

Town of Ballston  
Zoning Board of Appeals

**TOWN OF BALLSTON  
ZONING BOARD OF APPEALS**

**Regular Monthly Meeting: November 5, 2014**

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

Chairman Lesniak called November 5, 2014 meeting at 7:30 p.m. and Ms. Kane led the Pledge of Allegiance. The Chairman asked for corrections to the October 1, 2014 minutes.

Page 2 under MOTION ADD 16,941 sq. ft. area variance, 102.3' lot width, 21' front yard setback and 10.3 side yard setback.

**MOTION:** Mr. Russell made a motion to accept the October 1, 2014 minutes as amended. Ms. Brown seconded the motion. All board members voted in favor. **CARRIED.**

**OLD BUSINESS:**

**Douglas Sullivan, 29 Sherman Way, Ballston Spa, NY 12020; 228.14-1-37 (Variance pursuant to §89-4B (3) (Solar panel roof clearance).**

Douglas Sullivan and Scott Rakowski were present.

Chairman Lesniak stated the applicant is requesting a variance - 3' setback on the west side of the roof.

Chairman Lesniak stated since the last meeting, the Zoning Board members have checked other zoning regulations; the Building Inspector had a draft fire code on the solar panels and a meeting was held with town board members.

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The Zoning Board of Appeals has been instructed not to issue any 3ft. variances – applicant to maintain the 3ft due to safety.

Chairman Lesniak stated the applicant can withdraw their application or request a vote from the board.

Chairman Lesniak stated the NFPA insists on the 3ft. setback of any energized equipment.

Mr. Rakowski asked the drawback to withdrawing their application or having the board vote. Chairman Lesniak stated a request for reimbursement of the application fee needs to be submitted to the town board.

Mr. Rakowski asked, "Where did you cite the NFPA around solar panels." Chairman Lesniak stated it's not around solar panels, but energized equipment.

Mr. Johnson stated that the Town of Clifton Park and Town of Glenville enforce the 3ft. setback and was instructed by the town supervisor and town council members to enforce the 3ft. setback.

Chairman Lesniak stated, "The Town Board makes the law and the Zoning Board enforces the law."

Mr. Sullivan said that he stands to lose quite a bit of tax incentives and credits from New York State.

Mr. Rakowski said, "There are no 3 ft. setbacks on any other solar systems that have been installed."

A further discussion was held on solar arrays installed in the town.

Mr. Sullivan said "At the last meeting the board seemed very evenly split somewhere around 1' to 1' 6"."

Mr. Sullivan said there is no state code. The Town of Malta and other towns do not enforce and thinks this is against green energy.

Chairman Doyle said this is the first case in front of the board and are not against solar.

Mr. Rakowski said the only municipalities in all of New York State with the exception of Ballston, Clifton Park and Glenville have no restrictions.

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Mr. Merchant suggested attending the town board meeting to address any concerns.

Chairman Lesniak opened the public hearing at 7:45 p.m.

Chairman Lesniak closed the public hearing at 7:47 p.m.

No one wished to speak.

Mr. Russell said as a Professional Engineer looks at a practical solution and whether it applies to a safety issue and whether there is a law strictly providing guidance versus none. Laws now are evolving as we are becoming educated and learning and as we do that we have to go through a smart process as individuals on this board and the town to try to ensure that the laws and any applications that come before the board still meet the best intent of the codes and the safety of the individuals.

Application withdrawn.

**NEW BUSINESS:**

**David Vonie, 19 Jacob Street, Ballston Lake, NY 12019; 257.8-1-56 (Area Variance pursuant to §138-8.1 (Front setback – new front porch)).**

Chairman Lesniak read the applicant's narrative – "I am requesting a variance in order to build a 12' x 18' porch attached to the front of my house at 19 Jacob Street, in the Buell Heights sub division. The porch will be approximately three (3") off the ground, attached to the main house and will have railings on three sides as well as a gabled roof. The entrance to the porch will line up with the existing front door which will be approximately fifteen feet (15') from the driveway side of the porch. It is expected that the footings will be concrete formed using sonotubes. The existing concrete walk will be covered over by the new porch. Currently the plan is for the deck to be synthetic planking (TREK), with the railings to be vinyl as well as the covering of the support posts."

