**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the January 19, 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**: Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **APPROVE** the November 2020 meeting minutes.

The meeting minutes for the November 17, 2020 meeting were **UNANIMOUSLY APPROVED**.

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**

**\*\*\*\*\* ITEM #1 Old Business** is rescheduled for February agenda at the request of the Applicant.

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). Board tabled this item at the November meeting.

2. ZBA File #26-2020, Benjamin Race, 3161 Abbott Road, Zoned B-2 (Part of Farm Lot 446, Township 10, Range 7; SBL#151.16-2-1). Requests an Area Variance to construct a shed with a 5-ft. rear setback. Minimum rear setback for this shed is 10-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations. Board tabled this item at the November meeting.

 APPEARANCE: Mr. Benjamin Race, Petitioner and Property Owner

 Mr. Race explained to the members that he has a small home and desires to erect a shed to store

personal items, including his snow blower. His property is narrow and locating the proposed shed to be code compliant will not leave him with adequate space to turn his vehicle around to face forward to exit his property onto Abbott Road in a safe manner. Instead, he will be forced to back out into the busy moving traffic of Abbott Road. Locating the shed 5-ft. from the rear property line, instead of the required 10-ft., will improve this issue. He also spoke of snow storage being a problem during the winter months. Mr. Race submitted signed petitions from his neighbors indicating their support of the 5-ft. Variance request; #60 Vistula, 39 Hillside Avenue, and 3153 Abbott Road. These documents are part of the permanent record.

Ms. Bowers established that the 12-ft. by 12-ft. shed is not large enough to store a motor vehicle in it.

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 additional communications were received.

Board Discussion: Mr. Lennartz stated that this is a straight forward request and it is needed. The members feel it is a good solution.

Mr. Mateer made a **MOTION**, seconded by Mr. Lennartz, 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 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.**

 **NEW BUSINESS**

**\*\*\*\*\*\* ITEM #1, New Business is removed due to illness.**

1. 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).

2. ZBA File #28-2020, Buffalo Ophthalmology, 3055 Southwestern Boulevard, Zoned B-2 (Part of Farm Lot 461, Township 10, Range 7; SBL#153.09-3-10.21). Requests an Area Variance to add an additional panel to a non-conforming pedestal sign. Maximum sign area for this pedestal sign is 40 s.f., §144-38C (2) Pedestal signs shall have a clear, unobstructed area at least 8’ in height from the ground to the bottom of the sign, §144-5, terms defined.

 APPEARANCE: Dr. Deepan Selvadurai, Tenant

 James Popiela, Santoro Signs

 Penny Majewski, Manager, Buffalo Ophthalmology

 Dr. Selvadurai discussed the difficulties that their eye care patients are having in locating the office on Southwestern Boulevard. He feels proper signage should help this situation. He is requesting to have an additional sign panel placed on the pedestal sign. This will be viewed by both lanes of the fast paced Southwestern Boulevard traffic.

 The members discussed this request and it was felt that a sign complimenting the existing signage would help. In addition, they would like the address number displayed on the sign post.

 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 discussed the request further and agree to the request with a stipulation to have the address on the sign post, and not be a part of the sign.

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

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

1. The street number is to appear somewhere on the post so that it is visible, and not be a part of the sign.

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 WITH A STIPULATION.**

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).

 APPEARANCE: No one was present.

 The Chair tabled this case, as there is no one to present it to the Board.

4. ZBA File #30-2020, Ken Hickok, 3 Riley Meadow, Zoned R-2 (Sub Lot 24, Map Cover 3524; SBL#184.07-1-35). Requests an Area Variance to install a 4’-6” fence within the side street yard. Maximum height of a fence in a side street yard is 3’, §144-22A (1).

 APPEARANCE: Mr. & Mrs. Ken Hickok, Petitioner and Property Owner

 The Hickok’s explained their desire to erect a 4’-6” fence within their side street yard. They distributed information regarding the proposed fence and photos of fences in their development. They do not feel their request would change the character of the neighborhood, noting that there are two other corner lot properties in this development with fencing placed off the side of the residence.

