

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the April 19, 2016 meeting held in the Municipal Center Upstairs Engineering Conference Room, S4295 South Buffalo Street.

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

EXCUSED: Dwight Mateer

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 stated that the Alternate member, Mrs. Bernard, will be voting this evening in view of Mr. Mateer's absence.

A motion was made to **APPROVE** the March 15, 2016 meeting minutes as presented.

MOTION TO APPROVE IS HEREBY PASSED

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 Bochiecho, Vacant Land 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 Multi-Family project. No building shall be closer than 60' to another building or 50' to the R.O.W. of an access Road, Section 144-46 C (4) (a). No building closer than 50' to any property line, Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Jeffrey Bochiecho, Applicant
Mr. Andrew Terragnoli, Studio T3 Engineering, PLLC

Mr. Bochiecho explained the multi-family project to the Board, noting that it was revised based on comments received during a Concept Review meeting with the Planning Board. Three types of variances are needed for this three-phase project. He told the members that the variances do not affect the community; only those that live within the site. He further explained that placement of the units is based on Smokes Creek's location at the site.

Mr. Terragnoli told the Board that the project will have a private road, built to Town Code, with access onto California Road.

Mrs. Bernard discussed the setbacks of several units and noted that she is not comfortable with #19 and #17, but is really bothered by unit's #46 and #47 minimum building separation of 43'-3". She feels one of the units should be eliminated from the project. Based on economics, she is not sure if that is possible.

Mr. Metz established that there will be no renting of the units; there will be a Home Owner Association, and the buildings will consist of two adjoined units. He, also, discussed elimination of Units #39 and #40 located in the top north corner of the site. However, Mr. Bochiecho noted that, although, there is a 25-ft. side building setback no neighbor is impacted as the adjacent vacant land is not buildable because of Smokes Creek.

Chairman Liberti noted he was not comfortable with the location of one unit and he indicated on the plan its location. He also established that there will be a Home Owners Association with a fee charged to the residents living here.

The members discussed the layout of the plan with the Petitioners, and the number of variances that they require. The total number of variances for Minimum Building Separation is five (5); for Side Setback is six (6), and for Front Building/Street Setback is eighteen (18).

Mr. Lennartz asked for the Petitioner to describe the variances that are requested.

Ms. Kaczor inquired about the Homes Owners Association. She asked if the home owner could build an addition to the back of the unit.

Mr. Bochiecho stated additions to the units will be restricted, and if allowed a variance would be needed.

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. Phil Sorge
4089 California Road
Orchard Park, New York 14127*

Mr. Sorge stated that traffic is already horrendous on California Road and he feels additional traffic cannot be handled. He cited current traffic backups from McGard employees, Buffalo Bills games and in the future the Town Brush Mountain project.

*Mr. John Bernard, Planning Director
Town of Orchard Park
S 4295 South Buffalo Street
Orchard Park, New York 14127*

Mr. Bernard stated that the Planning Board had reviewed the Concept Plan twice, and they directed the Petitioner to the Zoning Board of Appeals for variances. He further stated that the land use is agreeable with the zoning. There are no approvals at this time as a SEQR and full Site Plan must be submitted for review. Additionally, a public hearing must be held by the Planning Board and a Traffic Impact Study must be performed and submitted to the Planning Office. Mr. Bernard stated he is here to answer questions the members may have.

Mr. Bochiecho stated that there is another access road to the site, as requested by the Planning Board. He feels this will answer the traffic concerns.

*Ms. Marsha Rose Kochan
4075 California Road
Orchard Park, New York 14127*

Ms. Kochan stated that she lives directly across from the proposed project on the corner of the Nottingham Village entranceway. She wanted to know where the entranceway would be into the proposed project's site. Mr. Bochiecho stated that the entranceway would be directly across from the entranceway into Nottingham Village. He further stated that the TIS may necessitate the need for a traffic signal here.

*Ms. Gail Bartholomy
11 Stepping Stone Lane
Orchard Park, New York 14127*

Ms. Bartholomy stated that she is worried about the loss of green space, and notes wildlife will be displaced. She also mentioned concerns regarding noise from the site and construction trucks adding to the wear on the already deteriorating roadway.

