

**WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
March 22, 2011**

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:33PM 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.

ATTENDANCE/ROLL CALL:

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

Absent:

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

PRESENTATION OF MINUTES:

Regular Meeting Minutes – February 22, 2011 – Motion was made by Sanzalone with a second by Dale for approval of the minutes with correction to a minor typographical error. Roll call, Cronce-aye, Fitting-aye, Romano –abstain, Hall-aye, Sanzalone-aye, Dale-aye, Fulper-aye.

Due to a conflict, Board Member Romano recused himself from the Green Power of West Amwell hearing.

APPLICATION(S):

Continued Public Hearing: Green Power of West Amwell - Block 3 Lot 12/14 – Route 179 -Use and Bulk Variance Application/Site Plan Application (7:36PM)

Chairman Fulper related that the public comment period had been finalized at the last meeting.

Engineer Tom Decker of Van Cleef Engineering was present on behalf of the Board. Memorandum dated March 22, 2011, was received and distributed.

Engineer Decker provided a review of the memorandum with comments as follows:

Appeal of Zoning Officers Determination

Applicant is seeking an appeal from the Zoning Officer's determination that the proposed solar facility does not constitute a permitted conditional use as a public utility.

Use Variances

Should the Board be in agreement with the Zoning Officer that the proposed solar facility is not a permitted conditional use or that the conditions have not been satisfied under the current zoning ordinance, the applicant is requesting a "d" variance for a non-permitted use.

In addition to the "D" Variance for the non-permitted use, the applicant is also seeking a "D" Variance to permit two principal uses on the same lot by retaining the existing farmhouse with the proposed solar facility.

Site Plan review

Items 1 through 18 of Memorandum were reviewed, with clarification as noted to item's below per discussion.

#6. A note should be added stating that all *additional* utility lines *within the solar field and from inverters to the existing utility pole* shall be installed underground.

#11. Fencing detail should be revised to show all fencing materials to be *green* vinyl clad.

#12. A detailed site-specific landscape plan should be provided to demonstrate adequate screening from adjacent properties. Screening will be subject to field inspection by the Township Engineer and supplemental plantings install as may be determined in the field. *Landscaping shall be limited to the extent possible of native species of deciduous and coniferous trees and shrubs that are indigenous to the area, as listed in the Natural Resource Inventory, and shall not include invasive species as listed in Natural Resource Inventory of West Amwell Township. Such plantings shall be depicted on a plan prepared by a licensed professional. The applicant shall rely upon existing vegetation, including existing hedgerows or windbreaks that provide screening, to the maximum extent practical. The appropriate height or caliper of the vegetation to be planted shall ensure that there is a 75 percent screening of the solar energy generation facilities within five years of completing the installation of the facilities. A photo-simulated exhibit depicting screening at key locations at the projected five-year period shall be required.*

In addition the applicant has agreed to the installation of two staggered rows of 10 foot high Norway Spruces at a spacing of 20 feet from the existing vegetation in the southwest corner and extending eastward along the southerly boundary of the area to be improved to provide a visual screening to the residential properties to the southwest.

#18. We also recommend review and approval by the *West Amwell Township Fire Official* as a condition of any approval, which may be granted.

Outside Agency Approvals

Approvals or letters of no interest are required from, but not limited to the following review agencies:

1. Hunterdon County Planning Board
2. Hunterdon County Soil Conservation District
3. Delaware & Raritan Canal Commission
4. Any other agencies having jurisdiction

Mr. Valenti related that the applicant and Counsel for the residents reached an agreement concerning buffering and potential noise, also agreeing not to challenge in court any approval that may be received.

Agreement is to plant two rows of 10ft. Norway spruce, staggered, 20ft. centers. Rows will be 10ft. from the back of each other. Referring to Exhibit G-1, showing the location to be at the southerly side of the field starting at an existing row of trees, around to the proposed access way, continuing in an easterly direction on the existing hedgerow, to where it ties into the existing trees. The existing trees are at the southeasterly side of the property approx. halfway across the solar field. Mr. Valenti testified that the applicant is also willing to agree to the proposed noise ordinance.

Mr. Goldberg identified the residents in agreement as Daniel & Heather Goodman, Vincent & Joanne Ranieri, Elizabeth Allen & Ian Wiggs, Herb Villa & Carol Barletti-Villa, Ron Spagnoli & Kristi O'Keefe. Mr. Goldberg stated that Mark & Crystal Evanko are not part of the agreement, have removed themselves as part of the original group, and are no longer represented by Mr. Goldberg.

