

2021-054 (continued)

Chairman Elling referred to the print and the close proximity to the radius; questioning if the Code Enforcement Office had any issues. Code Enforcement Officer Doug Busse stated there were no issues; if approved a permit is required from the Highway Department.

Chairman Elling questioned the number of cars in the household. Ms. Smith stated there are two cars. A neighbor parks directly behind the applicants driveway making it difficult to pull out with a third-row suv.

Ms. Hicks sated in June, a similar issue was addressed with a property on Cindy Lane; off street parking is not allowed in the front yard setback. The resident on Cindy Lane requested this for travel trailer parking. The same zoning applies (R-75) and does not allow for the driveway as it falls in the front yard setback on a corner lot. Neighbor letters were received in support of the project, but the Zoning Board members did determine that the project did not fit the character of the neighborhood, created a hardship for the town, and ultimitley denied the request.

Chairman Elling stated he was in receipt of letters of approval from property owners at 134 and 159 Bradwood Road 114, 108, 96, 101, and 102 Toby Hill Drive.

No comments were received from the public.

Motion by Elling, seconded by Hicks, to close the public hearing and deny the request for a variance for property located at 107 Toby Hill Drive to expand current driveway in required front yard setback, due to past precedence on similar lots.

Ayes: All

Noes: None

Motion Carried

2021-055

Request of Kyle Barnard for a variance for property located at 1212 Orchard Park Road to construct an accessory structure with 12' 10" midspan (12' midspan permitted)

Mr. Barnard stated he would like to add an addition off the back of the existing detached garage with 10' walls and a pitched roof. Eventually the goal would be a lift for car storage.

Ms Greenan questioned if this would be strictly for storage. Mr. Barnard replied the addition is just for storage.

Ms. Greenan questioned if Mr. Barnard has spoken with the neighbors behind his property. Mr. Barnard stated he has spkoen to the side neighbors.

Chairman Elling stated he was in receipt of letters of approval from property owner at 21 and 33 West Cranwood Drive along with corespondance from the NYS DOT with no objection to the project.

2021-055 (continued)

Code Enforcement Officer Doug Busse stated the Code Enforcement Office has no issue with the project as there is a lot of property along the back; the lot is very deep, almost 450' and approximately 250' from the rear neighbor.

Mr. Kapuscinski questioned if there will there be gas and electric. Mr. Barnard stated there is presently gas and electric.

Ms. Hicks questioned if the driveway will be expanded. Mr. Barnard stated the driveway will not be expanded.

No comments were received from the public.

Motion by Elling, seconded by Greenan, to close the public hearing and grant a variance for property located at 1212 Orchard Park Road to construct an accessory structure with 12' 10" midspan, noting no commercial business is to be housed in the structure.

Ayes: All

Noes: None

Motion Carried

OLD BUSINESS

2017-045

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

The applicant was not present.

Motion by Elling, seconded by Hughes, to table the meeting until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2020-053

Request of Union Transfer for renewal of a variance for property located at 1700 Union Road to allow an LED sign

The applicant was not present.

Motion by Elling, seconded by Hicks, to table the meeting until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2021-047

Request of Robert Jemiolo for a variance for property located at 3377 Clinton Street to allow outdoor live music (outdoor live music not permitted)

The applicant was not present.

Motion by Hughes, seconded by Hicks, to table the meeting until the end of the meeting.

Ayes: All

Noes: None

Motion Carried

2021-048

Request of Paul Strada c/o NAS Sign company for property located at 1015 Union Road to: 1) erect two signs on property; 2) a 46-sf sign; 3) 3' off lot line; 4) 7' to bottom of sign (one sign permitted; 24-sf maximum; 5' required off lot line; 3' allowed to bottom of sign)

Mr. Strada from NAS Sign Company was present on behalf of Southgate Family Dental and presented the following:

- ✓ The request is for a double-sided illuminated ground sign
- ✓ Illuminated signs are allowed and the request is for the sign to be closer to the road due to the configuration to the driveway, ingress and egress, and snow placement
- ✓ The size has been reduced, with the bottom section illuminated and frees up 8-sf. The request is reduced from 46-sf to 38-sf
- ✓ The sign has been lowered 6"; the original request was for 7' to the bottom and the compromised request is for 6' 6"
- ✓ The original request along the property line was 3' from the front property line and has been updated to bring the sign further back to 7'
- ✓ Regarding the neighbor to the south the desired location was at the grass and has been altered to be approximately 1' 6" north to the edge of the parking lot asphalt
- ✓ The request is based on the previously discussed hardships of the property

Chairman Elling stated he is in receipt of correspondence from the NYSDOT with no objection to the project.

