

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park August 15, 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
Robert Metz
Kim Bowers

EXCUSED: Michael Williams, Alternate

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 July 2023 were approved unanimously.

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

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

NEW BUSINESS

1. ZBA File #28-23, Michael Gengo, V/L Powers Road, Zoned R-2, SBL# 184.00-2-11.1, (Farm Lot 28, Township 9, Range 7). Requests an Area Variance to divide a 194.45 foot wide parcel into two (2) buildable lots 97.72 feet wide. *Minimum width for lots in an R-2 zone is 110 feet, §144 Attachment 15 Schedule of Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Mat Fitzgerald - Attorney*
Chris Wood - Architect
Julia and Michael Gengo - Future Owners
Amanda and Craig Przyklek - Future Owners

Mr. Fitzgerald stated that the future owners of this site were sisters who wish to develop homes next to each other. He noted that the lot was oversized and that there would be no future Variances sought. He went through the "balancing test" the Board must consider:

- Mr. Fitzgerald feels there would be no undesirable change as some surrounding properties are narrower than these lots.
- The only other way the benefit sought could be achieved is with a “flag lot” which Mr. Fitzgerald feels would have a bigger impact on the area.
- He feels the request is not substantial.
- He feels there would be no adverse effect as it is only one additional house vs. the one that could be built otherwise.
- He feels the difficulty could be considered “self-created,” however he noted that the lot has not been developed as-is, possibly because it is oversized and therefore too costly.

Mr. Mateer verified that the Applicant will need to apply for minor subdivision approval through the Planning Board. He inquired about the placements of the potential future homes and if the Applicant had spoken to any neighbors.

Mr. Fitzgerald stated that the houses would be approximately 100 feet from Powers road. It is their intention to leave a wooded area between the new lots and the neighbors to the rear for screening. He stated they have one letter of support from a neighbor, which was submitted to the Board. He believes some neighbors may be opposed to any development here, however he noted that under Town Code, this lot is developable including the option to develop a flag lot.

Mr. Lennartz verified that future setbacks would be compliant with Code and inquired about clearing trees in the front. Mr. Wood stated that it is their intention to keep as many trees as possible.

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.

Mr. John Venti
5600 Powers Road
Orchard Park, NY 14127

Mr. Venti expressed concern about potential future septic systems and drainage issues. He noted this neighborhood pays sewer tax although there is no sewer. He feels the project will change the view.

Ms. Michelle Brady
5746 Powers Road
Orchard Park, NY 14127

Ms. Brady stated that her property was next door and she has concerns about drainage. She mentioned an overflowing front ditch.

Ms. Carol Di Giore
5660 Powers Road
Orchard Park, NY 14127

Ms. Di Giore stated that she believed flag lots were illegal in Orchard Park. Mr. Bailey clarified that it was legal in some cases. She believes two houses side by side was too crowded.

*Mr. John Mariano
5681 Powers Road
Orchard Park, NY 14127*

Mr. Mariano had concerns about drainage issues, setbacks, septic systems and aesthetics. He would prefer a flag lot.

Mr. Fitzgerald made some final comments. While he appreciates the concerns raised, he emphasized that two homes with a flag lot would be legal here, and that septic systems would be subject to review outside the prevue of this Board. Mr. Wood added that the Town Engineering Department will review the drainage plan and the septic systems, and that the setbacks would be compliant with Town Code.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated there had not other than the letter of support submitted by the Applicant.

BOARD DISCUSSION:

Mr. Lennartz noted that septic systems and drainage are engineering issues not a Zoning issue, and outside the prevue of this Board. He prefers the proposal to a "flag lot".

Ms. Bowers feels that the neighbors may have the same concerns if a "flag lot" is developed at this site.

Mr. Mateer clarified with Code Enforcement Officer, John Wittmann that the sewer tax was levied by the County, and the ditch on Powers Road was maintained by the County, and the Town had no say in either. Mr. Mateer would prefer to see the new houses located somewhere other than directly behind existing homes.

