



**Zoning Board of Adjustment
Town of Brookfield, NH
267 Wentworth Road Brookfield, NH 03872
Thursday, August 31st, 2023**

ATTENDANCE: Brian Robischeau, Moderator; Michael Moore, Board Member; Doug Stefano, Board Member; Christopher Proulx, Board Member; Susan Weiske, Board Member; Dulcie Lavender, Board Member; and Abby Root, Secretary.

Also Present: Father Andrew Nelson, Rich Zacher, Packy Campbell, Bob Compton, Anthony Iannillo, Paul Trembley, Jan Ledbetter, Bill Nelson, and Frank Fraizer.

- **SITE VISIT:** The site visit started at 6:03 PM.
- Michael Moore inquired if the builder had a permit to build the structure in the first place. Rich Zacher said that Mr. Campbell did attempt to follow up with the code enforcement office, but received little to no response. He also asked if the panel was in compliance with the setback at that moment, to which Mr. Zacher said he believed the panel was not at the time in compliance.
- **Call to order:** Opening of hearing at 6:20
- **Pledge of Allegiance**
- Brian Robischeau, moderator of the hearing, started by asking the following questions to the board members.:
 1. Does anyone expect to gain or lose in the disposition of the case
 2. Is anyone related to either party
 3. Has anyone advised or assisted either party
 4. Has anyone directly or indirectly formed an opinion about the matter
 5. Is anyone employed or an employee of either party
 6. Is prejudice to any degree on anyone's mind

They all answered no to each question.
- After these questions, it was discovered that Mr. Campbell had not yet arrived. The Randall's went to call him. After no answer, there was discussion on either holding the

hearing without Mr. Campbell, or rescheduling. The Randall's eventually got in contact with Mr. Campbell, who informed all that he was running late.

- **Brian Robicheau presented a motion to postpone the meeting until 7:10 PM, seconded by Dulcie Lavaner. The motion passed unanimously.**
- Father Andrew Nelson renewed Doug and Dot's vows.
- **Packy Campbell arrived at 6:49. The hearing was decided to start at 7:00.**
- Packy Campbell first apologized for being late. He stated the equitable waiver is to be granted when you have a "good faith estimate." He stated he used reasonable care for the twenty foot setback and the code enforcement never provided him with any information on what or how much the violation is. Mr. Campbell stated he met the equitable waiver criteria for the first two with 1) good faith and 2) application for the waiver AFTER the installation, which he was unaware at the time was a violation. No one made him aware of the violation; at that time, Mr. Campbell said the town's position was that it needed to be fifty feet from the lot line. Called code enforcement and gave him a copy of the zoning ordinance where the panel is an ancillary structure that needs to be twenty feet from the lot line. He reiterated that there was good faith in the installation. He said no one informed him he was off from the twenty feet. Turn is only 270 degrees and most of the time it turns with the sun 140 degrees so when the town was looking at the position during construction he thought it was 19.5 feet. The third criteria is does it diminish property value. He agreed that if the tracker was blocking a scenic view, then maybe it would. But he does not see how the cost of moving the tracker would benefit the tracker. He says that even if he does move it, you will still have the same view. He thinks this instance is the "poster child" for why this law was created. There has to be some overwhelming public benefit for the price of moving the tracker. Because of the shape of the lot, it had to be put on the front corner. Because of this, he would like to ask for an equitable waiver.
- Father Andrew Nelson, an abutter, stated that it is most unfortunate that there was a disregard for the beauty of Brookfield and that the panel absolutely hurts property value. Father Andrew said they are commercial sized panels in a residential area. He also was frustrated about the lack of conversation and consideration before the installation. Father Andrew said the panel is the same size as the panels put up in Lilac Mall and Staples, which are located in Rochester, NH.
- Mr. Campbell acknowledged Father Andrew's points, but stated that, whether or not you think it does or does not hurt values, the question for the board is whether the equitable

waiver follows the letter of the law. If yes, the waiver must be granted. He did state he put up the trackers in Lilac Car Wash and Staples plaza, both of which he owns. However, Mr. Campbell corrected Father Andrew's estimated measurements by stating, "The one fact that is not accurate is that this is a 24 panel tracker it's 26 feet wide. The tracker at Staples and the trackers at Lilac Car Wash are 48 panel trackers. They're 48, 49 feet wide. This is not the commercial version of that tracker.... This is the residential version of the tracker."

