

THE REGULAR MEETING of the ZONING BOARD OF APPEALS of the Town of Cortlandt was conducted at the Town Hall, 1 Heady St., Cortlandt Manor, NY on *Wednesday, March 16th, 2016*. The meeting was called to order, and began with the Pledge of Allegiance.

David S. Douglas, Chairman presided and other members of the Board were in attendance as follows:

Wai Man Chin, Vice Chairman
Charles P. Heady, Jr.
James Seirmarco
John Mattis
Adrian C. Hunte
Raymond Reber

Also Present

Ken Hoch, Clerk of the Zoning Board
John Klarl, Deputy Town attorney

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ADOPTION OF MEETING MINUTES FOR FEB.17, 2016

So moved, seconded with all in favor saying "aye."

Mr. David Douglas stated the February minutes are adopted.

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CLOSED AND RESERVED:

- A. **CASE NO. 2015-17 ASF Construction & Excavation Corp.** for an Interpretation that the applicant is a Specialty Trade Contractor as defined by the Town Code Chapter 307-4 Definitions so they can submit a Special Permit Application to the Planning Board on property located at **37 Roa Hook Rd., Cortlandt Manor.**

Mr. David Douglas stated Mr. Klarl, I'll turn this over to you.

Mr. John Klarl stated Mr. Chairman, as you know, we have a history of reading every reserved Decision and Order in full, but given that tonight's reserved Decision and Order is 5 pages on 4

inch paper, I'm going to give you a brief overview and anyone at home who doesn't follow along with the overview can actually get a copy of the Decision and Order and read it for themselves. This is an application by ASF Construction & Excavation Corp. for an Interpretation that the applicant is a "Specialty Trade Contractor" as defined by the Town Zoning Ordinance Section 307-4 ("Definitions") so the Applicant can submit a Special Permit application to the Planning Board on the Applicant's property located at 37 Roa Hook Road. The 2.37 acre parcel here is in the HC Zoning District. The applicant stated in his application that ASF purchased the site on June 25, 2014 from the Hudson River Teachers Federal Credit Union. Records show that Hudson River Teachers Federal Credit Union came in to title in July 15, 2013 via Deed in lieu of foreclosure from the prior owner, Angela Jose. In looking at the application and the applicant indicated that both in this application and in multiple public hearings held before the board that the applicant's business was out of a "site preparation contractor". On May 9, 2015, Code Enforcement issued a Memorandum of Violation to Remedy changing from a dwelling into an office without approval and a Building Permit, and filling in wetlands. On May of 2015, the owner's attorney, Mr. Robert Corke, met with the DOTS staff regarding the violation. Therefore, Mr. Corke is seeking an Interpretation that the applicant is, in fact, a Specialty Trade Contractor. We note that we had a prior ZBA case No. and Decision in case No. 32-98 where the previous owner was held to be a Specialty Trade Contractor under the prior Town Code. Then, our Decision discusses Town of Cortlandt Local Law No. 12 of 2010 which is entitled "A Local Law Amending Local Law 8-2007 Zoning" and it has four sections in it. Section one is Legislative Intent. Section two is Amendments. Section three is Implementation and Section four is Effective Date. Section one talks about the history of Contractor's Yards under our Zoning Ordinance. At the top of page 3 of our Decision we talk about Special Trade Contractors are currently permitted in the CC, HC, HC-9A, MD and M-1 Zoning Districts. We indicate that, in addition to the proposed changes to the Code a new definition is sought which are – the new definitions are: considered Special Trade Contractors. There is no definition of a Special Trade Contractor in the current Zoning Ordinance. The current table of permitted uses list "Special trade contractors including plumbing, heating, and air conditioning, electrical, carpentry, sheet metal, etc." The lack of definition has led to the problems in defining and regulating the special trade contractors. Special section two of the Local Law is really the heart of the Decision because it pulls out a new amendment to Article 2 section 307-4. It states Specialty Trade Contractors shall be limited to the following: undertakes activities of a type that are specialized to the building industry and limited to plumbing, heating, electrical, air conditioning, carpentry, flooring, cabinet-making, painting, paper-hanging, roofing, siding and sheet metal work. Masonry, stone work tile-setting and plastering. Water well drilling, glass and glazing work, structural steel erection, once again it says 'structural steel erection' and manufacturing operations that do not require the processing of raw materials. This list of uses contained in Specialty Trade Contractors specifically excludes all uses listed under "Contractors Yards and SIC Code". So don't use that anymore. We go to page 4 of the Decision. Section three is about implementation of the new Local Law and section four indicated that Local Law took effect in July of 2010 therefore we had an application by the applicant which stated: while it is conceded that the statute as drafted does not specifically delineate a site preparation contractor as an included trade, it is presented for this Board's consideration that the trades delineated in the statute are consistent with the applicant. All delineated trades contemplate that the actual trade

