

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the October 2017 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Joseph Liberti, Chairman/Robert Lennartz/Robert Metz/ Dwight Mateer/  
Lauren Kaczor/Barbara Bernard, Alternate

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney  
David Holland, Code Enforcement Officer  
Rosemary Messina, Secretary

The Chairman called the meeting to order at 7:00 P.M., stating that if anyone appearing before the Board was related through family, financial or business relationship with any member of the Board, it is incumbent upon him to make it known under State Law and the Town Code of Ethics.

The Chairman stated that all persons making an appeal before this Board would be heard in accordance with the Town Laws of the State of New York, Article 16, Sections 267, 279 and 280a, Subdivision 3, and the Town of Orchard Park Zoning Ordinance. Any person aggrieved by any decision of the Board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal, specifying the grounds of the illegality. Such petition must be presented to the court within 30-days after filing of the decision in the office of the Town Clerk.

The meeting minutes for the September 19, 2017 meeting were unanimously **APPROVED**.

The Chairman stated that site inspections of all cases presented tonight were made by:  
**LIBERTI, AYE/LENNARTZ, AYE/KACZOR, AYE/MATEER, AYE/METZ, AYE/BERNARD, AYE**

1. ZBA File #23-17, Key Bank, 3030 Union Road, Zoned B-2 (Part of Farm Lot 461, Township 10, Range 7: SBL#152.12-2-3). Requests an Area Variance to allow an increase in front yard parking. Vehicle parking in the front yard is prohibited in this B-2 Zone, Section 144-29A (4).

APPEARANCE: John Bermantz, Regional Manager

Mr. Bermantz distributed information to the Board and explained the parking issue that exists at this site. He stated that Key Bank would like to construct three additional spaces at the front of the building that borders Union Road to alleviate the parking problem that occurs each Friday and Saturday. They currently have ten spaces here.

The Board members' questions established that twelve employees park at the rear of the building, there is no shared parking with the other businesses here, the neighbors were not contacted regarding the variance request, and that the site only has room for three additional parking spaces. Chairman Liberti confirmed that an area marked on the map was a dumpster location.

Mr. Metz established that the addition of the three parking spaces will not eliminate the parking problem, but Mr. Bermantz feels they will help. There is no more space on the site to construct parking spaces.

Mrs. Bernard established that employee parking is full when the all the staff is there. Mr. Bermantz told the Board that customers drive, circling around the lot searching for a parking spot, and end up at either of the two neighboring drug stores' parking lots, complaining of walking to access the bank.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of granting of the variance.

PROPONENT:

*Mr. Michael Jaeger  
55 Hart Place  
Orchard Park, New York 14127*

Mr. Jaeger spoke in favor of the variance request, noting that the bank needs the additional parking spaces and he feels it will not have an impact on anyone.

The Chair then asked if there was anyone in the audience who would wish to speak against the granting of the variance.

(Twice) NO RESPONSE.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no communications have been received.

BOARD DISCUSSION: The members feel it is a reasonable request, and there is front yard parking along this corner.

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Area Variance for the following reasons:

There will not be an undesirable change in the character of the neighborhood or a detriment to nearby properties.

2. The benefit cannot be achieved in another way, other than the granting of the variance.

3. The request is not substantial.

4. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

5. The difficulty is self-created, but that does not preclude the granting of the variance.

**THE MOTION BEING:**

<b>LIBERTI</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>MATEER</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

**THE MOTION BEING FIVE (5) IN FAVOR, THE MOTION IS PASSED.**

2. ZBA File #24-17, Andrew Geist, 24 Daisy Lane. Zoned R-1 (Sub Lot 52, Map Cover 2284; SBL #173.17-2-61). Requests an Area Variance to locate a shed in the required side street yard. Accessory structures shall not be located between the side street lot line and the principal building, Section 144-24A.

APPEARANCE: Mr. Andrew Geist, Petitioner/Property Owner

Mr. Geist told the members that he desires an additional shed to store personal seasonal items. He explained that the location chosen will allow him to access his utility trailer and also have greater use of his backyard. He feels this location does not make the proposed shed any more visible than it would be if it was placed elsewhere on the property.

Mrs. Bernard established that two sheds are needed as storage space is limited in the residence, as the basement is not conducive to removing items in and out.

Mr. Metz established that Mr. Geist does not want to construct a larger shed and remove the existing shed. The existing shed on the property will remain, as Mr. Geist may move some day and take the newer shed with him. The proposed shed will not be constructed upon a foundation.

