

Town of Athens Zoning Board of Appeals  
2 First Street, Athens, NY 12015  
Meeting Minutes: April 12, 2023

The Town of Athens Zoning Board of Appeals was called to order at 7:00 pm. The meeting began with the Pledge of Allegiance.

Board Members present: Chairman Eric Nelson, Member Christian Ames, Member Helen Ihde, Member Christian Pfister, ZBA Secretary Annmarie Krause. Also present: Michael Pirrone - Town Supervisor, Albert Gasparini - Town Code Enforcement Officer.

Also in attendance: Rhiannon Gifford - Murray Law Firm, Dave Swanson - SunEast Power, Joseph Kristi - Freepoint Solar, Joshua Lazarus and Jason Dickey - TRC Companies, Mary Beth Bianconi - Delaware Engineering, Tara Borodin-Galarza - Phinney Design Group, Bud Tremblee, Edward Bloomer, Gene Bartels, Marsha Bartels, Nora Adelman, Karen Dudley, Melissa Beck-Grosso and Ariana Deschaine.

**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 discussed a list of correspondence distributed in the last month. The first group of documents were responses from Murray Law Firm and TRC Companies who are both Freepoint Solar representatives.

1. On March 3, 2023 Freepoint Solar gave a partial response to the Delaware Engineering memo dated 12/12/2022
2. On March 17, 2023 Freepoint sent a letter with concerns about a ZBA member. That member has recused himself from the application. Secretary Krause will fill in as an alternate and a voting member for this application.
3. On March 29, 2023 Freepoint sent a letter covering Sunk Capital Costs & Cost Analysis for alternative sites.
4. On March 29, 2023 Freepoint sent a letter requesting confirmation that the board is done asking for more information. They explained that they do want a piece-meal approach for questions.
5. On April 4, 2023 Freepoint sent a letter in response to Attorney Dowd's letter dated March 7, 2023 concerning the Local and State needs relative to climate goals, alternative site analysis and existing infrastructure capacity.
6. On April 4, 2023 Freepoint sent information on Slopes, Visual Assessment and Landscaping documentation. This is supplemental to the March 3rd Response to the Delaware Engineering memo from December 12th.

Chairman Nelson then discussed the correspondence from Attorney John Dowd of Dreyer Boyajian to Freepoint Solar.

1. On March 7, 2023 Attorney Dowd sent a letter asking about public necessity and some legal questions.

2. On April 5, 2023 Attorney Dowd sent a letter in response to a Murray Law Firm March 29th letter. This letter asks for Sunk Capital Cost Itemization.
3. On April 5, 2023 Attorney Dowd sent a letter in response to Murray Law Firm on “completeness” and information requests.

All of these items are available on the website.

Chairman Nelson asked if Attorney Dowd’s request for itemizing the capital costs and a cost analysis for alternate sites would be answered. Rhiannon Gifford of Murray Law Firm responded that the answers would be forthcoming and expected to have them in the next week.

Chairman Nelson discussed the April 5th letter asking for input from Delaware Engineering about slopes in excess of 25%. For areas in excess 25% the proposal is to cut trees and remove vegetation, but not grub. Delaware is asking to graphically show the slopes of 25% or greater. This would show that no roads go through these areas and no solar panels will be constructed in these areas. Jason Dickey of TRC Companies explained that slopes are shown in color on the latest drawings in five slope categories one of which is showing the areas above 25%.

Mary Beth Bianconi of Delaware Engineering explained that for the board to consider a Use Variance, SEQR (State Environmental Quality Review) must be done. Delaware Engineering is drafting a letter to be sent in the next day or so showing the access road at a slope of greater than 25%. Following code 180-32E, a variance will be required for this road. This issue needs to be identified now from a SEQR perspective, but the consideration of the board would be done at a future time. This would be an Area Variance and would be done after the Use Variance because there will be no approval for any construction work while considering the Use Variance. One standard in SEQR says that the entire project must be considered including anything that would be permitted and built as well as impacts during and post construction, etc. If a Use Variance is approved the project would go back to the Planning Board. This is when construction information, including the 25% slopes, may lead to the need for an Area Variance and then come back to Zoning.

Chairman Nelson referenced a part of the Delaware letter asking for a cover letter from Freepoint. This cover letter should state that Freepoint deems their application complete and shows the documents that comprise the application. This will help to tie together all the questions and responses from previous meetings. Ms. Bianconi explained that the applicant has answered all of the question in some form, but there may be the need for additional information in the future. She asks that Freepoint confirm that all questions have been answered to the best of their ability. Chairman Nelson asked that any new responses be contained in one letter.

