

WEST SENECA ZONING BOARD OF APPEALS
1300 Union Road, West Seneca, NY 14224
6:00 pm in the Community Center on April 24, 2024

MEETING MINUTES

Meeting #2024-04

The regular meeting of the Zoning Board of Appeals of the Town of West Seneca was called to order by Chairperson Evelyn Hicks at 6:06 P.M. followed by the Pledge of Allegiance.

ROLL CALL: Present - Evelyn Hicks, Chairperson
Edmund Bedient
Amelia Greenan
Paul Lang
Joette Tronolone
Douglas Busse, Code Enforcement Officer
Steven Stachowski, Deputy Town Attorney

OPENING OF PUBLIC HEARING

Motion by Tronolone, seconded by Greenan, to open the public hearing.

Ayes: All Noes: None Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

Motion by Lang, seconded by Greenan, that proofs of publication and posting of legal notice be received and filed.

Ayes: All Noes: None Motion Carried

APPROVAL OF MINUTES

Motion by Tronolone, seconded by Greenan, to approve Minutes #2024-02 of February 28, 2024 with correction made under the Old Business section.

Ayes: All Noes: None Motion Carried

Old Business:

Chairperson Hicks advised that the town does not have in its current Code the ability to allow the raising of chickens on residential property. The Zoning Board utilizes area variances for review and approval. There may be a future resolution to aid in the process. All renewal variances previously have presented their application and their neighbors' letter of support and therefore the Board confirms with the Police and Code Enforcement Departments to determine if any complaints have been filed.

The Town Attorney is still reviewing the approach to variances for the raising of poultry/farm animals and the process is still being evaluated. If there is a change in the Town Code, the Town Board will hold a Public Hearing first on the subject.

2011-047

Lynda Otto presented for renewal of a variance for property located at 183 Westcliff Drive to allow raising of seven (7) hens on residential property.

No complaints from the neighbors, police or code enforcement have been received.

No comments from the public.

Chairperson Hicks referred to the area variance balancing test:

1) Is there an undesirable change in the neighborhood – no since applicant received letters of support at the time of the application and continued forward 2) Is there an alternative to the variance – yes applicant could have no chickens – but wants the chickens, so no alternative 3) Is the request substantial – no and there have been no complaints and does not affect the neighborhood in any way; 3) does it have an affect on the environment – no have not have any comments; 4) Is this a self-created difficulty - yes, but this is not the determining factor.

On the question, Deputy Town Attorney Stachowski referenced that the Board had been utilizing the use variance for these types of requests as opposed to the area variance.

Chairperson Hicks than utilized 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, most people do not have chickens and uses it for eggs for her family and personal purposes; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Tronolone, seconded by Lang, to close the public hearing and grant a temporary variance for property located at 183 Westcliff Drive to allow raising of seven (7) chickens on property with the following conditions: 1) the applicant will reappear at the April 2025 meeting or 2) if the variance is altered in the interim then applicant will be notified.

Ayes: All

Noes: None

Motion Carried

2012-036

Melinda & Edward Bauerlein presented for renewal of a variance for property located at 72 Sunset Creek to allow raising of three (3) chickens on residential property. Applicants have three (3) hens, no roosters.

No complaints from the neighbors, police or code enforcement have been received.

No comments 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, most people do not have chickens and uses it for eggs for her family and personal purposes; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Tronolone, seconded by Lang, to close the public hearing and grant a temporary variance for property located at 72 Sunset Creek to allow raising of three (3) chickens on property with the

following conditions: 1) the applicant will reappear at the April 2025 meeting or 2) if the variance is altered in the interim then applicant will be notified.

Ayes: All

Noes: None

Motion Carried

2013-013

Brian Hirsch presented for renewal of variance for property located at 122 Tampa Drive to allow raising of six (6) hens on residential property.

No complaints from the neighbors, police or code enforcement have been received.

No comments 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, most people do not have chickens and uses it for eggs for his family and personal purposes; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Ms. Greenan inquired if the variance could have a longer extension time to return as the applicant has returned yearly for the past eleven (11) years without issue. Mr. Hirsch indicated that nothing has changed and if this was for a fence, he would not be required to return annually. If there were complaints, then he could understand the reasoning for having to return. Inquired as to the reason why he has to keeping returned yearly if nothing changed. Code Enforcement Officer indicated that if the Board would grant a permanent variance then the Board would not have any rights to bring the matter back in front of the Board. There has been instances where the chicken variance has been approved at a property and then several years later an issue arises with a neighbors and that is addressed at these annual reviews. This is the process we have to follow at the moment.

Chairperson Hicks further acknowledges that a variance for a fence does not present with the issue as a live animal(s). Deputy Town Attorney Stachowski also advised that if the house was sold then the variance would not automatically be renewed for the new owner. If this was a permanent variance then the Board would have no authority to address future issues if the new owner was not as diligent as you, the current owner. This is a use variance and the annual review is the easiest way for the Town to monitor the requests. Currently the Town does not allow chickens at all, this is more a unique privilege. Chairperson Hicks encourages all residents when you see a public hearing to attend those meetings and provide feedback to the Town Board.

