

**MINUTES OF THE COHOES ZONING BOARD OF APPEALS HELD IN THE  
COMMON COUNCIL CHAMBERS OF COHOES CITY HALL ON WEDNESDAY,  
AUGUST 24, 2022 AT 6:30 PM**

**MEMBERS PRESENT:** Mr. Greg Mollnow, Chairperson  
Mr. Anthony Kusaywa, Vice Chair  
Mr. Mark Cotch  
Ms. Carolyn Dion  
Ms. Jacqueline DeChiaro

**MEMBERS ABSENT:** None

**ALSO PRESENT:** Joe Seman-Graves, City Planner  
Sharon Butler, Administrative Assistant  
Tess Drauschak, Assistant Planner

Chairperson Mollnow; called the meeting to order at 6:30PM.  
Roll Call taken; all members present

**CONSIDERATION OF THE MINUTES FROM THE JUNE 22, 2022 MEETING**

Chairperson Mollnow; first order of business, we will review the June 22, 2022, meeting minutes  
Chairperson Mollnow made a motion to approve the minutes 2<sup>nd</sup> by Vice Chair Kusaywa

All in favor, motion carried unanimously

	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>ABSTAIN</u></b>
Greg Mollnow	X		
Mark Cotch	X		
Anthony Kusaywa	X		
Carolyn Dion	X		
Jacqueline DeChiaro	X		

**CONSIDERATION OF AN AREA VARIANCE AT 2 LANSING LANE**

Chairperson Mollnow; the next order of business is the consideration of an area variance at 2 Lansing Lane. The applicant is proposing a new attached deck at the property 2 Lansing Lane, in the R-2 residential zoning district. Properties in the R-2 district require a side setback of 10 feet, but the applicant proposed that the deck directly abut the easterly property line, requiring an area variance of 10 feet. The Residential R-2 is intended to encourage the long-term stability of existing traditional neighborhoods where a diverse mix of single-family, two-family, and multifamily housing currently exists in the City of Cohoes, and to protect the health, safety and general welfare of those residing within the district. Considerations regarding the property; the applicant had begun construction on the deck without a permit. The applicant has also submitted a building permit application, which will be reviewed after a ruling is made regarding the area variance. The easterly property line which the applicant proposes to abut with his deck is shared by NYS Parks,

Recreation and Historical Preservation. The placement of the deck was reviewed by Brian Strasavich, Parks Operations Manager 1 with NYS Parks, Recreation and Historical Preservation and found to not appear to be a threat to the Empire State Trail or a concern for State Parks at this time. The proposed deck structure will be attached to the house on two sides; therefore, it is not considered an accessory.

General consideration for an area variance;

The appeal under consideration is one for an area variance, For an area variance to be legally granted pursuant to Section 81 of the General City Law, the following issues must be considered;

1. The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;
2. 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;
3. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area variance;
4. Whether the requested area variance is substantial;
5. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
6. Whether the alleged difficulty was self-created

Do we have Mr. Nadeau here, if you would come up and tell us a little more about the project Mr. Vincent De Paul Nadeau approached the board and stated he started to build a deck at his house, then gentlemen from Code stopped by and informed me that I needed to get a permit. The next morning I was told that there is a discrepancy of exactly where the property line was, the City of Cohoes was making their determination strictly on a satellite image. I've lived there my entire life and as far as we knew our property line was at the very top of the hill next to the bike path, which brings us approximately 15 or 16 feet away from the center of the bike path. As you mentioned the new deck is in an R-2 zoning district which requires the side setback be 10 feet and I'm proposing the deck directly abuts the property which requires an area variance of 10 feet and it is attached to my home and possibly encroaching on property known as NYS Parks and Recreation. Their representatives specifically Brian Strasavich which is the parks operation manager came to my property viewed it, took photographs which are on the website and their findings were such as you read into the record – we took a visit to Lansing Lane to view the deck in proximity of the NYS Trail, the deck as it is does not appear to be a threat to the Empire State Trails or concern for State Parks at this time. Of course we are unsure of exactly where the property line runs without a survey. For myself I seriously question the accuracy of the satellite imagery and basically in closing in the last 5 years I have put a couple of hundred thousand dollars into this property, it is beautiful, the whole bank on the west side of the bike path that is owned by the state, I've been maintaining that since I was a kid, it looks like a golf course. If you look at the easterly side of the bike path and it's also shown on the website, it's a jungle. You can see I maintain that property pretty well, considering I don't even own it. I would just like to say that I think the deck will enhance the appearance of the neighborhood and I believe the deck will have no adverse effect on the physical or environmental aspects of the neighborhood and firmly believe that there would be no environmental impact on the state lands whatsoever.

