

TOWN OF NEW BALTIMORE ZONING BOARD OF APPEALS
Regular Monthly Meeting
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The meeting was called to order at 7:33 p.m. by Patrick Linger, ZBA Chair, followed by the Pledge of Allegiance. Other Board Members in attendance were Craig Albano, Jeff Carlson and Denise Taber. Michael Meredith was absent.

Minutes

It was moved by Linger and seconded by Albano to approve the minutes of the November 6, 2019, 12498 U.S. 9W, LLC Variance Application Public Hearing as presented.

AYES: 4 NAYS: 0 ABSTAINED: None ABSENT: 1

It was moved by Albano and seconded by Taber to approve the minutes of the November 6, 2019, Regular Monthly Meeting as presented.

AYES: 4 NAYS: 0 ABSTAINED: None ABSENT: 1

Correspondence

1. From Planning Board Chair Robert Van Etten, copy of 11/20/19 letter to Jacqueline Phillips Murray, Murray Law Firm, re: Hannacroix Solar Site Plan Application.
2. Hannacroix Solar Facility, LLC – Variance Application Packet
3. From Greene County Dept. of Economic Development, Tourism & Planning, 239 Response, re. 12498 Rte. 9W, LLC Variance

With regard to the conversation on the 239 referral time frame to the County, Mr. Linger spoke with the new County Planner. For the future, we are to scan and send the 239 Form, application and supporting documentation. That will suffice to get the referral on the County Planning Board agenda. Any other items too difficult and/or too large to scan can then be mailed.

Old Business – None

New Business

Hannacroix Solar Facility, LLC – Variance Application

Present representing the applicant was Benjamin Botelho from The Murray Law Firm. Required Agent Authorization Form authorizing the Murray Law Firm to represent the applicant is on file.

Mr. Linger ran through the application as follows:

- A. The applicant, Hannacroix Solar Facility, LLC, is the Lessee and Optionee of the following address: Railroad Avenue, Town of New Baltimore, NY. There are five different properties (with tax numbers 17.01-3-1; 17.01-3-5; 17.03-2-21; 17.03-2-27; 17.03-2-5) that this project encompasses per Memorandums of Agreements between the owners and the applicant.
- B. Type of Variances requested are from setback and maximum lot coverage requirements.
- C. Describe the need for area variance or proposed use, if application is for a use variance:

Due to the proposed project employing five (5) tax map parcels, there is no setback from certain internal property lines and one of the five parcels will exceed the maximum lot coverage requirements, as more fully explained in the accompanying narrative.

Mr. Linger pointed out that the narratives were included in the meeting packet and do explain what their goal is in coming before the Zoning Board of Appeals. He continued in reading through the narratives, he believed their first inclination was to ask for a determination as to whether the Code should apply to the parcels as being a single project.

Mr. Botelho advised the Board that they are proposing a solar facility on five adjoining lots. Your Town Solar Facility law requires a 100-foot setback from any equipment to neighboring parcels. The way this is set up, the equipment would be spread out between all five of these parcels so that it is possible, so we have two requests. First a request for an interpretation of the Building Code, that it should not apply to internal lot lines; and if you would rather do Variances, that would be our alternative request. One of the parcels involved is a 57% coverage rather than the 50% allowed; but I think the total coverage is 30 something percent so well under the 50%. I think that it makes sense to look at the whole site as a whole rather than five individual parcels.

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Mr. Linger replied from an attorney's perspective, I can see where that would make sense; but from a Zoning Board of Appeals Chairman's perspective, I think that, as a representative of the Town of New Baltimore, we need to deal with parcels not with projects. If projects encumber multiple parcels, we deal with the parcels on their own. A Variance would not apply to a project; a variance would apply to a parcel if it were granted. I think, from my own point of view; I don't know if someone else wants to agree or disagree which is fine but from my point view, I believe the Code applies to parcels and not so much to projects even when they encompass multiple parcels.

