

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the February 16, 2016 meeting held in the Municipal Center Basement Public Meeting Room, S4295 South Buffalo Street.

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

A motion was made to **APPROVE** the January 19, 2016 meeting minutes as presented.

MOTION TO APPROVE IS HEREBY PASSED with FOUR (4) IN FAVOR AND ONE (1) ABSTENTION.

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

LENNARTZ, AYE/ KACZOR, AYE/MATEER, AYE/METZ, AYE/BERNARD, AYE

NEW BUSINESS

1. ZBA File #05-16, Kevin Abbatesa, 106 Knob Hill, Zoned R-1, (Sub Lot #363, Map Cover 2334; SBL# 185.08-2-14.1). Requests an Area Variance to allow a shed to remain in the side street yard. Accessory structures shall not be located between the side street lot line and the principal building, Section 144-24A.

APPEARANCE: Mr. Kevin Abbatesa, Applicant/Property Owner

Mr. Abbatesa stated that he purchased a pre-constructed shed from "Heritage Structures" of Lockport, New York and was told by their representative that he did not need a Building Permit to erect the shed in the Town of Orchard Park. In addition, they located the shed in violation of the side street lot-line ordinance. A Town Code Enforcement Officer contacted Mr. Abbatesa regarding the violations and he was made aware of the process of asking for a variance to request that the shed be allowed to remain.

Mr. Abbatesa stated that he is limited to where the shed can be placed due to the topography of the property. He reviewed the photographs of his property with the Board members, indicating that he had no other location to place the shed. He told the members that the shed provides greatly needed storage space for his family, and that the shed matches his existing home's gray siding and black shutters. He also indicated that there is another smaller shed on the property that is used to store pool toys. All permits were obtained for the existing deck, pool, gazebo and the smaller shed on the property. He pointed out that the gazebo has become unusable due to the topography conditions.

Ms. Kaczor spoke of the smaller shed on the property and established that personal pool toys are stored here. She questioned if Mr. Abbatesa had thought of removing the smaller shed and having one larger shed. He told the Board that he had not. The smaller shed stores pool toys, and the new shed stores patio furniture, a tractor and pool supplies. Previous to this, the patio furniture was stored under the deck and was ruined due to the weather. He re-purchased new patio furniture and intends to store it out of the elements in the new shed.

Mr. Mateer established that Mr. Abbatesa spoke to one of his neighbors regarding the request for the variance and no objections were voiced. He did not speak to the neighbor at the rear of his property or the neighbor across the street as he did not feel that they were impacted by the shed. He told the members that he plans on increasing the number of trees to provide additional buffering for the shed and his backyard.

Mr. Metz asked for clarification of the location of the smaller shed on the property. Mr. Abbatesa stated that it is near the end of the pool.

Mrs. Bernard established that the size of the new shed is 10 x 16 feet.

The Acting Chairman spoke of the review process the Board must follow and stated that one of the criteria the Board must consider is, "Could the benefit be achieved in another way"? He feels that the smaller shed could be removed, and the new shed located in its place. However, Mr. Abbatesa explained that the new shed cannot be put here as the footprint is larger and it will be in the area where there is a four-foot drop.

The Acting Chairman discussed placing the shed elsewhere within the code. Mr. Abbatesa stated that the shed would need to be smaller. The Acting Chairman noted that a correspondence from Mr. Accetta, of 27 Middlebury Lane, was received and Mr. Accetta wondered if the shed could be moved.

Mr. Metz asked Mr. Abbatesa if the gazebo could be removed and the shed located here. Mr. Abbatesa stated that the removing the gazebo will involve the removal of several trees.

Mr. Mateer discussed moving the shed back further. Mr. Abbatesa

The Acting 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 Acting 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 Acting 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.

Ms. Kaczor does not support having two storage sheds on the property.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor, 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 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.

THE MOTION BEING:

LENNARTZ	AYE
BERNARD	AYE
KACZOR	NAY
MATEER	NAY
METZ	AYE

THE VOTE BEING THREE (3) IN FAVOR AND TWO (2) AGAINST, THE MOTION TO DENY IS HEREBY PASSED.

A time frame to remove the shed was discussed. Deputy Attorney Berkowitz stated that the shed must be removed when practical. Code Enforcement Officer David Holland will meet with Mr. Abbatessa to discuss where the shed could be placed on the property.

There being no further business to be presented to the Board at this time Chairman Liberti adjourned the meeting at 7:30 P.M.

DATED: March 3, 2016
REVIEWED: March 15, 2016

Rosemary M. Messina
Zoning Board of Appeals Secretary

Robert Lennartz, Acting Chairman