

## ZONING BOARD OF APPEALS

Town of Lewiston 1375 Ridge Road Lewiston  
Thursday – January 13, 2022  
ZB 2022-1

Present: Conti, Heuck, Machelor, Maggard

Presiding: Norman Machelor, Chairman

Machelor: I'd like to call the meeting to order. I would ask everyone that is able to stand to stand for the Pledge of Allegiance.

Pledge of Allegiance

**A motion to approve the minutes of December 2021, was made by Heuck, seconded by Conti and carried.**

Machelor: If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to deny or grant 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 performed 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 opened

The first item on the agenda was a request from Michael Aceti, 4581 Simmons Road, SBL# 90.00-3-60, for a variance from Section 360-185E, Accessory uses and structures, from the maximum height limit of 18' to 24.7' to allow construction of a pole barn. The property is presently zoned RR, rural residential.

Michael Aceti: I want to build a pole barn with 16' walls which unfortunately makes the peak of my roof 24.7' which is obviously higher than the code. It's behind my home. It's approximately 100' from the road. It's not intruding on anyone's view. I'm looking for a 16' wall because I would like to use it for storage. I store fire wood that heats my house. I store my totes. I stack them 2-3 high in the barn. In order to keep the current foot print I would have to expand the foot print of the structure. The current structure there now has drainage around it. So, I don't have to go around the drainage I would like to keep it there so I would not have to put more drainage in. Also, the 16' walls would allow me to bring my tractor in. I could stack anything I want with that with the forks. Anything lower I would be hitting the rafters. Last but not least it would allow me to put a basketball rim in for the kids so they can play.

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Machelor: Do you have a plan? Is somebody designing this for you?

Aceti: Parco builders.

Machelor: When you proposed that, they're the ones that set the height based on your walls for the slope?

Aceti: Yes. I have to have the right pitch on the roof obviously for the structural integrity of the building.

Machelor: Any other questions from the Board?

Conti: You said the building would be 100' back from the road? In your write up you said 193' from the road?

Aceti: I apologize, 193' back. It sits well beyond the back of my house. It's parallel to my neighbor's barn as well.

Maggard: You have a large shed there now?

Aceti: Yes, there is a barn that is 36'x40'. It's an original pole barn. My neighbor told me it was built in the 70's. It has sinking posts. I can't rehab it. The goal is to just build new in the same spot.

Maggard: So, you're going to take it down?

Aceti: Yes.

Machelor: You say the foot print is going to be the same?

Aceti: Roughly 36'x40'. That's what we're going to put in place so we can keep the drainage intact. We're going to put about 2' of stone because it's in a low spot.

Machelor: Questions from the Board? Questions from the audience?

Public hearing closed.

**A motion to declare a negative declaration on the SEQRA was made by Heuck, seconded by Maggard and carried.**

**Heuck Aye, Conti Aye, Machelor Aye, Maggard Aye**

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**A motion to approve the variance, being what the applicant would desire would outweigh any detriment to the health, safety and welfare to the community that the variance be granted was made by Heuck, seconded by Conti and carried.**

**Heuck Aye, Conti Aye, Machelor Aye, Maggard Aye**

Public hearing opened

The next item on the agenda was a request from David Verner, 2128 Adams Circle, SBL# 89.04-1-28, for a variance from Section 360-185E, Accessory uses and structure, from the maximum height limit of 18" to 22" to allow construction of a pole barn. The property is presently zoned RR, rural residential.

David Verner, 2128 Adams Circle. We're removing an existing 18'x12' shed and replacing it with a 32'x20' pole barn. The height of the pole barn would be 23'. I incorrectly listed 22' on the application. My apologies for that. The new height would be 23'. The shed that was there was roughly 16' tall. It was a gambrel style roof. I'm looking to put the pole barn in so I can replace the storage that I had in the existing shed but also removing a travel trailer from my driveway. I can then store it in there and get it out of the driveway.

Machelor: How many sheds will you end up with?

Verner: Just one. The existing one is going to come down. It's actually partially down now. The wind did a number on it.

Machelor: Obviously it's not in the same footprint?

Verner: It's going to be 8' wider and 12' longer. It's tucked in the back corner of the property. It's not really visible from the road. It will be positioned such that the corner closest to the property line is matching the existing corner that was closer to the property line. It's actually extending in to the yard farther.

