

TOWN OF HOOSICK ZONING BOARD OF APPEALS

REGULAR MEETING

January 2, 2024

**RESOLUTION GRANTING AREA VARIANCES REGARDING
HAWTHORN SOLAR, LLC SOLAR ENERGY SYSTEM**

WHEREAS, Hawthorn Solar, LLC (a subsidiary of CS Energy, LLC) filed applications for special use permit, site plan, and area variances to construct, operate and maintain a solar energy system on 130 acres of land including a new 48,125-square-foot substation along Pine Valley Road and Fords Road within the Agricultural/Residential Zoning District; and

WHEREAS, the Hawthorn Solar proposed solar energy system project site is on lands of Dale Ford (Tax Map Parcel No. 36.-1-9.2) and Timothy and Brittany Marbot (Tax Map Parcel Nos. 36.-1-10.1, 36.-1-11.1, and 46.-1-10.11); and

WHEREAS, the Hawthorne Solar application materials included a Full Environmental Assessment Form (“FEAF”) pursuant to the New York State Environmental Quality Review Act (hereinafter “SEQRA”); and

WHEREAS, the Town of Hoosick Zoning Board of Appeals (hereinafter “Zoning Board”) determined to undertake a coordinated environmental impact review pursuant to SEQRA; and

WHEREAS, the Zoning Board served a notice of SEQRA lead agency coordination to all involved agencies concerning this action, indicating that it sought to be declared lead agency for this action; and

WHEREAS, following service of the notice of SEQRA lead agency coordination, no other involved agency objected to the Zoning Board serving as SEQRA lead agency for this action; and

WHEREAS, the Zoning Board declared itself lead agency pursuant to SEQRA through resolution at its August 7, 2023 meeting; and

WHEREAS, the Zoning Board, in consultation with its designated technical review consultant, reviewed all Hawthorn Solar application materials to determine completeness of the applications for purposes of holding a public hearing; and

WHEREAS, the Zoning Board determined such application materials to be complete and sought to hold a public hearing on such applications as required under the Town of Hoosick Land Use Regulations; and

WHEREAS, the Zoning Board, through resolution, scheduled a public hearing on such applications to be held at its meeting to be held September 5, 2023; and

WHEREAS, public notice of the public hearing, to be held September 5, 2023, was duly published, posted, and mailed by the Zoning Board in compliance with the requirements of the Town of Hoosick Land Use Regulations; and

WHEREAS, the Zoning Board held a public hearing on such applications on September 5, 2023, at which public comment on such applications was received; and

WHEREAS, the Zoning Board continued the public hearing on such applications on October 2, 2023, and accepted further public comment at that time; and

WHEREAS, the Zoning Board closed the public hearing on such applications on October 2, 2023, but established a 14-day period for submission of any additional written comments on such applications through and including October 16, 2023; and

WHEREAS, the 14-day period for written submission of any additional written comments on such applications ended on October 16, 2023; and

WHEREAS, additional written comments were received, considered by the Zoning Board, and provided to the applicant; and

WHEREAS, the Zoning Board required the applicant to respond to all public hearing comments and all written comments in writing; and

WHEREAS, the applicant thereafter submitted written responses to all public hearing comments and written comments; and

WHEREAS, the applicant reviewed its written responses to all public hearing comments and written comments at the Zoning Board's November 6, 2023 meeting; and

WHEREAS, the Zoning Board considered the applicant's written responses to the public comments and the applicant's presentation of the same at its November 6, 2023 meeting, and further deliberated on such applications at the November 6 meeting, including but not limited to the issues of screening and potential visual impacts; and

WHEREAS, the Zoning Board thereafter received and considered additional information from the applicant on tree planting species and a revised planting plan; and

WHEREAS, the Zoning Board has fully reviewed all application materials, including the site layout map and plan, the project narrative, the FEAF, all supporting technical information, public comments, agency comments, applicant responses to comments, and recommendation of the Rensselaer County Department of Economic Development and Planning, and has considered the comments of its designated technical review consultant; and

WHEREAS, the Zoning Board has adopted a Negative Declaration pursuant to SEQRA for this action; and

WHEREAS, following review of the complete record and upon due deliberation, and considering the review comments of the Zoning Board’s designated technical review consultant, the Zoning Board makes the following findings with respect to the area variance review criteria set forth in Hoosick Code Section 247-49(E)(2):

