



# TOWN OF SOUTHPORT

1139 Pennsylvania Avenue  
Elmira, NY 14904

*Minutes Approved  
by Board of Appeals  
3/18/2018*

**ZONING BOARD OF APPEALS**  
**WEDNESDAY, FEBRUARY 27, 2018**  
**7:00 PM**

**PUBLIC HEARING (continued from January 17, 2018)**  
**MARTIN DIPETTA**  
**80 PINE HILLS DRIVE, PINE CITY, NY 14871**

**PUBLIC HEARING (cancelled – rescheduled for March 21, 2018)**  
**MATTHEW KERWIN, BARCLAY DAMON, O/B/O,**  
**UP STATE TOWER CO, LLC & BUFFALO-LAKE ERIE WIRELESS SYSTEMS**

**INFORMATIONAL HEARING**  
**NICHOLAS TOBEY**  
**250 ROBERT STREET, ELMIRA, NY 14904**

Minutes of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on February 27, 2018 at 7:00 p.m.

**Item No. 1 - Call to Order**

**Attendance**

Board Members Present: James Gensel  
Daniel Williams  
John Arikian  
Justin Faulkner  
Susan Silvers, Alternate Member

Board Member Absent: Deborah Eames

Others Present: Leslie Mauro, Town Attorney  
Peter Rocchi, Town Code Enforcement Officer  
Bonnie Balok, Secretary-Zoning Board of Appeals

**Item No. 2 – Approval of Minutes of January 17, 2018**

Mr. Arikian requested a correction to the minutes to reflect that fact he had recused himself from the informational hearing concerning the cell tower proposed at Budd Street and Morley Place. (*Correction Noted and Completed*).

The Board was also advised there would be a coordinated effort between the Southport Zoning Board of Appeals and the Southport Planning Board which would include a joint public hearing and a joint SEQR review scheduled for March 21, 2018 at 7:00 p.m.

Mr. Arikian made a motion to approve the minutes of January 17, 2018 to include the correction; seconded by Ms. Silvers. The minutes of January 17, 2018 were unanimously approved.

Item No. 3 – New Business

**Public Hearing – Martin DiPetta**

*(continued from January 17, 2018)*

Attendance: Applicants Martin DiPetta and Susan DiPetta

Vice Chairman Williams called the meeting to order due to Chairman Gensel's delay in attendance and advised this hearing was a continuation of the public hearing for Martin DiPetta, 80 Pine Hills Drive, Pine City, NY 14871, concerning an area variance on Woodland Park lot, Pine City, NY 14871, Tax Map 118.03-2-38, Zoned AR, to build a thirty foot (30') by sixty foot (60') pole barn within the required side yard setback of twenty feet (20'). Section 525-24 – Bulk and Density Control Schedule. The public hearing was continued based on a problem with signage and snow, as well as the need for a revised survey. The previous survey showed Lot 21 with the barn over the property line. Chairman Gensel continued with the hearing.

Mr. DiPetta advised he had a new survey drawn up (*provided copies to the Board*); the property lines have not changed; barn is parallel with existing barn that is there, changed dimensions, the original was quite a ways forward, now moved back. Further, discussion took place with a neighbor being close to the fence and the correction gives more room in back. The pole barn would strictly be used for storage.

Mr. Rocchi advised the paper work submitted by Mr. DiPetta is in order.

Attorney Mauro explained because the pole barn is the only structure on the property, Town Code considers the pole barn a principal use structure on the property, not an accessory; because the pole barn is the only structure on the property; storage is not permitted in an AR District as primary use and discussed the lot line adjustment on the residence.

Chairman Gensel advised Mr. DiPetta could merge the two (2) properties, residence, if approved it would be on the condition of a single principal use which can not legally allow storage or merge two (2) properties. Divide two properties or connect the building parcel to the residence.

Mr. DiPetta advised the zoning had changed during the gas drilling discussions, changed from R1-taxes \$300 an acre to AR-taxes \$1,000 an acre. Further, Mr. DiPetta advised he had invested one thousand dollars (\$1,000) into this and was concerned about not being advised of this R1 and AR use.

Chairman Gensel explained the Board reviews the applications based on State law. A zoning issue on use is very different from an area variance. There are four (4) questions to be answered for a use variance and the applicant has to meet all standards; self-created is one of the difficult ones.

