

Town of Ballston  
Zoning Board of Appeals

**TOWN OF BALLSTON  
ZONING BOARD OF APPEALS**

**Regular Monthly Meeting: July 1, 2015**

**ATTENDEES:** Michael Lesniak, Chairman  
Marilyn Bell, Vice Chair  
Ellen Brown  
Robin Kane  
Stephen Merchant  
Daniel Mertzluft  
Timothy Long, 1<sup>st</sup> Alternate  
Dane Mellon, 2<sup>nd</sup> Alternate  
Peter Reilly, Attorney  
Thomas Johnson, Building Inspector  
Members of the General Public

Chairman Lesniak called the June 1, 2015 meeting at 7:30 p.m. and led the Pledge of Allegiance.

Chairman Lesniak asked for corrections to the May 6, 2015 minutes.

**MOTION:** Ms. Kane made a motion to accept the May 6,, 2015 minutes as submitted. Mr. Merchant. Chairman Lesniak abstained – was not present at the May 6, 2015 meeting.

**CARRIED.**

**Michael Palm, 92 Connolly Road, Ballston Lake, NY 12029; 239.10-2-10 (Area Variance (lot width and front setback) 280A Relief – Remove existing mobile home and construct a new single-family dwelling, detached garage pursuant to §138.11.1.**

Mr. Palma stated at the last meeting, the board requested the applicant to proceed to the Planning Board for site plan review.

Chairman Lesniak stated that the ZBA granted the applicant 280A Relief at the June 2014 meeting.

Chairman Lesniak stated that Connolly Road has been closed. From NYS 50 heading east onto Outlet Road to the RR tracks is barricaded with homes down towards the lake. The homes on the other side of the lake right now do not have access – the only access is out through Powers Lane to Outlet Road. Chairman Lesniak stated there are still issues and will not be able to

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receive a building permit until outstanding issues are resolved. Mr. Palma stated his wife (Susan Palma) has spoken Matthew Chauvin, Esq., Ianniello Anderson, PC, "who is working on it."

Chairman Lesniak stated the applicant requests an 85' lot width variance and a 40' front yard setback.

Mr. Russell asked if the existing dwelling will be removed. Mr. Palma stated the trailer is being used for a camp, but the plan is to remove and construct a single-family dwelling.

Mr. Russell asked if there is an existing septic system on the property. Mr. Palma said, "Not that they are aware of." The septic system has already been designed by a Professional Engineer for the single-family dwelling.

A further discussion was held on the proposed detached garage.

Ms. Bell stated now that Connolly Road will be the main road – asked is there sufficient width on this road and do you really want to be 20' from that road or is there a way to move your garage or even angle it slightly so it is further back off the road. Mr. Palma stated he would like get the detached garage further back just for esthetic purposes – two stalls located on the north side and set back as much as possible because of possible future sewers. Ms. Bell has a concern for snow removal. Ms. Bell stated this board is charged with granting the minimum variance required. Ms. Bell said, "If the board was to change to 24 ft. and a 36 ft. variance granted." Mr. Palma stated he could live with 24 ft. Ms. Bell stated it would be to the overhang.

Chairman Lesniak stated when he went to look at the property, there should be some type of a turnaround and had a difficult time turning around in his Ford F-150. Mr. Johnson said it used to be a straight-through. Mr. Johnson said, "The rail road promises to supply a good sum of money to help improve that road – the town board is working on that issue on how to improve that road." "There is talk that National Grid would move some of the power poles, but no one has been able to come to an agreement." Ms. Palma stated that they have spoken to all the owners on the road including the three that need to join in on Powers Lane and have agreed to do whatever is necessary." Mr. Johnson stated that is fairly recent because for a while were not in agreement." Ms. Palma said they all agree that they have to do something to grant us access through there plus there are two property owners that are willing to offer up a portion of their land – willing to create a turn-around.

Mr. Merchant stated he has a concern for the width of the road and at some point would think they would have to widen the road.

A further discussion was held on the existing width of the road.

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Chairman Lesniak opened the public hearing a 7:48 p.m.

