

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

**ZONING BOARD OF APPEALS
Minutes #2023-07
July 26, 2023**

Deputy Town Attorney Stephen Stachowski explained a variance runs with the property and his advice to the Zoning Board would be to limit the variance to several months. If a new owner is intending to have live music, they should have their own application and appear before the Zoning Board of Appeals.

Chairperson Hicks noted several times she has driven past the establishment and there have been cars parked in front where parking is not allowed.

Mr. Jemiolo stated he felt other establishments were being treated differently with parking. Code Enforcement Officer Doug Busse stated this directive came from the NYSDOT.

Chairperson Hicks stated non-compliance has been going on for approximately 10 years; the area was supposed to be blocked and a permanent barrier put in place. Mr. Busse stated there were conversations about a decorative barrier and what the expectations were, but traffic cones have been placed in the area.

Chairperson Hicks stated there is a formula being worked on to grant a use variance. At this point, the Zoning Board is taking Mr. Jemiolo's attestation that live music is needed to increase profits and there has not been any proof showing the hardship.

Mr. Stachowski explained a use variance has a higher standard and one of the determining factors is whether there is an undo hardship or financial burden without having the variance. The Zoning Board is looking for proof of a pattern that when there is a band, the business is making more money.

Chairperson Hicks referred to a special event permit and questioned the timeline. Mr. Busse stated there is a 30-day turnaround time, but his office is always willing to work with people. This can be granted three times per year. This request runs with the applicant, not the property.

Ms. Greenan requested clarification of the hours and questioned if Friday 7:00 PM -10:30 PM, Saturday 7:00 PM - 10:30 PM and Sunday 3:00 PM -7:00 PM. Mr. Jemiolo stated this is correct.

Brian Doster, 3361 Clinton Street, stated he is opposed to the variance request. There is no variance in place and Mr. Jemiolo still has music and refuses to follow the rules. Mr. Doster filed a police report, and the establishment is being sold. Mr. Jemiolo is in a tough business and does not have proof of the hardship.

Ms. Tronolone stated she was against granting the variance request based on the past situations, the neighbors' statements, and the fact that the property is being sold.

Ms. Greenan stated she would be open to a compromise to respect the neighbors' concerns and the previous violations.

Mr. Bedient questioned if there have been complaints since the last renewal. Mr. Busse stated there have not been complaints since the last renewal.

Mr. Bedient questioned the NYSDOT parking requirement. Chairperson Hicks stated this was a requirement of the NYSDOT and this was a safety reason. The variance for live music is a privilege.

Mr. Bedient stated he was open to a middle ground. Ms. Greenan concurred noting, Mr. Doster has attended multiple meetings along with illustrations that Mr. Jemiolo is not respecting the rules set forth.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no, this is an attraction for the business; 2) Is this a unique circumstance – yes, this is a neighborhood bar; 3) Does the variance change the character of the neighborhood – no, this establishment has been in this location for many years; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Chairperson Hicks stated if the sale of the business is not completed and the applicant wishes to renew the variance he will need to keep track of the sales during and not during music times; this will need to be brought to the next meeting.

Motion by Hicks, seconded by Greenan, to close the public hearing and grant a temporary variance for property located at 3377 Clinton Street to allow live music with the following conditions: 1) Friday from 7:00 PM – 10:30 PM; 2) Sunday from 3:00 PM – 7:00 PM; 3) the applicant should comply with NYS DOT requirements on parking in the front of the building; 4) the variance will expire on September 27, 2023 at which time the applicant will reappear before the Zoning Board of Appeals.

Ayes: (4) Hicks

Greenan

Lang

Bedient

Noes: (1) Tronolone

Motion Carried

NEW BUSINESS

2023-026

Request of Cody Schmidt for a variance for property located at 1909 Center Road to erect a 6' fence in front and side yard (fences shall not exceed 4' in front and side yard)

Mr. Schmidt stated he lives next to a church and would like the fence for privacy.

Ms. Greenan noted the shared driveway and questioned if the fence would propose any safety concerns. Code Enforcement Officer Doug Busse stated there are no safety concerns. The driveway extends more west and there is an ingress/egress on the side in the back.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 1896 and 1904 Center Road.

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; 2) Is there an alternative – no, there is an existing large blacktop area that was previously adjoined with the applicants lot; 3) Is the request substantial – no; 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, this is a pre-existing condition.

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Motion by Tronolone, seconded by Lang, to close the public hearing and grant a variance for property located at 1909 Center Road to erect a 6' fence in front and side yard.

Ayes: All

Noes: None

Motion Carried

2023-027

Request of Kelly Riordan for a variance for property located at 247 Main Street to allow raising of chickens on property (raising of poultry/farm animals not permitted)

Ms. Riordan stated she is looking to raise six hens to raise with her children; the chickens will provide eggs and be culled in the winter. The parcel is almost one acre and backs up to Pasquale's parking lot. The chickens are 177' from the house and 75' from the property line. The chickens are enclosed in a coop with a run.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 229 and 233 Main Street; the neighbor to the right did not sign. Code Enforcement Officer Doug Busse stated the neighbor at 255 Main Street was upset about flies on the property. Ms. Riordan stated that she spoke with the neighbor, and they were agreeable due to the location of the coop. Chairperson Hicks requested that Ms. Riordan obtain a letter in support from the resident at 255 Main Street.

No comments were received from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no, this is not close to the neighbors; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Lang, seconded by Greenan, to close the public hearing and grant a temporary variance for property located at 247 Main Street to allow raising of six hens on property noting, the applicant will reappear at the December 6, 2023 meeting.

