

TOWN OF DRYDEN PLANNING BOARD
November 15, 2017

Members Present: Marty Moseley (Chair), Joe Wilson, David Weinstein, Craig Anderson, John Kiefer, Tom Hatfield, Marty Hatch, and Jim Skaley (Alternate)
Liaisons Present: Craig Schutt (Conservation Board), Deborah Cipolla-Dennis (Town Board)
Town Hall Staff: Ray Burger, Planning Director

The meeting was called to order at 7:01 p.m.

Public Comment regarding items not on the agenda:

Shirley Lyon, Mineah Road, spoke regarding the Pine Ridge Cottage matter. The board had voted to ask the town attorney whether the matter could be revisited because of the discrepancies with respect to the septic system and traffic study and she asked about the outcome.

Chair Moseley said he contacted the attorneys and they indicated there is no section in town law that deals with the reopening of site plan reviews unless the applicant has lied or misled the planning board. S Lyon and D Weinstein believe the term misled would be appropriate. It was noted that the applicant has indicated that he has changed his plan or is abandoning the project. Unless that is received from the applicant in writing, S Lyon would like to move forward. D Weinstein asked Ray Burger to get something in writing from Mr. Wawak with respect to his intent for the property. Applicant can't build what he was approved for because of not meeting Health Department requirements. He knows what he is allowed to build, so it's reasonable to ask what he now intends to do. In this way we could avoid any legal steps. M R Burger will contact the applicant, M Moseley will contact the attorney, and the board will discuss this further next month.

S Lyon asked about any response from DOT to R Burger's letter and whether any further information was available about the lack of water in the area. R Burger said S Winkley has information about well records and is aware that this is one of the areas of concern in Dryden. DOT did respond that they will conduct a formal investigation of the intersection of Route 13 and Mineah Road. R Burger will provide them with the information compiled by the neighborhood.

S Lyon inquired about Chris Kappler's request to the Town Board and Planning Board rezone the upper half of Mineah Road. D Weinstein and Joe Wilson of the Planning Board and Deborah Cipolla-Dennis of the Town Board agreed to serve on a committee to look at this.

Delaware River Solar Update
2243 Dryden Road

George Reed of DRS submitted what they believed was a complete package on October 5. They received some comments back from TG Miller. NYSEG has advised them that the lines are full there so they had to shrink the second project down, so there are a few changes. The project will be 3.3 MW instead of 4 MW. The footprint of the site will shrink. They have put back the 50' setbacks in the subdivision given the back and forth with the zoning laws. If the law changes, they can adjust their plans. They want to comply with existing law. They will move some of the screening from right near Ferguson Road closer to the array.

They have a punch list of about 20 items they are addressing and met with Ray Burger today. They hope to have those items fully addressed and final plans to the town on Monday or Tuesday next week. They are hoping for a formal recommendation in December.

R Burger said TG Miller has been analyzing this for the past several weeks and asking for specifics on different pieces, mostly revolving around viewshed, soils and the SWPPP implications. He asked for a presentation tonight to see if there were any particular requests from the Planning Board.

D Weinstein said he'd like to see the visual simulations from places other than Ferguson Road. The views from other places that the project is visible and how the screening will block the visibility are important.

J Wilson said this rolling process makes it a challenge on where to start the review. It would be more efficient if the final application was identifiable so they could avoid looking at redundant information. R Burger will attempt to make that clearer on the website with the most recent application at the top. There will still be additions, such as SHPO's letter and pending punch list items.

J Osmeloski thanked the applicant for showing the 50' setbacks on the plan.

PUBLIC HEARING (continued)
APPLICATION OF MODERN LIVING RENTALS, LLC
FOR CONSTRUCTION OF 42 TOWN HOMES ON A
COMBINED LOT OF APPROXIMATELY 3 ACRES
(tax parcels to be combined: 56.-2-5 and 56.-2-6)
802, 804, 810 and 812 Dryden Road

Applicant is combining two parcels and building 42 townhouses on approximately three acres. C Anderson asked R Burger whether sidewalks were required to be shown on the plan and installed. R Burger's interpretation is as long as it is locked that they will be installed we have the discretion to set a point in time with a triggering mechanism or date certain, so they don't have to be installed with the project. C Anderson stated the zoning law says the sidewalks must be in the plan and further down it says they are required on the Route 366 corridor. That needs clarification. R Burger said we could go to the ZBA to get a different determination, but his determination is that we can say sidewalks are required on Route 366 and that can be met in a variety of ways; it doesn't have to be with the project. That can be established at the time of the approval. Applicant stated sidewalks will be done as part of the project.

