

ZONING BOARD OF APPEALS OF THE TOWN OF ORCHARD PARK, Erie County, New York, minutes of the Orchard Park February 17, 2026, meeting held in the Town of Orchard Park Community Activity Center, 4520 California Road.

MEMBERS PRESENT: Robert Metz, Chairman
Kim Bowers
Dwight Mateer
Michael Williams
Matthew Szalkowski, Alternate

NOT PRESENT: Lauren Kaczor Rodo

OTHERS PRESENT: Maura Seibold, Deputy Town Attorney
Natalie Nawrocki, Code Enforcement Officer
Kristin B. Mahoney, Recording Secretary

The Chair called the meeting to order at 7:00 P.M. and led the attendees in reciting the Pledge of Allegiance. The Chair introduced the members of the Board and representatives of the Town of Orchard Park.

The Chair stated 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.

APPROVAL OF MINUTES:

Each member of the Board has previously received and read a copy of the minutes for the December 16, 2025 meeting.

A **MOTION** was duly made by Mr. Williams and seconded by Ms. Bowers, to **DISPENSE WITH THE READING OF AND APPROVE THE MINUTES** for the December 16, 2025 ZBA meeting.

THE VOTE ON THE MOTION BEING:

METZ	AYE
BOWERS	AYE
MATEER	AYE
WILLIAMS	AYE
SZALKOWSKI	AYE

The Minutes were **UNANIMOUSLY** approved.

A **MOTION** was duly made by Ms. Bowers and seconded by Mr. Williams, to **APPROVE A CORRECTION** in the **March 18, 2025 Minutes**, due to a clerical error, in file #03-25, Item #5 to read:

Mr. Lennartz made a MOTION, seconded by Ms. Bowers, to APPROVE the Area Variances AS PRESENTED, based on the following:

THE VOTE ON THE MOTION BEING:

METZ	AYE
LENNARTZ	AYE
MATEER	NAY
BOWERS	AYE
WILLIAMS	AYE

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

THE VOTE ON THE MOTION BEING:

METZ	AYE
BOWERS	AYE
MATEER	AYE
WILLIAMS	AYE
SZALKOWSKI	AYE

The **CORRECTION TO THE MINUTES of MARCH 18, 2025** was **UNANIMOUSLY** approved.

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 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.

The Recording Secretary read the Affidavit of Publication and Posting of the Legal Notice for this meeting.

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

METZ, AYE / BOWERS, AYE / MATEER, AYE / WILLIAMS, AYE / SZALKOWSKI, NAY

The Chair presented the procedures to be followed at tonight's meeting.

The Chair stated that Mr. Szalkowski will be voting tonight in the absence of Ms. Rodo.

OLD BUSINESS

- 1 ZBA File# 62-25, Amanda Schepis & Benjamin Nold, 5 Norwood Lane, Zoned R-1, SBL# 162.15-5-17, (Sub Lot 36, Map Cover 2870).

- A. Request for a Rehearing for an Area Variance for a fence in the side street yard. *§144-63(E)(3). Zoning Board of Appeals shall refuse to hold further hearings on substantially similar application or appeal the same applicant, his successor or assign for a period of one year except and unless the Zoning Board of Appeals shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred.*
- B. Request two (2) Area Variances to install 120 linear feet of six (6) foot vinyl privacy fence in side street yard. *Maximum height for a fence in a side street yard is 4 feet §144-22 A(2)(c). A Fence shall not exceed four feet in height. A fence shall be of open, decorative design and permit clear visibility through at least 80% of its vertical area. Note- previous request ZBA# 39-25 for 168 linear feet of six (6) foot vinyl privacy fence was denied in August 2025. Also, previous ZBA #43-01 case was granted for existing side yard fence.*

APPEARANCE: Amanda Schepis & Benjamin Nold, Applicants

The Chair stated that such a rehearing would be allowable only upon a motion initiated by one of the members of the Zoning Board of Appeals and adopted by a unanimous vote of the members present but not less than a majority of all members.

The Chair inquired if there was a motion from the Board to rehear case 62-25.