The April 4th visual study was discussed. This is the document showing the viewpoints the board asked to model with existing views, post construction simulations and five year projected views. The photographs are located in Attachment A with three sheets per view, one overview map and 2 baseline. Landscape drawings were also submitted.

Melissa Beck-Grosso 464 Potic Mountain Road said that one of the pictures was a neighboring driveway near High Hill Road and Center Road. This photo was not the viewpoint she expected and instead should have been to the left where the roads meet. Chairman Nelson felt that this document

gave the board what they were asking for, but would look at it again to see if there are any other questions. He also explained that the document is available for public viewing.

Member Pfister asked about a solid fence shown in Photo #5. Mr. Dickey explained that this is a green mesh fence.

Chairman Nelson explained that if the application is substantially complete and Freepoint can deliver any answers needed in the next two weeks, then the board will be able to vote to schedule a public hearing. This public hearing can be opened at the May meeting and remain open for the June meeting as well. The meeting can remain open until the public is heard and the board is ready to vote on the application.

Ms. Bianconi explained that there are two parts to this decision. First is the technical portion which is the SEQR code compliance. The second is the Use Variance with the standard for that decision being the Con Ed vs Hoffman decision. This is being handled by Attorney Dowd and will be explained after he has received all pertinent information.

The technical portion of the decision includes:

- The EAF (Environmental Assessment Form) which is on the website and includes information such as threatened and endangered species and other related issues. She stated that artifacts are also within the environmental review SEQR process.
- The access road. Delaware looked at the access road and at this stage in the process the access road appears to meet code.
- The photo simulations satisfy the requests of the board. Ms. Bianconi explained that this includes leaf-off conditions and therefore shows the worst case. A few viewpoints show that the site will be seen in leaf-off conditions and in these cases mitigation is needed with landscaping, privacy fencing and other options. There is a 5-year post construction simulation and the assumptions appear reasonable. She explained that whenever you build anything you are changing the way a property looks. Change is not necessarily a reason to deny an application. The following question needs to be answered: "Is the visual contrast so extreme that it has a negative impact on the neighborhood?"
- The Landscaping plan has been submitted and appears to reply to the requests of this board.
- A Vegetation management plan has been submitted showing how the trees, shrubs and grasses are maintained. This information will satisfy SEQR, but more information may be needed for the planning process.
- A Storm Water Permit will be required by the state. More information will be needed to decide if this will be a general permit or an individual permit. The Planning Board will need to deal with this issue. At this time, there is enough information for the Zoning Board to continue the process.

Ms. Bianconi concluded that with some additional minor details, the technical portion of this application is ready for scheduling a hearing. She also stated that the application was submitted to DEC and that this is not an approval, but instead it is a notice of intent.

Member Ames asked about the effect on property values. Chairman Nelson said that there is a case study that is not specifically for the Town of Athens, but instead from other locations. Ms. Bianconi

discussed the differences with the Hoffman case and the effect on property values because in that case it was an exiting structure. Attorney Dowd would need to look into this question.

Chairman Nelson referenced Attorney Dowd's memo showing the criteria to use when evaluating this application. This criteria came from the State Supreme Court and is summarized in the Delaware Engineering memo of December 12th. He asked board members to look at this criteria over the next two months before a vote is taken.

Ms. Bianconi suggested that it may now be appropriate to schedule a Public Hearing that possibly continues through June giving time for the review of documents and comments. There can be a written comment period after the June meeting. The public hearing will be closed at the appropriate time. After that a positive or a negative declaration of SEQR will be made. A positive declaration would mean there is additional information needed about conditions of the site. A negative declaration may be made once there is evidence stating that based on the documentary record we are able to identify the sites conditions, identify a reasonable range of potential environmental impacts and a reasonable range of mitigation measures that would need to be conducted if the project is going to happen in the future. She reminded the board that this does not include storm water permits which are done by the state. Once SEQR has concluded the board can begin deliberations.

Ms. Bianconi suggested that the board discuss and deliberate on the application. Attorney Dowd can then draw up a draft resolution on the basis of these deliberations using the standards given to the board to follow.

This draft written resolution would document the following:

- The process that has been accomplished
- The SEQR process that has been conducted
- A description of the application materials
- A description of the standards that have been used to compare the application materials
- A description of the boards deliberations.

This documentation will be available, in writing, for the board as well as the public. The document would be evaluated at a board meeting and at that point a vote can be taken.

Member Pfister wondered about how far apart the two parties are. Ms. Bianconi and Chairman Nelson explained that all representatives are working together with continued cooperation.

Karen Dudley - Potic Mountain Road asked about storm water issues after project is complete. Ms. Bianconi stated that storm water is a state and not a local issue.

Melissa Beck asked about pink wetland delineation tape on the property. The consensus was that no one knows who placed it on the site and that it is not accurately delineated.

