



## **Project Narrative**

### **OYA Van Burenville Road LLC Community Distributed Generation - Solar and Energy Storage**

**April 29, 2021**

#### **Area Variance Requests**

OYA Van Burenville Road LLC (“OYA Solar,” “OYA,” or the “Applicant”) respectfully requests that the Board grant two area variances for its proposed Community Distributed Generation solar facility, to be located at 877 Van Burenville Road, in the Town of Walkkill (SBL # 21-1-51) (the “Project”):

- A setback variance from Code § 249-114(A)(3), permitting a reduction in the required setback from 1,000 feet to 500 feet from Van Burenville Road, based on the reasoning contained in the following narrative.
- A variance from Code § 249-114(B), permitting the maximum lot coverage to be increased from 15% to 18.8%. This will allow the fenced area to cover 15 acres, which complies with the limit defined in § 249-114(B) of the Town Zoning Code. The total area of the property is 80.10 acres.

#### **Project Background**

OYA submitted its application to the Planning Board for site plan approval and has appeared before the Planning Board twice. The Planning Board circulated the proposed plan to the neighboring Town of Mount Hope for feedback, as the property abuts the dividing line between towns. To-date, OYA Solar is unaware of any feedback that may have been received.

At its December 2<sup>nd</sup>, 2020 meeting, the Planning Board referred OYA Solar to this Board for an interpretation of Town Zoning Code § 249-114(A)(3), to determine whether OYA’s proposed vegetation would satisfy the intent of that Code section to permit the Planning Board to grant a setback waiver. On April 12<sup>th</sup>, following a Public Hearing, the Zoning Board voted that proposed vegetation does not satisfy the intent of the Code and that OYA must obtain a setback variance. OYA now respectfully requests the setback and lot coverage waivers from this Board.

Additionally, OYA plans to return to the Planning Board on May 5, 2021 to request that the Planning Board serve as lead agency in a coordinated review for a Type I action pursuant to the State Environmental Quality Review Act (“SEQRA”). OYA understands that the Planning Board must issue a negative declaration before this Board can vote on the requested variances.



## **Project Details**

The proposed Project will have a generation capacity of 2.2 Megawatts, using a single-axis tracking solar array, including battery energy storage.

OYA leased the property from the landowner, Lane Meadow Farm LLC, on May 24<sup>th</sup>, 2018. The term of the lease is for 25 years and includes the option to extend for 4 additional terms of 5 years. Since the property was leased, OYA has completed the necessary utility interconnection engineering required to develop a detailed scope of work, and has already committed 100% of the cost to interconnect the project to the utility grid, which is owned by Orange & Rockland. The interconnection process will include upgrades to existing distribution lines, as well as to the sub-station located in the Town of Wallkill. In addition to the electrical engineering, OYA Solar has completed topographic, boundary, wetland, and habitat surveys, all necessary to finalize and prepare the site plan for presentation to the Town of Wallkill. The "Habitat Suitability Assessment Report" has been included as part of this submission as reference material. State and Federal agencies, including the State Historic Preservation Office (SHPO), New York State Department of Environmental Conservation (NYSDEC), the US Fish and Wildlife Service (USFWS), and the US Army Corps of Engineers (USACE), have all been notified and provided detailed reports of the project's potential impacts. SHPO has concluded the project activities will have no impact to cultural or archaeological resources, while the USFWS has agreed there will be no impact to any threatened or endangered species. OYA Solar awaits responses from the NYSDEC and USACE, but expects each agency to concur that the proposed design will have no impact to any wetlands or wildlife located on or near to the site. A third-party glare study has also been completed, ensuring no glare will be experienced by any nearby residence, nor while travelling along any roadways or overhead flightpaths. The property is currently enrolled in the County's Agricultural District, and OYA will send a Notice of Intent to the New York State Department of Agriculture and Markets as part of the permitting process.

