

2022-010 (continued)

Chairperson Hicks questioned if the sign was permanent or temporary. Mr. Flejtuch stated although the sign will be there for some time, it is in fact a temporary sign. When the last home is sold, the sign will be removed. This should take approximately three years.

Chairperson Hicks questioned if lots were already sold. Mr. Flejtuch stated lots have been sold.

Motion by Kapuscinski, seconded by Greenan, to close the public hearing and grant a a variance for property located at 103 South Drive - Queens Landing to erect a 96-sf single sided sign.

Ayes: All

Noes: None

Motion Carried

2022-014

Request of Jennifer McAndrew of Plymouth Crossroads for a variance for property located at 3984 Clinton Street to have an interpretation for permitting proposed use of home in R-65A zoning

Jennifer McAndrew of Plymouth Crossroads provided the following details:

- This is a supportive program for male youth ages 18 – 24 years of age; the program has been in effect for over a decade and was previously housed in Lancaster.
- Due to Covid, the home in Lancaster was no longer able to be used. The program has been held by utilizing local church space at Ebenezer United Church of Christ.
- Funding has been received to be able to lease a property to house multiple youth at one time
- The current homeowner of 3984 Clinton Street is a friend of Plymouth Crossroads; the home is a 2-family home: 4 bedrooms in the upper and 3 bedrooms in the lower.
- The property is currently storing items for the program
- Plymouth Crossroads would like to move some youth in; staff is on site and the ages are 18 and over; no minors would be living on the premises.

Chairperson Hicks noted the Zoning Board of Appeals is not here to approve or deny the variance application; tonight, is for the Zoning Board of Appeals to interpret the zoning code in the Town of West Seneca. Code Enforcement denied this use as the proposed use is not provided for in the town code. Code Enforcement Officer Doug Busse concurred. The Code Enforcement Office cannot give approval as there is nothing specific in any zoning district across the town that permits this organization to do what is in the proposal.

Chairperson Hicks noted Ms. McAndrew is not the owner of the home; a letter was provided to the Code Enforcement Office by the owner of the home explaining the request and support of the program. Mr. Sandusky, owner of the home was present and stated his support of the program and explained he found nothing in the town code that prevented the use. Mr. Sandusky has no plans to sell his home.

Chairperson Hicks noted she was in receipt of correspondence from Erie County Division of Planning with no objection to the proposed variance as this was considered a local concern. The NYSDOT did not respond to the request within the allotted time frame; this is assumed not to be an issue with NYS.

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Chairperson Hicks requested clarification on who would be living in the home. Ms. McAndrew stated the residents of the home would be males ages 18 – 24 years of age; this is not a co-ed population. From January 2011 – October 2020 males ages 16 – 21 years of age were served; this was done with the Office of Child and Family Services NYS Certification. The program has had no citations or problems for over a decade in the Village of Lancaster and has achieved an 89% success rate. Approximately 9 out of 10 young men are successful in achieving the goals they have set for themselves. The typical goals are educational and/or employment related. At this point the program participants would be 18 years of age and older and would not require an Office of Child and Family Services NYS Certification. All the boys are prescreened for the program, i.e., mental health evaluations, substance abuse, criminal records. Most are coming to the program due to terminally ill parents or being raised by grandparents who are now in assisted living. No one is a court mandate, and all are coming to the program on a voluntary basis. The program not only provides room and board, but it also provides the life skills needed. Many are 18 years old and still in high school with no way to make enough at a part-time job for housing. The program transitions the residents into independent living. Ms. McAndrew stated she has been with the program for many years, has two children of her own, is a West Seneca resident and spends all her holidays with the residents. The residents are actively going to school and working when entering the program. This is a home, and they are responsible for chores, cooking, and cleaning. Case management is provided to work on the goals daily alongside the boys. The average stay for each youth is 3 – 6 months; this allows time to save up and obtain the skills needed to successfully live independently.

