





**2022-039** (continued)

variance stays with the property. If a renter were to come along, the renter would have the ability to have live music. However, anything granted today could be limited to the applicant not leasing to a third party.

Chairperson Hicks questioned if the applicant would still be responsible for the actions of his tenants. Mr. Stachowski stated the use variance would go into effect. If there were any noise ordinance violations the responsible party would be the lessee. If a limited use variance is granted, and there were issues, the Zoning Board could hold the property owner responsible. Code Enforcement Officer Doug Busse stated similar variances for live music have been granted to the tenants of a building. Code Enforcement views the variance as it goes with the building regardless of owner or tenant.

Brian Doster, 3361 Clinton Street, stated his opposition to granting a variance for live music. In the past, Mr. Jemiolo specifically stated the live music was not working. Mr. Doster does not object to a special event but granting the variance will open the issues of the past.

Chairperson Hicks stated the last variance, which was granted through Just 1<sup>st</sup>, had only one complaint on May 31<sup>st</sup> that was relative to live music. Chairperson Hicks stated she is inclined to allow the variance with the previous restrictions attached.

Mr. Kapuscinski questioned if Mr. Doster encountered any problems with the restricted variance. Mr. Doster stated there were only a handful of bands; there were really no issues. Mr. Doster expects some noise but objects to the variance.

Chairperson Hicks stated this variance would be for indoor music only; at no point should the music be played outside on the patio or have the doors open. Mr. Jemiolo requested clarification on if this was just for live music. Mr. Busse stated this is covered under the noise ordinance. Mr. Jemiolo may have a radio outside if it is not violating the noise ordinance.

Mr. Doster stated he disagreed; there was a variance requested from the previous owner. Mr. Busse stated he is not aware of a previous variance; tonight, is for live music and only live music.

Chairperson Hicks stated there are other properties with similar circumstances where a restaurant/bar is in a residential neighborhood and there is always a balance that needs to be met. Mr. Doster stated there is a variance from the previous owner that does not allow music outside even from a radio. Mr. Busse stated this may be the case, he would need to investigate further.

Chairperson Hicks noted the Zoning Board has approved a live music variance in the past and this variance has become limited. Mr. Jemiolo has previously stated he requires the variance to remain competitive and sustain his business. Chairperson Hicks noted of all the similar variances, Mr. Jemiolo is given a small window of opportunity.

Mr. Kapuscinski stated he was in favor of the limited hours of Friday and Saturday from 7:00 PM – 10:30 PM and stated Mr. Doster previously stated he did not have an issue with the hours. Mr. Doster stated he did not have an issue, but things may get out of hand.

**2022-039** (continued)

Chairperson Hicks stated she felt it was a good idea to allow the variance in three month increments to ensure the rules are being followed and suggested the applicant return at the early December meeting. Any additional days should be requested tonight.

Mr. Jemiolo noted the restrictions do not allow for him to hold an event in the afternoon or during a football game. Chairperson Hicks reiterated this is the time to ask; if Mr. Jemiolo would like to think this through the item could be tabled until next month.

Chairperson Hicks referred to the Deputy Town Attorney on how to allow a use variance with these circumstances. Mr. Stachowski stated live music is not allowed in West Seneca. The application is for a use variance to allow this property to have live music indoors. The Zoning Board is deciding if live music will be allowed and how often; leaving things open ended places constraints on enforcement.

Chairperson Hicks suggested tabling the request until the end of the meeting to allow Mr. Jemiolo time to think about his request.

Motion by Hicks, seconded by Kapuscinski, to table the item until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

**2022-041**

Request of Sue Petrillo for a variance for property located at 41 Lakeside Court to erect a 5' fence in front and side yard with 28' projection off house (4' maximum height allowed in front and side yard; 10' projection permitted)

Ms. Petrillo stated she recently purchased her home; she has a child with a disability and two dogs. The house is on a corner lot and currently does not have a fence. A fence is needed to keep the dogs safe and to allow a visible boundary for her child. Ms. Petrillo would like to go to a 5' height so the dogs will not be able to get over the fence.

Chairperson Hicks referred to the corner lot and stated a 4' fence would be permitted in the back of the house, but no fence would be allowed on the Lakeside Drive side. Code Enforcement Officer Doug Busse stated this is correct because the projection is more than 10' away from the house. There is a 30' setback from the house to the Lakeside Drive property line.

Chairperson Hicks stated the variances requested are 5' on Lakeside Court in the front of the house going to the back corner, along with the projection off the front on the Lakeside Drive side, along with the height in the front and side yard.

Chairperson Hicks questioned if the fence will be 3' off the sidewalk. Ms. Petrillo stated the fence will be at least 4' off the sidewalk.

Chairperson Hicks stated she was in receipt of a letter from the neighbor at 42 Lakeside Drive expressing concerns about the maintenance of pine trees and the property line.

**2022-041** (continued)

Ms. Petrillo referred to the survey and illustrated the trees and the property line. The trees are beyond Ms. Petrillo's property line and there is an easement between the two properties. Ms. Petrillo stated it is her belief that the neighbor would like the trees removed. Mr. Busse stated the town can not get involved in a property line dispute as they are not property surveyors and noted, the trees having nothing to do with the fence.

