

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 P.M. followed by the Pledge of Allegiance.

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

OPENING OF PUBLIC HEARING

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

Ayes: All Noes: None Motion: Carried

APPROVAL OF PROOFS OF PUBLICATION

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

Chairperson Hicks noted the correct location of the variance request for 2024-39 is 102 Greenbranch Road and not 4470 Seneca Street.

Ayes: All Noes: None Motion: Carried

APPROVAL OF MINUTES

Motion by Tronolone, seconded by Lang, to approve meeting minutes #2024-6 of June 26, 2024.

Ayes: All Noes: None Motion: Carried

OLD BUSINESS

None

NEW BUSINESS

Chairperson Hicks stated the variance request 2024-36 will be heard last.

SPR2024-37

Request of Amanda Maurino for property located at 212 Barnsdale Avenue for a 22' variance to widen the driveway by 8' (30' front setback required); and 2.) to allow front yard parking (no parking allowed in front setback).

Ms. Maurino stated she would like to expand the driveway a few feet to provide off-street parking for her tenant. Chairperson Hicks questioned if the entire driveway will be replaced, or just an expansion added to the existing driveway. Ms. Maurino stated the existing driveway is blacktop and her intention is to replace the entire driveway with concrete. Code Enforcement Officer Busse noted the property survey submitted with the application is not to scale. There are existing pavers on the left-hand side of the driveway that do not intrude at the front of the house and a variance is not required for this area. The applicant would like to extend the driveway approximately 3' beyond the pavers, which would be in the front yard setback, to have a doublewide driveway for tenant parking at the residence.

Chairperson Hicks questioned if the applicant would work with the Code Enforcement Office and Highway Department as to how the extension will be added. Mr. Busse stated that the updated drawing he just provided to the Zoning Board is acceptable to the Code Enforcement Office and a curb cut will require Highway Department approval which is generally just for notification purposes only. Chairperson Hicks conjectured that the existing curb cut would be used and possible a triangle on the side of sidewalk for the driver to turn. Ms. Maurino presented the neighbor's letters to Chairperson Hicks. Chairperson Hicks referred to the drawing and advised Ms. Maurino the Zoning Board can only approve variances to the sidewalk. Mr. Busse stated the Highway Department would need to grant approval to the curb edge.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 208, 211, 217, and 218 Barnsdale Avenue and confirmed they are the neighbors on either side of and across the street from Ms. Maurino's property, all requested properties provided responses, no neighbors declined. Ms. Maurino resides at 212 Barnsdale Avenue and intends to remain there, and the apartment is currently rented.

No public comments were received.

Ms. Greenan stated that the change is not substantial or undesirable for the neighborhood as this may alleviate on-street parking.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood – no, neighbors do not object; 2) Is there an alternative – no, on-street parking is not desirable; 3) Is the request substantial – no, according to the picture provided by Mr. Busse; 4) Does the variance have an impact on the environment – yes, no run-off can go onto the neighbor's property; 5) Is this a self-created difficulty – yes, but this is not the determining factor.

Mr. Bedient stated that he also lives on Barnsdale Avenue and received a variance permit for a similar situation and feels that the proposed driveway will enhance the neighborhood aesthetics.

Motion by Greenan, seconded by Lang, to close the public hearing and grant a variance for property located at 212 Barnsdale Avenue for a 22' variance to widen the driveway by 8' (30' front setback required); and 2.) to allow front yard parking (no parking allowed in front setback).

Ayes: All

Noes: None

Motion: Carried

SPR2024-38

Request of Danielle and Andrew Beilman for property located at 27 Rene Drive for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Julie Mazzu appeared on behalf of the applicant. Chairperson Hicks noted the Beilman's provided a letter to the Zoning Board allowing Ms. Mazzu to speak for them as they are out of town and Town Attorney Trapp indicated this was acceptable. Deputy Town Attorney Stachowiak commented he was aware that Mr. Busse had also spoken with the applicant directly prior to this meeting.

