**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the February 16, 2021 meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Lauren Kaczor, Chairwoman

 Kim Bowers

 Barbara Bernard, Alternate

 Robert Lennartz

 Dwight Mateer

 Robert Metz

OTHERS PRESENT: Councilman Gene Majchrzak, Liaison

 John C. Bailey, Deputy Town Attorney

 David Holland, Code Enforcement Officer

 Rosemary Messina, Recording Secretary

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

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

OLD BUSINESS

REMOVED BY THE APPLICANT, wishes to be on March agenda.

1. ZBA File #25-2020, Benderson Development, 3507 N. Buffalo Road, Zoned B-3 (Part of Farm Lot 14, Township 10, Range 7; SBL#161.08-2-1). Requests an Area Variance to allow vehicle parking in the front yard of a proposed Medical Office Building. Vehicle parking is prohibited in the front yard in this B-3 Zone, §144-29A (4). Applicant requested to be removed from 1/19/21 agenda and placed on February Agenda.

2. ZBA File #27-2020, Jason & Meghann Skrok, 141 Bielak Road, Zoned R-3 (Sub Lot 151, Map Cover 1809; SBL#152.09-2-41). Requests an Area Variance to install a 6-ft. high fence in the side street yard. Maximum height of a fence in a side street yard is 3-ft., §144-22A (1). Applicant did not attend 1/19/21 meeting due to illness. Tabled by the Board.

 APPEARANCE: Mr. & Mrs. Jason Skrok, Petitioners/Property Owners

 Mrs. Skrok distributed items for the members’ review that included photos, and a survey of their property, explaining that they desire to erect a 6-ft. high fence to keep their dog in their back yard. Installing the fence will require the removal of several mature trees, and she would like to avoid their removal. She requests to locate the fence 25-ft. away from the roadway, noting that she does not feel the fence will interfere with a motorists’ site vision.

 Ms. Bowers established that the 6-ft. high fence is desired for privacy, a future pool, and to keep their dog, a “Boxer”, from leaving the property. The fencing has been purchased, and if the variance is denied, Mrs. Skrok does not know what the stores’ return policy is regarding unused fencing.

 The Board members discussed the side set back and the height of the fence at length. They voiced concerns for the impairment of a motorists’ vision with the fencing.

 The Skrok’s feel the proposed fence will not cause vision impairments for motorists, and explained why, referencing several of the photographs they had taken.

 Mr. Metz discussed the height of the fence with the Petitioners. The Skrok’s do not feel they can reduce the height of the fence as their dog, a “Boxer”, could jump over it if it is lower.

 The Chair established that the Skrok’s did contact their neighbors and there were no objections voiced regarding the proposed Variance request.

 Mr. Mateer established that the proposed fencing will have a vinyl coating on it. He also reaffirmed that the Skrok’s desire for the fence is based on privacy, and to contain their dog. He suggests using a 3-ft. fence in combination with an electrical fence. However, the Skrok’s stated that they do not support the use of an electric fence, and they feel a 3-ft. fence will not provide the privacy that they are looking for.

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

IN FAVOR: (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: (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 member’s discussed the options that exist for the Petitioners and they determined to “table” their review of this case. They would like the Skrok’s to return after speaking to the fence vendor.

Ms. Bowers made a **MOTION**, seconded by Mr. Metz, to **TABLE** this case review, giving the Petitioner the opportunity to research their options.

 **KACZOR AYE**

 **BOWERS AYE**

 **LENNARTZ AYE**

 **MATEER AYE**

**METZ AYE**

THE **MOTION BEING (5) IN FAVOR**, THE **VARIANCE REQUEST** **IS** **TABLED** **UNTIL** THE **MARCH MEETING.**

3. ZBA File #29-2020, Joseph & Anna Mc Ternan, 26 Templeton Trail, Zoned R-1 (Sub Lot 85, Map Cover 3119; SBL#162.07-3-38). Requests an Area Variance to allow a 4’-6” high fence within the side street yard. Maximum height of a fence in a side street yard is 3’, §144-22A (1). Tabled at the 1/19/21 meeting due to lack of representation.

