

**TOWN OF KENDALL  
ZONING BOARD OF APPEALS  
MEETING MINUTES**

**March 9, 2021 at 7:00 p.m.**

ATTENDANCE:	Chair. Patrick Bolton	- absent
	Fletcher Rowley	- present
	Becky Charland	- present
	Shad Speer	- present
	Dan Mattle	- present

Also present: Town Board Liaison Newell, Supervisor Camaratta, Planning Board Chair. Patty Pfister, Code Enforcement Officer Hennekey, Deputy Code Enforcement Officer Strong and Recording Secretary Bakutis.

Public: Brian Harper, NextEra, (DG New York CS III, LLC)  
Kirk Golden, 47 Tearose Meadow Ln., Brockport  
Mary Swierkos, 15758 Roosevelt Hwy. Kendall  
Chris Congdon, 1807 W. Kendall Rd., Kendall  
Perry Congdon, 1807 W. Kendall Rd., Kendall  
Robert Furness, 1745 W. Kendall Rd., Kendall  
Michael Furness, 1879 Peter Smith Rd., Kendall  
Diane Furness, 1775 W. Kendall Rd., Kendall  
Paula Browe, 1783 W. Kendall Rd., Kendall  
Bob McGregor, 1909 W. Kendall Rd., Kendall  
Patty Pfister, 16903 Bald Eagle Dr., Kendall  
Chris Geangiadis, 300 Alexander St., Rochester  
Tom Munzert, Sr., 15959 Bridge Rd., Kent  
Tom Munzert, Jr., 362 Walker Rd.,

Standing in for Chair. Patrick Bolton, Acting Chairman Fletcher Rowley called the meeting to order at 7:04 p.m.

**PUBLIC HEARING FOR A VARIANCE (21VAR02) – TAX ID #31.-1-15.4**

Acting Chairman Rowley opened the public hearing at 7:05 p.m. He read the public notice:

Notice is hereby given that a public hearing will be held by the Zoning Board of Appeals of the Town of Kendall on Tuesday, March 9, 2021 at 7:00 p.m. at the Kendall Town Hall, 1873 Kendall Road, to consider the application of Mary Swierkos, 15758 Roosevelt Hwy., Tax ID #31.-1-15.4. Applicant seeks a variance for a 5-foot-tall fence in the front yard of residential property. Applicant is seeking relief from Article V, Section 265-36 A (3), allowing a 4-foot maximum height. Property is zoned residential agricultural (RA). All persons wishing to speak will be heard at this time. Application is on file in the town clerk's office.

Patrick Bolton  
Chair, Zoning Board of Appeals

Applicant was asked to explain to the board why she was seeking a variance. Ms. Swierkos told the board she would like to have a 5-foot fence constructed on her property because she has two dogs and one other dog that will be a performance agility dog and when she teaches this dog that comes from police lines, she may be able to jump the 4-foot fence just with her drive alone. She lives on a busy road, Roosevelt Hwy., and she stated there are a lot of wild animals that come into her front yard and she basically just wants to keep her dogs safe. Member Charland asked if it would be a chain link fences. The applicants answer was yes, it will be a chain link fence with double and single gates for access. DCEO Strong added she lives on an ample size lot, relatively rural where she is located. She does not feel that her three dogs and the one dog with high drive that is being trained for agility will stay in the boundaries of an invisible fence.

Acting Chairman Rowley closed the public hearing at 7:07 p.m.

The Zoning Board members discussed the appropriate criteria for the variance, they reviewed the documents submitted by the applicant. Becky Charland motioned to approve the variance, seconded by Dan Mattle. All in favor. Chairman Rowley asked for a roll call vote with the following results:

21VAR02 (SWIERKOS) – ROLL CALL VOTE:	Dan Mattle	- aye
	Becky Charland	- aye
	Shad Speer	- aye
	Fletcher Rowley	- aye

**APPROVAL GRANTED:** For a variance of a 5-foot-tall fence to be constructed in the front yard of residential property. Applicant is seeking relief from Article V, Section 265-36 A (3), allowing a 4-foot maximum height. Variance is unanimously approved 4-0.