Ms. Mazzu stated Mr. and Mrs. Beilman are replacing the existing fence along the side and back yards and would like to extend the fence along the side of the house with a 6' vinyl fence. The zoning allows for a 4' fence on the side of the house. Signatures were received from the adjacent neighbors and those across the street.

Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 20, 23, 24, 28, and 33 Rene Drive.

No public comments were received.

Ms. Tronolone questioned the type of fence. Ms. Mazzu stated vinyl fencing.

Ms. Greenan referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood – no, the request is very common; 2) Is there an alternative – yes, build a 4' fence; 3) Is the request substantial – no, this is not a substantial request; 4) Does the variance have an impact on the environment – no, the fence will not impact the environment; 5) Is this a self-created difficulty – yes, but this is not the determining factor. Ms. Greenan recommended approval of the variance.

Chairperson Hicks stated the Zoning Board of Appeals agrees with the balancing test.

Motion by Tronolone, seconded by Greenan, to close the public hearing and grant a variance for property located at 27 Rene Drive for a variance to erect a 6' fence in front/side (maximum 4' height allowed in front/side yard).

Ayes: All

Noes: None

Motion Carried

SPR2024-39

Request of Dale Steinel for property located at 102 Greenbranch Road for a variance to erect a front porch with a roof (30' setback required requesting 23' and no structures above 1st floor permitted).

Dale Steinel, of Authentic N.Y. Contracting, appeared on behalf of the property owners.

Ms. Greenan questioned Mr. Stachowski if it is acceptable for a contractor to apply on behalf of an applicant. Mr. Stachowski stated the applicant or their legal representative. Additionally, there is an issue with the notice and questioned Mr. Steinel if the homeowners could also appear if the request was tabled at the next meeting. Mr. Steinel stated it is possible and the property owners provided the neighbor approvals. Mr. Busse stated the Code Enforcement Office's practice is to allow contractors to appear on behalf of property owners and this is indicated on the application. Ms. Greenan and Mr. Stachowski indicated they agreed with proceeding to hear the request.

Mr. Stachowski stated the Zoning Board of Appeals can address the publication issue. Chairperson Hicks confirmed that the application indicates that the applicant is the contractor for an area permit for the front porch.

Mr. Steinel stated the porch will be 9' wide and extend 7' off the front of the house approximately 1.5' beyond the existing stairs and landing.

Mr. Busse stated the front yard setback requirement is 30' which does not permit any covered roof over a front porch, the house sits 30' off the road and the applicant is present to obtain a variance for the covered porch within the front yard setback. Chairperson Hicks noted the variance is 7' and will leave 23' of front yard setback.

Mr. Steinel presented the neighbors' consents to Chairperson Hicks noting the property owner of 113 Greenbranch Road gave her consent verbally but did not wish to sign the form. Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 96, 101, and 108 Greenbranch Road, and the applicant indicated verbal permission was given by the property owner of 113 Greenbranch Road.

No public comments were received.

Ms. Greenan questioned the intention behind the project. Mr. Steinel stated the homeowners have made significant investments in their home and would like the front door area protected, noting the design will positively impact the curb appeal. Chairperson Hicks questioned if the homeowners are planning on adding a double front door. Mr. Steinel stated he believes this to be true. Chairperson Hicks stated the porch is not enclosed and will be open on three sides. Mr. Steinel confirmed this is correct, there will be two 8" columns. Chairperson Hicks remarked that the drawings were remarkable.

Chairperson Hicks referred to the area variance balancing test: 1) Is there an undesirable change to the neighborhood – no, all of the affected neighbors have indicated they do not object and this type of porch adds to the curb appeal and value of a property; 2) Is there an alternative – no, covered porches are not allowed in the front yard setback and not adding a porch is the only option; 3) Is the request substantial – no, there will be 23' to the property line to allow for traffic and individuals to safely move about; 4) Does the variance have an impact on the environment – no, there is no impact; 5) Is this a self-created difficulty – yes, but this is not the determining factor.

Motion by Lang, seconded by Greenan, to to close the public hearing and grant a variance for property located at 102 Greenbranch Road to erect a front porch with a roof (30' setback required requesting 23' and no structures above 1st floor permitted).