Attorney Mauro explained Mr. DiPetta can not turn the front yard into an outdoor equipment storage area; not allowed under current zoning. Further, Mr. DiPetta could redraw the lot line and not have a land locked parcel. The process is done for Mr. DiPetta's protection and the Town's. This must fall under one of the allowable uses for AR such as contractor equipment storage, special use permit, depending upon dimensions and what an applicant is planning to do.

Chairman Gensel advised the Board can review the area variance application, but any review is based on one of two conditions building parcel to residence. In this case, the Code Officer declined the application for a pole barn because it did not meet zoning (*Language Read: Area Variances Language from Five (5) Questions*). Five questions reviewed and responded to by Mr. DiPetta as follows:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

A: *Mr. DiPetta – Believe not; storage pole barn will be a new structure, it will look nice, there are pole barns and sheds all over this area. This will look better than others, metal, painted, white roof and green to blend in with the woods.*

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

A: *Mr. DiPetta – No, because of access, has millings in lot and prepared for doing this.*

Item No. 3 – New Business

**Public Hearing – Martin DiPetta**

*(continued from January 17, 2018)*

Q3. Whether the requested area variance is substantial?

A. *Mr. DiPetta – Twenty feet (20'). Ten feet (10') on each side.*

*Parallel with existing barn. Neighbor's fence totally on my property.*

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

A. *Mr. DiPetta – No, made it better than it was; down hill angle, slows down water runoff. Everything is down hill and won't shed water to any neighbor.*

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

A. *Mr. DiPetta – No, question zoning revision. Before revision this would have been residential and would fit in. R1 from AG in back.*

Chairman Gensel reopened the hearing from last month's Public Hearing portion of the meeting advising this would be a comments only session and anyone speaking should provide their name and address.

Mr. Eric Van Inwagen: 96 Woodland Park' Moved to Woodland Park in 1965, lived there twenty (20) years, moved away for twenty five (25) to thirty (30) years, now moved back. Strip of land in question was right of way to get to the 34 acres. Originally land owned by Town of Southport, Woodland Park didn't proceed past 1970 because land didn't pass the perk test. Fifty foot (50') was not intended to be a building lot. Question 1 will change the tenor of the neighborhood. Certain concept of the neighborhood, had to meet certain standards, house must cost \$24,000, driveway paved within one year, higher requirement to live on Woodland Park as far as the appearance. The pole barn is not in keeping with the environment. Mr. DiPetta could build the barn further up on his acreage. Maybe there is something the Town could do to help him, so the neighbors would not have to see the pole barn. The trees Mr. DiPetta cut down were clear cut and leveled and changed the entry to the street. Now have a gravel parking lot and it is unattractive. I do think there is an environmental problem when it rains, water travels down past homes and crosses the street and causes dirt and gravel to pile up and this is pushed together by snow plows when snow is plowed. I am all for property rights, but Mr. DiPetta could store his equipment behind his own house.

Mr. Nicholas Brown: 34 Woodland Park This pole barn is thirty feet (30') by sixty feet (60') which is over one thousand square feet (1,000'), equipment he rents out, all the water run off and goes to Ms. Powers property and he could expand his garage for storage. There are other ways for him to go with this.

Mr. Carson : 17 Woodland Park Environmental hazard; water runs down to Powers, McLaughlin, and Clarkson ever since the trees were removed. Don't feel industrial building should be in a residential area.

Ms. Laura Powers: 14 Woodland Park Mr. DiPetta has raised this up so there is water there now. Ditch right in the front of my house. I had a puddle under the clothes line. There was a fire road up on the hill. Originally, my fence was twelve inches (12") on Mr. Dickerson property, now Mr. DiPetta says I am ten feet (10') on his property. The trees were cut down when I was gone.

Ms. Paula Kleinschmidt: 94 Woodland Park This is where my father lives and I am part owner too. It has been fifty (50) years of a beautiful area, premier area in Southport, now looks terrible, safety concerns with school bus stops, where trees were cut down it is now a blind curve, environmental concerns storing equipment that is going to be leaking into the soil with everyone having wells out there.

Ms. Janette Nordin 34 Woodland Park Voiced her concern about the appearance with a bright white roof which will stick out like a sore thumb, higher surface area for more run off, already have run off issues. After the area was cleared, kids go tubing there because of the run off.