will be performed off-site. In each instance, the site serves as a location to park vehicles and to store equipment and materials necessary for the performance of the trade. Reviewing the trades that are listed in the Code, we find: masonry and structural steel erection. We don't find excavation which is a second name in the applicant's trade name. Accordingly, the site cannot be used for material and equipment used in excavation and site preparation. A site visit and statements by the owner at the public hearings underscore this is a secondary activity. The applicant's primary business is building concrete structures. Working with concrete is masonry. Constructing concrete structures requires the use of a steel structure of reinforcing rods to provide concrete tensile strength. Thus, they erect structural steel. To conduct these trades the owner does not need to store any building materials. Concrete would be delivered directly to the job site. What they do need are the forms. We indicate that the only equipment used to conduct the applicant's trade would be trucks to haul the forms and rebar, and fork trucks and a crane to handle the forms and rebar. The last page of the Code is our analysis. We had various members of the Board giving input here and so this is the distillation of those comments. In ZBA case No. 32-98 (Jose's) the ZBA interpreted masonry, stone setting, other stone work and excavation work as a specialty trade contractors allowed in the HC Zone. However, a specialty trade contractor can be allowed only as specifically listed under Section 307-4. Therefore this Board says, in conclusion, if the prior ZBA case No. 32-98 interprets the use of masonry, stone setting and other stone work, concrete work and excavation work fall within the definition of special trade contractor, and are permitted in the HC Zoning District at 37 Roa Hook Road; and we factor in Local Law No. 12-2010 which was enacting in July of 2010, Section 307-4 the definition specifically mentions among other trades, masonry, stonework, as specialty trades, as well as structural steel erection and the Board takes into consideration that the applicant's states on the record as reflected in correspondence on pages 13-16 of the ZBA August 2015 public hearing that it handles rebar, concrete forms, structural steel, masonry, some plumbing and carpentry. Therefore, the ZBA renders an Interpretation that the applicant ASF Construction & Excavation Corp., is a specialty trade contractor under Cortlandt Code Section 307-4 on condition of no expansion of site work not specifically listed, thereby allowing the applicant to submit a Special Permit Application to the Town of Cortlandt Planning Board (such application, of course, is subject to the Planning Board review and compliance by applicant with all permitting requirements). This is a Type II action under SEQRA as it consists of the Interpretation of an existing Code of Rule. No further compliance is required. I know it's a little confusing but if you get to read the whole thing it makes more sense.

Mr. David Douglas stated thank you Mr. Klarl. Before we make a motion I just want to just state something because my view is different from the view expressed in the D&O and not to ruin the suspense I convinced absolutely no one on the Board that my view was correct but I do feel an obligation to, at least explain why it is I disagree and I'll do it briefly. The applicant stated during the multiple hearings that his business was to be site preparation contractor and the intent of the Local Law and the specific listings of what was limited under the Local Law does not include site preparation contractors and it seems to me that under the intent of the law and the wording of the law that if something is not limited within that list of what it's limited to then you can't allow that as a specialty trade contractor. I understand the reasoning of my colleagues up here that what the applicant is doing falls within, or arguably in my mind, falls within some of