The Hickok’s stated that they contacted approximately 20-neighbors and no one contacted them with objections to the Variance request. They told the Board that the fence is needed to keep their dog, a “Golden Doddle”, from leaving the yard. In addition, they plan on installing an inground pool in the future. The minimum height requirement for a pool fence is 4’.

The members discussed using an electric fence or having the proposed fence height reduced, but the Hickok’s did not feel these were options that would work for them.

Code Enforcement Officer David Holland confirmed that the inground pool fence height requirement is a minimum of 4’.

Mr. Mateer asked if the Hickok’s would consider putting up a 3-ft. fence in combination with an electric fence.

Mrs. Hickok stated that besides the increase of cost, by duplicating and replicating a fence, she has concerns involving her dog using the snow to leap over the fence in the winter months.

The proposed fence plan indicates that its location will be 50-feet from the road, and approximately 24-ft. out from the residence.

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 the request further, noting that the neighbors support the Variance request. They also acknowledged that the pool fence is required to be a minimum of 4-ft. high. The fence request is not much of a difference. Several members feel they could support a 4-ft. high fence. Further discussion included not installing privacy panels in the fencing, and to locate the fencing 18-ft. from the house, rather than 24-ft.

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, to **GRANT** an Area Variance for 4-ft.-6” with a **STIPULATION**, as follows:

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.

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

1. The fencing must be installed 18-ft. from the residence and not 24-ft.

THE VOTE ON THE MOTION BEING:

KACZOR NAY

BOWERS AYE

LENNARTZ AYE

MATEER NAY

METZ NAY

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

Mr. Lennartz made a revised **MOTION**, seconded by Ms. Bowers, to **GRANT** an Area Variance for 4-ft. fence with a **STIPULATION**, as follows:

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.

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

1. The fencing must be installed 18-ft. from the residence and not 24-ft.

 THE VOTE ON THE MOTION BEING:

 KACZOR NAY

 BOWERS AYE

 LENNARTZ AYE

 MATEER NAY

 METZ AYE

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

5. ZBA File #31-2020, Nicholas Rossi, 42 Graystone Lane, Zoned R-1 (Sub Lot 33, Map Cover 3119; SBL#162.11-4-9). Requests an Area Variance to allow a driveway closer than 5’ to a property line. A driveway shall be located no closer than 5’ to the lot line §144-22G.

 APPEARANCE: Mr. Nicholas Rossi, Petitioner and Property Owner

Mr. Rossi explained that he purchased his home in 2015, and in October 2020 he decided to replace his deteriorating driveway. The driveway was relocated to accommodate using his existing side-load garage. At that time he was unaware that he needed a Permit. He, also, was unaware that the Town Ordinance requires a driveway to be no closer than 5-ft. to a property line. Mr. Rossi told the Board that his original driveway was 3.5-ft. from the property line. He is not sure if there was a variance granted to this property to allow this. He stated that the expansion has left the driveway 2.5-ft away from his neighbor’s property line, and his neighbor is objecting to the violation. Mr. Rossi stated that he does not understand how a driveway on his property is an issue. He quoted Section 144-22G of the Town Code, noting that this law was enacted in 1990, and that prior to that, there was no setback law with respect to driveways. He feels the law is unfair. If he had known he was not Code Compliant he would have applied for a Variance prior to having the approximately $25,000 driveway expansion put-in.

 The Board members discussed this case at length.

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

IN FAVOR: 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. Timothy Hudson*

*44 Greystone Lane*

*Orchard Park, New York 14127*

Mr. Hudson spoke against the granting of the Variance. He stated that he is the adjacent neighbor impacted by the driveway setback violation.

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 the request further and determined to table this request, pending the receipt of a property survey performed by a Licensed Surveyor.

Ms. Kaczor made a **MOTION**, seconded by Mr. Metz, to **TABLE** this case, pending the receipt of a current survey:

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ AYE

 The **MOTION TO TABLE** IS **UNANIMOUSLY APPROVED**.

Further discussion continued with the Board willing to accept two months’ waiting time for the survey (March 16, 2021 meeting) to be submitted for review by the members.

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 8:30 P.M.

DATED: 2/26/21 Respectively Submitted,

REVIEWED: 3/16/21 Rosemary Messina, Secretary

 Zoning Board of Appeals

Ms. Lauren Kaczor, Chairwoman

 Zoning Board of Appeals