

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the November 17, 2015 meeting held in the Municipal Center Basement Public Meeting Room, S4295 South Buffalo Street.

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

EXCUSED: Lauren Kaczor, Alternate/Rosemary Messina, Secretary

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney/David Holland, Code Enforcement Officer
Danielle Ostrander, Recording 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 October 20, 2015 meeting minutes.

THE VOTE BEING UNANIMOUS, THE MOTION IS HEREBY PASSED.

The Chairman stated that at tonight's meeting we do not have full Board representation. In these circumstances it will require (3) votes to approve any motion that is presented. If a vote results in a two/two tie, the motion will be defeated. As a result we offer Petitioners the following three options:

1. We can vote on the petition and the Petitioner must accept the Board's decision.
2. We can hear the case and postpone the vote until the next meeting of the Board when a full Board is present. The absent member of the Board will review the testimony and all appropriate documents prior to the meeting.
3. The Petitioner can postpone making his presentation until the next meeting of this body.

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

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

OLD BUSINESS:

1. ZBA File #34-15, Paul & Jessica Brown, 111 Henning Drive, Zoned R-1 (Sub Lot 6, Map Cover 2085; SBL#173.06-4-33). Requests an Area Variance to construct an addition with a 38-ft. front setback. Minimum front setback for this R-1 Lot is 50-ft., Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations. This item was tabled by the Board at their 10/20/15 meeting.

APPEARANCE: Mr. & Mrs. Paul Brown, Petitioner/Property Owners

There was no representative in attendance for this case.

Mr. Metz made a **MOTION**, seconded by Mr. Mateer, to **TABLE** this case. Code Enforcement Officer David Holland, will contact the Petitioner.

THE VOTE BEING UNANIMOUS, THE MOTION IS HEREBY PASSED.

NEW BUSINESS

1. ZBA File #36-15, 2220 Southwestern Holdings, 2220 Southwestern Boulevard, Zoned B-2 (Part of Farm Lot 404, Township 10, Range 7; SBL#153.07-2-1.1). Requests a Variance to install a non-conforming pedestal sign at this site. Pedestal signs shall not exceed 40-sq.ft. in area nor 16-ft. in height. Pedestal shall not exceed 8-inches in horizontal dimension, Section 144-38C(2) & Section 144-5, terms defined. Minimum R.O.W. setback is 15-ft., Section 144-38C(1).

Mr. Mateer recused himself from voting in this case.

Chairman Liberti stated that only three members will vote in the matter, therefore, for a motion to pass, there must be an unanimous vote.

APPEARANCE: Mr. Chris Wood, Carmina – Wood – Morris
Mr. Ray Miranda, Petitioner/Property Owner

Mr. Wood told the members that they are requesting the following variances for this site:

(1) Height of sign, ordinance limit is 16-feet, asking for 20-feet, (2) Area of sign, ordinance limit is 40-sq.ft., asking for 50.3 sq.ft., (3) Pedestal horizontal dimension may not exceed 8-inches, asking for a 16-inch square base, and (4) Minimum R.O.W. setback is 15-feet, asking for a 5-foot setback. Mr. Wood explained the need for each variance, noting that they do not feel there will be a change to the character of the neighborhood. He spoke of the existing signage in the area, noting that they feel there will be no adverse effect on the environment or district if the variances are granted.

Chairman Liberti discussed using a monument sign, rather than a pedestal sign with Mr. Wood. He noted that the Tim Horton's on Big Tree Road (Route 20A) has a monument sign. Although the proposed pole sign is allowed, he personally feels a monument sign is a better choice and is aesthetically pleasing.

Mr. Lennartz reviewed the request and stated that he does not feel it is reasonable to allow the sign to exceed the height ordinance of 16-ft. He does not support the variance request for the height of the sign to be 20-ft. He discussed the other variance requests with Mr. Wood at length, verifying their need. He feels Tim Horton's is a highly visible operation and he concluded that there is no need for a sign higher than what the Town Code allows.

Mr. Metz asked for further information regarding the sign dimensions.

Mr. Miranda explained that the sign size is based on the number of tenants that need to be posted on the sign. He told the Board that he feels the sign must be higher so it will be seen. He, also, described the viewing issues he has had with a "help wanted" sign he posted on the property.

Mr. Wood stated that he feels that a monument sign placed here would have limited viewing and that snow would add to diminishing the visibility of a monument sign. He also discussed the R.O.W., utilities and a retention basin that interfere with the placement of the sign at the site. He further stated that they would be willing to compromise and withdraw the height variance if the other variances are granted. The sign will comply with the Town ordinance and be 16-ft.in height.

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 VARIANCE REQUEST WITH STIPULATIONS** as follows:

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 Variances are granted with the following STIPULATIONS:

1. The height of the sign is not to exceed the Town Ordinance of 16-ft.
2. The area of the sign may be as requested, at 50.3-sq.ft.
3. The setback may be as requested, at 5-ft.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
MATEER	ABSTAINED
METZ	AYE

THE VOTE BEING THREE IN FAVOR, WITH ONE ABSTENTION, THE MOTION IS HEREBY PASSED WITH STIPULATIONS.

