

ZONING BOARD MEETING  
TUESDAY – DECEMBER 27, 2011  
ZONING BOARD  
7:00 P.M. – TOWN HALL – 1529 NYS RTE 12  
BINGHAMTON – NEW YORK – 13901

PRESENT: Mr. Donald L. Phillips, Chairman  
Messrs. Ruston, Waskie, Doolittle, Grannis, & DiMascio

ALSO PRESENT: Donald G. Walls, Esq. - Town Attorney  
Russ Hemedinger, Councilperson  
Thomas Geisenhof, Code Enforcement

The meeting convened at 7:00 p.m. at which time Mr. Phillips called the meeting to order and welcomed the audience. Mr. Ruston read a statement which explained how the Zoning Board members are appointed, along with the Board's functions, limitations and duties. Mr. Ruston noted that the reading of this statement not only informs the audience about the Zoning Board of Appeals, but it also reminds the Board members of their responsibilities. Mr. Ruston also read the Notices of Publication for each case, which was duly published, as required by law, and as evidenced by Affidavits of Publication received and placed on file.

APPROVAL OF THE MINUTES

- Approval of the November 22, 2011, Zoning Board Meeting.

A motion was made by Mr. Doolittle, seconded by Mr. Waskie to approve the Minutes of the November 22, 2011, Regular Meeting.

ROLL CALL: AYES – 5 NAYS – 0

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At this time Mr. Ruston, ZBA Member, wanted the Board to know that he would be recusing himself from the Gregory Patinka application.

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AMENDED APPLICATION

- GREGORY J. PATINKA, 16 S. Morningside Dr.- TM#128.11-6-20.1 – Amended Area Variance for a driveway with less than required side yard setback from 10' to 0' in a Residential zone.

A motion was made by Mr. Doolittle, seconded by Mr. Grannis and unanimously carried to accept this amended application for an Area Variance for a driveway with less than required side yard setback from 10' to 0' in a residential zone and schedule a Public Hearing to be held on December 27, 2011, or as soon as the matter may be heard.

ROLL CALL:           AYES - 5           NAYS - 0

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PUBLIC HEARING

- GREGORY J. PATINKA, 16 S. Morningside Dr.- TM#128.11-6-20.1 – Amended Area Variance for a driveway with less than required side yard setback from 10' to 0' in a Residential zone.

Mr. Walls conducted the Public Hearing.

Mr. Walls asked Mr. Gregory Patinka or Mr. David Ruston if they wanted to address the Zoning Board at this time.

At this time David Ruston handed all the Board Members a power point presentation. Mr. Ruston read the presentation to the Board and audience. (paperwork attached to minutes)

Ms. Sarah Campbell, Hinman, Howard & Kattell, Attorney for Ronald G. & Sharon Fairs, 14 S. Morningside Dr. Her clients reside adjacent to the applicant's property. They are against this area variance. The applicant has requested a 100% variance for a driveway setback from 10' to 0'. This violates Section 73-44 of the Town's zoning law, which was amended in 2008. The Town Board and Planning Board changed the zoning law with regards to the driveway setback (10' from the property line).

In submitting this substantial area variance request we respectfully submit to the Board that the balancing test leads to denial. First, material undesirable change would be produced to the character of the neighborhood, and substantial detriment to my client's property with the granting of this variance. The Fairs have improved their property on the reliance of the zoning laws. These laws are in place to protect the Town of Chenango residence. They are a guide to what values the Town feels are important.

The Town feels that a setback requirement for a driveway is important to its resident's quality of life. Town of Chenango is one of the few towns that have a setback driveway law.

The Zoning Board of Appeals was created to allow minor relief from the Town's zoning laws. The variances would allow minimal changes to neighbors and neighborhoods. Unfortunately,

the application before the Board is not a minor change – it's substantial.

Together with the existing paved driveway on the west side and with the proposed driveway nearly 40% of the front of the house would result in pavement. This would give the property a commercial appearance, which would be completely out of character for this residentially zoned area.

