

**ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK**, Erie County, New York, minutes of the Orchard Park November 19, 2024, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

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

#### **APPROVAL OF MINUTES:**

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

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

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

#### **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.*

APPEARANCE: Sean Hopkins – Attorney  
Stephano Bueme- Applicant  
Michelle Liberatore – Liberatore Management

Mr. Hopkins noted that the garage will not be impeding on the side lot line more than it was currently. He noted the unusual lot lines on this site, explaining that neighboring properties to the Applicant's lot were owned by family members and that the garage was technically on one of those lots. He discussed the "balancing test" the

Board must consider. He stated that the work had begun because the contractor did not apply for a permit, and the owner was unaware.

Mr. Lennartz established that that there would be no commercial use of the garage.

Ms. Bowers inquired about the use. The Applicant stated it would be for personal use.

Mr. Metz established that technically the garage was on the Applicant's grandfather's land.

Mr. Mateer discussed the lot lines with Mr. Hopkins and Mr. Wittmann. The difficulty in determining the front vs. side yard due to the unusual lot formation. Mr. Hopkins was in agreement that the way it was written on the agenda was the most logical way. It was established that the side setback would not be made more non-conforming by this extension, which is why this project did not require a second Variance for the side setback.

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

*Margaret Ann Bueme  
5 Willowbrook Drive  
Orchard Park NY, 14127*

Ms. Bueme stated she was in favor of the project.

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

*Jennifer Totaro  
3 Willowbrook Drive  
Orchard Park, NY 14127*

This neighbor is opposed to the addition, and feels it is imposing, and has concerns about drainage. She showed a picture to the Board

*Carol Castonguay  
52 Willowbrook Drive  
Orchard Park, NY 14127*

This neighbor is opposed to the addition. She feels it is imposing to Ms. Totaro's property.

Mr. Hopkins noted in response to the neighbors' comments that the existing garage was not in good shape. He stated the Applicant intends to repair it and will add a gutter system. He also stated they would add whatever landscaping the Board felt would appease the concerned neighbor.

The Applicant stated that he takes pride in his property and he intends to make the garage "look nice" and add landscaping.

Mr. Hopkins suggested three stipulations:

1. The existing garage be repaired
2. A gutter system be added
3. Landscaping screening be added

**BOARD DISCUSSION:**

Mr. Mateer commented on the lot lines. The Board noted that the existing garage was “grandfathered in”, and therefore the setbacks to the addition need not comply to Code, so long as the garage did not become more non-conforming.

The Board Members discussed possible stipulations, including landscaping. Mr. Metz would like to see a stipulation that the Applicant work with Ms. Totaro to establish landscaping that would mitigate the impact of the addition. The Applicant discussed planting landscape along the north side of the property. Mr. Metz asked Ms. Totaro for input. Ms. Totaro did not feel that landscaping would help the situation.

Ms. Bowers stated that while she was unhappy the Applicant began the project without a permit, she is not opposed to the project. Ms. Bowers noted that while the Applicant may not like the project, she noted that the setback is not being encroached upon more than it is currently.

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.

Mr. Metz made a **MOTION**, seconded by Ms. Bowers, to **APPROVE** the Area Variance based on the following **with stipulations**:

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.

**With the following stipulations:**

1. There will be no business operating out of the garage.
2. The existing garage will be rehabbed and resided.
3. A gutter system will be installed which will direct water away from the neighboring property.
4. The Applicant is to work with the neighbor with regards to landscaping.

**THE VOTE ON THE MOTION BEING:**

METZ	AYE
LENNARTZ	AYE
MATEER	NO
BOWERS	AYE

RODO

NO

The Motion being **THREE (3) in favor** and **TWO (2) opposed**, the Motion to **GRANT** the Variance is **PASSED**.

2. ZBA File# 47-24, Joel & Brittany Durinka, 10 Hidden Oak Court, Zone R-2, SBL# 184.08-4-3, (Sub Lot 3, Map Cover 3478). Requests an Area Variance to construct a covered patio 6.5 feet from an in-ground spa/pool. *No swimming pool shall be located closer than 10 feet to any building nor closer than 10 feet to any rear lot line. No swimming pool shall occupy more than 10% of the total area of the premises, §144-30C(6)(c). Swimming pool- Enclosed body of water, either above or below ground, enclosed by concrete, steel, plastic, canvas or other material §144-5 Terms defined.*

APPEARANCE: *Joel Durinka – Owner*

The Applicant stated that the roof was near his spa, not a pool. He stated that his architect was unaware the spa would be considered a “pool” and noted that the spa was permitted as a “spa”.

Ms. Bowers stated she was in favor of the project.

Mr. Lennartz inquired about changing the roof line. The Applicant stated that it would cost between \$75,000 and \$100,000 to move as footers had already been installed.

Mr. Metz inquired about shortening the roof overhang. The Applicant feels that would shorten the overhang for the kitchen.

