

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the April 20, 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: Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers to **APPROVE** the February 16, 2021 and March 16, 2021 meeting minutes.

The meeting minutes for the February 16th and March 16th 2021 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

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). Note: Tabled by the Board at their 3/16/21 meeting to allow the Board to review submitted documents.

APPEARANCE: Mr. James Boglioli, Benderson Development, Attorney

Mr. Boglioli stated that in response to the Zoning Board members' initial comments regarding this project, Benderson Development had sent a supplemental submission addressing the concerns and questions they had. He then read and reviewed each of the criteria used by the Board, when considering the granting of a variance, concluding that Benderson Development feels their project is a good use for the site.

Ms. Bowers established that the current building is not safe or usable, and that Benderson Development has no tenants under contract for the proposed new building. She also confirmed that the site plan indicates a total of 62-parking spaces, with 13-parking spaces located in the front yard.

Mr. Lennartz discussed the existing 13-front yard parking spaces at this site with Mr. Boglioli. He also questions if "medical office" is the best use for this property.

Mr. Boglioli stated that they are not asking for additional parking spaces; only for the 13-spaces, currently, located in the front yard to be allowed. He further responded that their research indicates medical office space is needed for patient care, such as physical therapy and orthopedic treatment.

Mr. Metz asked if the building can be located closer to the street, eliminating the front yard parking.

Mr. Boglioli stated that there were four additional options presented to the Board. Each of these options needed a variance, or several variances.

Mr. Mateer asked for clarification on the variances that would be needed and Mr. Boglioli presented and explained the other four options to the Board members, noting what was non-compliant and what variance(s) would be required with each option.

Mr. Mateer asked why the vacant lot, owned by Benderson Development, diagonally across from this property, was not considered for development instead of this property.

Mr. Boglioli stated there are no plans to develop the vacant lot at this time. Benderson Development prefers to redevelop an existing site with a dilapidated building, than eliminating an area with green space and existing trees.

Chairwoman Kaczor discussed the property that is for sale on the south side of the project site. She questions if Benderson Development would be open to purchasing this property to enable problem solving of the project site. Mr. Boglioli stated that they are not considering purchasing any additional property.

Mr. Mateer discussed the Architectural Overlay Districts' review of this project with Mr. Boglioli.

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 that he supports the variance request, as the 13-parking spaces have been here since the 1970's. He feels this is a straight forward approval.

Mr. Mateer stated that, prior to voting, he would like to have the opportunity to speak with the Architectural Overlay District (AOD) members and know what their comments are regarding front yard parking for this project. He also stated that he does not support the project as it can be accomplished in another way without the granting of the variance.

Mr. Metz is in agreement with Mr. Mateer.

Chairwoman Kaczor conferred with Deputy Town Attorney John Bailey regarding the desire to have the AOD Board comments on this project.

Mr. Boglioli commented on this request and Attorney John Bailey told the members that the AOD Board comments are not relevant to the variance request.

The members continued with further discussion regarding the request.

Mrs. Bernard feels she has a conflict as her husband is on the AOD Board.

Ms. Kaczor made a **MOTION**, seconded by Mr. Mateer, to **DENY** the Area Variance request 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, or 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	NAY
LENNARTZ	NAY
MATEER	AYE
METZ	AYE

THE MOTION BEING (3) THREE IN FAVOR, AND (2) TWO AGAINST, THE AREA VARIANCE IS DENIED.

2. 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. Tabled by the Board at the January 19, 2021 meeting, pending information requested by the Board.

APPEARANCE: Mr. & Mrs. Rossi, Petitioners/Property Owners

Mr. Rossi presented his property survey that the Board had requested at the January 19, 2021 meeting. He briefly explained the situation that evolved from the reconstruction of his deteriorating driveway, and the need for a Variance. Mr. Rossi stated that his wife found it very difficult to drive her large vehicle into the garage space with the driveways' turning radius. He submitted and explained several photos, including one with the original driveway, and one with the new driveway. He told the members that the property issue involves a two-inch by 18-inch pie shaped encroachment on the neighboring parcel.

Mr. Rossi reviewed the criteria that the Board uses in determining each case that is presented before them, answering the questions, as follows;

1. ***Will there be an undesirable change in the character of the neighborhood, or a detriment to nearby properties created?***

Mr. Rossi stated that he has reviewed variances granted in the past and has seen where the Board allowed setbacks four-feet from a property line, when the ordinance required 8-feet. He asks that his driveway, also, be extended that consideration.

2. ***Can the benefit sought be achieved in another way, other than the granting of the Variance?***

Mr. Rossi stated that the Variance is the only way he can keep his driveway.

