

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park March 18, 2024, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Robert Metz, Acting Chairman
Dwight Mateer
Robert Lennartz
Kim Bowers
Michael Williams, Alternate

EXCUSED: Lauren Kaczor Rodo, Chairwoman

OTHERS PRESENT: John Wittmann, Code Enforcement Officer
John C. Bailey, Deputy Town Attorney
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, 267(A), 267(B) and 267(C), Subdivision 3, and the Town of Orchard Park Zoning Ordinance. Per Section 144-63 (1) All public notices have been filed. 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 Site Inspections of all cases presented tonight were made by:

METZ, AYE / MATEER, AYE / LENNARTZ, AYE / BOWERS, AYE / WILLIAMS, AYE

NEW BUSINESS

1. File#: 09-25, Anthony Adinolfi, 6446 Scherff Road, Zone A-1, SBL# 198.00-1-51, (Lot 2, Township 9, Range 7). Requests an Area Variance to install a 20 foot x 30 foot garage forward of the primary structure. *No accessory structure shall be located within the front yard or required side yard, §144-24A(1)(b).*

APPEARANCE: *Anthony Adinolfi – Owner*

The Applicant explained that he would like to place a garage on his “turn-around” area which is forward of the primary structure. He noted some maple trees, which would have to be removed if he were to move his garage to the rear.

Mr. Williams inquired about changing the orientation of the garage, so as to not require a Variance, however, the Applicant feels this would limit his access from the garage to the driveway and limit his ability to plow his driveway.

Ms. Bowers confirmed that the finishing of the garage would complement the house. The Applicant has not finalized finishing materials, however stated his intention that it be complementary.

Mr. Lennartz inquired about the use. The Applicant stated he would be using it for personal storage.

Mr. Mateer inquired if he had spoken to any neighbors. The Applicant stated that he had spoken to a few who had no issues, but also pointed out that the view of the garage from the street would be obscured by vegetation.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of the 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 no communications had been received.

BOARD DISCUSSION:

Mr. Williams would be more comfortable if the garage were moved back toward the house.

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

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will not be an 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 substantial.
5. There will not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created, however that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

METZ	AYE
LENNARTZ	AYE
MATEER	AYE
BOWERS	AYE
WILLIAMS	NO

The Motion being **FOUR (4) in favor and ONE (1) opposed**, the Motion to **GRANT** the Variance is **PASSED**.

2. File#: 10-25, Julia & Jason Pericak, 1 Deer Run, Zone R-1, SBL# 173.19-1-1 (Part of Lot 61, Township 9, Range 7). Request an Area Variance to construct a 20.25 foot x 31 foot deck on the side of the house with a 14.25 foot side setback. *Side setback in an R-1 zone is 15', §144 Attachment 15 Schedule of Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: Michael Anderson – Architect

Mr. Anderson noted that the proposed covered patio was .75 feet too close to the side setback, however, it was properly sized for the house. He also noted that the Applicant owned both lots to the rear.

Mr. Mateer inquired if the Applicant had spoken to any neighbors. The Applicant stated that the owner had spoken to some, and all received notification, and none were at this meeting.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of the 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 no communications had been received.

BOARD DISCUSSION:

The Board members had no opposition to this project.

Mr. Williams made a **MOTION**, seconded by Mr. Lennartz, to **APPROVE** the Area Variance based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will not be an 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 not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is not self-created.

THE VOTE ON THE MOTION BEING:

METZ

AYE

LENNARTZ	AYE
MATEER	AYE
BOWERS	AYE
WILLIAMS	AYE

The Motion being **FIVE (5) in favor** and **ONE (1) abstention**, the Motion to **GRANT** the Variance is **PASSED with a STIPULATION**.

