

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the August 18, 2015 meeting held in the Municipal Center Basement Public Meeting Room, S4295 South Buffalo Street.

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 JULY 2015 REGULAR MEETING:

Mr. Lennartz made a **MOTION**, seconded by Mr. Pigeon, to **ACCEPT** the minutes of the July 21, 2015 meeting.

THE MOTION BEING:

| | |
|----------|-----|
| LIBERTI | AYE |
| LENNARTZ | AYE |
| MATEER | AYE |
| METZ | AYE |
| PIGEON | AYE |

THE VOTE BEING UNANIMOUS 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 #25-15, Michael & Rebecca Zeller, 10 Norwood Lane, Zoned R-1 (Sub Lot 1, Map Cover 2870: SBL#162.15-5-16). Request an Area Variance to install a 6' high fence within a side street yard. Maximum height of a fence in a side street yard is 3', Section 144-22A (1).

APPEARANCE: Michael Zeller, Applicant/Property Owner

Mr. Zeller told the Board that he purchased his corner lot home in April 2015. He would like to extend the current 6-ft. high fence, that is code compliant, and continue it on his property to create total privacy and security for his family from the busy roadway of Route 20A. The property has an in ground pool with a 3-ft. high code compliant fence surrounding it that will be removed. He is open to

buffering the 6-ft. high fence with landscaping, or reducing its size slightly, and told the Board that the fence will be professionally installed.

Mr. Mateer established that Mr. Zeller did not speak to his neighbors regarding the variance request.

It was noted that a letter of non-support was received from 7475 Quaker Road, located across the road from Mr. Zeller.

Mr. Lennartz stated that the Board's decision is based on certain criteria, such as "can the benefit be achieved in another way", and "is the request substantial". He feels the benefit can be achieved with a code compliant 3-ft. high fence and that the request is substantial. He would like Mr. Zeller to present information that supports his request.

Mr. Zeller stated that 3-ft. will not provide the security and privacy they seek. A 6-ft. high fence will enclose the yard and the pool. Mr. Zeller stated that he could reduce the fence height to 4-ft. He prefers the height to be 6-ft. to provide security and privacy on this corner lot.

Mr. Pigeon discussed the height of the fence with Mr. Zeller, and he suggests a compromise be reached. He would like the height of the fence reduced to 4-ft., as he feels a 4-ft. fence will provide the privacy he is seeking.

Mr. Zeller stated he is agreeable to a 4-ft. high fence. Various types of fencing were discussed. Mr. Zeller stated he would use white vinyl and not a chain link fence. Mr. Zeller is allowed by Town Code to install a 6-ft. high fence at the rear of the property. The front facing along Route 20A and

Ms. Kaczor discuss the enclosure for the pool area and safety.

Mr. Metz established that approximately 50-sq. ft. is currently fenced-in, outside of the pool area.

Mr. Lennartz established that a 4-ft. fence is required for the pool area.

Mr. Pigeon discussed where the 4-ft. fence will be placed, and established with Code Enforcement Officer Dave Holland that the back of the property can have a 6ft. high fence. The pool is required to have a minimum of a 4-ft fence around it.

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 what is in file noting that it is against the variance request.

Board discussion- Mr. Lennartz stated that in deference to the pool he would support a reduced white vinyl fence from 6-ft. high to 4-ft. high.

Mr. Lennartz made a **MOTION**, seconded by Mr. Pigeon, 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 can 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 fence height shall not exceed 4-ft. The fence will be white vinyl.

THE MOTION BEING:

| | |
|----------|-----|
| LENNARTZ | AYE |
| LIBERTI | AYE |
| MATEER | NAY |
| METZ | NAY |
| PIGEON | AYE |

THE VOTE BEING THREE (3) to TWO (2), THE MOTION IS HEREBY PASSED.

2. ZBA File #26-15, Christopher Bieniek, 6060 Cole Road, Zoned A-1 (Sub Lot 3, Map Cover 2535; SBL#198.00-2-44.22). Requests an Area Variance to construct a Pole Barn in a front yard with a 7' side setback. No accessory structure shall be located within the front yard, Section 144-24A (1)(b) minimum side setback for this A-1 lot is 20', Section 144-9B, Schedule of Height, Lot, Yard and Bulk Regulations.

APPEARANCE: Mr. Bieniek, Applicant/Property Owner

Mr. Bieniek explained to the members that he desires to construct a Pole Barn within his front yard to locate a work shop and create additional storage space. He further stated that he feels there is only one location on his property to place the Pole Barn due to a septic system. Mr. Bieniek feels the Pole Barn will fit in nicely within his front yard.

The members discussed the request, noting that,

1. There are no other properties in the area with buildings in the front yard.
2. Locating the building in the front yard will create a detriment for the adjacent neighbor.
3. The building could be placed elsewhere. If placed on the side of the residence it will need a setback variance. However the members feel this location is less intrusive to the neighborhood.

Ms. Kaczor established that a table saw will be used in the barn and that items such as a lawn mower, snow blower and a motorcycle will be stored 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:

*Wayne R. Wanat,
6050 Cole Road
Orchard Park, New York 14127*

Mr. Wanat stated that he is the adjacent neighbor and that he has a nice view and does not want to see this structure in front of his garage.

*Mrs. Wanat
6050 Cole Road
Orchard Park, New York 14127*

Mrs. Wanat explained that she does not want to have her view shed disturbed; no other garages are in the front yard in their neighborhood.

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 **DENY** the Area Variance for the following reasons:

1. There will be change in the character of the neighborhood and a detriment created to the nearby properties.
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:

| | |
|----------|-----|
| LENNARTZ | AYE |
| LIBERTI | AYE |
| MATEER | NAY |
| METZ | AYE |
| PIGEON | AYE |

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

3. ZBA File #27-15, Wayne R. Wanat, 6050 Cole Road, Zoned A-1 (Sub Lot 2, Map Cover 2535; SBL#198.00-2-44.23). Requests an area variance to construct a Pole Barn with a 13'-6" side setback. Minimum side setback for this A-1 Lot is 20', Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. & Mrs. Wanat, Applicant/ Property Owner

Mr. Wanat told the members that he would like to construct a garage on the north side of his property for the storage of fire wood, snow removal equipment and a sports car. He further confirmed that a business will not operate from the building. He described the building elevation details to the Board, noting that the building will have vinyl siding that will match their residence. He told the Board that there is no other place to locate the building due to the wet areas at the rear of the property.

The members discussed locating the building in other ways with Mr. Wanat.

Mr. Metz established that there will be one door for ingress and egress to the building.

Mr. Mateer established that Mr. Wanat spoke with his neighbors. Mr. Wanat provided the Board with two signed letters of support. These were entered into the permanent file.

Mr. Pigeon established that there will be no livestock kept in the building.

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. Christopher Bieniek
6060 Cole Road
Orchard Park, New York 14127*

Mr. Bieniek stated that he is the adjacent neighbor and 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. Mateer 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 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.

4. ZBA File #28-15, Upstate Tower Construction Company & John A. Julicher, 3748 Southwestern Boulevard, Zoned I-1 (Part of Farm Lot 29, Township 10, Range 7; SBL#161.06-1-14). Requests Site Plan review and Tower Permit Approval for a 150' tower and telecommunication facility as required by Chapter 144, Article VII.

APPEARANCE: Mr. Dan O'Brian, Attorney
Mr. Don Carpenter, Representative Upstate Tower

The Applicants explained that they would like to remove the existing tower located here and construct a new 150-ft tower. The new tower will be located further back on the property and be compliant with the Town Code setback regulations. They told the members that safety and fallout zones were established and that the strict standards provided by the law have been met. The tower will offer co-location and provide the latest technology. They feel the site is ideal and that the tower will have no negative impact on the neighborhood. The tower is not required to be lit as it is below 200-ft. tall.

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

Mr. Lennartz feels the new tower will be an improvement and that it is safer.

The members determined that they did not need to consult an outside opinion for this request.

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, that this is an Unlisted action and that a **Negative Declaration** under SEQR be made based on the submitted short EAF.

THE MOTION BEING:

| | |
|----------|-----|
| LENNARTZ | AYE |
| LIBERTI | AYE |
| MATEER | AYE |
| METZ | AYE |
| PIGEON | AYE |

THE VOTE ON THE **MOTION BEING UNANIMOUS, A NEGATIVE DECLARATION IS MADE UNDER SEQ.**

Mr. Pigeon made a **MOTION**, seconded by Mr. Lennartz, that the existing tower is to be removed and to **GRANT** a Tower Permit to construct a new 150-ft. tower and **APPROVE** the Site Plan for the new location.

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 8:22 P.M.

DATED: 8/05/15
REVIEWED: 10/19/15

Rosemary Messina, Secretary
Zoning Board of Appeals

Joseph Liberti, Chairman