

MEMBERS PRESENT: ZBA: JEFF MULLIGAN, CINDY KELLEN, BOB WESTFALL, JEFF PASSARELL, DIANE ATTEA

PLANNING: KATHY COLE, KATHY MANNIX (VIA PHONE), BRIAN THORN, TOM MCGOVERN, RANDY KOZLOWSKI, CLARA MULLIGAN, MICHAEL MILES

OTHERS: CEO BRIAN GLISE, MRB ENGINEER LANCE BRABANT, MRB ENGINEER KEVIN MCINTEE

VISITORS: JOYCE BLOWERS, RONALD BLOWERS, TED MILLER, JOHN HETTRICK, KATHY HETTRICK, PETER BURKE, CHUCK MORGAN, DREW LENT, BRAIN HARPER, MATT MCCABE, LAURA MCCABE, ART HERNANDEZ, CHRISTINE WHITE, DENNIS REGAN

CLERK: KIM MCDOWELL

Before the meeting began, Lance addressed those present via phone call in - to remain muted on the line until the public hearing begins and he asks for any comments from you.

ROLL CALL VOICE VOTE OF THE BOARDS: Jeff Mulligan - Here, Jeff Passarell - Here, Bob Westfall - Here, Cindy Kellen - Here, Diane Attea - Here, Kathy Mannix - Here via phone in, Kathy Cole - Here, Tom McGovern - Here (showed up 5 minutes late), Mike Miles - Here, Clara Mulligan - Here, Randy Kozlowski - Here, Brian Thorn - Here

PLANNING & ZBA BOARD MOTION TO OPEN THE MEETING WAS MADE BY DIANE, SECONDED BY BOB.

KATHLEEN COLE -AYE
TOM MCGOVERN- ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE

CARRIED 11-0.

PLANNING & ZBA BOARD MOTION TO APPROVE THE MINUTES FROM THE JOINT MEETINGS ON MAY 7, 2020, JUNE 2, 2020 AND JUNE 22, 2020 AS SUBMITTED WAS MADE BY BRIAN; SECONDED BY CLARA.

KATHLEEN COLE -AYE
TOM MCGOVERN- ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE

CARRIED 11-0.

Tom McGovern arrived at meeting.

BURKE, PATRICK, RT SOLUTIONS D/B/A WORM POWER/1691 JENKS
ROAD/TAX PARCEL#35.-1-15 - PUBLIC HEARING - SIGN VARIANCE

MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY CINDY; SECONDED BY BOB.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE

CARRIED 5-0.

Jeff Mulligan asked what the exact square footage of the sign variance they are requesting and it is 247 square feet. Lance stated that there are two variances before the ZBA Board for this application, one for the number of signs and one for the square footage of the signs. Being in an Agricultural Zoning district, they are allowed one sign and a maximum of 20 square feet.

Jeff Mulligan asked all present if they had any questions or comments regarding this application. Tom McGovern asked what the highest post is on that road; Jeff Mulligan stated you will not really be able to see the signs from the road. Jeff Mulligan stated the only sign you will see is the one on the road, the other two on the building will not really be visible from the road.

Jeff Mulligan asked the applicant why they needed a variance for a sign when you are in an AG district. Mr. Miller said the sign at the road is for deliveries and truck traffic. As the operation as grown over the past year they have been hosting a lot of international and national guests and visitors and they don't have anything that sets them as apart from the Coyne Farm. They are trying to keep the signs similar to their corporate branding designs that are professional and neat looking. Mr. Miller stated it is all about marketing the business.

Jeff Mulligan asked if anyone had any other questions. Jeff Mulligan stated the bigger sign is facing the South and the driveway.

Lance stated they had 2 variances before the Board and they may want to talk about one at a time. Jeff Mulligan stated one is for the square footage and one for the number of signs.

Brian Glise read the variance questions and answers the applicant provided. The Board answered the questions themselves, #1 - NO, #2 - NO, #3 - YES, #4 - NO, #5 - NO.

Clara Mulligan feels the signs seem big for the space and area and for not facing the road. She feels it is a large variance for an AG district.

Cindy Kellen feels it is a lot of signage for that area as well. She wonders why they need a sign that big that faces the South.

Mr. Miller stated that the building is large so the sign needs to be visible to others to expand the brand.

Clara Mulligan asked what the purpose is of the smallest sign on the green building, Mr. Miller stated it is the one they have currently on the building.

Randy asked if there has been any other variances granted like this before; Cindy Kellen stated not this big.

