



**TOWN OF BALLSTON**  
**ZONING BOARD**  
323 Charlton Rd  
Ballston Spa, NY 12020  
Phone: 518-490-2715  
building@townofballstonny.org

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**TOWN OF BALLSTON**  
**ZONING BOARD OF APPEALS MEETING MINUTES**  
**March 2, 2022**  
**Town Hall - 323 Charlton Road**  
**7:30 pm**

**ATTENDEES:** Michael Lesniak, Chairperson  
Steve Merchant, Vice-Chairperson  
Annetta Dunham, Board Member  
Joanne Hull, Board Member  
Robin Kane, Board Member  
Tim Long, Board Member  
Dan Mertzlufft, Board Member  
Samuel Dorsey, 1st Alternate  
Patrick Whitton, 2nd Alternate  
Bill Keniry, Attorney

**Call To Order**

Meeting was called to order at 7:43 pm.

**Pledge Of Allegiance** was led by Chairman Lesniak.

**Approval Of Previous Minutes**

**MOTION:** Ms. Kane made a motion to approve the February 2, 2022, meeting minutes as drafted. Ms. Dunham seconded the motion. Abstained: Chairman Lesniak All others voted in favor. **CARRIED.**

Chairman Lesniak announced that the 1 Stewart Court variance application has been withdrawn by the applicant, Mr. Snyder.

**MOTION:** Ms. Kane made a motion to withdraw the application for an area variance for 1 Stewart Court for the construction of a shed. Mr. Merchant seconded the motion. All in favor. **CARRIED.**

**OLD BUSINESS**

**4 Red Barn Drive Area Variance (Ref # ZBA 2022-001) - Public Hearing Scheduled**

SBL 239.-16-2-26

Application for a side yard variance for the construction of a pool.



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**Mr. Greg Michalski**, property owner.

Chairman Lesniak stated that Mr. Michalski is requesting a 7' variance for the construction of a pool.

Chairman Lesniak stated that information was gathered and SEQR was completed at the last meeting.

Public hearing was opened at 7:46 pm.

No one chose to speak.

Public hearing was closed at 7:47 pm.

Mr. Merchant read through the criteria for the area variance:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; **NO, all members agreed.**
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; **NO, all members agreed.**
3. Whether the requested area variance is substantial; **NO, all members agreed.**
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and **NO, all members agreed.**
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance. **NO, all members agreed.**

**MOTION:** Ms. Hull made a motion to approve the side yard setback area variance of 7' for an in-ground swimming pool at 4 Red Barn Drive. Ms. Kane seconded the motion. All in favor. **CARRIED.**

**NEW BUSINESS**

**96 Lake Rd Boathouse (ZBA 2022-003)**

SBL: 249.6-1-11

Seeking variances to construct a boathouse.

**Mr. Brian Cooper**, property owner, presented the application.



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Chairman Lesniak read the narrative:

To build a new boat house to replace a currently in use boat lift and roll in dock. The new boat house will be placed in the same footprint as the current equipment. The new boat house will be built using Techno Metal Posts as the foundation which eliminates the need for any excavation fill or heavy equipment.

Mr. Cooper stated that upon reading the Town Code, he has decided to change the drawings to be a 5-foot width and meet the 350-square foot requirement.

Mr. Cooper stated that he is not asking for any variances.

Mr. Cooper stated that he gave the Board preliminary drawings that the engineer gave him. They will implement this change to meet the code to be 350 square feet.

Mr. Cooper stated that the one item that may be of concern is the distance away from shore of the proposed boat lift. Mr. Cooper stated that as mentioned, the proposed boat lift is in the same footprint as the current rolling dock. It is approximately 49 feet from shore to the very end.

Mr. Cooper stated that he wanted to reference a boat house that came before the Zoning Board on May 9<sup>th</sup>, 2018 for 4 Lakeshore Ave. Mr. Cooper stated that he has the minutes of that meeting, and it was discussed and ruled upon by this Board that due to the conditions of the water and how deep you need to go in order to float the boat off and weedy nature of the shoreline that a variance was not required and, in that case, to go ahead and build that boathouse. Mr. Cooper stated that his boathouse is exactly the same boathouse and that he actually designed it based on the one at 4 Lakeshore because he really liked it. Mr. Cooper stated that he has the same conditions in front of his house and is in the same portion of the lake (the very big portion of the lake so it had no impedance to traffic). He is blocked in by a lot of weeds, so he needs it at this distance in order to float the dock especially in the low water conditions because the lake rises and lowers up to 22 inches throughout the year.

Mr. Cooper stated that he is requesting this Board's agreement that a variance would not be required based on previous rulings of a very similar nature.

Mr. Long stated that the applicant mentioned that the boathouse at 4 Lakeshore Ave was approved, but the applicant also stated no variance was approved but no variance was needed so that wasn't an action that the Zoning Board took.

Mr. Cooper stated that he was told by the Town inspector that every piece of property sits on its own nature and that the Board has to agree in his particular case.

Mr. Long stated that no variance was ever granted.



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Mr. Long stated that the applicant said that the proposed boathouse is on the same footprint, but according to the plan, it is not the same footprint.

Mr. Cooper stated that on the plan, the position of boat lift, at the time that this survey was conducted shows the position on shore for winter conditions. Mr. Cooper stated that the photo he submitted shows the summer location.

Mr. Long stated that he understands the applicant wants a boat house, but he does not understand why it has be so far out.

Mr. Cooper stated that it is because of the depth of the water.

Mr. Long asked what the draft and size of the boat is.

Mr. Cooper stated that the draft is 2.5' and the size is 19'.

Mr. Merchant asked if the applicant was going to stay within the 350 square foot requirement, what is the applicant looking for.

Mr. Cooper stated that he is looking for an agreement that no variance is required on the design of his boathouse based on previous rulings.

Mr. Long stated that previous rulings are not relevant.

Ms. Hull stated that there was no previous ruling as there was no vote on that.

Mr. Cooper stated that there was a motion to dismiss the case as no variance was required.

Ms. Hull stated that based on some Google earth pictures, that the shore to the end of the dock is approximately 32 feet. Ms. Hull stated that with the stern sticking out of a 19' boat, so shore to stern is about 40 feet, so why is the applicant asking for a 45' dock. Ms. Hull asked why the applicant can't stay within the ordinance requirements.

Mr. Cooper stated that the ordinance requires 35'.

Ms. Hull stated that as of last year, the applicant had about 42' of dock.

Mr. Cooper stated that the boat lift has to be placed further out than the dock. Mr. Cooper stated that he was trying to measure to the outside of what he has today with a little bit for tolerance.



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Ms. Hull stated that the applicant may need to recheck his draft. Ms. Hull stated that she has a fairly large boat and her draft when the engine is raised up it is about 19” and everyone has to worry about weeds.

Mr. Cooper stated that the difference is that he cannot tilt his engine.

Mr. Merchant asked if the applicant is staying within the 350’ feet, where does the Board go from here.

