

**WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
January 25, 2011**

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:30 PM by Chairman Fulper.

The following statement of compliance with the Open Public Meetings Law as listed on the meeting agenda was summarized by Chairman Fulper: This meeting is called pursuant to the provisions of the Open Public meetings Law. This meeting was included in a list of meetings transmitted to the Hunterdon County Democrat and Trenton Times on January 10, 2011. Notice has been posted accordingly and a copy of this notice is available to the public and is on file in the Zoning Board of Adjustment Office.

The meeting was recorded via digital recording system and copy of CD is on file in the Zoning Board of Adjustment Office.

Chairman Fulper led the Pledge of Allegiance to the American Flag.

APPOINTMENTS/OATH OF OFFICE:

Board Attorney Palilonis administered oath of office to the following Board member(s):

John Cronce – 4 yr. term through 12/31/14

ATTENDANCE/ROLL CALL:

Roll call on attendance: John Cronce-present, Brian Fitting-present, Ruth Hall-present, Dave Sanzalone-present, John Ashton (ALT. #1)-present, John Hoff (ALT. #2)-present, Robert Fulper-present.

Absent: Romano, Dale

Professionals Present: Stewart Palilonis, Board Attorney; Tom Decker, Board Engineer; Tony Mercantante, Board Planner

PRESENTATION OF MINUTES:

Regular Meeting Minutes – December 28, 2010 – Motion was made by Sanzalone with a second by Ashton for approval of the minutes with corrections to minor typographical errors and confirmation of witness statements (listen to recording) as written. Roll call, Cronce-aye, Fitting-abstain, Hall-aye, Sanzalone-aye, Ashton (ALT. #1)-aye, Hoff (ALT. #2)- aye, Fulper-aye. Motion carried

RESOLUTION(S) OF APPROVAL:

Resolution 2011-07 - East Coast Colorants, LLC d/b/a Breen Color Concentrates – Block 8 Lot 23.03 - Kari Dr. - Use and Bulk Variance - Resolution as prepared by Attorney Palilonis was distributed. A copy was provided to the applicant's attorney prior to the meeting. Motion was made by Hoff with a second by Ashton for approval of the resolution contingent upon corrections as discussed. Roll call: Hall-aye, Ashton (Alt. 1)-aye, Hoff (Alt.#2)-aye, Fulper-aye. Motion carried.

APPLICATION(S):

Continued Public Hearing: Quick Chek Corporation - Block 23 Lot 1 - Route 31 & Harbourton Rd - Variance Request- Sign – Carried from 11/23/10 (7:59PM)

Mary Elizabeth Warner, Esq. was present on behalf of the applicant, Quick Chek Corporation, Route 31 & Harbourton Rd; Block 23 Lot 1. Application, checklist, and plan titled "Sign Modification Plan, Quick Chek Corporation" comprised of two sheets and prepared by Bohler Engineering, dated March 11, 2010, revised April 7, 2010 were received and distributed.

The following witnesses present on behalf of the applicant were sworn in by Attorney Palilonis:

Keith Cahill, Engineer - Bohler Engineering, 35 Technology Dr., Warren, NJ
Bob Volerio, Vice President of Real Estate, Quick Chek - 3 Old Highway 28, Whitehouse, NJ

The applicant's professionals offered their credentials and testimony experience and were accepted as expert witnesses

Witness #1 - Keith Cahill, Engineer- offered his credentials and testimony experience, and was accepted as an expert witness.

"Aerial Exhibit A," sheet 1 of 1, dated 10/26/2010 was offered as Exhibit Q-1. Mr. Cahill provided an overview of the site, stating the property has 750 ft. frontage along Harbourton Rd. and approx. 280 ft. along Route 31. The proposal is to modify the existing signage only.

"Signage Exhibit" sheet 1 of 2, dated 11/11/2010 was offered as Exhibit Q-2. Mr. Cahill provided testimony relating to the proposed modifications to the existing signs. Mr. Cahill stated, the signs were previously approved in 1998-1999 by this board. Proposed modifications include the existing freestanding ID sign, two canopy sign's, and the existing building sign.

"Allied Environmental Signage" sheet 1 of 1, dated 3/12/2010 was offered as Exhibit Q-3. Mr. Cahill testified Quick Chek has gone through rebranding across the state, and into New York. Mr. Cahill stated most are being rebranded to include this appearance; white letters, large "Q" in green, each channel letter is internally illuminated.