Chairperson Mollnow asked the board if they had any questions.

Member Cotch asked the applicant what the exact size of the deck is

Joe Seman-Graves stated that it is 12'2" x 16'2"

Member Cotch asked the applicant if that was going to be the final size of the deck

Chairperson Mollnow reiterated and asked the applicant if this was going to be the size and it wasn't going to be expanded at all

Mr. Nadeau responded no, won't be expanded. What happened was I started out by building a rather long ramp from the door, it may be 7 feet or 10 feet from the door I don't remember and stairs go down from there. After I put that on I realized we couldn't put anything on there as it was only 7 feet deep, so brought it out 5 feet and went up 4 feet further. The exact measurements I can't give you but he (Joe) has a copy of it there.

Chairperson Mollnow asked Member Cotch if he had any other questions, which he responded no Chairperson Mollnow then stated he had 2 questions for the applicant; what is the distance from the edge of the deck to what you believe is the property line, do you know approximately?

Mr. Nadeau; the distance from the edge of the deck

Chairperson Mollnow to the property line, the crest of the hill there

Mr. Nadeau the distance, I can only guess, probably 15 feet

Chairperson Mollnow ok, then the other question is because I haven't seen the permit, are you going to enclose it completely or leave it open

Mr. Nadeau stated it would be open

Chairperson Mollnow ok, any other questions from board members?

Member DeChiaro the deck I'm seeing here is this the final product?

Mr. Nadeau replied yes it's the final deck minus the railings

Joe Seman-Graves explained to the board that with the actual property lines, the satellite imagery is not at survey level so with that we usually ask for a survey but when we reached out to Parks, Parks didn't want to proceed with a survey so we're assuming the applicant is building to the property line, if approved within the building permit and in the resolution we will state that Parks did sign off without a survey but that will leave the door open should there ever be a property dispute then this board is covered and the applicant acknowledges that Parks did view what he was building and it was acceptable by Parks at this time

Chairperson Mollnow; thank you, at this time we will open it up to public comments. Joe did we receive some public comments

Joe Seman-Graves read two comments that were sent in and relayed a phone call that was made to him regarding the proposal. All three comments were in favor of the variance being granted.

Chairperson Mollnow opened it up for any public comments for anyone in the room. Being none he closed the public comment period. He then asked the board members if they had any other questions or discussion they wanted to have, being none Chairperson Mollnow made a motion to pass the requested variance based on the State Parks and Recreation acknowledging the proximity of the property line and that the porch is not going to be enclosed.

Member Dion 2<sup>nd</sup> the motion. Motion carried unanimously.

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
Chairperson Mollnow	X		
Mark Cotch	X		
Vice Chair Kusaywa	X		
Carolyn Dion	X		
Jacqueline DeChiaro	X		

Chairperson Mollnow told Mr. Nadeau that the variance was approved.

Mr. Nadeau thanked the board

Joe Seman-Graves told the applicant that he would forward this to the building department tomorrow so you can get the permit to go ahead and finish.

