



City of Binghamton Planning Department

SUMMARY OF MINUTES CITY OF BINGHAMTON ZONING BOARD OF APPEALS	
MEETING DATE: July 18, 2023	LOCATION: City Council Chambers, City Hall
CALLED TO ORDER: 5:15PM	RECORDER OF MINUTES: Shalin Patel

ROLL CALL		
ZONING BOARD OF APPEALS MEMBERS:	PRESENT	ABSENT
J. Kelly Donovan (chair)	X	
Susan Bucci	X	
John Matzo	X	
Ernest Landers	X	
Marina Resciniti		X
STAFF MEMBERS PRESENT:	TITLE & DEPARTMENT:	
Tito Martinez	Assistant Director, Planning Department	
Shalin Patel	Planner, Planning Department	
Greg Buell	Zoning Officer, Planning Department	
Elisabeth Rossow	Corporation Counsel	

APPROVAL OF MINUTES		
MOTION to approve the amended June 13, 2023 meeting minutes as written.		
FIRST: Matzo	SECOND Bucci	VOTE: Carried (4-0-1)
AYE(S): Bucci, Donovan, Matzo, Landers	NAY(S):	ABSTENTION(S): Resciniti

PUBLIC HEARINGS & FINAL DELIBERATIONS	
ADDRESS: 37 Saratoga Ave	CASE NUMBER: ZBA-2023-90
APPLICATION FOR: Area Variances for a 12'x20' garden/utility wooden shed where one accessory shed is allowed per residential lot, with a maximum area of 200 square feet and no dimension greater than 16 feet, and a side setback for 2.5' where 5' is the minimum requirement in the R-1 Residential Single-Unit Dwelling District.	
REPRESENTATIVE(S): Paul Himko (Owner, 37 Saratoga Ave)	
DISCUSSION POINTS:	
<ul style="list-style-type: none"> ▪ Applicant/Representative (Himko) wanted to build a bigger shed than what he had previously in his backyard, go from a 10x14' metal shed to a 12x20' wooden shed. ▪ Wants to build a bigger shed to store heavy equipment such as ATV, riding mower, snowblowers, mobility scooter, etc. ▪ The construction of the shed had already begun before the applicant presented himself in front of the ZBA and filled in paperwork for a building permit. ▪ Applicant (Himko) commented, he has well over 3.5 ft (just shy of 4ft) of space on the left-hand side of the shed (looking from the back of the house), he would just need a variance for the remaining length. ▪ In the back of the shed, applicant says he has about 2.5 ft of space between the shed and the fence in one spot and a few inches more in another spot (close to 3 inches). ▪ Board member (Bucci) asked, when you (the applicant) called about the shed, were you informed on the size requirements? 	

- **Applicant (Himko) commented**, “no, I just figured, my other shed is a metal one, it was 10x14’ and it is a shed, people have a shed wherever they want in their backyards. I probably should have asked.” (Himko) said he called the Building and Code department a while back about it, but they did not volunteer any information about it.
- A 12x16’ shed is permitted, but the (A/R, Himko) would like to build a 12x20’ dimension shed, which would require the variance because the 20’ dimension is higher than what is allowed per code.
- The partially built shed by the applicant is a code violation as referenced by Chair Donovan.
- A comment from **staff (Buell)** was not picked up on the recording, but he was talking about the neighbor on the backside of the applicant (Himko)’s property, who is not a fan of the applicant building a shed so close to the property line. Additionally, referencing his garage being right next to it with a window that you can see through it into her backyard, which provides no privacy to her.
 - **Applicant (Himko) commented**, “that woman (neighbor at 370 Conklin Ave) does not like me and her and her husband are not getting along.”
- **Board member (Landers) asked** the applicant, is your garage attached or detached? And you already have started the construction of this wooden shed? Is the floor made out of concrete?
 - **Applicant (Himko) commented**, it is detached. Yes, the floor and walls are up. The floor is wooden. You cannot see it from the road because there is a slight dip in the back.
- **Board member (Bucci) asked**, are you (the applicant) doing all of this work yourself or do you have somebody doing it for you? And no one cared to check in about the side setback and other requirements before building the shed?
 - **Applicant (Himko) commented**, “I’m having some friends do it, they work for someone, but are doing this on their own and my brother was helping, and I am doing what I can.” No, everyone is upset, but no one was aware.
- **Board member (Landers) asked**, so the permit was not obtained to build this shed?
 - **Applicant (Himko) commented**, “I applied and paid for the permit the same time I turned the paperwork in for the Zoning variants.
- **Staff (Martinez) commented**, upon checking in Municipality (our place to store code violations, decisions, etc.), applicant Himko applied for a permit in May of this year. There are only Greg’s initial violations listed for this property.
- **Chair (Donovan) commented** the following after deliberations were over, “your two best options would be to either you (the applicant) move the shed away from the rear property line or cut away some of the shed in the back.”
- **Staff (Martinez) commented**, the location of the shed will have to be 5’ from the property line, the fence may be bowed, but the property line is what would count.

