

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the May 18, 2021 meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

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

EXCUSED: Dwight Mateer

OTHERS PRESENT: John C. Bailey, 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.

APPROVAL OF MINUTES: The April meeting minutes were not available to be voted on.

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

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

1. ZBA File #08-21, Patrick Fino, 155 Velore Avenue, Zoned R-3 (Sub Lot's 828-830, Map Cover 956: SBL #151.16-3-12). Requests an Area Variance to construct a covered porch with a 26-ft. front setback. Minimum front setback for this R-3 lot is 30-ft., §144-9B, Schedule of Height, Lot, Yard, & Bulk Regulations.

APPEARANCE: Mr. Patrick Fino, Petitioner/Property Owner

Mr. Fino told the Board that he desires to construct a covered porch area at the front of his residence to provide a place to sit and relax for his family. He presented and explained details of the proposed porch, noting that it would be 8-ft. deep, and 22-ft. long. He also exhibited photos of other properties, explaining that he did not feel granting the Variance request would change the character of the neighborhood, as many of the homes exist with noncompliant setbacks.

Ms. Kaczor asked for clarification of the depth allowed and the variance that they are looking for. Mr. Fino stated that they are allowed 6-ft. depth, he needs 8-ft. They are allowed 30-ft. setback, he needs it to be 26-ft.

Mr. Lennartz noted that there are two projects in this area and he feels this and the other one are nice updates to the neighborhood.

It was learned that the porch addition will match the character of the residence.

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 good project.

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, 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	AYE
BOWERS	AYE
LENNARTZ	AYE
METZ	AYE
BERNARD	AYE

THE MOTION BEING (5) IN FAVOR, THE AREA VARIANCE REQUESTED IS PASSED.

2. ZBA File #09-21, Armor Bible Church, 5650 Powers Road, Zoned R-2 (Part of Farm Lot 28, Township 9, Range 7; SBL#184.00-2-15). Requests an Area Variance to alter a freestanding identification sign. This proposed freestanding identification sign is not permitted in this R-2 Zone, §144-37, signs in residential districts.

APPEARANCE: Mr. Robert Weber, Trustee
Jerry Noritz, Graffiti Graphics

Mr. Weber told the Board that the existing Church sign dates back to 1969, and is damaged. He presented a photo of the proposed new sign, noting it has been upgraded. Flood lights will no longer be used at the site, as one interior light bulb, inside of the sign, illuminates the name of the church. The sign is the same size as the old one, 24-sq.ft., and will be erected in the same location.

Mr. Noritz told the members that the sign will be (1) LED bulb with 60-watts when lit, versus the 252- watt flood lights. The sign will “glow”, and not have the harsh look from the flood lights bouncing on the property. The signage is raised up to avoid being buried in the snow. There will be less maintenance with this type of sign.

The members discussed the proposed signage.

Ms. Bernard discussed having the sign reduced by one foot.

Mr. Weber stated that the sign is 3-ft. x 8-ft., and he discussed the fact that reducing the sign will place it back into the snow.

Mr. Metz discussed having the signage made smaller.

Mr. Lennartz discussed the area neighbors and if there were any objections to the variance request.

Mr. Weber stated that Pastor Johnson has brought this up at church meetings. He has not received any negative responses.

Ms. Bowers discussed the fact that the signage area will be re-landscaped.

Ms. Kaczor confirmed that the sign will have a white background, with black lettering.

Mr. Weber stated that this is basically the same sign, just updated.

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. Metz feels this is a good project.

Ms. Bernard would like 1-ft. removed off the size of the signage.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, 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	AYE
BOWERS	AYE
LENNARTZ	AYE
METZ	AYE
BERNARD	NAY

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

3. ZBA File #10-21, Ed & Bridgid Hinman, 6162 S. Abbott Road, Zoned A-1 (Part of Farm Lot 35, Township 9, Range 7; SBL #196.02-3-5). Requests a Use Variance to allow a farm stand on this non-farm parcel, §144-30D.

APPEARANCE: Mr. & Mrs. Edward Hinman, Petitioners

The Hinman's explained that they would like to continue their family operated pumpkin stand that has been at this location for the last several years. They were told by the Building Department that they needed a Use Variance granted to continue.

The member discussed the operation of the pumpkin stand and sales at this location that usually take place for 6 to 8 weeks during the fall season time. There were no safety issues reported and several neighbors came to support their request.

Mr. Lennartz established that the business is profitable and they would like to keep it running as a family and community tradition. The pumpkins have been sold on a property that they do not own for the last 12-years.

Ms. Bowers established that the Petitioners received a letter informing them that they needed a Use Variance to operate their stand, instead of a permit.

