



# TOWN OF SOUTHPORT

1139 Pennsylvania Avenue  
Elmira, NY 14904

*Minutes Approved  
by Board of Appeals  
May 15, 2019*

## BOARD OF APPEALS

### MINUTES

**WEDNESDAY, APRIL 24, 2019**

### PUBLIC HEARING

*(Continued from March 20, 2019)*

Fagan Engineers, o/b/o Robert and David Cleary  
and

### EXECUTIVE SESSION

Review, Discussion and Recommendation of an Alternate Member to serve on the Zoning Board of Appeals

**SOUTHPORT TOWN HALL  
1139 PENNSYLVANIA AVENUE  
ELMIRA, NY 14904  
7:00 pm**

Minutes of the public hearing of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on April 24, 2019 at 7:00 p.m. The public hearing was a continuation of the March 20, 2019 hearing for Fagan Engineers, o/b/o Robert and David Cleary. The public hearing was followed by an executive session at 8:05 pm. to select an alternate ZBA board member to recommend to the Southport Town Board.

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

#### **Attendance**

Board Members Present: Justin Faulkner  
John Arikian  
Deborah Eames  
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 March 20, 2019

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

#### Item No. 3 – New Business (continued from March 20, 2019 public hearing)

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

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

Chairman Faulkner advised the public hearing is a continuation of the March 20, 2019 hearing for Fagan Engineers, o/b/o Robert and David Cleary concerning area variances for 1156 Broadway, as well as 985, 987 and 989 Sebring Avenue. The public hearing was turned over to Attorney Connolly.

**Minutes of April 24, 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*

Attorney Connolly called the meeting to order and advised this is a public hearing for Fagan Engineers, on behalf of Robert and David Cleary, 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: the paid receipt the applicant provided as proof of legal notice publication in the "Star-Gazette" was provided to Mr. Rocchi on March 20, 2019 and retained by Mr Rocchi*).

Mr. Gensel explained there is a change from the March 20 hearing, based on the Southport Planning Board's request to add sidewalks, pedestrian friendly sidewalks on Sebring, Broadway and Pennsylvania Avenue. There is a slight grade issue because of the DOT right-of-way.

Attorney Connolly opened up the public hearing for comments and asked if anyone had comments concerning the five (5) area variances and advised anyone speaking should provide their name and address.

Charlene Cummings: 21 Dalrymple Avenue, Pine City, NY. Advised, on the written documents Sebring is listed as Sebring Street, it should be Sebring Avenue. Further, she explained about quiet enjoyment of the property, safety of the school buses traveling on Elmira Street to Sebring Avenue and turning onto Pennsylvania Avenue, the narrow street concern with respect to a school bus and truck not being able to pass each other, the Street of Shops event held yearly on Pennsylvania Avenue, as well as parades; and asked if the road is heavy enough to support heavy traffic and so many vehicles causing the need for additional road repairs and/or shut downs.

Doris Farmer-Raymond: 917 Sebring Avenue, Pine City, NY. Inquired about the five (5) mandated questions that are required to be answered such as Question 1-Whether an undesirable change will be produced in the character of the neighborhood or community. Ms. Raymond advised, yes this will create an undesirable change; traffic will increase on Sebring, there are no sidewalks, clearly this is a residential area, narrow streets for cars to be on the sides of road, noise from truck deliveries has a negative effect, noise frequency and noise from Dollar General already adds to the noise level. Ms. Raymond advised seven (7) of the residents grew up in this area, they want to see the area developed, but want to know can a way be found not to come out onto Sebring Avenue which would be helpful for the neighborhood.

Sue Johnson: 904 Sebring Avenue, Pine City, NY. Advised she concurs with Doris Farmer-Raymond and is also concerned about sports events at Broadway School which adds to the traffic and is detrimental to Sebring Avenue.

Chairman Faulkner asked if there were other comments; no other comments forth coming, the public portion of the hearing was closed.

