

Meeting Minutes

Town of Binghamton Zoning Board of Appeals

Town of Binghamton Town Hall, 279 Park Ave., Binghamton, NY 13903

July 23, 2024 6:30 PM

6:31 PM: The members present participated in the quarterly training with the Planning Board. Presented by Attorney Gina Middleton, this evening's training was focused on FOIL.

The Zoning Board of Appeals meeting was called to order at 7:05 PM by Theresa Taro.

Members Present:

Kevin Olds

Meggan Olds, Secretary/Processor

Bob Strick

Theresa Taro, Chairperson

Gina Middleton, Attorney

Others present:

Elizabeth Rounds, Town Supervisor

Nick Pappas, Code Enforcement

Mike Donahue, Town Board

Carl Paugh, Resident

Mrs. Paugh, Resident

Pam Gray, Resident

1. Approval of revised 4/23/24 ZBA meeting minutes
2. **Public Hearing RE: Carl Paugh, 673 Park Ave., Binghamton, NY 13903**
 - a. Ms. Taro declared the hearing open at 7:05 PM, and Attorney Middleton asked if there were any residents or others who wished to speak. There being no speakers, the Board closed the hearing at 7:06 PM.
 - b. **Motion** by Kevin Olds and seconded by Bob Strick: The Town of Binghamton Zoning Board of Appeals declares itself the lead agency for purposes of SEQR review of the area variance application dated April 26, 2024 for property at 673 Park Ave., Binghamton, NY 13903. Vote: all in favor, none opposed, no abstentions
 - c. **Motion** by Bob Strick and seconded by Kevin Olds: The Town of Binghamton Zoning Board of Appeals declares the area variance application dated April 26, 2024 as a Type II action for purposes of the SEQR review requiring no further SEQR action. Vote: all in favor, none opposed, no abstentions
 - d. Comments from the applicant: Mr. Carl Paugh spoke, stating he would like to build a garage. The right side of the property is restricted due to the property line being so close, and the rear of the home contains the well and a hill. To the left of the home is the sand mound filter and well line. He is requesting this variance to allow the garage to sit in front of the home, but it would be 140 feet from the road and obscured from view by a line of trees. Electric lines, an alarm

system, and a shed would need to be moved without the variance. Mrs. Paugh added that it would not restrict traffic on Park Ave.

- e. Attorney Middleton clarified the Town Code statute: Chapter 240, attachment 1, part 1, section 10, which states that a garage must be placed behind the home.
- f. Code Officer Pappas described the site plan, including information about a creek on the property, which created an additional barrier. He also clarified that the garage would be placed where cars are currently parked. When asked Attorney Middleton if any type of construction could avoid the variance, Mr. Pappas explained that this is not possible in his professional opinion.
- g. Questions from the ZBA
 - i. K. Olds - can the driveway cross the leach field? - Mr. Pappas: no
 - ii. K. Olds - Can the driveway be placed close to the trees and allow for driving to the back of the house? - Mr. Pappas and Mr. Paugh: no
 - iii. K. Olds - the building looks as if it will be commercial - wants to assure it will not be uncharacteristic
 - iv. B. Strick - the precedent is not changing, this is an exception and is not unsightly
- h. Attorney Middleton: please note that there is a statement on the 239 review from Broome County that there is concern over impacts to the current sewer system. The county states that if any damage is done to the system, the Broome County Board of Health must be notified.
- i. Area Variance Requirement Review by Attorney Middleton and Discussion by Board: Attorney Middleton explained that there are 5 factors which must be considered when reviewing a request for an area variance.
 - 1. *Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.*
 - a. M Olds - tree line mitigates visual impact
 - b. B Strict - tree line and setback mitigate visual impact
 - c. T Taro - the neighborhood is rural and there are no very close properties
 - d. G Middleton - garage is characteristic of residential districts
 - e. Board determined it does not change the character of the neighborhood
 - 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..*
 - a. B Strict quoted Pappas' recommendation that there is not another viable option based on the design of the property and inability to drive over portions of it, and the location of the shed, electrical service, well, etc.
 - b. Board determined it cannot be achieved by an alternative
 - 3. *Whether the requested area variance is substantial.*
 - a. Attorney Middleton - this is usually done based on a percentage when based on a setback, however, this is request is to build in front, therefore it is a 100% variance
 - b. Board determined this is substantial because it is a 100% variance
 - 4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*
 - a. M Olds recommended that if a motion is made for the variance, it include a condition that the Paughs must contact the County Health Department should the septic system be damaged
 - b. M Olds - asked residents to clarify that this is for non-commercial personal use, which they did
 - c. Board determined this does not have an adverse impact on the physical condition or environmental conditions

5. *Whether the alleged difficulty was self- created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.*

- a. The Paughs purchased the home after it was constructed, with the current items already on the property
- b. Board determined this is still considered self-created, but at a lesser degree because the buildings and utilities were already constructed at the time of purchase

j. **Motion** by Meggan Olds and seconded by Kevin Olds: The Town of Binghamton Zoning Board of Appeals approves the area variance application dated April 26, 2024 for the property at 673 Park Ave., Binghamton, NY 13903 as requested with the condition that the Broome County Health Department is contacted if the present septic system sustains any damage. Vote: all in favor, none opposed, no abstentions

