

**Town of Shawangunk
Zoning Board of Appeals
February 19, 2025**

Minutes of a Public Hearing held by the Town of Shawangunk Zoning Board of Appeals on February 19, 2025, at 7:00 PM at the Town Hall, 14 Central Avenue, Wallkill, New York, County of Ulster for the following:

Present Were: Dennis Arluck, Chairman, Susan Wiand, Robert Wallner, Sandy Damon, and Chris Budney as members, Town Attorney, Richard Hoyt, Planning Board Members Richard Barnhart and Ryan Reid, Building Inspector, John Calaca, Kathy Ebbrell, Zoning Board Secretary, and members of the public.

Approval of Minutes: A motion was made by Mr. Wallner and seconded by Mrs. Wiand to approve the minutes of August 21, 2024. **Vote:** Mr. Budney – Abstain, Mrs. Wiand – Aye, Ms. Damon – Aye, Mr. Wallner - Aye and Mr. Arluck – Aye.

All Public Hearings remain open for one hour.

Appeal/Interpretation:

Christopher Sparaco/NY USLE Bruynswick Road I LLC – TM #99.2-6-10 (RAG-4) 2319 Bruynswick Road, Wallkill, NY 12589 - §177-23.1.E(3)b) – Solar Energy Systems – Appeal/Interpretation of the Building Inspector’s Ruling:

The applicant presented an updated proposal.

See Transcription (attached).

A motion was made by Ms. Damon and seconded by Mr. Wallner to continue this public hearing until the March 19, 2025, meeting. Vote: Mr. Budney – Aye, Mrs. Wiand – Aye, Ms. Damon – Aye, Mr. Wallner - Aye and Mr. Arluck – Aye.

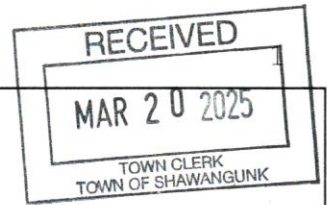
Mr. Mike Fingar stated they will be withdrawing their original application from July 19, 2023, without prejudice and will be submitting a new application for the March 19, 2025, meeting.

Appearances: None

A motion was made by Mr. Arluck and seconded by Mrs. Wiand to adjourn this meeting. Vote: Mr. Budney - Aye, Mrs. Wiand – Aye, Ms. Damon – Aye, Mr. Wallner - Aye and Mr. Arluck – Aye.

Meeting Adjourned at 7:54 PM

**Respectfully submitted,
Kathy Ebbrell
Zoning Board of Appeals Secretary**



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ZONING BOARD OF APPEALS PUBLIC HEARING

ZONING CODE INTERPRETATION REQUEST
APPEAL BY U.S. LIGHT ENERGY and
NY USLE BRUYN SWICK ROAD 1, LLC

DATE: Wednesday, February 19, 2025

LOCATION: 14 Central Avenue
Wallkill, New York 12589

TIME: 7 p.m.

BOARD: Richard W. Hoyt, Esq.
Chris Budney
Susan Wiand
Sandy Damon
Robert Wallner
Dennis Arluck

BOARD SECRETARY: Kathy Ebbrell

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MR. ARLUCK: Welcome.

MS. EBBRELL: Kathy Ebbrell,
secretary with the agenda.

Appeal interpretation New York US
Light and Energy. Christopher Sparaco SBL
99.2-6-10, address at 2319 Bruynswick Road,
Wallkill, New York and Wallkill Central
School District, large scale solar system,
solar energy system.

MR. ARLUCK: Can I get a motion to
accept the minutes from August?

MR. WALLNER: I'll make that motion.

MR. ARLUCK: Second?

MS. DAMON: I'll second it.

MS. EBBRELL: Mr. Budney?

MR. BUDNEY: Aye.

MS. EBBRELL: Actually, you were
not here, so it would be an abstain.

Wiand, Ms. Wiand?

MS. WIAND: Yes.

MS. EBBRELL: Ms. Damon?

MS. DAMON: Yes.

MS. EBBRELL: Mr. Wallner?

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2 MR. WALLNER: Yes.

3 MS. EBBRELL: Mr. Arluck?

4 MR. ARLUCK: Yes.

5 MR. HOYT: Shall I go.

6 MR. ARLUCK: Yes. Go ahead.

7 MR. HOYT: Good evening, everyone.

8 Richard Hoyt, Attorney for the Town. Just
9 a couple of preliminary comments to kind
10 of set the table for this evening.

