

ZONING BOARD OF APPEALS
TOWN OF CANAAN
COLUMBIA COUNTY, NEW YORK
April 24, 2018

Present: David Cooper, Pat Liddle, Sandy Haakonsen, Christy Ransford
Absent: Jack Steffek

Board Chair, David Cooper opened the meeting at 7:00 with 2 people in the audience.

There are two items on the agenda for this meeting – Public Hearing for file #2018-2 (Application for a Use Variance by TJB Land Corp., who is being represented by Andy Petersen of Monolith Solar Associates, and consideration of File #2018-3 for a .2, acre impounded pond for Richard Ortner.

7:01 Chairman Cooper decided to start the meeting with consideration of File # 2018-3 for a Special Permit to build a .2, acre impounded pond for Richard Ortner of 47 Schillings Crossing Road, Tax ID# 49-1-39.1

Consideration of file #2018-3: David read the file which is for a Special Permit to build .2, acre Impounded pond for Richard Ortner of 47 Schillings Crossing Road. This file is being represented by Samantha Cummings of Taconic Engineering. The project is located in an RAll district. The contractor will be Bervy Excavating to construct a pond that is approximately 12' deep, 75' wide, and 58' long. The lot dimensions are +/- 494' with a width of +/-1,211.

David read the narrative for the project that stated that the maximum fill height of the berm would be 5.75' with a volume of +/- 274,889 gallons. The volume of water being retained by the berm is +/- 116,914 gallons. The ponds spillway is located at the south end of the pond and will connect and discharge into the existing drainage ditch. The proposed pond does not require a NYSDEC dam permit, as it meets the criteria for exemption.

Samantha showed the Board the Master Map that contained berm notes along with existing Site conditions. Pat Liddle asked if there were wetlands involved, and there are some on the abutting property, but not on this property.

David asked how far the property was from County route 5, and it is 1,000' so the file doesn't have to be sent to the Columbia County Planning Board. David commented that any rational person should be able to view and understand this project.

Pat asked Samantha to have the pond area staked out so that it can be looked at. She also asked if the location of 47 Schillings crossing was marked, and Samantha thought so but wasn't sure.

Pat made a motion to accept the file, Christy Ransford with the 2nd. All in favor. The Public Hearing will be May 29th.

7:17 Public Hearing File #2018-2- Use Variance for TJB Landcorp. To install a 200 KW rooftop mounted solar array that will exceed the 110% usage.

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Chairman Cooper read the legal notice as well as the response from the Columbia County Planning Board which recommended that the Canaan Zoning Board of Appeals could make a final decision with a simple majority vote.

Mr. Petersen supplied the Board with documentation to use as proof of hardship for the Use Variance. Andrew explained that financially his company had evaluated what the operating costs were, and what was being brought in per month when TJB originally purchased the facility with two buildings, and then again, they evaluated when the two additional buildings were added. The documents then show what Monolith proposes the income and expenses would be if the Solar array is installed.

David read the narrative which stated that the project is located on a 3.59, acre parcel at 30 Flint Crossing Road. The lot is irregular— triangular shaped with 4 storage unit buildings onsite. It is bounded by CSX railroad tracks, power transmission lines and Town Right of Way (Flint Crossing Road). The parcel is fenced and includes gravel parking areas. There is 110 units on site ranging in size from 50SF to 300SF.

Monolith Solar intends to install a roof mounted solar system on the 4 structures. The system will be flush mounted with a maximum profile of 5 inches (2 inches panel width, 3inch rail height). The system is 200 KW and will produce onsite power but will exceed the 110% maximum allotted by the Canaan Solar Law. Monolith will capture any net power to be used to credit an offsite user (RNM) requiring this Use Variance. David went on to read the entire document which Monolith is using as its proof of hardship. The documents can be found in the file at the Town Hall.

David said in order to transport the energy for this you need the 3, phase powerline, which is there partly because of Loves and also because it is a main feeder for NYSEG. Andrew said yes and that for this project what they needed was a 200kw, 3 phase and perfect exposure to the sun. (No less than 90%)

Pat wanted to know how much over the 110% maximum the system would produce. The answer was basically 100% more, which means 200% Pat also asked when the contracts for Monolith and TJB were signed and the answer was early 2016, before the new solar law was signed. By the time the Utility approval came, they applied to the town and were told this couldn't even get a Use Variance.

Sandy said that after reading the case law, she understood it as just showing a loss was not enough, (even though they were not showing a loss) and that the applicant must demonstrate that the return from the investment would not be reasonable for each and every permitted use. Do they need to show this? David said that part of this process is for Andrew to look at the allowed uses. He said that some of the permitted uses may be quite a bit more profitable. David said if it would be helpful we could continue the hearing. He didn't want to rush Andrew.

David said he wasn't buying the uniqueness of the property. He couldn't see why Loves across the street wasn't in the same position. Andrew said the roof wasn't large enough, and there were too many utilities on the roof.

David mentioned this is not a Solar Farm, but a rooftop mounted system. He said the SEQR makes this seem innocuous. He doesn't want to discourage this, but thinks Andrew needs to rule out other uses. The buildings are making money. It is important for the Board that you help rule out what is feasible and not. Also help us understand why this particular thing is unique as opposed to something like Energy Answers. I think a business light in profits isn't necessarily unique. David mentioned that if this goes south he wouldn't be opposed to writing the Town Board and the Planning Board. There should be information from NYSERDA or somebody else for the need for this stuff. Find why they are pushing to produce power on rooftops. It's not a solar farm and is less objectionable than that. Andrew said this would take three acres of land if it was on the ground.

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Pat read some of the uses in the CIII zone and said that she thought if Andrew went through the list he could rule stuff out. Andrew said that with the shape of the property it hinders what you can do. He will go through the list.

David stated that in order for the Board to make a decision they need to understand it inside and out and be able to develop a rationale to either approve or disapprove it. If we disapprove it, it has to be logical and rational. It has to be based in point of fact. David will keep on looking through the NYSERDA information. Andrew said he would send over a ten, page handout that helps to develop laws and guidelines for towns. There is a section that covers power being generated and used somewhere else. This came from the governor's office

Chairman Cooper wants Andrew to educate the Board. He senses that we are going to continue this hearing.

Christy says she can't see proving this hardship. She compared it to building a house that was too costly and then saying that you are in over your head and want someone to help dig you out. David said everyone should start doing some thinking about the intersection of the two laws meaning the basic zoning law, and the solar component that is a part of it. The solar law doesn't supersede the zoning law but is an amendment to it.

Chairman Cooper wants Andrew to write down things like the type of power line and what the system is capable of, along with the NYSERDA information.

Andrew showed the Board some pictures of other projects that they had done, to show how flat the panels are.

Sandy wanted to know that since it seemed they were lumping 2 laws, together, would it make sense to keep an option open that the Board could approve one variance. Andrew explained that Bervy was a commercial business, so needed commercial panels. If it was residential, the panels and the racking are half the price. David asked if a residential system could be put on it, and Andrew said no because Bervy has commercial power. It is a commercial account.

Pat made a motion to continue the Public Hearing, with a 2nd from Christy.

All in favor.

David asked Andrew if he would mind if the hearing for the pond went first, and he said he had no problem with it. He said that if there was anything else the Board wanted to please let him know.

The March minutes were approved as submitted.

8:25 David Made a motion to adjourn with a 2nd from Sandy.

For the Board,

Heather O'Grady
Clerk