

ZONING BOARD OF APPEALS  
Town of Lewiston 1375 Ridge Road  
Lewiston, New York 14092  
Thursday – July 11, 2024

**Agenda- Citrine Power LLC Model City Road (A), RS Homes & Construction Management LLC Miller Road (B)**

Present: Heuck, Machelor, Sandonato

Absent: Conti and Warnick

Presiding: Norman Machelor, Chairman

Pledge of Allegiance

**A motion to approve the minutes of June 13, was made by Huck, seconded by Sandonato and carried.**

Machelor: If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to deny or grant requests to vary the Town of Lewiston Code, hence a variance request to allow or disallow a project brought to us because it cannot be built or performed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance to continue the project or denial to prohibit a project as presented. So, with that I would like to open the public hearing for Citrine Power LLC Model City Road SBL 102.02-2-1 is there someone to speak to this?

Cela Bernie: Yes

Machelor: Would you come forward and state your name and address into the microphone because we use that to get into the minutes.

Bernie: Is that good can you hear me?

Members: Yes

Bernie: Hello my name is Cela Bernie I am the principal for Citrine Power so I am representing the company. We are here today to ask

Kreps: Can you hold on one second the mic is on

Bernie: I feel like it is

Krep: Ok now I can hear you I am sorry.

Bernie: My name is Cela Bernie I am the principal for Citrine Power. We are a solar developer in commercial and community developers in the northeast. We have systems and projects across the northeastern states, New York, New Jersey and Connecticut etc. We are here in front of you today to get your thoughts about an area variance that we requested about a possible solar project that we are completing on the closed landfill on Model City Road. Currently and I won't make it very long but if you have it in front of you, if you don't have it in front of you, I can give you the... so that you can pass it along we didn't bring the large oh perfect. So, we are currently asking for an area variance from the northern side from the western side from the property line from 100 to 50-foot setback. So, the northern property line is basically the landlord's own property it's abutting its own property so Modern landfill is abutting its own property that's the northern side. The western side is with the National Grid transmission corridor there are transmission lines as well as 3 phase line where are project is going to be

ZBA- 07-2024 (A)

interconnecting too. It's a very narrow piece of strip that's owned by National Grid and we want to get a property well were asking for an area variance from a 150 foot there as well. And then this other...

Machelor: Did you say a 150?

Bernie: No from a 100 to 50.

Machelor: To 50.

Bernie: And then the second one we're actually asking setbacks to the abutting the rural residential zoning. On the west side where the National Grid transmission corridor is technically from the Town's zoning perspective it's a rural residential zoning district but that's not a rural or residential area at least that specific piece of property because of the transmission corridor and there are transmission lines on it. We were asking for a area variance on that specific case from 200 feet to 50 feet. Those are the only two that we are asking for. We're not asking for anything on the eastern side or on the southern side. We're going to get by to by the setback that is already a part of zoning bylaw.

Machelor: Ok would you say again. So, the way that you said it on the northern side you're going from 100 to 50 on the transmission side on the west side you're going from 150

Bernie: From 200 to 50

Machelor: It's 200 they want you 200 feet from them.

Bernie: They don't want us anywhere that's just the zoning law.

Machelor: Ok

Bernie: They don't have any...

Machelor: Comment on.

Bernie: Actually, they do they told us that we have to be 10 feet on either way from their transmission line.

Machelor: Ok.

Bernie: That's their rule from themselves we're asking for the rural residential. Based on your current solar zoning bylaw the rural residential area has to have a 200 setback.

Machelor: Ok. Even though there are no residents.

Bernie: Yes exactly. It's not a residential location.

Sandonato: Ok that makes sense.

Machelor: And this is a reduced project from before.

Bernie: Correct.

Machelor: Can you speak to what the reduction is in size.

ZBA- 07-2024 (A)

Bernie: The reduction in size is about almost 30% we increased it in order to make sure that we are really not on the south side that we are not asking for any setbacks on the south side at all.

Machelor: Ok. Ok questions from the board?

Heuck: No, she just answered them all.

Machelor: Ok thank you! Is there anyone else that would like to speak to this project? Sir. Hi Dom.

Heuck: Hi Dom.

Domonic Balassone: I live at 1315 Ridge Road. My concern was the south side of that project and I was just wondering how much of a change on the south side of their project is it now compared to the last meeting.

Machelor: Well, that's a good question. I was trying to get to that when I asked her about the size of it has changed but Dom if you want to come up here, I'll show you what it looks like on the plan. Ok so your house is here this one 1315 this is their new plan.

