

PLANNING BOARD MEETING

March 14, 2018

Present at meeting: Chair Joseph B. Potter, Vice Chair Nancy Keeshan, Members Ian Calder-Piedmonte, Kathleen Cunningham, Ed Krug, Patti Leber, and Randall T. Parsons. Also present were Director Marguerite Wolffsohn, Assistant Director JoAnne Pahwul, Counsel John Jilnicki, Secretary Jodi Walker, and several other interested persons.

The meeting was called to order at 6:30 PM.

WORK SESSION:

1. GOSMAN'S ADDITIONS SITE PLAN/SPECIAL PERMIT SCTM# 300-6-1-30.1

Assistant Director Pahwul gives an overview and presents plans. The board agrees to relax the accessory structure setbacks to allow the two freezers, shed and compactor to remain in their existing locations. The board finds that the compactor can be considered to be a water dependent use. A revised site plan that depicts the type and height of fencing around compactor should be submitted. The revised site plan should reflect the proper title of the project.

2. AMG 531 SITE PLAN/SPECIAL PERMIT SCTM #300-172-2-33.1

Assistant Director Pahwul gives an overview and presents plans. The applicant states that due to time constraints, they will not pursue the shared access depicted in the alternate sketch plan with the neighboring property at this time.

3. MOBIL GENERATOR SITE PLAN SCTM #300-172-6-4

Assistant Director Pahwul gives an overview and presents plans. In keeping with the Amagansett Historical District Study recommendations, the board would like the applicant to consider relocating the generator to the east side of the property. The majority of the board agrees to relax the rear yard setback requirements. The revised site plan should depict both fences proposed around the generator and types and heights. Fences at 5' would be preferable. The table of dBA levels should be revised to indicate that the levels without the acoustic panels are based on having two stockade fences.

REGULAR MEETING:

By motions made, seconded, the following resolutions were approved by the Board:

PLANNING BOARD OF THE TOWN OF EAST HAMPTON
EAST HAMPTON, NEW YORK

In the Matter of the Application

of

**SITE PLAN/
SPECIAL PERMIT
APPROVAL**

**MONTAUK
ENERGY STORAGE CENTER, LLC
SITE PLAN/SPECIAL PERMIT
SCTM# 300-27-4-8.8**

ADOPTED: 3/ 14/ 18

FINDINGS AND DETERMINATION OF THE BOARD

The findings of fact, conclusions, and determination set forth herein are made after consideration of the application, any presentations, memoranda or correspondence made or submitted to the Board by staff or interested parties, comments taken at any public hearing on the application, and inspection of the subject property.

A. PROJECT DESCRIPTION

1. TYPE OF APPROVAL SOUGHT:

(a) Site plan approval pursuant to Article VI of Chapter 255 (Zoning) of the East Hampton Town Code.

(b) Issuance of a special permit pursuant to Article V of Chapter 255 of the Town Code.

2. USE REQUIRING SPECIAL PERMIT: Public Utility

3. DESCRIPTION OF PROPOSED WORK: To construct a ~90' X 46' (4,154 sq. ft.) battery storage building and associated accessory structures

4. SIZE OF PROPERTY: 19,726 sq. ft.

5. OWNER OF PROPERTY: Peter Joyce

6. APPLICANT: Ross D. Groffman (c/o Montauk Energy Storage Center, LLC)

7. PROPOSED SITE PLAN: MTK-D-P002-4 - Site Plan & Grading Plan, dated September 8, 2017 prepared by ECI Engineering Services and stamped and sealed by Glen A. Smith.

8. DATE OF PUBLIC HEARING ON APPLICATION: August 9, 2017

B. PROPERTY LOCATION AND DESCRIPTION

1. SUFFOLK COUNTY TAX MAP DESIGNATION: #300-27-4-8.8

2. STREET LOCATION: 10 North Shore Road

3. CONTIGUOUS WATER BODIES: N/A

4. HAMLET OR GEOGRAPHIC AREA: Montauk

5. SITE DESCRIPTION & EXISTING IMPROVEMENTS: The property is situated along North Shore Road in Montauk and is zoned CI: Commercial Industrial. Existing land uses on surrounding properties south of the MTA/LIRR right-of-way, which borders the subject parcel to the north, are entirely commercial, industrial or utilities. It contains an existing storage yard use with scattered piles of materials such as logs as well as a small shed and storage containers.

