

**WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
May 24, 2011**

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

PRESENTATION OF MINUTES:

Regular Meeting Minutes – April 26, 2011 – Motion was made by Romano with a second by Fitting for approval of the minutes with minor correction as discussed. Roll call, Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Sanzalone-aye, Ashton (ALT. #1) aye, Fulper-aye.

RESOLUTION(S) OF APPROVAL:

Santolini, Thomas - Block 14.02 Lot 8 – Old York Road – Accessory Structure/Pole Barn Garage - Resolution as prepared by Attorney Palilonis was distributed. Motion was made by Cronce with a second by Sanzalone for approval of the resolution as presented. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Sanzalone-aye, Ashton (Alt. 1)-aye, Fulper-aye. Motion carried

APPLICATION(S):

Public Hearing: New Cingular Wireless PCS,LLC (AT&T) – Block 5.01 Lot 3 –125 Alexauken Creek Road – Completeness Determination/Public Hearing–Variance Request – Use/Height/ Preliminary and Final Site Plan Approval.

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Chairman Fulper related that New Cingular Wireless has requested to be carried to the June meeting, they appeared on the agenda for completeness and public hearing and were previously deemed incomplete. Anyone from the public that received notice is hereby notified that New Cingular Wireless is being carried to the June 28, 2011 meeting.

Continued Public Hearing: Garden Solar LLC – Block 18 Lot 1– 624 Brunswick Pike – Completeness Determination/Public Hearing – Variance Request –Conditional Use/Second Principal Use/Non-Conforming Use Variances. (7:38 PM)

Plan titled “Preliminary and Final Site Plan, Clean Generation Solar Energy Farm W2-076”, comprised of fourteen sheets and prepared by Engineering & Land Planning Associates, Inc. dated April 7, 2011, revised May 9, 2011 and Existing Conditions Plan dated May 9, 2011 were distributed.

Walter Wilson, attorney for the applicant, appeared on behalf of the applicant Garden Solar LLC, (property owner, West Amwell Properties, LLC).

Jacqueline Klapp, Certified Court Reporter, Flemington, NJ - present on behalf of the applicant Garden Solar.

Mr. Wilson stated they received a copy of Engineer Decker’s Completeness/Technical Review letter dated May 20, 2011.

Mr. Wilson offered that an existing conditions plan was submitted as a separate sheet to show the existing conditions.

Chairman Fulper referred to Mr. Decker’s May 20, 2011 letter, stating on pg 2, item #31 should be #32, #32 should be #33, item #5 should be item #6.

Mr. Wilson stated a waiver was not granted for item #31 at the April 26 meeting, and has been satisfied. Waivers are being requested for completeness purposes for item # 33c&g and item #6 on the zoning board checklist.

Mr. Wilson referred to the Completeness/Technical Review letter on pg. 4, *Zoning*, items 1 through 3, concurring that a variance is required. For item # 2, viewing as having two separate uses, masonry supply and the balance of property as agriculture use, thereby being a second principal use. By adding the solar use, they would be seeking to replace the second principal use with a different second principal use, not requiring a variance. Item #3, concurring use is not identified as a principle permitted use in Schedule Three as attached to the ordinance. Mr. Wilson referenced ordinance 109-84B(1) schedule of permitted uses, which contains Schedule Three along with editor’s note, items 1through 6, additional principally permitted uses. Item #1 retail trade establishment, suggesting the masonry supply falls within retail trade establishment. Suggesting it is a principal permitted use and therefore neither expanding nor intensifying it.

Engineer Decker provided comment regarding existing use, stating the NC Zone does have a statement that provides for retail trade establishments, it also states, business and professional medical offices, restaurants, and personal service establishments. It also refers to Schedule

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Three, under the heading there are several subheadings, residential uses, commercial office uses, commercial personal services, commercial wholesale retail uses. Under commercial/wholesale/retail uses is where lawn and garden supply is listed and it is not a permitted use within the NC Zone. It is only a permitted use in the HC and LHC Zones. Engineer Decker added, the ordinance has a section on outdoor storage for merchandise for sale, permitted in the HC and LHC Zones, but not in the NC Zone, stating that the operation of the masonry supply business has outdoor storage of material for sale. Believing that the intent is that there not be any businesses that require outdoor storage of materials, such as farm and garden, masonry, lumberyards, are not permitted uses within the district.

Motion was made by Fitting with a second by Sanzalone to deem applicant complete per May 20, 2011 VanCleaf letter. Roll call, Crounce-aye, Fitting-aye, Romano-aye, Hall-aye, Sanzalone-aye, Dale-aye, Fulper-aye. Motion carried (8:00PM)

Attorney Wilson requested the public hearing officially be open to review the public notices and carry the hearing to the next scheduled meeting. Chairman Fulper opened the public hearing for Garden Solar, Block 18 Lot 1. Notices of service and publication were reviewed by Attorney Palilonis and found to be in order. The public hearing for Garden Solar was closed. (8:08PM)

Public Hearing: Messick – Block 21 Lot 7 – Route 31 – Variance Request – Use/Height/Accessory Structure/Appeal of Zoning Officers Denial. (8:08PM)
Application, checklist, and plan titled Site Plan comprised of one sheet; sheet 10, and prepared by Goldenbaum Baill Associates, Inc. dated March 9, 1990, were distributed.

