

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

ZONING BOARD OF APPEALS
Minutes #2017-08
September 27, 2017

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 and 30 seconds of silent prayer.

ROLL CALL: Present - Timothy J. Elling, Chairman
Michael P. Harmon
Evelyn Hicks
Michael P. Hughes (arrived at 7:50 P.M.)
Richard P. Marzullo
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 Harmon, seconded by Hicks, to open the public hearing.

Ayes: All

Noes: None

Motion Carried

APPROVAL OF PROOFS OF PUBLICATION

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

On the question, Chairman Elling advised that Item #2017-62 was a late submittal for the meeting and the applicant published the variance request in the Buffalo News.

Ayes: All

Noes: None

Motion Carried

APPROVAL OF MINUTES

Motion by Elling, seconded by Harmon, to table approval of Minutes #2017-08 and request verbatim transcription of one item.

Ayes: All

Noes: None

Motion Carried

Chairman Elling announced the October Zoning Board meeting has been changed to November 8, 2017 and the November meeting has been changed to December 13, 2017.

OLD BUSINESS

2016-85

Request of Tracy Coccia of Big Lots for renewal of the variance for property located at 1980 Ridge Road to allow temporary structures to remain permanent (temporary structure maximum is 30 days)

Tracy Coccia represented Big Lots and requested approval of their proposal to construct an 8' high white vinyl fence to screen four storage units behind their store, noting another temporary storage container has been emptied and will be removed.

Code Enforcement Officer Jeffrey Baksa commented the storage units are located behind Big Lots, but the rear of the store has frontage on Orchard Park Road so they are not behind a building where no one can see them. He was concerned this could open the door for other businesses to do the same.

Mr. Harmon suggested a building addition or enclosing and covering the containers.

Ms. Coccia stated they are looking for the least expensive option. A new lease was recently signed for this location and they looked into renting additional space next to the store and having another entrance to the store. Ms. Coccia stated the business is growing and there is not enough space in the store, but she understood the landlord is reluctant to parcel off more of the building and would prefer to rent the entire space.

Mr. Marzullo commented he is not in favor of containers outside even with a fence and would prefer to see the business occupy the empty space in the building.

Susan Kims referred to another business on Union Road that was only permitted to have temporary storage containers on site. Mr. Baksa responded the other business only asked for temporary storage and never inquired about keeping them permanently.

Mrs. Hicks suggested extending the temporary variance for 60 days to allow time for the owner to come up with a more permanent solution.

Motion by Hicks, seconded by Marzullo, to extend the temporary variance until the December meeting to allow time for the owner to come up with a more permanent solution to their storage issue.

Ayes: All

Noes: None

Motion Carried

2017-45

Request of Rusty Nickel Brewing Company for a variance for property located at 4350 Seneca Street to allow live music

David Johnson and Jason Havens, owners of Rusty Nickel Brewing Company, submitted additional information on their proposal for live music and stated they would like to continue to host events that are popular with the community. The open microphone on Sunday afternoons from 5 P.M. to 9 P.M. has only been inside and they asked for the opportunity to bring it outside. The live music is acoustic, no drums, with limited amplification and the maximum decibel level has been 82. Mr. Havens stated they normally host six to seven special events per year and their harvest festival is this weekend.

Code Enforcement Officer Jeffrey Baksa stated no variance is required for special events. An application is filed with his office indicating the date/time, location, whether there is live music, parking, etc. It is reviewed and approved/denied by the Code Enforcement Office and the September 30th special event has been approved. Mr. Baksa further stated a variance is required for live music inside and outside and the Zoning Board can set conditions (i.e. dates & times).

Chairman Elling questioned if the live acoustic music on Sunday afternoons could be earlier. Mr. Havens stated most are done earlier and he could stipulate they would have to be finished by 8 P.M. He further stated they would like to be allowed to have live music indoors throughout the week.

