

# AREA VARIANCE FINDINGS & DECISION

MIDDLESEX ZONING BOARD OF APPEALS October 5, 2017(rescheduled for October 19, 2015)

Applicant/Owner: SUN 8 PDC LLC/DIST SUN, Marc Maser & Chet Feldman agents for owner Jeanette L. Daum  
Applicant's Address: 4450 Townline Rd., Rushville, NY 14544  
Agent's Address: 601 13<sup>th</sup> St. NW, Suite 450 S, Washington, DC 20005  
Telephone: Agent's # (202) 558-4465  
Location: 4450 Townline Road, Rushville NY 14544  
Applicable Section of Town Zoning Code: Section #403, Sched II  
Tax ID # 3.01-1-4

Variance No: #021417-Z-AV (amended 5-18-17)  
Zoning District: AG  
Published Notice on 10/08/17 (DM)  
Referral to County sent 10/13/17  
County Hearing held on 10/26/17  
Referral Response no significant county impact

## NATURE OF REQUEST

Applicant is requesting an amendment to an Area Variance granted by the Zoning Board of Appeals for this Parcel (B) on May 18, 2017. Due to a Lot Line Adjustment to the configuration of these parcels and to accommodate the reconfiguration of solar array tables, this reconfiguration was approved by the Planning Board on 9/06/17. The reconfiguration of a row of array tables, created the amendment to the "previously approved variance" for a fence line which surrounds these array tables to change position and now fall within the rear setback on Parcel B. Applicant requests to locate this fence 2-ft., 1-in. from the rear property line. The AG Zoning District, in which this parcel falls, requires 30-feet for a rear setback from the property line.

## FACTORS CONSIDERED:

1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created: Yes \_\_\_ No X

Reasons: There is no undesirable change created which would be a detriment to nearby properties because the location of the security fence chain-link fence is not visible from the neighboring parcels.

2. Whether the benefit requested by the applicant could be achieved by some method, feasible for the applicant to pursue, other than a variance: Yes \_\_\_ No X

Reasons: The applicant has stated that it is not feasible due to the quantity and reconfiguration of the proposed solar arrays installed are necessary for their K Watt hours output for the facility and for it to be financially feasible for the community to benefit from its installation. This reconfiguration is necessary to protect wetlands discovered on the property.

3. Whether the requested variance is substantial: Yes X No \_\_\_

Reasons: The variance request is substantial because it is now approximately 2 ft. from the property line where 30 feet are required; however, in correlation to the benefit of protecting the wetlands discovered onsite, the request is reasonable and worth supporting.

4. Whether the variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district: Yes \_\_\_ No X

Reasons: This proposed variance request is located in a materially insignificant location and so will not create an

adverse effect or impact the physical / environmental conditions in the neighborhood or district, in fact it is for the protection of the environmental and physical protection from erosion of the wetlands on Parcel B.

5. Whether the alleged difficulty was self-created: Yes X No \_\_\_\_\_

Reasons: Though self-created, this does not preclude the motion made to grant the variance request due to the greater need for the wetlands to be protected.

### **DETERMINATION OF THE ZBA BASED ON THE ABOVE FACTORS:**

The ZBA, after taking into consideration the above five factors, in a motion made by Mr. Richard DeMallie and seconded by Mr. Win Harper, finds that:

**X** The benefit to the Applicant **DOES** outweigh the detriment to the character, health, safety, and welfare of the neighborhood and therefore the variance request is **GRANTED.**

*NOTE: SEC. 908.0 of the Town of Middlesex, NY Zoning Law states:*

*Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals, or any officer, department, board or bureau of the Town, may apply to the Supreme Court by proceeding under Article 78 of the Civil Practices Law and Rules. Such action must be instituted within thirty (30) days after the filing of a decision in the Office of the Town Clerk.*

### **CONDITIONS:**

The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community: pending Yates County Planning Board review on October 26, 2017 – no significant county-wide impact.

Arthur Radin  
Chairman, Zoning Board of Appeals

October 19, 2017  
Date

### **RECORD OF VOTE**

	MEMBER NAME	AYE	NAY
Chair	<u>Mr. Arthur Radin, Chair</u>	<u>X</u>	_____
Member	<u>Mr. Win Harper</u>	<u>X</u>	_____
Member	<u>Mr. Ted Carman</u>	<u>X</u>	_____
Member	<u>Ms. Elizabeth Grant</u>	<u>X</u>	_____
Member	<u>Mr. Richard DeMallie</u>	<u>X</u>	_____
Member	<u>Ms. Rebecca Parshall (alt)</u>	<u>absent</u>	_____