The solar array's single-axis tracking system will allow the rows of solar panels to track the sun from East to West, improving the overall efficiency of the system, while also eliminating any chance of glare coming off the panels, since reflected light is wasted energy. The Battery Energy Storage System (BESS) included in the design allows any excess power generated by the solar array to be stored and fed into the grid later in the day, rather than being wasted. In short, a battery energy storage system coupled with a solar array allows for smooth, controlled, and more efficient delivery of electricity to the electrical grid.

The area of the property on which the project is being proposed was chosen due to it having the least amount of disturbance to the property. The remaining areas of the property contain the Little Shawangunk Kill, is heavily forested, and contains a number of wetlands. The proposed location avoids the Little Shawangunk Kill by the required 65-foot buffer, per Town Code. These natural features, combined with the Town's buffer, restrict the use of approximately 70% of the property.



Unlike most other construction activities, the methods and materials chosen to construct Community Distributed Generation solar arrays are purposely low-impact, allowing the property to be easily reverted to its pre-construction state when desired. The pile foundations used to support the rows of solar panels will be driven or screwed into the ground, allowing for clean removal. The fence posts are also typically driven or screwed into the ground. The land beneath and between the rows of solar panels will be seeded with native, non-invasive pollinator species of grass and plants, which can also benefit surrounding agricultural activities. The installation of the solar array provides the added benefit of allowing the land, which has been exposed to many cycles of agricultural activities, to fully regenerate.

### **Visual Impact Considerations**

A vegetative planting plan, similar to the options shown in the submitted visual simulations, can be tailored to ensure that the project is adequately screened. A final plan can be developed which meets the approval of the Town's Planning Board, as well as the neighboring residents. The property provides adequate space to explore a number of visual screening options.

#### Existing Conditions and Surroundings:

The property to the immediate North of the site is vacant, partially cleared and partially wooded. The property to the East is partially cleared for agriculture, but otherwise fully forested, and vacant. The property to the immediate South is also fully wooded and is vacant. The property to the West is owned by the same property owner as the subject property, contains a single residence, 3 barns, and is primarily vacant land. The property one lot further West is owned by the Landowner of the project. Approximately 25% of the Van Burenville Road frontage of the project property contains existing vegetation, and will provide minor amounts of visual screening for anyone travelling the road. There is also an existing, mature tree line which follows a portion of the western boundary of the property.

Proposal Once constructed, by added vegetation lining the outer fenceline of the solar facility, the project can be well screened from view by the necessary observation points located within the Town of Wallkill. Outside of Wallkill, there are 4 properties located in the Town of Mount Hope situated between 700 to 1,000 feet from the nearest point of the proposed solar array. 2 of these properties can have the solar facility screened by the proposed landscaping. The remaining 2 properties will be able to see portions of the solar array from their respective properties, however the portion that will be visible sits beyond 1,000 feet from each location. To help describe the scale of these distances, drawing S-200 of the site plans (included as part of this application package) illustrates the 1,000-foot and 500-foot setback distances from both Van Burenville Road and Pine Grove Road of Mount Hope (purple dashed lines).

As an alternative, vegetation can be planted as needed, immediately adjacent to all roadways, on either of the landowner's properties. It is assumed this is option is the least preferred solution, as it would decrease the views of farmland from the roadways.



## **Area Variance Considerations**

OYA Solar is requesting a 500-foot setback variance, that would permit the proposed solar facility to be set back 500 feet, rather than 1,000 feet from Van Burenville Road. Additionally, OYA is requesting a variance to allow the maximum lot coverage to be increased from 15% to 18.8%. Pursuant to Town Code § 249-48(C)(2) and N.Y. Town Law § 267-b(3), the Board may grant area variances where it is proper. In doing so, the Board must consider the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. In considering this balance, the ZBA is to consider five factors pursuant to N.Y. Town Law, as well as the factors articulated by the Town Code. The analysis for the requested variances is discussed in each factor heading below.

