

ZONING BOARD MEETING  
TUESDAY – FEBRUARY 27, 2018  
ZONING BOARD  
7:00 P.M. – TOWN HALL – 1529 NYS RTE 12  
BINGHAMTON – NEW YORK – 13901

PRESENT: Mr. Donald Phillips, Chairman  
Messrs. Ruston, Waskie, & Smith  
Mrs. Kinne

ALSO PRESENT: Donald G. Walls, Esq. – Town Attorney  
Terry Kellogg, Councilperson  
Scott Russell, Ordinance Office

ABSENT: Mrs. Pandich, ZBA Member

The meeting convened at 7:00 p.m. at which time Mr. Phillips called the meeting to order and welcomed the audience. He would like to offer his apologies for those that had applications last month and Public Hearing but due to an illness of our counsel, Attorney Walls, they postponed any decisions. Having spent two full days in classes in New York City they had made the correct decision.

Also, as they open the meeting he has Mr. Ruston read the responsibilities of this Board. As Mr. Ruston is going to read they don't make zoning they don't interpret zoning in terms of whether is it or isn't it unless they receive a request. He had a woman call his home totally upset that she couldn't have chickens in her vegetable garden. This Board has no part of that decision. He explained she needed to speak with Mr. Russell. With that Mr. Ruston please read the responsibilities of this Board.

Mr. Ruston read a statement which explained how the Zoning Board members are appointed, along with the Board's functions, limitations and duties. Mr. Ruston noted that the reading of this statement not only informs the audience about the Zoning Board of Appeals, but it also reminds the Board members of their responsibilities. Mr. Ruston also read the Notices of Publication for each case, which was duly published, as required by law, and as evidenced by Affidavits of Publication received and placed on file.

#### APPROVAL OF THE MINUTES

Mrs. Kinne – Would like to point out there is a miss print in the minutes – Page 1 – “we” that in mind. It should say “with” that in mind.

- Approval of the Minutes for January 23, 2018 Zoning Board Meeting.

A motion was made by Mrs. Kinne, seconded by Mr. Waskie to approve the Minutes of the January 23, 2018 Regular Meeting.

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#### PUBLIC HEARING

- THOMAS J. LEWIS – 4 Park Rd. – TM#112.11-2-34 – Application to Amend the original Area Variance (V-09 2017) to increase the size of the shed (accessory) from 12' x 20' to 16' x 28' in front of the principal use in a residential zone.

Mr. Phillips – That moves us to our Public Hearings this evening. The first case is Thomas J. Lewis to amend the original Area Variance. If you recall we gave Mr. Lewis a variance for a shed in front of the principal use in a residential zone – he now wants to increase the size. Public Hearing is conducted by Mr. Don Walls.

Mr. Walls conducted the Public Hearing.

Mr. Walls – Sorry to bring you back. When you alter the terms of a granted variance we have to go through the motions again. As he understands he wants to increase the existing shed to 16' x 28'.

Mr. Lewis – That's the foot print they want the variance for. Their intension is to make the shed a little longer on either side – 12' x 28'. They want the foot print in case they want to go bigger.

Mr. Walls – Your present plans are 12' x 28'? He thought they wanted 16' x 28'.

Mr. Lewis – Yes 16' x 28'.

Mr. Walls – The previous shed is 12' x 20'. That shed is on your premises and it's painted yellow?

Mr. Lewis – Yes its yellow vinyl siding.

Mr. Walls – You are going to trade it in for another one – is that right?

Mr. Lewis – Yes he said he would take it back and put a new one in place.

Mr. Walls – Is it going to be in the same place in front of the house?

Mr. Lewis – Basically centered in the same spot 3' on either side and same width.

Mr. Walls – You also applied for a gazebo.

Mr. Lewis – They were already approved for the gazebo.

Mr. Walls – You will eventually put in a gazebo in front of the house?

Mr. Lewis – At some point in the future.

Mr. Walls – Why do you want to enlarge the shed?

Mr. Lewis – First time he walked in he hit his head. His wife moved up from Maryland a few years ago – merging households together. Want to put what's in the garage into the shed and use the garage to park their cars.