The applicant's 0' setback would abut my client's legally existing driveway, resulting in two driveways with a visual impact of 20' of asphalt. This would have the appearance of a commercial looking area and this is not found in the immediate area. This is why the driveway setback was created – to prohibit multiple driveway situations and require it to be broken up with green space to preserve the residential character of the area.

This application is definitely substantial – it couldn't be any greater – reduce the required setback by 100% and disregard the town wide standard that has been set.

This request has been completely self-created. The applicant purchased the property in September. Within weeks of the purchase, they submitted their initial application for a variance. The applicant's even indicated they couldn't access the rear portion of their property without a need for a variance.

The property they purchased has less than 3' on one side and 10' on the other. The applicant's should have known before they purchased. This is not a contractor looking for relief. They knew it would require relief and they still purchased. That by definition is a self-created hardship.

It is interesting to hear of the various alternatives that the applicant could do without requesting a variance. Since the applicant can achieve their goals by other means, the Zoning Board of Appeals will need to deny this variance.

Her clients have had a rough ride with the neighbor's variance request and are distraught and feel it should be denied. They are long time residence of their property and have never had problems with the neighbors. They have invested in and enjoyed the many positive changes to the area.

Unfortunately, the applicant's purchased property that can't legally accommodate the number of vehicles they own (three cars and an R.V.). The property can't support a two car garage with driveway and storage of a recreational vehicle without a 100% variance and would result in substantial change to the character of the neighborhood and the detriment to her client's property specifically and all nearby properties.

On behalf of her client she respectfully asks that the Board uphold the zoning law and deny the request for the area variance.

Mr. Fair's petition and photos are also being submitted to be placed in the applicant's file.

Mr. Les Plain, 15 S. Morningside Dr., there are reasons we have setback rules. The reasons for these rules are clear. He is against the driveway.

Rodney Whitacre, 21 N. Morningside Dr., the applicant's property abuts to his in the back. He purchased his house in June and doesn't want to see a parking lot when he looks out his porch. He would hate to see the existing trees and grass be removed. He did send an e-mail on 12/27/2011 and wants the Board to have a copy of his e-mail (attached).

Mr. Ronald Fairs, 14 S. Morningside Dr., resides next to Mr. Patinka. His property is about 25% larger than Mr. Patinka's. They have 83 front feet and Mr. Patinka has 67 front feet; which is the narrowest lot in the Morningside Heights area. That's why if Mr. Patinka paves this driveway he'd have 40% of his property paved. Most homes in the Heights have 75 front feet. There are people that currently park on their lawns or have gravel in their front yards, but what he didn't say are those cars are being parked parallel. Most of these driveways are existing – grandfathered in. No driveway variances have been approved in three or four years. When you drive around the area you will find driveways parallel to one another but none of them are on the property line. They will have 10' to 15' of green space between them. There is just 25' between my house and the applicant's. If the variance is approved 20' would be paved and on the property line.

He also when on to say that he is here representing the Morningside Heights area and many are here tonight.

Mr. James Page, 32 S. Morningside Dr., wanted to know how Mr. Patinka would be disposing of the snow since he said in his statement if his variance was approved he'd dispose of the snow. Would the now be pushed out to the street or on his lawn? He doesn't feel the driveway should be approved as it wouldn't fit into the neighborhood.

Mrs. Sherry Fairs, 14 S. Morningside Dr., the Zoning Board of Appeals are the guardians of the codes. We expect you to represent the people of the area. The people who signed the petition are the ones immediately affected.

Mrs. Theresa Outman, 18 S. Morningside Dr., understood that originally there were three variances being applied for. One of the variances – expand the existing garage – affected her directly, but thankfully these were withdrawn. The gentlemen next door seem very nice. I completely understand the aspects of not going to the zero line.

Mr. David Ruston, 16 S. Morningside Dr., we are not trying to be bad neighbors or rotten people. We care about the neighborhood as well. We haven't resided here for 30 years, but if we could communicate with the neighbors I feel a lot of this would have been avoided. Unfortunately, there is no communication, but I did try to reach out to them.