Ms. Kaczor discussed the Bounce House and Face Painting that takes place at the site. This takes place on (1) Saturday for 2 hours. There is approximately a total of 30 to 40 people that will participate in this event.

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

IN FAVOR:

*Ms. Maureen Nash
6150 S. Abbott Road
Orchard Park, New York 14127*

Ms. Nash, an adjacent neighbor, spoke in favor of granting the Use Variance. She feels this is a fun activity for children.

*Mr. Dennis Berkowitz
6150 S. Abbott Road
Orchard Park, New York 14127*

Mr. Berkowitz, adjacent neighbor, feels this is a Tax Payer of Orchard Park, wanting to do something nice. He does not know why a resident in Hamburg complains about something in Orchard Park, as they do not pay Orchard Park taxes.

*Mr. Michael J. Cott
6179 S. Abbott Road
Orchard Park, New York 14127*

Mr. Cott spoke in favor of the Use Variance request. He lives across the street. He spoke of a Hamburg resident that does not pay Orchard Park taxes not forcing an Orchard Park resident to lose their business.

*Ms. Lisa Cott
6179 S. Abbott Road
Orchard Park, New York 14127*

She noted that she lives across the street, and the stand has always been there. She feels it is attractive, and does not distract from the neighborhood. She supports the Use Variance request. She does not want someone from another town to force an Orchard Park resident to lose their business.

*Pam
Unknown address
Orchard Park, New York 14127*

This is a beautiful area; historically, it adds to the flavor of our Town. It is a family tradition. She supports the Use 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. Damian Desbordes
6186 S. Abbott Road
Orchard Park, New York 14127*

Mr. Desbordes spoke against the granting of the Use Variance. He is concerned about traffic and safety issues here.

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 supports the request. Ms. Bowers stated she see no issues. Other Board members stated that they like the use of the property. Chairwoman Kaczor stated that she has never seen this many come in support of a request.

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

1. Per Section 144-63 (E) (1) all public notices have been filed.
2. 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.
3. The hardship is unique, and does not apply to a substantial portion of the district or neighborhood.
4. The variance will not alter the essential character of the neighborhood.
5. The alleged hardship 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
METZ	AYE
BERNARD	AYE

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

4. ZBA File #11-21, Mark & Rebecca Brice, 7335 Milestrip Road, Zoned R-2/R-1 (Part of Farm Lot 10, Township 10, Range 7; SBL #162.07-1-4). Requests an Area Variance to construct a detached garage/storage building within the front yard. No accessory structure shall be located within the front yard, §144-24A (1) (B).

APPEARANCE: Mr. & Mrs. Mark Brice, Petitioners/Property Owners

The Brices explained their need to have additional space for their vehicles. They stated that it is more economical to construct a pole barn and attach it to their existing residence, than constructing a wood expansion to their garage. They wish to preserve their back yard area for the family and not disrupt it with the needed garage expansion. Ms. Brice stated their desire to have the barn completed by winter so her parents, who reside with them can utilize it in the snow. The proposed pole barn would be a two car garage connecting to the driveway, with storage in the back. Ms. Brice stated the proposed pole barn would be a barrier to limit her children's access to the front yard.

Ms. Bowers expressed concern about the size of the proposed barn. She inquired if it was possible to set it back. Ms. Brice stated they would be willing to have it intrude only 10ft into the front yard. Mr. Brice stated that preserving the back and side yards is a priority to them as is utilizing the existing turnaround. He also stated there are existing trees that would screen it.

Mr. Lennartz expressed concern about having such a large structure in the front yard. The Brices stated they would be willing to shift it to be less obtrusive (only 10ft.in the front yard). Ms. Brice restated they wish to preserve the back yard.

The Board discussed placement of the proposed barn. Mr. Brice stated they have support from their neighbors.

Mr. Metz stated he would be in favor of shifting the proposed barn back so that it intruded only 10ft. into the front yard. The Brices stated they would agree with that compromise.

The members discussed details of the proposed barn placement.

Ms. Bernard inquired as to the material of the barn. Mr. Brice stated, "sheet metal". Ms. Brice stated the barn would be two-toned and one story high (10ft). The Brices clarified details of the doors' design.

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

Randy (Ms. Brice's father)
7335 Milestrip Road
Orchard Park, NY 14127

Ms. Brices' father stated the cost of lumber currently is exorbitant, and no neighbors have complained.

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 was in support of a maximum intrusion of 10ft. into the front yard. The other members were in agreement

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, to **GRANT THE** Area Variance Request 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.

The **VARIENCE** is **GRANTED** with the following **STIPULATION**:

1. That the structure not impede into the front yard more than 10 ft.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE

LENNARTZ	AYE
METZ	AYE
BERNARD	AYE

THE MOTION BEING (5) IN FAVOR, THE AREA VARIANCE REQUESTED IS PASSED.