Mike Miles stated each variance is individual to that application and you don't set a precedent as far as he knows. He also stated that you will never see the signs from the road unless you are looking for it.

Bob Westfall asked if the area beyond that will be developed; Jeff Mulligan stated none of that will be developed, it is under conservation.

Tom McGovern doesn't feel the signs are gaudy and he feels there is no issue.

Jeff Mulligan doesn't feel it is an issue since it is for branding and it doesn't affect the neighborhood.

MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY DIANE ATTEA; SECONDED BY CINDY KELLEN.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE

CARRIED 5-0.

Lance has grouped the approvals needed tonight all together, the SEQR Type II action and your ZBA Decision Sheet.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION
PATRICK BURKE (RT SOLUTIONS) - VARIANCE APPLICATION
1691 JENKS ROAD - AG - ZONING DISTRICT
TM# 35.-1-15
AREA VARIANCES - NUMBER OF SIGNS & SIGNAGE AREA

SEQR RESOLUTION - TYPE II ACTION

WHEREAS, the Town of Avon Zoning Board of Appeals, (hereinafter referred to as Board of Appeals) is considering Area Variance approvals for the total number of signs as three (3) are proposed within an AG Zoning District where only one (1) is allowed and a variance for signage area totaling 266.8 sq.ft. where 20 sq. ft. is allowed for a total area variance of 247 sq. ft., located 1691 Jenks Road; and

NOW, THEREFORE, BE IT RESOLVED THAT, the Board of Appeals does hereby classify the above referenced Action to be a Type II Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

BE IT FURTHER RESOLVED THAT, Type II Actions are not subject to further review under Part 617 of the SEQR Regulations; and

BE IT FINALLY RESOLVED THAT, the Board of Appeals in making this classification has satisfied the procedural requirements under

SEQR and directs this Resolution to be placed in the file on this Action.

The above resolution was offered by Jeff Passarell and seconded by Cindy Kellen at a meeting of the Board of Appeals held on Monday, July 7, 2020. Following discussion thereon, the following roll call vote was taken and recorded:

Jeffery Mulligan - Aye
Jeff Passarell - Aye
Cindy Kellen - Aye
Bob Westfall - Aye
Diane Attea - Aye

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Board of Appeals for the July 7, 2020 meeting.

Kim McDowell, L.S.
Kim McDowell, Clerk of the Board

TOWN OF AVON

**OPERA BLOCK BUILDING
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BUILDING AND ZONING DEPARTMENT

ZONING BOARD OF APPEALS DECISION SHEET

Project Name/Number: Patrick Burke (RT Solutions)

Hearing Date: July 7, 2020

- Area Variance for Signage Area - Proposed a total signage area of 266.8 sq. ft. where only 20 sq. ft. is allowed (247' area variance)
 - Sign 1 on bldg. – 192 sq. ft.
 - Sign 2 on bldg. – 35.28 sq. ft.
 - Sign 3 at road – 39.52 sq. ft. (double sided)
- Area Variance for number of signs – 3 proposed where only 1 sign is permitted

Subject Property Address: 1691 Jenks Road

Tax Account #: 35.-1-15

Zoning District: AG Zoning District

Agenda Item: Area Variance application for Signage Area and total number of signs.

Board Members	Present	Motion		Recusal
		Aye	Nye	
1. Jeffery Mulligan, Chairman	X	X		
2. Jeff Passarell	X	X		
3. Cindy Kellen	X	X		
4. Bob Westfall	X	X		
5. Diane Attea	X	X		
Alternate: _____				

Action:

- 247 sq. ft. variance approved for a total signage area of 266.8 sq. ft.
- 2 additional signs permitted for a total of 3 signs.

Conditions:

1. Commencement of the project is to occur within one (1) year from the approval date or the variance will be deemed null and void.
2. Any modification to the plans, variance, and/or project will require the application to be re-reviewed by the Zoning Board of Appeals and any prior approvals granted be deemed null and void.

Motion made by: Diane Attea

Seconded by: Jeff Passarell

DG NY SOLAR CS, LLC c/o RICHLAND RESOURCES, LLC/AVON-EAST AVON RD/TAX PARCEL#34.-1-15.21 - SOLAR FARM - PUBLIC HEARING CONT

Kathy Cole asked Brian Harper to bring those present up-to-date on any changes that have been made since we last meet in March. She also stated that Board members will give any comments first; followed by public comments from those attending in person and via phone call in. Kathy Cole asked for any public comments, please only voice new concerns that you have; if it has already been stated we have that on record and we have discussed it at length. Any new comments will be limited to three minutes to give everyone a chance to speak.