Balassone: Ok

Machelor: Their old plan is here. The old plan came right up to this tree line. The tree line will stay and then this will be whatever it is.

Balassone: Ok. What are these lines for?

Machelor: I don't know.

Balassone: So, this is where it's at now.

Machelor: This is where they are asking for this piece over here.

Machelor/ Balassone taking

Machelor: Ok.

Serianni: Norm can I ask a couple questions to the applicant.

Machelor: Yes sir.

Serianni: If you don't mind. So, you provided in your application a number of answers to question that are referred to in the balancing test for the area variance. I would just like to elaborate for the record the alternatives that you explored and why those alternatives were not feasible in order to make the project viable with regards to the 50 foot I am sorry the 100-foot 200-foot setbacks on the north and west property lines. Can you elaborate on that.

Bernie: Sure of course. As we mentioned we came before the zoning board with a different plan and we substantially changed our previous conversations and it's already been extremely reduced in terms of the size and for it to be feasible we just needed these variances from a finical stand point.

Serianni: Ok. And just for some clarification I guess I was just looking for some elaboration on these two points here. With regards closed landfills not being able to puncture for environmental reasons could you explain that.

ZBA- 07-2024 (A)

Bernie: Sure. So solar generally solar panels are very good reason probably only use to make use of a closed landfill typically closed landfills have a clay cap or some sort of cap so that there's no odors or any kinds of hazardous gases that kind of come out of them. And there are monitoring wells we are not allowed by the DEC by the state or anyone EPA to actually drill into that cap right, because then we would be creating a lot of hazardous gas or any type of material. We can't really do that. What we typically do not us only this is the industry standard on all closed landfills because we can't put the racking that are in solar panels are going to be sitting on into the ground with screws like we would have done on a regular property we put then on ballast logs. These are ballast logs that sit on top of the cap that don't puncture the cap and then our system sits the racking system sits on top of that ballast log. And those are generally a little bit not a little bit but essentially more expensive, because we have to be extremely careful not to damage the landfill.

Serianni: So that's part of the reason why the project would not be viable.

Bernie: Exactly. It's all of our... to build that kind of project.

Machelor: There seems to be a lot of space because we just had a resident come up where his house is. There's a lot of space between the place you are currently planning and the old plan.

Bernie: Ok.

Machelor: Is there a reason that you didn't take more of that property without going into... you wouldn't have had to get a variance anyway.

Bernie: That's a very good question. We truly didn't want to ask for a variance from the south side because we know our neighbors were sensitive for coming that way. And we figured it might make sense because we are only asking for a variance from our own property not mine necessary but the landlords own property.

Machelor: Yes

Bernie: And to our west it's really not a residential property. So, between those two commercial industrial properties we thought that would be more demine than asking anything from the neighbor's side residential side.

Machelor: Ok.

Serianni: One other question. Just to make sure that you are clear on this you also know that you'll have to go through site plan approval and special use permit.

Bernie: Yes. Yes 100 percent.

Serianni: So, this is just a question in regards to the setbacks on the north and west bound.

Bernie: Exactly. If we can get. If we were to get the variance, we start now doing our engineering to the Planning Board specifications right. So, we know exactly where we are going to sit on the landfill and then we start doing everything because they have long list on the solar zoning bylaw that we have to abide by all sorts of things. And that's not only in Lewiston in every project that we do we have to do it for ourselves as well as for engineering purposes. But this is the first step so that we know exactly where we are and then we start laying it out and then go to the Planning Board. So, there will be multiple steps into this process which we are well aware.

Serianni: I have no further question.

Bernie: Thank you!

**ZBA- 07- 2024 (A)**

Machelor: Ok

Heuck: I have no questions.

Machelor: This is an open public hearing is anyone else like to speak to this project? Ok I will close the public hearing. And ask for a motion.

Serianni: Before you make a motion, I would just ask that you make first the finding that the application for area variance type 2 action pursuant to SEQRA it's an area variance. And second if you are going to make findings, I would just ask that well actually I would suggest that rather than make a motion today you table the motion have a written motion submitted for the record which include the findings that are based on what was presented to the record today.

Machelor: Well, that's a good idea. That's a good idea.

Serianni: That's my recommendation.

