

ZONING BOARD OF APPEALS
TOWN OF CANAAN
COLUMBIA COUNTY, NEW YORK

Special Meeting

May 8, 2018

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

Chairman Cooper opened the meeting at 7pm with 1 person in the audience. The purpose of this meeting is to discuss file #2018-2 submitted by TJB Land Corp, for a roof mounted solar array that would exceed 110% usage, with Andrew Petersen of Monolith Solar as representative.

David stated that he called this meeting because after reading his personal notes after the Public Hearing and subsequently thinking about it, he remembered that at one point in the discussion it was brought up that this would be an allowed Use if more electricity was used on site. This project falls in the parameters of a small commercial location and it also falls within the Use Law. What got tagged was the capacity of the system. (Too great for what is being done.) David realized it was nuts to ask Mr. Petersen to invalidate uses on the property because there is already a conforming use on it. Some of the solar things can be looked at as accessory uses, because we don't allow large Solar Farms on the ground.

David read some notes that he had written after the Hearing on the 24th, and had sent to Andrew Howard, the Canaan Attorney. David informed him that the site was storage with rental units and there is an approved site plan that was approved by a previous Zoning officer. The project was never referred to the Canaan ZBA for Special Permit review. Many years have gone by and as a practical matter that Use is not an issue. What is important is that the current land use is not in question and is not involved with the Use Variance other than the rooftop structure, which they want to use for low profile solar panels. During the initial review we took this as a Use Variance because it is in conflict with the Solar law, and the net energy produced exceeds the 110% allowed amount by almost 100%, and all of the energy will not be consumed on-site. The Appellant is a NYSEG Commercial customer and the smallest commercial array is 200kv and onsite use is very modest, which means there will be overproduction, which logically leaves the site and enters the electric grid. The Board is using the Zoning Law overlaid with the Solar Law, using the four recommended, required proofs for reviewing and discussing the Use Variance. The Appellant has been very helpful and cooperative, providing relevant submissions. The Board is experiencing some difficulty applying these standards as they feel somewhat irrelevant. For example, asking the Appellant to demonstrate that all of the allowed Uses are not applicable to this site, (including monetary proofs), doesn't seem to fit the situation. The site already has an allowed Use, and the generating system is an ancillary Use. The request is to add a rooftop generating system that if the gross capacity fell into the parameters of our Solar Law would be allowed by Special Permit and site plan review. The generating Use is allowed however the Use is in conflict with the law in regards to capacity. David asked Andrew Howard if it would be more applicable to apply the standards for an Area variance.

David said that Andrew Howard's suggestion was that if the Board felt this way, they can vote and change the review from a Use Variance to an Area Variance. The reason David really wanted to have Andrew Petersen at this meeting was because this would have a big impact on how they conduct themselves and also a different impact on what the Zoning Board requests of them. David said that Andrew Howard had said this could probably go both ways.

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David said that the Board could leave the application as it was, and that he had told Andrew Petersen that even if this changed to an Area Variance, there were no guarantees that this would be approved. David said that the other thing to remember is that the Board is kind of encouraging him to come up with things that would use a lot of energy, which puts things at cross purposes for more radical development.

Christy Ransford asked how this is for the fire department, and Pat Liddle stated that the systems all have shutoffs. David said in every Solar decision he has stipulated that the owner and Monolith need to contact the fire department and make sure they know how to deenergize it.

David told Andrew that the Board had an obligation to help prepare the Appellant. There would be no advantage to having an Appellant who is unprepared for a hearing. This is easier if the Appellant knows the parameters.

Sandy Haakonsen asked what the options were and if this would be an Area Variance because it is an accessory Use. David said no and explained that the typical Area Variance that the Board would deal with is a non-conforming Side Yard or Front Yard and when you read the law, essentially it says that if someone is going to build a house and for whatever reason it is going to encroach, the Use is allowed. For example, the retaining wall is encroaching and they can't get setbacks, then we can vary that. What we can't do is say that this is a zone that doesn't allow any houses. In this case we are asking them to come up with a proof that this is the only spot that this specific thing can go.

The only time the Board has approved a Use variance was when it was totally illogical to disprove the Appellant. David used East Chatham Food Company as an example, and said they had a lot of problems, but the Board took care of the setback issues and allowed them to expand.

Chairman Cooper had the Board look at the Solar Use chart and the Board went through it. David said that if someone was coming in with a 300kv generating system that was ground mounted, it would definitely be a Use Variance because there isn't a Use there that allows it. His sense is that the 110% and the consumption on the property closely allies itself with the idea of a non-conforming Setback. There are days when that system is not going to generate anything.

David said the Board can't generate or change a law but they have the ability to interpret the law. Pat wanted to know what exactly Andrew Howard had said. David told her that he had taken notes that he had written, along with the draft minutes and he looked at the law and said I can see where you have personally come to the conclusion that the Use is allowed. This falls within the parameters of a small commercial generating array. Where it is running contrary to the law is because it doesn't consume enough energy. In a perfect world you would have an allowed Use and the energy generated would never leave the site. As a practical matter, that is not going to happen. If we are going to be honest about it, that is not what happens with any of these systems. Maybe they net out in a year to be perfect, but probably not. Pat said that with her system, she is sure that it generates more than 110%, but that is all she can get credit for.

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David said that all he is proposing to the Board is that when you look at this as a total package, the only thing that isn't allowed is the over capacity to generate electricity. David said if this is changed to an Area Variance, the Board can focus on these things and the Appellants might not like the conclusions that we come to but at least we can have an honest discussion about it. If it doesn't work, then it doesn't work.

Sandy said that she thinks we are just addressing only one of the hurdles. One hurdle being the generating more than the 110%, and the second being the offsite consumption. David said he thinks it is all really one issue. When all these systems are generating more than they use, the excess just goes into the grid. It just doesn't shut off. Andrew Petersen agreed with this. David went on to say that this is the minimum size of a commercial system.

Christy said to keep in mind that this is one of the only spots in town where this system will work. David said that along with that, every Area Variance is site specific and has its own parameters, and to have the same decision you would have to have exactly the same parameters. We can attach reasonable conditions to the decision that may enhance compatibility with the law, or not. They may work for the Appellant, or they may not. This is a lot of responsibility. It is not up to us to generate the proof to get this through. We can come up with reasonable conditions if we have to, but the thrust of this is on the Appellant.

Pat made a motion to change this file from a Use Variance to an Area Variance. David with the 2nd.

Discussion

Sandy said she thinks an Area Variance, if we can get it workable is a better solution for them as well as for us. I just don't know about Subsection C, (A and B.) David read aloud from the Solar law, and Andrew said that these numbers all come directly from NYSERTA. Sandy said she was all set with B, and that it could really be tweaked and put under the Area variance. It is just A, that states for the purpose of producing electricity is restricted to onsite consumption. Andrew stated that the energy is never consumed onsite. It doesn't go through your outlets, but through your panel and turns it backward. When it is dark out at night, you are getting it from the grid. It is pumping more into the grid during the day, and that allows you to pull from the grid at night and still have a \$0.00 bill. David said so you are saying that the energy leaves. Andrew said that it had to leave. There is no battery for it. Sandy said that is then a problem with our law.

Sandy stated that we are living and breathing through the issues of the Solar Law, and probably even partial failure of the law. Maybe that is why I am having issues, because I am trying to use what is provided.

David said he feels comfortable taking this path but is not sure where we will end up at the end of the day, but I would like the Appellant to focus on the uniqueness of the energy generating system as opposed to trying to come up with what else can happen in the little triangle of land.

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Pat said we may end up saying this will not work, but we will have looked at everything. I want to make sure we give every opportunity we can to get the information and understand this.

Sandy said she thought we could make the case for switching it to an Area Variance, and this may be a better avenue to take.

Pat said not perfect, but better. She then thanked David for looking into this.

David said he thinks this will allow the Board to examine this file in a more rational way and get better input from the Appellant.

Chairman Cooper said we have a motion on the floor and a 2nd to change the appeal from a Use Variance to an Area Variance.

The clerk polled the Board

David: Yes

Christy: Yes

Jack: Yes

Pat: Yes

Sandy: Yes

All in favor.

David asked if there were any specific things for Monolith to provide. He then said he would like more information on the relationship with the grid, and what happens with the energy. Reiterate why this has to be a commercial system.

Pat asked that he explain why this system has to be in this spot. Also, if there is a fire will there be a sign saying there is solar? Andrew said it is up to the town. David said in his decisions he puts in there to contact the fire company. Andrew said that his company actually trains fire companies.

Christy wanted to know how much this system really produces.

Christy made a motion to adjourn with a 2nd from Pat. All in favor. **8:21.**

For the Board,

Heather O'Grady

Clerk