**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the August 18, 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

OTHERS PRESENT: Timothy Gallagher, Deputy Town Attorney

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 THE MINUTES OF THE JUNE 16, & JULY 21, 2020 REGULAR MEETINGS:**

**Mr. Mateer noted a correction to the July meeting minutes on Page 2:** Mr. Mateer voted NAY in this case.

Ms. Bowers made a **MOTION**, seconded by Mr. Mateer, to accept the meeting minutes for June 16, 2020, and the corrected meeting minutes of July 21, 2020.

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ AYE

THE MOTION BEING UNANIMOUS, THE MOTION IS PASSED

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 #15-2020, Gary Ovitt, 6139 Bunting Road, Zoned A-1, (Part of Farm Lot 27, Township 9, Range 7; SB:#197.00-3-64). Requests an Area Variance to construct a barn which will create a dominating accessory use. Accessory use area shall not dominate principal use area, §144-5, Terms Defined.

APPEARANCE: Mr. & Mrs. Gary Ovitt, Petitioners/Property Owners

Mr. Ovitt explained to the Board he desires to replace the existing barn on his property. Two years ago the barn sustained damage from a tornado. He distributed photographs and information for the members’ review, noting that the barn is used to shelter their two horses. The proposed new barn will be larger and have space to store hay, a tractor, and other farming items. He also spoke of the look and style of the proposed building.

Mrs. Ovitt stated that the current barn stalls are not large enough to safely take care of their horses. Constructing a new barn with larger stalls will solve many issues. She submitted a letter from their veterinarian regarding equine patient safety issues existing with the current size of the stalls. She also submitted a petition signed by sixteen area neighbors supporting their Variance request. The Secretary will add these to the permanent file.

The members established:

(1) There are currently two horses kept here. The Ovitt’s do not have children and they expressed that the horses are treated as such. While the building is being constructed the horses will be at a friend’s barn. There is approximately 7+/-acres here. The existing barn is 16-ft x 24-ft. in size.

(2) The proposed barn will have updates put-in, making it safer and easier to house their horses. There will be no more than three horses kept here. No renting out of space for other horses will take place. Three stalls will be constructed, with a fourth stall for equine washing.

(3) A new metal pole barn, 28-ft. x 52-ft. in length will be placed where the current barn is located. It will have a metal roof with a swinging screen door.

(4) The structure is larger than their residence.

(5) There are three larger barns in the neighboring area. Mrs. Ovitt stated that they have a great relationship with their neighbors.

(6) Mrs. Ovitt stated that they have already reduced the size of the building, and she feels this is the smallest they can make the building.

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 discussed the request further. It was noted that it is important to have proper care for the horses. The project makes sense. However, it is a struggle to have the residence smaller than the proposed building.

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

3. The benefit sought cannot 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 AYE

METZ AYE

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

2. ZBA File #16-2020, Michael Anderson, 16 West Royal Hill, Zoned R-3, (Sub Lot 42, Map Cover 2521; SBL#153.10-1-42). Request (2) Area Variances to construct an addition to this dwelling. First, to allow a 26.3’ rear setback. Minimum rear setback for this R-3 lot is 30’, §144-22F. Second, to allow 23.3% lot cover. Maximum lot cover for this R-3 lot is 20%, §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Alex Lis, Petitioner/Property Owner

Mr. Michael Anderson, Abstract Architecture

Mr. Anderson explained Mr. Lis’ desire to have an addition constructed to his home for his wheelchair bound daughter. He feels they have chosen the best possible location for the addition, which is at the back of the residence, as there will be accessibility to the other parts of the home.

Mr. Mateer inquired if the neighbors had been contacted regarding the variance request and Mr. Lis told the members that he had. He, also, explained that the neighbor at the rear of the property is quite a distance away and the addition will not be seen.

Ms. Kaczor discussed if there would be an accessible porch constructed at the back side of the residence. Mr. Anderson stated that the existing porch will be removed and in its place they would construct a single-story covered deck.

Ms. Bowers does not feel the addition can be seen from the 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 communications were received.

Board Discussion: Mr. Lennartz feels there is an obvious need here. The Board members agree.

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, 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 created.

3. The benefit sought cannot 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 AYE

METZ AYE

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

3. ZBA File #17-2020, Mark & Dawn Kim, 1 Montclaire Lane, Zoned R-1, (Sub Lot 29, Map Cover 3119; SBL#162.11-4-5). Requests an Area Variance to construct a detached garage, with a 10’ side setback. Minimum side setback for this R-1 lot is 15’, §144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. & Mrs. Mark Kim, Petitioners/Property Owners

The Kim’s explained their desire to construct a detached, three-car garage 16-ft. x 20-ft. at the end of their driveway. An Area Variance of 5-ft. is requested; however, the Kim’s are still researching if a two-story garage and attaching the garage is workable for them. It was noted that there are two-story garages in this subdivision.