3. **Public Hearing RE: Pam Gray, 3208 Maxian Rd., Binghamton, NY 13903**

- a. Ms. Taro declared the hearing open at 7:27 PM, and Attorney Middleton asked if there were any residents or others who wished to speak. There being no speakers, the Board closed the meeting at 7:28 PM.
- b. Attorney Middleton clarified that the request is only for a single family home.
- c. **Motion** by Kevin Olds and seconded by Bob Strick: The Town of Binghamton Zoning Board of Appeals declares itself the lead agency for purposes of SEQR review of the area variance application dated June 20, 2024 for property at 3208 Maxian Rd., Binghamton, NY 13903. Vote: all in favor, none opposed, no abstentions
- d. **Motion** by Bob Strick and seconded by Theresa Taro: The Town of Binghamton Zoning Board of Appeals declares the area variance application dated June 20, 2024 for property at 3208 Maxian Rd., Binghamton, NY 13903 as a Type II action for purposes of the SEQR review requiring no further SEQR action. Vote: all in favor, none opposed, no abstentions
- e. Question from Kevin Olds: What does it mean that it requires no further SEQR action?
 - i. Attorney Middleton: There are 3 types of SEQR action:
 - 1. Type I: requires extensive review, as it may have an impact - that's the long form
 - 2. Type II: there is inherently assumed no substantial impact, and therefore a SEQR review is not required, and neither is the long or short form
 - 3. Unlisted: may have an impact, and requires the short form
- f. Comments from the applicant: Pamela (Rosen) Gray explained that the property was purchased in the 1960's by her father to build the ski resort. One piece from this property that she now owns borders Maxian Rd. Ms. Gray wants to sell it, but wants assurance that if sold, it is a buildable lot. She also asked about the County's eminent domain of the ownership of the strip next to it. Middleton clarified that this piece is not part of the 1.13 acres, and is owned by Broome County.
- g. Questions from and discussion with the ZBA
 - i. T Taro - does the parcel have at least 150 feet of road frontage? - yes
 - ii. N Pappas - this piece was originally broken into this lot before the town's comprehensive plan required 2 acre lots for private-septic building lots
 - iii. P Gray and B Strick - Having the bordering county lots will help assure the density of homes stays low
 - iv. K Olds - Would a 239 and site plan be required before building on the lot? Attorney Middleton clarified that if someone decided to build on the lot, they would still need a 239 review, a part II SEQR, and a site plan - to go through the whole permitting process. Right now, the county's response implies a home is ready to be built, and they are not recognizing that this is just to sell the lot. M Olds thought a house was planned right now.

- v. Attorney Middleton noted that this variance will remain with the parcel, even when sold.
- vi. K Olds asked for clarification that the buyer would need to go through the full review before building, and that we as a town are just agreeing that it can be built on if that review is successfully completed, despite the lot being under 2 acres. Attorney Middleton stated that this is correct - the purchaser must still meet all other requirements for building. The town is only waving the 2-acre requirement.
- vii. N Pappas clarified that the town will not give a building permit without all appropriate approvals, including from the county.
- h. P Gray - how do I tell the buyer that the parcel can be built upon? Attorney Middleton - you can tell them that it has been approved as a buildable lot by the Town of Binghamton, but that all county and other requirements still need to be adhered to. You can provide them with a copy of these meeting minutes, which will be posted on the town's website.
- i. Area Variance Requirement Review by Attorney Middleton and Discussion by Board: Attorney Middleton reviewed that there are 5 factors which must be considered when reviewing a request for an area variance.
 - 1. *Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.*
 - a. Board determined that this does not change the character, as a single family home is consistent with other neighborhood residences. Also, the presence of the county park next door alleviates the likelihood of building density.
 - 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.*
 - a. Board determined it cannot be achieved by an alternative because the lot was created before the current 2-acre lot zoning, and because it is surrounded by government property.
 - 3. *Whether the requested area variance is substantial.*
 - a. The board determined this is substantial because it is going from 2 down to 1.13 acres (approximately 46%), which is over 25% of the whole.
 - 4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*
 - a. The board determined this will not have an adverse impact. Creating a building at this time is not an issue - only if this is a buildable lot.
 - b. Attorney Middleton: noted on record that the board had a discussion regarding the site plan and the county's concern. The actual build is not an issue at this time - only that there can be construction on the lot.
 - 5. *Whether the alleged difficulty was self- created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.*
 - a. The board determined this Issue was not self created. The lot was willed to Ms. Gray before the current comprehensive plan with the 2-acre requirement was created.
 - b. Attorney Middleton reiterated that this is only a variance from the Town of Binghamton allowing for construction of a residential building on less than 2 acres, but that all county and other governmental requirements remain.
- j. **Motion** by Kevin Olds and seconded by Meggan Olds: The Town of Binghamton Zoning Board of Appeals approves the area variance application dated June 20, 2024 for the property at 3208 Maxian Rd., Binghamton, NY 13903 as requested. Vote: all in favor, none opposed, no abstentions

- k. Clarification by N Pappas that while this variance remains with the property, the construction variance requested by the Paughs is only good for construction to begin within one year of variance approval.
4. Other
- a. Theresa Taro reviewed training hours
 - b. Theresa Taro passed information to Meggan Olds, who will be taking over as ZBA Chairperson

Adjournment:

Motion to adjourn was made by TheresaTaro, seconded by Meggan Olds
All in favor

Meeting adjourned at 7:44 PM.

Respectfully submitted,
Meggan Olds, ZBA Secretary/Processor