

Town of Farmington

1000 County Road 8
Farmington, New York 14425

ZONING BOARD OF APPEALS

Established July 15, 1957

Monday, December 17, 2018, 7:00 p.m.

MINUTES—APPROVED

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

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

Board Member Excused: Cyril Opett

Staff Present:
Ronald L. Brand, Town of Farmington Director of Development and Planning

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

Residents Present:
Stefanie and Matt Barnes, 4936 Fox Road, Palmyra, N.Y. 14522
Dan Bieck, 4392 Fox Road, Palmyra, N.Y. 14522
Terry Bieck, 358 Stafford Road, Palmyra, N.Y. 14522
Edie and Eric Chapman, 230 Ellsworth Road, Palmyra, N.Y. 14522
Ronald R. Cramer, 5132 Fox Road, Palmyra, N.Y. 14522
Nancy and Jim Falanga, 395 Ellsworth Road, Palmyra, N.Y. 14522
Jim and Ann Foley, 373 Ellsworth Road, Palmyra, N.Y. 14522
Daniel T. Geer, for 568 Yellow Mills Road, c/o 6947 Proximity Lane, Victor, N.Y. 14564
Caroline Heberle, for 531 Yellow Mills Road, c/o 53 Mildorf Street, Rochester, N.Y. 14609
Linda Heberle, for 531 Yellow Mills Road, c/o 53 Mildorf Street, Rochester, N.Y. 14609
Nancy Hood, 5023 Maxwell Road, Farmington, N.Y. 14425
Tammy Johnson, 126 Yellow Mills Road, Palmyra, N.Y. 14522

Jason Krenichyn, 4880 Fox Road, Palmyra, N.Y. 14522
 John E. Orbaker, 4960 Fox Road, Palmyra, N.Y. 14522
 John C. Petura, 4923 Maxwell Road, Palmyra, N.Y. 14522
 Todd J. Richenberg, 5007 Maxwell Road, Farmington, N.Y. 14425
 Roger L. Wisner, 4820 Fox Road, Palmyra, N.Y. 14522

Media Present:

Josh Williams, Messenger Post Media (Canandaigua *Daily Messenger*), Canandaigua, N.Y.

1. MEETING OPENING

The meeting was called to order at 7:00 p.m. After the Pledge of Allegiance was recited, Mr. DeLucia introduced the Zoning Board of Appeals members, explained the emergency evacuation procedures, and noted that copies of the evening’s agenda were available at the door.

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

2. APPROVAL OF MINUTES OF NOVEMBER 26, 2018

■ A motion was made by MR. YOURCH, seconded by MS. PURDY, that the minutes of the November 26, 2018, meeting be approved.

Motion carried by voice vote.

3. LEGAL NOTICES

None.

4. CONTINUED PUBLIC HEARINGS

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

ZB #0903-18 Delaware River Solar LLC Area Variance
33 Irving Place
New York, N.Y. 10003

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

ZB #0904-18 Delaware River Solar LLC Area Variance
33 Irving Place
New York, N.Y. 10003

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

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

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

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

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

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

Mr. DeLucia reminded everyone in attendance that the Zoning Board of Appeals (ZBA) is dealing solely with the applications for the Area Variances. He said that decisions on these applications would not be made this evening and are pending until the Planning Board—the designated Lead Agency on this Action—considers all of the requested information deemed necessary by the Planning Board for making the State Environmental Quality Review (SEQR) determination of significance on the project.

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

Catherine Heberle (property owner of 531 Yellow Mills Road) said that she is 96 years of age and that her husband—a World War II veteran of the U.S. Army Air Corps—passed away last year. She said that she owns a home and 100 acres on the east side of Yellow Mills Road across from the proposed power plant and that she and her family have owned and kept the farm in the agriculture district for about 56 years. She that this a long time and that she never could have seen this [the solar project] coming in an ag district. Ms. Heberle said that she is strongly opposed to the size of this power plant, its scenic effects (noise, lights, trucks, etc.) and the loss of value to her family. She said that she is not opposed to renewable energy but this power plant should not be built on a farm in the ag district.

