

Town of Boston Zoning Board of Appeals
2025-06-05 - Meeting minutes-draft

Attendees: Lisa Rood, Beth Pryor, Dave May, Robert Ballard, Pamela Zylinski, Attorney Laurie Baker,
Code Enforcement Officer Bob Reed
Absent: Kelly Martin/Town Liaison, Attorney Dwight Kanyuck

1. Work Session – Planning Board – 7pm

2. Call Meeting to Order

Meeting called to order by MS. ROOD at 7:37pm

3. Pledge of Allegiance

Lead by MR. BALLARD

4. ZBA Responsibility Reading

Read by MS. PRYOR

MS. ROOD: Thank you. I want to point out, too, that it's state law that mandates this, so we are mandated by state law to do those things, and I just like to have that read (ZBA Responsibilities) before each and every voting board meeting so that everybody understands what powers we do and do not have all right. I want that to be clear. All right, let's have a roll call here.

ROLL CALL

Ms. Pryor

Mr. May

Mr. Ballard

Ms. Zylinski

Ms. Rood

MS. ROOD: I'd like to also add that we're going to have MS. ZYLINSKI as a full voting member this evening although she's an alternate.

5. Public hearings

PUBLIC NOTICE
TOWN OF
BOSTON
ZONING BOARD OF
APPEALS

The ZBA will meet at the Town of Boston Town Hall on **Thursday, June 5, 2025, at 7:00 PM** for the Work Session followed by the Public Hearing in the Court Room to hear the following petitions:

Tabled Petition #634 - NY Boston II, LLC (Buffalo Solar Project), 7832 Feddick Road, seeking three **AREA** variances: 384 feet for the Southside, 375 feet for the Northside and 23.8-acre variance for a new proposed solar array.

Petition# 636 – Jeffrey Snyder, 5521 James Dr, seeking two **AREA** variances. Variances for 1104sqft by 2ft height to erect a 1944sqft, 23ft high accessory structure.

Petition# 637 – Christopher Ford, 5868 Woodlee Ct, seeking two **AREA** variances. Variances for 100sqft by 8ft height to erect a 2100sqft, 31ft high accessory structure.

Petition# 638 – Brookfield Properties of WNY, 7840 Boston State Rd, seeking an **AREA** variance to create lots that do not have the required frontage on a public street.

MS. ROOD: We are returning to Petition number 634, NY Boston II, LLC (Buffalo Solar Project), 7832 Feddick Road, seeking three **AREA** variances: 384 feet for the Southside, 375 feet for the Northside and 23.8-acre variance for a new proposed solar array. We have been going at this literally for two years. I've looked at this application. I've researched this application and solar farms in general. I visited the site several times. I studied it. I researched it some more, as did the entire board, exhaustively. During the public hearing and the applicant's presentation, the cases presented by the applicant were for use variances that they kept referring to. What they are applying for with us are area variances; two different animals; two different sets of criteria that we follow. Both though, under state law, New York state law but there is a difference, but nonetheless, we looked at them. I looked at it under the public service utility standard which was requested, which gives them leniency under our prongs that we have to look at under New York state law. The conditions for approval: Does it create an undesirable change to the character of the neighborhood? Can the benefits sought by the applicant be achieved if the variance is not granted? Is the requested variance substantial? Will the variance have an adverse effect on the physical impact or environmental conditions of the neighborhood? Is the alleged difficulty self-created? That's what we have to look at when we get any application. We have four tonight. Every application goes through that test, that balance but because they are under the public service utility standard, they realize a bit of leniency instead of the more specific and direct criteria that a normal applicant would follow. So, considering that, I would like to put forth the **motion to deny** the application for the size of the property lot variance that they're shooting for which is 23.8 Acres. So, under the public necessity standard, the project is subject to a lighter variance standard rather than the traditional or more restrictive one. When the intrusion or burden on the local community, including those related to aesthetic concerns and potential environmental impacts would be minimal and under the public utility necessity standard, the applicant must demonstrate, now we're going back to these prongs here, that the project is a public necessity and that it is required to render safe and adequate service. Well, under the analysis and the Freepoint Solar LLC versus the Town of Athens, their department, and Delaware River Solar LLC versus the Town of Aurora Zoning Board of Appeals, Erie County Supreme Court cases, the community solar projects such as this one proposed by DRS are deemed a public necessity, such that the Public Utility variance standard applies. That's what has been deemed to be right. But there are compelling reasons, economic or otherwise, that make it more feasible to seek the variance than to pursue alternative locations. However, there's no legal requirement that applicants analyze each and every possible parcel of land before obtaining a variance. So, the solar law for large-scale solar energy systems, such as the project, requires a maximum lot area of 50 acres. That's what's in our code. The request invariance of 23.8 acres is substantial. The applicant has

selected a parcel knowing that the lot size exceeded the code. The applicant alludes to, quote, a few parcels were identified, unquote, as alternatives, but did not indicate whether any of those parcels could have been a site for the project without the substantial variance that's requested here. The board does not find DRS's response adequate under this prong. The intrusion and burden on the community, including those related to aesthetic concerns and potential environmental impacts associated with the requested variances is minimal or can be mitigated. The granting of the lot area variance does cause an incremental increase and impacts the neighboring property owners and further granting the lot area variance does not provide the project a greater opportunity to comply with the setback requirements of the town code. So, that's for the first variance request, which is the 23.8-acre variance. That is my motion.