Chairperson Hicks questioned if any neighbor signatures were obtained in favor of the project. Ms. McAndrew stated she spoke with the residents 3978 Clinton Street and believed they were in favor of the service. 3994 Clinton Street invited Ms. McAndrew in, and they spoke at length about the program. The residents at 3985 Clinton Street were never home when Ms. McAndrew stopped by; information was left for the resident. 3995 Clinton Street was spoken to, and Ms. McAndrew believes he was in favor of the request.

Chairperson Hicks noted a petition was signed by several residents stating:

West Seneca, New York Zoning Board Variance Petition

Not to allow a Boarding House at 3984 Clinton Street, West Seneca, NY 14224 in a residential neighborhood.

If a variance is approved, this will decrease home values of the surrounding neighborhood. As a community we don't know who or how these young men will be vetted. We also need to know how long the lease will be in effect. This neighborhood is not zoned for a boarding house.

If you agree with not allowing this variance to occur at 3984 Clinton Street, West Seneca NY, please sign and date below.

Chairperson Hicks noted the neighbor at 3994 Clinton Street did sign the petition. Residents at the following addresses signed the petition: 3994, 4000, 4032, 3940, 3934, 3924, 3926, 4041, 4027, 3985, 3995, 3939, 3909, 3905, and 4009 Clinton Street; 15, 27, 30, and 18 Kathy Lane; 111 Annette Drive; 3, 2, and 6 Lindner Drive. The total number was 27 signatures.

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Chairperson Hicks deferred to the Code Enforcement Officer to again explain the reason this was before the Zoning Board of Appeals. Mr. Busse stated his office was unable to approve the request since the proposed use is not distinct in the zoning code for permitted uses in the R-65A district. This is for an interpretation of the proposed use.

Chairperson Hicks noted members have spent hours researching the town code and deferred to Deputy Town Attorney Stephen Stachowski. Mr. Stachowski stated because the use was not explicitly defined in the town code, the Code Enforcement Office took the position to deny the request. You now have an applicant before the Zoning Board of Appeals stating this is allowed and requesting the Zoning Board of Appeals to look at the Town Code and make an interpretation to see if this use falls into the prevue of the town code. When interpreting the town code, the benefit of the doubt is with the property owner who believes this does fall under the town code. The Zoning Board members may consider neighbors opinions, but if the members believe this is allowed under the town code, a neighbor's opinion does not necessarily matter. This is not a use or area variance where one can determine it changes the character of the neighborhood; that would be against the town code if being allowed. This situation is seeking the wisdom of the Zoning Board of Appeals on their review of the town code to see if their specific request is allowed or not.

Chairperson Hicks questioned the occupancy limit on a two-family dwelling. Mr. Busse stated the occupancy limit goes by the size of the home. If one person is staying in each bedroom of the house it would not even come close to the occupancy put in place. This home is large enough for seven people to be living in.

Chairperson Hicks questioned how many people would be living in the home. Ms. McAndrew stated there would be seven beds available, but all may not be used at the same time. Ms. McAndrew stated although she understands the concerns, this is not a boarding house. This is the opposite. There are family dinners, expectations, and rules, this will function as a household. There is an agreement to be in the program such as banking and agreeing to put a specific amount in savings. The agreement is between both parties, if Plymouth Crossroads determines this is not working, they may say this is not a good fit for the resident.

Chairperson Hicks questioned if the town code has a definition of a boarding house. Mr. Busse stated there is no definition of the term boarding house in the town code. Chairperson Hicks stated the term boarding house in her opinion should be disregarded by the Zoning Board members when determining a decision.

Mr. Kapuscinski questioned if the petition was relevant due to the statement of the issue being a use variant as the Zoning Board members are not hearing a use variance. Chairperson Hicks stated she indicated it is not relevant as this not a boarding house and the board is doing an interpretation not a use. However, the fact that a letter is signed by 27 residents should be acknowledged.

Chairperson Hicks referred to the town code and questioned the definition of a dwelling. Mr. Stachowski stated a dwelling is defined as a building being used as a living quarter for one or more families but not including a building of mixed occupancy. A two-family dwelling is defined as a building containing two dwelling units and designed or used exclusively for occupancy of two families living independently of each other or two one family dwellings having a parting wall in common. The term family is defined as one or more persons living together in one dwelling unit and maintaining a common household including domestic servants, ingratiates guests,

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together with borders, roomers, and lodgers not in excess of the numbers allowed in this chapter as an accessory use.

