

March 3, 2022  
7:00PM  
Owego Town Hall  
2354 State Route 434  
Apalachin, NY 13732

MEETING OF THE TOWN OF OWEGO ZONING BOARD OF APPEALS

Present: Chairman Gary Phelps, Dan Myers, Jack Legg, David Kresge and Janet Brown

Others Present: Planning & Zoning Administrator Joann Lindstrom, Town of Owego Attorney Irene Graven.

Chairman Phelps called the meeting to order. The minutes from the Regular Zoning Board Meeting held January 6, 2022 were considered. Chairman Phelps noted a correction needed from Appeal No. 2104 fence height. The minutes should reflect a 7-foot fence around the perimeter of the proposed monopole. David Kresge made a motion to accept the minutes with the noted correction. Dan Myers seconded the motion. Chairman Phelps, Mr. Legg, Mrs. Brown, Mr. Kresge and Mr. Myers voted in favor of the motion.

Chairman Phelps then introduced the following resolution to vacate Appeal No. 2060 from the agenda.

RESOLUTION to VACATE APPEAL NO. 2060

WHEREAS on May 7, 2019 Ronald Schmidt, Town of Owego Code Enforcement Officer, observed a 10' x 16' shed situated on a vacant parcel (tax map no. 152.08-1-19.1) adjacent to Stephen Blazey's home at 513 Barton Road, Town of Owego, NY (tax map no. 152.08-1-19.2); and,

WHEREAS on November 21, 2019 Stephen Blazey applied, through the Town of Owego Zoning Board of Appeals, for an Area Variance for the shed, which was sited in violation of the towns setback requirements for the Agricultural (AG) zoning district in which it is located; and,

WHEREAS Mr. Blazey asserted that he owned the property and has been paying taxes on it for 12 years; and,

WHEREAS Linda Bailey, Town of Owego Planning and Zoning Secretary advised Mr. Blazey on this date that he must file a deed for the adjacent parcel, which the Town of Owego Assessor's records indicated was owned by Duane and Grace Cokely; and,

WHEREAS due to an erroneous administrative acceptance of an application for an Area Variance, the town assigned the application Appeal Number 2060; and,

WHEREAS eleven months after Mr. Blazey's failure to submit the requested deed, an appearance ticket was issued to him for December 3, 2020; and

WHEREAS Mr. Blazey failed to appear at this arraignment; and,

WHEREAS a bench warrant was issued to Stephen Blazey on February 25, 2021 by Justice Schumacher for failing to appear at two scheduled court dates; and is still outstanding

NOIW THEREFORE, BE IT

RESOLVED that due to Stephen Blazey's failure to prove ownership of the parcel in question (tax map no. 152.08-1-19.1) a request for an Area Variance could not be heard and the Town of Owego's Zoning Board of Appeals hereby vacates Appeal Number 2060.

Mr. Myers made a motion to accept the resolution. Mrs. Brown seconded the motion. Chairman Phelps, Mr. Legg, Mr. Kresge, Mr. Myers, and Mrs. Brown all voted in favor of the motion.

#### Appeal No. 2106

The Board considered Appeal No. 2106, a request for a Special Use Permit to construct a Solar Farm located on State Route 434 in the Town of Owego, submitted by Farmer Brown Solar, LLC.

*Appearance: Jason Kline, CSG Developers, Tim Gourley, Tract Engineering, PLLC (via Zoom) and Matthew Rowe, Keystone Associates Architects, Engineers and Surveyors, LLC*

*Exhibits: Application for a Special Use Permit dated December 23, 2021*

Chairman Phelps asked Mr. Kline if there were any changes made to the project since the Planning Board meeting. Mr. Kline stated they have increased the screening/landscaping per the Town of Owego Planning Board's request. Chairman Phelps asked if the screening could extend further on the Forest Hill Road side of the project to help the sight of the panels. Mr. Kline stated they would do that. Chairman Phelps asked that the trees be double row and staggered. Mr. Kline agreed. Chairman Phelps asked if the netting being used for the driving range could also be extended along the houses on Forest Hill Road. Mr. Kline stated since he

does not own the property, he cannot speak on that, he can only speak for the netting being done to protect the solar panels.

Chairman Phelps opened the public hearing.

