

MEMBERS PRESENT: PLANNING: KATHY COLE, BRIAN THORN, THOMAS MCGOVERN, CHRISTOPHER STERNER, KATHY MANNIX, CLARA MULLIGAN, COLLIN HAYES

ZBA: JEFF MULLIGAN, JEFF PASSARELL, BOB WESTFALL, DIANE ATTEA, CINDY KELLEN

ABSENT:

OTHERS: BRIAN GLISE (CEO, AVON), LANCE BRABANT (MRB ENGINEER), JAMES CAMPBELL (TOWN ATTORNEY)

VISITORS: NICK WALSH, JULIA ARMSTRONG, GARY WHEAT, JANET WARD, JORDAN GUADALUPE, BETSY GEORGE, DANA GROVER, KEVIN GILLAM, BOB LYETH, KEVIN OVERTON

CLERK: KIM MCDOWELL

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MOTION TO OPEN THE MEETING WAS MADE BY CLARA; SECONDED BY CHRISTOPHER STERNER.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
COLLIN HAYES - AYE  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - AYE

CARRIED 12-0.

ZBA & PLANNING MOTION TO APPROVE THE MINUTES FROM THE MAY 16, 2022, MEETING SUBMITTED WAS MADE BY BOB WESTFALL; SECONDED BY TOM MCGOVERN.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
COLLIN HAYES - ABSTAIN  
KATHLEEN MANNIX - ABSTAIN  
CLARA MULLIGAN - ABSTAIN  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - AYE

CARRIED 9-0.

Brian Glise asked the Board before moving to the first agenda item if Mr. Robert Lyeth could speak regarding his property on Bronson Hill Road and the Board allowed it.

Mr. Lyeth stated he received Town approval for a four lot subdivision in 1967-1968 that were approximately 1 acre each and he has one lot left that he would like to sell.

Since the lot doesn't conform to the present zoning laws, he has been told he needs an area variance for the lot to be buildable and asked the Board if this is how he needs to proceed to be able to sell the property.

Jim Campbell stated that he is a pre-existing non-conforming lot since the subdivision occurred prior to zoning laws in the Town of Avon and the best solution would be to get an area variance stating that so there are no conflicts when he sells the property.

Jeff Mulligan doesn't have a problem with this and putting him on the agenda for next month.

Jim Campbell sated they could schedule the public hearing tonight if they so choose.

MOTION TO SCHEDULE THE PUBLIC HEARING FOR THE JULY 18, 2022 MEETING WAS MADE BY DIANE; SECONDED BY CINDY.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

CARRIED 5-0.

KEVIN GILLAM/4820 DARBY ROAD/TAX PARCEL#34.-1-11.112/VARIANCE FOR ACCESSORY STRUCTURE IN FRONT OF PRIMARY STRUCTURE

ZBA MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY BOB; SECONDED BY JEFF PASSARELL.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

CARRIED 5-0.

Clara Mulligan asked what kind of building he is proposing to put on the property, and it is just a pole barn for storage.

Jeff Mulligan asked if there was any public comments or questions and there were none.

Mr. Gillam said the building will be tucked in and won't be seen from the road. He did speak to a couple of his neighbors regarding his plans as well.

Clara asked how tall the building is and it will be standard height.

Jeff Mulligan asked if he would need a height variance and that is not needed.

ZBA MOTION TO CLOSE THE PUBLIC HEARING WAS MADE BY JEFF PASSARELL; SECONDED BY CINDY.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

CARRIED 5-0.

Lance Brabant asked the Board if they had any concerns regarding the variance questions that were submitted, and they did not.

Clara Mulligan asked why it can't be at the back of the house and Mr. Gillam stated it is due to the septic system and the grade in the back, they would need to bring in a lot of fill to level it.

