

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the September 20, 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

**APPROVED
MINUTES**

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 August 16, 2016 meeting minutes as presented.

MINUTES UNANIMOUSLY APPROVED.

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 #30-16, Bernadette Clabeaux, 5098 Murphy Road, Zoned R-2 (Part of Farm Lot 29, Township 9, Range 7; SBL#172.18-2-12). Requests an Area Variance to construct an animal enclosure within 100-ft. of a property line. No building or pen used to contain animals shall be located within 100-ft. of any property line, Section 144-32A (1).

APPEARANCE: Bernadette Clabeaux, Applicant/Property Owner

Ms. Clabeaux told the Board that she would like to obtain a license from the "U.S. Fish and "Wildlife" agency to rehabilitate injured raptors. They require that structures must be built according to the "Minimum Standards for Wildlife Rehabilitation". Ms. Clabeaux feels that if the variance is granted it may facilitate her license approvals.

The Board members' questions established that the structure will be located 10-ft. from the neighbor's property line, and 50-ft. from their residence. The total number of birds at the site will not exceed four. Rehabilitated birds will be released where they were originally found. Those that cannot be rehabilitated within 190-days are placed with another rehab shelter, or put up for adoption at the SPCA. It was verified that Ms. Clabeaux spoke to her neighbors and no objections were voiced regarding the requested variance. The structures will house Owls or Red Tail Hawks. It was further verified that all New York State licenses will be obtained. The site will not be seen from the roadway and there will be no public visitation.

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

A question arose from the floor from Ms. Margaret Manos. She asked the Applicant to clarify the location of the project.

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:

LIBERTI	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

2. ZBA File #31-16, Joe Kaczmarz, 59 Hilltowne Drive, Zoned R-2 (Sub Lot 2, Map Cover 3490; SBL#184.07-3-2). Requests an Area Variance to allow a shelter structure to remain within 2-ft. of the dwelling. No accessory structure shall be located closer than 10-ft. to any primary structure, Section 144-24 A (1) (C).

APPEARANCE: Mr. Joe Kaczmarz, Applicant/Property Owner

Mr. Kaczmarz explained to the Board that when he placed a small gazebo type structure on his property he was unaware that he needed a Building Permit to do so. He told the Board that the materials used match his residence and that he does not feel the gazebo changes the character of the neighborhood. He further stated that the structure is barely visible behind his home, and that only one neighbor can view it. He submitted a list of the neighbors he had contacted, noting that there were no objections to the variance request.

Ms. Kaczor established that Mr. Kaczmarz did not attach the gazebo structure to his residence due to the roof line of the home.

Mr. Mateer established that Mr. Kaczmarz spoke to his neighbors. A list of those spoken to was submitted to the Board. The Secretary will enter this information into the permanent file.

Mr. Lennartz verified that Mr. Kaczmarz installed the gazebo himself and that he was unaware that he needed a permit to do so.

Mr. Metz established that there will be no electric power in the gazebo or flammable materials.

Mrs. Bernard established that there will be no propane grill kept in the gazebo.

Chairman Liberti established that the gazebo is anchored to the patio, and that the patio is anchored to the residence.

Mr. Metz established that there is no plan to enclose the gazebo.

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 Ms. Kaczor, to **GRANT** the Area Variance for the following reasons with a **Stipulation**:

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 is granted with the following STIPULATION:

1. The gazebo structure is not to be enclosed.

THE MOTION BEING:

LIBERTI	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED WITH A STIPULATION.

3. ZBA File #32-16, Lance Johnson, 6086 Scherff Road, Zoned A-1 (Part of Farm Lot 3, Township 9, Range 7; SBL#198.01-1-3). Requests an Area Variance to construct a detached garage which will increase lot cover to 13.25%. Maximum lot coverage for this A-1 Lot is 10%, Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Lance Johnson, Applicant/Property Owner

Mr. Johnson told the Board that he would like to construct a detached garage. However, according to Town Regulations, A-1 Zones are limited to a maximum lot coverage of 10%. He feels that the limitation creates a hardship for his small property.

Mr. Lennartz told Mr. Johnson that he feels this is a large variance request. He asked Mr. Johnson to explain why he cannot abide with the Zoning Law.

Mr. Johnson stated that he desires to construct a basic two-car garage.

The Board members discussed removing an existing shed on the property within one-year of constructing the detached garage.