Corey Waite, 300 Forest Hill Road, stated the screening will help a great deal. He also had concerns with any wildlife in the area, and drainage.

Ms. Lindstrom stated that a fence would be installed around the solar panels, therefore wildlife would not be able to cross through. Mr. Kline went on to explain that the fencing is a 7-foot chain link fence. Mr. Kline also stated that any drainage issue is addressed through State Environmental Quality Review Act (SEQR).

Chairman Phelps stated soil would be deemed undisturbed and Tioga County Soil and Water would be involved with the project. Mr. Kline stated the project will be in compliance with DEC criteria. Chairman Phelps read the concerns via email from Carrie Waite, 300 Forest Hill Road, particularly the proximity from the houses. Mr. Kline stated the closest fence to any house is at least 130 yards away, therefore the solar panels would be further. Chairman Phelps asked about grass maintenance. Mr. Kline stated they have contracted with a local farmer who has agreed to bring in sheep. Chairman Phelps asked if any pesticides or spraying of any chemical would be done. Mr. Kline stated no. Chairman Phelps asked about the ground maintenance that they sheep will not take care of. Mr. Kline stated they have contracted with a local firm to take care of.

Mrs. Brown asked if there would be grass and/or bushes planted for the sheep. Mr. Kline stated they will be planting grass, along with pollinator plants. There is also a plan for a bee keeper to use the space to help spread the pollination.

Chairman Phelps asked if the Apalachin Fire Department has been contacted. Mr. Kline stated they have spoken to Mike George, Fire Chief, and he has agreed to the plans.

Mrs. Brown asked where the transformer would be placed. Mr. Kline stated the transformer is at the furthest western point of the project. He stated it was planned to be as far from the residential area as possible.

Chairman Phelps asked about access to utilities. Mr. Kline stated utilities would be run underground from the solar panels to the existing poles.

Mr. Legg asked for a start date and time frame. Mr. Kline stated a start date of August 2022 and approximately four (4) months to complete, weather dependent.

Mrs. Brown noted the letter from the Tioga County Planning Board, and asked for clarification of the proposed battery storage. Mr. Kline stated the battery would be used to hold an overage of power collected through the panels and have the ability to continue to put that electricity back to the main power grid. Mrs. Brown asked if there would be any battery leakage. Mr. Kline stated there would not. Mrs. Brown asked if there was any glare from the solar panels. Mr. Kline stated they are required to do glare studies, and found little to no impact.

Ms. Lindstrom stated her concern with the proposed screening and the NYSDOT right of way. Mr. Kline stated they took that into account and are forty (40) feet from the right of way.

Mr. Waite asked about the noise level during the construction phase and afterwards. Mr. Kline stated they have conducted a full noise study he will have available for Mr. Waite to review if interested. Mr. Kline stated the transformer does make a slight humming noise, and this was taken into consideration and it was placed the furthest point away from the residential area. Mr. Kline stated construction will occur from 7AM-5PM six (6) days a week.

Mr. Myers questioned if the loudest part of the phase would be when the work crew is driving the posts for the panels into the ground. Mr. Kline stated yes.

Chairman Phelps closed the public hearing at this time.

Mrs. Brown asked about the plan with dust control. Mr. Rowe stated dust control is a part of DEC compliance. Mrs. Brown asked about the fencing. Mr. Kline stated it will be a 7-foot tall chain link fence, which is required by New York State.

Chairman Phelps asked if the entrances will be kept clear of mud. Mr. Kline stated yes, this is part of the NYSDOT regulations. Chairman Phelps asked if there would be any benefiting factor for the neighborhood in the area. Mr. Kline stated the electricity goes back onto the grid, but customers of New York State Electric and Gas (NYSEG) have the ability to sign up and request to use the power from this solar project.

Mr. Legg asked for clarification on the entrance. Mr. Kline stated there is only one entrance and exit for the project, the other driveway in question is at the request of the land owner to be able to access the remainder of the parcel.

Mr. Myers asked if there would be a Decommissioning Agreement between the Town and Farmer Brown Solar, LLC. Mr. Kline stated there would be, and it would be returned to the natural state.

At this time, Irene Graven, Town Attorney discussed what a PILOT (pay in lieu of tax) and Decommissioning agreement are for the public.

