

Town of North East
Zoning Board of Appeals
Minutes of May 17, 2018

The regularly scheduled monthly meeting of the Town of North East Zoning Board of Appeals, (ZBA), took place on Thursday, May 17, 2018 at 7:30 PM at the Town of North East Town Hall, 19 N. Maple Ave, Millerton, NY. ZBA members present were Chair Julie Schroeder, Patti Lynch-VandeBogart, Karen Pitcher, and Jon Arnason. Vice-Chair Edith Greenwood was absent. Present in the audience were Beverly and William MacDonald.

Chair Schroeder called the meeting to order at 7:28 p.m.

Chair Schroeder began the meeting with the review of the minutes of December 21, 2107.

On a motion by Pitcher, seconded by Lynch-VandeBogart and passed unanimously, the minutes of December 21, 2017 were approved as presented.

Chair Schroeder followed with an introduction of new ZBA secretary Gail Wheeler to the board members.

Arnason asked a question regarding one of the sections on training and attendance requirements contained in the new code inserts. He stated one of the provisions of this article on training states that any such training for Planning Board and Zoning Board members shall be approved by the Town Board. Chair Schroeder stated the Town Board gets involved at the end of the year to ensure they have the required number of training hours. A discussion ensued about some training attended this year. Chair Schroeder will follow up with the secretary to find the current list of training hours for the ZBA members.

Pitcher mentioned she would like to have more training on adaptive reuse. Arnason mentioned schools and churches that could be used for something else. Chair Schroeder stated it is something to pursue in the future.

Chair Schroeder began discussions about the proposed Solar Law and said a review page-by-page was the best way to begin. Arnason and Chair Schroeder were both on the solar committee and very familiar with this proposal. Arnason began the discussion with a brief description of the law. In the Town of North East, anything that is not listed as a use is prohibited; therefore, at the moment, there is no provision to allow any solar installation on anyone's property. Fundamentally, this solar law deals with that issue. It divides solar structures or systems into three categories. There are roof-top and building integrated systems which might be tiles instead of panels. These are permitted through a building permit and are to be installed by a licensed installer. The second category is solar fields with use by the landowner in creating electricity for his or her own use. For those, a special use permit (SUP) is required to allow for some oversight over the location and compliance with setback requirements. This is the area where there potentially could be a disagreement between neighbors. This gives the ZBA the ability to try and mitigate any concerns. The third category is solar farms. These will generate electricity commercially. The two major concerns with these are esthetics and the installation. Arnason elaborated on the fact that an installation might cease operation. Unless the Town Board waives

it, the person or company who operates the system would be required to put up a bond sufficient to cover the cost of removal of the installation. The costs could result in a bond of \$200,000-\$300,000.

Chair Schroeder stated all SUPs also have to get site plan approval from the Planning Board. There will be a fairly comprehensive review process in place for these systems as they are also subject to SEQRA.

The size of panels will be affected by whether the use is residential, commercial, in the yard, or a solar farm. The solar committee decided that a person can only generate electricity for use on his/her own property. This will then impose a size limitation. Arnason stated that if someone has a 20,000 square-foot house and wants to cover their roof with solar panels and generate electricity, it is difficult to see why anyone would care about that. Solar farms will be more problematic. A size limitation would only be arbitrary. There is a size limitation of approximately 30 acres imposed by state law. Chair Schroeder mentioned the most controversial topic is going to be the esthetic and visual impacts of solar farms. Arnason said you can't screen a solar farm from every possible view point. A good question for the Town or Planning Boards is whether there should be areas of the Town of North East where solar farms aren't permitted or will be required to meet an increased front-yard setback, such as on primary roads.

The Board discussed current buildings with solar systems. Chair Schroeder mentioned people have been coming in asking about installing solar and they have been told they can't do this. Lynch-VandeBogart mentioned windmills and Arnason stated that will be the next topic to be reviewed by the ad hoc committee.

Chair Schroeder stated Greenwood brought up some areas for review. The first area mentioned was on page 4, Section 3(c) that reads, "Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than [5] % of the original area of the Solar Energy System...." Greenwood believes this number to be low. Chair Schroeder said we should assume small scale and 25% would be a more appropriate number.

Arnason volunteered to write the report and send it to the Town Board and include the ZBA's comments.

Chair Schroeder mentioned the area on page 6, Section 4(f) that reads, "Solar Thermal Systems that generate electricity primarily for use..." should read, "Solar Thermal Systems that generate electricity *or hot water* primarily for use...."