6. FILED MAP NAME: N/A

7. FILED MAP NUMBER: N/A

8. DATE OF MAP FILING: N/A

9. BLOCK NUMBER IN FILED MAP: N/A

10. LOT NUMBER IN FILED MAP: N/A

C. ZONING CLASSIFICATION

- 1. ZONING DISTRICT:** CI: Commercial Industrial
- 2. ZONING OVERLAY DISTRICT:** N/A

D. SEQRA REVIEW

- 1. SEQRA CLASSIFICATION:** Unlisted
- 2. LEAD AGENCY:** East Hampton Planning Board
- 3. DETERMINATION OF SIGNIFICANCE:** Negative declaration
- 4. DATE OF DETERMINATION:** May 17, 2017

E. COUNTY COMMISSION REVIEW/ADDITIONAL FINDINGS OF FACT

1. By letter dated June 30, 2017, the Suffolk County Planning Commission has informed the Zoning Board of Appeals that it considers the subject application to be a matter for local determination.

2. The Board sent a letter to the Montauk Fire Department and Fire Marshal (dated March 30, 2017) requesting them to address whether or not they are confident that the proposed facility, whether at this location or any other, can adequately be accessed and assisted in the event of an emergency situation. By letter dated April 19, 2017 the Chief Fire Marshal stated that he had conferred with the Montauk Fire Department and that the applicants had satisfied all of their concerns regarding emergency response capability. By letter dated October 30, 2017, the East Hampton Fire Marshal advised that no further information pertaining to fire-fighting capabilities was needed.

3. No sanitary systems are proposed and approval from the Suffolk County Department of Health is not required.

4. By resolution dated January 9, 2018 the Zoning Board of Appeals granted the necessary relief.

5. The original information submitted regarding anticipated generated noise levels (prepared by TRC dated November 2016) indicated that the project would meet to 55 dBA maximum allowable at a property line in a commercial or industrial zoning district for nighttime hours, with the exception of a slight excess at the rear property line where the site abuts the MTA/LIRR right-of-way. The noise information did indicate that the site would be compliant with the maximum noise levels allowable in a residential zoning district with regard to the neighborhood along Navy Road to the north. It was originally stated that the applicants would apply for a variance. However, the Zoning Board of Appeals is not empowered to grant variances from Chapter 185 (NOISE) and it is not possible for the Planning Board to approve an application which has demonstrated by its own submitted information that it cannot meet a particular regulation of the Town Code.

The applicants have amended the project to provide additional Sound buffering and mitigation. Different model HVAC units with a lower noise output are now proposed. The area to the rear of the building where this equipment is housed is now to be surrounded by an 8' tall solid wood fence with sound attenuating materials. The revised noise contour map (prepared by TRC dated September 2017 and received on September 14, 2017) indicates that the facility will meet the maximum allowable 55 dBA standard at the northern property line.

6. A *Draft Emergency Action and Safety Plan*, prepared by TRC and dated received February 3, 2017, was submitted to the file. This plan establishes the planned response actions that will be taken by remote Control Room Operators that oversee the 24/7 operation of the site and other emergency personnel. In the document, the plan is described as a "living" document that will need to be revised over time based on experience. Appendix 3 of the document includes a list of organizations, titles, and telephone numbers to be contacted by the Control Operator during an emergency.

7. The General Arrangement Plan Safety (Sheet MTK-D-P003-1) stamped and signed by Glen A. Smith dated revised September 8, 2017 notes a number of safety design features that are part of the project, as enumerated in the side margin notes.

