

ZONING BOARD MEETING  
TUESDAY – MARCH 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  
Gavin Stiles, Ordinance Officer  
Kathleen Rudy, Deputy Town Clerk, Interim Stenographer

James Brewster: The hour being 7:02 PM, March 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. Eldridge; present; Mr. Smith; present, Mrs. Pandich; present, Mrs. Kinne, present, Mr. Brewster; present.

James Brewster: With the roll complete, I can confirm that we do have a quorum to continue this meeting, therefore, I'll read the following. This meeting being held via ZOOM Virtual Meeting Software as permitted by the Governor's Executive Order 202.1 and 202.15 which most recently extended by executive order 202.96. Tonight's meeting is being recorded and will be transcribed at a later date.

OLD BUSINESS:

James Brewster: First order of business tonight is approval of Minutes from our February 23, 2021 Zoning Board Meeting may be approved as written. Are there any objections?

Hearing no objections, the February 23, 2021 Meeting Minutes are approved.

NEW BUSINESS:

James Brewster: Application 2021-V03 Troy Widden of 33 Stacy Dr., Tax Map # 111.05-26.2. Application for an area variance to exceed the maximum size for an accessory building in an Agricultural Zone and Short EAF.

James Brewster: We have received that package so do any of the Board members have any questions or comments about that? If there is no discussion, I will seek a motion regarding that application for approval or denial to move on to the Planning Board and schedule it for our April meeting.

A motion was made by Thomas Eldridge to accept the application 2021-V03 and forward to the Planning Board and schedule it for our next monthly meeting on April 27, 2021, seconded by Aleta Kinne 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___

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

Ayes – 5      Nays – 0

James Brewster:      The next order of business we have to have Nick discuss a Disclosure of Conflict and Consent to Waive form for the upcoming public hearing.

Nicholas Cortese:      Coughlin & Gerhart does have a conflict of interest as it relates to the application that is before you tonight for a public hearing insofar as one of his colleagues represents the O’Neils in matters that are unrelated to this area variance. We don’t represent the O’Neils as it relates to the area variance, we have not provided any legal advice as it relates to their application and in fact as you saw in the form I sent, the O’Neils have signed a waiver of conflict because our firm does believe that the conflict is waivable. The Board needs to make a motion to waive the conflict on your end and authorize the chairman to sign that conflict waiver so that I can continue to represent you tonight during the public hearing.

James Brewster:      Will read the Disclosure of Conflict and Consent to Waive into the record before we vote on it.

**DISCLOSURE OF CONFLICT AND CONSENT TO WAIVE**

The undersigned hereby acknowledge that Coughlin & Gerhart, LLP has fully disclosed that it currently serves as general counsel to the Town of Chenango Zoning Board of Appeals (the “ZBA”) on all appeals that come before it, including area variance application V2021-02, which was submitted by Dane O’Neil and is currently pending before the ZBA. The undersigned further acknowledge that this may represent a conflict of interest with regard to Coughlin & Gerhart’s representation of Dane O’Neil in matters unrelated to the above-referenced proceeding. The undersigned further acknowledge that Dane O’Neil is proceeding without an attorney with regard to said appeal, that Coughlin & Gerhart, LLP represents only the interest of the ZBA on said appeal, and that the undersigned hereby waive any conflicts of interest that may be caused by Coughlin & Gerhart, LLP’s representation of the ZBA in said proceeding.

This document may be executed in counterparts, which shall collectively be considered one original. Facsimile or PDF signatures are acceptable.

James Brewster:      Board Members, do we have any discussion or somebody put a motion forth to accept this consent to approve me to sign it.

A motion was made by Melanie Pandich to accept the Consent Waiver and allow James Brewster to sign it, 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___

The motion was approved by a roll call of:

Ayes – 5      Nays – 0

James Brewster:      The next order of business is to have our public hearing for application 2021-V02.

**PUBLIC HEARING:**

James Brewster:      Application #: 2021-V02 of Dane O’Neil, 21 Cherry Lane in the Town of Chenango, Tax Map # 112.06-1-5, located in a Residential District. This application is for an area variance from the minimum front yard setback of 30 feet in said District to 23 feet, in order to accommodate the proposed construction of a porch. The environmental significance of the requested variance if any will be reviewed by this Board.

James Brewster:      At this time is there anyone from the public who would like to speak to this matter at this time?

Hearing nothing, I will read into record the notices from our Town Engineer and also the Planning Board Advisory.

Alex Urda, Town Engineer – The referenced application is to construct a front porch with less than required front yard set-back from 30 feet to 23 feet in a residential zone. The package included a Planning Board application with permissions and Zoning Board application, applicant letter signed by the owner, architectural sketches and the short EAF. In reviewing the Code of the Town of Chenango, Article 7, Subpart 73-23 C, Variances 2A, B & C. The granting of this variance is necessary for reasonable use of the land and is in harmony with the general purpose and intent of these chapters. Recommendations stated we have no engineering objections to the variance.

Planning Board – The Chairman and all of the members at their meeting on Monday, March 8, 2021, the Planning Board considered the requested area variance to construct a front porch with less than required front yard set-back from 30 feet to 23 feet in a Residential Zone with a short EAF. The Planning Board refers this application to the Zoning Board of Appeals with a favorable advisory.

