

May 30, 2023

## The regular meeting of the Town of Chautauqua Zoning Board of Appeals

### Opening:

The regular meeting of the Town of Chautauqua Zoning Board of Appeals was called to order at 3:30 pm, on Tuesday, May 16th by Zoning Chairman, Troy Smith.

### Board Members Present:

Chairman Troy Smith, L. James Hurley, Charlie Krause, Roberta Tenpas

### Board Members Absent: Stan Marshaus

**Others Present:** Ken Shearer (Code Officer), Jeff Paddock (Code Officer), Nicole Yacklon (Code Clerk), Ted Blanchard, Catherine, and Joe Seebald, Catharine Regis-Green, Glen Land / Marc Kenward (Wright Solar), Brad and Nancy Paul, Dan Hicks, Carolyn Barnes, Doug Leary, Robert Benjamin, Krisahn Gren, Heike Jacob (Wendell Engineering), Christian Schlesinger (Forefront Power), Bert and Mary Rappole, Mike Barnes, Mary and Don Husted, Karen Engstrom, Randall Carlson.

### Agenda:

#### Case No. 1:

To act on the appeal of Krisahn Gren for the placement of a fence. The property is located at 5991 Diamond Avenue Chautauqua, NY and is designated on the official Chautauqua County Tax map as Section 263.19 Block 2, Lot 54 in a Residential area which requires a side yard and rear yard setback.

Public Comments: There were several neighbors there to speak to their opposition of a variance for any fence that goes beyond 4ft. They also talked about the historical character of the neighborhood and the importance of keeping that character viable.

Board Comments: Roberta Tenpas asked if Ms. Gren had looked at any other alternatives and she had not as this was the only option out there to keep her dogs inside of her own yard. After some discussion on the character of the neighborhood. Chairman Troy Smith asked the neighbors present what they would suggest. Neighbors would like to see a split rail fence and no higher than 52 inches. Troy explained that The ZBA board's responsibility is to make a decision that is permissible under the Town Code.

At this time Krisahn Gren would like to withdraw her variance for the proposed fence and will be completing a new building permit application for a fence that will conform to code, which is 52" in height and she will bring it in 3 ft which would not require any variance.

#### Case No. 2:

Acting on the appeal concerns of Thomas Andersen for a shed. The property is located at 5392 Lake Avenue and is designated on the official Chautauqua County Tax map as Section 263.19 Block 2, Lot 15 in a Residential district which requires a variance.

Public Comments: none

Board Comments:

**Requirements for which Variance is Requested: Side yard setback and rear yard setback.**

**Applicable Section(s) of Zoning Code: 143-13A, 143-13C and 143-13D**

Findings and Decision were read out loud: By Chairman Troy Smith

No area variance will be granted without consideration by the board of the following factors.

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Response is. **NO**

Reasons: **New shed will not produce an undesirable change.**

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:

Response is. **NO**

Reasons: **Due to substandard lot size.**

3. Whether the requested variance is substantial: Response is. **NO**

Reasons: **Due to substandard lot size.**

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: Response is. **NO**

Reason: **Storage building will not have an adverse impact on either condition.**

5. Whether the alleged difficulty was self-created: Response is. **YES**

Reason: **Being requested by the owner.**

The ZBA, after taking into consideration the above five factors, finds that:

The Benefit to the Applicant **DOES** outweigh the Detriment to the Neighborhood or Community.

Reason: No adverse impact on either the physical or environmental conditions in the neighborhood.

The ZBA further finds that a variance of 13,523.22 sq. ft. lot size, 42.13' lot width and 5' side yard setback and 5' rear yard setback from Zoning Code is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

CONDITIONS: The ZBA finds that the following conditions are necessary to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: **N/A**

Adverse impact to be minimized:

Condition No. 2: **N/A**

Adverse impact to be minimized:

**Motion:** Chairman Troy Smith to Approve

**Second:** L James Hurley

**Vote:** Chairman, Troy Smith – Aye  
Member, Charlie Krause – Aye  
Member, L. James Hurley – Aye  
Member – Roberta Tenpas - Aye

## Motion Carried

### Case No. 3:

Acting on the appeal concerns of 44 Shore LLC. The property is located at 44 Shore Drive, Dewittville, NY 14728 and is designated on the official Chautauqua County Tax map as Section 263.15 Block 1, Lot 21.2, located in a Residential Lakeside district which requires a variance for lot size, lot width, front yard setback and side yard setbacks.

