

**Town of New Scotland  
Zoning Board of Appeals  
Minutes  
January 26, 2021  
7:00 PM**

*Zoning Board Members:*

Jeff Baker, *Chairman,*

Lance Moore, Dean Sommer, Edie Abrams, Erin Flynn Casey

Lori Saba, Planning Board Secretary, Jeremy Cramer, Building Inspector  
Crystal Peck, Zoning Board Attorney, Garrett Frueh, Town Engineer (Stantec Engineering)

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**Roll Call: Mr. Baker, Mr. Moore, Mr. Sommer, Ms. Abrams, Ms. Casey**

**Zoning Board of Appeals Meeting  
COVID Update**

The Zoning Board of Appeals for the Town of New Scotland will hold a regularly scheduled meeting on January 26, 2021 at 7PM. Due to health and safety concerns related to COVID-19 in person attendance will not be permitted. We are working diligently with our current limited staffing to start uploading applications to the Town's website prior to the meeting to give the public the ability to see the applications and supporting documentation and would encourage anyone who would like to comment on an application that has a public hearing scheduled for the upcoming meeting should email those comments to the Building Inspector at [jcramer@townofnewscotland.com](mailto:jcramer@townofnewscotland.com) by noon of the meeting day. In accordance with the Governors Executive Order 202.1 the meeting will take place remotely via Zoom. All written comments will be collected, submitted to the Board for review, and be read into the minutes of the following meeting prior to a decision on the application. During this time, all Zoning Board meetings will be recorded and a transcript of the meeting will be made available at a later date. Members of the public can connect via telephone or video conferencing to the meeting at:

Topic: Town of New Scotland Zoning Board of Appeals Meeting

Time: Jan 26, 2021 07:00 PM Eastern Time (US and Canada)

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## **Continuation of Public Hearing: 7p.m.**

- 1) **Variance Application # 544:** Application submitted by PV Engineers P.C. for a large scale solar project on a parcel that contains prime soils. Siting considerations identified in Part 2 G, Section 4.xiii of our Solar law prohibits large scale solar facilities on any site that is prime farmland or which contains prime soils. The proposed solar project is located on a parcel owned by Steven Burke, is located in the RA Zoning District On Altamont Road, and is identified as New Scotland tax parcels id # 72.-1-65.

Mr. Baker: We still have the public hearing open, so we will be taking comments tonight. We have an updated glare study from the applicant, which we requested. There are also letters submitted from the applicant.

Mr. DeVaux: I will go over the glare study update. I previously talked about the issue with the glare study being that Google Earth took the topography based on the top of the trees. I went ahead and sent him the existing conditions. He did update the line of site analysis. There was one table, it's just a check box that needs to be hit, but there is one table that seems to need to be updated that Mr. Frueh pointed out. We will get that updated. It is essentially the discussion we had last month with just the same receptors are seeing glare, the justification for non-glare now that the project is lowered is the vegetation around it. It is still expected the same abutter won't be seeing glare.

Mr. Fitzgerald: The project is in front of the Planning Board because it is an allowed use within this particular zoning district, it will undergo site plan review and we will require a special use permit. We have every reason to believe that it meets those requirements, but because of the soil district that it falls in under the county soil map prompted the applicant to file the request for the variance back in July because it's pretty much a blanket prohibition on any large scale solar development in any lands that have this prime soils designation. But then the same section code goes on to say that the applicant could make a request for a variance, so that's what has brought us here. We feel that in looking at the factors that the Board has to analyze a couple of them are clearly met and a couple of others that the project when you get into the nuances of the project where its situated by the voltage lines, setback for the most part from the road and with the screening that we believe the project can fit all of the tests that the Board must analyze. To the extent that it is close on any, that just would be a matter of nuancing the screening and a little bit of fencing and to take care of things. I do understand the neighbor's concerns that they have voiced over the last couple of meetings not wanting this in their backyard and without minimizing their concerns because I understand where they are coming from. Looking at the project we believe the way it has been proposed with the fencing and the screening and everything basically the neighbor's concerns can be addressed in this situation. I can answer any questions the Board may have. One thing I would note in the landowners letter he did address the issue of developing the property with houses because one or a couple of neighbors said they prefer houses being there than a solar facility, however in looking at what the landowner submitted it doesn't seem very feasible for him to develop houses in that area.

Mr. Frueh: The latest glare study, we reviewed and it shows some yellow glare at several of the receptors. I think terrain only obstructs one receptor based on the recent study so it is predominantly vegetation that will be obstructing glare. The applicant is relying on existing vegetation. They are proposing landscape screening to mitigate those glares and its recommended that it would just apply no cut buffer maintenance of the vegetation will be key in mitigating glare to the surrounding neighbors.

Mr. Baker: From our perspective looking at it, the SEQRA issues and the criteria that we have to apply; can the potential glare issues and not just glare itself but sort of the aesthetic impacts of the views from these homes towards that area be pretty fully mitigated with a robust landscaping requirement? I'm not relying simply on the existing vegetation nor what I think is an admittedly preliminary landscape plan that has been put in by the applicant, but with a very robust design plan can we mitigate those impacts and effectively block the views?

Mr. Frueh: Yes, it seems that a robust landscape plan could mitigate the glares associated with the recent reports received as long as they would be maintained and that is where diseases to that vegetation and things of that nature would just need to be monitored throughout its life cycle and life span.

Mr. Baker: I would even say we would require them to maintain a performance bond on that, the maintenance bond to assure that any vegetation is replaced. I think that would be something I would recommend. This would be more than a decommissioning bond, this is a maintenance bond.

Ms. Peck: That would be appropriate here. We could also either us or the Planning Board include a condition that involves any sort of complaints and a review by the Building Inspector and possibly bringing it back to the Planning Board for modification of the landscaping plan if it's found that whatever was put in place hasn't sufficiently address the glare.

Mr. Baker: Yes, I like that.

Ms. Abrams: Have you tested the arrays from the second floor of the nearest house?

Mr. Frueh: Yes, that model does have receptors for first floors and second floors so dependent on the house types, those surrounding receptors counted for those elevations.

Mr. Baker opened up the meeting to the public.