Mr. Albano questioned if there would be something that would tie all five of those parcels together as one entity forever as that project is going on so that one parcel cannot be sold individually? Mr. Botelho responded that he believed there was language in each of the agreements that our client has with the landowners forbidding them from selling, transferring or encumbering their property during the [Word not understood.] of the project. Two of the parcels are under option to lease and two are under options to purchase and I think those options will be exercised once the project is approved.

Mr. Linger continued that that was a question that he would have, I think, more for the Public Hearing than for this; but either way, the Zoning Board of Appeals can issue a Variance for a parcel. We are required to issue the minimum amount of Variance that is necessary to accomplish whatever the goal happens to be. In this instance, it is a solar farm. You have to weigh options as to:

- ...What is available?
- ...What are the options that are available?
- ...Are there no options available?
- ...Is it self-created?

What Craig has mentioned here is there is a way to do this and get rid of the requirement for those internal lines and that would be to purchase five pieces of property, combine them into one plot. That is an option that would negate this whole thing. That certainly is a consideration that we are going to have to take when we go through this.

My other concern or consideration would be the panels themselves. Do you know what they are using for panels as far as wattage per panel? Mr. Botelho responded that he was not sure per panel but that it was a five megawatt facility. Mr. Linger continued that he understood that but you could use let's say 100,000, 250 watt panels or can use 75,000 400 watt panels in which case you would use a third of the property. That is my other concern that there is a second option that is available. Whether it is feasible or not is not necessarily up to me but it is a potential option. Many times when there are options that are available and it is determined that it is feasible, then there is not a need for a Variance. Mr. Linger pointed out this is more towards the Public Hearing side of things but just so you understand what we have to consider before we can ever issue a Variance, whether it is an Area Variance or a Use Variance.

- ...A Use Variance is actually more specifically it must be proven rather than must be considered.
- ...With an Area Variance, things have to be considered and you weigh, you balance the whole thing out; but a Use Variance is different.

So I don't know if you can find that out before you come in next time or have someone with you who can answer those types of questions because they will have them. These are a 20-year agreement generally. I don't know about this one, I think it is 20 years. Mr. Botelho responded that he thought it was.

So if you start off with sub-standard equipment, 20 years from now that equipment is certainly going to be out of date, defunct, need to be replaced or removed. Whereas if you are starting off with a top of the line efficient panel that is going to produce the same amount, the same five megawatts on less property, it will maintain some more vacant land that can be developed for other things. We make new solar panels every day; we don't make vacant land every day, so it is certainly a strong consideration. Mr. Botelho responded that he would go back and see but he was sure there was a reason why they chose to set it up the way they did.

Mr. Linger continued a lot of it is explained in here, with the topography of the land, not having to clear cut. I never understood the theory of saving the planet by cutting down the trees so the sun could get to the panels. It seems counter-productive. Mr. Botelho continued that it was a great location right off the highway.

There is not a question of whether it is a permitted use there. It is permitted in that district so whether it is

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a good use or not, is not up to me. I don't own the property but it is a permitted use. The problem we are going to have is whether the Site Plan will work without the 100-foot setbacks. Additional questions to be answered are:

...What are they using?

...Can the footprint be shrunk down?

...Can the panels be upgraded shrinking the number of panels needed and thus shrinking down the overall footprint?

It was noted there is no battery storage or anything like that. The Board does not have a full-sized copy of the Site Plan at this time. Exact location of project and the five individual parcels (A,B,C,D and E) were pointed out and it was reiterated that if it was all one parcel, there would not be the setback issue. Mr. Carlson questioned if it could be combined into one piece if you are leasing some and possibly purchasing others? Mr. Botelho responded that he thought it was a question of what the landowners themselves would allow and then whether or not their client wants to take the risk of buying property and risking their [Several words not understood]

It was noted parcels involved are owned by New Baltimore Station LLC, C.F Trust and Eric Hogleund. Paul Schiller is a principal in New Baltimore Station, LLC along with two other gentlemen and he is also a Trustee of the Trust. The property owners are people residing in Florida, the State of Washington and New York. The only person residing locally at this time is Eric Hogleund. The location of Route 144, the railroad and the Thruway service area in relation to the five parcels were also noted. Question was raised regarding whether generated power would be going into a transfer station near it or the high tension lines right near the property. It was noted that three-phase had been run through to service the new Thruway Welcome Center and that it would probably hook in right there in the area at the Route 144 crossing.

