

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the April 17, 2018 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

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

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney
David Holland, Code Enforcement Officer
Rosemary Messina, Recording Secretary

The members recited the Pledge of Allegiance and the Chairwoman 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 Chairwoman 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 meeting minutes for the February, 2018 meeting were unanimously **APPROVED**.

The Chairwoman stated that site inspections of all cases presented tonight were made by:
BOWERS, AYE/LENNARTZ, AYE/KACZOR, AYE/MATEER, AYE/METZ, AYE/BERNARD, AYE

1. ZBA File #03-18, Patricia Bryniarski, 3580 Baker Road, Zoned R-2 (Part of Farm Lot 10, Township 10, Range 7; SBL#162.00-1-5.311). Requests an Area Variance to house Farm Animals within 100-ft. of a property line. No Building shall be used to house Farm Animals within 100-ft. of a property line, Section 144-32A (1).

APPEARANCE: Mrs. Patricia Bryniarski, Petitioner/Property Owner

Mrs. Bryniarski told the members that she erected two code-compliant storage sheds on the west side of her property line to help block the wind-blown soil from her westerly neighbor, the Town of Orchard Park Reclamation Center. Her property is over five-acres in size and she desires to raise a pair of goats, and perhaps chickens, keeping them in the existing sheds. To comply with the Town Code with regard to "Housing Farm Animals", the sheds need to be relocated to within 100-ft. of the property line. The shed relocation will take them out of her sight range, and place them in the restricted wetland area. Mrs. Bryniarski stated that she would like to be able to keep an eye on the livestock from her home, as there are animals of prey in the area. This location also places the livestock the farthest they can be from impacting her adjacent north and south neighbors.

Mrs. Bernard established that there is no livestock on the property at this time. Mrs. Bryniarski explained that she would like to pursue caring for a pair of goats, and if she is comfortable with taking care of them, she may move forward with chickens.

Mr. Metz established that Mrs. Bryniarski will build a regular structure for the goats if she determines that raising goats is something she likes to do and wants to increase her herd, as the current shed is not large enough to hold more than 4 goats.

Chairwoman Bowers established that the goats will be fenced-in, and that currently, Mrs. Bryniarskis' family dog is fenced in. She also established that if Mrs. Bryniarski decides to raise chickens she will use the remaining storage shed and they, too, will be fenced in.

Mr. Lennartz established that there are 7.68-acres at this site and that the two sheds are currently used for personal storage.

The members had no further questions.

Board discussion:

Mr. Lennartz feels the location is a good choice. He stated that he supports the variance request. Ms. Kaczor stated that she is having a hard time with this request.

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

(Twice) NO RESPONSE.

The Chairwoman 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 further communications were received other than what had been reported.

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

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties.
2. The benefit 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 MOTION BEING:

| | |
|-----------------|------------|
| LIBERTI | AYE |
| LENNARTZ | AYE |
| MATEER | AYE |
| METZ | AYE |
| KACZOR | NAY |

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

2. ZBA File #04-18, Michael High, 25 Scattertree Lane, Zone R-1 (Sub Lot 34, Map Cover 2377; SBL #173.18-1-24). Requests an Area Variance to install a 6-ft. high fence within the side street yard. Maximum height of a fence in a side street yard is 3-ft., Section 144-22A (1).

APPEARANCE: Mr. Michael High, Petitioner/Property Owner

Mr. High explained his desire to gain privacy and security for his family, dog, and property, by erecting a 6-ft. high, 30-ft. long fence, along his side street yard.

Ms. Bowers established that Mr. High feels he needs a 6-ft. high fence to contain the family dog, provide privacy for his family and stop trespassing. He told the Board that he does not feel the granting of the variance will create an impact on the neighborhood, change its character, or restrict a motorists' visibility. He plans to have a pool, and noted that a neighbor was granted a variance for a 6-ft. high fence when they had their pool put in.

Mr. Lennartz feels that the fencing will limit the site view of an individual traveling from around the corner on a bicycle. He also noted that he did not see any 6-ft. fences located in the neighboring side yard areas. However, each request for a variance stands on its own merit.

Ms. Kaczor established that Mr. High purchased and moved to this residence in August 2016. She feels he should have performed due diligence prior to purchasing this home.

