

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

**ZONING BOARD OF APPEALS**  
**Minutes #2018-03**  
**March 28, 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 Evelyn Hicks and 30 seconds of silent prayer.

**ROLL CALL:** Present - Timothy J. Elling, Chairman  
Evelyn Hicks  
Michael P. Hughes  
Richard P. Marzullo  
Raymond Kapuscinski  
Jeffrey Schieber, 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.

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### **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 Hughes, seconded by Marzullo, to approve Minutes #2018-02 of February 28, 2018.

Ayes: All

Noes: None

Motion Carried

### **OLD BUSINESS**

#### **2016-18**

Request of Deborah Arzaga for renewal of a variance for property located at 227/229 Pellman Place to raise chickens

**2016-18** (continued)

Deborah Arzaga stated her request for renewal of a variance to raise seven chickens.

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 Elling, seconded by Hicks, to close the public hearing and grant a one year variance for property located at 227/229 Pellman Place to raise a maximum of seven chickens, no roosters.

Ayes: All

Noes: None

Motion Carried

**2017-06**

Request of Charles Zglinicki for renewal of a variance for property located at 5414 Seneca Street to raise chickens

Charles Zglinicki stated his request for renewal of a variance to raise four chickens.

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 5414 Seneca Street to raise four chickens, no roosters.

Ayes: All

Noes: None

Motion Carried

**2017-45**

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

David Johnson & Jason Havens stated their request for renewal of a variance for live music.

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

**2017-45** (continued)

Code Enforcement Officer Jeffrey Schieber noted the applicants have fully complied with the Planning Board requirements as part of the special permit process.

A Main Street resident stated she has been a patron of the Rusty Nickel for about a year and commented that it is a well run, well managed business and they have consistently demonstrated the ability to maintain an orderly environment.

A Holland Avenue resident spoke in favor of the live music and stated he plays at the Rusty Nickel every Sunday night.

Motion by Elling, seconded by Hughes, to close the public hearing and grant a six month variance 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: All

Noes: None

Motion Carried

**2018-02**

Request of Ralph Lorigo for a variance for property located at 1197 Union Road to allow the following: 1) parking in front (side/rear parking required); 2) a one story building (two story required); 3) reduced parking spaces; 4) 24' driveway (30' required); 5) 83' front setback (0' - 20' setback required); 6) 5' rear setback (30' setback required)

Attorney Ralph Lorigo commented on the new overlay district and did not believe it worked for the area of Union Road between Southgate Plaza and Main Street because none of the buildings fit that code. Also, the only buildings from Main Street to Center Road that fit the code are old houses that were converted to commercial use. Mr. Lorigo stated his client bought the property at 1197 Union Road in 2016 and demolished the building prior to the design standards being adopted, and if the variances requested are not granted, the property cannot be used. He noted the proposed 1700 sf building will be an over \$300,000 investment in the town. Mr. Lorigo stated this is an area variance and the Zoning Board must balance the benefit to the applicant vs. the detriment to the neighborhood. He further referred to case law from a similar set of circumstances where a Planning Board decision was overturned in court.

No comments were received from the public.

**2018-02** (continued)

Motion by Hughes, seconded by Elling, to close the public hearing and deny the following variances for property located at 1197 Union Road: 1) parking in front; 2) a one-story building; 3) 83' front setback; and 4) 5' rear setback; because the benefit to the applicant does not outweigh the detriment to the neighborhood based on: a) In consideration of the town's Comprehensive Plan, which is codified in the Town Code, the information presented calls for an undesirable change in the aspirational character of the neighborhood. The requested variances would undermine the existing code and encourage further deviations where no unique hardship exists, setting a poor precedent to the detriment of the neighborhood; b) The benefit sought by the applicant can be achieved by another method. The project can be redesigned in a way that achieves the benefit the applicant is seeking and eliminates the need for the variances; c) The requested variances are substantial in nature. Deviations from the code this great would have a negative impact on the neighborhood.

Ayes: All

Noes: None

Motion Carried

Motion by Hughes, seconded by Marzullo, to approve variances for property located at 1197 Union Road for reduced parking (nine spaces for five chairs) and a 24' wide entrance on Union Road.