Mr. DeVaux: To add a little we have already sent that to the DOT for review because even with the Planning Board the DOT themselves will have to approve the concept and the design of that for as you said site distances, traffic and all those concerns. It will be a dual approval essentially between the Planning Board and the DOT. We will get their approvals separately. Even though it's just an access road it's called a commercial driveway access permit, it's very simple, we have a lot of experience with them and we design it with those criteria in mind. It has been sent to them, but when this is constructed a State permit will have to be pulled. Both people will have to kind of comment on that. It was a weird comment from the County, because that is in the State's purview as well.

Mr. Baker: I am happy to go on record to say they were strikingly unhelpful comments.

Mr. Moore: The glare mitigation that you have been discussing is this going to be from the start of the project or is this going to be a growth trees that will grow after the project?

Mr. Baker: This is something we would require or recommend that there be significant plantings from the beginning. I am careful to use the term mature, if it's not the proper term, but not saplings. Meaningful landscaping at an early stage.

Mr. DeVaux: I can give a little context on that I will answer in two parts; the first part is the mature growth that is existing that we don't plan on cutting is what was taken into consideration. The proposed growth we are using to kind of armor that in to absolutely

make sure, but the planting elevations are I believe five to six feet. They are not saplings they are five to six feet that's generally speaking the healthiest height to grow them. Then a lot of the evergreens, I should say, when we develop the more robust planting plan in areas that need more glare mitigation we will use tree species that grow essentially about three feet a year. Even though we are not requiring them or planning that their mitigation is going to mitigate glare they will grow in very fast and then replace say one of those tree dies. If anything happened to one of those trees it would be pretty well replaced by a proposed tree.

Mr. Moore: Thank you.

Mr. Sommer: I have a question, as you know the two neighbors that spoke were disturbed by the project and we keep talking about landscaping and I know Mr. Baker raised the issue of a performance bond and a complaint process, but I guess I have two questions. Do you object if the Zoning Board makes clear what robust means? I'm a little reluctant. Mr. Baker I don't if we are differing to the Planning Board, I'm sure they do a great job, but the principal issue that I would like to discuss is really not the glare issue and I maybe the neighbors are not basis to talk about the screening, but how do you go about another alternative visa adjacent landowner would be a berm with plantings, so you are planting three feet up at five feet, so you know, so have you ever done that? Is there a more effective, if you were making a recommendation to us of a more effective screening, so those two neighbors would feel more confident that at least they wouldn't have this visual impact? Is that something you've ever done?

Mr. DeVaux: The issue with the berm, so one is possible, but there are a couple of reason why you would not want to do that. We have done that in areas where there is an absolute, let's say this is really up in someone's face, we have pretty good screening here, and I know we want to screen it as well as possible. The issues with the berm are two fold, first there is going to be a storm water concern. That's pretty low on the list, we can figure that out. The real issue is there is going to be a long dimensioning return, so if we know areas that we need to propose trees that can grow you know about three feet a year pretty readily. We are talking about a year of growth that we are going to save from that berm, but the issue that you have with the berm is that the mortality rate for the trees is actually considerably higher. What you get, so the town can rightfully require either a performance bond or some towns require a landscape maintenance escrow. They are both pretty standard, but the issue you run into, so you've got the money to replace the trees, but you know what you're readily get from a nursery is either a five to six or a six to seven foot evergreen, so if after two years there is a high mortality rate where we would had six foot growth we are now putting in anywhere from five to seven foot evergreen that are actually, yeah we have three foot on the first year but now we have potentially five foot to seven foot evergreens where we would in fact after a year or two have 10 foot evergreens.

Mr. Sommer: The benefit of multiple layers of plantings so it's not just one line and I'm most concerned from the adjacent landowners and also across the street.

Mr. DeVaux: What we are proposing are admittedly schematic landscaping plan in a double row. We do double row, if you space it correctly it doesn't cost that much more money, because you have the space to stagger and the root balls can establish.

Mr. Sommer: In the proposed landscape screening diagram, I'm looking at one that shows two landscape areas just so there is no ambiguity can you put two lines in each of those places so we all are in agreement that it's two lines.

Mr. DeVaux: Yes, on the record I have no problem with you know I don't want to make any assumptions, so let's say we get an approval on these I would absolutely be okay with a

condition of that approval being double row plantings at a species and spacing determined by a registered landscaper architect. That will be the next step to get in front of the Planning Board; we will put this in front of our landscape architect. They will tell us what species are, because what we will end up doing too is you know if there is a visual impact that we want to mitigate we are going to put faster growing trees there. If we are talking about the road, which we already have a pretty good screening on, but we really want to hammer that end, we are going to propose something that's more in line with the existing landscape. It's not going to grow as fast but we have big trees there so it's not going to be as huge a deal.

Mr. Baker: We still have the public hearing open. Are there any members of the public who want to make comments now?

Mr. Burke, I am the landowner, I just wanted to call in, I know I wrote a letter, but just to emphasize my point, you know I guess I will start with I had concern as well as a neighbor approaching this. We are vested in this town. We have been here for 23 years. We've lived here now so it was a concern of mine, but in talking with Borrego, and what they proposed and what they were going to do you know I felt that it was feasible and that it satisfied my anxiety a little bit. I certainly have never farmed it nor do I ever plan on farming that land. Mr. Fuglein asked when we bought it if he could continue to hay the field and of course by all means you know he was able to do that. We would never farm that land and in speaking with him over the years and finding out the little bits and things about that land that was in his family you know for many years you know they never farmed that as well. I know that's a big concern and you know obviously I understand the need for land to be farmed. From my aspect that is not something I'm going to do you know we initially bought it as an investment. We were going to build our house on there, hopefully, but with the lack of water in that area it's a very you know it's a good concern. I had it a couple of years and I went to the Village to get water extended out to that land and they agreed to it, but you know after getting cost of that it was astronomical. We chose not to do that. I just think that this you know from my laypersons opinion and I'm partial I guess to this it is a good site; you do have the high tension lines there. From what I gathered from what Borrego said you know and what they instilled to me that you know they do a good job of screening everything and you know I feel comfortable with that. I do understand the neighbors' concern. I live in Voorheesville, I live on 25 acres there is many acres next to me I'm just one of those people that wouldn't bother me, but I know it does bother other people. I do understand that. My intension was to build on this, we probably will never do that, it will probably end up getting you know given to my four children eventually someday. I just wanted to call in just to answer any questions someone may have or you know just speak my mind a little bit. I think that is it.

