

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. 2024-002**
RIC Development LLC
2394 W. Church Street

Ms. Kent called the hearing to order at 7:45 p.m. The ZBA, RIC and Mr. Zomerfeld agreed that the discussions contained in the Minutes of RIC's earlier application (Appeal No. 2024-001), which is nearly identical, are incorporated by reference for this matter as noted below, **except for differences with respect to this matter, which are noted in bold below.**

The Legal Notice for this hearing was published in The Buffalo News:

Five VL Farms, Inc.: Application for a use variance at 2394 W. Church Street 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.

The property notice list was completed. As in Appeal No. 2024-001, review of the need for RIC to provide evidence of the property owner's approval for RIC to represent it before the ZBA is repeated here.

As in Appeal No. 2024-001, the request that RIC provide the reasons it requested the use variance, and Mr. Taravella's response, are repeated here.

As in Appeal No. 2024-001, the ZBA would repeat the following questions related to the requirements the board must consider in use variance requests (*and 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's statements about the solar/public utility use variance standard in Appeal No. 2024-001 are repeated here.*
 - a. Ms. Kent's response in Appeal No. 2024-001, about the ZBA having received legal advice that its questions are appropriate, is repeated here.
 - b. **Mr. Taravella's responses and the board's follow up questions and his responses to them in Appeal No. 2024-001 are repeated here, except that Mr. Taravella would note that the property owner had previously installed a golf driving range on this property, and Ms. Kent would note that the letter from Mr. Blaszc (provided by RIC in Appeal No. 2024-001) mentioning previous farm leases, soil conditions and topography appears to apply only to the property in Appeal No. 2024-001.**
2. **Is the hardship for the property unique, not applying to a substantial portion of the neighborhood?** *Mr. Taravella's responses, and the discussion among the ZBA, Mr. Taravella and Mr. Rice in Appeal No. 2024-001, are repeated here, except that Mr. Taravella would note the acreage for this property, and the ZBA would note that RIC's second use variance application on the same street refers here to the property in Appeal No. 2024-001.*
3. **Would the variance alter the essential character of the neighborhood?** *Mr. Taravella's response is the same as in Appeal No. 2024-001.*
4. **Was the alleged hardship self-created?** *Mr. Taravella's response is the same as in Appeal No. 2024-001.*

Ms. Kent's mention of follow up questions, and a summary of RIC's points, are the same as in Appeal No. 2024-001.

Mr. Taravella's confirmation of the RIC points summarized is the same as in Appeal No. 2024-001.

The two questions posed by the ZBA are the same as in Appeal No. 2024-001.

Mr. Taravella's responses about RIC's evaluation in other zoning districts of parcel size, grid proximity, topography and landowner leases, and the board's follow up questions and his responses to them, are the same as in Appeal No. 2024-001.

Ms. Kent's comment that the board needs to see documentation of the applicant's assertions is the same as in Appeal No. 2024-001.

Mr. Zomerfeld would indicate, as he did in Appeal No. 2024-001, that his client is trustworthy and that RIC's evaluation comes down to where the land is, grid proximity, and an available landowner lease. He would repeat his earlier comments about legal support for solar projects as a public utility, as he did in Appeal No. 2024-001.

Ms. Kent would repeat the remarks she made in Appeal No. 2024-001 regarding the ZBA's having received legal advice, and that the ZBA is requesting documentation that supports the use variance. *Mr. Zomerfeld would repeat his comment that there may not be an explanation beyond proximity to the grid and interested property owners, as he did in Appeal No. 2024-001.*

Ms. Kent, Mr. Taravella and Mr. Zomerfeld then would discuss tabling this matter, as they did in Appeal No. 2024-001, including Mr. Zomerfeld's and Ms. Kent's comments about the SEQRA/Lead Agency issue. *Mr. Zomerfeld would offer 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, as he did in Appeal No. 2024-001. Mr. Zomerfeld and Mr. Taravella would indicate that tabling this matter would be acceptable, as they did in Appeal No. 2024-001.

There would then be the same discussion as in Appeal No. 2024-001 about creating a list of documentation sought from RIC.

Based on the foregoing,

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 McCarthy, 2357 Derby Road

- I bought my house in a farming community, not a solar farming community. It's not something I really want to see every day. 500' really isn't that far. You can see it. It doesn't seem like RIC came too prepared to talk about things tonight. I don't want to have trouble selling my house because there's a solar farm. It does alter the neighborhood. It doesn't sound like any other sites were explored in the town that allows for it – this is unknown at this point.

Paul Alessi, 2450 West Church Street

- Is the other solar farm up and working? How is that going? Mr. Rice understands the work starts this Spring; it has been approved by the Town but it is not installed yet. Because of Covid, they are having trouble getting transformers and solar panels.
- Is this hearing strictly for the variance on the zoning? It has nothing to do with the landowner's ability to negotiate an agreement? Ms. Kent – that is correct.

Meeting was adjourned at 7:55 pm.

Respectfully submitted,

Shelly Griebel, Secretary
Eden Zoning Board of Appeals