

Town of Athens Zoning Board of Appeals
Special Location - EJ Arthur Elementary School
Meeting Agenda
December 14, 2022
7:00 p.m.

1: Austin Griffith [Public Hearing]

22 Skinner Lane, Catskill, NY 12414

Tax Map #103.00-3-35.1

Zoned - Open Space

-Accessory Dwelling

2: Freepoint Solar

Potic Mountain Rd/Center Rd., Athens, NY 12015

Tax Map #'s: 103.00-3-17, 103.00-6-1, 103.00-6-2, 103.00-6-4

-Public Utility Solar Project-

3: Meeting Minutes of November 9, 2022

Town of Athens Zoning Board of Appeals
2 First Street, Athens, NY 12015
Meeting Minutes: December 14, 2022

The Town of Athens Zoning Board of Appeals was called to order at 7:00 p.m. at the EJ Arthur Elementary School, 51 3rd Street, Athens. The meeting began with the Pledge of Allegiance.

Board Members present: Chairman Eric Nelson, Member Christian Ames, Member Helen Ihde, Member James Morabito and Member Christian Pfister. Also in attendance: Code Enforcement Officer Albert Gasparini and Secretary Annmarie Krause.

Also in attendance: Mary Beth Bianconi - Delaware Engineering, Adam Yagelski - Delaware Engineering, John Dowd - Special Council, George McHugh - Town Attorney, Mike Pirrone - Town Supervisor, Brent Frary - Attorney, Murray Law Firm, John Parise, Tom Skinner, Jeannette Skinner, Tom Satterlee, Joan Satterlee, Helen Franco, Margaret Morabito, John Swift, Doug Lynch, Austin Griffith, John Knight, Nora Knight, Dave Swanson, Josh Lazarus, Mellissa Beck Grosso, Matt Laudes, John J. Farrell

Project: Public Hearing, Austin Griffith, 22 Skinner Lane, Catskill, NY 12414, Tax Map #103.00-3-35.1, Zoned - Open Space - Accessory Dwelling

A motion was made to open the public hearing for 22 Skinner Lane, Catskill, NY
Motion: Member Ames
Second: Member Pfister.
Vote: All in favor - Nelson, Pfister, Ames, Morabito, Ihde

Chairman Nelson detailed the correspondence of two residents that were not able to attend the meeting. A letter of objection was received from John Fenyves - 20 Skinner Lane objecting to the addition of an accessory dwelling on property that is under five acres. He does not believe this should be allowed and does not want to see an increase in traffic.

An email was submitted by Kevin Byrne - High Hill Road, an adjoining property owner. He is opposed to the project, objecting to variances or approvals which deviate from residential, single family home use.

Chairman Nelson asked for input from those in attendance.

Jennette Skinner - 24 Skinner Lane is opposed to the project because of concerns about insufficient septic and the taxing of the water level. Ms. Skinner is also worried that if this project passes it “opens a can of worms” because many of the lots are less than 5 acres and she feels this type of project takes away the privacy of other residents as well as the peace and quiet of the area. Ms. Skinner also requested a restriction for having an Airbnb at Mr. Griffith’s location.

Tom Skinner - 24 Skinner Lane is concerned about the depth of the well at 22 Skinner Lane and questioned the adequacy of the well for the two dwellings. Chairman Nelson explained that if the project was approved these issues would be dealt with during the permit process.

Melissa Beck Grosso - 464 Potic Mountain Road is opposed to the project and feels there is no hardship to the property owner because there is already a home on the property. She feels that residents should follow the zoning that is in place. She also feels there is no need to build an accessory building for the purpose of income for the property owner.

Chairman Nelson explained that for open space zoning, a dwelling with an accessory unit would be allowed if you have 5 acres. He added that, at this time, Mr. Griffith is asking for an area variance because his application is not within the setbacks for the zone. According to Code 180.43, if you have a residence *“an accessory may be located by right, provided that the minimum acreage required for that principal building is met”*. The minimum for the open space zone is 5 acres and 22 Skinner Lane is 2.17 acres.

Nora Knight - 35 Skinner Lane was unopposed to the project at first, but is now uneasy about the creation of an Airbnb causing the area to become commercialized. Also, she doesn't want to add to the well issues that occurred last year. She thinks this type of project takes away from the residential feel of the community and can hurt the quality of life for the residents.

