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

MEMBERS PRESENT: Robert Lennartz, Acting Chairman/Robert Metz/Lauren Kaczor/

Dwight Mateer/Barbara Bernard, Alternate

EXCUSED: Kim Bowers, Chairwoman

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 Acting Chair 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 Acting Chair 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 Acting Chair stated that the Alternate member will be voting this evening due to the absence of Ms. Bowers.

**APPROVAL OF MINUTES:**

**The meeting minutes for August 21, 2018, meeting were unanimously approved.**

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

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

1. ZBA File #26-18, Richard E. Wilson, 50 E. Royal Hill Drive, Zoned R-3 (Sub Lot 18, Map Cover 2521; SBL#153.10-1-18). Requests an Area Variance to allow an accessory structure to remain within 7-ft. of the dwelling. No accessory structure shall be located closer than 10-ft. to any primary structure, §144-24A (1) (c).

APPEARANCE: Mr. Richard Wilson, Petitioner/Property Owner

Mr. Wilson explained that he ordered a custom built “Tiki Bar” shed and had it delivered and placed on a concrete pad approximately 7-ft. from his primary residence. The Code requires it to be located at 10-ft. He told the Board that he feels the structure is an extension of his patio. It is used for pleasure and entertaining, and not for storage. Moving the structure to another area on the property will minimize its usage.

Acting Chair Lennartz established that only chairs will be stored in the structure.

Ms. Kaczor established that there is no electric outlet available in the structure, and that Mr. Wilson uses an extension cord for his power needs.

Mr. Mateer discussed the possibility of moving the shed to make it compliant with the Town Code. Mr. Wilson explained that he could move it, however, that would involve placing the structure at an angle near the pool.

Mr. Metz established that Mr. Wilson’s neighbors have voiced no objections to the variance request. He also confirmed that the Mr. Wilson does not have plans to add electrical service to the structure, as the extension cord usage is satisfactory.

Mrs. Bernard established that moving the structure to conform to the Town Code will place it closer to the neighbors and 4-ft. closer to the property line.

Mr. Mateer confirmed with Code Enforcement Officer David Holland that the structure must be located 10-ft. from the side lot line. It is currently at 12-ft.

The Acting 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 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 were received.

Board Discussion: Acting Chair Lennartz expressed his support for the request.

 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, 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:**

**BERNARD AYE**

**LENNARTZ AYE**

**MATEER NAY**

**METZ AYE**

**KACZOR NAY**

THE **MOTION** BEING **THREE (3)** **IN FAVOR,** AND **TWO (2) AGAINST,** THE **MOTION** IS **PASSED.**

2. ZBA File #27-18, Ann Pascarella, 5624 Chestnut Ridge Road, Zoned R-2 (Part of Farm Lot 12, Township 9, Range 7; SBL#184.16-1-9.1). Requests an Area Variance to install an inground swimming pool within the front yard of this premises. No swimming pool will be permitted in a front yard or required side yard, §144-30 C (6) (d).

 APPEARANCE: Ms. Ann Pascarella, Petitioner/Property Owner

Ms. Pascarella stated that she would like an inground swimming pool constructed and located on the east side at the front of her newly built residence. The pool will have a 4-ft. fence installed on three sides, as the fourth side is parrell to the residence, and access to the pool is not available here.

She told the members that the pool cannot be located elsewhere on her property for the following reasons: the south side has an existing power pole, building, and the topography of the land is a challenge with a drop-off; the north side has underground utilities running north/south to the new house; and the west side has an existing driveway to a barn on the property.

Acting Chair Lennartz established that the older residence located here will be demolished, and that the pool would require a variance if it were located where the older residence was.

A decorative 4-ft. wrought iron fence will be installed around three sides of the pool, the fourth side is aligned with the new residence and fencing is not necessary. A berm (height unknown) will be constructed to buffer the view of the pool.

Mrs. Bernard established that the berm will be located on Ms. Pascarella’s property and not in the right-of-way.

Mr. Metz established that the pool will be 12-ft. wide with 3-ft. of concrete placed around the perimeter.

Mr. Mateer discussed locating the pool at the back of the residence. Ms. Pascarella explained that drainage, a telephone pole, a driveway to an existing barn, and the topography of the site, are all reasons this is not possible.

Acting Chair Lennartz discussed the topography of the site, noting that the drop-off interferes in locating the pool elsewhere. He also noted that the Petitioner does not have neighbors living close by.

Ms. Kaczor established that no business will be run in conjunction with the pool.

Mr. Mateer discussed reducing the size of the pool with Ms. Pascarella to 10-ft. wide.

Acting Chair Lennartz stated that he feels this is a difficult piece of property.

Mr. Metz established that the drop-off leaves no room to locate an above ground pool or an in-ground pool. Ms. Pascarella does not feel an above ground pool is attractive.

The Acting Chair then asked if there was anyone in the audience who would wish to speak in favor of granting the Variance request.

(Twice) NO RESPONSE.

The Acting Chair then asked if there was anyone in the audience who would wish to speak against granting the Variance request.

(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 were received.

Board Discussion: The members discussed the request further. Ms. Pascarella acknowledged that she must adhere to the utility company guidelines regarding the placement of the pool 10-ft. from the power lines and 10-ft. from the residence.

Ms. Kaczor 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, 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:**

**LENNARTZ AYE**

**MATEER NAY**

**METZ NAY**

**KACZOR AYE**

**BERNARD AYE**

THE **MOTION** BEING **THREE (3**) **IN FAVOR, AND TWO (2) AGAINST, THE MOTION IS PASSED.**

There being no further business to be presented to the Board at this time Acting Chair Lennartz adjourned the meeting at 7:22 P.M.

DATED: 9/27/18

REVIEWED: 10/16/18 Zoning Board of Appeals Rosemary Messina, Secretary

Robert Lennartz, Acting Chair