**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the February 18, 2020 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Lauren Kaczor, Chairwoman

 Robert Lennartz

 Dwight Mateer

 Robert Metz,

 Barbara Bernard, Alternate

EXCUSE: Kim Bowers,

OTHERS PRESENT: Timothy Gallagher, 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 alternate member, Mrs. Bernard, is a voting member this evening, due to the absence of Ms Bowers.

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:** Mr. Lennartz made a **MOTION**, seconded by Ms. Bernard to **APPROVE** the January 21, 2020 meeting minutes.

The meeting minutes for January 21, 2020 were **UNANIMOUSLY APPROVED,** with two abstentions.

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

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

**NEW BUSINESS**

1. ZBA File #02-2020, Benderson Development, 3340-3356 Southwestern Boulevard, Zoned B-1 (Part of Farm Lot 18, Township 10, Range 7; SBL#152.16-6-1.2). Requests an Area Variance to allow parking spaces within 50-feet of the street line. Parking is prohibited in the front yard within 50-feet of the street line, §144-29 A (4).

APPEARANCE: Mr. Matt Oates, Benderson Development

 Mr. David Zuppelli, Project Site Engineer, Benderson Development

 Mr. Douglas Hutter, Zaxis Architectural

The Applicants presented and explained the plans to construct a free standing Mighty Taco restaurant with a drive-thru. They are seeking an Area Variance to allow parking within fifty-feet of the street line. This will allow them to create additional parking spaces at the site and become compliant with the Town’s parking requirement. In addition, their plan meets the Towns’ Requirement for Green Space at the site. They feel the current Mighty Taco located here has a hardship by not having a drive-thru customer service option. They named several neighboring businesses that were granted variances allowing front yard parking. If the Variance is not granted, Mighty Taco cannot proceed with their project.

Chairwoman Kaczor invited the audience to move forward to view the presented Site Plan.

Mrs. Bernard discussed the traffic flow here, and feels they are “stuffing too much into a little spot”.

She questions if they gave thought to locate this project elsewhere on the property.

The Applicants stated they did study other options, however, this was the better choice for this property.

Mr. Metz discussed the proposed restaurant, and its location was clarified on the presented map. He questions how much further the asphalt will be moved towards Southwestern Boulevard.

Mr. Zuppelli indicated on the plan where it would be approximately 20-ft. forward, and explained that the property runs at an angle, so it will vary.

Mr. Lennartz stated that his questions have been answered.

Mr. Mateer discussed issues involving safety vehicles, moving the parking lot location, moving the drive-thru lane location, and the existing easements at the site.

Mr. Zuppelli explained that the fire lane is generally 24-ft. wide.

Mr. Mateer stated that he is trying to discuss the fact he feels their traffic pattern separates people from their destination. He would like Benderson Development to design a plan that eliminates the need for the Variance, by moving the parking closer to the building.

He Zuppelli stated he is confused by what Mr. Mateer is asking. The concept Mr. Mateer described goes against the elements of design and the industry standards. He feels this will confuse people, and most likely violate their customer leases at the plaza.

Mr. Mateer discussed walkable communities with Mr. Zuppelli.

Mr. Zuppelli stated he does not want to create a situation with something so out-of-the-ordinary that it becomes a dangerous situation.

Chairwoman Kaczor discussed that trees will need to be removed during the expansion.

Mr. Zuppelli told the Board that their Landscaping Plan received Conditional Approval on 2/07/2020 by the Conservation Board.

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

**IN FAVOR:**

*Mr. Caesar Cardarelli*

*6375 Lake Avenue*

*Orchard Park, New York 14127*

Mr. Caesar Cardarelli stated that he is not against the project. He expressed comments regarding the drive-thru noise, drainage, green space, and garbage blowing into the creek behind the site.

*Mr. Douglas Hutter,*

*Zaxis Architecture*

*4245 Union Road, Suite 210*

*Buffalo, New York 14225*

Mr. Hutter stated that he supports the Variance request. He feels it is a great opportunity for Mighty Taco to have the new store with a drive-thru and stay in Orchard Park.

Mr. Zuppelli responded to the comments by Cardarelli.

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 that we are looking at approving an Area Variance, we are not approving the project. We are just looking at parking spaces, and he feels this is a reasonable request.

Mr. Mateer feels that the Applicants could get the same advantage without the need for a Variance. He does not like the layout of the Site Plan.

