

Town of Byron Planning Board Minutes

Wednesday, November 5, 2025, at 7:00 PM

Byron Town Hall, 7028 Byron Holley Road, Byron, NY 14422

Those Present: Planning Board Members: Planning Board Chairman Christopher Hilbert, Jason Jack, Bill Stevens, Laura Bestehorn, Jen Tuerk, Town CEO/ZEO – Melissa Ierlan, Town Councilman Brandon Mason, Town Attorney John Sansone. Joe Graves & Rob Panasci – BlueWave. Members of the Public: Yvonne Loewke, Joel Woodward.

Call the meeting to order at 7:00 PM

MOTION: Motion to open the meeting made by L. Bestehorn. Second by J. Jack All in favor. None opposed.

MOTION PASSED

Note from Chairman Hilbert:

Please note that from this date forward all planning board meetings will be conducted as a business meeting. There will be an allotted time for public comments. At the next meeting and going forward you will need not only sign in but sign that you are requesting to speak. Each speaker is given 3 minutes.

Public comments will be on agenda items only. Agenda items will be accepted 10 days prior to each meeting and will be posted on the town website. Beyond that, it will be at the discretion of the Planning Board to add to the agenda.

Review and Approval of the October 1st Meeting Minutes

MOTION: Motion to open the review of October 1, 2025, meeting minutes made by B. Stevens, Second by J. Jack. All in favor. None opposed.

MOTION PASSED.

Spelling and grammatical corrections made.

MOTION: Motion to approve upon review of revisions of October 1, 2025, meeting minutes made by B. Stevens, Second by L. Bestehorn. All in favor. None opposed.

MOTION PASSED.

MOTION: Motion to close October 1, 2025, meeting minutes made by J. Jack, Second by L. Bestehorn. All in favor. None opposed.

MOTION PASSED.

Bergen Swamp Solar Review

MOTION: Motion to open the review of Bergen Swamp Solar Review made by B. Stevens, Second by L. Bestehorn. All in favor. None opposed.

MOTION PASSED.

Comments from Joe Graves, Blue Wave & Rob Panasci –

Joe Graves: Recapping all the documents that went back and forth since the last meeting.

Blue Wave as well as our engineer of record, Crawford & Associates, had a meeting with MRB which was memorialized in an October 6th memo that was given to the board and council. Wanted to bring up the 10% threshold. The applicant had asked for more accurate information to be shared along with sources and methods of assessment for both the Prime farmland calculation as well as what has been converted to date.

Additionally, MRB recommended that the full environmental assessment for Part 2 be reviewed at this meeting, flagging any potential concerns or issues. And a recommendation that the town confirm with the applicant in writing that they are in agreement, that the time frame since the public hearing was closed, that we are extending that time frame.

Following up on that, we have an email from the MRB group, from Sherman Gittens specifically on October 24th with documentation regarding the 10% prime farmland threshold. "It should be noted that the attached supporting documents for the soil conversion analysis per the review of Genesee County, who assisted the town in the review of all the applications proposed to date in the town. This information identified that the project will surpass the 10% limit identified by the town, and talking with NYSDAM, all community solar projects and larger, are considered conversion of prime farmland. A written confirmation has since been requested and has been provided."

Blue Wave set up a call with MRB regarding this and due to extenuating circumstances with Mr. Gittens, the call never happened but the follow-up from Sherman on 10/27 reads as follows: "I was mistaken when identifying that a variance would be required for the inability to comply with Section 2.12 which is the 10% prime farmland threshold in the code. Section 2.09.3 of the town code identifies that a waiver is required, and the competent jurisdiction for such a determination is most likely the Byron Town Board. MRB is recommending that you, the applicant, provide the town a waiver request for the necessary relief from the Town Board to review. The waiver request will need to be reviewed by the Town Board prior to identifying the process for future action."