Mr. Lennartz discussed the placement of the proposed garage. He also asked if Mr. Kim had talked to his neighbors. Mr. Kim stated he had, and he described what took place with one of the neighbors.

Ms. Bowers discussed if the garage will be attached or not. Mr. Kim stated they were unsure, and were still researching this option.

Ms. Kaczor stated that she had not seen any two-story garages in the neighborhood. The Kim’s stated that there were.

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 discussed the request further. Chairwoman Kaczor stated she would feel more comfortable if the garage was attached. It is determined that the Kim’s can construct their garage by attaching it to the residence without the need for a Variance. This is preferred by the members. Therefore, the review was tabled until the Kim’s determine how they would like to proceed.

Ms. Bowers made a **MOTION**, seconded by Mr. Metz, to **TABLE** this review, pending direction from the Petitioner.

THE VOTE ON THE MOTION BEING:

KACZOR AYE

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ AYE

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

4. ZBA File #18-2020, Kenneth & Tammy Kruszka, 5531 Draudt Road, Zoned R-2, (Part of Farm Lot 28, Township 9, Range 7; SBL#184.00-2-36). Requests an Area Variance to extend a detached garage within the front yard. Required space cannot be reduced, §144-20C.

APPEARANCE: Mr. & Mrs. Kenneth Kruszka, Petitioners/Property Owners

The Kruszkas explained their desire to remodel and update their current garage by constructing an extension, making it larger. Their septic tank is on the east side of the existing garage, and for that reason they cannot place the garage extension here. They are proposing to locate it at the front of the residence where the garage is already forward of the residence. A Variance was granted in 1969 to locate the garage here. There is plenty of frontage, as the residence is located at the back of the property. Mr. Kruszka further stated that, the home has no basement, and limited attic area, so there is no real storage space available to the Kruszka’s.

The members’ questions established the following:

⦁ An additional 650-sq. ft. will be added to the garage, and the addition is 16 x 26. The additional space will accommodate their F150 truck to be stored here.

⦁ The house is approximately two-hundred feet back from the road.

⦁ The garage cannot be placed on the other side of the house due to the septic system is located here.

⦁ If the Variance is granted, the shed on the property will be removed and the property will be cleaned-up.

⦁ There will be no business operated out of the garage.

⦁ There will be only two-garage doors.

⦁ The Kruszkas’ son, also, lives here.

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 discussed the request and agree to add a stipulation that the shed be removed from the property.

Ms. Bowers made a **MOTION**, seconded by Mr. Mateer to **GRANT** the Area Variance with a **STIPULATION** 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 created.

3. The benefit sought cannot 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.

This Variance is **GRANTED** with the following **STIPULATION**:

1. The existing shed on the property is to be removed.

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**

5. ZBA File #19-2020, James Militello, 7014 East Quaker Road, Zoned R-2, (Part of Farm Lots 7 & 8, Township 9, Range 7; SBL#162.18-2-10). Requests an Area Variance to install a 4.5’ high fence in the side street yard. Maximum height of a fence in a side street yard is 3’, §144-22 A (1).

APPEARANCE: Mr. James Militello, Petitioner/Property Owner

Mr. Militellos’, Father-In-Law,

Mr. Militello presented plans and photos, and explained to the members that he would like to build a 4-.5-ft. fence outward from his residence, closer to Freeman Road. It will be located behind the drop-off in front of the wooden steps at his property. He told the members that he needs the fence for the safety of his young children and dog. This is a corner home with busy speeding traffic, and his back yard faces Freeman Road. He does not feeling the fencing will impair a motorists’ view. He explained that his property is lower than the street and that the fencing would not appear to be 4.5-ft. high from the road. Only 18-inches of the fence height would be seen by passing traffic.

Mr. Mateer established that a 3-ft. fence will not work for Mr. Militello’s family. He also verified that Mr. Militello spoke with his neighbors, and no objections were voiced to the Variance request.

Ms. Bowers confirmed that they have a Shiatzu dog and that the fencing will be wood, with tight slats. Ms. Bowers further asked Mr. Militello to explain what the difference in the height of a 3-ft. fence and a 4.5-ft. fence is to him. He responded that his children and dog may climb over a 3-ft. fence.

Mr. Lennartz stated that he had observed the children and the dog playing outside in their yard. He observed that the property has a landscaping wall that hides part of the property.

Mr. Militello noted that there is a gap in the landscaping wall of three to four feet, with no vegetation. The drop-off in the property also begins here. He told the Board that the fence will not appear higher than the landscaping wall.

Mrs. Bernard asked for clarification of the type of fencing Mr. Militello is proposing. Mr. Militello stated that it is a solid wood fence, and that you cannot see through it. Mrs. Bernard noted that Mr. Militello can put up the fence he wants with a Variance; just not where he wants to.