Chairman Elling read a letter from surrounding residents requesting the variance be denied because the music is a nuisance to them. They did not object to live music indoors, but requested live music outdoors be limited to four times per year.

Anthony Marchioli lives on Main Street close to the Rusty Nickel and commented the music is not loud and he and his family look forward to it. He further stated the business owners are good people and the complaints are not warranted.

A Sky Hi Drive resident stated he is a patron of the Rusty Nickel and has severe tinnitus in his ear. He can only handle about 80 decibels but has no issue with the volume at the Rusty Nickel and has never had to use ear plugs.

Art Marczyński stated the patio at the Rusty Nickel is surrounded by trees and an 8' wooden fence. The music is acoustic and there are talented individuals that perform there.

2017-45 (continued)

Brian Doster stated he lives next to a bar that has a patio and was concerned that if it is granted for one location it will be granted for all, but noted there are different situations in different neighborhoods.

Adam Conrad commented the Rusty Nickel owners are doing a good job and the music is not loud.

Jeff Orłowski lives on Main Street and stated he has children that go to bed early and his major concern is after 8 P.M. He had no problem with indoor music, but outdoors the sound travels up the hill to Main Street and it is loud even if it is acoustic. Mr. Orłowski further stated he had no problem with five or six special events per year, but does not want blanket approval.

Paul Enderle stated people can still carry on a conversation with acoustic music because it is not loud, yet recorded music is allowed and it can be turned up louder. Mr. Baksa stated the noise ordinance specifies 90 decibels before 11 P.M. and 65 decibels after 11 P.M.

Motion by Hicks, seconded by Harmon, to close the public hearing and grant a six month variance until March 2018 for property located at 4350 Seneca Street to allow live music as follows: Monday – Thursday (indoor) 6 P.M. – 10 P.M.; Friday (indoor) 6 P.M. to 11 P.M.; Saturday (indoor) 2 P.M. to 11 P.M.; Sunday (indoor or outdoor) 4 P.M. to 8 P.M., noting any special events shall be submitted to the Code Enforcement Office for approval.

Ayes: (4) Mrs. Hicks, Mr. Harmon, Mr. Marzullo, Chairman Elling

Noes: (1) Mr. Hughes

Motion Carried

NEW BUSINESS

2017-49

Request of Laura & Michelle Scherer for a variance for property located at 605 Mill Road to construct a 4' high fence in front yard of corner lot (fences not permitted in front yard)

Laura & Michelle Scherer stated their request to construct a 4' chain link fence in the front yard of their corner lot.

Chairman Elling stated he was in receipt of letters of approval from property owners at 601, 619 & 633 Mill Road and 25 HiView Terrace.

2017-49 (continued)

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to close the public hearing and grant a variance for property located at 605 Mill Road to construct a 4' high fence in the front yard of the corner lot.

Ayes: All

Noes: None

Motion Carried

2017-50

Request of Eugenia Janiszewski for a variance for property located at 40 Inter Drive to construct a 6' high fence in the side yard (maximum 4' high fence permitted)

Eugenia Janiszewski stated her request to allow a 6' fence on the left side of her house for privacy and to keep stray animals out. Mrs. Janiszewski stated she and her husband were unaware they needed a permit and began putting the fence up, but they stopped when they found out a permit is required.

Chairman Elling noted the neighbor has a chain link fence along the same property line and questioned who will cut the grass in between the two fences. Mrs. Janiszewski responded that she and her family will maintain the section in between. Chairman Elling commented there could be problems in the future if the property changes ownership. Code Enforcement Officer Jeffrey Baksa advised that currently there is nothing in the ordinance that specifies fences have to be a certain distance apart.

Chairman Elling stated he was in receipt of letters of approval from property owners at 32, 45, 52 & 55 Inter Drive.

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 40 Inter Drive to construct a 6' high fence in the side yard.

