

ZONING BOARD OF APPEALS
REGULAR TUESDAY JULY 23, 2024
7:00 P.M. – TOWN HALL
1529 NYS RTE 12
BINGHAMTON, NY 13901

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

Also Present: Mark Spinner, Attorney – in for Nathan VanWhy

James Brewster: I have 7:00 so welcome everyone. I will open the Town of Chenango Zoning Board of Appeals meeting, the regular July meeting to order.

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

James Brewster: We have a quorum plus and therefore will continue with the meeting. The first order of business before we get to the minutes, I just want to let the board know that we were all reappointed and readjusted by the Town Board. The details are in their minutes from a couple of weeks ago. They went with my proposal. That's done and you can all check for your dates at your leisure by checking their minutes. Next up is the approval of June meeting. Do we have any questions, comments or corrections?

Board; I'm good.

James Brewster: I'll seek a motion to approve those minutes then.

Ed Miller: I'll make that motion.

Jon White: I'll second it.

James Brewster: Can we have a vote.

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 roll call of
Ayes- 5 Nays - 0

James Brewster: Minutes have been approved and may be posted as normal. We have no new applications tonight therefore no new business is on the agenda, and we can get straight to the first of our two public hearings tonight. The way this works is I'll open the public hearing for the first application here in just a second, which will be 8 Brook Ave., Ms. Rosales. We'll go over a short interview of the project. We've got some questions that must get some facts to address as part of the proceeding and anybody in the public will have the opportunity to comment and then we'll move by closing the hearing unless we need more information and then we'll move on to the next hearing and then we cycle back for application discussion with the board for each of the applications. That's how we operate. At this time without objection, I will open the public hearing for Zoning Board application 2024-V-09 Lillian Rosales of 8 Brook Ave. Application for a garage addition to house with a side yard setback from ten feet to three feet in a residential zone with a short EAF. We did get your comments regarding the five factors that you had but we'll just kind of go over a few of those again just for the record. If we choose to grant this variance for your project, do you believe that it will create an undesirable change to the character of the neighborhood or be a detriment to nearby properties and why or why not? You state in your application "no" which is fine but is there any reason for why it would not be a detriment to the neighborhood?

Lillian Rosales: My garage was already over there when I bought the house and was falling apart, that's why I decided to fix it again. I am not doing anything that wasn't already there.

James Brewster: Was the garage attached?

Lillian Rosales: Yes.

James Brewster: I believe I heard you say it was in disrepair.

Lillian Rosales: Yes.

James Brewster: Basically, to answer the question what I'm hearing is it was already there. Was it on the same footprint?

Lillian Rosales: Yes, and you can see in the pictures and in your records that it was already there. I'm not adding any more than whatever was there.

James Brewster: Ok. Board, any questions to follow up on that?

Edward Miller: So, it is the same size?

Lillian Rosales: Yes, the person in the town told me it was close, but it wasn't going to affect anything because it was already existing. Maybe what I did was not ask for permission again to do the repairs on the garage.

James Brewster: That kind of goes into the next question, is there any other way than asking for a variance that could achieve the project? You will have to answer that because you didn't answer that in your writeup as far as I can tell. I think you were starting to say that when you answered Mr. Miller about when you started the project already and then what happened when Mr. Stiles showed up?

Lillian Rosales: He told me the problem is that it was already over there but because I started to, I must go and ask for permission but that's something that I didn't know when I started, so I just followed the same size that it was. I don't feel like I was breaking the rules

James Brewster: Because you tore down and you changed it, that kind of changes the rules.

Lillian Rosales: Yeah exactly, he explained it to me. I didn't know when I did that.

Scott Smith: Can we go back to the first question? You said you didn't change anything, but when you took the garage down it set back behind the chimney quite a bit. Probably eight to ten may be fifteen feet.

Lillian Rosales: Oh, to come in front. But he told me the problem was not to come in front. So, he told me I could come in front, but I couldn't come on the side.

Scott Smith: Did you get a demolition permit to take the old garage down?

Lillian Rosales: No.

Scott Smith: Did you get a building permit to put anything else up?

Lillian Rosales: When I came over there, he told me that I must come here first to get a variance.

Scott Smith: So, now there's a structure back where the garage was?

Lillian Rosales: Yes.

Scott Smith: And there's part of the structure that is in front of where the garage is, it comes up in front of the chimney. Was a building up against the chimney at the time you bought the house?

Lillian Rosales: Yes, I moved it a little bit up front.

Scott Smith: About twelve or fifteen feet.

Lillian Rosales: Like eight feet maybe.

James Brewster: This is just for questions. Anybody else? The only other question I have is in doing your project will you be disturbing the environment a lot? Have you been tearing up the land, the lawn affecting any waterways, anything like that?

Lillian Rosales: No.

James Brewster: Ok, just a stick built constructed structure.

Lillian Rosales: Yes.

James Brewster: Anything further? There being none. The other two questions we will decide on our own for the substantialness or self-created. So, before I get to the correspondence we have. Anybody in the public like to be heard to speak for or against this application. Ok, nobody in the public wishes to speak. So, therefore we get correspondence from various town and county agencies. So, we received a statement from our Drainage Coordinator that was approved. The Town Planning Board sent us a favorable advisory. The engineer had no engineering objections, but one of the comments was to confirm the replacement was in kind match to what existed. That may be a more of a Planning Board issue. But it doesn't come before the Planning Board so that is between us and the Ordinance. The county 239 review had no comments from all departments. Ordinance, Gavin Stiles, said if approved the applicant will need to visit the ordinance office for permit paperwork. So, if we approve this tonight then you could move forward with Mr. Stiles regarding his requirements. That was his statement. So, do you have anything to add? Anything with the deeds do they look ok?

