

**Minutes for the Town Zoning Board of Appeals held September 16, 2020 in the
Community Building commencing at 6:00 p.m. regarding an Area Variance.**

Present: Erik Leerkes, Doug McTyier, Joyce Barry, Amy Schryer

Others: Bill Ball-Zoning Officer, Dean Cook, Don Meserve

Mr. Leerkes called the meeting to order at 6:04 p.m.

Pledge of Allegiance was sighted by all.

Public Hearing Announcement

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Town of Ticonderoga will hold a Public Hearing and meeting on Wednesday, September 16, 2020, commencing at 6:00 p.m. at the Ticonderoga Community Building's Conference Room, located in the Basement at 132 Montcalm Street, Ticonderoga, NY, regarding an Application for an Area Variance submitted by Dean Cook, concerning his property located at 572 Baldwin Road, Ticonderoga, NY., tax map number 160.1-3-3.000. All parties interested may be heard at such time.

Correspondence

Mailings went out to the ad-joining landowners, with no response.

Explanation of the Application

Area Variance-Dean Cook, 152 Baldwin Road(160.1-3-3.000)

Mr. Leerkes opened the meeting with asking the board to accept the meeting minutes from November 13, 2019.

Resolution#01-2020 brought by Joyce , seconded by Doug to accept the meeting minutes from November 13, 2019 p.m. **All in Favor** 3-Aye, 0-Nay **Carried**

Mr. Leerkes opened the public hearing by introducing the board.

Doug McTyier asked why this was being considered an Area Variance and not a Use Variance.

Bill Ball states that there is no Use in this zone.

Mr. Leerkes states that an Area Variance would be with setbacks and all that.

Bill discussed this with Matt(Town Lawyer) and he said that it would be an area variance.

Mr. Leerkes said that an Area Variance is if you needed a setback from his understanding. Use Variance is a variance to land use that is not allowed in the zoning district where the property is located. That is the situation we are in. The problem here is it is not zoned for solar and this would be a Use Variance.

Doug asked if the application was prepared by APEX

Dr. Cook said yes it was.

Mr. Leerkes said they filled it out for a Use Variance but they checked the application for an Area Variance.

Dr. Cook asks if it makes a difference what was checked area or use.

Mr. Leerkes states it does make a difference because you got turned down because it wasn't approved to use for a Use Variance and it's not an Area Variance because of setback of neighbors and such.

Mr. Leerkes is asking if he can check the Use Variance box instead of the Area Variance box. There is a discrepancy from one page to the other. The paper is filled out as a Use Variance . Mr. Leerkes is fine with checking the box.

Dr. Cook told him that it was alright to check the right box.

Bill said the only Solar that is allowed in there is roof top solar system or tier 1 system.

Mr. Leerkes asked Mr. Ball if he denied it because it wasn't an allowable use. Bill said, yes. So it is a Use Variance and not an Area Variance.

Mr. Leerkes asked if they all agreed that it was a completed application.

Joyce said that there are 4 criteria that have to be met and it doesn't meet the last criteria.

Mr. Leerkes says that right now we need to decide whether it's a completed application.

Resolution#02-2020 brought by Joyce, seconded by Doug to declare this a completed application for Area Variance. **All in Favor 3-Aye, 0-Nay Carried.**

Board Questions

Mr. McTyier asked from pictures, you are allowed a roof top solar, there is a building there, Is it a Barn?

Dr. Cook said yes it is a barn area

Mr. McTyier was wondering why not put it on the top of the barn because this would be accepted use.

Mr. Cook says because the barn is too small.

Mr. McTyier asked if it was a gable roof.

Dr. Cook said no that it is a straight roof.

Mr. McTyier said so one side faces south and faces west.

Dr. Cook said the solar will be used for their cottages to generate electricity for their family business. This is a generation family corporation, Heart Bay Environment Inc. This will help generate enough income to hopefully keep the family business going, so they don't have to sell the place. They got a 25% raise in their assessment a couple of months ago, we are trying to keep a family business going, sometimes you need to be able to cover the budget costs to have excess cash to be able to pay the taxes.

