

TOWN OF KIRKWOOD ZONING BOARD OF APPEALS

August 16, 2021

A Zoning Board of Appeals meeting was held on August 16, 2021 at 7:00 p.m. at the Joseph A. Griffin Town Hall and via Zoom Video Conference on the application of Brian and Christina Hennings regarding property located at 1618 US Route 11 in the Town of Kirkwood known as Tax Map No. 195.13-1-33 and located in an Agricultural/Rural Residence District, for an Area Variance to allow placement of a mobile home on property that is less than the required size.

Present: Duane Travis, Chairman
Ed Egan, Member
Cyndi French, Member
Bruce Nemcek, Member
Mike Maciak, Member

Other Present: Chad Moran, Building & Code Inspector
Keegan Coughlin, Attorney
Marc Latini, Associate Member

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

APPROVAL OF MINUTES:

Motion by Mike Maciak and seconded by Ed Egan to approve the minutes of the June 21, 2021 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. This was submitted to the Broome County Planning Department for a 239 m review. 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, the Town should ensure that the site plan can meet the New York State Department of Transportation requirements for driveway design and the Broome County Health Department requirements for septic systems. The site plan should be revised to show the driveway designed in accordance with NYSDOT standards (see NYSDOT comments), area disturbance, drainage, and required and proposed setbacks with other dimensions, and provide assurances that the septic system will be designed in accordance with BCHD requirements (see BCHD comments.) The correct response to SEQR question 10 (water supply) and the complete response to SEQR question 11 (wastewater treatment) should be provided.

Chairman Travis read the following from the Broome County Health Department: Applicant will need to obtain a Sewage Disposal Construction Permit with the Broome County Health Department before beginning construction. Septic systems for new construction must be designed by a private engineer. Applicant should contact the Health Department's engineer, Creig Hebdon, at 607-778-2863 for more information.

Chairman Travis read the following from the NYS Department of Transportation: This project will require the applicant to obtain a Highway Work Permit from NYSDOT for the driveway construction prior to the commencement of any work within the State right-of-way. Please direct the applicant to contact the NYSDOT

Broome Residency at 607-775-0522 to apply for this permit. All new or existing driveway openings shall be designed and constructed or reconstructed in accordance with the NYSDOT Policy and Standards for the Design of Entrances to State Highways, which can be found at www.dot.ny.gov/permits. Nothing may be placed within the State or nearby railroad rights-of-way.

Chairman Travis opened the Public Hearing at 7:07 PM.

Sarah Campbell, an attorney from Hinman, Howard, & Kattell is representing the applicant. Mr. and Mr. Hennings were also present. Ms. Campbell explained this is a request to allow a mobile home to be placed on a lot in the agricultural residential district with less than the required 2 acres. The application indicated that the lot is .68 acres. The owner provided an updated survey from 2019 and they are now up .78 acres. Copies were provided to the Board. Also provided was the amended Part 1, second page of the SEQR documents indicated by the County that they would like modified which is dated and initialed by the change.

Ms. Campbell went on to say the area variance test is a balancing test which weighs the benefits of the applicant against the detriment to the health, safety and welfare of the neighborhood. Ms. Campbell reviewed the area variance with the Board as follows:

1. Undesirable change to the character in neighborhood or detriment to nearby properties? The property is sandwiched in between the railroad tracks and Route 11. The northern portion of the property is the widest portion and that is where the mobile home will be located. There are no direct neighbors across the street or to the south. There is a residential home to the north, which appears to be a modified mobile home. In terms of the larger neighborhood the single-family mobile home is consistent with the overall character of the single-family home that are located in the area. This would provide no detriment to the neighborhood or community.
2. Whether the benefit sought can be achieved by some method other than the area variance? This is an existing parcel. The parcel has not been modified and it exists at its current size. If a mobile home is not permitted on this lot nothing would be permitted because nothing will meet the minimum requirements. A single-family home is probably the least intense use you could place on a parcel.
3. Whether the request is substantial? That is one that she never answers, it is up to the Board's judgement from a 2-acre requirement to a .78-acre existing lot could be determined to be substantial. Fortunately, with an area variance analysis that is just one of the factors and you have to weight that balance.
4. Whether there is an adverse impact on the environment? The chairman read the 239 review in which they indicated there are no countywide impacts. The DOT will require a highway work permit for the driveway and the County health department regulations will have to be met with respect to a septic system. They are certainly willing to accept those conditions. Probably your code enforcement officer would require that anyways.
5. Whether the hardship was self-created? She respectfully submits that it was not. This property wasn't purchased. They have come before you to alleviate any concern and the property has not been modified to make it smaller than it already was. In weighing the benefit to the applicant for the grant of the variance against any detriment they respectfully submit the balance falls in favor in granting the variance relief.