5. ZBA File #12-21, InSite Real Estate Development Services, L.L.C. V/L Orchard Park Road Zoned B-2/A.O.D. (Part of Farm Lot 18, Township 10, Range 7; SBL #152.16-6-2.11). Requests an Area Variance to allow vehicle parking in the front yard of a proposed grocery store. Vehicle parking is prohibited in the front yard in this B-2 Zone, §144-29A (4).

APPEARANCE: Joseph Gianni (InSite Real Estate-Developer)

Mr. Gianni presented a site plan and explained the need for street front parking. In order to reduce the amount of fill they need to bring into this site, they plan to shift parking toward Orchard Park Road. This site has had previous developers who have come before the ZBA. Mr. Gianni stated they had reduced the scope of the project to just the grocery building to minimize the impact on the site.

Ms. Bernard stated that on the Assessment question, "C2 (A)" was unanswered regarding City, Town, Village, or County Land Use Plans. Mr. Gianni stated he was not aware of this. Ms. Bernard inquired if they have a permit from FEMA. Mr. Gianni stated they had previously received FEMA approval for plans to raise the site, however they had a new concept plan so they will have to reapply to FEMA. They believe they have a high likelihood of approval. Ms. Bernard questioned why they had pushed a small strip of parking. Mr. Gianni stated they are attempting to reduce fill and impact on the site and there is a financial component.

Mr. Metz asked for clarification on the number of parking spaces impacted. Mr. Gianni stated there were 16 spaces.

Ms. Kaczor inquired as to the elevation of the parking as compared to the main road. Mr. Gianni stated it would be at a lower elevation than the main road, however the building elevation would be significantly higher. He also noted that the Architectural Overlay District Board (AOD) reviewed the elevation plan.

Mr. Lennartz inquired as to whether this difference in elevation would be an issue in the winter. Mr. Gianni stated their entrance has been designed as to be safe and the parking lot has a maximum grade of 3%.

Ms. Bowers inquired as to the number of parking spaces. Mr. Gianni stated 96; they are required to have 111 parking spaces. Mr. Gianni stated they would need to appear before the Planning Board with this matter.

Ms. Bernard stated her opinion that if they utilized more fill it would be an improvement.

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:

Ms. Bowers was in favor of the project. She stated that it is only 16 parking spaces in question.

Ms. Bernard stated her opinion that it is a good project, but she feels they could do better. She would like a plan with more fill added sent to FEMA.

Ms. Kaczor asked Mr. Gianni if they were to get more fill how far would they be able to move the parking back. Mr. Gianni stated the parking would still be in front of the property. Mr. Gianni stated that they were aiming to provide a larger cross-section for the movement of water as this would have less impact on the flood plan. He stated that FEMA approval is a long process, and this plan has a high chance of success as well as a net positive on the site.

Mr. Metz stated he was in agreement with Ms. Bernard that more fill would eliminate the issue. However, he is in favor of the project.

Ms. Kaczor inquired if FEMA might decide they needed more fill. Mr. Gianni stated that FEMA would be considering a cross section of the creek on the property and more fill decreases the width for the water running through the property.

Ms. Kaczor inquired if the current plan would decrease downstream flooding. Mr. Gianni stated that is correct, although culverts on either side constrained that somewhat.

Ms. Bernard stated her opinion that they should submit the plan with more fill to FEMA, and they may approved it.

Ms. Bowers asked for clarification that if FEMA were to approve more fill, they could move the impacted parking spaces. Mr. Gianni stated "correct". Mr. Gianni stated the goal was to decrease the risk of flooding. Ms. Bowers inquired if only the 16 parking spaces would move. Mr. Gianni stated, "Correct".

Code Enforcement Officer Dave Holland suggested that moving the proposed building would eliminate the need for this variance, however, they would need a variance to have the building closer to the road. The Applicant was receptive to this suggestion.

Ms. Kaczor suggested they table this review and investigate the possibility of moving the proposed building. Mr. Gianni stated that they would be willing to table the issue and investigate this aspect.

Ms. Bowers made a **MOTION**, seconded by Mr. Metz, to **TABLE** Area Variance request.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
LENNARTZ	AYE
METZ	AYE
BERNARD	AYE

THE **MOTION BEING (5) IN FAVOR, THE MOTION TO TABLE IS CARRIED.**

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 8:41 P.M.

DATED: 10/06/2021

REVIEWED: 10/19/2021

Respectively Submitted,
Rosemary Messina, Secretary
Zoning Board of Appeals

Ms. Lauren Kaczor, Chairwoman
Zoning Board of Appeals