- Bob Compton is the abutter who owns the horse barn. He stated he has spent his summer trying to work with his animals. His horses react negatively to the panel and it spooks them. He also said that it diminished his property value because people come to ride horses in a rural area there. Mr. Compton also noted that he is not against solar, just the placement of the panel.
- Mr. Campbell asked if it was 25 feet back, would people be happy with changed perspectives. Or that, given the law is on his side, are you willing to move it 25 feet when you only need to move it two. He also said they have "very little legal option but to grant the equitable waiver." Mr. Campbell stated that the Board of Selectmen said if he got an equitable waiver they would be happy and doing so would be a good way to double check everything. He informed the board that there is a well and further back there are trees in the back, and also a log truck in the back that goes in and out. Mr. Campbell, who sells real estate, said he does not mean to inconvenience anyone and he would be happy to list anyone's house.
- Anthony Iannillo inquired why no one was notified for the installation.
- Mr. Campbell discussed how Brookfield does not have a requirement to do so, and he only needed to pull a building permit and an electrical permit. He has had to notify neighbors previously in other towns, however, Brookfield, and most towns, do not have a solar ordinance. He couldn't send out notifications to abutters and it was not a part of the application process. He supports doing some sort of ordinance change in Brookfield.
- Paul Trembley, an abutter, agreed that moving it would not make a large difference. He inquired why the trees in the back weren't cut. He said many residents moved here for the rural charm, which the panel hinders. He also claimed that Packy contradicted himself by first stating the panel was commercial and then saying it is residential. He also noted that Mr. Campbell kept insisting the board has to grant him an equitable waiver, which Mr. Compton said it appears as though that is a threat.

- Mr. Campbell stated that he did not want to get lawyers involved or anything of that nature and that he will accept any decision the board will make. He reiterated how the panel meets the town ordinance.
- Jan Ledbetter inquired if there was a survey done. She said that we can not rely on stone walls, as they are all over Brookfield. Secondly, even if it is the stone wall that is the property line, there is no way to put up vegetation to help cover the panel.
- Packy Campbell said that there were assumptions that the stone wall is the lot line, however the deed mentioned the edge of the road for the setback.
- Bill Nelson asked how many possible places there were to put the tracker.
- Mr. Campbell said he was sure there are multiple places for the tracker to go to meet the setbacks. He said they did measure from the center of the right of way. Mr. Campbell said that the Randall's have rights to have a panel to save on electricity.
- Rich Zacher said that the property owner has to officially define the property lines, so you know exactly where the lot line is.
- Frank Fraizer read from the March 14th Zoning Ordinance. In the definition section (Article 10) you can find the definition of solar, and that solar is not defined as an ancillary structure. Meaning where you find the definition of solar the setback is fifty feet. The fall zone for something mounted as a big mass is twice the height. Meaning it wouldn't just fall twenty feet if that is the size, it could fall much further, which may present safety issues. He said it seems as though the setback should be fifty feet, which, if that is the case, there may not be a place on the property for the panel.
- Mr Campbell stated that the administrative decision by the town of Brookfield was that the tracker was an ancillary structure.
- **The Board Questions:**
- Doug Stefano asked which permits were applied for. Mr. Campbell answered that it was a building permit and an electrical permit. He also said that code enforcement told him what the setback was. He never got a cease and desist and the tacker **was defined as an ancillary structure**. Mr. Stefano asked if the code enforcement officer was given a diagram when applied for, but Mr. Campbell could not recall. However he reiterated that he met all the criteria and did everything he could to contact the building inspector, who

agreed with Mr. Campbell that the setback is 20 ft. He said he went to the Board of Selectmen and it seemed like the correct path forward.