Motion by Tronolone, seconded by Lang, to close the public hearing and grant a temporary variance for property located at 122 Tampa Drive to allow raising of six (6) chickens on property with the following conditions: 1) the applicant will reappear at the April 2025 meeting or 2) if the variance is altered in the interim then applicant will be notified.

On the question, Mr. Bedient inquired about the longest time of a variance without making it a permanent variance. Chairperson Hicks advised that it is the Zoning Board's discretion. Would it be proper to have a 2 year variance. Deputy Town Attorney Stachowski would advise against it as it is not in the regular course of business. Code Enforcement Officer Busse understands the inconvenience of having to return yearly, however that isn't the case for each one of these requests. If a situation arises then the complaining neighbor has to wait for the renewal time to have his or her issues addressed and resolved.

Chairperson Hicks reiterated once again 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, most people do not have chickens and uses it for eggs for his family and personal purposes; 3) Does the

variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Tronolone, seconded by Lang, to close the public hearing and grant a temporary variance for property located at 122 Tampa Drive to allow raising of six (6) chickens on property with the following conditions: 1) the applicant will reappear at the April 2025 meeting or 2) if the variance is altered in the interim then applicant will be notified. (Time noted was 10:34pm)

Ayes: All

Noes: None

Motion Carried

2016-018

Deborah Arzaga presented for renewal of a variance for property located at 227/229 Pellman Place to allow raising of chickens on property (raising of poultry/farm animals not permitted). Ms. Arzaga has eight (8) hens, lives at the end of a dead end street on four (4) acres of property. Hens came from the SPCA.

No complaints from the neighbors, police or code enforcement have been received.

No comments 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, most people do not have chickens and uses it for eggs for her family and personal purposes; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Greenan, seconded by Tronolone, to close the public hearing and grant a temporary variance for property located at 227/229 Pellman Place to allow raising of six (6) chickens on property with the following conditions: 1) the applicant will reappear at the April 2025 meeting or 2) if the variance is altered in the interim then applicant will be notified.

Ayes: All

Noes: None

Motion Carried

2016-099

Josephine Morcelle presented for renewal of a variance for property located at 45 Parkside Drive to allow keeping of a pig “Ginny Welsey Potter Pig” on residential property. She will be nine (9) in July.

No complaints from the neighbors, police or code enforcement have been received.

No comments 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, most people do not have pigs and this is family preference and personal purposes; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Tronolone, seconded by Lang, to close the public hearing and grant a temporary variance for property located at 45 Parkside to allow raising a pig “Ginny Welsey Potter Pig” on property with the following conditions: 1) the applicant will reappear at the April 2025 meeting or 2) if the variance is altered in the interim then applicant will be notified.

Ayes: All

Noes: None

Motion Carried

2020-048

Jeffrey Walters presented for renewal of a variance for property located at 49 Country Lane to allow raising of chickens on residential property. Mr. Walters currently has six (6) hens.

No complaints from the neighbors, police or code enforcement have been received.

No comments 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, most people do not have chickens and uses it for eggs for his family and personal purposes; 3) Does the variance change the character of the neighborhood – no; 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 49 Country Lane to allow raising of six (6) hens on property with the following conditions: 1) the applicant will reappear at the April 2025 meeting or 2) if the variance is altered in the interim then applicant will be notified.

Ayes: All

Noes: None

Motion Carried

2022-046

Melissa Fazzio presented for renewal of a variance for property located at 165 Willowdale Drive to allow raising chickens on residential property. Ms. Fazzio indicated she is looking for more organic food. She stated she has three (3) hens and no roosters. Chairperson Hicks inquired about the enclosure, which Ms. Fazzio said they are in a coop with a run. There are raccoons in the neighborhood so they are not out at night.

Complaints were received at both the Code Enforcement Office and with the Police Department.

Reviewed original application with the signature sheet from the neighbors. The original application was filed on August 26, 2022 and indicated no more than three (3) hens in the rear yard. Applicant's daughter had some sensitivity to food allergies and the hens would help control backyard insects and pests. She is registered dental assistant with an understanding of infection control, so she knows the importance of keeping an area clean. A copy of the picture of some chickens was attached as the Rhode Reds 2. The County had no opinion on it. The coop that was presented at the time of application is the same coop. Ms. Fazzio confirmed that coop is in the same location as indicated on her survey. She believes it is approximately twenty-five (25) feet around from her property line. At the Zoning Board Meeting in September of 2022 letters were presented with no objection from 94 Creekward and 161 Willowdale. Chairperson Hicks inquired further if these are the immediate neighbors. 94 Creekward is behind her property and 161 is the property to the left of her home.

