

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

PUBLIC HEARING DATE: October 19, 2023

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Curtis Neureuter
Doug Scheu
Candice Pineau
Joe Winiecki

EXCUSED: Drew Riedel
Patrick Riester

TOWN COUNSEL: Gary Sam

OTHERS: Dave Rice, Code Enforcement Officer

APPLICANT: CIR Electrical Construction Corp.
Darren Harzewski
Jeff Pedro
(Representing Bubba Kalooster LLC)

RE: **Appeal No. 2023-6**
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 September minutes. **Ms. Kent made a motion to approve the minutes from the September 21, 2023 meeting; seconded by Mr. Winiecki. Minutes approved unanimously.**

Mr. Rice informed the board that the hearing for Craig Hornberger was canceled. The applicant called the Building Department today to withdraw his application. Ms. Kent then read the Legal Notice for this hearing as published in the “The Sun”:

Bubba Kalooster LLC (aka Rayzor’s Dawghouse): Application for reconsideration, under Code section 225-45 J, of the denial in 2022 of an application for a 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 noted the board denied this identical request in April of 2022. The applicant has the ability to submit for reconsideration after one year. She confirmed with Ms. Crowe that the property notice list was completed.

The representatives from CIR Electrical were then asked to explain the reasons they applied for reconsideration. Mr. Harzewski explained that they wished to appeal the board’s decision from 2022. He read from the Solar Code which states the intent of the Code is “...to accommodate the use of solar energy systems...” Mr. Harzewski understood that the Town adopted the New York State Solar code in 2017. He further explained that the NY State solar rules have continued to evolve since

2017. The New York State definitions have changed utility scale solar to 1 megawatt or larger, as opposed to the Town's definition of 25 kw or larger. Mr. Harzewski also noted now New York distinguishes between Tier 1 and Tier 2 solar. He added that the south facing location of Rayzor's restaurant is ideal for solar, and the seasonal nature of the business and rising utility costs support the need for a solar installation.

Ms. Kent noted that Mr. Harzewski did not read the complete language about the intent of the 2017 Solar Code. While the Town said it intends to accommodate solar, as he quoted, the Code goes on to say in section B as follows: "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. Harzewski stated that there is no danger to the environment, no public health risks and Rayzor's will be aesthetically the same as the rest of the neighborhood; the Boys & Girls Club has roof mounted solar panels.

Ms. Kent noted this is a use that is not allowed by the Code, and in a location not allowed by the Code. If the variance were approved, a Special Use Permit would also be required from the Town.

Mr. Harzewski and Mr. Pedro were then asked questions by the board related to the requirements the board must consider in use variance requests, and Ms. Kent noted that under NY law all four requirements must be met in order to approve a use variance (*their 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? *Electricity costs and labor costs are on the rise and the business is growing. Can you provide facts about Rayzor's lack of reasonable return at this parcel, such as financial statements, as the ZBA requested in April 2022? I do not have that information.*
2. Is the hardship for the property unique, not applying to a substantial portion of the neighborhood? *This is a seasonal business with less time and opportunity to create revenue. There is no other business of this type on Main Street.* Mr. Neureuter disagreed: Dairy Queen is also a seasonal business serving foods.
3. Would the variance alter the essential character of the neighborhood? *This is a roof mounted system, there will be no visual change to the neighborhood.*
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.) *The Solar Code was in place two years before the current owner purchased the property in 2019. Mr. Pedro noted that Eden's Solar Code needs to be changed to allow this type of installation.*

Ms. Kent stated this is a use variance; a request to change how the property can be used. The ZBA understands that New York favors solar and wind energy systems, but the ZBA's job is to apply the Code as it is written and to follow the New York State guidelines for a use variance. Mr. Rice added that the Solar Code was written this way for a reason. The goal is to preserve the historic look of the Town as well as the future vision of the Town (the "small town Main Street" appearance of a rural farming community). The board has to apply the Code and the goals of the Town while being

cautious to not set precedents. Every parcel on Main Street could apply for a variance for large scale roof mounted solar panels if Rayzor's receives one.

The Board discussed the four tests for a use variance, the applicant's lack of required financial 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. No evidence of a hardship was provided, there is nothing unique about Rayzor's undocumented rising electricity costs, which in any event all business owners and homeowners are experiencing. Mr. Winiecki expressed concern with the poor preparation and responses to the standard questions for a use variance. Ms. Kent and Mr. Rice noted that any request to change the Solar Code needs to be presented to the Town Board.

Mr. Winiecki 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. Neureuter. Four members voted in favor of the motion; 1 member voted against. Motion approved.

Meeting was adjourned at 7:58 pm.

Respectfully submitted,

Jen Crowe, Secretary
Eden Zoning Board of Appeals