Ms. Greenan noted zoning restrictions must be strictly construed against the municipality that enacted and seeks to enforce the ordinance. Any ambiguity in the language employed must be resolved in favor of the property owner. As we consider and acknowledge the residents who signed the petition, the definition of boarding house is not defined in the town code. The question before the Zoning Board is if the proposed use falls within the prevue of a two-family dwelling. Ms. Greenan asked for more information on how the residents would be considered a family. Ms. McAndrew stated the residents are a family; they refer to each other as brothers. There are approximately 200 alumnae of the program; the typical Christmas has 30 – 40 youth back home for a function. Birthdays and milestones such as prom and road tests are celebrated together. Like a normal functioning family, there is a pizza night, someone doing dishes, picking up, etc. In this case with an upper and lower, the program can serve as two households; more than likely they will all end up at the same dinner table.

Chairperson Hicks requested information on transportation for the residents. Ms. McAndrew stated the youth still in school are still allowed to stay with their last school attended and that school district provides transportation. Bikes are provided for transitioning to independence to get to jobs. The house is on a bus line and a minivan is also used for transport to appointments; most do not come with a vehicle.

Chairperson Hicks noted this is an interpretation of the town code and the town code lacks an interpretation that specifically speaks to the intended use of the property and invited residents to speak to the interpretation of the town code. The Zoning Board does not approve or deny the project, they are to interpret the town code and decide if this is a family under the code. If the Zoning Board decides this is not a family as per the town code definition in which case the applicant can apply for a use variance.

Mr. Stachowski stated Chairperson Hicks is correct and if denied, the applicant should obtain their own legal counsel. Mr. Stachowski questioned if a resident owned a 2-family home in West Seneca, could they potentially rent it to three college students as opposed to related persons; would this be allowed under the 2-family dwelling. Mr. Busse stated this absolutely would be allowed. Seven people could rent the seven rooms of the house and the neighbors could have no objection; this would be permitted by town code. Mr. Stachowski stated there is precedence with the Code Enforcement Office, where unrelated people may live together. Mr. Busse stated the homeowner would not even need to come to the Code Enforcement Office for permission; it is legally allowed to rent out your house. Mr. Stachowski questioned what the Code Enforcement Office would do if a neighbor complained. Mr. Busse stated property maintenance would be addressed with the owner of the property. This is a unique situation that is not explicitly allowed.

Ms. Greenan stated she understands this is voluntary and questioned what goes into the vetting process. Ms. McAndrew stated there is a referral process. A one-on-one interview is conducted, background checks are run, drug tests upon prescreening, the regulations are agreed upon. As residents meet with the case manager and if goals are not achieved an action plan is put into place. No court mandates are taken in, just individuals who choose to transition into independence in a healthy and productive way.

Mr. Kapuscinski questioned how many residents have been expelled. Ms. McAndrew stated she had 178 residents over the time span in Lancaster and approximately 7 did not complete the program. This is a different

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cliente who is willing to sign on with the program, live with others and have staff/cameras on site. Random drug tests and room searches are done. Most neighbors in Lancaster did not know the program existed.

Ms. Greenan questioned if there would be any signage. Ms. McAndrew stated there has never been signage and her intent is never to do so.

Mr. Kapuscinski questioned if the residents are working or in school. Ms. McAndrew explained within seven days residents should be enrolled in school or working; there are always extenuating circumstances. There is a banking agreement where 50% of what is earned goes into a savings account, 25% is spending money, and the other 25% goes to household bills to set the path for independence.

A Clinton Street resident stated he was only being polite when he had Ms. McAndrew come into his home to hear what she had to say. This is not zoned for; this is a 2-family home, and this is not a family. The resident expressed concerns with not knowing the length of the lease and the constant turnover of residents. There is no fence to keep them off his property and this is residential. The resident stated it was his belief that a neighbor signed the petition because they did not wish to get involved. The resident expressed concerns surrounding the possible number of cars that may be on the property. This is a 2-family home for families not for young men coming in and out.

