

ZONING BOARD MEETING
TUESDAY- JANUARY 28, 2020
ZONING BOARD
7:00 P.M. - TOWN HALL -1529 NYS RTE 12
BINGHAMTON, NEW YORK 13901

PRESENT: Aleta Kinne, Vice-Chair
 James Brewster, Board Member
 Scott Smith, Board Member
 Joe Aston, Board Member
 Thomas Eldridge, Alternate

ALSO PRESENT: Nicholas Cortese, Esq. - Town Attorney
 Frank Carl, Councilperson
 John Freer, Ordinance Officer
 Donna Webster, Stenographer of the Zoning
 Board

ABSENT: Melanie Pandich, Board Member

At 7:00 p.m. Ms. Kinne called the January meeting of the Town of Chenango Zoning Board of Appeals to order.

Ms. Kinne: Here we are a new year/new decade, 2020. I will be presiding over the meeting tonight as Vice Chair as the Town Board is preparing to appoint our Chairman. Welcome to tonight's public meeting. The Town Board recently interviewed applicants to fill the seats of two members who retired on December 31st, so we welcome two new members tonight to our Zoning Board; Joe Aston, Board Member and Thomas Eldridge, Alternate. Melanie is absent tonight, so Thomas will be able to vote tonight.

Mr. Brewster read the ZBA Duties and Responsibilities.

Ms. Kinne – At the beginning of each year the members are asked to renew and sign our oath of office. Mr. Cortese would you please administer the oath?

Mr. Cortese administer the oath to all the ZBA members and each member signed and returned the signed copy to Donna Webster who in turn will present them to the Town Clerk, Lizanne Tiesi-Korinek, to verify signatures and file in the Clerk's office.

Ms. Kinne - Okay, on your desk you found a couple of amended items, an amended letter from the Planning Board and an amended page 13 of the minutes, if you would add that to the minutes and take out the old page. For the new members these reports are very important. Don't be afraid to speak up each month if you find any corrections

or deletions. Okay, our first order of business tonight will be to accept the minutes of the December 17, 2019 meeting. Are there any other corrections or deletions?

Motion to accept the meeting minutes of December 17, 2019: Motion made by James Brewster, seconded by Scott Smith and carried by the following:

Ayes – 5 Nays – 0 Absent – 1

Ms. Kinne – Tonight we have a public hearing for Linda Bellgraph and Gale Resseguie, 29 Johnson Rd, TM# 128.11-3-6 for an application for an area variance to reduce the side yard setback from 10’ to 24” for a carport in a residential zone and a short EAF is required.

Mr. Brewster read the Public Notice.

Ms. Kinne – Thank you, our public hearings under Section 73-22 of the Code of the Town of Chenango, the ZBA shall establish rules for the conduct of its affairs. Therefore we the Board ask our legal counsel, Mr. Nick Cortese, of the firm Coughlin & Gerhart, to conduct the public hearing on behalf of this vice-chairperson; thus providing his expertise in determining the evidence involved in the various applications of public record, thus contributing to the substantiation of the findings of this Board.

Mr. Cortese – Thank you very much. Good evening to both of you. I think that you probably know from the letter of intent that you submitted to the Board, granting an area variance is a balancing test of five different factors. None of the five factors are necessarily determinative and so basically what we are going to do is we’re going to go through your letter of intent; I will ask you some questions, the Board will ask additional questions, if they have any. After that, by the end of the meeting we will be able to vote on your area variance.

Factor #1 – Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance. Talk to me a little bit about what the project is, what the thoughts are, and what the type of change it would make to your neighborhood.

Ms. Resseguie – Basically it’s a patio cover that can be used as a carport as necessary.

Mr. Cortese – Are there a lot of other houses on your street that have carports?

Ms. Resseguie – Yes

Mr. Cortese – So in all likelihood it would be one of many?

Ms. Resseguie – That’s correct.

Factor #2 – Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Mr. Cortese – So, is there any other way that you could build the project that you want to build without receiving the area variance?

Ms. Resseguie – No, because the way the driveway is positioned, there is no other way to do it. There is a single driveway on that side of the house, so that is the only place.

Mr. Cortese – So, you have an attached garage and you're building an additional awning off the attached garage towards the back of your house and so there is really no other place you can build that.

Ms. Resseguie – Correct

Mr. Cortese – Okay, very good.

Factor #3 – Whether the requested area variance is substantial.

