

**TOWN OF KIRKWOOD
ZONING BOARD OF APPEALS**

May 18, 2020

A Public Hearing was held on May 18, 2020 at 7:00 p.m. via Zoom Video Conference on the application of Craig J. Santasiero regarding property located at 419 Old State Road in the Town of Kirkwood known as Tax Map No. 129.15-1-11 and located in a Residence R1 District, for an area variance to erect a 30 ft. X 60 ft. pole barn for storage of vehicles, tools, lawn care equipment, and miscellaneous items.

Present: Duane Travis, Chairman
Mike Maciak, Member
Ed Egan, Member – Joined at 7:25 PM
Bruce Nemcek, Member
Mark Latini, Associate Member

Other Present: Keegan Coughlin, Attorney
Chad Moran, Code Enforcement Officer

Absent: Cyndi French, Member

Chairman Travis called the meeting to order at 7:05 pm.

APPROVAL OF MINUTES:

Motion by Mike Maciak and second by Bruce Nemcek to approve the minutes of the March 16, 2020 meeting as submitted. All voted in favor. Motion carried.

PUBLIC HEARING:

Chairman Travis read the notice of public hearing and commented that we have the affidavits of posting by the Town Clerk on the sign board, the affidavits of publication in the Press & Sun Bulletin and the Country Courier, and affidavits of service by mail to property owners within 500 feet. The Broome County Planning Department 239 was prepared and comments were received. Chairman Travis read the following into the record: The Planning Department has reviewed the above-cited case and has not identified any significant countywide or inter-community impacts associated with the proposed project. This was also routed to the Broome County Department of Public Works (DPW) for review. They had the following comments: It appears that the proposed garage will be a distance from the existing home and driveway. The applicant should be aware that any work done in the County ROW including any new driveway will require a Highways Work Permit issued by the Broome County Highway Department. Also, please be advised that construction of a new driveway should be compliant with the New York State Department of Transportation Highway Design Standards.

Chairman Travis asked if this requires an EAF and Mr. Coughlin stated this will be a Type II action for SEQR because it is an area variance in a residential property.

Chairman Travis opened the public hearing at 7:12 pm.

Mr. Santasiero explained there is an existing driveway on the property now, which is part of the reason he picked that location. Chairman Travis stated he noticed a sluice pipe there. Mr. Santasiero stated someone from the County was there and said if they were going to use that and they were going to, concrete or blacktop over it, they would like to be informed so they can replace the pipe with a more current pipe.

Hearing no other comments, Chairman Travis closed the public hearings at 7:14 pm.

Mike Maciak asked if it was going to the right of the house, which is 419 and Mr. Santasiero stated yes, to the far right over by the hedge row, toward the next house up. He added it would be 50-60 feet this side of the hedge row. That hedge row is the property line.

Chad Moran stated for the record he does have a temporary building permit open for the storage container. When the garage goes in the contents of that will go into the pole barn and the storage container will be removed.

Mike Maciak asked if the garage doors on the pole barn would be facing the house and Mr. Santasiero stated yes. You would pull into the driveway off the road and turn to the right and go directly into the overhead door.

Duane Travis asked on the application he was stating that there is a wet area there which is the reason why you went 20 feet closer to the road than the house is and Mr. Santasiero stated yes and explained that if you come up off the driveway roughly 90 feet there is a large wet spot where two springs actually meet. He was trying to get down below all the moisture.

Chairman Travis reviewed the Area Variance criteria as follows:

1. Whether benefit can be achieved by other means feasible to applicant? Board: No. Due to the two springs that feed into there. This is the only area that is dry enough to put it in there.
2. Undesirable change in neighborhood character or to nearby properties? Board: No.
3. Whether the request is substantial? Board: No. The pole barn will be 60 ft. off the road and the front of the house is 80 ft. off the road. Percentage wise it is approximately 25 %.
4. Whether the request will have adverse physical or environmental effects? Board: No.
5. Whether alleged difficulty is self-created? Board: No. Based on the fact that there are springs on the property.

Motion by Mike Maciak and second by Bruce Nemcek to grant the area variance with the condition that the 20 ft. trailer be removed when the project is done.

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| Roll Call Vote: | Mike Maciak | Yes |
| | Bruce Nemcek | Yes |
| | Mark Latini | Yes |
| | Chairman Travis | Yes |

Motion Carried.

