

ZONING BOARD MEETING
REGULAR TUESDAY—JUNE 25, 2024
ZONING BOARD OF APPEALS
7:00 PM—TOWN HALL
1529 NYS RTE 12
BINGHAMTON, NY 13901

Present: James Brewster, Chairperson
Aleta Kinne, Vice Chairperson
Scott Smith, Board Member
Jon White, Board Member
Ed Miller, Board Member
Dan Wolters, Alternate Board Member

Also Present: Nathan VanWhy, Attorney

Absent: Gavin Stiles, Ordinance Officer

James Brewster: It's 7:01, I'll call the Town of Chenango Zoning Board of Appeals meeting to order. Can I get an attendance roll call, please?

Adam Donahue: Mr. Wolters; present, Mr Miller; present, Mr. White; present, Mr. Smith; present, Mrs. Kinne; present, Mr. Brewster; present.

James Brewster: Thank you, we have a quorum so we will proceed. Welcome everybody, we have a fairly short agenda with no new public hearings I should say. The next thing on the agenda is the approval of the minutes from May. Any comments, corrections on that? Otherwise I'll seek a motion to approve.

Aleta Kinne: I'll move.

Jon White: I'll second it.

Adam Donahue:	Ed Miller, Board Member	Voted: Aye
	Jon White, 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

James Brewster: May minutes are passed. Under old business we still have open public hearing for 2024-V06 at 258 Brooks Rd and that was for less than required lot size from 2 acres to 1.9 acres in an Agricultural zone. In our packets we have come under receipt of two dispositions from previous approved variances: one for the acreage, exactly 2 acres to 1.9, and the second one was for a frontage reduction which we had noticed the last time at the open meeting. We had that investigated. That's it, there are two approved variances on the property. As we all know they run with the land so here we are.

Jon White: So we basically just close the public hearing because the public hearing is still open essentially.

James Brewster: It is still open so I would have to close it unless, I will offer up if anybody in the audience would like to comment on the open public hearing. If that's the case I will close the public hearing and I will do so at this time. I will close the public hearing on that application. Now we're kind of left in an interesting spot with the applicant not here because ideally it would be nice under the new circumstances to just have him withdraw the application.

Nathan VanWhy: I think since he probably hasn't formally withdrawn it, we'd have to confirm that with Gavin, but I think you could dismiss it, just a motion to dismiss it as moot because the relief has already been granted by the town in a prior variance application. That way at least there's something for the record to show that an action was taken disposing of it.

James Brewster: All right, we've done dismissals before. If that's the desire of the board then I'll seek a motion to dismiss based on the fact there's already two existing variances on the property, one specifically for what was asked for.

Ed Miller: I'll make the motion.

Jon White: I'll second it, Mr. Chairman.

Adam Donahue: Ed Miller, Board Member Voted: Aye
Jon White, 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

James Brewster: Ok, application 2024-V06 has been dismissed. Now we're on to new business which is for us to look over the application and move it forward for the public hearings. We'll start with 2024-V09, Lilian Rosales of 8 Brook Ave, application for a garage addition side yard setback from 10' to 3' in a Residential zone. The applicant is not here so we shall carry on with our discussion.

Jon White: I will say on the short EAF she missed quite a lot of questions.

Aleta Kinne: I have them listed. Number one, three, four...

Nathan VanWhy: This would be a type II action though, so the short EAF wasn't necessary for the application. The code office of course has everybody fill it out but it's not actually needed for this as it's an area variance relating to a single or two-family house. This is a variance for a garage structure addition to the single-family house which makes it a type II action.

Jon White: So that's a moot point.

James Brewster: I'm good with that if everybody else is, because that was one of my biggest concerns with that. The other concern I have and I'm not quite sure how to resolve this, and I know that GIS is not perfect but just looking at it and understanding the layout of the neighborhood, her property amongst the others and not just hers in particular, they're close to the line

anyway. In some ways if you believed the GIS which of course is not the gospel, it almost could be interpreted that there's some interesting overlap of property buildings to other land so I just wanted to ask her if she had any kind of official layout. Her diagram met our requirements but...

Jon White: Where I'm going with this is, and some other stuff that's been brought up, we could accept the application. This is what she's asking for, for relief. She's got to prove that she's got that and do the survey. We could basically condition the survey in if needed or if the survey is done before our meeting then that's fine. You've got to stay the three feet off the line if you want this to happen and we can still choose to deny it if there's an issue anyways.

James Brewster: I guess the bottom line tonight is, do we have enough of a package with the concerns that we've discussed to move it forward?

