



# TOWN OF SOUTHPORT

1139 Pennsylvania Avenue  
Elmira, NY 14904

*Minutes Approved  
by Board of Appeals  
April 24, 2019*

## BOARD OF APPEALS

### MINUTES

**WEDNESDAY, MARCH 20, 2019**

**ORGANIZATIONAL MEETING (6:30 PM)**

#### **PUBLIC HEARINGS (7:00 PM)**

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

#### **INFORMATIONAL HEARING**

1. Fagan Engineers, o/b/o David and Amy Cleary

#### **EXECUTIVE SESSION**

Upstate Tower Co, LLC & Buffalo-Lake Erie Wireless Systems (Upstate and Blue Wireless Cell Tower)

**SOUTHPORT TOWN HALL  
1139 PENNSYLVANIA AVENUE  
ELMIRA, NY 14904**

Minutes of the organizational meeting of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on March 20, 2019 at 6:30 p.m. The organizational meeting was held at 6:30 p.m., followed by three (3) public hearings at 7:00 pm, an informational hearing at 9:00 pm, and an executive session at 9:36 pm

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

#### **Attendance**

Board Members Present: Justin Faulkner  
John Arikian  
Deborah Eames  
Susan Silvers  
Edward Steinhauer

#### Item No. 2 - Organizational Meeting

#### **Organizational Meeting**

The organizational meeting was called to order by Mr. Faulkner. The purpose of the organizational meeting was to elect a chairman, vice chairman, secretary and select a meeting day and meeting time.

#### **Resolution No. 1**

**Appointment of Justin Faulkner, Chairman of the Zoning Board of Appeals, Town of Southport for the year 2019.**

**Resolution by: Arikian**

**Seconded by: Silvers**

Whereas, the Zoning Board of Appeals held an organizational meeting to elect a chairman for the year 2019, and Whereas, Mr. Arikian made a motion to nominate Justin Faulkner as Chairman. Ms. Silvers seconded the motion. Resolved, Justin Faulkner will serve as Chairman of the Zoning Board of Appeals, Town of Southport for the year 2019.

Ayes: Arikian, Eames, Silvers, Steinhauer

Abstained: Faulkner

Noes: None

Carried.

**Resolution No. 2**

**Appointment of Deborah Eames, Vice Chairman Zoning Board of Appeals, Town of Southport for the year 2019.**

**Resolution by: Arikian**

**Seconded by: “Roberts Rules of Order”,  
as per Mr. Arikian, no seconded  
required for nominations**

Whereas the Zoning Board of Appeals held an organizational meeting to elect a vice chairman for the year 2019, and  
Whereas, Mr. Arikian made a motion to nominate Deborah Eames. Resolved, Deborah Eames will serve as Vice  
Chairman, Zoning Board of Appeals, Town of Southport for the year 2019.

Ayes: Arikian, Faulkner, Silvers, Steinhauer      Abstained: Eames      Noes: None      Carried.

**Resolution No. 3**

**Appointment of Bonnie Balok, Secretary, Zoning Board of Appeals, Town of Southport for the year 2019.**

**Resolution by: Eames**

**Seconded by: Refer to Resolution No. 2 “RROO”**

Whereas the Zoning Board of Appeals held an organizational meeting to elect a secretary for the year 2019, and  
Whereas, Ms. Eames made a motion to nominate Bonnie Balok. Resolved, Bonnie Balok will serve as Secretary, Zoning  
Board of Appeals, Town of Southport for the year 2019.

Ayes: Arikian, Eames, Faulkner, Silvers, Steinhauer      Noes: None      Carried:

**Resolution No. 4**

**Meeting Day for the Zoning Board of Appeals, Town of Southport shall be the third Wednesday of each month.**

**Resolution by: Faulker**

**Seconded by: Refer to Resolution No. 2 “RROO”**

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting day for the year 2019, and  
Whereas, Mr. Faulkner made a motion to set the meeting day as the third Wednesday of each month, Resolved, the third  
Wednesday of each month shall be the meeting day for the Zoning Board of Appeals for the year 2019.