The Board took the following action on this application.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION  
KEVIN GILLAM - 4820 DARBY ROAD  
AGRICULTURAL ZONING DISTRICT - TM# 34.-1-11.112  
AREA VARIANCE APPLICATION - ACCESSORY STRUCTURE IN FRONT OF  
PRIMARY BUILDING

SEQR RESOLUTION - TYPE II ACTION

WHEREAS, the Town of Avon Zoning Board of Appeals, (hereinafter referred to as Board of Appeals) is considering an Area Variance Application for an accessory structure to be located in front of the primary structure located 4820 Darby Road within the Agricultural zoning district; and

NOW, THEREFORE, BE IT RESOLVED THAT, the Board of Appeals does hereby classify the above referenced Action to be a Type II Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

BE IT FURTHER RESOLVED THAT, Type II Actions are not subject to further review under Part 617 of the SEQR Regulations: and

BE IT FINALLY RESOLVED THAT, the Board of Appeals in making this classification has satisfied the procedural requirements under SEQR and directs this Resolution to be placed in the file on this Action.

The above resolution was offered by Cindy Kellen and seconded by Jeff Passarell at a meeting of the Zoning Board of Appeals held on Monday, June 20, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Jeff Mulligan - AYE  
Cindy Kellen - AYE  
Bob Westfall - AYE  
Diane Attea - AYE  
Jeff Passarell - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Zoning Board of Appeals for the June 20, 2022 meeting.

Kim McDowell, L.S.  
Kim McDowell, Clerk of the Board

**TOWN OF AVON**  
**OPERA BLOCK BUILDING**  
**23 GENESEE STREET**  
**AVON, NEW YORK 14414**  
 PHONE: (585) 226-2425 • FAX: (585) 226-9299  
[http://www.avon-ny.org/index\\_town.html](http://www.avon-ny.org/index_town.html)

**BUILDING AND ZONING DEPARTMENT**

**ZONING BOARD OF APPEALS DECISION SHEET**

Hearing Date: June 20, 2022

Project Name/Number: Kevin Gillam

- Area Variance for an Accessory Structure in front of Primary

Subject Property Address: 4820 Darby Road

Tax Account #: 34.-1-11.112

Zoning District: AG District

Agenda Item: Area Variance – Accessory Structure located in front of the existing primary structure.

Motion made by: Cindy Kellen

Seconded by: Bob Westfall

Board Members	Present	Motion		Recusal
		Aye	Nye	
1. Jeffery Mulligan, Chairman	X	X		
2. Jeff Passarell	X	X		
3. Cindy Kellen	X	X		
4. Bob Westfall	X	X		
5. Diane Attea	X	X		
Alternate: _____				

Approved:

Denied:

**Conditions:**

1. Commencement of the project is to occur within one (1) year from the approval date or the variance will be deemed null and void.
2. Any modification to the plans, variance, and/or project will require the application to be re-reviewed by the Zoning Board of Appeals and any prior approvals granted be deemed null and void.

Estate of James Orman/Pole Bridge Road/Tax Parcel#54-1-6.124 -  
Subdivision application

Mr. Dana Grover, Surveyor, was present to discuss this application. He stated to his knowledge, the Orman family would like to subdivide the area they planted pine trees from the rest of the parcel. At the present time they have no plans to build on the lot.

Lance Brabant asked if this is a two-lot subdivision, and it is.

Jim Campbell asked Lance since the map doesn't completely show both lots, is that acceptable when filing the subdivision in Livingston County.

Mr. Grover stated it does show what is needed and he was not willing to survey the other larger part due to the cost to his client.

There was discussion on the map that was submitted regarding the two parcels. The Board felt there was some information missing and asked Mr. Grover to add more detailed information to the map for the next meeting. He is willing to do some of the suggestions but not all.

Kathy Cole stated we will schedule a public hearing for July 18, 2022, and Mr. Grover will add the verbiage needed for this to be filed with Livingston County before the next meeting.

Six Sprouts, acting agent for Southwest Corner LLC  
/1670 West Henrietta Road/Tax Parcel#35.9-1-27, 35.9-1-28  
#35.9-1-29, 35.9-1-33 - Site Plan discussion

Betsy George and Jordan Guadalupe were present to give the Boards an update on the project. The building is currently being worked on and they are hoping to be open by September.

Kathy Cole asked about the junk behind the building in that gated area and Betsy stated that it was going to be removed because they would like to use that as part of their business for a sitting area for customers.

There will be no parking in front of the building, they plan on using the parking lot to the left of the building by LeFrois Automotive.

Brian Glise asked if they have submitted a site plan yet and they have not. Betsy showed the Board members where things will be on the monitors with the survey map submitted.