Mark Spinner: My understanding of the deeds for this segment of parcels have written into it no less than three-foot setback from any neighboring parcel. We are looking at the Town Code that is a consideration as far as these pre-existing structure being most of them closer than ten feet from the neighboring parcel line that is likely the reason for that.

James Brewster: I'll ask if you all understand that.

Jon White: I have questions, but I'll ask them later.

James Brewster: Which won't be too long. I'll close the public hearing unless anybody else has something else. Need any further information?

Board: I'm good.

James Brewster: Without any objections then from the Board I will close the public hearing for this application 2024-V09. Alright it is so closed. So, therefore we will move on to the next public hearing and we will get back to a decision after the next public hearing. I'm looking at my agenda for application 2024-V10 Haza Bell of Northeast LLC. This is regarding 1241, 1241.5 and 1243 Upper Front Street. Application for a triple area variance to open a Taco Bell with less than required acreage from six acres to one point three eight acres, less than required lot frontage from three hundred fifty to one hundred ninety-three, and less than required lot depth from four hundred fifty to two hundred sixty-six feet in a PDD-C zone and short EAF to consider for later. Hello folks, you can come here and give an overview of your project, and we can ask questions later.

FL Gorman: My name is FL Gorman Attorney and Sam Burden is the engineer with Bohler Engineering and will be representing our triple area variance application. For the property which you provided for 1241, 1241.5 and 1243 Upper Front Street. As a side we have spoken with the Town Assessor and have put in an application for the lot consolidation. We are looking for a declaration under SEQR. We are looking for a variance for minimum lot size, lot width and depth. This property, as you know, is a vacant Speedway Gas Station with a canopy. What we are proposing is shrinking the size of the building. Right now, it's twenty-eight hundred square feet and has dropped down to twenty-four hundred square feet. Propose increasing the green space. Close off one of the curb cuts, the northly curb cut. Generally, improve the

site and bring in a state-of-the-art Taco Bell with drive-through. We have the short EAF which is in our application and if you have any questions generally from a micro standpoint is going to be a smaller building footprint and more green space and are improving the site. There are no negative impacts to the environment, it improves the site. Test step two the five factors. We believe there will be no undesirable changes, this is a commercial corridor. Commercial retail establishments and this fits right in with no undesirable change to the neighborhood. There will be no detriment to the neighboring properties, we will be improving them. We don't believe this will be feasible to achieve what we want without the variances. The variances we are requesting are pre-existing conditions with Speedway. Not asking for anything more than the pre-existing conditions. Because there're pre-existing conditions, we don't believe the variance is substantial. In fact, we will be lessening the nonconformance's because the building is going to shrink and there is more green space added. We don't believe the variance will have an adverse impact on the environment or the neighboring properties. Again, we will be improving the property, that commercial corridor with the state-of-the-art building. We don't believe this was self-created. The properties in PDD-C have been non-conforming since 1988. What we are asking for here outweighs any possible detriment to the community. In fact, this Taco Bell with drive-through will be an improvement to the community. If you have any specific questions, we are willing to address those and refer you to our short EAF form which we completed as our narrative to the application. I don't know if Sam has anything he would like to add.

Sam Burden:

No, I guess we could have shown the site plan. Other than that, I don't have anything to add. We were also requested by the Planning Board to consolidate the lots as part of our application. Seems commonplace procedural. We did receive a couple letters that I'm sure we are going through. We have been working closely with the engineer and all the involved agencies. The applicant is really excited about this site. Looking to upgrade the facility if you have been there, it is really in rough space. I think this brings out some good character in

the neighborhood. Bring another good property back to the Gateway of Chenango.

Aleta Kinne: Did you say it's been empty since 1988?

FL Gorman: No, the zoning non-conformance has been there since 1988.

Aleta Kinne: Thank you.

James Brewster: We must address the five factors: due to their presentations I don't have any personal questions.

Jon White: No, I think I'm good.

Aleta Kinne: Inaudible

James Brewster: Things may crop up as we go through the letters, we will get there. Anyone here to speak for or against this application? No, ok. Now I will move onto the correspondence that I have to read into the record. Some of these I'm going to paraphrase and some in their entirety or pretty close to it. The Drainage Coordinator from the Town sent approval. The Planning Board has sent a favorable advisory from their meeting. In summary, the engineer has no engineering objections. But he did state that all things needed in the 239 comments NYS DOT and other agencies should be considered. That was a bulk statement from both boards. The 239 comes in several parts. We will start off with the Broome County Planning has reviewed the above cited case and has not identified any significant or county-wide intercommunity impacts associated with this proposed project contingent upon compliance with the BMTS and NYSDOT and DPW, BCHD comments. In addition, we provide the following comments: the project site is practically located within the Preliminary Fema Special Hazard Area, well not a regulatory floodplain, the town should exercise caution in approving and the applicant should know the risks in placing a project located within the floodplain. We know the project narrative states with conversations with the town the applicant is to consider raising the building two feet above base flood elevation. Town Planning and Zoning should ensure the consideration of the whole action is taken place as required by SEQR including the variances and the site plan review for the full environmental review. Quoting from the handbook, each agency should consider the environmental impacts for the entire action before approving or funding or taking any element of action.

