

ZONING BOARD MEETING  
TUESDAY- APRIL 28, 2020  
ZONING BOARD  
7:00 P.M. - TOWN HALL -1529 NYS RTE 12  
BINGHAMTON, NEW YORK 13901  
REVISED 5/26/2020

PRESENT: James Brewster, Chairperson  
Aleta Kinne, Board Member  
Melanie Pandich, Board Member  
Scott Smith, Board Member  
~~Joe Aston, Board Member~~  
~~Thomas Eldridge, Alternate~~

ALSO PRESENT: Nicholas Cortese, Esq. – Town Attorney  
Frank Carl, Councilperson  
Gavin Stiles, Ordinance Officer  
Alex Urda, PE – Town Engineer  
Donna Webster, Stenographer of the Zoning Board

At 7:01 pm Mr. Brewster called the Town of Chenango Zoning Board of Appeals meeting to order. The following roll call was taken for attendance of ZBA members:

Joe Aston: Present  
Melanie Pandich: Present  
Aleta Kinne: Present  
Scott Smith: Present  
James Brewster: Present  
Thomas Eldridge, Alternate Present

This meeting is being held in accordance with Executive Order 202.1 issued by Governor Andrew Cuomo, March 12, 2020. Executive Order suspends provisions of the open meeting law to the extent necessary to prevent any public body to meet and take any action authorized by law without permitting in public, in access meeting and to authorizing such meetings to be held remotely or by conference call. This meeting is being held remotely via the Zoom App, web browser or by telephone. This meeting is being recorded and will be transcribed at a later date.

Further announcements: We would like to have folks submit any questions or comments during the public hearing to the Zoom chat or there is an option to send Ms. Webster an email. Your comments will be read and taken into consideration by the Board. As a last resort, at the end of the commentary of the public hearing, I will solicit the folks that are on only by phone, take a brief roll if they would like to speak to that and call on an individual one by one.

The next order of business is to approve the special meeting minutes from March 10<sup>th</sup>. We do not at this time have the March 31<sup>st</sup> public hearing minutes, so we will just move forward with

preliminary visual mapping assessment. Is the requirement out to a five mile buffer and can we request further information of the view shed analysis? Is that what we are looking for?

Mr. Urda – I'm looking it up. I don't recall a 5 mile limit on it.

Mr. Brewster – The edge of the circle is 5 miles. That's the preliminary study that they did as far as I can tell. Is that the legal limit that they need to provide?

Mr. Urda – George, I think you just picked a 5 mile limit, right? I don't recall seeing that in the code.

Mr. Santoire – Yes, that's what is on the map. That's what they used for it. There's no specific requirement that I could tell from the code.

Mr. Urda – We would establish less or more tonight if you want something different, as part of the process.

Mr. Brewster – Okay.

Mr. Eldridge – As living in that area and looking at this map; it shows it as visible in a lot of areas that it definitely would not be visible from, so I don't see how another five miles or a mile would prove anything more because it's obviously erring on the side of visible where it's not already.

Mr. Cortese – The only thing that the telecommunications law of the Town says regarding distances is that the applicant has to submit a comprehensive report inventorying existing towers and other appropriate structures within 4 miles of any proposed new tower site and I believe this has been done. I think part of what the applicant is asking for tonight (correct me if I'm wrong, George) is they want to do a photo imaging of different views around the area and they are looking for your input of what type of photo imaging you would like to have done. So as I understand that, it's like a computer generated image of what the tower would look like from a variety of different locations and they're looking for your input of what you would like to see from particular vantage points. Is that about right, George?

Mr. Santoire – Yes. That's basically what we'll use in the balloon float. We take pictures of the balloon and we also have it fly and then, based on where they take the picture, and how far away the balloon is, they can basically photo shop a 3D rendering image of the proposed cell tower. They can basically get the effect of what it would look like however far away you are from it.

Mr. Cortese – And the balloon floats at about 110' above just like the tower would?

Mr. Santoire – Yes. We'll do one that is about 10' above. I think your code requires it to be flown at the height of the tower.

