

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park September 19, 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
Robert Metz
Kim Bowers

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 August 2023 were approved unanimously.

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

MATEER, AYE/ LENNARTZ, AYE / METZ, AYE / BOWERS, AYE / RODO, AYE

NEW BUSINESS

1. ZBA File# 37-23, Patrick Pannell, 37 Golden Crescent Way, Zoned R-3, SBL# 161.15-1-31, (Sub Lot 12, Map Cover 3472). Requests an Area Variance to place their storage shed 4 feet from the side property line. *Minimum side setback in an R-3 zone is 15 feet, §144 Attachment 15 Schedule of Height, Lot, Yard, and Bulk Regulations.*

APPEARANCE: *Patrick Pannell - Owner*

Mr. Pannell apologized for not applying for a building permit before constructing their shed and fence. He stated he was unfamiliar with the ordinance. He submitted letters obtained from neighbors in favor of the shed's placement. He feels that placing the shed 15 feet off the lot line would not look aesthetically pleasing.

Ms. Bowers inquired if the shed's installer had indicated he would need a permit, and when the Applicant received a permit for their fence. The Applicant stated that he was not instructed that he would need a permit, and they received a permit for the fence at the same time they applied for the permit for the shed.

Mr. Lennartz inquired if the shed would be used purely for storage. The Applicant answered affirmatively.

Mr. Mateer inquired how long after the fence installation the shed was installed. The Applicant stated the fence was installed a year before the shed. It was established that the Applicant discovered they needed a permit for the fence and the shed at the same time.

The Chair inquired if the shed was on stone and how difficult it would be to move. The Applicant stated that it was on concrete blocks, it would be challenging to move, and the Applicant feels it is placed in the best spot.

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.

(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 other than the letters of support submitted by the Applicant.

BOARD DISCUSSION:

Mr. Lennartz would have preferred the Applicant had gotten the permit prior to building, however he feels the shed is located in a good spot as it is not easily visible.

Mr. Lennartz made a **MOTION**, seconded by Mr. Metz, to **GRANT** the Area Variance 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
METZ	AYE
MATEER	AYE
BOWERS	AYE
RODO	NO

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

2. ZBA File# 38-23, Samuel Puleo, 6314 Chestnut Ridge Road, Zoned A-1, SBL# 197.00-3-9.1, (Part of Farm Lot 10, Town 9, Range 7). Requests an Area Variance to construct a 72 foot by 64 foot accessory structure which would cause the total of all accessory structures to exceed the primary structure by 2,356 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 Accessory use Terms defined.

APPEARANCE: *Samuel Puleo – Owner*

The Applicant stated he had submitted Plans to the Board. He stated they had a large lot, and the structure would be surrounded by trees and not easily visible from the house or the road. They will use it for storage, and for a pickle ball court and golf simulator.

Mr. Mateer inquired how many acres the property is, what is located behind the property, and if the Applicant is planning on renting out the structure. The Applicant stated that property is 10 acres. He stated Chestnut Ridge Park is directly behind his property, however, the building would not be located closely to that property line. They are not planning to rent the building, it would be for personal use.

Mr. Metz inquired if the building would be screened by trees on all sides, if the Applicant had spoken to any neighbors, and about the size of the golf simulator. The Applicant stated the building would be screened by trees on all sides. He has spoken to the direct neighbor who has no issues, and the golf simulator is a small portion of the building.

Mr. Lennartz stated he had been concerned about the neighbor, and inquired what was located behind the neighbor's property. The Applicant stated that there was a field beyond the neighbor's property, and noted that the planned building is significantly beyond the neighbor's house and most of his lot.

Ms. Bowers inquired what would be stored in the building and if a business would operate out of it. The applicant stated that in addition to cars they would store lawn related items and no business would operate out of the building.

Mr. Mateer inquired about the height of the building, and the Applicant stated that the interior would be approximately 14 feet and the exterior would be "in the low 20s".

Mr. Metz inquired about the siding. The Applicant stated that it would be two-toned aluminum.

The Chair inquired about the connecting driveway and the Applicant demonstrated on the survey where it would be located.

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.

(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 had been received.

BOARD DISCUSSION:

Mr. Lennartz stated that the trees would provide a lot of screening to the building and he was therefore more in favor than he would be otherwise.

Ms. Bowers and Mr. Metz were in agreement.

Mr. Mateer feels it is a substantial request given the size of the proposed building.

The Chair inquired about an existing shed. The Applicant stated they plan to remove it.