Mr. Keniry stated that this Board does not have the power or the authority to review the applicant’s plans in advance and give him an advisory opinion as to whether or not it may or may not be compliant with the code. This board gives relief from strict application of the code. So, when the applicant indicated that he could comply with the 350-square foot rule with respect to the dock, then the Board members are left reacting with “what relief are you looking for us to grant?”. Mr. Keniry stated that the Board can grant variances or deviations and if the applicant does not need relief, then he does not need to come before the Zoning Board.

Mr. Cooper stated that the Building Inspector had told him that he may need relief from distance to shore.

Mr. Long stated that the old dock was 32’, which if it were a boathouse it would comply. If the proposed structure is in the same footprint, then the applicant would not need a variance.

Mr. Cooper stated that the boat lift extended past the dock and the new boat house would go beyond the 32’

Mr. Long stated that now the applicant would have a boat house instead of a lift that would extend the same distance so why isn’t it the same.

Mr. Cooper stated that the current boat lift overlapped with the dock, but the new boat house would extend beyond it and would exceed the 35’.

Mr. Long asked why the boat house can’t be within 35’ of the shore as there is 48” depth.

Mr. Cooper stated that in normal conditions it was measured 48 inches of depth of water where the boat is today and he added 24 inches to that as he measured on the day last summer when there had been a lot of rain so the lake was pretty full. The Ballston Lake Improvement Association has a graph that shows the water depth changes throughout the year. It can vary up



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to 24 inches so if that happens, then it could be down to 24 inches, and he would barely be able to take the boat off the water.

Ms. Hull asked if the applicant currently has 32' of dock, and with the stern hang over, does the applicant need an additional 14'. Ms. Hull stated that the applicant is asking for 46'

Ms. Hull stated that the Ballston Lake Improvement Association has water depth information, and the applicant can use that information to show hardship.

Mr. Cooper stated that he needs a minimum 4 persons to get the boat out.

Ms. Hull stated that owning a boat is not a hardship.

Mr. Merchant stated that the applicant needs to get the plans right and come back with the exact relief that he requires.

Mr. Long stated that they are not ready to proceed because the proposed boat house is 737 square feet.

Ms. Hull stated that the gang plank needs to be counted.

Ms. Hull stated that she doesn't know how they can make a decision without knowing what is going to be in place.

Mr. Cooper stated that he was not aware that he needed to provide final design drawings.

Mr. Merchant stated that the Board needs to know exactly what relief is needed.

Mr. Keniry stated that there is a definition in the code of dock. There is no definition of a dock plus a lift. Mr. Keniry stated that the applicant has a condition where he wants the lineal feet of the dock plus the boat lift. Mr. Keniry stated that the Board needs to know how many additional lineal feet the applicant needs for relief.

Mr. Cooper stated that he needs 46' and he can try and bring something back to the Board if he needs to.

Chairman Lesniak stated that they don't handle cases in one night. The first night is to provide information to the applicant for what is needed to make a determination.



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Chairman Lesniak stated that the Board is not ready to move forward to set public hearing.

Mr. Cooper asked if a public hearing required only if a variance is being asked for.

Chairman Lesniak stated “yes.”

Mr. Mertzlufft stated that it is not a hardship that water is low, it is just the reality for a certain size boat with a certain size dock. Mr. Mertzlufft stated that he understands that the applicant is trying to cover for the purposes of the low water depth, but it is a “tough nut” for the Board.

Mr. Cooper stated that he doesn't understand why 4 Lakeshore could have a boat lift and they did not require a variance.

Mr. Long stated that they must have complied with the code.

Mr. Merchant asked what constitutes the shoreline.

Mr. Long asked where the shoreline is measured from.

Mr. Cooper stated that he measures from the average high-water mark. Mr. Cooper stated that the code talks about an elevation of 251' which would be in his back yard next to his house if he used that elevation. Mr. Cooper stated that on the plan it shows the high-water mark as 258' elevation. Mr. Cooper stated that he is trying to interpret the rules and measure it from the normal mean high-water line which is approximately at the location of the existing deck.

Mr. Merchant stated that the applicant is guessing how far out the dock should be, guessing where the water is, guessing where the shore line is going to be. Mr. Merchant stated that the applicant should come up with the exact relief he needs, and the Board can see what they can help with.

Mr. Cooper stated that his existing deck is at a fixed spot, and he is measuring off that to where the existing dock and boat lift reside, and he is trying to design the new boathouse to be in the exact same spot.

Mr. Merchant stated that then he should measure off the existing structure and come back with an exact number.

Ms. Kane stated that the concept drawing should be provided.

Mr. Cooper stated that a drawing was included in the submission and asked if that suffices.



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Ms. Kane asked if it has a flat roof.

Mr. Cooper stated that it is flat storage deck where he intends to have solar DC batteries inside a box so that he can run the boat lift with solar panels.

Ms. Kane asked if the panels would increase the height of the structure.

Mr. Cooper stated that the total height would extend up 3 feet.

Ms. Kane asked if there are any walls on the sides.

Mr. Cooper stated that there are handrails, and it will be wide open.

Ms. Hull stated that the plan shows the water line and lake bed is shown but does not show measurements from the waterline to the lake bed and the applicant should find that out.

Mr. Cooper stated that it changes month to month so when should that measurement be shown for.

Ms. Hull stated that she would like to see something that shows that the applicant really needs the extra 14-15' as the applicant indicated that the plans before the Board need to be scrapped as the plans are going to be different.

Chairman Lesniak stated that neighbor did send a letter stating they had no objection:



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Janet Gaudons

100 Lake Rd

Ballston Lake NY, 12019

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To whom it may concern:

I am the neighbor of Brian and Kelly Cooper at 96 Lake Rd, Ballston Lake NY. I have reviewed the plans that Brian and Kelly have presented me for a new boat house along the waterfront and do not have any concerns with the project moving forward.

Best Regards,

Janet Gaudons

Ms. Hull asked if it is from the adjoining neighbor since the applicant is at 96 Lake Rd and the neighbor is at 100 Lake Rd.

Mr. Cooper stated that it is the adjoining neighbor; the mailboxes skip a number.

Mr. Long stated that the expectation is that next month the applicant will provide final drawings.

Mr. Cooper stated that he will try. His contractor won't give him final drawing unless he pays for the construction, and he doesn't want to proceed unless he knows he will be allowed to proceed.

Application is tabled.



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**60 Middleline Rd CSI (ZBA 2022-004)**

SBL: 238.-2-26.2

Seeking an interpretation of Section 138-162.4(D) and a variance of "System Coverage Perimeter" for a Community Solar Installation.

**Mr. Morgan Ruthman** of Spinney Group, property owner, presented the application.

Mr. Ruthman stated that there were actually two requests submitted in connection with their application; one was for an interpretation and one for an area variance. Mr. Ruthman stated that his approach is spelled out in the cover letter. If the Board wants to entertain this particular interpretation, then the area variance would be essentially moot. Mr. Ruthman stated that the extent to which an area variance is required is really going to depend on the interpretation issue.

