

**ZONING BOARD MEETING
TUESDAY – November 24, 2020
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
Joe Aston, Board Member
Thomas Eldridge, Alternate

Absent: Melanie Pandich, Board Member

Also Present: Nicholas Cortese, Esq., Town Attorney
Frank Carl, Councilperson
John Freer, Ordinance Officer
Kathleen Rudy, Deputy Town Clerk, Interim Stenographer

James Brewster: Okay, the hour being 7:00 PM, November 24th. 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. Eldridge; present, Mr. Aston; present, Mr. Smith; present, Mrs. Kinne, present, Mr. Brewster; present. Ms. Pandich; 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 202.72. Tonight's meeting is being recorded and will be transcribed at a later date. As relevant here, these executive orders suspend provisions of the open meetings law, to the extent necessary, to allow any public body to meet and take any action authorized by law, without permitting in public in-person access to meetings.

Moving on to the October 27, 2020 meeting minutes. We are going to be doing a little slightly different approach tonight. Mr. Brewster would like to make a statement to the effect of the Minutes of October 27, 2020 may be approved as written, any objections? If you remain silent then they will be approved. Otherwise please state object and point out any corrections or additions you would like to see to the minutes.

Hearing nothing the October 27, 2020 Meeting Minutes are approved as written.

James Brewster: At this time before we get into our old business, I would like to seek a motion from the Board Members to go into a recess at this time, a short recess for legal advice.

A motion was made by Aleta Kinne to go into recess for legal advice, and seconded by Thomas Eldridge and unanimously carried.

Nick Cortese: We are just taking a brief recess for confidential legal advice. Mr. Chairman, Members of the Board you may have Mr. Freer in, Mr. Carl in, if you want to, but the folks that stay here should not extend beyond Town Officials.

James Brewster: Members, without an objection would you like to have Mr. Carl stay? All stated yes. Would you like to have Mr. Freer stay? All stated yes. No objections made.

Nick Cortese: We will put everyone in the waiting room, then re-admit everyone once we have had our confidential conversation. Thank you.

James Brewster: Seeking a motion to come back into regular session.

Scott Smith made a motion to come back into regular session from a brief, legal recess, seconded by Thomas Eldridge and unanimously carried.

OLD BUSINESS:

James Brewster: 2020-V12 The Abbey Family Trust Application - Continuation of Public hearing

- Letter from Mr. Abbey, dated 10/22/2020, received by the Town of Chenango on 10/27/2020.
- Letter from Mr. Richard & Mrs. Teresa Matthews, dated 10/26/2020, and received by the Town of Chenango on 10/27/2020.
- Letter from Attorney Allen Pope of Coughlin & Gerhart, dated 10/8/2020 and received by the Town of Chenango on 10/27/2020.
- Letter from Richard T. Matthews received today on 11/24/2020.
- Letter from Teresa Matthews received today on 11/24/2020. Attached to these letters are several photos and we also received a video that is on file.

James Brewster: As an administrative issue here, a lot of those we have received today and folks of the public, he would request that in order for, in the future, you should try to get information to the Board Members at least 72 hours before the meeting to ensure that they will be read and considered in their entirety. Also, based on recent developments and our legal advice, at this time due to additional research, we need to conduct on this application. He would like to solicit from the Board Members a motion to table this application again one more month in order for us to look into some material that came in but more importantly the potential legal issues that we need to research on the property and some things. So, he will seek that motion to table and continue the hearing in December.

Scott Smith made a motion to table application 2020-V12 public hearing until December for further investigation and then research can be done, seconded by Thomas Eldridge and carried unanimously.

James Brewster: The motion to table Application 2020-V12, has passed.

James Brewster: Second item of old business; Application 2020-V02, New Cingular Wireless. Also, with new developments, Board Members, he would like to read the following statement and also close the public hearing for this New Cingular Wireless. Yesterday, we received a letter from the representative with Airosmith who represents AT&T and the cell tower and the statement is as follows:
 "AT&T has recently decided to no longer move forward with the construction of a new tele-communications tower off Brotzman Road. Therefore, we would like to formally withdraw our application as we will no longer be perusing a special use permit from the Zoning Board to construct the tower, and AT&T no longer wishes to use the resources required to bring the project to fruition. We will not be in attendance, at the Zoning Board Meeting tomorrow night and will not be attending any future meetings regarding the application. If the Board were to deny such a withdraw, please inform me of the decision regardless. Best Regards, George Santori of Airosmith".

James Brewster: Board Members, with no objection he would like to have our Board accept that withdraw, close the public hearing and close out application 2020-V02. Hearing no objections, the public hearing is closed and the application has been accepted as withdrawn.