Mr. Long asked if the street address will change. Mr. Palma said no it will remain the same.

Chairman Lesniak closed the public hearing at 7:50 p.m.

Ms. Brown read the five criteria for an area variance:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. No, will improve it to what is there now.
- 2) Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance. No, there is no other property.
- 3) Whether the requested area variance is substantial. Yes.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. No.
- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. No.

**MOTION:** Ms. Brown motioned to declare this a Type II action under the SEQR process therefore exempt from further review.

**MOTION:** Ms. Bell made a motion for the property located at 92 Connolly Road variances pursuant to §138-11.1 that a 36 ft. front yard setback be granted and an 85 ft. lot width variance be granted for the construction of a new home with the removal of the existing trailer on the lot with the provision that the issuance of building permit be granted contingent on the following that the proposed access arrangement for the new lot shall be consistent with that the DOT office said that they were closing the road and if the applicants were granted the 280A access that what our variances would be contingent on, but received the alternate access arrangement as required. Mr. Russell seconded the motion and all present voted in favor.

**CARRIED.**

**Matthew Duemler, 125 Charlton Road, Ballston Spa, NY 12020; 238.-2-78.11 (Area Variance §89-4(D)(3) Allow Solar Panels in front yard and 89-4(D)(2) pursuant to 138-10.1 – Front yard setback.**

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Chairman Lesniak read the applicant's narrative

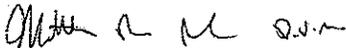
To the board or appeals

We are submitting an application to appeal the location of placement for a solar system. Attached please see a sketch of where our proposed placement lies within our property. This is the most ideal location for a solar system within our back lot due to the direct path of the sun. Our system will conform to every part of the current zoning law except for it will technically be placed in a front yard under the tightest interpretation of the current zoning law. However, this system will be approximately 250 feet to the side of our house and will be at least 250 feet from the road. Our system will not be visualized from the road or from any of our adjacent neighboring properties. It will be protected by a hedgerow that is already in place and will have further landscaping around it to decrease its visualization even from my property.

The town board amended the zoning law at our request because it was evident to them that this was a special circumstance and wanted to allow for the appeals committee to review our application. With our property being a back lot and our home not being horizontal to the road, our "front yard" is artificially extended dramatically. In reality, the location of our system is in a backyard, protected from the road by the house we own on 121 Charlton road and a side yard from our building site.

As the town of Ballston is an advocate for solar use and clean energy, I would request our appeal be granted to allow for our system to be placed in an appropriate location as deemed by the sun direction and demonstrated by the studies provided by the experts at Positive energy. Furthermore our system meets the spirit of the zoning laws by not damaging or violating our neighbors views or landscape.

Thank you for your Consideration



Matthew R Duemler D.V.M.

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Matthew Duemler, Legal Counsel for applicant and Mark Bomba, Positive Energy NY, LLC were present.

Mr. Merchant asked height and length of the proposed solar panel. Mr. Bomba stated 8.6' x 76'.

A further discussion was held on front setback.

Ms. Brown asked if the proposed solar panels stationary or do they rotate. Mr. Bomba stated they are stationary.

Ms. Brown asked the maximum height. Mr. Bomba stated 8.6 feet.

Mr. Russell asked if the proposed transformer is part of the solar panel system. Dr. Duemler stated the proposed transformer is no longer relevant.

Mr. Merchant said, "He realizes it covered with all the shrubbery and trees, but in the fall and all winter long and should put evergreens down there." Dr. Duemler stated there are strips of evergreens down both sides and the plan is to make it as invisible as possible.

Chairman Lesniak asked if the applicant has spoken to the neighbors about the proposed solar panels. Dr. Duemler provided the board with a list of neighbors who do not object to the proposal. Chairman Lesniak commended the applicant for talking to the neighbors and providing the board with their signatures.

A further discussion was held on side yard setbacks.

Chairman Lesniak asked the applicant is he would have a problem if that 30' setback was now 60' and if so, what would the problem be. Dr. Duemler said it's pushing it further away from the direction we want from the sun would be the most ideal and not putting it more out in an open field and putting closer to his house; it's not in the middle of the field.

