



SITE ADDRESS: 124 Goodman Drive, Bethlehem, PA 18015

Office Use Only:

DATE SUBMITTED: 10.27.2021

HEARING DATE: 11.17.2021

PLACARD: 11.05.2021

FEE: 500⁰⁰

ZONING CLASSIFICATION: I

LOT SIZE: IRREGULAR 255.01 ACRES

APPLICATION FOR APPEAL TO THE CITY OF BETHLEHEM ZONING HEARING BOARD,
10 EAST CHURCH STREET, BETHLEHEM, PA 18018

1. Return one (1) original and eight (8) copies of this application and all supporting documentation to the Zoning Officer, along with the filing fee. Include site plans and/or floor plans as necessary.
2. The application is due by 4PM on the 4th Wednesday of the month. The hearing will be held on the 4th Wednesday of the next month.
3. If you are submitting MORE THAN 10 exhibits at the hearing, you MUST place them in an indexed binder and submit at one time.

Appeal/Application to the City of Bethlehem Zoning Hearing Board is hereby made by the undersigned for: (check applicable item(s):

- ☒ Appeal of the determination of the Zoning Officer
- ☐ Appeal from an Enforcement Notice dated _____
- ☒ Variance from the City of Bethlehem Zoning Ordinance
- ☐ Special Exception permitted under the City Zoning Ordinance
- ☐ Other: _____

SECTION 1

APPLICANT:	
Name	Saucon Valley Solar Partners, LLC
Address	5 Commerce Avenue
	West Lebanon, NH 03784
Phone:	[REDACTED]
Email:	[REDACTED]

OWNER (if different from Applicant): Note. If Applicant is NOT the owner, attach written authorization from the owner of the property when this application is filed.	
Name	Lehigh University (Brent Stringfellow)
Address	681 Taylor Street
	Bethlehem, PA 18015
Phone:	[REDACTED]
Email:	[REDACTED]
ATTORNEY (if applicable):	
Name	Catherine N. Durso
Address	645 West Hamilton Street, Suite 800
	Allentown, PA 18101
Phone:	[REDACTED]
Email:	[REDACTED]

SECTION 2. INFORMATION REGARDING THE REAL ESTATE

1. Attach a site plan, drawn to scale, of the real estate. Include existing and proposed natural and man-made features.
2. Attach architectural plans and elevations depicting proposed alterations or new construction.
3. Attach photographs.
4. If the real estate is presently under Agreement of Sale, attach a copy of the Agreement.
5. If the real estate is presently leased, attached a copy of the present lease.
6. If this real estate has been the object of a prior zoning hearing, attach a copy of the Decision.

SECTION 3.

THE RELIEF SOUGHT:

If the Applicant seeks a dimensional variance for any setback, lot coverage, distance between certain uses, etc., please state the following:

Section of Code	Dimension Required by Code	Dimension Proposed by Applicant	Variance Sought
§1318.16 & §1318.17	6' Fence Height	8' Fence Height	2'
_____	_____	_____	_____
_____	_____	_____	_____

If the Applicant seeks a use or other variance, please state the **specific section(s)** of the Zoning Ordinance applicable and describe the variance sought.

If the Applicant seeks a Special Exception, please state the **specific section (s)** of Zoning Ordinance applicable: _____

If the Applicant seeks an appeal from an interpretation of the Zoning Officer, state the remedy sought in accordance with Sec. 1325.11 (b):

Interpretation of §1318.16 & 17 regarding if the zoning ordinances imposes a height limit on fences not located within the building setback lines of side and rear yards (see narrative). In the alternative, a variance is sought for fence height to meet state/federal regulatory agency requirements and electrical building code standards.

NARRATIVE

See Attached.

CERTIFICATION

I hereby certify that the information contained in and attached to this application is true and correct to the best of my knowledge and belief.

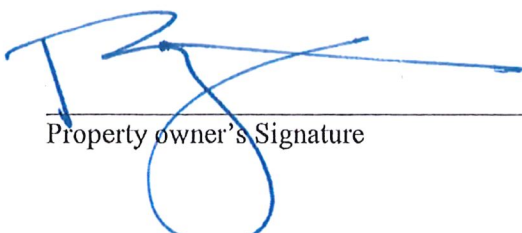
I also certify that I understand that any and all federal, state or local rules and regulations, licenses and approvals shall be obtained if the appeal is granted.

Saucon Valley Solar Partners, LLC
By EDF Renewables Distributed Solutions, Inc., Manager
By Scott Hesser, Real Estate and Development Counsel

Applicant's Signature

October 25, 2021

Date



Property owner's Signature

10/25/21
Date

Received by

Date

NOTICE: If the Decision of the Zoning Hearing Board is appealed, the appellant is responsible for the cost of the transcript.

BEFORE THE CITY OF BETHLEHEM ZONING HEARING BOARD

SUPPLEMENTAL STATEMENT

I. BACKGROUND

Saucon Valley Solar Partners, LLC ("Applicant") is the equitable owner of property located off Goodman Drive South in the City of Bethlehem. The property consists of over 20 acres and is located in the Institutional (I) Zoning District. The property is owned by Lehigh University and is currently used for agricultural purposes. Applicant is proposing to use the property for a solar energy collection system for the benefit of Lehigh University which is permitted by right in the I Zone as per Ordinance Section 1305.01(g). Applicant requests a favorable interpretation that a fence taller than six (6) feet in height is permitted. In the alternative, Applicant requested a variance from Ordinance Section 1318 to permit an eight-foot high fence to surround the solar energy collection system. The relief requested should be approved as set forth below.