2nd BY: MR. BALLARD.

ROLL CALL

Ms. Pryor – Approve the motion to deny

Mr. May – Approve the motion to deny

Mr. Ballard – Approve the motion to deny

Ms. Zylinski – Approve the motion to deny

Ms. Rood – Approve the motion to deny

MS. ROOD: So, there's another variance that we have here, too, for the property line setbacks from 500 feet to 125 feet for the north property line and 500 feet to 120.3 feet on the south property line. I would make a **motion to also deny** these variances.

STATEMENT OF FINDINGS

Maximum Lot Area Variance - 23.8 acres

Under the public necessity standard, the Project is subject to a lighter variance standard, rather than the traditional (more restrictive) area variance criteria when the intrusion or burden on the local community, including those related to aesthetic concerns and potential environmental impacts, will be minimal; and

Under the public utility necessity standard the applicant must demonstrate:

(a) *That the Project is a "public necessity" in that it is required to render safe and adequate service;*

YES-Under the analysis in the *Freepoint Solar LLC v Town of Athens* (3rd Department) and *Delaware River Solar, LLC. v. Town of Aurora Zoning Bd. of Appeals* (Erie County Supreme Court) cases, community solar projects such as this one proposed by DRS are deemed a public necessity such that the public utility variance standard applies.

(b) *There are compelling reasons, economic or otherwise, that make it more feasible to seek the variance than to pursue alternative locations, however, there is no legal requirement that applicants analyze each and every possible parcel of land before obtaining a variance; and*

NO – The Solar Law for Large Scale Solar Energy Systems, such as the Project, requires a maximum lot area of 50 acres. The requested variance of 23.8 acres is substantial. The applicant has selected a parcel knowing that the lot size exceeded the code. The applicant

alludes to “a few parcels were identified” as alternatives but did not indicate whether any of those parcels could have been a site for the project without the substantial variance requested here. The board does not find DRS’ response adequate under this prong.

(c) *The intrusion and burden on the community, including those related to aesthetic concerns and potential environmental impacts, associated with the requested variance is minimal or can be mitigated.*

NO- The granting of the lot area variance does cause an incremental increase in impacts to neighboring property owners and further, granting the lot area variance does not provide the project a greater opportunity to comply with the setback requirements of the Town Code.

Property Line Setback Variances from 500 feet to 125 feet for the North Property Line and 500 feet to 120.3 feet on the South Property Line

(a) *That the Project is a “public necessity” in that it is required to render safe and adequate service;*

YES-Under the analysis in the *Freepoint Solar LLC v Town of Athens* (3rd Department) and *Delaware River Solar, LLC. v. Town of Aurora Zoning Bd. of Appeals* (Erie County Supreme Court) cases, community solar projects such as this one proposed by DRS are deemed a public necessity such that the public utility variance standard applies.

(b) *There are compelling reasons, economic or otherwise, that make it more feasible to seek the variance than to pursue alternative locations, however, there is legal no legal requirement that applicants analyze each and every possible parcel of land before obtaining a variance; and*

NO – The applicant has selected a parcel that limits buildable area because of the presence of a utility easement, wetlands and streams, and forested areas. To offset these self-selected limitations the applicant is requesting a substantial setback variance to offset the impacts. The applicant alludes to “a few parcels were identified” as alternatives but does not indicate whether any of those parcels could have been a site for the project without the substantial setback variance requested here. The board does not find DRS’ response adequate under this prong.

(c) *The intrusion and burden on the community, including those related to aesthetic concerns and potential environmental impacts, associated with the requested variance is minimal or can be mitigated.*

NO-The purpose of the Town’s solar law is to “balance the potential impact on neighbors when solar energy systems may be installed near their property and to mitigate the impact of solar systems on environmental and agricultural resources, while preserving the rights of property owners to install solar energy systems with respect to large solar energy systems.” To accomplish this the solar law provides that “aesthetic impacts will be reduced [by imposing] various site requirements upon large-scale solar facilities, including screening, height limitations, setbacks, and others.” While the public utility standard supersedes the five statutory criteria of Town Law § 267-b(3)(b) for granting area variances, the statutory criteria are informative in assessing whether the impacts intended to be minimized or mitigated by the Town’s property line setback requirement would continue to be minimized or mitigated if the setback variance is granted. As set forth below, because of the substantial variance requested and the significant detrimental impact of the project on the surrounding rural

residential neighborhood, the aesthetic concerns related to the requested variance cannot be minimized or mitigated.

- (1) *whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;*

YES –The neighborhood in the immediate proximity to the proposed project consists of a collection of rural residential properties with a panoramic viewshed of Lake Erie to the west adjacent to what is now farmland. The topography of the area is such that many of these residential properties will have an unobstructed view of the solar panels that cannot be mitigated with screening on the project parcel. As such, there will be a substantial change in the character of the neighborhood from an agricultural to a utility use that will likely impact property values. The Erie County Agricultural and Farmland Protection Board expressed concerns that the project would result in fragmentation of agricultural lands, create farm management challenges resulting in loss of land available for agricultural production, and loss of productive soils classified as prime if drained, and farmland conversion due to cumulative impacts from solar developments. Additionally, construction noise, especially pile driving activities, will have a substantial impact on the residences.