Application does not seek variance for canopy signs; variances were previously granted for material and illumination. Building signage seeks variance for size from 24sq.ft. to 71.9sq.ft.. Letter height requires approval for the 3ft.9in. "Q," allowable height is 2 ft. Sign will be internally illuminated as previously approved. Channel letters stick off building 9 inches; ordinance allows 3 inches, current letters are approximately same distance off building.

Mr. Cahill stated that the illumination is the same as the current lettering, the output is the same, using the same type of fixture internally.

In response to Board questioning regarding illumination, Mr. Cahill stated that the intensity would be greater due to the greater sq. footage on the building façade.

Mr. Cahill stated the location of the existing freestanding ID sign is at the intersection adjacent to the detention basin, it is externally illuminated, constructed of a wood material.

Signage Exhibit" sheet 2of 2, dated 4/7/2010 was offered as Exhibit Q-4. Mr. Cahill provided testimony regarding sign dimensions and detail. Proposed freestanding ID sign would be internally illuminated similar to the channel letters on the building and canopy, less white and more green. Price sign would have red LED in shape of numbers. Existing numbers are placards 8 ½ x 11, raised by a pole and stuck on. Mr. Cahill testified to injuries by attendants as a result of changing the prices.

Mr. Cahill provided testimony to the illumination from the existing signs compared to the proposed LED signs, stating it would not impose any negative impact on the adjacent properties or traveling public.

Mr. Cahill related the variances associated with this proposal would be for the material not previously granted, and the illumination, being internally illuminated. The area was previously granted at 57sq.ft, suggesting the variance in terms of area was previously granted because of reduction in size.

Chairman Fulper opened questioning to Board professionals/members:

Engineer Decker stated that a nonconforming sign is being removed and another is being put up, it triggers a variance.

In response to questioning by Board members, Mr. Cahill stated, eight sites in New York have gone through the rebranding, adding that a few had similar ordinances as West Amwell.

Mr. Cahill was unable to provide the number of safety incidents for this location, adding, it is most definitely a rebranding effort. Regarding the LED freestanding sign, prices will be red, with no movement.

Chairman Fulper opened questioning to the public:

Douglas Lomakin – neighboring resident– questioned how many variances were being requested. Mr. Cahill responded two variances for the freestanding ID sign, the area was previously granted, variances would be for the material and the illumination. No variance requested for the canopy. For the building mounted sign, the material, illumination, the extension of sitting off the face, would all be previously granted. New variances for building sign would be; area of building sign, height of building sign, exceeding 2ft to the 3ft 9in. The existing was 3ft 6in. The extra 3in. created a new variance. Two variances on freestanding ID, two on building sign.

Mr. Lomakin questioned how many signs were permitted on the building, in response Mr. Cahill stated on the existing site there is one building mounted and two existing canopy. Regarding height requirement, Mr. Cahill stated, 15ft. is allowed, 15ft. is proposed for the freestanding ID sign.

Mr. Lomakin asked if they were within the property lines in the original variance, Mr. Cahill stated they are within the allowed setbacks of 5ft. Mr. Lomakin asked the total

number of signs permitted, Mr. Cahill responded the variances received previous approval to allow three signs between the canopy and building and one freestanding ID sign; four signs. Mr. Lomakin questioned the total sq. footage for signage; Mr. Cahill provided testimony regarding sign dimensions. Mr. Lomakin stated concern with additional signage installed over a year ago totaling approx. 40sq.ft. Mr. Cahill testified he was unaware of any additional signage.

Chairman Fulper opened questioning to the Board members:

In response to questioning, Mr. Cahill testified relating to the candlepower off the freestanding ID sign, stating, current sign at a distance just off the face of the sign has 3-4 ft. candles, and at 25ft. distance from the face ranged from .5-to 1ft. candle. The proposed sign measured at the face is .1ft. and at 25ft. distance was 2ft candle. A darker green panaflex rather than white has been added to the sign. No side glare coming from the building mounted letters.

Chairman Fulper opened the floor to the public for comments/questions:

Douglas Lomakin expressed concern with the application regarding the brightness of the proposed LED freestanding sign. Mr. Lomakin expressed displeasure with alleged ongoing issues regarding removal of signs, trucks idling, air brakes releasing, and the addition of signs. Attorney Palilonis advised Mr. Lomakin the alleged violations are not relevant to the application and should be brought to the attention of the Zoning Officer. Chairman Fulper requested that Mr. Lomakin focus on the testimony of the applicant. Board Member Cronce questioned whether the applicant was aware of any of the alleged violations; Attorney Mary Elizabeth Warner replied they were unaware of any violations, adding, if the site does not comply with the approvals, it will be brought in to compliance. Mr. Lomakin's comments were noted.

