**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the August 20, 2019 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman

Lauren Kaczor

Robert Lennartz

Dwight Mateer

Robert Metz

Barbara Bernard, Alternate

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney

David Holland, Code Enforcement Officer

Rosemary Messina, Recording Secretary

Natalie Nawrocki, Secretary to the Building Inspector’s Office

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.

**APPROVAL OF MINUTES:**

The meeting minutes for July 16, 2019 were **UNANIMOUSLY APPROVED** with one (1) **ABSTENTION**.

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

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

**NEW BUSINESS**

1. ZBA File #21-19, Charles Kasper, 39 Ridgewood Drive, Zoned R-3 (Sub Lot 224, Map Cover 2174; SBL#152.11-2-6). Requests an Area Variance to construct an addition with a 5-ft. side setback. Minimum side setback for this R-3 Lot is 7-ft., §144-20 (A) (2).

APPEARANCE: Charles Kasper/Daryl Martin, Architect

Mr. Kasper desires to construct an addition to his 1-1/2 car garage to gain storage space for his personal vehicle and other items.

The members’ questions established that Mr. Kasper contacted his neighbors regarding his request for the Variance and the most impact neighbor signed a letter stating he has no objections to the request. He told the members that he will not run a business from this structure and that there will be one garage door, just made slightly larger.

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 other communications were received.

Board Discussion: This is not an unreasonable request.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, 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 can 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**

**KACZOR AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

THE **MOTION BEING** **(5) FIVE IN FAVOR**, THE **MOTION** TO **GRANT THE** **REQUEST IS UNANIMOUSLY PASSED.**

2. ZBA File #22-19, Nicholas Taneff, 279 Summit Avenue, Zoned R-3 (Sub Lot’s 67 – 69, Map Cover 916; SBL#152.13-4-25). Requests an Area Variance to allow a covered porch within the required front yard. Required area or space cannot be reduced, § 144-20C.

APPEARANCE: Mr. Nicholas Taneff, Petitioner/Property Owner

Mr. Brian Pierrot, Contractor

Mr. Taneff showed the Board photos of his porch prior to, and after the storm damage occurred. He explained to the members that he did not feel he needed to apply for a Building Permit because of the existing Town Code “Exemption Law”, Section 45-10, Sub-Section B10, “Repairs”. He hired Mr. Pierrot to repair his porch and canopy using the existing footprint. However, the repairs to the canopy made it extend approximately six to eight inches beyond the porch, over the stairs. Mr. Pierrot felt uncomfortable exceeding the original building footprint and applied for a Building Permit, at the Orchard Park Building Inspector’s Office, where it was determined that a Variance was needed. Mr. Taneff stated that all work has stopped and will be completed as soon as they are able to get a Building Permit.

Ms. Bowers stated that she feels the porch looks nice, along with the columns and the railing.

Mr. Lennartz also felt the porch was nice.

Mr. Mateer complimented Mr. Taneff on his presentation.

Ms. Kaczor asked the Petitioner what he would do if the Variance is denied. Mr. Taneff commented that he did not know.

Mrs. Bernard stated that she thought it looked nice.

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 other communications were received.

Board Discussion: The members felt the request was reasonable, and that there are no issues.

Ms. Kaczor made a **MOTION**, seconded by 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**

**KACZOR AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

THE **MOTION BEING (5) IN FAVOR,** THE **MOTION** TO **GRANT THE REQUEST IS UNANIMOUSLY PASSED.**

3. ZBA File #23-19, Mary Gordon, 66 Old Orchard Lane, Zoned R-2 (Sub Lot 32, Map Cover 2409; SBL#184.13-1-50). Requests an Area Variance to install a 6-ft. high privacy gate in the side street yard. Maximum height of a fence in a side street yard is 3-ft., § 144-22 A (1).

APPEARANCE: Ms. Mary Gordon/Petitioner/Property Owner

Mr. James Hardiman, Friend

Ms. Gordon distributed photos of her property to the Board and explained that she is seeking privacy along her front driveway. Presently, plantings provide screening of her property, but not for her driveway area. She would like to install a 6-ft. high cantilever fence with black privacy slats to block the view of her driveway area from the road. The fence will have an automatic gate that will slide open and shut. She also wants the fence put in to stop errant balls rolling down her driveway, and off her property, to the street. She feels the proposed fence will keep balls on her property and provide the privacy she is seeking. She showed the members photos of the 6-ft. high fence she would like to install.

Ms. Bowers told Ms. Gordon that she feels a 6-ft. high fence is too large for the driveway area. She observed that her property has plantings that provide privacy.

