

**Town of Pomfret
Zoning Board of Appeals
Pomfret Town Hall
9 Day Street
Fredonia, NY 14063**

**November 12, 2024
7:00 PM**

Public Hearing #08-24
Minutes

APPLICANT & OWNER:

Chautauqua Watershed Conservancy
Berry Rd
Fredonia, NY 14063
SBL: 112.00-3-11.1
Special Use Permit

PRESENT: Ruth Eckstrom, Alex Moon, Ray Lewandowski, Nicole Waite (Zoning Clerk)

ABSENT: David Fridmann (Chairman), Michaelene Comerford, Jonathan Townsend (Alternate)

PUBLIC PRESENT: Twan Leenders (Director of Chautauqua Watershed Conservancy), Bethany O'Hagan (Chautauqua Watershed Conservancy), Joseph Rollman (Site Design Consultant), Daniel Pacos, Gerald Fancher

1. **CALL TO ORDER:** Ruth Eckstrom called the meeting to order at 7:01 PM.
2. **MEETING NOTICE:** Ruth Eckstrom read the Public Hearing Notice aloud.

“NOTICE IS HEREBY GIVEN that Public Hearing #08-24 will be held by the Pomfret Zoning Board of Appeals on November 12, 2024, at 7:00 PM at the Pomfret Town Hall, 9 Day Street, Fredonia, NY 14063 to consider the appeal of Chautauqua Watershed Conservancy, for property located at 34 Johnson Street, Fredonia, NY 14063 for a: Special Use Permit. This property is described on the tax map as SBL: 112.00-3-11.1.

The proposed action is to construct a 57' x 39' 5-vehicle gravel parking lot. The Building Permit denial was based on failing to meet the Town of Pomfret's Zoning Code Section 300-14 B "Uses by Right". The property is zoned Agricultural/Residential (AR2).

This application for a Special Use Permit is open to inspection at the Town of Pomfret Planning & Zoning Office, 9 Day Street, Fredonia, NY 14063.

PLEASE TAKE FURTHER NOTICE that the environmental significance of the proposed request under SEQRA will be reviewed by the Board at said hearing.

Any person may appear in person or by agent or attorney. Please contact the Zoning Office at (716)672-7496 Ext. 7 with any questions. Communication in writing in relation thereto may be filed with the Zoning Board of Appeals or at such hearing. All interested persons shall be heard.”

3. **CORRESPONDENCE:** Clerk Waite reported that the only correspondence received was the response from the Chautauqua County Department of Planning and Development regarding the 239 Mandatory Referral, which states: “the proposal would be a matter of local concern.”.

Dan Pacos, neighbor to the proposed site stated that he, and many of the other neighbors did not receive a letter informing them of tonight’s public hearing. Clerk Waite explained that the list used for mailings was the same one generated by the previous Clerk Teresa Bunge in March of 2024 for the initial hearing on this project. However, after comparing the list with the zoning map, it was agreed there were several neighbors missing from it.

4. **SEQR PART 1 REVIEW:** The board reviewed the Part 1 SEQR submitted by the applicant. The board agreed for #14 ‘Wetland’ should also be checked. No other concerns or comments were made on Part 1 of the SEQR.
5. **DECISION:** Since every neighbor within 500 feet of the property site did not receive a notification of tonight’s hearing, a decision cannot be made at this time.

A motion was made by Alex Moon for the continuance of the public hearing to December 3, 2024, at 7:23PM so that all necessary public notice protocols are adhered to. The motion was seconded by Raymond Lewandowski and carried unanimously by roll call vote.

ROLL CALL:

1. Ray Lewandowski - AYE
2. Alex Moon - AYE
3. Ruth Eckstrom - AYE
4. Michaelene Comerford - ABSENT
5. Jonathan Townsend (Alternate) - ABSENT
6. David Fridmann - ABSENT

**January 7, 2025
6:30 PM**

PRESENT: Dave Fridmann (Chairman), Ruth Eckstrom, Alex Moon, Ray Lewandowski, Jonathan Townsend (Alternate), Nicole Waite (Zoning Clerk), Warren Kelly (Code Enforcement Officer)

PUBLIC PRESENT: Bethany O’Hagan (Chautauqua Watershed Conservancy), Joseph Rollman (Site Design Consultant), Dianne Ferguson, Kimberly Joy-Pacos, Daniel Pacos,

Erin Cunningham, Stephen Mastrelli, Donald Friend, Mark Cunningham, Gabrielle Cunningham, Gianna Cunningham, Marc Levy, Beverly Strauser, Daniel Conklin

- 1. CALL TO ORDER:** Chairman Fridmann called the meeting to order at 6:30 PM.
- 2. NOTIFICATION OF MEETING:** Chairman Fridmann read the published Public Hearing Notice aloud.