Mr. McTyier asks, so this is basically the financial hardship that you are claiming to have?

Dr. Cook says yes it is.

Ms. Barry asks if the reflection from the solar panels, will this be angled to not reflect.

Dr. Cook states, it won't matter, this panel won't be visible from any building at all.

Ms. Barry says that's not what she is asking, "Will the reflection, reflect over the mountain on the other side of them."

Dr. Cook said no they are south end and the back face north and they are angled to get the maximum benefit of the solar.

Doug says the property is residential and at some point in time, it could be lost.

Dr. Cook said yes and some point in time it could burn down given the latest situations.

Mr. Leerkes says since it's not an approved use and it's a use variance, there are 4 criteria that you must meet.

Mr. Leerkes tells what the 4 criteria's are and says he understands that taxes went up, but taxes are not a hardship, everyone has to deal with them.

Dr. Cook only those on the lake shore of Lake George are dealing with this a little differently than others are, this is property we have inherited down through generations, I'm probably the 5th generation to own this property, this is where property taxes become a burden on the people that inherit the land. People buy land in this district, knowing full well about the higher taxes, but when you inherit the land, there are times when you can use it as a , just like the man who built a house and 50 years later, had to

sell because he couldn't afford to pay the taxes on it. The liability on all of us on the lake shore that inherit land is the taxes.

Mr. Leerkes says he understands that but the zoning law in Ticonderoga that just passed last year, it's very new, said no ground mounted solar in a residential zoning.

Dr. Cook says that he doesn't think that it is residential.

Bill says that it is medium density residential, and it says that solar systems are allowed and can be used.

Mr. Leerkes said they just need the zoning law to say medium residential is allowing tier 1, which is roof mounted.

Bill says no that it needs to be tier 3 that they allow, because tier 1 is already allowed.

Mr. McTyier says that it is considered a commercial solar system right is that why?

Bill says that is a side of it, usually you don't have it running right into the grid, you have it running through one of your own meters.

Mr. McTyier says that on the application is said in one spot that is was off grid and then another spot it said grid tied, he owns solar panels and his goes to national grid and you will be allowed credits right?

Dr. Cook said sure.

Mr. McTyier said he is all for solar, we just have to make sure to follow the laws.

Bill says he has talked to several people around the area and when he showed them the aerial maps, they wouldn't be able to see it at all from the lake

Mr. McTyier said that is one of the important factors too.

Mr. Leerkes says his point is that it is zones for Tier 1, and that was by the elected body. We aren't the elected body that changed the laws.

Bill says this is why we have the Zoning Board of Appeals, because everyone has the right to appeal.

Mr. Leerkes says he understand that but its not their job to re-write the laws. Their job is to check the interpretation of the laws.

Bill says as long as he meets those 3 or 4 criteria.

Mr. McTyier said to keep things consistent, I remember when we had a case in town of the same thing. It really came down to wasn't affecting the neighborhood, it wasn't causing any kind of changes, those people were told that unless you documented that hardship with documents, anyone can come in saying that they have a lot of tax bills and that it is a hardship, and I am sure it is, that's why I work like I do, but you must prove it to get it, and how you do that I don't know.

Mr. Leerkes states you must have documented proof to prove the hardship. He understands that the solar company filled out the application. He has no question that it won't affect the neighborhood. I know the area and you aren't going to be able to see it. We have neighbors that have responded and we will hear from them this evening. Mr. Leerkes asked the neighbor if he would like to speak.

Don Meserve, I am all for solar, and this project will not be seen by the general public. If we don't go to solar, we aren't going to be preserving anything. We will be looking up there at Mountain tops. I encourage this board whenever someone comes up with a reasonable plan about solar or any alternative energy, that it should be considered in a very positive light, because without it this world is not going to be a world. As an adjoining landowner, I have absolutely no problems with what he is doing.

Mr. Leerkes said that he can't disagree with what Don has said, except the law.

