

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the February 20, 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 January, 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 #01-18, Stephen Ottley, 9 Sandpiper Court, Zoned R-1 (Sub Lot #31, Map Cover 3207; SBL#173.12-2-20). Requests an Area Variance to construct a detached garage with a 12-ft. side setback and within 8-ft. of the dwelling. Minimum, side setback for this R-1 Lot is 15-ft., Section 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations. No Accessory Structure shall be located closer than 10-ft. to any primary structure, Section 144-24 A (1) (C).

APPEARANCE: Mr. Ed Shanahan, Atlantic Garages, representing Mr. Ottley

Mr. Shanahan explained to the Board that the case review was moved from January to February 2018, so a meeting could take place with the Birdsong Home Owner's Association. They discussed his customer's desire to have a detached garage and learned that detached garages are not allowed in the Birdsong Subdivision. Therefore, Mr. Ottley will construct an attached garage using a breezeway attached to the residence. The Area Variance is still needed, as the garage will be located within 8-ft. of the primary structure. The Town of Orchard Park Code requires that the garage be no closer than 10-ft. to the primary structure. Mr. Shanahan further explained that a fireplace insert is located on the proposed garage side of the house that juts out and creates the need for the variance.

Chairwoman Bowers established with Mr. Shanahan that Mr. Ottley would like to have a two-car, attached garage constructed, and the breezeway will be 8-ft. He indicated that he had not contacted the adjacent neighbors, however, the neighbor across the street at 10 Sand Piper did send a letter of support to the Town of Orchard Park.

Mr. Lennartz established that the garage will be attached with a breezeway.

Mr. Mateer discussed the associated measurements involved, and his desire that the project be constructed without the need for a variance. He further established that there is no drawing prepared by an engineer for the construction of the garage.

Mr. Shanahan told the members that he feels his client will have wasted money on drawings if the variance is denied. If the variance is granted, matching siding and architecture will be carried through to mimic the existing residence. Mr. Mateer reviewed the presented survey with Mr. Shanahan.

Ms. Kaczor established that Mr. Ottley has at least six vehicles, and desires a two-car garage. Shortening the width of the proposed garage is not an option for him. His vehicles are currently stored elsewhere. Ms. Kaczor discussed other options in locating the building with Mr. Shanahan.

Mr. Metz established that if the garage is moved to the back and attach to the residence you would not need to worry about the fire place. Mr. Shanahan told the members that there is a patio area at the back of the residence and Mr. Ottley would not want to remove it.

Mr. Shanahan told the members that the proposed plan is the best choice as it is cost effective, and causes the least amount of disturbance at this property.

Mr. Metz, established that the least amount of distance from the fire place wall and breezeway that Mr. Shanahan feels comfortable with 6-feet. The fireplace insert is two-feet, so eight-feet would exist between the residence and the breezeway.

Ms. Bowers feels a distance of 6-feet from the fire place structure would be acceptable.

Mrs. Bernard reviewed the details of the project with Mr. Shanahan. She stated that she would not want the structure to be placed less than five feet of the residence.

Ms. Kaczor established that the residence was not built by the Ottley's. She commented that the Ottley's must have known about the fireplace insert prior to buying the home.

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.

IN OPPOSITION:

*Mr. Kevin Miller, President of the Birdsong Home Owner's Association*  
[KJMiller1961@yahoo.com](mailto:KJMiller1961@yahoo.com)

Mr. Miller stated that he does not support the variance request. He would like the attached garage constructed without the need for a variance, to keep the community consistent.

The Chairwoman then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no further communications other than the one received in the file were received.

BOARD DISCUSSION:

Mr. Lennartz established that Mr. Miller is against the project as he did not receive details from Mr. Ottley. He also verified with Town Attorney Leonard Berkowitz that the Zoning Board of Appeals is a separate entity from the Home Owner’s Association and is not obliged to follow their rules. The Homeowner Association will work with Mr. Ottley on the ascetics of the attached garage.

Mr. Metz established with Mr. Shanahan that the vent work for the fireplace cannot be run straight up to eliminate the extra that juts out.

The members discussed wanting to have the project accomplished without a variance. Mrs. Bernard would like Mr. Ottley to work with the Homes Owner’s Association.

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

1. There will be an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The benefit can be achieved in another way, other than the granting of the variance.
3. The request is not 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:**

<b>BOWERS</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>MATEER</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

**THE MOTION BEING FIVE (5) IN FAVOR OF DENYING THE VARIANCE, THE MOTION IS PASSED.**

Meeting adjourned at 7:34 P.M.

DATED: 3/01/18  
REVIEWED: 3/20/18

Zoning Board of Appeals  
Rosemary Messina, Secretary

Kim Bowers, Chairwoman