the definitions, but I personally, I'm not convinced. In fact, I don't think the applicant was convinced that he fell within any of the definitions. For instance, he wrote in his application "while it is conceded that the statute as drafted does not specifically delineate a site preparation in contractors including trade..." and at various hearings the applicant was also specifically queried about whether the site preparation work in which it engaged constitutes a trade under the Local Law 12 of 2010 and he repeated, just as he did in his application, he conceded that it did not. Just to give an example, he stated "it's not a specifically listed trade under the statute and if he had claimed that it was then the applicant "would not be telling the truth". I give the applicant a lot of credit. He did tell the truth and he told the truth in saying that what his view, it did not fall within the categories. The applicant also stated that at least 75% of his work involved the "specialty of pouring concrete, of preparing forms for concrete" and, as I said before, I don't see that as one of the specialties listed under the Local Law. Again, I didn't convince anybody but I really do think that we are misreading the statute and I think that – personally, I'd be perfectly happy to allow the use that the applicant wants to use but I just don't see it as being allowed under the language but I'm going to lose so I guess I'll just stop talking.

Ms. Adrian Hunte stated thank you Mr. Douglas. I'll just say, if I call myself a Hamburger joint and I sell chicken doesn't mean that I'm not eligible for...

Mr. David Douglas stated I don't think we need to debate. We've been debating it for months.

Ms. Adrian Hunte stated that's just my comment on this and since it's my case, case 2015-17 ASF Construction & Excavation Corp. for property located at 37 Roa Hook Road, Cortlandt Manor, N.Y. 10567. This is a request for an Interpretation that the applicant is a Specialty Trade Contractor as defined by the Town Code Chapter 307-4 "Definitions" so they can submit a Special Permit application to the Planning Board. I make a motion that we adopt the Decision and Order.

Mr. John Klarl stated the one that I read from.

Ms. Adrian Hunte stated the one that, yes, our council Mr. Klarl just read into the record which is dated March 16th, 2016.

Seconded with all in favor saying "aye."

Mr. David Douglas stated I'm opposed.

Ms. Adrian Hunte stated and this is a Type II SEQRA action; no further compliance required.

Mr. Ken Hoch stated Mr. Reber; yes, Mr. Mattis; yes, Ms. Hunte; yes, Mr. Seirmarco; yes, Chairman Douglas; no, Mr. Chin; yes, Mr. Heady; yes. Motion carries 6 to 1.

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ADJOURNED PUBLIC HEARING TO FEB.:

- A. CASE NO. 2015-20 Emily Fehlbaum** for an Area Variance for an Accessory Structure, a 12' x 24' garage, in the front yard on property located at **100 Laurel Rd., Croton-on-Hudson.**

Mr. David Douglas stated it's my understanding that she is seeking another adjournment because her husband who's taking the lead on this is currently overseas.

Mr. Ken Hoch stated correct.

Mr. David Douglas stated we'll adjourn that, so we'll make a motion to adjourn that to next month.

So moved, seconded with all in favor saying "aye."

Mr. David Douglas stated okay, case No. 2015-20 is adjourned to April.

- B. CASE NO. 2015-23 Acadia Cortlandt Crossing, LLC** for Area Variances for the Minimum Buffer Requirement along a residential district boundary and the Minimum Landscape Coverage requirement, and a Variance from the required number of parking spaces on property located at **3144 E Main St. (Cortlandt Boulevard), Mohegan Lake, NY.**

Mr. David Douglas stated the Town Board, yesterday, approved the project. My understanding is now it's going to be in front of the Planning Board in May so that if we put it on our agenda for May, our meeting's after the Planning Board.

Mr. Ken Hoch stated yes, I have an email from the applicant's attorney requesting that they be put over until the May meeting.

Mr. David Douglas asked do we have a motion to do that?

So moved, seconded with all in favor saying "aye."

Mr. David Douglas stated that case will be on for May.

