

APPROVED MINUTES

ZBA Mtg. #10

Regular Mtg. #10

October 18, 2016

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ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the October 18, 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.

There are no meeting minutes available at this time to be voted on.

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 #38-16, Michael Tronolone, 70 Fairway Drive, Zoned R-1 (Sub Lot 2, Map Cover 2373; SBL#173.14-2-19). Requests an Area Variance to add a roof structure over an existing side entrance which projects into the required side street yard. Every part of a required yard must be open to the sky, Section 144-22A.

APPEARANCE: Mr. Mike Tronolone,

Mr. Tronolone explained to the Board that he would like to add a roof to offer protection from the elements over his existing side doorway entranceway.

Ms. Kaczor established that the water from the roof will drain to the gutter system.

Chairman Liberti established that Mr. Tronolone spoke with his neighbors, and that there were no objections voiced 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.

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:

LIBERTI	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

2. ZBA File #39-16, request withdrawn.

3. ZBA File #40-16, Thomas Whieldon, 4164 Imperial Drive Zoned R-3 (Sub Lot 66, Map Cover 2363: SBL#161.20-6-63). 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. Thomas Whieldon, Petitioner/Property Owner

Mr. Whieldon presented photos to the Board of a privacy hedge that buffered the view of his side street yard. He explained that when he first bought this property the hedge was 12-ft. high and overgrown. He trimmed the hedge down to 8-ft. and preserved his buffer. However, the hedge did not survive this year. Therefore, he would like to install a 6-ft. high fence in its place to gain back his privacy. He told the Board that he did not feel the variance request would create an undesirable change to the character of the neighborhood as there are other neighbors with 6-ft. high fences. He further stated that the care of the hedge became time and labor consuming, and now it is dying. He explained the proposed fence and where he would like to place it. The fence will be 4-ft. 8" high, with a lattice board at the top that is 1-ft. 4" high. The fence will be 84-ft. by 30-ft. in length. Mr. Whieldon feels he has a "road" in his backyard and that the fence will eliminate its view from passersby.

Mr. Lennartz asked for Mr. Whieldon to restate the measurements of the proposed fence. He established that the fence will be white, 4'-8" tall with lattice board at the top, 1-ft. 4" high, making it a total of 6-ft. high and 84-ft. x 30-ft. in length.

Mrs. Bernard established that Mr. Whieldon's placement of the fencing is based on limiting the loss of his back yard space. She established that the hedges were approximately 4-ft. wide and that the fence will be placed on top of the area where the hedges had been.

Mr. Metz established that the fence will be 16-ft. from the edge of the culvert and not be attached to the residence.

Mr. Lennartz asked Mr. Whieldon if he would consider a compromise of reducing the total height of the fence to 4-ft. However, Mr. Whieldon told the Board that a 4-ft. fence will not provide the privacy he is looking for.

Mr. Whieldon told the Board that he desires what 38-homes in his neighborhood have, six-foot high fences. However, a five-foot high fence is agreeable to Mr. Whieldon. He realizes this situation is created because his property is a corner lot. He told the Board that he is not asking for anything he did not have before, as the hedge was taller than what he is asking for. He noted that he could have let the hedge grow to even higher heights, but it died.

Chairman Liberti stated that a 3-ft. fence is what the Town Ordinance allows. He feels Mr. Whieldon should plant pine trees here to solve his privacy issue.

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 stated that he supports a five-foot high fence.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, 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 fence is not to exceed a total of 5-ft. in height.

THE MOTION BEING:

LIBERTI	NAY
KACZOR	NAY
LENNARTZ	AYE
MATEER	NAY
METZ	AYE

THE MOTION BEING THREE (3) NAYS AND TWO (2) AYES, THE MOTION IS DENIED.

4. ZBA File #41-16, Scott Patronic, 12 Pawtucket Row, Zoned R-1 (Sub Lot 245, Map Cover 2283; SBL#174.17-1-34). Requests an Area Variance to construct a cabana with a 2-ft. side setback. Minimum side setback for this R-1 lot is 15-ft., Section 144-9B, Schedule of Height, Lot, Yard and Bulk Regulations.

