

ZONING BOARD OF APPEALS
REGULAR MEETING TUESDAY, OCTOBER 22, 2024
7:00 PM-TOWN HALL
1529 NYS RTE 12
BINGHAMTON, NEW YORK 13901

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

Also Present: Nathan VanWhy Planning/ Zoning Attorney
Gavin Stiles, Ordinance Officer

Absent: Aleta Kinne, Vice Chairperson
Edward Miller, Board Member

James Brewster: I have 7:00 p.m. so welcome everyone. I will open the Town of Chenango Zoning Board of Appeals meeting, for the regular October meeting to order. First order of business to call the roll please.

Diane Aurelio: Ms. Kinne will not be attending tonight's meeting. Mr. Wolters: present, Mr. Miller: absent, Mr. White: present, Mr. Smith: present, Ms. Kinne: absent, Mr. Brewster: present.

James Brewster: Ok we have a quorum I do have a quick announcement here that in addition to Aleta battling her own health issues with her hip which we have seen. Her husband Ron passed away today. That was sad news I received this afternoon. We will be in touch with her about what is going on for next month. So tonight, on the agenda we have we have 1 acceptance of a new business application and a public hearing for application that we received last month. But first is the approval of September 24, 2024. Does anybody have any issues with that Any issues or corrections? I will seek a motion to approve the minutes from September 24th minutes.

Jon White: So moved Mr. Chairman.

Dan Wolter: Second.

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James Brewster: Can we have a call please.

Diane Aurelio:	Dan Wolters, Board Alternate	Voted: Aye
	Edward Miller, Board Member	Voted: Absent
	Jon White, Board Member	Voted: Aye
	Scott Smith, Board Member	Voted: Aye
	Aleta Kinne, Board Member	Voted: Absent
	James Brewster, Chairperson	Voted: Aye

The motion was thereupon declared adopted by roll call of 4 to 0

Ayes- 4 Nays – 0 Absent -2 (Kinne & Miller)

James Brewster: Minutes approved and will be published accordingly. We have 1 application to review and to approve to move forward through Planning Board and then onto our board for the public hearing at our next meeting. Is the applicant here tonight?

Mr. Weidman: Yes, that’s me.

James Brewster: In brief, for tonight we may have a question for you. We review your application to make sure it is complete and then we will send it off to the Planning Board for their advisory and schedule the public hearing for our November meeting. To go over your project and answer any questions from us and the public of course if they want to chime in. So, this 1 is fairly quick for you tonight. Thanks for being here. Application for:

- 024-V15- James Weidman -1320 River Rd. – TM#079.18-1-9- Application for a double area variance to create a buildable lot with less than required acreage from 2 acres to 1/239 acres and road frontage from 240’ to 150’ in an agricultural zone and short EAF.

Any comments from the board on the status of this application.

Jon White: I did notice Mr. Chairman there were a few questions unanswered on the EAF short form Part I. I do not know if it would be easier to contact the ordinance office. To get them filled out before the Planning Board meeting and public hearing.

James Brewster: I believe that is an option, do we have any other options? Or is that the better way to do that?

Nate VanWhy: Having Mr. Weidman just talk with the office code just answer yes or no to the questions. Do you folks see any answers that are wrong on there? That form needs to be corrected by the applicant.

Jon White: There are some questions I did not write down that were missed, that is all. There is a reason the question is there and should be answered by the applicant yes or no.

Nate VanWhy: There is just a couple at the top and the 5th question. They are quite easy questions.

James Brewster: So, we cannot manage that tonight. You can get that amended by calling code and have them check the box and resubmit it Just to correct that form.

Nate VanWhy: Diane has the file, another good reason to have the files at the meeting.

Diane Aurelio: Let me go get it, I didn't bring it because they were just accepting it.

James Brewster: While we are waiting for the documents is there anything.

Jon White: His site plan and what his intensions to do. Everything else is good, just the EAF questions.

James Brewster: We have the letter, site plan and the EAF.

Nate VanWhy: Practical concern is the summary of the area variance application. You say from 2 acres to 1.239 acres. That is a very specific number. I do not know if you want to be that specific.

James Weidman: It ended up that way because I wanted to take 150 feet of frontage that runs to the river. The low water mark in the river.

James VanWhy: You just did the math. If you have a surveyor going out there. The variance will allow you to go as low as 1.239 acres. You could do something slightly bigger than that. That is where the math works out. I do not want to set you up for a situation. I understand why you do not want to pay for a survey yet. Ideally

here is the survey and we know exactly the acreage. I just want to give the board a heads up and concerns about it. You might do 1.2 acres instead of 1.239.

James Brewster: We can talk this over I go through the questions that look like number.