Public Comments: none

Board Comments: Concern was discussed about the size of the proposed garage and the potential for it to become habitable space.

**Requirements for which Variance is Requested: Rear yard setback and maximum garage size.**

**Applicable section(s) of Zoning Code: 143-13D and 143-12A**

Findings and Decision were read out loud: By Chairman Troy Smith

No area variance will be granted without consideration by the board of the following factors.

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties:

Response is. **NO**

Reason: **New garage will not produce undesirable change in the neighborhood.**

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:

Response is. **YES**

Reason: **Applicant can submit plans for a smaller garage size. The second story should be reduced so that it cannot be utilized as a living space only storage space.**

3. Whether the requested variance is substantial: Response is. **YES**

Reason: **Garage size is 1,425 sq. ft. over the maximum garage size allowed.**

4. Whether the variance has an adverse impact on the physical or environmental conditions in the neighborhood: Response is. **NO**

Reason: **Garage will not have an adverse impact on the physical or environmental conditions in the neighborhood.**

5. Whether the alleged difficulty was self-created: Response is. **YES**

Reason: **Being requested by the owner.**

The ZBA, after taking into consideration the above five factors, finds that:

The Benefit to the Applicant **DOES NOT** outweigh the Detriment to the Neighborhood or Community.

Reason(s): **The board's concern is the second story of the garage. The current plans show that the garage could be converted to living space, which is prohibited by Town law. The ZBA Board requests that a revised plan with a smaller second story be presented at a future meeting.**

The ZBA further finds that a variance of Zoning Code is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

**CONDITIONS:** The ZBA finds that the following conditions are necessary to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1:

Adverse impact to be minimized:

Condition No. 2:

Adverse impact to be minimized:

**Motion:** Chairman Troy Smith to Deny

**Second:** L. James Lewellyn

**Vote:** Chairman, Troy Smith – Nay  
Member, Charlie Krause – Nay  
Member, L. James Hurley – Nay  
Member – Roberta Tenpas - Nay

**Motion Carried to Deny**

#### **Case No.4:**

To act on the appeal concerns of Arcadis / Forefront Power for a proposed Solar Collection facility located at 6455 Cadenza Passage, Chautauqua Stedman Road in Mayville. Christian Schlesinger from Fore Front power was in attendance to answer any further questions from the board and or attendees.

Heike Jacobs and Andrew Reilly from Wendell Engineering presented a report listing 25 conditions that the Town board should consider when deciding to approve or deny the solar collection facility request. The report was based on a culmination of sources that included questions/concerns from the ZBA board as well as citizens who attended the board meetings, e-mailed/mailed their concerns and questions. Wendell is comfortable with this report. Additionally, a revised landscaping plan was also discussed, and Arcadis/Forefront Power will continue to work with the neighbors on a landscaping plan.

**Public Comments:** Several neighbors had an opportunity to voice additional concerns such as, zoning doesn't consider property values. M. Husted urged the board to go visit the Sherman solar farm. K. Engstrom presented quotes and research information from other towns that she asked to be considered. B. Rappole reiterated that placing a facility such as the proposed would devalue his home and business.

**Board Comments:** Member, Charles Krause discussed the impact of bulldozing 25 acres of land. Wendell stated that there is a sediment and erosion control plan that would be in place.

**Motion:** Chairman Troy Smith made a motion to move forward with an approval for the project to move to the Town Board.

**Second:** L. James Lewellyn

**Vote:** Chairman, Troy Smith – Nay  
Member, Charlie Krause – Aye  
Member, L. James Hurley – Aye

Member – Roberta Tenpas – Aye

A motion was approved by the board that Arcadis/Forefront Power go to the Town Board.

**Case No. 5:** Sol Source Power, and Representative Glenn Land, attended the meeting to discuss any further questions and concerns the board and attendees may have for their request for a Solar Collection facility on Wright Road, named, Wright Solar 1 and Wright Solar 2.

Troy Smith made a motion to open the meeting to the public for Sol Source Power.

Public Comment(s): M. Hustead commented that we are raping the earth. K. Engstrom presented several quotes and voiced her concerns against the Solar collection facilities.

Board Comments: Currently, the board is waiting for the Letter of Intent from the County Planning Board. Once the Letter of Intent is received the board will place Sol Source back on its Agenda.

**Meeting was adjourned at 5:15pm**