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 VOTE ON THE MOTION BEING:

KACZOR AYE

BERNARD NAY

LENNARTZ AYE

MATEER NAY

METZ AYE

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

2. ZBA File #04-2020, Stephen Sabuda, 3110 Angle Road, Zoned R-2 (Part of Farm Lot 469, Township 10, Range 7; SBL#153.15-2-3). Requests an Area Variance to allow an accessory structure to remain within 4-ft. of the dwelling. No accessory structure shall be located closer than 10-ft. to any primary structure § 144-24A (1) (c).

APPEARANCE: Mr. Michael Santa Maria, Attorney representing Mr. Steven Sabuda, Applicant

Mr. Santa Maria explained to the Board that Mr. Sabuda’s contractor had put in a shed without getting a permit. He apologized, stating that Mr. Sabuda had not been aware of this fact. The shed is used to store equipment for Mr. Sabuda’s catering business. It was placed on a concrete pad, 4-ft. from the primary structure. The Town Code states no accessory structure shall be located closer than 10-ft. to the primary structure. Mr. Sabuda did not realize he was in violation of the Town Code with the sheds’ placement. Mr. Santa Maria told the members that the shed is located here as it was the only suitable place to locate it. There are issues with the topography at the site, and it will create a hardship for Mr. Sabuda to remove the shed. The shed has been here for over 1-1/2-years and he feels it is an attractive shed.

Mr. Mateer asked if Mr. Sabuda had spoken to any of his neighbors about the shed. Mr. Santa Maria stated that he did not know if he had. He also is not aware of any complaints from the surrounding neighbors. Mr. Santa Maria does not feel this is a very large shed. He further noted that if Mr. Sabuda had known that no permit was obtained and that he needed a Variance he would not have gone through with the project. Mr. Santa Marie stated that he feels ignorance is not an excuse, but he does not believe the shed is hurting anyone. It is not known if the shed was built on site.

Mr. Lennartz established that there was a complaint about the shed. Mr. Santa Maria stated that Mr. Sabuda is currently in court with the Town Prosecutor over not having a permit for the shed and for violating the Town Code with its placement. If the shed is moved to the right, the topography slopes downward; and at that point, the shed will be too close to the neighbor’s property. He confirmed that there is a concrete extension to drive-up to the shed.

Mr. Metz asked if he is running a business from the shed. Mr. Santa Maria noted that no one comes to his house, and that only equipment is stored here. Customers go to his restaurant in Lackawanna, New York, to order catered food for various events.

Mrs. Bernard discussed wanting to know where items were stored before the shed existed. Mr. Santa Marie stated that he did not know.

Chairwoman Kaczor established that Mr. Sabuda’s wife and son help him unload the supplies from his vehicle into the shed. Mr. Santa Marie could not confirm if there is electric power in the shed.

Mr. Metz discussed the storage area behind the house that has no access by vehicle.

Mr. Mateer discussed if there is side access to the shed. This is not known. He further discussed a way to not need the variance.

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. Mateer feels it is possible to move the shed and relocate it. He wants to send a message from the Board.

Mrs. Bernard feels there is no point in moving the shed 6-feet. The area will still look the same when it is in compliance, so why bother.

Mr. Lennartz feels if the Petitioner had appeared prior to the shed being constructed for the Variance he would have vote “no”. The concrete is already there, and he does not want to punish the Petitioner because of a mistake that occurred by not having a permit issued. He does feel this will set a precedent for other cases.

Mr. Lennartz made a **MOTION**, seconded by Mrs. Bernard, 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 neigh- borhood or district.

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

THE VOTE ON THE MOTION BEING:

KACZOR NAY

BERNARD AYE

LENNARTZ AYE

MATEER NAY

METZ NAY

THE **MOTION BEING (3) THREE AGAINST, AND (2) IN FAVOR**, THE **MOTION TO GRANT** THE **VARIANCE IS DENIED.**

Deputy Town Attorney, Timothy Gallagher stated that he is also the Town’s Prosecuting Attorney. This case was “Tabled”, pending the action from the Town of Orchard Park Zoning Board of Appeals.

3. ZBA File #05-20, Mary Boersma, 48 Willowbrook Drive, Zoned R-2 (Sub Lot 19, Map Cover 2272; SBL#172.03-4-1). Requests 2 Area Variances for this property. First, to construct a shed with a 5-ft. side setback. Minimum side setback for this R-2 lot is 10-ft., § 144-98, Schedule of Height, Lot Yard & Bulk Regulations. Second, to allow an 8-ft. high fence enclosure for a sport court. Maximum height of a fence in a rear yard is 6-ft. § 144-22A(2).

