

**BARCLAY DAMON** <sup>LLP</sup>

**Ari M. Goldberg**  
Associate

April 24, 2023

**VIA HAND DELIVERY**  
**VIA ELECTRONIC MAIL**

Town of Pendleton  
Zoning Board of Appeals  
c/o Ron Diedrich, Code Enforcement Officer  
6570 Campbell Boulevard  
Lockport, NY 14094  
[rdiedrich@pendletonny.us](mailto:rdiedrich@pendletonny.us)

Re: Andrew Yaeger – 6988 Bear Ridge  
Area Variance  
Supplementary Application Materials

Dear Chairman Graves and Members of the Zoning Board of Appeals:

Barclay Damon LLP represents Andrew Yaeger (“Applicant”), record property owner of 6988 Bear Ridge Road (“Property”) in the Town. As you may recall, Applicant appeared before the Zoning Board of Appeals (“ZBA”) at your February 28, 2023 meeting with respect to his area variance request under Town of Pendleton Zoning Code § 247-34.E(1).

On March 23, 2023 Applicant requested a rehearing pursuant to New York State Town Law § 267-a(12). By unanimous vote of the ZBA members in attendance at its March 28, 2023 meeting, the ZBA agreed to rehear the Applicant’s 1,128 SF area variance request. On April 13, 2023, Applicant submitted the necessary forms and paid the required application dues with regard to the rehearing scheduled for the April 25, 2023 ZBA meeting.

In supplement to Applicant’s area variance forms and in furtherance of the area variance request, enclosed, please find:

1. Property Survey with Proposed Barn Location
2. Area Variance Statutory Analysis
3. Prior ZBA Granted Area Variances for Accessory Structure

Yaeger – Bear Ridge Road Area Variance  
April 24, 2023  
Page 2

Thank you for your consideration. We look forward to further discussing the Applicant's area variance request, and please reach out to me with questions.

Very truly yours,

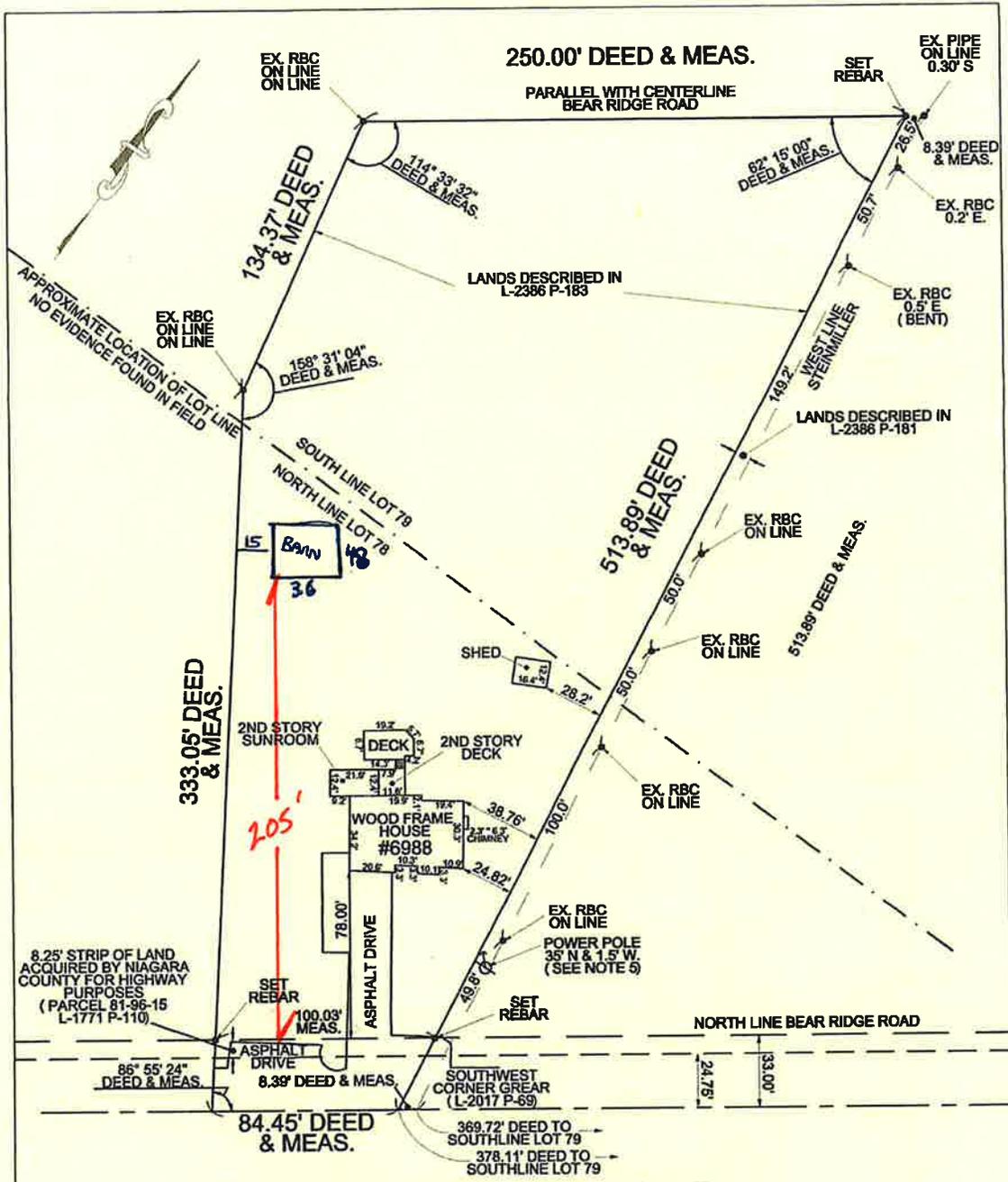
A handwritten signature in blue ink, appearing to read "Ari M. Goldberg".