Chairperson Hicks questioned if the resident understood the town code's definition of a family. The resident stated he understood the definition and asked to repeat the definition. Chairperson Hicks repeated the definition of family under the town code is defined as one or more persons living together in one dwelling unit and maintaining a common household including domestic servants, ingratiate guests, together with borders, roomers, and lodgers not in excess of the numbers allowed in this chapter as an accessory use. It is up to the board to state if they agree with this broad definition of family applies to the people who wish to rent the home. The resident stated he understood.

The resident stated there are 27 signatures in opposition to this and realizes the top of the petition states this is a boarding house. To him this is a boarding house with the constant flow of residents; this is not a family. Chairperson Hicks stated the board is tasked with deciding if this meets the definition of family. At a previous Town Board meeting, it was noted that a resident needed to go into assisted living and the son moved in and the neighbors have had difficulties with drugs and prostitution. Code Enforcement and the Chief of Police are involved in handling the matter. No matter where you live in the town, you could have a problem, and this is a single-family home. The resident stated his area is zoned residential. The resident questioned if the program was qualified to do the vetting.

Ms. Greenan reiterated the Deputy Town Attorney mentioned the owner could rent the property out to two different sets of college students and the only vetting would be from the renter. In this case, this is part of a program where the residents are vetted, gone through drug screening, and extensive qualification. The job of the Zoning Board is not to define what a family is; the Zoning Board is here to interpret what a family is as it currently exists under the town code. The Town Board in the future could change the definition.

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Mr. Stachowski stated normal codes that a property needs to follow are still in place, such as noise, and number of cars. Mr. Busse concurred; seven 18-year-old men could rent the property and there could be seven vehicles there.

A Sharon Drive resident stated he is aware of the program and has volunteered with the program for the past ten years. The resident has met the staff and residents. In his experience, the staff is qualified and professional and treat the residents like family. It is an unassuming set up with no signage. The staff is geared towards making residents independent through guidance and help. The residents go on to lead productive lives. The residents would be on the streets without the program. The resident stated he understands the Clinton Street residents' concerns; however, if he was given the petition with the way it was worded it would have raised questions for him too. While in Lancaster, the police department were involved and even had referrals to the program.

A Sharon Drive resident stated she understands the concerns of the neighbor but there is background knowledge that has now been given. If approved this is something the town should be proud to have in the neighborhood. The work the program does helps the residents to be productive members of society. When the Lancaster facility was closed, the resident had two young men move in with her family for a month. It was a wonderful, respectful experience, and the family has maintained their relationship with the young men. The resident has been to the previous location and the residents are a family.

A West Seneca resident stated she has been on the board of Plymouth Crossroads for ten years. In the past, when dealing with 16- and 17-year-old, the Office of Child and Family Services required NYS Certification and they deemed the processes used by Ms. McAndrew and her staff. Ms. McAndrew is qualified and certified in social services. The program is to provide homes to kids who have none.

Chairperson Hicks questioned if a governmental agency provides money towards the rent. Ms. McAndrew stated in the past there was HUD funding; the budget line was cut. Money was received from the Office of Child and Family Services up until October 2020; this money will not be taken going forward as it requires the program accept 16- and 17-year-olds. County funding is received for youth development and summer prime time. No funding is received for the actual home. Chairperson Hicks reiterated, the people are living here voluntarily, the programs may be funded from an outside source, but the rent is as if anyone was contributing towards their rent along with the resident's contribution.

The Clinton Street resident expressed concerns that Clinton Elementary School was a block away. Chairperson Hicks questioned how pedophiles are handled within the town. Mr. Busse stated residents are notified and they are most likely all over town. Chairperson Hicks asked if any residents were pedophiles. Ms. McAndrew stated absolutely not; this would be part of the screening process.