Kathy Cole asked if Endza's Eats was going to be cleaned up as well and the grant includes cleaning that up as well, they plan on replacing the roof and have siding that matched their building.

Jeff Mulligan asked if there was going to be a curb along the road so no one will park in front of the building, and they would like to put out decorations or plants to deter people from parking in the front.

Cindy Kellen asked about grouping the lots together and Gene is combining two or three parcels together. Gene told them he has up to a year to turn in the paperwork.

Brian Glise and Lance Brabant gave suggestions that need to be done before approval can be granted. The current building permit for fixing the building is good for one year. However, for the business to open, the paperwork must be submitted for the combination of the parcels which Brian Glise questioned that timeline and asked them to contact Tami Synder.

Lance Brabant discussed what must be shown on the site plan for approval such as, parking lot and parking space dimensions, handicap parking, lighting, landscaping, dumpster locations, exits and entrances, emergency vehicle access, display locations, any external improvements you are making must be on the site plan. Any existing infrastructure such as water, sewer, and any other utilities. Lance stated signage can be separate unless it is a stand-alone sign.

Jim Campbell stated they should go to Kevin O'Donoghue and ask for the survey map to be converted to a site plan and he will get that done for you and he is very knowledgeable with the Town Code for Avon.

Betsy and Jordan asked since the parking lot is next to LeFrois will there be any setbacks to the parking and there is not. The parking lot will be gravel and a couple years down the road hoping to black top it. Lance stated that since they are state roads, they may require pavement in their right-of-way.

Lance Brabant stated they have until April 2023 to get the lots combined and the connection to the sewer which is when the permit expires. The site plan application needs to be submitted with everything discussed here tonight for the July meeting.

James Campbell stated if your site plan isn't approved before your September opening, you are not able to open until it is approved.

Jeff Passerell asked for clarification about the parking spaces on the site plan and Lance stated that the plans will show they intend to have parking of vehicles and since it is gravel, they probably won't strip it, but we will see where it is.

Avon CSG 2 LLC acting agent for Stokoe Farms/Lake Rd/Tax Parcel#44.-1-30.2 - Solar array-discussion & overview'

Nick Walsh and Julia Armstrong were present to discuss this application.

Julia is the Project Development Manager for Dimension Renewable Energy, and this is the second solar project they are working on in the Town of Avon, the previous project is on Starkey Drive that just was approved a few months ago.

Julia stated this project will be located at 5534 Lake Road and is 5.23 MW DC/4 MW AC with fixed tilt ground mounted panels. This project will have 200 feet setback from all neighboring roads and 400 feet setback from residential buildings and 100 fee setbacks on the sides and rear therefore no variances are needed for this project. There will be 18-acre limit of disturbance within the fence line.

They plan on modeling the decommissioning plan and decommissioning bond value, operation & maintenance plan that was approved by Avon CSG 1 (Starkey Drive), remotely monitored 24/7, regularly scheduled vegetative maintenance, and routine inspection of equipment.

Julia also stated they have completed the National Grid CESIR Study, full wetland delineation, topographic & boundary surveys, and Phase 1 Environmental Assessment.

She feels they are the ideal Avon neighbor since there will be minimal noise and maintenance activity, limited project footprint, no strain on Town resources, and additional revenue for the Town.

Kathy Cole stated that to her knowledge that land is good farmland and she thought that the Town of Avon doesn't approve projects that are good farm land.

Jim Campbell responded that the Town of Avon Solar Code doesn't state that. The Town Board did consider limiting the development on prime soil but instead they determined to set a maximum size for the array itself regardless of what soil it is being built on due the fact that most soils in the Town of Avon are prime soils or soils of statewide importance.

Nick Walsh stated they understand the importance of farmland and we worked to compress the footprint of the 18 acres and not push for any variances.

Clara Mulligan asked why that field in particular because the landowner owns many acres in Avon; it has to do with interconnection characteristic of that land, the utility lines run down the side of the property.

Collin Hayes asked if this would need to be referred to the County Planning Board and it will.

Clara Mulligan also stated that it will most likely get disapproved because of the prime soil aspect of the application. Jim Campbell stated that the County Planning Board approved the changes to the Town of Avon Solar Code not too long ago.

Brian Thorn asked how many projects Dimension currently operates, and Nick stated they are in the process of building their first projects they own and operate fully.