8. By letter dated September 19, 2017 the Town Engineer found the engineering elements satisfactorily addressed.

9. Pursuant to Chapter 125, the Planning Department is required to prepare a Coastal Assessment Form (CAF) for certain actions which occur within the State's designated coastal area. The subject property (along with all of Amagansett and Montauk east of Devon) although not shorefront, is within this designated coastal area and the project represents an action for which the CAF is required. The Planning Department prepared this form this and found the project consistent with the Local Waterfront Revitalization Plan (LWRP). By decision dated November 16, 2017 the Planning Board agreed.

F. COMPLIANCE WITH TOWN CODE OR OTHER REQUIREMENTS OF LAW

Based upon the foregoing, the Planning Board finds that the application as approved, subject to any conditions or modifications specified in § H below, meets the following requirements:

1. The application contains all necessary elements of a site plan as enumerated in § 255-6-50 of the Town Code.

2. The application meets the standards enumerated for review of site plans in § 255-6-60 of the Town Code.

3. The application meets the general standards required for the issuance of a special permit by § 255-5-40 of the Town Code, in that:

(A) Nature of use. The use proposed will be in harmony with and promote the general purposes of Chapter 255 of the Town Code as the same are set forth in § 255-1-11 thereof.

(B) Lot area. The lot area is sufficient, appropriate, and adequate for the use, as well as reasonably anticipated operation and expansion thereof.

(C) Adjacent properties. The proposed use will not prevent the orderly and reasonable use of adjacent properties.

(D) Compatibility. The site of the proposed use is a suitable one for the location of a public utility use in the Town, and the proposed use will be compatible with its surroundings and with the character of the neighborhood and of the community in general, particularly with regard to visibility, scale, and overall appearance.

(E) Effect on specific existing uses. The characteristics of the proposed use are not such that its proposed location would be unsuitably near to a church, school, theater, recreational area, or other place of public assembly.

(F) Use definition. The proposed use conforms to the Town Code's definition of "public utility" as that definition is used in § 255-1-20 of the Town Code.

(G) Circulation. Access facilities are adequate for the traffic estimated to be generated by the proposed use on public streets and sidewalks, so as to assure the public safety and to avoid traffic congestion; and vehicular entrances and exits are clearly visible from the street and are not within seventy-five (75) feet of the intersection of street lines at a street intersection.

(H) Parking. §255-11-45 (Schedule of Off-Street Parking Requirements) of the Town Code does not provide a parking requirement for a public utility use. The site will be monitored

remotely and unmanned on a daily basis and not available to the public. Areas of the site are proposed to be improved with crushed rock and road base surfaces that will provide improved surfaces to park the vehicles that will occasionally service the site. Therefore the Board has determined that the off-street parking is sufficient and more than adequate for the use and anticipated number of occupants and that the site layout will allow that these spaces will be convenient and conducive to safe operation.

(I) Buffering and screening. Adequate buffer yards and screening have been provided to protect adjacent properties and land uses from possible detrimental impacts of the proposed use.

The property's address is given as a North Shore Road address but is really on a section of road identified on most maps as Second House Road. The site and the principal structure would be visible to those driving along this road to the residential properties, resorts, and recreational open space (beach access points and Navy Beach) along Navy Road. As such the Planning Board sought to minimize the visual impacts upon this public roadway. The applicants originally proposed a row of black chokecherry (*Alonia melanocarpa*) along with three (3) eastern red cedars (*Juniperus virginiana*). The Board did not find this acceptable as the chokecherries were not tall enough in height to provide adequate screening and more importantly as they are deciduous and would not provide year-round screening. The applicants subsequently amended the plan to add taller evergreen screening along the front of the parcel which primarily consists of 4'-6' tall Arborvitae (*Thuja occidentalis*). The Planning Board did not object to using Arborvitae but required that the alternative cultivar "Green Giant" (*Thuja standishii* x *plicata*) be planted as it is more deer resistant than the standard type.

(J) Runoff and waste. Adequate provision has been made for the collection and disposal of stormwater runoff, sewage, refuse, and other liquid, solid, or gaseous waste which the proposed use will generate.