Chairperson Hicks indicated that Code Enforcement office received several calls from 171 Willowdale and inquired where in relationship is this resident to her residence. This is the neighbor directly next door and who did not sign the letters of support. In 2024 the following calls were made to the code enforcement office on Feb 28th with complaints of noise and indicated that he will forward all documentation to the Supervisor's office with the request to have the chickens removed. Calls were made to code enforcement office on the following dates from the owner of 171 Willowdale indicating the chickens are made clucking sound - March 4th, 12th, March 13th, March 18th, and March 21st. Then on April 4th the owner of 171 Willowdale visited the code enforcement office and showed a picture on his camera showing five (5) chickens on the property. Ms. Fazzio indicated that there are only three

(3) chickens on the property, she was fostering two (2) other for her father who lives in Springville. Ms. Fazio stated that the owner of 171 Willowdale has made numerous calls since she moved in for complaints about her children, her dog and now the chickens.

Chairperson Hicks referred again to the complaints calls of April 8th, April 9th, April 10th, April 12th and April 15th made to the code enforcement office where all calls indicated that the chickens were making noise. The Applicant believes that the neighbor is harrassing her with all of these calls.

Calls were also made to the Police Department Feb 21st upon the advice of the Zoning Board told him to call whenever he heard the chickens making noise. When Patrol arrived they confirmed that the homeowner had the proper paperwork for the chicken and further stated did not hear any noise being made from the chickens at that time. On February 25th another call log was received from police department indicating the chickens were making noise and running loose. On March 12th another call log was received from 171 Willowdale and when Patrol arrived at the house, all quiet.

Calls from 171 Willowdale directly to left and 161 directly to the right. Neighbors did not sign the okay. Backyard neighbor said okay. 171 Willowdale neighbor numerous calls

Public Comments:

Joe Cyran of 171 Willowdale came to the microphone to express his concerns and indicated that this will take a while and would be okay with tabling this to the end of the meeting.

Chairperson Hicks did request both the applicant and the owner of 171 Willowdale to try to work this out separately and neither party is willing to do that. Motion made by Hicks, seconded by Bedient to table this request to the end of the meeting.

Ayes: All

Noes: None

Motion Carried

Motion made by Bedient, seconded by Greenan to resume the request of for renewal of a variance for property located at 165 Willowdale Drive to allow raising chickens on residential property. Time at 9:31pm.

Ayes: All

Noes: None

Motion Carried

Mr. Cyran **approached the board and again** requested **to confirm that three (3) chickens were allowed under the approved** variance ~~to confirm the number of chickens~~. Ms. Greenan advised that is what the board has been told. Chairperson Hicks reiterated that all speakers are directed to the board member and not the audience **as Mr. Cyran directed his remark to the audience rather than the board**. The photograph Mr. Cyran previously provided to the code enforcement office and the one he is showing currently shows five (5) chickens. There are currently five (5) chickens at the property. Attorney Stachowski advised that if the variance is for three (3) chickens and there were more than three (3) chicken that is something that code enforcement would handle. The purpose of this public hearing is to determine whether or not the variance for three (3) or more chickens is renewed. Otherwise it would be a code enforcement issue. Mr. Busse indicated that there have been a number of complaints from Mr. Cyran made to his office. Ultimately the question for the Board will be whether or not there is a change to the neighbor and whether to grant the variance in Mr. Stachowski's opinion. Ms. Greenan asked Mr. Busse for further clarification if there was a violation of the variance from 3 to 5 chickens to which Mr. Busse advised that all the complaints would be presented and allow the board to make a

determination going forward. Chairperson Hicks stressed that if anything is approved tonight, the variance terms must be adhered to. Of all the chicken variances that have been approved and granted over the course of years there has not been problems, so would like to work this out tonight. This seems to be more along the lines of a neighbor dispute and Chairperson Hicks wanted to note that and all approved variances must be adhered to.

Chairperson Hicks requested several times to advise of any additional information that has not already been provided to be introduced given the lateness of the hour. Mr. Cyran continued to reiterate the all the conversations he has had with both code enforcement and the police department all of which were documented. Mr. Cyran stated that he was told by Chairperson Hicks to keep a papertrail back in June 2023 and that is what he has done; he has routinely called the police and code enforcement departments. Chairperson Hicks clarified that she stated that he should contact the police if he had a problem and filed a complaint. It did not mean that it had to do with the approved variance. The official record takes everything in consideration when determining whether to approve or deny a variance request. Mr. Cyran continued to advise the board that he called Supervisor Dickson's office, who was aware of his prior complaints. He also call Highway Superintendent Adams about barking dogs at 165 Willowdale. Mr. Cyran stated that Mr. Adams and Mr. Schieber suggest to file FOIL request in reference to any animal complaints. Mr. Cyran also spoke with Bill and Sean in animal control who inquired if the sounds were loud or overwhelming? He feels loud enough. Also spoke with Officers: Weber, Greenan, and Crandall and explained to them that Chairperson Hicks instructed him to contact them anytime I felt that the chickens were disturbing and loud. Mr. Cyran also called Sean from animal control about the chickens, however, that is not a dog issue.

