

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the May 15, 2018 meeting held in the Municipal Center Basement Meeting Room, S4295 South Buffalo Street.

MEMBERS PRESENT: Kim Bowers, Chairwoman/Robert Lennartz/Robert Metz/Lauren Kaczor  
Barbara Bernard, Alternate

EXCUSED: Dwight Mateer/Len Berkowitz, Deputy Town Attorney

OTHERS PRESENT: David Holland, Code Enforcement Officer  
Rosemary Messina, Recording Secretary

The members recited the Pledge of Allegiance and the Chairwoman 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 Chairwoman 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.

The Chairwoman stated that Mrs. Bernard, the Alternate member, will be voting due to the absence of Mr. Mateer.

The meeting minutes for the April, 2018 meeting were unanimously **APPROVED**.

The Chairwoman stated that site inspections of all cases presented tonight were made by:  
**BOWERS, AYE/LENNARTZ, AYE/KACZOR, AYE/METZ, AYE/BERNARD, AYE**

1. ZBA File #07-18, David & Sandra Bowersox, 6385 Cole Road, Zoned A-1 (Part of Farm Lot 58, Township 9, Range 7; SBL #198.00-2-22.2). Request an Area Variance to install a 6-ft. high fence partially within the front yard. Maximum Height of a fence in a front yard is 3-ft., Section 144-22A (1).

APPEARANCE: Mr. David Bowersox, Petitioner/Property Owner

Mr. Bowersox told the members that unwanted large dogs, horses, and goats, come onto his property. He described an incident where the dogs attacked and nearly killed his small dog. Based on this situation, he would like to install 6-ft. high fencing, with wire, along his property line to prevent this from happening in the future. The maximum height of a fence allowed in a front yard is 3-feet, and the members' questions established that a 3-ft. high fence will not prevent the neighbor's animals from accessing Mr. Bowersox's property. He read aloud the five criteria the Board uses to determine if a variance should be granted or denied, providing responses to each, concluding that he does not feel the granting of the variance will change the character of his neighborhood. The proposed fencing is similar to others in his rural community. It was further established that Mr. Bowersox spoke to his neighbors and no objections were voiced to the variance request. Mr. Bowersox would like to locate the fence within his front yard approximately 250 to 275-feet from the roadway.

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

(Twice) NO RESPONSE.

The Chairwoman 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 that the location of the fencing in the front yard is back far enough from the roadway to not be visible or create a problem. The members feel the fencing is needed.

Ms. Kaczor made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance for the following reasons:

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties.
2. The benefit 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 not self-created.

**THE MOTION BEING:**

<b>BOWERS</b>	<b>AYE</b>
<b>BERNARD</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

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

2. ZBA File #08-18, Daniel Witczak, 113 Vistula Avenue, Zoned R-3 (Sub Lot 613-615, Map Cover 956; SBL #151.16-2-33). Requests an Area Variance to construct a covered porch with a 20-ft. 6-inch front setback. Minimum front setback for this R-3 lot is 30ft., Section 144-9B, schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mrs. Lindsey Witczak, Petitioner/Property Owner

Mrs. Witczak asked that a misspelling of her last name be corrected. Chairwoman Bowers stated that the Secretary will correct this.

Mrs. Witczak told the members that their porch collapsed and they desire to construct another one that is approximately 3-ft. larger. The members' questions established that the porch will match the character of the existing home and the porch will be extended 8-ft. from the house.

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

(Twice) NO RESPONSE.

The Chairwoman 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 is a benefit to the neighborhood.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor, to **GRANT** the Area Variance for the following reasons:

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties.
2. The benefit cannot be achieved in another way, other than the granting of the variance.
3. The request is 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 MOTION BEING:**

<b>BOWERS</b>	<b>AYE</b>
<b>BERNARD</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

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

3. ZBA File #09-18, ECO Serve Pest Services, 3573 North Buffalo Road, Zoned B-3 (Part of Farm Lot 14, Township 10, Range 7; SBL #161.08-2-15.2). Requests an Area Variance to install a freestanding sign at the front lot line. Minimum front setback for this freestanding sign is 10-ft., Section 144-38B (1).

