

Attachment to Zoning Application

Project Name: Moo Cow Solar

AP 304, Lot 28

Zoning District: RR5

Request: Relief from Art 6, Section 610, Table 6-4, 85 foot side yard setback

The state law was recently amended to require the Planning Commission (the “Commission”) to review and approve variances and special use permits when a development project is also being reviewed by the Commission. To assist with the Commission’s review and approval of our variance request, the Applicant has listed below the specific standards for a dimensional variance with our general response to each such standard (italics). Additional testimony at the preliminary plan hearing, scheduled for March 27, 2024, will be provided to support the variance application.

The Coventry Zoning Ordinance requires an eighty-five (85) foot side yard setback, defined as “a line or lines parallel to a lot line at the minimum distance of the required setback for the zoning district in which the lot is located that establishes the area within which the principal structure must be erected or placed.” “Side yard” is further defined as “the area between the main building and the side lot line, extended from the front yard or front lot line where no front yard is required, to the rear yard. The width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest point of the named building.” Importantly, the side yard need not be vegetated. However, the subject solar facility use requires a 40-foot vegetated buffer, which will serve as a screen to any potential abutting views.

The plan proposes a minimum setback along the northern boundary line of 63 feet.

§ 45-24-41. General provisions — Variances. [Effective January 1, 2024.]

In granting a variance, the zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the planning board or commission, shall require that evidence to the satisfaction of the following standards is entered into the record of the proceedings:

- (1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(a)(16).

This project received master plan approval from the Planning Commission on April 26, 2023, for a 4.4-megawatt ground-mounted solar array occupying approximately 9.4 acres and will require associated equipment and access increasing the full development area to 12.7 acres. The project encompasses two parcels of land (Lot 27.1 and 28), which will be administratively combined upon issuance of Final Plan approval. After merger, by administrative subdivision, the total land area of the subject property will be 117 acres, such that the development area does not exceed 11% of the entire property.

In early 2021, a previous solar development proposed by another Applicant suggested a design that sited the solar panels along Victory Highway. Comments from the Planning Commission supported a re-design which sites the solar panels at the far east portion of the property. After master plan submission, further review of the numerous wetlands and stormwater facilities required the Applicant to adjust the placement of the solar panels further north, which encroaches into the required side yard setback. Importantly, the Applicant notes the adjustment is not due to an increase in the size of the solar array, and the Applicant will be maintaining (and supplementing) the required 40-foot vegetated buffer.

Further, the land occupied by a separate owner to the north (Plat 304, Lot 21), is partially located within a Natural Heritage area that is subject to further constraints on development (essentially not buildable land) and, similar to our property, contains several wetlands. There is a low likelihood that the northern subject property owner will be able to or permitted to build in the vicinity of our northern property boundary. Therefore, visual degradation of natural views is not a concern.

Therefore, the variance sought is clearly due to the unique characteristics of the subject property, i.e., to keep the solar array far from Victory Highway and to respect required wetland buffers and resource areas.

(2) That the hardship is not the result of any prior action of the applicant; and

The Applicant did not take any action to create the hardship, as the Planning Board preferred the relocation of panels away from Victory Highway. The wetlands are an existing condition that required the relocation of the panels to avoid impacts to those sensitive natural resource areas.

(3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.

The requested variance will not alter the general character of the surrounding area; to the contrary, the variance is necessary to place the solar array far from Victory Highway and outside the boundaries of the existing wetlands and natural resource areas. Additionally, the Applicant is processing a visual analysis that demonstrates a person's view from the north will not be impacted by the addition of the solar panels. Further, the 40-foot vegetated buffer will only better screen and provide additional natural views for the owner/future user of the northern property from that vantage point. The side yard setback minimum does not require vegetation, it is the buffer that will work to screen the panels from view.

(4) [Deleted by P.L. 2023, ch. 304, § 1 and P.L. 2023, ch. 305, § 1.]

(e) The zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the planning board or commission, shall, in addition to the above standards, require that evidence is entered into the record of the proceedings showing that:

(2) In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted is not grounds for relief. The zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the planning board or commission has the power to grant dimensional variances where the use is permitted by special-use permit.

If the variance is not granted, the hardship will amount to more than a mere inconvenience, and the relief sought is minimal to reasonable enjoyment of a permitted use.

- *The solar development received a special use permit on August 2, 2023 and meets all other zoning requirements applicable to major solar developments., and almost 75% of the side yard setback remains along the northern side lot boundary at the solar installation area.*
- *The Applicant has designed the solar array to respect the views of travelers and residents along Victory Highway by locating the solar panels far from the road.*

- *The Applicant has also designed the solar development to not impact wetlands and minimize impacts to those wetland buffers and jurisdictional areas.*
- *Finally, the Applicant has improved stormwater facilities from the master planning stage to address both stormwater capture and pre-treatment before entering the wetlands.*

Each of the above items will be in jeopardy if the zoning variance is not approved by this Planning Commission.