Mr. Baker: Any other public comments? Hearing none I will make a motion to close the public hearing; Ms. Casey seconded the motion; all in favor; motion so carried.

Ayes: Mr. Baker, Mr. Moore, Ms. Abrams, Mr. Sommer, Ms. Casey

Nays:

Abstained:

Vote: 5-0

Ms. Abrams: I don't know anything about the building of the project like this. Some articles talk about conduit being buried and cabling either above ground or below ground. Can you tell us what will happen with this project?

Mr. DeVaux: Yes, so what we can do, there might be some additional requirements from the Planning Board, because we had talked about possibly implementing the Agricultural and Markets requirements for a plan like this because of the considerations of soil. I am going to answer it as if we are going to do that. I think that's pretty reasonable for what the Town is looking to do it is a very reasonable compromise. What the Ag and Markets requirement would be we are going to put in conduit. We put the conduit in deeper so that you know in the future like let's say some conduit gets pulled up by the equipment. The top soil, so there will be conduit, so they dig a trench, it's a minimal invasive trench, and they dig three foot wide trench or a four foot wide trench along where only the cables are shown. Even though there is wiring connecting all of the panels that's above ground and it's actually on the racking, where the wiring goes north south to connect it to the inverters that's the only place where there is a trench. That trench now three or four feet wide what they will do is they will side place the topsoil right next to the trench, so when they back fill they are going to back fill with the native material, and back fill with the native topsoil. That is a requirement, because I want to make sure that kind of moves forward with the Planning Board. We would propose to do that work to mitigate the concerns of the Town for agricultural. That's saying that if its good top soil, good soil will go back, and we are not taking it off site. There is no grading on site from the road. What is graded on the road there will be a stock pile onsite so the topsoil stays on site. That's another Ag and Markets requirement, so when we get to the Planning Board they will probably want us to show where we are going to store some topsoil. It's not going to be a bunch, but it will be onsite, so when that road gets ripped up and gets decommissioned there will be a nice pile of onsite topsoil that will go right back to where that road is.

Ms. Abrams: How do you protect the topsoil for 25 years?

Mr. DeVaux: They seed it, so the NYS DEC regulations for storage of any material is to, if you have anything you know, it's not a huge amount because it's just the road we are talking about, but you would put in a low pile and then you hydro seed it like you would do any other area of disturbance. They spray a mix of seed and like a newspaper material that kind of glues it all together, so it immediately stabilizes and grass grows on it. There will be a planted mound of dirt which will be all top soil.

Ms. Abrams: Thank you. I don't have any more questions.

Mr. Sommer: This is from the Zoning Board training, how does it work when you grant an area variance like this on these soils and then in the future we get another one of these? Is it important to kind of make distinguishing features on each one of these so that it doesn't serve as a precedent or if we grant this now and then we get one in the future does the granting of this one enhance the likelihood of an arbitrary capricious challenge in the future with another one.

Mr. Baker: Yes. Each case has to be determined that we explain the reasons we are going to give an approval for this, why we think it's appropriate in relation to the standards that we are applying. Would that apply to the next application? Depends on the application. How is it located? In the simplest things, if on the other side of this power lines there was essentially an identical or very similar piece of property, right, how would we treat that. Well, do we look at that point as a cumulative impacts that worry us, but otherwise absent that, we would look at it and say yeah, you know you'd have to approve it. I think probably the better example you'd have this cumulative impact questions, it's not necessarily one, so adjacent to this one or one elsewhere in the town. Again, we would look at that one in the context of how it is located. There could be some very poorly sited solar arrays and we've all driven around and seen them. Again, depending on what local land use laws there were controlling it and the nature of the boards who did it you know we've seen some bad design projects.

Mr. Sommer: When we make a decision, I won't pre decide it, but when we make a decision is it important to add certain unique characteristic that were taken into account?

Ms. Peck do we give Mr. Fitzgerald the opportunity to maybe make clear for the record certain unique components of this only because I am, I don't want to say concerned, but I'm conscious of the fact that everything we do can establish a precedent and so I don't want to be setting us up.

Mr. Baker: Everything establishes precedent. This is the first case and there might be others, but also take into recognition that when the Town Board adopted this law presumably they did a SEQR analysis and looked at the cumulative impacts of the potential where things could be built in the town and they decided they gave it a negative declaration and decided it wasn't a significant impact that way. What we're looking at to the extent the cumulative impacts of how often we are going to be asked to give a variance on the prime soils criteria. That's all we are being asked to do here. We know the Town Board is revisiting that, I don't know what they are going to do with it, if they will change it or not. We will have to see what happens. If we start getting a bunch of these then it's a real issue which is also why the Town Board needs to sort of revisit the law. The law doesn't work if every application needs to get a variance. We have to be consistent we can't treat people differently unless we can distinguish what the reasons are for doing that.

Ms. Casey: Public town minutes are all evidence of the findings that we make and the reason supporting our decisions, so the fact that we discussed that this is uniquely situated there is very little glare impacts, it's very you know not a major traffic area, very difficult to see with the proposed landscaping, no other suitable use of farming or housing for that area. I mean these are all things that go into why we may find that this is particularly well suited for solar and grant a variance on that basis.

Mr. Sommer: That corridor may be part of this new upgrade that's coming through town and because the green towers that are running on 345 now could handle 765, I think it is going up 20-feet more, so these power corridors are not the greatest to have a residential home right next to it.

Mr. Baker: That is the point, and this is the line that's having the upgrade isn't it.

Mr. Cramer: Mr. Frueh is reviewing both SWIPPs lately.

Mr. Frueh: I believe it's the, I can't recall off the top of my head if this is right here. It's for Princeton to the New Scotland submission.

Mr. Sommer: I do think it is a very distinguishing feature.

Mr. Baker: Yes and the point is I do appreciate the concerns of the neighbors of the visual impact having to see a solar farm that we are going to do our best to mitigate, but they are going to see a lot more of the powerlines. That's being built now. Any other general comments. I think what we need to do is first take us through our SEQR process.

Ms. Peck: I will screen share the EAF with you and walk everyone through it.

Below is the resolution as presented by Ms. Peck.

Mr. Sommer: Is there a small impact in the sense that it's going from ag field to a solar field? I agree it is not a significant one, but I'm just asking whether what F is really asking.