Mr. Gensel advised that one of the things to note was the original site wasn't going to have a Broadway entrance; the original entrances were off Sebring Avenue. The applicant worked with DOT to get an entrance on Broadway. The DOT and DPW wanted the entrance on Broadway and Sebring; updated drawings were submitted showing proposed sidewalks and entrances as requested by the Southport Planning Board.

Mr. Gensel also addressed the residents' concerns advising that school buses and Street of Shops; are issues that all involve traffic control. Local owners are aware of these events like parades, and will work with these events. The capacity of Sebring Avenue is being reviewed by the highway superintendent; having core samples reviewed, but it looks like Sebring is a heavy duty street; issues concerning Dollar General would have to be addressed by the Town and Dollar General, but the whole area is deemed to be commercially zoned. Parking is sufficient on the roads and the Town will address that over time.

Minutes of April 24, 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

Chairman Faulkner advised the applicant will answer the five (5) area variance questions concerning the four (4) undersized parcels; each of the five (5) questions will be reviewed based on lot size, building setbacks, fuel canopy setbacks, drive aisle width and sign setback.

Mr. Gensel, o/b/o Robert and David Cleary, 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 – No. Setbacks are more in line, as all existing buildings are set in line such as the bowling alley and Pizza Hut. Front setback (21-25 feet) wouldn't create any detriment, and is not out of character. Drive aisle (21.6 feet) is a marginal difference, can't tell the difference between 21 feet to 21.6 feet; not detrimental. Sign setback-don't need a variance on that.*

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 – No. Lot Size on the four (4) non-conforming parcels absorbed by building setback, maximum front not feasible, looked at this in several ways. Fuel canopy this is comfortable to fuel, could move closer, but proposed is more convenient. The height of the canopy is at least twelve feet (12') high to bottom. If DOT hadn't taken property there a variance wouldn't be needed. Drive aisle width would be impacted if building was made smaller. It is important to keep the project a multi use because the grant requested requires multi use and from the planning point of view, the building would be maximum size starting from there and could be smaller; typical drive isle is twenty four feet (24') and the reason for twenty four feet (24') is twelve feet (12') on one side for lanes required The 21.6 on one side is to accommodate ten feet (10').*

Q3. Whether the requested area variance is substantial?

A: *Mr. Gensel – No. Relief is not substantial when one considers if four (4) commercial properties were developed individually that would be substantial; putting them all together is less substantial. Set backs are non-visible traditionally, but setbacks with form-based zoning is substantial. Fuel canopy with requirements. Drive isle-\ thirty feet (30') would make this project feasible. .*

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. Gensel – No. Redevelopment cleans the area up and includes a storm water management system; allowing variance improves situation.*

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. Gensel –No. All variances are self-created, but with the situation, the Town approved form-based zoning, the Town advertised the site as a commercial development. The difference here is it is self-created based on mitigating circumstances, the site development wouldn't need all these variances if not for formed-based zoning; this is only viable if the variances can be obtained.*

The Board members discussed the four (4) individual properties, Sebring concerns and sidewalks, lot sizes and volume of traffic on Sebring, and concern about the Board's liability if variances were granted in contradiction to current code.

Attorney Connelly advised situations involving ZBA decisions not following exactly what the code says is not that unusual. The Board's job is to make a determination based on five (5) factors mitigated by other factors that tip the scale for a variance or pile on no variance; culpability always a possibility, but every project is different and all are unique, it is not uncommon to go against code. Further, the Planning Board will do a traffic study and a Site Plan Review.

Minutes of April 24, 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

The Board reviewed the five (5) area variance questions and provided their answers as follows:

(Note: Sign Variance Not Needed)

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?

Lot Size	A: No – 5	Yes – 0	
Building Setback	A: No – 4	Yes – 1	Mr. Arikian - Yes
Fuel Canopy	A: No – 5	Yes – 0	
Drive Isle	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,

Lot Size	A: No – 5	Yes – 0
Building Setback	A: No – 5	Yes - 0
Fuel Canopy	A: No – 5	Yes – 0
Drive Isle	A: No – 5	Yes - 0

Q3. Whether the requested area variance is substantial?

