

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the Orchard Park December 19, 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  
Michael Williams, Alternate

EXCUSED: Kim Bowers

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.

The Chair noted that in the absence of Ms. Bowers, Mr. Williams would be a voting member tonight.

#### **APPROVAL OF MINUTES:**

The minutes for November 2023 were approved unanimously.

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

**MATEER, AYE/ LENNARTZ, AYE / METZ, AYE / RODO, AYE / WILLAMS, AYE**

#### **OLD BUSINESS**

1. ZBA File# 21-23, Ellicott Development, 4297 Abbott Road, Zoned B-2, SBL# 172.05-1-1.1 (Part of Farm Lot 39, Township 9, Range 7). Requests 2 Area Variances. The first Variance is for the entranceway(s) of the automotive service station to be 189 feet 5 inches to the nearest residential zone. *Location of exits and entrances. No automotive service station shall have an entrance or exit for vehicles within 300 feet, as measured along the right-of-way, of an existing school, public playground, church, chapel, convent, hospital, public library or any residential district. Such access shall be not closer to any intersection than 30 feet, §144-29C(2)*. The second Variance is for front yard parking. *Vehicle parking shall be prohibited in the front yard of B Commercial or in any area set forward of a building when the majority of the building front is at a greater setback than the front line of the building, §144-29A(4)*. NOTE: This hearing was adjourned at the 7/18/23 ZBA meeting.

This item was removed from the Agenda at the request of the Applicant.

**OLD BUSINESS**

1. File #47-23, Joseph Iafallo, 4177 Abbott Road, Zone B-2, SBL# 161.17-3-9.1, (Lots 2 & 3, Map Cover 1541). Requests a Use Variance to convert his one-family legal non-conforming residence into a two-family residence. *A nonconforming use shall not be extended except within the same building which it partially occupied at the date of the enactment of the ordinance from which this chapter is derived, and then only with the approval of the Board of Appeals, §144-60.*

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

The Applicant stated that the granting of this request would not impact the surrounding areas, and it would improve the value of this house. He further stated dividing the unit will help with tenant selection and potentially lead to quieter tenants who are less inclined to throw parties. The Applicant noted that the parcel is zoned B-2 and R-3, and is adjacent to an R-3 zone.

Mr. Mateer noted that as the request is for a Use Variance, there is a financial component. He inquired if the Applicant had any financial data to prove they could not receive a reasonable return on the property as is. The Applicant restated that dividing the unit into two units as opposed to one unit with 5 bedrooms would reduce the likelihood of parties.

Mr. Metz inquired about parking. The Applicant stated that the parking would be the same with or without the Variance as there would still be five bedrooms. Mr. Metz established that the residence has been unrented for approximately 15 years.

Mr. Lennartz inquired if a business would operate out of this residence. The Applicant responded negatively.

The Chair inquired if the Applicant had spoken to any neighbors. The Applicant responded that they had and had not received any negative feedback. The Chair established with Code Enforcement Officer, John Wittmann that a portion of the parcel is zoned R-3.

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 not opposed. He feels that strict application of the Code may prevent a reasonable return since the property has not been lived in for 15 years.

Mr. Mateer would feel more comfortable if the Applicant had more specific financial evidence. He noted that the Business District was set with an intention.

The Chair feels that a request for rezoning would be more appropriate than a Use Variance.

The Chair made a MOTION, seconded by Mr. Williams, to refer this case to the Town Board for rezoning from a B-2 to R-3 Zone.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
METZ	AYE
MATEER	AYE
BOWERS	AYE
RODO	AYE

The Motion being **UNANIMOUS** in favor, the **MOTION** is carried.

2. ZBA File# 48-23, Natale Development LLC., 5245 Murphy Road, Zoned SR, SBL# 184.07-1-1.112 (Part of Farm Lot 21, Township 9, Range 7). Requests Area Variances to allow three (3) multi-unit apartment buildings with a height of three (3) stories. *The height of a building at any point shall be no more than 35 feet and 2 ½ stories in this SR zone, § 144-46.1E*

APPEARANCE: *Bobby Corrao – Natale representatives*  
*Jeff Palumbo - Attorney*

Mr. Pulumbo stated that this project was located at the site of the former Sisters of Mercy and the building present on the site is an eyesore. They are proposing three, 3 story buildings with 186 independent senior housing units. He stated this was not a rezoning case, and senior housing is allowed here. He noted that the planned project met the Town Code's height restrictions, although they are requesting a Variance for the number of stories. He discussed the balancing of factors the Board must consider. He explained that having a third story allows them to maximize both greenspace and amenities by condensing the footprint of the plan. If the Variance is denied, they will increase the footprint of the buildings to maintain the planned density. He stated that the Code allowed three stories at the time of their initial application in 2019 and the cost to redesign the project will be substantial, and will make the project unfeasible.

Mr. Lennartz noted that the neighborhood was residential and questioned the Applicant about traffic problems and increased density related to the project. Mr. Palumbo stated that there is no density issue as the density would be the same if the project had two stories with a wider footprint. He feels the project is not feasible without the Variance.

Mr. Metz stated that the request seems substantial, and had concerns that the project would resemble a "warehouse for people". Mr. Palumbo argued that the height was the same whether the Variance was granted or not.

Mr. Mateer stated that while he supports senior housing, he feels this project will have a negative impact on the neighborhood, and that it may appear institutional. He noted that when the original building was occupied, the character of the neighborhood was different. He feels it would have an undesirable change on the neighborhood as it is today. He feels the benefit sought could be achieved another way. Mr. Palumbo feels that the

proposed plan is an improvement, and without the Variance they would have to construct more buildings at the same height. He also feels it is not feasible financially.

There was some question about what was and was not allowed in the allowed half story. Code Enforcement Officer, John Wittmann clarified.