3. ***Is the request substantial?***

Mr. Rossi stated that he does not feel it is substantial.

4. ***Will there will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district?***

Mr. Rossi does not feel there is. There is no substantial harm done; it is a driveway.

5. ***Is the difficulty self-created? (This does not preclude the granting of the Variance.)***

Mr. Rossi stated that he does not feel the difficulty is self-created. He explained that the previous home owner had expanded the side-load garage to accommodate their growing family. However, the garage expansion left a dilapidated driveway with a tight turning radius.

Mr. Rossi further reviewed the photos he had provided to the Board. He then discussed the 15-foot Right of Way (ROW) area that residents use, but do not own. He stated that the Town of Orchard Park owns this area. So with respect to the portion of his request for a variance, applicable to the property line, he feels the Board does not have the authority to comment on this, as the Town owns it. He concluded that all property owners use this area to extend their driveway to the paved portion of the R.O.W.

Mrs. Rossi, explained to the members that there is a portion of their driveway that infringes on their neighbor's property. They will have the driveway cut, and restore their neighbor's property. She, also, confirmed that her vehicle, a Ford Expedition is very large. She continuously had difficulty with the driveway turning radius when traveling in and out of the garage. While using the driveway to access their garage, she inadvertently kept driving on the lawn, creating a rut in the grass. An unattractive muddy mess was created from plowing snow and its storage. Their contractor suggested a solution to eliminate the access problem, and the mess, by redoing the driveway and straightening the driveway sideline. She stated that their desire is to keep a nice neat property.

Deputy Town Attorney Bailey voiced a concern over the Petitioners' additional comments made, and asked that only the setback variance request be discussed.

Chairwoman Kaczor, also, acknowledge this with the Petitioners.

The Rossi's both noted that they did not know the reconstruction of the driveway would create an egregious situation with the setback and the property line. They stated that there are other properties in the development with this same setback situation, and that their property is not the only one that has their driveway right on the property line. Mrs. Rossi noted that her husband is saying, "We are asking for a Variance for a portion that is really owned by the Town that already has a driveway".

Ms. Bowers discussed fixing the driveway with Mr. Rossi and confirmed the measurements involved.

Mr. Mateer discussed cutting off the "little piece of the driveway" with Mr. Rossi.

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.

IN OPPOSITION:

*Mr. Timothy Hudson
44 Greystone Lane
Orchard Park, New York 14127*

Mr. Hudson stated he does not support the Variance request, and would like a setback area kept here, noting drainage could be an issue.

*Mrs. Timothy Hudson
44 Greystone Lane
Orchard Park, New York 14127*

Mrs. Hudson explained why she does not support the Variance request.

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 feels this is an unfortunate situation. He further noted that there should be a setback area for snow and would like to have a compromise.

Mr. Metz stated that he agrees with Mr. Mateer regarding the need for a setback area. He would like to see a 2-ft. setback.

Ms. Bernard stated that she does not have any issues.

Mr. Lennartz is not bothered with this request; all the lawns butt up to the driveway or have flowers here. He hates to see the driveway cut and, he respectfully, does not see a reason for it. He feels the driveway does not need a setback.

Ms. Bowers feels that it is unfortunate that we are here, today, because of this. She is in agreement with having the property line encroachment removed for the neighbors and the future neighbors, so there are no problems down the road.

Ms. Kaczor discussed having a 1-foot or 2-foot setback area with the Board members.

Both Mr. Metz and Mr. Lennartz feel they could agree to a one-foot setback, however they also feel this is a big expense. Mr. Lennartz stated, "And really, what is the benefit of that?"

Mr. Mateer consulted Code Enforcement Officer David Holland regarding the presented survey.

The members reviewed the survey.

Mr. Metz feels that the cost involved with cutting the driveway is prohibitive.

Mr. Mateer stated he wants a 1-foot setback.

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, to **ACCEPT** the driveway with no setback as he cannot see a reason to cut the driveway just to meet a setback number. This Area Variance request is **GRANTED**, 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	NAY
BOWERS	AYE
LENNARTZ	AYE
MATEER	NAY
METZ	AYE

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

NEW BUSINESS

1. ZBA File #06-21, Margaret Ferron, 49 Woodhaven Road, Zoned R-2 (Part of Farm Lot 15, Township 10, Ranger 7; SBL #162.05-2-17). Requests an Area Variance to install a 4-ft. high fence partially within the front yard. Maximum height of a fence in a front yard is 3-ft. §144-22A (1).

