

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the June 19, 2018 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman/Robert Lennartz/Robert Metz/Lauren Kaczor
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.

The meeting minutes for the May, 2018 meeting were unanimously **APPROVED**, with one Abstention.

The Chairwoman stated that site inspections of all cases presented tonight were made by:
BOWERS, AYE/BERNARD, AYE/LENNARTZ, AYE/KACZOR, AYE/MATEER, AYE/METZ, AYE

1. ZBA File #12-18, Peter & Cheryl Steffan, 233 Ashwood Lane, Zoned R-2 (Sub Lot 94, Map Cover 2984; SBL #184.08-2-46). Requests an Area Variance to locate a shed with a 5-ft. side setback. Minimum side setback for this R-2 Lot is 10-ft., Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. & Mrs. Peter Steffan, Petitioners/Property Owners

Mr. Steffan explained his desire to erect and locate a 16-ft. x 16-ft. storage shed on his property. To comply with the Town Ordinance numerous trees will need to be removed from the property. He told the members that he would like to be granted the Area Variance to locate the shed 5-ft. from his side setback so that the trees remain. He confirmed that he spoke to his neighbors regarding the requested variance and no objections were voiced. He further confirmed that he will not run a business from this structure.

Mr. Mateer discussed reducing the size of the shed with the Petitioners. However, the Steffan's did not feel that reducing the size of the storage shed would help them with their storage issues.

Ms. Kaczor established that the proposed shed will match the character of the existing residence.

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: The members feel that this is a straight forward request that is well understood. Ms. Kaczor feels the shed size should be reduced and the Town Code followed.

Mr. Lennartz 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 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 #13-18, John Reynolds, 4694 Freeman Road, Zoned R-1 (Sub Lot 1, Map Cover 2373; SBL #173.14-2-20). Requests an Area Variance to construct a detached garage within the front yard. No accessory structure shall be located within the front yard, Section 144-24 A (1) (b).

APPEARANCE: Mr. John Reynolds, Petitioner/Property Owner

Mr. Reynolds explained to the Board that he moved to this residence in September of 2017 and would like to construct a 2-1/2 car garage to store several automobiles. He does not feel the proposed garage will interfere with the sightline view of his neighbors. He also stated that the garage will architecturally match the existing residence. He prefers to have the garage detached for ascetic reasons and to enable side yard access from the driveway.

The members' questions established that the proposed garage will store 2-1/2 cars and have an access door to the side yard. An existing concrete pad will be removed, and the proposed garage will be located here. It was also verified that Mr. Reynolds spoke to his nearest neighbor and no objections were voiced to the granting of the requested variance. In addition, no business will be operated from this structure.

The members discussed attaching the garage to the residence to avoid the need for a variance and having a door at the rear of the garage to access the backyard. Mr. Reynolds feels attaching the garage to the home will be difficult. He does not want to block access to his rear property and feels it is ascetically pleasing to have the garage detached.

The members discussed using a breezeway to connect the residence and the garage.

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 OPPOSITION:

*Kristofer T. Straus
10 Fairway Drive
Orchard Park, New York 14127*

Mr. Straus stated he was not against the variance, but that, he would like clarification of several questions he had; the location of the proposed garage, if it is a two-story, or a one-story building, and where a trailer will be parked that is on the property.

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 members feel that there is another way other than the granting of the variance to achieve the benefit sought. The garage should be attached to the residence with a breezeway.

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, or a detriment to nearby properties.
2. The benefit sought can be achieved in another way, other than the granting of the variance.
3. The request is substantial.
4. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
5. The difficulty is self-created.

THE MOTION BEING:

BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

THE MOTION BEING FIVE (5) IN FAVOR OF DENIAL, THE MOTION TO DENY IS PASSED.

3. ZBA File #14-18, Jeff Pedro, 6653 Chestnut Ridge Road, Zoned A-1, (Part of Farm Lot 9, Township 9, Range 7; SBL #198.00-6-34). Requests an Area Variance to install a roof mounted solar energy system. Solar Panels are prohibited on the front roof, Section 144-55 D (1) (d).