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

THE VOTE ON THE MOTION BEING:

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|----------|-----|
| LENNARTZ | AYE |
| METZ | AYE |
| MATEER | NO |
| BOWERS | AYE |
| RODO | NO |

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

2. ZBA File #29-23, Jim & Janine Wardlaw, 4417 Freeman Road, Zoned R-1, SBL# 173.06-5-2, (Part of Farm Lot 7, Township 9, Range 7). Requests an Area Variance to replace the existing shed with a 16 foot x 24 foot shed increasing the lot coverage to 18.86%. *Maximum lot coverage in an R-1 Zone is 15%, §144 Attachment 14 Schedule of Height, Lot, Yard, and Bulk Regulations*. This item received a previous Variance increasing the lot coverage on 10/21/14.

APPEARANCE: *Jim and Janine Wardlaw – Owners*

The Applicant explained the previous Variance was granted to the old owners of the home. The new Variance request is less than 1% difference from the previous Variance. They plan on removing a shed which was 10 feet by 14 feet. It will be replaced with a new studio, which will be 16 feet by 24 feet, in a different location, as part of a larger landscape renovation. The Applicant spoke to the neighbors to the North and South and intend to make the view pleasant for them. The landscape project will be done professionally and the Applicant feels it will improve their home's value.

Mr. Lennartz noted a clerical error in the Agenda. The Agenda said "minimum" and it should have said "maximum". The error has been corrected in these minutes. Mr. Lennartz clarified that the studio would be newly constructed and that the existing shed would be removed.

Mr. Metz stated that he was in favor of the project.

Mr. Mateer finds the proposal impressive and noted that this home is very close to the Village, and he finds the proposal in keeping with their neighborhood.

The Chair confirmed with Mr. Wittmann that the pergola would not be included in the calculation for lot coverage.

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.

*Mr. Bill Kielbasa
32 Stonehenge
Orchard Park, NY 14127*

Mr. Kielbasa had concerns about the height of the proposed shed, setbacks and the location of the fire pit. He also feels that the proposed pool is too large.

The Chair stated that the only thing that is before the Board is the lot coverage and that the other aspects of the project comply with Town Code and are outside the purview of this Board.

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. Mateer confirmed with Mr. Wittmann that fire pits are not regulated under Town Code, and the shed’s height and setback was compliant with Town Code.

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.

THE VOTE ON THE MOTION BEING:

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|----------|-----|
| LENNARTZ | AYE |
| METZ | AYE |
| MATEER | AYE |
| BOWERS | AYE |
| RODO | AYE |

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

3. ZBA File #30-23, Alicia & Corey Collins, 94 Autumn Lane, Zoned R-2, SBL# 184.06-1-42, (Sub Lot 42, Map Cover 3707). Requests an Area Variance to move the existing shed to the rear most part of property with a 0 foot setback each side lot line on this pie-shaped lot. *Minimum side setback in an R-2 Zone is 15 feet, §144 Attachment 15 Schedule of Height, Lot, Yard and Bulk Regulations.*

APPEARANCE: *Alicia and Corey Collins – Owner*

The Applicant stated that, upon counsel from the Building Department, they would like to change their request. They are now proposing only one side setback Variance of 8 feet. They plan to rotate the shed’s orientation to accomplish this. Ms. Collins stated that where the shed is currently located they cannot see their children in the yard.

The Chair verified the location of the shed.

Mr. Lennartz clarified with the Applicant that the shed would have a setback from one side lot line of 8 feet, and that it would meet the required set back on the other side (15 feet).

The Board members were in favor of the new proposal.

The Chair inquired if the Applicant had spoken to any neighbors. The Applicant had not, however they noted they did not have neighbors on one side.

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. Metz is in favor of this project.

Ms. Bowers noted the odd shape of the lot.