A Covington Drive resident stated she was speaking as a resident and not as a member of the Town Board. The application states they are looking for an interpretation and the agenda states they were here for a variance. Mr. Busse stated this is an interpretation of the proposed zoning as the current zoning sits with the property today. The resident stated the interpretation states it is an application and looking for an interpretation of the application. Mr. Busse stated this is correct, it is an interpretation for a permitted proposed use in R-65A zoning.

NEW BUSINESS

2022-015

Request of Thomas Meredith for a variance for property located at 83 Princess Lane to erect a 6' fence in front and side yard on corner lot (4' maximum height allowed in front and side yard)

Mr. Meredith stated his residence is at the corner of Summit Avenue and Princess Lane; Summit Avenue is a dead end into his backyard. The only neighbor this would directly affect resides at 370 Summit Avenue. This resident is on vacation but did state she had no objection to the variance request. Previously, a variance was granted for a two-car garage in the back yard. Mr. Meredith would like to get a swimming pool soon and would like a 6' fence for privacy and to keep the deer out of his yard.

Chairperson Hicks noted correspondence was received from Erie County Division of Environment and Planning stating there was no objection to the proposed request.

Code Enforcement Officer Doug Busse noted the dead-end part of the street is like a paper street. There will be no building.

Chairperson Hicks questioned the location of the fence to the sidewalk. Mr. Meredith stated the sidewalk is parallel with Summit Avenue and ends before the property; approximately 15' before the garage. The fence would be approximately 4' off the garage. Mr. Busse stated there is not a sidewalk running parallel with the new fence.

No comments were received from the public.

Chairperson Hicks referred to the use variance factors: there is not an undesirable change to the neighborhood; the alternative to the variance is to not put up the fence; the request is not substantial with only one neighbor being affected; this variance has no impact on the environment; this is a self-created hardship. This is a dead-end street that backs up to a field and the sidewalk is a distance away.

Motion by Kapuscinski, seconded by Greenan, to close the public hearing and grant a a variance for property located at 83 Princess Lane to erect a 6' fence in front and side yard on corner lot.

Ayes: All

Noes: None

Motion Carried

2022-017

Request of Stephen Owczarczak and Taryn Barber for a variance for property located at 235 Tampa Drive to erect a 6' fence in front and side yard on corner lot (4' maximum height allowed in front and side yard)

Ms. Barber stated the application is to erect a 6' fence from the back of the house to the driveway/garage with a small section between the garage and shed and neighbor's fence. Chairperson Hicks questioned if any trees would be removed. Ms. Barber stated the pine trees would need to be removed with other gardens going in.

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Chairperson Hicks questioned how far off the sidewalk would the fence be placed. Ms. Barber stated she would like to do the property line which is approximately 1' off the sidewalk. The other side of the sidewalk has greater than 7' of grass. Code Enforcement Officer Doug Busse stated the sidewalk is a unique situation and is the only one in the neighborhood pushed back.

Ms. Greenan questioned if the 3' spacing was a requirement or preference of the Zoning Board. Mr. Busse stated this was a preference. Chairperson Hicks stated this is done in newer neighborhoods with very little green space between the road and the sidewalk to allow room for a pedestrian to move if a car were to jump a curb. In this situation there is a substantial amount of green space between the road and the sidewalk.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 234, 250, and 251 Tampa Drive.

No comments were received from the public.

Motion by Kapuscinski, seconded by Greenan, to close the public hearing and grant a variance for property located at 235 Tampa Drive to erect a 6' fence in front and side yard on corner lot with the following condition: the fence is to be 1' off the sidewalk due to the unique circumstance surrounding the amount of greenspace between the house and the road.

Ayes: All

Noes: None

Motion Carried

2022-018

Request of Anthony and Amy Ehrenreich for a variance for property located at 26 Larsen Lane to install a generator with 17' 8" front yard setback (30' front yard setback required)

Mr. Ehrenreich stated he would like to have a home generator installed. Mr. Ehrenreich's neighborhood loses power often, and his spouse currently works from home.

Code Enforcement Officer Doug Busse explained the house is on a corner lot; there is a 30' front yard setback required. Mr. Busse noted there are shrubs which will block the view of the generator.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 25, 13, 31, 32, and 19 Larsen Lane along with 15 Brookwood Drive.

