

**PLANNING BOARD  
REGULAR MEETING (ZOOM)  
TUESDAY OCTOBER 13, 2020  
7:00 P.M. – TOWN HALL – 1529 NYS RTE 12  
BINGHAMTON – NY – 13901**

**Approval of the August 10, 2020, Regular Planning Board Minutes.**

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**PRESENT:** Cynthia Paddick - Chair  
Messer: Donnelly, Blythe, Worden, and Szenher

**ALSO, PRESENT:** Keegan Coughlin, Town Board Atty.  
Alex Urda P.E. - Town Engineer  
John Freer – Building/Code Inspector  
Jo Anne Klenovic – Town Supervisor

**ABSENT:** Nicholas Cortese - Planning/Zoning Atty.  
Michael Boland - Alternate

Ms. Paddick – I need to read the virtual meeting information for the record and take a roll call of the board members to see who is in attendance for the virtual Planning Board meeting. We have to make sure that the transcription reflects there is a quorum.

With that being said the meeting convened at 7:00 p.m. at which time Ms. Paddick called the meeting to order and read the opening of a virtual meeting, roll call of who is in attendance.

Jamie Szenher - aye

Kevin Worden- aye

Alan Blythe - aye

Brian Donnelly -aye

Ms. Paddick - aye

Roll Call: Ayes - 5                      Nays- 0                      Absent – 1 (Boland)

All present and accounted for and has a quorum to proceed.

Ms. Paddick – Diane if you can put this in the record:

I Cynthia Paddick, Planning Board Chair have confirmed with Counsel that this meeting is being held in accordance with Executive Orders 202.1 and 202.15, originally issued by Governor Cuomo on March 12, 2020, and April 9, 2020, respectively, and extended by Executive Orders 202.28 and 202.29, issued on May 7, 2020 and May 8, 2020, respectively.

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. They also authorize municipal board meetings and public hearings before such municipal boards to be held remotely by conference call or similar service.

This meeting is being held remotely via ZOOM virtual meeting software. The public has the ability to view or listen to this meeting live via the ZOOM app, web browser and by telephone. This meeting is being recorded, and will be transcribed at a later date.

Now we can proceed with the agenda, approval of the Planning Board minutes from August 10, 2020.

A motion was made by Mr. Blythe, seconded by Mr. Worden to approve the minutes from the August 10, 2020 regular meeting.

Roll Call: Ayes - 5 Nays- 0 Absent – 1 (Boland)

**NEW BUSINESS**

- **NONE**

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**ADVISORY OPINION/REFERRALS**

- **2020-V12-ABBAY FAMILY TRUST #4 -JAY ABBEY**-Portion of TM#094.02-1-1.1- Application for an area variance to create a buildable lot with less than required road frontage from 240’ to 0’ in agricultural zone. & Short EAF

Mr. Urda -The referenced application is an advisory opinion request from the ZBA for an area variance to create a buildable lot with less than required road frontage from 240’ to a 0’ with a legal 25-foot right-of-way/easement within an agricultural zone.

The application package & associated info included: Dated: Rcvd.:

- Application to Zoning Board incl. permissions statement --09/15/20
- Email Confirmation 09/15/20 09/15/20
- Applicant letter 09/09/20 09/11/20
- County Clerks Recording Page – Deed Information 11/13/98 06/30/20
- Boundary Surveys w/ house shown; incl. Surveyor’s Desc 11/15/11 06/19/20
- Lot Split Survey 08/12/20 08/13/20
- Site Sketch ---- 06/19/20
- Short EAF 07/01/20 09/11/20
- Department of Planning & Economic Development Letter 07/24/20 07/27/20
- Pictures of area flooded 07/31/20 07/16/20
- Follow up email 09/16/20 09/18/20
- Matthews Letter 08/19/20 08/20/20
- Baseline Documentation Report Conservation Easement (Matthews) 05/\_\_\_/20 08/19/20
- Grant of Conservation Easement & Declaration Covenants (Matthews) 08/19/20
- Broome County 239 Review “No Impacts” 10/07/20 10/07/20
- Email from T. Matthews – Matthews Sketch ---- 09/25/20

In reviewing the Code of the Town of Chenango, Article VII §73-23 C Variances (2) (a), (b), and (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.

Recommend Legal should review access and easement concerns of neighbors. I have no engineering objections.

Mr. Freer – The ordinance office has no concerns allowing this variance request with a building permit being required.

Ms. Paddick – Is the applicant present? Yes.

Yes- Jay Abbey here.

