

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

PUBLIC HEARING DATE: April 21, 2022

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Joseph Winiiecki
Curtis Neureuter
Drew Riedel
Doug Scheu
Candice Pineau

EXCUSED: Larry Dibble

TOWN BOARD: Gary Sam

CODE ENFORCEMENT: Dave Rice

APPLICANT: Jordan Yax, CIR Electrical
(Representing Bubba Kalooster LLC)

RE: **Appeal No. 2022-3**
Bubba Kalooster LLC
8178 N. Main Street

Ms. Kent called the hearing to order at 7:00 p.m. and asked for comments on the March minutes. **Mr. Winiiecki made a motion to approve the minutes from the March 17, 2022 meeting; seconded by Ms. Kent. Minutes approved unanimously.**

Ms. Kent then read the Legal Notice for the hearing published in the “The Sun”:

Bubba Kalooster LLC: Application for a use variance at 8178 N. Main Street to allow installation of a Utility Scale Solar Energy System, in violation of the uses allowed in the Mixed Use 1 zoning district and the MS4 (storm water) overlay area, under Code section 172-4.B.

Ms. Kent confirmed with Ms. Crowe that the property notice list was completed, and the applicant authorized CIR to appear on its behalf.

Ms. Kent summarized that the hearing is for a use variance to allow a utility scale solar system of about 53kw at Rayzor’s restaurant in the MU-1 district and MS4 overlay area. The Solar Code permits up to 25kw systems there. There are four tests to be met for approval of a use variance. If approved, the applicant will need to apply for a Special Use Permit by the Town Board following site plan review by the Planning Board.

Mr. Yax was then asked to explain the reasons Rayzor’s applied for a variance. Mr. Yax said the solar system was designed based on consumption. The intent is to produce at least the minimum amount of electricity used. This solar system is typical for a restaurant of this size. He mentioned the Boys & Girls Club has roof-mounted solar panels. Ms. Kent indicated those panels were in place before the Solar Code was adopted in 2017.

Mr. Neureuter asked if the applicant will be selling electricity back to the utility company? Mr. Yax said yes, the system is designed to produce what is used, but additional production will be sold to the utility company. Ms. Kent noted the seasonal operation of the restaurant. Are the production levels based on when the business is in operation? Mr. Yax replied that the production need is based on an annual average. Mr. Neureuter noted the irony of the consumption being equivalent to full roof coverage by solar panels.

Ms. Kent read into the record the following Findings in Town Code Chapter 172-2, Solar Energy Systems, adopted in July of 2017:

“(A) . . . the Town of Eden intends to accommodate the use of solar energy systems.

(B) However, regulation of the siting, installation and use of solar energy systems is necessary for the purpose of protecting the health and safety of neighboring property owners and the general public, and the aesthetics of the community. These regulations are in place to balance the need to improve energy sustainability through increased use of solar energy while preserving the public health, welfare, and safety, as well as environmental quality, visual and aesthetic values, and existing neighborhood’s social and ecological stability. Further, the intent is to minimize any adverse impacts on the character of neighborhoods, property values, scenic, traffic safety, historic and environmental resources of the Town.”

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

1. The applicant cannot realize a reasonable return on the property from uses allowed in the zoning district; is the lack of return substantial, as shown by competent financial evidence? *The property owner would gain the ability to predict consistent energy bills and save money over time.* Ms. Kent asked if there is a minimum number for the electricity need. *Half the solar panels would only cover half of the electricity bill. I don’t have the electric consumption number.* Mr. Winiecki questioned the lifespan of the solar panels and recycling costs. *The panels come with a 25-year warranty.* Ms. Kent noted that NY law requires a factual showing of “no reasonable return” for any legal use of the property in the zoning district, and that the MU-1 district is very permissive. It allows almost all retail, as well as restaurants and office and business uses. Does Mr. Jax have information about lack of reasonable return from other possible uses of this parcel? *No.* Can he provide facts about Rayzor’s lack of reasonable return at this parcel, such as financial statements? *No.*
2. Is the hardship for the property unique, not applying to a substantial portion of the neighborhood? *Because of the multiple refrigeration units and seasonality of the business, usage at this location is higher than neighboring properties.* Ms. Kent questioned whether the applicant checked the annual electricity usage at Shur Fine, or at other restaurants on Main Street? *I don’t know.* Mr. Riedel asked what circumstances have changed since the business was purchased in 2019; haven’t all businesses had increasing costs?
3. Would the variance alter the essential character of the neighborhood? *There would be no visual change to the neighborhood. You would only see the solar panels on the one half of the*

roof that is facing the road. Very similar to what is seen on the roof of the Boys & Girls Club. The visibility is not obstructive.

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.) *I'm not aware of the history of the purchase of Rayzor's.* Mr. Scheu asked if the engineer who designed this solar system consulted our Solar Code? *Yes, but the system is designed to support usage.*

Mr. Yax questioned the basis for a 25-kw maximum for small solar in the Code. Mr. Rice explained that the Town adopted the New York State standards for solar in 2017, that is where the number came from. Most residential solar plans that Eden sees are 12-15kw.

The Board discussed the four tests for a use variance, the applicant's lack of required evidence, and whether this is a unique situation, or is a self-created problem, since the Solar Code with its 25kw limit was in place when the applicant bought the restaurant in 2019. Mr. Neureuter expressed concern with the poor preparation and responses to the standard questions for a use variance. He opined that no evidence of a hardship was provided, there is nothing unique about this situation, and all business owners and homeowners are experiencing higher energy costs.

Mr. Riedel made a motion to deny the application for a use variance at 8178 N. Main Street to allow installation of a Utility Scale Solar Energy System, in violation of the uses allowed in the Mixed Use 1 zoning district and the MS4 (storm water) overlay area based on the lack of evidence provided by the applicant: no evidence of a hardship, not unique circumstances, not a unique parcel and the alleged hardship is self-created. Seconded by Mr. Winiecki. Motion approved unanimously.

Meeting was adjourned at 7:40 p.m.

Respectfully submitted,

Jen Crowe, Secretary
Eden Zoning Board of Appeals