Additional documentation that was submitted along with this package was the MRB's memo dated October 24th specifically around the 10% prime farmland threshold, MRB states the Genesee County Planning provided the town with some information regarding the projects. This identifies that 1,246.04 acres of prime farmland is being converted due to solar projects. Excelsior, Leatherleaf, Green Street, and Blue Wave, noting that does not include access roads. Assuming the Byron Comprehensive Plan document, the document of Section 2.C of prime farmland map 6 is correct, and the town has 12,475 acres of prime farmland. This means that 10% of that total is 1,247.5 acres. With Bergen Swamp projected to being identified as converting 17 acres which would be the total conversion of about 15.5 acres greater than the town limit. The applicant would have to request a variance.

Looking for confirmation if that map provided is the final work, which we have no doubt it is. It was provided by the town, in their comprehensive plan, so we believe that is the case.

Chris Hilbert: But, that map was created in 2018. Since then there have been multiple properties that have been converted from prime farmland into housing.

Joe Graves: One of the documents that was provided in this submission package was this document here outlining the 12,475 acres. This was provided by the MRB group.

We reviewed the documentation and had a response *passed out copies to all board members and council. Outlining the response itself, there's a couple of things I wanted to point out:

1. We are not exceeding a 10% threshold based on the data provided by MRB. Also, the fact that the code enforcement officer, as well as council, accepted the application, had not flagged anything. The data we provided is not sufficient in our reading to say that we are above that, and I'll outline why:
 - a. This is a map provided by Genesee County on October 24th to us. It identifies not the overall total prime farmland, but that was identified in a separate exhibit. The prime farmland is broken out by being either Excelsior or others, and we break out prime farmlands' statewide importance and then prime farmland if drained in separate categories. Now the letter that was emailed from Ag & Markets does not put certain prime farmland of drained soils into a category 4 mineral, that didn't seem to be accounted for in the overall prime farmland.
 - b. There's a more obvious reason that we meet the threshold. Specifically, there are two properties that are pointed out here. Those two properties are listed as non-Excelsior projects that have been fully converted. So, when looking into these properties, those properties are owned by Craig Yunker, who farms our property that we're working on right now. When we brought this to Craig's attention, Craig provided a letter to the effect, and it's on the following two pages (in handout), that states those projects are not part of the Excelsior project, they have no solar proposed on them, and there are no other projects with rights to that property, nor is there any other approvals for projects on that property. So, as you see, these two properties are not proposed to have solar. There are no collectors, no feeder lines, and no solar.

With the exclusion of these two properties, that adds 75 acres back to the overall total, not having to look at any of the other data here, that alone in and of itself, means we have enough capacity or prime farmland for our project to move forward.

Following this information, our engineer received an email Lance from MRB group, he's replacing Sherman for a time, saying in part that "based on our review, our suggestion that this still be provided to the Town Board for review and determination, whether or not a waiver is needed, based on the information the applicant has provided. Also, being the Town Board may need to issue a waiver, the Town Board is not considered an involved agency, and as such, an amended coordinated SEQR review to occur."

- A. One point there, I want to clarify, the applicant (Blue Wave), we can make that determination if the coordinated review or uncoordinated review needs to occur. We also, per the other document, have never submitted a waiver request, and are not requesting a waiver.
- B. What this is pointing to in our code, specifically, the solar ordinance that was adopted, is Section 2.09.3. This is where the waiver conversation comes from. Now notice, MRB initially said a variance would be requested, then they moved to waiver. Pointing to where this language is actually coming from. "Unless preempted or waived by a body of confident jurisdiction, the procedural and substantive components of this law shall apply regardless of any contract, easement, or license that may exist between the applicant and landowner in the town."

Based on the interpretation received, what this law refers to, and I want to go to the actual enactment of the solar ordinance. So, it repealed Section 11.15 of the actual zoning law. And not just repeal, it replaced it. So, this law is now in this document. So, when it says this law, it's procedural of this document. Nowhere in this document is there a definition for waiver. Nowhere in this document does it state the Town Board has any review or approval authority over a waiver.

Furthermore, the permanent amount the council provided when we initially started this process, word for word, the first page:

"This memorandum will provide the procedure for review of solar application in the Town of Byron. The planning board has the power to review, act on, and provide advisory reports for site plan review, special use permits, variances, and emergency housing permits. The zoning code, Section 5.024 & 5. Furthermore, tier 3 and 4, solar energy systems need a special use in site plan review by the planning board, subject to site plan requirements of Section 3.03, 3.05, 2.121 (which is the new solar code), and zoning codes 3.03 and 3.05, which requires the planning board to approve site plans and special use permits. As well as the process for any potential referrals."

