

Town of Athens Zoning Board of Appeals
2 First Street, Athens, NY 12015
Meeting Minutes: February 8, 2023

The Town of Athens Zoning Board of Appeals was called to order at 7:00 pm 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 and Member Christian Pfister. Absent: Member James Morabito. Also present: George McHugh - Town Attorney, Albert Gasparini - Town Code Enforcement Officer, Annmarie Krause - ZBA Secretary.

Also in attendance: Caryn Mlodzianowski - Bohler Engineering, Brent Frary - Attorney, Murray Law Firm, Dave Swanson - SunEast Power, Joshua Lazarus - TRC Companies, Scott Olson - Attorney for Young/Sommer, Karen Dudley, Mellissa Beck, Mike and Dave Barnes, Ralph Vandrisco.

Project: Albert Gjonbalaj - Stay at Lina's, 9071 US Route 9W, Athens, NY 12015, Tax Map #: 121.00-2-14, Area Variance

Chairman Nelson opened the Public Hearing. There were no members of the audience present for this application and CEO Gasparini explained that no one has come to him with any concerns for this project.

Caryn Mlodzianowski, project manager from Bohler Engineering, explained the areas in need of relief and covered the following information: (These areas are marked on the drawing in Orange.)

For utility or home construction: Maximum slope allowed by code is 25%.
For driveway construction: Maximum slope allowed by code is 10%.

On this property:

Lot 2: Utility Area	Existing Maximum Slope - 33% on 3000 sq. ft. (8% relief needed)
House Footprint	Existing Maximum Slope - 63% on 1760 sq. ft.
Lot 3: Utility Area	Existing Maximum Slope - 24% (no variance needed)
House Footprint	Existing Maximum Slope - 38% on 1380 sq. ft.
Lot 2&3: Driveway	Existing Maximum Slope - 33% on 2000 sq. ft.

Chairman Nelson asked about the mitigation plan for the extreme slope on Lot 2. Ms. Mlodzianowski explained that they would cut in and create a walkout basement for the houses on both Lot 2 and Lot 3. Chairman Nelson stated that the portion of the driveway serving Lots 2 & 3 is perpendicular to topography lines and then levels out. The code says there can be no more than 10% slope against 5% of its total length and so a variance is needed.

Member Pfister commented on how steep the slope appeared on a visit to the site. Chairman Nelson and Ms. Mlodzianowski commented that the homes will not be seen from the road because they are being built on the backside of the hill. Member Pfister asked about future plans especially because

of the size of the houses asking if these will be rented. Ms. Mlodzianowski stated that they may be rented or sold.

Member Ames asked if the homes would be built at the same time the site is refurbished and if fill is needed. Ms. Mlodzianowski said the plan is for the projects to happen simultaneously and explained that fill would be taken from the property, if possible.

Member Pfister asked about the average slope of the entire area. Ms. Mlodzianowski did not have a calculation for the entire property, but the majority is above 10% and a large portion of the property is above 25%.

Member Ames asked if there was any reason not to allow this use. Chairman Nelson explained that one intent of the steep slope code is esthetics, to maintain the view of the hillside and what you see from a distance. With this property only the septic areas would be visible from the roadway.

CEO Gasparini discussed the need to protect against erosion when building on top of a hill and into a wetland area. He expressed the importance of professional help for this project and would require structural and/or civil engineers to address erosion and storm water protection. This will be done during the planning process as the site is designed.

Chairman Nelson stated that the project needs 3000 sq. ft. for the utility areas, 1760 sq. ft. and 1380 sq. ft. for a total of 3140 sq. ft. for the houses and 2000 sq. ft. for roadway totaling approximately 8200 sq. ft. against 7 acres. Adam Yagelski from Delaware Engineering explained that the disturbance of one or more acres would trigger a SWPPP (Stormwater Pollution Prevention Plan) which would address erosion concerns. Attorney McHugh explained that even if this project is under an acre a SWPPP can be requested.

Mr. Yagelski asked if there is a geotechnical analysis of the soils. Ms. Mlodzianowski stated that none had been done, but this will be reviewed as part of the design process. The soil has a good percolation rate to support the septic system, but is not sandy so the septic is sized a bit larger.

A motion was made to close the Public Hearing.

Motion: Member Pfister

Second: Member Ames

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

Chairman Nelson asked for a vote on a Steep Slope Variance Request for the section of driveway between Lot 1 and Lot 2 that exceeds 10%, the buildings on Lot 2 and Lot 3 that exceed 25% and for the Septic Area on Lot 2 that exceeds 25%.

A motion was made for the three Area Variances.

Motion: Member Ames

Second: Member Pfister.

Vote: 3-Ayes (Nelson; Ames; Ihde) 1- No (Pfister)

Motion carried

Project: ARX Wireless Infrastructure LLC/Verizon Wireless, Farm to Market Road, Athens, NY, Tax Map #: 105.00-1-8.11, Area Variance, Zoned: AG - Agriculture, Installation and operation of 155-foot cell tower.

