



DRAFT

## MEETING MINUTES

### Board of Zoning Appeals

Thursday, October 27, 2022

#### CALL TO ORDER

Mr. Deschler, Chair, called the October 27, 2022, meeting of the City of Dublin Board of Zoning Appeals (BZA) to order at 6:32 p.m.

#### ROLL CALL

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

#### ACCEPTANCE OF DOCUMENTS/APPROVAL OF MINUTES

Mr. Clower moved, Mr. Murphy seconded, to accept the documents into the record and approve the meeting minutes from September 22, 2022.

Vote: Mr. Garvin, abstain; Mr. Nigh, yes; Mr. Deschler, yes; Mr. Murphy, yes; and Mr. Clower, yes.  
[Motion carried 4-0 with 1 Abstention]

Mr. Nigh moved, Mr. Murphy seconded, to approve the meeting minutes from the Joint Session held on August 31, 2022.

Vote: Mr. Deschler, yes; Mr. Clower, yes; Mr. Garvin, yes; Mr. Murphy, yes; and Mr. Nigh, yes.  
[Motion carried 5-0]

#### CASE PROCEDURES

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

Prior to this meeting, the applicant for case 22-131V – Yi Residence at 6056 Brigids Close Drive, requested to postpone for a later date.

Mr. Jesse Stamp stated there may be some presentations from Staff this evening about potential updates being considered to the solar panel Code by the Planning and Zoning Commission and City Council. These are not law yet; changes are still being considered by City Council. The focus for tonight's meeting needs to be on the criteria in the Code, which is the same that was applied at the meeting last month.

Ms. Noble stated her comments relate to the Board's questions since the last meeting. There is a list of all permits that have been issued from the Building Department in terms of solar panels. This data includes the locations where all solar panels were approved. Staff has received information where solar panels were installed without permits and will be pursuing information about those. The City has been communicating with the public that included private meetings with Home Owner Associations (HOAs) to discuss the Code modifications being considered along with Council's goals. The latest modifications were presented to the Planning and Zoning Commission last Thursday, October 20, 2022. Staff received very direct feedback as

to the Code language that would be adopted and the amendment should move forward to City Council with a minimum of two readings. The first will occur in November and the second is anticipated for December. In addition, the communications team has sent Senate Bill 61 information to the HOAs to facilitate conversations they may be having.

## **TABLED CASE**

### **1. 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 the same information that was presented at the September meeting for the benefit of the member that was not in attendance. An aerial view of the site included a number of mature, evergreen trees along Post Road as well as mature vegetation to the rear of the property where a stream runs along the north property line. A photograph showed the existing conditions from Post Road with the evergreens split only by the width of the driveway.

Current Code language on Solar Panels:

- 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 – Criteria Not Met**

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 – Criteria Not Met**

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 – Criteria Not Met**

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 was 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. Gavin – He asked if the applicant's house sits far enough back from the street that the solar panels would not be visible.

Mr. Hounshell – The setback of the home from Post Road is 120 feet.

### Applicant Presentation

Kevin Wadsworth, 6240 Post Road, said 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. There is a line of trees on the east side of the property, also, which screen very well. The house meets unique conditions as it faces south along with 45% of houses in Dublin and the only economical place to install solar panels is on the south-facing roof. At the last meeting we discussed ground-mounted systems but they are less efficient and by the language in the current Code, ground-mounted panels could be installed to the west side or the rear of the house but would be more expensive and less efficient, defeating the purpose of the solar panels. The house is on a septic system and the entire front yard is a leach bed where planting trees is not permitted. Without shade, the electric use is quite high, which makes them a great candidate to switch to solar panels on the south/street-facing side of the house. This also sets them apart from other residential homes in Dublin. This property is not in a neighborhood, it is on a rural road without a sidewalk and the house is set back 120 feet from Post Road. This environment makes their property unique as compared to a lot of houses in Dublin and is visually screened from the neighbors.

When he sought a solar company, Ecohouse provided him with one of the references on 5676 Tara Hill, just a block north of them who had a solar system installed on the south face of their roof that was completed in 2021. The Code has not changed since 2021, only the interpretation of the Code has. He was told at the September meeting he would be in compliance if he built a shed on the west side of his property and added the solar panels to the shed on the south-facing roof. That did not make a lot of sense.



Sometime in 2022, the City decided they did not like solar panels on street-facing facades so the accessory structure requirements were applied. That in itself is a reasonable verification for a Variance to the Code.

Mr. Deschler asked Staff to clarify as the applicant's statement may not be accurate.

Ms. Noble – In the current Code, solar panels are not a permitted use outside of the three areas Mr. Hounshell noted. Solar panels are not a use allowed in the Zoning Code. To allow for opportunities under the current Code, Staff found the accessory structure section as a temporary relief to allow some solar panels until the Code could be updated.

Mr. Wadsworth – He consulted with a lawyer about this. The attorney's answer was if something is not in the Code, it is allowed. Staff has taken the complete opposite approach where if something is not in the Code, it is disallowed. 5676 Tara Hill Drive applied and were approved for two different permits in 2021: one to install solar panels and the other for the electrical component when the Code was the same and allowed.

Mr. Descheler – The City made a determination at some point in time.

Ms. Noble – Before Staff was able to make a consolidated decision with the Building Department, solar panels would be reviewed as an accessory use/structure. The Building Department had different interpretations under which they issued permits. That is why Planning stepped in for consistency until there is a Code Amendment was approved. Planning recognized this was not ideal and is working toward a solution.

### **Public Comment**

There were no online comments received.  
No attendees to comment at this time.

### **Board Discussion**

Dan Garvin – It is clear, the City does not have the appropriate language in place right now but that is being expedited. The request would have to meet all three of the criteria in the first section and his thought is that it does not. The closest to meeting the criteria is the Special Condition criteria as the home is set back and largely blocked from view. He could appreciate the energy bills, but it does not meet the other two qualifications. While a modification could be forthcoming, he would not feel comfortable granting a Variance now.

Mr. Clower – He asked to repeat his comments from the last meeting regarding Action/Inaction. If someone wants to build a shed in the backyard or side yard, it is not the fact they are building a shed that would be a problem, it is the fact that they are choosing to build it in a location that is causing the problem. If the only place to build a shed on a property is forward of the house because there is a steep gradient on the backside and there is no way to build a shed on that steep gradient it is not that a homeowner wants to build a shed that is a problem, it is if the only place to possibly build a shed is on the front of the house. In those cases, the Board has decided it is not the action/inaction of the applicant; they did not choose the terrain that included a steep grade in the back yard or choose the layout of the site. The Board has ruled in favor of the property owners for these cases.

It was not the action/inaction of the applicant wanting to build the solar panels, it is that they want to install panels on the south-facing side of the house. It was not their option to build the roof facing the



south, they are not responsible for the sun being significantly stronger on the south side, and there is no other location to install the solar panels. At the meeting last month, solar companies stated they do not build on the north side of houses and they do not build ground-mounted panels for residential properties. The only way the applicant could achieve having solar panels is on the south-facing side of the roof. Based on previous findings, this is not the fault of the applicant to need the Variance.

Mr. Gavin – That argument makes a lot of sense. We see sheds not being built where they are required to due to a steep terrain. Sometimes the Board is looking for alternatives rather than allowing the shed in front of the house. Initially the process is to come as close to meeting the standard in the Code as possible. However, the position of the solar panels for effectiveness is a gray area rather than black and white. There are probably degrees of effectiveness at play. To have solar panels installed on the side would not require a Variance.

Mr. Clower – Solar companies will not add panels to the north side of roofs; it is not financially feasible. The return on investment is not at all there. Snow does not melt off the solar panels in the winter months because the sun is not hitting it as strongly. That adds a cumulative amount of snow on the panel that can fall in large clumps.

Mr. Wadsworth – His house faces 180 degrees south, incident sun on the south versus the north is a factor of 5. Over a 25-year lifespan, the solar panels are guaranteed. For panels installed on the south, electricity is produced at 7 cents per kWh versus 14.5 cents for electricity produced by American Electric Power (AEP). The cost is 35 cents per kWh, if installed on the north side. His house is a single-gable roof so there is no 'side of the house' solar panels could be installed.

Mr. Gavin – He recognized building ground-mounted solar panels is not cost effective.

Mr. Wadsworth – He clarified, ground-mounted panels are more expensive. The City has determined solar panels on the front of the house would be an eyesore. If the Board agrees with that, a ground-mount would be more of an eyesore than a roof-mounted system. He did not want to adversely affect his neighbors in that way. This would also cause a challenge having to mow around the solar equipment.

Ms. Noble – If someone has a house with a front-loaded garage, it pushes their house further back to the rear yard setback. There have been a lot of requests that have come before the Board where the applicant requests to do something in the rear space, but because of the design of the house, and it was pushed back to the rear yard setback, they were not permitted per Code. As part of that analysis, the Board has asked if the applicant was the original owner that designed the house, and if so, they contributed to the problem. If it was not the owner that designed the house, it was not the applicant's action/inaction that caused the problem. She spoke with a lot of companies, and some companies will not put solar panels on the north side but some companies will take more liberties. It is not a blanket statement that all companies will not build on the north side of a home. There is an economic threshold when that decision is made.

Mr. Wadsworth – More reputable companies will shy away if it does not make sense and some companies will do anything.

Mr. Gavin – There is a clear measurable return on investment and that is not always the case with these types of projects. The Board dealt with a fire pit case where the Variance was not granted so the fire pit was going to have to be more expensive. The Board cannot include the economic factor when determining outcomes. This is not black and white but more of an economic issue. There are other options available that are less effective, economically.



Mr. Wadsworth – It was time to replace the roof and after research, he found this would be a good time to install solar panels. With a fire pit, someone is not building it because they want to start a hot dog business, they are wanting one because it is a nice feature to have. It is not the case for the solar panels. Some people might want solar to be more environmentally friendly, which is a nice bonus, but for his family, it is to bring the electricity costs down. He did not realize having solar panels would make sense in Ohio like it would in Arizona until he did the research. He indicated as more people do the research, more and more requests for solar panels will be seen in the next 5 to 10 years.

Mr. Gavin – The Board has to determine whether the solar panels can be installed in the optimal position while seeing that the criteria is met in order to approve the Variance. As the Code is not yet solidified with an amendment, timing is an issue.

Mr. Clower – There is a representative from a solar company present. He asked if perhaps she was ready to provide input into this discussion.

The Chair – The Board should finish deliberation first.

Mr. Gavin – He asked the applicant to explain how he met the intent and purpose criteria.

Mr. Wadsworth – He struggled with what that wording meant. If the only reason a Variance is not granted is "because I said so", there is not a counter argument to that. Reasoning might be flawed but if "the Board said so", that is it. Criteria 3 reads, we wrote a Code stating X is not permitted. He asked how the Code did not say that. Arbitrarily, it does not say that. He could put a shed next to his house and install solar panels on that shed, but that has far more of an impact on the neighbors and the property value on the street than if solar panels were installed on the rooftop where they are flat, black panels on a dark roof. He drove past that house on Tara Hill and never noticed it had solar panels until the company pointed it out to him. That is where he would put the intent of Criteria 3. Clearly, the intent of the Code was not there to prevent solar panels given I could put them on a shed and our neighbors have them.

Mr. Gavin – That is where we run into the timing issue. The intent of the requirement is to keep the street-facing homes without solar panels or with something considered distracting, an eyesore, and out of uniformity with the rest of the homes in the neighborhood. The applicant had asked how there could ever be a case where that intent would not be impaired because it is in the Code, which is the idea behind the Variance. Maybe this case could be put in that category of something that was not thought of at an earlier stage but at this point the City is operating under the idea that it is considered a non-use structure. If the intent is to prevent anything that could be distracting or take away from the uniformity of street-facing facades it is hard to see how the criteria has been met. He understood the frustration but right now, this is the Code.

Mr. Clower – 'Substantial adverse effect' means the City does not want people building swimming pools or sheds in their front yards where it would be hideous and cause property values to drop.

Mr. Gavin – He agreed that for those cases requirements are intended to stop that.

Mr. Clower – In a 2019 study done by Zillow, adding solar panels to the house raised property values 4.1%.

Mr. Gavin – That makes sense for the house being sold but that goes back to the economic value factor.

Mr. Clower – By raising the house value for the one house with solar panels, comps were also increased in the neighborhood.

Mr. Nigh – He asked if those homes on Zillow had the same Code that Dublin had because he is not understanding the relevance of that information.

Mr. Clower – The study shows solar panels do not cause a substantial adverse effect, as it is raising property values as a whole in the United States.



Mr. Nigh – That is assuming the only reason for the Code is to affect property values. It could be people do not like looking at them. His thoughts on this case have not changed since the September meeting. The applicant should know where the Board stands.

Mr. Gavin – He cannot get over the third criteria and is not all the way on the first criteria. Accumulatively, he was leaning no to granting the Variance.

Mr. Nigh – He will not support the Variance.

Mr. Murphy – The aesthetics of the neighborhood would be the only substantial adverse effect and that will come down to a matter of taste. With the factors of the Zillow study and the added value of the panels, we are back to the question of what the benefit is. We have had so much difficulty fitting solar panels in as an accessory use. He has not been persuaded because nothing fits perfectly to the contour of the facts and circumstances with the Code criteria we have to consider. Until we see significant steps moving forward by City Council, he is not as inclined to make this decision for one specific home when there are neighborhoods. When there is a broader standard this Board can go by, and that appears to be where the momentum is right now, then that is where he is. He has softened given the new information the Board has regarding the movement of City Council. He was not hot on granting a Variance at this point as it is an imperfect match, leaning less now to granting a Variance without more information leading to the contrary.

Mr. Deschler – He was staying with the same position he had at the September meeting. A house facing south is not a special condition. Nothing satisfies the Special Condition requirements. The applicant would hear 4 no votes and 1 in support of a Variance if a vote was taken now.

The Chair – He asked legal if it is okay to allow someone from the solar panel company to speak now who did not choose to speak earlier. He swore that speaker in.

Jillian Dyer, Ecohouse Solar, 1809 O'Brien Road, Columbus, Ohio 43228, said there may be companies that will install panels on the north side but one of the largest solar companies in the country just went bankrupt and out of business. They had a reputation for doing cheap installs that were not done up to Code and did not always get the necessary permits. It has been a sticking point in the industry and the Ohio Attorney General filed an injunction to not allow them to ever do business in the State of Ohio. That is the only company that comes to mind that would build wherever. There are multiple class-action law suits against them. As was discussed at the last meeting "Just because you can, does not mean that you should". Most companies in central Ohio will not install on the north side of the home. Installing a ground-mount would require trenching and that would not be possible over a septic tank or a leach bed. There are requirements for how deep wires need to be buried so she is not sure if they could go around it in this instance. It is likely the array would have to be a lot larger to meet the electrical usage in the home. Being a long, narrow property, she was not sure how the ground equipment could be angled properly and fit within the setbacks. It is not reasonable to expect someone when they build or move to a property to know they might need to adhere to a Code that is not written for a technology that was not available at the time they moved in. Household solar has only been offered in the last 10 years for most homeowners and efficient enough to install on a single house roof. The process may be exhilarated but there is no guarantee the new Code will not still require a Variance to be permitted.

Mr. Gavin – He asked if trees would be a factor for ground-mounted systems

Ms. Dyer – She answered affirmatively. The solar panels would need to be positioned almost due south and there may not be enough room beside the house or behind it without being shaded by the house or trees.

Mr. Gavin – He asked Staff if the Code was updated, if it would allow the applicant to request a new Variance.

Mr. Stamp – Most likely, yes.



The Chair – He asked the applicant, since they were in the same position they were last month of not having enough votes to grant a Variance, if he wanted to again table or for the Board to proceed with a vote.

Mr. Wadsworth – He agreed to table the case. He was interested to see what would go into the revised Code.

Mr. Clower moved, Mr. Murphy 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. Garvin, yes; Mr. Nigh, yes; Mr. Deschler, yes; Mr. Murphy, yes; and Mr. Clower, yes.  
[Motion to table passed 5-0]

## COMMUNICATIONS

- Tammy Noble - This is the time of year meeting dates are being created for consideration for the next year. The rules and regulations state the BZA meets the fourth Thursday of every month. She asked the Board if they had a desire to meet on a different day of the week for October because she recalled scheduling issues.  
The Chair - Conflicts in years past were due to Beggar's Night falling on the meeting night/Thursday and the Board members wanting to participate with their families. The October meeting was not an issue this year because it falls on a Monday and there is not going to be an issue for October 2023 because the 31st falls on a Tuesday.  
Tammy Noble – Joint Work Session date(s) will also be identified earlier to better accommodate members' schedules.
- Tammy Noble – There is a potential case to be reviewed in November and the application is not for Solar Panels.

Mr. Deschler adjourned the meeting at 7:28 p.m.

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Jason Deschler, Chair  
Board of Zoning Appeals

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Administrative Assistant II, Recorder

