

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, April 22, 2019, 7:00 p.m.

MINUTES—APPROVED

The following minutes are written as a summary of the main points that were made and are the official and permanent record of the actions taken by the Town of Farmington Zoning Board of Appeals. Remarks delivered during discussions are summarized and are not intended to be verbatim transcriptions. An audio recording of the meeting is made in accordance with the Zoning Board of Appeals adopted Rules of Procedure. The audio recording is retained for four months.

Board Members Present: Timothy DeLucia, *Chairperson*
Nancy Purdy
Thomas Yourch

Board Members Excused: Jeremy Marshall
Cyril Opett

Staff Present:
Ronald L. Brand, Town of Farmington Director of Development and Planning
Dan Delpriore, Town of Farmington Code Enforcement Officer

Applicant Present:
Daniel Compitello, Solar Project Developer, Delaware River Solar, 130 North Winton Road,
#415, Rochester, N.Y. 14610

In Attendance:
James Foley, 373 Ellsworth Road, Palmyra, N.Y. 14522
Frances Kabat, Esq., The Zoghlin Group PLLC, 300 State Street, Suite 502,
Rochester, N.Y. 14614

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. After the Pledge of Allegiance was recited, Mr. DeLucia introduced the Zoning Board of Appeals members and explained the emergency evacuation procedures.

Mr. DeLucia said that the meeting would be conducted according to the Rules of Procedure approved by the Zoning Board of Appeals on February 25, 2019.

2. APPROVAL OF MINUTES OF MARCH 25, 2019

■ A motion was made by MR. YOURCH, seconded by MS. PURDY, that the minutes of the March 25, 2019, meeting be approved.

Motion carried by voice vote.

3. LEGAL NOTICE

None.

4. CONTINUED PUBLIC HEARINGS

ZB #0902-18	Delaware River Solar LLC 33 Irving Place New York, N.Y. 10003	Area Variance
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The applicant is requesting an Area Variance to Chapter 165, Section V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a setback of 20 feet from along the south property line on proposed Lot 2 of the Delaware River Solar LLC Solar Energy Facility Site Plan, dated July 3, 2018. The Town Code requires a minimum rear setback of 160 feet. The property is located at 466 Yellow Mills Road and is zoned A-80 Agricultural district.

ZB #0903-18	Delaware River Solar LLC 33 Irving Place New York, N.Y. 10003	Area Variance
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The applicant is requesting an Area Variance to Chapter 165, Section V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a setback of 20 feet from along the south property line on proposed Lot 3 of the Delaware River Solar LLC Solar Energy Facility Site Plan, dated July 3, 2018. The Town Code requires a minimum rear setback of 160 feet. The property is located at 466 Yellow Mills Road and is zoned A-80 Agricultural district.

ZB #0904-18	Delaware River Solar LLC 33 Irving Place New York, N.Y. 10003	Area Variance
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The applicant is requesting an Area Variance to Chapter 165, Section V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a

setback of 20 feet from along the north property line on proposed Lot 3 of the Delaware River Solar LLC Solar Energy Facility Site Plan, dated July 3, 2018. The Town Code requires a minimum front setback of 180 feet. The property is located at 466 Yellow Mills Road and is zoned A-80 Agricultural district.

ZB #0905-18 **Delaware River Solar LLC** **Area Variance**
33 Irving Place
New York, N.Y. 10003

The applicant is requesting an Area Variance to Chapter 165, Section V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a setback of 20 feet from along the north property line on proposed Lot 4 of the Delaware River Solar LLC Solar Energy Facility Site Plan, dated July 3, 2018. The Town Code requires a minimum front setback of 180 feet. The property is located at 466 Yellow Mills Road and is zoned A-80 Agricultural district.

This project was discussed at the Project Review Committee (PRC) meetings on August 3, 2018, and September 7, 2018.

Mr. DeLucia reconvened the Public Hearings on ZB #0902-18, ZB #0903-18, ZB #0904-18 and ZB #0905-18 which were opened by the Zoning Board of Appeals on September 24, 2018, and which were continued on November 26, 2018; December 17, 2018; and January 28, 2019.

(The Public Hearings on the Preliminary Four-Lot Subdivision, Preliminary Site Plan and Special Use Permit applications were opened by the Planning Board on November 7, 2018, and were continued on December 5, 2018; January 16, 2019; and April 17, 2019. The Public Hearings before the Planning Board will reconvene on May 15, 2019.)