J Wilson asked whether the application was complete. R Burger said the punch list items were completed on November 3. Some items cannot be provided at this point (DOT approval & SWPPP), but approval can be conditioned on those. Standard conditions of approval cover many conditions. It is TG Miller's position that there is nothing outstanding that would prevent approval of the final site plan.

There was a question about whether DOT had any requirements or guidance with respect to sidewalks. There is a project for sidewalks in portions of Varna. Applicant has reached out to DOT in Syracuse about that project and has not received a response. They asked for some flexibility to work this out with DOT.

LEED certification for the project was discussed. There may be some additional documentation necessary for some items. The density bonus was granted conditioned on meeting LEED requirements of 40 or more, and the board needs to verify that those points are indeed in place so they get the additional three units. R Burger said the combination of the analysis done by Dave Sprout and the response by Gretchen Brevard makes 41 points. He is confident with that number. The only time there can be official action on LEED status is tonight. Applicant and the board reviewed the analysis and response. Approval can be conditioned on the applicant maintaining at least 40 points.

Recommendations by the board include:

Simplify the green cleaning brochure for tenants.

Have a LEED certified engineer submit documentation that one of the buildings does indeed qualify for LEED for homes.

Have a HERS certified rater rate the buildings and provide documentation that the buildings have a rating of 75 or less. If the rating is above 75 applicant will resubmit for Planning Board approval.

The sidewalk is shown by a dotted line on the site plan. The dotted line is the northern limit of it. The southern limit is on the right-of-way line/property line. It will be clearly delineated with material type. If necessary, applicant will get approval of NYS DOT.

The plan for the pocket park will be reconfigured to accommodate the sidewalk where it comes across. There will be a connection for the TCAT bus stop. A pedestrian connection was added after last meetings comments. Applicant noted some of this may change because of DOT's plans for sidewalks. The plan has been revised to provide for a sidewalk all along the driveway. It will be 6' wide. Three decorative crab apple trees were added along the drive to break up the façade. The sidewalk along the frontage will be 5' wide. Lighting between the two buildings will be provided by some building-mounted gooseneck fixtures to illuminate the sidewalk.

There has been no response from the Varna fire chief. Planning Department staff has looked at it and it meets all the internal radiuses from a fire code standpoint.

There was no public comment.

There was discussion about a maintenance plan/agreement for the landscaping.

Review of SEQR:

Part two was reviewed by the board and answers recorded on the official document by Ray Burger.

RESOLUTION # __ (2017) - NEG SEQR DEC – Application of Modern Living Rentals--Construction of 42 Townhomes at 802 Dryden Road

T Hatfield offered the following resolution and asked for its adoption:

WHEREAS,

A. The proposed action involves consideration of the application of Modern Living

Rentals LLC to construct 42 units at 802 Dryden Road.

B. The proposed action is an Unlisted Action for which the Planning Board of the Town of Dryden is the lead agency for the purposes of uncoordinated environmental review in connection with approval by the Town.

C. The Planning Board of the Town of Dryden, in performing the lead agency function for its independent and uncoordinated environmental review in accordance with Article 8 of the New York State Environmental Conservation Law - the State Environmental Quality Review Act "(SEQR), (i) thoroughly reviewed the full Environmental Assessment Form (the "full EAF"), Part I, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) thoroughly analyzed the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) completed the full EAF, Part II;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Planning Board of the Town of Dryden, based upon (i) its thorough review of the full EAF, Part I, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including the criteria identified in 6 NYCRR §617.7(c), and (iii) its completion of the full EAF, Part II, including the findings noted thereon (which findings are incorporated herein as if set forth at length), hereby makes a negative determination of environmental significance ("Negative Declaration") in accordance with SEQR for the above referenced proposed action, and

2. The Responsible Officer of the Planning Board of the Town of Dryden is hereby authorized and directed to complete and sign as required the determination of significance, confirming the foregoing Negative Declaration, which fully completed and signed full EAF and determination of significance shall be incorporated by reference in this Resolution.

