

**MINUTES OF A REGULAR MEETING
OF THE ZONING BOARD OF APPEALS OF THE TOWN OF POMPEY**

October 9, 2023

7:00 PM

Pompey Town Hall

Board Members Present: David Tessier, Chairman
David Hale
Kevin Sharpe
Donald Neugebauer
Seara Haines

Also present were Town Supervisor Renee Rotondo, the Town of Pompey Codes Enforcement Officer Tim Bearup, Attorney Tim Frateschi, and Planning Board Secretary Sarah LoGiudice.

Chairman Tessier called the meeting to order at 7:02 pm.

Application by Harrington Homes, Inc. for TWO AREA VARIANCES, to allow a reduction of 0.62 acres, from the minimum of 2 acres per lot, as required for a single family residence in a Farm District, as per Schedule 165 in the Town Code, resulting in a lot size of 1.38 acres for each of two lots on Watervale Road, tax map numbers 4.-01-15 (lot 2), and 4.-01-3.2 (lot 3), just south of 4334 Watervale Road (lot 1).

This matter was adjourned from the last meeting, per the advice from T. Frateschi who wanted to further research the matter. T. Frateschi reported that the subdivision from 1986 that was previously reviewed and signed by the Planning Board Chairman, was never filed with the County. Therefore, the approval became null and void within 60 days. As the approval was never filed, there are technically no lot lines, and therefore the land cannot be varied. A subdivision of land was created by deed, and because we do not have a filed subdivision map, there is no way to vary the lot. T. Frateschi informed the applicant, via their surveyor, and the applicant has decided to withdraw the application at this time. They can certainly come back for a subdivision if they so choose. Lot 1, which already has a house on it, will likely not be affected. The owner of Lot 1 will need to work with Code Enforcement to merge his two lots in order to make it a conforming lot. The applicant has withdrawn the application, and therefore there is no reason to open a Public Hearing.

K. Sharpe questioned if the applicant will be refunded their application fees; it was unknown if this would be the case.

D. Neugebauer confirmed that the applicant could come before the Planning Board with a subdivision application. T. Frateschi has suggested to the applicant that if they choose to do so, they should come forth with an application that includes a conforming lot.

As the hearing had been adjourned to tonight, D. Hale made a motion to open the Public Hearing; S. Haines seconded the motion. All were in favor, none were opposed. The Public Hearing was opened at 7:10 pm.

Eric Schwedes 4310 Watervale Road – Mr. Schwedes questioned how this would affect his property, as his property is part of the Broderick Subdivision. T. Frateschi is unsure if this will affect his property. E. Schwedes thanks the Board for their time and attention to the matter.

D. Neugebauer motioned to close the Hearing at 7:11 pm. K. Sharpe seconded the motion at 7:11 pm. All were in favor, none were opposed. The Hearing was closed at 7:12 pm.

Public Hearing on an application by Dan Cech, located at 4504 Spruce Ridge Drive, tax parcel 004.-16-14.0, requesting an AREA VARIANCE for a 40.5kw roof mount solar system in a Residential District to be installed by Alternative Power Solutions. The resident is asking for an increase of 15.5 kW above the allowed 25kw. Local Law 165-16.2 E (6) solar arrays over 25kw require a variance from the ZBA.

Fees were paid, and the matter had been properly advertised. Neighbor notices had been sent. OCPB review of the application was not necessary. The Board planned to review the five criteria for an area variance, and then would weigh the benefit to the applicant vs. the detriment to the community before making a decision.

Present is the applicant, Dan Cech. A complete application package was previously submitted to the Town. A Site Plan had been provided, and Codes Enforcement produced an aerial photograph of the property, including the neighboring properties.

D. Tessier was at the property Sunday afternoon, and met with Mr. Cech; they walked the property and looked at the barn. D. Tessier's concern was potential impact to neighbors. D. Hale also drove by the property and viewed the property from the road. D. Tessier took a photograph from Broadfield Road; the other Board Members reviewed the photo.

D. Cech noted that the house is significant and that they use a fair amount of power. The goal is to get the house to where it can be "neutral" as far as electricity use goes. The AC output from the system is 20.4 KW. They are looking to install the additional panels in order to be able to collect solar energy during the day during the winter, so that the house can be powered by solar overnight. There will be batteries that will be charged for use throughout the night. The barn roof has capacity to host 100 panels. The variance would allow the applicant to go from

having panels on 2/3 of the roof to having panels on the entire roof; the variance is only needed for these additional 1/3 panels.

