

**TOWN OF ELLICOTTVILLE
ZONING BOARD OF APPEALS
Thursday, June 2, 2022**

PRESENT: Cindy Dayton, Chairperson
Gail Scheeler, Member
Harry Weissman, Member
Kathleen McGoldrick, Member and Applicant

ALSO PRESENT: Greg Kyser, Town Planner; Kelly Fredrickson, Code Enforcement Officer;
Rodney Tolley; Lyndsey Mavissakalian-Solar Liberty Energy Systems;
Steven Chaffee, applicant; Ste[hen Chaffee

Ms. Cindy Dayton, Chairperson, called the meeting to order at 6:00 p.m. and opened a Public Hearing for TZBA 2022-16 for 8331 West Valley Road (Route 240) for an area variance request for Kathleen McGoldrick. As Ms. McGoldrick was the applicant for this project, she recused herself from participation in the ZBA process for this discussion and represented herself as the applicant for this project.

The subject of the Public Hearing was Ms. McGoldrick’s application for an area variance to allow construction of a solar energy system on her 1.90-acre property. This is a non-conforming lot that predates the Town’s Zoning Ordinance. Since this request is to construct a new accessory structure to the single family residence on the property, the solar array is subject to current Zoning standards. The applicant wishes to construct a solar array in a portion of the required setback area, therefore an area variance has been requested. As the property lies both in the Agricultural-Residential and Conservation Districts, the more stringent setback requirements of the Conservation District apply to this request per Section 1.7(B) of the town’s Zoning Code. Therefore, the applicable setbacks for front yard and side yard are both 100 feet. The property does not contain any wetlands or streams. It is located on a designated Scenic Byway, New York State Route 240.

Ms. McGoldrick, Mr. Tolley and Ms. Mavissakalian all spoke about the proposed project, which was designed by Solar Liberty. If approved, Solar Liberty will perform the installation. Three configuration and location options were presented, with the Option 1 that would be located closest to the road being the preferred option. The other two options would be similar installations in varying configurations and located further from the road, however diminishing levels of solar energy would be produced if either of the other options were approved.

Due to the size and topography of the lot and existing vegetation, the front yard area is the only feasible location for this project. A steep hill with mature trees is located directly behind the house and due to vegetation shade and topography, the rear of the lot is unsuitable for a solar installation. Under all three options, side yard setbacks are required for installation. Option 1 also would require a front yard setback, bringing the solar array to 43 feet from the front yard

line, where a 100 feet front yard setback is required. All proposed options would meet the height requirements.

The applicant wishes to construct the array to provide sustainable energy for the home and an electric car. Per Solar Energy’s estimation, Option 1 would fully supply those requirements, generating more than enough usable energy during peak production months. Assuming production exceeds needs during peak generation months, the excess energy would be provided to the grid to be used by other consumers. A “bank” of electricity would be established by the grid’s energy provider, enabling the applicant to obtain grid electricity at no cost when needs are not met by the solar arrays. Option 2 and Option 3 are not estimated to provide enough electricity to fill the entire need.

An estimated comparison for the three options is provided below:

	Option 1	Option 2	Option 3
Front yard setback	43 feet (57% variance)	109 feet (no variance)	108 feet (no variance)
N side yard setback	11 feet (89% variance)	12 feet (88% variance)	31 feet (69% variance)
S Side yard setback	137 feet (no variance)	106 feet (no variance)	87 feet (13% variance)
Electricity supplied compared to need	100%	90%	80%

The Public Hearing announcement was published in the paper, posted at the Town Hall and neighbors whose property is within 150 feet of the proposed project were mailed notice of the Public Hearing. Other than those present and noted above, there were no comments received in relation to this application.

Following presentation of the project during the Public Hearing, a motion was made by Ms. Scheeler, seconded by Mr. Weissman and carried to close the Public Hearing.

