

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park February 21, 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, 267-A, 267-B and 267-C, 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 January 2023 were approved unanimously.

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

RODO, AYE/ BOWERS, AYE/ LENNARTZ, AYE/ MATEER, AYE / METZ, AYE / WILLIAMS, AYE

NEW BUISINESS

1. ZBA File #02-23, Cheryl Krantz-Emerling & Todd Emerling, 5128 Lake Avenue, Zoned R-3, SBL# 151.16-3-25, (part of Farm Lot 446, Town 10, Range 7). Requests 2 Area Variances to construct a shed on their legal non-conforming lot. The first Area Variance is to place the shed 4 feet off the side lot line [6 feet allowed]. *Minimum side yard set-back is 6 feet. Nonconforming lots 60 feet in width or less shall have a side yard setback of five feet. Side yard setbacks of nonconforming lots greater than 60 feet shall increase one additional foot for each 10 feet of width up to the minimum side yard setback set forth in this chapter. §144-20 (A)(2).* The second Area Variance is to have the shed 2 feet off the primary structure. *No accessory structure shall be located closer than 10 feet to any primary structure §144-24 A(1)(c).*

APPEARANCE: *Todd Emerling and Cheryl Krantz Emerling – Owners*

Mr. Emerling explained his desire for a new shed. They currently have an old shed which will be taken down if this Variance request is granted. He would like to make room for a car in the garage. He stated that they could

have Tough Shed install a fire wall adjacent to the garage if the Board felt it was necessary. He distributed pictures to the Board.

Mr. Mateer inquired about placing the shed on the other side of the fence, and was concerned a 2 foot wide walkway was not enough space to walk through. The applicant was opposed to placing the shed in that location and mentioned a deck which would make the space tight.

Mr. Metz noted that if the shed were attached to the house, it would be in compliance with code.

Mr. Lennartz inquired about the applicants' ability to use the walkway at 2 feet wide. He also inquired if the applicant had spoken to any neighbors, and noted that the adjacent property was owned by Tim Hortons and may never be developed. The applicant stated that he felt they would still be able to use the walkway, and that they had spoken to one neighbor, however, they don't have an immediate neighbor.

Ms. Bowers inquired about the size and orientation of the shed, and if it would be blocking a window. The applicant stated the shed would be 8 foot by 12 foot, would face the road, and that the window in question is a garage window.

The Chair felt that it would be better to move the shed nearer the property line, given that there is no neighbor and the land may never be developed, thereby allowing for a larger space between the house and shed. Mr. Mateer feels the gate will open better with that option. The applicant was in favor of that option.

The Board discussed the necessity of a fire wall but did not feel it was necessary at 4 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 that this case was referred to Erie County, but received no reply.

BOARD DISCUSSION:

The Board members discussed the Chair's proposal of shifting the shed's location towards the lot line. They also discussed getting the lawn mower to the back yard and determined with the applicant that it would be possible.

Mr. Mateer stated that while is normally opposed to sheds near lot lines, this is a difficult property to utilize and he is therefore in favor of the Chair's proposal.

Mr. Lennartz and Ms. Bowers are also in favor of the new proposal.

Mr. Metz offered a 1 foot setback for consideration, but the Board felt 2 feet would be easier for maintenance.

Mr. Mateer made a **MOTION**, seconded by Bowers, to **GRANT** the **TWO** Area Variance requests, the first being that the shed will be 2 feet off the lot line, The second being that the shed will be 4 feet off the structure, 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.

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

1. The property owner shall not store materials or equipment around the shed.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
RODO	AYE
BOWERS	AYE

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

2. ZBA File #03-23, Daryn Rothenberger, 7415 Behm Road, Zoned A-1, SBL# 198.00-2-57.1, (Farm Lot 57, Town 9, Range 7). Requests an Area Variance to increase the lot coverage to 8.45% for the construction of a 56 foot x 36 foot barn. *Maximum lot coverage in an A-1 Zone is 8%, §144 Attachment 15 Schedule of Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Daryn Rothenberger - Owner*

The applicant explained that he is proposing a “residential outbuilding” for storage. He explained that he is a disabled veteran and he needs an area to walk in the winter. He explained the medical reasoning for this. He stated the primary structure has a 3000 square foot footprint and the new building would be 2200 square feet. He stated under Code, he believes he would be allowed 5082 Square feet. He stated, the building will look more residential than agricultural.

Mr. Metz noted that there are currently vehicles in the driveway and lawn and asked if this would remedy that. The applicant stated that it would, as the garage is currently set up for exercise.

The Chair asked if the applicant had spoken to any neighbors, and if there would be a business run out of the garage. The applicant stated that he had spoken to some neighbors, who were not opposed as they also have outbuildings, and no business would operate out of this structure.

Mr. Mateer stated he is in favor.

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 this case was referred to Erie County, but received no reply.

BOARD DISCUSSION:

Mr. Lennartz believed the request was not substantial. The Board was in agreement.

Ms. Bowers made a **MOTION**, seconded by Metz, to **GRANT** the Area 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
RODO	AYE
BOWERS	AYE

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

3. ZBA File #04-23, Joseph DeMarco, V/L Taylor Road, Zoned I-1, SBL# 161.00-5-30.11, (Part of Farm Lot 32, Town 9, Range 7). Requests an Area Variance for a 25 foot front setback to construct a 50 foot x 240 foot office building. *Minimum front setback in an I-1 Zone is 50 feet, §144 Attachment 14:1 Schedule of Height, Lot, Yard and Bulk Regulations.*

Mr. Williams recused himself from this case.

Appearance: *Timothy Arlington – Apex Consulting Services*

Mr. Arlington explained this property had previously received a Variance for setback, however it got held up in the engineering process. He stated, they have received verbal approval from Town Engineering, however they need a new Variance. The application is for a 25 foot setback, however the Site Plan shows the building at 30 ft. He explained that they need to have access to doors and a fire lane, which they need to find room for on this narrow Site. He stated there would be overhead doors in rear, which could be an eyesore if they were facing front. He stated if the building were any narrower, it wouldn't allow a normal sized vehicle to pull in.

Ms. Bowers inquired about the number of bays within the building, and if there would be enough room for emergency vehicles. The applicant explained that originally they were planning more, however, the current plan is for the DeMarcos to utilize most of the space. Mr. Arlington stated there would be enough space behind the building for emergency vehicles.

Mr. Lennartz verified with the applicant that the Variance request was for 25 feet, although the actual location of the building would be 30 feet. Mr. Arlington stated, they would find a 30 foot setback acceptable.

Mr. Mateer looked over the Site Plans. He noted that they appear to show a 25 foot, not a 30 foot setback. Mr. Arlington stated that the Site Plans might have been a different revision than he had seen, however he was certain the building would be located at 30 feet. Mr. Mateer noted that although the drawing said 25 feet, the scaling appeared to indicate 30 feet and he verified details of the Site Plan with Mr. Arlington.

The Chair verified with the applicant that they would not be seeking a drive-thru.

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 this case had been referred to Erie County, but received no reply.

BOARD DISCUSSION:

Mr. Lennartz was in favor of a 30 foot setback, and the Board members were in agreement.

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

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

- 1. The setback shall be 30 feet.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
RODO	NO
BOWERS	AYE

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

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 7:50 P.M.

DATED: 3/16/2023
REVIEWED: 3/21/2023

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman
Zoning Board of Appeals