Ms. Pandich – I'm just wondering if I need to recuse myself due to my husband working directly for the division of Emergency Services and would be putting in that request?

Mr. Cortese – No, as long as you or your family doesn't have a financial interest in the project or you have received some kind of consideration. If you don't stand to benefit directly from this project, supposing you approve it, you don't need to recuse yourself.

Ms. Pandich – Okay, thank you. I just wanted to make sure it was proper.

Mr. Brewster – Okay Nick, you have some questions. The floor is yours.

Mr. Cortese – George, in looking through the EAF you submitted you have .9 acres as far as land disturbance. Is that really a good and accurate number?

Mr. Santoire – I would say it is accurate as it could be. I can certainly look more into it, but that is what we got directly from our engineers.

Mr. Cortese – I'm assuming that it includes not only the pad that you have to construct, but the disturbance that will be caused by the access road.

Mr. Santoire – Correct. The whole access road and the whole compound.

Mr. Cortese – Alright. The reason why I ask is because the difference between an unlisted action and a Type 1 action would be... Well, in this instance the property is in a State certified Agricultural District, so it would be a Type 1 action under SEQRA. But under Chenango, Type 1 actions are a little more stringent and it flips over to a Type 1 action if it exceeds 10% of the thresholds in the Type 1 regs and so in that instance the acreage disturbance threshold would end. So under the Town's code it would be if you disturb more than 1 acre we'd have a Type 1 action as opposed to an unlisted. That's why I asked about that .9 measurement.

Mr. Santoire – I would say it is pretty precise. I've seen this with different municipalities before; the one acre kind of thing. I think we're generally aware of it, so if it can be under an acre we try to make it happen.

Mr. Cortese – Okay, so we'll take .9 as the accurate number then. Second question; did you guys do an agricultural data statement for this project?

Mr. Santoire – I don't believe so. I don't remember seeing that in the requirements.

Mr. Cortese – Well it's required under state law. The way that that works is if your property that you're doing the project on is within 500 feet of another State certified Agricultural District and that property has a farm operation on it, you have to do an agricultural data statement under 305-a of the NY Ag and Markets Law. It requires notice to the property owners, which I believe the Town does that anyway and the Town can kind of coordinate that with you. I just wanted to alert you to that, because that may be needed.

bulk of the balloon test. Basically make sure it is coordinated and advertised to give the public a chance to see it; as well as the Board.

Mr. Brewster – Okay. George, do you have any dates in mind or did you want us to dictate that to you?

Mr. Urda – You might consider backing off from the next meeting time frame or if you're going to do an advisory to planning. Maybe the balloon gets coordinated before planning or discussion like that.

Mr. Santoire – If we can get it done before the next zoning meeting. When is the exact date of that meeting?

Mr. Cortese – It's May 26<sup>th</sup>.

Mr. Urda – Planning Board is coming up sooner. I don't think you can choose before planning. But you might want to land it before 239 is done, such that anyone from 239 goes to see it.

Mr. Cortese – It's got to be more than 14 days in advance from today to be advertised twice in the paper; one 14 days in advance and one 7 days in advance. Primary date has to be a weekend day, so you're probably looking at a Saturday. So the earliest you could possibly do this would be the 16<sup>th</sup>. The 16<sup>th</sup> or the 23<sup>rd</sup> is probably the date.

Mr. Santoire – That's what I was thinking. The 16<sup>th</sup> if that is possible. I will try to get it done, otherwise the 23<sup>rd</sup>. The 23<sup>rd</sup> is cutting pretty close to the meeting on the 26<sup>th</sup>. You have to prepare it afterward too.

Mr. Urda – You need time for visuals afterward.

Mr. Santoire – Right. It could be tough to meet that. We'll try and shoot for the 16<sup>th</sup>.

Mr. Brewster – Obviously there's a time crunch. You said it would be ideal if it comes back before the 239 comes back. Would it help to schedule your public hearing for the following month?

Mr. Santoire – For June, you mean?

