

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

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

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

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

OLD BUSINESS:

1. ZBA File #07-17, Christopher Eagen, 76 Rolling Hills Drive, Zoned R-2 (Sub Lot 42, Map Cover 2269: SBL#172.11-1-60). Requests an Area Variance to install a 6-ft. high fence in the side street yard. Maximum height of a fence in a side street yard is 3-ft., Section 144-22 A (1).

APPEARANCE: Mr. & Mrs. Christopher Eagen, Petitioner/Property Owner

Mrs. Eagen explained to the Board that they desire to have a fenced-in play area for their children. An existing 6-ft. fence will be moved and relocated to the side street yard for as far as it will extend, and the fencing will be continued with 4-ft. high fencing after that point. They wish to provide privacy and deter children from trespassing on their property.

Ms. Kaczor established that the neighbors were contacted and there is no objection to the variance request. Mrs. Eagen told the members that a safety fence may be put in around the existing pool.

Mr. Mateer verified the height of the fencing to be used and where it would be located.

Mr. Lennartz feels the Petitioner should use a 3-ft. high fence per the Town Ordinance.

Mr. Metz established that the existing 6-ft. fencing at the rear of the property is their neighbor's fence.

Mrs. Bernard ask what other safety is provided to keep children out of the pool. Mrs. Eagen stated her children are never left alone.

Mr. Liberti established that the fencing will be a "picket style fence" and all match.

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.

(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 have been received.

Board discussion: Several members feel the request is substantial. Mr. Mateer asked Mr. Holland for further clarification on the fencing at the rear of the property owned by the neighbor, and the possibility of it being removed at some point-in-time. Mr. Mateer also discussed eliminating the need for a variance if the Petitioner used four-ft. and three-ft. high fencing, rather than the 6-ft. high fence. The Petitioners stated that they want to re-use the existing 6-ft. high fence to save approximately \$4,500.

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

1. There will not be an undesirable change to the character of the neighborhood or a detriment to nearby properties.
2. The benefit can be achieved in another way, however, economically the cost is not affordable.
3. The request is 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 proposed three foot fence in the front yard is going to be 4-ft is allowed by the Town Code.

THE MOTION BEING:

LIBERTI	NAY
LENNARTZ	AYE
KACZOR	NAY
METZ	NAY
MATEER	NAY

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

NEW BUSINESS:

1. ZBA File #14-17, Peter Murray, 70 Henning Drive, Zoned R-1 (Part of Farm Lot 7, Township 9, Range 7; SBL#162.18-3-22.1). Requests an Area Variance to construct a detached garage within the front yard. No accessory structure shall be located within the front yard, Section 144-24A(1)(b).

APPEARANCE: Mr. Peter Murray, Petitioner/Property Owner
Representative from Bammel Architects

Mr. Murray desires to locate a garage in his front yard, but any where he locates the garage is considered his front yard. He told the Board that the rear of the property is not suitable as a ravine exists here. He feels the proposed location is the best choice, based on the topography and established tree growth. He further noted that the style of the structure will blend into the neighborhood, and be buffered from the nearest neighbors. He will not be running a business from here, and the only utility will be electric. He distributed photos of the property for the Board's review of where he would like to place the structure. He noted that his neighbor, Mr. Hennigan, is the most impacted by the variance request. Mr. Murray told the members that he is willing to put in additional landscaping to create further buffering to diminish the view of the garage for Mr. Hennigan and others that may view it.

The members' questions established that,

- The proposed location allows two existing rows of trees to remain and minimizes tree removal;
- Several vehicles will be stored here, along with personal items;
- Neighbors were contacted, and some support the request, and some do not;
- Mr. Murray is open to a compromise with the height of the building;
- Mr. Murray does not feel the request will alter the character of the neighborhood;
- The structure will have a single door in front, and a double door in the back;
- The overhang measurement is included in the size;
- The Petitioner purchased the property in 2015 and is aware of the boundary lines of his lot;
- The Petitioner has an existing two-car garage attached to his residence;
- Mr. Murray feels the porch added on to the garage gives a nice architectural look to the building;
- The existing cabana structure on the property stores pool equipment. It has a 10-ft. x 12-ft. storage area with an 8-ft. x 12-ft. sitting room.

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.

IN OPPOSITION:

*Mr. Charles B. D'estries
56 Henning Drive
Orchard Park, New York 14127*

Mr. D'estries spoke against granting the variance request, noting that the Zoning Laws exist to protect property. He does not feel a building of this size is reasonable. He does not want his view-scape to change, or the value of his home.

*Mr. Michael P. Hennigan
60 Henning Drive
Orchard Park, New York 14127*

Mr. Hennigan does not support the variance request. He feels granting the variance to allow the structure in the front yard will change his view-scape, diminish the value of his home, and change the character of the neighborhood. He finds this totally unacceptable.

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 stated that this will change the character of the neighborhood.

Ms. Kaczor 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 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
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE VARIANCE IS DENIED.

2. ZBA File #15-17, Kevin N. Roeder, 101 Hodson Road, Zoned R-2 (Part of Farm Lot 15, Township 10, Range 7; SBL#162.05-4-3.2). 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 144-32A(1). A farm parcel must contain at least 5-acres, Section 144-5B, terms defined.

