

Town of Athens Zoning Board of Appeals
2 First Street, Athens, NY 12015
Meeting Minutes: May 10, 2023

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 Christian Pfister, Member James Morabito, ZBA Secretary & Alternate Member Annmarie Krause. Absent: Member Helen Ihde Also present: Michael Pirrone - Town Supervisor, George McHugh - Town Attorney, Albert Gasparini - Town Code Enforcement Officer.

Also in attendance: Mary Beth Bianconi and Adam Yagelski - Delaware Engineering, Tara Borodin-Galarza - Phinney Design Group, Ariana Deschaine, William & Renee Stewart, Jacqueline Murray - Murray Law Firm, Jason Dickey - TRC Companies, Matt Landes - Freepoint Solar, Dave Swanson - Freepoint Solar, Margaret Morabito, Karen Dudley, Thomas Satterlee, Renee Stewart, William Stewart, Margaret Muenkel, Elaine Cornacchia, Nancy Scaramuzzino, Natale Scaramuzzino, Marsha Bartels, Gene Bartels, Michael Germinario, Jim Skewes, Mike Dossantos, George Greiner, Russell Nadler, Sean McGrath, Deb Parker, Wayne Orr, Paul Urban, PJ Urban, Melissa Beck-Grosso, Douglas Lynch, John Erik Swift, Christopher Schaefer, Chase Schaefer, Peter Fur, Gabriele Corrado, Matt Landes, Susan Brown, Eric Holsopple, Lisa Holsopple, Tom Krause, Elaine and Gary Kingman, David Blasch, Erben.

Project: Deschaine Café, Ariana Deschaine, 9760 NYS Route 9W, Athens, NY 12015, Tax Map #'s: 104.00-5-1, 104.00-5-2, Area Variance, Zone: MUC - Mixed Use Community

The public hearing for Deschaine Cafe was opened at 7:00 pm. Tara Borodin-Galarza of Phinney Design Group representing the applicant, gave an overview. She explained that the property, owned by Ariana Deschaine, is at the corner of 9W and Schoharie Turnpike. The location was previously Schmidt Brothers Garage. The existing 1300 sq. ft. building will be renovated with an 1100 sq. ft. addition creating a cafe with a small seating area for dining and takeout. Access to the site is from Route 9W leading to two separate parking areas with one-way drives exiting onto Schoharie Turnpike. There is a one-way drive to the left leading to parking for quick pick-up or to the right to park for dining.

The applicant is asking for an Area Variance for setbacks on a property that was already non-conforming as Schmidt Brothers Garage. Ms. Borodin submitted a table showing the changes and effects to the existing setbacks. There will be a trade off of property from residential to commercial to allow the property to become more conforming. She explained that the applicant owns both properties, but is not planning to join the lots.

At the April Zoning Board meeting, the septic system was discussed. Ms. Deschaine is in the process of purchasing a piece of the adjacent parcel along Schoharie Turnpike to use as part of the cafe parcel. The neighboring parcel is owned by William and Renee Stewart at 9750 Route 9W,

Athens and they are present at the meeting. At approximately a quarter acre, this parcel allows for a septic system location. There were test kits done and the calculations have not been completed, but Ms. Borodin is optimistic that the added property will solve any issues with the septic. The intention is to finalize the plan by the next meeting.

Chairman Nelson asked if any audience members would like to speak about this project. George Greiner of 1387 Schoharie Turnpike asked about an exit out of the parcel. Ms. Borodin explained that there will be an exit at the back of what is presently Schmidt Brothers with a one-way drive onto Schoharie Turnpike.

Member Pfister asked if the raised bed is a septic system. Ms. Borodin said that the mound shown on the survey is on the parcel belonging to the Stewarts and is not part of the new septic system.

A motion was made to adjourn the Public Hearing until June 14, 2023 at EJ Arthur Elementary School.

Motion: Member Ames

Second: Member Pfister

Vote: 5 Ayes - Nelson, Pfister, Ames, Morabito, Krause

Member Morabito recused himself from the Freepoint Solar Application

A break was taken until the 7:30pm Freepoint Solar Public Hearing.

Project: Freepoint Solar, Potic Mountain Road / Center Road, Athens, NY 12015

Tax Map #: 103.00-3-17, 103.00-6-1, 103.00-6-2, 103.00-6-4, Public Utility Solar Project

At 7:30 the Public Hearing for Freepoint Solar was opened. Chairman Nelson explained that the meeting was being recorded as a zoom meeting with video as well as audio.

Jacqueline Murray of Murray Law Firm and Attorney for Freepoint Solar gave an overview of the project. She explained that the project is a 5 megawatt community distributed solar generation facility on 37 acres over 4 parcels on Potic Mountain Road and Center Road. Freepoint secured an interconnection agreement from Central Hudson Gas and Electric in 2017 to reserve the hosting capacity over their distribution system. This project is not permitted in the residential district and so a Use Variance is needed.