Mr. Cortese – What you said in your letter of intent was that it is not substantial because it's a wooden roof with posts to allow for parking, etc., etc., but whether or not the variance is substantial actually means is whether the variance you're asking for is substantial. So the side setback is 10 feet and you're asking for it to be 2 feet. I would suggest to you that it is a substantial area variance but that doesn't necessarily mean that it's a bad thing. What I will ask is have you asked your next door neighbor about this?

Ms. Resseguie – Yes, they have no concerns with it at all and they have given us a letter.

Ms. Kinne – I do have a letter from them.

Mr. Cortese – Okay, great. So then, no objections from the neighbor that is going to be most affected by this?

Ms. Resseguie – That's correct.

Factor #4 – Whether the proposed variance will have an adverse effect, or impact on the physical or environmental conditions in the neighborhood district.

Mr. Cortese – Obviously you are building a new roof, so will there be a gutter system on the roof? How will the drainage work for that? Will it just run off onto the yard or the driveway? What's your plan for that?

Ms. Resseguie – We haven't totally decided if we were going to go with a gutter system or we were thinking along the line of decorative stone for it to drain into.

Mr. Cortese – Okay, so there would be some kind of drainage system; your just not sure yet. Does your neighborhood have any issues with drainage runoff or any kind of backyard flooding, or anything like that?

Ms. Resseguie - No

Factor #5 – Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Zoning Board, but shall not necessarily preclude the granting of the area variance.

Mr. Cortese – I think this factor is often misunderstood to the extent that self-created basically means were you aware of the zoning in your neighborhood before you decided to undertake this project; well whether you were actually aware of that or not, unfortunately really doesn't matter. Basically the zoning is what it is and you need a variance and you knew or should have known that the variance needed to be had to do your project; it's self-created. I would suggest to you that this variance situation is self-created, but then again that is not a determinative factor whether or not you get the variance.

I don't have anything further as it relates to this application, so I would just ask any Board members who have any question throw them out there at this point.

Mr. Smith – Are there any neighbors present?

Neighbor – Not real close neighbors.

Mr. Smith – How far?

Neighbor – About ten houses down

Mr. Smith – Same side?

Neighbor – No, opposite side.

Mr. Smith – What are your thoughts?

Neighbor – Just don't want to distract from the neighborhood.

Mr. Smith – Any objections?

Neighbor – No

Mr. Smith – Is the roof line two feet from the neighbor at 31 Johnson?

Ms. Resseguie – Yes

Mr. Smith – So there is plenty of space between for drop off rain to dissipate in decorative stone?

Ms. Resseguie – Right

Ms. Kinne – We do have some correspondence...

Mr. Brewster – I have a question; explain to me how you came about this procedure. You said you were not familiar with the residential zoning for the setback. Can you take me through how you're here tonight? How did this come about? Did you go for a permit or something?

Ms. Resseguie – No we actually got a notice telling us...

Mr. Freer – I can explain that for you. I had a complaint come in that there was a building with no permit, so we went to the site and investigated and came back to the office and researched it. It was not permitted, they came in and had a discussion with us, and we moved forward from that point and that is why we are here.

Mr. Brewster – Okay, so, it's built?

Ms. Resseguie – Not completely.

Mr. Brewster – But it's started.

Ms. Resseguie - Yes

Ms. Kinne – Mr. Freer, I was going to ask you next for your recommendation.

Mr. Freer – The ordinance office has no concerns regarding the area variance for the side yard setback. The only thing we request is that a building permit be required from this point forward until you finish the project.

Ms. Kinne – Okay, you will apply for a building permit?

Ms. Resseguie – Yes

Mr. Cortese – Can I ask what state of completion that it is in right now?

Ms. Resseguie – The roof is not complete. They just started the roof and we wanted to do some finishing touches - fascia/soffit.

Mr. Cortese – But it's framed up at this point?

Ms. Resseguie – Yes

Mr. Eldridge – I have a question, it states in here, at the meeting January 13th at the Planning Board this was brought up. Does it not come here before it goes to the Planning Board?

Mr. Cortese – Yes, it does.

Mr. Eldridge – So it was here already?

Ms. Kinne – It comes here and we accept the application and set up the public hearing. During that period of time, it goes to the county, to the Planning Board, to our Engineer and our drainage coordinator, which I have their correspondence here.

Mr. Eldridge – So it was already accepted by the Zoning Board?

Mr. Cortese – Basically when the ZBA first looks at applications, it's a very cursory review just to ensure the application is complete and has all the components. Then the way the procedure works, in this town, is that it goes to the Planning Board and the Planning Board takes a look at it and they make a recommendation to you and then it comes back to do what we are doing now, a public hearing to more formally consider this.

