

**TOWN OF MANLIUS  
ZONING BOARD OF APPEALS  
September 15, 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>

Chairperson 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   |
| Code Officer | Tom Poitras     |

In Person Attendees that signed in: Barbara Henry, Fayetteville. Dirk Oudemool, Syracuse. Dave Taylor, E. Syracuse. Ryan Benjamin, Kirkville. Regan Smith, Manlius. Devon Cretaro, E. Syracuse. John Courcy, E. Syracuse.

Virtual Attendees: J. Thomas Bassett

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

**Minutes**

Member Linhart made a motion, seconded by Member KP Kelly, to approve the minutes of August 18, 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.**

Chairperson T. Kelly announced the matter before the Board. He then made the following statement to the Board: “The Code Enforcement Officer reviewed the building permit application and determined that Abundant Solar met the standards for the issuance of the building permit under the newly amended Town Code and Chapter 59 of the Town Code and issued the building permit. The issuance of a building permit is a ministerial act and is not subject to the discretion of the Code Enforcement Officer. Rather, if an applicant meets the code standards, the building permit must be issued. It is not within the purview of the Code Enforcement Officer to determine the underlying legality of any law duly enacted. Town Code section 56-1210 requires the Town Code Officer to mark construction documents which are part of the building permit as “accepted.” The documents did not contain this designation, but they do now contain this

designation “accepted”. Accordingly, this Board finds that the building permit was properly issued. However, this Board is concerned about a policy not adopted or practiced in this Town regarding time stamping/date stamping of documents received by the Town Code Enforcement Officer and recommends that the Town Board take up this important procedural issue immediately.” There was discussion as to who would make this statement a motion before the Board. Mr. T Kelly then stated that he was making a motion as set forth above. The motion was then seconded by Member Catalino. Chairperson requested a vote on the motion and the following was the vote:

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

Nays: 0

All members voted in favor of the motion and the motion carried.

Member KP Kelly then stated he would like to make an advisory motion to the Town Board relating to the appeal matter. Discussion ensued as to the nature of the motion and whether it would be a recommendation to the Town Board. After discussion, the following motion was made by Mr. KP Kelly as follows: “This is a recommendation to the Town Board from the Zoning Board of Appeals regarding the solar installation on the Town landfill, that the Town Board waive the distance policy or any other restriction for this project and move the proposed Abundant Solar Array from the existing site on the landfill to the other end of the Manlius landfill near the solar array for the Town of DeWitt. The motion was seconded by Member Miller.

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

Nays: 0

All in members voted in favor of the motion and the motion carried.

It was noted that this is not a matter currently before this Board, but that the recommendation would be forwarded by the ZBA secretary to the Town Board.

Chairperson T. Kelly then noted that there were other matters that were raised in connection with this appeal, however, those were not subject to review of this Board and would be taken up by the appropriate body/court.

Mr. Dirk Oudemool, Esq. indicated to the Board that he thought there had been an illegal executive session prior to the ZBA meeting. Attorney Sutphen disagreed, stating that there was not an executive session; there was an allowed advice of counsel session with the ZBA members prior to the meeting.

### **Legal Notices**

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

**Devon Cretaro, 6457 Fremont Rd., E. Syracuse NY (tax map # 053.-01-08.0) requesting one area variance for a 24' X 32' shed. With an existing side yard setback of 10' they will need a variance of 10' to meet the required 20' side yard setback.**

Member K P Kelly made a motion, seconded by Member Catalino to open the public hearing at 6:47 PM and it was carried unanimously.

Mr. Cretaro stated if he were to place the shed 20 feet off his property line it would be directly behind his house. Mr. Cretaro stated that the back of his yard is wetland and that is why he is asking for 10 feet off the side yard. Mr. Cretaro stated they may add electricity to the shed in the future.

Member KP Kelly asked what the barn will look like. Mr. Cretaro stated the barn will be close to the house color with a concrete floor and a front and side door. Mr. Cretaro stated the barn will be used for storage of cars mostly.

Code Officer Poitras provided an elevation certificate stating the barn will be two feet above the flood plain.

Member Linhart asked what will happen to the existing shed in the back. Mr. Cretaro stated it will stay.

Member Linhart made a motion, seconded by Member KP Kelly to close the public hearing at 6:55 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
- 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? The board answered no
- 5) Whether the alleged difficulty was self-created? The board answered yes, he wants 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 variance **of 10 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 an area variance to Devon Cretaro, 6457 Fremont Rd., E. Syracuse NY 13057. This variance is being granted for the sole purpose of permitting the construction of a 24' X 32' foot shed. There by modifying the 20-foot side yard set back to that of ten feet leaving a variance of 10-feet.

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

Nays: 0

All in Favor.

Motion Carries.

**Ryan Benjamin, 7771 Myers Rd., Kirkville NY (tax map # 049.-01-01.0) requesting two area variances for a 24' X 36' garage. With an existing side yard setback of 6' they will need a variance of 14' to meet the required 20', with an existing rear yard setback of 6' they will need a variance of 34' to meet the required 40'.**

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

Mr. Benjamin stated the garage will be 24' X 36'. Mr. Benjamin stated the garage will be placed where the current shed is and that shed will be moved to the other side of the yard. Mr. Benjamin stated the location for the garage is because there is a septic tank and leach field that goes through the middle of the backyard.

Member Linhart made a motion, seconded by Member Catalino to close the public hearing at 7:07 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, because of the leach field in the middle of the yard.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The board answered no.



Ms. Auclair stated she would like to install a 10' X 20' shed behind the garage. Ms. Auclair stated she needs the variance because there is septic and a water line in on the property and many trees.

Chairman T. Kelly asked what the shed will look like. Ms. Auclair stated the shed will be placed on gravel and have 2 doors.

The Board asked question about the look of the property and the changes that are planned.

Ms. Auclair stated the new shed will replace the old shed which is being removed at this time and the old garage will be staying for now. Ms. Auclair stated she is planning to make improvements to the property as she can including new doors on the garage.

Member Linhart made a motion, seconded by Member KP Kelly to close the public hearing at 7:34 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 because of the location of the septic, water line and trees.
- 2) Whether the Variance will result in an undesirable change in the character of the neighborhood or to nearby properties? The board answered no it will be an improvement to the property.
- 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, she 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 of **15' side yard** 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**



- 5) Whether the alleged difficulty was self-created? The board answered yes, they want 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 variance for **4-foot side yard and 34-foot rear yard** 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 Linhart made a motion, seconded by Member Miller to grant an area variance to Regan Smith, 110 Brinan Fields Run, Manlius NY for the purpose of constructing a 16' X 30' in-ground pool grant a side yard variance of 4-feet to meet the required 15-feet and a rear yard variance of 20-feet to meet the required 25-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 Miller made a motion, seconded by Member KP Kelly, and carried unanimously, to end the meeting at 6:52 PM

Respectfully submitted,  
Debi Witzel, Secretary  
Zoning Board of Appeals