

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the December 15, 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
Lauren Kaczor, Alternate

EXCUSED: Len Berkowitz, Deputy Town Attorney

**APPROVED
MINUTES**

OTHERS PRESENT: John Bailey, Town Attorney
David Holland, Code Enforcement Officer
Rosemary Messina, 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.

A motion was made to **APPROVE** the November 17, 2015 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/METZ, AYE/ MATEER, AYE/KACZOR, AYE

NEW BUSINESS

1. ZBA File #39-15, "The Residences at the Ridge", 5285/5287 Chestnut Ridge Road, Zoned SR (Part of Farm Lot 13, Township 9, Range 7; SBL#185.05-3-11.1). Requests an Area Variance to construct an apartment building with a 31.24' rear setback. Minimum rear setback for this proposed building is 70.95', Section 144-46.1 (D) (3).

APPEARANCE: Mr. Chris Wood, Carmina - Wood - Morris
Mr. James Jerge, Petitioner/Property Owner

Mr. Wood explained that after meetings with the residents of "Orchard Commons" and area neighbors, the proposed project was crafted to address their concerns. A four-ft. berm is proposed to be constructed, with 5-ft. high pine trees, to buffer the Orchard Commons neighbors at the rear of the property. Less intrusive one-story buildings are proposed with a reduction in unit density from 34, to 24 units. Based on the lot's depth, a rear setback of 70.95 ft. is required by the Town Code. However, the Petitioner is requesting a variance for a rear setback of 31.24-ft. Mr. Wood stated that they feel the variance is necessary based on the buildings they wish to construct and the geometry of the property, which is deep and narrow. Mr. Wood also explained that the project exceeds the allowed 20% lot coverage by 3.7%. If the variance is denied, the Town Code allows the construction of two-story buildings with 34-units.

The members discussed the variance request and agreed that they could not find criteria to support granting the variance.

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. Dan D'Arcy – Orchard Commons, Spokes Person
5393 Chestnut Ridge Road
Orchard Park, New York 14127*

Mr. D'Arcy spoke for the group, noting that they do not support the variance request, as their view-scape would be the patio home. He referred to his submission to the Zoning Board of Appeals dated 12/11/15, where he discusses other aspects of the project that the group objects to.

*Mr. Jack Sheele
5293 Chestnut Ridge Road
Orchard Park, New York 14127*

Mr. Sheele has no objection to the proposed project, however, he wants the project done properly with no infringement on the Orchard Commons property.

*Mr. Russell P. Faust
5329 Chestnut Ridge Road
Orchard Park, New York 14127*

Mr. Faust does not support the variance request.

*Mrs. Rose Schmitt
5314 Chestnut Ridge Road
Orchard Park, New York 14127*

Mrs. Schmitt does not support the variance request. She does not want increased traffic in her neighborhood.

Mr. Lennartz stated that he feels the Petitioner has not met the criteria for granting the variance, and he will move for denial of the request.

Ms. Kaczor stated she agrees with Mr. Lennartz. She also feels that if the request was for a lesser amount she might be willing to support the variance.

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 **DENY THE VARIANCE** request based on the following:

1. There will be an undesirable change in the character of the neighborhood and 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:

LIBERTI	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

MOTION TO DENY IS HEREBY PASSED.

2. ZBA File #40-15, Jack Ruh, 75 Mid County Drive, Zoned I-1, (Part of Farm Lot 25, Township 10, Range 7; SBL#161.07-5-31). Request a Use Variance to construct a self-storage facility creating a second use at this site. Only one use shall be permitted on a lot, Section 144-20 (D).

APPEARANCE: Mr. James Bammel, Bammel Architects
Mr. Jack Ruh, Petitioner/Property Owner

Mr. Bammel stated that the original approved Site Plan for this property included plans for future expansion of the tennis center. However, the Petitioner, Mr. Ruh feels a self-storage facility would provide a greater return on the value of his property, as he does not feel the tennis center should be expanded. He presently operates a self-storage facility located on Route 20A, "Quaker Storage", and Mr. Ruh believes there is a need for an additional self-storage facility.

Mr. Bammel explained the economic hardship to the members, noting that they are seeking a Dual Use Variance to operate a self-storage facility.

Mr. Metz verified the location of the buildings on the Site Plan. He also established that Mr. Ruh had spoken to his neighbors and that there were no objections to the variance request.

Mr. Mateer established that the self-storage facility will be single-units, similar to Mr. Ruh's existing storage facility. It was noted that the units that exist there are over 30-years old and in good condition. There will be lighting at the site, and the hours of operation will be the same as the "Quaker Storage" facility, with no access at night, other than police.

Ms. Kaczor established that the storage units are size based and approximately 30-units may be available for rent.

Mr. Liberti established that the facility will be self-serve.

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 Use Variance for the following reasons:

1. Strict application of the regulations will deprive the applicant of a reasonable return on the property.
2. The hardship is unique, and does not apply to a substantial portion of the district or neighborhood.
3. The variance will not alter the essential character of the neighborhood.
4. The alleged hardship may be self-created, but that does not preclude the granting of the variance.

THE MOTION BEING:

LIBERTI	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

THE VOTE BEING UNANIMOUS, THE MOTION IS HEREBY PASSED.

3. ZBA File #41-15, Cutaia Acquisitions, L.L.C. V/L Orchard Park Road, Zoned B-2 (Part of Farm Lot 18, Township 10, Range 7; SBL#'s 152.16-6-2.1 & 152.16-6-3). Requests (2) Variances for a proposed retail building. First, to allow vehicle parking in the front yard. Parking is prohibited in the front yard in this B-2 Zone, Section 144-29 A (4). Second, to provide fewer parking spaces than required by Section 144-29 A (3) (c).

APPEARANCE: Mr. Chris Wood, Carmina – Wood – Morris
Peter Sorgi, Attorney

Mr. Sorgi told the members that they are seeking two variances, one for front yard parking, and one to allow fewer parking spaces than required by the Town Code. He explained the need for the variances and presented "Exhibit B", noting that the site has an irregular configuration of developable land, limited due to Smokes Creek bisecting the Project Site. The Town Code requires 121-parking spaces and the Petitioner has provided 115 spaces.

Mr. Wood explained further details of the site to the members. He stated that FEMA, the NYS DEC and Army Corps are working with them.

Mr. Metz established that the egress to the site will be the existing traffic signal at the Hammocks Drive and the North Buffalo Road entrance into the Top's Plaza.

Mr. Liberti established that the proposed plaza will have lights left on at night and operate during normal business hours.

Mr. Mateer established that there will be several retail tenants in the plaza and that a dumpster will be located 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.

PROPONENT:

*Mr. Rich Eliah
Taffey's
4855 N. Bailey Avenue
Amherst, New York 14226*

Mr. Eliah stated that he had questions regarding the size of the buildings and he expressed his concern for the traffic backups that already occur here.

Mr. Wood stated a study will take place to determine the timing of the traffic light.

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. Lennartz, to **GRANT** the two (2) Area Variances 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
KACZOR	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 7:57P.M.

DATED: December 30, 2015
REVIEWED: January 19, 2016

Rosemary M. Messina
Zoning Board of Appeals Secretary

Joseph Liberti, Chairman