Mr. DeLucia asked if anyone in attendance wished to speak for or against the application, or ask questions.

Mr. Compitello (Delaware River Solar) provided the following update on the status of the applications:

- Since February 2019, Delaware River Solar has been in consultation with the New York State Department of Agriculture and Markets (the Department) regarding the Notice of Intent (NOI) submitted to the Department by the New York State Energy Research and Development Authority (NYSERDA). Mr. Compitello said that all proposals for solar projects to be located within an agricultural district, and for which NYSERDA funding is requested, must be reviewed by the Department. He said that NYSERDA funding has not yet been received but that Delaware River Solar intends to apply for NYSERDA funding upon approval of the project by the Planning Board. Mr. Compitello said that the NYSERDA funding equates to making solar power affordable for residents.

- The Department received the complete application that had been submitted to the Town.
- Mr. Compitello distributed to the Zoning Board of Appeals hard copies of letters from NYSERDA to the Department (dated April 9, 2019) and from Raymond A. Ball, Department Commissioner, to NYSERDA (dated April 12, 2019) regarding Commissioner Ball's determination. Mr. Compitello read the following portion of the Commissioner's letter aloud:

“Based on all relevant information before me, I have determined that the proposed action would not have an unreasonably adverse effect on the continuing viability of farm enterprises within the district or State environmental plans, policies and objectives. This determination is due, in part, to NYSERDA's commitment to the mitigation outlined in its letter dated April 9, 2019 (attached) . . . ”

—Raymond A. Ball, Commissioner,
New York State Department of Agriculture and Markets

Mr. Compitello said that the Commissioner's letter is very good and favorable for the project. He said that the Commissioner indicated that the project would not have adverse impacts upon the Smith farm or upon Agriculture District #1.

Mr. Compitello said that the Department found that the proposal as it stands today is well designed. He said that the Department recommended that Delaware River Solar must follow the guidelines on solar mitigation which are in the Town solar law. He said that the existing cattle will remain on the farm and that the cattle area and fencing will be reshaped by Delaware River Solar for the farm owners.

Mr. Compitello said that the Department requires that the parcels be merged back to their original state of pasture land following the decommissioning of the solar project. He said that a 30-foot-wide path must be provided to accommodate farm equipment and cattle to traverse the parcel from the barn on the east side to the pasture on the west and south sides.

Mr. Compitello said that the company could pursue this project without the approval of the Area Variances. He said that the project still would work, but that there would be a greater visual impact and a greater impact the farm operations. He said that Delaware River Solar is seeking the Area Variances to reduce the footprint [of the project] and to allow for better farm operations for the Smiths.

Mr. Compitello said that the Department also found that the four Area Variances requested by Delaware River Solar would serve as “acceptable mitigation. The variance(s) would reduce the footprint of the project on the project site, allowing for the grazing operation to fully maximum the contiguous grazing area. . . . ” (NYSERDA to Depart-

ment, April 9, 2019). Mr. Compitello said that the Department sees the Area Variances as a positive and that the company is glad that they did.

Mr. Compitello said that the next step will be for the Planning Board to issue the State Environmental Quality Review (SEQR) declaration. He said that the applications would then return to the Zoning Board of Appeals for action upon the four Area Variance requests in May or June.

Ms. Kabat (attorney with The Zoghlin Group, Rochester, N.Y) said that she represents a group of landowners concerned about the impacts of the solar development in the Town of Farmington in connection with Delaware River Solar's pending Area Variance applications. She provided the following statement into the record of the meeting:

“We ask this board to deny the Area Variance applications because Delaware River Solar failed to satisfy the requirements of Town Code, specifically Section 65.3 and Town Law Section 267 (B) (3). Delaware's requested 20-foot Area Variances essentially eliminate interior setbacks of the proposed project which is inherently inconsistent with its request to subdivide the project into four separate parcels.

“Now, I'd just like to briefly discuss the Area Variance criteria. It is our position that the project will produce an undesirable change in the character of the neighborhood. The applicant's requested setbacks will result in a densely massed solar facility out of character and scale with the surrounding neighborhood. The relief sought by the applicant can be achieved by some feasible method other than a variance. The applicant could construct a solar farm by following the setback requirements and reducing the number of solar panels.