 APPEARANCE: Mr. Joseph Mc Ternan, Petitioner/Property Owner

Mr. Mc Ternan distributed photos of his property and explained to the members that it was his desire to have a 4’-6” high fence erected within his side street yard, to provide safety for his children from a pond area behind their home. He told the members that applying for the permit was delayed due to COVID restrictions, reduced hours in the Town Building Office, and his wife being 9-months pregnant with 3 small children. His contractor encourage erecting the fence, based on the safety of the children, and to apply for the fence permit at a later date. At that time it was not known that the fence violated the Town Code height requirement. Mr. Mc Ternan stated that the fence is located 53-ft. back from the road, and he does not feel it creates an impairment for motorists. He spoke to his adjacent neighbors regarding the variance for the fence, and they indicated to him that they had no objections to the request. Mr. Mc Ternan would like to move forward, and is requesting the variance under what he feels are “extraordinary circumstances”.

Ms. Bernard established that the fencing located on Templeton Trail is off by 3-ft. in one portion.

Mr. Mateer established that the fence vendor indicated to Mr. Mc Ternan that this type of fencing is used for pools. The fencing was put in with concrete.

Mr. Metz confirmed with Mr. Mc Ternan that the entire length of the 4’-6” ft. high fence is problematic and violates the Town Code. The vendor for the fencing is “LG Fence” and he was unaware that the fence height did not meet the Town Code at the time of its construction.

Mr. Lennartz reviewed the section of the fence that is not code compliant, on the presented map. The full cost of the fence was $18,000.

Ms. Kaczor established with Code Enforcement Officer David Holland, that the Building Department remained open during the pandemic. She also confirmed with the Petitioner that if the variance is denied, that section of the fencing in violation of the code must be removed, and a code compliant fence will be added that may not match the rest of the fencing in place.

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

IN FAVOR:

(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 hates to see the Petitioner remove the fence. He, also, does not feel the 6-inches is noticed from the road.

Mr. Mateer stated he is concerned that the Building Department was never closed, and that the Petitioner moved ahead and put the fence in without a permit. However, it is not brought all the way to the road, and he does not feel it looks that intrusive. He feels it is esthetically pleasing and the difference is not that large as a variance would have likely allowed a 5-ft. fence.

Ms. Bernard agrees with Mr. Mateer.

Both the Chair, and Mr. Metz, do not feel fences should go up without a permit, and in this case the fence does not even meet the Town Code. They feel bad for the money invested.

Ms. Bowers questions the height of 4-ft. 6”, noting that we are getting Variance requests for this size of fence repeatedly. Perhaps this is a new size used in the industry that is now on the market.

 Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, to **GRANT** an Area Variance based on the following:

1. Per Section 144-63 (E) (1) all public notices have been filed.

2. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties created.

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

4. The request is substantial.

5. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

6. The difficulty is self-created, but that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

KACZOR NAY

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ NAY

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

NEW BUSINESS

1. ZBA File #01-21, Andrew & Erin Drouin, 11 Sugarbush Way, Zoned R-2 (Sub Lot 135, Map Cover 2409; SBL#184.09-5-93). Requests a Variance to house chickens on this parcel. Chickens shall not be housed except on a farm nor within 100-ft. of any property line of such farm, §144-32A (1). A farm parcel must contain at least 5-acres, §144-5B, terms defined.

 APPEARANCE: Mr. Andrew Drouin, Petitioner/Property Owner

 Mr. Drouin explained that he would like a variance to have chickens. He plans on having them raised by his children to instill good work ethics and responsibility lessons. He told the members that a nonpermanent coop, measuring 4-ft. x 8-ft. deep and 3-ft. to 4-ft in height, could be placed in the woods behind his residence. He feels the coop will not be seen from the road, or change the character of the neighborhood. He indicated on the presented survey a line of trees that would buffer the view of the coop and he, also, discussed using arborvitae bushes for screening the site. Mr. Drouin would like up to six (6) chickens for egg production. He told the members that he would be willing to compromise with a lesser quantity. He also told the members that chickens do not make noise, and stated there will be no roosters. Any extra eggs will be given to neighbors and friends. The chickens will be fenced-in and contained on his property. They will not be free range, or leave the coop area. Mr. Drouin stated that he spoke with his neighbors and did not receive objections to his request for the variance.