Mr. Lennartz established that Ms. Gordon has a signed petition from some of her neighbors supporting the Variance request. She also stated that she talked to additional neighbors and no one objected to the variance request.

Mr. Lennartz told Ms. Gordon that the code allows a 3-ft. high fence. He feels there is privacy with the established plantings on the property.

Ms. Gordon told the members that she is looking for full privacy. This is a corner lot and a 3-ft. fence will not provide the privacy she is seeking.

Ms. Kaczor established that Ms. Gordon has lived here approximately 4-years, and was aware this was a corner lot when she purchased the property. Ms. Gordon told the Board that the fencing will be on each side of the driveway, extending 4 to 5-feet with a sliding automatic gate. It will be approximately 4 to 5-feet back from the road.

Mr. Mateer discussed the proposed location of the fencing, and established that the driveway is 60-ft. wide. Code Enforcement Officer David Holland confirmed that the location of the fence is proposed on private property and not Town property.

Mr. Metz established that the fence will be a chain link fence with inserts.

Mrs. Bernard feels Ms. Gordon can accomplish privacy with additional vegetation. They discussed this further and Ms. Gordon stated that the “balls rolling into the street issue” is not resolved with additional vegetation.

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.

OPPONENT:

*Ms. Susan Hardiman*

*74 Old Orchard Lane*

*Orchard Park, New York 14127*

Ms. Hardiman stated that she has lived here for almost twenty-years on the corner lot across the street from Ms. Gordon. She explained that she does not support the Variance request.

Ms. Sabatino

33 Thornapple Lane

Orchard Park, New York 14127

Ms. Sabatino stated that she resides in a home adjacent to Ms. Gordon and that she never spoke to her or her husband regarding the Variance request. She is confused as to why Ms. Gordon is looking to create privacy with a six-ft. fence after removing the trees that created privacy between both their properties. She explained that she does not support the Variance request.

Ms. Gordon stated she removed Ash trees located on her property that were dead.

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

Board Discussion: The members feel this is a substantial request, and that a six-ft. high fence does not fit-in with the character of the neighborhood.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor, to **DENY** the Variance request based on the following:

1. There will be an undesirable change in the character of the neighborhood, and 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**

**KACZOR AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

THE **MOTION BEING (5) IN FAVOR,** THE **MOTION** TO **DENY THE REQUEST IS UNANIMOUSLY PASSED.**

4. ZBA File #24-19, Matthew Kraus, 46 Lakewood Drive, Zoned R-3 (Sub Lot 243, Map Cover 2174; SBL#152.11-1-13. Requests an Area Variance to allow a shed with a 2-ft. side setback. Minimum side setback for this R-3 lot is 10-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Matthew Kraus. Petitioner/Property Owner

Mr. Kraus constructed a shed, without knowing that he was required to have a Building Permit. When he went to the Building Inspector’s Office to apply for a permit to erect a deck he realized his oversight. He told the members that if the shed is located in compliance with the Town Code, it would be in the middle of his back yard, which is not desirable. He explained that he lives at the end of a cul-de-sac and his lot is a wedge shape making it difficult to locate the shed anywhere but in the middle of his yard. He enjoys the view scape he has of Smokes Creek and does not want the tool shed placed there. He also explained his need for the shed for additional storage of his tools.

The members’ questions established that Mr. Kraus plans to use the 8-ft. x 10-ft. shed to store his personal items; this includes tools, a lawn mower and a snow blower. It was learned that the shed could be moved, and that there are no plans for electricity inside the tool shed. He spoke to his neighbors and no objections were voiced regarding the location of the shed or the variance request to allow the shed to remain.

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.

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

Board Discussion:

Ms. Kaczor discussed the location of the shed further. Mr. Mateer discussed overhead electricity. It is felt that a difficulty exists because of the lot shape.

Mr. Mateer made a **MOTION**, seconded by Mr. Metz, 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 created.

2. The benefit sought cannot be achieved in another way, other than the granting of the Variance.

3. Due to the difficulty of the lot shape, 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. This does not preclude the granting of the Variance.

**THE MOTION BEING:**

**BOWERS AYE**

**KACZOR AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

THE **MOTION BEING (5) IN FAVOR,** THE **MOTION** TO **GRANT THE REQUEST IS UNANIMOUSLY PASSED.**

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 7:44 P.M.

DATED: 10/08/19

REVIEWED: 10/15/19 Zoning Board of Appeals Rosemary Messina, Secretary

Kim Bowers, Chairwoman