

Town of Athens Zoning Board of Appeals
2 First Street, Athens, NY 12015
Meeting Minutes: February 14, 2024

The meeting for 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, Member Christian Pfister, ZBA Secretary & Alternate Member Annmarie Krause. New Member Chris Sprague arrived later in the meeting.

In attendance: George McHugh - Town Attorney, Micheal Pirrone - Town of Athens Supervisor, Tara Borodin - Phinney Design Group, Ariana Deschaine - A Clear Run, Albert Gasparini - Town of Athens CEO, Allyson Phillips - Young Sommers, LLC, Hailee Dickson, Russ Nadler.

Also in attendance: Margaret Muenkel, Tom Saterlee, Cara Pfister, Rob Muenkel, Tom Krause.

Project: Deschaine Cafe / Ariana Deschaine, 9570 Rt. 9W, Athens, NY 12015
Tax Map #104.00-5-1, #104.00-5-2, #104.00-5-22, Zoned MUC, Lot Width Relief Variance

Tara Borodin of Phinney Design Group, explained the first page of the site plan. The sections outlined in yellow show the existing residential property, the property for the cafe and the Stewart property. There is a diagonal yellow line delineating where the existing property line ends and the Stewart property begins. The applicant is proposing expanding to the new property line outlined in pink.

Ms. Borodin discussed the zoning statistics chart on page four of the application showing the statistics of the existing conditions, the previously approved variances and the variances requested for the three parcels.

The property was surveyed in the location of the existing septic system shown on page L-0.11. There is a 10 foot setback with the lot line adjusted to accommodate the septic as well as the pipe going to the septic. There is a dashed line delineating the existing lot line and also a solid line showing the proposed lot line. Ms. Borodin stated that the surveyor confirmed the information and added it to the map. He adjusted the lot lines to show the correct boundaries. The remainder of the application has not changed.

Chairman Nelson stated the two variances needed are a side setback proposed at 3.44 feet and previously approved at 11.4 feet which is an additional relief of 8 feet and a rear setback that is improved from existing. Member Ames asked if the applicant has purchased the Stewart property. The applicant said she is waiting for approval before purchase.

A public hearing was scheduled for Thursday, March 14th at 5:30pm at EJ Arthur Elementary School.

Project: ARX Wireless Infrastructure LLC/Verizon Wireless, Farm to Market Road, Athens, NY, Tax Map #: 105.00-1-8.11, Appeal of the vote by the Planning Board.

Chris Sprague was welcomed as an Alternate Member of the Zoning Board of Appeals. He will be sworn in for the next meeting.

Chairman Nelson explained that the applicant is appealing the Planning Board vote on the application for ARX Wireless. The Town code allows for this appeal in *Chapter §162-24 Appeals*:

“To the extent permitted by federal and state law, any person adversely affected by the Board's actions with respect to an application, recertification application or revocation of a special use permit for a tower shall have the right to appeal the adverse decision to the Town of Athens Zoning Board of Appeals.”

The appeals are from Attorney Andrew Campanelli and Hailey Dickson and represent 37 people. Chairman Nelson said that all the information for this application will be located on the FTP site on the Town of Athens website.

Chairman Nelson explained that there was a vote taken by the Planning Board on October 26, 2023 that allegedly denied the ARX application. The Planning Board indicated it was not a vote and that there was no action taken. There was a special meeting held on November 8th with another vote that allegedly denied the application. There was a regular order meeting on November 14th where the application was voted on with an approval provided to ARX Wireless. The appeal says that the Planning Board can vote “Yea” or “Nay” on an application, but they cannot overturn themselves. So, if they voted to deny the application they cannot come back and vote to approve it.

Attorney McHugh explained that this is an appellate process. The Zoning Board is only looking at the process used when the Planning Board voted and not looking at the merits of the application itself.

There will be a Public Hearing including the residents and their attorney, the Chairman of the Planning Board, the Town Engineer and the Attorney for the applicant, ARX. The meeting will be transcribed by a Court Reporter, for the record. Each party will explain their position and Chairman Nelson is hoping to have a vote at the March meeting.

Chairman Nelson read the resolution for the appeal into the record.

“Whereas an appeal was filed under Chapter §162-24 of the Town Code regarding an application and special use permit filed by ARX wireless and approved by the Town of Athens Planning Board. Now, therefore be it resolved that Athens Zoning Board of Appeals hereby schedules a public hearing for the purpose of hearing all interested parties and the public concerned with the appeal before the Zoning Board of Appeals on March 14th 2024 at 6pm at the EJ Arthur Elementary School located at 51 Third Street, Athens, New York. Be it further resolved that the town clerk is authorized and directed to publish public notice of said public hearing consistent with all applicable laws.”

A motion was made to approve the resolution.

Motion: Chairman Nelson

Second: Member Ihde

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

Russ Nadler - 264 Flats Road asked the board to read the 14 page brief from January 15, 2024 that is within the package distributed to the board. This is the section that explains the side of the residents. He also wishes the residents were working together with the town on the matter. He is unhappy about the fact that there was no lawyer for the town at the meetings, while the applicant did have an attorney. He stated that this process needs to happen before anyone can bring an Article 78.

Haley Dickson - 128 Flats Road asked if Attorney McHugh has a conflict because he is the lawyer for the Planning Board. Chairman Nelson explained that as the lawyer, he is helping guide the board with legal issues, but does not affect the votes of the members.

Member Pfister expressed his thoughts on the confusing minutes of the October 26 meeting. He felt that the minutes don't explain what the members were voting on and there was no resolution.

Chairman Nelson asked that if anyone has audio or video of these three meetings to please share these with the board. Attorney McHugh is in the process of getting the audio from Attorney Olsen of ARX, if it is still available.

Member Ames asked the difference between voting yes or no. Attorney McHugh explained that if you vote that the Planning Board had a rational basis for their decision then the board can affirm their decision and the appeal is denied.

The meeting is set for Thursday, March 14th at 6:00 pm at the EJ Arthur Elementary School.

Meeting Minutes: October 11, 2023

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

Motion: Member Ames

Second: Chairman Nelson

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

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

Motion: Member Pfister

Second: Member Ihde

Vote: 5 Ayes - Nelson, Pfister, Ames, Ihde

Meeting Adjourned 7:35 p.m.

Respectfully Submitted,
Annmarie Krause, ZBA Secretary