J. Wilson seconded the motion which was unanimously approved.

On motion of D. Weinstein, seconded by C. Anderson, and unanimously approved, the public hearing was closed.

The board discussed and reviewed site plan approval conditions.

RESOLUTION #__ (2017) – SITE PLAN APPROVAL WITH CONDITIONS
MODERN LIVING RENTALS, LLC
802 DRYDEN ROAD

T. Hatfield offered the following resolution and asked for its adoption:

RESOLVED, that the Dryden Planning Board has reviewed the site plan for 802 Dryden Road by Modern Living Rentals, LLC and approves the site plan subject to the following conditions:

1. Forty (40) LEED points have been shown to be achieved. In the event that the points change categories the applicant needs to resubmit for approval from the Planning Board.

2. A certified HERS rater shall rate the building (for each of the buildings after construction) and provide documentation to the Code Officials. In the event that the rating is above 75 resubmission and approval of the Planning Board will be required.
3. A five foot (5') sidewalk will be shown on the plat for the entire parcel fronting Dryden Road, clearly identifying the width, approximate location and materials, and will be approved by NYS DOT (in the event that is required). Construction will be in coordination with the Town Highway Superintendent and NYS DOT. Sidewalk to be installed prior to issuance of Certificate of Occupancy for the last building.
4. Stormwater maintenance agreement acceptable to the town attorney.
5. Approval of the SWPPP by the town engineer.
6. Landscaping shall be maintained in perpetuity as approved unless otherwise amended.
7. One building needs to be analyzed by a LEED professional and documentation needs to be provided to the code officials that the building complies with the LEED qualifications for homes as built (needs to meeting 2009 LEED ND criteria).
8. Town of Dryden Standard Conditions of Approval.

D. Weinstein seconded the motion which was unanimously approved.

The board reviewed the proposed zoning law amendment regarding internal lot line setbacks for large scale solar energy systems. R Burger said the town board is considering these amendments and has asked the Planning Board for comment. The intent is to reduce the internal lot line setbacks. Currently 50' is required around each lot.

Comments:

- If the use is abandoned, the setbacks should convert to the same setbacks as the surrounding zone.
- The subdivisions are forever and if one system fails or gets removed there is a zero side lot line to a panel on the neighboring lot that could be problematic for a new owner. It could be reduced to whatever the lot line set backs are in the underlying zone.
- Part of the rewrite for the large scale solar law should be a separate subdivision law for large scale solar that provides for zero lot lines (only for solar). The present proposed amendment is a band aid.
- That could give up the intensive use of space.
- Reducing the internal lot lines would enable the developer to move away from the external lot lines and provide more setback there.
- Development on multiple lots should have continuity.
- A subdivision is eternal. If technology changes and they don't need to use all the lots, they'll be left with a neighboring lot with at 15' setback.
- There has been no feedback from the fire departments.

- If the use of one lot changes, nothing can be done about the setbacks on the neighboring lot.

Public Comment:

Sarah Osmeloski said removing the 50' setbacks is probably a good idea because the facilities can be consolidated, but she doesn't think the law should be amended to zero in all instances because we need wildlife corridors running through the vast fields of panels. It's unfair to sacrifice the environment to save the environment. We need some kind of setback at least every so many acres so that there is some access for the wildlife to move through. In addition, if we take away the 50' setbacks, there should be some compensation that the setbacks on the perimeter of the projects be increased. The reasons for an increase on the outside of the projects are:

- (1) So the neighboring properties don't feel so encroached on.
- (2) The fire companies won't fight fires on these solar projects. We need a larger setback in the realm of 100' to 200' from adjoining properties so that the fire departments can access a fire before it encroaches on the neighbors.

Joe Osmeloski said he is in favor of removing the 50' setbacks. The reasoning is saying then the solar companies can move it further back on the outside, but that isn't mandatory. If you take away the setbacks inside to give them a break, there should be a law that says the setbacks from an exterior property line is 100' to 200'. To eliminate the internal setbacks and assume the companies are going to move further away from neighboring properties is not a good idea. It should be defined. There should be something substantial to keep it away from people's property.

The Planning Board discussed asking the Town Board to charge them with review of the large scale solar law and subdivision law. D Cipolla-Dennis can bring this up at the next town board meeting. C Anderson said we are forcing these large systems into a subdivision law. They don't need to have an approved common driveway to get to the facilities. If you wrote a subdivision law exclusively for solar you could avoid some of these problems.

