Town of Campbell, NY

ZBA Meeting

Minutes

Tuesday, November 19, 2024 at 6:00 pm

Guests

Joseph Seeley, Erica Smith, Tony Harris, Jim Harris, Gail Harris, Linda Baird, Nancy Kostolansky, Matt Lipoins, Melissa Melco, Molly Messenger, Marty Meriwether, Jeffrey Horton, Richard Buck.

1. **Pledge/Call to Order/Roll Call**

   Minutes:
   Chairman Morse opened the meeting at 6:00 PM with the Pledge of Allegiance. The Clerk took Roll call All present.

2. **Prior Minutes**

   Minutes:
   A motion to adopt the Draft minutes from October 15, 2024 was made by Dave Smith was seconded by Anthony Creaton was adopted by vote

   Vote results:
   Ayes: 5 / Nays: 0 / Abstains: 0

3. **New Business**

   a. **Amended Appeal 2 of 2024**

      Minutes:
      Chairman Morse asked the applicant Molly Messenger if there was anything she wanted to add to the amended application for the Wixon Road solar project. Ms. Messenger discussed the reduction in setback relief outlined in 12.7 (m) of the Town Zoning Law of a 100' set back. Where the previous application requested a 55.4' relief from the Western lot line, a 38.2' relief from the Southern lot line, and a 48.4' relief from the Front lot line, the amended application requests a 25' relief from each of the lot lines. The request for relief from section 12.7 (g) to replace trees at a 1:1 ratio, and to be allowed to replace the 30 Timber trees and 160 Firewood trees with a value of $1,668 with 96 evergreen trees which are valued at $15,000- $18,000 remains unchanged. David Morse stated that there was some language in the past meeting about the trees being replaced. He asked what degree the company was going to do that. His concern is that the trees die and the screen is no longer there. If in three years the trees die off will the company replace them? Ms. Messenger replied that the longest she has seen is 18 months, because generally in that time frame the trees have taken root, unless there is a salt issue from the road or they are planted too close together. She stated that what the company usually does is replace the trees or the Town makes them put up a bond for the replacement of the trees, or hold in escrow. Chairman Morse replied that his main concern was the screen being opened up and not achieving the purpose if

the landscaping. He understands that if a tree makes it for 18-24 months that it will likely be ok, but pines have a tendency to have issues with disease. He expects the project to be in place for 20 years or more and wondered what the plan to maintain the trees for the life of the project was. Molly asked if a two year agreement was acceptable. Anthony Creaton asked what the maturity level of the trees that are being planted will be. Molly Stated that they are usually in the realm of 6' no less than that. After 2 years they should grow 2' per year. So they should be 8'-10' foot by then. Matt Lipoins the attorney for the applicant stated that for the record the Planning Board resolution that actually states that as a condition of approval the landscaping shall be maintained in good growing condition or something in that nature, he would check to see the exact language. Dave Morse asked what the duration of that would be. Mr. Lipoins stated that that was actually in the solar law, which states good growing condition. The company could definitely stipulate to the two years but under the law whoever the project owner is, will be required to maintain the landscaping for the life of the project. Molly Messenger also stated that it was in the maintenance plan, she and that while building the operation maintenance plan they had copied the town law into the plan, so it is probably already in there. Mr. Buck stated that "we" have experience with a project in the town of Hume and they said they were planting trees and some of them lasted a year. He just drove by there and they are at year four and a lot of them are dying on the vie. They didn't replace them. Molly stated that they had consulted a local landscaper, because they wanted to use a local that knows the ground in case there is a ground issue, freeze issue, or bug issue; because some of the pine trees don't take well to some zones and area.
David Morse said that last time they got side tracked with the setback request, but only kind of touched on the vegetation issue. He wants to ensure that the area residents don't have a situation where a year or two down the road the vegetation is gone, and all they see is the solar field. Gale Harris asked if the same would apply to the Maple trees. Ms. Messenger said yes. Chairman Morse stated that Maple trees did not seem to have the same issues. He stated that Pine and Spruce have a tendency to have issues. They may grow great for six years then you get 4 or 5 of them die right off. He said that Molly had answered his question that whoever the owner is will maintain the landscaping. Jim Harris stated that basically the trees die because they get too close together and once they touch that is when they start dying. Matt Lipoins stated that on the site plan the trees would be staggered to avoid that issue. Dave Morse asked Richard Buck if he was happy with the response. Mr. Buck replied in the affirmative. Mr. Buck then stated that a condition could be put into in the tile that is in the local law that would talk about a bond issue, to be discussed, negotiated and approved by the Town Attorney in consultation with the Zoning Chair. That's fine. Chairman Morse replied alright. He then asked if anyone else on the Board had a question on the trees. He stated that they had discussed the setbacks. Anthony Creaton asked if the company was still willing to work with the Fire department on the UTV. Molly Messenger stated that they had met with the Town Attorney, and the Town Supervisor based on the Host Agreement, and they had talked about the Fire Department and what they wanted. Mr. Buck stated that he had further discussions with Chuck Malcomb