The planning board provides final approval for these types of permits, not the Town Board. The reason behind being used that we need a waiver, which we don't need to start, is that procedurally or substantively, we are asking for a change from the law. We are not. The request for a waiver to go to the Town Board is changing this law.

Secondly, procedurally or substantively, this law says that within 62 days of a public hearing closing, a determination needs to be approved. We did not waive that and we are the competent jurisdiction for that determination.

With that being said, respectfully ask, that the resolution that was provided to us which lacks detail, which lacks information, and which is wrong in multiple areas not be looked at tonight. Table this, and we will continue the environmental review next meeting when we have the MRB associate here.

Rob Panasci: I think what we're saying here, is that when you submit an application. We submitted an application to the code officer. The code officer looked at the application. If the code officer doesn't believe that the applications meets the code, what's the first step? You deny it, you deny it

and make them go to the zoning board. That didn't happen and that was the first level of review. Then the second level of review was the Town Attorney wrote that letter saying "Well here we are". Then 8-12 months later, we're here and there's this request that we're now supposed to have a waiver and then you start the SEQR process over. While we don't agree, we don't necessarily want to fight, there's no fighting going on. But the point being is that we're going to take what the county said.

The second part of this is, coordinated review is great. We normally say, is the applicant or the attorney coordinating your review because you don't want messed up SEQR findings.

Joe Graves: Yeah so, I think the stark information here is that there is 2 parcels being counted, that are affirmatively not part of a project, and have no solar proposed on them. Beyond that, we have two other parcels, Leatherleaf is one of them, 35 acres being utilized out of 175 acre parcel; the FEAF part one and two, both state, the rest of it will continue to be farmed. So there's acreage there, the other project as well, 35 acres out of a believed 160 acre parcel with the same situation.

So there are other inconsistencies that we don't have to delve into at this point because affirmatively, Craig Yunker has stated these two parcels are not part of Excelsior, nor are they part of any other solar project to date.

Rob Panasci: And the article 10 permit shows there's no infrastructure on those parcels.

Joe Graves: The Genesee County map said it was part of another project other than Excelsior. So, we're simply making the connection, it was once viewed as part of Excelsior, but never from 2000 to this past May, when they made a submission, have there been any infrastructure placed on those parcels.

John Sansone: What was the name of the town attorney on that letter?

Rob Panasci: Bridget O'Toole, dated September 5th, 2024. I can get you a copy of it.

John Sansone: I would suggest that the board would want to consider tabling that resolution that was drafted by MRB. We really are at a disadvantage because we don't have anyone from MRB here to talk about it and there is a lot of information that was provided in the letter on October 31st, 2025.

Joe Graves: We would also respectfully request written confirmation after consideration of where the board and enforcement officer stands, if a waiver is deemed necessary, where in the code it states a waiver is needed and where the Town Board comes into play. We would also like the opportunity to discuss next steps, because what happened today is we were driving and my engineer got a draft resolution that he forwarded to me. We actually didn't get any of the conversation with MRB, it was all sent to our engineer, and they translated it to us, and it was a response directly to my email. So being able to review this while we're not driving, just respectfully, would be appreciated.

John Sansone: Definitely. That shouldn't have happened, but with Sherman being out was part of the problem and I think going forward it should get better.

Chris Hilbert: And to your point, I didn't get it either until 2:51 this afternoon. We're not going to make a decision today, we need to look at the information going forward.

No additional comments/questions.

