

pZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park October 15, 2024, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Robert Metz, Acting Chairman
Dwight Mateer
Robert Lennartz
Michael Williams, Alternate

EXCUSED: Lauren Kaczor Rodo, Chairwoman
Kim Bowers

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, 267(A), 267(B) and 267(C), Subdivision 3, and the Town of Orchard Park Zoning Ordinance. Per Section 144-63 (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.

The Acting Chair noted that Mr. Williams would be voting tonight in the absence of the Ms. Kaczor Rodo.

The Chair stated that at this meeting we do not have full Board representation. In these circumstances it will require (3) votes to approve any motion that is presented. If a vote results in a two/two tie, the motion will be defeated. As a result we offer petitioners the following three options:

1. We can vote on the petition and the petitioner must accept the Board's decision.
2. We can hear the case and postpone the vote until the next meeting of the Board when a full Board is present. The absent member of the Board will review the testimony and all appropriate documents prior to the meeting.
3. The petitioner can postpone making his presentation until the next meeting of this body.

APPROVAL OF MINUTES:

A **MOTION** was duly made and seconded, to dispense with the reading of, and **APPROVE** the Minutes for the September 2024 ZBA meeting. The Minutes were **UNANIMOUSLY** approves.

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

METZ, AYE / MATEER, AYE / LENNARTZ, AYE / WILLIAMS, AYE

The Chair inquired if any voting member would like to recuse themselves from any case. Mr. Williams stated that he would like to recuse himself from item #1.

NEW BUSINESS

1. ZBA File# 41-24, Liberatore Management Group, 44 Willowbrook Drive, Zoned R-2, SBL# 172.03-1-4.1, (Part of Farm Lot 37, Township 9, Range 7). Requests an Area Variance to construct a 24 foot by 16 foot addition onto the existing garage impeding into the required front yard. *Required area or space cannot be reduced. The area or dimensions of any lot, yard, parking area or other space shall not be reduced to less than the minimum required by this chapter, except as provided in this chapter, and, if already less than the minimum required by this chapter, said area or dimension may be continued but shall not be further reduced, §144-20C.*

The Chair noted that due to an Abstention, the Applicant would require all three voting members to vote to approve this Variance request. The Applicant opted to be reviewed at the next meeting.

2. ZBA File# 42-24, Hiram Knapp, 7250 Ellicott Road, Zoned R-1, SBL# 185.00-3-58.12, (Farm Lot 60, Township 9, Range 7). Requests an Area Variance to construct a 30 foot by 15 foot covered porch on the end of the storage building. Total area of accessory structures exceeds primary structure footprint by 342 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, Accessory use §144-5 Terms defined.*

APPEARANCE: *Hiram Knapp - Owner*

In light of the special rules in use, the Chair established that the Applicant would like his case to be heard tonight.

Mr. Knapp stated that he would like to cover his existing patio. He noted that he has six (6) acres of land, and characterized his house as "in the middle of the woods". He stated that he cannot place a deck or patio off his home due to a steep decline.

Mr. Williams established the location of the proposed cover with the Applicant, and inquired about the material. The Applicant stated that it would be metal and match his garage.

Mr. Lennartz inquired if the covered area would be utilized only for recreation. The applicant answered affirmatively.

Mr. Mateer established that three sides of the structure would be open. He inquired if the Applicant had spoken to any neighbors. The Applicant stated that he had spoken to two neighbors who had no issue, but noted that most of his neighbors were located far away from him.

Mr. Metz inquired if he planned to use this area for storage in the winter. The Applicant stated that he would likely store his furniture and any other storage would be minimal.

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 Members were not opposed to the project noting it would not be easily visible.

Mr. Lennartz made a **MOTION**, seconded by Mr. Mateer, to **APPROVE** 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:

METZ	AYE
LENNARTZ	AYE
MATEER	AYE
WILLIAMS	AYE

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

3. ZBA File# 43-24, Park Edge Sweet Shop, 3752 North Buffalo Road, Zoned B-3, SBL# 162.09-1-5, (Part of Farm Lot 16, Township 9, Range 7). Requests an Area Variance to install a free standing sign at the front property line. *Location. One freestanding sign may be erected, and no part of such sign shall be set back less than 10 feet from the right-of-way line. Where a business area abuts a residential area, any such sign shall be set back at least 15 feet from this side line. No sign shall interfere with the visibility from any driveway at its intersection with a public highway, §144-38 B(1).* [Amended 1-2-1991] Received AOD approval on August 21, 2024.

This item was removed from the agenda at the Applicant's request.

