

**MINUTES OF THE TOWN OF FORT EDWARD ZONING BOARD OF APPEALS
MEETING HELD ON THURSDAY, JULY 29, 2021 AT TOWN HALL COMMENCING
AT 6:00 P.M.**

Chairman LaFay called the meeting to order at 6:00pm

PRESENT: Chairman Ken LaFay
Dolores Cogan
Jim King
Richard Fisher

ABSENT: Jim Maskell

OTHERS PRESENT: Lisa Harrington, William Harrington, Matt Tripoli, Sandra Austin, Syed Hussnane, Mohamad Iqbal and Zoning Board Clerk Aimee Mahoney

APPROVAL OF MINUTES:

MOTION by Jim King, Seconded by Rick Fisher to approve the minutes of the meeting of July 15, 2021 **ALL AYES**

BUSINESS:

**Lisa Harrington
Use Variance Application
523 Lower Oak St.**

Chris Koenig: The building is currently a closed daycare center, the building was constructed in the 70's and is currently zoned R-2. The building was the former IGA in the 70's so what we have is a commercial building that was constructed and then the zoning code was adopted and it's an R-2 district which is residential so that makes this property non-conforming. The applicant is seeking relief from several parts of the zoning code one of which is the use because they are proposing a deli and 2 apartments. The relief for the use and from residential conversions is from section 108-42 B. Nondwelling Structures: No commercial or manufacturing structure, originally designed for other than residential use, shall be converted to a dwelling structure, nor shall any such structure which was so converted prior to the adoption of this chapter be further converted to provide for additional dwellings. Also, a non-conforming use cannot be expanded or changed and that is Article 9. Was there a previous variance granted for the operation of the daycare center?

William Harrington: No, basically what they told us when we were doing the daycare center is that schools were allowed in that zone so as a pre-school it was allowed into the zone.

Chris Koenig: I had a few questions regarding the site plan which is done at the Planning Board not this Board but there are some applicable issues one of which is parking. The zoning code requires 1 parking space for every 300sf of floor space which is approximately 18 spaces.

Syed Hussnane: We are actually thinking about changing it to a wholesale place instead of a deli. It would just be wholesale goods, no cigarettes or beer but just paper goods and household items. It will be more of a warehouse where we would deliver stuff to other small businesses. If we start with a warehouse would it be possible in the future to do some retail?

Chris Koenig: You would have to come back to the Board for that but in this case if you are not specifically requesting the parcel to be rezoned commercial it seems like you want to keep it as R-2 the Zoning Board will have to be very specific as to what is allowed. It would be a big departure from deli/retail to a warehouse because now you will have more things like truck traffic in and out more so than with retail. I would have to look at the requirements for parking for a warehouse but you would have to demonstrate space for loading as well as parking for staff. Did Matt French tell you that you would need Site Plan review?

Lisa Harrington: We aren't submitting an application for Site Plan until we know if the zoning goes through.

Chris Koenig: In terms of SEQR it is an unlisted action so that will need to be done by this Board. It will be a short form. A county referral is not required.

Chairman LaFay: We will need a new application due to going from a deli to a warehouse as well as a short form SEQR form. Will you be proposing any signage?

Syed Hussnane: Yes we will but should not have any problem staying within the code requirements.

Jim King: Will there still be an apartment now that it's a warehouse?

Syed Hussnane: Yes, it will be an apartment upstairs and a warehouse downstairs.

Jim King: How many apartments 1 or 2?

Syed Hussnane: I believe the Town allows 2 but right now we only plan on 1 and it will be owner occupied.

Chris Koenig: Do you know how many trucks would be in and out and what kind of trucks?

Syed Hussnane: Most of the buying that we will be doing will be in a 7-9 passenger van, it will not be trucks. I don't want to say that there will never be trucks as the business grows. Most of the buying we can do ourselves with minivan delivery. We will be starting small and I already have accounts that we are going to work with. Worst case scenario would be a truck like a U-Haul size but it will not be a full tractor trailer. It will be all dry goods.

Chris Koenig: How many people would work there?

Syed Hussnane: Probably 4.

Rick Fisher: What would your hours of operation be?

Syed Hussnane: Probably 9:00am-5:00pm or 6:00pm.

Dolores Cogan: Will there be one entrance and one exit or will it be separate?