Question 1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance administrative rule or regulation? Would that be yes, or no? Tuff question I understand.

Nate VanWhy: I would say it is no.

James Weidman: Are you ok with that?

James Weidman: Yes.

James Brewster: Question 2. Does the proposed action require a permit, approval, or funding from any other government agency? No. Question 5 Part a. Is the proposed action as a permitted use under the zoning regulations? No. Part b -Consistent with the adopted Comprehensive Plan?

Nate VanWhy The answer to a and b the answer to that is no. There is a reason he is applying for a variance. It is not consistent or permitted under the zoning regulations. I am perusing it is not. I have not reviewed the Town's Comprehensive Plan. No saying this would be allowed over there. The Comprehensive Plan is separate from your zoning code. I know there were not a ton of zoning changes after the last Comprehensive Plan was updated.

James Brewster: This document is important and for government work it has to be filled out completely. Which is what we are doing. For no or yes, it is a guidance document as we move to the next phase with SEQR. We just want to have all the l's s dotted, and t's crossed. All good with the change's members? Anything else I am not seeing any blanks. Ok.

Jon White: I'm good.

James Brewster: We come to a point where it looks like the application is complete and good to move on. Can we have a motion?

Jon White: I will make the motion to accept this application and move it forward to the Planning Board and to schedule a public hearing on November 26th.

Dan Wolters: Second

James Brewster: So, we will take a roll call to approve 2024-V15 as moved. Can we have a vote please?

Diane Aurelio:	Dan Wolters, Board Alternate	Voted: Aye
	Edward Miller, Board Member	Voted: Absent
	Jon White, Board Member	Voted: Aye
	Scott Smith, Board Member	Voted: Aye
	Aleta Kinne, Board Member	Voted: Absent
	James Brewster, Chairperson	Voted: Aye
	The motion was thereupon declared adopted by roll call of 4 to 0	

Ayes- 4 Nays – 0 Absent -2 (Kinne & Miller)

James Brewster: See you in a month or you can stay and see what you will be going through next month.
Next is the application for the following:

PUBLIC HEARING

- 2024-V-14 – Kevin Worden – 307 Port Rd. – TM#078.10-1-26- Application for a double area variance to create a buildable lot with less than required road frontage from 240’ to 125’ and lot size from 2 acres to .43 acres in an agricultural zone and short EAF.

The applicant is here. First of all, Mr. Worden tell us about your intended project and the reasons for your variance. We will then go into specifics with questions which you answered in writing. So, we won’t have to cover them in detail.

Kevin Worden: Purchase this property back in 2014, it is across the road from my residence. It was a rental property with a double wide trailer on it. House was condemned by the Town for code violations. So, I purchased it, tore it down, and cleaned up the property. Just recently my parents stated they would like to move back here. They currently live in North Carolina. There is no housing in the area for a reasonable price. Small housing is what we are looking for, less than one thousand square feet. So, I would like to build a home on this

property, it did have a single-family home at one time. I would like to build another one on this property. And since it has been over 12 months, I had to get a double variance to rebuild on this property again.

James Brewster: Any questions We have the summary.

Nate VanWhy: Mr. Chairman this is a procedural question. Mr. Worden, I know your wife is here. How do you feel about his parents moving in across the street from you. I am just joking.

Ms. Worden: You are not too far off; it is better than them living inside my walls. Across the street is fine and my parents live next door and Kevin and puts up with that crazy.

Kevin Worden: It is elderly acres up there.

James Brewster: That was delivered so well. So, we have five factors that we must consider while addressing area variances. There is no 1 factor is deterministic of the approval or denial. Again, it is more of a guidance thing for us.

Factor 1- Will there be an undesirable change by us granting this variance and the character of the neighborhood or detriment to the property. You previously stated in writing there are currently single-family homes on small agricultural lots, some homes have variances some should and do not.

Kevin Worden: The property adjacent to this, the home was demolished, and a new home was put in and they did not need to go for variances. Because it was done within the 12-month period. They would have to meet the new zoning regulations. That house was there probably built around the same as the other piece of property.

James Brewster: Factor 2 -Is this goal achievable by any other method than requiring a variance. - You just addressed that. The previous home had been constructed prior to the agricultural zoning regulations.

Factor 3. -Is the requested variance substantial? The question asked is this going to be a big zoning change. To the zoning laws. Your statement you said is not substantial, there are adjacent properties to this one that has single-family homes on them with no variances and smaller frontages. Everybody is good with that, yes ok.

Factor 4. Will the granting of this variance have an adverse effect or impact on the environmental conditions in the neighborhood?
Building a home will be tearing the hack out of your land and cause a physical environmental impact.

