



ZONING BOARD OF APPEALS
4 High Street Saugerties, NY 12477
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April 6, 2026

PRESENT: Bill Schirmer (Chair), Joseph Mayone, Tim Scott Jr., Randy Ricks and Holly Strutt (Alternate).

ALSO PRESENT: Becky Bertorelli (Zoning Board Secretary) and Sean Weaver (Building Inspector).

ABSENT: Henry Rua (Vice-Chair).

Schirmer called the meeting to order at 7:00 pm. Strutt to join as a member in Rua's absence. Strutt accepted.

PLEDGE

PUBLIC HEARING

DIYDS, LLC: INTERPRETATION OF §245-56 OF TOWN OF SAUGERTIES ZONING CODE

1776 Route 212

Saugerties, NY 12477

File #: 26-002

SBL #: 27.4-5-4.200

Presented by Khattar Elmassalemah, Preatorius & Conrad, P.C. All certified mail receipts and return receipt (green cards) were handed to the ZBA secretary. A motion was made by Mayone, seconded by Scott Jr., to open the public hearing. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. The public hearing opened at 7:01pm.

Elmassalemah-the applicant is looking for an interpretation of §245-56 of the Town of Saugerties zoning code, General Definitions, specifically "Horticultural Specialties" and "Indoor Agriculture" to determine how the proposed indoor cannabis cultivating facility should be classified. The parcel is approximately 1.2 acres and is located on Route 212 in the Highway Business (HB) zoning district with Gateway Overlay (GO). The applicant has a permit from NYS to run a micro-cannabis production facility. They will be using the existing parking and existing buildings. No new construction is proposed at this time. The existing structures were constructed in 2012. The landscaping will remain and reuse the sign.

Schirmer opened the floor for public comments:

- Mark Kantor, 24 Adams Road-concerns that are shared with neighbors on the road and the general area. If this is a horticultural project it will require a lot of water. This was once Fiber Flame and due to the impacts of the old landfill on the water quality it is not potable. What will be the septic impact? This is a psychedelic drug and it will be grown in a neighborhood. This type of production facility should not be in a residential location. When the Town was

developing the updated zoning regarding cannabis the intention of the public was to keep it away from residential areas. Schirmer-we hear your concerns but the water/sewer impacts would be concerns that should be addressed before the Planning Board during the site plan review process. Elmassalemah-the applicant is proposing a water recycling process. This proposed use will use 94 gallons of water per day and when calculating the need per bedroom for a single family residence it is approximately 110 gallons a day per bedroom. There are less than 10 employees proposed. No issues to expand either system as it is sufficient for the proposed use. This parcel is zoned Highway Business, not residential. Horticultural specialties are allowed with site plan review. There will be no selling to the general public from this facility. Evan Seplow (applicant/DIYDS)-the use is allowed by licensing received from NYS. I am a cancer survivor and use cannabis medicinally. We are looking to offer this to others throughout the state. Even though we can not sell in Saugerties we would supply to other areas that do allow the sale of cannabis. This is an allowed use in NYS with the proper permits.

- Heather Hutchinson, 24 Adams Road-recovering marijuana user/addict. It is an addictive plant that causes psychiatric episodes. Many end up in the emergency rooms. I was part of the ZBA hearing regarding processing of materials below where we live. It was determined that they were not allowed to process materials so how can the applicant process cannabis?
Schirmer-you are talking about two different types of uses that really are not comparable.
Strutt-the concerns being discussed are not part of the purview of the ZBA. Most concerns will be discussed within the site plan review process with the Planning Board.
- Arefa Mohamed, 45 Adams Road-speaking on behalf of myself and my partner Steven Murray. Our parcel is located directly above the proposed site. We purchased this land to live in a quiet rural residential area. We have several concerns about the proposed use. This specific use is not appropriate for this site. The ground water is already an issue due to the previous landfill that was located across Route 212. This will add additional concerns. The state has designated this a contaminated site. A 2,000 square foot canopy will require 400 gallons of water. An aquifer analysis required annually. The energy required is comparable to an entire neighborhood for such a growing facility. This is not compatible with the existing neighborhood. There will be year around activity on the site and can be seen from Adams Road. Our parcel is located about 20' from the facility. Odor is a real concern, we will experience it directly. This is a quiet and residential neighborhood not commercial. Placing a high intensity commercial use is not compatible in a residential area. Schirmer-most of the concerns mentioned will be addressed by the Planning Board during site plan review. The job of the ZBA is strictly to interpret where this use falls under the current zoning code and how it should be classified by definition as a horticultural specialty or indoor agriculture.
- Samantha Dederick, Chair of Town of Saugerties CPC-Bob & I were involved in the right to farm law as 4th generation farmers. The CPC only discussed indoor growing in reference to the use table, during the events and lodging law review, which was supposed to include agro tourism. The intent was to allow Saugerties to have a viable farming economy. The CPC wanted to allow indoor growing everywhere but was cautioned about massive factory farming. It was discussed further and the result being indoor growing being allowed in the Industrial zoning district only. Agricultural crops are allowed in all districts by right when growing outdoors. Horticultural crops are allowed in all districts with a special use permit. In my opinion, the application for growing on Route 212 does not seem to fit the designation of industrial and disputes the right to farm law. Keeping the operation indoors promotes mitigation of odors, safety and security issues which could affect the neighbors. Indoor growing cuts down on water use compared to field growing and irrigation. There is an inconsistency between the

use table and the right to farm law, which allows all crops to be grown outdoors, but not indoors.

Schirmer-there are issues with the definitions in our zoning and our use table in how to interpret. These need to be addressed by the Town Board. The project narrative submitted by the applicant defines the project as “indoor agriculture”. I have an issue with saying this is a horticultural specialty because of the zoning definition. This parcel has been operated as a commercial use for years. Horticultural Specialty is allowed anywhere in the Town with nothing but site plan review by the Planning Board. Indoor agriculture can include horticultural specialties but horticultural specialties does not mention indoor agriculture.

Strutt agrees with Schirmer’s concerns. The indoor agriculture definition lists items included and mentions cannabis and horticultural specialties separately, which implies that cannabis is not the same as a horticultural specialty.

Schirmer-the issue with considering this a horticultural specialty is the definitions. The crop is not the concern, it is the definitions and the interpretation will set a precedent.

Scott Jr.-when the Town Law was drafted there was some ignorance on certain aspects of permitting. Cannabis is an actual flower which is listed under horticultural specialties. If the law had been drafted today it may have been defined differently. Cannabis is specifically listed under “indoor agriculture” in the definition and not under “horticultural specialties”.

Seplow-the permit that we hold with NYS is for a micro cannabis business, which is the lowest tier of permitting. This is an entry level permit. Not allowing this use under horticultural specialty would stop the production of this plant within the Town. We are trying to break the stigma regarding cannabis. This is not something we can sell within Saugerties but would like to hopefully some day when the Town accepts that. All concerns that have been brought up are controlled and included in the permitting process with the NYS, which will be strictly enforced. Schirmer-I believe the Board requested a copy of the permit and the permitting process with regulations from NYS. We have yet to receive that. It would be helpful in our review. The proposed operations are small and all growing is done indoors but the definitions are what the Board will have to consider and base the decision on. It will set a precedent for future applicants.

Strutt-my decision will not be based on stigma, does not fit within the horticultural specialties definition. If this was a vegetable growth facility it would be the same thing. The Town Board has work to do to clean up the definitions and use table and define where this is an allowed use within the town. Schirmer-where it fits in definitions is the biggest concern. Weaver-my determination as a horticultural specialty was based on the fact that it would require a site plan review. There is a large outside growing facility on Blue Mountain Road that was allowed without any review because of right to farm law. I have already brought my concerns to the Town Board regarding where indoor growth of cannabis will fit with Planning Board oversight. Outdoor growth has no oversight because of right to farm laws.