Mr. Linger suggested let's first get this out of the way so we don't have to worry about this. That is the determination on whether the Code applies to the project or each parcel. He asked for the Board Member's opinion on it. Mr. Linger reiterated that he felt the Town Code applied to parcels and not to projects.

Mr. Albano questioned if it could be one parcel at some point? Mr. Linger responded if it were one parcel, we would not be here. Mr. Albano continued or locked together so that no one could pull them apart. He did not know if that was legally possible and how it would be done. Mr. Linger responded it is possible; they would have to buy all five. Mr. Albano clarified without purchasing it, so someone could not separate it. Mr. Botelho believed that would be the case when the solar facility is actually built. No individual landowner will be able to sell the property, lease it to someone else or do anything that would jeopardize the facility. I think that is true at this point as well. They are under option to lease or option to buy so nothing can be done without our client having the option first to lease or buy but they are all technically separate parcels with separate Tax ID Numbers. It was again noted they are locked in for 20 years.

Mr. Linger continued this is my opinion on it; I don't know that I want to set a precedent. This is a specific project but that doesn't mean that at some point down the road, we won't have a totally different project with maybe a different set of circumstances. I don't think I would want to apply a different thought process to it where our code applies to your parcel regardless of who owns it or what project is being done on it.

Question was raised:

.Could it be shifted around a little bit to balance out on a couple of those parcels where you are lacking?

Mr. Botelho responded you may be able to. I think the topography was a big deciding factor. Because of hills, they are trying to keep it as much to the east as possible. He further commented that he would look into the different types of panels they are using and see if they could use a higher wattage panel to reduce the coverage. Even then, I think we are still going to have a setback issue with at least a few of those internal property lines.

Question was raised and it is going to be setback from the Thruway? Mr. Linger responded that it is going to be from all the property lines. Mr. Botelho reiterated that it would be setback from all the exterior property lines at least 100 feet. This is just from the internal property lines. Mr. Linger

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explained we are looking at the lines that are in between the parcels. Here, there and over here as pointed out. The Clerk pointed out that there will need to be a Variance for each parcel. It was felt that indeed there would have to be a Variance for each parcel. The Variance goes to the parcel. You can have a variance on one but not another or you could need a variance on one and not another, especially if you want to shrink the size of it down.

Mr. Linger advised he had a solar array, had done a fair amount of research on them before I purchased mine. I did upgrade my panels because I could produce more power in the same amount of space by so doing which worked for me. This is on a far grander scale than the roof of my house, but the same theory applies. If I can't make 100% of my power with 240-watt panels but I can with 300-watt panels, then I make the 100% with 300-watt panels. That was five years ago; now there are 415-watt panels. The technology is now 25% more efficient and better. In theory, that is 25% less space that I would need to make the same amount of power so that is why I raised that question.

Question was raised do all five of these lots need variances? Mr. Linger responded as of right now, it looks like it. Question was raised with regard to Parcel A. It was believed that that was only for access and that power may be routed over it. That parcel may not need a Variance. Between B and C for sure. The access drive cuts C & D off but it is probably less than 100 feet between the two. B and C for sure, then C & D. The Code describes the setback from equipment to property line so that would be B to C; C to D; and D to E and then there is the lot coverage for B at 57.4% or 7.4% over what is allowed per Code.

Discussion then turned to any wetlands on the property. It was believed there might be some in that area and a wetlands permit might be needed. Mr. Botelho commented that there are wetlands on the property but that he did not have that legend with him. The Clerk advised the wetland issue came up at the Planning Board and it was indicated there are a lot of little pockets. Mr. Linger added it is probably Hudson River estuary because that all runs down towards Sickles Creek and that is all going to drain in that direction.