 Ms. Bowers stated that, this is not farm land, nor do you have 5-acres to have farm animals. She is struggling with this request.

 Mr. Lennartz stated that this property is a residential subdivision, and not a farm. He feels the chickens will change the character of the neighborhood, and that the request is substantial. Mr. Drouin does not have the required five acres; if he had 4-1/2-acres Mr. Lennartz might consider the request.

 Mr. Metz asked if there were responses from neighbors regarding this request in the file.

 Secretary Rose Messina reported that there were, and that the members had been copied on these as they were received.

 Mr. Mateer commends Mr. Drouin for what he would like to do, and feels he is a good parent. However, his role on the Zoning Board is to act for the community. He agrees with Mr. Lennartzs’ comment that if there were 4-1/2 acres, he might consider the request. Your property is less than an acre and he feels this is a substantial request.

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

**IN FAVOR:**

*Mr. Jonathan Pleban*

*18 Sugarbush Way*

*Orchard Park, New York 14127*

Mr. Pleban stated that he supports the variance request. He an adjacent neighbor and is here also representing the resident that owns the property behind Mr. Drouin. They both support the request.

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. Eugene M. Hanitz*

 *121 Old Orchard Lane*

 *Orchard Park, New York 14127*

Mr. Hanitz does not want a precedent set in this residential neighborhood. He does not support the variance request.

*Ms. Diane Hanitz*

*121 Old Orchard Lane*

*Orchard Park, New York 14127*

Ms. Hanitz stated that she does not support the variance request, and does not want a precedent set. She further stated that Orchard Park is not “Buffalo”.

*Mr. Gary Malloy*

*123 Old Orchard Lane*

*Orchard Park, New York 14127*

Mr. Malloy does not support the variance request to have chickens. He does not want change to the character of his residential neighborhood.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated no additional communications were received, other than what she had sent to the Board.

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

1. Per Section 144-63 (E) (1) all public notices have been filed.

2. There will be an undesirable change in the character of the neighborhood, and a detriment to nearby properties created.

3. The benefit sought can be achieved in another way, other than the granting of the Variance.

4. The request is substantial.

5. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

6. The difficulty is self-created.

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ NAY

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

2. ZBA File #02-21, Ashley & Eric Woodruff, 75 Breezewood Drive, Zoned R-2 (Sub Lot 230, Map Cover 3284; SBL#172.20-4-30). Requests an Area Variance to extend an attached garage 5-ft. into the required front setback. Minimum front setback for this R-2 lot is 40-ft. §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

 APPEARANCE: Mr. & Mrs. Eric Woodruff, Petitioners/Property Owners

Mrs. Woodruff explained that for safety concerns, they would like to create a side load garage, so that

the entire slope of the driveway becomes less severe. She discussed how they will accomplish this with the Board noting, that their driveway would then be 3-ft. from the side property line, adjacent to 71 Breezeway Drive, requiring a variance. Currently, if a child leaves the garage on their tricycle they are immediately headed down the steep driveway, with no slowing down, straight into the traffic on Breezewood Drive.

Mrs Bernard discussed the driveway with the Petitioners further, as she wondered if it is worth making this change. The Petitioner stated they feel it is.

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

IN FAVOR:

(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 issues with this request.

 Mr. Metz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** theArea Variance based on the following:

1. Per Section 144-63 (E) (1) all public notices have been filed.

2. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties created.

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

4. The request is not substantial.

5. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

6. The difficulty is self-created, but that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ AYE

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

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 8:14 P.M.

DATED: 4/14/21 Respectively Submitted,

REVIEWED: 4/20/21 Rosemary Messina, Secretary

 Zoning Board of Appeals

Ms. Lauren Kaczor, Chairwoman

 Zoning Board of Appeals