Lot Size	A: No - 5	Yes – 0
Building Setback	A: No – 0	Yes – 5
Fuel Canopy	A: No – 5	Yes – 0
Drive Isle	A: No – 5	Yes - 0

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

Lot Size	A: No – 5	Yes - 0.
Building Setback	A: No – 5	Yes – 0
Fuel Canopy	A: No – 5	Yes – 0
Drive Isle	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?

Lot Size	A: No – 4	Yes – 1	Mr. Arikian - Yes
Building Setback	A: No – 0	Yes – 5	
Fuel Canopy	A: No – 2	Yes – 3	Mr. Arikian, Mr. Faulkner, Mr Steinhauer - Yes
Drive Isle	A: No – 0	Yes - 5	

Mr. Steinhauer made a motion to vote on the area variances listed above contingent on the applicants receiving the SEQRA Site Plan Coordination from the Southport Planning Board and obtaining necessary permits, meeting DOT standards, including any other governing bodies and fueling storage. Motion seconded by Ms. Eames.

Secretary Balok called the roll; Mr. Arikian-No, Ms. Eames-Yes, Ms. Silvers-Yes, Mr. Steinhauer-Yes, Chairman Faulkner-Yes. Area variance granted.

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

Item No. 3 – New Business (continued)

**Executive Session**

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

Discussion took place concerning the three (3) applicants who had submitted letters of interest to serve as an alternate member on the Southport Zoning Board of Appeals.

The board members reviewed each applicant's background and relative qualifications to serve on the ZBA.

Ms. Silvers made a motion to recommend Shawn Crater as alternate member of the ZBA. Ms. Eames seconded the motion.

The Board voted unanimously to recommend Shawn Crater, 15 Hillside Drive, Pine City, NY 14871 to the Southport Town Board to serve as the alternate board member on the Southport Zoning Board of Appeals.

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: 8:25 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

Recommended Alternate Board Member  
Shawn Crater, 35 Hillside Drive, Pine City, NY 14871

Bonnie Balok, Secretary  
Zoning Board of Appeals,  
April 26, 2019

*Minutes Approved  
by Board of Appeals  
May 15, 2019*

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

**RESOLUTIONS  
2019**

**RESOLUTION NO. 11**

**AREA VARIANCES GRANTED**

Area variance for undersized lots Ch525-110, building setbacks CR form-based code Ch525-17, fuel canopy setbacks Ch525-110, drive aisle width Ch525-112 and sign set back Ch 525-91 on the following

PROPERTIES	TAX MAP# 109.10-1-25 COMMONLY KNOWN AS:	ZONED: COMMERCIAL REGIONAL 1156 BROADWAY, ELMIRA, NY, 14904
	TAX MAP# 109.10-1-27 COMMONLY KNOWN AS:	ZONED: COMMERCIAL REGIONAL 985 SEBRING AVENUE, PINE CITY, NY 14871
	TAX MAP# 109.10-1-28 COMMONLY KNOWN AS:	ZONED: COMMERCIAL REGIONAL 987 SEBRING AVENUE, PINE CITY, NY 14871
	TAX MAP# 109.10-1-29 COMMONLY KNOWN AS:	ZONED: COMMERCIAL REGIONAL 989 SEBRING AVENUE, PINE CITY, NY 14871
APPLICANT:	FAGAN ENGINEERS, O/B/O ROBERT AND DAVID CLEARY 113 EAST CHEMUNG PLACE, ELMIRA, NY 14904	
OWNER:	ROBERT AND DAVID CLEARY 360 SOUTH MAIN STREET ELMIRA, NY 14904	
RESOLUTION:	STEINHAUER	SECONDED: EAMES

