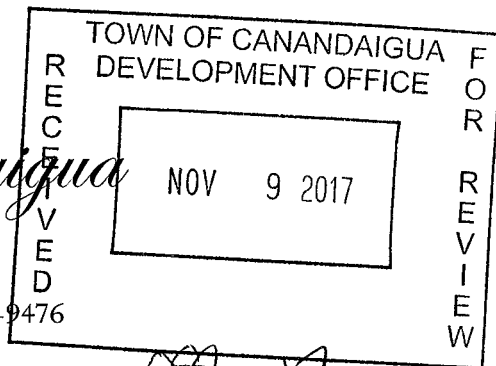


Phone: (585) 394-1120 / Fax: (585) 394-9476



CPN #: 000-11

FOR: ☒ AREA VARIANCE ☐ USE VARIANCE ☐ INTERPRETATION

1. Name and address of the property owner: Travis Woolley
5966 Monks Road, Canandaigua, NY 14424
 Telephone Number of property owner: 585-507-3592
 Fax # _____ E-Mail Address: twoolley1@hotmail.com

2. Name and Address of Applicant *if not the property owner*: Aegis Solar, LLC
3250 Ocean Park Blvd, Suite 355, Santa Monica, CA 90405
 Telephone Number of Applicant: 917-383-0963
 Fax # _____ E-Mail Address: tom.mcilwaine@ccrenew.com

3. Subject Property Address: 5932 Monks Rd, Canandaigua, NY 14424
 Nearest Road Intersection: Monks Rd and Seneca Point Rd
 Tax Map Number: 153.00-1-72.310 Zoning District: RR3

4. Is the subject property within 500' of a State or County Road or Town Boundary? (If yes, the Town may be required to refer your application to the Ontario County Planning Board.)

YES

NO

5. Is the subject property within 500' of an Agricultural District? (If yes, an Agricultural Data Statement must be completed and submitted with this application – for use variance applications only.)

YES

NO

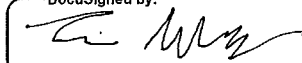
Submitted with this project's Site Plan Review Application

(Continued on back)

6. What is your proposed new project and the variance(s) or interpretation requested?
2MW, Approximately 20 acre Large Scale Solar Energy System. We are requesting an Area
Variance for a Fence Height Restriction. Please see attached Variance Tests for further information.
-
7. Have the necessary building permit applications been included with this form? If not, please verify with the Development Office which forms are required to be submitted.
8. With your completed application for an Area Variance, attach a tape map/survey/site plan, elevation of the proposed structure, and other documentation necessary describing the requested variance(s) illustrating why it is practically difficult for you to conform to the Zoning Law.
- All maps, surveys, or site plans shall accurately depict the property including all existing and proposed structures, setbacks, and dimensions. *All dimensions must be precise.*
9. With your completed application for a Use Variance, attach a current survey map/site plan of the subject parcel with a detailed description of the proposed use, a statement as to why you feel this use variance is necessary, and a completed Environmental Assessment Form.
10. With your completed application for an Interpretation, attach a current survey map/site plan of the subject parcel with a detailed description of the proposed use, a statement as to why you are appealing the zoning law determination, and a copy of the zoning law determination of which said appeal is requested.
11. If the variance requested is related to signs, attach a Sign Detail Sheet, a site plan, and colored renderings of the proposed signage, and any other documentation required in Article IX (Sign Regulations) of the Town of Canandaigua Zoning Law.

I have examined this application and declare that it is true, correct, and complete. I understand that my application and all supporting documentation will be examined by the Zoning Board of Appeals as an integral component of deliberations.

I hereby grant my designee permission to represent me during the application process.

DocuSigned by:

DF9659DC700649C...

