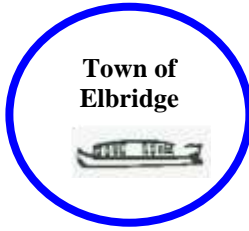


Town Of Elbridge Zoning Board of Appeals



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TOWN OF ELBRIDGE ZONING BOARD OF APPEALS Meeting Minutes/Hearings [May 15th, 2019](#)

MEMBERS PRESENT: Chairman Tim Gannon, Deputy Chairman Chris Beane, Joanne Spoto Decker, Bruce Foote, John Tambroni, Paige Boratko ZBA Secretary/Alternate, ZBA Attorney Scott Chatfield

ALSO PRESENT: Mr. Steven Johnson, Erick Conroy, TOE Planning Board Chairman Marc Macro, TOE C.E.O Howard Tanner

[Open meeting](#)

Introduction of the new T.O.E C.E.O. Howard Tanner

Chairman Tim Gannon called the meeting to order at 7:00 p.m. and after the Pledge of Allegiance; a motion was made by Chairman Timothy Gannon and seconded by Bruce Foote to open the hearing for Mr. Steven Johnson /589 State Rte. 5 in Elbridge NY. Chairman Timothy Gannon read the legal notice that was posted in the Post Standard news publication on 05/13/2019

[HEARING#2](#)

TM#038.-01-56.1)

Mr. Steven Johnson

589 State Rte. 5 W.

Elbridge New York 13060

2 Area Variances - Zoned – B-1

Pre-existing non-conforming residence

Prior Zoning R-2 1989

Chairman Timothy Gannon requested Mr. Johnson to come forward and explain to the board his reasons for his application. Mr. Johnson stated that he purchased the house in 1989 when the property was then zoned R-2. He recently (2016) merged together two neighboring lots creating one 2.11 acre lot which is now zoned B-1 since October of 2018. Mr. Johnson stated that he would like to construct a 30x40 pole barn. He is proposing a front yard setback of 50ft Chapter 30 section 35-C-3 requires a 75ft setback. His application is for a reduction of 25ft.

Tim Gannon: The hearing was originally stated as two area variances; after further review it appears that there is only one variance required which is on the front yard setback of 50 feet so what is the reason why the other area variance is no longer needed?

Howard Tanner: The residence becomes an allowed use in the B-1 zone. We were able to remove the second variance as the nonconforming use goes away. After further review with Scott of the new B-1 law which was just adopted; with site plan approval it becomes a legal entity as a residence assuming that in the B-1 district it meets the requirements of not more than 25% of commercial uses which it does. The pole barn is subject to site plan approval. The planning board can adjust where to place the barn. Essentially if this board grants the 25 ft. setback, he still has another board review to go to which is the planning board for site plan approval.

Tim Gannon: Is there verbage in the B-1 that mentions multiple outbuildings as there is another pre-existing outbuilding there?

Scott Chatfield: No, not that I am aware of, but the use of those buildings may be an issue. It is zoned as B-1 business so and the pre-existing buildings can be used for business purposes. If the use of the pre-existing outbuildings is used for residential

purposes, they would be subject to site plan approval unless the building was pre-existing nonconforming as the use. It would depend on what they're used for. When Mr. Johnson goes to the planning board for site plan approval, that building should be shown on their map including the location of the new building.

Tim Gannon: Mr. Johnson what are you planning on using this pre-existing building for?

Steve Johnson: it's for personal storage of lawn equipment and tools.

Chairman Timothy Gannon: asked the following questions:

Are there any other questions from the board?

None

Does the board have enough information to make a determination on all three issues?

Yes

Is there any one to speak in favor of or in opposition?

No one

Joanne Spoto Decker made a motion seconded by Deputy Chairman Chris Beane to close the hearing for Mr. Steven Johnson/589 State Rte. 5 Elbridge New York. It passed with all in favor at 7:20 p.m.

Open meeting

This application is not subject to O.C.P.B. GML-239 review and recommendations due to the T.O.E. exemption agreement involving residential accessory structures including sheds, storage buildings and garages dated 8/30/2016. After a brief discussion the Town of Elbridge Zoning Board of Appeals did a SEQR review for Mr. Steven Johnson for the area variances to be located at 589 State Rte. 5 Elbridge New York. A motion was made by Chairman Timothy Gannon seconded by Deputy Chairman Chris Beane to issue a:

X *Negative declaration* __ *Positive declaration*. It passed with 5 Aye(s) and 0 Nay(s) at 7:33 p.m.