The members reviewed photos submitted by Mr. High and had no further questions.

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

(Twice) NO RESPONSE.

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

OPPOSITION:

*Mr. Douglas Hamberger
30 Ironwood Court
Orchard Park, New York 14127*

Mr. Hamberger stated that he does not support the variance request for a 6-ft. fence, as he feels it will change the character of the neighborhood. He noted that the previous owner of the property had vegetation that provided a natural buffer for privacy and Mr. High removed it.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated that three (3) communications against the request were received.

Board Discussion:

The members feel the variance will change the character of the neighborhood, that visibility will be an issue, and that the benefit sought can be achieved in another way, other than the granting of the variance.

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

1. There will be an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The benefit sought can be achieved in another way, other than the granting of the variance.
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:

| | |
|-----------------|------------|
| LIBERTI | AYE |
| LENNARTZ | AYE |
| MATEER | AYE |
| METZ | AYE |
| KACZOR | AYE |

THE MOTION BEING FIVE (5) IN FAVOR, THE MOTION TO DENY IS PASSED.

3. ZBA File #05-18, Nicholas Kin, 5980 Armor Duells Road, Zoned R-2 (Part of Farm Lot 21, Township 9, Range 7; SBL #172.04-1-59). Requests a Variance to house chickens on this parcel. Chickens shall not be housed except on a farm nor within 100-ft. of any property line of such farm Section 144-32 A (1). A farm parcel must contain at least 5-acres, Section 144-5B, terms defined.

APPEARANCE: Mr. & Mrs. Nickolas Kin, Petitioner/Property Owner
Mr. Ethan Kin, Son

Mr. Kin explained to the members the benefits he believed his family would attain living in the Town of Orchard Park. He told the Board that it was brought to his attention that he was not code compliant with a chicken coop constructed and located at the back of his property. The coop houses 15 pet chickens on his .8-Acre lot. He further explained that the coop was placed in error on his neighbor's property, Forbes-Capretto Homes. Forbes-Capretto Homes has expressed to him that the coop must be moved immediately. He told the Board that he would like to keep the chickens and move the coop near his adjacent neighbor's property, Mrs. Shannon. Mrs. Shannon has indicated that she does not object to the coop being placed close to her property line. Mr. Kin stated that his friends will help him move the 1,500 pound coop, and he told the members there are no roosters.

The members' questions established that the chickens are fenced-in. However, at times, they are allowed to freely roam the property. The variance sought is to allow the chickens to remain, as the property is less than five-acres.

Attorney Lenard Berkowitz and Code Enforcement David Holland discussed the variance and Attorney Berkowitz determined that this request is for a "Use" Variance.

Mr. Lennartz established that the chickens wander to the adjacent neighbor's property (Mrs. Shannon), and she is fine with this. To locate the coop 100-ft. from the lot line it would need to be placed in the front of the Kin's residence. The Kin's property is .8-Acres in size; the Town Code specifies a minimum of 5-acres is required.

Mr. Ethan Kin spoke regarding his training methods with the chickens.

Mr. Mateer reviewed the survey map with the Petitioners and asked Mr. Kin to mark on the map where he would like to locate the coop. Mr. Kin indicated on the property survey where he would like to place the coop, noting that "anywhere in that section would be ideal". Mr. Mateer further established that a chicken's life span is approximately four years. Mr. Kin told the members that over time, he would be comfortable with having no more than 6 chickens kept on his property. A light-weight portable fence will be used to contain the chickens.

Ms. Kaczor established that the Kin's are not currently using the chickens for business purposes.

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

IN FAVOR:

*Ms. Pam Shannon
5940 Armor Duells Road
Orchard Park, New York 14127*

Ms. Shannon fully supports the variance request. She does not object to the chicken coop being placed on her property line, and she verified on the map where her property is located.

*Ms. Margaret Fahs
7 W. Royal Hill Drive
Orchard Park, New York 14127*

Ms. Fahs spoke in favor of the variance request.

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

IN OPPOSITION:

*Mr. David Evans
5940 Armor Duells Road
Orchard Park, New York 14127*

Mr. Evans spoke against the granting of the variance. He told the Board that the Petitioner does not have the required 5-acres, and he believes wild-life predators, such as coyotes and fox, are attracted to the chickens.