Ms. Paddick- I'm assuming everyone on the board has had the opportunity to review the application the numerous letters from residents and the applicant and his attorney. Also, a letter from an attorney representing someone in the neighborhood. Does anyone have any questions or comments of the applicant? No one, I have a couple questions for Alex. We received a letter from a neighbor concerned about the flooding that occurred in 2006 and 2011. You have looked at the 500-year flood is it safe to assume in your opinion you are not concerned about an additional house being built up there to contribute to any further detriment to the area? It really doesn't affect the area. I'm just asking a question about getting this variance.

Mr. Urda – That is correct. There is access that is already existing. Usually if I was concerned it would be along the access way.

My I ask the engineer a question – I'm James Haley, atty represents E.L. Rose Conservatory agency.

Ms. Paddick – Yes go ahead.

Mr. Haley – When you say you have no concerns about it. You have a right-of-way that maybe 10' wide. Do you have any concerns about the engineering as far as emergency vehicles the slope next to the row?

Mr. Urda – I reviewed it and it did not have any concerns on that.

Mr. Haley – Did you consider the row to be 10' or 25'?

Mr. Urda – I recognized it to be 10'. I understand the width is 25' but, that is for the legal discussion.

Mr. Haley – You say the width that is allowed, is this an ingress/ egress road? This is a 10' ingress and egress easement, it's not a town road. Where did you get 10' from? That is the historical width you can see it on aerial photos it's 10' wide. Where did you get 25' from?

Mr. Coughlin -We ask members of the public not direct questions to each other only to the members of the board or representative of the town. That would be great.

Ms. Paddick – If someone wants to speak if you could state who you are to ask the question of the board so it can be put into the record. It is difficult to tell who is speaking with the Zoom meeting. So if you could do that it would be greatly appreciated.

Kathy Desisto - I live on 49 John Smith Road – Michael Fallon is stated on the deed-I have a question for Mr. Urda. I'm a geologist and of course very concerned about the drainage and erosion on the property. We have written a letter and we would love to have you come out. I think before deciding anything we would like someone Mr. Urda to come out in person and take a look at this, before deciding anything. . Take a look at the issues we are facing an on our property.

Ms. Paddick - Ok, that will be noted Alex. I'm assuming you have already been there.

Mr. Urda – I didn't meet with anyone- no.

Ms. Paddick – You looked at this area. So, what is before the Planning Board is we need to give an advisory on the variance to the Zoning Board of Appeals. Actually, they will be the ones to act on that. So, if the board does have any other questions for Mr. Urda or anything like that, if not would the board like to make a motion?

If I may interrupt if I could. – This is Michael Wright, Attorney for the Matthews. I would like to ask Mr. Urda what the basis was for his conclusion. Basis for his opinion based on the easement being 25' opposed to 8 or 10' wide. Because I think that is a bit of fundamental concern 25' opposed to 8 or 10' wide. As we contended is on historical record data demonstrates he does not have a proper engineering base to make a recommendation of approval.

Mr. Coughlin- Just to interject I represent the Town on this matter and the Town Board. This is a private issue on the easement. The Planning and Zoning Board are not litigating the private issue of the easement. The Planning Board can take this into consideration any recommendation for approval could place a condition upon that approval, that such easement is in fact legal and valid if the board so chooses to put a number on that. The board is not here to decide what the easement is, that is outside their scope. So, we are going to try and stay out of that conversation. Planning Board has any concerns with the respect to the easement that are raised by the neighbors the board could consider that as a potential condition and would the Zoning Board of Appeals consider this with any condition on approval or recommend denial.

Mr. Haley – Representing the Conservatory- don't you think it is fundamental to know the width of the easement in the sense that if it is 10' wide easement on an old farm road water is going to whistle down the mountain. Perhaps heard some of these people on the Zoom meeting now that this is pretty important for Mr. Urda to understand before he can make a recommendation one way or another.

Mr. Coughlin – That's fair to considered but, respect to the variance at hand from 240' down to 0' is really what we are looking at. It's not a use variance building a house would be an allowed use for this area variance. So, we are considering the impact of the granting of the road frontage will impact the surrounding neighborhood. Will way in the factors of an area variance tests.

Mr. Haley – If you look at 267-B of the town law you will see the detriment down slope.at least two of the prongs of the test

Albert Millus - Can I speak?

Ms. Paddick – Yes.

