

VILLAGE OF CALEDONIA ZONING BOARD OF APPEALS

Village Hall, 5043 Chester Lane, Racine, WI 53402

Tuesday, April 26, 2022, at 9:00 a.m.

1. Meeting called to order

Acting Chairperson Richard Mielke called the meeting to order at 9:00 a.m.

2. Roll Call

Board Members in attendance: Richard Mielke, John Barnes, Jacob Lovdahl, and Roseanne Kuemmel.

Absent: Joan Rennert was excused

Staff Present: Development Director Peter Wagner

3. Approval of Minutes from February 23, 2021, and December 21, 2021, meetings.

A. Motion by Kuemmel to approve the February 23, 2021, minutes. Seconded by Barnes. Motion carried unanimously.

B. December meeting minutes will be held until the next scheduled meeting for possible approval.

4A. Public Hearing

Patrick Krukowski
7023 Whitewater Street
Racine, WI 53402

Request a variance from Municipal code Building Code Sections 15-1-9, 15-1-13(3)(b), and 15-1-13(4) which require that the foundation of a razed building be removed and a new foundation that is compliant with standards for construction of a new garage be installed.

The Public Hearing was opened, and Wagner swore in the applicants, Patrick and Janice Krukowski.

Patrick and Janice Krukowski, 7023 Whitewater Street, gave their testimony outlining their reasons for requesting the variance, explaining that the existing fire-damaged garage is not salvageable. Both of the Krukowskis gave testimony, stating that the existing slab is in good condition, it is 4 inches thick, is not chipped, lies flat and there are no drainage problems associated with it. There is a fuel oil tank for the furnace in the garage along with associated fuel lines that run under the concrete. The tank and the lines would have to be removed and reinstalled if the slab must be replaced.

The Krakowski's presented to the Board documentation from a concrete contractor stating there is no deterioration of the existing concrete slab and no reason to replace it for the new build. They noted the hardships they would face should the variance be denied.

Patricia Krukowski said that if the variance is not approved, it would be a great burden on them because in order to do what is required for a new slab, the driveway would have to be torn up, as would their private sidewalks. The fuel tank and lines would have to be removed to get have a new slab added to the construction project.

If the Board agrees that the applicant meets the criteria for granting a variance, the Board can make a motion to grant a variance allowing the applicant to use the existing slab.

Mielke asked three times if anyone wanted to speak in favor of the variance.

Kristine Brandt, 3147 STH 31, spoke in favor of granting the variance. She said she had been looking at the pictures, studying the case and listening to the testimony and it sounds good.

Mielke asked three times if anyone wanted to speak against the variance.

None.

Mielke closed the Public Hearing portion of the meeting.

5. Board Meeting

A. Deliberation on the preceding petition.

The Board of Appeals reviewed and discussed the testimony presented regarding the unique circumstances that the Krakowskis must work with on their property. The Board reviewed the presented documentation regarding the utilization of their existing garage slab foundation and the reasons for requesting the variance. Board Members discussed the fact that the requirement to build a new slab is a Village rule and not part of the Uniform Dwelling Code, which exempts detached garages from the requirement. They also noted the hardships the applicants would face if the variance is not granted, including being without heat for an extended period of time. A Board Member mentioned the contractor's determination that the slab is in good condition.

B. Decision on the preceding petition.

Kuettel motioned to grant a variance from Building Code Sections 15-1-9, 15-1-13(3)(b), and 15-1-13(4) which require that the foundation of a razed building be removed and a new foundation that is compliant with standards for construction of a new garage be installed, thus allowing the applicant to use the existing slab on which to build a new detached garage located at 7023 Whitewater Street, Parcel ID No. 104-04-23-08-062-000 for the following reasons:

-Preservation of Intent: Granting a variance will allow the applicant to construct a two-car garage, which is a permitted use in the R-5 district.