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Area Variance 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 substantial based on the size, however it shouldn't preclude the granting of the Variance.
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
METZ	AYE
MATEER	NO
BOWERS	AYE
RODO	AYE

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

3. ZBA File# 39-23, Michael and Leslie Rakowski, 59 Coventry Lane, Zoned R-1, SBL# 173.07-1-44, (Sub Lot 98, Map Cover 2337). Requests an Area Variance to place a storage shed 38 feet from the front property line. *Minimum front setback in an R-1 zone is 50 feet, §144 Attachment 14 Schedule of Height, Lot, Yard and Bulk Regulations.*

APPEARANCE: *Michael and Leslie Rakowski – Owners*

The Applicant stated that the property sits in the middle of a fork in the road and both forks end in a dead end. He stated that the area that is designated as the "front yard" they perceive as their back yard. He explained that the shed would not be easily visible from outside the property. The adjoining neighbor has sent a letter of support. He stated it would be located 5 feet from a property line.

Mr. Metz established that the shed would be located 5 feet from the adjoining neighbor.

Mr. Mateer inquired of Code Enforcement Officer, John Wittmann about the Building Department's determination that this project required only one Variance. Mr. Wittmann explained that the shape of the lot makes it difficult to define the lot lines as determined by Town Code and therefore the Building Department pursued the Variance request with the greatest potential encroachment.

Mr. Mateer inquired if it was possible to build the shed without a Variance. The Applicant stated that they would have to cut into a berm. The Applicant explained that moving it towards the house would impact an existing tree.

Mr. Lennartz inquired about the size and purpose of the shed. The Applicant stated that the shed would be 10 feet by 12 feet and would be used for storage.

Ms. Bowers feels the berm is a hindrance and feels the shed as proposed is in the best location.

Mr. Mateer made a **MOTION** to **TABLE** this review and refer this case to the Building Department for a reevaluation. There being **NO** second, the motion **FAILED**.

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.

(Twice) NO RESPONSE

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

BOARD DISCUSSION:

Mr. Lennartz feels the request is not substantial

Ms. Bowers feels there is not a better location.

Mr. Mateer has concerns about the way the Variance request was defines and feels this review should be tabled.

Mr. Lennartz suggested the Board could offer two Variances. The Chair feels they can approve the shed "as placed." Mr. Mateer feels the location should be reflected in the minutes.

Deputy Town Attorney, John C. Bailey, advised that the record will show that the Building Department determined only one Variance was needed. Alternatively, the Board has the authority to grant two Variances.

The Chair made a **MOTION**, seconded by Ms. Bowers, to **GRANT TWO** Area Variances (One being for a front setback of 38 feet and the Second being for a side setback from the east side line of 5 feet.) 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
METZ	AYE
MATEER	NO
BOWERS	AYE
RODO	AYE

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

4. ZBA File# 40-23, Gregory and Corrie Tonucci, 5 Hilltowne Drive, Zoned R-2, SBL# 172.19-1-34, (Sub Lot 25, Map Cover 2940). Requests two (2) Area Variances for the placement of a storage shed. The first Variance is to place the storage shed 7 feet from the side lot line. The second Variance is to place the shed 7 feet from the rear lot line. *Minimum side and rear setback in an R-2 Zone is 15 feet, §144 Attachment 14 Supplement Height, Lot, Yard, and Bulk Regulations*

APPEARANCE: *Gregory Tonucci – Owner*

The Applicant submitted images. He stated they have a corner lot. He feels that this is the only potential location for a shed and that it is screened by trees. He also stated that he spoke to neighbors who have no concerns.

Mr. Lennartz confirmed with the Applicant that the shed would be 10 feet by 18 feet, there would be no commercial use, and that the neighbors are supportive.

Ms. Bowers noted that the location is not very visible.

Mr. Metz inquired about the location and the Applicant explained.

Mr. Mateer had follow up questions about the location and the Applicant showed the Board on the Survey the exact location of the shed.

The Chair inquired if the Applicant planned to remove any trees. The Applicant responded negatively.

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.

(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 had been received.

BOARD DISCUSSION:

The Board was in favor of the project.

Mr. Metz made a **MOTION**, seconded by Mr. Lennartz, to **GRANT** the Area Variance 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 could be considered 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, but that does not preclude the granting of the Variance.

THE VOTE ON THE MOTION BEING:

LENNARTZ	AYE
METZ	AYE
MATEER	AYE
BOWERS	AYE
RODO	AYE

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

There being no further business to be presented to the Board at this time, the Chair adjourned the meeting at 7:44 P.M.

DATED: 10/10/23

REVIEWED: 10/17/23

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman
Zoning Board of Appeals