Mr. Brewster – Yes

Mr. Santoire – I guess I'd rather not. I'd rather try and hit it for the 26<sup>th</sup>. I think we have a chance to do it and so we'd rather do that and I know that's what AT&T would want to do. They would want to keep it moving forward.

Mr. Eldridge – Yes, is there any way that in the future, since this is a Town regulation and when they go to ordinance to begin with, that this could be explained to them then? So the process starts maybe with a little more time. Our meetings are only a month apart and he's got 20 days to get this figured out.

Mr. Brewster – It's a great question Thomas, unfortunately I don't have the answer to that. We'd have to get an answer from John or Gavin or Alex.

Mr. Urda – This is where you could technically receive it as a pre-application, but being that George has given us so much detail, I looked at it as it was an actual application with catching up the pieces. If we just treated it a pre-application tonight, then you would see the full application prior to the next meeting. Right now they are okay to submit the balloon in process before the next meeting. We don't need a full month of lag, am I correct?

Mr. Cortese – I don't believe so. There is nothing in the regs or Town law saying this needs to be done in a certain time. It just says the applicant needs to tell us when it's going to happen and the fact that we are scheduling it at a mutually agreeable time is just a nice thing that we are doing, basically.

Mr. Urda – It's just that in this instance when George came in asking for the pre-application meeting also gave us a full application.

Mr. Cortese – George, this is a complete application as far as your folks are concerned, right?

Mr. Santoire's computer froze and went off line for a short period.

Mr. Urda – While we wait for him Nick; I don't find anywhere that this is required by telecom or the Planning Board unless you know somewhere for special purpose.

Mr. Cortese – There is nothing in the telecom law requiring that this needs to be referred to the Planning Board. However in the general powers and duties of the ZBA 73-24, it does say at least 15 days before the date of the hearing required by law an application to the Board, the secretary of the Board shall transmit to the Planning Board a copy of said application or appeals. The Town's code more generally states that any application that comes before the Board needs to be referred to the Planning Board. In an abundance of caution, this should be referred to the Planning Board for review and recommendation.

Mr. Urda – Sound good to me.

Mr. Brewster – Okay, we have a motion on the floor and seconded to approve the application as a complete application.

Mr. Cortese – Do we have a date for the balloon test?

Mr. Brewster – May 16<sup>th</sup> for the weekend, if good weather and the 23<sup>rd</sup> is the backup day.

Mr. Santoire – Okay, anything else?

Mr. Brewster – I think we’re good. Good luck and we’ll see you on the 26<sup>th</sup>.

Mr. Santoire – Thank you.

Mr. Brewster – Next up we have an application to review 2020 V-03, Matthew Jablonsky for an area variance to place an accessory structure(above ground pool) with less than the required side yard setback from 15’ to 5’ in an agricultural zone. Is Matthew on the line? - No answer. Board members, any thought on this? I believe Ordinance has requested to have an improved site plan and asked Matt to tighten it up a bit with a little more to scale drawing. I would agree with that. Anybody disagree with that? Nope, okay. We can move this along to a motion.

Motion to accept Application 2020, V-03 Matthew Jablonsky and schedule a public hearing for May 26, 2020 – motion made by Aleta Kinne, seconded by Scott Smith and carried by the following roll call:

James Brewster, Chair	Voted	<u>  Aye  </u>
Aleta Kinne, Vice Chair	Voted	<u>  Aye  </u>
Melanie Pandich	Voted	<u>  Aye  </u>
Scott Smith	Voted	<u>  Aye  </u>
Joseph Aston	Voted	<u>  Aye  </u>
Thomas Eldridge, Alternate	Voted	<u>          </u>

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

Ayes – 5      Nays – 0      Absent – 0

Mr. Brewster – Application 2020, V-03 has been approved and scheduled for the 26<sup>th</sup> of May with a referral to the Planning Board.

Mr. Brewster – Next we have to review Application 2020, V-04, Nicholas Harris, 8 Badger Rd for a double area variances to construct an accessory structure (shed) exceed the maximum square footage from 125’ to 240’ along with less than required side yard setback from 5’ to 3’ in a residential zone with a Short EAF. This application is up for discussion. It looks fairly complete. Does anyone have anything on this application they would like to discuss? Is Nicholas here? No response.