Chairman Lesniak stated the applicant's neighbors Anton and Beatrice Rohrmeier residing at 14 Jacob Street have no objection to the variance.

Mr. Russell asked the distance to the current edge of the sidewalk to the current house. Mr. Vonie stated 7'.

A discussion was held on the underground utilities.

The proposed porch includes a roof with an overhang.

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A discussion was held on existing setbacks within the neighborhood.

Ms. Brown asked the applicant if there are plans to enclose the proposed porch. Mr. Vonie replied no.

Chairman Lesniak opened the public hearing at 8:01 p.m.

Chairman Lesniak closed the public hearing at 8:02 p.m.

No one wished to speak.

Ms. Bell 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. The board replied NO.
- 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. The board replied NO.
- 3) Whether the requested area variance is substantial. The board replied YES – consistent with neighborhood.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. The board replied 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. The board replied NO.

**MOTION:** Mr. Mertzlufft motioned to declare this a Type II action under the SEQR process therefore exempt from further review. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Ms. Kane made a motion at 19 Jacob Street for David Vonie for the construction of a front porch with a variance of 42' pursuant §138-8.1. Ms. Bell seconded the motion and all present voted in favor. **CARRIED.**

**Susan Fogg, 166 Stage Road, Charlton, NY 12019 (Variance pursuant to §138-30 (A) (B) Directional signs – various locations).**

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Brandon Fogg was present on behalf of the applicant.

Chairman Lesniak read the applicant's narrative. "We are asking for a variance for November 24 through December 24 to put up signs so passing cars can find our farm. Signage is very important to get customers to our farm because we are not a major road. We are requesting these areas: Signs are double sided 18x27 lawn sign type with the name of farm and a directional arrow.

- A. Two of the signs placed at the intersection of Rt. 50 and Lake Hill which is 2.6 miles from farm.
- B. One sign placed at intersection of Lake Hill and Kingsbury which is 2.7 miles from farm.
- C. One sign at the intersection of Lake Hill and 146A which is 3.6 miles from farm."

Ms. Kane asked, "What will be on the sign." Mr. Fogg replied the name of the business - Fogg Hollow Farms and will include an arrow.

Ms. Kane asked, "What material will the signs be made of." Mr. Fogg replied vinyl with a wire stand.

Ms. Kane asked the height of the sign. Mr. Fogg replied 16".

Chairman Lesniak asked if the applicant could meet the ordinance of 2 sq. ft. Mr. Fogg replied, no the signs are preprinted.

Chairman Lesniak opened the public hearing at 8:11 p.m.

Chairman Lesniak closed the public hearing at 8:12 p.m.

No one wished to speak.

Mr. Russell asked, "What would our process be if we wanted to change the law." Mr. Reilly said to make a request to the town board. Chairman Lesniak and Mr. Johnson to discuss proposal with town board at a later date.

Ms. Bell 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. The board replied NO.

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- 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. The board replied NO.
- 3) Whether the requested area variance is substantial. The board replied NO.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood of district. The board replied 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. The board replied YES.

**MOTION:** Ms. Bell motioned to name The Town of Ballston Zoning Board of Appeals be the Lead Agency in the SEQR process and declare this an unlisted action under the SEQR process therefore will declare this a Negative Declaration under the SEQR process. Mr. Russell seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Ms. Bell made a motion for Susan and Brandon Fogg at 166 Stage Road to grant a variance pursuant to §138-30(A)(B) for the temporary presentation allowance of signs from November 24 through December 24 annually to put up four signs that exceed the two miles - 2 signs at 2.6 miles, 1 sign at 2.7 miles and 1 sign at 3.6 miles from the farm and in addition an area variance of 1.37 sq. ft. be granted per sign so each sign to measure 18" x 27" – signs not to be placed on the county right-of-way (ROW) – in accordance with the attached letter dated, October 15, 2014. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

**Derik & Catherine Roy, 645 Randall Road, Ballston Spa, NY 12020; 227.-1-59.11 (Variance 89-4B (3); 89-4D (4) (Solar panels, setback from roof edge and height).**

Lindsey McEntire with Monolith Solar was present on behalf of the applicants.

