**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the October 15, 2019 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman

Robert Lennartz

Dwight Mateer

Robert Metz

Barbara Bernard, Alternate

EXCUSED Lauren Kaczor

Len Berkowitz, Deputy Town Attorney

OTHERS PRESENT: David Holland, Code Enforcement Officer

John Bailey, Town Attorney

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.

**APPROVAL OF MINUTES:**

The meeting minutes for August 20, 2019 were **UNANIMOUSLY APPROVED.**

The Chairwoman stated that the Alternate Member, Mrs. Bernard, will be voting this evening due to the absence of Ms. Kaczor.

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

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

**NEW BUSINESS**

1. ZBA File #25-19, Sheryl Zielonka, 3880 Abbott Road. Zoned B-2 (Part of Farm Lot 40, Township 9, Range 7; SBL#161.00-5-12). Requests a Use Variance to allow a non-conforming residential use in this B-2 Zone. Residential uses are not permitted in Business Zones, §144-9A, Schedule of Use Controls.

APPEARANCE: Sheryl Milligan Zielonka, Petitioner/Property Owner

Jay Milligan, Petitioner/Property Owner

It was established that the Petitioners have not had success leasing this property for business purposes. They are seeking relief to have it used for a non-conforming residential use, as a single-family home. The property has been vacant for approximately two-years. The Petitioners also own the adjacent parcels. They feel they can rent this single family residence for $1,200/month, plus utilities.

Mr. Lennartz stated that the key factor for a Use Variance is a financial hardship; and that is proven here.

Mr. Mateer feels that they have presented a sufficient case.

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 other communications were received.

Board Discussion: This is not an unreasonable request.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **GRANT** the **USE VARIANCE** for the following reasons:

1. Strict application of the regulations will deprive the applicant of a reasonable return on the property, provided that lack of return is substantial as demonstrated by competent financial evidence.

2. The hardship is unique, and does not apply to a substantial portion of the district or neighborhood.

3. The variance will not alter the essential character of the neighborhood.

4. The alleged hardship was not self-created.

**THE MOTION BEING:**

**BOWERS AYE**

**BERNARD NAY**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

2. ZBA File #26-19, Buffalo Mercy Hospital, 3669-3671 Southwestern Boulevard, Zoned I-1 (Part of Farm Lot 32, Township 9, Range 7; SBL#161.00-5-33.21/A & 161.00-5-53). Requests an Area Variance to install a non-conforming monument sign. Monument signs shall not exceed 30-sq.ft. in area nor 5-ft. in height, §144-5, Terms Defined.

APPEARANCE: Ms. Janet Faulhaber, Representing Mercy Hospital

Mr. Dan Jawak, Mercy Hospital

The Petitioner presented and explained the proposed sign request. They would like to increase the size of the sign to 40-sq.ft. The sign is not illuminated.

The members felt that the proposed double sided sign is beautiful.

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 other communications were received.

Board Discussion: This is a nice sign and it will improve safety.

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.

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

**THE MOTION BEING:**

**BOWERS AYE**

**BERNARD AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

3. ZBA File #27-19, Pediatric Urgent Care of WNY, 3055 Southwestern Boulevard Zoned B-2 (Part of Farm Lot 462, Township 10, Range 7; SBL#153.09-3-10.21). Requests an Area Variance to allow a pedestal sign with 55-sq.ft. of sign area. Maximum sign area for this pedestal sign is 40-sq.ft, §144-38 C (2).

APPEARANCE: Dr. Kathleen of Pediatric Urgent Care

Jim, representing Ulrich Signs

Dr. Kathleen told the members that she needs a little larger sign, as this is a large complex with multi-businesses on a fast paced roadway. People have difficulty finding them. She promotes pediatric care, and hopes to expand her hours in the future.

Mrs. Bernard discussed the sign, noting that she feels it is large and obtrusive. She would like to see the colors reversed.

Mr. Lennartz feels that it is a problem trying to locate this business.

Mr. Mateer feels the graphics are hard to read. Perhaps a blue background would be better.

Ms. Bowers feels most people call, and she is not sure of the sign’s purpose.

It was established that Dr. Kathleen owns the adjacent properties on both sides of this property.

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 other communications were received.

Board Discussion: Perhaps white would help the sign information stand out more.

Mr. Mateer 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 created.

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**

**BERNARD NAY**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

4. ZBA File #28-19, Sunrise Medical Group, 3775 Southwestern Boulevard, Zoned B-2 (Part of Farm Lot 32, Township 9, Range 7; SBL#161.00-5-26.12). Requests an Area Variance to install a non-conforming freestanding sign at this site. Freestanding signs shall not exceed 9-ft. in overall height, §144-5, Terms Defined. Each sign surface shall not exceed 20-sq. ft., Section 144-38 B (2).

APPEARANCE: Amy Burke, Doctor (Owner)

Ms. Burke explained the proposed sign, noting that the height exceeds the Town Ordinance.

Ms. Bowers established that there will be two tenants with signs here; Dr. Burke and the other is a sleep study business.

Mr. Lennartz discussed the size of the sign and gave his support for the request.

Mr. Metz feels there is no problem with the size of the sign. The sign does not indicate that the only access to the facility is on California Road.

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 other communications were received.

Board Discussion:

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 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**

**BERNARD AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

5. ZBA File #29-19, Stephano Bueme, 2 Hillsboro Drive, Zoned R-1 (Part of Farm Lot 4, Township 9, Range 7; SBL#185.10-1-4.12). Requests an Area Variance to allow fence sections exceeding 3-ft. high in the front yard and side street yard. Maximum height of a fence in a front yard or side street yard is 3-ft., §144-22A (1).

APPEARANCE: Mr. Stefano Bueme. Petitioner/Property Owner

Mr. Bueme explained to the Board that he needs three (3) fences; one 4-ft. high, one 3-ft. 6” high and one 3-ft. 8” high. He told the Board that he spoke to his neighbors and submitted a petition signed by 40 residents. Code Enforcement Officer David Holland reconfirmed this for the Board.

Mr. Lennartz discussed using 22” of top soil. He also noted that the petition indicates substantial support from his neighbors.

Mr. Metz questions moving the fencing.

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

PROPONENT

*Mr. Bard Ernst*

*3 Hillsboro*

*Orchard Park, New York 14127*

This neighbor fully supports Mr. Bueme’s request for the fence.

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 other communications were received.

Board Discussion: Looks good.

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 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**

**BERNARD AYE**

**LENNARTZ AYE**

**MATEER AYE**

**METZ AYE**

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

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 7:43 P.M.

DATED: 12/13/19

REVIEWED: 12/17/19 Zoning Board of Appeals Rosemary Messina, Secretary

Kim Bowers, Chairwoman