Brian Harper and Drew Lent are present to give updates on this application. They have moved the buffer closer to the property line of the residents to offer more of a screening, it will be a native evergreen tree planted six feet apart from the center of each tree. They feel that will do a great job of blocking any visuals. They have gotten comments on the SWPPP, O&M plan and Decommissioning plan which they have addressed and submitted to MRB Group as well as the latest civil designs shown tonight.

Lance stated we have issued a comment letter back in June and they have responded to those comments and the applicant has resubmitted the Operations and Maintenance Plan and Decommissioning Plan. We have gone through the information and revised plans were provided last Friday we haven't had a chance to go through it fully. The applicant is working diligently to meet or exceed what we are asking and suggesting. Lance feels we need to continue the public hearing until the August meeting along with any new information provided tonight and any new public comments. He is anticipating a SEQR review at the August Board meeting. The next meeting is August 4th, comments by residents should be submitted by July 13th to give ample time for the Board, MRB Group, and the applicant to review before the next meeting. The applicant will then forward any new information to the Town by July 27th at Noon to give the Board and MRB Group ample time to review and comment before the August meetings.

Clara asked Brian Harper about the SWPPP that was provided and how the appendixes were not in it or she couldn't find them. It was determined that only Part 1 was received by the Town to forward to the Board members. Lance will send Part 2 to Kim to forward to the Board members.

Drew Lent asked a question regarding the Decommission plan and Town Code; one of the provisions states that if facility is not producing energy for 90 days, that kicks off the decommission plan. He feels that is a very short period of time, if there is equipment failure or something along those lines, it could take more than 90 days to get it completely fixed. He has seen codes that go from 12-18 months for this kind of problem. Mr. Lent would like the Board to consider a variance on that one aspect of the code for this application. Lance stated the local law requires that verbiage to be in there and any change to that the Town Board would need to provide that waiver. There was discussion on this provision in the solar law and how it could potentially be handled if this were ever to occur. Kathy Cole asked Kim McDowell to mention this to the Town Board members as well as Jim Campbell, Town Attorney, for their thoughts and get back to the Boards.

Kathy Cole opened the meeting up for public comment and stated that only new comments/questions should be asked at this time. Please stand up, say your name, and address and you have a time limit of three minutes.

Lance also stated that the Board will take public comments from those present and then we will have public comments from those joining us via phone in.

Joyce Blowers, Lake Road, my first question has to do with the SWPPP document, is that available to the public; it is and Mrs. Blowers will email Kim a request to have it sent to her. Mrs. Blowers also asked exactly where the trees will be placed; Brian Harper showed her on the drawing where the trees will be planted.

Lance also stated that everywhere there is a solar panel will have screening, along the driveway/entrance there will not be any screening. Brian Harper stated once construction is completed that road will not be used hardly at all.

Ron Blowers, 5378 Lake Road; which is probably a half a mile from this site. Mr. Blowers is not going to address this application; he is here to address the Board members. He lives out in the country and they have a beautiful view of farmland and this is something for you to consider that you have more solar farms that will be coming up. There have been people out in the field behind me and there is a proposed solar farm going in the field even though you don't have the application now. He doesn't want to look out at a solar farm at his age. He spoke with a realtor and they told him that he would have to have cash on hand to purchase a new house due to the market lately which he has limited income and can't do that. He feels that some of the things the state is doing affects him and he has no way of being represented.

Christine White, 1945 Pole Bridge Road; she wants the applicant to consider the wild life in the area when figuring out the trees they plan on planting. She also asked if the line of the trees will be in the right of way of the utility and it will not be. It will be 25 feet on the eastern side of the road. The trees they are planning on planting will be American Holly and they will be 6 feet and 10 feet at planting.

Steve Hernandez, Pole Bridge Road; questioned how long the solar farm will last before becoming obsolete and it is 25 years. The Special Use Permit, O&M Plan, and Decommission Plan will run for the duration of the project. He also asked if you can farm the land after everything has been removed and Lance stated Ag & Markets review has determined that these projects have less of an impact on the land than residential disturbance on the land. The decommission plan is to restore the land as it was to the pre-existing conditions as best as it can be with the idea that they can farm it. Mr. Hernandez also wanted to know what they would do if their property values go down due to the solar farm; Brian Harper stated that there hasn't been any studies that show the property values go down from solar farms being built.