Mr. Walls – Speaking of hitting your head what's the height of the shed?

Mr. Lewis – Height will be extended one foot up.

Mr. Walls – How high – under 16'?

Mr. Lewis – Yes.

Mr. Walls – As the result of altering the shed there will be no change in the location.

Mr. Lewis – Just 3' on either side.

Mr. Walls – How about the construction and design?

Mr. Lewis – Same person – Amish made – Mid Valley construction up in Whitney Point. They are the ones that put it together.

Mr. Walls – He has to go through all the criteria again. You are family with them. You commented in writing about them in your application. For example – as a result of this change is there any material change in the neighborhood as a result of this increase?

Mr. Lewis – No it will be 3' on either side.

Mr. Walls – He noticed there are a couple of other sheds in the area.

Mr. Lewis – Yes the neighbor down the street used the same company.

Mr. Walls – This increase is almost double the square footage – correct?

Mr. Lewis – He wouldn't say that it's less than that about 144.

Mr. Walls – Talked about the character of the neighborhood and also talked about the fact that it is a substantial increase. He assumes there won't be any impact on the local environment.

Mr. Lewis – No.

Mr. Walls – How about an alternative – can you provide storage anyplace else on your property to avoid building this shed?

Mr. Lewis – Most of the stuff is in the garage. We want to get that stuff out of the garage and into the shed.

Mr. Walls – Let's assume for the moment this Board turns you down. What practical difficulty would you suffer as a result?

Mr. Lewis – They'd have to use the existing shed.

Mr. Walls – Anything else you'd like to tell the Board in connection to your application?

Mr. Lewis – Pleased with the builder and his work.

Mr. Walls – Any reaction with your neighbors – pro or con?

Mr. Lewis – No.

Mr. Russell, Ordinance Office comments if the Zoning Board of Appeals approves the Area Variance they request the applicant applies for a building permit.

Mr. Walls – Mr. Chairman – Those questions that were asked previously and the written record is sufficient.

Mr. Phillips – Anyone have any questions for the applicant?

Mr. Walls – Anyone care to comment? Hearing from no one we'll close the Public Hearing.

Mr. Phillips read the following correspondence.

Broome County Planning has reviewed the above cited case and has not identified any significant countywide impacts associated with the proposed project.

Town Planning recommends a favorable advisory with a building permit being required prior to any construction.

Urda Engineering a favorable advisory is recommended and to coordinate with the building department for a building permit.

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- LINDSAY ROVERE – 256 Mary Dr. – TM#0768.20-3-47 – Application for an Area Variance to construct an addition with less than required rear yard setback from 25' to 11' in a Residential Zone.

Mr. Walls conducted the Public Hearing. All the records from the previous meeting will be part of this meeting. You are located on a lot with two fronts – one on Mary Dr., and one on Matthew. You would like to build an addition on the rear portion of the lot.

Mrs. Rovere – Correct.

Mr. Walls – Presently you have a deck on the back of the house.

Mrs. Rovere – They did and it was their understanding they would be doing the addition in October, so her dad tore it down. They realized they needed a variance so currently they have a sliding glass door.

Mr. Walls – Please give us the dimensions of the proposed addition.

Mrs. Rovere – Sunroom will be about 16' x 16'.

Mr. Walls – Will you have a deck in addition to that?

Mrs. Rovere – Yes they are.

Mr. Walls – Added on or is that part of the addition?

Mrs. Rovere – 16' x 16' room with a deck coming off of that.

Mr. Walls – The purpose of the addition?

Mrs. Rovere – To provide them with an extra room for their growing family.

Mr. Walls – The type of construction will it be compatible with the main house?

Mr. Rovere – Yes.

Mr. Walls – When finished how much rear setback will you have?

Mrs. Rovere – Plan says 11’.

Mr. Walls – The ordinance required 25’ and you are decreasing to 11’.

Mrs. Rovere – Correct.

Mr. Phillips – Is that with the deck on the back?

Mr. Rueffer – (Mrs. Rovere’s father) – If you don’t mind me speaking he thinks the problem is the 11’ already exists between the houses now. She’s carrying the 11’ along the line coming off the back of the house. She’s not any closer to the line on that side.

