

May 10, 2023

RECEIVED
PLANNING DEPARTMENT
MAY 10 2023
TOWN OF YORKTOWN

Via Electronic Mail

Hon. Richard Fon, Chairman
and Members of the Planning Board
Town of Yorktown
363 Underhill Avenue
Yorktown Heights, NY 10598

**Re: Dell Ave. Solar Farm
Application for Site Plan and Special Use Permit
Tax Map Parcel 70.15-1-2 & 70.11-1-16 (“Property”)**

Dear Chairman Fon and Members of the Planning Board:

As you know, we represent B & M Management Company, Inc. (“B&M”), the owner of the above-referenced Property, and SCS Dell 014136 Yorktown, LLC (“Applicant”), in connection with the above-referenced application for a solar farm (“Project”). The Project was last on your Board’s agenda for a Public Hearing on November 14, 2022. We respectfully request that the Project be placed on the May 22, 2023 agenda to continue the Public Hearing.

In connection with the Application, enclosed please find the following additional documents:

#	Document	Prepared By	Dated	Rev #
37	Phase 1 ESA Report, rev1	TRC	2022-11-18	Rev 1
38	NYSDEC No Impact Determination Letter - Bald Eagle	NYS DEC	2022-11-30	
39	Glare Study Analysis for FAA	FORGE SOLAR	2023-01-10	
40	SWPPP Response Letter to NYCDEP - January 2023	TRC	2023-01-13	
41	Stormwater Pollution Prevention Plan - January 2023, rev1	TRC	2023-01-13	Rev 1
42	ALTA Survey, rev1	LAND DESIGN	2023-02-06	Rev 1
43	FAA Determination of No Hazard Letter	USDOT FAA	2023-03-16	
44	Visual Impact Assessment, rev2	TRC	2023-05-10	Rev 2
45	Comment Response Log, rev2	SCS / TRC	2023-05-10	Rev 2
46	Site Plan Set, rev3	TRC	2023-05-10	Rev 3

Since last appearing before your Board, the Applicant has been working diligently in furtherance of advancing the Project. The Applicant, for example, prepared and submitted a revised SWPPP in January 2023 for review by the Town and NYCDEP which addressed comments received from NYCDEP last year. In addition, the Site Plans have been effectively finalized, and now include the scope for the Con Edison utility interconnection.

Most significantly, over the last several months the Applicant's consultant, TRC Companies ("TRC"), conducted and completed a comprehensive Visual Impact Analysis ("VIA") on behalf of the Applicant. The VIA includes line-of-sight ("LOS") analyses from the 16 different viewpoints that were specifically requested by the Planning Department. TRC concluded, as to each of the 16 viewpoints, that either no significant or adverse unscreened views of the Project would be expected, or that no views of the Project will exist at all. (*See* VIA, § 3.0).

The Applicant has also been actively engaged in discussions with representatives for the adjoining neighbor at 71 Hog Hill Road ("Neighbor") regarding the Neighbor's concerns with potential visual impacts from the Project.¹ Based on those discussions, as well as a site visit to the Neighbor's property, an additional 9 viewpoints from the Neighbor's property were considered for visual analysis. The VIA includes 5 photosimulation analyses, which were taken from 4 of those 9 viewpoints. From the other 5 viewpoints, it is reasonably concluded that views of the Project will not be discernible.

Ultimately, the VIA concludes that the Project would not be visible from the vast majority of the Neighbor's 33-acre magnificent and heavily wooded residential property. There will be no views of the proposed solar panels from, for example, any part of the main residence, the landscaped rear yard area, tennis court, swimming pool, or pavilion. Along the nearly 2,300 linear foot common boundary line between the subject Property and the Neighbor's property, there is only a ± 125 -foot portion from which there are screened views of the Project's northern array during leaves-off conditions.² (*See, e.g.*, VIA, § 3.2). To see the panels, however, one needs to look through more than 200-feet of natural tree buffer.³

The Neighbor's representatives have taken the position that to comply with the Special Use Permit standards for the Project, the solar panels must essentially be invisible from every location on the 33-acre property, since large-scale solar projects must be "fully screened from adjacent residential properties." Zoning Code § 300-81.4(F)(3)(g). Our review of similar solar applications approved by this Board demonstrates that in applying the "fully screened" standard, the Board has

¹ Our team has also been in touch with representatives of the Random Farms Subdivision.

