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

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

Barbara Bernard, Alternate

EXCUSED: Dwight Mateer

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 Mr. Mateer.

**APPROVAL OF MINUTES:**

**The meeting minutes for October 16, 2018, were approved with one abstention.**

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

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

1. 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. This case was tabled at the 10/16/18 meeting.

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

Based on the comments made by the Board at the October 16, 2018 meeting, Mr. Yost presented and explained an alternate sign for the members’ review. He showed various photos of the proposed sign, noting that the sign is open in the center, and wider than the current sign, as the two poles used to hold up the sign are now located on the outside of the sign. The height remains the same as the existing sign, at 78-inches high.

Ms. Kaczor established that the sign will be lit internally with L.E.D. lights. There are no issues with the shine from the metallic material on the sides of the signage.

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 feel it is an attractive looking sign, and a good compromise.

Ms. Kaczor 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 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**

**KACZOR AYE**

**MATEER AYE**

**BERNARD AYE**

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

2. 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. This case was tabled at the 10/16/18 meeting.

APPEARANCE: Mr. Doug Hutter, Zaxis Architectural, representing Mr. Glen Smith, Owner

Mr. Andrew Gerbec, representing Glen Smith, Owner

Mr. Hutter stated that he is representing the Owner, Mr. Smith, who is ill this evening. He invited the public to come forward to view the details of an updated plan, noting that a letter was submitted to the Board Members summarizing the project with more detail. The following was established:

⦁ The use of the Pavilion is not limited to Club members.

⦁ There will not be a great deal of noise. Bands consist of one or two people with music ending at

11:00 P.M. No complaints have been filed in the past at either of Mr. Sullivan’s business locations.

⦁ The Town noise ordinance does not regulate this proposed use.

⦁ The Pavilion will be used seasonally.

⦁ Catering is used to provide food, as no food will be stored here.

⦁ The request is revised to one (1) Area Variance, to allow a 240-sq.ft. accessory structure in this B-2 Zone, and not the five-foot setback.

⦁ The “fire pits” will be barbeques.

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. Seymour, Daughter-In-Law*

*Hermann & Eleonore Pohl*

*6998 Michael Road*

*Orchard Park, New York 14127*

Ms. Seymour stated that her in-laws are concerned about a structure that large “opening the door” for increased noise, impacting their quality of life.

*Ms. Ann Marie Gamble, Daughter of resident*

*Ms. Freida Lang*

*6990 Michael Road*

*Orchard Park, New York 14127*

Ms. Gamble told the Board her mom has concerns for her quality of life changing, security, and noise.

*Mr. Michael Pohl, Son*

*Mr. Hermann J. Pohl*

*6998 Michael Road*

*Orchard Park, New York 14127*

Mr. Pohl had questions regarding the fencing and trees to be put in, and would like to know if shut down times could be stipulated for noise issues.

Attorney Leonard Berkowitz stated that the Zoning Board can put reasonable conditions on the variance for a project. The fencing and tree selections will be reviewed by the Planning and Conservation Boards.

A resident inquired about the appreciation or depreciation of property values with regard to the proposed project. Chairwoman Bowers stated that the Zoning Board does not have that information; this would be a Planning Board question.

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 noted that the nearby church does not allow music past 11:00 P.M.

Mr. Metz stated he likes the project and feels there should be a curfew to limit the noise to end at 11:00 P.M.

The Chairwoman, Mr. Lennartz and Mrs. Bernard would like the Planning Board to set a limit for the music.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor, to **GRANT** the Area Variance with a **STIPULATION**, 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.

**This Variance is granted with the following Stipulation:**

1. The Planning Board is to review neighbor questions and concerns regarding noise and music limitations.

**THE MOTION BEING:**

**BOWERS AYE**

**LENNARTZ AYE**

**KACZOR AYE**

**METZ AYE**

**BERNARD AYE**

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

NEW BUSINESS

1. ZBA File #33-18, Michael Mangino Jr., 5087 Big Tree Road, Zoned R-3, (Sub Lot 13, Map Cover 875;

SBL# 160.20-1-17). Requests an Area Variance to construct a detached garage/storage building in the rear yard. Accessory area shall not dominate principal use area, § 144-5 terms defined. Accessory structures shall not occupy more than 25% of a required rear yard, § 144-24 A (1) (a).

APPEARANCE: Mr. Dan Buchanan, Bammel Architects, Representing Petitioner

Mr. Buchanan explained that Mr. Mangino desires to construct a 30-ft. x 16-ft. detached garage, with an 8-ft. lean-to on one side, to store his business inventory. He is requesting a variance to allow a five-foot side yard setback, and another variance for the size of the building. He spoke to his neighbors regarding the two variance requests and no objections were voiced. The existing garage on the property will be taken down. Existing drainage issues will be mitigated by Mr. Mangino.