Ayes: Arikian, Eames, Faulkner, Silvers, Steinhauer      Noes: None      Carried.

**Resolution No. 5**

**Meeting Time for the Zoning Board of Appeals, Town of Southport shall be 7:00 p.m.**

**Resolution by: Faulkner**

**Seconded by: Refer to Resolution No. 2 “RROO”**

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting time for the year 2019, and  
Whereas, Mr. Faulkner made a motion to set the meeting time as 7:00 pm each month. Resolved, 7:00 p.m. shall be the  
meeting time for the Zoning Board of Appeals for the year 2019.

Ayes: Arikian, Eames, Faulkner, Silvers, Steinhauer      Noes: None      Carried.

Board also discussed the time frame for information to be provided to the Board. Board agreed to ten (10) days prior to  
meeting; Paper work should be sent to the Board members seven (7) calendar days prior to the meeting; send hard (paper)  
copies, eliminate same email copies.

Board also requested formal application for ZBA and Planning Board alternative board members.

Organizational Meeting Adjourned: 6:51 pm

**Minutes of March 20, 2019 – Public Hearing – Robert Whispel**

**128 Dry Run Road, Pine City, NY 14871**

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

Minutes of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on March 20, 2019 at 7:00 p.m. *(Note to file: The informational meeting held for Mr. Williams, on February 20, 2019, was withdrawn).*

Item No. 1 - Call to Order

**Attendance**

Board Members Present: Justin Faulkner  
Deborah Eames  
John Arikian  
Susan Silvers  
Edward Steinhauer

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

Item No. 2 – Approval of Minutes of February 20, 2019

Chairman Faulkner advised the first item on the Agenda is the Minutes of February 20, 2019 and asked if there were any changes or corrections. Ms. Silvers made a motion to approve the minutes; seconded by Mr. Steinhauer. Ms. Eames Abstained. Minutes of February 20, 2019 approved.

Item No. 3 – New Business

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

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

Chairman Faulkner called the meeting to order and advised this is a public hearing for Robert Whispel, 128 Dry Run Road, Pine City, NY concerning an area variance to allow for sub-division of 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 in an AR zone and side yard setback of twenty feet (20') as per Section 525-24-Bulk and Density Control Schedule. *(Note to File: Mr. Rocchi reviewed and maintained the paid receipt the applicant provided as proof of legal notice publication in the "Star-Gazette")*.

Chairman Faulkner turned the public hearing over to Attorney Connolly who requested Mr. Whispel provide a summary of the project.

Mr. Whispel explained he purchased the property in three (3) parcels in October 2017; one hundred twenty foot frontage(120'), seventy five foot frontage (75')and house one hundred fifty footage (150') to meet code, as well as three and one-fourth acres (3 ¼). Mr. Whispel provided a survey showing three (3) parcels with measurements as listed above.

Mr. Whispel further explained when he bought the land, the house was on a one hundred twenty foot (120') by one hundred eighty foot (180') lot, not big enough to do anything with. The front of the house is one hundred fifty feet (150'), wants to sell the house with three (3) acres, with the one hundred fifty feet (150') it meets code, so they can sell that. Mr. Whispel advised he wants to keep the one hundred fifty acres (150') and have access to the one hundred fifty acres on top., sell the house and three and one-fourth acres (3 ¼) which has its own driveway

Attorney Connolly advised a one hundred ten foot (110') variance is requested; one hundred fifty foot (150') is required by code. Attorney Connolly asked if there was anyone present interested in making a comment; with no one expressing any interest in speaking for or against the project, Chairman Faulkner closed the public hearing portion of the meeting.

Minutes of March 20, 2019 – Public Hearing – Robert Whispel

128 Dry Run Road, Pine City, NY 14871

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

Mr. Whispel provided the following answers to the area variance questions:

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. Whispel - No. There will be no physical changes to any land as the access driveway already exists.

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. Whispel – No. There are no other options other than the variance applied for.

Q3. Whether the requested area variance is substantial?