3. File#: 11-25, Jessica Radon/RH3385, LLC, 3385 Orchard Park Road, Zone B-4, SBL# 152.20-4-1, (Part of Lot 16, Township 10, Range 7). Requests an Area Variance for additional front yard parking. *Front Yard Parking is prohibited §144 Attachment 10 Schedule of Use Controls.*

APPEARANCE: *Jessica Radon – Owner*

The Applicant explained that there are three tenants in this building. This building was previously the “Spa at Falling Water”. The spa is now a tenant in the building, and has downsized. The front of the building is actually on the side of the lot, so the front yard parking is to the side of the building.

Mr. Lennartz inquired about the number of additional spaces. The Applicant would be removing five to reconfigure, adding 19, for a net increase of 16 spaces.

Mr. Mateer inquired about the need for additional spaces, and the Applicant stated that the timing for the three tenants overlaps, and they often have no parking, which requires them to turn away clients. Mr. Mateer inquired about traffic flow, and the Applicant feels that while this design will not eliminate the need for three-point turns, it will help because there will be other parking available when the rear appears busy to drivers as they pull in.

Mr. Metz inquired about adding additional parking on the north side of the lot. The Applicant stated that it was not possible due to the creek.

Mr. Lennartz is in favor of the project.

Mr. Mateer noted this was in the AOD, and confirmed with Deputy Town Attorney, John Bailey, that both Boards have Authority in this case. He also confirmed with Mr. Bailey that the ZBA had the option of adjourning until the AOD reviewed this case.

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

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated there was none.

BOARD DISCUSSION:

Mr. Mateer stated that he wanted to help small businesses thrive, and he noted that in this case, there was an existing building, which differentiated it from other cases, which had proposed new buildings with front yard

parking. However, he also noted that this was located in the Architectural Overlay District, where generally, the Town did not like to see front yard parking, and he had concerns about the aesthetics.

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

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will not be an 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 not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created, however, that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

METZ	NO
LENNARTZ	AYE
MATEER	AYE
BOWERS	AYE
WILLIAMS	AYE

The Motion being **FOUR (4) IN FAVOR** and **ONE (1) OPPOSED**, the Motion to **APPROVE** the Variances is **PASSED**.

4. File#: 12-25, Richard Keppel, 3061 Abbott Road, Zone B-2, SBL# 151.12-4-27, (Sub Lots, 1&2 Map Cover 1410). Requests an Area Variance for an 8 foot solid wood fence in the front yard. *Maximum height of fence in front yard is 4 feet, Such fence or wall or hedge shall in no event enclose a front yard; nor shall it exceed four feet in height. A fence shall be of open, decorative design and permit clear visibility through at least 80% of its vertical area, §144-22A(2)(c).*

APPEARANCE: Richard Keppel – Owner

Mr. Keppel stated that he had received an order of violation in January. He stated that he uses the fence to contain the sports activities of his kids, and that this area was the only flat area in his yard. He also noted a privacy concern he had with a neighbor.

Ms. Bowers inquired if the fence was already in place. The Applicant replied affirmatively. It was confirmed that the Applicant had installed it without a permit and the Applicant stated that he was unaware that he needed a permit. Ms. Bowers noted that the current lot somewhat limited the Applicant.

Mr. Williams inquired about changing the orientation or location of the tennis area. The Applicant did not feel that was possible.

Mr. Mateer noted that the Applicant would not need a Variance to install a fence extending directly from the corner of the building. The Applicant stated that there was a boulder there. Mr. Mateer inquired about tying the fence to the house with a bracket. The Applicant did not feel that was possible.

Mr. Lennartz inquired if the Applicant had spoken to the most effected neighbor. The Applicant stated the neighbor was in favor of the fence.

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.

*Jack Robinson
3055 Abbott Road
Orchard Park, NY 14127*

Mr. Robinson stated that he was the stated “most affected neighbor”, and he was opposed to the fence and also stated that he believes the fence to be on his property.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated one communication was received and it had been distributed to the Board Members.

BOARD DISCUSSION:

Mr. Williams is opposed to the fence.

Mr. Mateer feels the benefit could be achieved without a Variance.

