

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the July 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:

The Meeting Minutes for April 6, 2021 were unanimously approved.

The May 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/METZ, AYE/MATEER, AYE

OLD BUSINESS:

1. ZBA File #12-21, InSite Real Estate Development Services, L.L.C. V/L Orchard Park Road Zoned B-2/A.O.D. (Part of Farm Lot 18, Township 10, Range 7; SBL #152.16-6-2.11). Tabled by the Board at their 5/18/21 meeting. Board to review a revised request for an Area Variance for a proposed grocery store building.

APPEARANCE: Joe Gianni (InSite Real Estate Development Services L.L.C.)

Mr. Gianni explained the proposed project and presented renderings of two proposals, noting that depending on the option taken, "Plan A" would be for front yard parking (16 of 96 spaces), and "Plan B" would need a setback variance, eliminating the front yard parking variance. He, also, noted this site had been granted a front yard parking variance in 2015 with a different Site Plan. He told the members that this site has a flood plain that needs to be accounted for in meeting FEMA standards.

Mr. Mateer asked for clarification of the rendering with regards to fill and elevation of the site. Mr. Gianni explained several fill locations. He also stated the slope of the driveway would be 6% at its steepest. He explained that an area behind the building contained material that would have to be removed, and then fresh fill would be brought in to develop the area. They are seeking to minimize these costs.

Ms. Kaczor asked for clarification on the “Plan B” setback request. Mr. Gianni stated the setback would be 16ft. from the cart chorale and 10ft. from the building.

Ms. Bowers was in favor of Plan B.

Mr. Lennartz was also in favor of Plan B.

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 there was a communication from the Erie County State Department of Transportation, which made a recommendation for the Town’s Engineering Department to review a specific portion of the site.

Board Discussion:

Mr. Mateer asked to see the file.

The members were in favor of Plan B.

Mr. Lennartz established that with Plan B there would be only one variance required.

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the revised Area Variance for the “Plan B” Building Setback 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	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 #13-21, Spencer R. Davis, V/L at 6752 Scherff Road, Zoned A-1 (Part of Farm Lot 1, Township 9, Range 7; SBL#198.00-6-47). Requests (3) Area Variances for Site Plan Approval of a proposed single-family dwelling and pole barn. First, to permit a 2-story accessory building. An accessory building shall not exceed one story, §144-24A (1) (a). Second, to permit an accessory building which will create a dominating accessory use. Accessory use area shall not dominate principal use area, §144-5 terms defined. Third, to permit an accessory building within the front yard. No accessory structure shall be located within the front yard, §144-24A (1) (b).

APPEARANCE: Mr. Davis - Petitioner/Property Owner

Mr. Spencer explained his desire to build a home and a workshop on this property.

Ms. Bernard inquired as to the nature of the proposed "workshop". Mr. Spencer stated the workshop will be for personal storage and provide a place to work on cars. Ms. Bernard inquired as to the need for two stories. Mr. Spencer stated he needed the second story for additional storage.

Mr. Metz established that Mr. Spencer would not be running a business out of the proposed shop.

Mr. Lennartz confirmed that Mr. Spencer will use a tractor for snow removal.

Mr. Mateer established that the structure will be a pole barn. Mr. Mateer inquired about the need for the second story. Mr. Spencer explained he needs additional space for personal storage and that the building will match the design of his residence.

Ms. Bernard inquired as to the square footage of the house and the barn. Mr. Spencer stated the house would be approximately 3,500sq. ft., and the barn would be somewhat larger, due to the second story. Upon driving up the driveway you will see the house first, and then the barn, although the barn is closer to the road.

Mr. Metz asked if Mr. Spencer had spoken to his neighbors regarding the Variance request. He stated he had spoken to several neighbors and there were no objections voiced.

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

*Kathleen Ballish
6783 Scherff Road
Orchard Park NY, 14127*

Ms. Ballish inquired as to the purpose of this structure and Mr. Spencer explained that he needed it for storage. Ms. Ballish is concerned that there would be a commercial business run out of the barn. Mr. Spencer stated he has no intention of doing so. He also stated that he will not be storing large construction vehicles in it.

Ms. Kaczor stated that the zoning of this property does not allow Mr. Spencer to run a business here.

*Ms. Brink
6700 Scherff Road
Orchard Park NY, 14127*

Ms. Brink expressed concern as to the size of the structure.

*Scott Bartell
6720 Scherff Road
Orchard Park NY 14127*

Mr. Bartell stated he is unsure as to what this project will look like.

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 didn't have a problem with the project. He stated once neighbors see there is no commercial usage they may support the project.

Mr. Mateer agreed with Mr. Lennartz.

Ms. Bernard feels it is not unreasonable to put a barn on a 13 acre piece of property, as there are currently several barns located on Scherff Road.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance request to permit a 2-story accessory building 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 doesn't preclude the granting of the variance.

THE VOTE ON THE MOTION BEING:

KACZOR	NO
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING (4) IN FAVOR, THE AREA VARIANCE REQUEST IS PASSED.