Item No. 3 – New Business

**Public Hearing – Martin DiPetta**  
(continued from January 17, 2018)

Mr. Kevin Mosher:

Kendra Woodrum 112 Woodland Park Would be a distraction to have a metal pole barn, basically an industrial structure, metal pole barn wouldn't fit in. Variance is substantial – fifty percent (50%), this is esthetically unpleasing and not in keeping with the area. Maximum lot size coverage, it is on thirty four (34) acres, it is not plausible for a thirty foot (30') by sixty foot (60') steel building to be there without affecting the character of a neighborhood. Putting this building in the front yard in lovely neighborhood, is a significant impact on neighborhood.

Mr. Bill Redder:

67 Woodland Park Since 2013 looked at Pine Hills Drive and Woodland Park and it is all residential. Two (2) separate parcels connected to fifty foot (50') strip flip flopped a number of times. Now one (1) parcel zoned agriculture. Is it that easy to change zoning. Point is, it is entirely residential. To me I look at the two (2) as the same. Once a setting of a modest house with trees, imposing a building of that size with acreage of that size seems ridiculous. I wouldn't think twice, it doesn't fit, it is going to disrupt this neighborhood. It is beautiful, an exceptional area in the Town of Southport. This will set a precedent, will have to do for others what would be done here, Grade changes caused faster run off, faster flow. Negative impact to Woodland Park and Pine Hills Drive. This will be the first thing you will see when coming onto Woodland Park. Usage has an impact on property values. Could have negative impact on property values.

Mr. Bill Carleton:

88 Pine Hills Drive I have a pole barn. Thoughts are for Laura Powers as far as her property shrinking. Used Laura's pins to do everything. They surveyed it all. Grading, DiPetta took down trees. I didn't have run off. DiPetta's grading made run off better; he has done everything he could.

Carmen Dandrea:

111 Woodland Park I support all who spoke against property.

Chairman Gensel asked if anyone else would like to comment; no other comments were made and the public hearing portion was closed.

Discussion took place between Mr. DiPetta and Chairman Gensel concerning the use of the site; Mr. DiPetta advised he never rented out equipment and had no intention to use the property as a commercial operation. When the area is plowed, gravel and millings run off the lot, but no water is coming down. Mr. DiPetta advised he has been there twenty nine (29) years, clear cut nothing, and he put a ditch in. The standing height would be a twelve foot (12') clearance, identical to Mr. Carleton's; putting barn back side of property would cost a fortune.

The Board members discussed the zoning in Woodland Park. Originally the right of way to develop the property Agriculture/Residential; building tighter in R1. The two parcels Mr. DiPetta owns could be combined, move the building back and do whatever he wants to put in this location with reasonable conditions on variance, buildings will be within fifteen feet (15'). The two options available are: a use variance or merge the properties to make the pole barn an allowable use. Attorney Mauro advised there is nothing in the Code that allows for aesthetics or mandates building other than height.

The Board reviewed the five (5) area variance questions as follows:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

A: Yes 5 No 0

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

A: Yes 5 No 0

Q3. Whether the requested area variance is substantial?

A: Yes 5 No 0 Over fifty percent (50%) considered substantial

Item No. 3 – New Business

**Public Hearing – Martin DiPetta**  
*(continued from January 17, 2018)*

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

A: Yes 0 No 5

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

A: Yes 5 No 0

The Board discussed the following concerns: the applicant only meets one (1) of the five (5) area variance requirements, the cost/value of homes in the area versus a metal pole barn in the neighborhood, the inability for the Board to add reasonable conditions to any variance granted, and the fact that trees have to be cleared. Based upon the discussion, a resolution was made by Mr. Arikian to decline the area variance request; seconded by Ms. Silvers. Unanimous vote of yes to decline the variance request. Area variance denied.

February 27, 2018 – DiPetta Public Hearing Adjourned: 8:41 pm.

Original on File:

Town Clerk

C:

Board of Appeals

Town Board

Planning Board

Town Supervisor

Town Clerk

Town Attorney

Town Assessor

Town Code Enforcement Officer

Applicant: Martin DiPetta, 80 Pine Hills Drive, Pine City, NY 14871

Item No. 3 – New Business

**Informational Hearing – Nicholas Tobey**

Attendance: Applicants Casey Harvey and Nicholas Tobey

Chairman Gensel called the meeting to order and advised this is an informational hearing for Nicholas Tobey, 653 Draht Hill Road, Elmira, NY 14901 concerning an area variance at 250 Robert Street, Elmira, NY 14904 to expand the existing driveway to the left to allow for two (2) parking spaces side by side. Tax Map 109.07-3-48, Zoned R3,

Mr. Tobey explained he wanted to widen the driveway to allow two (2) cars to park in the driveway; adding to the existing one. The house is a one (1) tenant home on a fifty foot (50') lot.

