

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the May 19, 2015 meeting held in the Municipal Center Basement Public Meeting Room, S4295 South Buffalo Street.

**APPROVED
MINUTES**

MEMBERS PRESENT: Joseph Liberti Chairman/Robert Metz/Roland Pigeon/Robert Lennartz
Dwight Mateer/Lauren Kaczor, Alternate

OTHERS PRESENT: Len Berkowitz, Deputy Town Attorney/David Holland, Code Enforcement Officer
Rosemary Messina, Recording Secretary

The members recited the Pledge of Allegiance and the Chairman called the meeting to order at 7:00 P.M., stating that if anyone appearing before the Board was related through family, financial or 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 Chairman 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.

Mr. Lennartz made a **MOTION**, seconded by Mr. Pigeon, to **ACCEPT** the minutes of the April 21, 2015 meeting.

THE VOTE BEING UNANIMOUS, THE MOTION IS HEREBY PASSED.

The Chairman stated that site inspections of all cases presented tonight were made by:

KACZOR, AYE/LENNARTZ, AYE/LIBERTI, AYE/ METZ, AYE/ PIGEON, AYE/MATEER, AYE.

NEW BUSINESS:

1. ZBA File #08-15, Georgio Condemi, 6965 Michael Road, Zoned R-3 (Part of Farm Lot 463, Township 10, Range 7; SBL #153.10-1-53). Requests an area variance to erect a 3-ft. 7-in. high fence within the front yard of this premises. Maximum height of a fence in this front yard is 3-ft., Section 144-22A (1).

APPEARANCE: Mr. Georgio Condemi, Applicant/Property Owner

Mr. Condemi explained that he would like to install a fence seven-inches higher than the regulation allows. He, previously, installed a non-conforming fence without a permit and this fence remained in place approximately 7-years before the Town's Building Department had him remove it. He feels other properties have fences exceeding the Town Code and that his request should be granted. Mr. Condemi feels a hardship exists in providing safe care of children attending his wife's day-care business. A higher fence will contain the children and stop play-toys, such as a balls, from going onto the busy roadway. He noted that the rear yard has drainage problems and that it is too wet for the children to play here. Mr. Condemi indicated that the Town made a mistake locating a drainage pipe to collect water, as the water drains directly onto his property, rather than away. He noted Thomas Minor, from the Building Department visited his property and reviewed the drainage situation.

Ms. Kaczor discussed the nursery school children with Mr. Condemi and their care.

Mr. Metz established that the nursery school does not mix the younger children with the older ones and Mr. Condemi describes the ages of attendance.

Bob Lennartz does not understand what the Applicant's hardship is. He sees this as a personal choice of what Mr. Condemi would like. He feels Mr. Condemi can live with a 3-ft. tall fence, per the Town Code.

Mr. Condemi stated that a 3-ft. fence will not look well with his property. He also spoke of the fence gates being part of this request.

Mr. Pigeon established that Mr. Condemi feels the fence must be higher for the safety of the children. Mr. Pigeon, also, told him that the gates are not a part of the request under review this evening.

Deputy Town Attorney Len Berkowitz stated that the legal notice did not specify the gates in the variance request, therefore, the gates cannot be added to tonight's variance request. He further noted that the gates were declined in a previous variance request, and that one-year must pass before the same request can be broached again.

Chairman Joseph Liberti discussed variance procedures with Mr. Condemi.

Mr. Condemi stated that records were not mailed to him to file an Article 48.

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

IN FAVOR:

(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)

IN OPPOSITION:

*Mrs. Elaine Murphy
6795 Michael Road
Orchard Park, New York 14127*

Mrs. Murphy stated she is not against the request, however, she voiced several concerns and questions what will keep the children contained if the sides are not fenced in. She also noted that she has the same water issues Mr. Condemi has, and that she put in drain tiles to resolve it.

Board discussion;

Mr. Lennartz does not feel there is a hardship and that a 3-ft. fence will work to keep the children contained.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no communications have been received.

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

1. There is no hardship established by the Petitioner.
2. The benefit sought can be achieved with the use of a 3-ft. fence.
3. There will not be an adverse effect on the physical or environmental conditions of the neighborhood or the district.
4. The difficulty is self-created.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
LIBERTI	AYE
MATEER	AYE
METZ	AYE
PIGEON	AYE

THE VOTE BEING UNANIMOUS, THE MOTION TO DENY IS PASSED.

2. ZBA File #09-15, Proposed Day Care Facility, 3943 N. Buffalo Road, Zoned B-3 (Part of Farm Lot 16, Township 9, Range 7; SBL #162.13-1-6.1). Requests an Area Variance to extend a driveway area within 5-ft. of the lot line. A driveway shall be located no closer than 5-ft. to the lot line in this Business Zone, Section 144-22G.

APPEARANCE: Nancy Waring, Owner of Edu-Kids
Chris Wood, Carmina - Wood - Morris

Mr. Wood explained that they are requesting a setback Variance for the asphalt driveway, from the north property line, to provide a safe ingress/egress at the site. In addition, there will be adequate parking, pedestrian access, and protection of the building from vehicular traffic (curbing) for the proposed facility.

The Board members' questions established that the variance is sought for safety reasons. Further discussion of the egress and ingress at the site took place, parking, paving and snow removal were also discussed. The spaces at the rear of the site are for employees. Property owners on the north side were not spoken to.

It was learned that the Public Safety Committee reviewed this project, and that there are no future known variances needed for this property.

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

IN FAVOR:

Mr. William Boldt
101 Hawthorne
Orchard Park, NY 14127

Mr. Boldt stated that Mr. Bill Paladino met with him and discussed what he was going to do at the site. He stated that he has no problems with 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.

IN OPPOSITION:

*Mr. Michael Crapsi/Michael's Salon
6285 Scherff Road
Orchard Park, New York, NY 14127*

Mr. Crapsi stated that he is not against, however, he would like to know where the parking lot would be located at the site. He will meet with Mr. Wood to gain this knowledge after the meeting.

*Mr. Dave Stott
15 Locust,
Orchard Park, New York 14127*

Mr. Stott expressed his concerns regarding the future of the site, noting that he has not seen the plans for development and that he would like to know what is intended at the site. He does not want the variance granted until development of the whole property is known.

The Chair then asked if the Secretary had received any communications either for, or against, granting the variance. The Secretary stated no communications have been received.

Board Discussion;

Mr. Lennartz stated that this is the only variance for the property, and the Petitioner has stated that he does not anticipate returning for any further variances.

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

1. There will be no undesirable change in the character of the neighborhood or a detriment to nearby properties created.
2. The benefit sought cannot be achieved in another way.
3. The request is not substantial.
4. There will not be an adverse effect on the physical or environmental conditions of the neighborhood or the district.
5. The difficulty is self-created, but that does not preclude the granting of the variance.
6. There are no further variances anticipated for this property at this time.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
LIBERTI	AYE
MATEER	AYE
METZ	AYE
PIGEON	AYE

THE VOTE BEING UNANIMOUS, THE MOTION IS HEREBY PASSED.

3. ZBA File #11-15, Forbes Capretto Homes, 52 Breezewood Drive, Zoned R-2 (Sub Lot #1, Map Cover 3285; SBL#172.20-4-10). Requests an Area Variance to construct a Single Family Dwelling with a 40' front setback. Minimum front setback for this R-2 lot is 50', Section 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.
4. ZBA File #12-15, Forbes Capretto Homes, 56 Breezewood Drive, Zoned R-2 (Sub Lot #2, Map Cover 3285; SBL#172.20-4-9). Requests an Area Variance to construct a Single Family Dwelling with a 40' front setback. Minimum front setback for this R-2 lot is 50', Section 144-9B, Supplemental Schedule of Height, Lot, Yard & Bulk Regulations.

APPEARANCE: Mr. William Tuyn, Forbes/Capretto Homes

The Chairman combined ZBA File#11-15 with ZBA File#12-15 together as the review and requests are the same.

Mr. Tuyn used his I-Pad to display and explain that two exception lots located in Phase 1 and Phase II of the approved subdivision "slipped-through-the-cracks" and should have been approved with a 40-ft. setback, like all the other homes in the subdivision. Instead they were approved at 50-ft.

The members asked questions pertinent to traffic issues, the existing tree line and reviewed an aerial photo to compare the boundaries. They concluded that 40-ft. will benefit the entire neighborhood. It will also improve the aesthetic beauty of the neighborhood. Mr. Tuyn stated that there are many reasons it is beneficial to keep the setback at 40-ft.

Mr. Mateer told Mr. Tuyn that he feels it is better to have a longer driveway for the safety of small children. This was discussed further.

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

IN FAVOR:

Mr. John Giannicchi
470 Taut Road
Cheektowaga, NY 14127

Mr. Giannicchi stated that he supports 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 have been received.

Board Discussion;

Both Ms. Kaczor and Mr. Mateer feel a compromise should be reached to modify the setback.

Mr. Mateer made a **MOTION**, to **GRANT** the Area Variance with a 45-Ft. Front Setback.

Motion **FAILS**, to obtain a **Second**.

Mr. Pigeon made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Area Variance with a 40-Ft. Front Setback based on the following:

1. There will be no undesirable change in the character of the neighborhood or a detriment to nearby properties created.
2. The benefit sought, can be achieved in another way.
3. The request is not substantial.
4. There will not be an adverse effect on the physical or environmental conditions of the neighborhood or the district.
5. The difficulty is self-created, but that does not preclude the granting of the variance.

THE MOTION BEING:

LENNARTZ	AYE
LIBERTI	AYE
MATEER	NAY
METZ	AYE
PIGEON	AYE

THE VOTE BEING, ONE AGAINST, AND FOUR IN FAVOR, THE MOTION IS HEREBY PASSED.

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

DATED: 6/15/15
 REVIEWED: 6/16/15

Rosemary Messina, Secretary
 Zoning Board of Appeals

Joseph Liberti, Chairman