



# TOWN OF SOUTHPORT

1139 Pennsylvania Avenue  
Elmira, NY 14904

*Draft Minutes  
To be Approved  
by Board of Appeals*

## BOARD OF APPEALS

### MINUTES

**WEDNESDAY, FEBRUARY 20, 2019**

**ORGANIZATIONAL MEETING (6:30 PM)  
POSTPONED TO MARCH 20, 2019**

**INFORMATIONAL HEARINGS (7:00 PM)**

1. Robert Whispel
2. Dan Williams
3. Fagan Engineers, o/b/o Robert and David Cleary
4. DD Waring and Susan Stark

**SOUTHPORT TOWN HALL  
1139 PENNSYLVANIA AVENUE  
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 20, 2019 at 7:00 p.m.

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

#### **Attendance**

Board Members Present:	James Gensel Justin Faulkner John Arikian Susan Silvers	
Alternate Board Member Present:	Edward Steinhauer	Board welcomed Mr. Steinhauer to the ZBA
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 September 19, 2018

Chairman Gensel explained the Organizational Meeting was postponed and will be held March 20, 2019.

Chairman Gensel advised the first item on the Agenda is the Minutes of September 19, 2018 and asked if there were any changes or corrections. Ms. Silvers made a motion to approve the minutes; seconded by Mr., Faulkner. Minutes of September 19, 2018 were unanimously approved.

*(Last ZBA meeting for the year 2018 was September 19, 2018; Mr. Youngs thereafter withdrew his application and sought an alternative remedy for the area variance request)*

**128 Dry Run Road, Pine City, NY 14871**  
*Re: Area Variance, 122 Dry Run Road, Pine City, NY 14871*

Item No. 3 – New Business

**Informational Hearing– Robert Whispel**  
128 Dry Run Road, Pine City, NY 14871

Present: Robert Whispel, 128 Dry Run Road, Pine City, NY 14871.

Chairman Gensel called the meeting to order and advised this is an informational hearing for Robert Whispel, 128 Dry Run Road, Pine City, NY concerning an area variance to sub-division land, commonly known as 122 Dry Run Road, Pine City, NY, that does not meet the required one hundred fifty foot (150') of road frontage and side yard setback of twenty feet (20') as per Section 525-24-Bulk and Density Control Schedule.

Discussion took place concerning the property measurements, setbacks, house and barn site consisting of three and one-fourth (3 ¼) acres, the three (3) parcels of land purchased consisting of one hundred fifty four (154) acres, the property width of 128 Dry Run Road measuring two hundred twenty five feet (225') to two hundred twenty eight feet (228'), slope of the land going up the driveway to be eight percent (8%) to ten percent (10%) slope, clarification to subdivide 122 Dry Run Road, Pine City from property proposed subdivision, and the property remaining on the side will remain with 128 Dry Run Road, Pine City.

Basically, the relief being sought is relief from the minimum lot frontage which creates a “flag lot”. The frontage will be divided at the lot line.

Two (2) area variances are being requested; two (2) area variances lot and side setback.

Chairman Gensel advised Mr. Whispel he must complete the required paper work and submit the answers to the five (5) area questions, in writing, before the March 20, 2019 hearing. (*Answers to Five (5) questions must be provided, in writing, to the ZBA by March 8, 2019*).

Public Hearing: Wednesday, March 20, 2019 at 7:00 pm  
All required paper work will be provided to Mr. Whispel by Mr. Rocchi and Ms. Balok.

Chairman Gensel suggested Mr. Whispel also should provide a property survey for 128 Dry Run Road, Pine City, NY. Mr. Whispel advised he does not have a survey and has lived at the location for twenty one (21) years.