MOTION: A motion was made to table any decisions on the Bergen Swamp Solar Review until all information is collected, made by B. Stevens. Second by J. Jack. All in favor. None Opposed
MOTION PASSED

MOTION: A motion was made to close the Bergen Swamp Solar Review made by L. Bestehorn. Second by B. Stevens. All in favor. None Opposed
MOTION PASSED

Excelsior Land Separation

MOTION: A motion was made to open the Excelsior Land Separation by J. Jack. Second by L. Bestehorn. All in favor. None Opposed.
MOTION PASSED

Chris Hilbert: As of this point in time, Melissa (Ierlan) and Debra Buck-Leaton, have asked for completed documents from Excelsior for the land separation. Basically, they need an address and a proper survey. At this point in time, neither has been provided to the board. So it is in my opinion, and counsel's opinion, that we are no longer going to table this. They will have to reapply.

Restatement: An application has to be on the agenda, has to be in 10 days prior to the monthly meeting. So, on that, that we don't have a completed application from Excelsior Energy Project for the maps and address issue. We're going to end that process right now, if they need to reapply, they'll get ahold of Melissa.

John Sansone: Just to confirm, Melissa, do you have a completed application?

Melissa Ierlan: I emailed the engineer, Javid Afzali, told him that I had the application but I had no survey yet at the last meeting and I never heard back from him. I talked to Debra and she said no she hadn't received anything.

John Sansone: Just to clarify, the application is received but you're looking for additional information that's necessary for you to decide on it?

Melissa Ierlan: Yes, correct.

MOTION: A motion was made to deny the Excelsior Land Separation made by B. Stevens. Second by J. Jack. All in favor. None Opposed.
MOTION PASSED

MOTION: A motion was made to close Excelsior Land Separation section made by L. Bestehorn. Second by B. Stevens. All in favor. None Opposed.

MOTION PASSED

Joel Woodward Special Use Permit

MOTION: A motion was made to open the Joel Woodward Special Use Permit portion made by J. Jack. Second by L. Bestehorn. All in favor. None Opposed.

MOTION PASSED

Chris Hilbert: Application for a continuance of all preexisting nonconforming uses and variances associated with 7548 Byron Holley Townline Road. Confirmed Melissa had an actual signed application.

Melissa Ierlan: I have an email, this application was sent to Kristy's email and on the last page of the SEQR there is an electronic signature, but not on the application.

John Sansone: Joel, do you mind signing a copy of the application so we can move forward?

*Application signed

Chris Hilbert: We need clarification from you (Joel) as to what the application is asking for.

Joel Woodward: To continue operations the way that they've been for 30 years.

Chris Hilbert: And it also states that you are asking for occupancy of 60 people and it sounds like you are going to use the upstairs at some point, just not currently.

Joel Woodward: Yes, its current occupancy is 60. It was 130 something. But without a sprinkler system put in, you couldn't use the upstairs, which removes part of the occupancy. Trying to put a system in next year

Chris Hilbert: What is the plan for parking for 60 people? That would be parking for 30 – 35 cars, approximately.

Joel Woodward: The same as it's always been. There's a stone parking lot in front of it. There is a whole almost acre there that is available for the property.

Melissa Ierlan: *Pulled calculations. The actual parking area measures 85 feet wide and 55 feet. So, there is room for 16 cars in total as parking spaces are 10x20 per New York State.

Chris Hilbert: Another concern that was brought up, is that the property is not located within the industrial zone, and the distances from residences.

Joel Woodward: That's why it's got the nonconforming use and that would be only if you're starting a new business.

Melissa Ierlan: Back in May, I did a Town Board report, I reported to the Town Board that I was told 7548 Byron Holley Road has been sold at auction. As I read the zoning code it states that special

use permits shall expire at the discontinued use for more than 6 months. I did an inspection April 17, 2024, and at the time, the women I met with (Angela) who was the manager said they hadn't been open for several months because the owner got married. The club, as far as I'm concerned, has not been open for over a year because if she was open, she would have called me for a fire inspection by April 17th and never did. I just assumed it was closed.

I was told by a neighbor that there were people living upstairs. I drove by a couple of times and I couldn't tell if they were or they weren't. Also in the report to the board, I referenced section 11.12 Adult Uses which is in our zoning and it talks about 500 feet from another adult use, a residential, agricultural zoning district, 2000 feet from a school, a place of worship, a playground. No use shall be permitted, operated, conducted, or located in any zoning district other than industrial. Such you show me all requirements of local law in 2002 in the event of a conflict, with this local law, the provisions of that law shall control. Local law 2002 lays out these same standards. I wasn't here at the time, and so I don't know how this kept continuing on, and this is what I told the (Town) board.

