



TOWN OF SOUTHPORT

1139 Pennsylvania Avenue
Elmira, NY 14904

MINUTES APPROVED
BY BOARD OF APPEALS
4/20/2022

BOARD OF APPEALS

MINUTES
WEDNESDAY, MARCH 16, 2022

EXECUTIVE SESSION

ZBA Board – 6:00 pm

PUBLIC HEARING

Jan Liberatore
121 Orchard Hill Road, Elmira, NY 14903

Re: 901 Southport Street, Elmira, NY 14904

PUBLIC HEARING

William Everett, 8 Elan Place, Pine City, NY 14871
NRI – Newcomer Remodeling
Glenn Newcomer

Re: 1243 Pennsylvania Avenue, Pine City, NY 14871

INFORMATIONAL HEARING

Jose Lopez, II
511 Jefferson Street, Elmira, NY 14904

Re: 464 Christian Hollow Road, Pine City, NY 14871

SOUTHPORT TOWN HALL

1139 PENNSYLVANIA AVENUE, ELMIRA, NY 14904
7:00 PM

Webex Meeting

1-650-479-3208

Meeting number (access code):

2634 190 4432

Meeting password:

BGnQUVi2T82

(24678842 from phones/video systems)

Minutes of the Executive Session of the Zoning Board of Appeals, Town of Southport, held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on March 16, 2022 at 6:00 p.m.

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

 Bonnie Balok, Secretary-Zoning Board of Appeals

No action was taken at this session.

Based on the fact no action was taken, no minutes are required

Motion to Adjourn: Ms. Combs; seconded by Ms. Silvers. Unanimously approved.

Executive Session Adjourned: 6:46 pm

Bonnie J. Balok
Secretary-Zoning Board of Appeals
March 20, 2022

MINUTES APPROVED
BY BOARD OF APPEALS
4/20/2022

Public Hearing - Jan Liberatore

121 Orchard Hill Road, Elmira, NY 14903
Re: 901 Southport Street, Elmira, NY 14904
Area Variance for a reduction in lot width that does not meet the required lot width as per Section 525-24 Bulk and Density Control Schedule in R2 zone. The parcel currently does not meet the required lot width of seventy five feet (75'). Zoned: R2

Item No.1. Call to Order – Public Hearings and Informational Hearing

Chairman Faulkner called the meeting to order at 7:00 pm.

Item No. 2. Approval of the Minutes of February 16, 2022

Chairman Faulkner advised the next item on the agenda is the approval of the minutes of February 16, 2022. Motion by Ms. Silvers to accept the minutes as prepared; Seconded by Mr. Steinhauer. The minutes of February 16, 2022 were unanimously approved.

Item No. 3. New Business

Chairman Faulkner advised the next item on the agenda is a public hearing for Jan Liberatore, 121 Orchard Hill Road, Elmira, NY 14903 regarding 901 Southport Street, Elmira, NY 14904 and a request for an area variance to allow for a reduction in lot width that does not meet the required lot width, as per Section 525-Bulk and Densite Control Schedule in a R2 Zone. The parcel currently does not meet the required lot width of seventy five feet (75').

Mr. Liberatore explained the history of the three (3) lots purchased by his great grandfather on Southport Street and advised two (2) houses were built on the three (3) lots. In 1940 his grandfather passed away and his daughters lived in the properties. In 1945 his one great aunt inherited the property. The property was never divided. In 1984, the property was split into two (2) separate parcels; one aunt lived in the small house and the other aunt lived in the bigger house. In 1985 one aunt died and the other aunt purchased 901 Southport Street with forty five feet (45') for each lot. His great aunt had a line drawn down the middle and this changed her lot by five feet (5'). Mr. Liberatore has owned the properties for over twenty (20) years and now anticipates selling 901 Southport Street and retaining 899 Southport Street. To accomplish a sale, he would like to move the property line ten feet (10') which would give him fifteen feet (15') on the side of the house, back property line near the Coachman Motor Lodge will not change. The property at 899 Southport Street is sixty four feet (64') and the property at 901 Southport Street is seventy three feet (73'). A property will be resurveyed by Weiler Associates and would change to seventy five and one-half feet (75 ½") at 899 Southport Street and sixty two feet (62') and 901 Southport Street; one will conform and one will not. The sewer hookups connected two (2) separate for each property based on the original survey. The 899 Southport Street sewer in line to the street and encroaches on 901 Southport Street.

Chairman Faulkner advised Mr. Liberatore is requesting an area variance and there are five (5) area variance questions he is required to answer. *(Note: Mr. Liberatore's answers are listed in italics below and Mr. Liberatore also provided a written response to the five (5) area variance questions and reviewed the answers verbally at hearing as follows):*

Question 1. 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 granting the area variance?

No change to the character of the neighborhood or community; no detriment to the nearby properties.

Question 2. Whether the benefit sought by the Applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

No alternative to the proposed lot line adjustment. The adjustment will increase safety and decrease hazards for first responders, workmen and others.

Question 3. Whether the requested area variance is substantial?

Not substantial and will not adversely affect the neighborhood, the community or the District.

Question 4, Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions of the neighborhood or district?

Will not have any adverse affect on the physical or environmental conditions of the neighborhood or district and will beneficially impact the health, safety and general welfare of the neighborhood.

Public Hearing - Jan Liberator

121 Orchard Hill Road, Elmira, NY 14903
Re: 901 Southport Street, Elmira, NY 14904
Area Variance for a reduction in lot width that does not meet the required lot width as per Section 525-24 Bulk and Density Control Schedule in R2 zone. The parcel currently does not meet the required lot width of seventy five feet (75'). Zoned: R2

Item No. 3. New Business (continued)

Question 5. 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?

Not self-created as the lot lines as they currently exist between 899 and 901 Southport Street were in place at the time the applicant acquired title to the property.

Chairman Faulkner opened the public hearing portion of the meeting. Chairman Faulkner asked if there was anyone present or on the phone with comments? No responses. The public hearing was closed.

Chairman Faulkner advised the Board now has to provide their answers to the five (5) area variance questions.

Question 1. 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 granting the area variance?

No – 5 Unanimous

Question 2. Whether the benefit sought by the Applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

No – 5 Unanimous

Question 3. Whether the requested area variance is substantial?

No – 5 Unanimous

Question 4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions of the neighborhood or district?

No – 5 Unanimous

Question 5. 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?

No – 5 Unanimous

Motion made by Ms. Silvers to approve the area variance requested for a lot line change in the line between two (2) homes at 899 and 901 Southport Street with lot width of seventy five and one-half feet (75 ½') at 899 Southport Street and sixty two feet (62') at 901 Southport Street with a “no” vote denying the variance and a “yes” vote granting the variance. Seconded by Ms. Combs.

Secretary Balok called the roll: Mr. Crater-Yes; Ms. Combs-Yes; Ms. Silvers-Yes; Mr. Steinhauer-Yes; Chairman Faulkner-Yes.

Area variance unanimously approved.

Public Hearing for Mr. Liberator adjourned: 7:15 pm.

Bonnie J. Balok
Secretary-Zoning Board of Appeals
March 20, 2022

Original on File: Town Clerk
Copy: Town Supervisor, Town Attorney, Town Code Enforcement Officer
Board of Appeals Town Board Planning Board
Minutes to: Mr. Jan Liberatore, 121 Orchard Hill Road, Elmira, NY 14903

MINUTES
APPROVED
BY BOARD OF
APPEALS
4/20/2022

William Everett

8 Elan Place, Pine City, NY 14871

(NRI Newcomer Remodeling-Glenn Newcomer)

Re: 1243 Pennsylvania Avenue, Pine City, NY 14871

Use variance to allow for a cottage industry which is not allowed in R2 zone as per Section 525-Use Regulation

Table Zoned: R2 (Current Use: Vacant Commercial)

Item No. 3. New Business (continued)

Chairman Faulkner advised the next item on the agenda is a continuation of the public hearing held on February 16, 2022 for William Everett, 8 Elan Place, Pine City, NY 14871 regarding 1243 Pennsylvania Avenue, Pine City, NY 14871 and a request for a use variance to allow for a cottage industry (Section 525-108) which is not allowed in a R2 zone as per Section 525-Use Regulation Table, Tax Map # 109.09-3-40, Zoned: R-2, Current Use: Vacant Commercial.

Present: William Everett

Glenn Newcomer

Attorney Stephen Barnstead, Counsel for Applicant

William Everett advised he is seeking a use variance for the property to allow his primary residence in the front of the house and a remodeling business with an office and shop in the back of the property. Mr. Everett provided a slide presentation of the proposed use showing where their business is currently located, what the 1243 property currently looks like and what it would look like after renovations., as well as 3D renderings, site plan of 1243 Pennsylvania Avenue and a sign put in the front yard.

Attorney Carrie Wenban, o/b/o Guthrie Medical Group, current owner of the property, spoke to the Board via phone and advised she was not present at the hearing last month, but did receive a copy of the minutes. The primary question concerns the hardship and is it self-created. Guthrie owned the property for many years with doctors offices there for a number of years. Guthrie built a new building and since then this site has not been occupied; vacant for very long time. There has not been an expressed interest in the property for some time. The property was converted from a residence to medical offices. Guthrie does not believe the hardship was self-created because the medical office was relocated to accommodate their current needs for more space and to better meet the needs of the community. Based on research done on the question, and with respect to a buyer when seeking a variance, it is not a hardship that is self-created when they go ahead and seek that variance before purchasing the property; that finding coming from a Third Department case that involved the City of Amsterdam versus Board of Appeals which found a hardship was self-imposed when the applicant for the variance acquires the property, is aware of the restriction at the time of purchase and went ahead to accomplish this. Here we have a contract that the applicant needs to go before your Board make application and receive approval from your Board accomplish this before hand, so they are not self-creating the hardship by not coming to the Board after they have purchased the property and then coming to the Board for relief on the property.

Attorney Leslie Connelly, Attorney for Town of Southport, ZBA, advised the self-created hardship is not the question on the property and the Town understands that Guthrie was operating under a use variance, and then when Guthrie left and the property was vacated the non-conforming use ended up being discontinued. The self-created harm we are looking at is the potential purchaser and from what was found looking at the Court of Appeals of NYS. That is the prospective purchaser is chargeable with knowledgeable applicable instruction and is bound by them and any other fact or circumstances learned through the exercise of due diligence and hardship in the context of zoning where the applicant for a variance acquires the property subject to the restrictions in which they seek relief. Now when you have contract vendee, as in this case, the contract vendee's question of whether they can continue to use the property or how they can use the property is going to be dictated by prior use. If they were coming to us and said we want to continue the office use variance, and we understand that it has expired, the non-conforming use expired that's different. Here the applicant is looking for a use variance to change the use of the building from what it had previously been for a medical use to now a residence and an in-home light fabrication operation. That that use was not covered in the variance that applied to Guthrie. This is now seeking a different use of the property and it is deemed to be a self-created hardship when you can't purchase property knowing there is a restriction on and then claim self-created hardship, and then say, you did not create the harm.

Attorney Wenban stated in this context, and in the environment in the Town of Southpor, using that for a medical practice then vacated it, doesn't seem possible where another buyer is going to be able to come along and continue that use. No one has come in several years while that the property has been vacant, and there isn't any medical provider for the property and no inquires for a similar use.

William Everett

8 Elan Place, Pine City, NY 14871

(NRI Newcomer Remodeling-Glenn Newcomer)

Re: 1243 Pennsylvania Avenue, Pine City, NY 14871

Use variance to allow for a cottage industry which is not allowed in R2 zone as per Section 525-Use Regulation

Table Zoned: R2 (Current Use: Vacant Commercial)

Item No. 3. New Business (continued)

Attorney Connelly explained unfortunately a standard that has to be upheld is that you can not get a reasonable return on the property, a demonstration that there is absolutely no way you can receive a return on the property for all of the conceived possible uses for that property, and that needs to be demonstrated in dollars and cents and workup. We haven't seen any proof to satisfy that aspect of a use variance that needs to be satisfied, but that said, going back to the position that was held last month, which was researched again, confirmed that unlike an area variance, the use variance you must satisfy all four (4) of the Standards of Review or questions and the self-created hardship is a killer on a use variance unlike an area variance.

Attorney Stephen Barnstead, o/b/o of Mr. Everett, stated it still remains our position that this is not a self-created hardship. The applicant does not own the property at this point in time. The applicant has a purchase offer on it and it is contingent upon the variance being approved. When you are looking at the self-created hardship, what the State was looking at was making sure that the applicants weren't taken advantage of knowing that something was not proper and proceeding anyway, sort of arguing ignorance. Here we are trying to make sure we can do what we want to do. The applicant has done no wrong, it's not like he bought it and is now saying well we shouldn't have bought the property and now we are asking you to work around that. Nothing like that is occurring here.

Attorney Connelly explained what the applicant is doing is obeying the law and he hasn't purchased the property and that's fine, but the Court of Appeals said in the Matter of Clark no one acquires land when the use is prohibited by the zoning ordinance and may not thereafter obtain a variance on hardship otherwise stated a zoning board may not grant a variance to relieve a self-created hardship.

Attorney Barnstead explained it is not self-created, we have not already acquired the property.

Attorney Connelly asked who would the use variance go to.

Attorney Barnstead advised it would still go to his clients. It's not self-created, it's not a violation.

Attorney Connelly advised that is semantics.

Mr. Steinhauer advised that the State Zoning Board of Appeals states that, a contract vendee who enters into an agreement with the owner of the property, contingent upon the granting of a variance, is a legitimate person aggrieved who are the proper parties before the board since the contract vendee, yet to purchase the property, he can not present to create a self-hardship and must rely on the circumstances of the owner with whom he or she has a contract.

Attorney Connelly stated that is the point she made earlier if Guthrie was coming and saying or the applicant was coming saying we want to continue office uses that's what the use variance was granted for, you could argue that is in perpetuity and we want to come in and do the same thing you are in the same shoes, the vendee has the same rights as the owner. This would be a different use of the property, it's not offices. It's something that is completely different.

Attorney Barnstead stated under your argument, where you are, basically this is self-created because you are asking them to do something that is not permitted, every variance is that way. Because now they are asking to do something that is not permitted that was otherwise permitted on this property it is a self-created hardship.

Attorney Connelly explained that's what the law is.

Mr. Steinhauer asked, doesn't it say, we can't take one non-conforming variance and go to another non-conforming variance?

Attorney Connelly stated yes.

William Everett

8 Elan Place, Pine City, NY 14871

(NRI Newcomer Remodeling-Glenn Newcomer)

Re: 1243 Pennsylvania Avenue, Pine City, NY 14871

Use variance to allow for a cottage industry which is not allowed in R2 zone as per Section 525-Use Regulation

Table Zoned: R2 (Current Use: Vacant Commercial)

Item No. 3. New Business (continued)

Ms. Silvers advised the person who is applying for the use variance has to prove each of the four (4) requirements that are listed and if even one (1) of them is not proved, then the variance is gone. If there is an area variance there are the five (5) questions to answer, but the majority of them and you have proved the majority of them, that's fine. If your self-created, and yes it is self-created, that's not a problem if there is at least three (3) others have been proven. For a use variance it is not the same.

Attorney Barnstead stated contrary to what is being said, it is our position that this is not self-created hardship.

Ms. Combs explained that even that point, it is non-conforming. Everyone knows this is a unique property, but this is not the same by any shape or form. This is not medical, but if they were putting in some other type of offices, where you were having visitors in and out, but this is light commercial. It's a significant change. No one wants to see the property empty, but we are trying to do our due diligence.

Mr. Steinhauer advised that's what makes it self-created.

Attorney Wenban explained she would like to mention two (2) additional cases that were found on this matter. There is a case regarding the County Parks versus Malone that was a Nassau County case, the county parks property and the contract vendee it is wise to apply for a variance before the property changes hands and that the ZBA would be that of the property owner not the potential purchaser. Again the focus being on what Guthrie had done to take the hardship not what the buyer would be going through with the purchase. In addition, discontinuance of a variance does not mean it creates a hardship, so there is case law supporting that abandonment of a variance cannot, such as Guthrie shutting down and relocating, should not be a self-created hardship for the property owner to have the justification for abandoning it. In Citizens Savings Bank there is an order to purchase property used as a restaurant under abandonment and were aware of problems with the septic system, but was unaware of the full extent of that, the court ruled that the inability to obtain the grant to use as a restaurant was not a self-created barring the granting of a variance allowing use.

Attorney Connelly explained she would have to take a look at that case, but here it's not the use, because it was obviously discontinued when you left, but non-conforming use that was allowed by the variance is only allowed as long as the property is being used. A non-conforming use lapses for a year, then it's gone. Even though there is a use variance on the property, for offices as it was granted, that's not what's being proposed here and it is a significant change. We haven't seen any information or any financial information that there is no reasonable return on the property. We have seen no evidence. This is in no way disparaging of Guthrie or anyone, we just haven't seen anything that would reach that level. It's been marketed by Guthrie and we've been told that it can't be sold. We need information that you listed the property, here, here and here and no one has taken it and there can't be a reasonable return there's evidence that could be provided to a court and we haven't seen anything in dollars and cents to support an argument that there is no reasonable return on the property under what it could currently be used for.

Attorney Wenban advised with respect to that if I was asked to provide that information, we would have provided that. What I can comment on now, which is a matter of public record, is that the property is being sold for \$100,000, that property was currently purchased by Guthrie Clinic 12/1988 for \$447,446 and because the property has been vacant for so long and the current offer on the table of \$100,000 for a property purchased in 1988 for \$447, 446 and that was a going business. When that property was purchased it involved both the purchase of the business, the property and assets such as equipment and other assets. The full market value of the property on the assessment records land is \$90,000 and market value \$725,000. The realtor handling the sale has been unable to secure a buyer and the \$100,000 is the only offer we have had on the table. I bring this up to point out Guthrie is really not realizing a reasonable return. They paid \$447,000 for it and owned it all that time for twenty (20) years at a cost of expenses put into the building, and trying to find a buyer for it and an offer of \$100,000 when the property is considered to have a value of \$725,000 the return is no where in that ballpark.

William Everett

8 Elan Place, Pine City, NY 14871

(NRI Newcomer Remodeling-Glenn Newcomer)

Re: 1243 Pennsylvania Avenue, Pine City, NY 14871

Use variance to allow for a cottage industry which is not allowed in R2 zone as per Section 525-Use Regulation

Table Zoned: R2 (Current Use: Vacant Commercial)

Item No. 3. New Business (continued)

Mr. Steinhauer advised that's because it was an existing business, you were buying the existing business and the property and it's conditioned at the time it was for sale. The condition of it today and the use of it today is not worth \$400,000. When commercial businesses are sold, the commercial business is worth more when it is an operating business than it does when it is vacant. If Guthrie had approached the Town for a reassessment of the property for assessed value that would be different.

Ms. Silvers explained the applicant is applying for the variance and Guthrie is not applying for the variance so the reasonable return would be to Guthrie not to the applicant. That doesn't have anything to do with the applicant that has to do with the seller. It appears as though Guthrie already knew they would not get a reasonable return when they marketed it for \$200,000 instead of \$447,000; they knew they weren't going to get a reasonable return in it's current condition and it is vacant with no variance. It's still a self-created hardship. They marketed it knowing they did not have a use variance, the use was not approved, went back to R2; the seller knew that or should have known that. Mr. Everett is being asked to prove that this is not a self-created hardship. Use variance is much more difficult to get than an area variance, if use variances were granted willy-nilly, then there would be little zones here there and everywhere.

Attorney Connelly advised yes and what the applicant would need to say, I am under contract with Guthrie and they provided me with this information demonstrating that they tried to market the property for however long and they unable to get a higher amount and we could use the property. That just wasn't presented to us in satisfying the criteria. We did not see any evidence of that. The applicant stands in the seller's shoes. The applicant would have to say, I'm asking for this use variance because, as demonstrated by the current property owner, they can't get a return off from this and that is why we need a use variance so we can change the use of it so that I can operate it. There is no way to re-people it with offices and there is just no way for them to make a reasonable return. All use variances are not self-created. Purchasing property that is not zoned for the use you are proposing and looking to operate is self-created. That is why use variances are so rarely granted. For a use variance you have to demonstrate the hardship was not self-created and same for the area variance.

Attorney Barnstead advised at the last meeting that wasn't requested to provide that information. I know it is within the normal process, but it wasn't actually specified as with the issue of dealing with the self-created hardship. We can obtain that information from Guthrie. The way this is being described here tonight all variances are self-created, all use variances are self-created. Every variance would be looking at being self-created. We are saying it was not self-created.

Mr. Everett asked if he was trying to prove that it was not self-created by him or Guthrie? Mr. Everett explained he has not acquired the property. If he got it and acquired it, then it would be completely his. Then he would have created the hardship, but he hasn't acquired it. He is going through the process that he understands he is supposed to do.

Attorney Connelly explained, Mr. Everett is the contract vendee, Mr. Everett has not acquired the property yet. What he needs to demonstrate is that he would be able to that, he will be able to use the property for the same use that preceded him. That's not what he is doing. Mr. Everett is not proposing what Guthrie did, he is proposing to have it be a house and light industrial. Guthrie could not do that if they wanted to. They would have to get a use variance. Mr. Everett is asking to do something currently different than what the property is permitted for.

Ms. Combs explained Mr. Everett is not looking for something similar, he is looking for something completely different.

Chairman Faulkner advised we will re-open the public hearing portion of this hearing and asked for comments from anyone attending the meeting or on the phone.

William Everett

8 Elan Place, Pine City, NY 14871

(NRI Newcomer Remodeling-Glenn Newcomer)

Re: 1243 Pennsylvania Avenue, Pine City, NY 14871

Use variance to allow for a cottage industry which is not allowed in R2 zone as per Section 525-Use Regulation

Table Zoned: R2 (Current Use: Vacant Commercial)

Item No. 3. New Business (continued)

Mr. James Gensel, 1246 Pennsylvania Avenue, Pine City, NY 14871, in attendance at the meeting explained he had submitted additional information to the Board from the James A. Coon, Local Government Technical Series, "Guidelines for Applicants to the Zoning Board of Appeals"; copies were distributed at the hearing tonight. Mr. Gensel further explained initially he was in support of this project if it was a similar use as what was done before, but getting into the industrial side of things, that is going beyond what is considered continuation of a non-conforming, that is why he and his wife disagree with the approval of this use variance. There is a reason zoning is written the way it is. There is a reason why you have buffers between certain types of businesses. This isn't about just a different type of residential use similar to other variances that have been received. It's actually jumping two slots on the use chart going from residential, commercial to industrial if there's fabrication. If the applicant would actually remove that from the application, I would have no problem with the use as a general office. The other issue is this was advertised as a cottage industry. Right now you can only view this in the vein of a use variance for a cottage industry. If you are going to do what this has crept to, which is light industrial, you would have to redo your public notices, the neighbors don't know this

Chairman Faulkner asked about a cottage industry.

Attorney Connolly advised a cottage industry could be like making quilts in a backroom and selling them or having a little shop at the back of my house with so many employees, etc. It's a home use. That's not what's being presented here.

Mr. Gensel continued and advised, a cottage industry can employ a maximum of three (3) employees, this proposal has ten (10) employees, A cottage industry has to be a maximum of seven hundred fifty square feet (750'), this projects is over five thousand square feet (5,000'). Another example is the pizza hut building that is vacant and they say it can't be developed and so an applicant comes along and wants to put a strip club in there. The applicant could say, I want to buy the Pizza Hut this is not self-created hardship, I'm not the owner of the property, This is an extreme example, but the action is self-created. We wouldn't be in front here if the applicant didn't seek to buy the property. This is self-created. The only way of being non-self-created is if you were looking at, from Guthrie's point of view, and they had a similar use and the non-conforming expired. The non-conforming expired, I could make an understanding of that. This is a totally different thing. Mr. Gensel advised he bought his property across the street in 1995-96 for \$50,000. Obviously when a corporation buys a property it is similar lot size and similar time frame and paid an exceeding amount, part of that is because they were buying a business and there are ways of compensating a business for buying over paying for the property and also buying the equipment.

Attorney Barnstead explained the cottage industry listing was either the Town or the Board itself that labeled it a cottage industry. It was not the applicant. The applicant requested this for a commercial purpose.

Chairman Faulkner asked if there was anyone else who would like to make a comment. No other comments requested, the public hearing portion of the meeting was closed.

Mr. Everett provided answers to the four (4) Use Variance questions. (Note: Mr. Everett's answers are in italics below).

Question 1. The applicant cannot realize a reasonable return, provided that lack of return is substantial and demonstrated by competent financial evidence.

It is our intention for NRI and the principal owner, myself, to take up residence in the residential portion of the property and take up a remodeling business in the back portion. In the business use of the building would be essentially an office, work area and storage area. All operations would be conducted in the existing structure on the property. The current building on the property is much too large to be used for a single family residence, however it is ideally suited for a business and residency housed in the structure. We would perform some interior remodeling which would fit the needs of the business space. Therefore due to the size of the structure anticipated, and the cost associated with this large structure NRI can not realize a financial return if the property had to be used as a single family residence, if not allowed to conduct my business there. In addition, the structure needs significant costs to convert the property from medical offices

Item No. 3. New Business *(continued)*

Question 2. The alleged hardship relating to the lot in question is unique and does not apply to a substantial portion of the District or neighborhood in which the lot is located.

The property does present as a very unique property and does not comply with the regulations of the R2 district as it is currently used. The square footage is much larger than any other residence or any other type of structure located in the vicinity of the property. Additionally, the property has been significantly remodeled from when it was a residence to allow for the doctor and medical offices. As the floor plan of the property is that of an office setting, it does not allow for a residence both because of the size and the office plan makes this property truly different and unique property from the structures of any neighboring properties.

Question 3. The requested use variance, if granted, will not alter the essential character of the district neighborhood in which a lot is located.

NRI will not alter the essential character of the neighborhood as it is a residential district. NRI does not want to change the outward appearance of the structure, so anyone viewing the property would not see the change in character of the neighborhood. Also the amount of traffic created by the business would be minimal as typically we have seven (7) to eight (8) employees with principal officers. As employees work at customer sites, seldom come to our office or property. Also, NRI meets with customers at their homes or businesses, as such, there will not be much customer traffic at the property.

Question 4. The alleged hardship is not self-created.

It is not self-created as the use of the property as an office is due to the zoning change. NRI believes at the time the office was relocated the property was in compliance with the existing zoning ordinance. The existing zoning ordinance, the hardship was essentially created by the Town when R2 was changed and the property was subsequently being used as an office for a business purpose. Additionally, it is not self-created, as NRI nor Mr. Everett are not the owners of the property which specifically included this in the offer of the purchase of the property, that the Town grant the zoning approval on this commercial property before the closing of this property.

Attorney Barnstead stated, at the last meeting, in regards to Question 1 they provided some additional information which basically included their experience within the remodeling business, so they would be familiar with what the costs of remodeling a building such as this one would be. It is a ten thousand, eight hundred forty four square foot (10,844') building and to convert it from the current office, by removing all the various exam rooms and all the different things that go along with a medical office, based on their experience, the cost would be well in excess of one hundred thirty thousand dollars (\$130,000).

Mr. Steinhauer stated if they are purchasing the house for \$100,000 and putting \$110,000, wouldn't it would be worth \$210,000 to sell it; from his experience that house would be worth at least \$210,000.

Chairman Faulkner interrupted the hearing and excused himself from the meeting based upon a possible conflict of interest due to the fact he owns property in close proximity to this property,

Ms. Silvers, serving as Vice Chairperson of the ZBA assumed the duties of the Chairperson of the ZBA.

Mr. Wrigley, serving as Alternate on the ZBA, took his place as a voting member on the ZBA Board.

Ms. Silvers asked if there were any other comments and advised the public hearing portion has been closed.

The Board reviewed the four (4) Use Variance questions and provided their respective answers to the questions. *(Note: Answers in italics)*

Item No. 3. New Business (continued)

Question 1. The applicant cannot realize a reasonable return, provided that lack of return is substantial and demonstrated by competent financial evidence.

No – 5 (Unanimous – All Board Members)

Question 2. The alleged hardship relating to the lot in question is unique and does not apply to a substantial portion of the District or neighborhood in which the lot is located.

No – 2 (Mr. Crater, Ms. Silvers) Yes – 3 (Ms. Combs, Mr. Steinhauer, Mr. Wrigley)

Question 3. The requested use variance, if granted, will not alter the essential character of the district neighborhood in which a lot is located.

No – 1 (Mr. Crater) Yes – 4 (Ms. Combs, Ms. Silvers, Mr. Steinhauer, Mr. Wrigley)

Question 4. The alleged hardship is not self-created.

Yes – 5 (Unanimous – All Board Members)

Ms. Silvers advised the applicant has failed to prove all four (4) of the use variance requirements and under the law we have to decline this because if only one (1) of the four (4) is not proved the request must be declined.

Ms. Silvers requested a motion to vote on the variance for Mr. Everett.

Mr. Crater made a motion to vote on the use variance for Mr. Newcomer and Mr. Everett with a “yes” to approve the variance and a “no” to decline.

Mr. Steinhauer seconded the motion.

Secretary Balok called the roll: Mr. Crater-No; Ms. Combs-No; Mr. Steinhauer-No; Mr. Wrigley-No; Ms.Silvers-No

Variance denied.

Public hearing for Mr. Everett adjourned: 8:14 pm

Bonnie J. Balok
Secretary-Zoning Board of Appeals
March 22, 2022

Original on File: Town Clerk
Copy: Town Supervisor, Town Attorney, Town Code Enforcement Officer
Board of Appeals Town Board Planning Board
Minutes to: Mr. William Everett, 8 Elan Place, Pine City, NY 14871

MINUTES APPROVED
BY BOARD OF APPEALS
4/20/2022

Informational Hearing – Jose Lopez, II

511 Jefferson Street, Elmira, NY 14904

Re: 464 Christian Hollow Road, Pine City, NY 14871

Area variance to build addition on back of house within fifty feet (50') of the riparian buffer, as per Section 525-126-Stream Protection and an

Area variance to build an addition on the back of the House within the Minimum Rear Yard Requirements (Setbacks) of forty feet (40') as per Section 525-24-Bulk and Density Control Schedule

(AR Zone

Current Use: Residential)

Item No. 3. New Business (continued)

While waiting for Mr. Faulkner to return to the meeting, Chairperson Silvers called the meeting to order and advised this is an informational hearing for Jose Lopez, II, 511 Jefferson Street, Elmira, NY 14904 regarding 464 Christian Hollow Road, Pine City, NY 14871. Mr. Lopez is requesting an area variance to build an addition on back of the house within fifty feet (50') of the riparian buffer, as per Section 525-126-Stream Protection and an area variance to build an addition on the back of the house within the Minimum Rear Yard Requirements (Setbacks) of forty feet (40') as per Section 525-24-Bulk and Density Control Schedule in an AR zone (Current Use: Residential)

Chairperson Silvers advised the main problem is stream protection and building in the buffer zone for the creek. Chairperson Silvers asked Mr. Lopez to step up to the microphone and explain to the Board what he would like to do.

Mr. Lopez explained in 1988-89 his parents bought the property, it is a one bedroom house along the creek side of Christian Hollow Road. His father became ill, and his mother was selling the property to his uncle, but his uncle got ill and passed away. When Mr. Lopez went over there three (3) or four (4) years ago the house was unoccupied and unlivable, so he had to tear off the back end of the house. The addition requested will not be any farther out than the original structure; ten feet (10') by twelve feet (12) area. The whole property is not fifty feet (50') from the water. According to the property line, he owns three fourths (3/4) of the creek, the water has taken about fifty feet (50') of his land, but he has been filling it in for the past two (2) to three (3) years on his own property line; dormer has been built on.

Ms. Combs advised Mr. Lopez' property is at the bottom of Lightizer Road and she goes by it every day. There are several houses along that creek that are pinned in over the bridge. The last big rain storm washed over the bridge, but missed Mr. Lopez' house.

Note: Chairman Faulkner resumed Chairmanship of this informational hearing. After recusing himself from the previous public hearing, Mr. Faulkner returned to the ZBA meeting, Mr. Wrigley left the voting seat and Chairman Faulkner resumed his duties as Chairman of the ZBA informational hearing.

Discussion took place concerning many issues such as: the whole property is non-conforming. The flood was in 2018, would this be grandfathered in and would Mr. Lopez need a letter from DEC, this was pre-existing before Mr. Lopez tore the room off. Mr. Lopez pulled the room off in 1997 and now wants to put that back where it was. Also, anyone in a flood plain receives a ten percent (10%) discount on protection laws.

Attorney Connolly explained about allowing a building in a buffer and the need to get special permission to build within a buffer.

Question was posed, since the whole thing is too close to the stream, can't this be grandfathered in and DEC wouldn't allow it. There is a concern about this washing away. The house is grandfathered in, but the room was removed.

Question also was posed about reaching out to the Soil and Water Conservation Service.

Mr. Rocchi will check out the flood insurance, but can't necessarily get an answer on this.

Attorney Connolly will call DEC in the Town of Wayne and ask them to mail information.

Mr. Lopez provided pictures of the room that was there twenty four (24) years ago.

Chairman Faulkner explained to Mr. Lopez about the public hearing process and set the public hearing for Wednesday, April 20, 2022 at 7:00 pm. The legal notice will

Ms. Balok will email the legal notice to the "Star-Gazette", instructions and copy of legal notice to Mr. Lopez. for payment to the newspaper.

Informational Hearing – Jose Lopez, II
511 Jefferson Street, Elmira, NY 14904
Re: 464 Christian Hollow Road, Pine City, NY 14871
Area variance to build addition on back of house within
fifty feet (50’) of the riparian buffer, as per Section 525-
126-Stream Protection and an
Area variance to build an addition on the back of the
House within the Minimum Rear Yard Requirements
(Setbacks) of forty feet (40’) as per Section 525-24-
Bulk and Density Control Schedule
(AR Zone *Current Use: Residential*)

Item No. 3. New Business (continued)

Public hearing for Mr. Lopez adjourned: 8:38 pm

Original on File: Town Clerk
Copy: Town Supervisor, Town Attorney, Town Code Enforcement Officer
Board of Appeals Town Board Planning Board
Minutes to: Mr. Jose Lopez, II, 511 Jefferson Street, Elmira, NY 14904

Item No. 4 Old Business

No old business

Item No. 5 Discussion

No further discussion

Item No. 6 Adjournment

Motion to adjourn: Ms. Silvers
Seconded by: Ms. Combs
Adjourned: 8:40 pm

Bonnie J. Balok
Secretary-Zoning Board of Appeals
March 23, 2022

MINUTES APPROVED
BY BOARD OF APPEALS
4/20/2022

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

**RESOLUTIONS
2022**

Resolution No. 6

AREA VARIANCE GRANTED

PROPERTY:	TAX MAP NO. 109.07-1-41 COMMONLY KNOWN AS 901 SOUTHPORT STREET	ZONED: R2 ELMIRA, NY 14904
APPLICANT:	JAN LIBERATORE 121 ORCHARD HILL ROAD	ELMIRA, NY 14903
OWNER:	JAN LIBERATORE 121 ORCHARD HILL ROAD	ELMIRA, NY 14903
RESOLUTION:	SILVERS	SECONDED: COMBS

WHEREAS, Jan Liberatore, 121 Orchard Hill Road, Elmira, NY 14903, applied for an area variance for a reduction in lot width that does not meet the required lot width, as per Section 525-24-Bulk and Density Control Schedule at 901 Southport Street, Elmira, NY 14904 in a R2 Zone, as per Town Code, Town of Southport, County of Chemung. The property is located in an R2 zone and is commonly known as 901 Southport Street, Elmira, NY 14904, Tax Parcel, 109.07-1-41, and

WHEREAS, the Town of Southport Zoning Board of Appeals held a hearing on March 16, 2022 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 granting of the area variance, with no public comments for or against the project, and

WHEREAS, based upon deliberation, consideration and discussion, the members of the Zoning Board of Appeals were of the opinion the area variance could be granted to allow for a lot line change in the line between two (2) homes at 899 and 901 Southport Street with lot width of seventy five and one-half feet (75 ½') at 899 Southport Street and sixty two feet (62') at 901 Southport Street, and

NOW THEREFORE BE IT RESOLVED the area variance is granted to Jan Liberatore, 121 Orchard Hill Road, Elmira, NY 14903 with respect to 901 Southport Street, Elmira, NY 14904, Tax Map 109.07-1-41 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 will render the variance null and void.

Yes-Grant Variance:	Crater; Combs; Silvers; Mr. Steinhauer; Chairman Faulkner
No-Deny Variance	None
Carried.	
March 16, 2022	

*Minutes & Resolution approved by Board of Appeals
4/20/2022*

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

**RESOLUTIONS
2022**

Resolution No. 7

USE VARIANCE DENIED

PROPERTY:	TAX MAP NO. 109.09-3-40 COMMONLY KNOWN AS 1243 PENNSYLVANIA AVENUE	ZONED: R1 PINE CITY, NY 14871
APPLICANT:	WILLIAM EVERETT (<i>NEWCOMER REMODELING</i>) 8 ELAN PLACE	PINE CITY, NY 14871
OWNER:	GUTHRIE MEDICAL GROUP, D/B/A GUTHRIE CLINIC 1243 PENNSYLVANIA AVENUE	PINE CITY, NY 14871
RESOLUTION:	CRATER	SECONDED: STEINHAEUER

WHEREAS, William Everett, 8 Elan Place, Pine City, NY 14871, applied for a use variance to allow for a cottage industry, as per Section 525-108, which is not allowed in a R2 zone as per Section 525-Use Regulation Table, at 1243 Pennsylvania Avenue, Pine City, NY 14871 in a R2 Zone, as per Town Code, Town of Southport, County of Chemung. The property is located in an R2 zone and is commonly known as 1243 Pennsylvania Avenue, Pine City, NY 14871, Tax Parcel, 109.09-3-40, and

WHEREAS, the Town of Southport Zoning Board of Appeals held a hearing on February 16, 2022, tabled and continued the hearing on March 16, 2022 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 granting of the use variance, with one public comment against the project, and

WHEREAS, based upon deliberation, consideration and discussion, the members of the Zoning Board of Appeals were of the opinion the use variance should be denied to allow for a cottage industry, as per Section 525-108, which is not allowed in a R2 zone as per Section 525-Use Regulation Table, at 1243 Pennsylvania Avenue, Pine City, NY 14871 in a R2 Zone, and

NOW THEREFORE BE IT RESOLVED the use variance is denied to William Everett, 8 Elan Place, Pine City, NY 14871 with respect to 1243 Pennsylvania Avenue, Pine City, NY 14871, Tax Map 109.09-3-40 and the building inspector of the Town of Southport be and hereby is not authorized to issue a permit for said use.

Yes-Grant Variance:	None
No-Deny Variance:	Crater; Combs; Silvers; Mr. Steinhauer
Abstained:	Faulkner Recused Himself Due to a Possible Conflict of Interest
Carried.	
March 16, 2022	