Chairman Phelps completed SEQR Part II with the Board.

Mr. Legg made a motion for Chairman Phelps to sign the negative declaration for SEQR Part II. Mr. Myers seconded this motion. Chairman Phelps, Mr. Kresge, Mrs. Brown, Mr. Legg and Mr. Myers all voted in favor of the motion.

Mr. Myers made a motion to approve the Special Use Permit for Appeal No. 2106 with the conditions noted from prior Board reviews, a letter from Tioga County E.M.S., and additional screening. Mr. Legg seconded the motion. Chairman Phelps, Mr. Kresge, Mr. Myers and Mr. Legg all voted in favor of the motion. Mrs. Brown abstained.

Reference:

Appeal No. 2106 dated March 3, 2022

ACTION OF THE ZONING BOARD OF APPEALS of the Town of Owego, Owego Town Hall, 2354 State Route 434, Apalachin, New York:

To: Farmer Brown Solar, LLC  
1213 Purchase Street  
New Bedford, MA 02740

At a meeting of the Zoning Board of Appeals held the 3<sup>rd</sup> day of March 2022, the above reference Appeal was considered and the Board by resolution GRANTED your request for a Special Use Permit pursuant to Chapter 125 of the Code of the Town of Owego.

The resolution adopted by the Board of Appeals follows, viz:

WHEREAS, a public hearing was held the 3<sup>rd</sup> day of March 2022, on notice according to the law, at which Jason Kline of CSG developers, Matthew Rowe, of Keystone Architecture, Engineers and Surveyors, LLC, and Tim Gourley of Tract Engineering, PLLC (via Zoom) appeared on behalf of Farmer Brown Solar, LLC and gave testimony to the questions put forth to then by this Board; and

WHEREAS, Mr. Kline agreed to extending the landscaping/screening along the residential side of the project; and

WHEREAS, Mr. Kline agreed to meet with Tioga County Emergency Management services Department to provide first responders with incident and management training in the event the battery energy storage system is installed; and

WHEREAS, Mr. Kline agreed to abide by all conditions put forth to him by the Tioga County Planning Board, Town of Owego Planning Board, and NYSDOT; and

WHEREAS, Mr. Kline answered all public comments that were received;

NOW, THEREFORE, be it

RESOLVED, that the Board makes the following findings based on the entire record:

1. Applicant requested a Special Use Permit to construct a Solar Farm
2. Property is located on State Route 434
3. Property is situating in a General Business "GB" zoning district;

And be it further

RESOLVED, the application for the Special Use Permit is hereby GRANTED.

Any and all other provisions of this Chapter not waived or modified by this decision are to be observed.

#### Appeal No. 2107

Next the Board heard Appeal No. 2107, a request for a Use Variance to construct an enclosed accessory building, submitted by Archie Resue, 12 Wellington Drive in the Town of Owego.

*Appearance: Archie Resue, Applicant*

*Exhibits: Application for a Use Variance dated February 18, 2022*

Chairman Phelps asked Mr. Resue for a brief overview of his request. Mr. Resue explained that he purchased an 11.69 acre parcel on Ridgefield Road, and would like to be able to construct a pole barn to store personal effects. Mr. Resue stated because the land was an old shale pit, it could never be developed. Chairman Phelps asked what Mr. Resue planned to do with the property. Mr. Resue stated for now he would like to construct a pole barn to store personal affects in, and possibly in the future construct a single family home.

Chairman Phelps opened the public hearing.

Jennifer DeNardo, 136 Pine Knoll Road, expressed her opposition to the Use Variance. She stated her concern is the possibility of lessened wild life in the area, vehicles driving the property at night, as it adjoins to her back yard, and construction equipment being used.

Mr. Resue stated there should not be anyone present at night on the property, and he has installed game cameras to ensure this is not happening.

David Antonaitis, 130 Pine Knoll Road, expressed his opposition to the Use Variance. He stated his concern is the noise which is already occurring all hours of the day into the evening time, and the destruction that could occur to the land as there are no paved drives, and the possibility of oil and other vehicle fluids seeping into the ground.