Mr. Cyran advised that then contacted Chairperson Hicks seven (7) times by email and asked her to share these emails with board members. Ms. Hicks did not recall if she shared each of the emails with the board. Mr. Cyran then shared printed out copies of the emails that he asked to be shared. Mr. Cyran continued to express that he has contacted several people several times and this continues to aggravate him. Mr. Cyran has requested that code enforcement office visit his home several times. He brought along his polaroid camera. Mr. Lang viewed and described what was viewed. Mr. Lang advised that the coop appears to be a wooden or comproble with chicken wire and a blue metal/aluminum roof.

Then Mr. Cyran went back to the code enforcement office and was given accessory structure for attached garage, gazebo and sheds along with etc. Code Enforcement Officer Busse confirmed with Town Attorney Trapp that the "etc" included coop, specifically any accessory building. Based upon the information from the Code Enforcement office he questioned if that was 3' from the property line. Mr. Lang viewed the viewed 2nd photo of the camera and stated that the coop appeared to be 6-9 inches from the fence, assuming that the fence is on the property line or within a reasonable distance. Mr. Cyran believes this is a violation of the construction of the coop. Chairperson Hicks does not believe that the board stipulated the type of chicken coop previously shown nor does the board go back and confirm. The survey originally showed that the coop was to be in the middle of the property and right now and it was constructed closer to Mr. Cyran's property.

Mr. Stachowski advised that the Board approves the use and they look at the sample, but they are not regulating anything as that is handled by Code Enforcement. They would handle if there was an issue with the structure, if there is a noise violation that also would be handled. Mr. Busse strongly recommended that he attend tonight's meeting to address all the issues. Ms. Greenan inquired if the coop was in the position originally posed (middle of the property) would that still be a reason for the

complaints. The issue he is having is not with the location of the coop but with the noise. References were made back to the original application (September 2022) and the renewal (March 2023). Mr. Cyran is being treated by medical professionals and feels this situation is making it worse and feels that the original application was misleading.

Clerk Newton reviewed the prior minutes from the Zoning Board meeting minutes from March 22, 2023 which indicated that this matter was reviewed and the variance was granted with no objections from any party and the variance was for six (6) chickens to which Ms. Greenan indicated then the applicant is not in violation of the variance.

Ms. Greenan summarized the events to try to come to a middle ground, however Mr. Cyran indicated no and just wants the chickens removed due to the sound. Chairperson Hicks reminded everyone the the complaints are Mr. Cyran's opinions and not necessarily facts. The board members all acted in good faith. Mr. Bedient referenced back to the original application, then the renewal of the variance and now all of these complaints - what changed? Code Enforcement indicated that they addressed each complaint, however it was to be dealt with at this meeting. The Town has a decibel level however dogs barking, music playing, chickens clucking or cars driving by don't rise to the level of complaint. Mr. Cyran indicated that nothing change since the original application. Each time the complaint registers and the noise is not happening when onsite. Mr. Busse did not see anything with the cleanliness with the property, the location of the coop will be addressed upon site visit to see if the coop is in the setback (3 feet from the lot line is required). Ms. Greenan did note again that there is no violation as to the total amount of chickens. Mr. Stachowski would recommend a shorten time frame for the renewal to ensure most of the issues are resolved. The main concern of Mr. Cyran is his opinion the noise in the neighborhood and just wants the chickens removed. Chairperson Hicks reconigzed there is no compromise. Mr. Bedient asked the applicant if she had any suggestions and she is open to moving the coop to a different location or look at alternative sound barriers.

Chairperson Hicks than utilized 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 – no, as shown on the agenda several other variances were granted and most people do not have chickens however she uses it for eggs for her family and personal purposes. 3) Does the variance change the character of the neighborhood – no as there would be more neighbors would be in attendance with complaints and applicant did have letters of support from other affected neighbors; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Greenan, seconded by Tronolone for grant the variance for a period of six (6) months for three (3) hens, relocation of the coop out of the setback and with recommendation to contact code enforcement. The applicant will return in October 2024.

Ayes: All

Noes: None

Motion Carried

2023-030

Edward Culliton presented 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). This is an ongoing process and confirmed by Code Enforcement Officer Busse that a building permit was filed today and issued for the detached section that this driveway would approach to. The permit for the building of the structure is withing the Town Code nothing has been changed from the original

application. They will be well within the requirements of the setback. The immediate neighbor was present at a prior meeting and Mr. Busse confirmed that the neighbor really has no say in the construction. The building meets all setback requirements, and all permits are valid for one (1) year to finish the project. This is for the second driveway, and it was confirmed that the Camper was removed from the driveway.

The variance is required for this driveway and no commercial vehicles not allowed.

Comments from the public - Ms. Ludwig – 39 Florence – presented with complaints about no building permit, stone driveway has been there for quite some time and the lot has commercial vehicles on it. Currently there is a large mound of concrete slabs, dirt, etc.

Chairperson Hicks summarized as the current condition of the property is an eyesore.

The applicant has not been able to remove the concrete slab due to equipment needed and plans to have it removed by mid-May. Pursuant to the town code this needs to be removed as soon as possible.

Chairperson Hicks reiterated the previous complaints made in the Fall.