The project appeared before the Zoning Board for review, but that ended in a denial which was overturned because the project was recognized as a public utility facility. The reason is because the project will provide electricity to the general public and be distributed by Central Hudson's existing system. The electricity that will be distributed will be available to Central Hudson customers and will result in a savings for the community. This will support renewable energy without having to install panels on individual properties.

The parcel is wooded and meets the setbacks under the zoning code. There will be a buffer around the project made of existing vegetation that will remain between adjacent properties as well as the public right of way. There are limited areas where the project is visible. In consultation with Delaware Engineering and the ZBA, Freepoint Solar presented viewpoints showing potential visibility and provided photo representations. The visual analysis of these viewpoints were done during leaf-off conditions presenting the worst case scenario. The two viewpoints that showed minor to moderate visibility use privacy fencing and landscaping to mitigate. The remaining majority of viewpoints showed no visibility because of topography and existing vegetation.

The applicant has provided additional environmental assessment materials that have been updated since the application had been dormant for a while. Freepoint did refresh consultations with the State Fish and Wildlife Service and the DEC to get new assessments on the impact to threatened and endangered species. There are Northern Long-Eared Bats and Indiana Bats in the area and measures are being taken to mitigate the disturbance on the bat populations. The project will be enclosed within a perimeter fence and will have privacy screening where needed. A landscaping plan has been submitted to the ZBA that shows screening in areas where needed. Ms. Murray was prepared to listen and to address questions.

Chairman Nelson listed the items added to the website since the April 12th meeting.

- Delaware Engineering Memo to the ZBA dated April 14th a review and assessment of documents from TRC with a review of next steps
- Attorney Dowd opinion letter to the ZBA and Freepoint Solar on April 17th concerning legal positioning and an opinion on the project
- A response from Murray Law Firm dated April 25th
- A TRC memo to Delaware Engineering dated May 3rd

Chairman Nelson explained that the audience would have three minutes per person to speak and began from the right side of the room.

Margaret Morabito - 119 Buttermilk Falls Road asked about screening in the area where the panels would be installed. Ms. Murray explained that there would be 8 and 12 foot fencing, with a neutral color wind mesh, to block the view. In the foreground there will be landscaping. A representation of this can be seen in the simulations located on the town website.

Jason Dickey - TRC Companies explained that ten locations were shown in winter with leaf-off, worst case conditions. These were done using a CAD system and shows height and distance from the view. The images show the location of the viewpoint, the existing representation and a simulation with 5 year growth.

Doug Lynch - 49 High Hill Road asked about the pink wetland delineation tape on the site. Mr. Dickey explained that this was not part of the project and was not aware of how the tape appeared at the location. Mr. Lynch explained the he has lived at this location for 16 years with his family and he, his wife and their two children are opposed to the project because the project is only a negative for his family with no positives. He noted that when he moved to the area only houses could be built

in these locations where the solar panels would be installed. He questioned who owns these properties.

John Swift - 37 Skinner Lane is against the project and discussed the list of criteria to consider that was given to the board from Delaware Engineering. He asked, is this a community service, what will this community get and will anything go to the neighborhood and feels this part of the criteria has not been met by the applicant. He feels that from the perspective of the neighbors and himself, they will be looking right at the site. This project replaces beautiful trees with fences and he did not move to this area to look at fences and landscaping. The taxes are going up and this will make the property value go down. Mr. Swift does not believe the criteria that needs to be followed has been met by the applicant. The loophole of the Public Service Utility Act does not address the needs of the community.

Jim Morabito - 119 Buttermilk Falls Road is against the project and explained that he was asked, in a letter by the attorney for Freepoint Solar, to recuse himself from the project. He feels that every legal position is being pushed and that he was pushed out of having a vote.

Melissa Beck - 464 Potic Mountain Road is against the project and explained that her property is zero feet from the project and her well is 73 feet from the project. She expressed that the comparison of Freepoint Solar to Indian Point in Con Ed vs Hoffman are not apples to oranges, but apples to arsenic. The Indian Point project was pre-existing modifications in an industrial area. This project is rural and residential. Indian Point is not dependent on the weather, but solar panels are dependent on the sun. Indian Point produced 2 million kilowatt hours, the solar project will produce 5000 kilowatt hours with 20,000 to 25,000 panels in the space.

Ms. Beck went on to say that this project removes trees taking 40 acres of forest, disrupting the watershed, creating issues with wells and the water table. In a study from Yale, a tree has the cooling effect of two domestic air conditioners. One tree can take in one ton of carbon in its lifetime and this project cuts down 40 acres of them. Less trees and plants allow more carbon into the atmosphere and when the trees are cut down and removed this also releases more carbon into the atmosphere. All of this making matters worse instead of better. Roots help with water issues and deforestation adds to the water issues. There was a change in the status of the endanger bats that occurred on January 23rd. These bats are located on the 18 acre parcel. Deforestation will displace the animals, but not the ticks and other insects and the bats that eat them will be gone too.