SPR2024-036

Request of Embury Holding, LLC for property located at 287 Center Road for variances:

- 1.) to allow a parking reduction variance for 26 parking spaces (required to have 36 parking spaces);
- 2.) to allow front yard setback variance of 20' (required to have 40');
- 3.) to allow west side yard setback variance of 0' (required to have 30');
- 4.) to allow east side yard setback of 5' (required to have 30');
- 5.) to allow rear yard setback of 0' (required to have 30');
- 6.) to allow front yard parking to exceed the required 30% frontage threshold;

Matthew Fitzgerald, Esq. of Phillips Lytle appeared on behalf of the applicant Embury Family Dentistry and introduced Drs. Caitlin and Carl Embury, property owners since 2021, and Brad Humberstone, Director of Design Build at Mitchell Design Build.

- Site is directly across the street from the Wimbledon Plaza
- Has been a dental practice since 1984
- The Wimbledon Plaza is to the north; residential and institutional uses including the West Seneca Middle School are to the east; single family, multi-family, vacant land, and commercial properties to the west
- Proposing a minor expansion of 1,410-sf to the building which is currently 1,889-sf noting the expansion falls within the required setbacks and does not require a variance
- Project includes the demolition of a garage on the western edge of the property and will not be replaced
- Proposing 10 new off-street parking spaces in the front yard which require a variance, to accommodate new treatment rooms and additional employees will be onsite noting there is no space in the rear (south side) of the lot for the parking spaces
- Appeared before the Planning Board for review of the sketch plan and no members of the public appeared noting immediately abutting neighbors were notified
- The Planning Board requested a snow removal plan and landscaping on the eastern and western edges of the front yard parking lot
- The existing large trees will be supplemented with additional landscaping to be approved by the Planning Board when the site plan is reviewed
- Considerations:
 - Currently 0' setback on the western edge of property and the existing parking spaces are immediately up against the property line
 - Garage will be replaced with parking spaces
 - Losing parking spaces on southern side due to the building expansion
 - Variance required for the front yard on the east side noting the neighbor has provided consent
 - Unable to make contact with the neighbor on the west side despite three attempts made by the applicant but are willing to address any concerns that may arise
 - Wimbledon Plaza to the north has many parking spaces, is not a residential property and noted they did not seek consent from them

Mr. Fitzgerald ran through a balance test:

- Is this an undesirable change in the neighborhood – No, this is a unique property that is zoned Residential but has been pursuant to a variance granted 40-years ago; the addition of minor parking area in the front and other minor variances that already exist on the property are not a detriment to the community versus a benefit to the applicant.
- Is there an alternative – No, the layout on the property does not provide for a different plan that will allow traffic circulation and a variance for less than the required spaces is being requested. The current practice is like the practice that has been ongoing for 40-years. This is a low volume high quality operation and there has never been an issue with parking. No street parking is allowed.
- Is the request substantial – Not substantial as most of the variances requested are not substantial because they are the existing conditions, the front yard requirement is a complete prohibition but is mitigated by the nature of the operation, and the much larger parking lot across the street. The benefit to the applicant being able to grow their business in the town far outweighs any detriment to the community.
- Impact to the environment – The proposed project is small, snow removal and storm water will be handled onsite, there will be no traffic impact to the neighbors, and the existing curb cut will be used.

- Self-created hardship – Yes, but the dimensions of the lot dictate the proposed changes but believe the benefit to the applicant far outweigh any detriments to the community and noted landscaping, stormwater controls, and other details will be addressed by the Planning Board during site plan review.

Ms. Tronolone questioned the number of patients the practice sees and the hours of daily operations. Dr. Carl Embury stated each provider sees 1 to 1.5 patients per hour. The purpose of the project is to combine Dr. Caitlin Embury's location with this one, there will be three hygienists and two doctors that will see 5 to 6 patients per hour. The goal is to have employees park in the back of the property and leave the front and side parking for patients. The office hours will be 8 A.M. to 4 P.M. Monday through Wednesday, and 8 A.M. to 1 P.M. Thursday.