2. ZBA File #15-21, Raymond Miranda, 4956/4968 Chestnut Ridge Road, Zoned B-2 (Part of Farm Lot 13, Township 9, Range 7; SBL#'s 172.20-1-17 & 172.20-1-16). Applicant is appealing the Zoning Officer's determination that the site is in the Architectural Overlay District (AOD). If the ZBA determines that the site is in the AOD, the Applicant requests a variance to allow a drive-through window at the proposed restaurant. Drive-through windows are prohibited in the AOD, §144-75Q.

Mr. Mateer will recuse himself from voting in this matter due to a financial relationship. Therefore, the alternate member, Ms. Bernard, will be voting.

APPEARANCE: Adam Walters - Attorney
Raymond Miranda – Petitioner/Owner/ Developer

Mr. Walters explained they are appealing the Zoning Officer's decision that the property is located in the Architectural Overlay District, and alternatively, they are asking for a variance to allow a drive-thru window. He explained the project, and expressed his opinion on the Town Regulation. He noted that the Town has appealed the decision of the Court to throw-out the law prohibiting drive-thru's. He stated his client wishes to move forward with the project.

Ms. Bernard inquired as to the amount of business done through the drive-thru. Mr. Miranda stated before COVID drive-thru traffic was about 70% of business at his restaurants, then during COVID it was 100% for a time, and now is around 80%. He stated about 10% of their customer base uses the restaurant, and the remainder place takeout orders. Mr. Miranda noted they have room for 22 cars in their queuing line at this location. He asserted that it was unusual for a stacking lane to be longer than 10 cars. He stated they had two traffic studies done and they found there would be no traffic issues at this site.

Ms. Bowers asserted that the map shows the site in the AOD and that the verbiage says "New Armor Duells Road." Mr. Walters asserted that while the map shows the site within the AOD, the code states the AOD ends where Ellicott Road meets New Armor Duells Road.

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.

Mary (last name inaudible)
Resident of Orchard Park, New York 14127

Ms. Mary feels this project will have a negative impact on the neighborhood, and explained why. She also feels that this project is "an accident waiting to happen".

Name not given
6435 Armor Road
Orchard Park, NY 14127

Another resident feels this is an unsafe location for a drive-thru, and that there is not enough room.

Name not given
6435 Armor Road
Orchard Park, NY 14127

Another resident feels this project is a B-1 Business, and not a B-2 zoning classification.

*Ms. Judy Salerno
25 Harmony Circle
Orchard Park, NY 14127*

Ms. Salerno questioned the logistics and safety of making a left turn out of the proposed parking lot.

*Name and address inaudible
Orchard Park, New York 14127*

This resident feels this project will pose a risk to people walking on the street.

Mr. Walters stated that there was a determination by the Building Inspector when the application was filed that this project was an authorized use of a B-2 Zone. He added that there have been extensive traffic studies performed.

Ms. Kaczor made a **MOTION**, seconded by Ms. Bowers, to **RESERVE** their decision and provide a written explanation.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BERNARD	AYE
BOWERS	AYE
LENNARTZ	AYE
MATEER	RECUSED
METZ	AYE

THE MOTION BEING (5) FIVE IN FAVOR, AND (1) ONE RECUSAL, THE MOTION IS CARRIED.

- 3. ZBA File #16-21, Larry Broad, V/L Westview Place, Zoned R-3, Part of Farm Lot 23, Township 9, Range 7; SBL #172.08-4-38. Requests an Area Variance to construct a single-family dwelling on a lot which does not have minimum access along a dedicated street length. The stub end of a street shall not be considered a portion of the street length, §144-22B.

APPEARANCE: Paul Notaro – Attorney

Mr. Notaro stated the lot was landlocked and shaped like a lowercase “ h”. The only frontage is at the stub end of Westview Place, located in the Village of Orchard Park. The Village has issued a memo to the Town stating they have no objection.

Mr. Baily stated the Town received a letter today from the Town Engineering Department stating they would allow the request, therefore, no Board action is required. Therefore, this cased is removed.

- 4. ZBA File #17-21, Norm Marshall, 6095 Newton Road, Zoned A-1 (Part of Farm Lot 19, Township 9, Range 7; SBL#184.00-4-15). Requests an Area Variance to construct a detached garage with an 11-ft. side & rear setback. Minimum side & rear setback for this A-1 Lot is 20-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

Ms. Kaczor is recusing herself in this case and Mr. Lennartz will be the Acting Chairman. The Alternate Ms. Bernard will be voting.

APPEARANCE: Norm Marshall, Petitioner/Property Owner

Mr. Marshall explained that when they planned their garage, they used a previous survey. However, a new survey, indicates that they measured from the center of the road, instead of from markers. This discrepancy created a garage located within 11 ft. from the rear of their property line. Mr. Marshall presented aerial photos of the property and other documents for the members' review.

Mr. Mateer discussed the size of the garage and established that Mr. Marshall will store cars here and have a workshop.