- (2) *whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;*

NO– The developer has not demonstrated that project is uneconomical if it conforms with the setback requirement or a substantially lesser setback variance.

- (3) *whether the requested area variance is substantial;*

YES – The required setback variance is substantial, representing a 75% reduction in the setback requirement.

- (4) *whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;*

YES – As discussed above, the project substantially changes characteristics of the neighborhood. While the proposed project is a permitted use under the Town's zoning, such permitted use is in the context of the setbacks and other area requirements provided within the Town code. Contrary to the Comprehensive Plan objective of preserving rural character, the topography of the project site is not conducive to changing the character of the surrounding neighborhood from a scenic rural residential area to an industrial setting;

- (5) *whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.*

YES-The difficulties of developing the project were self-created as the applicant was aware of the need for substantial setback variances when developing the project.

I'll look for a second.

2nd by: MS. PRYOR

ROLL CALL

Ms. Pryor – Approve the motion to deny

Mr. May – Approve the motion to deny

Mr. Ballard – Approve the motion to deny
Ms. Zylinski – Approve the motion to deny
Ms. Rood – Approve the motion to deny

MS. ROOD: I also have a resolution to read into the minutes:

TOWN OF BOSTON ZONING BOARD OF APPEAL – RESOLUTION NO. 2025-001

**APPLICATION OF NY BOSTON II, LLC
(BUFFALO SOLAR PROJECT) FOR AREA VARIANCES**

WHEREAS, the Town of Boston has received applications for zoning variances, a special use permit, and site plan review from NY Boston II, LLC, an entity associated with Delaware River Solar, related to the development of a 3.6-megawatt solar facility (the “Project”) at 7832 Feddick Road (the “Project Site”), the first proposed large-scale solar development in the Town; and

WHEREAS, the Town Board classified the solar project as a SEQR Type I action, asserted lead agency, and issued a SEQRA negative declaration for the Project on November 6, 2024; and

WHEREAS, the Town’s regulations governing solar energy systems (the “Solar Law,” Local Law No. 5 of 2019) provide that the purpose of the Solar Law is to

balance the potential impact on neighbors when solar energy systems may be installed near their property and to mitigate the impact of solar systems on environmental and agricultural resources, while preserving the rights of property owners to install solar energy systems without excess regulation. The Town of Boston recognizes the importance of solar energy systems in generating electricity for on-premises and off-premises use, the reduction of greenhouse gas emissions, and support for emerging solar energy system economic development.

WHEREAS, in enacting the Solar Law, the Town Board indicated that: “it is recognized solar energy systems may be perceived to be aesthetically detrimental to surrounding properties, especially residential neighbors, the proposed regulations provide measures to lessen the potential for such impacts, and for aesthetic impacts to be considered in the review process”; seeks to accommodate public demand for solar energy systems, while minimizing potential adverse impacts upon neighboring uses”; and “aesthetic impacts will be reduced as a result of [the Solar Law] which imposes various site requirements upon large-scale solar facilities, including screening, height limitations, setbacks, and others”; and

WHEREAS, the Project Site is located in a Residential-Agricultural (RA) Zoning District, which is considered a residential district; and

WHEREAS, Large Scale Solar Energy Systems, such as the Project, are specially permitted uses in an RA Zoning District; and

WHEREAS, the Solar Law requires that for Large Scale Solar Energy Systems, such as the Project, a setback of at least 500 feet from all property lines bordering a residential district and maximum lot area of 50 acres; and

WHEREAS, on or about December 16, 2024, the Project applied to the Zoning Board of Appeals (“ZBA”) for area variances for the property line setback requirement (the “Setback Variance”) for the Project from 500-feet to within 125-feet of the southern, western, and western property lines (a 375-foot deviation) and within 225-feet of the northern property line (a 275-foot deviation), and an area variance from the maximum lot area of 50 acres (the “Lot Area Variance”) whereas the subject parcel for the Project is 73.8-acres (a 23.8-acre deviation) (collectively the “Variance Application”); and

WHEREAS, for a traditional request for an area variance, the ZBA, in making its determination, shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- (5) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (6) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (7) whether the requested area variance is substantial;
- (8) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (9) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

WHEREAS, the New York State appellate courts have recently deemed large scale solar energy projects, such as the Project, to be treated as necessary public utilities for the purposes of requests for zoning variances, including use and area variances, because of their contribution to the state’s renewable energy goals (*see Freepoint Solar LLC v Town of Athens Zoning Bd. of Appeals*, 234 AD3d 127 [3d Dept 2024] (applying the public utility necessity standard of *Consolidated Edison Co. of New York, Inc. v. Hoffman*, 43 N.Y.2d 598 (1978))); and

WHEREAS, the premise of the public utility necessity standard is that the public necessity must be viewed in a broader consideration of the benefits to the public at large (beyond the immediate community) counterbalances typical considerations related to local environmental or aesthetic impacts; and

WHEREAS, under the public necessity standard, the Project is subject to a lighter variance standard, rather than the traditional (more restrictive) variance criteria, when the intrusion or burden on the local community, including those related to aesthetic concerns and potential environmental impacts, will be minimal; and

WHEREAS, under the public utility necessity standard the applicant must demonstrate:

- (c) That the Project is a “public necessity” in that it is required to render safe and adequate service;

- (d) There are compelling reasons, economic or otherwise, that make it more feasible to seek the variance than to pursue alternative locations, however, there is no legal requirement that applicants analyze each and every possible parcel of land before obtaining a variance; and
- (e) The intrusion and burden on the community, including those related to aesthetic concerns and potential environmental impacts, associated with the requested variance is minimal or can be mitigated.

WHEREAS, a public hearing was held on the Variance Application on March 6, 2025 and continued on May 1, 2025, and the public was invited to comment on the Variance Application at the hearing or submit comments prior to the hearing for consideration by the ZBA; and

WHEREAS, following the March 6, 2025 ZBA meeting, the applicant provided responses to comments, additional line of site profiles, and noise generation information for the Project; and

WHEREAS, at its June 5, 2025 meeting, the ZBA made the findings below which are being memorialized in these Resolutions, attached hereto as Statement of Findings.

NOW THEREFORE, BE IT RESOLVED, the Board finds that the granting of the requested Lot Area Variance for the Project will result in a significant intrusion or burden on the community that outweighs the benefits to the general public at large from the Project. The Board finds that on balance, the Applicant's request for a Lot Area Variance shall not be granted; and

BE IT FURTHER RESOLVED, the Board finds that the granting of the requested Setback Variances for the Project will result in a significant intrusion or burden on the community that outweighs the benefits to the general public at large from the Project. The Board finds that the Applicant's request for Setback Variances shall not be granted; and

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be filed in the office of the Town of Boston Town Clerk within five (5) days of the date of this Resolution and shall be mailed to the Applicant within the same five (5) day period.

On June 5, 2025, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Chairperson Rood	[X]	[]	[]	[]
Board Member Pryor	[X]	[]	[]	[]
Board Member Ballard	[X]	[]	[]	[]
Board Member May	[X]	[]	[]	[]
Board Member Zylinski	[X]	[]	[]	[]

Jennifer Cavarello, ZBA Clerk

And we will have a roll call and a vote for the adoption of the foregoing resolution, which I

will make as a motion.

2ND BY: MS. PRYOR

MS PRYOR - I APPROVED THE RESOLUTION,

MR MAY - I APPROVED THE RESOLUTION,

MR BALLARD - I APPROVE THE RESOLUTION.

MS ZIELINSKI - I APPROVE THE RESOLUTION

MS. ROOD - I APPROVE THE RESOLUTUION

MS. ROOD: There you have it

ATTORNEY CHARLES MALCOM: I'd like a copy of that. My name is Charles Malcolm, my address is 140 Pearl Street, Buffalo, New York. I'd like that sheet of paper that you were reading off of when you were doing the three motions before you read the resolution. Just to make sure you don't dispose of that.

MS. ROOD: The sheet of paper that I was reading off of?

ATTORNEY MALCOM: You had a packet that you were reading from when you were doing your initial findings, before you read from the resolution.

MS. PRYOR: It will be in the minutes.

ATTORNEY LAURIE BAKER: They'll be attached to the resolution because it was included.

ATTORNEY MALCOM: Okay. Yes, thank you.

MS. ROOD: It will be sent within 5 days.

ATTORNEY MALCOM: Have a good night. Thank you.

MS. ROOD: All right, we have three more to go.

Petition# 636 – Jeffrey Snyder, 5521 James Dr, seeking two **AREA** variances. Variances for **1104sqft by 2ft height** to erect a 1944sqft, 23ft high accessory structure.

MS. ROOD: We have a letter from Mr. Snyder:

TO WHOM IT CONCERNS:

I am requesting a variance to construct a 1,900 square foot pole barn on my property located at 5521 James Drive (MC 2234 Lot 13). The overall dimensions of the structure will be 54 feet wide, 36 feet long and 23 feet high (including cupola).

This structure will be utilized to provide climate-controlled storage for existing and planned assets and equipment as well as a future pet wash (we have two dogs) and restroom facilities to utilize while using our pool.

Aesthetics have been carefully considered to ensure that the design of the structure conforms with existing properties and creates an attractive addition to the neighborhood and our property.

Best regards, Jeffrey A. Snyder

MS. ROOD: From Mr. Reed, our Assistant Code Officer:

Petitioner wishes to obtain 2 variances for his property at the above address. The variances required are as follows:

Pursuant to Article XVIII Supplemental Lot Size and Open Space Requirements Section 123-136 B (4) for the height and size of the building.

The size of the structure you propose will be 1944 square feet and 23 feet high. Allowable is 840 square feet and 21 feet in height.

Allowed 840 Square feet Proposed 1944

square feet Variance 1104 square feet

Allowed 21 feet height to ridge Proposed 23

feet height to ridge Variance 2 feet

MS. ROOD: From Sarah Desjardin, our planning consultant regarding petition number 636:

FROM: Sarah desJardins, Planning Consultant

Regarding Petition# 636, Jeffrey Snyder is seeking two (2) area variances for a proposed accessory structure at 5521 James Drive. This action is classified as a Type II Action under SEQR and therefore is not subject to review under SEQR.