### ***1. Whether the area variance would observe the spirit of the law and would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.***

#### Setback Variance

The requested variances would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The properties adjacent the property are either vacant and/or agricultural land, and/or are screened from view. The owners of the residences located near the Project do not object to the siting of the Project. Approval of the requested setback variance will in fact ensure that the project is more robustly screened from view; if the Project was set back 1,000 feet from the roadway, no vegetative screening would be required by the Code.

#### Lot Coverage Variance

The requested variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The properties immediately surrounding the property are either vacant and/or agricultural land and/or already fully screened from view. Any remaining portions of the project will be robustly screened from view by added vegetation as part of the design. By producing a source of renewable energy, the project will in fact benefit the neighborhood.

### ***2. Whether the benefit sought by the applicant could not be achieved by some method, feasible for the applicant to pursue, other than an area variance.***

This factor requires that the applicant retain the benefit of its project and that the project be feasible. A zoning board of appeals cannot deny a variance and effectively require an applicant to pursue an alternative design that is a “profound departure” from, or substantially costlier than, the original project design. See *Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. ZBA of Town/Village of Harrison*, 296 A.D.2d 460 (2d Dep’t 2002); *Baker v. Brownlie*, 248 A.D.2d 527 (2d Dep’t 1998); Salkin, N.Y. Zoning Law & Practice § 29:36.



#### Setback Variance

Here, the only way to avoid the instant request for a setback variance is to shift the array in the Southeast direction; however, this would result in a request to infringe on the 65-foot buffer required to protect the Little Shawangunk Kill, as well as significantly increasing the amount of tree clearing required. This may also result in increased visibility of the array to the surrounding residents, as the alternative region of the property is visible. The added construction costs by requiring significant tree clearing, installation into wetlands, and having to bore electrical components beneath the stream will render the project economically unviable. Therefore, the currently requested variance is the sole feasible method by which to site the array in a manner assuring minimal disturbance.

#### Lot Coverage Variance

OYA has thoroughly investigated economic viability of the Project without obtaining a variance to permit an increase in permitted covered area. Reducing the size of the Project any further would render the Project unviable, primarily due to the high cost of existing electrical infrastructure upgrades. Therefore, a reduction in Project size is not a feasible alternative.

### **3. Whether the area variances would be substantial in relation to the requirement.**

In evaluating this factor, zoning boards of appeal must examine the totality of the circumstances within an application, considering the balancing test that overarches all five factors. *See Friends of Shawangunks, Inc. v. Zoning Bd. Of Appeal of Town of Gardiner*, 56 A.D.3d 883, 886 (3d Dep't 2008) (although variances were substantial, the zoning board of appeals properly determined that the area variances would not have a substantial impact on the community); *Schaller v. New Paltz Zoning Bd. Of Appeals*, 108 A.D.3d 821, 824 (3d Dep't 2013).

#### Setback Variance

Here, a reduction in setback distance of 500 feet compared to the required 1,000 feet would only be substantial in nature if there were to be no visual screening of the array. The proposed plans include a substantial vegetative visual buffer so that once constructed, the Project will be screened in accordance with the intent of the Town Code. Therefore, when considering the totality of the circumstances including the appropriate visual screening, the requested setback is not substantial in nature.

#### Lot Coverage Variance

The request to increase the allowed lot coverage from 15% to 18.8% is relatively minor. In acreage, this will increase the project footprint from 12 acres to 15 acres. Considering the added acreage will be hidden from view by vegetative screening, the change will not be substantial, but is required for the project to proceed.



***4. Whether the area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, including increased population density, if any.***

The requested variance would not have an adverse impact on the physical or environmental conditions in the neighborhood. The proposed facility is located in an existing agricultural neighborhood and will not produce noise, vibrations, emissions, odors, or other undesirable effects. Moreover, the facility is unmanned and will not generate any traffic or increased population density that would increase demands on government services. In fact, the proposed project will contribute to the tax base of the Town, School District, County, as well as any Special Districts, while not drawing on any of these services. The facility will provide a benefit to the neighborhood by producing renewable energy.