Ms. Greenan questioned if the existing sign will be moved. Mr. Fitzgerald stated the sign is the northern boundary and the sign will not be moved. Mr. Humberstone indicated his agreement. There will be minor encroachment of the landscaping abutting the house. Chairperson Hicks questioned if the maple trees in the front yard will be removed. Mr. Fitzgerald stated the only tree on the eastern side of the driveway will be removed.

Chairperson Hicks questioned the applicants why they chose this site as opposed to the other site. Dr. Caitlin Embury stated she is at 664 Center Road which is landlocked with no room to expand. Dr. Carl Embury stated there is a second floor which requires an elevator to be ADA compliant. Mr. Fitzgerald stated the Emburys do not own 664 Center Road and the property is hardscaped with no room for expansion.

Ms. Greenan stated it seems that too much is being added to the residential property and questioned whether another location was considered. Mr. Fitzgerald stated the Emburys own 287 Center Road, and the property has been a dentist's office for a long time. The doctors have different equipment and skillsets in each office and have had to transport these between offices; there are benefits to combining them under one roof. The expansion of the building is compliant with the code and the expansion of the parking lot requires variances.

Chairperson Hicks stated all examples of being comparable are on the north side and noted there are home occupancy businesses nearby. Historically businesses in this area served a walkable community when they were built. This project is unique as no one lives at the residence and unapproved parking already exists. Mr. Fitzgerald stated the existing parking is existing nonconforming. Mr. Busse stated he agrees and believes parking has existed in this manner from the establishment of the dental practice in the 1980's and has been unable to find any site plan approval from this time. Chairperson Hicks questioned why the variance request is being heard by the Zoning Board at this point if they are preexisting conditions that were allowed under prior Zoning Boards. Mr. Busse stated there are new variance request proposals and solicited Mr. Stachowski's opinion on the applicants' intent. Mr. Stachowski stated he would agree that the intent is to document the parking variance and referred to one of the arguments that the request will not change the character of the neighborhood because it already exists. Mr. Busse further explained that the Code Enforcement Office will bring any outstanding issues to the appropriate board when they are discovered. Mr. Stachowski agreed with Mr. Busse and stated the applicants did not own the property when parking was established. Mr. Fitzgerald stated the property was last reviewed by the Zoning Board in 2006 when the requirement for the owner to reside at the property was removed and the parking issue was not discussed. If the use ever changed the property owner would need to apply for a use variance with the Zoning Board of Appeals. The understanding at the time was this was an existing nonconforming use and should the Zoning Board of Appeals decide the south and western setback variances are not required this will not present a problem to the applicants; the variances were included after discussions with the town and out of an abundance of caution. The space layout will be changing with the demolition of the garage, noting the setback is not changing. Mr. Lang stated he understands the existing nonconforming aspect

is the rear parking lot, variance Nos. 3 and 5; and the front parking lot is addressing variance Nos. 1, 2, 4, and 6. Mr. Fitzgerald concurred.

Chairperson Hicks stated in her experience she asked if the applicants would change the existing sign to a pedestal sign and stated she is opposed to this type of sign on the side of the street. If this change is a part of the plan the applicants need to disclose this. Mr. Fitzgerald stated the applicants do not anticipate changing the sign and would not object to making this a condition of site plan approval. Mr. Busse stated there are restrictions on signs for residential zoning. Chairperson Hicks stated Mr. Fitzgerald mentioned other businesses nearby and noted they do have pedestal signs, Ohrt and Goodman and Wirth, as well as a dentist office on Union Road that is zoned commercial. The site is charming and is opposed to adding any further encroachments on this site. Mr. Fitzgerald suggested the Zoning Board can place a conditioned approval that includes maintenance of the existing sign or prohibition of a pedestal sign as well as landscaping around the sign that would be acceptable. Chairperson Hicks stated the Planning Board will work out the details.