Ari M. Goldberg

AMG:amg  
enclosures

cc: Andrew Yaeger (via e-mail)  
Ted Joerg, Town Prosecutor/Counsel to ZBA (via e-mail)  
Claude Joerg, Town Attorney (via e-mail)

**Property Survey  
with Proposed Barn Location**



## BEAR RIDGE ROAD (VARYING WIDTH)

**CERTIFICATION:**  
I hereby certify to the Chicago Title Insurance Co., & M & T Bank, its successors and assigns, that in my professional opinion, this survey was prepared in accordance with the current Code of Practice for Land Surveys adopted by the New York State Association of Land Surveyors.

This certification does not extend to subsequent owners, mortgages, or title insurers, unless this survey has been resurveyed for this purpose by the surveyor.

*Michael D. Rozeski* 10-08-15  
Michael D. Rozeski, L.S. 050223 Date

"Only copies from the original survey map marked with an original of the land surveyor's embossed seal and signature shall be considered to be valid true copies."

- NOTES:**
- 1) This survey is subject to easements and right of way of record.
  - 2) Measurements made to the siding of the building.
  - 3) This survey was completed without the benefit of an Abstract of Title and is subject to any state of facts that may be revealed by an examination of such.
  - 4) RBC= Rebar w/ cap. All RBC's on this survey were labeled "Molntosh".
  - 5) There is an easement to Niagara Mohawk and New York Telephone to access/maintain this pole (L-2472 P-166).

"Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 7209, subdivision 2, of the New York State Education Law."

SURVEY PREPARED  
FOR  
LAW OFFICE OF  
PATRICIA GEORGE

LANDS DESCRIBED IN  
LIBER 2386  
PAGE 183

*Michael D. Rozeski*  
MICHAEL D. ROZESKI, L.S.  
N.Y.S. LICENSE NO. 050223

CLIMAX DEVELOPMENT OF WNY, LLC  
140 WEST MAPLEMERE ROAD  
WILLIAMSVILLE, NEW YORK 14221  
PHONE: 716-548-2894  
SCALE 1" = 60'  
AREA = 1.93 ACRES +-  
FIELD SURVEY DATE: AUGUST 1, 2015  
OFFICE SURVEY DATE: AUGUST 18, 2015  
JOB NO.: 15S-02-027  
DRAWN: MDR

**PART OF:**  
LOT 78 & 79 SEC. - TWP. 13 RANGE 7  
TOWN OF PENDLETON  
NIAGARA COUNTY, NEW YORK  
TAX MAP NO.: 165.01-1-21

REVISION 1: September 20, 2015: Added certification for Chicago Title Insurance Preliminary Title Report 2015-334  
REVISION 2: September 28, 2015: Removed parcel described in L-2386 P-181 from survey.

