

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the August 16, 2022, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Lauren Kaczor, Chairwoman
Robert Lennartz
Dwight Mateer
Robert Metz
Kim Bowers

EXCUSED: Michael Williams, Alternate

OTHERS PRESENT: John C. Bailey, Deputy Town Attorney
John Wittmann, Code Enforcement Officer
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:

The Meeting Minutes for July 2022 were approved unanimously.

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

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

NEW BUSINESS

1. ZBA File #19-22, John Wohlfeil, 3981 California Road, Zoned R-3, SBL#161.03-1-30.1, (Sub Lot 1 Map Cover 2349). Requests an Area Variance to construct a 22 foot x 32 foot detached garage with carport in the front yard. *No accessory structure shall be located within the front yard or required side yard §144-24 A(1)(b).*

APPEARANCE: John Wohlfeil - Owner

Mr. Wohlfeil stated he recently bought a house with a one car garage. He was not aware of the Town Code preventing him from constructing a garage in the front yard. He stated he uses a large, 8 foot high van to take care of his elderly parents. He also stated he has asthma, making it difficult to remove snow. He stated he needs to be able to remove the seats of the van to put wheel chairs in.

Ms. Bowers established that the applicant currently has a shed, and the size of the proposed garage.

Mr. Mateer inquired about the existing shed in the back yard. The applicant stated that it was not useful for the stated purposes as it was in the backyard. He presented new images of the potential garage, which differed from his application.

Mr. Lennartz stated his opinion that the garage would “stick out”. He inquired if the applicant had spoken to neighbors. The applicant stated he had spoken to one neighbor who is present at this meeting and that neighbor was originally in favor. His other neighbor’s home is behind him and screened by woods. He explained his house is across the street from Wings.

Mr. Metz clarified the footprint of the garage to be 32 foot x 24 foot, specifically a 24 foot x 24 foot garage with an 8 foot overhang. Mr. Metz also established that the applicant’s parents live in Orchard Park.

Mr. Mateer inquired if the applicant had considered attaching the garage to the house and moving it back thereby avoiding the need for a Variance. The applicant feels there is not enough room and it would close off windows. The applicant clarified lines on the survey with Mr. Mateer.

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

Ms. Nancy Ernst
3993 California Rd.
Orchard Park NY, 14127

Ms. Ernst stated she is a neighbor of the applicant. She noted there are woods between the homes, but is worried the garage might be an eyesore.

Mr. Casimir Kucharski
3965 California Rd.
Orchard Park, NY 14127

Mr. Kucharski stated he wants more information. He is not against the applicant having a garage or shed but feels it should be in the in the back yard.

Ms. Dauuta Kucharski
3965 California Rd.
Orchard Par, NY 14127

Ms. Kucharski spoke against the project. She is concerned about drainage and is opposed to a garage in the front of the house.

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 is not in favor. He feels the garage sticks out in the front, it is close to the road, and feels it would be an eyesore.

Ms. Bowers was in agreement.

Mr. Mateer agreed. He feels the applicant could put it in the back yard.

Mr. Metz was also in agreement.

Ms. Bowers made a **MOTION**, seconded by Mr. Mateer, to **DENY** 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 an undesirable change in the character of the neighborhood, or a detriment to nearby properties created.
3. The benefit sought can be achieved in another way, other than the granting of the Variance.
4. The request is substantial.
5. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BOWERS	AYE
KACZOR	AYE

The Motion being **UNANIMOUS** in favor, the Motion to **DENY** the Variance is **PASSED**

2. ZBA File # 20-22, Jessica Getty, 3 Old Salem Court, Zoned R-2, SBL# 184.09-6-12, (Sub Lot 16 Map Cover 2450). Requests an Area Variance to install a 4 foot tall wrought iron fence 48 feet into the front yard and 8 feet into the required side yard. *Wall, hedge or fence not over 3 feet high in any front yard or side street yard, provided that such wall, hedge or fence does not obstruct or obscure visibility of or for any pedestrians or vehicles approaching or leaving the premises on which the said wall, hedge or fence is erected, §144-22 A(1).*

APPEARANCE: Jessica Getty – Owner

Ms. Getty explained that she lives on a corner lot and the only green space is front yard. She feels that her proposed fence is aesthetically pleasing and would benefit the neighborhood.

Mr. Mateer inquired why a 3 foot fence, which is allowable by Code, would not work. The applicant stated that 3 feet is not high enough, in her opinion, and that she was unable to find a 3 foot wrought iron fence. She noted that neighbors have similar fencing. Mr. Mateer noted that those fences were in the backyard.