Mr. Lennartz established that no neighbors were contacted. He asked Mr. Geist if he could locate the shed elsewhere, however Mr. Geist noted that it would create a situation with the back yard becoming "choked-up" and create wasted space.

Mr. Mateer established that it is an "if" Mr. Geist would move; perhaps in five-years or more.

Ms. Kaczor had no questions.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of granting of the variance.

PROPONENT:

*Mr. Michael Jaeger  
55 Hart Place  
Orchard Park, New York 14127*

Mr. Jaeger spoke in favor of the variance request, noting that Mr. Geist's property is impeccable. He feels there is no problem with the variance request.

The Chair then asked if there was anyone in the audience who would wish to speak against the granting of the variance.

(Twice) NO RESPONSE.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no communications have been received.

Board discussion: Members discussed the request with Mr. Geist further, in an attempt to locate the shed elsewhere on the property.

Mr. Lennartz would like landscaping planted around the shed.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance for the following reasons:

1. There will not be an undesirable change to the character of the neighborhood and a detriment to nearby properties.
2. The benefit can be sought in another way.
3. The request is not substantial.
4. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty is self-created, but that does not preclude the granting of the variance.

**THE MOTION BEING:**

<b>LIBERTI</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>MATEER</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>NAY</b>

**THE MOTION BEING FOUR (4) IN FAVOR, AND ONE (1) AGAINST, THE MOTION IS PASSED.**

3. ZBA File #25-17, Michael & Karen Nowak, 30 Independence Drive, Zoned R-1 (Sub Lot 10, Map Cover 2378; SBL#185.06-1-5). Requests an Area Variance to construct a hot tub platform with an 8-ft. side setback. Minimum side setback in this R-1 Zone is 15-ft., Section 144-9B, Schedule of Height, Lot, Yard and Bulk Regulations.

APPEARANCE: Mr. Chris Repp, Repp Construction

Mr. Repp stated that Mr. Nowak would like a hot tub installed with access points as close to the house as possible for convenient access. The house is placed at an angle on the property and this creates the need for the variance, as the corner of the deck is pushed out within 8-ft. of the property line. He submitted a letter of support from his neighbor at 20 Independence Drive stating they have no issue with the variance request. This letter will become part of the permanent record.

There were no questions from the Board members.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of granting of the variance.

(Twice) NO RESPONSE.

The Chair then asked if there was anyone in the audience who would wish to speak against the granting of the variance.

(Twice) NO RESPONSE.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no communications have been received.

Board discussion: The members feel the request is reasonable.

Ms. Kaczor made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance for the following reasons:

1. There will not be an undesirable change to the character of the neighborhood and a detriment to nearby properties.
2. The benefit can be sought in another way.
3. The request is not substantial.
4. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty is self-created, but that does not preclude the granting of the variance.

**THE MOTION BEING:**

<b>LIBERTI</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>MATEER</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

**THE MOTION BEING FIVE (5) IN FAVOR, THE MOTION IS PASSED.**

4. ZBA File #26-17, David Lussier, 6836 Scherff Road. Zoned A-1 (Part of Farm Lot 1, Township 9, Range 7; SBL#198.00-6-18.111). Requests an Area Variance to construct a detached garage with a 15-ft. side setback. Minimum side setback for this A-1 lot is 20-ft., Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. David Lussier, Petitioner/Property Owner

Mr. Lussier explained that he would like a variance to construct a detached garage 15-ft. from his side setback to create additional storage space. Chairman Liberti stated that the Town Code requires a 20-ft. setback. If he is willing to move the garage an additional 5-ft. there would be no need for the variance. Mr. Lussier told the members that he does not want to move the proposed garage. He feels the garage will look better with a symmetrical placement on his property. He also stated that the garage will match his residence.

Ms. Kaczor established that Mr. Lussier spoke with his neighbors and no objections to the variance were voiced. She also confirmed that only personal storage would be kept here, small trailers, tractors, and implements.

Mr. Mateer established that no business will be run from this structure.

Mr. Lennartz established that Mr. Lussier he does not want to move the garage over as it will be too close to his residence and he would need to break up and remove a portion of the existing sidewalk.

Mr. Metz discussed another building on the property. Mr. Lussier told the Board that this shed is on skids and most likely will be relocated to the back yard.

Mr. Liberti established that there will be no business run from this structure.