Mr. Falanga (395 Ellsworth Road) said that another large-scale solar plant—the Whitestone Solar Project—had been proposed earlier this year for a 41.5-acre site at the north-west corner of State Route 96 and Payne Road. He presented an article from the Town of Farmington bulletin [newsletter] in which the parcel of land was described as “. . . being used for commercial horse stables and active agriculture activities. . . .” Mr. Falanga said that when Mr. Foley asked about the status of this project, he was referred to Mr. Morse (the Town Code Enforcement Officer) who reported that the developer had withdrawn the project because of the potential application to the ZBA for approval of Area Variances for setbacks. Mr. Falanga said that he wanted to inform the residents of this additional application which had been withdrawn. He said that this would have been an example of solar sprawl, and that when one [project] gets in there, more will come. He said that the Town of Parma is fighting five solar projects right now and that the Town of Newfield is fighting three or four right now.

Mr. Foley (373 Ellsworth Road) said that the developers [of the Whitestone Solar Project] withdrew the application because they did not want to go through the Area Variance procedure.

Mr. Falanga said that he is asking the ZBA for the same consideration this evening. He said that he is aware that the ZBA has a smaller role in this process but that the overall result, if this were to be passed, would be a monumental decision. He said that if the ZBA perceives this as a small cog in the wheel, we [the residents] perceive this as a huge cog in this project going forward.

Mr. Falanga then read into the record a letter to the ZBA signed by eight residents regarding the five test questions which the ZBA will consider in its deliberations on the Area Variance applications, as follows:

To: The Town of Farmington Zoning Board

Re: Delaware River LLC Solar Energy Power Plant,
466 Yellow Mills Road

As a group of concerned citizens opposing the large-scale solar power plant, we acknowledge that the Town of Farmington Zoning Board of Appeals must, in their review of the Delaware River LLC application, consider the benefit to the applicant if the variance is granted, and the detriment to the health, safety and general welfare of the neighborhood or community that would occur if the variance were to be granted.

We also acknowledge that the Zoning Board of Appeals must, in their review of this application, consider the following factors.

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. As stated in the Town of Farmington *Comprehensive Plan*, the northeast quadrant of Farmington is designated as open, rural and noncommercial/industrial. A Master Plan is not a suggestion; it should be carried out. Residents have a reasonable right to expect zoning classes will confirm with existing uses. The Town's Master Plan protects our scenic and natural environment, and rural/agricultural character, that has largely been the impetus for the Town's past development. Therefore, do not grant the variance.
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. It must first be determined that there is no feasible alternative use of the land other than for large-scale ground-mounted solar PV systems. Therefore, do not grant the variance.
3. Whether the requested Area Variance is substantial. 21,000 solar panels, 40+ acres of land—the largest proposed commercial solar power plant in upstate New York with a 35-year lease—is substantial. Therefore, do not grant the variance.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. As landowners, we are not opposed to personal use sustainable energy development. However, we urge the board to assure that every opportunity is given to addressing this monumental issue, that if granted would forever

change the Town of Farmington for the worse. Industrial development along the most scenic and open agricultural areas is inappropriate. Many years and many tax revenues have been collected by the Town from residents in the area.

An industrial site of such magnitude will assuredly cause devaluation of neighboring properties. Each landowner in the vicinity of the proposed Yellow Mills Road site has invested lifetime earnings to reside in an area of such pristine beauty. The value of our homes at their time of purchase was reflected in their prices. Our investment in our homes has been a significant additional commitment of our financial resources, and the character of our neighborhood weighed heavily in our decisions to live here. Nearby open farmland will be negatively affected for future use and/or development. Therefore, do not grant the variance.

5. Whether the alleged difficult was self-created. Absolutely. Please assure that large-scale solar projects are contained in designated industrial zones. Therefore, do not grant the variance.