Matt McCabe, 1875 Pole Bridge Road; he has lived there for 23 years. Mr. McCabe asked how the drawing presented tonight is any different than the one the Board took a vote on at the last meeting. He asked what the actual vote was 5-4 in favor of what plan and Lance stated this plan. Kathy Cole stated this plan is the one after review was decided to go forward. Lance also stated that this is the application that is before us and the alternative design was something they asked the applicant to provide to give us another option. Mr. McCabe feels that this is blatant disrespect of the tax payer for what they all voted on and they signed the papers that are against it. Mr. McCabe stated that everyone on the Board is older and how would they feel if Mr. Howlett was building a solar farm behind their house; how are you going to feel. He feels like there is lack of respect for the people of Pole Bridge Road.

Tom McGovern stated technically he likes this plan but personally he is against it because of the problems of the residents. Tom asked Mr. McCabe what layout Mr. McCabe would like and in his opinion he feels the other plan was better.

Jeff Mulligan stated the job of the Board for approval is based on what is presented to them. There was much discussion on what the Board is able to do based on resident's opinion.

Tom McGovern stated if there is an alternative plan that the residents feel is better, he would like to see it.

Kathy Cole told those present if they have a better alternative to submit it in writing to the Boards.

Mr. McCabe stated he is trying to find a happy medium for the whole thing. Kathy Cole stated that they all are doing that exact same thing as well.

Mr. McCabe stated that they are a lot closer to our houses than you think. He would be in favor of an alternative plan but ultimately he would not like them back there at all. He would like to see the panels move farther away from the resident's property lines. He also stated there was a hedgerow there; he has shown the Board pictures of it. If that hedgerow was still there and you put the panels farther back you may have a lot less angry people.

Chuck Morgan lives in the Village. At the last meeting it was decided by both Boards that they wanted some information regarding property values. I just want to make sure the three major studies on property value that he sent has been distributed and read by everyone. Kathy Cole stated it has.

Christine White stated she has found several studies that were done on property values and the criteria that they use is a three mile radius but if you break it down to a half mile or mile you get a 40% devaluation. She wants the Board to look closely at the studies because our houses are right there and she has spoken to people in Caledonia and they have a big devaluation of their properties. Mrs. White was also under the impression that the alternative option was the one the Board voted on to pursue, North to South with 3 panel rows.

Mike Miles stated that he remembers the vote of 5-4 to the alter Plan B at that time but there were two abstaining votes and two absent votes.

Brian Harper stated that there was a meeting on the phone and that vote was for the plan before you tonight. He said that vote was 6-2 on this layout.

Lance clarified that due to the pandemic there were no public hearings but teleconferences with no public comments. The Board's had to meet to decide when the public hearing would be for this application before tonight and at that time there was dialogue on the two plans and the result was this plan was the one chosen.

Jeff Mulligan asked the residents in the room given the two options which one would they prefer. They would like the alternative plan. Kathy Cole stated that plan would have the panels away from their property lines but they would be higher up with probably more visibility. Lance stated that in moving panels to a different location that doesn't change exactly what the Boards has to review as part of the application and he discussed the items that would change and have different impacts coming out of the review.

Christine White stated that some studies show panels have run off and in some cases that is not any better than the farmed land.

Lance stated the applicant has to specify what will be under the Panels and how they will maintain it, etc. The Town has some recommendations as to what we want to see. They will also have to make sure any drainage that runs off the panels and hits the ground comply with the NYS DEC standards which we are asking them to go above that.

Christine White thought the applicant was going to have both plans showing the difference between the patterns and they were going to present the pattern with the panels three in a row tonight.

Mike Miles stated that the plan in front of them is the plan that they are basing their decisions on.

Drew Lent stated that the SWPPP that has been submitted shows the drainage and the reduction in peak flow on the design that is before the Boards tonight.

Jeff Mulligan stated that from a drainage stand point, it is more beneficial for the panels to be closer to the property lines than more up the hill but from a visual obvious it is different.

Mr. McCabe pointed to the drawing presented and he said that the hedgerow was taken out and where the high spot and where the low spots are and he wants the panels moved to a certain spots on the plans that would make the residents happy. He disagrees with all the drainage benefits that they are proposing.

Kathy Cole stated the Town is looking into all the drainage issues but that isn't a part of this application.

Randy Kozlowski asked Matt McCabe to put all he described in writing which appears to be a possible solution.

Jeff Mulligan stated that we are trying to accommodate the residents. If they get moved, it is a higher elevation and they could potential be more visible than with option 1.

Lance Brabant asked if there was anyone on the phone that has any comments on this application. There were no comments via phone call in.

Joyce Blowers, Lake Road, commented that when they were considering the sign variance tonight the Board was concerned about the impact on the neighborhood, community, and Avon as a whole. Yet, this Special Use Permit is going to affect 30 homes for 25 years and if the applicant reaches all the criteria in the law it feels like it is just a given to get approved. You are concerned about Avon being an Agricultural and farm community and when people drive through and see solar panels; that spoils the landscape of Avon. No one will want to come to Avon.

Dennis Regan, Oak Openings Road, he doesn't have a dog in this fight here in Avon but where he has a summer home there is a solar farm. He stated that there the property values went down about 1/3 due to the solar farm. He also state that the solar panels catch fire and lighting is drawn to them.

Matt McCabe, 1875 Pole Bridge Road, asked Jeff Mulligan why does Mr.

Howlett want to put the panels there, does anyone know. Kathy Cole stated that is a question for Mr. Howlett not us. Mr. McCabe said Mr. Howlett would probably say that that piece of land is not farmable, it is deemed unusable for him. Mr. McCabe watched Jeff Mulligan put drainage on his fields and why can't Mr. Howlett do the same on this property; Jeff stated Howlett doesn't have an outlet to put it in. When all the houses were originally built drainage was never considered. Christine White stated that reverts back to the Town and not making that a priority when the houses were built.

Laura McCabe, 1875 Pole Bridge Road, asked if the plan presented before us tonight takes into account drainage issues and redirecting water; and the answer yes. She asked where is it going to go to. If Mr. Howlett can't figure it out how can this applicant figure it out.

Lance stated that run off from a farm technically doesn't have to be treated, it can just flow. If any project is over an acre of disturbance they are required to treat that water. Kevin McIntee from MRB Group stated that they have to store the water on the premise for a period of time and have it release at a slower rate. That is what the SWPPP document is designed to address and he hasn't had a chance to review it in its entirety.

Mr. Lent said it is not stored in a pond it is reducing the time it takes for the rain to leave the site. They are doing that by having 12 months out of the year a cover crop of grasses on site. The gravel road will have some dry swills to help and act as a temporary basin to slow down the storm water runoff.

Chuck Morgan stated if you look at the comprehensive plan in the soil types map, dark green is for productive land and white means it is not conducive to farming. This parcel has mostly white and this comes from the County and Soil and Water Conservation group. In his opinion, he feels this was a place chosen to meet both the solar law and the comprehensive plan.

Steve Hernandez, Pole Bridge Road, says it is about the water and the fact that the resident's will be starting at these things for the next 30 years. What happens if our property values go down, who is going to compensate them for that.

Matt McCabe, Pole Bridge Road, what about the property values after we are all gone, no one is going to want to buy those properties which you are losing tax dollars on.

Kathy Cole stated this public hearing will continue to the next meeting which is on August 4th at 7:00PM. If you have any other written comments please submit them no later than July 13th so that they can be forwarded to everyone for review. The comment letter from MRB will be based on the plan before us tonight and then the applicant will have any updates to both MRB Group and the Town by July 27th at noon for all to review before the August meeting.

Mr. Lent stated that any slight changes take a significant time and effort and calculations on the applicant's part to get them completed and turned in by the deadline.

Lance stated if there is a change to this there are other things to consider for the Board - an amended SEQR and send more information out to others since it is a different plan. If that is the case than the time frames will go out the door to give them time to make the changes.

Matt McCabe asked Mr. Harper why he didn't bring a second plan when he knew that the Boards wanted to look at an alternative plan.

Kathy Cole stated we told them not to bring a second plan.

Kathy Cole asked Brian Glise if there was any other items he wanted the Boards to know about or discuss.

Brian stated White Horse Automotive wants to pave over the gravel in the back so they can have cars on display there. There was a letter in 2012 to the owner stating they needed to come to the Boards for a Special Use Permit which they never did. It was determined they need to come to a meeting.

ZBA & PLANNING BOARD MOTION TO CLOSE THE MEETING WAS MADE BY
CINDY KELLEN, SECONDED BY KATHY MANNIX.

KATHLEEN COLE -AYE
TOM MCGOVERN- ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - AYE
CLARA MULLIGAN - AYE
MICHAEL MILES - AYE

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
JEFF PASSARELL - AYE

CARRIED 11-0.

MEETING CLOSED.