

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

The Town of Athens Zoning Board of Appeals was called to order at 7:04 pm at the Athens Firehouse, 39 3rd Street, Athens. The meeting began with the Pledge of Allegiance.

Board Members Present: Chairman Eric Nelson, Member Christian Ames, Member Christian Pfister, Member Helen Ihde, ZBA Secretary & Alternate Member Annmarie Krause. Also present: George McHugh - Town Attorney, Michael Pirrone - Town Supervisor.

In attendance: Caryn Mlodzianowski-Bohler Engineering, Mary Beth Bianconi and Adam Yagelski-Delaware Engineering, Jacqueline Murray-Murray Law Firm, Matt Landes & Dave Swanson-Freepoint Solar, Tegan Kondak-TRC, Nora & John Knight, Melissa Beck, Mike Campbell, Tom Campbell, Russ Nadler, Lisa & Eric Holsopple, Chase Schaefer, Christopher Schaefer, Jessica Lee, Gabe Corrado, Tom Krause, Joe Fabiano, Alfonso Escobar, Jacqueline Tefft, Clinton Tefft, David Blasch, Corey Vorraro, Michael Germinario, Dieter Hartmann, Gene Bartels, Marsha Bartels, Joan & Tom Satterlee, Helen Franco, Richard Sciarra, Teri VanWormer, Hal Brodie, Karen Dudley, Margaret & Rob Muenkel, Michael Ragaini, Paul Urban, Elaine Cornacchia, Doug & Tanya Lynch.

Project: Stay at Lina, Albert Gjonbalaj, 698 & 706 Green Lake Road, Athens, NY 12015, Tax Map #'s: 103.00-4-37 103.00-4-38, Area Variances, Zone: RU - Residential (Green Lake Watershed Overlay), Relief from Front Yard Setbacks

Caryn Mlodzianowski of Bohler Engineering presented for the applicant. Ms. Mlodzianowski explained that the project previously received a variance for setbacks for two single family homes to be built on approximately an acre and a half. As the project moved forward they encountered rock and to avoid blasting, they are asking to change the setbacks and move the homes closer to the road. For 706 Green Lake Road, the additional relief is 18.5ft. The code calls for a front yard setback of 75ft. The setback would be 34ft. 3in. from the road to the front porch with this additional 18.5ft. For 698 Green Lake Road, the applicant is seeking relief of an additional 20ft. for a total of 51.5ft of relief and a final setback of 24ft. 7in.

A member of the audience asked about the location of the leach field. Ms. Mlodzianowski explained that this type of issue would be handled at the planning stage.

A motion was made to close the Public Hearing.

Motion: Member Ames

Second: Member Pfister

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

A motion was made to approve the above variances for 698 and 706 Green Lake Road, Athens.

Motion: Member Ames

Second: Member Ihde

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

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 listed the items received since the last meeting. A memo from Delaware Engineering dated July 6, 2023 pertaining to stormwater and drainage. A memo dated July 11, 2023 pertaining to Quantity Analysis and Hosting Capacity. A draft resolution on the Use Variance request. These items have been added to the dropbox and are reviewed below.

Adam Yagelski of Delaware Engineering explained the July 6th, 2023 Delaware Engineering memo. This was in answer to a request of the board at the previous meeting outlining the rationale for Delaware's findings. The draft EAF part 2 stated "no to small impact" would occur with respect to drainage and stormwater. The applicant proposed a combination of avoidance of steep slopes and development of a Storm Water Pollution Prevention Plan (SWPPP) in conformance with the NYSDEC. The SWPPP contains an analysis of pre- and post-development and addresses the approximately 720sf of proposed impervious cover. This showed there would be no increase at points where the site drains. In the places analyzed for 1, 2, 10 and 100 year storms it showed decreases between 1.15cfs and 4.83cfs. Delaware believes that the conclusion of the applicant is reasonable.

Mr. Yagelski continued; a waiver has been requested for disturbance of more than 5 acres of steep slope. This is a common request, but not commonly granted and more controls and inspections are required. If this waiver is not granted then disturbance must be kept to a maximum of 5 acres. It was shown that in Class D soils, disturbance of 25% or greater require site specific storm water coverage and different mitigation. The applicant proposed eliminating grubbing in steep slope areas to help avoid disturbance. The details would be defined at the Site Plan stage of the project which lessens the standard to be met at this time and this is why Delaware has recommended there would be "no to small impact".