Jon White: The site plan and the survey's an issue. Do we not accept it until we have a more official site plan drawing to verify this or do we allow it to go to the Planning Board and then public hearing and then take care of it there? I don't know what the lesser of two evils would be.

James Brewster: I look at it the way that that's what the public hearing is for. It's just, how do we convey to her some of our concerns to her to forward along? Or, do we just not and whatever she brings forth she brings forth.

Jon White: And that would have to be conditioned before getting a building permit anyways. And if she doesn't comply to the conditions, the building permit doesn't get issued and so it would go away essentially.

Aleta Kinne: She's already started doing some work and he put a Stop Work Order on it.

Scott Smith: There's two buildings presently there, additional buildings besides the house. There's two, one in the front and one in the back and they're kind of covered with something in between but there's two distinct foundations on the ground. There was a garage there. They tore down the garage without a demo permit and then they just started building more stuff before they were kind of forced to come to the town.

Nathan VanWhy: That's interesting because her application says that she's redoing a garage so that makes me question, is this already a preexisting, nonconforming use or variance given? If she's staying within the same footprint of the garage that was torn down, even though it was torn down without a demo permit, it was still there. As long as it wasn't more than a year ago...

Scott Smith: It was.

Nathan VanWhy: It was? Ok.

Scott Smith: Gavin has some documentation regarding when it was torn down and when they started to just build and then when he went in with the Stop Work Order. Sadly, nobody seems to have photographs of the old one, I was going to look at some previous listings.

James Brewster: I kind of don't want to go too much further other than whether or not the package is, this is great for the next round. Very important considerations but who knows, maybe it can play into us moving it forward.

Jon White: Even on the aspect of them already starting something without a permit that really doesn't affect us either way and ultimately the Town board has not put any provisions in to give

Gavin some extra grip to say you know, you're going to get punished worse because you started now. You're basically slapped on the hand, beg forgiveness, oh sorry I'll get a permit and away you go.

James Brewster: Yeah, this board has approved retroactive variances before.

Jon White: There's nothing in the Town Code that says we can't do anything like that, that we're limited to just what comes before you.

James Brewster: So in the grand scheme of things we've sent forward, are we in the same ballpark of pushing this forward to it's public hearing?

Jon White: I think so. What's everybody else's opinion?

Ed Miller: Based on this she's really got the space you mean, right?

Jon White: No, just the paperwork that's been put in front of us, is there enough paperwork to accept this and go from there?

Aleta Kinne: That's really all we have tonight is an application.

Ed Miller: Yeah.

Aleta Kinne: We have to accept it and then...

James Brewster: Right, she's got something that addresses the five factors, she has the SEQR which wasn't necessary. She does have a diagram, a couple of them, the satellite and the plat. So, in my opinion it's a complete package to do what we normally do and then get into the nitty gritty at the discussion and the public hearing for sure.

Aleta Kinne: Did you get a site plan that shows where the septic is?

Jon White: No, there was no septic or anything.

James Brewster: No.

Aleta Kinne: She marked on her thing that...

James Brewster: the required exhibit is, it does say site plan, whatever that means to us, whether it's an official site plan or in other words things we've seen. Is it drawn to 1:20 scale, have we ever really hung anybody out to dry on that one?

Jon White: It's always the case that we've accepted a lot of hand-drawn site plans in the past.

James Brewster: Showing lot size, buildings, parking, ingress, egress, landscaping and appropriate the long or short form. That's the actual required. Letter of intent or interest in the property, photographs, never really had a lot of photographs come through. So as far as what's to me, what's required, I agree with Jon. It's a package. She has the right to her day in court if you will.

Aleta Kinne: Move it to next month.

Jon White: That's the way I look at it.

James Brewster: Motions are available to be made.

Jon White: I will motion to pass this to the Planning Board and then to public hearing for next month's meeting.

Scott Smith: I'll second it.

Adam Donahue: Ed Miller, Board Member Voted: Aye
 Jon White, 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

James Brewster: Great, so we've moved that on to July 23rd, our regular July meeting. With that one aside we've got 2024-V10, the Haza Bell of Northeast LLC on several properties on Front St, application for a triple area variance to open a Taco Bell. They're looking for less than required acreage from 6 acres to 1.38, less than required lot frontage from 350' to 193', and less than required lot depth from 450' to 266' in a PDD-C. Thoughts on that one?

Aleta Kinne: Looked pretty complete.

Ed Miller: It's a pretty thorough application.

Aleta Kinne: We don't discuss it tonight, we just accept it.

James Brewster: Correct, as long as it meets the typical criteria that we have just outlined.

Jon White: It seems like their paperwork is all in order.