Chairperson Hicks stated the ZR-1 form was forwarded to NYSDOT and the Erie County Department of Environment and Planning July 10th and are still within the 30-day timeframe for comments to be received and questioned the applicant if the project has been submitted for coordinated review. Mr. Fitzgerald stated this project is a Type II action not subject to further SEQR review because it is the expansion of an existing structure by less than 4,000-sf. Chairperson Hicks questioned Mr. Busse if Erie County will require a wider driveway. Mr. Busse stated he does not know. Mr. Fitzgerald stated he does not anticipate this requirement based on the volume of traffic, but the applicant can incorporate this if Erie County requires expansion of the driveway.

Chairperson Hicks questioned Mr. Stachowski about the Zoning Board's options. Mr. Stachowski stated the Zoning Board may move forward with approval of the variances after performing the balancing test with the understanding any issues brought up any government entities will be brought back to the Zoning Board for further discussion. Chairperson Hicks confirmed August 10th will be the deadline for comments from NYS and Erie County. Mr. Stachowski questioned what Planning Board meeting the applicant will be heard at should the variances be approved. Mr. Fitzgerald stated the September meeting and explained if the Zoning Board does not decide at this meeting Mr. Humberstone cannot prepare the fully engineered drawings in time for the September meeting.

Ms. Greenan questioned what the maximum number of cars will be onsite at any one time. Mr. Fitzgerald stated the practice can have 5 – 6 patients and 11 team members at a time with possibly a few additional people; the requirement of 36 spaces is more than necessary. Ms. Greenan stated the existing amount of 16 is not sufficient. Mr. Fitzgerald confirmed this is correct and if there was any way to eliminate or reduce the number of parking spaces in the front the applicant would, but it cannot be done. Mr. Lang agreed with this statement. Ms. Greenan questioned if the parking spaces could be put on a diagonal. Mr. Humberstone stated that design presents its own difficulties, and the current design is the most efficient for traffic flow.

Mr. Bedient stated obtaining the variances is the path of least resistance as opposed to requesting a rezoning to commercial and commented commercial zoning would allow for commercial purposes. Mr. Fitzgerald agreed that the alternative would be to pursue a rezone which would negate the front yard variance. From the applicants' standpoint there is no real difference as they intend to use the property as a dental office but if the zoning is changed to commercial, future owners could use the property for any commercial use.

Chairperson Hicks stated the possibility of returning the structure to a house after the expansion is completed could not be accomplished with a large investment. Mr. Fitzgerald stated that would require substantial

renovations, but this is true of the existing condition. Chairperson Hicks stated the statute would allow for any type of professional service company. Mr. Fitzgerald stated he recalls the property being limited to dentists and dentist affiliated activities and any interpretation would be determined by the Zoning Board. Ms. Greenan stated the minutes do reflect Mr. Fitzgerald's statement. Mr. Fitzgerald suggested this stipulation may change if a residential component of the building was reintroduced, for example, an attorney lived at the site and utilized some space for an office as a home occupancy. Mr. Lang questioned if this would be permissible in a residential district without any variances if an owner was a home occupant. Mr. Busse stated there are criteria regarding floor plans and the residential zoning must include an "A" and requires Planning Board and Town Board approval. Mr. Stachowski stated the stipulation from 1984 still applies contingent upon the use not changing and the area variances can be made contingent upon the use continuing not upon the applicants owning the property.

Chairperson Hicks requested the neighbor consent form. Chairperson Hicks stated neighbor signatures with no objection to the variance were obtained from residents at 297 Center Road and noted the applicant was unable to make contact with the neighbor to the west. Chairperson Hicks questioned the notification provided. Town Clerk Newton stated the publication was the only notification given, neighbor letters were not sent. Mr. Busse stated neighbor letters were not required because this is not a rezone request but understands the applicant did approach the neighbors as required.

