**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the July 16, 2019 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman

Lauren Kaczor

Dwight Mateer

Robert Metz

Barbara Bernard, Alternate

EXCUSED: Robert Lennartz

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney

David Holland, Code Enforcement Officer

Rosemary Messina, Recording Secretary

Natalie Nawrocki, Secretary to the Building Inspector’s Office

The members recited the Pledge of Allegiance and 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. 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 Alternate member, Mrs. Bernard, is a voting member this evening, due to the absence of Mr. Lennartz.

**APPROVAL OF MINUTES:**

The meeting minutes for May 21, 2019 were **UNANIMOUSLY** approved.

The meeting minutes for June 18, 2019 were **APPROVED** with one (1) **ABSTENSION**.

The Chairman stated that site inspections of all cases presented tonight were made by:

**BOWERS, AYE/BERNARD, AYE/KACZOR, AYE/MATEER, AYE/METZ, AYE**

**NEW BUSINESS**

1. ZBA File #19-19, Edward Shanahan, 95 Fox Chapel Drive, Zoned R-1 (Sub Lot 28, Map Cover 2285; SBL#173.16-1-29). Requests 3 Area Variances to construct a detached garage. First, to allow a 4-ft. side setback. Minimum side setback for this R-1 lot is 15-ft., §144-9B. Second, to allow an accessory structure to be located 6-ft. from the dwelling. No accessory structure shall be located closer than 10-ft. to any primary structure, §144-22A (1) (c). Third, to increase lot cover to 16.3%. Maximum lot cover is 15% for this R-1 lot, §144-9B.

APPEARANCE: Ed Shanahan, Petitioner/Property Owner

Mr. Shanahan distributed a packet to each member containing information regarding his request to construct a detached garage. He told the members that he feels his request is for one Variance, and not for *three Variances*, as determined by the Building Department.

He explained the plan to the members, however, the Board feels this is the same request that was reviewed and denied three-years ago. They asked Mr. Shanahan to indicate what is “*substantially* *different”* with this request, and the one presented in 2016. His explanation did not change the Board’s view.

Mr. Shanahan spoke of a correspondence he received from his neighbor, Mrs. Marion Fields, regarding drainage issues. He feels the drainage concerns she has will be corrected with drainage tile and the site work he plans to implement here. He further noted that Mrs. Fields is present in the meeting room this evening.

Mr. Shanahan told the Board that he did contact his neighbors, but was unable to reach Mrs. Fields by phone, and has not spoken with her regarding the Variance request.

Mr. Shanahan confirmed that he would not run a business out of the proposed garage.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of granting 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.

OPPONET

*Mr. Edward Mazur*

*91 Fox Chapel Drive*

*Orchard Park, New York 14127*

Mr. Mazur stated that he does not support the Variance request as he feels the proposed garage will encroach on his scenic view. He also worries about the resale value of his home, drainage, and privacy.

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

Board Discussion: Ms. Kaczor feels there is no winning either way; Mr. Mateer feels the request is substantial; Mr. Metz agrees with both their comments. Mrs. Bernard desires additional information, but established that there is nothing else to submit.

Ms. Bowers made a **MOTION**, seconded by Ms. Kaczor, to **DENY** the Variance request based on the following:

1. There will be an undesirable change in the character of the neighborhood, or a detriment to nearby properties.

2. The benefit sought can be achieved in another way, other than the granting of the Variance.

3. The request is substantial.

4. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district with an unusually large project and the three Variances.

5. The difficulty is self-created.

**THE MOTION BEING:**

**BOWERS AYE**

**KACZOR AYE**

**MATEER AYE**

**METZ AYE**

**BERNARD AYE**

THE **MOTION** BEING **FIVE (5) IN FAVOR,** THE **MOTION** TO **DENY** THE REQUEST **IS PASSED.**

2. ZBA File #20-19, James & Kathleen Smith, 86 Minden Drive, Zoned R-3 (Sub Lot 73, Map Cover 2174: SBL#152.11-5-33). Requests an Area Variance to construct a living unit addition with a 25.27-ft. side street setback. Minimum side street setback for this R-3 lot is 30-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: James & Kathleen Smith, Petitioners/Property Owners

Mr. Smith presented and explained his plan to construct a living unit addition. He told the members that he needs the Variance to avoid blocking his kitchen window on the existing main residence. Mr. Smith spoke to his neighbors, and there were no objections voiced to the Variance request.

Chairwoman Bowers established that the addition will match the existing residence. The interior of the addition will have larger doorways and halls for future handicap access.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of granting 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 were received.

Board Discussion: The members felt this was a straight forward project

Mr. Metz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the Variance request based on the following:

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties.

2. The benefit sought cannot be achieved in another way, other than the granting of the variance.

3. The request is not substantial.

4. There will be no adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

5. The difficulty is self-created, but that does not preclude the granting of the Variance.

**THE MOTION BEING:**

**BOWERS AYE**

**KACZOR AYE**

**MATEER AYE**

**METZ AYE**

**BERNARD AYE**

THE **MOTION** BEING **FIVE (5)** **IN FAVOR**, THE **MOTION IS PASSED**.

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 7:34 P.M.

DATED: 8/14/19

REVIEWED: 8/20/19 Zoning Board of Appeals Rosemary Messina, Secretary

Kim Bowers, Chairwoman