2. ZBA File #37-15, Precision Flooring, V/L Southwestern Boulevard, Zoned B-2 (Sub Lot 1, Map Cover 2030; SBL#153.08-1-1). Requests a Variance to reduce the number of off-street parking spaces required, Section 144-29.

APPEARANCE: Mr. Tom Kapinos, Jr., Director of Operations, Precision Flooring
Mr. Frank Weiland, Precision Flooring

The Applicants explained that the proposed business is "by appointment only", there are no set business hours and they do not feel the Town required 22-parking spaces are needed. The building will be used partly for the storage of flooring material and there will be three (3) employees. Therefore, they are requesting to have a variance to reduce the Town requirement to 13-parking spaces.

Mr. Mateer discussed deliveries and snow removal at the site with the Petitioners.

Mr. Kapinos stated that twenty-five hundred feet of the property is dedicated to snow storage. The snow will be stored in the five-foot, outside perimeter area, and at the rear of the property's green space. He told the Board that deliveries of materials will not be made by semi-tractor trailers as the turning radius at the site is not able to accommodate trucks of that size. Short axel trucks will be able to deliver here.

Mr. Mateer stated that he feels two of the proposed parking spaces will not exist as they are located within a turning radius area at the site.

Mr. Kapinos assured the Board that a template was used to measure the turning radius and the two parking spaces are not compromised.

Mr. Lennartz asked if the Applicants could reduce the size of the proposed building as he feels the proposal is too large for the site. He also discussed the Petitioner's desire to lease a portion of the building and noted his concerns for traffic at the site.

Mr. Kapinos stated that the project is designed to meet the Town Ordinances. A good portion of the structure will be used for storage; that is the essence of the business. The B-2 Zone limits the type of business that can be placed here. He feels a business such as a trade business or a smaller office would be a good fit and traffic issues will not be created.

Chairman Liberti discussed his concerns if the business closes.

Mr. Kapinos feels that, although the B-2 Zone is the more restrictive zone another business could locate here as the Town Codes were met with their Site Plan.

Mr. Metz stated he is not comfortable with the fact that an unknown tenant would be here and it would be unknown if the number of parking spaces provided is adequate.

The Petitioners expressed that a business would not locate here if the building and parking did not meet their needs.

The members asked if the building could be reduced. The Petitioners stated that they did have an alternate plan. Discussion concluded that 14-parking spaces would be constructed using the alternate plan. The Petitioners noted that they want to contribute to the community by having the derelict lot spruced up, and employing people.

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. Edward Leak
2 Hazel Court
Orchard Park, New York 14127*

Mr. Leak stated that he does not support the variance request and he feels the Petitioner's should have done due diligence prior to buying the lot. He feels they are attempting to put in 10-pounds into a 5-pound bag.

Mr. Kapinos stated that the project will be built and he will reduce the building and be compliant with the parking space code.

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. Mateer, to **DENY** the Area Variance for the following reasons:

1. There will be an undesirable change in the character of the neighborhood and a detriment to the nearby properties created.
2. The benefit sought can be achieved in another way.
3. The request is substantial.
4. There is no adverse effect or impact on the physical or environmental conditions of the neighborhood and the district.
5. The difficulty is self-created.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE VOTE BEING UNANIMOUS, THE MOTION TO DENY IS HEREBY PASSED.

3. ZBA File #38-15, Quaker Crossing East, V/L Amelia Drive, Zoned B-1 (Part of Farm Lot 28, Township 10, Range 7; SBL#152.17-1-13.161). Requests a Variance to install an additional non-conforming monument sign at this site. One conforming freestanding sign per parcel is allowed, Section 144-38B.

APPEARANCE: Mr. Gerry Buchheit, Petitioner/Property Owner

Mr. Buchheit explained that during the holidays he pays staff to direct traffic at the plaza to insure traffic safety. The last building has been completed on the east side of the plaza and he has found that as traffic travels on Amelia Drive it is difficult to see Marshalls, Pet Smart, Famous Foot Wear and Roué 21. He feels that these four (4) tenant names will be what the public will be looking for and he would like to have a monument sign identifying them. He feels this will keep traffic moving along safely.

Mr. Metz established that due to size limitations of the sign, Mr. Buchheit wanted to keep the sign request limited to just the four main tenants; the other stores on the east side of the plaza are easier to see. There are three existing signs on this roadway. Mr. Buchheit explained that the signage makes it easier and safer to have the public know where they are going. The backside of the new building mostly likely have signs on it.

Chairman Liberti established that the sign will be lit from the backside and be turned on with the other signs at the plaza.

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. 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:

LIBERTI	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	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 8:05 P.M.

DATED: December 9, 2015
REVIEWED: December 15, 2015

Rosemary M. Messina
Zoning Board of Appeals Secretary

Joseph Liberti, Chairman