VOTING

MOTION to note that this is a SEQR Type II action and no further environmental review is required and to open the public hearing. Meeting opened at 5:28pm.

FIRST: Donovan	SECOND: Matzo	VOTE: Carried (4-0-1)
AYE(S): Donovan, Matzo, Bucci, Landers	NAY(S):	ABSTENTION(S): Resciniti

PUBLIC COMMENT:

- **1 letter received in opposition of the project from neighbor Heather Gabriel at 370 Conklin Ave.** Ms. Gabriel had following to say in her letter (complete letter, word for word can be acquired from the Planning Department per request):
 - Good neighbor's for at least 25 years, several years back he had a small garage and asked me to sign off on a variance to allow him to build a newer garage from older one, I agreed to sign off and the building he put up is huge.
 - He also put windows all around the garage and one is facing my backyard.
 - He also has 12x8' utility trailer that he's using as storage and pool amenities going to this outbuilding which I'm not sure what it is used for. It's heated and air conditioned, full two stories and she can see it that it can be used as housing in the future.
 - Small metal shed he is replacing was approximately 8x8', one story. The new building is twice the size and too close to the property line.
 - I kindly ask the City of Binghamton to reject Mr. Himko's application for the construction of the new building as it is way too close and overlooking what little yard I have.
 - I also have concerns in the future he may market the property as a multiple family lot.
 - When I am in my yard, all I can see is his garage, with a large window facing my house. I have young kids that use the yard and while Mr. Himko has been a nice neighbor, he is older and who knows what kind of people will occupy this property in the future and what they will use it for.

Applicant response to the public comment:

- **Applicant (Himko) commented**, the back of the neighbor's garage covers $\frac{3}{4}$ of my shed and what they'd see is maybe 3ft of the shed. It steps down into a belly, the roof would start just above the fence line.
- The utility trailer I have in the back, I put stuff in there from the old shed until I got a newer shed built. The trailer will be gone once the new shed is built.
- **Chair (Donovan) asked**, the garage, is that a living space or just setup as a shop?
 - **Applicant (Himko) replied**, it is just a garage. There is an upstairs for storage only.
 - **Staff (Buell) explains**, on one side is a long, narrow workspace, and on the other, larger side is a parking for 1 vehicle.
- **Board member (Matzo) asked**, "since this shed is on 2 skids or 6x6s, 8x8s, 4x4s, whatever, why can't we move it forward away from her property line?" Board member further commented, "it does not even look like it is 50% built yet, you got two side walls up, possibly the back and some of the floor. And that is not the two sidewalls, it's just 2x4s. It would eliminate a lot of the problems if you moved it 3ft forward."
 - **Applicant (Himko) replied** because the shed is down a bank. "I'd have to get some kind of excavator with long forks. It is down in an embankment. There is a possibility of it being moved, but I would have to tear everything down and my driveway is only 10' wide. I would have to take the neighbor's fence down to get a cement truck in the back. Currently, I have no concrete in my shed."
- **Board member (Matzo) asked**, in bit of a confusion, the fence is behind the shed, correct? And then on the side you got fence along the side. What is stopping you from putting something in there to move the shed forward?
 - **Applicant (Himko) replied** with "right" in both of the earlier remarks. With the letter question, he commented, "you can't really move it forward, because you are coming into the bank and I am going to have to take some of the bank out to have my doors still open, the swinging doors."
- **Staff (Martinez) commented**, the variance is for the side setback, not the back. The neighbor that submitted the complain is the neighbor behind the applicant's lot. The variance is for the side.
 - **Applicant (Himko) commented**, I need both side and rear setbacks, in the rear I am 3' from the back. On the side I am shy from 4'. "I had a variance for the garage, because previous pre-existing garage was built on the neighbor's backyard, because he had a big Cadillac. The shed is going to be even with the garage in the back. It will not go back any further than the garage."