Ms. Bowers made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance **as amended** by the Applicant at this meeting (that being one Area Variance for a side setback of 8 feet) 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:

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|----------|-----|
| LENNARTZ | AYE |
| METZ | AYE |
| MATEER | AYE |
| BOWERS | AYE |
| RODO | AYE |

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

4. ZBA File #31-23, Dan Szczublewski, 44 Lakewood Drive, Zoned R-3, SBL# 152.11-1-14, (Sub Lot 242, Map Cover 2174). Requests an Area Variance to install a 18 foot x 12 foot storage shed 3 feet from the side lot line. *Minimum side setback in an R-3 Zone is 10 feet, § 144 Attachment 14 Schedule of Height, Lot, Yard, and Bulk Regulations. Applicant has a legal non-conforming lot that allows a 7 foot side setback, §144-20 A(2).*

APPEARANCE: *Dan Szczublewski – owner*

The Applicant stated that they had replaced an existing shed and shifted the shed to 3 feet from the property line.

Mr. Metz confirmed that the fence was on the property line and the shed was located 3 feet from the fence.

Mr. Mateer confirmed that the rear setback was in compliance and inquired what the shed would be used for. The Applicant stated that it would be used for storage.

Mr. Lennartz verified that the shed has already been constructed and the shed at the location was the shed in question. He inquired why a building permit was not obtained prior to construction. The Applicant felt he did not need a building permit as he was just replacing an existing shed.

Ms. Bowers confirmed with Mr. Wittmann that the lot in question was “non-conforming” and therefore the required setback is 7 feet.

The Applicant noted the odd shape of his lot.

The Chair inquired if the shed could be moved if the Variance was not granted and how difficult would it be to move it. She also inquired if the Applicant had spoken to any neighbors. The Applicant stated that it could be moved relatively easily and he had spoken to neighbors who had no issue with the shed.

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 established with Mr. Bailey that the Applicant should have obtained a permit even though he was replacing a damaged shed.

Mr. Mateer stated that the backyard was small, and unusual shape, and that a 3 foot setback meant the shed was maintainable without going onto the neighbor's property. He stated that although he was in favor he would have preferred the Applicant to have gone through the proper steps before building the shed.

Mr. Mateer 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 could be considered 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:

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| LENNARTZ | AYE |
| METZ | AYE |
| MATEER | AYE |
| BOWERS | AYE |
| RODO | NO |

The Motion being **FOUR (4) in favor**, and **ONE (1) opposed**, the Motion to **GRANT** the Variance is **PASSED**.

5. ZBA File #32-23, William Hamm, 4500 Abbott Road, Zoned R-3, SBL# 171.08-5-18.2, (Part of Farm Lot 38, Township 9, Range 7). Requests an Area Variance to remove an existing house at the rear of the property and replace with a new single family dwelling. *Multiple Residences not permitted in an R-3 Zone, §144 Attachment 5 Schedule of Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *William Hamm – Owner*

The Applicant stated they bought the property in 2015. There are currently three (3) residences on the property. The front two (2) homes are rented out. The home in the rear of the property is in poor repair and on piers. He feels that the current structure was most likely built as a "cottage". They would like to demolish it and replace it with a new residence which they plan to live in.

Mr. Metz inquired about the square footage of the proposed home and the driveway. The Applicant stated the home would be around 1700 and 1800 square feet. The driveway is a public right of way and appears to be a "ghost road" meaning it is not owned by anyone. As he doesn't own it he cannot make major improvements to it.

Mr. Mateer inquired about the public right of way and the neighbors behind the property, and if the Applicant had spoken to any neighbors. The Applicant stated that the public access road does extend to the rear neighbors. They have not spoken to any neighbors as they don't currently live there, however, they believe that the project will be an improvement as they are removing an eyesore.

Mr. Lennartz is not opposed to the project.

Ms. Bowers feels it would be an improvement and likes that it will be owner occupied.

The Chair inquired about the last time someone lived there, how many stories the proposed house would be and if a business would operate out of the home. The Applicant stated the home was last rented in 2015, the new home will be a single story and no business would operate out of it.

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 it's an improvement.

Ms. Bowers was in agreement.

Mr. Mateer stated that typically he wouldn't be in favor of adding a new home to a lot, but supports it in this case as the lot currently has (3) three homes.

