BOARD OF ADJUSTMENT MINUTES

DATE: March 23, 2009

1ST FLOOR
NORTH CONFERENCE ROOM
CITY HALL

Type of Meeting: PUBLIC HEARING

Chairman Richard Fort called a regular meeting of the Board of Adjustment to order at 2:00 p.m. Mr. Fort read the opening statement explaining the functions of the Board of Adjustment. Everyone giving testimony regarding a case before the Board was duly sworn. Notice was previously mailed to all required parties.

BOARD MEMBERS PRESENT:

Acting Chair Esther Manheimer……..……X✍
Juma Jackson…...…… X✍
Janet Whitworth...……..... X✍
Tom Cathey... ……...…….. X
James Sheeler……..……..…. X

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CASE	STAFF PRESENTING CASE	GRANTED/DENIED/ CONTINUED
1. 19 Lynnstone Court	**Nathan Pennington**	**Granted**

Additional Information

STAFF PRESENT: Martha McGlohon, Patti McFarland, Nathan Pennington

CASE # 09-71000002

ADDRESS 19 Lynnstone Court
PETITIONER: Keith Bamberger
PIN # 9658.87.6634.00000

REQUEST: The petitioner is requesting a variance to Section 7-14-1(a)(1) of the UDO in order to accommodate the placement of solar panels and associated support structure in the front setback for property located at 19 Lynnstone Court.

BACKGROUND: The *UDO* specifies that accessory uses and structures shall not be located within a required front setback area, including private, non-commercial solar energy systems; however, the *UDO* also specifically states that the City of Asheville Board of Adjustment may grant a variance to the required setbacks and allow such structures to be located in the front yard in order to allow for optimal placement provided that (1) no portion of the structure or architectural features project over the property lines, (2) that the structure will not adversely impact adjacent properties and will be compatible with the character of the neighborhood, and that (3) it can be demonstrated that no other design can product the same outcome. Further, North Carolina General Statutes provide for the placement of solar collectors on private property serving the needs of single-family residences. However, the specific statute does not prohibit an ordinance from regulating the location or screening of said device(s).

The petitioner is requesting a 16 foot variance to the required 25 foot front yard setback requirement for the RS-4 zoning district and this would represent a 64% reduction to the aforementioned requirement.

PROJECT DESCRIPTION: The project site consists of one (1) parcel comprising .44 acres or approximately 19, 166 square feet according to Buncombe County GIS data. The site is zoned RS-4 and is located within the City of Asheville's corporate limits.

The petitioner was cited by the Building Safety Department for failure to obtain proper permits for the construction and placement of the solar collector array on the subject property. The petitioner applied for zoning and building permits on January 22, 2009 and after planning staff reviewed the application it was determined that the applicant would need a variance for the location of the solar panels and associated support structure to be placed in the required front yard setback. The support structure is a 4'x4' frame that supports three (3) 4'x 10" solar panels, and the total footprint of the structure is 12' x 8' or 48 square feet.

Large evergreen and deciduous trees line the southern perimeter of the subject property thereby reducing the amount of sunlight that is available for collection by the solar panels. The current location allows for a solar window of 82 % pursuant to the attached letter supplied by the applicant. The relocation of the solar array elsewhere on the property would reduce the available

window by more than 10%, and would greatly decrease the overall effectiveness of the system. The existing home was constructed in 1952.

DISCUSSION: Mr. Nathan Pennington presented the case to the Board and oriented the Board to the site. Mr. Pennington stated that the petitioner is requesting a 16 foot variance to the required 25 foot front yard setback requirement for the RS-4 zoning district and this would represent a 64% reduction to the aforementioned requirement. The solar panels and associated support structure are 12' x 8' or 48 sq. ft.

Mr. Pennington read the requirements from the UDO concerning the placement of solar panels and solar array in the front yard. The applicant has provided a letter from his solar installer stating the need to locate in the front setback in order to optimize the efficiency of the solar system.

Ms. Manheimer read the N.C. State Statue passed by the Legislature in 2007, and explained that this section doesn't prohibit solar collectors or screening of solar devices and it requires that ordinances allow reasonable use of solar collectors. Ms. Manheimer stated that the UDO is in line with the state statue.

Mr. Bamberger came forward to present his case to the Board. Mr. Bamberger stated that this system will be heating the hot water and 90 % of the living space and allow them to keep the house at about 60 degrees year round. This will save about $20 or $30 a month and they will not be burning oil in the furnace, thus improving air quality.

Ms. Manheimer asked who determines where to locate the system. Mr. Bamberger responded that Grayson Newell from Sundance Powersystems is here to explain why the unit was placed where it is. Mr. Sheeler asked if the system is only used to heat hot water. Mr. Bamberger stated that they have forced air heating and the radiator pre-heats the air before it goes into the firebox. Mr. Sheeler stated that the basis of his question is if the size of the array is larger enough to last forever. Mr. Bamberger stated that he doesn't expect a need to add to the size of the solar array. The size of the array is large enough to accommodate the needs of a family of four. The array is modular and you can add another collector if necessary, but it is not expected.

Mr. Grayson Newell from Sundance Powersystems came forward to address the Board concerning the location of the solar panels and associated array. There are very tall trees that border the southern property line. Those trees shade almost everything on this property including the roof. If this solar array was to be moved behind the house, the solar window would be less.

Mr. Sheeler clarified that it is the trees that would be shading the area and not the house. Mr. Newell stated that without the trees, this array could go on the roof.

Mr. Cathey asked if there was any ways of making it less intrusive to the neighbors. Mr. Newell responded that as long as you were not blocking the front of the array you could place some screening along the back.

Ms. Manheimer asked staff if there are any screening requirements. Mr. Pennington responded that there aren't any screening requirements. Mr. Sheeler responded that it would be very difficult to plant anything along the front, because in a couple of years it would be partially blocking the solar panels. The solar panels need light.

Mr. Chris Pelley, President of the Haw Creek Community Association came forward to address the Board. Mr. Pelley doesn't live on the street but received a call from a couple of neighbors concerning these panels. From the neighbor's yard you can see the back of these panels looking toward Tunnel Rd. Mr. Pelley continued to say that he is sympathic with the Petitioner but these panels really stick out. Mr. Pelley has seen elsewhere where these panels could be installed on the roof or oriented to the south. He wasn't sure if all these options had been investigated or maybe they were cost prohibited. These panels really stand out and are like a billboard on that street; there must be a better way to do this.

Ms. Janet Cothran who lives at 23 Lynnstone Court came forward to address the Board. Ms. Cothran had a letter from Chad Nance who lives at 20 Lynnstone Court and read it into the record. Ms. Cothran also read a letter from her husband Guy Cothran into the record.

March 22nd, 2009

Dear Board of Adjustment,

My name is Chad Nance, I am a 15 year resident of 20 Lynnstone Court Asheville, NC 28805. I am unable to attend the Monday March 23rd meeting due to work obligations, so I am writing to express my opinion that the request for variance to Sec. 7-14-1(a) of the Unified Development Ordinance by the residence of 19 Lynnstone Court be denied.

While I respect the residents of 19 Lynnstone Court desire to seek alternative forms of energy, I strongly disagree with the placement of the of the solar panels and support structure in question. The location of the solar panels is a decision that I feel was not well thought out by either the residents of 19 Lynnstone Court or the contractor (Sundance Power Systems) and done without regard to the other residents of Lynnstone Court.

It is my opinion that the placement of the solar panels not only is an eyesore and obstruction to the neighborhood, but could possibly lower property values of other houses on Lynnstone Court as well as be a deterrent to prospective home buyers should another resident of Lynnstone Court decide to sell their home.

I appreciate your time regarding this matter and for hearing the opinions of myself and other residents on our street.

Sincerely,

Chad Nance 3/22/09

Chad Nance

3/23/09

Board of Adjustment
City of Asheville
Asheville, NC

Dear Board of Adjustment,

I regret that I am not able to be present in person today due to sickness. This letter is to state for the record that I request that the variance request Sec. 7-14-1(a)(1) of the Unified Development Ordinance by Keith Bamberger of 19 Lynnstone Court concerning the placement of solar power panels on their property be denied.

I am a 11 year resident of 23 Lynnstone Court. We have a very small neighborhood and the solar power panels in question are far too large and in too prominent a place for our small neighborhood. They are a detraction and a eyesore.

We can no longer see our entire neighborhood when we use the table on our porch to eat meals due to the placement of the solar panels. Our line of sight has been reduced dramatically and we can no longer see our children, or other neighborhood children, at play or watch for traffic due to the location of these panels.

The lack of securing a Building Permit before installation and the continued work of the vendor in the clients basement for two days after the stop work order was posted give credence to the possibility that the philosophy behind this project was to proceed with the installation with disregard to the law or neighborhood because "it is easier to receive forgiveness than get permission."

I would respectfully ask the Board to deny this variance and not set a precedence other unscrupulous contractors may try to emulate,

Guy Cothran
23 Lynnstone Court
Asheville, NC

Mr. Sheeler asked if the Cothrans or Mr. Pelley have spoken with any other solar companies concerning alternate areas for placing the solar array. Ms. Cothran responded that they had not spoken with any contractors.

Mr. Sheeler asked Mr. Newell to come up and address the size of panel. Mr. Newell responded that this is a standard size panel and there is a smaller size panel available but it would produce less output. Based on the fact that Mr. Bamberger is wanted to use the solar system to heat the house this is the needed size. Mr. Sheeler asked if you needed to move away from this array is there another alternative. Mr. Newell said that the only alternative would be to move it back and have an 11% reduction in output which would eliminate the space heating option.

Ms. Whitworth asked staff if the panels were moved 6 feet would they be in compliance with the UDO. Mr. Pennington responded that no, it would still be out of compliance with the UDO. It would need to be 25 ft. from the street and that would put it close to the house. Mr. Sheeler asked the size of the array. 25ft would put it on the north side of the house and it would be shaded.

Mr. Bamberger returned to the microphone to point out an oak tree and show the south side of the property. Mr. Bamberger stated that the backyard is not an option and placing them on the roof wasn't an option either.

The public hearing was closed.

Ms. Manheimer stated that under state law they can't prevent the reasonable use of the solar panels.

Ms. Whitworth asked for clarification concerning the UDO and reasonable use.

Mr. Sheeler stated that it would deny this homeowner an opportunity to use solar power.

Mr. Cathey stated that it may be the best option for solar power, could something be done to make it easier on the eyes.

Mr. Sheeler asked about planting a hedge and if it would obscure the panels.

Mr. Pennington was asked to come back to the podium and spoke to aesthetics and screening of the panels.

Mr. Sheeler stated that he expected Sundance Power Systems to have obtained the appropriate permits in order to protect the Customer. Screening in back of the solar array might make the visibility worse for children in the street and limit the amount of light for the panels.

Mr. Pennington stated that staff can work with the applicant to provide screening behind the solar array. There is a list of recommended species that would be utilized.

Ms. Manheimer stated that the state law carves out an exception for this and on many lots there isn't a place to locate a solar array.

Opened Public Hearing: 2:09 pm Closed Public Hearing: 2:45 pm

Motion: Mr. Sheeler made a motion that in light of lack of any other alternatives for practical solar resource on this lot, that the variance request is approved with screening that is acceptable to city staff and consistent with the UDO behind the solar array.	2nd By: Mr. Cathey	VOTE: 5-0
Esther Manheimer		Aye
Juma Jackson		Aye
Janet Whitworth		Aye
James Sheeler		Aye
Tom Cathey		Aye

Additional Information
OTHER BUSINESS: A resolution of appreciation was presented to Richard Fort in honor of his service to the Board of Adjustment. The minutes from February 23, 2009 were adopted unanimously. MEETING: ADJOURNED: 2:54 pm

Read, approved and adopted this _____ day of _____, 2009.

_____ _____

Planning Technician Chairman