Mr. Strada noted he previously submitted letters of approval from neighboring properties/businesses. There is an identity issue with other business nearby with similar names.

Mr. Kapuscinski stated he was recently on site and inquired if the sign could be placed in the middle of the parking lot as this location would not require a variance. Mr. Strada stated the code is for 5' off the property line and the proposal is for 3'. The request is not unreasonable, placing a sign in the middle of a parking lot is not safe.

Chairman Elling stated the compromise at the previous meeting was: 1) 6' 6" to the bottom of the sign; 2) 7' off front lot line; 3) a 38-sf sign - with a request today of 3' off the lot line to stay

2021-048 (continued)

on the edge of the grass. Mr. Strada stated this is correct, staying in the grass keeps the sign out of the driveway where cars pull in.

Ms. Hicks questioned if the property owners have spoken with the neighbor. The property owner stated they have not spoken to the adjacent neighbor.

Chairman Elling requested clarification regarding ground signs in the Comprehensive Plan. Code Enforcement Officer Doug Busse stated pedestal signs are not permitted in the Union Road corridor; by definition the requested sign is a ground sign as the requested sign is less than 7'.

The neighbor adjacent to the 1015 Union Road stated she spoke with other neighbors who state they are now not ok with the sign. Chairman Elling explained just because neighbors sign approval letters for the applicant, it does not mean the Zoning Board will go along with the variance request.

Chairman Elling asked the neighbor if she had complaints with the revisions. The neighbor referred to the property owners garage and employees parking behind the garage. Chairman Elling explained this has no bearing on the sign. The sign is allowed to be 5' off the property line legally with no variance. The request is for 3' off the property line with the original request being at the property line. The applicant compromised with 3' off the property line, just before the pavement. The neighbor stated she understands this.

Chairman Elling stated if the location is denied, the sign will go 2' into the parking lot, and questioned if this was a concern. Ms. Hicks stated 5' would bring the sign closer to the neighbors living room window; the proposal brings the sign back from the sidewalk towards the house. If the variance is denied it will be closer to the neighbors house. The neighbor stated it is reckless to place the sign at the proposed location.

The neighbor stated she would like the sign to be as far away from her house as possible. Chairman Elling stated the applicant is legally allowed to place the sign 5' away and has already compromised.

Chairman Elling stated as of now the compromise is : 1) 6' 6" to the bottom of the sign; 2) 7' off front lot line – originally 3'; 3) a 38-sf sign – originally 46-sf; 4) 3' off the side property line. The applicant came back with compromises to the neighbor.

Ms. Hicks stated she has no objection to the second sign being near the building if the applicant would like. The applicant stated they would like to leave the second sign in place.

Motion by Elling, seconded by Greenan, to close the public hearing and grant the following revised variance for property located at 1015 Union Road regarding signage: 1) 3' off property line; 2) 6' 6" to the bottom of the sign; 3) 7' off lot line; 4) a 38-sf sign.

Ayes: All

Noes: None

Motion Carried

2017-045 (continued)

- ✓ Rodents have been seen on site. Mr. Busse stated he will call the county on behalf of the residents.
- ✓ Aggravated with the lack of response and reports from the Police Department
- ✓ Rusty Nickel has consistently broken the rules of the Town of West Seneca and have had no consequences.
- ✓ Heavy equipment was brought in, boulders moved, and fences taken down for a patio expansion and questioned if a permit was filed. Capacity has increased along with the noise.
- ✓ The outdoor music was allowed with the provision that shielding was put in place, there has been no shielding for approximately 3 months.
- ✓ There are issues outside of the Zoning Boards jurisdiction
- ✓ At times over 200 people are also congregated under a tent with live music (i.e., wedding)

Chairman Elling questioned the Deputy Town Attorney on the protocol for denying a variance renewal without the applicant being present. Deputy Town Attorney Kim Conidi questioned if the Applicant provided a reason to the Town Clerk as to why they were unable to attend. Town Clerk Amy Kobler stated the applicant did not contact the office. Ms. Conidi advised if the matter was properly published, the variance could be denied, and the applicant could reapply.

