



# TOWN OF BALLSTON ZONING BOARD OF APPEALS MEETING MINUTES

**January 3, 2024 at 6:30 pm**

Town Hall Meeting Room and Zoom Webinar for Viewing Only  
323 Charlton Road, Ballston Spa, NY 12020

[www.townofballstonny.org](http://www.townofballstonny.org)

## **ATTENDEES:**

Annetta Dunham, Chairwoman  
Patrick Whitton, Vice Chairman  
John Hall, Board Member  
Tim Long, Board Member  
Steve Merchant, Board Member  
Dan Mertzlufft, Board Member  
Justin Zampella, Board Member  
Bill Keniry, Attorney  
Kerri Mains, Zoning Board Secretary

## **ABSENT:**

Jeff Stickles, Code Enforcement Official

## **Call to Order**

The meeting was called to order at 6:30 pm and the Pledge of Allegiance was recited.

## **Approval of Previous Minutes**

**MOTION:** Mr. Long made a motion to approve the December 6, 2023 meeting minutes. Mr. Whitton seconded the motion. All in favor. **CARRIED.**

## **OLD BUSINESS**

### **1 Lazor Road Area Variances (ZBA 2023-018)**

239.-2-23.11

Application for a side yard setback area variance for the installation of a carport with solar array. Public Hearing scheduled.

**Mr. Jim Gardner** of Kasselmann Solar, LLC and **Mr. Paul Breton**, property owner.

Mr. Whitton stated that the Board has received an updated application that changes the relief sought from eight feet to 11 feet.

Mr. Gardner stated that the updated application is a correction as the property was not correctly notated on the original plan. The setback would be one foot from the closest property line.

Mr. Whitton asked if this includes the overhangs on the structure; Mr. Gardner answered affirmatively.



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Mr. Whitton stated that the Board will wait until 6:35 pm to open the public hearing as that is the time it was scheduled for.

Mrs. Dunham introduced Mr. Hall and the Board members welcomed him as a new member of the Zoning Board of Appeals.

Mrs. Dunham stated that this project was previously classified as a Type 2 Action under the State Environmental Quality Review Act (SEQRA) and is exempt from review. It is also exempt from Saratoga County Planning Board review.

Public Hearing open at 6:35 pm.

No one wished to speak.

**MOTION:** Mr. Whitton made a motion to close the Public Hearing at 6:36 pm. Mrs. Dunham seconded the motion. All in favor. **CARRIED.**

Mr. Whitton polled the Board for questions; there were none. He asked the applicants why the proposed location is critical as compared to putting it somewhere else on the property since Mr. Breton owns a lot of land.

Mr. Breton stated that as you come into the driveway, the righthand side faces south and would be the perfect location for a carport and for the sun. If placed on the left side of the driveway it would be the opposite tilt and any rain or snow from the roof would fall onto the driveway.

There was a discussion regarding placement of the carport. Mr. Whitton stated that it would work on the north side of the driveway; in the proposed location rain and snow will fall on the neighbor's property. Mr. Breton stated that the neighbor's property is just a right of way; the neighbor is in favor of the project. Mr. Whitton stated that it is not just a right of way, it is physically owned property; if the neighbor ever builds a driveway the snow will fall on it. Mr. Long asked if separating the carport from the solar array was considered; the carport could go on the left side of the driveway with the solar panel elsewhere; a variance could be avoided. Mr. Breton stated that he thought of it as killing two birds with one stone. Mr. Gardner stated that they are here to exercise Mr. Breton's right to seek a variance. Mr. Breton stated that the power lines come into the corner of the barn so he could put the electrical connections for the solar panel in the barn. If located elsewhere, he would have to run electricity from the array to the barn. He considered behind the barn, but the proposed location would be perfect. If the variance is not granted, he will think of something else.

Mr. Whitton stated that variances are forever. If a future neighbor wants to install a driveway, the roof snow falling on it could create an uncomfortable situation between neighbors. When the Board grants setback variances they like buffer space around structures for maintenance, snow clearing, etc.

Mr. Gardner asked if the Board would be more amenable to a smaller structure which would reduce the amount of relief.

Mr. Whitton stated that that would be better.



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Mr. Breton stated that he has a drawing for a smaller carport that is 12 feet by 48 feet, which is less square footage.

Mr. Whitton stated that for him the original proposal is a hard sell; it's the width that is the issue.

Mr. Breton showed a drawing of the smaller structure to the Board and stated that he is willing to compromise.

Mrs. Dunham asked if a revised application is necessary if Mr. Breton wants to change to a smaller structure.

Mr. Keniry stated that it is not necessary if the applicant states on the record that he is amending his application.

Mr. Merchant stated that the buffer for maintenance, etc. is something that must be considered.