The garage's purpose is to house the trailer and house vehicles. Deputy Town Attorney Stachowski recommended that the Board be mindful of construction must be built as there is no guarantee that the building must be built. Mr. Busse reiterated that the driveway must have hard surface, permit can be filed and constructed within that time period. Mr. Stachowski confirmed that he would probably recommend that the variance approval is held off until the garage has been fully constructed when Ms. Greenan inquired. It was noted that this stone driveway can be utilized for the construction of the garage. The parties also agreed that the debris will be cleaned up.

Motion made by Hicks, seconded by Greenan to table this until September 2024 meeting.

Ayes: All

Noes: None

Motion Carried

2024-001

Robert Hopkins of Hopkins Solutions LLC presented for a variance for property located at 5190 Seneca Street to erect a temporary storage structure within 15' setback to lot line (1. Temporary structures are not permitted 2.) 30' setback required).

Mr. Hopkins updated the board with regard to the shipping container located in the setback and needed the variance. Code Enforcement Officer Busse explained that the original request was shipping container behind the building and adjacent to the residential property and their was discussions about possibly moving the location to the side of the building which is still within the setback on Seneca Street there is a 25 foot setback now and the town code is a 40 foot setback. Mr. Hopkins still wants to keep the storage container in its current location temporarily, as he is still working with a potential new landlord as still in West Seneca. Chairperson Hicks indicated the current property is still cluttered looking and wondered if he would still have some presence at 5190 Seneca Street. Applicant advised that if the negotiations go through the whole operation will move, as the owner not willing to sell 5190 Seneca Street. The storage container is owned by Mr. Hopkins and will eventually be moved. Applicant advised that tabling this request has become difficult for him to keep attending meetings as this is the busy season for him in response to Chairperson Hicks statement of tabling the matter.

No comments from the public.

Ms. Greenan did inquire if this matter was heard at the planning board and the Applicant confirmed no. Many discussions have occurred with code enforcement on site plans, removing all equipment, location and the applicant is aware if he remains here he will need Planning Board approval. The property is zoned correctly. Applicant is still planning on painting the storage container. Deputy Attorney Stachowski recommends that the Board make a decision at tonight's meeting as this is a temporary structure that is unpermitted sitting in the setback for a period of time.

Discussion on the length of time for the variance as the Board would not wish to have a year variance for this request. Chairperson Hicks reminded the board that there are two (2) variances to consider (temporary structure that is not permitted and the setback).

Deputy Town Attorney recommends the use variance to deal with the temporary structure and the area variance to deal with the setback request. Chairperson Hicks agreed and went through the use variance balancing test: 1) Can a reasonable return be achieved by another method – the applicant states no - it would be costly at approximately \$4k which would be a hardship to his business in addition to the rent that he is paying; 2) Is this a unique circumstance – yes the size of the lot cannot accommodate the business, not suitable for a lot businesses; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Tronolone, seconded by Greenan, to close the public hearing and grant a use temporary variance for property located at 5190 Seneca Street to keep shipping container at the same location 1) the applicant will reappear at the September 2024.

Ayes: All

Noes: None

Motion Carried

Moving on to the area variance Chairperson Hicks went through the area variance balancing test: 1) Is there an undesirable change in the neighborhood – the applicant states no 2) Is there an alternative to the variance – yes could ask the temporary structure to be moved 3) Is the request substantial with relation to the entire site, no 4) does the variance have an impact on the the environment – Hours of operation between 8am and 7pm. not early or late to load or unload, no impact on the environment.

Motion by Lang, seconded by Greenan, to close the public hearing and grant a temporary area variance for property located at 5190 Seneca Street to grant the variance to allow temporary structure in the 40-foot setback 1) the applicant will reappear at the September 2024.

Ayes: All

Noes: None

Motion Carried

New Business:
2024-003

Bruce Vona presented for a variance for property located at 531 Center Road for a variance of 26,250 sf of lot area for construction of an 8 dwelling units (minimum lot size requirement is 43,000 sf).

Mr. Vona is the proposed purchaser for 531 Center Road to convert the building into a multi resident apartments. The applicant has appeared before in front of the Planning Board and the Town Board for this project relative to the number of units permitted. Pursuant to Code Enforcement Officer Busse this existing building based on the plans would be sufficient. The request is based on the lot size, if the lot was larger than a variance would not be required. Each unit has 2 bedrooms, the smallest is 700 and the largest 900 which does meets code. Currently the building would allow for three (3) units and the Applicant is requesting eight (8) units.

No comments from the public. Chairperson Hicks indicated that some issues were dealt with at the Planning Board meeting and no comments at the Town Board meeting.

Deputy Town Attorney Stachowski recommends being thoughtful in the rationale of the area variance in the instance of a challenge.

Chairperson Hicks acknowledges that Erie County ZR1 has provided a response letter with no recommendation and reviewed to be of local concern. The letter from NYS DOT with no opinion on

this property. Site plans and other potential issues were dealt with at the Planning Board and Town Board.

Neighbor letter of no objections were received from the following addresses: 20, 27, 30, 33 Florence Ave., 523 and 528 Center Road. These addresses surround the property on all four sides.