² To put this in perspective, using the "measure distance" feature on Google Maps, the Starbucks on Commerce Street is $\pm 2,300$ linear feet from Town Hall "as the crow flies." The length of Town Hall is ± 125 feet.

³ As noted in the VIA, to mitigate any potential visual impacts from the Project, the Applicant has significantly minimized the number of trees proposed to be cleared from the Property. This results in system shading inefficiencies that are 3-4 times worse than are typical for similar solar projects. (*See* VIA at 2).

not required every inch of the solar panels to be invisible, but rather required that the panels be screened to the greatest extent practicable based upon the particular facts of each case.

The Applicant maintains that the extremely limited views from the Neighbor's property, which are most prevalent in a half-acre area containing VP1, VP8, and VP9, are already naturally screened to the maximum extent practicable by the existing tree buffer. Nevertheless, in the spirit of neighborly cooperation, the Applicant analyzed potential options to make the panels "invisible," including the planting of additional trees or the installation of an 11-foot tall, 150-foot long vertical slat fence on the Neighbor's property. A rendering representing such a fence is annexed as Exhibit "A." Implementing this option would block completely any view of the Project from the Neighbor's property at the viewpoints concerned in the VIA. It is our understanding that the Neighbor will not consider any proposed improvements (landscaping or otherwise) on the Hog Hill Road property.

To demonstrate the unreasonableness of applying "fully screened" to mean "completely invisible," the Applicant also prepared the annexed Exhibit "B." Exhibit "B" shows a much taller and much longer opaque fence located on the subject Property in order to eliminate Project views from the Neighbor's property. To block completely any view of the Project with privacy fencing on the subject Property, the fencing would span approximately 200 feet wide with fence sections as tall as 24 feet high. As Exhibit "B" shows, the aesthetic impacts of such a fence would far exceed the screened views of the Project.⁴ When viewed in the context of the entire Project, the fact that the Project is most visible from a small corner of the Neighbor's property, primarily during leaves-off conditions, and even then, it is only seen through a tree buffer, demonstrates that the Project is, in fact, fully screened in compliance with a rational reading and your prior implementation of the Zoning Code.

Finally, it bears noting that in 2011, this Board determined in its SEQRA Findings Statement for the prior Croton Overlook age-restricted multifamily residential project that the existing high-tension powerlines "have a greater existing visual impact than any potential view of the [Croton Overlook] project's roofline." The roofline of the proposed Croton Overlook project was 28 feet high. Under no circumstances will the proposed Project's solar panels exceed 10 feet tall. The proposed solar Project is thus significantly less impactful than the previously proposed multifamily residential development on the Property.

CONCLUSION

The Applicant's Development Team continues to maintain that this Project on the subject Property is well-situated and entirely consistent with the State's goal and objective of encouraging sustainable green energy projects to benefit the community and society at large. The Applicant's Team looks forward to presenting the foregoing to the Board, and answering any questions you may have at the May 22, 2023 meeting.


⁴ In response to Exhibit "B," the Neighbor's consultant requested that the Applicant provide a rendering of an 800-foot-long opaque fence. Since such a fence would not be feasible, the Applicant saw no benefit of going through the motions of preparing further iterations of that fence.

If you require any additional information in the interim, please do not hesitate to contact either of the undersigned. Thank you for your consideration.

Respectfully submitted,

ZARIN & STEINMETZ

By:



David S. Steinmetz
Jody T. Cross

Encls.

cc: (via email)

John Tegeder, R.A., Director of Planning
Robyn A. Steinberg, AICP, Town Planner
Matt Matthews, B & M Management Company, Inc.
SCS Dell 014136 Yorktown, LLC
James Glathaar, Esq.