James Brewster: We probably have more than enough information.

Aleta Kinne: I think that we should require a written environmental report on the contamination that's been there, not just have it worded it in here that it's been done.

Jon White: I think the DEC has commented on that.

James Brewster: There is a DEC letter.

Aleta Kinne: I didn't see it, and that's what I would like to see. A letter.

James Brewster: I did catch a glance of it yesterday so I know what these guys are saying.

Aleta Kinne: I thought I read everything, I didn't see it.

Scott Smith: It's from 2017.

Aleta Kinne: Maybe it's going to be like Castle Creek that they're going to raise it two feet and as long as they don't go down in the ground. I remember it saying that on the one in Castle Creek that one time.

James Brewster: Right, yes. Here it is. NYS DEC, April 2017, it's letter from the DEC stating that spill requirements have been met.

Aleta Kinne: Ok, I'm missing that one.

James Brewster: I was thinking about that one and then I saw it yesterday and just now so, I'm always concerned about brown fields and so forth.

Aleta Kinne: It's been sitting for a while.

James Brewster: I'm available for a motion on this, should anyone choose.

Aleta Kinne: I'll move.

Ed Miller: I'll second.

James Brewster: And that's to move application 2024-V10 through to the Planning Board for advisory opinion and then to our regularly scheduled July meeting. Roll call, please.

Adam Donahue:	Ed Miller, Board Member	Voted: Aye
	Jon White, 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

James Brewster: V10 is passed, moved forward. Again we have no public hearings, no application discussions. I do have something for your consideration. It's really minor. Tomorrow night the board is going to consider reappointments primarily for me and Aleta however my understanding from being at the last Town Board meeting when they were talking about Planning, they are probably going to discuss an entire restructuring because it's so messed up, the dates. None of the slots slide to be alternating five-year slots at this time. I put in just my opinion on a potential structure for us, which kind of moved, Aleta and I get fitted into a slot. I think you stayed and you stayed and you were kind of reassigned because you're coming up again towards the end of the year and I did something totally different with the alternate. It's my recommendation, they probably won't go for it. I just wanted to make sure everybody's ok because how it worked out, I kind of redid everybody and went by either sliding a year just to, and this is just me citizen/chairman talking, just an unsolicited opinion to hopefully help move them along in the discussion because sometimes it gets bogged down in the Town Board so would everybody be ok being bumped a little bit more from their current expiration?

Jon White: Mine goes to 2028.

James Brewster: I think my recommendation was to just bump you a year to 2029.

Ed Miller: Mine's got to be coming up.

James Brewster: you're October of this year. That's what the mess is. When you came in you didn't just get five years, you got...

Jon White: The existing term that you took over. I had a six-month term when Thomas Eldridge resigned and went to the Planning Board, then I got reupped to the five years.

Ed Miller: So whoever I took over for, I just finish their term.

Jon White: Correct and then you get your five years after you finish the term of the person that you replaced.

James Brewster: I think my recommendation was you just get bumped to next year.

Ed Miller: Yeah, whichever is fine.

James Brewster: The other thing is, none of this is off-kilter with what I heard them say, because they had to say we're just going to do it, we're going to slot the slots and then plug the names in. I think that was one way they were going to do it is to set the slots and you don't really care about the names per se. That's what I did.

Ed Miller: Why do they do every 5 years?

Jon White: It's a state law that you always have, if it's five people on the board you've got five years and everybody has to alternate so say you have three or four people come up at once for appointment and they all say they don't want to be reappointed and they all walk out the door. This way your board is kind of even and it doesn't get off kilter because you always have an alternate, is the purpose behind that.

James Brewster: I'll forward to you guys what I sent, I should've done that in the first place. I had a lot of CC's on there, but I just figured I'd bring it up tonight.

Aleta Kinne: You and I are just going for a five year?

James Brewster: What I did was I gave members 25, 26, 27, 28, 29, members 1-5.

Nathan VanWhy: Do you want me to read the email that you sent?

James Brewster: Sure.

Nathan VanWhy: Extend the Ed Miller slot to December 31st, 2025 from current expiration of October 2024. Renew appointment of Aleta to December 31st, 2026. Extend Jon White from 26 to 12/31/27. Renew appointment of Jim to 12/31/28. Extend appointment of Scott to 12/31/29 from 11/28, and then the alternate is a one-year term, always coming up every year.

James Brewster: You were bumped to 27, Aleta got 26, I got 28, and then Scott gets bumped to 29.

Aleta Kinne: So I'm going two years?

James Brewster: Just to sort it out. Just to get the staggering and then when that two years came up you would be another five and each slot when it ends...