Machelor: I also would like to say to that we only have a 3-member board today and projects like this are large enough that I would like our full board to be able to rule on them. So, with that I'll except what a motion to just table till next meeting. Ok

**Sandonato: I'll make that motion.**

**Heuck: I'll second it.**

**Machelor: Make motion made in seconded tabled until the next meeting in order to get a written response and to be able to appear before the full board.**

**Bernie: Thank you!**

**Machelor: Your welcome.**

**ZBA- 07-2024 (B)**

Machelor: Ok. Second one is variance request RS Homes & Construction LLC Miller Road SBL 131.08-2-26. Someone here to speak to that. Yes Sir.

Raj Sharma: Owner of RS Homes. The biggest problem is alright is a policy of national grid I wasn't sure...

**(unable to be transcribed)**

My building was done last year and survey approved survey proof of these and nothing was brought up more or beyond...

Define easement of 25 feet even the transmission line running across the lot. So, I am talking about east and west going across transmission line being owned by national grid. Site plan...

The whole thing starts up until Building inspector Tim Masters got the email from National grid saying that the easement of 25 feet is not at all defined as part of their policy because they need from 37 half feet from the center point of the power line. Nobody was aware of this new policy given the pole on the company before national grid. So long story short I worked the lot and up until the end of June I was ok I did my diligence last year I called national grid I called building Department and this lot was buildable if we give them 25 feet of easement. With that there I started the construction thing I got this message right in the middle

**(unable to be transcribed)**

So, we have been doing what we can together with the building department especially Edward and Tim Masters they have been great. We have pleaded our case back and forth for almost a month now so long story short as we are sure I say ok there is no reason to go and keep discussing it so I come up with a practical realistic solution for everybody. With the perception that each party thinks they are right even I think I am right. I don't know if Lewiston thinks right. Everyone thinks they are they are the best they won't listen. Anyway, I said let me come up with a solution the problem never ending. I am already in \$60,000 plus so with all due respect it's unfortunate that this 60,000 plus I am requesting a 6-foot variance like 10,000 dollar one feet. So that's the conclusion of pleading my case. So, I can flip my house and reduce my 2-car garage to one car garage and I agreed what other policy who's right or wrong its ok. I will give you what you need 37 and half from the center line of power line. So technically I am giving them 12 and half feet more than allowed. **(unable to be transcribed)**

15 feet of frontage 15 northside setback. I feel that I can put my building in with a better design I am ready to reduce my 2-car garage to one car garage just to keep going. This whole thing has taken almost a month. So finally, around like 2 weeks back 3<sup>rd</sup> party real estate manager her name is Pamela and agreed finally to what I proposed. With all good questions with the building department Tim and Ed pleaded my case very well. Part of the problem one is already resolved so I am here to request everybody part 2 of this problem is in house problem because what we thought left here... **(unable to be transcribed)**

Plead your case if there's a... **(unable to be transcribed)**

You'll be fine so. Given the seniority of the direct neighborhood and everybody saying this thing distance between the existing houses 14 to 15 feet so even if we give the variance of 6 feet distance between houses will be almost the same. So, with that I believe if this variance is approved and excepted by board that, that will open up my construction because I already put a lot of money.

Machelor: Can you come up a minute. Come on up. So, this is the house you are proposing.

Raj: Yes

Machelor: This is the powerline right here.

Raj: Yes, which we will be giving them 37 ½ feet. If you don't mind look at the survey.

Raj and Machelor talking cannot hear due to papers on the mics.

Machelor: The only thing asked to do today is to allow you to have a 6 ½ foot rather than 12 1/2.

**ZBA- 07-2024 (B)**

Raj: Exactly. Long story short. Yes.

Machelor: So, this 6 ½ feet is where on here?

Raj: If you look at north, north south if you look at right here this one is from where we are doing south to north. This is the powerline we are doing this side right here you see 6.5

Machelor: And that's... who's over there?

Raj: Gentleman right here.

Machelor: Ok you're the neighbor. How much space is there between the neighbor's house.

Raj: So, if you follow the rule of 15% then general rule then definitely here again is a 12 feet so if I add up 12 and 6 it's going to be around 18 feet or so. This side never almost 12 ½ feet if you do the same frontage so what I am saying is 12 plus 6 almost 18 feet which is more than existing to further down the street.

Machelor: This 6 ½ feet is from here to here

Raj: Right. Tim Masters wrote it up because it has to be minimum 6 feet. Ok, I will give you 6 1/2.

Machelor: Ok

Raj: So that will be in compliance of the fire code. So that way I can lay out my building as it is the permit is issued, I don't have to spend money on an architect to revise my plan. Only thing is that I would leave it the smaller garage. Initially it was 25x20 so I will be like 14 feet garage. I am willing to sacrifice because I am losing land here and giving 12 ½ feet more land here so I am requesting to help me out with this 6 feet more on this side. You can not build anything you can't do anything. If you look at it in the broad scheme the 28 their subdivision was approved there's a road in between. So that road also will allow me anymore.