Chairman Lesniak stated that this application is related only to Type III solar installations defined below:

Type III – Community Solar Installation (CSI) is only in the rural district and requires a minimum of 60 acres total to qualify. If the adjacent property is under the same ownership, the total acres of the commonly owned, contiguous property count toward the total 60 acres. System coverage perimeter may not exceed 20% of parcel if the property is located within the Watershed Overlay District.

Mr. Ruthman stated that they have submitted an application to the Planning Board for a community solar installation (CSI). The way that these installations work is they aggregate solar panels and produce renewable energy which is then placed onto the electrical grid and subscribers benefit from the production of electricity from a renewable resource through their existing utility provider, in this instance, National Grid. The Town of Ballston recently enacted a solar ordinance. The current administration has been very proactive in trying to pursue renewable energy initiatives; there have been a number of EV stations installed around town and that the Town of Ballston is now a Clean Energies Community. The Town is still in a moratorium and is currently reviewing its comprehensive plan and proposed zoning amendments. The solar ordinance was passed by the Town Board on an isolated basis and pulled out of the moratorium. Mr. Ruthman stated that as he understands it, the reason for that is that the town really feels strongly about pursuing these types of installations and promoting renewable energy. That was the backdrop against which his organization submitted the application.

Mr. Ruthman stated that they submitted an application for 5 megawatts covering approximately 25 acres of the property when the fence enclosure is included. Currently the Town Board is actively discussing the terms of how coverage is defined for solar installations. Mr. Ruthman stated that there is a piling or a racking system which is placed into the earth and then a panel is placed on top of that. In many instances, coverage is defined as just the actual impervious



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surface of the pole itself. As far as infiltration is concerned for stormwater management purposes, a solar panel isn't considered an impervious surface by New York State DEC and NYSERDA.

Mr. Ruthman stated that they have proposed a solar installation at property located at 60 Middleline Road and it meets all the relevant criteria for this type of installation however it is in the watershed overlay district. This ordinance contains a limitation on system coverage perimeter for properties located in that overlay district.

The two requests this evening for his project are to be able to move forward with the original plan that was submitted to the Planning Board that they believed was in conformity with the zoning regulations. It was a 5 MW system which is typical for these types of community solar installations. The reason for that size is that the utility company and Public Service Commission of the State of New York have arrived at this size as a reasonable metric for optimizing feasibility and output of distributed generation. They are intending to create resiliency and redundancy within the electrical grid. The goal within the State of New York, regionally and nationally, is to have microgrids emerge eventually which create an opportunity for distribution of electrical consumption and electrical demand. Five megawatts is the size which has been identified by NYS as the appropriate size for these types of installation which is what they submitted an application for and then in response, they were informed by Mr. Stickles that the project actually exceeded the maximum system coverage perimeter.

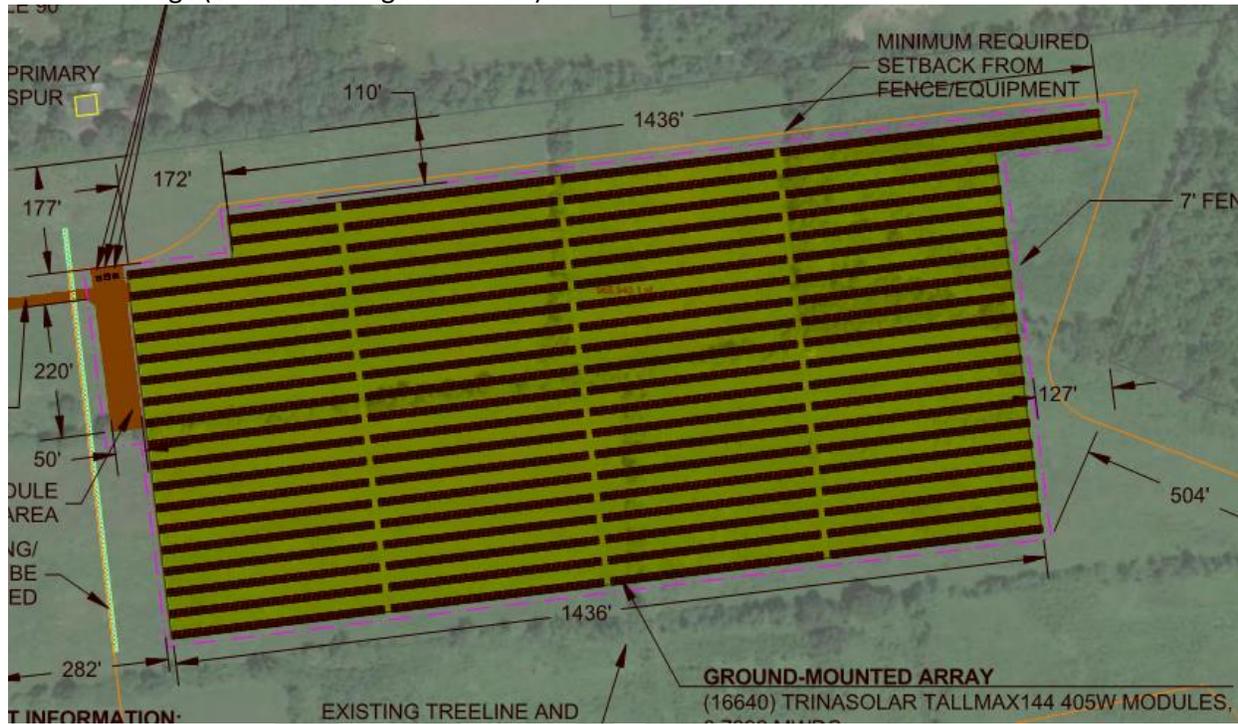
Mr. Ruthman stated that in Attachment D, he has included the email exchange between Mr. Stickles and Ms. Lippmann of MJ Engineering which concluded that system coverage perimeter was in excess of the 20% limit. Ms. Lippmann asked Mr. Stickles for clarification stating that if only the solar panels surface area was included then the system coverage would be approximately 7.38 acres or 11.7% and would meet the current zoning. Ms. Lippmann laid out in schematic fashion to clarify his interpretation as shown below:



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**Option 1** – all area encompassed by the solar panels (in yellow): This is approximately 22.2 acres or 35.3% coverage (exceeds zoning max of 20%).



