

APPROVED MINUTES

ZBA Mtg. #7

Regular Mtg. #7

July 19, 2016

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ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the July 19, 2016 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Joseph Liberti, Chairman/Robert Lennartz/Lauren Kaczor/Dwight Mateer/
Robert Metz/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.

A motion was made to **APPROVE** the June 21, 2016 meeting minutes as presented.

Chairman Liberti abstained as he was absent at the June meeting.

MOTION TO APPROVE IS HEREBY PASSED WITH FIVE (5) IN FAVOR AND ONE (1) ABSTENTION.

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

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

NEW BUSINESS

1. 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).

The Applicant withdrew the petition.

2. ZBA File #22-16, Mercy Ambulatory Center, 3669/3671 Southwestern Boulevard, Zoned I-1 (Part of Farm Lot 32, Township 9, Range 7; SBL#161.00-5-53). Requests a Variance to replace a damaged sign with a non-conforming monument sign. Monument signs shall not exceed 30 sq.ft. in area, nor 5-ft. in height, Section 144-5, terms defined.

APPEARANCE: Mr. Daniel Janak, Catholic Health Facility Planning
Ms. Janet Puckhaber

Mr. Janak distributed information to the members and explained that Mercy Ambulatory Center needs a new sign to replace an existing 21-sq.ft. illuminated sign that is damaged. The proposed replacement sign will be 40 sq.ft., illuminated, and be located where the existing sign is.

Mrs. Bernard established that the sign will be lit for 24-hrs. She expressed a concern for its brightness.

Mr. Liberti established that the lighting can be adjusted.

Mr. Metz established that a wind storm caused damage to the existing sign. He stated he is concerned that individuals will be looking for the old style sign and that he hoped that the new sign did not cause confusion. He further established that the sign will be perpendicular to the road.

Mr. Mateer established that the original sign is 3-ft. by 7-ft. tall. The new sign is placed higher so that plantings can be put in around the base. There was no Landscaping Plan for the Board to review.

Mr. Janak noted that the sign must be visible from the roadway.

Ms. Puckhaber stated that the sign will illuminate at night time in red.

Mr. Liberti established that there is only one sign, and that it will be located on Southwestern Boulevard, on a berm area, with plantings.

Ms. Kaczor established that there will be no flashing or movement within the sign.

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

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

Mr. Jaeger stated that he supports the proposed sign, noting that people go to the MAC Center and need to find it quickly while driving on this busy roadway. The proposed sign will assist people in locating the MAC Center quickly.

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 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:

LENNARTZ	AYE
LIBERTI	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

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

3. ZBA File #23-16, Colton RV, 3443 Southwestern Boulevard, Zoned B-2 (Part of Farm Lot 19, Township 10, Range 7; SBL#152.20-1-2.11). Requests a Variance to install a 6-ft. high fence within the front yard and side street yard. Maximum height of a fence in a front or side street yard is 3-ft., Section 144-22A(1).

APPEARANCE: Mr. Jim Colton, Colton RV

Mr. Colton explained to the members that he would like to control the traffic flow entering into his business for security and safety reasons and feels a 6-ft. high fence is necessary. He stated that he spoke with his neighbors regarding the variance request and no objections were voiced.

The members discussed possible fencing options with Mr. Colton that included height, style, placement and types.

Code Enforcement Officer David Holland verified on the map where a variance would be required. He told the Board that the face of the building is considered the front of the property for this corner location.

Mr. Lennartz stated that a 6ft. high fence in the front yard is not allowed, nor desirable. If approved, other commercial lots on Southwestern Boulevard may desire a 6-ft. high fence. He feels that the benefit can be achieved in another way by using a 3-ft. high fence.

Chairman Liberti spoke of using pillars that slide up and down in the ground rather than cones to detract motorists.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of granting 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. Michael Jaeger
55 Hart Place
Orchard Park, New York 14127

Mr. Jaeger stated that there was to be no access from the former Jim Ball site to Hart Place, but there is. He also stated that he feels existing trees will die if a fence is put in. He further noted that this is a narrow roadway and that truck car carriers unload dangerously in the middle of the street. He does not support the variance request.

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

Mrs. Jaeger does not support the variance request.

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

Mr. Hartman does not support the variance3 request.