Mr. Yagelski explained the July 11th, 2023 Delaware Engineering memo answering questions about the need for this project in regard to the Climate Change Act. When asking for information about the progress the state has made in meeting the mandates, the applicant asked Delaware to look at publicly available data. In doing so, Delaware found that the Governor's office in a 2021 statement said the state was on track to reach the 6 GW goal and are at 95-96% toward this goal. The governor directed NYSEDA and the Public Service Commission to issue a roadmap to increase the amount to 10GW. Delaware looked at the approved roadmap that the Governor used as the source of these numbers. There were two datasets: 1-project completed and producing and 2-projects in development (projects that have received interconnection, but have not yet received permitting). As of March 31, 2023 for projects that are complete and as of May 31, 2023 for projects in development the state is at 88.1 GW of capacity. This is beyond the 6 GW goal from the Climate Act.

The applicant submitted a response today through Attorney Murray of Murray Law Firm dated July 12, 2023 and reiterated that the project is needed in order to advance the 70% reduction in greenhouse gas emission by 2030 and expressed that they had shown this target in prior materials.

Mr. Yagelski stated that in the July 11th memo, Delaware looked at the Feeder 2006 hosting capacity. The solar industry and the electric utilities work together on hosting capacity to reduce costs when identifying locations where solar projects are viable. It is done with mapping that is updated about once a year. Questions remain on what the hosting capacity represents and whether or not it includes projects in progress. Chairman Nelson pointed out an attached diagram showing that Feeder 2006 runs through parcels zoned to allow solar.

Mr. Yagelski stated that the NYSERDA hosting capacity map for Feeder 2006 shows two projects in the queue. Hosting capacity information is not clear and there is no other information in the record. It is unknown as to whether the applicant could modify the interconnection. The hosting capacity for Feeder 2006 is not uniform and the current map shows there is no capacity there, yet in the application materials it is stated that they have an interconnection agreement. It may be reserved capacity, but it is unknown at this time.

The applicant, in today's memo, says that according to their most recent submission, including a letter from Central Hudson, it shows capacity in the town. It remains unclear if this reserved capacity can be freed to move the project to part of the town that is zoned for solar.

Chairman Nelson stated that the resolution drafted by Attorney Dowd of Dreyer Boyajian takes SEQR to its end and finds a ruling of non-significance. The resolution also denies the Use Variance application. The Chairman read the resolution into the record. [See attached.]

On completion of the reading of the resolution, a motion was made issuing a negative declaration under SEQR and denying the Use Variance.

Motion: Member Pfister

Second: Member Ames

With the motion taken the meeting was open to discussion of the resolution. Chairman Nelson asked the board if there are any questions about the resolution including any modifications. Mary Beth Bianconi from Delaware Engineering stated that the resolution was posted to the website and copies were left out for the audience. She also said that if the board denies this applicant, it is the end of the process. If the board approves the application, it would then go to the Planning Board. This would only be an approval of the use and any other items in question would be dealt with in planning.

The memo mentioned above and prepared by Attorney Murray of Murray Law Firm was read into the record by Ms. Bianconi for any board members as well as audience members that had not had a chance to read it. The memo was sent in the afternoon of July 12th, at approximately 4:00pm. [See attached.]

During the reading, Chairman Nelson disagreed with the memo and mentioned that the press release, which is part of the record, shows that the state is on track to meet these goals in the next year and a half, that he disagreed with the argument and it is a non-factor in the deliberation. Ms. Bianconi said that #27 of the resolution seems to be in conflict with the letter, "*Central Hudson Hosting Capacity*

Map which the Applicant provided shows that feeder 2006, to which the proposed Solar Facility will connect, has less than 0.5 MW hosting capacity where it adjoins the Property.”.

Member Ames asked about the 70 by 30 goals. Ms. Bianconi explained that this is the underpinning drive toward renewable energy in New York State. Solar is a component of the 70 by 30 goal and it is also made up of hydroelectric, wind and geothermal. There are both community facilities that are small and large facilities like the Flint Mine facility. Flint Mine is not creating power to purchase locally, but is being fed into the grid to support overall power in the state.

Member Pfister felt that the board looked at all Judge Silverman asked the board to do and did not see this project as helping the local community or the county. This project was not large enough and is too small to contribute to the battle against climate change. He believes the applicant did not do enough to find hosting capacity at permitted locations.

Member Krause also felt that this project does not do enough to warrant the harm to the community.

A motion was made to amend the resolution, adding the letter from the Murray Law Firm dated July 12, 2023 to the motion issuing a negative declaration under SEQR and denying the Use Variance.

Motion: Member Ames

Second: Member Pfister

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

A vote was taken on the motion issuing a negative declaration under SEQR and denying the Use Variance with the addition of the letter from the Murray Law Firm dated July 12, 2023.

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

Meeting Minutes: June 14, 2023

A motion was made to approve the Minutes of June 14, 2023 as written.

Motion: Member Ames

Second: Member Pfister

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

Further Business: None

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

Motion: Member Ames

Second: Member Ihde

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

Meeting Adjourned 8:28 p.m.

Respectfully Submitted,
Annmarie Krause, ZBA Secretary