

ZONING BOARD OF APPEALS MEETING
TUESDAY - NOVEMBER 28 2023
7:00 PM – TOWN HALL
1529 NYS RTE 12
BINGHAMTON, NEW YORK 13901

Present: James Brewster, Chairperson
Aleta Kinne, Vice Chairperson
Scott Smith, Board Member

Dan Wolters, Alternate Board Member

ABSENT:
Jon White, Board Member
Ed Miller, Board Member

Also Present: Gavin Stiles, Ordinance Officer
Lindsey Fey, Zoning Secretary
Nathan VanWhy, Planning/Zoning Attorney

Brewster - Alright, I'll call the Town of Chenango Zoning Board of Appeals monthly meeting to order, it's 7:02. Can we have an attendance roll call please?

Fey - Mr. Wolters – Here
Mr. Smith – Here
Mr. Brewster – Here
Ms. Kinne – Here

Brewster - Alright, we have a quorum, so we will continue. Anybody have anything about the October minutes? If not, I'll seek a motion to approve those.

Wolters - So moved.

Brewster - And a second?

Smith - I'll second.

Brewster - Alright, motion made and seconded. Can we have a vote?

Fey - Mr. Wolters – Aye
Mr. Smith – Aye
Ms. Kinne – Aye
Mr. Brewster – Aye

Brewster - OK, October minutes approved and may be posted and filed and whatever else needs to be done. OK, there's no new business tonight, so we have no new applications to approve so, we will jump right into our public hearings for this evening. The first one being application 2023-V10, Cindy Lou Picciano, 478 Port Road, has asked for an area variance to re-construct a porch with less than required front yard setback from 50' to 26.83' to the steps and from 50' to 28.79' to the porch in an Agricultural Zone. And this did not require a 239 evaluation. So, I will open the public hearing at this time. So, we did get an explanation of the five factors, but to start off just tell us a little about the project in general and why you need to ask for relief from the zoning.

Picciano - I've lived in my home for 34 years and it had a deck on it when I bought it, I replaced the deck in 2000 and had to pull it off in September to replace my foundation wall and they're requesting to put in a smaller porch instead of a large deck.

Brewster - OK. So, we do have the five factors, I just want to ask you, you might have covered some of it there, but do you expect this to be an undesirable change in the neighborhood?

Picciano - No.

Brewster - No, OK. And you said that it was looking to be a smaller porch?

Picciano - Yes, the deck that they took out was 57' long.

Brewster - OK, is there any other way to accomplish what this project, I mean you said there was an existing deck before and you're repairing it.

Picciano - No, I had to replace the foundation.

Brewster - OK. So the deck had to come down?

Picciano - Yes.

Brewster - OK, so it's a reconstruct, just smaller.

Picciano - Yes.

Brewster - OK, and there's no other option?

Picciano - No.

Brewster - OK. So, another thing we look at is, is this a big change over the existing zoning law in your opinion?

Picciano - No.

Brewster - OK, did you replace the deck in 2000?

Picciano - Yes, in 2000.

Brewster - Did you have to come before us way back then?

Picciano - No, I don't know why.

Brewster - In your opinion do you think the variance will have an adverse impact on the physical or environmental conditions of the neighborhood. Meaning are you going to be moving a lot of earth or disturbing the environment to do the porch.

Picciano - No. Definitely did with the foundation.

- Brewster -** Board members, any questions on any of those topics? Anybody from the public want to speak for or against this application?
- A O'Brien -** Is it appropriate for the public to ask a question of why they need a variance to replace an existing structure when it's smaller than the original footprint?
- Fey -** It's because she wasn't far enough away from the road. She's supposed to be 50' back.
- A O'Brien -** Oh, and it's because when it was originally put in this was missed and that's why it's being addressed now? I'm just trying to understand code.
- VanWhy -** That's exactly it Amy. It should've been caught before, for whatever reason it wasn't, now it's being replaced.
- Picciano -** How long has the 50' law been in place?
- VanWhy -** That's a good question, I would hazard that's probably been in the town code for a while.
- Stiles -** If something is constructed prior to the zoning then it is pre-existing, non-conforming, kind of grandfathered in. If you build within the envelope of that thing it can kind of remain that way but if you completely take it down now you are subject to our current zoning laws. So, if you had an addition off the side of your house that was this far from your neighbor's property it could be there forever, and you can do whatever you want. If you lose that and try to build it again, you've got to come and talk to us.
- Brewster -** Anymore questions? No one else? Then I will kind of go over our correspondence here. Our Planning Board submitted an advisory to us which was favorable, the town engineer had no objections, drainage coordinator we did not receive anything back from him. And the 239 from the county was not applicable in this case. I did not receive any letters for this application. Therefore without any other questions from the public I will go ahead and close this public hearing. I will now open application 2023-V11, Jared T. O'Brien, 128 Poplar Hill Road, request to construct a pole barn that is 2016sqft instead of the allowed 1500sqft., used for storage only, no occupancy, no sewer, in an Agricultural Zone. OK, the public hearing is now open, so tell us a little bit about the project, why you're requesting the variance.