Residents expressed the following concerns:

- ✓ Rusty Nickel should be told they are required to comply
- ✓ The 6' fence never went to the back of the property; a pond is in the middle of the property
- ✓ The establishment is dog friendly – dogs are barking
- ✓ The original plan in was a cider mill; there have been many additions to the original footprint that the town does not know about
- ✓ Rusty Nickel bought the property next to the Ebenezer Ale House
- ✓ Would a variance be required to make the new property a parking lot – Mr. Busse stated this would require Planning Board and drainage approvals.
- ✓ Should be forced to comply with town laws and ordinances; all variances and codes are on the town website. Residents comply and the Rusty Nickel should comply.
- ✓ Provided a copy of property survey – Rusty Nickel has a trailer parked on the resident's property and questioned if a permit was issued for the trailer. Mr. Busse stated he did not know there was a trailer.
- ✓ A concrete barrier is on the backside of their property and the resident's property
- ✓ There is debris and building materials littered on the property
- ✓ Could the residents see the permits on file (i.e., beer garden, trailer, concrete barrier, sheds, pond, and awning)? Mr. Busse stated the residents may file a FOIL request with the Town Clerk and he would assume the permits were not filed.
- ✓ A fabric curtain has been hung

Chairman Elling stated he drove through the property and agreed with the neighbors on the condition, noting this is not what a West Seneca Business should look like.

WEST SENECA COMMUNITY CENTER
1300 Union Road
West Seneca, NY 14224

ZONING BOARD OF APPEALS
Minutes #2021-09
September 22, 2021

2021-047

Request of Robert Jemiolo for a variance for property located at 3377 Clinton Street to allow outdoor live music (outdoor live music not permitted)

The applicant was not present.

Motion by Elling, seconded by Kapuscinski, to receive and file the variance request, noting the applicant has yet to black out the parking stripes in the front as requested 6-months ago by the NYSDOT.

Ayes: All

Noes: None

Motion Carried

ADJOURNMENT

Motion by Kapuscinski, seconded by Hicks, to adjourn the meeting at 7:30 P.M.

Ayes: All

Noes: None

Motion Carried

Respectfully submitted,

Amy M. Kobler
Town Clerk/Zoning Board Secretary

July 26, 2021

Supervisor Gary Dickson
Town of West Seneca
1250 Union Road
West Seneca, NY 14224

Mr. Dickson,

We are residents of both Main Street and Seneca Street in the Town of West Seneca, whose residentially zoned properties are in close proximity to the Rusty Nickel Brewing Company, located at 4350 Seneca Street, and who have been adversely affected over the years by the business. We are writing to make you aware of our concerns because we have been informed that the business has contracted for or purchased a residentially zoned parcel next door and will have to go before the Planning Board to have it zoned commercially. It appears that they are already expanding their physical footprint and have been performing work on the property without the necessary approvals. Rusty Nickel Brewing has failed to properly approach the town with a plan. We need your help now more than ever to put a stop to the pattern of ignorance that has affected the tranquility of our Main & Seneca Street neighborhoods.

Since their inception, there has been a pattern of deceit and lack of transparency from the proprietors in all aspects of their business doings. Priding themselves as a "farm brewer/micro-brewery" back in 2013-2014 the NYS laws were evolving and changing rapidly, which was understandable as businesses of their nature were popping up slowly in the WNY area, however, Rusty Nickel Brewing chose expand and evolve in the shadow those changing laws as a way to avoid proper permits and variances needed to conduct business in West Seneca for years. As the business grew, they have added patios, fire pits, a raised deck and have begun to host wedding receptions outdoors, with or without special permits or permission from the Town. As business owners, they should be aware of codes, legalities, permits and variances required to operate the type of business they set out to create, in the middle of a residential neighborhood. At the very least, if they were unaware or unsure should have had the common sense to approach town officials for assistance and guidance. Instead they have chosen the approach of *"it's better to ask for forgiveness than ASK for permission"* over the last several years. This repeated pattern can be seen in various years of planning and zoning board minutes since it resulted in a disruption to the neighborhood, which was only addressed after the residents brought their business practices to the attention of town offices.