Ms. Beck showed a map of all the solar that already exists in New York State. Green County, NY is the 733 highest producer of solar electricity by megawatt in the United States out of 3221 counties. Greene is the 10th largest electricity generator of all 62 counties in the state of New York and generates more than 4,342,490 megawatt hours. This translates to over 4 billion megawatt hours produced while only consuming 344,107,000. We are producing 4 billion megawatt hours more than we are using based on the census that was done in July of the homes and businesses in Greene County. So when is enough, enough. This information shows this project is not needed. Quoting Con Ed vs Hoffman, "it was never meant that a utility may place a facility wherever it chooses within a community and the utility should show the modification is a public necessity."

David Blasch - 195 Buttermilk Falls Road is against the project and said his house is at the bottom of the hill and he clears out a swale to keep water moving away from his house and out of his basement. He is afraid of all the water that will head to his home because of this project.

Margaret Muenkel - 55 Billingswood Point is against the project and asked if this is the only place and the best place for a solar project. She asked about building on 9W instead of choosing a beautiful, mature tree filled location. She also asked about considering the environmental impact to the animals, watershed and the thousands of trees, all to save the planet. It makes no sense to her.

Erben - 73 High Hill Road is against the project and says he has been here for three weeks and can't believe this monstrosity is being built here. From his property the fence will be seen right out his bedroom window. He came here for peace and quiet and to enjoy the animals and fresh water, but not for all the water to seep down onto his property. He is at point zero for this nightmare. This will be harmful to the water table and animals and will be ugly. There are no leaves on the trees six months of the year. He feels that this project is a disgrace.

George Greiner - 1387 Schoharie Turnpike asked about the Olana viewshed. He is for solar, but against solar in this location and would like to see it in an industrial area. This is a hunting area, will hurt the bat population and cause lots of dead trees. The 5000 kilowatts of power will not help the community. The "crapy" shale will pulverize when walked on and will not hold. This type of project should be in industrial areas and not residential areas as shown in the comprehensive plan. If this is allowed now, it will happen again in the future.

Gab Corrado - 158 Buttermilk Falls Road was told that the Athens Power Plant would save money on electric for Athens, but it never happened. This area looks beautiful and so he is against the project happening here. He asked what will happen when someone shoots a gun and breaks panels. This area is not zoned commercial and he does not want commercial here. He will buy the properties if the owners want to sell.

Karen Dudley - 463 Potic Mountain Road spoke of the perfect view of this project across the street from her house. She moved here five years ago for the peace and quiet and the animals including bear and deer. She does not want to see this changed. The flow of water from Buttermilk Falls effects six streams and will be felt right down to the Catskill Creek. She asked who is liable if there are problems with flooding after the project is complete? What about lightning strikes? How about the chemicals from panels not being detectable. She worries about toxins. She also mentioned that the solar farm on 9W is not maintained.

Elaine Cornacchia - lives on McGovern Lane at the very end of the Town of Athens, in a low lying spot and already has problems with water coming down the mountain. Cutting down the forest displaces bats, deer, mice and birds for a 10% savings a year. It is not enough and will cause depreciation of home values. She asked who profits from all the wood, what is the mitigation for all the animals and can the area residents hook into this? Her daughter lives on High Hill and will no longer be able to see trees because they will all be cut down.

Eric Holsopple - 485 Potic Mountain Road is against the project and asked about the environmental impact study on the runoff and a retention pond. He felt that this project should be in the 9W area. He wants to keep the area residential and is against "spot zoning". Commercial industry does not belong in a residential zone. This will cause the property value to go down when the taxes are going up. He asked about wells, water flow and troubles with runoff. He feels that the state and federal agencies are streamlining solar, but should not be putting it in beautiful places like this one. He feels 3-phase is why this location was chosen. He asked about a decommissioning plan. He hopes that the board acts in accordance with the needs of the residents.

Peter Urban - 503 Potic Mountain Road is against the project and asked about the buffer area. Ms. Murray explained that the setback of the fence to the property line is 50 feet with existing trees to remain. The access drive will be clear cut and trees will be planted. The leaf-off mitigation areas will be landscaped in addition to the 50 feet of existing trees. Topography changes hide most of the viewpoints and are shown on the website. Attorney Murray explained that pursuant to NYS DEC regulations they are required to prepare a SWPPP for the DEC. This must demonstrate that run off will not exceed pre-construction conditions. DEC regulated storm water devices will be used. There will be no development on slopes greater than 25%. When asked about removal of contaminated water Attorney Murray explained that there is not a source of contamination and that the panels are not designed to produce contamination. When asked about fence height, she explained that fence height is a Planning Board issue, but that the fence must be 7 feet according to electrical code. When asked why they chose this area, she stated that it has hosting ability with the 3-phase service and that this type of hosting is not available on 9W. There is a map showing the hosting ability with Central Hudson as part of the application materials. Mr. Holsopple expressed that this infrastructure is not available on 9W, but could be done with investment from tax dollars. Ms. Murray also stated that this site was chosen because it is screenable using the topography.

