

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the May, 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/
Barbara Bernard, Alternate

EXCUSED: Dwight Mateer

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 April 2017 meeting were unanimously **APPROVED**, with two recusals.

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

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: No one was in attendance.

Ms. Kaczor made a **MOTION**, seconded by Mr. Lennartz to **TABLE** this case.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
METZ	AYE
BERNARD	AYE

THE MOTION BEING UNANIMOUS, THE MOTION TO TABLE IS PASSED.

2. ZBA File #08-17, Michael & Jennifer Derrick, 6140 Benning Road, Zoned A-1 (Part of Farm Lot 66 & 67, Township 9, Range 7; SBL#198.00-2-52.2). Requests a Use Variance to construct and operate a farm bakery on this premises. Permitted uses in this A-1 Zone do not include farm bakeries, Section 144-9A, Schedule of Use Controls.

APPEARANCE: Mr. & Mrs. Michael Derrick, Petitioners/Property Owners

Mr. Derrick told the members that they operate two types of farming; Horses, and Natural Organic Fruits and Vegetables. He explained that his wife started a small bakery, certified through Erie County, using ingredients solely from their organic and locally grown products. They would like to offer their fresh bake goods "direct from the farm". Mrs. Derrick has outgrown her current baking space, and they would like to construct a pole barn that would match their existing horse barn. He told the Board that there is no description in the Town Ordinance for a "Farm Bakery" permit. Mr. Derrick

stated that the structure would be located 650-ft. back from the road. He does not feel there will be issues with traffic, and he noted that there are Farm Bakeries that exist in nearby towns. They would like the opportunity to offer farm fresh items to the public. He told the Board that the "Farm Bureau" of New York issued a letter supporting their request and the right-to-farm. In addition they spoke to Collen Baker of the "Orchard Park Chamber of Commerce", who is excited, and feels positive about their request. The Derricks expressed their commitment to farming and feel it is a win/win situation for them and the community. Mr. Derrick stated that he spoke to his neighbors and no objections were voiced to the variance request.

Ms. Kaczor established that approximately 30-vehicles visit the farm on a daily basis. During the weekend there is more traffic. Mr. Derrick told the Board that current advertising is through "social media". If they are allowed to operate the Farm Bakery further advertising methods will be used. They feel it is difficult to predict what the traffic count will be with a Farm Bakery. Presently, orders are placed ahead of time, and pickups are scheduled. They do not feel the traffic will be increased by an exorbitant amount.

Mr. Lennartz stated the determining criteria for approval of a Use Variance. He stated that there is no allowance in the ordinance for farm use, and that the property is successful with the horses, fruits and vegetables. What the Derrick's desire is an add-on. However Mr. & Mrs. Derrick told the Board that they need the extra income to help the farm survive their increasing business expenses. Mr. Lennartz feels this will change the character of the neighborhood.

Mr. Derrick stated they are already ready doing business on the farm and that the proposed structure will look like a farm structure.

Mr. Metz asked Mr. Derrick if the Bippert Farm is certified by the State, and what their zoning is. Mr. Derrick stated that they are certified, but he is not sure what the zoning is, or who certified them; the town, or the state.

Mrs. Bernard established that baked goods have ingredients from partnerships made with local farms. Mrs. Bernard questions how this business can be kept small. Mrs. Derrick told the members that the operation will be similar to a "mom and pop" operation, and that there will be no waitresses or a large enterprise operated here, or a coffee shop.

The Chairman established that a local "fresh made here" feel is the desired type of business they desire. The Derricks have out grown baking in their home and find owning or renting a North Buffalo Road property is out of their price range. They explained that they want people to see the orchards where the fruits are grown and the fields are planted.

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

PROPONENT:

*Mr. Henry Siterek
6086 Benning Road
Orchard Park, New York 14127*

Mr. Siterek stated that he 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.

(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: Mr. Lennartz stated that in reviewing the Use Variance criteria, he finds it difficult to approve this request. He feels the difficulty is self-created, and he does not see a hardship.

Chairman Liberti established that the orchard was expanded, and now the Derricks have more produce than what they can use. Mrs. Derrick would like a professional place for customers to purchase her bake good items. She feels selling to the community at large will help with the overage of produce. A farm stand at the front of the property is not going to work. If they are not able to do this she may as well stop her business. The Derrick's feel it is a hardship for them not to be able to do what the other nearby farms, in other towns, are doing.

Mrs. Bernard has a problem with the commercialization of the farm. She discussed adding a stipulation to the motion.