A motion was made to schedule a Public Hearing for May 10, 2023 at 7:00 pm at EJ Arthur Elementary School.

Motion: Member Ames

Second: Member Ihde

Vote: 5 Ayes - Nelson, Pfister, Ames, Ihde, Krause

Freepoint Solar will provide a list of addresses in the 500 foot zone around the site after which letters will be sent and a posting will be in the newspaper.

**Project: Deschaine Café, Ariana Deschaine, 9760 NYS Route 9W, Athens, NY 12015, Tax Map #'s: 104.00-5-1, 104.00-5-2, Area Variance, Zone: MUC - Mixed Use Community**

The property owner, Ariana Deschaine, explained that the actual name for the cafe has not been decided. Tara Borodin from Phinney Design Group was present to represent the applicant. Ms. Borodin explained that this property is an existing-non conforming building that used to be an auto shop. There is a separate residence adjacent to the property along Schoharie Turnpike that is also owned by the applicant. She would like to keep the properties separate. There was a shed that has been removed. This plan shifts a portion of the residential site to the commercial site to alleviate some non conforming issues. The proposed left side setback change would allow for a driveway onto the site. The plan proposes the addition of an 800 sq. ft. porch with the stone and garage front remaining. The applicant is working on sketches of the improvements to both properties and believe this will help with the curb appeal of both structures.

Chairman Nelson went over the chart of variances needed:

| Item                         | Required                                             | Existing            | Proposed |                                   |
|------------------------------|------------------------------------------------------|---------------------|----------|-----------------------------------|
| Front Setback                | 40                                                   | 12                  | 12       | No Change                         |
| Front Setback Residence      | 40                                                   | 33.5                | 33.5     | No Change                         |
| Left Side Setback            | 25                                                   | 19.5                | >25      | From Non-Conforming to Conforming |
| Left Side Setback Residence  | 25                                                   | >25                 | 40       | Conforming                        |
| Right Side Setback           | 25                                                   | 13                  | 13       | No Change                         |
| Right Side Setback Residence | 25                                                   | 29                  | 15.2     | Becomes non conforming            |
| Rear Setback                 | 50                                                   | 0                   | 5        | Improvement, but non conforming   |
| Rear Setback Residence       | 50                                                   | 42                  | 17       | Becomes less conforming           |
| Lot Size                     | 3 acre                                               | 1/4 acre + 1/2 acre |          | Remains non conforming            |
| Lot Depth                    | This proposal brings lot depth closer to conforming. |                     |          |                                   |

Member Ames asked about the septic system location. Ms. Borodin said the owner is in negotiations to purchase more space from an adjacent lot to alleviate the septic issue. This would add to the acreage and allow for a larger septic system.

Member Pfister asked if this property uses village water and also if this will affect the ability to sell the home. Ms. Borodin felt that the upgrades will elevate the corner and will become a local favorite.

Chairman Nelson explained that this is a permitted use and is a preexisting structure and asked the timeline for the additional property. Ms. Borodin explained that this was a recent idea and they were

not sure when it would be finalized. There are ways to make the septic work with the original property size such as less parking or gravel instead of pavement.

Ms. Bianconi said the additional property for the septic could make the lot closer to conforming. She explained that the public hearing can be scheduled, but the vote can be taken after a decision is made on the property purchase vs. the septic being installed on the existing lot.

Chairman Nelson explained that there are tradeoffs in this application. Some items are improved, some are made worse and some are not changing. A vote can be taken for a public hearing. The applicant should return at that time with a resolution to the septic system location.

Chairman Nelson asked the board if there are any issues stopping them from voting on a public hearing. The board had no objection.

A motion was made to schedule a Public Hearing for May 10, 2023 at 7:00 pm at EJ Arthur Elementary School.

Motion: Member Ames

Second: Member Pfister

Vote: 5 Ayes - Nelson, Pfister, Ames, Ihde, Krause

A resolution to change the Freepoint Solar public hearing to 7:30 pm on May 10, 2023 was accepted and an email will be sent to interested parties for Freepoint Solar.

Motion: Member Ames

Second: Member Ihde

Vote: 5 Ayes - Nelson, Pfister, Ames, Ihde, Krause

### **Meeting Minutes: March 8, 2023**

A motion was made to approve the Minutes of March 8, 2023 as written.

Motion: Member Ames

Second: Member Ihde

Vote: 5 Ayes - Nelson, Pfister, Ames, Ihde, Krause

### **Further Business: None**

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

Motion: Member Pfister

Second: Member Ames

Vote: 5 Ayes - Nelson, Pfister, Ames, Ihde, Krause

Meeting Adjourned 8:14 p.m.

Respectfully Submitted,  
Annmarie Krause, ZBA Secretary