Sean Pfeiffer- 74 Rocktown-Lambertville Rd. – questioned if this application was being governed under the prior sign ordinance, or the one adopted in 2010. Engineer Decker related the new sign ordinance criteria are the same as the old ordinance. Stating the relief they are looking for based on the new ordinance is the same as was required under the old ordinance.

Hearing no other questions, the floor was closed to the public (9:00PM).

In summary, Mary Elizabeth Warner, stated reasons for granting this application without interfering with the zoning plan. Stating, testimony was provided supporting variances are requested for safety and branding issues, have demonstrated the light output would be less rather than more, open to having that as a condition of the resolution of approval. Mary Elizabeth Warner stated she would personally represent if there were any violations, so they are addressed and brought current.

Motion was made by Hall with a second by Cronce to deny the application as proposed. Based on testimony not proving need for variance. Roll call: Cronce-aye, Fitting-nay, Hall-aye, Sanzalone-nay, Ashton (Alt. #1)-nay, Hoff (Alt. #2)-nay, Fulper-nay, Motion denied.

Motion was made by Cronce with a second by Hoff to approve variances for the building and canopy signage as proposed. Roll call: Cronce-aye, Fitting-aye, Hall-nay, Sanzalone-aye, Ashton (Alt. #1)-aye, Hoff (Alt. #2)-aye, Fulper-aye, Motion carried

Motion was made by Cronce with a second by Hall to deny the variance for the freestanding internally lit sign as proposed. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Sanzalone-aye, Ashton (Alt. #1)-nay, Hoff (Alt. #2)-nay, Fulper-nay, Motion carried to deny. Resolution to be prepared for February meeting. Board member Fitting expressed concern with the LED sign, stating it is with the materials, best interest to promote business on Route 31; zoned commercial, likes the ordinance; sustainable and natural products used in the sign. Board member Cronce was concerned LED will have a trickle effect throughout the town, we are a rural community; it is not rural looking, and by testifying it was for safety issues is not reason enough. (Hearing concluded at 9:19PM).

(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed 9:19PM – 9:27PM)

Chairman Fulper related that the meeting would end at 10:30

Continued Public Hearing: Green Power of West Amwell - Block 3 Lot 12/14 – Route 179 -Use and Bulk Variance Application/Site Plan Application (9:27PM)

Attorney Valenti requested a special meeting be scheduled. Attorney Palilonis stated he was unavailable for the next three weeks. Mr. Valenti suggested they remain on the agenda for the next regular meeting and address the possibility of a special meeting at that time.

Mr. Challoner provided an overview of the site plan, stating; the solar panels have been located to the rear portion of the property to utilize existing vegetation and farm structures as screening. Access into the fields will be provided through a cut into the existing vegetation behind the barn so the barn continues to act as screening. In the site, proposing a gravel road to provide access to the transformers and inverter pads. In the field, the access passageways between the panels will be native species or native vegetation that will grow and require periodic maintenance to ensure the grass does not grow too tall. The gravel road will provide stable structure for maintenance trucks to travel; only around the perimeter of the structure, not interior of the panels. Met with the West Amwell Woodlands Management Coordinator, a small area on the eastern portion of property will require existing vegetation be removed to eliminate shading of the panels. The coordinator provided a review letter indicating the area was mostly diseased and insignificant tress, also listed the trees to be removed. Site has a proposed setback for the panels of 100ft. around the perimeter of the property. The entire solar arrangement is enclosed with a security fence system.

Mr. Challoner testified the property has an existing nonconforming condition that requires a variance for frontage. The lot is an isolated lot; the only access to Route 179 is through an 18-foot right of way though the adjoining property to the south. Mr. Challoner opined the variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan, stating the property does have permanent access through an 18ft right of way thru the adjoining property. The solar panels after construction are a very low maintenance, very benign use.

Mr. Challoner referred to sheet 7 of the site plan showing detail of the 8ft.chainlink fence; stating the barbed wire is no longer being proposed.

