

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the June 21, 2016 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Robert Lennartz, Acting Chairman/Lauren Kaczor/Dwight Mateer/Robert Metz/
Barbara Bernard, Alternate
EXCUSED: Joseph Liberti, Chairman
OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney
David Holland, Code Enforcement Officer
Rosemary Messina, Secretary

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.

Chairman Liberti is excused this evening and Mr. Lennartz will be the Acting Chair. The Alternate member, Mrs. Bernard, will be voting this evening in view of Mr. Liberti's absence.

A motion was made to **APPROVE** the May 17, 2016 meeting minutes with one edit; In Case #2 Mr. Mateer voted "NAY".

MOTION TO APPROVE WITH EDIT, IS HEREBY PASSED.

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

LENNARTZ, AYE/ KACZOR, AYE / MATEER, AYE /METZ, AYE/BERNARD, AYE

NEW BUSINESS

1. ZBA File #14-16, Brian Handzlik, 7 Orchard Hill Drive, Zoned R-1 (Sub Lot#64, Map Cover 1908; SBL#173.20-3-45). Requests an Area Variance to construct an attached garage with a 2-ft. rear setback. Minimum rear setback for this R-1 lot is 10-ft., Section 144-20C.

APPEARANCE: Brian Handzlik, Petitioner/Property Owner

Mr. Handzlik explained that he would like to construct an attached garage to park their personal vehicles.

Mrs. Bernard established that their three vehicles will fit in the proposed garage.

Mr. Metz established that Mr. Handzlik contacted his neighbors regarding the variance request and there were no objections voiced. Mr. Handzlik submitted five (5) signed documents indicating support for his variance request.

Mr. Mateer discussed the location of the garage and established that the existing driveway will be used.

Ms. Kaczor established that the existing shed on the property will remain.

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.

PROPONENT:

*Ms. Patricia M. Brammer
1 Orchard Hill Drive
Orchard park, New York 14127*

Ms. Brammer supports the variance and she praised Mr. Handzlik's care of his property.

*Mr. Norman Chudy
42 Tanglewood Drive
Orchard Park, New York 14127*

Mr. Chudy told the members that he supports the variance request. However, he would like Mr. Handzlik to locate windows or doors elsewhere than on the southwest side of the garage. He further stated that he would like the addition to be stained and match the residence.

Mr. Handzlik stated that he needs to have the door on the southwest as the breezeway from his house is on that side. It was determined that this would not be a problem.

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.

Board discussion:

Ms. Kaczor would like no items stored outside of the garage.

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 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 MOTION BEING:

BERNARD	AYE
LENNARTZ	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

MOTION IS UNANIMOUSLY PASSED.

2. ZBA File #15-16, Marvin Barberich, 5569 Scherff Road, Zoned A-1 (part of Farm Lot 4, Township 9, Range 7; SBL#185.14-2-23). Requests an Area Variance to construct a shed with a 5-ft. side setback. Minimum side setback for this A-1 Lot is 9-feet, Section 144-20-A (2)

APPEARANCE: Mr. Marvin Barberich, Petitioner, Property Owner

Mr. Barberich apologized to the Board and explained that he had not known a permit was required to erect a new shed to replace the existing deteriorating shed partially located on his property and his neighbor's.

Mr. Mateer established that Mr. Barberich built the new shed on cinder blocks, and a gravel base. Mr. Barberich told the Board that the shed will be used for personal storage.

Ms. Kaczor established that the shed cannot be moved without demolishing it to do so.

Mr. Barberich told the members that he will demolish the original shed.

Acting Chair Lennartz established that the new shed is solely on Mr. Barberich's property. Mr. Barberich spoke with his neighbor regarding the variance request and no objections were voiced.

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.

Board discussion:

Ms. Kaczor feels that the shed's 5-ft. side setback might be a problem for a new neighbor in the future.

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

1. There will be no undesirable change in the character of the neighborhood, and or 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
LENNARTZ	AYE
KACZOR	NAY
MATEER	AYE
METZ	AYE

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

3. ZBA File #16-16, Liberatore Management Group & Ellicott Development V/L Southwestern Boulevard, Zoned B-1 (Part of Farm Lot 19, Township 10, Range 7; SBL#152.19-1-21). Requests an Area Variance to allow front yard parking at this proposed medical office building. Parking is prohibited in this front yard location, Section 144-29A (4).

