

**SOMERSWORTH ZONING BOARD OF ADJUSTMENTS**  
**MINUTES OF MEETING**  
**April 7, 2021**

**MEMBERS PRESENT:** Matt Keiser Chair, Glenn Garvin-Alternate, Keith Perkins, Brad Fredette and Richard Brooks  
**EXCUSED MEMBERS:** Kenneth Vincent  
**STAFF PRESENT:** Michelle Mears, Director of Development Services, and Dana Crossley Planning Secretary

The meeting was called to order at 7:00PM.

Keiser stated due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The public has access to watch to this meeting through the Local Government Cable Access Ch. 22 (Comcast), and streamed live through the City's website at [www.somersworth.com](http://www.somersworth.com). Although this is a public meeting, the public is encouraged not to attend and instead to leave comments or concerns at the following phone number # 1-603-692-9519, by emailing [ZBA@somersworth.com](mailto:ZBA@somersworth.com) or by sending written comment to Zoning Board of Adjustment, 1 Government Way, Somersworth NH 03878. Comments must be received no later than 4pm the day of the meeting. The public can access the meeting and listen live by telephone and then adding the webinar I.D.

Roll call attendance was taken. **Perkins and Brooks** were in attendance in City Council Chambers. **Fredette, Keiser, Garvin, Vincent** were in attendance remotely and alone. Director Mears was also in attendance remotely. Secretary Crossley was also in attendance in City Council Chambers.

Keiser promoted Garvin to a full voting member for the meeting.

**1) Approval of the minutes:**

Brooks **MOVED** to accept the February 3, 2021 minutes as presented.

Fredette seconded the motion.

The **MOTION CARRIED** by a 5-0 roll call vote.

**2) OLD BUSINESS**

A) Any old business that may come before the Board.- NO other old business.

**3) NEW BUSINESS**

A) Ian Joseph Campbell, LLC, is seeking an appeal of an administrative decision regarding the definition of a structure for properties located at 4 Enterprise Drive, in the Commercial Industrial (CI) District, Assessor's Map 48 Lot 24C, and 413 High Street, in the Residential Commercial (RC) District, Assessor's Map 36 Lot 3A, ZBA#04-2021 PUBLIC HEARING

Keiser opened the public hearing at 7:06 PM.

Mears stated the applicant is seeking an appeal of an administrative decision regarding the definition for two properties located in the City, she has included a staff memo for the Board's packet. Included in the memo is the definition of structure. She explained that the solar trackers have been deemed structure that must meet

the setbacks of each property. She reviewed a brief history of the solar array trackers and the properties in question.

Keiser clarified the issue for discussion tonight is that the City has determined the solar arrays on pedestals are a structure and must meet setback requirements and the applicant disagrees with that and would like the Board to determine if the solar arrays on pedestal are a structure. And that there is no variance request.

Mears stated that is correct.

**Packy Campbell of Ian Joseph Campbell LLC member/owner** was in attendance to represent the application. He noted they own the two car washes known as Lilac Car Wash in Somersworth.

Campbell stated the question before the Board is not if the solar tracker is a structure, he agrees it is a structure, he thinks there are different kinds of structures. He stated in the City's definition it states "*A combination of materials to form a construction for use, occupancy or ornamentation...*" so there could be something that is a structure that is habitable (building, car wash, shed, etc.) and those structures are meeting the setbacks. He stated there is clearly another class of structures. He stated he is asking the Board to determine what type of structure the Board thinks the solar trackers are and if that structure should be held to the standard of not needing to meet the setbacks. He stated in the aerial of 4 Enterprise you can see the dumpster enclosure is located in the rear and side setbacks, the vacuum kiosks are structures, the dumpsters, the fence meet the definition of the structure. He stated the vacuums are bigger than the solar trackers. He stated signs meet the definition of a structure and even argue by some that the pavement meets the definition of a structure. He stated he wants to make the argument that there are different types of structures that are habitat and structures throughout the entire City. He stated solar tracker technology is new and different. He stated he feels it is similar to a stand-by generator that are at a lot of homes and located in the setbacks. He stated he is asking the Board to recognize there are two different types of structures and asking these structures are treated to those they are most similar to. He stated the solar trackers are more like a light post, street sign or vacuum kiosk than a building you would occupy. He stated there are many structures that have been historically allowed in the setback. He stated there are other communities that allow for a building permit to be pulled for a solar tracker and for it to be within the setbacks. He stated there is a hardship when one develops a commercial lot, the solar trackers are designed for commercial lots, and can make a difference for clean renewable energy, buildings are set as close to setbacks as possible. He stated the lots are built to the max and then if a solar company that comes to put in a solar tracker that super majority of properties in Somersworth would not be able to install a solar tracker without relief. He stated he does not feel they should need a variance and they were not required to when paving or installing the vacuums. He stated the sign had to receive a specific permit. He stated if the Board feels there is a difference between a fence post, light post, telephone pole is different, then the Board should vote to turn over the administrative decision and say that this is a structure that is entitled to equal protection. He stated this structure should be treated the same way as other structures that are allowed to be within the setbacks.

