**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the

May 21, 2019 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman

Lauren Kaczor

Robert Lennartz

Dwight Mateer

Robert Metz

Barbara Bernard, Alternate

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney

David Holland, Code Enforcement Officer

 Rosemary Messina, Recording Secretary

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.

**APPROVAL OF MINUTES:**

The meeting minutes for April 16, 2019 were unanimously approved.

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

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

**NEW BUSINESS**

1. ZBA File #07-19, John K. Payne, 7090 Gartman Road, Zoned A-1 (Part of Farm Lot 2, Township 9, Range 7; SBL#198.00-1-53). Requests an Area Variance to construct a storage building which will create a dominating accessory use. Accessory use area shall not dominate principal use area, §144-5, terms defined.

 APPEARANCE: Mr. John Payne, Petitioner/Property Owner

Mr. Payne distributed copies of color photographs for the members to review, explaining that he desires to construct a 40’ x 80’ building to store his collection of vehicles. Currently, his vehicles are stored at various locations; however, he would like the majority of them stored at his residential property. Mr. Payne told the Board that he will not operate a business from this building.

Mr. Lennartz discussed the drainage at the site and established that drainage concerns will be improved and resolved with the construction of a French Drain.

Mr. Mateer established that Mr. Payne spoke to several of his neighbors and no objections were voiced regarding the granting of the variance. His adjacent neighbor most affected is his mother-in-law, and she supports the request. He also established that a second floor mezzanine will be constructed in the proposed structure. Here he will park lighter weight vehicles, such as a garden tractor.

Chairwoman Bowers established that the property owned by his mother-in-law will be kept in the family, or purchased in the future by Mr. Payne. It was learned that a shed currently on the property will be removed and a children’s playhouse, constructed by Mr. Payne, will remain.

Mrs. Bernard established that a “bump-out” shown on the Building Plan is for a covered picnic shelter that will not be enclosed.

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: Mr. Lennartz stated he feels the request is excessive relative to the home; but he agrees that the only one that will really view it is his mother-in-law, so he supports the request. Ms. Kaczor noted that the structure is located quite a distance from the roadway, and the adjacent parcel (mother-in-law’s land) may be added to his in the future.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area 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 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**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

2. ZBA File #08-19, Lindsay Carrow, 359 Lakeview Avenue, Zoned R-3 (Sub Lot’s 139 & 140, Map Cover 860; SBL#152.09-3-16). Requests an Area Variance to install an inground swimming pool within the front yard of this premises. No swimming pool will be permitted in a front yard or required side yard, §144-30 C (6)(d).

 APPEARANCE: Ms. Lindsay Carrow, Petitioner/Property Owner

 Ms. Carrow explained that she lives on a corner lot and is looking to achieve privacy within her pool area.

Ms. Carrow also submitted petitions signed by five (5) of her neighbors supporting the request for the variance. These have been entered into the permanent file.

 Chairman Bowers established that the proposed fencing is four-feet high; it will be placed where the shed is on the property, and not block the vision of motorists. She also commented that there are odd shaped lots in this neighborhood.

Mr. Mateer reviewed the design of the proposed fencing. He established that Ms. Carrow submitted a petition signed by her neighbors supporting the request for the variance. He also clarified where the fencing will be placed.

The Board members had no further questions.

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 Chair feels this is an odd shaped lot and that this is the best location for the fencing. This is an improvement to the property, and she finds the proposed 4-ft. fencing to be a reasonable request.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the Area 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**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

3. ZBA File #09-19, Dennis Salemi, 4109 N. Buffalo Road, Zoned B-3 (Part of Farm Lot 16, Township 9, Range 7; SBL#162.13-2-14). Requests an Area Variance to construct a building addition with a 2.5-ft. rear setback. Minimum rear setback for this B-3 lot is 20-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

 APPEARANCE: Mr. Dennis Salemi, Petitioner/Property Owner

 Mr. Michael Lukaszewski, Bammel Architects

 Mr. Lukaszewski presented and explained plans to construct an addition at this retail operation. They believe the best option is to locate the addition behind the building. The Verizon building is located behind his property.

The members’ questions established the following:

⦁ The proposed one-story addition is for the existing store’s retail operations.

⦁ The current square footage of the store is approximately 300-sq.ft. with a covered open patio at the front.

⦁ No communication has taken place with the Verizon property owner at the rear of the building.

