

City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Application



TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER

DO NOT WRITE IN THIS SPACE

CASE NO. 2-22-16

DATE FILED 4/20/22

CJ
ZONING BOARD CLERK

Applicant:

GNM Solar 17, LLC c/o Bruton & Berube, PLLC

E-mail: fx@brutonlaw.com

Phone: 603-749-4529

Applicant Address: 60 Shaw Drive, Rochester, NH 03868

Property Owner (if different): GNM Solar 17, LLC

Property Owner Address: 60 Shaw Drive, Rochester, NH 03868

Variance Address: 60 Shaw Drive, Rochester, NH 03868

Map Lot and Block No: 0240/ 0049/ 0000

Description of Property: Please see attached.

Proposed use or existing use affected: Please see attached.

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section Table 18-D

and asks that said terms be waived to permit Power Generation Utility in the Agricultural District

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance. **I understand that while presenting my case the testimony should be confined to the 5 criteria and how they pertain to my case.**

Signed: *[Signature]*

A. Haney for Applicant

Date: April 18, 2022

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City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Criteria

1) Granting the variance would not be contrary to the public interest because:
Please see attached.

2) If the variance were granted, the spirit of the ordinance would be observed because:

Please see attached.

3) Granting the variance would do substantial justice because:

Please see attached.

4.) If the variance were granted, the values of the surrounding properties would not be diminished because:

Please see attached.

5.) Unnecessary Hardship:

a. Owing to special **conditions of the property that distinguish it from other properties in the area**, denial of the variance would result in an unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

Please see attached.

And:

ii. The proposed use is a reasonable one because:

Please see attached.

b. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in the strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

Please see attached.

FRANCIS X. BRUTON, III
CATHERINE A. BERUBE
JOSHUA P. LANZETTA

OF COUNSEL
JAMES H. SCHULTE

Bruton & Berube, PLLC

ATTORNEYS AT LAW

601 Central Avenue
Dover, NH 03820

TEL (603) 749-4529
(603) 743-6300
FAX (603) 343-2986

www.brutonlaw.com

April 20, 2022

VIA HAND DELIVERED

Robert Gates, Chair
Zoning Board of Adjustment
City of Rochester, New Hampshire
31 Wakefield Road
Rochester, NH 03867



Re: Appeal of Administrative Decision and Application for Variance
Applicant: GNM Solar 17, LLC c/o Bruton & Berube, PLLC
Owner: GNM Solar 17, LLC c/o Bruton & Berube, PLLC
Property: 60 Shaw Drive, Rochester, NH 03868
MBLU: 0240/ 0049/ 0000
Zone: Agricultural District ("AG")

Dear Chairman Gates:

Enclosed please find ten (10) copies of an Application for Variance as well as ten (10) copies of an Application for an Appeal of an Administrative Decision, together with the associated filing fees for both.

We understand that this matter will be placed on the agenda of the Zoning Board of Adjustment for its meeting of May 11, 2022, and the Applicant respectfully requests that the Application for the Appeal of the Administrative decision be heard first. Should there be any questions regarding the enclosed application, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "FXB", written over a horizontal line.

Francis X. Bruton, III
E-mail: fx@brutonlaw.com

FXB/mas
Enclosure

cc: GNM Solar 17, LLC

FRANCIS X. BRUTON, III
CATHERINE A. BERUBE
JOSHUA P. LANZETTA

OF COUNSEL
JAMES H. SCHULTE

Bruton & Berube, PLLC

ATTORNEYS AT LAW

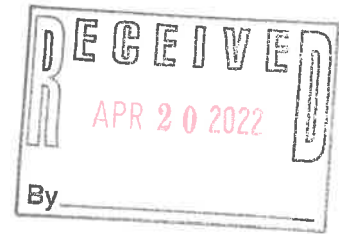
601 Central Avenue
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April 20, 2022

Robert Gates, Chair
Zoning Board of Adjustment
City of Rochester, New Hampshire
31 Wakefield Road
Rochester, NH 03867



Re: Variance to Install Solar Panels on Real Property located in the
Agricultural District
Applicant: GNM Solar 17, LLC c/o Bruton & Berube, PLLC
Owner: GNM Solar 17, LLC c/o Bruton & Berube, PLLC
Property: 60 Shaw Drive, Rochester, NH 03868
MBLU: 0240/ 0049/ 0000
Zone: Agricultural District ("AG")

Dear Chairman Gates:

The purpose of this letter is to submit a Variance Application (the "Application") on behalf of GNM Solar 17, LLC (the "Applicant") to install solar panels on real property located at MBLU 0240/ 0049/ 0000, otherwise identified as 60 Shaw Drive in Rochester, New Hampshire (the "Property").

Pursuant to N.H. R.S.A. 674:33(I)(b)(1) – (5)¹ and the Zoning Ordinance of the City of Rochester, New Hampshire², the Applicant seeks a variance under Ordinance Table 18-D to install solar panels in the Agricultural District, and respectfully requests that the Zoning Board of Adjustment (the "ZBA") schedule a hearing in May to review and grant the Application.³

I. ENCLOSED MATERIALS

Please find enclosed 1-copy of each of the following documents:

1. Variance Application dated April 20, 2022; and
2. Letter of Authorization dated April 20, 2022.

¹ RSA 674:33(I)(b)(1) – (5).