Acting Chairman Lennartz inquired if Mr. Marshall contacted his neighbors regarding the Variance request. Mr. Marshall stated he provided the names of neighbors in support of the Variance, but that he was not successful in getting in touch with his neighbor at the rear of his property. He further noted that the property behind him is mostly wetlands.

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

*Mark Braun
6088 Newton Road
Orchard Park, NY 14127*

Mr. Braun stated he supports the Variance request.

The Acting 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 Acting 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 reasonable request.

Mr. Mateer made a **MOTION**, seconded by Ms. Bowers, 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	RECUSED
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE

METZ AYE
BERNARD AYE

THE MOTION BEING (5 FIVE) IN FAVOR, AND (1) ONE RECUSAL, THE AREA VARIANCE REQUEST IS PASSED

- 5. 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. First, to allow vehicle parking in the front yard. Vehicle parking is prohibited in the front yard in this I-1 Zone, §144-29A (4). 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.

APPEARANCE: Allison Raffaele – Hospital Administrator
Daniel DeBoy – Kideney Architects
Dr. Kumrow – Veterinary

Mr. DeBoy explained they are seeking to build a 1,250sq. ft. garage at the rear of the site and would also like front yard parking. There would be 18 spaces and a drop-off lane at the front western section, 35 spaces in the front eastern section, and 53 spaces to the side. He stated the arrangement of the site is similar to the existing businesses in this business park. He presented pictures of the proposed animal hospital to the Board. The garage area will house a tractor, which less apt to disturb the animals. He noted the importance of the emergency entrance being identifiable and accessible from the street.

Ms. Bowers stated she is not opposed to the garage. She discussed the parking spot locations with Mr. DeBoy, and he clarified that the front parking area is for emergency cases and employees and other clients would park in the rear.

Mr. Mateer established that the facade of the garage will match the hospital. Mr. Mateer stated he would like to see the building re-oriented to eliminate the front yard parking request. Dr. Kumrow responded that reorienting the building will affect the functionality of the hospital with emergency, client. Mr. Mateer discussed the logistics of changing the building’s design with the applicants at length.

Mr. Lennartz discussed reducing the number of parking spaces with Dr. Kumrow.

Mr. Metz inquired if it was possible to locate the “drop off” in the front and the associated parking on the side. Mr. DeBoy expressed concerns with this idea.

Ms. Bernard stated she is not opposed to the garage. She discussed eliminating the side parking or moving it to the rear of the building. There will be approximately 200 employees that will park at the rear of the building.

Ms. Kaczor discussed details of the drawings submitted, noting that she feels 53 parking spaces located at the front of the building is a lot. She questioned if cars could be moved after clients are brought into the emergency entrance.

Ms. Bowers feels that clients may be distraught and unable to move their cars in a timely manner.

The Board discussed with the applicant the scope of the project in comparison to the existing animal hospital on North Buffalo Road in detail.

Ms. Bowers noted that other businesses in this industrial park have front yard parking.

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 was in favor of granting the variance. He agrees with the applicant that the emergency entrance must be readily visible and accessible.

Mr. Mateer would like to see another alternative brought before the Board.

Mr. Metz would like to see some of the front yard parking moved to the side or back.

Ms. Bernard would also like to see another alternative brought before the Board.

Ms. Kaczor stated she was in agreement with Ms. Bernard. She would like to see a reduction in the amount of front yard parking.

Ms. Kaczor made a **MOTION**, seconded by Mr. Metz, to **TABLE** the review of the Area Variance.

The Board discussed possible alterations and reductions they would like to see made with the parking at this location.

THE VOTE ON THE MOTION BEING:

KACZOR	AYE
BOWERS	AYE
LENNARTZ	AYE
MATEER	AYE
METZ	AYE

THE MOTION BEING (5) FIVE IN FAVOR, THE MOTION TO TABLE IS PASSED.

- 6. ZBA File #19-21, Jim Di Martino, 2905 Angle Road, Zoned R-3. Requests an Area Variance to construct an addition to a detached garage with a 5-ft. side setback. (SBL#153.07-2-10.2) Minimum side setback for this R-3 lot is 6-ft., §144-20A (2).

APPEARANCE: Jim Di Martino, Petitioner/Property Owner

Mr. Di Martino explained he would like to construct a 10x24 sq. ft. addition onto his existing barn.

Mr. Metz stated he couldn't see any neighbors through the woods at this site. He noted it was a variance of only 1ft.

Ms. Bowers stated it was difficult to see through the woods, and she is not opposed.

Ms. Kaczor inquired if the addition would match the existing structure. Mr. Di Martino told the Board that it would match.

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 she had received a letter from a neighbor in support.

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. 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 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 9:10 P.M.

DATED: 10/15/2021
REVIEWED: 10/19/2021

Respectively Submitted,
Anna Worang-Zizzi
Recording Secretary

Ms. Lauren Kaczor, Chairwoman
Zoning Board of Appeals