The SEQR form should also address and show compliance with BMTS, NYSDOT DPW and BCHD comments. Address the town request that the applicant consider raising the base flood elevation, include the SHPO determination and the archaeologist's findings regarding the pet cemetery. The other findings address the stormwater discharge flow to the adjacent properties and include all final plans and documents. The Town's ZBA should consider the precedence granting these variances would set. Clear documentation of the practicality of the unique land site for the project circumstances justify such variances is recommended to avoid unintended consequences elsewhere, particularly in the PDD-C District. The Town Planning and Zoning Board and applicant should strive for excellence in building and site design for this project given the visibility of this project site. Upper Front Street serves as a Gateway to the Town of Chenango, and the development along this corridor leaves an impression with visitors and residents alike. The project should include photo simulations of views of the building and site of Upper Front Street, and the site plan include generous landscaping including the hydroseed area and near the driveway access feasible. We also recommend landscape ground Monument signs in place of the pylon signs to be feasible. Ensure the owner knows the maintenance responsibilities of the landscape plan. The other one is a site plan comment, a letter from BMTS which is Binghamton Metropolitan Transportation Study supports. Maybe I should read NYSDOT first. I'll just read BMTS they support NYSDOT's recommendation dated June 18, 2024, we would specifically reiterate the comment that access be provided from the site and the property to the north. So, vehicles can utilize the traffic signal. This would be consistent with NYSDOT access management policies that would reduce traffic conflicts between vehicles existing and entering the site and traffic along US 11. I'll read NYSDOT comments now, their comments recommend the applicant look to provide access from this site and the site to the north to utilize the signal at the intersection. Better traffic management and highway safety with gaps between businesses. Please provide documentation outlining the coordination undertaken by the applicant or the town to pursue this connection. Should this connection not be constructed the applicant will be required to provide adequate justification for its exclusion to NYSDOT prior to the issuance of a NYSDOT Hwy Work Permit. This project will

require the applicant to obtain a Perm 33 Hwy Work Permit. All new or existing driveway openings shall be designed and constructed in accordance with NYSDOT policies and standards to the design of entrances to highways. The existing driveway to the site shall be removed as part of the site development. NYSDOT thanks the applicant for the removal of this in the site plan. Drainage study required by NYSDOT sidewalks around the frontage shall conform to the ADA guidelines act and be carried through the driveway. The applicant will be required to provide a pedestrian connection between the building and the sidewalk. These will be included in the written record anyway. To the County Department of Public Works (DPW) the applicant should be aware the parcels is in the municipal separate storm sewer system and in an MS4 area and as such should adhere strictly to the erosion and sedimentation guidelines set forth by the NYSDEC and provide the project documents. These are other apparent impacts to the Broome County infrastructure: DPW has no additional comments. The Ordinance Department states if approved the need to visit their Ordinance Office to permit paperwork and the other agencies. That's all the correspondents I have. Does anyone have any last questions before I close the public hearing?

Jon White: I'm good. I do have one question with regards to NYSDOT: did you try to talk to the neighbors on the access and what was the outcome?

FL Gorman: Our client has tried several times and spoken to the broker. I have a communication; this is from our client to the broker: hope you are having a good summer. I wanted to see if you ever heard back from the owner of the adjacent property. We are at a point of no return in terms of approval. We had a couple of meetings, and it doesn't seem like any kind of financial agreement for cross access. Please let me know the status of communications with your client. This is in response to Bob Dilia getting a little help from the seller. I don't think she can make a deal. This is from the client I had multiple conversations with Paul Cirba about the adjacent property starting in May of this year. He has indicated that she is not speaking, only throwing out unrealistic dollars for the cross access. We tired multiple scenarios for obtaining access, but none have proved feasible. The below note from the owner's rep sums up the outcome. Please let me know if you have any questions. That note again I don't think she is capable of making that

deal. Sam and I were out there a couple of weeks ago before the Planning Board meeting and we do think there are real practical issues. We were there five-thirty, this box right here is vacant and not being used. But the stacking can stack four vehicles deep. That means you can get a little car around but a box truck or something like that and even then, it would shift everything back even if it worked.

Jon White: So, you are taking into consideration this design now staying away from the pet cemetery.

FL Gorman: We won't touch it this is all undisturbed.

Jon White: So, you stay out of that. The reason I ask this question is that way you can justify with NYSDOT we tried, and we can't this is what we got to do. Unless NYSDOT changes their mind. Just to be clarified for the record. And they have done so. I'm good with it, you have tried and it's not going to come to a deal. You would have to go back to plan B and see if NYSDOT will accept that. I'm good with this.

FL Gorman: So, that is the opening I can see there are a couple things at play here the actual engineering of it. Yes, we are being blocked, yes it pushes us back and visibility from the building is already difficult. We have already consolidated one driveway, and the comments sent from NYSDOT wanting to provide cross access so they can further eliminate a driveway here. It is unreasonable and not practical to kill the deal. If somebody traveling had to turn and look behind them and recognize it's a Taco Bell. Turn into the intersection and enter our site. Taco Bell relies on pass by traffic. We want something to eat what is in the area. We don't want to have signage on a neighboring property and who knows what this will be to provide if we if we were to provide a connection now their parking is already inadequate, and we are reducing our parking more. It is not feasible and would not work especially pushing back. We have the SHPO letter from Chris Cultural Resource. It's better off if we don't touch this back area. We would have to propose the NYSDOT standard would push us further back. NYSDOT what they really want to just go to a right out here. It's just not feasible for the project. That's the other portion of it. Hope that answered your question.

