

WEST SENECA TOWN OFFICES
1250 Union Road
West Seneca, NY 14224

ZONING BOARD OF APPEALS
Minutes #2018-06
June 27, 2018

The regular meeting of the Zoning Board of Appeals of the Town of West Seneca was called to order by Chairman Timothy Elling at 7:00 P.M. followed by the Pledge of Allegiance led by Michael Hughes and 30 seconds of silent prayer.

ROLL CALL: Present - Timothy J. Elling, Chairman
Evelyn Hicks
Michael P. Hughes
Richard P. Marzullo
Raymond Kapuscinski
Jeffrey Baksa, Code Enforcement Officer
Tina Hawthorne, Deputy Town Attorney

Absent - None

Chairman Elling read the Fire Prevention Code instructing the public where to exit in case of a fire or an emergency.

OPENING OF PUBLIC HEARING

Motion by Hughes, seconded by Hicks, to open the public hearing.

Ayes: All Noes: None Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

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

Ayes: All Noes: None Motion Carried

APPROVAL OF MINUTES

Motion by Elling, seconded by Marzullo, to approve Minutes #2018-05 of May 23, 2018 with the following revision to the motion for executive session:

"Motion by Elling, seconded by Hicks, to recess to executive session at 7:40 P.M. to discuss a matter of pending litigation, noting that at the conclusion of the discussion of pending litigation no other business will be discussed."

Ayes: All Noes: None Motion Carried

OLD BUSINESS

2013-19

Request of David Shearer for renewal of a variance for property located at 1800 Union Road to allow live music

David Shearer stated his request to renew the variance to allow live music on Friday's and Saturday's only, 10 P.M. to 2 A.M. at Rockin Buffalo located at 1800 Union Road.

Chairman Elling stated no complaints were registered with the town for this address over the past year.

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to close the public hearing and grant a one year variance for property located at 1800 Union Road to allow live music Friday and Saturday nights, 10 P.M. to 2 A.M.

Ayes: All

Noes: None

Motion Carried

2017-59

Request of Robert Jemiolo for renewal of variances for property located at 3369 – 3385 Clinton Street to: 1) allow outdoor patio seating until 9 P.M. Sunday – Thursday and until 11 P.M. Friday and Saturday; 2) allow an unpaved parking lot

Robert Jemiolo stated his business is not yet open and he is still in the process of obtaining licenses with a target of fall as the earliest date to open. Seating is still planned seasonally for the outdoor patio. The parking lot is still unpaved and he needs to have cash flow to install blacktop.

Mrs. Hicks expressed concern that millings will flow into the creek if snow is plowed toward the rear of the property and she suggested a better snow removal plan.

No comments were received from the public.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a six month variance for property located at 3369 – 3385 Clinton Street to: 1) allow outdoor patio seating until 9 P.M. Sunday – Thursday and until 11 P.M. Friday and Saturday; 2) allow an unpaved parking lot.

Ayes: All

Noes: None

Motion Carried

2018-26

Request of Robert Pattison of East Seneca Fire Company for a variance for property located at 100 Lein Road to construct a new electronic sign within 500' of residential property and construct a 20'6" high storage building (12' maximum height allowed)

Michael Willman represented East Seneca Fire Company and stated their request to replace their existing sign with a new electronic sign, noting the planter box where the sign is located will be moved back so no part will be in the county right-of-way. They are aware of the sign ordinance and will have an automatic dimmer and turn off the sign at 11 P.M. They would also like to construct a 20'6" high storage building behind the existing garage to store fire district equipment, including a large trailer used for water rescue and an ATV used for emergency purposes only. The trailer is currently stored outside next to the building and the height of the proposed building is due to the size of the trailer. Mr. Willman stated both projects were explained to the neighbors.

Chairman Elling stated he was in receipt of letters of approval from property owners at 36, 43, 57, 58, 68, 64, 79, 101, 107, 113, 124, 132, 136 Lein Road; 157, 173 & 179 East Center Road; 5 Partridge Lane; and 1860, 1870, 1890 & 1896 Center Road. Erie County recommended that full color backgrounds be discouraged after sunset as a courtesy to the neighbors and drivers.

