



MEETING MINUTES

Board of Zoning Appeals

Thursday, September 28, 2023

CALL TO ORDER

Mr. Deschler called the meeting to order at 6:30 p.m. He stated that in addition to attending the meeting, the public can access the livestream on the City's website. The City welcomes public participation including public comments on cases. The Chair briefly explained the rules and procedures of the Board of Zoning Appeals (BZA).

ROLL CALL

Board Members present: Jason Deschler, Dan Garvin, Joseph Nigh, Patrick Murphy, Joel Kretz
Staff present: Tammy Noble, Thaddeus Boggs, Zachary Hounshell

ACCEPTANCE OF DOCUMENTS

Mr. Murphy moved, Mr. Kretz seconded acceptance of the documents into the record and approval of the 8-24-23 meeting minutes.

Vote on the motion: Mr. Garvin, yes; Mr. Deschler, yes; Mr. Murphy, yes; Mr. Nigh, yes; Mr. Kretz, yes.

[Motion carried 5-0.]

The Chair swore in staff and members of the public who planned to address the Board during the meeting.

CASES

- **Case 23-094: Trubiano Residence, 95 Longview Drive, Non-Use (Area) Variance**

Variance to Zoning Code §153.074(E)(1)(c)(5) to install roof-mounted solar panels on a residential structure when the roof and panels are not a similar color and the roof is not rectangular in shape to avoid a complex and non-symmetrical configuration. The 0.46-acre site is zoned R-2, Limited Suburban Residential District and is located ±185 feet southwest of the intersection with Dublin Road.

Staff Presentation

Ms. Noble stated that the applicant is proposing two variances to Section 153.074(E)(1)(c)(5) that address solar regulations for roof-mounted equipment on residential and commercial buildings. The Code was adopted by City Council on June 12, 2023 to regulate the installation of renewable energy equipment for solar energy. Subsequent to the Code adoption, staff has been reviewing solar equipment installation applications within the purview of the new Code language. This application is addressed by two sections of the Code, one related to shape and the other related to color of the panels. The 0.46-acre site is zoned R-2, Limited Suburban Residential District, and is located approximately 185 feet southwest of the intersection of Longview Drive and Dublin Road, south of the Historic District and west of the Scioto River. The area is characterized by residential subdivisions that contain typical sized lots with uniform shape and typical grid street pattern. This rectangular site is located in the Gould Subdivision with a single access point from Longview Drive. The applicant is proposing to install twenty-eight solar panels on the rear and side of the existing residential structure. The panels are proposed to be black in color with black framework that conceals wiring, conduits, etc. that are necessary for installation. The color of the existing roof is light grey in tone and will be in contrast to black panels. The applicant is also proposing a configuration that maximizes the use of the rear and side elevations but results in a non-symmetrical pattern. The section of the Code that is addressed relates to Accessory Structures. The two Code sections of concern are:

1. Section 153.074(E)(1)(c)(5). For pitched roofs, roof-mounted equipment shall be installed in a rectangular shape to avoid complex and non-symmetrical configurations.
2. Section 153.074(E)(1)(c)(5). For pitched roofs, roof-mounted equipment shall be a color that is similar to the roof color.

These are aesthetic requirements and are applicable to all portions of a residential or commercial building.

Ms. Noble reviewed background on the development of the Code regulations. Planning staff worked on the effort for several months. Other communities' regulations were reviewed; installers were consulted regarding best practices; statutory language was reviewed that could impact residential installations including text regulations for planned districts and preferred practices of advocacy groups. Public surveys were taken and public meetings were held. Based on feedback from all the meetings, draft code language was proposed and reviewed during multiple work sessions with City Council. On June 12, 2023, City Council approved a Code amendment to include regulations for solar renewable energy equipment.

Ms. Noble displayed a slide of the applicant's home, which has a slanted, u-shaped roof, and a graphic of the proposed solar panel layout. The panels would be situated in the middle and left portions of the roofline in an attempt to maximize the area exposed to the sun. Staff has reviewed the application against the variance criteria, and only one of the three required criteria is met. Staff recommends disapproval of the application as the application meets neither of the required Code sections.