O'Brien - Well, my wife and I have built up there over 20 years, we didn't expect to have such a big family, so I need a place to keep my small equipment instead of keeping it outside, we tried to make it away from the public as much as possible behind the house. We've been planting trees out front over the years to try and conceal anything back there.

A O'Brien - It's going to be more natural looking because we have trees and it's placed so it kind of flows with it's surroundings and we decided not to go to high so it doesn't look like a monstrosity and overpowers the house.

O'Brien - Yeah, so there won't be any car repairs or oil spills up there. Just to store equipment and extra storage from the house like Christmas decorations.

Brewster - OK, so you kind of covered it. I would say, in your opinion, it's not going to create an undesirable change to the neighborhood. You're asking for more square footage than what is allowed, can you do this any other way? How did you come up with 2016?

O'Brien - I looked at other barns and I visited other places and saw how other pole barns were built and saw a couple of them and thought this is a good size, this will fit what I need and that's what I ran with.

Brewster - Are you pouring a floor?

O'Brien - It'll be a concrete floor.

Brewster - The other big question that we have regarding the physical environment, is there going to be any environmental hazard from actually building the project?

O'Brien - No hazards at all. My profession is in construction, I'm very well-rehearsed in SWPPP, I take care of the environment. This is second nature to me.

Kinne - Are you going to be paving around it?

O'Brien - I like stone, I like the stone look. You can see around my house I have a lot of loose stone and that's what I prefer that to have. Maybe in a few years I'll put a blacktop driveway but right now it's fresh millings, that's what I have available to

me right now. As we know, asphalt is very expensive but, right now it's just going to be a lot of stonework. In front of the barn, it's just going to be millings.

Kinne - I was just asking because of the runoff.

O'Brien - Yes, because of the runoff is why I like stone too, it helps with the erosion, and it slows the water down quite a bit.

Kinne - Thank you.

Brewster - I've covered all the factors that we pretty much have unless somebody else has something to address. Any more questions? I actually have one, you sent us a diagram, and I'm assuming it's the positioning of the building, it's the one with the satellite photo of your property and the structure looks like it's on an angle behind your house, and I know you combined the two other properties with your bigger one there so, my question is, is that, what we're seeing here, is that going to be in the orientation of the barn?

O'Brien - Yes sir.

Brewster - So, I'm seeing it pretty close to not the property lines that you combined, those are out of the picture but your dad's property on that corner. It needs 15 feet, are you 15 feet away from that corner? Because if the diagram is accurate, I don't think it is.

VanWhy - Is the building up already?

A O'Brien - No.

VanWhy - So what he's asking for is not an area variance for the setback.

O'Brien - I know I'm more than 10 feet, I don't have an exact, if I told you an exact, I'd be lying to you, but I definitely know I have more than 10 feet.

VanWhy - So, because you only applied for a variance for the size of the building you will have to place the building 15 feet back, regardless of the sketch kind of showing the site. So, if you're already 10 feet, then 5 or a little bit more basically.

Brewster - It doesn't even have to move. The way it's angled in this picture, my point is his point basically, you just have to make sure you're 15 feet away. It's even a matter if you can just tilt the orientation just to get that 15 feet of the corner off of your dad's property line.

O'Brien - Would it be easier if I just buy my dad's property.

Brewster - Or you could do that. So, there would be three options, one would be that one would be to tip it, or one would be to come back for another variance, which would be the least optimal. The choices are yours, not ours. I just want to make sure you will have that 15 feet since you didn't come for it.

A O'Brien - If the owner of the property were within that 15 feet and they're ok with it...

Brewster - See, there may or may not be a time down the road, we have to look at the land, and the land keeps on existing past all of us so, the law says you can't have anything, you would need a variance for that, but you can't just have a variance for that to have it close to that because someday you, your kids, whoever's going to inherit the land on both sides is going to be long gone in 100+ years and then it'll be somebody else, it won't be O'Brien property, and it might be two other families so, we have to look at the perpetual-ness of the land, if you will, down the road, not just the current owners. The zoning code just goes with the land, not the people.

A O'Brien - OK, got it.

Brewster - So, that's it, that's all I wanted to say. Like I said it's a little bit out of the scope of what we're approving or not. But just know that you have to have that. Are we good?

O'Brien - We're good.