### **CONSIDERATION OF AN AREA VARIANCE AT 28 SUMMIT STREET**

Chairperson Mollnow moving on to the next variance. The next variance is another consideration of an area variance at 28 Summit Street. The applicant has submitted an area variance application for the additions of a 12'x10' shed at 28 Summit Street in the multifamily residential zoning district. Properties zoned MFR require a side setback of 10 feet, but the applicant proposes that the shed be placed with a setback of 1 foot from the northerly property line, requiring an area variance of 9 feet. The owner of this property also owns the property addressed 30 Summit Street which borders 28 Summit Street to the south. 26 Summit Street which borders 28 Summit Street to the north and would be nearest property to the proposed shed, is occupied by the Magin Family. They have provided to the zoning officer and zoning board of appeals a letter of support for the proposed placement of the shed. Due to the width of the property (25') any configuration of a 12'x10' shed placed on the property would require an area variance.

The appeal under consideration is one for an area variance. For an area variance to be legally granted pursuant to Section 81 of the General City Law, the following issues must be considered;

1. The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;
2. 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;
3. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area variance;
4. Whether the requested area variance is substantial;
5. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
6. Whether the alleged difficulty was self-created.

Chairperson Mollnow asked if the applicant Mr. Obzud if he could approach and give some details on what he is looking to do

Mr. Michael Obzud approached and stated to the board that he was just looking for a place to store his equipment. I put one on my property at 30 Summit Street but back then I went for 5 foot, but back then it was 5 foot in that area and now it's 10 foot, and the property is only 25 feet wide and it would be right against that property line so I went to my neighbor and they are fine with it. It will be sided the same color as the house, everything will match

Chairperson Mollnow; perfect, do any members of the board have any questions for the applicant.

Member DeChiaro asked the applicant if he said he owns 30 Summit also

Mr. Obzud stated yes and he owns 32 also

Member DeChiaro asked if he could put the shed closer to the property that he owns

Mr. Obzud stated that he has a pool and a garden in the back of 28 Summit, Joe Seman-Graves put the satellite picture up on the screen so members of the board could see the properties and where the pool and garden are and where the shed would be placed. He stated that where the white fence is that is where the shed would go

Member DeChiaro ok

Chairperson Mollnow asked if there were any other questions from board members, being none he opened it up to public comments. One was received which was read aloud, Michael and

Megan Magin they were in favor of the variance being granted, they own 26 Summit Street. He then asked if there were any other public comments from the room, being none public comment period was closed

Chairperson Mollnow made a motion to approve based on the existing neighbors not having an issue with the variance.

Motion was 2<sup>nd</sup> by Vice Chair Kusaywa motion carried unanimously

	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>ABSTAIN</u></b>
Greg Mollnow	X		
Mark Cotch	X		
Anthony Kusaywa	X		
Carolyn Dion	X		
Jacqueline DeChiaro	X		

Chairperson Mollnow relayed to the applicant that the variance was approved and he was to contact Joe Seman-Graves in the morning and Joe would let him know what the next steps would be.

**CONSIDERATION OF AN AREA VARIANCE AT 19 ELIZABETH COURT**

Chairperson Mollnow; the next variance up for discussion is at 19 Elizabeth Court, this is another area variance. The applicant has submitted an area variance application for the addition of a carport at 19 Elizabeth Court in the R-1 residential zoning district. The proposed carport will be attached to the main structure of the home, thus being an extension of the home. Single family homes in the R-1 zoning district require a side setback of 12 feet, but the applicant proposed that the carport be placed with a side setback of 9 feet 10 inches from the northeasterly property line, requiring an area variance of 26 inches. The intent of the R-1 district is to encourage the continuation and improvement of existing single-family neighborhoods in the City of Cohoes and to protect the health, safety and general welfare of those residing within the district. The proposed carport structure will be attached to the house on the one side; therefore, it is not considered accessory. Should this area variance be rejected by the board, the applicant may choose to build the carport as a freestanding structure disconnected from the principal dwelling. Should the applicant choose to pursue this option, no variance will be required as the structure does not constitute an accessory building, single family dwelling, accessory dwelling or any other used as detailed in the City of Cohoes Schedule of Area and Bulk Regulations (Chapter 285, Schedule B). As per a letter from the applicant, neighbors at 18 Elizabeth Court have expressed concerns regarding the following: Excessive water runoff onto neighbor’s property; infringement on the shared property line; belief that the carport will detract from the value of the neighbor’s house if/when they seek to sell. These neighbors have provided photos which illustrate their concerns, which are included in the boards meeting materials.