Conti: Do you know how far from the road it is?

Verner: The lawn is well over 200' deep. The front edge of the new pole barn will be at least 150'-175' from the road.

Maggard: Do you have any people in back of you, the back of your lot?

Verner: The property backs up to the Raby farm, the lower level of the Raby farm. There is not anybody back there. There are no houses.

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Machelor: Any further questions? We also have the short SEQRA form. Is there anybody else that would like to speak to this issue?

Public hearing closed

**A motion to declare a negative declaration on the SEQRA was made by Conti, seconded by Heuck and carried.**

**A motion based on the Board's discussion the following considerations the Zoning Board of Appeals determines that the benefit for the variance to the applicant outweighs any detriment to health, safety and welfare of the community, that the variance requested is the minimum necessary and the variance be granted was made by Conti, seconded by Heuck and carried.**

**Heuck Aye, Conti Aye, Machelor Aye, Maggard Aye**

Public hearing opened

The next item on the agenda was a request from Montante Solar, representing Niagara University, Lewiston Road, SBL# 115.00-1-12 for a variance from Section 360-219 (8) Utility-scale solar energy systems: special use permit requirements, 360-220 ©, 1, 4, 5 &6, 360-220 (O), 360-220 (P) special use permit criteria to install a utility scale solar. The property is presently zoned PUD, Planned Unit Development. Alternatively, this applicant seeks a Town of Lewiston Code interpretation that the solar project better fits the definition of Ground Mounted Solar Systems vs Utility-Scale Solar Energy System.

Good evening. Thank you for listening to us. I'm Tom Barnes from Niagara University. I have some colleagues here who will speak as well. We're here because we're putting a solar array on our campus. I just want to give you some back ground and the purpose of it. As an institutional leader here at the campus, in the region we are the largest independent institution in the region. We follow a lot of key things for the University, 1, as a Catholic University we follow .....for care to our environment. We also understand that industrial properties in this region haven't always been the best .....of the property. We want to help reverse that trend. Lastly for us it really is the new students coming up. They have a care for the environment. So, for us to recruit students to be green as we can it is important for us to go in that direction. We have more than 800 employees on our campus. Our economic impact is almost \$240,000,000. each year. We think by doing this we can help take the lead role in our region in building this. I just wanted to give you some back ground. We are working with a number of partners. Dan McMahon is here, our Director of Facility Services, Chair of our Master Plan Committee, Professor Mark Gallo is the Chairman of the Sustainability Committee. Chris Leardini is one of our partners as well. I'm going to turn it over to Katie Soscia who is one of our partners from Montante Solar. Thank you.

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Soscia, Montante Solar. I do have a couple of hand outs for reference. The first part of our request tonight is just to get an interpretation on how this project will be permitted through the Town of Lewiston. The project, I apologize there is someone from Hodson Russ that is supposed to be here tonight who couldn't make it last minute. We looked at the definitions of the ground solar array energy system and the utility scale code. We believe that our project would comply with the ground mounted solar energy code. I have the definition in front of me and if you don't mind, I can go through step by step how we feel it complies. The location is the solar energy system would be placed no closer than 3 times the height of the energy system but not less than 25' from any property line. With the design of our solar project, we would comply with that. The location of said energy system shall be located in the side or rear yard. If you look at where this is located on the whole university parcel it is in the back corner of the university. It should not be placed within 30' from any structure on the lot. Our project would also comply with that. The orientation of said solar energy system should not be close to any neighboring dwelling where feasible. The system is designed as a tracker. It would go in to the site lines of NYPA's property. However, NYPA has been involved in this process and is in support of the project. There is a letter of support from NYPA that was included in the ZBA packet. I don't think that should be a deterrent. This parcel in particular is zoned RR, rural residential. It was a gift from NYPA. It was originally two parcels that were combined in to one but both were zoned RR and gifted from NYPA. Because of the RR designation it should not exceed 10' when orientated at maximum tilt. Here our project would comply with that as well. It would be a maximum of 8' at maximum tilt. The variance that we would require for a ground mounted project, according to the code, it should not take up more than 5% of the total acreage of the lot that it is placed on. The University is 163.5 acres about. The variance request that we would go in that case if it were designated a ground mount would to have the variance for 10% of the total square footage of the entire lot itself. When we look at the definition of utility scale system. Obviously, we were thinking of it as this project and scale would fit similar to others in the community of this size that were permitted this way. There are 2 key things that I wanted to point out here. In the definition of utility scale system, A, any solar energy system that is designated and intended to supply energy primarily in to the utility grid for sale to or use by the general public. This project is not selling power into the grid that is to be used by the general public at all. It is going to be used by Niagara University who will be the sole off taker of the array. It is also on the lot in which it is going to be supplying power to. The only designation that may trigger the utility scale which is why we are asking clarification today is because the project itself is over 5 acres. It would be about 16.5 acres is the total square footage of the array. However, in the ground mounted definition it doesn't have any sort of path on size and it actually does have language as well of how to approach projects larger than 2 acres of size in the ground mounted solar array. That is the first thing we wanted the ZBA input on. Thank you very much.

