

**TOWN OF MANLIUS**  
**ZONING BOARD OF APPEALS**  
**August 18, 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/Ih9BYpkhLFE>

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

	Member	K P Kelly
	Member	Clare Miller
Virtual	Member	Karrie Catalino
	Member	Warren Linhart
	Secretary	Debi Witzel
	Attorney	Jamie Sutphen
	Code Officer	Tom Poitras

In Person Attendees that signed in: Brenda & Andy Daiss, Dave Taylor, John J. Courcy, Melissa Yandon, Barbara Henry, Dirk Oudemool, Michael J. Gatmaitan.

Virtual Attendees: Susan Goldner, J. Thomas Bassett.

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 Miller, to approve the minutes of July 21, 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.

**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 that the board has reviewed the documents concerning this issue. Chairman T. Kelly read aloud a proposed resolution (motion) prepared by ZBA Attorney Sutphen in conjunction with the Chair and asked for the board for their comments.

**Proposed Motion**

*The matter before the Zoning Board of Appeals for a determination as to whether the town code officer properly issued a building permit to Abundant Solar on April 14, 2022, and in coming to its decision here in the board is mindful of the legal principle that the issuance of a building permit is a ministerial act, not subject to discretion of the Code Enforcement Officer. This Board has reviewed the documents submitted to the Code Enforcement Officer in support of the*

*application for a building permit which are part of the public file as well as the affirmation of the Code Enforcement Officer Tom Poitras. All documents required by Town code Chapter 59 were submitted by the applicant and subsequently appropriately reviewed by the Code Enforcement Officer. Accordingly, this Board finds that the Town Code Enforcement Officer properly issued the building permit to Abundant Solar on April 14, 2022. The application has brought up many, ancillary issues, most which relate to the Town Board's actions and passing legislation related to the approval of solar arrays, landfills as well as to its authorities to do so. However, the review of the ZBA is limited to the ministerial issuance of the building permit only. All other issues raised by the applicant are beyond the purview of this board and are not entertained here in. Those are matters that are properly left to the appropriate vendor.*

Board members discussed the motion and clarified as it states, the Code Enforcement Officer preformed his duties as an agent of the Town and completed his duties in a satisfactory manner.

Member KP Kelly asked Code Enforcement Officer Poitras if he is a certified Code Enforcement Officer and what his background is. Mr. Poitras answered that his certification is current, and asked Member KP Kelly how that is relevant to the issuance of the building permit? Member KP Kelly asked if Mr. Poitras had any other professional review the documents submitted such as an Engineer or another Code Enforcement Officer? Mr. Poitras answered no and stated the better question would be is someone else required to look at the documents which is not required. Mr. Poitras stated the plans provided were completed by a licensed Engineer.

Code Enforcement Office Poitras read aloud the steps he must follow for the review a submitted building permit application.

Member Linhart stated he is concerned that all the documents presented to the Code Enforcement Office had not been date stamped. Mr. Poitras stated there is no requirement to date stamp documents as they come in.

The ZBA Board confirmed by way of Town Board minutes that all the necessary documents had been submitted to the Town Board before the March 23, 2022, meeting and the permit application had been submitted on April 1, 2022.

Member K P Kelly made a motion, seconded by Member Linhart to open the public hearing at 7:01 PM and it was carried unanimously.

Attorney Dirk Oudemool representing Barbara Henry asked if the resolution was prepared by ZBA Counsel? Attorney Sutphen stated the resolution (motion) was prepared in conjunction with the Chair for an uncirculated draft. Attorney Oudemool made the follow comments:

1. Attorney Oudemool stated Attorney Sutphen should recuse herself because of an obvious conflict of interest in that her firm is contracted as Counsel for the Town of Manlius. Mr. Oudemool stated the ZBA Board should consider hiring their own independent Counsel.
2. Attorney Oudemool stated he disagrees with the proposed resolution (motion) read earlier. Attorney Oudemool stated in the Town code section 59-12 sub-paragraph C of which he focused on number 11 which says, application shall be made by the owner or agent of either the architect, engineer, or builder, deployed in connection with the proposed work. Attorney Oudemool stated he knows the application was made by

Abundant Solar and as stated in the code an application by a person other than the owner shall be accompanied by an affidavit of the owner thus providing authorization for the proposed work. Attorney Oudemool stated there is no such affidavit by the Town Board in the file.