The Petitioner asked that their variance request be removed from the agenda.

4. ZBA File #17-16, Mark Gusakov, 60 Hobby Lane, Zoned R-1 (Part of Farm Lot 63, Township 9, Range 7; SBL# 162.19-1-5). Requests an Area Variance to construct a shed with a 3-ft. side & rear yard setback. Minimum side yard & rear yard setback for this R-1 lot is 15-ft., Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Mark Gusakov, Petitioner/Property Owner

Mr. Gusakov explained that he would like to construct a shed to be used for storage of personal items, such as equipment and tools. The shed will match his residence and be pre-built. He spoke to his neighbors and no objections were voiced regarding the variance request. Mr. Gusakov submitted a petition signed by four (4) of his neighbors stating that they support the variance request.

Mr. Gusakov explained his request further to the Board, noting that he would like to have a 3-ft. side and rear yard setback.

Acting Chairman Lennartz reviewed the property survey and location of the proposed shed. He established that removing a tree is the only other option open to Mr. Gusakov in locating the shed elsewhere on his property.

Mr. Mateer reviewed the submitted colored maps provided and asked Mr. Gusakov for further clarification.

Mr. Metz established that the next smaller size shed is 10-ft. by 12-ft. Mr. Gusakov told the Board that this size will not meet his storage needs, for a boat, a lawn mower, and a vehicle. The location of the structure was also discussed.

Mrs. Bernard established that the building would operate as a garage with no water and electricity.

Mr. Gusakov stated that the shed size chosen (24-ft. long x 12-ft. wide by 10-ft. high) is the last size before a formal garage classification.

Acting Chair Lennartz stated that this is a large structure, and he feels it is actually a garage that will violate the setback regulation by 12-ft. It was established that no business operation would take place in the proposed shed.

Mr. Gusakov told the Board that if he wanted a garage, he would have constructed it on the side of his residence. He has a two-car garage on his property. He further stated that he is asking for 3-ft. setback, but that, he could revise this to 4-ft. He told the Board that no business will operate from here.

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.

Board discussion:

The members discussed the request.

Ms. Kaczor made a **MOTION**, seconded by Mrs. Bernard, to **DENY** the Area Variance for the following reasons:

1. There will be an undesirable change in the character of the neighborhood and or 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
LENNARTZ	AYE
KACZOR	AYE
MATEER	NAY
METZ	AYE

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

5. ZBA File #19-16, Richard Taylor, 5885 Chestnut Ridge Road, Zoned A-1 (Part of Farm Lot 11, Township 9, Range 7; SBL#185.00-2-56.2). Requests an Area Variance to construct a 6-ft. high privacy wall within the front yard, Maximum Height of a wall in the front yard is 3-ft., Section 144-22 (1).

APPEARANCE: No one was present.

6. ZBA File #20-16, David Rogers, 32 Peppermill Lane, Zoned R-2 (Sub Lot #39, Map Cover 2409; SBL# 184.13-1-2). Requests an Area Variance to install 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: Mr. David Rogers, Petitioner/Property Owner

Mr. Rogers explained to the members that a shed was removed on his property and he would like to extend his existing fence 24-ft. to utilize his yard. He noted that he lives on a dead-end street and that he does not feel the fence will have an impact on his neighbors. Mr. Rogers explained further that the fence will assist with his children and three (3) dogs. It will also keep coyotes, fox, and other wild life off of his property. He spoke with his neighbor and there were no objections to the variance.

Mr. Mateer reviewed the fence request. He verified details further with Code Enforcement Officer David Holland.

Ms. Kaczor established that the corner lot rules were not known to the petitioner when he purchased his home.

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.

Board discussion:

The members discussed the request.

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

1. There will be no undesirable change in the character of the neighborhood or 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 Variance is granted with the following **STIPULATION**:

1. The fence is to be four ft. high running parallel to the house 25-ft. from the Right-of-Way.

THE MOTION BEING:

BERNARD	NAY
LENNARTZ	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

Meeting adjourned at 8:02 P.M.

DATED: 7/15/16
REVIEWED: 7/19/16

Rosemary M. Messina, Secretary
Zoning Board of Appeals

Robert Lennartz, Acting Chairman