Mr. Metz discussed where the sidewalk will need to be removed on the submitted map.

Mrs. Bernard reviewed the submitted paperwork and established the location of the existing shed. She also confirmed that Mr. Lussier does not want the detached garage too close to his home, and he is not willing to move it further back from the lot line.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of granting of the variance.

(Twice) NO RESPONSE.

The Chair then asked if there was anyone in the audience who would wish to speak against the granting of the variance.

OPPONENT:

*Mr. John King  
6856 Scherff Road  
Orchard Park, New York 14127*

Mr. King told the members that he is the affected adjacent neighbor, and that Mr. Lussier had not contacted him. He feels there is no apparent reason for this variance, as there is ample room in the area on that side of Mr. Lussier's property to accommodate a garage without coming that close to his property line. He has many concerns, such as noise, and the view of garbage piled on the side of the existing structure, and what he will use the garage for. He submitted a photo copy of what he reported to the Board. This will be entered into the permanent file.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no communications have been received.

Board discussion: Chairman Liberti feels the Petitioner has sufficient room to place the garage elsewhere on the property.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **DENY** the Area Variance for the following reasons:

1. There will be an undesirable change to the character of the neighborhood and a detriment to nearby properties.
2. The benefit sought can be achieved in another way.
3. The request is substantial.
4. There will not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty is self-created.

**THE MOTION BEING:**

<b>LIBERTI</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>MATEER</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

**THE MOTION BEING FIVE (5) IN FAVOR, THE MOTION TO DENY THE VARIANCE IS PASSED.**

5. ZBA File #27-17, Colton RV, 3443 Southwestern Boulevard, Zoned B-2 (Part of Farm Lot 19, Township 10, Range 7; SBL#152.20-1-2.11). Requests an Area Variance to install a 6-ft. high fence within the side street yard. Maximum height of a fence in a side street yard is 3-ft., Section 144-22A (1).

APPEARANCE: Ms. Kristin Savard, Design Studio,  
Mr. Jim Colton, Colton RV

Ms. Savard explained that that this request is not related to the request that was denied in 2016. She gave a brief history of the project site and concluded that they are attempting to have the site blend with balance and harmony with the parcel that Mr. Colton recently purchased. They would like the site to appear as one facility with fencing and landscaping to compliment it.

Mr. Colton spoke to the members regarding the theft and vandalism of his customer's vehicles that remain parked here for service. He feels a 6-ft. high fence will help with these issues. He also noted that vehicles cannot be stored at the rear of the building due to the fire-code.

Ms. Savard assisted the members with understanding the approved Site Plan and a discrepancy that exists on the plan. She, and Mr. Colton, answered the questions they had regarding the variance request.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of granting the variance.

IN FAVOR:

*Ms. Stacey Bush  
29 Hart Place.  
Orchard Park, New York 14127*

Ms. Stacey Bush supports the variance request for the 6-ft. high fence. She wants Hart Place to look nice.

*Ms. Megan Sheppard  
3563 Abbott Road  
Orchard Park, New York 14127*

Ms. Sheppard supports the variance requests as she feels a 4-ft. high fence will not stop anyone, as it is too low in height.

The Chair then asked if there was anyone in the audience who would wish to speak against the granting of the variance.

AGAINST:

*Mr. Michael Jaeger  
55 Hart Place  
Orchard Park, New York 14127*

Mr. Jaeger spoke against the variance request and explained he does not want Hart Place to look like a dump. He feels that security issues can be handled by cameras. He described his disappointment with the Colton site and concluded that he would like a landscaped berm constructed, as other locations in Orchard Park have, for buffering.

*Mrs. Gaylene Jaeger  
55 Hart Place  
Orchard Park, New York 14127*

Ms. Jaeger does not support the variance request. She is upset trees were removed to put in the fencing.

*Mr. Charles Hartman  
115 Hart Place  
Orchard Park, New York 14127*

Mr. Hartman does not support the variance request. He is disturbed that existing trees were removed. He feels the fencing should be placed near the edge of the property line.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no communications have been received.

Board discussion: Chairman Liberti feels those against the variance should meet with Mr. Colton and discuss their issues in an attempt to resolve the conflict that exists.

Mr. Colton withdrew his request for the variance.

Meeting adjourned at 8:22 P.M.

DATED: 11/01/17

REVIEWED: 11/21/17

Rosemary M. Messina, Secretary  
Zoning Board of Appeals

Joseph Liberti, Chairman