- Michael Moore asked if the tracker is in service right now. Mr. Campbell said it is not turned on currently, but it is fully functional. He said one of the ways the setback could be met without moving it was to set the tracker so it would never turn in a spot that would violate the setback. Mr. Moore also asked if the fall radius was taken into consideration. Mr. Campbell said when looking at the ordinance that didn't apply to that type of structure, but he did say he most likely looked at that after the fact. Mr. Campbell did say it has a 16,000 lbs concrete base and uses the same base as the 48 foot tracker. Mr. Moore inquired if the BOS encouraged Mr. Campbell to apply for the equitable waiver. Rich Zacher then said the BOS didn't encourage Mr. Campbell, but did acknowledge that there is an option to go to the ZBA. Mr. Campbell also said he knew that the BOS could not grant the equitable waiver, but he went to them so they could inform him how much he was in violation, which they are legally obligated to do. Mr. Campbell believes there was a misunderstanding and he was not asking for an equitable waiver.
- Dulcie Lavender said the burden of proof is on the applicant, not the board. She also said Brookfield is very different from other towns he has done installations. Mr. Campbell said it is the Randalls' right to get the equitable waiver. He also said perception is reality and he does not deny that it diminishes property value. He said it exists whether it moves or it doesn't.
- Susan Weiske said she read the letter where Mr. Campbell agreed with the twenty foot setback, but he, or the property owners, did not determine from where. She said she is "amazed that they didn't do a survey or that you didn't require one to know exactly what you were setting back from."
- Mr. Campbell said he has never done a survey for residential trackers. He said he did however measure to make sure it was within the setback. He stated he used reasonable care. He reiterated previous points about how if the tracker is moved however many feet, it will still be there. He claims the cost and the value in moving the tracker does not match the value for the town benefit.
- Before the vote, there were last comments. Paul Trembley stated that Mr. Campbell is saying that no matter if you like it or not, it will stay there. Vicky Randall added how "moving it isn't going to change how it looks." Father Nelson stated how if it had to be there, despite him feeling as though it diminishes property value, it should, at the very least, meet the setback without any exception. Susan Wieske inquired how he measured. Mr. Campbell stated he measured both on paper and on site. Mrs. Lavender said the town needs

to have a clear ordinance and rules for solar and whether or not it is a structure or an ancillary structure. Lastly, Michael Moore raised concerns if the board votes yes to this, is the board, and town, taking on a liability by granting this waiver.

- Mr. Campbell said he is going to use the twenty-four hour rule to discuss with his clients what to do after the board makes their decision. He also again discussed how the board should grant him the waiver and he is open to having discussions after.

- **FINAL VOTE:**

- a) That the violation was not noticed or discovered by owner, former owner, owner's agent or representative, or municipal official until after a structure and violation has substantially completed or until after the law of other divisional land violation had been subdivided by conveyance to a bona fide purchaser for the value:

1. **Chrisopher Proulx - Yes**
2. **Susan Weiske - Yes**
3. **Michael Moore - Yes**
4. **Doug Stefano- Yes**
5. **Dulcie Lavender Yes**

- b) That the violation was not an outcome of ignorance with the law of an ordinance. Failure to acquire confiscation, misrepresentation or bad faith on part of any owner or owners agent or representative, but was instead caused either by good faith error in measurement or calculation made by owner or owner's agent or an error in the ordinance interpretation made by a municipal official in the process of issuing a permit over which that official had authority:

1. **Dulcie Lavender - Yes**
2. **Doug Stefano - Yes**
3. **Michael Moore - Yes**
4. **Susan Weiske - Yes**
5. **Christopher Proulx - Yes**

- c) That the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:

6. **Christopher Proulx - Yes**
7. **Susan Weiske - No**
8. **Michael Moore - No**
9. **Doug Stefano - No**
10. **Dulcie Lavender No**

d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation the cost of the correction far outweighs any public benefit to be gained that would be inequitable to require the violation to be corrected:

6. **Dulcie Lavender - No**
7. **Doug Stefano - No**
8. **Michael Moore - Yes**
9. **Susan Weiske - No**
10. **Christopher Proulx - Yes**

- **Brian Robicheau stated that, because C and D did not pass, the equitable waiver was not granted.**
- Mr. Campbell stated he did not think the decision was just and he will give his clients a 24 hour window to decide what to do. He also said if anyone wanted to make a motion to change their vote, it would be appreciated. He ended by saying he will continue to work with the code enforcement officer to assure the placement is correct and has the approval of the town.
- **Meeting Adjournment:** The meeting was adjourned at 8:48 PM.

Respectfully submitted,

Abigail Root

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Secretary