NEW BUSINESS: No new business.

James Brewster: With no new business, we will move on to a public hearing of a new application.
 2020-V13 Matthew Johnson of 13 Calgary Lane, Tax map # 112.07-2-6 – Application for an area variance to build an addition with less than required side yard setback from 10' to 4' in a residential zone & Short EAF to construct a home addition. The environmental significance of the requested variance if any will be reviewed by the Board.
 Board members, without objection, he is opening the public hearing for this application. Hearing nothing, the hearing is open. Mr. Johnson, are you present? Mr. Johnson acknowledged that he is present.

James Brewster: We have your application and at this time, we have your note, but we also need to go through what are our five factors which you have probably read about in the application itself that we need to cover to guide us along, and make a decision on your application. None of these factors are exclusively binding by themselves, they are guidance for us to consider and to weigh the options in their entirety.
 The first factor we discuss is whether your addition will produce an undesirable change in the character or a detriment to the other properties?

Mr. Johnson: It would still be consistent with architecture of the neighborhood, actually very similar to the house right across the street, just a little bit of a bump out, mostly like a garage on the side of the house.

James Brewster: Asked Board Members if there were any questions on factor number one?

Hearing nothing so moving on to factor number two: Is there any other feasible alternative that you could do this project by without an area variance?

Mr. Johnson: No, just based on the layout of the house the area where they are planning on putting the addition is just an expansion on an existing small bedroom, so next to that behind the house is the bathroom and the kitchen. So, no real natural area to add a bedroom area to.

James Brewster: Ask the Board if they had any questions for Mr. Johnson on this factor? Hearing Nothing: The next question is whether or not the requested variance is substantial which is a very subjective factor that we mostly take under consideration, but do your best to add to anything that you would like to on that.

Mr. Johnson: The only consideration that he really had concern with was with his neighbor; he wanted to make sure that they were ok with coming that much closer to their house, given that there would still be twenty feet between the homes, and he did discuss it with them and their only concern was the ability to get a service vehicle or maintenance vehicle to get behind their house and this would still allow plenty of room for that so no, it doesn't make a substantial impact on the area there.

Scott Smith: Is that the Gate's family?

Mr. Johnson: Yes

Scott Smith: They sent us a letter, pretty much saying just what you said.

Mr. Johnson: We talked about it and after initially meeting with the Board here, you guys had recommended that I have them provide a letter for documentation.

James Brewster: Number four; is there anything in your proposed project requesting the variance that would have an adverse impact on the physical or environmental conditions of your neighborhood?

Mr. Johnson: Stated not to his knowledge, it would just be a box built on piers, so we would not be digging a foundation, just putting it on sono tubes, concrete so very little impact to the ground, so no impact on drainage or anything.

James Brewster: Will you be skirting those piers you said you would be putting it on, or will you be able to see underneath?

Mr. Johnson: No, it will look like foundation, it will have concrete board and concrete material so that it looks like part of the original house.

James Brewster: Factor number five, whether the alleged difficulty was self-created?

Mr. Johnson: Outside of the idea that when we bought this house, I told my wife that we will not be adding to it, we have changed that tune to facilitate my girls having rooms of their own, it just made sense for us.

James Brewster: Mr. Freer of Ordinance, what say you?

John Freer: Ordinance office has no objection to this variance request, we require a building permit prior to construction.

Mr. Brewster: Is there anyone here from the public tonight to speak for or against this application? Hearing nothing, he will read some of the letter he received from County and Town officials, and also from the Gates:

Starting with the Gates received October 28, 2020; "To whom it may concern, I own the home at 11 Calgary Lane in the Town of Chenango and have lived here many years. I have always loved this area and am happy to see so many young families move into the neighborhood. Last year Matt Johnson bought the home next door at 13 Calgary and move in this spring with his wife Chelsea and two young daughters. I have known Matt since he was very young as he grew up down the street on Shaw Place where his parents continue to live, and he grew up with my son Scott. It has been a pleasure seeing his children grow up in the same neighborhood as their Dad. Recently Matt approached me and my husband with plans to build an addition onto the side of the house nearest my property. He marked the property line and talked to us about making the downstairs bedroom larger so that he and Chelsea can move down there giving the girls the two upstairs bedrooms and a bathroom of their own. He paced off the area and told me that the addition would be similar in appearance of the house across the street at 14 Calgary, which I think will look fine. It is my understanding from discussions with Matt that the addition would be four feet away from the property line rather than the ten feet that is required by current codes and would therefor require a variance to be granted. After discussing this with my husband, Bob, we see no reason for this to be a problem and are agreeable with Matt moving forward with this addition. There will still be approximately nineteen feet between the two houses, and adequate space for access needed for service vehicles. Please feel free to contact me with any questions regarding this matter. Signed Carol Gates and Robert Gates".

