

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the July 17, 2018 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman/Robert Metz/Lauren Kaczor/Dwight Mateer/
Barbara Bernard, Alternate

EXCUSED: Robert Lennartz

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney
David Holland, Code Enforcement Officer
Rosemary Messina, Recording Secretary

The members recited the Pledge of Allegiance and the Chairwoman called the meeting to order at 7:00 P.M., stating that if anyone appearing before the Board was related through family, financial or a 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 Chairwoman 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 Chairwoman stated that Mrs. Bernard, the Alternate member, will be voting due to the absence of Mr. Lennartz.

The meeting minutes for the June, 2018 meeting were not available at this time, and will be voted on at the next meeting.

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

BOWERS, AYE/BERNARD, AYE/KACZOR, AYE/MATEER, AYE/METZ, AYE

1. ZBA File #19-18, Sylvia & Stephen Ottley, 9 Sandpiper Court, Zoned R-1 (Sub Lot #31, Map Cover 3207; SBL #173.12-2-20). Requests an Area Variance to construct a garage addition which creates a combined side setback of 36.5-ft. Required combined side setback for this R-1 Lot is 45-ft. Section 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Edward Shanahan, Atlantic Garages

Mr. Shanahan stated that a previous request for a Variance was denied. He presented and explained a new plan, noting that after meeting with the Birdsong Home Owners Association (HOA), Mr. Ottley must attach the proposed garage to his existing residence. The proposed garage cannot be located without needing an Area Variance, as it will not be in compliance with the Town Code. The Petitioner does not feel the granting of the Variance will create an undesirable change to the character of the neighborhood or a detriment to the nearby properties.

Ms. Bowers established that the garage addition will match the existing structure and confirmed where the two-car garage would be located.

Mr. Mateer established that the structure will be 20-ft. long x 24-ft. wide.

Ms. Bernard established that the Petitioner has several cars he would like to store inside.

Ms. Kaczor established that there are no issues with the neighbors and the Birdsong HOA.

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

(Twice) NO RESPONSE

The Chairwoman 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 were received.

Board Discussion:

Mr. Mateer made a **MOTION**, seconded by Ms. Kaczor, 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.
2. The benefit sought cannot be achieved in another way, other than the granting of the variance.
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 district.
5. The difficulty is self-created, but that does not preclude the granting of the Variance.

THE MOTION BEING:

BOWERS	AYE
BERNARD	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

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

2. ZBA File #21-18, Carol & Ray Opie, 170 Squire Drive, Zoned R-1 (Sub Lot 28, Map Cover 2527; SBL #185.06-7-28). Requests an Area Variance to construct a garage addition partially located 11-ft. from the side lot line. Minimum side setback for this R-1 Lot is 15-ft., Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Raymond Opie, Petitioner & Property Owner

Mr. Opie explained to the Board his desire to construct a garage addition to store his personnel vehicles. He explained he would like the proposed garage aligned with the back of his residence, but an existing chimney on the side of the residence interferes with this. Placing the front corner of the garage 11-ft. from the property line accomplishes his goal, but an Area Variance is needed for the side setback. The members' questions established that the proposed 24-ft. x 14-ft. garage will match the existing residence, a business will not be operated from this structure, and that Mr. Opie spoke to his neighbors and no objections were voiced regarding the Variance request.

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

(Twice) NO RESPONSE

The Chairwoman 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 were received.

Board Discussion: The members did not find a problem with this request.

Mr. Metz 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, or a detriment to nearby properties.
2. The benefit cannot be achieved in another way, other than the granting of the variance.
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 district.
5. The difficulty is self-created, but that does not preclude the granting of the Variance.

THE MOTION BEING:

BOWERS	AYE
BERNARD	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

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

3. ZBA File #20-18, Bell Atlantic Mobile Systems of Allentown, Inc., D/B/A Verizon Wireless, 7263 Ellicott Road, (Part of Farm Lot 60, Township 9, Range 7; SBL #185.03-2-15.11). Requests Site Plan Review and Tower Permit Approval for a 144-ft. Monopole Tower and Telecommunication Facility as required by Chapter 144, Article VII.