A. Mr. Whispel – Yes. There are no other viable options to gain access to the remaining 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. Whispel – No. There will be no physical changes to any land as the access driveway already exists.

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. Whispel –No. The land was purchased on October 13, 2017, after the latest code change by the Town of Southport. Two (2) parcels of land did not have sufficient road frontage, nor did the house lot meet the minimum acreage requirement. The proposed changes outlined in the variance, one (1) parcel would be fully compliant with the new code and the other parcel, while not fully compliant with the road frontage requirement, would still meet the intent of the new code to prevent houses being built to close together.

The Board members provided their answers to 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: No – 5 Yes – 0

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue,

A: No – 5 Yes - 0

Q3. Whether the requested area variance is substantial?

A. No - 0 Yes - 5

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. No – 5 Yes - 0.

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. No – 0 Yes - 5

Ms. Silvers advised, in lieu of the answers to the area variance questions, she would make a motion to grant the variance. Ms. Steinbauer seconded the motion. Secretary Balok called the roll; Mr. Arikian-Aye, Ms. Eames-Ayes, Ms. Silvers-Aye, Mr. Steinhauer-Aye, Chairman Faulkner-Aye. Area variance granted.

Adjourned: 7:22 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

Minutes of March 20, 2019 – Public 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)

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

429 Dry Run Road, Pine City, NY 14871

Present: DD Waring and Mark Watts

Attorney Connolly called the meeting to order and advised this is a public 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. (Note to File: Mr. Rocchi reviewed and maintained the paid receipt the applicant provided as proof of legal notice publication in the "Star-Gazette").

Attorney Connolly requested Ms Waring provide a summary of the project.

Mr. Watts spoke on behalf of Ms. Waring. Mr. Watts advised he lives at 564 Dry Run Road and has worked the land at 429 Dry Run Road for twenty (20) years. Ms. Waring would like to sub-divide fifty seven acres (57) into two (2) parcels; one to be forty five acres (45) to be sold to me for agriculture use and the other twelve acres (12) for the house. There is a shared driveway, forty foot (40') road to be constructed if the future owner doesn't want to share the driveway.

Attorney Connolly advised if a variance is granted, it would have to be contingent on construction of the driveway.

Mr. Watts further advised there is two hundred twenty five feet (225') all together, they would have seventy five foot (75') give Watts fifty feet (50') which is enough to get farm equipment up there and he is asking for a variance of approximately fifty feet (50').

Attorney Connolly explained this would need a curb cut for the drive.

Attorney Connolly asked if there was anyone present interested in making a comment, and if providing a comment or questions, give your name and address.

Mr. Eric Bielke, 496 Dry Run Road, Pine City, NY advised he has no problem with what Mr. Watts is doing.

Attorney Connolly asked if anyone else wanted to speak at the hearing? No further comments were made. Chairman Faulkner closed the public hearing.

Mr. Watts provided the following answers to the area variance questions:

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. Watts- No. An area variance will work to maintain the character of the neighborhood or community as it will allow the property to stay as an agricultural property as it now exists.

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. Watts – No. Access to the property currently exists from the Dry Run Road and there is no other land available for sale that could be utilized to gain the road frontage needed. Therefore, the variance is the only viable method..

Q3. Whether the requested area variance is substantial?

A. Mr. Watts – No. The requested variance is not substantial; asking to reduce the road frontage to provide access to the agricultural fields.

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. Watts – No. See information stated in Q1 above.

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. Watts –No. This was not self-created. When the original sub-divide (2007) was requested, the area in question was strip zoned, road frontage was one hundred feet (100’) needed to sub-divide. If that was still the case, road frontage today is two hundred twenty five feet (225’), the property could be sub-divided and still maintain the one hundred feet (100’) road frontage. The Town changed the zoning in 2008 and now one hundred fifty feet (150’) frontage is needed. This left seventy five feet (75’) of the three hundred feet (300’) needed to be able to sub-divide with the current zoning and the request for a variance is due to the newly adopted zoning.

The Board members provided their answers to 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: No – 5 Yes – 0

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue,

A: No – 5 Yes - 0

Q3. Whether the requested area variance is substantial?

