

ZONING BOARD OF APPEALS

**Town of Lewiston 1375 Ridge Road Lewiston New York
Thursday – February 10, 2022
ZB 2022-1**

Present: Conti, Machelor, Maggard

Absent: Heuck

Presiding: Norman Machelor

Machelor: I would like to call the meeting to order and ask everyone who is able to stand, to stand for the Pledge of Allegiance.

A motion to approve the minutes of December was made by Conti, seconded by Maggard and carried.

Machelor: If you have not attended a Zoning Board of Appeals meeting before the task of the Board is to grant or deny requests to vary the Town of Lewiston Code, hence a variance request to allow or disallow a project brought to us because it cannot be built or preformed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance to continue the project or denial to prohibit a project as presented.

Public Hearing Open

Borrego Solar Systems, Inc., representing Sanborn Area Historical Society, Inc., requests a use variance to allow for an interconnection to National Grid existing utility pole located in a General Business (B) district on property located at Niagara & West Streets that ties in to the property at 2660 Saunders Settlement Road, SBL# 118.00-1-22.12, to allow for a solar array.

Machelor: Is there anyone who would like to speak to this issue. Please come to the microphone and identify yourself.

Steve Long, Borrego Solar. We are here tonight to request a variance for our solar project that went in front of the Planning Board and they realized there was an issue with the zoning. We are here tonight to present what we're going to request for a variance. I have Marc Kenward from Erdman Anthony. He is our civil engineer on the project and he will explain the details.

ZB 2022-1A

Marc Kenward, Erdman Anthony Consulting Engineers. We're assisting Borrego with the civil site work plans and entitlement permitting for this project, which will construct and operate a 5 mega-watt community solar energy system at 2660 Saunders Settlement Road in the Town of Lewiston, located on the south side of the road, approximately 650' west of Bridgeman Road. The site has historically been used as active and tilled farm land, although in the last 2-3 the central portion has remained fallow and reverting back to brush. The southern portion and along the northwest portion of the property are still actively tilled farm land. The northwest portion remains untouched. The site is owned by the Sanborn Area Historical Society which houses a museum and event center on property at the northern portion of the site. That will remain untouched. The project site area is approximately 59.53 acres. It has frontage on Saunders Settlement Road and is 1,952' deep. The project will encompass approximately 42.7 acres of the central and southern portion furthest from Saunders Settlement Road. There will be 2 fenced arrays totaling 22.35 acres. One array will be on the north side of the stream. It bisects the property. One will be on the south. We were also looking at putting all access to the site; the Historical Society has a strip of former railroad right-of-way that extends from the southeast corner of the site along the railroad all the way up to the intersection of West and Niagara Streets in the hamlet of Sanborn. The issue that came up was that most of the site is zoned properly for the community solar project. It's zoned RR, rural residential. There is a small portion of this former railroad property that landed in a general business district. I will point out in the application this at one time prior to 2012 was zoned industrial which would have been an acceptable use for the solar. The issue came up as we were going to use this for access to the site and we were also going to have what we called a pole farm interconnect up here in this piece that was zoned general business. What we learned at the Planning Board meeting was that because this was all connected to the solar project it was not an allowed use. We couldn't even use it for construction or temporary access to the site. We have reworked planning and access to the site will be coming from Saunders Settlement Road along an existing driveway and farmland. We'll have access on the north end but the interconnect still has to come out to a pole at the corner of West and Niagara Street because that's where National Grid and Borrego agreed as they were getting started on the project for the planned point of interconnection. As I said we had the pole farm which is a series of 5 poles with interconnection equipment mounted on them. We've moved that pole farm back to here, westward to be on the area zoned RR. Now all we're trying to do is connect the pole farm to the National Grid pole at the corner of West Street and Niagara Street. We're also now going to go underground through this general business zone to get to that. In the end the thought is there will be nothing visible for this interconnection on this piece of land that's zoned general business. We're here tonight to present our case for that use variance to allow us to....our final piece of interconnection to be underground and connect our site and the pole farm, the interconnection poles to that National Grid pole at the corner of West and Niagara Street. I have a statement from the Historical Society about it and I would like to enter that in to the record. I'll give you a copy of it. "The income from the Sanborn Area Historical Society Solar Project is essential for the Sanborn Area Historical Society to continue to serve the community, preserving the rural heritage of the area and educating on the area's history. Prior to the

ZB 2022-1B

pandemic the Sanborn Area Historical Society was falling short of meeting income requirements despite the best efforts to increase fundraising. With the pandemic, fundraising has been more difficult. The Sanborn Historical Society has had to do things like postponing the loan payments on the museum property but the loan payments must resume in 2022. The post pandemic environment will make it even more difficult for fundraising while expenses increase each year. As a result, the income from the Solar Project is vital to meet our budget requirements.” I believe their intent is to create a fund to help fund it continually after the lease is up on the solar farm. They will basically create a fund that they can draw off of for even operation and maintenance costs beyond the 25-year lease of the project. I’m open to questions now if you have them. Of course, this is a hearing so other people can speak.

Machelor: Does anyone else wish to address this? Questions from the Board.

Ron Craft, 105 North 4th St.: I’m recently on the Planning Board and now I’m on the Museum Board. I see what these people are doing. This is crucial to keep this thing going. We’re connected with the school now. The kids are seeing what’s happening in the past and the parents are getting involved. We really need this. That’s all I have to say. Thank you.

Machelor: Anyone else?

Conti: Marc I have a question. On the use variance there are 4 criteria we have to match on all 4 criteria. The one is “the property is incapable of earning a reasonable return initial investment if used for any of the other allowed uses in the district”, like a dollar and cents proof. Do you have anything like that? Do you have anything that shows that property really can’t be used for anything else. We’re talking just that strip, the part that is zoned business, that little piece there.

Kenward: It’s about 50’ width I believe.

Conti: I think it’s 40’, we looked at it earlier.

Kenward: Given what little I know. I know some about the requirements for that little strip of land. It really can’t function for anything other than what it has been which has been farm lane access to the rear of the property for the farmers. There is also a farmer who also accesses it and crosses the train crossing for farm use down here in the RR portion of that former right-of-way. We didn’t find anything in the deed about that access but somebody has been using it for access to farm land over here. Given the smallness of the lot, it really can’t be built on with structures or any other use like that. It’s always been intended for access only. I don’t think you could construct anything on it other than just a driveway. What we want to do is provide access, there will be an easement to National Grid so they can also access the one or two poles that are part of their interconnection back here on the RR where we have the pole farm. I don’t think any of that strip is buildable for anything else other than an access right-of-way if you will.

ZB 2022-1C

Conti: Tom, what would we need at that point?

Seaman: It's a unique parcel. Often times when an applicant is seeking a use variance, they will submit an affidavit from a realtor or appraisal or something from somebody that the Board can have in the record that shows what you've just said, which in some respect does make sense. It's only 40' wide. It's a strip of land that happens to be zoned business. The question could they put a business there, not with the current code. I guess maybe what the Board is asking that, let me say a couple things, they can't give a decision today because they're waiting for a SEQRA determination from the Town Board. A decision won't be made on it today. Maybe what the Board is asking is a little additional submission that you could put dollar wise.....

Conti: All the other criteria, everything falls in to place. We understand and kind of agree with what you're saying, but a use variance is a very hard thing in New York State. If we can get that one other piece just to show that financially we cover everything on it.

Seaman: Because of the split zone, if you could really just focus in on that business zoned area.

Conti: You don't need the RR part of it. Just that little strip.

Seaman: That particular area cannot be utilized for anything else. The criteria is could you see a reasonable rate of return for that portion for any of the other allowable uses within a business district. That is the conversation that they need to have with themselves. It would be very helpful for them in case they're ever challenged in any way to have some additional submission on that.

Kenward: I think between the 3 entities here which is myself, the engineer, Steve the project developer for the applicant, and with some further assistance from the Historical Society Board, we probably could come up with something reasonable.

Conti: Everything else falls in to place. We have to hit all 4 criteria on this.

Kenward: I can look at it from the setback perspective Steve, I know that.

Conti: It's only that strip. The rest of the RR part don't even worry about. It's just that little strip there.

Maggard: Is there any other way that you can put together the same format but staying in the RR?

Kenward: What that would mean and this is where some more financial hardship comes in place, if we have to go back to National Grid, you have to find a different point of connection which the next obvious place would be out at Saunders Settlement Road. Then we are starting

ZB 2022-1D

all over with National Grid and it's another 1 plus year delay if it's possible to make that connection. There are other projects in the que, you have to get in the que with National Grid and they consider your project. If we have to move the point of connection then we have to start all over with National Grid. It would be another year delay.

Conti: The financial hardship would be way too much for that.

Long: Then you're looking you're in the que in an early spot and then you go to the end.