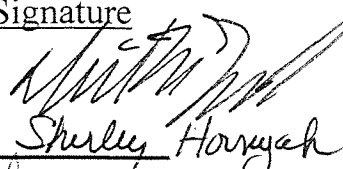
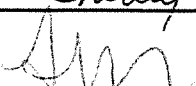
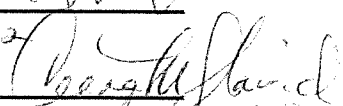
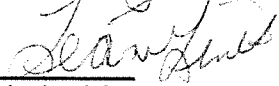
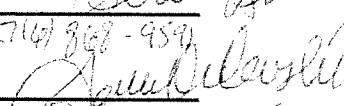
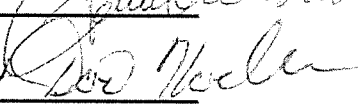

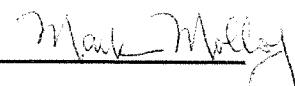
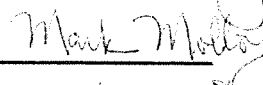
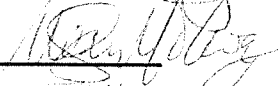

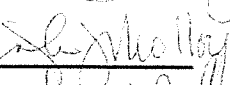
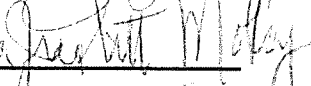

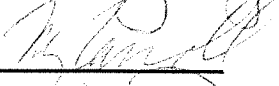

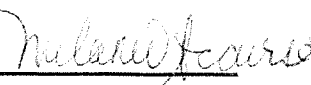
We believe that an approved expansion will exacerbate the current issues, which include excessive noise that is disruptive to our homes. The regular shouting, yelling, singing and hooting which is a direct result of the quantity of patrons on the patio engaged in alcohol consumption is found to be disruptive on a regular basis. The business also hosts numerous "special events" which have loud amplified live music, during which time residents have either had to move to different areas of their home or have children sleep in bedrooms other than their own to find peace from the noise. When first establishing themselves in West Seneca, they stated that they believed the impact on the neighbors would be minimal and would actually generate less traffic than the previous tenant. The previous tenant was a daycare. All of these have been met with resistance from various neighbors, many of whom have suffered in silence. We urge you to deny this request when presented before you. We are a diverse neighborhood, from young growing families, blue collared, "nine to five" earners as well as folks that have done their time working the daily grind and take pride in the homes, gardens and their own patios to enjoy the company of friends, or take in the beauty that is our neighborhood.

Please find the attached signatures of the supporting residents residing on Main & Seneca Streets in the Town of West Seneca who respectfully ask for any and all expansion to be halted. The signatures represent those that are opposed to the business practices of the Rusty Nickel Brewing Company and believe that the above statements are an accurate reflection of their behavior. Please feel free to contact any one of us who has signed below, if you so desire with any additional inquires or questions you may have. We would be happy to discuss further to resolve the issues.

Sincerely,

Save our Main Street

CC: James Rathmann, Chairman, West Seneca Planning Board
Timothy Elling, Chairman, West Seneca Zoning Board of Appeals

Name (Print)	Address	Contact #	Signature
DAVID SHARLEY HORN YAK	840 MAIN ST W. SENECA, NY 14224	716/674-9462 H 716/445-1958 C	 Shurley Hornyak
Avelia Machawski	844 main st W. Seneca NY 14224	716/279-9333	
Teena Slawich	878 main st. west Seneca NY 14224	716/536/6222	
Leanne Lindhurst	905 Main St. west Seneca NY 14224	716-677-7857	
JILLIAN ORLOWSKI	911 Main St West Seneca, NY 14224	716/368-9541	
DAVID KOEHLER	854 main st W Seneca NY. 14224		
LINDA KOEHLER	" " "		
Mark Molloy	919 Main St. W Seneca		
	4382 Seneca St. W Seneca		
Megan Molloy	761 Main St. W. Seneca		
Megan Molloy	4378 Seneca St. W Seneca		
John J. Molloy	948 Main Street W. Seneca		
Judith A. Molloy	948 Main Street W. Seneca		
Kelly Cosgrove	825 Main St. W Seneca	716/483-5110	
HARM CARROLL	886 Main St. West Seneca		
Judy Davidson	831 Main St W. Seneca		
Mary M Janz	810 Main St		MARY JANCZAK
MELANIE ACCURSO	800 MAIN ST.	447-9920	
Susan Fisher	4324 Seneca St. W. Seneca		

Name (Print)

Address

Contact #

Signature

Carlene R. Steen 436 Seneca Street - Carlene Steen
Lisa Paul 899 Main St. Lisa Paul
Bill E. James 874 Main St. Bill E. James