A. No - 0 Yes - 5

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. No – 5 Yes - 0.

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. No – 5 Yes – 0

Attorney Connolly advised the Board, if an area variance is approved, it should include being contingent upon the county approval of a road being built, if a new owner doesn’t agree with an easement. Contingent on building a road now and not relying on an easement subject to approval of the owner.

Ms. Waring advised the property will go on the market on Monday; don’t know what the feeling might be about sharing the driveway.

Mr. Steinhauer made a motion to approve the requested variance contingent upon getting approval from the county to put a road there, and not replying on an easement subject to approval from the county. Seconded by Mr. Arikian. Secretary Balok called the roll: Mr. Arikian-Yes, Ms. Eames-Yes, Ms. Silvers-Yes, Mr. Steinhauer-Yes, Chairman Faulkner-Yes. Area variance granted with contingency clause.

Adjourned: 7:45 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  
564 Dry Run Road, Pine City, NY 14871

**Minutes of March 20, 2019 – Public 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)

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

Present: James Gensel, President-Fagan Engineers  
Robert and David Cleary

Attorney Connolly called the meeting to order and advised this is a public 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 (*Note to File: Mr. Rocchi reviewed and maintained the paid receipt the applicant provided as proof of legal notice publication in the “Star-Gazette”*).

Attorney Connolly explained about the SEQRA Lead Agency. The Town received funding and the Town Board was the SEQRA lead agency, but this has been deferred to the Planning Board to serve as Lead Agency for the project to avoid segmentation of the project. The ZBA does not need to conduct its own SEQRA review because we are doing a coordinated review. Any approval that the ZBA gives, should it give an approval, would be contingent upon the Planning Board SEQRA determination to consider any determination they received from DOT or any other agencies involved in the process.

Chairman Faulkner opened the public hearing for Robert and David Cleary and their representative Mr. Gensel.

Mr. Gensel explained there are four (4) separate parcels. The first drawing, C1, shows there are four (4) separate parcels. The project is the merge these parcels together to develop this into a mixed use. The Town received a grant for development of that site as a mixed use site. That funding is contingent upon this being a mixed use site. The proposal is that we develop this as three (3) uses and that is why we are falling under different zoning, on top of that the Town passed form-based zoning. At the time it was a popular idea, but now this does not conform to form-based zoning such as setbacks; twelve feet (12') upon and against three (3) sidewalks, Broadway, Pennsylvania Avenue and Sebring. What is being proposed is to merge the four lots into one, set the building twelve feet (12') maximum from the road, Broadway seventy feet (70'), Pennsylvania Avenue forty eight feet (48') and Sebring sixty two feet (62'). The fuel canopy twenty five feet (25') setback having twenty one .26 feet (21.26'), drive isle width twenty one .6 minimum width twenty two feet (22').

Chairman Faulkner opened up the public hearing for the public to discuss setbacks to existing property keeping in mind the Planning Board is the lead agency.

Doris Farmer Raymond, 976 Sebring Avenue advised she strongly opposes this development. The problem is the fact the neighbors were never approached about this huge endeavor. In the past, when Dollar General was proposed, the neighbors did receive notification of the proposed development. This proposal changes the traffic onto a residential street where school buses drop off children. It is important to configure what this entails. She advised she is not opposed to any progress and looking for tax revenue, but the neighbors have had no voice in this proposal.

Attorney Connolly explained the Planning Board will be meeting April 1 to review items such as distance from one building to another, how far away from the road, how big the drive should be, impacts such as noise, visual will all be taken up by the Planning Board SEQRA, and impact items such as distance from the building to the property, signage, these are issues for ZBA. The ZBA is confined as to what it can review. The ZBA does not look at visual aspects of the building, that is the responsibility of the Planning Board

**Minutes of March 20, 2019 – Public 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)

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

Chairman Faulkner advised these are the items the ZBA must address; the lot size is less than one (1) acres, code requires one (1) acre, front setback on three (3) areas, fuel canopy setback needs to be twenty five feet (25'). Their proposal is twenty one feet (21'). The Planning Board's April 1<sup>st</sup> meeting is the best forum to discuss your concerns because they will made decisions with your concerns in mind.