Mr. Lennartz inquired if the applicant had spoken to neighbors. He also inquired for more detail on why a 3 foot fence wouldn't work, noting there were not a lot of front yard fences in the neighborhood. The applicant stated she had spoken to many neighbors, who all had no objection. She also stated her opinion that a 3 foot fence would look odd with the house.

Ms. Bowers inquired if there was any room for compromise. The applicant stated there was not as she can't find shorter wrought iron fences. Ms. Bowers established with the applicant placement of the planned arches.

The Chair then asked if there was anyone in the audience who would wish to speak on favor of granting of 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 that a communication had been received and distributed to the Board.

BOARD DISCUSSION:

Mr. Lennartz is not in favor of the project.

Ms. Bowers and Mr. Metz agreed.

Mr. Mateer feels it would create an undesirable change in the neighborhood.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **DENY** 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 an undesirable change in the character of the neighborhood, or a detriment to nearby properties created.
3. The benefit sought can be achieved in another way, other than the granting of the Variance.
4. The request is substantial.
5. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE

BOWERS
KACZOR

AYE
AYE

The Motion being **UNANIMOUS**, the Motion to **DENY** the Variance is **PASSED**.

3. ZBA File #21-22, Jeremy Page, 5925 Webster Road, Zoned R-3, SBL#161.11-1-8, (FL29 T9 R7). Requests a Use Variance to repair vehicles and also to store his electrical equipment for his business. *In any district, whenever a nonconforming use of land, premises, building or structure or any part or portion thereof has been discontinued for a period of one (1) year, such nonconforming use shall not thereafter be reestablished, and all future use shall be in conformity with the provisions of this chapter. Such discontinuance of the active and continuous operation of such nonconforming use or a part or portion thereof for such a period of one (1) year is hereby construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon same or an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such nonconforming use of the land and premises, the abandonment shall be construed and considered to be completed within a period of less than one (1) year and all rights to establish or continue such nonconforming use shall thereupon terminate, §144-57.*

APPEARANCE: Jeremy Page - Owner

Mr. Page stated he was under the assumption that the property could continue to operate as a business when he purchased it. He stated the vehicles stored there are his personal vehicles. He stated he uses a storage unit, which he described as “unobtrusive” and there is some debris around the property.

Deputy Town Attorney, John Bailey stated that this case was a “non-conforming use” which had been abandoned for more than a year and as such, the threshold question is whether this was a self-created hardship.

Mr. Lennartz inquired about vehicles being repaired at the property currently, including vehicles without plates. He also commented on an Orchard Park Bee article which stated that an “illegal business” is being run on the property and inquired if the applicant had any comment. He also inquired if the applicant had spoken to any neighbors. The applicant stated that the vehicles there are all his own personal vehicles, and the vehicles without plates are used for parts. He stated that he operates a licensed business as an electrical contractor and he parks his trucks at this site at night. He has heard his neighbors are opposed. He stated that the cars racing around the streets were not his, and that the people frequenting his property were friends of his teenage son. His plan is to improve the property.

Mr. Metz inquired about reports from neighbors that they had to walk out into the street because of work being done on cars. The applicant is unsure about those incidents. He stated he has 6 cars. He clarified that he repairs cars for friends and people he sponsors in a race he operates. The applicant stated that while the Variance request includes a potential car repair business, the more critical portion is the ability to store his electrical equipment. Mr. Metz clarified with the applicant that none of his vehicles stay on Town streets.

Mr. Mateer inquired about where he stored his equipment prior to purchasing this property. He also inquired about trucks the applicant owns and asked clarifying questions about the purpose of the Use Variance. The applicant stated he stored the equipment outside in a storage unit at his previous property. He added that he has two (2) trucks which pull trailers. The applicant would like to repair vehicles eventually, however, he currently needs to store equipment for his electrician business. The applicant maintained that the cars currently on the property are not part his business.

BOARD DISCUSSION:

Mr. Lennartz made a **MOTION**, seconded by Chairwoman Kaczor, to **DENY** the Use Variance request based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. The non-conforming use has expired.
3. This is a self-created issue.
4. I do not support reinstating the non-conforming use of the premises for the intended use.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BOWERS	AYE
KACZOR	AYE

The Motion being **UNANIMOUS** in favor, the Motion to **DENY** the Variance is **PASSED**.

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 7:45 P.M.

DATED: 9/7/2022
REVIEWED: 9/20/2022

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor, Chairwoman
Zoning Board of Appeals