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

THE VOTE ON THE MOTION BEING:

| | |
|----------|-----|
| LENNARTZ | AYE |
| METZ | AYE |
| MATEER | AYE |
| BOWERS | AYE |
| RODO | AYE |

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

- 6. ZBA File #33-23, Brandy & Kyle Tedesco, 39 Hilltowne Drive, Zoned R-2, SBL# 172.19-1-18, (Sub Lot 31, Map Cover 2940). Requests an Area Variance to place their 16 foot x 12 foot shed 10 feet from the side lot line. *Minimum side setback in an R-2 Zone is 15 feet, §144 Attachment 15 Schedule of Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Brandy and Kyle Tedesco – Owners*

The Applicant explained they would like to build a shed to store their outdoor furniture, lawnmower, kids’ toys etc. They plan to add a concrete pad this year and construct the shed next year. The Applicant submitted a picture of a shed similar to the one they are planning to construct.

The Board verified with Mr. Wittmann that the Applicant would have two (2) years to finish building as long as they begin the project within six (6) months.

Ms. Bowers confirmed that the shed would be 16 feet by 12 feet.

Mr. Lennartz verified the location of the proposed shed in relation to an existing tree. The Applicants plan to keep the tree and place the shed in front of it.

Mr. Mateer suggested moving the shed closer to the house, but the Applicants feel it would be a better layout visually, and for “flow” at the proposed location.

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 request is not substantial.

Ms. Bowers, Mr. Metz, and Mr. Mateer were in agreement with Mr. Lennartz.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, 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 does not preclude the granting of the variance.

THE VOTE ON THE MOTION BEING:

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|----------|-----|
| LENNARTZ | AYE |
| METZ | AYE |
| MATEER | AYE |
| BOWERS | AYE |
| RODO | NO |

The Motion being **FOUR (4)** in favor and **ONE (1)** opposed, the Motion to **GRANT** the Variance is **PASSED**.

7. ZBA File #35-23, Frank Nowakowski, 3755 Abbott Road, Zoned R-3, SBL# 161.09-3-12, (Sub Lots 57 & 58, Map Cover 897). Requests a Variance to park vehicles during stadium events. *Only parking lots in existence on May 3, 2017, are allowed hereunder, and all others are specifically prohibited, §144-12C.*

APPEARANCE: *Frank and Lisa Nowakowski – Owner*

The Applicant explained that they own this commercial property and they would like a permit to park cars in their existing parking lot. They bought the property in 2019 and no parking permit was previously issued. The Applicant stated that it was an existing parking lot, and there were no changes made to it. The old owner parked cars intermittently, however, they did not have a permit. Right now the Applicant allows employees, family and friends to park there for stadium events but they would like to charge others to park. The Applicant stated there would be approximately 20 cars on event days.

Ms. Bowers had no issues.

Mr. Lennartz was in agreement with Ms. Bowers.

Mr. Metz inquired what the building was currently used for. The Applicant stated it was used for education administration.

Mr. Mateer inquired if the Applicant has used the property for parking. The Applicant stated that during stadium events people have driven by and requested that they be allowed to park, and they have accepted payment from them.

The Chair inquired if the Applicant had spoken to any neighbors. The Applicants stated that their neighbors park cars as well.

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 was and it was distributed to the Board.

BOARD DISCUSSION:

Ms. Bowers feels that parking is common in this area.

Mr. Mateer inquired about lighting. The Applicant stated the lot is lit. Mr. Mateer verified with Deputy Town Attorney, John Bailey, that this would be an Area Variance not a Use Variance because it was a permitted use with a permit.

The Chair inquired of Mr. Bailey if it was within this Board's ability to stipulate no parking on the lawn. Mr. Bailey stated that it could be stipulated, however it would be difficult to enforce.

Ms. Bowers made a **MOTION**, seconded by Mr. Mateer, 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.

THE VOTE ON THE MOTION BEING:

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|----------|-----|
| LENNARTZ | AYE |
| METZ | NO |

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|--------|-----|
| MATEER | AYE |
| BOWERS | AYE |
| RODO | NO |

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

There being no further business to be presented to the Board at this time, the Chair adjourned the meeting at 8:23 P.M.

DATED: 8/31/2023
REVIEWED: 9/19/2023

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman
Zoning Board of Appeals