**Area Variance  
Statutory Analysis**

**Town Law § 267-b(3)(b) Area Variance Analysis**  
**6988 Bear Ridge Road**

Andrew Yaeger (“Applicant”), resides 6988 Bear Ridge Road, SBL 165.01-1-2.1 (“Property”) in the Town. Applicant’s wife is the record Property Owner. The Property is 1.93 acres in size. Applicant seeks to construct a 36’ x 48’ accessory structure totaling 1,728 SF. Under Town Zoning Code § 247-34.E(1), only a 600 SF accessory structure is permitted on the Property because it is less than two acres (albeit less than one-tenth away of the 2.00 acres where 1,200 SF is permitted under subsection (2) of the Code). Consequently, Applicants request an area variance of 1,128 SF in total.

As this ZBA is aware, the standard for reviewing an area variance request is set forth in New York State Town Law § 267-b(3)(b). In making its determination, the ZBA shall consider the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

**(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

Granting a variance to authorize the accessory structure will not produce an undesirable change in the character of the neighborhood or detriment to nearby properties. The neighborhood surrounding the Property has barns/accessory structures of a large size that obtained variances:

- 6971 Bear Ridge Road contains a 2,640 SF accessory structure with 888 SF overhang—totaling 3,528 SF (along with other accessory structures aggregating 5,430 SF total on the property). The ZBA gave the owner/applicant for 6971 Bear Ridge Road an area variance under Town Code § 247.E(3) (along with a 1 foot height variance for the accessory structure) in April 2018.
  - o While the ZBA noted the variance request was substantial in this context, they also found it would not detriment nearby properties “as it would have a negligible visual impact from the road due to the county [downward slope] of the property.”
  - o The ZBA also determined “there were no alternative solutions that would not require a variance to meet the town code.”
  
- 6991 Bear Ridge Road contains an aggregate total of 2,304 accessory structure SF. The ZBA gave the owner/applicant for 6991 Bear Ridge Road an area variance under Town Code § 247.E(3) in March 2021.
  - o Importantly, this was actually the second area variance granted for the property at 6991 Bear Ridge Road. Only 1,200 SF of accessory structure was allowed. Owner/applicant obtained a variance in May 2001 for 528 SF (bringing the total aggregate accessory structure to 1,728 SF). Then again in March 2021, owner/applicant obtained another variance from this ZBA for 576 SF—thereby allowing 1,104 total SF of accessory structure on the Property.
  - o Again, the ZBA noted a substantial variance request but minimized the weight of that factor because the neighborhood would not be detrimented since the accessory

structure would be “mostly out of view from neighboring properties and entirely from the road.”

- The ZBA also determined “there were no alternative solutions that were reasonable and would still provide benefit to the applicant.”

As shown below, these two properties that obtained variances are adjacent Applicant’s Property:



Applicant’s proposed barn will not be visible to neighboring properties or from the roadway. The proposed barn will be located in the north west corner of the parcel. The proposed barn is also only 16’ in height as defined in the Town Code and does not need any variance (as opposed to 6971 Bear Ridge). Generally, the proposed barn roof line matches the garage of the home on the Property. Due south of the proposed barn location along Bear Ridge Road, Applicant has a substantial copse of evergreen trees that screen the barn location from view. The Applicant’s Property also slopes downward from the road to the rear of the property, further shielding the proposed barn from view.



June 2021 Google Streetview looking north, along western edge of Property (due south of proposed barn location).

Even if the proposed barn was visible from the street, such minor visibility does not indicate a detriment to the neighborhood. As this ZBA determined in the 6971 Bear Ridge Road accessory structure variance, such visibility “would have a negligible visual impact from the road due to the contour of the property [a slope downward from the road to the rear of the property].” And, as this ZBA determined in the 6991 Bear Ridge Road variance (the property directly across the street from Applicant’s Property), the additional accessory structure “is mostly out of view from the neighboring properties and entirely from the road.” With respect to the other vantage points, the proposed barn is strategically located to take advantage of vegetative screening along the Property boundary because such vegetation shields from view the barn.

The neighborhood is defined by accessory structures. A survey of aerial maps shows multiple properties in the neighborhood with accessory structures (circled in blue):



Lastly, Applicant is 0.07 (seven hundredths) short of a 2.00 acre lot. Under Town Code § 247-E(2), if Applicant had 0.07 more acres (and if he could even manage to acquire it), his area variance request would only be 528 SF as Applicant would be permitted up to 1,200 SF in accessory structures. Notably, Town Code § 247.E(2) allows parcels between 2.00 and 7.00 acres up to 1,200 SF in accessory structures, while subsection (3) then permits 7.00 acre parcels and up, a 2,000 SF maximum. The range is wide.

