



## TOWN OF SOUTHPORT

1139 Pennsylvania Avenue  
Elmira, NY 14904

*Minutes Approved  
by Board of Appeals  
April 21, 2021*

### BOARD OF APPEALS

#### AGENDA

WEDNESDAY, MARCH 17, 2021

#### ORGANIZATIONAL MEETING

Officers, Meeting Date and Time  
6:30 pm

#### REQUEST FOR AREA VARIANCE EXTENSION

Fagan Engineers, o/b/o David and Amy Cleary  
7:00 PM

#### REQUEST FOR AREA VARIANCE

Erica Kelsey and Christopher DeCaires  
7:15 pm

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

#### Webex Meeting

Meeting number (access code): 173 978 0344  
Meeting password: f2SqhpxpJfm

Minutes of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on March 17, 2019 at 7:00 p.m.

Board Members Present: Justin Faulkner  
Shawn Crater  
Belinda Combs  
Susan Silvers  
Edward Steinhauer  
Kenneth Wrigley, Alternate

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

#### Item No. 1 – Call to Order

Mr. Faulkner called the meeting to order on or about 7:00 p.m. Mr. Faulkner advised the organizational meeting and re-appointment of Mr. Steinhauer would be moved to the end of the meeting to accommodate the two (2) requested area variance hearings. (Note: Agenda Items Renumbered as per Mr. Faulkner's changes)

*Minutes approved by Board of Appeals-4/21/2021*

Item No. 2 – Approval of Minutes of September 16, 2020

Mr. Faulkner advised the next item on the agenda was the approval of the minutes of September 16, 2020. Motion made by Ms. Silvers to accept the minutes as prepared; seconded by Mr. Steinhauer. The minutes of September 16, 2020 were approved with Mr. Faulkner and Ms. Combs abstaining based upon their absence from the September hearing. (Note: Meetings 2020---Last Meeting- 9/16/20) (Note: Meetings 2021---First Meeting-3/17/2021)

Item No. 3 – New Business

Request for Variance Extension

Request an extension of the Area Variance by revising the requirement to “within one (1) year from the granting of all other required Town approvals”.

Fagan Engineers, o/b/o, Dave and Amy Cleary, 113 East Chemung Place, Elmira, NY 14904

Re: Area variance to build eleven (11) elevated duplexes twenty two (22) units on approximately four (4) acre lot, minimum area requirements shall be ten (10) acres in the Planned Development District (PDD) as per Section 525.43 D2; also, duplexes not allowed in R1 zone.

Autumnview Way, Pine City, NY 14871 Current Use: Residential Tax Map #: 108.00-1-34.11 Zoned: R1  
Reference: February 19, 2020 Minutes----below: area variance.

*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.*

*Request an extension of the Area Variance by revising the requirement to “within one (1) year from the granting of all other required Town approvals”.*

Present: James Gensel, Fagan Engineers, o/b/o David and Amy Cleary

Discussion included many issues: Timeliness of the request for a variance extension, Town Law 267-Granting of an extension, the need for granting of approval by the Town Board and Planning Board, the reality of many meetings held via Zoom, the two and one-half months delay in receiving the sketch plan, six months going by with (5) letters against the project from the public, discrepancy from Fagan Engineers on the Short Environmental form and a question on answering everything correctly, the ZBA not the lead agency, referral to the Town Board and Fagan’s request to the Code Enforcement, February 18, one day before the deadline, a letter sent to Chairman Faulkner, copy to the Code Department, the question of exceeding one (1) year and the request for an extension made the day of or the day after the variance expired, and the concern this should have been done in January. The concern about interpretation and when does the clock start. The concern that Fagan failed on every time line and the public notified the applicants the variance was going to expire. A variance goes with the land not with the property owner. When approved, the applicants did get the PDD and site approval from the Planning Board, a concern for no trailer on site as stipulated in the Code. The concern because of the six (6) month delay from the sketch plan to the Town Board.

