

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the Orchard Park November 15, 2022, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Lauren Kaczor Rodo, Chairwoman  
Robert Lennartz  
Dwight Mateer  
Kim Bowers  
Robert Metz  
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. 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:**

Ms. Bowers made a motion, seconded by Mr. Mateer to dispense with the reading of, and approve the Meeting Minutes from October 2022.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	ABSTAIN
KACZOR	AYE
BOWERS	AYE
WILLIAMS	AYE

The Motion 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/ BOWERS, AYE/ LENNARTZ, AYE/ MATEER, AYE / METZ, AYE / WILLIAMS, AYE**

**OLD BUISINESS**

1. 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).* This item was tabled at the October 18, 2022 ZBA meeting.

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

Ms. Bennet explained they are seeking a Variance for fewer parking spaces due to the environmental limitations of the site. She stated they had come before the ZBA in October, and the review had been tabled in order for both parties to do some research. The applicant had a traffic engineer prepare an assessment on the site. She also stated that according to the ITE Trip Generation Model, thirty four (34) was the number of cars coming into the site during peak hours, which is fewer spots than the thirty five (35) they are requesting.

The Chair stated that one of the reasons this item was tabled in October was that there was a question from a member of the public about the reasoning for the piece of Code regarding parking spaces. Upon doing research, the Town could not find the original reasoning on record.

Mr. Lennartz stated that it was his understanding that the DOT had denied the applicant a curb cut at this site, and inquired about the applicants' plan in light of this development. Town attorney, John Bailey noted that the Building Inspector was under the impression that the DOT had denied the applicant a curb cut. The applicant stated that it was their understanding their application with the DOT was still under review. The applicant stated that if they were denied a curb cut, they would work with the adjacent landowners to develop a private drive. However, they would still need the Variance, since in their experience fifty three (53) parking spaces is excessive.

The Chair inquired about how Bills traffic would affect the parking situation at the site. The applicant noted that the DOT doesn't account for Bills Traffic, however he doesn't feel it will substantially impact the parking situation at the site.

Mr. Lennartz verified with the applicant that the ITE Trip generation model showed thirty four (34) cars entering and exiting the site *per hour* during the highest peak hour.

Mr. Mateer noted that a 7,000 square foot store wouldn't require a Variance, and possibly an 8,000 square foot store could avoid a Variance depending on how the lot was utilized. He also stated his understanding that in a store of this nature, customers tend to make quicker trips, reducing the need for parking, compared to other retail stores where customers may take more time. The applicant affirmed that Mr. Mateer was correct in his assessments.

Mr. Metz established that there would be between one (1) and three (3) parking spots for employees.

BOARD DISCUSSION:

Mr. Mateer noted that although there was no record of the original reasoning for the Code regarding parking spots, one (1) spot per 200 square feet seems to be a standard number used across many municipalities.

The applicant stated that retailers typically over estimate the amount of parking they need according to the ITE model by about 10% to avoid the appearance of there being no parking. He noted that some municipalities have switched to Zoning regulations which reflect those standards.

Mr. Mateer confirmed with Town Attorney John Bailey that the options before the Board are to approve the Variance, deny the Variance, or return the case to the Planning Board for Concept Review.

Mr. Bailey noted that the Chairman of the Planning Board had determined that the site is located on a Scenic Highway and the State has additional requirements for projects in that case, including a long EAF. He noted the Planning Board has the authority to alter parking requirements up to 10%, although that is not as much as the applicant is requesting.

The Chair felt that the case should be referred to the Planning Board.

The Board members were in agreement.

Mr. Lennartz made a motion, seconded by Mr. Metz to refer this case to the Planning Board for Concept Review.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE
BOWERS	AYE

The Motion being **UNANIMOUS** in favor, the Motion to refer this case to the Planning Board for Concept Review is **PASSED**.

**NEW BUSINESS**

1. ZBA File #27-22, Daniel Patti, V/L Webster Rd., Zoned B-2, SBL# 161.09-3-8.11, (Part of Farm Lot 40, Township 9, Range 7). Requests a Use Variance to park vehicles during stadium events. *On any Erie County Football Stadium activity date, the property owners in any B-2 or I-1 Zone within the one-mile radius described above may permit parking for compensation, providing they have obtained a commercial parking permit from the Town of Orchard Park, §144-12(B). Only parking lots in existence on May 3, 2017, are allowed hereunder, and all others are specifically prohibited, §144-12(C)*

APPEARANCE: Daniel Patti – Owner, Jeff Abate - Lawyer

Mr. Abate stated the parking lot had been in existence for over thirty (30) years and the applicant had been told by the Building Department he did not need a permit. He noted this lot has been a parking lot since before the date required by code. The applicant explained the improvements he has made to the property.

Town Attorney, John Bailey confirmed the parking lot was pre-existing prior to the May 3, 2017 date dictated in the Code, and that it was in continual use from that time. Mr. Bailey inquired if the property had the proper permit. The applicant stated that he was told he did not need a permit.