APPEARANCE: Mr. Jeff Pedro, Petitioner/Property Owner

Mr. Pedro explained that a permit issued to him to install solar panels in 2016 expired. Upon reapplying, he found the current Town Ordinance prohibits solar panels on the front roof. He told the Board that he feels the non-reflective, black, solar panels will not be easily viewed by his neighbors and road traffic, nor does he feel the solar panels will create an undesirable change in the character of his neighborhood. His residence is setback from the roadway and located in a heavily wooded area. Mr. Pedro had planned to off-set the cost of his geothermal heating and cooling system with the use of solar panels.

The members discussed Mr. Pedro's request for the Area Variance. They established that he did not speak with his neighbors, and that to be efficient, the panels need to have Southern Exposure. During the not-so-sunny winter months credits built-up during the year are used. His electric bill is expected to be 56% lower, and if his system is reduced in size he will lose both State and Federal Tax Incentives.

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: Mr. Lennartz spoke of the non-reflective panels and the home being back off the roadway in the woods. He does not see a problem with the request based on where the residence is located. He feels the Petitioner has a hardship. Mr. Metz stated he likes the idea.

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, 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 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	NAY
METZ	AYE
KACZOR	NAY

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

- 4. ZBA File #15-18, Dennis Bracci, 5573 S. Abbott Road, Zoned A-1 (Part of Farm Lot 36, Township 9, Range 7; SBL #183.12-3-21). Requests an Area Variance to reconstruct a single family dwelling with an additional 320-sq. ft. of lot coverage. Maximum lot coverage for this A-1 Lot is 10%, Section 144-9B, Schedule of Height, Lot, Yard, and Bulk Regulations.

APPEARANCE: Mr. Dennis Bracci, Petitioner/Property Owner

Mr. Bracci explained to the Board that their home was destroyed by a fire and that he would like to rebuild the structure using the same foot-print with a few changes; a covered back deck and front porch area.

Mr. Lennartz verified that Mr. Bracci spoke with his neighbors and no objections were voiced to the granting of the Variance.

Ms. Kaczor established that the porches will not be enclosed.

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: The members feel that this is a good idea and a major improvement.

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 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 not self-created, as the home was lost to a fire.

THE MOTION BEING:

BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

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

5. ZBA File #16-18, Danny's Buffalo Cuisine, 4300 Abbott Road, Zoned B-2 (Part of Farm Lot 39, Township 9, Range 7; SBL #160.20-1-11.111). Requesting a variance to install an electronic message sign at this site. Digital signs are prohibited per Section 144-36 A (9).

APPEARANCE: Mr. Paul Fadarie, N•A•S Sign Company
Mr. Paul Strada, N•A•S Sign Company

Mr. Strada told the Board he feels it is archaic to use a reader board with changeable plastic letters for advertising, as the proposed electronic message board sign is the most effective way to reach the public. The sign, is turned on or off remotely; can post restaurant menu specials all day in a safe manner; can have its "brightness" controlled. He does not feel the proposed sign will change the character of the neighborhood, as the football stadium across the roadway has several electronic message board signs. He further stated that there are at least six other electronic message boards in the Orchard Park area. The proposed sign dimensions are the same dimensions of the current reader board signage. Mr. Strada further feels the request is not substantial, and that granting the variance will have no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

Mr. Fadarie told the Board that the sign will advertise menu specials during the 12 hours it is open each day to passerby's in an effort to increase its business.

Chairwoman Bowers established that the data on the sign is controlled to have no movement, and that the sign will be turned off at the restaurant's closing, prior to 12:00 AM. She briefly discussed the existing electronic message board signs in the Orchard Park area, noting that the Town of Orchard Park won a lawsuit against billboards and where the Taxpayers of Orchard Park spent time and money to preserve their community. She told the Petitioners that there are other opportunities to advertise other than a sign that lights up. She further stated that there is no evidence that an electronic sign increases business. The Petitioners told the Board that they had no data to submit regarding traffic accidents caused by electronic message board signs.

Mrs. Bernard discussed the proposed sign and established that the Petitioners are open to reducing the sign's design with the elimination of the top "oval" portion for a simpler looking sign.

