**Zoning Board of Adjustment**

**27 School Street**

**HILLSBOROUGH, NH**

**NOVEMBER 19, 2018**

**DATE APPROVED**: 01-14-19

**TIME:** 7:00 p.m. –9:35 p.m.

**CHAIRPERSON:** David Rogers

**VICE CHAIRPERSON:** Roger Racette

**MEMBERS:** Russell Galpin Dana Brien and Nancy Torres

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:** Larry Baker and John Segedy

**ABSENT:** Larry Baker, David Rogers

**Present:** Dana Brien, Nancy Torres, Roger Racette, Russ Galpin, John Segedy, Robyn Payson

Also Present: Stephen Bennett, Kay L. Bennett, Jeff McGlashan, Jim Larkin, Tara Cederholm, Kelly Dowd, James Bailey, III, Susan Shamel, Roger Shamel, John Daley, Paul Plater

**CALL TO ORDER:**

Vice Chairman Racette called the meeting to order at 7:00 p.m. He announced that Chairman David Rogers recused himself for this meeting and Alternate John Segedy was appointed in his place to vote.

**PUBLIC HEARING:**

**Appeal of Administrative Decision**

**Denial of a Certificate of Approval for a Building Permit in the Historic District**

**Kay & Stephen Bennett**

**1 North Road (Map 8, Lot 63)**

The Applicants Kay and Stephen Bennett appointed Kelly Dowd to present the appeal. Mr. Dowd introduced himself and stated the decision of the Historic District was substantively illegal. He continued to state the reasons specifically RSA 672:1 III a it discusses the purposes of zoning and it states the installation of solar or other renewable energy or the building and structures that facilitate renewable energy shall not be unreasonably limited by the use of municipal zoning powers or unreasonable interpretation of such powers except where necessary to protect public health, safety and welfare. Mr. Dowd continued to explain the reasons for the Grounds for Appeal as outlined. See attached Grounds for Appeal of Administrative Decision Pursuant to RSA 676:5 I. Mr. Dowd also discussed with the Board visual screening for proposed solar array. His clients have done some planting after the Historic District’s decision and prior to this hearing.

Vice Chairman Racette pointed out that the ZBA has the same authority as the HDC in that they cannot issue a building permit as requested in the Appeal but rather they can approve the Certificate of Approval. The Building Inspector would issue the building permit. The Board asked for clarification of the size of the panels and field. Jeff McGlashan from Clean Energy addressed some of the concerns. The panels are 40 inches wide and roughly 66 1/3 inches long, they would be in landscape format so 4 x 9, roughly 160 inches tall. Vice Chairman stated there would be 36 panels 4 x 9. Mr. Daley clarified that the difference in space is because of the angle the panels will be positioned. Visual impact is the concern. Screening of the panels was also discussed. Vice Chairman Racette questioned Mr. Dowd on the 45 days for a determination. He stated the Board decision was made on the 44th day. Mr. Dowd agreed but questioned whether the Board had a proper quorum as Mr. Larkin is an abutter and his opinion is Mr. Larkin should have recused himself. Mr. Galpin asked if there were any complaints at the hearing about not having a quorum. Mr. Dowd stated there was none. Mrs. Brien asked if there was a definition in the RSA 672 that defines “traditional”? Mr. Dowd did not believe so. Mr. Segedy stated the traditional use of trying to site houses facing the right direction with windows and with correct overhangs is not the same as a five-acre solar field. Mr. Dowd stated renewable energy systems is the wording used for traditional solar uses.

Mr. Larkin asked to speak on behalf of the HDC. He stated that the HDC did not make any mistakes and the panels would be highly visible. Mr. Larkin handed out a Rebuttal to Kay and Steve Bennett’s Appeal (see attached). The Board decided to hear from those in favor at this time.

The Board asked to hear from residents who were in favor of the application. Susan Shamel spoke in favor of solar power. Jon Daly stated he was in favor with the condition of appropriate screening. Jim Bailey wanted to clarify that he was not at the hearing where the decision was made but attended the prior meeting. The second meeting was a continuance of the first and the Bennetts were not asked to submit a whole new application. Roger Shamel also spoke in favor of the solar power with the proper screening. Jeff McGlashen of Revision Energy spoke in favor of the project. Revision has installed solar arrays in other historic districts.

At this time the Board was given time to review the handout from Mr. Larkin. The floor was opened to those not in favor of the application starting with Mr. Larkin. He proceeded to go over points on his Rebuttal to the Bennett’s Appeal and asked the Board to uphold HDC’s decision and deny approval. Tara Cederholm spoke against the application on behalf of her parents, Daniel and Joy Hingstons, who are abutters on three sides of the Bennett’s. Ms. Cederholm pointed out that should this application be approved, screening on all three sides should be considered, as well as screening throughout the building process not just the end result.

Mrs. Bennett stated she felt that their application stood on its own merits and felt the HDC was going to deny their application from the beginning. Mr. Larkin confirmed that Mrs. Bennett stated her application stood on its own merits at the time of the first meeting. Mr. Larkin also stated he did not discuss his opinion of the application with any other HDC Board members and his decision would remain the same whether or not he was an abutter. The issue of Mr. Larkin not recusing himself for conflict of interest was discussed. It was also stated that the Bennetts knew Mr. Larkin was an abutter and did not object at the time of the meeting. Mr. Dowd, at this time, reiterated his points for approval for this application.

At this time the Public Hearing was recessed by Vice Chairman Racette. A motion to assume authority of the HDC to make a decision based on its merits was made by Vice Chairman Racette, seconded by Mrs. Torres. The motion passed unanimously. The Board will assume the authority of the HDC.

The Board discussed the application positively and the possible ways of screening. It was determined that the screening has to be affective in blocking the view of the panels on all sides.

The recess and Public Hearing was closed by the Vice Chairman. Mrs. Torres made a motion the ZBA reverse the decision of the HDC and the ZBA grant the approval of the solar array for the applicant with the condition that the solar array be reasonably screened natural vegetation at least six feet. Mr. Galpin seconded the motion. Mrs. Brien made a motion to include evergreen screening. Vice Chairman seconded the amendment. The amendment was approved unanimously.

Mr. Segedy made a motion to amend the motion to read: The ZBA reverses the decision of the HDC and issues a certificate of approval and the ZBA grants this approval of the Solar Array for the applicant with the condition that the solar array be visually screened with a minimum of six-foot-tall evergreen vegetation. The Board approved unanimously the amendment and the motion.

Having no further business, the meeting was adjourned at 9:35 p.m.

Respectfully Submitted,

Dianne Rutherford

Administration/Land Use Secretary