



MEMORANDUM

TO:	Zoning Hearing Board Members
FROM:	Laura Harrier, Zoning Officer
DATE:	April 3, 2024
SUBJECT:	ZHB-2023-08 / Deborah and Larry Panik 1919 Brickyard Road Continued Hearing Date April 4, 2024
COPIES:	ZHB, T. Dinkelacker, Twp Staff, Applicant

The following information is being provided regarding Zoning Application ZHB-2023-08 originally received on September 28, 2023.

PROPOSAL

Deborah and Larry Panik (“Applicant”), seek to add a Residential Ground Mounted Solar Energy System to the rear yard of their parcel located at 1919 Brickyard Road.

APPLICATION COMPLETENESS REVIEW

The submission included the following documentation in the original application received 9/28/23. To date, no new information has been submitted for the continued hearing.

- A Zoning Appeal Application pages 1 through 11
- Solar Energy World Site Plan Drawing No. A001
- Solar Energy World Worksheet
- Solar Foundations USA Foundation Packet including Design Letter and Signed and Sealed Professional Construction Drawings.
- A check with appropriate fee
- Lehigh County Property Assessment Record

BACKGROUND INFORMATION

A building permit application was received on May 17, 2023, for the installation of the ground mount solar system. The Zoning Officer denied the application on May 26, 2023, for exceeding the maximum square footage of yard area per lot. The Applicant chose not to appeal the denial of the building permit application but rather to take time to review and discuss with the solar company if other options were available. After months of review and seeing no other options, the homeowner decided to go before the Zoning Hearing Board to request a dimensional variance from the maximum yard area devoted to residential ground mount systems.

ZONING OFFICERS COMMENTS

The Zoning Ordinance allows for roof, ground rack, and pole mounted residential solar energy systems. Residential systems are considered accessory to the main dwelling.

The Zoning Ordinance 350-48(s)(13)(E)(ii)(2) states the yard area devoted to the ground mounted systems shall not exceed 500 square feet or 10 square feet per every 1,000 square feet of lot area, whichever is less. Since the ordinance states “the lesser of”, the Applicant is capped at utilizing 313.63 square feet of their lot area for a ground mounted system.

LOT: The lot size is 0.72 in area or converted is 31,363 SF. The allowable area would be **313** square feet per the zoning ordinance. The total proposed is **1,418** square feet for the ground mounted system. Therefore, the Applicant requires a dimensional variance for an average of **1,105** square feet for the ground mounted solar system per Section 350-48(s)(13)(E)(ii)(2).

SETBACKS: The original site plan indicates a 3-foot setback for the side and rear yards where 10 feet is required. This should be clarified if the 10-foot setback can be met; and if not, a variance will be required from Section 350-48(s)(13)(E)(ii)(1).

HEIGHT: The original construction documents indicate the height requirement is not compliant with Section 350-48(s)(13)(E)(iii)(1) of the Ordinance, where freestanding solar panels and ground arrays shall not exceed a height of eight (8) feet above the ground unless the lot area exceeds one acre, in which the height limit shall not exceed 11 feet. The drawings indicate the total height from grade to be 110 inches in height (or 9 feet and 3 inches). Since the lot is less than one acre (0.72 acres), the system shall maintain a maximum height of 8 feet measured from grade to top of panel. If the system cannot be altered to comply, a variance is required from Section 350-48(s)(13)(E)(iii)(1).

It was mentioned during earlier discussions that the ability to have a combination of roof and ground mounted systems would be acceptable by ordinance. However, the solar company does not recommend the existing metal shingled roof to be utilized and stated it was not suitable for solar panels, and; therefore, the only option was to appear before the ZHB for relief.

VARIANCES 350-16

The Board may grant a variance provided the following findings are made where relevant in a given case:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of Lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the Zoning Ordinance in the neighborhood or district in which the property is located;
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable Use of the property;
- (3) That such unnecessary hardship has not been created by the appellant;

- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate Use or development of adjacent property, nor be detrimental to the public welfare;
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue;
- (6) The variance shall not authorize a Use that is not permitted in the Zoning Ordinance and which could more properly be considered a rezoning to be heard by the South Whitehall Township Board of Commissioners.

APPLICABLE DEFINITIONS

ACCESSORY BUILDING OR STRUCTURE

The building or structure subordinate to and detached from the principal building on the same lot and used for purposes customarily incidental to the principal use or building.

ACCESSORY or ACCESSORY USE

Those activities and land uses incidental to a primary use that function as secondary or subordinate to a primary or principle use. Accessory activities or uses are considered sufficiently significant or different from the primary or principal use so as to warrant regulatory criteria separate from the primary or principal use. Accessory uses are permitted by right provided said use is shown as an accessory use in the Zoning District Schedule for the district in which the use is located and the use is in conformance with all other provisions of this chapter.

SOLAR ENERGY SYSTEMS, RESIDENTIAL

Definition: A system and all associated equipment which converts solar energy into a useable electrical energy, heats water or produces hot air or other similar function through the use of solar panels mounted on a roof, ground rack, or pole, with the primary intention of reducing on-site consumption of utility-supplied electricity.

SOLAR PANEL

A structure containing one or more receptive cells, the purpose of which is to convert solar energy into useable electrical energy, heat water, or produce hot air or perform any other similar function by way of a solar energy system.

CLOSING

Due to the solar element of the proposal, it cannot be determined by the Zoning Officer if the minimum relief is being requested. The Solar Agency Representative should present testimony to the Zoning Hearing Boards satisfaction.

Laura Harrier
Zoning Officer, Community Development