- **Chair (Donovan) asked**, assuming you are custom building this shed to your liking. It's not a kit, right? Is there anything keeping you from making it smaller than 20' long? It's not finished, so it's better that we ask before it done.
- **Applicant (Himko) replied**, "right. There is no way to make it smaller unless you want to take a chainsaw to it. Why take something off from the back of the shed that is still going to be 12' wide?"
- **Board member (Bucci) commented**, if it was only 16x12', it would meet the zoning regulation, then you would only need the side variance.
- **Applicant (Himko) replied**, if she's (neighbor) is complaining, what difference would it make to her in the backyard if it was 24' long or 10' long, the shed is still going to be there.

MOTION to close the public hearing. Meeting closed at 5:42pm.

FIRST: Donovan	SECOND: Matzo	VOTE: Carried (4-0-1)
AYE(S): Donovan, Matzo, Bucci, Landers	NAY(S):	ABSTENTION(S): Resciniti

DELIBERATION:

- AREA VARIANCE FOR OVERALL SIZE (ONE DIMENSION OVER 16') OF THE SHED-

1. The Zoning Board of Appeals determined that the granting of the variance would not result in an undesirable change in the neighborhood because the size is not the problem, there have been variances granted for this size of structures (sheds) before, it is not the desired size, hence why the zoning code says maximum of 200 sq ft and no dimension greater than 16'.
2. The Zoning Board of Appeals concluded that under applicable zoning regulations, there are reasonable alternatives. The applicant could make it 1', 2', 3' shorter, any of those choices are a choice. It would have been in the applicant's best interest that he got more information from the city, that would have been helpful to the applicant. That is a lack of communication that cannot be corrected.
3. The Zoning Board of Appeals determined that the requested variance was not substantial based on approval of other larger shed structures in the past, it may be little bigger than what is allowed (240' vs 200'), but the size difference between a 16'x12' vs. a 12'x20' is not as drastic as it may seem to an average person's point of view.
4. The Zoning Board of Appeals determined that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The old metal shed was removed a long time ago. This new proposed wooden shed should be an improvement over the old metal shed.
5. The Zoning Board of Appeals determined that the alleged hardship was self-created.

- AREA VARIANCE(S) FOR SIDE AND REAR SETBACKS-

1. The Zoning Board of Appeals determined that the granting of the variance would not result in an undesirable change in the neighborhood because there have been setbacks granted in the past for other sheds, some right up to and on the property lines. Some properties in the applicant's neighborhood have garages and structures that were built right up to the property line.
2. The Zoning Board of Appeals concluded that under applicable zoning regulations, there is not a reasonable alternative. There is no alternative for the side yard setback per allowable dimension of the shed (12'), which would eat up some of the 5' minimum setback requirement. The alternative for the rear setback would be to shorten the shed or move it forward (which you might have to cut out some of the bank or push it forward and build a little higher foundation in the back, raise it up).
3. The Zoning Board of Appeals determined that the requested variance was not substantial.
4. The Zoning Board of Appeals determined that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The Zoning Board of Appeals determined that the alleged hardship was self-created.

MOTION to approve the requested variance(s), subject to the following conditions:

- Overall size of the shed to be reduced from 12' x 20' to 12' x 18'.
- Move the shed forward, to leave approximately 5' of space between the shed and rear property line.
- Area variance approved for a 3' side setback where 5' is the minimum

FIRST: Matzo	SECOND: Landers	VOTE: Carried (4-0-1)
AYE(S): Matzo, Landers, Bucci, Donovan	NAY(S):	ABSTENTION(S): Resciniti

PUBLIC HEARINGS & FINAL DELIBERATIONS

ADDRESS: 18 Kendall Ave	CASE NUMBER: ZBA-2023-96
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APPLICATION FOR: Area Variance for to widen a driveway to 25', where 18' is the maximum width in the R-1 Residential Single-Unit Dwelling District.

REPRESENTATIVE(S): Michael and Deborah Dunlap

DISCUSSION POINTS:

- **Representative (D. Dunlap) commented**, there is an approximately 30' of space between where her proposed driveway ends to the property (at 22 Kendall Ave) to the west.
 - The project is an improvement to the existing driveway, as it stands the existing driveway is in a disrepair.
 - The disrepair of the current driveway has not affected property values in the neighborhood.
 - **Board member (Matzo) asked**, according to some of the letters submitted to us, they are concerned about what you plan on parking on there? Because they were talking about trailers and different equipment.
- **Representative (D. Deborah) commented**, "our existing vehicles. Michael is self-employed, periodically there is there has been a work trailer there, it is not the intent to have that park there full time. At one point we had building materials stored in it, so it was an enclosed space to explore materials.
 - **Board member (Matzo) asked**, you are definitely 30' not 32' approximately when you put this driveway in, correct from the other property line?
- **Representative (D. Deborah) commented**, if it is extended to 25' wide, then there is 32' of gap between driveway and the neighbor's property line.
 - **Board member (Bucci) asked**, how many vehicles do you own that you plan on parking there?
- **Representative (D. Dunlap) replied**, "we each have a vehicle now, I have a car, he (referring to Michael) has a truck, there are times if he comes from a work location there maybe an extra vehicle with a work van, he has a snow plowing business as well, so sometimes there are two pickup trucks in the driveway (multiple pickup trucks because of his business).
 - **Board member (Landers) asked**, someone commented about a motorhome. Do you have a motorhome?
- **Representative (D. Dunlap) answered**, "we have a motorhome, but it is stored elsewhere."
- **Board member (Bucci) asked**, your intent is to then extend it to go to the retaining wall in the rear of the existing structure. Is that right? Do you have this timed out? (Referencing it to some of the comments from letters received that timeliness of some of your other home repairs have not been as timely as the neighbors would appreciate).
- **Representative (D. Dunlap) replied**, the intent is to start the driveway at the existing garage and bring it forward.
- **Representative (M. Dunlap) replied**, "the projects that have been started in the past for the house, I have been doing them myself when I have time to do them. Well, the last 3 years I've had severe medical problems and that is why the front of the house has not been completed. I am working on it right now; in fact, I plan on having it done very shortly. This project here would be contracted out, I do not do heavy equipment building. We would hire a contractor to come in and construct our driveway, so it would be a fairly quick job. What they plan on doing is, putting in the retaining wall and taking the driveway that is in disrepair right now and using it to fill where we are bringing up the back side. And because of the amount we are coming up, they want that to settle before we pour the concrete. It would be a gravel driveway for one season possibly just so everything settles, so when we do pour the concrete, you don't have cracks on it and so on."
 - **Board member (Bucci) asked**, it would be reasonable to say that the project could be completed by next Spring?

- **Representative (M. Dunlap) replied**, it would be more like summer season, because you would like to go a season with it with frost and rain and everything and driving on it, just to compact it all down. It would not be any different than any other gravel driveway, but it would look nicer than it looks right now.
- **Staff (Martinez) commented**, “gravel is not a permitted driveway material, so it is not legal to use it as a driveway if it’s gravel, it would have to be concrete, asphalt, pavers, or something permanent wouldn’t track mud and dust off the property. Leaving the gravel for a year would not be permitted.”
- **Representative (M. Dunlap) commented**, we can have it compacted, I would hate to see the driveway cracked. The finished product will be concrete (referencing to board member (Landers) asking about what the finished material will be).
- **Chair (Donovan) and Board member (Landers) asked** a question to the staff, what is the approved curb cuts? Can we override the approved curb cut?
- **Staff (Martinez) replied**, it is 18 feet. The Traffic Board would have the ability override the length of the curb cut because it is an opening onto a public street. The driveway has a maximum width of 18’ as well. Driveway width for multi family housing and commercial properties is 24’ and it is 30’ for industrial.
- **Representative (M. Dunlap) commented**, the lot next to 18 Kendall Ave was considered a building lot when we bought our house, it was a separate house number and everything. That piece of lot was able to have another 18 ft of driveway had we not had it combined into our lot.
- **Board member (Matzo) asked staff (Martinez)**, what would be the maximum length of time that the applicant could keep his driveway in its current conditions while they are doing construction? So, why couldn’t he just leave his driveway in the state with gravel on it for a year then do the work?
- **Staff (Martinez) replied**, work that requires a permit has to be done within a year, but not the driveway per se. He will need a permit to build the retaining wall. Because parking area or driveway cannot be graveled and he stated that he would be parking vehicles and things on it, while it settled. That would be a violation of that regulation. It is short of grey area where he could leave it for a year, but parking on it would be the illegal activity.
- **Representative (M. Dunlap) commented**, “down on Vestal Ave, right directly behind my property, not sure if the property owner went and acquired a variance or not, but they paved half of their front yard, and are parking several vehicles on it. They eliminated quite a bit of their front yard greenspace.
- **Board member (Bucci) asked**, are there code violations placed on the applicant’s property now?
- **Staff (Martinez) replied**, there is an open violation for the siding and underneath exposed sheeting and things, and for peeling paint. It is scheduled to go to the court later this month.
- **Representative (M. Dunlap) commented**, “we saw the judge and because of my medical condition, he granted me until July 28 on the old permit. If the city granted a new permit, I would have one year to complete the work. The city has granted me a new permit. It will be done in the next couple months before winter the siding will be done. It is all done except for one small section on the east side, from the fireplace to the corner of the house. The front of the house has already been started.”
- **Chair (Donovan) asked the applicant**, have you considered extending your driveway less than 25’?
- **Representative (M. Dunlap) replied**, “the concrete blocks that we are putting in, they are made for that distance.