APPEARANCE: Mr. Scott Hall, Petitioner/Property Owner  
Ms. Audrey Hall, Petitioner/Property Owner

The Hall's explained the need to re-instate a commercial sign in the front yard for their business. The two previous businesses had their signage located here, with landscaping and two electrical lights secured into the ground. The Town Ordinance declares a sign must be 10-ft. back from the ROW. Currently, the sign posts sit at the property line. The Hall's would like the sign to remain here to avoid moving the electric lighting, redesigning landscaping, and having to remove two existing trees that would then block the view of the sign.

Chairwoman Bowers stated that she remembers when the property lines were pushed back during the re-configuring of the roadway.

Mrs. Bernard feels this is a good opportunity to make this property Code Conforming.

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

(Twice) NO RESPONSE.

The Chairwoman 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 do not want the two existing trees removed for the sign to become Code Compliant.

Mr. Lennartz made a **motion**, seconded by Mr. Metz, that this is an **Unlisted Action** and that a **Negative Declaration** under **SEQR** be made based on the submitted **Short EAF**.

THE MOTION BEING:

<b>BOWERS</b>	<b>AYE</b>
<b>BERNARD</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

**THE VOTE ON THE MOTION BEING UNANIMOUS, A NEGATIVE DECLARATION IS MADE UNDER SEQR.**

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Area Variance for the following reasons:

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties.
2. The benefit sought cannot reasonably be achieved in another way, other than the granting of the variance.
3. The request is 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 not self-created.

**THE MOTION BEING:**

<b>BOWERS</b>	<b>AYE</b>
<b>BERNARD</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

- 4. ZBA File #10-18, George & Jackie Weimer, 3508 Old Transit Road, Zoned R-2 (Part of Farm Lot 1, Town 9, Range 7; SBL #163.05-3-4.1). Requests an Area Variance to create a Building Lot consistent with pre-12/89 requirements. Lots created after 12/6/89 are subject to Section 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. & Mrs. George Weimer, Petitioner/Property Owner

Mr. & Mrs. Weimer presented photos and a survey of the property they own for the Boards' review. They explained that they would like to split the parcel and sell a "Buildable Lot". However, they would like the lot measurements to be based on the "Pre-1989" R-2 Bulk Regulations, as the current Town R-2 Bulk Regulations cannot be conformed to. The Weimer's also told the Board that their daughter resides in the home located on the eastern portion of this parcel, along Old Transit Road.

Code Enforcement Officer David Holland stated that, based on today's Requirements the proposed Building Lot is short in depth and area. The question for the Board is, "Can the Petitioner follow the "Pre-1989" Bulk Regulations and create a Building Lot consistent with Pre-12/89 Requirements?"

Mr. Lennartz established that the R-2 Zoning District now requires a Building Lot to have a minimum of 20,000-sq.ft., with a minimum depth of 150-ft. The proposed lot falls short of these requirements. The newly created lot, as proposed, will conform to Pre-1989 Bulk Requirements.

Ms. Kaczor asked to review the file materials.

Mr. Metz discussed removing the existing garage to add additional square feet to the proposed parcel. Mr. Weimer stated that he would be in compliance with the current regulations if he removed the existing garage and added the additional property to the proposed Building Lot.

Mrs. Bernard established that the Applicants have owned the property for two-years, and would like to use the "Pre-1989" Regulations to split the parcel, and sell the newly created parcel as a Buildable Lot. Mrs. Bernard stated that she has a problem with this request. The Town Regulation they want to use is from 30-years ago. She concluded she supports making two conforming lots with the current Regulations.

Ms. Bowers established that the applicants would consider constructing another detached, two-car garage if this one is removed.

Ms. Kaczor asked the Petitioner's why they want to split their parcel. Mr. Weimer explained that responsibilities of mowing and upkeep of the property led to this decision.

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

(Twice) NO RESPONSE.

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

IN OPPOSITION:

*Mr. Michael A. Mleczak  
7960 Milestrip Road  
Orchard Park, New York 14127*

Mr. Mleczak spoke in opposition to the variance request, noting that he feels there is already a lot of traffic at this corner.

*Mr. Henry Riederer  
3530 Transit Road  
Orchard Park, New York 14127*

Mr. Riederer stated that he does not support the variance request, and explained that he has safety concerns with the vehicle traffic that occurs at the corner of Old Transit and Milestrip Roads. Many accidents have occurred here.

