

**ZONING BOARD OF APPEALS
TOWN OF CHESTER**

1786 Kings Highway
Chester, New York 10918
October 14, 2021

PRESENT: Gregg FEIGELSON, Chairman
Walter POPAILO, Member
Dan DOELLINGER, Member
Tom ATKIN, Member
Julie BELL, Member
Giuseppe CASSARA, Alternate Member

ABSENT: 0

ALSO PRESENT: Melissa FOOTE, Secretary
Rob DICKOVER, Counsel

Chairman Feigelson called the meeting to order at 7:02 PM and opened with the Pledge of Allegiance

Chairman Feigelson: Hello everyone, the September 9, 2021 meeting minutes that Melissa Foote emailed to us need to be adopted if there are no objections, I'll make a motion to adopt the minutes. Can I get a 2nd?

Member DOELLINGER: I'll 2nd

Member POPAILO: Yes

Member BELL: Yes

Member ATKINS: Yes

Chairman Feigelson: And I say yes, so the **September 9th minutes are adopted.**

Chairman Feigelson: First on the Agenda is **ARTHUR ALZAMORA, 26 NEAL DRIVE** this was a Referral from the Planning Board. Originally it consisted of an interpretation for whether the proposed site was the Front yard, the Side Yard, Rear Yard. That went away at the last meeting. The applicant has conceded that the proposed site is in fact the Front Yard. The application is complete we did the SEQRA determination. It was a Type II, and no further action is needed. We asked that the permission to visit the site be granted, and we also asked that the actual location of the site be marked off so we could visit the site and get an idea of what the impact might be. Hopefully most of the board if not all had a chance to visit the site.

Member BELL I didn't, is there a picture of it?

Chairman Feigelson: Yes, I will pull up a picture of it.

****Picture is being shared on the screen for viewing****

Chairman Feigelson: This is the relevant code §98.40D1b, it basically says you can't put solar arrays, ground mounted on the front yard. Pam from Infinity Solar is joining us. Do you have anything you'd like to add?

Pamela Ziolkowski/Infinity Solar: Nothing has changed. I can tell you that the old location would have been right in the middle of that field behind the yard, so anyone would have seen it. The new location is almost completely covered in between all of the trees on a slope.

Member Popailo: Gregg, I have to jump out of the meeting, please let Giuseppe be the 5th on the Board.

Chairman Feigelson: OK, no problem. Does anyone have any other questions?

Member ATKINS: Did any of the neighbors get back that they were against it?

Chairman Feigelson: We'll get to that Tom.

Member BELL: How many panels are going up?

Chairman Feigelson: Its 71ft x 10ft is that right Pam?

Pamela Ziolkowski/Infinity Solar: Yes.

Member BELL: Yes, I'm just trying to figure it out, because I've had mine for years.

Pamela Ziolkowski/Infinity Solar: There are 36 panels.

Member BELL: You're not going to see it because it's behind these trees, am I correct?

Pamela Ziolkowski/Infinity Solar: It's almost completely concealed.

Member BELL: Where they wouldn't have been concealed in the back yard?

Pamela Ziolkowski/Infinity Solar: Right, they would have been in the middle of the backyard.

Member BELL: We wouldn't have been able to say anything if they weren't concealed in the back right?

Pamela Ziolkowski/Infinity Solar: It was approved.

Chairman Feigelson: The backyard would have been allowed by the code. I would be interested to those of you that were able to visit the site. Any thoughts, any concerns?

Member ATKINS: I went there about an hour ago. It's a lot higher than the house. The homeowners won't even see it in the new location. It's going to get 100% sun, but the backyard is good too. In the back they would see the solar panels, but up there in the front they won't see them it's like 50/60ft higher than their house.

Member BELL: Will anyone else see them Thom, like riding by?

Member ATKINS: You know, the homeowners won't see it in the front but if it's in the backyard they'll be looking at it all the time. Their house is so much lower than where the solar panels will be.

Member BELL: OK, who else went there?

Chairman Feigelson: I visited the site, my impression was first off this a private road and it's not visible from the public road, that's one thing I noticed.

Member ATKINS: The people who live on the left side, on 16 Neal drive were walking and they didn't really care about the Solar in the new location.

Chairman Feigelson No other questions or comments?

Before we can open the Public Hearing, I need to confirm with Melissa that the mailings are in order, and that the publication in the Time Herald Record was submitted?

Melissa Foote: Yes it is.

Chairman Feigelson We can make a motion to open the Public Hearing for Alzamora.

Member BELL: I will make the motion.

Member ATKINS: I'll 2nd that.

Chairman Feigelson: Roll Call Votes

Member DOELLINGER: Yes

Member ATKINS: Yes

Member BELL: Yes

Member CASSARA: Yes

Chairman Feigelson: Did we receive any correspondence relating to this application?

Melissa Foote: We did not receive any correspondence, nothing.

Chairman Feigelson: No one seems to be showing up to make a comment for or against, so I will make a Motion to Close the Public Hearing.

Member ATKINS: I'll 2nd.

Member DOELLINGER: Yes

Member BELL: Yes

Member ATKINS: Yes

Member CASSARA: Yes

Chairman Feigelson: Okay public hearing is officially closed and now we will move on to the 5 factor review

- #1 Whether there will be an undesirable change in the character of the neighborhood, or a detriment to nearby properties?

Member DOELLINGER: No

Member BELL: No

Member ATKINS: No

Member CASSARA: No

Chairman Feigelson: No

- #2 Can the applicant achieve their goals via a reasonable alternative that does not involve the necessity of an area variance?

Member DOELLINGER: No

Member BELL: No

Member ATKINS: No

Member CASSARA: No

Chairman Feigelson: No

- #3 Is the variance substantial?
Member DOELLINGER: Yes, because it was already approved in the back yard. The applicant chose to put it somewhere else, for esthetic reasons.
Member BELL: Yes, he has other options in the backyard.
Member ATKINS: Yes
Member CASSARA: Yes
Chairman Feigelson: Yes

- #4 Will the variance have an adverse impact on physical or environmental conditions in the neighborhood or district?
Member DOELLINGER: No
Member BELL: Yes
Member ATKINS: No
Member CASSARA: No
Chairman Feigelson: No

Counsel DICKOVER: Can we get some elaboration for the member for decision or findings on the question?

Chairman Feigelson Yes.

Counsel DICKOVER: The record should reflect the reason for your determination, and we have a split feeling on this one. I'd like to see the reasons for your finding in record.

Member DOELLINGER: : no, because the residence is located on a private road, so what's actually considered the front of the house, for front yard purposes is a private road anyway as opposed to a front yard on a public road where more of the general public would have an opportunity to see it.

Counsel DICKOVER: Anyone else?

Member BELL: I think because it's going from the back to the front, it is substantial. It's going from one yard to another. That is a big parcel. It's not a 1/4 of an acre.

Counsel: For purposes of a decision, can the applicant tell us how big this parcel is, it doesn't appear in our written record, approximation of the size is fine?

Pamela Ziolkowski/Infinity Solar: It is 5 Acres.

Member BELL: Yes, that's big.

Member ATKINS: If we allow this one, down the road somebody else might want it. If we let this one go in the front yard why can't I? There is plenty of room in the back.

Counsel: I think we have enough in record to explain of the finding.

Chairman Feigelson OK, thank you.

- #5 Is this a self-created difficulty?

Member DOELLINGER: Yes, the applicant is making the decision to move them from a place where they could go in a permitted location to a front yard.

Member CASSARA: Yes

Member BELL: Yes, this was already approved and now they want to change it.

Chairman Feigelson: Yes, they have a clear alternative and they chose to propose this alternative. The next step is to move forward to make a motion to draft a decision. Just for the record, I will make the motion to direct counsel to prepare a written decision based on our findings, to grant the requested variance to §98.40D1B to permit a ground mounted solar array in the Front yard.

Member ATKINS: I'll 2nd

Member DOELLINGER: Yes

Member CASSARA: Yes

Member BELL: No

Member ATKINS: No

Chairman Feigelson: Yes

Chairman Feigelson: That is a majority of the Board, so Pam this motion was to draft the decision. The Vote will be at the next meeting. Ok?

Pamela Ziolkowski/Infinity Solar: OK

Counsel DICKOVER: Just for the record Mr. Chair, before we leave this action for SEQR purposes, this will be a Type 2 Action, with Zoning Board acting as lead agency can make that finding and we will reflect it in the decision as a Type 2 Action no further environmental review is required for this matter.

Chairman Feigelson: Yes, we made that determination at the last meeting. Thank you for reminding. OK, that's it for this application, thank you Pam.

Pamela Ziolkowski/Infinity Solar: Thank you.

Chairman Feigelson: It looks like we have a no show for **Qemal Xharo**. I believe Counsel at the last meeting you suggested we put it on the agenda again. I'm not sure how we logistically proceed for this one. We can discuss it, but we're going to get to the point where we want to schedule a Public Hearing, and there's no applicant to address. So do you have any recommendations?

Counsel DICKOVER: It looks like the matter was scheduled to be heard on May 13, 2021 and the applicant failed to appear that evening.

Chairman Feigelson: That's correct.

Counsel DICKOVER: Then I think the same thing occurred on September 9, 2021.

Chairman Feigelson: Yes, that's correct.

Counsel DICKOVER: That meeting we suggested we have the Secretary send the applicant a letter advising them that the matter would be heard again this evening and if they failed to appear the Board would act upon the matter, and since we haven't had any proof presented with respect to their case, the Board would have no other alternative but to deny the application. Melissa was this matter noticed for a Public Hearing this evening or No?

Melissa Foote: No, not for a public hearing. I sent a letter after you asked for me to notify the Applicant after the September 9, 2021 meeting, the week of September 13, 2021. Earlier this week I emailed the same letter that we haven't heard from you, please confirm if you received this. I have not heard back from him. He has replied in the past.

Counsel DICKOVER: I have a copy of notice for a Public Hearing on May 13, 2021 on this matter.

Chairman Feigelson: No we never scheduled a Public Hearing for this.

Counsel DICKOVER: My suggestion at this point. We try to be as accommodating to applicants as we can be, they've paid a fee. They've been told at least on one occasion that the matter would be deemed abandoned or denied by this board. I think perhaps at this point. Melissa in addition to the email you did send a letter right?

Melissa Foote: Yes, and it's in our files.

Counsel DICKOVER: It seems to me that the board has 2 choices, you can accommodate this applicant, and send one more letter if they fail to appear at the next meeting the board will treat their application as having been abandoned. That would allow you to close it, or you can make a motion tonight and deem it an abandoned application.

Chairman Feigelson: Any thoughts from the Board? I'm open to the idea of leaving it open, and give them one last chance.

Member ATKINS: One more Time

Member DOELLINGER: Yes, one more time.

Member BELL: Yes, one more time.

Member CASSARA: Yes, one more time.

Chairman Feigelson: OK, Melissa we need you to take action and reach out to the applicant again. The language needs to be pretty definitive, that it's his last chance.

Melissa Foote: OK

Member Bell: What does he want to do again?

Member DOELLINGER: He wants to put a 6ft fence in the front yard.

Chairman Feigelson: My impression is that the fence is already there.

****Viewing pictures of the property****

The applicant has done a lot of work on this application. When I pulled in to look, you can see the fence.

Member BELL: So what does he want now?

Chairmen Feigelson: I'm not sure how it came to be but it was a building permit denial. It's an open fence. So it needs a variance for it.

Member DOELLINGER: So his motivation may not be that strong since he already has it up there.

Chairman Feigelson: I'll make a motion to adjourn the meeting.

Member BELL: I'll 2nd that.

Member DOELLINGER: Yes

Member BELL: Yes

Member ATKINS: Yes

Member CASSARA: Yes

Meeting adjourned at 7:21 pm

Respectfully submitted,

Melissa Foote
Zoning Board of Appeals Secretary