

ZONING BOARD OF APPEALS OF RIDGEFIELD

MINUTES OF MEETING

January 28, 2019

NOTE: These minutes are intended as a rough outline of the proceedings of the Board of Appeals on Zoning of Ridgefield held on January 28, 2019 in the Public Meeting Room, Town Hall Annex, 66 Prospect Street, Ridgefield. Copies of recordings of the meeting may be obtained from the Administrator at cost.

The Chairman called the special meeting to order at approximately 7:00 p.m. Sitting on the Board for the evening were: Glenn Smith (Chairman), Carson Fincham (Vice Chairman) Terry Bearden-Rettger, Sky Cole, and Mark Seavy. Alternates Robert Byrnes and Michael Stenko were also present.

ROTATION OF ALTERNATES

The rotation for the meeting was: first, Mr. McNicholas; second Mr. Byrnes; third Mr. Stenko. No alternates were used for this meeting. Thus, the rotation for the next meeting will be: first, Mr. McNicholas; second Mr. Byrnes; third Mr. Stenko.

CONTINUED PETITION

Appeal No. 18-029

Sanjay Tripathi

Property Located at 90 Canterbury Lane

This was the continued hearing from the appeal of the decision of the Zoning Enforcement Officer filed by Sanjay Tripathi of 78 Canterbury Lane. The appeal was on a zoning permit for ground mounted solar arrays issued to Smadar and Dane Unger of 90 Canterbury Lane. Attorney Keith Ainsworth again represented the appellant, Sanjay Tripathi.

Mr. Ainsworth started first and stated to the Board that answers to core questions were not being answered by the Unger's and their experts. Mr. Ainsworth stated that appellants never claimed energy would be sold to a 3rd party from the solar panels, but thru the net metering program, power would be sent back to the grid would result in a monetary credit to the Unger's. Also, many of the reports entered did not refer to ground mounted solar panels but roof mounted panels. Mr. Ainsworth further stated that Mr. Baldelli was wrong in issuing the permit. The panels were not an outbuilding but possibly an accessory structure. These ground mounted panels are on a larger scale and too large to be considered incidental. These panels, were not common or customary in Ridgefield. Since the Unger's panels will send energy off site, the conditions of the zoning permit are incorrect. The zoning permit included a condition stating power generated to the location was limited to use on the property. The letter from the CT Green Bank attorney submitted by the Appellees' did not address that energy obtained from the panels went back to Eversource for their use. The system was designed to send extra energy to the grid. Mr. Smith asked Mr. Ainsworth if the zoning permit should be overturned based on the condition. Mr. Ainsworth replied yes. Mr. Ainsworth submitted an updated statement from George Keithan that stated the panels should have been placed lower than 11 ft and placed elsewhere on the property. Mr. Tripathi showed the Board a series of photos that showed shadowing and sun exposure on the arrays between 8:43 am and 3:46 pm. There was significant shadowing from the Tripathi's house on the arrays at different points in the day. Board members pointed out the sun was weaker and limited in January compared to other times of the year.

Mr. Smith stated that the arrays were 27 ft from the setback and asked Mr. Ainsworth if the Unger's could build another structure, like a barn, garage or pool at the 25 ft setback. Mr. Ainsworth agreed they could. Mr. Smith also referred to the West Hartford solar panel regulations Mr. Tripathi previously referred to at a Board of Selectmen meeting. Specifically, in West Hartford ground mounted arrays can only be 8.5 ft high, no more than 2% of total lot area, setback the same as a permanent structure and panels must be screened. Mr. Smith said the arrays at 90 Canterbury meet almost all the regulations as West Hartford, though 90 Canterbury arrays are 11.5 ft not 8.5 ft. Mr. Tripathi stated that lack of regulations on solar panels in Ridgefield hurt the look and feel on neighborhoods in Ridgefield. Mr. Cole asked Mr. Tripathi if the view of the equestrian center to the rear of his property was appealing to him. Mr. Tripathi replied yes and stated the facility was already there when they purchased the property. Mr. Cole stated the view was appealing to the Tripathi's and the view of the solar panels may be appealing and attractive to others as solar panels are seen as good for the environment. Mr. Tripathi replied that an appraisal he had done showed it lowered the value of his home and over 100 people signed a petition agreeing that ground mounted solar panels did not belong at that location on the Unger property. Mr. Cole asked if he would like to see solar power regulations drafted for Ridgefield. Mr. Tripathi replied yes. Mr. Smith stated that any new regulation or ordinance would likely not change the allowed location of arrays. A setback was a setback and a regulation would not state for example, that a garage could be located at certain distance from property line but a solar array had to be another distance away. Mr. Smith also discussed Connecticut legal cases involving encroachment on views. There are no court decisions upholding a right to a view.

Richard Baldelli, ZEO for the Town of Ridgefield and issuer of the zoning permit spoke next. He presented to the Board from the zoning regulations 1.4.A.1., *Interpretation of Regulations, Prohibited If Not Permitted* which stated what was prohibited if not permitted. He also presented to the Board a list of examples of state-wide common residential accessory uses, including HVAC units, arbors, docks, fences, fire-pits etc. Mr. Baldelli stated that some of these uses required a permit in other towns, but not all required a permit. Mr. Baldelli also stated there was nothing in the Town of Ridgefield regulations or ordinances that protected a residences view. The Unger's could have built their house out of metal and glass if it met the building code. He further stated if the ZBA overturns the permit, it could affect solar power in Ridgefield as 120 roof and ground mounted power arrays are in the Town. Currently, Ridgefield does not differentiate between roof and ground mounted. Mr. Smith discussed the discrepancy between Mr. Baldelli and Mr. Mason at the January 7 meeting regarding available lot coverage. Mr. Mason and Mr. Baldelli both re-calculated the numbers and the discrepancy was due to the Unger's constructing with less lot coverage than what was originally submitted. The final as-built survey was not completed but it was agreed that the lot coverage to build a 40 x 40 ft structure was still available. Mr. Baldelli stated that in his opinion, solar arrays were the definition of a structure. When asked about the conditions on the permit being incorrect since power was going to be moved off the property, Mr. Baldelli replied that enforcement of conditions on permits fell on the ZEO, not the ZBA or another Town agency. Mr. Smith asked if he understood what net metering was. Mr. Baldelli replied that he understood it. Mr. Smith then asked if he was still good with the language, he used to grant the conditions in the permit, as the condition does not reference net metering. Mr. Baldelli stated he would act if there was a complaint against power being sold off the property.

Mr. Fincham asked why a zoning permit was issued under 3.4.A.1., *permitted with zoning permit (ZEO)* and not under 3.4.C.2., *permitted with approval of site plan (Planning Director)*. Mr. Baldelli replied he felt the arrays were an accessory structure as defined under 1.4.1. Mr. Baldelli asked what difference would the outcome have been if it was permitted under the ZEO or Planning Director as he was Director, Planning and ZEO for the Town. Mr. Smith then asked him to explain what entailed a site plan review. Mr. Baldelli explained that there was usually no public review while approving a site plan. Ms. Bearden-Rettger asked about the description of a site plan under 9.1.C.5. Mr. Baldelli replied that the Planning and Zoning Commission does not issue conditions regarding buffers any longer. Mr. Smith asked if vegetative screening can be done. Mr.

Baldelli stated yes, but screening was hard to maintain and enforce. Fencing is often used as a condition as it is permanent and more enforceable.

The attorney for the Unger's, Matthew Mason then appeared to respond. He submitted to the record a full biography of Robert Fuller who submitted an affidavit previously supporting the issuance of the zoning permit. Also, submitted was a list of Connecticut Green Bank residential customers with solar projects in Ridgefield dating back until 2005. Mr. Mason stated that the discussion of screening was irrelevant since no regulations in the Town required screening. He did state that the Unger's always planned to screen the arrays. Also, the shading reports were irrelevant since how much energy the arrays produced for the Unger's was not an issue. Chris Lobdell of Pure Point Energy appeared again to speak about the array location. Locating the arrays on the other side on the Unger's property would then likely have come within 5 ft. of the septic system and the trees on the lot line could affect the energy production. Mr. Lobdell stated they differences in power generated were minor and no site on the property was perfect to locate the arrays. He further stated that the Tripathi photos showing shadowing on arrays reflect the sun in the month of January. Trees planted up to 18 ft. may block the arrays at certain times but the arrays would not be greatly affected. Ms. Bearden-Rettger asked if roof top panels were considered. Mr. Lobdell replied that roof top panels were more complicated but he was not involved with the sale aspect of the arrays to the Unger's. Mr. Lobdell confirmed net metering does occur on roof mounted panels as well. Mr. Mason stated many arguments presented tonight were irrelevant and false including that the arrays were too big for the lot, were within the setback and could not be seen from the Unger's home. He pointed to drawings submitted in his Response to Appeal Statement that showed the views from the Unger's. He also stated to the Board that the panels were customarily and incidental within the zoning regulations. He further stated that the Pure Point letter was attached to the permit, so net metering was clearly planned, with fair intent by Mr. Baldelli. Mr. Mason asked if they Board had concerns about the language of the condition, could the permit be amended. The condition, he stated, does not take away the intent of use. Mr. Mason also stated that West Hartford was the only Town that had an ordinance for ground mounted panels required under 10 ft. Mr. Smith asked how the arrays could be considered an outbuilding. Mr. Mason replied they could fall under an accessory structure definition. Mr. Mason said the Tripathi's just do not like the way the arrays look. When asked by Mr. Smith about enforcement of tree plantings, Mr. Mason replied that all Towns fight the enforcement issue and stated the Tripathi's could plant trees along their property line as well. He also stated the appraisal entered by the Tripathi's for their property was not a true appraisal. In his rebuttal, Mr. Ainsworth stated that the list by Green Bank of solar panels projects were all roof mounted, so therefore ground mounted arrays were not customary in Ridgefield. The zoning permit was imperfect and believes it should be granted under 3.4.C.2, under a site plan approval.

Seventeen people appeared to speak at the hearing. Approximately 7 spoke in favor of the appeal and approximately 7 people spoke in favor of the permit being issued to the Unger's.

At this time the public comments ended and the hearing was closed. Mr. Smith announced that the Board would make a decision at a later date. That decision session date was not announced as meeting room availability and available dates of members was to be decided.

As there was no further business before the Board, the Chairman adjourned the hearing at approximately 9:45 pm.

Respectfully submitted,

Kelly Ryan
Administrator
