

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park January 24, 2024, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Robert Metz, Acting Chairman
Robert Lennartz
Dwight Mateer
Kim Bowers
Michael Williams, Alternate

EXCUSED: Lauren Kaczor Rodo, Chairwoman

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.

Mr. Metz noted that in the absence of Ms. Kaczor Rodo, he would be acting as Chair and Mr. Williams would be a voting member tonight.

APPROVAL OF MINUTES:

The Minutes for December 2023 were approved unanimously.

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

MATEER, AYE/ LENNARTZ, AYE / BOWERS, 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.

APPEARANCE: *Sean Hopkins – Attorney*
Jeremey Wassel – Ellicott Development

Mr. Hopkins submitted a series of slides explaining the project to the Board and explained that based on feedback received from the ZBA at their July meeting, they had made several alterations to their original plan, including moving the driveways and dumpster enclosure. He detailed other changes and described the project. The Applicant also commissioned a Traffic Impact Study which found no adverse impact. Mr. Hopkins discussed the Truck Routing Plan.

Mr. Hopkins noted that the driveways had been moved and now are closer to compliance with Code. The proposed driveways as currently drawn are a greater distance from the two residences, both of which are vacant. On Abbott Road the driveway is now at 189 feet and 5 inches to the nearest residential zoned parcel. On Big Tree Road the driveway is 248 feet and 5 inches. He stated they will have adequate screening, fencing etc. He discussed Town Code and stated that the provision requiring driveways to be 300 feet to the nearest residential district only applies to “automotive service station”.

Mr. Hopkins noted that front yard parking is standard in convenience stores since being able to see inside the store allows guests to feel safe. They have minimized the front yard parking space, and have added greenspace near the right-of-way. He feels it is an improvement to the surrounding areas.

Mr. Hopkins noted that if the Variance is granted, the project will still require Site Plan Approval and Conservation Board Approval. He discussed the balancing criteria the Board must consider under New York State Law.

Mr. Mateer asked for clarification of distances drawn on an aerial photograph. The Applicant explained that the first distance shown was from the proposed driveways to the property lines (104 feet and 150 feet). The second distance shown was the distance from the proposed driveways to the nearest residential zoned district (189 feet and 248 feet). The third distance shown was the distance from the proposed driveways to the nearest property currently *being used* as a residence (359 feet and 413 feet).

Mr. Mateer noted that the majority of front yard parking in the area is limited and inquired about alternatives which would reduce or eliminate the need for a Variance for parking. The Applicant explained that under Town Code, parking was only considered front yard parking in this case if it was in the front yard on Abbott Road. Therefore, the majority of the parking was not considered front yard parking. Mr. Mateer confirmed with Code Enforcement Officer, John Wittman that the Applicant’s interpretation of the Code was accurate.

Mr. Lennartz noted that previously some neighbors had felt that there would be a negative impact on their properties, and inquired if the Applicant had met with any neighbors. The Applicant stated that they had spoken with one neighbor to discuss landscape screening, and committed to working with neighbors as far as screening was concerned.

Ms. Bowers inquired about the number of parking spaces and the number of front yard parking spaces. The Applicant stated that there would be 29 parking spaces including nine front yard parking spaces. Ms. Bowers established with the Applicant that there would be four electric vehicle chargers with the possibility of more being added in the future, and those parking spaces could function as regular parking spaces if no one was charging their cars.

Mr. Williams inquired about the Truck Routing Plan for fuel deliveries. The Applicant confirmed that fuel trucks would not be making left hand turns onto Abbott or Big Tree Roads and that deliveries are made roughly once a day.

Mr. Metz confirmed that the Applicant is requesting a Variance for both driveways.

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.

*Sandra Bugenhagen
5227 Big Tree Road
Orchard Park NY, 14127*

Ms. Bugenhagen stated this project is located next door to her. She was concerned about fumes, traffic, noise, groundwater, and property values.