Mr. Millus – I’m the attorney that represents Mr. Abbey. I was up to the property last night with Mr. Abbey. These objections are just ridiculous. There has always been there forever. 8’-10’- 25’ wide it makes no difference. I’m the town attorney for the Town of Fenton been the attorney for thirty years and Deputy attorney before that. We all know water comes off the hills. Mr. Abbey building a house up there is not going to change that. These people don’t want a new neighbor in their neighborhood. We ask the Planning Board respectfully to recommend to the Zoning Board of Appeals they grant this variance. If there is any issue with the easement width it has nothing to do with this application with the town. We will duke that out with the property owners. That’s all I have to say. I sent letter to court today and to Mr. Wright and Mr. Haley already. I respectfully ask this board to recommend approval to the Zoning Board of Appeals for this variance request, thank you.

My I speak?

Ms. Paddick – How is speaking?

James Haley for the Conservatory- Mr. Millus said we are a Conservatory which is recognized by the State and Federal Law .Mr. Millus is a partner on our Board of Directors. So, I think getting back to the law which the board has to consider, is the five prong tests. Which I have not heard anything that shows this is not going from 240 to 230 to 220. It’s going from 240’ to 0’ of road frontage. Which is 500’ from a town road. I think when you look at the five-prong test it doesn’t meet any of them, and that’s my point.

Mr. Coughlin – People new to municipal board meetings. I just want to out line the process for this variance. The Planning Board is considering a recommendation to the Zoning Board of Appeals for this variance request. Then there will be a public hearing with the Zoning Board of Appeals it will be done over Zoom like this. And I would encourage anyone to appear at that public hearing to raise those concerns. So, the Zoning Board can hear everything you would like to say. I believe On October 27<sup>th</sup> at 7:00 p.m. I’ll double check that on my calendar, that is correct the public hearing will be on Tuesday October 27<sup>th</sup> at 7:00 p.m.

Ms. Paddick – So would someone on the board like to make a motion on this?

Mr. Donnelly- I make a motion for a favorable advisory to the Zoning Board of Appeals for this area variance, .seconded by Mr. Worden

Ms. Paddick – Any further discussion from the board on this if not can we have a vote,

Mr. Coughlin – Cindy, really quick just so the board is aware. Mr. Haley eluded to the five-prong test that the Zoning Board will be considering for this variance since the Planning Board doesn’t usually deal with this. I’ll just read the five prongs criteria to consider for granting an area variance:

- (1). Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance
- (2). Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
- (3). Whether the requested area variance is substantial.
- (4). Whether the proposed variance will have an adverse effect, or impact on the physical or environmental conditions in the neighborhood or district.
- (5). Whether the alleged difficulty was self- created which consideration shall be relevant to the decision of the Zoning Board, but shall not necessarily preclude the granting of the area variance.

So, again the variance is for 240' of road frontage down to 0'

Ms. Paddick – Thank you Keegan. Any further discussion – none, great, can we have a vote.

Roll Call: Ayes - 5 Nays- 0 Absent – 1 (Boland)

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So, this will go to the Zoning Board of Appeals with a favorable advisory from our board, as Keegan said there will be a public hearing at that time and anyone interested to please come and represent themselves.

Nothing else on the agenda for this evening does anyone have anything for the board if not can we have a motion to adjourn.

Could I ask a question? – This is Tim Matthews, live at 2 John Smith Road adjacent to the property. Are you taking any other input from the folks on the line here?

Mr. Coughlin – There will be a public hearing, this board is just providing an advisory opinion and that's it. This is not a public hearing tonight for public input.

Ms. Paddick – We will take public input and we have made our favorable advisory to the Zoning Board of Appeals. This part is for the public hearing and the Zoning Board to make the final decision on this. We just passed a favorable advisory.

Mr. Coughlin – If you would like to say something for the record I'm sure Ms. Paddick would welcome that.

Ms. Paddick – Yes.

Tim Matthews – I would like to say something for the record for the 45 years we have had this home ownership in the Town of Chenango. We felt blessed with the responsible town leadership and a great place to safely raise a family. We are primarily concerned about the location of the proposed lot on a steep wooded slope. The environmental risks and the misrepresentation on the variance application. In addition to clarifying the characteristics of our protected property and correcting the description of the access that is being claimed. We would like the Planning Board to consider the following questions and the facts in our objections for the proposed variance application . Regarding proposed lot location the attorney for the applicant incorrectly said we are opposed to development. We are opposed to the location of this lot. It's located right next to