EXHIBIT A

Exhibit A



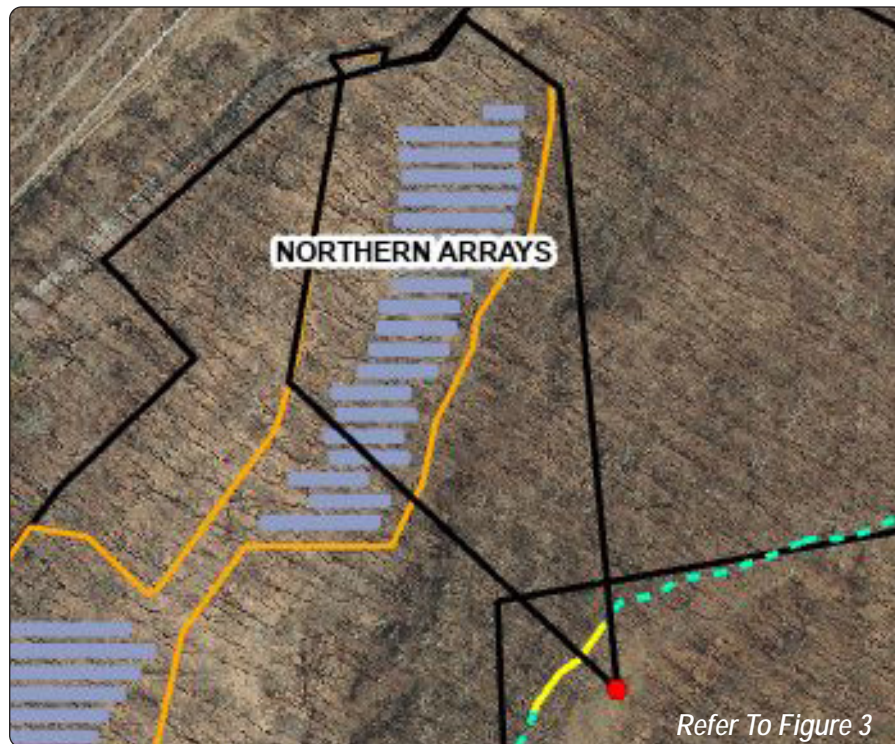
Existing Conditions



Proposed Conditions

N

Viewpoint Location Aerial Map



Viewpoint Location Topographic Map



Viewpoint Coordinates	41.21288 -73.77768
Town	Yorktown
Viewpoint Elevation (MSL)	420'
Distance to Nearest Array	340'
Direction of View	North
Lens Focal Length	50mm (35mm Equivalent)
Date/Time of Photograph	11/08/2022, 2:11PM







