

TOWN OF BETHLEHEM



John Clarkson
Town Supervisor

Zoning Board of Appeals Agenda

David Devaprasad
Chairman

Wednesday, December 20, 2017
6:00 PM

I. Call to Order

II. Public Hearings

- A.** Elsmere Fire District - for construction of a new fire station located at Wemple and Feura Bush Roads pursuant to Zoning Law Section 128-90 (B). The Zoning Board of Appeals is to apply the "Balance of Interest Test" when determining the applicability of the zoning law to quasi-public projects and, if said provision is applicable to this project, make a determination as to whether the project is to undergo site plan review. (17-01000027)
- B.** Innovative Solutions - 454 River Road, Glenmont - for an area variance under Article VI, Section 128-59(I) (K). Signage. (17=01000028)

III. Applications - Review and Possible Public Hearing Scheduling

- A.** Victor Kustov- 619 Wemple Road, Glenmont, for area variance(s) under article V, District Regulations, Section 128-25 Rural District D.(17-01000029)

IV. Resolutions

- A.** John McPhillips-43 Bender Lane, Glenmont

V. Discussion/Possible Action

VI. New Business

VII. Minutes Approval

- A.** Wednesday, December 06, 2017

VIII. Adjournment

Next Regular Meeting January 3, 2018

John McPhillips-43 Bender Lane, Glenmont

RESOLUTION

* * *
*

WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking Variances under Article VI, Supplementary Regulations, Section 128-47 B (3) (Fences in residential districts, corner lot, height and setback) requested by John McPhillips (“Applicant”) for property at 43 Bender Lane, Delmar, New York; and

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on December 6, 2017; and,

WHEREAS, Members of the Board are familiar with the area in which the proposed construction is to be done and the specific site of same; and,

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

Applicant’s property in the Core Residential District is improved by a single family residence, and is located at the corner of Bender Lane and Devon Road. He proposes to erect a 6’ tall wooden fence in the front yard opposite the side yard (Devon Road side); where the Town Code limits fence height to 4’. In addition, the proposed fence at this location would be on the property line; where the Town Code requires a setback of 15’.

Applicant John McPhillips testified in support of the application.

There is an existing 4’ high fence on the property at the subject location, which would be replaced. The property slopes downgradient along Devon Road. The proposed 6’ high fence

would provide enhanced privacy and screening in this portion of the property.

Moving the proposed fence back from the property line to eliminate the setback variance would significantly diminish the usable space in the applicant's rear yard.

There are other fences in the neighborhood similar in height and appearance to the one proposed by the Applicant.

Applicant provided the Board with a written statement of support for the project from several of his neighbors. Applicant testified that he had received an oral statement of support from the immediately adjoining neighbor.

At the public hearing, two of Applicant's neighbors asked questions regarding the proposed fence, but did not directly oppose the application.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicant, the Board determines that the proposed variances (Fences in residential districts, corner lot, height and setback) will be granted.

The Board has determined that the requested variances will be a benefit to the Applicant in his use and enjoyment of the property and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood. There are similar fences in the neighborhood and the project received the support of the Applicant's neighbors. The Board also determines that the new fence will improve the appearance of the property and the neighborhood.

The benefit sought by the Applicant (rear yard privacy while preserving usable space) cannot be achieved by some method other than variances.

The requested variances will have no adverse effect on the physical or environmental conditions in the neighborhood.

The requested variances are the minimum that is necessary and adequate to the Applicant's needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variances has been created in part by

the Applicant, and in part by the physical configuration of the property (down slope on Devon Road side), but this factor is outweighed by the above Findings and Determinations.

The proposed fence is a “Type II” action under the NY State Environmental Quality Review Act (“SEQRA”) (6 NYCRR 617.5 [c] [10]), and no environmental impact review is required.

The requested variances (Fences in residential districts, corner lot, height and setback) are GRANTED, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicant at the December 6, 2017 hearing except as the same may be modified by the Town Building Department; and
2. The project shall be completed within the time required by section 128-89 (R) of the Town Code.

