

**CHEMUNG COUNTY PLANNING BOARD MEETING  
DISCUSSION/MOTIONS  
JUNE 29, 2017**

**A. TOWN OF CHEMUNG – Zoning Area Variance – Roberts**

**DISCUSSION:** R. Olthof reported that property is located in a Residence Agricultural zoning district. Petitioner is seeking a zoning area variance to construct a replacement deck around their swimming pool. There's also a shed that they'd like to put up on their property. The problems that they have under the Town's present law is that it is a pre-existing, under-sized parcel. It has less than the three acre minimum size required. So this is basically an enlargement of the property's non-conformity in that particular zoning district. The new deck would have the edge sitting 24' from the property rear boundary. In that zoning district there is a minimum rear-yard setback of 40'. Petitioner is seeking relief from that standard. The shed from what we can see is fine where it is planned to be located. There's no problem as far as the distance from the property edge. We have seen this before with other properties. In the Town there are quite a number of undersized properties relative to the Town's minimum required acreage for properties in RA zones. There are a number that are undersized. Every one of them when they've wanted to do an improvement have had that problem and require an area variance. From our standpoint there's absolutely no impact on county or intercommunity interests. We would recommend determination by the Town of Chemung Zoning Board of Appeals based on the standards for approval of area variances under the New York State Town Law. M. Yunis said we've made comment before to the Town to which R. Olthof added that the board suggested that they review that, to revisit the whole question of minimum acreage. M. Yunis asked if we should suggest that again or local determination to which R. Olthof noted that you could recap that. He added that it's basically our recommendation. Olthof advised the petitioner, who was present, that this releases this item to the Town for their determination.

**MOTION:** Made by Mary Jo Yunis, seconded by Andrew Avery, recommending local determination since no Countywide or intercommunity interests would be directly affected by the proposed zoning area variance. Members in favor, all; opposed, none. Motion carried.

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**B. TOWN OF HORSEHEADS – Zoning Area Variance – Purpura**

**DISCUSSION:** R. Olthof reported that property is located on Old Ithaca Road in a Neighborhood Service zone within the Town. Petitioner is proposing to erect a 12 square foot sign to improve the visibility from Ithaca Road. I think you can see on the little site plan where it would be located. M. Yunis asked if it were the site of Jerlando's to which R. Lewis answered it was the Angry Oven previously.

R. Olthof said I think you can see where it is located. The article that they are siting relates to the setback requirement. It's a little hard to tell on that plan whether they're encroaching on the required setback area. Where it's located it looks like it might be a little bit of concern in terms of site distance on Old Ithaca Road. As far as the status of this, the Town of Horseheads Zoning Board of Appeals acted to grant the variance. That is the information we have. They have approved it. The only other question is, is there another jurisdiction like Andy to which M. Yunis asked A. Avery if he was worried about it. A. Avery replied that when it's that close to Ithaca Road, I can't tell from this drawing where that sign really is in relation to my pavement. So, yeah, I worry about it a little bit. That's the only referral that I had any real concern about. R. Lewis said doesn't it say right here--see your edge of the right-of-way is right here where it says lawn and then it says proposed sign. It says it looks like there's a dimension that I can't read it. R. Olthof said it is one foot from the right-of-way. A. Avery replied that if that is indeed the right-of-way is my question. He is just calling it right-of-way, but I'd almost like to see it on an aerial so I can see how far away it is from the edge of the pavement, because the first time I throw snow and it hits that thing, he's going to be calling. R. Lewis asked from him to do that though, do they still have to get a permit from the county to work near the right-of-way to which A. Avery said only if it is in the right-of-way. R. Lewis said so he is just goosing it then. A. Avery did not know why he needs to be so close to the right-of-way. It looks like a big lawn area. R. Lewis said it is the old J & L Dairy from years ago. A. Avery said they have an aerial here. M. Yunis asked if this was Jerlando the whole time and they just keep changing the name. R. Olthof said they're going to call it Fratello's now. A. Avery said that an aerial photo would have radiuses. This puts it very close to my edge of the pavement. I've got to see if goes back. R. Olthof said he thought it should be communicated. R. Lewis said that whatever we act on should be with some comments to which R. Olthof agreed. A. Avery said he would make a comment that it is not clear exactly where this is in relation to the edge of the pavement. If it is where he thinks it is, it is too close. M. Yunis said why don't we turn it down? Why don't we deny it based on needing more information on exact location or we're concerned it is too close to the edge of the pavement? A. Avery said he thought what they're calling the right-of-way in this case isn't a surveyed right-of-way but my edge of the pavement. M. Yunis asked if A. Avery's right-of-way is further in to which A. Avery answered that it is because of drainage. M. Yunis said if that was the case if it was further in, then you would have less of an issue with it as opposed to. . . to which A. Avery replied that he just cannot tell from this exactly what's what, and that is concerning. Maybe it is 10' beyond the edge of pavement and then maybe it's fine, but I can't tell for sure. R. Lewis said petitioner wants it close so people know there's a pizza joint there. He asked R. Olthof if he would be recommending deny it with comments. M. Yunis you can't tell how far in off the. . . to which R. Olthof said that you could recommend denial of it. A. Avery said Old Ithaca Road was a state road at one time. And it's going to have a defined right-of-way versus a user right-of-way, so that should be very easy for him to determine where the right-of-way is, show the pavement edge on that, show the right-of-way edge on it, both of you mentioned showing where the sign is in relation to the right-of-way and the pavement edge. That is what I am looking for. M. Yunis said we could deny it based on needing more information and outline exactly what A. Avery is

