

November 18, 2020

A MEETING OF THE PLANNING BOARD of the Town of Ossining was **held on November 18, 2020 at 7:30 p.m. by video conference** pursuant to Governor's Executive Order 202.1 dated March 12, 2020. Members of the public were able to view and join the meeting via computer or mobile app as follows:

<https://us02web.zoom.us/j/81129157853>

There were present the following members of the Planning Board:

Ching Wah Chin, Chair  
Jim Bossinas, Member  
Gareth Hougham, Member  
Donna Sharrett, Member

Absent: Carolyn Stevens, Member  
Jesus Lopez, Alternate Member

Also Present: Kathy Zalantis, Attorney, Silverberg, Zalantis LLP  
Valerie Monastra, AICP, Nelson, Pope & Voorhis, LLC  
Daniel Ciarcia, PE, Consulting Town Engineer  
Sandy Anelli, Secretary

**Rinaldi Subdivision, 39 Stormytown Road, 10-Lot Subdivision Final Subdivision Review PUBLIC HEARING CONTINUED**

The applicants are seeking Final Subdivision Plat Approval to subdivide the subject property into ten (10) building lots and to construct a Town Road to provide access to eight (8) of the ten (10) lots. Lots #1 and #3 are proposed to have direct access to Stormytown Road via existing driveways. The project is located at 39 Stormytown Road, Section 89.07, Block 3, Lot 62 on the Town of Ossining tax maps. The site is 6.68 acres in size and is zoned R-20 One-Family Residence District. The Applicant received Preliminary Site Plan Approval on October 2, 2019.

Mr. Hernandez, Architect, was in attendance. Updated plans were received November 9, 2020. Ms. Monastra submitted and reviewed with the Board a memo dated November 12, 2020. No further SEQRA is required. The applicant still needs to provide a subdivision plat prepared by a Licensed Land Surveyor. The applicant is requesting a waiver with respect to sidewalks on Stormytown Road. Ms. Monastra noted that the Board should discuss this item. Mr. Chin asked if the Board would like to see sidewalks on Stormytown Road as discussed in prior meetings. Board members were in agreement unanimously that they are in favor of installing the sidewalk along the Stormytown Road location. Mr. Ciarcia said they will need a storm water plan based on whatever the final configuration of the project is and based on the amount of impervious that goes along with that and the final plat. Ms. Monastra noted the landscaping plan changed as well. The Board should review those changes.

Ms. Sharrett said she is still not satisfied with the choice of the trees and all of the evergreens by Torview. The existing inventory of trees are deciduous so it's not going to look harmonious. There's a lot of evergreens everywhere else. The ones proposed along the road when you're on Stormytown Road would be better not to have it look like a wall of evergreens. It would look a little bit more harmonious with the feel of the town of Ossining if there was deciduous trees there. It's important to maintain the look of our treed streets.

Mr. Hernandez said he would relay these items to the client and thanked the Board. Mr. Chin asked if there was anyone from the public in attendance to speak on this hearing. Mr. Jeffrey Goldstein raised his virtual hand to ask questions about how this was going to affect Torview. Mr. Goldstein said he is a new member to Torview Swim Club and new to the project. Mr. Chin said the applicant has addressed comments with Torview Board members that were in attendance at previous meetings. Mr. Goldstein said he would check with the Torview Board meeting minutes for further information.

**Mr. Bossinas made a motion, seconded by Ms. Sharrett and unanimously passed by the Planning Board to adjourn the Rinaldi Subdivision, 39 Stormytown Road Public Hearing to December 16, 2020.**

**Borrego Solar Systems Inc., St. Augustine Church, 381 N. Highland Avenue, Battery Storage System Site Plan Review**

Borrego Solar Systems Inc. (the “Applicant”) is seeking site plan approval to construct a standalone energy storage system that would be used to supplement power to the local power grid at peak hours, by utilizing New York State’s Value of Distributed Energy Resources (VDER) mechanism. The system will be enclosed by a 7 ft. chain link fence and will occupy a total area of 0.22 acres. The system will be unmanned, and a gravel access road will be installed for occasional vehicle access. The property is owned by the Archdiocese of NY Inc. and is located at 381 North Highland Avenue, Section Block and Lot 80.18-2-1 (“Project Site”). The property is located in the R-20 zoning district.