Ms. Kaczor discussed using a stipulation to eliminate the building evolving into a dinner.

Mr. Lennartz established that Mrs. Derrick sees customers arriving to pick up orders that were already previously placed. There may be a table provided for someone to sit and eat something, but she is looking to use a larger space to produce on a larger scale, and use the items they are growing and have them for sale. She does not have time to wait on tables.

Code Enforcement Officer Dave Holland noted that if the Board makes a motion to approve they may want to have a Stipulation to refer this item to the Planning Board for Site Plan approval. If this was a Permitted Use they would need to see the Planning Board for things like lighting, parking, and other items.

Ms. Kaczor made a **MOTION**, seconded by Mrs. Bernard, to **GRANT** the **Use Variance with Stipulations** based on the following:

1. I think it will help the Applicant receive a reasonable be return on their property.
2. The hardship is not unique, and does not apply to a substantial portion of the district or neighborhood.
3. The variance will not alter the essential character of the neighborhood.
4. The alleged hardship was not self-created.

This Variance is granted with the following Stipulations:

1. This will not be a full service facility.
2. This will not be a commercialized operation.
3. Refer to Planning Board for Site Plan Approval.
4. Products are to be made with local Western New York farm products serviced at that location.
Do due diligence to this aspect.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	NAY
KACZOR	AYE
METZ	AYE
BERNARD	AYE

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

3. ZBA File #09-17, Joseph Endress, 71 Sonnet Drive, Zoned CMO (Sub Lot 16, Map Cover 3547; SBL#162.08-3-16). Requests an Area Variance for a covered deck with an 11-ft. rear setback. Required rear setback for this structure is 20-ft., Section 144-17.1D (5).

APPEARANCE: Mr. & Mrs. Endress, Petitioners/Property Owners

Mr. Endress explained to the members that he would like a screened, covered deck. He submitted a

letter of support from his neighbor residing at 75 Sonnet Drive.

Mrs. Bernard asked if Mr. Endress had considered a roll-down type awning. Mr. Endress explained that he feels that type of enclosure is unsafe, and he would like a permanent fixture. He also does not want to worry about rolling it down each time it is needed.

Mr. Metz established that this is a brand new home and that during the design process a covered deck was an option they could have chosen. They were not aware that it would require a variance after the home was built. If they had known, they would have had it constructed while the home was being built.

Ms. Kaczor established that the proposed covered deck will match the existing residence.

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:

Mr. Lennartz made a **MOTION**, seconded by Mr. Liberti, 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 sought cannot be achieved 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 MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	NAY
BERNARD	NAY
METZ	NAY

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

Further Board discussion- Compromise reached with Petitioner to reduce 2-ft. off the requested setback, making it a 13-ft. rear setback. Motion revised: Rear set back is 13-ft., instead of 11-ft.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor, to **GRANT a 13-ft. rear setback** 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 sought cannot be achieved 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 MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
BERNARD	AYE
METZ	NAY

THE MOTION BEING FOUR (4) AYES AND ONE (1) NAY, MOTION IS PASSED.

4. ZBA File #10-17, Kenneth Sommer, 237 Windom Avenue, Zoned R-3 (Sub Lots 29 thru 31, Map Cover 1293; SBL# 151.16-5-29). Requests an Area Variance to construct a garage addition with a 29-ft. front setback. Minimum front setback for this R-3 Lot is 30-ft., Section 144-9B, Schedule of Height, Lot, Yard and Bulk Regulations.

APPEARANCE: Kenneth Sommer, Petitioner/Property Owner

Mr. Sommer explained in detail why he needs the 12" variance. He told the members that without it he cannot construct his garage addition with a workable turning radius, nor have a garage that will fit his vehicle. He indicated on his I-Pad further details of the garage addition for the members to review. He noted that he is the last house on a dead end street. In addition, he does not feel he is changing the character of the neighborhood, as several properties with homes on this street have less than 30-ft. front setbacks. He submitted a letter of support from his neighbor residing at 189 Windom Avenue.

Mrs. Bernard established that Mr. Sommer will be able to turn his vehicle around in his driveway.

Mr. Metz established that the proposed garage will match the current garage door.

Ms. Kaczor established that the garage will not be used to run a business here.

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: The members feel the request is not substantial.

