



**CHAIRMAN**  
Randy Bogar

**VICE CHAIRMAN**

**SECRETARY**  
Dolores Shaw

## **ZONING BOARD OF APPEALS**

The Town of New Hartford Municipal Offices  
(at The Orchards)  
8635 Clinton Street, New Hartford, New York 13413  
OFFICE: (315) 733-7500 Ext. 2423  
FAX: (315) 793-2036

### **Board Members**

Byron Elias  
Michele Mandia  
Daniel McNamara  
Lenora Murad  
Karen Stanislaus, Esq.  
Timothy Tallman

### **MINUTES OF THE REGULAR MEETING ZONING BOARD OF APPEALS TOWN OF NEW HARTFORD MUNICIPAL BUILDING MARCH 18, 2024**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present Byron Elias, Tim Tallman, Karen Stanislaus, Lenora Murad, Michele Mandia, and Daniel McNamara. Also in attendance were Town Attorney Herbert Cully, Councilman David Reynolds, Councilman David Tehan, Codes Officer Lary Gell, Christina Lacy/Codes, and Secretary Dory Shaw. Chairman Bogar also introduced Assessor Darlene Abbatecola, Planning Board Chair Heather Mowat, and Fire Chief Tom Bolanowski. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting. He explained that the meeting is also being taped.

\*\*\*\*

The application of **Mr. Adam Lark, 14 Tibbitts Road, New Hartford, New York**. Mr. Lark has proposed an expansion of the 2<sup>nd</sup> story to his non-conforming structure. Therefore, the applicant is seeking an Area Variance for the construction of a 2<sup>nd</sup> floor addition to the pre-existing, non-conforming building. Tax Map #339.015-1-7; Zoning: Medium Density Residential. Mr. Lark appeared before the Board.

He explained that his family is growing and needs the additional living space. The plan he is working with suits his needs – the home was built in the 1950's. He is not changing the footprint of the existing house. They want to stay in New Hartford and this is the most feasible way to accommodate his needs.

A few Board Members wanted to know if the new siding will match the existing, etc. Mr. & Mrs. Lark stated the new siding will blend in with what they have there now. They are expanding over the garage so it will have one continuous roof. At this time, the Board asked to see a sketch, which was presented to them to review.

Chairman Bogar asked if there was anyone present to address this application. No response. The Public Hearing closed at approximately 6:15 P.M. Secretary Dory Shaw stated there were no calls received for this application.

At this time, the Board Members reviewed the criteria for an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no - all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no, all in agreement;
- The requested variance is substantial – response: no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in agreement;

- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no, all in agreement.

Motion was made by Board Member Karen Stanislaus to approve the application as presented, and that a Building Permit be obtained within one year of approval date; seconded by Board Member Lenora Murad; and that a Building Permit be obtained within one year of approval date. Vote taken:

Chairman Randy Bogar – yes  
Board Member Tim Tallman – yes  
Board Member Dan McNamara – yes  
Board Member Michele Mandia - yes

Board Member Byron Elias – yes  
Board Member Karen Stanislaus - yes  
Board Member Lenora Murad - yes

Motion was **approved** by a vote of 7 – 0.

\*\*\*\*

The application of **Young/Sommer LLC for Key Capture Energy, LLC** for an Interpretation from the Zoning Board of Appeals. The applicant has proposed the construction of an un-manned 150 MW Battery Energy Storage System (BESS) on property located off Woods Highway and Ariana Lane close to the National Grid sub-station. Interpretation needed to review the information provided to determine if they have an appropriate franchise; and to determine whether a BESS is considered a “substation”. Tax Map #328.000-3-7.1; Zoning: C1 General Commercial. E. Hyde Clarke, Esq., of Young/Sommer LLC, Mr. Sean Peters of H2M and Ms. Lucia Yu, Key Capture Energy appeared before the Board.

Town Attorney Herbert Cully explained that Codes Officer Lary Gell provided documentation the way the Zoning Ordinance defines Permitted Uses. If it is not a Permitted Use, it is not allowed. He read what Schedule A permits. The applicant has provided a letter detailing his interpretation because our Code does define a Public Utility but not a public utility substation. He read some information on a public utility regarding franchises and public service law. Codes Officer Gell did some research and NYSERDA put out a publication. Attorney Cully prepared a rough draft of the law for these type circumstances. There have been some modifications by NYSERDA (New York State Energy Research & Development Authority) adjusting this.

Attorney Clarke felt they met the franchise requirement in the Town Code. The issue is the State of New York doesn't call it a franchise. Information was provided for additional definition on battery storage. They need to be next to the National Grid system. He explained the concept with this request. There is no franchise agreement with the Town. This is highly regulated providing electricity to the public. Key Capture has a number of projects – we are working to meet the State requirement. Codes Officer Gell felt they did not meet the definition.

Board Member Mandia asked who is the actual person going to own this system and how many substations do they have – Key Capture Energy and in New York State they have three operating projects, Saratoga, Rockland County and Buffalo. Ms. Yu explained the energy law and explained solar power compared to battery storage. Board Member Mandia asked about research on toxic gas, what batteries do to the environment, battery life, etc. It was stated there is a new battery recycling plant being built and they try to recapture it. Ms. Liu stated she will send some research done on this.

Chairman Bogar asked if there have been some projects that haven't gone through – it was stated yes. He mentioned trying to use another type as technology changes. He referred to sodium sulfate. Ms. Yu stated they have done studies on this.

Attorney Cully stated the law talks in terms of SEQR review and Planning Board involvement – Special Use Permit. SEQR would address noise, odors all the elements. The Planning Board would be looking into decommissioning plans, fire safety plans, and all things recommended by NYSERDA and interested agencies. Attorney Cully stated the way the law states now this is through the Town law and we are proceeding to enact.

Board Member Elias read the documentation, etc. They have to pass the test for a franchise and wondered why they haven't done it. Attorney Clarke addressed this and why the State has to be involved. He feels there won't be a franchise agreement for a generator or similar to this. He was asked why they can't create a franchise agreement with the Town of New Hartford. Attorney Clarke said he would look into this.

Board Member Mandia addressed this land and if they have approached any neighbors. Mr. Yu said the landowner is Mr. Adler who owns the entire Business Park. They are subdividing the parcel and have an option.

Board Members Murad and Stanislaus feel they need additional information, but when are you thinking of going forward with this project – possibly 2027 or 2028 breaking ground. She referred to the substation. Attorney Clarke addressed how electricity comes in and out and how it is distributed – it is a process.

Chairman Bogar asked why this location – there are residents living there and a nearby mobile home park. Ms. Yu explained the layout of the land and the availability for transmission lines. This is kind of an industrial area; the land is pretty flat and would be close to the substation.

Board Member Tallman asked if there had been any fires – none of their projects. A reference was made to the governor in New York State (Kathy Hochul) putting together a task force as to what went wrong to prevent fires in the future. Ms. Yu was asked if their substation is unmanned. Chairman Bogar asked if something went wrong is there something or someone to monitor this. Ms. Yu said yes – it is monitored. She explained the communication system that goes to the fire department; training will also occur. Also, she explained this is much larger compared to others built and explained what the battery cells look like on the plan.

Ms. Yu referred to the letter from the resident referring to why it is called a substation not energy storage units.

Board Member McNamara asked is this is the largest one – answer: yes. Why would we need one so much larger than Buffalo or Rockland County – Ms. Yu said it is reaching State goals. They are trying to push for this, the other projects were like kick off types. They have other projects with similar size. He also asked if this design report is the general area or designed to support a much larger scale – Ms. Yu said it will help New York as a whole and she explained. Board Member McNamara said it seems like this is a little bit of a larger scale for us to be handling. He thinks a lot of people are concerned about environmental impact. His question is this size substation necessary for our area – how

many homes can handle this. He doesn't see a benefit from this. Attorney Clarke addressed this and regulation on a State level, megawatts, fire safety, etc.

Ms. Yu said the project would be connected to National Grid.

Board Member Elias addressed franchises, i.e. with the Town, State of New York on how it is regulated, agreement?

-Planning Board Chair Heather Mowat is here (not to represent the Planning Board but for information). She explained the process with applications and how reviews are held. She referred to the Town of New Hartford having a volunteer fire department and any involvement with adjoining fire departments in the area. We do not have a local law. She is concerned about this; she feels we need more information to look at this because there is a lot of input. There are residences in this area. She spoke about the input and number of hours. She also referred to decommissioning plan, new technology. She isn't against it but there is no structure as to how to determine how to get certain regulations. She is for smart green energy. She also explained the time review involved through the Planning Board.

Chairman Bogar asked if approved, can they sell it to someone else. Ms. Yu said possibly, but they take pride in developing their projects. They haven't sold any of their projects.

-Fire Chief Tom Bolanowski appeared before the Board. This is new to them as they don't have a lot of rules to go by. They have looked at government comments and want to make sure that those recommendations go forth in the Town. He explained about monitoring systems. They have looked into this and are prepared but there are mutual aid concerns. It would involve other fire districts. Training is needed, especially yearly, and responsible parties. Board Member Tallman asked if they have enough manpower to handle any kind of fire. Chief Bolanowski said yes. Long term water is needed; staffing is required, water supplies addressed. He explained how the cooling process – this is a new challenge for us.

-Mr. James Marsher, 8361 Woods Highway. He has done a lot of research on this (see attached). New technology is wonderful and went on the National Grid site on how they define a substation. It is not agreed on how National Grid defines it. He spent many hours researching this. There are long term availabilities; zinc batteries are extremely safe and last a lifetime. A fire can be disastrous, especially if a battery malfunctions – it becomes a domino effect. According to FEMA, BESS can have flammable ashes. He feels this Board needs to take their time with it. He feels these are suppose to be near solar projects, wind farms, and there is nothing nearby. They will be feeding off National Grid substation.

Board Member Elias asked Mr. Marsher how he would feel is the project doesn't get built until 2027 and they are willing to accept the changes required while building – what are your thoughts. Mr. Marsher doesn't deal with hypotheticals.

Codes Officer Gell stated that tonight it is to determine whether the Zoning Board of Appeals believe that the applicant has proven to the Board that this use fits the Town's definition of public utility/substation. If they feel that it does meet the definition, after that time they will need to go in front of the Planning Board for a full Site Plan Review and its requirements. That is when items that have been asked about tonight will be addressed. Currently, the Town does not have a Battery Energy Storage System (BESS)

as an approved "USE". Currently the applicant is asking to move forward through one of the Town's other approved uses to see if it fits. It is the Zoning Board of Appeals' determination to see if they fit that use. He feels they do not fit that use as a public utility and a substation.

-Ms. Mowat addressed the Board: 1) maintenance agreement should be addressed; 2) any possible sale, bonds, etc. Even if the Zoning Board of Appeals agrees with the applicant, this is a public utility, substation which still has to go through full Site Plan Review.

Mr. Marshner wants to make sure this is done right, safety, etc. He also asked if we know of any municipalities that had a fire issue. Attorney Cully stated that perhaps Herkimer-Oneida Counties Planning Department may know.

Board Member Mandia is not ready to address anything like this right now.

-Ms. Lisa Britt: she lives nearby this project. Her concern is the water table – it is very high. Dripping issues – it can go into the water. There are sewers and wells there which can be contaminated. Out of the six fires, three were in New York. She doesn't know if Governor Hochel addressed this or not.

There being no further input, the Public Hearing was closed at approximately 7:36 P.M.

Discussion ensued regarding a law that would govern some type of road map to the Planning Board. Some Board Members wanted additional information; more research is needed.

At this time, regarding the Interpretation, motion was made by Chairman Randy Bogar that this project is not a substation and it doesn't meet the definition of a substation/criteria; seconded by Board Member Michele Mandia. Vote taken:

Chairman Randy Bogar – yes	Board Member Michele Mandia – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus – yes
Board Member Dan McNamara – yes	Board Member Tim Tallman – yes
Board Member Byron Elias – yes	

Motion carried that this is not a substation by a vote of 7 – 0. All in favor.

Vote on the franchise discussion:

Motion that this is not a franchise by Chairman Randy Bogar; seconded by Board Member Michele Mandia. Vote taken:

Chairman Randy Bogar – yes	Board Member Michele Mandia – yes
Board Member Lenora Murad – yes	Board Member Karen Stanislaus – yes
Board Member Dan McNamara – yes	Board Member Tim Tallman – yes
Board Member Byron Elias – yes	

Motion carried that this is not a franchise by a vote of 7 – 0. All in favor.

Town of New Hartford  
Zoning Board of Appeals Minutes  
March 18, 2024  
Page 6

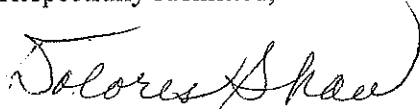
Mention was made to possibly approach the Town Board about a franchise.

\*\*\*\*

Motion to approve the minutes of the December 18, 2023 Zoning Board of Appeals meeting made by Board Member Byron Elias; seconded by Chairman Randy Bogar. All in favor.

Motion to adjourn was made by Chairman Randy Bogar; seconded by Board Member Byron Elias at approximately 7:55 P.M.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dolores Shaw". The signature is written in black ink and is positioned above the printed name.

Dolores Shaw, Secretary  
Zoning Board of Appeals

dbb

## PROPOSED CONSTRUCTION OF A BATTERY ENERGY STORAGE SYSTEM (BESS)

1. According to [National.grid.com](http://National.grid.com), **Battery storage**, or **Battery Energy Storage Systems (BESS)**, are devices that enable energy from renewables, like solar and wind, to be stored and then released when the power is needed most.

**Substations** contain the specialist equipment that allows the voltage of electricity to be transformed and then distributed.

### **BESS's ARE ENERGY STORAGE UNITS, NOT SUBSTATIONS**

2. According to [fema.gov](http://fema.gov), BESS lithium battery cells can experience **thermal runaway** which causes them to release very hot flammable, toxic gases and **can result in an explosion, or a very difficult to extinguish fire**. The local fire services do not have standard operating procedures for BESS fires, nor do the power company and BESS owner. In addition, there are many questions about the toxicity of the battery vent gas. Further research into residential BESS hazards is essential as BESS hazards could eventually become a regular part of dwelling fires.

3. **Environmental concerns:** potential air, soil and noise pollution.

### **QUESTIONS:**

Who would own and maintain the BESS?

How close would it be to neighboring property lines?

What steps would be taken to mitigate air, soil and noise pollution, if possible?

How far can a hazardous smoke plume travel in the event of a fire/explosion?

Why choose a power substation that is nowhere near a solar or wind farm?

Will a land use variance be needed for this project and, if so, why should it be granted?

Is there a New York State-guided plan model for the town to use related to BESS?

What is the insurance liability associated with building and operating a BESS?

**RECOMMENDATION:** The Planning Board should defer until there's ample public and other community input into developing a viable community plan, which would evolve into an ordinance being put in place to deal with Young/Sommer's and any other future requests.

Respectfully submitted,

James and Kim Marscher, 8361 Woods Highway