**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the

June 18, 2019 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman

Robert Lennartz

Dwight Mateer

Robert Metz

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 Alternate member, Mrs. Bernard, is a voting member this evening, due to the absence of Ms. Kaczor.

**APPROVAL OF MINUTES:**

The meeting minutes for May 21, 2019, are not available this evening and will be voted on at the next meeting.

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

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

**NEW BUSINESS**

1. ZBA File #14-19, Thomas & Katherine Michalewski, 2 Aspen Lane, Zoned R-2 (Sub Lot 54, Map Cover 3707; SBL#184.06-1-54). Requests an Area Variance to install a 4-ft. high fence partially within the front yard. Maximum height of a fence in a front yard is 3-ft., §144-22A (1).

**REMOVED BY APPLICANT**

2. ZBA File #15-19, James Taravella, 6849 Jewett Holmwood Road, Zoned R-1 (Part of Farm Lot 5, Township 9, Range 7; SBL#173.14-1-2). Requests an Area Variance to construct an addition 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. James Taravella, Petitioner/Property Owner

Mr. Taravella submitted a letter from his adjacent neighbor on the west, stating that he supports the variance request for a five-foot setback. He told the members that if you are facing the residence, this property is on the right. The letter of support will be entered into the permanent file by the Secretary.

Chairwoman Bowers established that Mr. Taravella did speak to other neighbors and no objections were voiced to the variance request.

The plans for the proposed addition were reviewed by the Board. The members voiced their concerns regarding the character of the neighborhood being changed, as they feel the variance is substantial.

Mr. Taravella stated that he feels the roofline diminishes the addition, and that it still appears as a Ranch Style residence. He explained and discussed further details of the addition, noting that he may put in a second floor, as it is possible to do so. He noted that the second floor is only on a portion of the addition.

Mr. Lennartz discussed his concerns and asked if there are alternatives available to Mr. Taravella, as he feels the 10-ft. encroachment is a lot.

Mr. Taravella noted that the property use to have a septic system and that a sanitary lateral passes through the rear of the lot. It is difficult to avoid the external lateral by expanding solely to the south. The plans for his property are no longer in existence at the Building Inspector’s Office.

Mr. Mateer stated that Mr. Taravella can construct a two-story house without needing a variance, and that it is the garage that creates the need for the variance. Mr. Mateer does not feel it is unusual to want a two-car garage.

Mrs. Bernard established that the Town Code has always allowed a fifteen foot setback at this property. She also established that there is a driveway into the garage. Mr. Taravella will have the driveway widened to accommodate the proposed two-car garage.

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 their concerns for the size of the house, however the case is about the setback variance and not the size of the house. Mr. Mateer discussed adding a stipulation to not exceed one story, if the variance is granted. The members discussed this with Deputy Attorney Berkowitz and Code Enforcement Officer David Holland. It was determined that the stipulation would only apply to the area contained in the variance.

Mr. Mateer made a **MOTION**, seconded by Mrs. Bernard, to **GRANT** the Variance request 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.

**THE MOTION BEING:**

**BOWERS AYE**

**LENNARTZ NAY**

**MATEER AYE**

**METZ NAY**

**BERNARD AYE**

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

3. ZBA File #16-19, Jennifer Derrick, 37 Ridgewood Drive, Zoned R-3 (Sub Lot 225, Map Cover 2174; SBL#152.11-2-5). Requests an Area Variance to install an above ground swimming pool within the front yard of this premises. No swimming pool will be permitted in a front yard or required side yard §144-30 C (6) (d).

 APPEARANCE: Ms. Jennifer Derrick, Petitioner/Property Owner

Ms. Derrick explained her desire to have an above ground pool. Her residence is located on a corner lot and the only location the pool can be placed is in her “side yard”, which is her front yard on Ridgewood Drive. The actual front door of the residence and her driveway face Minden Drive. She plans on using a natural hedge to buffer the pool area. She has spoken to her nearest adjacent neighbor and he supports the variance request.

Ms. Bowers established that the existing fence will be removed and not be replaced.

Mrs. Bernard discussed her concern for pool toys blowing away in the wind into the roadway. This is a cul-de-sac so there will not be much of an impact.

Mr. Metz established that access to the pool will be accessed by a deck located between the house and the pool. There will be steps inside the pool, but not on the outside. This will prevent someone from walking up the steps into the pool.

Mr. Lennartz established that the most affected neighbor does not object to the variance request. The line of trees will buffer him.

Mr. Mateer established that there are other pools in the neighborhood. He feels if this was an inground pool it would not be seen as well.

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 is in favor of the variance and stated that there is no other place to locate the pool. He feels Ms. Derrick will have substantial screening.

Ms. Bowers established that there will be screening on Minden Drive. She explained how she feels about the request, noting that providing screening on the property is good, and that this is a temporary structure.

Mr. Metz stated that he has no issues with the request.

Mrs. Bernard discussed having a 15-year time limit on the variance.

Code Enforcement Officer David Holland commented that a 15-year time limit is difficult for the Building Department to enforce.

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, to **GRANT** the Variance request, 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.

The Variance is granted with the following Stipulation:

1. Natural screening is to be planted to provide buffering of the pool along Ridgewood Drive.

**THE MOTION BEING:**

**BOWERS AYE**

**LENNARTZ AYE**

**MATEER NAY**

**METZ AYE**

**BERNARD NAY**

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

4. ZBA File #17-19, Charlene Almasi, 1 Forsythia Court, Zoned R-2 (Part of Farm Lot 38, Township 9, Range 7; SBL#172.03-3-1). Requests an Area Variance to allow a 3-ft.-6-inch fence within the front yard. Maximum height of a fence in a front yard is 3-ft., §144-22 A (1).

APPEARANCE: Charlene Almasi, Petitioner/Property Owner

Ms. Almasi explained why she needs the requested fencing.

Ms. Bowers established that Ms. Almasi put up the fence and had not realized that she needed a permit to do so. In addition the fence was 6-inches higher than what the ordinance allows.

Ms. Almasi told the member that the fence is 3’6” high, as that is what she needs to block the view of her garbage totes.

Chairwoman Bowers noted that she kept driving by and could not see the fence; so that is a good thing.

The members did not have any questions.

Mr. Mateer discussed a question he had with Code Enforcement Officer David Holland. The fence is 11-feet in length.

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: None

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Variance request 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.

**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 #18-19, Zack & Siobhan Pappas, 6086 Benning Road, Zoned A-1 (Part of Farm Lot 67, Township 9, Range 7; SBL#198.00-2-53). Requests an Area Variance to allow a private stable on this 4.7-acre farm parcel. A farm parcel must contain at least 5-acres. No such building shall be located within 100-ft. of any property line of such farm, §144-32A, Animal Housing.

APPERANCE: Zack & Siobhan Pappas, Petitioners/Property Owners

The Pappas’ told the members that they had just purchased this residence, and that they had always wanted a farm. This is one of the oldest farms in the area and they would like to bring it back to what it used to be, and keep several horses kept in the existing barn,

Mr. Mateer spoke to Code Enforcement Officer David Holland regarding the property and where the measurement for the lot size was taken.

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 had no concerns.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the Variance request 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.

**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 7:55 P.M.

DATED: 7/15/19

REVIEWED: 7/16/19 Zoning Board of Appeals Rosemary Messina, Secretary

Kim Bowers, Chairwoman