December 20, 2017

S. David Devaprasad
Chairman
Zoning Board of Appeals

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on December ____, 2017.

Kathleen Reid, Secretary
Zoning Board of Appeals

RESOLUTION

* * *
*

WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking Variances under Article VI, Supplementary Regulations, Section 128-47 B (3) (Fences in residential districts, corner lot, height and setback) requested by John McPhillips (“Applicant”) for property at 43 Bender Lane, Delmar, New York; and

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on December 6, 2017; and,

WHEREAS, Members of the Board are familiar with the area in which the proposed construction is to be done and the specific site of same; and,

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

Applicant’s property in the Core Residential District is improved by a single family residence, and is located at the corner of Bender Lane and Devon Road. He proposes to erect a 6’ tall wooden fence in the front yard opposite the side yard (Devon Road side); where the Town Code limits fence height to 4’. In addition, the proposed fence at this location would be on the

property line; where the Town Code requires a setback of 15’.

Applicant John McPhillips testified in support of the application.

There is an existing 4’ high fence on the property at the subject location, which would be replaced. The property slopes downgradient along Devon Road. The proposed 6’ high fence would provide enhanced privacy and screening in this portion of the property.

Moving the proposed fence back from the property line to eliminate the setback variance would significantly diminish the usable space in the applicant’s rear yard.

There are other fences in the neighborhood similar in height and appearance to the one proposed by the Applicant.

Applicant provided the Board with a written statement of support for the project from several of his neighbors. Applicant testified that he had received an oral statement of support from the immediately adjoining neighbor.

At the public hearing, two of Applicant’s neighbors asked questions regarding the proposed fence, but did not directly oppose the application.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicant, the Board determines that the proposed variances (Fences in residential districts, corner lot, height and setback) will be granted.

The Board has determined that the requested variances will be a benefit to the Applicant in his use and enjoyment of the property and will have no detrimental impact on the health, safety or welfare of the community and the neighborhood. There are similar fences in the neighborhood and the project received the support of the Applicant’s neighbors. The Board also determines that the new fence will improve the appearance of the property and the neighborhood.

The benefit sought by the Applicant (rear yard privacy while preserving usable space) cannot be achieved by some method other than variances.

The requested variances will have no adverse effect on the physical or environmental conditions in the neighborhood.

The requested variances are the minimum that is necessary and adequate to the Applicant's needs, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variances has been created in part by the Applicant, and in part by the physical configuration of the property (down slope on Devon Road side), but this factor is outweighed by the above Findings and Determinations.

The proposed fence is a "Type II" action under the NY State Environmental Quality Review Act ("SEQRA") (6 NYCRR 617.5 [c] [10]), and no environmental impact review is required.

The requested variances (Fences in residential districts, corner lot, height and setback) are GRANTED, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicant at the December 6, 2017 hearing except as the same may be modified by the Town Building Department; and
2. The project shall be completed within the time required by section 128-89 (R) of the Town Code.

December 20, 2017

S. David Devaprasad
Chairman
Zoning Board of Appeals

- - -

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on December ____, 2017.

Kathleen Reid, Secretary
Zoning Board of Appeals

TOWN OF BETHLEHEM

John Clarkson
Town Supervisor

Zoning Board of Appeals Minutes

David Devaprasad
Chairman

Wednesday, December 6, 2017
6:00 PM



I. Call to Order

A Regular Meeting of the Zoning Board of Appeals of the Town of Bethlehem was held on the above date at the Town Hall Auditorium, 445 Delaware Avenue, Delmar, NY. The Meeting was called to order at 6:00 PM.

| Attendee Name | Title | Status | Arrived |
|-----------------|--|---------|---------|
| Dave Devaprasad | Chairman | Present | |
| Jane Barnes | Board Member | Absent | |
| Joshua Beams | Board Member | Present | |
| Donna Giliberto | Board Member | Present | |
| Jeremy Martelle | Board Member | Present | |
| Michael Moore | Planning/Zoning Board Counsel | Absent | |
| Mark Platel | Assistant Building Inspector | Absent | |
| Craig Yaiser | Assistant Building Inspector | Present | |
| Kathleen Reid | Assistant to the Zoning Board of Appeals | Present | |