Mr. McTyier said looking at the future and that is this all changes if this land is protected or some kind of conservancy. He asks what is the number of acreage there, what is the minimum acreage.

Dr. Cook said 1 acre, and it is considered Row use by the APA.

Mr. McTyier, said let say you get solar and you are paying your electric and things continue to get worse and you decide to sell some of this land. A developer buys it, what size lots do you get rid of and start tearing trees out. If the land is preserved and there is an assurance for that.

Dr. Cook said, we have no idea whether this could happen or not.

Mr. McTyier said I know you don't intend for that to happen, none of us intend for that to happen.

Bill says part of the law says that if that happens they have to be removed. I sat in on the preliminary talks and they adopted the solar law and around the lake was the hot subject. Nobody around the lake wants to wake up and look at the sunrises and see a big shiny array of solar panels across the lake. You go to Queensbury and I can't believe they let them.

Mr. McTyier, When I see that stuff shining, in a way, I like it because I know what it is doing, do you understand what I am say. I am not disagreeing with what your idea. I think it is great. If we had someone from the water shore or Lake George from the town when they made this law. There wasn't a whole large area for them to think about when they did this law. They did this for a reason.

Bill Ball said this is why they did it because it has to be natural shielded ...inaudible to many speaking.

Mr. Leerkes said if it is not allowed on the ground, it is a Tier 1 right.

Dr. Cook said it depends on who you ask. The APA just approved a 2 megawatt system for Ticonderoga yesterday. The property is rural use but still medium property.

Mr. Leerkes said yes, but not in a medium residential.

Dr. Cook, I don't know that I don't work for the county, I am in resources.

Mr. Leerkes said I just mean the zoning; you are zoned as medium residential

Dr. Cook says yes for the town, but the APA says rural use. It splits modern intensity on the lake side and Rural on the other. I have to go through them....inaudible too many speaking at once. It is a true planning board case from the Lowes Building.

Mr. McTyire said are you saying that the APA was being lenient. Is the Lowes building in an area that is zoned for that?

Mr. Leerkes said it is an agri/market district, which has rules on what percentage of the range it will cover.

Bill says that up there it is 250 acres.

Ms. Barry says she can see that he has completed all of this except for the 4th criteria.

Mr. Leerkes said that has been what he is saying. We have 4 criteria's that have to be met, not just one but all 4.

Ms. Barry said the 4th one is a hardship which has not be self-created. Which like we explained before, I think if you got that in writing.

Bill said you can definitely show your electric bills, that would be quite a hardship.

Mr. McTyier asked how many building they had.

Dr. Cook said they have 12 buildings.

Bill says that a lot of electric bills

Mr. Leerkes says everyone has electric bills.

Mr. McTyire says that those building create an income also.

Dr. Cook says the buildings are the only reason they still own the property.

Bill says that the people that come to rent these buildings spend a lot of money in the town, that is one of our biggest draws.

Don Meserve said talking about this new solar law that is in place, it is a new law. I kind of felt that was what the Zoning Board of Appeals was about, so when there are discrepancies or issues, to raise those issues and help solve them, and adjust the law. It is kind of hard for someone to come forward and say,

I want to do this and to be told that there is a new law. Nobody knows how the new law is going to be in the next 10 or 12 years. Just hope that solar will be more prevalent.

Mr. Leerkes understands what you are saying. I don't have a problem with the solar aspect of it at all. The laws are passed in the Town by the elected officials. We aren't elected. We aren't here to change the law; we are here to check the interpretation of it. On a case by case we can grant a use, if it meets the criteria, what I am saying the criteria for a financial hardship are the proof. Anybody can come in and say I'm having a hardship. Because we aren't elected officials, that is a slippery slope if we change the law. That would be like you saying I don't like the law so let's change it. We don't have the authority to change the law.

Don says that's not the point he is making, for you to change the law. I think the solar law is going to be forever evolving, and changing.

Mr. Leerkes agrees, but it needs to be done by the elected bodies.

Don said the point he is trying to make is that if the gentleman is denied this tonight then you guys need to approach our elected officials and discuss it with them about what is going on.

To many voices speaking, inaudible.....

Mr. McTyier says that there is nothing that says that this can't be tabled.

Dr. Cook says so if you say you need something that supports the hardship, what is it that you would like?

Mr. McTyier says that is a tough one.

Ms. Barry says power bills and possibly what you are going to save by having this.

Dr. Cook says this system is going to pay all those bills.

Mr. Leerkes said your mention of hardship was the big increase in costs, and you mentioned taxes and assessment.

Dr. Cook says unless someone changes the rate, if your assessment goes up, so does your taxes.

Mr. Leerkes says he understands that but it was literally your assessment that went up.

Dr. Cook said for them it went up almost 30%.

Ms. Barry said she can sympathize with you for example, Grace Trombley, she inherited this property from family, then it the crick, now it's the lake. Almost everyone on the crick that was permanent residents had to move.

Mr. McTyier asked where this was, the little falls. To many talking... inaudible.....

Doug said when they did his study, what they did was a 10% allowance over what the cost from the year before as far as electric. Are you planning on going beyond that or just your use?

Dr. Cook said he started this process a year and half ago, so they have my bills for the last 18 months.

Mr. Leerkes asked if this was one lot. (Looking @ a map and asked to show him the lot)? What is on this property?

Dr. Cook states a barn.

Mr. Leerkes states it is one tax unit and can only put one residential building.

Dr. Cook says I can put many residential buildings.

Mr. Leerkes says, Yes only if you subdivided it.

Dr. Cook says it is 250 acres and it will be 142 panels, (going over the map of property with Dr. Cook is Mr. Leerkes)..

Mr. Leerkes says this is rural use.

Mr. McTyier asked if these were going to be individual.

Dr. Cook says no, one rack.

Mr. McTyier says that it is very oriented and very similar to a rooftop.

Mr. McTyire and Dr. Cook talking on top of each other... in audible....

Mr. Leerkes asks if these are actual existing trees, so this is the lake side.

Dr. Cook is showing him the property on the map.

Don states he is on the back side of the mountain to this property.

Ms. Barry says he meets all of the criteria except #4.

Dr. Cook asks once again, what do you need to substantiate this? He says he goes through this on the Lake George Commission. You can't go for just saying a hardship.

Mr. Leerkes says he understands, but you have to meet all 4 criteria.

Ms. Barry wants to see electric bills and see how much its going to save him.

Dr. Cook says he is surprised that is not in your application.

Mr. Leerkes says they didn't give us anything for that. If you read the application it says that if the area variance is still requested please refer to the section of area variance. It is not my job to look it up.

Mr. McTyier said we had one person asks for proof and they walked away, they didn't even continue to ask for the variance, so I don't think we can state what it really has to be, but present some stuff. We don't want to get into your personal information, just need something to show how much your tax assessment went up. Tax assessments are public knowledge, anyone can look those up.

Mr. Leerkes said also show your electric, then if you wish we could table , and set a date to reconvene, because if we deny then your only option is ...in audible...

Mr. McTyier said he doesn't think that we necessarily have to hear it again, I think we can make a decision with in a certain amount of time.

Mr. Leerkes said we can't close the public part if we want more evidence, so I believe if we adjourn to a specific date , and we agree now to a date, then we don't have to re-advertise because it is an extension of this meeting. Wanted to know how much time do you need for a public notice.

Ms. Schryer stated 10 days.

Mr. Leerkes said he read up on the rules last week and he is pretty sure , if we set the date today, that is public notice since this is a public hearing.

Mr. McTyier said he would like to know from the Supervisor, is that who did the new laws, was that the supervisor?

Mr. Leerkes said it the whole town board that did the new laws.

Bill states that it says that the Town Board can alter or change the laws.

Mr. Leerkes says that he believes there will be many changes to get it right.

Mr. Leerkes asked Ms. Schryer to message the Town Clerk to see if we adjourn to a set a date now, tonight if we need to set another public notice. That way Dr. Cook can take care of his stuff and you won't have to wait a month.