DRAFT

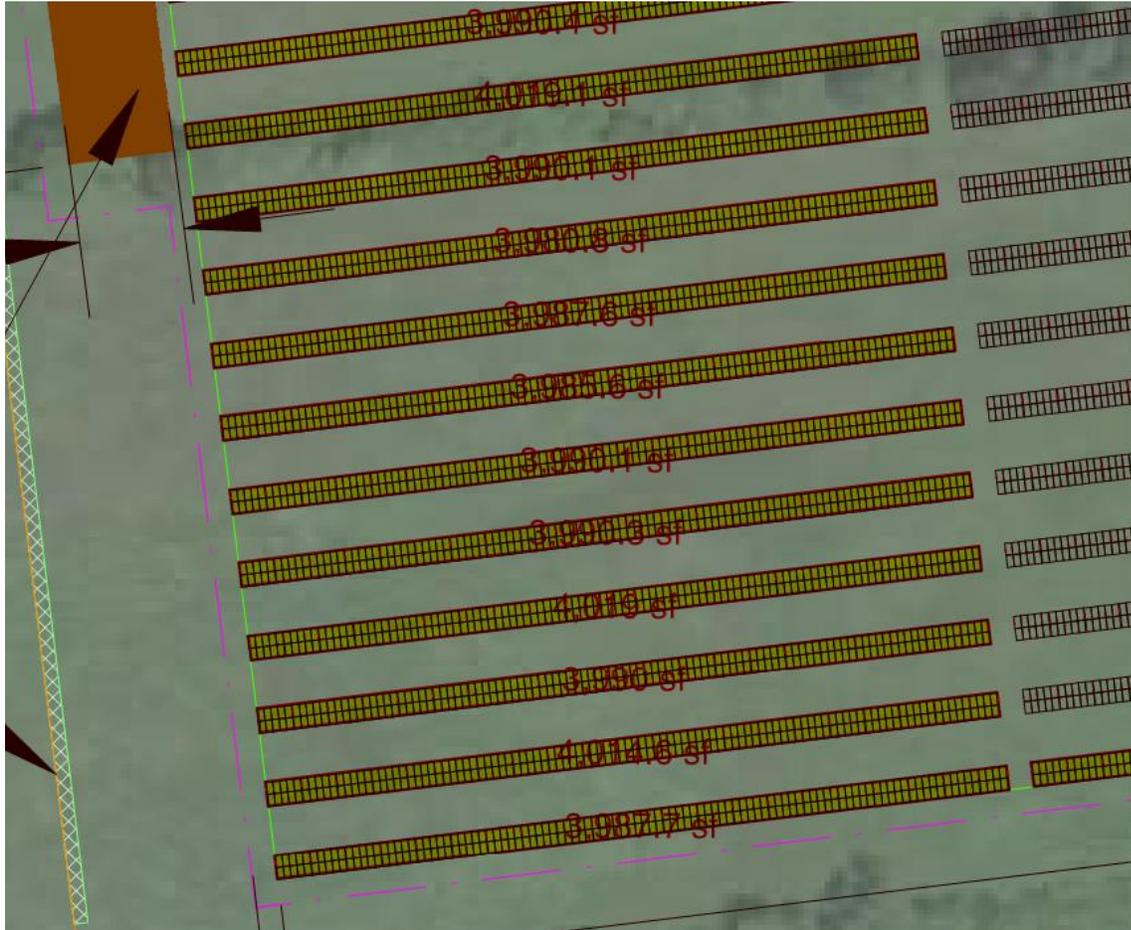


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**Option 2** – Only the surface area of the panels is calculated (in yellow). This is approximately 7.35 acres or 11.7% coverage and meets zoning.



Mr. Stickles responded with the interpretation that the coverage was the whole block. Mr. Ruthman stated that they disagree with that interpretation and that is the one of the reasons why they are here before the Zoning Board. Mr. Ruthman stated that in support of their argument, he has a couple of different points:

1. There is no such thing as “system coverage perimeter” in land use municipal regulations, solar energy installations or any other type of industry parlance. It is not a term that has any common use or application. It is unclear where the term emanates from and what the intent of that term’s application was.

It is also unclear why it is only applicable to the watershed overlay district. The reason why that’s unclear to him and others who evaluated this issue, including MJ Engineering,



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is because stormwater systems are very minimal when you look at solar installations. If the intent of limiting the size of these arrays within the watershed overlay district was born out of a fear that there would be an adverse consequence relating to the watershed itself as a result of these solar systems, then that is not supported by DEC or NYSEERDA. As a matter of fact, the Town Board just this week entertained the Ballston Lake water quality report which was very thoroughly prepared by some folks in the town and there's no mention of solar installations as potentially adverse to the watershed. Mr. Ruthman stated that as he has noted in a couple of occasions, watershed overlay district allows industrial and manufacturing in commercial uses. Solar panels are a very benign use - they don't create noise pollution, traffic, or any other adverse environmental impact.

Mr. Ruthman stated that his contention is that the term “system coverage perimeter” is not defined in the ordinance itself nor is it defined in any other literature. Even Googling the term results in zero hits. Because there is no real point of reference for the town to look to that New York State guidelines that are identified by the Division of Local Government services remarks that when the ZBA has to interpret a term as there is no precedent that it should just refer to standard terms that are readily available to them that in this instance would include the definition of the term “lot coverage.” Lot coverage is defined in the Town Code, and Ms. Lippmann in her memo to the Town's Planning Board in connection with the application as a means of expressing the conformity or lack of thereof of the application with the zoning regulations identifies system coverage perimeter as lot coverage right under the table that she included in the memo:

	Required	Provided
Lot Coverage (max)	20%	35.3%
Panel Height (max)	20 ft	11 ft
Fence Height (min)	7 ft	7 ft
Right of Way Setback (min)	200 ft	282 ft
Adjoining Property Setback (min)	100 ft	110 ft
Separation From Neighboring Residences (min)	250 ft	250 ft
Separation From Residence on the Same Property (min)	100 ft	N/A

Mr. Ruthman stated that the definition of lot coverage within the Town Code is as follows:

**LOT COVERAGE**

The percentage of the lot area covered by the combined area of all buildings, structures, parking areas, or other impervious surfaces on the lot.

Two key terms in that definition are “structures” and “impervious surfaces.” The Town’s solar ordinance defines solar collectors as “structures” and “impervious surfaces.” Logically we are left to conclude that a solar array is a structure and impervious surface and that system coverage perimeter if it means lot coverage means that the system coverage perimeter should be interpreted to mean the panels area not the area of



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undisturbed vegetative growth between the panels themselves. Mr. Ruthman stated that is the essence of his first argument.

2. Mr. Ruthman stated that the second argument is that the Town's definition of coverage is inconsistent with DEC stormwater management regulations as shown in Attachment E. According to DEC guidelines, they define commercial solar installations as "land clearing and grading for the purposes of creating vegetated open space" and it also states that "panels are spaced apart so that rainwater can flow off of them and down gradient side of the panel and continue as sheet flow across the ground surface." Mr. Ruthman stated that from the stormwater management standpoint, there's no purpose to be served by looking at this array as one monolithic block and to include the rows of grass between them as coverage areas as it's really not a coverage area.

Mr. Ruthman stated that the term "system coverage perimeter" is also in conflict potentially with other areas of the Town's solar law because the Town's definition of impervious surfaces doesn't align with its own SWPPP criteria and as a matter of fact the Town's solar law requires every Type III system to submit a full SWPPP. The Storm Water Pollution Prevention Plans are always submitted in conformity with New York State DEC guidelines and as noted DEC guidelines don't include the areas between the panel rows.