II. Public Hearings

- A. Public Hearing - John McPhillips - 43 Bender Lane, Delmar - for an area variance Under Article VI, Section 128-47, Fences and Freestanding Walls. (17-0100026)

The Applicant is proposing to install a six foot high fence in the front yard, opposite side yard, two feet taller than the allowed four foot fence for front yards. The fence is proposed to be installed on the property line, which is fifteen feet short of the fifteen foot required setback. The lot is located in the Core Residential District and is currently a single family dwelling.

A motion to indent the Public Hearing notice into the minutes was offered by Mr. Martelle, Seconded by Mr. Beams.

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Board of Appeals of the Town of Bethlehem, Albany County, New York will hold a Public Hearing on Wednesday, December 6, 2017 at 6:00 PM, at the Town Offices, 445 Delaware Avenue, Delmar, New York, to take action on an application submitted by John and Cheryl McPhillips for an area variance located at 43 Bender Lane, Delmar. The Applicant is proposing installation

Minutes Acceptance: Minutes of Dec 6, 2017 6:00 PM (Minutes Approval)

of a six foot fence that does not meet the height and setback requirements of the Town Code under Article VI, Section 128-47, Fences and Freestanding Walls.

Mr. McPhillips was present on his own behalf. He would like to replace his existing fence with a new 6' cedar fence for the perimeter of his back yard. Due to the grading on his property he would like a higher fence as the ground slopes down taking away from privacy for his family and concern for his dogs. The Applicant would like to construct the fence on the property line to avoid a 100 year old pine tree.

The Application does not need to be reviewed by the Albany County Planning Board. Chairman Devaprasad answered questions from the audience regarding the five factors required for an area variance.

A couple of residents had concerns regarding impact on the neighborhood which Mr. McPhillips explained the new fence would be an improvement aesthetically from the existing fence.

The following issues were discussed:

Impact of visual impact of motorists

Aesthetics of fence

Use of back yard

Other options for the location of the fence

Mr. McPhillips submitted a list of neighbors in favor of the variances.

There was no one present to speak in favor or in opposition of the variance.

The Public Hearing was closed as follows:

| | |
|------------------|---|
| RESULT: | CLOSED [UNANIMOUS] |
| MOVER: | Donna Giliberto, Board Member |
| SECONDER: | Jeremy Martelle, Board Member |
| AYES: | Dave Devaprasad, Joshua Beams, Donna Giliberto, Jeremy Martelle |
| ABSENT: | Jane Barnes |

III. Applications - Review and Possible Public Hearing Scheduling

- **ELSMERE FIRE DISTRICT - FOR CONSTRUCTION OF A NEW FIRE STATION LOCATED AT WEMPLE AND FEURA BUSH ROADS PURSUANT TO ZONING LAW SECTION 128-90 (B). THE ZONING BOARD OF APPEALS IS TO APPLY THE "BALANCE OF INTEREST TEST" WHEN DETERMINING THE APPLICABILITY OF THE ZONING LAW TO QUASI-PUBLIC PROJECTS AND, IF SAID PROVISION IS APPLICABLE TO THIS PROJECT, MAKE A DETERMINATION AS TO WHETHER THE PROJECT IS TO UNDERGO SITE PLAN REVIEW. (17-0100027)**

The Board voted to accept the application and set the Public Hearing for December 20, 2017 at 6:00 PM as follows:

RESULT: APPROVED [UNANIMOUS]
AYES: Dave Devaprasad, Joshua Beams, Donna Giliberto
ABSENT: Jane Barnes, Jeremy Martelle

- **INNOVATIVE SOLUTIONS - 454 RIVER ROAD, GLENMONT - FOR AN AREA VARIANCE UNDER ARTICLE VI, SECTION 128-59(I) (K). SIGNAGE. (17=01000028)**

The Board voted to accept the application and set the Public Hearing for December 20, 2017 at 6:10 PM as follows:

RESULT: APPROVED [UNANIMOUS]
MOVER: Joshua Beams, Board Member
SECONDER: Jeremy Martelle, Board Member
AYES: Dave Devaprasad, Joshua Beams, Donna Giliberto, Jeremy Martelle
ABSENT: Jane Barnes

IV. Resolutions

- **LAGRANGE/FOREFRONT POWER LLC-DELAWARE AVE.,DELMAR - SEQR**

**ZONING BOARD OF APPEALS
TOWN OF BETHLEHEM**

**SEQRA RESOLUTION
CLASSIFICATION OF ACTION and NEGATIVE DECLARATION
FOREFRONT POWER, LLC and ESTATE OF LaGRANGE
PROPOSED GROUND MOUNTED PHOTOVOLTAIC (PV) SOLAR
ENERGY GENERATING FACILITY
VACANT PROPERTY at DELAWARE AVENUE, DELMAR
(Tax Parcel No. 95.00-4.30)**

USE and AREA VARIANCES

WHEREAS, Forefront Power, LLC, on behalf of the landowner (Estate of Marvin LaGrange) (“Applicants”) have submitted to the Town Zoning Board of Appeals (ZBA) an application for use and area variances (property in two zoning districts, access road to proposed PV generating facility to be located in RH District where use not permitted; area variances [side and rear yard setbacks] needed for PV generating facility infrastructure in R District) (“the Project”); and

WHEREAS, the ZBA has received a Full Environmental Assessment Form (“EAF”) for the Project with Part I completed by the Applicant, and;

WHEREAS, the New York State Environmental Quality Review Act (SEQRA) regulations found at 6 NYCRR Part 617.3(a) require that no agency shall carry out, fund or approve an action until it has complied with the requirements of SEQRA, and;

Minutes Acceptance: Minutes of Dec 6, 2017 6:00 PM (Minutes Approval)

WHEREAS, 6 NYCRR 617.6(a) requires that when an agency receives an application for approval of an action it must: (1) determine whether the action is subject to SEQRA, (2) determine whether the action involves a federal agency, (3) determine whether other agencies are involved, (4) make a preliminary classification of the action, (5) determine whether a short or full EAF will be used to determine the significance of the action, and (6) determine whether the action is located in an Agricultural District, and;

WHEREAS, this Project is a “small scale, ground mounted solar PV system” that will also require special use permit and site plan approval from the Town of Bethlehem Planning Board (Town Code section 128-67.2 [E]); and

WHEREAS, this Project is an “unlisted” action under SEQRA and;

WHEREAS, 6 NYCRR 617.6(b) (4) indicates that when more than one agency is involved in the review and approval of an unlisted action, an agency may conduct an “uncoordinated” review under SEQRA, and

WHEREAS, the ZBA has independently considered the information provided in the EAF and application materials, comments and testimony made during the public hearings held on August 2, August 16 and November 15, 2017, the Recommendation of the Albany County Planning Board dated July 27, 2017, and has completed Part II of the EAF,

NOW, THEREFORE, BE IT RESOLVED,

that the Zoning Board of Appeals hereby determines that:

1. The Project which is the subject of the proposed variances constitutes an Unlisted action which is subject to SEQRA,
2. The proposed action does not involve a federal agency,
3. Portions of the proposed action are located in, or within 500 feet of, an Agricultural District and an Agricultural Data Statement dated June 12, 2017 has been completed, and
4. A Full EAF is adequate for determining the significance of the proposed action.

BE IT FURTHER RESOLVED,

That the Zoning Board of Appeals hereby determines to conduct an “uncoordinated” SEQRA review of the variance application, and;

BE IT FURTHER RESOLVED,

that based upon its review of the Project application materials and the EAF, review of the comments and testimony made during the public hearings held, and comparison with the Criteria for Determining Significance found at 6 NYCRR Section 617.7(c), the Zoning Board of Appeals hereby finds that approval of the use and area variances for the Project constitutes an action which will not have a significant impact on the environment and, therefore, does not require preparation of a Draft Environmental Impact Statement; and,

BE IT FURTHER RESOLVED,

that this determination is based upon the following facts particular to this application and the following conclusions:

1. The requested use variance is needed only for the proposed access road from Delaware Avenue to the PV solar generating facility operation, located in the RH District at the front of the property. The access road will lead to the infrastructure associated with the PV solar generating facility, located at the rear of the property in the R District the Project is a permitted use. Granting of the use variance for the access road will not affect the character of the immediate neighborhood, which includes other vacant land and a National Grid power line.
2. The Project is consistent with the Town’s Comprehensive Plan which encourages the development of alternative, renewable energy sources, and also promotes leaving the properties in this area of the Town in agricultural production (which will occur on the balance of the property in the RH district).
3. The Project will be a benefit to the Bethlehem Central School District, which will purchase all power generated by the PV solar facility, resulting in cost savings to District taxpayers.
4. Granting of the requested area variances (side and rear yard setbacks) will not impact nearby properties. The infrastructure for the PV solar generating facility will be setback a considerable distance from Delaware Avenue, and screened from immediately adjoining properties by distance, trees, a fence and the National Grid powerline.

BE IT FURTHER RESOLVED,

Minutes Acceptance: Minutes of Dec 6, 2017 6:00 PM (Minutes Approval)

that this Determination of Significance shall be considered a Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law; and,

BE IT FURTHER RESOLVED,

that this Determination of Significance shall be transmitted to the Town Building Department and Town Department of Economic Development and Planning; and

BE IT FURTHER RESOLVED,

that the Town Department of Economic Development and Planning is hereby authorized to file any and all appropriate notices so that the intent of this Resolution is carried out.

On a motion by _____, seconded by _____, and by a vote of ___ for, _____ against and ___ absent, this RESOLUTION was adopted on _____, 2017.

The Board voted to Approve the Resolution drafted by counsel as follows:

RESULT: APPROVED [UNANIMOUS]
AYES: Dave Devaprasad, Joshua Beams, Donna Giliberto, Jeremy Martelle
ABSENT: Jane Barnes

- **LAGRANGE/FOREFRONT POWER LLC-DELAWARE AVE., DELMAR - USE VARIANCE**

RESOLUTION

AV-1728

Forefront Power, LLC,

Estate of LaGrange

Delaware Avenue (95.00-4.30), Delmar

*

WHEREAS, an application has been filed with the Zoning Board of Appeals of the Town of Bethlehem, Albany County, New York (“the Board”) seeking Variances under Article XIII, Use and Area Schedules, Section 128-99A (Schedule of Uses, Rural Hamlet District, solar PV facility access road not a permitted use), and Article VI, Supplementary Regulations, Section 128-67.2 E (3) (b) [2] [a] (Special Use permit standards for large-scale ground mounted solar photovoltaic [PV] systems, additional setbacks in residential districts), requested by Forefront Power, LLC (“Applicant”), Estate of LaGrange (“Owner”) for vacant property at Delaware

Minutes Acceptance: Minutes of Dec 6, 2017 6:00 PM (Minutes Approval)

WHEREAS, the Board, acting on said application, duly advertised in the Spotlight and sent written notice to all persons listed in the petition as owning property within 200 feet of the premises in question and held a public hearing on said application at the Town Hall, 445 Delaware Avenue, Delmar, New York on August 2, August 16 and November 15, 2017; and,

WHEREAS, Members of the Board are familiar with the area in which the proposed construction is to be done and the specific site of same; and,

WHEREAS, all those who desired to be heard were heard and their testimony duly recorded at the above hearing; now therefore,

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

Applicant proposes to construct a large-scale (2.0 MW) solar PV generating facility on vacant land owned by the Estate of Marvin LaGrange. The property is just over 55 acres in size, has been in marginal agricultural production for some time and is located in two different zoning districts. The front portion of the property has access to Delaware Avenue and is located in the Rural Hamlet (RH) District; the rear portion of the property is located in the Rural (R) District. The solar panel array and related infrastructure would be erected in the R District where this use is permitted by Special Use Permit and Site Plan approval (Town Planning Board). The only use proposed for the RH District is the access road to the solar array and related infrastructure from Delaware Avenue, to be constructed along the northern border of the property. The access road is, by law, a part of the overall project, but is not a permitted use in RH District, making a use variance necessary. In addition, the Town Code requires an additional one hundred twenty feet (120') be added to the applicable

Minutes Acceptance: Minutes of Dec 6, 2017 6:00 PM (Minutes Approval)

side and rear yard setbacks in the R District (where residential uses are allowed). The Applicant seeks three area variances from this provision of the Code: N side yard variance of 120' (15' proposed, 135' required); S side yard variance of 70' (65' proposed, 135' required); and rear yard variance of 120' (40' proposed, 160' required). As noted, if the variances are granted, the project would require Special Use Permit and Site Plan approval from the Town Planning Board.

Attorney Jaqueline Phillips Murray, Tim Ahrens of Forefront Power, Eric Sterling of Sterling Commercial Appraisals and Judy Kehoe of the Bethlehem Central School District (BCSD) testified in support of the application.

The solar PV project is being proposed pursuant to a Request for Proposal (RFP) issued by BCSD in 2015. BCSD would be the “off-taker” of all energy generated by the PV facility; and would realize cost savings of approximately \$45 thousand/year over the life of the project in energy credits for the solar power. By New York State law, Applicant’s response to the RFP required a commitment to a site for the solar PV facility located within the School District. Applicant’s project application requires approval from State agencies, and an interconnection agreement specific to the project site with National Grid for the generated power. Applicant is also seeking grants from the New York State Energy Research and Development Agency (NYSERDA) for construction of the project, which are site-specific and non-transferable. Finally, the Applicant’s contract with BCSD requires the proposed solar PV facility to be in production by November of 2018. These legal requirements greatly limit or preclude altogether the Applicant’s ability to seek out alternative locations for the project. For all these reasons, if an alternative project site not requiring variances were to be pursued it would likely mean the end of the project.

In 2015, at the time the Applicant entered into its contract with BCSD, the Town Code contained no provisions regulating the siting of solar PV facilities. The Town Code was amended in February 2016 to add Section 128-67.2 (“Solar photovoltaic [PV] systems”). Prior to February 2016, it is likely that the project would have been classified as a “public utility,” a use which is subject to a different and less stringent standard of review when zoning variances are necessary.

The front portion of the property (RH District) has less than 100’ of frontage on Delaware Avenue. The solar array and related infrastructure on the rear portion of the property would be set back over 1000’ from Delaware Avenue.

Eric Sterling presented to the Board an “Appraisal Report” on the project, dated November 6, 2017 (“Sterling Report”), and addressed to the “unnecessary hardship” requirement for the proposed use variance on the RH portion of the property (Town Code Section 128-90 C [1]). The Sterling Report considered all uses allowed by right or by special use permit/site plan approval in the RH District, and concluded that none of them were economically feasible for the Owner to undertake. The Sterling Report made particular note of the fact that the Owner is the deceased owner’s Estate, not a real estate developer, and that the LaGrange family used the property for agricultural production, a use which has declined in profitability over the many generations that the family has owned the property. The Sterling Report noted that, even if there were demand for certain uses allowed in the RH District, Owner would have to either establish a business as an owner-occupant, or construct a building for an allowable use on speculation and seek a tenant.

Under questioning from the Board, it was determined that use of the RH portion of the property for single family residences, on its face the most feasible alternative land use, was also not economically viable. Mr. Sterling testified that there was limited sight distance along Delaware Avenue at the access to the property and that the nearby National Grid power line would likely negatively impact the property’s marketability. The Town Building Inspector also testified: that the limited highway frontage for the property at Delaware Avenue would make construction of a new Town highway (to serve a potential residential subdivision) impractical; that the property is also not served by public water and sewer; and that only one single family residence could be constructed on this portion of the property without significant area variances.

