

*Town of Farmington*

1000 County Road 8  
Farmington, New York 14425

**ZONING BOARD OF APPEALS**

*Established July 15, 1957*

**Monday, September 24, 2018, 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*  
Jeremy Marshall  
Cyril Opett  
Nancy Purdy  
Thomas Yourch

**Staff Present:**

Ronald L. Brand, Town of Farmington Director of Development and Planning  
James Morse, Town of Farmington Code Enforcement Officer

**Applicants Present:**

Orlando Crespo, 408 Terri Drive, Farmington, N.Y. 14425  
David Matt, Project Engineer, Schultz Associates Engineers and Land Surveyors, P.C.,  
129 South Union Street, P.O. Box 89, Spencerport, N.Y. 14559  
Roger and Carol Smith, 4790 Fox Road, Palmyra, N.Y. 14522

**Residents Present:**

James R. Dennie, 595 Yellow Mills Road, Palmyra, N.Y. 14522  
Nancy and Jim Falanga, 395 Ellsworth Road, Palmyra, N.Y. 14522  
Stephen K. Ferris, 1734 State Route 332, Farmington, N.Y. 14425  
Ann and Jim Foley, 373 Ellsworth Road, Palmyra, N.Y. 14522  
Mark Gray, 532 Eastbrooke Lane Rochester, N.Y. 14618  
Caroline Heberle, 53 Mildorf Street, Rochester, N.Y. 14609  
Linda Heberle, 531 Yellow Mills Road, Palmyra, N.Y. 14522  
Edward Hemminger, Chairperson, Town of Farmington Planning Board  
Peter Ingalsbe, Supervisor, Town of Farmington  
James F. Redmond, 175 Burham Heights, Palmyra, N.Y. 14522

Gordon Wilson, 427 State Route 21, Palmyra, N.Y. 14522

### 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, explained the emergency evacuation procedures, and noted that copies of the evening's agenda were available at the door.

Mr. DeLucia said that the meeting would be conducted according to the Rules of Procedure approved by the Zoning Board of Appeals on March 19, 2018.

### 2. APPROVAL OF MINUTES OF JULY 23, 2018

■ A motion was made by MR. OPETT, seconded by MR. YOURCH, that the minutes of the July 23, 2018, meeting be approved.

Motion carried by voice vote.

### 3. LEGAL NOTICE

Mr. DeLucia attested that the following Legal Notice was published in the *Canandaigua Daily Messenger* newspaper (the Town's official newspaper) on Sunday, September 26, 2018, that it was posted upon the Town of Farmington website ([www.townofarmington-ny.com](http://www.townofarmington-ny.com)), and that it was posted upon the Town Clerk's bulletin board in the foyer of the Town Hall:

#### LEGAL NOTICE

**NOTICE IS HEREBY GIVEN** that Public Hearings will be held by and before the Zoning Board of Appeals of the Town of Farmington on the 24th day of September, 2018, commencing at 7:00 p.m. at the Farmington Town Hall, 1000 County Road 8, in the Town of Farmington, Ontario County, New York, to consider the following applications:

**ZB #0901-18: ORLANDO CRESPO, 408 TERRI DRIVE, FARMINGTON, N.Y. 14425:** Request a Temporary Use Permit according to Chapter 165, Article VII, Section 91 of the Town of Farmington Codes to permit a temporary food cart operation upon the parking lot portion of the Ontario Mall site. The property is located at 1740 NYS Route 332 and is zoned GB General Business district.

**ZB #0902-18: DELAWARE RIVER SOLAR LLC, 33 IRVING PLACE, NEW YORK, NEW YORK 10003:** Request an Area Variance to Chapter 165, Article 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 IVRING PLACE, NEW YORK, NEW YORK 10003:** Request an Area Variance to Chapter 165, Article V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a setback of 20 feet 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. 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, NEW YORK 10003:** Request an Area Variance to Chapter 165, Article 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, 33 IVRING PLACE, NEW YORK, NEW YORK 10003:** Request an Area Variance to Chapter 165, Article V, Section 65.3 F. of the Town of Farmington Codes. The applicant wishes to erect solar panels having a setback of 20 feet 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. The property is located at 466 Yellow Mills Road and is zoned A-80 Agricultural district.

**SAID BOARD OF APPEALS WILL MEET** at said time and place to hear all persons in support of such matters or any objections.

Tim DeLucia, Chairperson  
Zoning Board of Appeals  
Town of Farmington

**4. NEW PUBLIC HEARINGS**

**ZB #0901-18                      Orlando Crespo                      Temporary Use Permit**  
**408 Terri Drive**  
**Farmington, N.Y. 14425**

The applicant is requesting a Temporary Use Permit according to Chapter 165, Article VII, Section 91 of the Farmington Town Codes to permit a temporary food cart operation

upon the parking lot portion of the Ontario Mall site. The property is located at 1740 NYS Route 332 and is zoned GB General Business district.

