

Town of Rockland
Zoning board of appeals
October 17th, 2023
#23-03 Area Variance
Rockland Solar LLC

Members present: Chairman Arthur Reigal, Perry Kuehn, Shelia Schultz, Daniel Smith

Public Hearing Convened at 7pm by zoom & in person.

Daniel Y and Rockland Solar LLC are seeking Area variance to erect a 22-acre 5-megawatt ground mount PV solar array at 219 Amber Lake Rd. Livingston Manor, NY

David Yanosh, Rockland Solar LLC representative introduced their plan to convert 35 acres out of 142.7 acres of a forested area into meadows with a 22-acre fenced in 5-megawatt ground mounted PV solar array at 219 Amber Lake Rd. Livingston Manor, NY. With a rear yard setback of 400ft and 700ft from any structure. The PV array would connect to the Hazel Rd. substation.

Member Schultz asked about the service of the Solar and wind turbines as off grid or public use. Question of location and proximity to neighbors and the road were raised Applicant would have private use and not sell back to the utility's companies. Additional questions were raised in how the Wind turbine would affect the views scape of the forested White Roe Lake area.

In 2018 New York state made changes to the Energy codes which govern commercial Solar arrays increasing the cap from 2 megawatts to 5megawatts on all projects.

Member Keuhn asked about the existing Town of Rockland Municipal code on Solar arrays. The Municipal code was written in 2017 and has not been updated to reflect the NYS updates.

Member Shultz had a concern with if the project is actually a use variance versus an area variance. From a zoning perspective, the solar PV array is considered as a utility and essential service. A second concern was if the Solar project would pose a visual impact.

Member of the public – concerns of the use of lithium storage batteries and fires
No use of storage batteries on the premises

A unanimous motion to close the meeting was made by all Members.

Public hearing was closed at 7:20 pm

Town of Rockland
Zoning Board of Appeals
Regular Meeting: October 17, 2023, at 7:21 pm

Chairman Riegal opened the regular meeting with the pledge to the flag.

Approval of Previous Minutes

Previous minutes of December 2022 Catskill Brewery Annex and August 16th, 2023, Ierardi case was tabled until the next meeting.

No old business to discuss.

Case Review discussion

Member Kuehn main discussion points was the lack of Town solar regulations being updated to reflect the NYS current regulations for 5 megawatt projects. The 2019 NYS Green law was enacted to remove barriers for solar projects to be created and Article 10 or 94 in the Case of the Town of Sanford denied a Solar project and NYS overturned the ruling. Chairman Reigal inquired and discussed the points of the hardships faced regarding the limited applicate pool, logistical parameters, the visibility of the solar project and location to the nearby substation.

Member Smith agreed with all points made in regard to the topography of the site plan maps, aesthetics to the town and had no further questions.

Chairman Riegal stated that all decisions of the ZBA need to be defensible in a court of law and if an applicant were to approach the board in the future, they would have to be approved if they met the same criteria as code must be applied equitably:

With no further discussion the Board moved into the **Standard of Review process.**

ZBA: Standard of Review: Area Variance

Zoning Board of Appeals must balance the benefit to the applicant versus detriment to the health, safety and welfare of the neighborhood. The burden of proof lies with the applicant. Factors to be assessed:

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

Discussion: State & Case Law – Energy / Utility project

Resolution: Does not apply due to State & Case law

By _____Schultz_____ Seconded _____

Roll Call Vote: Perry Kuehn – Yes Sheila Shultz – Yes
 Arthur Riegal – Yes Daniel Smith - Yes

- 2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.**

Discussion: Solar project is unique in the location and amount of land, and adequate substation

Resolution: The benefits can be achieved by other methods

By _____ Shultz _____ Seconded _____ D. Smith _____

Roll Call Vote: Perry Kuehn – Yes Sheila Schultz – Yes
Arthur Riegal – Yes Daniel Smith - Yes

3. Whether the requested area variance is substantial.

Discussion: The Solar project not substantial

Resolution: The area variance is not substantial, meets NYS energy Code standards

By _____ D. Smith _____ Seconded _____ Kuehn _____

Roll Call Vote: Perry Kuehn – Yes Sheila Shultz – Yes
Arthur Riegal – Yes Daniel Smith - Yes

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Discussion: No impact on the view shed altered landscape, impact on the neighborhood

Resolution: Will have not have adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

By _____ P. Kuehn _____ Seconded _____ S. Shultz _____

Roll Call Vote: Perry Kuehn – Yes Sheila Shultz – Yes
Arthur Riegal – Yes Daniel Smith - Yes

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

Discussion: The hardship is not self-created – Local Municipal law is out of date, Logistical of the project and applicants. NYS standards vs Town of Rockland Municipal code: Town of Rockland is more restrictive.

Resolution: The difficulty is not self-created

By _____ P. Keuhn _____ Seconded ____ S. Shultz _____

Roll Call Vote: Perry Kuehn – Yes Sheila Shultz – Yes
Arthur Riegal – Yes Daniel Smith - Yes

Zoning Board Action

Approve ___X___ Deny _____ Approve with conditions (below) _____

The area variance as requested by the applicant is hereby approved, the project does to meet the requirements of the Town of Rocklands definition of a public utilities and essential service re: A letter of finding will be submitted to the Town of Rockland Town board and Supervisor Robert Eggleton.

Resolution by _____ P. Kuehn _____ Seconded ____ S. Shultz _____

Roll Call Vote

Perry Kuehn – Yes Sheila Shultz – Yes Arthur Riegal – Yes Daniel Smith - yes

Motion to adjourn made and passed by common consent at 7:40 pm