

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park December 20, 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:

The minutes for November 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 / METZ, AYE / WILLIAMS, AYE

NEW BUISINESS

1. ZBA File #30-22, Eric & Melissa Burroughs, 5765 Scherff Road, Zoned R-1, SBL# 185.03-2-25, (Farm Lot 3, Town 9, Range 7). Requests an Area Variance to construct a 50 foot by 30 foot pole barn on a corner lot with a 20 foot and 35 foot setback from the street side yard. *Minimum street side setback in an R-1 Zone is 50 feet. §144 Attachment 14, Schedule of Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Eric & Melissa Burroughs - Owners*

Mr. Burroughs explained his desire to build a barn. He stated they had moved to Orchard Park in October and would like to store a camper, an enclosed trailer, and other items. He stated he felt there was a hardship due to their corner lot and feels like the proposed position is the best placement for the barn.

Mr. Williams noted the height of the walls was 16 feet and inquired about the overall height of the barn. He also inquired about access to the barn. Mr. Burroughs explained that while the overall height was not set, they did need a 14 foot tall door for their fifth wheel. The access would be via a second driveway off Bruce Drive.

The Board conferred with Code Enforcement Officer, John Wittmann, about whether the applicant would be able to have a second driveway under Code. Mr. Wittmann could not say for a fact that the applicant would be allowed to do that without more research. Mrs. Burroughs noted that their neighbor has two driveways.

Ms. Bowers inquired how many bays the applicant was proposing and if the applicant had spoken to neighbors. Mr. Burroughs stated that the decision as to how large the barn would be was dependent on the Board's decision at this meeting. The applicant had spoken to the nearest neighbor who had no concerns. Ms. Bowers noted the barn is very large, and inquired if there was room for compromise. The applicant noted the size was compliant with Code.

Mr. Lennartz established that the flags on the property were for an invisible fence, not a location of the proposed barn.

Mr. Metz inquired if the doors would be different heights and discussed the possibility of reducing the size of the barn, which could then reduce the need for a Variance. Mr. Burroughs stated the doors would be different sizes to accommodate their camper. The applicant does not feel he can reduce the size.

Mrs. Burroughs explained her reasoning for the barn's placement. She explained there was a ravine on other side of the property, it won't block view, the neighbors are more in favor of this placement, and the barn would also act as a barrier to the road. The applicant showed more pictures of the potential location.

Mr. Metz inquired about the siding and the applicant explained his thoughts, although nothing is set.

Mr. Mateer noted if the barn were placed on the other side of the property, it wouldn't need a driveway or a variance. Mrs. Burroughs explained that someone is living right behind their property and it would impede the neighbor's view. She also noted the uneven topography and stated they would need to bring in a lot of fill.

The Chair inquired if the applicant were willing to shift the barn 5 feet for a 25 foot setback. She feels it would be less of a detriment. The applicant feels he is being punished for having a corner lot and discussed the shape of the lot on survey. The applicant clarified where he wants to place the barn.

Mr. Mateer discussed the orientation of the barn with the applicant.

Mrs. Burroughs explained her desire to preserve backyard.

At this point it was discovered that there was a discrepancy in where the applicant was discussing placing the barn and where it was marked on the survey. The applicant stated that he was not firmly set on the dimensions or location of the barn.

Mr. Mateer suggested the Board Table the review of this item which would give the applicant the chance to come up with a definitive plan.

Deputy Town Attorney, John Bailey, stated that in his opinion they can build a driveway according to Code.

Code Enforcement Officer, John Wittman, noted that the grade level to roof line could be 18 feet at a maximum.

Mr. Mateer made a **MOTION**, Seconded by Ms. Bowers, to Table the review of this item.

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 **TABLE** the review is **PASSED**.

2. ZBA File #32-22, Original Pancake House, 3019 Union Road, Zoned B-2, SBL# 152.12-4-1, (Part of Farm Lot 461, Town 10, Range 7). Requests two (2) Area Variances for conversions to an existing pedestal sign. Request #1 is to convert the existing sign to an intermittent message sign. *Intermittent signs prohibited, §144-36(A)(10)*. Request #2 is to exceed the 8 inch maximum horizontal width pedestal with a 4 foot wide pedestal. *A sign not attached to any building or structure, supported by one pedestal permanently placed in the ground, with a clear, unobstructed area at least eight feet in height from the ground to the bottom of the sign, except for the pedestal which shall not exceed eight inches in horizontal dimension. The overall height of pedestal signs shall not exceed 16 feet, §144-5 Terms Defined.*

APPEARANCE: Ryan Mis - Flexlume Signs, Roman J. Jewula - owner

Mr. Mis explained the project and passed out packets to the board. He noted a dip in profits for the restaurant and explained his hope that the new message center will bring in business. He explained intermittent messaging centers, and stated the message center would also be used for community events. He noted two places in Orchard Park which have intermittent messaging centers: Reeds Jenss and Armor Heating and Cooling.

Mr. Jewula stated that until the Pandemic, they were doing record numbers. He stated that their current sign is dated. He stated the message center would have high resolution and lots of detail. He feels it will be attractive and explained improvements they have made and are planning to make.

Mr. Mateer noted that as this request is for an Area Variance, not a Use Variance, there is no financial consideration. He also noted that November and December's numbers were not reported and inquired about other improvements, which could help financially. Mr. Jewula explained their plans for remodeling, landscaping etc., and noted they are working with a marketing team on a sort of rebranding.

Mr. Metz established that the new message center would be able to display different messages and that they can change the content to display specials etc. Mr. Jewula feels that it will not be a distraction and noted there would be no flashing. Mr. Mis explained there would be nothing inside the covering for the existing poles.

Mr. Lennartz inquired why the Applicant felt the new sign would make a difference in sales versus other improvements and advertising. Mr. Mis stated that there's a spike when a restaurant puts in a message center. He stated each new message means "more impressions".

Ms. Bowers stated that while she was in favor of a new sign, she did not feel a message center was necessary. She feels advertising will draw attention to the restaurant. The applicant restated the advantages of a message center. Ms. Bowers was not opposed to the post covering.

Mr. Mis noted that a message center was like investing in many signs, only all in one place.

Mr. Williams inquired about any data showing a direct link between a messaging center and a specific increase in sales. Mr. Mis did not have any data available but did give some examples.

The Chair inquired if the project were to be denied, what the applicant would do. Mr. Jewula stated that in that case they would put in a different sign.

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 noted that although it may be a value to business, the Town has made a decision to stay away from intermittent signs, and therefore he cannot support this proposal.

Mr. Metz was in agreement, although he commended the presentation.

Mr. Mateer feels the benefit can be achieved another way.

The Chair suggested that if the intermittent sign were to be denied, the Board could table the review of the pedestal sign, so as to avoid approving something without solid information.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **DENY** the **first** Area Variance for the intermittent sign request based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will be an undesirable change in the character of the neighborhood, or a detriment to nearby properties created.
3. The benefit sought can be achieved in another way, other than the granting of the Variance.
4. The request is substantial.

5. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created.

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 **DENY** the Variance is **PASSED**.

Ms. Bowers made a **MOTION**, Seconded by Mr. Lennartz, to Table the review of the second Area Variance request for a four foot pedestal.

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 **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 8:16 P.M.

DATED: 1/9/2023
REVIEWED: 1/17/2023

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman
Zoning Board of Appeals