I want to address some of the statements by the attorney. I did say we could achieve this by alternate methods, but I felt they would be a detriment to the area. We can legally store our 30' R.V. and all our vehicles on the property without any variance what so ever. We can park them on the property line and access the rear of our property. We chose not to rut up our property and we are not doing anything so awful or out of the ordinary. We welcome input from others as we want to be good neighbors. The bigger picture is can we make improvements to our property? If we can't then maybe we'll rent it out and go buy something else.

Mr. Gregory Patinka, 16 S. Morningside Dr., the 40' of pavement in our first proposal, we tried to work with the neighbor. We spoke with the Town's code and he suggested we narrow it down to the least evasive. We changed the driveway with 2' .5" path with grass in the middle so it was not all paved. We changed it from asphalt to colored concrete to try to make it look like a path to the back yard.

Ms. Sarah Campbell, Hinman, Howard & Kattell, Attorney for Ronald G. & Sharon Fairs, 14 S. Morningside Dr., no one is looking to give the applicant's a hard time. The reality is the property is too small for the plans. This is the Zoning Board of Appeals not the Planning Board. The Planning Board did meet and they recommended denial of the variance. Once a variance is granted there is no power on how it's used. The Board must consider the criteria for the area variance. The applicant has stated that there are alternatives and the Board needs to take that into consideration.

Mr. Ronald Fairs, 14 S. Morningside Dr., had a question for the Board. If you approve this, how can the Board justify variance requests in the future in terms of setting precedence?

Mr. Walls closed the Public Hearing.

Mr. Thomas Geisenhof, Ordinance Office, recommends that since the applicant could build a garage and park a recreational vehicle in the rear yard regardless of the Board's decision, the Ordinance Office recommends that the Zoning Board of Appeals grant the area variance to allow a driveway with less than required 10' side yard setback to allow a suitable, rut free, driveway surface to facilitate the proposed use of the rear yard property. It is also recommended that the ZBA stipulate that no R.V. can be parked on this property.

Mr. Phillips, Chairman ZBA, wanted to know if the Board has the power to deny an R.V. on a property.

Mr. Walls explained that the Board can make it a condition within the motion.

Mr. Phillips read the following correspondence.

Town Planning Board recommends a negative advisory with the following reasons – violates current zoning requirements and the comprehensive plan, ordinance was

changed to protect the people from encroachment issues, variances are for relief from the current zoning, when the hardship has not been self created. The owners knew full well they would not be able to do this without a variance and it will change the neighborhood appearance.

Gent Engineering recommends approval and also recommends the pad be sloped up from the road to not intercept or re-direct roadside drainage.

Broome County Planning has reviewed the application and has not identified any significant countywide impacts associated with the project.

Petition from Ronald & Sherry Fairs – signatures from various neighbors.

Drainage Coordinator has reviewed the application and if a curb and/or road cut are necessary a permit is required. Also the new driveway must not disrupt the flow of water on the edge of the road.

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NEW BUSINESS

- THE HOCKEY SHOP – Lorton LLC – Anthony DeBellis – 1146 Upper Front St.- TM#128.08-1-7 – Application for a Use Variance for the expansion of a non-conforming use for a residential unit and an Area Variance for the side yard setback from 10’ to 2.79’.

RECOMMENDATION -

The Ordinance Office finds this application to be complete and would recommend the Board accept and schedule the Public Hearing for January 24, 2012.

A motion was made by Mr. Waskie, seconded by Mr. Doolittle, and unanimously carried to accept this application for a Use Variance for the expansion of a non-conforming use for a residential unit and schedule a Public Hearing to be held on January 24, 2012, or as soon as the matter may be heard.

ROLL CALL:           AYES - 5           NAYS – 0

A motion was made by Mr. Waskie, seconded by Mr. Doolittle, and unanimously carried to accept this application for an Area Variance for the side yard setback from 10’ to 2.79’ and schedule a Public Hearing to be held on January 24, 2012, or as soon as the matter may be heard.