Ayes: All

Noes: None

Motion Carried

2017-51

Request of Paul & Lynn Frontera for a variance for property located at 20 Circle End Drive to construct a 6' high fence in side yard (maximum 4' high fence permitted)

Lynn Frontera stated her request to allow a 6' high fence in her side yard, noting the contractor was ahead of schedule and the fence was constructed today.

Chairman Elling stated he was in receipt of letters of approval from property owners at 14, 19 & 26 Circle End Drive.

No comments were received from the public.

Motion by Elling, seconded by Marzullo, to close the public hearing and table this item until the next meeting on November 8, 2017 to view the fence prior to voting on this item.

Ayes: All

Noes: None

Motion Carried

2017-52

Request of Salvatore Christopher for a variance for property located at 451 Fisher Road to construct a 6' high fence in front yard of corner lot (fences not permitted in front yard in R districts)

Salvatore Christopher stated his request for a variance to allow him to replace a rusted chain link fence with a 6' high fence in the same location, 18'2" from the edge of the road.

Chairman Elling stated he was in receipt of letters of approval from property owners at 330, 338, 435 & 459 Fisher Road. Erie County Division of Planning had no recommendation and Erie County Department of Public Works had no issue as long as the fence is not constructed within the Fisher Road highway right-of-way.

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 451 Fisher Road to construct a 6' high fence in the front yard of the corner lot, 18'2" from the road edge.

Ayes: All

Noes: None

Motion Carried

2017-53

Request of Scott Eggleston for a variance for property located at 1 Park Meadow Drive to construct a 6' high fence in the front & side yard of corner lot projecting more than 10' past house (maximum 4' high fence permitted with maximum 10' projection past house)

Scott Eggleston stated his proposal to construct a 6' high fence in the front & side yard of his corner lot, noting he tried planting trees for privacy from the traffic on Orchard Park Road but it was not sufficient.

Code Enforcement Officer Jeffrey Baksa noted the fence will be located outside of the easement.

Chairman Elling stated he was in receipt of letters of approval from property owners at 2, 3 & 4 Park Meadow Drive. Erie County Division of Planning had no recommendation.

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to close the public hearing and grant a variance for property located at 1 Park Meadow Drive to construct a 6' high fence in the front & side yard of the corner lot projecting more than 10' past the house.

Ayes: All

Noes: None

Motion Carried

2017-54

Request of Julie Bossard for a variance for property located at 280 Ansley Court to construct a 6' high fence in front & side yard of corner lot (maximum 4' high fence permitted)

Julie Bossard stated her proposal to construct a 6' high fence enclosing the yard to contain her dog.

Chairman Elling questioned if the trees and bushes will remain and Ms. Bossard responded the fence will be inside them.

Chairman Elling stated he was in receipt of letters of approval from property owners at 268, 269 & 274 Ansley Court and 596 & 617 Center Road. Erie County Division of Planning had no recommendation and Erie County Department of Public Works had no issue with the proposed fence.

No comments were received from the public.

2017-54 (continued)

Motion by Elling, seconded by Harmon, to close the public hearing and grant a variance for property located at 280 Ansley Court to construct a 6' high fence in the front & side yard of the corner lot.

Ayes: All

Noes: None

Motion Carried

2017-55

Request of Richard Johnson of X-Press Signs for a variance for property located at 2193 Union Road to construct a 67 sf electronic message board within 500 feet of residential property (maximum 40 sf sign allowed and minimum 500 feet from residential property)

Code Enforcement Officer Jeffrey Baksa clarified there are two signs that total 67 sf, but only the lower portion will be LED.

Mr. Marzullo noted the new sign regulations for LED signs. Richard Johnson of X-Press Signs stated his customer is aware of the rule changes in the new Sign Ordinance.