No comments were received from the public.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 100 Lein Road to construct a 20'6" high storage building and a new electronic sign within 500' of residential property, noting the sign base and sign itself cannot be in the right-of-way and must comply with the sign ordinance.

Ayes: All

Noes: None

Motion Carried

2018-27

Request of Jonathan Powers for a variance for property located at 1500 Ridge Road to construct a building addition reducing rear yard setback to 5' (30' rear setback required)

2018-27 (continued)

Jim Gannon of Scheid Architectural represented Jonathan Powers of Day & Night Plumbing and stated his proposal to construct an 1134 sf single story block addition on the existing building at 1500 Ridge Road. The existing building is setback 5' from the rear property line, which was permitted at the time it was built. The required rear setback is currently 30', so they are requesting a variance to reduce the rear setback to 5' for the addition. Mr. Gannon noted there is a 13' wide utility right-of-way owned by the town directly behind the building.

Chairman Elling commented on water on the site coming from the building and stated no water from the parcel can flow onto neighboring properties. He questioned what is being proposed for drainage.

Mr. Gannon responded there are no gutters on the existing building and Mr. Powers is considering installing them on the rear of the building. Mr. Powers stated he is willing to work with the town to install proper drainage.

Chairman Elling stated he was in receipt of letters of approval from property owners at 1478 Ridge Road & 129 Maryon Drive. He further commented on storage of stone and debris on the property and presented pictures of the site.

Code Enforcement Officer Jeffrey Baksa stated the C-2 zoning permits material storage outside, but it should be screened from public view.

Mr. Gannon questioned the date of the photos and stated the material is not currently on site.

A Maryon Drive resident stated there are no gutters on the building and there have been drainage issues since he bought his house in 1989. He provided pictures of materials stored on site, including spoils brought back from jobs that never get cleaned up. He further stated the easement has been filled in over the years and water runs off the bank onto his property. Improvements were made to the building next door and gutters were added, but they drain into his neighbor's back yard and he was concerned the same will happen if Mr. Powers puts gutters on the other building. The resident presented minutes from various town meetings where issues were addressed at this property, pictures indicating two abandoned cars on the site and a petition signed by surrounding property owners at 119, 123, 129, 133 & 139 Maryon Drive and 295, 304 & 310 Covington Drive that opposed the project. He asked that the variance be denied until improvements are seen at the site.

2018-27 (continued)

Mr. Powers stated he had nothing to do with the issues in 1989 and there are no abandoned cars on the property, every vehicle is registered and driven daily. There was fill put at the end of the building, but this was a misunderstanding from the tenants and it was cleaned up immediately. The pictures with spoils were taken in the spring and it is short term storage that a tenant uses February – April.

Mrs. Hicks commented on the view of the property from the residents' homes on Maryon Drive and Covington Drive.

Mr. Powers stated two doors were ordered but have not yet been replaced and the other two doors were painted. None of the brush behind the building is on his property. Mr. Powers proposed planting a couple of trees to screen the building.

Chairman Elling suggested moving the building forward to comply with the 30' rear setback. Mr. Gannon responded they would then need a variance for the front setback.

Mr. Hughes suggested Mr. Powers be a good neighbor, do the necessary work and then come back before the Zoning Board.

Mr. Powers requested his application be tabled for three months to allow him an opportunity to do the work requested.

Motion by Hicks, seconded by Elling, to table this item until September to allow the applicant time to do necessary drainage work.

Ayes: All

Noes: None

Motion Carried

2018-28

Request of Richard Donovan of 14 Holy Helpers Church for a variance for property located at 1345 Indian Church Road to construct an electronic sign within 500' of residential property

Richard Donovan represented 14 Holy Helpers Church and stated their request to construct an electronic sign within 500' of residential property, noting the sign will be turned off at 11 P.M. except during their three day summerfest event when it will remain on until midnight.

2018-28 (continued)

Chairman Elling stated he was in receipt of letters of approval from property owners at 28 & 36 School Street; 2 Doster Place; 25 Race Street; and 1120 & 1365 Indian Church Road. Erie County Division of Planning had no recommendation on the project, but did suggest that full color backgrounds be discouraged after sunset as a courtesy to the neighbors and drivers.