Mr. Santasiero wanted to go on record saying that he appreciates the help he received from Chad, explaining why he had to do this and what he had to do. He has been very helpful.

A Public Hearing was held on May 18, 2020 at 7:00 PM via Zoom Video Conference on the application of Andrew J. Schepis regarding property located at 624 Colesville Road in the Town of Kirkwood, Tax Map # 147.01-2-13.2 and located in a Residence R1 District for an area variance to construct a 28 ft. X 32 ft. detached garage in front of the house.

Chairman Travis read the notice of public hearing and commented that we have the affidavits of posting by the Town Clerk on the sign board, the affidavits of publication in the Press & Sun Bulletin and the Country Courier, and affidavits of service by mail to property owners within 500 feet. The Broome County Planning Department 239 was prepared and comments were received. Chairman Travis read the following into the record: The Planning Department has reviewed the above-cited case and has not identified any significant countywide or inter-community impacts associated with the proposed project. This was also routed to the Broome County Department of Public Works (DPW) for review and they have no comments.

Chairman Travis asked if this is a Type II and Mr. Coughlin stated yes, this will be a Type II. Chairman Travis stated no EAF is required.

Chairman Travis opened the public hearing at 7:28 PM.

Mr. Tim Rogers, Colesville Road, stated he wasn't necessarily coming to this in opposition, just have a few questions and concerns. As a fourth generation Brookvale resident and living here pretty much all his life he has seen some things go on that he regrets not attending other hearings. He asked if the building permit isn't granted until after the hearing on the variance and Chairman Travis stated yes, that is the normal process. He asked if the Town is aware that the site has already been developed and the foundation has been poured and Chad Moran stated yes. Mr. Rogers stated his main concern is the existing house already has an attached two car garage and asked what the intended use is going to be on the detached garage. Chad Moran explained he wanted to use it for overflow for his garage and his shed for his lawn equipment and things.

Mr. Rogers asked which way the doors will face in regards to the road and Mr. Schepis stated the doors will face toward the south. The north that faces your house will have no garage doors, no windows. Mr. Rogers asked if there will be additional lighting to light up the rear of the garage that would face his property and Mr. Schepis stated no and there is a church between the properties. Mr. Rogers stated the church is closer to the road and he is diagonally to his property. Mr. Rogers asked what recourse does a resident have if this building turns into something else in the future like turning it into a small business and Chad Moran explained he would need to call him and they would adjust the COO. If he wanted to change it to a business it would have to be rezoned, which probably won't happen.

Hearing no other comments, Chairman Travis closed the public hearing at 7:32 PM.

Mike Maciak stated he went to the site today, it is a clean site, and it looks like he is waiting to set the building.

Bruce Nemcek stated it looks to be a long distance from the property line and Chairman Travis agreed, about 200 feet off the road frontage.

Chairman Travis commented if you are facing the property from the road the extreme right-hand side has a steep embankment which would not be appropriate to build anything on. The rear of the property and the left-hand side has a large wooded area and an uphill elevation which would be costly to try to excavate to put a garage there. The level area of the property is in front of the house, which he where he plans to put it.

Chairman Travis reviewed the Area Variance criteria as follows:

1. Whether benefit can be achieved by other means feasible to applicant? Board: No. Due to the topography of the land and the mount of excavation.
2. Undesirable change in neighborhood character or to nearby properties? Board: No.
3. Whether the request is substantial? Board: No.
4. Whether the request will have adverse physical or environmental effects? Board: No.
5. Whether alleged difficulty is self-created? Board: No. Due to the topography.

Motion by Ed Egan and second by Mike Maciak to grant the area variance with the condition that no lights be installed off the back of the building.

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| Roll Call Vote: | Mike Maciak | Yes |
| | Bruce Nemcek | Yes |
| | Ed Egan | Yes |
| | Mark Latini | Yes |
| | Chairman Travis | Yes |

Motion Carried.

A Public Hearing was held on May 18, 2020 at 7:00 PM via Zoom Video Conference on the application of Francis T. French regarding property located at 374 Foley Road in the Town of Kirkwood, Tax Map # 163.02-1-22 and located in a Residence R1 District for a use variance for three 48 ft. X 8.5 ft. trailer located on the property that are licensed with no truck to haul them.