⦁ No second story is desired, as they wish to keep the character of the barn, and accessibility of the building.

⦁ Parking is not easy at this location.

⦁ The front entrance will be the main access to the addition. There is a man-door at the rear of the building.

⦁ The space between the building and the existing fence is five-feet.

Mr. Mateer asked if the project could be reduced. Mr. Lukaszewski noted that the space is need to have movement for customers.

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 reported that the Planning Department is requesting color renderings of the elevations if the variance is approved.

Board Discussion: Mr. Mateer discussed his concerns regarding the utility and the property line. He feels maintenance will be difficult with the fencing located so closely here. Ms. Kaczor established that board and batten will be used to match the existing barn, along with hardy board.

Mr. Metz made a **MOTION**, seconded by Ms. Bowers, 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 can 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**

**LENNARTZ AYE**

**MATEER NAY**

**METZ AYE**

THE **MOTION** BEING **FOUR (4)** **IN FAVOR, AND ONE (1) AGAINST** THE **MOTION** IS **PASSED.**

4. ZBA File #10-19, James & Cathleen Meyer, 7786 Milestrip Road, Zoned R-2 (Sub Lot 1, Map Cover 3594; SBL#153.20-2-1). Requests an Area Variance to install a 4-ft. high fence partially within the side street yard. Maximum height of a fence in a side street yard is 3-ft. §144-22 A (1).

 APPEARANCE: Mr. James Meyer, Petitioner/Property Owner

 Mr. Meyer explained his desire to install a 4-ft. high fence behind his home. He showed the location of the fencing on a map and used color photos to show the Board what it would look like from the street. He told the members he has three (3) dogs and a 2-year-old granddaughter that need to be contained. The fencing must be 4-ft. high as, in the winter snow months, the dogs can walk-up and over the fencing. He showed the members photos representing what the proposed wrought iron fencing will look like.

 Mrs. Bernard inquired if the location of the fencing can be shifted over so the need for the variance could be eliminated. Due to the location of a door and a patio this is not possible.

Mr. Lennartz established where the encroachment is located in the front yard.

Mr. Mateer feels the fencing could be put in at an angle; however, Mr. Meyer stated this would interfere with his plans for the patio.

 Ms. Kaczor established that Mrs. Meyer is against using “Invisible” fencing because of the electric shock training.

 Chairwoman Bowers stated that the “Invisible” fencing will not help with the concerns regarding the grandchild.

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: Chairwoman Bowers feels this is far enough away from the roadway and it will not interfere with site vision of motorists.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, 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 NAY**

**LENNARTZ AYE**

**MATEER NAY**

**METZ AYE**

THE **MOTION** BEING **THREE (3)** **IN FAVOR, AND TWO (2) AGAINST,** THE **MOTION** IS **PASSED.**

5. ZBA File #11-19, Jonathan Corto, 3421 North Benzing Road, Zoned I-1 (Part of Farm Lot 27, Township 10, Range 7; SBL#152.18-1-5). Requests two (2) Variances for a proposed warehouse addition. First, to allow a 10-ft.-11-7/8 inch rear setback. Minimum rear setback for this I-1 lot is 20-ft., §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations. Second, to provide sixteen (16) additional parking spaces, four (4) of which are in the front yard. Forty-one (41) additional spaces are required per §144-29A (3) (e). Parking is prohibited in the front yard, §144-29A (4).

 APPEARANCE: Mr. Jonathan Corto, Petitioner/Property Owner

 Mr. Corto desires to add on to his business and construct 16-additional parking spaces. He will be adding several new employees. Four of the new parking spaces will be located in the front yard. The Ordinance states that he is required to have 41-additional parking spaces.

Mr. Metz established that the business prepares fresh foods. Their hours of operation are 5:00 A.M. to 6:00 P.M. He has fifteen (15) employees and up to two of them pack the food. There will be an additional curb-cut constructed on North Benzing Road.

Mrs. Bernard discussed the green space at the site, drainage and emergency vehicle access. She feels Mr. Corto should tear down his building and re-build it. She feels he is putting too much on the property.

Mr. Mateer discussed the delivery trucks. He feels if the trucks are stored inside the building they can be pre-loaded at the front of the building and have one of the variances could be eliminated. Presently, it is planned to have the whole right side of the building as a 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.