As the ZBA recalls at its February meeting, it determined that a variance of 600 SF at the Property would have no detriment, and granted Applicant the permission build 1,200 SF—a permissible maximum he is a mere 0.07 acres short. The fully requested variance here, is only an additional 528 SF—less than the second variance granted to neighboring property 6991 Bear Ridge. The total aggregate SF of accessory structure on the 1.93 acre Property would be 1,728 SF—far less than the 5,000 plus SF of accessory structures adjacent 6971 Bear Ridge. In other words, the additional 528 SF or the total 1,128 SF is decidedly of minimal and non-detrimental impact—it would not alter that character of the neighborhood. Rather, as the neighborhood is replete with accessory structures and Applicant’s proposed barn is relatively small and negligibly visual, proposed barn will not detriment the neighborhood—it will define it.

**(2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.**

The benefit sought by the Applicant cannot be achieved by any other method, feasible for the Applicant to pursue. Applicant is 0.07 (seven hundredths) short of a 2.00 acre lot that permits 1,200 total SF of accessory structures. While this minor shortfall of more permissive square footage is referenced above to demonstrate minimal detriment to the neighborhood, acquiring 0.07 acres is simply not feasible. It requires Applicant to find a willing buyer from adjacent abutting parcels, engage in survey work, obtain a subdivision approval with the Town, incur closing costs, and costs associated with the filing real estate documentation with regard to transaction and subdivision in the Erie County Clerk’s office.

And—in any event—Applicant would still be seeking a variance to build the proposed barn. This is a similar set of circumstances then to 6971 Bear Ridge Road where this ZBA concluded: “there [are] no alternative solutions that would not require a variance to meet the town code.”

Also, Applicant desires this size accessory structure to store his vehicle and family outdoor equipment. To that end, exactly like 6991 Bear Ridge Road, “there [are] no alternative solutions that were reasonable and would still provide benefit to the applicant.”

**(3) whether the requested area variance is substantial.**

As the ZBA is aware, the law in New York is clear that a pure mathematical formula cannot be the basis of a determination of whether a variance should be considered substantial. The ZBA must consider the magnitude of the requested variance in light of its impact. Merely because a variance may seem noteworthy on paper does not mean that any “harm” would be generated on the surrounding community, and it is “harm” that is balanced against the interest of the Applicant according to the Town Law § 267-b(3) test.

Here, the requested variance is not substantial. As mentioned above, there is no harm in authorizing the Property to contain an accessory structure that is: negligibly visible from the road, if not screened entirely; complimentary to the neighborhood character defined by accessory structures; similar in circumstances to two variances granted at adjacent properties; and on a property within spitting distance of more permissible accessory structure square footage. Accordingly, the requested variance is not substantial.

For consideration, the average person driving by the Property will not know that the Property is only 1.93, 0.07 acres short of a maximum 1,200 SF allow, and required a 1,128 SF variance to build the barn (if one can even see it). The substantially or harm is therefore minimized.

Lastly, a request for additional accessory structure SF is a common variance request in the Town given the rural character of properties and the expansive, somewhat incongruent range contained in the Town Code. Applicant could have 0.07 more land and be allowed the same square footage of accessory structure as a 7.00 acre property. In addition to the variances described in detail at the adjacent Bear Ridge Properties, the ZBA granted a 1,416 SF accessory structure variance on a 1.5 acre residential property at 5191 Tonawanda Creek Road in August 2018, and the ZBA granted a 2,468 SF accessory structure variance on a 1.97 acre residential property at 4119 Beach Ridge Road in November 2018—both of which are far greater in numbers compared to Applicant's proposed variance. The frequency of these requests indicates an disconnect between what Town resident's desire for accessory structures on their residential properties and how the Town Code provides a wide (rather inadequate, outdated, and poorly designed) range of total of permissible square footage. The robotic application of these specific acreage totals of residential properties also fails to account for nuances in neighborhood, property location, and site layout. Accordingly, Applicant is another resident in a long chain of requests for an accessory structure square footage and the request is therefore not substantial.

**(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

The requested variance will not adversely affect the environment. The requested variance will not impact drainage, flooding, and runoff or any other topographical changes such as grading, trees, and vegetation.

**(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.**

If the ZBA should determine that the alleged difficulties are self-created, Town Law § 267-b(3)(b) provides that such a determination does not preclude the granting of the requested variance. As concluded below, the self-created element is of minimal weight in balance with the other criteria.