Ms. Peck: When you look at the landscape on this property this is a very screened property. You really can't see it very well at all from the neighboring properties or the road. I didn't see how this actually is going to change the natural landscape of this area.

Mr. Baker: Essentially because it is such a low profile use its visual community impact concerns of changing the character of the area, I don't think it changes the character of the area. It keeps a lot of the views open across the property. Any questions on Part 2 of the EAF from the Board? None please continue with Part 3.

Ms. Abrams: I would like to ask a general question about impact on plants and animals. Does it only have to be on plants and animals that are endangered?

Ms. Peck: No, we are looking at any significant habitats, but there were really none that were identified, because we did have a study conducted by the consultants to see what kind of impact we were looking at. There was really nothing unique to the wooded area, to the field area that was absent from some of the, that was not found in the adjacent properties or lands.

Mr. Baker made a recommendation that we issue a negative declaration that there is not a significant impact on the environment based on the proposed action.

Ms. Abrams: The Comprehensive Plan does talk about attracting carbon free energy, no question about it, but on the other hand it does talk about not cutting down woods and keeping the you know flight patterns for the birds or whatever. Since you have an emphasis on both of those things maybe you shouldn't mention the Comprehensive Plan.

Ms. Peck: I can take that out if that's how the Board feels. The reason I put in there was because there is a discussion about trying to promote being a climate smart community and clean energy within the Town. I did think it was worth a nod, because you are talking about a general you know how it falls in with the general community and the community plan that was set forth by the Town.

Mr. Baker: I think we should keep it in. I think it is an important thing, I mean there are always elements of a comprehensive plan or how an action affects it. There is a tradeoff and a balancing that has to be done. Nothing fits clearly within all the boxes. It is important to note that is where we take into the balance. The impacts on habitat and wildlife of a given project and its site considerations and so, yes obviously there is going to be destruction of some semi-forested area here, but we are also providing some habitat benefits by the nature of the solar use and how the property is going to be done. It is showing our support or a reason why we do not think that the project is likely to result in significant adverse environmental impacts. That's the threshold we are looking at. In the categories that we are looking, does project tip the scale over to presenting a significant adverse impact. You have given a lot of good consideration on what it is and we have taken a hard look necessary to determine whether there are potential issues and we evaluated them. I don't know how much more we could do. We have a resolution on a negative declaration. Mr. Sommer you had some good suggestions or some good comments would you like to share.

Mr. Sommer: I did have some comments on page four. In section V, it talks about the glare analysis and it goes to the next page 4, and it says that potentially significant impact caused by glare will be mitigated by natural terrain. I said, well maybe we should be more exact. I'm not certain if the glare studies actually say that the view from Thacher is fully mitigated. What it says that the glare may be seen from the parking lot for a few weeks in April and again in August at 7:00 a.m. for up to 20 minutes. That may

not be considered significant but I just wanted to make certain that I didn't know how exact we had to be in using this language.

Mr. Baker: Let's talk about that one first before you go on to the other one. I think that is a good comment. I don't have a problem, I assume it's factually accurate of including that in there to reflect that we are cognizant of a potential impact on Thacher Park, but we quantified it and we're comfortable with it and determined it's not a significant adverse impact.

Mr. DaVaux: I do want to break down the way that the glare study analysis works or the way it's kind of formatted a little bit, because it is a little confusing, so what the glare analysis aims to do is first determine those areas of glare without any consideration of mitigating factors and then goes to explore those mitigating factors because what if they do mitigate it, so from Thacher Park there was the potential for the glare based on you know let's call it the moon scape topography. You know just line of sight, but then they did go on to talk about the existing pines along Tygert and the onsite vegetation which is pretty high in comparison to the system itself and I do believe, unless I'm mistaken, that we did state it would be mitigated based on those. That you wouldn't actually see those 20 minutes of glare for those couple of weeks. Without those mitigating factors you would in fact see, so I think it actually does show correctly the way that Ms. Peck wrote it, but if there is some language that the Board wanted to put in there we obviously don't have any issue. I just wanted to add the additional context to that glare study.

Mr. Sommer: My concern was just how exact we have to be; I don't object to the language, I just didn't know how precise this was supposed to be.

Ms. Peck: I don't see any problem with changing the language to at least express that there actually is a potential for glare.

Mr. Sommer: You could say will be reasonably mitigated, you know.

Mr. Frueh: The most recent glare study doesn't state that there is mitigating factors for Thacher. It just states that its green glare that would be created by these solar arrays which causes a temporary after image which is very minimal and relates it to the glare of a pond say you would be seeing up at Thacher.

Mr. Baker: I think that's the proper way to put it, because I do think given the elevation of Thacher looking down I don't think the trees along Tygert or something is going to be providing much mitigation. It is the fact that the nature of the reflection that gets shown and given the distance and as Mr. Frueh said the nature of the color is not a significant element.

Mr. Sommer: Mitigated that may be fine it will be mitigated. That was just something I noticed from the study that there would be some glare for the early riser who is up at the escarpment at 7:00 in the morning.

Ms. Peck: If I could make a suggestion Mr. Baker, just so that for future projects you know that come in front of us for our own reference why don't we add in the

language the way Mr. Frueh expressed it. Talking about the green glare that is very minimal, the after effect of the pond. Mr. Frueh please email that to me.

Mr. Frueh: Yes, sure.

Mr. Baker: That's a good thing to add.

Mr. Sommer: In viii, the language right now says the vegetated buffer surrounding the property will mitigate impact to neighboring properties. I think that is true. The one question I ask for you and for the Board is the comment I had whether we should add something about mitigation by significant robust plantings, because I agree that as proposed it will mitigate it, but I'm kind of conscious of the neighbors in trying to make certain that they understand we did listen to them and whether we should add some language about the vegetative buffer surrounding the property will be by robust and multilayer plantings in order to mitigate the impact; just some more specific language.

Mr. Baker: I would say where we have the vegetated buffer surrounding the property start the sentence out with the applicant has recognized that the vegetated buffer surrounding the property will be maintained and enhanced by a robust multilayer landscaping plan which will mitigate the impact to the neighboring properties. We have to make it clear for the purposes because this is a Type 1 action that this is something that has been offered and has been included by the applicant and is not being imposed upon them as a condition, because we can't do a conditioned neg dec and the applicant has agreed to do all of this. Mr. Fitzgerald can you confirm that you are consistent with this?