Brewster - OK, anyone from the public want to speak on the application? OK. I do have correspondence that you provided for us from your neighbors, in short it looks like you addressed your neighbors, let them know that you were going to put up the barn, and three residents nearby said that they have no objection to us granting, basically he's saying yes to your request. So, we have correspondence as well from the Planning Board for a favorable advisory to us, the engineer had

no engineering objections, did not receive a report from the drainage coordinator, it did go for county review to 239, they stated 'no significant county or community impacts, however they put in there that the variance is substantial according to recently approved local law 6-2022 allowing for 1500sqft., that's why you're here. They did make a comment about squaring away the building permit dimensions with the other documents, and we probably just also talked about that, the square footage, just make sure all the documents line up. Gavin will probably guide you through with that. The Health Dept. had no comments, and I made a comment about the positioning the 15 feet, that's all I have for correspondence. Last call for anybody before I close the public hearing.

Stiles - No sir, we're good.

Brewster - Ordinance is good, alright. OK, I will close the public hearing now for 2023-V11. So, now we will step back to V10, there's no SEQR for this per our attorney, good news there. Therefore, we can move right along to resolution. Anybody have any comments?

Kinne - I do, she doesn't have any choice.

Brewster - Understood. All good?

Smith - All good.

Brewster - We can walk through the resolution and go through the five factors.

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~~/~~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 ~~can~~/~~cannot~~ be achieved by another method, other than the grant of an area variance.
3. The requested area variance ~~is~~/~~is not~~ substantial.
4. The requested variance ~~would~~/~~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~~/~~is not~~ 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~~ **does not outweigh** any potential detriment to the health, safety and welfare of the neighborhood or community posed by such grant.
7. Therefore, the Applicant's application #2023-V10 for an area variance to reduce the front yard setbacks from 50' to 26.83' (to the steps) and 50' to 28.79' (to the porch) for a front porch in an Agricultural Zone, is ~~granted~~ **granted with the following conditions/denied**.
8. This Resolution shall take effect immediately.

At a regular meeting of the Zoning Board of Appeals of the Town of Chenango, held on November 28, 2023, at Chenango Town Hall, 1529 NYS Route 12, Binghamton, New York 13901, the foregoing motion was made by Kinne and seconded by Wolters. The ZBA members voted as follows:

James Brewster, Chair	Voted: <u>Y</u>
Aleta Kinne	Voted: <u>Y</u>
Scott Smith	Voted: <u>Y</u>
Dan Wolters, Alternate	Voted: <u>Y</u>

- Brewster -** Your variance is approved, see Gavin for a building permit, and you may move forward. Onto application #11 for a pole barn up on Poplar Hill. Any comments or questions before we move on?
- Smith -** There's others in the neighborhood that have similar structures. There's three across the street from him.
- Kinne -** At some point we have to consider the warning that the County keeps giving us about setting a precedent, but I've got no complaints about this one. They keep telling us that, but we just keep right on doing it.
- Smith -** I would think if anything, that if we were to suggest a change it might be relative to how much land you have and how close neighbors are etc. 1500sqft in a 100x160 lot is a lot more than what they have. So, if we go down that road, we should probably come up with a number that it becomes a problem.
- VanWhy -** So there's a reason for the variance factors that you would consider right? So, yes there is a precedence created whenever you undertake anything but there's always reasons potentially to distinguish between granting a variance like this on

this particular lot versus in a lot that you just described, the character of the community and the impact of a structure on a 100x160 lot will be more impactful than a lot like this. I'm assuming for the other properties on this road have now created a neighborhood where this type of structure is common, and so in this neighborhood if someone comes in and says, 'hey I'd like to also build a 2000sqft additional structure', you might say yes, that makes sense they're all big lots, they're all round. But two streets over they're smaller.

Brewster -

Alright, should we go through the factors when we get to that one, but we can jot it down to explain the size of the lot is appropriate for this structure. If everybody's good with that?

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~~ **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 ~~can~~ **cannot** be achieved by another method, other than the grant of an area variance.
3. The requested area variance ~~is~~ **is not** substantial.
4. The requested variance ~~would~~ **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~~ **is not** 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~~ **does not outweigh** any potential detriment to the health, safety and welfare of the neighborhood or community posed by such grant.
7. Therefore, the Applicant's application #2023-V11 for an area variance to construct a pole barn that is 2,016 square feet instead of the allowed 1,500 square feet, to be used for storage only, in an Agricultural Zone, is ~~granted~~ **granted with the following conditions/denied**.
8. This Resolution shall take effect immediately.

At a regular meeting of the Zoning Board of Appeals of the Town of Chenango, held on November 28, 2023, at Chenango Town Hall, 1529 NYS Route 12, Binghamton, New York 13901, the foregoing motion was made by Smith and seconded by Kinne. The ZBA members voted as follows:

James Brewster, Chair

Voted: Y

Aleta Kinne Voted: Y
Scott Smith Voted: Y
Dan Wolters, Alternate Voted: Y

The resolution is now passed, and the variance is granted. Alright then, unless anyone has anything else that will conclude tonight's ZBA meeting. Alright then, without objection I will adjourn the meeting at 7:40PM.