Mr. Phillips – He was over there yesterday and he sees what he’s saying.

Mrs. Rovere – Because she is on a corner lot it’s considered her other back, but if you look at the house from the front it’s actually her side yard between her house and the next door neighbor.

Mr. Walls – As he understands it’s because of your configuration you really can’t put an addition on either side. Right?

Mrs. Rovere – You mean move it somewhere else?

Mr. Walls – Right.

Mrs. Rovere – Right because coming off they have the bathroom and bedroom and would be closer to the street.

Mr. Walls – You very nicely answered all of the criteria one by one and it’s part of the record. Anything else you’d like to add?

Mrs. Rovere – No.

Mr. Walls – You say there’s no undesirable change in the neighborhood as a result of the addition.

Mrs. Rovere – No and most houses, especially on her street, have the same addition. She knows the house directly across the street from her, also on a corner, two fronts, two backs they have the same addition in the same spot.

Mr. Walls – You also assert that because of the configuration of your lot you really can’t put the addition on any other portion of your house.

Mrs. Rovere – Right.

Mr. Walls – You did some calculations whether it's substantial or not. He won't go over the arithmetic. Also the variance will not impact neighborhood environment. In the event it was turned down what difficulty would you suffer?

Mrs. Rovere – They wouldn't have as much space as they would like to.

Mr. Phillips – Your family is still growing?

Mrs. Rovere – Well she thinks it's good.

Mr. Walls – Anything else you'd like to tell us?

Mrs. Rovere – No.

Mr. Walls – Any one care to comment on this application?

Mr. Russell, Ordinance Office comments if the ZBA approves the Area Variance they request the applicant applies for a building permit.

Mr. Walls closed the Public Hearing.

Mr. Phillips – Any questions from the Board?

Mr. Waskie – He has a concern. When he was looking at the property from the front of the house where the mailbox is your neighbor's fence – thought maybe it was an optical illusion – it's a little askew going to the left. It looks like you have an 11' setback on that side. With the money you are investing he's recommending to get a survey or to find the pins to make sure your addition is not encroaching.

Mr. Phillips – What Mr. Waskie says is a good point. If you ever want to sell this property and they do a survey and you have an 11' variance from this Board and now you are at 10'-3". This is just a suggestion.

Mr. Waskie – They had that occur a few months ago where a gentleman came in for an addition and they granted a variance they recommended a survey and found that he was way short.

Mr. Phillips – Just a suggestion it's not going to effect the decision of this Board this evening. Might be something you look into. Anyone else?

Mr. Phillips read the following correspondence.

Broome County Planning has reviewed the above cited case and determined it is not subject to 239 l and m because the project is not located within 500 feet of the County and State interests under the law.

Town Planning recommends a favorable advisory with a building permit being required prior to any construction.

Urda Engineering recommends coordinate with the building department for code compliance review and a building permit. A favorable advisory is recommended.

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VOTES ON PUBLIC HEARINGS

Mr. Phillips – Before we vote on the Public Hearings Mr. Walls and himself use pamphlets that tell them of the criteria that this Board constantly looks at and go out to each site. (Mr. Phillips handed all attendees a pamphlet). They are currently looking at the left side because the other side is for Use Variances, and tonight they don't have a Use Variance. He just went to classes in New York City during one of the classes they recommended that the folks that come, applicants as well as audience understand what this Board is looking at.

- THOMAS J. LEWIS – 4 Park Rd. – TM#112.11-2-34 – Application to Amend the original Area Variance (V-09 2017) to increase the size of the shed (accessory) from 12' x 20' to 16' x 28' in front of the principal use in a residential zone.

A motion was made by Mr. Waskie seconded by Mr. Ruston to approve this application to Amend the original Area Variance (V-09 2017) to increase the size of the shed (accessory) from 12' x 20' to 16' x 28' in front of the principal use in a residential zone.

Mr. Phillips – He wants to go down through each of the criteria and if anyone has any concerns. Where the benefit can be achieved by other means feasible to the applicant. It would be nice to see people use a garage for a garage.

Mr. Ruston – It's interesting that tonight's whole meeting in both instances is based on corner lots which are always problematic.