-Exceptional Circumstances: Unique circumstances exist on the property, including that the heating oil tank is in the garage and fuel lines run under the concrete. The owners would have to be without heat for an extended period of time if a new slab is required. The existing slab has been certified by a contractor as being in satisfactory condition.

-Absent of Detriment: Granting this variance does not materially impair or be contrary to the purpose of this Ordinance to the surrounding properties.

-Preservation of Property Rights: Granting the variance will allow the applicant to build a new garage, pending approval of a building permit.

Motion by Kuemmel. Seconded by Barnes. Motion carried unanimously.

4B. Public Hearing

Marc Silverman
3147 STH 31
Racine, WI 53405

Request a determination regarding the definition of an essential service and the area calculation for a solar power array. And a request for a variance from Municipal Zoning Code Section 16-1-1(a)(11)(a)(10), which states that ground mounted solar arrays are prohibited in the street yard of a residentially zoned parcel, and Section 16-1-1(a)(11)(a)(4), which states that accessory structures located in the street yard shall meet the minimum street yard setback or the average lot street yard setback for a residential district.

The Public Hearing was opened. Wagner swore in the applicant, Marc Silverman. Silverman, 3147 STH 31, gave his testimony and presented evidence outlining his reasons for requesting the determination of an essential service, the determination of the area calculation for a solar panel array, and for requesting the two variances.

Silverman said the process has become much more complicated due to the new (accessory structure) code the Village adopted in December, which changed the requirements and further restricted the location. He indicated it is his understanding he is applying for a variance of the new code. He suggested first considering the determination of whether his installation is made up of individual panels or is a single array of panels. He described the panels and their size, which is less than 36 square feet each, and therefore not requiring a permit. He presented a manufacturer's specification sheet for the type of panels he installed.

Wagner agreed the determinations should be considered first because if the array is deemed an essential service there are no setback requirements, eliminating the need for the second variance. If the panels are determined to be individual accessory structures, no permit would be required. He noted that even if a permit is not required, any accessory use must meet the minimum code requirements. He said staff has made the determinations that the panels are not an essential service and that they are not individual accessory structures.

Silverman referenced his written testimony that he had submitted with his application for the appeal, in which he discusses Wisconsin State Statutes that address essential services and private utilities.

Mielke agreed the determinations needed to be made first before addressing the requests for variances. He asked Silverman to explain in his own words why it is his **determination** that solar panels are an **essential service**. Silverman read from legal precedents and recited various codes which he said stipulate that his solar panels qualify as both an essential service and a public utility based on local and state requirements.

Mielke again asked for Silverman to explain to the Board why he thinks that solar energy is an essential service.

Silverman read from Racine County Code of Ordinances (RCCO) the definition of essential services, which includes electrical and services thereto. He stated the solar panel array is necessary for him to supplement the heat in his house, which has three oil burning furnaces and four fireplaces. The house was built in 1940 and was set up to use the wooded lot as a source of fuel for heating. It has become onerous to cut and split wood and feed the fireplaces, he said. The full use and enjoyment of the property is being hindered by the restrictions on solar panels and he has the right to avail himself of adequate heat. The panels provide supplemental electricity for the purpose of heat, and his intent was to connect the system to a heating element. Heat is an essential service, he added.

Mielke asked Silverman if he thinks what he presented satisfies the State's requirement of the definition of an essential service.

Silverman replied that the criteria he is aware of defines a private utility as necessary for the exercise of the principal use or the principal service of the structure, and said the solar panels are necessary for the principal use of the structure because they could provide heat and electricity. He said he found out a new Ordinance on the permitting of solar panels was passed in December when he applied for an electrical permit and couldn't get it because of Zoning issues. As a result, he said he has 350 feet of open trenches on his property.

Silverman then asked to divert from the next bullet point to discuss his solar panels being a utility because that determination is so closely tied, in Village Ordinances and State Statutes, with essential services. Mielke said that is not part of the packet. Silverman said the consideration of a utility was in his initial application.

