

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the February 17, 2015 meeting held in the Municipal Center Basement Public Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Robert Lennartz, Acting Chair/Dwight Mateer/Robert Metz/Roland Pigeon
Lauren Kaczor, Alternate EXCUSED: Joseph Liberti Chairman

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

The members recited the Pledge of Allegiance and the Acting 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 Acting 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 Chairman noted that Alternate member Ms. Kaczor will be voting this evening due to the absence of Mr. Liberti.

Mr. Pigeon made a **MOTION**, seconded by Mr. Mateer, to **ACCEPT** the minutes of the October 21, 2014 & December 16, 2014, and January 20, 2015 meetings.

THE VOTE ON THE MOTION BEING:

**APPROVED
MINUTES**

KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
PIGEON	AYE

THE **VOTE** BEING UNANIMOUS, THE **MOTION** IS HEREBY **PASSED**.

The Acting Chairman stated that site inspections of all cases presented tonight were made by:

KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
PIGEON	AYE

NEW BUSINESS

1. ZBA File #01-15, Georgio Condemi, 6965 Michael Road, Zoned R-3 (Part of Farm Lot 463, Township 10, Range 7; SBL #153.10-1-53). Requests a permit to install (2) driveway entry gates which exceed the height limitations of Section 144-22A (1).

APPEARANCE: Mr. & Mrs. Georgio Condemi, Applicants/Property Owners

Mr. Condemi distributed photos to the members for their review. Mrs. Condemi explained that her nursery school children play in the front driveway, and that for safety reasons she would like to have non-electric operated gates placed here.

Mr. Pigeon stated that he would like further clarification for needing the gates. The Condemi's told the members that in addition to safety reasons, they would like to prevent motorists from trespassing and using their driveway as a turn-around area. It was established that the driveway is not "U"-shaped.

Ms. Kaczor established that a nonconforming fence had been taken down.

Mr. Mateer established that the grade of the driveway makes it necessary to locate the bottom of the gate up higher to avoid hitting the driveway, and when the fence is measured at grade level it is more than five-feet.

The Acting Chair stated that he does not feel a hardship exists.

Mr. Condemi stated that there are other properties in Orchard Park with higher gates.

Mr. Pigeon established that the bottom of the gate would be one-foot off the ground to clear the driveway. Mr. Condemi would like to place two gates here.

Ms. Kaczor established that the neighbors do not object to the variance request.

Mr. Mateer established that there are two driveways at this residence, and that they will both look the same, with the same gate installed.

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

(Twice) NO RESPONSE

The Acting 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 Acting 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.

Ms. Kaczor asked about vehicles parked at the site. She established that this residence is a duplex and that no one lives on the other side.

Mr. Pigeon established that the day-care is on one side and that the Condemi residence is on the other. A conforming fence at the rear of the house will be extended to the front of the property and be 3-ft. high.

Mr. Pigeon made a **MOTION** that this is a Type 2 SEQR Action and, therefore, no SEQR determination is necessary, and that the Board **GRANT** the Area Variance for two Gates, based on the following:

1. There will be no undesirable change in the character of the neighborhood or a detriment to nearby properties created.
2. The benefit sought cannot be achieved in some other way than through the granting of a 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 the district.
5. The difficulty is self-created, but that will not necessarily preclude the granting of the variance.

ON THE QUESTION:

The height of the gates is confirmed to be approximately 70-inches at the highest point, and only the gate is included in this figure. The applicable grade clearance for the fence is 12-inches. Total height of fence is 82-inches.

There was no second to this motion. There being no second to the **MOTION**, the **MOTION FAILS**.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor, that this is a Type 2 SEQR Action and, therefore, no SEQR determination is necessary, to **DENY** the Area Variance for two gates based on the following:

1. There is no hardship created; this is a key factor in this decision.
2. The benefit sought can be achieved in other ways than through the granting of a variance.
3. The request is substantial.
5. The difficulty is self-created.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
PIGEON	NAY

THE VOTE BEING FOUR (4) IN FAVOR, AND ONE (1) NAY, THE MOTION TO DENY THE VARIANCE IS HEREBY PASSED.

2. ZBA File #02-15, Nicholas Gaetanos, 7 Fir Top Drive, Zoned R-1 Zoned R-1 (Sub Lot 97, Map Cover 2265; SBL#173.20-6-23). Requests an Area Variance to construct a covered front porch with a 46.95' front setback. Minimum front setback for this R-1 Lot is 50', Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Nicholas Gaetanos, Applicant/Property Owner
Mr. Richard Cole, Great Lakes Remodeling
Joe, Representing Great Lakes Remodeling

Mr. Gaetanos explained that he would like to have a sun porch with a roof over it. He showed the members several photos of the proposed porch using an IPAD.

*The Boards' questions established that the porch will extend five-feet from the existing residence.

*A second story will be also be constructed.

*The neighbors were spoken to and there were no objections regarding the variance request.

*Mr. Gaetanos needs to have five-feet, as three-feet will not meet the needs of his expanding family.

*The entire front of the residence will be reconstructed.

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

(Twice) NO RESPONSE

The Acting 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 Acting 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.

The Board members agreed the plan would be an improvement to the area.

Mr. Metz, made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the Area Variance based on the following:

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

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
PIGEON	AYE

THE **VOTE** BEING UNANIMOUS, THE **MOTION** IS HEREBY **PASSED**.

3. ZBA File #03-15, West Herr Subaru, 3559 Southwestern Boulevard Zoned B-2 (Part of Farm Lot 22, Township 10, Range 7; SBL# 161.07-7-11.2). Requests a variance to install a non-conforming pedestal sign at this site. Pedestal signs shall not exceed 40-sq.ft. in area nor 16' in height. Pedestal shall not exceed 8" in horizontal dimension, Section 144-38C (2) & Section 144-5. Note: Request includes removal of existing pedestal sign.

APPEARANCE: Mr. John Wabick, Vice President

Mr. Wabick explained that Subaru installed a "corporate" sign at their site. He noted that the Subaru sign is inferior and small, when compared to the existing signs on the Auto Mall Strip (Southwestern

Boulevard). He also presented photos for the members to review of the other signage along the Auto Mall Strip.

The members discussed the competition's signage and the different sizes of signs. It was noted that the issue is the height, and Mr. Wabick would like a small variance as he cannot modify the sign. He discussed the signs that have been at this site; at one time, there had been a monument sign here, and when it was removed the entryway was diminished in sign square footage.

It was confirmed that Mr. Wabick would not be filing for a larger "KIA" sign and that the KIA sign and Subaru sign will be the same height. The Subaru sign will be on the same schedule as the other lights are. It was learned that Mr. Wabick does not know what the size of the Subaru sign had been, as this sign was removed.

Mr. Wabick acknowledged that the site was renovated and significant money was spent. He would like to have his variance granted for a better sign.

There is no one present to ask if they were "in favor" or "against".

The Acting 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.

Mr. Lennartz, made a **MOTION**, seconded by Mr. Pigeon, that this is a Type 2 SEQR Action and, therefore, no SEQR determination is necessary, to **GRANT** the Area Variance for a Subaru sign with a height of 16-ft, is based on the following:

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

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
PIGEON	AYE

THE **VOTE** BEING UNANIMOUS, THE **MOTION** IS HEREBY **PASSED**.

There being no further business to be presented to the Board at this time Acting Chair Lennartz adjourned the meeting at 7:52 P.M.

DATED: March 16, 2015
REVIEWED: March 17, 2015

Rosemary Messina, Secretary
Zoning Board of Appeals

Robert Lennartz, Acting Chairman