(See Attachment #1)

Mr. Chapman (230 Ellsworth Road) said that he is concerned about the future. He said that we have the wonderful Town of Farmington and that it seems that the western part has been designated for industrial, commercial use and tracts, and that the eastern side is agricultural, and has been that way, and has worked out beautifully. He said that there is still land available on the western side, albeit a little more expensive and more expensive for a group to set it up. He said that if a variance is granted on the agricultural land, that will have been just the opening—Pandora’s Box will be opened—and there will be all kinds of requests for variances. He said that by doing this, the board will be setting a precedent, and that he will be concerned about that. He said that maybe it will not be this year or next year, but somewhere along the line there will be someone who is going to say, “you allowed a commercial venture over there; there isn’t any reason why we couldn’t do it.” He said that this is his concern.

Ms. Johnson (126 Yellow Mills Road), thanked everyone for coming out tonight. She said that this is very important to her and that she is very passionate about this. Ms. Johnson asked if there is anything that we can be possibly missing. She said that she would like to find a way to keep country *country*. Ms. Johnson said that she is not against individual solar-anything, but that she is terrified [of this project]. She said that she just does not want city encroaching. She that this terrifies her and that she is reaching out to you [the board]—as her board representatives—if you could think of something that we are missing to keep country *country*.

Ms. Johnson said that she is 50 years old and hopes that she lives to 90, that she plans on staying here, and that her son will get their home someday. She said that she wants country and does not want city encroaching. Ms. Johnson said that she is reaching out to the

board, as our representatives, to keep the country *country*. Ms. Johnson said that everything is changing, that technology is fantastic, and asked why should something be changed that is not broken. She said that if we want solar and to save money on our homes, we can buy into it now. Ms. Johnson said that she does not want something this mammoth opening a doorway.

Mr. Foley said the residents have learned that New York State has set up a bank that produces financing for people such as Delaware River Solar (DRS). He said that the reason that New York State has set up the bank is so that this New York State-controlled bank can loan the money, as is clearly set up in the legislation, because private banks (i.e., Chase, CITI, Bank of America, any of the large lending institutions) do not want to loan money to these developers because there is no track record of how long they will be successful and how long the project will exist. He said that we are being told that there is a 30-year decommissioning, and that the smart people with the money do not even know if it is good enough for a year or two years. Mr. Foley said that this is an infant industry with no history behind it. He said that we are being asked to leap off the bridge holding hands. Mr. Foley said that the money part of it is, at least, a small piece of it.

Mr. Foley said that he thinks that it was a crucial mistake for the Town Board to amend the Town Law to permit large-scale solar power plants in an ag district. He said that he thinks they [the Town Board] were misled when this law was being developed, that they were being told that it would help farmers who were running into tough spots by helping them to offset their economic difficulties with this type of thing. He said that nobody—at least as far as we have been able to determine—were ever told in the build-up to this, and by the passage of the law, that what we would like to do is build a large power plant. He said that the reason that they [DRS] need an ag district is that the value of that land is lower than anywhere else.

Mr. Foley said that even though he thinks that it was mistake, there are two parts to the law that are crucial. He said that the first thing that the drafters did was to change the setbacks. He said that they made them bigger, and that they made them bigger for an obvious reason. He said that even a small array—70 or 80 panels—can be somewhat unsightly. He said that the idea of the setbacks was to move the panels away from an area that would have visual negativity to it. He said, that of course, the first thing out of the box Delaware River wants to do is say is that the 180-foot setback you have is not good enough, we want you to reduce it to 20. Mr. Foley said that he read that it was said that this would help the footprint. No, he said, the truth is that it will allow more panels. And the more panels we put in—Delaware—the more money Delaware will make.

Mr. Foley said that if we look at just the setbacks alone, and if the drafters of the law thought that 180 [was needed], we cannot reduce it to 20 feet without understanding what a gigantic impact it makes on the law itself. He said that it basically negates it [the law].

Mr. Foley said that he is beginning to get a bit impatient by waiting, because the answer is so obvious. He said that the law says, in no uncertain terms, that if the applicant wishes to build a large-scale solar operation on farmland that is designated in the Farmington

Farmland Protection Plan—and this is one of them since this is prime soil area—the law states unequivocally that it can only be done once it is determined by the Planning Board that there is no other feasible alternatives for the use of the land. Mr. Foley said that nobody is going to meet this test. He said that this is prime farmland. He said that there are many alternative uses other than a large-scale power plant.

Mr. Foley said that this was brought up to the Town Board and to the Planning Board. He said that he tried to impress upon both boards that this, in the law, is a conditioned precedent. He said that this is a stop sign and that before you go anywhere on the road to approval you first have to make this determination—is a large-scale solar power plant the only feasible use of the land? He said that the answer to that is “no.” He said that if somebody would address that—as the Planning Board’s responsibility happens to be—we would not be having this conversation. Mr. Foley said that he thinks that the answer is overwhelmingly obvious, that this is not the only alternative.

Mr. Foley said that he hopes that somebody tracks down the Town Attorney and asks the Town Attorney [to] please tell us what we said in the law that we passed. He said that he does not think that it is mysterious. He said that it is obvious. And that if we would address this, we would not all be meeting like this on a regular basis, and we actually would be saving some money because every time Delaware comes up with something or answers something, we have to ask our Town Engineer to run it down. Mr. Foley said that’s money. He said that while he is not trying to enhance the ability of lawyers to make money, he said that the money might be better spent asking the Town Attorney to give a legal opinion on what to him seems so obviously legally clear.

Mr. DeLucia said that the speakers are making some great points. He said that he understands their passion and interest, and that he understands what it is they believe should be done. But, he said, the ZBA cannot address the issues which are being talked about this evening. He said that the ZBA’s specific charge is to deal with the setback Area Variances which have been requested [by the applicant]. He said that the board has quite a bit of information already but that the decisions on the Area Variance applications cannot be made tonight because the SEQR (State Environmental Quality Review) process has not yet been completed by the Planning Board.

Mr. DeLucia said that he understands the issues which have been discussed, but that the ZBA cannot affect and make decisions on the issues discussed this evening. He said that it will be the Planning Board which will make the decision on this project. He said that the only thing that we [the ZBA] can deal with are the internal setbacks, lot-to-lot, and it is to make the footprint smaller. He said that if we [the ZBA] decline the setback variance requests, the project will be spread out more than what the applicant is proposing.

Mr. Compitello (Delaware River Solar) said that one option is to build the project with the setbacks and [therefore] farther from the roads. He said that the other option is to develop the project under the Town’s zoning laws which require 320-foot to 340-foot setbacks between the systems and which pushes the systems closer to the roads. He said that both options still require 21,000 solar panels, and that the company is not doing this to

increase the size of the solar system or to build something larger. He said that the purpose of the Area Variance applications is to condense the area on the land to provide more space for the Smiths to farm, as they do today, and to pull the setbacks further back away from the adjoining properties so that there is less of a visual impact.

Mr. Felanga asked how much money would be saved by compressing the project. Mr. Compitello said that either option would cost the company the same amount.

Linda Heberle (531 Yellow Mills Road), said that Dan [Mr. Compitello] mentioned two alternatives—a gigantic footprint or a tighter footprint. She said that she thinks that there is a third alternative—do not build it at all. But, she said, if you [the ZBA] do not allow the variances, maybe they could get none or one or two. She said that now they are asking for three separate solar plants on one piece of property. Ms. Heberle said that it is her understanding that NYSERDA (the New York State Energy Research and Development Authority) will only give them so much money for a 2.3MW project, so the reason that they're asking for three is so they can triple the money that they are getting back from the State.

Ms. Heberle then showed the board and the audience a photograph on her computer which depicts the views of the Smith farm from her property on the east side of Yellow Mills Road. Ms. Heberle said that the proposed shrubbery around the solar project will not block the views from her farm and that planting a vegetative buffer will be more difficult for the applicant because the Smith property is located on a corner—a very visible piece of property from every angle—from Yellow Mills Road, Fox Road and all the surrounding properties. Ms. Heberle said that she can see all the way to Fox Road from her property.

