



DRAFT

MEETING MINUTES

Board of Zoning Appeals

Thursday, September 22, 2022

CALL TO ORDER

Mr. Deschler, Chair, called the September 22, 2022, meeting of the City of Dublin Board of Zoning Appeals (BZA) to order at 6:38 p.m.

ROLL CALL

Board Members present: Mr. Deschler, Mr. Nigh, Mr. Clower, and Mr. Murphy,
Board Member absent: Mr. Gavin
Staff present: Ms. Noble and Mr. Hounshell

ACCEPTANCE OF DOCUMENTS/APPROVAL OF MINUTES

Mr. Nigh moved, Mr. Murphy seconded, to accept the documents into the record and approve the meeting minutes from August 25, 2022.

Vote: Mr. Deschler, yes; Mr. Clower, yes Mr. Murphy, yes; and Mr. Nigh, yes.

[Motion carried 4-0]

CASE PROCEDURES

The Chair briefly explained the rules and procedures of the Board of Zoning Appeals (BZA) and swore in Staff and any members of the public who planned to address the Board during the meeting.

CASE

1. Tomin Residence at 5692 Richgrove Lane, 22-112V, Non-Use (Area) Variance

The Chair - This is an application for a Variance to allow building-mounted solar panels as an accessory structure to be located on a street-facing façade on a 0.19-acre site is zoned Planned Low Density Residential District – Brighton Park. The site is located ±260 feet northeast of the intersection of Richgrove Lane with Kentfield Drive.

Ms. Noble – She presented an aerial view of the site that is approximately a fifth of an acre in size and contains a single-family home with a patio to the rear. The home is oriented towards the south with a general layout similar to the adjacent properties to the east and west. The applicant has proposed solar panels to be installed on the forefront of the roof.

This is the first time the Board has reviewed an application of this type. The current language in the City of Dublin Zoning Code for solar panels is as follows:

- Residential solar panels are not currently listed as a specific use in areas excluding the West Innovation District, Bridge Street District, and the Dublin Corporate Area Plan.

- To allow solar panels per the existing Code language, the City utilizes Zoning Code §153.074(B)(6)(a), which regulate accessory structures.
- All accessory structures are required to be constructed within the permitted buildable area of a lot, behind all applicable setback lines, and to the rear or side of the principal structure.
- The applicants are requesting solar panels for the front part of the roof of their home that faces the street, which necessitates review by the Board of Zoning Appeals.

The applicant has provided two options from their solar company, Ohio Power Solutions. The first option indicates 12 panels that produce 5,932 Kwh per year on the south/street-facing portion of the roof and the second option contains 19 panels and produces 5,828 kwh per year on the north portion of the roof. Planning has taken into consideration both options in this general location. She presented a photograph of the home as viewed from the street.

This application was reviewed against the Non-Use Variance Review Criteria of which none were met. All three criteria in the first set need to be met and shared Staff's findings for the criteria:

1. **Special Conditions**

The site is similar in size to the adjacent properties and the applicant's house, along with adjacent properties, are southern facing. There are no special conditions.

2. **Applicant Action/Inaction**

The Variance request is necessitated by the applicant and is necessitated on the basis of switching to renewable energy on the home.

3. **Impair the Intent & Purpose of the Requirement**

The Variance request would directly impact the requirements and intent for all accessory structures to be located forward of the building.

The City is in the process of revising the Code but at this point in time, Staff and the Board must follow this criteria. The second set of criteria are less stringent and include four criteria, of which two have to be met in order to allow this Variance. Staff found two of the criteria had been met as follows:

1. **Special Privileges – Criteria Met**

Several properties within the zoning district could obtain roof-mounted solar panels that meet zoning requirements due to the orientation of each home that does not have a south-facing front façade.

2. **Recurrent Nature**

The request is recurrent in nature to warrant a Code update to contemplate locations and requirements for solar panels in a residential district.

3. **Delivery of Governmental Services – Criteria Met**

The proposed location of the solar panels would not affect the delivery of governmental services.

4. **Other Method Available**

Utilizing solar energy can be accommodated by other methods that may be less economical but continue to produce energy. The applicant states that by adhering to the Code the solar panels would



be “an underperforming, over-expensive solar system”. However, the Board does not factor in cost when reviewing applications for Variances.

Questions for Staff

Mr. Clower – The City plans to change these requirements in the Code and asked if there was a draft version yet, available to the public.

Ms. Noble – Planning Staff presented a version to the Planning and Zoning Commission (PZC) in April 2022 and they requested more information about the functionality of solar and the advancing technologies. Planning Staff presented again to the PZC on September 15, 2022, and a Code Update should be ready for review in the next month or so.

Mr. Clower – He asked if building mounted solar panels will still fall under the accessory structure category.

Ms. Noble – The draft document will not include accessory structures and will be a standalone Code modification for solar panels.

Mr. Clower – He asked what the draft document states about street-facing solar panels.

Ms. Noble – Based on the feedback received last week from the PZC, there is not a draft currently in place. There has been limited support for street-facing solar panels but staff is obtaining options for those situations.

Mr. Clower – He asked how much of a role the particulars of the house (roof pitch) will factor into the language of the ‘yet to be drafted’ regulation.

Ms. Noble – General aesthetics and material choices have been a larger topic than the functionality of solar panels.

Mr. Deschler – The applicant had provided a photograph of a house and an address with front façade solar panels and asked Staff to confirm if it was located in Dublin.

Ms. Noble – There have been conversations with the City’s Building Department as solar panel applications for permits have been reviewed within the Building Department as a structural device and contain an electronic component. Staff needs to be cohesive in how the permits have been reviewed. Staff has not identified if all the locations where solar panels have been installed, were first reviewed and a permit approved and whether they precede the Code that identified solar panels as accessory structures. She deferred to the applicant on this particular location.