3. Mr. Ruthman stated that the last point is how to interpret the town's intent. The town's intent is probably most succinctly expressed in the provision of the solar ordinance called purpose and intent from section of the solar law "the purpose of this legislation is to balance the potential impact on the community when solar collectors maybe install while preserving the rights of property owners to install solar collection system without excess regulation." Mr. Ruthman stated that he would contend that this interpretation of a regulation is excessive. Mr. Ruthman stated that he would respectfully request the ZBA to reconsider. To be fair to Mr. Stickles, this is the type of thing that has risen for the first time in the town. Mr. Ruthman stated that Mr. Stickles is functioning in a very ambiguous situation where he's being asked to interpret things for the first time and the town doesn't have precedent for these types of things. Mr. Ruthman stated that as noted in his memo, he doesn't think it is appropriate that the town intended to pass an ordinance which again included an undefined term that is inconsistent with DEC and NYSERDA regulations and that is in conflict with its own definition of lot coverage.

Mr. Ruthman stated that those are the arguments that he set out in his memo as it relates to the interpretation request. The Zoning Board has jurisdiction to issue and interpretation which they could then take back to the Planning Board as a means of reverting to their original application that was submitted initially because they felt that it is conforming with the zoning regulations, but were informed that that was not the case.

Chairman Lesniak stated that looking at Attachment B, Ms. Lippmann states that



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- 7. The project area is located within the Ballston Lake Watershed Overlay District, therefore the "system coverage perimeter" shall not exceed 20% of the parcel size pursuant to §138-115.4.D. Based on our review of the concept plan submitted, the applicant is proposing coverage of approximately 35.3%, which exceeds zoning limits. The applicant shall revise the plans accordingly.
- 8. The bulk requirements and proposed conditions are provided below. Non-conforming items are shown in red.

	Required	Provided
Lot Coverage (max)	20%	35.3%

Chairman Lesniak stated that MJ Engineering has come up with the fact that basically it's the perimeter around the solar panel arrays.

Mr. Ruthman stated that he wanted to clarify that MJ Engineering did not arrive at the conclusion, but Mr. Stickles did.

Mr. Ruthman stated that Mr. Stickles responded, and Ms. Lippmann asked for further clarification with the graphic options as shown above and Mr. Stickles responded, "Option 1."

Mr. Ruthman stated that the number 35.3% is really Mr. Stickles' interpretation.

Mr. Ruthman stated that there is a threshold question of "what does it mean when the Town uses the term 'system coverage perimeter'?"

Mr. Ruthman stated that currently the Town of Ballston is in the process of rewriting the Zoning code including perhaps this Solar ordinance.

Mr. Ruthman stated that he has provided public comment which are very similar to the comments he is presenting here before the Zoning Board.

Mr. Ruthman stated that the Town Board's process is also moving forward in a parallel fashion which may take his current ZBA request out of the question, but he is working with the assumption that the Solar Law remains unchanged.

Mr. Ruthman stated that the request before the Zoning Board is "Is there an interpretation that the ZBA can make this 35.3% number 11.7%?"

Mr. Ruthman stated that Ms. Lippmann in her memo says, "Mr. Stickles, it's 11.7% if I just take this yellow highlighter and highlight the rows" and that's clearly below the 20% limit.

Chairman Lesniak asked if the ZBA makes an interpretation that makes it 11.7 %, then would the applicant add a lot more solar panels.



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Mr. Ruthman stated that it would stay at that 11.7% coverage because there are constraints on the property as well as the fact that the array has been designed with the 5 MW limit in mind for interconnection with the utility company.

Mr. Ruthman stated that the 11.7% would be the “absolute largest” it could be.

Mr. Mertzluft asked if any other municipalities in NY have had similar interpretations.

Mr. Ruthman stated that he has not seen this term “system perimeter coverage” as it is not a commonly used term.

Mr. Ruthman stated that he has had a couple of exchanges with NYSERDA Clean Energies Siting Office. NYSERDA has a model solar ordinance that they make available to municipalities that are in the process of implementing new solar laws to encourage renewable energy. NYSERDA is actually drafting a new model law that they will be releasing this month. Bill Ouderkerk from the Siting Office says that in the new model law, they are removing the term coverage from its contents because it has created confusion. NYSERDA’s position on the issue now is that the most relevant metric for municipalities ability to manage how, where and size of these types of systems are setbacks and that property line and roadway setbacks are the most appropriate way of a town telling developers where and when these types of installations should be located. The coverage issue creates a lot of confusion because solar panels are frankly very different than roofs and buildings and concrete slabs. They don't create the same level of impervious condition that those structures do and so treating them that way is not appropriate.

Mr. Long stated that is Mr. Ruthman’s opinion.

Mr. Long stated that since there is no precedence, the Board must follow common language definitions. Mr. Long stated that, in his mind, the common definition of “system” would be system of all the arrays, not 1000 systems of the individual panels. The definition of “perimeter” would be perimeter around the whole system not around each individual panel. Mr. Long stated that he can’t agree with any other definition, but the plain language definition of system perimeter is exactly that of the perimeter around the whole array. Mr. Long stated that trees and vegetation will not be allowed to grow between the arrays, so it is not going to have the same impact as if the solar panel array was not there. It would be allowed to grow into a forest. The one-foot-high vegetation is there because people need to get there for maintenance.

Mr. Ruthman stated that by using the term “undisturbed” area, he was attempting to communicate that there is no disturbance to the area as a result of the installation of these systems.

Mr. Long stated that there will be disturbance as pilings will be dug and dirt is going to scattered all over the place and vegetation is going to be covered up and will have to grow again.



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Mr. Ruthman stated that there are disturbances but a helical pier (an auger digs a hole that is 6-8" in diameter) represents the extent of disturbance. There is equipment operation associated with it, but it is no different than the equipment that was sent to brush hog the property recently.

Mr. Ruthman stated that currently the property is a field, not used for agricultural purposes and is not a forest.

Mr. Long asked if vegetation will be allowed to grow between the panels.

Mr. Ruthman stated that "if the question is will vegetation be allowed grow between the panels, then the answer is yes, but if the question is whether the vegetation be allowed to grow unchecked, then the answer is no."

Mr. Long stated that then it will be disturbed.

Mr. Ruthman stated that it will be mowed or maintained.

Ms. Dunham stated that there is cap of 20% in the watershed to keep run off to a minimum. Ms. Dunham asked how the applicant proposes to keep that under control.

Mr. Long stated that if roots are not there then soil will run off into the lake.

Mr. Ruthman stated that the best way to explain this is for the members to imagine the field as it exists in its current condition with a series of vertical pilings installed in this field, but no change other than that.

Mr. Ruthman stated that for solar installations only a basic SWPPP is required during the construction process. If this was traditional development proposal like the residential subdivision or concrete factory, both of which are allowed under the zoning ordinance in the watershed overlay district, there would have be a very robust stormwater management plan involving stormwater retention basins and water treatment. That is not required in this case because the solar panels are non-toxic and benign. The water arrives on the panel surface it runs off and then it touches the earth and it's allowed to drain into the earth. The only limiting factor in its ability to do that is the presence of these six-inch poles which has been determined by engineering and other relevant authorities as not significant. There's actually a lot of interesting opportunities that the Town of Ballston and the Town Board is looking such as allowing grazing in these fields to operate for local farmers to bring their livestock and sheep. It is more expensive than mowing the lawn, but it results in the same outcome of maintaining the field which, not unlike agricultural fields, must be maintained and not allowed to grow unchecked for logical reasons obviously shade being one of them. It's a grassy field with panels in it and the field must periodically maybe once a year get mowed.