Bruce Nemcek asked if there has ever been anything on that lot and Chad Moran stated there was a 2-story house, which burned down. Mrs. Hennings stated in the pictures Chad had shown her it was 1991.

Mr. Coughlin asked if it meets the other setbacks and Chad Moran explained yes, there is a three-foot window, nothing else could go in there. Mr. Coughlin asked if that is where they are going to put it and Mrs. Hennings stated yes.

Cyndi French asked about the water and Mrs. Hennings stated there is water there but no sewer, it will be a septic tank.

Bruce Nemcek asked is there are any setbacks as far as the railroad and Chad Moran explained it is from the center line of the rail back.

Mr. Coughlin asked if the pad is up to HUD standards and Ms. Campbell stated yes, it will be up to HUD standards. The home will be placed on the larger/wider part of the property.

Mr. Coughlin stated to the Board that their office is representing the seller on this deal and they believe it is a waivable conflict of interest because he is not the one applying here today. As long as the Board is ok with that we are good to go. The Board was ok with it.

Hearing no other comments, Chairman Travis closed the public hearing at 7:17 PM.

Chairman Travis asked if we needed to complete the SEQR and Mr. Coughlin stated no but asked if there was standing water on the property and Mr. and Mrs. Hennings stated no. Chad Moran added it is on a slope. Mr. Coughlin stated if there was a stream on the property the Board could consider doing it but they have the option because there were a couple of yes answers. It is a Type II action but you always have the option to treat it as an unlisted. As a general rule, residential area variances are a Type II so you would not need to further consider SEQR if the Board choose, unless you wanted to be extra cautious and go through Part 2 due to it being in the Federal Wetlands area. The Board agreed it was a Type II and not to proceed with the SEQR. The wetlands are located across the railroad tracks in the back of the house.

Chairman Travis reviewed the Short EAF Part 2 – Impact Assessment form with the Board Members and the Members answered no to all questions. A copy of the complete Short EAF is included in the file.

Motion by Ed Egan and Mike Maciak to issue a Negative Declaration for the purposes of SEQR and it was discussed the difference in the characteristics of this property with the neighboring wetlands and that is the reason the determination was made that it is not as it relates to the endangered species.

Roll Call Vote:	Mike Maciak	Yes
	Ed Egan	Yes
	Cyndi French	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion carried.

Chairman Travis reviewed the area variance criteria with the Board:

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

Mike Maciak asked if it would be on a pad, no cellar and Mrs. Hennings agreed, on a pad. There will be new skirting on the home.

Cyndi French asked if in the future they would want to build a garage and Mrs. Hennings stated it would be nice to but doesn't know if it is feasible. They will probably put a small shed on the property. Chad Moran stated 144 SF, 12X12 without a building permit and adhering to the setbacks.

Mr. Coughlin stated it would be appropriate to have the following conditions:

1. Driveway will be designed to NYSDOT standards.
2. The septic plan be approved by Broome County Department of Health.
3. A highway work permit will be required.

Motion by Cyndi French and seconded by Mike Maciak to grant the area variance with the following conditions:

1. Driveway will be designed to NYSDOT standards.
2. The septic plan be approved by Broome County Department of Health.
3. A highway work permit will be required.

Roll Call Vote:	Mike Maciak	Yes
	Ed Egan	Yes
	Cyndi French	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion carried.

Motion by Mike Maciak and seconded by Ed Egan to adjourn the meeting. The meeting was adjourned at 7:28 pm.

Respectfully Submitted,

Mary Kay Sullivan, Secretary
Zoning Board of Appeals