Andrew Walheim, attorney for the applicant, stated they were here because of a denial for a previously approved construction permit and several other items of non-compliance relating to the property use. The Zoning Official denial mentioned several other items of noncompliance as far as the current use of the property relating to certain ordinances and board resolution.

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

Michael Messick, Property owner - 105 Circle Dr. South, Lambertville, NJ
Carol Messick, Property owner - 105 Circle Dr. South, Lambertville, NJ

Attorney Walheim provided that the property was purchased by the Messick's in 2000, prior to purchase of the property, the business was being operated out of the home. Zoning Official Venettone agreed to help locate property suitable for the intended business use. 462 Route 31 was located. As a condition of the purchase, the Messick's wanted to ensure that the intended use was going to be appropriate. The Messick's requested Zoning Official Venettone sign off on a letter that outlined the intended uses of the property. Entered as Exhibit M-1, letter dated November 26, 1999, approved January 4, 2000 by Zoning Official Eugene Venettone. The letter (exhibit M-1) was signed off on by Zoning Official Venettone prior to Messick's owning the property. Purchase date of the property was February 16, 2000.

Improvements were made to the property by the Messick's, including the construction of the current office building. In 2007, a construction permit was obtained to construct a pole barn. The permit was initially approved by Construction Official Rose on 12/5/07, date crossed out and

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dated 2/14/08. Entered as Exhibit M-2, Construction Permit for Pole Barn. All permits were paid for in full at the time they were obtained.

Michael Messick testified that excavation and site work for the Pole Barn has been started. Entered as Exhibit M-3, Site Plan by Goldenbaum Baill, dated March 9, 1990.

Chairman Fulper requested that the structures on exhibit M-3 be labeled to reflect existing conditions.

Mr. Messick testified his original contractor went bankrupt, requiring him to secure another. During that time Mr. Messick went to the Construction Dept. to revise the plans from a two story structure to a one story. At that time Mr. Messick was informed that he could not construct the proposed building. Mr. Messick was referred to Zoning Official Baldino, at which time he received a zoning denial for approvals that were put in place by the prior Zoning Official, Eugene Venettone.

Attorney Palilonis questioned whether the applicant was aware that the 2/14/08 construction permit states that it is only good for a period of one year, and if construction ceases for a period of six months it is void. Mr. Messick stated he has bills from the excavator showing that they periodically worked on the building, and he also called the state with reference to the permit extension act. Mr. Walheim referenced the permit extension act, relating that the permit is still valid. Zoning Official Baldino stated that the permit extension act was only good until January 2011, anything after that is no longer valid. Mr. Walheim stated, the extension is valid for permits until January 2011, that's to exempt properties that haven't been worked on in a year since they have been issued, or if there is a six month gap between doing work on the property. Prior to January 1, 2011 there has been work on the property without more than a 6 month gap, the permit has never expired in conjunction with the act and the work that has been done on the property. Mr. Walheim added, permits obtained between January 2007 and January 1, 2010 have an extension until January 2011 as long as you meet those requirements where you started work within the year of the issuance of the permit, have done work within a six month period of time.

Attorney Palilonis related that Zoning Officer Baldino denied the pole barn because you can't enlarge a non-conforming use, and as an accessory building in excess of 15ft. high.

Attorney Walheim stated that the zoning permit was made for a pole barn structure, denial was made beyond the application with findings of non-compliance within the denial beyond the application.

Mr. Walheim referred to a prior resolution, stating Mr. Messick obtained approval to operate his plumbing & heating business. Carol Messick added that they also operate Mr. Well Pump and Stinky's Septic Service. Mr. Messick stated that the additional businesses are a division of Michael J Messick Heating & Plumbing business. The septic license is separate which is owned by Michael J Messick, as well as the Mr. Well Pump license. Mr. Messick related that Stinky's has to be a separate licensed business.

(Chairman Fulper related that there would be a change in the agenda order of business resulting in a brief recess of this application – hearing recessed (8:48 PM – 8:50 PM))

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Continued Public Hearing: Garden Solar LLC – Block 18 Lot 1– 624 Brunswick Pike –
Completeness Determination/Public Hearing – Variance Request –Conditional Use/Second
Principal Use/Non-Conforming Use Variances. (8:48 PM)

The applicant and members of the public were advised that the public hearing would be continued to the June 28, 2011 meeting of the Board at 7:30 PM. No additional notices will be given. (8:50 PM)

(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed (8:50 PM - 8:59PM))

(The regular order of agenda business resumed – Messick Application re-opened)

Public Hearing: Messick – Block 21 Lot 7 – Route 31 – Variance Request –
Use/Height/Accessory Structure/Appeal of Zoning Officers Denial. (8:59PM)
Application, checklist, and plan titled Site Plan comprised of one sheet; sheet 10, and prepared by Goldenbaum Baill Associates, Inc. dated March 9, 1990, were distributed

Attorney Walheim stated, the denial of construction permit and findings of non-compliance are not appropriate in light of prior approvals, whether it be the construction permit or the letter (exhibit M-1) signed by Zoning Official Venettone.