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.
 - This variance makes this project less impactful through the reduction of its overall footprint. The proposed project layout centers the project away from exterior lot lines, allowing for increased setbacks from exterior lot lines which will benefit off-site properties and further reduce visual impact.
 - This variance will allow the project to realize greater efficiencies by allowing for the site to be developed as a singular system rather than being broken up into multiple facilities.
 - The Zoning Board finds that no undesirable change will be produced in neighborhood character or to nearby properties through the granting of this variance.
2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.
 - The applicant’s response to public comments at #61 of “Hawthorn Public Hearing Questions (10.23.23)” states that “a reduction in the overall footprint of the project, by allowing for the project to overlap internal parcel boundary lines, is not achievable through any other mechanism other than an area variance, as the setbacks are legal regulation and the applicant must comply unless an area variance is received.”
 - The project could be constructed in a manner that achieves compliance with the setbacks in the Hoosick Land Use Regulations; however, the Zoning Board does not find this to be feasible in light of the benefit to surrounding properties achieved by centering the solar facilities away from exterior lot lines.
 - This variance is the only option for the applicant to achieve this benefit to the surrounding properties.
3. Whether the requested area variance is substantial.
 - The applicant’s response to public comments at #62 of “Hawthorn Public Hearing Questions (10.23.23)” states that “the variance will result in an impact reduction, pulling away from both adjacent non-participating property boundaries and roads.”
 - This area variance would relieve 100% of the setback requirement for front, side, and rear yards with respect to internal lot lines of the three project parcels while exceeding the required setbacks on all exterior lot lines with non-participating parcels and public road frontages.

- While 100% relief is substantial, this impact is balanced through the reduction in impact and efficiencies that would be achieved as well as through the exceedance of setbacks on exterior lot lines against non-participating parcels and public road frontages.
 - The area variances will terminate when the solar facility ceases operation.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- The applicant’s response to public comments at #63 of “Hawthorn Public Hearing Questions (10.23.23)” states that “the proposed variance will minimize the impact of the proposed project, by allowing the project to consolidate and reduce the footprint. The variance will not create additional physical or environmental impact. Adhering to the setbacks for internal property boundaries will require the project to spread the panel rows out, to accommodate the setback, rather than building through.”
 - This variance would reduce the project’s physical footprint on the land by a minimum of seven acres, and allow for increased setbacks from exterior lot lines.
 - The Zoning Board, as SEQRA lead agency, has determined that the action will not create a significant adverse environmental impact, and that identified impacts have been mitigated to the maximum extent practicable.
 - The area variances will terminate when the solar facility ceases operation.
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.
- The applicant’s response to public comments at #64 of “Hawthorn Public Hearing Questions (10.23.23)” states that “The lot lines that are in place and the applicable setbacks were established through no action of the applicant. The alleged difficulty was not the creation of the applicant, as no parcels will be subdivided, and no new lot lines created.
 - However, the Zoning Board finds that this hardship is self-created both by the applicant and the respective landowners. The applicant created a multi-parcel project lease area between two separate landowners. The landowners were aware that the lease area would cross property boundaries. The Zoning Board finds this issue to be relevant but not determinative, and must be weighed in connection with all other review criteria; and

WHEREAS, based upon such findings, and upon review of the complete application record, record of proceedings, public comments and responses thereto, the SEQRA record and Negative Declaration, and upon due consideration and deliberation, the Zoning Board is prepared to act upon the area variance applications;

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Appeals of the Town of Hoosick in regular session duly convened as follows:

1. The Town of Hoosick Zoning Board of Appeals approves the area variance applications for the Hawthorne Solar, LLC commercial solar facility located along Pine Valley Road and Fords Road, subject to the following condition:
 - a. The area variance for each parcel shall terminate when the solar facility ceases operation.

The foregoing Resolution, offered by _____ and seconded by _____, was duly put to a vote as follows:

MEMBER ZIEHM	VOTING _____
MEMBER BAILEY	VOTING _____
MEMBER PIRIE	VOTING _____
MEMBER SUSSMAN	VOTING _____
CHAIRMAN HOAG	VOTING _____

The foregoing Resolution was/was not thereupon declared duly adopted.

January 2, 2024