11 First of all, this is an appeal of
12 the building inspector's determination of
13 August 8th from last year. This is not a
14 variance request, and therefore, the
15 normal variance tasks simply don't apply.
16 The only issue for the Board to determine
17 is was Mr. Calacca correct or was he
18 incorrect. And at the end of the process,
19 you can either affirm what he did, reverse
20 what he did or modify what he did. You
21 have the complete appellate jurisdiction
22 over any ruling that he makes that is then
23 appealed to you. And the applicant did
24 appeal timely back in October, and you all

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2 have that big packet. Due to scheduling
3 conflicts and holidays, we are first
4 hearing this matter this evening.

5 This is a Type II exempt action
6 under the State Quality -- Environmental
7 Quality Review Act. Interpretations are
8 deemed exempt. So the Board does not have
9 to consider SEQR when it makes its
10 decision. Likewise, this matter does not
11 have to be referred to the Ulster County
12 Planning Department because it is only an
13 appeal. It is not the grant of a variance
14 or a permit.

15 There was no need to notify the
16 neighbors like you would normally do on
17 any variance request. The only notice
18 requirements are the landowner and the
19 appellant, I assume the landowner is fully
20 aware?

21 MR. CALACCA: Yes.

22 MR. HOYT: He is here.

23 The building inspector, who is in
24 the building.

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(Building inspector raised his hand.)

MR. HOYT: Oh, back here. The building inspector is here.

The other requirement was, due to a mixup, we had to publish tonight's hearing in the local newspaper. We did not do that due to an oversight. So I'm going to recommend that tonight you listen to all the evidence that anyone wants to present, but I'm afraid you are going to have to vote to continue this hearing, presumably a month from tonight, and we will cure that defect by getting a notice in the newspaper for March 19th, I presume. Although, I don't want to speak for the Board.

MR. ARLUCK: Yes.

MR. HOYT: So I just want to let everyone know up front this will not be the only opportunity. Good or bad, we will have this matter adjourned into March. Again, since everyone is here this

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2 evening, there is absolutely no legal
3 reason to stop the proceedings and go
4 home. We are here, so let's open the
5 hearing.

6 Finally, this Board opened a public
7 hearing in the summer of 2023. I might
8 mention three members have joined the
9 board since then. On the request of US
10 Light for various area variances, that
11 hearing was opened, I think in July,
12 adjourned to August, and then kind of
13 adjourned with no appearances and it kind
14 of fell off the table. We would ask you
15 guys, if not tonight, at some point bring
16 us back up to speed on where you are at
17 and anecdotically, I heard you resolved
18 some of your variance issues. But I'll
19 let you present that. The point is, we
20 need to close that out one way or the
21 other. Either you withdraw all of it or
22 part of it or this Board will have to
23 reconvene and make a decision on that one.
24 And unfortunately, more than a quorum of

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2 the Board wasn't around to hear your
3 evidence in '23. So we don't need to know
4 tonight unless you know, but we would like
5 you to get something in our record because
6 it is an open piece of business that we
7 really need to clean up.

8 I'll ask for more comments at the
9 end, but thank you.

10 MR. ARLUCK: They can ask for a
11 continuance or they can refile?

12 MR. HOYT: On what, the old variance
13 proceedings?

14 MR. ARLUCK: Yes.

15 MR. HOYT: Yes. I mean, they have
16 an application. They probably don't need
17 to refile. But I have a feeling if you
18 are going to pursue anything there, maybe
19 it is not all the relief you needed a year
20 and a half ago, and you are probably
21 thinking well, we don't know how this
22 mature tree issue is going to play out.
23 So we understand that. It is a good
24 opportunity to converse with you about it

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2 since I don't think the Board brought this
3 up for over a year now.

4 MR. ARLUCK: No, he haven't.

5 MR. HOYT: Your variance matters.

6 So that's all I have for now.

7 Thank you.

8 MR. ARLUCK: We are ready.

9 MR. FINGAR: Thank you.

10 MR ARLUCK: Your name.

11 MR. FINGAR: I'm Michael Fingar.

12 I'm the Chief Operating Officer of US
13 Light and Energy. And I have Alex
14 Burnett, US Energy as well. He is a
15 project developer on the project. I also
16 have a couple colleagues that may speak
17 tonight, so I may as well introduce them
18 now.

