

ZONING BOARD OF APPEALS

Town of North Dansville & Village of Dansville
14 Clara Barton Street
Dansville, NY 14437

Minutes for Thursday, December 19, 2024

Meeting was called to order by Mark Specchio at 7:06pm

Pledge of Allegiance

Roll Call:

Board Members: Chairperson, Mark Specchio – Present
Mary Ann Holden - Present
Dick Gillard - Absent
Karen Schleyer - Absent
Chuck Infantino Present
Jennifer Howe (Secretary/Alt.) Present

Also in attendance: Code/Zoning Officer, Tammy Malone, Village Lawyer, John Vogel,
Village Engineer, Sherman Gittens

Guests: Janice King David Gallo, DRS
Julie Wolfer Bill Bacon
Chuck Menosky Bill Waterhouse
Dennis Weidman Gary Kramer
Kevin Weidman Gerald Welch, Jr
Matt Mihaly, DRS Charlie Perkins
Matt Liponis, Hodgson Russ Attorneys

Approval of 11/21/2024 Minutes:

A Motion was made by Mary Ann Holden to accept the November 21, 2024, Minutes.

2nd by Chuck Infantino

All were in favor with **3 AYE, 0 NAY, 0 Abstain.**

NEW BUSINESS: Application from Janice King to combine two parcels, each with a primary structure on them, into one. Parcels are 6359 Sahrles Rd and 6355 Sahrles Rd.

The Board asked the applicant about the applications and why they would like to combine the 2 parcels.

Janice King said that it was once a single parcel. It was separated in 1989 when 2 acres of the 60 acers was sold to her son in 1989 and recently, it was sold back to Janice, the applicant. There were 2 home steads on the property when they purchased it, which was before zoning laws.

Current zoning law states there cannot be 2 primary residents on the same tax parcel.

A motion was made by Mary Ann Holden to set a public hearing for January 16, 2024 @ 7pm for 6359 Sahrles Rd Application.

2nd by Chuck Infantino

All were in favor with **3 AYE, 0 NAY, 0 Abstain.**

The applicant was given instruction and paperwork on mailing certified letters to neighboring property owners and to bring the receipts to the public hearing.

Jennifer Howe will advertise the Public Hearing in the appropriate publication.

OLD BUSINESS:

Delaware River Solar Project

Chairperson, Mark Specchio asked the representatives who are present for Delaware River Solar if they have the current Resolution from the Village Lawyer that was sent out today (12/19/24).

Matt Liponis, from Hodgson Russ Attorneys stated that they did, and he did have a chance to discuss it with his client and it sounds like it is something they can move forward with. There are a couple provisions that was discussed informally prior to tonight's meeting, that they would like to see changed.

- 1) Provision #3 on page 7: *Other than as otherwise stated in this Resolution and Special Use Permit, three violations of the Special Use Permit within a five-year period of time will result in a revocation of the Special Use Permit.*
 - Instead of the five years, DRS would like to change that to two years.
- 2) Provision # 2 – bb on page 7: *Prior to issuance of a building permit a Letter of Credit for the construction phase of the project will need to be approved by the Village Engineer and provided to the Village as a surety for the Village Road Use, Erosion and Sediment Control placement and removal, vegetative buffer placement & survival for two consecutive seasons, and site stabilization.*
 - Matt Liponis stated, rather than having a line of credit, which is expensive and goes to the bank instead of the town to benefit, DRS would like to have some type of escrow or escrow equivalent and that can be worked out after tonight's meeting.

Other than these two main provisions, Matt Liponis stated there some general objections to the reasonableness of some of the other provisions:

- 10" of grass growing: Matt Liponis stated, "maybe it's something that's in the law, but what is used for the grass that grows in between the panels is a pollinator mix, and that pollinator mix needs to grow to a certain point before it blooms flowers and that's the purpose of supporting pollinator species like butterflies. They (DRS) would like to suggest thirty-six (36) inches".
- Another provision in the agreement was that Village Roads could not be used at all – that as since been struck from the current resolution as there is a Road Use Agreement.
- Another is with respect to Stormwater. Matt Liponis stated, he understood that the provision that is currently here states that if there is any addition, or any stormwater that comes from the proposed project site to any neighboring property site whatsoever, which could be a drop of water, it would constitute as a violation. Liponis stated, "You do know we're going to comply with the SWIFT, right? And that's what we have to do under the law". Continuing with stating they would prefer it says, *compliance with the SWIFT is mandatory* under this.
 - Village Engineer, Sherman Gittens stated that complying with SWIFT is mandatory, regardless. The provision says, increase of the stormwater under neighboring properties, which is standard that is held for any construction. It identifies that there needs to be evidence.
 - Matt Liponis said that it is not the way it was stated.
 - Code Officer, Tammy Malone read the section: *If there is evidence that the project is increasing the runoff.* Tammy stated that she would be the person looking at the evidence and asked Matt Liponis if he thought she would hold them for a drop? Liponis replied, "Um, Well, I wouldn't put it past you, I'll tell you that much".
 - Chairperson, Mark Specchio read the current Stormwater Provision: *Any increase of stormwater drainage from the stie to neighboring properties will trigger an automatic review of the project. If there is evidence that the project is increasing the runoff of stormwater onto the neighboring properties, then the applicant will have 180 days to provide mitigation solutions that will be reviewed by the Planning Board and the Village Engineer.*

-Matt Liponis continued to state that they were there to create a record and that the court order said reasonable conditions and that was the purpose of creating a record and they were voicing certain objections they had that seem somewhat burdensome and unreasonable. The only two changes that was hoped to be agreed upon were already discussed earlier, "because that's the stuff that we can't live without. We are just creating a record with the other conditions".

-Chairperson Specchio pointed out that Liponis, Lawyer for DRS was not reading from the correct and current document, and he was trying to go on record saying that there are things that are not in the actual agreement.

-Sherman Gittens, Village Engineer brought the attention to the earlier comment of Liponis saying "a drop of water would trigger decommissioning" and that was not in this current/new document and wants to make sure that, it is identified on record.

-Liponis stated that posture between the two parties at this point has been... (making had gestures an aggressive noise), and he doesn't want those hostilities to continue on throughout the years in the form of violations that are unwarranted based on the language that was zeroed in on was "any increase", which to them would mean a drop. There is an understanding that there is an evidence piece and now just creating a record of objections.

-Board Member Mary Ann Holden spoke, stating there were two items they absolutely had to have. (1) Escrow and (2) Change the five years for violations to two years, and asked DRS representatives to explain the reason of this change.

-Matt Liponis explained that if there is an invasive species that flies through the air that lands on the property and seeds, which they cannot control or were aware of, all of a sudden, that's in violation. That would be violation one. It gets cleaned up but comes back- that's violations two. Then next summer, even though it has been sprayed, it comes back and that's the third violation. What is preferred is that it happens over a period of two years, when that triggers the Provision, rather than a five-year period.

-The time period was discussed, and the violations would reset every five years, as it is written right now.

-John Vogel, Village Attorney asked if the Board changed that Provision from five years to two years and the Escrow Agreement instead of a letter of credit, will there not be a court challenge?

-Matt Liponis, DRS Attorney stated, "Listen, that stuff is above my pay grade, I don't make those decisions, I'm just here to communicate exactly what our client, you know, how they feel about the conditions".

-Vogel stated that he would not like the Board to greatly reduce the period of time to two years and agreed to the Escrow instead of a line of credit, and still have to go back to court.

-Liponis replied, "Do I think that that's a likelihood, do I think that would happen? No, I don't".

-Tammy Malone pointed out that he was not the lawyer who was sending threatening letters for the last month. Every email he (other lawyer) sent since the last meeting, he has threatened court action.

-MaryAnn Holden, Board Member stated the this is the only issue since she's been on this board, for fifteen years, that we let the applicant dictate the resolution.

-Liponis reiterated that what they were doing was creating a record and what their position is on certain things.

-Sherman Gittens spoke, stating that it was understood that there is some disagreement with what is considered Planning Board or ZBA jurisdiction. Throughout the solar code there is a lot of things that are cross jurisdiction over the Boards. One thing is that the ZBA has certain requirements that the need of the site plan will involve, so that is a big reason why the ZBA does have a vested interest in what the site plan has on it.

-Matt Liponis wanted to clarify two items. (1) the written visual record of predevelopment site conditions and asked if pictures would be ok. [Sherman Gitten stated he would recommend that]. (2) Applicant must provide a true and complete copy of the recorded deed showing title in New York Dansville One, LLC. The deed may be transferred to another entity later on, so if it can be changed to, *in the name of the appropriate entity*. [Mark Specchio thought that this would be fine].

-Liponis had concerns about the conditions of the soil testing. He stated they did not know what the testing parameters would be and asked for a bit more clarity.

-Gitten stated that at this time he didn't have the documents, but global method be testing before construction, testing for any heavy metals. More exact parameters will follow well before a preconstruction.

-Chairperson Mark Specchio stated that he is not happy about changing #3 as he feels it was very direct the way it is written right now and that there is no wiggle room in that, and the perspective of invasive species is understood.

-John Vogel stated he can change the word "will" to "may".

Mary Ann Holden made a motion to grant a special use permit to Delaware River Solar. It is approved subject to the conditions in the document, of the 17 whereas is's and the conditions in the document with amendments to items n, x and bb. X and bb seem to be redundant, but they will reflect the escrow agreement rather than a letter of credit. And we changed item 3 in the resolution that the violations in that period of time may result in a revocation, but the dissipating time remains 5 years. Item n, being changed to a deed or lease agreement in the name of the appropriate entity.

Motion was 2nd by Chuck Infantino.

Roll Call Vote was taken:

Mary Ann Holden: I've been ordered by the court, I vote yes

Chuck Infantino: Yes

Mark Specchio: Yes

All were in favor with **3 AYE, 0 NAY, 0 Abstain.**

OTHER BUSINESS:

There was no other business to discuss.

ADJOURNMENT

A Motion was made by Mary Ann Holden to adjourn the meeting.

2nd by Chuck Infantino

All were in favor with **3 AYE, 0 NAY, 0 Abstain.**

Next Meeting and Public Hearing is January 16, 2025, at 7pm – Town Hall 14 Clara Barton St. Dansville.

Respectfully Submitted,
Jennifer Howe, ZBA Secretary