Machelor: I don't think it's relevant today but would you explain that the owner of the array will be selling the power to someone?

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Soscia: The array will pump electric directly in to the utility grid and then Niagara University will get credit for that utility that dollar amount that the electric provided under National Grid electric bill.

Machelor: The implication is that Niagara University uses that much power on an annual basis? That is the purpose of the size of the array?

Soscia: The size of the array is designed to offset the dollar threshold of the National Grid electric bill. Niagara University gets a pretty big NYPA allocation as well. This project is not touching that NYPA allocation or going towards it at all. It is only going towards the National Grid portion of their electric bill.

Conti: In a year it produces x amount of wattage that the University is going to be using, what happens when you go over that? You produce 20% more than what they use and you're in your second and that's gone to 25. Eventually they are going to do something with this electricity right? You can only hold on to that for so long.

Soscia: With...not crediting which is the crediting method that this project will use, they are going to be....for every kilowatt hour that comes in to the grid is going to receive the dollar value. If it's over producing in the summer when schools not in session and the campus is not using as much electricity, but it is producing the most electricity in terms of solar projection, they will get a dollar credit that goes in to essentially a bank. Niagara University can draw from that bank throughout the year. In the winter when the solar system isn't going to be producing as much but campus is in full swing, they're using more electricity they can draw from that bank to pay their National Grid electric.

Conti: When you produce more electricity in the year or two years or whatever, what happens to the actual electricity? Is National Grid going to continue giving you credit or are they eventually going to say okay, you only have so long to use these credits?

Soscia: The system was designed only to offset that certain dollar amount. We haven't sized it to be over-sized. However, if that were to happen for whatever reason, a major upgrade to the campus they did some developments that caused their electric usage to go down, they would still have that bank of credits to pull from. However, if they don't have a National Grid bill to set it against, they're essentially worthless.

Conti: So then National Grid has extra electricity that is going to sell to the outside world?

Soscia: Yes, essentially.

Machelor: You say they are only offsetting the National Grid bill?

Soscia: Correct.

Machelor: As you alluded to in your statement the size of the thing is really the determining factor here. Just because the ground-based unit doesn't specify acreage, when you get to the utility base size it says anything larger than 5 acres, that's quite a lot different than 17 acres, 3 times. When you look at the size of the plot that it's going to be on, there is very little room for setbacks or shielding these things from other people to see them. The assumption is and I have all the literature that people will like to see them rather than not like to see them. The preponderance of the people would like to see electric solar panels on the campus, maybe they will, maybe they won't. I don't know. That is part of the issue.

Conti: I guess one of the things I think he is trying to say is in 360-215 when talking about ground mounted solar energy system, the intent of the law was for a residential, you put something on your roof, put something in your back yard and that's what you're using. It was never intended for a large 17-acre 4-megawatt system. That is just one of the parts of it. You're looking at 163 acres of land approximately and giving you 17 acres of that. The intent of the law for ground mounted was never intended for a project that large. Now the Town itself as this Board is, is very much in favor of solar electric. With everything going on in this world, anything to help save energy in any way we can. We did produce this law that was just put in to place for reasons.

Maggard: I would like to know how you came about going for the ground permit rather than the utility?

Soscia: The main designation there was really that Niagara University, it's on their campus and the electricity is intended to be used for the parcel in which it is sited. That was our intention of looking at the ground mounted versus the utility scale. Totally understood that utility scale has that designation of 5 acres or more. However, a ground mounted also doesn't have a cap on it for acreage either which is why we thought we would ask the ZBA to take a look at it. As you mentioned this parcel doesn't have a lot of room for setbacks and would not be able to comply with the utility scale setback that are in the code. When we're looking at variances and how to get this project over the line, I think it's a really good project. I can certainly go through the variances for the utility scale project. One of the handouts that I had given you is kind of breaking down who all the neighbors are of the site. The neighbors, the law that was put in to place, I actually had listened just because I'm a local solar contractor, I listened in on some of the meetings for the Town of Lewiston when that was being discussed and a moratorium was enacted and it's really to protect residences from shielding them from what people consider utility use. I think even though this doesn't necessarily fit the law in terms of the code it really doesn't fit the spirit of the law in the Town of Lewiston because if you look at the neighbors, it's the University itself, it's NYPA, it's National Grid, it's the land fill. It's only one other industrial use parcel. Of those neighbors 3 of them are long term neighbors. They're going to be there long after the system is decommissioned and taken away. The reuse of that land or the

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property value of that land is not affected the same way it might be in a residential setting. Even though it doesn't fit the code as it is written, it is a really good site for solar if you look at it and who the neighbors are and who it is going to affect. We're really just trying to find a way to get this project over the finish line to be quite honest. We think it's a good project, the University thinks it's a good project. The University is excited about using it as a recruitment tool. They need to compete with other Universities like UB who have solar systems like this that are used by students. The University would like that opportunity as well. I guess whether it's ruled a ground mounted or utility scale we'd really like to find a way to cross the finish line here. We really do think it is a good site in the grand scheme of the Town of Lewiston.

Maggard: The ground mounted is just for possibly roof mounted and then if you couldn't mount it on the roof, it would be ground mounted. It would be a residential type of system. Whereas the utility system is by far a lot larger. To be able to sell it, you have to sell the portion that you're not using even though you get reimbursed, you're still going to sell it to the public or someone else.

Socia: I think that the Town of Lewiston might just want to consider it. I understand what you're saying from a residential point of view. With what I do on a commercial level, the new way of interconnection now is connecting in to the utility grid. Anything over 20 kilowatts which essentially is a commercial scale over 20 kilowatts is going to be connected in to the utility grid because of the way electricity is valued. It's so much more valuable by putting it in to the grid than putting it directly in to the main distribution panel. Unfortunately, I don't know why that is. I personally disagree with that. Regardless I think the issue would be that commercial systems of 25 kilowatts could essentially be are they utility scale as well? Food for thought, I'm not trying to challenge but from my industry anything over 25 kilowatts may be connected in the same way.

Machelor: When the law was announced after a lot of discussions and one of the reasons it was written the way it was and it isn't just to protect for instance anybody that would be a neighbor to this, it would be anybody that would be a neighbor in the Town. What we're charged here with is trying to enforce the code as it was written and not immediately as soon as we get a.....a year-old changes it, we're going to ignore the code as it was written because this is a special thing. There is no doubt it is special. I don't see any other kind of things happening around. There is a lot of space in the town. This would be a terrible precedence for us to....the thing is about the ground mounted regulations are so thin about shading and distances and so on and so forth because as Marge said it was intended to be in a residential neighborhood, not where you're building it. When you see it from the 10,000-foot view point it looks like 5 pounds of sausage in a 3-pound bag. There is an awful lot of stuff in that site. Maybe it's not appropriate for today but the question would be can it be smaller, can it be shielded better and away from the rest of the campus a little better than it's going to be?



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Soscia: My first response is that part of the where this project is located, to the south of that is the Town of Niagara. Prior to coming here today we went to the Niagara County Planning Board of approvals as well to have them review our project. They were unanimously in support of the project, knowing it is that close to a municipal boundary and that variances would need to be requested. I think half of the neighbors are to the south which is Niagara County, which is something the County Planning Board has already looked at. The other neighbor, it literally is the University itself is its own neighbor to the project. Then as I mentioned NYPA as well. Again, whether this is a ground mounted or utility scale I understand the position you're in and not wanting to set certain precedence. I do think it fits the spirit of what Lewiston is trying to do in terms of citing a project. It is next to utility neighbors who are long term neighbors and industrial parcels or a land fill.