ROLL CALL:           AYES - 5           NAYS – 0

VOTES ON PUBLIC HEARING

- GREGORY J. PATINKA, 16 S. Morningside Dr.- TM#128.11-6-20.1 – Amended Area Variance for a driveway with less than required side yard setback from 10’ to 0’ in a Residential zone.

A motion was made by Mr. Doolittle, seconded by Mr. Grannis, and unanimously carried to approve an amended Area Variance for a driveway with less than required side yard setback from 10’ to 0’ in a residential zone with the condition that no R.V., trailer or any self contained trailer be placed on the property.

ROLL CALL:            AYES - 2                    NAYS - 3                    RECUSE - 1

Mr. Phillips, Chairman ZBA, this is a rare situation – Mr. Fairs has his driveway on the property line and it’s a very beautiful property. Now we have locked out any newcomer. I understand the concerns out there because if a neighbor wanted to do the same as Mr. Patinka I’d be right where you (Fairs) is.

Mr. Doolittle, ZBA Member, noted that Mr. Patinka is willing to put in a concrete path. What I have a concern with is the 10’ side set back and 2’ overhang of the proposed garage in the rear. I see that the proposed garage has outlets for the R.V. to be parked along the one side of the garage.

Mr. Waskie, ZBA Member, this is a tough issue. There are solutions to the problem – could the drive be circular? You want to keep with the character of the area. It’s a catch 22. Didn’t have time to research but understand that the former owner sold some of his land to Mr. Fairs so he could make his driveway; thus locking the new owners out.

Mr. Phillips, Chairman ZBA, understands they want to build the garage in the rear but there’s a lot of soil in the back that needs to be removed. Do they plan on removing it?

Mr. David Ruston explained that the dirt would be hauled away but that’s not what the issue is right now – the driveway is.

Mr. Phillips, Chairman ZBA, asked each Board member to give their opinion about the proposed area variance.

Mr. DiMascio, ZBA Member, is torn. Looking at the properties understands both view points of each owner and wanting them to invest in their properties. We have zoning laws for a reason. I’m uncomfortable with this – the irony for me is you did buy a 5 pound property and are trying to put 10 pounds on it. I’m not being insensitive- this is a personal observation more than anything. I will have to vote no on this.

Mr. Gordon Grannis, ZBA Member, as far as expanding the other driveway – making it wider or the proposed driveway – to me it's the same amount of asphalt. I don't see which one is worse – to me they are both the same. As far as putting the proposed driveway in there will be problems with that. As of right now he's against it.

Mr. Fred Doolittle, ZBA Member, initially I was in favor of letting the driveway go in. They have made some concessions – not making it a full width of concrete but by putting strips of concrete in. What we are allowing would go all the way back. The driveway would be just the beginning as they plan on building a garage in the back. We've placed the condition on the variance (no R.V. etc.) but what's to prevent them from coming back for a variance on the R.V. He will be voting no on this application.

Mr. Phillips, Chairman ZBA, each case is decided individually based on its merits or demerits at that point. It has nothing to do with setting precedents. This Board never went with precedents. Each application is reviewed case by case, and the decision is based on the information this Board receives and reviews.

Mr. Ken Waskie, ZBA Member, it's been difficult – catch 22. Knowing that this can happen without a vote - they can have a mud track along the side of the house. They can expand the front driveway to the front door – it just takes away from the neighborhood. So it can happen no matter if the vote goes up or down. I will take the lesser of two evils and vote yes.

Mr. Don Phillips, Chairman ZBA, my feeling is what's the worst of two evils. They can still have the garage and then have a mud track; which is a lot less attractive to the Fairs. The fact we put the condition in – no R.V.- that's the only reason why I'm voting for it; even though there could be a double car garage out back – that's not our problem. I'm voting for it but it's a hard decision.

#### ADJOURNMENT

There being no further business before the Board, a motion was made by Mr. Waskie to adjourn the meeting at 8:10 p.m.

Respectfully submitted,

Nancy Schnurbusch,  
Recording Secretary