looking for. R. Olthof said we could note that there is a concern. M. Yunis said if we table it, isn't there something about the 30 days? Actually we would be within the 30 days. R. Olthof said we would be within the 30 days. That might have to go for override. It would have to come back to them for override. M. Yunis said they've already approved it. She said she would move for denial based on needing more information and potential impact on county interests, on the highway and outline what Andy is looking for. A. Avery said he would recommend that the petitioner contact his office regarding this item.

**MOTION:** Made by Mary Jo Yunis, seconded by Joseph Peters, Anthony Pagano abstaining, recommending Town denial of the variance based on the absence of sufficient information concerning the proposed sign's location in relation to the County's right-of-way. The Board agreed that the applicant should contact the Commissioner of Public Works directly to address this potential County concern. Members in favor, all; opposed, none. Motion carried.

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**C. TOWN OF BALDWIN – Conditional Use Permit – Delaware River Solar, LLC**

**DISCUSSION:** R. Olthof reported that we have a pair of referrals from the Town of Baldwin and noted that it has been years since we have received any referral from the Town of Baldwin. There are two projects, two different properties involved. Both are located in agricultural use land in portions of the Town. There's a proposal on the table for approval of conditional use permit involving site plan approval by the Town Planning Board of solar energy systems in both cases. In the one case on the Breesport-N. Chemung Road we've got two individual parcels contiguous with each other. The overall size of the parcel on Breesport-N. Chemung Road is about 26.5 acres. The project size on that is about nine acres roughly. The other project which is the same kind of a request in both cases. Breesport-N. Chemung Road is two parcels with combined acreage of 26.4, a 13-acre project area. In the case of Turner Road is a 10-15-acre project area with overall land parcel about 43.8 acres in size. You have in your package all the particulars showing the layout of both of these projects. They both require approval of a conditional use permit which under the Town of Baldwin law falls in the purview of the Planning Board, and it does involve the site plan approval process. What the petitioner is also seeking, and this I don't think this was reflected in the original package we received from the Town, is the desire to actually rezone the properties. Currently, they are Residence Agricultural zoning classification, and the desire in both cases is to have the Town Board rezone those to Commercial. Petitioner's Attorney George Winner confirmed that desire. R. Olthof said there are two actions but a couple different bodies in the Town. As far as the status of review, the Town Planning Board has conducted, from the standpoint of its approval, the SEQR review and made a determination of non-significance under SEQR for that. They have fairly, thoroughly evaluated the various impacts, loss of agricultural viable land, impacts on drainage, noise, traffic generation, energy consumption, all that, and concluded that the projects proposed would not have a significant impact on the