**Balancing.**

As indicated above, the ZBA must take into consideration the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Here, the benefit to the Applicant is significant. Granting the requested area variance authorizes Applicant to build an accessory structure that fits his family and benefits of the neighborhood, matching similarly substantial area variance request for adjacent properties granted by this ZBA in the past and fitting within a long line of requests by other Town residents. On the other hand, any detriment to the health, safety and welfare of the neighborhood or community is negligible. With substantial benefit to the Applicant if the variance is granted and no detriment to the health safety and welfare of the community by such a grant, it is respectfully requested the proposed variance of 1,128 SF be approved.

**Prior ZBA Granted Area Variances  
For Accessory Structures**

**Thomas Elberson**  
5822 Dunnigan Road  
Pendleton, New York

A motion was made by Mr. Schlemmer to table the deliberation for one month to clarify the rules regarding the simultaneous building of an accessory structure and residence. The motion was seconded by Mr. Meholick. All voted in favor.

**Michael Schmit**  
5972 Fisk Road  
Pendleton, New York

A motion was made by Mr. Buechler to table the deliberation for one month to review the deed restrictions with the Town Attorney, Mr. Ned Perlman. The motion was seconded by Mr. Meholick. All voted in favor.

**Andrew Rawe (Continuation of February 27<sup>th</sup> Public Hearing)**  
6971 Bear Ridge Road  
Pendleton, New York

APRIL 2018

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 44 ft. x 66 ft. (2,640 sq. ft.) accessory structure on his property where a maximum of 2,000 sq. ft. is required per Town Code. There is also an existing accessory structure on the parcel that is 857 sq. ft., for a total area of 3,497 square feet. The area variance request would be 1,497 sq. ft. as per Town Code §247-34.E.(3). The property is approximately 21.9 acres and is R2 medium density residential zoning.

During the public hearing it was determined that the accessory structure sizes did not include the overhangs on the proposed and existing buildings, and the property size was corrected to 26 acres. The proposed accessory structure size is 2,640 sq. ft. plus the overhang at 888 sq. ft., for a total of 3,528 square feet. The existing building size was 1,300 sq. ft. with an overhang of 602 sq. ft., for a total of 1,902 square feet. The total aggregate area of both builds is 5,430 square feet. After corrections for sizing, the variance request was modified to 3,430 square feet.

The application was also amended during the public hearing to also include a height variance for the proposed structure of 1 ft. to allow for a total height of 21 feet.

The ZBA board reviewed the Area Variance tests, and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance would not create an undesirable change to the neighborhood and nearby properties as it would have a negligible visual impact from the road due to the contour of the property.

- b. Are there alternative solutions that would not require a variance?

It was agreed that there were no alternative solutions that would not require a variance to meet town code.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was approximately 2.5 times greater than town code allows.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

The board members felt that the variance would not have an adverse effect on the physical or environmental conditions in the neighborhood as the slope of the property is away from the road.

- e. Is the applicant's difficulty self-created?

It was agreed that the applicant's difficulty was self-created.

A motion was made by Mr. Daigler to grant an area variance of 2,542 sq. ft. and a height variance of 1 ft., allowing for a new structure of 2,640 sq. ft. with a total height of 21 feet; conditioned on a 1 year time limit on completion; and conditioned on the existing structure remaining as is - i.e. not rebuilt or replaced with a new structure. The motion was seconded by Mr. Meholick. Mr. Schlemmer, Mr. Buechler, Mr. Meholick & Mr. Daigler voted in favor, and Mr. Welka voted against. The variance request was approved.

TOWN OF PENDLETON  
Town Hall  
6570 Campbell Boulevard  
Lockport, NY 14094  
Phone: (716) 625-8833  
Fax: (716) 625-6295



TOWN OF PENDLETON  
Department of Public Works  
6640 Campbell Boulevard  
Lockport, NY 14094  
Phone: (716) 625-8033  
Fax: (716) 625-6323

**March 23, 2021**

Scott Grear  
6991 Bear Ridge Road  
North Tonawanda, NY 14120

**Grear, Scott 6991 Bear Ridge Rd., Pendleton NY**

**Proposed Project:**

Owner wishes to construct a 16 ft. x 36 ft. extension to rear of an existing accessory structure for a total of 2,304 SF where maximum accessory structure size allowed is 1,200 SF per Town Code §247-34.E.(2). Area variance sought is 576 SF accessory structure size variance. There is an existing accessory structure size variance of 528 SF approved by the ZBA on 22 May 2001. Property is 4.77 acres and zoned R1 Low-Density Residential

The owner stated that proposed addition would be open at both sides and that the roof line would be merged with existing structure's roof.