Wagner said under essential services, a utility is identified as an essential service. He read the definition of utilities from the RCCO. He said if the Board agrees the solar panel installation is a private utility under that definition, and any utility is considered an essential service, then the job of the Board is to determine whether what's being proposed is considered a private utility as an essential service necessary for the exercise of the principal use of the home, and whether without it the owner would still be able to utilize the principal use or service of the principal structure.

One of the Board Members asked how many open trenches (for planned electrical installation) are in the yard. Silverman said one. The Board Member clarified with Silverman that this means there is one trench from the solar array to the house. He confirmed with Silverman there are separate cables or wires going from each of the solar panels to the single trench and then asked if they all join together. Silverman said, no, "not at that point they don't." The Board Member confirmed with Silverman that there are not 30 individual trenches running the length of the yard. Silverman said there is a single trench, single conduit and multiple

conductors. He explained the electrical system he hopes to install for the panels and gave details about how the panels function.

Silverman began his testimony for the **second determination**, which pertains to the area calculation for a solar panel array, by asking, “At what point do you decide that this is one thing?” For instance, if they were all mounted to a common structure they would be considered one, but his are separate panels not mounted to a common structure. Instead, each individual panel has a pipe that is sunk into the ground.

Mielke asked what information Silverman could present that would describe the panels being considered separate panels because when you look at the installation from afar, it appears to be an array of solar panels.

Silverman compared the solar panel installation to a scenario in which several sheds were in line and said the sheds would not be considered an array but individual structures. He stated the new Ordinance that was adopted in December is being retroactively applied to his circumstance and noted the new code specifically bans solar panels from the street yard. He said he is asking for the same right as any individual and thinks his property is constrained by being heavily wooded and down in a hole. There is no other location on his lot where he could put the panels. He maintained it is not equitable that the recently adopted code is being applied to an installation that was there prior to the code being adopted.

One of the Board Members asked if some trees could have been cut down so the panels could be installed on the roof instead of installing the panels near the road right-of-way. Silverman said the low elevation of his property, and the tall trees on his property and adjacent properties mean the roof nor the rear or side yards are options to locate the panels. If he cut down his trees, the house would still be in shade because of the tall trees on adjacent properties.

The Board Member asked Silverman whether he considers the panels in the photo in the manufacturer’s specifications to be individual panels or an array. Silverman said it is a set of individual panels. Mielke confirmed Silverman views the installation as individual panels and that he would like each panel to be considered an individual structure under the definition as set forth by RCCO.

Silverman referenced the new Village Ordinance on accessory structures that was adopted in December and the RCCO rule, which the new Ordinance supersedes. One difference is the new code specifically prohibits solar panels in the front (street) yard. He said that the total aggregate size of his solar panel installation is a fraction of what is allowed on his property by code and would have complied with the law to get a waiver for the front (street) yard setback until the Ordinance was passed in December. The new regulation specifically restricts placing solar panels in the front (street) yard.

Mielke asked if that was the end of the applicant’s presentation for the determination of whether the installation is an array or individual panels.

Silverman asked the Board to consider what he had just stated, as well as the fact that prior to December 31, almost a year after the installation began, there was no Ordinance that bypassed that aspect of the regulation for solar panels. He noted the fact that other accessory uses may be installed in the front (street) yard and that solar panels were okay (under the old code) but now they’re not. Previously, you could consider them as one and still get a waiver for the setback requirement but now you can’t, Silverman said.

A Board Member confirmed with Silverman that the panels are not located in the State Highway Right-of-Way.

When Mielke began instructing the Board Members to consider the next item, Silverman said the matter of the installation being a utility should be considered. He contended his installation should be grandfathered in, because the panels were put in prior to the Ordinance being passed. He stated he wants the Board to consider the situation as it was when he received a Notice of Violation letter from Caledonia Zoning, which was prior to the new law taking effect. The letter cited the RCCO rule, not the current Village Ordinance.