Light studies were performed and disturbed to the board.

Ms. Kane asked, "Do you have a picture of it other than that line on a page." Dr. Duemler stated it was submitted with the application. Mr. Johnson said it was only one picture, and does not have the ability to color copies.

A further discussion was held on the size of the proposed solar panels.

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Ms. Kane asked how big is your house and why can't these go on your house. Dr. Duemler stated their house is facing the wrong direction. Ms. Kane asked the square footage of the applicant's house. Dr. Duemler stated 4,000 sq. ft. Dr. Duemler stated the panels that are put on the roof are not as effective as the ones on the land. Mr. Bomba stated this is a zero energy house and be heated by electric through electric heat pumps and cooled by electricity and will not be using anymore fossil fuels other than the energy that he is creating for the house. Ms. Kane said, "That does not matter if it's on his house or on the ground." Mr. Bomba stated it just would not be as efficient.

Mr. Mertzlufft asked if this house is on the grid aside from the net metering of the outgoing power. Dr. Duemler stated yes it will be on the grid as a backup source.

Chairman Lesniak opened the public hearing at 8:23 p.m.

No one wished to speak.

Chairman Lesniak closed the public hearing at 8:34 p.m.

Ms. Brown read the five criteria for an area variance:

Ms. Brown read the five criteria for an area variance:

- 1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. No, as long as it's sheltered.
- 2) Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance. No, not feasible for the applicant to pursue.

Ms. Kane stated she feel it can be put somewhere else. Mr. Bomba stated it can be put somewhere else, but will not be as productive and will not work.

- 3) Whether the requested area variance is substantial. No.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. It can be physical, but stipulate proper plantings.

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- 5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. Yes.

A further discussion was held on proposed plantings.

Ms. Kane stated there needs to be more trees within that 30 ft.

Ms. Bell asked for a better definition from Ms. Kane relative to trees. Ms. Kane said, "Just another deciduous/evergreen tree in 15 ft. of the panel minimum within two years of the height of the panels." Mr. Bomba said, "If you get it too close, it will be shaded by the system itself." Ms. Kane said, "You can trim them." Ms. Brown said, "Maybe you should move the solar panels."

Ms. Bell asked if there was a request on height and the number of trees. Ms. Kane said 15 or 20 Ms. Bell asked if the smaller younger trees are sufficient.

Chairman Lesniak said, "Evergreens be planted in such a manner that in some period of time would shield/screen these panels so you wouldn't see them from those homes."

Dr. Duemler said, "The evergreens that were planted already (does not know the exact number) seven feet apart to reinforce the hedgerow (two or three rows). Ms. Kane asked 30 feet away from the solar panels. Mr. Russell said, "He had an opinion that he would not want to have a tree closer to the panels – as this tree grows, it's going to spread out."

A further discussion was held on proposed tree plantings.

Dr. Duemler said, "The row that we have there – evergreen trees planted 7 feet apart, will do another row 7 feet apart in front of the house and the solar panel."

Mr. Mertzlufft asked how many trees were planted along the side. Dr. Duemler stated 25. Mr. Mertzlufft asked if they were saplings. Dr. Duemler stated two to three years old.

Chairman Lesniak reiterated that the applicant provided a list of signatures not opposed to the proposal.

Mr. Mertzlufft said, "When you say you're willing to put something like those evergreens between the solar array and the hedgerow – what are you thinking." Dr. Duemler said, "The hedgerow is 25 feet wide planting trees 7 feet apart. Mr. Mertzlufft said, "You're talking 10 of these trees." Mr. Mertzlufft asked the applicant if that is acceptable. Dr. Duemler said it's acceptable.

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Chairman Mertzlufft said, "We are breaking new ground here and does not think it's improper for the board to stipulate."

Mr. Mertzlufft said, "Ten (10) evergreens planted as you see them in the space is appropriate for the purpose of screening the back of the solar array from anybody looking from the front."