A public hearing was scheduled for March 21, 2018 at 7:00 pm at which time the applicant will be required to answer the five (5) area variance questions.

February 27, 2018 – Tobey Informational Hearing Adjourned: 8:53 pm.

Original on File:	Town Clerk
C:	Board of Appeals
	Town Board
	Planning Board
	Town Supervisor
	Town Clerk
	Town Attorney
	Town Assessor
	Town Code Enforcement Officer
	Applicant: Nicholas Tobey, 653 Draht Hill Road, Elmira, NY 14901

Item No. 4 - Old Business

No old business

Item No. 5 - Discussion

No further discussion.

Item No. 6 – Adjournment

Mr. Williams made a motion to adjourn; seconded by Mr. Faulkner. Adjournment unanimously approved.

Meeting Adjourned: 8:55 pm

Original on File:	Town Clerk
C:	Board of Appeals
	Town Board
	Planning Board
	Town Supervisor
	Town Clerk
	Town Attorney
	Town Assessor
	Town Code Enforcement Officer
	Nicholas Tobey, 653 Draht Hill Road, Elmira, NY 14901

**ZONING BOARD OF APPEALS  
TOWN OF SOUTHPORT, COUNTY OF CHEMUNG, STATE OF NEW YORK**

**RESOLUTIONS  
2018**

**RESOLUTION NO. 6**

**AREA VARIANCE DENIED**

PROPERTY:	TAX MAP NO. 118.03-2-38 COMMONLY KNOWN AS WOODLAND PARK	ZONED: AR  PINE CITY, NY 14871
APPLICANT:	MARTIN DIPETTA 80 PINE HILLS DRIVE	PINE CITY, NY 14871
OWNER:	MARTIN DIPETTA 80 PINE HILLS DRIVE	PINE CITY, NY 14871
RESOLUTION:	ARIKIAN	SECONDED: SILVERS

WHEREAS, Martin DiPetta, 80 Pine Hills Drive, Pine City, NY 14871 applied for an area variance at Woodland Park, City, New York, 14871 to build a thirty foot (30') by sixty foot (60') pole barn within the required side yard setback of twenty feet (20'), as per Section 525-24 – Bulk and Density Control Schedule Town Code, Town of Southport, County of Chemung. The property is located in a AR zone and is commonly known as Woodland Park, Pine City, New York, 14871, Tax Parcel, 118.03-2-38, and

WHEREAS, the Town of Southport Zoning Board of Appeals held a public hearing on January 17, 2018 at 7:00 p.m, or as soon thereafter as it could be heard, at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York, with several residents voicing concerns against the proposal, as well as the timeliness of the sign posted in the yard, which was complicated with snow covering the sign, and

WHEREAS, the Town of Southport Zoning Board of Appeals reopened and continued the public hearing on February 27, 2018 at 7:00 pm at the Town of Southport, 1139 Pennsylvania Avenue, Elmira, NY 14904, with several more residents voicing concerns against the proposal, and

WHEREAS, this matter was submitted to the Chemung County Planning Board and thirty (30) days has expired with the Board taking no action on the matter, and

WHEREAS, upon deliberation, consideration and discussion, and following inspection of the property, the members of the Zoning Board of Appeals were of the opinion that an area variance should be denied not allowing an area variance to build a thirty foot (30') by sixty foot (60') pole barn within the required side yard setback of twenty feet (20') as per Section 525-24 - Bulk and Density Control Schedule.

NOW THEREFORE BE IT RESOLVED, that an area variance be denied to Martin DiPetta, 80 Pine Hills Drive, Pine City, NY 14871 with respect to Woodland Park, Drive, Pine City, New York, 14871, Tax Map 118.03-2-38 and the Building Inspector of the Town of Southport be and hereby is not authorized to issue a permit for said use.

Ayes:	Arikian, Faulkner, Silvers, Williams, Gensel
Noes:	None
Carried.	Area variance denied.

February 27, 2018

*Resolution for Minutes of February 27, 2018 - DiPetta  
Approved by Board of Appeals April 18, 2018*