Chairperson Hicks questioned if a 6' fence would be allowed behind the house perpendicular to Lakeside Drive. Mr. Busse stated a 6' fence would not be allowed as this is considered the side yard/front yard due to the corner lot situation.

Chairperson Hicks stated if the 4' fence is allowed, and the applicant did not need to come for a variance the applicant could build that fence right on the property line. Mr. Busse stated this is correct. It is noted the overhead utility line is outside of Ms. Petrillo's property line. If the trees are also outside of the property line, then this will not be considered in the variance request.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 49, 46, 23, and 38 Lakeside Court.

No comments were received from the public.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - there is no undesirable change to the neighborhood; 2) Is there an alternative - no as the Zoning Board of Appeals has typically granted similar fences on corner lots; 3) Is the request substantial - this is not substantial considering the lot size; 4) Does the variance have an impact on the environment - there is no impact on the environment; 5) Is this a self-created difficulty - yes, but this is not the determining factor.

Motion by Hicks, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 41 Lakeside Court to erect a 5' fence in front and side yard with 28' projection off house.

Ayes: All

Noes: None

Motion Carried

**2022-042**

Request of Lynne Snell for a variance for property located at 32 Molnar Court to install a generator with 25' front yard setback (30' front yard setback required)

Ms. Snell stated she is looking to have a whole house generator installed in the side yard on a corner lot. The side of the yard where the generator would be placed has no windows and is also where the gas meter located. The electric has gone out as this residence several times this year for approximately six hours at a time.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 80, 68, and 77 Molnar Drive along with 6, 26, and 22 Molnar Court. Chairperson Hicks acknowledged this area of town frequently losses power. 30' is the required setback for the generator and the ask is not substantial at 27.28', because this is on a corner lot and the residence is considered to have two front yard setbacks. It is not practical to have the generator near windows.

**2022-042** (continued)

No comments were received from the public.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, this is not a large structure; 2) Is there an alternative – there is no other alternative; 3) Is the request substantial – this is not substantial; 4) Does the variance have an impact on the environment – there is no impact on the environment; 5) Is this a self-created difficulty – no, the applicant can not control when there is a power outage.

Motion by Hicks, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 32 Molnar Court to install a generator with 25' front yard setback.

Ayes: All

Noes: None

Motion Carried

**TABLED ITEMS**

**2020-085**

Request of Amanda Lanyzs for renewal of a variance for property located at 88 Lyndale Court to allow the raising of chickens (raising of poultry/farm animals not permitted)

The applicant was not present.

Chairperson Hicks noted if Ms. Lanyzs wishes to continue raising chicken, she must reapply for a variance with the Code Enforcement Office.

Motion by Hicks, seconded by Kapuscinski, to deny the variance renewal for property located at 88 Lyndale Court to allow the raising of chickens.

Ayes: All

Noes: None

Motion Carried

**2022-038**

Request of Shirley Burgos for a variance for property located at 475 Potters Road to install an 18' x 20' turn around driveway in front yard setback (40' front yard setback required)

The applicant was not present.

Motion by Hicks, seconded by Lang, to table the item pending further notification of the Code Enforcement Office.

Ayes: All

Noes: None

Motion Carried

**2022-039**

Request of Robert Jemiolo for a variance for property located at 3377 Clinton Street to allow live music (live music prohibited)

Mr. Jemiolo stated he would like to keep Friday and Saturday but wondered if there was any opposition to acoustic sets as this would be quieter. Chairperson Hicks stated the type does not matter as this is still live music and does not believe making the distinction between live music and acoustic was in the realm of the Zoning Board. Deputy Town Attorney Stephan Stachowski stated it was his recommendation that the Zoning Board refrain from making the distinction. Code Enforcement Officer Doug Busse concurred as this would be hard to enforce.

Mr. Jemiolo stated he would like the ability to earn by having live music at an earlier hour on Saturday. Mr. Stachowski advised against granting an either-or type of time variance as this also would be hard to enforce.

Mr. Jemiolo expressed concerns with the number of special event permits he could be granted. Mr. Busse stated having a band inside on a Sunday afternoon would not be considered a special event. A special event would be a one-time event (i.e., Fall Fest, St. Patrick's Day).

Chairperson Hicks questioned if the building has been leased. Mr. Jemiolo stated there is currently no lease.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – no, as the applicant feels this is needed to return a profit on his business; 2) Is this a unique circumstance – yes, this business is temperamental and has not had steady patrons and ability to be open; 3) Does the variance change the character of the neighborhood – no, assuming the applicant adheres to the noise ordinance; 4) Is this a self-created hardship - yes, but not the determining factor.

Motion by Hicks, seconded by Kapuscinski, to close the public hearing and grant a temporary variance valid until December 4, 2022, for the property located at 3377 Clinton Street to allow live music with the following conditions: 1) indoor music only; 2) Friday's and Saturday's from 7:00 PM – 10:30 PM; 3) the applicant will return on December 7, 2022, to reevaluate.

On the question Mr. Lang questioned if the applicant should return earlier to allow the applicant to plan events for the December holiday season. Mr. Jemiolo stated what Chairperson Hicks proposed is acceptable.

Ayes: All

Noes: None

Motion Carried

**ADJOURNMENT**

Motion by Kapuscinski, seconded by Lang, to adjourn the meeting at 7:20 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler  
Town Clerk/Zoning Board Secretary