environment. The only additional point I think that they may want to consider is to with the addition of the rezoning make clear that that is part of the action and simply allude to the fact that the impacts of the project is a result of the rezoning would be unchanged. That is just basically to clarify their environmental record for the project. M. Yunis asked why they did they need to rezone the property to which R. Olthof said he thought that that was just a desire and then said he didn't think that they needed to because under the present zoning Residence Agricultural the use is allowed subject to just approval of a conditional use permit is my understanding. Attorney George Winner representing the petitioner said that the Town wanted it rezoned. The Town believed it should be rezoned as a subject to conditional use permit. M. Yunis asked wouldn't that constitute spot zoning to which R. Olthof answered that he thought that if there were a finding by the Town Planning Board that that basically is consistent with what they consider to be long range growth objectives of the Town they would probably have adequate grounds to make that case. As far as putting together a record of why they are doing it and whether it is or not a spot zoning issue, that would be the closest they could come to address it. Particularly if that is the Town's desire to do rezoning, it is really incumbent upon them to make the case that that is consistent with what they consider their plan for the Town. Winner said that in the environmental impact assessment that was submitted that it indicates that the Town is requesting that the property be rezoned. That was in the requirements. M. Yunis noted that R. Olthof had felt that it was allowed under the current zoning to which R. Olthof expounded by noting that the initial pass that their consultant Hunt Engineers assisting the Town on the environmental review had a conclusion in one of their submissions to the Town that no rezoning was under consideration. But what we received, in fact we just received this week amended data from the engineer or the company itself it indicated that there was a zoning change. Winner said it was from our engineer. R. Olthof said that in any of these it is just clarifying what they were directed by the Town to do. I think that to the extent that it is of the Town's volition to have it rezoned to that, then really it is a question of can they document in one way or another for the record that that is what they consider to be consistent with the plan. That is really what the basis for a rezoning like that would be. You are rezoning because you figure that that is desirable from the long range standpoint relative to the Town. And that would be an action by the Town Board after a public hearing. M. Yunis asked if they dealt with end-of-life type of stuff to which R. Olthof said as far as decommissioning, to which Winner answered that they have entered into agreements with the Town for decommissioning. M. Yunis asked how that works. Winner noted that they pay a certain amount of money every year. R. Olthof asked if that would be like an escrow account to which Winner confirmed. Winner said it was a site review. R. Olthof said as far as the status of action by the Town on this, is this still in the process of going through a storm water permit review to which Winner answered that he did not know if storm water review is involved with it. R. Olthof asked A. Avery if it would be a SWPPP on this or was there sufficient acreage affected by this to which A. Avery said it has sufficient acreage, but said that the question is, is solar exempt, he did not know. Winner said that he did not know R. Olthof said he did not think that there were. It would be simply if there was a necessity to do it. It looked like there was a SPDES application filed from what we have in your package. It looks like it's undergoing one or another type of review. The only

other thing in terms of permits that I could see that would come into play on that might be if there's any impact on driveway from the county roadways. Winner said we need approval from county with the N. Chemung-Breesport Road access. A. Avery said we would require a highway permit. R. Olthof said as far as additional actions on this by the Town, to which Winner interjected that there would not be a whole lot of traffic. R. Olthof agreed and said that it did not look like a traffic generator in any way. He continued saying that in terms of action by the Town there would be a public hearing. They've also filed from a financial standpoint for some assistance from the IDA for the PILOT agreement. Winner said that that is pending. R. Olthof said it is pending right now. That has been acted on. So it is just a question of the final result. There was a hearing on that just this week as I understand it. Winner said we are in negotiations with the Town with respect to a host community agreement and the like. This is an \$11 million deal between the two projects. So it is a substantial investment. R. Olthof said in terms of reviewing this I spoke with Town of Baldwin Town Planning Board Chairman Ashur Terwilliger, and from the Town's standpoint they are contented that the project as proposed is basically adequate. There are no particular problems that are posed from the Town's standpoint. The lands in question are not actively in farm use. Any potential loss of farmland is of relatively minor importance from the Town's standpoint. It is an agricultural district, but the applicants have gone ahead and done the filing of the Agricultural Data Statement which they have to do under the law. From the standpoint of the county or intercommunity interests, we really don't see any adverse impact from what's proposed with this at all. M. Yunis asked if it was open land right now to which R. Olthof answered one is of some degree of farming involved, but it is not an active high production. And the other as I understand it doesn't have any agricultural activity at all on it right now. M. Yunis said it is open land, they are not clear cutting woods or anything like that. Winner said there are no structures. Winner said that were two public hearings associated with the IDA application. There was no public opposition expressed at those hearings. R. Olthof said that he did not believe there had been at Town Planning Board level either to his knowledge. M. Yunis asked where Delaware River Solar was out of to which Winner replied it was New York City. But they do have a substantial project in development in the Town of Newfield in Tompkins County. In Tompkins County it is the model for the adoption of sort of the solar blue print for dealing with solar projects in Chemung County with the IDA. Because most of these projects have to be IDA projects for the purposes of getting a PILOT that makes them at all affordable. Obviously if you assess this project at \$6 million, you would be spending \$2 per kilowatt hour for your power. So it would not be at all financially feasible. So all these projects envision certain PILOT agreements. Chemung County took its lead from Tompkins County who went through a long and tortuous process which they normally do in that county for anything, and so they use that as the model for solar development here in Chemung County. So these are the first two projects that would be approved in Chemung County for solar. I assume with the mandate of developing renewables in the State of New York of the significant amount of percentage of generating capacity generating for the grid these probably will not be the last projects you will see. R. Olthof asked if it is 2 megawatt to which Winner said they are 2 megawatt each arrays. The difference in size depends on the different ages of the panels that they use.