Mr. Mateer inquired about seating. It was established that with the seating around the perimeter of the hot tub, the depth was less than 3 feet.

The Chair established that the neighbor had spoken to several neighbors who were in favor of the project.

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.

*Gary Moore  
45 Arrowood Lane  
Orchard Park, NY 14127*

Mr. Moore had a question about the project. The Applicant responded and Mr. Moore rescinded his objection.

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. Metz realized he had a personal connection and recused himself.

Deputy Town Attorney, John Bailey, confirmed that three votes would be required to grant the Variance.

Mr. Lennartz feels that it would be a significant hardship for the Applicant to move the roof.

Mr. Mateer feels that since this is a shallow hot tub, not a pool, he is not concerned about people jumping into it.

Mr. Lennartz made a **MOTION**, seconded by Ms. Bowers, 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	Obstain
LENNARTZ	AYE
MATEER	AYE
BOWERS	AYE
RODO	AYE

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

3. ZBA File# 48-24, Delores Getz, 5252 Dorst Drive, Zoned A-1, SBL# 197.03-1-5, (Part of Farm Lot 33, Township 9, Range 7). Requests Area Variances to divide a parcel for a future single family dwelling construction. 1.) Dimensions for these lots shall conform with the applicable Schedule of Regulations, §144-9B Attachments 14 & 15. 2.) Proposed habitable floor area is 720 square feet. Minimum habitable floor area is 1,200 square feet §144 attachment 16.

APPEARANCE: *Delores Getz – Owner*

Ms. Getz explained that her current home appears to be on a “double lot”, and is large for the house. She believes that the lot size requested is similar to other houses on the street, and would not constitute a change in the character of the neighborhood. The house she is proposing will be similar in “style” to other homes on the street. She stated she spoke to neighbors who are in favor. The original home will be sold to divide as “marital assets”.

Mr. Mateer confirmed with Code Enforcement Officer, John Wittmann that the garage would not count in the square footage, as it is non-habitable space.

Mr. Metz inquired about the about the size of the proposed house compared to other's in the neighborhood and if the Applicant would be willing to consider a 900 square foot home. The Applicant stated that the original home on the property was 1,400 square feet, and there were some smaller homes on the street. She believes one neighboring home to be approximately 900 square feet. The Applicant is unsure if 900 square feet would fit into her budget.

The Chair noted that an 800 square foot home was 66% of the minimum allowable square footage, whereas 900 square feet would be 75%. She expressed concerns about the square footage of the proposed home and inquired if the Applicant had spoken to the neighbors. The Applicant stated that she had spoken to many neighbors who were in favor of the project.

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 suggested a stipulation allowing an 800 square foot residence.

Mr. Mateer was in favor of the project. He feels it will not appear out of place.

Mr. Lennartz stated that he could support it as presented.

Ms. Bowers feels that it will fit into the neighborhood, and noted that it is at the end of the street.

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

Ms. Bowers made a **MOTION**, seconded by Mr. Lennartz, to **APPROVE** the Area Variances 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 Variances.

THE VOTE ON THE MOTION BEING:

METZ	NO
LENNARTZ	AYE
MATEER	AYE
BOWERS	AYE
RODO	NO

The Motion being **THREE (3) in favor** and **TWO (2) opposed**, the Motion to **GRANT** the Variances is **PASSED**.

4. ZBA File# 49-24, Ryan & Beth Keem, 184 East Abbott Grove, Zone R-3, SBL# 161.09-3-20, (Lot 48 Map Cover 897). Requests an Area Variance to remove the existing carport and construct a 2 car garage 5 feet from the side lot line. *Minimum side setback for 80 foot wide lot is 7 feet. Nonconforming lots 60 feet in width or less shall have a side yard setback of five feet. Side yard setbacks of nonconforming lots greater than 60 feet shall increase one additional foot for each 10 feet of width up to the minimum side yard setback set forth in this chapter. Where said lot is adjacent to any street, a side yard conforming to that set forth in § 144-22D shall be required, §144-20A(2).* The minimum side setback for this lot is 7 feet.

APPEARANCE: Ryan and Beth Keem – Owners

The Applicant explained that they currently have a carport which they would like replace with a 2-car garage. He noted that the neighbor he would be intruding upon has a similar variance and is not opposed.

Mr. Mateer noted that this was relatively straight forward.

Ms. Bowers established that the existing breezeway would be replaced with a mudroom, and established the location of the garage as it relates to the house with the Applicant.

The Chair inquired about an existing shed which the Applicant plans to keep.

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:

The Board was in favor of the project.

Mr. Metz 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
MATEER	AYE
BOWERS	AYE
LENNARTZ	AYE
RODO	AYE

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

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: 12/17/24  
REVIEWED: 12/10/24

Respectfully submitted,  
Anna Worang-Zizzi

Ms. Lauren Kaczor Rodo, Chairwoman  
Zoning Board of Appeals