3. Attorney Oudemool stated that the Code Enforcement Officer did not enforce the new statute which exempted this project from Planning Board Review.

Attorney Oudemool stated that there is more work to be done by the ZBA Board and that it would be a mistake to consider the adoption of the proposed resolution (motion) presented earlier.

Dave Taylor, 7303 Roumare Rd., E. Syracuse stated he is upset that the Planning Board was removed from the process for this application. Mr. Taylor stated he would like to look at the Building Permit file.

Tom Bassett, 7321 Barberry Lane, Manlius asked the following questions:

1. The proposed motion did not indicate that the Board is denying the Article 78. Attorney Sutphen stated the proposed motion has nothing to do with the Article 78.
2. Has the Code Enforcement Officer felt it necessary to seek the opinions of other professional resources prior to issuance of other solar facility building permits assuming that such other facilities have been permitted? Code Enforcement Officer Poitras is taking a ministerial act within his authority, is he being accused of malfeasance? Attorney Sutphen stated the only thing the Code Officer must do is follow the regulations and issue a permit.
3. Is there a responsive of pleading to the Article 78 petition and is it a matter of public record and who is representing the Town or is agents or employees in this litigation? Attorney Sutphen stated there has been no responsive pleading to her knowledge but there is an article 78 that is a matter of public record. Baldwin, Sutphen and Frateschi is representing the Town in the Article 78 proceeding.
4. Does Attorney Oudemool have an unlimited period to make a highly technical legal argument tonight before this board, without any opportunity for the Board to consult with its council? This is not the proper forum for this argument in the actual pending legal proceeding.

Mr. Bassett stated he wanted to know what the board is being asked to do tonight as he believed a motion had been approved. Chairman T. Kelly stated the motion was not approved and is still open for discussion. Mr. Bassett stated the purpose of the Article 78 proceeding is to appeal the issuance of the building permit. Chairman T. Kelly stated the appeal before the ZBA Board is, was the building permit filed correctly? Yes or No.

Attorney Oudemool stated he filed the Article 78 proceeding after he had exhausted all other remedies.

Mr. Bassett stated he believes Attorney Oudemool's objective for his client is to string the project out so the developer will lose interest and the solar array then never gets built.

John J Courcy, 7296 Roumare Rd. stated he did not like process the Town used for issuing Abundant Solar their building permit.

Member KP Kelly made a motion, seconded by Member Linhart to close the public hearing at 7:36 PM and it was carried unanimously.

Member Linhart stated he feels like he has the weight of Atlas on his shoulders and that this is not an easy decision. Member Linhart stated:

1. he listened to everyone.
2. made his comments about using a date stamp.
3. Code Officer Poitras stated he looked at everything and issued the building permit.
4. There is no requirement for a date stamp.

Chairman T. Kelly stated the board can vote on the proposed motion presented earlier or the Board can adjourn the matter pending further study of the issues raised.

The Board had a discussion with board counsel on the steps the court will take if the Zoning Board were to vote yes or no or do not decide at all. The Board decided to table the decision until the September 15<sup>th</sup> meeting as they wish to research questions that came up in the tonight's meeting. The Board did decide not to seek outside counsel.

### **Board Action**

Member Miller made a motion, seconded by Member KP Kelly to adjourn the proceeding for 30 days.

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

Nays: 0

All in Favor.

Motion Carries.

### **Legal Notices**

Member Linhart made a motion, seconded by Member Miller to waive the reading of the public notices and it was carried unanimously.