**Area variance(s) sought:**

1. 576 SF additional accessory structure size variance

**Board Action:**

The Board considered, among other things, the character of the neighborhood, the reason for the variance request, and the size of the variance. The Board also considered that there was no alternative that would bring benefit to the applicant and not require a variance.

Mr. Kantor moved to approve the area variance request as proposed for an additional 576 SF accessory structure size variance, conditioned on a one year time limit for completion of the project. Mr. Graves seconded the motion.

**Voting in favor of the motion:** Buechler, Graves, Kantor, and Schlemmer.

**Voting against:** None

**Decision:**

Area variance for an additional 576 accessory structure size variance is approved with the following condition(s):

1. One year time limit on completion of the project

Wolfgang Buechler  
Chairman, Pendleton ZBA

**Town of Pendleton**  
**ZONING BOARD OF APPEALS**  
**March 23, 2021 Meeting**

**MEMBERS:**

Wolfgang Buechler, Chairman  
Dennis Welka, Secretary  
James Schlemmer  
Nicholas Graves  
David Kantor

The ZBA regular meeting was called to order by Mr. Wolfgang Buechler at 7:00 pm. Chairman Buechler, Mr. Graves, and Mr. Kantor were present at the meeting. Mr. Schlemmer attended remotely via telephone. Mr. Welka was excused. Pendleton Town Prosecutor Theodore A. Joerg, Esq. was also present at the meeting. No changes were made to the ZBA agenda submitted by Chairman Buechler.

**PUBLIC HEARINGS:**

**Grear, Scott**  
6991 Bear Ridge Rd.  
Pendleton, NY 14094

Owner wishes to construct a 16 ft. x 36 ft. extension to rear of an existing accessory structure for a total of 2,304 SF where maximum accessory structure size allowed is 1,200 SF per Town Code §247-34.E.(2). Area variance sought is 576 SF accessory structure size variance. There is an existing accessory structure size variance of 528 SF approved by the ZBA on 22 May 2001. Property is 4.77 acres and zoned R1 Low-Density Residential.

The public hearing was opened at 7:00 PM by Chairman Buechler.

Mr. Grear provided site drawings with approximate location of the existing structure and stated that the proposed addition was intended to be an open-ended overhang to house an RV that does not fit in the existing structure. Mr. Grear stated the impact on the surrounding area would be minimal due to the obscured location on the property. He also stated that the height of the overhang would follow the existing roofline and tie directly into the existing structure. The parking area will be crushed stone.

The public hearing was closed at 7:10 PM.

**Burich, Keith & Mary**  
5217 Tonawanda Creek Rd.  
Pendleton, NY 14094

Owners wish to construct a 1,036 SF detached garage at a 62 ft. front yard setback where a minimum of 100 ft. front yard setback is required per Town Code §247-11.D.(1). Area variance sought is 38 ft. detached garage front yard setback. Property is 153 ft. x 683 ft. and zoned R2 Medium-Density Residential.

The public hearing was opened at 7:12 by Chairman Buechler.

Mr. & Mrs. Burich provided site drawings and indicated the approximate location of the proposed structure as well as preliminary architectural drawings depicting the proposed elevation and design. The petitioners stated the structure was intended as a dual-use two car garage and pool house as the rear of the structure would back up to the front of an in-ground pool on the property. Mr. & Mrs. Burich noted that an existing high-pressure gas line crosses the entire property at a depth of 1-3 feet about 20 feet from the dwelling. The purpose for the variance is to avoid building on or beyond the gas line.

In attendance for the public hearing were next-door neighbors Jeff and Suzanne Kuntz of 5213 Tonawanda Creek Rd. Mr. & Mrs. Kuntz raised concerns regarding potential decreases to property their value, changing wind patterns, potential to turn the addition into living space, and obstruction of the view out the window in the direction of the applicant's property and portions of Tonawanda Creek should the variance be approved.

Mr. & Mrs. Burich stated no water would be run to the structure, nor would anybody be residing inside the structure for any period of time.

The hearing was closed at 7:35 pm.

#### **REGULAR ZBA MEETING:**

##### ***Review Minutes from Prior Meeting:***

A motion was made by Mr. Schlemmer to accept the minutes of the February 23, 2021 meeting, and was seconded by Mr. Graves. All voted in favor.

##### ***Specific Board Deliberation Actions:***

**Burich, Keith & Mary**  
5217 Tonawanda Creek Rd.  
Pendleton, NY 14094

Owners wish to construct a 1,036 SF detached garage at a 62 ft. front yard setback where a minimum of 100 ft. front yard setback is required per Town Code §247-11.D.(1). Area variance sought is 38 ft. detached garage front yard setback. Property is 153 ft. x 683 ft. and zoned R2 Medium-Density Residential.