APPEARANCE: Mr. Kevin Roeder, Petitioner /Property Owner

Mr. Roeder desires to be able to keep 4 chickens as pets at his residence. He has had the chickens for over one year. They were roaming freely, and not in an enclosed area. A correspondence was received from 66 Hodson Road, stating that the chickens were on a neighbor's porch and in their yard. Mr. Roeder stated that the chickens are kept in the coop and let out in the evening and stay in their yard.

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

IN FAVOR:

*Mrs. Adarienne Benning
62 Hodson Road
Orchard Park, New York 14127*

Mrs. Benning stated that the chickens are a joy to watch, and she supports the variance request.

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

AGAINST:

*Mr. David Hillery
113 Hodson Road
Orchard Park, New York 14127*

Mr. Hillery stated that the chickens roam everywhere. This is not a farm- this is a residential street with homes.

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

Board discussion: The members discussed the ordinance stating that 5-acres are needed. They also discussed the chickens roaming in neighbor's yards.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the Variance for the following reasons, with **STIPULATIONS**:

1. There will not be an undesirable change to the character of the neighborhood or a detriment to nearby properties.
2. The benefit cannot be sought in another way.
3. The request is 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 Variance is granted with the following Stipulations:

1. There are to be no more than four Chickens, and no Roosters.
2. The birds are not to migrate on the near-by properties.

THE MOTION BEING:

LIBERTI	NAY
LENNARTZ	AYE
KACZOR	NAY
MATEER	AYE
METZ	NAY

THE MOTION BEING THREE (3) NAYS AND TWO (2) AYES, THE MOTION FAILS.

3. ZBA File #16-17, 4936 Ellicott OP LLC, 4936 Chestnut Ridge Road, Zoned B-2 (Part of Farm Lot 13, Township 9, Range 7; SBL#173.13-1-6). Requesting Area Variances for a proposed restaurant expansion project. First, to reduce the front setback from 37'-2" to 36'-4", required space cannot be reduced, Section 144-20C. Second, to reduce the rear setback from 17'-5" to 10', required space cannot be reduced, Section 144-20C. Third, to allow an increase in front yard parking. Vehicle parking in the front yard is prohibited in this B-2 Zone, Section 144-29A(4). Last, to allow fewer parking spaces than required by Section 144-29A(3)(h).

APPEARANCE: Mr. Sean Hopkins, Attorney
Mr. Patrick Mahoney, Lauer-Manguso Architects

Mr. Hopkins stated that the new owner of Eckl's, Mr. Cornell, would like to update the restaurant and make various improvements, including the construction of an addition, offering outdoor dining. He explained the proposed parking plan noting that handicapped parking spaces will be put in. He further explained that Mr. Cornell has an agreement utilizing parking spaces with the adjacent business, on the

west side of the property, "Litwin/Castle Insurance". He also bought the property at 4943 Chestnut Ridge Road to add land for the expansion and further development of the site.

The members' questions established that;

- Customers may park at the "The Litwin Castle" parking lot and walk to the restaurant.
- The parking lot will be paved.
- They will employ approximately 29-people, who have permission for off-site parking. During the expansion, seating at the restaurant will be increased from 120, to 232 seats, plus an additional 55 seats located in the upstairs outdoor seating area. The upstairs seating area could be partially enclosed and one-half of these seats maybe used through inclement weather. Signage for the site has not yet been developed.
- They will be short 19-spaces from the Town Ordinance of 116-required spaces. Three spaces at the site will be handicapped accessible.
- Mr. Cornell will continue to purchase land in the future to use for parking.
- Deliveries are dropped off generally when the restaurant is not open to the public.

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

IN FAVOR

*Mrs. Jo Anne Litwin-Clinton, Owner Litwin/Castle Insurance
4955 Chestnut Ridge Road
Orchard Park, New York 14127*

Mrs. Litwin spoke in favor of the variance request. She noted that they need to finalize a license agreement for parking on her property. She trusts that they will work this out.

*Stephanie Williams
5832 Seifert Road
Orchard Park, New York 14127*

Ms. Williams spoke in favor of the variance for this Orchard Park restaurant.

*Mr. William Dietsch
4962 Ellicott Road
Orchard Park, New York 14127*

Mr. Dietsch spoke in favor of grating the variance for this Restaurant.

*Mr. John McFadden
1 Quaker Lake Terrace
Orchard Park, New York 14127*

Mr. McFadden spoke in favor of grating the variance for this Restaurant.

*Mr. George McKnight
95 Squire Drive
Orchard Park, New York 14127*

Mr. McKnight is a retired "Planner". He supports the variance request and feels the project to update this vintage building to be impressive.

*Ms. Sharon Zulinke
3 Metzger Drive
Orchard Park, New York 14127*

Ms. Zulinke supports the variance request for Eckl's to be updated.

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 have been received.

Board discussion: The members feel the request is not substantial.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, that this is an Unlisted Action and that a **Negative Declaration** under SEQR be made based on the submitted Short EAF.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE VOTE ON THE MOTION BEING UNANIMOUS, A NEGATIVE DECLARATION IS MADE UNDER SEQR.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor to **GRANT** the Variances for the following reasons:

1. There will not be an undesirable change to the character of the neighborhood or a detriment to nearby properties.
2. The benefit cannot be sought in another way.
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.

ON THE QUESTION: Mr. Lennartz agreed to amend the motion he made, and deleted several stipulations.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

Meeting adjourned at 9:00 P.M.

DATED: 7/16/17
REVIEWED: 7/18/17

Rosemary M. Messina, Secretary
Zoning Board of Appeals

Joseph Liberti, Chairman