Respectfully submitted,

Sarah desJardins, Planning Consultant

MS. ROOD: I make a motion that we open the public hearing.

2ND BY: MS. PRYOR

ROLL CALL

MS. PRYOR

MR. MAY

MR. BALLARD

MS. ZYLINSKI

MS. ROOD

MR. SNYDER: Jeffrey Snyder, 5521 James Drive, Hamburg. I think I outlined it pretty well in my letter to the board. We're looking to put a pole barn on that's also going to be used for vehicle storage, recreational vehicle storage, lawn equipment storage, pool and outdoor furniture storage, and we usually have a pool full of children all summer and a bathroom for them to use, so they're not running in the house. And I plan to retire soon, so I need a place to tinker around.

MS. ROOD: In our work session, we were taking a look at things, and we all have been up there, individually, taking a look and noticed that you have your site work already done and drainage already put in. Question was whether or not you were going to take the other shed down.

MR. SNYDER: The other shed is gone.

MS. ROOD: The one by the pool.

MR. SNYDER: The pool house, no, we do not intend to take the pool house down. That has all the equipment: the pool pump and the saltwater system are all in the pool house. So,

that's not being primarily used for storage, it's for equipment that runs the pool.

MS. ROOD: That's a big building out that little lot.

MR. SNYDER: That side of is 120 by 189, that's a regular building lot size that we're putting it towards the back.

MS. PRYOR: Have you spoken to any of your neighbors?

MR. SNYDER: I have neighbors to either side with me this evening.

MS. PRYOR: I'd love to hear from them.

MR. KOSTOWNIAK: We live at 5535 James Drive, on the east side of Jeff. I've been working with Jeff on the project. I'm helping him out, kind of managing the project, it's my background. I am a Civil engineer for the Town of Orchard Park engineering department, so, I understand all the rules and regulations, that we're trying to work within them. I'm here to answer any kind of technical questions as far as the building's height. The height variance, the two feet, is actually just from the decorative cupola. The roof is that high because he's matching the building. His existing home has a steep pitched roof. So, it's just kind of architectural. It's going to be a nice building. It's been staked out. We looked at it. It's not even visible from the road because of the trees. You have been out there you can see the tree line. It's up against the back yard. We have Mrs. Smolinski here and she owns the property to the rear and to the West. Everyone we've talked to on the street hasn't had a problem with it, and there are several buildings in the area that are similar if not bigger. So, we hope you guys take that into consideration. Any questions?

MS. ROOD: Talk to me about the drainage.

MR. KOSTOWNIAK: Sheet flow. There's some collection alongside the driveway, but it's just going to sheet flow and it's going to flow onto our property that Jeff and I both own to the rear of the project. It's flowing onto his own property.

MS. ROOD: I always calculate the runoff because I learned the hard way. I put up a 60 by 80-foot riding arena at my house. I did put substantial drainage in there, and I built it up and everything, but you know, it just generates so much water, because you're taking a permeable surface and turning it into a hard surface and just figuring for an inch of rain, you're going to generate 1211 gallons running off being shed off that roof.

MR. KOSTOWNIAK: It's going to be collected and then on a little daylight onto Jeff's own land, and then it'll flow onto Jeff's own land and flow into our pond on our land. So, it's all going to be collected and that's where it's going. If you walk in the woods, you'd see exactly where the runoff goes. I understand exactly what you're saying and good job on the calculations, your spot on.

MS. ROOD: Thanks. Any other questions?

MR. MAY: Any consideration on a smaller platform, building?

MR. KOSTOWNIAK: It's his call but you can't put the cat back in the pillowcase, so just got to do it the size you want right out of the gate.

MR. SNYDER: I have a lot of toys.

MR. KOSTOWNIAK: Yeah, he's got some toys and wants some more. We staked it out. It fits on there good. The thing that might make it more visible is that we had to raise the site so that the sewer connection would work. That was the Sewer Authority. We've worked with every agency, got all their approvals. We have backflow prevention coming in, and our sewer tapped done. We were going to put a sewer lift station in, but Erie County Sewer didn't want to do that, so they're the ones who forced us to go up in the air, to lift it and just invested quite a bit of money in his own property, and this one, it's going to look fantastic.

MS. ROOD: The drawings are beautiful. So, because you had to raise everything, is that taking consideration, you said it's going to be the same height as the house, even after you have raised it?

MR. KOSTOWNIAK: Floors could be pretty close to the finished floor of his existing house.

MS. ROOD: The height isn't.

MR. KOSTOWNIAK: The height is going to be probably lower than it, but it still hits at 22 feet because of the decorative copula at the top. It's going to be different colors. We put a lot of effort in the colors.

MS. ROOD: Was going to say that it didn't really match the house.

MR. KOSTOWNIAK: Yeah, no, it's going to be different color.

KATHY SMOLINSKI: Kathy Smolinski, 5509 James Drive, Hamburg, New York. My husband put in that subdivision. That is going to be an asset to our neighborhood as far as I'm concerned. I'm on the left of it, and it's coming out beautifully, so I really would like it to go up.