**Michael & Vanessa Gatmaitan, 4463 Swissvale Dr., Manlius NY (tax map #110.-11-05.0) requesting one variance to install a 18 X 30 inground pool. With an existing side yard setback of 10' they will need a variance of 10' to meet the required side yard setback of 20'.**

Mr. Gatmaitan stated they have a steep hill behind them and a tiered back yard and picked the best spot to fit the pool. Mr. Gatmaitan stated they will be adding a retaining wall and drainage. Mr. Gatmaitan stated there is already a fence for the yard and the pool will have alarms.

Member KP Kelly stated the location for the pool is reasonable.

Member Catalino asked if the neighbors had been notified. Mr. Gatmaitan stated he had talked to both his neighbors.

Member K P Kelly made a motion, seconded by Member Linhart to open the public hearing at 7:48 PM and it was carried unanimously.

Member KP Kelly made a motion, seconded by Member Linhart to close the public hearing at 7:56 PM and it was carried unanimously.

### **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 as the chosen location is the most logical.
- 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? The board answered no not at 10 feet.
- 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, he wants a pool.

### **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 **side yard variance of 10'** 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 Miller made a motion, seconded by Member KP Kelly to grant an area variance to Michael & Vanessa Gatmaitan for the real property located at 4463 Swissvale Dr., Manlius NY. This variance is being granted for the sole purpose of permitting the construction of a 18 X 30 foot inground pool. Thereby modifying the 20-foot side yard set back to that of 10 feet leaving a variance of 10 feet.

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

Nayes: 0

All in Favor.

Motion Carries.

Member Miller made a motion, seconded by Member KP Kelly to grant an area variance to James & Marcia Morrison for the real property located at 5007 F-M Road, Manlius NY 13104. This variance is being granted for the sole purpose of permitting the construction of a 10 x 16 foot shed. There by modifying the 40-foot rear yard set back to that of ten feet leaving a variance of 30-feet.

**Melissa Yandon, 111 Kendall Dr. W., E. Syracuse NY (tax map # 062.-01-63.0) requesting one variance to install a 4' above ground pool. With an existing rear yard setback of 21' they will need a variance of 4' to meeting the requested rear yard setback of 25'.**

Member KP Kelly made a motion, seconded by Member Linhart to open the public hearing at 8:00 PM and it was carried unanimously.

Ms. Yandon stated they have had a pool in this location for fifteen years and it has a sand base which would be difficult to move. Ms. Yandon stated she was unaware of the requirement for a variance. Ms. Yandon stated she has spoken with her neighbors, and they have no issue with the location of the pool.

Member KP Kelly asked if they put the fence when the pool is not in use. Ms. Yandon stated that the stairs are locked in the shed when the pool is not in use.

Code Officer Poitras stated the pool was brought to their attention because is was observed by Code Officer Grevelding and not a neighbor complaint.

Member Linhart made a motion, seconded by Member KP Kelly to close the public hearing at 8:03 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 pool is already existing.
- 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? The board answered 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? Yes, they wanted the pool.

### **Determination of ZBA Based on the Above Factors:**

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



- 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.
- 3) Whether the requested Variance is substantial? Yes, the rear yard variance of 23-feet is substantial and the side yard variance of 15-feet is not substantial.
- 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, they want a 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 **side yard variance of 15-feet and a rear yard variance of 23-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 Miller made a motion, seconded by Member KP Kelly to grant two area variances to Andy & Brenda Daiss, for the real property located at 8022 Blaney Stone Way, Manlius NY. These variances are being granted for the sole purpose of permitting the construction of a 10 x 16 foot shed. There by modifying the 20-foot side yard set back to that of 5-feet leaving a variance of 15-feet and modifying the rear yard setback to that of 40-feet to that of 17-feet leaving a variance of 23-feet.

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 Linhart made a motion, seconded by Member Miller, and carried unanimously, to end the meeting at 8:20 PM

Respectfully submitted,  
Debi Witzel, Secretary  
Zoning Board of Appeals