**Board of Adjustment**

**Canterbury, NH**

**Minutes of Hearing**

**23 August 2023**

**Case No. 2023-7 Variance**

Present were: Chairman Joe Halla, Calvin Todd, Christopher Evans, Jim Wieck, and Sean O’Brien (Alternate).

Also present were: Mark Phillips, applicant, Ryan Young from Sundial Solar, and Fred Portnoy, abutter.

Chairman Halla advised those present that **Mark Phillips** is seeking a variance as regards a solar panel array on his property. The application involves Tax Map 101, Lot 77000 located at 639 Shaker Road located in the rural zone. The proposed use states “Owner would like to add solar panels for renewable power. The only suitable location is within 50’ setback from road”. Chairman Halla gave a detailed description as to the conduct of the hearing procedure.

Ryan Young introduced himself as being from Sundial Solar which is spearheading the project management. He noted Mr. Phillips is trying to do the right thing in terms of creating renewable energy for his home. Like everybody else their company does many more rooftop solar installations. They went through that on this project and rooftop solar is just not a good option probably because of the way the roof sits and because of some trees in the back that he doesn’t control because they belong to an abutter. Before they looked at a variance, they tried to do everything else to accomplish a solar installation at this site. What they would do is a classic, modern, single array, all black panels, one array basically facing south, and it will look very nice in that location. The other thing about this location is there is already some natural shading, screening from the road from large trees, birch and some brush when you look from the road to where the array is proposed. There is also sort of a natural grade on the road. The road is straight right there, there are no turns, it’s not curvy. They are proposing a modest 15 panels, it’s not tall, maybe nine or ten feet. Chairman Halla asked how far from the road is this going to be. Mark offered about 30 feet. Ryan said this is what they wanted to talk with the board about. Obviously, in that area there are homes that are within 10 feet. You’d have to get down below that slope

and it’s going to be kind of on an angle, not perpendicular to the road, but away from the road, very close to this road, 20-22 feet. At the farther end it will be more like 30 feet. Chairman Halla asked what would be the closest to the road. Ryan advised they would propose 20 feet from the road. Chairman Halla asked if they have a drawing of any of this that shows the size of the lot or where the house is. They included a map in their proposal. Chairman Halla asked how big is the lot? It is one half acre now. Mark advised he had a quarter acre and he bought the adjoining land. It is on Shaker Road near the Belmont line, part of Sherwood Forest.

Chairman Halla asked if there were any questions from board members. Jim asked if there is anywhere else on the property where it could be constructed. Ryan responded no, it wouldn’t be practical to move it east or west. West goes closer to the abutting line, east goes right in front of the house and you are within that setback area. That’s really the issue here, if you move fifty feet, the further we move back we get into shading from the house and trees in the lot right behind Mr. Phillips. Calvin asked what’s the offset to production of a roof base to a ground base, does it drop? Ryan responded typically not, in this situation because of the shading of the trees, it’s impractical. They would never propose doing a roof base in this situation. Chairman Halla asked how did you get here? Did you go to the building inspector, how did you end up knowing you had to come for a variance. Ryan advised they talked with Joel. They went through it with Joel. He kind of talked us through, he doesn’t speak for the board, talked through other options and there aren’t any, but generally he thinks he was as

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supportive as he could be in his role. Sean found a picture of the house on Google Maps and offered to show the board. There was discussion about the orientation of the house with the proposed ground panels unit. Chairman Halla asked how big are the panels? Individually, they are about 3x6. The whole array is 30 feet long by 7 feet deep. Chairman Halla asked what’s going to be facing the road, the 30 feet? Ryan responded, yes, it will be not quite perpendicular to the road. Chairman Halla asked if they will meet the side setbacks. Yes. He asked if Joel feels you need to get a building permit to put this up. Ryan advised he cannot remember if Canterbury has a building or solar permit requirement. He asked how did the building inspector get involved? Ryan advised he went in to talk about permitting. So, he went in to talk with him. Yes, because every town has different requirements, he goes in to find out what they are for each town. Chairman Halla asked if he thought they needed a building permit, or this is where he wanted it put. Calvin advised that in order to pull a permit he has to get a licensed electrician involved. Calvin asked how much road frontage is there. The road frontage is about 100 feet. The lot size is about 100x100. Chris asked is it a one story or two-story home? Mark replied from the road it looks like one story cape. In the back it’s like three stories. Jim asked if the array will be oriented perpendicular to the road. Shaker Road runs north/northeast. It would be tilted toward the corner of the house. Jim asked what’s the width of that array in the dimension. It would be about 10x30 feet. There was discussion with the board with a laptop depiction of the lot and house. Chairman Halla asked for confirmation that you have to have a building permit because of the electrical hook up. Yes, that is required but not because of the panels. Chris noted it is a permanent foundation so requires a permit. Chairman Halla asked what kind of foundation does it have? Ryan advised it will be a steel structure foundation, probably subsurface concrete footings. They will be sonar tube footings.

Chairman Halla asked if there were any questions from board members. There being none he asked if anyone wished to speak in favor. Fred Portnoy spoke saying his property is at 642 Shaker Road and his driveway is directly across the street from the site. His house is way back in the woods and cannot see it from his home. But, his message is he is completely in favor of solar panels anywhere anytime and he is in favor of this. There was no one present who spoke in opposition. The applicant had nothing further to add. There were no further questions. The testimony portion of the hearing was closed.

Sean said he is trying to understand what the setback is for. Chairman Halla advised the setbacks usually apply to buildings, structures. He noted the reason he brought this up as far as you need a building permit because there is a gray line in his thinking about whether this is a structure or not any more than I poured a footing and had a 30-foot flagpole in front of my yard, to me that is not a structure. Evidently this is as far as permitting goes. Jim said he saw two potential reasons for having the zoning. One is esthetics, what is good for the neighborhood. And also, it’s the safety issue. To him, that area is pretty unique, it’s congested in there. He used as an example having a stonewall and someone going off the road and hitting it. He does not think this is a safety issue. There is no other way he can do it. Calvin pointed out he owns the adjoining lot that it would be next to so, he’s not putting it in the neighbor’s property and shading it. Chris wondered if the hardship was established because he could go up another 50 feet and get clear of the house so that would be the only question he would have, is the hardship established. Jim responded, well, what is the other reasonable way to do it. Chris replied that he didn’t know he was just posing the question. Calvin said there is a drop off of power due to shading, so in that sense the hardship the margins if you are loosing 35% of your potential generation and all you have to do is move it 30 feet, isn’t that kind of a hardship in terms of…..yes, Chris concurred. Calvin said again, solar is not a necessity, so you can argue it two ways, but it seems like this is the only area possible to put

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it. Chris said he would not argue for denying the application. There were no abutters here to complain and he does not have any major objections.

Jim made a motion to approve Case No. 2023-7, a request for a variance, setback…this is a Use Variance.

1. The zoning restriction as applied to the applicant’s property does interfere with the applicant’s reasonable use of the property considering the unique setting of the property, the environment. It’s an area where the lots are small, there are trees surrounding the property that the applicant does not control that would prevent this from operating properly.
2. No fair and substantial relationship exists between the general purpose if the zoning ordinance and the specific restriction on the property. It does not seem there is a safety issue that this would present a hazard. Esthetically, it’s not an unreasonable location.
3. Granting the variance would not injure the public or private rights of others. It won’t be blocking the light on adjacent property.

Chris seconded the motion. The Board vote was a unanimous decision to **GRANT** the variance. Chairman Halla explained the thirty-day appeal process.

Respectfully submitted,

Lisa Carlson, Clerk

Board of Adjjustment

**DRAFT**