Scott Olson from Young/Sommer, representing ARX Wireless Infrastructure asked for either an interpretation of the code concerning building height vs tower height or to ask for a variance for the tower height.

Chairman Nelson explained the Town of Athens Zoning Code covers telecommunications towers. He read the pertinent sections of code including a reference to Tables 1 & 2 and considered “The Board” in §162-6 to be the Planning Board.

§162-6 New Towers The Board may consider a new tower when the applicant demonstrates that shared use of existing appropriate structures and existing or approved towers is impractical. An applicant shall be required to present an adequate report inventorying all existing appropriate structures and existing or approved towers within a reasonable distance of the proposed site...

...The report shall outline opportunities for shared use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each existing appropriate structure and existing or approved tower as well as documentation of the physical, technical and/or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.

§180-23 Height regulations

The Planning Board may grant a special permit for a structure in excess of such height restrictions, provided that it is not more than 10% of the roof area of the principal building and is used for one of the following purposes: television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, silos, cooling towers, ornamental towers and spires, chimneys, elevator bulkheads, smokestacks and flagpoles. [1] Editor's Note: Table 2 is included at the end of this chapter.

Mr. Olson questioned the reference to “roof” in the code because the tower has no roof.

Chairman Nelson said that referring to Table 1 of the code, both a special use permit and site plan approval is needed for an Agricultural Zone. The Planning Board can make a judgement on the height of a telecommunications tower as long as the applicant proves the tower is necessary. After looking at the relevant sections of the code, the conclusion Chairman Nelson sees is that the Planning Board has the authority to deal with tower height. The application should not need a variance and a vote can be taken by Zoning to refer the applicant back to the Planning Board. CEO Gasparini concurred that no variance is needed.

Member Pfister felt the definition shows the tower can be considered a building. He asked if a hearing is needed before a vote can be taken. In the opinion of both Attorney McHugh and Chairman Nelson, no hearing is needed.

Member Ames asked if other sites have been discussed. Mr. Olson answered that they have looked at other sites and also checked for existing towers or tall structures and found none that would work.

Member Pfister and Member Ames mentioned the beauty of this location and hope the applicant is sensitive to that. Mr. Olson said they are and will do balloon tests with photos and visual interpretations for all sensitive areas and that the Planning Board will have this information at the Public Hearing for anyone that is interested.

Chairman Nelson summed up the conversation as follows. The Planning Board referred this application to the Zoning Board because of concern for the height of the tower of 155 ft. The tallest allowed height of a structure in the Town of Athens is 45 ft in any zone. There are exceptions in the code for cell towers that defer to the Planning Board. Code §180-3 addresses telecommunications towers and refers to §162-6 for approval of new towers. In §180-23 Height Restrictions, it states the Planning Board may grant a special permit addressing height. After looking at these sections of the code, the Zoning Board believes the Planning Board has the authority to deal with tower height.

A motion was made to refer ARX Wireless Infrastructure LLC back to the Planning Board.

Motion: Member Pfister

Second: Member Ames.

Vote: 4 - Ayes (Nelson; Pfister; Ames; Ihde)

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 stated the goal for this meeting is to review the TRC Potic Technical Memo uploaded to the FTP site on February 3rd; a view shed analysis, a visual resource analysis in a five mile radius as well as a document showing viewpoints that will model what the project will look like at road level.

Member Pfister and Member Ihde didn't see a need for the #5 Schoharie viewpoint location because nothing can be seen from there.

Joshua Lazarus, project manager with TRC Companies and representing Freepoint Solar is working on a response to the December 12th comments, and is interested in confirming the locations for "leaf-off" photos requested by Delaware Engineering. He would like to do this before the end of winter and have for the March meeting.

Mr. Lazarus explained, in 2020 Freepoint Solar submitted a view shed map evaluating a one mile radius and Delaware has asked for a map that evaluates a five mile radius. Mr. Lazarus stated that the project is at a high point, so there is limited to no visibility from a five mile radius due to the topography. Potic Mountain is at 660 feet and within the five mile radius the highest point is 840 feet. There is an elevation gain of between 180 and 200 feet, but over a distance of five miles not much can be seen.

Delaware also asked for photographs from visual resources including state parks, trails, historic resources and other places that are important to the community. A list of these resources are shown on pages 2 and 3 of their report and are shown on the maps. The solar project was not visible from any of the sensitive locations shown on Table 1 with the findings shown on pages 2 and 3. The review done in 2019 still stands because it was dealing with the same sensitive resources including Olana State Park. About half of the five mile radius is below Potic Mountain.

Member Ames asked if the analysis is done by going to these sites and actually viewing them. Mr. Lazarus explained that the view shed analysis is done with a computer modeling system called LiDAR. It is standard procedure to use computer models to show this information. Figure 1 shows limited to no visibility with vegetation and structures within the five mile radius using this method. Around the project there are trees 50-70 feet tall and these block visibly from a distance. Delaware is asking for views to be shown in “leaf-off” conditions.