(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: Mr. Lennartz has concerns regarding the setback and the fire code. Route 219 abuts the back of the property and he feels the property needs to be cleaned up-a-bit.

Mr. Corto told the members that he plans to improve the look of the building and pave the driveway.

Mr. Mateer wants a stipulation for no over-night parking.

Code Enforcement Officer David Holland noted that there is an ordinance that stipulates no over-night parking in the I-1 Zone.

Mr. Mateer made a **MOTION**, seconded by Ms. Kaczor, to **GRANT** the Variance request with a **STIPULATION** 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 Variance is **GRANTED** with the following **STIPULATION**:

1. There is to be no over-night parking of trucks.

**THE MOTION BEING:**

**BOWERS AYE**

**KACZOR AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

6. ZBA File #12-19, Brian & Donna Donovan, 7884 Quaker Road, Zoned R-1 (Part of Farm Lot 72, Township 9, Range 7; SBL#162.00-3-37). Requests an Area Variance to install a 3-ft-6-inch high fence within the front yard. Maximum height of a fence within a front yard is 3-ft., §144-22 A (1).

 APPEARANCE: Mr. Brian Donavan, Petitioner/Property Owner

Mr. Donavan explained that he would like to build a decorative rail at the front of his residence, and repair the existing railing on his property. He told the members that the rail will not create an obstruction to motorist views, as it will be setback over 100-feet from the roadway.

Mr. Lennartz established that the split rail fencing that exists here is already higher than what the code allows.

The members’ questions established that the neighborhood does have several rail fencings in use.

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 Chair stated she feels it is a nice looking fence and it will not take away from a motorist’s sight line. It is also similar to a neighbor’s fence across the street.

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, 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 NAY**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

THE **MOTION** BEING **FOUR (4)** **IN FAVOR, AND ONE (1) AGAINST** THE **MOTION** IS **PASSED.**

7. ZBA File #13-19, William Dorsey & Ashley Whipple, 60 Oakwood Street, Zoned R-3 (Sub Lot’s 10 & 11, Map Cover 1541; SBL#161.17-4-9). Request an Area Variance to construct a detached garage in the rear yard. Accessory area shall not dominate principal use area, §144-5, Terms Defined.

 APPEARANCE: Mr. William Dorsey & Ms. Ashley Whipple, Petitioners/Property Owners

Mr. Dorsey explained that their garage is located below the grade level of their driveway, causing it to flood when it rains, or snowfall melts. He would like to construct a new four-car garage to store their personal vehicles, snowmobiles and lawn equipment. In addition, a dry floor will be available for storage space for personal items that are presently kept in the two deteriorating outbuildings. He told the members that if the variance is granted he will take down the two outbuildings, as their goal is to store items in the new garage, and improve their property’s appearance.

The members verified that Mr. Dorsey currently has four-vehicles and plans to acquire two-more. They discussed reducing the size of the garage with the Applicants. Mr. Dorsey stated that there are other residents with 4-car garages in the neighboring area, and he named several locations. The members discussed this further. It was established that the residence is 973-sq.ft. Mr. Dorsey feels he could reduce the size of the garage to 28-ft. x 48-ft. The members discussed this compromise and it was confirmed that this would make the building reduced in size by 150-sq.ft., or be a total of 1,344-sq.ft. Code Enforcement Officer David Holland confirmed that a variance is needed if the garage exceeds the size of the residence, which is 973-sq.ft. Mr. Dorsey told the members that the existing “U” shaped driveway will not be changed.

Ms. Kaczor established that attaching the garage to the back of the house is not desirable.

Chairman Bowers established that adding to the front of the garage takes away from the front yard and their greenspace.

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: Members are struggling with this request.

Mr. Mateer made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Variance request with a **STIPULATION** 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 Variance is **GRANTED** with the following **STIPULATION**:

1. The building is to be reduced to 28-ft. by 48-ft. in size.

**THE MOTION BEING:**

**BOWERS AYE**

**KACZOR NAY**

**LENNARTZ AYE**

**MATEER AYE**

**METZ NAY**

THE **MOTION** BEING **THREE (3)** **IN FAVOR,** AND **TWO (2) AGAINST**, THE **MOTION** IS **PASSED WITH A STIPULATION.**

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 8:16 P.M.

DATED: 7/11/19

REVIEWED: 7/16/19 Zoning Board of Appeals Rosemary Messina, Secretary

Kim Bowers, Chairwoman