Chairman Elling stated Erie County Division of Planning had no recommendation and NYSDOT had no objection to the proposed sign as long as it is not located in the Union Road right-of-way. Chairman Elling further stated he was in receipt of letters of approval from property owners at 139, 144, 145, 156, 204, 216, 250 & 270 North Avenue; 22, 23, 29, 49, 50, 55 & 66 Forest Drive; 30, 33, 38, 39, 47, 69, 70 & 71 Woodbine Avenue; 53 Trier Place and 2143 Union Road. He questioned lack of a signature from the property owner next door at 2185 Union Road. Mr. Baksa advised that 2185 Union Road is commercially zoned property.

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 2193 Union Road to construct a 67 sf electronic message board within 500 feet of residential property.

Ayes: All

Noes: None

Motion Carried

2017-56

Request of Richard Johnson of X-Press Signs for a variance for property located at 795 Center Road to construct a 66 sf electronic message board within 500 feet of residential property (maximum 40 sf sign allowed and minimum 500 feet from residential property)

Code Enforcement Officer Jeffrey Baksa clarified there are two signs that total 66 sf and the LED portion is only 18 sf per side.

Richard Johnson of X-Press Signs stated they will be removing the existing sign on Union Road.

Chairman Elling stated Erie County Division of Planning and Erie County Department of Public Works had no recommendation and NYSDOT had no objection to the proposed sign as long as it is not located in the Union Road right-of-way. Chairman Elling further stated he was in receipt of letters of approval from property owners at 79, 84, 85, 91, 99, 109 Fremont Avenue; 18, 21, 29, 35, 51, 119 Greymont Avenue; 1406 & 1420 Union Road and 729 & 737 Center Road.

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to close the public hearing and grant a variance for property located at 795 Center Road to construct a 66 sf electronic message board within 500 feet of residential property.

Ayes: All

Noes: None

Motion Carried

2017-57

Request of Richard Johnson of X-Press Signs for a variance for property located at 3440 Transit Road to construct an 88 sf electronic message board within 500 feet of residential property (maximum 40 sf sign allowed and minimum 500 feet from residential property)

Richard Johnson of X-Press Signs stated the sign is already at this location and they are changing a portion of it to LED.

Chairman Elling stated Erie County Division of Planning had no recommendation and NYSDOT had no objection to the proposed sign as long as it is not located in the state right-of-way. Chairman Elling further stated he was in receipt of letters of approval from property owners at 4968, 4977, 4983, 4990, 4994, 4995 & 4998 Clinton Street.

2017-57 (continued)

No comments were received from the public.

Motion by Hughes, seconded by Marzullo, to close the public hearing and grant a variance for property located at 3440 Transit Road to construct an 88 sf electronic message board within 500 feet of residential property.

Ayes: All

Noes: None

Motion Carried

2017-58

Request of Robert & Paulette Grabowski for a variance for property located at 105 Westminster Road to construct a 6' high fence in side yard and a 4' high fence projecting 16' into front yard (maximum 4' high fence in side yard and maximum 10' projection into front yard)

Robert & Paulette Grabowski stated their proposal to construct a 6' high fence in their side yard and a 4' high fence projecting 16' into their front yard for privacy, noting they have no problem with their neighbors but their side door faces the neighbor's front yard where they sit. The fence will be 70' from the side door.

Code Enforcement Officer Jeffrey Baksa advised that if a house is setback the required 30' they can construct a fence up to 10' into the setback; however, this house is only setback 20' so they need a variance for the entire 16'.

Mr. Harmon was not in favor of extending the fence to the street and questioned the purpose of it. He thought it would change the character of the neighborhood and suggested only allowing the 6' high fence from the front to the back of the house.

Mr. & Mrs. Grabowski stated the fence will slope down to 4' in front of the house and they wanted that for appearance reasons.

Chairman Elling stated he was in receipt of letters of approval from property owners at 84, 91, 94 & 112 Westminster Road.

No comments were received from the public.

Motion by Harmon, seconded by Hughes, to close the public hearing and grant a variance for property located at 105 Westminster Road to construct a 6' high fence from the front of the house to the back of the house.