J Osmeloski asked the Planning Board to also consider density. We will soon have two large scale solar energy systems less and a mile from each other. He pointed out that in the Sun8 vs. Dynamic law suit, it is stated that Mr. Pinney was willing to purchase a large parcel of land directly across from 2150 Dryden Road in order to lease the new land to Dynamic. Now there is possibly a third large scale solar within a mile. Are we to the point where we are going to ruin one part of the town and the rest of the town looks great? There should be a density limit. Right now it looks like the Route 13 corridor is going to be the solar panel capital of Dryden.

M Hatch said it is certainly a planning exercise to discuss what things are acceptable in concentration and what things are not (storage facilities). It's reasonable to think about density in that way and decide what should go where. Once you start down that road you'll have to be more comprehensive.

T Hatfield said when the board first started this process they talked about capping the total amount of solar based on either kilowatt hours or densities. The current situation is an opportunity to study and identify where we need to improve. Asking the Town Board to charge the Planning Board to do that would be a good move. With respect to this band aid, he agrees the outside perimeter setback could be increased.

J Wilson asked what other municipalities do for setbacks and R Burger said the few he had looked at were less than 50 feet.

D Weinstein is concerned about making changes in law now that could cripple the two solar farms that have gone through the whole process. He doesn't see the advantage. He agrees that the subdivision matter is of consequence. The probability that a part of the array would be discontinued and that land sold to someone else while there is still an array on the adjacent one is unlikely.

J Kiefer said this board was reviewing the proposed law as requested by the town board. It was confirmed that any change would apply to current applications as well as future applications.

RESOLUTION #__ (2017) – RECOMMENDATION REGARDING PROPOSED SOLAR LAW AMENDMENT

J Kiefer offered the following resolution and asked for its adoption:

Whereas, the Town of Dryden Planning Board has reviewed and discussed the proposed amendment to the Town of Dryden Law regarding setbacks and application deposits for solar energy systems, now, therefore, be it resolved

RESOLVED, that the Planning Board requests that the proposed local law be amended to read:

“e. Complies with a fifty-foot (50) front yard, rear yard, and side yard setback, except that in the event that there were another large-scale energy system located on internal lot lines that the internal yard setbacks would be compatible with the underlying zoning district yard setbacks.”

Voting in favor – J Kiefer, M Moseley, Craig Anderson, Tom Hatfield

Opposed – D Weinstein, J Wilson, M Hatch

Motion carried

M Moseley announced that the ZBA has requested that the Planning Board look into a couple of different items. One of those is front yard setbacks for residential properties and they have had several applications for that, all of which have been granted. There are a few other items and he will bring that information next month. It was noted that there are also other items in the zoning law that need to be reviewed and doing this by piece meal may not be a good idea.

In response to a question about whether re-writing the law applies to Sun8, M Moseley explained that it technically would not apply to Sun8 because they have an approval/application in so they would be able to build as approved. The Town Board made a condition that the variance had to be granted on the special use permit that was approved for Sun8. The variance was denied. Therefore the condition of the special use permit could not be complied with. As he understands it, Sun8 is asking to have that condition of the special use permit removed and that the town law be amended to change the setbacks. If Delaware River Solar completes their application before the amendment takes effect, it would be under the old law.

RESOLUTION #__ (2017) – REQUEST CHARGE FROM TOWN BOARD

T Hatfield offered the following resolution and asked for its adoption:

RESOLVED, that the Town of Dryden Planning Board hereby requests that the Dryden Town Board charge it with reviewing the solar energy law, including the subdivision law and how it pertains to large scale solar projects.

Seconded by C Anderson and unanimously approved.

R Burger announced that the Town Board will hear a presentation tomorrow night at 7:00 p.m. on the proposed Town of Dryden Agriculture and Farmland Protection by Cooperative Extension. Planning Board members may send comments to the Town Board.

The Natural Resources Conservation Plan will also be presented to the Town Board tomorrow night.

M Moseley confirmed with D Cipolla-Dennis that the Town Board would like the Planning Board to move forward with review of the Delaware River Solar application on the Carpenter Farm when the application is complete.

Meeting adjourned at 9:25 p.m.

Minutes compiled from recording.

Bambi L. Avery
Town Clerk