

**Village of South Nyack
Planning Board Minutes
September 21, 2016**

Present:

Jerry Ilowite, Chairman
Allyson Pifko, Member
Bill Whitehurst, Member
Myra Starr, Member
Timothy Kenna, Member
Scott Fine, Alternate

Also present:

Robert Knoebel, Board Attorney
Sokuna Mam, Board Secretary

Mr. Ilowite called the meeting to order at 7:33pm. This meeting was noticed to the public on September 7, 2016. There was one item on the agenda.

An application by Katherine Green & Omri Green for site plan approval to site plan approval to permit the installation of solar panels. The premises is a one family dwelling, is located 25 Gesner Ave., South Nyack, NY 10960 and identified on the Tax Map as Section Block and Lot 66.62-2-30, located in an R-12 Zoning District.

Case #1 – 25 Gesner Ave., South Nyack, NY 10960

Appearing: Richard Galbreth, Sol Providers

Mr. Galbreth is seeking approval on behalf of the Green residence for site plan approval for the proposed installation of 29 solar panels on the roof of an existing single-family. The panels are not directly facing the road. There will be no panels on north side. One set of panels will be facing the neighbor's property but behind the neighbor's house. Two sets of panels will be facing east and west. On the west side the panels are facing the trees and that will block the neighbor's view. On the east side the panels will be on the second story and far away from neighbors' house. The panels will not affect the look or glare in the front. All the equipment will be inside and it won't affect the aesthetic of the project.

Mr. Ilowite asked Mr. Galbreth to describe the panels.

Mr. Galbreth commented that the color of the panels is black on black finish. They will stand about 4 by 6 inches off the roof. They are attached every 32-48 inches on the roof with stands off and metal equipment that goes around it creates the 4 inches gap.

Mr. Ilowite reviewed Mr. Collazuol, the Village Engineer's letter dated September 20, 2016.

Zoning:

South Nyack Code §110-6.1-Screening of mechanical equipment. Equipment located on roof shall be screened as approved by Planning Board.

The solar panels are not by typical interpretation “mechanical equipment” and mount flush with roof on raised brackets. The panels proposed are on the rear roof areas.

Plan Review:

The plans do not affect site conditions; the solar panels are to be mounted on the rear roof of the structure. Sub panels are shown to be installed inside the basement. One conduit run is indicated on the front roof.

Summary:

Subject to the appearance of the panels on the rear roof and the conduit on the front roof we have no objection to the plans.

Mr. Ilowite asked Mr. Galbreth to explain Village Engineer's question about the conduit.

Mr. Galbreth explained the installer would recommend that the conduit will come from the junction box, run down the back side of the house, the over to the front corner. He did a walk through with the owner explaining the placement of the panels.

Mr. Ilowite asked Mr. Galbreth to show the conduit on the site plan and it should not be on the front of the house.

Mr. Fine asked design life time of these panels and how long they will last.

Mr. Galbreth explained solar panels typically last approximately 25 years. However, it depends on the manufacture and conditions. There are solar panels that can last 40 years. He also explained about panels, states energy codes, and future rapid shutdown.

There was a discussion about the signatures on the application.

Mr. Kenna reviewed the SEQRA short form. He asked “does the proposed action exceed the state energy code requirements and describe features and technologies?”

There was a discussion about whether the proposed actions exceed the state energy code requirements.

Mr. Ilowite reviewed the SEQRA short form. He asked if the proposed action needs funding from another governmental agency.

Mr. Galbreth explained the rebate program. The New York State Energy Research and Development Authority (NYSERDA) offer a rebate of \$1.00 per installed Watt on residential solar PV system.

There were no members of the public present.

Ms. Starr made a motion to conditionally approve the site plan for 25 Gesner Avenue, as shown on drawings, dated August 19, 2016 prepared by B. Cranston; subject to the following conditions:

- Amend conduit location to the side on the site plan.

The premises is a one family dwelling, is located 25 Gesner Ave., South Nyack, NY 10960 and identified on the Tax Map as Section Block and Lot 66.62-2-30, located in an R-12 Zoning District. This is a Type 2 SEQRA action with no potential for negative environmental impact.

Mr. Whitehurst seconded.

Board Vote:

Mr. Ilowite	Aye
Mr. Whitehurst	Aye
Mr. Kenna	Aye
Ms. Starr	Aye
Ms. Pifko	Aye

Motion approved 5-0 (supermajority)

NEW BUSINESS:

The Board postponed approval of minutes of the June 15, 2016 until the October 19, 2016 meeting.

The Board postponed approval of minutes of the July 20, 2016 until the October 19, 2016 meeting.

Mr. Ilowite commented that the Village received a letter from the Rockland County Office of the County Attorney stating they require the land use board to file its minutes with Rockland County Department of Planning under the General Municipal Law §239-m (6) and §239-n (6) within thirty days after final action.