**MOTION:** Ms. Bell motioned to name The Town of Ballston Zoning Board of Appeals be the Lead Agency in the SEQR process. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

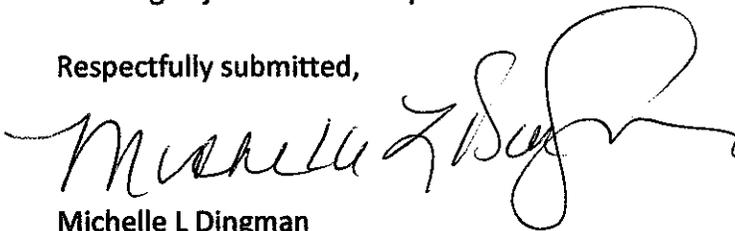
**MOTION:** Ms. Bell motioned to declare this a Negative Declaration under the SEQR process. Ms. Brown seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Ms. Bell made a motion for the Town of Ballston Zoning Board of Appeals grant a variance pursuant to §89-4(D)(3) of the Zoning Law for the installation of the solar array be constructed in the front yard of the property being constructed at 125 Charlton Road with the following stipulation that minimum ten (10) new evergreen plantings be planted (young or small) do not have to be fully mature trees, roughly seven (7) feet apart somewhere between the hedgerow and the existing hedgerow and the rear of the solar array. Ms. Brown seconded the motion. Mr. Russell, voted in favor, Ms. Kane, voted not in favor, Ms. Brown, voted in favor, Mr. Mertzlufft voted in favor, Mr. Merchant voted in favor, Ms. Bell voted in favor and Chairman Lesniak said he has problems with the 76 feet and size of the size of the array however, you (the applicant) went to your neighbors and signed off and agreed to the proposal and that array will exist for any future buyers, voted in favor. **CARRIED.**

**MOTION:** Mr. Mertzlufft made a motion to adjourn. Ms. Kane seconded the motion. **CARRIED.**

Meeting adjourned at 8:50 p.m.

Respectfully submitted,



Michelle L Dingman  
Zoning Board of Appeals Secretary

Enclosure

To Whom It May Concern:

Solar power systems derive clean, pure energy from the sun. Installing solar panels helps combat greenhouse gas emissions and reduces our collective dependence on fossil fuels. Traditional electricity is sourced from fossil fuels such as coal and natural gas. For these reasons the Town on Ballston has advocated for the use of solar panels within its community. We have reviewed and support the use of the solar panels at 125 Charlton Road. We understand that although technically the proposed location for these panels are within the front yard of 125 Charlton, we have no objection to their proposed placement location.

<u>Name</u>	<u>Address</u>	<u>Date</u>
1. <u>Alexanne Akon</u>	<u>131 A Charlton Rd</u>	<u>6/18/15</u>
2. <u>Melanie Acj</u>	<u>121 Charlton Rd</u>	<u>6/18/15</u>
3. <u>Brenda Akon</u>	<u>116 Charlton Rd</u>	<u>6/18/15</u>
4. <u>Jo Wilson</u>	<u>137 Charlton Rd</u>	<u>6/23/15</u>
5. <u>Andy Long</u>	<u>135 Charlton Rd</u>	<u>6/23/15</u>
6. <u>Alexandra Helton Judd</u>	<u>131 B Charlton Rd</u>	<u>6/23/15</u>
7. <u>Robert E. Akon</u>	<u>118 Charlton Rd</u>	<u>6/23/15</u>
8. <u>Shirley Center</u>	<u>522 Ballston</u>	<u>6/24/15</u>
9. <u>Virginia O'Hara</u>	<u>107 Charlton Rd</u>	<u>6/24/15</u>
10. <u>George M. Russell</u>	<u>117 Charlton Rd</u>	<u>6/24/15</u>
11. <u>Chris M. Russell</u>	<u>117 Charlton Rd</u>	<u>6/24/15</u>
12. <u>Erin M. Russell</u>	<u>121 Charlton Rd</u>	<u>6-24-15</u>
13. <u>Matt R.</u>	<u>125 Charlton Rd</u>	<u>6/24/15</u>
14. <u>Joe McNamee</u>	<u>89 Middle Line Rd</u>	<u>6-25-15</u>