Ms. Dayton opened the Regular portion of the Town of Ellicottville Zoning Board of Appeals meeting and asked for discussion on the Minutes of the May 5, 2022, meeting. She requested a correction in the Minutes at the end of the first paragraph, to state “this is the first solar energy project to come before the Town ZBA.” There were no other comments on the Minutes and no objections to making this correction. A motion was made by Mr. Weissman and seconded by Ms. Scheeler to approve the amended Minutes. Motion carried.

Under Old Business, Ms. Dayton opened discussion on TZBA 2022-16-8331 West Valley Road, Kathleen McGoldrick, for the solar project presented during the Public Hearing portion of the meeting. Under Zoning Law, the Board has 62 days to take action on the Variance Request.

Reading from the Staff Report prepared by Town Planner Greg Kyser, Ms. Dayton provided a brief project description of the application and the Zoning Analysis. According to NY State Zoning Law, the Board is required to perform a balancing test to compare the benefit to the

applicant against the detriment to the health, safety and welfare of the community in considering whether to grant a variance. If it determines the benefit outweighs the potential detriments, the Board may grant the minimum variance necessary to achieve the desired result.

Board Discussion - TZBA 2022-16-8331 Balancing Test

1. *Would granting the variance would affect the current pattern or density of the development in the neighborhood or is it a concern for the public health and safety in the neighborhood?* Mr. Weissman and Ms. Scheeler said that it would not affect the density of the neighborhood and would be sufficiently away from the road so as to not impact traffic, line of sight, etc. Mr. Weissman pointed out that several homes in the general area do not presently meet zoning setback requirements, including one home that was granted variances for construction under the current Zoning Ordinance. Since anti-glare coating is a requirement per the town's Solar Ordinance, oncoming traffic would not be affected by sun glare from the solar panels. It was noted that the town's Comprehensive Plan calls for a less stringent setback requirement for this section of the Conservation District, however that recommendation has not been codified in the Zoning Ordinance. The Board's consensus was that granting the request would not negatively affect the neighborhood or public health and safety, therefore this test was met.
2. *Can a similar outcome be achieved if the variance request is denied? Can a different site design achieve the same outcome without the need for a variance?* The board discussed the three options presented by the applicant, focusing on the lesser amount of energy that would be provided if Option 2 or Option 3 were approved. Board members also discussed the need for a variance with any of the 3 options and the configurations that would be required for each of the three options. Mr. Weissman said he felt the applicant's desire to produce the optimum amount of energy should be considered. Ms. Dayton said she felt the configuration of Options 2 and 3 were less desirable aesthetically, which offsets the closer placement to the road that is required for Option 1. Ms. Scheeler agreed with all points. The Board determined this test was met.
3. *Is the requested area variance substantial?* While Option 1 required the most substantial front yard setback, the Board determined that this request was no more substantial than other area variance requests that have come before the Board and was in fact less than some neighboring homes. In reviewing the various locations and configurations presented for each of the options, Mr. Weissman said he felt there was little difference between any of the options. The Board determined this test was met.
4. *Would granting the proposed variance have an adverse effect on the physical or environmental conditions in the neighborhood?* Mr. Weissman and Ms. Scheeler agreed that the proposed location for any of the options posed no threat to cultural, historical or natural resources, the area was not in a wetland or an environmentally sensitive area and there were no traffic, odor or light issues posed by granting approval for any Option. Ms. Dayton pointed out that the linear configuration proposed in Option 1 was more visually appealing and the Board felt it might offer the best option for screening from the road. Also, the applicant plans no change in the way the area is managed (it is presently not mowed). Although this project is located along a scenic by-way, the Board determined any potential negative visual impact from the siting of solar panels could be

mitigated by screening. This matter is expected to be discussed at the Town Planning Board under a Site Plan review.

5. *Is the difficulty self-created? If so, this does not necessarily preclude granting the variance.* The Board determined that the difficulty is self-created, since the applicant has the option to not pursue solar electricity on their property. However, the applicant is choosing to do so as an environmentally-friendly alternative to reduce their carbon footprint.

This variance request is subject to State Environmental Quality Review Act (SEQR) review. A motion was made by Mr. Weissman to classify the area variance as a Class 2 action under SEQR, therefore it would be exempt for review from Cattaraugus County review. Ms. Scheeler seconded the motion. All Aye, motion carried.