II. REQUESTED RELIEF

The City of Bethlehem Zoning Ordinance permits by right solar energy collection systems within the Industrial (I) Zoning District as per Section 1305.01(g). Applicant is proposing a solar energy collection system on the property to be surrounded by an 8 foot high fence. All of the proposed solar improvements are permitted, but the Zoning Officer has advised that a dimensional variance is needed to permit a fence height greater than 6 feet in the I Zone. The Zoning Officer advised that because the Ordinance defines Yard, Front Yard, Rear Yard and Side Yard to include all of the open space between lot lines and a principal building and that the City has applied the fence height limitations of 1318 to the definition of Yard and not to a minimum yard setback, that a dimensional variance is needed. Applicant requests a favorable interpretation that these fence height maximums only apply when a fence is located in the required front, rear or side yard setback. In the alternative, a variance from Section 1318 is requested.

Ordinance Sections 1318.12, 1318.16 and 1318.17 govern fences in front, side and rear yards. Each of these Sections contain language that setback requirements do not apply to fences over 4 feet in the front yard and over 6 feet in the side and rear yard. None of the proposed fencing is within a required front, rear or side yard setback. There is no principal building on the Property so the setback is measured from the property line. The proposed fence is 47.8 feet from the eastern property line; 63.3 feet from the western property line; over 200 feet from the southern property line and over 50 feet from the northern property line. Read in its entirety, Section 1318 should be interpreted to prohibit a fence taller than 6 feet if within a rear or side yard setback and taller than 4 feet if within a front yard setback.

Section 1318.29 was enacted by the City of Bethlehem to promote the use of solar energy systems for the generation of electricity, and to obtain the benefits of solar energy as a renewable and clean energy source which enhances the reliability of the overall electrical power grid and helps reduce dependence on fossil fuels. Sections 1318.29(b)(6)&(7) require the design of the solar energy system to conform to applicable industry standards and comply with the Pennsylvania Uniform Construction Code (UCC), as amended. The UCC adopted the International Building Code 2015 (IBC) and Chapter 27 (Electrical) of the IBC requires that all electrical components, equipment and systems in buildings and structures covered by the IBC comply with the requirements of the National Electric Code. Solar installations are regulated by the National Electric Code. National Electric Code Section 110.30 requires that a fence not less than seven (7) feet in height or a combination of six (6) feet or more of fence fabric and a one (1) foot or more extension of barbed wire or equivalent surround a solar collection system based on the

voltage of the equipment. Based on this, a fence taller than 6 feet is necessary to meet the Code. This height is necessary to deter access by persons who are not qualified. By imposing a fence height limit of 6 feet in all rear and side yards and not just if within a setback, the Ordinance effectively prohibits solar panel installations as a taller fence is required to meet the Electric Code.

Applicant submits that an interpretation in its favor should also be made as the City's fence height maximum should be preempted by the requirements of the National Electric Code. Preemption occurs when law at a higher level government is used to overrule authority to a lower level. State law can be used to preempt local ordinances, and federal law can be used to preempt state or local law. In the case of *JoJo Oil Co. v. Dingman Township Zoning Hearing Board*, 77 A.3d 679 (Pa. Cmwlth Ct. 2013), the Court held that while a municipality is not preempted by the Oil and Gas Act from regulating traditional zoning concepts such as where a natural gas activity may occur, it will be preempted where local ordinances regulate operational aspects of the industry. A local regulation that conflicts or confounds rather than advances the operation of the state or federal law in question would be preempted. Similarly, in the case of *Schuylkill Township v. Pennsylvania Builders Association*, 947 A.2d 714 (Pa. 2008) the PA Supreme Court considered what "local circumstances or conditions that will allow a municipality to impose stricter standards on construction than those required by the General Assembly for statewide use." In that case, the Court looked at the Pennsylvania Construction Code Act which applies generally to the construction, alteration, repair and occupancy of all buildings in the Commonwealth and whether it preempts the establishment of different construction standards by local ordinance. The Court determined that the fire suppression standards set forth in the Schuylkill Township Zoning Ordinance exceeded those mandated by the UCC and should not be permitted. A similar interpretation should be provided as the City's limitation on the fence height conflicts with the National Electric Code. This results in a *de facto* exclusion of solar installations. The requested fence height should be permitted as the solar panels cannot be constructed without complying with the fence height requirements of the Electric Code.

To the extent a dimensional variance is needed, it should be granted as granting a variance will not adversely impact public health, safety or welfare. In fact, a taller fence height is necessary to deter access by unqualified persons and is in the interest of public health, safety and welfare. Without the relief requested, the Applicant cannot install the solar panels. The Applicant is requesting the minimum relief necessary. A hardship is created by the National Electric Code requirement for fence height. The height of the solar panels meets the Ordinance requirements.

III. CONCLUSION

For the above-mentioned reasons, the proposed fence height should be approved.

FITZPATRICK LENTZ & BUBBA, P.C.

By: 

Catherine E.N. Durso, Esquire
Attorneys for Applicant
Two City Center
645 West Hamilton Street, Suite 800
Allentown, PA 18101

Date: October 26, 2021