There was a discussion about GML and minutes. The Planning Board is in compliance with the County of Rockland's requirement.

Mr. Knoebel commented about upcoming Planning Board meeting. Cuddy & Fedder sent a memo representing AT&T for Salisbury Pt. Coop. The question; is it a new application. They request a building permit without Planning Board review. Mr. Knoebel commented that he will further

review the application. The federal law conflicts with the Village of South Nyack local law-Telecommunication. According to South Nyack’s Zoning Local Law “No tower or antenna shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permit and in conformity with these regulations.”

The Village has detailed procedures and requirements if it complies with these performance standards for RF energy or nonionizing electromagnetic radiation (NIER). The definition of “Eligible facilities request” - the Federal easements and rights-of-way “if an executive agency, a State, a political subdivision or agency of a State, or a person, firm, or organization applies for the grant of an easement or right-of-way to, in, over or on a building or other property owned by the Federal Government for the right to install, construct, and maintain service antenna...”

Mr. Ilowite quoted “this approval must be granted on an expedited basis.”

Mr. Knoebel quoted “The enabling regulation determines a new or existing or substantial change. Substantial Change – “a modification substantially changes the physical dimensions of an eligible support structure” if it meets the required criteria.

In case there’s something on top of a building, if it makes “more than 10% larger in height or overall volume than any other ground cabinets associated with the structure...”

Mr. Knoebel believed that the federal law contradicts the Village of South Nyack local law-telecommunication for this particular zone in regards to “in any change...”

Mr. Ilowite questioned who determines if it’s a substantial change.

Mr. Knoebel commented that the Building Inspector determines if the applicant would need only a building permit or if it needs to be reviewed by the Planning Board.

Mr. Kenna commented that it looks like the applicant is applying for three new antennas and the Board normally receives a safety report. He was concerned that the applicant needs to demonstrate the need.

Mr. Knoebel commented the applicant provided laws and regulations. If the applicant was only replacing the antennas, The Building Inspector issues a building permit. He commented that the Board needs to see the calculations, if it falls with the Federal Law criteria and our local law requirements.

Mr. Whitehurst commented the Board is obliged to approve the application but not forego the Planning Board review.

There was a discussion that they stated what they’re doing but they need to come for a Planning Board review.

There was a discussion that the Planning Board determines the substantial change defined by the Federal Law.

There was a discussion about Cuddy & Fedder's memo stating that the Federal Law mandates approval through a non-discretionary review process whether the request for the modification of the existing wireless tower is a substantial change on the facility.

A state of local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

Mr. Ilowite quoted the documentation requirement for review: "the local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities."

Mr. Kenna was concerned about the Federal Law review of the application and the criteria for the substantial change definition.

There was a discussion about what is the criteria for substantial change.

Mr. Knoebel answered Mr. Kenna's concerned "for any eligible support structure, it involves installation of more than the standard number of a new equipment cabinets for the technology involved, but not exceed four cabinets..." "installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure..."

Mr. Ilowite commented that the applicant needs to come to Planning Board for review.

There was a discussion about the Planning Board criteria.

Mr. Ilowite commented that in the past the Planning Board required the applicant to identify the locations on the rooftop, and exposure to radio frequency meets the FCC law. In the past the Village had hired a consultant to review and write a report for the proposed wireless communication facilities upon installation and demonstrates that the facility complied with the FCC law.

Mr. Knoebel commented that the Village will need to establish an escrow account to review the application. The Planning Board is entitled to request an expert to assist the board on whether the application meets the criteria.

Mr. Ilowite questioned if the Planning Board is allowed having a consultant review the application if the federal law says the local government may not require an applicant to submit any other documentation.

Mr. Knoebel will look into this project more to have the applicant provide funds to an escrow account once we consult with the expert.

Mr. Kenna is concerned about reviewing more of these applications in the future. These applications should continue to be reviewed by the Planning Board.

Mr. Knoebel gave an example of a prior application and questioned why they didn't provide a post installation test report.

Mr. Kenna asked Mr. Knoebel, does the consultant measure the equipment and submit the calculations of the estimated NIER. He believed that the Planning Board should be able to keep track of telecommunication towers.

Mr. Knoebel asked the Planning Board secretary to find the last consultant that the Board used. If they want to be hired, they would be able to answer preliminary questions about what we can expect. He will speak to the consultant about the escrow account.

There was a discussion about the timeframe for review: within 60 days of the date on which an applicant submits a request seeking approval, the board needs to approve the application unless the board determines it is not an Eligible Facilities Request.

Mr. Whitehurst made a motion to adjourn the meeting at 8:20pm, seconded by Mr. Kenna, and unanimously approved.

The next meeting is on October 19, 2016.

Respectfully submitted:

Sokuna Mam
Deputy Village Clerk

Date Approved: _____