Machelor: It's not just the immediate neighbors. Anybody is a neighbor out in the Town where someone else that would want to do this sort of a thing and say well it's really a ground mount even though it's as big as it is. As Marge pointed out the purpose when the code was written was to enable people to do this. We are in favor of solar but we want to put restrictions on sizes and locations for people. This would certainly over turn that spirit of it for us.

Conti: Is there anybody else here that wants to speak on the project?

Morreale: They said there was only one variance the acreage, then the setbacks come in to play, correct?

Soscia: For the utility scale setbacks is an issue.

Morreale: You have railroad tracks, you have roads, buildings, you're not going to meet the setback on any of them.

Seaman: It's a little different. They've got an application here that's an application and the alternative. The first request they're asking for is an interpretation, does this meet ground mounted versus a utility scale. The alternative is if it ends up being utility scale solar then there is a number of different setbacks that they would be asking for. In terms of the ground mounted, if the Board chose to interpret it that way, there is only one area variance they would ask for and it's.....to the side of the lot. The setbacks apply not only in terms of if it ends up being if they proceed on the utility scale solar definition.

Soscia: Thank you.

Machelor: Is there anyone else that wants to speak to this?

Soscia: If the Board is not moving to look at this in the form of ground mounted, I would like to present the utility scale consideration.

Conti: Let us do the interpretation first and then we'll go from there.

Seaman: You can leave the public hearing open for now. You can make a determination on the interpretation if you would like.

**Conti: First let me say that the ZBA of the Town of Lewiston is not in any way against solar systems. We have a new law that was implemented back in January 2021, and we want to follow the law as closely as possible. The interpretation of the law: Chapter 360. Zoning Article XXVIII Solar Energy Systems, Section 360-215 – Definition (Ground Mounted Solar Energy System)**

**In reviewing this section of the law, the intent of the law was for use on a residential home (either a single home or a rental unit IE: up/down – side by side units) to have it installed on their roof-top or back yard. It was in no way intended to include a 163.2-acre parcel of land that includes a 17 acre and a 4 Mega-Watt solar system.**

**The size of their piece of property (163.2 acres) along with the size of the solar system (17 acres) being proposed, does not fit into the intent of this section of the law.**

**Section 360-218 C-7 – General Criteria**

**The total surface area for a ground mounted solar system shall not exceed 5% of the total lot area. The total lot area of NU is 163.2 acres. 5% of that is 8.16 acres, which is well under the 17 acres proposed for the Niagara University solar energy system, again showing that this proposed project does not fit under this section of the law.**

**Section 360-215 – Definitions (Utility-Scale Solar Energy System)**

**In reviewing this section of the law, this better fits into what Niagara University (Montante Solar) wants to do, (all three sub-categories) but especially under the heading 'B' which states "Any solar energy system that consists of an overall footprint greater than five (5) acres." This proposed solar system fits under this section of the law considering it is 17 acres.**

**Therefore, in considering the interpretation of the law, as I have just stated, I make a motion that the Niagara University (Montante Solar) Solar Energy system be deemed a Utility-Scale Solar energy System which is consistent with the Town of Lewiston Building Inspector's determination was made by Conti, seconded by Maggard and carried.**

**Heuck Aye, Conti Aye, Machelor Aye, Maggard Aye**

Seaman: If I may interrupt for a moment, as I said earlier the application was an application and the alternative. You rendered a decision now that this is going to proceed in line with the utility scale solar energy system. I do know that the applicants have recently filed an application with the Planning Board as well. I'm not sure when it hits the Planning Board's agenda but the question is how to deal with SEQRA before you make any determination

relative to the area setbacks, the area variances and the setbacks. It is my recommendation that as that application proceeds through the Planning Board that there should be a determination relative to SEQRA before either makes a determination, relative to anything on the special use permit or a site plan review for the Planning Board and also relative to the area variances that are requested before you relative to a utility-scale solar system. In that regard what you guys can do today and what I recommend that you do is take a motion to declare the Town Board as Lead Agency for SEQRA which it is always because the Planning Board is a recommending Board in this Town. Take a motion on that, that the Town Board would be Lead Agency for SEQRA and also to request that the Town Board begins its SEQRA review process immediately so that the whole project can begin to move forward. The SEQRA process can sometimes take a little bit of time. That would be all that you would be able to do tonight until the SEQRA determination is made. That is my recommendation for you.

