

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park October 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
Robert Metz
Kim Bowers
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 September 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 / WILLAMS, AYE

NEW BUSINESS

1. ZBA File #41-23, Jessica Croce, 5168 Ellicott Road, Zoned R-2, SBL# 173.17-1-50.111, (Part of Farm Lot 13, Township 9, Range 7). Requests an Area Variance to construct a 25 foot x 51 foot detached garage forward of the primary structure. *No accessory structure shall be located within the front yard or required side yard, §144-24 A(1)(c).*

APPEARANCE: *Tomaso Briatico – Architect*

Mr. Briatico explained that the owner would like to add a four (4) car garage to their front yard. He stated that the house is located approximately 800 feet from the street and that it is not oriented towards the street. The property is over 6 acres and they intend to match the finishes to the house.

Mr. Williams inquired about the finishes and if the Applicant had spoken to any neighbors. Mr. Briatico stated they would match the finishes to the house, and he had not spoken to any neighbors as the garage will not be easily visible to them.

Ms. Bowers confirmed that the garage would be a four (4) car garage. Mr. Briatico further explained that the owner has multiple cars and children who may have cars in the future. The garage may also be used to store lawn equipment.

Mr. Lennartz established that no business would operate out of this garage.

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 no communications had been received.

BOARD DISCUSSION:

Mr. Lennartz is in favor of the project as it is not easily visible from the road.

The other Board members were in agreement.

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

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
METZ	AYE
MATEER	AYE

BOWERS
RODO

AYE
AYE

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

2. ZBA File #42-23, Tracy Meyer, Vacant Lot adjacent to 6400 Powers Road, Zoned R-2, SBL# 184.12-3-10.3, (Part of Farm Lot 12, Township 9, Range 7) AND Vacant Lot at the corner of Big Tree Road and California Road, Zoned R-3, SBL# 161.18-1-20.1 (Part of Farm Lot 31, Township 9, Range 7). Requesting Variances to allow temporary produce stands on these non-farm parcels. *Farm: any parcel of land containing at least five acres which is used for gain in the raising of agricultural products, livestock, poultry or dairy products. It includes necessary farm structures within the prescribed limits, the storage of equipment used and the use of temporary stands for the sale of the produce of the "farm" on which located, §144-5 Farm, terms defined.*

APPEARANCE: *Tracy and David Meyer - Owners*

The Applicants explained that they had operated the unmanned farm stand at Powers Road for six (6) years. The Applicant stated that at the time they were told by the Town that they did not require a permit as the stand was unmanned. Two (2) years ago they began operating their stand on Big Tree Road and California Road. They have received one complaint recently for their stand on Powers Road, which they immediately closed. The complaint was referencing cars pulling out which blocked the complainant's view. They then applied through the Planning Department for the Planning Board as directed by the Code Enforcement Officer, but the Town determined they should appear before the ZBA. The Applicant stated that they have submitted a plan to control traffic whereby customers will enter on Chestnut Ridge Road and exit onto Powers Road.

Mr. Mateer inquired of Deputy Town Attorney, John C. Bailey, if the Board was voting on the safety of the proposed plan, or simply the stand itself. Mr. Bailey stated they were considering only the stand itself. Mr. Mateer inquired if the Applicant's had received input from any Boards or Agencies about their plan. The Applicants had not. Mr. Mateer stated that he would like to recuse himself and have no further input into this review.

Mr. Metz inquired about the dates they operate the stands. The Applicant stated they operate July 1st through October 31st.

Mr. Lennartz confirmed the dates noting that if it was made part of a Motion, they would be unable to alter the dates. The Applicants would be satisfied with the stated dates.

Ms. Bowers feels the new traffic flow is an improvement. She inquired if there would be signage. The Applicant stated there would be.

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 communications in favor of the project had been distributed to the members of the Board.

BOARD DISCUSSION:

Mr. Metz is in favor of the project.

Mr. Lennartz noted that the stands had been in operation for a long time with no issues.

Ms. Bowers stated that she was in favor of the project with the new traffic flow.

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 substantial based on the size, however it shouldn't preclude the granting of the Variance.
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	Recused
BOWERS	AYE
RODO	AYE
WILLIAMS	AYE

The Motion being **FIVE (5)** in favor and **ONE (1)** recused, the Motion to **GRANT** the Variance is **PASSED**.