A motion was made by Mr. Buechler to table a vote on the variance in order to visit the property once again. Motion was seconded by Mr. Kantor. All voted in favor of the motion.

**Grear, Scott**  
6991 Bear Ridge Rd.  
Pendleton, NY 14094

Owner wishes to construct a 16 ft. x 36 ft. extension to rear of an existing accessory structure for a total of 2,304 SF where maximum accessory structure size allowed is 1,200 SF per Town Code §247-34.E.(2). Area variance sought is 576 SF accessory structure size variance. There is an existing accessory structure size variance of 528 SF approved by the ZBA on 22 May 2001. Property is 4.77 acres and zoned R1 Low-Density Residential.

The ZBA board reviewed the variance for the proposed structure and commented as follows:

**a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?**

The board felt that there would be no significant change in the characteristics of the neighborhood as a result of the proposed 576 SF addition to the accessory structure as it is mostly out of view from neighboring properties and entirely from the road.

**b. Are there alternative solutions that would not require a variance?**

It was agreed that there were no alternative solutions that were reasonable and still provided benefit to the applicant.

**c. Is the requested variance substantial?**

It was agreed that the variance requests were substantial.

**d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?**

The board members felt that it would not have an adverse effect on the physical or environmental conditions in the neighborhood.

**e. Is the applicant's difficulty self-created?**

It was agreed that the applicant's difficulty was self-created.

A motion was made by Mr. Kantor and seconded by Mr. Graves to approve the variance as requested with a one year time limit for the project to be completed. All voted in favor of the motion. Variance granted with condition.

**Arlington, Tim** (on behalf of Howard Urban)  
Property at Tonawanda Creek Rd. and Transit Rd.  
Pendleton, NY 14094

Petitioner desires to create 2.6 parking spaces per unit on a site where a minimum of 3 spaces per unit is required per Town Code §247-12.K.(18)(c). Area variance sought is 0.4 parking space variance. Property is 12.92 acres and zoned CO2 Commercial.

The ZBA board reviewed the Variances for the proposed structure and commented as follows:

**a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?**

The board felt that there would be no significant change in the characteristics of the neighborhood as many of the apartments have only one bedroom.

**b. Are there alternative solutions that would not require a variance?**

It was agreed that space did exist on the property to add more parking space but this could create potential drainage issues as well as reduce the amount of greenspace on the site.

**c. Is the requested variance substantial?**

It was agreed that the variance request was not substantial.

**d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?**

The board members felt that it would not have an adverse effect on the physical or environmental conditions in the neighborhood.

**e. Is the applicant's difficulty self-created?**

It was agreed that the applicant's difficulty was self-created.

A motion was made by Chairman Buechler and seconded by Mr. Schlemmer to approve the variance as requested. Chairman Buechler, Mr. Schlemmer, and Mr. Kantor voted in favor of the motion. Mr. Graves was opposed. Variance granted.

*New Inquiries to ZBA: None*

*Correspondence: None*

*Special Topics: None*

*Miscellaneous ZBA Topics: None*

The next scheduled meeting will be on Tuesday, April 27, 2021 at 7:00 pm.

A motion was made by Mr. Graves to adjourn the meeting at 8:30 PM and seconded by Mr. Kantor. All voted in favor.

***Attachments:***

Sign In Sheet for 3/23/21

Town of Pendleton Public Hearing Request for Gear, Scott  
Town of Pendleton Notice of Public Hearing for Gear, Scott  
Town of Pendleton Denial of Building Application for Gear, Scott  
Public Hearing Mailing List for Gear, Scott  
Project renderings for Gear, Scott  
Site Survey of Property for Gear, Scott

Town of Pendleton Public Hearing Request for Burich, Keith & Mary  
Town of Pendleton Notice of Public Hearing for Burich, Keith & Mary  
Town of Pendleton Denial of Building Application for Burich, Keith & Mary  
Public Hearing Mailing List for Burich, Keith & Mary  
Project renderings for Burich, Keith & Mary  
Site Survey of Property for Burich, Keith & Mary

Submitted by Nicholas Graves for:

Dennis J. Welka  
Secretary

**Craig Schmidt**  
6140 Aiken Road  
Lockport, NY 14094

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to keep a shed in current placement at a setback of 120' where 150' is required.  
Town Ordinance Affected: §247-34, F(2)A Variance Sought: 30' Front Yard Setback Current Zoning: R-1 Size of Parcel: 1.44 Acres

Mr. Craig Schmidt was notified by mail that he has a nonconforming accessory structure and needed to come into Building Inspector office to address the situation. A Denial of Building Application was issued and a Public Hearing Request Form was completed.