Mr. Smith – Corner lots are harder to sell too. People have concerns with them.

Mr. Phillips – Undesirable change in the neighborhood.

Mr. Waskie – Going back to the corner lot – they can't change that.

Mr. Phillips – Whether the request is substantial. He doesn't think so.

Mr. Smith – How does one define substantial in this particular case?

Mr. Phillips – Those are a balancing interpretation – substantial.

Mr. Smith – Guess if there's no complaint then it can't be too substantial.

Mr. Phillips – If there was someone here this evening that was complaining he would say yes they would look at it carefully.

Mr. Waskie – If you look at Park Rd. and the way it comes around Wisconsin the strip of land makes a nice barrier.

Mr. Kellogg – Excuse me Mr. Chairman. He wanted to answer Scott's question. Pursuant to the New York State Guidelines for substantiality. Just to give you some context. It says "It is difficult to quantify "substantiality." The board should, however, make a reasoned judgment as to whether the nonconformity being proposed is too great, as compared to the lawful dimensions allowed by the zoning law. Some courts have looked favorably upon a board's application of a simple mathematical analysis. A court upheld the denial of a

variance based in part on the showing that construction would have exceeded the allowable lot coverage by 15%. That's one example.

Mr. Smith – For those that don't know he's a relatively new member of the Board.

Mr. Phillips – 15% of the property. So that's a no. Whether the alleged difficulty was self-created. Everybody in the Town of Chenango has a one or two car garage - we buy too many things.

ROLL CALL:            AYES -        5        NAYS -        0        ABSENT -    1 (Pandich)

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-        LINDSAY ROVERE – 256 Mary Dr. – TM#0768.20-3-47 – Application for an Area Variance to construct an addition with less than required rear yard setback from 25' to 11' in a Residential Zone.

A motion was made by Mr. Ruston seconded by Mr. Waskie to approve this application for an Area Variance to construct an addition with less than required rear yard setback from 25' to 11' in a Residential Zone.

Mr. Phillips – Can it be achieved by other means feasible by the applicant. Concerns? As the applicant has said there are other homes in the area that have done this. A nice family room off the back side. Undesirable change in the neighborhood.

Mrs. Kinne – No.

Mr. Phillips – Whether the request is substantial. We go back to Mr. Kellogg – 15% - not even close. Whether the request will have an adverse physical/adverse environmental effects – no. Was the alleged difficulty self-created – anyone?

ROLL CALL:            AYES -        5        NAYS -        0        ABSENT -    1 (Pandich)

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ADJOURNMENT

There being no further business before the Board, a motion was made by Mr. Waskie, and seconded by Mr. Ruston to adjourn the meeting at 7:35 p.m.

Respectfully submitted,

*Nancy Schnurbusch*  
Nancy Schnurbusch,  
Recording Secretary



**Russell, Scott D.**

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**From:** Donald G. Walls, Esq. <dgw1007@aol.com>  
**Sent:** Wednesday, April 25, 2018 10:22 AM  
**To:** Russell, Scott D.  
**Subject:** please see attached ltr  
**Attachments:** 180425 ltr to Scott Russell re Lumpsteds comments for Zoning Board minutes.docx

Law Office of  
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April 25, 2018

Scott Russell  
Ordinance Department  
Town of Chenango  
1529 NYS Rt. 12  
Binghamton, NY 13901

**RE: Mr. Lumsden's comments**

Dear Scott:

At the April 24, 2018, meeting of the Zoning Board of Appeals member, Aleta Kinne, raised the question of Mr. Lumsden comments made on that date should be a part of the official minutes.

After review of the situation, it is my understanding that meeting of the Zoning Board was officially closed and adjourned when Mr. Lumsden made his off-the-record comments. Under those circumstances, since the meeting had adjourned and was closed and his comments were not made at the time the meeting was in session, there is no need to have them as part of the record.

If anyone is interested, they may go to the Town Clerk since Mr. Lumsden filed his remarks with the Town Clerk. I hope this clarifies the situation.

If you have any questions, please feel free to contact me.

Very truly yours,

  
Donald G. Walls

DGW/sme