Dan Spitzer, attorney: Would you consider Mr. Seaman recommending to them that they also defer the date of filing their initial determination? We very much don't want to be in a situation where a decision is rendered on the utility. We wait for SEQRA which we agree and understand what you are trying to do. Our 30 days runs the challenge of the interpretation. We don't want to be in that position. That Board can say that or you and I can enter in to tolling agreement. We can avoid any hassle. As you pointed out this is an alternative. Niagara University is benefiting either way. We don't want the clock to run.

Seaman: What you're worried about is your ability to appeal the determination on the interpretation. I would agree with you Mr. Spitzer. On behalf of the Town, I will enter in to an agreement with you that we will toll that determination until the final decision is made relative to the Zoning Board's decision.

Spitzer: We appreciate that. We don't want to be at odds with the Zoning Board.

Seaman: Absolutely, that's understandable, it's a reasonable request. I'll make that acknowledgement on behalf of the Town.

Spitzer: Thank you Mr. Seaman, thank you Mr. Chairman.

Seaman: If he was going to appeal your decision on the interpretation the time to run is very short. To appeal a decision against a municipality, they have a very short period of time, it's 30 days or 90 days depending. What he's asking is that rather than having to go file a motion to appeal this now, while the rest of this plays out, he's asking for us to agree as the Town which I'm able to do, the Town is able to agree to toll or extend his period of time to appeal that up until when you make your decision on the alternative, on the area setbacks on the area variances. In other words, his time to make an argument in front of another court to appeal your decision on the interpretation won't begin to run until you've rendered your decision on the area variance request that's in front of you.

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Machelor: The area variances for the.....

Conti: That's not going to come in front of us until after the Planning Board.

Seaman: What will likely happen is the Town Board will initiate SEQRA. At some point while this is playing out in front of the Planning Board there will be a recommendation from the Town Engineer as to what the SEQRA determination should be. Sometimes they wait until the very end but in a scenario like this, they'll very likely make a SEQRA determination even before the Planning Board makes their final decision about special use permit and site plan. There will be a SEQRA determination hopefully not too long from now. At that point the two Boards can move independently forward again and make their determination because SEQRA has already been decided. Does that make sense?

Machelor: We're going to do the motion you asked for.

Seaman: You don't need to do a motion on that. I'm making a representation as legal counsel for your Board that we're going to toll the time for an appeal until you have rendered a decision on the alternative request that's in front of you, the area variance. Does it make sense Joe?

Conti: It makes sense but I don't necessarily agree with it but it makes sense. I get what you're saying and what he's asking.

Seaman: The alternative, they would need to go spend money and file a bunch of legal papers on something that they might not need to do. If everything else flows and they end up getting approved at the end of the day, they won't need to start a legal law suit, spend money, the town wouldn't have to spend money either on something that may ultimately get approved. That's what they're asking for.

Conti: Toward a utility based.....

Seaman: The question that he's asking to toll is merely your interpretation of the law. He's got 30 days to file a law suit on that if he disagrees. Or we can extend it for them which we are agreeing to do.

Machelor: We are still going to make a motion to declare the Board Lead Agency and do all that?

Seaman: Yes, you should do that as well. Make a motion to declare Town Board Lead Agency and request that they initiate SEQRA.

Machelor: We are holding an abeyance our decision or just their ability to challenge more in to the future?

Seaman: You are tolling the statute of limitations that would run relative to your decision on the interpretation.

Conti: Then we will in turn, once it goes through the SEQRA process, then come back to us looking at the variances, but we can waste all of our time if it ends up going back to ground mounted? I'm missing something here.

Seaman: I don't know what you are missing. The only way the interpretation would change now is if they file an article 78 law suit and go to a judge and request a change. They have 30 days to do that. What they're asking is can we just wait until the rest of this plays out? It may very well be that they don't need to do that.