who is Matt's Supervisor. But that is not part of this, it is part of the Host Agreement with the Town. Erica Smith asked which Fire Department were they talking about. The Clerk Replied that it was the E. Campbell Fire Department. Molly confirmed that it was Jordan Frost that they had been talking to. Chairman Morse asked if anyone else on the Board had questions. Supervisor Horton read a statement from the Zoning Officer. " With the added panels being spaced 10 feet apart versus the original 12 feet, will there be an issue with fire fighting response and available equipment? This has already been discussed with the Town Supervisor and Molly Messenger, but the Zoning Officer wanted it on the record. The Supervisor is working with Molly on some sort of Fire Fighting apparatus for the Fire Department. David Morse asked that other than the UTV the Fire Department did not have any other issues on the layout? Supervisor Horton stated that they did not. He explained that discussions with the solar company had focused on training since day one. They would like this to happen before the project is up and running, and would like to include Campbell, E. Campbell, and Coopers Plains Fire Departments. Any Department that may respond to an issue with mutual aid. Dave Morse asked if anyone had a timeframe of when the when the training would take place. He then asked Molly that if this project is approved what time frame do they project to have this up and running? Ms. Messenger stated that this site, because of materials and NYSEG, the first date that they could get to interpatch, is not until June 30, 2025. That is if they had everything done and approved, which they don't, so it would be August or September somewhere around there. So they would probably start the second quarter which would be around April or May, if they have the approvals to begin construction. Chairman Morse asked if that would give ample time to get the training in. Jeffrey Horton stated that Jordan Frost had requested that once the project has started, and the fence is built before the project goes live. If they sit in a training right now they have no actual thing to compare to. Ms. Messenger stated that what they do is when the inverter comes on and they start to run the panels, that is when they can walk through and see the layout and where the shut off switches, disconnects, and emergency panels are. That is when the training is important, the company does not want anything to go live until the Fire Department has had a site visit. It depends on who shows up, in some cases no one shows up. They will work with Jordan and everyone can come to the site that they will be working, and ask questions. This could be more than one day. Not limited to if they are not here, because the crew will be working for months at a time. Jeffrey Horton stated that was the main thing for Jordan on the training piece. Jordan did not think it would be beneficial to do training before they had something that they could visualize. Chairman Morse stated that his main concern was that they would have time to be trained before the project went on line. He then asked if the Board had further questions or if Mr. Horton or Mr. Buck had anything to ad. Mr. Buck wanted to know if the board was going to read through "the resolution", and add before the sentence that reads "This resolution is effective immediately" "we can add language that says, um, uh, the applicant will provide, uh, a bond for tree, or vegetation, or landscaping, replacement in an amount, to be negotiated and approved by the Town attorney, and the ZBA Chair, that's up to you if you want to do that". Dave Morse asked Molly

Messenger if there was a problem with doing something like that. She replied that they had done this in the past, and should be no problem. Gale Harris asked what the project would do to her property taxes. Chairman Morse stated that he was not on the tax board and did not have an honest answer to the question. He would assume that her taxes would stay the same because she is not altering her property. Tony Harris stated that if a million dollar home were built behind his property it would affect his property value. Does this work the same way? Chairman Morse stated that he did not have an answer but Mr. Buck may. Mr. Buck stated that he had never seen that happen in any of the Towns that he has represented. Morse stated that his presumption was that she it would not affect her property value. Mrs. Harris asked who she would talk to to find out that information. Anthony Creaton stated that she should talk to Jeff first so he could direct her to the correct person. Jeffrey Horton offered to make a call and see if he could get an answer. Mrs. Harris stated that she also wanted to know id it would depreciate her property value. Jeff stated that he would make the call and let her know. David Morse stated that he was ready to do the Variance findings and decision worksheet. Linda Baird asked from the aspect of the Fire Department, is the access road going to be maintained throughout the year so they would have access and would there be any lighting provided because it is a big County and they travel all over the place. People may not already know where to go. Molly Messenger replied that the road would be maintained but there was no outdoor lighting, ant any of the locations. The maintenance is actually in the agreement. Linda Baird asked if there would be instructions for if there were an emergency with a step by step guide. Molly stated that that was all in the Emergency Response Plan that goes to the Town the Plan has a local and emergency contact listed. David Morse then began the Area Variance Findings and Decision Worksheet. The Worksheet is specifically dealing with Section 12.7 (m) for the setbacks and 12.7 (g) for tree replacement, of the Zoning Law. Would the variance create an undesirable change to the character of the the neighborhood, or a determent to nearby properties?
The Board agreed that an undesirable change would be produced due to the visual impact f the solar farm. But the proposed screening should help. Whether the benefit sought by the applicant could be achieved by a feasible alternative to the variance. David Smith commented that before there was a way but at this point he did not believe there was an alternative. Steven Peck mentioned that by reducing the spacing by two foot between the solar panels, they added 1700 new panels to achieve their goal. Would it have been feasible to have done ten feet instead of twelve, would it have worked to work within the 100' guidelines? By getting the 25' relief the company is gaining 1700 panels would the company still have been able to get a 1.8 MW output? Molly Messenger clarified the question, if they had a 100' set back with a 12' spacing would they be able to achieve their goal? Mr. Peck asked if the project was increasing to 2.5 MW from the 1.8. Molly replied that the original project was supposed to be 2.5 MW. The answer is no. Without the variance they would not be able to achieve a 2.5MW output even with a 10' spacing. Dave Morse stated that the reason they changed the spacing was to achieve the 2.5 MW goal with the 75' setback. The Board agreed that there was no other way to achieve the project without the setback reduction.

Dave Smith asked Molly Messenger how long the company will replant the trees that are planted if they die. Molly Messenger stated that generally 18 months is enough time for the trees to take root and prosper if they are going to. Molly stated that the company would be willing to put up a bond or escrow to replace the trees. She offered to extend the 18 month window to 2 years. Whether the requested variance is substantial. The Board agreed that the request is substantial but that the applicant had revised the application to reflect what the Board had asked for. Would the variance have an adverse impact on the physical or environmental conditions of the neighborhood. The Board agreed that it would, but the issue would be mitigated by the trees, and landscaping. Was the issue self created? The Board agreed that it was a self created hardship. DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS: The ZBA, after taking into consideration the above five factors, finds that: The Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community. Reasons: Having given the application deference using the Public Utility Standard the Campbell Zoning Board finds that the application for a 25' setback request is reasonable and that the tree replacement of 96 evergreen trees which are valued at $15,000- $18,000 to replace the removal of 30 timber trees and 160 firewood trees at a value of $1,668 is acceptable. The ZBA further finds that a variance of_25% or 25' from Section 12.7 (M) of the Zoning Code is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because: The Project constitutes a public utility for land use and zoning purposes, and is subject to review pursuant to the public utility variance standard, as set forth under applicable New York State Court of Appeals precedent, Which requires the applicant to demonstrate that the property cannot yield a reasonable return if used by a permitted use, that the circumstances causing the hardship are unique to the subject property, and that the proposed use will not alter the essential character of the neighborhood.
A motion by Theron Seeley seconded by Anthony Creaton to approve the variance with the following conditions: 1. The applicant shall follow any conditions set by the Planning Board for the Special Use Permit. 2. Prior to the construction of the Project, the Applicant shall provide a bond or some other form of financial security reasonable to the Town Attorney or Town Engineer, which the Town shall be authorized to call on in the event that installation or maintenance of landscaping measures is inconsistent with the Landscaping Plan filed with the Town. The motion was adopted by vote

Vote results:

Ayes: 5 / Nays: 0 / Abstains: 0

4. **Adjournment**

Minutes:

With no other business before the Board the meeting was adjourned at 6:27 PM upon motion by David Morse, seconded by Theron Seeley.

Vote results:

Ayes: 5 / Nays: 0 / Abstains: 0

Contact: Michelle Seeley (Townclerk@campbellny.com 6075278244) | Minutes published on 01/14/2025, adopted on 02/25/2025