

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

MEMBERS PRESENT: Lauren Kaczor, Chairwoman
Kim Bowers
Dwight Mateer
Robert Metz

EXCUSED: Barbara Bernard, Alternate
Robert Lennartz

OTHERS PRESENT: John C. Bailey, Deputy Town Attorney
David Holland, Code Enforcement Officer
Anna Worang-Zizzi, 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 Meeting Minutes for October 2021 were approved UNANIMOUSLY.

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

KACZOR, AYE/ BOWERS, AYE /MATEER, AYE/METZ, AYE

NEW BUSINESS

1. ZBA File #28-2021, Tina Croom and Frederick Gearhart, 7081 Michael Rd. Zoned R-3 (part of Farm Lot 463, Township 10, Range 7; SBL# 153.10-3-8 Requests an Area Variance to construct a storage shed within the front yard. No accessory structure shall be located within the front yard §144-24A(1)(b).

APPEARANCE: Tina Croom and Frederick Gearhart – Owners

Ms. Croom and Mr. Gearhart explained their desire to locate a 12'x24' shed in the front yard of their residence. They stated they would store a snow plow and other items in the shed so they could park in their garage and access the driveway with the snow plow from the shed. They explained their house is 400ft. from the road and so there are neighbors' sheds are in front of where this shed would be. They described how the backyard was fenced and how it would be impossible to place the shed there without moving the fence. Ms. Croom and Mr. Gearhart showed pictures of their property to the board.

Ms. Bowers established that the shed would be 12'x24' or smaller and that the door would be facing the driveway.

Mr. Mateer inquired about the vinyl shed currently there. The owners stated they would prefer to keep it but would be willing to remove it if the Board approved the Variance.

Mr. Metz inquired if the petitioner plans on doing any business out of this shed. The petitioners answered negatively. Mr. Metz inquired if there was any landscaping planned. The petitioners stated there was not.

Chairwoman Kaczor inquired if the petitioners had spoken to their neighbors. They stated they had and they had received no complaints.

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 his opinion that the petitioner should remove the vinyl shed if the Variance is approved. Mr. Metz and Ms. Bowers agreed.

Mr. Metz made a **MOTION**, seconded by Ms. Bowers, to **GRANT** the Area Variance request 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 vinyl shed is removed or relocated so it complies with Town Code.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING (4) IN FAVOR THE MOTION IS PASSED WITH A STIPULATION.

CHAIRWOMAN KACZOR STATED THAT ALTHOUGH ITEMS 2-4 ARE SEPARATE, THEY WOULD BE HEARD TOGETHER SINCE THE VARIANCES REQUESTED ARE IDENTICAL AND THE PETITIONER IS THE SAME.

2. ZBA File #29-21, Pleasant Acres West, LLC, V/L 6088 New Taylor Rd. Zoned R-3 (Sub Lot 86, Map Cover 3472; SBL #161.15-2-33) Requests (4) Area Variances to construct a two-family dwelling on this parcel as follows:
 1. Lot Width: 110ft. provided vs. 125ft. required
 2. Lot Depth: 150ft provided vs. 175ft. required
 3. Lot Area: 15,821sq. ft. provided vs. 24,000sq. ft. required.
 4. Side Setback: 24 ft. proposed vs. 25 ft. required.

§ 144-9B Supplemental schedule of height, lot, yard and bulk regulations.
3. ZBA File #30-21, Pleasant Acres West, LLC, V/L 6126 New Taylor Rd. Zoned R-3 (Sub Lot 84, Map Cover 3472; SBL #161.15-2-30) Requests (4) Area Variances to construct a two-family dwelling on this parcel as follows:
 1. Lot Width: 110ft. provided vs. 125ft. required
 2. Lot Depth: 150ft provided vs. 175ft. required
 3. Lot Area: 16,500sq. ft. provided vs. 24,000sq. ft. required.
 4. Side Setback: 24 ft. proposed vs. 25 ft. required.

