

**ZONING BOARD MEETING
TUESDAY – FEBRUARY 23, 2021
ZONING BOARD OF APPEALS
7:00 P.M. – TOWN HALL (ZOOM)
1529 NY RTE 12
BINGHAMTON, NY 13901**

Present: James Brewster, Chairperson
Aleta Kinne, Board Member
Scott Smith, Board Member
Melanie Pandich, Board Member
Thomas Eldridge, Board Member

Also Present: Nicholas Cortese, Attorney
Jim DiMascio, Councilperson
Gavin Stiles, Ordinance Officer
Kathleen Rudy, Deputy Town Clerk, Interim Stenographer

James Brewster: The hour being 7:05 PM, February 23, 2021. I will call the Town of Chenango Zoning Board of Appeals meeting to order and ask that Kathy, could you please call roll of the Board for us.

Kathleen Rudy: Mr. Smith; present, Mrs. Pandich; present, Mrs. Kinne, present, Mr. Brewster; present. Mr. Eldridge; absent.

James Brewster: With the roll, it appears as though the Board has a quorum and therefore, I'll read the following into record. I, James Brewster, chairman of the Town of Chenango Zoning Board of Appeals, have confirmed with the Counsel that this meeting is being held via ZOOM Virtual Software in accordance with the Governor's Executive Order 202.1 and 202.15 which has been extended by executive order 202.92. Tonight's meeting is being recorded and will be transcribed at a later date.

First order of business tonight is approval of Minutes from our January 26, 2021 Zoning Board Meeting may be approved as written. Are there any objections?

Hearing nothing the January 26, 2021 Meeting Minutes are approved.

NEW BUSINESS:

James Brewster: Application 2021-V02 Dane O'Neil of 21 Cherry Lane, Tax Map # 112.06-1-5 – Application for an area variance to construct a front porch with less than required front yard setback from 30" to 23" in a residential zone and Short EAF.

New applications are presented to the Board and fall under the routine administrative function of the Board and are not open for public comment at the time. Members will evaluate the application for completeness and relevance and accept the application or deny it, refer it to the Town Planning Board for review and recommendation and schedule it for a future public

hearing. Questions and comments regarding the details of an application should be brought forth at the scheduled ZBA public hearing.

James Brewster: Members, are there any questions for the applicant about the information on the forms provided, or do we find the forms complete and ready to move forward?

Aleta Kinne: On the short environmental form, page 1, they didn't fill in # 3 yet, and it would just be a good idea if they could fill in their total acreage.

James Brewster: Asked if the applicants were present, hearing nothing, in that case what Mrs. Kinne said will be noted in the record and have the Ordinance staff follow up with them on that. Any other questions, Mrs. Kinne?

Aleta Kinne: Yes, she was wondering about question 2 on that same page, they might want to reconsider that because they are applying for a permit.

James Brewster: Does any other Board members have any other questions about that?

Nick Cortese: Asked Aleta which question she was referring to. Aleta stated question # 2 on page 1; 'does the proposed action require a permit'. Nick responded that that answer was a correct answer because the Town of Chenango is the only agency that would require a permit in this situation.

James Brewster: Board members are there any other questions or anything you would like to bring up, or he will seek a motion to accept the application and move it into planning and schedule it for our next monthly meeting as public hearing.

A motion was made by Aleta Kinne to accept the application 2021-V02 and forward to the Planning Board and schedule it for our next monthly meeting on March 23, 2021, seconded by Melanie Pandich and carried by the following roll call vote:

Scott Smith, Board Member	Voted <u> Aye </u>
Melanie Pandich, Board Member	Voted <u> Aye </u>
Aleta Kinne, Vice Chairperson	Voted <u> Aye </u>
James Brewster, Chairperson	Voted <u> Aye </u>

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

Ayes – 4 Nays – 0 Absent – 1, Thomas Eldridge

James Brewster: Thomas is here and trying to get into the meeting.

James Brewster: The next order of business is to have our public hearing for application 2021-V01. Mr. Brewster read the rules of a Public Hearing.

Thomas Eldridge is present.

PUBLIC HEARING:

James Brewster: Application 2021-V01 Tyler & Heather Kolb of 23 Aitchison Road, Tax map # 110.12-1-18 – Application for an area variance to create a buildable lot with less than required acreage from 2 acres to 1.9 acres in an Agricultural Zone & short EAF.

