

**TOWN OF MANLIUS
ZONING BOARD OF APPEALS
June 16, 2022
6:30 PM**

The Town of Manlius Zoning Board held a hybrid meeting with in-person attendees and virtual attendees. The meeting was live streamed on the Town Facebook page and the Town YouTube Channel. The recording of the meeting can be viewed here: <https://youtu.be/Ih9BYpklLFE>

Chairman Timothy Kelly presided, and the following Board members present:

Member	K P Kelly
Member	Clare Miller
Member	Karrie Catalino
Member	Warren Linhart
Secretary	Debi Witzel
Attorney	Jamie Sutphen

In Person Attendees: David Taylor, E. Syr. Matthew O'Brien, N. Syr. Alexander Hebert, Kirkville. John & Kathy Bachman, Kirkville. Dirk Oudemool, Syr. John J Courcy, E. Syr. Christopher Wyker, Liverpool. David Zuber, E. Syr. Ann Luffred, Fayetteville. Regina & Robert Black, Fayetteville. Barbara Henry, Fayetteville. Connie Whitton, Fayetteville. Bob Burger, Fayetteville. Emir Alemic, Manlius.

Virtual Attendees: RJ Nicolli, J. Thomas Bassett, J Li.

The Pledge of Allegiance was recited. The meeting was called to order at 6:30 PM.

Minutes

Member KP Kelly made a motion, seconded by Member Catalino, to approve the minutes of May 19, 2022, as submitted by Secretary Witzel.

Ayes: Chairperson T. Kelly, Member Miller, Member KP Kelly, Member Linhart, Member Catalino.

Nays: 0

All in Favor:

Motion Carries.

Legal Notices

Member K P Kelly made a motion, seconded by Member Catalino to waive the reading of the public notices and it was carried unanimously.

Member Linhart made a motion, seconded by Member KP Kelly to open the public hearing at 6:34 PM and it was carried unanimously.

John Bachman, 7901 Peck Rd., Kirkville NY (tax map # 042.-01-29.0) Public Hearing for one variance for a 14' X 26' shed with an existing side yard setback of 8 feet they are requesting a variance of 12 feet to meet the required 20'.

Mr. Bachman stated he has purchased a 14' X 26' shed to use as storage and to keep a small car in. Mr. Bachman stated the shed will match the house and will be set on stone crush and will

have electric. Mr. Bachman stated he will be keeping the older shed on the lot that houses his lawn equipment.

Member Linhart made a motion, seconded by Member Miller to close the public hearing at 6:40 PM and it was carried unanimously.

Member Kelly asked what the shed will be used for? Mr. Bachman stated his snowblower and a small car. Member Kelly asked if the floor will be able to hold a car. Mr. Bachman stated yes it will have 12” studs $\frac{3}{4}$ “.

Board Questions

Chairperson T. Kelly proceeded with the board through the five (5) criteria questions:

- 1) Whether the benefit sought by the Applicant can be achieved by some other feasible method? The Board answered no because of the flood plain issue.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The Board answered, no, as it fits with other sheds in the neighborhood.
- 3) Whether the requested Variance is substantial? The Board answered no.
- 4) As to whether the Variance will have an adverse effect on physical or environmental conditions? The board answered no.
- 5) Whether the alleged difficulty was self-created? The board answered yes because he wants the shed.

Determination of ZBA Based on the Above Factors:

The ZBA, after taking into consideration the above five factors, finds that:

 X The benefit to the applicant **DOES** outweigh the Detriment to the Neighborhood or Community.

 The benefit to the applicant **DOES NOT** outweigh the Detriment to the Neighborhood or Community and therefore the variance requested is denied.

The ZBA further finds that a variance **of 12 feet** is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA further **GRANTS** the variance as requested with the following conditions: None

SEQRA Review

Chairperson T. Kelly determined the proposed project and action contemplated is comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Board Action

Member Catalino made a motion, seconded by Member KP Kelly to grant an area variance to John Bachman, for the real property located at 7901 Peck Rd., Kirkville NY. This variance is being granted for the sole purpose of permitting the construction of a 14' X 26' shed. There by modifying the 20' side yard setback to that of 8' leaving a variance of 12'.

Ayes: Chairperson T. Kelly, Member Miller, Member KP Kelly, Member Linhart, Member Catalino

Nays: 0

Allin Favor.

Motion Carries.

Catherine & Brendan Whipple, 107 Fallen Oaks Lane, Manlius NY (tax map # 117.02-03-10) Public Hearing for one variance for an 8 feet X 16 feet deck with an existing rear yard setback of 15' 3" they are requesting 9' 9" to meet the required 25' setback.

Matthew O'Brien, contractor stated he will be constructing a 16' X 18' covered deck.

Member KP Kelly stated that if this is built as an open room it will need to stay and open room. Member Kelly asked if the deck is being built from a kit. Mr. O'Brien stated that it will be a custom-built deck.

