



TOWN OF WHEATFIELD

COUNTY OF NIAGARA

Zoning Board of Appeals

2800 Church Road, North Tonawanda, NY 14120

Phone: (716) 694-1026 Fax: (716) 694-1800

www.wheatfield.ny.us

Minutes of Meeting

August 12, 2019

Chairman Muscatello called the meeting to order at 7:00 pm.

Roll Call:

Present: Richard W. Muscatello (Chair) Michael Schaffer (Vice Chair)
Art Gerbec Arthur Kroening
Matthew F. Klettke Debbie Carr (Secretary, non-member)

Reading & Approval of Previous Meeting Minutes:

Motion to approve Board minutes of July 22, 2019 was made by M. Schaffer and seconded by A. Kroening:

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Yes
- M. Klettke - Yes

Motion approved

Communications: None

Reports of Committees : None

Unfinished Business: None

New Business: None

Hearings(s) Held/Interpretations:

7:05 pm: Borrego Solar Systems, Inc. for David & Dennis Jakubaszek requests a variance for Lot # 133.00-1-3, located at 2469 Lockport Rd. for the construction of a ground mounted utility grade solar energy system to allow a 20' setback where a 50' setback is required.

Board Findings:

1. A variance application was previously approved by the ZBA on July 9, 2018.
 - a. Applicant was unaware the approved variance came with an expiration date.
2. Five (5) neighbors physically attended today's meeting.

Motion to close the public hearing was made by M. Schaffer, seconded by A. Gerbec. Ayes: Unanimous

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Yes
- M. Klettke - Yes

Motion approved

Findings per New York State Law Guidelines: Subsequent to reading the guidelines for granting area variances, evaluating the petitioner's testimony, and considering attendee contributions, the Zoning Board of Appeals concluded:

1. The current project received the Town Planning Board's tentative approval, pending ZBA decision: substituting a 7' fence in lieu of a 6' fence.
2. No. The current dilapidated structures on the property will be demolished, as a condition to approval.
3. Yes. From 50' to 20'
4. No. The abutting property is owned by the power companies. There are no plans in the foreseeable future for any significant development.
5. Yes

Findings per New York State Law Guidelines on Variance application that was previously approved by the ZBA on July 9, 2018 :

1. Current rules permit a minimum of 25' from the top bank of the creek. Nevertheless, the Planning Board requested 50'. Site plan could lessen the solar array in that area but that would not be economically feasible, depriving the petitioner maximum potential of the property. Arrays could be positioned closer to Lockport Road but that, too, would limit future development of the property.
2. No. It's agricultural land and is set back 676' (approximate) from the road. The positioning will enhance the appearance of the structure. A fence and shrubs, greenery, etc., will improve street appeal.
3. Yes. From 50' to 20'.
4. No.
5. Yes.

Motion to approve the variance request was made by M. Schaffer, seconded by A. Gerbec.

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Yes
- M. Klettke - Yes

Motion Approved

7:05 pm: Borrego Solar Systems, Inc. for David & Dennis Jakubaszek requests a variance for Lot # 133.00-1-3, located at 2469 Lockport Rd. for the construction of a ground mounted utility grade solar energy system to construct a 7' fence that exceeds the maximum 6' height.

Board Findings:

1. A variance application was previously approved by the ZBA on October 22, 2018, and November 12, 2018.
 - a. Applicant was unaware the variance came with an expiration date.
2. Five (5) neighbors physically attended today's meeting

Motion to close the public hearing was made by M. Schaffer, seconded by M. Klettke.

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Yes
- M. Klettke - Yes

Motion approved

Findings per New York State Law Guidelines: Subsequent to reading the guidelines for granting area variances, evaluating the petitioner's testimony, and considering attendee contributions, the Zoning Board of Appeals concluded:

1. NFPA 70 (National Electric Code) guidelines had previously been adopted by the Town of Wheatfield which mandates a 7' fence.
2. With a setback of 676' (approximate) from Lockport Road, a 12" difference in fence height would not be apparent.
3. No.
4. No. The area is densely populated.
5. Yes

(Note) Extract Findings per New York State Law Guidelines on variance application that was previously heard by the ZBA on October 22, 2018 and approved on November 12, 2018 :

1. Yes. Petitioner is guided by the NEC code which mandates a 7' fence. Petitioner's engineer cautioned that building a 1' or 2' berm with a 6' fence is not NEC allowable. Additionally, the berm would result in a significant cost increase and would not be aesthetically pleasing.

2. No. Adjacent neighbor at 2469 Lockport Rd., on the west side, expressed his unhappiness and concerns, alleging that other neighbors feel the same. Factually, the fence is over 600' from the right of way.
3. No. From 6' to 7'. Area is mostly farmland.
4. No. Allegedly neighbors are concerned with the length of the fence, which is outside the scope of this height variance request. The landscaping plans submitted by the applicant to the Town's Planning Board stipulate that initial plantings will be a minimum 7' in height, measured from ground level, along the front and 300' down the east and west sides. This information was shared with the resident.
5. Yes.

Motion to approve the variance request made by A. Gerbec, seconded by M. Schaffer:

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Yes
- M. Klettke - Yes

Motion Approved

The following advisory recommendations, emanating from ZBA members and attendees, are for the Town's Zoning Enforcement Officer's action, as deemed appropriate:

1. Access to the site should be via a 20' wide stone/gravel roadway, and constructed to be dustless and continuously maintained.
2. Efficacy of the demolition process should be evaluated by the ZEO prior to issuance of a permit.
3. Completeness and maintenance of the landscaping plan should be evaluated by the ZEO.
4. Compliance with 200-144, Wheatfield Code, Maintenance, procedures and fees and 200-143 (maximum overall height of utility scale energy system, etc.)
5. Certificate of Occupancy should be held in abeyance until all five (5) Town fire company members have been properly trained to deal with solar emergency protocols.
6. Borrego's modus operandi should incorporate an automatic "recloser circuit on the main breaker disabler."
7. The Town advised to engage an electrical substation engineering firm to review the construction drawings **before the issuance of a building permit**. The consultant firm should conduct onsite electrical inspections during construction and commissioning of this facility. The costs should be the responsibility of the petitioner.

Miscellaneous: None at this time.

Next Meeting Schedule : August 26, 2019 @ 7:00pm, sharp, Building Dept. lower level conference room.

Public Hearings: Scheduled for August 26, 2019 - None at this time.

A motion to adjourn : Made by M. Klettke, seconded by M. Schaffer Ayes: Unanimous

Respectfully Submitted,

Deborah Carr
Secretary

Distribution: ZBA Distribution Listing

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Building Dept.
Planning Board

Assessor
ZBA Members
Town Clerk

Town Board
MIS Manager
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Fire Advisory Board