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

MEMBERS PRESENT: Kim Bowers, Chairwoman/Robert Lennartz/Robert Metz/ Dwight Mateer/

Barbara Bernard, Alternate

EXCUSED: Lauren Kaczor

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 Chair 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 Chair 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 Chairwoman stated that the Alternate Member, Mrs. Bernard, will be voting this evening due to the absence of Ms. Kaczor.

**APPROVAL OF MINUTES:**

**The meeting minutes for September 18, 2018, were approved with one (1) abstention.**

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

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

1. ZBA File #28-18, Robert Farwell, 65 Squire Drive, Zoned R-1 (Sub Lot 9, Map Cover 2527; SBL #185.06-7-9). Requests as Area Variance to construct a shed with a 5-ft. side setback. Minimum side setback for this R-1 Lot is 15-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Robert Farwell, Petitioner/Property Owner

Mr. Farwell explained that he desires to erect an 8’ x 12’ storage shed in the corner of his back yard where the existing trees will buffer its view. Chairwoman Bowers noted that the Board had received a letter of support for the Variance from Mr. Farwell’s adjacent neighbor. Mr. Farwell confirmed that neighbor was present in the audience if the Board needed to ask him questions.

The members’ questions established that, the other neighbors did not objection to the Variance request; the shed will be located 5-ft. from the side setback line; no electricity will be installed in the shed; it will be used strictly for personal storage, and no business will be run from this structure.

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

Board Discussion: Mr. Lennartz felt the request was reasonable.

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 sought 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.

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**

**BERNARD AYE**

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

2. ZBA File #29-18, Tanya Desiderio, 6 Holly Ridge Lane, Zoned R-1 (Sub Lot 25, Map Cover 3491; SBL #162.11-5-25). Requests an Area Variance to construct a shed with a 7-ft. side setback. Minimum side setback for this R-1 Lot is 15-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Ms. Desiderio, Petitioner/Property Owner

Ms. Desiderio explained to the members that she desires to place a 16’ x 16’ storage shed on the elevated portion of her property. She explained to the Board that her property is mainly sloping land, and that she feels the higher elevated portion is the ideal location for the shed as there are existing trees here to buffer its view. However, two small trees may need to be removed to accomplish this.

Mr. Mateer established that Ms. Desiderio does not want to reduce the size of the proposed shed to 12’ x 16’, as her husband feels they need the storage space for their pool and patio items.

Mr. Lennartz established that Ms. Desiderio started to prepare an area on her property to place the shed, unaware that she could appeal for a Variance. Upon learning about the Variance process she discontinued her efforts with that location. She is now seeking an Area Variance to allow the shed to be placed in the preferred, elevated location on her property that is outlined with flags. She confirmed that the request is for a 7’ side setback, and that their yard extends back for an additional 25 to 30 feet from where they would like to place the shed.

Chairwoman Bowers likes the Petitioner’s plan to “tuck-in” the proposed shed among the existing trees to buffer its view.

Mr. Metz discussed the drainage at the property and established that the Petitioner does not feel the shed will create additional water issues. He also confirmed the shed will be used for personal storage only, and no business will be run from this structure.

Mrs. Bernard discussed the setback requested, location of the fencing and shed with Ms. Desiderio.

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

Board Discussion: Mrs. Bernard has concerns regarding the shed’s location.

Mr. Mateer 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 created.

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**

**BERNARD NAY**

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

3. ZBA File #30-18, Towne Mazda, 3531 Southwestern Boulevard, Zoned B-2 (Part of Farm Lot 461,

Township 10, Range 7; SBL# 161.07-7-7.1). Requests an Area Variance to install a non-conforming monument sign at this site. Monument signs shall not exceed 30-sq.ft. in area nor 5-ft. in height, § 144-5, Definitions. Note: Proposed sign replaces existing pedestal sign.