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NEW PUBLIC HEARING:

A. CASE NO. 2016-03 Sunrise Solar Solutions LLC on behalf of James Neuberger for an Area Variance for the total square footage of accessory structures to construct a ground mount solar energy system on property located at **267 Croton Ave., Cortlandt Manor.**

Mr. Brendan Breen stated good evening. How are you? I'm here Sunrise Solar on behalf of James Neuberger. It's a nice size system. There's plenty of room to fit it in. It's like giving a whale a Tic Tac. It's going to bounce off nicely. It's going to help the environment. If I had one I'd give one to you. I think it's a clear-cut case. What do you think?

Mr. Wai Man Chin stated that's my case. First, looking at this thing, reading the first fact sheet and everything else, I guess I missed the 18.67.02 acres. I was looking at the percentage of 84%. I thought that was very, very excessive but then afterwards I saw it was 18.67 acres and then opening up the page you look at where the panels would be and where it's going to be and it's like a speck on that piece of property. If it was a one acre site I would have a problem with this but at 18 acres I came down to 0.006 percent of the property for the site of the panels compared to the site of the property. That's like less than zero point. From what I see right now, I find this is kind of a unique condition because of such a large site. I would not have a problem with this.

Mr. John Mattis stated I'd like to make a comment on that. The way our Code is written, the accessory structures without a Variance can only be 50% of the primary residence. So, if you have a 20-acre property with a footprint of 1,500 square feet because you have an 1888 small house you really get penalized where you can put stuff on that property. Nobody would see it. Nobody is going to see this and that creates a dilemma for us. We've been cognizant of the past where people have wanted to put things like tennis courts and pools. Another circumstance in this, as this Sunrise Solar Solutions program was one of the ones that was endorsed by Westchester County and specifically endorsed by the Town of Cortlandt. So, based on those, these are special circumstances. We generally don't give Variances this large. The property is very large. We have a hard time saying 'no' if somebody wants to put solar in. It's in a place where you can't find it. Relative to the house and the other things that are on the property, it violates the Code of the 50%, it's 84% but at the same time, you have a small house on a very, very large property, you get penalized. So, those are the circumstances that we take into consideration and I'm in favor of this.

Mr. James Seirmarco stated I have two questions: the ground piece, what's the overall height of it?

Mr. Brendan Breen responded I just have to check that out. The ground mounts themselves?

Mr. James Seirmarco stated the overall ground mount structure.

Mr. John Mattis stated we show something like 5 foot 8 inches but there's like another foot on

top for something to the tip.

Mr. Brendan Breen stated they pour a box and then they go up. It's going to be under 14 feet with the panels and everything.

Mr. John Mattis asked 14?

Mr. Brendan Breen responded no, not the box itself, the concrete box.

Mr. James Seirmarco stated I'm talking about the structure. The whole thing is going to be 14 feet off the ground.

Mr. Brendan Breen stated no, no, no, off the ground itself? You're probably looking at this high off the ground.

Mr. James Seirmarco asked with the panels?

Mr. Brendan Breen responded with the panels there's going to be about 14 feet high.

Mr. James Seirmarco asked why does it have to be so high?

Mr. responded because you have two layers of panels and you have these panels are 6 feet long and they're also at an angle. You have to have a certain amount of size to produce a certain amount of energy.

Mr. James Seirmarco stated I'm looking – the new Code is coming down the pipe, it says that they can't be more than 10 foot tall and since we only have – it's not enforceable right now because we don't have the Code but I'm thinking down the road. The fence that we have in side yards is 6 foot, in the rear yard it's 8 foot so it's also going to be required to screen this so if it's 14 foot tall, it's very difficult to screen.

Mr. Brendan Breen stated I'm sorry. I was looking at this plan but thinking of another plan. Actual structure is 5 foot 8, with the panels it's another 2 or 3 feet so you're looking at about 9 feet of the design. Sorry, I was thinking of something else.

Mr. John Mattis stated that's what we thought.

Mr. Brendan Breen stated it's a new technology. We're running into different Variance issues because everything is new.

Mr. James Seirmarco stated we're doing the same thing. The Town is rewriting the Code and I know what's proposed right now is 10 foot and probably going to end up being even lower because it's hard to screen something 10 foot when you're only allowed 6 or 8 foot fence.

