

TOWN OF CORTLANDVILLE ZONING BOARD OF APPEALS
DRAFT Public Hearings/Meeting Minutes - Monday, 25 January 2021 – 6 PM
Water & Sewer Garage – Terrace Road – Cortland, NY

Board Members (*absent)

John Finn, Chairman
Thomas Bilodeau
Joanne Aloï
Bernice Potter-Masler
Carlos Karam

Others Present

Bruce Weber, Planning/Zoning Officer
Joan E. Fitch, Board Secretary (via Zoom)
John DelVecchio, Town Attorney (via Zoom)

Applicants & Public Present (per Nick Alteri, C'ville Reception)

Matt Lester for WellNow Urgent Care, Applicant; Attorney Corey Auerbach & Engineer Drazen Gasic for Source Renewables, Applicant; Anthony Gizzie.

The Public Hearing was opened at 6 p.m. by Chairman John Finn, who read aloud the Legal Notice as published in the *Cortland Standard* on 13 January 2021, as follows:

NOTICE IS HEREBY GIVEN that a public hearing before the Zoning Board of Appeals of the Town of Cortlandville will be held Monday, January 25, 2021 at 6 p.m. at the Cortlandville Water & Sewer Garage across the parking lot from the Raymond G. Thorpe Municipal Building, 3577 Terrace Road, in the Town of Cortlandville, New York, to consider the following applications pursuant to the 1986 Zoning Law:

1. *In the matter of the application of Route 222 Cortlandville, LLC (WellNow Urgent Care), for property located at 1096 Route 222, Tax Map No. 86.13-01-58.100, for Area Variances in the terms and conditions of Section 178-111B & 112 B4, Table 1, 113 note 2A to allow for an off-premise sign with an area and height greater than allowed & closer to property line, and to allow for a greater number of building-mounted signs with an area greater than allowed.*
2. *In the matter of the application of Source Renewables for property located on Locust Avenue, Tax Map No. 76.20-01-08.000, for a Use Variance in the terms and conditions of Section 178-123.3D 3a, to allow for a ground-mounted large scale solar energy system in an R1 District and for an access road for commercial use.*

The above applications are on our website at www.cortlandville.org or at the office of Bruce A. Weber, Planning & Zoning Officer, Raymond G. Thorpe Municipal Building, 3577 Terrace Road, Cortland, New York, call (607) 756-7052 or (607) 423-7490. Persons wishing to appear at such hearing may do so in person, by Attorney, or other representative. Communications in writing in relation thereto may be filed with the Board or at such hearing.

Attendance at the meeting will require you to wear a mask, practice social distancing, and consent to your temperature being taken. We request that only one member of the household attend due to space limitations.

John Finn, Chairman
Zoning Board of Appeals

(Note: Proof of Publication has been placed on file for the record.)

PUBLIC HEARING #1**Route 222 Cortlandville, LLC, Applicant/Rossler-Herwood Properties, LLC, Reputed Owner – South Side of NYS Route 222 – TM #86.13-01-58.100 – Signage for WellNow Urgent Care**

Chairman John Finn recognized Matt Lester, representing the developer who was seeking an area variance to allow for an off-premise sign with an area and height greater than allowed and closer to the property line, and to allow for a greater number of building-mounted signs with an area greater than allowed, as shown on the materials accompanying the application. It is noted that this is a revised application dated 1/6/21, (see Minutes of this Board dated 11/24/20).

Mr. Lester explained that they have decreased the requested amount of signage, removed the monument sign, moved the proposed sign on the rear of the building, and changed elevation as shown. PZO Weber advised that illumination of the signs is not a factor.

Chairman Finn asked if there was anyone present who wished to speak on this matter; there was no one.

**With everyone being heard who wished to be heard,
Chairman Finn closed the Public Hearing at 6:08 p.m.**

DISCUSSION/DECISION

Member Tom Bilodeau, in reviewing the applicant's renderings, had PZO Weber reiterate the requirements for signage.

At the request of Chairman Finn, Member Joanne Aloï proceeded with the required questions (balancing test) for an area variance; the responses given by the ZBA members, were as follows:

1. Whether an undesirable change would be produced in neighborhood character or detriment to nearby properties?

Findings – Free-Standing Sign: No. All Board Members present agreed.

Building-Mounted Signs: No. All Board members present agreed.

2. Can the benefits sought by applicant be achieved by other means feasible to the applicant?

Findings – Free-Standing Sign (15 ft. H): No. All Board Members present agreed.

Building-Mounted Signs: Yes. All Board members present agreed.