Mr. Fitzgerald: Yes, we are consistent with that. We have no concerns with your proposed revisions here.

Mr. DeVaux: No, that actually sounds very reasonable.

Ms. Peck: Yes it is the proper way to do it, very much so.

Mr. Baker: Mr. Sommer, those were good comments and I appreciate those. We have a resolution to issue a negative declaration based on everything that we have looked at and an environmental impact statement will not be required.

Mr. Baker made the motion; Mr. Sommer seconded the motion; all in favor; motion so carried.

Ayes: Mr. Baker, Mr. Moore, Ms. Abrams, Mr. Sommer, Ms. Casey

Nays:

Abstained:

Vote: 5-0

Mr. Baker: My view is that this project does meet the standards for an area variance. I think we've had a very good and robust discussion of what's happening here. I think I'm very very cognizant of the concerns of the neighbors. I recognize the limitations of the law we have that we should be avoiding agricultural land and this should not be placed on prime soils. However, I do say all things being equal this is a pretty good prime location for a solar array given its location adjacent to the powerlines, which we have pointed out are being significantly upgraded, completely separate and apart from this project. It is capable to fully and vigorously landscape around this to mitigate the impacts for the neighbors and I would propose some conditions. I think it is consistent with our policies of the Town to promote renewable energy sources, to preserve open space and it is consistent with the State policy. I think it is incumbent upon all of us as we battle climate change. We recognize what happens as we move forward with renewable energy. Renewable energy by definition is going to require a distributed energy source where we are going to have little sources of generating power all around. In the past it was certain neighbors and certain neighborhoods that bore the burden of large scale power plants. Now it is a burden, I think we all have to share, and I'm not mitigating the potential impact for neighbors. I certainly appreciate their concern and I think we would all have those concerns if one is located near us. I think it is the obligation of our Board and the Planning Board that we mitigate those impacts as completely as possible. Again, this site, taking just this site as we have no other applications before us, I'm comfortable that this is a good site. Does that mean we will approve the next one we see? I don't know, it depends on where it is. But we will give it I'm sure a vigorous and as strict a review as we have given this one. So that's my view going through it. I would like to hear from other people and then we can go through the particular standards for this. I have just a preliminary list of conditions that I think we should discuss too, that I would impose and I was going back through some of our previous minutes and picking things up and stuff that I think in general was agreed to by the applicant. One of them is a condition a priority sign up for New Scotland residents on the community power opportunity application. However, that is done. I required that all the vegetation along Altamont Road be maintained. Maintaining all the existing vegetation along the property lines and increasing the buffer and vegetation to assure additional screening for 217 Altamont Road and also the adjoining property from that. I don't have the number for that property. I think included in that specifically is a double line of trees. It should be designed with the input of a landscape architect and a maintenance bond for an escrow fund to assure placements for the life of the project. A lot of times you see these they require a replacement of anything that dies within the first few years. I think this should be for the life of the project a maintenance bond or an escrow fund to assure that continues. The other one I think I don't know how much it is necessary again but for site plan reviews the Planning Board should require secondary containment, also equipment pads to control any potential spills. There is not much there it's not much of a requirement but it is better safe than sorry and it protects the wells of the neighbors. I think that was my primary list of things. I will open it up for other folks to comment.

Mr. Sommer: I have a comment on your comment about solar and I know Ms. Abrams is very legitimately concerned as I was about the wooded area and they did put in that wildlife corridor, but you know global climate change increases invasive killing of insects and just here in New Scotland and certainly on my land we have

lost thousands of ash trees in the last two years, because of the Emerald Ash Borer, so we are losing a lot of forest because of greenhouse gas emissions and I tend to think that we have to keep that balance in mind. We are moving toward renewables and we are already seeing impacts and those impacts are certainly as damaging to wildlife and to flora than this project, so in the balance we do have to move towards renewable. I kind of echo your sentiment Mr. Baker.

Ms. Abrams: My comments usually touch on aesthetics and in this particular case I think we are surrounding the project with enough landscaping that most people will not even notice that this project is in this location.

Ms. Peck went through the resolution with the Board, which is shown below.

Mr. Sommer: This sentence should be reworded; while neighboring property owners expressed concern that the value of their property would be diminished due to close proximity with a large-scale solar array, there is no definitive evidence supporting these concerns. I'm just raising this for my fellow Board members I think that sentence should be reworded, because I'm afraid that they could read that as if we were kind of discounting or not giving proper weight and the sentence before says the applicant has agreed to provide additional screening. I think it should say and reduce a negative effect, I think it should say neighboring property owners expressed concerns about the value of their property and the mitigation measures being taken were meant to respond to that. The only reason I say there is no definitive evidence supporting these concerns. I get concerned about who had the burden of proof on that and maybe I'm being a little too conscious of it, but I don't know if the members of the Board really have made a determination that there is no definitive evidence. I think what we listened to their concern and tried to mitigate it with what they told us or what they expressed to us. If other people don't share that I'm more than willing to leave it.

Ms. Abrams: I like the language that Mr. Sommer used. It does show we listen and we do care about our neighbors and the residence of our town.

Mr. Baker: I agree. I think that is fine. There has been very little data that would support that as opposed to any other use that goes in, because it's an amorphous question. I do agree. I am comfortable with your suggested changes.

Mr. Sommer: Just reword it to make it what we did, we heard concerns and we tried to mitigate and the applicant agreed to do so and it's an important component. If when we vote, if it passes it's because we are expecting this applicant to come through with robust multilayer planting and funding to make certain it remains that way.

Ms. Abrams: I was wondering whether or not we should include that this project even though its 25 or 30 years is temporary. We aren't putting up a building that is going to last over 100 years or whatever. It can also be put back into agricultural use.

Mr. Baker: I think we have that.

Ms. Abrams: Oh, I don't have that in front of me. Yes, it is very legalese, but okay.  
Mr. Baker: I will list the conditions. I will change the order of these in how we put them in. Ms. Peck will draft it and we will have the final language.