Ms. Heberle said that when studies are done, they measure 1,000 feet away and what they can see from 1,000 feet. She said that her property is 50 feet away, and that it is not only where the house is located. Ms. Heberle said that her dream [to keep the farm in her family] is turning into a nightmare. She said that it is not just what you can see now—that this is taking away all the potential from all properties surrounding this farm. She asked the board to take into consideration the future, as well as now. And, she asked if you [the board] do let them have it—and she hopes that you don't—to be sure that visual buffers be placed all around, and high enough so you can't see it.

Mr. Brand suggested that Ms. Heberle provide a copy of the photograph to which she referred on her computer. Ms. Heberle said that a paper photograph would not permit her to scan and zoom in on the areas in the photograph that she would like the board to see. Mr. DeLucia suggested that the photograph be provided via e-mail which would permit the board to view the photograph electronically. Ms. Heberle said that she would provide the photograph via e-mail to the Town. Ms. Heberle then displayed the photograph on the computer to Mr. DeLucia and to Mr. Compitello.

Mr. DeLucia again said that he understands the positions of the speakers but that the ZBA's only decision concerns the setback requirements. He said that he appreciates hear-

ing from the residents but that the board needs information which would help the board with the decision. He said that some of the things discussed this evening will help the Planning Board determine whether or not they will approve the project.

Ms. Chapman (230 Ellsworth Road) asked when the residents can reasonably expect that the ZBA will have enough information to make a fair decision.

Mr. Brand said that the Planning Board, on December 5, 2018, requested the following additional information from the applicant:

- Preparation of a Notice of Intent through NYSERDA and filed with the Commissioner of the New York State Department of Agriculture and Markets. Mr. Brand said that once we have notice that NYSERDA has made such filing, then the Planning Board will await the Commissioner's report and determination.
- Submission of a Soils Group Worksheet Map for the entire holdings of the Smith property and to have this map prepared in cooperation with the Ontario County Soil and Water Conservation District Office, so as to enable the Planning Board to determine that there is no feasible alternative area on this site that will not affect soils classified as Class 1 through 4, or that there are alternative soils of lower classifications on the site where there would be a lessened impact upon the loss of the more important farmland soils.
- Submission of a Wetlands Delineation and Report by a certified wetland biologist retained by MRB Group, D.P.C. (the Town consulting engineering firm).

Mr. Brand said that the applicant has been requested to provide this information to the Planning Board on or before January 16, 2019, for discussion at the continuation of the Planning Board's Public Hearings on that evening.

Mr. Brand said that the ZBA may be in a position to act upon the Area Variance applications at its meeting on January 28, 2019, pending receipt of the materials by the Planning Board on January 16, 2019, and completion by the Planning Board of the SEQR determination. He said that this schedule would be the quickest on the condition that all of the material comes together.

Mr. Brand said that Town Code Enforcement Officer James Morse is in the process of preparing a zoning interpretation regarding the possible alternative uses of the Smith property, as discussed earlier this evening by Mr. Foley. Mr. Brand said that Mr. Morse is working with the Town Attorney on this zoning interpretation to have a response at the Planning Board meeting on January 16, 2019.

Mr. Petura (4923 Maxwell Road) said that he learned about this project about a month ago. He said that he is retired and spent 46 years in the field of chemical and environmental engineering—cleaning up some of the most unbelievable superfund sites in the country. He said that something is really wrong in this process. He said that due process is

what this country stands on, and that this project is all backwards, forwards, upsides and down, and going in areas that do not make sense. He said that this is crazy, that there is nobody bidding and that there is no specification put out for this.

Mr. Petura said that when this first started out, it was five or six acres of solar to help the property [owner] with his financial needs to keep going, in general. He said that it has gone to 40+ acres. He said that's huge, that it is agricultural land, and that it is part of the responsibility of the township Planning Board—overall agricultural planning—and every township has this responsibility in every state.