D. Tessier noted that the building houses an indoor basketball court. Several years ago, the Board approved an area variance for the structure, due to the height. D. Cech noted that the building also now houses a volleyball court as well.

D. Tessier asked if the battery would be located inside. The battery will be located in the basement of the applicant's home-it is 20 banks of batteries that are 60 KW in totality.

D. Neugebauer asked why you went to the battery way, as opposed to going back to the grid. The applicant did this to be able to handle power outages. If the grid goes down, it will automatically disconnect and the house will remain powered. National Grid has no objection at all; they care about the AC side, and the Town Code is concerned with the panel side.

D. Hale noted that the residential code allows for 25 KW. That seems to be the standard. It is believed that Town Code was written to align with that.

D. Neugebauer wondered if the Board could anticipate this number to change based on the State's push for alternative energy.

T. Frateschi noted that the State likely came up with the 25KW number because this would be enough to power a residential house-this is not a typical residential house-this is a large house that will be using a lot of electricity. He confirmed with the applicant that this property would not be used for commercial purposes. The motivation of the owner is to make sure that he always enough renewable energy to power his home.

D. Cech explained that the panels are put on in strings of 10, and the roof will hold 100 panels.

K. Sharpe asked if the applicant had done any research with the State to see why they came up with the 25 KW standard. It appears that this is the standard capacity.

D. Tessier asked if there were no storage batteries, could you put a generator in. The applicant said that generators and solar together are complicated. If the system tries to export while on the generator, the generator will blow. Part of the system is an islanding device and it monitors the voltage on National Grid's side to protect the people working on the lines.

K. Sharpe asked if the applicant already had the 60 panels. No, there are currently no panels.

S. Haines asked how tall the barn is. The applicant is not sure. The panel array does not increase the height of the structure. The Board members confirm that it is a very steep pitch on the roof.

D. Neugebauer questioned if there is any code related to the amount/size of batteries inside of someone's house. T. Frateschi confirmed that there is nothing in the code related to this.

K. Sharpe confirmed that the code is not concerned where the panels are located on the property. D. Tessier confirmed that the code does differentiate between pole mounted and roof mounted panels; there is a 25 KW limit for both.

K. Sharpe asked why stop at asking for 40.5KW, as there would still be room on the West side of the building to add more panels. D. Cech confirmed that the West side is not ideal for solar power, and that side would be somewhat more visible as well; it does not make sense financially.

D. Neugebauer asked if there would be any issue with the roof supporting the panels. No, the engineers have researched this.

D. Hale motioned to open the Public Hearing at 7:35 pm. D. Neugebauer seconded the motion. All were in favor, none were opposed. The hearing was opened at 7:35 pm.

Peter Armstrong 4466 Red Spruce Lane- He lives within the same neighborhood. If you look across his yard, you are looking at Mr. Cech's barn. The system will not be seen from the road. There will already be panels on the roof from his viewpoint. He felt that from his standpoint, it is a non-issue.

Jason Wallen 4528 Spruce Ridge-He lives two doors down and walks past the house several times per day. From the road, you can just barely make out a corner of the barn. He did not feel that adding additional panels would be offensive at all.

Nancy Furdock 7255 Sevier Road - She was in strong support of residential solar, and felt that what he is planning to do is reasonable. She thought that the 25KW is from many years ago; the limit may be somewhat unreasonable now. One of the initiatives of the Town is to get solar, and this would be a great way to do it.

Jason Wallen noted that the concern is purely cosmetic.

D. Tessier noted that Ms. Furdock was before the Board previously with a similar project.

James Starowicz 4335 Watervale Road –Someone who assisted with writing the Town solar law was present at a previous meeting; this individual said that the original 25 should be increased, and he cited electric vehicles. He felt that there is a large consensus saying that 25 KW is no longer appropriate.

Forrest English-Lamb is the designer who works for Owen Pugh at Alternative Power Systems. He commented via Zoom, and confirmed that they have both electrical and structural stamps for the project.

D. Cech stated that he had read the Town Code and was very moved by the preamble to the Code around the goals of the Town as it relates to renewable energy in general. He would like to think that he is within the spirit of the Code. He wants to set the right example to his kids and show them that they are doing something for the environment, and trying to be responsible citizens and reduce the impact that his family has.

D. Hale asked what the life expectancy of the panels is. It is either 15 or 20 years, and this is another reason that they are over paneling. The panels are designed to have a minimum amount of power loss. By having more panels installed, they can extend the lifetime of the system because they do not have to replace them because they are just making enough power to get by. The homeowner is responsible for the panels when their life is over. They are recyclable, and because they are the best panels that can be purchased, their lifetime may be extended even further.

D. Neugebauer made a motion to close the hearing. K. Sharpe seconded the motion, all were in favor, none were opposed. The public hearing was closed at 7:45 pm.

D. Hale noted that he agrees with the comments from the neighbors. Why not fill the roof and make it esthetically whole.

SEQR

The ZBA will act as lead agency. This is a residential area variance, which is automatically a Type 2 action; an action with the least amount of impact and no further environmental review is required.

1. Whether the benefit sought by the applicant can be achieved by some other feasible method?

Yes, the applicant could get a generator-there is other means available, but not necessarily better ones. T. Frateschi confirmed that this is the best means to get what the applicant is looking for.

2. Whether the variance will result in an undesirable change in the character of the Neighborhood?

No

3. Whether the requested variance is substantial?

K. Sharpe asked what substantial would look like. This is not a size issue, this is a consumption issue. T. Frateschi noted that the case law shows that it can be reduced to a mathematical equation, but it does not have to be. Why hasn't someone gone to the State with this issue? D. Cech confirmed that this is not a State issue because State Law says that over 25KW you need a building permit, not a variance. The variance is needed due to Town Code. The Board needs to balance the benefit to the applicant vs. the detriment to the neighborhood when it comes to substantiality. Neugebauer noted this one is a little easier because the roof can support it; it does not require another structure etc.

4. Whether the variance will have an adverse effect on physical or environmental conditions?

No. Water runoff does not apply here etc. D. Neugebauer appreciates the clarification on the recyclability of the panels. Mr. English-Lamb confirmed that warranty is actually 25 year; the life expectancy of the panels is really 40 years

5. Whether the alleged difficulty was self-created?

Yes, but this is not determinative nor dispositive

D. Neugebauer made a motion regarding the SEQR (Environmental,) Review, that the ZBA is acting as Lead Agency, that this is an area variance in a residential area, and is therefore a Type 2 Action and no further environmental review is required. D. Hale seconded the motion. All were in favor, none were opposed. The SEQR action passed at 7:47 pm.

D. Neugebauer noted that the only concern he had left was with the batteries in the basement. He is not sure how much of a concern this could be because he does not know enough about it. D. Cech stated that they have the electrical stamp determining that the batteries were approved for this use. Lithium ion phosphate is the safest/ most stable battery available.

D. Hale asked if the fire department needed to be aware. D. Cech was unaware of any such requirement. The engineers have made sure that they are up to code with shutoff, rapid shutdown switches etc. D. Cech provided the drawings of the shutdown placards.

D. Hale made a motion to grant the applicant the extra 15KW/40 panels as requested in the application at 8:00 pm. D. Tessier seconded the motion. D. Neugebauer wanted to add the condition that the fire department is made aware, specifically of the batteries. The Code Enforcement Officer will notify the Fire Department accordingly.

K. Sharpe asked the Code Enforcement Officer is this has ever come before. The variance is asking for 15.5 KW, not 40 panels. D. Cech confirmed that the amount requested would be the same regardless of the size of his house. D. Neugebauer confirmed that he is more in favor of this project because the roof can support the additional panels. S. Haines confirmed that she wanted to know what the height of the building was because it was granted a previous variance, and therefore is higher than usual. If there were neighbors with concerns, she would have wanted to hear more about this.

Codes Enforcement Officer T. Bearup confirmed that Town Code allows for 50 KW in farm zones.

Roll Call Vote:

Seara Haines: Yes

David Hale: Yes

David Tessier: Yes

Don Neugebauer: Yes

Kevin Sharpe: Yes

The motion carried 5-0. Chairman Tessier thanked all for coming and for providing education on the subject. There is nothing on the calendar for next month.

D. Neugebauer made a motion to adjourn the meeting at 8:08 pm. K. Sharpe seconded the motion. The meeting was adjourned at 8:08 pm.

Respectfully Submitted,

Sarah LoGiudice
Secretary to the Zoning Board of Appeals

Town of Pompey