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

April 16, 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

EXCUSED: Barbara Bernard, Alternate

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 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.

**APPROVAL OF MINUTES:**

The meeting minutes for February 19, 2019, and March 19, 2019 were approved with one (1) abstention.

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

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

**NEW BUSINESS**

1. ZBA File #05-19, Aaron M. Naegely, 54 Hilltowne Drive, Zoned R-2 (Sub Lot 13, Map Cover 2940; SBL #172.19-1-14). Requests 2 Area Variances to construct a detached garage in the side yard. First, to allow a 9-foot side setback, Minimum side setback for this R-2 Lot is 15-ft., §144-9B, Schedule of Height, Lot, Yard and Bulk Regulations. Second, to allow an accessory structure to be located 7-feet from the dwelling. No accessory structure shall be located closer than 10-ft. to any primary structure, §144-24A (1)(c).

APPEARANCE: Mr. Aaron Naegely, Petitioner/Property Owner

Mr. Naegely explained to the members that when his home was being built the attached garage was reduced in size and constructed as a side load garage due to the location of a sewer-line access cap at the front of the property. The size of his garage does not allow room for vehicles 20-ft. in length, nor the parking of two vehicles at the same time. He told the members that he has three vehicles. One vehicle is his work vehicle (for law enforcement) with equipment kept in it. Mr. Naegely desires to store all his vehicles in a garage to detour theft. He submitted a signed petition from his neighbors residing at #55 and #58 Hilltowne Drive indicating that they support the Variance request. Mr. Naegely discussed other garage options, noting that he cannot attach the proposed garage to his residence as the exterior wall contains his furnace exhaust and fireplace.

Mr. Lennartz verified the following information;

⦁ The garage was constructed as a side load garage due to the location of a sewer line access cap. It is smaller than a normal garage. Today’s vehicles are built larger. The size requirement needed for the proposed garage is a depth of 26-ft. to fit two, 20-ft. trucks. A third vehicle will be kept in the existing side-load garage.

⦁ The new garage will match the color, siding and house style.

Mr. Mateer established that the proposed garage depth is approximately 30-ft. If the variance is denied Mr. Naegely stated that he would have to find another way to accomplish what he needs. He cannot move the garage behind the residence as there is a rear patio and a shed located here with a berm. A variance would still be required for the rear yard. Placing the garage in the proposed location provides additional privacy to the adjacent neighbor’s pool area.

Mr. Naegely told the members that he has put a lot of thought into the garage blending with the flow of the residence and he does not want it to look like it was constructed as an aftermarket thought. He feels the proposed location is the best placement of the garage.

Ms. Kaczor established that no business will be run out of the proposed structure.

Ms. Bowers established that pavers will be used to create a walk-way to the man-door to the proposed garage.

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: Mr. Lennartz expressed that he feels the Variance should be granted, based on the discussions, visual considerations and the hardship expressed to store an expensive work vehicle. Mr. Metz agrees and noted that he does not see another place to locate the garage.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, 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 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**

**KACZOR AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

2. ZBA File #06-19, Michael & Ann Marie Schmidt, 5043 S. Freeman Road, Zoned R-1 (Part of Farm Lot 5, Township 9, Range 7; SBL #173.18-3-4). Requests Board of Appeals approval to extend a non-conforming two-family residence. §144-60, extension of use.

APPEARANCE: Mr. Michael & Ann Marie Schmidt, Petitioners/Property Owners

Mr. Schmidt distributed color photos for the Board to review. He explained that they recently purchased a legal “Multi-family Residence” with a deteriorating garage with drainage issues. They plan to demolish the garage and build a new three-car garage that will alleviate the drainage problems. In addition, they have a future building they would like to construct at the rear of the property to store various items. Their goal is to eliminate outside clutter of vehicles, a boat, and equipment.

Chairwoman Bowers established that the Petitioners are converting a two-family residence into a one-family residence and adding the second-family residence back-on over the three-car garage. The presented map indicates where the future storage building will be located at the rear of the property.

Deputy Town Attorney Leonard Berkowitz stated that this is an extension of a non-conforming use, and the request is for a Use Variance. The members discussed this further with Attorney Berkowitz and Code Enforcement Officer David Holland.

Chairwoman Bowers stated that we are looking for approval of the revised plans, and she questions if it matters which way the Board decides this request.

Attorney Berkowitz feels the appropriate way to view this request is as a “Use Variance”.

Mr. Schmidt stated that some square footage is being added, and some is lost with the revisions made.

Mr. Mateer established the mortgage is based on the second income.

Mr. Metz established that the items to be stored in the future building at the rear of the property are currently stored at another property Mr. Schmidt owns. This future building will be completely compliant, and will be constructed before the three-car garage.

Mr. Lennartz, noted that the Petitioners bought the house with a mortgage based on consideration of maintaining a two-family home.

Ms. Kaczor established that Mr. Schmidt tried to speak and reach-out to his neighbors. He was successful with one neighbor, and did not receive any objections to the variance request.

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

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

IN OPPOSITION:

*Mr. Todd Van Hoff*

*286 Pleasant Drive*

*Orchard Park, New York 14127*

Mr. Van Hoff does not support the variance request. He feels that they are asking to allow a brand new nonconforming building that does not fit into the neighborhood.

*Ms. Lisa Van Hoff*

*5031 S. Freeman Road*

*Orchard Park, New York 14127*

Ms. Van Hoff expressed concern for the drainage issues.

The Chairwoman discussed the request further with the Petitioner. She reviewed the plans for the “U” shaped house with a courtyard. The new plan is reducing the size of the rental space and increasing the size of the home. Further discussion took place of the request between the Petitioner and Mr. Van Hoff.

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.

The Board is not being asked for an “Area Variance”.

Board Discussion: The members discussed the request further. It is felt that this is a “Use Variance” request.

Ms. Bowers made a **MOTION**, seconded by Mr. Mateer, 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 several times during the presentation.

2. The hardship is unique, and does not apply to a substantial portion of the neighborhood.

3. The variance will not alter the essential character of the neighborhood, it will improve it.

Please keep the neighbors in mind.

4. The alleged hardship is self-created, and believe it will improve the character, and help the drainage.

**THE MOTION BEING:**

**BOWERS AYE**

**KACZOR AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 8:50 P.M.

DATED: April 17, 2019

REVIEWED: May 21, 2019 Zoning Board of Appeals Rosemary Messina, Secretary

Kim Bowers, Chairwoman