Chair Schroeder went on to mention page 7, Section 5(a) (4) that reads, "Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than twenty-four (24) inches above the flat surface...." Chair Schroeder wanted to know what was considered for the parapet. Arnason mentioned the little wall around the roof.

Chair Schroeder then mentioned page 7, Section 5(a) (1) that reads, "Solar Panels on pitched roofs shall be mounted with a maximum distance of eight (8) inches between the roof surface and the highest edge...." She believes the code states 24 inches so the fireman can get on the roof. Arnason mentioned Section 5(c) covers the requirement for emergency responders.

Chair Schroeder read page 9, Section 6(k), that states, "Any special use permit issued for a Free-standing or Ground Mounted Solar Energy System or Solar Car Port will expire three years after its initial issuance to ensure the installation is being maintained...." She believes this to be too harsh. Arnason stated that it is right out of the Model Law of the Town of Rhinebeck. Chair Schroeder said that if someone goes through the ordeal of getting a SUP and site plan approval and invests monies based on those approvals, only to have to go through it all over again in another three years was overly onerous and discriminatory. Arnason made a suggestion of asking Ken McLaughlin about the matter. He would be more familiar with this and it will be looked at by him, since it is more of an enforcement issue. Chair Schroeder was of the opinion that you can make a SUP expire but it is unusual and there has to be a legitimate reason for doing so. She suggested perhaps some type of review after three years. If someone is in violation of their SUP, their permit is automatically revoked anyway.

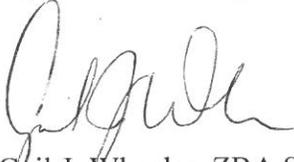
Lynch-VandeBogart mentioned page 14, Section 9(q), that reads, "Any special use permit issued for a Solar Farm shall expire three years after issuance to ensure the installation is being maintained...." Chair Schroeder and Arnason both said they can see the difference between solar farms and private residential uses. Arnason will ask Ken McLaughlin about this as well.

After review of the law, Chair Schroeder asked Arnason to write a report with the changes and correct some of the minor typographical errors.

Chair Schroeder opened the meeting to the public. Beverly and William MacDonald were introduced to the ZBA. Mrs. MacDonald wasn't on the agenda but wanted to speak to the Board. A brief history was given to the Board regarding a matter with her property and the property of Larry Selfridge. Mrs. MacDonald stated runoff from Mr. Selfridge's driveway is ruining her property and that is why she came to the Builder Inspector's office a year ago this May. Chair Schroeder said Mr. Selfridge's property is about four acres in five-acre zoning district. Some years ago, he came for a variance for a mobile home and was denied. He was told a two-family house was permitted and he had to attach the addition or whatever to his mother's house. Chair Schroeder heard nothing more about it at the time and the matter was done. Mrs. Macdonald said when the Town went through the file of Mr. Selfridge, he didn't have a building permit nor approval for the septic; however, there was a Certificate of Occupancy (CO). She asked for the person who issued the CO to be dismissed but knows that person is still here at Town Hall. The problems have been going on since her mother was alive and living in the house Mrs. MacDonald now owns. Chair Schroeder said she believed that the matter is in the Town Court now. Mrs. MacDonald said she is not allowed to say anything in Town Court. She has pictures and can document everything that happened. She believes he is breaking the law. Mrs. MacDonald now believes they are going to rezone that area and Mr. Selfridge is going to get a CO on his house and she doesn't agree with this. She believes this is an illegal house and Mr. Selfridge should be fined because he thumbed his nose at everybody. If he gets a CO, then at least make it where he has to sell both buildings at the same time. Chair Schroeder said that at some point he has to come back to the ZBA. If the Town modifies the zoning and reduces the acreage, he still would have to come before the Planning Board to get subdivision approval and that is when the matter of the road would be dealt with. Arnason asked if the Town has brought an action against him. Chair Schroeder said she thought that the CO on the 2nd home had been rescinded. Chair Schroeder informed Mrs. MacDonald that the ZBA can't do anything about this matter. Until the ZBA has an application, it can't make a decision on a matter. The ZBA is a

quasi-judicial board and can't give any advice. Mrs. MacDonald said her hands are tied. Chair Schroeder and Arnason both felt that she should retain an attorney. At present, Ken McLaughlin needs to make the call as this is an enforcement issue. Mrs. MacDonald said none of this should have happened. Arnason said if nothing else, a lawyer could explain her rights and let her know the course of action in this matter.

A motion made by Arnason, seconded by Lynch-VandeBogart, and passed unanimously, to adjourn the meeting at 8:23 p.m.



Gail J. Wheeler, ZBA Secretary

Approved: 01/17/2019