Member Ames asked Austin Griffith what his intentions are for the property. Mr. Griffith said he is not sure of the well depth and that his well had no issues this summer. He explained that he is in the area part time and rents his home as an Airbnb when he is out of town. He stated that there are not more than four people in his house at any one time and that the existing house is 1200 sq ft. The square footage of the two dwellings would be approx. 2000 sq ft in total. Mr. Griffith plan is for either a single story cottage or a cottage over a garage and distributed a preliminary design of the structure to the board members. He explained the property would have one well and one septic and in total for both dwellings there would be three bathrooms and three bedrooms.

Mr. Griffith also mentioned that John Fenyves, who submitted a letter in objection, has not built his house yet and still has the ability to locate the home further from the accessory building and avoid the issues noted in his letter.

Member Pfister asked if there were any existing accessory buildings on the property. Mr. Griffith replied that there is only a shed. Member Pfister asked about turning the dwelling into an Airbnb. Mr. Griffith explained that he would like to do either that or a short/long term rental for travel nurses and thinks this would increase the value of his property.

Chairman Nelson and Attorney McHugh explained that the variance requested was an area variance for setback relief, but in this case an area variance as well as a use variance would be needed and both may be considered in the decision. They explained that this is considered a single dwelling unit on 2.17 acres and that many other parcels near this location are also under 5 acres. As per code

180.43, an accessory building can be considered one unit on 5 acres or more. Because this is less than 5 acres, it brings into question whether or not an accessory dwelling may be added.

A motion was made to close the public hearing for 22 Skinner Lane, Catskill, NY

Motion: Member Ames

Second: Member Pfister.

Vote: All in favor - Nelson, Pfister, Ames, Morabito, Ihde

Chairman Nelson explained that when looking at code 180.43, a detached dwelling in the Open Space Zone with less than 5 acres of property is not allowable. The application in front of the board is for a side setback variance, but it is premature to act on that variance because ultimately he may not be able to build the accessory unit due to the need of a use variance.

A motion was made to vote on the application for 22 Skinner Lane, Catskill, NY

Motion: Member Ames

Second: Member Pfister.

Vote: Five No Votes - Nelson, Pfister, Ames, Morabito, Ihde

The application was denied.

Austin Griffith also relayed to the board that he mailed his check for the public hearing costs.

Project: Freepoint Solar, Potic Mountain Road / Center Road, Athens, NY 12015

Tax Map: 103.00-3-17, 103.00-6-1, 103.00-6-2, 103.00-6-4, Public Utility Solar Project

Chairman Nelson explained the goals of this meeting are to go over the memo from Delaware Engineering and to help all in attendance understand the next steps to evaluate this project. The applicant has a copy of the memo being discussed at this meeting and is aware of all the questions being asked.

Mary Beth Bianconi of Delaware Engineering explained that all information pertaining to this project are available on the Town of Athens website. She explained that this is a Type One action under SEQR. Coordination with other agencies to issue approvals will be required. The process has begun to make the Athens Zoning Board lead agent for the SEQR process so this board can evaluation the environmental impact of the project.

Ms. Bianconi explained that originally this project came in front of the Zoning Board about a year ago and was denied when using the Standard Use Variance test since solar is not allowed in the district. A lawsuit was filed by the applicant and the judge in the case required the zoning board to use the Public Utility Standard from a 1978 court case.

Ms. Bianconi continued: Con Ed, a power company downstate, applied to the Village of Buchanan in Westchester County, for a permit to construct improvements to a nuclear power plant. It was pre-existing when the application was made in 1977. The improvement exceeded the height limit and

the village believed a Use Variance was required. The ZBA denied the variance. It was appealed and the decision from the states highest court created the Public Utility Standard.

The court case determined that some impact on the neighborhood is likely and because utilities are required, the needs of the broader public may outweigh local concerns. The Public Utility Variance must have a rational basis and have substantial evidence. Local concerns, though important, are not the sole criteria since utilities are required to provide such service, instrumentalities and facilities as shall be safe and adequate and, in all respects, just and reasonable.

The zoning board may not exclude a utility from a community where the utility has shown a need, however the utility cannot place the facility wherever it chooses without answering the following questions:

1. *Is it a public necessity and something the community as a whole cannot live without and is required by the community?*
2. *Does it have to be at this location? Is there a hazard if not built here?*
3. *Is the burden minimal?*

Adam Yagelski of Delaware Engineering continued with the presentation. A site selection analysis is needed showing the company has looked at other sites. Chairman Nelson wants more information to explain what makes this site unique so that this type of application, if approved, is not repeated throughout the Town of Athens. Ms. Bianconi explained that a test of burden level and intrusiveness is important. The project can't destroy the reason why the zone was created.

