**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the September 15, 2020 meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Lauren Kaczor, Chairwoman

Kim Bowers

Robert Lennartz

Dwight Mateer

Robert Metz

Barbara Bernard, Alternate

OTHERS PRESENT: Timothy Gallagher, Deputy Town Attorney

David Holland, Code Enforcement Officer

Rosemary Messina, Recording Secretary

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 stated that the minutes from the August 18, 2020 regular meeting are not available at this time.

The Chair stated that Site Inspections of all cases presented tonight were made by:

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

**OLD BUSINESS**

REMOVED 9/10/2020:

1. ZBA File #17-2020, Mark & Dawn Kim, 1 Montclaire Lane, Zoned R-1, (Sub Lot 29, Map Cover 3119; SBL#162.11-4-5). Requests an Area Variance to construct a detached garage, with a 10’ side setback. Minimum side setback for this R-1 lot is 15-ft., §144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations. This case was tabled by the Board at their 8/18/2020 meeting.

**NEW BUSINESS**

1. ZBA File #22-2020 Robert Dudish, 12 Kent Drive, Zone R-1, (Sub Lot 27, Map Cover 2005; SBL#173.20- 2-36). Requests an Area Variance to construct a shed with a 6.1-ft. side setback. Minimum side setback for this R-1 Lot is 15-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Dudish, Petitioner/Property Owner

Mr. Dudish stated that he desires to construct a shed to store lawn mowers and other personal property. However, the topography of his property limits where a shed could be placed. He, also, does not want to remove mature trees and bushes. He told the members that, after speaking to his adjacent neighbor, he is reducing his request to a 10-ft. side setback Variance. He presented photos for the members to review, noting that there are several dying trees that will need to be removed. He also noted that additional landscaping will be planted to buffer the neighbors’ view of the shed.

Mr. Metz asked for clarification on the presented plan as to where the dying trees are located.

Mr. Lennartz verified that the other neighbors do not object to the Variance request as they cannot see the shed.

Chairwoman Kaczor verified that the Petitioner is seeking a reduced Variance for a 10-ft. side setback.

The Chair is agreeable to the reduced Variance.

Mr. Mateer established that the neighbors that will be able to see the proposed shed are present.

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

IN FAVOR:

*Mr. & Mrs. Andrew Kenlon, Jr.*

*14 Kent Drive*

*Orchard park, New York 14127*

The Kenlon’s spoke, noting that they are agreeable to the reduced Variance request. They reviewed the sketch plan and discussed the proposed shed with the Petitioner and buffering of the site.

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 discussed the request further and were agreeable to the reduced request, with buffering of the shed for the neighbor.

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** a **REVISED 10-FT.** Area Variance with a **STIPULATION**, based on the following:

1. Per Section 144-63 (E) (1) all public notices have been filed.

2. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties created.

3. The benefit sought cannot be achieved in another way, other than the granting of the Variance.

4. The request is not substantial.

5. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

6. The difficulty is self-created, but that does not preclude the granting of the Variance.

This Variance is granted with the following **STIPULATION**:

1. Landscaping is to be used to screen viewing the shed by the neighbor.

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ AYE

THE **MOTION BEING (5) IN FAVOR**, THE **VARIANCE REQUEST** **IS** **PASSED WITH A STIPULATION**.

2. ZBA File #23-20, Michael & Kimberly Stehlar, 40 Independence Drive, Zoned R-1, (Sub Lot 11, Map Cover 2378; SBL#185.06-1-6). Requests an Area Variance to construct a shed within the required side street yard. No accessory structure shall be located within the required side yard, §144-22A (1) (b).

APPEARANCE: Mr. & Mrs. Michael Stehlar, Petitioners/Property Owners

Mrs. Stehlar explained their plans to have a shed located in their side street yard. She told the Board that they need extra storage space and that the shed will also provide some privacy for this corner lot. She also explained that the rear yard slopes and has a drainage issue.

Mrs. Bernard discussed the request with Mrs. Stehlar and concluded that she feels the Stehlar’s can use fill, and work with that, in placing the shed in a compliant location. Mrs. Stehlar also discussed her plans to have an inground pool and a fence erected in the future.

Mr. Metz affirmed that a lawnmower, snow blower and other personal items will be kept in the shed.

Mr. Lennartz established that the shed will be 7-ft. from the side of the residence.

Mr. Mateer affirmed that Mrs. Stehlar contacted her immediate neighbors regarding the Variance request.

Ms. Bowers reviewed the presented sketch plan and established that pine trees are on the other side of the Petitioner’s lot. She, also, verified on the map where the 10’ x 16’ shed will be located. Mrs. Stehlar stated that the shed’s siding will match their residence. Ms. Bowers discussed reducing the variance request with Code Enforcement Officer David Holland.

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

IN FAVOR:

Mr. *Noel Bassett*

*2 Curley Drive*

*Orchard Park, New York 14127*

Mr. Bassett stated he supports the Variance request.

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 stated he can support this request because the side yard is 60-ft. long, and the shed location is close to the residence.

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Ms. Bowers stated she is in agreement; she feels this is a large yard and feels the planting of bushes and trees (and the fence) will diminish the shed.

Mr. Mateer feels this is a little much in the side yard.

Mrs. Bernard is not convinced that granting a variance is the only way to locate the shed on this property. She’s not in favor of request.

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

1. Per Section 144-63 (E) (1) all public notices have been filed.

2. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties created.

3. The benefit sought cannot be achieved in another way, other than the granting of the Variance.

4. The request is not substantial.

5. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

6. The difficulty is self-created, but that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

KACZOR NAY

BOWERS AYE

LENNARTZ AYE

MATEER NAY

METZ NAY

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

THIS ITEM HAS BEEN REMOVED:

3. ZBA File #11-2020, Up State Tower Company & Buffalo-Lake Erie Wireless Systems Company, 75 Weiss Avenue, Zoned R-3/B-2 , Part of Farm Lot 456, Township 10, Range 7; SBL#152.12-3-1.11). Requests Site Plan review and Tower Permit Approval for a 160-ft. monopole tower and telecommunication facility as required by Chapter 144, Article VII.

There being no further business to be presented to the Board at this time Chairwoman Kaczor adjourned the meeting at 7:50 P.M.

DATED: 10/09/2020 Respectively Submitted,

REVIEWED: 10/20/2020 Rosemary Messina, Secretary

Zoning Board of Appeals

Ms. Lauren Kaczor, Chairwoman

Zoning Board of Appeals