Mr. Petura said that he spent most of his years in Pennsylvania so that he is not that familiar with New York, but that he understands the basic process. Mr. Petura said that the feasibility study has not been done—to change it from ag to something else—and is a major flaw in the process. He said that the Town should not be considering a permit or anything else until the feasibility study is done.

Mr. Petura said that the words that he wrote down again and again were: Was a “conditioned precedent” established. He said that's legal. He said that Mr. Foley spoke about this in his November 18th letter to the Town. He asked if there has been an answer to the question or if a feasibility study has been done.

Mr. Petura said that he has done feasibility studies for all kinds of facilities all over this country—from California, to Maine, to Michigan, to Florida—cleaned up all kinds of nonsense. This is simple, folks, he said. He said that this is not rocket science and this is not cleaning up trichloroethylene in ground water. He said that this is not cleaning up the stream-filled acid pits in Orange County, California. He said that this is not the Valley of the Drums in Kentucky. (*Clerk's Note: A reference to a 23-acre toxic waste site in northern Bullitt County, Kentucky, near Louisville, named after the waste-containing drugs strewn across the area.*) Mr. Petura said that this is how you use your land, as the community as a whole wants—setting off places like brownfields along Route 332. He said that he used the word “brownfields” because they are not green fields.

Mr. Petura said that he is in favor of solar energy. By disclaimer, he said that he has a permit approved in this township right now to put solar in his backyard. He said that the company has put him on hold because they have just laid off a third of their residential staff. He said that Jim [Foley or Falanga] raised the question earlier, “Is this sustainable?” Mr. Petura said that the concept is sustainable, except for one thing. Without government subsidies, solar would not be where it's at. He said that he is glad that we have the government solar, and yjsy he is glad that industries are pursuing the Mohave Desert and other places around the country where this is an appropriate thing to put, where there is no other use for the land that is feasible as determined by whoever the governing body is.

But, Mr. Petura said, this is agricultural property, and these people have legitimate concerns for their property taxes. He said that when he sold some land in Cherry Hill, New Jersey, in the 1970s, he had to declare that his property was immediately adjoined by a 10-acre former landfill. He said that back in the 1960s, when they put in landfills, they

did not even bother to file the 1959 American Society of Civil Engineers Sanitary Landfill Code. Mr. Petura said that he received a letter in September 1971 from the township officer suggesting that he and his two neighbors evacuate the property immediately. Why? Because methane had migrated out of that landfill into our two homes, he said.

Mr. Petura said let us use some common sense here, get back to the due process in the right order, have all the parties heard from, and have a process that follows a specification instead of one guy who flies in here and drops in. He said that he uses the word “vulture” as one possibility here. He said that he does not know how this all came about—how they [DRS] decided to pick this property and make it a showcase. Mr. Petura said that thinking needs to be put into this to do this right.

A resident from Stafford Road said that the reason that we are really here are the zoning variances from 180 feet to 20 feet. He asked why the solar panels would be placed closer to the road at the sometimes-dangerous intersection of Yellow Mills Road and Fox Road. He said that the solar panels would be a huge distraction at this dangerous intersection and that this is a question of public safety. Mr. DeLucia said that it is his understanding that the setbacks are lot-to-lot and that the applicant is proposing three separate lots. He said that these setback variance requests are lot-to-lot so that the footprint [of the project] is in the center of the property, rather than spread out. Mr. DeLucia said that if one maintains what the Town Code requires for each of the specific lots, they can still put in 21,000 panels but they will be on three separate lots farther away from each other, rather than three collected [closer together].

The resident asked about the setbacks from the road. Mr. Compitello said that the setbacks from Fox Road would increase from 180 feet to between 429 and 530 feet, so they [DRS] would be increasing the setback by more than twice of the Town Code. The setback from Yellow Mills Road would increase by about 280 feet.

