

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the May 17, 2016 meeting held in the Municipal Center Upstairs Engineering Conference Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Joseph Liberti, Chairman/ /Lauren Kaczor/ Dwight Mateer/Robert Metz/
Barbara Bernard, Alternate
EXCUSED: Robert Lennartz
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 Chairman stated that the Alternate member, Mrs. Bernard, will be voting this evening in view of Mr. Lennartz's absence.

A motion was made to APPROVE the April 19, 2016 meeting minutes as presented.

MOTION TO APPROVE IS HEREBY PASSED with Mr. Mateer Abstaining.

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

LIBERTI, AYE/ KACZOR, AYE / MATEER, AYE /METZ, AYE/BERNARD, AYE

NEW BUSINESS

1. ZBA File #09-16, Thomas Zelig, 6234 New Taylor Road, Zoned R-2, (Sub Lot 3, Map Cover 1793: SBL#161.16-2-10). Requests an Area Variance to construct a detached garage 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. Thomas Zelig, Petitioner/Property Owner

Mr. Zelig explained to the members that his home has no basement and that the existing garage is small, with room only to park one vehicle in it as one side is shorter. He would like to construct another garage to store his motorcycle, lawn equipment, snow blower, and wood-working tools. The size of the proposed garage is 12 x 20-ft., and it will have a concrete driveway. All vehicles will be parked in the garage and

no longer left outside.

Mrs. Bernard established that Mr. Zelig feels there is no room behind the house to place a garage and locate a driveway back to it. Mr. Zelig prefers to locate the proposed garage along the side of the residence. He further stated that he feels the proposed garage will not change the character of the neighborhood.

Mr. Metz established that there are no sheds in the rear yard and that the proposed garage will have a door and a man door. The garage will match the color of the residence.

Mr. Metz established that Mr. Zelig did not speak to his neighbors about the variance, as he felt there was barely any one around him that would see the structure, other than the neighbor directly across the street, and possibly the property owner at the back of his property.

Ms. Kaczor established that no business will be carried on in the proposed garage and that an existing fence will remain.

Chairman Liberti established that no trees will need to be removed to construct the proposed garage, and that the garage will be used strictly for personal storage.

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

IN FAVOR: (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.

IN OPPOSITION

*Mr. Ralph Geschwill
17 Burbank Road
Orchard Park, New York 14127*

Mr. Geschwill stated he does not support the variance request to allow the proposed garage, as it violates the Building Code and there is an attached garage already at the site. He asked to see the plan and the Board provided it to him. After reviewing the plan, he stated that it will not benefit the other residential homes in the area. He stated further that he had spoken to the neighbor across the street and they could not make the meeting, but noted they don't want this. They feel their property values will be impacted.

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 discussed details of the proposed garage.

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

1. There will be an undesirable change in the character of the neighborhood and a detriment to nearby properties created.
2. The benefit sought can be achieved in another way.
3. The request is substantial.
4. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or the district.
5. The difficulty is self-created.

THE MOTION BEING:

BERNARD	AYE
LIBERTI	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE VOTE BEING FIVE (5) TO DENY, THE MOTION IS PASSED.

2. ZBA File #10-16, Stephen & Marianne Myers, 70 James Place Zoned R-2 (Sub Lot 23, Map Cover 2060; SBL#184.11-2-41). Requests an Area Variance to erect a 6-ft. high fence in the side street yard. Maximum height of a fence in a side street yard is 3-ft., Section 144-22A (1).

APPEARANCE: Marianne Meyers, Applicant/Property Owner

Mrs. Meyers explained to the Board her desire to install a 6-ft. high fence in her side street yard. She told the Board that her dog, a Golden Retriever, is able to jump a fence lower than 6-ft. high. The proposed fence will also help maintain a safe environment for her three grandchildren that play at her home on a daily basis.

Mrs. Meyers stated that locating the fence elsewhere on the property will involve the removal of several trees and create the loss of backyard space. The proposed fence will not obstruct a driver's view-shed, and it will provide privacy in the future when they install a swimming pool for the children. She noted that her neighbor has a 6ft. high fence on the south side of the property that she can tie into.

She submitted a petition signed by nine (9) neighbors stating that they had no objections to the granting of the variance. The Chair directed the Secretary to enter the petition into the permanent file.

Ms. Kaczor established that the planting of landscaping is a possibility on the outside of the fencing.

Mr. Mateer established that the dog is currently kept on a leash when outside. He discussed having a compromise with the height of the fence, and/or installing an invisible fence.

Mr. Metz established that the fence line will begin at the back of the house, and extend towards James Place, approximately 30-ft. The fence will be 21-ft. before the ROW. Mr. Metz further discussed the issues with the dog jumping the fence and relocating the fence.

Mrs. Meyers stated that three (3) trees will be impacted if the fence is placed in the backyard.

Mr. Liberti established that the fence would mimic the neighbor's fence.

Mrs. Bernard established that Mrs. Meyers feels she would lose use of her back yard if the fence is placed elsewhere and several existing trees will be lost.

Mr. Mateer discussed the three trees that will be impacted if the fence is located in the yard area.

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

IN FAVOR:

*Mrs. Todd Sinclair
75 James Place
Orchard Park, New York 14127*

Mrs. Sinclair stated that she is the neighbor across the street and she supports the request for the variance. She, and the other neighbors, like the idea and feel the ascetics will be pleasing.

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:

Mr. Liberti noted that a 4-ft. fence is allowed.

Ms. Kaczor would like the fence limited to five-ft. in height, noting that this is a corner lot.

Mrs. Meyers stated that a 5-ft. high fence will not work with her dog.