Tony Mercantante, Board Planner opined that the Zoning Officers determination is correct; it is not a public utility. Also stating the field location of the final landscape materials is critical to provide proper buffering.

In response to Board Member questioning, Planner Mercantante stated he based his opinion regarding the Zoning Officers determination on his interpretation of reading the ordinance, stating the term public utility wasn't intended to address this type of public utility.

In summary, Mr. Valenti stated, the applicant is seeking an appeal of the Zoning Officers decision. Applicant feels they satisfy conditions as a public utility use, with one deviation from the conditional aspect that a d-3 variance would be required. The applicant is also seeking a use variance for the use of solar panels.

Mr. Valenti stated that the State of NJ has revised the statute to indicate this use is considered to be an inherently beneficial use, stating that the positive criteria is satisfied based upon that fact.

Mr. Valenti related, in weighing criteria you take the importance of the interest at stake, in this case it is the use of solar energy and generation of solar energy, and weigh that against any negative effects. Considering any conditions that could be placed to limit those negative effects, and determine, on balance it could be granted without substantially impairing the public health, welfare and benefit as well as the zoning ordinance.

If this were not an inherently beneficial use, the criteria for positive criteria would still be met by satisfying a purpose of the zoning ordinance. The public welfare and benefit of the public is one of the purposes of zoning, based on the push for solar energy, that aspect would be satisfied from positive criteria.

From a negative criteria, if we didn't have inherently beneficial use, we would be looking to establish that it could be granted without substantial detriment to the public good; it will not substantially impair the intent and purpose of the zone plan ordinance, it is not inconsistent with the master plan and zoning ordinance.

Where an inherently beneficial is involved, the burden is somewhat less, we have the positive criteria, no negative impacts, only negative impacts that we heard testimony on, was potential sight detriment from some of the residents that now have withdrawn that based upon the conditions that have been placed. Mr. Valenti stated that sight alone; especially of this magnitude of over ¼ acre away, with significant buffering, and limited sight of installation wouldn't be enough to overcome the positive criteria. The only other thing was real estate testimony, not at all supportive, speculative at best.

Applicant is seeking a use variance for solar farm, stating; under whichever formulation you were to use, whether the ordinary criteria you would apply for a d variance; would be met, and would meet under the inherently beneficial use criteria, which is more of a weighing factor.

Seeking a dual use variance to have two primary uses on premises, believing the second use is an inherently beneficial use; still apply that criteria, meaning that you have already met the positive criteria. There would be no negative aspects of allowing the residence and farm to continue to exist, there has been no testimony with any negative effect of allowing it to continue. If you were going to apply the traditional formulation, you would be able to grant that variance without substantial detriment to the public good and without substantially impairing the intent and purpose of zoning plan and ordinance, allowing the farmstead and house to continue to exist would advance the public good and zoning plan.

Additionally the applicant is seeking two bulk variances; one for the fence height, from a 6ft. to 8ft., actual height of the fence better serves the safety of the public, and a variance for frontage, stating there is an existing bulk variance for access. Mr. Valenti opined the bulk variance, relating to access, could be granted again without any substantial impairment.

Attorney Palilonis related the Board, Mr. Valenti, and Mr. Goldberg all have a copy of his memorandum dated 2/24/11 regarding inherently beneficial use as applies to this case. Stating the MLUL has been amended to state that these types of facilities are beneficial. Not all inherently beneficial uses are created equal, once you identify the public interest involved, that has a certain weight, and you balance that against any harm to the public good. Mr. Palilonis opined the issue of substantial impairment of the zone plan isn't in play for two reason; Master Plan talks about sustainability, and the proposed ordinance. The only impact is the visual impact, whether or not it is substantial or outweighs the public good, and whether or not it can be ameliorated in the way of adverse impact by proper site planning.

Regarding the appeal, it is automatic. Can't see any basis for an appeal, Planner Mercantante has opined that he doesn't believe that type of facility was foreseen when

the conditional use ordinance was written. Mr. Palilonis recommended that appeal be denied.

Attorney Palilonis stated the conditional use is only a conditional use if it is a public utility, if the appeal is denied; effectively saying it is not a public utility.

Attorney Palilonis cited the amendment to the MLUL regarding the dual use as it applies to inherently beneficial uses. Attorney Palilonis stated his interpretation to mean it contemplates a dual use and doesn't seem to distinguish between residential situation and commercial or industrial.

