

TOWN OF MOREAU
NEW YORK

351 REYNOLDS ROAD • MOREAU, NY

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APPLICATION FOR AREA VARIANCE

TOWN OF MOREAU
BUILDING DEPARTMENT

FOR INTERNAL USE ONLY

APPLICANT:	<u>National Grid</u> <u>Area Variance</u>	APPEAL #:	<u>888</u>
		ZONING DISTRICT:	
		DATE SUBMITTED:	<u>5/9/25</u>
		DATE ACCEPTED:	
		HEARING DATE:	
<input type="checkbox"/> SEQR Type 1 <input type="checkbox"/> SEQR Type 2 <input type="checkbox"/> Unlisted			

APPLICANT INFORMATION:

- Applicant(s):** Niagara Mohawk Power Corp. d/b/a National Grid
Street Address: 2 Hanson Place, c/o Jessica Leis, Legal
City, State, Zip: Brooklyn, NY 11217
Telephone #: (929) 928-0966 Fax #: _____
E-mail Address: Jessica.Leis@nationalgrid.com
- Agent:** Allyson Phillips, Esq.; Young Sommer LLC
Street Address: 500 Federal Street, 5th Floor
City, State, Zip: Troy, NY 12180
Telephone #: 518.438.9907, Ext. 257 Fax #: _____
E-mail Address: aphillips@youngsommer.com
- Owner:** Niagara Mohawk Power Corp. d/b/a National Grid & Erie Boulevard Hydropower, LP
Street Address: 1125 Broadway, c/o Jason Cowee, PM
City, State, Zip: Albany, NY 12204
Telephone #: (518) 743-2010 Fax #: _____
E-mail Address: Jason.Cowee@nationalgrid.com

RELATIONSHIP TO THE PROPERTY:

OWNER: ☒ Yes ☐ No

LESSEE: ☐ Yes ☐ No

AGENT: ☐ Yes ☐ No

If an agent, please attach an Agent Authorization Form.

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GENERAL PROJECT INFORMATION:

ADDRESS: 296 Spier Falls Rd (aka 203-213 Potter Rd) TAX MAP #: 62.-1-5.11 & 75.-1-1
 CURRENT USE: Public Utility- Substation ZONING DISTRICT: RP- Resource Protection
 LENGTH OF TIME OF USE: 62 years PROPOSED USE: Public Utility- Substation
 RELIEF SOUGHT: Front yard setback variance of Section 149-26(C) & Attachment 7- Schedule of Regulations (RP)

AREA VARIANCE REQUEST:

	Required Dimension	Proposed Dimension	Difference	%
Front Yard Setback	<u>50'</u>	<u>33'-7"</u>	<u>16'-5"</u>	<u>33%</u>
Side Yard Setback	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
Rear Yard Setback	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
Lot Area	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

GENERAL DESCRIPTION OF THE ACTION FOR WHICH AN AREA VARIANCE IS SOUGHT:

Construction of a new 1,800 SF Substation Control Building, to replace a recently
damaged and retired building.

CRITERIA: An area variance may be granted only in the event that **ALL five (5)** of the circumstances listed in § 179-59A are specifically found to exist by the Zoning Board of Appeals and are each so stated in the findings.

- (1) That the strict application of said dimensional requirements would result in a specified practical difficulty to the applicant.
- (2) How substantial the requested variance is in relation to the requirements.
- (3) That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue.
- (4) That there will be no substantial change in the character of the neighborhood or a detriment to the adjoining properties.

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- (5) That the variance would not be materially detrimental to the purpose of this chapter or to property in the district in which the property is located or otherwise conflict with the description or purpose of the district or the objectives of any plan or policy of the town and that the variance requested is the minimum variance which would alleviate the specific practical difficulty found by the Zoning Board of Appeals to affect the applicant.

Please describe how your circumstance meets ALL five (5) criteria (please attach additional pages as necessary):

Please see attached legal addendum.

[illegible]

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CHECKLIST OF VARIANCE APPLICATION COMPLETENESS:

As per §149-57 of the Zoning Chapter of the Town Code, the following information shall be supplied by the applicant with any variance application:

Please complete the checklist of required application elements:

- ☒ 1. Map of the property with a scaled site plan and/or elevations necessary to show the proposed project for which the variance is sought.
- ☒ 2. Complete narrative response addressing each of the criteria as specified in this application.
- ☐ N/A 3. Financial documentation demonstrating the reasonableness of financial return on the property.
- ☒ 4. Completed and signed Part 1 of the appropriate Environmental Assessment Form. Paper copies are available at the Building Department in Town Hall or electronically at <https://www.dec.ny.gov/permits/6191.html>.
- ☐ 5. Additional information requested by the Zoning Board of Appeals.

Please return the original application, with all four pages intact, along with ten (10) paper copies and an electronic copy, including required information and documentation. The electronic copy may be submitted on a flash drive or emailed to biclerk@townofmoreau.org.

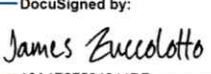
NOTE: The application will not be scheduled on the Zoning Board of Appeals agenda until all paper and electronic copies have been received by the Town Building Department.

Also note that the information to be provided is not limited to the space on this form. If additional space is needed, please use separate sheets and indicate the enclosure number or page number for the attached sheets in the related space provided on this application.