Chairperson Hicks questioned the size of the generator. Mr. Ehrenreich stated the generator will be less than 4' wide; slightly smaller than an airconditioner unit. There is a garden on the side of the proposed generator blocking the view to neighbors.

Chairperson Hicks questioned if the generator will be used only as a backup when the power fails. Mr. Ehrenreich stated this is correct.

No comments were received from the public.

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Chairperson Hicks referred to the area variance factors: this does not create an undesirable change to the neighborhood; the alternative is to change the placement of the generator, however that would be an added expense to the homeowner; this is not a substantial request due to the size; this has no impact on the environment; this is a self-created hardship as the homeowner cannot control the electricity going out.

Motion by Greenan, seconded by Kapuscinski, to close the public hearing and grant a a variance for property located at 26 Larsen Lane to install a generator with 17' 8" front yard setback.

Ayes: All

Noes: None

Motion Carried

FOR DISCUSSION

Ms. Greenan stated at the March meeting the process for a variance to allow the raising of chickens was recently changed and all variances reappear in January. The Deputy Town Attorney has given guidance on the balancing test for an area variance along with the unnecessary hardship test for the use variances. With so many variances for chickens, and the unnecessary hardship test being referred to, most chickens are reapproved unless there are police reports on file. Ms. Greenan asked the Deputy Town Attorney to research if another method, such as a permit, could be researched.

Deputy Town Attorney Stephan Stachowski stated the town code does not allow residents to raise chickens in the Town of West Seneca. The best way to change the process would be for the Town Board to change the town code. There are some towns of similar size that have enacted codes permitting chickens. In regard to what the Zoning Board members look at in making the determination to approve (i.e. police reports) Mr. Stachowski recommends keeping the process the same. Raising chickens has been allowed and this has set a precedence. This is something the Town Board could investigate.

Code Enforcement officer Doug Busse stated the town code is very vague regarding farm animals; it is Mr. Busses' opinion the only way to do this would be to have a code implemented and many factors will need to be considered.

Town Clerk Amy Kobler stated a multiple dog permit was recently implemented requiring an onsite inspection by the Animal Control Officers renewed annually and suggested something similar could be created with Code Enforcement Officers completing inspections annually. Mr. Busse stated Code Enforcement will need to have authority to address any problems that arise. Mr. Stachowski questioned a fee. Town Clerk Kobler stated the fee is \$50 and the cost of the dog licenses annually.

Mr. Busse reiterated the need for Code Enforcement and Erie County Health Department to remove chickens should it become necessary. Chairperson Hicks referred to past instances where the SPCA was called to intervene due to the care and housing of the chickens.

Chairperson Hicks stated there are humane and hygienic factors to consider and is comfortable continuing the with the current practice and proposed staggering the need for applicants to reappear to every other year if they have had chickens for three or more years. Mr. Busse stated he agrees with this suggestion and issues generally arise immediately. Ms. Greenan stated she agrees with the proposed process and suggested placing this under the Home Occupancy Permits that are reviewed by the Planning Board. Mr. Stachowski stated it

WEST SENECA COMMUNITY CENTER
1300 Union Road
West Seneca, NY 14224

ZONING BOARD OF APPEALS
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sounds plausible but will need to confirm if the town code would need to be amended. Ms. Greenan stated the opportunity for the public to speak and review of police reports would still occur.

Chairperson Hicks questioned if the board members would like to begin staggering the applicants based on the three year threshold. Mr. Stachowski stated variances are tied to the land, and if the applicant moved the property would still carry the variance and suggested linking the variance to the applicant as well. Chairperson Hicks stated she is trying to consider the hardship of the applicants returning every year. Mr. Stachowski stated he appreciates the consideration, but the Zoning Board is granting permission for these applicants to do something that is essentially against the law, and they should respect that despite the inconvenience.

Ms. Greenan stated she appreciates the discussion and will leave the issue with the Deputy Town Attorney to pursue.

ADJOURNMENT

Motion by Chairperson Hicks, seconded by Kapuscinski, to adjourn the meeting at 8:03 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary