



TOWN OF SOUTHPORT

1139 Pennsylvania Avenue
Elmira, NY 14904

MINUTES APPROVED
BY BOARD OF APPEALS
JUNE 15, 2022

BOARD OF APPEALS

MINUTES
WEDNESDAY, APRIL 20, 2022

PUBLIC 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):

2633 037 5686

Meeting password:

tF28DvZE4mT

Minutes of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, NY on April 20, 2022 at 7:00 p.m.

Board Members Present: Justin Faulkner
Shawn Crater
Susan Silvers
Edward Steinhauer
Ken Wrigley

Board Member Absent: Belinda Combs

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

1. Call to Order

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

2. Approval of Minutes of March 16, 2022

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

3. New Business

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

Public Hearing

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

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

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

Tax Map No. 128.00-1-4

Zoned: AR

Current Use: Residential

Public Hearing – Jose Lopez, II

511 Jefferson Street, Elmira, NY 14904

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

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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)*

Mr. Lopez explained he wanted to put a bedroom back on the structure as it was when his parents bought the house in 1988. Twenty five (25) years ago, Mr. Lopez tore the bedroom off and blocked off the area. Mr. Lopez further explained he is handing the house over to his son and wants to have the house be a nice home, no wider just putting back what was there. Mr. Lopez advised he has already made numerous improvements on the home. Mr. Lopez further advised he talked with Jim Lynch and Brad Chaffee of the Department of Environmental Conservation (DEC) and was advised the house is not in a flood zone. Mr. Lopez stated the water is run off water not a creek.

Mr. Rocchi explained the Town of Southport is concerned about the backyard setback and to have the building as far away from the river as possible. Mr. Rocchi advised the DEC doesn't have knowledge of the local law. Mr. Rocchi further advised this area is mapped as a flood zone and the Town requires a buffer away from the creek, and there is also the concern about the backyard setback. Mr. Rocchi advised the law states this must be two feet (2') above not one hundred and forty eight feet (148'), and if the Town lost the insurance rate discount, that would affect everyone in the entire Town. Mr. Rocchi advised based on the determination, Mr. Lopez would not be allowed to build a porch on this house either, as it is now, it is pre-existing and non-conforming.

Discussion took place concerning flood insurance points, the Town having one hundred seventy eight (178) points with a cushion of fifty (50) to one hundred (100) points, in the insurance manual this is listed as Category Nine (9), with five percent (5%) in cost of flood insurance premium, but the Town will not have an exact figure until an audit is completed.

Attorney Connelly requested Mr. Lopez obtain a document from Jim Lynch, in writing, concerning the flood zone and the Town might be able to take this information into consideration, but something from Mr. Lynch is needed in writing. Attorney Connelly explained about the flood plain and flood zone, the buffer area, the DEC designation of a flood plain and the regulations governing permits that are required in a buffer zone. Attorney Connelly advised the room was town down twenty five (25) years ago; had this been done within a year, following the exact same foot print and no larger, it would be a different situation. Attorney Connelly explained this depends on the jurisdiction if a variance was granted and if someone was injured, the Town could be sued.

Discussion also took place concerning a home not having a mortgage and therefore flood insurance would not be required, Also the terms and definition of floodway and floodplain. Mr. Crater provided details and explained a floodway is more strict; a creek tributary has more velocity and a registered engineer's study would be required. The floodplain requires an elevation certificate. Mr. Lopez's home is in a one-hundred year flood study and his home is above the floodplain elevation. Mr. Crater provided detailed maps and documentation concerning the LiDAR resource material, including providing History of LiDAR showing pictures of the site from 2010, 2014 to current; the picture dated 2010 shows a utility room was not there; the picture dated 2014, shows the utility room was added. Mr. Crater further explained floodway lists categories for streams; streams in segments and Mr. Lopez's property is in Segment F, along the bank there are numbers and Mr. Lopez's site is 1148'; the 1149' means floodplain elevation certificate is above 148 and wouldn't affect the Town's flood insurance rate map. Mr. Crater further advised what the 100 year flood study completed on Christian Hollow Road shows the floodway is encroaching on Mr. Lopez's home and he might need a floodplain elevation certificate done by an engineer. Mr. Crater explained that history tells us there was a flood, FEMA went into depth on this and the last time that was done by FEMA was August 5, 1991. Mr. Crater advised the map that FEMA did lists A-H, F is the section Mr. Lopez is in; slope velocity of water moves 13.1 foot per second, drops from 1153 to 1156 (7' within that area) and two tributaries running into it. This doesn't indicate not being in floodway. Floodway is volatile, most restrictive and most water flows through it.

Chairman Faulkner opened up the public hearing portion of the meeting and asked if anyone was present or on the telephone who wanted to speak at the hearing? Chairman Faulkner advised anyone speaking should provide their name and address.

Public Hearing – Jose Lopez, II

511 Jefferson Street, Elmira, NY 14904

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

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(AR Zone

Current Use: Residential)

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

Ms. Leslie Strykowski, 471 Christian Hollow Road, Pine City, NY advised she lives directly across the road from Mr. Lopez, lived there twenty five (25) years and remembers there was a back room that Mr. Lopez took down; as a neighborhood, Mr. Lopez has turned this property around one-hundred twenty percent (120%), it was a dump, Mr. Lopez rebuilt everything, never an issue about anything he has done there.

Mr. Mike Strykowski, 471 Christian Hollow Road, Pine City, NY advised he echoes the words Leslie provided and explained Mr. Lopez is just trying to make improvements and he doesn't care if this is in a flood zone, no flood insurance with or without a mortgage. Mr. Strykowski explained water came across his property and he was told it would be almost impossible for him to get flood insurance. Mr. Strykowski also explained he spoke with Mark Watts, Soil and Water Conservation, and was advised it is the property owners' responsibility, the Town and County won't be responsible and the water never touches the Lopez's property.

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

Mr. Lopez provided answers to the five (5) Area Variance questions. (*Note: Mr. Lopez's answers are in italics below*).

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 the granting of the area variance?

Mr. Lopez: Advised – No, disagree.

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?

Mr. Lopez: Advised – No.

Question 3. Whether the requested area variance is substantial?

Mr. Lopez: Advised – No.

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

Mr. Lopez: Advised – No.

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?

Mr. Lopez: Advised – Yes.

The Board reviewed the five (5) area variance questions and provided their answers as follows: (*Note: Answers in italics below*).

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 the granting of the area variance?

Unanimous: No – 5 Crater, Silvers, Steinhauer, Wrigley, Faulkner

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?

Unanimous: No – 5 Crater, Silvers, Steinhauer, Wrigley, Faulkner

Question 3. Whether the requested area variance is substantial?

Unanimous: Yes – 5 Crater, Silvers, Steinhauer, Wrigley, Faulkner

Public Hearing – Jose Lopez, II

511 Jefferson Street, Elmira, NY 14904

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

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(AR Zone

Current Use: Residential)

Item No. 3. New Business (continued)

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

Unanimous: Yes – 5 Crater, Silvers, Steinhauer, Wrigley, Faulkner

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?

Unanimous: Yes – 5 Crater, Silvers, Steinhauer, Wrigley, Faulkner

Mr. Steinhauer made a motion to vote on the variance for Mr. Lopez, with a “no” vote denying the variance and a “yes” vote granting the variance. Ms. Silvers seconded the motion.

Secretary Balok called the roll. Mr. Crater-No; Ms. Silvers-No; Mr. Steinhauer-No; Mr. Wrigley-No; Mr. Faulkner-No. Variance denied.

Public hearing adjourned: 7:46 pm.

4. Old Business

No further discussion.

5. Discussion

Attorney Connolly provided information concerning the outcome of the lawsuit brought against the Town of Southport by Mr. Ring concerning chickens on his property. Attorney Connolly advised the court dismissed the litigation based upon the timeliness of the filing; the parties had thirty (30) days to file their complaint, they filed in fifty five (55) days.

Mr. Rocchi advised he can now send a cease and desist order.

Discussion continued about the importance of consistency in the Board’s decisions and the concern about setting a precedent.

The Board also discussed training that was held last month at Corning Community College and specifically the explanations of legal decisions.

Mr. Steinhauer advised he would be moving to Hoffman Street in a month, so he would no longer be eligible to serve on the Southport ZBA. A new member will be sought.

6. Adjournment

Ms. Silvers made a motion to adjourn. Mr. Steinhauer seconded the motion. Unanimous vote yes to adjourn.

Meeting adjourned: 7:51 pm.

Original on File: Town Clerk,

Copy: Town Supervisor Town Attorney Town Code Enforcement Officer
Zoning Board of Appeals Town Board Town Planning Board
Minutes 4/20/2022 to: Jose Lopez, II, 511 Jefferson Street, Elmira, NY 14904

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

**RESOLUTIONS
2022**

Resolution No. 8

AREA VARIANCE DENIED

PROPERTY:	TAX MAP NO. 128.00-1-4 COMMONLY KNOWN AS 464 CHRISTIAN HOLLOW ROAD	ZONED: AR PINE CITY, NY 14871
APPLICANT:	JOSE LOPEZ, II 511 JEFFERSON STREET	ELMIRA, NY 14904
OWNER:	JAN LOPEZ, II 511 JEFFERSON STREET	ELMIRA, NY 14904
RESOLUTION:	STEINHAUER	SECONDED: SILVERS

WHEREAS, Jose Lopez, II, 511 Jefferson Street, Elmira, NY 14904, applied for an area variance to build an addition on the back of his house within fifty feet (50') of the riparian buffer, Section 525-126-Stream Protection, and an area variance to build an addition on to the back of the house within the Minimum Rear Yard Requirements (Setbacks) of forty feet (40') as per Section 525-24-Bulk Density Control Schedule at 464 Christian Hollow Road, Pine City, NY 14871, in an AR Zone, as per Town Code, Town of Southport, County of Chemung. The property is located in an AR zone and is commonly known as 464 Christian Hollow Road, Pine City, NY 14871, Tax Parcel 128.00-1-4, and

WHEREAS, the Town of Southport Zoning Board of Appeals held a hearing on April 20, 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 two public comments in favor of 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 should be denied to allow for an addition on the back of this house within fifty feet (50') of the riparian buffer and an area variance to build an addition on the back of the house within the minimum rear yard setbacks of forty feet (40'), and

NOW THEREFORE BE IT RESOLVED the area variance is denied to Jose Lopez, II, 511 Jefferson Street, Elmira, NY 14904 with respect to 464 Christian Hollow Road, Pine City, NY 14871, Tax Map 128.00-1-4 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, Silvers, Steinhauer, Wrigley, Chairman Faulkner
Carried.
April 20, 2022