

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the January 19, 2016 meeting held in the Municipal Center Basement Public Meeting Room, S4295 South Buffalo Street.

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

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney
David Holland, Code Enforcement Officer
Rosemary Messina, Secretary

**APPROVED
MINUTES**

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.

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 congratulated Ms. Kaczor on her Town Board appointment to full Board member, and welcomed the newly appointed Alternate member, Mrs. Bernard.

A motion was made to **APPROVE** the December 15, 2015 meeting minutes as presented.

MOTION TO APPROVE IS HEREBY PASSED with four (4) in FAVOR and one (1) ABSTENTION.

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

LIBERTI, AYE/LENNARTZ, AYE/ KACZOR, AYE/METZ, AYE/BERNARD, AYE

NEW BUSINESS

1. ZBA File #01-16, Jeffrey Bochiechio, V/L California Road, Zoned R-4, (Part of Farm Lot #32, Township 9, Range 7; SBL#161.03-1-2). Requesting Area Variances for this proposed Multiple Dwelling project. Arrangement of buildings not in conformance with Section 144-46 C (4).

Item #1 was removed by the Applicant and will be rescheduled for a future meeting date.

2. ZBA File #02-16, Midori Suddaby, 72 & 76 Tanglewood Drive West, Zoned R-1, (Sub Lot #'s 107 & 179, Map Cover's 2265 & 2305; SBL#'s 173.20-6-2 & 173.20-6-3). Requests an Area Variance for a lot line adjustment which will create side setbacks of 14.2'. Minimum side setback for these R-1 lots are 15', Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. & Mrs. Suddaby, Applicant/Property Owners

Mr. & Mrs. Suddaby explained that they would like to sell their property, and that they own the adjacent lots on the right, and left, of their residence. An addition was constructed to their residence and a portion of it is on one of the side lots. They would like the lot line moved to include the addition and this causes a violation of the Town Code requiring a side setback of 15'. They need an Area Variance granted for a side setback of 14.2'.

Ms. Kaczor established that no variance was needed at the time of the addition.

Chairman Liberti established that no one would be impacted by the variance request. The Suddaby's own both properties.

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.

The Board members felt the variance request was de minimis.

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

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 the district.
5. The difficulty is self-created, but that does not preclude the granting of the variance.

THE MOTION BEING:

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| LIBERTI | AYE |
| BERNARD | AYE |
| KACZOR | AYE |
| LENNARTZ | AYE |
| METZ | AYE |

THE VOTE BEING UNANIMOUS, THE MOTION IS HEREBY PASSED.

3. ZBA File #03-16, Ray Laks Honda, 3590 Southwestern Blvd., Zoned I-1, (Part of Farm Lot 25, Township 10, Range 7; SBL#161.07-5-36.12). Requests a variance to install a non-conforming freestanding sign at this site. Freestanding signs shall not exceed 9' in height nor 20 sq. ft. in area. No such sign shall be set back less than 10' from the R.O.W. line, Section 144-38 B.

APPEARANCE: Mr. Michael Eberhard, Alco Sign Service
Mr. Michael Laks, Ray Laks Honda

Mr. Laks told the Board that they are proposing the smallest Honda freestanding sign that they can effectively use, and that anything smaller will have viewing problems due to the topography of the property and winter snow-fall levels. He provided the Board with photos of the proposed signage, noting that they feel the sign will fit into the character of the neighborhood, as other signs this size currently exist in the "auto mall" area. The proposed sign measures 5' x 5' with an over-all-height of 13'. Honda initially asked them to use a 10' x 10' sign with an over-all-height of 25'; however, Mr. Laks felt that a sign of that size was extreme for the area.

Mr. Eberhard discussed the site with the members, noting that there is a drop in the topography as you move further back on the lot. The proposed sign will be completely lost if placed 10' from the R.O.W. as the pitch in the lot drops down four to five feet. Therefore, they would like to construct a berm that would be level with the sidewalk area and place the sign 10' from the R.O.W. They feel sign viewing issues and costs involved with a higher sign will be eliminated.

Code Enforcement Officer David Holland spoke of a NYS Telephone easement area and cautioned that a sign permit cannot be issued without a letter of permission from the utility if the variance is granted and the sign is located here.

Mr. Lennartz verified that as part of the approval, the Applicants are willing to construct a berm and locate the sign 10' from the R.O.W. This will eliminate the need for a second variance.

Lauren discussed increasing the variance request for the sign's height further to resolve the topography issue. It was noted that constructing a berm is less costly.

Mrs. Bernard verified that the proposed sign is 13' high.

Mr. Metz established that from the bottom of the ground up to the sign is 7'10".

Joe Liberti established that the sign will be lit and a timer will be used to control when it is on or off.

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, the variance. The Secretary stated no communications have been received.

Mr. Lennartz stated that he finds the presented plan acceptable based on the Petitioner constructing the berm and locating the sign 10' from the R.O.W. and remaining in compliance with the Town Code. He feels the Petitioner has tried their best to stay code compliant.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance with a **STIPULATION**, for the following reasons:

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 the district.
5. The difficulty is self-created, but that does not preclude the granting of the variance.

This Variance is granted with the following Stipulation:

1. The Petitioner will construct a berm at the front property line, level with the sidewalk area and place the 13' high sign, 10' from the R.O.W. line.

THE MOTION BEING:

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| LIBERTI | AYE |
| BERNARD | AYE |
| KACZOR | AYE |
| LENNARTZ | AYE |
| METZ | AYE |

THE VOTE BEING UNANIMOUS, THE MOTION IS HEREBY PASSED WITH A STIPULATION.

4. ZBA File#04-16, Edward Shanahan, 95 Fox Chapel Drive, Zoned R-1, (Sub Lot 28, Map Cover 2285; SBL#173.16-1-29). Requests an Area Variance to construct a detached garage with a 4' side setback and a 6' separation from dwelling. No accessory structure shall be located within a required side yard, Section 144-24 A (1) (b). No accessory structure shall be located closer than 10' to any primary structure, Section 144-24 A (1) (C).

APPEARANCE: Mr. Edward Shanahan, Applicant/ Property Owner

Mr. Shanahan explained to the members that he does not feel that the requested variance will change the character of the neighborhood. He also covered the other points listed in the Zoning Board review and consideration sheet that is handed out with each variance request application.

The Board members discussed their concerns regarding snow removal and its placement at the site. Mr. Shanahan stated that it is put on the front lawn and that the water runs to the back of the property.

Mr. Lennartz established that Mr. Shanahan spoke to his immediate neighbors regarding the variance and they did not express objections to the request.

Ms. Kaczor established that the garage will be for storage.

Mr. Metz established that the existing garage is used for his personal vehicles and no business will be operated from here.

Mrs. Bernard discussed the proposed garage, retaining wall, and drainage at the property with the Petitioner.

Mr. Metz discussed the existing driveway with the Petitioner.

Mrs. Bernard stated that the neighbor's view from their home will be of a wall.

Mr. Liberti established that the neighbor understood the request when Mr. Shanahan spoke to him and had no objections to his plans.

Mr. Lennartz reconfirmed that the Board's decision is solely on the Variance Setback request, and not snow removal or drainage; this is a case that only involves the side set back and location of the new structure closer than 10-feet. There are no other issues.

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.

Mrs. Bernard does not support the variance request.

Ms. Kaczor stated that she is concerned about the tight area and she feels the Petitioner knew of this when he purchased the property in October.

Bob Lennartz agrees.

Mr. Lennartz made a **MOTION**, seconded by Mrs. Bernard, to **DENY** the Area Variance for the following reasons:

1. There will be an undesirable change in the character of the neighborhood and a detriment to nearby properties created.
2. The benefit sought can be achieved in another way.
3. The request is substantial.
4. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or the district.
5. The difficulty is self-created.

THE MOTION BEING:

| | |
|----------|-----|
| LIBERTI | AYE |
| BERNARD | AYE |
| KACZOR | AYE |
| LENNARTZ | AYE |
| METZ | AYE |

THE VOTE BEING UNANIMOUS, THE MOTION TO DENY IS PASSED.

There being no further business to be presented to the Board at this time Chairman Liberti adjourned the meeting at 7:41 P.M.

DATED: January 26, 2016
REVIEWED: February 16, 2016

Rosemary M. Messina
Zoning Board of Appeals Secretary

Joseph Liberti, Chairman