Mr. Mike Conway and Mr. Greg Gibbons of Borrego Solar were in attendance. Mr. Conway gave a brief overview of the updates to the plan. A site walk was held November 13, 2020 and additional screening with plants and trees was discussed. Revised plans and EAF dated October 22, 2020 were on file. A later draft plan was submitted by the applicant November 17, 2020, showing potential planting around the system, titled, 381 N. Highland Avenue NY, Draft Planting Plan, Dated November 17, 2020.

Ms. Monastra submitted and reviewed the following memo items with the Board. Memo dated November 12, 2020. A copy was given to the applicant.

1. SEQRA: The Proposed Action is classified as an Unlisted Action. The Planning Board circulated a notice of its intent to be lead agency to commence the SEQR process and it is recommended that the Planning Board declare itself as lead agency at the November 18, 2020 Planning Board meeting.
2. Zoning: The Project Site is zoned R-20. The Applicant is seeking approvals for a battery energy storage facility which will require a special permit from the Zoning Board of Appeals (ZBA). The proposed use would fall under the use category “public utility rights-of-way” as well as “structures and other installations necessary to serve areas within the town” [200-7(B)(3)].
3. Public Hearing: A Planning Board public hearing per Section 200-50(C)(5) of the zoning code will be required.
4. Zoning Board of Appeals: A special permit is required for this application.
5. County Board Referrals: This project was referred to the Westchester County Planning Board per Section 239 L, M and N of the New York State General Municipal Law and Section 277.61 of the County Administrative Code. The County sent a response dated October 19, 2020 which found the application “to be a matter for local determination in accordance with your community’s planning and zoning policies.”

**Outstanding Environmental Review Comments**

1. A review of the Full EAF was undertaken and details were provided in the October 5, 2020 comments memorandum. The Applicant provided a revised EAF and all EAF comments were addressed.
2. Threatened or Endangered Species: The Applicant prepared and provided a habitat assessment report which found that the proposed project will have *No Effect* on any threatened or endangered species or habitat for those species. A response from the NYS DEC is still pending.
3. Archeological Site: The Applicant is preparing a Phase 1A/B for the site to address the State Historic Preservation Office’s comments. A review of that report will be conducted once a copy is received.

**Site Plan Comments**

1. The Applicant provided additional details on the road widths and road surface materials. A 20foot wide gravel driveway is proposed. John Hamilton, Building Inspector, reviewed the proposed roadway and has the following questions/comments on the access road:
  - a. Please provide the travel distance from the roadway to the nearest fire hydrant.
  - b. The turning radius must conform to Appendix D Fire Apparatus Access Roads in the 2015 International Fire Code. The Fire Department should review the proposed turnaround.
  - c. The driveway grade should not exceed 10%.
2. The Applicant provided architectural profiles of the storage facility. The profiles also identify the dimensions of the batteries and their associated mechanical equipment.
3. A 7-foot chain linked fenced is proposed. The Planning Board may want to specify the color of the fence and if the fence should contain slats.
4. Landscaping has not been proposed and the Applicant is proposing to install the battery energy storage system on a mowed field. No tree removal is anticipated. However, the Planning Board may want to discuss if landscaping is necessary and if so where they would like to see its installation.
5. The Ossining Fire Department should review and comment on compliance with all applicable fire safety codes and emergency access to the battery storage facility.