Sue Johnson, 904 Sebring Avenue advised she lives on the far end of Sebring and is concerned about this project. Ms. Johnson advised the residents should have been notified so they could attend the April 1<sup>st</sup> Planning Board meeting.

Richard Williams, 33 Dalrymple Avenue advised he wanted to find out what is being proposed.

Delores Wheeler, advised she owns two (2) properties at 302-316 Robert Street and 987 Sebring Avenue. Ms. Wheeler explained she has three (3) generations of family who have lived in this area and she would like to see the gas station there, a mini mart and drive in restaurant. Ms. Wheeler advised she is in favor of the project.

Doug Stimmerman, 957 Sebring Avenue advised he is concerned about the zoning information one (1) acre of land to put a site of this size on and the zoning law concerning the filing station.

Attorney Connolly advised the Board has to give consideration to the four (4) legal questions the applicant needs to address as detailed in Section 525-140, standards that the courts have established.

Gary Allington, 972 Sebring Avenue stated the gentleman explaining the project advised there are four (4) parcels, all commercial. It is commercial, but residents are located on these properties, all the way to Manor Drive.

Dan Williams, 148 Mt. View Drive advised he served on the ZBA for ten (10) years and inquired about how long this site has been zoned commercial; Ms. Wheeler advised NYS had taken part of 1200 Pennsylvania Avenue for an intersection on the corner since 1932. Mr. Williams further advised the public hearing was published in the newspaper, a sign is up and residents are allowed to go to the Zoning Department to obtain additional information, the difference between the Planning Board and the ZBA has been published in Town newsletter at least five (5) times explaining the difference between the Planning Board and the ZBA. Mr. Williams explained an informational hearing shouldn't be like a public hearing because the informational hearing is supposed to be a gathering of information to establish the need for a public hearing. Mr. William further explained he had looked at developing this parcel, but couldn't see there would be enough traffic there, and from his recent attendance at a meeting in Albany he believes the state is strongly discouraging local business and all development has a potential risk. A developer and business owner looks at local development and does everything to make a project such as this a positive thing

Chairman Faulkner asked if there were any other comments? No further comments forthcoming, Chairman Faulkner closed the public input session.

Mr. Gensel provided the following answers to the area variance questions:

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. Gensel-Four separate parcels, non-confirming parcels and can be developed right now with no undesirable change in the character of the neighborhood or community.*

Minutes of March 20, 2019 – Public 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)

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

- 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. Gensel – Allowing a variance on the three (3) sided front yards is not typical, set of parcels stuck on a three (3) way corner. Reducing the scale of the project could impact the grant funding from NYS Main Street as the \$500,000 requires multi-use. Variance request is setback, driveway width, canopy-move the building all the way to Sebring, requesting 27.7’feet; 25 feet normally with a variance request of ten percent (10%).*
- Q3. Whether the requested area variance is substantial?
- A. *Mr. Gensel–Proposed lot one (1) acre, ten percent (10%), building setbacks, Town should withdraw original zoning, drive out width, one (1) low monument sign, variance within five feet (5’) of front, illuminated, county approved already, property line right of way flares, sign does impact line of sight, sign doesn’t get in the way of that. Fagan Engineers made tweaks to that are substantial to the .88 acre.*
1. *Twelve percent (12%) reduction in lot size*
  2. *Fuel canopy twenty five to twenty one-- 20% reduction*
  3. *Driveway 5%*
  5. *Sign variance*
  4. *Setbacks maximum front setback 12 feet*
  5. *Unique 3 front yards put in form based zone to get site to work need variance put on site when Town passed zoning.*

Chairman Faulkner suggested the Board not make a recommendation tonight. The Board has sixty two (62) days to make a recommendation, that will give time for those making comments to the Planning Board.

