

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the October 18, 2022, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

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

EXCUSED: Robert Metz

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. Per Section 144-63 (E) (1) All public notices have been filed. 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 September 2022 were approved unanimously.

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

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

**NEW BUSINESS**

1. ZBA File #24-22, Michael Horrigan, 6515 Cole Rd., Zoned A-1, SBL# 198.00-2-15.12, (Part of Farm Lot 58, Township 9, Range 7). Requests 2 Area Variances to construct a carport on the side of an existing garage. The first Variance is to allow all structures on the property to have a combined lot coverage of 10.4%. *Maximum lot coverage allowed is 8%, §144 Attachment 14:1 Height, Lot, Yard, and Bulk Regulations.* The second Variance is to allow a side yard setback for the structure of 14 feet. *Minimum side yard setback is 20 feet, §144 Attachment 14:1 Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Mr. Michael Horrigan – Owner*

The applicant explained that he would like to put a carport over an existing concrete pad.

Ms. Bowers established that the existing garage is used for vehicles, however, the applicant would park his winter vehicles under the proposed carport.

Mr. Lennartz inquired if the applicant has spoken to neighbors. The applicant stated that he had spoken to two neighbors, one of whom wrote a letter in support, and the other had no issue with the proposal.

Mr. Mateer inquired about any previous Variances the applicant has received. The applicant stated he had received a Variance for his garage pertaining to lot coverage.

The Chair established the applicant would not be extending the concrete pad nor operating a business at this site.

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 one communication was received and was distributed to the Board.

BOARD DISCUSSION:

Mr. Lennartz noted that the neighbors were not opposed, and he didn't feel that the request was substantial.

The Board was not opposed to this project.

Mr. Mateer made a **MOTION**, seconded by Mr. Williams, 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 not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created, however that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
WILLIAMS	AYE
KACZOR	AYE

BOWERS

AYE

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

2. ZBA File #25-22, James McCarthy, 34 Middlebury Rd., Zoned R-1, SBL# 185.08-2-19.1, (Sub Lot 357, Map Cover 2335 and Part of Sub Lot 358, Map Cover 2334). Requests an Area Variance to install a tool shed 5 feet from the side property line of the rear yard. *Minimum side setback for accessory structure in R-1 zone is 15 feet, §144 Attachment 15:1 Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Mr. James McCarthy - Owner*

The applicant stated they would like to construct a 10 foot by 10 foot shed to store items currently taking up too much space in the garage.

Mr. Mateer inquired if the applicant has spoken to neighbors. He also noted that the applicant had mentioned not wanting to cut trees down in his application and asked for more information. Mr. Mateer further inquired if the applicant could not remove a portion of the fence and make the shed act as a portion of the fence, reducing the relief requested. The applicant stated he had spoken to the neighbor on whom this shed would encroach, and the neighbor had no issues. The applicant also explained that there were several nut trees and some ash trees which he would like to avoid cutting down. The applicant explained the cost of the option proposed by Mr. Mateer would be cost-prohibitive and also he had concerns about a planned future dog escaping through gaps between the shed and the fence.

Mr. Williams suggested the applicant move the fence, put the shed up and then replace the fence. The applicant explained that would place the shed on the only sunny spot in the yard, which is where they currently have a garden.

Mr. Lennartz inquired what the applicant would store in shed. The applicant explained they would store bikes, toys a stroller etc. as well as wood working materials.

Ms. Bowers established the door placement and that the facade would be the same color as house.

The Chair inquired if the applicant had considered an 8 foot by 12 foot, lessening the need for the Variance. She also inquired about snow removal. The applicant explained there is a tree that leans forward and would hit top of the shed. He also does not want to put the shed partially on the driveway, which would limit parking space. The applicant explained their plan for snow removal.

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 that no communications had been received.

BOARD DISCUSSION:

Mr. Lennartz was not opposed as the shed proposed is not oversized. Ms. Bowers was in agreement. Mr. Mateer was also in favor.

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 not substantial.
5. There will not be an 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	AYE
WILLIAMS	AYE
KACZOR	NO
BOWERS	AYE

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

3. ZBA File #26-22, Dollar General, 6017 Big Tree Rd., Zoned B-2, SBL#s 172.08-4-5 and 172.08-4-4, (Part of Farm Lot 23, Township 9, Range 7). Requests an Area Variance for 16 fewer car spaces than the 53.2 spaces required. *Retail or mercantile establishments, stores or service shops: one off-street parking space for each 200 square feet of floor area, exclusive of parking areas provided for employees on the same premises. Additional off-street parking may be required by the Town Board in the case of shopping centers on sites of two acres or more, §144-29A(3)(c).*

APPEARANCE: Ms. Tara Bennet, Mr. Marc Romanowski – Broadway Group

Ms. Bennet explained this project would be on the corner of Bigtree Road and Thorn Avenue. She explained that Smoke Creek runs along back of lot, and there is a significant change in typography. She explained drainage on the site. She stated that while they knew there were wetlands on the site, the wetlands are more extensive than the mapping from the DEC indicated. She stated the reduction in parking would enable them to avoid the wetlands and the flood plain.