**Borrego Solar Systems Inc., Continued**

6. The Applicant provided information in their Response to Comments on the noise levels that would be generated from the battery energy storage system. Based on the information provided and the location of the surrounding land uses, the facility will meet the Town's Noise regulations found in Chapter 130, Noise, of the Town Code.
7. The Applicant provided information on lighting in their Response to Comments. There will be no additional continuous lighting for the system or parking lot. The battery containers contain two 18W LED, switch-controlled lights (on opposite sides of the battery container) and the external pad will contain a single dark sky compliant light. All fixtures are at low incident angles to reduce light pollution to abutting properties.

**Additional Plans**

The Town of Ossining is working on a draft Battery Energy Storage law based upon New York State Energy Research and Development's (NYSRDA) model law. The law itself will most likely not be adopted until after this application is complete. This application meets many of the criteria in the model law, but there are a few additional plans highly recommended by NYSEDA that should be submitted and reviewed during site plan approval for battery storage facilities. It is recommended that the Applicant provide the following additional plans for review and comment by the Building Department and Ossining Fire Department:

1. Decommissioning Plan – was provided and should be reviewed by the Building Department and Ossining Fire Department.
2. Operation and Maintenance Plan - An Operation and Maintenance Plan will be prepared for this project and supplied to the Building and Fire Departments for review and approval prior to the issuance of a Building Permit. Once operational the site will have a full-time (24/7) O&M company monitoring and maintaining the system.
3. Emergency Operations Plan - was provided and should be reviewed by the Building Department and Ossining Fire Department.

As a condition of approval all plans should be reviewed by the Building Department and Ossining Fire Department prior to issuance of the building permit and any transfer of ownership of the battery energy storage system will assume all of the obligations of the site plan approval, emergency operations plan, operation and maintenance plan, and decommissioning plan.

Mr. Ciarcia submitted and reviewed a memo, dated November 18, 2020 as follows:

The latest set of plans submitted for the Borrego Solar project at the Saint Augustine facility has been reviewed and we have the following comments:

1. Provide a Stormwater Pollution Prevention Plan (SWPPP) to capture and treat the additional runoff generated by the proposed access road and equipment pad. The applicant has acknowledged this requirement, but the SWPPP has not been submitted for review.
2. Indicate the limit of disturbance on the erosion control plan and post the total disturbed area on the plans.
3. Confirm that the silt sock shown on the erosion control plan is the same device depicted on the detail sheet as a "mulch tube". The nomenclature should be consistent between the plan and details. End.

On behalf of the EAC and Green Ossining, Ms. Sharrett asked if using low carbon concrete for the base, if possible, would be something they can consider. Mr. Conway said he can look into that but was not familiar with it. Also, with regard to screening, Ms. Sharrett recommended using screening that could work as a pollinator friendly plant that would help the honey bees on site. With regard to the lighting, Mr. Gibbons said these are very minor they are only in the equipment pad area and on a motion sensor, not going on by a bird or squirrel, it's only where somebody might need access to the unit if they need to service the system. There won't be any running lights. They are dark sky rated and won't provide light pollution to the surrounding area. Ms. Sharrett asked about the need for the Fire Department to wear ventilator masks if it were necessary. Mr. Gibbons said this is standard Fire Department gear, however, they do not recommend Fire Fighters going in towards the overheating batteries at any time. Ms. Sharrett thanked Mr. Gibbons for the site walk.

**Borrego Solar Systems Inc., Continued**

Dr. Hougham recommended using something other than green plastic fence slats in the chain link proposed around the units. In his opinion wood slats would look better, or randomly alternating blocks of different colors in all natural colors, if that is possible. Mr. Gibbons said they would provide natural landscape screening and check with the Church to see what they would like to see visually. First Responders generally like to see what is going on inside when it comes to being able to approach the system and view it from the outside. Dr. Hougham said he understands that leaving one side open seems prudent for the reasons mentioned. The screening is most needed from the west. Dr. Hougham agrees that at least one side should be open.

The Board will need recommendations from the Ossining Fire Department. Mr. Chin asked if the Board was ready to schedule a public hearing. Ms. Monastra noted the 30 days have passed for designation of lead agency under SEQRA so the Planning Board can act as lead agency at this time.

**Mr. Bossinas made a motion, seconded by Ms. Sharrett and unanimously passed by the Board to set a public hearing for Borrego Solar Systems Inc., St. Augustine Church, 381 N. Highland Avenue Battery Storage System Site Plan Review December 16, 2020.**

**Parth Knolls, LLC, Residential Development, 87 Hawkes Avenue, Amendment to Resolution of Site Plan Approval**

Mr. Anthony Beldotti Sr., Parth Knolls LLC, was in attendance. He reviewed his original letter is requesting that the Town Planning Board allow the Building Inspector to issue a Temporary Certificate of Occupancy for Building No. 1 and temporary CO's for the apartments as they are completed on the first floor and then on the second floor in Building 1. Building 1 is in the finishing stage and the owner is ready to begin marketing of the apartments for rental. Their General Liability Insurance Policy will not allow the owner to physically show the apartments for rental without a temporary certificate of occupancy.

Ms. Monastra noted that a public hearing would have to be set for this because it is an amendment to the resolution of approval. A redlined draft version of the resolution of approval reflecting the applicant's request was submitted to the Board and the applicant for review.

A temporary CO would give the applicant the ability to show the apartments for future rental purposes. He said they would not be occupying the building, that's a second phase of their request. They would complete the apartments on the first floor, which are 10, get CO's for each apartment, then on the second floor which is 14 apartments. Mr. Beldotti said they are substantially complete and he would like to share photos of that with the Board. One condition of the original resolution was that the pool and pool area be substantially completed. Mr. Beldotti said this is done with the exception of plastering of the pool inside. This item cannot be done until next year because once you plaster the pool for it to cure properly you must fill the pool with water and maintain the pool in a filled condition. That is the remaining work to be done. The equipment room, sidewalks around the pool, everything is backfilled and graded, curbs are in, most of the paving is completed and the inside of the building is substantially completed. Building No. 2, the exterior is completed and trades are working on the inside roughing. Mr. Beldotti said they are ready to start marketing the project and that is why they are asking for this change.

Mr. Ciarcia noted that there were some items not completed when he last visited the site. However, with the pool being an important benchmark on this job, it's fair to say that the builder has advanced that as far as you can without filling the pool. Mr. Ciarcia said the intent of that condition was that you didn't want a developer not fulfilling his recreation obligations prior to people occupying the building and obviously nobody's going to be going in the pool for the next few months. This will not cheat any future residents out of the recreational use of that pool and he has no objection with these amendments.

Mr. Chin asked if there were any comments or concerns from the Board or anyone from the public. There was no one in attendance from the public to speak on this matter. Ms. Zalantis noted that because this is an amendment the Board needs to proceed with a public hearing and after the public hearing the Board can consider granting the proposed amendment.

**Parth Knolls, LLC, Amendment to Resolution continued**

Ms. Sharrett thanked Mr. Beldotti for a site visit prior to the meeting and asked about some trees at the north side of the property where there are some trees covered with vines. Mr. Beldotti said they cleaned up everything right up to the property line within the last week but they cannot go any further because they can't trespass on Deerfield's property. Mr. Beldotti said they will be finishing the planting for building number 2 during the final phases of construction. Ms. Sharrett expressed concerns with the trees in Deerfield covered in vines. Mr. Beldotti said that area was cleaned up as far as their property line allows for. Mr. Beldotti said it looks much better there now.

Mr. Bossinas said he thinks it is a legitimate hardship for the applicant but still wants to make sure that we have some guarantees that the project reaches 100% completion before they get final CO. Mr. Bossinas is in agreement with scheduling the public hearing for this. Dr. Hougham said he is in agreement with granting the request and scheduling the public hearing.

**Ms. Sharrett made a motion, seconded by Mr. Bossinas and unanimously passed by the Board to set a public hearing December 16, 2020 for the Parth Knolls, LLC, Residential Development, 87 Hawkes Avenue Amendment to Resolution of Site Plan Approval**

Mr. Beldotti thanked the Board.

**Miscellaneous**

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**John Fussell, Rayford Deverne & Sons, 50 Old Albany Post Road, Architectural Review Board Amendment**

Mr. John Fussell was in attendance. He provided photos, a survey and a draft easement for an encroachment of stairs already constructed partially on the neighbor's property. Ms. Monastra reviewed with the Board that a violation was issued by the Building Inspector for construction of the patio and a stairway that are not shown on the approved ARB site plans. There are outstanding items, the stairway encroaches on the neighboring property so the applicant will need to create an easement agreement between the two properties and this will have to be reviewed by the Town Attorney. The submission was for review by the Board and open for discussion. Ms. Zalantis said she needs a better understanding of what the applicant is seeking. If it rises above minor changes, it needs an amendment to the prior approval and would have to go through the same process as a public hearing. She will also need more time to review the easement document.

Mr. Chin said by looking at the documents submitted, there is a staircase right adjacent to, or on the property line and not shown in the original plans. In addition to this, a patio was added that was not part of the original approved ARB.

Mr. Fussell explained that when they were doing site work they noticed at that elevation they could see the river and it added a beautiful view. Mr. Fussell, in conversations with his Engineer Mr. Noviello, discussed the need for a permit for a patio. According to this discussion, they felt there was no need for a permit. Ms. Monastra noted that there is a need for a permit, at least for the stair that was constructed and Ms. Zalantis agreed, there is probably a need for a permit for the patio as well.

Mr. Ciarcia said for the stair there would be a need for a permit and for the retaining wall under the patio and the fact that there are no plans that show anything other than a survey and few photos. This submission has nothing that was contemplated on the site plan that the Board reviewed previously.

Mr. Fussell said it was after-the-fact. He said he didn't think this would require a site plan amendment because it is a natural patio and they weren't going to do a high wall and behind the patio. There is ledge rock behind it. Mr. Fussell said that he would like to clarify that in his letter to the Board he wrote that this recommendation of a patio was advised by Dr. Hougham but that was not the case. Mr. Fussell explained that the stair was built over the property line because it was his impression that a fence on the neighbor's property line was directly on the line but it was actually set back. Ms. Sharrett asked Mr. Fussell why he waited so long to get these items reviewed if the violation was issued June 23<sup>rd</sup> of this year. She also pointed out that this looks like it was built on a very steep slope which might have required a steep slope permit.

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**Rayford Deverne & Sons, Inc. continued**

After a lengthy discussion and consideration of the violation of ARB approval documents, Mr. Chin said the Board might consider the December 16, 2020 agenda for a Public Hearing. This would at least give an opportunity to hear what the neighbors have to say and give Mr. Fussell time prepare a proper amended application with documentation and have a review of the easement. First Mr. Fussell said he would remove everything, but then changed his mind and agreed to a public hearing.

**Dr. Hougham made a motion, seconded by Ms. Sharrett and unanimously passed by the Board to set a public hearing for Rayford Deverne & Sons, Inc., 50 Old Albany Post Road, ARB Amendment Review December 16, 2020.**

**Minutes**

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October 21, 2020 meeting minutes were held over to December 16, 2020.

**Adjournment**

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**A motion was made by Mr. Bossinas made a motion, seconded by Ms. Sharrett and unanimously passed by the Board to adjourn the meeting to December 16, 2020.**

Time Noted: 8:40 p.m.

Respectfully submitted,

*Sandra Anelli*

Sandra Anelli, Secretary  
Town of Ossining Planning Board

**APPROVED: December 16, 2020**

November 18, 2020