4. ZBA File# 44-24, Kevin Fitzpatrick, 95 Stoughton Lane, Zoned R-1, SBL# 162.15-5-59, (Sub Lot 57, Map Cover 2870). Requests an Area Variance to put a 16 foot by 12 foot storage shed 10 feet from the side lot line. *Minimum side setback in an R-1 Zone is 15 feet, §144-9B.*

APPEARANCE: Kevin Fitzpatrick – Owner

In light of the special rules in use, the Chair established that the Applicant would like his case to be heard tonight.

The Applicant stated that he has 24 feet of space between his driveway and the lot line and he feels that his shed would be in the driveway if placed 15 feet from the lot line.

Mr. Lennartz established that the shed would be placed forward of the fence.

Mr. Mateer established dimensions of the shed and location with the Applicant. He noted that by his calculations, the shed would not be in the driveway at 15 feet from the lot line. He feels the Applicant could complete this project without a Variance.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of 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. Williams and Mr. Lennartz were in favor of the project.

Mr. Mateer feels the benefit sought could be achieved another way.

Mr. Lennartz made a **MOTION**, seconded by Mr. Williams to **APPROVE** 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 the modification alleviates some of the issues.

THE VOTE ON THE MOTION BEING:

METZ	AYE
MATEER	NO
WILLIAMS	AYE
LENNARTZ	AYE

The Motion being **THREE (3) in favor** and **ONE (1) opposed**, the Motion to **GRANT** the Variances is **PASSED**.

5. ZBA File# 45-24, Buffalo Sports Garden, 2945 Southwestern Boulevard, Zoned B-2, SBL# 153.10-2-1, (Part of Farm Lot 408, Township 9, Range 7). Requests an Area Variance to construct a 360 square foot addition on the side of the building one foot off the side lot line. *Where the side or rear yard in a residence district abuts a side or rear yard in a nonresidential district, there shall be provided along such abutting line or lines a side or rear landscaped yard at least equal in depth to that required in the residence district. In no case, however, shall the abutting side yard be less than 20 feet nor the abutting rear yard be less than 20 feet, §144-221(2).*

Mr. John Wittmann, Code Enforcement Officer, clarified the zoning of the parcel next door for the Board, noting that the residential portion is towards the back corner and there would be no minimum setback should the entire lot be zoned business.

APPEARANCE: Joseph Battaglia – Owner

In light of the special rules in use, the Chair established that the Applicant would like his case to be heard tonight

The Applicant stated that he is seeking to build an addition to house a walk in cooler. He stated that he is somewhat land-locked and that his neighbor is unwilling to sell a portion of his property to the Applicant, however, he is not opposed to the addition. The Applicant feels that this addition would not impede any future development of the adjacent lot, as the angle of the road would likely push development back on the neighboring lot.

Mr. Williams inquired if the addition could be built in a different location. The Applicant explained that there was parking on the other side of the building, and that for the purposes of running tap lines, this location was preferable.

Mr. Lennartz inquired if the Applicant was aware of any future plans for the lot next door. The Applicant stated that he had spoken about a potential vegetable stand however nothing was certain. He again noted the neighbor was not opposed to the addition.

Mr. Mateer inquired if the Applicant could utilize a different size or shape for the addition. The Applicant felt he was somewhat boxed in.

Mr. Metz inquired about utilities. The Applicant noted that the gas meter would be turned and that a new electric meter would be located elsewhere. Mr. Metz established that it would not be located on the addition impeding further on the neighbor.

The Chair then asked if there was anyone in the audience who would wish to speak in favor of 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 feels that he can support the request considering the use of the adjacent lot.

Mr. Williams stated he feels unsure.

Mr. Mateer feels that while he wants to support a business, he is concerned about maintenance. He noted that the Applicant will have to access the neighbor’s property to maintain the addition, and that while currently the relationship is cordial, in the future someone else may own the parcel.

Mr. Metz inquired if the Applicant had any flexibility in the setback. The Applicant feels he can accept a 2.5 foot setback.

Mr. Mateer made a **MOTION**, seconded by Mr. Williams to **APPROVE** the 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 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.

With the Stipulation:

1. That the side setback not be less than 2.5 feet.

THE VOTE ON THE MOTION BEING:

METZ	AYE
MATEER	AYE
WILLIAMS	AYE
LENNARTZ	AYE

The Motion being **UNANIMOUS** the Motion to **APPROVE** the Variance is **GRANTED with a STIPULATION**.

There being no further business to be presented to the Board at this time, the Chair adjourned the meeting at 7:45 P.M.

DATED: 10/22/24

REVIEWED: 11/19/24

Respectfully submitted,
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman
Zoning Board of Appeals