There was a discussion regarding Lazur Road. Mr. Hall asked if it is a dedicated Town road. Mr. Whitton stated that it is a private road with flag lots where parcels have a strip of land that they could use to build a driveway to Lake Road. He showed a map to Mr. Hall. Mr. Breton explained the property setup. Mr. Long stated that the variance stays with the property, not the owner. Mrs. Dunham stated that it is a benefit/detriment balancing act.

There was a discussion regarding the procedure for moving forward. Mr. Keniry stated that if the applicant amends the application and seeks less relief, he suggests that the Board should have that reflected in the record and be clear as to the relief granted if they approve the variance. If the Board denies the variance, the applicant can return to the Board with a different application or seek a rehearing on the denial. The applicant would have to ask the Board for a rehearing and a unanimous vote is required in order to grant the rehearing. With the public hearing closed, the Board has 62 days to act.

Mr. Whitton asked Mr. Breton how he would like to proceed.

There was a discussion regarding the smaller structure's size and placement. Mr. Gardner stated that he doesn't have plans for the smaller structure; he estimates a five-foot setback based on the size of the new versus original carport. Mr. Breton stated that it would be 12 feet wide by 48 feet long, which would be about three feet shorter and eight feet narrower than the original. Mr. Gardner stated that the original's height is 11 feet, 4.75 inches; he does not know the height of the new carport. Mr. Breton stated that it would be shorter. Mr. Long asked if it would generate enough power. Mr. Breton stated that it would not generate as much.

There was a discussion regarding placement of the structure, so the overhang is over the driveway. Mr. Whitton stated that that would consume some of the relief. Mr. Breton stated that he would be willing to do that with the new structure. Mr. Whitton stated that it could be done with the original structure as well.

Mr. Breton stated that he would rather have the smaller structure as it is waterproof; the original is not.

There was a discussion of the relief required for the smaller structure. Mr. Whitton stated that the setback requirement is 12 feet. Mr. Hall stated that he is uncomfortable with determining the relief for the applicant. He asked if the Board would be comfortable with stating a distance that would be acceptable. Mr. Whitton stated that the applicant should revise his application and determine the relief.



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There was a discussion regarding the next procedural step. Mrs. Dunham asked, since the public hearing is closed, if the Board should vote no so that the applicant could revise and return to the Board. Mr. Keniry stated that the preferred approach would be to not vote. He would prefer to see the Board vote on something definite, and the applicant wants definite relief, if granted, so he can be confident in what to build. Before a vote, the Board would want a sufficiently definite plan from the applicant.

Mr. Mertzlufft stated that the Board tries to grant the minimal relief necessary for people to be able to use their property for sheds, etc. They must consider precedent and the variance criteria. As proposed, he would vote no. To him, relief of perhaps two or three feet would be acceptable.

Mr. Breton asked if it could be placed nine or ten feet from the property line.

Board members answered yes, if the Board is in favor.

Mr. Mertzlufft stated that what he is hearing from the Board members is that Mr. Breton needs to rework the plan.

There was a discussion of items Mr. Breton could consider, including adjustment of the overhang, placement over the driveway, layout of the solar plan, etc., before submitting a revised application.

There was a discussion regarding a Board vote. Mr. Whitton stated that it is Mr. Breton's decision if he would like a vote on the current proposal; if not the project can be tabled so he can revise. Mr. Long stated that Mr. Breton should decide what is important to him for the project. Mr. Mertzlufft stated that Mr. Breton is entitled to a vote; one option is to table the project while the plans are updated, then discuss and perhaps vote at the next meeting.

There was a discussion regarding the relief. Mr. Zampella stated that he also feels comfortable with two to three feet of relief. Mr. Long stated that he thinks it can be done with two. Mr. Mertzlufft stated that the Board has never approved a one-foot setback.

Mr. Breton stated that his household uses a lot of power. When the plans were drawn up, it was bigger than he expected. Perhaps he could find another area on the property for a ground mounted solar array.

There was a discussion regarding options for the project.

Mr. Breton stated that he will come back with revised plans.

Mr. Hall stated that what is proposed cannot be built without digging on the neighboring property. He would like to see a letter from the neighbor. The other Board members agreed.

Mr. Keniry stated that the submission deadline for the next Zoning Board meeting is January 24, 2024 at noon. He read from the area variance criteria and asked that the applicant inform the Board if he will not make the submission deadline. He explained that, since the public hearing is closed, the clock now starts on the 62 days.

**MOTION:** Mr. Whitton made a motion to table this case until the next meeting on February 7, 2024 at 6:30 pm. Mr. Merchant seconded the motion. All in favor. **CARRIED.**



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The applicants thanked the Board.

## **NEW BUSINESS**

No new business.

**MOTION:** Mrs. Dunham made a motion to adjourn the meeting. Mr. Whitton seconded the motion. All in favor. **CARRIED.**

Meeting was adjourned at 7:15 pm.

Respectfully submitted,

*Kerri Mains*

Kerri Mains  
Zoning Board Secretary