

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the April, 2017 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Robert Lennartz, Acting Chairman/ Dwight Mateer
Robert Metz/Barbara Bernard, Alternate
EXCUSED: Joseph Liberti, Chairman/Lauren Kaczor
OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney
David Holland, Code Enforcement Officer
Rosemary Messina, Secretary

The Acting Chairman called the meeting to order at 7:00 P.M., stating that if anyone appearing before the Board was related through family, financial or 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 Acting Chairman 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 Acting Chairman stated that due to the absences of Chairman Liberti and Ms. Kaczor, the Alternate member, Mrs. Bernard, will be voting this evening. He further stated that there are only four members present, therefore, at tonight's meeting we do not have full Board representation. In these circumstances it will require (3) three votes to approve any motion that is presented. If a vote results in a two/two tie, the motion will be defeated. As a result we offer petitioners the following three options: 1. We can vote on the petition and the petitioner must accept the Board's decision; 2. We can hear the case and postpone the vote until the next meeting of the Board when a full Board is present. The absent members of the Board will review the testimony and all appropriate documents prior to the meeting; 3. The petitioner can postpone making his presentation until the next meeting of this body.

The Petitioner chose to proceed.

The meeting minutes for the March 2017 meeting were unanimously **APPROVED**.

The Acting Chairman stated that site inspections of all cases presented tonight were made by:

LENNARTZ, AYE/MATEER, AYE/METZ, AYE/BERNARD, AYE

1. ZBA File #06-17, Matthew Lubkowski, 7625 Ellicott Road, Zoned R-1 (Part of Farm Lot 68, Township 9, Range 7; SBL#185.04-2-4). Requests an Area Variance to construct an attached garage with a 0'-0" side setback. Minimum side setback for this R-1 Lot is 15-ft., Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Matthew Lubkowski, Petitioner/Property Owner

Mr. Lubkowski stated that he would like to construct a one-car garage on the east side of his existing two-car garage for tool storage and hobby materials. The garage will not be placed with a 0'-0" side setback as listed, but rather a 1-foot side setback.

Mr. Lubkowski explained the details of his request to the Board. He noted that he tried to purchase the adjacent property, but it is not for sale. Letters of support for the variance were submitted from 3 neighbors residing at 7637, 7632, and 7615 Ellicott Road and are part of the permanent file.

Acting Chair Lennartz explained the criteria the Board uses to review requests for variances. "Is the request substantial?" He told Mr. Lubkowski he feels the request is substantial.

Mrs. Bernard established that the existing two-car garage is not being used as a two-car garage, as many items are stored here. She also established that the request for a one-foot setback includes the overhang of the structure.

Mr. Metz established that there is a shed in the back of the property currently used for storage.

Mr. Mateer feels that the request could be achieved in another way. He suggests moving the items from the existing two-car garage into the shed. He told the board that his tractor is larger than the shed. Mr. Mateer stated a 20' x 24' shed will accommodate Mr. Lubkowski items. However Mr. Lubkowski explained to the Board he would have to add a driveway to the back, and he prefers to have the structure closer to his residence for his convenience.

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.

OPPOSITION:

*Attorney Dale McCabe, representing property owner Mrs. Breidenstein
976 Union Road
West Seneca, New York 14224*

Mr. McCabe stated that Mrs. Breidenstein does not support the variance request. She feels this is a substantial request, a change to the character of the neighborhood, and that it is self-created. Mrs. Breidenstein does not want Mr. Lubkowski encroaching on her property during constructions stages, and feels that the existing two-car garage should be used for what it was intended for.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no communications have been received.

Board discussion: The members feel the request is substantial.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **DENY** the Variance for the following reasons:

1. There will be an undesirable change to the character of the neighborhood and a detriment to nearby properties.
2. The benefit can be sought in another way.
3. The request is substantial.
4. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty is self-created.

THE MOTION BEING:

LENNARTZ
BERNARD

AYE
AYE

METZ
MATEER

AYE
AYE

THE MOTION BEING UNANIMOUS, THE MOTION FOR A VARIANCE IS DENIED.

Meeting adjourned at 7:25 P.M.

DATED: 05/12/17

REVIEWED: 05/12/17

Rosemary M. Messina, Secretary
Zoning Board of Appeals

Robert Lennartz, Acting Chairman