Mr. McTyier asked if these were considered commercial class because of the size of them. Whenever they do these bigger solar projects they always have in there something to provide for dismantling. I would like to see in here something that says if you all of the sudden decide you want to sell, then that area would have to be dismantled.

Mr. Leerkes said that there is, it is a rule, it is not in here.

Bill says that any solar project has to have this.

Mr. McTyier says that there needs be something or someone provided to take them down.

Bill said that APEX will put up a bond for this that is what they told us.

Town Clerk Tonya Thompson was called and said that if they table the meeting tonight then you have to specifically say when you will convene to hear it again. You need to pass a resolution to table it until you specifically want to bring it back again.

Mr. Leerkes asked Dr. Cook how long he would need to get his information together.

Dr. Cook asked what the date was said that the 21st of September was a week and was enough time for him.

The ZBA Board asked if Wednesday, September 23, 2020 at 6:00p.m. would be a good time for Dr. Cook.

Dr. Cook said yes, because that gives him time to check to see when the town accepted the solar law, because NYSERDA has their own requirements for approving solar and I don't remember if you go to NYSERDA and say I want to put a solar system in and how do I go about this as far as permitting goes and they have a whole song and dance and you don't have to go through that, you aren't going to have to make it up along the way and leave the ZBA trying to figure it out.

Resolution#03-2020 brought by Joyce and seconded by Doug to table the meeting and reconvene for Wednesday, September 23, 2020 at 6:00 p.m. **All in Favor: 3-Aye, 0-Nay Carried**

Mr. Leerkes said that they all agreed verbally that they are only looking for the one additional criteria.

It is under his understanding that we don't close the public hearing.

Ms. Schryer says no we don't.

Mr. Leerkes asked if anyone else had anything else to speak of.

Don said yes he would like to say when you talk about property that has been in a family for years, the object that he feels very deeply about, so you don't have to divide the property, and if you can't do it and it will get sold to a development and would that area of the lake want more development on that area of the lake. So to me it is thinking about what is good for the area. That's what I thought of Zoning Board of Appeals. What do you do when someone wants to put up an addition on and is supposed to be within 10 feet of the right away, and you guys say ok. Then you approve it.

Mr. Leerkes says that is much easier. That is the difference between a use variance and an area variance. In that situation you are denied because you don't need the set backs, you are not denied because it not an approved use. In an area variance, you only need to meet 1 of the 4 criteria, where in the use variance you need to meet all 4.. It is basically to protect the residence from an unelected board not re-writing the rules.

Dr. Cook thinks that the role of the ZBA is to make some of the rules more humanistic and easier to abide by.

Mr. Leerkes also thinks if we get what we need to get to prove it, we will get that way. It also brings a point, we are in a bind, and as citizens, say to the town board, you need to relook at this, and we all have the right to do that. Maybe they need to adjust their solar law. Why not allow ground mounted, within a certain size.

Bill said that maybe that the town board could talk about this.

Don said maybe they could put a line in there that says according to the individual lot, because every lot in town is different.

Mr. Leerkes said this is a large lot.

Dr. Cook says I don't consider this a large lot. This is way passed lot size. 250 acres is a pretty big lot.

Mr. Leerkes says that medium residential is smaller than an acre.

Dr. Cook said there is no way, from being involved in the Zoning a long time ago, that you should use anticipation use down the road as a reason not to approve. He would never agree to that, because you don't know what is going on down the road from that. It maybe what we want to do 20 years from now, is cover that whole field with solar panels. We are so hurting right now to get energy without carbon. There will be a real value in putting in alternative energy. Trying to say what we have to do about this and that, trying to anticipate what is going on down the road.

Resolution#04-2020 Joyce made a motion, seconded by Doug to adjourn the meeting at 6:50 p.m. until Wednesday, September 23, 2020 at 6:00 p.m. **All in Favor 3-Yes 0-Nay Carried**

Respectfully Submitted by: Amy L. Schryer-Deputy Town Clerk