Mr. Metz 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 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.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
METZ	AYE
BERNARD	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

5. ZBA File #11-17, Robert Grimm, 360 Sunset Terrace, Zoned B-3 (Part of Farm Lot 16, Township 9, Range 7; SBL#162.13-2-3). Requests an Area Variance to construct an addition creating a 13-ft. rear setback. Required rear setback for this B-3 Lot is 20-ft., Section 144-9B, Schedule of Height, Lot, Yard and Bulk Regulations.

APPEARANCE: Mr. Robert Grimm, Petitioner/Property Owner

Mr. Grimm told the members that he desires to add a bedroom to his ranch home. He explained that adding the master bedroom and attaching it to the garage puts his home within 20-ft. of rear lot boundary. The variance is needed because the house is being connected to the garage making it one complete building. His property is zoned commercial and is next to the Corto's facility. He explained the variance request to his neighbor and no objections were voiced. You will not see the addition from the road.

Mr. Lennartz verified the request with Mr. Grimm.

Mr. Metz established that the garage will still be used as a garage.

Mrs. Bernard established that no business will be operated from here.

Chairman Liberti established that the neighbor residing at 350 Sunset Terrace had no objection to the variance request.

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: The members feel the request is not substantial.

Mrs. Bernard made a **MOTION**, seconded by Mr. Metz, 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 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 not self-created.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
METZ	AYE
BERNARD	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

6. ZBA File #12-17, Bammel Architects for Al Busse, 61 Burmon Drive, Zoned B-2 (Sub Lots 6 & 7, Map Cover 1410; SBL# 151.12-5-3). Requests an Area Variance to construct an addition within 10-ft. of a detached garage. No accessory structure shall be located closer than 10-ft. to any primary structure, Section 144-24 A (1) (c).

APPEARANCE: Mr. Busse, Petitioner/Property Owner
Mr. Mike Lukaszewski, Jim Bammel Architects

Mr. Lukaszewski explained what they feel is the best location for the addition, and why.

The members' questions established that the addition will not be viewed from the roadway, the wood stairs shown on the back deck may be converted to a ramp, if needed, and there will be a rear entrance.

Ms. Kaczor established that there will be no business run from here.

Chairman Liberti asked if another placement suggestion was considered, but Mr. Lukaszewski stated it is more economical to locate the addition where it is proposed.

Ms. Kaczor established that 10-ft. is required and they are asking for 5.7-ft.

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.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Variance for the 5.7-ft. setback based on 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 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 as presented.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
METZ	AYE
BERNARD	AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED.

7. ZBA File #13-17, Ian Mitchell, 7389 East Quaker Road, Zoned R-2 (Part of Farm Lot 63, Township 9, Range 7; SBL#162.19-1-8). 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. Ian Mitchell, Petitioner/Property Owner

Mr. Mitchell explained to the Board that he would like a variance granted to erect a 6-ft. fence to provide security and safety for his child. He told the Board that he has three letters of support from his neighbors owning property at 7367 E. Quaker Road, 16 Metzger Drive, and Vacant Land 6 Quaker Road.

Mrs. Bernard established that the fence will not be a solid type. She asked if the petitioner could reduce the height of the fence to four-feet, however Mr. Mitchell did not feel a four-foot fence would provide what he is looking for.

Mr. Liberti established that the fence is for both privacy and safety.

Mr. Metz asked if Mr. Mitchell had thought of moving the swing set behind the building with the patio area because he could then put up the 6-ft. fence without the need for a variance.

Mr. Mitchell told the members that it is extremely tight in that area and will barely fit.

Mr. Lennartz feels a 6-ft. fence is substantial. He asks if a compromise can be reached at 4-ft.

Mr. Mitchell told the members that he strongly feels he needs a 6-ft. fence for privacy and safety.

Ms. Kaczor discussed the fact that there was never a fence at this property with Mr. Mitchell. She verified Mr. Mitchell was aware of this when he purchased the property.

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 a communication was received against the Variance request from 36 Hobby Lane.

Board discussion: The members discussed the request and would like the height reduced. Mr. Lennartz does not support the request with a 6-ft. height.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor, to **APPROVE** the Variance for a 4-ft. fence 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 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	NAY
LENNARTZ	AYE
KACZOR	AYE
METZ	NAY
BERNARD	NAY

THE MOTION BEING THREE (3) NAYS, AND TWO (2) AYES, THE VARIANCE IS DENIED FOR A FOUR-FT. FENCE.

Meeting adjourned at 8:30 P.M.

DATED: 6/19/17
REVIEWED: 6/19/17

Rosemary M. Messina, Secretary
Zoning Board of Appeals

Joseph Liberti, Chairman