

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the August 17, 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: 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 May / July meeting minutes were not available to be voted on.

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:

1. ZBA File #18-21, Orchard Park Veterinary Medical Center, V/L Windward Road, Zoned I-1, (Part of Farm Lot 27, Township 10, Range 9; SBL#152.19-1-29.111). Requests (2) Area Variances for a proposed medical office project. (The first Variance they no longer require.) Second, to construct a 1,250-sq.ft. Maintenance building at this site. Maximum size of an accessory structure building in this I-1 Zone is 240-Sq.ft., §144-24B. Tabled by Board at their 7/20/21 meeting.

It was established there had been no change from the previous meeting.

Ms. Bowers made a **MOTION**, seconded by Mr. Mateer, 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 created.
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 VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING (5) IN FAVOR, THE AREA VARIANCE REQUESTED IS PASSED

NEW BUSINESS

- 1. ZBA File #20-21, Wayne Scheible, 5525 Berg Road, Zoned R-3 (Part of Farm Lot 449, Township 10, Range 7; SBL#152.09-5-1). Requests a Use Variance to allow a Farm Stand on this non-farm parcel §144-30D.

APPEARANCE: Wayne Scheible - Owner

Mr. Scheible explained that he has had his Farm Stand for several years. He noted that there is room on the street for cars to pull over and he has an honesty box to collect payment. He noted a similar stand exists on Abbot Road, and they were granted a Use Variance.

Ms. Bernard inquired how many cars, per day, stop at this stand. Mr. Schieble stated, typically, one or two cars stop at a time, with an average stay time of 15-20 minutes.

Mr. Metz inquired if there had been any auto accidents, to which Mr. Scheible answered, "No".

Mr. Lennartz inquired about seasonal start and end dates, to which Mr. Scheible explained he only sold pumpkins from approximately September 11th through Halloween. Mr. Lennartz explained that with a Use Variance, finances is a factor the Board analyzes. He inquired if this was profitable, to which Mr. Scheible answered affirmatively. Mr. Lennartz inquired if there is an issue with traffic backing up, to which Mr. Scheible answered, "Not to my knowledge, I don't believe so".

Ms. Bernard inquired how his neighbors felt about the stand. Mr. Scheible responded that some neighbors had stated they were in favor of the stand, and none reported that they were against 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 communications were received.

Board Discussion: Mr. Lennartz felt that if a Variance is granted, he would like the dates September 1st through November 1st stipulated.

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, to **CONDITIONALLY GRANT** the **USE VARIANCE** request with a **STIPULATION**, based on the following:

1. Strict application of the regulations will deprive the applicant of a reasonable return on the property, provided that lack of return is substantial as demonstrated by competent financial evidence.
2. The hardship is unique, and does not apply to a substantial portion of the district or neighborhood.
3. The variance will not alter the essential character of the neighborhood.
4. The alleged hardship is self-created but that does not preclude the granting of this Variance.

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

1. The Farm Stand is to sell produce from September 1st through November 1st.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE **MOTION BEING (5) IN FAVOR, THE AREA VARIANCE REQUESTED IS PASSED WITH A STIPULATION.**

2. ZBA File #21-21, Gregory & Samantha Robinson, 310 Sunset Terrace Zoned R-2 (Sub Lot 310, Map Cover 1853; SBL#162.13-2-9). 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).

APPEARANCE: Samantha and Gregory Robinson - Owners

Ms. Robinson described the need to contain their Siberian husky, and feels a 3ft. fence is insufficient. The house is on a corner lot. Mr. and Mrs. Robinson submitted a document signed by their neighbors in support of the fence.

Mr. Mateer inquired if an invisible fence or an electric fence on top of the fence could be used to contain the dog. Ms. Robinson stated that they had tried shock collars in the past and they did not work for their dog. Mr. Robinson stated that the property slopes, creating the need for a taller fence.

Mr. Lennartz inquired if 6ft. is really necessary or if a 4ft. fence could suffice. Mr. Robinson stated that 5ft. might be acceptable.

Ms. Bernard asked for clarification on the placement of the fence. The Robinsons explained the fence placement. Ms. Bernard asked if a 4ft. fence would be sufficient, to which the Robinson's stated 5ft. would work.