Recorded Vote: (A = Aye, N = Nay)

J. Spoto Decker A, Chairman T. Gannon A, C. Beane A, B. Foote A, J. Tambroni A

Criteria Review: Area Variance - A Reduction of 25ft

The Board then applied the five Area Variance criteria one at a time for the all variances requested.

- 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; NO
- (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; NO
- (3) Whether the requested area variance is substantial; Yes
- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; NO
- (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; YES, But does not preclude the granting of variance.

ZBA DECISION VOTE:

A Reduction of 25ft from Chapter 30 section 35-C-3 requires a 75ft setback. A reduction of 25ft

Resolved:

It is the decision of the Town of Elbridge Zoning Board of Appeals that with the evidence presented as set forth in the findings of facts and with the review of the area variance Criteria that the relief petitioned for by Mr. Steven Johnson be granted with the following stipulation(s) of:

- 1) That the pole barn be placed no closer than 25ft of the right of way.

2) The applicant will need to meet with the Town of Elbridge Planning Board for site plan review and will be required to have his surveyor to show proper location of all building and actual distances since the “As Built” will be needed.

Chairman Timothy Gannon made a motion seconded by Deputy Chairman Chris Beane to:

Approve *Amend* *Deny* *other* *Special Permit* *Area Variance* *Use Variance* *Interpretation*

It passed with 5 Aye(s) and 0 Nay(s) at 7:38p.m.

Recorded Vote: (A = Aye, N = Nay)

J. Spoto Decker A, Chairman T. Gannon A, C. Beane A, B. Foote A, J. Tambroni A

A motion was made by Chairman Timothy Gannon and seconded by Bruce Foote to open the hearing for Mr. Jay Meyers/Meyers Management- Reef Restaurant located at 1161 Old Route 31 in Memphis NY. Chairman Timothy Gannon read the legal notice that was posted in the Post Standard on 05/13/2018 and then proceeded to read the denial letter from the T.O.E C.E.O Howard Tanner.

HEARING#2

(TM#024.-02-03.0)

Mr. Jay Meyers/Meyers Management- Reef Restaurant

1161 Old Rte 31

Memphis, NY 13112

Use Variance - Zoned – B-1/R-1

Mr. Meyers

This letter is to inform you I am denying your request for outdoor music at the above address. Outdoor music is not a use specifically permitted in your zoning district by chapter 30 section 35-b of the Town of Elbridge zoning law.

Also I would like to remind you the use of the deck and lawns for outdoor music was not a part of your original site plan and may require additional site plan approval.

If you have any questions feel free to contact this office. -Respectfully, Howard Tanner C.E.O.

ZBA Attorney Scott Chatfield: Now that that is on the record Mr. Chairman I would like to point out for the record that the code does not specifically permit or prohibit live outdoor music’s for properties owned in a B-1. The majority of this property is B-1 and in the letter dated April 1, 2019; the code enforcement officer ruled that outdoor music is not a permissible use. As a result, an application was made to this board for a use variance. The question of whether or not outdoor music is or is not permissible is not before this board.

No one has filed for interpretation of that ruling. That ruling made by the Code Enforcement Officer is binding by this board and everyone else. The applicant has chosen to appeal a use variance. I wanted that clarified so now you proceed with the normal use variance procedure.

I would also like it noted that the chairman has stated that the applicant is not present and no one is here to speak in favor of the application for use variance.

The Town of Elbridge ZBA has notified the adjacent municipalities of the Town of Lysander and The Town of Van Buren via electronic transmission to the Clerk of both townships that a hearing will be held for a use variance on a property that is within five hundred feet of their municipality. A response was received from both Townships.

O.C.P.B.GML-239 –Required

Onondaga County Recommendations: A Gml 239 was received by the O.C.P.B. and set for review at their April 24th, 2019 meeting.

The Onondaga County Planning Board referral has recommended several modifications and also included advisory notes.

Please see attached. OCPB Referral

OCPB Referral Case #: Z-19-94

NOW THEREFORE BE IT RESOLVED, that the Onondaga County Planning Board recommends the following MODIFICATION(S) to the proposed action prior to local board approval of the proposed action:

As this project has an approved site plan, any changes to the site should start with site plan review with the Planning Board to document any planned changes to the site, including location and scale of proposed performance areas, circulation, lighting, parking and/or access, etc. The Planning Board may then refer any variances necessary to the Zoning Board of Appeals and table site plan review until the variances are considered and granted, or not.