Ayes: All

Noes: None

Motion Carried

2017-59

Request of Ryan Mills of Schnitter, Ciccarelli, Mills, PLLC for a variance for property located at 3369-3385 Clinton Street to 1) construct an 8' high privacy fence in side yards; 2) allow outdoor patio seating; 3) allow unpaved parking lot for one year

Ryan Mills represented Robert Jemiolo, contract purchaser of 3369-3385 Clinton Street, and stated an 8' high wood privacy fence was requested at the Town Board meeting so he is requesting a variance for both sides of the property to provide screening for the neighbors. A variance is also requested to allow a portion of the parking lot to remain gravel for one year due to the cost of renovations for the project. The patio was added about seven years ago and Mr. Jemiolo would like to be able to utilize it for service of food and beverages during seasonal months. Mr. Mills commented this property was a restaurant/bar for many years and it fits in the neighborhood. Mr. Jemiolo is planning to make a sizable investment in the property and will be leasing the restaurant/bar which is currently vacant.

Chairman Elling questioned the location of the proposed fence on the west side and Mrs. Hicks questioned the total length of the fence. Mr. Mills responded there is an existing 6' fence on the west and they will be adding to it for additional privacy for the neighbor. The 8' fence will run from where the patio starts to the rear about midway through the parking lot. The total length of the new fence will be about 100'. The arborvitaes will remain and they had discussed some additional foliage.

Chairman Elling was not comfortable with a one year variance for paving because it will expire in October and they may not get blacktop at that time of year. Mrs. Hicks questioned if the parking plan presented met the requirement in the Town Code. Code Enforcement Officer Jeffrey Baksa responded the parking plan presented meets the requirement for the occupant load. He referred to the number of spaces that will remain gravel and suggested calculating how many spaces are paved and then request a reduction in the required parking spaces for one year rather than requesting a gravel parking lot for a year.

Mrs. Hicks read a letter from Erie County Division of Planning concerning the parking area encroaching on Buffalo Creek and encouraging the town and developer to take measures to protect the riparian buffer and prevent automobile waste and other wastes from migrating to the creek.

Chairman Elling questioned the hours for service on the patio and noted he had requested police reports from the previous restaurant/bar and all the complaints were due to the patio being open after 11 P.M. He further questioned if there were plans to have music on the patio.

2017-59 (continued)

Mr. Jemiolo stated he will specify to the tenant that the patio can only be open Monday – Saturday, 11 A.M. to 11 P.M. and on Sunday 10 A.M. to 9 P.M. They will have speakers but no live music and will stay within an acceptable range. Mr. Jemiolo further stated the restaurant will not open until at least spring.

Chairman Elling stated he was in receipt of letters of approval from property owners at 3362, 3395, 3402 & 3451 Clinton Street. NYSDOT did not object to any of the variances requested.

Brian Doster commented on problems with the proposed parking plan and did not think the parking would be sufficient. He further stated according to Town Code patio seating must be shielded from public view and requested a stockade fence around the patio. Mr. Baksa stated the C-2 zoning requires shielding from public view, so an 8' high fence would suffice but it must be constructed where the Town Board stipulated. Mr. Doster stated due to the elevation change the 8' fence will be more like a 6' fence and he preferred to have the 8' fence surround the patio. Mr. Baksa stated the Town Board's motion did not stipulate enclosing the patio. Mr. Marzullo also commented that a fence surrounding the patio will encroach upon the driveway.

Town Clerk Jacqueline Felser noted there were discussions as to whether the project required site plan approval, so they may have to return to the Planning Board for site plan review. Mr. Baksa stated they may be able to apply for site plan waiver since the size of the building is not being changed. A site plan would have to be prepared and submitted to the Code Enforcement Office for review and approval by a Code Enforcement Officer, the Town Engineer and the Planning Board Chairman.