“The requested variance is substantial. At 20 feet, the requested Area Variances effectively eliminate interior setbacks between the proposed parcels.

“The proposed Area Variances will have an adverse impact on the physical environment or environmental conditions of the neighborhood. There are documented concerns regarding [the] impacts to surface or subsurface agricultural drainage. The project site is also located on top of an aquifer and its dense compacted design will potentially impact the aquifer and environmentally sensitive regulated wetlands on and off the site.

“Finally, the applicant's difficulty was self-created. Its requests are based on a site plan configuration and its desire to obtain compensation under Public Service Commission tariff.

“Thank you.”

Mr. Compitello said that Delaware River Solar would be addressing in writing the letter which Ms. Kabat submitted to the Planning Board on April 17, 2019 (Master Correspondence Index #82).

He said that the applicant's difficulty to which Ms. Kabat referred was not self-created. Mr. Compitello said that there is a requirement under the New York State Public Service Commission law that transfers through to NYSEERDA and RG&E requirements that each solar system must be sited on its own tax parcel. He said that the reasons for this are the association that each parcel has to have its own Limited Liability Corporation assigned to it for accounting and tax purposes required by the State. He said that the requirement to subdivide and the number of parcels are due to the number of solar systems that the company is proposing. He said that the project will help meet the New York State goal of reaching 50 percent of renewable energy by 2030. Mr. Compitello said that the company has the right to subdivide the parcels in the manner that is proposed and also to seek the setbacks, given that they will allow for better farm operations and less visual impacts to the surrounding community.

Mr. Compitello asked to make note on the record of the documented concerns on wetlands and stormwater impacts. He said that Delaware River Solar has answered every question at every Public Hearing in writing and that the materials have been entered into the application abstract. He said that all information has been available to the public for many months.

Mr. Compitello said that the company is happy to answer any remaining questions. He also said that the company is planning to host an open house for residents in a more informal setting to help to communicate aspects of this project. He said that this project is no different than hundreds of solar farms which have been developed across the State and hundreds of others which will be developed in the coming years.

Mr. Brand asked about the letters which Mr. Compitello distributed to the Zoning Board of Appeals this evening. Mr. Compitello said that they are copies of the same letters which have been distributed to the Planning Board (Master Correspondence Index #79A and #79B). Mr. Brand said that the signed hard copy of the letter from the New York State Commissioner of Agriculture and Markets was received today and has been entered onto the Master Correspondence Index. He said that the Planning Board has been notified of its receipt.

Mr. Brand said that he prepared a draft resolution for the board's consideration this evening to continue the Public Hearings on the Area Variance applications to May 20, 2019. He said that the Zoning Board of Appeals may begin its deliberations on the Area Variance applications at that meeting if the Planning Board makes the SEQR determination of significance at its meeting on May 15, 2019.

There were no further comments or questions on these applications this evening.

Mr. DeLucia then read aloud the following resolution:

**FARMINGTON ZONING BOARD OF APPEALS RESOLUTION
CONTINUATION OF PUBLIC HEARINGS**

Files: **ZB #0902-18 Area Variance**
 ZB #0903-18 Area Variance
 ZB #0904-18 Area Variance
 ZB #0905-18 Area Variance

APPLICANT: **Delaware River Solar LLC, c/o Peter Dolgos, 33 Irving Place,**
 New York, NY 10003, on behalf of Roger and Carol Smith,
 4790 Fox Road, Palmyra, N.Y. 14522, owners of property at
 466 Yellow Mills Road

ACTION: **Area Variances—Continuation of Public Hearings**

WHEREAS, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has received applications for four area variances (Files ZB #0902-18, ZB #0903-18, ZB #0904-18 and ZB #0905-18) to enable the proposed subdivision of land that is required for the operation of a proposed solar farm, with a proposed total of three solar panel arrays, one array to be located upon each of the three proposed lots, comprising a total of approximately 37.5 acres of land, a part of Tax Map #010.000-01-037.131, which contains a total of 135.4 acres of land; and

WHEREAS, the subdivision of land is a prerequisite for the applicant to comply with the New York State Energy Research and Development Authority (NYSERDA) restrictions for the maximum level of energy being generated by an operating solar energy farm on a parcel of land; and