In any case, the Onondaga County Health Department and Onondaga County Department of Transportation require a site plan for their review of changes to the site, or its use. The Town must ensure any agency requirements or changes are reflected on the final approved site plan. Alternatively, any requirements of these agencies can be stated as a condition of approval. Per the Health Department, the plan must ensure the site will not negatively impact the existing septic system area. The Department of Transportation requires information on frequency, hours and scale of the proposed event space, and notes that the applicant still requires OCDOT permits in order to use or modify the overflow parking area shown on the original site plan

The applicant is requesting a use variance to allow live music performances outside of an existing restaurant located on a portion of a 2.4-acre parcel in Business (B-1) and Residential Rural (RR) zoning districts. The restaurant site is located in the Jack's Reef hamlet on the eastern shore of the Seneca River in the Town of Elbridge; the western shore of the river, in the neighboring Town of Lysander, consists of mostly residential lots; lands to the south and east of the site, primarily in the neighboring Town of Van Buren, are enrolled in NYS Agricultural District 3 and contain active farmland, including the neighboring Hourigan Farm. The Overall Site Plan, the site consists of one tax parcel divided into three segments by the intersection of Plainville Road and Old Route 31, both county roads; the northern portion of the parcel has additional frontage on River Road, a county road, and contains an existing building which was recently renovated into The Reef restaurant; there is a deck at the western corner of the building and a front patio, each with a concrete sidewalk to the parking lot; the parking lot is shown to occur on the northern side of the building and provide 56 parking spaces, including 4 handicap-accessible spaces; evergreen screening is shown along the northern lot line which abuts a single-family residential lper the local application, the requested use variance would allow for music to be played outdoors on the deck or lawn; there is no additional information regarding the time, location, or frequency of the intended use; the site appears to have limited lawn space. The southeastern portion of the parcel has frontage on Old Route 31 and contains an existing gravel area which is shown in the Overall Site Plan to be used for overflow parking, providing 34 additional parking spaces

Chairman Timothy Gannon: Is there any one to speak in favor of or in opposition of the application?

Mr. Jay Meyers is not present.

ZBA Attorney Scott Chatfield: I am requesting that the record reflects that the ZBA is in possession of a letter dated May 15, 2019 from Mr. Erick Conroy. That the board has received and read the letter and is requesting if Mr. Conroy has anything else to add.

Erick Conroy: my names Erick Conroy I live next door to the restaurant. I wrote a letter that states multiple things and I requested to come and speak my piece. With the outdoor music and things that have not been finished on Mr. Myers part is and will affects my family greatly. I made several attempts to rectify this without being here with Mr. Myers and it was pretty much brushed off so unfortunately here I am. My wife and family would like some peace.

Chairman Timothy Gannon: approximately how close to the Reef Restaurant is your property line to the reef?

Erick Conroy: about 20 feet. I would've been happy if I was a half-mile down the road. The Noise and traffic right now without outdoor music is crazy. There's no privacy. If he had addressed everything on his site plan before he got his C.of O. I probably wouldn't be here. There's multiple incidences where there's 20or so people in the parking lot, the language is awful. I've got young kids here listening to this. There's got to be something put up so that when the cars pull into the parking lot the lights shine right into the house. I'm not sure how this was set up but it doesn't appear that our house was taken into consideration. I just need it fixed that's all. I've been to Howard a few times; he said to write a letter to the planning board. I did that. Hopefully there'll be some kind of resolution. I've been over to talk to Jay quite a few times and he kind of blew it off

like it was no big deal. He doesn't park on that side of the property he parks across the street. He never sees that side and said he didn't care about that side of the property or down in back. Not sure if he was joking but it didn't seem like it. When I first met the guy, he said anything you need let me know and obviously that's not the case. So now I'm here talking you guys. When I bought my house 16 years ago there was no parking lot next to the restaurant that was there and I didn't have kids at that time so it didn't really matter. Now there's a huge parking lot with lights and the gravel gets dragged out into the road. It's a mess. I'm just not happy right now.

Chairman Timothy Gannon: what would your concern be if there was music outside?