Adjourned: 7:24 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: Robert Whispel  
128 Dry Run Road, Pine City, NY 14871

Bonnie Balok, Secretary  
Zoning Board of Appeals,  
February 21, 2019

**1251 Pennsylvania Avenue, Pine City, NY 14871**  
*Re: Use Variance, Penn. Ave & Furman Rd, Pine City, NY 14871*

Item No. 3 – New Business (continued)

**Informational Hearing– Dan Williams**  
1251 Pennsylvania Avenue, Pine City, NY 14871

Present: Mike Overton, Energy Savers of NY  
Absent: Dan Williams

Chairman Gensel called the meeting to order and advised this is an informational hearing for Dan Williams, 1251 Pennsylvania Avenue, Pine City, NY concerning a use variance to allow for construction and operation of a business on property, commonly known as Pennsylvania Avenue and Furman Road, Pine City, NY, which is not an allowable use in R2 zone, as per Chapter 525-Use Regulation Table.

Mr. Overton advised a use variance is being requested for Energy Savers of NY, a low traffic, small commercial glass and glassing fabrication company. The land was purchased last August, it is an existing vacant lot, the building will look residential in nature. The required R2 rear setback is twenty feet (20'). The company will employ three (3) employees in the building, hours of operation will be 7:30 am – 4:30 pm, deliveries will be two (2) a week and will include receipt of aluminum at the shop and small glass deliveries, large deliveries will be drop shipped to the actual job site, manufacturing will be inside, saws used will not create a lot of noise, equipment will all be stored inside, driveway is adequate for employee parking, no customers will at this location.

Discussion continued concerning the kind of use – manufacturing/industrial and the fact that no other location has been looked at because Heather Williams owns this site close to Dan Williams' site, but the two (2) companies will remain separate. The total square footage of the building is three thousand, one hundred twenty square feet (3,120').

Further discussion centered on if the business were to go out at this location. Mr. Overton advised the property would revert to a duplex, but it was pointed out the use variance would continue with the property.

Chairman Gensel advised a use variance is a much more narrow path for approval, but a survey must be submitted, the Department of Public Works must review and approve the driveway, and the use variance questions must be submitted in writing to the ZBA before the March 20, 2019 hearing; (*Answers to use questions must be provided, in writing, to the ZBA by March 8, 2019*).

Public Hearing: Wednesday, March 20, 2019 at 7:05 pm  
All required paper work will be provided to Mr. Williams by Mr. Rocchi and Ms. Balok.

Adjourned: 7:35 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: Dan Williams  
1251 Pennsylvania Avenue, Pine City, NY 14871

Bonnie Balok, Secretary  
Zoning Board of Appeals,  
February 21, 2019

Minutes of February 20, 2019 – Informational Hearing – DD Waring and Susan Stark

429 Dry Run Road, Pine City, NY 14871

Re: Area Variance for subdivision of land; does not meet required 150 foot or road frontage, as per Section 525-24-Bulk Density Control Schedule

Item No. 3 – New Business (continued)

**Informational Hearing– DD Waring and Susan Stark**

429 Dry Run Road, Pine City, NY 14871

Present: DD Waring and Mark Watts

Chairman Gensel called the meeting to order and advised this is an informational hearing for DD Waring and Susan Stark, 429 Dry Run Road, Pine City, NY concerning an area variance for subdivision of land that does not meet the required one hundred fifty foot (150’) of road frontage, as per Section 525-24—Bulk Density Control Schedule.

Mr. Watts inquired about the road frontage, specifically if they have enough road frontage so avoid the need for a variance because the property has one hundred fifty feet on each side.

Ms. Waring advised fifty two (52) acres of land were purchased in 1984, 488 Dry Run Road was purchased in 1985, and after that the house and land was put together. The house was built on the hill after that; Bushes and Watts farm the land. The goal is to maintain the land to be able to farm the land. Ms. Waring explained she has to move and Mr. Watts is buying the land to maintain farming.

Attorney Mauro reviewed Town Law concerning the property and advised the recommendation would be an area variance to provide adequate frontage for a buildable lot, and further the law has a preference to not allow non-conforming.