PUBLIC COMMENT:

- **Jeff Platsky (neighbor at 12 Kendall Ave) spoke** in opposition of the project. Mr. Platsky said he has concerns with the project and to assess the impact of the project on the nature, the character, and the aesthetics of the neighborhood. And note that this project is requesting a 39 percent deviation from the existing regulation.
- **Kathleen Howell (neighbor at 17 Kendall Ave) spoke** in opposition of the project. Ms. Howell said “I have upkeeped and kept my house beautifully for 42 years that I have lived in this neighborhood, I hardly know what to say. I am looking at broken blacktop from a mud driveway forever. I maintain my property; I just think I deserve better.”
- There were 3 letters received (one from Mr. Platsky, one from Ms. Howell, and from Ms. Watson), all in opposition of the project.

<ul style="list-style-type: none"> ▪ Martha Watson (neighbor at 9 Kendall Ave) wrote in opposition of the project. Ms. Watson had following to say in her letter: “I am opposed to the request by the homeowners of 18 Kendall Ave that they be allowed to expand their driveway to 25’. It seems to be a very large expanse or concrete suitable for something very large to be poured there. I feel it will alter the character of this block and create an eyesore. It is not something I would want to look at on a daily basis.” ▪ The other two letters further referenced the undone siding of the house as well as the parking of the RV. 		
VOTING		
MOTION that the ZBA is lead agency in SEQR review and that the action is Type II, no further environmental review is required and to open the public meeting. Public meeting opened at 6:22pm.		
FIRST: Donovan	SECOND: Matzo	VOTE: Carried (4-0-1)
AYE(S): Donovan, Matzo, Landers, Bucci	NAY(S):	ABSTENTION(S): Resciniti
MOTION to close the public hearing for 18 Kendall Ave. Public meeting closed at 6:31pm.		
FIRST: Donovan	SECOND: Matzo	VOTE: Carried (4-0-1)
AYE(S): Donovan, Matzo, Landers, Bucci	NAY(S):	ABSTENTION(S): Resciniti
DELIBERATION:		
<i>-FOR AREA VARIANCES-</i>		
<ol style="list-style-type: none"> 1. The Zoning Board of Appeals determined that the granting of the variance would not result in an undesirable change in the neighborhood because the current driveway is already close enough to the proposed dimension requested and is in a disrepair. This property also has additional yard of space next to their house to make up for the open lot requirement. 2. The Zoning Board of Appeals concluded that under applicable zoning regulations, there is not a reasonable alternative. Because although the board could force the applicant to abide by the 18’ rule per the code regulations, but that would mean the applicant would lose backside of the existing driveway and the condition would remain in disrepair. The material the applicant plans put on the driveway comes precast into certain dimension, hence why they proposed a 25’ wide driveway. 3. The Zoning Board of Appeals determined that the requested variance was substantial based on the fact that it is almost 40% of an increase from what is accepted by code. 4. The Zoning Board of Appeals determined that the proposed variance will have some adverse effect or impact on the physical or environmental conditions in the neighborhood or district. 5. The Zoning Board of Appeals determined that the alleged hardship was self-created. 		
MOTION to approve the requested variance, subject to the following condition(s):		
<ul style="list-style-type: none"> ▪ Before starting construction of the proposed driveway project, the applicant must clear up all city and code enforcement violations and with the knowledge that the length of the apron is contingent on Traffic Board approval. 		
FIRST: Matzo	SECOND: Bucci	VOTE: Carried (4-0-1)
AYE(S): Donovan, Matzo, Landers, Bucci	NAY(S):	ABSTENTION(S): Resciniti

ADJOURNMENT		
MOTION to adjourn		TIME:
FIRST: Matzo	SECOND: Donovan	VOTE: Carried (4-0-1)
AYE(S): Donovan, Matzo, Landers, Bucci	NAY(S):	ABSTENTION(S): Resciniti