3. Is the requested variance substantial?

Findings - Free-Standing Sign: No – Member Karam. Yes – Chair Finn, Members Bilodeau, Aloï & Potter-Masler. Building-Mounted Sign: Yes. All Board members present agreed.

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?

Findings – Free-Standing Sign: No. All Board Members present agreed.

Building-Mounted Signs: No. All Board members present agreed.

5. Has the alleged difficulty been self-created?

Findings – Free-Standing Sign: No – Chair Finn, Members Bilodeau & Karam. Yes – Members Aloï & Potter-Masler. Building-Mounted Sign: No – Chair Finn, Members Bilodeau & Karam. Yes – Members Aloï & Potter-Masler.

After a brief discussion, a motion was made by Member Aloï to grant the area variance for the off-premise free-standing sign with an area and height greater than allowed and closer to the property line than allowed, as requested. The motion was seconded by Member Karam, with the vote recorded as follows:

Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Aloï		
	Member Potter-Masler		
	Member Karam		

Motion carried.

This becomes Action #1 of 2021.

A motion was then made by Member Bilodeau to approve the area variance for Sign A and allow the choice of either Sign B or Sign C as proposed. The motion was seconded by Member Aloï, with the vote recorded as follows:

Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Aloï		
	Member Potter-Masler		
	Member Karam		

Motion carried.

This becomes Action #2 of 2021.

Mr. Lester commented that identification of the building posed what he considered a “life safety” issue, especially when it comes to identification by ambulances/emergency vehicles. He suggested amending the motion to set a maximum square footage.

After considering the representative’s plea regarding the building-mounted signs, **the motion was amended by Member Bilodeau to grant the area variance for building-mounted Sign A as requested, with choice of either Sign B or C OR the option of three building-mounted signs not to exceed 185 square feet in area. The motion was seconded by Member Aloï, with the vote recorded as follows:**

Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Aloï		
	Member Potter-Masler		
	Member Karam		

Motion carried.

This becomes Action #2 of 2021 as Amended.

PUBLIC HEARING #2

Source Renewables, Inc., Applicant/Gunzenhauser Real Estate, Reputed Owner – West Side of Locust Avenue – TM #76.20-01-08.000 – Use Variance – Solar System in R1 District

Chairman Finn recognized Corey Auerbach of Barclay Damon (law firm) who had appeared at this Board’s public hearing held on 24 November 2020, at which time he asked that the Board not take any action on this request for a Use Variance in order for him to provide some additional information to clarify some issues the Board had; reference is made to those Minutes.

Attorney Auerbach stated that the applicant commissioned a NYS Licensed Appraiser to prepare an Economic Viability Analysis to provide the competent financial evidence referenced in Item 1 of the Town's "Use Variance Findings & Decision" form completed by the applicant. The analysis is to serve as financial evidence to demonstrate the lack of a reasonable return. A detailed explanation is contained in an 8 January 2021 letter to Chairman Finn, c/o PZO Bruce Weber, from Attorney Corey A. Auerbach, Partner – Barclay Damon, representing the applicant, a copy of which has been placed on file for the record.

Attorney Auerbach stated that the owner of the property, who has had the property since 1963, cannot get any return on the subject property for any of the uses allowed, and he reviewed the figures/information and other responses set forth in the aforementioned 8 January 2021 letter. Mr. Auerbach also noted that the Cortland County IDA served as Lead Agency under SEQRA and it was determined that there will be no significant environmental impacts from this project.

Planning/Zoning Officer Bruce Weber asked if the applicant has been able to gain access to the City parcel other than thru this parcel? Attorney Auerbach affirmed that this is correct, as an agreement has been reached to access the parcel in the City without going thru the parcel in the Town. (Note: The City of Cortland has approved a second solar facility on abutting land, containing 44.7± A., immediately to the south. The subject parcel in the Town contains 24.4± acres of which the project will involve 21.6± acres. Principle access for the site will be off Locust Avenue in the northeast corner of the project at the bottom of the hill.)

PZO Weber stated there were two issues the Board should address in their deliberations, (1) solar arrays require a Use Variance, and (2) the use of the property for commercial use to access the parcel in the City of Cortland would also require a Use Variance because a business use is not an allowed use in an R-1 District.

Town Attorney DelVecchio advised the Board that the arguments made by Attorney Auerbach, and the evidence that he presented are to be considered in their determination as to whether or not a use variance is appropriate for the overall use of the property as for solar arrays, but also for the access road.

Chairman Finn asked if there was anyone present who wished to speak on this matter; there was no one.