The applicant stated that a neighbor had made a complaint about the property and in the process of dealing with that, he was told he needed to go before the ZBA before he could be given a permit.

Mr. Bailey recommended that the Board go on record stating that no Variance was necessary.

The Chair made a Motion, seconded by Mr. Mateer, to go on record stating that this is not a Zoning Board of Appeals matter, and that the applicant should file for a permit.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE
BOWERS	AYE

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

2. ZBA File #28-22, Elizabeth Callahan, 10 Braunview Way, Zoned R-1, SBL# 162.15-4-8, (Sub Lot 26, Map Cover 2496). Requests an Area Variance to construct a one (1) car garage addition with mudroom 8.75 feet from the side lot line. *Minimum side setback for structures in R-1 Zone is 15 feet, §144 Attachment 14:1 Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Carol Sciortino – architect, Derek Acker*

Ms. Sciortino explained project. She stated the existing garage had stairs in middle, which made it difficult to use, and also that the client had more than two (2) cars. Originally, Ms. Sciortino was under the impression that the required setback was 10 feet, however, that is the setback requirement in the Village. She explained that family members of the applicant need access to the pool in the backyard and what was being proposed was as small as possible while still meeting the applicants' needs. She noted they discussed the project with the neighbors who were not opposed, and that the design is attractive from their direction and created some privacy from the pool.

Mr. Williams inquired if there was any way to make the addition smaller, thereby requiring a smaller setback. Ms. Sciortino stated that a smaller addition wouldn't fit a car.

Ms. Bowers confirmed that the applicant had spoken to their neighbors and that they were not opposed.

Mr. Lennartz established that they had spoken specifically to the neighbor to the left, and he inquired about the pool fence during construction. The applicant confirmed that they had and the neighbor was not opposed. Ms. Sciortino stated they would move the fence during construction.

Mr. Metz inquired if the applicant could eliminate the planned half bath and thereby reduce the setback. The applicant explained that they need an accessible way to the pool, so it would not make a difference. The applicant showed details on plan to the Board members.

Mr. Mateer noted that this is a pie shaped lot, meaning the front of lot is substantially larger and if the lot lines were straighter they may not need such a large Variance. He inquired if the applicant had spoken to any other neighbors. The other neighbors were not immediately available.

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

(Twice) NO RESPONSE

(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 had not.

BOARD DISCUSSION:

Mr. Lennartz feels it is not a substantial request.

Mr. Mateer noted that the lot shape creates a hardship.

The Chair feels uncomfortable granting the request and feels that it is a substantial request.

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, however that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	NO
KACZOR	NO
BOWERS	AYE

The Motion being **THREE (3)** in favor and **TWO (2)** opposed, the Motion to **GRANT** the Variance is **PASSED**.

3. ZBA File #29-22, Benderson Development Co.,LLC, 3507-3519 North Buffalo Rd., Zoned B-3, SBL#'s 161.08-2-1 & 161.08-2-21.1, (Farm Lot 14, Township 10, Range 7). Requests 2 Area Variances to construct a medical office building on a corner lot with a 25 foot setback at each street right of way line. *Minimum front setback in a B-3 Zone is 50 feet, §144 Attachment 14:1 & 15:1. Minimum side yard setback facing a street, Side yard of corner lot. The side yard of any corner lot of record at the time of adoption of this chapter shall have a width equal to the required minimum front yard setback of any adjoining lot fronting on the side street; provided, however, that the side yard of any corner lot in a B-1 or B-2 Commercial District shall have a minimum width of 10 feet where the front of the building on said lot is set back at least 300 feet from the intersecting or intercepting streets, §144-22(H).*

APPEARANCE: *James Boglioli – Benderson Development*

The Applicant explained project and explained that a previous request to the ZBA was for front yard parking, whereas this request was for a setback Variance.

Mr. Mateer noted the green buffer between the applicant and the neighbor.

Mr. Metz is in favor.

Mr. Lennartz is also in favor.

Ms. Bowers stated she wasn't opposed to the previous request but is not opposed to this one either.

The Chair noted that in meetings with the DOT, they had stated their intention to add a turning lane near this site on Orchard Park Road, and she was not sure how much it will encroach on the site. She inquired if the applicant could leave more green space near the intersection. The applicant stated it was possible to shift the building to allow more greenspace, however they have not received any notice of takings from the DOT.

Town Attorney, John Bailey noted that the State may already have enough room in the right of way to add a turning lane.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of the 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 there had not.

BOARD DISCUSSION:

Mr. Lennartz feels the proposal is a good compromise considering the old building needs to be removed

Ms. Bowers feels it's a good project.

Mr. Metz feels the proposal is more walkable.

Mr. Mateer is in favor.

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 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
METZ	AYE
KACZOR	AYE
BOWERS	AYE

The Motion being **UNANIMOUS** 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 7:53 P.M.

DATED: 11/30/2022  
REVIEWED: 12/20/2022

Respectfully submitted,  
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman  
Zoning Board of Appeals