

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the May 17, 2022, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Lauren Kaczor, Chairwoman
Robert Lennartz
Dwight Mateer
Robert Metz
Kim Bowers
Michael Williams, Alternate

EXCUSED:

OTHERS PRESENT: John C. Bailey, Deputy Town Attorney
John Wittmann, 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 April 2022 were approved:

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BOWERS	AYE
WILLIAMS	AYE
KACZOR	Abstained

The Motion being 5 in favor, the Motion to **APPROVE** the minutes is passed.

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

KACZOR, AYE/ LENNARTZ, AYE/ MATEER, AYE/METZ, AYE/ BOWERS, AYE / WILLIAMS, AYE

NEW BUSINESS

1. ZBA File #08-22, Brian Pierrot, 268 Summit Avenue, Zoned R-3, (SBL# 152.13-4-19, Lot #'s 22, 23, 24, Map Cover 916). Requests an Area Variance to construct an accessory structure being a 40ft. x 26ft. detached garage that exceeds the footprint of the primary structure. Accessory Use - A use customarily incidental and

subordinate to the main use or building and located on the same lot therewith. In no case shall such "accessory use" dominate, in area, extent or purpose, the principal lawful use or building, except that vehicle parking areas may be larger than building area §144-5 Terms defined.

APPEARANCE: Brian Pierrot –Owner

Mr. Pierrot explained his need for a garage. He explained the depth of the garage was to fit his boat. The height of the garage is to fit his truck and boat. He would use the garage for storage of the boat, tools and other items. He showed photos to the Board of his house before he began fixing it up and currently. The design of the proposed garage would fit the design of the house.

Mr. Metz inquired about the size of the garage. He is concerned it will not fit in with the neighborhood. He also inquired about whether a business would operate out of this garage. He inquired if the applicant had spoken to neighbors and inquired about the finishes of the proposed garage.

Mr. Pierrot explained he would use it from time to time for his contracting business. The garage would have a metal roof and board and baton siding and would complement house and neighborhood. Mr. Pierrot stated the garage would be oriented to minimize visual impact. He stated he had spoken to neighbors.

Mr. Mateer noted a discrepancy whereas the Variance request was for 40ft x 26ft, however the Building Plans show 52ft x 26ft. It was established that there is an unenclosed awning which accounted for the difference. Mr. Mateer noted that the size of the house is not much smaller than the proposed garage, and therefore, the applicant could reduce the size of the garage slightly eliminating the need for a Variance. Mr. Pierrot explained he needed the space. Mr. Mateer established that the applicant had spoken to neighbors and received no complaints.

Mr. Williams inquired about the orientation of the garage on the Plan. The applicant explained details on the Plan.

Mr. Lennartz inquired about whether construction equipment would be stored here. Mr. Pierrot explained there would be no heavy equipment.

Ms. Bowers inquired about the number of Bays the proposed garage would have. The applicant explained there would be two 16ft. doors and a lean-to. Ms. Bowers clarified details about the placement of the garage with the applicant.

The Chair inquired about an existing shed on the property. Mr. John Wittmann, Code Enforcement Officer, confirmed that it would add to the "accessory use" area. It was established that with the existing shed and the proposed garage, the applicant was roughly 200sq. ft. over the area allowed without a variance.

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

Mr. Nicholas Taneff
279 Summit Avenue
Orchard Park, NY 14127

Mr. Taneff spoke on behalf of the project. He commended the applicant on how he had improved the property so far and felt the garage would be an added benefit.

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 doesn't think the request is substantial, but feels the applicant could build a reasonable sized garage without a Variance.

The Chair would like to see the shed removed if the Board were to approve the project.

Ms. Bowers and Mr. Lennartz were in agreement.

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

1. There will not be an 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.

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

1. The existing shed is removed after the garage is built.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BOWERS	AYE
KACZOR	AYE

The Motion being **UNANIMOUS**, the Motion to **GRANT** the Variance is **PASSED**.

2. ZBA File #09-22, Brownstone Homes, 6069 Newton Road, Zoned A-1, (SBL# 184.00-4-13.11, part of Farm Lot # 19, Township 9, Range 7). Requests an Area Variance to install a 6ft. high gate and fence in the front yard, 68ft. from the front of lot. Wall, hedge or fence not over three feet high in any front yard or side street yard, provided that such wall, hedge or fence does not obstruct or obscure visibility of or for pedestrians or vehicles approaching or leaving the premises on which the said wall, hedge or fence is erected §144-22A(1) Yard Regulations.

APPEARANCE: Kristen Leggio – Brownstone Homes Representative

Ms. Leggio explained the Homeowner would like privacy for the house.

Ms. Bowers inquired about the fence placement. Ms. Leggio clarified that the fence would only be along the front of the property and showed the placement of the fence to the Board members on photos.

The Chair established that the height was 6ft. for both the fence and the gate.

Bowers inquired about the size of the front yard. Ms. Leggio was unsure.

Mr. Metz inquired about aesthetics of the gate. Ms. Leggio described the gate to the board and clarified that it would have stone pillars, and a see through fence and gate.

