**Planning Board Meeting** of the Town of LeRoy held on Tuesday, May 17, 2022 at 7:00 PM in the Boardroom of the Town Hall, 48 Main Street, LeRoy NY 14482.

**Members Present:** John Mangefrida, Chairman

Marny Cleere

Thomas Frew

David MacKenzie

Patrick Major

Joan Tresco

**Absent:**  Thomas McGinnis

**Recording Secretary:** Patricia A. Canfield, Recording Secretary

**Others Present:**  Mike Risewick & Jeff Steinbrenner, Zoning and Code

Austin Scarborough, Wes Pettee Labella Associates,

Richard Prinzi, Mary Prinzi

The Planning Board meeting was called to order at 7:00 PM by Chairman Mangefrida followed by approval of the minutes of the previous meeting of April 19, 2022 with correction of removing Deputy Town Clerk and replacing with Secretary for Planning Board on **MOTION** by Joan Tresco and seconded by Marny Cleere and passed unanimously.

***NEW BUSINESS:***

1. **Route 5 Solar Project – Site Plan Review – AES -**

Austin Scarborough, AES relayed that they are working with Wes Pettee from Labella Associates to complete the Site Plan Approval and Solar Permit for Rte 5 Storage Solar Project and Stormwater Pollution Prevention Plan (SWPPP). SWPPP should be available by the week of June 6, 2022. Town Attorney has reviewed and approved contract language inclusive of conditions being met prior to issuance of any building permit or construction.

**Site Plan Approval – Solar Permit – Rte 5 Storage Solar Project -**

On **MOTION** by Thomas Frew and seconded by Patrick Major and passed unanimously the following **RESOLUTION:**

**TOWN OF LEROY PLANNING BOARD**

**SITE PLAN APPROVAL AND SOLAR PERMIT FOR RTE 5 STORAGE SOLAR PROJECT**

**(AES Rt5 Storage Solar, LLC)**

**TOWN OF LEROY PLANNING BOARD**

**Resolution Issuing Site Plan Approval and a Solar Permit for the Rt 5 Storage Solar Project (AES Rt 5 Storage Solar, LLC)**

**May 17, 2022**

**WHEREAS**, AES Rt 5 Storage Solar, LLC (the “Applicant”) proposes to construct a 5-megawatt community solar power generation facility (the “Project”) on two parcels of land approximately 66 acres in size owned by Route 5 Storage, LLC (the “Owner”) located at 7054 W Main Road, LeRoy, New York (Tax ID: 183689-029-000-0001-012-001 and 183689-029-000-0001-013-002) (the “Property”); and

**WHEREAS**, the proposed Project will be owned, operated, and maintained by the Applicant who will enter into a lease with the Owner for use of the Property as a solar facility; and

**WHEREAS**, on or about October 22, 2021, the Applicant submitted an application to the Town Planning Board seeking site plan approval for the Project, which was subsequently supplemented; and

**WHEREAS**, the documents submitted by the Applicant as part of its application consisted of, among other things, (1) an application; (2) a Full Environmental Assessment Form (“EAF”); (3) site plans and specifications; (4) the requisite filing fee and escrow amount for the application; (5) a Payment in Lieu of Taxes (“PILOT”) Agreement; (6) a Decommissioning Agreement; (7) an Operation & Maintenance Plan; (8) an Ag Data Statement; and (9) a variety of additional documents (collectively, the “Application”); and

**WHEREAS**, the Town Planning Board, with the assistance of its technical and legal consultants, LaBella Associates (“LaBella”) and Mark Boylan, Esq. (“Town Attorney”), engaged in a detailed review of the Application materials; and

**WHEREAS,** solar systems are permitted in industrial zoning districts in the Town pursuant to the Town of LeRoy Local Law no. 1 of 2021; and

**WHEREAS**, by letter dated November 19, 2019, the New York State Office of Parks, Recreation, and Historic Preservation (“OPRHP”) stated that the Project is located in an archaeologically sensitive area and a Phase 1a archaeological survey was conducted; and

**PBM – 05-17-22**

**WHEREAS**, a Phase 1b archaeological survey was conducted involving shovel test pits and by letter dated January 31, 2022, OPRHP signed off on the project finding that “no historic properties, including archeological and/or historic resources, will be affected by this undertaking.”; and

**WHEREAS,** on February 28, 2020, the Applicant received correspondence from the New York State Department of Environmental Conservation (“NYSDEC”) confirming that there are no records of rare or state-listed animals or plants, or significant natural communities at the project site or in its immediate vicinity; and

**WHEREAS**, the United States Army Corps of Engineers issued an Preliminary Jurisdictional Determination on May 28, 2020, and the project will be authorized under either NWP 51 or NWP 14, as a renewable solar project affecting less than 0.1 acres of the waters of the United States and is subject to a blanket water quality certification by NYSDEC; and

**WHEREAS**, the Application was referred to the Genesee County Planning Board pursuant to NYS General Municipal Law Sections 239-l and 239-m, and the County Planning Board reviewed the Project materials and approved the Project in October of 2021 with two modifications: 1) that the Applicant follows the New York State Department of Agriculture and Markets (“NYSDAM”) Guidelines for Solar Energy Projects and 2) that the applicant minimizes impacts to future farming by either relocating the portion of the driveway and equipment pads currently proposed through the middle of the field or amend the decommissioning plan to include decompaction of the foot print of the access road to a minimum of 24 inches beneath the bottom of the former stone layer and a post decommissioning monitoring for 3 growing seasons; and

**WHEREAS**, the Applicant responded to the County on November 5, 2021 stating that they will follow the NYSDAM guidelines and followed up with a response on April 26, 2022 conveying an agricultural data statement and confirming that the remaining County comment will be satisfied by amending the decommissioning plan;

**WHEREAS**, the Town’s Engineer, LaBella Associates, D.P.C. (“LaBella”), submitted comments related to the Project’s Site Plan application to the Town Supervisor on April 19, 2022, and provided updated comments on May 17, 2022; and

**WHEREAS**, on April 26, 2022, the Applicant submitted a response to LaBella’s comments related to the Project that answered and addressed each comment; however, not every comment has been resolved to the satisfaction of LaBella; and

**WHEREAS**, the Town Planning Board has taken into consideration the site plan permit criteria contained in § 130-4 of the Town of LeRoy Code, respectively, including, but not limited to, the harmonious relationship between proposed uses and existing adjacent uses, the maximum safety of vehicular circulation between the site and street, adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety, and adequacy of landscaping and setbacks to achieve compatibility with the protection of adjacent residential uses; and

**WHEREAS**, on April 28, 2022, the Town Board as SEQRA lead agency after a coordinated review, issued a SEQRA Negative Declaration for the Project, a Type 1 action, finding that the Project would not create any significant adverse environmental impacts and that a Draft Environmental Impact Statement (“DEIS”) need not be prepared;

**NOW THEREFORE BE IT RESOLVED THAT**, the Town Planning Board hereby conditionally approves the Applicant’s site plan application and issuance of the solar permit finding that the requirements of the site plan review found in the Zoning Law at section 130-4 and of the solar law have been met, all subject to the following conditions which must be satisfied prior to issuance of the building permit or commencement of construction:

1. Approval of the Decommissioning Agreement, attached hereto as Exhibit A, by the Town Board and approval by the Town Board and Town Attorney of the associated financial security for the implementation of the Decommissioning Agreement; and
2. Approval of the final Stormwater Pollution Prevention Plan by LaBella in accordance with their comment letters and submission of a signed Notice of Intent (“NOI”) and acknowledgment of receipt by the New York State Department of Environmental Conservation (“NYSDEC”) of the NOI and the final Stormwater Pollution Prevention Plan (“SWPPP”) to the Building Inspector by the Applicant; and
3. Addition of “Local Law No. 1 of 2021 of the Town of LeRoy, Commercial Solar Code for Use in the Town of LeRoy” to the list of applicable codes in a set of revised plans; and
4. Review and Approval of the driveway entrance and associated culvert by the New York State Department of Transportation, as the agency with jurisdiction over Route 5; and
5. Approval by the fire code official/Building Inspector for the fire apparatus road and the turning radius of the fire apparatus road as designed in the Site Plan; and
6. That comments in a letter dated May 17, 2022 be satisfactorily addressed, and indication of said satisfaction be noted by LaBella Associates in future correspondence to the Town of LeRoy; and

**BE IT FURTHER RESOLVED**, that a copy of this Resolution shall be filed in the office of the Town of LeRoy Town Clerk within five (5) days of the date of this Resolution, and shall be mailed to the Applicant within the same five (5) day period.