*Mr. John Giannicchi, Representing Forbes-Capretto Homes
470 Cayuga Road
Cheektowaga, New York 14225*

Mr. Giannicchi stated that Forbes-Capretto Homes is the property owner at the back of this property and they are against the granting of the variance. He presented a petition signed by eight neighbors supporting the denial of the variance. In addition, he submitted seven color photographs of the chicken's roaming freely on the Forbes-Capretto Homes' property as recently as Friday. One photo documented the presence of a rooster. Mr. Giannicchi noted that the show house, where he met potential customers, was adjacent to the Kin property. The chickens, although friendly, intimidated customers with their presence, and Animal Control needed to be called. He showed the members a photo of the chickens scattered all over the property. He also reported that one of the neighbors that signed the petition has a situation where the chickens do "laps" around their yard. He questions the construction and safety of the coop.

The photos and signed petition against the variance will be entered into the permanent file.

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

Board Discussion:

Mr. Lennartz stated that his concern that the chickens would travel to the other neighboring properties is apparently happening.

Chairwoman Bowers established if the variance is approved the number of chickens will be reduced over time to no more than six. She verified with the Kin's that they have no roosters. She also verified with Mr. Giannicchi and that the photos presented to the Board were taken as recently as Friday.

Ms. Kaczor discussed a stipulation to revisit this case if the adjacent property is sold, as the new property owners may not want the coop on their property line.

Mrs. Kin questions the photographs submitted, as to where and when they were actually taken. She also questions Mr. Giannicchi's signed petition.

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

1. Strict application of the regulations is reasonable. There is no argument made on a financial return. The denial will not deprive the applicant of a reasonable return on the property.
2. The hardship is not unique, and does apply to a substantial portion of the district or neighborhood.
3. The variance will alter the essential character of the neighborhood.
4. The alleged hardship is self-created.

THE MOTION BEING:

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|-----------------|------------|
| BOWERS | NAY |
| LENNARTZ | AYE |
| MATEER | NAY |
| METZ | AYE |
| KACZOR | AYE |

THE MOTION BEING THREE (3) IN FAVOR OF DENIAL, AND TWO (2) AGAINST, THE MOTION IS PASSED.

4. ZBA File #06-18, Paul & Joyce Bertini, 32 Bender Dr., Zoned R-2 (Sub Lot #18, Map Cover 1793; SBL #161.16-2-34). Requests an Area Variance to construct a covered front porch with a 37-ft. – 10-inch setback. Minimum front setback for this R-2 Lot is 40-ft., Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Paul Bertini, Petitioner/Property Owner

Mr. Bertini desires to add a covered front porch onto his home. He explained that there is a bend in the road that creates a situation where one corner of the proposed porch will encroach on the minimum frontage by approximately 2-feet. He told the members why he does not feel the porch will change the character of the neighborhood, and discussed tree removal that will take place by a firm he hired.

The members reviewed the submitted plan to verify the location of the porch.

Ms. Bowers established that Mr. Bertini does not reside at this residence. She discussed details of the porch with Mr. Bertini, and established that a tree was taken down recently and the remaining stump will be ground down. She further established that the roof on the residence will be extended to cover the proposed porch.

Mr. Lennartz asked for clarification of the trees that will be removed on the map. Mr. Bertini stated that additional trees will be removed as they are massive and hang over the residence. All stumps will be ground down by the firm he hired.

Mr. Mateer established that reducing the porch sitting area will make it unusable, as the post and railings take up space.

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

(Twice) NO RESPONSE.

The Chairwoman 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 additional communications have been received.

BOARD DISCUSSION: The members feel this will be a nice improvement.

Mr. Mateer made a **MOTION**, seconded by Ms. Kaczor, to **GRANT** the Area Variance for the following reasons:

1. There will not be an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The benefit 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 MOTION BEING:

| | |
|-----------------|------------|
| BOWERS | AYE |
| LENNARTZ | AYE |
| MATEER | AYE |
| METZ | AYE |
| KACZOR | AYE |

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

Meeting adjourned at 8:10 P.M.

DATED: 5/04/18

REVIEWED: 5/15/18

Kim Bowers, Chairwoman

Zoning Board of Appeals
Rosemary Messina, Secretary