Mr. Mateer asked the applicant to explain details of the fence location on the survey.

Mr. Metz inquired about the rationale for the setback from the street. Ms. Leggio stated if gate was closer to the road it would be more of a distraction for drivers entering and exiting the driveway.

Ms. Bowers noted that at this distance, the proposed gate does not obscure visibility.

The Chair inquired if the applicant would be willing to compromise on the height. She would like to see the fence a bit shorter. Ms. Leggio stated she would have to check with the homeowners.

Ms. Bowers would like to know height of the pillars, however Ms. Leggio was not sure.

The Board would like to see more details and some compromise on height as well as drawings.

Ms. Bowers made a **MOTION**, seconded by Mr. Metz, to **Table**.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BOWERS	AYE
KACZOR	AYE

The Motion being **UNANIMOUS**, the Motion to **TABLE** the review of the Variance request is **PASSED**.

- 3. ZBA File #10-22, Regency Builders, 20 Wentworth Drive, Zoned R-3, (SBL# 161.15-2-19, Sub Lot 74 Map Cover 3472). Requests an Area Variance for side setback of primary structure under construction at 12.88ft. Minimum side setback is 15 feet §144 Bulk Rates, Attachment #15, Supplement #86.

APPEARANCE: Mr. Robert J. Mayo – Regency Builders

Mr. Mayo explained that the error that resulted in this home being built with an incorrect setback was a human error made by several people and involved agencies. He stated he had built many homes over the years and he had never needed a Variance for a setback violation before.

Ms. Bowers clarified the location of the home.

Mr. Lennartz inquired about the setback of a neighboring house under construction, and asked about how this mistake was made. Mr. Mayo stated the neighboring house's setback was more than 15ft. Mr. Mayo explained that the zoning designation of this subdivision is both R2 and R3, and there may have been some confusion. He stated this mistake was a human error, which was missed by several people.

Mr. Metz thanked the applicant for his candor.

Mr. Mateer inquired how many houses Mr. Mayo had built within his career. The applicant responded "probably over 2500," this one being the only with this sort of error.

The Chair asked about a neighboring house and what the applicant would do if the Variance was denied. Mr. Mayo assured the Board that the setbacks would be correct on the neighboring house, and stated he was unsure what he would do if the Variance was denied.

The Chair then asked if there was anyone in the audience who would wish to speak on favor of granting of 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 feels the request is not substantial.

Mr. Lennartz agreed the request was not substantial.

Mr. Metz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the Area Variance request based on the following:

1. There will not be an 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:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BOWERS	AYE
KACZOR	AYE

The Motion being **UNANIMOUS**, the Motion to **GRANT** the Variance is **PASSED**.

4. ZBA File #11-22, Alliance Homes, 7022 Gartman Road, Zoned A-1, (SBL# not issued yet, part of Lot 2 Township 9 Range 7). Requests an Area Variance for front setback of primary structure under construction at 55.47ft. Minimum front setback is 75 feet. §144 Bulk Rates, Attachment #15, Supplement #86.

APPEARANCE: Andrew Romanowski – Alliance Homes

Mr. Romanowski explained there is a creek with a ravine on the property. He stated when they positioned the house, it became clear that the planned placement of the house was too close to the ravine. Mr. Romanowski explained he mistakenly consulted the Bulk Regulations from pre 1989, which allowed for a 50ft. setback. He stated if he had realized the setback requirement was 75ft., they would have still had to seek a Variance due to the ravine. He showed aerial photos of the neighborhood and noted there is a lot of variation in neighborhood as far as setbacks.

Mr. Metz is concerned about persons in the Town doing things, and then asking for Variances after the fact. Mr. Metz also inquired about any impact on other lots. Mr. Romanowski assured the Board the mistake was human error, not an intentional action, and that it would have no impact on other lots. He took responsibility for the error.

Mr. Mateer inquired how many homes the applicant had built in his career. The applicant stated about 1300 with no other Variance requests after the fact.

The Chair inquired if the applicant had spoken to neighbors. Mr. Romanowski stated he had and there were no problems.

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

*Mr. Charles Dahlenburg
6480 Scherff Road
Orchard Park, NY 14127*

Mr. Dahlenburg spoke in favor of the Variance.

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 feels this is an understandable error and not a significant request.

Ms. Bowers feels that the 50ft. setback fits in with the neighborhood.

Mr. Mateer feels this is a once in a career problem, as this applicant has not had similar issues before.

Mr. Metz agreed the request was not significant.

Mr. Williams was in agreement.

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers to **GRANT** the Area Variance request based on the following:

1. There will not be an 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 not be an 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:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BOWERS	AYE
KACZOR	AYE

The Motion being **UNANIMOUS**, the Motion to **GRANT** the Variance is **GRANTED**.

There being no further business to be presented to the Board at this time, Acting Chairman Metz adjourned the meeting at 8:03 P.M.

DATED: 5/26/2022
REVIEWED: 6/21/2022

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor, Chairwoman
Zoning Board of Appeals