Kevin Worden: I did take down a large tree that was on the lot. But it is not changing any more.

James Brewster: The actual construction you do not anticipate too.

Kevin Worden: No.

James Brewster: Factor 5 – The difficulty is self-created. You stated the Town of Chenango condemned the single-family home. You purchased the property and cleaned it up. Solving the Town’s problem and replacing that eyesore with a new single-family home that would add property tax money and sewer EDU money to the town’s budget. Anything else to add to that?

Kevin Worden: Sorry I had to put that in.

James Brewster: That was crafty since I have been to many meetings regarding that. I am familiar with EDU’s now. Members have any questions for Mr. Worden. I take by the silence everyone is good.

Scott Smith: I saw a hand full of other properties of comparable size in that area. It will not change the neighborhood much.

James Brewster: We will get to that, any questions of the applicant.

Nate VanWhy: When you initially bought the property what were your intentions?

Kevin Worden: Buy it and do the bear minimum to rent it out again. But we had some shady tenants up there, some troubled times up there. Actually, five of those parcels up there have rentals on them. I purchased three of them. One is across the street that is my property now. The one that was cleaned up we sold to the neighbors. And this is the other one. It has been cleaned up quite well. I did not want anything to get worse over there, that is why I purchased it.

James Brewster: Before I go into the correspondence. I would just like to ask if there is anyone from the public to speak about this application. You are the only one here from the public. So, you can speak for or against. You do not have to say anything. With that I move onto our correspondence:

Town Engineer: No engineering objections assured well and specify fit prior to advancing to a building permit.

Drainage Coordinator: No response to it.

Planning Board: Sent a favorable advisory.

Broome County: Not subject to 239 Review. Essentially no comments from them.

Ordinance Office: No objections, just get a building permit, drawings, proof of insurance and any other appropriate things.

James Brewster: No letters from the public. So, with that, there is nothing else from the Board question wise if there are no objections I will close the public hearing for application 2024-V14 is now closed. Move onto our SEQR Part II portion. This is determined to be a Type II Action under SEQR, as defined by SEQR. So, we do not have to take any further action to accept it as a Type II Action. I will confer with counsel that it is a Type II Action

Nate VanWhy: I was just looking at it again. I think it falls under the Type II Action under SEQR. Granting individual setbacks and lot line variances and adjustments. This is the creation of a new parcel which is about lot lines and where those lot lines go. The safest course. Would be to treat it as an Unlisted Action? If we want to run through that quickly it is never a terrible thing and we can do that, I will have to look back on who the town treated these previously. I am just looking at it tonight and said hum, why is this making me think about this? Do an Unlisted and we will double check it in the future.

James Brewster: I do recall doing several SEQR reviews with the previous council then what we be before.

Nate VanWhy: Area variances for single two and three family homes are defined as Type II Action. When you are dealing with an individual setback. Like the property is over here and they want to build addition onto their property that is a Type II Action. Putting a garage on your property, which is a Type II Action. They might have been too cautious previously. This one I am thinking could be Unlisted Action. I will check the case law on this treat it as an Unlisted action. I will go through the eleven questions on Part II of SEQR. And the standard answer is not too small or moderate to large. No too small ok, moderate to large we would have to defend.

SEQR SHORT FORM PART II- for 2024-V14 Kevin Worden

1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations.

Board: No.

2. Will the proposed action result in a change in the use or intensity of use of land.

Board: No.

3. Will the proposed action impair the character or quality of the existing community.

Board: No.

4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?

Board: No.

5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking, or walkway?

Board: No.

6. Will the proposed action cause an increase in the use of energy and fail to incorporate reasonably available energy conservation or renewable energy opportunities?

Board: No.

7. Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?

Board: No.

8. Will the proposed action impair the character or quality of important historic, archaeological, architectural, or aesthetic resources?

Board: No.

9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?

Board: No.

10. Will the proposed action result in an increase in the potential for erosion, flooding, or drainage problems.

Board: No.

11. Will the proposed action create a hazard to environmental resources or human health.

Board: No.

Nate VanWhy: Based on your answer no to small impacts on all eleven questions it would be appropriate for one of you to render a Negative Declaration according to SEQR for this Unlisted Action regarding the environmental significance for this project. I will accept that motion should you desire to give it to me.

Scott Smith: So, moved Mr. Chairperson to issue a Negative Declaration for this Unlisted Action.

Dan Wolters: I will support that.