Some of them are bigger than others depending on their age. It's very interesting. One of the major things you touched on that are out there that people should be concerned about are the decommissioning agreements and things like that. Those have been developed by the Town and they are in place. M. Yunis said she was curious how that worked and said so it is a pay-in every year. Winner said he did not participate in negotiation of that agreement, but it is his understanding that when he looked at it that it called for a yearly payment, a certain amount of money. M. Yunis asked if then at that point did the Town end up decommissioning at the end of that or it's just if you will a security deposit so if they don't decommission to which Winner said he believes you use the funds for the decommissioning, but the property owner otherwise would be responsible for it as it is their property. In one project we are leasing and the other property we are purchasing. M. Yunis said it is becoming big business. Winner said it IS big business. R. Lewis asked if there were any other comments? M. Yunis asked if R. Olthof would be recommending local determination to which R. Olthof noted he would recommend local determination subject to approval in the case of the one County Highway permit. M. Yunis asked if comment were needed with respect to the way you read it because it sounded like they already rezoned because it doesn't matter to which R. Olthof said they did not rezone it yet. M. Yunis wondered if comments might be needed that it looked like under the current zoning it was an allowable use. R. Olthof said we could point out that it appeared to be an allowable use, but if it is the Town's wish or the Town's directive that they want to be dealt with as rezoning. Winner said he would raise that with them again but it is his understanding that that is what they want. M. Yunis said it seemed a little odd that if it was allowable why you'd want to zone just those two parcels. R. Olthof said for that matter they could add that as an allowable use enumerated in their ordinance if they wanted to. Winner said if you want to communicate that to Ashur, that would be helpful. R. Olthof said we can discuss it with him. M. Yunis if R. Olthof's recommendation would be local determination with comments regarding the zoning. The motion will be for both referral item "C" and "D".

**MOTION:** Made by Mary Jo Yunis, seconded by Anthony Pagano, recommending local determination since no Countywide or intercommunity interests would be directly affected by the conditional use permit sought along with comments that the current zoning already allows for commercial use. Members in favor, all; opposed, none. Motion carried.

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**D. TOWN OF BALDWIN – Conditional Use Permit – Delaware River Solar, LLC**

**DISCUSSION:** R. Olthof reported that we have a pair of referrals from the Town of Baldwin and noted that it has been years since we have received any referral from the Town of Baldwin. There are two projects, two different properties involved. Both are located in agricultural use land in portions of the Town. There's a proposal on the table for approval of conditional use permit involving site plan approval by the Town Planning Board of solar energy systems

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want to communicate that to Ashur, that would be helpful. R. Olthof said we can discuss it with him. M. Yunis if R. Olthof's recommendation would be local determination with comments regarding the zoning. The motion will be for both referral item "C" and "D".

**MOTION:** Made by Mary Jo Yunis, seconded by Anthony Pagano, recommending local determination since no Countywide or intercommunity interests would be directly affected by the conditional use permit sought along with comments that the current zoning already allows for commercial use. Members in favor, all; opposed, none. Motion carried.

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**E. TOWN OF ELMIRA – Approval of Subdivision Plat – Van Houten**

**DISCUSSION:** R. Olthof reported that the property consists of a total of a 34.5-acre existing land tract existing that owners would like to divide into four parcels, each of which would be slightly above five acres in most cases. Basically it is a very simple land split proposed. I think that their object is to retain for their own residential purposes and just have the other available for other prospective owners or developers. But there is no development plan for this. It is a simple land split. Property is located on Lowman Road, County Routes 1 and 2. The only real impact we could envision related to that might be any future driveway placement, things of that nature. R. Lewis said it would need a county highway permit for that. R. Olthof said he did not see any need for county concern about the proposal. Are there any other factors at play? A. Avery said it is a one lane bridge on Greatsinger Road. He does not think that the addition of three properties with one on other side of bridge would be a problem.