Ayes: All

Noes: None

Motion Carried

2023-028

Request of Shawn Hoerner for a variance for property located at 60 Brook Lane to erect a 6' fence in front and side yard with 26' projection past the front of the house (fences shall not exceed 4' in front and side yard; fences shall not project more than 10' past house)

Chairperson Hicks recused herself from the request and left the meeting room.

Mr. Hoerner stated he would like a fence along the property. The house is on a corner lot and raised up allowing neighbors to see into the yard. The privacy fence will also help with the family dog who barks as people pass by.

Ms. Greenan questioned if the fence will be 3' from the sidewalk. Code Enforcement Officer Doug Busse stated if approved this can be noted that the fence should be 3' from the sidewalk. Ms. Greenan explained this is traditionally done to protect pedestrians.

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Ms. Greenan stated neighbor signatures with no objection to the variance were obtained from residents at 88, 65, 96, and 100 Sunset Creek and 56 Brook Lane.

No comments were received from the public.

Ms. Greenan referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - no, this is a common request for a corner lot; 2) Is there an alternative – no, this is needed for privacy; 3) Is the request substantial – no; 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 Tronolone, seconded by Lang, to close the public hearing and grant a variance for property located at 60 Brook Lane to erect a 6' fence in front and side yard with 26' projection past the front of the house, noting the fence is to be erected 3' from the sidewalk.

Ayes: All

Noes: None

Motion Carried

Chairperson Hicks returned to the meeting.

2023-029

Request of Richard Cerrone for a variance for property located at 118 Chamberlin Drive to install a generator 2' off side property line (generators shall be 5' from side property line)

Ms. Cerrone stated her home has frequent power outages and would like a generator installed.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 122 and 117 Chamberlin Drive.

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, there are neighbor letters in support; 2) Is there an alternative – no; 3) Is the request substantial – no; 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 Greenan, seconded by Tronolone, to close the public hearing and grant a variance for property located at 118 Chamberlin Drive to install a generator 2' off side property line.

Ayes: All

Noes: None

Motion Carried

2023-030

Request of Edward Culliton for a variance for property located at 20 Florence Avenue to allow a second driveway for new garage access (maximum one driveway allowed on residential property)

Mr. Culliton stated he has already put in the second driveway. A stone driveway was placed to allow access to the backyard for a future pole barn. The property is a triple wide lot with four trees that will be removed.

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Chairperson Hicks questioned the timeline for the pole barn. Mr. Culliton stated approximately 12 – 18 months for construction.

Chairperson Hicks questioned the purpose of the proposed garage. Mr. Culliton stated this is to store two trailers. Code Enforcement Officer Doug Busse stated there is only one trailer allowed to be stored on a property from May 15th – September 15th. Construction and commercial equipment are not allowed on residential property. After September 15th, no trailer or camper should be out.

Chairperson Hicks questioned if construction equipment is stored on the property. Mr. Culliton stated he drives a dump truck and frequently brings it home. Mr. Busse stated this is not allowed to be stored on residential property.

Deputy Town Attorney Stephen Stachowski questioned what is on the property. Mr. Culliton stated a camper and a trailer for a race car. Mr. Stachowski questioned if Mr. Culliton now understood the code. Mr. Culliton stated he understood, and this is the reason for the future pole barn.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 6 Apt. 4, 27, 73, 40, and 69 Florence Avenue.

Mr. Stachowski questioned how many residents in West Seneca have a second driveway. Mr. Busse stated there are only a handful that are pre-existing non-conforming. There are a few with another accessory building on the lot. Mr. Stachowski reminded the board this request could potentially set a precedence.

Nina Ludwig, 39 Florence Avenue, stated this is the third driveway. There is a house, garage, and double deep shed. One of the driveways is made from millings, with three trailers parked on it. There is also a dump truck parked on the property and all of this creates a safety hazard. This is located on a dead-end street with children.

Chairperson Hicks stated there is a driveway going to the house, and a gravel driveway on the north side and the driveway being referred to goes out to the neighborhood.

Susan Kims, 99 Covington Drive, stated she was speaking as a resident and questioned if a gravel driveway was permitted. Mr. Busse stated a gravel driveway was not allowed but this is in reference to the driveway being requested. Mr. Culliton stated the previous owner is responsible for the gravel driveway.

Chairperson Hicks stated it was her opinion that the driveway should be removed, filled in with grass and a variance request be submitted when the garage is ready to be built. Residential property owners should not have to see the equipment. There are neighbors who called Code Enforcement and they were against the variance and do not want to see the trailers.

Ms. Greenan stated she agreed with Chairperson Hicks that the pole barn should be built before the driveway installation. Ms. Tronolone stated she agreed with Chairperson Hicks.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood - yes, the driveway is not an allowed use and the items in the driveway should be enclosed at least half the year; 2) Is there an alternative – yes, the applicants have indicated they are looking at several other options to store their equipment; 3) Is the request substantial – yes, this is a large project in relation to

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the area; 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 Greenan, to close the public hearing and deny the variance request for property located at 20 Florence Avenue to allow a second driveway for new garage access, noting the plans for the potential garage are not finalized.

On the question, Mr. Lang questioned if this item should be tabled for reappearance as the circumstances change. Mr. Stachowski recommended tabling the item.

Chairperson Hicks withdrew her motion. Ms. Greenan withdrew her second.

Motion by Hicks, seconded by Greenan, to table the item until the December 6, 2023, meeting.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Hicks, seconded by Greenan, to adjourn the meeting at 8:00 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary