

MINUTES
LEWIS COUNTY PLANING BOARD
January 19, 2017

- (1) **Call to Order:** Chairman Kaido called the regular meeting of the Lewis County Planning Board to order at 2:30 PM in Room 327 on the 3rd floor at the Lewis County Court House, Lowville, New York. Roll call was requested by Chairman Kaido.
- (2) **Roll Call:** Board Members Present: Mike Kaido, William Burke, Tom Spaulding, Patricia O'Brien and Tim Peterson. Staff Present: Frank Pace, Director of Planning; Rachel Gardner, Planner. Others Present: Steven Virkler from the Journal & Republican/Watertown Daily Times, and Henry Avallone, Citizen.
- (3) **Reading and Approval of Minutes:** The December 21, 2016 meeting minutes were received and there were no modifications made by the Board members present. Mr. Burke motioned to approve the minutes; Mrs. O'Brien seconded the motion, which carried unanimously.
- (4) **Correspondence and Communication:** None
- (5) **Report of Officers:** None
- (6) **Report of Special Committees:**

239-M Review

Mr. Pace read the following reviews to the Board:

VILLAGE OF LOWVILLE PLANNING BOARD

Site Plan Review/Special Permit (Village Application #SP2016-9) for the installation of 80 Kw Roof Mount Solar System at 7383 Utica Blvd. (State Route 12) in the Village of Lowville.

Dave Jantzi T/A Boulevard Properties LLC – Applicant

The applicant provided the following project information; 1) Letter overview prepared by Benjamin Fouse of Green Volt Solutions; and 2) Documentation from Aubertine & Currier, Structural Analysis (9/5/2016 & 9/8/2016); Paul J. Ford and Company, Structural Engineers, dated 12/5/2016; National Grid dated 11/2/2016; CNY Realty dated 9/28/2016; Leegill Ventures, LLC dated 10/21/2016; Jantzi Request for zoning variance documentation/notification of adjacent land owners, dated 10/12/2016 and unsigned Project Site Plan, prepared by Rectify Solar LLC.

The proposed project submission complies with the applicable Village criteria, as indicated by the Village referral form dated December 5, 2016. It should be noted that on November 28, 2016 the Village of Lowville Zoning Board of Appeals (ZBA) granted a variance “with no conditions” for the subject site (see attached ZBA documents).

It should be noted that the undersigned contacted the Village and requested available information regarding the variance. The Village supplied e-mail correspondence and a hand-written ZBA document related to the application. Said information is as follows: based on a September 14, 2016 e-mail between Cheyenne Steria and Ben Fouse of Green Volts Solutions

there was a difference of interpretation with respect to a “Principle Solar System” between the Code Enforcement Official and the Planning Boards understanding of a Pre-existing Nonconformity and the necessity for a variance with regards to current zoning criteria (lot size required 5 acres, existing 2.9 acres) (see attached e-mail chain).

▪ *Compatibility With Adjacent Uses:*

The zoning for this area is identified as AC (Auto-Commercial). Currently the property use is Commercial establishment. The current and proposed site modifications identified are consistent with the Utica Blvd. corridor. Thus, the proposed project is consistent with the character of the AC setting.

▪ *Traffic Generation and Effect:*

The roadway is identified as South State Street (Utica Blvd., State Route 12). This roadway consists of two lanes of travel in a north-south direction. The roadway system also contains a center turning lane. The applicant appears to be utilizing the existing driveway entrance. There are no apparent sight obstructions that would impede egress and ingress to the property with the proposed use.

Based on the current zoning, area use and roadway design, it would appear that the roadway system will not be adversely impacted by the proposed interior site reconfiguration activities.

There is no reported traffic problems associated with this facility. Applicant has indicated no changes to existing driveway entrances (Compliance with Article X, Subsection 1020).

▪ *Protection of Community Character:*

The proposed project is located within the AC zone in the Village of Lowville. There are numerous existing commercial facilities in this zone (area). Based on review of the current zoning criteria in the County file for the Village of Lowville the proposed project is in compliance with the criteria under Article IV, Section 420, Schedule A, and Article VI, Subsection 605 and 610. It should be noted the Village Planning Board identified checklist 1,3,4,6, and 7 as Yes and item 5 as No. Additionally, items 2, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 identified as NA with special note on #25 “ZBA Approval”.

Compliance with Article IX, Section 920 is recommended. *“Waiver of Submission Requirements” The planning board may waive any of the submission requirements listed in Section 915 above where it deems that the information is either not applicable or is unnecessary to a particular plan review.*

Additionally, the applicant provided a completed SEQR Appendix, Short Environmental Assessment Form for review. The Village of Lowville as the Lead Agency acknowledged the project as an “Unlisted Action” with a further determination of a Negative a Declaration on December 5, 2016 (See attached SEQR document).

▪ *Signage:*

The applicant is not proposing signage for this project.

- *Drainage:*

The site is currently zoned AC. There are no currently known drainage issues with the site. As reported by the applicant the proposed site modification is related to the roof area of the existing structure. Thus, no ground disturbance is proposed for this project (See SEQR document).

Based on the information supplied by the applicant, the proposed use will not create any adverse environmental concerns for the area.

- *Erosion:*

Article IX, Site Plan Review, Section 21 requires submission of an erosion and sediment control plan conforming to the standards and practices contained in the USDA Soil Conservation Service Engineering Field Manual (EFM) and New York Guidelines for Urban Erosion and Sediment Control, or other erosion and sediment control manual recognized by the Planning Board.

NYS DEC regulations require erosion control plans when the applicant disturbs 1 acre or more. The SEQR form, Page 1, item 3 indicates a (0) acre area of disturbance for the project. If applicable, before commencing construction activity, the owner or operator of a construction project that will involve soil disturbance of one or more acre must obtain coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity.

The owner must develop a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements of the General Permit for Stormwater Discharges from Construction activity. The owner must submit a Notice of Intent to the NYS DEC prior to start of construction (if applicable).

- *Parking:*

Based on the applicant's information the site activities involve the installation of an 80 Kw roof mounted solar system only. No other site modifications are proposed by applicant.

- *Community Facilities:*

The subject property currently contains electrical service. The site is also connected to municipal water and sewer utilities.

- *Lighting:*

Based on the applicant's submission, current exterior lighting will remain (Article X). The site activities involve the installation of an 80 Kw roof mounted solar system only. No other site modifications are proposed by applicant.

- *Landscaping and Screening:*

Based on the applicant's submission, no landscaping is proposed, Article X, Subsection 1070.

Recommendation: Approve with the following conditions:

1. Compliance with Article IX, Section 920 is recommended. *“Waiver of Submission Requirements”* The planning board may waive any of the submission requirements listed in Section 915 above where it deems that the information is either not applicable or is unnecessary to a particular plan review. This information should be placed in the project file and a copy forward for the County file.
2. Compliance with all Local, State and Federal regulatory requirements for this type of facility and the products stored.

Guidance Recommendation for the Planning Board and Zoning Board of Appeals:

The intent of this comment section is to provide additional guidance only as described in the inter-municipal agreement for referral reviews criteria. The information supplied below for review is in regard to the interpretation request by the Planning Board and the action taken by the Zoning Board of Appeals, as well as documentation supplied in the referral application for review.

These excerpts are informational in nature. For review of the entire reference document please refer to www.dos.ny.gov/lg/publications/Zoning_Board_of_Appeals.pdf

What is an interpretation? *The zoning enabling statutes provide boards of appeals with the power to hear and decide appeals from and review decisions of the administrative official responsible for the enforcement of the zoning regulations. The statutes specifically allow the board to reverse or affirm, wholly or partly, or to modify the decisions appealed to it. This general 28 statement of the board’s appellate jurisdiction allows the board to interpret the municipality’s zoning regulations. The interpretation power is part of the appellate jurisdiction of the board of appeals, and cannot lawfully be exercised unless an appeal has been taken from an enforcement officer’s decision.²⁹ In its simplest terms, an appeal seeking an interpretation is an appeal to the board of appeals claiming that the decision of the enforcement official was incorrect.*

The basis of an interpretation *The Court of Appeals has held that a zoning board of appeals performs a “quasi-judicial” function when it renders an interpretation of a zoning provision, and, as such, should act according to its own precedent. Thus, where a board of appeals has interpreted a particular provision of the municipal zoning law in a prior case, it should follow that precedent. This requirement points up the essentiality of good record-keeping, and of maintaining easy reference to prior decisions. The ideal system will cross-reference the filing of case records according to several parameters, such as: zoning law provision interpreted; location of property; name of appealing party(ies); as well as by simple chronology.*

What is a variance? *In essence, a variance is permission granted by the zoning board of appeals so that property may be used in a manner not allowed by the zoning. It is only the zoning board of appeals that has the power to provide for such exceptions from the zoning. And since zoning is meant to implement the municipality’s development objectives and protect the health, safety and general welfare of the people, it follows that there are strict rules governing when variances may be provided. There are two types of variances - use and area - and we will take them up separately since the rules for each are different. One point should be emphasized at the outset. Though it is not a legislated change in zoning, a variance is essentially a change in the zoning law as it applies to the subject parcel of land. It therefore*

applies to the land itself, and not merely to the owner who happens to have applied for it. While a variance may be conditioned so as to be temporary where the nature of the use will be temporary (e.g., a construction trailer), the typical variance must instead "run with the land." It cannot be made to apply only to the current owner. "It is basic that a variance runs with the land and, 'absent a specific time limitation, it continues until properly revoked'.

The General City Law, Town Law and Village Law specifically incorporate this concept into the language of the statutes. The statutes provide as follows: "'Use variance' shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations."

"Before the Board may exercise its discretion and grant a variance upon the ground of unnecessary hardship, the record must show that (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and (3) that the use to be authorized by the variance will not alter the essential character of the locality." These rules have since become known by almost all practitioners as the "Otto" rules for granting use variances.

Self-created hardship: *While it was not a factor in the Otto decision, there is one more important consideration that must be noted before leaving the discussion of use variances. That is the so-called rule of "self-created hardship." The self-created hardship rule has now been codified in the statutes.*

The Area variance: *The statutes define an area variance as follows: "'Area variance' shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations." Area variances are thus, as a practical matter, distinguished from use variances in that a use variance applies to the use to which a parcel of land or a structure thereon is put, and an area variance applies to the land itself. In most cases, the difference is clear-cut. If an applicant for a variance wishes to use his property in a residential district for a funeral home, he obviously wants a use variance; if, however, he wishes to build an extra room on his house, and it would violate a side yard restriction, an area variance is just as obviously called for.*

*The statutes now specifically set forth the rules for the granting of area variances. They provide that in making its determination on an application for an area variance, the board of appeals must balance the benefit to be realized by the applicant against the potential detriment to the health, safety and general welfare of the neighborhood or community if the variance were to be granted. **In balancing these interests, the board of appeals must consider the following five (5) factors:***

- 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.*
- 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.*
- 3. Whether the requested area variance is substantial.*
- 4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*

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.

Minimum variance necessary: The statutes codify what the courts had previously held: When granting either a use or an area variance, a zoning board of appeals must grant the minimum variance that it deems necessary and adequate, while at the same time preserving and protecting the character of the neighborhood and the health, safety and welfare of the community. Thus, the board need not grant to an applicant everything he/she has asked for. Rather, the board is required to grant only the approval that is absolutely necessary to afford relief.

Conditions The statutes empower the board of appeals, when granting a use or area variance, to impose “such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property.” While the statutes now expressly authorize the setting of conditions, the courts long ago held that boards of appeals have the inherent power to impose reasonable conditions to protect the neighborhood. We should clearly distinguish conditions from alternatives. While an alternative is a different version of relief – or, perhaps, a way to avoid the need for relief – conditions are instead requirements placed on the enjoyment of the relief that the board actually grants. Conditions are meant to mitigate the impacts of the approved project on both the neighborhood and on the integrity of the zoning law.

The Decision: Sooner or later, of course, the board will have to render its decision. The statutes now uniformly provide that, the board has (62) days from the conclusion of the hearing on the matter to render its decision. This period may, however, be extended by mutual consent of the applicant and the board of appeals. The statutes also require that the board of appeals keep minutes of its meetings, showing the vote of each member on every question, and, if absent or failing to vote, showing those facts. The principles which form the basis of the board of appeals’ decision are found in the criteria, discussed above, for making interpretations or for the granting of use or area variances. Where the decision instead involves an exercise of original jurisdiction, the principles will be found in the standards of review contained in the local special use permit, site plan, or other provisions under which the application has been made. However, the board arrives at its decision, the decision itself must be supported by findings which constitute “**substantial evidence.**” In other words, findings of fact and/or testimony must be placed on the record which adequately support the decision. It is no exaggeration to say that everything a board of appeals decides is a potential lawsuit. Board of appeals actions are one of the most litigated fields of law. In the event of court review, there will have to be a record, with findings, to enable the court to determine whether the decision was supported by substantial evidence on the record. There are many cases in which the entire matter was remanded to the board of appeals for a redetermination because of an inadequate record; or, even where an adequate record of evidence existed, because there was no statement of the findings of fact which supported the final decision.

Filing the Decision: The statutes provide that every rule, regulation, every amendment or repeal thereof and every order, requirement, decision, or determination of the board shall be filed in the office of the municipal clerk within five business days after the day it is rendered (a copy must also be mailed to the applicant). These filing requirements are of major importance as a practical matter, because the 30-day period to appeal a board of appeals decision to the courts begins to run from the date of the filing of the board's decision.

Conclusion: *Too often, the procedure by and before the zoning board of appeals is informal to a point where its actions may be invalid. Procedural matters are inherently dull. But there is a reason for them - and courts will uphold them. Informality is fine, up to a point, but board of appeals actions affect the property rights of individuals, and the procedural requirements of the statutes are meant to protect these rights as well as the welfare of the community. It is hoped that the procedures noted herein, as well as the substantive rules governing both interpretations and variances, will be of assistance to boards of appeals throughout the State of New York.*

Reference Document: New York, Division of Local Government Services, Zoning Board of Appeals, James A. Coon Local Government Technical Series, 2005.

Upon review of the site plan document with the Board members, there was a brief discussion regarding the area of the roof where the system would be constructed. There was also a brief discussion regarding the Village Checklist and its completion. Mr. Pace also provided an overview to the Board on the additional section referenced “**Guidance Recommendation for the Planning Board and Zoning Board of Appeals**” after the recommendation section. This was provided to the Village as guidance considering the ZBA documentation on their interpretation ruling was limited. After the discussion regarding the project, Mr. Petersen made a motion to approve the project with the conditions listed above, seconded by Mr. Burke, which carried unanimously.

VILLAGE OF LOWVILLE PLANNING BOARD

Site Plan Review (Village Application #SP2016-12) to open a Bed & Breakfast located at 7663 North State Street (State Route 26) in the Village of Lowville.

Chris Buckingham T/A 1812 House Lowville, LLC – Applicant

The applicant provided the following Project Documentation: 1) Letter of Intent; 2) Plot Plan; Sign Detail; and SEQR Short Form, Appendix B. The proposed project submission complies with the applicable Village criteria, as indicated by the Village referral form dated October 3, 2016.

▪ *Compatibility With Adjacent Uses:*

The zoning for this area is identified as NC (Neighborhood-Commercial). Currently the property use is residential. The current and proposed site modifications identified are consistent with the North State Street corridor. Thus, the proposed project is consistent with the character of the NC setting.

▪ *Traffic Generation and Effect:*

The front of the structure is positioned along North State Street (State Route 12). This roadway consists of two lanes of travel in a north-south direction. The roadway system also contains a center turning lane. The applicant appears to be utilizing the existing driveway entrance which is located on Waters Terrace. Waters Terrace is part of the Municipal Roadway System. There are no apparent sight obstructions that would impede egress and ingress to the property with the proposed use with existing entrances.

Based on the current zoning, area use and roadway design, it would appear that the roadway system will not be adversely impacted by the proposed use.

There are no reported traffic problems associated with this property. Applicant has indicated no changes to existing driveway entrances (Article X, Subsection 1020).

▪ *Protection of Community Character:*

The proposed project is located within the NC zone in the Village of Lowville. There are numerous existing residential-commercial facilities in this zone (area). Based on review of the current zoning criteria in the County file for the Village of Lowville the proposed project is in compliance with the criteria under Article IV, Section 420, Schedule A and Section 430, Schedule B, including but not limited to Article V, Subsection 530, Article VII, Article VIII, Section 830-3, Article IX, and Article X.

It should be noted the Village Board identified checklist items 1-7, 13 and 18 as YES and items 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, and 25 as NA. Compliance with Article IX, Section 920 is recommended. *“Waiver of Submission Requirements” The planning board may waive any of the submission requirements listed in Section 915 above where it deems that the information is either not applicable or is unnecessary to a particular plan review.*

Additionally, the applicant provided a completed SEQR Appendix B, Short Environmental Assessment Form for review. The Village of Lowville as the Lead Agency acknowledged the project as an “Unlisted Action” with a further determination of a Negative a Declaration on December 5, 2016 (See attached SEQR document).

▪ *Signage:*

The applicant has proposed signage in accordance with Article VII. It should be noted that sign details were provided with the Plot Plan.

▪ *Drainage:*

The site is currently zoned NC. There are no currently known drainage issues with the site. Applicant is not proposing any exterior modifications, based on application documents.

Based on the information supplied by the applicant, the proposed use will not create any adverse environmental concerns for the area.

▪ *Erosion:*

Article IX, Site Plan Review, Section 21 requires submission of an erosion and sediment control plan conforming to the standards and practices contained in the USDA Soil Conservation Service Engineering Field Manual (EFM) and New York Guidelines for Urban Erosion and Sediment Control, or other erosion and sediment control manual recognized by the Planning Board.

NYS DEC regulations require erosion control plans when the applicant disturbs 1 acre or more. *The SEQR form, Page 1, item 3 indicates a (0) acre area of disturbance for the project.* If applicable, before commencing construction activity, the owner or operator of a construction project that will involve soil disturbance of one or more acre must obtain coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity. The owner must develop a Stormwater Pollution

Prevention Plan (SWPPP) in accordance with the requirements of the General Permit for Stormwater Discharges from Construction activity. The owner must submit a Notice of Intent to the NYS DEC prior to start of construction (if applicable).

▪ *Parking:*

Based on the applicant's information and Article VIII, Subsection 830-3 and 840, it would appear the proposed/existing paved parking area is in compliance with Village parking criteria. However, the Plot Plan indicates (8) parking spaces with no reference to Subsection 830-3 and number of "Guest Rooms" which governs the required number of spaces, "plus one". Applicant should clarify the number of guest rooms and how they arrived at the (8) parking spaces (e.g., number of guest rooms).

▪ *Community Facilities:*

The subject property currently contains electrical service. The site is also connected to municipal water and sewer utilities.

▪ *Lighting:*

Based on the applicant's submission, no exterior lighting is proposed (Article X, Subsection 1030).

▪ *Landscaping and Screening:*

Based on the applicant's submission, no additional landscaping is proposed, Article X, Subsection 1070.

Recommendation: Approve with conditions

1. Compliance with Article IX, Section 920 is recommended. "*Waiver of Submission Requirements*" *The planning board may waive any of the submission requirements listed in Section 915 above where it deems that the information is either not applicable or is unnecessary to a particular plan review.* This information should be placed in the project file and a copy forward for the County file.
2. Applicant should clarify the number of guest rooms and how they calculated the eight (8) parking spaces. This information should be placed in the project file and a copy forward for the County file.
3. Compliance with all Local, State and Federal regulatory requirements for this type of facility and the products stored.

Upon review of the site plan documents with the Board members, there was a brief discussion regarding the conditions of approval referenced in the report. The discussion reviewed the parking space calculation and the way the Village completed their checklist. After the discussion regarding the project, Mr. Spaulding made a motion to approve the project with the conditions listed above, seconded by Mr. Petersen, which carried unanimously.

(7) Report of County Planner:

Responses from municipalities regarding previously submitted/reviewed projects:

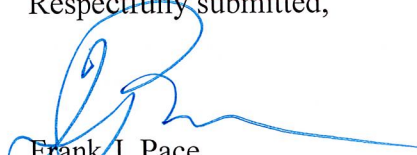
- Site Plan Review - Adirondack Valley Builder, Inc. - Town of Lowville Planning Board - Approved

(8) **Unfinished Business:** None

(9) **New Business** Mr. Pace provided the Board with an update on the county's solar, educational, clean energy communities projects, as well as the Article X process with regard to the Number 3 Wind Farm project. There was also a brief discussion regarding Ms. Gardner's Transportation Education Program.

(10) **Adjournment:** There being no other business, a motion to adjourn the meeting was made by Mr. Burke, seconded by Mrs. O'Brien. Chairman Kaido adjourned the meeting at 3:15 PM.

Respectfully submitted,



Frank J. Pace
Director of Planning