Chairman Lesniak read the narratives –

“For the proposed project at 645 Randall Road, we at Monolith Solar plan to install two top of pole mounted solar arrays in the customer, Cathy Roy’s backyard. The arrays will measure 16’ 4” by 13’ 0” with a total square footage of 212 1/3’. These arrays will be mounted at a 45° angle on top of poles which will be located roughly 500’ from the closest property line, as shown in the included site plan. The total height of the arrays after installation will be 13’ 6” from the ground to the top of the array, which violates the 10’ maximum height requirement set forth by the Town of Ballston. Also, we are looking to install a separate roof-mounted solar array that will span the entirety of the roof to all except for the peak of the roof, which can also be seen by the dimensions in the included planset. Here we are remaining behind the 3’

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setback from the peak, but we would be violating the remaining 3' setbacks for the edges of the roof.

We come before the Zoning Board to request a variance for this height setback and roof setback. This proposed project will have very little to no impact on the surrounding environment whatsoever, besides improving it through the utilization of green energy."

"Please consider our request for variance review for solar on our home. My family and I are looking to operate our home as efficiently as possible, and we also have our "environment" to consider, and this solar electrical system will make our home more efficient and facilitate our "Green" ideals. In the past year our electric expenses have risen substantially, and this system being installed by Monolith Solar will decrease our financial burden in the purchase of electricity, in addition to helping the environment.

I must stress the importance of this installation, and the impact it will have on our home. I am asking you that in your review of this project, you grant approval for the project, as our installer has complied with the 3 ft. setback on the roof peak. The system that is being stalled will be in an area that is not visible from the street and is entirely on the back portion of our property."

#### Roof Mount Request

Ms. McEntire said that 3 ft. setback is something that the National Fire Protection Association (NFPA) has designed and instill this setback requirement is not due to the electrical voltage system, but due to accessing the roof and also ventilating the roof – having access on both sides, the bottom and ventilating that top peak portion in the event of a fire.

Ms. McEntire said surrounding towns like Clifton Park who have a similar setback requirement "Have stuck with the peak portion and actually granted us a variance – allowing installation of the sides and the bottom." Mr. Johnson said the Town of Clifton Park has a 3 ft. setback, which they enforce and have granted setback variances.

Ms. McEntire said the setback requirements are due to having access to the roof.

Further discussion was held on safety.

Chairman Lesniak said the town board stated that the ZBA should not grant a variance for the 3ft.

Ms. McEntire said the NFPA code changes for gable roofs.

Chairman Lesniak stated any concerns to be addressed with the town board.

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No action taken on proposed roof mounted solar panels.

Pole Mount Request

Ms. McEntire states the applicants electricity use is so high and cannot fit enough panels on their roof to produce enough to cover 100 percent of their electricity needs – two poles requested due to the shale at that location.

Ms. Bell asked is 13' 6" the typical height. Ms. McEntire said it depends on how many panels on the pole mount. Ms. Bell asked if poles are under 10'. Ms. McEntire replied no.

Chairman Lesniak asked what would stop the applicant from installing more than two panels to make up the difference for the roof. Ms. McEntire said the cost of ground mount is more expensive than a roof mount.

Mr. Russell asked, "Do the pole mounted rotate or stay in one position." Ms. McEntire said they stay in one position.

A further discussion was held on egress of the residence if the solar panels were mounted on the roof.

Mr. Mertzluft asked are all the projects similar to the proposed have net metering. Ms. McEntire stated that all residential have net metering – All solar projects in New York State have net metering – it's a requirement from the Public Service Commission.

Chairman Lesniak opened the public hearing at 8:40 p.m.

Chairman Lesniak closed the public hearing at 8:41 p.m.

No one wished to speak.

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. The board replied NO.
- 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. The board replied NO.

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- 3) Whether the requested area variance is substantial. The board replied NO.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The board replied 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. The board replied NO.

**MOTION:** Mr. Russell motioned to name The Town of Ballston Zoning Board of Appeals be the Lead Agency in the SEQR process and declare this an unlisted action under the SEQR process therefore will declare this a Negative Declaration under the SEQR process. Ms. Kane seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Ms. Kane made a motion pursuant to §89-4D(4) for 645 Randall Road for the construction for up-to three solar panels 13' 6" high and 16' 4" wide – (288' from property). Mr. Merchant seconded the motion and all present voted in favor. **CARRIED.**

Mr. Mertzluft encourages the applicant or one of their colleagues to attend the town board meeting on November 6, 2014 citing the NFPA codes and history.

**David & Susan Gibson, 107 East Line Road, Ballston Lake, NY 12019; 249.-3-30.11 (Variance pursuant to §89-4D (4) - Solar panel height).**

Lindsey McEntire with Monolith Solar was present on behalf of the applicants.

Chairman Lesniak read the narratives –

“For the proposed project at 107 East Line Road, we at Monolith Solar plan to install a top of pole mounted solar array in the customer, Susan Gibson’s backyard. The array will measure 5’ 6” by 3’ 4” with a total square footage of 18 1/3’. This array will be mounted at a 45° angle on top of poles which will be located roughly 117’ from the closest property line, as shown in the included site plan. The total height of the array after installation will be 13’ 6” from the ground to the top of the array, which violates the 10’ maximum height requirement set forth by the Town of Ballston.

We come before the Zoning Board to request a variance for this height setback. This array will be placed next to a very similar array that has been installed on poles in Mrs. Gibson’s backyard for years, and the proposed array will tie into the house in the same place as the previous array via a 150’ underground trench. This proposed project will have very little to no impact on the

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surrounding environment whatsoever, besides improving it through the utilization of green energy.”

“We respectfully request your favorable review of our variance request for additional solar PV for our 26-acre property off of East Line Road. In 2007, we received a Town building permit for the current 1.6 KW solar pole-mounted array in our backyard. This array was installed with the support of the New York State Energy Research and Development Authority Solar PV incentive program. We designed that system for additional capacity. Now, we are seeking to add that additional capacity with two additional pole-mounted arrays of approximately the same size and shape as the original. We recently received approval from NYSERDA for these additional arrays.

Our family has been supporters of renewable and efficient use of energy for many years and we practice what we preach in order to reduce greenhouse gas emissions and our carbon footprint. Also, the new system being installed by Monolith Solar will decrease our financial burden in the purchase of electricity from the grid, in addition to helping the environment.

Our installer, Monolith Solar, has complied with the property setback on the ground, and has designed the system to be adjacent to our existing ground mounted array. Both current and new systems are in a portion of our 3-acre backyard heavily screened by trees on our land and far from the road and from our nearest neighbor, and will have legible visibility.”

A further discussion as held on placement and size of the proposed pole mounted solar array.

Chairman Lesniak asked, “What is the distance from the road.” Mr. Johnson replied approximately 230’.

Chairman Lesniak opened the public hearing at 8:55 p.m.

Chairman Lesniak closed the public hearing at 8:56 p.m.

No one wished to speak.

Mr. Russell 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. The board replied NO.
- 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. The board replied NO.

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- 3) Whether the requested area variance is substantial. The board replied NO.
- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The board replied 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. The board replied YES.

**MOTION:** Mr. Russell motioned to declare this a Type II action under the SEQR process therefore exempt from further review. Ms. Kane seconded the motion and all present voted in favor. **CARRIED**

**MOTION:** Ms. Kane made a motion pursuant to §89-4(D) (4) at 107 East Line Road for the construction of two pole mounted solar panels 13' 6" approximately 230' from East Line Road and 117.39' from their side property line. Mr. Merchant seconded the motion and all present voted in favor. **CARRIED.**

**MOTION:** Ms. Kane moved to adjourn. Ms. Brown seconded the motion and all present voted in favor. **CARRIED.**

Meeting adjourned at 9:02 p. m.

Respectfully submitted,



Michelle L. Dingman  
Zoning Board Secretary