*Mr. William Rivera  
7961 Milestrip Road  
Orchard Park, New York 14127*

Mr. Rivera stated he does not support the variance request. He feels the request will change the character of the neighborhood.

*Mr. John Giannicchi  
3520 Transit Road  
Orchard Park, New York 14127*

Mr. Giannicchi stated he does not support the variance request, and spoke of sewer and drainage concerns he has.

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:

Code Enforcement Officer David Holland noted that the lot depth cannot be made compliant with the regulation even if the garage is removed.

Ms. Kaczor does not want to change the character of the area, citing concerns for the density.

Chairwoman Bowers stated that even if the garage is removed, the proposed lot cannot be compliant with the Town Regulation regarding the depth. She also commented that this is already a busy intersection.

Mr. Lennartz made a **MOTION**, seconded by Ms. Kaczor, to **DENY** the Area Variance for the following reasons:

1. There will be an undesirable change in the character of the neighborhood, or a detriment to nearby properties.
2. The benefit 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 MOTION BEING:**

<b>BOWERS</b>	<b>AYE</b>
<b>BERNARD</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

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

- 5. ZBA File #11-18, Robert Doty, 6218 Seufert Road, Zoned A-1 (Part of Farm Lot 17, Township 9, Range 7; SBL #197.00-3-38). Requests an Area Variance to construct a detached garage within the front yard. No accessory structure shall be located within the front yard, Section 144-24A (1) (b).

APPEARANCE: Mr. & Mrs. Robert Doty, Petitioners/Property Owners

Mr. Doty told the members he would like to erect a detached two-car garage, as indicated on the submitted survey. He explained that the topography of his property creates a hardship, and limits the placement of the proposed garage. He told the members that the location chosen causes the least disturbance to his property.

Disturbances include; major disruption to buried septic and electric lines, economic hardship, the need for extending his driveway, lessening of cosmetic appeal of the property, and drainage issues. If the garage is attached; there will be major renovations for plumbing, and electrical rewiring. He showed photos stored on his I-Phone to the members of his property.

Mrs. Bernard established that the notch at the front of the proposed garage could be placed facing the roadway. Mr. Doty showed a photo to the Board of the back of the property, noting that the slope in the terrain will prevent this.

Mr. Lennartz discussed placement of the proposed garage at the front of the property with Mr. Doty. Mr. Doty stated that his contractor will meet the complications with the topography and feels this is the best location for the garage. He also established that the side setback meets the Town Requirement. The existing garage is 156-ft. from the road, and the proposed garage will be 120-ft. from the road. It was established that an existing shed (located on blocks) will be removed to a Code Compliant location. This will be a stipulation if the variance is approved.

Mr. Metz discussed the back fill procedure to take place for the proposed garage.

Ms. Kaczor established that no business will be operated from this structure. She further established that Mr. Doty spoke with his neighbor on the west, and he did not have objections to the variance request. Mr. Doty did not contact any further neighbors, as he knew they were to be notified through mail by the Town of Orchard Park.

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

(Twice) NO RESPONSE.

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

IN OPPOSITION:

*Ms. Edna Bowman  
6219 Seifert Road  
Orchard Park, New York 14127*

Ms. Bowman spoke in opposition of the variance request.

Board Discussion:  
Members agree that the existing shed should be conforming.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance with a **STIPULATION** for the following reasons:

1. There will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties.
2. The benefit sought cannot reasonably be achieved in another way, other than the granting of the variance.
3. The request is 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.

This Variance is granted with the following **Stipulation**:

1. The existing shed is to be brought to a Conforming Location.

**THE MOTION BEING:**

<b>BOWERS</b>	<b>AYE</b>
<b>BERNARD</b>	<b>AYE</b>
<b>LENNARTZ</b>	<b>AYE</b>
<b>METZ</b>	<b>AYE</b>
<b>KACZOR</b>	<b>AYE</b>

**MOTION UNANIMOUSLY APPROVED WITH A STIPULATION.**

Meeting adjourned at 8:02 P.M.

DATED: 6/15/18  
REVIEWED: 6/19/18

Kim Bowers, Chairwoman

Zoning Board of Appeals  
Rosemary Messina, Secretary