**APPROVAL OF MINUTES:**

Minutes from the March 9, 2021 meeting submitted by Recording Secretary Bakutis were reviewed. Shad Speer moved to accept the minutes as presented, seconded by Dan Mattle. All in favor.

**PUBLIC HEARING FOR A VARIANCE (21VAR03) – TAX ID #31.-2-15**

Acting Chairman Rowley opened the public hearing at 7:15 p.m. He read the public notice:

Notice is hereby given that a public hearing will be held by the Zoning Board of Appeals of the Town of Kendall on Tuesday, March 9, 2021 at 7:15 p.m. at the Kendall Town Hall, 1873 Kendall Road, to consider the application of Frederick Stone, 1716 West Kendall Rd., Tax ID #31.-2-15. Applicant seeks variances for a ground mounted solar array with a 23-foot side set-back and a 73-foot front set-back. Applicant is seeking relief from Article V, Section 265-22 E(2) requiring a side set-back of 25-feet and front set-back of 90-feet. Property is zoned residential agricultural (RA). All persons wishing to speak will be heard at this time. Application is on file in the town clerk's office.

Patrick Bolton  
Chair, Zoning Board of Appeals

Acting Chairman Rowley asked if the applicant would like to tell the board why he is seeking a variance. Applicant, Frederick Stone, was not present. His contractor Kirk Golden, Ecouis Solar, Residential & Commercial Solar Panel Installer, explained the reason Mr. Stone was not present, saying he recently had surgery. He explained to the board the reason the variance is needed. The location Fred picked on the property for the ground mounted solar array does not have enough side and front footage to meet the code. Fred Stone is seeking relief to have his ground mounted solar system to be 23-feet from the north property boarder. The front set-back is 73-feet from the center of the road and to the side of the home but behind the plain of the foundation of the home. The property line kind of cuts back to the south, so if they move the array so many feet off the road, they get back in to close to the house and the house will shade out the array. The 23-feet was figured off the fence line, he says there may be another actual 2-feet on the other side. They are behind the front of the house, behind the foundation, Kirk tells the board that location is optimal for picking up sunlight. Dan Mattle asked if it was north of the house, Kirk answered yes. Dan asked is 17-feet to the west going to make that much of a difference, Kirk answered yes and explained instead of the line being straight the line will cut in on a diagonal to the house. He said it could be moved a couple of feet, but they figured it is a generous distance off the fence Fred has there and he also plans on planting Norwegian pine behind it. Fletcher Rowley said he does not see any line that is deviating any other property. He had Kirk show him on the map where the array is located. Kirk said Fred's fence is kind of along that line and if they move the array up, they will get shading and around 3 o'clock they start losing sunlight from the trees that will cast a shadow, from the east it would be great though. Shad Speer asked was a building permit on the property when you went there to do the work and Kirk said no and proceeded to tell the board that they hired an engineering intern for the summer and the intern did all the paperwork and designed drawings for the job, but he never filed the paperwork and that he left it in the bottom of his desk when he left. When Kirk's company found the paperwork for the application, he tells the board they sent it all into the town. Shad questioned him again, asking when you went to the job site didn't you see there was no permit. Kirk said that is correct, and when they sent in the paperwork it was several weeks before they called back to see what was going on with the permit. Kirk told the board he thought the biggest concern would be the location from the road, not the two feet from the line. Fletcher told him that the road frontage would be the most percentage of the area variance. Dan Mattle told Kirk he feels it is possible in the wintertime the weather may infringe on the solar array but not during the summer. Kirk said if they move it, there are gas lines and trees that are probably 50 to 60-feet in height. Fred would have to clear out the trees and move the gas line.

No public comment.

Acting Chairman Rowley closed the public hearing at 7:23 p.m.

The Zoning Board members discussed the appropriate criteria for the variance, they reviewed all the documents submitted by the applicant. Dan Mattle suggested to the contractor to have the applicant move the solar array the 90-feet on the north side and told the contractor if you don't know where the line is you should find out first. Dan told Kirk it's not very far to move it and the room is there to do so. Kirk said it will cost around \$3,000. to move it. Dan told him

you did the work without a permit. Kirk admitted that was a mistake and when he found out about the case, he called the CEO but it was hard to reach him because he is only in the office one night during the week and he himself works all week long. He said it was not easy to attend tonight's meeting because he works so far away sometimes. He told the board in the twenty years he has been in business this is the first time he didn't have a building permit in on time and the whole reason for that is everything for them is financial. He said they are out another \$10,000 dollars until they can get the building permit submitted. To move it over to the area where Dan suggested in the woods, Dan said it would take 2-feet to meet the 90-foot from the road and the 25-foot from the north line, Dan told him you're not far off and Kirk said it is when they have to dig everything up going all the way to the applicants house, they would have to take all the wire out and move it, take the post and cut all the cables that hold it down, take all the panels off, take it all apart, pick it up and move it, put it all back together, put the array back on, re-dig the trench, re-pull the electrical wire and line. Dan asked Kirk you didn't know all of this before you installed everything, Kirk said he had no clue. Shad Speer said he still goes back to the fact that there was no building permit, how do you know as a contractor that there is no building permit on the job site. Kirk said he does not go out to the job site, his crew does, they do not understand those things, the business aspect of the company. He said that was the whole reason they hired an intern and that was not cheap, especially during Covid-19, their business is hurting. Kirk told the board normally he has about twenty jobs at this time of year, he has zero. He told the board so from now to the rest of the year he has to find jobs. He is working in Mendon right now, that should last about 3 to 4 months and after that he will probably have nothing. Because of Covid-19 he cannot promote his business either door to door or the NYS Fair other fairs and put up a booth, etc. He told the board he will do whatever they tell him he has to do, but it will be a hardship to do what was suggested. He apologized to the board and said this is not his policy or how he does business, but they had an intern who made a mistake and now they're trying to fix it, he added people do make mistakes. Acting Chair asked for a motion. Shad Speer motioned to deny the variance, seconded by Dan Mattle. All in favor. Acting Chairman Rowley asked for a roll call vote with the following results:

21VAR03(Stone) – ROLL CALL VOTE:	Dan Mattle	- nay
	Becky Charland	- nay
	Shad Speer	- nay
	Fletcher Rowley	- nay

APPLICATION DENIED: For a variance of 23-feet from the north property line and the front setback of 73-feet from the center of the road and to the side of the home but behind the plain of the foundation of the home. Tax ID #31.-2-15. Applicant is seeking relief from Article V, Section 265-22, requiring a 25-foot side setback and a 90-foot front setback. Area variance is unanimously denied 4-0.

**PUBLIC HEARING FOR A TAX ID #31.-2-27**

Acting Chairman Rowley opened the public hearing at 7:30 p.m. He read the public notice: Notice is hereby given that a public hearing will be held by the Zoning Board of Appeals of the Town of Kendall on Tuesday, March 9, 2021 at 7:30 p.m. at the Kendall Town Hall, 1873 Kendall Road, to consider the application of

DG New York CS III, LLC., Tax ID #31.-2-27. Applicant seeks a variance for a ground mounted solar energy system on a parcel with 45-feet of frontage. Applicant is seeking relief from Article V, Section 265-22 E(2) requiring 140-feet of frontage. Property is zoned residential agricultural (RA). All persons wishing to speak will be heard at this time. Application is on file in the town clerk's office.

Patrick Bolton  
Chair, Zoning Board of Appeals

Acting Chairman Rowley asked if the applicant would like to introduce himself to the board and public attendees and give a general overview of the project. He said, I'm Brian Harper with NextEra Energy, we're an energy company from South Florida, our company is doing several projects across central New York right now with community solar. This is one of the projects we are constrained as far as the area we are allowed to go to in general, we have to be close to electricity, a distribution line. In Kendall there is a huge 34.5 kb line, and it runs across the old railway easement. We approached two landowners and one responded back to them, which was Mr. Munzert, we submitted our initial electrical design to National Grid, and they came back with reasonable prices to have upgrades done and still be financially reachable. The original design had it coming from the north where the cell tower road is, but we need a 20-foot road to get into the project, it is something the town requires. We are unable to have a 20-foot wide road were that current road is. Our only other option is to come in through this smaller area in the middle of the project, that brought us to this latest round, the planning board sent us to this board to get approval for the area variance to move the road to the south. Shad Speer asked Brian if they had any other options or if they spoke to any other landowners for some kind of agreement for a wider area. Brian said it was brought to their attention the Furness's were open to the idea to have a temporary access road during construction, he said that is how it was presented to him. He had Chris go out and speak to the Furness's along with the company's construction manager, 1) to just give them a better idea from the construction standpoint; how many cars will be going by, what the dust would be, they would put a temporary fence in there during that time. They know the road is skinny, it's a 40-foot road, there's not very much on either side, there having a temporary construction fence come in there to mitigate any sort of hazard there during construction. When it's operational its once every three months there will be a truck going in there. To go back to your initial question, we did talk to them, he said he doesn't know what the latest is on their feelings on giving them the temporary access road. Brian said he knows, they had thought of what the project was initially and it kind of moved because of the DEC setbacks, we had the project squished as far back as possible into the corn field, the DEC came back and said they needed 150-foot buffer on all their wetlands so it kind of squished the project up and to make it economically feasible for this project they tried to maximize the land. You can't see it on this map, but they will have a row of trees and the project is moved closer towards W. Kendall Rd. Brian said again for the variance he doesn't know if solar projects are linked to what their discussing tonight as far as the variance for the road. Fletcher Rowley asked Kirk, couldn't you find a different access road, he knows that is awfully narrow, he went by there and noticed a telephone pole that is in play and will probably have to be moved, he doesn't know, he asked Brian if he could see a wider apron coming off of that secondary road coming off that secondary road a lot better than coming down through between those two houses. Brian said he thinks that's the right thing to do, working with the Furness's if they're still willing and able to have a temporary construction

road going across their property. But again, back to what we're discussing tonight, the variance on the road frontage, if we have a permanent road running there, we still need a variance. Brian said they're willing to work with everyone and put a temporary construction road in. Becky asked how long the trucks will be coming in and out and during what months. Brian said about 4 to 6 months and the time of year will depend on when they can start. Shad asked CEO Hennekey if this went to the CPB and CEO Hennekey told him no the county did not hold a meeting because there was not enough on the agenda. Deputy CEO Strong added the county returned it back to the town to let this board act on it.

Acting Chair. Fletcher Rowley asked if any attendees would like to speak or ask a question:

- 1) Perry Condon, 1807 W. Kendall Rd. – He felt the original idea of the project being back by the woods was feasible, but he does not like the idea of it being moved toward W. Kendall Rd. He's afraid the temp. road will be right in the middle of a ditch in that area, and it fills up awful when it rains, snows, ice. He lives there and has to clean it out.
- 2) Paula Browe, 1783 W. Kendall Rd. – She added on to what Perry said, she said when the water backs up from their back yard to where they want to put the driveway, they will be flooded from time to time when they have the extra rain, snow, and ice. It's definitely not a spot for anybody to be there during those certain times.
- 3) Bob Furness, 1745 W. Kendall Rd. – He lives on the adjoining property where the so called project is going to take place. He has asked for some sort of guess of how big it is going to be, how far it's going to be from the road. He feel's nobody knows nothing, or nobody is saying anything. He feels he will be punished the most because of the road frontage he has. If it's going to be 200-feet behind his house or 200-feet from the road, that's what he gets to look at all day. He thought at the beginning they were talking of it being back by the tower, that would be something different he said, but now they're up by his back yard. He's concerned his property value will decrease. Himself and his wife are not happy about the trucks driving back and forth that close to their house.
- 4) Travis Gascon, 1739 W. Kendall Rd. – Said he's Bob Furness's adjoining neighbor, own's the property back to the cell tower next to the Hojack. He says this company never contacted him or informed him of anything and they want to build on the side of his property. He is concerned of the value of his property and what's in it for him and his neighbors. The thing that makes sense to him is to parcel off his land next to the Hojack, but he says he would never do that. Working in his yard and seeing all the geese out there is unexplainable, it's a beautiful sight, he doesn't think the solar panels will be.
- 5) Mike Furness, 1879 Peter Smith Rd. – He said when they talked about putting it back by the woods, they really did not want it back by the cell tower, but something they could live with, maybe. Now he says the other day these guys came out and Mike ask them where you are putting it and they tell him right there as close to the lot line as they can, right behind his lawn is a ditch and a fence, its just going to be on the other side of that, Mike says there's no way. Mike expressed to the board that 40-feet between the houses isn't big enough, not even close. He feels they need to get more information out there so they can understand what is going on, otherwise his parents aren't going to agree to anything.

- 6) Perry Congdon, 1807 W. Kendall Rd., - Feels the town should put up some information for the people ahead of time. He said he found out from a neighbor. He said they didn't fight the one going up back by the woods, in fact they were almost ready to have it put back there, not all a sudden it's going up by the road.
- 7) Travis Gascon, 1739 W. Kendall Rd. – Asked how it is considered Agricultural Residential (AR). Dan Strong explained that is the zoning classification within the town. The zoning classification is Agricultural Residential (AR) and then your allowed certain uses within that district. Travis said he understands the term, he just wants to know how the solar is considered agricultural. Dan explains, the way it is figured in that term is the way the town law reads regarding these major solar farms, the town law reads in Section 5C, a major system or solar farm can be permitted in any district in the town of Kendall when authorized by a site plan review and a special use permit from the planning board. And then it goes into different terms and conditions. Dan say's that's how it evolved into how it is allowed into agricultural residential, it's not considered a typical agricultural operation.
- 8) Mrs. Furness, 1745 W. Kendall Rd., expressed concern of the trucks going in and out along side and in between her and Paula Browes houses. She does not like the thought of it especially when her grandchildren will be playing outside.
- 9) The public attendees had concerns regarding notifications of public hearings, notices, etc., CEO Hennekey and Strong explained to them how publication of the hearings, letters going out to neighboring properties and the information that is available for reviewing is in the town clerk's office to view anytime during business hours.

Acting Chairman Rowley closed the public hearing at 7:54 p.m.

Acting Chairman Rowley stated, it sounds like there are some real concerns that residents have so he feels along with the members of the board that this variance should be tabled at this time. He asked for a motion. Shad Speer motioned to table the variance to have more time to gather more information and possibly another scenario for an entrance and then schedule another hearing. Seconded by Becky Charland. All in favor. Acting Chairman Rowley asked for a roll call vote with the following results:

(DG New York CS III, LLC.) Tax ID #31.-2-27 – ROLL CALL VOTE:	<b>Dan Mattle</b>	- aye
	<b>Becky Charland</b>	- aye
	<b>Shad Speer</b>	- aye
	<b>Fletcher Rowley</b>	- aye

APPLICATION TABLED

**ADJOURNMENT:**

Dan Mattle made a motion to adjourn, seconded by Fletcher Rowley. All in favor. Meeting adjourned at 8:22 p.m.

**NEXT MEETING:**

Tuesday, April 13, 2021 at 7:00 p.m.

Respectfully Submitted,

Tammy Bakutis  
Recording Secretary