“**NOTICE IS HEREBY GIVEN** that the rescheduled continuance of Public Hearing #08-24 will be held by the Pomfret Zoning Board of Appeals on January 7, 2025, at 6:30 PM at the Pomfret Town Hall, 9 Day Street, Fredonia, NY 14063 to consider the appeal of Chautauqua Watershed Conservancy, for a Special Use Permit for vacant property located at Berry Street, Fredonia, NY 14063. This property is described on the tax map as SBL: 112.00-3-11.1 and is zoned Agricultural/Residential (AR2) under the Town of Pomfret Zoning Code.

The proposed action is to construct a 57' x 39' 5-vehicle gravel parking lot. The Building Permit denial was based on failing to meet the Town of Pomfret's Zoning Code Section 300-14 B "Uses by Right".

This application for a Special Use Permit is open to inspection at the Town of Pomfret Planning & Zoning Office, 9 Day Street, Fredonia, NY 14063.

PLEASE TAKE FURTHER NOTICE that the environmental significance of the proposed request under SEQRA will be reviewed by the Board at said hearing.

Any person may appear in person or by agent or attorney. Please contact the Zoning Office at (716)672-7496 Ext. 7 with any questions. Communication in writing in relation thereto may be filed with the Zoning Board of Appeals or at such hearing. All interested persons shall be heard.”

The board received copies of the notices that were mailed by Clerk Waite to the applicant and property owners within 500 feet of the project site.

- 3. CORRESPONDENCE:** Daniel Pacos had mailed a letter regarding this project on December 1, 2024. However, since the December 3, 2024 public hearing was rescheduled due to inclement weather and he is in attendance tonight he will read it during the public comment period.
- 4. PROJECT DISCUSSION:** Bethany O'Hagan, Chautauqua Watershed Conservancy and Joseph Rollman, site design consultant, introduced themselves. Mr. Rollman stated that the property is nature preserve land. Its purpose is safe and appropriate access to nature. He believes conservation aligns with the definition of a Wildlife Habitat, which is a permitted use for this zoning district per Town of Pomfret Zoning Code Chapter 300-14D 'Uses requiring no permit'. He also quoted Chapter 300-48A 'Parking' of the Town Code which states “All parking spaces shall be allowed by right which requires a zoning permit, except that no permit is required for new single-family and duplex parking spaces.” He expressed that his interpretation of that text

means this project should not require a special use permit, but instead an area variance for the setback of the proposed parking lot.

Mr. Rollman then explained the thought process behind locating the parking lot on Johnson Street instead of Berry Road. According to him, it was chosen to be located towards the front yard, with minimal visual impacts, and with a setback that aligns with the adjoining buildings. He added there would be minimal grading necessary and it would protect more greenspace. Traffic flow and speeds also played a large part in their decision, as evidenced by the traffic count included with the organization's application. On the other hand, he said construction on Berry Road would require more grading, longer construction, more disruption to the neighbors, and increased costs for the project.

5. PUBLIC COMMENTS: Chairman Fridmann opened the public comment portion of the hearing. Speakers were instructed to state their name and address.

- Daniel Pacos, 110 Johnson St: Mr. Pacos read his previously submitted letter aloud.

“Dear Chairman Fridmann and Zoning Board Members:

I am writing to express my opposition to the Chautauqua Watershed Conservancy's application for a Special Use Permit to construct a parking lot on the Conservancy's property on Johnson Street in the Town of Pomfret. As you are aware, the owner may not construct a parking lot on that parcel without a Special Use Permit because the zoning of the area does not allow that use without a special use permit. I am unable to attend the public hearing due to a work commitment, so I am sending this letter along to you to voice my opposition.

The area in question is located at the end of Gardner Street in the Village, where Gardner Street intersects Johnson Street. To construct a parking lot proximate to the intersection would be irresponsible because it would create a dangerous situation. The property owned by the Conservancy is about four feet below the grade of Johnson Street, so any vehicles exiting the proposed parking area would be coming uphill to the street level. This is a residential neighborhood area, with single family homes with a multitude of young children on Johnson St., Ventura Circle, Gardner St. and Sunset Drive. In this neighborhood, people frequently walk their dogs, and children ride bicycles and scooters in the street. Having vehicles exiting a parking area into a residential neighborhood with children often in the streets would be very dangerous. Also, a parking area such as the one proposed is not in keeping with the character of the current neighborhood.

We, the area residents, feel that placement of the parking area on the other side on the Conservancy's property that borders Berry Road would be a much

better choice. The Berry Road site would have better sight lines for vehicular ingress and egress. It would also not place the parking area near as many homes with children. Since the speed limit on Berry Road is higher than the speed limit on Johnson Street, there are naturally less children playing in the street. Also, the grade of the property on the Berry Road side of the property is much closer to that of the road, making ingress and egress safer for vehicles.

