

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the June 16, 2015 meeting held in the Municipal Center Basement Public Meeting Room, S4295 South Buffalo Street.

**APPROVED  
MINUTES**

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

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

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

**APPROVAL OF THE MINUTES OF THE JUNE 2015 REGULAR MEETING:**

Mr. Lennartz made a **MOTION**, seconded by Mr. Pigeon, to **ACCEPT** the minutes of the June 16, 2015 meeting.

**THE MOTION BEING:**

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
MATEER	RECUSED
METZ	AYE
PIGEON	AYE

**THE VOTE BEING FOUR (4) IN FAVOR AND ONE (1) RECUSAL, THE MOTION IS HEREBY PASSED.**

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

LIBERTI, AYE/LENNARTZ, AYE/METZ, AYE/MATEER, AYE/PIGEON, AYE/KACZOR, AYE

**NEW BUSINESS:**

1. ZBA File #19-15, Red Carpet Inn, 3940 Southwestern Boulevard, Zoned B-2 (Part of Farm Lot 40, Township 9, Range 7; SBL#160.12-3-22.1). Requests an Area Variance to replace two changeable message panels with one L.E.D. changeable message panel. L.E.D. signs are prohibited Section 144-36 A(9).

**APPEARANCE:** Mr. Peter Sorgi, Attorney  
Ramash Patel, Applicant/Property Owner

Mr. Sorgi stated that the current sign at the Red Carpet Inn is 39 sq.ft. in size, and that Mr. Patel is proposing to erect a smaller L.E.D. sign in its place. They are aware of the 2009 Town Law prohibiting L.E.D. signs, however, they feel in this instance it makes sense to allow the L.E.D. sign as the nature of the stadium area is different from the other areas of the Town. He noted that;

- A LED sign will make locating the hotel easier.
- The 23.5 sq. ft. sign will reduce visual clutter, as it is smaller.
- Using and changing an electronic message board is safer, and saves time.
- Existing L.E.D. signs are located in this area.
- Mr. Patel feels there will be no detriment created to the neighborhood if the variance is granted.

Chairman Liberti established that during the recent Rolling Stones concert the Applicant had one room remaining for rent. Based on this fact he does not feel the proposed L.E.D. sign is necessary.

Mr. Patel told the members that "La Galleria" Banquet Center is across the street from his business, and that a competitor motel (Twin Oaks) is also located here. He told the members that a L.E.D. sign is used to promote the motel and that he would like to have the same advantage.

Mr. Mateer stated that he feels customers will use the internet to locate the Red Carpet Inn, and passer-byes see if there is a vacancy on the signage that is currently in place.

Mr. Sorgi told the Board that other businesses in the area have L.E.D. signs and Mr. Patel feels the proposed sign will fit-in with the character of the neighborhood. He seeks to have the benefit of having the same advantage as his competitor across the street for renting rooms and/or parking spaces during the football games held at the stadium.

Mr. Mateer and Mr. Sorgi discussed "*Can the benefit sought be achieved in some other way than the granting of the variance*", and "*Is the request substantial*". Mr. Mateer feels the request is substantial, noting that he does not want the area to look like a "Las Vegas".

Ms. Kaczor stated that she feels the request is substantial, and she spoke of the brightness of the L.E.D. light and it being distracting and dangerous while driving.

The Board discussed the request further with the Petitioner and Mr. Sorgi.

Mr. Pigeon established that the Petitioner is open to stipulations limiting scrolling, and the changing of the sign message.

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

PROPONENT:

Mr. Wayne Cunningham  
4600 Abbott Road  
Orchard Park, New York 14127

Mr. Cunningham spoke in favor of the variance request, noting that he feels the sign is a good idea and that it will help the business.

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.