Sam Burden: NYS DOT and everybody has reiterated that same comment they would like to see it but, it looks good but when you get to the actual maintenance of it how it would impact the business it doesn't work.

Jon White: I bring this up because if we were to grant the variances it runs with the land. So, then if they weren't going to grant to be able to do this there is still a variance to put up a building at this point if we were to grant it. How does that go down the road. If we grant the variances and NYSDOT won't allow them to do their project because of ingress/ egress?

James Brewster: Multi phases in play.

Jon White: We can discuss that, I just wanted to bring that to light for the record. Even though it is site plan stuff that we don't deal with I think that part of it could shed a little light on this.

FL Gorman: NYS DOT must grant some type of access so they can't lock your parcel off. They must grant some sort of access in some form. As much of the variance would run with the property there would still be access to the property one way or another.

Jon White: The further south you go this is only going to help.

FL Gorman: We put everything in play as far from the intersection as we possibly could. Which NYSDOT likes to see. Removing one access and trying to remove the second to further extend would really hurt the business, any business.

Sam Burden: We have to do a ground lease here and I think there will be some real issues for the property owner if he ever agrees to get rid of all his access.

James Brewster: Anything else for the public hearing. No, I will close the public hearing for application 2024-V10. You can go back to your seats. What we will do is go back to the agenda to discuss application 2024-V09 SEQR for 8 Brook Avenue. . But first since we closed the public hearing, we go through the SEQR analysis.

SEQR Part II Questions 1--11

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

James Brewster: Since there is little to no adverse impacts, I assume you will be declaring a Negative Declaration for SEQR and will entertain a motion.

Ed Miller I'll make that motion Mr. Chairman to accept Negative Declaration.

Scott Smith: Second Mr. Chairman.

James Brewster: Can we have a vote.

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 roll call of
Ayes – 5 Nays – 0

James Brewster: We have concluded the SEQR portion with a Negative Declaration. We can go onto our discussion for these variances. First 2024-V-09 Lillian Rosales of 8 Brook Ave.

Jon White: If they stay know where their boundary lines are and stay three foot off from what they are asking to do. So, basically that would be an in kind rebuild of what they're looking to do. I'm wrong in saying that.

Scott Smith: That would be difficult without their own survey. This only gives us an approximation of space.

Jon White: They would have to have their own survey to do that. We would have to put into the condition, they need to know where the lot line is. Because we have done that in the past and currently. This is a lot line encroachment, so you need to know where the lot line is exactly. To protect themselves, the applicant and everybody else. They need to know where the survey is and so they get the lot surveyed and stay three feet off the line and do their project according to town codes.

Ed Miller It could be two and a half feet because we don't know where the property line is.

Aleta Kinne: What if the survey does not show what they think it is?

that says there is a three-foot setback restriction. In some instances, does the deed trump or does the town law trump.

Mark Spinner: The town laws are what we are looking at the variance for. The deed is a factor used in this analysis we are going ten to three. These people obtained the parcels with the understanding that they could not build more than three feet from the neighboring parcel. That's what's in conflict with the town code but it's a factor the board could look at when deciding whether to grant this three-foot variance.

Jon White: So, in a lot of respects we are going with what the deed says. So, this is a hypothetical saying it was five feet in the deed, they wanted three feet, essentially, we could not grant it because the deed was saying five feet.

Mark Spinner: You could grant it but, then it would be open for a challenge from a neighbor.

Jon White: Because of the deed restriction, ok.

Ed Miller: That's a very grey area.

Jon White: That can challenge our decision too. If it was to say five foot and we said we will let you do three feet. But the neighbor says no the deed says five. They can sue the next person and the applicant and the governing body for that reason.

Mark Spinner: As I said earlier, deed restriction is a factor. If they are asking for more than the deed restriction, then that is an issue.

Jon White: I through that out there as a hypothetical to put a grasp on the whole picture of that.

Mark Spinner: That is a good point.

Jon White: I think further down the line we are going to see something like that.

James Brewster: When I drove by today, without knowing exactly where the line is, it was close. From the existing original and the deed plan.

Aleta Kinne: I understand that what they have done so far is a little larger than what was there?

James Brewster: You can ask them that.

Lillian Rosales: I just go from the side; the side is the same as before.

Scott Smith: Was it the same as what they built in the back, that follows through.

Jon White: Longer in the front

James Brewster: Longer but not wider.

Ed Miller: It's not wider to the property line.

Lillian Rosales: It is the same.

Jon White: It's ok if it is a little bigger if they are not encroaching on the front setback so that would bring them back for a second variance.

James Brewster: Right, but they didn't go in front of the chimney, they didn't go in the front line.

Scott Smith: Not in front of the front line but in front of the chimney.

Jon White: So if Gavin is good with it at the end of the day, we are just discussing the side setback.

Scott Smith: It is my understanding there was never a building permit correct.

Lillian Rosales: Correct.

Scott Smith: So, Gavin has never been able to inspect, approve anything, no building permit, He did place a stop work order in April. I don't know if they didn't understand the stop work order.

Lillian Rosales: Yes, he came to the house and explained he said I had to come here about my house.

Scott Smith: How do we remediate the lack of a building permit? And the continuous work with a stop work order.

James Brewster: I don't believe that is purview. That's in Gavin's bailiwick.