Machelor: In other words, they don't need to do it because when they come to us for the variances for the utility grade....

Seaman: They may be granted the variances, they may work something out, they may get approval with the Planning Board and everyone may come to an agreement as to how they're going to develop the project and they're comfortable moving forward. In that case they will have saved a bunch of money starting the law suit to appeal your decision.

Machelor: If everybody is good with that, I'll ask for a motion for the SEQRA review.

**A motion that the Town of Lewiston be Lead Agent and begin the SEQRA process was made by Heuck, seconded by Maggard and carried.**

**Heuck Aye, Conti Aye, Machelor Aye, Maggard Aye**

Soscia: Can we get in to today and go over the variances that we are requesting for the utility scale?

Seaman: You could, but I recommend you hold off. What will happen is they're not going to be able to make a decision on that for probably a couple of months. The SEQRA process needs to begin. It's going to include a coordinated review. Only after the Town Board makes a determination on SEQRA. Let's assume for a minute that it's a negative declaration like many of the other solar projects have been, only after that decision has been made....any of the town Board or agencies make decisions relative to projects. You may want to just hold off and come back when that's been made and make your full application relative to the variance request.

Soscia: Can I get the Zoning Board's opinion on our site plan for utility scale?

Seaman: They're not going to be able to make any decisions.

Soscia: I understand. We just want to know if we're heading down the right path here.

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Seaman: You want to enter in to discussion if they want to entertain any further conversation about this tonight?

Conti: Considering we have to wait for the SEQRA and stuff, we can hear your position but we're not going to be able to give you anything of substance like Tom just said. If you want to take the time to do it, that's strictly up to you. We're only going to be able to listen because we're not going to go further until we get the SEQRA.

Spitzer: I think what Ms. Soscia is saying is if you have any questions based on what you've seen this is a great time to ask. We can work with your team and your engineers and ask any questions. This is the same idea behind the tolling, let's work as a team together. So, if you had any questions about it, we could work on either answering them tonight or working through them.

Soscia: Or to provide any feedback.

Conti: What he's saying basically is to ask any questions so they can have some feedback now to see if they need to go in a different direction to make it worth their while.

Machelor: As our attorney said and I don't want to paraphrase him but I think it would be better for you to take this yes, we are in favor of solar. I would say yes, we are in favor of the University of having some capacity to do this. There are all kinds of yesses in there. Yes, you don't have any residential neighbors coming and saying they don't want it.

Conti: As far as our Board goes, we're usually pretty liberal as far as trying to stay within Town Law but giving away some parts. As you saw with the two height variances, we're willing to work with that and that's something we've been trying to work on with the Town. Some of the variance relief that you're looking is very high. We had a similar one a couple of months ago and it got turned down but they came back within a couple of days with a re-work within the law that actually produced more electricity than what they were originally going to do. Yes, we can listen but some of them are very high. I think working that down to get the variance relief better on your part would be a great benefit for you. We're not here saying it's exactly X and we're not going to budge from X. For one of them the property setback is 85% variance relief. It's a very large variance relief. We've always worked with people as far as that goes. In the meetings themselves we ask what can you do? We're willing to work but we also have to take the law in to consideration.

Machelor: You do have mitigating things, factors on your side. All kinds of them. We have all the literature here what people would like to see. As Joe said we are willing to listen but not today.

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Soscia: Understood. I don't want to waste anybody's time either. I appreciate that feedback. I also want to let the ZBA know that when we were looking and when the University was looking for the sites of where they wanted to put the solar array, they did take a lot of consideration in to affect. If you look at the other places where a solar array can be on campus, this is probably the best location in terms of where it's cited, who the neighbors are, that it can only be seen by people who are intentionally going to NYPA or going to the University because of where it's located off of Witmer Road and everything. I know that Universities as well usually have some type of special consideration when it comes to variance requests as well. Thank you. I appreciate your time.

Dan McMahon, Director of Facilities. Just to give you a little perspective, we have 1.1 million square feet of building space, 42 buildings on campus. The perspective of scale reduction, the size of the array is compensating scale of our campus. It's definitely something that compared to another project the impact is totally different on a different scale from that.