The original submission from the applicants included storm water run-off calculations and was reviewed by the Town Engineer who found the plans acceptable. It did not include drainage structures. The existing and proposed topography would result in run-off primarily directed towards the west and south ends of the property and permeable paving materials (crushed rock) are proposed throughout the majority of the improved portions of the site, though an asphalt driveway is proposed at the front of the site.

Multiple members of the public, including commercial/industrial property owners in the adjacent area expressed concern over the lack of storm water run-off control measures and the effect that re-grading and bringing in fill may have on their properties. It was noted correctly that this area of Montauk routinely floods in various spots, particularly during heavy rains in April/May.

The applicants then submitted a new plan to control storm water run-off (prepared by ECI dated September 7, 2017 and dated received September 14, 2017). This plan utilizes a roughly 3' deep infiltration trench covered by a metal grate along with a retention pond along the front (south) property line. The Town Engineer has reviewed this proposed amendment to the project and by memo dated September 19, 2017 has found the engineering elements satisfactorily addressed. The Town Engineer has verified that the capacity of these structures is adequate for a 2" rainfall, which is the applicable standard of the Town Code. The location of the trench and retention pond should prevent storm water run-off from entering the adjacent roadway to the south and impacting the neighboring properties.

(K) Environmental protection. The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or disruption of important natural features, systems, or processes and without significant negative impact to groundwater and surface waters on or off the site.

Members of the public expressed concern over the use of this site for a facility of this type. The history of flooding in the surrounding area and the accessibility of the site during storms and floods, the prudence of placing critical infrastructure in a flood hazard area, the potential for contamination and fire from the batteries, and potential inconsistencies with the Local Waterfront

Revitalization Plan (LWRP) were all specifically cited.

The parcel is in an area of Montauk which routinely floods. However, the entirety of the property itself is within the X500 or X flood zone as depicted on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM). This means that technically it is not within a designated flood hazard area or the Town's Flood Hazard Overlay District. However, it is entirely surrounded by areas which are within a designated flood hazard zone (either AE el.5, 8, 9 or 10). As such, the Planning Board has expressed significant concern over the course of the site plan/special permit review that it may be difficult or impossible to reach the facility in the event of a major storm. Major portions of North Shore Road, Second House Road and Industrial Road in this immediate area are predicted to be directly impacted or inundated by storm surge in the event of a Category 1 hurricane, as per FEMA's Sea, Lake and Overland Surge from Hurricanes (NYSLOSH) computer model. Therefore, it was important that the Board ascertain how this facility will be able to respond to flooding and storm damage in the (likely) event of a Category 1 storm or greater occurring within the predicted (minimum) 20 year operating span.

The applicants have submitted an emergency action plan and severe weather plan. The main aspect of the emergency action and safety plan will be remote monitoring by an off-site control room. There is also a plan to designate an on-island manager, a general manager, and a control room operator who will have delegated decision authority in emergency situations. The plan describes the process to be followed, the delegation of authority and response actions.

The severe weather plan states that prior to such an event the on-island manager may decide to send an emergency response team to the site to secure the building, equipment, and critical communication components. Sandbags may also be used, if necessary. Should forecasted conditions warrant shutting down the facility then this decision would be made by a transmission operator.

One of the Planning Board's main concerns with this proposed project is the ability of the applicant's personnel as well as emergency services personnel to physically reach the site as well as to respond to an emergency situation given the property's location relative to flood hazard zones and potential areas of inundation during storms.

The applicant's Draft Emergency Action & Safety Plan/Severe Weather Plan appears to have addressed how the facility's personnel will/can respond to emergency situations. However, the Planning Board felt that it was imperative to get a written approval of the Fire Marshal and/or the Montauk Fire Department stating that they are confident that the proposed facility, whether at this location or any other, can adequately be accessed and assisted in the event of an emergency situation.

The Board sent a letter to the Montauk Fire Department and Fire Marshal (dated March 30, 2017) requesting them to address the aforementioned issue. By letter dated April 19, 2017 the Chief Fire Marshal stated that he had conferred with the Montauk Fire Department and that the applicants had satisfied all of their concerns regarding emergency response capability.