No comments were received from the public.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 1345 Indian Church Road to construct an electronic sign within 500' of residential property, noting the sign should be turned off no later than 11 P.M. except during the three day annual summerfest when the sign can remain on until midnight.

Ayes: (4) Mr. Hughes, Mrs. Hicks, Mr. Kapuscinski, Chairman Elling

Noes: None

Abstentions: (1) Mr. Marzullo

Motion Carried

2018-29

Request of Caitlin Chmura for a variance for property located at 990 Center Road to construct a 6' high fence in front and side yard of corner lot (maximum 4' high fence permitted)

Caitlin Chmura stated her request for a 6' high fence in her front and side yard to contain her pets, for privacy and for protection on her corner lot. She understood the neighbor behind her property has a problem with the fence, but noted it will not block his view and will not make the neighborhood look bad. Ms. Chmura indicated on the plan the placement of the fence and location of a gate.

Chairman Elling stated he was in receipt of letters of approval from property owners at 980 & 1000 Center Road; 250 Summit Avenue; and 2, 3, 7 & 10 Summit Meadow.

A Summit Meadow resident stated his objection to the proposed fence due to it obstructing his view when exiting his driveway.

Chairman Elling questioned if Ms. Chmura would agree to a 4' setback from the sidewalk and Ms. Chmura responded she would.

2018-29 (continued)

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 990 Center Road to construct a 6' high fence in the front and side yard of the corner lot, setback 4' from the sidewalk.

Ayes: All

Noes: None

Motion Carried

NEW BUSINESS

2018-30

Request of Scott Eggleston for a variance for property located at 100 Orchard Park Road to construct a new pedestal sign with no setback (10' setback required)

Scott Eggleston stated his request to construct a new pedestal sign at 100 Orchard Park Road, noting the post is already there and is in line with parking lot lights.

Chairman Elling stated he was in receipt of letters of approval from property owners at 25, 27, 120, 131 & 137 Orchard Park Road and 78 Fairfax Drive. He further referred to a letter received from NYSDOT indicating the existing light post cannot be used as it is located in the state right-of-way. Chairman Elling suggested moving the sign or meeting with NYSDOT to discuss placement.

No comments were received from the public.

Motion by Elling, seconded by Marzullo, to table this item until the next meeting to allow the applicant to meet with Edward Rutkowski of NYSDOT concerning placement of the sign.

Ayes: All

Noes: None

Motion Carried

2018-31

Request of Paul Strada for Schunke Insurance for a variance for property located at 997 Union Road to construct an electronic ground sign with 4' clearance under sign, 32 sf with no setback, within 500' of residential property (3' maximum clearance under sign and 24' sf with no setback permitted)

2018-31 (continued)

Paul Strada of NAS Sign Company stated the request of Schunke Insurance to replace their existing sign with a double sided LED sign with 4' clearance under the sign and no front setback. Mr. Strada noted the existing foundation is a couple inches from the state right-of-way. He further stated they would like to keep the sign on until 11 P.M. and noted their location on Union Road across from Southgate Plaza.

Chairman Elling stated he was in receipt of letters of approval from property owners at 22, 26, 32, 44 & 50 Southwood Drive. NYSDOT suggested a front setback of at least one foot and also noted that no part of the foundation, posts or sign can be installed or extend within the state highway right-of-way, including the air space. Chairman Elling stated the Zoning Board requires a 3' setback from the sidewalk and he did not believe that would interfere with any parked cars.

No comments were received from the public.

Motion by Elling, seconded by Marzullo, to close the public hearing and grant a variance for property located at 997 Union Road to construct a 32 sf electronic ground sign with 4' clearance under the sign, 3' setback from sidewalk and within 500' of residential property, noting all residential property is behind the business so an 11 P.M. shut off time is allowed.

Ayes: All

Noes: None

Motion Carried

2018-32

Request of Sami Kidan for a variance for property located at 30 Columbia Parkway to construct a 6' high fence in side yard (maximum 4' high fence allowed)

Sami Kidan stated his request to construct a 6' high fence in his side yard to keep deer out of his yard, noting there will be a gate across his driveway and the fence will extend to his neighbor's house.

Chairman Elling stated he was in receipt of a letter of approval from the property owner at 22 Columbia Parkway.