Member Linhart stated that the owners stated there will be a gas fireplace to block the view of the church.

Attorney Sutphen stated that there is a stormwater conservation area and Town drainage easement behind the house which means nothing will ever be built there.

Member Linhart made a motion, seconded by Member KP Kelly to open the public hearing at 6:48 PM and it was carried unanimously.

Member Linhart made a motion, seconded by Member Catalino to close the public hearing at 6:49 PM and it was carried unanimously.

Board Questions

- 1) Whether the benefit sought by the Applicant can be achieved by some other feasible method? The board answered no as the deck will be off the back of the house.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The board answered no
- 3) Whether the requested Variance is substantial? no
- 4) As to whether the Variance will have an adverse effect on physical or environmental conditions? No
- 5) Whether the alleged difficulty was self-created? The board answered yes as they want a deck.

Determination of ZBA Based on the Above Factors:

The ZBA, after taking into consideration the above five factors, finds that:

 X The benefit to the applicant **DOES** outweigh the Detriment to the Neighborhood or Community.

_____ The benefit to the applicant **DOES NOT** outweigh the Detriment to the Neighborhood or Community and therefore the variance requested is denied.

The ZBA further finds that a variance for **9 feet 9 inches** is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA further **GRANTS** the variance as requested with the following conditions: **That the covered deck not be enclosed.**

SEQRA Review

Chairperson T. Kelly determined the proposed project and action contemplated is comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Board Action

Member Miller made a motion, seconded by Member Linhart to grant an area variance to Catherine & Brendan Whipple for the real property located at 107 Fallen Oaks Lane, Manlius NY. This variance is being granted for the specific purpose of permitting the construction a 18' X 16' deck. There by modifying the rear yard setback of 25' to that of 15' 3" leaving a variance of 9' 9". With a condition that the covered deck not be enclosed.

Ayes: Chairperson T. Kelly, Member Miller, Member KP Kelly, Member Linhart , Member Catalino.

Nays: 0

All in Favor.

Motion Carries.

Emir Alemic, 4952 Fayetteville-Manlius Rd., Manlius NY (tax map # 104.-04-01.0) Public Hearing for one variance for a 12' X 24' shed with an existing rear yard setback of 12' they are requesting 28' to meet the required 40'.

Member KP Kelly made a motion, seconded by Member Catalino to open the public hearing at 6:54 PM and it was carried unanimously.

Mr. Alemic stated he wants to build a 12' X 24' shed.

Member Linhart reviewed a photo of the location for the shed next to a chain link fence. Member Linhart asked how tall the roof will be. Chairman T. Kelly stated the drawing shows 13' 8" for the roof. Member Linhart asked what will be done with the tree branch that sticks way out. Mr. Alemic stated he spoke to his neighbor Mrs. Stern, and she is fine with him cutting it off.

Member Kelly wanted to know when Mr. Alemic hopes to have the shed completed. Mr. Alemic stated he is hoping by late September. Member Kelly asked if the shed would match the house. Mr. Alemic stated yes, the siding and roof will match the house.

Member Catalino asked if the shed will be built with all new materials. Mr. Alemic answered yes.

Chairman T. Kelly asked what the shed would be used for. Mr. Alemic answered yard equipment.

Member Linhart asked when the old shed would be taken down. Mr. Alemic answered as soon as the new shed is completed.

Member Linhart made a motion, seconded by Member KP Kelly to close the public hearing at 7:00 PM and it was carried unanimously.

Board Questions

- 1) Whether the benefit sought by the Applicant can be achieved by some other feasible method? The board answered yes it could be placed elsewhere but this location is less visible.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The board answered no as the new shed will be an improvement from the old shed.
- 3) Whether the requested Variance is substantial? The board answered yes as it is a request of 28'.
- 4) As to whether the Variance will have an adverse effect on physical or environmental conditions? The board answered no.
- 5) Whether the alleged difficulty was self-created? The board answered Yes, as he wanted a new shed.

Determination of ZBA Based on the Above Factors:

The ZBA, after taking into consideration the above five factors, finds that:

 X The benefit to the applicant **DOES** outweigh the Detriment to the Neighborhood or Community.

 The benefit to the applicant **DOES NOT** outweigh the Detriment to the Neighborhood or Community and therefore the variance requested is denied.

The ZBA further finds that a variance for **28 feet** is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA further **GRANTS** the variance as requested with the following conditions: **The old shed be taken down within 30 days of the new shed being completed.**

SEQRA Review

Chairperson T. Kelly determined the proposed project and action contemplated is comprised of a Type II Action pursuant to the New York State Environmental Quality Review Act, and as such no further review was required.

Board Action

Member Linhart made a motion, seconded by Member KP Kelly to grant an area variance to Emir Alemic, 4952 Fayetteville-Manlius Rd., Manlius NY. an area variance of 28' in the side yard to allow for a 12' X 24' new construction shed.