19 I have Chris Koenig from CT Male
20 Associates, our engineer on the project.
21 And Ari Goldberg, our counsel from Barclay
22 Damon.

23 MR. BURNETT: So this is clear to
24 everyone, I'll pass out handouts.

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2 Just to recap a little bit, we had
3 a 3.75 megawatt AC solar project,
4 approximately 5 megawatt DC community
5 solar project located at this address in
6 the Town. And we did originally submit a
7 joint application to both the Planning
8 Board and to the Zoning Board. Out of an
9 abundance of caution, due to some
10 ambiguity that we saw in the code, we were
11 unsure what relief we may need, but we did
12 make some assumptions based on the areas
13 that we saw on the site.

14 Particularly to that, I want to
15 call out that we have resolved because,
16 Mr. Hoyt, you asked for that. But I also
17 want to say, we planned to present that as
18 well, the vegetative buffer around the
19 array. We originally requested relief
20 from that, in large part because the array
21 itself was already screened by neighboring
22 properties that had the mature trees. In
23 further discussion with both the Zoning
24 Board and the Planning Board, it was

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2 understood that the position of those
3 Boards and possibly the neighbors was they
4 might not always have those trees there
5 and they could be cleared. So we have
6 left that 50-foot vegetative buffer on our
7 array undisturbed. So we no longer need
8 that variance or are seeking that
9 variance. I recognize it has been some
10 time since we met with you.

11 In large part we have been
12 discussing with the Planning Board after
13 we last saw you, and then it fell off from
14 regularly scheduled meetings due to the
15 interpretation requests and ultimately,
16 our appeal. So that variance request has
17 been -- is no longer needed. So happy to
18 update application when appropriate. I
19 think right now, in large part, in order
20 to do that we need to understand what we
21 are here to discuss tonight, which is what
22 is a mature tree, and that would help us
23 define what, if any, relief may be
24 necessary as it related to the Town Code.

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So the third, and the other variance that we no longer need was due to lot coverage, and we have tightened up our area a little bit related to that and just avoided that.

MR. ARLUCK: I'm sorry.

Is that the 18 now acres for the array?

MR. FINGAR: Chris, do you have the metrics available for that?

MR. KOENIG: That is correct. Yes.

MR. FINGAR: That sounded correct. I just want to confirm a number for you on that.

MR. BURNETT: 18.8.

MR. FINGAR: So the overall area of the array.

MR. ARLUCK: Down from 22 or 23?

MR. BURNETT: I believe it was 22.5.

MR. FINGAR: Right. So that was mostly through design changes on our part that we worked to remove those two of

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2 three.

3 And the third potential variance is
4 really uncertain if it is needed based on
5 what is determined to be the definition of
6 a mature tree.

7 But I did want to just provide a
8 little overview of the application, and I
9 think what I just said should largely
10 catch you up. But we did submit this back
11 in April of '23. I recognize there are
12 some new members on the Zoning Board. We
13 first met with the Planning Board at first
14 to introduce our project. That was on
15 June 6. Then we met with the Zoning Board
16 at that time. It was a couple weeks later
17 in July to open up the discussion.

18 Initially, when we met with the
19 Zoning Board, it was understood that it
20 seemed like from your perspective that we
21 were asking for a lot, both in the count
22 of the variances and potentially the areas
23 that we were requesting relief from. We
24 were asked to make sure that that was the

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2 minimum variances that would be necessary
3 for the project to proceed and to take a
4 hard look at the code of truly what it was
5 asking us to do and comply with. So we
6 took some time to do that, and we went
7 back to the Planning Board, and that led
8 up to the next several months of
9 discussions back and forth from a technical
10 review. Still uncertain on the exact
11 variances, but knowing in order for you to
12 complete an action SEQR would have to be
13 performed, County referral would have to
14 be done at the Planning Board level. So
15 we spent a bulk of our time last year
16 working with the Planning Board to go
17 through the technical review of our
18 application.

19 We had a lot of back and forth with
20 the Planning Board. We hosted several
21 site visits. Some of you were in
22 attendance for those. But the Planning
23 Board also held some independent site
24 visits as well, as I understand it. And I

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2 apologize, I forgot the name of the
3 committee, but there was something, an
4 environmental committee that also attended
5 and held the site visit. I don't recall
6 the formal name of that group. Chris, do
7 you recall.

8 MR. KOENIG: It was the EMC.

9 MR. FINGAR: Thank you.

10 The EMC held a visit at the
11 property, and ultimately, where we last
12 left off was needing to get an
13 interpretation of what a mature tree was.
14 Because there were a few definitions
15 floating around, floating through the Town
16 consultants, and I think just from our
17 position. We had sought that
18 interpretation from the building inspector.
19 We received that interpretation, and I do
20 want to turn it over to Alex in a moment
21 to go through the details of what those
22 are. But in large part, we disagree with
23 that interpretation, and we have appealed
24 it, and we are looking for your guidance

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2 on whether or not that should be upheld or
3 whether it should be modified or changed
4 in some way so that we can proceed with
5 this project. I recognize it has been a
6 very long time for the Town to review this
7 project. It also has been a very long
8 time for us in development.

9 Ultimately, I feel we have a really
10 great site for this type of project. It
11 is well-screened. It has an improved air
12 connection, and it fits well within the
13 community without impacting it, from our
14 perspective, which is hard to do with the
15 projects nowadays. I'm particularly
16 finding it an improved interconnection
17 point that can handle the injection of
18 this type of power that is out of view.
19 It is really almost unheard of at this
20 stage of the projects and what is happening
21 in these communities. So we feel we have
22 a valuable site. We would like to discuss
23 how to make that happen within the Town,
24 and that leads us to where we are today.

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2 MR. ARLUCK: Let me ask you a
3 question.

4 Have you guys ever looked at our
5 comprehensive plan for AG4?

6 MR. FINGAR: Personally, I have
7 not. I'm sure that our team has. If you
8 have questions related to that, then I
9 think likely together we can answer them.

10 MR. ARLUCK: Yeah. I just would
11 like to just mention there is basically it
12 is a protection issue from site lines from
13 the mountain, and these are things that we
14 are hoping that you would consider in this
15 plan. So go ahead.

16 MR. FINGAR: I just want to speak
17 to that for a moment because I wasn't
18 exactly clear with that reference, but I
19 have looked at the comprehensive plan to
20 understand. I understand the Town values
21 protection of agricultural property, which
22 this property does not cause to happen,
23 and we have done a complete visual
24 analysis as well, which I realize I don't

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2 know if that made it to the Zoning Board,
3 but that was part of our efforts with the
4 Planning Board as well.

5 MR. ARLUCK: Go ahead.

6 MR. BURNETT: So getting into the
7 presentation, so I wanted to start with
8 kind of breaking down, you know, what we
9 are here to discuss, that being the
10 section of the solar code specifically as
11 it relates to the mature trees and the
12 clearing of the mature trees.

13 So as it reads, "Clear cutting of
14 mature trees shall be limited to the area
15 of the panel array, the equipment
16 compound, the area of access roadways and
17 the area required for solar access and in
18 no case more than ten (10) acres per
19 parcel." So it is our understanding and
20 seemingly, the Town's as well as I'll get
21 into. Based on the determination that
22 this ten acre limit does, in fact, only
23 apply to mature trees as we understand it.

24 MS. FINGAR: I think that is worth

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2 just pointing out, and I'll go back to
3 that slide for a moment to a couple things
4 that were a little bit ambiguous to us and
5 I think still are that we are looking for
6 some clarification on.

7 One was that what is a mature tree,
8 which seems to be isolated in the code,
9 different than an average tree or the
10 alternative. It is singled out as
11 something of significance, a mature tree.
12 Additionally, another area that I think is
13 more clear in the code but maybe less
14 clear in our discussion is what is this
15 trying to limit. It has been told to us
16 or expressed to us before that that was
17 ten acres in totality of clearing, when
18 our interpretation of this, and I think
19 that the building inspector's interpretation
20 confirms this, and I will show that in the
21 following slide, is that truly is
22 discussing a limitation of mature tree
23 clearing.

24 MR. BURNETT: So to highlight the

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2 main takeaways from that determination
3 from the building inspector, specifically,
4 a mature tree was given a definition. So
5 in his words, whether or not a tree is a
6 mature tree in my assessment is a tree
7 that is old enough to produce a flower or
8 fruit. And another main takeaway for us
9 is, quote, "It is my ruling that 'in no
10 case' means all trees capable of flowering
11 or fruiting as included in the ten (10)
12 acre limitation. So these two together is
13 the definition of a mature tree being the
14 flowering or fruit bearing trees, that
15 being the mature tree definition; and then
16 the next statement, saying that in no case
17 refers to what he defined as a mature
18 tree. It is then our understanding of the
19 code and through his determination, that
20 this section of the code is, in fact,
21 referencing only mature trees to be
22 limited to ten acres of clear.