WHEREAS, Fagan Engineers, 113 East Chemung Place, Elmira, NY 14904, o/b/o Robert and David Cleary, applied for area variances at 1156 Broadway, Elmira, NY 14904, and 985-989 Sebring Avenue, Pine, City, New York, 14871 to allow for construction and operation of a Convenience Store, Restaurant and Fuel Station on undersized lots, Ch 525-110, building setback CR form-based Ch 525-17, fuel canopy setback Ch 525-110, drive aisle width Ch 525-112, and sign setback Ch 525-91, as per Town Code, Town of Southport, County of Chemung. The properties are located in a CR zone and are commonly known as 1156 Broadway, Elmira, NY 14904, and 985-989 Sebring Avenue, Pine City, NY 14871, Tax Parcels Tax Map# 109.10-1-25, Tax Map# 109.10-1-27, Tax Map# 109.10-1-28 and Tax Map# 109.10-1-29, respectively, and

WHEREAS, the Town of Southport Zoning Board of Appeals held a public hearing on March 20, 2019 and continued that public hearing on April 24, 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 several people voicing comments and concerns about 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 area variances at 1156 Broadway, Elmira, NY 14904, and 985-989 Sebring Avenue, Pine, City, New York, 14871 would be allowed for construction and operation of a Convenience Store, Restaurant and Fuel Station on undersized lots, Ch 525-110, building setback CR form-based Ch 525-17, fuel canopy setback Ch 525-110, drive aisle width Ch 525-112, and sign setback Ch 525-91, as per Town Code, Town of Southport, County of Chemung. The properties are located in a CR zone and are commonly known as 1156 Broadway, Elmira, NY 14904, and 985-989 Sebring Avenue, Pine City, NY 14871, Tax Parcels Tax Map# 109.10-1-25, Tax Map# 109.10-1-27, Tax Map# 109.10-1-28 and Tax Map# 109.10-1-29, respectively, and

NOW THEREFORE BE IT RESOLVED, that area variances be granted to Fagan Engineers, o/b/o Robert and David Cleary, 113 East Chemung Place, Elmira, NY 14904 with respect to 1156 Broadway and 985-989 Sebring Avenue, Pine City, New York, 14871, Tax Map Numbers 109.10-1-25, 109.10-1-27, 109.10-1-28 and 109.10-1-29, respectively, and and the Building Inspector of the Town of Southport be and hereby is authorized to issue a permit(s) 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.

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

**RESOLUTIONS  
2019**

**RESOLUTION NO. 11  
(CONTINUED)**

**AREA VARIANCES GRANTED**

Area variance for undersized lots Ch525-110, building setbacks CR form-based code Ch525-17, fuel canopy setbacks Ch525-110, drive aisle width Ch525-112 and sign set back Ch 525-91 on the following

PROPERTIES	TAX MAP# 109.10-1-25 COMMONLY KNOWN AS:	ZONED: COMMERCIAL REGIONAL 1156 BROADWAY, ELMIRA, NY, 14904
	TAX MAP# 109.10-1-27 COMMONLY KNOWN AS:	ZONED: COMMERCIAL REGIONAL 985 SEBRING AVENUE, PINE CITY, NY 14871
	TAX MAP# 109.10-1-28 COMMONLY KNOWN AS:	ZONED: COMMERCIAL REGIONAL 987 SEBRING AVENUE, PINE CITY, NY 14871
	TAX MAP# 109.10-1-29 COMMONLY KNOWN AS:	ZONED: COMMERCIAL REGIONAL 989 SEBRING AVENUE, PINE CITY, NY 14871

APPLICANT: FAGAN ENGINEERS, O/B/O ROBERT AND DAVID CLEARY  
113 EAST CHEMUNG PLACE, ELMIRA, NY 14904

OWNER: ROBERT AND DAVID CLEARY  
360 SOUTH MAIN STREET ELMIRA, NY 14904

Ayes: Arikian, Eames, Faulkner, Silvers, Steinhauer  
Noes: None  
Carried. Area variances granted.  
April 26, 2019