**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the June 16, 2020 meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Lauren Kaczor, Chairwoman

Kim Bowers

Robert Lennartz

Dwight Mateer

Robert Metz

Barbara Bernard, Alternate

EXCUSED Timothy Gallagher, Deputy Town Attorney

OTHERS PRESENT: David Holland, Code Enforcement Officer

Rosemary Messina, 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. 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:** Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **APPROVE** the February 2020 meeting minutes.

The meeting minutes for February 18, 2020 were **UNANIMOUSLY APPROVED,** with one abstention.

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

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

**NEW BUSINESS**

1. ZBA File #06-2020, Michael Rudzinski, 3105 Angle Road, Zoned R-2, (Sub Lot 1, Map Cover 2816; SBL#153.12-3-13). Requests an Area Variance to install a 6-ft. high fence partially within the side street yard. Maximum height of a fence in a side street yard is 3-ft., § 144-22A (1).

APPEARANCE: Mr. Michael Rudzinski, Petitioner/Property Owner

Mr. Rudzinski explained that he has a corner lot and that he would like to install a 6-ft. high fence to create safety, privacy, and containment for his children and two pet dogs. He noted that three-foot fencing will not provide this. He feels no sight lines will be impacted for motorists, and that trees will not need to be removed. He explained that what is considered his “front yard” is not logical, as there is no driveway here, entranceway or walkway into the residence.

The members reviewed the submitted file materials and photos. Their questions established the following:

⦁ Mrs. Bernard inquired why Mr. Rudzinski does not use an electric fence. Mr. Rudzinski stated that his wife is not comfortable with an electric fence, as this type of fence is not perfect and the dogs can escape.

⦁ Mr. Metz questioned the breed of dogs that Mr. Rudzinski owns, and it was learned they are a Labrador/ Retriever mix.

⦁ Mr. Lennartz stated that he did not find other neighbors with fencing. However, Mr. Rudzinski told the members where other fencing is located in his neighboring area.

⦁ Ms. Bowers asked for clarification of the location of the fencing. She established that Mr. Rudzinski is concerned that his dogs will jump over a 3 or 4-ft. fence. She also noted that she is concerned for the adjacent neighbors’ view of the proposed 6-ft. high fencing. Mr. Rudzinski stated that he had not spoken with his adjacent neighbors. However, he did speak to the neighbor across the street, and he did not have any issues with the Variance request.

⦁ Mr. Mateer established that the dogs are currently tied up outside on a 20-ft. line. He questions if Mr. Rudzinski had thought about using a 3-ft. fence along with an electric fence. Mr. Rudzinski stated that this will not help solve his privacy issues.

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.

IN OPPOSITION

*Mr. Ross Guarino, Jr.*

*3085 Angle Road*

*Orchard Park, New York 14127*

Mr. Guarino spoke against the Variance request. He does not want the character of the neighborhood changed with a fence of this height.

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 feel the request is substantial. Code Enforcement David Holland addressed a question regarding the Town Code, as requested by the Chair.

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

1. Per Section 144-63 (E) (1) all public notices have been filed;

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

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

4. The request is substantial.

5. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood

or district.

6. The difficulty is self-created.

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ AYE

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

2. ZBA File #07-2020, West Herr Nissan, 3580 Southwestern Boulevard, Zoned I-1 (Part of Farm Lot 18, Township 10, Range 7; SBL#161.07-5-30). Requests an Area Variance to replace a non-conforming monument sign with a new non-conforming monument sign. Monument signs shall not exceed 30-sq.ft. in area, nor 5-ft. in height, §144-5, Terms Defined.

APPEARANCE: Allan Bender, Representing Flexlume

Mr. Bender presented and explained the proposed sign to the members noting that he did not feel the sign will change the character of the neighborhood or be a detriment to nearby properties. He stated that the dealership is updating the sign to be in compliance with Nissan guidelines for their new image. He does not feel the request is substantial as they are exceeding the requirement by 1’8”. He also noted that the existing sign is damaged and warrants replacement.

Mr. Mateer discussed having the sign made smaller with Mr. Bender.

Mr. Lennartz discussed the need for a new sign and the proposed replacement.

Mr. Metz established that the proposed sign will be taller.

Mrs. Bernard established that the sign will be 16-inches higher, but it will also be narrower. This does not bother her.

The Chair established that the sign will be located in the current location of the existing one.

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 stated that applicants are always wanting larger signs; where does this end. Mr. Lennartz does not feel the size difference will be noticed. The Chair and the remaining Board members stated that they had no issues with the request.

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

1. Per Section 144-63 (E) (1) all public notices have been filed.

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

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

4. The request is not substantial.

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

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

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BOWERS AYE

LENNARTZ AYE

MATEER NAY

METZ AYE

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

***REQUEST WITHDRAWN BY APPLICANT:***

3. ZBA File #08-2020, Luis Cabas Ormaechea, 122 Ashwood Lane, Zoned R-2 (Sub Lot 58, Map Cover 2965; SBL#184.12-4-19). Requests an Area Variance to install a 6-ft. high fence within the side street yard. Maximum height of a fence in a side street yard is 3-ft., § 144-22A (1).