1. **Chris Yaskulski – 9209 Robbins Road – Area Variance Application –**

Applicant requesting area variance to add carport in front of existing garage. Garage is close to lot line and carport would continue on same line 24’ out from garage. Town of LeRoy code requires 12’ side set back and carport construction would require an 11’ variance.

**Zoning Board of Appeals – Application Recommendation – Area Variance 9209 Robbins Road -**

On **MOTION** by Joan Tresco and seconded by Mary Cleere and passed unanimously the following **RESOLUTION:**

**RESOLVED**, the Town of LeRoy Planning Board approves the recommendation to the Village of LeRoy Zoning Board of Appeals to hear the request of Chris Yaskulski, 9209 Robbins Road, LeRoy NY for consideration of an Area Variance to construct carport that does not meet side set-backs.

**PBM – 05-17-22**

1. **Rod Allen – 44 Gilbert Street – Area Variance Application –**

Applicant requesting area variance to replace front landing and expansion to add porch chairs. Village of LeRoy code requires 35’ set back and applicant requested a 21’ variance for project.

**Zoning Board of Appeals – Application Recommendation – Area Variance 44 Gilbert Street -**

On **MOTION** by David MacKenzie and seconded by Patrick Majors and passed unanimously the following **RESOLUTION:**

**RESOLVED**, the Town of LeRoy Planning Board approves the recommendation to the Village of LeRoy Zoning Board of Appeals to hear the request of Rod Allen, 44 Gilbert Street, LeRoy NY for consideration of 21’ Area Variance to replace and increase front landing to 16’ x 6’.

1. **Stephen Cottone [W. Crocker Property] Request for Rezone – Construct Pole Barn – Commercial/Storage Use –**

Mr. Cottone made prior application to Planning Board to construct a pole barn on approximately 2.5 acres for storage use only. The land is currently owned by William Crocker and would be purchased pending approval to move forward. After initial application for use of storage, Planning Board referred applicant to Town Board for Special Use Permit Application. Mr. Cottone changed initial use as discussed with Planning Board to both storage and/or commercial use. As property is zoned R-1 and commercial use is not allowed in zone, Town Board recommended to applicant the process of zone change. Chairman Mangefrida relayed the Genesee County Planning Board referral was returned with no significant impact. Also, the area was not determined to be “spot zoning” as adjacent land is zoned commercial. Planning Board members expressed the area in question is a prime residential area.

**Stephen Cottone - Request for Re-Zone – North Street Road – Denial -**

On **MOTION** by Thomas Frew and seconded by David MacKenzie and passed with voting as follows: Members Cleere, MacKenzie, Tresco and Chairman Mangefrida – aye; Patrick Major – Nay the following **RESOLUTION:**

**RESOLVED**, the Town of LeRoy Planning Board denies the request submitted by Stephen Cottone,

9419 Summit Street Rd, LeRoy NY for application to re-zone approximately 2.5 acres of land from tax map parcels 22.-1-30.11; and 22.-1-34 located on North Street Road currently R-1 [Residential]Zone to C-1 [Commercial] Zone.

1. **Land Separation – Process/Discussion –**

Planning Board discussed the land separation process and preventative measures to avoid a separated parcel being considered “useless” and/or “land locked”. Code Officer Mike Risewick has contacted Genesee County Office of Real Property for guidance. The process requires application and review for issues to determine any stipulations or conditions to address a landlock situation or deeded right of way. Land separation applications could be referred to Planning Board for further review to address any potential issues and feasibility moving forward.

With no further business to come before the Planning Board, on **MOTION** by Thomas Frew and seconded by Joan Tresco and passed unanimously to adjourn at 8:06 PM.

Respectfully submitted, Patricia A. Canfield, Planning Board Secretary