

# Town of LeRay

## Zoning Board of Appeals - Minutes

October 5, 2022

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### Call to Order

On October 5, 2022, the LeRay Zoning Board of Appeals held their meeting in the Town of LeRay Conference Room. The meeting was called to order by Chairperson Oatman at 6:30 P.M. who lead the room in the Pledge of Allegiance.

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### Open Regular Meeting

Board members in attendance: Jan Oatman – Chairperson, Jacalyn Tunstall - Member, Christian Favret - Member, David Mushtare - Member, John Hallett - Member, Lee Shimel – Zoning Enforcement Officer, and Morgan Melancon – Secretary to Planning and Zoning. Additionally, Mike Callahan, Shawn McCormick, Lane Netto, Julia Braunmueller, Roger Abbey, Fran Abbey, and Troy Chisamore were in attendance.

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### Approval of Minutes

The minutes from the regular meeting on September 14, 2022 were reviewed by the Board members. A motion to approve the minutes was made by Member Tunstall and seconded by Member Mushtare.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					

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### Correspondence and Communication

Chairperson Oatman asked if there was anyone who was not on the agenda that wished to address the Board. There was none. Chairperson Oatman asked Ms. Melancon if there was any correspondence to which Ms. Melancon replied there was none.

**Public Hearing at 6:30 PM for an Area Variance Application for Jenkins Road Solar, LLC.** The proposal is to install a solar facility on 25 acres of a 49-acre property. NexAmp is requesting a 90-foot Area Variance for the rear-yard setback per section 158-130, subsection J(2b) of the Zoning Code. The rear yard abuts an existing solar project which is owned by NexAmp. The project is located on County Route 16, tax parcel #54.19-2-22.13.

Chairperson Oatman asked the Board to review the Area Variance Application for Jenkins Road Solar. It was discovered that the map the Board had reviewed was not the latest map. Ms. Melancon retrieved the correct map for the Board’s review. Ms. Braunmueller was in attendance as the representative and gave a brief presentation.

Ms. Braunmueller stated that the panels overlapping the side yard had been moved to the rear-yard, as requested, and the four (4) encroachments were labeled. Ms. Braunmueller explained that the rear-yard setback envelope was 120 feet from the back, and encroachment number four (4) needed the greatest relief. Chairperson Oatman clarified that on the original design, the Board had been asked for a 30-foot setback and a 90-foot area variance. Ms. Braunmueller reviewed the map and said it measured 44 feet from the edge of the property line to the panels and measured 28 feet from the fence to the property line.

Chairperson Oatman reviewed the Jefferson County Planning Department’s comments on the project. The county advised the applicant to revise the variance application to eliminate all reference to the Western setback request since it was no longer being discussed. The Board agreed that the existing documentation adequately showed there was no longer a side yard variance and felt revising application was unnecessary. The County also advised that the Board obtain written permission from the property owner indicating that he consented to the project. The Board agreed that the Letter of Authorization adequately satisfied the request as the owner gave NexAmp permission to represent them. In addition, the property owner was at the meeting. Chairperson Oatman asked the Board if they had any other comments or questions. The Board had none.

Chairperson Oatman opened the Public Hearing at 6:43 PM and Secretary Melancon read the hearing notice as published in the Watertown Daily Times on September 20, 2022. Chairperson Oatman asked if there was any comments from the audience. Hearing none, a motion was made by Member Hallett and seconded by Member Mushtare to close the Public Hearing at 6:44 PM.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					

Chairperson Oatman said the statute provided that in making its determination on an application for an Area Variance, the Board must balance the benefit to be realized by the applicant against the potential detriment to the health, safety, and general welfare of the neighborhood or community if the variance were to be granted. In balancing these interests, the Board must consider the following five factors:

1. The requested variance will not create an undesirable change in the character of the neighborhood or detriment to nearby properties in that the request was at the rear of the property, abutting an existing solar project and therefore would have no impact on the adjacent property.

The vote went as follows:

- Jan Oatman             will     will not
- Christian Favret     will     will not
- Jacalyn Tunstall     will     will not
- David Mushtare      will     will not
- John Hallett          will     will not

2. The benefits sought by the applicant can be achieved by some other feasible method because they could downsize the project or potentially move the project forward.

The vote went as follows:

Jan Oatman	<input checked="" type="checkbox"/> can	<input type="checkbox"/> can not
Christian Favret	<input checked="" type="checkbox"/> can	<input type="checkbox"/> can not
Jacalyn Tunstall	<input checked="" type="checkbox"/> can	<input type="checkbox"/> can not
David Mushtare	<input type="checkbox"/> can	<input checked="" type="checkbox"/> can not
John Hallett	<input type="checkbox"/> can	<input checked="" type="checkbox"/> can not

3. The requested variance is substantial in that the requested variance was a 75% increase.

The vote went as follows:

Jan Oatman	<input checked="" type="checkbox"/> is	<input type="checkbox"/> is not
Christian Favret	<input checked="" type="checkbox"/> is	<input type="checkbox"/> is not
Jacalyn Tunstall	<input checked="" type="checkbox"/> is	<input type="checkbox"/> is not
David Mushtare	<input type="checkbox"/> is	<input checked="" type="checkbox"/> is not
John Hallett	<input type="checkbox"/> is	<input checked="" type="checkbox"/> is not

4. The proposed variance will not have an adverse effect or impact on the physical and environmental conditions of the neighborhood or district because the requested variance was for the rear lot line setback, which abutted another existing solar project and therefore would have no impact on the physical and environmental conditions of the neighborhood.

The vote went as follows:

Jan Oatman	<input type="checkbox"/> will	<input checked="" type="checkbox"/> will not
Christian Favret	<input type="checkbox"/> will	<input checked="" type="checkbox"/> will not
Jacalyn Tunstall	<input type="checkbox"/> will	<input checked="" type="checkbox"/> will not
David Mushtare	<input type="checkbox"/> will	<input checked="" type="checkbox"/> will not
John Hallett	<input type="checkbox"/> will	<input checked="" type="checkbox"/> will not

5. The alleged difficulty was self-created because the project could have been proposed with a different layout so as to fit into the footprint of the property.

The vote went as follows:

Jan Oatman	<input checked="" type="checkbox"/> was	<input type="checkbox"/> was not
Christian Favret	<input checked="" type="checkbox"/> was	<input type="checkbox"/> was not
Jacalyn Tunstall	<input checked="" type="checkbox"/> was	<input type="checkbox"/> was not
David Mushtare	<input checked="" type="checkbox"/> was	<input type="checkbox"/> was not
John Hallett	<input checked="" type="checkbox"/> was	<input type="checkbox"/> was not

Mr. McCormick, who owns a neighboring property asked if he was able to ask a question at this point. Although the public hearing was already closed, the board allowed him to do so. He asked Ms. Braunmueller where the power lines would be run. Ms. Braunmueller explained that the lines will be along the same distribution of the existing poles and the number of existing poles would not be changed. The existing infrastructure would be upgraded to support the project, along with the project on David Jackson's property. Ms. Braunmueller and Mr. McCormick reviewed the map and Mr. McCormick asked

if there would be an increase in the number of transformers to which Ms. Braunmueller said there would not be. Mr. Shimel stated that National Grid required the interconnect to be above ground on all solar projects, but all the lines up to the poles would be underground. Chairperson Oatman explained to Mr. McCormick that for future reference, he should address any questions during the public hearing.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					

After careful consideration and extensive discussion, the Board agreed as the area variance request was for the rear lot line setback of the property, was abutting an existing solar project, was not visible to the other neighbors, and thus would have no impact on the neighboring parcels, that there were no concerns with the request. A motion was made by Member Mushtare and seconded by Member Hallett to grant the Area Variance, for the reasons stated above, of section 158-130 subsection J(2b) of the Zoning Law of the Town of LeRay to allow a 90-foot rear-yard area variance, located on County Route 16, tax parcel #54.19-2-22.13.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					

Chairperson Oatman informed Ms. Braunmueller that Ms. Melancon would send them an approval letter in the mail.

**Review of an Area Variance Application for Lane Netto.** The proposal is to place a 14 x 30 foot shed, 8 feet from the side-yard. Mr. Netto is asking for a 2-foot side-yard variance per section 158-21, subsection A(4) of the Zoning Code, located on Cottontail Drive, tax parcel #74.16-2-3.8.

Chairperson Oatman asked the Board to review the Area Variance Application for Lane Netto. Chairperson Oatman stated that the application had the property listed in an Agricultural District. The Board confirmed that the property was actually in a Mixed-Use District and Ms. Melancon said she would update the information on the application.

Mr. Netto was in attendance as the representative and gave a brief presentation. Mr. Netto had photos of the property on his phone and discussed them with the Board. Mr. Netto said there was a 6-foot privacy fence that was 8 feet off the property line that he wished to line up with the shed. Chairperson Oatman inquired as to what the distance was between the edge of the house and the shed if the shed was to be put at 8 feet. Mr. Netto approximated that the distance would be 30-35 feet. Chairperson Oatman asked what abutted the property on the side yard. Mr. Netto explained that Joe Converse owns a 50-foot access strip next to his property that allows access to farmland behind his property, approximately 150 acres in total. There was no house next to the requested variance, nor behind his property, but one house on the other side-yard. Mr. Netto said Mr. Converse had planned to develop the land behind him but had retired before doing so. Member Tunstall asked if he had discussed the area variance with Mr. Converse. Mr. Netto stated that he hadn't discussed it with him yet, but he could and did not think Mr. Converse would mind.

It was discussed that as the adjacent property was a 50-foot access strip and was not of sufficient width to place a house on it in the future.

Chairperson Oatman asked if the Board had any other comments or questions to which Member Favret asked for clarification on where the fence was to which Mr. Netto explained. Chairperson Oatman clarified that Mr. Netto would be able to place the shed the required 10 feet off the property line.

According to Section 617.5, the Zoning Board of Appeals had reviewed part 1 of the State Environmental Quality Review (SEQR) and determined that the project would not have a significant adverse impact and therefore was classified as a Type II action requiring no further review. A motion was made by Member Favret and seconded by Member Tunstall to declare the action as Type II.

The Board determined that the Area Variance Application met all the requirements for Preliminary Review and that the Area Variance Application was complete. A motion was made by Member Tunstall and seconded by Member Mushtare to deem the Area Variance Application as complete.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					

A motion to set a Public Hearing for the November 9, 2022 meeting at 6:30 PM was made by Member Mushtare and seconded by Member Favret.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					

Chairperson Oatman informed Mr. Netto that the next meeting would be in the Board Room and that a letter would be mailed out, outlining the Public Hearing information. Chairperson Oatman requested that Mr. Netto email the photos of the property to Mr. Shimel for the file.

**Review of an Area Variance Application for Good Morning Rentals.** The proposal is to construct a garage. Mr. Abbey is asking for a front-yard area variance at the greatest relief of 28.5-feet, per section 158-17, subsection A(1b) of the Zoning Code, located on State Route 3, tax parcel #83.08-2-13.3.

Chairperson Oatman asked the Board to review the Area Variance Application for Good Morning Rentals and explained that on state roads, there was a 60-foot setback from the right-of-way. Mr. Abbey was in attendance as the representative and gave a brief presentation.

Mr. Abbey said he wanted to build a garage to the right side of the existing house, approximately 30 feet from the house and 12 feet from the side yard property line. Mr. Abbey explained that if the garage was built any further back, he would have to cut down a row of mature trees. The garage would fit neatly within the proposed space and there was an existing circular driveway in front of it, as well as an existing sidewalk from the house to the proposed side entrance of the garage. Chairperson Oatman stated that the

proposed garage would sit further back than the existing house did and asked if the Board had any other comments or questions, to which the Board had none.

According to Section 617.5, the Zoning Board of Appeals had reviewed part 1 of the State Environmental Quality Review (SEQR) and determined that the project would not have a significant adverse impact and therefore was classified as a Type II action requiring no further review. A motion was made by Member Tunstall and seconded by Member Mushtare to declare the action as Type II.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					

The Board determined that the Area Variance Application met all the requirements for Preliminary Review and that the Area Variance Application was complete. A motion was made by Member Mushtare and seconded by Member Tunstall to deem the Area Variance Application as complete.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					

A motion to set a Public Hearing for the November 9, 2022 meeting at 6:30 PM was made by Member Mushtare and seconded by Member Tunstall.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					

Chairperson Oatman informed Mr. Abbey that a letter would be mailed out, outlining the Public Hearing information.

## Adjournment

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A motion was made by Member Favret and seconded by Member Mushtare to adjourn the meeting at 7:12 PM.

The vote went as follows:					
Member Tunstall:	Yes	Member Favret:	Yes	Chairperson Oatman:	Yes
Member Hallett:	Yes	Member Mushtare:	Yes		
The motion passed.					