**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the December 17, 2019 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman

Lauren Kaczor

Dwight Mateer

Robert Metz

Barbara Bernard, Alternate

EXCUSED Robert Lennartz

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

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:** Mr. Mateer made a **MOTION**, seconded by Ms. Kaczor to **APPROVE** the October 15, 2019 and November 18, 2019 meeting minutes.

The meeting minutes for October 15, 2019, and November 19, 2019 were **UNANIMOUSLY APPROVED.**

The Chairman stated that Site Inspections of all cases presented tonight were made by:

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

 **OLD BUSINESS**

1. ZBA File #31-19, Heathwood Assisted Living, V/L Webster Road, Zoned B-3 (Part of Farm Lot 15, Township 10, Range 7; SBL#162.05-2-2.11). Requests (2) Area Variances for a proposed Assisted Living Facility. First, to allow a 3-story structure with a 36-ft. – 2 inch height. The height of a building in this B-3 Zone shall not exceed 2-1/2 stories nor 35-ft., §144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations. Second, to allow Front Yard Parking. Vehicle parking in the front yard is prohibited in this B-3 Zone, § 144-29A (4). NOTE: This case was Tabled at the November 19th meeting.

APPEARANCE: Mr. James Bammel, Bammel Architects

Mr. Bammel noted that after appearing before the Zoning and Planning Boards the Petitioner has decided to withdraw his Variance requests. He will move forward without the need for Variances, and reapply to the Planning Office with a revised plan. A mail notification will be sent to invite the residents to meet with Bammel Architects in the future to discuss concerns neighbors may have regarding this project.

**Ms. Bowers stated that the Board acknowledges that request has been withdrawn.**

**NEW BUSINESS**

1. ZBA File #34-19, Daniel Cirasunda, 5571 Dennis Road, Zoned R-1, (Part of Farm Lot 4, Township 9, Range 7; SBL#185.10-3-7). Requests an Area Variance to construct a garage addition with a 42-ft. front setback. Minimum front setback for this R-1 Lot is 50-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Daniel Cirasunda, Petitioner/Property Owner

Mr. Cirasunda explained to the Board that he would like to construct an addition to his garage with a front setback of 42-feet. However, the Town Ordinance requires a 50-ft. front setback in this R-1 Zone.

The Chair established that Mr. Cirasunda would like additional space for a summer vehicle and personal storage. The structure will blend with the existing home and have the same siding. The existing plantings will help buffer the site. To make a third bay in the garage he needs the additional feet, otherwise it is too small to be accessible.

Mr. Mateer established that the neighbors were contact by Mr. Cirasunda and no objections were voiced to the Variance request.

Ms. Kaczor established that no business will be run from this structure. The space is solely for a vehicle.

Ms. Kaczor asked Code Enforcement Officer David Holland a question regarding the setback. After discussing this topic further with Mr. Holland and reviewing the map, Ms. Kaczor noted that she believes she is clear on what is proposed; Mr. Cirasunda has put it in a different way than what the Town describes it.

Mr. Metz confirmed that this will be a garage with spaces for three vehicles and personal storage.

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 Chairwoman confirmed that Board member Lauren Kaczor is clear on the request before the Board. There were no more questions from the Board.

Mr. Mateer made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area 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

BERNARD AYE

KACZOR NAY

MATEER AYE

METZ AYE

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

2. zba file #35-19, William J. Sahlem, 2260 Southwestern Boulevard, Zoned B-2 (Part of Farm Lot 404, Township 10, Range 7; SBL#153.07-2-1.3). Requests an Area Variance for a proposed Indoor Golf Driving Range with a height of 75-ft. Maximum height of a building in this B-2 Zone is 35-ft. §144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Frank Wailand, of Frank Wailand Associates

Mr. Owen Williams, Frank Wailand Associates

Mr. Wailand explained the project for this 5.3-acre parcel to the Board. He noted that this will be an all-service sports facility with a weight room, field house, and golf driving range. The Variance request is to construct one of the proposed three buildings 75-ft. high, for indoor golf and soccer. The structures will be located 420-ft. from the center of the Southwestern Boulevard roadway. Sketches show he plans to minimize the building’s appearance using terrain slopes, 8-ft. lower than Mr. Sahlem’s adjacent property. He is also proposing to construct 156-parking spaces.

Chairwoman Bowers established that the 75-ft. high building is needed for a driving range. The steel building will have two-levels inside. The Chair feels this is a large facility.

Mr. Wailand stated it appears there are not neighbors here, just businesses nearby, and heavy vegetation hides the site.

Ms. Kaczor established that there will be a mezzanine and a second story.

Ms. Bernard noted that there is a R-3 Zoned property behind this site, and that the Orchard Park School owns it. She feels someone may buy this property and put houses here. The golf course property is, also, located here. She has concerns for neighbors as the height of the building is 3 times as high as the existing Sahlem’s Roofing building on the adjacent property. She feels there is no way you are going to hide a 75-ft. high building from the residents at the rear of this property that reside on Angle Road. Ms. Bernard asked about offering digital golfing.

Mr. Wailand responded that those have facilities have an actual dome on them.

The Chairwoman noted that this is a great concept, but we have to think beyond five-to-ten-years out. If the business fails, what could the structure be used for.

Mr. Wailand stated that the facility can offer other sports, such an indoor baseball or soccer.

Mr. Metz discussed the second tier with Mr. Wailand.

Mr. Mateer stated he has no questions.

Ms. Kaczor does not completely understand the need for the second floor. She does not see a hardship. If there is no second floor, they are using the height whether the 2nd tier is built or not.

Mr. Mateer feels they should try to minimize the building’s height. He questions if there is a hardship.

Deputy Attorney Lenard Berkowitz noted that this Board must determine if there is a hardship that exists because you cannot have a building height of 75-feet.

Mr. Wailand told the Board that they feel there is a need for this type of facility.

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 Chairwoman noted** that the Planning Board made a recommendation to the Zoning Board of Appeals of “No Recommendation”.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated a communication from the Department of NYS Sewer Management was received, and this was read out loud by the Chairwoman. The correspondence will be filed with the permanent record.

Board Discussion:

Chairwoman Bowers stated that the Variance request for the height is far more than what she is comfortable with. She likes the idea of the project.

Ms. Kaczor stated that she likes the idea but is not sure this is the right location for this.

Mr. Mateer stated that when he uses the five factors to determine if a variance should be granted he finds it not desirable for the neighborhood.

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

1. There will be 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

BERNARD AYE

KACZOR AYE

MATEER AYE

METZ AYE

THE **MOTION BEING (5) FAVOR,** THE **MOTION TO DENY** 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 7:43 P.M.

DATED: January 17, 2020

REVIEWED: January 21, 2020 Zoning Board of Appeals Rosemary Messina, Secretary

Kim Bowers, Chairwoman