James Brewster: Mr. & Mrs. Kolb are present; Board Members are there any questions for the applicants? Hearing none; he will take the Kolb's through the five findings of facts.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Heather Kolb: She believed it is a great neighborhood, she does not think that it would be detrimental. There is a trailer that just went in across the street this past year and she doesn't believe it would cause a detriment. There is a safe spot for the driveway at the bottom of the lot for the curb, they do know a couple of neighbors that support them.

Tyler Kolb: It is a good neighborhood, they would love to be an addition to it.

2. Are there any other methods that you can pursue where we would not have to give you an area variance?

Tyler & Heather Kolb: When we originally found out that we were a tenth of an acre short of building on the lot, we talked about trying to purchase a tenth of an acre but we spoke with one lawyer and the legal fees for doing the paperwork they would charge us was..... this is a more sound decision for us and we didn't want to bother our neighbors too much to ask them if we could purchase a tenth of an acre of their land, to respect that it is their land, so we decided to go this route.

James Brewster: When you purchased the property was it a sub-division originally or was it cut off when you purchased the property and designed to that size?

Tyler Kolb: No, we bought the lot at the size that it is, it was not a part of the surrounding lots in 2017.

James Brewster: Are there any questions from the Board? Hearing nothing, moving on.

3. Talking about the substantiality, are you asking for a really large request that would be detrimental to the entire neighborhood if it was granted?

Tyler Kolb: We don't believe it is a large variance, a tenth of an acre, we do not feel putting a house on this lot will affect the environment in any detrimental way, so we don't feel this is a very large request.

James Brewster: Board Members, are there any questions on number three?

Aleta Kinne: Stated she did not have a question, but a statement. In looking at the map, it is one of the larger lots in that area.

Scott Smith: Adding to Aleta's information, the lot next door, the house was built in 1930 and is 1.16 acres.

Thomas Eldridge: Stated he noticed the same thing on the map, this is like twice the size of some of the ones on that small little map there.

4. Briefly touching on this earlier, would this variance have an adverse effect on the physical or environmental conditions in the neighborhood or district?

Heather Kolb: Technically the land will be altered with a foundation, well and septic so it will be affected in some way and she know that new build construction laws, based on her research, they give you about a year clearance so it will only affect the physical land itself for about a year, but she believed it will... the integrity of the property will still be intact and hopefully will be a good addition to the community.

Tyler Kolb: We don't believe it will have any adverse effects to any neighboring properties.

5. Somewhat of a difficult question for folks to answer is, was this difficulty self-created?

Tyler Kolb: When we bought the property, he was not aware of the two acres for a buildable lot, so the reason it was self-created was lack of research or knowledge, but we didn't create the lot to that size or anything like that.

James Brewster: Any questions from the Board? Hearing nothing, we have covered all of the questions. Any comments from you folks?

Tyler Kolb: Just looking forward to being neighbors in the neighborhood and hopefully to be approved for our request.

James Brewster: He is going to ask Ordinance to provide their comments for the record.

Gavin Stiles: The Ordinance Department doesn't have any problem with the approval of this pending building permit for construction going forward.

James Brewster: Has a question for Ordinance; That map of their driveway not to scale, will you take that into consideration as far as the setbacks, to make sure it is inside of all of the parameters, if and when you are allowed to give them a building permit?

Gavin Stiles: We will, indeed.

Thomas Eldridge: Gavin, does their driveway require a NYSDOT permit where it is located?

Gavin Stiles: He would be remiss if he said yes or no, at the moment, but he will look into it.

James Brewster: Opening the floor to the public for comments on this application.

Resident: Sent an e-mail to Diane Aurelio just before the meeting.

Kathleen Rudy: The Town has not been receiving e-mail from the County all day.

Nick Cortese: Maybe we can answer your question right now.

Resident: The question had to do with the environmental impact on the variance. So, if you grant the variance, what is the environmental impact of the build on the hill? You have a code of 35-16 determination of the environmental significance of build. She guesses the concern has to do with the ground water issues that surround Upper Stella Ireland Road, and what will the build impact the other properties in the neighborhood.