§ 144-9B Supplemental schedule of height, lot, yard and bulk regulation.
4. ZBA File #31-21, Pleasant Acres West, LLC, V/L 6116 New Taylor Rd. Zoned R-3 (Sub Lot 85, Map Cover 3472; SBL #161.15-2-31) Requests (4) Area Variances to construct a two-family dwelling on this parcel as follows:
 1. Lot Width: 110ft. provided vs. 125ft. required
 2. Lot Depth: 150ft provided vs. 175ft. required
 3. Lot Area: 16,500sq. ft. provided vs. 24,000sq. ft. required.
 4. Side Setback: 24 ft. proposed vs. 25 ft. required.

§ 144-9B Supplemental schedule of height, lot, yard and bulk regulations.

APPEARANCE: Shawn Hopkins – Attorney
 Elliot Laskey – Owner/Developer

Mr. Hopkins explained that these 3 lots are part of a larger 87 lot subdivision. He stated the Subdivision Review Process for this project began in 1988. The project was challenging and took a long time to develop and he explained some of the setbacks they had encountered. He stated these 3 lots were always intended to be two-family homes, and the homes in this area are predominantly two-family homes on similarly sized lots. He expounded that the Code in place when this project began would have allowed these potential homes to be developed in this way, however the Code changed in 1989 after this project had begun. He submitted documents including Map Covers, an Aerial Photograph, Elevations, and copies of Town Code and described these. He noted these would be upscale homes around 1,700 sq. ft. per unit, renting

for around \$2,500. He listed the Variances the petitioner is requesting, and explained some of the Code they were in compliance with. He asserted his opinion that they met the criteria for granting of a Variance.

Mr. Mateer noted that the Map Cover didn't state which houses are designated as one-family and which are designated as two-family. He also noted that an R-3 zone allows for one-family homes and inquired if one-family homes would fit on these lots.

Mr. Hopkins explained that there were only 4 lots zoned R-3, and one was a larger lot, and so that potential home was in compliance with Code. Mr. Laskey stated that while a single family home would physically fit, economically it would not make sense and that these lots had always been envisioned as two-family lots.

Mr. Mateer noted that with an Area Variance, there is no economic consideration, unlike with a Use Variance, and that he would like to see evidence that these homes were envisioned as two-family homes before the Code was changed.

Mr. Laskey stated that he may have overlooked the Zoning change unintentionally and also stated his frustration with the Subdivision Review Process.

Chairwoman Kaczor inquired if they had considered combining the lots. The petitioner responded that it would not be economically feasible, as it would reduce the number of homes.

Ms. Bowers inquired what the petitioner would do if the Variances were not granted. Mr. Laskey stated they would develop single family homes, however it would be a loss financially.

Mr. Metz inquired if the Petitioner was willing to combine two of the lots if the Board were to grant the Variances on the third. Mr. Laskey was not amenable to that compromise.

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

APPEARANCE:

*Tony and Amelia Cirelli
47 Braunview Lane
Orchard Park, NY 14127*

Mr. and Ms. Cirelli had several questions for the developer. It was established that these questions did not fit the format of this hearing and would constitute a side conversation. The developer agreed to speak with them after the meeting.

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

*John Tomani
5583 Chatham Road
Clarence, NY 14001*

Mr. Tomani owns property at 6100-6102 New Taylor Road. He stated that when he built his home he "played by the rules." He felt this project would have a negative effect on his property and that it would constitute "Spot Zoning".

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variances. The Secretary stated no communications were received.

BOARD DISCUSSION:

Mr. Mateer would like to see documentation supporting the claim that these lots were intended to be two-family homes prior to 1989. He stated he would like to table this review to give the applicant time to re-search this.

Ms. Bowers was also in favor of tabling the review. Mr. Metz concurred as well.

Chairwoman Kaczor stated she was also in favor of tabling and would like to see alternatives from the petitioner in addition to the requested documentation.

Chairwoman Kaczor made a **MOTION**, seconded by Mr. Metz, to **TABLE** the review of these items.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING (4) in FAVOR THE MOTION IS PASSED.

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 8:01 P.M.

DATED: 11/24/2021
REVIEWED: 12/21/2021

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor, Chairwoman
Zoning Board of Appeals