APPEARANCE: Ms. Mary Boersma, Petitioner/Property Owner

 Mr. Boersma, Petitioner/Property Owner

Ms. Boersma is requesting two Area Variances. She presented and explained her plans for the first Variance request, stating it is her desire to have a custom built shed located 5-ft. from her side setback. The Town Code requires the setback to be a minimum of 10-feet. She told the Board that the shed will be located 8-ft. off of her driveway to allow for snow plowing. However, to have more access room to the back yard and to avoid removal of existing trees they would like to locate the shed closer to the existing fence. She provided the members with photos of the proposed shed. Pavers will be used to access the shed and the sports court area. Ms. Boersma told the members that landscaping is planned for the site.

 Mr. Mateer established that their neighbors support the request.

 Mr. Boersma spoke regarding the existing split rail fence located on the property.

 Ms. Boersma told the members that a swing set will be taken down and removed from the property.

 Mr. Lennartz discussed the existing trees at the site and learned that the proposed shed’s location will not require any removal of trees.

 Mrs. Bernard stated that she is good with the shed request, as the neighbors’ shed is located adjacent to this area.

Mr. Metz stated that he had no questions.

Mr. Mateer noted that if they used a smaller shed they could reduce the variance request. However, Ms. Boersma explained that they need the larger shed for storage requirements. Mr. Mateer pointed out a discrepancy in the paperwork regarding the size of the setback area needed. Code Enforcement Officer David Holland explained that this was an outdated paper.

Chairwoman Kaczor discussed the location of the proposed shed further with the Petitioners, verifying that there is room for cutting grass between the neighbors’ shed and their proposed shed.

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. Metz stated that the request is reasonable.

Mr. Metz made a **MOTION**, seconded by Mrs. Bernard, 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 VOTE ON THE MOTION BEING:

KACZOR AYE

BERNARD AYE

LENNARTZ AYE

MATEER AYE

METZ AYE

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

Ms. Boersma presented and explained her plans for the second Area Variance request, stating that they would like to construct an eight-ft. high fence. This would not be a solid fence; you can see through it, and being black in color, it tends to “disappear” from a distance. She told the members that the sport court that they intend to install needs an 8-ft. high fence to contain errant hockey pucks and basketballs. She explained that she feels the fence will be an upgrade to their property.

Mr. Lennartz verified that the fencing will look like what is presented to the Board in the photographs.

Mr. Mateer stated that he feels that a 6-ft. fence is sufficient, and he would like to know why the Boersma’s feel the need for an 8-ft. fence. Additionally, he does not recall seeing any fences of this height in their neighborhood.

Ms. Boersma responded that there is a neighboring residence that has fencing higher than 6-ft., and it is not “see-through” like theirs’ will be.

Mr. Mateer asked the Boersma’s to think about agreeing to a compromise to have an 8-ft. fence at the backside of the court, and 6-ft. fencing on the remaining three sides.

Mr. Lennartz established that no trees will be removed to install the fencing.

Chairwoman Kaczor discussed the sport court, confirming that there are two court areas; one basketball court (with a single hoop), and one hockey court with a net.

Ms. Boersma told the Board that they worked with “Versa Court”, a company that provided the calculations for designing the sport court. They did not want to purchase and build something too large and not functional.

Mr. Metz established that the neighbor across the way is fine with the fencing and the lighting.

Mrs. Bernard discussed the court area lighting. The neighbor knows that the lighting will face outward across the pond area.

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. Mateer stated that he is not in favor of an eight foot fence. He noted that he does not feel an 8-ft. fence will stop the ball from leaving the court area.

The members reviewed the cell phone photos presented and discussed the request further with the Petitioners.

Ms. Kaczor made a **MOTION**, seconded by Mr. Mateer, to **DENY** the Area 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.

5. The difficulty is self-created.

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BERNARD AYE

LENNARTZ NAY

MATEER AYE

METZ AYE

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

There being no further business to be presented to the Board at this time Chairwoman Kaczor adjourned the meeting at 8:20 P.M.

DATED: 5/13/2020

REVIEWED: 6/16/2020

 Respectively Submitted, Rosemary Messina, Secretary

 Zoning Board of Appeals

Ms. Lauren Kaczor, Chairwoman

 Zoning Board of Appeals