Mr. Nigh – He wanted to ensure that each of the applicants for the three cases being heard this evening were aware that since there is one Board Member absent, three of the members would have to approve the request and if the Board was split 2 – 2, the Variance would not be approved due to the lack of a majority. The applicants also have the opportunity to request to table this evening and wait until the measures for Code Amendments are finalized and approved.

Mr. Clower – Normally, the process is, if an application is denied, the applicant has to wait one (1) year before reapplying. In this case, if the applicant does not receive the requisite three (3) votes and are denied, if the applicants would have to wait a full year or when the Code has been amended and apply under the new regulations.

Ms. Noble – It is undetermined at this point what the regulations will allow but as soon as the new regulations go into effect, the applicant may reapply.

Applicant Presentation

Chris and Olga Tomin, property owners, 5692 Richgrove Lane – Mr. Tomin said the main point in their case is about efficiency. The solar panel company first presented just a solar panel installation on the front portion of the roof as it is the most obvious placement as the Tomins live on a street that runs east-west



with the front of the house facing south. If the panels were placed on the north side of the house, algae starts to build with the absence of sunlight. Significantly more panels would be needed to provide even less electricity. 19 panels would produce less than 90% of the energy that is needed for our young family based off of the current electric bills and as the two children grow, the panels would produce even less of the energy needed. Panels installed on the front makes the most sense and will provide energy for the whole property. Given the current Zoning Code, it will not make sense for anyone residing in Dublin with the front of the house facing south to have solar panels. The solar panels will not produce enough energy to power the house.

Ms. Tomin – Our house does not face a main street with a lot of traffic. The only people that view our house are our neighbors and many of them have been inquiring to the progress in recent weeks; all of which support the project. The photograph taken of our house makes the roof appear to be a light gray when in fact, it is a darker shade of gray. The panels proposed will be black; they are not proposing a lime green product with red polka dots. Our house is not a historic building; it was built in 1994. The applicants are trying to raise awareness about renewable energy resources.

Ms. Tomin read from the Zoning Code §153.074(B)(6)(a) as referenced by Ms. Noble:

All accessory uses and structures including swimming pools, and associated decking shall be constructed within a buildable area of a lot behind all applicable setback lines and to the rear or side of the principle structure.

Ms. Tomin – She understood solar panels are considered an accessory; but they are not intending on adding a swimming pool or deck on the front of their house. She also found on the City's website case 21-151 Administrative Request – Code Amendment was reviewed by the Planning and Zoning Commission on April 21, 2022. Under MUR-4, Renewable Energy Equipment, as an accessory use in all districts would use specific standards. Item 3: Rooftop and Building-Mounted Equipment shall adhere to the following requirements:

- A. Rooftop equipment for the collection of solar energy shall not extend beyond the maximum permitted height of the principle structure.
- B. Building-Mounted Renewable Energy Equipment shall be completely integrated into the architectural character of the principle structure and shall not be located on an elevation facing residential use.

Ms. Tomin – They are within the limits as stated. They have not proposed something outrageous; they are just planning to install the solar panels where they are efficient. The way the house is situated and the roof is sloped, they cannot install the panels on the backside.

Questions for the Applicant

Mr. Clower – He asked for the location of the house referenced earlier that has solar panels installed on a south/street-facing street. The address was 6152 Jacana Drive, off of Avery Road.

Mr. Tomin - When the application was submitted a few months ago, he even referenced the Ward it was in but cannot recall now.

Mr. Clower – He requested confirmation that the 12 panels could be installed on the front versus the 19 panels on the back.

Ms. Tomin – She answered those were the options they were provided and the pitch of the roof is 32 degrees.

Mr. Clower – He confirmed the house reference on Jacana Drive is across from the soccer fields. A photograph of the house was shown on screen.



Mr. Deschler – He confirmed the house was in Hawk’s Nest. He asked Staff for information on this address.
Ms. Noble – There are two scenarios that could have taken place. The solar panels were constructed without permits or constructed before solar panels were identified as an accessory structure.

Mr. Deschler – It is the City’s position that there is this home that has solar panels on a street-facing façade that is not relevant to the cases this evening.

Ms. Noble – The home does not meet the Code restrictions that are applied to this application.

Mr. Clower – He asked when the City started enforcing that solar panels were considered accessory structures.

Ms. Noble – Approximately three (3) years ago. The Building Department would have started these regulations.

Mr. Deschler – He clarified with Staff that regardless of the reason, the fact that this house in Dublin has front-facing solar panels, is simply not relevant for the Board’s consideration this evening, to which Ms. Noble answered in the affirmative.

Jesse J. Shamp, Frost Brown Todd, 10 W. Broad St., Ste 2300, Columbus, OH 43215 – The only difference is this Board did not grant a Variance for that address.

Mr. Tomin – The audience provided him with more properties in Dublin with solar panels on street-facing roofs. If nothing has been approved by the Board, perhaps those properties pre-date Code restrictions.

Mr. Clower – A Google search on the address for Jacana Drive showed a picture taken from the street in August 2019, which did not have solar panels, which is right in line with the three years Staff had talked about but it was harder to pinpoint a timeline further than that.

Mr. Nigh –All three of the first set of three criteria have to be met to approve the application. The applicant is required to present to the Board how all three of these have been met. He asked the applicant for the Special Condition (Criteria 1) for his property that does not exist somewhere else.

Mr. Tomin – Our property is special because it is not a one-off case; any house on the north side of the street is going to run into the same issue.

Ms. Tomin – Our house is special because of the direction of the pitch.

Mr. Nigh – Stating that your house faces a direction that many others in the City face is the exact opposite of a Special Condition. He asked if there was anything else that was special about the property.

Ms. Tomin – She repeated this is applicable to this case.

The Chair – Even if the Board were to agree that is a Special Condition, he asked if the applicants could apply the second and third criteria.

Mr. Clower – The Action is not that you want to build solar panels on the house, it is that the solar panels you wish to install are what is causing the action.

Mr. Shamp – He clarified the applicant is requesting the Variance out of need because the applicant wants to install solar panels on the front of the house. A Variance is not needed, if the panels are installed on the back of the house. The Action that has necessitated the Variance is the applicant’s decision for economic and efficiency reasons. The applicant does not have to do that to have solar panels but might be more costly and less efficient.

Mr. Tomin –In this situation, it defeats the purpose of having solar panels on a house if it cannot supply the energy needs of the home.

Mr. Clower – He asked about the third criteria. He asked the applicant how adding solar panels on the street-facing façade does not adversely affect the neighborhood.

Mr. Tomin – He asked how the solar panels on a street-facing façade would affect the neighborhood.

Ms. Noble – The whole intent of the Code Section is to allow certain locations for accessory uses and this is the one location that is prohibited.



Mr. Nigh – The intent of the City, per the Code, is to not have solar panels on the front of the house. The applicant would have to state why this was not contrary to the intent of the Code to permit panels on the front of his house.

Mr. Tomin – He asked for an example of a similar residential situation where this criteria had been met because the way it was just phrased, it is meant not to be met. The Board is asking the applicant/us to prove why the Code does not apply to us. The whole point of the Code is to keep people from doing something that is not permitted.

Ms. Noble – This Board has approved Variances but the process is meant to be difficult. It is for instances where the Code cannot be met to accommodate the use requested. There are no similar instances for solar panels, as of yet.

Mr. Tomin – He asked for a general residential issue that would meet this criteria so he could frame his argument from that example.

Ms. Noble – In June, 2022, the Board approved a Variance for a property owner (Johanssen's) to allow a structure in front of the principle structure based on the topography and the size and shape of the lot.

Mr. Tomin – He asked how that application met the criteria, specifically.

Ms. Noble – That property owner would not have been able to build an accessory structure/shed because of the conditions of the site unless a Variance was approved allowing the applicant to build it where it was not permitted per the Code.

The Chair – The difficult situation here is the Code Section is currently under consideration for modifications to allow in certain instances where perhaps front-facing, solar panels could be permitted within the City. The applicants this evening are falling in this gap period for requesting solar panels now. There is going to be reluctance on this Board to approve this Variance or set an improper precedent. The applicant's option if solar panels are wanted now, need to be placed on the north/rear side of the house.

Mr. Nigh – A lot of the people requesting Variances from this Board have no other options. He reiterated that the applicant does not have to request a vote for approval of the Variance but could request a vote to table the application.

Public Comment

Ms. Noble – There is a new process for signing in electronically but she was not sure how that information is to be relayed to the Board. She suggested the Chair just ask the audience if anyone wanted to provide public comment.

Bob Moffit, 5667 Kentfield Drive, lives in same neighborhood and supports anyone putting solar panels in, front or back. Solar panels have probably evolved since the Code was conceived. Panels are all black now, streamlined, and have a low profile. Somewhat by default, 25% of the homes in the neighborhood are going to fall under this same situation and will be limited on the ability to have solar panels. If the Code is kept the same, it will prevent 25% of Dublin of being able to make a good financial and environmental decision for their own home.

Kevin Wadsworth, 6240 Post Road (actually the second applicant), the Department of Energy and NREL both have good solar modeling. The difference in solar gain from a south-facing panel versus a north-facing panel in one year is negative 5. Solar panels are an efficient way to generate energy. AEP is 15 cents a kwh, putting a solar panel on the south side of his house, over a 25 year period which they are under warranty for, works out to 7 cents a kwh, half the price he is paying to AEP right now for electricity. If put on the north side, 7 cents goes to 35 cents a kwh. There is no reason to do that.



Before he signed a contract with EcoHouse Solar, some references were provided for people to talk to and one of the residents lived on Tara Hill; that installation occurred in 2020 and was permitted by the Building Department. The same black panels were used on the roof. He was not a lawyer but identifying solar panels as an accessory structure is a stretch. He thought someone from the City decided they were going to stop people from adding solar panels and came up with stretching the accessory structure requirements to make it fit since there was nothing in the Code at that time. That is not the right fit and there are a lot of houses in Dublin with solar panels. 2020 was not that long ago when the same type of panels were permitted. The Board is reluctant to let the Tomin's do what a lot of their neighbors might have done, as recently as two years ago.

Staff addressed the public comment.

Ms. Noble – Solar is not a use listed in Dublin's Zoning Code that is permitted outside of the three locations: Bridge Street, the West Innovation District, and the Dublin Corporate Area Plan. Until solar could be included in the Code properly, Staff needed a way to implement solar; accessory uses was the best option found for the use of solar panels at the side or the rear of a structure. Staff realized the limitations imposed until a proper Code could be created and approved.

Jillian Dyer, 2273 Indiana Avenue, a representative of EcoHouse, was attending with Kevin Wadsworth (case 2). EcoHouse does not install panels on the north side of houses in Central Ohio as it is not worth it. People would end up paying more than if they were just paying for regular electricity, which prevents people with a south-facing house to install panels and experience the benefits. In the winter, even if a small amount of power is produced, there are brooms sold for sweeping off the snow from the roof. EcoHouse does not recommend that as it is more likely the solar panel would get damaged trying to remove snow or ice off the panels. Getting the panels fixed or replaced would be more expensive. Black panels on the south side of a roof will help snow melt more quickly from the sun. Just because there is a plan that shows that solar panels could be put on the north side of the house, does not mean you should do it and it would not be useful.

Mr. Tomin – He asked to address the Board, again. The whole reason they provided the north option was at the behest of the City. The applicant was told it was a good idea to show how less efficient panels installed on the north side would be. His provider also recommended against installing any panels on the north side.

David Shell, 5582 Baybrook Lane, fully supported the Tomin's effort. The Board has been very conservative with interpreting the Code identifying solar panels as an accessory structure but solar panels are also like a shingle, performing the same exact function. A case could be made that the first criteria is met and based on that, the second and third criteria would fall in line. Criteria 2 & 3 are built-in rejections that occur when the first is not met. The Code is not stating it cannot be done, but the Board is interpreting that solar panels cannot be permitted.

Ms. Noble – Those policy decisions are not made by this Board.

Mr. Clower – He asked Ms. Noble to speak to Mr. Tomin's statement that Staff recommended that comparison be added for the Board to consider.

Mr. Tomin – There was a Zoom call with Bob/the solar provider, Ms. Noble, and someone else from the City, who he could not recall. Bob asked if it would be helpful to provide that information and Ms. Noble agreed it should be added to the application, which the Tomin's provided. Bob made it clear panels should not be added to the north side of the roof. The intent of adding the proposal for the back half of the house was to show how bad of an idea it was and enforce the idea not to install there.



Ms. Noble – Staff guides applicants for a good standing with the Board. Not knowing what that analysis would have brought, she could imagine that conversation was more of the panels absolutely cannot be installed at another location. She did not anticipate the fact that the north side would be less efficient would become a conclusion.

Ms. Tomin – She reiterated the solar company professional recommended not placing the panels on the north side because when trying to clear the snow off, the panels will be damaged and potentially an unsafe practice for the homeowner. She wondered if this subject came up the first time solar panels were being considered. This cannot be the first time efficiency and the need for the solar panels to be cleaned after snowfall has been discussed. She assumed all the solar panel companies in Central Ohio must anticipate and believe the same.

Mr. Clower – He asked the applicant if her installer stated the same as Ms. Dyer from EcoHouse.

Ms. Tomin – She did not talk with the installer, personally but her husband received the information from the installer that installation on the north side was not the way to go.

Jill Raudabaugh, 6329 Conleth Circle, referred to a case where a Variance was granted to permit a shed to be on the front of the property when it was required to be off the back; that is very analogous because theoretically, the shed could have been built on the back if the homeowner would spend a lot of money to build a very sophisticated infrastructure that would adjust off of a cliff, or whatever it would need to be. Additionally, they could have built that shed on the back of the house. That Variance was granted and the solar panel issue is the same kind of argument.

Board Discussion

Mr. Nigh – There has been a lot of great information presented but what is missing is, the Board is not the body that writes the Code and does not decide what is an accessory structure. While those arguments could be extremely valid, it is not for this Board to debate. He has heard solid arguments for why there needs to be a change to the Code that needs to be re-evaluated, which the City agrees. There is a divide between what is happening here and what the Board is tasked with deciding based on what is being asked. This should not be the section in the Code for the Board to follow but that is not a determination for this Board. The Board is not ignoring those statements but are tasked with dealing with a very narrow subject. He agreed with the statements made earlier, these standards in this Code Section seem to make it very difficult to obtain a Variance and that appeared to be the intent. He wanted to go over first, what the Board has to review versus the valid and well-educated comments that have been made of which the Planning and Zoning Commission and City Council have to consider, next.

Mr. Clower – The Substantial Adverse Effect, just by the language of intent and purpose of the requirement being varied is relatively invalid. – The Board has determined Solar Panels have been shoehorned into this was the only way to get solar panels permitted period, but this was designed so people would not have pools or an ugly shed in their front yard or a large shed right on their property line creating a wall from the neighbors next door. That is the intent and purpose of the requirement being varied. If these were solar shingles, we would not be having this discussion because they would not be considered an accessory structure.

Mr. Shamp – There are two clauses in that third criteria. Substantial Adverse Effect to property or improvements in the vicinity or will not materially impair the intent and purpose of this other requirement. Staff stated permitting them in the front materially impairs the intent and purpose of the requirement rather than causes a substantial adverse effect to the property or improvements.

Mr. Clower – The intent of this is to prevent someone from building an eyesore. He asked what the adverse effect was in this case. In a Zillow study, adding solar panels to the house raises the value by 4.1%. Solar



panels do not have a negative effect to the house value, it raises the value of the house. Studies show 80% of buyers say energy efficient features are important when buying a house and are more inclined to buy solar panels. To address a neighbor's perception of solar panels, a main talking point in Dublin, there have not been any studies on the neighboring land values other than full-scale commercial solar installed, like a giant solar field. Houses selling for 4.1% more in your neighborhood because they have solar panels increases the comp value for all the houses in the neighborhood. If you are looking for a house and Zillow is seeing this 4.1% increase of sales on several houses in a neighborhood that increases the value of all houses in the neighborhood. Therefore, he does not see how there can be a substantial adverse effect of someone installing solar panels in a neighborhood if it raises home values or that house or the surrounding houses.

Mr. Deschler – He asked if Mr. Clower was in favor of passing this Variance.

Mr. Clower – The third requirement does not make any sense for any of the cases to be reviewed this evening. Therefore, the criteria is met for this particular case in front of us.

Mr. Nigh – He asked Mr. Clower if he would grant a Variance in this case.

Mr. Clower – Based solely on requirement three, yes, but requirements one and two still need to be addressed. For criteria two, Action/Inaction: This Board has found in the past, if someone wanted to build a shed (discussed earlier) there is nothing preventing someone from building a shed in their backyard. Because of the topography, there was no other place to build a shed. It was not the action of wanting to build a shed, it was wanting to build a shed in a particular location because of geography of the land. The solar panel providers have stated installing solar panels on the north side of a house is a "no-go". The snow is dangerous, it is way less efficient, if they are trying to remove the snow, they face potential injury by getting on the roof when there is snow and ice. The solar provider did not want to even give an estimate for installation on the north side for this case and the other two cases we will review later, do not give that estimate, we would be penalizing this applicant for providing the Board with the comparison. The solar panel professionals and the homeowners stated this is not something that is recommended. It is not the fact the homeowners want to build solar panels on the front/south side of the house that is a problem. They literally cannot build solar panels anywhere other than the south-facing side of the house.

Mr. Tomin – Multiple solar providers came out to provide a quote. After the applicant learned Dublin did not allow solar panels on street-facing roofs, two of the three providers said they could not help us. It was only one provider that offered to align with us to fight for a Variance request and the other two completely backed out.

Mr. Clower – Solar panels providers are coming out to these homes and stating they would love to install solar panels on the house, but the only place they can be installed is on the south side, which is street-facing. Two-thirds of the providers stated they cannot install panels otherwise. That is not Applicant Action; it is wanting to build solar panels on the only location possible and that is the same as wanting to build a shed on the only viable location possible. That criteria was met in the shed case so the criteria should be found met in this case.

Mr. Clower – Special Condition – If all the houses face the south, there are no special conditions. If 25% of the houses in Dublin are on south-facing streets, none of those houses would be permitted to have solar panels. The City is working on changing the Code but in the meantime, the Board is still held to the specific criteria. In this case, the pitch of the roof is 32%, which is a 50% drop in efficiency. If there is a low-pitched or flat roof, there would be a non-issue. It becomes increasingly more challenging to build solar panels on higher-pitched roofs. The Special Condition for this house applies as there is nothing else in the Code that states all the houses facing a certain side of the street are not permitted to do "X".



When houses have a side-loaded garage, the house is forced to be built further back on the property making it harder to include patios so Variances for those cases were approved as having a special condition even with other houses in the neighborhood with side-loaded garages. When 25% of the houses in Dublin are affected, there is a problem including this house, which is a Special Condition with this house and the pitch of the roof is 32% completely prevents it from getting solar panels. The last part of this criteria is the practical difficulty and in this instance there is no way to install solar panels on the north side of the home as the sun would not produce the same efficiency, the solar panels would be more expensive for a worst result deeming it not economical and a worthless addition.

Ms. Noble – There are location requirements in many sections of the Code.

Mr. Deschler – He asked Mr. Tomin if his house was governed by a Home Owner's Association (HOA).

Bob Moffit, HOA representative as the treasurer for the last 10 or 15 years or so was present.

Mr. Deschler – He asked Mr. Moffit if there were any Code regulations/declarations, or restrictions under the HOA.

Mr. Moffit – There are three requirements: Must have a certain mailbox (which fell to the wayside long ago); satellite dishes were not originally permitted because when the Code was written they were huge but when they became much smaller, they were installed all over; clotheslines are not permitted; and fences must follow the Dublin City Code requirements.

Mr. Deschler – Mr. Clower sounds like he would be in favor of granting a Variance in this instance.

Mr. Clower – If any of his arguments are wrong, he was willing to entertain those. Personally, he felt strongly about criteria two and three as being met. The first criteria was the one by far that he struggled with the most. He requested comments and feedback from the rest of the Board.

Mr. Murphy – He asked if there were any deed restrictions that would preclude the applicant from installing the solar panels, albeit it does not govern the decision of this Board.

Mr. Tomin – None to his knowledge.

Mr. Murphy – To address the Special Conditions and 25% of the homes in Dublin would not be permitted to enjoy the benefits of solar panels is fairly compelling. Couple that with the inclement weather in Central Ohio and the risks faced, not just with the efficiency of the panels themselves in the winter time but also in the maintenance placed in a certain area of the home would create special conditions.

Criteria 2 depends on our definition but utility charges are an issue and again the maintenance needs to be taken into consideration putting the homeowner in harm's way.

Criteria 3 the intent and purpose – Intent of the Code – there is an incongruence here with what the Board normally sees with the Variance requests. Going back to the example of the shed proposed for a flagship lot with a significantly sloped backyard. The Variance was granted because the front was the only viable area to place a shed. He was inclined to agree with the arguments made by Mr. Clower.

Mr. Nigh – Criteria 3. The argument has been that it does not impair the other homes. He asked legal to explain the impairment on the Code. If it would directly impact the intent of the Code, if the Code is to not have someone install panels on a certain facing element, if the Board were to grant that Variance, the Board would be doing the exact opposite of the intent.

Mr. Shamp – Yes, that is what the language states; to not materially impair the intent and purpose of the requirement being varied. The called out examples in the Code are swimming pools and sheds but the requirement the City has determined to apply is accessory use. And the Code states accessory uses are not permitted on the front of the structure. If an accessory structure use is permitted in the front that materially impairs the intent and the purposes of the requirement.

Mr. Nigh – He asked if the intent of the Code is to not permit an accessory structure on the front of the property, how is granting a Variance not contrary.



Mr. Clower – When he hears materially impair the intent and the purposes of the requirement, he hears the City not wanting people having giant sheds or ugly swimming pools in the front making the houses look ugly and decreases materially the resale value of the other houses in the neighborhood affecting the tax base. The City is looking out for the taxpayers, not permitting something that would decrease values. Materially impair implies there is a down side to whatever Variance happens. Materially, solar panels are a good thing for the City.

Mr. Nigh – He did not disagree but thought Mr. Clower was not hearing what the Code is stating. He was trying to get behind Mr. Clower's argument. He is not saying solar panels are good or bad but the Code does not address solar panels, correctly. The intent of the current Code as written is to not permit solar panels no matter the value as a result.

Mr. Clower – The purpose is to keep accessory structures behind the front of the home no matter what they are.

Mr. Murphy – The purpose is also to adhere to setbacks that are applicable to property lines. This applies to the structure in relation to the boundaries of the site itself and not necessarily to the structure.

Mr. Shamp – He understood that argument. The plain reading of the Code is that accessory uses are to be kept to the side or behind the principle structure.

Mr. Nigh – It is clear to this Board that the Code needs to be changed but he felt handcuffed as they had no say in identifying solar panels as an accessory structure. When 25% of the homes have an issue means the City needs to address this immediately. To move forward with this case, he cannot get there. Once the Code has been changed, there will be an even better situation so all the applicants should table and go to the Planning and Zoning Commission and City Council who can make this sweeping pertinent change.

Mr. Tomin – He questioned the purpose of the process since it seems every Variance request should fail based on the interpretation of the materially impair part of it.

Mr. Nigh – If you look at the history, this Board has probably granted the most Variances. None of these very valid comments are being dismissed. This body does not have the authority to make these necessary changes. We are only tasked with applying these very strict criteria and standards.

Mr. Deschler – Mr. Clower and Mr. Murphy are supportive of granting a Variance and Mr. Nigh is not. This Board has been put in a very difficult situation until the City has its Code. He was reluctant to grant a Variance where there could be some precedent for this gap period. As of this evening with just four on the panel, the Variance would be disapproved. The applicant has the opportunity to table the decision or get disapproved now and reapply at another time with an alteration. He believed the applicants will get what they want with a change in the Code and will not need to request a Variance. If the applicants do not want to wait, it is possible they could return with the fifth member present that could rule in favor of the Variance. In this case, the applicant has already convinced two Board Members. He wanted the applicant to have solar panels on the south side but with the process, he could not get there.

The Chair adjourned the meeting for a short break so the applicants could decide what to do. Upon return, the Chair asked the applicant how they wanted to proceed.

Mr. Tomin – The applicant requested to table the case.

Mr. Murphy moved, Mr. Clower seconded, to table the Non-Use (Area) Variance to allow building-mounted, residential solar panels as an accessory structure to be located on a street-facing façade.

Vote: Mr. Deschler, yes; Mr. Nigh, yes; Mr. Clower, yes; and Mr. Murphy, yes.

[Motion passed 4-0]



2. Wadsworth Residence at 6240 Post Road, 22-130V, Non-Use (Area) Variance

The Chair - This is an application for a Variance to allow building-mounted solar panels as an accessory structure to be located on a street-facing façade on a 1.32-acre site is zoned Planned Unit Development District – Indian Run Meadows. The site is located ±250 feet northwest of the intersection of Post Road with Holt Drive.

Mr. Hounshell – He presented an aerial view of the site that for the most part, was rectangular in shape, with a maximum lot depth of approximately 312 feet and a lot width of 149 feet at the front property line. The home is oriented at the center of the site towards the south and is setback ±120 feet from Post Road, 53 feet from the west property line, and 31 feet from the east property line. There are a number of mature trees along Post Road as well as mature vegetation to the rear with a stream that runs along the north property line. A photograph showed the existing conditions from Post Road.

As read from the Code:

- Residential solar panels are not currently listed as a specific use in areas excluding the West Innovation District, Bridge Street District, and the Dublin Corporate Area Plan.
- To allow solar panels with existing Code language, the City utilizes Zoning Code Section 153.074(B)(6)(a) which regulate accessory structures.
- All accessory structures are required to be constructed within the permitted buildable area of a lot, behind all applicable setback lines, and to the rear or side of the principal structure.
- The applicants are requesting solar panels to the front façade of their home which necessitates review by the Board of Zoning Appeals.

A graphic was presented showing the areas proposed for 31 solar panels to be mounted on the south-facing roof.

Staff has reviewed the application against the Non-use Variance Review Criteria and found the first three criteria have not been met when all three are required to be met.

1. Special Conditions

The site is one of the larger properties in the area, with the house located at the center of the site and landscaping and mature vegetation along the perimeter of the site. The home has a south-facing front roof façade that is not unique to this site; adjacent sites are the same. No special conditions apply to this site.

2. Applicant Action/Inaction

The Variance request is necessitated by the applicant on the basis of switching to renewable energy on the home.

3. Impair the Intent & Purpose of the Requirement

The Variance request would directly impact the requirements and intent for all accessory structures to be located forward of the building.

For the second set of criteria, two of the four criteria have been met, which is required for approval.

1. Special Privileges. . . . Criteria Met

Several properties within the zoning district could obtain roof-mounted solar panels that meet zoning requirements due to the orientation of each home that does not have a south-facing front façade.



2. Recurrent Nature . . . Criteria not Met

The request is recurrent in nature to warrant a Code update to contemplate locations and requirements for solar panels in residential district. Staff is aware of the increase in these requests and is working towards a Code Amendment for solar panels.

3. Delivery of Governmental Services. . . Criteria Met

The proposed location of the solar panels would not affect the delivery of governmental services.

4. Other Method Available . . . Criteria not Met

Utilizing solar energy can be accommodated by other methods that may be less economical but continue to produce energy.

Since the totality of the requirements above were not met per Staff's analysis, disapproval is recommended for the Non-Use (AREA) Variance to Zoning Code §153.074(B)(6)(a) to allow solar panels as an accessory structure to be located on a street-facing façade.

Questions for Staff

Mr. Clower - He asked the distance from the west side of the house to the No Build Zone setback.

Applicant Presentation

Kevin Wadsworth, 6240 Post Road, the houses on the north side of Post Road are on septic systems, with no access to City Sewer. His leach bed is in his entire front yard; planting trees is not permitted. Without shade, the electric use is quite high but solar panels on the south/street-facing side of the house is a great alternative. This property has mature trees on a rural road without a sidewalk and the house is set back 120 feet from Post Road. The only way to see the house is a view from the driveway. He took a photograph of the house at eye level which is not visible due to the 30-foot pine trees. This environment makes their property unique as compared to a lot of houses in Dublin and are visually screened from the neighbors. The neighbors to the east are in attendance. Trees were planted back in the 60's between the houses there, which makes them fairly secluded. The underlying assumption of the Code is that solar panels are ugly and are bringing down the aesthetics of the neighborhood so the City does not want them. Even if that was accepted as true, the roof is not visible from the street or the neighbors. This makes for a Special Condition. This is all he had to say at this point since he made points earlier in the meeting for the first case.

Questions for the Applicant

The Chair found there were no questions for the applicant and was also interested in the setback on the side yard.

Mr. Deschler – He asked if the applicant considered having solar panels installed on the ground on the west side of the house.

Mr. Wadsworth – Generally those are disfavored and more expensive. He uses a lot of electricity and was looking for an economic solution for power. The neighbors stated the panels installed on the ground are less attractive than those that are installed on the roof. A ground-mounted array would detract from the neighbors. The less expensive and more attractive option of a roof-mounted system would be selected over a ground system. He did not need to get a quote; he did research and found the ground-mounted systems were more expensive.



Mr. Deschler – It was his understanding that ground-mounted panels can be tracked and directed towards the sunlight.

Mr. Wadsworth – Those are for commercial uses only and not produced for residential homes.

Mr. Hounshell – At most, the side yard setback is eight (8) feet. Ground-mounted solar panels are considered accessory structures and would need to meet those requirements. The side of the house begins at the front plane of the house.

Mr. Deschler – The applicant would have the option to have ground-mounted solar panels to the side of the house that could go back to the rear yard setback for the near term.

Mr. Nigh – Additionally, the applicant could apply and obtain ground-mounted solar panels without having to receive approval from this Board.

Mr. Wadsworth – That is a different system than what he has requested.

Mr. Clower – He asked Staff if the applicant could build a shed on the west side of the house and add solar panels to that.

Mr. Hounshell – The shed would need to meet the requirements of an accessory structure, first.

Ms. Noble – If an accessory structure were added to an accessory structure it is considered one accessory structure.

Mr. Deschler – Considering the topography of the side and rear of the yard, is there anything that could further impede having ground-mounted panels such as a steep slope.

Mr. Wadsworth – The rear yard slopes quite a bit, starting at the tree line. The backyard is shaded by the house and the trees. The west side is not appreciably sloping. He has lived here for 20 years and thoroughly understands the topography of the yard.

Mr. Hounshell – He presented a graphic to show there is four feet of slope from the back of the house to mature vegetation.

Public Comment

Jillian Dyer, Ecohouse Solar, said the company does not install ground-mounted panels for residential; those are typically for commercial use as they are large and cost a lot more to maintain. There are more opportunities for animals to come through and chew on wires and it would be difficult to maintain vegetation that would grow under the panels to keep it from damaging any of the equipment. It is more dangerous to have everything right there on the ground if the area is not fenced off. More ground mounts are installed in rural areas. There could be an issue with trenching for the wiring when there is a septic sewer such as this that would also increase the cost. Rotational mounts that were mentioned earlier as an option are not something her company installs for residential use nor does she believe any companies in the Columbus area would do so.

In November 2020, Ecohouse Solar installed a system on the front roof of a house at 567 Tara Hill Drive that was approved by the City. Ecohouse just recently found out they would have to be applying for Variance requests in Dublin. In other jurisdictions, the company has not had issues getting approvals for installations.

Mr. Deschler – He asked Staff when the City began requiring solar panels to be identified as accessory structures.

Ms. Noble – There was no specific date for when a specific policy was written. There were solar panel inquiries coming in that needed avenues for approval. Staff will research that site to ensure there were permits issued.



Jillian Dyer – One of the representatives from Ecohouse Solar attended a Planning and Zoning Commission meeting (October?) last year. The company was informed that solar panels would no longer be permitted on the south side if street-facing.

Ms. Noble – The policy would have been in force prior to that meeting because that is what prompted that conversation.

Mr. Nigh – Assuming what Ms. Dyer said was correct, it was sometime after November 2020 but before November of 2021.

Ms. Noble – She wanted to verify there were permits issued.

Ms. Dyer – She had no further comment as everything else was addressed during the first case this evening.

There were no online comments received.

Board Discussion

Mr. Clower – His thoughts were known on the second and third criteria, which were stated for the first case this evening. For the first criteria, he found the septic system to be a Special Condition and even more convincing than the previous case. This prevents trees from being planted in the front yard, causing a higher electricity bill to cool the house and it cannot be shaded to make it more energy efficient. The applicant said the house is visibly blocked which he found to be incredibly true per Google maps. For the intent and purpose of the requirement, he argued solar panels are fine, if installed with aesthetics in mind.