Mr. Brendan Breen stated you're looking at 8 and a half feet.

Mr. Wai Man Chin stated 8 and a half right now.

Mr. David Douglas stated maybe in our Decision we can make it explicit that it can't go above 9 feet.

Mr. Brendan Breen stated I can do that.

Mr. David Douglas asked is that fine with you?

Mr. Brendan Breen responded I believe so. If I have a problem with that I will contact whoever I have to contact.

Mr. Raymond Reber stated all indications are 8 feet is sufficient with these structures.

Mr. John Mattis asked when you're showing the 5 foot 8 inches, the way that's angled, it looks like it might only be a foot, a foot and a half.

Mr. Brendan Breen stated yes, because of the back angle and everything.

Mr. James Seirmarco asked and did you propose any screening around it or no?

Mr. Brendan Breen responded on this job, no, because it was...

Mr. James Seirmarco stated it's a big piece of property.

Mr. John Mattis stated it's huge.

Mr. Brendan Breen it's actually kind of buried in the back and there's all woods.

Mr. James Seirmarco stated I'm just asking the question.

Mr. Brendan Breen asked have you ever been to the property? It's a beautiful property. It sits nice in the corner. It's nice.

Mr. David Douglas stated one reason we're just putting some of these things on the record is we want to make sure that it's clear that we're granting this for certain and specific reasons. Each property's different.

Mr. Brendan Breen stated I understand.

Mr. Wai Man Chin stated like I said, if it was a one-acre site, you have a problem getting a pool.

Mr. Brendan Breen stated if it was a one-acre site I wouldn't be wasting your time and my time doing this, especially in this weather.

Ms. Adrian Hunte stated I don't have a problem with it.

Mr. David Douglas asked any other comments?

Mr. Wai Man Chin stated anybody in the audience who would like to speak on this? I make a motion on case 2016-03 to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed.

Mr. Wai Man Chin stated I make a motion on case 2016-03 to grant an Area Variance for total square foot of an accessory structure from an allowed 2,872 square feet up to 5,273.31 square feet to construct the ground mount solar energy system. This is a Type II under SEQRA, no further compliance is required.

Mr. David Douglas stated and I would just add that there will be a condition that...

Mr. Wai Man Chin stated the condition is that the height will be no more than 9 feet.

Seconded with all in favor saying "aye."

Mr. Raymond Reber stated opposed, only in the sense of why 9 when it can be 8?

Mr. James Seirmarco stated well he said 8 and a half.

Mr. Raymond Reber stated I oppose it then, sorry. It should be 8 feet not 9.

Mr. David Douglas stated let's poll the Board.

Mr. Ken Hoch stated Mr. Reber; no, Mr. Mattis; yes, Ms. Hunte; yes, Mr. Seirmarco; yes, Chairman Douglas; yes, Mr. Chin; yes, Mr. Heady; yes. Motion carries 6 to 1.

Mr. David Douglas stated thank you very much.

B. CASE NO. 2016-04 Sunrise Solar Solutions LLC on behalf of Alice Mann for an Area Variance for the total square footage of accessory structures to construct a ground mount solar energy system on property located at **31 College Hill Rd., Cortlandt Manor.**

Mr. Raymond Reber stated this one is my case. Similar situation except mine's much more severe. It should also be noted that we're kind of swimming without a road map because the Town doesn't have anything officially on record how to deal with solar so we're left to use our good judgment in the interim. This situation here is not 18 acres, it's only 7 acres. The Variance looks very large. It calls for a 201% Variance but again, it's a unique situation because the solar array is only 608 square feet which is a very reasonable size solar array. In essence, they are well passed the allowable without the solar array. Again, I think we have to use rational judgment and say this is a reasonable size solar array on a relatively large piece of property and, in fact, where it's going to be located, again, it's remotely located back on the property. Neighbors will not see it. I've talked to some neighbors. They have no problem with it. They agree. They don't see it. Again, I would have no problem in approving this but I don't believe in a 9-foot height. I would go for an 8-foot height. My proposal would be to grant an Area Variance for the total square footage of accessory structure allowed a Variance of 2,662.78 square feet for a total of 3,990.78 with a maximum height of the structure at 8 feet and this would be a Type II, no further compliance. Again, anyone in the audience have any questions on this? None. I would have to close the public hearing I guess. Anybody on the Board want to say anything?