Thomas Eldridge: That would be a good question for Alex, the engineering plan, they signed off on it.

James Brewster: He will be reading comments from the Engineer and the Drainage Coordinator as well, soon during the public hearing. Then we will be evaluating the environmental impact after we close the public hearing, before we decide on the variance. Asking Ordinance; would this also be part of the building and are there other parts of code that you have to look into for the building permit as well as this process?

Gavin Stiles: With it being brought up, it is something that we would dig into, it is not something that we are typically handling but we can explore that for sure. It is not a question that he was expecting to have to get into, because this is not something that we deal with, if this becomes an issue, we can certainly explore it and get to the bottom of what needs to happen.

Resident: Are you aware that there are ground water issues at the intersection at the bottom of Aitchison and Upper Stella Ireland?

Gavin Stiles: He is not currently aware of that. He will look into it.

Thomas Eldridge: He is confused; Aitchison does not run to Stella Ireland; it runs between Dimmock Hill and Wilson Hill.

Resident: You are right, she apologizes.

Thomas Eldridge: So, are you saying there's ground water running further down that Road to Dimmock toward the Dome where it does meet at the intersection there?

Resident: The intersection of Aitchison and Dimmock.

Nick Cortese: It is also important to remember, Board Members, that we are here to consider and area variance this evening that would create a buildable lot but it doesn't guarantee that any structure would be authorized to be built on that lot, that is subject to a separate process where the applicant submits building permit plans and it is reviewed by Ordinance and any other relevant Town Officials for the approval of the actual project itself. Tonight, we are just looking at whether or not the application that we are looking at is for a one tenth of an acre variance so that a structure could be built on the lot and it does not necessarily guarantee that a structure would be built on that lot.

James Brewster: Moving on to the various statements from various departments:

Received February 9, 2021, from the Planning Board for this application:
"The Planning Board referred this application to the Zoning Board of Appeals with a favorable advisory."

Received a 239 review from the County:
"The County Planning Department reviewed the case and has not identified any significant county wide or intra-community impacts associated with the proposed project. However, the site plan should show the driveway access and area of disturbances". They also routed it to Broome County Department of Public Works, Broome County and enclosed comments from the Health Department. The DPW had no comments.

Broome County Health Department Stated:
"It looks as if the applicants are doing everything correctly from the Health Department standpoint."

The Engineer's Report:
"Recommendations, reading the code of the Town of Chenango, it states on chapter 73-3, see variances 2 A, B & C the granting of the variance is necessary for reasonable use of the land and is in harmony with the general purpose of the tone of the chapters. The parcel is a pre-existing condition. Recommendation of the Engineer states, 'Numerous pre-existing, similar instances live next door and within the surrounding area. They have no engineering objections to the variance'".

The Drainage Coordinator Review:
Has an approval with conditions; there is an existing pipe on the property that can be used as a driveway entrance, if the driveway might be elsewhere a 20' x 12" sluice pipe must be installed. So, there is some indication that the previous coordinator has identified something that potentially needs to be done. That will be noted in the record.

James Brewster: Public Hearing for 2021-V01 is now closed and moving on to perform the SEQR evaluation:

Nick Cortese: Short Environmental Assessment Form, Part 2 – Impact Assessment

1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?
Board: No
2. Will the proposed action result in a change in the use or intensity of use of land?
Board: No
3. Will the proposed action impair the character or quality of the existing community?
Board: No
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area?
Board: No

5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking, or walkway?
Board: No
6. Will the proposed action cause an increase in the use of energy and does it fail to incorporate reasonably available energy conservation or renewable energy opportunities?
Board: No
7. Will the proposed action impact existing: a) public / private water supplies?
b) public / private wastewater treatment utilities?
Board: No
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural, or aesthetic resources?
Board: No
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora, and fauna)?
Board: No
10. Will the proposed action result in an increase in the potential for erosion, flooding, or drainage problems?
Board: No
11. Will the proposed action create a hazard to environmental resources or human health?
Board: No

Nick Cortese: Ok, Board Members, you have answered no, or small impact may occur to all of the answers in part 2, so his presumption would be is that under part 3 it should mean a negative declaration under SEQR, if that is the case need a motion for that negative declaration and if he is wrong, we could have a discussion about an alternate recommendation.