Mark Spinner: At this point what you have before you is an application for a variance a three foot variance once if the board does vote then Gavin goes through the permitting process to continue. If they are under a stop work order now, they must address that. Part of that process is they must satisfy Gavin with the setback boarding that property in some fashion.

Scott Smith: And if they don't that is Gavin's axe to grind?

James Brewster: That is in his wheelhouse, at this point it is a code enforcement code violation.

Mark Spinner: There are processes to address the building constructed with a building permit if there isn't a way to resolve it. Otherwise, I don't anticipate that will be the case.

Scott Smith: That would go into Gavin's office not yours.

Mark Spinner: All you are seeing here is that they are allowed to put up a structure to replace the garage if it is three feet or more from the neighboring property line. It is up to Gavin to make that happen

Scott Smith: That's to him to do the measuring.

James Brewster: Require the applicant to have a survey. I don't know if they have a builder or engineer working with them to do this. Are you doing this yourself?

Lillian Rosales: I'm doing it myself; my son has a friend that is an architect that is helping us. Gavin already came and told us to get a variance and wait for approval.

Mark Spinner: I think that permitting process is going to require a survey to ensure it isn't encroaching on the neighboring property.

Aleta Kinne: Do we close it until they bring in a survey?

James Brewster: I guess if you feel it is needed, we can condition it

Jon White: I would condition it.

James Brewster: So, the way I'm looking at it is the town code only allows ten they requested three which is within their deed is a factor, they just didn't have the deed. So, there is kind of a limit that is holding us up if we consider that, or your example if they wanted more. That is my take on it.

Ed Miller: That is up to the code department.

Mark Spinner: The board doesn't have anything in front of them to say that the building is not closer than three feet. We don't have anything to verify it to deny it. If all other factors are fine, we don't have any proof otherwise. That would be up to Gavin to ensure the project progresses.

James Brewster: And they were a nonconforming issue anyway. We can say by deed.

Jon White: By deed they probably were conforming.

James Brewster: That was from 1951 when code came into effect.

Jon White: I am good that it is a conditioned survey. Once that get a survey and meets that side setback> What their asking for I would be good with that. Then it is Gavin's department to make sure they are adhering to the building code and everything else, that's it.

Ed Miller: I would give them the three feet and let Gavin worry about if it fits.

Jon White: We give Gavin a tool they will have a survey that will guarantee. So, Gavin doesn't have to measure with a yardstick.

James Brewster: He has no desire to do so, he is not stamped licensed.

Lillian Rosales: He already went because he is the one who helped me. He was the one who told me how much I must ask for. That's why I know how much to ask for.

James Brewster: Right but we are talking about ensuring even the existing, the preexisting condition meets the three-foot threshold. Once you tear something down you bounce out of conforming to the town code. It starts the clock and that's why you are here and working with Gavin. Hypothetically we can allow you the three feet, but the building at three feet we don't know for sure. We are going under your word and history. It is probably three feet, but we don't know that for sure. We must know for sure.

Scott Smith: For the neighbors later how did they do this this document says this to allow the three feet.

Ed Miller: Otherwise, the survey tells the lines.

Scott Smit: The survey will tell you exactly where the boundary lines are and where everything is, and you would have that document if you ever sold the property to prove you are conforming with the variance.

James Brewster: And your deed.

Jon White: I think we can go through the five factors unless someone else has a question.

James Brewster: That's what I was going to say.

Ed Miller: I think you lost your job,

James Brewster: Two years man. Are we all good. I'll start reading whereas in the resolution and call for a vote.

Aleta Kinne: If the board wants to go with the condition, I'd rather wait for a survey.

James Brewster: I'm just curious your reason behind that. Honestly want to know what's the reason.

Aleta Kinne: Just in my experience. I'll go with the condition.

James Brewster: You can also vote no.

Mark Spinner: That is an option to carry it over. We talked about everything on the approval and the condition to receive a survey between now and the next meeting and wrap it up then. Whatever the board feels most comfortable with.

Scott Smith: So, we can make a resolution based on a survey we would have that information to look at.

Mark Spinner: You would be voting on the actual resolution at this point. What you would be doing is go through everything, get it all in the minutes and the record. Continue with the public hearing for another month. When they show up with a survey and if it is acceptable then we have done all the work and approved it at that point.

Ed Miller: Were not going to be able have a scaled drawing of the building so we're not going to know anyway. I think we leave that up to Gavin.

Jon White: Once the line is established three foot over that's it

Ed Miller: Were not going to have anything to look at measuring that.

Mark Spinner: I don't know how long it takes to contract someone to do that. So really at this point you would be agreeing to. It's a variance of three feet and it would be up to Gavin to ensure the building meets the setback.

Jon White: And on condition that the survey is done prior to the building permit approval, he must verify that it's three feet off the property line.

Ed Miller: Then they can move forward.

Jon White: And if that is not done then the variance is null and void essentially, correct? Am I wrong? If they don't meet the condition, then it is null and voided can't continue with the project.

Ed Miller: I think they still have the variance but can't do it.

Mark Spinner: They can do it just alter the construction of the project, so it is back three feet. Gavin can enforce that, or his department or court would have to. I don't know if the conditioning of a variance on the survey the right mechanism for this really. I think you grant the variance if you agree with the factors and agree it is appropriate and then it's up to your code department to ensure the structure being built follows the code and the newly passed variance.

Jon White: If we put a condition they must provide a property line survey.