Code Enforcement Officer Jeffrey Baksa stated Mr. Kidan's neighbor will also need a variance if the fence connects to their house. Chairman Elling suggested a 4' fence in the neighbor's yard to eliminate the need for a variance.

No comments were received from the public.

2018-32 (continued)

Motion by Elling, seconded by Hicks, to close the public hearing and grant a variance for property located at 30 Columbia Parkway to construct a 6' high fence in the side yard with a gate across the driveway.

Ayes: All

Noes: None

Motion Carried

2018-33

Request of Lauren Kisloski for a variance for property located at 85 Bernice Drive to construct a 6' high fence in front & side yard of corner lot (maximum 4' high fence permitted) and construct a shed in front setback (30' front setback required)

Kevin Kosloski stated his request to replace an existing 4' high fence with a 6' high privacy fence and construct a shed inside the fence in the corner of the front yard.

Chairman Elling stated he was in receipt of letters of approval from property owners at 57, 58, 64, 70 & 93 Bernice Drive.

No comments were received from the public.

Motion by Hughes, seconded by Kapuscinski, to close the public hearing and grant a variance for property located at 85 Bernice Drive to construct a 6' high fence in the front & side yard of the corner lot setback 3' from the sidewalk and construct a shed inside the fence in the front setback.

Ayes: All

Noes: None

Motion Carried

2018-34

Request of Lesley & Michael Casciano for a variance for property located at 246 Union Road to construct a 30' high accessory structure with 8' separation from house (maximum 12' height for accessory structure and minimum 10' separation from house)

Attorney Timothy Greenan represented the Casciano's and stated their proposal to construct a 30' high accessory structure on the right side of the garage doors attached to the existing garage. There is no neighbor to the rear and the structure will be used for cold storage, not living quarters.

Code Enforcement Officer Jeffrey Baksa understood the structure was detached and stated no variance is needed if it is attached. He will verify this with the property owner, but suggested the Zoning Board act on the variance in case it is necessary.

2018-34 (continued)

Chairman Elling stated he was in receipt of letters of approval from property owners at 226 & 266 Union Road.

No comments were received from the public.

Motion by Hughes, seconded by Elling, to close the public hearing and grant a variance for property located at 246 Union Road to construct a 30' high accessory structure with 8' separation from house.

Ayes: All

Noes: None

Motion Carried

2018-35

Request of _____ for a variance for property located at _____ to construct an above ground pool connecting to deck/house (10' separation required for accessory structures)

_____ stated his proposal to extend his deck to connect to an above ground pool, noting there will be a pool alarm and self-closing, self-latching gate installed.

Mrs. Hicks questioned the distance from the pool to the corner of the house and whether it was close enough for someone to jump from the roof and reach the pool.

_____ responded it was not close enough to jump from the house to the pool.

Chairman Ellina stated he was in receipt of letters of approval from property owners at _____

No comments were received from the public.

Motion by Marzullo, seconded by Hicks, to close the public hearing and grant a variance for property _____ to construct an above ground pool connecting to the deck/house.

Ayes: All

Noes: None

Motion Carried

2018-36

Request of Jason Havens of Rusty Nickel Brewing Company for a variance for property located at 4350 Seneca Street to construct a 20' x 60' addition reducing side setback to 7' (25' side setback required)

2018-36 (continued)

Jason Havens of Rusty Nickel Brewing Company and Attorney Charles Grieco addressed the Zoning Board with a proposal to enclose the patio with a 20' x 60' enclosure with seasonal doors, noting the patio will need to be extended 3' to 4' to be ADA compliant with spacing between the tables. Mr. Havens stated he is working with the neighbors to reduce noise and enclosing the patio will help accomplish that objective.

Chairman Elling stated Attorney Grieco was formerly the Attorney for the Town of West Seneca and Town Attorney John Fenz has advised there is no ethical violation for him to now represent the applicant.

Mr. Marzullo questioned if the enclosed patio will be heated and if the enclosure will change the inside seating capacity. Mr. Havens responded he currently does not have funds to heat the room, but would like to in the future. The seating capacity will be the same.