Linda Heberle asked why the Four-Lot Subdivision application has not been decided prior to the Area Variance applications. Mr. DeLucia said that the Area Variance applications must be decided first to enable the Planning Board to receive and consider a specific plan. He said that this is the reason that the setbacks are considered first.

The resident from Stafford Road said that the only purpose of the subdivision is so that they [DRS] can legally get around our law.

Mr. Brand said that the four lots could be combined back into one lot at a future date, by application, if they are owned by a single owner at the expiration of the lease. But, he said, over the course of the years, if more than one individual owns one or more of the lots, then combining the lots becomes a more complex issue.

Mr. Petura asked if there are copies of the “before” and “after” setbacks. Mr. DeLucia said that hard copies are available in the Town Hall. Mr. Brand said that he would see that the files are posted on the Town website.

Caroline Heberle asked if the neighbors would have been told about this project earlier if the land had been sold instead of leased. Mr. Brand said that the Town usually is not informed about land sales in advance and often does not receive notice until a deed is filed in the Ontario County Clerk's Office. He said that there is a lead time of approximately three months from the time that a deed is filed in the Ontario County Clerk's Office, that notification is made to the municipality, and that a tax-account number is assigned. He said that the public was notified of this project and that the property was posted immediately upon the receipt of the application in the Building Department and the scheduling of the Public Hearings.

Mr. Petura asked if there are other commercial solar operations in Farmington township. Mr. Brand said that the owner of the mini-warehouse business on Commercial Drive has a solar installation and an agreement with Rochester Gas & Electric Corporation for generating surplus solar power.

Mr. Falanga asked if Mr. DeLucia knew why Whitestone Solar withdrew their application. Mr. DeLucia said that a variance application was never filed, that the project never reached the ZBA and that he had no information about the applicant's rationale for withdrawing the project.

Mr. Falanga said that what is lost in this process is the Planning Board's prerequisite for the applicant to comply with NYSERDA restrictions. He said that he understands that the ZBA has a narrow view because of the variances, but this narrow view has huge ramifications. He said that there has been the passion of people who have been coming out—over 120 at the two Planning Board meetings, and that there will be a lot more on January 16th. Mr. Falanga said that this is a 35-year decision that we have to live with, and you [the ZBA] have a part in that. He said that when you [Mr. DeLucia] asked to direct the questions that the ZBA can control, the five-question response was directly aimed at the zoning board. He said that these are the five reasons why this should not be granted. And Dan [Mr. Compitello] has been disingenuous in the past.

Mr. DeLucia said that he did not wish to hear criticism about people. He asked that comments be directed to him, and that the concern is about the variances that we [the ZBA] have in front of us. He said that this is all that he wants to hear. He said that he is not going to listen to any comments about issues that need to go to the Planning Board. Mr. DeLucia said that he heard the five responses to the ZBA test questions and that those are the ones that the ZBA needs to hear to determine whether to grant, or not to grant, these variances. Mr. DeLucia said that he did not want to hear bad talk about anybody in this room.

Mr. Falanga then mentioned [Town Board Member] Nate Bowerman, [Director of Planning and Development] Ron Brand and [Town Board Member] Michael Casale who all said the same thing in the [Town Board] minutes—the intent was clear to help small, individual farmers offset some of their costs with personal solar. And, he said, that they are on record as saying that no one ever envisioned anything like this. He said that Nate Bowerman said that it was supposed to be small, personal solar. Mr. Falanga said that the

only ones who envisioned this were the solar companies who came in to help to rewrite the code, and that this is documented in the [Town Board] minutes.

Mr. Petura asked if the board has a set of criteria which is used to grant a variance request. Mr. DeLucia said that these criteria are listed on every application which appears in the ZBA minutes on the website, which are the same five test questions as discussed this evening.

Mr. Geer (568 Yellow Mills Road) asked about noise and if noise will affect the variance. Mr. DeLucia said that the variance applications deal with setback requirements which do not meet the Town Code. Mr. Compitello said that there are no lights within the system, and that the transformers do make noise, but that this sound is lower than the decibel level of his voice. He said that the noise dissipates by about 20 feet or 30 feet away. Mr. Geer said that he hears the noise from the Thruway two or three miles away. Mr. Compitello said that he would hear the noise of the Thruway over the noise from the transformers.