Chairwoman Bowers established that the property is Zoned R-3 (Residential), and Deputy Attorney Berkowitz confirmed that the proposed structure cannot be used for the storage of business items in this residential zone.

Mr. Lennartz stated that proposed structure will fill the entire yard. He noted that he does not have a clear understanding of what will be stored in the building. The proposed building is 2,040 sq. ft. in size and the code allows a 1,400-sq. ft. building. He would like to know what Mr. Mangino’s hardship is. Mr. Buchanan stated that the building would need to be reduce almost in half to be code compliant.

Ms. Kaczor feels this is a huge building, and she would like the size reduced as much as possible. She is also struggling with the fact that this is a residential zone.

Mr. Metz feels rain water will be an issue and wonders where it will drain to.

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 Chairwoman discussed tabling this item with the members, pending the receipt of additional information.

Mr. Metz made a **MOTION**, seconded by Ms. Kaczor, to **TABLE** this case.

**THE MOTION BEING:**

**BOWERS AYE**

**LENNARTZ AYE**

**KACZOR AYE**

**METZ AYE**

**BERNARD AYE**

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

2. ZBA File #34-18, Rich Potter, 7752 Michael Road, Zoned R-2, (Part of Farm Lot 470 & 401, Township 10, Range 7; SBL# 153.12-2-5.12). Requests an area variance to construct an addition with a 10-ft. side setback. Minimum side setback for this R-2 lot is 15-ft., § 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

Chairwoman Bowers left the room briefly, and the Acting Chair, Robert Lennartz, called for the next Petitioner.

APPEARANCE: Mr. Potter, Representing Mr. Gerald Kempf, Petitioner/Property Owner

Mr. Potter explained that he would like to construct a 650-sq. ft. addition to Mr. Kompf’s existing residence. Due to the floor plan, septic system, and the property’s topography, an addition can only be placed on the east side of the residence.

The members’ questions established that the addition will match and blend into the existing residence, it will be constructed on the right side as you face the front of the property, and will not be for rent. Access points to the interior of the home were discussed. It was not known if Mr. Kempf had spoken to his neighbors about the variance request.

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:

*Mr. Robert Tortorici Jr.*

*7738 Michael Road*

*Orchard Park, New York 14127*

Mr. Tortorici had questions regarding the variance request that were addressed by Mr. Potter.

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 Board members felt positive about this request.

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 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**

**KACZOR NAY**

**METZ AYE**

**BERNARD AYE**

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

3. ZBA File #35-18, James F. Jerge, V/L Jewett Holmwood Road, Zoned R-1, (Part of Farm Lot 61, Township 9, Range 7; SBL# 173.19-3-2.1). Requesting an area variance for a proposed 20-lot subdivision. First, to allow (4) sublots with an area of less than 25,000-S.F. Minimum lot area for this R-1 Subdivision is 25,000-S.F. Second, to allow (13) lots with a width of 110-ft. Minimum lot width for this R-1 subdivision is 120-ft., § 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Chris Wood, Carmina ⦁ Wood ⦁ & Morris

Mr. Thomas Johnson, Developer

Mr. Mark Romanowski, Attorney - Hopkins, Sorge & Romanowski

Mr. Wood explained the proposed project for a 20-Lot Subdivision, noting that seven acres of the property will be dedicated greenspace.

Mr. Romanowski explained the variances requested, and why the project is designed the way it is. He noted that if it were designed differently, they would need further variances.

The Chairwoman stated that based on information from Planning Coordinator John Bernard there is a concern from Town Engineer Wayne Bieler regarding the need for an updated plan. Therefore, the Board will table this item until receipt of an updated plan.

Chairwoman Bowers asked the Board members and the Audience to discuss questions/concerns with the Petitioner. The following topics were covered:

⦁ Board Member Lauren Kaczor discussed wetland concerns and flooding issues. Mr. Johnson explained that the topography of the site will work well in providing relief. Board Member Robert Metz stated his questions regarding Lots 15 &16 were answered.

⦁ Audience members spoke regarding concerns for privacy, referencing Lots 18 and 19; Drainage concerns; verified Wetland areas on the presented map, and confirmed that a Wetland study has been performed. A Traffic study, and Storm water management report will happen during the Planning Board review.

⦁ The time frame on completion of this project is approximately three (3) years.

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **TABLE** THIS CASE **UNTIL RECEIPT** OF **AN UPDATED PLAN.**

**THE MOTION BEING:**

**BOWERS AYE**

**LENNARTZ AYE**

**KACZOR AYE**

**METZ AYE**

**BERNARD AYE**

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

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 8:31 P.M.

DATED: December 13, 2018

REVIEWED: December 18, 2018 Zoning Board of Appeals Rosemary Messina, Secretary

Kim Bowers, Chairwoman