Ms. Kinne – So, our next piece of correspondence is from the Town Engineer, Mr. Urda, and he says he has no engineering objections. Next, the drainage coordinator, Michael Kwartler signed off on it November 19, 2019. Next the Planning Board letter, and the Planning Board refers this back to us with a favorable advisory. Then Broome County; project is not subject to a 239 review. Broome County has no objections. I have a letter signed by Dinos Maniates, the resident at 31 Johnson Road. He has no objections to the carport.

Mr. Eldridge – That's the direct neighbor?

Ms. Kinne – Yes. Is there any further discussion from the Board for these applicants?

Mr. Cortese – Do any members of the public want to speak to this application tonight...Okay.

Ms. Kinne – So Mr. Cortese, do you have any other questions for us?

Mr. Cortese – No, I would just suggest that we close the public hearing at this point if no one has any more comments and we'll talk about the five factors amongst the Board, make some determinations, and then we'll be ready to vote when you are.

Ms. Kinne closed the public hearing for further discussion by the Board.

Mr. Cortese – For those of you guys who are new, area variances require the consideration of the five factors which I just went through with the applicant. You have worksheets in front of you that are for your own information and the hope is that once we get to this point, when the public hearing is closed, we have a discussion on those five factors. We make some conclusions and those end up being part of the minutes and after we do that we can make a motion and vote on whether or not you approve this. There is a resolution attached. I would like to step back and let you guys

have a free flowing discussion. If you need me to step in I will, but go through the factors, discuss them all and then we can move on.

Ms. Kinne – Being the people in the neighborhood are satisfied, I have no objection to the area variance.

Mr. Brewster – One thing I wanted to point out, the Engineer did suggest a survey. How certain are you of your property lines? You are within a margin of error.

Ms. Resseguie – The neighbor’s fence is on the line, in fact there is a stake along the fence.

Ms. Kinne – It has been surveyed and fenced.

Mr. Smith – Just so you know, they recently bought the house and when it was available for sale, I was on the property and did see the stake.

Mr. Brewster – Okay I’m good. If you can find the stake; that satisfies my concern of the Engineer’s concern.

Mr. Cortese – Do any of you have any concerns regarding the individual factors?

Mr. Smith – Nick, when you say substantial, is it possible it’s substantial but in a good way?

Mr. Cortese – I would say if it’s substantial, it’s only a bad thing if you think it’s a bad thing. In this particular instance, the setback is 10’, and they wanted it down to 2’, so they wanted it down 80%. By anyone’s measure, that’s a substantial variance. I’d say anything over 50%, as a rule of thumb is probably substantial, but that is your determination to make, not mine. In any event most variances are substantial that we’ve seen or dealt with in the last year together. That doesn’t necessarily mean that the application shouldn’t be granted. It’s just a factor to consider.

Ms. Kinne – I’ve said this before of other variances and I’ll say it again tonight. In our town, when a lot of the residential areas were developed, they were on small lots with one car families. Now we’re in an age where people have two cars and building carports and garages and so we have to allow the setback changes to accommodate the people. That’s my feeling.

Mr. Smith – I’m sure we’ll get more applications.

Mr. Cortese – I think the applicant said there were a number of carports on that street to begin with. This would just be another. If there is no further discussion amongst the board members, you can make a motion if you like.

Motion to accept Application # 2019-V08 of Resseguie/Bellgraph for an area variance from the minimum side yard setback in the Residential District of 10 feet to 24 inches (2 feet): Motion made by Scott Smith, seconded by James Brewster:

WHEREAS, on November 19, 2019, Gale Resseguie and Linda Bellgraph (“Applicants”) duly filed an application for an area variance for property they own within the Town, located at 29 Johnson Road in the R – Residential District and designated as Tax Map No. 128.11-3-6; and

WHEREAS, Applicant specifically requests a variance from the minimum side yard setback allowed for in the R – Residential District from 10 feet to 24 inches (2 feet) in order to construct a proposed new carport/covered patio on said property; and

WHEREAS, the ZBA has determined Applicant’s application for an area variance to be a Type II action for purposes of the State Environmental Quality Review Act (“SEQRA”) and, thus, no further determination or procedure is required under SEQRA with respect to said application; and

WHEREAS, after due notice by publication in the official newspaper of the Town of Chenango, the ZBA held a public hearing to consider said application on January 28, 2019, at which hearing all persons desiring to be heard in regard to said application were so heard; and

WHEREAS, the ZBA has duly reviewed and considered all documents submitted by the Applicant, as well as the reports and recommendations of the New York State Department of Transportation, Broome County Department of Planning and Economic Development, the Town of Chenango Planning Board, Engineer, Ordinance Officer and Drainage Coordinator, and has carefully considered all of the information presented and received at the public hearing on behalf of the Applicant and the public with respect to Applicant’s application.