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Ms. Dunham asked how many panels the systems have since everything is in percentages only. Ms. Dunham asked if the applicant was to reduce the system to 20% coverage, would he achieve his goal.

Mr. Ruthman stated that Appendix A shows the original plan of 5 MW plan and Appendix C shows the revised submittal after Mr. Stickles' interpretation which results in approximately 3 MW. Mr. Ruthman stated that row spacing is not that different. If the panels get jammed all together, then it is a suboptimal situation and would be worse from a stormwater perspective.

Mr. Ruthman stated that interpretation request is a very narrow request for the term "system perimeter coverage."

Mr. Long stated that they are regular words that have definitions.

Mr. Ruthman stated that the words have definition individually, but when used together they don't.

Mr. Long stated that comparing Attachment A and C then the new plan is 2/3 the size of the larger plan.

Mr. Ruthman stated that is a fair approximation.

Mr. Mertzlufft stated that there is reason why these arrays get put in fields where the sun shines on them. Mr. Mertzlufft stated that he feels that it will be resolved by the Town Board. Mr. Mertzlufft stated that stormwater rules were written for impervious structures such as a "Target distribution center" and it was covered by acres of pavement.

Mr. Mertzlufft stated that the important questions is how the solar installation affects the runoff, erosion, degradation, or vegetation growth. Mr. Mertzlufft stated that he sees these arrays everywhere and it can't be that impactful because they would have heard about it. Mr. Mertzlufft stated that members should not lose sight of how this technology is to be used. Mr. Mertzlufft stated that the terminology for coverage that is for regulations for standard development is poorly matched with this particular technology.

Mr. Merchant asked if 20% would be 12 acres.

Mr. Merchant asked about screening to limit the impact to the neighbors.

Mr. Ruthman stated that this is a conceptual rendering, but screening plans were provided to the Planning Board. Mr. Ruthman stated that at the site visit with the Planning Board, it was discussed that screening was a key consideration and he has assured Mr. Van Vorst that screening will be done, and a robust landscaping plan has been submitted.



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Mr. Ruthman stated that the 20% limit was lifted from the current zoning regulations for other structures and put onto the solar ordinance and that is not an apples-to-apples comparison. Mr. Ruthman stated that solar installation is much less impactful than a building such as a distribution center that had the allowable 20% coverage.

Mr. Merchant asked if the applicant would put additional panels if the interpretation allows for definition that does not include the space between the arrays.

Mr. Ruthman stated that if the Town Board chooses to remove the 20% limit, then this application to the Zoning Board would be moot. If the Town Board retains the 20% limit and the ZBA deems that they agree with the Building Inspector's interpretation, then he would request an area variance. Mr. Ruthman stated that it is important to have this Board's interpretation especially if the Town Board does not make any changes. Mr. Ruthman stated that he believes that the variance request has merit in regard to the criteria for an area variance.

Mr. Long stated that Attachment C would apply if Town Board doesn't change the law.

Mr. Ruthman stated that Attachment C would only apply if

- (a) The Town Board elects not to amend the Zoning ordinance;
- (b) The ZBA elects to uphold Mr. Stickles' interpretation; and
- (c) The ZBA denies their request for an area variance.

Mr. Long asked if the applicant would proceed with the 3.5 MW plan and Mr. Ruthman said "yes."

Mr. Long asked if the array wouldn't get bigger than the 5MW plan if the ZBA was to interpret coverage to allow for that plan.

Mr. Ruthman stated that it is the maximum allowable size.

Mr. Long asked if Mr. Ruthman would put the rows closer together.

Mr. Ruthman stated that it is not optimal because of shading when they are close together and in fact, without spacing appropriately it would not be good for these systems including for stormwater purposes.

Mr. Merchant asked what the height of the panels would be.

Mr. Ruthman stated that the height will be under 10' and the ordinance allows 20'.

Mr. Ruthman stated that these are fixed tilt arrays.

Mr. Merchant stated that he is concerned about the detriment to the neighbors.



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Mr. Ruthman stated that is exactly why the Town Board set the minimum setback requirements as they have and this project plan exceeds all the setbacks and they are being conservative about the setbacks, aggressive about the screening and impact to the neighbors.

Mr. Ruthman stated that if the ZBA were to rule in agreement with Mr. Stickles' interpretation then they would request an area variance and the first criteria the ZBA would evaluate is the detriment to the neighborhood. Mr. Ruthman stated that their contention is that this project would be in conformity with the zoning ordinance. The area variance that they are requesting only affect the areas to the south and east of this property that are unoccupied and vacant portions of the property they already own and does not have any adjoining neighbors. Mr. Ruthman stated that the northwest has one residence, there is a veterinarian and two neighbors who would not be affected with the granting of this variance.

Mr. Ruthman stated that the second criteria is "Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance." Mr. Ruthman stated that it is not feasible as they can't get a 5 MW system any other way. Mr. Ruthman stated that there is a case cited in his application:

In *Sasso v. Osgood*, 86 N.Y.2d 374, the NY Court of Appeals held that the ZBA must "weigh the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the area variance is granted", and that an applicant need not show "practical difficulties" in its request for an area variance.

Mr. Ruthman stated that the third criteria is "whether the area variance that's being requested is substantial." Mr. Ruthman stated that in their view, it is not a substantial request because it is an expansion of an array into vacant and unoccupied portions of property which they own, and which don't have any adjoining neighbors.

Mr. Ruthman stated that the fourth item is "whether the proposed variance will have an adverse effect or impact on the physical environment or the conditions in the neighborhood." Mr. Ruthman stated that there is no change to the physical environment as a result of this other than the extension of what is already being proposed which is a solar system into areas that are unoccupied and vacant owned by us, but which don't have any neighbors or adjoining property owners.

Mr. Ruthman stated that the last item is "whether the alleged difficulty with self-created." Mr. Ruthman stated that the Town's passage of the code didn't exist when they took ownership of the parcel. Mr. Ruthman stated that there is some case law reference in his application regarding what it means to have created a hardship and whether or not it is relevant to the consideration.

Mr. Long asked when the property was acquired.

Mr. Ruthman stated that it was acquired in December of 2015.



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Mr. Merchant stated that when it was sold, he was told it would be horse farm.

Mr. Ruthman stated that there was a property owner who bought it from the Van Vorst family prior to their purchasing it.

Mr. Ruthman stated that his narrative in the application touches on the five criteria for an area variance as well as case law and other information supporting his request.

Mr. Ruthman stated that the

“Town’s overall intent as it relates to solar energy installations is contained in §138-115.1 Purpose, Intent and Authority, which not only states that solar energy is a “necessary component of the Town of Ballston's current and long-term sustainability agenda”, but also remarks that “[t]he purpose of this legislation is to balance the potential impact on the community when solar collectors may be installed while preserving the rights of property owners to install solar collection systems without excess regulation.” In addition, §138-115.8(B) regarding “Appeals” states that “If a building permit for a solar energy device is denied because of a conflict with other Town Law or the building code, the applicant may seek relief from the Town of Ballston Zoning Board of Appeals which shall regard solar energy as a factor to be considered, weighed and balanced along with other factors considered by the Zoning Board of Appeals”.