Chairman Elling stated he was in receipt of letters of approval from property owners at 4340 & 4358 Seneca Street and 864, 878, 896 & 899 Main Street. He suggested obtaining site plan review/waiver prior to the variance.

Mr. Havens asked for the variance first so he can continue to apply for bank financing. He will continue with site plan review or waiver following approval of the variance.

Mr. Grieco stated they are not sure if site plan review is required, but a variance is required. Typically, the variance should be obtained first because without the variance they would not proceed to the Planning Board for site plan.

A Seneca Street resident commented he has no problem with the covered patio and they are normally good neighbors, but he referred to a tree that was recently cut down that he believes is on his property. He presented pictures of the tree and pictures of the St. Patrick's Day party, noting people cut through his yard. He understood they were putting up a fence and would like to see that happen to stop people from trespassing in his yard.

Code Enforcement Officer Jeffrey Baksa stated the owners of Ebenezer Ale House cut the tree down and are putting up the fence. They are also supposed to be striping the parking lot this season. Mr. Baksa stopped them from removing trees and they have filed for a tree removal permit for one ash tree that is dead.

A Seneca Street resident spoke in favor of the Rusty Nickel and commented they get blamed and labeled with issues from Ebenezer Ale House.

2018-36 (continued)

A Rosewood Drive resident stated he is a patron of the Rusty Nickel and was in favor of enclosing the patio as it will extend summer and help reduce noise in the neighborhood.

Mr. Marzullo commented that increasing space increases the ability to have more patrons and he did not see how the capacity will not be increased. Mr. Baksa stated occupant load and parking is based on the type of use and square footage. The patio has already been taken into consideration, so enclosing it does not allow for more occupants or call for more parking.

Motion by Elling, seconded by Marzullo, to table this item and refer it to the Planning Board for a determination on the site plan waiver.

Ayes: (2) Chairman Elling, Mr. Marzullo

Noes: (3) Mr. Hughes, Mrs. Hicks, Mr. Kapuscinski

Motion Denied

Motion by Hughes to close the public hearing and grant a variance for property located at 4350 Seneca Street to construct a 20' x 60' enclosure reducing side setback to 7'.

Motion failed due to lack of a second.

Mr. Baksa suggested approving the variance contingent upon site plan waiver or site plan approval from the Planning Board.

Motion by Elling, seconded by Marzullo, to close the public hearing and grant a variance for property located at 4350 Seneca Street to construct a 20' x 60' enclosure reducing side setback to 7' contingent upon either site plan waiver or site plan approval from the Planning Board.

Ayes: All

Noes: None

Motion Carried

2018-37

Request of Sean Shoemaker for a variance for property located at 100 Shirley Drive to construct an attached garage reducing front setback to 22' (minimum 30' front setback required)

2018-37 (continued)

Sean Shoemaker stated his request for a variance to construct an attached garage reducing the front setback to 22', noting he previously received a variance for the same purpose but had trouble finding an architect and the variance expired. His neighbors have not changed since the previous variance was approved in 2016.

No comments were received from the public.

Motion by Hughes, seconded by Elling, to close the public hearing and grant a variance for property located at 100 Shirley Drive to construct an attached garage reducing front setback to 22' as previously approved 10/26/2016.

Ayes: All

Noes: None

Motion Carried

2018-38

Request of Kasey Kling & Aaron Land for a variance for property located at 4041 Clinton Street to construct a 26' x 40' garage with 24' peak (maximum 12' height for accessory structures)

Aaron Land stated his proposal to construct a 26' x 40' detached garage with a 24' peak to store his boat. There will be no commercial use, no living quarters and no plumbing installed, but he may install some type of heat in the future.

Chairman Elling noted NYSDOT approval is required for the curb cut.

No comments were received from the public.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a variance for property located at 4041 Clinton Street to construct a 26' x 40' garage with a 24' peak, pending approval of the curb cut from NYSDOT.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

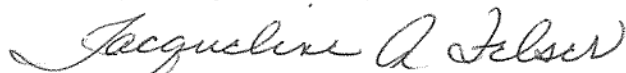
Motion by Kapuscinski, seconded by Elling, to adjourn the meeting at 9:50 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,



Jacqueline A Felser

Town Clerk/Zoning Board Secretary