Chairwoman Kaczor verified that Mr. Militello has lived here approximately two-years. She does not feel he did his due diligence in purchasing the property. She noted that she owns a corner lot and knows what she cannot have.

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 discussed the request further. Mr. Lennartz stated that he is thinking of supporting the request, as most of the fencing will be screened by the landscaping. Other members spoke and did not support the fence. The Chair feels Mr. Militello knew what he was buying when he purchased the property.

Mr. Militello’s father-in-law spoke and explained why the fence made sense to install for the safety of the children and family pet.

Ms. Kaczor made a **MOTION**, seconded by Mr. Mateer, 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 created.

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 NAY

MATEER AYE

METZ AYE

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

6. ZBA File #20-2020, Maria Dee, 18 Hilltowne Drive, Zoned R-2, (Sub Lot 4, Map Cover 2940; SBL#172.19-1-5). Requests an Area Variance to construct a swimming pool deck with a 4’ rear setback. Minimum rear setback for this R-2 Lot is 10’, §144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Maria Dee, Petitioner/Property Owner

Ms. Dee explained to the Board that she desires to construct a deck on the back side of her above ground swimming pool, in the left rear yard. This will allow her to have full view of the pool from anywhere in the yard. If the deck is constructed in front of the pool it will create a visual barrier causing safety concerns. She also told the Board that no one can build behind her.

Mr. Lennartz noted that it is not possible to view her residence at the rear of the property as there is a good deal of natural vegetation at the rear of the property, and beyond that, is Armor Duells Road. No one will ever build behind her property.

Ms. Kaczor established that Ms. Dee did contact her neighbors and there were no objections to the Variance request.

An existing fence was discussed and Code Enforcement Officer David Holland confirmed its location for the 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:

*Dan, a Concerned Citizen*

*Orchard park, New York 14127*

Dan stated he supports the request for the Variance.

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 discussed the request further and they feel this is a good location to put the proposed deck, as you cannot see it.

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, 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 created.

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 neigh- borhood 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 AYE

METZ AYE

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

7. ZBA File #21-2020, Telly Forcucci, 37 Winterhall Road, Zoned R-1, (Sub Lot 22, Map Cover 2436; SBL#173.07-3-22). Requests an Area Variance to construct a detached garage with a 6’ side setback. Minimum side setback for this R-1 lot is 15’, §144-9B, Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. Telly Forcucci, Petitioner/Property Owner

Mr. Forcucci present and explained his plans to construct a detached, single-car garage to the Board members. He stated he desires additional space to store his vehicles and personal items. He submitted letters of support from 9-neighbors residing at, 29, 30, 31, 34, 36, 41, 42 & 43 Winterhall Road. He pointed out that the neighbor looking directly at the proposed garage signed a petition supporting the Variance.

Mr. Lennartz stated that he feels this will change the character of the neighborhood, as there are no other detached garages in the area.

The members discussed various details of the request and in particular, the length of the proposed garage. Several members discussed connecting the garage to the residence, and negating the need for the Variance, but Mr. Forcucci stated that this is not an option.

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. & Mrs. Paul Johnson*

*38 Winterhall Road*

*Orchard Park, New York 14127*

The Johnson’s stated that they live across the street and do not support the variance request. They feel there is no hardship, and that the request is in violation of their Home Owners Association (HOA) Deed Restrictions (which Mr. Johnson read to the Board). He also noted that Mr. Forcucci did not contact them regarding the Variance request.

The Chair discussed the Boards’ options with this case. Deputy Town Attorney Timothy Gallagher stated that the Board can table their review while the HOA is contacted by Mr. Forcucci, or have a final vote on the Variance request.

Code Enforcement Officer Mr. Holland noted that the Town does not enforce deed restrictions.

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 discussed the request further. They feel that granting the Variance will change the character of the neighborhood, and that the request is substantial.

Mr. Lennartz 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, and a detriment to nearby properties created.

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) IN FAVOR**, THE **MOTION TO GRANT THE VARIANCE IS DENIED.**

REMOVED

8. ZBA File #11-2020, Up State Tower Company & Buffalo-Lake Erie Wireless Systems Company, 75 Weiss Avenue, Zoned R-3/B-2 , Part of Farm Lot 456, Township 10, Range 7; SBL#152.12-3-1.11). Requests Site Plan review and Tower Permit Approval for a 160-ft. monopole tower and telecommunication facility as required by Chapter 144, Article VII.

There being no further business to be presented to the Board at this time Chairwoman Kaczor adjourned the meeting at 8:48 P.M.

DATED: 10/07/2020 Respectively Submitted,

REVIEWED: 10/20/2020 Rosemary Messina, Secretary

Zoning Board of Appeals

Ms. Lauren Kaczor, Chairwoman

Zoning Board of Appeals