*Mike Mangino
5087 Big Tree Road
Orchard Park, NY 14127*

Mr. Mangino had concerns about traffic and fuel deliveries. He also stated that his son lives at 5074 Big Tree Road. His son was unable to attend the meeting tonight but wished to convey his opposition to the project as well.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated communications had been received and forwarded to the Board.

BOARD DISCUSSION:

Mr. Lennartz feels that the new proposed driveway location is an improvement over the previous plan and he was in favor of granting the Variances.

Mr. Williams was also in favor.

Ms. Bowers noted that this Board was weighing the appropriateness of the Variances, not the project as a whole. She was in favor of the Variances.

Mr. Mateer feels that the parcel could be developed as something other than a gas station without the need for any Variances.

Mr. Lennartz made a **MOTION**, seconded by Mr. Williams, to **APPROVE** the Area 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 | NO |
| BOWERS | AYE |
| WILLIAMS | AYE |

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

NEW BUSINESS

- 1. ZBA File #02-24, William Meister, 5 Stoughton Lane, Zoned R-1, SBL# 162.15-5-48, (Sub Lot 67, Map Cover 2870). Request a 40 foot setback to construct a 36 foot by 25 foot addition in the required front yard. *Minimum front yard setback in an R-1 Zone is 50 feet, §144-9B.*

APPEARANCE: *Jim Bammel – Alliance Homes*
William Meister – Home Owner

Mr. Bammel stated that this property is a corner lot. He distributed updated plans to the Board Members. He stated that the house is undersized and that there was no other place to put this addition logistically. He feels that sightlines will be unaffected.

Mr. Williams inquired about the specific location of the addition, and Mr. Bammel described it to him.

Ms. Bowers noted that due to the angle of the lot, only a corner of the addition was in the impacted area, not the entire addition. The Applicant affirmed that that was correct.

Mr. Lennartz inquired if the fence was installed before the Applicant bought the house. The Applicant responded affirmatively.

Mr. Mateer inquired if the shed was installed before the Applicant purchased the house. The Applicant responded affirmatively. Mr. Mateer noted that there was no record of a Building Permit being obtained for either the fence or the shed. He would prefer to see the house and the shed moved and described a more desirable 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 no communications had been received.

BOARD DISCUSSION:

The Board members were in favor of the project.

Mr. Mateer feels it would be unfair to make it a condition of granting the Variance that the Applicant move the shed and the fence, since they were installed by the previous owner. However, he asked the Applicant to take it under advisement.

Ms. Bowers made a **MOTION**, seconded by Mr. Williams, to **APPROVE** 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 |
| WILLIAMS | AYE |

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

2. ZBA File #03-24, Matthew & Jamie Carlson, 7630 Jewett Holmwood Road, Zoned R-1, SBL# 173.16-1-54, (Part of Farm Lot 70 Town 9 Range 7). Requests a 13 foot side setback to construct a 30 foot by 25.5 foot attached garage. *Minimum side setback in an R-1 Zone is 15 feet, §144-9B.*

APPEARANCE: *Mathew Carlson – Owner*

Mr. Carlson explained that due to angle of the lot only one corner is impacted, and if they were to make the garage smaller it would be too small. He also stated that there was no other feasible location. He stated he had spoken to the impacted neighbor, who had submitted a letter in favor.

Mr. Mateer confirmed that the impacted neighbor was in favor. He inquired what the Applicant would do if the Variance was not granted. The Applicant stated he would have to build the garage at an angle, however it would look out of place and less aesthetically pleasing than what he is requesting with the Variance.

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 other than the one submitted through the Applicant.

The Board was in favor of the project.

Mr. Mateer made a **MOTION**, seconded by Ms. Bowers, to **APPROVE** 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 no 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 |
| WILLIAMS | AYE |

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

There being no further business to be presented to the Board at this time, the Chair adjourned the meeting at 7:59 P.M.

DATED: 1/31/24

REVIEWED: 2/16/24

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman
Zoning Board of Appeals