MS. PRYOR: Thank you. Is there anybody else here who would like to speak on behalf or against for this petition? Then, I make a motion to close the public hearing.

2nd BY: MS. ROOD

ROLL CALL

MS. PRYOR

MR. MAY

MR. BALLARD

MS. ZYLINSKI

MS. ROOD

MS. PRYOR: I'll make a motion. Given the support from the neighborhood, I will make a motion to approve Petition 636. I'll go through my conditions to approval.

Approve x **Deny** **Reserve Decision**
Table **Time Frame**

Conditions to approval:

(1) Does it create an **undesirable change to the character of the neighborhood**?

Yes [☐] No [☒]

(2) **Can the benefit** sought by the applicant **be achieved if the variance is not granted**?

Yes [☐] No [☒]

- (3) Is the requested variance **substantial**? Yes [X] No []
- (4) Will the variance have an **adverse effect on the physical impact or environmental conditions of the neighborhood**? Yes [] No [X]
- (5) Is the alleged difficulty **self-created**? Yes [X] No []

2nd BY: MR. BALLARD

ROLL CALL

MS. PRYOR

MR. MAY

MR. BALLARD

MS. ZYLINSKI

MS. ROOD

APPROVED

MS. ROOD: Make sure you get in touch with Bob Reed for the permit.

MR. SNYDER: Thank you very much.

MR. BALLARD: There was a time frame on it.

MS. PRYOR: Six months.

MR. BALLARD: You have six months for the variances.

Petition# 637 – Christopher Ford, 5868 Woodlee Ct, seeking two **AREA** variances. Variances for **100sqft by 8ft height** to erect a 2100sqft, 31ft high accessory structure.

FROM: Sarah desJardins, Planning Consultant

RE: June 2025 ZBA petitions

Chairman Rood and Board members:

Regarding Petition# 637, Christopher Ford is seeking two (2) area variances for a proposed accessory structure at 5868 Woodlee Court. This action is classified as a Type II Action under SEQR and therefore is not subject to review under SEQR.

MS. ROOD: Letter from Mr. Ford:

Notice of intent:

Intended purpose of the barn/garage at 5868 Woodlee Ct includes storage for my tractor, tractor implements, side by side and camper. Shop for storage of tools and working on projects associated with my boat, camper and work on my personal vehicles. Remaining storage areas to store numerous decorations that have filled my basement and attic in the house. Also, storage for items that are currently in a large storage unit left to us by a family member.

MS. ROOD: Letter from Code Enforcement Officer Bob Reed:

Respectable Chairman Rood and Conscientious Board members,

Petitioner wishes to obtain 2 variances for his property at the above address. The variances required are as follows:

- Pursuant to **Article XXV Supplemental Lot Size and Open Space Requirements**,

Section 123-136 B (4) which states:

B In R districts:

(4) Maximum allowable height and square footage of lot coverage, for one-and-one-half-story accessory buildings is as follows:

The property is 4.43 acres, between 3 and less than 5 acres the maximum allowable size is 2000 square feet, and 23 feet in height. A variance is necessary for the increased square footage and increased height.

Allowed 2000 square feet Required 2100 square feet
Variance 100 square feet

Allowed 23 feet

Required 31 feet

Variance 8 feet

MS. ROOD: I make a motion to open the public hearing.

2ND BY: MS. PRYOR

ROLL CALL

MS. PRYOR

MR. MAY

MR. BALLARD

MS. ZYLINSKI

MS. ROOD

CHRISTOPHER FORD: Christopher Ford, 5868 Woodlee Ct, Orchard Park. As described, I got a three-car garage, and I got one car in it and the tractor's been pushed into the backyard because of all the storage.

MS. ROOD: You got a lot of stuff.

MR. FORD: You have no idea. Let me just put it in perspective. My last projects my wife gave me for decorations, did everybody see the two-foot-high light bulbs that came out, they looked like the old style of light bulbs. Well, you string five of those together with four-inch pipe, and it looks like a string of lights. Those are in the garage right now, taking up half a bay. So, yes, my tractor's in the back, my chipper's in the backyard. I want to get all this stuff out of the backyard where it is getting destroyed by mice and out of sight. I just don't like things sitting outside. It's dead there. You saw the boat sitting in the yard. My son's camper is coming over. So, all this is to get in there. And all those projects I did were in the middle of winter on my concrete floor in the garage. I'm retired. I can't do that anymore. I need to get indoors. So, that's the square footage. Height wise, if you took my garage, the front, it's a very steep pitch/roof line, that is the same pitch and the same three windows that are on the front. If you stood in the front of my garage, you'd be looking at the front of the of the barn, and it just pushed over to that side and extended longer. Same with the Dormer. So, the height issue is because of the way the garage is built, trying to maintain the same aesthetic that the house is, the same constructions. I mean, it's going to be sided, asphalt roofing. It's going to match the house as if it's a compliment to it, not an add on to it. So, the square footage was just a little bit, just because that's how much we can get in there, but the height is because of the Aesthetics of the current house that we have. Run-off?

MS. ROOD: We did talk about drainage.