In response to questioning, Mr. Challoner testified, the variance for the height of the fence is for safety, to keep people out of the area due to high voltage transformers and inverters. Citing one purpose of the zoning is for public safety. Mr. Challoner opined the benefits out weight the detriments, stating the fence will be placed behind any existing natural screenings and out of sight from adjoining properties. Therefore, the benefit of the public safety over the visual impact of the increase in height is a benefit to the town and can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan.

Mr.Challoner responded to questioning referencing the proposed draft ordinance 2-2011 ordinance to amend chapter 109. Citing section 3: 5.c.(4)(h) of the draft ordinance.

Completeness and Technical Review#1, dated October 22, 2010, prepared by Board Engineer Tom Decker was previously received and distributed. Board and applicant reviewed the plan review section, applicant agreed to comply with items as discussed during review. Dismantling plan to be provided as condition of approval.

Outside Agency Approvals: Mr. Challoner stated all outside agency requirements would be complied with.

Proposed **Ordinance 2, 2011-** Renewable Energy Facilities, offered into the record as G-8.

West Amwell Environmental Commission Letter, dated January 17, 2011, offered into the record as G-9.

Mr. Challoner responded to questioning regarding proposed Ordinance 2, 2011, stating the RR-4 non-industrial zones, among others, have created two types of renewable energy sources; minor and major solar generating systems, this would be a major that would be a conditional use in the RR-4 zone. Responding to Mr. Valenti's request, citing the draft ordinance, Mr. Challoner provided his interpretation of Section 3: 1, last sentence.

Mr. Challoner reviewed proposed **Ordinance 2, 2011-** Renewable Energy Facilities, citing areas of compliance/non-compliance to the proposed application. Mr. Valenti requested that Section 3:4, setbacks, be address again. Mr. Challoner stated the minimum setback is 50ft., the applicant has setback the panels from the property a minimum of 100ft.

Members of the public were advised that the public hearing would be continued to the February 22, 2011 meeting of the Board at 7:30 PM. No additional notice will be made (10:31 PM)

CORRESPONDENCE:

The following items were distributed as correspondence:

Notice of public hearing to be held on January 26, 2011 for **Ordinance 2-2011 - An Ordinance to Amend Chapter 109 to Provide Regulations Regarding Renewable Energy Facilities**- introduced January 10, 2011

Comments/Recommendations from the **Environmental Commission** for current solar application. Per board discussion, correspondence received from official Twp. Boards/committees/commissions be received on Twp. letterhead, with a signature (electronic form acceptable).
Chairman Fulper addressed forwarding ZBA applications to the Environmental Commission, per MLUL 40:55D-27. Board members expressed concerns regarding timing of application review by the EC. Applications will be forwarded on an as needed basis.

HCPB - Coffee with the County on Wed, Feb 23, 7:30 -9:00am

NJPO Training Dates – Dale, Ashton, Hoff require training

Unethical Behavior email, dated January 23, 2011. Board member discussion ensued regarding Twp. officials attendance at ZBA meetings.

Copies of the **NJ Planner** dated December 2010/January 2011 were distributed

PRESENTATION OF BILLS FOR PAYMENT:

The following bills were received:

VanCleaf - Ziegenfuss escrow account 11/1-11/28 \$2496.00
Ziegenfuss escrow account 11/29-12/31 \$748.00

VanCleaf - Breen escrow account 11/1-11/28 \$170.00
Breen escrow account 11/29-12/31 \$476.00

VanCleaf - Quick Chek escrow account 11/1-11/28 \$612.00

NJPO Combined membership w/PB \$180.00

Palilonis Special/ Reorg meeting 1/6/11 \$875.00

Motion made by Cronic with a second by Sanzalone to approve bill list contingent upon certification of funds. Motion carried on roll call vote – all ayes

DISCUSSION:

Special ZBA meetings – Secretary Hall related that currently there is no allowance in the Township salary ordinance allowing for compensation to the Secretary for special meetings, stating that the ordinance could be amended if the Board so desired.

It was suggested that other municipalities have adopted a “special meeting fee ordinance” to cover special meeting costs; including secretary compensation. Secretary Hall will research the special meeting fee ordinance and submit a memo to Clerk Olsen with request.

OPEN TO PUBLIC:

The floor was opened to the public. Hearing no comments/questions, the floor was closed.

ADJOURNMENT:

Motion was made by Sanzalone with a second by Cronic for adjournment at 11:03 PM. All members voted in favor of adjournment.

Respectfully submitted,

Ruth J. Hall