

TOWN OF EDEN
ZONING BOARD OF APPEALS
2795 EAST CHURCH ST, EDEN, NY 14057

PUBLIC HEARING DATE: February 15, 2024

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Curtis Neureuter
Doug Scheu
Joe Winiecki
Herb Stocksclaeder

EXCUSED: Drew Riedel
Patrick Riester

TOWN BOARD: Gary Sam

OTHERS: Dave Rice, Code Enforcement Officer

APPLICANT: RIC Development LLC
James Taravella, PE
Henry Zomerfeld, Esq. (Hodgson Russ LLC)
Sheila Ransbottom (Wendel Companies)

RE: **Appeal No. 2024-001**
RIC Development LLC
2027 Eden Evans Center Road

Ms. Kent called the hearing to order at 7:00 p.m. and asked for comments on the October minutes. **Mr. Winiecki made a motion to approve the minutes from the October 19, 2023 meeting; seconded by Ms. Kent. Minutes approved unanimously.**

Ms. Kent then read the Legal Notice for this hearing as published in The Buffalo News:

Lunge: Application for a use variance at 2027 Eden Evans Center Road to allow installation of a Utility Scale Solar Energy System in the R-2 zoning district, in violation of the location restrictions under Code section 172-4 B.

Ms. Kent confirmed with Ms. Griebel that the property notice list was completed. Ms. Kent asked if RIC has received written approval from the property owners to represent them here. Mr. Taravella noted that he provided a copy of a National Grid authorization for RIC to represent the property owners, and an appendix to the [unidentified] agreement also gives RIC authority to represent the property owners. Ms. Kent indicated the National Grid form authorizes RIC to act for the property owners with respect to National Grid electricity issues only; the ZBA requires authorization as well. Mr. Taravella stated that he will provide the required written approval.

Ms. Kent noted that any audience members who wish to speak will be allowed to do so after the application has been presented to the board and the board has asked its questions. When speaking, please identify yourself and state your address for the record. If the applicant disagrees with the decision of this board, it can appeal to the Supreme Court of Erie County.

RIC was asked to provide the reasons it requested the use variance. Mr. Taravella explained they would like to build a utility scale solar project at the rear of the property. The property is zoned R2 which does not allow for commercial grade/utility scale solar. RIC feels this would be a productive project; and the panels can be hidden from street view. RIC received letters from neighbors confirming their approval of the use. Facilities would be more than 500' from the road, so they are barely visible and will not be an eyesore. RIC will be providing a landscaping plan as well.

RIC was then asked questions by the board related to the requirements the board must consider in use variance requests. Ms. Kent noted that under NY law all four requirements must be met to approve a use variance (*RIC's answers are in italics*):

- 1. The applicant cannot realize a reasonable return on the property from any uses allowed in the zoning district; is the lack of return substantial, as shown by competent financial evidence?** *Mr. Zomerfeld stated that this is a unique case because it is a solar use variance which is held to different standards. This is a public utility variance standard which does not include the same factors. Ms. Kent responded that the board has read the legal summary in Mr. Taravella's letter and has consulted with the Town Attorney. We've been advised our questions are appropriate and we will proceed with them. Mr. Taravella: the area where we intend to build the solar farm is a flat area on the property. I have a map showing the agriculture assessment report prepared by Mike Blaszczyk, who previously farmed the property. The report shows this area is wet and does not consistently see positive yields. Ms. Kent noted that Mr. Blaszczyk and perhaps others have leased the property in the past for farming; can you tell us how much the owners have received from those leases? I do not have that information on hand. Can you tell us whether the property owners have explored other options that would include uses permitted in the R2 district (such as residential development, office use, or retail agriculture)? I'm not aware of them pursuing anything else. Looking at residential development of the property would bring substantial cost for installing utilities to the area. To develop the area which currently is not on public water and sewer, we would need about 5 acres, we would need to install roads and would be limited to how many parcels we can divide out. The wetlands would also be a hindrance. It would be extremely costly for us to install infrastructure in an area like this. Can you tell us what those costs are? Just the utilities for this project would be close to \$900,000 which would not include roadways. Mr. Neureuter asked if these numbers were developed by RIC engineers? Yes, he developed the numbers and he is a licensed engineer. Mr. Neureuter questioned the quote of \$900,000 for the utility extension and what would the roads would cost? Mr. Taravella admitted that once he saw that number, he did not pursue costs any further. Mr. Neureuter asked why he chose to use this particular cost example to demonstrate rates of return? Because I know there is residential development within the town, and I know the lots are typically selling for \$50,000 - \$80,000 each. We wouldn't be able to turn enough lots back there to even come close to covering the cost for utilities. A residential development is not a cost-effective option at this time. Did you compare the cost to costs for the other uses permitted in this zoning district? The residential costs made the most logical sense to me; I'm not a land development guy.*