EXHIBIT B

Exhibit B



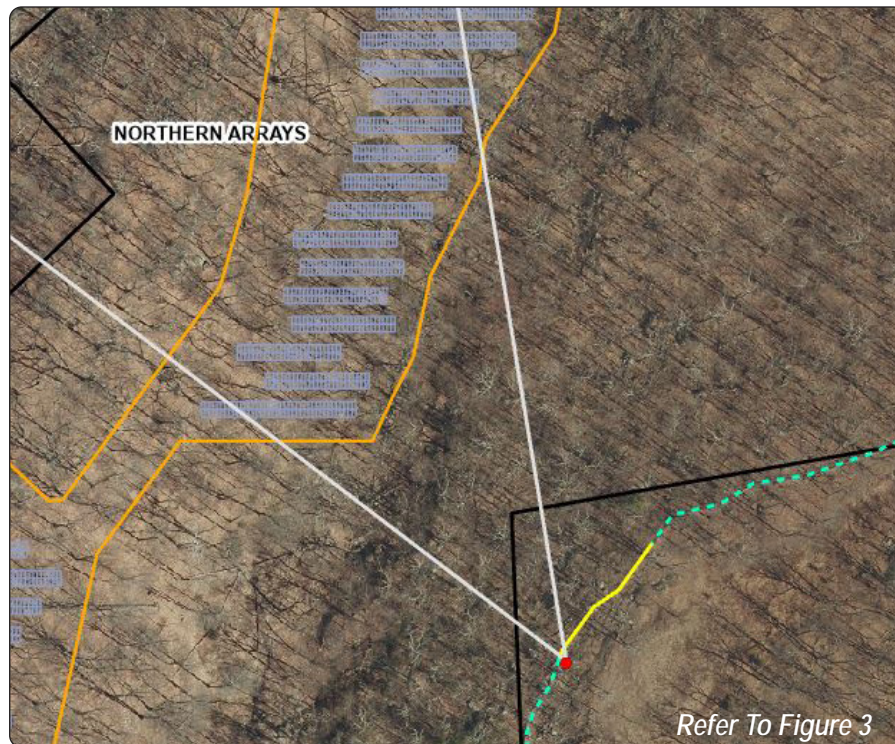
Existing Conditions



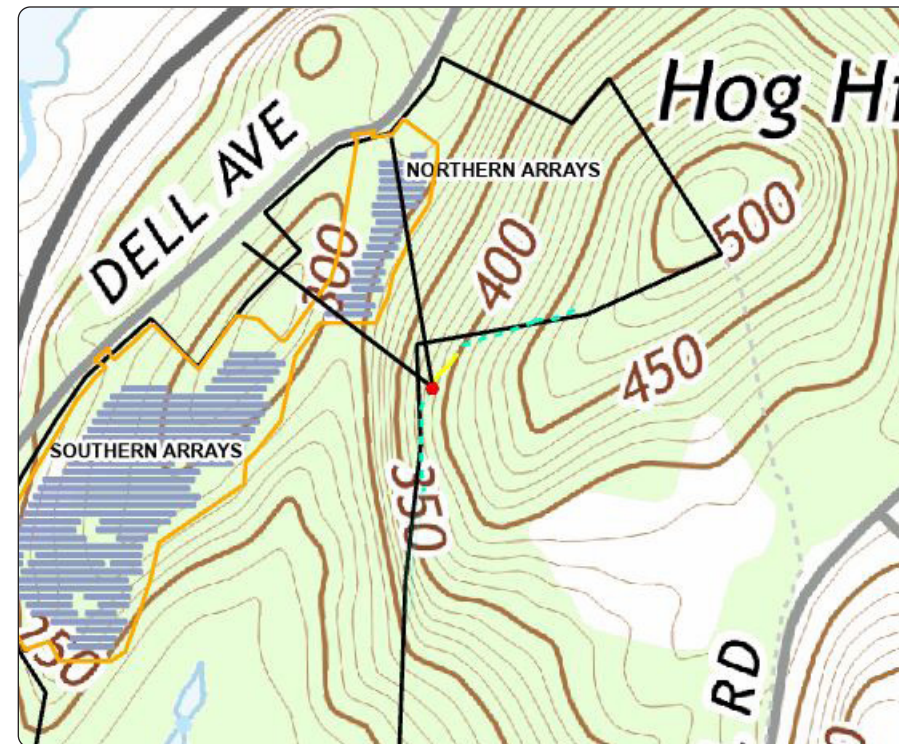
Proposed Conditions

NW

Viewpoint Location Aerial Map



Viewpoint Location Topographic Map



Viewpoint Coordinates	41.21280 -73.77800
Town	Yorktown
Viewpoint Elevation (MSL)	390'
Distance to Nearest Array	282'
Direction of View	Northwest
Lens Focal Length	50mm (35mm Equivalent)
Date/Time of Photograph	12/13/2022, 2:13PM



VP8 - Hog Hill Road Property Boundary, View Northwest

Representative Simulation - Existing Conditions

May 2023





VP8 - Hog Hill Road Property Boundary, View Northwest

Representative Simulation - 18-Foot to 24-Foot Tall Visual Barrier at Property Line (on Project Property)

May 2023