APPEARANCE: Mr. Robert Brenner, Nixon Peabody LLP

Mr. Brett Morgan, Verizon Wireless Site Acquisition Consultant

The Petitioner explained the need for a permit to construct a 144-ft. monopole tower (plus 4-ft. lightning rod) and associated equipment located at the foot of the tower. Other site improvements, as shown on the submitted Site Plan, will be carried out. The tower exceeds the 35-ft. maximum structure height allowed in an A-1 Zone. Verizon Wireless requests approval to accommodate the project as proposed.

Attorney Leonard Berkowitz suggests the Applicants initially present "Exhibit E", the "State Environmental Quality Review Act" (SEQRA) Long Form, to assist the members in making a determination of a "Positive" or "Negative SEQRA Declaration".

Mr. Mateer stated that he was not provided a copy of the submission for his review as there were not enough copies.

Summarization of presentation:

- The submitted SEQR Document, is reviewed.

Mr. Metz made a motion, seconded by Mr. Mateer, that this is an Unlisted Action and that a **Negative Declaration under SEQR** be made based on the submitted Long EAF.

THE MOTION BEING:

BOWERS	AYE
BERNARD	AYE
MATEER	NAY
METZ	AYE
KACZOR	AYE

THE VOTE ON THE **MOTION BEING FOUR FAVOR** and **ONE AGAINST**, A **NEGATIVE DECLARATION** IS MADE UNDER **SEQR**.

The members' questions established the following:

- Generator is tested one day per week (Tuesday's at 11:00 A.M. for 15 to 20 minutes).
- Fall Zone of tower discussed.
- Site Lighting is activated by a motion sensor.
- Easement agreement will be in place with Orchard Park resident that owns the property to access tower site with small dirt road.
- Time frame for construction is approximately two to three months.
- Section E, Page 5 at top of page discussed "Document states maximum power levels, not exceeded", response from Petitioner is, "to see Page 2, Summary".
- The residence on the left of the site is owned by the Church; construction of the tower and testing of the generator will not be an issue. They will arrange with the Church when the generator testing occurs on Tuesdays.
- Discussion of having a stipulation that the testing occurs only during business hours.
- Demolition Bond - will be in place if equipment becomes obsolete and needs to be removed. Board members would like additional information on the Demolition Bond.
- Before and after photos of the site created using weather balloons were discussed.
- Discussed Site Inspection to take place every five years; this can be required by the Board.

Discussion to Table this item, pending Board review. Petitioner to provide additional copies of submission and a draft resolution for the Board's review.

The Chairwoman then asked if there was anyone in the audience who would wish to speak in favor of this application.

IN FAVOR:

*Mr. Ray Caputo
17 Bruce Drive
Orchard Park, New York 14127*

Mr. Caputo stated that he supports the request for the cell tower; it is needed.

The Chairwoman then asked if there was anyone in the audience who would wish to speak against the application.

IN OPPOSITION:

*Mr. Joseph Salla
5790 Cole Road
Orchard Park, New York 14127*

Mr. Salla is not in favor of this request. He feels it is against the best interest of the neighboring property values and will impact wildlife.

*Mr. Michael McLellan
7179 Ellicott Road
Orchard Park, New York 14127*

Mr. McLellan told the member he lives four houses down the street from the Church. He is against this project and feels it is not in the best interest of the neighbors; what are the safe parameters? He feels if your calls are dropped you should get another carrier.

*Mr. Anthony McLellan
7179 Ellicott Road
Orchard Park, New York 14127*

Mr. McLellan spoke against the project citing environmental and property impacts.

The members discussed additional information they would like the Petitioner to return to the Board with.

Ms. Bowers made a **MOTION**, seconded by Ms. Kaczor, to **TABLE** the review of this case, pending the receipt of the requested information.

THE MOTION BEING:

BOWERS	AYE
BERNARD	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

THE MOTION BEING FIVE (5) IN FAVOR, THE MOTION TO TABLE IS PASSED.

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 8:07 P.M.

DATED: 8/08/18

REVIEWED: 8/21/18

Zoning Board of Appeals
Rosemary Messina, Secretary

Kim Bowers, Chairwoman