Attorney Connolly advised the Board can close the public hearing, request written comments, re-open the public hearing, public can return and give input. The Planning Board meets April 1, which will be a public hearing and will allow discussion of the actual details of the project. The Board can table their review of the area variance questions and re-open the public hearing.

Ms. Eames made a motion to table the decision with a possible decision April 24 (*Fourth Wednesday*). Ms. Silvers seconded the motion. Secretary Balok called the roll: Mr. Arikian-Yes; Ms. Eames-Yes; Ms. Silvers-Yes; Mr. Steinhauer-Yes; Chairman Faulkner-Yes.

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

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

Minutes of March 20, 2019 – Informational Hearing – Fagan Engineers, o/b/o David and Amy Cleary  
113 East Chemung Place, Elmira, NY 14904

Re: Zoning Interpretation of Planned Development District.  
Ch 525-43-D-2 in the R1 zone; the minimum area shall be  
ten (10) acres  
Pennsylvania Avenue(end of Autumnview Way)  
Tax Map 108.00-1-34.11 and 108.00-1-34.2

Item No. 3 – New Business (continued)

**Autumnview Way - PDD**

Mr. Gensel explained in 1990 Autumnview became an approved subdivision, construction began in 2007. Future extension of Autumnview lots has met problems with ground water issues. This impacts sales of the properties. Sump pumps don't work to keep flooding under control. Bought at separate time, Section 525-43-B allows for multiple parcels owned by multiple parties and the project could be a multiple parcel. The town attorney and zoning officer require these be merged together into one (1) parcel, residence separate, duplex separate. It is Fagan Engineers contention to bring two (2) separate parcels together, but the Code Officer is requiring this to be one (1) parcel. Barrington Estates is a Planned Unit Development, one in the Town of Horseheads, one in the Town of Big Flats. We are seeking a zoning interpretation of the Planned Development District (PDD) in the R-1 zone with a minimum area of ten (10) acres.

Attorney Connolly explained this is a common ownership development proposed on a tract of 4.8 acres. The Town Code's intent that a project within a PDD be developed in the context of a ten (10) acres minimum with the appropriate mitigation of impacts to neighbors in the R-1 District afforded by this acreage; to hold otherwise goes against R-1 protections. All acres in PDD are not being developed. The others are going to be residential. Merge one property into PDD, buffer for neighbors, not squeezing development and smaller development. Single family in R-1 Autumnview are a certain lot size, can't do single family with combined septic system. The development will have \$70,000 in the lot, building, house and have to ask about \$350,000.. The applicant cannot form a PDD by aggregating contiguous but legally distinct acres of property that will not be redeveloped with an inadequate lot to redevelop only the inadequate lot. The intent of the PDDs -Planned Development Districts is not to circumvent the variance or traditional zoning amendment process in order to establish single uses which would not normally be allowed by the underlying zoning district.

Attorney Connolly explained this needs to be a common ownership step in full compliance of PDD over ten (10) acres. PDD or area variance based on requirement that this needs to be ten (10) acres. The tract of land owned, single person, corporation, group of people, etc. application must be filed by everyone in District all parcels developed. This would return to the ZBA only for variance if needed. PDD is not to circumvent PDD in R-1. All Board members can defer to Counsel and Code; and come to the ZBA for an area variance.

Ms. Eames made a motion to close the informational hearing. Ms. Silvers seconded the motion.

Adjourned: 9:35 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: Fagan Engineers, o/b/o David and Amy Cleary  
113 East Chemung Place, Elmira, NY 14904

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

Item No. 3 – New Business (continued)

**Executive Session**

Ms. Silvers made a motion to open the Executive Session. Mr. Arikian seconded the motion.

Mr. Arikian recused himself based upon a conflict with an existing cell tower on his privately owned property.

Attorney Connolly reviewed, informed and advised the board members concerning the recent mediation for Upstate/Blue Wireless Cell Tower.

5. Old Business

No old business.