Mr. John Mattis stated I agree with everything Mr. Reber said except the 8 feet and I just want to say ditto to the comments I made for the last case. This is very similar except it's a smaller piece of property. It won't be seen. It's a smaller array and they were over the allowable anyway, in which case; what do you say? You can't put solar in. It's not going to have any impact on anybody except providing electricity for the residents.

Mr. Brendan Breen stated if it makes you feel any better, Solar Solutions does great work. They don't cut the corners. They're not a national chain that subs out their work. All the systems are owned. It's not leased out. You don't start running around.

Mr. John Mattis stated I've had some long discussions with Doug and I've seen some of the presentations. It's a top notch firm.

Mr. Brendan Breen stated we're trying. We're trying.

Mr. James Seirmarco asked and how tall will this be?

Mr. Brendan Breen responded I would say it's going to be under 9 feet. I will do my best to keep it under 8 but it's also a structural thing. You want to build it correctly. You want it to bear the wind loads, the snow loads, everything. I will do my best to keep it as low to the earth as possible for you.

Mr. Raymond Reber stated our main concern about the 8 feet is the fact that our Zoning Code allows fences no higher than 8 feet so if it does become a situation where neighbors can see the array, it would be nice to be able to say; well they can put a fence in and block it but if the fence is 8 and the solar array is 9, they're going to see it so you'll have a neighbor complain. That's

all. Trying to avoid a complaint from a neighbor.

Mr. Brendan Breen stated high fences make good neighbors.

Mr. David Douglas stated I agree with Mr. Reber's point but as it's drafted now, again, we're working – we're somewhat in limbo, as it's drafted now, the Town seems to be considering a 10 foot limit and maybe they're changing it but I just don't want to be in a situation where we've unduly limited these applicants to 8 feet and then find out that everybody else can do 9 but I understand what you're saying.

Mr. Raymond Reber stated I understand. The reason why I'm saying 8 is, as an engineer looking at their plans, their plans say they'll be within 8 feet so that's why. I don't feel I'm restricting him unless something unusual happens, their plans are calling for under 8 feet.

Mr. Brendan Breen stated okay.

Mr. Raymond Reber asked any other comments?

Mr. Wai Man Chin stated on the last case I agreed with the 9 foot, so that's the only...

Mr. Raymond Reber stated consistency.

Mr. Wai Man Chin stated yes.

Ms. Adrian Hunte stated I don't see any adverse affect or impact on the physical or environmental conditions whether it's 8 feet or 9 feet.

Mr. Raymond Reber stated I make a motion on case No. 2016-04 to close the public hearing.

Seconded with all in favor saying "aye."

Mr. David Douglas stated public hearing is closed. So how mechanically do we do this? You propose it as 9 feet and then you'll vote against it?

Mr. Raymond Reber stated I'll make it 9 feet so we're consistent. On case No. 2016-04, Sunrise Solar Solutions for a solar array at 31 College Hill Road I make a motion that we approve an Area Variance for the total square footage of an accessory structure from an allowed 1,328 square feet up to 3,990.78 square feet to construct a ground mounted solar energy system. This is a SEQRA Type II; no further compliance required. Height limit is 9 feet.

Seconded with all in favor saying "aye."

Mr. David Douglas stated it's granted.

Mr. stated thank you. Have a good night. Thanks for your time.

Mr. David Douglas stated you too.

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ADJOURNMENT

Mr. John Mattis stated I make a motion to adjourn the meeting.

Seconded with all in favor saying "aye."

Mr. David Douglas stated our meeting is adjourned.

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**NEXT MEETING DATE:
WEDNESDAY, APRIL 20, 2016**