4. ZBA File #09-2020, Melodee Helfrich, 6100 Newton Road, Zoned A-1 (Part of Farm Lot 19, Township 9, Range 7; SBL#184.00-4-19). Requests an Area Variance to allow a private stable on this 1.5-acre parcel. No building shall be used to contain horses except on a farm. A farm parcel must contain at least 5-acres. No such building shall be located within 100-ft. of any property line of such farm, § 144-32A, Animal Housing.

APPEARANCE: John & Melodee Helfrich, Applicants and Property Owners

Mrs. Helfrich presented her request to the Board to house two mini-burrows on her property. She explained her plans, noting that she has four (4) neighbors that signed a petition supporting her request for the Variance. The following was entered into the permanent file, supporting the request; 6140 Newton Road, 5783 Burton Road, 5845 Burton Road, and 6105 Newton Road.

The members’ questions established the following;

⦁ This is a narrow property, surrounded by farms with other animals. There is no fencing here.

⦁ No business will take place here. No one would rent or use the burrows.

⦁ Mrs. Helfrich will foster no more than two mini-burrows.

⦁ Manure will be bagged-up.

⦁ The adjacent neighbor did not sign the letter supporting the Variance request.

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.

IN OPPOSITION

*Mr. Mark Braun*

*6088 Newton Road*

*Orchard Park, New York 14127*

Mr. Braun submitted signed petitions against the Variance request from 6076, 6083, 6088, and 6095 Newton Road. These documents will be entered into the permanent file. He noted that the granting of the Variance will be a detriment to the nearby single family homes; he feels the variance is substantial, and he continued to explain why he did not support the request.

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 feel the property is too small and that the Variance request is substantial.

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

1. Per Section 144-63 (E) (1) all public notices have been filed.

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

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

4. The request is substantial.

5. There will be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

6. The difficulty is self-created.

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ AYE

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

5. ZBA File #10-2020, James Armillotti, 5075 Ellicott Road, Zoned R-1, (Part of Farm Lot 13, Township 9, Range 7; SBL#173.17-2-11). Requests 2 Area Variances for an attached garage addition. First, to exceed allowable lot cover. Second, to allow a dominating accessory area, § 144-9B, Schedule of Height, Lot, Yard & Bulk Regulations and § 144-9A, Terms Defined.

APPEARANCE: Mr. James Armillotti, Petitioner/Property Owner

Mr. Armillotti explained to the members that he is planning to have his parents move into the vacant half of his two-family home and have use of the current garage. The home has no attic or basement and he would

like to construct a 30-ft. x 40-ft. pole barn attached to the existing garage for additional storage space. The existing shed and lean-to on the property will be removed. He does not feel the building will look out of place, as there are other neighboring properties with large out-buildings.

Mr. Lennartz stated that this is a fairly substantial request, and he asked Mr. Armillotti if he could reduce the size of the building. However, Mr. Armillotti told the Board members that he has calculated the items that will need to be stored, and he needs a building of this size. Mr. Armillotti confirmed that he spoke to his neighbors and there were no objections to the Variance request. This included his immediate adjacent neighbor. Mr. Armillotti submitted two letters of support that will be entered into the permanent file; 5083 Ellicott Road and 5069 Ellicott Road.

Ms. Bowers established that in addition to his parents’ personal items, there are several collectible cars, a camper, and car trailer. Mr. Armillotti told the members that he would like to keep the property neat and orderly. Ms. Bowers feels this is a large request.

Mr. Mateer verified that Mr. Armillotti will not be running a business from the building. Mr. Armillotti stated that he needs this size building and if the Variance is not granted he most likely will need to move.

Mrs. Bernard acknowledged that she understood the situation Mr. Armillotti has. She also verified that the camper is not currently on his property, it is stored elsewhere with other items.

The members reviewed and discussed the presented plan and photos with the Petitioner.

The Chair asked if the Petitioner had considered going up in height with a second floor to reduce the building size. Mr. Armillotti stated that he feels it would not look visually good.

The members continued to discuss further details of the proposed pole barn and its attachment to the existing garage.

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

IN SUPPORT

*Mr. Carolyn Valone Bell*

*5083 Ellicott Road*

*Orchard Park, New York 14127*

Ms. Valone Bell spoke in favor of the Variance request.

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 noted that the request does fail some of the points they need to consider; however, he feels it does meet enough for approval.

Ms. Bowers stated that it is larger than it should be, but when you look at the improvements it makes to the property she is inclined to approve it.

Mr. Mateer stated that the Petitioner cannot reduce the size; he needs this structure.

Mr. Metz stated that there are minuses and positives; but, he likes that the Petitioner is taking care of his family.

Mrs. Bernard feels the benefit outweighs the negative, and the neighbors support the request.

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

1. Per Section 144-63 (E) (1) all public notices have been filed;

2. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby prop- erties.

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

4. The request is substantial.

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

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

THE VOTE ON THE MOTION BEING:

KACZOR NAY

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ AYE

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

There being no further business to be presented to the Board at this time Chairwoman Bowers adjourned the meeting at 8:15 P.M.

DATED: 8/13/2020

REVIEWED: 8/18/2020

Respectively Submitted, Rosemary Messina, Secretary Zoning Board of Appeals

Ms. Lauren Kaczor, Chairwoman

Zoning Board of Appeals