Conti: I guess what I was saying on that one that I compared it, they wanted a ton of variance relief. We ended up turning it down, they came back within the law and actually it was producing more electricity than it was the way they had it spread out. That's the only thing I'm saying. I understand, you try to work through what you need. I just think and we all think, I can speak for everybody here that we're willing to work with you but the percentages have got to be somewhat reasonable. Some are almost full variance relief.

Soscia: Unfortunately, the solar project would not be able to proceed without variances and changing the variance setbacks would significantly decrease the project site.

Machelor: That's what we will discuss at that time. We will ask you those questions pretty specifically, not just in general.

Spitzer: I really appreciate your pointing out the 85% variance. Was there any other variance that unofficially .....

Conti: There are 4 of them that are at 85% variance relief.

Spitzer: That's because the University chose this spot on the campus that has the least impact on the neighborhoods and on the campus itself and as you mentioned it is not near any homes or anything. Sometimes that doesn't fit in to a general law that was passed. I'm very familiar with your other experiences with non ZBA's, your brother in the first project that Borrego did that you approved and some of the others. I know you worked through this law very carefully. The University actually put out an RFP before the law was adopted. They were looking at as the Director of Facilities mentioned where is the least intrusive place to put this in a community that's very concerned? Sometimes that doesn't fit in to one size fits all of the law. That's why there are 5 factors for a variance consideration. I certainly agree with you, is it substantial?

ZB 2022-10

Yes, it is. Is it substantial though in terms of the land uses? I think the point NU is making to you tonight is no it's not. When you look at that factor and your attorney can advise you how to look at that factor. When you look at that factor while it's a substantial of a given, it's not a substantial variance in terms of the land use of the area. That is the point the NU Director is trying to make about his project. They placed it in a spot where the University would have the least intrusive impact on this community. While it's a large one, because of the way that site is, probably, I don't want to mislead you that with the point Ms. Soscia is making, I don't want to mislead you that there is ability to move things around, it's really not possible. It's a large campus and most of the space is spoken for, for other uses. It's in this let's not have any impact on the community spot for a reason. I think that is the reason that the ZBA has created it to look at that more overall than just the deviations from the variances. That's what we are asking you to think about. We'll certainly take the message that you've provided.

Maggard: We do know the area that you've selected is a very good area because it doesn't have an awful lot of residential or anything around it. It's great that the college is even deciding in the clean act. I think it's wonderful. The road is the consideration for me. I think that going down that road, it needs to be looked at very carefully.

Soscia: It is a private road.

Maggard: Yes, it is, but a lot of people use it.

Spitzer: The University is saying how do we have the least impact on the community? Let's put it on our private road, not a public road.

Maggard: I think it's great. It just needs the setback.

Conti: We can discuss that at the time.

Spitzer: Thank you very much.

Seaman: The one last thing I would like to ask you to do is make a motion to leave the public hearing open.

**A motion to leave the public hearing open was made by Conti, seconded by Heuck and carried.**

The next meeting will be February 10, 2022, at 6:30 P.M.

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

Respectfully submitted,





Sandra L. 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 January 13, 2022, at 8:30 P.M. in the Town Hall, 1375 Ridge Road, Lewiston, New York to act on the following applications:

Montante Solar, representing Niagara University, Lewiston Road, SBL# 115.00-1-12, requests a variance from Section 360-219 (8), Utility-scale solar energy systems: special use permit requirements, 360-220 (C), 1, 4, 5 & 6, 360-220 (O), 360-220 (P) special use permit criteria to install a utility scale solar. The property is presently zoned PUD, Planned Unit Development. Alternatively, this applicant seeks a Town of Lewiston Code interpretation that the solar project better fits the definition of Ground Mounted Solar Systems vs Utility-Scale Solar Energy System.

Michael Aceti, 4581 Simmons Road, SBL# 90.00-3-60, requests a variance from Section 360-185 E, Accessory uses and structures, from the maximum height limit of 18' to 24'.7" to allow construction of a pole barn. The property is presently zoned RR, rural residential.

David Verner, 2128 Adams Circle, SBL# 89.04-1-28, requests a variance from Section 360-185 E, Accessory uses and structures, from the maximum height limit of 18" to 22" to allow construction of a pole barn. The property is presently zoned RR, rural residential.

Information concerning these requests are 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  
N#294530

1/6/2022