

LIVINGSTON ZONING BOARD OF APPEALS

February 04 2020

The meeting opened at 7:00 p.m. with the Pledge of Allegiance.

Attendance:

Chairman Thomas Alvarez.

Vice Chairman Charles Schneider

Stan Yarian

Sarah Price

Charles Dickens

Zack Feuer

Attorney Ted. Hilscher.

Absent: NONE.

A motion to accept the January 07 2020 was made by Zack Feuer 2nd by Charles Dickens. All present voted AYE.

A motion to go into executive session made by Charles Dickens

Seconded by Zack Feuer at 7:06

A motion to re-enter regular meeting made by Zack Feuer

Seconded by Sarah Price at 7:18

Chairman Alvarez announced continuation of Public Hearing for Greatwonder Farms.

Comments were received by public:

1. Andrew Yaruska Not in favor. Not in C-1 Do not set a precedence.
2. Karen Fetty Map concerned about the distance from the road and the type of screening.
3. Pan Kline in favor of solar but the Town put a lot of thought into the Regulations for solar and would like to see that they follow the rules.

Public Hearing closed 7:40.

Chairman Alvarez reported that Zoning Board of Appeals members Charles Schneider and Sarah Price are recusing themselves from voting on this matter.

Members Schneider and Price confirmed.

Attorney Ted Hilscher indicated a letter was received from Columbia County Planning board indicating its review could not be completed because certain items were missing.

Attorney Hilscher reported “I spoke with Matt Griesemer the attorney for the applicants about the January 31 letter from the Columbia County Planning Board. He indicated (1) he had nothing more to present to the ZBA from his client, and (2) that the ZBA could proceed to a vote on the application of Greatwonder Farms.”

Attorney Hilscher read the following proposed resolution:

WHEREAS, the applicant Greatwonder Farms Inc. has applied for a Large Scale Solar Energy System, as same is defined at the Town of Livingston Zoning Law § 3.2 Schedule of Permitted Uses, proposed for Schneider Road, located in a LDR-2 Zone, and

WHEREAS, the Town of Livingston adopted Local Law #1 of 2017 as follows:

The Town of Livingston presently has in effect a Town Zoning Law which has established regulations for building, construction and allowable uses within the town. The Town Board has reviewed and revised the regulations concerning solar panel installations in order to preserve and protect the health, safety and welfare of its residents. The town recognizes the potential benefits and desirability of solar power and renewal energy sources, but determines that the town should regulate the installations. This Solar Energy Law is adopted to advance and protect the public health, safety and welfare of the Town of Livingston, including: (1) Taking advantage of a safe, abundant, renewable, and non-polluting energy resource; (2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses; and (3) Increasing employment and business development in the region by furthering the installation of Solar Energy Systems,

and

WHEREAS, in furtherance of the protection of the public health, safety and welfare of the Town of Livingston, said Local Law allowed for the placement of Large Scale Solar Energy System in C-1 Zone by Special Use Permit, and prohibited Large Scale Solar Energy System in LDR-2 Zone, and

WHEREAS, the project proposed by the applicant is prohibited in the LDR-2 Zone and the applicant has applied for a use variance under Section 6.8.11(b) and a public hearing was duly noticed and held on said application on January 7, 2020, and

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Appeals finds as follows:

1. Section 6.8.11(b) reads in part, as follows:

No (use) variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove unnecessary hardship the applicant must demonstrate the Board of Appeals that

- (1) under applicable zoning regulations the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

- (2) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

- (3) the requested use variance, if granted, will not alter the essential character of the neighborhood; and

- (4) the alleged hardship has not been self created.

2. In consideration of the four legs of the test, the Zoning Board of Appeals finds as follows, as to #1:

The applicant must demonstrate under applicable zoning regulations the applicant cannot realize a reasonable return, provided the lack of return is substantial as demonstrated by competent financial evidence. The applicant has failed to meet said standard. There are, under the town schedule of uses, 55 uses that are allowed either by Special use Permit or by right in LDR-2 Zones. The applicant provided no discussion and no evidence at all regarding the possibility of realizing a reasonable return under any of these uses except for agriculture, and as to

agriculture, no competent financial evidence was provided. The Zoning Board of Appeals notes that at least one member of the public at the public hearing, on a farm almost adjacent to the subject parcel, testified he is currently able to realize a reasonable return in the business of agriculture.