Attorney Murray and Mr. Ahrens, in support of the requested area variances, testified, and the Board finds: that the project’s distance from Delaware Avenue (over 1000’) would provide a significant “visual buffer” from this direction; that the proposed solar array would be set approximately 20’ behind a fence around the project site; that reducing the number of solar panels (to increase the side and rear setbacks) would make the project economically infeasible; and there is no other feasible location for the proposed access road on lands zoned R (where the solar PV facility is an allowed use). The Board finds that, on the south side, there is a significant buffer of trees and vegetation in existence, which would remain to screen

the project from this direction. Nearby properties include the National Grid powerline, and other lands in agricultural production.

One Town resident testified at the August 2, 2016 with a request for more aerial views of the project site. There was no testimony to the Board in opposition to the project.

By Recommendation dated July 27, 2017 (Case No. 04-17072022) the Albany County Planning Board deferred to local consideration on the application.

CONCLUSIONS OF LAW

Use Variance

Based on the above Findings of Fact, the Applicant has demonstrated that the Town Code zoning regulations and use restrictions applicable to the portion of the property in the RH District have caused unnecessary hardship, and the Board has determined that the requested use variance (access road part of solar PV facility, a use not allowed in the RH District) will be granted.

The Applicant and Owner have demonstrated, based on competent financial evidence in the Sterling Report, that the Owner cannot realize a reasonable return on the RH District property under the current regulations and restrictions of the Zoning Code. Of the uses currently allowed in the RH District, all are either physically infeasible for the property or economically unfeasible, due to lack of demand for such development at the subject location, the Owner's status and capabilities (Estate of deceased owner, lands in agricultural production for generations), and the physical constraints at the property and surrounding area (limited highway frontage and sight distance at Delaware Avenue, lack of public water and sewer, nearby National Grid powerline). The Board agrees with the findings of the Sterling Report and determines that, absent the granting of the use variance, the property has little or significantly reduced economic value. The historic use of the RH District property for agriculture has become less profitable over time. The Board further determines that, without the requested use variance, Owner will, as a practical matter, be constrained in its use and development of the rear portion (R District) of the property to those land uses allowed in the RH District, as the same situation presented by this application would otherwise arise.

The hardship related to the property is unique, and does not apply to a substantial portion of the neighborhood. Applicant is constrained by New York State law (site of PV facility must be in the BCSD), its contract with the BCSD, and the regulations of the involved NY State agencies (DPS, NYSEDA) from selecting an alternate location for the project. The “split zoning” of the property, coupled with the limited highway frontage at Delaware Avenue, are also factors here.

The requested use variance, to allow an access road along the northern boundary of the RH District portion of the property, will in no way alter the essential character of the neighborhood. Other than development of the access road, this portion of the property will be essentially unchanged, and may remain in agricultural production.

The alleged hardship necessitating the use variance has not been created by the Applicant or the Owner. At the time the project was conceived and Applicant went to contract with BCSD, the Town Code had no regulations pertaining to solar PV facilities; there was no intent on Applicant’s part at that time to seek a use variance.

Area Variances

Based on the above Findings of Fact, and after reviewing the application, sketches and plans submitted, testimony at the hearing, and other documents submitted by the Applicant, the Board determines that the proposed variances (additional setbacks in residential districts for large-scale ground mounted solar photovoltaic [PV] systems) will be granted. The solar facility infrastructure on the R District portion of the property will be screened from view of nearby properties by distance, existing trees and vegetation, and by a setback from the fence around the facility. Immediately adjoining land uses are the National Grid powerline (otherwise undeveloped), lands in agricultural production, or contain steep slopes and are undeveloped. The Planning Board may, in its review of the Special Use Permit/Site Plan application, consider whether additional screening may be necessary or appropriate.

The Board has determined that the requested variances will be a benefit to the Applicant, the Owner and the BCSD and its taxpayers and will have no detrimental

impact on the health, safety or welfare of the community and the neighborhood. Development of renewable, alternative sources of energy is consistent with the Town's Comprehensive Plan. Leaving the RH portion of the property in agricultural production is also consistent with the Town Comprehensive Plan.