Mr. DeLucia opened the Public Hearing on this application.

Mr. Crespo said that he would like to operate a food cart at Ontario Mall Antiques, 1740 State Route 332, on Saturdays and Sundays, and on an occasional Friday, from approximately 10:00 a.m. to 4:00 p.m. to serve hot dogs, hamburgers, and sausages for the convenience of mall customers and staff. He said that his stainless steel food cart is three feet by six feet in size and has two burners.

Mr. Brand asked about the location of the food cart on the site. Mr. Crespo said that the food cart would be located on two public parking spaces in the southern portion of the mall parking lot. He said that the spaces will be marked with cones. Mr. Crespo said that the food cart would be removed from the site at the end of each day of operation and that the two parking spaces would then again become available for vehicles.

Mr. Brand asked about signs on the food cart. Mr. Crespo said that there would be one “Finger Lakes Hots” sign on the food cart and that it would not be an overhanging sign. He said that he has hot dog and hamburger advertising flags which he would display if they are approved by the Town.

Mr. Brand asked if tables would be available for customers. Mr. Crespo said that he has no plans for customers’ tables, but that he could provide them if they were to be requested and approved. He said that a small table would be set up near the cart for condiments.

Mr. Morse said that he reviewed the application and considered the possibility of outdoor seating.

Mr. DeLucia said that he is familiar with Ontario Mall Antiques and that there is an indoor lounge with tables, coffee and water for customers, but that there is no outdoor customer seating.

Mr. Marshall asked about the days of operations. Mr. Crespo said that the food cart would primarily be operated on Saturdays and Sundays, weather permitting, and that he will take the cart off the premises each night.

Mr. Opett asked about the hours of operations. Mr. Crespo said that he would begin to set up the food cart at about 10:30 a.m., that it takes about 40 minutes to set up, and that he would begin serving from approximately 11:00 a.m. to 6:00 p.m.

Mr. DeLucia then asked if anyone in attendance wished to speak for or against the application, or ask questions. There were no comments or questions from those in attendance. There were no further comments from board members or Town staff.

Mr. DeLucia then closed the Public Hearing on this application.

**ZB #0902-18**                      **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 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**                      **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 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**                      **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 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.

Mr. DeLucia concurrently opened the Public Hearings on ZB #0902-18, ZB #0903-18, ZB #0904-18 and ZB #0905-18.

This project was discussed at the Project Review Committee (PRC) meetings on August 3, 2018, and September 7, 2018. Public Hearings on the Preliminary Four-Lot Subdivision, Preliminary Site Plan and Special Use Permit applications before the Planning Board have been scheduled on November 7, 2018.

Mr. Matt (Schultz Associates Engineers and Land Surveyors) presented this application. Property owners Roger and Carol Smith (4790 Fox Road) also attended.

Mr. Matt said that this is a Community Solar project intended to provide low cost solar power to approximately 1,000 homes and businesses in the Farmington area. The three proposed solar plants are located on 40+/- leased acres in the central portion of a 135-acre parcel. Each project involves installation of 7,000 solar panels with each project covering approximately 3.1 acres. The total disturbed area is estimated at 37.5 acres, though only the inverter pad and road locations are expected to require grading. The solar panels will be located in rows with approximately 19-foot aisles between rows. The applicant anticipates no change to the project area drainage patterns or flows. The project area will be surrounded by an 8-foot fence and motion sensor lights may be installed on inverter equipment.

The decommissioning plan uses cost guidance from NYSERDA and estimates from actual projects in Massachusetts. The estimated decommissioning cost per 2 MW solar project is \$126,000 with \$60,000 to be deposited in escrow at the beginning of the project with escalation payments deposited annually and cost estimates adjusted every three years as specified in Town Code.

The agricultural data statement indicates 40 acres are currently used to grow hay and other areas of the parcel are used to graze cattle. The property and all surrounding lots are in the County's Agricultural District #1. The Town has identified that the proposed solar project footprint would be on soils identified as Class 1 to 4. In accordance with Town Solar regulations, the applicant has certified that no alternative site location is feasible to avoid use of high value agricultural soils. The property owner intends to continue to grow crops and graze cattle on portions of the site not covered by solar panels along Yellow Mills Road and in the northwest corner of the site (near Fox Road). The applicant also owns a 21-acre parcel with 900 feet of frontage along Fox Road to the west. According to OnCOR, more than half of this property is un-forested, very poorly drained and not prime farmland. A portion of this property is in the floodplain.

Following the discussion of this project with the PRC in August, Mr. Matt said that several solar panels have been relocated and fence lines have been rearranged. He also said that the proposed property lines have been adjusted.