Mr. Ruthman stated that he believes that the Town Board in drafting this ordinance gave guidance to the ZBA when it provided the opportunity for applicants to make a submittal to the ZBA and then the guidance that the Town Board provided is that they care about solar energy and that they care about renewable energy and that they want the ZBA to weigh and balance that in their determination.

There was some discussion regarding whether the perimeter is around the solar array or the fenced area. Mr. Ruthman stated that the fencing is there to prevent people from entering the solar panel area and to prevent damage or trespassing.

Chairman Lesniak stated that there are some solar installations that can’t even be seen and that is what he understands that the Town Board wanted here. Chairman Lesniak mentioned the solar system that was installed at the Indianapolis airport and then had to be taken down and adjusted because of the glare that the pilots encountered. Chairman Lesniak stated that he had some concerns when he saw the requirement is a 7-foot fence and that won’t be sufficient for screening when the panels are 10’ high.

Mr. Ruthman stated that the solar law does have requirements regarding glare. Mr. Ruthman stated that he agreed with Chairman Lesniak about screening and the system will be designed to be invisible.



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Mr. Ruthman stated that the Planning Board requires photo simulation from various points that show what the screening would look like, which will be provided. Mr. Ruthman stated that Planning Board members had expressed their view on the significance of the screening and Mr. Ruthman stated that he will do whatever the town requires.

Mr. Ruthman stated that if the ZBA determines that the term “system coverage perimeter” meets Mr. Stickles definition then he would request an area variance.

Chairman Lesniak stated that it would be hard to grant the 20% because then it would be spot zoning. Chairman Lesniak stated that there is no doubt that the Town Board wants solar, but they also outlined the parameters that limit to 20%. Chairman Lesniak stated that he wanted to note that the screening of the arrays is not the purview of the ZBA; it is the purview of the Planning Board’s consideration.

Chairman Lesniak stated that in terms of the coverage, there is going to be solar panels and nothing else is going to be done there.

Chairman Lesniak stated that the Town may amend the law and they are already making changes.

Mr. Ruthman stated that Chairman Lesniak had mentioned “spot zoning” and he would look at it through a different lens. In the matter of lot coverage, they are requesting area variance for what is otherwise an allowed use.

Chairman Lesniak stated that he doesn’t know where the Town is going with their proposed changes.

Mr. Long stated that as of today, the law stands at 20% coverage.

Mr. Ruthman stated that he would like to have his request for an area variance considered.

Chairman Lesniak stated that at this point they should wait to see what the Town Board intends to do.

Mr. Merchant asked if the Planning Board is doing SEQR.

Mr. Ruthman stated that the Planning Board is doing SEQR review on the plan as presented in Attachment C. At the last Planning Board meeting, the members asked going forward that the applicant show both options on the concept renderings. The Planning Board understands that there are legitimate scenarios in which the reduced footprint will be deleted, and they would revert back to their original submittal. The Planning Board is taking the view that there will be a solar farm on this property.



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Mr. Long asked how likely the Planning Board is going to have to deal with the 5 MW plan.

Mr. Ruthman stated that he could not give a percentage figure response as the answer to that question depends on how the Zoning Board interprets his requests.

Mr. Long stated that the applicant is just wasting the Planning Board's time.

Mr. Ruthman stated that he does not think they are wasting the Planning Board's time because they have an application that does conform currently.

Mr. Ruthman stated that he would give an analogy:

For instance, "if I was a multi-family residential developer and I wanted to build an apartment community that had 150 units in it and the Town said well there's a zoning provision that only lets you build 100, I would say OK well I'll move forward with the application for 100 but I prefer to build 150 because of economy of scale and other economic and practical considerations."

Mr. Keniry stated that the law does allow the applicant to proceed on these various paths, so procedurally he's fine. Mr. Keniry stated that he wanted to point out that this action has been classified as a Type I action for SEQR and that is a little bit different than what this Board typically sees. Coordinated review was initiated on about February 17. Coordinated review has a 30-day period of time within which interested or involved agencies have the ability to sort of wrestle to become the lead agency. Mr. Keniry stated the general expectation is that the Planning Board would be the lead agency for SEQR review. Mr. Ruthman's project will be back before the Planning Board on March 30<sup>th</sup>

Mr. Ruthman stated that the submission deadline is on March 9<sup>th</sup>, and they will be providing the SWPPP as well as visual analyses

Mr. Keniry stated that he expects that SEQR will be done at that time as the expiration of the 30 days should be around March 17<sup>th</sup>, so that by the time the next Planning Board meeting occurs, all the SEQR should be complete, and Mr. Ruthman could be back here.

There was a discussion about whether a public hearing could be set for the following meeting. Mr. Keniry stated that they can schedule the public hearing with the recognition that there might be an issue with SEQR, and they have to re-notice the public hearing.

Chairman Lesniak polled the board regarding setting the public hearing. Mr. Merchant stated that he needed more information. Mr. Ruthman stated that he doesn't anticipate any issues and that Ag and Markets, DEC and ACOE have already provided comment. Ms. Kane stated "yes to set." Mr. Long stated that if there are issues, then they can cancel the public hearing. Mr.



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Keniry stated that the Board can adjourn the public hearing or if the application becomes moot, then the hearing can be canceled. Ms. Hull, Mr. Mertzlufft, and Ms. Dunham felt that they could set the public hearing.

Mr. Ruthman asked if a public hearing is required for the interpretation.

Mr. Keniry stated that the public hearing notice will be published with both applications.

**MOTION:** Mr. Merchant made a motion to set a public hearing for interpretation and area variance for the 60 Middleline Road application for April 6, 2022, at 7:35 pm. Ms. Kane seconded the motion. All in favor. **CARRIED.**

**Active Solar - Randall Road Solar Farm (ZBA 2022-002)**

SBL: 226.-1-43.1

Seeking a variance for setback from adjoining property for a Community Solar Installation.

**Mr. Jason Dell**, Lansing Engineering; **Mr. Frank McCleneghen** and **Mr. Paul Kruder** with Active Solar presented the application.

Chairman Lesniak stated that the applicant was seeking a setback to bring solar installation within 10' from National Grid property.

Chairman Lesniak stated that they had no attorney present, and the Board is unable to act on this application without the Town Attorney present.

Chairman Lesniak asked if the applicant has contacted National Grid.

Mr. McCleneghen stated that they have an approved interconnection application with National Grid.

Board members asked to see the agreement and the applicant stated that they would submit for the next meeting.

Mr. McCleneghen stated that they have done six of these solar farms at sites near utility substations and are very familiar with the process.

Mr. Dell showed the plan that shows that National Grid property bisects the property in question.