6. Discussion

No discussion

7. Adjournment

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

Adjourned: 9:56 pm

Bonnie Balok, Secretary  
Zoning Board of Appeals,  
March 22, 2019

*Minutes Approved  
by Board of Appeals  
April 24, 2019*

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

**RESOLUTIONS  
2019**

**Resolution No. 1**

**Appointment of Justin Faulkner, Chairman of the Zoning Board of Appeals, Town of Southport for the year 2019.**

**Resolution by: Arikian**

**Seconded by: Silvers**

Whereas, the Zoning Board of Appeals held an organizational meeting to elect a chairman for the year 2019, and  
Whereas, Mr. Arikian made a motion to nominate Justin Faulkner as Chairman. Ms. Silvers seconded the motion.  
Resolved, Justin Faulkner will serve as Chairman of the Zoning Board of Appeals, Town of Southport for the year 2019.

Ayes: Arikian, Eames, Silvers, Steinhauer      Abstained: Faulkner      Noes: None      Carried.

**Zoning Board of Appeals-Town of Southport**

**Page 2**

**Minutes of March 20, 2019 – Organizational Meeting (continued)**

**Resolution No. 2**

**Appointment of Deborah Eames, Vice Chairman Zoning Board of Appeals, Town of Southport for the year 2019.**

**Resolution by: Arikian**

**Seconded by: “Roberts Rules of Order”,  
as per Mr. Arikian, no seconded  
required for nominations**

Whereas the Zoning Board of Appeals held an organizational meeting to elect a vice chairman for the year 2019, and  
Whereas, Mr. Arikian made a motion to nominate Deborah Eames. Resolved, Deborah Eames will serve as Vice  
Chairman, Zoning Board of Appeals, Town of Southport for the year 2019.

Ayes: Arikian, Faulkner, Silvers, Steinhauer      Abstained: Eames      Noes: None      Carried.

**Resolution No. 3**

**Appointment of Bonnie Balok, Secretary, Zoning Board of Appeals, Town of Southport for the year 2019.**

**Resolution by: Eames**

**Seconded by: Refer to Resolution No. 2 “RROO”**

Whereas the Zoning Board of Appeals held an organizational meeting to elect a secretary for the year 2019, and  
Whereas, Ms. Eames made a motion to nominate Bonnie Balok. Resolved, Bonnie Balok will serve as Secretary, Zoning  
Board of Appeals, Town of Southport for the year 2019.

Ayes: Arikian, Eames, Faulkner, Silvers, Steinhauer      Noes: None      Carried:

**Resolution No. 4**

**Meeting Day for the Zoning Board of Appeals, Town of Southport shall be the third Wednesday of each month.**

**Resolution by: Faulker**

**Seconded by: Refer to Resolution No. 2 “RROO”**

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting day for the year 2019, and  
Whereas, Mr. Faulkner made a motion to set the meeting day as the third Wednesday of each month, Resolved, the third  
Wednesday of each month shall be the meeting day for the Zoning Board of Appeals for the year 2019.

Ayes: Arikian, Eames, Faulkner, Silvers, Steinhauer      Noes: None      Carried.

**TOWN OF SOUTHPORT, COUNTY OF CHEMUNG, STATE OF NEW YORK**

**RESOLUTIONS  
2019**

**Resolution No. 5**

**Meeting Time for the Zoning Board of Appeals, Town of Southport shall be 7:00 p.m.**

**Resolution by: Faulkner**

**Seconded by: Refer to Resolution No. 2 “RROO”**

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting time for the year 2019, and Whereas, Mr. Faulkner made a motion to set the meeting time as 7:00 pm each month. Resolved, 7:00 p.m. shall be the meeting time for the Zoning Board of Appeals for the year 2019.

Ayes: Arikian, Eames, Faulkner, Silvers, Steinhauer

Noes: None

Carried.

Board also discussed the time frame for information to be provided to the Board. Board agreed to ten (10) days prior to meeting; Paper work should be sent to the Board members seven (7) calendar days prior to the meeting; send hard (paper) copies, eliminate same email copies.

Board also requested formal application for ZBA and Planning Board alternative board members.