NOW, THEREFORE, BE IT RESOVED by the Zoning Board of Appeals of the Town of Chenango, Broome County, New York, as follows:

1. The requested variance will not produce an undesirable change in the character of the neighborhood or cause a detriment to nearby properties.
2. The benefit sought by the Applicant cannot be achieved by another method, other than the grant of an area variance.
3. The requested area variance is substantial.
4. The requested variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The hardship giving rise to the variance request is self-created.
6. The entire record of this proceeding supports the conclusion that the benefit to the applicant conferred by the granting of an area variance outweighs any potential detriment to the health, safety and welfare of the neighborhood or community posed by such grant.

7. Therefore, the Applicant's application #: 2019-V09 for an area variance is granted.
8. This Resolution shall take effect immediately.

The ZBA members voted as follows:

Aleta Kinne, Acting Chair	Voted ___ Y ___
James Brewster	Voted ___ Y ___
Melanie Pandich	Voted _ absent _
Scott Smith	Voted ___ Y ___
Joseph Aston	Voted ___ Y ___
Thomas Eldridge, Alternate	Voted ___ Y ___

The motion was thereupon declared adopted by a roll-call vote of:

Ayes – 5 Nays – 0 Absent - 1

Ms. Kinne – Okay, so under new business we have from the ordinance office a completed application for a use variance: Roosevelt Farm, LLC, Lynne Deamer, 751 Dimmock Hill Rd., Binghamton 13905, TM# 076.04-2-7.221. They are asking us to allow an engineering/source company in agricultural zone. Property will also remain agricultural because they will be boarding horses. May we have a motion to accept this application and schedule a public hearing for February 25, 2020? I might just say you're buying this property contingent upon this approval. Is the owner now here? The owner is here and the purchaser is asking for the application.

Mr. Cortese – I just have to say on the record that Coughlin & Gerhart will have to recuse itself from the ZBA for this particular application. As I understand it; the Town Board is working on having special council approved. From now until the conclusion of this application, I can't give you any legal advice other than to tell you either what the black letter law says or to advise you on procedure. I can't give you any substantive advice.

Ms. Kinne – Okay, so with that said, I'm going to ask for a motion to accept this application and set up a public hearing for February 25th.

Motion to accept the application for Roosevelt LLC-Lynne M. Deamer, 751 Dimmock Hill Road, TM#076.04-2-7.221 for a use variance to allow an engineering/sourcing company to rent space in the existing building and continue to board horses in an

Agricultural District and Short EAF and schedule a public hearing for February 25, 2020: Motion made by James Brewster, seconded by Scott Smith and carried by the following:

Ayes – 5 Nays – 0 Absent – 1

Mr. Carl – One thing; I waited until that was passed because I never want the Town Board to intervene in this stuff, but for administrative clean up your agenda reads to rent space, but that is not what it looks like in your application. Am I correct?

Ms. Deamer – You are correct in that Roosevelt Farms would purchase the property, have the horses and board the horses. The engineering company DDM Supply would rent space within the building.

Mr. Carl - I just wanted to make sure our paperwork was clean.

Ms. Kinne – Before we close, I believe Mr. Carl has an item.

Mr. Carl – Prior to us adjourning, I need to excuse Mr. Brewster for a minute. So the law states that the ZBA selects its vice chairman. It also states that the Town Board selects the chairman, so the ZBA does not have the authority to do that, but the Town Council has asked for input from the ZBA if anybody has any problems from it. On behalf of the Council, I simply want to ask you guys if any of you have any concerns or take issue with appointing Mr. Brewster as Chair for the ZBA.

There were no objections with appointing Mr. Brewster as Chair for the ZBA.

Mr. Carl – Thank you for your time and I wanted to get that in the minutes.

Mr. Brewster was called back in to the meeting.

ADJOURNMENT

Scott Smith made the motion to adjourn with a second from James Brewster.

Meeting adjourned at 7:43 p.m.

Respectfully Submitted,

Donna M. Webster
Stenographer of the Zoning Board