Board Questions for Staff

Mr. Kretz requested clarification regarding criteria #2, which states: "The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable."

Ms. Noble stated that if the condition is recurrent in nature it would indicate that the Code regulations should be revisited rather than entertaining a number of variances. Because this is the first variance of this nature that the Board has received, it is not recurrent.

Mr. Deschler inquired about the conversations that staff had with the applicant regarding the applications.

Ms. Noble stated that staff has talked with the applicant a number of times since the application was submitted and made him aware of the option for a variance request or an appeal. The applicant is present and will be sharing his concerns with the Board tonight.

Mr. Deschler inquired if the conversations addressed any options to maximize the location of the panels in a manner that would align with Code.

Ms. Noble responded that other shape and location options were discussed, but there is concern that the energy generated would not be sufficient for the homeowner's needs.

Mr. Garvin inquired if the Code provides any exceptions with the shape or color in order to achieve the necessary energy efficiency.

Ms. Noble responded the only consideration would be in regard to installation of panels on the front façade; the applicant or the installer would be required to provide assurance that the front façade installation is necessary. That is not a requirement of other sides of the building.

Applicant Presentation

Jake Trubiano, 95 Longview Drive, Dublin, stated that he has been involved with residential solar energy for the past seven years. He owns a residential solar company. He and his wife purchased their home in Dublin three years ago. He attended the public meeting on the solar energy topic in January 2023, at which the primary discussion issue was whether panels would be permitted on the front of homes. He was very encouraged by Dublin's commitment to sustainability and the amount of community members in support of solar, and following that meeting, he convinced this team to relocate their headquarters from Greenville, South Carolina to Dublin, Ohio. When he later saw the Code that Dublin adopted, he was shocked. Requirements regarding a rectangular shaped installation and matching roof color were not discussed at the January public meeting he had attended. He has worked with a large number of jurisdictions, and those requirements are uncommon. As it stands, Dublin has the most anti-solar zoning code in the nation. He does not believe that was the City's intent. Dublin cannot have this Code and also claim to be the most sustainable and resilient city. The issue is resolved by simply amending the two specific sections of Code. He is aware that the BZA does not have the authority to do that, but he wanted to take advantage of this opportunity to provide his feedback. He noted that in his area and the Waterford neighborhood, the vast majority of roofs are visible from some angle. The objective of the City's code is to make the solar installation aesthetically acceptable on rooftops. However, his U-shaped roof is unique. The solar panels on his roof would not be visible from the public realm, so the installation shape cannot be seen from the front or either side of his house. In addition, there is a very dense tree line, much of which are pines, between his home and the neighbor's home to the rear. He requested staff to show slides of his original installation design, which was not a rectangle. He has requested that number of panels and layout because those are the two roof faces that receive the most sunlight. The remaining roof faces are primarily shaded and would also be visible from the public realm. The layout he has proposed would succeed in offsetting 100% of their energy

usage, which maximizes the purpose of solar. The recommended rectangular layout (shown) is a very unattractive layout. There is so much more space available on the roof that could be used to maximize the solar energy. Typically, installation occurs in line with the roof, rather than arbitrary rectangular installations. He reviewed the difference in energy efficiency achieved by installing the correct number of solar panels. The proper way to install solar panels is to put footers or brackets into the roof to which a rail is attached, and then a row of panels is attached between two sets of rails. That achieves a symmetrical pattern. If it is necessary for him to install a less efficient number of panels at this point in time to satisfy the rectangular design requirement, he will add more panels later, as he anticipates the Code eventually will be modified. However, the best appearance is achieved if done at the outset.

Board Questions

Mr. Kretz inquired if it would be possible to add a sloping rail.

Mr. Trubiano responded that it would not be compliant with Code nor maximize the aesthetics.

Mr. Kretz stated that there is some subjectivity in color. He asked if the applicant believes his roof is similar in color to the panels and if he had considered painting his roof black to meet the requirement.

Mr. Trubiano responded that his roof is a medium dark gray color, which is similar to the black color of the panels. He has not heard of anyone painting their roof and is not sure that is an option. He could install a new roof, but the cost would be \$15,000-\$20,000. The primary reason people install solar is to save money, so installing a new roof would defeat that purpose. That definitely does not seem necessary when the only people who would be able to see the proposed solar installation would be his daughters, when playing in their backyard.

Mr. Kretz stated that he is aware of the option to paint some roofs.

Mr. Nigh inquired if the applicant understands that this Board is not the body that enacted the Code. The BZA was not involved in that process. Because the Board's review tonight must determine whether the criteria have been met, he requested the applicant to provide some specificity in how he has attempted to meet Criteria 1 and 3.

Mr. Trubiano stated that the core purpose of the Code is aesthetics. He believes his home meets the "special condition" criteria, as there is no chance anyone could see the solar panel installation; even the neighbors to the rear of his property would be unable to see them. That lack of visibility is due to the unique U shape of his home.

Mr. Nigh stated that he believed his statement was that it was not visible from the rear due to the tree line and the home's situation on the lot.

Mr. Trubiano clarified that the lack of visibility is due to all the reasons just stated.

Mr. Nigh referred to Criteria 3. The intent and purpose of the Code's requirement that the installation design be rectangular in shape and match the roof color is aesthetic. How does he believe a installation that is not rectangular in pattern on a roof not determined similar in color to the panels would not impair the Code's purpose for those requirements?

Mr. Trubiano stated that the intent and purpose of the requirement is to ensure that the solar panels are aesthetically acceptable to the public. Evidently, City Council thought that a rectangular pattern on a black roof would be the best appearance. However, in his case, no one would be able to notice that the panel installation on his roof is not rectangular, because it will not be visible to the public.

Mr. Deschler stated that BZA's obligation is to see if they can make his variance request work with the existing Code requirements. With regard to the roof-mounted equipment, he does not see any language that states there is an obligation to minimize the view from neighbors or the public. That is part of the language for ground-mounted solar equipment, but it is not part of the language for roof-mounted equipment. The applicant has requested approval of two variances, one for the color and the other for the shape. While what he has requested makes sense, it is not compliant with Code. Therefore, he would agree with staff's recommendation and deny the variance requests.

Mr. Trubiano inquired if the Board does not agree that his U-shaped roof does not meet the criteria concerning its unique nature.

Mr. Deschler responded that essentially what he has requested is that the Board set a precedent for any homeowners who have unique roof designs. There are many unique roof designs in the City. The Board must avoid setting that precedent in view of future applications.

Mr. Trubiano responded that it is also unique because the installation would not be viewable by any members of the public.

Mr. Deschler suggested that the applicant could keep his currently proposed layout and to be compliant with Code, he could indicate that to have the additional panels necessary to become energy efficient, that they must be placed on another portion of his roof, such as the front façade. He would be able to demonstrate the necessity of that location to maximize the energy efficiency.

Joy Trubiano, 95 Longview Drive, Dublin requested clarification of Mr. Deschler's suggestion.

Mr. Deschler stated their application for the proposed installation is not compliant with the Code language. However, they could work with staff to meet the Code language. He believes they probably could achieve approval of the additional nine panels desired, if they were located on a different roof elevation.

Mr. Trubiano responded that a critical element of an installation is that they be placed on the roof elevation that receives the most sunlight. Placing the nine panels on any of the home's other roof faces would not produce as much energy as in the proposed locations. There are massive pine trees that shade the west elevations from 3 pm forward; a large oak tree shades the east elevation; and the front, north side receives limited sunlight. There is no other eligible roof space that would achieve any solar energy efficiency.

Mr. Deschler responded that he understands his situation; however, based on the current Code, his proposal is noncompliant with the color and rectangular shape requirements. The Board cannot set precedent for a unique situation, which is not the Code's intent. He requested the Assistant Law Director to confirm.

Mr. Boggs responded that he is correct. The purpose of this Board is to take the Code as it is written and apply the criteria set forth for variance consideration. The burden to meet those criteria is on the applicant to provide evidence that the criteria have been met.

Mr. Murphy stated that the purpose of this Board is not to respond specifically to environmental concerns and promote the energy efficiency achieved by installing solar energy panels. The Board must try to find a balance between helping the applicant achieve his purpose while being compliant with the City's aesthetic standards. This Board is not the legislative body; it can only interpret the current Code and determine if a variance can be granted in the applicant's circumstances. The

applicant could share his view with City Council regarding the need to modify the language of the Code to tilt it a little more toward achieving energy efficiency and a little less toward the aesthetics.

Mr. Kretz inquired if the Board denied the variance requests tonight, the applicant would be able to request a permit for installing panels on two roof surfaces -- the same roof section proposed tonight but also an additional, different roof surface. Would such a request be prohibited because of the Board's denial of this variance?

Ms. Noble responded that the greater hindrance is the color requirement. It probably would be possible to modify the shape to meet Code.

Mr. Kretz stated that if not for the color requirement, the applicant could submit another application addressing the shape requirement.

Ms. Noble responded affirmatively.

Mr. Kretz referred to the Code language regarding color. The staff report states, "the roof color is light gray, which is similar to many roofs, and shape and pattern is not unique or complicated." If the City is acknowledging that the gray roof color is common across the City, unless the intent of the Code was not to permit many solar panel installations, it would appear to be contradictory. He would like to have more context on the color issue, including how common gray roofs are in the community.

Ms. Noble responded that "similar in color" does not mean the roof must be black. The City has approved applications on dark color roofs, primarily dark gray. In staff's interpretation, light gray is not similar to black; therefore, the panels' appearance would be noticeable. Staff's interpretation has been the same for other applications. If staff is incorrectly interpreting that light gray is not similar in color, then the correct path would be the appeal process, not a variance. Most of the roofs of the homes in this subdivision are similar in color; therefore, in staff's interpretation, the situation is not unique.

Mr. Kretz inquired if there are other panel colors.

Ms. Noble responded that there are other roof colors that would match the black panels. Staff has approved other applications. She has spoken with a couple of solar panel installation companies who do offer panels with a more gray color, although it could impact the efficiency of the panels.

Mr. Trubiano stated that solar panels are made up of square cells, and all the cells are black. It is possible to get a gray frame system; however, with that frame, shiny black squares against a gray background are the result. That is not consistent with the City's aesthetics purpose. The gray frames are acceptable for commercial use where the solar panels are not visible, such as flat-roof structures. It would not be acceptable for residential use.

Mr. Kretz responded that he does not understand his objection to the gray frame, if his argument is that the solar panels on his roof would not be visible. Could they be seen?

Mr. Trubiano responded that they would not be visible. There is another factor in the situation. The majority of solar panel manufacturers no longer manufacture gray frames for residential homes. The only gray frames manufactured are for solar panels that are 150% larger than residential panels. They are made for commercial utility-scale solar. He could look into that further, but most likely, the result would be he would have a lesser quality panel on his roof, which would result in issues in the future.

Mr. Boggs pointed out that if the panels with black photo cells were framed in gray in the grid pattern that the applicant has proposed, that would run afoul of another section of this Code.

Mr. Kretz stated that he is still caught up with staff's comment that the light gray color is similar to many roofs in the community. The City is supportive of solar panel installations per Code. Is the issue the word "similar"? How dark must the gray be? It would be preferable not to make judgment calls regarding whether a roof color is sufficiently similar.

Ms. Noble stated that when draft Code language was provided to Council for consideration, illustrations were provided showing what applications would be approved or not approved with the proposed language. The illustrations showed that the only roof colors that would be approved were very dark in nature, primarily black roofs or gray with elements of black. That consideration was part of Council's review of the proposed language.

Mr. Trubiano inquired if only dark gray would be permitted, or if dark brown or blue would be permitted. He has several customers in the Wyandotte Woods subdivision where every roof is a dark brown color. Those customers are considering the appeal process. If he could achieve some clarity regarding the dark brown color, it could avoid the lengthy appeal process.

Mr. Boggs stated the question about process may seem pedantic, but it is important. There are different standards that this Board would apply in hearing an administrative appeal of a decision versus a variance, which is before the Board tonight. He would be reluctant for staff to respond to the question that has been posed without having the materials at hand, which could be coming before this Board in a month or two. The first criteria for a variance review is whether "special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district." What staff is saying with this variance appeal is that a light gray roof is not special or unusual on structures in the same zoning district. The question before the Board is not whether light gray and black are similar. It is whether light gray is unusual or unique in this zoning district.

Mr. Nigh stated that the Board is having a conversation about something that is not before it. This is not City Council, so it is not a debate about what the Code should be or other applications. The hearing is not about whether this Board thinks the request is appropriate in general. It is to apply these criteria to the Code and determine if they are met. Unfortunately, he does not see any way that either of the variance requests meet the necessary criteria. If three members of the Board concur, the variance would not pass.

Mr. Deschler inquired if any public comments were received.
Staff confirmed that no public comments were received on the case.

Board Discussion

Mr. Deschler thanked Mr. Boggs for the clarification regarding the difference between a variance request and an administrative appeal.

Mr. Kretz stated that his position on the variance request regarding a rectangular shape is no. He is less comfortable on taking a position on the similar color requirement. This could be an important precedent, as this will not be the last application with a gray roof.

Mr. Deschler pointed out that the similar criteria relates to other homes in the zoning district that have similar roof colors. There is a difference between evaluation of an administrative appeal relative to the color and a variance for installation of a dissimilar color. The applicant may prefer to table this application tonight.

Mr. Trubiano inquired if it would have been advisable for him to file an administrative appeal concerning the color denial.

Mr. Deschler responded that he could table the variance application and work with staff on presenting an appeal of staff's determination that the application was not compliant with the Code's color requirement.

Mr. Boggs clarified the difference in the variance versus appeals processes.

Mr. Trubiano requested clarification of his option tonight.

Mr. Deschler responded that it probably would be better for Mr. Trubiano to table the entire application and submit an application for a rectangular shape on whatever roof elevation(s) he prefers. Staff will provide a determination regarding the application's compliance with the Code requirement for color. If staff indicates it is not compliant, Mr. Trubiano can appeal staff's decision to this Board. While it will be necessary for the Board to hear that appeal, the standard the applicant must meet would be different.

Mr. Deschler inquired board members' positions on the two variance requests.

Mr. Garvin stated that the Board's responsibility is to determine if the application meets the 1st and 3rd criteria. He agrees with staff that the application does not meet those criteria. The applicant has made some good points about aligning the Code with what the community wants and about the fact that his installation would not be visible. However, the Board must base its decision on compliance with Code. His position would be no on both variance requests.

Mr. Murphy stated that the Board's position must be consistent with the current Code. In drafting the legislation, public comments and material facts were considered. Implementing the Code now is "ironing out" any need for language modification. At this time, however, there is no avenue for granting the variances.

Mr. Kretz stated that he also is a no on both variances. His position on the color requirement is based on the fact that City Council was provided examples of the roof colors that would be denied when considering the proposed Code language. One of the images was of a light gray roof with black panels, so it can be assumed that Council determined that was not similar in color.

Mr. Deschler inquired if the applicant wished to proceed with the vote or table his application.

Mr. Trubiano reiterated that Dublin has adopted the most anti-solar energy code of any community of which he is aware. It seems hypocritical for it to consider itself a sustainable city, as the majority of homeowners will not be able to pursue solar panel installations because their roofs are not black or dark gray.

Mr. Garvin responded that he understands his frustration, but this is not the forum in which to address it.

Mr. Trubiano requested that his application be tabled.

Mr. Garvin moved, Mr. Kretz seconded a motion to table Case 23-094.

Vote: Mr. Murphy, yes; Mr. Garvin, yes; Mr. Kretz, yes; Mr. Deschler, yes; Mr. Nigh, yes.

[Motion carried 5-0.]

COMMUNICATIONS

- The next regular BZA meeting is scheduled for 6:30 p.m., Thursday, October 26, 2023.

No additional communications were provided.

ADJOURNMENT

The meeting was adjourned at 7:47 p.m.

Chair, Board of Zoning Appeals

Assistant Clerk of Council