WHEREAS, the actions to grant a total of four area variances—two front setback and two rear setback variances—are part of the procedural requirements for the construction and operation of the proposed solar power farm on the above referenced three proposed parcels of land; and

WHEREAS, on September 24, 2018, the Board classified these actions as being Type I Actions under the requirements of Article 8 of the New York State Environmental Conservation Law; and

WHEREAS, the Board, after having classified these actions as Type I Actions, directed that a coordinated review be conducted with Involved and Interested Agencies; and

WHEREAS, the Board on Monday, September 24, 2018, declared its intent not to be designated the Lead Agency for these Actions; and

WHEREAS, Board, on Monday, September 24, 2018, opened the Public Hearings upon these Actions and received testimony from the public; and

WHEREAS, the Planning Board, on Wednesday, November 7, 2018 did by resolution, designate itself the Lead Agency for making the determination of significance upon the Action; and

WHEREAS, the Planning Board in their resolutions dated November 7, 2018; December 5, 2018; January 16, 2019; and April 17, 2019, moved to table any further discussion upon the requested Action and has continued the public hearings upon the requested Special Use Permit, Preliminary Subdivision Plat and Preliminary Site Plan approvals, citing the lack of requested information to enable it to make a determination of significance; and

WHEREAS, in accordance with the procedures established by the State Environmental Quality Review Act (SEQRA), the Board may not make a decision upon any part of the proposed Action until the Lead Agency has made a determination of significance.

NOW, THEREFORE, BE IT RESOLVED THAT the Board does hereby continue the Public Hearing upon these requested area variances to their May 20, 2019 meeting.

BE IT FINALLY RESOLVED THAT the Board does hereby direct a copy of this resolution be provided to the Town Planning Board, the Applicant, the landowners and one copy placed in the Town Project File on this Application.

■ A motion was made by MR. YOURCH, seconded by MS. PURDY, that preceding resolution be approved.

Timothy DeLucia	Aye
Jeremy Marshall	Excused
Nancy Purdy	Aye
Cyril Opett	Excused
Thomas Yourch	Aye

Motion carried.

5. PUBLIC COMMENTS—OPEN FORUM DISCUSSION

Mr. Compitello offered to conduct a site visit to the Smith Farm on Yellow Mills Road for members of the Zoning Board of Appeals, Town staff and other Town boards based upon interest.

6. OTHER BOARD MATTERS

Mr. Brand distributed written materials to the board on legal topics which had been discussed at the 2019 meetings of the Association of Towns. He said that these materials are part of the board members’ ongoing annual training and that a question-and-answer ses-

sion will be scheduled to provide board members with two hours of continuing education training.

In response to Mr. Compitello's offer to conduct a site visit to the Smith Farm for board members, Mr. Brand said that although the offer is well intentioned, the boards must be aware of the requirements of the New York State Open Meetings Law regarding the presence of a quorum of the board (for example, three of the five members of the Zoning Board of Appeals or the Planning Board). He said that due public notice would be required and that minutes and an official record of the meeting would have to be taken if three or more board members are in attendance at an event.

Mr. Brand also expressed caution to the members of the Zoning Board of Appeals regarding their attendance at an informal open house for residents which Mr. Compitello has offered to host. He said again that the New York State Open Meetings Law must be followed if three or more board members were to attend such an event.

Mr. Delpriore said that he could attend Mr. Compitello's open house and provide a report to the board. He also said that the Town staff can provide a site visit for individual board members to any property under application upon request with the assurance that a quorum of the board does not attend.

7. **NEXT MEETING DATE**

The next regular meeting of the Zoning Board of Appeals will be held on Monday, May 27, 2019, in the Farmington Town Hall, 1000 County Road 8, commencing at 7:00 p.m. (or at the Town Highway Department, 985 Hook Road, depending upon the status of the Delaware River Solar application).

8. **TRAINING OPPORTUNITY**

**Genesee–Finger Lakes Regional Planning Council
Spring 2019 Regional Local Government Workshop**

May 17, 2019

Information: dave.zorn@gflrpc.org

9. **ADJOURNMENT**

■ A motion was made by MR. YOURCH, seconded by MS. PURDY, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 7:35 p.m.

Following the meeting, the clerk locked the front entrance doors to the Town Hall.

Respectfully submitted,

L.S.

John M. Robortella
Clerk of the Zoning Board of Appeals