Erick Conroy: my kids go to bed around eight 830. I wouldn't be 100% opposed to it if he would fix the buffers; it's a give-and-take as you've got to be neighborly. If it's going on all night then that would be a problem. You've got people across the river and I don't even think Lysander has any idea this is going on. It'll go right down the river, it'll be loud. Years back when it was the Port of Call, they had music periodically and it was loud. During the week that would be a NO-GO.as far as the kids are concerned.

Chairman Timothy Gannon: do you have any other concerns?

Erick Conroy: in the letter there was a concern about the dumpsters. We couldn't sit outside at all last year due to the smell. This is one of the reasons why my wife was upset. Our deck from the dumpsters is maybe 50 feet. I'm not sure why it was put there, but it is closer to our house than it is to the restaurant by hundreds of feet distance. Then at 6 AM they come to get the trash and its BANG-CRASH my kids are jumping out of bed, it's really loud. I'd like to work with this guy. I told him that the trees were all dead back there. He said I don't care about that side of the parking lot. So that gives you an idea of who he is. I'm glad the establishment is there and glad to see it boost the community and I don't want to see anything happen to the business. But it would be great if he worked with the people in the community. All those trees are dead, the garbage stink, the noises and the lights are bad.

Chairman Timothy Gannon: anyone else to speak against the application?

No one

Chairman Tim Gannon made a motion seconded by Deputy Chairman Chris Beane to close the hearing for Mr. Jay Meyers/Meyers Management. It passed with all in favor at 7:50 p.m.

Open meeting

Chairman Tim Gannon stated that the ZBA board members have read the referral from the Onondaga County planning board. He then read aloud the referral modifications of OCPB Referral Case #: Z-19-94(Listed in red above)

Deputy Chairman Chris Beane questioned if it was an approved site plan.

ZBA attorney Scott Chatfield stated that the site plan was approved but there were some issues as far compliance.

The Board then applied the criteria review for the use variance one at a time

- 1) Cannot realize a reasonable return – substantial as shown by competent financial evidence:
No evidence has been presented; there is no evidence to substantiate any claim of lack of reasonable return.
- 2) Alleged hardship is unique and does not apply to substantial portion of district or neighborhood:
No evidence has been presented at this time to show that this issue is unique to this property.
- 3) Requested variance will not alter essential character of the neighborhood:
No evidence has been presented by the applicant, but the board has heard evidence that outdoor music may in fact alter the character of the neighborhood based on testimony from area residents and the OCPB resolution. There is a risk that there will be a significant adverse effect on the neighborhood.

4) Alleged hardship has not been self-created

ZBA attorney Scott Chatfield: This application includes proof from Onondaga County records that the property was purchased in 12/04/2013. The board should take judicial notice of the fact that the allowable uses in the B-1 zone are the same today as they were in 2013. The allowable uses have not changed. Chairman Tim Gannon's observation that an application for site plan was made within the past two years and there was no request to use the outdoor spaces for outdoor music at that time. If that request had been made at that time this issue would not have come up. These are all facts of the records.

The board concludes that based on the evidence/facts submitted that this issue for the alleged hardship is self-created.-

ZBA DECISION VOTE:

Resolved:

It is the decision of the Town of Elbridge Zoning Board of Appeals that with the evidence presented as set forth in the findings of facts and with the review of the use variance Criteria that the relief petitioned for by Mr. Jay Meyers/Meyers Management- Reef Restaurant, 1161 Old Rte. 31 in Memphis NY. **Not** be granted.

John Tambroni made a motion seconded by Joanne Spoto Decker to:

Approve Amend Deny other Special Permit Area Variance Use Variance Interpretation

It passed with 0 Aye(s) and 5 Nay(s) at 8:10p.m.

Recorded Vote: (A = Aye, N = Nay)

J. Spoto Decker **Chairman T. Gannon** **C. Beane** **B. Foote** **J. Tambroni**

ZBA attorney Scott Chatfield: SEQR review does not need to be done on an application that has been denied because you are not allowing anything to happen.

Approval of Minutes:

01//2019 Minutes

A motion to approve the January 15th 2019 minutes as written was made by Chairman Tim Gannon and seconded by Bruce Foote. It passed with all in favor at 8:20 pm.

DISCUSSIONS: *None*

OLD BUSINESS: *None*

ADJOURNMENT: With no further business on the agenda, a motion was made by Joanne Spoto Decker and seconded by Chairman Timothy Gannon to adjourn tonight's meeting. The meeting was adjourned with all in favor at 8:13pm.

Respectfully Submitted

Paige Boratko- Secretary/Alt. member