James Brewster: Board Members, I will seek a motion for that negative declaration.

A motion was made by Melanie Pandich for a negative declaration for SEQR, seconded by Thomas Eldridge and carried by the following roll call vote:

Thomas Eldridge, Board Member	Voted ___Aye___
Scott Smith, Board Member	Voted ___Aye___
Melanie Pandich, Board Member	Voted ___Aye___
Aleta Kinne, Vice Chairperson	Voted ___Aye___
James Brewster, Chairperson	Voted ___Aye___

A Negative declaration has been approved by the Board for SEQR by a roll call of:
Ayes – 5 Nays – 0

James Brewster: Moving forward to discuss the application in its entirety and the Board Members will consider the five findings of fact. Let's have a discussion from one to five then we will have Nick take us through the Resolution depending on what we discuss.

- 1) Will there be an undesirable change in the character of the neighborhood or cause a detriment to nearby properties?
Board: No
- 2) Can the Benefit being sought by the Applicant be achieved by another method, other than the granting of this variance?
Board: No
- 3) Is the requested area variance substantial?

- Board: No
- 4) Would the requested variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
Board: No
- 5) Is the hardship giving rise to the variance request self-created?
Board: Yes

Nick Cortese: Resolution on Area Variance Application # 2021-V01

**ZONING BOARD OF APPEALS
Town of Chenango, Broome County, New York**

In the Matter of the Application # 2021-V01 of Tyler & Heather Kolb
For an area variance from the minimum lot size
in the A – Agricultural District from 2 acres to 1.9 acres

RESOLUTION ON AREA VARIANCE APPLICATION # 2021-V01

WHEREAS, on January 19, 2021, Tyler and Heather Kolb (“Applicants”) duly filed an application for an area variance for property they own within the Town, located at 23 Aitchison Road, Tax Map No. 110.12-1-18, wherein Applicants requested a variance from the minimum lot size in the A – Agricultural District of 2 acres to 1.9 acres in order to create a buildable lot; and

WHEREAS, pursuant to Part 617 of the implementing regulations of the State Environmental Quality Review Act (“SEQRA”), the Town of Chenango ZBA determined on February 23, 2021 that the requested variance is an Unlisted Action as defined under said regulations and, after a review of the Short Environmental Assessment Form and other relevant documentation submitted by Applicants, issued a negative declaration under SEQRA; 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 February 23, 2021, 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 Applicants, as well as the reports, comments and recommendations of the 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 Applicants and the public with respect to Applicants’ application.

NOW, THEREFORE, BE IT RESOLVED 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 Applicants **cannot** be achieved by another method, other than the grant of an area variance.

3. The requested area variance is **not** 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 Applicants 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 Applicants' application # 2021-V01 for an area variance from the minimum lot size in the A – Agricultural District of 2 acres to 1.9 acres is **granted**.
8. This Resolution shall take effect immediately.

At a regular meeting of the Zoning Board of Appeals of the Town of Chenango, held on February 23, 2021 via Zoom virtual meeting software, as authorized by the Governor's Executive Orders 202.1, 202.10, 202.15 and 202.92, the foregoing motion was made by A. Kinne and seconded by S. Smith. The ZBA members voted as follows:

Thomas Eldridge, Board Member	Voted	<u> Aye </u>
Scott Smith, Board Member	Voted	<u> Aye </u>
Melanie Pandich, Board Member	Voted	<u> Aye </u>
Aleta Kinne, Vice Chairperson	Voted	<u> Aye </u>
James Brewster, Chairperson	Voted	<u> Aye </u>

A Negative declaration has been approved by the Board for SEQR by a roll call of:
 Ayes – 5 Nays – 0

James Brewster: The Area Variance has been adopted by Resolution.

James Brewster: With no further business, it looks like we can adjourn. If you have any objections, please speak up, if not, remain silent and we will adjourn.

Aleta Kinne: Not making an objection, however, would like to welcome the Kolb's to the Town of Chenango and she is sure they will be happy there.

James Brewster: Hearing nothing, this meeting is adjourned. (7:53 P.M.)

Sincerely,



Kathleen A. Rudy, Deputy Town Clerk
 Interim ZBA Stenographer