

**MINUTES OF A REGULAR MEETING  
OF THE ZONING BOARD OF APPEALS OF THE TOWN OF POMPEY**

**October 14, 2024**

**7:00 PM**

**Pompey Town Hall**

Board Members Present: David Tessier, Chairman  
David Hale  
Kevin Sharpe  
Donald Neugebauer  
Seara Haines

Also present were Town of Pompey Codes Enforcement Officer Tim Bearup and Attorney Amelia McLean-Robertson.

Chairman Tessier called the meeting to order at 7:00 pm.

The purpose of the hearing was to review an application submitted by Kyle Payne located at 7837 Brown Gulf Road., tax parcel 009.-03-13.0. Applicant is requesting a Use Variance to install a freestanding solar array in the rear of the property, which lies in the (HR) Hamlet Residential Zoning District. The location of the proposed solar array neighbors to a (F) Farm District Parcel. Freestanding solar arrays are not permitted in the (HR) Hamlet Residential District but are permitted in the (F) Farm District.

Local Zoning Law – 165-16.2 E (2) Solar energy conversion systems

Present was the applicant, Kyle Payne.

Chairman Tessier reviewed the application. The property is 4.4 acres, and the total acreage to be physically disturbed is one acre, perhaps even smaller. The applicant checked “yes” that the use is permitted under Town Code on the application; however, it is not a permitted use, which is why a variance is needed

The installation contractor is Revamp Energy LLC. Doug Jarvis from Revamp is also present. Drawings of the project were submitted for Board review.

Chairperson Tessier noted that he lives across the street from Austin Jarvis from Revamp Energy LLC. He has no connection to the applicant, as he was only familiar with the previous owners of the property.

K. Sharpe asked if the applicant lives on the property as a Cicero address was listed on the application. Yes, he does. The applicant used to live in Cicero, but moved into this property mid-August. The applicant was unaware of the solar restrictions at the time he purchased the property.

Mr. Payne and Mr. Jarvis presented the Board with color photos of the project location. The Board reviewed the photos extensively and compared them with the survey that was provided with the application.

Chairman Tessier surmised the conversations of the Board. Photos were provided to the Board, and the photos were taken from where the solar array will be placed. There will be two structures, both 10 ft. by 38 ft. They will be on a slope, and the total height will be 8 feet. There is a shed on the property that is approximately 10 ft. high.

The applicant explained that there was not enough roof space and angle to supply the home with the power required, so that is why they did not pursue a roof-mounted system. The total wattage of the system will be 23k.

D. Neugebauer stated that the panels will produce 23k, and that is the amount that is allowed. They determined this amount based on the needs of the home.

K. Sharpe asked the applicant if he was planning to use battery storage. No, he is not.

D. Hale asked if they overproduce power, would it go back to the grid. Yes, it will, and then he would be credited back for this amount. Chairman Tessier noted that the allowed amount is 25kw.

D. Neugebauer asked if they could add more to the structure in the future. If they were going to add more than 25kw, then they would need to obtain an additional variance in the future.

D. Neugebauer made a motion to open the Public Hearing at 7:30 pm. D. Hale seconded the motion. All were in favor, none were opposed. The public hearing was opened at 7:30 pm.

### **Public Hearing**

**Linda Herlihy-3741 Watervale Road.** Ms. Herlihy is in the next house down on Watervale Road. She is curious to know how far back on the property the system will go. She noted that this seems like a large amount of solar panels. Chairman Tessier noted that this seems to be the average size of system that has been presented before the Board. She also wanted to know how much land would be disturbed, because there are water issues in the area that run into her property. She noted that previous owners of the property disturbed the land with a backhoe and now she has a lot of water on her property during heavy rain. Other neighbors have had issues with their wells because of the digging. The problems have been with the supply. She asked if there is going to be anything put in place to camouflage the system. The Board

welcomed Ms. Herlihy to look at the photos provided to the Board. There is a split rail fence already in place. D. Hale asked what direction the panels would face. They will face southwest. Ms. Herlihy viewed the photos. D. Neugebauer did not think that the panels would be visible from the road.

The applicant currently mows the area, and the system will not be placed on a cement pad.

D. Hale asked if the runoff from the panels would go into the pond. Yes, it will.

D. Neugebauer noted that it does not appear that Ms. Herlihy will be able to see where the panels will be. He asked for more information on the construction on the system.

There will be large screws that will go into the ground approximately six feet deep to secure the system. There will be no concrete poured. There will be no disruption of any soil or vegetation. They will use an auger head on a skid steer to dig the holes. It will be non-invasive.

**Jim Schoonmaker-3590 Watervale Road.** His home would also not allow for a roof-mounted solar system. They sympathized with the applicant in this area. They were aware of the prohibition of freestanding units in the hamlet area. They believed that this was because of the density in the hamlet areas. This is one of larger properties in the area. When they got the notice, he walked down and looked at the property and viewed the location of the system. He did not realize the property sloped so significantly, and therefore does not believe that anyone will know the system is there due to the location. He hopes that it works out as well for the applicant as it did for them. He and his wife were there to express their support of the project.

D. Hale made a motion to close the hearing at 7:51 pm. S. Haines seconded the motion at 7:51 pm. All were in favor, none were opposed. The hearing was closed at 7:51 pm.

D. Hale asked if the system would have been taken down if a new owner moved in. No, the variance is for the property, not the owner.

### SEQR

This is an unlisted action, so a short form SEQR is required. The ZBA acted as the lead agency. A. McLean-Robertson read the questions from the SEQR form. The answer to all of the questions was no, or small impact.

K. Sharpe made a motion for a negative SEQR declaration at 7:58 pm. S. Haines seconded the motion at 7:58 pm. All were in favor, none were opposed. The motion carried at 7:58 pm.

D. Neugebauer asked if it was necessary to impose a restriction on the kW if the Town Ordinance allows for 25 kW. No, it is not. Additionally, he asked if it was necessary to require a corrected drawing of the project, as the one submitted was incorrect.

The applicant can prepare a corrected map and will send it to T. Bearup once it is completed. There will be a condition placed on the approval that these will be submitted prior to a permit being issued. The drawing needs to show specs for the footers and the exact location of the system on the land. If the applicant decided to move to battery storage in the future, an additional permit would be needed. This could also be added as a condition of approval.

### **Use Variance Criteria**

The Board addressed the four criteria for a use variance.

1. The applicant cannot realize a substantial return-substantial as shown by competent financial evidence.
2. The alleged hardship is unique and does not apply to substantial portion of district or neighborhood
3. The requested variance will not alter essential character of the neighborhood
4. The alleged hardship has not been self-created.

The Board noted that almost all applications that are presented present with self-created hardship. The ZBA reviewed the four criteria for a use variance, and discussed each one individually. Upon completion of this review and comment, the Board determined that the applicant has successfully demonstrated an unnecessary hardship, and that the project could be approved as presented.

D. Neugebauer made a motion to approve the use variance based on updated footing detail being presented, no battery storage and the location of the panels is as shown on the map dated 10/14/2024 and signed by David Tessier at 8:11 pm. D. Hale seconded the motion. All were in favor, none were opposed. The motion passed at 8:11 pm.

The meeting was adjourned at 8:12 pm.

Respectfully Submitted,

Sarah LoGiudice  
Secretary to the Zoning Board of Appeals  
Town of Pompey