3. As to number 2, the applicant must demonstrate that the alleged hardship relating to the property in a question is unique, and does not apply to a substantial portion of the district or neighborhood. The board finds the applicant fails to meet this standard. The applicant indicated that the parcel was unique in that woods and hills partially obscured the proposed site on three sides. Applicant failed to compare this parcel to the rest of the town of Livingston, most of which also consists of former farmland, woods and gentle hills. The Zoning Board of Appeals finds that the subject parcel is not unique at all, but in fact is typical and representative of much of the town.
4. The applicant must demonstrate, regarding number 3 that the requested use variance if granted will not alter the essential character of the neighborhood. The Zoning Board of Appeals finds the applicant did not meet the standard. As much as solar energy is a worthwhile and forward-thinking enterprise, the Zoning Board finds that the applicant did not meet its burden in demonstrating that 18 acres of solar panels placed into open farmland does not alter the character of the neighborhood.
5. Finally, the applicant must demonstrate the alleged hardship has not been self created. The Zoning Board of Appeals find the applicant fails to meet this standard. The Zoning Board of Appeals finds that the prohibition by the Zoning

Law of a use proposed by an applicant does not represent an unnecessary hardship. According to Columbia County tax rolls, the applicant purchased subject property in 2018, subsequent to the adoption of local Law #1 of 2017 so that the applicant was aware or should have been aware that the proposed use was prohibited prior to the applicants' purchase of the subject lands.

6. Since the applicant must prevail on all four standards, and the failure of the applicant to meet even one of the standards must result in a denial, the Zoning Board of Appeals hereby denies the application of Greatwonder Farms Inc.

Discussion among Board Members took place.

Zach Feuer asked that paragraph number 4, pertaining to use variance criteria number 3, be removed from the proposed resolution, and then moved for the adoption of the amended resolution.

Charles Dickens seconded.

In favor of denying the use variance application of Greatwonder Farm Inc.

Chairman Alvarez called the roll:

Zach Feuer voted yes

Charles Dickens voted yes

Stanley Yarian voted yes

Chairman Alvarez voted yes

After short recess.

Chairman Alvarez introduced the matter of the appeal by Scenic Hudson and Olana Historic Site of an order of the building code officer of the town of Livingston and recognized Mr. Caffry, attorney for the appellants.

Mr. Caffry spoke in favor of overruling Mr. Harkins' decision to allow construction on the Eger tower to proceed. Mr. Caffry had provided his arguments in writing to the board in advance of the meeting.

Ms. Murray then spoke in favor of letting Sam Harkins's decision stand. Ms. Murray had provided her arguments in writing to the board in advance of the meeting.

Public hearing opened at 8:15.

Jeffrey Anzevino spoke against Sam Harkins decision. Siting conditions have changed. The proposed new tower is out of date. Requests the Planning board review the application.

Sean Sawyer Olana Partnership spoke of the National Historic landmark of Frederick Church, living with nature. Views are spectacular and well planned. Never against the tower just wants more input with the project.

Attorney Jacqueline Murray spoke for the Eger's. If not against the tower why the Article 78?

Received a copy of Resolution No 190-2018 from the Board of Supervisors County of Columbia.

E mail from NYCOMCO Ben Lacouette in favor of the tower.

Robert Lopez Columbia County 911 spoke of the tower as it is needed for the safety of Fire Police, Emergency workers and Police Officers.

Public hearing closed at 8:55.

The Board will not vote tonight.

Applicant to return for the March meeting.

A motion to adjourn was made by Sarah Price and 2nd by Charles Dickens. Meeting closed at 9:05. Next meeting March 03 2020. At 7:00 p.m.

Respectfully submitted.

Eileen Yandik

Secretary ZBA.