2. **Is the hardship for the property unique, not applying to a substantial portion of the neighborhood?** *We need a substantial amount of land to install a solar project. The other properties in the area have well water and public sewer at the street. If they have three quarters of an acre that is vacant and buildable, the utilities are already there. Mr. Taravella was asked if he counted individual lots in reaching his conclusion. I did not count individual lots. Should I have our team do an analysis of lots in R2 as well as AG Priority and Light Industrial?* Ms. Kent noted it's hard to conclude this property is unique because RIC's second application being heard tonight (Five VL Farms) is on the same street, with the same use variance request, and other properties in this district may qualify for your program. Mr. Neureuter asked how many acres are needed for this type of solar project? *This project is going to be 20.2 acres of developed area. Again, it will be set at the back of the property, away from the road.* Mr. Neureuter asked if they could conceivably develop other lots in this district that are around 22 acres? Mr. Rice noted that commercial solar that uses farmland, or land in the County Agricultural Overlay District, may only use up to 25% of the lot for solar. For 20 acres of solar, an 80-acre lot is needed. Mr. Neureuter suggested that RIC could also reduce a project's size if it wished to use smaller lots; Mr. Rice agreed that could be an option.
3. **Would the variance alter the essential character of the neighborhood?** *We have placed the project as far from the road as possible. We are also developing an extensive landscaping plan to help screen the project.*
4. **Was the alleged hardship self-created?** (This NY law standard asks whether the need for the use variance was in place when the property was acquired.) *Mr. Taravella: No. The site selection in addition to land size is limited by substation capacity and proximity to adequately sized feeder lines. It all goes into the calculation of that.*

Ms. Kent noted that whether the need for a use variance is self-created causes us to ask additional questions, based on these points made by RIC:

You state in your letter that RIC's business purpose is to generate solar electricity and provide it to the grid to be distributed to consumers. *Mr. Taravella: That is correct, and distribution will be a community solar program.*

You note in your letter that the current Eden zoning "severely constrains" the fulfillment of your business purpose, but this parcel in the R2 zone has a unique combination of the characteristics that RIC needs. *Yes, that is correct.*

Your remarks and your letter state that economic feasibility for your project requires: parcels of a certain size; proximity to a grid connection; suitable topography; and the availability of property leases. *Yes those are the important characteristics.*

So our questions are these: Can you tell us why RIC chose this parcel to fulfill its purpose, rather than a parcel in Eden's three other zoning districts that do allow commercial solar: AG Priority, Rural Residential and Light Industrial? Can you document the efforts RIC made to seek and evaluate parcels with the characteristics it requires in the three available zoning districts?

Mr. Taravella noted that two landowners in the R2 district want to participate. We ask property owners and if they say no, we cannot force it upon them. Again, we must look at the grid maps to see if the capacity of the feeder lines are adequate in those areas. There tend to be smaller lines in the outskirt districts and they can't handle the capacity of the thermal load, causing them to not be suitable locations.

What about topography? Are there any flat parcels in the Rural Residential, AG Priority or Light Industrial districts, which cover roughly half of the town of Eden? *I did not study the topography of every district, but this parcel meets the topography standards and all other criteria that we need.*

The board pursued the landowner/lease question. You stated that you located landowners for solar projects in the R2 district. How do you go about finding interested candidates? *We have an origination team that studies grid maps from National Grid and NYSEG to find substations with capacity. For proximity to the grid, are there other places in Eden, besides R2, where proximity might be accomplished? It's possible, but again we need landowners that want to do it.*

Mr. Taravella was asked if he had anything to show the board where the grid is located in Eden. *I don't have anything with me showing the substation locations and capacities. For topography, do you have anything to show us that certain areas are too steep or too wet and you couldn't use them? I can provide you with a lidar map if that's what you would like?*

Ms. Kent noted that the board needs to see documentation of RIC's assertions.