Ms. Kaczor established that no business will be operated from the proposed detached garage.

Mr. Mateer reviewed the map with Mr. Johnson. He established that the existing shed is approximately 21-ft. x 12-ft. in size. He concurred that removing the shed will create more room on the property.

Mr. Metz discussed a shared access road and Mr. Johnson explained that it led to an Erie County water tower that is located within Chestnut Ridge Park.

Mrs. Bernard established that the existing attached garage is a one-car garage. She discussed what would be stored here and in the new garage.

Mr. Metz established that two vehicles will be stored in the proposed detached garage and a lawn mower.

Chairman Liberti discussed the compromise of removing the existing shed.

Mr. Johnson agreed to remove the shed within one-year of constructing the detached garage.

Mr. Lennartz established that Mr. Johnson spoke to a neighbor regarding the variance request and that he has not received any objections to his 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. Lennartz made a **MOTION**, seconded by Ms Kaczor, to **GRANT** the Area Variance for the following reasons with a **STIPULATION**:

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 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.

This Variance is Granted with the following Stipulation:

1. The existing shed is to be removed within one-year of the construction of the detached garage.

THE MOTION BEING:

LIBERTI	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	NAY
METZ	AYE

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

4. ZBA File #33-16, Robert & Elizabeth Wagner, 3954 N. Freeman Road, Zoned R-2 (Part of Farm Lot 8, Township 9, Range 7; SBL#162.13-3-4). Requests an Area Variance to construct a storage barn within the front yard. No accessory structure shall be located within the front yard, Section 144-24 A (1) (b).

APPEARANCE: Mr. & Mrs. Robert Wagner, Applicants/Property Owners

Mr. Wagner would like to construct a storage barn and locate it at the front of his property. He does not feel the barn will be viewed from the roadway as the existing apple orchard creates a natural buffer. He explained that locating the storage barn in the rear yard is difficult due to the topography and existing trees.

He further stated that his residence is 400-ft. from the roadway, and that he feels it is practical to keep the storage barn close to the residence, with the existing driveway to access it. He told the Board that with the return of children back home many items and several vehicles need to be stored. He noted that he spoke to his neighbors and that no objections were voiced regarding the variance request. He submitted four (4) signed petitions in support from his neighbors. The Secretary will enter these into the permanent record.

Ms. Kaczor established that the structure's facade will be natural wood.

Mr. Lennartz established that the structure will be 27-ft. deep by 60-ft. wide.

It was established that no variance is needed if the storage barn is located behind the house. However, the topography of the site is an issue, and many trees would need to be removed if the structure is located there.

Mr. Metz thanked Mr. Wagner for his service to our Country. He established that the proposed storage barn is large enough to meet his family's storage needs.

Mrs. Bernard discussed the access doors on the proposed barn and established that they would be on the side facing the driveway. She also established that one pear tree will need to be relocated.

Ms. Kaczor established that no business will be operated from the barn.

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. Jonathan Kuntz
3955 North Freeman Road
Orchard Park, New York 14127*

Mr. Kuntz stated that he does not support the variance request.

*Ms. Sally Wales
3950 N. Freeman Road
Orchard Park, New York 14127*

Mr. Kuntz stated he is representing Sally Wales, 3950 N. Freeman Road, Orchard Park, NY. Mr. Kuntz submitted a note from Ms. Wales to the Board for their review, wherein she states she is against the variance request as she feels the structure will lower her property value.

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 established that the location of the proposed barn would be approximately 200-ft. from the roadway.

Mrs. Johnson told the Board that the barn will be located behind her neighbors, including Ms. Wales, residence. She also confirmed that there will be no pumpkin farm or business operating from the barn.

Mr. Lennartz asked Mr. Kuntz for further clarification to his objection of granting the variance. It was determined that several of his objections were not relevant to the variance request before the Board.

The Board reviewed the submitted plan and the location of the barn on the survey map.

An unknown resident came forward to review the location of the proposed barn on the survey map with the Applicants. She expressed concerns involving lighting issues and it was established that no spot lights will be installed on the barn.

Code Enforcement Officer David Holland stated that residential lighting is not regulated by the Town Code.

Deputy Town Attorney Berkowitz stated that the Board can stipulate whatever they feel is necessary.

Chairman Liberti reviewed the map further with the applicants. He discussed relocating the barn elsewhere on the property. The discussion concluded that there is no place to locate the structure that is free of topography or tree issues.

