

TOWN OF EDEN
ZONING BOARD OF APPEALS
2795 EAST CHURCH ST, EDEN, NY 14057

PUBLIC HEARING DATE: April 17, 2025

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Doug Scheu
Curtis Neureuter
Herb Stocksclaeder
Sara Buchanan
Todd Keppler

EXCUSED: Joseph Winiecki

OTHERS: Dave Rice, Code Enforcement Officer

APPLICANT: David and Marylou Pew

RE: **Appeal No. 2025-002**
Dave & Marylou Pew
4033 Schuster Road

Ms. Kent read the Legal Notice for this hearing as published in The Hamburg Sun:

Pew: Application for an area variance at 4033 Schuster Road, to allow a Minor Subdivision of an existing parcel in violation of the minimum lot size rule under Code section 225-14A.

Ms. Kent confirmed with Ms. Griebel that the property notice list was completed. Mr. Stocksclaeder lead this hearing, and asked the applicants to provide the reasons for the variance request.

Mr. Stocksclaeder noted that the applicant would like to split off the existing house from their 83-acre lot, creating a new 1.39-acre lot; which is less than the 4-acre minimum required in the Agricultural Priority district. Mr. Pew stated that this was the original homestead when they purchased the property 30 years ago. At that time, they split off 5 acres to build their new home and kept the older home as a rental property. They now wish to sell it while maintaining as much active farmland as possible.

Mr. Pew stated that splitting off a 4-acre parcel would reduce the amount of land farmed, and also could impact access to the farm field. Ms. Kent asked whether an easement was considered to allow for continued access. Mr. Pew noted that there is currently a lease in place with a farmer and giving up additional acreage would impact that lease. Mr. Rice noted that any division of land would result in a new Erie County Ag District lease paperwork, regardless of how large or small the reduction in land is.

After reviewing and discussing options, the board members noted that it is possible to increase the size of the proposed lot, reduce the substantiality of the variance and still maintain active farmland; creating a lot of 2.1 acres would bring the variance request below 50%.

Mr. and Mrs. Pew were then asked questions by the board related to the requirements the board must consider in area variance requests. *Answers by the applicant are in italics.*

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.** *No. Other residences in our area are undersized. A 1.39-acre lot will be a nice sized lot. Our intent is to maintain the agriculture.*
2. **Whether the benefit sought by the applicant can be achieved by a method feasible for the applicant to pursue, other than an area variance.** *If we were to split off a 4-acre parcel and then not sell it, we would have to maintain that land. This is becoming more difficult for us to do and would be a hardship.*
Board members suggested that there are other feasible options to add more land to make the variance less substantial and still maintain acreage for farming, such as revising the farming lease to include the open space available on the new lot; the ZBA has to enforce the Zoning Code under NYS rules without setting a precedent for undersized lots applicable to all zoning districts. Mr. Scheu noted that asking the board to mitigate concerns over maintaining the property, if not sold, is beyond the ZBA's purview.
3. **Whether the requested area variance is substantial.** *This proposed split preserves as much farmland as possible.* Board members noted this request is mathematically substantial (65%) and as discussed earlier, a less substantial split can be achieved without setting a precedent and without reducing agricultural use. For example, if the farming lease isn't changed to include the new lot, the owner of the new lot could have new agricultural uses in mind, such as animal husbandry or a greenhouse.
4. **Whether the requested area variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.** *No. There are other lots in our area that are the same or lesser size. See our examples.* The board noted that some other undersized lots are grandfathered as they existed prior to the current zoning code, and others are clustered at the intersection of Schuster Road and East Eden Road, where smaller lots are more expected.
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.** *No. We are making this request to preserve farmland.*

The board discussed the issues further, including the need to weigh the Town's stated objective of larger lot sizes to preserve agricultural character in this zoning district, versus ease of a smaller lot size for sale for the convenience of the applicants. Board members also noted they may approve a variance with a different lot size condition, if appropriate.

Based on those factors, Ms. Kent made a motion to approve the application for an area variance at 4033 Schuster Road, to allow a Minor Subdivision of an existing parcel in violation of the minimum lot size rule under Code section 225-14A, upon the condition that the lot size be a minimum of 2.1 acres, which will result in a variance of less than 50% from Zoning Code. Seconded by Mr. Neureuter, motion approved.

Respectfully submitted,

Shelly Griebel, Secretary
Eden Zoning Board of Appeals