

Town of Pompey Zoning Board of Appeals  
June 24, 2013  
7:00 PM

David Tessier, Chairman, Pat Frazee and Kevin Sharpe present. Marc Wasmund, Attorney and Rick Penhall, Code Enforcement Officer also present.

David Tessier welcomed everyone and introduced the members of the board and stated that there are three items on the agenda for tonight.

First item on the agenda is the continuation of the public hearing of Chris and Richard Moseson concerning the construction of a bridge on Pompey Center Rd.

On May 5, 2013 at 5:00 PM, Chairman Tessier, David Hale, Don Neugebauer, Pat Frazee and Rick Penhall, COE met at the site with Richard and Chris Moseson, Don Brang, Karen Dobbertin, and Jim and Joanne Schoonmaker. The bridge and property lines were marked with colored ribbons.

Chris Moseson explained the reasons for the proposed location.

The board discussed possible other locations and the various impacts of those locations.

These issues will be discussed at the continued public hearing on June 24, 2013 at 7 pm at the Pompey Town hall.

The site meeting was adjourned at 5:45 pm

The public hearing was re-opened at 7:05 PM

Chris and Richard Moseson submitted a letter asking for an extension to this variance. It is up to the board whether to close the hearing or keep it open for a specific time. If we close the hearing the Mosesons' will have to reapply again.

This hearing is continued from May 29, 2013. This is an area variance of a side line set back for a horse bridge construction. Kevin Sharpe stated that he was not at the previous meeting concerning this. Chris Moseson is asking for a 90 day extension. Chris has taken pictures of snowmobile bridges over culverts on #2 road and was wondering if there were variances applied for those bridges. She has the Pompey town code saying that a structure would need walls and a roof. This bridge would have railings, not walls.

Karen Dobbertin asked if Chris received a letter from the DEC. Did Chris give a proposal of her drawing, were there any other neighbors contacted? Chris said she contacted one other neighbor. Karen feels she is using her property as a screen for the bridge. Shouldn't she be using her own screening? Is there a change in use of her property from farm to recreational use. Looking at the drawing she submitted for the bridge this could be 60' long and would come to within 6' of the Dobbertin property line. Karen does not want her property impacted. Karen feels that the Mosesons' should have the full burden of this project. They should do the monitoring of this and Karen finds that hard to believe unless they have it covered 24 hours a day. At the last meeting Chris stated that they ride in a loop and Karen is wondering where the other end of the loop is. This is a very dangerous area for this bridge.

Pat Frazee would like to act on this as presented and would propose that it be denied. If there is going to be a significant change then I don't think a variance will be necessary. There is no reason this can't be done without a variance. This can be done another way very reasonably. Several ideas were discussed with the applicants at the on site meeting. Relying on someone else's screening is not applicable.

Chris stated again that this is the narrowest side of the stream and the best place for the bridge. She could tweak this by a foot or so and not need a variance and I would have the back line surveyed and get it exact. Could this hearing be kept open until this falls into place? Rick Penhall said this is a structure and needs a variance.

Pat Frazee made a motion to close the hearing and seconded by Kevin Sharpe.

Roll Call Vote

	Aye	Nay	Other
David Tessier	X		
Pat Frazee	X		
Kevin Sharpe	X		

All in favor, motion carried.

Pat Frazee made a motion to deny the application as presented to us and Kevin Sharpe seconded.

Roll Call Vote

	Aye	Nay	Other
David Tessier	X		
Pat Frazee	X		
Kevin Sharpe	X		

All in favor, motion carried.

The second agenda item is an application from the ESF College Foundation as the Agent for Estate of Robert Sand, for an area variance from 200' to 20' on Purcell Rd.

Robert Quinn as agent submitted this application

ESFCF intends to purchase an approximately 75 acre parcel to be subdivided from an existing 147 acre parcel, for education and research use by SUNY College of Env. Science and Forestry. This parcel would have 20' frontage on Purcell Rd. Once subdivided, 20' frontage/access on Purcell Rd. is the only feasible way to access timber stand for education, research and timber harvest. The 20' strip has been the access to parcel for decades. Pompey Center Rd. access is not feasible because it would interfere with anticipated development and it is longer. The hardship is unique in that the 20' strip has provided timber harvest for decades and it has the ability to support student and faculty research and education. Decades of detailed timber management records were kept by deceased ESF alum Bob Sand. No other property could serve purpose in this way. ESFCF intends to be owner of the property in perpetuity, with only use to be research, education, and timber management. There would never be development on the parcel except access road and parking area with signage. The property is on Pompey Ctr. Rd. right at the town line.

The reason for the variance is to request the reduction of the 200' road frontage to 20'. This is a substantial change. David Tessier is a graduate of ESF but is not connected to ESF foundation or

this project. Pat Frazee is an adjacent property owner, but has no monetary connection to this application. David and the attorney are comfortable with this disclosure and the tow members do not need to recluse themselves.

David Tessier stated that there could be 10- 15 students at a time and there will need to be space for the cars. Mr. Quinn said that this would be on the 75 acres. David suggested that there be concrete markers at the entrance to the 20' frontage.