Mr. Aston – Are any of the neighbors present right now? No response.

Mr. Brewster – If no comments, I’ll accept a motion on this one too.

Motion to accept Application 2020, V-04, Nicholas A. Harris and schedule a public hearing for May 26, 2020 – Motion made by Scott Smith, seconded by Melanie Pandich and carried by the following roll call:

James Brewster, Chair	Voted	<u>  Aye  </u>
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**Factor #3** – Is this requested variance substantial to the property? We need to move a couple setback lines for you. One looks by 9’ and one by 20’

Ms. Burns – Right.

Mr. Burns – What do you mean by substantial?

Mr. Cortese – Whether or not a variance is substantial is you take what the current setbacks are that are allowed by the zoning code vs whatever you are asking for. That is what determines the substantiality of the variance. I believe your variances probably do qualify as substantial because of the amount of variance you are asking for, but that’s a non-determinative factor for the Board to consider.

Mr. & Ms. Burns – Okay

**Factor #4** – Will your project have a significant detriment to the physical or environmental conditions in the neighborhood?

**Factor #5** – Is your hardship self-created?

Mr. Burns – No detriment to the environment. We are going to do all the tie out water to the drainage. We will be landscaping. And then is the hardship self-created? Yes, I guess it is. We want to do it; we want to build this garage and the little salon on it.

Mr. Brewster – I guess with being a hair salon, there is some level of hazardous materials and chemicals that comes with that. I assume you do colorings and that type of chemical use. Is there a methodology you have for containment of that?

Ms. Burns – There really isn’t. We have OSHA papers for items. You put color on and it kind of dissipates, you do a perm. There is no real hazard remnant. It all goes down the drain. There’s no real hazard to it.

Mr. Brewster – Okay.

Mr. Cortese – If I can interject for a moment Mr. Chairman, I believe you all know this but the Planning Board earlier this month took up the site plan application for the salon that is going to be inside this addition. They approved the site plan. Many of the specific detail oriented things like what you just described have been considered by the Planning Board and were approved.

Mr. Brewster – Board members do you have any comments on the five factors for the applicants before we move on?

Mr. Smith – Have you made allowances for extra parking?

**WHEREAS**, on February 4, 2020, for the purpose of constructing an addition, including space for a home occupation (hair salon), Lori and Robert Burns (“Applicants”) duly filed an application for an area variance from the minimum front yard (Barry Way) setback in the R – Residential District from 30 feet to 23 for property they own within the Town, located at 3 Barry Way and designated as Tax Map No. 112.12-2-32; and

**WHEREAS**, on March 20, 2020, Applicants amended their original application by, among other things, modifying their request for an area variance from the minimum front yard (Barry Way) setback in the R – Residential District from 30 feet to 10 feet; and

**WHEREAS**, the ZBA has determined Applicants’ 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 April 28, 2020, 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 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 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 Applicants 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 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.



("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 April 28, 2020, 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 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 RESOVED** by the Zoning Board of Appeals of the Town of Chenango, Broome County, New York, as follows:

9. The requested variance will not produce an undesirable change in the character of the neighborhood or cause a detriment to nearby properties.
10. The benefit sought by the Applicants cannot be achieved by another method, other than the grant of an area variance.
11. The requested area variance is substantial.
12. The requested variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
13. The hardship giving rise to the variance request is self-created.
14. 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.
15. Therefore, the Applicants' application #: 2020-V01 for an area variance (Front Yard, Lolita Street) is granted.
16. This Resolution shall take effect immediately.

At a meeting of the Zoning Board of Appeals of the Town of Chenango, held on April 28, 2020 via ZOOM virtual meeting software (**Meeting Link: <https://us02web.zoom.us/j/89674282432>; Meeting ID: 896 7428 2432; Password 145140**) in accordance with the Governor's Executive Orders 202.1 and 202.10, the foregoing motion was made by Scott Smith and seconded by Aleta Kinne. The ZBA members voted as follows:

Mr. Brewster – Okay folks, any other questions?