The appeal under consideration is one for an area variance. For an area variance to be legally granted pursuant to Section 81 of the General City Law, the following issues must be considered;

1. The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;

2. 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;
3. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area variance;
4. Whether the requested area variance is substantial;
5. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
6. Whether the alleged difficulty was self-created.

Chairperson Mollnow then asked Mr. Taylor to approach the board and speak about the project.

Mr. Clifford Taylor approached the board and stated that he stated to construct the carport, he started last year and he had to renew his building permit this year. He said he understood the neighbor's concerns, he was trying to address them the best he can. He explained that the run off that he installed a drain pipe that extends to the back of the property and that he was going to installed a gutter system on the neighbor side of the car port to avoid run off onto the property and the gutter system would extend back further on the property. Which I think will address their concerns of the run off. He also stated that he does not believe having a carport on his property will have any bearing on resale value of his neighbor's house. He also explained to the board that there is already substantial flooding in the yards, and what he is building is not going to have an effect on that. He said it floods pretty much every time it rains, (pictures were put up on the screen) he said it looks awful but that doesn't extend to the area where he is building. He stated that it is an issue he wants to take up with the City because it occurs more now that the road has been paved. He told the board he just wants to put up a car port to keep his car under and it's going to be like the one right down the road and it doesn't detract from the neighborhood so it wouldn't have any bearing on the resale value of anyone house. I'm trying to do my due diligence and do the best I can

Chairperson Mollnow; ok, I would like to comment on one thing that you said, the concrete slab you have in place with the drain, that isn't part of the variance because the slab really isn't part of the accessory structure, so I just want to make the members of the board aware that the slab in place is considered an extension of his driveway, so we are not considering the extension of the driveway, the variance is only for the extension of the house structure being the carport that is attached to his house.

Mr. Taylor; stated to the board that the front most post being used for the structure is 9'10" from the base of the post to the boarder of the property. The neighbors did get a survey done to identify where the property line is, previously it was thought that it was the pole and the tree out back, I fell 2 inches shy of that, from what I believed was the 10' setback.

Chairperson Mollnow; in the picture to the left your driveway is on the left

Mr. Taylor; yes it's the left.

Chairperson Mollnow asked the board if they had any other questions or comments

Member Cotch asked the applicant if he had a garage in the back

Mr. Taylor; stated that it is a shed

Member Cotch asked if you could pull a car into it

Mr. Taylor responded that if you really wanted to yes you could, but he keeps a lot of stuff inside of there. Obviously, it's a shed, I have a lot of tools, and he is hoping to be able to do some woodworking in there. He stated that he would not put a car in there

Chairperson Mollnow asked if there were any other questions from board members. He then asked Joe Seman-Graves about public comments stating that he knew a few had been sent in and they are in the packet so let me know if you want to go through them.

Joe Seman-Graves; asked 2 members of the public who submitted a comment if they wanted him to read them or if they wanted to go over them. He stated that they sent in 2 sets of comments.

Bill and Kate Kowaski 18 Elizabeth Court Joe read what was on the screen, he also read comment sent in by Harris at 20 Elizabeth Court. Neither neighbor was in favor of the carport being installed. Joe did explain that he did not know what the proposed variance was that the Harris's proposed which was denied and then the only thing additionally is that a business would have to go in front of the planning board for a special use review and approval.

Chairperson Mollnow asked Mr. or Mrs. Kowaski if they would like to address the board on anything else.

