

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the March 15, 2016 meeting held in the Municipal Center Basement Public Meeting Room, S4295 South Buffalo Street.

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

EXCUSED: Rosemary Messina, Secretary

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney  
David Holland, Code Enforcement Officer  
Danielle Ostrander, 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.

A motion was made to **APPROVE** the February 16, 2016 meeting minutes as presented.

**MOTION TO APPROVE IS HEREBY PASSED with FIVE (5) 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/MATEER, AYE/METZ, AYE/BERNARD, AYE**

### NEW BUSINESS

1. ZBA File #06-16, Jennifer Emerling, 77 Sonnet Drive, Zoned Conservation Management Overlay "CMO" (Sub Lot 18, Map Cover 3547; SBL#162.08-3-18). Requests an Area Variance to construct an addition with an 8.5-ft. rear setback. Minimum Rear Setback in this CMO District is 20-ft., Section 144-17.1D (5).

APPEARANCE: Mr. Andrew Mulichak, Contractor/Representative

Mr. Mulichak stated that Ms. Emerling would like to have a "three season's room" with an outside deck addition constructed to her existing home. He noted that Ms. Emerling has mobility issues, and the proposed addition will enable her to enjoy her property further.

Mr. Mateer established that the neighbors were contacted and there were no objections voiced regarding the variance request.

Mr. Mulichak provided the Board with a copy of the Homeowners Association's correspondence indicating support for the Variance request.

Mr. Lennartz noted that the Variance request is well over 50% of what is allowed by the Town Ordinance. He feels Ms. Emerling "maxed-out" the home's allowable footprint, and that the Variance

request is a substantial change for the neighborhood. He spoke of reducing the Variance request, but concluded that he feels, "to add an addition at all, is excessive".

Mr. Metz stated that there were building options available to Ms. Emerling prior to construction, and the layout she chose was the largest available.

Chairman Liberti established that Mr. Mulichak's proposed addition is custom-built and that it is possible to reduce the size, noting that the setback Variance is over 60% of what is allowed by the Town Code.

Mr. Mulichak stated that the addition is a 12-ft. x 14-ft. sun room with a 12-ft. x 12-ft. outside deck. He does not feel the request should be reduced as the architectural look of the residence will be compromised. He further feels that a size reduction lessens the usefulness of space in both the sun room and outside deck area. He told the Board that Ms. Emerling desires to enjoy her yard and gardens. The proposed sun room and outside deck eliminate the need to walk a difficult stairway to do so.

Ms. Kaczor stated that she feels the Petitioner should have done due diligence prior to building her home. This should not have been a "surprise".

Mr. Lennartz noted that there are other homes at this site that were issued Building Permits for decks that comply with the Town Ordinance.

Mr. Mulichak stated that Ms. Emerling did not realize this would be a problem.

Mrs. Bernard asked that the request be compromised and reduced to 10-ft. instead of 12-ft.

The members discussed reducing the request to 10-ft. further with Mr. Mulichak.

Mr. Mateer told Mr. Mulichak that the issue is the space between the deck and the rear setback line.

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

IN FAVOR:

*Mr. Phil Garrison  
7843 Milestrip Road  
Orchard Park, New York 14127*

Mr. Garrison asked for further details of the proposed Variance request, and concluded 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, other than a note from the Town of Orchard Park Planning Coordinator that is in the permanent file.

Mr. Liberti made a **MOTION**, seconded by Mr. Mateer, to **DENY** the Area Variance to construct an addition, with a revised minimum of a 10-ft. rear setback, for the following reasons:

1. Granting the Variance will alter the essential character of the neighborhood.
2. The hardship is not unique to the area.
3. The Applicant will not be deprived of the economic benefit of the property.
4. The benefit sought can be achieved in another way.
5. The difficulty is self-created.

**THE MOTION BEING:**

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

**THE VOTE BEING FIVE (5) IN FAVOR, THE MOTION TO DENY IS HEREBY PASSED.**

2. ZBA File #07-16, Kanwaljit Singh, 27 Elmtree Road, Zoned R-3, (Sub Lot's 386 - 388, Map Cover 927; SBL#172.05-2-7). Requests an Area Variance to construct a covered porch within the required front yard. Required area cannot be reduced, Section 144-20 C.

APPEARANCE: Mr. Kanwaljit Singh, Petitioner/Property Owner

Mr. Singh told the Board that he would like a covered porch constructed to his existing home to protect family members from the elements.

The Board questions established that, Mr. Singh plans to have the proposed porch match the existing residence, that the neighbors were contacted and no issues were voiced, and that the proposed porch will be 6-ft. long x 7-ft. wide.

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.

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

1. There will be no undesirable change in the character of the neighborhood and 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:**

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

**THE VOTE BEING FIVE (5) IN FAVOR 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 7:31 P.M.

DATED: April 8, 2016  
 REVIEWED: April 19, 2016

Rosemary M. Messina  
 Zoning Board of Appeals Secretary

Joseph Liberti, Chairman