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

1. There will be an undesirable change in the character of the neighborhood, 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 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 Stipulations:**

1. The sign message board can be changed every two hours.
2. The letters are to be stationary with no flashing.

**THE MOTION BEING:**

LENNARTZ	AYE
LIBERTI	NAY
MATEER	NAY
METZ	NAY
PIGEON	AYE

**THE MOTION BEING (2) TWO IN FAVOR AND (3) THREE AGAINST, THE MOTION FAILS.**

2. ZBA File #20-15, Foulad Manteghi, 12 Hemlock Hill Road, Zoned R-1(Sub Lot #382, Map Cover 2334; SBL#185.08-2-60). Requests an Area Variance to construct a garage addition with a 10'-6" side setback. Minimum side setback for this R-1 lot is 15', Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

**APPEARANCE:** Mr. Foulad Manteghi, Applicant/Property Owner  
Ms. Tara Manteghi, Applicant/Property Owner

Mr. Manteghi told the Board that that he would like an Area Variance to construct a garage addition 10'-6" from the side setback to have the convenience of parking his vehicle in an attached garage. He further stated that with the vehicle parked in the garage snow removal in the driveway will become easier.

Mr. Mateer established that the Applicant spoke to the neighbors and no objections were expressed regarding the variance request.

Ms. Kaczor established that there will be no business operating out of the proposed garage.

Mr. Pigeon established that the garage will be used for storing their personal vehicle.

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

PROPONENT:

*Mr. Charles Manteghi  
12 Hemlock Hill Road  
Orchard Park, New York 14127*

Mr. Manteghi stated 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.

Mr. Metz made a **MOTION**, seconded by Mr. Mateer, 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:**

LENNARTZ	AYE
LIBERTI	AYE
MATEER	AYE
METZ	AYE
PIGEON	AYE

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

3. ZBA File #21-15, Larry Schrock, 5450 Ellicott Road, Zoned R-2 (Part of Farm Lot 4, Township 9, Range 7; SBL#185.10-4-3). Requests an Area Variance to construct an addition with a 32' rear setback. Minimum rear setback for this R-2 Lot is 40', Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Larry Schrock, Applicant/Property Owner  
Mr. Larry Alessi, Contractor

The members' questions established that the Applicant would like to construct a master bedroom addition to the existing residence.

Mr. Schrock and Mr. Alessi explained that there is only one area to locate the proposed addition. They further explained that the addition will balance the look of the house.

Mr. Mateer established that the next door neighbor was contacted and had no objections to the variance request.

Ms. Kaczor established that the rear property is landlocked and will not be developed.

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.

Mr. Mateer made a **MOTION**, seconded by Mr. Pigeon, 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 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:**

LENNARTZ	AYE
LIBERTI	AYE
MATEER	AYE
METZ	AYE
PIGEON	AYE

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

4. ZBA File #22-15, Diamond Medical Examination, 3836 North Buffalo Road, Zoned B-2 (Part of Farm Lot 16, Township 9, Range 7; SBL#162.09-1-17). Requests an Area Variance to construct an 896 S.F. detached garage in the rear yard. Maximum size of an accessory structure in this B-3 Zone is 240 S.F. and shall be a minimum of 10' from the rear and side lot lines, Section 144-24B.

APPEARANCE: Dr. DeVincentis, Applicant/Property Owner  
Emma Zawisky, Business Manager

The Applicants explained that they would like to construct a 3-bay detached garage for staff parking, and the storage of lawn and snow plowing equipment. It was established that the neighbors located on the south side of the property and across the street were contacted regarding the variance request and they had no objection to the requested variance.

Mr. Pigeon established that there would be no walk-in traffic and that the business will operate during normal business hours, Monday through Friday.

Mr. Metz established that snow removal will be placed at the fence area on the property. The members reviewed the map with Ms. Zawisky to verify the location for snow storage.

Mr. Mateer inquired as to why a garage of this size is desired and why it was not located further back on the property. It was established that the 3-Bay garage is needed for staff parking and to have the ability to move cars easily in and out without blocking each other. In addition, lawn and snow plowing equipment will be stored here.