² Zoning, City of Rochester, New Hampshire, Chapt. 275 (2022) (the "Ordinance").

³ Ordinance § 18-D.

II. NARRATIVE

The Applicant seeks to operate a sustainable blueberry farm, powered by sunlight, on the Property. To this end, the Applicant proposes installation of fifty solar panels collecting 1-megawatt of alternative current to power multiple farm-uses on the Property, with excess electricity delivered to the nearby energy grid under the State of New Hampshire's net metering rules.⁴ In addition to solar power production, the solar panels are proposed as a method to create a shaded micro climate for the Property's blueberry farm. This micro climate increases solar power production by up to 3-percent, and results in reduced water consumption and carbon emissions at the Property.

The Property is uniquely suited to sustainable farming practices because it 1) is located on a Class VI Road, 2) is wooded and screened, 3) abuts residential and industrial, and commercial uses, 4) includes a high voltage electricity corridor, and 5) is encumbered by a utility easement for the same.

III. LEGAL ANALYSIS

The project substantially complies with the Ordinance, the Application, and the 5-variance criteria as set forth in NH RSA 674:33.

The variance criteria are enumerated and *italicized* below with the Applicant's responses following in plain text.

A. The variance will not be contrary to the public interest.

The Applicant respectfully asserts the proposed use, i.e., solar panels located in the Agricultural District, represent a reasonable use of the Property, and that the public interest is served by permitting the orderly development of property in a locus specifically zoned for agriculture.⁵ Here, the solar panels produce energy while creating a shaded micro climate for the Property's primary use as a blueberry farm. This micro climate results in reduced water consumption and increased power production throughout the Property, and the proposed use does not 1) alter the essential character of the surrounding neighborhood, 2) impact abutters, and/or 3) affect the public.

B. The spirit of the ordinance is observed.

The spirit of the ordinance is observed because the Project represents a reasonable use of property when balanced with the location, zone, and historic use of the Property. Allowing the solar panels that work to increase farm production—an agricultural use—encourages the most appropriate use of land in Rochester's Agricultural District when juxtaposed with the zone's intent "...to promote expansion of agricultural activity."⁶

⁴ See *Id.*

⁵ Ordinance § 275-5.4(4), 275:52.

⁶ *Id.*

C. Substantial justice is done.

Substantial justice is done by granting this variance because it allows the Applicant's property to be reasonably utilized in light of abutting property uses (i.e., agricultural uses) and its locus in the Agricultural District (a district established "...to promote expansion of agricultural activity").⁷ This proposal does not burden the public in any way, and substantially benefits the Applicant by allowing him to reasonably use his property with no detrimental effect to surrounding property.

D. The values of surrounding properties are not diminished.

The Applicant respectfully asserts that all surrounding properties have an associated value that is premised upon the existence of structures and features similar to those proposed on his Property, and that the proposed improvements likely increase comparable neighboring property values. Here, the Project will not affect any abutting neighbor and is consistent with other uses in the near vicinity and promoted in the existing district.

E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

- 1) *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*

Rochester's Agricultural District was specifically created to allow agricultural uses.⁸ The proposed solar panels work to create energy while substantially increasing farm productivity—an agricultural use. Additionally, the Property is adjacent to Rochester's General Industrial District where surplus energy is offloaded into the immediate power grid. This immediate proximity makes the Property uniquely suitable for installation of solar panels. Additionally, abutting property currently hosts 2-kVA transformers suitable for off-loading surplus energy produced by the solar panels.

Accordingly, there is no fair and substantial relationship between the general public purpose of the Ordinance's provision—prohibiting solar panels on the Property—and the specific application of this provision to the Property because the use specifically promotes agriculture, and the Property abuts the Industrial District where surplus power may be easily off-loaded.

- 2) *The proposed use is a reasonable one.*

The Agricultural Zone was created "...to promote expansion of agricultural activity." The solar panels serve the dual purpose of sustainably powering the Property's farm operation while providing a micro climate designed to increase

⁷ *Id.*

⁸ *Id.*

crop production and decrease water consumption. These symbiotic uses “preserve existing farms, promote expansion of agricultural activity,”⁹ and are reasonable given the Property’s proximity to the Industrial District where surplus power is off-loaded.