*Resolutions for Minutes of March 20, 2019 l  
Approved by Board of Appeals  
April 24, 2019*

**RESOLUTIONS  
2019**

**RESOLUTION NO. 6**

**AREA VARIANCE GRANTED**

PROPERTY:	TAX MAP NO. 117.001-23 COMMONLY KNOWN AS 122 DRY RUN ROAD	ZONED: AR  PINE CITY, NY 14871
APPLICANT:	ROBERT WHISPEL 128 DRY RUN ROAD	PINE CITY, NY 14871
OWNER:	ROBERT WHISPEL 128 DRY RUN ROAD	PINE CITY, NY 14871
RESOLUTION:	SILVERS	SECONDED: STEINHAUER

WHEREAS, Robert Whispel, 122 Dry Run Road, Pine City, NY 14871 applied for an area variance at 128 Dry Run Road, Pine, City, New York, 14871 to allow for sub-division of land, sub-division does not meet required one hundred fifty foot (150') of road frontage in an AR zone and does not meet 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 122 Dry Run Road, Pine City, New York, 14871, Tax Parcel, 117.00-7-23, and

WHEREAS, the Town of Southport Zoning Board of Appeals held a public hearing on March 20, 2019 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 no one voicing concerns for or against the proposal, 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 granted to allow for sub-division of land, as detailed above, with respect to Section 525-24 - Bulk and Density Control Schedule.

NOW THEREFORE BE IT RESOLVED, that an area variance be granted to Robert Whispel, 128 Dry Run Road, Pine City, NY 14871 with respect to 122 Dry Run Road, Drive, Pine City, New York, 14871, Tax Map 117.00-1-23 and the Building Inspector of the Town of Southport be and hereby is authorized to issue a permit for said use. and that failure to complete the project within one (1) year from the granting of this variance will render the variance null and void.

Ayes:	Arikian, Eames, Faulkner, Silvers, Steinhauer
Noes:	None
Carried.	Area variance denied.

March 20, 2019

*Resolution for Minutes of March 20, 2019 I  
Approved by Board of Appeals  
April 24, 2019*

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

**RESOLUTIONS  
2019**

**RESOLUTION NO. 7**

**AREA VARIANCE GRANTED**

PROPERTY:	TAX MAP NO. 107.00-2-1 COMMONLY KNOWN AS 492 DRY RUN ROAD	ZONED: AR  PINE CITY, NY 14871
APPLICANT:	D D WARING AND SUSAN STARK 492 DRY RUN ROAD	PINE CITY, NY 14871
OWNER:	D D WARING AND SUSAN STARK 492 DRY RUN ROAD	PINE CITY, NY 14871
RESOLUTION:	STEINHAUER	SECONDED: ARIKIAN

WHEREAS, D D Waring and Susan Stark, 492 Dry Run Road, Pine City, NY 14871 applied for an area variance at 492 Dry Run Road, Pine, City, New York, 14871 to allow for sub-division of land, sub-division does not meet required one hundred fifty foot (150') of road frontage in an AR zone, 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 492 Dry Run Road, Pine City, New York, 14871, Tax Parcel, 107.00-2-1, and

WHEREAS, the Town of Southport Zoning Board of Appeals held a public hearing on March 20, 2019 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 one person voicing approval of the proposal, 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 granted to allow for sub-division of land, as detailed above, with respect to Section 525-24 - Bulk and Density Control Schedule; variance contingent upon getting approval from the county to put a road there, and not relying on an easement subject to approval from the owner.

NOW THEREFORE BE IT RESOLVED, that an area variance be granted to D D Waring and Susan Stark, 492 Dry Run Road, Pine City, NY 14871 with respect to 492 Dry Run Road, Drive, Pine City, New York, 14871, Tax Map 107.00-2-1 and the Building Inspector of the Town of Southport be and hereby is authorized to issue a permit for said use, and that failure to complete the project within one (1) year from the granting of this variance will render the variance null and void.

Ayes:	Arikian, Eames, Faulkner, Silvers, Steinhauer
Noes:	None
Carried.	Area variance denied.

March 20, 2019

*Resolution for Minutes of March 20, 2019  
Approved by Board of Appeals  
April 24, 2019*