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County Reply – Mandatory Review of Local Planning Action as per NYS General Municipal Law §239-l, m, & n

Local Referring Board: Town of Newburgh ZBA

Applicant: Frank Darrigo Revocable Trust

Project Name: none provided

Proposed Action: Use Variance for installation of solar farm in R-1 district

Reason for County Review: Within 500 feet of Interstate 84

Date of Full Statement: January 11, 2018; resubmitted May 11, 2018

Referral ID #: NBT 01-18M

Tax Map #: 86-1-96

Local File #: 2638-17

Comments:

The Planning Department has reviewed the submitted materials regarding the appeal for a use variance and has found no evidence that intermunicipal or countywide impacts would result from its approval. County Planning recommends that the Board act on this variance request only if the applicant satisfies the unnecessary hardship standard, as defined by New York State law.

The courts of New York hold that the unnecessary hardship standard is satisfied by competent proof of each of the following:

1. the land in question cannot yield a reasonable return, in dollars and cents, if used for any use permitted in the zone,
2. the use to be authorized by the variance will not alter the essential character of the locality,
3. the hardship is unique to the parcel and not general throughout the zoning district, and
4. the hardship is not self-created.

Although it is for the Town Zoning Board of Appeals to determine whether the unnecessary hardship standard is met in this case, we note the presence onsite of contaminated soil and potentially contaminated water resources, which would greatly limit the development of this property for residential uses as permitted in the R-1 zone by Chapter 185 of the Town of Newburgh Code.

County Recommendation: **Local Determination**

Date: May 16, 2018

Prepared by: Megan Tennermann, AICP, Planner

David Church, AICP
Commissioner of Planning

As per NYS General Municipal Law 239-m & n, within 30 days of municipal final action on the above referred project, the referring board must file a report of the final action taken with the County Planning Department. For such filing, please use the final action report form attached to this review or available on-line at www.orangecountygov.com/planning.