

MINUTES OF THE COOPER TOWNSHIP ZONING BOARD OF APPEALS MEETING ON FEBRUARY 23, 2022

A meeting of the Zoning Board of Appeals of Cooper Township was held on February 23, 2022 at 5:30 pm at the Cooper Charter Township Hall, 1590 West D. Avenue, Kalamazoo, Michigan.

Members Present: Stephen Magura, Stephanie Davis, Sheryl Gluchowski, Dave Fooy, Taylor Miller (sitting as an alternate for Carol DeHaan).

Members Absent: Carol DeHaan

Also Present: Michael Homier, Township Attorney; Julie Johnston, Township Planner; Applicant, Maura representing Climax Solar, Daniel Petrasko, property owner

Chairperson Gluchowski called the meeting to order at 5:30 p.m.

Review and Approval of Minutes

Chairperson Gluchowski asked that the draft minutes of the February 3, 2022 meeting be corrected to fix typos and an extra word. A motion to approve the February 3, 2022 minutes as amended was made by Comm. Magura and supported by Comm. Davis. Motion carried unanimously.

Climax Solar side yard variance

Applicant: Climax Solar

Owner: Daniel Petrasko

Address: 5971 North 12th Street

Parcel: 02-31-101-013

Request: Consideration of a variance to allow a private solar array to be located in a side yard when placement in a rear yard is required.

Maura a representative on behalf of Climax Solar stated that the company experienced some miscommunication issues regarding the site plan approval of the project. The original site plan included installation of solar units on both the property's roof and mounted to the ground. The initial project manager only filed the site plan for the ground mount solar units even though the project included roof mounted panels. The ground mounted site plan was denied. Then the company subsequently submitted building permits for both the ground mounted and roof mounted panels, which were both approved.

Township Planner Julie Johnston stated that Maura was mistaken on some of the details. Ms. Johnston explained that the Township received an application for both ground mounted and roof mounted solar panels.

The ground mounted panels were denied through zoning, and a building permit was requested only for roof mounted solar panels. When the building official went out to inspect the site, he found only ground mounted panels, thus leading to the variance request.

Maura sincerely apologized for the issues with the installation. She added that property in question does not have a large enough area in the back yard to locate ground mounted solar panels due how far the home is set back into the property. The reason Climax Solar chose a split system was due an engineering report that indicated issues with glare off of the solar panels if they were mounted on the front pitch of the roof.

Comm. Gluchowski stated that she had a hard time understanding how the installation team could have improperly installed the system on the ground since the mounting equipment for a roof mounted system would be very different than one for a ground mounted system. Maura, the representative for Climax Solar, stated that there were miscommunication issues within the company from the beginning and not just on the date of installation.

Public Hearing

Comm. Gluchowski opened the public hearing and asked if there were any public comments on the variance request. Township Planner, Julie Johnston stated that the Township did not receive any written remarks regarding the variance request.

There being no public comment, Comm. Gluchowski closed the public hearing.

Board Discussion

Comm. Miller asked why a roof mounted system was not appropriate. Maura, the representative for Climax Solar, stated that if the panels were mounted on the front roofline there was a potential for glare off the panels to enter the roadway potentially limiting driver visibility. Township Planner Julie Johnston asked if any roof panels were planned for this system. Maura responded that as of the date of the meeting, the entire system is ground mounted, and she is not sure what the plans are moving forward because they would depend on the outcome of the meeting.

Comm. Gluchowski stated that the Zoning Board of Appeals has specific criteria that they must base their decisions on, the first being if the property had a unique physical characteristic that prevented it from complying with the zoning ordinance. Comm. Gluchowski remarked that this property does not have a back yard so obviously it would be impossible to comply with the ordinance.

Comm. Magura asked if the rear yard setback was nonconforming and if so, how would that be taken into account. Township Planner Johnston stated that the minimum rear yard setback is only 15 feet, therefor the property is conforming.

Comm. Miller asked about the miscommunication issues in order to understand why the solar panels are currently only ground mounted even though the original site plan had them located on both roof and the ground. Maura responded that their company started a year before COVID hit and had gone from a small company of 5 people to a staff of over 100 and then shrunk back due to the virus. Additionally, their original electrician lost his license causing the company to lose every electrical permit. Maura confessed there was a lot of confusion while reapplying for all of the electrical permits and dealing with staffing issues.

Comm. Miller remarked that the ZBA must determine if the property could comply with the ordinance, and roof mounted systems are allowed within the Township, she asked why the site plans state that a roof mounted system would not be appropriate. Maura explained that their engineers found the weight of the entire system was too heavy for the roof to hold due to the age of the home and the size of the rafters.

Comm. Magura asked if they could have installed a smaller roof mounted system instead. Maura responded that a smaller system would be counter-productive for the home since the purpose is to limit their carbon footprint. A smaller system would not produce enough electricity requiring the owners to still need electricity from a utility provider.

Comm. Gluchowski informed the applicant and the ZBA, that they must look at their application as if the project were not completed, rather than completed and in violation.

Township Attorney Mike Homier stated that he prepared two resolutions, one denying the variance, and one approving the variance. Attorney Homier suggested the Board review the resolutions to see if they felt one fit the situation at hand more than the other.

Township Planner, Julie Johnston explained that this property did have some unique characteristics including the fact that it is a corner lot with two front yards and two side yards, and the fact that the home is situated to the rear of the property with very little property behind the home.

Comm. Gluchowski remarked that considering the layout of the property the applicant did select what she thought was the best location for the solar system.

Ms. Johnston outlined her staff report for the Board and explained that conforming with the ordinance is unnecessarily burdensome because there is not a back yard to locate a solar system within. Additionally, Ms. Johnston stated that other property owners within the Township who have a back yard would be allowed to ground mount their solar panels.

Ms. Johnston explained that the spirit of the Ordinance requiring ground mounted panels to be in the rear yard was designed to screen solar equipment from public roads and neighboring properties. Ms. Johnston stated that the placement of the solar equipment in this case complies with the spirit of the Ordinance to the extent it possibly can.

Comm. Gluchowski asked if Attorney Homier thought that it would be more compliant with the zoning ordinance if they required the applicant to locate some of the panels on the roof. Attorney Homier stated that the ZBA could conditionally require the applicant to place some of the panels on the roof but given the facts of the case, he did not feel that requiring the solar panels to be roof mounted would be considered reasonable.

Comm. Gluchowski remarked that the current ground mounted solar panels look nice and do not impact the neighbors or the road and therefore she does not see a need for additional screening.

Comm. Magura asked how high the solar array was from the ground to which Maura responded that it was approximately 8 feet from the ground. Comm. Magura stated that given the height there is not much you could plant in the way of screening that would not interfere with the operation of the solar array.

Comm. Miller stated that the applicant could add in screening towards the road that would obscure the solar panels without interfering with its operation.

Comm. Gluchowski stated that she was inclined to approve the variance based on finding that the property has unique physical attributes and set-back restraints which prevent the Applicant from constructing a ground mounted solar array within the rear yard of the property. Additionally Comm. Gluchowski did not think that the roof could hold the entire system thereby creating a need for some ground mounted solar panels and requiring a variance. Comm. Gluchowski found that approving the variance would not be contrary to the public interest and upholds the spirit of the zoning ordinance without causing adverse effects on the surrounding properties.

A Motion was made by Comm. Gluchowski supported by Comm. Miller to adopt the resolution approving the variance. Motion passed 4-1.

Citizen Comments

No public comments.

Adjournment

Motion to adjourn by Chairperson Gluchowski and supported by Comm. Magura. Motion passed 5-0.