Mr. Williams made a **MOTION**, seconded by Mr. Mateer to **DENY** the Area Variance for an Area Variance, 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:

METZ	AYE
MATEER	AYE
BOWERS	AYE
LENNARTZ	AYE
WILLIAMS	AYE

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

5. File #03-25, (Previous File# 21-23) Ellicott Development, 4297 Abbott Road, Zoned B-2, SBL# 172.05-1-1.1 (Part of Farm Lot 39, Township 9, Range 7). Requests 2 Area Variances. The first Variance is for the entranceway(s) of the automotive service station to be 189 feet 5 inches to the nearest residential zone. *Location of exits and entrances. No automotive service station shall have an entrance or exit for vehicles within 300 feet, as measured along the right-of-way, of an existing school, public playground, church, chapel, convent, hospital, public library or any residential district. Such access shall be not closer to any intersection than 30 feet, §144-29C(2).* The second Variance is for front yard parking. *Vehicle parking shall be prohibited in the front yard of B Commercial or in any area set forward of a building when the majority of the building front is at a greater setback than the front line of the building, §144-29A(4).* NOTE: This is a rehearing of expired Variances granted on 1/16/24.

APPEARANCE: *Jeremy Wassel – Ellicott Development*

Mr. Wassel noted that these Variances had previously been granted. He explained the project. He noted that the project will still require Site Plan review. He discussed the timeline and Planning Board and ZBA meetings and approvals this project had already been through, and noted that there had been no changes to the Site Plan. He also explained that the driveways were located 189 feet and 5 inches from one residential district, and 248 feet and 5 inches to the other. He noted that two houses were located closer, however those are each zoned B-2.

Mr. Lennartz inquired if there had been any changes since the last time this project appeared before the ZBA. The Applicant responded that there had not.

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.

*Sandra Bugenhagen
5227 Big Tree Road
Orchard Park, NY 14127*

This member lives next door and is opposed. She asserted that the measurements submitted by the Applicant are incorrect.

*Gary Trella
4317 Abbott Road
Orchard Park, NY 14127*

Mr. Trella stated his intention to file an article 78. He stated his safety concerns related to the proposed EV chargers. He asserted that facts submitted by the Applicant relating to traffic studies and measurements are incorrect.

*Merry Wokasier
3 Greenfield Street
Orchard Park, NY 14127*

This member of the public had safety concerns related to traffic.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated one communication had been received and had previously been distributed to the Board Members.

BOARD DISCUSSION:

Mr. Lennartz if the Applicant ascertained that the measurements were correct. The Applicant answered affirmatively.

Mr. Williams noted concerns about safety related to traffic, but stated that this Board could only review the Variance requests.

Mr. Mateer stated that he was opposed to this project the previous time it was before this Board and remained opposed. He stated that a Code Compliant business could be developed at this site, and he felt the request was substantial.

Mr. Lennartz stated he had voted for this project before and he remains in favor.

Ms. Bowers stated she remains in favor of the project, noting that this was a busy area of Town and is likely to become busier with the new stadium, and she feels this project will not have much impact on traffic. She also noted that this project was appropriate for the B-2 zone.

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz to **APPROVE** the Area Variance for a 9.5 foot side setback for the stairs leading to the deck, based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
 2. There will not be an 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 not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
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1. The difficulty is self-created, however that does not preclude the granting of the variance.

THE VOTE ON THE MOTION BEING:

METZ	NO
MATEER	AYE
BOWERS	AYE
LENNARTZ	AYE
RODO	NO

The Motion being **THREE (3) in favor** and **TWO (2) opposed**, the Motion to **GRANT** the Variances is **PASSED**.

There being no further business to be presented to the Board at this time, the Chair adjourned the meeting at 8:09 P.M.

DATED: 04/11/2025
REVIEWED: 04/15/2025
APPROVED: 05/20/2025

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman
Zoning Board of Appeals