Dr. DeVincentis told the members that a sewer easement exists at the rear of the property and that the building cannot be placed here due to drainage 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, other than the letter of support in the file.

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 on the physical or environmental conditions of the neighborhood or the district.
5. The difficulty is not self-created.

**THE MOTION BEING:**

LENNARTZ	AYE
LIBERTI	AYE
MATEER	NAY
METZ	AYE

PIGEON

AYE

**THE VOTE BEING FOUR (4) AYES AND ONE (1) NAY, THE MOTION IS PASSED.**

5. ZBA File #23-15, Wayne Cunningham, 4600 Abbott Road, Zoned R-3 (Part of Farm Lot 48, Township 9, Range 7; SBL#171.12-3-10.2). Requests an Area Variance to construct a detached garage within the front yard. No accessory structures shall be located within the front yard, Section 144-24A(1)(b).

APPEARANCE: Mr. Wayne Cunningham, Applicant/Property Owner

Mr. Cunningham told the Board that he desires to construct a detached garage and locate it approximately 300-ft. from the road in his front yard. His property is surrounded by wooded areas that will screen the proposed garage. He told the Board that he needs additional storage space for vehicles, lawn, and snow equipment. He would like to place the proposed garage where a garden shed had previously been located. Mr. Cunningham submitted a letters of support for the variance request signed by his neighbors. These letters were entered into the permanent file.

Mr. Lennartz established that the 24' x 24' garage will be placed at the former location of a 10' x 12' shed. Mr. Cunningham explained that he does not want to cause distress to the existing trees on his property, as the trees aid with drainage issues. This is why he chose the former location of the shed. The former shed was moved and placed on skids along the side of the residence. It contains a lawn tractor and gardening supplies. He chose not to locate the proposed garage at the side of the residence because of a large tree located there. The 10' x 12' shed may remain on his property because of convenience of use.

Mr. Metz established that the garage will be wood with stained siding.

Mr. Liberti established that the symmetrical with the home- shed – use to have a parking spot there-

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.

Mr. Lennartz 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 or a detriment to nearby properties created.
2. The benefit sought, can be achieved in another way.
3. The request is not substantial.
4. There will not be an adverse effect 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:**

LENNARTZ	AYE
LIBERTI	AYE
MATEER	AYE
METZ	AYE
PIGEON	AYE

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

6. ZBA File #24-15, Ronald Smalt, 6076 Newton Road, Zoned A-1 (Part of Farm Lot 19, Township 9, Range 7; SBL#184.00-4-17). Requests an Area Variance to create a building lot consistent with pre-12/89 Requirements. Lots created after 12/6/89 are subject to Section 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Ronald Smalt, Applicant/Property Owner

Mr. Smalt explained that he would like to construct a home for his son, however he was provided with the Town requirement from pre-12/89 (by the Building Department) indicating that a setback of 50 feet is required. The correct setback for lots created after 12/6/89 is 75-feet. However, the topography of the site makes it impossible to meet this. Mr. Smalt submitted letters of support signed by his neighbors stating that they had no objection to the variance request. These letters were entered into the permanent file. The other nearby residences have the pre-12/89 setback of 50-feet, so Mr. Smalt feels the proposed home will not change the character of the neighborhood.

The members' questions established that the water and drainage issues here will be improved for the area.

Mr. Mateer discussed the drainage situation with Mr. Smalt. Mr. Smalt stated that he is working with an engineer to resolve the water 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.

Mr. Mateer discussed the Town regulation with, Code Enforcement Officer David Holland.

Mr. Mateer made a **MOTION**, seconded by Mr. Pigeon, 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 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:**

LENNARTZ	AYE
LIBERTI	AYE
MATEER	AYE
METZ	AYE
PIGEON	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 8:30 P.M.

DATED: 8/05/15  
 REVIEWED: 8/06/15

Rosemary Messina, Secretary  
 Zoning Board of Appeals

Joseph Liberti, Chairman