Inaudible

Mark Spinner: He is the Code Enforcement Officer; he oversees enforcing the town code. Part of the town code sometimes is variances. That's a necessary offshoot of the town code. A variance was granted for this parcel. So, it is still.

James Brewster: We have brought this up before I'm not sure that is his responsibility. We presume that compliance of a variance is part of the ordinance.

Mark Spinner: He is the Code Enforcement Officer. He oversees enforcing the town code. Part of the town code sometimes is variances. That's a necessary offshoot of the town code. A variance was granted for this parcel. So, it is still.

Jon White: It still his job to oversee it.

Mark Spinner: Correct, it is still under his umbrella.

James Brewster: So, I'm wonder if we put conditions in to condition the variance

Aleta Kinne: That is why I suggested we wait for the survey.

James Brewster: That's required of them to get the survey.

Ed Miller: We could give them a variance if they elected to move the whole house over three feet.

Mark Spinner: What you would do then, is say that they can't meet the five tests because we don't know what kind of impact that will have on the neighboring property. Get the survey and have it verified by Gavin.

Ed Miller: Personally, I would give them the variance and let Gavin's department take care of it. The code enforcement is supposed to verify those rules to ensure they are met. He has the authority to say.

James Brewster: I don't want to leave that as an assumption. Maybe it is not a true condition maybe it is part of the document where we can state it

Ed Miller: I think all we are doing is giving you three feet and it is not up to us to ensure that happens.

Mark Spinner: Correct.

Jon White: Even if we waited for a survey they come back and show it on a survey map how do we know that there still not going to be three feet or two in a half foot off. The bottom line is if we grant it they have to stay three feet off and can't come any closer. Gavin must enforce it to the variance that we issued. And if they are required to have a survey. Then they are required to have a survey. If we can't put it in as a condition. I don't see why we should wait. We're going to sit here looking at a survey and you're not going to know it is three feet off. The last time I did that I got in a lot of trouble going over and measuring. So, that is absolutely bs and I will not ever do that again. I'm saying this so it can be part of the public record. As far as I'm concerned that's Gavin's problem to determine it not mine. I got my butt in a lot of trouble over that, so that's the end of it.

Mark Spinner: Does the board feel they want to have a survey before voting on the variance? You can certainly hold this over or deny it and reapply with a survey Because we know what the project is we just don't know where the property line is. So, it's really what the board feels most comfortable with.

Jon White: So moved Mr. Chairman

James Brewster: I didn't think we had a motion or ask for one yet along with the five factors.

Scott Smith: I would say in all fairness to everyone considering all the work that has already been done uninspected. And how the neighborhood I

realize they have that setback in their eighty-year-old deed I think we should ask for the survey and get it,

James Brewster: Let's go down the five factors then we can come to whether or not to move onto the resolution. Or tabled it contingent of a survey.

So, five factors ready.

Whereas the ZBA has duly reviewed and considered all the documents submitted by the applicant as well as recommendations. if any of New York State Department of Transportation. Broome County Department of Planning and Economic Development, the Town of Chenango Planning Board, Engineer, Ordinance Office and Drainage Coordinator. and has carefully considered all the information presented and received at the public hearing on behalf of the applicant and the public with respect to the applicant's application.

Now, therefore, it is resolved by the Zoning Board of Appeals of the Town of Chenango. Broome County, New York. regarding the variance request for a garage with less than required side yard setback from ten feet to three feet.

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

Board: Will not

2. The benefit sought by the applicant cannot be achieved by another method. other than grant of an area variance.

Board: Cannot

3. The requested area variance is substantial.

Board: Is Substantial

4 The required variance 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 raise to the variance request is self-created.

Board: Is self-created

6, Conditions required to mitigate adverse impacts if any Approval of the variance is granted, contingent upon the applicant submitting a certified survey of the property within sixty days.

6, Conditions required to mitigate adverse impacts if any Approval of the variance is granted, contingent upon the applicant submitting a certified survey of the property within sixty days.

7, The entire record of this proceeding supports the conditions that the benefit to the applicant conferred by granting of an area variance outweighs any potential detriment to the health, safety and welfare of the neighborhood or community posed by such grant,

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 July 23, 2024 at the Chenango Town Hall, 1529 NYS Route 12, Binghamton, New York, the foregoing motion was made by Edward Miller and seconded by Jon White. The Zoning Board, members voted as follows:

James Brewster: Decision on whether we will vote on this.

Mark Spinner: You could add a survey as a condition to mitigate the impact on the neighboring property. Put it in the resolution and then go from there.

Jon White: Then Gavin has all the materials he needs is what you are saying, right? They would be required to get a survey and Gavin can enforce it as part of the building permit requirement.

James Brewster: Are you comfortable with that condition?

Jon White: I am comfortable with it. I think that is what I was trying to get at from the beginning.

Ed Miller: I'm comfortable giving them the variance and let Gavin worry about it. If we want to condition it with the survey, I don't have a problem with that either.

James Brewster: A softer approach instead of mandating the survey, put a condition in there the ordinance department ensures correct property lines are established.

Mark Spinner: Then you are putting the condition on the code enforcement.

Jon White: Which we are not allowed to do, because that was the sticky wicket we and Gavin got with that other time on a different variance. We're here because of checks and balances and we are crossing that line. If we say they need to have a survey, Gavin enforces it.

They have a survey then it is up to Gavin how to approach it. That keeps us as two separate entities. Am I wrong in saying that?