Public Hearing is open.

Charles McDevitt owns the property south of the Sand property . There is a turn around in an open area already. Is there a way to secure the entrance? Ron Miller lives on the north side and William Cushane is next to Ron Miller and he also stated there is plenty of room already. Pat Frazee stated they are not looking to expand the 20' right a way. David Tessier said they would be putting gravel in the right of way. Ron feels the post will draw attention to the entrance of the right of way and he would feel better if they were further up by the entrance.

Pat Frazee said that this is a significant variance change and we usually deny these. He doesn't see a reason to approve this just because it is SU and there should be no special consideration. David stated that we can put conditions on subdivisions that there will be no houses on this property. To be used for research and forestry only. Pat said there is no road just a few ruts there. It doesn't stay within the 20' boundary, the driveway wanders.

Marc Wasmund said the reason for the variance is that this will be the only access for ESF to enter the property. The owner has no access from Pompey Center Rd. The only way around this would be to change the configuration of the subdivision so ESF has frontage on Pompey Center Rd.

Ron Miller said the distance from Purcell Rd. and the distance from Pompey Center Rd., are about equal. There are different path ways to come thru that property. There are a few logging trails already there. Mr. Quinn said access from Pompey Center Rd. would be quite steep and they would have to cross a stream. The college can't justify buying the whole property.

Pat Frazee said it would be difficult to deal with the next person who wants a 20' frontage for a subdivision and he is not ready to establish a precedent. We would be creating a 20' wide road frontage it is not there now.

A gentleman from Frank Long Rd. said they have a 20' logging road that goes along residential properties. Marc Wasmund said the legal issue is creating a lot with a 20' entrance. The only reason David would go along with this is because it can be conditioned for education and forestry only.

Kevin Sharpe asked if the 20' width is sufficient for the trucks to use. David Tessier said they could draw in a 200' frontage on Pompey Center Rd. but they could still use Purcell for logging. Pat Frazee said this can be achieved in another way without impacting anyone. David Tessier would like to hear from the other board members.

Pat made a motion to close the hearing and seconded by Kevin

Roll Call Vote

	Aye	Nay	Other
David Tessier	X		
Pat Frazee	X		
Kevin Sharpe	X		

All in favor, motion carried.

Pat Frazee proposed to deny this application.

Kevin Sharpe agrees with no 20' entrance for residential but not sure for agriculture.

Mr. Quinn said the 200' or 250' frontage on Pompey Center Rd. is not feasible for the college to buy. There were 4 alternatives considered, whole parcel, to stream, the steep slope area.

David Tessier and Kevin Sharpe are in favor of waiting 30 days to 7/29/13.

Kevin Sharpe made a motion to adjourn this to 7/29/13 with no public hearing only the board for a determination. Seconded by David Tessier.

Roll Call Vote

	Aye	Nay	Other
David Tessier	X		
Pat Frazee		X	
Kevin Sharpe	X		

Attorney Wasmund said a vote is not required to adjourn the decision.

This will be on the agenda for next month for decision.

The last item on the agenda is an application from Karen Keeney for a public hearing on an 18' variance for the maximum height of a wind turbine represented by Ken Craig, engineer (Bergey Windpower).

This is an application for the installation of a small wind turbine at 7070 Frank Long Rd. They are requesting an 18' variance for the maximum height of a SWECS, for a maximum height of 133'. Strict application of the law would greatly reduce the cost effectiveness of the project. The monetary losses would be quite significant.

The size and shape of the property make it unique. The distance to neighboring properties and homes is very long. These conditions greatly decrease the effects of the project on the surrounding community.

The variance would not noticeably affect the district in any way. Increase in line of sight is negligible due to size of property. Law is in place to ensure good neighbor practices. This variance will not put that ideal in jeopardy.

There is a letter from Karen Keeney stating she has entered into a contract with Alternative Power Solutions of NY. There is a map included showing acreage and windmill location. There is also a letter from Alternative Power Solutions.

We have also received letters from Nathan Podkaminer, Jane Podkaminer and Gay Burch. David Tessier remembers looking at this property for the same reason as tonight in 2011. This is a new application.

Ken Craig stated that this is a modified application from 2011. By dropping this to 18', we are hoping this is more palatable. The height is dropped 20' from 2011. There is noise data and visual site from 2011. They will not exceed the town's decibel levels at the property lines. The turbine is an allowed use by the town because it is under 115' so they feel the variance does not increase noise or damage to environment. This will be over a ½ mile off the road.

Pat Frazee asked what is the east boundary, it is Terry Mundy's property. South boundary is about 780' to Sevier Rd. There is 1000' on the east property line and the turbine will go 220' south of the north line.

David Tessier opened the public hearing.

Terry Mundy is on the north east side of Keeny's property at 7099 Frank Long Road. Terry is building a home and is about 500' from the road. He is OK with this wind turbine application

Nate Podkaminer was at the last meeting in 2011 and stated that the maximum height is suppose to be 115'. What is the real hardship here? There was a committee of volunteers who worked hard on putting together law 165.15 concerning the height regulations for the town of Pompey on wind turbines. Now the first thing in front of the town is a variance for this law.