Aleta Kinne: Are we starting with our training all over too?

James Brewster: Training is calendar year.

Jon White: You only have to have four. It's only for a new member that you have to have six and then you go to four so it doesn't matter. Calendar year is calendar year, and you can roll, you can do ten in one year and only need four and roll the six over. I did a whole mess in the beginning and I'm still good for half a credit for next year.

Aleta Kinne: I was way ahead at one time too and then in there somewhere someone said no we're not going to carry them over and I didn't get carried over.

James Brewster: We're carrying.

Jon White: I thought that was a state law anyways.

Aleta Kinne: I had a list very long at one time and they didn't carry it over for me. I can't go back now.

James Brewster: I can't rectify that for you, sorry. You're caught up except for calendar year 2024, this year. That's the other reason, and I heard them say they want to organize it to the end of the year, calendar year as opposed to whatever they were doing.

Jon White: Like mine, Thomas ended at December 31st so when I started July 1st of 2021 and then I got reappointed January 1st of 2022 for my five years because Thomas' ended at December 31st of 2021 so that's how, plus some people came in midyear, part year. That snowball has rolled as people have come in and gone out and it's never been straightened out. It's left to get kicked down the road.

Aleta Kinne: I started out with January 1st replacing Jim DiMascio when he became a board member and then all of a sudden the next thing I knew it was April.

James Brewster: I was all over the place too.

Nathan VanWhy: This should not be a big deal. The amount of time the Town Board has spent talking about it and what I try to communicate to everybody is everything you've done is legal, we just need to get it fixed and whoever wants to serve whichever terms it's fine, but somebody's got to end in every single year so somebody's going to have one, somebody's going to have two from right today somebody's got 1, 2, 3, 4, 5 and then it's just on the clerk's office to keep track of terms of office with each seat and when a person comes in and out and just tracking that but making sure always to know seat 1 ends in years 1 and 6 and seat 2 ends in years 2 and 7. We just know that that's when those seats are up.

James Brewster: I thought way out of the box on the alternate, I don't know what the town's going to do about that.

Nathan VanWhy: The Town Code says that the Town Board is authorized to appoint ad hoc and/or alternate members to the ZBA where conflicts of interest or other factors intervene to eliminate a full board attendance and so really what I would say that the town should be doing anyway every year is appoint an ad hoc or alternate member every year at the reorg meeting which is what you said. I don't know what they're doing now and to the extent that you've been appointed as the alternate member you hold that position over until a replacement is selected so you're either a hold over unknown or hold the position until they pick somebody else.

Jon White: I think a lot of times there's been enough turnover of board members that somebody hasn't stayed that long in an alternate position.

James Brewster: I was out in a year. Chairman.

Scott Smith: I was out of it in six months.

James Brewster: I think most of us were.

Jon White: That's the purpose of having an alternate is they can get further up to speed on the governmental process of what we do and then boom, they can slide right in.

James Brewster: That's what I did, I just wanted to let you guys know that there could be some changes because they'll probably want to come to you so that's why I wanted to come to you.

Jon White: Even if I bumped back a year it doesn't matter. If it's got to align with things at the end of the day as long as I'm doing my job and showing up and doing my training they can't get rid of me.

James Brewster: To a point I think I was Captain Obvious. They're going to do it for Planning and then you'd think they would use the same methodology of just thinking about the members. That's one of the reasons I sent that out, to help.

Scott Smith: And help you did.

Nathan VanWhy: Are you folks comfortable with me relaying to the Town Board if they bring this up for discussion for tomorrow night that Jim talked about it with the other board members, they are all comfortable with this approach?

Board: Yes.

James Brewster: Chances are I'm going to be there anyway but I'm just going to sit in the back and watch you do your magic.

Aleta Kinne: Are they doing anything about our last meeting being changed? It came up at the last work session.

Nathan VanWhy: We figured that all out, it was all done appropriately. I'm focusing on the publication of the legal notice and that did happen because thank god for my paralegal who handles it all smoothly with Kari and Dawn. They all had it and none of them were at the meeting to tell us the news that in fact it did get done right.

James Brewster: That was the biggest concern was whether or not it was a legal meeting.

Nathan VanWhy: It was.

Jon White: Because it's got to be posted five days before.

James Brewster: We were good and it's on the record that we were good and now it's doubly on the record that we were good. We're at the moment of adjournment.

Jon White: So moved.

Ed Miller: I'll second that.

James Brewster: Any objections to adjourning?

Board: No.

James Brewster: Assuming all in favor we'll adjourn at 7:38.

Respectfully submitted,



Kari Strabo