

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

MEMBERS PRESENT: Joseph Liberti, Chairman/Robert Lennartz/Robert Metz/ Dwight Mateer/
Lauren Kaczor/Barbara Bernard, Alternate

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney
David Holland, Code Enforcement Officer
Kathy Creagan, Recording 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 October 17, 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

1. ZBA File #28-17, Magliano Group LLC, V/L Bussendorfer Road, Zoned R-2 (Part of Farm Lot 29, Township 9, Range 7; SBL#172.00-2-8.21). Requests an Area Variance to create three (3) building lots which will share a 20-ft. access by easement. Building lots shall have immediate exclusive access measuring a minimum of 30-ft. along and contiguous with a dedicated street, Section 144-22B.

APPEARANCE: Mr. Bill Paladino, Petitioner/Property Owner

Mr. Paladino told the Board that he would like to have one common driveway and split this parcel into three (3) building lots. He is unable to meet the Orchard Park Town Code requirement, as Niagara Mohawk owns a portion of the front of the property, along the east side of Bussendorfer Road. He explained that he has an easement agreement in place with Niagara Mohawk to allow a 20-ft. wide road to exist crossing their property for the sole purpose of ingress and egress. The proposed three lots are shown on the Site Plan, indicating they will share the 20-ft. access road over the Niagara Mohawk parcel and then have separate driveways. He noted that the adjacent properties at 5112 and 5020 Bussendorfer Road, constructed single-family homes that do not have the required 30-ft. of immediate exclusive frontage along a dedicated street. He does not feel the requested variances will change the character of the neighborhood.

Ms. Kaczor established that the upkeep of the driveway and easement agreement will be shared by the three parties that own each of the building lots.

Mr. Lennartz asked for clarification on the map of where the 20-ft. road will be placed.

Mr. Metz established that the Petitioner owns the property behind the three proposed lots.

Chairman Liberti established that one or two family members will reside here, and that Mr. Paladino did not contact his neighbors regarding the requested variances.

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

Mr. Michael Behringer, of 5020 Bussendorfer Road, Orchard Park, New York, asked if he could see the information submitted to the Board by the Petitioner. He told the Board that he feels the area has wetlands that must be resolved. It was noted that the Planning Board will review the project and at that time the issue of wetlands will be addressed.

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: Members commented that they understand the Petitioner’s difficulty.

Mr. Lennartz, 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 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	NOT PRESENT
METZ	AYE
KACZOR	AYE
BERNARD	NOT PRESENT

THE MOTION BEING FOUR (4) IN FAVOR, THE MOTION IS PASSED.

The Chair announced that we have a full Board now, with the arrival of Mr. Mateer and Mrs. Bernard, who were delayed at another meeting.

2. ZBA File #29-17, 2549 Group LLC, 4297 Abbott Road, Zoned B-2 (Part of Farm Lot 39, Township 9, Range 7; SBL#172.05-1-1.1). Requests two (2) Variances for a proposed Daycare Center. First, to allow this use in a B-2 Zone, Section 144-9A, Schedule of Use Controls. Permitted Uses in this B-2 Zone do not include Daycare Centers. Second, to allow front yard parking. Vehicle parking in the front yard is prohibited in this B-2 Zone, Section 144-29A(4).

APPEARANCE: Bill Paladino, Petitioner/Ellicott Development

Mr. Paladino explained to the Board that he would like to construct a 7,994 GSF Daycare Center with front yard parking in this B-2 Zone. He is requesting a Use Variance and an Area Variance as the

project does not comply with the Town Code. He does not feel the granting of the two variances will change the character of the neighborhood, as there are other businesses with front yard parking nearby, and four (4) other sites in Orchard Park with Daycare Centers located in a B-2 Zone. He explained that the project cannot be achieved without the variances. This is a narrow lot, and New York State regulations must be followed for the Daycare Center room sizes. He proposes to locate the “drop-off/pick-up” area at the front of the building for visibility and safety. He feels the proposed location of the building will not interfere with passing motorists’ sight vision.

Ms. Kaczor established that Mr. Paladino chose this site based on a study that concluded Abbott and Big Tree Roads are well-traveled, and this would be a good location for a child daycare site.

Mr. Mateer established that the building elevations were not available, but the proposed building is similar to the “Edu-Kids Building” on North Buffalo Road, in Orchard Park. He also established that Mr. Paladino tried to purchase the adjacent property on the south, however, he was unsuccessful. Mr. Mateer discussed his concerns regarding the safety of the children picked-up and dropped-off here. Mr. Paladino stated that the existing fencing will be adjusted to assist with that issue.

Mr. Lennartz has concerns with ingress and egress of the site and traffic patterns. He established that no other variances are needed for the project.

Chairman Liberti established that signage will be displayed on the building.

Mr. Metz stated that he has concerns for vehicle access of the site during the busy times of the day. He established that Mr. Paladino did not contact any of the neighbors regarding the variance request.

Mrs. Bernard established that the daycare busy times will be 8:00 A.M. thru 10:00 A.M., and 4:00 P.M. thru 6:00 P.M.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of the 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. Mark Lester
Big Tree Road
Orchard Park, New York 14127*

Mr. Lester told the members that this is a dangerous intersection. Lives have been lost here, and he also feels the area has a high crime rate.

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 noted that this project will be seen by the Planning Board. It is not in the ZBA’s purview to determine if this is a safe building or not. The member’s feel it is a reasonable request, and it was noted that there is front yard parking along this corner. The financial justification regarding this lot is that it has been difficult to find a use for it, and the lot is vacant now for 4-years.

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

1. The Applicant has demonstrated that the zoning has caused an unnecessary hardship and that;
 - a. Strict application of the regulations will deprive the applicant of a reasonable return on the property, provided that lack of return is substantial as demonstrated by competent financial evidence.
 - b. The hardship is unique, and does not apply to a substantial portion of the district or neighborhood.
 - c. The variance will not alter the essential character of the neighborhood.
 - d. The alleged hardship is self-created, but that does not preclude the granting of the variance.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
MATEER	NAY
METZ	AYE
KACZOR	AYE

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

With regard to the Area Variance;

Mr. Lennartz 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:

LIBERTI	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

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

3. ZBA File #30-17, Thomas Johnson, 6450 Chestnut Ridge Road, Zoned A-1, (Part of Farm Lot 10, Township 9, Range 7; SBL#197.00-3-16). Requests a Variance to construct a 60-ft. x 96-ft. storage building on this dual use property. A non-conforming use shall not be extended except within the same building, Section 144-60.

APPEARANCE: Mr. Thomas Johnson, Petitioner/Property Owner

Mr. Johnson explained that he would like to construct a shed to store his construction equipment. He spoke to the neighbors and did not receive negative responses regarding the variance request.

Ms. Kaczor established that there will not be much traffic at the site and there are two driveways that access the property.

Mr. Lennartz verified that Mr. Johnson will be using the structure strictly to store his construction equipment.

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

Mr. Metz made a **MOTION**, seconded by Mr. Mateer 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:

LIBERTI	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

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

4. Removed by Applicant.

5. ZBA File #32-17, Terry Hixson, 6 Forsythia Court, Zoned R-2 (Sub Lot #21, Map Cover 2186, Range 7; SBL#172.03-2-7). Requests an Area Variance to locate a shed in the required side street yard. Accessory structures shall not be located between the side street lot line and the principal building, Section 144-24A.

APPEARANCE: Terry Hixson, Petitioner/Property Owner

Mr. Hixson would like to place a prefab shed on the side of his residence. This is a corner lot and he

explained that there is not enough room at the rear of the home.

Ms. Kaczor established that Mr. Hixson spoke with his neighbors regarding the variance request and there were no objections voiced. He will plant landscaping to buffer the shed.

Mr. Metz established that only personal items will be stored here and no business will be run from the structure.

Mrs. Bernard would like the shed moved 10-ft. closer to the residence. However, Mr. Hixson explained that a sewer vent pipe is in the way.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of the 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. Metz made a **MOTION**, seconded by Mr. Lennartz 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:

LIBERTI	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	NAY

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

Meeting adjourned at 7:58 P.M.

DATED: 1/9/18
 REVIEWED: 1/16/18
 Joseph Liberty, Chairman

Zoning Board of Appeals
 Rosemary Messina, Secretary