Mr. Kowaski approached the board. He stated that he was never approached about a shed, I have trees along side my pool, I thought it was going to be a shed to put a lawn mower in but it ended up being a garage. If I saw what it was actually going to be instead of a paper with a little square on it, it didn't bother me but with this going on if you look at the pictures, he did put a gutter on his side. That shed was built in 2015 you can see there is a gutter on his side but not on our side. (Pointing to the pictures on the screen) He pointed out that the drain points towards their property and rain coming off will go onto their property. He stated that he put gutters up on his house on his neighbor's side so water coming off his roof wouldn't go into her basement.

Chairperson Mollnow asked Joe to put the picture up and he asked Mr. Kowaski if he was talking about the picture on the right showing his gutters coming down and going in the swale

Mr. Kowaski stated yes, it's a nature swale because of the way they built the houses. But right now the gutter he has under the concrete pad it ends and the spout comes towards our property. If the ground is frozen February and March it can back it up because my gutters point to that area now. If you look at the pictures you can see the natural swale, but all the water coming off the carport is going down to the drain and then this is where it empties (shown on the picture on the screen)

I'm concerned about the runoff when the ground is frozen. But that is not the only reason I am here, when I talked to Cliff I asked him if he was going to be selling cars here are you? And he replied to me no, then one week later, he's been selling cars a few years there now, he repairs and fixes them then sells them. One week later there was a car from Connecticut for sale there, (he showed the board a picture he took with his phone) when he told me that he wouldn't be selling cars there and then he did one week after. I think he's going to run a car sales place, and he's been repairing cars and selling them. Now in the back of his shed, I don't go on his property but he's got all sorts of big barrels and I don't know if they are filled with oil drained from cars but he can't run a repair shop there. It's an R-1.

Chairperson Mollnow like Joe said if that is his intention he would have to go in front of the planning board for a special use permit. That is not something that we look at here, but like Joe said it would go to the planning board

Mr. Kowaski you would allow that to happen

Chairperson Mollnow that would be the planning board that would review that

Mr. Kowaski but he is doing that now

Joe Seman-Graves asked Mr. Taylor if he was running a business out of there.

Mr. Taylor stated the he appreciated him asking but he is not running a business. That the car was his brothers from Maryland and he asked him if he could sell it for him and he would give him

some of the money, so he drove it back from Maryland and sold it for him. It was licensed, it had Maryland plates on it.

Chairperson Mollnow; asked Mr. Kowaski if he had any other comments for the board

Mr. Kowaski stated he felt that the concrete pad as going to be a lift for cars, which he has seen him doing. I believe that the carport is going to be used to lift up the cars to do work on them. Would you want someone working constantly next to your house. And I don't know if those barrels have oil in them or what, there's a lot of storage stuff back there, that I have pictures of. My concern is I went on DEC website and they claim oil should not be stored in plastic containers and there are a lot of plastic containers back there behind that shed. I don't know what's in them but it's not safe if it's oil. DEC says storing oil in plastic containers outside causes it to sweat creating moisture and then when you go to turn it in, they won't take it because it has to be separated. Oil has to be strictly oil not oil and water and when you put it in plastic containers it sweats. And it causes water to be in it, that's another concern I have, if he's storing oil back there, it's a fire hazard

Chairperson Mollnow sorry to interrupt but if you have a concern with something like that you can code enforcement about that, we can't do anything about what's being stored on properties, or the DEC you can call them directly

Mr. Kowaski can you see my point about the water, we get rain sometimes in February and March and the ground is still frozen and it can only handle so much water then it will start backing up. My concern is all that water coming off there, it's like a half A frame and yes when he did the gutter he didn't put it on that side he put it on his side on the shed, but didn't put it on my side. The drain pipe is right there and you can see the downspout and it goes towards the swale there and when the ground is frozen and there's a lot of rain that will be coming off that roof

Chairperson Mollnow thank you for your comments Mr. Kowaski, I assuming there are no more public comments because there is no one else here, so we will close public comments. Members of the board anything you would like to discuss or comment on? Mr. Taylor if you would like to make a redress, Mr. Kowaski I don't want to go back and forth so if we could take his comments and we can move on, we understand your points of your comments.