Attorney Connolly advised it is important to take into consideration practical difficulties, unnecessary hardship, COVID last year and the applicants’ involvement with the project. The ZBA does have authority to grant an extension. Deadline in the Code. Courts interpret with a vagueness. The interpretation, what would a reasonable person do? Deadline is a deadline – extension made in a timely manner. If the owners were to sell the project, the variance does run with the land. The variance starts when the project is filed with the clerk. If the ZBA believes the variance has expired, the applicants would need to resubmit everything; another public hearing and another variance.

Attorney Connolly provided her opinion that the variance was authorized by the ZBA, but the applicants were not able to get a permit because the Town Board needed more. The variance approval did allow the process to move forward. The variance was acted upon and the Town to start the PDD process. Construction hasn't started, and activity has moved along, but due to actions beyond the applicants' control held up the process causing practical difficulties. The applicants are still going forward waiting for other Boards. The question is, does the ZBA feel the applicants have been processing this or is there a reasonable delay or hardship?

Attorney Connolly further explained in case law, when it is appropriate to give an extension if the applicant shows diligence, showing they are doing substantial activity.

Attorney Connolly suggested the ZBA could extend for one (1) year and if the applicants don't do anything or if the applicants continue to move forward, and if there are mitigating factors to approve or deny. Attorney Connolly advised she would support the ZBA extend the variance for a year and the applicants must come back within one (1) year from February 19, 2021.

Mr. Gensel advised the building inspector has not issued a permit and the language of the variance granted requires the Building Inspector of the Town of Southport 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.

Mr. Gensel further advised, the timeline doesn't start until the process begins, the applicants are doing their due diligence, going to the Health Department, meeting with the Town Board, and the Town Board decided to take the longest time line and mixed use. The Town Board had to go through the process of two single homes, went through all this before the applicants can go through the process. Public opinion is one thing, two hearings (*re-zoning and site plan approval*) and the year starts when a permit is issued. The Town Board's extension stated, "due to COVID, extend to next month". The time frame is necessary for permits from the Town. Mr. Gensel explained the public did notify the applicants the variance was expiring. The PDD mix single family allowed, eleven (11) duplexes and the applicants' intent for an area variance to allow for Planned Development District, and next the site plan, for two family homes.

Mr. Gensel explained a variance is a change in the Zoning Law and applies to the land not to the owner. Mr. Rocchi cannot authorize permits yet. Originally, Autumnview was an undersized design. Mr. Gensel advised the concern is, did this variance really expire? If the Board believes the variance did expire, the applicants are looking for an extension.

Mr. Gensel explained in March the applicants were waiting for the ground to thaw to dig a test hole. Mr. Gensel further explained the applicants are doing due diligence, and in two and one-half (2 ½) months the applicants have done lots of work. A complex project takes time especially when the Town Board requests changes. The applicants wanted to start this last year, but the Town Board wanted a lot of changes. Asking for a one year completion of this project is not appropriate for this type of project. At the last Town Board meeting, it would be sixty two (62) days until the end of the public hearing. This project is being put off for a longer time because of the Town Board; no the fault of the applicant.

Motion: Mr. Crater made a motion to deny the extension of the variance with approval from the Town Board and Planning Board, as well as a trailer on site.

Seconded: Ms. Combs

Vote Called: Mr. Crater-Deny; Ms. Combs-Deny  
Ms. Silvers-Extend Ms. Steinhauer-Extend Mr. Faulkner-Extend

Extension Granted for one (1) year beginning February 19, 2021.

Hearing Adjourned: 7:51 pm *Minutes approved by Board of Appeals-4/21/2021*

**Erica Kelsey & Christopher DeCaires**  
Re: 1150, 1152, 1154 South Main Street and  
1151 Charles Street, Elmira, NY 14904

Item No. 3 – New Business (continued)

Request for Area Variance

Erica Kelsey and Christopher DeCaires, 23 Alvord Drive, Elmira, NY 14905

Re: Area variance to sell vehicles on undersized lot, per Section 525-110 (A)(a) and (e) Vehicle Filing Stations, Vehicle Repairs, Vehicle Sales and Heavy Equipment, Vehicle Sales and/or Repair, and/or Contractor's Equipment Yard.

A. Dimensional requirements

(1) Minimum lot size, lot width and setback requirements:

- (a) Minimum lot size for a vehicle filing station, vehicle repair, vehicle sales and heavy equipment vehicle sales uses shall be the greater of either one (1) acre or the minimum of lot area requirement prescribed in Article V. §525-24 [1]
- (e) The minimum lot width shall be the greater of two hundred feet (200') or the minimum lot width prescribed in Article V. §525-24.

1150, 1152, 1154 South Main Street, and 1151 Charles Street, Elmira, NY 14904

Tax Map: 109.08-4-15, 16, 17 and 109.08-4-36

Current Use: Commercial

Zoned: CN

Present: Erica Kelsey and Christopher DeCaires

Recused: Edward Steinhauer  
Mr. Steinhauer recused himself from the informational hearing.

Board Member: Kenneth Wrigley  
Mr. Wrigley was seated at hearing to replace Mr. Steinhauer

Ms. Kelsey advised the project being proposed is for a restaurant and vehicle sales. Ms. Kelsey explained parking for the restaurant would be in the back of the existing building, car sales would be on the side of the existing building, entrance from the drive through would be from Curtis Street and around to exit onto South Main Street. Ms. Kelsey further explained whatever is required will be done and the area will be cleaned up with a fence put up if needed.

Mr. Rocchi advised there are a total of four (4) parcels, .57 of an acre more than required is there. The majority of car lots are under one (1) acre. Planning Board dictates parking requirement.

Public hearing will be scheduled for Wednesday, April 21, 2021 at 7:00 pm. The applicants are required to pay for a legal notice to be printed in the newspaper; a sign will be posted on the property advising the public of a public hearing. Secretary Balok will send the public hearing notice and instructions to the applicants.

Informational Hearing Adjourned: 8:11 p.m.

Item No. 4 – 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. 2**

**Appointment of Justin Faulkner, Chairman of the Zoning Board of Appeals, Town of Southport for the year 2021**

**Resolution by: Steinhauer**

**Seconded by: Silvers**

Whereas, the Zoning Board of Appeals held an organizational meeting to elect a chairman for the year 2021, and

Whereas, Mr. Steinhauer made a motion to nominate Justin Faulkner as Chairman; seconded by Ms. Silvers.

Resolved, Justin Faulkner will serve as Chairman of the Zoning Board of Appeals, Town of Southport for the year 2021.

Ayes: Combs, Crater, Silvers, Steinhauer      Abstained: Faulkner      Noes: None      Carried.

**Resolution No. 3**

**Appointment of Susan Silvers, Vice Chairman Zoning Board of Appeals, Town of Southport for the year 2021**

**Resolution by: Faulkner**

**Seconded by: Steinhauer**

Whereas the Zoning Board of Appeals held an organizational meeting to elect a vice chairman for the year 2021, and

Whereas, Mr. Faulkner made a motion to nominate Susan Silvers; seconded by Mr. Steinhauer.

Resolved, Susan Silvers will serve as Vice Chairman, Zoning Board of Appeals, Town of Southport for the year 2021.

Ayes: Combs, Crater, Faulkner, Steinhauer      Abstained: Silvers      Noes: None      Carried.

**Resolution No. 4**

**Appointment of Bonnie Balok, Secretary, Zoning Board of Appeals, Town of Southport for the year 2021.**

**Resolution by: Silvers**

**Seconded by: Steinhauer**

Whereas the Zoning Board of Appeals held an organizational meeting to elect a secretary for the year 2021, and

Whereas, Ms. Silvers made a motion to nominate Bonnie Balok; seconded by Mr. Steinhauer.

Resolved, Bonnie Balok will serve as Secretary, Zoning Board of Appeals, Town of Southport for the year 2021.

Ayes: Combs, Crater, Faulkner, Silvers, Steinhauer      Noes: None      Carried:

**Resolution No. 5**

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

**Resolution by: Faulkner**

**Seconded by: Crater**

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting day for the year 2021, and

Whereas, Mr. Faulkner made a motion to set the meeting day as the third Wednesday of each month; seconded by Mr. Crater.

Resolved, the third Wednesday of each month shall be the meeting day for the Zoning Board of Appeals for the year 2021.

Ayes: Combs, Crater, Faulkner, Silvers, Steinhauer

Noes: None

Carried.

**Resolution No. 6**

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

**Resolution by: Faulkner**

**Seconded by: Crater**

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting time for the year 2021, and

Whereas, Mr. Faulkner made a motion to set the meeting time as 7:00 pm each month; seconded by Mr. Crater.

Resolved, 7:00 p.m. shall be the meeting time for the Zoning Board of Appeals for the year 2021.

Ayes: Combs, Crater, Faulkner, Silvers, Steinhauer

Noes: None

Carried.

Item No. 5 – Recommendation to Town Board (Re-appointment of Mr. Steinhauer)

Reappointment of Mr. Steinhauer Motion to so move Ms. Silvers; seconded by Mr. Crater. Unanimously approved.

Item No. 6 – Old Business

No old business.

Item No. 7 – Discussion

No discussion

Item No. 8 - Adjournment

Meeting Adjourned: 8:13 pm

Original on File: Town Clerk

C: Town Supervisor, Town Attorney, Town Code Enforcement Officer

Board of Appeals Town Board Planning Board

Minutes of 3/17/21 Fagan Engineers, 113 East Chemung Place, Elmira, NY 14904

Minutes of 3/17/21 Erica Kelsey & Christopher DeCaires, 23 Alvord Dr., Elmira, NY 14905

Bonnie Balok, Secretary-Zoning Board of Appeals

March 19, 2021

*Minutes approved by Board of Appeals-4/21/2021*

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

**RESOLUTIONS  
2021**

**Resolution No. 1**

**AREA VARIANCE EXTENDED ONE (1) YEAR BEGINNING FEBRUARY 19, 2021  
EXTENSION GRANTED UNTIL FEBRUARY 19, 2022**  
*(AREA VARIANCE ORIGINALLY GRANTED – FEBRUARY 19, 2020)*

PROPERTY:	TAX MAP NO. 108.00-1-34.11 COMMONLY KNOWN AS AUTUMNVIEW WAY	ZONED: R1  PINE CITY, NY 14871
APPLICANT:	FAGAN ENGINEERS, O/B/O DAVID AND AMY CLEARY 113 EAST CHEMUNG PLACE	ELMIRA, NY 14904
OWNER:	DAVID AND AMY CLEARY 59 CRESTVIEW DRIVE WEST	PINE CITY, NY 14871
RESOLUTION:	CRATER	SECONDED: COMBS

**WHEREAS**, Fagan Engineers, on behalf of David and Amy Cleary, applied for an extension of an area variance previously granted on February 19, 2020 at Autumnview Way, Pine City, NY to allow for construction of eight (8) duplexes on a 4.6 acre lot located in an R1 zone which does not meet the required ten (10) acres required in a Planned Development District (PDD), as per Town Code Section 525-43 D 2 Planned Development District, Town Code, Town of Southport, County of Chemung. The property is located in an R1 zone and is commonly known as Autumnview Way, Pine City, NY 14871, Tax Parcel, 108.00-1-34.11, and

**WHEREAS**, the Town of Southport Zoning Board of Appeals held a hearing on March 17, 2021 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, to consider the extension of the area variance granted on February 19, 2020, and

**WHEREAS**, the project was not completed within one (1) year from the granting of the variance, construction hasn't started, activity has moved along, but due to actions beyond the applicants' control the process has been held up causing practical difficulties, and

**WHEREAS**, based upon deliberation, consideration and discussion, the members of the Zoning Board of Appeals were of the opinion the area variance previously granted could be extended for one (1) year beginning February 19, 2021, and

**NOW THEREFORE BE IT RESOLVED** the area variance granted to David and Amy Cleary, 59 Crestview Drive West, Pine City, NY 14871, with respect to Autumnview Way, Pine City, New York, 14871, Tax Map 108.00-1-34.11 is granted a one (1) year extension of the variance originally granted on February 19, 2020. The area variance is hereby extended for one (1) year beginning February 19, 2021 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 area variance extension will render the variance null and void.

*To avoid any misunderstanding, the roll was called with each Board member voicing a "Deny" or "Extend" vote.*

Deny: Crater, Combs  
Extend: Silvers, Steinhauer and Faulkner  
Carried.

March 17, 2021

*Minutes approved by Board of Appeals-4/21/2021*