He said that the fence line has been increased by about a half-acre and that the landowner will lease the property within the fence line to the solar provider. The landowner will keep the current herd of cattle. A pass-through will be installed in the fence line for the movement of cattle and farm equipment.

He said that the subdivision of the land into three parcels is a requirement of Rochester Gas & Electric Corporation (RG&E) and the Public Service Commission. Mr. Matt said that the solar panels would be located as far from the road as possible.

Mr. Matt said that although the Town Code requires rear setbacks of 160 feet and front setbacks of 180 feet, the applicant is requesting Area Variances for setbacks of 20 feet along the south property line of proposed Lot #3 and 20 feet along the north property line of proposed Lot #3 keep the system as compact as possible, to avoid excessive disturbance, and to save many more acres of land.

Mr. Matt said that the property will remain in the owners' names and that they intend to continue to farm the land. He said that owners plan to have sheep graze within the fence line to maintain the vegetation level. All the remaining existing farmland will continue to be farmed or will be used for cattle grazing. Following decommissioning of the solar system, the land will revert to farmland.

He said that the Area Variance applications are for the interior lot line setbacks to keep the system compact and to avoid gaps between the three areas of solar panels. He said that the overall project will have a setback from Fox Road of 310 feet, a setback of 160 feet from the south property line, a setback of 675 feet from the west property line, and a setback of a minimum of 430 feet from east of Yellow Mills Road. He said that these distances are to maintain a large buffer around the installation to meet the intent of the Town Code.

Mr. Matt said that adjacent homes are at least 600 feet or more from the solar panels and that there are existing visual buffers on three sides of the property.

Mr. Brand asked about the role of the New York State Energy Research and Development Authority (NYSERDA) and about its requirements. Mr. Matt said that the Public Service Commission has a regulation that a plant of this size has to be broken up into multiple units of no more than 2 megawatts (MW). Each unit must be separate and individual on its own lot with its own connection from the panels to an inverter and to the electrical grid. He said that this is controlled by the Public Service Commission and RG&E.

Mr. DeLucia asked about the calculation that the electrical output of each of the three installations is indicated as 2.33 MW, which is greater than the 2 MW limit, for a total of 7

MW. Mr. Matt said that there would not be 100 percent output every day from each installation due to conditions in western New York State. He said that the output from each installation would be 2 MW and within the regulatory requirements.

Mr. Brand said that this evening's presentation is the first Public Hearing session in a multi-step process to review this project. He said that the Preliminary Subdivision Plat, the Preliminary Site Plan and the Special Use Permit applications would be heard by the Planning Board. The first Planning Board Public Hearings are scheduled for Wednesday evening, November 7, 2018, at 7:00 p.m. in the Town Hall meeting room.

Mr. Brand said that the staff has reviewed these applications and has coordinated its review with Scott Sheeley, Permit Administrator, New York State Department of Environmental Conservation, Region 8 Office, in Avon, N.Y. Based upon these pending actions, it is recommended that the Zoning Board of Appeals (ZBA) classify these applications as Type I actions under the State Environmental Quality Review (SEQR) regulations. He said this classification will require a SEQR coordinated review by Involved and Interested Agencies, among which will be the New York State Department of Environmental Conservation (DEC) and the Army Corps of Engineers.

Mr. Brand said that the property lies within the established Ontario County Consolidated Agricultural Use District #1.

He said that Article 8 of the New York State Environmental Conservation Law, Part 617, identifies a nonagricultural use which is to take place either wholly or partially within an established County Agricultural District which exceeds 25 percent of any threshold established in the Law to be a SEQR Type 1 Action. He said that in this instance, the 25 percent threshold involves the physical alteration of 2.5 acres of land.

Mr. Brand said that the SEQR review also will include a 30-day public review and comment period which will commence on Friday, September 28, 2018, and conclude at 12:00 p.m. on Friday, October 29, 2018.

He also said that one of the Involved Agencies must become the Lead Agency for making the SEQR determination of significance upon this project. He said that the ZBA may not wish to accept this responsibility because of the limited role that the ZBA will have in the review and approval process. Mr. Brand said that it remains to be seen which agency is willing to accept the Lead Agency responsibility. He said that the Planning Board has traditionally designated itself as Lead Agency on other applications because of its experience in working through the SEQR process and identifying appropriate mitigation measures.

Mr. Brand said that the staff recommends that the ZBA establish the 30-day SEQR public review and comment period and continue the Public Hearings upon the requested Area Variance applications to November 26, 2018.

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

Mr. Gray (532 Eastbrooke Lane, Rochester, N.Y.) asked how much money per acre the property owners will receive from this project, and how much money the Town will receive. Mr. Brand said that the Town would receive no money from the project other than the application fees.

Mr. Gray expressed a comment about the impact of the project on wildlife.