Syed Hussnane: It's just going to be one, we will primarily use the front entrance but there is side entrance also.

Chris Koenig: Along with the updated application and the Short EAF form make sure you answer the questions for the criteria for a use variance on the application as well. Also, the parking requirements for a wholesale establishment is different from retail; the requirement is 1 space for each 2 employees in the maximum shift and then the total parking area cannot be less than 20% of the building floor area.

Dolan Solar CS Energy

Matt Tripoli: Our Company constructs large scale ground mounted solar projects. We are here tonight to talk about our Dolan solar project in the Town of Fort Edward. National Grid has a large power line that runs north/south through Town that we are proposing to connect to for this project between Cary and Patterson Roads. One of the Town Codes requires that we can only occupy 40% of a lot with solar panels and currently we are working with 7 different landowners on this project. We have an option to purchase a piece of property and options to lease property for our solar facilities from our other landowners. In order to reduce the overall footprint of the project we would like to keep everything as clustered and close to National Grid as possible so even though we have multiple tax parcels and properties coming together we would like to keep the solar facility continuous through the property lines. To comply with zoning law for the R-Ag district that we are in we need a rear yard setback and side yard setback. We appeared in front of the Planning Board a few weeks ago and they circulated their intent to be lead agency letters for the SEQR process. We have a site plan application with them and also discussed the variances needed with them.

Chris Koenig: For this project since it is in the Ag District we would need to do a County referral for the variance, we will also be referring the site plan to them as well. Sometimes you can consolidate them but I don't think the site plan is far enough advanced to do that so they can be sent separately.

Matt Tripoli: The people involved are where the variances will occur. The Planning Board gave the feedback that they thought it made sense to lay it out this way to minimize the impacts and try to keep the project as consolidated as possible. We will also be hiring a third party to do a Decommissioning Plan as well as post security for removal cost and restoration of the property all as part of the site plan review.

Dolores Cogan: Is the lease for 25 years?

Matt Tripoli: The base lease we have with the landowners is 25 years with the possibility of extension.

Dolores Cogan: I understand the guidelines of the variance and what you are proposing; my question is the footprint that will be left as well as attention to the wildlife and I understand you have already submitted an incident take permit with DEC or have you not?

Matt Tripoli: We have not submitted a permit to them; we have had some correspondence with them about what their records are of species in the area. We just got a letter back from DEC as part of the agency coordination process where they identified those species again. There are 2 approaches you can take with DEC and one is they have records of different species in their databases and when we apply for a project they reply to us and say we can do surveys to determine if those species are actually present so I think the approach we most likely will take just from a timing perspective is we will assume that the DEC's records are correct and if we install the project as we are proposing we will disrupt some habitat and will have to re-establish habitat somewhere else for a net conservation benefit as part of the incidental take permit.

Dolores Cogan: I would be satisfied then if the Board would follow through with the environmental piece because I think that is vital to have this project be successful.

Chris Koenig: That will be handled under SEQR at the Planning Board.

Chris Koenig: NYS Ag. & Markets also has construction standards that we have to abide by one of which is taking really good care of topsoil.

Rick Fisher: After 25 years if the variances are granted will those variances still hold after the project ends?

Chris Koenig: Typically the variance carries on with the property but the Board can approve the variances just for this project only.

Dolores Cogan: How many acres are being clear cut?

Chris Koenig: In the application it shows -52 acres.

Area Variance Criteria:

- 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: **Board consensus: NO, ground mounted solar is a permitted use and granting the variance would allow the project footprint to be minimized.**
- 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: **Board consensus: NO, due to multiple properties being leased there is no other way to achieve the same result.**
- 3) Whether the requested area variance is substantial: **Board consensus: NO**

- 4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district: **Board Consensus: NO, ground mounted solar projects are permitted in all zoning districts in the Town.**
- 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: **Board consensus : NO**

MOTION by Jim King, Seconded by Dolores Cogan to approve the requested area variances only for the length of the proposed solar project as proposed in the zoning analysis table on page SK-02 dated 07/06/2021 contingent on County Planning Department comments **ALL AYES**

ADJOURNMENT:

MOTION by Jim King, Seconded by Dolores Cogan to adjourn the meeting at 7:17pm **ALL AYES**

Dated: August 3, 2021

Aimee Mahoney, ZBA Clerk