A motion was made by Scott, seconded by Mayone to close the public hearing. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. The public hearing was closed at 7:48 pm.

Schirmer-the Board has 62-days to make a decision after the public hearing is closed. A motion was made by Mayone, seconded by Scott, to abstain from a decision until the May 4, 2026 monthly meeting. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried.

MIRTO CPA, LLC: INTERPRETATION OF §245-21 OF THE TOWN OF SAUGERTIES ZONING CODE

436 Route 212
Saugerties, NY 12477
File #: 26-003
SBL #: 17.16-1-14

Presented by Robert Rowan, representing Mirto CPA for owner Melinda Rowan. A motion was made by Strutt, seconded by Ricks, to open the public hearing. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. The public hearing opened at 7:50 pm. Rowan-we are looking to add an additional sign to a previously approved non-conforming State Farm sign posts. My wife's business has been located on the second floor for 2-years.

Schirmer opened the floor for public comments: No one was present to speak with concerns/comments.

Schirmer-the proposed sign satisfies the sign law requirements and is 2' x 6'. The existing State Farm sign is non-conforming but that is not up to the applicant. This interpretation will not set a precedent for future applicants. The sign as proposed satisfies the law without a variance. Mayone-agree.

A motion was made by Ricks, seconded by Mayone, to close the public hearing. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. The public hearing was closed at 7:54 pm. A motion was by Schirmer, seconded by Mayone, regarding the interpretation that the proposed sign satisfies the sign law without any additional variances required. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried.

NEW APPEALS

AMANDA ZASLOW-MOSELEY & JOSEPH MOSELEY: 5' REAR YARD AREA VARIANCE.

264 VanVlierden Road
Saugerties, NY 12477
File #: 26-004
SBL #: 8.3-4-6

Presented by Diego Celaya, Architect. The applicant is proposing construction of an addition to an existing single family residence located at 264 Van Vlierden Road. The parcel is located within the Low Density Residential (LDR) zoning district and is 1.664 acres. The addition (master bedroom, kitchen, screen porch and storage room) will be on the east side of the parcel and will be on the rear of the SFR. Due to the configuration of the rear lot line the addition will fall in the 50' rear yard setback in one section and require a 5' area variance to be 45' off the property line in that particular spot.

A motion was made by Mayone, seconded by Strutt, to set the public hearing for May 4, 2026 at the monthly meeting. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye.

Motion carried. A motion was made by Mayone, seconded by Scott Jr., to declare this a Type II Action under SEQR. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried.

OLD BUSINESS

ELIZABETH REECE: INTERPRETATION OF THE BUILDING INSPECTOR/ZONING ADMINISTRATOR'S DETERMINATION DATED MARCH 11, 2025.

7 Tomsons Road
Saugerties, NY 12477
File #: 26-001
SBL #: 18.1-4-5.100

Schirmer-the applicant is seeking an interpretation of the Building Inspector/Zoning Administrator's determination dated March 11, 2025 classifying the proposed BESS as an “electric service” as defined in the Town of Saugerties Zoning Code, and therefore being permitted in the Industrial (I) zoning district by special use permit and site plan review.

The matter was presented by Elizabeth Reece, a third-party appellant. Also present was the developer of the proposed battery energy storage facility, KCE NY 34, LLC. The developer’s counsel, Hyde Clark, and KCE Developer, Paul Williamson, were permitted by the Board to speak, as the developer has a vested interest in the outcome of this application.

Reece, 67 Elm Street-this evening is for discussion regarding timeliness and my standing as an aggrieved appellant. Read prepared statement with visuals (*Attachment 1 & 2*).

Clarke-a response was submitted by the developer to the statement read by Ms. Reece. Most of the concerns addressed in Ms. Reece statement are concerns with SEQR and items that will be reviewed by the Planning Board. She has provided no statement of injury or damage different in kind and degree from the community at large. The ZBA is only here to determine whether the Code Enforcement Officers determination of classification for the proposed BESS as an “Electric Service” is inaccurate. The application that is before the Planning Board for KCE NY 34 seems to be all that is discussed. The distance alone is not the only factor to determine an aggrieved appellant. However the cited case is being demonstrated inaccurately. The petitioners in that case were adjoining neighbors to the site not 2,700 feet away. It is only one factor in determining if a party is aggrieved. Indicating that adjacent is not sufficient enough for standing when being considered an aggrieved appellant. The initial determination was filed with the Building Department as required and is not required to be filed in the Town Clerk’s office. The appellant should have a specialized concern and this applicant does not demonstrate that.

Reece-I did not receive your (KCE NY 34) response to my initial comment letter until 2 weeks after it was submitted for the record. I will be directly impacted and the noise will be devastating. I did not hear about this project until the January 2026 Town Board meeting. The decision of the Code Enforcement Officer was not reasonably discoverable.

Schirmer-the ZBA must consider the timeliness of the appeal. However, we have received credible evidence that the applicant was aware of the proposed use within the Town back in December when she responded to a Freeman Article in December 2025 regarding BESS in the Town of Saugerties. Do not

believe that the applicant is being truthful about when they learned about this project. That being said the ZBA will have to determine if the applicant is an aggrieved appellant. The applicant does not live within the 500' radius of the site in which public hearing notifications would have to be sent. There is no precedent that can be found within the local zoning that extends that 500' radius to individuals outside that area that is acceptable for public hearing notifications. The applicant is located 2,700 feet away from the project site. If the ZBA were to accommodate this appeal everyone within the Town would be considered an aggrieved appellant. SEQR does not come into play when deciding this. All questions pertaining to that process are for the Planning Board. This Interpretation is considered a Type II Action under SEQR which does not require further review. The applicant has not shown that they will suffer any greater harm than others in the community. Strutt-we hear the concerns but they are for the Planning Board. To be an aggrieved appellant the detriment must be specific to you and greater than the general public. Reece-the actual technology of the project has not been noted. Schirmer-again, this is for the Planning Board. The ZBA is only focusing on the request for an interpretation of the classification as an "electric service". Strutt-agree, the ZBA can only look at that. Ricks-agree that the 500' sets a precedent for those that would be impacted. Reece-this is a novel new use and brings new challenges for the community. Schirmer-the ZBA has to look at the precedent this will create. To prove standing as an aggrieved party, the Applicant would have to establish that she would suffer direct harm or injury that is in some way different from that of the public at large.

The applicant has not reached the burden of proof to establish standing as a person aggrieved. The Board can not conclude that the Applicant would suffer impacts greater than that of the public at large. A motion was made by Schirmer, seconded by Scott Jr., to deny hearing the Applicant's appeal based on lack of standing as an aggrieved party. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. With the decision to dismiss the appeal based on lack of standing, the question of timeliness became moot.

BOARD DISCUSSION

- A motion was made by Mayone, seconded by Strutt, to approve the draft minutes of the March 2, 2026 meeting. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried.
- The Planning Board meeting minutes were received.

ADJOURNMENT

A motion was made by Scott Jr., seconded by Strutt, to adjourn the meeting as there are no further items to discuss. Board vote: Strutt-Aye, Ricks-Aye, Scott Jr.-Aye, Mayone-Aye, Schirmer-Aye. Motion carried. Meeting adjourned at 8:35 pm.

Respectfully submitted,

Becky Bertorelli
Secretary
Zoning Board of Appeals

Attachment 1 & 2:

https://drive.google.com/file/d/1oppWgS-UTkuBExszLsXLTW8sbmrvMse_/view?usp=sharing

<https://drive.google.com/file/d/1G3kXuClifn1CueQoP805masPgdSZlxw/view?usp=sharing>