When your company finds that the grid permits an area to connect, how do you contact landowners? *I am unsure of how the property owner was contacted. Typically, it would start with a mailer to determine interest. It may involve a local real estate agent that reaches out to see if there is any interest. I am unsure if that is what happened in this case. When we find someone who is interested, we enter into negotiations to see if there is any land that they would like to lease to us. Do you make house calls? Phone calls? I don't know if RIC does but the realtors we hire might.*

Can you supply us with a mailing list that may have been used for the project (and the Five V&L Farms project)? Can you provide us with mailing lists of properties within other zoning districts? We would like to see evidence that your firm attempted to seek and evaluate parcels within the zones where commercial solar use is permitted. If it turns out that there's nothing possible because of lack of proximity to the grid, or the land is too steep or wet, and you've dealt with 300 possible land owners with no interest, that would show us that you exhausted the other options. We do have three zoning districts designated as eligible for this use. *Mr. Zomerfeld responded that he has worked with RIC for a number of years, with many projects across the state. RIC is a trustworthy company. If there were a viable land owner in a district that could be developed without a use variance, trust me, I'm sure they would prefer not to have to pay me to travel here and review everything. It really comes down to where the land is and if it is suitable to connect to the utility and the landowner is willing to lease it. I also wish to emphasize this is part of the reason why the standard of the [Town Law section] 267b really doesn't apply here. I do want to make sure the record is clear. It's not my opinion. There have been a number of court cases including some with the State's highest court that have held solar as a public utility and the public utility variance standard should apply in this case.* Ms. Kent repeated that the ZBA has received legal advice, including about additional NY caselaw that isn't cited in Mr. Taravella's letter. We will let the lawyers handle that. In the meantime, we are requesting documentation that supports the use variance. We assume RIC made a rational decision to not proceed with a project in the roughly half of our town that does allow utility scale solar. This is

what we are asking to be explained and demonstrated. *Mr. Zomerfeld said there may not be an explanation beyond proximity to the grid and interested property owners.*

Ms. Kent then asked Mr. Taravella and Mr. Zomerfeld whether they would favor the board proceeding to a decision tonight, or would prefer to provide answers to the board's questions; she is willing to have the board consider tabling the decision. *Mr. Zomerfeld questioned how the board can act tonight, because he understands the Planning Board is the Lead Agency and they will be reviewing the SEQRA materials.* Ms. Kent responded that the ZBA was asked to review this variance request first, and that the ZBA and Planning Board will need to discuss the SEQRA Lead Agency question. *Mr. Zomerfeld responded with his understanding that the ZBA has unanswered questions, and the ZBA wishes for RIC to provide answers to those questions, regardless of SEQRA and Lead Agency status at this time. He and Mr. Taravella indicated tabling the matter would be acceptable.*

There was discussion about creating a list of documentation sought from RIC. Ms. Kent suggested that the Building Department would be available to review RIC's proposed list if RIC would find that helpful.

Ms. Kent made a motion to table this proceeding to allow the applicant to provide evidence of hardship and documentation showing that this project cannot be located in one of the Town's zoning districts where utility grade solar is permitted. Seconded by Mr. Neureuter. All voted in favor, motion approved.

The hearing was then open for public comment:

Michael Rosowicz, 2100 New Jerusalem Road asked a number of questions including the cost of the project, how it will affect tax assessments, whether there will be a PILOT agreement in lieu of taxes, whether the Town will have liability (and/or cost) for fire and police services, whether large amounts of concrete will be poured, and whether a bond will be in place for decommissioning expenses.

Mr. Taravella responded to several of the questions, and Mr. Rice and Ms. Kent noted that these project-specific issues would be considered by the Planning Board (which has its own public hearings) at a later time.

Donald Gerring, 2059 Eden Evans Center Road indicated that he does not want the utility solar project, and said he has learned that for every 10 acres of land a landowner gets about \$23,000 a year for 20 years. But will there be money in escrow for when this great idea isn't needed anymore? He understands that Eden's solar code requires power lines at the solar farm to be buried, but the existing electrical poles will not be able to handle the power. How will that be handled since National Grid stated they have capacity for this solar farm? He indicated bigger poles will be needed.

Meeting was adjourned at 7:45 pm.

Respectfully submitted,

Shelly Griebel, Secretary
Eden Zoning Board of Appeals