Silverman said that, at that time, one could consider the panels' aggregate (square footage) and contended it would have been a legal placement and that he would have been able to get a waiver for the street yard setback. Silverman said the old code would have allowed a solar panel array in the street yard with zero setback. He said that, based on a table in the RCCO, the installation would have been exempt from the Zoning requirements based on the fact that its aggregate square footage for the lot size.

Mielke asked whether the reference was to the requirement that an accessory structure can't be located where Silverman installed the panels. Silverman gave his interpretation of the code, purporting that if the square footage of the accessory structure is less than 35 square feet, an exemption is granted, you get a waiver from the Zoning requirements. Mielke interjected that it goes back to whether the solar array is considered as individual panels or as an array. Silverman responded that when the installation was put in place, the question of whether they are individual structures or an array would not have mattered because even if you consider it one thing, it still falls well within the guidelines of aggregate accessory structures which get waived on the basis of their square-footage footprint. Mielke questioned that interpretation and asked Wagner for clarification.

Wagner said the solar array was noncompliant with RCCO Sec. 20-1115 and the applicant was notified by mail in August 2021. The Village never considered this a legal accessory structure in a residential district based on where it was located. A permit was needed because the structure was over 36 square feet, and the location needed to comply with the minimum setback requirements. If located in the street yard, it had to meet the same setback as the principal structure under RCCO. He explained the code has a lot averaging provision for accessory structures in street yards that applies if houses are set back further than the minimum street yard setback, which is part of RCCO Sec. 20-1115. The code was cited in the Notice of Violation letter the Village sent to Silverman in August. The installation was considered to be a code violation, based on staff interpretation that a grouping of solar panels that come together and are working in unison to supply power to one thing are acting as one unit and therefore the square-footage of the installation is greater than 36 square feet.

The Ordinance before December required the location of an accessory structure to match the setback of the principal structure; that is why the Village said it wasn't compliant. If it had been set back 35 feet, the applicant could have obtained a permit. But the panels as installed did not meet the requirements of RCCO Sec. 20-1115 and the location was illegal. The point Silverman made about the square footage being in compliance was not an issue. The array could have been put in the street yard with a 35-foot setback and been compliant, so long as it had a permit.

As the applicant did not agree with staff's interpretation of the code, Wagner consulted Village legal counsel. Making the determination took months. Counsel agreed with staff that the installation was one unit and needed to meet the setback requirement. Since that time, the rules have changed, and not just for solar panels but for air conditioning units and power generators, which also are not permitted in a street yard. He noted that any variance now granted would have to be to the new code. No permit had been issued for the installation under the old code. The new Village Ordinance retains many of the provisions of the County code and regulates several uses that were not previously addressed. In addition, there is a new provision that prohibits solar arrays in the street yard.

Mielke asked if the applicant thinks he installed the panels in a proper manner and Silverman said yes.

Wagner said that interpretation is based on the premise that solar energy is an essential service and exempt from setbacks. With the advice of counsel, staff made the determination that the panels are not an essential service, nor do they meet the definition of a utility. The new accessory structure Ordinance adopted in December had been previously requested by the Community Development Authority as part of the Village's efforts to adopt its own Zoning Code. When the Board of Appeals application was submitted, the new rules had been adopted.

Wagner explained the two variance requests to the Board Members. The variances would be to the newly adopted code prohibiting solar panels in the street yard, and to the setback requirement if a solar array were allowed in the street yard. Even if a variance were granted to the rule that prohibits solar panels in a street yard, a minimum 35-foot setback is required. Board Members should consider whether zero feet is an acceptable setback or whether it should be something between zero and 35 feet. A variance is required to allow the existing zero-foot setback. The Board has discretion to grant a variance anywhere from zero to 35 feet. He reiterated that the Village never saw this installation as a compliant accessory structure, under either the County code or the new Village Ordinance.

Silverman asked what the minimum front (street) yard setback is for a fence.

Wagner stated a fence may be installed on the lot line and noted fences are regulated by the Building Code not by the Zoning Code.

Mielke asked Silverman when he installed the panels knowing some people might not consider solar energy an essential service or a utility, did he think he placed them in a location that is allowed by the Zoning prior to this December? Silverman said yes, because it fell within both the aggregate square footage limitation and the individual panel size of an individual accessory structure of less than 35 square feet. The estimated total area of the installation is 17 square feet. Silverman maintained he went by the code when installing the panels, which he said are set back about 5 feet from the road right-of-way line. He said he can't put them back any further without placing them in the shade.

Mielke said the Board will consider whether to grant a variance to the most recent Ordinance which would allow the applicant to have the solar panels in the street yard. He asked Silverman to explain why he thinks the variance is warranted based on the criteria.

Silverman said the property is exceptional because he has a heavily wooded property at a low elevation. It's not a usual circumstance because there's no other place on the property for the panels to be located and function. In a usual circumstance, the property isn't down in a hole and amongst heavily wooded adjacent properties. Mielke said that is a self-imposed hardship and is not preventing him from using the property for the intended use, which is to live in.

Silverman said he doesn't want to live where it is 40 degrees inside.

Mielke noted the panels would not provide the only source of heat to the house.

Silverman said it is the only source of "adequate" heat.

Mielke asked Silverman to provide the Board with a good reason why the variance should be granted.

Silverman said he has presented precedence from State law that says the solar panel installation should be considered as a utility or an essential service. He is requesting uniform application of the law to say that the rights accorded to other people in other circumstances should be accorded to him, that his property is encumbered and that he is seeking relief. He said his property is such that he is unable to comply with the requirements of the front (street) yard setback because of where the property is located relative to adjacent properties. If the lot was flat and not heavily wooded, and if the adjacent lots were not heavily wooded, he would be able to comply with the regulations.

One of the Board Members asked if some trees could be removed to open the area to sunlight, specifically some of the very tall trees close to the house so the panels could be put on the roof of the house.

Silverman replied that the trees, "are not all mine."

The Board Member said with the house being so far from the property lines, that wouldn't really come into effect. If there are extremely tall trees next to the house, then that's self-imposed.

Silverman said some of the trees are the neighbors' trees.

Wagner projected an aerial map view from the Racine County Mapbook. He used the measuring tool on the application to estimate distances from the house to the lot lines, which showed the nearest lot line is more than 100 feet from the house.

Kristine Brandt of 3147 STH was sworn in and provided her testimony about conditions on the site, which supported the testimony of Silverman regarding tall trees, lack of direct sunlight, low elevation and a steep driveway. She said the panels are essential for them to get adequate heat in the house. She purported that the panels are both essential and a utility because electricity and heat are essential.

Mielke asked Silverman if he wouldn't be able to use his home without the heat generated by the solar panels. Silverman indicated that is not the case but said he has insufficient heat. He continued that he has insufficient electrical capacity to heat the house and that upgrading the service is not available. There is no natural gas service to the house. He said he is not sure if gas service is available but that installing a gas line would be cost prohibitive because the house is about 300 feet from the road and three gas furnaces would have to be installed in the house at high cost. Mielke noted that neither economic nor self-imposed hardships are grounds for a variance and would not be considered.

Silverman continued, saying he should be able to provide for heat in his house the same way as anybody else on any other property. The only reason he can't use solar panels to provide heat for his residence is because his property is encumbered, unlike most other properties. For this reason, he is asking for an exception to the Zoning Code.

Mielke asked Silverman if he has exceptional circumstances and Silverman replied in the affirmative.

Mielke asked Silverman to state the exceptional circumstances. Silverman cited the elevation of his property as being uncharacteristic of the neighborhood, and of other like properties, as well as his wooded lot, and the dense wooded area around his neighbors' house to the south, of which he has no control.

One of the Board Members asked about the street-side elevation of the parcel changing. Silverman said the elevation has changed about 5 or 6 feet since he bought the parcel. He said the driveway has a steep decline into the lot and that the neighbors also have difficulty getting out of their driveway.

Mielke asked Silverman to confirm that he wants the Board to consider a variance because he has low elevation and a wooded lot, and he has to have solar (generated energy) to heat the house. Silverman said yes. Mielke asked Silverman if there is another way to have adequate heat. Silverman said no, adding that the house was built in 1940 with four fireplaces and three oil-burning furnaces, the combination of which is needed to supply adequate heat. Mielke asked if it is his position that he's lost the ability to have heating oil delivered? Silverman confirmed that Franksville Oil will no longer deliver to his property. Mielke asked if he's tried other sources. Silverman said he contacted one other source but was not able to secure heating oil delivery.

He said he could buy diesel fuel from one company but that their heating oil price is cost prohibitive. Mielke reiterated that a variance may not be granted for economic reasons. Silverman explained the hardships he has faced with the oil burners. Mielke asked if they could be repaired or replaced. Silverman said there are practical limitations. Mielke said modernizing mechanicals is sometimes necessary with older houses.

Mielke read the **second requested variance**, which pertains to the minimum street yard setback of 35 feet.

Wagner further explained the variance request and how it relates to the two determinations and the other variance request, noting the size of the structure was not an issue.

Mielke acknowledged the applicant's stance, which is that there is no place to put the panels other than the front (street) yard. This item pertains to whether the installation should be described as a solar array that has to be set back 35 feet. He asked Silverman if he was okay with that. Silverman said no, he cannot put the panels further into his property without placing them in the shade because of the trees on the neighbor's property to the south.

Mielke confirmed with Silverman that the only variance that would work for him is for the panels to be located in the front yard, and to be exempted from the minimum street yard setback.

A Board Member asked if the solar panels were installed about a year ago why they still were not functioning. Silverman replied that it is because he was notified he is not allowed to have them (at the location installed).

Wagner explained that when Silverman applied for an electrical permit for the panels, Building Inspection held the request because there was no Building Permit issued for what the Village determined to be a solar panel array. Solar panel arrays are considered accessory uses requiring an Accessory Structure permit and must meet the requirements of Village Code. He said the size of the array is not an issue, just the location.

Mielke asked Silverman to continue to present his evidence. Silverman said he weighed heavily on the State's definition of a private utility. There are multiple avenues that he presented, for instance the Board could determine the panels are a private utility, because it is a privately owned and privately maintained facility for the generation of power. He said doesn't understand why solar panels would not qualify for that designation. Also, the panels are an essential service that would provide heat and electricity which is essential for the use and enjoyment of property as provided for by State law. If such designations are not approved, he has requested a variance because his property is encumbered by virtue of its position and the fact that the State changed the elevation. The confluence of circumstances, including the neighbor's property and the heavily wooded lot that precludes his placing solar panels and using power from them, which is a right that would be afforded to anyone else according to the Village Zoning Code. Solar panel installations are allowed in the Zoning District for his property.

Mielke asked three times if anyone wanted to speak in favor of the variance.

Janice Krukowski, 7023 Whitewater St., spoke in favor of granting the variance because the property is situated in such a way that the owner is being encumbered by not receiving things that other people without the land elevation and beautiful trees would be able to receive. This will add to the restoration of his property and provide the comfort which he is unable to provide. He wants to provide for himself and his home. Should there be a time when the property is sold it will continue giving pleasure to the surrounding area because the home will not go neglected.

Mielke asked three times if anyone wanted to speak against the variance.

Wagner read an email from Dale Stillman, 6601 Blue River Way, and Trustee of the Village of Caledonia, which expressed strong opposition to defining solar panels as an essential service, or as individual accessory structures. He said he was against granting the variances because they do not align with the new code.

Mielke asked Silverman if he had further comments.

Silverman said his installation should be held to the same standard as a fence, for which there is no requirement to have it set back in the yard. He should be given the same right as someone who wants to install a fence.

Mielke said the Village Board has clearly spoken in their December decision to publish an Ordinance saying they don't want solar arrays or panels in front (street) yards. He acknowledged that Silverman is saying to treat it like a fence but said he would not be able to come to that conclusion.

Wagner noted electrical conduits typically are not installed on fences.

Brandt added that it is a utility. It is capable of being hooked up to the grid and providing power to the community. That is a utility, it has that capability, and utilities are exempt from the setback.

Mielke closed the Public Hearing portion of the meeting.

5. Board Meeting

C. Deliberation on the preceding petition.

Mielke read the first item to consider, whether solar power panels, or array, is an essential service as defined by code and therefore exempt from a minimum street yard setback. He said he doesn't see this as being an essential service.

The RCCO definition of an essential service was again read out loud.

Wagner read the different requirements for considering a determination versus a variance.

A Board Member asked if the Board's determination is specific to the applicant's solar array being an essential for him.

Wagner said no, the Board is being asked to decide if solar panels in Caledonia are considered an essential service.

A Board Member asked if the Board would be setting a precedence. Wagner confirmed that no other applicant has ever made the case that solar panels are an essential service for a residential property.

Mielke commented that solar energy is considered a supplement that some people use to reduce their utility costs but that it is not an essential service.

A Board Member added that while electricity is essential, solar panels are not an essential service if power is already provided by a public utility.

Mielke asked who agreed with the determination that solar panels are an essential service. None.

He then asked who sees it as not an essential service. A vote was taken by a show of hands, and it was unanimously decided to not consider the solar panel installation an essential service.

Mielke read the second determination, whether individually mounted solar panels are one array or separate structures when considering the size of a solar power array. If deemed separate structures, no permit would be needed for the solar panel array.

Board Members discussed how to determine whether the panels are an array. They considered the number of panels, the spacing between panels, how they are mounted and whether they are all connected and work together in unison.

Mielke said Board Members should consider that Village staff thinks this should be treated as a single structure and sees no evidence that determination is wrong.

Mielke called for a vote to determine whether individual solar panels are considered separate accessories when calculating the size of a solar array.

He asked for all those in favor of considering them as separate panels when determining the size. None.

He asked for all those in favor of considering them to be a group of panels making up an array. By a show of hands, it was unanimously approved to consider the panels as a solar power array with the total area of all of them put together.

Next, Mielke said the Board should consider a variance to the Ordinance that was published in December in determining whether to allow a solar array in the front (street) yard. He thought the new rule should be used as the Village Board wrote it knowing of this installation and there was no grandfathering clause stating that existing structures were exempt.

Wagner explained that the total square footage of the accessory structure is not an issue because the area of the array is within the maximum square footage for accessory structures on the subject property. Solar panels must be located in the side or backyard as of December 2021. If the location is denied, the Board need not consider the second variance requiring the 35-foot setback.

Board Members discussed the exceptional circumstances presented by the applicant, such as the low elevation and the heavily wooded lot. They did not think there was proof that there is no source of heating oil available, only that it may be cost prohibitive.

One Board Member said that while the low elevation is an exceptional circumstance and the applicant wouldn't be able to put panels on the roof unless he clear trees, his decision not to cut down trees is a

self-imposed hardship even though he can't change the neighbors' wooded lots. He asked where the roofline is and whether it is at street level.

Board Members viewed a projection of a topography map of the subject and adjacent properties and discussed the elevations shown.

A Board Member posed the question of whether there are other options for locating solar panels given the circumstances. He asked if it really is an exceptional circumstance or a self-imposed hardship, given that the property line to the south is more than 100 feet from the house.

Mielke asked if any Board Member came up with something exceptional. Hearing none, he began the discussion of the list of five requirements used to determine whether a variance may be granted. He noted he didn't think evidence had been presented that would allow the Board to grant the variance under the criteria.

Preservation of Intent: Not applicable to the case.

Exceptional Circumstances: Board Members discussed the lack of adequate heat and the reasons for that, along with any options the owner might have within the existing circumstances. They discussed whether the situation with the steep driveway was created by the State work on STH 31, resulting in difficulty getting heating oil delivered. They questioned if there was evidence presented that there is no source of heating oil delivery. There was agreement that no evidence was presented to prove that delivery of heating oil is not an option.

Economic Hardship and Self-Imposed Hardship Not Grounds for Variance: the price of heating oil cannot be considered. The desire for using solar generated energy when electricity from a public utility is available is self-imposed.

Preservation of Property Rights: No variance should be granted to allow solar panels in the front (street) yard when the Village Board specifically stated they are not allowed in the front (street) yard. Board Members found no way to rationalize a variance to put solar panels in the front (street) yard with a zero setback. Board Members discussed seeing no evidence to support one of the five items and no grounds to grant the variance. They agreed no evidence was presented showing this particular property should be allowed to have panels in the front (street) yard. They talked about the terms unique versus unusual and noted there are many wooded lots in the area, including the adjacent parcels and questioned whether the wooded lot aspect should not be a consideration because neighboring lots are similarly wooded. The topography has changed since the house was constructed because of changes to STH 31 but that does not come into play because the panels still would need to be in the rear or side yard. There are many lots in the Village where conditions would not be conducive to having solar panels in the side or rear yard but that is not justification for giving a variance, especially in light of the recently approved Ordinance.

Absence of Detriment: not appropriate in the case.

D. Decision on the preceding petition.

Mielke asked for a motion to either grant or deny the variance.

Wagner gave further instructions on the criteria and how they should be addressed in the motion.

Mielke said a motion to deny the variance should state that the Board doesn't find that there is no way to use solar panels on this property (other than the current installation). There is a connection to the We Energies electric source and it likely can be upgraded. There is electric utility service to the property that has not been upgraded to provide more power, but it could be. He questioned whether there is really no other way to heat the house and said no evidence has been presented that there is no way to get heating oil. He again called for the motion and stated he is opposed to a variance to allow the panels in the street yard.

Board Members discussed the evidence given in testimony as it relates to the criteria for granting a variance and agreed to deny the variance. Discussion ensued to formulate a motion.

Motion by Barnes to deny the variance to 16-1-1(a)(11)(a)(10) because, as to **Preservation of Intent**, the current positioning of the solar panels would be direct contrast with current Village Ordinance. Under **Exceptional Circumstances**, Board Members noted there are other properties in Caledonia that are similarly situated with respect to elevation, location, access to electricity provided by a public utility, and fuel oil service to heat the property, though difficult, may be an option. The situation with fuel oil costs being more expensive cannot be considered for the purposes of granting a variance under this Ordinance. As to **Preservation of Property Rights**, the variance would not be necessary as panels could possibly be located in a different location on the lot, and alternative heat sources are available through upgrading of the electrical service or a continued search for fuel oil options.

Seconded by Lovdahl.

Motion carried unanimously.

Wagner recommended making a motion regarding the second variance.

Motion by Barnes to deny the second variance based on 16-1-1(a)(11)(a)(4) which if granted would be not consistent with the purpose and intent of the regulations of that specific Ordinance.

Seconded by Lovdahl.

Motion carried unanimously.

6. Adjournment

Kuettel made a motion to adjourn the meeting. Barnes seconded. Motion carried unanimously.

The meeting adjourned at 12:45 p.m.

Respectfully submitted,
Helena Dowd
Planning & Zoning Technician
Village of Caledonia