DRAFT, SUBJECT TO REVIEW, CORRECTION AND APPROVAL

DUNBARTON ZONING BOARD OF ADJUSTMENT
MONDAY, JUNE 11, 2018
DUNBARTON TOWN OFFICES – 7:00 P.M.

The regular monthly meeting of the Dunbarton Zoning Board was held at the above time, date and place with Chairman John Trottier presiding.

The following members were present:

  John Trottier, Chairman
  Dan DalPra, Co-Chairman
  Alison Vallieres, Secretary
  James Soucy
  John Herlihy

Town Offices:

  Donna White, Planning and Zoning Department

John Trottier, Chairman, called the meeting to order at 7:00 p.m.

Meeting Posting:

The Chairman verified with the Secretary that the meeting notice had been posted in two public places throughout the Town and published in the Concord Monitor for one day. In addition, the notice was posted on the Dunbarton Web Page.

APPROVAL OF PREVIOUS MEETING MINUTES – MONDAY, AUGUST 14, 2017 AND NOVEMBER 13, 2017

MOTION:

John Herlihy made a motion that the Monday, August 14, 2017 minutes be approved as written. Dan DalPra seconded the motion. The motion passed unanimously.

John Trottier stated that he had made several grammatical changes in the minutes for November 13, 2017. He presented them to the members. They agreed with the suggested changes.

MOTION:

Dan DalPra made a motion that the Monday, November 13, 2017 minutes be accepted as revised by John Trottier. Jim Soucy seconded the motion. The motion passed unanimously.
ELECTION OF OFFICERS:

MOTION:

Chairman:

John Herlihy made a motion that John Trottier be elected as Chairman for the 2018 year. Dan DalPra seconded the motion. The motion passed by a majority vote with John Trottier abstaining.

Vice-Chairman:

John Trottier made a motion that Dan DalPra be elected as Vice-Chairman for the 2018 year. John Herlihy seconded the motion. The motion passed by a majority vote with Dan DalPra abstaining.

Secretary:

John Herlihy made a motion that Alison Vallieres be elected as Secretary for the 2018 year. John Trottier seconded the motion. The motion passed by a majority vote with Alison Vallieres abstaining.

7:10 P.M. – PUBLIC HEARING: ROBERT KELLER, PLANET GREEN ON BEHALF OF BAKER-CROMWELL TRUST (G3-01-20) REQUESTS A VARIANCE TO ARTICLE 4., SECTION B. TABLE OF DIMENSIONAL REGULATIONS TO ALLOW THEM TO INSTALL A 10.88 KW FIXED GROUND MOUNT SOLAR ARRAY CLOSER TO THE LOT LINE THAN ALLOWED LOCATED AT 99 STINSON DRIVE IN THE MEDIUM DENSITY DISTRICT IN DUNBARTON, NH

Robert Keller, Planet Green on behalf of Baker-Cromwell Trust, explained the plan as submitted as follows:

Robert Keller – Stated that due to the unique design of their property, north to south, it is better if the solar array faces south and west. The layout of the property and the vegetation on the property is why we located it where it is proposed. It is located a little bit into the setback but still on their grassy area.

John Trottier, Chairman, noted that the Solar Array was 16’ into the east side setback of the property. The proposed array could be shifted to be outside the setback and still be in the same orientation as presented.
Alison Vallieres asked if the playground equipment was permanent or can it be moved. Could the solar array be placed up near where the box labeled "Proposed solar panels, etc.".

Keller stated there is bark mulch, etc. along with irrigation as well in the area she was referring to. That location would add expense to the owner.

Robert Keller noted that the more we face North, the worse the product of the system. If we put the solar array closer to the playground equipment, it would be a concern to the kids playing. In addition, there is mulch, etc. along with irrigation pipes.

Applicant stated if he moved the solar array more to the west so it was not within the setback, it would be in the middle of that portion of his property.

Robert Keller stated if they moved the proposed location, it would still be in the middle of the grass.

John Herlihy stated it was facing southwest. What about the top of the lot on the north?

Robert Keller stated the trees in that area would cause too much shading.

Jim Soucy stated the drawing does not show the tree canopy along the east side beyond the well setback line towards the northerly property line. We can’t tell where the tree canopy is.

John Herlihy stated “Are you telling me there would be no other place to put this solar array?"

Robert Keller noted that the area behind the house, etc. was wooded, etc.

John Herlihy asked why he couldn’t move the playground equipment?

Dan DalPra asked how does this Solar Array get installed?

Keller noted it will be installed with ground screws. They hold the solar array in place. They are less invasive then regular screws.
John Herlihy asked how much electricity will this product produce?

Keller stated that it would produce more of the electricity in the middle of the day. Approximately 16,000 KW hours per year. Would cover his whole household. It offsets 100% of someone’s electrical uses.

Jim Soucy noted you say there are 80’ tall pine trees in that area.

Keller stated the property slopes down. There are pine trees along the leach field. Can’t put in a solar array there.

The applicant answered the criteria questions required for the granting of a Variance as follows:

1. The variance will not be contrary to the public interest because:

Answer – The Variance is to install solar panels within the required 40' setback. They are not a structure that will have any impact on the use of the nearest abutting property. By installing solar, the Baker-Cromwells will be lessoning the load on the existing utilities.

2. The spirit of the Ordinance is observed because:

Answer – This is not a typical structure once constructed, there will not be any impact on the direct abutting property. The area on the abutting property has a wetland that will also act as a natural buffer.

3. Substantial justice would be done because:

Answer – The reason for the location of the structure it to put it as far from the road as possible and position the array as south as possible for energy production.

4. The values of surrounding properties are not diminished because:

Answer – Residential solar is becoming more common place.

5 Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
(a) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and;

Answer – The reason for the variance is to "tuck" the structure off to the side of the property and avoid being visible as much as possible. Once in place, the only impact the structure will have is the visibility from the road.

(ii) The proposed use is a reasonable one.

Answer – We feel this is a reasonable use because of the structure's low impact on the abutting properties.

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Abutters were read as follows and noted all had been notified by Certified Mail:

Michael J. Palelli - Not Present
Brad Fournier - Not Present. Mr. Baker-Cromwell presented a letter from Mr. Fournier, copy attached.
David H. Malay - Not Present. Mr. Baker-Cromwell presented a letter from Mr. Malay, copy attached.
Scott Smith and Colleen Smith - Present. Stated they would stare at this and felt it would devalue their property. We would have to look at the back of the solar panels from our house. Object to the location within the setback.
Ryan Ruland - Not Present. Mr. Baker-Cromwell stated that he had received a text message from Mr. Ruland. At this point in the meeting, John Trottier, Chairman, stated that he would not accept text messages.

Jacques Belanger, Surveyor for the applicant - Not Present

Edward Klements - Present. Stated he understands the Board will make a decision, either yes or no. He stated he has had plenty of encroachments around his property.
Looks like it could be put somewhere else on the property. At any rate, he stated he failed to see the real hardship for this encroachment.

Jim Soucy noted your property is at the north of the subject property. He could cut down a lot of trees. If there is a will there is a way.

Robert Keller – There are other locations. We are trying to tuck it off to the side as much as possible and also sticking it in the middle of the yard would not be too appealing.

**Jeff Crosby, Stark Highway South**, Stated he was just an interested party. The Planning and Zoning Board have crafted setbacks. If they do allow structures in the setback, what is the sense of having setbacks. They are hopeful people don’t have to encroach. I don’t feel they have proven this is a hardship. They don’t want to look at other locations. I don’t feel this is a hardship. I am not the one who has to look at it.

Mr. Baker-Cromwell - The hardship is that if you see an eyesore, everyone would see this in the middle of the yard. No one is going to want to buy the property with a solar array in the middle of the yard.

John Trotter noted the five members of the Zoning Board of Adjustment would be voting on this application.

**Board Discussion:**

**John Trottier** stated he felt there are other options on the property for the placement of the solar array. Placement of the array could occur outside the setback with the same orientation as proposed and not require a variance. In summary, the applicant is requesting a variance so he doesn’t have to rearrange existing site features, added expense and due to their personal aesthetics. Values of surrounding properties would be impacted as indicated by the abutter and applicant has not provided adequate evidence or response to this criteria.

**John Herlihy** stated the Planning and Zoning Boards have spent a lot of time developing setbacks. He stated he did not feel this was a hardship. There are other locations on the property.
Jim Soucy noted that of the five criteria that has been presented, he does not see that the substantial justice criteria has been satisfied with what has been presented. Additionally, it does not demonstrate a hardship. There are lots of properties that have narrow areas. There are other locations for the solar array. It seems that the landowner still can do something with his land.

Alison Vallieres stated she felt there were other locations that the solar array could be placed which are not within the setback and the hardship criteria has not been met.

**MOTION:**

John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment deny the request for a Variance to Article 4., Section B. Table of Dimensional Regulations from Robert Keller, Planet Green on behalf of Baker-Cromwell Trust (G3-01-20) to allow them to install a 10.88 KW fixed ground mount solar array closer to the lot line than allowed located at 99 Stinson Drive in the Medium Density District in Dunbarton, NH. This decision is based on discussions among Board members and the fact that the following criteria for the granting of a Variance has not been met.

1. The values of surrounding properties are not diminished.
2. Substantial justice would be done.
3. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Dan DalPra seconded the motion. The motion passed unanimously.

There being no further business, the meeting was adjourned with the following motion:

**MOTION:**

A motion was made by John Herlihy to adjourn the meeting at 7:55 p.m. Dan DalPra seconded the motion. The motion passed unanimously.

Respectfully submitted,

Alison Vallieres, Secretary