Chairman Travis read the notice of public hearing and commented that we have the affidavits of posting by the Town Clerk on the sign board, the affidavits of publication in the Press & Sun Bulletin and the Country Courier, and affidavits of service by mail to property owners within 500 feet. The Broome County Planning Department 239 was prepared and comments were received. Chairman Travis read the following into the record: The Planning Department has reviewed the above-cited case and has not identified any significant countywide or inter-community impacts associated with the proposed project. We make no determination as to whether the applicant meets the four tests of a use variance. However, we have the following comments: The project site is located partially within the Preliminary FEMA Special flood Hazard Area. The Town Zoning Board of Appeals should exercise caution in approving a project located within the Special Flood Hazard Area. The applicant should be informed of the risks of placing the project within the Special Flood Hazard Area. The Town should ensure that the trailers do not contain hazardous material storage. The case file was routed to the New York State Department of Transportation for review, which had the following comment: We have reviewed the materials for the above-referenced proposal. Please advise the applicant that nothing may be placed within the State right-of-way. The applicant may contact the NYSDOT Broome Residency at 607-775-0522 if assistance is needed in locating the highway boundary.

Chairman Travis asked if an EAF is needed and Mr. Coughlin stated it will although we don't necessarily have to do that tonight. We are just here on public hearing comments and going to keep it open.

Chairman Travis opened the public hearing at 7:45 PM.

Mr. Peter Contro, 355 Foley Road, asked who started this and Chad Moran stated he did. Mr. Contro asked if he had noticed the trailers there and Chad Moran explained they have been there for some time and trying to get him to move them. Mr. Contro asked if the town wants them to be moved out and Chad Moran stated yes. Mr. Contro asked if that is in the code and Chad Moran stated yes. Mr. Contro stated if that is in the code that is what should be done.

Mr. and Mrs. Devo, 377 Foley Road, stated the biggest thing is they have been there and they have added to them. There use to be just one, then another showed up and then another one. It is up to the Town but if it is the code they should be removed. They agree with that. They have no other issues as long as there is no business being run out of them. It would be nice to not have them there. The esthetics portion of it also. He has a very large garage plus a two-car attached garage and not sure what three trailers are for.

Chairman Travis explained there was an initiative in 2016 to put together a new plan for the Town of Kirkwood. Part of that was better property maintenance and trying to keep up with things as this. The Town of Kirkwood wants to clean up where it can and make it nicer for the citizens. He thanked everyone for their input and stated we are going to hold this over until next month so we can get input from Mr. French. Mrs. Devo asked if they would get another letter or are they invited and Chairman Travis stated they were invited to that meeting. That meeting will be Monday, June 15th at 7 PM. We don't know if that will be another Zoom meeting or at the Town Hall. That will be published on the Town's website. Mike Maciak asked what happens if Mr. French doesn't show up and Mr. Coughlin explained that at that point the board could close the public hearing and decide the application on the paper submissions or they could hold it over again and see if he is going to come, which would be the board's decision. Mike Maciak asked if it is held over they have to have a new public hearing and Mr. Coughlin stated not necessarily, depending on how long it is held over for. If we did it more than one month his recommendation would be to do another advertisement. For next month you won't need to re-advertise unless the town wants to.

Motion by Ed Egan and second by Bruce Nemcek to hold this over for one month.

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| Roll Call Vote: | Mike Maciak | Yes |
| | Bruce Nemcek | Yes |
| | Ed Egan | Yes |
| | Mark Latini | Yes |
| | Chairman Travis | Yes |

Motion Carried.

A Public Hearing was held on May 18, 2020 at 7:00 PM via Zoom Video Conference on the application of First Light c/o NTP Wireless regarding property located at 53 Francis Street in the Town of Kirkwood, Tax Map # 162.15-1-7 and located in a Residence Multi District for a special use permit for installation of a 9 ft tall, 12 ft. X 20 ft. prefabricated shelter to increase data processing speeds from fiber optics lines currently existing in the right-of-way; the lease compound is 50 ft. X 50 ft. and is unmanned.