In discussing the three options, Mr. Weissman pointed out that this is an unusual request due to the fact that granting the request has a direct bearing on the operability of the system. Also, additional reviews are required by the Planning Board, which could also result in mitigative requirements for visual impact.

Ms. Dayton noted that the configuration difference between Option 1 and Options 2 and 3 made her believe Option 1 had the lesser visual impact due to the fact that the alignment is linear, vs an L-shape presentation in options for 2 and 3.

Mr. Weissman pointed out that the visual impact is no more substantial than other homes in the area, including a newer single-family home that was granted construction variances on the corner of Route 240 and Beaver Meadows Road. The Board agreed that while the home does not meet current setback requirements, it does not create a detrimental impact to the neighborhood.

The Board agreed that the most benefit would be provided to the applicant by granting Option 1. A Motion was made by Mr. Weissman to grant the variance request for Option 1 to allow a solar panel system to be constructed ~43 feet from the front yard setback and ~10 feet 6 inches from the north side yard setback. The motion was second by Ms. Scheeler. All Aye, Motion approved. Ms. Dayton wished the applicant well with pursuing the project, noting there were additional approvals required.

New Business – TZBA 2022-60: 6179 Route 219 South, Steven Chaffee, side yard setback variance request for an accessory use structure.

Ms. Dayton asked Ms. McGoldrick to participate in the remainder of the meeting as a ZBA Board member and she agreed. The applicant was present and explained his desire to place an “Amish Style” structure on skids on a concrete pad that remains from a former garage situated approximately 10 feet from the side yard property line of the lot. The 12 by 20 feet proposed structure would be unheated and would not have electric. The neighboring most closely impacted property is currently used as housing for disabled adults.

The Board discussed the proposed structure with the applicant. The front house has four units, and the applicant wants to use the structure to store excess furnishings from the rental units. The proposed location is ~10 feet from the side yard setback, where a 15 feet side yard setback is required.

After reviewing the application, the Board determined the application was complete. A motion was made by Ms. Scheeler and seconded by Ms. McGoldrick to set a Public Hearing on the variance request for the next regularly scheduled meeting on Thursday July 7, 2022 at 6 p.m. Due to ongoing construction at the Town Center, the likely location for the meeting will be at the Town Hall.

The Board took up discussion of TZBA 2022-65 – 10 Easy Street, Wepler Properties LLC. There was no one present to represent the project. Ms. Dayton noted that she did not have an opportunity to look at the project on location. Ms. Scheeler did look at the project and said that the project “needs help” from the aspect of the structure is in poor repair. Ms. Dayton expressed strong concerns of the parking indicated on the drawings provided by the applicants, specifically that seven cars are depicted in the drawings.

The Board discussed public safety aspects of granting variances for the Holimont Holihuts subdivision that potentially increase an already substandard parking and traffic situation. Based on the information provided and the fact that there were no representatives for the project present, the Board felt there was not enough information provided to set a Public Hearing. A motion was made by Ms. McGoldrick and seconded by Ms. Scheeler to deny the request to set a Public Hearing on the project. All Aye; the Motion was carried.

The Board then discussed two recent requests the ZBA has considered at Holimont and that the level of expected requests is expected to increase in the future. The roads do not meet current fire safety requirements for egress and the winter parking situation adds to the limited access. The possibility of forming a joint committee between the Planning and Zoning Boards was discussed, with the intent to make a recommendation for Zoning changes to the Town Board for consideration. Points of discussion included road right-of-way encroachment, fire access and whether Homeowners’ Association pre-approval is required before a Project that encroaches on the road Right of Way should be obtained before the Project comes before the ZBA. Ms. Dayton asked the Board to consider options for Holihuts variance requests and to bring recommendations to the next ZBA meeting.

A motion was made by Mr. Weissman and seconded by Ms. McGoldrick to adjourn the meeting All Aye, the Motion was carried at 7:38 p.m.