23 MR. FINGAR: Additionally, I think,
24 on that, what we disagree with, and we

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2 will go into this in further slides, is
3 that to say a mature tree is any tree that
4 is old enough to produce a flower or
5 fruit, that is a wide range of trees.
6 Trees can begin to flower in as little as
7 six months old, and it goes up from there.
8 So we disagree with that, especially in
9 context to our site. But I think as it
10 relates to other areas in the code that we
11 will go into, that seems to conflict.

12 MR. BURNETT: So while we
13 understand and appreciate the building
14 inspector's perspective, we did provide an
15 expert report by a certified arborist, and
16 that was submitted to the Town, I believe
17 called the Tree Mature Report. So that
18 gave, you know, that perspective, our
19 perspective that we would support. And the
20 understanding of the section of the code
21 relates as well to the ecological impact.

22 Let me rephrase that.

23 Understanding that this section of
24 the code is meant to relate to the

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2 ecological impact, and there is a mention
3 in the determination letter from the
4 building inspector that this report was
5 focused more so on the commercial value or
6 the economical value of the trees surveyed
7 and the trees on the site. So while we
8 understand that that was mentioned within
9 the report, it is tied back into the
10 ecological impact, as the two do relate to
11 each other. So what the report refers to
12 specifically is that this property does
13 not fall into the kind of realm of a
14 mature forest. And his kind of
15 determination in the report is that a
16 typical hardwood forest of the nature that
17 this property has would require a lengthy
18 time to regenerate and really become a
19 mature forest that is encompassed by
20 predominantly all mature trees. And what
21 he suggested is that that would take about
22 80 to 100 years to happen. And through,
23 in slides further along, you'll see we
24 provided some historical imagery. And the

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2 example we are using is from an image from
3 1974, and that shows and kind of puts into
4 perspective what could have happened in
5 the last 50 years, 51 years now, but you
6 know, what could have happened in the last
7 50 years in terms of the regeneration of
8 this forest.

9 MR. FINGAR: So just, where that
10 map came about, and we will go into that
11 in further slides, that was in response to
12 a Town engineer comment that was made that
13 offered one definition, and I recognize
14 there are a few out there of mature trees,
15 maybe trees that are 50 years or older.
16 So we went back to that historical imagery
17 that we had available from 1974, coincided
18 with their year of submissions 50 years
19 ago. It also was one of the more clear
20 aerial images that was available to us.
21 And you can see in that image, and we will
22 go to that shortly after this slide, of
23 the areas that were historically already
24 cleared and then have revegetated to the

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2 state they are in today.

3 MR. BURNETT: And so what was
4 suggested in the report is that a forest
5 of this nature would likely take 80 to 100
6 years. So that being, the historical
7 imagery you were referencing being 50
8 years, it is still quite a while until
9 this property really would regenerate into
10 a mature forest, a forest of predominantly
11 mature trees.

12 And then as mentioned in the
13 previous slide, the building inspector
14 states that in no case refers to trees
15 that can produce a flower or fruit, which
16 he previously defines as a mature tree.
17 This confirms our understanding that this
18 section of the code, the ten acre limit,
19 is just reiterating that this is what we
20 believe to be, you know, ten acres of
21 mature trees only. This is not any tree,
22 any bush, it is, you know, the code reads
23 and determined that it is solely related
24 to mature trees.

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MR. FINGAR: So these were the images that we discussed earlier. I do want to allow you to read the text on it, but it is probably easier to see those looking at the wall here to read them from your packet.

MR. BURNETT: And I will say the one image on the right is this image we have here, and then both images are blown up a little bigger on the last two slides in the packet handout.

MR. FINGAR: So after you just cover the points on the slide, in terms of text, if you want to turn it over to Chris to talk a little bit about the methodology that got us that image.

MR. BURNETT: All right.

So going back to kind of the determination letter and understanding that we now have this definition of a mature tree. So based on the -- so our position is largely based on the expertise that was provided to us through that tree