(Twice) NO RESPONSE

Hearing none, the Zoning Board of Appeals **DECLINED THE REHEARING.**

2. ZBA File #63-25, BaMarco Development LLC, V/L Bentley Drive (private), Zoned R-4, SBL# 161.70-1-15, (Part of Farm Lot 32, Township 9, Range 7). Requesting Area Variances for a proposed multiple dwelling, townhouse project with regard to the arrangement of buildings. *No building shall be closer than 60 feet to another building nor 50 feet to the right-of-way of an access road. §144-46c (4)(a).*

APPEARANCE: Nicholas DeMarco, Applicant
Angelo Tomasello, Applicant Partner

The Applicant distributed an affidavit from the owner of 20 Bentley Drive, recapped the project and stated that variances had been granted previously. The variances now sought are less numerous than those previously granted. Those now sought are variances with respect to building separations for only the three (3) westerly buildings- from 60 feet to 50 feet- and the driveway on Unit 15 is proposed to be 31.96 feet.

In response to questions from Board Members, the Applicant stated that the newest plan has the three-unit building placed in a different location. Both plans had 23 new units total. The facades of the new buildings will complement the aesthetics of the existing building. The economics of the project preclude the elimination of units for the purpose of increasing the distance between buildings. Variances were now needed only for the distance between the back buildings, and only one unit requires a variance to the road.

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 closed the Public Hearing.

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

Ms. Bowers made a **MOTION**, seconded by Mr. Williams, to **APPROVE the AREA VARIANCES AS REQUESTED**, 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
BOWERS	AYE
MATEER	AYE
WILLIAMS	AYE
SZALKOWSKI	AYE

The **MOTION** was **UNANIMOUSLY APPROVED**.

NEW BUSINESS

1. ZBA File# 01-26, Joseph DeMarco, 4000 California Road, Zoned I-1, SBL# 161.03-1-5.11, (Farm Lot 32, Township 9, Range 7). Requests two Area Variances for a proposed non-conforming freestanding sign. The first is for a 0'-0" setback from the right-of-way line. *§144-38 B (1) No part of such sign shall be set back less than 10 feet from the right-of-way line.* The second is to allow 32 square feet of display surface per side. *§144-38 B (2). There shall be no more than two display surfaces, each of which shall not exceed 20 square feet.*

APPEARANCE: Rick Johnson, Applicant Representative

Mr. Williams is recusing himself from this vote.

The Chair stated that the Erie County Department of Public Works (ECDPW) has recommended that the Town adhere to its setbacks. In situations such as this, the sign setback will require a supermajority, that is, four (4) votes to pass.

The Chair instructed the Applicant that there will be less than a full Board voting and he is able to adjourn the matter to a later date if the Applicant wishes. The Applicant confirmed that the sign setback Variance will require four (4) votes to pass and the sign size Variance will require three (3) votes to pass. The Applicant stated he would like to continue.

The Applicant stated that he was required to keep the tree line on the property and that meant there was nowhere else to place the sign. The sign needed to be 32 square feet because it needed to display the names of the tenants at the site.

Ms. Bowers inquired if the sign would be illuminated.

The Applicant stated he would not be illuminating it and he was unsure if the owner would be doing that.

The Chair stated that the Sign Permit Application stated that the sign will be illuminated internally.

There was discussion regarding the Planning Board approving the project in 2023 but mandating that the treeline had to stay.

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

Nancy Ernst
3993 California Road
Orchard Park, NY 14127

Ms. Ernst stated that she is against the granting of the Variance. She lives across from this property. She stated that she had to fight with the owners about lights shining in her house, garbage and fallen trees on the lot, and the wind blowing refuse into her yard. She stated that owners cut down $\frac{3}{4}$ of the trees and they allow people to park there for the Buffalo Bills games, resulting in garbage left everywhere. Ms. Ernst has lived there for 47 years and feels the owners are not trustworthy.

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

The Chair closed the Public Hearing.

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

Mr. Mateer made a **MOTION**, seconded by Ms. Bowers, to **DENY the AREA VARIANCE FOR a 0'-0'' setback from the right-of-way line** based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. There will be an undesirable change in the character of the neighborhood, or a detriment to nearby properties created.
3. The benefit sought can be achieved in another way, other than the granting of the Variance.
4. The request is substantial.
5. There will 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
BOWERS	AYE
MATEER	AYE

WILLIAMS
SZALKOWSKI

RECUSED
AYE

The **VOTE BEING FOUR (4) IN FAVOR AND ONE (1) RECUSED**, The **MOTION** was **APPROVED**.