**With everyone being heard who wished to be heard,
Chairman Finn closed the Public Hearing at 7:37 p.m.**

DISCUSSION/DECISION

At the request of Chairman Finn, Member Joanne Aloï proceeded with the required questions (balancing test) for a Use Variance for the **Solar Arrays**; the responses given by the ZBA members, were as follows:

1. Has the Applicant demonstrated that the Applicant cannot realize a reasonable return, and that the lack of return is substantial and has been demonstrated by competent financial evidence?

Finding: Yes. All Board members present agreed.

2. Has the Applicant demonstrated that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood?

Finding: Yes – Members Bilodeau & Aloï. No – Chair Finn, Members Potter-Masler & Karam.

3. Has the Applicant demonstrated that the requested use variance, if granted, will not alter the essential character of the neighborhood?

Finding: No. All Board members present agreed.

4. Has the Applicant demonstrated that the alleged hardship has not been self-created?

Finding: No. All Board members present agreed.

Member Joanne Aloï then proceeded with the required questions (balancing test) for a Use Variance for the **Access Road for Commercial Use**; the responses given by the ZBA members, were as follows:

1. Has the Applicant demonstrated that the Applicant cannot realize a reasonable return, and that the lack of return is substantial and has been demonstrated by competent financial evidence?

Finding: Yes - Member Bilodeau. No – Chair Finn, Members Aloï, Potter-Masler & Karam.

2. Has the Applicant demonstrated that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood?

Finding: Yes - Member Bilodeau. No – Chair Finn, Members Aloï, Potter-Masler & Karam.

3. Has the Applicant demonstrated that the requested use variance, if granted, will not alter the essential character of the neighborhood?

Finding: Yes - Member Bilodeau. No – Chair Finn, Members Aloï, Potter-Masler & Karam.

4. Has the Applicant demonstrated that the alleged hardship has not been self-created?

Finding: No. All Board members present agreed.

With no further discussion, **a motion was made by Member Potter-Masler to deny the Use Variance for a ground-mounted large scale solar energy system in an R-1 District. The motion was seconded by Member Karam, with the vote recorded as follows:**

Ayes: Chairman Finn
Member Potter-Masler
Member Aloï
Member Karam

Nays: Member Bilodeau

Motion carried.

This becomes Action #3 of 2021.

Town Attorney DelVecchio then asked the Board members to clarify their Balancing Test findings and the reason behind them. Responses pertaining to **Solar Arrays** were obtained as follows:

#2. Chair Finn commented he felt what was proposed would not aesthetically be pleasing to the eye from the south; it is not visible from the north. He thought it did not fit in with what the City is doing with regard to their ‘Gateway to the City’ improvement project. Members Aloï, Potter-Masler, and Karam agreed.

#4. Member Aloï stated the Gunzenhausers purchased the property a long time ago and nothing has changed, so the hardship was self-created. The other Board members agreed.

With no further discussion, a motion was made by Member Aloï to deny the Use Variance for an access road for commercial use. The motion was seconded by Member Karam, with the vote recorded as follows:

Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Potter-Masler		
	Member Aloï		
	Member Karam		

Motion carried.

This becomes Action #4 of 2021.

As requested by Town Attorney DelVecchio the Board members clarified their Balancing Test findings and the reason behind them. Responses pertaining to **Access Road** were obtained as follows:

- #1. Member Aloï stated the proposed access road is not a part of the reasonable return and we have not seen any financial evidence relating to this.
- #2. It's an R-1 District and is not something we have control over, and is not an allowable use.
- #3. Board members believed it will alter the neighborhood in respect to aesthetics.
- #4. Chairman Finn reiterated that the Gunzenhausers purchased the property a long time ago and nothing has changed, so the hardship was self-created. The other Board members agreed.

APPROVAL OF MINUTES

A motion was made by Member Karam to approve the ZBA Minutes of 24 November 2020, as submitted. The motion was seconded by Member Bilodeau, with the vote recorded as follows:


Ayes:	Chairman Finn	Nays:	None
	Member Bilodeau		
	Member Potter-Masler		
	Member Aloï		
	Member Karam		

Motion carried.

This becomes Action #5 of 2020.

ADJOURNMENT

At 8:07 p.m., on a motion by Member Potter-Masler, seconded by Member Aloï, with everyone present voting in the affirmative, the meeting was adjourned.


Joan E. Fitch, Board Secretary

Draft emailed to KRP, AR, Bd. Members, JD,
BW, DD, DC, KM on 1/11/21.