James Brewster: I'd be fine putting in the condition.

Aleta Kinne: Just tell them to bring a survey next month.

James Brewster: That can be an inconvenience to the applicant.

Jon White: We're the ones that are supposed to verify that, that's code enforcement

Mark Spinner: I think if you want to approve this if the inspectors outweigh the detriment, then we can vote to grant the variance subject to the condition that the applicant obtains a survey.

Jon White: Correct.

Mark Spinner: Everyone ok with that?

Ed Miller: How do you know if it passes?

Mark Spinner: We don't, ordinance does.

Jon White: Town Board would have to change the town code to give Gavin rules to be able to effectively do that. I don't think there is anything in town code any kind of fines. That's no in my wheelhouse, just saying that is more of a town board thing then it has to do with us. As much as you would like too, that's not our job,

James Brewster: I would be comfortable with a survey being required. So, we could have a motion to approve the resolution on the condition that the applicant must have a survey.

Ed Miller: I'll make the motion.

Jon White: Seconded.

James Brewster: Any further discussion, no I'll hold that until we have the proper language.

Mark Spinner: Approval of this variance is granted, contingent upon the applicant submitting a certified survey of the property within sixty days.

Jon White: Sixty days is good.

James Brewster: Thirty days isn't enough time. The sooner the better for Gavin. No further discussion let's go for a roll call

Adam Donahue: Ed Miller, Board Member Voted: Aye
Jon White, Board Member Voted: Aye
Scott Smith, Board Member Voted: Nay
Aleta Kinne, Vice Chairperson Voted: Nay
James Brewster, Chairperson Voted: Aye

Aleta Kinne: Voted No - I think we are getting sloppy; we are handing lollipops to everyone. That's my opinion.

Scott Smith: Voted No - I agree with Aleta, we are putting a lot on Gavin.

The motion was thereupon declared adopted by roll call of
Ayes – 3 Nays - 2

James Brewster: So, the variance is approved providing a certified land survey to Gavin so he can verify the boundary.

James Brewster: Next we move on to discussing application 2024-V10 this is a triple area variance for Taco Bell consider acreage reduction from six acres to one point three eight acres, frontage reduction from three fifty to one ninety-three and required lot depth from four fifty to two sixty-six. But first we must do SEQR

SEQR Part II Questions 1-11

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

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 environmental 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)?

Aleta Kinne: I'm thinking of the pet cemetery that was put there in the nineteen forties when I was kid. I don't think you will find a single person alive today that buries their pet there. So, that is not a problem.

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 it fails to incorporate reasonably available energy conservation or renewable energy opportunities?

Board: No.

7. Will the proposed action impact existing:

a, Public/ private water supplies?

Board: No.

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 (i.e., wetlands, waterbodies, groundwater, air quality, flora and fauna)?

Board: No.

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

Board: No,

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

Board - No.

Based on the information small to no impacts it appears the board will issue a Negative Declaration if that is true can we have a motion.

Jon White: Motion to adopt a Negative Declaration for SEQR

Aleta Kinne: Second.

James Brewster: We determined to have a Negative Declaration therefore let's vote:

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 roll call of
Ayes – 5 Nays - 0

SEQR has passed with a Negative Declaration,

James Brewster: Move onto the discussion for the triple variance. Anyone can take the floor while I get the resolution here.

Aleta Kinne: Not changing, I'm surprised there isn't already a variance on the property.

James Brewster: So am I.

Aleta Kinne: In my opinion inaudible

Jon White: Wasn't Hess there before 1998 when the last plan was adopted. It was a gas station way before that. Speedy bought out Hess because of the use they were able to change. It was three different parcels. There was a fabric store, a vet and a restaurant.

James Brewster: Do you think the six acres is a new part of the Comprehensive Plan.

Aleta Kinne: That was the first Comprehensive Plan from two acres to six acres.

James Brewster: So, that has been around for a long time, that makes more sense now. Which do you want to take first, the acreage? We could probably do all three. We can go through one of the factor cases and revisit the others if the answers are the same. To start Six acres to one point three eight acreages.

Now therefore, be it resolved by the Zoning Board of Appeal of the Town of Chenango, Broome County, New York, that regarding the variance request for less than required acreage from six acres to one point three eight acres:

1. The requested variance will / will not produce an undesirable change in the character of the neighborhood or cause a 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

Jon White Because you are going from six to one point three eight acres is a substantial amount. Substantial in the one number or the project.

James Brewster It could be a bigger broader concept is giving the variance substantial or is it the number substantial.

Ed Miller The piece of land is substantial, but the project is not.

Mark Spinner: You are looking at the variance for the six-acre requirement, that is eighty-five percent reduction.

Scott Smith: Yes, but not in a bad way.

Jon White: I'm not saying it is bad but, substantial yes.

Board: Is.

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: Will not

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

Jon White: They made a valid point that this is an existing building on the property that was developed, they just want to redevelop it for their own use. It is in a more restrictive zone. So, it is not self-created

James Brewster: We would still have to give a variance on the old plan. I agree with you, it is not self-created, let's go with that

Board: Is not.

6, Conditions required to mitigate potential adverse impacts, if any:

Board: No.

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

Board: Outweighs

James Brewster That concludes the answers we gave to the five factors also apply one or two may change from reducing the frontage three fifty to one ninety-three. All the same there -

Board: Yes.

Jon White: You are at that fifty percent threshold.

