

**TOWN OF SCHODACK - COUNTY OF RENSSELAER - STATE OF NEW YORK
ZONING BOARD OF APPEAL OCTOBER 25, 2021
CALLED TO ORDER BY: CHAIRMAN CALARCO AT: 7:00 P.M.**

PRESENT

David Calarco, Chairman
Ed Brewer
Bob Loveridge
Anthony Maier
Lou Spada
Craig Crist, Esq.
Nadine Fuda, Director of Planning and Zoning
Melissa Knights, Assistant to Director

MEMBERS ABSENT

APPROVE OF DRAFT MINUTES DATED SEPTEMBER 13, 2021

Loveridge moved, Maier seconded that the minutes be approved as amended, as the official minutes of this meeting.

4 Ayes. 0 Noes

Ayes: Brewer, Calarco, Loveridge, Maier, Spada

Oppose:

Abstain: Brewer was absent on September 13, 2021

Nadine Fuda, Director, read the hearing notice(s) as published in the Troy Record on the following variance application(s):

Nassau County True Value published on October 15, 2021

public hearing open 7:04 p.m.

public hearing closed 7:28 p.m.

Nassau County True Value
3517 Rt. 20

Z799-21/HC/211.-2-15

Proposed - Area Variance for sign

Mark Gardner and Craig Garner, owners and applicants, Evan Walsh, Watch Fire Signs, Pat Boni, Vice President Saxton Sign Corp, Pat Boni Vice President Saxton Sign Corp. were present for this meeting.

Chairman Calarco stated this was sent to the Rensselaer County of Economic Development and Planning and after review they determined the proposal does not have a major impact on any county plans and that local consideration should prevail. Also, this went before the Planning board for their recommendation and received a favorable recommendation.

Mr. Mark Gardner stated they have been running this business for the past 38 years, his son Craig will be taking over and would like to upgrade the inventory and the look, starting with a new sign to replace the one that was hit by a delivery truck. Saxton Sign gave them a proposal using the same footprint same size the only thing different is the bottom part of the sign will be digital, if you noticed the sign is in the parking lot lit up, it is not bright the sign is muted. They are not looking to have the sign scroll it will change once a day, at night it will change into night mode showing the time and temperature and in the morning the sign will be programmed for sales in the store or to promote a worthy cause.

Mr. Craig Garner spoke about the community promotions, as well as working closely with their customers, they are a small community and would like to get information out to them.

Mr. Spada stated the sign you propose is exactly the same size as what was there. And what is that size.

Mr. Craig Garner showed the existing and the proposed sign which is exactly the same

Chairman Calarco stated on the plan it says the sign is 64 sq. ft. is that correct.

Mr. Craig Garner stated yes, it is 64 sq. ft. not including the planter.

Chairman Calarco stated the code allows a sign of 42 sq. ft. he is not sure if the building inspector didn't catch that on the denial but that is the code. He asked how long the sign has been there.

Mr. Garner stated the sign was there when they bought the building 38 years ago and it was the original sign for Bailys Hometown Supply and before that it was the Grand Union sign. which they have a picture of on the counter at the store, it is the same base, post just changed out for the different businesses.

Chairman Calarco stated the board is wondering if there was ever a variance for the sign.

At this point Mrs. Fuda went to the Planning office to see if there was plans for the Grand Union or Bailys that shows the sign. A few minutes later she came back and stated there was nothing in the files for this property past 1972, Which is before zoning.

There was board discussion on the applicant requesting a determination from the building inspector.

Mr. Walsh stated they just want to replace what was hit and damaged, they are not increasing the size of the sign.

Chairman Calarco stated the question is not a matter of this board be in favor or not in favor of the sign, he feels the board is very in favor of the new sign it's just the process that we have a law that states a free-standing sign can be only 42 sq. ft. Now the variance for the portion of the sign that changes is fine but there is another issue and that is the total size of the sign, which is 22 sq. ft. larger than our code allows.

Mr. Welch asked if they could have the variance for the digital portion of the sign and then go the building inspector for the interpretation of the size and if it is considered grandfathered in.

Chairman Calarco stated he is not sure if that can be done that way.

Mr. Garner stated he is confused, Saxton sign stated this was grandfathered in and should be no issue, just need to get approval for the digital portion.

Chairman Calarco asked if Mr. Garner could get a copy of the Grand Union picture to the board for the record.

Mrs. Fuda came back but did not find anything on file for this building.

Chairman Calarco stated the applicant has a picture of this business pre-zoning with this sign when it was the Grand Union and then it was Bailys Hometown Supply and now our business Country True Value.

Mr. Garner stated correct the sign is from 1964 and the only change to the sign was for the change in the ownership.

Mrs. Fuda stated she thinks they can all agree that the sign has been there prior to zoning.

Attorney Crist stated we just heard from the planning director the sign has been there prior to zoning.

Chairman Calarco stated the size of the sign of 64 sq. ft. doesn't change and the board will have to deal strictly with the digital portion of the sign. He also spoke about a letter we received from the VFW in Nassau stating they are in favor of this application (see file)

Mr. Loveridge asked for clarification on the sign changing once a day.

Mr. Walsh explained the sign will go into night mode from 10:00 or 11:00 which is muted and looks like the night sky with the time and temperature then a 6am or 6:30 am the sign will turn back on for the day.

The Board members reviewed the area variance criteria.

AREA VARIANCE CRITERIA

- 1) Can the benefit be achieved by other means feasible to the applicant? NO
- 2) Will the granting of the variance create an undesirable change in the character of the neighborhood or to nearby properties? NO
- 3) Is the request substantial? NO
- 4) Will the request have an adverse physical or environmental effect? NO
- 5) Is the alleged difficulty self-created? NO

6) Conditions:

- the digital portion of the sign will change once per day.

PLEASE NOTE, the Zoning Board of Appeals has no authority to alter or determine the ownership of property and that the decision of the Board herein is not a determination of the underlying ownership of the subject property/ies.

LEAD AGENCY

Maier moved, Spada seconded that the Zoning Board of Appeals be **LEAD AGENCY** relative to the variance only.

5 Ayes, 0 Noes, Motion carried.

Ayes: Brewer, Calarco, Loveridge, Maier, Spada

Oppose: None

TYPE II ACTION

Be it resolved that the Zoning Board hereby classifies the proposed action as a Type II Action under SEQRA.

Calarco moved, Loveridge seconded.

5 Ayes. 0 Noes. Motion carried.

Ayes: Brewer, Calarco, Loveridge, Maier, Spada

Brewer moved, Maier seconded.

that the area variance be **GRANTED** for a new digital sign to be constructed at 3517 Rt. 20, Nassau NY, 12123

Brewer	Calarco	Loveridge	Maier	Spada
Yes	Yes	Yes	Yes	Yes

Nadine Fuda, Director, read the hearing notice(s) as published in the Troy Record on the following variance application(s):

Green Dale Community Solar Farm **published on** October 15, 2021

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public hearing open 7:34 p.m.

public hearing closed 8:37 p.m.

Green Dale Community Solar Farm
County Rt. 32
Proposed - Site Plan Modification

Z800-21/PD-1/227.-1-7

Hyde Clark, Esq, Young/Summer LLC and Gillian Black, Eden renewables were present for this meeting.

Chairman Calarco stated this was sent to the Rensselaer County of Economic Development and Planning and after review they determined the proposal does not have a major impact on any county plans and that local consideration should prevail. There was a note in the decision letter stating if approved the applicant should be required to plant trees to provide a visual buffer for the highly visible site. Also, this went before the Planning board, and they made a favorable recommendation.

Attorney Clark stated earlier this year they requested a determination from the building inspector on the setback from the utility property lines. The board did make a decision the 200-foot set back was required and was upheld the zoning officers determined. Once they had that decision, they then submitted an amended site plan application to the planning board with a proposal to be 25 feet from the utility corridor. So now they are back before this board for the new proposed setback of 25 feet from the property line of National Grid.

Attorney Crist stated it is a conditional approval from the town of Kinderhook contingent upon the final approval from this board. Correct

Attorney Clark stated yes.

Mr. Spada asked on the left side of the of the site and the solar panels, what is the distance to the property line?

Mr. Black that is our open space, the distance from the panels to the property line is 200 + feet.

Mr. Spada stated originally you went to the planning board the proposal was made for a 100-foot setback.

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53-2021

Mrs. Fuda stated that proposed 100-foot set back was to the town board for the PD approval request.

Mr. Spada stated the PD approval was for a 100-foot setback

Mr. Black stated they had the PD map drawn out differently.

Mr. Spada stated his concern is the right-a-way, with 25 feet whatever the maintenance is on that right-a-way is they only have the 25 feet to spill over into your area. He knows that this is a utility to utility and maybe the 200-foot setback is off the 25 feet is pretty tight if something should happen in that corridor and they need to get heavy equipment in there.

Mr. Black stated if you took a drip line at the closes distance to our property line the distance is about 40 feet. He showed on the plans the total distance is 240 feet, National Grid could get another whole set of lines in this area and their access is from a Rt 9 so there shouldn't be an issue.

Mr. Spada stated if 100 feet was ok with you originally you didn't like the 200-foot setback and now you come back with a 25 foot, his question is why.

Attorney Clark stated this has been kicking around and they have to continually have to work with the property owner and to make sure if the site design is the best for everyone.

Mr. Spada stated his question is you were working with the property owner to start with, and you came up with a 100 feet. At that point it was ok and now you are requesting 25 feet. That is a considerable difference.

Mr. Loveridge inquire what National Grid potential use was.

Mr. Black stated he reached out he their account manager at National Grid and they were told it is a case by case on there.

Attorney Crist stated it is very hard to get a comment from them.

Mr. Black stated another solar project in a different town has the fence on the property line, and the solar array is 25 feet from the property line.

Chairman Calarco stated you could put your fence on the property line as well. The fence doesn't bother us, what does is the solar panels, because from day 1 the proposed setback for the panels was 100 feet rather than the 200 feet that is required.

Attorney Clark stated when the law was being looked at in the past and the concern was for the residential neighbors, there is no visibility impact to a utility and trespassers have no impact. He is asking the board to take into consideration the difference between a residential impact then what this project represents.

Mr. Black stated there are a lot of wetlands in some areas and high terrain in others, so the structures were moved closer to the property line to get the maximum number of panels on site.

Chairman Calarco asked to see the plans with the 200-foot setback and where the array was place viruses what they are proposing.

Mr. Black showed on the plans the lower portion of the property where the panels were placed. They will be able to shrink it once they buy the property but as of now, they don't know what will happen until the setback is decided. Also, they have moved the pad and added a new entrance due to the engineer's request.

Mr. Loveridge asked how many modules were proposed on the first plans and how many are proposed now

Mr. Black stated the first proposal was maybe 18,000 or so, the plans now have about 2000 more panels because of the proposed 25 foot set back.

Mr. Loveridge asked if the square footage in the back was shifted over to the left side you could accomplish the same thing, but the terrain would be different, correct.

Mr. Black stated the terrain is pretty bad in that area it is not optimal. It will give a lot of shading to the west of the hill.

Mrs. Fuda stated that area he is referring to is the highest point in the town, if a water tower were to be constructed in this area this is where it would be located.

Chairman Calarco asked if they were amenable to changing the number of panels along the 25-foot set back.

Mr. Black stated that is his best construction area, that is why they are asking for the 25-foot set.

Chairman Calarco asked what currently and what will be left in that 25 feet.

Mr. Black stated there is some trees and brush and some forested area in the ravine.

Mr. Spada stated the situation really is not whether the 25 is a 25, the situation is the code is 200 feet and the request is 25 feet and that is a substantial difference if we were to grant this. This board has always tried to work with developers and so forth, but we have never tried to set a precedent, but if we go to this 25 feet that decision diminishes the 200-foot setback law. Because it cost you a little more to put solar panels on the left of the site is irrelevant to the law. He personally has a problem with the substantial request.

Attorney Clark stated it is a utility to a utility.

Mr. Spada stated they are a property owner, they might want to do something and you're talking about another high line we are talking about electric cars in the next 20 years, who knows what the corridor will be. He will not go less than 50 %.

The applicant requested a couple of minutes to discuss the setback.

The applicant came back with a request of a 50-foot setback.

Mr. Spada stated he is not willing to go less than 50% or a 100-foot setback.

Mr. Brewer stated he is willing to go with the 25-foot setback in this area because of the situation, it is better to do it here than where the residents are. He knows the law is 200 feet but, in this case, it seems less of an impact.

Mr. Spada stated he respects what they have done and the work that has gone into this project. His concern is not whether National Grid boundaries his concern is setting the precedent. The request of 25-foot setback is a road he doesn't want to go down.

Mr. Loveridge stated he feels the same way as Mr. Spada. for the time he has been on the board if they go 50% they are stretching it.

Chairman Calarco stated he feels the same as Mr. Spada and Mr. Loveridge in not going beyond 50%. But he also sympathize with Mr. Brewer's point, this is a utility against a utility.

The applicant asked if they could make a call to the Mr. Giovanni and discuss what was being discussed.

NOTE at this point the meeting stopped recording.

10 minutes later the applicant came back and asked if they could adjourn until a later date.

The board agrees to the adjournment

Loveridge moved; Maier seconded to adjourn Greendale decision to a later date, request made by the applicant.

5 Ayes, 0 Noes, Motion carried.

Ayes: Brewer, Calarco, Loveridge, Maier, Spada

Oppose: None

MEMBER DISCUSSION

Mark & Carol Rochester

Z798-21/R20/20.1-1-51

27 Orchard Road

Proposed - Front / Side yard set back

Loveridge moved: Calarco Seconded to **wave** the reading of the resolution.

4 Ayes, 0 Noes, Motion carried.

Ayes: Brewer, Calarco, Loveridge, Maier, Spada

Oppose: None

RESOLUTION/DECISION OF ZONING BOARD OF APPEALS **APPROVAL ON AREA VARIANCE APPLICATION FOR MARK AND CAROL** **ROCHESTER/COMFORT WINDOWS AND DOORS**

WHEREAS, the Town of Schodack Zoning Board of Appeals had received an Area Variance Application by Applicants MARK AND CAROL ROCHESTER and COMFORT WINDOWS AND DOORS to construct a deck extension further into the side yard setback of the property, a pre-existing, non-conforming structure in that it has an existing deficient side yard setback in that The Code of the Town of Schodack requires all such structures to be located at least thirty (30) feet from the side yard boundary. An additional two feet is sought in the application so as to make the egress from the deck more safe.

APPLICANT/S NAME AND ADDRESS: MARK AND CAROL ROCHESTER, 27 Orchard Road, Castleton, NY 12033 (property is located within the Town of Schodack) and Comfort Windows and Doors, 27 Warehouse Row, Albany, NY 12205.

PROPERTY OWNER/S NAME AND ADDRESS: MARK AND CAROL ROCHESTER, 27 Orchard Road, Castleton, NY 12033 (property is located within the Town of Schodack).

PROJECT NAME: Z798-21

LOCATION: 27 Orchard Road, Castleton, NY 12033 (property is located within the Town of Schodack).

TAX MAP NO: 210.1-1-51

ZONING DISTRICT: R-20

LOT SIZE: 110' x 100.28'

NOW, THEREFORE, BE IT RESOLVED, THAT at the September 13, 2021 meeting of this Board, a MOTION was made by CALARCO, SECONDED by MAIER and approved by a vote of 4 to 0 (Brewer absent), to grant approval of the Area Variance Application, by Applicants to construct a deck modification to the structure which is a pre-existing, nonconforming structure so as to have a total deficient side yard setback of two (2) feet upon the condition that APPLICANT not increase the nonconformity by further infringing on the side yard setback and utilize like materials for the addition as are contained on the existing deck. Therefore, the proposed deck shall when constructed have a 26' side yard setback.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Town of Schodack Zoning Board of Appeals, after due consideration of said Area Variance Application, and the requirements of the Code of the Town of Schodack and New York State Town Law 267-b, in granting said approval acknowledges that the benefit to the Applicant if the variance is granted exceeds any detriment to the health, safety and welfare of the neighborhood or community by such grant, and also makes the following determinations:

1. *Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.*

It is the determination of this Board that no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. It is noted that many of the nearby properties enjoy pre-existing, non-conforming status. It is also noted that the neighbor to the rear of the property attended the public hearing and stated he had no objection to the subject application.

2. *Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.*

No, the extension is needed for safety reasons and no other way to obtain the benefit needed can be achieved.

3. *Whether the requested area variance is substantial.*

The Board finds that the total amount of the side yard setback, here an additional two feet, making the setback 26 feet is not a substantial departure from the 30-foot requirement.

4. *Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.*

It is the determination that it will not, including for the reasons set forth in #1, above.

5. *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of the area variance.*

As with most matters that come before this Board, the variances are needed because Applicant desires to build at variance with existing requirements. As such, the difficulty is self-created. However, see the discussion in factor 2, above.

PLEASE NOTE, the Zoning Board of Appeals has no authority to alter or determine the ownership of property and that the decision of the Board herein is not a determination of the underlying ownership of the subject property/ies.

DATED: _____, 2021

David Calarco, Chairman, Town of Schodack Zoning Board of Appeals

I AGREE TO ALL OF THE FOREGOING:

Mark Rochester

Carol Rochester

Calarco move; Maier seconded to adopting the above resolution.

5 Ayes, 0 Noes, Motion carried.

Ayes: Brewer, Calarco, Loveridge, Maier, Spada

Oppose: None

ADJOURN

Spada moved, Loveridge seconded that the meeting be adjourned. There being no objections, Chairman Calarco adjourned the meeting at 8:57 p.m.

Respectfully submitted,
Nadine Fuda
Director of Planning & Zoning