Ms. Kaczor made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance for the following reasons with a **Stipulation** that the fence be no higher than 5-ft.:

1. There will not be an undesirable change in the character of the neighborhood and 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 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 does not preclude the granting of the variance.

The request is **GRANTED with** the following **Stipulation**:

1. The fence is not to exceed five-feet in height.

THE MOTION BEING:

BERNARD	AYE
LIBERTI	NAY
KACZOR	AYE
MATEER	NAY
METZ	AYE

THE **VOTE BEING THREE (3) IN FAVOR AND TWO (2) AGAINST**, THE **VARIANCE REQUEST IS GRANTED WITH A STIPULATION**.

3. ZBA File #11-16, Ryan Homes, 11 Concerto Court, Zoned CMO (Sub Lot 28, Map Cover 3547; SBL#162.08-3-28). Requests an Area Variance to construct a single-family dwelling with a 17.5-ft. rear setback. Minimum rear setback for the CMO District is 20-ft., Section 144-17.1D (5).

APPEARANCE: Mark Longo, Ryan Homes, Petitioner

Mr. Longo explained that due to a family emergency, he was authorized to fill in for the gentlemen that was to give the presentation to the Board this evening.

Mr. Longo explained the request to the Board, noting that they are seeking a variance to allow a 17.5ft. rear setback. The required setback is 20-ft. for this CMO District.

The Members reviewed the plans for a walk-out basement sitting room, off the Master Bedroom Suite. It was learned that this is the final lot for purchase at the site. The Board members' questions established that this is an odd shaped lot and that the Petitioner is looking for relief amounting to 2.5-ft.

Ms. Kaczor asked if the neighbors had been contacted, but Mr. Longo told the Board that he did not know if they were.

Mr. Mateer established that if the customer reduced the size of the rooms, the need for the variance would be eliminated. He also reviewed the elevations further and questioned if there would be a future deck or outdoor patio.

Mr. Metz inquired about the dotted-off area on the site plan. He established that any plans to add to the site would need to return to the Zoning Board of Appeals.

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

PROPONENT:

*Home Owner
11 Concerto Court
Orchard Park, New York 14127*

The Home Owner noted that she supports the variance request. She stated she will seek to have a deck, eventually.

Code Enforcement Officer David Holland stated that she will not need to see this Board if a deck of no more than no more than 10- feet is added.

The home owner spoke and told the Board that she desires to have a walkout basement with a sitting area off of her Master Suite Bedroom.

*Mrs. Jennifer Emerling
77 Sonnet Drive
Orchard Park, New York 14127*

Mrs. Emerling stated that she supports 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.

Mr. Metz made a **MOTION**, seconded by Ms. Kaczor, 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 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 does not preclude the granting of the variance.

THE MOTION BEING:

BERNARD	AYE
LIBERTI	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

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

4. ZBA File #12-16, Empire One Federal Credit Union, 3020 Orchard Park Road, Zoned B-2, (Part of Farm Lot 456, Township 10, Range 7; (SBL#152.12-1-9). Requests a Variance to install a non-conforming pedestal sign at this site. Pedestal shall not exceed 8-inches in horizontal dimension, Section 144-5 Terms Defined.

APPEARANCE: Chris Mc Cafferty, Ulrich Sign Company, representing Empire One

Mr. Mc Cafferty stated that the proposed sign meets the Town Code. However, the Applicant desires to have decorative masonry to conceal the metal pole. A variance is needed to achieve this goal.

Mr. Mateer reviewed the Site Plan.

Chairman Liberti established that the sign will be illuminated, and that a photocell and a timer will turn an internal light on at 8:30 A.M., and off at midnight. He asked if a monument sign was considered for this site. Mr. Mc Cafferty stated that the applicants had wanted something more visible.

The 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 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.

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

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 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 does not preclude the granting of the variance.

THE MOTION BEING:

BERNARD	AYE
LIBERTI	AYE
KACZOR	AYE
MATEER	AYE

METZ AYE

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

5. ZBA File #13-16, Jennifer Emerling, 77 Sonnet Drive, Zoned CMO District, (Sub Lot 18, Map Cover 3547; SBL#162.08-3-18). Requests an Area Variance to construct an elevated deck with an 8-ft. rear setback. Minimum rear setback for this accessory structure is 10-ft., Section 144-24A (1) (d).

APPEARANCE: Jennifer Emerling, Applicant/Property Owner

Ms. Emerling is requesting to construct a 7.5-ft. deck. The minimum rear setback is 10-ft. The patio will be enclosed, and the deck will be open. Ms. Emerling is not able to negotiate the stairway and an elevator will be put in. She told the Board that her back yard is private and not seen by any one.

Mr. Metz verified the location of the stairway on a platform. He questions why it is not located against the building. She explained that there are windows here.

Mrs. Bernard established that on the west side no one is there. Twelve feet is necessary to have tables and chairs.

Chairman Liberti asked Ms. Emerling if she had a "Plan B". She stated that her elevator is the "Plan B".

Mr. Mateer noted that Ms. Emerling had a variance request in March before the Board. It was for the same size, but this it is a different plan. He confirmed with Code Enforcement Officer David Holland that this is a different request.

Ms. Kaczor established that the deck area will match the existing home.

The 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 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.

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

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 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 does not preclude the granting of the variance.

THE MOTION BEING:

BERNARD	AYE
LIBERTI	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE VOTE BEING UNANIMOUS, THE MOTION IS PASSED.

There being no further business to be presented to the Board at this time Chairman Liberti adjourned the meeting at 8:17 P.M.

DATED: June 17, 2016
REVIEWED: June 17, 2016

Rosemary M. Messina, Secretary
Zoning Board of Appeals

Joseph Liberti, Chairman