Ms. Bowers made a **MOTION**, seconded by Mr. Metz, to **APPROVE the AREA VARIANCE for 32 square feet of display surface per side**, 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
BOWERS	AYE
MATEER	NAY
WILLIAMS	RECUSED
SZALKOWSKI	AYE

The **VOTE BEING THREE (3) IN FAVOR, ONE (1) OPPOSED, AND ONE (1) RECUSED**, The **MOTION** was **APPROVED**.

2. ZBA File# 02-26, Jack Kuebler, 3892 Southwestern Boulevard. (V/L), Zone DR-2, SBL# 161.09-4-25, (part of Farm Lot 40 Town 9 Range 7). Requests a Use Variance to display storage sheds for sale. *Exterior display not permitted in a DR-2 Zone, §144 Attachment 14A Schedule of Use Controls.* Will require Planning Board approval.

APPEARANCE: *Jack Kuebler, Applicant*

Mr. Williams is recusing himself from this vote.

The Applicant stated that he is seeking to again have 14 sheds and an office on the property, and that he has received Planning Board approval to do so.

Mr. Mateer stated that there was correspondence received this morning from a neighbor regarding his lights shining straight into their home.

The Applicant stated he had fixed this problem last fall.

Mr. Mateer stated that the photos were recent.

The Applicant asked who it was because there was a difficult neighbor who had been trespassing on his property.

Mr. Mateer stated that the neighbor's concern was legitimate.

The Applicant stated there were timers on the lights and if it was necessary to adjust the lights he was willing to do so.

In response to Board Member questions, the Applicant stated that the lights were on a pole, they could be redirected, and they would not be turned on until the sheds were present on the site.

Ms. Bowers inquired as to the time the lights went out and how long the Applicant had been at that location.

The Applicant stated 9 pm, and on Bills game nights 11 pm. The lot was not illuminated after October except for Bills game nights. He had been at the location for approximately 9 years, and the lights were approximately two (2) years old.

Mr. Mateer stated that the Applicant will most likely come back next year seeking the same Variance, and Mr. Mateer would hope that he would be interested in working with the neighbors concerning any issues they have with his business.

The Applicant stated he would address it.

The Chair stated he would like to see any motion be contingent on the Applicant making corrections and having the Town Building Department verify that corrections have been made in the next 30 days.

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 closed the Public Hearing.

The Chair then asked if the Secretary had received any additional communication either for, or against, granting the Variance. The Secretary stated no additional communications had been received above the two (2) distributed this morning and at this meeting.

Ms. Bowers made a **MOTION**, seconded by Mr. Mateer, to **APPROVE the USE VARIANCE with Stipulation that the Applicant make arrangements with the Building Inspector to review the situation**, based on the following:

1. Per Section 144-63 (E) (1) All public notices have been filed.
2. Strict application of the regulations will deprive the applicant of a reasonable return on the property, and the lack of return is substantial as demonstrated by competent financial evidence.
3. The hardship is unique and does not apply to a substantial portion of the district or neighborhood.
4. The variance will not alter the essential character of the neighborhood.
5. The alleged hardship was self-created, however that does not preclude the granting of the variance.
6. The Applicant will make arrangements with the Building Inspector to review the lighting situation at his property within the next 30 days.

THE VOTE ON THE MOTION BEING:

METZ	AYE
BOWERS	AYE
MATEER	AYE
WILLIAMS	RECUSED
SZALKOWSKI	AYE

The **VOTE BEING FOUR (4) IN FAVOR AND ONE (1) RECUSED**, The **MOTION** was **APPROVED**.

There being no further business to be presented to the Board at this time, the meeting was adjourned at 8:01 P.M.

DATED: 02/27/2026
APPROVED: 03/17/2026

Respectfully submitted,
Kristin B. Mahoney, Recording Secretary

Mr. Robert Metz, Chairman
Zoning Board of Appeals