Chairman Gensel explained there are two (2) non-conforming lots; the existing parcel is non-conforming

Ms. Waring inquired about the kind of survey needed and Chairman Gensel advised the survey needs dimensions along the right of way.

Chairman Gensel further advised Ms. Waring needs an area variance on the newly created agriculture parcel based on the five (5) area variance questions, and the answers to the five (5) questions must be provided to the ZBA, in writing, before the March 20, 2019 hearing. (*Answers to use questions must be provided, in writing, to the ZBA by March 8, 2019*).

Public Hearing: Wednesday, March 20, 2019 at 7:10 pm  
All required paper work will be provided to Mr. Williams by Mr. Rocchi and Ms. Balok.

Adjourned: 8:04 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: DD Waring and Susan Stark  
429 Dry Run Road, Pine City, NY 1487  
Mail Notices to: Mark Watts  
564 Dry Run Road, Pine City, NY 14871

**Minutes of February 20, 2019 – Informational Hearing – Fagan Engineers, o/b/o Robert & David Cleary  
113 East Chemung Place, Elmira, NY 14904**

*Re: Area Variance for undersized lots Ch 525-110, building setbacks,  
CR form-based Ch 525-17, and fuel canopy setbacks Ch 525-110,  
Drive aisle width Ch 525-112 and sign setback Ch 525-92 on the following:  
1156 Broadway, Elmira, NY  
985, 987 and 989 Sebring Avenue, Pine City, NY*

Item No. 3 – New Business (continued)

**Informational Hearing–Fagan Engineers, o/b/o Robert and David Clearly**  
113 East Chemung Place, Elmira, NY 14904

Present: Brian Grose, Fagan Engineers  
Robert and David Cleary

Chairman Gensel recused himself from this informational hearing and left the meeting room.

Vice Chairman Faulkner called the meeting to order and advised this is an informational hearing for Fagan Engineers, on behalf of Robert and David Clearly, concerning an area variance for undersized lots Ch 525-110, building setbacks, CR form-based Ch 525-17, and fuel canopy setbacks Ch 525-110, Drive aisle width Ch 525-112 and sign setback Ch 525-92 on the following: 1156 Broadway, Elmira, NY, as well as 985, 987 and 989 Sebring Avenue, Pine City, NY

Attorney Mauro explained about the SEQRA Lead Agency. The Town Planning Board and the Town Board will make the determination concerning which Board will be the Lead Agency. The ZBA needs to discuss, review and complete the SEQRA form, provide recommendation to the Planning Board and Town Board. The Planning Board and Town Board will take these recommendations under advisement and make the determination about the Lead Agency.

Mr. Grose advised the Cleary's own what was the Dixie, two (2) houses and parcels.

Mr. Grose directed the Board's attention to Page C2-Site Plan, Preliminary Print Fagan Engineers, Southport Convenience Store and Restaurant, and explained the proposal is to construct a six thousand, two hundred square foot (6,200') convenience store with a drive-thru restaurant and fueling station, twenty three (23) parking spaces, a dumpster enclosure and two (2) access areas; one from Broadway and one from Sebring. The parcels are zoned Commercial Regional (CR) and proposed use is permitted. The design proposed is limited due to the parcel's minimum size, drivable width, signage with the majority of the limitations due to the zoning changes (Form Based).

Mr. Grose explained the Town had problems selling the property; the town came up with two (2) concepts for development of the site that a site development specialist provided.

Discussion continued with a concern about traffic, impact on neighbors, the proposal in contrast with code, and traffic through the drive-thru. Mr. Grose advised, yes traffic will increase, but Dollar General has traffic there now.

Mr. David Clearly informed the Board the Cleary's have this concept in Mansfield, PA, have been in business there for nineteen (19) years, that site has a big \$100,000 marquee (*which would not be such a large signage proposal for Southport*), he lives on Crestview Drive in Pine City, works at Pudgies Southside, has gotten lots of input from neighbors near the proposed site and the neighbors like the amenities, hours of operation will be 5:00 am – 11:00 pm, lunch, dinner options for all ages, people use to go to Pennsylvania to get gas, this will be a gateway to Southport and will be a stellar operation. Mr. Cleary explained the project is a challenge, there hasn't been any significant development of Southport in some time and the former Dixie Restaurant will be demolished to make room for this proposed project, currently getting bids from local contractors, and if they can open up before the restaurant with the convenience store and gas they will do that. Broadway is commercial and there will be ground level two (2) to three (3) display marquees. Mr. Cleary explained the drive-thru will provide breakfast pizza and a different food service operation.

Mr. Grose advised there will be parking in the front, side and rear consisting of ten (10) near Pennsylvania Avenue side, seven (7) on Sebring side and six (6) on front side which includes handicapped parking. All parcels are zoned Commercial Residential (CR). The drive-thru requirement is thirty feet (30') which seems excessive because most towns require twenty four feet (24').

Minutes of February 20, 2019 – Informational Hearing – Fagan Engineers, o/b/o Robert & David Cleary  
113 East Chemung Place, Elmira, NY 14904

Re: Area Variance for undersized lots Ch 525-110, building setbacks,  
CR form-based Ch 525-17, and fuel canopy setbacks Ch 525-110,  
Drive aisle width Ch 525-112 and sign setback Ch 525-92 on the following:  
1156 Broadway, Elmira, NY  
985, 987 and 989 Sebring Avenue, Pine City, NY

Item No. 3 – New Business (continued)

Mr. Cleary advised the plan calls for a large sit down restaurant where people can sit down and enjoy a meal, The Cleary’s own a national franchise and will be good partners with whoever they work with. Traffic – ninety percent (90%) of the traffic is already in that area. For food service the hope is they will be busy. If the Cleary’s don’t come to an agreement with a national franchise, they can setup their own. Mr. Cleary also pointed out the businesses such as Shepherds and Williams Construction, noted the proposal is an allowed used, and explained the immediate neighbor Bill Cook advised he is all for this. Mr. Cleary explained about the fuel pump area, advising there will be three (3) pumps and no diesel because more pumps and diesel doesn’t fit in the community and it will make it easy for people to get in and out.

The Planning Board is reviewing this and the ZBA will need to complete the SEQR at the March 20, 2019 meeting.

Vice Chairman Fulkner advised the public hearing will be scheduled for March 20, 2019 at 7:15 pm and the Board will be considering five (5) area variances and completing a SEQR at that hearing. (Answers to the area variance questions have already been provided, in writing, to the ZBA as of February 20, 2019).

Public Hearing: Wednesday, March 20, 2019 at 7:15 pm  
All required paper work will be provided to Fagan Engineers by Mr. Rocchi and Ms. Balok.

Adjourned: 8:34 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: Fagan Engineers, o/b/o Robert and David Cleary  
113 East Chemung Place, Elmira, NY 14904

5. Old Business

The Board discussed the variance procedure form and a recommendation was made to require all applicants to submit everything, in writing, prior to the public hearing in accordance with Board submission. Failure to provide the required information, in writing, would prohibit the hearing from being heard by the Board. Mr. Arikian made a motion to follow use of this form; seconded by Mr. Faulkner. Unanimously approved.

6. Discussion

The Board regretfully accepted the resignation of James B. Gensel from the Zoning Board of Appeals effective February 22, 2019. The Board thanked Mr. Gensel for his expertise and service on the Board since February 20, 2008.

7. Adjournment

Ms. Silvers made a motion to adjourn the meeting; seconded by Mr. Steinhauer. Unanimously approved.

Adjourned: 9:00 pm

Bonnie Balok, Secretary  
Zoning Board of Appeals,  
February 21, 2019

*Draft Minutes  
To be Approved  
by Board of Appeals*