Member Ames asked how Hoffman compares to this application. Ms. Bianconi explained that the applications are very different. ConEd was already an existing power plant and stopping the project would have a substantial impact. The argument in the Hoffman case was that you are simply adding to an enormous power plant. Hoffman was existing and in that case there was necessity and site selection was obvious because of an operating nuclear facility. In this case, though, even with the differences Hoffman must be used because of the ruling by the judge.

Ms. Bianconi explained that Athens and Cocksackie host a large amount of solar already and Athens Generating is located in this town as well, but none of the power generated goes to the Town of Athens. This area has already given for the benefit of others.

Mr. Yagelski discussed the issue of the grid. These facilities are more efficient in locations served by existing utility infrastructure. North Catskill is the nearest substation. He proposed questions about alternative locations outside the Residential Zone that are served by this substation. He also questioned the possibility of costs the town may incur in the future.

Mr. Yagelski continued: The application shows that the zoning requirements are met except for use. More information is needed for the Steep Slope Ordinance. More detail is needed for slope evaluation. There should be more categories of slopes (ie. 15 - 25 and 25 and more). There are different requirements as the slopes become steeper. There are also specific standards with respect to driveways. These facilities typically have an access road around them. A piece of the access road would be build on slopes that are fairly steep. More information is needed here.

Mr. Yagelski also proposed questions about the SEQR process including visibility within a mile, landscaping, erosion and sediment control. Are they following the DEC policy for view shed analysis when clearing this substantial amount of vegetation? They must provide information more consistent with that policy as well as information about visual impact assessment in various conditions and from various vantages. A five mile radius for large scale clearing should be analyzed. The board can mitigate the potential impacts. A screening plan needs to be reviewed for 15 Center Road, a non participating property. The screening and maintenance plan needed to keep in perpetuity must be submitted. A review of storm water and run off is needed because this is on a steep slope and at the top of a small water shed area. A narrative is needed showing how they will address these run off issues. The project allows over 40 acres of disturbance. It is over the 5 acre New York State requirement and so a waiver is needed. The applicant provided a phasing plan, but a narrative is needed to show how these phases will work. Mr. Yagelski explained that the project should not harm the reason the zone was established.

Member Ames asked if this includes land used to access the facility. Mr. Yagelski felt it would because it is part of the project, but the line is adjacent to the property so there would not be a substantial impact.

Brent Frary - Lawyer for Freepoint Solar added that they are working on answers to the questions and will submit as soon as possible. All the information will be on the town website. Freepoint will resubmit the EAF and Application to the Town with a cover letter.

Member Morabito asked what bearing the opinion of the neighbors will have. Chairman Nelson mentioned that there were letters from 2018. The letters in favor and opposition will be part of the record. Attorney McHugh stated there will be a public hearing and that the concerns of neighbors are not a reason to deny, but are a part of the analysis. Ms. Bianconi stated that local concerns are a factor, but not the only factor.

A motion was made to hear from the public.

Motion: Member Ames

Second: Member Ihde.

Vote: All in Favor - Nelson, Pfister, Ames, Morabito, Ihde

Chairman Nelson explained that there will be a public hearing in the future, possibly February or March.

Melissa Beck - 464 Potic Mountain Road explained that she put together packets the previous time this application was before the Zoning Board. She would like that packet distributed to the members. The Chairman thought he may have a copy. Ms. Beck inquired about one property owner that sold to Freepoint and other property owners that have written consent letters.

Doug Lynch - 49 High Hill Road wanted reassurance that the information from Freepoint would be checked for accuracy. The representatives from Delaware Engineering explained that it is their job to review the information provided and they are only interested in facts.

Eric Swift - 37 Skinner Road asked if we could access a higher court for this case. Ms. Bianconi provided information about the New York State Climate Leadership and Community Protection Act which is working to advance green power. This project is helping to meet the state law of 6000 megawatts of solar by 2025. The committee is putting out a report and will have a public comment period in January. She noted that this is the time for voices to be heard at [climate.NY.Gov](https://climate.ny.gov).

John Parise - 310 County Route 45 asked when information will be submitted. Chairman Nelson explained that any information received by the January 11th meeting will be discussed. There will be no public hearing until all the information is in.

Meeting Minutes: November 9, 2022

A motion was made to approve the Minutes of 11/9/22 as written.

Motion: Member Ames

Second: Member Ihde

Vote: All were in favor - Nelson, Pfister, Ames, Morabito, Ihde

With nothing further to come before the Board, a motion to adjourn the meeting

Motion: Member Ames

Second: Member Ihde

Vote: All were in favor - Nelson, Pfister, Ames, Morabito, Ihde

Meeting Adjourned 8:30 p.m.

Respectfully Submitted,
Ann Krause, ZBA Secretary