

ON THE MOTION OF Craig Umbehauer
Danny Ross

RESOLUTION NO. 19-13

Town of Cortlandville
Zoning Text Amendment
McLean Solar, LLC

WHEREAS, on June 6, 2019 the Zoning Officer, Town of Cortlandville, pursuant to General Municipal Law 239 M submitted an application for a Zoning Text Amendment because it affects lands throughout the Town of Cortlandville, which has been received by the Cortland County Planning Department, AND

WHEREAS, the Cortland County Planning Department has reviewed this request and submitted a written report dated June 14, 2019, which is on file, AND

WHEREAS, the Cortland County Planning Board on June 19, 2019 held a regular meeting with a quorum and did consider this request, AND

WHEREAS, the Cortland County Planning Board did thoroughly consider the material submitted by the petitioner, Department comments and all other relevant reports on file, NOW THEREFORE BE IT

RESOLVED, that the Board recommends denial of this application for a zoning text amendment as the creation of an overlay district is not intended to permit uses not allowed in the underlying zoning district. The proposed zoning text amendment is also not considered a floating zone as floating zones are designed to account for possible future uses that are considered desirable by the Town but are not currently permitted uses in any of the Town's zoning districts. Finally, the proposed zoning text amendment may be considered "spot zoning" as the creation of an overlay zone, particularly through the request of an applicant proposing to develop a ground-mounted large-scale solar energy system on one of the 10 affected properties may be considered spot zoning as it would permit the use of the property in a manner totally different from that of the surrounding area for the benefit of the owner of such property, AND

BE IT FURTHER RESOLVED, that the Board reminds the Town of the requirements of General Municipal Law Section 239 M that a supermajority vote is to be attained by the Town in order to approve this application, AND

BE IT FURTHER RESOLVED, that the Planning Department is hereby authorized to convey this action to the Zoning Officer, Town of Cortlandville.

Wendy Miller, Secretary
Cortland County Planning Board
June 19, 2019
Ayes: 8
Nays: 0

June 14, 2019

Town of Cortlandville
Zoning Text Amendment
McLean Solar, LLC

TO: Cortland County Planning Board

FROM: Cortland County Planning Department

This application for a zoning text amendment is being referred to the Cortland County Planning Board pursuant to General Municipal Law 239-M because it affects lands throughout the Town of Cortlandville.

GENERAL INFORMATION

Date Received: June 6, 2019

Applicant: McLean Solar, LLC
Attn: Elie Schecter
55 5th Avenue
Floor 13
New York, New York 10003

Requested Action: zoning text amendment

Purpose: to amend the Town's zoning law by adding language for the establishment of solar overlay districts

Existing Regulations: Code of the Town of Cortlandville
Chapter 178 – Zoning

ANALYSIS:

The applicant is requesting a zoning text amendment to add language for the establishment of solar overlay districts into the Town's zoning law. The proposed amendment would permit a solar overlay district to be established on lots of 10 or more acres within a Residential (R-1) District which are substantially adjacent to an Agricultural District. The Town's existing zoning law permits ground-mounted large-scale solar energy systems in the Agricultural and Industrial Districts subject to delineated standards and requirements including the requirement to apply for and obtain a conditional permit.

There are 10 properties in the Town of at least 10 acres which are zoned Residential (R-1) with a total area of approximately 327 acres. The proposed amendment therefore would potentially include an additional 10 properties and an additional 327 acres of land as areas eligible for ground-mounted large-scale solar energy development. The proposed zoning map amendment has been requested as the applicant is proposing to develop a ground-mounted large-scale solar energy system on one of these 10 properties in the Town that is at least 10 acres in size and is a Residential (R-1) zoned property adjacent to an Agricultural District. The Town's existing law does not permit ground-mounted large-scale solar energy systems on R-1 zoned properties. The applicant would therefore be required to apply for and obtain a use variance to develop this property for a use not permitted by the Town's zoning law. The applicant however, would not be able to prove the unnecessary hardship required for obtaining a use variance since they are not the owner of the property. The applicant is therefore requesting that the Town's zoning be amended to accommodate the proposed use on this property.

The purpose of an overlay zoning district is to provide additional protections of special features in a municipality in addition to the existing requirements of the underlying zoning district. An overlay zoning district is not intended to permit uses not allowed in the underlying zoning district. An example of an overlay zoning district in the Town of Cortlandville zoning law is the aquifer protection district regulations. The aquifer protection district does not permit uses which are not allowed in the underlying zoning district rather, provides stricter requirements for certain uses which may have a detrimental impact on the aquifer. Another example in the Town's zoning law is the Flood Damage Prevention which applies to all areas designated as special flood hazards by the Federal Emergency Management Agency (FEMA).

The proposed request would also not be considered a floating zone. Floating zones are designed to account for possible future uses that are considered desirable by the Town but are not currently permitted uses in any of the Town's zoning districts. Floating zones are site specific and provide more flexibility in the development of a property than conventional Zoning districts. Examples of uses which may be delineated in a floating zone are affordable housing, cluster development and planned unit developments.

Additionally, an applicant proposing an overlay zoning district as a means to develop a property for a use not permitted in the underlying zoning district may be considered "spot zoning". The NYS Court of Appeals has defined "spot zoning" as the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners. The creation of an overlay zone, particularly through the request of an applicant proposing to develop a ground-mounted large-scale solar energy system on one of the 10 affected properties may be considered spot zoning as it would permit the use of the property in a manner totally different from that of the surrounding area for the benefit of the owner of such property. It should also be noted that Agricultural and Industrial Districts encompass approximately 25,834 of the 31,280 acres of land in the Town or approximately 83% of all land in the Town. It seems that the Town has already provided more than sufficient area for development of ground-mounted large-scale solar energy systems without infringing on existing residential areas.

Finally, the proposed zoning text amendment is considered a Type I Action under SEQR as it has the potential to change the allowable uses of more than 25 acres of land in the Town. The Town should therefore complete the SEQR process including completion of a Full Environmental Assessment Form upon receiving comments from involved and interested agencies to determine if the proposed zoning text amendment may result in any significant adverse environmental impacts.

RECOMMENDATION:

The staff recommends denial of this application for a zoning text amendment as the creation of an overlay district is not intended to permit uses not allowed in the underlying zoning district. The proposed zoning text amendment is also not considered a floating zone as floating zones are designed to account for possible future uses that are considered desirable by the Town but are not currently permitted uses in any of the Town's zoning districts. Finally, the proposed zoning text amendment may be considered "spot zoning" as the creation of an overlay zone, particularly through the request of an applicant proposing to develop a ground-mounted large-scale solar energy system on one of the 10 affected properties may be considered spot zoning as it would permit the use of the property in a manner totally different from that of the surrounding area for the benefit of the owner of such property.

Prepared by:

Daniel S. Dineen
Director of Planning