

**TOWN OF KIRKWOOD**  
**ZONING BOARD OF APPEALS**  
**September 23, 2024**

A Zoning Board of Appeals meeting was held on September 23, 2024 at 7:00 p.m. at the Joseph A. Griffin Town Hall on a use variance for the construction of a 30 ft. X 40 ft. pole barn after removal of three existing shed structures regarding property located at 851 Old State Road in the Town of Kirkwood known as Tax Map No. 130.02-1-26.111 and located in a Residence R Zoning Districts.

Present:                    Duane Travis, Chairman                    Chad Moran  
                                 Mike Maciak, Member                    Gina Middleton  
                                 Bruce Nemcek, Member  
                                 Marc Latini, Member

Please note, these minutes were done from notes only. The recording of the meeting was blank and therefore minutes are a summary of the meeting.

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

**PUBLIC HEARING:**

Chairman Travis read the notice of Public Hearing and commented we have the affidavit of posting by the Town Clerk, notice to property owners within 500 feet of the project, affidavit of publication in the Press & Sun Bulletin, Broome County Planning Department 239-m recommendations and a Short EAF has been filed.

Ms. Middleton stated there was an error in the public hearing notice, it stated this was an area variance but it is a use variance. All other details in the notice were correct.

Chairman Travis read the comments from Broome County Planning Department who did not identify any significant countywide or inter-community impacts. The entire letter is included in the file.

Chairman Travis opened the public hearing to public participation at 7:05 PM.

Mr. Dave Barrows, 839 Old State Road, asked what is a use variance and Ms. Middleton explained that a use variance authorizes a use of the land which otherwise would not be allowed or would be prohibited. The property doesn't have a primary structure, a house, the pole barn is considered an accessory structure and therefore not allowed. It would change the principle use of the property. Mr. Barrows asked if a house could be put on the land and Ms. Middleton stated yes, a house is allowed. The zoning is not changing, he is asking for a use variance to allow the pole barn.

Mr. Barrows had concerns, there are some businesses running not far from his property and he didn't want it to turn into a business. It was noted if this is approved there could be conditions placed on it such as cold storage only and no outside storage. Mrs. Barrows was concerned with property values and asked how far back from the road it would be and Mr. Beck stated 80 feet from Old State Road. The door would face the Barrows property.

Hearing no other comments, Chairman Travis closed the public hearing at 7:16 PM.

**APPROVAL OF MINUTES:**

Motion by Mike Maciak and seconded by Bruce Nemcek to approve the minutes of the April 15, 2024 meeting as submitted. All voted in favor. Motion carried.

Motion by Marc Latini and seconded by Bruce Nemcek to declare the Zoning Board of Appeals the lead agency for the SEQR review of the proposed project on a parcel located at 851 Old State Road, Binghamton, NY 13904 with tax map ID number 130.02-1-26.111.

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

Motion Carried.

Chairman Travis, referring to Part 1 of the Short EAF, questioned #5 and #14. All questions were corrected and are included in the file.

Ms. Middleton read each question in Part 2 of the Short EAF and the board answered no to all questions and is included in the file.

Motion by Mike Maciak and seconded by Marc Latini to declare the proposed project on a parcel located at 851 Old State Road, Binghamton, NY 13904 with tax map ID 130.02-1-26.111 an Unlisted Action pursuant to SEQR regulations.

Roll Call Vote	Marc Latini	Yes
	Mike Maciak	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion Carried.

Motion by Mike Maciak and seconded by Bruce Nemcek to issue a Negative Declaration for the purposes of SEQR.

Roll Call Vote	Marc Latini	Yes
	Mike Maciak	Yes
	Bruce Nemcek	Yes
	Chairman Travis	Yes

Motion Carried.

Ms. Middleton explained this is a 4-test analysis, for a use variance, all the answers to the questions should be no.

Mr. Beck explained the project, there is electric and water on the site but no septic. He plans to use it for cold storage only. He lives at 652 Nowlan Road but he purchased the land in 2019. He admits he didn't know the rules. The builder was supposed to take care of the building permit but didn't. A question was asked if there would be concrete and Mr. Beck stated yes. Mr. Beck explained he would use it for storage of his tractor with

bucket, snowmobiles, a 4X4, and mowers. There would be no storage outside and no business is planned. A question was asked regarding lighting and any lighting would have to be downward facing. Bruce Nemcek commented it is a large property, it is not unrealistic for the size to have a pole barn on it. Mr. Beck commented he would be removing the 3 sheds that are currently on the property.

There was a discussion regarding the location of the pole barn, if it was too close to other houses. A question was asked if it could be moved back further and Mr. Beck stated he could move it back but he would have to remove trees and he didn't want to have to do that.

Chairman Travis reviewed the use variance criteria with the Board as follows:

1. Cannot realize a reasonable return, substantial as shown by competent financial evidence. Mr. Beck commented if he needed to put a residence/living space on the property in order to put the pole barn in, the cost would be prohibitive, he already has a home on Nowlan Road. Board: Yes.
2. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood. Mr. Beck commented if he had to build a primary structure it would be expensive, cost prohibitive. Board: It is a hardship. Yes.
3. Requested variance will not alter the characteristics of the neighborhood. Chairman Travis commented yes, it will alter the character. The homes in that area are very nice, it will change the character and also set a precedent for allowing this in other parts of the town. Mike Maciak commented he had no problem with him doing this. Mr. Beck commented he would be removing the old, rundown structures and wants to put up a new pole barn.
4. Alleged hardship has not been self-created. Board: It was, he purchased the property with no principle structure. Mr. Beck commented at some point there was a house, which isn't there anymore, the foundation was left on the property along with the three sheds.

John O'Neill commented if the pole barn could be built to look like a house, would that be a compromise.

Motion by Mike Maciak to grant the use variance with conditions of cold storage only, for personal use only, move further back on the property and provide a visual buffer between that property and the neighbor's property. The motion was not seconded so no roll call was taken.

Motion by Marc Latini and seconded by Bruce Nemcek to deny the use variance.

Roll Call Vote:	Marc Latini	No
	Mike Maciak	No
	Bruce Nemcek	No
	Chairman Travis	Yes

Motion Denied.

As a note, the board members did make it clear, if there were some "no" votes, that they were voting "no" to the project, therefore yes to be denied.

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Motion by Bruce Nemcek and seconded by Marc Latini to adjourn the meeting. The meeting was adjourned at 8:15 pm.

Respectfully Submitted,

Mary Kay Sullivan, Secretary  
Zoning Board of Appeals