Signature

Niagara Mohawk Power Corp. d/b/a National Grid, by: James Zuccolotto, Authorized Signatory

Applicant (print)

DocuSigned by:

16A4E87684044DE

Applicant (sign)

5/8/2025

Date

Legal Addendum to Application for Area Variance

Town of Moreau Zoning Board of Appeals

Applicant: Niagara Mohawk Power Corporation d/b/a National Grid

Property: 296 Spier Falls Road (a/k/a 203-213 Potter Road), Wilton, New York

Request for an Interpretation of 149 Attachment 7

Section 149-26(c) of the Town of Moreau Zoning Code ("Code") and the Schedule of Regulations for the Resource Protection (RP) District (149 Attachment 7) provides that the minimum front yard setback for a 1-family use is 50 feet. The Schedule is silent as to the required minimum setbacks for other permitted uses within the RP District. "As zoning regulations are in derogation of the common law, they must be strictly construed against the municipality that enacted them and any ambiguity in the language employed must be resolved in favor of the property owner." *Subdivisions, Inc. v. Town of Sullivan*, 92 A.D.3d 1184, 1185 (3rd Dept 2012); *see also Sullivan v. Bd. of Zoning Appeals of City of Albany*, 144 A.D.3d 1480, 1482 (3rd Dept 2016); *Mamaroneck Beach & Yacht Club, Inc. v. Zoning Bd. of Appeals of Vill. of Mamaroneck*, 53 A.D.3d 494, 498 (2nd Dept 2008).

As such, National Grid seeking an interpretation of 149 Attachment 7 and requesting that the ambiguity in the Schedule of Regulations for the RP District be resolved in favor of National Grid, as the property owner. Specifically, National Grid is requesting a determination that the noted setback regulations are inapplicable to a public utility use and are only intended to regulate a 1-family use.

In the alternative, National Grid requests a variance of Code Section 149-26(C) and 149 Attachment 7.

Request for An Area Variance

National Grid is considered a public utility under New York law and is therefore entitled to a relaxed zoning standard. (*Matter of Consolidated Edison Co. v. Hoffman*, 43 NY2d 598 [1978]). In *Consolidated Edison*, this State's highest Court determined that the ordinary variance standard is inapplicable and a public utility company applying for a variance need only show that there are "compelling reasons, economic or otherwise," for needing the variance. National Grid respectfully submits this Statement of Intent in support of its application for special use permit and variance relief, and all other necessary approvals under the *Consolidated Edison* standard. O the National Grid is considered a public utility under New York law and is therefore entitled to a relaxed zoning standard. (*Matter of Consolidated Edison Co. v. Hoffman*, 43 NY2d 598 [1978]). In *Consolidated Edison*, this State's highest Court determined that the ordinary variance standard is inapplicable and a public utility company applying for a variance need only show that there are "compelling reasons, economic or otherwise," for needing the variance. National Grid respectfully submits this Addendum in support of its variance application under the *Consolidated Edison* standard. As set forth in more detail below, there are compelling reasons for needing the variance.

Although National Grid is a public utility and entitled to the relaxed variance standard, the traditional area variance standard also favors relief. Pursuant to New York §267-b(3)(b):

- (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

Constructing the new 115 kV Control Building within the required front yard will not create an undesirable change in the character of the neighborhood. This site has existed as a public utility substation for over 60 years. The building is bordered to the south by County Road 24, to the north by the Hudson River, and to the east and west, by over 100 acres of public utility fee owned property (National Grid and Erie Boulevard Hydropower LP). Further, there are structures currently situated within the existing Substation which are located closer to the front property line than the proposed Control Building. The existing 34.5 kV control building is approximately 26 feet from the front property line, as such, the proposed 115 kV Control Building, setback at 33 feet-7 inches will be in line with the existing conditions, and further, will not be increasing the existing non-conformity.

- (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

Given the narrow condition of the parcel, National Grid has no other feasible option for the location of the proposed 115 kV Control Building. The proposed building is replacing a control building that is no longer functional due to a recent fire. In designing the new 115 kV Control Building, National Grid engineers evaluated the site and determined that the proposed location was the best possible option for compliance with engineering and safety standards. The engineers even considered the unique nature of the parcel and deviated from standard control building dimensions to create a building that was elongated and narrower than typical designs.

- (3) whether the requested area variance is substantial;

The Schedule of Regulations for the Resource Protection District (149 Attachment 7) provides that the minimum front yard setback is 50 feet, where the 115 kV Control Building is proposed at 33 feet-7 inches from the front property line. The requested variance is not substantial, as it is an approximately 33% deviation from the Code's requirement. Further, as there are existing structures already within the required front yard, and also closer to the front property line than the proposed Control Building, National Grid sets forth that the addition of the Control Building would amount to an insignificant change.

- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

The requested variance of the front yard setback will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The installation of the 1,800 square foot Control Building and associated fencing would be considered a Type II Action under the State Environmental Quality Review Act ("SEQR"), either under 6 CRR-NY 617.5(c)(2) (replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building, energy, or fire codes unless such action meets or exceeds any of the thresholds in section 617.4 of this Part) or 6 CRR-NY 617(c)(9) (construction or expansion of a primary or accessory/appurtenant, nonresidential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities). Therefore, the project is presumed to not have a significant adverse impact on the environment.

- (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Given the unique narrow nature of the parcel, and its existence as a public utility facility for over 60 years, the proposed variance should not be considered self-created. However, if the Board determines that the relief is self-created, National Grid respectfully sets forth that such self-creation shall not preclude the granting of the area variance.