

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

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

EXCUSED: Barbara Bernard, Alternate

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

**APPROVED
MINUTES**

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 September 20, 2016 meeting minutes as presented.

MINUTES UNANIMOUSLY APPROVED.

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

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

NEW BUSINESS

1. ZBA File #43-16, Charles Dunham III, 3840 Sheldon Road, Zoned R-3 (Part of Farm Lot 40, Township 9, Range 7; SBL#161.09-4-2.121). Applicant is appealing the Building Inspector's determination that this Multiple Dwelling expansion project is not in conformance with Section 144-9B, Schedule of Height, Lot, Yard and Bulk Regulations. Should the ZBA affirm the Building Inspector's determination, the Applicant requests an Area Variance allowing the proposed density.

APPEARANCE: Mr. Christopher Wood, Carmina • Wood • Morris, Architects, Applicant

Mr. Wood told the Board that they are appealing Code Enforcement Officer Dave Holland's determination that their proposed project is non-conforming with the current Town Ordinance, Section 144-9B, Schedule of Height, Lot, Yard and Bulk Regulations. Mr. Wood explained that they feel their property should be "grandfathered-in" under the previous code of 1958 that allows the site to have four multi-family dwellings constructed on the remaining 6.85-acres. He does not feel they should be held to the current code requiring 10-acres to build the four-units. The expansion at the site will not require further variances, and they feel the plan will not appear dense. He told the members that there is a single-family home located here that will be demolished. Mr. Wood stated that the original 1958 Site Plans indicate that the project was to expand with this number of buildings on the property, and for whatever reasons it was delayed until now.

Deputy Attorney Lenard Berkowitz told the Board that the Petitioner could have built these buildings in 1958, as multi-family dwellings were an established use of the property. He further stated that if the Board determines that it is grand-fathered-in, there is no need for the determination of the variance.

Mr. Wood stated that there are currently two existing, eight-unit buildings at the site, and if the other two portions of the site are combined, it will match the footprint of the 1958 original site.

Mr. Lennartz stated that this situation was allowable years ago, and then the particulars changed creating a hardship to the property owner to seek relief for the regulation that exists today.

Mr. Wood stated that there is one parcel that is vacant land, and it will be kept vacant.

Chairman Liberti noted that the entire parcel is basically developed based on today's terms of the code, creating a hardship to move forward.

Mr. Metz established that the property will be exactly like it was in 1958 if combined with the other parcels.

Deputy Attorney Len Berkowitz stated that the Board must make a determination if a reasonable interpretation of the ordinance in this matter was made by the Building Inspector's Office. The Board must approve or deny the request.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **AFFIRM** the determination of Code Enforcement Officer Dave Holland's interpretation of the law is correct and, therefore, the ten-acre minimum does apply.

THE VOTE ON THE MOTION WAS UNANIMOUS.

Mr. Wood presented his request before the Board, noting that he is looking for relief from the current Town Ordinance requirement of a ten-acre minimum for the construction of 4-buildings. If approved, there will be a total of 6-buildings, which is less than what was allowed back in 1958. All Town Code requirements are met or exceeded, other than the 10-acre requirement. He further stated that the Petitioner has purchased several properties adjacent to this site.

Ms. Kaczor asked for clarification on the total number of units to be at the site.

Mr. Metz established that the buildings will be similar to the existing ones at the site.

Mr. Lennartz established that the adjacent neighbors were not spoken to by the Petitioner.

Mr. Woods stated that the adjacent properties are not close to the project.

Mr. Liberti established that the Petitioner feels there is not enough R-3 land to meet the Town Code to continue the project and is looking for relief.

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

PROPONENT:

Mr. & Mrs. Jacqueline Hallinan
3851 Sheldon Road
Orchard Park, New York 14127

There were questions and comments from the Hallinan's regarding trash issues at the site, the location of the buildings and the access road. Mr. Wood reviewed the map with the Hallinans. The stated they would like additional trees planted to add to the existing buffer area.

Mr. Wood stated that the dumpster will have an enclosure and that the Conservation Board will review the project. Chairman Liberti suggests that Ms. Hallinan meet with Mr. Wood after the meeting to discuss these matters further.

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.

Board discussion.

Mr. Lennartz stated that he feels the variance makes sense if the density is under the maximum. The project is in full compliance with R3 zoning requirements, with the exception of the 6.85-acres. He feels comfortable with the request.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, for **APPROVAL** of the Area Variance as proposed with the interpretation of Code Enforcement Officer Dave Holland's determination that there is a need for the variance, based on the following:

1. There will be no undesirable change in the character of the neighborhood, and or detriment to nearby properties created.
2. The benefit sought cannot be achieved in another way.
3. The request is substantial.
4. There will be no 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 VOTE ON THE MOTION BEING:

LIBERTI	NO
LENNARTZ	AYE
KACZOR	NO
MATEER	AYE
METZ	NO

THE MOTION BEING **THREE (3) NAYS AND TWO (2) AYES, THE MOTION FAILS.**

Deputy Attorney Len Berkowitz suggests that the Board make a motion to deny with their reasons stated why.

Chairman Liberti stated that he heard no hardship voiced, and he feels the property has been depleted of space to construct the four-buildings and the property is landlocked.

Mr. Lennartz asked if the Board would be open to constructing less than four units.

Mr. Wood stated that they had no negative comments from the neighbors that lived across the street, other than they would like the site cleaned-up.

The Chair made a **MOTION**, seconded by Ms. Kaczor, to **DENY** the request for the following reasons:

Mr. Metz stated that he feels that 6.85-acres, versus the required 10-acres, is a substantial request.

Mr. Wood discussed adding the adjacent parcel that the petitioner owns. The addition of this .4-acre parcel will bring the total acres at the site to 7.2-acres.

Mr. Metz stated he feels adding the .4-acre parcel is a move in the right direction.

Ms. Kaczor asked if the Petitioner would consider constructing three buildings, rather than four.

Mr. Lennartz stated he supported the project with the four buildings, and that he supports the project reduced to three buildings, the property is landlocked.

Mr. Metz stated he would like a stipulation that the Petitioner is not to return to construct building #4.

The Board members agree that they prefer to see three buildings constructed at the site.

The Chair called for a "seconded on the vote," however, Mr. Lennartz stated he would like to amend his original motion, as follows:

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

1. There will be no undesirable change in the character of the neighborhood, and or detriment to nearby properties created.
2. The benefit cannot be achieved in another way.
3. The request is substantial.
4. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood.
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. No more than three (3) eight-unit buildings are to be constructed
2. The 3840 Sheldon Road property is to be added to the property, making it 7.2+/-acres.

THE VOTE ON THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
KACZOR	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING UNANIMOUS THE MOTION IS PASSED WITH TWO STIPULATIONS.

Meeting adjourned at 8:15 P.M.

DATED: 12/07/16
REVIEWED: 12/07/16

Rosemary M. Messina, Secretary
Zoning Board of Appeals

Joseph Liberti, Chairman