Mr. Urban also asked about a Variance law that stated no variance would be granted if it cost the neighbors more than \$150. He said this was in the ecode, but is no longer there. The board felt the ecode was last updated in 2019 and were not aware of this code reference. He asked about how long some members of the board lived in the area and have served on the board. He felt that this project should go near the Athens Generating plant.

Paul Urban asked about using Athens Generating with no trees to cut down. He explained that this project is not wanted by this community and asked why this is happening.

Chairman Nelson explained that the Zoning Board does not have the ability to choose locations. Applications come to the board with a presentation and that is all that can be evaluated.

Tom Satterlee - 164 High Hill Road is against the project and asked how the clear cutting and fencing will allow the wildlife to continue to move through the area. He has enough deer and ticks already. He also said there is an abandoned farm at the bottom of the hill where trees will not need to be cut down.

Chris Schaefer - 459 Potic Mountain Road just purchased his home two years ago and is totally against the project and stated that no one in this area wants this project.

Chairman Nelson explained that the Public Hearing will remain open for the June meeting. It will be closed at the June meeting and any documents and letters will be accepted until then.

A motion was made to adjourn the Public Hearing until June 14, 2023 at 7:00 pm at EJ Arthur Elementary School.

Motion: Member Ames

Second: Member Pfister

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

Adam Yagelski - Delaware Engineering explained next steps. Once the Public Hearing is closed, SEQRA must be addressed with a positive or negative declaration. Delaware Engineering will put together a roadmap of how to address the Public Utility Standard and piece it together with the information submitted by the applicant. After the hearing is closed next month, the board will talk through all the issues. In July, Delaware Engineering and Attorneys McHugh and Dowd will draft a resolution of the deliberations which will be made available to board and public. Once the board is comfortable with the information in the resolution a vote can be taken.

Mary Beth Bianconi - Delaware Engineering explained that public opinion is important. This project is proposed to be community energy, but it sounds like the residents of the area do not plan to buy power from this project and that there is no demand locally. The hearing has been recorded and so this information is on record.

The job of the board is not to like or dislike the project, the job is to see if the project meets the standards. The three areas the zoning board deals with are to interpret definitions, to look at Area Variances such as setback dimensions and to look at Use Variances as in locating a commercial project in a residential zone, which is where this project falls. The applicant has been given the opportunity to apply to the Zoning Board for a variance. The applicant has to prove they meet the criteria and the public hearing makes the public part of the process. The public is encouraged to go to the website to look over the materials.

An environmental review must be completed and once it is completed, it does not give permission to do the project, but instead just reviews the standards and checks to see that the applicant is reducing any impacts. Once this is done, the board will decide if the applicant has met the criteria given by law.

Self inflicted hardship is part of the old standard. The applicant did not meet that standard in the past appearance, but the judge ruled to hold this project to a different standard. This standard is from a law suit that occurred in the past in the Village of Buchanan at a nuclear plant in the Town of Peekskill, NY. This lawsuit was Con Edison vs. Hoffman. It may be hard to compare an existing Nuclear Power Plant to this project which is a green field. Acting State Supreme Court Judge

Silverman decided this case should come back to the Zoning Board using the Public Utility Standard.

When asked if the board can vote no, Ms. Bianconi replied that if the criteria has not been met, then the board can vote no. One criteria is public necessity, did the applicant prove there is a public necessity in this location and at this scale?

Ms. Bianconi stated that Delaware Engineering will create a road map of all the submitted information to help show if the criteria has been met. She also stated that the applicant pays for all the Engineering and Attorney fees.

Meeting Minutes: April 12, 2023

A motion was made to approve the Minutes of April 12, 2023 as written.

Motion: Member Pfister

Second: Member Ames

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

Further Business:

Member Ames asked about the Zoning Board discussing the septic system at Deschaine Cafe before issuing a variance. Chairman Nelson explained that the location of the septic may change the setbacks for the application and therefore needs to be decided before a variance can be considered.

It was noted that in the minutes of the April meeting, Alternate Member Krause had not yet been voted in as a member and inadvertently voted at the April meeting. There were five unanimous votes for each of the motions and so this does not effect any outcomes.

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

Motion: Member Pfister

Second: Member Ames

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

Meeting Adjourned 9:00 p.m.

Respectfully Submitted,
Annmarie Krause, ZBA Secretary