

Town of Allegany Zoning Board of Appeals
Public Hearing/Meeting Minutes
Monday, **November 1, 2021** at 7:00 P.M.
Birch Run Facility, 3790 Birch Run Rd, Allegany, NY

APPROVED

Present:

John Jones, Chairman
Don Sue
Ron Kyser
Jeff Baxter
Carol Ozzella
Kari Faulkner, Secretary

Also Present:

Michael Giardini, Kinley Corp; Edwin Becker; Ty Baccile, Clean Choice Energy; Carol
Zimmerlin, Tetra Tech

Chairman Jones opened the meeting with the Pledge to the Flag at 6:58p.m.

Minutes

Mr. Kyser made the motion to approve the minutes of the August 2nd Meeting, as written. 2nd by Ms. Ozzella. Chairman Jones – aye; Mr. Sue – aye; Ms. Ozzella – aye; Mr. Baxter – aye; Mr. Kyser – aye. Carried.

New Business

Michael Giardini/Kinley Corp, Cranberry Rd. – 0.015 acre/653.4 sq. ft. Variance of Minimum Lot Area (SBL# 94.061-1-40.2)

This application is a request for a minimum buildable lot variance, located on Cranberry Rd. The intent of the applicant is to construct a single-family residence on said parcel.

Mr. Giardini, of Kinley Corp, addressed the board, of the minimal nature of the requested variance. Less than 3% under size of the required lot area. Municipal sewer and water are available, reducing the required minimum lot area to 0.50 acre. A survey provided by Mr. Giardini measures this parcel at 0.485 acre. Mr. Giardini is requesting a variance of 0.015 acre or 653.4 sq. ft.

Ms. Ozzella made the motion that a Public Hearing is not required for this application. 2nd by Mr. Sue. Chairman Jones – aye; Mr. Kyser – aye; Mr. Sue – aye; Ms. Ozzella – aye; Mr. Baxter – aye. Carried.

The board discussed the Town of Allegany Zoning Ordinance regulations, the character of the neighborhood, the potential for improvement of the currently vacant lot, the lack of physical or environmental impact that would be created, and the minimal size of the requested variance.

Ms. Ozzella made the motion to approve 0.015 acre/653.4 sq. ft. variance of the required minimum lot area. 2nd by Mr. Sue. Chairman Jones – aye; Mr. Kyser – aye; Mr. Baxter – aye; Ms. Ozzella – aye; Mr. Sue – aye. Carried.

The board advised the applicant to contact the Town of Allegany Code Enforcement/Building Inspector, Jerry Dzuroff, to further discuss the requirements for obtaining a building permit.

Edwin Becker/Tetra Tech, Five Mile Rd./Buffalo Rd. – Zoning Determination (SBL# 93.002-2-15.1)

This application is a request for a Zoning Determination. While some of this parcel is zoned A-F, a substantial portion is zoned R-1. The applicants are requesting the entire parcel be re-zoned as A-F. The intention is to install a solar array after the re-zoning has been completed.

A letter of intent was submitted by Carol Zimmerlin, of Tetra Tech, on behalf of the landowner, Edwin Becker, it reads as follows:

September 14, 2021

Chairman John Jones
Zoning Board of Appeals
Town of Allegany
Town Hall
52 West Main Street
Allegany, NY 14706

Subject: Letter of Intent for Zoning Interpretation / Determination Request for Parcel ID #93.002-2-15.1

Dear Chairman Jones:

Tetra Tech, Inc. and CleanChoice Energy, on behalf of the landowner, Edwin F. Becker, (the Applicants) are hereby submitting a Notice of Intent to apply for a zoning interpretation / determination for Parcel ID #93.002-2-15.1 (hereafter referred to as “Parcel” or “Site”). The Town of Allegany *Zoning Ordinance III, Article III, Section 303(E) District Boundaries*, states

that “where physical or cultural features existing on the ground are at variance with those shown on the Zoning Map, the ZBA shall interpret the district boundaries”.

The land parcel identified as Parcel ID #93.002-2-15.1 is shown on the Town of Allegany Zoning Map as having both ‘R-1 Single Family Residential’ and ‘A-F Agricultural-Forestry’ zoning (see Figure 1 – Town Zoning Map, with the parcel outlined in red). Per review of aerial maps dating back to 1939, the landuse of the A-F zoned portion has consistently been forested, wildlife habitat. The entire parcel has consistently contributed to the rural character of the Town.

The applicant requests that the ZBA consider the following points when making a zoning interpretation / determination for the Parcel.

- The Comprehensive Plan is intended to guide general types of development that are appropriate for a particular area of the Town. The Town of Allegany Zoning Map adopted 10-11-2016, depicts district boundary lines that are intended to follow the Comprehensive Plan and Mapping.
- The Applicants investigated, delineated, and reported Physical Site Characteristics / Features of the R-1 Portion of the Site in the Fall of 2020 and again in the Spring of 2021:
 - The Applicants confirmed the location of an unnamed tributary of Five Mile Creek, which bisects this portion of the Site, similar to what the Town Comprehensive Plan Hydrologic Features Map (see Figure 2) and NYSDEC ERM Map (see Figure 3) show. However, in addition, the Applicants identified Physical Characteristics previously unmapped by the Town, County or State.
 - These Physical Characteristics include hardwood forest, wildlife habitat, hunting stands, hydraulic features, and a large wetlands complex exceeding 12.4 acres.
 - The large wetlands complex is associated with the tributaries of Five Mile Creek and consists of palustrine emergent (PEM), palustrine scrub-shrub (PSS), and palustrine unconsolidated bottom (PUB or pond) wetlands (see Figure 4).
- The abovementioned Physical Site Characteristics would present a constraint on future residential development of the R-1 portion of the Site.
- After review of the Physical Characteristics of the zoned R-1 portion of this Parcel, the Applicants believe the Parcel is mischaracterized by the current R-1 zoning.

According to Section 3.2 of the Comprehensive Plan, the Comprehensive Plan and its associated Maps serve as a basis for the Town Zoning Map. Per desktop review of online data, it appeared that there were only two non-protected NYSDEC mapped streams in the Project area (see

Figures 2 and 3), however per the wetland delineation performed by the Applicants in the Fall of 2020 and Spring of 2021, it was discovered that the majority of the R-1 zoned portion of the Site is covered by wetlands (see Figure 4).

The Comprehensive Plan designates that a Residential Land Use district be designed primarily for single family residences. Wetlands would present a constraint on future residential development. Per the Town of Allegany Comprehensive Plan, Section 2.8 - Summary of Development Opportunities and Constraints, it states that *wetlands represent a constraint to development since the land disturbance should not occur in or near wetlands*. In addition, in Section 3.1 – Goals and Objectives of the Comprehensive Plan, Goal 2 says, *encourage future development that is respectful of the natural environment and is located on land suitable to support proposed development*.

The Applicants are asking the ZBA to take the aforementioned information into account, especially pertaining to the R-1 zoned portion of the Site, when making a parcel zoning interpretation / determination for Parcel ID #93.002-2-15.1. Per our findings it appears that Physical Characteristics/ Features of the entire Parcel are in alignment with A-F zoning, not R-1 zoning.

Please let us know if you have any questions or require addition information regarding this request. Photos showing wetland and stream areas that span the R-1 zoned portion of the Site are also attached for your review in Figure 5.

Sincerely,

Edwin F. Becker, property owner

Encl:

Figures:

1. Allegany Zoning Map showing Parcel Location
2. Hydrologic Features Map from Town Comprehensive Plan
3. NYSDEC ERM Map
4. Wetland Delineated Resources Map
5. Wetland Photos

After a through discussion, regarding the history of the parcel, it was determined this application should be referred to Cattaraugus County Planning Board, for review and further interpretation.

Mr. Kyser made the motion to refer this application to Cattaraugus County Planning Board. 2nd by Ms. Ozzella. Chairman Jones – aye; Mr. Sue – aye; Mr. Baxter – aye; Ms. Ozzella – aye; Mr. Kyser – aye. Carried.

Mr. Baxter made the motion to adjourn the meeting. 2nd by Mr. Sue. Chairman Jones – aye; Mr. Sue – aye; Mr. Kyser – aye; Mr. Baxter – aye. Carried.

The meeting was adjourned at 8:20 p.m.

Next Zoning Board of Appeals Meeting December 6, 2021 7 P.M.

Respectfully submitted by:

Kari Faulkner, Zoning Board of Appeals Secretary