

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the January 15, 2013 meeting held in the Basement Public Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Joseph Liberti Chairman  
Robert Lennartz, Alternate  
Robert Metz  
Roland Pigeon  
Richard Zajac

**APPROVED  
MINUTES**

EXCUSED: Donald Holmwood

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney  
David Holland, Code Enforcement Officer  
Councilman Gene Majchrzak, Board Liaison  
Rosemary Messina, Zoning Board of Appeals Secretary

The members recited the Pledge of Allegiance and 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.

APPROVAL OF THE MINUTES OF THE NOVEMBER 2012 REGULAR MEETING:

Mr. Zajac made a **MOTION**, seconded by Mr. Liberti to **ACCEPT** the minutes of the November 20, 2012 meeting.

THE VOTE ON THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
METZ	AYE
PIGEON	AYE
ZAJAC	AYE

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 Chairman stated that site inspections of all cases presented tonight were made by:

LIBERTI	AYE
LENNARTZ	AYE
METZ	AYE
PIGEON	AYE
ZAJAC	AYE

**OLD BUSINESS**

1. ZBA File #30-12, Benderson Development Company, 4050-4098 North Buffalo Road, Zoned B-1 (Part of Farm Lot 16, Township 9, Range 7; SBL#161.16-1-13.311). Requests a Variance to allow (2) directional signs to include logos. Existing pedestal sign precludes the inclusion of logos on these signs, Section 144-38C (3). This item was tabled by the Board at the November 20, 2012 meeting.

**APPEARANCE:** Mr. Louis Terragnoli, Tops Markets  
Ms. Cheryl Rozek, Benderson Development

Mr. Terragnoli presented and explained a revised sign plan based on comments made by the Board members during the 2012 November meeting. He stated that Benderson Development is seeking to erect an internally illuminated monument sign rather than the previously requested two (2) directional logo signs. They feel the proposed monument sign is architecturally appealing and a good compromise.

Mr. Pigeon discussed the location of the proposed monument sign with Mr. Terragnoli. He stated that he would like the sign located back far enough on the property so it will not interfere with sight-vision when exiting the property.

Mr. Terragnoli explained to the members that Benderson Development would like the traffic heading east on New Taylor Road to view the sign and have the opportunity of using this access.

The members discussed the proposed monument sign and they expressed their concerns regarding its size and the brightness of the illumination. They also discussed the fact that this is a residential area and they question if the neighbors will be in agreement with a lighted sign versus the original request for two (2) directional signs. The Board would like Mr. Terragnoli to reduce the size of the sign and provide further signage details, including the sign's exact location. Mr. Terragnoli told the Board that the hours of illumination and the size of the sign are flexible points of discussion.

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

(Twice) NO RESPONSE

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

(Twice) NO RESPONSE.

The Chairman then asked if the Secretary had received any additional communications either for, or against, granting the variance.

The Secretary stated no communications have been received.

Mr. Zajac stated that he would like to receive possible public feedback on the revised request, noting that the illuminated monument sign was not a published option. He also established with Code Enforcement Officer David Holland that the sign ordinance does not directly address the size of the directional signs. Rather, such signs are to be approved by the Planning Board as to location and size. Mr. Zajac stated that he prefers a smaller monument

sign rather than the two directional signs. He discussed reducing the monument sign with Mr. Terragnoli.

Mr. Pigeon would like the Applicant to provide the dimensions for a smaller monument sign. He also noted that he does feel the sign should be lit during the evening hours and that a timer should be used to limit the hours of its illumination. He concluded that he would like this item Tabled to enable the Applicant to provide additional information to the Board.

Mr. Liberti verified that the Applicant's published legal notice indicates that the request is to allow (2) directional signs with logos. The submission this evening by the Applicant is to allow a second monument sign. This had not been anticipated; therefore, the published request is not correct and re-notification of the neighbors will need to take place.

Mr. Lennartz established that the proposed monument sign will be approximately 6-ft. tall by 6-ft wide; the previous request was for signage "as big as a poster". He told Mr. Terragnoli that he feels most everyone will enter from the North Buffalo Road main access, and that people are aware of the side access. He questions why the Applicant needs this type of sign on a side street that everyone knows exists. He does not feel that the proposal is a compromise. He questions what the neighbors will think of an illuminated sign in this residential area.

Mr. Terragnoli stated that the proposed monument sign "tells you that this is an entrance and more". He feels that unidentified arrows will not be recognized by the public for this new store. He concluded that he will return to the Board with the requested information and the exact location of the proposed monument sign.

Mr. Lennartz stated that he feels the public should be advised that the request has changed and that an additional lighted monument sign is being pursued.

Mr. Pigeon made a **MOTION**, seconded by Mr. Lennartz to **TABLE** the review of this request and they ask that the Applicant re-file their appeal for the correct Variance request.

THE VOTE ON THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
METZ	AYE
PIGEON	AYE
ZAJAC	AYE

THE **VOTE** BEING UNANIMOUS, THE **MOTION TO TABLE** IS HEREBY **PASSED**.

1. ZBA File #01-13, John & Karen Schott, 26 Templeton Trail, Zoned R-1 (Sub Lot 85, Map Cover 3119, SBL#162.07-3-38). Requests an Area Variance to construct an addition with a side street setback of 55-ft. Minimum side street setback for this corner lot is 60-ft., Section 144-22D.

APPEARANCE: Tim Berger, Representing the Schott's

Mr. Berger presented a letter from Mr. & Mrs. Schott authorizing him to represent them in this matter. He also submitted a letter from 17 Templeton Trail, Orchard Park, New York,

indicating support for the Variance request. The Chairman asked the Secretary to enter these documents into the permanent file.

Mr. Berger explained the need to construct the first floor addition and he noted that the layout of the lot, residence and roadway contribute to the need for the variance request. He told the members that he feels the location for the proposed addition is the best choice at the site, and that he feels the request is not substantial.

Mr. Pigeon stated that he reviewed the survey and understands the issue at this property that has created the need for the Variance request.

Mr. Zajac noted that adjacent property is a proposed subdivision and he concluded that the request would not impact that property.

Mr. Liberti established that the facade on the proposed addition will match the existing home.

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

(Twice) NO RESPONSE

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

(Twice) NO RESPONSE.

The Chairman then asked if the Secretary had received any additional communications either for, or against, granting the variance.

The Secretary stated no communications have been received.

Mr. Zajac made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance based on the following:

1. There will be no undesirable change in the character of the neighborhood or a detriment to nearby properties created.
2. The benefit sought cannot be achieved in another way.
3. The request is not substantial.
4. There will not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty may have been self created, however that does not preclude the granting of the variance.

THE VOTE ON THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
METZ	AYE

PIGEON  
ZAJAC

AYE  
AYE

THE **VOTE** BEING UNANIMOUS, THE **MOTION** IS HEREBY **PASSED**.

2. ZBA File #02-13, Steven Bystran, 6112 Boston Ridge Road, Zoned A-1 (Part of Farm Lot 17, Township 9, Range 7; SBL#197.00-4-32.1). Requests a Use Variance to operate a Licensed Farm Distillery at this premises. Permitted uses in this A-1 Zone do not include Farm Distilleries, Section 144-9A, Schedule of Use Controls. A farm parcel must contain at least five (5) acres, Section 144-5 Terms Defined.

APPEARANCE: Steve Bystran, Applicant/Property Owner  
Adam Bystran, son

Steven Bystran explained to the members that the trend today is to promote "local" and that the request to allow a Farm Distillery would be an extension of the use of farm products to create a profit. If the ZBA approves the Farm Distillery variance request he will be able to apply for the necessary New York State license to operate this business. He described his property to the members, noting that he constructed berms to create privacy at the site. He plans to run a small operation and if it were to grow larger he would move the distillery off-site.

Mr. Lennartz discussed "home-brewing" with Adam Bystran. Adam explained that he has taken training in brewing and he desires to produce a small product line consisting of "aged" whiskey, bourbon, gin and vodka.

Steven Bystran explained further details of the distillery operation to the members. He noted that a small amount of local grain would be brought in, but that they would also provide their own. No large tractor trailers would be making deliveries at this site. He told the members that the grain waste remaining after the brewing process would be used by farmers for compost or be consumed by livestock. He also stated that approximately 100-gallons per month of product may be produced. They would like to offer their product to restaurants and trade that are interested in local products.

Mr. Liberti asked the Bystrans, how large the business has to grow before they felt it should be moved. Steven Bystran explained that this was begun as a hobby and that no one is "quitting their day-job". He feels that they must experiment with this business and "find their way". If it becomes economically viable, and they have a larger market than what they can produce for, they would need to consider the next step with the business.

Adam Bystran told the members that there are no other distillery operations in the Buffalo area and that he feels they will be well received.

Mr. Pigeon established that the Bystrans will continue to make their product from their home as a hobby, even if they are not granted the variance.

Steven Bystran stated that they would like to market their product in this region and he restated that if the business were to outgrow the location they would relocate the operation.

Mr. Metz established that controlled samples of their products will be offered at the site and off-site. The tasting room is not attached to the residence and the Bystrans do not feel this will be similar to a winery tasting room.

Steven told the Board that he is not comfortable with more than ten (10) people at his residence per day. He also stated that he feels this will not be similar to a winery and that it will be a cash business.

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

(Twice) NO RESPONSE

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

(Twice) NO RESPONSE.

The Chairman then asked if the Secretary had received any additional communications either for, or against, granting the variance.

The Secretary stated no communications have been received.

Mr. Zajac established that a Use Variance and an Area Variance must be granted for this case. It was further established that the acreage at this site totals to 4.5-acres. Mr. Zajac concluded that he does not feel that the request will change the character of the neighborhood.

Mr. Lennartz made a **MOTION**, seconded Mr. Metz, to **GRANT** a Use Variance and an Area Variance based on the following:

1. There will be no undesirable change in the character of the neighborhood.
2. The benefit sought cannot be achieved in another way.
3. The request is not substantial.
4. There will not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty may have been self-created, however that does not preclude the granting of the variance.

THE VOTE ON THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
METZ	AYE
PIGEON	AYE
ZAJAC	AYE

THE **VOTE** BEING UNANIMOUS, THE **MOTION** IS HEREBY **PASSED**.

There being no further business to be presented to the Board at this time Chairman Liberti adjourned the meeting at 7:50 P.M.

DATED: February 11, 2013

REVIEWED: February 12, 2013

Respectfully submitted,  
Rosemary Messina, Secretary  
Zoning Board of Appeals

Joseph Liberti, Chairman