Ms. Bennet described nearby businesses. She further explained they would propose building a retaining wall, which would limit the need for fill and limit the environmental impact. She stated they intend to provide screening to the nearby neighbors. The applicant described some of the aesthetic

choices available and explained they would use the existing Dollar General as a model and would also utilize feedback from the Planning Board.

Mr. Romanowski stated they had met with Planning Board preliminarily. He explained, the Town requires 54 parking spots, however in Dollar General's experience they don't need that many. He stated the store on Southwestern Blvd. has 34 spaces. He stated that as a convenience store, people don't stay long in Dollar General. He stated his opinion that this Variance actually reduces impact of the store and is a benefit to the community.

Mr. Lennartz inquired, with regards to the character of the neighborhood, has the applicant spoken to any of the nearby residences? The applicant had not spoken to any neighbors yet.

Ms. Bowers inquired about the difference in size between this store and the store on Southwestern Blvd. and further inquired about any difference in layout or offerings at this location which may attract more customers. The applicant explained that this store is slightly larger, however the offerings are the same. Ms. Bennet explained that they use an "ITE generation model" to predict the volume of vehicles and find it to be reliable.

Mr. Mateer inquired if the Southwestern store needed a Variance, if the applicant had considered situating the building differently, and also how many employees would be working at this location. The applicant could not be certain, but assumed that the store on Southwestern Blvd. did need a Variance. He explained they could not change the way the building was situated due to Wetlands, and also to allow delivery trucks to maneuver. He noted that during the Site Plan Review process there would likely be alterations to the design. He stated there would be two to three employees working at a time.

The Chair inquired if the applicant had considered a smaller store, thereby requiring less parking. The applicant explained that this design is the newest model and less cramped. He stated most stores in the area are in the 9000 square foot range. The applicant doesn't feel there's any benefit to the community to have a smaller store.

The Chair explained to the audience that this Board would only be hearing comments related to the parking Variance not the project as a whole.

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.

*Ms. Ashley Fuller  
6007 Big Tree Road  
Orchard Park, NY 14127*

Ms. Fuller explained that her house was 20 feet to the West. She is opposed to this project.

*Mr. Kevin Galas*

*197 Thorn Avenue  
Orchard Park, NY 14127*

Mr. Galas was opposed to the Variance.

*Ms. Linda Brigance  
4454 Duerr Road  
Orchard Park, NY 14127*

Ms. Brigance feels there's a reasoning for the Code this project would be breaking. She feels if the Code was passed it must have been reasonable. She stated she requested this information but would have had to file a FOIL which would take approximately 30 days, however they did not have 30 days' notice for this meeting. Deputy Town Attorney, John Bailey explained that the decision would have been made by the Town Board, however, that information was not available at this meeting.

*Mr. Luke Bowden  
4498 Duerr Road  
Orchard Park, NY 14127*

Mr. Bowden had concerns about the construction of retaining wall and the possibility of disturbing the Wetlands. He also had concerns about traffic overflow creating a safety hazard.

*Ms. Anne Eisenburg  
4454 Duerr Road  
Orchard Park, NY 14127*

Ms. Eisenburg stated she would like more information made available about why this regulation exists. Deputy Town Attorney, John Bailey explained that to achieve that the Board would have to Table this review and request that the Town Board research this issue.

*Mr. Richard Galas  
201 Thorn Avenue  
Orchard Park, NY 14127*

Feels that there needs to be more study of the DOT.

The applicant is not opposed to Tabling this review to research, however, he stated the ratio of building space to parking is fairly standard in this area, and also quite high.

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

BOARD DISCUSSION:

The Board in favor of Tabling.

Ms. Bowers made a **MOTION**, seconded by Mr. Williams, to **TABLE**:

THE VOTE ON THE MOTION BEING:

LENNARTZ

AYE

MATEER	AYE
WILLIAMS	AYE
KACZOR	AYE
BOWERS	AYE

The Motion being **UNANIMOUS** in favor, the Motion to **TABLE** the review is **PASSED**.

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 7:52 P.M.

DATED: 10/24/2022

REVIEWED: 11/15/2022

Respectfully submitted,  
Anna Worang-Zizzi

Ms. Lauren Kaczor, Chairwoman  
Zoning Board of Appeals