James Brewster:

1. The requested variance will / will not produce an undesirable change in the character of the neighborhood or cause a detriment to the 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 variance is / is not substantial

Board - 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 is / is not self-created.

Board - Is not.

6. Conditions required to mitigate potential adverse impacts if any

Board - No

7. The entire record of this proceedings supports the conclusion that the benefit to the Applicant conferred by 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.

Board - Outweighs

Be it further resolved by the Zoning Board of Appeals of the Town of Chenango, Broome County, New York that regarding the variance request for less than required lot depth from four fifty to two sixty-six feet.

1. The requested variance will / will not produce an undesirable change in the character of the neighborhood or cause a 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 are variance is / is not substantial

Board - Is not

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 not.

6. Conditions required to mitigate potential adverse impacts, if any

Board - No.

7. The entire record of this proceeding supports the conclusion that the benefit to the Applicant conferred by 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:

Board - Outweighs

James Brewster: We broke out the variance, but we have one motion. Seek a motion to approve this resolution for the three variances as we have stated there.

Aleta Kinne: I'll make that motion.

Jon White: Second.

James Brewster: 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 roll call of
 Ayes – 5 Nays - 0

James Brewster: That is the end of our agenda tonight does anybody have anything else?

Jon White: I want to elaborate on what Aleta said earlier about we are getting sloppy, I tend to agree with her a little bit but, when it comes to site plans and all that. If you want that then we need to not accept the application or accept the application in that instance. Where in the package you are supposed to have a site plan to scale and all that. We had applications that didn't. I think if we are going to clean things up, we need to make sure it's in there. If not, we don't accept the application and make them come back the following month. That is a good way to clean things up. The whole property line thing I got in a real pickle, and it created some turmoil. That is not our job to determine where the property line is or where the building is, that is Gavin's job. That was brought to our attention that it is Gavin's job. If we want to clean things up, we need to have it in the paperwork when we start, otherwise if we accept it we have to deal with what's in front of us. Like it or not.

Ed Miller: When you put the application in you are supposed to have a site plan.

Jon White: That time I got in trouble I said that needed to be done. We have accepted applications that were sloppy too. This one was non-existent. I'm defending you on this Aleta, we need to clean this up. In the beginning when we accept the application. Then it is up to Gavin. As for Scott I fully agree on the aspect of these people should be punished for not getting a building permit and not stopping.

Scott Smith: It goes beyond that.

Jon White: We have no teeth in that. That is a Town Board / Town Code thing. If anything, we must lobby them so that they have to look at making changes. You can't even get them to change the PDD-C problem right now.

Ed Miller: That is not our job. All we can say we will give you the three feet.

Jon White: I do agree with Scott but, unfortunately it puts a lot of burden on Gavin. These are the cards that are dealt with. We are a separate entity from Gavin. He is to enforce the Town Code, and we are to give checks and balances. That is our main purpose of the ZBA or the residents. If they want a determination if they don't agree with Gavin. It starts with us accepting the application. If we think there is a property line issue, we need not accept it.

James Brewster: I will make a checklist on the application. I can make a checklist from the rules and just say is the SEQR filled out right, site plan.

Aleta Kinne: Jon before you were with Gavin,

Jon White: Yes, that had something to do with it. You can go out by yourself and make that determination. I can probably find the letter I think I still saved from Mr. Lumsden. This will be a long sticking point for me. In that email he said I will read this in full. In the last meeting Jon White stated that he and Gavin met at a citizen's home to go over an option and look at the site together. And Jon went into detail on how it could be done. It is not up to the ZBA to design something for a citizen. It also gave the appearance that Jon and Gavin had a close relationship, which is correct. Remember the ZBA at the next meeting will have to give an interpretation of a decision Gavin has made. The ZBA is a quasi-board that is to be separate from code planning engineering and town board etc. The homeowner said he did not seem to have a problem with it. But everyone should let people know they are just going to be there to inspect and for safety. It is very important when a business has OSHA concerns and safety. The appearance is not good for Gavin or the ZBA. Just to remind everyone a few years ago the former ZBA Chair and the former Code Officer would talk before each meeting, and this was brought out in public and found to be problematic for the town. Everyone needs to know what their responsibilities are and are not. Always be a separation of power. Please feel free to share this with your board, thank you Mr.

Chairman, Mike Lumsden this was dated October 23, 2022. Basically it is not our job for us to design, our job to see what is in front of us. And determine what is in front of us. If that is the case, we need to have a site plan at day one or we don't accept the application.

inaudible

Ed Miller: We will give you three feet; it is up to the engineering and the code office.

Mark Spinner: Your role is interpretation.

Aleta Kinne: I didn't know you got that letter.

Jon White: I was going to make it public. He was right in what he was saying, that is our role as a quasi-board. I was wrong about meeting with Gavin. Even though it was approved by our town attorney at the time. I was still technically in the wrong, So I admitted that, and it won't happen again. That is not our position, we need to have the facts in front of us or we don't accept it. Make the determination only on what is in front of us. Everything else is Gavin's responsibility.

Aleta Kinne: I've been saying for a long time we need a site plan and septic.

James Brewster: No, we don't do septic reviews, site plan we need what is required on the application.

The board continued their discussion on what is necessary to accept an application, site plan setbacks and property lines. We to or not to close a public hearing.

James Brewster: There being no further discussion can I have a motion to adjourn the meeting.

Board: They unanimously agreed to adjourn the meeting at 9:06 p.m.

Respectfully submitted,



Diane Aurelio
Ordinance Office