Chairman Phelps then read the letters provided to Planning and Zoning on behalf of two residents. Tina Slocum, 138 Pine Knoll Road, expressed her opposition the Use Variance. She wrote her concern was the increase in noise level and human activity in the quiet wooded area behind her home. Greg and Ellen Williamson, 119 Cafferty Hill Road, expressed in their letter that if it was only for storage, and there would be no noise of impact on the surrounding environment, they support Mr. Resue building the proposed pole barn.

Rusty Sloane, 122 Pine Knoll Road, expressed his opposition to the Use Variance, noting the same concerns as the other neighbors. Mr. Sloane also noted he would be able to see the structure from his home, and prefers the wooded scenery.

Chairman Phelps then read over the letters given to him by a citizen at the meeting. Theresa and Joseph Resavy, 128 Pine Knoll Road, expressed their opposition to the Use Variance. Michael Kania, 38 Pembroke Drive, expressed his opposition to the Use Variance. Also noted by Chairman Phelps, was the Pine Knoll Neighborhood petition signed by twenty-two (22) residents opposing the Use Variance.

David Gennett, 9445 State Route 17C, expressed his opposition to the Use Variance. He stated he was interested in buying the parcel a few years ago, but when he inquired with Planning and Zoning what he could do with it, he determined it was not worth the purchase.

Michele Resue, 94 Pine Knoll Road, identified herself as the applicant's mother. She expressed her frustration with the neighbors assuming the applicant would be using the pole barn for different uses other than storage. She also reiterated that no one is to be at the parcel at night, and the property was posted for that reason.

Jennifer Smith, 125 Pine Knoll Road, expressed her opposition to the Use Variance, but did ask if the structure could be built elsewhere.

There being no further comments from the public, Chairman Phelps closed the public hearing.

Mr. Myers commented on the zoning and rights from the Town of Owego Code Book, Chapter 125-12, permitted uses in Residential B. Mr. Myers also noted the Zoning Board of Appeals does not change the zoning laws or area, that only the Tow of Owego Board could change zoning.

Mr. Legg asked what the structure would be primarily used for. Mr. Resue stated the pole barn would be used for storage, with no electricity or water.

Mrs. Brown asked if the new structure would fit in with the rest of neighborhood. Mr. Resue stated he would be able to finish the pole barn any way he wanted to, but would be sure to have it go with the existing neighborhood. Mrs. Brown asked if the subsoil conditions could be overcome. Mr. Resue stated he felt he could overcome the conditions with his construction ideas.

Mr. Myers made a motion to approve Appeal No. 2107. Mr. Legg seconded this motion. The vote went as follows:

Chairman Phelps - No

Mrs. Brown – No

Mr. Legg – No

Mr. Myers – No

Mr. Kresge – Abstained

Reference:

Appeal No. 2107 dated March 3, 2022

ACTION OF THE ZONING BOARD OF APPEALS of the Town of Owego, Owego Town Hall, 2354 State Route 434, Apalachin, New York:

To: Archie Resue  
12 Wellington Drive  
Endicott, NY 13760

At a meeting of the Zoning Board of Appeals held the 3<sup>rd</sup> day of March 2022, the above referenced Appeal was considered and the Board by resolution DENIED your request for a Use Variance pursuant to Chapter 125 of the Code of the Town of Owego.

The resolution adopted by the Board of Appeals follows, viz:

WHEREAS, a public hearing was held the 3<sup>rd</sup> day of March 2022, on notice according to the law, at which Archie Resue appeared and gave testimony to questions put forth to him by this Board; and

WHEREAS, Mr. Resue explained his intention for the pole barn construction would be for storage; and

WHEREAS, Mr. Resue was unable to address the questions of the Use Variance as outlined by the Town of Owego Code Book; and

WHEREAS, all public comments were heard and put into public record;

NOW, THEREFORE, be it

RESOLVED, that the Board makes the following findings based on the entire record:

1. Applicant requested a Use Variance to construct pole barn
2. Property is located on Ridgefield Road
3. Property is situating in a Residential B "RB" zoning district;

And be it further:

RESOLVED, the application for the Use Variance is hereby DENIED.

Any and all other provisions of this Chapter not waived or modified by this decision are to be observed.

Chairman Phelps adjourned the meeting.

Respectfully submitted,

Teddi Card, Planning & Zoning Secretary  
On behalf of the Zoning Board of Appeals