Ms. Kaczor established that there was no fencing here previously. It was established that the fencing will be white and solid.

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 stated he would be in favor of compromising on a 5ft. fence. Mr. Metz said he was in favor of a 4ft. fence. Ms. Bernard stated she supported a 5ft. fence.

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

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. 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. The fencing is not to exceed 5-ft. in height.

THE VOTE ON THE MOTION BEING:

KACZOR	NO
BOWERS	RECUSED
LENNARTZ	AYE
MATEER	AYE
METZ	NO
BERNARD	AYE

THE **MOTION** BEING **(3) THREE IN FAVOR, TWO (2) NAYS, AND (1) ONE RECUSAL, THE AREA VARIANCE REQUESTED IS PASSED WITH A STIPULATION.**

- 3. ZBA File #22-21, Kevin & Brittany Kline, 60 Eaglebrook Drive, Zoned R-3 (Sub Lot 19, Map Cover 2181; 152.11-3-11). Requests an Area Variance to construct an addition with a 14-ft. 11” rear setback. Minimum rear setback for this R-3 Lot is 40-ft. §144-9B, Schedule of Height, Lot, Yard and Bulk Regulations.

APPEARANCE: Kevin and Brittany Kline - Owners

Ms. Kline described their plan to construct an addition onto their home. She stated that there are woods behind their house, and their neighbors to the rear would most likely be unable to see the addition. The Kline’s submitted a document with neighbors’ signatures showing their support for the project and drawings of the proposed addition. Ms. Kline explained they would like to add a living room / dining room as well as a bedroom. The Kline’s also clarified the existing sunroom would be removed.

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. Mateer stated that due to the shape of the addition it would be unlikely to be seen from the street.

Mr. Metz stated he likes the project.

Mr. Lennartz agreed.

Ms. Bernard stated she was in favor of the project.

Mr. Metz made a **MOTION**, seconded by Ms. Bowers, 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 created.
- 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 VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING (5) FIVE IN FAVOR, THE AREA VARIANCE REQUESTED IS PASSED

4. ZBA File #23-21, Brian & Joelle Druzvik, 5420 Lake Avenue, Zoned R-3 (Part of Farm Lot 449, Township 10, Range 7; SBL#152.13-2-1). Requests a Variance to house (2) Pygmy Goats on this parcel. Farm Animals shall not be housed except on a farm, nor within 100-ft. of any property line of such farm, §144-32A(1).

APPEARANCE: Joelle and Brian Druzvik - Owners

Ms. Druzvik explained that their daughter has been diagnosed with autism, and they would like to use Pigmy goats as therapy goats. She explained that they would consider the goats as pets, house them in their garage, and provide them with access to the outdoors during the day. The Druzvik's stated their neighbors are in favor of the goats, and that it is highly unlikely the goats would be visible from the road. They submitted pictures of the garage and yard, noting that they will use a moveable, non-permanent fence to contain the goats.

Mr. Lennartz inquired if there is a fence between the Druzvik's yard and the neighbors. Ms. Druzvik stated that there is not, there is shrubbery. Mr. Lennartz expressed concern about the goats' food attracting vermin. The Druzvik's stated that they were planning on feeding the goats inside the garage. Ms. Druzvik stated that it was her understanding the goats do not attract rats because they don't eat grain, they eat hay. Mr. Lennartz stated that with a Use Variance, there must be a financial return. The Druzviks stated that there would be no financial return. The Druzviks stated they want 2 males, because they tend to be quieter than females, and they would be neutered.

Ms. Bowers had several questions regarding the Pigmy goats. Ms. Druzvik stated that Pygmy goats can grow approximately 16 inches in height, with a life expectancy of 12 to 14 years, and that they would have two, the same age.

Mr. Mateer inquired how the Druzviks knew they needed a variance. Mr. Druzvik stated they called the Town, as they did not want to have an animal they were unable to keep.

Ms. Kaczor discussed the animal waste. The Druzviks stated they would use the droppings in their gardens, and that the goats urinate where they sleep. The farm they visited had no noticeable smell from their goats.