The neighbor's present voiced concerns beyond the scope of the variance request and they were encouraged to contact the Town Board or Building Inspector's Office for issues such as snow removal and weeds.

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. Lennartz made a **MOTION**, seconded by Mr. Liberti, 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:

LENNARTZ	AYE
LIBERTI	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION TO DENY IS PASSED.

4. ZBA File #24-16, Ellicott Development, 4297 Abbott Road, Zoned B-2 (Part of Farm Lot 39, Township 9, Range 7; SBL#172.05-1-1.1). Requests an extension of a Variance to allow a 6-ft. high fence within the front yard and side street yard. Maximum Height of a fence in a front yard or side street yard is 3-ft., Section 144-22A (1). Note: September 2014 ZBA File #21-14, stipulated that this case be revisited after March 2016.

APPEARANCE: Tabled to the August meeting due to no representation present.

5. ZBA File #25-16, Brandon Block, 3285 Abbott Road, Zoned B-2 (Part of Farm Lot 31, Township 10, Range 7; SBL#151-16-5-1). Requests an Area Variance to construct a storage building which will create a dominating accessory use area. Accessory Use Area shall not dominate principal use area. Section 144-5, Terms defined.

APPEARANCE: Brandon block

The members' questions established that Mr. Block desires to store personal items and will not run a business at the site. It was further established that Mr. Block spoke with his neighbors regarding the variance request and there were no objections voice. The van parked at the property will be removed from the site. The driveway to the storage building will be on the side of the residence. The shed is very difficult to move to another location.

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.

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:

LENNARTZ	AYE
LIBERTI	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

6. ZBA File #26-16, Richard Gasiewicz, 7120 Ward Road, Zoned A-1 (Part of Farm Lot 1, Township 9, Range 7; SBL#198.00-5-18.112). Requests an Area Variance to allow a shed to remain 6-ft. from a dwelling. No accessory structure shall be located closer than 10-ft. to any primary structure, Section 144-24A (1) (C).

APPEARANCE: Richard Gasiewicz

Mr. Gasiewicz erected his shed without a Building Permit.

The members' questions established that he needs additional storage space and that the shed cannot be moved due to the way it was constructed. He spoke with his neighbors and there were no objections to the variance request.

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.

Mr. Metz 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:

LENNARTZ	AYE
LIBERTI	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

7. ZBA File #27-16, Rolling Ridge Community LLC, V/L west side of South Abbott Road, Zoned A-1 (Part of Farm Lot 35, Township 9, Range 7; SBL#184.00-6-41.1). Requests an Area Variance to reduce lot size requirements to be consistent with lots in a Town of Hamburg Subdivision which they are part of. Section 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations. NOTE: This project has previously appeared before the ZBA, see Files #32-96, #05-01, #05-04, & #10-14.

APPEARANCE: Mr. Mark Romanowski, Attorney
Mr. Michael Metzger, Metzger Engineering

Mr. Metzger presented and explained the Phase 5 Site Plans for the "Rolling Ridge Subdivision" located in the Town of Hamburg, noting that a portion is also located in the Town of Orchard Park. In 2014 a variance was granted for relief to realize the R-2 Bulk Requirements of Orchard Park. The variance granted has since expired and Mr. Metzger is seeking to have it granted again.

The members reviewed the details of the project with the Petitioner. Questions regarding lot dimensions were discussed. It was noted that the Planning Board will review this project for the single-family lot partially located in the Town of Orchard Park.

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

LENNARTZ	AYE
LIBERTI	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

8. ZBA File #28-16, Jacqueline Mattina & Thaddeus Chmiel, 24 Wellington Lane, Zoned R-2 (Sub Lot #17, Map Cover 2289; SBL#162.14-1-20). Requests an Area Variance to install a 4-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: Ms. Jacqueline Mattina

Ms. Mattina told the Board that she had no idea of the wetlands at her home.

Corner lot- barb-

Metz- 4ft to back

Lauren- not in front of home

Jacq-

Other homes have 6ft high fence-joe- type of fence- wrought iron showed photo

(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.

Ms. Kaczor made a **MOTION**, seconded by Mr. Mateer, 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:

Meeting adjourned at 8:34P.M.

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

Rosemary M. Messina, Secretary
Zoning Board of Appeals

Joseph Liberti, Chairman