Mr. Yagelski stated that the board needs to address this SEQR issue to find any potential adverse impact and plan for mitigation. He said that most of the sensitive resources will not have visibility to the solar site. He feels that a photo simulation from the east side of the lake would provide definitive evidence from the lower elevations. He suggested that some viewpoints be considered because the result may change in the “leaf-off” view. For example the viewpoints #2 - Green Lake and #13 - Green Lake Boat Launch which are approximately 1 mile from the site and #19 - Vosenkill Road and #20 - Howard Hall Road which are approximately 2.5 - 4 miles from the site. The view from #18 - Leeds Athens Road at Forest Avenue may be eliminated because it is to the south. The areas from viewpoint #5 & #16 at High Hill Road and Schoharie Turnpike were selected because it is a scenic road, but these views are to the east and can be eliminated.

Member Ames asked if the elevation of each site can be shown on the chart. Mr. Lazarus said this can be added in the future, and that there is also a color map that shows the elevations with everything below the site appearing in blue.

Member Ihde asked for the height of the highest item being installed. Mr. Lazarus explained that the height at the site is 660 ft with panels standing 12 ft above grade, the fence height is 8.5 ft and the pads are 7.5 ft. No buildings will be at this location.

Mr. Lazarus explained the Viewpoints on Figure 4.

- Viewpoint 1 is at the entrance to the site. There is proposed landscape screening for this location.
- Viewpoint 2 from Center Road has proposed landscape screening because residents can see the project form here. It is the center of the project with a view from the road. The view will be taken from the public right-of-way, looking at the site, and shot with a wide angle camera.
- Viewpoint 3 Potic Mountain Road has a viewpoint on the west side.
- Viewpoint 4 was suggested because of the residences and closeness of the solar arrays.
- Viewpoint 5 has been deemed unnecessary.

Chairman Nelson asked about adding High Hill Road and Center Road. The neighbors in attendance also asked for the addition of High Hill Road and Skinner Lane. Chairman Nelson also questioned what can be seen from the backyards of the property owners which will be addressed in the future.

Melissa Beck - 464 Potic Mountain Road asked about showing viewpoints of the affected neighbors and suggested a viewpoint addition of Potic Mountain Road and Buttermilk Falls facing northeast.

Member Ames asked if there are any properties along the site that will be looking down into this site. Mr. Lazarus is going to check on this and get back to the board, but said trees can be planted to mitigate any issue. The size and maintenance of the proposed trees will be discussed at a future meeting.

Member Pfister asked about the visualization with the trees cut and asked if poles will be coming from this site. He also mentioned that the trees on the 9W solar site are dying. Mr. Lazarus said the visualizations will show the panels with the screening that is blocking the panels. It will be shown with “leaf-on” and “leaf-off” views.

Member Ihde asked about the location of the access road. Mr. Lazarus stated it would be off of Center Road and that there is a detailed site plan which will be addressed at a future meeting.

Looking at Figure 2 in the five mile view, a viewpoint on Howard Hall Road between Schoharie Turnpike and Leeds Road was discussed and the decision was to allow the professionals to decide the exact location of this viewpoint. Mr. Yagelski spoke about Viewpoint #19 - Vosenkill Road which is 3.2 miles from the site and is too far away, so it can be eliminated. He also discussed looking at Cross Road which is about a half mile from the site and is considered a scenic road. A viewpoint can be considered between High Hill Road and Potic Mountain Road.

Member Ames suggested Eli Street in Coxsackie. This is a prominent point with a veteran memorial and flag pole. It is the entrance to Coxsackie with a view back to the mountains. Chairman Nelson reiterated that Green Lake should be added.

Mr. Yagelski asked about the mitigation and Mr Lazarus asked to discuss that at a later time.

Bret Frary, Attorney for Murray Law Firm, asked for a vote to approve the locations. Chairman Nelson stated that the board has done an initial review of the TRC documents and that Delaware Engineering needs to review these choices. This will be done in a reasonable amount of time with Delaware having the final say. The board has made the following requests:

To be added:

Figure 4

Center Road and High Hill Road
High Hill Road and Skinner Lane
Potic Mountain Road and Buttermilk Falls

Figure 2

Eli Street, Coxsackie
Green Lake
Howard Hall Road

To be eliminated: Viewpoint #5

A motion was made to amend the viewpoints as shown above.

Motion: Member Pfister

Second: Member Ames.

Vote: 4- Ayes (Nelson; Pfister; Ames; Ihde)

Motion carried

Melissa Beck - 464 Potic Mountain Road asked that the representation for Freeport Solar treat the residents with respect.

Meeting Minutes: January 11, 2023

A motion was made to approve the Minutes of January 11, 2023 as written.

Motion: Member Ames

Second: Member Ihde

Vote: 4- Ayes - Nelson, Pfister, Ames, Ihde

Further Business:

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

Motion: Member Ames

Second: Member Ihde

Vote: 4- Ayes - Nelson, Pfister, Ames, Ihde

Meeting Adjourned 8:35 p.m.

Respectfully Submitted,
Annmarie Krause, ZBA Secretary