

Town of Homer Zoning Board of Appeals
Minutes for Wednesday, April 22, 2026, at 6:00pm

Board Members (absent *)

Dan Gustafson, Chairman
Stuart Young
Gary Sweeney
Chris Mauler
Rhea Robinson *
Ryan DuBois *
Rick Villnave*
Lindsay Andersen (alternate)

Others Present

Mike McMahon, Planning Chair
Dan Ellis, Attorney to the Town

Public Attendance: Michael Batzer, Timothy Deline, Rebecca Wagner, Linda Armstrong, Donna Hill, Steve Waligurski, Brent Nelson, Mike Stoker, Yanira Stoker, Jameson Delvecchio, Atty John Delvecchio

Public Hearing

Chairman Gustafson opened the public hearing at 6:00pm to consider an application by Jameson Delvecchio for an area variance to allow for a subdivision of a 5.11-acre lot located at 4864 Sweeney Road tax map no. 75.02-01-02.000. The applicant is seeking to subdivide 2.7+/- acres of the 5.11-acre subject parcel to allow for the construction of a two-family home on the subdivided parcel. The proposed subdivision will reduce the road frontage of the subject parcel to 265 feet which is less than the required 300 feet of road frontage. The legal notice was read out loud for the board and public.

Attorney John Delvecchio stated he would be representing his brother Jameson Delvecchio and presenting the application. Attorney Delvecchio stated the applicant is seeking an area variance to allow for the width of the lot nearest to the road to be reduced to 265 feet. The intent is to subdivide the lot with a narrower lot size so that the applicant can build a two-unit rental on the back lot.

Attorney Delvecchio stated they have presented the plan to the Cortland County Health Department who stated they did not foresee any issues with the proposal as far as the well and septic systems.

Attorney Ellis stated for the record that in 1979 when properties 1-35 of the original Briar Meadow subdivision were created/subdivided there were deed restrictions put into place which state there shall be no further subdivisions for the purpose of re-sale or construction.

Attorney DeVecchio state that his client is aware of the deed restrictions, but that that the deed restrictions are outside of the legal purview of the zoning board of appeals.

Attorney Ellis agreed and stated that the board would not be adjudicating the effectiveness of the deed restrictions, but that it should be stated on the record that any decision the board makes would not be intended to authorize a violation of any private deed restrictions.

Mike Stoker, who resides at 4664 Briar Meadow Rd., asked for the criteria for the variance and an explanation as to how the board makes the determination to issue such variance.

Attorney Ellis stated an area variance is granted when a zoning board determines that the benefit to the applicant outweighs any potential detriment to the health, safety, and welfare of the neighborhood. Attorney Ellis state that Zoning boards use a balancing test consisting of five primary criteria. The criteria were read out loud:

- Character of the Neighborhood: Whether the change will be undesirable or create a detriment to nearby properties.
- Feasible Alternatives: Whether the applicant can achieve their goal through some other method that does not require a variance.
- Substantiality: How significant the requested deviation is e.g., asking for a 1-foot setback vs. a 10-foot setback.
- Physical or Environmental Impact: Whether the request will have an adverse effect on the physical or environmental conditions of the area.
- Self-Created Difficulty: Whether the owner created the problem or hardship themselves. While relevant, a self-created difficulty does not automatically result in a denial for an area variance.

Rebecca Wagner, who lives next door to the proposed construction lot, stated she feels there are without a doubt physical and environmental impacts that would occur if a two-family home was constructed on the property and it is already considered a wetland. She also stated that she bought her home for privacy that the deed restrictions ensured would remain and she does not understand why a variance would even be considered, given that the neighborhood consists of all single-family, larger lots.

Rebecca also stated that the application states 273 feet, but Attorney Delvecchio and the proposed map have stated 265 feet. Attorney Delvecchio stated the application is incorrect and they are indeed requesting a 265 feet width. She asked if it is a requirement to submit a new application and he stated he was requesting a verbal amendment to the original application.

Attorney Ellis stated the county planning department had conducted a GML review and determined the application was technically adequate and it was returned for local determination.

Rebecca Wagner asked how the request is not considered a self-created hardship. Attorney Delvecchio replied they stated on the application that they are aware the hardship is self-created, but the existing lot width is non-compliant at 290 feet wide, and he does not feel 25 feet is a substantial difference that would have a significant impact.