Keiser opened for public comment.

Mears stated no public comment was received via mail, email or phone.

Keiser closed the public comment session.

Garvin clarified what exists for solar trackers on site.

Campbell explained there are three solar trackers at the High Street property. He stated the Enterprise Drive property has one. He stated they are now seeking to add another to the Enterprise Drive site and one more for High Street as well.

There was a brief discussion of the existing solar trackers locations.

Campbell stated due to the interpretation that these are structures, the ordinance is not clear and does not list structures that do not need to meet setbacks. He stated there is a clear standard business practice that allows the structures he's listed and allows them in the setbacks. He stated due to this being a new technology the Board should overturn the decision.

There was a brief discussion of solar trackers in parking lots.

Fredette stated his understanding of this Board, is that it is their responsibility to look at individual cases and make decisions based on specific criteria of the Ordinance. He stated what he hears the applicant saying and looking for is to use the Board to get around a change in the City's Zoning Ordinance relevant to solar panels. He stated the applicant has stated he would install several more trackers if this decision is granted in his favor. He inquired how the applicant felt the City erred in the administrative determination.

Campbell stated he had asked for an interpretation of the Zoning Ordinance. He stated it was determined in that interpretation that the solar trackers are a structure that must meet the setbacks in each zone. He stated the process for the ZBA, once the administrator makes a determination, the Board is being asked to determine if the decision is accurate and just, and was it the intent of the City of Somersworth to not allow solar trackers in the setbacks. He stated the remedy he is looking for, because the solar tracker is a structure, he agrees the administrator had to say it was a structure that cannot be in the setback, but disagrees that it does not have to be taken one step further, since the ordinance does not say telephone poles, vacuum kiosks, dumpster enclosures, pavement, that they can be in the setback but almost every property in the City has structures in the setbacks.

Fredette stated he does not think that is a fair statement. He stated on his experience on the Zoning Board he can think of several occurrences where there have been requests for dumpsters in the setbacks. He stated he would like to hear specific examples of properties with dumpsters in the setbacks but no variance. He stated if there are people violating the ordinance it is a different example.

Campbell stated he would revise his statement, he is using light posts, vacuums kiosks, pavement, street lights, and telephone poles as examples. He stated he does not think a solar tracker is a lot like a dumpster enclosure, he disagrees that a solar tracker as they build them on a concrete pedestal, the same size as a concrete light pedestal is allowed in the setback, which has the same disturbance area, if the Board thinks a solar tracker is more like a light posts or more like a dumpster enclosure, that is the decision he is seeking. He stated he thinks it is reasonable for the Board to determine if the solar tracker is more like a house/shed or a vacuum kiosk/light post/telephone pole/sign which the City allows in the setbacks. If the Board feels it is more like a house or shed they should not overturn the decision. He stated since there are so many things allowed in the setback if they are most like those things should overturn the decision. He stated he would like to see the decision overturned because it would be consistent with the way standard business practice the City has as it relates to structures that are very similar to the structure in discussion today.

Brooks stated when he reviewed the ordinance he did not see anything that would regulate the smaller structures spoken to that would exempt them to allow them within the setback.

Mears stated that is correct and likely a variance would likely need to have been sought.

Brooks stated the Board has to interpret the Ordinance on how it is written. He stated fences, signs and light poles and pavement are being used as examples, there is an element of common sense that goes along with this. Utility poles travel alongside the road it is where they have been installed since they have been put up. He stated fences typically follow a property line and often used as a boundary structure. He stated he understands there are structures that are exempt. He inquired if someone wanted to construct a windmill or radio antennae would they have to meet the required setbacks and he believes they would. He finds that a solar tracker would be similar to those structures and need to meet the required setbacks. He stated light

poles are to light areas and would need to be at certain locations. He stated the vacuum cleaners reviewed at a whole with height and width the solar array is larger and not a fair comparison. He stated in review of what it is similar to he would consider it more similar to a windmill or radio antennae rather than pavement or light poles.

Campbell stated windmills are typically much larger than the solar trackers but other communities have very specific windmill ordinances. He stated the cell phone towers are also much larger structures and would think it would be addressed in the ordinance. He stated the ordinance does not speak to any exemptions.

Mears stated there are setback requirements for signs, pavement and dumpsters. She stated some of those are regulated through the Site Plan Regulations.

Keiser stated there are requirements not necessarily in the Zoning Ordinance, but that does have a specific section regarding radio towers.

Campbell stated apparently dumpsters and pavement have setback requirements but they are not the same, and so do signs, but the fact that the ordinance is silent on solar trackers, he finds it is a wrong position to think the solar trackers must meet the full 50' setback. He stated that is not the setback it should have to reach, it should reach something like a dumpster setback. He stated he is an active business person, actively building structures, he does not have time to wait for the City to redo the Ordinance. He stated this was discussed in 2019 but it has not been addressed 2 years later. He thinks the ZBA has an obligation to make a decision that is in the best interest of the community at large and really speak to the fact that the Zoning Ordinance is silent on this. He stated the decision is arbitrary because there is nothing in the Ordinance that requires it to meet the setbacks when there are clearly other structures that do not have to meet the setbacks. He stated the Ordinance speaks to it, because it does not have a solar tracker setback, asking the Board to overturn the decision and suggested a condition that allows solar tracker pedestals in the setback and the overhang as well, as long as it is 5-10' from the property line. He stated he would find that to be a reasonable determination and more in line with what has been done with other structures that have different setbacks and reasonable way to resolve the issue.

Campbell stated it would be an error to uphold the decision that a solar tracker must meet the setbacks. He stated he understands why the City made the decision they made, but this is the process to clarify the ordinance. He stated it is the Board's opportunity to determine if it is reasonable or not and could determine a more appropriate setback. He stated once the Board makes a decision that would allow for the solar trackers to be closer than the existing setbacks it would be the ordinance in effect until the City took up a specific change to the Ordinance. He stated if the Board votes in favor of the City it would prevent so many properties from installing solar trackers and he would have to appeal that decision to the Court and feels with his research a Judge would side with him. He explained he hopes the Board makes a decision that allows the tracker and overhang to not meet the setback. He asked that whomever makes the motion, to make a motion to overturn the administrative decision and allow solar trackers to be 5-10' from the property line at the edge of the overhang from the center of the tracker and feels that would be a reasonable outcome.

Keiser inquired how large the solar panels are.

Campbell stated the typical solar panel is 2'x6' and then there is a 2" gap and they go in rows, 24 panel tracker has 6 rows 4 panels wide, 24'x22'. He stated the height is variable depending on how the tracker pole is set in the ground and at what angle the panel is at. He stated the 42 panel tracker is a 6 panel rows 7 high, 21' of radius overhang. The arrays are very rarely lying flat.

Garvin asked what the current process for installing one of the solar trackers.

Campbell explained his history with the ZBA and variance requests for 4 Enterprise Drive and 413 High Street. He stated if the Board votes in his favor tonight he would not need to seek any more variances. He stated he feels it would be consistent to allow some sort of relief to what he believes the Planner had to make a stance on because he does believe it is a structure. He stated because the ordinance is silent on solar trackers having very particular exemptions to the setback where other types of structures there are defined setbacks. He stated he feels it would be appropriate for the Board to determine the solar trackers are more like a sign, light pole or dumpster.

Garvin stated the variance was denied for the 4 Enterprise Drive property because there was room for the array to be placed without the variance.

Campbell stated he could have done 1 tracker at High Street and met the setback. He stated he wants to do 2 at 4 Enterprise Dr. to be able to offset his electrical use.

Fredette stated there has been discussion of a reasonable requirement, if talking about the outer most corner of the tracker, what does the applicant feel is a reasonable setback from the property line.

Campbell stated for the outer most point of the overhang, between 5-10' from the property line. He stated the Board should recognize if they are 5' from the lot line, the travel way is still another 12' typically from the property line.

Brooks stated batteries were mentioned, does that send power to the grid or does it only power the site. He inquired also what the life span of the arrays are.

Campbell stated the batteries do interact with the grid. He stated the expected life span is 37 years.

Keiser closed the public hearing at 8:10 PM.

Fredette stated he appreciates the applicant's presentation. He stated he goes back to some of Brooks' questions on what the solar trackers are like. He stated for him, whether it is 2' off the ground or 12' off the ground it is still a structure. He stated the life of these panels and the cost of putting those in, they will be there for quite some time. He stated a vacuum kiosk was used for an example, if a car wash is closed the vacuum cleaner would be removed. He stated to him this is a structure and if there were to be special setback requirements for the solar trackers it is something that should be looked at thoroughly and done through a zoning change and not this Board.

Brooks stated he would agree, he is reluctant to rule this and say it is not a structure. He stated it very much is a structure as far as he sees, it comes back to if it should be classified as a different structure that is exempt in some way. He stated the Ordinance is not silent on structures, it says structures are structures, reluctant to overturn and say it isn't a structure. He stated at the same time there needs to be something to update this and have a better definition to this, it is a unique structure in themselves because of the shape and form along with that fact that it moves. He stated it deserves for discussion and thoughts to what would be a fair setback but still feel it is a structure.

Fredette stated another way he would see it as a structure that needs to meet the setbacks, when looking at the trackers, it could affect the line of sight, the aesthetic of the area.

Garvin inquired if it was something the Board should do, to change the past decision and make new criteria for everyone to follow.

Keiser stated based upon the Ordinances the administration made a decision that the solar trackers fit into the criteria of a structure that is required to meet setbacks and the Board is to independently look at that and

determine if it is the correct decision. He stated he does not think the Board and re-write or set specific criteria for all solar trackers, that is the roll of the City Council.

Garvin stated based on that it does not sound like the Board can give the applicant what he is looking for but can only talk to a specific one.

Keiser stated it is their roll to interpret the Zoning Ordinance as it exists.

Garvin stated he realizes it would make it easier for the applicant to grant what he is seeking but he has not seen many other applications for the solar trackers, he does not see that the current process is that much of a hardship.

Brooks stated there are different zones and to give a blanket setback requirement without considering all zones would not be appropriate. He noted that the Historic District has different and specific requirements for solar. He stated because it is a new evolving structure there needs to be more consideration of what the appropriate setback for each zone is.

Fredette stated he felt the current procedure in place, until the Zoning Ordinance is changed to specifically address this topic, it shows the process is working on High Street. He stated based on the existing Zoning Ordinance he feels the City made the correct decision.

Perkins stated he agrees the solar trackers are unique structures and should have specific setbacks but it is not the job of the ZBA. He stated he feels the City made the correct decision, these are a structure and is in favor of the City's ruling. He noted in regards to telephone poles, for State Roads there are RSA's that govern those.

Garvin stated he supports the technology.

**MOTION:** Fredette stated, after review of the application, the file and all the information presented to the Board, I feel that the appeal should be denied because of reasons discussed and I move that the request of Ian Joseph Campbell LLC for an appeal of an administrative decision regarding the definition of structure for pedestal solar trackers **be DENIED.**

The MOTION is SECONDED by Brooks.

The MOTION CARRIES by a 5-0 roll call vote.

Campbell inquired if the motion for rehearing could be addressed at this meeting tonight.

Keiser stated the applicant would need to submit the request for a motion for rehearing for a different meeting.

Brooks stated he will be recusing himself from the next application as he is a direct abutter.

**B) Daniel Vincent & Assiah Russell are seeking a variance from Section 19.6.C.1a to allow the expansion of a non-conforming use on a property located at 21 Linden Street, in the Residential Single Family/A (RIAH) District, Assessor's Map 11 Lot 118, ZBA#05-2021 PUBLIC HEARING**

Keiser informed the applicant that the Board is a four member Board. He asked if they wished to move forward with a four member Board.

Somers stated yes.

Keiser opened the public hearing at 8:29 PM.

Mears stated the Board should have received a revised memo via email dated April 5, the applicant is seeking approval for an additional 114 sf. expansion of living space for a total of 580 sf. She noted this project has been subject of previous Zoning approvals.

**Attorney Sharon Somers of Donohue, Tucker and Ciandella, Daniel Vincent and Assiah Russell** were in attendance remotely from a conference room at City Hall.

Somers stated they were before the Board in January 2021 to receive approval to construct an addition onto a non-conforming structure, as relayed in the some of the letters but would like to focus on the letter submitted on March 26. She stated after the relief was granted the amount of space needed was not presented correctly and they have met with an excavator who has provided additional information. Somers stated the net result that what is needed to make the addition fully usable for the applicants, would be the original 466 sf. (granted January 2021) and an additional 114 sf. She asked the Board to look at the March 26 letter she submitted and the floor plan provided with that. She stated it shows the existing area of the structure, a 20' x 20' room, 10' x 18' kitchen. She stated the plan in discussion tonight is the 20' x 20' addition plus the 10' x 18' kitchen. She stated what they are seeking tonight, it can be called an amendment to the earlier application or considered a new application, but looking for an approval to add on 114 sf. to that which was obtained in January, grant a new variance for a total of 580 sf. with the same conditions attached as the variance granted in January 2021 (limited to one bedroom, limited to the new 580 sf. and the shed shall not be living space) if the Board decides to grant the relief that is ultimately what they are looking for to have 580 sf. She stated if the Board should deny the request for the additional 114 sf. want to be sure the original variance granted in January 2021, which is vested since the appeal period is over, will remain in full effect.

Somers stated because they have already demonstrated why they are untiled under the variance criteria for the 466 sf. all she is going to do is to address why the same arguments apply to this request for the 114 sf. She stated as previously discussed at the January meeting, the intention was to have a 10x18 kitchen and an area for living and dining. She stated the desire is to have enough space in the living area in general to so that they can move about. She stated they have provided in the submittal images of the existing interior. She reviewed those photos with the Board. She noted the current entry way is right at the corner of what is noted as a 10x10 mechanical room and the proposed kitchen. She stated the current living space is cramped and small. She stated the relief they received at the January meeting in combination with this request for 114 sf would enable them to do two things, move the entry way into the 20x20 area which will allow them to have enough room for a travel path through the living space to access the other rooms. She stated the other reason is that for these applicants there are medical conditions that will require them to use an assisted device such as a wheel chair, there needs to be enough room so that there can be furniture to live with and passage of wheelchairs. She stated that is why they are seeking the additional 114 sf. on top of what was approved in January. She stated with the input from the excavator it was determined that the 114 sf. was needed rather than the 132 sf. as referenced in some of the documents.

Somers stated in terms of the variance criteria, all of the same criteria and arguments made in January for the 466 sf request should be incorporated by reference and in terms of that earlier square footage with this 114 sf. She stated in her submitted March 26 memo that arguments apply equal force to this 114 sf. She stated by

adding the 114 sf. in the area marked 20x20 will not diminish surrounding property values for all the same reasons as stated at the earlier hearing. She stated the added square footage will expand to the interior of the lot and not impact the abutters or street view. She stated it will not be contrary to the public interest and the Board has approved the variance for the rest of the addition it cannot be that by adding an additional 114 sf it would alter the essential character of the neighborhood, especially since the same conditions will be applicable with emphasis on that it will remain a one bedroom unit. She stated for the hardship she would cite the same argument as at the previous hearing for the 114 sf. this square footage will allow the owner to move around the home. Somers stated the 114 sf. will make a critical difference for these applicants to be to use the space in the manner they want to.

Somers noted that there was one letter of support received from the direct abutter, Richard Brooks, and that it has been distributed to the Board. She stated she understands there have been no letters in opposition received for this application.

Keiser opened for public comment.

Mears stated one letter was received, submitted by Richard Brooks of 18 Linden St., in support of the request, this letter was distributed to the Board members prior to the meeting and available in the Planning file records.

There were no other comments received via mail email or phone.

Keiser closed for public comment.

Keiser stated the motion made for tonight would be to address 114 sf. and leaves the original variance approval from January 2021 as is and this adds to it.

Somers stated that was acceptable.

There were no questions from the Board for the applicant.

Somers stated she had no further comments to add.

Keiser closed the public hearing at 8:53PM

Perkins stated he is in support of this variance request for all of the same reasons discussed with the original request. He stated he expects if the applicant had asked for this amount the first time it would have been approved.

Fredette stated he also agrees. He stated he understands the request and does not think it is unreasonable for an additional 114 sf. He stated it will not change the scope of the structure. He stated it will not change the overall characteristic of the structure especially since they are not asking for any additional bedrooms.

Garvin stated he is also in support.

**MOTION:** Perkins stated after review of the application, the file and all the information presented to the Board, I feel that all five criteria have been satisfied because of reasons discussed and I move that the request of Daniel Vincent & Assiah Russell for a variance from section 19.6.C.1a to allow an additional **114 sf.** expansion of a non-conforming use **GRANTED.**

Fredette asked if they should go through the five criteria. Mears stated she felt they were addressed.

The MOTION is SECONDED by Fredette

The MOTION CARRIES by a 4-0 roll call vote.

Brooks returned to the Board.

**C)** Any other new business that may come before the Board.

Brooks stated after all the technical issues at this meeting he feels they should strongly consider resuming meeting in person. He would be strongly in support of meeting in person.

Keiser stated they will look into the steps to resuming meeting in person.

Fredette stated previously the Board had initiated memos being sent to Council with suggestions for Zoning amendments to be considered. He stated he felt that one should be sent for consideration of specifications for solar panels.

Mears stated she could do that.

Brooks **MOVED** to **ADJOURN** the meeting.

Fredette seconded the Motion.

The **MOTION CARRIED** 5-0 by a roll call vote and the meeting ADJOURNED at 9:01 PM.

Respectfully Submitted,

Dana Crossley, Planning Secretary