Mr. Gray asked what would happen to the solar panels after 25 years. Mr. Matt said that the company would follow the decommissioning plan as part of the application process with the Planning Board. He said that the company would remove everything on the property that is not there now. He said that the solar panels have recycled value and that the land will be returned to the existing condition when the lease with the property owners expires.

Linda Heberle (531 Yellow Mills Road) asked if this was a 30-year lease. Mr. Matt said that this would be a 25- to 30-year lease with three five-year options. Ms. Heberle said then it could possibly be a 30-year lease with 15 years of options.

Ms. Heberle asked about the size of the solar panels. Mr. Matt said that they are 3 feet by 2 feet with 28 panels per module (a module is a racking system). Mr. Matt said that there will be 7,000 panels on 10 acres on each of the three installation lots.

Mr. Morse reviewed the site plans. He said that the overall size of one individual module on a pedestal is 12 feet wide x 45.4 feet long. Mr. Matt said that there would be 290 modules and 7,000 solar panels on each of the three 10-acre installation lots, for a total of 21,000 solar panels on this project.

Ms. Heberle said that her family owns property across the road from this site. She said that her property is elevated and that instead of viewing grass she will see glass, aluminum and glare. She said that Mr. Matt has not discussed screening along Yellow Mills to block some of this. She presented two photographs of the view of the site from her property (attached).

Mr. Matt said that all the solar panels would face south. He said that the concept of the panels is to absorb as much sunlight as possible, that the panels have minimum glare and are coated with a glare-reduction material, that glare from a solar panel is wasted energy, and that studies have shown that glare from a solar installation is similar to glare from a forest.

Ms. Heberle said that no one here would want thousands of sheets of panels in their front yards. She said that this [project] is extreme and that it might be better received if there were only one of these installations in the center of the property instead of three separate installations. She asked if Mr. Matt's company had ever built one [a solar project] this

big. Mr. Matt said that he is working on a four-unit installation in Ogden, N.Y. (Monroe County).

Ms. Heberle asked if it is accurate that the electricity from a smaller installation can be used locally and that the electricity from this project cannot be used locally because the project is so large. Mr. Matt said that all the electricity to be produced will go directly into the local power grid. He said that the applicant consulted with RG&E to determine the need in their power system. He said that this area is one that was flagged by RG&E and that this a piece of land which was identified by the company.

Mr. Matt said that the benefit of the electricity goes to the ZIP Code in which the electricity is produced. Mr. Brand said that in this instance, the ZIP Code in which the property is located is Palmyra, N.Y.

Caroline Heberle (53 Mildorf Street, Rochester, N.Y.), the owner of the Heberle property across from the proposed installation site, asked about the location of transmission lines. Mr. Matt said that the electric lines would run underground and then come up onto existing utility poles when they reach the road.

Linda Heberle asked about the inverters. Mr. Matt said that the inverters are about the size of a refrigerator and would be installed on small concrete pads. He said that the noise from an inverter is about the same as a refrigerator.

Ms. Heberle asked Mr. Matt to address the buffer of the site along Yellow Mills Road. Mr. Matt said that he will work with the Planning Board on this, i.e., trees or a fence. Ms. Heberle said that they [the residents] might not be around long enough to see the trees grow.

Mr. Falanga (395 Ellsworth Road) said that he is friends with Roger and Carol Smith, the property owners, that he has met with them face to face a couple of times. He said that he is an advocate for solar power but not for a solar installation of this size. He said that this installation would be one of the largest in upstate New York and that it is not “regular.” He said that the DRS (Delaware River Solar) website indicates that the average solar installation is less than 12 acres total. Mr. Falanga said that the odds of the company being around to decommission the project is very slim. He said that start-up companies in New York State typically last less than four years. He said that they [Delaware River Solar LLC] won’t be around very long.

Mr. Falanga said that his question is: Will the Town be liable for the decommissioning? He said that the cost of decommissioning a 10-acre site is about \$100,000, from the research which he has done. He said that it would be about \$400,000 to decommission a site of this size.

Mr. Falanga said that he agrees with Ms. Heberle that a small installation behind the marsh would be a favorable resolution. He said that perhaps the company can redesign the project to better meet the needs of the community. Mr. Falanga said that he believes

that there are substation changes that will affect the rural nature of the area. He said that he and his family have lived here for 21 years for the rural setting, that it is his understanding that the northeast quadrant of the Town is designated in the Master Plan for open and farmland, and that this proposal reminds him of a light industrial use more so than anything else. Mr. Falanga said that the setback from Fox Road is not deep enough and that the 40 acres is huge.

Mr. Matt said that the footprint of the fence line is 30 acres and that the footprint of the solar panels is 10 acres.

Mr. Falanga said that it is his understanding that nine municipalities in New York have enacted moratoria on solar installations over 10 acres.

Ms. Falanca expressed concern that a project of this large of a scale would impact property values. She is not sure if young people would want to buy a house in this area if they have to drive by this every day. She said that it will be an eyesore because of the scale.

Ms. Falanca asked about the fence around the installation. Mr. Matt said that the fence would be eight feet in height and of a wood timber post design (a farm-type fence) as opposed to a metallic chain-link fence.

Mr. Gray asked if the Town has looked into installing solar panels on copper roofs to save space and for the consideration of wildlife.

Mr. DeLucia said that he appreciates the comments and questions being asked of this board. He said that the ZBA applications are for the setbacks between the separate lots which are required for the project to meet Public Service Commission regulations of each installation at no more than 2 MW. He said that the ZBA will capture residents' comments and questions. He said that the ZBA will not necessarily have the answers to the questions this evening, but that the Planning Board will develop the Site Plan and will take the comments into consideration. The Planning Board will have its first Public Hearing session on November 7, 2018.

Mr. Redmond (175 Burham Heights) said that he owns 350 acres of land on the northeast corner of Yellow Mills Road and Fox Road. He asked about the impact of the project on property values. He asked if assessments are going to decline.

Mr. Wilson (427 State Route 21) asked if the signatures of people living nearby are necessary to accept the fact that this will no longer be agricultural land. He said that to him, with all the solar panels, it will not be agricultural land any more.

Mr. Foley (373 Ellsworth Road) said that he was impressed with Mr. Matt's presentation. He said that Mr. Matt kept referring to the project as "a plant." He said that this will be a power plant being built in an area which is rural and agricultural. He said that he has never seen more homes built near a power plant, or real estate values go up near a power plant. He said that it is generally the complete opposite of this.

Mr. Foley referred to Town Code Section 165-65.3 regarding large-scale solar systems. He said that he was impressed with the Code and how regulatory it was expressing the concerns of the authors about the significant impact of a large-scale installation. He said that the Code covers such items as the removal of construction debris, traffic control, barbed wire fencing, etc.—very significant details. Mr. Foley said that the Code goes into significant details about the concerns of a large-scale power plant, that it wasn't envisioned being built in the middle of an agricultural area which encourages farms and homes.

Mr. Foley said that his major concern is that granting variances at this time is premature and that this project requires more study. He said that solar is where we need to go but we have to balance the interests. Mr. Foley said that the company in Delaware [the applicant] is going to reap a financial gain but that he hasn't heard anything beneficial to the Farmington, such as lower electric rates or the donation of a portion of the profits from the company to the Town. He said that the board has a difficult problem and that he believes that it will be reviewed seriously.

Mr. DeLucia said that the granting of any variances this evening would be premature. He said that the resolution before the ZBA is to align the agencies which must study this and submit recommendations to the ZBA. He said that there is much more work to do.

Mr. Gordon said that he owns property across from the proposed site and that the project will definitely degrade the value of his property.

Mr. Morse said that the Building Department is open for anyone to stop in and review the plans. He encouraged residents to come in and said that the staff will provide copies of the maps and plans.

Ms. Falanca asked how long the company has been in business. Mr. Matt said that he did not know. Ms. Falanca said that she heard that the company is only two years old and is a start-up company. Mr. Matt said that a representative of the company will attend the Planning Board meeting on November 7, 2018, and would be able to provide company information.

Ms. Heberle asked if there will be lighting on the property. Mr. Matt said that there would be motion sensors on the inverters. Mr. Yourch asked if the sheep would set off the lights.

Mr. DeLucia said that the Public Hearing before the ZBA will be kept open and will reconvene on November 26, 2018.

## **5. BOARD BUSINESS—DELIBERATIONS AND DECISION**

**ZB #0901-18**

**Orlando Crespo**

**Temporary Use Permit**

■ A motion was made by MR. MARSHALL, seconded by MR. YOURCH, that the reading of the State Environmental Quality Review (SEQR) resolution be waived.

Motion carried by voice vote. The reading of the SEQR resolution was waived.

■ A motion was made by MR. MARSHALL, seconded by MS. PURDY, that the following SEQR resolution be approved:

**FARMINGTON ZONING BOARD OF APPEALS RESOLUTION  
SEQR RESOLUTION—TYPE II ACTION**

**ZB #0901-18**

**APPLICANT: Orlando Crespo, 408 Terri Drive, Farmington, N.Y. 14425**

**ACTION: Temporary Use Permit according to Chapter 165, Article VII, Section 91 of the Town of Farmington Codes to permit a temporary food cart operations upon the parking lot portion of the Ontario Mall site. The property is located at 1740 NYS Route 332.**

**WHEREAS**, the Town of Farmington Zoning Board of Appeals (hereinafter referred to as the Board) has reviewed the criteria, under Part 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations, for determining the Classification associated with the above referenced Action; and,

**WHEREAS**, the Board finds the Action is identified in Section 617.5 (c) (1), (3) and (7) of the State Environmental Quality Review (SEQR) Regulations, as being a Type II Action in that it involves the granting of a Temporary Use Permit to permit a temporary food cart within a portion of the public parking lot located at the Ontario Mall Site, 1740 State Route 332.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board finds that the Action is classified a Type II Action under Section 617.5 (c) of the SEQR Regulations.

**BE IT FURTHER RESOLVED THAT** Type II Actions are not subject to further review under Part 617.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board in making this Classification has satisfied the procedural requirements under SEQR and directs this Resolution to be placed in the Town file upon this Action.

Timothy DeLucia     Aye  
Jeremy Marshall     Aye  
Cyril Opett             Aye  
Nancy Purdy             Aye

Thomas Yourch      Aye

Motion carried.

Mr. DeLucia then read aloud the following resolution:

**TOWN OF FARMINGTON**

**TEMPORARY USE PERMIT FINDINGS AND DECISION**

**Applicant:** Orlando Crespo  
408 Terri Drive  
Farmington, N.Y. 14424

**Application:** ZB #0901-18  
**Zoning District:** GB Gen. Business  
**Notice published:** Sept. 6, 2018  
**County Meeting:** Sept. 12, 2018  
**Hearing Held:** September 24, 2018

**Property Location:** Ontario Mall Site, 1740 NYS Route 332, Farmington, New York 14425

**Use For Which Permit is Requested:** Applicant desires to operate a food service cart on a portion of the public parking spaces located on the above referenced property.

**State Environmental Quality Review Determination:** The above referenced application has been determined to be a Type II Action in accordance with the provisions contained in Part 617.5 (c) (1), (3) and (7), New York Codes, Rules and Regulations and Article 8 of the New York State Environmental Conservation Law.

**County Planning Referral Number and Recommendation:** #160-2018. Class 1 with comments that relate to the number of parking spaces to be used in conjunction with the food cart.

In accordance with the provisions contained in Chapter 165, Section 91 of the Farmington Town Code, this application for a Temporary Use Permit is based upon the following Findings by Zoning Board of Appeals:

***Test:** No Temporary Use Permit will be granted without a clear understanding of the nature of the permit, the time period covered by the permit and a detailed listing of the conditions of approval. The following findings must be made by the Zoning Board of Appeals on any Temporary Use Permit:*

- (1) The temporary use will be in harmony with the general purposes and intent of Chapter 165, Section 38 of the Farmington Town Code, taking into account the location and size of the proposed use, the nature and intensity of the operation involved in or connected with the proposed use and the size and location of the site in relation to adjacent sites and uses.

**Proof:** The Zoning Board of Appeals (hereinafter referred to as Board) finds, based upon testimony given tonight in the public hearing record, that the purpose of the proposed

Temporary Use Permit is to allow the use of a food cart to be located upon two parking spaces adjacent to the southern wing of the Ontario Mall Site. The food cart will be in operation on Fridays, Saturdays and Sundays, between 11:00 a.m. and 4:00 p.m. and will not remain on the site overnight. In addition, the food cart will be in operation on any day that the property owner requests during the hours of 11:00 a.m. and 4:00 p.m. The food cart will operate year round on the days specified above herein. The food cart will not provide curb service to any vehicle in the public parking lot. The area around the food cart will be kept clean at all times and there shall be no litter on the property resulting from the operation. There shall be a food receptacle located in close proximity to the food cart and no food may be left over night in the receptacle. The food cart operation shall not offer alcoholic beverages.

The Board further finds that the applicant has not identified any employees to operate the food service at this location. The Board further finds that the applicant intends to have only one commercial speech sign located on the property other than on the side of the food cart. The Board further finds that the applicant will not be storing the food cart, or any related petroleum products on the site overnight. The Board further determines that the applicant is aware of the limitations contained in the Town Code for the granting and renewal of a Temporary Use Permit.

The Board further finds that there shall be no Building Permits issued for the proposed food cart operation that is associated with this proposed Temporary Use Permit without first obtaining Site Plan Approval from the Town Planning Board.

- (2) The proposed temporary use will not tend to depreciate the value of adjacent properties.

**Proof:** The Zoning Board of Appeals finds that the character of the neighborhood is commercial with large volumes of traffic passing by along State Route 332. The Board further finds that the peak hours of operation of the Ontario Mall coincide with the proposed hours of operation of the food cart. The Board further finds that the applicant intends to maintain the appearance of the food cart and this portion of the public parking spaces at the Ontario Mall Site. The Board further finds that the applicant has an agreement with the Ontario Mall Property Owner to operate the food cart outside the New York State Route 332 right-of-way and to have customers use only the nearby parking spaces located in this portion of the Ontario Mall Site. The Board further finds that the applicant is not intending to install tables or chairs, or picnic benches on the Ontario Mall Site.

The Board, based upon these findings, concludes that the proposed temporary use will not tend to depreciate the value of adjacent properties. On the contrary, the Board finds that said temporary use will provide an opportunity to enhance the agricultural sector of the Town and County by offering seasonal home grown produce.

- (3) The proposed temporary use will not create a hazard to health, safety or general welfare.

**Proof:** The Zoning Board of Appeals finds that the proposed use with the findings identified above herein will not create a hazard to health, safety or general welfare of the community. The Board further finds that granting the Temporary Use Permit with conditions will enable the Town to evaluate the temporary operations associated with the proposed Temporary Use Permit, thereby allowing the Town opportunity to establish rules and regulations for creating a Special Use Permit for this type of land use within the developing area of the community. Such action it is felt should promote and sustain the viability of the commercial land use operations within the community and county. The Board also finds that the food cart in this location will provide service to users of the Auburn Trail.

Based upon the above findings, the Zoning Board of Appeals hereby makes the following decision:

- The request for the Temporary Use Permit is hereby granted.
- The request for the Temporary Use Permit is hereby granted with the following conditions set forth below:
- The request for the Temporary Use Permit is hereby denied.

The Zoning Board of Appeals hereby grants approval of the requested Temporary Use Permit with the following conditions:

1. The Temporary Use Permit is hereby granted for a period of two (2) years that is to commence on Tuesday, September 25, 2018, and will automatically terminate on September 26, 2020, unless renewed by the applicant prior to said date.
2. All New York State Health Department Permits are to be displayed on the food cart and a copy thereof filed with this project file in the Town Building Department.
3. No petroleum tanks are to be stored on the property when the food cart is not open for business.
4. The Temporary Use Permit is not transferrable to another party.
5. The Temporary Use Permit does enable the applicant to hire employees directly related to food cart operations.
6. All parking spaces to be used in conjunction with the food cart operation are to be on a dust-free surface and the parking spaces are to be double striped.
7. The Temporary Use Permit is hereby granted with the understanding that the applicant will not need to obtain Site Plan Approval from the Town Planning Board.

- 8. The Temporary Use Permit is hereby granted with the condition that the findings contained above herein by the Zoning Board of Appeals are hereby made conditions of approval for the proposed Temporary Use Permit.
- 9. The Temporary Use Permit is hereby granted to the applicant for the sole purpose of operating a food cart within the public parking spaces established in the southern wing portion of the Ontario Mall Site located at 1740 State Route 332.
- 10. One directional sandwich board type sign may be allowed to be located along the site frontage and outside the right-of-way boundary for State Route 332 and not placed on the Auburn Trail. Said sign is to be removed from the property at the end of each day of operation and stored inside the food cart.

The Temporary Use Permit is hereby issued to Orlando Crespo and is not transferable to a second party.

Upon the expiration of the requested Temporary Use Permit, the temporary use shall immediately cease and all equipment, supplies and materials relating to this permit shall be removed from the site and the site shall be returned to a condition acceptable to the Town Code Enforcement Official.

Following the reading of each condition of approval, Mr. DeLucia asked Mr. Crespo if he understood and agreed with the conditions. Mr. Crespo said that he understood and agreed with the conditions.

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

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

Motion carried.

<b>ZB #0902-18</b>	<b>Delaware River Solar LLC</b>	<b>Area Variance</b>
<b>ZB #0903-18</b>	<b>Delaware River Solar LLC</b>	<b>Area Variance</b>
<b>ZB #0904-18</b>	<b>Delaware River Solar LLC</b>	<b>Area Variance</b>
<b>ZB #0905-18</b>	<b>Delaware River Solar LLC</b>	<b>Area Variance</b>

■ A motion was made by MR. MARSHALL, seconded by MR. YOURCH, that the reading of the following complete resolution be waived and that Mr. DeLucia read aloud the board actions.

Motion carried by voice vote. The reading of the following complete resolution was waived. Mr. DeLucia read aloud the board actions.

**FARMINGTON ZONING BOARD OF APPEALS RESOLUTION  
SEQR RESOLUTION—TYPE I ACTION**

**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**

**ACTIONS:**                **Area Variances, Preliminary Subdivision Plat, Special Use  
Permit and Preliminary Site Plan Approval**

**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 construction of a solar farm, with three solar panel arrays, on three proposed lots containing 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 on a parcel of land that is part of an operating solar energy farm; and

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

**WHEREAS**, there are other required Town approvals that involve Preliminary Subdivision Plat, Special Use Permit and Preliminary Site Plan all by the Town Planning Board; and

**WHEREAS**, the Town is obligated under the stated intent of the State Environmental Quality Review Act (SEQRA) regulations to consider the entire Action being proposed and not just certain components; and

**WHEREAS**, the site lies within the established Ontario County Consolidated Agricultural Use District Number 1; and

**WHEREAS**, Part 617.4. (b) (8) of Article 8 of the New York State Environmental Conservation Law, identifies any Unlisted action that includes a nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to Agriculture and Markets Law, article 25-AA, sections 303 and 304) and exceeds 25 percent of any threshold established in this section, to be a Type I Action; and

**WHEREAS**, in this instance, the above referenced 25 percent threshold involves the physical alteration of 2.5 acres of land; and

**WHEREAS**, the proposed Site Plan identifies the physical alteration of more than 2.5 acres of land.

**NOW, THEREFORE, BE IT RESOLVED THAT** the Board does hereby classify these actions as being Type I Actions under the requirements of Article 8 of the New York State Environmental Conservation Law.

**BE IT FURTHER RESOLVED THAT** the Board having classified these actions as Type I Actions, does further direct that a coordinated review be conducted with Involved and Interested Agencies.

**BE IT FURTHER RESOLVED THAT** the Board directs Town Staff to prepare a Project Notification Review Letter, provide copies of the identified applications documents to the Involved and Interested Agencies, establish a 30-day review and comment period, and request the identified Involved Agencies to in turn identify which agency should be established as the Lead Agency for these Actions under the SEQR Regulations.

**BE IT FURTHER RESOLVED THAT** the 30-day public review and comment period shall commence on Friday, September 28, 2018 and end at noon on Friday, October 29, 2018.

**BE IT FURTHER RESOLVED THAT** the Board does hereby declare its intent not to be designated the Lead Agency for these Actions.

**BE IT FURTHER RESOLVED THAT** the Board does hereby move to table any further consideration of these requested area variances until a lead agency has been established and a determination of significance made as required under the SEQR Regulations.

**BE IT FINALLY RESOLVED THAT** the Board does hereby continue the public hearing upon these requested area variances to their November 26, 2018 meeting.

■ A motion was made by MR. OPETT, seconded by MR. MARSHALL, that the preceding resolution be approved.

Timothy DeLucia	Aye
Jeremy Marshall	Aye
Nancy Purdy	Aye
Cyril Opett	Aye

Thomas Yourch                      Aye

Motion carried.

## **6. PUBLIC COMMENTS**

None

## **7. CODE ENFORCEMENT OFFICER UPDATE**

Mr. Morse reviewed the status of the following projects:

- Farmington Gardens II: Certificates of Occupancy will be issued soon.
- The grading permit has been submitted for the Hathaway's Corners project. The staff will now be reviewing these materials.
- A Pre-Construction Meeting has been conducted for Auburn Meadows Subdivision, Section 9.
- Revised plans have been submitted for the DiMartino dental office project.
- A Pre-Construction Meeting for the American Equipment project at the corner of State Route 332 and Collett Road is scheduled for Thursday, September 27, 2018.

## **8. DIRECTOR OF DEVELOPMENT**

Mr. Brand discussed the following projects:

- Work continues on the Auburn Trail. Some portions are nearly complete with installation of topsoil and hydroseeding. These sections are awaiting the final installation of stone dust. Concrete sidewalks are being installed along State Route 332. The old sidewalks along State Route 332 just north of the Cobblestone Arts Center have been removed. New 10-foot-wide sidewalks which taper to five feet wide will be installed in this area.
- The installation of drainage pipes from Ivory Drive to Canandaigua–Farmington Town Line Road will begin soon.
- The Planning Board soon will receive the Preliminary Overall Site Plan for Hathaway's Corners following receipt of the applicant's responses to comments from the staff and the Town engineer.

- Meyer’s RV of the Finger Lakes on the northeast corner of State Route 96 and Mertensia Road has received Preliminary Site Plan approval from the Planning Board.

**9. PLANNING BOARD CHAIRPERSON**

Mr. Hemminger said that the two major issues which were considered during the Planning Board’s Public Hearing on the Hathaway’s Corners project were onsite drainage and traffic on County Road 41. He said that the drainage mitigation measures should assure that the drainage issues will get no worse and may improve. He said that the Town Board’s requirements for left-turn and right-turn arrows and turning lanes at the State Route 332/County Road 41 intersection should mitigate traffic concerns as expressed by residents of County Road 41 and Calm Lake at the hearing. He said that the SEQR determination of non-significance for Hathaway’s Corners has been approved by the Planning Board.

**10. NEXT MEETING DATE**

The next regular meeting of the Zoning Board of Appeals, if necessary, will be held on Monday October 22, 2018, in the Farmington Town Hall, 1000 County Road 8, commencing at 7:00 p.m.

**11. 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 8:15 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

Attachments: Two photos submitted by Linda Heberle, 531 Yellow Mills Road.