Susan Kims questioned who owns the property. Mr. Mills stated he is the legal owner and he is selling the property to Mr. Jemiolo. Mrs. Kims questioned if the variance remains if the deal falls through and Mr. Baksa advised the variance will expire after six months if no permit is filed.

Mr. Mills referred to the proposed parking plan and stated it is based on a 7000 sf restaurant as requested by the Planning Board. The end user may require less spaces and they may return and ask for a reduction if less parking spaces are needed. Mr. Baksa suggested a nine month variance for the paved parking and stated when a final plan is submitted for the actual seating area, his office will be able to determine exactly how much parking is required.

Chairman Elling stated he was not comfortable with the patio closing at 11 P.M. during the week and suggested 9 P.M. Sunday – Thursday and 11 P.M. Friday and Saturday.

2017-59 (continued)

Motion by Elling, seconded by Hughes, to close the public hearing and grant variances for property located at 3369-3385 Clinton Street as follows: 1) construct an 8' high privacy fence on the west side yard starting at the front edge of the patio and extending 100' past the rear corner of the building; 2) construct an 8' high privacy fence on the east side yard as shown on the plan submitted; and further, grant temporary variances until June 2018 as follows: 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

2017-60

Request of James Gaczewski for a variance for property located at 195 Broadway Street to construct a detached garage in side yard of corner lot (accessory structures allowed in rear yard of R districts)

James Gaczewski stated his proposal to construct a 24' x 28' detached garage in his back yard extending into the side yard of his corner lot. Mr. Gaczewski stated he will not be operating a business from the garage and there will be no driveway leading to it.

Chairman Elling stated he was in receipt of letters of approval from property owners at 181 Broadway Street and 30, 821 & 830 Elm Street.

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 195 Broadway Street to construct a detached garage in the side yard of the corner lot.

Ayes: All

Noes: None

Motion Carried

2017-61

Request of Lindsay Wiepert for a variance for property located at 46 Lockhart Road to expand driveway into required 30' front setback

Jason & Lindsay Wiepert stated their proposal to expand their driveway 9' to make room for additional vehicles, noting the fence will be moved over to allow for the expansion.

2017-61 (continued)

Chairman Elling stated he was in receipt of letters of approval from property owners at 37 Lockhart Road and 1, 5 & 9 Chancellor Lane.

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 46 Lockhart Road to expand the driveway into the required 30' front setback.

Ayes: All

Noes: None

Motion Carried

2017-62

Request of Garrett Mayer for a variance for property located at 1540 Seneca Creek Road to construct a building with 16' front setback and 5' side setback (25' front setback and 50' side setback required)

Garrett Mayer stated his proposal to replace an old barn with a new structure for production of apple cider.

Chairman Elling read a letter from Erie County Department of Public Works (ECDPW) stating that prior to their approval of this variance request they require: 1) a site plan prepared by an engineer licensed in the State of New York identifying the number of parking spaces required and provided for both the existing retail store and the new structure; 2) modifications to the existing parking area that will eliminate the need for backing out onto a county highway; 3) a plan for providing safe pedestrian access from the retail store to the newly constructed parking area west of the cemetery.

Mr. Mayer was unaware of the comments from Erie County and stated construction of the new barn will not change where people are currently parking.

Chairman Elling stated the Zoning Board cannot issue a variance without approval of ECDPW.

Code Enforcement Officer Jeffrey Baksa stated Mr. Mayer should submit revised plans to his office that address the ECDPW comments. They will then be distributed to the Zoning Board members and forwarded to ECDPW for review.

Chairman Elling stated he was in receipt of letters of approval from property owners at 1470, 1499 & 1550 Seneca Creek Road.

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2017-62 (continued)

No comments were received from the public.

Motion by Hicks, seconded by Harmon, to table this item until the November meeting.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Marzullo, seconded by Hicks, to adjourn the meeting at 10:20 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Jacqueline A Felser
Town Clerk/Zoning Board Secretary