MR. FORD: We did. There is a 12-inch pipe that you saw at the end of it in. That was required; there was a natural swale that went through that whole area. There are drainage inlets on the other side that pick up all the water and carry it down through that area. It'll be guttered, drains, sump pump.

MS. ROOD: You're going to have snow jacks on it?

MR. FORD: Everything's going to be tied into, you know, I mean, what do you mean by snow jacks? The only metal portions are on the dormer. My garage has a four foot over hanged to posts in front of the garage. We're matching that on the front, and those are the only small sections of steel that'll be up there, everything else is asphalt. So, then it's going to have the asphalt to gutters everything tied into that drain that goes into the back, everything underground.

MS. ROOD: I did figure out you're run off.

MR. FORD: My dad's a retired drainage salesman. I used one in the house, and I have another one in the back, which is going to go in into the backyard. It's huge, like half circle, it gets buried, and its stone, it's vacant. You dump water.

MS. ROOD: Like a dry well, a bubbler pit.

MR. FORD: Basically. It's massive. We're going to dump everything into that. Whatever doesn't drain out of that fills to the top and then goes out the pipe, and it'll tie into the rest of the drainage.

MS. ROOD: You're building is even bigger than the other guy's building. So, an inch of rain is going to shed 1 308 gallons and the gully washers we've been getting lately, it's even gotten wet on the inside of my riding arena, and I've got double drainage all the way around the building and out.

MR. FORD: With the rest of the yard and everything we did, the drainage we did, I am very particular about that, so everything will be tied into something. Like I said, there's a ravine, a gully in the back there that goes down and everything funnels into that. My neighbor cut last year a path to do their side by side and their bikes, their trail bikes and all that through there, and he's got a pipe. It continues from where that pipe is. It goes back there because that's the swale that all the water goes through. He's got a pipe under his driveway or his path back there, and once you get past that, it dumps into that ravine, and it just goes out from there.

MS. PRYOR: Did you speak to any of your neighbors?

MR. FORD: There's only one neighbor that will even see it, and I did speak to him, and I spoke to him again, we walked it again, like tonight before we came over here. He doesn't oppose it. He didn't want to put his name on any documents or anything like that, but he said, I don't oppose it. It's your property, do what you want. The only other neighbor that contacted me, he wasn't sure where it was going. He's up front. I think he was worried it was going in front of our current house between us there and he was like, what trees are you going to take out, I said nothing is going over there, so, he was fine with it.

MS. ROOD: Any other questions.

MS. PRYOR: I can't remember, is the building going to be lit?

MR. FORD: Lit? Like sconces that you put on the side of your garage or something like that.

That's all. No. Nothing. Aesthetic wise, where there's a side, a man door, the light there.

MR. BALLARD: You said you are putting in a foundation because you're putting in a partial basement?

MR. FORD: As long as you're doing it, might as well put a basement in it. I'm not a big fan of pole barns. Longevity-wise, I'm not sold. Long time ago when you had a telephone pole that was coated and a lot of things you can't use now, you can stick it in the ground, and it lasted a long time. I'm not comfortable with that. If I'm going to do it where it's going to stand, you're not going to have issues, and I wanted the foundation. As long as I was doing a foundation, you might as well put a basement in, you're digging it out anyway. So, that's what we did.

MS. ROOD: Is it a full basement?

MR. FORD: Partial.

MS. ROOD: So, you'll have storage down there, too. So, it's kind of like having two levels.

MR. BALLARD: Is that the spot you hide from your wife so she can't fill it with that, too. You said she's got everything in the attic. Yeah, I mean, I get 750 above

MR. FORD: I have 750 above the garage, and there's a walkway. It's got to a very excessive point. We are overflowing. I need to do something with it.

MS. PRYOR: Would you consider going 10 feet smaller?

MR. FORD: I've calculated it, four feet will bring me down 120 square feet, aesthetically or my neighbor sees, that's not going to change anything.

MS. PRYOR: Anybody else here, who would like to speak on behalf of this petition? Then, I'll make a motion to close the public hearing.

2nd BY: MR. MAY

ROLL CALL

MS. PRYOR

MR. MAY

MR. BALLARD

MS. ZYLINSKI

MS. ROOD

MR. MAY: I would like to make a motion to accept petition 637:

Approve x Deny _____ Reserve Decision _____
Table _____ Time Frame _____

Conditions to approval:

(1) Does it create an **undesirable change to the character of the neighborhood**?

Yes [] No [X]

(2) **Can the benefit** sought by the applicant **be achieved if the variance is not granted**?

Yes [] No [X]

(3) Is the requested variance **substantial**? Yes [] No [X]

(4) Will the variance have an **adverse effect on the physical impact or environmental conditions of the neighborhood**? Yes [] No [X]

(5) Is the alleged difficulty **self-created**? Yes [X] No []

2ND BY: MS. PRYOR

ROLL CALL

MS. PRYOR

MR. MAY

MR. BALLARD

MS. ZYLINSKI

MS. ROOD

APPROVED

Petition# 638 – Brookfield Properties of WNY, 7840 Boston State Rd, seeking an **AREA** variance to create lots that do not have the required frontage on a public street.