Setback Variance

Further to the above, the proposed setback variance is specifically intended to avoid infringing on the 65-foot protective buffer for the Shawangunk Kill, avoiding installation in wetlands, and reducing the required amount of tree clearing; thus, the Project with the variance is less impactful to the environmental conditions of the neighborhood than it would be without the variance. As noted above, the vegetative screening will also ensure that there are no adverse visual impacts to the neighborhood.

Lot Coverage Variance

The minimal 3.8% increase in permitted lot coverage would not have adverse physical or environmental effects. The Project is already sited, at a 15-acre size, to avoid any adverse impacts to the Shawangunk Kill or require additional tree clearing. As noted above, the vegetative screening will also ensure that there are no adverse visual impacts to the neighborhood.

***5. Whether the hardship would be self-created.***

Setback Variance

The hardship resulting in the need for a setback variance is not self-created. As noted above, OYA Solar has carefully sited the Project to produce minimal disturbance to the Shawangunk Kill/existing forested area, and will result in maximal visual screening. The majority of the property is restricted due to the Little Shawangunk Kill and its buffer zone. The Applicant is unable to change the location or design of the proposed Project considering these constraints. Therefore, OYA is unable to make further modifications to the location or design of the proposed Project considering the unique physical and environmental constraints of the property.

Lot Coverage Variance

The hardship giving rise to the need for a lot coverage variance is also not self-created. OYA has thoroughly explored the option of conforming to the 15% maximum permitted lot coverage limit, but this would render the Project economically unviable due to the costs owed to the utility company, Orange & Rockland, for the necessary electrical infrastructure upgrades. These electrical infrastructure upgrade



costs are not negotiable and are set by the public utility. Therefore, this economic hardship is not created by OYA.

To the extent that the Board disagrees and finds that the hardship for any of the above variances is self-created, the Applicant respectfully reminds the Board that this factor is not dispositive pursuant to N.Y. Town Law § 267-b(3). *See Daneri v. Zoning Bd. of Appeals of Town of Southold*, 98 A.D.3d 508, 510 (2d Dept. 2012) (self-created nature of difficulty does not preclude grant of area variance).

***6. Whether the variance observes the intent of the Town of Wallkill Master Plan.***

The 2005 Town of Wallkill Master Plan does not address solar facilities. However, the Master Plan articulates an intent to safeguard agricultural areas and open space. The proposed project is a passive use that will assist in preserving agricultural land for future use. Except for the panels and racking, the project will be open space, seeded with a mix of native grasses and wildflower that will allow local pollinators and wildlife to thrive. Therefore, OYA Solar believes that the proposed project respects and observes the intent of the Master Plan.

***7. Whether, in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.***

OYA Solar seeks to bring a renewable energy source to the Town and further New York State's commitment to reducing carbon emissions 85% by 2050. OYA Solar has carefully sited the project to create minimal disturbance to existing vegetation, natural resources, and neighbors. The project is a passive use that will not draw on government services and will instead (a) provide a source of tax revenue to the Town, County, and School District, and (b) ensure a significant number of local residents and businesses are given the opportunity to subscribe and realize the associated monetary savings. Therefore, OYA Solar maintains it is in the interest of justice for the Board to grant the requested setback variance.

**Additional Information - Community Solar Subscription Process**

The purpose of a community solar array is to provide local individuals and businesses the opportunity to obtain their electricity from a clean and renewable source of energy, when their particular conditions will not allow for it to be installed on their own property. Many homes and businesses simply do not have the space or upfront funds available to install solar panels by their own means. Instead, a large number of residential properties and businesses can subscribe to a portion of a larger solar array, such as the one being proposed. This "community" approach to distributing renewable energy allows all involved parties to share the benefits, including the utility company, the community, as well as the developer. Firstly, the developer no longer needs to mobilize and install a large number of smaller systems on homes or businesses. The same number of solar panels are simply consolidated into one area. The significantly



reduces the time and cost involved in generating the same amount of energy. Secondly, the utility company benefits by having an electricity generator that is much closer to the community, which helps to avoid costly upgrades to the grid. Finally, the subscriber does not need to provide the upfront cost of purchasing and installing the equipment, but gets to enjoy the savings from passed on from the utility company.