While I can certainly understand and support the idea of the Conservancy keeping property as natural habitat sites, I can't help but think that the idea of a parking area for the Conservancy at the proposed location is not ideal. The nature of the Johnson Street, Sunset Drive and Gardner Street area changed in the 1950's and 1960's with the construction of the homes in those neighborhoods. The extension of Johnson Street and the addition of the Ventura Circle development back in the 1980's and 1990's further cemented the area as a residential neighborhood. Gone are the large farms of yesteryear in that area. The previous owners of the Conservancy's property seemed to holdout against the change in the neighborhood, and one can't help but wonder if the conversion of the property to the use by the Conservancy was a sort of "last act of defiance" against the change from farming land to a residential neighborhood. But if it was in fact their motive, it would seem that adding a parking lot to the Johnson Street side of the property would change the nature of the property even further, making it less about nature and more about commercial development. That use would not fit with the nature of the surrounding properties.

Municipalities enact zoning laws to ensure that development will occur within planned guidelines, for the betterment of the community. When zoning laws are not followed with integrity, the community can suffer because of incompatible uses. I feel that approval of the applicant's special use permit for the construction of a parking lot on Johnson Street in between single-family homes would be one of those cases. It would also seem to be something akin to "spot zoning", which is something that should always be avoided.

Therefore, I respectfully request that the Town of Pomfret Zoning Board of Appeals deny the applicant's application for a special use permit to construct a parking area on Johnson Street and follow the Town's approved zoning. Additionally, I would also request that the Zoning Board of Appeals direct the Conservancy to change the sign that the applicant prematurely erected on the Berry Road side of their property that notes parking for the Conservancy property is located on Johnson Street. The sign was incorrectly erected without approval for the parking area to be constructed on Johnson Street and should therefore be removed or altered to remove that statement. Thank you in advance for your consideration."

- Mark Cunningham, 190 Gardner St: Identified himself as a conservationist, and said he supports the work of the Chautauqua Watershed Conservancy but

is wholly against the proposed parking lot on Johnson Street. He made mention of the signage that had already been installed to direct visitors to park on Johnson Street. He then handed out a Google Earth overlay map of Johnson Street with what he claims is the number of children that live near the proposed lot. According to him, 42 children aged 18 years old or under live in the neighborhood. He said many children play or bike in the road, and residents walk their dogs in the road.

He then brought up the stop sign across from the proposed project site, and said people already blow through it, creating an unsafe situation that the police department patrols. He described Johnson Street as a drag strip, where cars traveling at high speeds will not see vehicles exiting the parking lot. He handed out a photo he took of the sight line looking down Johnson Street and described it as obstructed. He personally believes that the dip down of a parking lot on Berry Road would be significantly less than the one needed for Johnson Street. He also reported a person had camped overnight in the woods on the Chautauqua Watershed Conservancy's lot, then trespassed through neighboring yards.

- Gabrielle Cunningham, 190 Gardner St: Introduced herself as a 16-year-old, with an 11-year-old sister and said they must be on high alert because of people blowing the stop sign at Gardner and Johnson.
- Steve Mastrelli, 188 Gardner St: Reported that he moved into the neighborhood in 1988 and since then the number of children living there has increased a lot. He fears for their safety with the current speeding and stop sign. He believes the parking lot should be located on Berry Road instead.
- Donnie Friend, 179 Gardner St: Expressed that while he supports the nature preserve being in their neighborhood he believes there is too much action in this small neighborhood for the proposed parking lot.
- Kimberly Pacos, 110 Johnson St: Introduced herself as a retired neighborhood watch member. She expressed concern that someone will park in the proposed lot to watch their houses and children or engage in illegal activities.
- Marc Levy, 4541 Berry Rd: Wants to make sure the Zoning Board takes the increased 55 mph speed limit of Berry Road into consideration. He sees positives and negatives for both locations. He explained that he hikes a lot of trails and is familiar with trailheads. Based on his experience, he doesn't expect a lot of people and traffic at the site. He commented he is looking forward to having wildlife trails in his neighborhood.
- Erin Cunningham, 190 Gardner St: Reported she chose this neighborhood to settle down in with her daughters because it was quiet and safe. She reported that recently a tow truck, 2 locksmiths, and a police officer were trying to

unlock a vehicle at the site around midnight because the owner had dropped their keys in a field. She also said the street is narrow and the line of sight is small, whereas on Berry Road you can see for several hundred feet. She mentioned that her daughter has already nearly been hit by a vehicle in their neighborhood.

6. **DISCUSSION OF CONDITIONS:** Chairman Fridmann asked for clarification on the applicant requesting an area variance versus a special use permit. Mr. Rollman reiterated that he believes the parking lot is an accessory use to the nature preserve, and that per Chapter 300-48A it should be a use by right. Therefore, the only approvals needed would be for an area variance.

Chairman Fridmann said that he spoke with Warren Kelly (Code Enforcement Officer) when the original building permit application was submitted and they agreed a special use permit would be the best path forward.

Bethany O'Hagan mentioned she had looked at the sign in sheets from their other trailheads, and they all averaged only 1-2 visitors per week which supports how little disruption will be created at this site.

Daniel Pacos asked to speak. He said that the residents of the neighborhood keep an eye on anyone that parks and isn't a property owner. Ms. O'Hagan commented that she feels Mr. Pacos should recuse himself as he is the Town Supervisor and in a position of power. He responded that he is speaking as a resident and that he doesn't have a vote to recuse himself from.

Marc Levy interjected to say not everyone signs in at the trailheads so the number of 1-2 visitors per week isn't entirely accurate.

Chairman Fridmann brought up that there are no sidewalks on Johnson Street. He asked if on-street parking is allowed, and if there is enough room to park on street. Ruth Eckstrom responded that parking isn't restricted, but the road is narrow.

Chairman Fridmann explained that in the spring the Chautauqua Watershed Conservancy initially applied for this parking lot on Johnson Street and that during public hearing #2-24 the Zoning Board of Appeals told Twan Leenders (Director of Chautauqua Watershed Conservancy) the preference would be for locating it on Berry Road. It was his understanding the organization would be reapplying with that location. Instead, after many months a new application was submitted for Johnson Street. He asked for more clarification on why the applicant is still pursuing the Johnson Street location.

Mr. Rollman said he is just the engineer, but his work was mostly based on client preference, and traffic flow. He pointed to the traffic study included in the application.

Alex Moon asked if any of the other Chautauqua Watershed Conservancy sites have their own parking. Bethany O'Hagan responded that not all of them do, but most of the ones with trails have parking lots.

Ms. O'Hagan also shared that the organization had received a generous donation to make manicured accessible trails at this property site. The donor expressed fear that if the parking lot was denied these trails wouldn't be accessible to the public.

Ruth Eckstrom asked if Berry Road is a possibility as a location instead of Johnson Street. Ms. O'Hagan explained that they are a non-profit organization. According to her the Berry Road location would increase costs, construction time, and they worry about the faster traffic. In order to move forward with a Berry Road parking lot they would need to find funding to cover the increased costs.

Ruth Eckstrom recommended the following conditions be put onto any approval of the Special Use Permit:

- Dawn to Dusk parking only
- No snow piled on street side of lot
- No parking lot lighting
- Sign erection be in compliance with Town of Pomfret Zoning and sign standards, as well as NYS code

The board agreed to these conditions.

7. **SEQR DECLARATION:** The board reviewed the Short Environmental Assessment Form Part 2 and discussed each question. The decision for all except #3 was 'No, or small impact may occur'. For #3 the board agreed based on concerns from the property's neighbors that a 'Moderate to large impact *may* occur'.

Ruth Eckstrom made a motion that a Negative SEQRA be declared with respect to the Special Use Permit application submitted by Chautauqua Watershed Conservancy for property located on Berry Rd, Fredonia, NY 14063 (SBL: 112.00-3-11.1) for the purpose of constructing a 57' x 39' 5-vehicle gravel parking lot in an AR2 zone. The residents of Johnson Street neighborhood are extremely concerned with a parking lot on their street. The motion was seconded by Michaelene Comerford and carried unanimously by roll call vote.

ROLL CALL:

1. Ray Lewandowski – AYE
2. Alex Moon – AYE
3. Ruth Eckstrom – AYE
4. Michaelene Comerford – AYE
5. Jonathan Townsend (Alternate) – RECUSED
6. David Fridmann – AYE

6. **DECISION:** A motion was made by Ruth Eckstrom to approve the Special Use Permit submitted by Chautauqua Watershed Conservancy for the construction of a 57' x 39' 5-vehicle gravel parking lot on vacant land at 34 Johnson St, Fredonia, NY SBL: 112.00-3-11.1). The motion was seconded by Michaelene Comerford. The motion was denied by a majority roll call vote.

ROLL CALL:

1. Ray Lewandowski - NAY
2. Alex Moon - NAY
3. Ruth Eckstrom - NAY
4. Michaelene Comerford - AYE
5. Jonathan Townsend (Alternate) - RECUSED
6. David Fridmann - NAY

7. **ADJOURNMENT:** Michaelene Comerford made a motion to adjourn the hearing at 7:33 PM. The motion was seconded by Alex Moon and carried unanimously.

Respectfully Submitted,

Nicole Waite

Nicole Waite
Planning & Zoning Clerk
Town of Pomfret