MS. ROOD: From Code Enforcement Officer Bob Reed:

Respectable Chairperson Rood and Conscientious Board members,
Petitioner wishes to obtain a variances for his property at 7480 Boston State Rd. The proper permit process was followed for construction, but as was recently discovered by the builder constraints for the funding stream at the federal level from Freddie Mac prohibit further funding on this parcel as planned. The large parcel is being divided into 3 smaller parcels from 1. Further, the parcels are in a split zoning of R-A and R-3, with the buildings being constructed on the solely on the section of the R-3 zoning.

The variance required is as follows:

Pursuant to Article XXIII Lot Frontage on Streets Required for Dwellings

§ 123-122. No dwelling shall be erected on any lot which does not have immediate frontage on a street held by the owner thereof in fee simple, subject to easements of record, as defined in this chapter.

Frontage: Required

Provided: None

Right of way easement: Provided in the deed to all parcels

Recommendation was made to seek a variance even though at present time there is an easement. A map has been provided showing the parcels and has been issued proper SBL numbers by the Assessor. The zoning is correct for these units and no other variances are required.

FROM: Sarah desJardins, Planning Consultant

RE: June 2025 ZBA petitions

Chairman Rood and Board members:

Regarding Petition# 638, Brookfield Properties of WNY is seeking an area variance to create lots at 7840 Boston State Road that do not have the required frontage on a public street. This action is classified as a Type II Action under SEQR and therefore is not subject to review under SEQR.

MS. ROOD: Make a motion to open the public hearing.

2ND BY: MR. BALLARD

ROLL CALL

MS. PRYOR

MR. MAY

MR. BALLARD

MS. ZYLINSKI

MS. ROOD

NICHOLAS TUTTLE: Good evening member of board. Nicholas Tuttle appearing on behalf of petitioner, from Attea and Attea. I appreciate you taking the time tonight. I was shocked that it went this quickly with the other matters. We are here today looking for SBL numbers to be issued. We are dividing one parcel into three different parcels for commercial funding. We've been doing this commercial funding for quite a while now. As you know, it does not go very quickly, so this is kind of a last-minute item to close on phase two of the project. I do have larger blow-ups of the survey if you would like copies of those. I know we've provided a larger one.

MS. ROOD: We have we do have some.

MR. TUTTLE: Perfect. I just wanted to make sure. I have highlighted it too to show the parcels on where they're going, if you like. If you would like them.

MS. PRYOR: You went through the effort, sure, might as well.

MS. ROOD: I just want to note too that I did have a call from Paul Ziarnowski, the Chair of the Planning Board, and he said that this whole subdivision has already been approved, and that basically this is a formality for the funding.

MR. TUTTLE: That's where we're at right now. So, that's why we're seeking that. Looking at the balancing test, I believe that our proposal does show favorable in our case for the balancing test. Everything has already been approved, the buildings have already been constructed or are very close to being completed right now. We're not looking at changing any of the scope of the project. We're just looking at putting on paper, lines basically on the survey to allow for the funding to move forward. If there are any further questions, I would be happy to answer anything that you may have.

MS. ROOD: So, you're splitting that one down the middle.

MR. TUTTLE: Yes. There are buildings on both sides that would be going down the center of the parking lot. There are easements of record already. We have the deed descriptions, and the descriptions are in the package that were provided to you. We are ready to record those when necessary and when approved.

MS. ROOD: It's good to see where the delineation is specifically, appreciate that.

MR. TUTTLE: There's a very large map that we provided that folds out. There is another one if you need to see it.

MS. ROOD: An even bigger one from the planning board room?

MR. TUTTLE: Yes. I have another copy here, too, if you want to see it.

MS. ROOD: Anyone have any other questions? Make a motion to close public hearing.

2ND BY: MR. MAY

ROLL CALL

MS. PRYOR
MR. MAY
MR. BALLARD
MS. ZYLINSKI
MS. ROOD

MS. PRYOR: I'd like to make a motion to approve petition 638. Conditions to approval.

Approve x **Deny** **Reserve Decision**
Table **Time Frame**

Conditions to approval:

- (1) Does it create an **undesirable change to the character of the neighborhood**?
Yes [☐] No [☒]
- (2) **Can the benefit** sought by the applicant **be achieved if the variance is not granted**?
Yes [☐] No [☒]
- (3) Is the requested variance **substantial**? Yes [☐] No [☒]
- (4) Will the variance have an **adverse effect on the physical impact or environmental conditions of the neighborhood**?
Yes [☐] No [☒]
- (5) Is the alleged difficulty **self-created**? Yes [☐] No [☒]

2ND BY: MR. BALLARD

ROLL CALL

MS. PRYOR
MR. MAY
MR. BALLARD
MS. ZYLINSKI
MS. ROOD

MS. ROOD: All right. Thank you.

MR. TUTTLE: Thank you for your time.

MS. ROOD: Any other business to be brought before this board? Are there any applications for July?

BOARD CLERK: I believe one.

6. New business
None

7. Old business
None

8. Motion to Adjourn

MS. PRYOR: Make a motion to close

2ND BY: MR. MAY

ROLL CALL

MS. PRYOR

MR. MAY

MR. BALLARD

MS. ZYLINSKI

MS. ROOD

CLOSED – 8:32PM