APPEARANCE: Mr. Scott Patronic, Petitioner/Property Owner

Mr. Patronic stated that he had wanted a shed to store his patio furniture in, and that the plans grew to having a cabana for use with his in-ground pool. In the off-season the cabana will be used to store the patio furniture. He told the Board that he spoke with his neighbor on the north and there were no objections voiced to the variance request. Although a variance is not necessary if the cabana is placed in the back yard Mr. Patronic would like to locate the cabana at the far corner of the property. Mr. Patronic feels it is undesirable to locate the cabana there due to accessibility and the additional work involved to locate it there. He also feels his neighbor at the back of his property would not want to have a direct view of the cabana, so locating it in the corner, tucked away, is the best choice.

Mrs. Bernard asked if Mr. Patronic had taken into consideration the plumbing for the half bath and the slope needed for sewer flow. Mr. Patronic stated that he had chosen the proposed location as other locations involved tree removal and had difficulties with locating the cabana. In placing the cabana at the rear corner of the property he did not take into consideration the slope of the property.

Mr. Lennartz confirmed that the neighbor most affected wrote a letter of support.

Mr. Liberti discussed the location of the cabana further with Mr. Patronic.

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:

*Louise Zelasko
70 Concord Drive
Orchard Park, New York 14127*

Mrs. Zelasko told the Board that she lives at the South East corner of this property, and for the last thirty-years it has been a pristine buffer. She would hate to see it taken away and she does not want to have her neighborhood change.

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.

The members discussed the request, noting that the request could be achieved in another way.

Mr. Mateer discussed reducing the size of the cabana, and revising the setback request to three-feet.

Mr. Lennartz stated that this is not a small storage shed, and fifteen-feet is the code.

The Board reviewed photos of the cabana.

Mr. Mateer made a **MOTION**, seconded by Ms. Kaczor, to **GRANT** the Area Variance for a 9' x 18' structure, with a three-foot side setback based on 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 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	NO
KACZOR	NO
LENNARTZ	NO
MATEER	AYE
METZ	NO

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

5. ZBA File #42-16, David Wahl, 34 Saddle Brook Court, Zoned R-2, (Sub Lot 12, Map Cover 3331: SBL#153.15-1-32). Requests an Area Variance to construct a shed with a 5-ft. and 7-ft. rear and side setback. Minimum rear and side setback for this R-2 lot is 15-ft., Section 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. David Wahl, Petitioner/Property Owner

Mr. Wahl explained that he desires to locate a storage shed on his property. However, there are difficulties with the topography of his parcel. The only level area to place the shed is at the rear, northeast corner of his lot, as his property is a hill with steep grading in both the front and rear yards. To locate the shed here, Mr. Wahl will need to have variances granted for a five-foot and seven-foot rear and side yard setback. He submitted five letters of support from his neighbors. These documents will be entered into the permanent file.

Mrs. Bernard established that the doors of the storage shed face inside the property, that the front door faces the roadway, that the shed will be Amish built, and that the shed will be placed on crushed stone. She verified that his neighbors support the variance request. He further stated that no one will ever occupy the property adjacent to this rear yard as the Town of Orchard Park owns the property.

Mr. Metz established that the shed will be used to store patio furniture and not a tractor.

Mr. Lennartz stated that the use of the shed will be also for seasonal items. He verified that the neighbors have no objections to the variance request.

Mr. Mateer established that no one will live behind Mr. Wahl as the Town owns the property.

Ms. Kaczor established that no business will be carried on in the shed.

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:

LIBERTI	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

6. ZBA File #43-16, Charles Dunham III, 3840 Sheldon Road. Review moved to November 15th meeting.
7. ZBA File #44-16, David & Karen Ort, 315 Independence Drive, Zoned R-1 (Sub Lot 4, Map Cover 2546; SBL#185.07-1-4). Requests an Area Variance to construct a shed with a 3.5-ft. side setback. Minimum side setback for this R-1 Lot is 15-ft., Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. & Mrs. David Ort, Petitioners/Property Owners

Mrs. Ort stated that they submitted an incorrect request; the side setback should read 5-feet, and not 3.5-ft.