Lance Brabant stated that once we get a full application, we will start the review process to make sure all the components are compliant with the code, and it takes at least a two-month period, and it is a lengthy process once we get the material.

Nick and Julia will begin to work on the application and hopefully be back in July to begin that process.

DG NY SOLAR CS IV, LLC, ACTING AGENT FOR GARY & EILEEN WHEAT/5406 LAKE ROAD/TAX PARCEL #44.-1-26.1 - SOLAR FARM - SITE PLAN & SPECIAL USE PERMIT APPLICATION

Janet Ward and Kevin Overton are present for this application.

Janet gave the Board members a copy of the final site plan and the landscaping renderings for this solar farm.

Janet also stated in May Christopher Sterner gave some suggestions for landscaping as well as Mrs. Blowers requested more trees on her property line.

Janet stated they are keeping the driveway separate since Mr. Wheat uses the current driveway and the farmer does as well. Also, since National Grid has determined the point of interconnection has to be ten feet away from the driveway there needs to be a separate driveway.

Janet stated this application is in compliance with the Town of Avon code, all changes requested by the Board and residents has been made to the best of our ability, so she is hoping to get approval tonight.

Tom McGovern thanked Janet for addressing the sensitivity of the neighbor concerns.

James Campbell stated SEQOR has been completed and public hearings are done.

Lance Brabant stated all MRB comments have been addressed, however, we still need to approve the Decommissioning letter which is usually separate anyways. At this point if the Board doesn't have any additional questions, we can begin the approval process for this application.

James Campbell stated approvals are subject to PILOT, Decommissioning Agreement, Road Use Agreement, and Community Benefit Agreement as well.

Clara Mulligan asked if the fence will be conducive for small animals and will have a gap at the bottom, and Lance stated that has been discussed previously.

The Planning Board took the following action.

TOWN OF AVON PLANNING BOARD RESOLUTION  
DG LAKE ROAD SOLAR, LLC (NEXTERA ENERGY RESOURCES) REPRESENTING  
GARY & EILEEN WHEAT  
LARGE SCALE SOLAR - LAKE ROAD SOLAR PROJECT  
5406 LAKE ROAD  
TAX MAP ID: 44.-1-26.1  
PRELIMINARY/FINAL SITE PLAN REVIEW

SITE PLAN APPROVAL RESOLUTION

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), received an application for Site Plan Approval to allow for the development of the DG Lake Road Solar, LLC proposed Lake Road 5 MW Solar Project (Project), to construct and operate a 5 megawatt (MW) alternating current (AC) (6.881 MW direct current [DC]) solar photovoltaic facility within an approximately 36-acre property parcel (parcel ID 44.-1-26.1) located south of Lake Road, north of Henty Road, and east of Pole Bridge Road, in the Town of Avon, Livingston County, New York as described in the Site Plans dated September 13, 2021, last revised May 25, 2022 (the current application) and all other relevant information submitted and discussed at the June 20, 2022 Joint Planning Board and ZBA Meeting; and



WHEREAS, this application was required to be forwarded to Livingston County Planning Board for review and was discussed at the February 10, 2022 meeting where a response of "no action" was provided; and

WHEREAS, the Town of Avon Planning Board has classified the above referenced Action to be a Type I Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, in compliance with NYS Town Law and the regulations of the State Environmental Quality Review Act (SEQRA), a determination of significance and a negative declaration was adopted by the Town of Avon Planning Board on Monday, February 21, 2022; and

WHEREAS, on January 17, 2022, February 21, 2022, March 21, 2022, April 18, 2022, and May 16, 2022 in compliance with NYS Town Law, the Planning Board & Zoning Board held Joint public hearings on the current application and completed a formal review of the application; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby approves the requested Site Plan with the following conditions:

1. The Applicant shall obtain a Building Permit within twelve (12) months of such approvals or the approvals shall automatically terminate and be deemed null and void. Additionally, the Applicant shall complete construction of an approved (Site Plan and Special Use Permit) Type 2 Solar Energy System within twenty-four (24) months of obtaining such approvals or the approvals shall automatically terminate and be deemed null and void and be of no force an effect at law.
2. No signage associated with this project has been approved. Separate approval by the Planning Board is required for all signage.
3. The Town Engineer review letter dated May 9, 2022 is to be addressed prior to the site plans being signed by the Planning Board Chair.
4. Site Plan Approval is conditioned on the Operations & Maintenance Plan for the Lake Road Solar Project, dated May 2022 V4 and as discussed with the Zoning Board and Planning Board and as to be revised per the Town Engineers letter dated May 9, 2022.
5. Site Plan Approval is conditioned on the Decommissioning Plan for the Lake Road Solar Project dated May 13, 2022 V5 and as discussed with the Zoning Board and Planning Board and as to be revised per the Town Engineers letter dated May 9, 2022.
6. Site Plan Approval is conditioned on the Stormwater Pollution Prevention Plan (SWPPP) for Lake Road Solar Project dated September 2021, last revised April 7, 2022 and as to be revised per the Town Engineers letter dated May 9, 2022.
7. No permits shall be issued until the NYSDEC Acknowledgement letter has been received by the Town Building & Zoning Department.
8. Prior to obtaining a building permit, the Applicant must provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Avon at its discretion) for the decommissioning of the site and for the removal of the Type 2 Solar Energy System, with Avon as the designated assignee/beneficiary, in an amount to be approved by the Town Engineer based on their review of the Decommissioning Cost Estimate submitted by Namaste Solar.

9. The Decommissioning bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal.
10. Each year after the Lake Road Solar Project has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such system, the then owner/permit holder for the system shall provide the Town of Avon Building & Zoning Department & Town Clerk with written confirmation that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.
11. After completion, the Applicant shall provide to the Town of Avon Building & Zoning Department a post- construction certificate from a Professional Engineer registered in New York State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.
12. Prior to any permits for any portion of the Project being issued, the Applicant shall enter into an Agreement/Plan for Decommissioning of the Project, in a form acceptable to the Town Board of the Town of Avon.
13. A Special Use Permit granted by the ZBA is required prior to signatures being affixed to the site plans.
14. All consultants' fees for review of application are to be reimbursed by the applicant to the Town prior to the issuance of permits.
15. The owner/operator is responsible for maintaining and replacement of all trees and landscaping as depicted on the approved site plans for the life of the project. All identified trees and landscaping in need of replacement are to be replaced by the following growing season.
16. Prior to issuance of any permit the owners or developers and landowners of the property are required to enter into a Payment in Lieu of Tax Agreement with the Town of Avon for payment by the owners, developers or landowners to the Town of Avon of an agreed upon payment in lieu of taxes pursuant to §130-81 K.
17. Prior to issuance of any permit the owners or developers and landowners of the property are required to enter into a community benefit agreement with the Town of Avon for payment by the owners, developers or landowners to the Town of Avon of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset the potential negative impacts that may be associated with a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System.

18. Prior to issuance of any permit, the Applicant and its general contractor shall enter into a written Road Use Agreement benefitting the Town of Avon and in a format acceptable to the Town of Avon at its sole discretion. Such Road Use Agreement will require Applicant and its General Contractor to indemnify and hold the Town harmless from any and all damage to the roadways within the Town that may result from the development of Applicant's Type 2 Solar Energy System. As a part of such Road Use Agreement, the Applicant shall provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Avon at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions stated above.
19. All contact information for the applicants, developers, and landowners are to be provided to the Town of Avon CEO prior to issuance of a permit.
20. A preconstruction meeting with the Town of Avon, once all conditions of approval have been met, is required to be held prior to issuance of any permit.
21. Battery Storage and associated site improvements are NOT approved for this project and will require separate approval from the Town if requested.

The above resolution was offered by Thomas McGovern and seconded by Clara Mulligan at a meeting of the Planning Board held on Monday, June 20, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - *RECUSED*  
Collin Hayes - *AYE*  
Kathy Mannix - *AYE*  
Christopher Sterner - *AYE*  
Clara Mulligan - *AYE*  
Brian Thorn - *AYE*  
Thomas McGovern - *AYE*

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the June 20, 2022 meeting.