(Signature of Property Owner)

11/9/2017

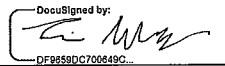
(Date)

Town of Canandaigua

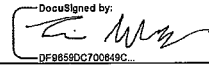
5440 Routes 5 & 20 West
Canandaigua, NY 14424
Phone: (585) 394-1120 / Fax: (585) 394-9476

***Property Owner is responsible for any consultant fees
(Town Engineer, Town Attorney, etc.) incurred during the application process.***

Please note that the **Property Owner** is responsible for all consultant fees during the review of this application including legal, engineering, or other outside consultants. Applications submitted to the Town of Canandaigua Planning Board will normally receive chargeback fees of at least five hours to ten hours for planning services including intake, project review, resolution preparation, SEQR, and findings of fact. PLEASE NOTE that the number of hours will be SIGNIFICANTLY INCREASED due to incomplete applications, plans lacking detail, or repeated continuations. Subdivision applications and larger commercial or industrial projects traditionally require more hours of engineering, legal, and other consultant review and preparation and will incur higher costs. Applications for new construction may be referred to the Town Engineer for engineering review which may include at least an additional eight to twelve hours of review time. The **Property Owner** will also be responsible for legal fees for applications submitted to the Town of Canandaigua Planning Board, Zoning Board of Appeals, or the Town of Canandaigua Development Office. Fees for engineering and legal expenses traditionally range between one hundred and one hundred fifty dollars per hour. A copy of the Town's annual fee schedule is available upon request from the Development Office or the Town Clerk's Office. The **Property Owner's** signature below indicates that the **Property Owner** understands that the **Property Owner** will be responsible for all outside consultant fees incurred as a result of the submitted application, and consents to these charges. Additionally projects approved by the Town of Canandaigua Planning Board may be required to pay a parks and recreation fee as established by the Town Board (currently \$ 1,000 per unit) if required as part of the conditions of approval.

DocuSigned by:

DF8658DC700849C

(property owner)

DocuSigned by:

DF8658DC700849C

(property owner)

TESTS FOR GRANTING AREA VARIANCES

BE VERY SPECIFIC WHEN ANSWERING THESE QUESTIONS

"Area variance" shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations. (Town Law Section 267, subsection 1.(b)).

In deciding whether to grant an area variance, the Zoning Board of Appeals takes into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community. (Town Law Section 267-b, subsection 3.(b)).

To enable the Zoning Board of Appeals to grant an area variance, the applicant must present substantial evidence concerning the following topics by providing supporting evidence for each. Attach additional sheets if necessary.

- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

See attached.

- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

See attached.

- (3) Whether the requested area variance is substantial.

See attached.

- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

See attached.

- (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

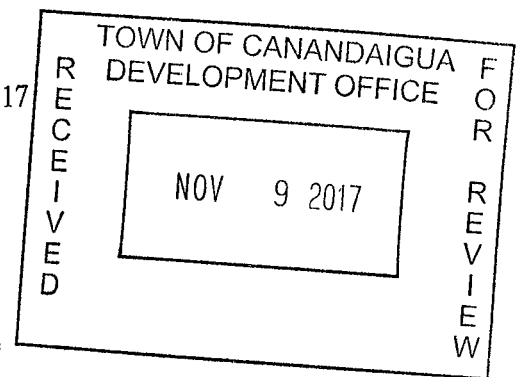
See attached.



Boylan Code
Attorneys at Law

November 9, 2017

Zoning Board of Appeals
Town of Canandaigua
5440 Route 5 & 20 West
Canandaigua, New York 14424



Re: Cypress Creek Renewables Fence Variance

Dear Board Members:

This firm represents Cypress Creek Renewables ("CCR") in the above-referenced matter. Thank you for considering CCR's request for an additional 12 inches of fence height, for a fence comprising 7 total feet as opposed to the permitted 6 feet.

In making this request, CCR would like to respectfully re-iterate that the factors below are ultimately meant to guide and inform the Zoning Board's balancing test, which calls for the Zoning Board to weigh to potential detriment to the community versus the potential benefit to the applicant were the variance to be granted.

In sum, CCR believes the factors clearly show that any detriment potential resulting from the additional 12 inches of fence is negligible and very much outweighed by the benefits to both the community and CCR in providing additional security and safety for the proposed project (the "Project").

Factor 1: Whether there will be an undesirable change in the character of the neighborhood or a detriment to nearby properties:

The approval of the requested variance permitting an additional 12 inches in height to allow for a seven foot fence instead of a six foot fence will not result in an undesirable change in the character of the neighborhood nor a detriment to nearby properties.

The Project itself is a specially permitted use and thus carries a legal presumption that it is in fact consistent with the character of the underlying zoning district in which it is permitted (so long as it meets any standards set forth in the zoning code, which standards are within the Planning Board's jurisdiction). The Project will contain a number of elements exceeding 7 feet and in many cases such elements, such as the solar panels, will approach 10 feet. Thus, a 7 foot fence would be consistent with the overall Project, which Project itself is legally presumed to be consistent with the character of the area comprising the zoning district.

Particularly noteworthy is the fact that the proposed fence would be consistent with the fencing surrounding the utility structure immediately east of the site, which appears to contain a 6 foot +/- fence with a foot +/- of barbed wire, comprising approximately seven feet +/- in total.

Furthermore, the area surrounding the Project comprises Rural Residential zoned lands, which permit agriculture as a principally permitted use, including farming. Pursuant to the Town Code, fencing enclosing farmland is permitted at a height of 8 feet (See the Town Code at Section 220-9[K](6)). Thus, the Town Code permits and anticipates uses in this area which would allow fences up to 8 feet in height. In fact, portions of the subject parcel and the neighboring parcel are currently being farmed and, pursuant to Code, would allow for the installation of an 8 foot fence today. Therefore, the Town Code not only anticipates and allows fences in excess of 6 feet in height in the area, it permits a fence of 8 feet in height to be installed today on the very parcel the Project is proposed.

In sum, because the area both allows permits which today would allow an 8 foot fence and because the area actually contains fencing exceeding 6 feet in height, the proposed seven foot fence would be consistent with the character of the neighborhood and would not cause a detriment to nearby properties.

Factor 2: Whether the benefit can be achieved by some feasible alternative:

The benefit that CCR is attempting achieve by way of the variance is strict compliance with the National Electric Code (the "NEC") and the additional safety and security afforded by a seven foot fence versus a shorter fence. There is no feasible alternative by which CCR could otherwise achieve such benefit.

The NEC generally provides that outdoor electrical installations shall be enclosed by a wall, screen or fence of seven feet in height (or six with the addition of a foot of barbed wire) where such installations are not otherwise "enclosed." While the Town is comfortable with concluding that the Project does not require a seven foot fence because it does not consist of unenclosed "exposed" or "live parts," other municipalities have interpreted CCR's projects to merit the 7 foot fence. A number of CCR's partners have also taken the position that CCR's project merit a 7 foot fence under the NEC. As a result, CCR has approached and interpreted the NEC conservatively and has consistently constructed its projects using seven foot fences, presuming that certain components of its projects (such as certain wires, connections, panels, etc.) could now or later be construed to comprise unenclosed exposed parts requiring a seven foot fence per the NEC. In this way, CCR ensures that it meets the NEC, even under the strictest of interpretations, both now and in the future.

Moreover, CCR appreciates the benefit of and seeks the advantages of a taller fence, regardless of the requirements of the NEC, for security and safety purposes. The reason the NEC requires a 7 foot fence as set forth above is to provide added safety and security. CCR seeks the benefit of the added safety and security provided by a 7 foot fence, regardless of the NEC requirements. A taller fence more effectively deters and prevents



entry and access to the Project, protecting against accidental injury to persons and animals and potential damage to or tampering with the Project. This added safety would not only benefit CCR, but would also benefit the community in better protecting its residents.

Factor 3: Whether the requested area variance is substantial:

From a qualitative perspective, the additional 12 inches in fence height that has been requested is negligible and does not rise to the level of substantial, for many of the reasons set forth under the Factor 1 analysis. In sum, 8 foot fences are already allowed in the surrounding area and neighborhood and, in fact, a fence of approximately 7 feet in height is already present on a parcel adjacent to the site. Thus, the proposed 7 foot fence would be well within the height range of fences present and allowed in the area, not rising to the level of a substantial request.

From a quantitative perspective, the requested area variance of an additional 12 inches in fence height amounts to a ~15% increase over the height which is permitted by Code. We would respectfully request that the Zoning Board of Appeals agree that such a minor increase does not rise to the level of substantial.

Factor 4: Whether the proposed variance will have an adverse effect on physical or environmental conditions:

The installation of a 7 foot fence as opposed to the permitted 6 foot fence will generally have no further impacts on physical or environmental conditions – both a 6 foot and 7 foot fence will have essentially the same impacts to drainage and runoff, topography, vegetation, etc.

The only theoretical impact that could be said to arise by increasing the fence 12 inches would be that related to visual impacts. However, for all of the reasons already set forth herein, such an impact will be so minor as to be insubstantial. The additional visual impact from 12 inches in fence height will be consistent with the allowed uses present and able to be constructed in the neighborhood and will be consistent with the remainder of the Project which, in many cases, approaches a height of approximately 10 feet. Moreover, the testimony at the Planning Board confirms that for the most affected properties visual impacts relating to the view shed of the Lake do not begin to materialize until a height of 10 feet, far below the 7 requested.

Based upon the facts associated with the Project and the analysis set forth herein, there is no reason to believe the requested 12 inch variance will have an adverse effect on physical or environmental conditions.



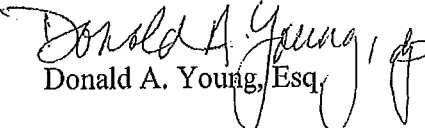
Factor 5: Whether the difficulty was self-created, which factor shall not necessarily be determinative:

Until this time, CCR has not encountered an issue with its interpretation of the NEC that a 7 foot fence would be required for its large scale solar projects. As a result, CCR has routinely constructed its projects in New York State with 7 foot fences. One of CCR's concerns is that should it instead build a project with a 6 foot fence, it could later be determined from a State or Federal official that the fence is of an improper height, causing a substantial burden to CCR. While we understand the Town's interpretation of the NEC, CCR feels that given the relatively new territory of applying the NEC to large solar projects, it is best practice to conservatively interpret the NEC and build 7 foot fences. Based upon its experience in dealing with the construction of large scale solar in New York, CCR does not feel that this difficulty is self-created – rather, the difficulty flows from the NEC.

Furthermore, as set forth above, CCR feels that, regardless of the application of the NEC, the safety and security benefits of a 7 foot fence are superior to that of a 6 foot fence.

Very truly yours,

BOYLAN CODE LLP

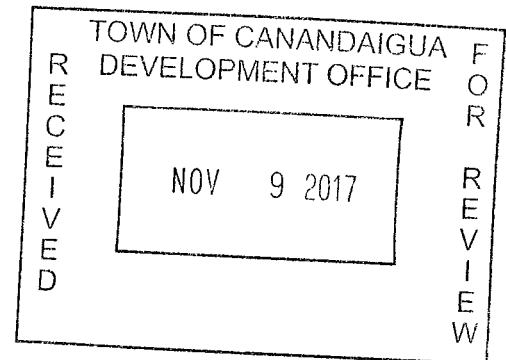

Donald A. Young, Esq.



11/06/2017

Eric Cooper-- Zoning Inspector
Town of Canandaigua 5440
Route 5 & 20 West
Canandaigua, NY 14424

Re: Aegis Solar, LLC
Special Permit and Site Plan Application
5932 Monks Rd
Canandaigua, NY 1424



Mr. Cooper:

Our company, Cypress Creek Renewables, the interest owner of Aegis Solar, LLC, is delivering an update to our Special Permit and Site Plan Application package to your office regarding the above referenced solar farm project located in Canandaigua. The original application package was delivered on April 12th, 2017. This application update is respectfully submitted for your review in advance of the Town of Canandaigua Planning Board Meeting on November 14th, 2017.

The following materials are included in this application update to be added to the original package:

- Aegis Solar Civil Site Plans (with Landscaping Plan and Steep Slopes Exhibit)
- Aegis Solar SWPPP
- Canandaigua MRB Review Memo Responses dated 10/16/17
- Aegis Solar O&M Plan
- Aegis Solar Revised Decommissioning Plan and Cost Estimate
- Aegis Solar Construction Sequencing Diagram
- Aegis Solar Approval Criteria Memo
- Aegis Solar Economic Benefit and Utility Information Memo
- Aegis Solar Equipment Specifications
- NYSDEC Correspondence concerning Panel Permeability
- Aegis Solar Area Variance Application and Fence Detail Sheet

Thank you in advance for your assistance. Please contact me should you have any questions, or require any additional information.

Kind Regards,

Tom McIlwaine
Zoning Manager
917-383-0963
tom.mcilwaine@ccrenew.com