

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park March 21, 2023, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Lauren Kaczor Rodo, Chairwoman
Robert Lennartz
Dwight Mateer
Kim Bowers
Robert Metz

EXCUSED: Michael Williams, Alternate

OTHERS PRESENT: John C. Bailey, Deputy Town Attorney
John Wittmann, Code Enforcement Officer
Anna Worang-Zizzi, 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. Per Section 144-63 (E) (1) All public notices have been filed. 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 minutes for February 2023 were approved unanimously.

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

KACZOR, AYE/ BOWERS, AYE/ LENNARTZ, AYE/ MATEER, AYE / METZ, AYE / WILLIAMS, AYE

NEW BUISINESS

1. ZBA File #05-23, John Chrynowicz, 4990 Ellicott Road, Zoned R-2, [Note: this SBL# has been corrected: SBL# 173.17-1-2.1], (Farm Lot 13, Township 9, Range 7). Requests two (2) Area Variances for a pole barn. The first Area Variance is for the barn to be forward of the primary structure with a 16 foot front setback. *Minimum front setback in an R-2 zone is 40 feet, §144 Attachment 14:1 Schedule of Height, Lot, Yard and Bulk Regulations.* The second Area Variance is that the barn exceeds the footprint of the primary structure by 338 square feet. *A use customarily incidental and subordinate to the main use or building and located on the same lot therewith. In no case shall such "accessory use" dominate, in area, extent or purpose, the principal lawful use or building, except that vehicle parking areas may be larger than building area, §144-5 Terms defined.*

The Chair recused herself.

APPEARANCE: *John Chrynowicz and Chelsie Crawford - Owners*

The Applicant explained that the SBL# was incorrect on the Agenda for this meeting as he merged two adjacent lots and at that time it was given a new SBL#. The updated SBL# is 173.17-1-2.1 [Note: the SBL# was corrected above to reflect this change]. The Applicant explained that the previous Building Inspector issued him a building permit and the Applicant subsequently built the barn. The Applicant has been informed by the Town Building Department that he requires two (2) Variances for this barn.

Mr. Lennartz noted that the setback violation caused no infringement on neighboring property.

Mr. Mateer inquired what the barn will be used for. He also inquired if a business would operate out of the barn. The Applicant explained he will use the barn for storage and no business would operate out of it.

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

Ms. Joanne Litwin
4995 Chestnut Ridge Road
Orchard Park, NY 14127

Ms. Litwin feels the barn does not create a change in the character of the neighborhood and that it is an improvement. She also feels the structure's placement is in an area more like a backyard than a front or side yard given the parcel's unique shape and the house's orientation.

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

Marie Galadski
Philson Drive
Orchard Park, NY 14127

Ms. Galadski had concerns about the size of the barn and questioned the procedure for the review of this Variance.

Mary Hinterberger
8 Philson Drive
Orchard Park, NY 14127

Ms. Hinterberger stated that she felt the barn was too big and had questions regarding the Zoning Appeals process.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated there had been communications submitted, which were distributed to the Board.

BOARD DISCUSSION:

Mr. Lennartz noted that the barn doesn't infringe on neighboring property. He is not opposed to this project.

Mr. Mateer clarified that this Board would either grant or deny the Variance. If the Variance is denied, the Applicant would have to remove the barn. He further stated that although it would be difficult to for the Applicant, he would vote to have the barn taken down if he was opposed. That being said, Mr. Mateer stated he had visited the site and he doesn't feel the request is substantial.

Mr. Mateer made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the **two (2)** Area Variances with a **STIPULATION** based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will not be an 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 Variances.
4. The request is not substantial.
5. There will not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created, however that does not preclude the granting of the Variances.

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

1. The applicant is to remove the shed.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
BOWERS	AYE

The Motion being **FOUR (4)** in favor, the Motion to **GRANT** the **two (2)** Variances is **PASSED** with a **STIPULATION**.

2. ZBA File #06-23, Towne Hyundai, 3525 Southwestern Blvd., Zoned B-2, SBL# 161.07-7-7.1, (part of Farm Lot 22, Township 10, Range 7). Requests an Area Variance to replace the existing 10 foot sign with a 16 foot high monument sign, 120 square feet in area with a 21 square foot text area. *A freestanding sign with a solid supporting base, not exceeding 30 square feet in area or five feet in height. Where sign surface and base are the same dimension, the text of the sign shall not exceed 20 square feet, §144-5 Terms defined.*

APPEARANCE: *Michael Yost – Architectural Graphics*

Mr. Yost explained that Towne Hyundai is remodeling and would like a new sign. The Applicant noted that many signs in this area are this large.

Mr. Mateer noted that the location of the sign was unclear in the information submitted to the Board and requested a clear Site Plan. He would also like to see more options for the sign. The Applicant explained the location and stated that they would be following the Town's setback requirements.

Mr. Metz noted that each sign request that comes before this Board seems to be larger than the previous one. The Applicant stated his opinion that this is a multi-million dollar business and it deserves a nice sign.

Ms. Bowers noted that the Applicant came before this Board for a sign for Mazda. She prefers a “cutout” design similar to that sign vs. a solid base as she feels it improves visibility.

Mr. Mateer clarified with Code Enforcement Officer, John Wittman, details of the Town Code for monument and pole signs.

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

A member of the public asked for clarification on the Town Code, which was provided.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated there had not.

BOARD DISCUSSION:

Ms. Bowers does not care for the solid base design.

Mr. Metz prefers a height of no more than 15ft.

Mr. Lennartz was in agreement with Mr. Metz.

The Chair suggested tabling this case. The Board would like to see a “brand book” with more options.