Mr. Ort explained that he desires to locate a storage shed on his property, however, his property slopes downward. If the shed is placed on the north side of the parcel drainage issues will occur along with landscaping and tree removal. He reviewed photos of the proposed location on the south side of the property with the members, noting it was chosen as it is flatter, has existing trees to buffer the view of the shed, and measures were taken to control the drainage. The area will need to have some grading performed, but they feel the shed will not be viewed here and cause a detriment to the nearby neighbors.

Mr. Metz asked for clarification regarding the proposed shed's location on the survey.

Ms. Kaczor established that no business will be run from the shed.

Mr. Mateer established that Mr. Ort spoke with several neighbors and no objections were voiced to the variance request.

Mr. Lennartz stated that a correspondence was received from an adjacent neighbor, Mr. Bauer at 305 Independence Drive, who is against the variance.

Mr. Ort stated that he is willing to work with his neighbor to buffer the shed further. Perhaps additional trees can be planted to buffer the shed.

Mr. Metz asked if the setback area could be further than 5-ft. Mr. Ort discussed issues of topography and the removal of trees. He feels they could move the setback slightly due to a drop-off area here.

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.

Mr. Lennartz asked if Mr. Ort would agree to a 7-ft. side setback. Mr. Ort stated he would agree to this stipulation.

Ms. Kaczor would like the Petitioner to plant trees to buffer the adjacent neighbor's view of the shed.

(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 with **STIPULATIONS**, 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 Variance is granted with the following Stipulations:

1. The minimum side setback is to be seven-feet.
2. Trees are to be planted to buffer the neighbor's view of the shed.

THE MOTION BEING:

LIBERTI	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED WITH TWO STIPULATIONS.

8. ZBA File #45-16, ITT/Enidine, 7 Centre Drive, Zoned I-1 (Part of Farm Lot 31, Township 9, Range 7; SBL#161.19-1-2). Requests an Area Variance to add a parking area partially located within the front yard. Parking is prohibited in the front yard in this I-1 Zone, Section 144-29A (4).

Ms. Kaczor recused herself from voting in this case. The Alternate member, Mrs. Bernard, will be voting.

APPEARANCE: Mr. Greg Schneider, Aurora Architectural

The Petitioners explained to the Board that they require additional space for their growing business and would like to expand their building. They indicated on the presented Site Plan that the expansion would be located on the west side of the property. It was noted that several parking spaces will be displaced. Therefore, they are seeking a variance for "Front Yard Parking" to construct spaces at the front of the property. They feel it is a hardship for employees and visitors to walk approximately 500-ft. to access the building, when access would be within 200-ft. if the parking were located at the front. They further feel safety issues are involved in the winter months, and they would like the parking closer to access the building. They noted that there is a total of over 50% Green Space at the site and they discussed the parking further with the members.

Mr. Metz reviewed the map and asked for further clarification regarding the parking area. He also verified that the Town Engineering Department will review drainage issues for the site.

Mr. Schneider told the members that the Petitioners are trying to preserve the existing landscaping at the site.

Mrs. Bernard discussed the number of spaces lost (23) with Mr. Schneider and questions if the need for parking spaces diminishes during the night shift. Mr. Schneider told the Board that during the night shift changeover, the number of parking spaces needed is tight. During the winter months they have snow moved and stored where it will not impact the number of parking spaces available.

Mr. Lennartz stated that he visited the site today, in the afternoon, and there were no parking spots to be found at the site. He established that the Petitioners feel the number of proposed parking spaces will be adequate.

Mr. Mateer indicated on the Site Plan that that another option open to the Petitioner is to shift the driveway. However, the Petitioner stated that doing so would create a safety issue. Additionally, a Green Space buffer would be reduced that the adjacent property benefits from.

Mr. Liberti established that the light plan will be reviewed during Site Plan Review by the Planning Board.

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 that there was one letter not supporting the request from Mr. Peter Krog. The Chairman suggests that the Petitioners speak with Mr. Krog.

Board discussion.

Mr. Lennartz stated this is reasonable request.

Mr. Lennartz 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:

LIBERTI	AYE
KACZOR	RECUSED
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BERNARD	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

Meeting adjourned at 8:15 P.M.

DATED: 11/18/16
REVIEWED: 12/20/16

Rosemary M. Messina, Secretary
Zoning Board of Appeals

Joseph Liberti, Chairman