Mr. Lennartz noted that the Petitioners quoted criteria the Board uses in deciding the granting of an Area Variance. He stated that the criteria used for granting a Use Variance is not the same. He feels this is a long-established business, the hardship is not unique, and advertising can be sought in other media outlets.

Mr. Mateer discussed specific details of the proposed sign with the Petitioners, including the control over its brightness. He feels the Petitioners have not shown that "Strict application of the regulations will deprive the applicant of a reasonable return on the property", nor have they provided information that "the lack of return is substantial as demonstrated by competent financial evidence". This is part of the criteria used for the granting of a Use Variance, and Mr. Mateer does not see that demonstrated. He wants the business to be viable; a sign can be here, just not an electric sign. He does not see evidence that the electric sign will create a reasonable return on the property.

Mr. Fadarie told the members that the financial hardship occurs when the Buffalo Bills lose a game and everyone leaves. The business was built on Sunday afternoon traffic, and the Owner of the restaurant would like to have customers patronize the restaurant on a daily basis. The message Board would be used to promote six specials per day, banquets, and catering.

Ms. Kaczor established that the neighbors had not been contacted, as the Petitioners did not feel the sign is visible from Penhurst Street and verification of this was spoken from a resident of the area attending the meeting.

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 OPPOSITION:

*Ms. Merry Wokasien
3 Greenfield Street
Orchard Park, New York 14127*

Ms. Wokasien is against the granting of the variance and wants the Town Code followed.

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: It was felt that the case did not meet the criteria for granting a Use Variance. It was also felt that the Town went to serious lengths to have this type of sign disallowed in our community.

Ms. Kaczor made a **MOTION**, seconded by Ms. Bowers, to **DENY** the Use Variance for the following reasons:

1. Strict application of the regulations will not 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 is self-created.

THE MOTION BEING:

BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE

THE MOTION BEING FIVE (5) IN FAVOR, THE MOTION TO DENY IS PASSED.

6. ZBA File #17-18, Richard Taylor, 5885 Chestnut Ridge Road, Zoned A-1 (Part of Farm Lot 11, Township 9, Range 7, SBL# 185.00-2-56.11). Requests an Area Variance to construct a detached garage/pool house building within the front yard. No accessory structure shall be located within the front yard, Section 144-24A (1) (b).

APPEARANCE: Ms. Sciortino, Architect, representing the Petitioner

Ms. Sciortino presented and explained the proposed plans to construct a garage space that will offer a pool house with a covered porch near the existing pool. The design incorporates both needs into one structure, technically, facing the front of the property. The structure will not block the existing home and will look attractive, while matching and enhancing the existing structures. Placing the structure elsewhere would make it visible to neighbors, and not meet the need for the covered porch area near the pool.

Ms. Kaczor established that the neighbors were not contacted.

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: The members feel this is beautiful project.

Mr. Mateer made a **MOTION**, seconded by Ms. Kaczor, 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 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	AYE

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

7. ZBA File #18-18, Matthew Laufer, 4591 Abbott Road, Zoned R-3 (Sub Lot 3, Map Cover 1056; SBL# 171.12-3-13). Requests an Area Variance to locate a shed with a 5-ft. rear setback. Minimum rear setback for this R-2 lot is 10-ft., Section 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Matthew Laufer, Petitioner/Property Owner

Mr. Laufer explained that he purchased his home with a shed that is in disrepair. Upon seeking to replace the shed he found that it is located in violation of the rear setback line. He explained that this is a small backyard with nowhere to place the shed without requiring a Variance. The shed is in a private area where its view is obstructed by trees that are protected through a deed restriction.

The members' question established that Mr. Laufer will use the current shed's foot print of 8-ft. x 10-ft. but will construct a 12-ft. x 10-ft. shed. The structure will have a brown metal roof with brown siding. Mr. Laufer spoke to his neighbors and there were no objections voiced to his request for the variance.

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: The members feel that the request is not substantial.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor, 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 cannot be achieved in another way.
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	AYE

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

Meeting adjourned at 8:19 P.M.

DATED: 7/19/18
REVIEWED: 7/19/18

Zoning Board of Appeals
Rosemary Messina, Secretary

Kim Bowers, Chairwoman