Chairperson Hicks referred to the area variance balancing test. Mr. Stachowski suggested the balance test be split for the four variances related to the front parking lot and two for the nonconforming use. Chairperson Hicks confirmed the balance test for variance Nos. 1, 2, 4, and 6 and requested Mr. Fitzgerald go through each component: 1) Is there an undesirable change to the neighborhood – Mr. Fitzgerald stated the area is mixed residential mixed with commercial and has been a dental practice for 40 years. Landscaping will surround the lot to ensure there is no change to the character of the community to minimize the visual impact. The property is bound to the use and there will be very low trip counts. The eastern most neighbor has given their consent, the neighbor across the street is a commercial property, and the neighbor to the west will be screened by the existing trees. One tree will be removed, and dense landscaping will be added to the property line in this location. The benefit to the applicant is substantial, there is a significant benefit to the patients, and do not feel the changes will be particularly noticeable to the community. 2) Is there an alternative – No, alternatives were investigated but not viable given the property layout. 3) Is the request substantial – This is a very unique circumstance and if this property was zoned commercial none of the variances would be required. The most visible vantage point to see the parking lot would be from the much larger parking lot across the street. Within the context, the variances are not substantial. 4) Does the variance have an impact on the environment – From an aesthetic standpoint there will be additional landscaping for screening, stormwater will be managed onsite, traffic studies are recommended when the number of trips per hour exceeds 100 and this practice will average 5 – 7 trips and at most 10 per hour. 5) Is this a self-created difficulty – Due to the site and the 40-year use variance within the residential zoning is not self-created beyond the owners choosing to buy the property noting a self-created hardship is not the determining factor for approval.

Motion by Bedient, seconded by Tronolone to close the public hearing and grant variance Nos. 1.) to allow a parking reduction variance for 26 parking spaces (required to have 36 parking spaces); 2.) to allow front yard setback variance of 20' (required to have 40'); 4.) to allow east side yard setback of 5' (required to have 30'); and 6.) to allow front yard parking to exceed the required 30% frontage threshold noting the applicant will return to the Planning Board to discuss snow removal and landscaping, and including the stipulations that there will not be a change to the existing sign and a notice of no impact is received from Erie County. Mr. Stachowski stated the rationale used by the Zoning Board was the rationale as presented by Mr. Fitzgerald for the balancing test.

Ayes: All

Noes: None

Motion Carried

Mr. Fitzgerald referred to the area variance balancing test for Variance Nos. 3 and 5: 1) Is there an undesirable change to the neighborhood – No, there is an existing privacy fence on the western side of the property and the expectation is that the neighbor will not see the parking spaces. The elimination of the garage will be a benefit to the community and will be replaced with parking places. There is a reduction in parking spaces in the southern portion to allow for better circulation due to the building expansion and the character of the community will not be affected. 2) Is there an alternative – No, alternative layouts and designs were considered but would not be viable due to the layout of the property. 3) Is the request substantial – No, the number of existing nonconforming parking spaces and the amount of setback being encroached upon are decreasing on the south side. 4) Does the variance have an impact on the environment – Aesthetically there is a net benefit to the environment and there are no other significant concerns because the hardscape already exists. The stormwater and snow removal will be managed onsite. Chairperson Hicks confirmed the applicant does not have a dumpster onsite. Mr. Fitzgerald indicated they do not. 5) Is this a self-created difficulty – There are existing site limitations noting encroachments are being reduced and the self-created difficulty does not outweigh the benefits.

Ms. Greenan stated she agrees with Mr. Fitzgerald's balance test with the exception that in Ms. Greenan's opinion this is a substantial request but agrees that this has been in place. Chairperson Hicks agrees with Ms. Greenan and noted the two variances already exist and the motion will put them on the record under this use variance; it is not a new request but an approval of an existing use.

Mr. Bedient stated he appreciates the applicant choosing to build onto the back of the building to mitigate changes to the character of the neighborhood.

Motion by Tronolone, seconded by Greenan, to grant variance Nos. 3.) to allow west side yard setback variance of 0' (required to have 30'); and 5.) to allow rear yard setback of 0' (required to have 30').

Ayes: All

Noes: None

Motion Carried

Motion by Tronolone, seconded by Bedient, to close the public hearing at 7:31 P.M.

Ayes: All

Noes: None

Motion Carried