

SOMERSWORTH ZONING BOARD OF ADJUSTMENTS
MINUTES OF MEETING
August 7, 2019

MEMBERS PRESENT: Matt Keiser Chair, Richard Brooks, Brad Fredette,
Glenn Garvin, Donald Routhier
MEMBERS ABESENT: Coty Donohue, Christien DuBois
STAFF PRESENT: Shanna B. Saunders, Director of Development Services,
Dana Crossley Planning Secretary

The meeting was called to order at 7:00PM.

Keiser appointed Garvin to the board for excused member Donohue.

1) Approval of the minutes of the meeting of July 2, 2019.

Brooks stated there was a minor edit to the first page second the last sentence. He stated 'garage' should be changed to 'house'.

Brooks **MOVED** to accept the minutes as amended. Fredette seconded the motion. The **MOTION CARRIED** by a 5-0 vote.

2) OLD BUSINESS

A) Any old business that may come before the Board.

No Discussion

3) NEW BUSINESS

A) Ian Joseph Campbell LLC, is seeking a variance from Table 5.A.1 of the Zoning Ordinance to place solar panel pedestals and array within the front setbacks on a property located at 4 Enterprise Drive, in the Commercial Industrial (CI) District, Assessor's Map 48 Lot 24-C, ZBA#13-2019.PUBLIC HEARING****

Keiser opened the public hearing at 7:01pm.

Saunders explained the applicant is proposing to install a solar array on a pedestal within the setbacks of Enterprise Drive (50' front setback). The green circle on the map shows the diameter of the array when it is flat and turns. The applicant has proposed the arrays will be 10' off the ground on a 3' x 3' pedestal.

This project is going through Minor Site plan review by the Site Review Technical Committee. In the initial review, the applicant proposed having the arrays within the travel way. The SRTC supports moving the arrays outside the travel way which would put the array into the setback.

Attorney Jim Shannon, applicant's agent and Packy Campbell, member of Ian Joseph Campbell LLC attended the meeting. Shannon stated the use at this property is a car wash. It has existing solar panels on the roof. The owner (Campbell) is proposing to add additional free-standing solar arrays to offset the high electric usage. The goal is to increase the non-carbon electric use.

Shannon noted that since the SRTC requested the applicant to seek a variance to move the arrays out of the travel way which is why they are here tonight. With the location change the arrays may only be 5' tall if the structure is out of the travel way. Shannon explained how the array spins and tracks the sun. He stated the intent is to place the array within the grassy area and the structure will be within the 50' setback of Enterprise Drive.

Shannon reviewed the criteria of the application. He stated this is a heavily commercial zone with no residential in the immediate area. Does not believe the enhancement of carbon reducing footprint of this business would have an effect on the abutters in the Commercial Zone of the City. He stated the applicant is very in favor of non-greenhouse gas emitting electricity. The applicant utilizes solar power in many of his businesses and has existing solar on the roof the property. Shannon explained that it is in the public's interest that they use the solar power to reduce carbon emissions. He stated since it is a commercial zone does not feel that being in the setback affects the neighbors as it is between the road and this property. He stated the setbacks are 50' and the only traffic on this road goes to this property. He stated there is potential for more development around it but this is currently the only developed lot. Shannon stated the unique characteristics are that this is the only place they can place the array without needing other variances. He stated with the grass under the panels it will be in an area that is readily available to receive the snow that comes off of the array with the existing drainage system in place. He stated having solar meets the requirements of the purpose of the ordinance. He stated it is reasonable to make an effort to reduce greenhouse gases and think the use is reasonable. Shannon stated he felt the criteria had been met for an area variance. He stated the hardship is that this is the only location that they can install this additional solar. He stated the largest demand for electricity is during the high peak demand during the day. Shannon stated when comparing the setbacks and the proposed use of solar, feels it is recognized by everyone (and SRTC) the importance of reducing greenhouse gases meets the substantial justice criteria. He stated it is also mentioned in the Master Plan that Somersworth wants to reduce the use of greenhouse gases. He stated the City does not have the regulations currently to encourage solar use. He stated it is not contrary to the ordinance but it is not talked about in the ordinance. He stated they did not think the installation of the arrays would be contrary to the ordinance in an area that is already in the buffer zone.

Public Comment: No public comment.

Brooks asked how often the arrays would need to be cleaned and if there is maintenance with these. **Packy Campbell** replied this array has a snow dump mode that will rotate and dump the snow. He stated these do not require being cleaned. He explained how the arrays track the bright spots in the sky and that the array is see-through to produce energy on both sides. He stated having the arrays over the lawn maximizes production by capturing the reflective light off of snow.

Brooks asked how these arrays compare to roof arrays for energy production. Campbell explained the amount of energy he expects to make a year with this array (40,000 kilowatt hours year). He explained that the roof array makes less energy than the tracking arrays.

Campbell stated they will be essentially 5' from the lot line. But then there is 15' of right of way between the road and property line. He stated the center of the tracker will be 25' from the lot line. He explained the overhang will be 5' from the property line. He is requesting a 5' setback.

Brooks asked if there would be a glare. Campbell stated it is a potential but he has no experience with a glare from his personal arrays. He stated they absorb the light to create the electricity.

Fredette asked what happens with the energy that is produced. Campbell explained that NH uses net metering. He stated they will use the electricity on site. He explained if there is extra energy that is not used on site it goes to the grid and he is reimbursed by net metering.

Fredette stated he is trying to find a quantified hardship which is why he is trying to understand the numbers. Campbell stated he did not believe the numbers had anything to do with the hardship. He explained the hardship is the unique characteristics of the lot, in that the lawn area is within the 50' setback and because of the fact that the roof is already utilized. He stated he felt it was a right to be able to use solar to offset the electric use. He noted that he receives notices from the power company requesting they not use power during the peak demand hours due to their problem. Campbell stated the hardship is the site, the pavement, traffic flow, the concerns of the SRTC for access this is the only location. He feels that if this variance was denied it would be saying he could not utilize this technology because the City does not have an Ordinance that specifically addresses these types of arrays.

Fredette stated he did some research prior to coming to the meeting and found that other communities are struggling with solar and the definition of solar panels. He stated it does not seem straight forward to him in regards to the hardship.

Campbell stated that the lot should be looked at and if there is another place that the array can be placed and meet the setbacks he would like to know. He stated because of the unique factors of the lot and the unique technology he should be granted the area variance to allow the arrays within the setbacks. He stated it would not impact traffic flow, other properties and will benefit the community at large during peak electric demand.

Garvin asked why the array could not go on the roof. Campbell explained that because the array is like a wind sail it requires the concrete footing to stay in place. He stated the array is rated for a 105 wind speed and could not be put onto a rooftop. He added that this site has roof solar already as well.

Keiser asked if the panels were about 40' x 20'. Campbell stated they are 38.4' x 21.7' and when it spins it is a 40' diameter. Keiser asked if the company offers other sizes. Campbell stated yes but this is the one that is most practical. Campbell stated they looked at a 24 panel tracker vs. the 42 panel tracker they are requesting, but it resulted in more setback issues. Keiser asked if there was a smaller array available. Campbell stated yes. Keiser asked why it would not be practical. Campbell stated because it would not meet the setbacks or stay out of the driveway the way the SRTC requested. Keiser asked if the original proposal had the array over the pavement. Campbell stated yes, and explained where it was originally proposed. He stated to offset the power on this site he needs 42 panels which can be done on one tracker. Campbell explained that the trackers need to be a certain area apart to avoid shading.

Brief discussion ensued on a property having two front setbacks and that it does not make it a unique lot.

Keiser clarified that the request was to be 5' from the property line. Campbell confirmed.

Routhier requested a picture of the solar device being proposed. Campbell passed out a picture of one to the board.

Routhier clarified the setbacks of this lot and the requested encroachment. Campbell stated they would be 45' into the setback. Routhier asked if the array would rotate further than 45' into the setback. Campbell stated no.

Routhier clarified that he does not want to use smaller units because it will not meet the electric needs for the car wash. Campbell stated that was correct. Routhier asked if they looked at other solar options that would meet their needs. Campbell stated yes, but they would not meet the needs of the site and the roof is already being utilized.

Routhier asked what other products are there that would not be so intrusive into the setbacks. Campbell stated other option would be roof mounted solar array which is already utilized and maximized. Shannon added that their first proposal to the SRTC did not require a variance but were requested to seek one to move the array from the travel lane.

Routhier asked if the SRTC had any other recommendation for the location of the device. Shannon stated they had not and explained the restrictions that led to this requested location.

Routhier asked if the SRTC would be voting on this or just making a recommendation. Saunders explained that the SRTC serves as the Minor Site Plan committee and would be the ones that review the application for potential approval. She stated the applicant came in for the first review and there was discomfort in having the panels over the travel way. The SRTC requested the applicant seek a variance to move the arrays out of the travel way which would place them into the setbacks, with the intent that the ZBA decision would determine the final location for SRTC public hearing.

Routhier asked if all of the paving is required. Shannon explained that the paving cannot be eliminated; it is for queuing, vacuums and the bypass lane.

Routhier asked if a smaller array could be put in the grassy area. Shannon stated there is a large septic tank there and they would not be able to put the footings around it.

Fredette stated he has done research on net metering and asked how solar development companies make money. Keiser cautioned Fredette to keep the questions pertinent to the variance criteria. Fredette stated he thinks solar is great and allowing this large of a structure within the setback is a dangerous precedent to set. Fredette is still wrestling with the hardship.

Routhier asked if the applicant spoke to his neighbors for feedback. Campbell stated he did talk to his rear abutter and possibly the Fireworks owner. He stated they did not state any objections and has had general support.

Routhier stated his concern is that it is close to the road and an ugly piece of equipment. He asked the applicant to review the hardship argument again. Campbell stated this array, defined as a structure, does not fit anywhere else on the lot without the area variance relief. Routhier asked if it was a hardship to have a lot that isn't large enough to put in new equipment. Campbell replied that it is in the public interest and people should have the right to offset their electric bill with solar and to do what is good for the environment. Routhier stated the City does have the right to establish zoning districts and that is one of the criteria that has to be met. He stated the zoning district in this case does not want anything built within those setbacks for aesthetic and visibility purposes. Routhier stated there is not a right to build within the setbacks. Shannon stated solar is a newer technology and the Master Plan encourages the use of solar but the ordinance does not specifically address it. Routhier stated the question is not if they should use solar, the issue is that the City has setbacks for various reasons. He reiterated the request to know what the hardship was.

Keiser asked Saunders to explain the SRTC concerns.

Saunders stated the concerns were that having the large spinning trackers in the travel way led to the potential of large vehicles (specifically garbage trucks hitting it). She stated it does not seem they would function well together. The SRTC could recognize there was some open space and asked the applicant to request having the pedestal inside the setbacks to ensure it would not be in the travel way.

Fredette stated that it appears the applicant feels he's doing them a favor by coming to this board. Shannon stated they are not here to do the board a favor but rather here on request of the SRTC.

Brooks asked if the array could be raised higher. Shannon stated it could not because of the wind factor. He stated that if they place the arrays in this location outside of the travel way they would use the 5' tall arrays. Campbell stated these 10' high trackers are sold as carport trackers and feels they could be use in a parking lot.

Brooks asked if there was a concern of the appearance at SRTC. Saunders stated screening was discussed at the SRTC meeting. She stated the board recognized that for the function of these arrays it could not be screened. She noted that rooftop solar is not required to be screened as HVAC is.

Shannon stated this project received unanimous support from the SRTC. Saunders stated most members of the SRTC supported the nature of the project to move toward solar.

Brooks stated he agrees but does not want to ruin the aesthetics that the ordinance strives for.

Routhier stated it is an unusual device within the setback request. He stated the applicant presented one plan to the SRTC and then came to the ZBA with a second plan that the SRTC has not seen or addressed any concerns. Shannon stated the SRTC requested they move the arrays out of the travel way on the property.

Routhier stated the applicant is presenting the request to put the solar device 5' from the property line. He asked if the SRTC saw that proposal. Campbell stated the SRTC suggested that location. Shannon stated the SRTC did not see this map because it was not drawn yet. Routhier asked if the SRTC raised any concerns with this location for traffic visibility impact. Campbell stated the SRTC suggested this as a better location. Shannon stated he felt Saunders could reiterate this information as well. Routhier asked if they would have to go back before the SRTC. Saunders stated that is correct they would go back with this proposal for a vote.

Garvin asked if they could put arrays on one property and utilize that electricity on a different lot. Shannon explained how that would not work and why they would want it on site.

Garvin clarified that the design is to be in parking lots. Campbell stated if there is an object in the parking lot it will likely get hit, which was the concern of the SRTC. He stated it would be reasonable and beneficial to put over the lawn area. He stated there is no other area on the lot that does not have shading or impact to utilities or paving.

Saunders reminded the board a site visit is always an option. Brief discussion ensued of any examples available to view.

Routhier asked if the array has lights. Campbell replied no. Routhier asked if the variance is approved, does the SRTC have the right to reject the proposal. Saunders replied yes, the SRTC will approve or deny the application.

Garvin asked if the property across the street from this site is developed. Shannon stated no. Campbell stated that he plows Enterprise Drive. Saunders clarified that private roads are still subject to setbacks.

Keiser closed the public hearing at 8:14pm

Board Discussion:

Fredette stated he thinks this is a great idea and supports solar. He stated he felt this was a dangerous situation in regards to precedent. He stated he has been struggling with the hardship. He stated aesthetics is a big part of the ordinance and thinks a larger body than this needs to look at that first.

Brooks stated he agrees with a lot Fredette's statement. He questioned if this structure would be embraced if allowed. He stated the property has been built out as much as it can be but now wants to add more. He stated he is having a hard time finding the hardship as well.

Routhier stated he is not concerned on aesthetics because beauty is subjective. He stated this is a corner lot on a minimally used road in the commercial area that has a need for this structure. He stated he is still working on the hardship but there is one in a way. Routhier stated there is some argument for a hardship in that there is no other place to put it and no other technical equipment that he could use in place of it. He stated there is a hardship argument but still struggling some.

Garvin stated he thinks this is great and that it would be good to be seen. He stated he is not sure how he would define the hardship for this application.

Keiser stated after reviewing the criteria does not think it would affect the property values of the abutters. He stated he thinks it is beneficial to the public interest. He stated the applicant is trying to meet his electric needs with the solar arrays and that would do justice to do it. Keiser stated he was on the fence for how this meets the spirit of the ordinance because it is defined as a structure but does not take up space like a structure. He stated for hardship and what makes this property different than surrounding properties he does not see that that criteria has been met. He stated he does not see evidence this lot is different than surrounding lots.

Fredette stated there has been a lot of discussion about technology. He stated he is not taking a position on solar but rather looking at the characteristics of the lot. He stated he does not feel there is enough hardship to put the structure in the setbacks.

Brooks stated the ordinance outlines setbacks and this is about definitions. He stated setbacks are set for a reason to reduce overcrowding or space and land. He stated a hardship on the setback is what he having an issue with. He stated it has nothing to do with the request for solar.

Routhier questioned if an area is built up should that prevent property owners from upgrading to new technology.

Fredette stated Routhier's comment makes sense. He questioned then if solar panels would be allowed in all setbacks.

Routhier stated that would be for the legislative body to decide. He stated they are only looking at this application.

Keiser stated he does not ever feel that 5' is an adequate setback. He stated there are some other options for the location.

Fredette stated there is another option and they would need to convince the SRTC of the alternate location.

Fredette stated after review of the application, the file and all the information presented to the Board, I feel that criteria 3, the hardship criteria, of the five criteria have NOT been satisfied and I MOVE that the request of Ian Joseph Campbell LLC for a variance from Table 5.A.1 of the Zoning Ordinance to install a solar array with pedestal in the 50' front setbacks be DENIED.

The motion was SECONDED by Garvin.

The MOTION CARRIED by a 4-1 vote. The application is DENIED.

- B) Ian Joseph Campbell LLC, is seeking a variance from Table 5.A.1 of the Zoning Ordinance to place solar panel pedestals and array within the front setback on a property located at 413 High Street, in the Residential/Commercial (R/C) District, Assessor's Map 36 Lot 3A, ZBA#14-2019. PUBLIC HEARING**

Keiser opened the public hearing at 8:28pm.

Saunders stated this application is asking for a variance from the setback of Commercial Drive. During file research it was determined that Penny Lane is a private driveway. The applicant and the bank own to the center line of this driveway. She stated this makes that a side setback. The front setback applies to the Commercial Drive side. The setbacks are 50' from the front and 30' from the side. Saunders asked for clarification from the applicant if they will be meeting the 30's side setback.

Campbell stated they are not going to meet the 30' setback either.

Saunders stated the original proposal presented to the SRTC showed the arrays over the travel way. The SRTC expressed the same concerns as before about the rotation over the travel area. Saunders noted there are several easements across the property. This includes a gas easement and drainage easement that also results in a wetland and buffer. This is considered Minor Site Plan and would go back before the SRTC for final review and decisions.

Keiser clarified that the applicant would need a front and side setback as the plan submitted. Saunders stated that is correct. Keiser stated which is still under Table 5.A.1. Saunders stated that is correct. Keiser asked if the board had an objection with moving forward with the variance request for a front and side request. The board had no objection with moving forward. Keiser clarified the applicant is comfortable moving forward. Campbell stated he is comfortable moving forward.

Attorney Jim Shannon applicant's agent and Packy Campbell member of Ian Joseph Campbell LLC attended the meeting. Shannon stated the surrounding properties are all large commercial uses. He stated installation would not have effect on surrounding property values. He stated permitting the installation of solar power on site to meet power demands of this property would be in favor with the public interest. Shannon stated this property has more unique characteristics that limit the property owner to site the arrays. He stated opposite of the proposed location of the arrays the lot is bisected by the wetlands and gas easement. He stated this prevents them from using much of the undeveloped portion of their land. Shannon stated that the wetland setbacks have an effect on this property. As a result of the special conditions it limits the solar array to the proposed location. Shannon stated it cannot go on the roof because of the wind loads. He stated based on the nature of the property believes the application combined with the setbacks and factors the purpose of the ordinance will cause a burden on the property. He stated the request to offset the use of greenhouse gases with solar power is a reasonable request. He stated the use of this property requires high electricity usage. The easements constrain the location that the solar arrays can be located. Shannon stated because the ordinance is silent on solar it would not be contrary but it does enhance the spirit of the Master Plan.

Public Comment: No public comments.

Routhier asked if the arrays being proposed for this location were the same size as the ones proposed for the 4 Enterprise Drive project. Campbell stated yes. Routhier asked if the dots on the map provided were drawn by an engineer or the applicant. Campbell stated he drew them. Routhier asked why they are requesting three arrays. Campbell stated in order to offset the power usage at this site he would need the three arrays.

Fredette stated the proposal shows one of the arrays close to the pavement. He asked if the array is over Penny Lane. Shannon stated it is not the intent to be over Penny Lane. Shannon stated the intent is to be a few feet away from the pavement. Campbell showed the board a hand drawn sketch of the location of the arrays to proposed setback request. Campbell stated he would meet the setbacks put in place by this board.

Keiser clarified that the applicant is requesting a 5' setback from Commercial Drive and 5' from Penny Lane. Campbell replied Penny Lane would not be 5' it is a 19' request.

Brooks asked if there is any solar panels at this property. Campbell stated no. Brooks asked if there was a reason it could not be put onto the roof. Campbell stated roof mounted solar does not generate enough energy to offset their electrical usage. Campbell stated the trackers are unique because they are off the ground, similar to an awning and rotate. He stated the variance should be granted because the property is unique and the unique technology is not defined in the ordinance. Campbell stated the pedestal itself will be farther from the setback, which is the part that is in the ground.

Garvin stated the pedestal would still be 25' from the property line and then the overhang is another 20' into the setback. Campbell stated that was correct. Garvin asked if the original proposal had the arrays in a location that did not require a variance. Shannon stated yes, they were originally closer to the existing paving. Shannon stated because of the concern of closeness to the wetlands and travel ways they moved the location of the arrays. Garvin clarified that there was a location that the arrays could be placed without a variance. Campbell stated that was not true. Campbell explained that because of the setbacks and having two frontages would still need a variance. Campbell reviewed the restrictions of the property due to the easements.

Routhier asked what the approximate cost of the array was. Campbell stated about \$55,000 each. Routhier asked if they looked at putting in a larger array rather than the three smaller arrays. Campbell stated they looked at an 84 panel tracker but it would still be within the setbacks.

Fredette asked who plows Penny Lane. Campbell stated sometimes he does and sometimes the bank does. Fredette asked if there were any plans for the City to take possession of the driveway at this time. Saunders stated the City has no plans to take the possession of the driveway.

Fredette asked if the applicant owns both accesses to the parking lot. Campbell stated yes, one is an in and one is an out. Fredette asked if the applicant could reconfigure the parking lot to allow for the arrays to meet the setbacks. Shannon explained there is existing infrastructure located in the parking lot and they need the existing parking area for the queuing area. He stated the queuing area is a requirement from the Planning Board.

Keiser asked for clarification on a spot on the map. Shannon explained it was a dumpster.

Keiser asked if the wetlands boundary is within the parking lot. Shannon stated the 100' buffer covers most of the parking lot area. Shannon stated even if they used the original location they would need to get a Conditional Use Permit. Campbell stated they are going through the process for the Conditional Use Permit. Campbell stated they are trying to reduce the impact into the wetlands.

Keiser asked how far the array farthest to the right is from Commercial Drive. Campbell stated it is 40'.

Brooks asked who approves the wetland buffer encroachment. Saunders explained that the Conservation Commission reviews the application and sends a recommendation to the Planning Board. She stated the Planning Board holds the public hearing for final decision.

Keiser closed the public hearing at 9:06.

Board Discussion:

Garvin stated he is unclear if the applicant has another location he could put the arrays without a variance.

Fredette stated he understands the applicant does have another location the arrays could be located.

Saunders stated the previous location that was presented to the SRTC would still require a wetland CUP.

Fredette stated it was potential but had not been explored. Saunders stated the difference in this lot is the additional wetland buffer.

Fredette stated he sees more of a hardship for this property. He stated it is a larger piece of property and if there was no wetlands it would provide more options. He stated he sees some level of hardship. Fredette stated he does not believe that having solar is a right as defined currently.

Keiser stated he does see this lot as unique with the gas easement, wetland area, and it is a through lot. He stated he does not like structures to be 5' from the property line.

Fredette stated the 20' from Penny Lane and he has concern of ensuring clear passage to the bank lot.

Routhier stated he thinks the property is unique, believes there is a hardship not contrary to the zoning ordinance, it keeps in nature with the commercial area, and is inclined to support the proposal.

Brooks stated he agrees with Routhier's statement. He stated the property is loaded with easements. He stated he feels 5' is too close. He stated his concern is trucks pulling off onto the side of the road.

Fredette stated his concern with Penny Lane is that they are looking at the property line which is in the middle of the driveway. Fredette asked how wide the driveway is. Keiser stated it is roughly 24' wide. Fredette stated in theory the driveway takes up 15' of that property and nothing could be put there.

Garvin states he sees the hardship for this lot. He stated he is not sure what setback they would approve for the variance.

Keiser stated that the applicant is requesting for the top left (Penny Lane) array 20' from the property line which would be 8' from the driveway. The array closest to Commercial Drive would be 5' from the property line and that would be approximately 10'-15' from the Commercial Drive.

Garvin stated he feels a 15' setback is adequate.

Fredette stated he would like to see the array next to Penny Lane set farther back.

Keiser stated he would suggest a 20' setback for front and sides. Brooks stated he felt that was reasonable.

Fredette stated after review of the application, the file and information presented, I feel all of the 5 criteria have been satisfied with emphasis that this property has several unique factors including easements and wetland, I MOVE that the request of Ian Joseph Campbell LLC for a variance from Table 5.A.1 of the Zoning Ordinance to install solar arrays with pedestals in the 50' front setback and 30' side setback be GRANTED WITH THE FOLLOWING CONDITIONS:

- No closer than 20' from the front and side setbacks.

The motion is SECONDED by Brooks.

Discussion: Garvin stated one array would have to be moved. Keiser stated based on the application presented yes. Garvin stated he feels they are squeezing them and would be comfortable with a lesser restriction. Fredette stated he based his condition on the discussion of trucks and safety for people making corner. Fredette stated he is going to stay with his motion. Brooks stated he would be nervous to go for a lesser number than 20'.

The MOTION CARRIES by a 5-0 vote.

C) Any other new business that may come before the Board.

- a. No other business before the board.

Routhier **MOVED** to **ADJOURN** the meeting. Brooks seconded the Motion. The **MOTION CARRIED** 5-0 and the meeting **ADJOURNED** at 9:25 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary