

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the Orchard Park January 17, 2023, 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:**

Mr. Lennartz made a correction to the December minutes relating to the motion for ZBA File #32-22. The factors listed in the motion were written affirmatively, however they should have been negative. The minutes for December 2022 were approved unanimously with the correction.

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 #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.* This item was tabled at the December 2022 meeting.

APPEARANCE: *Eric & Melissa Burroughs – Owners*

The Chair made a MOTION, seconded by Mr. Metz to take this item off the table. The Vote being UNANIMOUS, this item is taken off the Table.

The Applicant thanked the Board members for walking his property and viewing the location he intends for the barn. He also stated that they had received more signatures from neighbors indicating their support for the barn's placement. He also submitted a copy of a neighbor's letter to the Board in support of the project.

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 that there had been one.

#### BOARD DISCUSSION:

Mr. Lennartz stated that he was not in favor of this project.

Mr. Metz asked for a clarification about the distance from the house to the barn. The Chair stated, per the survey, the barn would be 16 feet off the house, which was confirmed by Code Enforcement Officer, John Wittmann.

Mr. Mateer noted that several older properties to the north on Scherff Road of this property have homes a similar distance to the road as the proposed barn, which was allowed by Code at the time. Therefore he doesn't feel it's a significant change to the neighborhood.

Ms. Bowers thanked the Applicant for staking the potential location of the barn.

The Chair stated that she would like the barn to be shifted so that it was 10 feet off the house, as opposed to the currently proposed 16 feet, thereby increasing the setback. She would also add a stipulation that the barn be no wider than the proposed 30 feet, to maintain the increased setback. She noted that the property line was difficult to determine, but the house was a permanent structure.

The Board members discussed wording of the potential stipulation. The Applicant was opposed to the stipulation. The Chair stated she would not be in favor of granting the Variance without the stipulation.

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

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.

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

- 1. The barn is to be located 10 feet off the side of the house, and no wider in the east-west direction than 30 feet.

THE VOTE ON THE MOTION BEING:

LENNARTZ	NO
MATEER	AYE
METZ	AYE
KACZOR	AYE
BOWERS	NO

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

The Chair and Mr. John C. Bailey, Deputy Town Attorney explained the Applicant’s options for appeal. Mr. Mateer noted (and confirmed with Mr. Bailey) that the Applicant could re-apply in a year. The Board clarified the location that the barn would be permitted with the Applicant.

- 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 an Area Variance 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.* This item was tabled at the December 2022 meeting.

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

Mr. Mis distributed images of the proposed sign with the applicant. He noted that they had appeared before the Board in December for a Variance for an intermittent message center in addition to this Variance request. The Board was not in favor so they have developed a “Plan B”. This would be an aluminum cabinet which would surround the existing poles, with push through acrylic numbers which will be illuminated. The Applicant explained the signage on the building would match.

Ms. Bowers stated she liked the proposed sign. Mr. Lennartz was in agreement.

Mr. Metz inquired if there was a speaker on the old sign, and the Applicant explained it was a light which shone on their old flag.

The Chair stated she liked the new sign, and inquired about the new colors, which the Applicant confirmed would be red and blue. The Chair inquired about the square footage of the original sign. The information was not immediately available, however, the Applicant stated they were very close to the original size. Mr. Wittmann stated that he had looked at the original building permit and it was under 40 square feet.

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:**

The Board members were in favor of this project.

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Area Variance 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 doesn't 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**.

**NEW BUISINESS**

1. ZBA File #01-23, Western New York Pediatrics, 5800 Big Tree Rd., Zoned I-1, SBL#172.07-1-9.12, (part of Farm Lot 31 Town 9 Range7). Requests an Area Variance to install a 32 square foot (each side) freestanding sign. *There shall be no more than two sign sides, the exterior dimensions of which shall not exceed 30 square feet per side. The total area on which printing appears shall not exceed 20 square feet. §144-38.1 B(2)*

APPEARANCE: *Mark Payne – Quality Quick Signs*

Mr. Payne explained they were proposing a 4 foot by 8 foot, 2 inch thick sandblasted sign, which they plan to place 20 feet off the road. He stated the new sign will help people find the business. Currently there is a small sign, but it is difficult to see. He feels the request is insubstantial and that the sign will fit in with the neighborhood.

Mr. Metz inquired how late the practice is open, and about illumination. Mr. Payne was unsure, but believed the office was open until between 5pm and 7pm. He stated that Quality Quick signs had no plans to illuminate the sign, however the practice may have plans to add lights. Mr. Metz noted that the practice was difficult to locate, so he is in favor of this project.

The Chair asked about the color of the sign, since only black and white images were available to the board. The applicant showed the Board pictures of the sign on his phone. The Chair confirmed that the new sign would be around 20 feet closer to the road, and would have no interior illumination.

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:

The Board members were in favor of this project.

Mr. Metz made a **MOTION**, seconded by Ms. Bowers, to **GRANT** the Area Variance 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 doesn't 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 7:34 P.M.

DATED: 1/31/2023  
REVIEWED: 2/21/2023

Respectfully submitted,  
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman  
Zoning Board of Appeals