Mr. Mateer asked Mr. Wagner why 200-ft. was selected from the front roadway to place the barn. It was learned that Mr. Wagner did not want to impact existing apple trees and a row of 80-ft. high pine trees.

Mrs. Bernard established that the location for the barn is staked out at the site.

Mr. Lennartz verified additional information regarding the request with Code Enforcement David Holland.

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

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 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.

This variance is granted with the following Stipulations:

1. The size of the storage barn is not to exceed 27-ft. x 60-ft.
2. The storage barn is to be located in the front yard, 200-ft. from the front roadway.
3. There is to be limited lighting with no outside spot lights placed on the building.
4. There is to be no business operation or commercial use of the barn.

THE MOTION BEING:

LIBERTI	AYE
KACZOR	NAY
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

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

5. ZBA File #34-16, Thomas Olivieri, 6186 S. Abbott Road, Zoned A-1 (Part of Farm Lots 34 & 35, Township 9, Range 7; SBL#196.02-3-7.1). Requests an Area Variance to unmerge 3 parcels and restore them to their pre-merge configuration. Newly created lots must conform with Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Thomas Olivieri, Applicant/Property Owner

Mr. Olivieri explained that his father merged three parcels he owned into one Sub Lot Number, and that he would like to un-merge the parcels to be able to sell the two vacant lots for the development of residential homes. He noted that he has a buyer for both properties.

Code Enforcement Officer David Holland told the members that each lot will be 114-ft. wide. The regulation is 160-ft. in this A-1 Zone.

Mr. Mateer requested to review the property survey from 1960 with the original house survey.

Ms. Kaczor established that Mr. Olivieri spoke with his neighbors regarding the variance request and no objections were voiced.

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 discussed the sizes of the lots and the taxes that would be generated with these properties with Deputy Town Attorney Len Berkowitz.

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:

LIBERTI	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

6. ZBA File #35-16, Patrick Badaszewski, 5471 Berg Road, Zoned R-3, (Part Farm Lot 449, Township 10, Range 7; SBL#152.09-1-20). Requests an Area Variance to install a 6-ft. high fence in a side street yard, maximum height of a fence in a side street yard is 3-ft., Section 144-22 A (1).

APPEARANCE: Mr. Patrick Badaszewski, Applicant/Property Owner

Mr. Badaszewski explained to the Board that he would like to erect a 6-ft. high fence to keep his dog from leaving their yard. He submitted photos of his dog, his neighbor's 6-ft. high fence, and signed petitions from several neighbors stating that they had no objection to the requested variance.

Mr. Metz confirmed that Mr. Badaszewski's neighbors do not have objections to the variance request.

Mr. Lennartz discussed the proposed stockade fence further with Mr. Badaszewski.

Mr. Mateer asked about using an electric fence, but Mr. Badaszewski does not want to use that type of product with his pet. Mr. Mateer suggests that perhaps a four-ft. fence could be used, as it would be less of a visual barrier.

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.

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

1. There will be no 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 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.

This variance is granted with the following Stipulation:

1. The fence is not to exceed four (4) feet in height.

THE MOTION BEING:

LIBERTI	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	NAY
METZ	AYE

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

7. ZBA File #36-16, removed by Applicant.
8. ZBA File #37-16, Jim & Jackie Ennis, 7664 E. Quaker Road, Zoned R-1 (Part of Farm Lot 72, Township 9, Range 7; SBL#162.00-3-35). Requests an Area Variance to install a 4-ft. high spilt rail fence within the front yard. Maximum height of a fence in a front yard is 3-ft., Section 144-22A (1).

APPEARANCE: Mr. & Mrs. Jackie Ennis, Applicants/Property Owners

Mr. & Mrs. Ennis explained that they would like to install a 4-ft. high spilt rail fence in their front yard to replace a former one.

Ms. Kaczor established the fence is for decoration.

Mr. Mateer asked the Applicants to explain why a three-foot high would not suffice.

Mrs. Ennis explained to the Board that the original fence on the property was a 4-ft., three rail fence. It is their desire to have the site restored to its former condition and be ascetically appealing.

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 can 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:

LIBERTI	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

Meeting adjourned at 8:26 P.M.

DATED: October 27, 2016
 REVIEWED: November 15, 2016

Rosemary M. Messina, Secretary
 Zoning Board of Appeals

Joseph Liberti, Chairman