Mr. Smith – Nick, if this is approved as a hair salon, does that stay with the property?

Mr. Cortese – No. That's the beauty of a special permit. It runs with the owner, it does not run with the property. If they move or leave and then somebody else wanted to retain that as a hair salon, then they would have to come back and reapply.

Mr. Brewster – I have a couple of quick questions. Nick, this went through the Planning Board, correct?

Mr. Cortese – For site plan, yes.

Mr. Brewster – This question is for the Burns'. Has anybody gone over the code with you? Because there are some restrictions on this. To get a special permit, they can be a little tricky.

Mr. Burns – We read the application and answered the questions. I am sure we answered questions for Mr. Cortese in one of the planning meetings.

Mr. Brewster – Do you plan on selling any product?

Ms. Burns – Probably shampoo and conditioner.

Mr. Brewster – Okay, thank you. Anything else folks? I'm sorry I have one more thing. There was nothing in the record. Are you going to have a sign or is this just word of mouth?

Ms. Burns – No sign.

Mr. Cortese – Donna, do you have anything in the chat or anything you received email wise?

Ms. Webster – I do not.

Mr. Brewster – We still have that 2719 on the line.

2719 – No comment, Mr. Chairman.

Mr. Brewster – At this time I will close the public hearing on this matter of the special permit. Now is it time to go through the SEQRA. Do we have any further discussion from the Board? Now we have to do the SEQRA on this.

Mr. Cortese went through Part 2 of the Short Environmental Assessment Form asking the Board to answer the questions using the information contained in Part 1 that was completed by the applicant. Please see the completed Part 2 and Part 3 attached to these minutes.

Planning and Economic Development, the Town of Chenango Planning Board, Engineer, Ordinance Officer and Drainage Coordinator; and

**WHEREAS**, the ZBA finds that Applicants’ application complies with Section 73-12 (C) (1) of the Town of Chenango Zoning Ordinance, which sets forth the requirements for operating a home occupation within the Town; and

**WHEREAS**, the ZBA further finds that Applicants’ proposed special use will not constitute a traffic hazard or otherwise be detrimental to the residential character of the area.

**NOW, THEREFORE, BE IT RESOVED** by the Zoning Board of Appeals of the Town of Chenango, Broome County, New York, that the Applicants’ application #: 2020-V01 for a special use permit to operate a home occupation (hair salon) on property located at 3 Barry Way (Tax Map No. 112.12-2-32) within the Town is hereby granted.

**BE IT FURTHER RESOLVED**, that this Resolution shall take effect immediately.

At a meeting of the Zoning Board of Appeals of the Town of Chenango, held on April 28, 2020 via ZOOM virtual meeting software (**Meeting Link: <https://us02web.zoom.us/j/89674282432>; Meeting ID: 896 7428 2432; Password 145140**) in accordance with the Governor’s Executive Orders 202.1 and 202.10, the foregoing motion was made by Scott Smith and seconded by Joe Aston. The ZBA members voted as follows:

- James Brewster, Chair            Voted   Aye
- Aleta Kinne, Vice Chair        Voted   Aye
- Melanie Pandich                Voted   Aye
- Scott Smith                        Voted   Aye
- Joseph Aston                     Voted   Aye
- Thomas Eldridge, Alternate    Voted

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

Ayes – 5            Nays – 0            Absent – 0

Mr. Brewster – The special permit has been approved for the home occupation hair salon. And to recap the area variances have been approved. Go forth and build!

Ms. Burns – Yay, thank you very much.

Mr. Cortese – Get a building permit first.

RECEIVED

APR 28 2020

TOWN OF CHENANGO  
ORDINANCE

Agency Use Only (If applicable)

Project: Lois Burns  
Date: 4/28/20

**Short Environmental Assessment Form**  
**Part 2 - Impact Assessment**

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing: a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**PRINT FORM**