In reviewing the material, it was noted that it looks like Parcel D is the heavy panels, 2500 KW converter pad. Mr. Linger explained that would be the inverters. They collect all the DC power and exchange it to AC.

It was again questioned so we are not going to overturn the letter for determination then? It will be parcel by parcel. Mr. Linger pointed out that is what the Planning Board did. They said it does not meet setbacks, gave them a denial and sent them to us. We could have interpreted that differently, said no, it is one project, it is all going to be one contiguous piece. We could overturn that, which is in our authority; but it is not something that would be in our best interest. It was again commented that it was not felt it was a good idea to set that kind of precedent by applying the Code to a project rather than parcels. If the property was all purchased, all five lots combined into one, then it would remove all those lines. That would negate the need for a Variance. Variances should not be easy to get nor should they be necessary if the Codes are in good order. Each parcel will need its own setback variance; and one, if they can't squeeze the 7% out of it, would need the area Variance for over 50%.

At present, the Board has one application in front of it which kind of encumbers the whole thing. It was felt that new applications were needed that would break these out into what each parcel is going to require. If you need an Area Variance and a Setback Variance on B, that is an application for the Area Variance for the coverage and an application for the setback; then that is another application for C, one for D, one for E. I don't want to drag things another month to get that. It was believed the Public Hearing could be set assuming we can get those applications in and have them for next month. It was noted that the applications would be almost verbatim.

What I want to do is split this original application and break it out into the different ones that you would need. It was suggested that Mr. Botelho check and see what is going to be used and if they are able to shrink the system down by using a different panel or not.

Mr. Linger advised one thing I noted in the narrative and I don't know if the attorney's office wrote the narrative or whether the solar company wrote the narrative. There was a justification in there as far as why they needed a Variance and it had to do with not being able to meet the requirements of NYSERDA and New York State incentives and I can tell you for a fact that that New York State incentive makes absolutely no difference to this Board. It would not be a consideration for this Board to even worry

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about, whether they would get their full incentive from New York State or not.

Mr. Linger referred to Section IV, Area Variance Criteria, Sub-Section B, of document provided by applicant and cited:

The Solar Facility also could not be reduced in size as it would not meet the requirements of the 20-year Renewable Energy Credit contract awarded by NYSERDA for the facility.

That is not really a justification for us. It really is not something that we can consider. It is certainly a consideration for the company. Obviously, that is part of their profit margin or cost of this system.

Mr. Linger continued it seems like you were going to use like 40 acres total. Mr. Botelho clarified there is 109 acres total but it has a 35% site coverage so that would be....Mr. Linger continued I tried to do the math on what a megawatt takes and a megawatt is usually somewhere around four acres, so for a five megawatt you are going to use 20 acres. So if you are going to use 40 acres at 50%, that would take up 20 acres of property at that 50%.

Mr. Linger continued so let's do that then; figure out what you are going to need for the individual parcels because you might not need them on all of them. We will just take the application that is here and split it out to what is going to be defined for each parcel. They are going to be pretty much the same, other than one of them will need an Area Variance for the total coverage. The Clerk asked for clarification on the number of applications. Each tax map parcel will be listed on an application. The one would be two applications, one for the lot coverage and one for setback, if setback is needed; however, they have it figured out.

Mr. Linger continued that he thought it was a positive not to have to knock a bunch of trees down to make this work. I know the property pretty well and what they are using is fairly flat. It was noted that the modular log cabin that had been put there for a log cabin business, which never got off the ground, has been removed. There are billboards there. A forestland does not have to be cut down to make it happen as was done in Westerlo. That is one of the things that concerns me with handing this. If we go wrong, it will come back to bite us.