Gavin Stiles:      Ordinance Department – We do not have any concerns at all if it is approved, we will need a building permit and we will proceed.

James Brewster:      I would like to state for the record, we typically do request that the County reviews the project and they stated that it was not applicable for them to review.

Nick Cortese:      Would like to ask a question of Gavin; Did the applicant talk at all about the project and specifically about this being kind of a combination porch / handicap access ramp or did they have the discussion with John, did that not happen. He is just curious because some of the material that was in the application itself because the applicant referenced his and his wife’s disability and that being part of the need to construct this thing?

Gavin Stiles:      He heard nothing about that Nick, we talked about the porch and then the handicapped ramp just popped up at a later date. He saw the e-mail...

Nick Cortese: He knows that was there before, like in that old photo you can go to Google Maps and look at the property and see the ramp on it, he just knows that part of his proposal pointed out that he and his wife had some kind of disability, it didn't specify what, but said that the porch would improve accessibility due to their disabilities and he is just wondering if there was any discussion that was had with Ordinance about this being a handicapped accessible kind of situation or if it was just discussed as being a porch in the traditional sense.

Gavin Stiles: To his knowledge, the conversation that he had with Mr. O'Neil was for a porch only. He heard nothing about a handicapped accessibility until he had heard about it at a later date.

James Brewster: Does anyone have anything else to add before he closed the public hearing? Hearing nothing, he is closing the public hearing and moving on to the Board deliberations. He does state as advised from Counsel that this is a Type II consideration under SEQR, therefore we will not have to go through any of the paperwork for that and we can move on to considering the five factors for our 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.

Mr. Brewster – He didn't see anything in the drawing that would stand out, it looks like they had a fairly steep rise on the masonry steps that they had so it looks it is just going to be replaced with a standard porch with a couple of access points of perhaps some shorter stairs.

Melanie Pandich – She agrees, and the applicant did note as well that it is comparable with other porches and decks in their area.

James Brewster – He drove past their house and couldn't see that it would be any big deal.

Scott Smith – States he agrees, and that it would appear that they are simply making it so that maybe the intent is to be able to roll a wheelchair down to the car without getting soaking wet in rain.

James Brewster – So at this time we can answer the question since we are talking about it; it will not produce an undesirable change. So, number one would be 'will not'.

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

James Brewster – Speaking just about the variance, our requirement is 30 feet and according to the drawing it butts up to the front of his house, so he needs 7 feet.

Thomas Eldridge – There is no other way to do that.

James Brewster – He can't see any other way to do that either.

Scott Smith – He agrees, he can't do it any other way from what he has seen, he has driven by the house too.

Melanie Pandich – She agrees with that as well.

James Brewster – So the benefit 'cannot' be achieved by any other method.

3. Is the requested area variance substantial?

Scott Smith – He would say it is not.

Thomas Eldridge – He would agree, it is not.

Melanie Pandich – Agrees as well.

Aleta Kinne – Agrees.

James Brewster – That is likely true, so we will agree, 'is not'.

4. would this variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Thomas Eldridge – Would not.

Scott Smith – Probably not very much run-off there or any kind of disturbance, so he will say would not.

James Brewster – Sounds like that is a consensus, so 'would-not'.

5. Was this hardship self-created?

Thomas Eldridge – Yes this was self-created.

Scott Smith – He feels it was self-created just by buying that house, instead of buying a house that already had a covered ramp-area.

James Brewster – So we all agree that is an 'is self-created' answer.

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

Nick Cortese: Will read the resolution that is up for adoption tonight.

### **RESOLUTION ON AREA VARIANCE APPLICATION #: 2021-V02**

**WHEREAS**, on February 5, 2021, Dane O'Neil ("Applicant") duly filed an application for an area variance for property he owns within the Town, located at 21 Cherry Lane in the R – Residential District and designated as Tax Map No. 112.06-1-5, wherein Applicant requested a variance from the minimum front yard setback in said District of 30 feet to 23 feet in order to accommodate the proposed construction of a porch; 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 March 23, 2021 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 March 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 Applicant, as well as reports and recommendations submitted in regard to Applicant's application, including those submitted by 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 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 Applicant 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 Applicant's application #2021-V02 for an area variance from the minimum front yard setback in the R – Residential District of 30 feet to 23 feet 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 March 23, 2021 via Zoom virtual meeting software, as authorized by the Governor's Executive Orders 202.1, 2020.10, 202.15 and 202.96, the foregoing motion was made by Melanie Pandich and seconded by Thomas Eldridge. The ZBA members voted as follows:

James Brewster, Chair	Voted: <u>aye</u>
Aleta Kinne	Voted: <u>aye</u>
Melanie Pandich	Voted: <u>aye</u>
Scott Smith	Voted: <u>aye</u>
Thomas Eldridge	Voted: <u>aye</u>

The motion was thereupon declared adopted by a roll-call vote of 5-0.

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.

James Brewster: Hearing nothing, this meeting is adjourned. (7:29 P.M.)

Sincerely,

Kathleen A. Rudy, Deputy Town Clerk  
Interim ZBA Stenographer