From the County, The County Planning submitted a document to the Town stating that the project is not subject to 239 review, it is not located within 500 feet of any State or County interest covered under the law per Broome County GIS.

Letter received November 10th from our Planning Board; The Planning Board refers this application to the Zoning Board of Appeals with a favorable advisory.

A letter received November 3rd. from the Town Engineer, Alex Urda; Recommendations, we have no engineering objections to the application.

James Brewster: Board Members, with no further comments and no further letters to read into record, at this time without objection I request that we close the public hearing on this application. With no objections, this public hearing is closed.

Moving on to the Finding of Facts. Factor number one is there anything that would like to be discussed whether this project would create an undesirable change to the character or detriment to the nearby properties?

Scott Smith: He does not see any major change to the area.

Joe Aston: He said it would look like the house across the street.

Aleta Kinne: No objection.

James Brewster: He has no objections as well. Moving on to number two; can the benefit sought by the applicant be achieved by any other method other than the variance you are requesting?

Mr. Johnson: No.

James Brewster: Filling that in a little, the positioning of the house behind the bathroom is restrictive and so he needed to go to the position he has mapped out.

Do we find this request to be substantial?

Joe Aston: Does not believe so, no.

Scott Smith: He would say no, considering the number of houses around them that are actually a little bit bigger so it is just fitting in with the rest of them.

James Brewster: Have we noticed whether or not any of them are encroaching on the property line, this is a big addition but he doesn't feel that it would be substantial either.

Scott Smith: There are quite a few that are that close. If you are looking at a quarter of a mile around it, yes.

James Brewster: Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?

Board: Stated no.

James Brewster: Number five; Is this a self-created difficulty?

Joe Aston: Stated yes because he wants an addition.

Board: Agreed.

Nick Cortese: What he heard from the Board is that as far as findings of facts, the requested variance wouldn't produce an undesirable change in the character of the neighborhood. The benefits sought by the applicant cannot be achieved by another method. The area variance is not substantial. The requested variance would not have an adverse impact on the physical or environmental conditions and is self-created. The Board agreed.

RESOLUTION ON AREA VARIANCE APPLICATION #: 2020-V13

WHEREAS, on October 16, 2020, Matthew Johnson ("Applicant") duly filed an application for an area variance for property he owns within the Town, located at 13 Calgary Lane in the R — Residential District and designated as Tax Map No. 112.07-2-6, wherein Applicant requested a variance from the minimum side yard setback in the R — Residential District of 10 feet to 4 feet in order to construct an addition; 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 November 24, 2020 that the requested variance is a Type II Action as defined under said SEQRA regulations and, thus, no further environmental review is required; 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 November 24, 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 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 not** substantial.
4. The requested variance **would not** have an adverse 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 preceding forced to conclusion that the benefit to the applicant conferred by granting of an area variance outweighs any potential detriment to health, safety and welfare of the neighborhood or the community, therefore the applicant's application, 2020-V13 for an area variance with a minimum side yard setback in the R Residential District of 10 ft. to 4 ft. is granted and the Resolution shall take effect immediately.

James Brewster: Asked the Board members if they are satisfied with the reading of that and if so he will seek a motion to approve this Resolution as written.

A motion was made by Aleta Kinne to accept the application for an area variance from the minimum side yard setback from ten feet to four feet in a residential district; seconded by Joe Aston and carried by the following roll call vote:

Thomas Eldridge, Alternate	Voted ___Aye___
Joe Aston, Board Member	Voted ___Aye___
Scott Smith, Board Member	Voted ___Aye___
Aleta Kinne, Vice Chairperson	Voted ___Aye___
James Brewster, Chairperson	Voted ___Aye___

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

Ayes – 5 Nays – 0 Absent – 1 (Melonie Pandich)

James Brewster: Ok, the motion has passed, so this application grants you the variance Mr. Johnson.

Mr. Johnson: Thanked everyone for their time and assistance.

Discussion was had on moving the December meeting up a week, however, due to publishing issues, it was decided to leave the meeting as December 22, 2020.

James Brewster: Without objection, so if you are silent, we will close the meeting. Hearing nothing... the Meeting is closed at 8:11 P.M.

Sincerely,

Kathleen A. Rudy, Deputy Town Clerk
Interim ZBA Stenographer