

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the February 19, 2019 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

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

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney
David Holland, Code Enforcement Officer
Norman Stoj, Chairman of Historic Preservation Board
Rosemary Messina, Recording Secretary

The members recited the Pledge of Allegiance and the 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 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 Chair and the members welcomed Mr. Lennartz back to the Board after recovering from his accident.

APPROVAL OF MINUTES:

The meeting minutes for January 15, 2019, were approved with one (1) abstention.

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

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

1. ZBA File #01-19, Jack Ruh, 75 Mid County Drive, Zoned I-1 (Part of Farm Lot 25, Township 10, Range 7: SBL#161.07-5-31). Requests two Area Variances to divide this parcel. First, to allow 46% lot coverage on Parcel #1. Maximum Lot Coverage for this I-1 Lot is 40%. Second, to create a 5-ft.-1" front setback for parcel #2. Minimum front setback for this I-1 parcel is 50-ft., §144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. James Bammel, Bammel Architects

Mr. Bammel explained that his client desires to split this parcel to separate the two businesses on the property. One business is a tennis center, and the other is a self-storage facility. He briefly explained that the Planning Board granted permission for an additional storage building to be constructed here, but that the owner has chosen to not go ahead with that plan. He further explained that the proposed parcel split will create a flag-lot, requiring them to request two variances. The Ordinance allows for a maximum of 40% lot coverage, and they are at 46%. The other variance is for the front setback of the flag lot, which is at 30-foot frontage (instead of 50-ft.) The depth back is 141-ft. He feels the setback does not feel like it is encroaching on the front yard because of the flag lot position.

Mr. Lennartz established that the parcel is currently one piece. Splitting the parcel with the existing Tennis Center on it, creates the need for a variance for the overage of lot coverage on Parcel #1. The existing Self-Storage Facility is on parcel #2. If the owner changed his mind about constructing the additional storage building here, he will need to come back before the Town with submission plans for review. Mr. Bammel stated that Mr. Ruh most likely desires to have the businesses separated for tax purposes.

Mr. Mateer asked if the variance requests could be reduced. Mr. Bammel discussed the requests and concluded it would lead to the need of other variance requests.

Ms. Kaczor established that the financial hardship is the need to have the businesses on separate parcels for business purposes.

Mr. Metz reconfirmed the request with Mr. Bammel that the property is being divided into two parcels and the five ft. setback is a New York State minimum, the area to the front remains with the tennis center. He also stated that he did not understand what the tax issue would be.

After further Board discussion, the Chair noted that if the property is not divided, and if Mr. Ruh desired to sell one of the businesses, the whole parcel would need to be sold. Perhaps it is something of that nature. Mr. Lennartz feels this is also a banking issue which could revolve around a number of items.

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 there was a comment from Erie County Planning, however, Deputy Attorney Leonard Berkowitz noted that as the building is not being constructed the comment is irrelevant.

Board Discussion: The members discussed the request further and concerns were raised regarding the Petitioner changing his mind and deciding to put up the other building. The Board members feel that the project would go back to the Planning board for review. If the building is going to create excess lot coverage they would have to come back to the Zoning Board of Appeals. They are not approving the building. The members do not feel this is something they have to worry about today.

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, to **GRANT** the variance request based on the following:

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties.
2. The benefit sought can be achieved in another way, other than the granting of the variance.
3. The request is 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
KACZOR	NAY
LENNARTZ	AYE
MATEER	NAY
METZ	AYE

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

2. ZBA File #02-19, Geoff Bray, 4025 North Buffalo Road, Zoned B-3 (Part of Farm Lot 16, Township 9, Range 7: SBL#162.13-3-6.111). Requests a Use Variance to convert a one-family dwelling to a two-family dwelling. A non-conforming use shall not be extended except with the approval of the Board of Appeals, §144-60, Extension of Use.

APPEARANCE: Mr. James Bammel, Bammel Architects

Mr. Bammel presented and explained the proposed plans for changing this single-family residence into a two-family dwelling. The house currently has a tenant, and Mr. Bray would like to have his family's historical homestead "brought back to life". One entrance will exist at the front, and one at the rear of the structure.

Mr. Lennartz discussed the Use Variance request with Mr. Bammel and inquired as to what the economic hardship is.

Mr. Bammel explained that the Use Variance will allow two levels of income; one to pay for repairs, the other to offer a source of income.

Ms. Kaczor established that each residence will have two bedrooms, and one bathroom.

Chairman Bowers established that based on today's market, offering the residence as a two-family home is more desirable. She further established that the driveway will remain as it is.

Mr. Mateer established that the interior has minimal renovations, and that the outside of the residence will not change in any way.

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 were received.

Board Discussion: The Members feel this is a reasonable request and that the property will be preserved. The Chair noted that Mr. Stoj, the Chairman of the Historical Board, is present in the audience and that prior to the meeting she discussed the request with him. Establishing that no changes will occur to the front of the outside of the building is well received by the Historical Preservation Board.

Mr. Mateer made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Use Variance request based on the following:

1. Strict application of the regulations will deprive the applicant of a reasonable return on the property, provided that lack of return is substantial as demonstrated by competent financial evidence.
2. The hardship is unique, and does not apply to a substantial portion of the district or neighborhood.

3. The granting of the Variance will not alter the essential character of the neighborhood.
4. The alleged hardship is not self-created.

THE MOTION BEING:

BOWERS	AYE
KACZOR	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	NAY

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

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 7:30 P.M.

DATED: March 21, 2019

REVIEWED: April 16, 2019

Zoning Board of Appeals
Rosemary Messina, Secretary

Kim Bowers, Chairwoman