- Maintain the existing vegetation buffer along Altamont Road
- Maintain the existing vegetation along the property lines and increase the buffering and vegetation for assured additional screening from neighboring properties which will include at least a double line of multilayer staggered mature as practicable additional vegetation.
- The Planning Board should consult with a registered landscape architect for a design to maximize the screening.
- There should be a maintenance bond or similar fund to assure the life time maintenance of the vegetation.
- The applicant should comply with all of the Agricultural and Markets Guidelines for the solar energy projects; including minimizing soil disturbance and preserving prime agricultural soils.
- The Planning Board should require secondary containment on the equipment pads.
- The applicant shall provide priority for New Scotland residents for subscriptions to the community solar subscription.
- Escrow account setup or a performance bond.
- There was a suggestion about a condition for a complaint mechanism and an opportunity for review and revisit by the Planning Board to enhance the landscaping. I think that's a good idea.
- Decommissioning bond should be set up too.
- Planning Board should maintain and require a wildlife corridor at least as generous as shown on this plan.

Mr. Baker: In the body of the resolution that we recognized the comments of the Albany County Planning Board, but we don't feel the County has identified any county wide impacts or inter municipal impacts any different from the factors that this Zoning Board considered in its review of the application. Therefore, we felt it appropriate to override their recommendation.

Mr. Baker made the motion to grant the area variance as set forth in the resolution with the accompanying conditions; Mr. Moore seconded the motion; all in favor; motion so carried.

Ayes: Mr. Baker, Mr. Moore, Ms. Abrams, Mr. Sommer, Ms. Casey

Nays:

Abstained:

Vote: 5-0

**New Business:**

- 1) **Variance application # 545:** Application submitted for an area variance by James Cramer to request relief from Article XVI, Section 190-112, Table #2 to allow for a dwelling to be constructed 40' from the front property line. The parcel is located at 28 Whitbeck Road, located in the hamlet development extension zoning district, and is identified as New

Scotland Tax parcel # 84.-1-9. The front setback requirement in the HDE district is a 5' minimum and 20' maximum. This request is for 20' of relief. The parcel received site plan approval by the planning board in January with a condition of applying for the variance for the dwelling location.

Mr. Baker: As you know the Planning Board has approved this application. We will schedule a public hearing on this application.

Mr. Elliott: At the scheduled public hearing I will change the map to show exactly what it is and what we are asking for.

Mr. Baker I will make a motion to schedule a public hearing. We will waive the referral to the Planning Board and reduce the notice requirements due to the proximity of neighbors to 500-feet. Ms. Abrams seconded the motion; all in favor; motion so carried.

Ayes: Mr. Baker, Mr. Moore, Mr. Sommer, Ms. Abrams, Ms. Casey

Nays:

Abstained:

Vote: 5-0

**Regular Meeting:**

Discussion/Action: Minutes of December 22, 2020 meeting: Mr. Moore moved to accept the December 22, 2020 minutes and Ms. Casey seconded the motion; all in favor; motion so carried.

Ayes: Mr. Baker, Ms. Abrams, Ms. Casey, Mr. Sommer, Mr. Moore

Nays:

Abstained:

Vote: 5-0

Discussion/Action: 2021 Regular meeting dates: 2/23, 3/23, 4/27, 5/25, 6/22, 7/27, 8/24, 9/28, 10/26, 11/23, 12/21.

**Motion to adjourn:** At 8:50 p.m. Mr. Baker moved to adjourn.

Respectfully submitted,

Lori Saba

**THE NEXT TENTATIVELY SCHEDULED MEETING IS February 23, 2021**

In the Matter of the Application of

Borrego Solar Systems, Inc.

**FINDINGS AND  
DECISION # 544**

For Area Variance #544

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APPEARANCES: ReJean DeVaux, Project Engineer  
Edward Fitzgerald, Esq., Counsel

**Area Variance Application # 544.** Application submitted by Borrego Solar Systems, Inc. for an area variance allowing for the siting of a 5 Megawatt (MW) solar array system with associated access, grading, drainage, and utility improvements on 26.9 acres of Prime Farmland. The requested variance is seeking 100% relief from § 190-58(H)(4) of the Town of New Scotland Zoning Law. The proposed solar project is located on a parcel owned by Steven Burke in the RA Zoning District;

**PREMISES: Altamont Road, New Scotland Tax Id. #72.-1-65**

WHEREAS, at a regular meeting held on July 28, 2020, the instant Application was submitted for consideration to the Town of New Scotland Zoning Board of Appeals (“Zoning Board”); and

WHEREAS, at its July 28, 2020 meeting, the Zoning Board determined that the proposed action was a Type I action under New York State Environmental Quality Review Act and declared its intent to assume Lead Agency status; and

WHEREAS, the project was thereafter referred to the Town of New Scotland Planning Board for recommendation as required by Section 190-74(D) of the Town of New Scotland Zoning Law; and

WHEREAS, at a regular meeting held on October 6, 2020 the Town of New Scotland Planning Board reviewed the proposed application and voted unanimously to issue a negative recommendation on the variance application and further recommended that the Zoning Board seek additional information to help mitigate the impact to prime soils on the site; and

WHEREAS, pursuant to New York State General Municipal Law Section 239-m the Albany County Planning Board issued a recommendation disapproving the proposed project with the following comments:

1. The request does not fulfill the balancing test for area variances set forth in State Statute.
2. Town Law prohibits construction of solar array projects on parcels with prime soil.

3. An agricultural data sheet is not required for an area variance. However, because the issue at hand is prime soils, a survey of surrounding farms and areas may be helpful in determining the appropriateness of this specific area variance.
4. While the property development will require a site plan review, the zoning board should not grant the variances without first consulting NYS DOT on proposed design layout and curb cut changes.

WHEREAS, at meetings held on July 28, 2020, August 25, 2020, September 22, 2020, October 27, 2020, November 24, 2020, December 22, 2020, and January 26, 2021 the Zoning Board, in addition to conducting a site visit on September 17, 2020, considered the following materials and information submitted by the Applicant, and

- Property value impact study dated May 2018;
- US Fish and Wildlife letter dated December 4, 2019;
- Soil Evaluation & Opinion Letter dated March 7, 2020;
- Full EAF, Part 1 dated March 16, 2020;
- Letter from Shumaker Consulting Engineering & Land Surveying, DPC dated April 24, 2020;
- NYSDEC Permit letter dated April 28, 2020;
- NYSDEC email correspondence dated May 5, 2020;
- Area Variance Application Form with support letter dated July 13, 2020;
- U.S. Army Corps of Engineers letter dated July 14, 2020;
- Site Plan dated August 14, 2020;
- Glare Studies dated August 23, 2020, November 27, 2020, and January 12, 2021;
- Shumaker Habitat Study dated September 22, 2020;
- Stantec Consulting Services, Inc. review letters dated September 22, 2020, October 21, 2020, and December 22, 2020;
- Wetland Investigation and Delineation report dated October 17, 2020;
- Truck Traffic Analysis dated December 12, 2020;
- Letter from Steven Burke dated December 23, 2020;
- NYSDEC Division of Fish and Wildlife letter dated December 24, 2020;
- Letter to Zoning Board of Appeals from Edward Fitzgerald, Esq. dated January 8, 2021;
- Deed;
- Thatcher Park Photo Report, undated;

WHEREAS, a public hearing, being duly notices, was held on the application on November 24, 2020, December 22, 2020, and closed on January 26, 2021; and

WHEREAS, comments were received at said public hearing by the neighboring properties regarding concerns over screening and a negative effect on property values related to neighboring properties proximity to the proposed project;

WHEREAS, in reviewing the evidence and testimony received, the Zoning Board of Appeals makes the following findings:

- A. For the reasons set forth in the accompanying SEQR Resolution, the proposed project will not have a significant impact on the environment;

- B. While the parcel is not actively farmed, with recent history indicates that the property has been used as a hay field and consists of prime farmland as defined in the Town of New Scotland Zoning Code.
- C. The Applicant is seeking 100% relief from the Town of New Scotland siting requirements for large scale which prohibits the siting of a solar array on prime farmland;
- D. There is not an alternate site on the subject parcel that will allow for a reduction of relief sought by the Applicant;

WHEREAS, all evidence and testimony having been carefully considered, the Zoning Board reviews the application under the standards set forth in Sec. 190-76(B) of the Town of New Scotland Zoning Law and reached the following conclusions:

**1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

No, with the inclusion of significant screening for adjacent property owners. The subject parcel is a relatively flat area of land that is naturally screened from Altamont Road and neighboring properties. The Applicant has agreed to provide additional screening to prevent and/or reduce any negative aesthetic effect on neighboring parcels, the roadway or escarpment. While neighboring property owners expressed concern that the value of their property would be diminished due to close proximity with a large-scale solar array, there is no definitive evidence supporting these concerns. Further, concerns over proximity are to be mitigated by significant screening between the proposed property and the neighboring properties.

**2. Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance.**

No. The subject property consists almost entirely of prime soils or soils of statewide importance and, therefore, the project cannot be sited on the property without the requested variance.

**3. Whether the requested area variance is substantial.**

Yes. The variance request seeks 100% relief of the Town of New Scotland Zoning Law.

**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the district or neighborhood.**

No. The proposed project is a clean energy project that is consistent with the promotion of a climate smart community as recommended in the Town of New Scotland Comprehensive Plan. Notwithstanding the above, the project will have an impact on agricultural land in the Town of New Scotland and surrounding neighborhood. The Zoning Board has determined that the project will not have a significant adverse effect on the environment. However, in order to mitigate its

effect on future farmland as well as account for the perceived purpose of the Town of New Scotland's siting considerations relative to prime farmland, application of New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands will reduce and/or eliminate the possibility that the project will irreversibly convert agricultural land to a non-agricultural use.

5. **Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.**

Yes.

NOW, THEREFORE, BE IT RESOLVED, that based on the evidence and testimony received in relation to the instant Application and as further discussed above, the requested area variance to allow a large-scale solar array to be sited on prime farmland is granted subject to the following conditions to mitigate its impact on the surrounding neighborhood and district:

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Jeffrey Baker  
Chairman, Zoning Board of Appeals

Ayes:

Nays: 0

Abstain: 0

**TOWN OF NEW SCOTLAND  
ZONING BOARD OF APPEALS**

**SEQRA RESOLUTION**

Area Variance Application #544

At a regular meeting of the Zoning Board of Appeals held on January 26, 2021, the following Resolution was offered by Board Member Jeff Baker, who moved for its adoption and was seconded by Board Member \_\_\_\_\_.

WHEREAS, the Town of New Scotland Zoning Board of Appeals (“Zoning Board”) has received an application from Borrego Solar Systems, Inc. for an area variance allowing for the siting of a 5 Megawatt (MW) solar array system with associated access, grading, drainage, and utility improvements on 26.9 acres of Prime Farmland. The requested variance is seeking 100% relief from § 190-58(H)(4) of the Town of New Scotland Zoning Law. The proposed solar project is located on a parcel owned by Steven Burke in the RA Zoning District and is identified as Town of New Scotland tax parcel # 72.-1-65; and

WHEREAS, at its regular meetings held on July 28, 2020, the Zoning Board received the subject application along with a completed Part 1 Full Environmental Assessment Form; and

WHEREAS, the State Environmental Quality Review Act (SEQRA) regulations require that no agency shall carry out, fund, or approve an action until it has complied with the requirements of SEQRA; and

WHEREAS, the proposed project is a Type I action under SEQRA requiring coordinated review; and

WHEREAS, at its July 28, 2020 meeting the Zoning Board identified the Town of New Scotland Planning Board as an Involved Agency under SEQRA and directed a Notice to Involved Agencies declaring the Zoning Board’s intent to assume Lead Agency Status; and

WHEREAS, the Town of New Scotland Planning Board at a regular meeting held on August 4, 2020 agreed to the Zoning Board’s Lead Agency request; and

WHEREAS, at a regular meeting held on October 6, 2020 the Town of New Scotland Planning Board reviewed the proposed application and voted unanimously to issue a negative recommendation on the variance application and further recommended that the Zoning Board seek additional information to help mitigate the impact to prime soils on the site; and

WHEREAS, pursuant to New York State General Municipal Law Section 239-m the Albany County Planning Board issued a recommendation disapproving the proposed project with the following comments:

5. The request does not fulfill the balancing test for area variances set forth in State Statute.

6. Town Law prohibits construction of solar array projects on parcels with prime soil.
7. An agricultural data sheet is not required for an area variance. However, because the issue at hand is prime soils, a survey of surrounding farms and areas may be helpful in determining the appropriateness of this specific area variance.
8. While the property development will require a site plan review, the zoning board should not grant the variances without first consulting NYS DOT on proposed design layout and curb cut changes.