I received a packet from Chris (Hilbert) and there was a statement about the minimum separation distance between adult businesses and residences being 500 feet. So, I did all the measurements, and it was 148 feet from one house, 74 feet from another, 146 and 198 *listed out in handout.

I don't know how this has been continuing for so long. I know they came for a variance before the state and the state allowed them no use of the second floor, had to remove all the kitchen appliances. They had to put in a monitored fire alarm system. They had to put in heat sensors under the dance floor. I don't think there's anything like that in the building. I only inspected it one time, and when I walked through the building with a woman there, I wasn't aware this existed so I wasn't really looking for it to be honest.

John Sansone: Sir, do you have a copy of the 2002 document, the state giving you that?

Melissa Ierlan: Yes, that was in the package that I sent them.

John Sansone: Very good. So what you should do (to Melissa), is ask them for the record of those items that they are there. Then if you have to do an inspection, do it.

Melissa Ierlan: Okay, well as far as I'm concerned, I didn't do the inspection in April (a general fire & safety inspection) because the lady told me they weren't open. So I was going on that.

Joel Woodward: I haven't seen any inspections she has done at all either, by the way, because I put a FOIL in and didn't receive anything past 2014. But it does have heat sensors throughout the whole building, even upstairs. So, the heat sensors will alarm the fire company tied into a service (not sure who is monitoring). On to the other issues, that is why we have a nonconforming use.

I know the last day it was closed. I can also go to the state and get the final tax records which were filed that month. You can also look at the electric bill, the water bill, et cetera. So if it was not in use, those would not exist, correct? The lease for Angela ended the 31st of April and they were open until the end.

John Sansone: Is Angela still around? The only reason I'm asking here is because I'm wondering didn't people get a paycheck if the business was running? The only reason I am asking is because if there's an allegation being made that it wasn't in use, and then you're saying that it was used all the way up to the 31st, and there should be some people working, there should be payroll records.

Joel Woodward: Well, they're contractors.

John Sansone: There should be a contract. There should be some kind of payment, compensation to show that they were working and that it was being used. If it's not that, and there's no paychecks to show people who were working downstairs, then the electric usage must be for upstairs, which would be a violation. So that should be something you should try to get that from.

Chris Hilbert: Sounds like, to consider the application, we will need you to show activity less than a year – utility usage, compensation for work stubs and tax filings with personal information redacted. From Melissa, the verification of enough parking, ADA compliance, a formal property inspection.

John Sansone: It looks like there was a law that was passed in May 2002, and then the application for the state was granted with conditions in October 2002.

No additional comments/questions.

MOTION: A motion was made to table Joel Woodward Special Use Permit section made by L. Bestehorn. Second by B. Stevens. All in favor. None Opposed.

MOTION PASSED

Codes, Fees and additional meeting discussion

MOTION: A motion was made to open the Codes, Fees and additional meeting portion made by J. Jack. Second by B. Stevens. All in favor. None Opposed.

MOTION PASSED

Chris Hilbert: Upon John (Sansone)'s availability.

John Sansone: Nothing in November. Looking at December.

Chris Hilbert: December 4th at 7 pm – everyone in agreement.

MOTION: A motion was made to close the Codes, Fees and additional meeting portion made by L. Bestehorn. Second by B. Stevens. All in favor. None Opposed.

MOTION PASSED

Other Business/Public Comments

No additional comments/concerns.

Next Meeting – Wednesday, December 3, 2025, at 7:00 PM

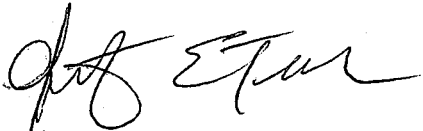
Adjournment

MOTION: A motion was made to adjourn the meeting by B. Stevens. Second by L. Bestehorn. All in favor. None Opposed

MOTION PASSED

Meeting ADJOURNED at 8:14 PM

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Tuerk", written in a cursive style.

Jennifer Tuerk