Mr. Falanga asked about the schedule for the next meetings at which these applications would be discussed. Mr. Brand said that the Planning Board has continued the Public Hearings on the Subdivision, Site Plan and Special Use Permit applications to January 16, 2019. He said that the applications are not on the Planning Board agendas for the meetings on December 19, 2018, and January 2, 2019.

Mr. Falanga asked how residents could be placed on the Town Board agenda. Mr. Brand said that the Town Board has a “privilege of the floor” comment period at every meeting or that residents could contact the supervisor’s office in advance to be placed on the agenda.

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

Mr. DeLucia said that a draft resolution has been prepared for consideration by the board to continue the Public Hearing on the four Area Variance applications to Monday, January 28, 2019.

■ A motion was made by MR. MARSHALL, seconded by MR. YOURCH, that the chairperson read aloud only the action items in the resolution.

Motion carried by voice vote. Mr. DeLucia read only the action items in the following complete resolution:

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

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

ZB #0905-18 Area Variance

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

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

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

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

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

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

WHEREAS, the Town is obligated under the stated intent of the State Environmental Quality Review Act (SEQRA) regulations to consider the potential environmental impacts identified for all of the pending decisions, by both the Planning Board and the Board, upon these proposed applications (hereinafter referred to as Action) as opposed to individual decisions; and

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

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

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

WHEREAS, the proposed Site Plan identifies the physical alteration of more than 2.5 acres of land; and

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

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

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

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

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

WHEREAS, the Planning Board, on Wednesday, November 7, 2018, did by resolution table any further discussion upon the requested Action until Wednesday, December 5, 2018; and

WHEREAS, the Planning Board, on Wednesday, December 5, 2018 determined that it did not have enough information to enable it to make a determination of significance and did direct the Applicant to provide additional documentation to that Board, on or before January 16, 2019; and

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

NOW, THEREFORE, BE IT RESOLVED THAT the Board does hereby continue the Public Hearing upon these requested area variances to their January 28, 2019 meeting.

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

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

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

Motion carried.

5. NEW PUBLIC HEARINGS

None.

6. BOARD BUSINESS—DELIBERATIONS AND DECISIONS

None.

7. PUBLIC COMMENTS

None

8. CHAIRPERSON’S COMMENTS

Mr. DeLucia requested that board members review the 2018 Rules of Procedures and let him know of any suggested revisions in preparation for the adoption of the 2019 Rules of Procedure at the next meeting.

It was the consensus of the board that the ZBA will continue to meet on the fourth Monday of the month in 2019. Mr. Brand requested that Mr. DeLucia inform Ms. Daniels in the supervisor’s office of this consensus for inclusion on the agenda of the Town Board 2019 organizational meeting.

9. NEXT MEETING DATE

The next regular meeting of the Zoning Board of Appeals will be held on Monday, January 28, 2019, in the Farmington Town Hall, 1000 County Road 8, commencing at 7:00 p.m.

This location may change depending upon a Planning Board determination of significance upon the Delaware River Solar applications pending before the Planning Board. If it is determined that the January meeting of the Zoning Board of Appeals will require a larger room, then the meeting will be moved to the Town Highway Department Facility, 985 Hook Road, Farmington, N.Y. 14425.

10. ADJOURNMENT

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

Motion carried by voice vote.

The meeting was adjourned at 8:05 p.m. After the adjournment, there were a number of attendees talking in the Main Lobby area of the Town Hall until approximately 8:20 p.m.

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

Respectfully submitted,

L.S.

John M. Robortella
Clerk of the Zoning Board of Appeals

Attachments presented by Mr. Falanga (hard copies scanned as PDF files by the clerk):

Letter from residents, re: Delaware River Solar Project, 466 Yellow Mills Road

Excerpt from Town of Farmington Newsletter, re: Whitestone Solar Project