Ayes: Chairperson T. Kelly, Member Miller, Member KP Kelly, Member Linhart, Member Catalino.

Nays: 0

All in Favor.

Motion Carries

Ronald Nicolli Jr, 5717 Harness Hook Lane, Chittenango NY (tax map # 082.2-01-46.0) Public Hearing for two variances for a 10'X 20' shed with an existing rear yard setback of 10 feet they will need 30 feet to meet the required 40 feet. With an existing side yard setback of 5 feet, they will need a variance of 15 feet to meet the required 20 feet.

Member Catalino made a motion, seconded by Member Linhart to open the public hearing at 7:05 PM and it was carried unanimously.

Mr. Nicolli stated he would like to place a 10' X 20' shed in back right corner of his yard. Mr. Nicolli stated that directly behind his property is HOA land and behind that is Aspinall's growing field so no one will be building behind him. Mr. Nicolli stated the owner of the vacant lot next to him is okay with the shed. Mr. Nicolli stated the shed will sit on crushed stone and it will match the house. Mr. Nicolli stated he will also be installing a white PVC fence around the entire property.

Member Miller asked how tall the fence will be. Mr. Nicolli answered the fence will be 6 feet tall and he has approval from the HOA for the shed and fence.

Member Linhart stated the large door will face inside the yard, the double doors will face towards the house.

Member Linhart made a motion, seconded by Member KP Kelly to close the public hearing at 7:11 PM and it was carried unanimously.

Board Questions

- 1) Whether the benefit sought by the Applicant can be achieved by some other feasible method? The board answered no
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The board answered no as other properties have sheds in the neighborhood.
- 3) Whether the requested Variance is substantial? The board answered yes, compared to other sheds in the neighborhood.
- 4) As to whether the Variance will have an adverse effect on physical or environmental conditions? The board answered no.
- 5) Whether the alleged difficulty was self-created? The board answered yes, because he wanted a shed.

Board Action

Member Linhart made a motion, seconded by Member Catalino to table this application for now.

Ayes: Chairperson T. Kelly, Member Miller, Member KP Kelly, Member Linhart, Member Catalino.

Nayes: 0

All in Favor.

Motion Carries

Barbara Henry, Appeal to the Manlius Zoning Board of Appeals to appeal the issuance of a building permit by the Code Enforcement Officer to Abundant Solar Power, LLC

Chairman T. Kelly stated this item is an appeal to the Zoning Board of Appeals for the issuance by the Code Officer of a building permit to Abundant Solar Power LLC, for the property located at tax map # 074.-01-06.1. Chairman T. Kelly read aloud the letter of appeal submitted by Barbara Henry which states the building permit does not comply with the requirements of section 155-27.2 of the Town code and should not have been approved.

Member KP Kelly made a motion, seconded by Member Miller to open the public hearing at 7:33 PM and it was carried unanimously.

Attorney Dirk Oudemool handed out a list of objections to the issuance of the Abundant building permit.

1. Code officer cannot issue a building permit for a project that does not comply with zoning. Abundant contract of October 7, 2020 became effective at the latest April 28, 2021 as to a defect in the original contract. The section 155-27.2 adopted on March 23, 2022, cannot be applied retroactively to a contract effective before that date.
2. Section 64(2) Town Law right of residents to demand a referendum if they object to the Town Board leasing Town owned land is a vested statutory right which cannot be eliminated by a retrospective application of this amended zoning law.
3. Town Board did not adopt a resolution considering and evaluating the Abundant Solar project at the Bowman Road landfill site as required by section 155-27.2.
4. In the Local Law adopted March 23, 2022 there is a reference on page 8 to "Section D4b below", does not exist and such an evaluation of all criteria was to be done "before finalizing the lease".

Chairman T. Kelly stated that he has the information Attorney Oudemool provided and will get information from the Code Officer to have all the details and come back to another meeting at some point.

Attorney Sutphen stated the Zoning Board is not the board that decides that the statute was correct or incorrect. What the Zoning Board interprets is Did the Code Enforcement Officer do what he was supposed to do.

Chairman T. Kelly stated at the next meeting the Codes Officer will go through the process that he has followed. Outlining everything, documentation, dates, times, and all to confirm that the Codes Officer acted appropriately in the issuance of the permit in accordance with Town Law.

Member KP Kelly made a motion, seconded by Member Catalino to table this application until the July 21, 2022 meeting.

Ayes: Chairperson T. Kelly, Member Miller, Member KP Kelly, Member Linhart, Member Catalino.

Nays: 0

All in Favor.

Motion Carries

Adjournment

With there being no other business, Member Catalino made a motion, seconded by Member Linhart, and carried unanimously, to end the meeting at 7:52 PM

Respectfully submitted,
Debi Witzel, Secretary
Zoning Board of Appeals