Mr. Bochiecho stated that he would be available to answer any questions or concerns the residents have, and would provide his phone number to them. He further stated that this is a phased plan.

*Mr. James Haas
9 Stepping Stone Lane
Orchard Park, New York 14127*

Mr. Haas stated he is concerned for drainage changes in the area. Mr. Bochiecho stated that there would not be any additional water created.

*Mr. Edmund Kuntz
4070 California Road
Orchard Park, New York 14127*

Mr. Kuntz stated that he is concerned about traffic and his property value effected by this project.

The Board members discussed the project:

Mr. Lennartz stated that the Petitioner could construct houses here if he wanted, with no variances. He feels the zoning allows this type of development.

Ms. Kaczor expressed her concerns for the future of the adjacent property. However, it was noted that the creek comes through the adjacent property and it would never be developable.

Chairman Liberti stated he feels this is a large number of variances. He is concerned about the street setback variances that are close to one another. He finds several of them "tight".

Mr. Metz stated that he had no questions.

Mr. Lennartz noted that the proposed project is still in a "preliminary stage". Mr. Bochiecho stated they are willing to work with the Town.

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. Lennartz made a **MOTION**, seconded by Ms. Kaczor, to **GRANT** the Area Variances 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 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:

BERNARD	AYE
LIBERTI	NAY
LENNARTZ	AYE
KACZOR	AYE
METZ	NAY

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

2. ZBA File #08-16, Cologero Ippolito, 5077 Abbott Road, Zoned R-2 (Part of Farm Lot 37, Township 9, Range 7; SBL#171.20-2-4.1). Requests an Area Variance to construct a Carport within the front yard with a 6' side setback. No Accessory Structure shall be located within the front yard, Section 144-24 A (1) (b). Minimum side setback for this structure is 8', Section 144-20 A (2).

APPEARANCE: Mr. Cologero Ippolito, Applicant

Mr. Ippolito explained to the members that he would like to erect a carport on an existing paved area adjacent to his two-car garage. The garage is not large enough to accommodate his two vehicles, therefore, they are parked outside. The snow that accumulates on the vehicles is difficult for him to remove due to health issues, and he feels a carport would help keep the snow off the vehicles. In addition, he noted that headlights shining in his neighbor's windows would be buffered with the carport.

Mrs. Bernard established Mr. Ippolito's garage door is the standard width of 16-feet.

Mr. Ippolito stated that he cannot fit his family's vehicles, a "Ford Fore-Runner" and a "Ford Edge" in the garage.

Mr. Metz established that various equipment such as a snow blower, tractor, tiller, and a lawn mower are kept in the garage; other items are stored in a shed on the property.

Chairman Liberti established that the neighbors were contacted and no one voiced objections to the variance request.

Mr. Lennartz further discussed the space problem that Mr. Cologero described to the Board. He asked if the garage could be re-arranged to create room for the vehicles. Mr. Cologero told the Board that if both vehicles are parked in the garage it is a tight fit with no room to open the doors. He further explained that the garage door cannot close because the back end of the vehicles extend outside the door.

Mr. Liberti discussed re-positioning the garage sideways.

Mr. Lennartz established that the vehicles will fit in the proposed gazebo area.

Ms. Kaczor established that the proposed Gazebo area would offer two spaces and that only personal vehicles will be parked here.

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. Timothy Coughlin
5089 Abbott Road
Orchard, Park, New York 14127*

Mr. Coughlin voiced his concerns regarding the carport blocking his site view from his driveway when accessing Abbott Road. He also is concerned about the effect upon the resale value of his home.

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. Lennartz understands the situation with large vehicles, and the need for a larger structure; however, he feels this is a large setback variance and he does not feel that there is a hardship.

Mrs. Bernard noted that she has two full size pick-up trucks and they fit in her standard size garage.

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 or 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:

BERNARD	AYE
LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
METZ	AYE

THE VOTE BEING FIVE (5) IN FAVOR 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 7:55 P.M.

DATED: May 16, 2016
REVIEWED: May 17, 2016

Rosemary M. Messina
Zoning Board of Appeals Secretary

Joseph Liberti, Chairman