Chairperson Hicks asked again if anyone from the public wished to speak, no comments were received.

Mr. Lang referenced prior conversation of the patio homes the requirements for square footage are antiquated compared to modern designs and feels that this plan does not seem unrealistic. Mr. Busse further confirmed that there is sufficient parking at the site that was confirmed by Ms. Greenan. Mr. Vona's architect did respond to the area balancing test: 1) Is there an undesirable change in the neighborhood – the applicant states no, because the neighbor already has apartment buildings nearby 2) Is there an alternative to the variance – right now there is not much demand for office space, but a stronger demand for apartments 3) Is the request substantial with relation to the entire site, no 4) does the variance have an impact on the the environment – as the building and parking lot existing, no impact on the environment.

Ms. Hicks wanted to note that she is in full support of redevelopment of existing buildings and agrees with the rationale given for the area variance.

Motion by Hicks, seconded by Tronolone to close the public hearing and grant an area variance for the property located at 531 Center Road reducing 43,000sq to the existing the 16,750 sq ft for redevelopment of the building to develop the 8 apartments units and the rational presented is consistent with the reasons, goals and opinions of the Zoning Board and further that the Zoning Board supports this redevelopment.

Ayes: All

Noes: None

Motion Carried

2024-004

Daryl Martin presented as the Architect of the property for a variance for property located at 425 Potters Road to construct new enclosed dining structure (currently there is existing concrete outside dining area - 1.) requesting variance for front yard setback of 11.14' (40' setback required) 2.) requesting variance for side yard setback 1.9' (25' setback required).

Daryl Martin – architect

Owner –

Attorney – Bill Miller

The property site is very challenging, and they would like to enclose the right hand side of the building to all season dining. The fire retarded petitions already built into the plans. Right now it is used as an outdoor patio and would like to be able to use the space all year round. This would be a one story enclosure of an existing building and no plans to go to second story.

Neighbor letter of no objection from 419 Potters Road.

No complaints from Code Enforcement office. Letter from was received from NYS DOT with no opinion. No public comments.

Smoking will be allowed south of the entrance was confirmed.

Two (2) area variances are before the board for a front yard setback of 11.14 (40 ft) and variance for side yard setback 1.9 (25ft) Chairperson Hicks referred the area balancing test: 1) Is there an undesirable change in the neighborhood – the applicant states no, because the project will improve the neighbor 2) Is there an alternative to the variance – yes but for financial reasons it makes sense to

enclose this area 3) Is the request substantial with relation to the entire site, no 4) does the variance have an impact on the the environment – no. the patio currently exists 5) Is this a self created difficulty no , applicant iindicated that in order to profitable best to enclosure the area.

Motion by Tronolone, seconded by Lang to close the public hearing and grant an area variance for the property located at 425 Potters Road for both variances for the front yard setback of 11.14' and for the variance for the side yard setback 1.9'.

Ayes: All

Noes: None

Motion Carried

2024-005

James Antkowiak and Daniel Antkowiak presented for variance for property located at 105 Terrace Blvd to erect a 6' fence in front/side and driveway extension 3' off lot line (maximum 4' height allowed in front yard and 30' front setback). His son and daughter in law live there with young children and want the fence for their protection in the yard. The extension of the driveway will aid so they do not keep stepping on the grass/snow.

Code Enforcement Officer Busse advised the Board that this is a corner lot with a paper street situation. The parcel next to 105 Terrace is undeveloped and there are no plans for development.

Neighbor letters with no objections were received from 113, 112 and 75 Terrace Blvd.

No comments from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Is there an undesirable change in the neighborhood – the applicant states no, 2) Is there an alternative to the variance – no due to the location of the paper street 3) Is the request substantial with relation to the entire site, no 4) does the variance have an impact on the the environment – no 5) Is this a self created difficulty no.

Chairperson Hicks asked again for comments from the public, no comments received.

Motion by Lang, seconded by Greenan, to close the public hearing and grant a variance for property located at 105 Terrace Blvd. to erect a 6' fence in front/side yard.

Ayes: All

Noes: None

Motion Carried

Motion by Bedient, seconded by Lang to close the public hearing and great a variance for the driveway extension of 3' ft and within 3' from the property lot line. On the question, it was confirmed that the property owner will be required to obtain a building permit for both the fence and the driveway extension.

Ayes: All

Noes: None

Motion Carried

2024-006

John E. Stanton, Jr. presented for a variance for property located at 33 Southgate Drive for the installation of Generac Generator and is requesting a 3' side yard setback (5' setback required).

Mr. Stanton resides at the property with his Mother and hopes that this generator is added security especially for power outages.

Neighbor Letters were provided from the following addresses: 39, 27 and 26 Southgate Drive.

Chairperson Hicks requested clarification that this is an area variance due to the setback location which was confirmed by Code Enforcement Officer Busse.

No comments from the public.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change in the neighborhood – the applicant states no, 2) Is there an alternative to the variance – no 3) Is the request substantial with relation to the entire site, no 4) does the variance have an impact on the the environment – no. 5) Is this a self created difficulty no.