Linda Armstrong stated that she does not believe rental units are in anyway improving the neighborhood, the original deed restrictions were put into place to protect the wetlands and forest areas, and she believes that zoning laws exist for a reason. She does not feel there is any reason to not comply with the existing laws, by issuing a variance which would lead to the development of the two-unit structure.

Donna Hill stated that she remembers the purpose of the original subdivision deed restrictions and it was to prevent further development and ensure large lots for single family dwellings.

Attorney Delvecchio stated the purpose of this meeting is for the zoning board to consider the area variance for the width of the lot and feels the other information is irrelevant to the scope of the meeting.

Chairman Gustafson asked three times if there were any further comments from the public. With no further questions or comments the public hearing was closed.

Regular Meeting

Chairman Gustafson opened the regular meeting to discuss the application by Jameson Delvecchio for an area variance to allow for a subdivision of a 5.11-acre lot located at 4864 Sweeney Road tax map no. 75.02-01-02.000. The applicant is seeking to subdivide 2.7+/- acres of the 5.11-acre subject parcel to allow for the construction of a two-family home on the subdivided parcel. The proposed subdivision will reduce the road frontage of the subject parcel to 265 feet which is less than the required 300 feet of road frontage.

Attorney Ellis stated the request for an area variance for a single- or two-family property is considered a Type 2 action under SEQR therefore there is no need for further environmental review.

Mike Stoker asked what the difference is between Type 1 and Type 2 actions and why further review was not required. Attorney Ellis stated state that Type 1 actions are activities that the State of NY has predetermined to likely cause significant adverse environmental impacts. Those activities may require significant environmental review under SEQR. He stated that Type II actions are those activities that the state has predetermined to not cause significant adverse environmental impacts. Type II activities do not require further review by the acting board.

The board agreed that the proposed action is a Type II action under SEQR and no further environmental review was conducted.

A gentleman spoke up from the back of the room. Attorney Delvecchio requested that no further public questions or communications be considered by the board as the public hearing had been closed. The board agreed that the public hearing had

been closed and that no further comments should come from the audience, without further permission from the board.

Board members proceeded to review each of the five criteria of the area variance balancing test to determine if the benefit to the applicant outweighs any potential detriment to the health, safety, and welfare of the community as follows:

1. Whether the variance will create an undesirable change in neighborhood character or act as a detriment to nearby properties.

Member Young stated that he thought the variance would create an undesirable change in the neighborhood, mainly because it would allow a lot smaller than all neighboring lots which contain single-family owner-occupied homes. There was further discussion that the variance would ultimately allow a duplex rental to be constructed amongst the larger single-family homes and lots in the preexisting single-family neighborhood which is not in keeping with existing neighborhood conditions. The board agreed with member Young and cited testimony provided by residents during the public hearing.

2. Whether the benefit can be achieved by the applicant through other feasible methods (not requiring a variance).

Member Andersen indicated that there is already a home on the lot as it exists without a variance. There was some discussion indicating that the applicant could acquire a compliant lot to build on. The board agreed with member Andersen.

3. Whether the requested variance is substantial, as compared to the code requirement.

Member Andersen state that “substantial” is a relative term. She further indicated that although the number of feet requested for the variance may seem small on its face, that the request was actually substantial because it would allow for a much smaller lot than what exists in the neighborhood and would also lead to a the construction of a duplex which is not consistent with the existing neighborhood. The board agreed with member Andersen.

4. Whether the variance will have an adverse effect or impact on physical or environmental conditions in the neighborhood.

Member Andersens stated that the board had already covered this issue in that the variance would ultimately lead to development that is not physically in keeping with the existing neighborhood of larger lots containing single-family homes. There was some limited discussion about the lot also containing wetlands.

5. Whether the alleged difficulty was self-created.

The board acknowledged attorney DelVecchio's prior statement that the hardship is self-created as indicated on the application for a variance.

Board Chair Gustafson asked the board for a motion to approve the application. No motion was made.

Attorney DelVecchio state that he would sue the board if the board did not act on the application.

Member Young made a motion to deny the area variance request due to the board's findings that the detriment of granting the variance outweighs the benefit to the applicant. Member Young stated that the variance would create an undesirable change in the neighborhood by allowing a smaller lot than what currently exists in the neighborhood and ultimately allowing the construction of a duplex which is not in keeping with the physical nature of the existing neighborhood. Member Mauler seconded the motion. With all members in favor saying "aye", none opposed, and none abstained. The motion was carried 5,0,0.

Adjournment

The meeting was adjourned at 6:55pm.

Lindsay M. Andersen, Recording Secretary