**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the March 16, 2021 meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Lauren Kaczor, Chairwoman

Kim Bowers

Barbara Bernard, Alternate

Robert Lennartz

Dwight Mateer

Robert Metz

OTHERS PRESENT: John C. Bailey, 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 MINUTES:** Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers to **APPROVE** the January 19, 2021 meeting minutes.

The meeting minutes for January 19, 2020 were **UNANIMOUSLY APPROVED.**

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

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

OLD BUSINESS

1. ZBA File #25-2020, Benderson Development, 3507 N. Buffalo Road, Zoned B-3 (Part of Farm Lot 14, Township 10, Range 7; SBL#161.08-2-1). Requests an Area Variance to allow vehicle parking in the front yard of a proposed Medical Office Building. Vehicle parking is prohibited in the front yard in this B-3 Zone, §144-29A (4). Note: previously removed from 1/19/21 & 2/16/21 agenda by Applicant. Requesting to be placed on 3/16/21 meeting agenda.

APPEARANCE:Mr. James Boglioli, Benderson Development Representative

Mr. Boglioli presented an updated parking plan and briefly explained Benderson Developments’ proposed project to construct a new Medical Office Building. He told the Board that the existing structures on the site will be demolished, and the new facility will be leased to several tenants. Mr. Boglioli stated that Benderson Development is requesting a Variance to allow Front Yard Parking. The presented parking plan shows three options, and he explained each one to the Board, stating that he does not feel the character of the neighborhood will be changed, as front yard parking exists in the neighboring area.

The members discussed the front yard parking at several commercial sites in the area, and they also reviewed the proposed front yard parking choices presented by Mr. Boglioli.

Mr. Lennartz stated that the Board just received this updated plan, and he would like more time to review it.

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 decided to table this request to allow time to review it.

Ms. Bowers made a **MOTION**, seconded by Mr. Metz to **TABLE** the review of this case to allow the members time to review the updated plan.

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 IS PASSED**.

2. ZBA File #27-2020, Jason & Meghann Skrok, 141 Bielak Road, Zoned R-3 (Sub Lot 151, Map Cover 1809; SBL#152.09-2-41). Requests an Area Variance to install a 6-ft. high fence in the side street yard. Maximum height of a fence in a side street yard is 3-ft., §144-22A (1). Tabled by the Board to the 3/16/21 meeting.

APPEARANCE: Mr. & Mrs. Skrok, Petitioners/Property Owners

The Skrok’s discussed the difficulty that they were having to the Board in trying to resolve their non-compliant fence.

Code Enforcement Officer, David Holland was asked to speak on the code by the Board.

The Skrok’s noted that it would cost an exorbitant amount of money to reduce the size of the 6-ft. fence to 3-ft. In addition, a 3-ft. fence will not work for them. They also do not want to remove the existing two trees in their yard, as this would be another expense. They, again, stated that their neighbors have no objection to the Variance request for the 6-ft high vinyl fence in the side street yard.

Mr. Mateer is not sure he feels the fence should be granted.

Ms. Bowers would like to see a compromise.

Board Discussion: The members discussed a compromise to have a 10-ft. side setback. It was noted that the residence is set back far enough from the road to be able to add an addition ten feet toward the road and then build a 6-ft. high fence, ten feet closer to the road without the need for a variance.

Mr. Mateer made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** an 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. Six foot high fence can be located 10-ft. into the side street yard.

THE VOTE ON THE MOTION BEING:

KACZOR NAY

BOWERS AYE

LENNARTZ AYE

MATEER AYE

METZ NAY

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

**NEW BUSINESS**

1. ZBA File #03-21, Jesse M. Wagner, 5531 Lake Avenue, Zoned R-3 (Part of Farm Lot 28, Township 10, Range 7; SBL#152.13-3-6). Requests (2) Area Variances to construct an addition to a detached garage. First to allow a 5-ft. side setback. Minimum side setback for this R-3 Lot is 10-ft., § 144-9B. Schedule of Height, Lot, Yard & Bulk Regulations. Second, to allow a dominating accessory area. Accessory use area shall not dominate principal use area, § 144-5, terms defined.

APPEARANCE: Mr. & Mrs. Jesse Wagner, Petitioners/Property Owners

The Wagner’s distributed photos and reference material to the Board, explaining that they desire to construct an addition to their detached garage, as it is not high, or long enough, to house their personal vehicles, which are 3/4 ton pickup trucks. They also desire additional storage room for personal items. They contacted their neighbors, and no objections were voiced to either variance request. They told the Board that they plan to have the existing garage repaired, or replaced. Their goal is to attach it to the proposed pole barn. The front garage will be connected to their residence, and converted into living space for their growing family. They explained that the side setback variance is necessary to avoid the removal of two mature Maple trees. Proper drainage will be

installed to avoid flooding of the neighbor’s property and the surrounding area. The Wagner’s feel that moving forward with the project will add curb appeal to their property and is good for the neighborhood. It will also help solve personal storage issues.

Ms. Bernard discussed adding on to the residence and the lot coverage requirements with Code Enforcement Officer David Holland.

Mr. Metz established that there will be no business run from the addition. There is a snow plowing business, but only the plows and trucks will be kept here.

The members had additional questions that were answered to their satisfaction by the Petitioners.

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 had several questions for Mr. Wagner that were answered to their satisfaction.

Ms. Bowers made a **MOTION**, seconded by Mr. Mateer, to **GRANT** both Area Variances, 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**, **BOTH** THE **AREA VARIANCES REQUESTED ARE PASSED.**

2. ZBA File #04-21, Wendy Whelan, 211 Vistula, Avenue, Zoned R-3 (Sub Lot 632 & 633, Map Cover 956; SBL#151.16-2-24). Requests an Area Variance to allow a front porch with a 1-ft. +/- front setback. Setback for demolished porch was 2-ft. +/-. Yard area, if less than required, shall not be further reduced, § 144-20C.

APPEARANCE: Ms. Wendy Whelan, Petitioner/Property Owner

Ms. Whelan explained that over time, her front porch crumbled and deteriorated. Not realizing that she needed a Building Permit, she had a new porch constructed over the existing dilapidated concrete porch. Besides not having a Building Permit, it was found that the new porch is noncompliant with the Towns’ front setback ordinance. Ms. Whelan spoke of the benefits of the new porch, noting that it is attractive, and provides a safe place for her children to play and enter the residence. Ms. Whelan stated that if she is directed to remove the porch it will cause a financial hardship.

Ms Bowers asked Ms. Whelan what type of porch was put in, and the submitted photos where reviewed of the new porch.

Mr. Metz established that the new porch is over the old porch and that it is slightly larger than the original 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: The members feel the new porch looks good.

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** an Area Variance, 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 #05-21, Brandi Magney & Nicholas Zona, V/L – 32 Hampton Court, Zoned R-1 (Sub Lot 46, Map Cover 2611; SBL#173.19-2-13). Requests an Area Variance to construct a single family dwelling with a 60-ft. front setback. Minimum front setback for this lot, per map cover 2611, is 70-ft.

APPEARANCE: Ms. Brandi Magney & Nicholas Zona, Petitioners/Property Owners

Deputy Attorney John Bailey stated that the Zoning Board of Appeals has no authority in this matter.

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 8:27 P.M.

DATED: 4/16/21 Respectively Submitted,

REVIEWED: 4/20/21 Rosemary Messina, Secretary

Zoning Board of Appeals

Ms. Lauren Kaczor, Chairwoman

Zoning Board of Appeals