

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the August 21, 2018 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman/Robert Metz/Lauren Kaczor/Robert Lennartz
Dwight Mateer/Barbara Bernard, 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 Chairwoman called the meeting to order at 7:00 P.M., stating that if anyone appearing before the Board was related through family, financial or a 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 Chairwoman 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 MINUTES:

The meeting minutes for June 19, 2018, meeting were unanimously approved

The meeting minutes for July 17, 2018, were approved with one abstention.

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

BOWERS, AYE/BERNARD, AYE/KACZOR, AYE/LENNARTZ, AYE/MATEER, AYE/METZ, AYE

1. ZBA File #22-18, Justine Krasuski, 26 Knoche Way, Zoned R-2 (Sub Lot 92, Map Cover 3594; SBL#153.20-2-92). Requests an Area Variance to construct a shed which will increase lot cover to 14.6%. Maximum lot coverage for this R-2 Lot is 14%, §144-9B, Supplemental Schedule of Height, Lot, Yard, and Bulk Regulations.

APPEARANCE: Ms. Justine Krasuski, Petitioner/Property Owner

Ms. Krasuski explained her need for storage space to the members. She would like to locate the proposed 10-ft. x 14-ft. shed on the right side of her home. The proposed shed will match her residence. There will be no business operated from the shed, and the neighbors contacted did not express any concerns with the variance request.

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

IN FAVOR:

Beth Mireles
10 Alyson Drive
Orchard Park, New York 14127

Ms. Mireles stated that she supports the variance request.

The Chairwoman 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 were received.

Board Discussion: The request was favorable to the members.

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.
2. The benefit sought cannot be achieved in another way, other than the granting of the variance.
3. The request is not substantial.
4. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty is self-created, but that does not preclude the granting of the Variance.

THE MOTION BEING:

BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	NAY

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

2. ZBA File #23-18, Beth Mireles, 10 Alyson Drive, Zoned R-2 (Sub Lot 10, Map Cover 3594; SBL#153.20-2-10). Requests an Area Variance to construct a shed which will increase lot cover to 14.05%. Maximum lot coverage for this R-2 Lot is 14%, §144-9B, Supplemental Schedule of Height, Lot, Yard, and Bulk Regulations.

APPEARANCE: Mr. & Mrs. Mireles, Petitioners/Property Owners

Mrs. Mireles explained to the members her desire to have a storage shed located on the left side of their property. The shed will match the existing residence. The neighbors they spoke to did not express any concerns regarding the variance request. There will be no business run out of the storage shed, and electricity will be available in the shed for operating an electric fan. Code Enforcement Officer Dave Holland stated that the setbacks are conforming.

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

(Twice) NO RESPONSE

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

IN FAVOR:

Justine Krasuski,
26 Knoche Way
Orchard Park, New York 14127

Ms. Krasuski spoke in favor of the variance request.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no communications were received.

Board Discussion: Mr. Lennartz commented positively on the request.

Mr. Lennartz made a **MOTION**, seconded by 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.
2. The benefit sought cannot be achieved in another way, other than the granting of the variance.
3. The request is not substantial.
4. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty is self-created, but that does not preclude the granting of the Variance.

THE MOTION BEING:

BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	NAY

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

3. ZBA File #24-18, First Baptist Church of Orchard Park, 5933 Big Tree Road, Zoned R-3 (Part of Farm Lot 23, Township 9, Range 7; SBL#172.07-1-7). Requests a Variance to install a new freestanding identification sign. This proposed freestanding identification sign is not permitted in this R-3 Zone, §144-37.

APPEARANCE: Mr. Gary Bullard, First Baptist Church of Orchard Park Treasurer
Pastor Clint Fingerlow

Pastor Fingerlow explained to the Board that their current sign is not visible from the road. Customers seeking the driveway for the adjacent Tim Horton's property confuse the Church driveway as the entrance-way to Tim Horton's. He presented several photos of the damage and excessive wear that has occurred to the Church driveway and lawn, noting that they feel a larger sign will help with the driveway confusion. They do not feel the placement of a larger sign will interfere with the current traffic, as the proposed sign is approximately 4-ft. x 3.5-ft. in size, and it will be set back sufficiently from the roadway, as prescribed by the Town Code. Photos of the proposed sign were reviewed by the members. The member's questions established that the sign;

- Will be constructed of wood, and be held upright by two 6-ft. white pillars on each side.
- The sign will not be lit internally; however, solar spot lights will be used to illuminate the sign.
- The sign will be located on the left of the driveway, facing Route 20A.
- The sign is single-sided.
- The existing sign will be removed.

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

(Twice) NO RESPONSE

The Chairwoman 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 were received.

Mr. Metz made a **MOTION**, seconded by Ms. Kaczor, to **GRANT** the Area Variance with a **STIPULATION**, based on the following reasons:

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties.
2. The benefit sought cannot be achieved in another way, other than the granting of the variance
3. The request is not substantial.
4. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty is self-created, but that does not preclude the granting of the Variance.

The **Variance is granted with** the following **STIPULATION**:

1. The existing sign must be removed.

THE MOTION BEING:

BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

THE MOTION BEING FIVE (5) IN FAVOR, THE MOTION IS PASSED WITH A STIPULATION.