It should also be noted that although the entirety of the property is situated within Zone X or Zone X 500 of the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM), neither of which represent a designated flood hazard zone, the applicants propose to both raise the grade of the site and the finished first floor elevation of the principal building. As noted on the cover sheet of the submitted plans, Zone X does not have a designated base elevation, as it is not a designated flood hazard zone. However, an area roughly 100' to the south of the site is designated Zone AE elevation 5'. The applicants propose a finished first floor elevation of the principal building of 10.3', which is over 3' higher than what is required. This should help to further mitigate the potential for the facility to be impacted by flooding.

It is additionally noted that the facility has been designed to go off-line in the event of an emergency situation such as flooding. It is not a facility which would be needed to, or which could, generate power for the community during an emergency. Therefore, it is not imperative that the site be accessed immediately during or after such an event.

(L) Compliance with other laws. The proposed use can and will comply with all provisions of the Town Code which are applicable to it, and can meet every other applicable federal, state, county, and local law, ordinance, rule, or regulation.

(M) Conformity with other standards. The proposed use can and will meet all of the specific standards and incorporate all of the specific safeguards required of the particular use by § 255-5-50 of the Town Code.

G. DISPOSITION OF APPLICATION

The application is approved as described herein, subject to any conditions or modifications specified in § H below.

1. TYPE OF APPROVAL GRANTED:

- (a) Site plan approval pursuant to Article VI of Chapter 255 of the Town Code.
- (b) Issuance of a special permit pursuant to Article V of Chapter 255 of the Town Code.

2. NATURE OF APPROVED USE: Public utility/energy storage facility

3. DESCRIPTION OF APPROVED WORK: To construct a ~90' X 46' (4,154 sq. ft.) battery storage building and associated accessory structures

H. CONDITIONS OF APPROVAL

The approval hereby granted is contingent upon full compliance with the conditions set forth in this section. The property may not be used except in accordance with this conditional approval, and all improvements shall be made, built, or installed in accordance with the plans described below.

1. APPROVED SITE PLAN: MTK-D-P002-4 - Site Plan & Grading Plan, dated September 8, 2017 prepared by ECI Engineering Services and stamped and sealed by Glen A. Smith.

2. APPROVED BUILDING OR CONSTRUCTION PLANS:

- Montauk Substation Stormwater Retention Design", dated 09/07/17
- Noise Contour Map, dated September 2017
- Set of plans all prepared by ECI Engineering Services and stamped and sealed by Glen A. Smith. (MTK-D-P002-1 - Cover Sheet, dated revised 05/01/17; MTK-D-P002-2 - Map of Survey, dated revised 05/01/17; MTK-D-P002-3 - Layout Plan - Overall, dated revised 09/08/17; MTK-D-P002-4 - Site Plan & Grading Plan, dated revised 09/08/17; MTK-D-P002-5 - Surface Plan, dated revised 09/08/17; MTK-D-P002-6 - Retaining Wall Profile & Details, dated revised 05/01/17; MTK-D-P003-1 - General Arrangement & Landscape Plan, dated revised 09/08/17; MTK-D-P004-1 - Elevations A, B, C, D & E, dated revised 09/08/17; Mtk-D-P007-1 - Equipment Slab & Oil Containment Detail, dated revised 05/15/17; MTK-D-P008-1 - Fence Details, dated revised 06/14/17; MTK-D-P008-2 - Sound Wall Details, dated revised 06/14/17; MTK-D-P010-2 - Lighting Plan, dated revised 06/14/17).

3. ADDITIONAL CONDITIONS AND TIME LIMITATIONS:

3.1 No building permits may issue, nor may clearing, grading, or construction activities be commenced, until and unless the conditions enumerated in sub¶ 3.2, & 3.3, below have been met, as evidenced by the report of the Planning Board Chair.

3.2 The applicant shall obtain the final written approval of the Architectural Review Board.

3.3 The applicant shall submit a *Final Emergency Action and Safety Plan* that includes the names and telephone numbers of the Environmental Response Team Company and On-Island Manager, as well as any other needed updates.