Mr. Williams inquired about the greenspace, buffers. He stated that currently the project has planned 67% greenspace and existing trees buffering between the site and the neighbors. He stated that if they were forced to proceed with only two stories, they would be forced to reduce the greenspace to as low as 20% and remove the buffering vegetation.

The Chair established that the Applicant was planning to remove all existing buildings on the site. The Chair inquired if the Applicant had spoken to any neighbors. The Applicant stated they had attempted to meet with neighbors.

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.

*Cal Lawson*  
*5267 Murphy Road*  
*Orchard Park, NY 14127*

Mr. Lawson submitted a petition of neighbors who were opposed to this Variance being granted. He stated that while the existing building had three stories, it was located in the rear of the property where it is not easily visible. He had concerns about residents in the third story being able to look down into the surrounding properties. He had concerns about traffic and noted that Murphy Road had no stripes and no shoulders. He also feels that the project's location away from an intersection may lead to traffic issues.

*Miguel Diaz*  
*3 Golden Oak*  
*Orchard Park, NY 14127*

Mr. Diaz had concerns about traffic and noise. He also felt Mr. Palumbo's comments about reducing greenspace to the minimum allowed by Code were unnecessarily aggressive. He feels the proposal will have a negative impact on the neighborhood.

*Rick Schunke*  
*38 Riley Meadows*  
*Orchard Park, NY 14127*

Has concerns about privacy and says the pine trees discussed are dead and not creating much barrier. He discussed the state of Murphy Road, and had safety concerns. He feels it would change the character of the neighborhood.

*John Kaczor*  
*42 Riley Meadow*

*Orchard Park, NY 14127*

Mr. Kaczor stated for the record, he is a 3<sup>rd</sup> cousin to the Chair, however they have never discussed this project. He stated he has not received any attempts at communication from the Applicant. He also discussed wetlands on the site.

*Tracey Sattler  
5329 Murphy Road  
Orchard Park, NY 14127*

Ms. Sattler had concerns about traffic. She noted that Murphy Road has not been improved since more neighborhoods have been added. She feels the road was not designed for this level of traffic. She feels the Applicant should be responsible for inspecting Murphy Road for damage incurred during construction, and covering the cost of repairs. She feels they should provide financial insurance such as a bond or letter of credit to cover the cost of repair to the roads. She also requested that Natale provide a designated point of contact so residents can contact them if there is damage to the road and request Natale develop a communication plan.

*Daniel Wierzbowski  
5024 Murphy Road  
Orchard Park, NY 14127*

Mr. Wierzbowski questioned whether the greenspace the Applicant touted as a benefit was usable due to the wetlands on the site. He discussed environmental concerns. He was also concerned about the state of repair of Murphy Road. He feels people who purchased homes were not adequately informed about the plan for this project.

*Dave Sattler  
5329 Murphy Road  
Orchard Park, NY 14127*

Mr. Sattler had concerns about light pollution and light trespass.

*Sal Mantione  
5857 Powers Road  
Orchard Park, NY 14127*

Mr. Mantione feels the Applicants would not like this project if it were near their homes.

*Norm Michael  
5330 Murphy Road  
Orchard Park, NY 14127*

Mr. Michael noted that this project was not located at a corner and he feels therefore it will cause greater traffic disturbances.

*Eladio Adorno  
35 Riley Meadow  
Orchard Park, NY 14127*

Mr. Adorno had concerns about the power grid and noise related to generators.

*Eirene Choroser*  
6195 Newton Road  
Orchard Park, NY 14127

Ms. Choroser stated her agreement with those who had spoken in opposition.

*Amy Weirer*  
6149 Newton Road  
Orchard Park, NY 14127

Ms. Weirer stated, "I agree with everything everyone has been saying".

Several neighbors wished to state their agreement with the residents who spoke. A list is maintained in the Planning Department Office with the Zoning Board File.

The Applicant responded to the residents' comments, stating that this project was not before the Board for Zoning or Site Plan review. He feels that the Town should be forced to fix the road, but that has no bearing on this project. He noted the nearest Applicant was 150 feet away.

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. Mateer noted that a Variance request requires the Board to balance the benefit to the Applicant with the effect to the neighborhood. He feels that this Variance would have an undesirable detriment to the neighborhood.

Mr. Williams was in agreement. He feels the request is unreasonable, and may effect privacy. He feels it is undesirable to the neighborhood.

Mr. Metz and Mr. Lennartz were in agreement.

The Chair feels there isn't a hardship to the Applicant.

Mr. Mateer noted that granting the Variance may create an institutional feel and an undesirable change to the neighborhood.

The Chair made a **MOTION**, seconded by Mr. Williams, to **DENY** the Area Variance 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
METZ	AYE
MATEER	AYE
WILLIAMS	AYE
RODO	AYE

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

- 3. ZBA File# 49-23, Prodigy Webster LLC., V/L Webster Road, Zoned R-3, SBL # 161.00-3-28.1 (Part of Farm Lot 16, Township 9, Range 7). Requests 2 Area Variances for a 3-lot (two-family dwelling) subdivision. The first Variance is to allow a 145 foot lot depth. *Minimum lot depth for these lots is 175 feet, § 144-9B, supplemental schedule of height, lot, yard & bulk regulations.* The second Variance is to permit a two-family dwelling on each of these three (3) lots. *No more than 33 1/3 % of lots in any existing or new subdivision shall be used for two-family dwellings, § 144-9A schedule of use controls.*

This item was removed from the Agenda at the request of the Applicant.

There being no further business to be presented to the Board at this time, the Chair adjourned the meeting at 8:21 P.M.

DATED: 1/10/24  
REVIEWED: 1/16/14

Respectfully submitted,  
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman  
Zoning Board of Appeals