The benefit sought by the Applicant (development of an economically viable solar PV generating facility within the BCSD) cannot be achieved by some method other than the requested variances.

The requested variances will have no adverse effect on the physical or environmental conditions in the neighborhood.

The requested variances are the minimum that are necessary and adequate to the Applicants' need for an economically viable solar PV facility, while still preserving the character of the neighborhood.

The alleged difficulty necessitating the requested variances has been created by the Applicant, but this factor is outweighed by the above Findings and Determinations.

The proposed solar PV generating facility is an "Unlisted" action under the NY State Environmental Quality Review Act ("SEQRA"). A SEQRA Classification of Action and Negative Declaration is adopted herewith.

The requested use and area variances described above are GRANTED, on the following conditions:

1. The proposed construction will be completed in accordance with the plans, specifications, testimony and exhibits given by the Applicant at the August 2, 2017, August 16, 2017 and November 15, 2017 hearings except as the same may be modified by the Town Planning Board or Town Building Department in subsequent review proceedings; and

2. The project shall be completed within the time required by section 128-89 (R) of the Town Code.

December 6, 2017

S. David Devaprasad
Chairman
Zoning Board of Appeals

- - -

The foregoing Resolution filed with the Clerk of the Town of Bethlehem, Albany County, New York, on December 7, 2017.

Kathleen Reid, Secretary

Zoning Board of Appeals

The Board voted to Approve the Resolution drafted by counsel as follows:

RESULT: APPROVED [UNANIMOUS]
AYES: Dave Devaprasad, Joshua Beams, Donna Giliberto, Jeremy Martelle
ABSENT: Jane Barnes

- **LAGRANGE/FOREFRONT POWER LLC.,DELAWARE AVE., DELMAR - AREA VARIANCE**

The Board voted to Approve the Resolution drafted by counsel as follows:

RESULT: APPROVED [UNANIMOUS]
MOVER: Joshua Beams, Board Member
SECONDER: Jeremy Martelle, Board Member
AYES: Dave Devaprasad, Joshua Beams, Donna Giliberto, Jeremy Martelle
ABSENT: Jane Barnes

V. Discussion/Possible Action

- **JOHN MCPHILLIPS-43 BENDER LANE, DELMAR**

The Board voted to APPROVE the variance(s) 3-1 as follows:

Ms. Giliberto-

- Not an undesirable change to the neighborhood
- No other feasible means due to location of tree and grading of property
- Not a substantial request
- Not a negative environmental effect
- Not self-created

Mr. Beams-

- Upgrade from current fence
- No other feasible means

Chairman Devaprasad-

- Agreed with all reasons previously stated
- Noted the uniqueness of a corner lot in this situation
- Proposed fence will be in the same location as the existing fence

Mr. Martelle -voted against the variance(s)-

- The Applicant could install the fence behind the tree
- Express that the problem is self-created
- Could minimize request for the 15' setback

RESULT: **APPROVED [3 TO 1]**
AYES: Dave Devaprasad, Joshua Beams, Donna Giliberto
NAYS: Jeremy Martelle
ABSENT: Jane Barnes

VI. New Business

VII. Minutes Approval

A. Wednesday, November 15, 2017

RESULT: **ACCEPTED [UNANIMOUS]**
MOVER: Joshua Beams, Board Member
AYES: Dave Devaprasad, Joshua Beams, Donna Giliberto, Jeremy Martelle
ABSENT: Jane Barnes

VIII. Adjournment

Motion To:

RESULT: **ADJOURN [UNANIMOUS]**
MOVER: Joshua Beams, Board Member
SECONDER: Donna Giliberto, Board Member
AYES: Dave Devaprasad, Joshua Beams, Donna Giliberto, Jeremy Martelle
ABSENT: Jane Barnes

The Meeting was adjourned at 6:38 PM

Next Regular Meeting December 20, 2017, 6 PM

Minutes Acceptance: Minutes of Dec 6, 2017 6:00 PM (Minutes Approval)