

Memorandum

To: Town of Washington Zoning Board of Appeals
From: AKRF, Inc. (A. Werner, AICP, A. Moore)
Date: December 13, 2024
Re: 749 Stanford Road – Appeal of Building Permit for Solar Installation
cc: Jonathan Ialongo (Town of Washington Building Inspector)
Kyle Barnett (ZBA Attorney)
Charles J. Gottlieb (Appellants’ Attorney)

AKRF, Inc. has reviewed the following documents submitted for the above referenced matter:

- Appeal of Building Permit – Cease and Desist Letter to the Town of Washington Zoning Board of Appeals (with Exhibits), prepared by Charles J. Gottlieb of the law firm Whiteman, Osterman, and Hanna LLP on behalf of Appellants Lisa Biase and Lou Casciano, dated August 16, 2024.

DESCRIPTION

The Appellants and owners of property located at 5515 Route 82, Lisa Biase and Lou Casciano, have submitted this appeal to the Town of Washington Zoning Board of Appeals (ZBA) related to the issuance of a building permit for construction of ground-mounted solar panels on a property east-adjacent to the Appellants’ property, with the address 749 Stanford Road (SBL 1385889-6666-00-727971-0000) (the “Project Site”). The owner of the approximately 390-acre Project Site is listed as August Madeline Fields LLC. By their appeal, the Appellants assert that the building permit granted by the Town’s Building Inspector was done so in violation of Local Law 1 of 2018, known as the “Solar and Wind Energy Law.” Specifically, the Appellants claim that the Project Site was incorrectly determined to be a Residential Property under the Solar and Wind Energy Law; and that instead, it should be considered a Non-Residential Property, which requires Site Plan and Special Use Permit approval from the Town of Washington Planning Board, with a public hearing, prior to the issuance of a building permit for solar panels. The Appellants also request that the ZBA invalidate the building permit on the basis that the landscape plan is unable to completely screen all views from the Appellants’ property. At their November 19, 2024 meeting, the ZBA set a public hearing on this appeal for December 17, 2024.

COMMENTS

1. The ZBA’s review of this appeal is considered a Type II action under the State Environmental Quality Review Act (SEQRA), requiring no further environmental review. The applicable Type II citation is found at NYCRR 617.5(c)(37): “interpretation of an existing code, rule or regulation.” Should the building permit be revoked as a result of this appeal, the solar installation would be subject to Planning Board review and approval and an environmental review pursuant to SEQRA.
2. The Appellants request that the ZBA issues a “cease and desist” on construction of the solar panels while hearing this appeal and making a determination.

3. By their appeal, the Appellants request that the ZBA makes the following determinations:
 - a. That the building permit is invalid, as the landscape plan insufficiently screens views of the solar panels. The Appellants further state that the ZBA should review the landscape plan submitted as part of this appeal, require the inclusion of visual renderings, and provide the Appellants with the opportunity to review the plan; and
 - b. That the Project Site is a Non-Residential Property under the Town's Solar and Wind Energy Law, and that therefore, site plan approval and a special permit are required from the Planning Board prior to the issuance of a building permit.
4. The Town's Solar and Wind Energy Law defines a Residential Property as "real property that is primarily used for residential purposes and contains a one- or two-family residence." The Project Site is located in the Town's RL-5 zoning district and within Agricultural District 21. It is unclear if the Project Site receives an agricultural property tax exemption. Based on a review of Dutchess County property information available online (Dutchess Parcel Access), the Project Site appears to contain multiple residential structures, as well as agricultural uses including a horse stable and riding ring. The Project Site, known as Arcadia Fields, has also been advertised as containing a "tree farm." The residential structures are assumed to be a primary residence with accessory or guest dwellings. Dutchess County Parcel Access lists the land use of the Project Site as a "Special Farm."
5. The exact purpose of the solar installation is unclear. AKRF assumes that the ground-mounted solar panels are intended to serve the Project Site as a whole, due to their placement in the northwest corner of the site, in an open field not adjacent to any structures. The Appellants contend that the ZBA should consider alternative locations for the solar panels, noting that the Project Site is 390 acres with several open and flat fields. The ZBA may request that the owner of the Project Site provide a description of the solar panels' purpose and an explanation of the particular site location on the property.
6. AKRF defers to the interpretation of the Town's Building Inspector on the classification of the property's primary use as either residential or non-residential, and the reasoning behind the issuance of the building permit. The Town's Building Inspector should provide written or oral testimony on these findings at the December 17, 2024 public hearing.

RECOMMENDATION

At the December 17, 2024 ZBA meeting, AKRF recommends that the ZBA 1) discuss the appeal and consultant comments; 2) classify the appeal as a Type II Action under SEQRA (§ 617.5(c)(37)); and 3) open the public hearing.