

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the September 21, 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  
Dwight Mateer  
Robert Metz

OTHERS PRESENT: John C. Bailey, Deputy Town Attorney  
David Holland, Code Enforcement Officer  
Rosemary Messina, Recording Secretary  
Anna Worang-Zizzi, 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:**

Minutes were not available for approval.

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**

Mr. Mateer made a **MOTION**, seconded by Ms. Bowers to enter into an executive session to preserve client attorney privilege.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

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

THE BOARD RESUMED THE REGULAR MEETING.

**OLD BUSINESS**

1. ZBA File #15-21, Raymond Miranda, 4956/4968 Chestnut Ridge Road, Zoned B-2 (Part of Farm Lot 13, Township 9, Range 7; SBL#'s 172.20-1-17 & 172.20-1-16). Applicant is appealing the Zoning Officer's determination that the site is in the Architectural Overlay District (AOD). The Board is to review and determine decision.

Ms. Kaczor made a **MOTION**, seconded by Ms. Bowers that the Board adopt the following resolution:

*WHEREAS, Miranda Holdings, Inc. (the "Applicant") submitted an application (the "Application") to the Board of Appeals of the Town of Orchard Park (the "ZBA") for a Boundary Interpretation Request and, in the alternative, for an Area Variance for property located at 4956 and 4968 Chestnut Ridge Road, Orchard Park, New York, SBL Nos. 172.20-116 & 172.20-1-17 (the "Property"); and*

*WHEREAS, in accordance with applicable law, the ZBA held a public hearing on the Application and received testimony on the record, which has been duly considered; and*

*NOW THEREFORE BE IT RESOLVED by the Board of Appeals of the Town of Orchard Park as follows:*

1. *The ZBA has considered so much of the Application requesting a Boundary Interpretation and determined that the Boundary Interpretation is DENIED, as set forth in the attached decision, which is incorporated herein by reference; and*
2. *The ZBA has considered so much of the Application requesting an Area Variance and determined that the Area Variance is DENIED, as set forth in the attached decision, which is incorporated herein by reference.*

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
LENNARTZ	AYE
MATEER	RECUSED
METZ	AYE
BERNARD	RECUSED

**THE MOTION BEING (4) FOUR IN FAVOR, AND (2) TWO RECUSALS, THE MOTION IS PASSED.**

**NEW BUSINESS**

1. ZBA File #26-21, Speedway, V/L Southwestern Blvd. at Angle Rd Zoned R2 (Part of Farm Lot 405, Township 10, Range 7; SBL# 153.07-1-8.31). Requests an Area Variance to install a non-conforming pedestal sign at this site. Pedestal signs shall not exceed 16' in height and shall be supported by one pedestal, §144-5, Terms defined. Pedestal signs shall not exceed 40 S.F. in area per side § 144-38 C (2).

APPEARANCE: Rob Sweet - Agent

Mr. Sweet explained that Speedway/7-11 is requesting a 23-ft. tall, 99-sq. ft. pedestal sign for the proposed convenience store at this location. The proposed sign would be internally illuminated and have twin posts. There will be three (3) LED price panels; the top panel would be approximately 64-ft. in size, with the price panels approximately 35-ft. He stated that the sign is setback from the pavement

approximately 60-ft., due to area that is reserved for road widening, through the State DOT, and also utility placement on the site. Mr. Sweet stated that a smaller sign could be blocked by landscaping, or other signs, and they want to give customers enough time to react to their pricing as they are driving. He also stated another business across the street has a similar sign, although that business is in West Seneca.

Ms. Bernard stated she was not in favor of the sign, and would like to see the size and height reduced. Mr. Sweet stated that he would be willing to compromise.

Mr. Mateer and Mr. Sweet discussed calculations regarding the sign's size.

Mr. Metz suggested reducing the height of the sign 5ft. which would create a sign that was 18ft high. He also suggested reducing the size of the sign to 72sq. ft. (36 sq. ft. to be the price panels, and 36sq. ft. to be the "Speedway" portion) Mr. Sweet stated that the changes would be acceptable.

Mr. Lennartz stated he found the compromise acceptable.

Ms. Bowers and Ms. Kaczor were also in favor of the compromise.

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 Board was in favor of the project, as adjusted, by the discussed compromise.

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

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties created.
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 Variance is **GRANTED** with the following **STIPULATION**:

1. The height of the sign is not to exceed 18ft., and the size of the sign not to exceed 72sq. ft.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

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

2. ZBA File #27-21, West Herr Jeep, 3599 Southwestern Blvd. Zoned B-2 (Part of Farm Lot Township 10, Range 7; SBL #161.07-6-3.111). Requests an Area Variance to replace a non-conforming pedestal sign with a non-conforming monument sign. Monument signs shall not exceed 30 S.F. in area or 5' in height. § 144-5B, terms defined.

Ms. Bowers recused herself from voting in this case. The alternate member Ms. Bernard will be voting.

APPEARANCE: Michael Yost – Sign Fabricator

Mr. Yost explained the proposed sign for Jeep Chrysler at this site. He stated the existing sign was a 15ft. flag pole sign. They are proposing a 10ft. tall monument sign. He stated the set back and area comply with the Town Code.

Mr. Lennartz inquired if there is potential for decreasing the height of the sign. Mr. Sweet stated that Jeep uses a Brand Book and that any signs not in the Brand Book would be custom. He stated that the sign they are proposing is smaller than the one that will be removed and that they are reducing the overall signage by taking down the sign on the building.

Mr. Metz stated that he was in favor of the sign, but not its height.

Ms. Bernard stated that a nearby Nissan sign is 7ft. tall, and is the shortest on the roadway.

Mr. Mateer stated he would prefer a shorter sign, and noted, if the sign is shorter it may be visible under the trees. Mr. Yost stated they would prefer to leave the design “as is”.

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 is in favor of the sign.

Mr. Mateer stated he is not against the proposed sign.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area 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 created.
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 VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	ABSTAINED
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BERNARD	AYE

**THE MOTION BEING (4) IN FAVOR, AND (1) ABSTENTION, THE AREA VARIANCE REQUEST IS PASSED.**

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 8:10 P.M.

DATED: 10/06/2021

REVIEWED: 10/21/2021

Respectfully submitted,  
Anna Worang-Zizzi

Ms. Lauren Kaczor, Chairwoman  
Zoning Board of Appeals