Kim McDowell, L.S.  
Kim McDowell, Clerk of the Board

The ZBA Board took the following action.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION  
DG LAKE ROAD SOLAR, LLC (NEXTERA ENERGY RESOURCES) REPRESENTING  
GARY & EILEEN WHEAT  
LARGE SCALE SOLAR - LAKE ROAD SOLAR PROJECT  
5406 LAKE ROAD - TAX MAP ID: 44.-1-26.1  
SPECIAL USE PERMIT APPLICATION

SUP APPROVAL RESOLUTION

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), received an application for Special Use Permit Approval to allow for the development of the DG Lake Road Solar, LLC proposed Lake Road 5 MW Solar Project (Project), to construct and operate a 5 megawatt (MW) alternating current (AC) (6.881 MW direct current [DC]) solar photovoltaic facility within an approximately 36-acre property parcel (parcel ID 44.-1-26.1) located south of Lake Road, north of Henty Road, and east of Pole Bridge Road, in the Town of Avon, Livingston County, New York as described in the Site Plans dated September 13, 2021, last revised May 25, 2022 (the current application) and all other relevant information submitted and discussed at the June 20, 2022 Joint Planning Board and ZBA Meeting; and

WHEREAS, this application was required to be forwarded to Livingston County Planning Board for review and was discussed at the February 10, 2022 meeting where a response of "no action" was provided; and

WHEREAS, the Town of Avon Planning Board has classified the above referenced Action to be a Type I Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, in compliance with NYS Town Law and the regulations of the State Environmental Quality Review Act (SEQRA), a determination of significance and a negative declaration was adopted by the Town of Avon Planning Board on Monday, February 21, 2022; and

WHEREAS, on January 17, 2022, February 21, 2022, March 21, 2022, April 18, 2022, and May 16, 2022 in compliance with NYS Town Law, the Planning Board & Zoning Board held Joint public hearings on the current application and completed a formal review of the application; and

WHEREAS, on June 20, 2022, in compliance with the Town of Avon Town Code, and Local Law No. 3 of the Year 2021 the Planning Board completed a formal review on the current application and granted site plan approval; and

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board does hereby approves the requested special use permit with the following conditions:

1. The special use permit shall remain in effect for the current owner of the premises with no requirement for renewal, provided the use remains in compliance with the conditions of approval, Town Code §130-11 and §130-35, and Local Law No. 3 of 2021.
2. The Town Code Enforcement Officer may make an on-site visit at least once over the course of the year, or as may be necessary to ensure that the Special Use Permit is being operated in accordance with the conditions specified by the Zoning Board.
3. In the event of any complaints about the Special Use Permit being filed with the Code Enforcement Officer and failure to take corrective action by the applicant shall be brought to the attention of the Zoning Board.
4. Before beginning operations, the subject property will be subject to inspection by the Town Code Enforcement Officer to determine compliance with Town Code requirements and conditions of this approval.
5. No signage associated with the Special Use Permit has been approved. Separate approval by the Planning Board is required for all signage.

6. All conditions as required by the Planning Board as part of Site Plan approval are required to be addressed prior to the issuance of permits.
7. Prior to obtaining a building permit, the Applicant must provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Avon at its discretion) for the decommissioning of the site and for the removal of the Type 2 Solar Energy System, with Avon as the designated assignee/beneficiary, in an amount to be approved by the Town Engineer based on their review of the Decommissioning Cost Estimate submitted by Namaste Solar.
8. The Decommissioning bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal.
9. Each year after the Lake Road Solar Project has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such system, the then owner/permit holder for the system shall provide the Town of Avon Building & Zoning Department & Town Clerk with written confirmation that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.
10. After completion, the Applicant shall provide to the Town of Avon Building & Zoning Department a post- construction certificate from a Professional Engineer registered in New York State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.
11. Prior to any permits for any portion of the Project being issued, the Applicant shall enter into an Agreement/Plan for Decommissioning of the Project, in a form acceptable to the Town Board of the Town of Avon.
12. If the use of an approved Solar Energy System is discontinued, the owner or operator shall provide written notice to the Code Enforcement Officer within thirty (30) days of such discontinuance. In any case, Solar Energy Systems are considered inoperative and abandoned after 180 days without electrical energy generation which is consumed onsite (or credit for onsite consumption is received) for Type 1 Solar Energy Systems or without production of energy and offsite sale to and consumption by one or more customers for Type 2 Solar Energy Systems.
13. If the Applicant violates any of the conditions of its Special Use Permit, Site Plan approval or violates any other local, state or federal laws, rules or regulations, such violation shall be grounds for revocation of the Special Use Permit. Revocation may occur after the applicant is notified in writing of the violations and the Town of Avon Zoning Board of Appeals holds a hearing on same as provided for herein.
14. All consultants' fees for review of application are to be reimbursed by the applicant to the Town prior to the issuance of permits.
15. The owner/operator is responsible for maintaining and replacement of all trees and landscaping as depicted on the approved site plans for the life of the project.

All identified trees and landscaping in need of replacement are to be replaced by the following growing season.

16. Prior to issuance of any permit the owners or developers and landowners of the property are required to enter into a Payment in Lieu of Tax Agreement with the Town of Avon for payment by the owners, developers or landowners to the Town of Avon of an agreed upon payment in lieu of taxes pursuant to §130-81 K.
17. Prior to issuance of any permit the owners or developers and landowners of the property are required to enter into a community benefit agreement with the Town of Avon for payment by the owners, developers or landowners to the Town of Avon of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset the potential negative impacts that may be associated with a Commercial Building-Mounted Solar Energy System, Commercial Roof-Mounted Solar Energy System or Type 2 Solar Energy System.
18. Prior to issuance of any permit, the Applicant and its general contractor shall enter into a written Road Use Agreement benefitting the Town of Avon and in a format acceptable to the Town of Avon at its sole discretion. Such Road Use Agreement will require Applicant and its General Contractor to indemnify and hold the Town harmless from any and all damage to the roadways within the Town that may result from the development of Applicant's Type 2 Solar Energy System. As a part of such Road Use Agreement, the Applicant shall provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Avon at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions stated above.
19. All contact information for the applicants, developers, and land owners are to be provided to the Town of Avon CEO prior to issuance of a permit.
20. A preconstruction meeting with the Town of Avon, once all conditions of approval have been met, is required to be held prior to issuance of any permit.
21. Battery Storage and associated site improvements are NOT approved for this project and will require separate approval from the Town if requested.

The above resolution was offered by Cindy Kellen and seconded by Jeff Passarell at a meeting of the Zoning Board of Appeals held on Monday, June 20, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Jeff Mulligan - *AYE*  
Cindy Kellen - *AYE*  
Bob Westfall - *AYE*  
Diane Attea - *AYE*  
Jeff Passarell - *AYE*

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Zoning Board of Appeals for the June 20, 2022 meeting.

Kim McDowell, L.S.  
Kim McDowell, Clerk of the Board

Janet Ward asked for copies of the resolutions that were approved tonight and Lance will send them to her.

Janet also asked for the Chairpersons to sign the NYSERDA forms for incentives, which they did.

Kathy Cole welcomed Collin Hayes to the Planning Board at this time.

Kathy Cole asked Brian if he had anything he would like to discuss with the Boards and he did.

Brian stated there was a pop-up party of about 5,000 that he became aware of last week and it was determined it was a marijuana festival at the Vintage Drive Inn Flea Market. He investigated it and spoke with Paul Dean, and it had been cancelled.

Mr. Dean also expressed concerns about another flea market that popped up across the street. Brian went over and spoke to that owner and told them they need to come into the Town and get Board approval to run a flea market.

Brian stated the solar farm on Routes 5&20 are still having a hard time getting the trees for landscaping for the site. Brian told them if the landscaping isn't done there will be no Certificate of Compliance which means no flipping the switch. They want to come up with a Bond agreement and come in to talk to the Board about that alternative.

Brian stated there is a code enforcement matter on Gilbert Mills Road that is a tenth of an acre shy of five acres and has a lot of farm animals. The neighbors have complained to the humane society on the conditions of the animals, and we have a pending matter in court currently which she has plead guilty to the violation and gave her a time frame to comply with our code. We are hoping to possibly see her in July on this matter.

Kathy Cole asked Brian to check White Horse Sales on West Henrietta Road for compliance with their approved site plan, she feels like there are more cars than there should be; Brian will investigate.

ZBA & PLANNING MOTION TO CLOSE THE MEETING WAS MADE BY CHRISTOPHER STERNER; SECONDED BY JEFF MULLIGAN.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
COLLING HAYES - AYE  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - AYE

CARRIED 12-0.

MEETING CLOSED.