

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the July 19, 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

EXCUSED: Michael Williams, Alternate

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 June 2022 were approved unanimously.

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

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

NEW BUSINESS

1. ZBA File #16-22, Robert Cunningham, 6390 Milestrip Road, Zoned R-2, SBL# 152.20-3-19, (Farm Lot 19, Township 10, Range 7). Requests an Area Variance to construct a 20 foot x 25 foot garage, 3 feet off right side property line. Minimum side setback is 10 feet, §144 Attachment 14:1 Height, Lot, Yard, and Bulk Regulations.

APPEARANCE: Robert Cunningham - Owner

Mr. Cunningham explained he would like a garage to fit his vehicles. He explained his existing garage is only 6ft high.

Mr. Mateer inquired if it was the applicant's intention to utilize this as a two (2) car garage. The applicant answered affirmatively. Mr. Mateer established dimensions and location of the proposed garage with the applicant. The applicant explained that the proposed placement of the garage was to keep the garage away from the center of the yard where he has a pool placed, and to allow access with his ride-on lawn mower.

Mr. Metz clarified with the applicant that the door opening on the existing garage is lower than 6ft. It was established that the size of the mower is 42 inches, and requires around 4-5 feet of space to fit through.

Mr. Lennartz inquired if the proposed garage could be shifted and thereby require a less substantial variance. The applicant explained that he needs to fit through middle of yard. He stated he had talked to his neighbor, who had no issues with the proposal. He explained that the middle of the yard has a pool and landscaping which would allow 5 feet of access between the proposed garage and the existing landscaping. Mr. Lennartz inquired how the applicant would cut the grass on the property-line side of the proposed garage, and the applicant stated he uses a push mower for areas he can't reach.

Ms. Bowers inquired as to what is stored in the existing garage, to which the applicant responded tools and "junk". Ms. Bowers inquired about the slope of yard. The applicant explained that they would build a level pad for the garage.

The Chair inquired if a business would be run out of garage. She spoke about the possibility of a 5 foot setback being granted as opposed to the 3 feet requested. She inquired, in that case, if the applicant could use a push mower to mow between the pool and the garage. The applicant explained he would like to be able to access the backyard with his truck. The applicant explained details of the placement of objects in his yard on the survey.

Ms. Bowers inquired about standard sizes for a two (2) car garage. Mr. Mateer explained that in his experience, 20 x 25 feet is small for a two (2) car garage.

Mr. Metz inquired if there was enough space for a car to turn around before reaching Milestrip Road. The applicant answered affirmatively.

The Chair inquired if the applicant had considered attaching the garage to the house. The applicant stated he did not consider that solution as visually appealing, and was also concerned about how close that would place the garage to the pool and deck.

The Chair then asked if there was anyone in the audience who would wish to speak in 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:

Ms. Bowers noted that the Board had approved a similar Variance for house on Chestnut Ridge Road last year. It was noted the neighbor has trees blocking the view of the proposed garage.

Mr. Mateer feels a 3 foot setback is substantial. He would be more in favor of a setback of at least 5 feet. He stated the Applicant could build a single car garage providing a larger setback.

Mr. Lennartz established the landscaping location with the applicant. Mr. Lennartz feels it is a substantial request and would prefer a 5 foot setback.

Mr. Lenartz made a **MOTION**, seconded by Mr. Metz, 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 not be an 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 Variance is **GRANTED** with the **STIPULATION**:

1. The setback is not to exceed 5 feet.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BOWERS	AYE
KACZOR	NO

The Motion being **FOUR (4)** in favor, the Motion to **GRANT** the Variance with a **STIPULATION** is **PASSED**

2. ZBA File #17-22, Adam & Bridget Kern, 105 Mid County Drive, Zoned I-1, SBL# 161.07-5-32.1, (Part of Lot 25, Township 10, Range 7). Request an Area Variance for the purchase of existing structure on an undersized lot of 26,000 square feet. Minimum lot size is 40,000 square feet, §144 Attachment 15:1 Height, Lot, Yard, and Bulk Regulations.

APPEARANCE: Adam and Bridget Kern - Owners

Mr. Kern explained part of this property was recently sold, creating non-conforming lot, which they are seeking to purchase. They would like to purchase the existing non-conforming lot to house a screen printing business.

John C. Bailey, Deputy Town Attorney, noted that if this Variance were denied, it would make this property unmarketable.

Mr. Metz inquired about the typical number of cars that would be parked at the site. The applicant stated this is not retail location, therefore one (1) to three (3) cars would be parked there, typically.

The Chair established with the applicant that they would be doing renovations but would maintain the existing footprint of the building.

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

*Katie Johnson
6956 East Quaker Street
Orchard Park, NY 14127*

Ms. Johnson stated she was the Relator for the applicants. She feels the property with the planned improvements will be an asset for community.

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 that a communication had been received and distributed to the Board.

BOARD DISCUSSION:

Mr. Lennartz stated he was for the Variance as the property would be unmarketable without it.

Mr. Metz noted there would be no physical change.

Ms. Bowers made a **MOTION**, seconded by Mr. Mateer, 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 not be an 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 not self-created.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
WILLIAMS	AYE
KACZOR	AYE

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

3. ZBA File #18-22, John Carrow, 574 Lakeview Avenue, Zoned R-3, SBL# 152.09-2-44, (Sub Lot's 102-104, Map Cover 860). Requests an Area Variance for an above-ground pool 5 feet off the rear property line. No swimming pool shall be located closer than 10 feet to any building nor closer than 10 feet to any rear lot line. No swimming pool shall occupy more than 10% of the total area of the premises, §144-30C (6)(c).

APPEARANCE: John Carrow - Owner

The applicants explained they would like a pool.

Ms. Bowers inquired if the applicant would be open to a 21 foot pool instead of a 24 foot pool. The applicant stated they would really prefer a 24 foot pool.

Mr. Lennartz noted the back yard backs up to playground with no rear neighbors. He inquired if the applicant had spoken to neighbors. The applicant stated they had spoken to seven (7) neighbors who had no objection and brought a note from a neighbor stating he had no objection.

Mr. Metz inquired if the applicant had considered an oval shaped pool. The applicant stated they had considered but rejected that option due to price difference and increased maintenance.

Mr. Mateer further inquired about an oval shaped pool. The applicant stated his understanding that an oval pool was not as stable.

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

*Child of the Applicants
574 Lakeview Ave.
Orchard Park, NY 14127*

The child stated, "I want a pool!"

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 considering the location, he had no problem with the project.

Ms. Bowers had no problem with the pool and noted an above ground pool was not a permanent structure.

Mr. Metz was in agreement.

Mr. Mateer feels the benefit sought could be achieved another way.

Mr. Lennartz 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 not be an 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 substantial, but there's a balancing of factors.
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:

LENNARTZ	AYE
MATEER	NO
METZ	AYE
BOWERS	AYE
KACZOR	NO

The Motion being **THREE (3)** in favor, the Motion to **GRANT** the Variance is **PASSED**.

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 7:34 P.M.

DATED: 7/22/2022

REVIEWED:

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor, Chairwoman
Zoning Board of Appeals