APPEARANCE: Ms. Cindy Magner, Representing her mother, Petitioner/Property Owner

Ms. Magner explained that her mother is dealing with a situation where the neighbors' dog jumps over her 3-ft. high fence and onto her property interfering with her daily routine with her dog. This is very frightening and she would like to make it easier for her mom to let her dog in and out of her home by replacing the existing fencing with a white vinyl 4-ft. high fence. Her mom must use the front door to let the dog in and out as the residence does not have a back door. She told the members that the existing fence is located 45-ft. from the roadway. She would like to remove this fence, and install a 4-ft. high, closed panel fence, in the same location to try and mitigate any future issues with the neighbors' dog.

Ms. Kaczor discussed the style of the fencing, noting that she would like to see open slat fencing, and not a solid panel closed fence. She finds the style of the fence an issue, relative to the character of the community.

Ms. Magner explained that either dog can put their head into the slat space, and this is a situation that is

not wanted. She also stated that her mom has already ordered and paid for a 4-ft. high solid panel fence. However, there may be time to change the order. It is not known if the price will run more for a picket style fence.

Further questions from the members established that "electric fencing" is not an option for her mom. Her dog is a smaller, regular sized "Collie" dog. It was also learned that the fence will be straight across at the top.

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. Rebecca Overton
37 Woodhaven Road
Orchard Park, New York 14127*

Ms. Overton spoke in favor of the variance request, noting that Ms. Ferron needs to have protection from the neighbors' errant dog.

*Ms. Merlene Richards
65 Woodhaven Road
Orchard Park, New York 14127*

Ms. Richards spoke in favor of 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:

The members discussed this request at length. It was established that the Dog Warden has been to the neighbor's home regarding their dog.

Mr. Mateer explained that he feels a 3-ft. fence should be sufficient.

Mr. Lennartz affirmed that the front yard fencing will be solid white vinyl panel fencing; the side yard will be a chain-link fence.

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Area Variance request 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	NAY
BOWERS	AYE
LENNARTZ	AYE
MATEER	NAY
METZ	AYE

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

- 2. ZBA File #07-21, David & Sandra Mellerski, 6784 Milestrip Road, and Ronald & Patricia Mellerski, 6792 Milestrip Road (SBL#'s 153.17-1-9.12 & 153.17-1-9.11). Requesting an Area Variance to create a new building lot with minimum street access. Two lots with minimum street access shall not be contiguous, §144-22B.

APPEARANCE: David & Sandra Mellerski, Petitioner/Property Owners

Mr. Mellerski told the Board members that due to medical reasons he needs to downsize their home. He would like to stay in Orchard Park, and is proposing to utilize their property, by constructing a smaller handi-cap accessible home further back on his property. They are requesting an Area Variance to create a new building lot with minimum street access. The Town Code does not allow two lots with minimum street access to be contiguous. He noted that his parents, live adjacent to his property and are present this evening, along with his builder, Andrew Romanowski, of Alliance Homes to answer questions the Board may have.

Mr. Mellerski further explained that he plans to sell his existing residence, and extend the driveway to access the new residence. The driveway is currently a "shared driveway" with an easement between him and his parents. He also explained that if they choose to do so there is the potential for all three lot owners to put in their own separate driveway in, in the future. In addition, the Assessor's Office informed him that that there is one remaining split that may take place for this property. Mr. Mellerski stated that there is one-more split available for this property to have. Due to the topography of the property the new residence will not been seen from the roadway. Mr. Mellerski spoke of the criteria the Board uses to base their decision to grant a variance. He reviewed these and responded to each item, concluding that the proposed project will not change the character of the neighborhood.

Mr. Lennartz discussed the shared driveway aspect with Mr. Mellerski, and asked for further clarification regarding this.

Mr. Metz stated that is a concern he had, also. He verified that the driveway for the proposed new residence would be approximately 500-ft. from Milestrip Road, and be 12-feet in width.

Mr. Mateer discussed the setback requirements and the splits with this parcel.

Mrs. Bernard verified that the necessary documents have been filed with the Town Clerk, including the shared driveway (easement).

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.

Mr. Mellerski submitted a letter supporting the Variance request from Mr. Jeff Wright, who is interested in purchasing 6784 Milestrip Road. The members reviewed this submission and the Secretary will enter this document into the permanent file.

Board Discussion: The members expressed positive thoughts regarding the request for the variance.

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Area Variance request 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, 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 8:25 P.M.

DATED: 6/09/2021
REVIEWED: 7/20/2021

Respectively Submitted,
Rosemary Messina, Secretary
Zoning Board of Appeals

Ms. Lauren Kaczor, Chairwoman
Zoning Board of Appeals