**MOTION:** Made by Mary Jo Yunis, seconded by Joseph Peters, recommending local determination since no Countywide or intercommunity interests would be directly affected by the proposed subdivision plat. Members in favor, all; opposed, none. Motion carried.

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**F. TOWN OF ELMIRA – Zoning Use Variance – Bronx Jewish Boys**

**DISCUSSION:** R. Olthof reported that this property has a former monastery building located on Church Street. It is located in a AAA Residential Low Density zoning district. The applicants are in the process of offering to purchase the property. It has been in disuse for some period of time, long enough to go into the discontinuance provision under the law. It was in a religious seminary use for years. The new applicants are seeking the ability to acquire the property and use it as a seminary for their congregation right now. It is not a use that is

specifically allowable in that zoning district. Basically there might be some case they could make that it's basically a continuation of a prior use. But I think that what they're seeking is a use variance to formalize that status so they can acquire the building and use it for that purpose. Historically I think it is about a 20,000 square foot dormitory type building on the property. There had been about a 2,000 square foot church and a 2,000 square foot rectory building. There's really no change that they're proposing in that. I think that they would be subject to some necessary improvements to meet New York State Building Code as I understand it. But from the zoning standpoint it really becomes more of an issue of do they meet the qualifications for approval of a use variance. The legal material that they submitted is fairly persuasive at the argument of why they are presenting the grounds that they believe they meet the standard. I believe that that is in your package as well. In terms of impacts, at the county level or intercommunity, we really do not see any impacts related to this. I think we would once again recommend Town determination of this based on the state standards for approval of use variances which are basically addressed point-by-point in their proposal.

**MOTION:** Made by Mary Jo Yunis, seconded by Andrew Avery, Anthony Pagano abstaining, recommending local determination since no Countywide or intercommunity interests would be directly affected by the proposed zoning use variance. Members in favor, all; opposed, none. Motion carried.

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**G. TOWN OF BIG FLATS – Approval of Site Plan – Dean**

**DISCUSSION:** R. Olthof reported that this property is located at the intersection of Daniel Zenker Drive and Palmer Road. There is an existing business on the property. Petitioner wishes to construct a new 22-space “RV” storage building on the property which would be about 8,470 square feet in size. You have the layout plan for what they are proposing. The only thing that was a little unclear really from their sketch is whether there's any new access driveway, access that they are proposing. It looks like all access to the parcel is coming in from Palmer Road North. I don't know if they had to deal with you Andy Avery to which A. Avery replied they don't. R. Olthof said this is pretty much of local interest. There's no other impact we can see. The additional building proposed meets their area and bulk requirements. On the basis of what they submitted we would go as far as to say we recommend approval subject to any additional approval requirements that the Town considers warranted. M. Yunis said she would hesitate on going to approval when you say you are not even sure if they are looking for another driveway. If they have not given us that much, I would probably say no. R. Lewis said that it says under permit “with associated access drives”. R. Olthof said that where it said “drives”, that is where he was a little confused by everything with their site plan because I don't see any different drives that are depicted there. Nothing on Daniel Zenker Drive.

**MOTION: Made by Mary Jo Yunis, seconded by Anthony Pagano, recommending local determination since no Countywide or intercommunity interests would be directly affected by the proposed site plan. Members in favor, all; opposed, none. Motion carried.**

**CHEMUNG COUNTY PLANNING BOARD MEETING  
ATTENDANCE  
JUNE 29, 2017**

**ATTENDANCE:**

**Members:**

**Andrew Avery  
Joseph Peters  
Anthony Pagano  
Mary Jo Yunis  
Robert Lewis**

**Others:**

**Randy Olthof, Pl. Commis.,  
Jerre Cress, Assistant Plnr.  
Scott Shaw Associate Pl. I  
Nanette Moss, Secretary  
Jill Roberts, Pet., T. of  
Chemung  
George Winner, Esq., rep.  
Delaware River Solar,  
Pet., T. of Baldwin (Turner  
Rd. and Breesport-N.  
Chemung Rd. referrals  
“C” and “D”)  
Chip LeValley, Cde. Enf. Ofcr.,  
T. of Elmira, re Van Houten  
and Congregation Bronx  
Jewish Boys referrals “E”  
and “F”  
Matt Freeze, Morning Times**

**Absent:**

**Douglas Brackley  
Bo Manuel  
Ronald Panosian  
Henry Dalrymple**