Ms. Bernard inquired if the Druzviks had considered other animals for therapy. The Druzviks stated that they do have indoor animals, however they have not had the same effect with their child.

Ms. Bowers inquired if the pen area was always going to be near the garage exit. Mr. Druzvik stated that he may temporarily move portions of the pen to give them more area to graze, but it would always funnel back to the garage entrance.

Mr. Mateer inquired if the fencing would be strong enough to contain the goats. Mr. Druzvik stated the farm they had visited is using this fencing with no issues.

Ms. Druzvik stated that the goats are small, and are not strong.

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

IN FAVOR:

*Ms. Kelly Burn
5428 Lake Avenue
Orchard Park, NY 14127*

Ms. Burn stated her yard was adjacent to the Druzbiak's yard. She visited the goat farm with the Druzbiaks and stated there was no smell. She stated her daughter is autistic and that the goats are therapeutic. She stated she is in favor of the goats.

*Ms. Kish
5446 Lake Avenue
Orchard Park, NY 14127*

Ms. Kish stated she supports the Variance request.

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:

Ms. Bowers stated that she is torn on this issue. Although, the Druzbiaks made a good case, she is unsure if the goats should be defined as "farm animals" or "pets".

Mr. Mateer stated that he agreed with Ms. Bowers. He noted that rabbits can be kept as farm animals, but also as pets. He commended the Druzbiaks for coming before the Board and approaching this the correct way. He does not feel the goats would be obtrusive and stated that the purpose of this Board is to provide flexibility.

Mr. Lennartz agreed with Mr. Mateer. He feels the photos helped clarify his understanding of the issue.

Mr. Metz stated he is, also, torn on the matter.

Ms. Kaczor stated she was opposed. The Town Ordinance requires a minimum of 5 acres.

The Druzbiaks restated that the goats do not require a lot of space.

Mr. Holland commented that in the past, the Board has granted Variances with a Stipulation to review after a period of time.

Ms. Bernard suggested tabling the issue to do more research.

Ms. Bowers stated she would be in favor of adding a Stipulation "to review in a year", if this variance were to be granted.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the Use Variance request, with a **STIPULATION**, based on the following:

- 1. Strict application of the regulations will not deprive the applicant of a reasonable return on the property, however that does not preclude the granting of this variance.
- 2. The hardship is unique, and does not apply to a substantial portion of the district or neighborhood.
- 3. The variance will not alter the essential character of the neighborhood.
- 4. The alleged hardship is self-created but that does not preclude the granting of this variance.

THIS VARIANCE IS GRANTED WITH THE FOLLOWING STIPULATION:

- 1. The Board is to review this item in 1 years' time.

THE VOTE ON THE MOTION BEING:

KACZOR	NO
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	NO

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

- 6. ZBA File #25-21 Ty Romanello, 6907 Cole Road, Zoned A-1 (Part of Farm Lot 57, Township 9, Range 7; SBL#198.00-4-16.112). Requests an Area Variance to construct a garage/storage building which will create a Dominating Accessory Use. Accessory Use area shall not dominate principal use area, §144-5, Terms Defined.

APPEARANCE: Ty Romanello - Owner

Mr. Romanello explained the need to store his tractor, snow plow, camper and other items that are currently outside.

Ms. Bowers verified that he intends to store these items inside the proposed building.

Mr. Mateer discussed the size of the property with Mr. Romanello. It is 8.52 acres, with 547 ft. of frontage.

Mr. Lennartz inquired if the building was to be used solely for storage.

Mr. Romanello stated it is for personal storage.

Ms. Kaczor inquired if the new structure would match the house. Mr. Romanello stated that they were trying to find materials to match the house. Ms. Kaczor asked if he had spoken to his neighbors, and he told the Board that he did, and had not received any negative responses to his variance request.

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 feel this is a good project.

Ms. Bowers 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 created.
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 VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE **MOTION BEING (5) IN FAVOR, THE AREA VARIANCE REQUESTED IS PASSED**

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 8:20 P.M.

DATED: 10/6/2021
REVIEWED: 10/19/2021

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor, Chairwoman
Zoning Board of Appeals