Chairman Travis read the notice of public hearing and commented that we have the affidavits of posting by the Town Clerk on the sign board, the affidavits of publication in the Press & Sun Bulletin and the Country Courier, and affidavits of service by mail to property owners within 500 feet. The Broome County Planning Department 239 was prepared and comments were received. Chairman Travis read the following into the record: The Planning Department has reviewed the above-cited case and has not identified any significant countywide or inter-community impacts associated with the proposed project. However, we have the following comments:

The project site is located partially within the Preliminary FEMA Special Flood Area. The Town Zoning Board of Appeals should exercise caution in approving a project located within the Special Flood Hazard Area. The applicant should be informed of the risks of placing the project within the Special Flood Hazard Area. The Town should ensure that the project complies with the appropriate laws, receives the appropriate permits for the diesel fuel storage tank and generators and includes a spill prevention plan and chemical data sheets, as applicable. See Broome County Health Department comments. The SEQR response to question 20 is yes but no spill information is provided and the statement provided is not entirely clear. These discrepancies should be addressed. The case file was routed to the following agencies for review: New York State Department of Transportation and the Broome County Health Department. Enclosed are comments from the BCHD that need to be addressed. NYSDOT had no comments. Health Department comments: The applicant should consider secondary containment for the diesel fuel storage unit to prevent accidental spills or leaks from contaminating local soils and groundwater. This may already be built into the storage tank.

Chairman Travis opened the public hearing at 7:54 PM.

Chairman Travis commented that Chad Moran had stated that the project is not located in the Aquifer Protection District and Chad Moran agreed. Chairman Travis commented that he also said that the generator runs on battery and not fuel and Chad Moran said he wasn't 100% sure.

Erin Liesenfeld who is representing First Light stated she would find out the exact specs and provide them. Chad Moran explained that if it was diesel run it would have the protection it had to but he thinks it went to the battery backup. After reviewing comments from Broome County Chad Moran stated it is going to be a 50-kW diesel generator with a 520-gallon belly tank. Chad added they will probably do the battery backup. The generator has a full capacity diesel protection. Chairman Travis asked if it would meet the noise levels and Chad stated yes.

Chairman Travis closed the public hearing at 8:00 PM.

Referring to Part 1 of the SEQR Chairman Travis stated that Broome County asked about question #20 regarding remediation. Mr. Coughlin explained that he thinks the reason they are asking is the question asked if it has been subject to or an adjoining property and the answer is yes and it says it is not currently undergoing remediation. Mr. Coughlin asked if the site was subject to remediation in the past that has been completed and Ms. Liesenfeld stated she will seek the answer for that and will provide that to you. Chad Moran stated he thinks that when the bigger firms do their research it may have popped up once before that something had been done and they are saying no nothing is being done that they know of now. It may be a default answer for whatever avenue they use to do this form. Mr. Coughlin stated that assuming the rest of the SEQR review goes well we can give a conditional negative declaration pending further explanation on #20 and if we need to revoke that we can do that.

At this point Mr. Coughlin reviewed Part 2 of the Short Environmental Assessment Form with the Board and their answers are included in the file.

Motion by Mike Maciak and second by Ed Egan to declare a Negative Declaration for the purposes of SEQR on the condition that we get more explanation on #20 with regards to any past remediation and if there is ongoing remediation or any issues the ZBA would reconvene and consider that impact on the environment.

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| Roll Call Vote: | Mike Maciak | Yes |
| | Bruce Nemcek | Yes |
| | Ed Egan | Yes |
| | Mark Latini | Yes |
| | Chairman Travis | Yes |

Motion Carried.

Mr. Coughlin review the standards for the Special Permit and stated there is no factor test. Chairman Travis commented from what was sent in they are meeting all the factors including fencing and landscaping. The only time vehicles would be there would be for repair purposes. Chad Moran stated vehicles would be 1-2 times per month.

Hearing no other comments, the public hearing was closed at 8:14 PM.

Motion by Ed Egan and second by Bruce Nemcek to grant the special permit.

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| Roll Call Vote: | Mike Maciak | Yes |
| | Bruce Nemcek | Yes |
| | Ed Egan | Yes |
| | Mark Latini | Yes |
| | Chairman Travis | Yes |

Motion Carried.

Motion by Mike Maciak and second by Ed Egan to adjourn the meeting. The meeting was adjourned at 8:17 pm.

Respectfully Submitted,

Mary Kay Sullivan, Secretary
Zoning Board of Appeals