Mr. Taylor addressed the board and stated that he uses the plastic barrels as saw horses, there is nothing in them.

Chairperson Mollnow instructed Mr. Taylor to address his comments to the board and not to Mr. Kowaski, if you want to talk afterwards go ahead

Mr. Taylor pointed out on the screen the pipe drain the white tube that is 10-foot drain and it does drain in the swale, it's 10 foot away from the houses, I don't see where that is going to be an issue. I can extend it another 10 feet so it is 20 feet out. There was a week that we got rain for 36 hours straight, and it's hard for anything to handle that much water. I'm not looking to do car repairs or looking to put cars up

Chairperson Mollnow thank you Mr. Taylor. Members of the board any other questions or comments? Would anyone like to make a motion?

Member DeChiaro stated that looking at the criteria obviously, I don't think that what he desires to have on his property with the adjacent neighbor feels so strongly that it is a detriment to their property and the neighborhood that they live in, a variance is something, we have a code and asking for a variance is something that should be taken seriously and if you have a neighbor right next door that is saying that this is going be a concern for our property and I know Mr. Taylor has his opinion that it won't but they have their opinion as well.

Chairperson Mollnow asked if any other board members had any other questions or comments

Vice Chair Kusaywa stated that he agreed with Member DeChiaro

Chairperson Mollnow stated that his concern if this structure is not attached to the house then no variance will be required per the code. So then is it better to have an A framed pergola structure rather than a carport attached to the house, what is better for the neighborhood, because that would have the same drainage issues from the property but there is no variance required from us.

Member DeChiaro that's why we go by the code, and what he's asking for is not by code and this variance we are saying no

Member Cotch asked if he would still have to go through planning

Joe Seman-Graves replied no, he then went on to explain to the board about the combined storm system, and this is more of a street problem than the structure being put on the property. He stated that the City is starting to address the separation of the storm and sewer system to help with the issue of the system not being able to handle all the rain waters, this is a street wide issue.

Mr. Kowaski spoke out

Chairperson Mollnow told Mr. Kowaski that public comment period was closed

Mr. Kowaski stated that it was about what Joe was talking about. When the city paved Elizabeth Court 3 or 4 years ago, when I first moved there was the guy paving down the street and I asked him if he could take some takeout some of my lawn and curb it because the drain sat in the grass and not in the road, so I had him curb it, and when they came and paved Elizabeth Court they paved over that curb. The easiest thing is to have them come and cut that out, if they curbed that it would solve the problem

Chairperson Mollnow ok. Joe anything else you want to talk about there, other than the City is reviewing how to improve

Joe Seman-Graves I would say the only comments are obviously you're going to have similar to the same amount of water run-off from the concrete pad as you would have from the structure regardless of how it's built so I don't know if you change the type of structure if that is going to change any of the concerns there, there going to have the same type of runoff. Myself, the engineer and code didn't see this as having potential flooding concerns given the way it's laid out already. Given that this is attached to the house and there is a 12-foot setback, when the applicant came and asked for setbacks a year ago, give or take, the 12 foot number was given to him because we didn't know how it was being constructed, so to that I don't think the applicant tried to build something with the wrong intentions.

Chairperson Mollnow ok, any other comments or questions from the members of the board? Being none, Chairperson Mollnow made a motion to DENY this variance based on what members of the board have said that under considerations this is creating an undesirable change to the neighborhood based on some of the neighbor's comments, and also that the alleged difficulty was self-created because Mr. Taylor is trying to build a carport that is not according to the zoning requirements

Motion 2<sup>nd</sup> by Member DeChiaro motion carried unanimously

	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>ABSTAIN</u></b>
Greg Mollnow	X		
Mark Cotch	X		
Anthony Kusaywa	X		
Carolyn Dion	X		
Jacqueline DeChiaro	X		

Chairperson Mollnow Mr. Taylor your variance was denied, you can follow up with Joe on what you want to move forward with.

Chairperson Mollnow asked if there was anything else to discuss, being no topics he called the meeting to adjourn at 7:20PM