a steep slope and the water shed flows down that slope and across our property. Directly above our spring fed well and continues down the steep ravine. On John Smith Road. This lot location disregards the surface water flow there going to be adding impervious surfaces house roof, garage roof, driveway, access road and who knows what else. There's been no discussion of it. There is more than 100 acres up there to choose from. The lot location is negligent the town's Comprehensive Plan says that it maybe best to leave slopes grader than 15% in their natural state. There are no plans for surface water, no septic design, no utility service. All of which needs to be part of a comprehensive building plans and these must be generated and approved before the lot location. No simple erosion and sediment plan showing the areas to be disturbed and the erosion and sediment plan control practices including location of culverts, steams or ponds off site. The property has a history contributing to excess runoff causing erosion and damage to driveways erosion of ditches and washing out retaining walls, damage to public roads and the neighbors downhill. Water management plans needs to be considered is more than just moving surface water off the lot but also significant risk to the properties to the south. The proposed access ingress/egress farm path that is not a public road. It is represented as 25' right-of-way on the application will increase traffic on the farm path. It's 500' from the nearest road and posses a significant change to the character of our property. Already multiple instances of vehicles traffic driving at unsafe speeds to the road and access path. Multiple neighbors on the road have complained. There is evidently new access to Abbey Trust #4 property from the Buckley Road side that kind of negates the dead-end status of John Smith Road and significantly increase traffic load from the original intent of the access path granted in the 1050's was a seasonal farm for ingress and egress on the property. That intent has not changed based on the convenience of a subsequent owner granting this variance for this new lot places an increase burden on the access path across the Matthews property. Were now three properties would claim a right-of-way, the conservation easement it's not something we made up. It's on John Smith Road it's a protection for the conservatory of the property certified by a conservation expert requested with Broome County under the stewardship of Edward L. Rose Conservancy Inc. Important aspect of keeping the Matthews property in its actual state is to show the current runoff in this water shed. The proposed lot location possesses a new risk, with increase surface water runoff ,flow volume to the conservation value of the John Smith Road and to other homes. Any proposed changes to the property the conservation easement would have to be approved by Edward L. Rose Conservancy, LLC. any changes to the dirt access path, flow of access surface water, digging on the Matthews property. The conservation easement was established in perpetuity as having significant environmental value in the Town of Chenango. This geographic terrain on the Matthews property serves as an important row in drainage and surface water control. The extensive site clearing already in progress on the proposed lot location and lack of planning are immediate risk is present to the preserved Matthews property and the and the other properties on John Smith Road. When the Abbey's filed an appeal to the Zoning Board, New York State Uniform Law Section 267-A6 applied immediately to requires all work on proposed action to building a house to stop unless there is an immediate threat to life or property. There's no eminent threat to life or property. The bull dozing has continued this likely caused moderate damage and was surprised that your board didn't go through pulling moderate to large impact. Because the impact of the environmental characteristics certainly could. Will the proposed action result in changes the adverse level of traffic, it already has. Will the proposed action change the natural resources, yes. Will the proposed action result in an increase potential erosion flooding and drainage, yes. Approval of this variance could prove detrimental to the adjacent properties.

The Planning Board not just read the words written on the application but also look at behavior and actions and the real intent of the applicant. We have not prevented ingress or egress to the Abbey Family Trust #4 property. We do not oppose smart development in the appropriate location. We do oppose disregarding the safety and private property of the neighbors . This variance request should be denied. Thank you.

Ms. Paddick – Thank you for your statement.

Mr. Coughlin - Mr. Matthews some of the things you eluded too will also be discuss during the SEQR Review on October 27<sup>th</sup>. This is an advisory only from the Planning Board, that’s why this board did not through those questions tonight.

Mr. Matthews – Thank you that helps.

Ms. Paddick – Nothing further can I have a motion to adjourn?

Ben Perkus – I understand this is not the public hearing .Can I say something for the record as well?

Ms. Paddick – Sure.

Ben Perkus - I’m the neighbor that lives on Rte 12 at the bottom of the hill. Back in 2006 is when our back yard was totally devastated with ton and tons of rocks and that was called a 500-year flood back then. But four times since then we have had significant flow that has altered the character of the yard as well. And just for the record it wasn’t just a one-time thing it’s been ever since then. There is a serious water flow problem already. I would like the Planning Board and Zoning Board take these remarks seriously.

Ms. Paddick – Thank you for your statement.

There being no further business before the board a motion was made by Mr. Blythe and seconded by Mr. Donnelly to adjourn the meeting at 7:30 p.m.

There were 43 participants including the board members that attended this Zoom meeting.

Respectfully submitted,

Diane Aurelio  
Ordinance Secretary