The access is from a private easement that has been in place for many years shouldn't be an issue if you think it is adequate.

Motion was made by Fitting with a second by Dale to deny the Appeal on the basis that it is not a public utility within the intent and purpose of the ordinance. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Sanzalone-aye, Dale-aye, Ashton (Alt. #1)-aye, Fulper-aye, Motion carried to deny the Appeal of the Zoning Officers decision.

Motion was made by Fitting with a second by Sanzalone to approve the bulk variance on the frontage, bulk variance on 8ft. fence height, use variance for two principal uses on one property (existing farm house), and the use variance for the solar farm, based on the testimony and conditions of Van Cleef Engineering. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Sanzalone-aye, Dale-aye, Ashton (Alt. #1) aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (8:28PM)

Board member Fitting commented that the applicant has done a good job to move the arrays a great distance from the residents; they have added Board approved screening and most recently additional screening agreed to by the public, having satisfied the negative criteria. Maintaining the farmhouse maintains the ability of the property to be farmed in the future; removing it would be a negative.

Board members Hall and Dale stated that they agreed with comments made by Board member Fitting.

Board member Ashton commented that some of the compromises made by the applicant; not just in the future but today, preserve an area that will be actively farmed that wouldn't have been under the original application.

Chairman Fulper commented, for the same reasons that Fitting stated the inherently beneficial outweighs any of the detriment. The negative criteria has to be of substantial impact, stating, he believes they have mitigated that. The existing farmhouse is good to have on the property for future use for farming purposes and for security. The height of the fence is for safety, and acts as a buffer and is beneficial. The road frontage issue is adopted from a pre-existing use, and should move forward with the application.

(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed 8:28 PM – 8:40PM)

Public Hearing: Santolini, Thomas - Block 14.02 Lot 8 - Old York Road - Variance Request -Accessory Structure/Pole Barn Garage (8:40PM)

Copies of application, plan of survey dated 12/6/10 for said property with location of proposed structure were distributed.

Notices of service and publication were reviewed by Attorney Palilonis and found not to be in order due to improper notice; notice was not sent to the East Amwell Township Clerks Office. Santolini application was continued to the April meeting of the Board.

Members of the public were advised that the public hearing would be continued to the April 26, 2011 meeting of the Board at 7:30 PM. No additional notice will be made (8:53PM)

CORRESPONDENCE:

The following items were distributed as correspondence:

Application for Zoning Permit Denial dated 2/18/11 for **Block 21 Lot 7 – Route 31 – Michael and Carol Messick** –2800sq.ft. Garage/storage pole barn/accessory structure 23ft. in height-was received from Zoning Official Baldino.

Certificates in Basic Land Use Law and Planning was received and distributed for Board members John Dale, John Ashton, and John Hoff for successfully completing the mandatory training course.

Approval of Bill List 3-22-11:

A motion by Dale, seconded by Sanzalone to approve the 3/22/11 bill list, contingent upon availability of funds, was approved by Voice Vote – all ayes.

Secretary Hall clarified the secretary-training fee, stating the current fee covers one class; three sessions, to be attended in April. In May, there are two additional classes; five sessions, at a cost of approx. \$600. for the combined classes. The Secretary Certificate will be earned upon successful completion of the classes.

Attorney Palilonis provided an explanation of non-escrow attorney fees as time spent at Board meetings when there is no applicant to charge it to, it comes out of the board budget.

DISCUSSION:

Secretary Hall distributed a copy of **Ordinance3,2011-Renewable Energy Facilities** at the March 7, 2011 meeting. The ordinance is scheduled for final adoption on March 23, 2011 at the Township Committee meeting.

Secretary Hall distributed a **flyer with email attached** from **Mayor Molnar**, advertising the **Country Fair** scheduled for **May 14**, requesting all boards and committees to participate in the Country Fair. Secretary Hall suggested that we participate by having our forms available to make the residents aware of what our role is. A reminder email will be distributed to solicit participation from Board members.

Board member Cronic suggested the minutes reflect that Board member Romano recused himself from participating in the Green Power of West Amwell application due to a conflict, and has been absent from the meetings since November 2010, as was originally recorded in the November 23, 2010 approved minutes.

OPEN TO PUBLIC:

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

ADJOURNMENT:

Motion was made by Cronic with a second by Sanzalone for adjournment at 9:08 PM. All members voted in favor of adjournment.

Respectfully submitted,

Ruth J. Hall