4. ZBA File #25-18, Renée Wall, 266 Curley Drive, Zoned R-1 (Sub Lot 24, Map Cover 2546; SBL#185.07-1-24). Requests an Area Variance to construct a shed with an 8-ft. side setback. Minimum side setback for this R-1 lot is 15-ft., §144-9B, Schedule of Height, Lot, Yard, and Bulk Regulations.

APPEARANCE: Mr. & Mrs. Thomas Wall, Petitioners/Property Owners

Mr. & Mrs. Wall explained that they desire to have a shed constructed for storage of various family items and outdoor furniture. They told the Board that the topography of their backyard is quite hilly, and the location chosen to place the shed is the only flat area on their property. They spoke to their neighbors and no objections were voiced regarding the variance request.

The members reviewed the request and established that the Petitioner has two shed sizes in mind; 12-ft. x 20-ft. long, or 10-ft. x 20-ft. long. The shed they choose to locate here will depend on what the topography allows. In addition, the two existing "temporary storage" structures will be taken down. It was verified that no business will be operated from the shed, the shed will match the existing residence, and no boat will be stored in the shed other than a canoe.

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

(Twice) NO RESPONSE

The Chairwoman 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 were received.

Board Discussion: Ms. Kaczor began a motion and withdrew it. The Members discussed the 8-ft. setback request further with Code Enforcement Officer David Holland and Deputy Town Attorney Len Berkowitz commenting that the request is for an 8-ft. side setback, and that it is up to the Board if they want it to be reduced.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the Area Variance with an 8-ft. side setback as requested, with a **STIPULATION**, based on the following:

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties.
2. The benefit sought cannot be achieved in another way, other than the granting of the variance.
3. The request is not substantial.
4. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or 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 two existing temporary structures are to be removed, as the new shed will replace them.

THE MOTION BEING:

BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	NAY
KACZOR	NAY

THE MOTION BEING THREE (3) IN FAVOR, AND TWO (2) AGAINST, MOTION IS PASSED WITH A STIPULATION.

OLD BUSINESS:

1. ZBA File #20-18, Bell Atlantic Mobile Systems of Allentown, Inc., D/B/A Verizon Wireless, 7263 Ellicott Road, (Part of Farm Lot 60, Township 9, Range 7; SBL #185.03-2-15.11). Requests Site Plan Review and Tower Permit Approval for a 144-ft. Monopole Tower and Telecommunication Facility as required by Chapter 144, Article VII. NOTE: This item was tabled by the Board at the 7/17/18 meeting.

APPEARANCE: Mr. Jared Lusk, Esquire, Nixon Peabody
Mr. Brett Morgan, Verizon Wireless Site Acquisition Consultant

Mr. Lusk stated that the Board members were provided with the additional information they had requested during the July meeting. The members reviewed the information and Chairwoman Bowers called for the members' additional questions.

Mr. Lennartz asked for further clarification regarding the Church property and wayward hunters' bullets, as he has concerns regarding the propane tank. If the variance is approved, perhaps a stipulation should be included to have the Church rescind its permission to the hunters using the Church property.

Mr. Lusk responded that he did not feel this is an issue, as other cell towers exist, along with numerous home owners using propane tanks without this concern.

Mr. Lennartz, along with Mr. Mateer, discussed their concerns for the Tower base viewed by the public, and the service roadway.

Mr. Morgan explained that there is a jog in the road that makes the tower base not easily viewed from the main road. Additionally, it is a well-screened area with woods and natural vegetation. He concluded that 8-ft. galvanized fencing will be put around the Cell Tower compound.

It was established that the Petitioners chose to erect a Cell Tower, rather than using "mini-cells" because it was the right "tool" for the service demand in this area. It was further established that the 5G network will operate along with the Macro and Micro cells. This technology will change over time and the future may have connection service managed in another way, such as light, or telephone pole mountings. They noted that this site is not a dense user site. In response to Mr. Mateer's question of, "How would you prevent malicious activity if someone is shooting at this thing...this is a criminal offense" the Petitioners responded that they have not had to address an *intentional* issue that involved bullets and a propane tank.

Mr. Metz discussed the submitted SEQR Document, Section "E", Page 12 & 13, pertaining to the lack of listing hunting.

The Chair established that the Church could post signs to prohibit hunting on the property. She also established that the height of New York State trees will not exceed the height of the tower, as trees can block the signal. The Chair asked the Petitioners where the closest tower is located relative to the proposed tower location. Mr. Lusk referred to tab "F", Page 11 of the submission, and discussed the information contained here.

Ms. Kaczor discussed the servicing of the site with the Petitioners. It was established that they are serviced at least twice a month.

There will be a gate at the entrance to prevent people from accessing the dirt road to the tower.

Board Discussion:

This is not a request for a variance, as this is a utility.

Ms. Bowers made a **MOTION TO APPROVE**, the request for a cell tower permit as submitted **BY COUNCIL**, seconded by Mr. Lennartz. The motion is attached as an Addendum to the minutes.

THE MOTION BEING:

BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	NAY

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

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 7:57 P.M.

DATED: 8/31/18

REVIEWED: 9/18/18

Zoning Board of Appeals
Rosemary Messina, Secretary

Kim Bowers, Chairwoman