Once a potential subscriber contacts OYA Solar, their annual energy consumption will be reviewed. This helps to define their proportion of the solar array to which they will be assigned. To put this in perspective, the solar array being proposed will generate enough power to satisfy the energy needs of approximately 650-700 homes. However, the electricity is not fed directly to the subscribers, but rather first into the grid. This gives the utility company control over the grid, and eliminates the need to source their power from a generation facility located much further away. This is valuable to the utility company, since transporting energy over longer distances also requires energy to do so, resulting in loss of overall energy, which comes with a cost.

Because the electricity is not sent directly to the consumer from the community solar array, but is rather first fed into the nearby grid, the subscriber is instead provided bill credits, which are applied to their normal electricity bill, reducing the charges by up to 10%. Essentially, this allows the subscriber to experience the same net savings as having the equipment located directly on their property.

The subscription agreement has no signup or hidden maintenance fees, and no cancellation fees for residential subscriptions. Large commercial subscribers may have a cancellation fee included in their agreement, but this is to help offset the impact of having a large portion of the array suddenly becoming unsubscribed. The subscription, and electricity bill savings, begin automatically when the solar array comes online.

### **Conclusion**

As demonstrated above, the requested setback and lot coverage variances would permit a Project greatly beneficial to the Town, with no adverse impacts to the surrounding neighborhood or existing natural features of the property. Therefore, OYA respectfully requests that the Board grant the requested variances. OYA looks forward to presenting the proposed requests and discussing the details of the proposed Project with the Board at its May 10, 2021 meeting.



**Appeal Request:**

Revised April 28, 2021

Any Appeal is made or requested by the applicant for the following:

- Interpretation of the Zoning Law
- Commercial Variance
- Use Variance
- Sign Variance
- Area Variance
- Residential (Decks, Shed, Pool, Addition, Accessory bldg. /structure)  (New Structure)
- Accessory building larger than 28ft x 28ft

Other:

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- Front / Side / Rear / Yard setback from 1000' to 500' Section 249-114
- Front / Side / Rear / Yard setback from \_\_\_\_\_ to \_\_\_\_\_ Section \_\_\_\_\_
- Front / Side / Rear / Yard setback from \_\_\_\_\_ to \_\_\_\_\_ Section \_\_\_\_\_
- Front / Side / Rear / Yard setback from \_\_\_\_\_ to \_\_\_\_\_ Section \_\_\_\_\_
- (Maximum solar area) ~~Lot area from~~ 15% to 18.8% Section 249-114B

State reason and purpose for Request:

Sufficient vegetation screening will be installed to prevent view of solar array;  
Proposed location of array is less impactful to wetland and forest portion of property

Applicant must print and submit Environmental Assessment Form. This form must be filled out by going to the following link and following the steps given: [www.dec.ny.gov/eafmapper](http://www.dec.ny.gov/eafmapper)

Has this proposal appeared before the Planning Board?  YES  NO

Property taxes up to date with the Town of Wallkill?  YES  NO

Property owner must have their signature notarized on this application:

Owners Signature: [Signature] Notary Public: [Signature]

Sworn to before me this date: 4/29/2021

Applicant same as owner

State of New York  
County of Orange

Building Inspector signature: \_\_\_\_\_ Date: \_\_\_\_\_

**BRIAN M GRZYBEK**  
Notary Public - State of New York  
No. 01GR6318398  
Qualified in Sullivan County  
My Commission Exp. 01/26/2023