3.4 The Town of East Hampton shall be notified of any changes to the *Final Emergency*

Action and Safety Plan within 30 days of their occurrence and an updated plan of all changes made to this plan during the course of the year, or proposed to be made, should be submitted for review by the Fire Marshal annually.

3.5 The applicant shall perform the parking, access, drainage, and landscaping improvements shown on the approved site plan and approved building or construction plans described above prior to the issuance of a certificate of occupancy.

3.6 The facility should be equipped with all safety design measures specified on the General Arrangement Plan (MTK-D-P003-1) prepared by ECI Engineering Services and stamped and sealed by Glen A. Smith, dated September 8, 2017.

3.7 The access improvements shall be maintained by the applicant for so long as the improvements approved as part of this site plan are in use. This requirement shall be a continuing condition of this approval, and the applicant and any successors in interest shall repair, replace, and maintain these improvements as may be necessary to satisfy this condition.

3.8 All runoff and drainage shall be contained on site. This shall be an ongoing condition of the site plan approval.

3.9 All landscaping shall be maintained by the applicant in accordance with the approved site planting plan for so long as the improvements approved as part of this site plan are in use. This requirement shall be a continuing condition of this approval, and the applicant and any successors in interest shall replace and replant the landscaping on the site as may be necessary to satisfy this condition.

3.10 Any areas to be seeded with grass shall utilize a native grass seed mixture. A proposal for a native grass seed mixture should be submitted for review prior to planting.

3.11 No Certificate of Occupancy shall be issued for this site or for the improvements thereon until and unless all of the foregoing conditions have been met.

3.12 The applicant shall apply for and obtain a building permit no later than three (3) years from the date of this resolution.

3.13 The applicant shall apply for and obtain a Certificate of Occupancy no later than four (4) years from the date of this resolution.

I. VALIDITY OF APPROVAL

If any condition of this resolution is not met, or is not met within the prescribed time period, all approvals, permits, or authorizations granted hereby shall be deemed void and of no effect.

DATED: March 14, 2018

cc: William Boer
1200 Wall Street West
Lyndhurst, NJ 07071

Ross D. Groffman, Executive Director
East Hampton Energy Storage Center, LLC
700 Universe Boulevard, FEW/JB
Juno Beach, Fl 33408

Planning Department
Building Inspector
Architectural Review Board

Result: Adopted
Mover: Nancy Keeshan
Seconder: Ed Krug
Ayes: Nancy Keeshan, Randall T. Parsons, Ian Calder-Piedmonte, Ed Krug
Opposed: Joseph B. Potter, Patti Leber, Kathleen Cunningham

**PLANNING BOARD OF THE TOWN OF EAST HAMPTON
EAST HAMPTON, NEW YORK**

In the Matter of the Application

of

**EXTENSION
OF TIME**

**HOSTWAY INN
SITE PLAN
SCTM #300-166-6-2, 3**

ADOPTED: 3/ 14/ 18

1. By resolution adopted September 11, 2002, and subsequently modified September 12, 2012, (the "Resolution"), the Planning Board granted site plan approval to the above-mentioned application, subject to various conditions.

2. By letter dated March 9, 2018, Laurie Wiltshire, agent for the applicant, has informed the Planning Board that additional time is needed within which to obtain a certificate of occupancy and has requested an extension of time.

3. Based upon the foregoing, the Planning Board hereby extends the time within which the applicant must comply with the conditions of the Board's resolution retroactively in one (1) year increments within which to obtain a certificate of occupancy, or until March 11, 2019.

4. In all other respects, the original Resolution of approval as extended is hereby reaffirmed.

DATED: March 14, 2018

cc: Laurie Wiltshire
LPS
P.O. Box 1313
East Hampton, NY 11937

Planning Department
Building Department

Result: Adopted
Mover: Patti Leber
Seconder: Kathleen Cunningham
Ayes: Joseph B. Potter, Nancy Keeshan, Patti Leber, Randall T. Parsons, Ian Calder-Piedmonte, Kathleen Cunningham, Ed Krug

Adoption of Minutes: March 7, 2018

Upon motion duly made and seconded the meeting was adjourned at 8:00 PM.