Machelor: Well, that's not an issue. That's why I bought you up. Because we need to make sure we're talking about the right thing.

Raj: Right

Machelor: You only want to talk about

Raj: 6 ½ feet. 6 ½ feet is what I am requesting.

Machelor: Ok. Thank you! This is an open meeting. So, is anyone like to speak to this? Yes Sir. Please state your name and address.

John Riscio I am here with my wife Duana Scarpelli we live at 5945 Miller Road we are the property that is directly adjacent to the north end of the property. So, this variance would affect us directly. We understand the applicant's situation I am here to request the board to consider conditions before approval of the variance. In the form of some kind of barrier or a fence that the applicant would have to put in as part of condition of granting the variance.

Machelor: Ok a fence

Riscio: Some kind of a barrier yes.

ZBA- 07-2024 (B)

Machelor: Do you know how much side yard you have.

Riscio: Well, we meet the 12 ½ to town code.

Machelor: Just

Riscio: Just right. So, this would be just for privacy and the expectations that we had moving into the town. That we would have the same consideration of the other houses in the neighborhood.

Machelor: Ok. You know about the fence requirements?

Riscio: No

Machelor: Well, he could have a 6 foot you could have a 6-foot fence up to the edge of the house and then from then from the edge of the house to the front you could have a 4 foot. So, he could request a 6-foot fence that could be approved by the town. Say ok you could have a 6-foot fence and then you get into the fence regulations how the fences can be built and what they can look like and what face you got. He would have to face the good face toward you.

Riscio: Yes.

Machelor: Ok that's it you think.

Riscio: That's it that's our main concern.

Machelor: Ok thank you! Anyone else want to speak to this? Questions from the Board?

Sandonato: Does the applicant for the variance agree that he'll put in a fence?

Machelor: We will have to see.

Raj: Yes.

Machelor: You heard this discussion.

Raj: Yes, I heard and I said I will agree. Yes, I agree.

Machelor: Essentially what we would do obliviously is to say we make a motion and then attach to that motion we like this recommendation because we don't do that. Because we don't do fences. We can send it forward with a recommendation that the neighbor would appreciate a fence and the Town can decide whether that's a good idea. Ok.

Serianni: Would you like some opinion on that?

Machelor: Sure.

Serianni: So, you can make your variance conditioned on his acquiring and constructing of a 6-foot fence otherwise in conformance with the provision of the zoning code as part of your approval. So essentially you would issue the motion to grant the variance conditioned on the applicants acquiring and constructing a 6-foot fence on the north property lines.



**ZBA- 07- 2024 (B)**

Machelor: To be approved by the Town.

Serianni: Yes, well it wouldn't have to go to...

Machelor: Would it fall in the regulation.

Serianni: It wouldn't have to be approved by the Town Board. It would just be by the Building Department.

Machelor: Oh ok. Anymore questions?

Members: NO

**Machelor: Let's have a motion.**

**Serianni: Declare it a type two.**

**Machelor: Ok I will close the public hearing. Thank you!**

**Heuck: The only regards to this it is a unique situation for the applicant that's for sure. But I see it as a making a motion to approve the variance to the other side from 12.5 to 6.5 which is 50% and with the condition that he erect a fence or construct a fence according to code on the north side property.**

**Sandonato: I second it.**

**Machelor: Ok motion made in seconded. Everyone hear that. Ok. I will call the question then. All those in favor say AYE.**

**Members: AYE**

**Machelor: Opposed. Please poll the board. That means we have to say individually that we say yes.**

**Serianni: Just call the names.**

**Kreps: Gary Heuck: Yes Norman Machelor: Yes, and Henry Sandonato: Yes**

**Machelor: Ok that's how that's done. Ok motion been made in the seconded its all approved. Everyone hear it. Thank you! Thank you for coming. I would like to close the hearing or close the meeting. Motion to adjourn.**

**Heuck: Make a motion to adjourn**

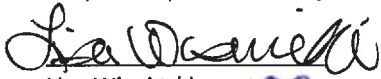
**Sandonato: I second it.**

**Machelor: Ok all in favor say AYE**

**Members: AYE**

**Machelor: We are adjourned. Thank you!**

Respectfully submitted by



Lisa Wisniewski  
Building Dept Clerk



Norman Machelor  
Chairman