Mr. Mateer was in favor of tabling this review.

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **TABLE** the review of this Variance.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
RODO	AYE
BOWERS	AYE

The Motion being **UNANIMOUS** in favor, the Motion to **TABLE** is **CARRIED**.

3. ZBA File #07-23, Bliss Construction, 4370 South Taylor Road, Zoned I-1, SBL# 172.07-1-6.1, (part of Farm Lot 23, Township 9, Range 7). Requests an Area Variance for a 9 foot side setback adjoining a residence. *Minimum side setback in an I-1 Zone adjoining a residence is 20 feet, §144 Attachment Schedule of Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Sean Hopkins – Attorney – Hopkins, Sorgi & McCarthy*
Chris Wood – Architect – Carmina & Wood

Mr. Hopkins explained that this project has been approved by Planning Board and distributed documents including the real estate listing for a neighboring property. He feels that the setback violation is due to a “clerical error” in the Town Code book. He explained the limitations of the Site including a FEMA floodplain and DOT drainage easement. He noted that the residence next door to this lot has multiple uses, including two industrial buildings.

Mr. Metz established with the Mr. Hopkins that the first floor of this building had lease agreements.

Mr. Lennartz inquired about a potential compromise, however, the Applicant would not be able to meet their lease agreements in that case.

Ms. Bowers suggested that the developer could add more landscaping between this property and the neighboring residence as screening. The Applicant would not oppose that suggestion.

Mr. Mateer asked Deputy Town Attorney, John Bailey for clarification on the legal definition of “back yard” as it pertains to this lot. Mr. Mateer discussed options for changing the orientation or design of the building, all of which were ultimately untenable due to the limitations of the Site and lease agreements.

The Chair discussed options with the Applicant. She would prefer a setback of 10ft. The Applicant noted that only a small bump out has a 9ft setback.

Mr. Hopkins also noted the neighboring residence is for sale and when it is sold, he feels it is most likely to be used for commercial purposes.

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

Denise Kern
4360 South Taylor Road
Orchard Park, NY 14127

Ms. Kern explained that her residence is neighboring this property and that she has a “legal non-conforming” lot. She believes this Variance will cause a hardship. She has concerns about drainage and lighting and feels that the contractors are in violation of the “Good Neighbor policy” which was previously established. She believes the developers have dug closer to the property line than stated. She discussed an offer from Mr. Bliss to purchase her lot.

Theresa Wilder
4270 South Taylor Road
Orchard Park, NY 14127

Ms. Wilder had questions about the Code and was shown copies of the relevant section. She is opposed to this Variance.

Marie Manley
250 Sunset Terrace
Orchard Park, NY 14127

Ms. Manley read a statement. She feels the developer “cuts corners” and has concerns about drainage.

The Chair then asked if the Secretary had received any communications either for, or against, granting the Variance. The Secretary stated there had and they had been distributed to the Board.

BOARD DISCUSSION:

Mr. Hopkins explained the lighting plans approved by the Planning Board and stated they are “dark skies compliant” and noted there will be no lighting on the side of the building neighboring Ms. Kern. He also discussed drainage. Mr. Wood explained that they may have dug closer to the property line as part of their “Site Work” because they had to replace dirt before placing the footers.

Mr. Mateer feels the Applicant acted in good faith. He suggested that this case be referred to the Conservation Board who can make recommendations for extra landscaping between this property and the neighboring residence.

Ms. Bowers agreed with referring this case to the Conservation Board.

Mr. Lennartz was in agreement with Mr. Mateer about the additional landscaping and also feels the Applicant acted in good faith.

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

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will not be an 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 not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is not self-created.

Stipulation:

- 1 Extra landscaping is to be approved by the Conservation Board.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
RODO	NO

BOWERS

AYE

The Motion being **FOUR (4)** in favor and **ONE (1)** opposed, the Motion to **GRANT** the Variance is **PASSED**.

4. ZBA File #08-23, Frank & Mary Albert, 3837 North Freeman Road, Zoned R-2. SBL# 162.10-2-11, (part of Farm Lot 8, Township 9, Range 7). Requests an Area Variance to replace their storm damaged garage in the existing location forward of the primary structure. *No accessory structure shall be located within the front yard or required side yard, §144-24(A)(1)(b).*

APPEARANCE: *Joseph Iafallo – Bammel Architects*
Frank Albert - Owner

Mr. Iafallo explained that the original garage fell down during a snowstorm and they wish to utilize the existing foundation.

Mr. Lennartz established with Mr. Iafallo that the items currently there will be cleaned up upon completion of the barn and that one neighbor was present to speak on his behalf.

Mr. Mateer inquired if a business would operate out of this barn. Mr. Iafallo answered negatively.

Mr. Metz inquired where the Applicant would store items during construction. Mr. Iafallo stated that much of it would be stored inside his house. Mr. Metz noted a lot is still outside.

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

Michele Terrerri
3841 North Freeman Road
Orchard Park, NY 14127

Ms. Terrerri spoke in favor of this project.

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 there had not.

BOARD DISCUSSION:

The Board was in favor of this project.

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

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will not be an 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 not be an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.
6. The difficulty is self-created, however that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
MATEER	AYE
METZ	AYE
KACZOR	AYE
BOWERS	AYE

The Motion being **UNANIMOUS** in favor, the Motion to **GRANT** the Variance is **PASSED**.

There being no further business to be presented to the Board at this time, Chairwoman Kaczor adjourned the meeting at 8:14 P.M.

DATED: 4/4/2023
REVIEWED: 5/16/23

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman
Zoning Board of Appeals