Motion by Tronolone, seconded by Lang, to close the public hearing and grant a variance for property located at 33 Southgate Drive to allow the installation of Generac Generator within the side yard setback.

Ayes: All

Noes: None

Motion Carried

2024-007

Ann-Marie A. Titus presented for a variance for property located at 86 Seneca Creek Road to 1.) erect a 6' fence in the front/side yard (maximum 4' height allowed in front/side yard and to 2.) erect a pergola structure with 1' front yard setback (30' front setback required).

The project has been designed and planned out to redo the whole landscaping project. The plan is to do all the planting then the finalized of everything to be done by end of July, 2024.

No comments from the public.

Neighbor letters were received from the following addresses: 76, 75, 85, 96 Seneca Creek Road with no objections.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change in the neighborhood – the applicant states no, 2) Is there an alternative to the variance – no 3) Is the request substantial with relation to the entire site, no 4) does the variance have an impact on the the environment – no. 5) Is this a self created difficulty no.

Motion by Greenan, seconded by Lang, to close the public hearing and to grant both the 6' fence variance and the pergola structure for the property located at 86 Seneca Creek Road.

Ayes: All

Noes: None

Motion Carried

2024-008

Jeff Scroger presented for a variance for property located at 46 W. Cranwood Drive to allow AC unit with 1.5' setback (units shall be 5' off the side property line).

No comments from the public.

Neighbor letters were received from the following addresses: 45, 39, 34, 55 W Cranwood, 4, 11 Laurelton and 33 West Cranwood.

It was noted that the immediate neighbor did not sign the letter due to the work would not let him – 40 West Cranwood. The applicant indicated that this neighbor did not express any concerns.

Chairperson Hicks felt that if the neighbor had major concerns then they would be in attendance tonight and would assume consent.

Asked again if anyone from the public wishes to speak on this request. No comments were received.

Ms. Greenan read an email from Susan Kims – *“houses are older and were built in the 1960s and closer together and reason for the codes so properties are not impacted unnecessarily, or values of home aren't diminished. The Town needs to upload standards when it can to keep issues from compounded on residents. Included photos which shows that the AC unit has already been installed.”*

Chairperson Hicks inquired if a building permit was obtained prior to the installation that was confirmed. Code Enforcement Officer Busse advised that this was addressed with the applicant and the permit has been filed. The applicant stated that nothing has been hooked up since.

Chairperson Hicks asked again for any comments from the public, no comments were received. Mr. Lang inquired if there are any windows on this side that would effect this neighbor and Applicant confirmed there are two (2) windows facing the AC unit.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change in the neighborhood – the applicant states no, letters received other than the neighbor at 40 W Cranwood who advised employment would be jeopardize and the neighbor is not in attendance tonight objecting, so assume consent, 2) Is there an alternative to the variance – Applicant says no reasonable other area on his property to move this AC unit 3) Is the request substantial with relation to the entire site, no 4) does the variance have an impact on the the environment – no except for the noise, most houses are built close together. 5) Is this a self created difficulty no.

Motion by Tronolone, seconded by Lang, to close the public hearing and to grant the variance to allow AC unit in the setback for the property located 46 W. Cranwood Drive.

Ayes: Greenan, Hicks, Lang, Tronolone

Noes: Bedient

Motion Carried

2024-009

George Brimmer III presented for a variance for property located at 180 Woodcrest Drive to allow raising of chickens on property. Requesting three (3) hens in contained chicken coop on residential property (raising of poultry/farm animals not permitted).

Homeowner has organic garden and hope that the chickens will help get prevent Japanese Beetles. He will have an enclosed coop along with a run for three (3) egg laying hens.

Neighbor letters were provided for the following addresses: 176, 165, 171, 173, and 181 Woodcrest. Immediate neighbor was the first to sign the no objection letter.

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, most people do not have chickens and uses it for eggs for his family and personal purposes; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Tronlone, seconded by Lang, to close the public hearing and grant a temporary variance for property located at 180 Woodcrest Drive to allow raising of three (3) hens on property with the following conditions: 1) the applicant will reappear at the April 2025 meeting or 2) if the variance is altered in the interim then applicant will be notified.

Ayes: All

Noes: None

Motion Carried

2024-010

Jeff Bybee presented for a variance for property located at 425 Meadow Drive to allow the conversion of garage to living space and allow parking in front yard setback (no parking in front setback), Rebuilding garage area to be living space. It was noted that the variance deals with only the parking in front. Town code indicates no parking in front of the garage. Applicant is able to convert the garage to living space without the approval of the Zoning Board. Chairperson Hicks clarified that this is an area variance rather than use variance. The application will be corrected that this is an area variance and not the use variance as noted.

No letters were obtained since he thought not to get neighbor letters since he was planning on building a detached garage (has building permit) as well as converting the garage to living space.

As the neighbor letters were not obtained and Greenan motion made a motion to table to next meeting in May 2024 which was seconded by Tronolone.