Machelor: That's the other side of the financial hardship too. This is the best thing to do financially and that land is not really available for any other use within the parameters of zoning. Does anyone else have any questions.

Public Hearing Closed

Machelor: Since we can't make a decision, should we table it or adjourn?

Seaman: You don't need to make a motion to table it. You can just adjourn. You can even leave your public hearing open. I would recommend that you leave the public hearing open. I would recommend you take a motion to leave the public hearing open. The only thing that really does for you is, when you close the public hearing, it really starts time frames for making decisions. There is no reason to close it right now. Give the applicant time to get in to what they need to. I would leave it open. I would leave it on the agenda. Leave it on the agenda for the next meeting.

Long: Can I ask a question on approval sequence? I thought you said Town Board has to act on SEQRA before they can make their decision?

Seaman: I believe that the coordinated review time frame has run and the Town Board will bethe next time you guys come here.that they receive a recommendation from our engineers in terms of what the SEQRA determination would be. Then if they do and they negative dec it then this Board will be able to make a determination at the next meeting.

Long: Does the Town Board need recommendation from the Planning Board?

Seaman: In terms of the SEQRA, they can act without the Planning Board's recommendation on SEQRA. You still need to go back to Planning and work through Planning to get their recommendation on the Special Use Permit and Site Plan Approval.

Kenward: We are going to the County February 28th.

ZB 2022-1E

Seaman: That has to happen before the Town Board makes a decision. If everything falls right in place then sometime in the next meeting or two the Town Board would hear a SEQRA. Assume for a moment they negative dec it, then it opens the doors for these Boards to make their determinations. This will be a final determination which is why they need to do SEQRA on it. Planning does a recommendation to the Town Board. So, you've been through it for the Special Use Permit. They recommend up to the Town Board who makes the final determination. The Town Board's final determination cannot happen before they hear from the County but it sounds like that will have already taken place as well. So, you're probably looking....

Conti: Our next meeting is March 10th.

Seaman: The Town Board meets on Monday and then again two weeks from then. They meet twice between now and the time you guys meet again.

Conti: We should have the SEQRA for our March 10th meeting then.

Machelor: Tom, say again when it has to go back to County Planning.

Seaman: They can refer their project to the County Planning almost whenever. It sounds like they already have. The County needs to make their decision before the Town Board ultimately gives the final stamp approval on the Special Use Permit that they would be considering.

Kenward: Forgive me I just want to clarify, the Town Board they won't meet, their first meeting after the County makes a recommendation would be March 14th.

Seaman: You don't have to worry about the County so much. You're already on the County agenda for the next meeting?

Kenward: We think we are. We don't have that confirmed yet.

Seaman: That just has to happen before the Town Board makes their determination. The Town Board won't make their determination until the Planning Board makes their recommendations.

Kenward: So, the Town Board's SEQRA doesn't have to wait for County recommendation?

Seaman: No. The Town Board should consider the whole totality of the project in terms of SEQRA and make their determination that opens the door for this Board to make determination on this application. You go to the public hearing with the Planning Board, assuming the Planning Board recommends approval then it goes over to the Town Board for their final approval. As long as you've been to the County before the Town Board makes that final

ZB 2022-1F

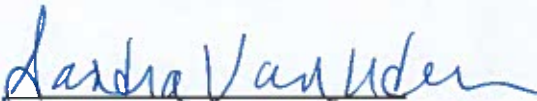
approval, then the Town Board's final approval would be your approval. Usually when you leave your hearings open it's best to do that by motion.

A motion to keep the public hearing open was made by Conti, seconded by Maggard and carried.

The next meeting will be March 10, 2022, at 6:30.

A motion to adjourn was made by Conti, seconded by Maggard and carried.

Respectfully submitted,



Sandra VanUden
Zoning Secretary



Norman Machelor
Zoning Chairman

NOTICE OF PUBLIC HEARING

Notice is hereby given that a Public Hearing will be held by the Zoning Board of Appeals of the Town of Lewiston on February 10, 2022, at 6:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following application:

Borrego Solar Systems, Inc., representing Sanborn Area Historical Society, Inc., requests a use variance to allow for an interconnection to National Grid existing utility pole located in a General Business (B) district on property located at Niagara & West Streets that ties in to the property at 2800 Saunders Settlement Road, SBL# 118.00-1-22.12, to allow for a solar array.

Information concerning this request is on file and available for inspection during normal business hours at the above-named office. All citizens and persons of interest will be given an opportunity to be heard.

Norman Machelor
Zoning Chairman
NW#295565

2/4/2022