George Kayanka lives on Sevier road and is on the west and south side of Kenney property. Why do you need a large turbine when there is no house there? What will the residential requirements be for a large turbine when it doesn't exist? What model is this turbine?

Mr. & Mrs. Trikha said we have no tree line to obscure our view. We are right across the street from this structure. What about the noise and how is this going to look. The town felt they were very liberal when they set the limits of 115'.

Pete Fietta owns property on Sweet Rd. and he is not sure where this site is going to be located. Karen Kenney said it will be a long ways away.

Anita Kayanka has questions on the noise level and the negative impact on the neighbors.

Ken Craig said the turbine is close to 2000' off the road and it will not be audible from the road. These are 50x smaller than the Fenner windmills. This is a 10kw machine. NYS Energy and Resource Development Authority dictates grants for this program and estimates production at varying heights. They do not have a height restriction. We have determined that the production will be considerably more at a higher elevation. There are higher tree elevations in proximity to this location and that will reduce the production of this turbine. I feel this will meet the owner's needs. Karen said the height she is asking for will not feed the whole proposed house. The decibels will be zero. At 197' it will be 52.1 decibels.

Pat Frazee asked what the change in 18' does to the decibels. When the turbine spins faster are the decibels increased.

Ken Craig stated about 2.5 decibels less because of the height. The turbine will not increase in size. Just the height, to get it over the tree line. There will be from 2000 – 3000 kw hours change

by the 20'. The noise level will be lower the higher the turbine and if the turbine spins faster the decibels will increase.

Anita Kayanka asked about lighting, bird migration.

David Tessier stated that there will be no lighting and the bird migration is part of the application.

Nate Podkaminier said he is concerned about the precedent that is being set. Going from 115' to 133' and what is going to happen to the next application. I feel the board should only allow the 115' as the ordinance states.

Mr. Trikha asked if there is an estimate to the kw hours. Ken Craig said that at 120' it is about 11,000 kwh so it would be about 1500 kwh less.

Pat Frazee attended several meetings of the tower committee and he did not see much on data that they used to determine the 115' height.. This was an arbitrary number and there were comments that you may need a higher number for the height.

Kevin Sharpe stated that if the tower was built at 115' they would not need a variance. From the road can you tell the height? How many in the state are over 15' over the regulations.

Ken Craig said there are about 5 to 7 towers over the town's requirement of height, Cazenovia has one and all were approved.

David Tessier said this is the only application to come to this board.

Pat Frazee said the tree height is about 60' – 80' in this area. Ken Craig agreed with this. Pat said that variances aren't always hardships.

David Tessier said we have 5 questions to answer to balance the benefit to the applicant versus the detriment to the health, safety, and welfare of the community.

Marc Wasmund, attorney, said we have to determine the unique aspects of this property and what makes it different than other properties.

Ken Craig said the balloon study was done in 2011 at the 153' height and now it is lower. They could in actuality put up 2 -100' turbines and not require a variance.

David Tessier clarified that the 2 turbines would be more visually offensive.

Anita Kayanka asked is this residential zone .

David Tessier said this is a farm zone.

Pat Frazee said this is a very long distance from the road. Not sure you could tell the difference of 18'.

Ken Craig said that the applicant could see 2 months saving of electricity per year for the 18'. He feels it could be 40% savings per year. The life of the turbine is 30 years.

Pat Frazee feels the wind energy is not self sufficient. The applicant is getting grants for this application. That's the only way this works. I feel that we will be changing the heights continually as more people want this.

Pat made a motion to close the public hearing and seconded by Kevin Sharpe.

Roll Call Vote

	Aye	Nay	Other
David Tessier	X		
Pat Frazee	X		
Kevin Sharpe	X		

All in favor, motion carried.

The board reviewed the 5 areas of concern to help in their decision.

1. Can this be achieved by other means feasible to applicant; Yes
2. Is this undesirable change in neighborhood character or to nearby properties; this is actually 2000' away from the other neighbors. No
3. Is the request substantial; it is 15% change and therefore not substantial
4. Whether request will have adverse physical or environmental effects; No
5. Is this self-created; Yes

SEQRA

David Tessier made a motion to accept this is as a type 2 action and with no further action necessary. Seconded by Pat Frazee.

Roll Call Vote

	Aye	Nay	Other
David Tessier	X		
Pat Frazee	X		
Kevin Sharpe	X		

All in favor, motion carried.

Pat Frazee asked about conditions and no conditions were proposed.

Pat Frazee made a motion to approve the height variance from 115' to 133' as presented in the application in its entirety and seconded by Kevin Sharpe.

Roll Call Vote

	Aye	Nay	Other
David Tessier	X		
Pat Frazee	X		
Kevin Sharpe	X		

All in favor, motion carried. The meeting adjourned at 9:10 PM

Respectfully submitted

Carol Crolick