WHEREAS, at meetings held on July 28, 2020, August 25, 2020, September 22, 2020, October 27, 2020, November 24, 2020, December 22, 2020, and January 26, 2021 the Zoning Board considered the information provided in the EAF, along with supplemental information provided by the Applicant and comments on the application provided by the Town Engineer, and

WHEREAS, information and materials considered by the Zoning Board include:

- Property value impact study dated May 2018;
- US Fish and Wildlife letter dated December 4, 2019;
- Soil Evaluation & Opinion Letter dated March 7, 2020;
- Full EAF, Part 1 dated March 16, 2020;
- Letter from Shumaker Consulting Engineering & Land Surveying, DPC dated April 24, 2020;
- NYSDEC Permit letter dated April 28, 2020;
- NYSDEC email correspondence dated May 5, 2020;
- Area Variance Application Form with support letter dated July 13, 2020;
- U.S. Army Corps of Engineers letter dated July 14, 2020;
- Site Plan dated August 14, 2020;
- Glare Studies dated August 23, 2020, November 27, 2020; and January 12, 2021;
- Shumaker Habitat Study dated September 22, 2020;
- Stantec Consulting Services, Inc. review letters dated September 22, 2020, October 21, 2020, and December 22, 2020;
- Wetland Investigation and Delineation report dated October 17, 2020;
- Truck Traffic Analysis dated December 12, 2020;
- Letter from Steven Burke dated December 23, 2020;
- NYSDEC Division of Fish and Wildlife letter dated December 24, 2020;
- Letter to Zoning Board of Appeals from Edward Fitzgerald, Esq. dated January 8, 2021;
- Deed;
- Thatcher Park Photo Report, undated; and
- Comments submitted by neighboring property owners and the general public.

WHEREAS, the Zoning Board in reviewing the information provided has given careful consideration to the criteria set forth under 6 NYCRR Part 617.7(c); and

NOW, THEREFORE, BE IT RESOLVED that the Town of New Scotland Zoning Board of Appeals hereby designates itself as lead agency for the proposed action; and

FURTHER RESOLVES AND DETERMINES that the following:

- i. The project will not result in modification of or impact on geographical features, surface water, flooding, existing air quality, any critical environmental area (CEA), transportation systems, or human health.
- ii. While the proposed project will result in a physical disturbance of land, erosion measures will be put in place to control runoff during construction with a Stormwater Pollution Prevention Plan developed for the site in compliance with NYSDEC and Town of New Scotland requirements. The panels will be installed on a system of steel posts and racks, minimizing to the greatest extent practicable ground disturbance with installation.
- iii. Project consultants have coordinated with the United States Fish and Wildlife Service, New York State Department of Environmental Conservation - Division of Fish and Wildlife, and the New York State Department of Environmental Conservation - Division of Environmental Permits regarding potential impacts to threatened and endangered species. The Northern Long-Eared Bat, Indiana Bath, Least Bittern, Sedge Wren, and Pied-billed Grebe were identified to exist within close proximity to the project. Tree clearing is proposed to be performed between November 1<sup>st</sup> and March 31<sup>st</sup> to avoid impacts to the Indian Bat and Northern Long-Eared Bat. The project consultants conducted a Habitat Survey of the forested portion of the site which indicated that habitats within the forested portion of the site did not represent instances of unique habitat, flora, or fauna species and would not result in undue strain to flora and fauna within the surrounding contiguous habitats. The Town Engineer conducted a review of the various state and federal agency letters, along with the report of the project consultant, and determined that the project does not appear to have an impact on critical habitats.
- iv. The project will have an impact on agricultural resources. While the parcel is not actively farmed, with recent history indicating that it has been used predominately for hay, it is proposed to be sited on prime farmland consisting of prime soils or soils of statewide importance. The project Applicant has agreed to use New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands. The project life is approximately 25 to 30 years and can be returned to pre-development condition following decommissioning. As such, the proposed project will not irreversibly convert agricultural land to a non-agricultural use.
- v. The project consultants have performed Glare Analysis which was supplemented in response to comments by the Planning Board, Zoning Board, and Town Engineer. Concerns were raised regarding the impact to views from the escarpment and John Boyd Thatcher State Park as well as possible glare impacts to neighboring residential homes and vehicles. The

updated Glare Analysis indicates that any potentially significant impact caused by glare from the panels will be mitigated by natural terrain and vegetative buffers, both naturally occurring and as proposed by the Applicant.

- vi. The project is within an archaeologically sensitive area. The project is within an archaeologically sensitive area. A letter received from New York State Parks, Recreation and Historic Preservation dated March 20, 2020 stating that no properties, and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.
- vii. The project will not cause a significant increase in the use of any form of energy. Minor energy uses may be required during clearing, grading, and construction activities on the project site. The project will have a net positive impact on the use of energy by increasing access to clean, renewable energy sources for residential households.
- viii. The project will result in temporary increase in noise during construction which is not deemed significant. The project will result in an increase to outdoor lighting with impact on neighboring properties to be minimal. The vegetative buffer surrounding the property will mitigate impact to neighboring properties. The proposed lighting will be depicted in detail during site plan review to determine if any additional mitigation methods are necessary.
- ix. The proposed use is permitted in the RA Zoning District and is consistent with the promotion of a climate smart community as recommended in the Town of New Scotland Comprehensive Plan. However, the siting of the project on prime farmland is prohibited under the Town of New Scotland Zoning Law. The project is currently being reviewed for an area variance and the Applicant has provided evidence that there is no ability to site the project on the parcel without siting the array on prime farmland. Apart from the siting location, the project otherwise complies with the Town of New Scotland Zoning requirements. Implementation of guidelines through NYS Division of Agriculture and Markets may be used mitigate the impact on prime farmland.

BE IT FURTHER RESOLVED, based upon the information and analysis above and the supporting documentation referenced, the proposed action will not result in any significant adverse environmental impacts; and

BE IT FURTHER RESOLVED that this determination of significance shall be considered a Negative Declaration made pursuant to Article 8 of the Environmental Conservation Law and the Chairman of the Zoning Board of Appeals is hereby authorized to file any and all appropriate notices so that the intent of this Resolution is carried out.