Ayes: All

Noes: None

Motion Carried

**NEW BUSINESS**

**2018-03**

Request of Micah Milewski for a variance for property located at 4620 Clinton Street to construct an 8' high fence projecting 80' from front of house (maximum 6' rear fence, 4' front/side fence & 10' projection from house)

Micah Milewski stated his request to construct an 8' high fence projecting 80' from the front of his house to screen the business next door and help cut down on noise. He would like the fence to go at least to the corner of the parking lot, which is at least 30' past the corner of his house.

Zoning Board members suggested different ways of tapering the fence from 8' high at the rear of the house down to 4' high in the front and were not in favor of an 80' projection from the front of the house.

Mr. Milewski stated he needs at least 24' in front to taper the fence and make it look aesthetically pleasing.

**2018-03** (continued)

Chairman Elling requested that Mr. Milewski stake a point 24' from the front of the house to allow the Zoning Board members to see the visual point where the fence will end.

The neighbor at 4630 Clinton Street spoke in favor of the fence and stated it will also benefit his property.

Motion by Elling, seconded by Hughes, to table this item until the next meeting and request that the applicant stake a point 24' from the front of the house to allow the Zoning Board members to see the visual point where the fence will end.

Ayes: All

Noes: None

Motion Carried

**2018-06**

Request of Jason Smith for a variance for property located at 3 Veronica Drive to construct a shed in front yard and a 6' high fence projecting 31' into front yard of corner lot (accessory structures not allowed in front yard and maximum 4' high fence projecting a maximum of 10' into front yard)

Jason Smith stated his proposal to construct a shed in his front yard and a 6' high white vinyl fence on his corner lot to keep his children safe. The shed will be sided the same as the house and will be behind the fence.

Chairman Elling stated he was in receipt of letters of approval from property owners at 4 Veronica Drive and 854, 857, 865 & 875 Seneca Creek Road. Erie County also has no objection or issues with the proposed fence.

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 3 Veronica Drive to construct a shed in the front yard and a 6' high fence projecting 31' into the front yard of the corner lot.

Ayes: All

Noes: None

Motion Carried

**2018-07**

Request of Dennis Rydzynski Sr. for a variance for property located at 39 Charlescrest Court to operate a catalog and mail order business

Dennis Rydzynski stated his request to operate a catalog and mail order business in his home at 39 Charlescrest Court, noting he had operated this same business for many years at his home at the corner of Century Drive and Westcliff Drive. There will be no inventory at the house and no signage other than a sandwich board type sign that is not permanent and can be taken in and out daily.

Chairman Elling stated he was in receipt of letters of approval from property owners at 142, 148 & 149 Nancycrest Lane and 33, 45 & 53 Charlescrest Court.

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 39 Charlescrest Court to operate a catalog and mail order business.

Ayes: All

Noes: None

Motion Carried

**2018-08**

Request of Patricia Zemar for a variance for property located at 51 Wichita Road to construct a 6' high fence in side yard (maximum 4' high fence allowed)

Patricia Zemar commented on issues in her neighborhood with people cutting through from Cazenovia Golf Course and stated her request to construct a 6' wood stockade fence on her adjoining lot to prevent this.

Mr. Marzullo did not see a need for the fence across the front and suggested it be constructed in the rear yard. Chairman Elling suggested beginning the fence at the front corner of the neighbor's garage and continue it parallel with Wichita Road across to Ms. Zemar's house. Code Enforcement Officer Jeffrey Schieber noted the fence would be setback approximately 10' from the front corner of the house.

Chairman Elling stated he was in receipt of letters of approval from property owners at 47, 52, 60 & 61 Wichita Road.

A Covington Drive resident commented on a previous variance application from last year that was denied a 2' high fence in their front yard. Chairman Elling stated that variance was denied because of the sidewalk.

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**2018-08** (continued)

Motion by Elling, seconded by Marzullo, to close the public hearing and grant a variance for property located at 51 Wichita Road to construct a 6' high fence in the side yard and across the front of the property beginning at a point approximately 10' behind the front corner of the house and in line with the front corner of the adjacent property owner's garage running parallel with the street.

Ayes: All

Noes: None

Motion Carried

**ADJOURNMENT**

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

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,



Jacqueline A Felser  
Town Clerk/Zoning Board Secretary