Mr. Murphy – This Zoning Code seems to be more focused with adding accessory structures that could border the property (shed) needing to be behind all applicable setback lines, and to the rear or side of the structure. The solar panels would be an improvement on the actual structure itself (house roof) actually affixed rather than something that is additionally placed on the property. That should be underscored with respect to how the Board approaches this. This Code Section is so inelegant that there is no one-to-one comparison here. It was difficult to say materially impaired, impairing the intent and purpose of the requirement. The Board is having to torture the Code Section to come to any conclusions. The Special Condition that exists here, as mentioned, is the significant amount of vegetation in the back which would render ground-mounted panels extensively useless, if the applicant had to install the panels in the backyard. There are the complications with the septic system including a leach bed, forcing the panels off to the side. That all goes into Special Conditions.

Mr. Nigh – The comments about the side yard and the rear yard are not at all compelling to him because the applicant is not asking the Board to rule on the side or rear yard. Some consideration should be given to the property given no trees can be planted for shade of the house but the septic system is the same for the neighbors and not unique to this property. When the applicant states “this is what happens in our neighborhood”, that dismisses the Special Condition. All three cases this evening should be tabled. The Planning and Zoning Commission and City Council should be asked to expedite this process to amend the Code. He asked the members if they believe all three of the solar panel cases this evening should be tabled at least and ask CC and PZC to move on a Code Amendment as expeditiously as possible.

Mr. Wadsworth – There are only six (6) or eight (8) houses in Dublin with these conditions so that still qualifies as special. With so few houses in the entire population of Dublin that have a septic system, he could not believe he was the only one to consider that as special.

Mr. Nigh – He asked Staff how many houses have a septic system like this.

Ms. Noble – Definitely it is a small demographic but in the Summit View area, there are homes on septic systems.



Mr. Clower – He did not want to take the decision away from the applicant about the opportunity to table but he would recommend that the applicant do so.

Mr. Murphy – The most persuasive voice City Council could hear from would be the public. A lot of compelling arguments have been made this evening. Granting a Variance is not an easy decision to make based on the current language of the Code; additional language and guidance is needed. There is no compelling reason this process should continue as it has for Solar Panels and the applicants being precluded from installation as the legal boundaries described here. He suggested the public reach out to City Council and let them know the feelings on this and tonight's proceedings should not be the last word on this matter. This Board does not have the authority to change the law, we have to adhere to its structure.

Mr. Clower – He was in favor of tabling for the sake of the applicant because we go to a vote it will be a 2 – 2 split vote; the Variance is denied and the applicant will not be able to reapply for one (1) year, unless the Code is amended.

Mr. Nigh – He did not want to presume Mr. Deschler was a no vote.

Mr. Deschler – Similar to the reasons of the prior case, south facing is not a Special Condition. Our task to follow the Code as currently constituted cannot satisfy that condition. The septic system was not relevant. The applicant could try and convince the fifth member to be supportive but may have an equal chance when the Code is revised. If the applicant moves forward with the vote tonight of 2 – 2, he could appeal to Franklin County.

Ms. Noble – The applicant should choose their own best path.

Mr. Wadsworth – He disagreed with Staff's assertion that this Variance should be disapproved.

Mr. Deschler – The Board has agreed with the applicants but their hands are tied. Everything that has been expressed as far as the compelling arguments need to be restated at City Council. We all want to use renewable energy and the tax credit is going to be extended.

Mr. Wadsworth – He had no idea he would run into these problems because solar panels were permitted as early as two years ago. He wanted to feel good about using renewable energy but his intent was also to save money. He said he would like to table the Variance request.

Mr. Murphy moved, Mr. Clower seconded, to table the Non-Use (Area) Variance to allow building-mounted, residential solar panels as an accessory structure to be located on a street-facing façade.

Vote: Mr. Deschler, yes; Mr. Nigh, yes; Mr. Clower, yes; and Mr. Murphy, yes.

[Motion passed 4-0]

3. Yi Residence at 6056 Brigids Close Drive, 22-131V, Non-Use (Area) Variance

The Chair - This is an application for a Variance to allow building-mounted solar panels as an accessory structure to be located on a street-facing façade on a 0.23-acre site is zoned Planned Low Density Residential District – Dublinshire. The site is located northwest of the intersection of Brigids Close Drive with Curragh Court.

The Chair asked the applicant's representative to approach.

Salvador Pareja, Blue Raven Solar, 2029 Riverside Drive, Suite 102 requested to table the case.

Mr. Nigh moved, Mr. Clower seconded, to table the Non-Use (Area) Variance to allow building-mounted, residential solar panels as an accessory structure to be located on a street-facing façade.

Vote: Mr. Murphy, yes; Mr. Deschler, yes; Mr. Clower, yes; and Mr. Nigh, yes.

[Motion passed 4-0]



COMMUNICATIONS

Tammy Noble stated that during the Joint Session held in August that included City Council, the Planning and Zoning Commission, the Architectural Review Board, and the Board of Zoning Appeals, a request was made of Staff for comparing past cases with similar scenarios to the cases under review. This process was not followed for this meeting as there were no past cases that aligned with the current cases under review for solar panel usage. The process will be followed for applicable cases going forward.

Solar panels are slated to be discussed at the Planning and Zoning Commission (PZC) meeting on October 20, 2022. The public was encouraged to reach out to the PZC and City Council Members with their thoughts concerning solar panels so amendments to the Zoning Code can be expedited.

Mr. Deschler adjourned the meeting at 9:25 p.m.

Jason Deschler, Chair
Board of Zoning Appeals

Administrative Assistant II, Recorder