IV. RELIEF REQUESTED

Pursuant to NH RSA 674:33, the Applicant respectfully requests the ZBA:

1. Approve the Application; and
2. Grant any and all relief necessary to affect the aforementioned request.

Sincerely,



Francis X. Bruton, III, Esquire
fx@brutonlaw.com

FXB/mas
Enclosures

cc: GNM Solar 17, LLC

⁹ *Id.*

ZONING

275 Attachment 4

City of Rochester

**Table 18-D Industrial-Storage-Transport-Utility Uses
[Amended 5-7-2019]**

LEGEND

P = Permitted Use

C = Conditional Use

E = Use Allowed by Special Exception

Industrial-Storage-Transport-Utility-Uses	Residential Districts					Commercial Districts				Industrial Districts			Special		Criteria/Conditions Reference
	R1	R2	NMU	AG	DC	OC	GR	HC	GI	RI	HS	AS			
Airport	—	—	—	E	—	—	—	—	—	—	—	—	P	—	Article 21
Commercial parking facility	—	—	—	—	C	—	—	—	—	—	—	—	—	—	—
Contractor's storage yard	—	—	—	E	—	—	—	E	P	P	—	—	—	—	Articles 20 and 22
Distribution center	—	—	—	—	—	—	P	C	P	—	—	—	—	—	Article 21
Emergency services facility	—	—	—	—	C	C	—	C	C	—	P	—	—	—	Article 21
Fuel storage	—	—	—	—	—	—	P	E	E	—	—	—	—	—	Article 21
Helipad (accessory use)	—	—	—	E	—	E	P	E	P	P	P	P	P	—	Article 21
Industry, heavy	—	—	—	—	C	—	P	E	P	E	—	—	—	—	Article 21
Industry, light	—	—	—	—	—	—	P	P	P	—	—	—	—	—	Article 21
Industry, recycling	—	—	—	—	—	—	—	—	—	P	—	—	—	—	Articles 20 and 22
Junkyard	—	—	—	—	—	—	—	E	E	P	—	—	—	—	Articles 20 and 22
Laundry establishment-3	—	—	—	—	—	—	—	P	P	—	—	—	—	—	—
Mini-warehouse	—	—	—	—	—	—	P	C	P	—	—	—	—	—	Articles 20 and 21
Monument production	—	—	C	—	—	C	—	P	P	P	—	—	—	—	Article 21
Parking lot	—	C	C	C	C	C	—	P	C	P	C	P	P	—	Article 21
Printing facility	—	—	C	—	—	P	—	P	P	—	—	—	—	—	—
Public parking facility	—	—	—	—	P	—	—	—	—	—	—	—	—	—	—
Recycling facility	—	—	—	—	—	—	—	E	E	P	—	—	—	—	Articles 20 and 22
Research and development	—	—	—	—	E	P	P	P	P	—	—	—	—	—	Article 21
Sawmill	—	—	—	—	—	—	—	—	E	—	—	—	—	—	Article 21
Sawmill, temporary (accessory use)	—	—	—	P	—	P	—	P	P	P	—	P	P	—	Article 23

ROCHESTER CODE

Industrial-Storage-Transport-Utility-Uses	Residential Districts				Commercial Districts				Industrial Districts		Special		Criteria/Conditions Reference
	R1	R2	NMU	AG	DC	OC	GR	HC	GI	RI	HS	AS	
Solid waste facility	—	—	—	—	—	—	—	—	—	P	—	—	Articles 20 and 22
Tank farm	—	—	—	—	—	—	P	C	P	—	—	—	
Trade shop	—	—	C	—	C	C	P	P	P	P	—	—	Article 21
Transportation service	—	—	C	—	C	—	P	P	C	C	—	—	Article 21
Truck terminal	—	—	—	—	—	—	P	—	C	C	—	—	Article 21
Utility - substation	E	E	E	E	E	C	E	P	P	P	E	E	Article 21
Utility - power generation	—	—	—	—	E	—	E	—	E	E	—	—	Article 21
Warehouse	—	—	C	—	C	C	P	P	P	C	—	C	Articles 20, 21 and 23
Wireless communications facility	—	—	—	E	E	E	P	E	P	P	E	E	Articles 20 and 22



60 Shaw Drive

Rochester, NH

1 inch = 284 Feet



April 26, 2022



www.cai-tech.com



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

CONSTRUCTION DETAIL			CONSTRUCTION DETAIL (CONTINUED)									
Element	Cd	Description	Element	Cd	Description							
Model	00	Vacant	Half Bath Rati									
Style	99	Vacant Land	Extra Fixture(s)									
Grade			Extra Fix Ratin									
Stories												
Units												
Residential Unit												
Comm Units												
Exterior Wall 1												
Exterior Wall 2												
2nd Ext Wall %												
Roof Structure												
Roof Cover												
Interior Wall 1												
Interior Wall 2												
2nd Int Wall %												
Interior Floor 1												
Interior Floor 2												
Basement Floor												
% Heated												
Heat Fuel												
Heat Type												
2nd Heat Type												
2nd % Heated												
# Heat Systems												
AC Percent												
Bedrooms												
Full Bath(s)												
Bath Rating												
3/4 Bath(s)												
3/4 Bath Rating												
Half Bath(s)												
Half Bath Ratin												
Extra Fixture(s)												
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)												
Code	Description	L/B	Qty	Dim 1	Dim 2	Grade	Condition	Yr Blt	% Gd	Unit Price	Grade Adj.	Appr. Value
BUILDING SUB-AREA SUMMARY SECTION												
Code	Description	Living Area	Floor Area	Elfr Area	Unit Cost	Undepreciated Value						
Ttl Gross Liv / Lease Area												

Sec # 1 or 1 Bldg # 1

Print Date 4/27/2022 9:54:06 AM

No Sketch