Ayes: All

Noes: None

Motion Carried

2024-011

Paul Notaro, Esq., presented on behalf of Anthony Buccella and Carina Schultz for a use variance for property located at 735 Union Road to permit proposed use of home in R75A zoning for a private hair salon. Mr. Notaro advised that nothing will change with the exterior of the home. The existing property is currently set up for a law office along with a residential home and has sufficient parking for handicap spaces and sufficient other parking. Salon will be by appointment only from Tuesday through Friday. There is also parking for the homeowners off East and West Road. Mr. Notaro indicated this fits the code which the statute had in mind. Per Code Enforcement Officer Busse advised that the property already has a home occupation permit. This specific business is not listed in the town code and that is the reason for the use variance request. A copy of the floor plan and parking plan will need to be provided (parking spaces are sufficient right now). Susan Collins, Esq., the current homeowner, advised that she currently has one (1) employee, and her interpretation is the owner and one (1) employee per statute. Chairperson Hicks inquired if there would be more than four (4) or five (5) customers, however Mr. Notaro advised that the current building would not accommodate that, nor would that be in accordance with the statute. Further, Chairperson Hicks inquired if the home occupation aspect is something the town adopts as law or state law? Mr. Busse advised it is part of the Town Code. Mr. Busse confirmed to Ms. Hicks that it could be part of the Town Code. He is unaware if any other towns have done this when asked by Ms. Hicks.

Erie County Planning did respond to the ZR1 that they have no recommendation, and the proposed action has been reviewed and has been determined to be of local concern.

Neighbor letters were received from the following addresses: 524, 536, 757 Union Road which are the neighbors adjacent to the property. The neighbor at 751 Union Road, just recently passed away, the Executor of the Estate is aware of this use variance request but is currently in Florida. Ms. Collins indicated that the property has been established for many years as an occupational office. She feels that if this was to be a doctor's office there would be many more people than a hair salon.

No other comments from the public.

Chairperson Hicks referred to the use variance balancing test: 1) Can a reasonable return be achieved by another method – yes currently operating at a different location; 2) Is this a unique circumstance – yes; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship – no, the house is currently set up for this, but this is not the determining factor.

Motion by Tronolone, seconded by Greenan, to close the public hearing and to grant the use variance to permit the proposed use home occupation of the R75A zoning at the property as a hair salon which is not currently listed as permissible accessory list.

Ayes: All

Noes: None

Motion Carried

2024-012

Jacob Klubek presented for a variance for property located at 281 Fawn Trail to erect 6' fence in the front/side yard (maximum 4' height allowed in front yard and 30' front setback). Would like to continue 6' around both the front, side and back yard of his home for privacy and security. Currently has a puppy and would like to prevent anything from happening to the property.

Neighbor letters were received from the following addresses: 273 is unoccupied for a number of years; 278, 270, 286, 289 and 272 Fawn Trail, no objection.

No comments 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 – no; 3) Does the variance change the character of the neighborhood – no; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Tronolone, seconded by Lang, to close the public hearing and to grant the variance to allow a 6' fence in the front yard and within the 30' front setback variance.

Ayes: All

Noes: None

Motion Carried

2024-013

Matt Wiertel presented for variance for property located at 316 Aurora Avenue to construct new structure for the rear with setback of 1.43' (30' setback required).

James Spratz Architect PC who will be designing the structure. Single story addition that will have a master bedroom and master bathroom and walk in closet. Right now, 2 bedroom house, would like three (3) bedroom house.

Neighbor letters were received from the following addresses: 322 Aurora, 309 Emporium, 315 Emporium and 307 Aurora. Unable to get in touch with 322 Aurora (there should be little or no effect to the project). The house is currently in the setback as indicated by Attorney Stachowski. Mr. Busse advised that the drainage plans will be addressed once his office reviews the blueprint, inspection, etc. pursuant to Chairperson Hicks' question.

No comments 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; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Greenan, seconded by Lang, to close the public hearing and to grant the variance to allow the new structure construction in the rear of the existing home within the setback.

Ayes: All

Noes: None

Motion Carried

2024-014

Linda Emmi and John Oshei presented for variance for property located at 100 Rosewood Drive to erect 6' fence on the side/rear yard (maximum 4' height allowed in front yard).

They wish to install a cat fence along the side and back of their property to protect their cat from predators. Their cat was previously killed because he was hit by a car and their remaining cat died from a broken heart.

No comments from the public.

Neighbor letters were received from the following addresses: 94, 106, 91 and 127 Rosewood no objections.

Chairperson Hicks referred to the use area 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; 4) Is this a self-created hardship - yes, but this is not the determining factor.

Motion by Greenan, seconded by Lang, to close the public hearing and to grant the variance to erect the 6' fence on the side/rear yard for property located at 100 Rosewood Drive

Ayes: All

Noes: None

Motion Carried

Chairperson Hicks reminded everyone that the next Zoning Board of Appeals will be on May 22, 2024 at 6:00 PM, in the West Seneca Community Center, 1300 Union Road.

ADJOURNMENT

Motion by Tronolone, seconded by Lang, to adjourn the meeting at 10:35 PM.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,
Kate Newton
Town Clerk/Zoning Board Secretary