It is coming back to bite Westerlo big time right now. A large solar project had gone in in a very conspicuous location in Westerlo. It was properly permitted by the Town but the residents of the area did not take advantage of the Public Hearing(s) to comment; now they are very upset. A huge area was clear cut. It is right in the middle of the heavily traveled Route 32 and it just goes for a mile. That project from the air looks like a lake.

It was noted that it appears here to maximize production, this is being put on a tracking system so that it will track with the sun. Then come back at night and track all day long. A bit more maintenance in them but it certainly would increase production.

Discussion returned to the Variance Applications. Mr. Linger commented whether you are going to get a Variance or not, I don't want to push this out two or three months while we wait to get the paperwork in. Mr. Botelho responded that he was sure the paperwork could be gotten in next week. The paperwork is mostly done. It was felt the Public Hearing could be scheduled for January, the basics are already here.

We just don't want to handle it as one application and that is no fault of any one. It is another new thing. It is coming in many Towns, not just New Baltimore. The County is doing a comprehensive study on every Town to see what their solar codes are, to try and come up with the best practices because some of the Towns do not have a Planning Board, do not have any Zoning. The County doesn't want to see them get run over because they do not have it in place.

We are an attractive town, we are close to the transmission lines. We have to balance everything. New solar panels are being made every day; new land is not. A 20-year commitment is going to be in your face for 20 years. We need to make sure that we do it right. I don't know how I feel about putting a Variance or not putting a Variance; but I know you can come back and answer questions that say this is not feasible and here is the reason why or that is not feasible and here is why, who knows. I think it is best to handle them separately.

It would not need to be five separate Public Hearings; we could run them concurrently since they all deal with the same thing. I think the surrounding property owners, who are near the site of this proposed

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project, should have the opportunity to weigh-in if they feel they need to; as well as for you and your client to have the ability to say, okay, here is how we mitigated that or here is what we did to avoid this. The need for five separate Hearings, one after another, was not felt to be necessary.

This is new, our Solar Code is in place which is good. There are things that I have asked the Town Board to take a look at that are in there, which has not been done to date so we go by what we have in front of us and apply it as it comes up. This happens to be a little more convoluted since there are five parcels involved. It throws a little bit of a wrench into it and I think the way to handle it is with each on its own; and in that way, no one can come back later on and say hey, if you considered this one as one project, why won't you consider mine as the same. I could definitely see that happening.

It was noted this is not in a heavily populated area near the Thruway and railroad. It would be seen by the immediate area, the Thruway and 144.

Question was raised as to whether there was anything the Board had missed and discussion followed on application and public hearing deadlines. Mr. Botelho pointed out they would have to go back to their client to see just where their equipment is on the parcels, if a better panel could be used requiring less panels on a parcel. Mr. Linger responded that would make a little difference here as well as with the Public and stressed we are going to have to weigh each Variance against the options that are there before any decision is made on it. I certainly will not say that this is a slam dunk and that a rubber stamp will be put on it. It has to show that you definitely absolutely have to have a Variance to do this, short of purchasing all the property and making it into one. Then we would not need to even be here. Maybe that is an option for them. Mr. Botelho pointed out that it would be a financial risk for them to buy the five parcels and then not have it work out. Mr. Linger responded and it is a risk for us to give a Variance and give up 40-some acres of pretty prime property too. It is one risk versus the other.

The Public Hearing was scheduled for 7:30 p.m. January 8. All necessary Variance Applications need to be in my December 18 at the latest. Mr. Botelho was provided with the instruction sheet for the sending of certified letters. The Clerk will send the list of the surrounding property owners to be notified to Mr. Botelho. The certified mail green cards, white postal receipts for any green cards not returned and any letters returned are to be brought the night of the Public Hearing.

Adjournment

There being nothing further to come before the Board,

at 8:27 p.m., it was moved by Albano and seconded by Linger to adjourn the meeting.

Ayes: 4 Nays: 0 Abstained: 0 Absent: 1

Respectfully Submitted
Marjorie Bronk Loux
ZBA Clerk