Mr, Schmidt explained that because his house is less than a year old, he thought that an accessory structure permit would be covered under the building permit for the house and that he was not aware of the front yard setback requirements.

The public hearing was closed at approximately 7:24 PM.

**REGULAR ZBA MEETING:**

***Review Minutes from Prior Meeting:***

A motion was made by Jim Schlemmer to accept the minutes of the July 24, 2018 meeting, and was seconded by Dennis Welka. All voted in favor.

***Specific Board Deliberation Actions:***

**David & Patricia Chrzanowski**  
5191 Tonawanda Creek Road  
North Tonawanda, New York

*AUGUST 2018*

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a new 24 ft. x 36 ft. (864 sq. ft.) Addition with 8 ft. x 36 ft. shed roof overhang (288 sq. ft.) to their existing 864 sq. ft. accessory structure on their property for a total building size of 2,016 sq. ft. where a maximum of 600 sq. ft. is allowed per Town Code. The area variance request would be 1,416 sq. ft. as per Town Code §247-34.E.(1). The property is approximately 1.5 acres and is R2 medium density residential zoning.

The ZBA board reviewed the Area Variance tests, and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance would not create an undesirable change to the neighborhood and nearby properties.

- b. Are there alternative solutions that would not require a variance?

Town of Pendleton

Zoning Board of Appeals

It was agreed that an alternative solution would be to construct a smaller accessory structure or purchase more property from the family to meet town code.

c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it was approximately two and half times larger than town code allows.

d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

The board members felt that the variance would not have an adverse effect on the physical or environmental conditions in the neighborhood.

e. Is the applicant's difficulty self-created?

It was agreed that the applicant's difficulty was self-created.

A motion was made by Mr. Schlemmer to grant an area variance of 1,416 sq ft. which would consist of 864 sq. ft. addition to the existing structure. The new structure must be attached and located directly behind the existing structure (north) and a 288 sq. ft overhang to the east side of the new addition, the motion was seconded by Mr. Daigler. Mr. Schlemmer, Mr. Daigler and Mr Buechler voted in favor, Mr. Welka voted against. The variance as stated above was granted with a 1 year condition for the completion of the project.

*Specific Board Deliberation Actions:*

**Joseph Follendorf**  
**4119 Beach Ridge Road**  
**Pendleton, New York**

Nov 2018

APPLICATION FOR VARIANCE of the provisions of the Zoning ordinance of the Town of Pendleton to construct a 40 ft. x 62 ft. (2,480 sq. ft.) accessory structure on property where there is an existing 588 sq. ft. accessory structure, for a total of 3,068 sq. ft. where a maximum of 600 sq. ft. is allowed as per Town Code. The area variance request would be 2,468 sq. ft. as per Town Code §247-34.E(1). The property is 1.97 acres and is R-1 low density residential zoning.

The ZBA board reviewed the Area Variance tests for the area of the accessory structure, and commented as follows:

- a. Will the granting of the variance result in an undesirable change to the character of the neighborhood or will it be detrimental to nearby properties?

The board members felt that the granting of the variance would create an undesirable change to the neighborhood and nearby properties as it would be very visible from Townline Road.

- b. Are there alternative solutions that would not require a variance?

It was agreed that there were no options available to build the accessory structure at the 600 sq. ft. allowed by Town Code with the existence of 588 sq. ft. shed.

- c. Is the requested variance substantial?

It was agreed that the requested variance request was substantial as it three times greater than what Town Code allows.

- d. Will the variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

The board members felt that the variance would not have an adverse effect on the physical or environmental conditions in the neighborhood.

- e. Is the applicant's difficulty self-created?

It was agreed that the applicant's difficulty was self-created.

A motion was made by Mr. Meholick to grant an area variance of 1,200 sq. ft., allowing for a total aggregate are of 1,800 sq. ft. for the new & existing structures, with the condition that the project be completed in one year and that the height of the accessory structure be no higher than a maximum of 20 feet. The motion was seconded by Mr. Buechler. Mr. Buechler, Mr. Daigler, Mr. Meholick & Mr. Schlemmer voted in favor of the variance request; and Mr. Welka voted against the request. The variance request was granted.

Date of Meeting  
11/27/2018