3. ZBA File #43-23, Leanne Fiegl & Arlene Shelley, 6367 Chestnut Ridge Road, Zoned A-1, SBL# 198.00-1-1, (Farm Lot 10, Township 9, Range 7). Requests an Area Variance to construct an enclosed stairway to the 2nd floor 6.5 feet from the side lot line. *Minimum side yard setback in an A-1 zone is 20 feet, §144 Attachment 14 Schedule of Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Joseph Iafallo – Architect*
Leanne Fiegl – Owner

Mr. Affelo explained that they are seeking to add a staircase to the second floor to add a “gaming room”. He stated this would never be used as a rental of any kind.

Mr. Metz inquired why the stairs would have an exterior entrance. The Applicant stated that if the stairs were to be accessible from the inside, it would disturb the interior layout and possibly eliminate a window.

Mr. Mateer established that the new gaming room would have heat and electricity but no plumbing.

Ms. Bowers established that the space is currently used for storage and accessed via a pull-down ladder.

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 no communications had been received.

BOARD DISCUSSION:

Mr. Lennartz feels he can support the project.

Ms. Bowers and Mr. Metz were in agreement.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the Variances 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	NO

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

4. ZBA File #44-23, James R. Bammel, 3715 Southwestern Blvd., Zoned I-1, SBL# 161.00-5-29, (Part of Farm Lot 32, Township 9, Range 7). Requests a Use Variance for a proposed facility which includes a “pick-up” window. *Drive-in service facilities are prohibited in this I-1 zone, §144-9A, Zoning Schedule of Use Controls.*

APPEARANCE: *Joseph DeMarco Jr. – Owner*
Joseph Iafallo – Architect

The Applicant explained that they are seeking relief for a proposed drive through “pick up window”. He stated that there would be no cuing of cars and if there were a need for a cue, it would be hidden behind the building.

Ms. Bowers inquired how many cars could be stacked. The Applicant stated that there would be no need for stacking since this window would be for scheduled, express pick up, and not a traditional drive through. However, there would be space for ten (10) cars.

Mr. Lennartz inquired what the use of the proposed project would be. The Applicant declined to say.

Mr. Williams inquired about a current building on the property. The Applicant stated that a residence was currently on the property, however, in the future it will either become a business, or potentially be removed.

Mr. Mateer noted that in order for a Use Variance to be granted, the Board would need to determine that “strict application of the regulation would deprive the Applicant of a reasonable return on the property”. He asked if the Applicant had brought any financial evidence or evidence that the hardship is not self-created. The Applicant stated that the only evidence is that the tenant would like an express window and that their direct competitors have such windows.

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.

Ms. Judy Williams
6405 Powers Road
Orchard Park, NY 14127

Ms. Williams inquired how the Board could approve a Variance without knowing what the proposed project is.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated no communications had been received.

BOARD DISCUSSION:

Mr. Lennartz noted that the conditions for a Use Variance are very specific, and he feels the Applicant did not address them. Mr. Lennartz does not believe the hardship is unique, and he feels the Variance could change the character of the neighborhood.

Mr. Mateer stated that as there has been no financial information provided, he cannot support the proposal.

The Chair inquired of Code Enforcement Officer, John Wittmann if there were any other drive throughs in the industrial zone in Orchard Park. Mr. Wittmann could not be certain. The Chair stated that to her memory, there are none.

Ms. Bowers confirmed with Deputy Town Attorney, John C. Bailey, that if the Variance were granted, and this project changed or was not developed, the Variance would still hold.

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, to **DENY** the Use Variance based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. Strict application of the regulations will not deprive the applicant of a reasonable return on the property, provided that lack of return is substantial as demonstrated by competent financial evidence.
3. The hardship is not unique, and does apply to a substantial portion of the district or neighborhood.
4. The variance will alter the essential character of the neighborhood.
5. The alleged hardship is self-created.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
METZ	AYE
MATEER	AYE
BOWERS	AYE
RODO	AYE

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

There being no further business to be presented to the Board at this time, the Chair adjourned the meeting at 7:41 P.M.

DATED: 10/30/2023
REVIEWED: 11/20/2023

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman
Zoning Board of Appeals