James Brewster: Can we have a roll call:

Diane Aurelio:	Dan Wolters, Board Alternate	Voted: Aye
	Edward Miller, Board Member	Voted: Absent
	Jon White, Board Member	Voted: Aye
	Scott Smith, Board Member	Voted: Aye
	Aleta Kinne, Board Member	Voted: Absent
	James Brewster, Chairperson	Voted: Aye

The motion was thereupon declared adopted by roll call of 4 to 0

Ayes- 4 Nays – 0 Absent -2 (Kinne & Miller)

James Brewster: SEQR is a Negative Declaration.

James Brewster: Now it is time to go over the application in its entirety. Before we get into the five factors does anyone have any questions or broad discussion you want to discuss?

Dan Wolters: Seems to be a reasonable ask.

Jon White: Cut and dry and there are similar lots like this within a quarter mile radius. I do not think it is an unreasonable expectation for what they want to do.

James Brewster: It is just a paperwork exercise, and it timed out.

Scott Smith: Basically, it is a ten-year renovation.

Jon White: You can make twenty if you want.

James Brewster: Now to get into the resolution:

The ZBA has duly reviewed and considered all documents submitted by the Applicant, as well as the reports and recommendations, if any, 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 RESOLVED by the Zoning Board of Appeals of the Town of Chenango, Broome County, New York, that regarding the variance request to construct a single-family home with less than the required road frontage for 240' to 125':

Is there a second resolution for the second variance? On the back side we will get to that one.

1. The requested variance **will or will not** produce an undesirable change in the character of the neighborhood or cause detriment to nearby properties.

Board: Will not.

2. The benefit sought by the Applicant **can/ cannot** be achieved by another method, other than the grant of an area variance.

Board: cannot.

3. The requested area variance **is /is not** substantial.

Board: Is not.

Dan Wolter: it is over fifty percent, it is substantial, 240 to 125.

James Brewster: There is discussion, balancing test.

Scott Smith: Considering the number of other lots on the street that are very close by I think smaller. I do not think it is substantial if there are other ones.

James Brewster: I see your point. I am going to agree not substantial. But I see your mathematical reason which is fine.

Scott Smith: It depends on which equation you use.

James Brewster: Did you intergrade it or did you differentiate it. So, it is not substantial.

The requested variance **would/ would not** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Board: Would not.

4. The hardship giving rise to the variance request **is /is not** self-created.

Board: Is.

Scott Smith: Is by virtue of the timing.

5. Conditions required to mitigate potential adverse impacts, if any:

Board: Not applicable

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/ does not outweigh** any potential detriment to the health, safety and welfare of the neighborhood or community posed by such grant; and

Board: Outweighs.

James Brewster: Now we have to move onto the second variance regarding the variance request to construct a single-family home with less than required lot size from 2 acres to .43 acres:

1. The requested variance **will/ will not** produce an undesirable change in the character of the neighborhood or cause detriment to nearby properties.

Board: Will not.

2. The benefit sought by the Applicant **can/ cannot** be achieved by another method, other than the grant of an area variance.

Board: Cannot.

3. The requested area variance **is/ is not** substantial.

Board: Is not.

Dan Wolter: Come on from 2 acres to .43 acres.

James Brewster: I have to lean on the mathematical side on this one. In principle of the neighborhood, I see your point now. This is substantial.

4. The requested variance **would/ would not** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Board: Would not.

5. The hardship giving rise to the variance request **is/ is not** self-created.

Board: Is.

6. Conditions required to mitigate potential adverse impacts, if any:
Board: Not applicable.

7. The entire record of this proceeding supports the conclusion that the benefit to the Applicant conferred by the granting of an area variance **outweighs /does not outweigh** any potential detriment to the health, safety and welfare of the neighborhood or community posed by such grant; and

Board: Outweighs.

AND BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately. At a regular meeting of the Zoning Board of Appeals of the Town of Chenango, held on October 22, 2024, at Chenango Town Hall, 1529 NYS Route 12, Binghamton, New York, the foregoing motion was made by Dan Wolter and seconded by Scott Smith. The ZBA members voted as follows:

James Brewster, Chair	Voted: <u>Aye</u>
Aleta Kinne	Voted: <u>Absent</u>
Scott Smith	Voted: <u>Aye</u>
Jon White	Voted: <u>Aye</u>
Edward Miller	Voted: <u>Absent</u>
Dan Wolters, Alternate	Voted <u>Aye</u>

The motion was thereupon declared adopted by a roll-call vote of 4 to 0.
Ayes- 4 Nays – 0 Absent -2 (Kinne & Miller)


James Brewster: Any other administrative business, there being none I'll accept a motion to adjourn.

Jon White: So moved Mr. Chairman

Dan Wolters: Second.

Adjourn at 7:36 p.m.

Respectfully submitted,



Diane Aurelio
Ordinance Office