APPEARANCE: Michael Yost, Yost Neon Display, Representing Town Mazda

Mr. Yost explained that the proposed monument sign is the same height and width of the existing non-conforming sign, and that it will be located two-feet over from where the current sign is. He told the members that the present sign will be removed. The new sign will be illuminated, and further from the driveway and street; this will eliminate snow plowing from impacting the signage. Mr. Yost told the members that every five-to-ten years the franchise signs are updated.

Several Board member questions could not be answered by Mr. Yost. He explained to the members that he does not sell the signage, he only installs it.

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

Board Discussion:

The members discussed the concerns they had with the proposed non-conforming sign.

Mr. Mateer feels the current sign is substantially smaller than the proposed new sign. He would like Mr. Yost to return with additional sign options from Mazda that are offered to the dealership. He concluded that the Board should look-out for the community, and not have it become an area of “giant signs”. He feels the Town Code should be followed, and he would like this item tabled pending the receipt of other sign options available from Mazda.

Mrs. Bernard stated she feels the proposed sign will interfere with a motorists’ view.

Mr. Lennartz noted that he was comfortable with the proposed sign.

Mr. Mateer made a **MOTION**, seconded by Mrs. Bernard, to **TABLE** this item.

**THE MOTION BEING:**

**BOWERS AYE**

**LENNARTZ NAY**

**MATEER AYE**

**METZ AYE**

**BERNARD AYE**

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

4. ZBA File #32-18, Buffalo Cigars, 2911 Southwestern Boulevard, Zoned B-2 (Part of Farm Lot 409, Township 10, Range 7; SBL# 153.06-2-1.1). Requests (2) Area Variances to construct a Pavilion structure on this site. First, to allow an accessory structure in excess of 240-sq.ft. Maximum size of an accessory structure in this B-2 Zone is 240-sq.ft., § 144-24B. Second, to allow a driveway within 5-ft. of a lot line. A driveway shall be located no closer than 5-ft. to the lot line, § 144-22G.

APPEARANCE: Mr. Doug Hutter, Zaxis Architectural, representing Mr. Glen Smith, “Couple 2 Threes LLC”, Owner of Buffalo Cigars

Mr. Hutter distributed copies of color plans and explained that the Owner had purchased and combined his lot with an adjacent lot. He plans on demolishing the existing residence on this lot and would like to construct a private, open-air Pavilion at the rear of the newly joined properties. They anticipate appearing before the Planning Board for a Building Permit and a Recommendation for Site Plan approval to the Town Board. He told the members that the Town Code does not have a chapter covering a “Pavilion”. Therefore, the Pavilion is being treated as an accessory structure. He explained the project and the three Area Variances they are requesting. Mr. Hutter told the members that the property consists of two (2) triangular shaped lots, which presents hardships for development of parking associated with the Pavilion. The submitted design with the Pavilion located at the rear of the site provides the best balanced relationship between the building, parking, greenspace for activities, the septic system, and storm water detention.

The members’ questions established the following:

⦁ The Pavilion will have a small serving area and storage space within it.

⦁ A 6-ft. wood fence will be erected along the residential area with spruce trees planted.

⦁ There will be fire-pits, power, and water available at the Pavilion.

⦁ Food will be catered and brought in. Food will not be prepped, or stored here.

⦁ The number of people anticipated attending an event will be determined by the Planning Board.

⦁ Lighting and Photometrics are to be reviewed by the Planning Board.

⦁ Music will be at the events held during the hours defined by the Town Code.

⦁ Green Space is important to the owner. He does not want a sea of asphalt.

⦁ “Buffalo Cigar” currently has functions outside on a patio area. The number of people who attend is not known.

⦁ A two-lane road will allow connection between the Pavilion parking lot and the existing “Buffalo Cigar” retail building parking lot.

⦁ Hardy Board, in earth-tone colors, will be used on the outside of the Pavilion.

⦁ Moving the driveway over 10-ft. will create the need for a different variance.

⦁ The parking lot will be designed to accommodate sixty-four (64) customers.

⦁ Mr. Hutter does not feel the character of the neighborhood will be changed with the granting of the variances. They feel this is a continuance of “Buffalo Cigar” that is already in existence in a Commercial District.