Mr. Dell stated that they are looking for a variance from the setback requirement only where this parcel is adjacent to the National Grid property. Mr. Dell stated that they meet all the other setbacks that are specified in the solar law including the 250-foot set back from a residence to the



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array on the eastern side of the property and they also meet the required setbacks from Randall Road that are specified in the solar code. Mr. Dell stated that the only variance that they are seeking is to the actual utility corridor or utility substation property.

Mr. Merchant asked if there are panels on the field when you turn onto Randall Rd.

Mr. Dell stated that they have chosen to have panels in the flatter area.

Mr. Merchant asked how the applicant will ensure that the panels are not visible from the road.

Mr. Dell stated that they have provided visual analyses to the Planning Board. Mr. Dell stated that they have not received any comments back from the Planning Board pertaining to the visual analysis. Mr. Dell stated that if the Planning Board requested additional screening, then they would provide it.

Chairman Lesniak asked how far the array is set back from Randall Rd.

Mr. Dell stated that they are about 300' from one side and about 200' on the other side which is required.

Mr. Merchant stated that the plan doesn't show any gas lines. Mr. Merchant stated that he remembers when he was younger that the gas line blew up.

Mr. Dell stated that he will talk to the surveyor and have that added.

Mr. Merchant stated that they may need set back from that.

Mr. Dell stated that they will look into that.

Mr. McCleneghen stated that there are markers on the National Grid property.

Ms. Dunham stated that they typically need owner authorization form which gives the presenters the ability to speak on his/her behalf.

Mr. McCleneghen stated that they have it for National Grid but will provide it to the Zoning Board.

Ms. Hull asked if any part of the proposed project encroach on wetlands or water bodies.

Mr. Dell stated that the ACOE does allow some disturbance within the wetland itself. The disturbance associated with the project is very small. It's a helical pile and there is not a lot of trenching required and the wiring is hung on the racking underneath the panels. Mr. Dell stated that they will be seeking a joint permit with the DEC and ACOE. Mr. Dell stated that they are



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going to be within the DEC buffer area, not the actual wetland. Mr. Dell stated that both the Army Corps and the New York State DEC will be reviewing this application with respect to the wetlands. Mr. Dell stated that the DEC and ACOE won't review any application without preliminary approval from the Planning Board.

Mr. Merchant stated that the Mourningkill Creek runs through the area, but he didn't think it would affect the project and Mr. Dell agreed.

Mr. Merchant asked how many acres of panels are there.

Mr. Dell stated that it is around 20 acres for the panels, but the farm is about 79 acres.

Mr. Merchant stated that panels on the north side won't be seen at all.

Chairman Lesniak asked what the setback requirement is.

Mr. Dell stated that it is 100'.

Chairman Lesniak stated that, the applicant is requesting a 90' variance.

Mr. Dell stated that the variance of 90' would be to the fence line.

Chairman Lesniak asked where they need screening.

Mr. Dell stated that it would be on the southwestern side, and it is specified in the plan that was provided to Planning Board.

Ms. Hull asked if the applicant could explain why a variance is needed.

Mr. Dell stated that it is a need to maximize the yield for the property. The proposed placement is the optimum place of this type of system of this size.

Ms. Hull asked if they could meet the 100' requirement.

Mr. Dell stated that it would significantly reduce the yield.

Mr. McCleneghen stated that one of the hardships of the property is the wetlands and stream. They are trying to get economy of scale on the site and stay out of those wetland areas by going to only areas that are already cleared. They are trying to maximize what they have.

Mr. Mertzluft asked if the applicant doesn't get the variance, will the project shrink from the 7.4 MW.



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Mr. Dell stated that it would reduce by about 25%.

Mr. Long stated that they were told that the optimum size was 5 MW.

Mr. McCleneghen stated that optimum is maybe not the right word, but maximum is the appropriate word.

Chairman Lesniak said that he thought this was a 5 MW system.

Mr. McCleneghen stated that there is a maximum size for distributed generation in New York that can be fed to the utility. Developers will sometimes do two interconnection points to the utility provider co-located on one property. Mr. McCleneghen stated that they have two interconnections to National Grid's line. Technically they can have 10 MW for these two interconnections. This project is at 7.4 MW that is split between the two sides.

Mr. Long stated that project is careful to keep 100' from every other property line except National Grid property and then it is right up to the National Grid.

Mr. McCleneghen stated that it is the same kind of use.

Mr. Long stated that too bad National Grid does not see it that way.

Mr. McCleneghen stated that National Grid does not have a problem with it and will provide the connection application that was submitted to National Grid showing that they have reviewed the site plan.

Mr. Merchant asked how wide the National Grid property is.

Mr. Dell stated that it is about 100' wide.

Chairman Lesniak asked where the gas line is located on the National Grid, and it could potentially be located near the property line and then the solar array could be only 10' away.

Mr. Dell stated that only the fence line is 10' from the National Grid property line and the solar panels are another 10-12' away.

Mr. Long asked where the underground cables go.

Mr. McCleneghen stated that everything feeds to the center.

Mr. McCleneghen stated that their panels are fixed tilt; they are not trackers.



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Mr. McCleneghen stated that he is local, and he wants to be a good neighbor and make sure that he does a good job of screening.

There were several discussions about screening and setbacks where the applicant's representatives had approached the podium. Ms. Hull stated that Mr. McCleneghen had said that they would have 8' shrubs to screen the 8' panels.

Chairman Lesniak stated that there is a solar panel array on Charlton Road that was done correctly because no one could see them.

Chairman Lesniak stated that the solar panels in Amsterdam are a horrible sight.

Mr. McCleneghen stated that owner of that property used to own his house. Mr. McCleneghen stated that he had taken a look at that property and refused to take it for those reasons.

Ms. Hull asked if the applicants had spoken to neighbors, and they were okay with it.

Mr. McCleneghen stated that they had spoken to the neighbor on Hop City. There is a gentleman across the street they've spoken to.

Mr. Merchant asked if they have spoken on the property owner by the substation.

Mr. McCleneghen stated that he had not spoken to them, and his thought was that they are already looking at high-tension line and a substation.

Mr. Dell stated that there is a distance of about 700' between the panels and that property.

Mr. McCleneghen asked if a public hearing would be set for the next meeting.

Chairman Lesniak stated that he wanted to remind everyone that they did not have an attorney present.

Chairman Lesniak polled the board and Mr. Merchant, Ms. Kane, Mr. Long and Chairman Lesniak indicated they would like to wait; Mr. Mertzlufft and Ms. Dunham wished to go forward with the public hearing.

Mr. McCleneghen stated that they acquired this property two years ago and he doesn't understand why delay this even though there is no attorney present, but he also understands that it is the board's decision.

Chairman Lesniak stated that for the next meeting the applicant should provide the gas line information and the interconnection letter.



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Mr. Long stated that there is a distance limit with gas lines and was not sure if that was relevant here. Mr. Long stated that there are gas lines right below their high-tension lines.

**MOTION:** Mr. Merchant made a motion to adjourn the meeting. Mr. Mertzlufft seconded the motion. All in favor. **CARRIED.**

Meeting ended at 10:30 pm.

Respectfully submitted,

*Nisha Merchant*

Nisha Merchant  
Zoning Board Secretary

DRAFT