⦁ Mr. Hutter has not received communications that “Buffalo Cigar” disturbed the community with their events held.

⦁ It was confirmed that the Petitioner is seeking an Area Variance.

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

*Ms. Ann Marie Gamble, Daughter of resident*

*Ms. Freida Lang*

*6990 Michael Road*

*Orchard Park, New York 14127*

Ms. Gamble told the Board that her Mom is against the granting of the variance as it will change the character of her neighborhood. They feel there will be an increase in the levels of light, noise, smoke, and smells.

*Mr. Herman J. Pohl, Jr. Son of resident*

*Mr. Herman J. Pohl,*

*6998 Michael Road*

*Orchard Park, New York 14127*

Mr. Pohl told the Board that hisDaddoes not support the variance request. He feels music bands will disturb the peace and quiet of the neighborhood.

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 discussion among the Board and Mr. Hutter concluded that no variance is needed to construct an enclosed restaurant facility with a “sports-bar”, on the adjacent lot. The facility could also have a covered patio, and live music each night until 4:00 A.M., as this is a State Roadway. However, Mr. Hutter stated that the proposed Pavilion is not that type of facility.

The members determined that they need to speak and ask questions directly to the Property Owner, Mr. Smith.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **TABLE** this case pending the presence of the Property Owner, Mr. Smith, to answer further questions from the Board regarding the “hours of operation”, “smoke” associated with the fire pits, and “the maximum size needed” for the proposed Pavilion.

**THE MOTION BEING:**

**BOWERS AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

**BERNARD AYE**

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

5. ZBA File #31-18, Verizon Wireless, 3964 California Road, Zoned I-1 (Part of Farm Lot 32, Township 9, Range 7; SBL #161.03-1-8). Requests Site Plan Review and Tower Permit Approval for a 28.6-ft. Telecommunications Tower Facility as required by Chapter 144, Article VII.

APPEARANCE: Mr. Robert Brenner, Attorney Nixon Peabody

Mr. Brenner presented and explained the proposed plans for a Micro Cell Facility. A 24-inch antenna will be mounted on top of a 30-ft. wooden utility pole. The pole will be set 5-feet into the ground, making the overall height of the pole 25-ft. at ground level. The pole will be located on California Road to provide capacity relief for the Taylor Road area.

The members’ questions established the following:

⦁ A single guide wire will be used to hold up a standard 30-ft. wooden utility pole.

⦁ A 24-inch antenna will be placed at the top of the pole.

⦁ The wooden pole is placed 25-ft. above the ground, with the remaining 5-ft. below the ground.

⦁ The antenna weighs 28-lbs.

⦁ If the technology becomes obsolete, the pole will be removed.

⦁ The nearest resident is approximately 600-ft. away.

⦁ The pole is low and not visible through the trees.

⦁ There is no need for a generator.

⦁ The use of the wooden utility pole is not necessarily a cost effective project. Its use is driven by allowing the technology to be closer to the users.

⦁ There will be no additional driveways put in at this property for access, or a generator put in.

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

A question from Mrs. Casimir Kucharski, residing at 3965 California Road established that children will not be impacted by this site. It will comply with all applicable laws.

Mr. Lennartz made a motion, seconded by Mr. Metz, that this is an Unlisted Action and that a **Negative Declaration** under SEQR be made based on the submitted Short EAF.

**THE MOTION BEING:**

**BOWERS AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

**BERNARD AYE**

THE VOTE ON THE MOTION BEING UNANIMOUS, A **NEGATIVE DECLARATION** IS MADE UNDER **SEQR**.

Board Discussion:

Mr. Metz made a **MOTION**, seconded by Mrs. Bernard, to **GRANT** Site Plan Approval, and Issue a Permit for the Micro-Cell Facility.

**THE MOTION BEING:**

**BOWERS AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

**BERNARD AYE**

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

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 8:42 P.M.

DATED: November 14, 2018

REVIEWED: November 20, 2018 Zoning Board of Appeals Rosemary Messina, Secretary

Kim Bowers, Chairwoman