Chairman Fulper questioned whether the letter (exhibit M-1) signed by Mr. Venettone was being presented as a legal document under the land use law.

Mr. Walheim stated that they are presenting the letter as a document requested by the Zoning Official at that time. Stating, it was an agreement, an acknowledgement of the approval of the use of the property; it was a binding decision by the town through their agent.

Attorney Walheim responded to Attorney Palilonis, stating they would like the board to acknowledge that the current use of the property is appropriate as per the prior approval of Zoning Official Venettone.

Board discussion ensued regarding approvals set in the prior Planning Board resolution. Attorney Palilonis stated that the current use is not the use that was approved in the Planning Board resolution.

Mr. Messick testified their attorney required a signed letter stating approved uses of the property from the Zoning Official before closing on the property. The letter (exhibit M-1) was taken to Mr. Venettone for his signature.

Attorney Walheim referred to the denial for the pole barn stating that a construction permit was previously obtained and consistent with the prior approval of Mr. Venettone prior to purchasing of the property. Proposed pole barn marked as building "A" on exhibit M-3, frame barn has been demolished; excavation work has been started for pole barn. Pole barn plan details were submitted to the construction department in 2007.

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Board discussion ensued regarding Zoning Official Baldino's denial dated 2/18/11 regarding denial of the permit granted for a structure that was larger than the previous structure. Mr. Messick responded, stating that Gene Venettone told him that he came out to the site to check it, seeing that there was an overhang on the building with piers, Gene stated that the building could be taken out to the piers. Chairman Fulper noted that the permit states a 40x70sq.ft. building, questioning whether Gene looked at the existing building and whether the footprint was 40x70. Mr. Messick responded that Gene looked at the existing foundation which had piers out from the building for an overhang; Gene stated that the building could be built out to the piers. When questioned whether the piers went out in both directions from both sides, Mr. Messick stated no, just out the back. It was noted that the structure was being expanded in both directions, going longer and almost twice as wide. Mr. Messick stated that Gene said it was okay; Gene approved the drawings, and said to pay for the permits.

Responding to board member questions, Mr. Messick stated that he was unaware of the 1990 Planning Board resolution at the time he purchased the property.

Attorney Walheim stated that the principal residence being occupied by a caretaker is consistent with prior approval of the Zoning Official. Non-compliance denial comes from the resolution which requires owner occupied building. Shown on the plan as a two story frame dwelling, marked as building "B" on exhibit M-3. Mr. Messick testified the caretaker is responsible for security on the property and pays a reduced rent.

Attorney Walheim referenced the denial, stating that the one story frame barn, marked as building "C" on exhibit M-3, expanded to 1800sq.ft. from the usual size of 520sq.ft. within side yard setbacks, does not comply with 109-9(2)c. The structure is currently being used as an office. Replacement/expansion of the one story frame barn was done in 2004 with permits and inspections. Set of three pictures of building "C" entered as Exhibit M-4 a, b, c. Attorney Palilonis suggested that the construction permits be submitted to this Board, Carol Messick acknowledged the request.

Mr. Messick testified they have water tests and Board of Health inspections for building "C" they will supply. Building "C" is equipped with two restrooms, and is handicap accessible.

Chairman Fulper restated that Mr. Messick will provide the construction permits and certificate of occupancy for building "C".

Attorney Walheim stated the next issue on the 2/18/11 denial is the plumbing & heating business is a permitted use within the LHC Zone 109-87B as per schedule Three of Permitted Uses, this is not to take place in an accessory structure. Construction of the office building was done with reliance upon prior approval from the Zoning Official. Zoning Official Baldino stated the house was the principal building and everything else was accessory buildings; not allowed to have permitted use in them.

Mr. Messick provided clarification on existing and proposed buildings, building "A", is the proposed building that was denied and will be used as storage of material and trucks. Building "C" is the current office building. One story frame shed, marked as building "D" was the previous office, equipped with bathroom, used for storage.

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The next issue in the denial is the Planning Board resolution #4-90, limiting the number of trucks to be stored on the property to five. Mr. Walheim stated the prior approval of the Zoning Official approved twelve trucks. When questioned, Mr. Messick stated the actual number of trucks parked on the property is sixteen; 2 Stinky's, 2 Well Pump, 10 Messick, 2 dump trucks, adding that some of the trucks are in sheds.

The last issue in the denial is the storage of other materials on site. Mr. Messick testified they store materials and equipment and wanted to do small retail in the future; adding that Gene said it was allowable. Carol Messick testified they are storing plumbing materials, hot water heaters in the existing wood coop on the southerly side, marked as building "F", storage of two trucks and material in the existing wood coop on the northerly side marked as building "G". No outside storage of material.

In response, Mr. Messick stated the plans were from the previous owner. Carol Messick responded that building "D" was previously rented out and would possibly rent it out again.

Chairman Fulper asked the applicant what they are appealing to us for, in response, Mr. Walheim stated the appeal is multi-level; the denial of the construction permit that was previously approved, as well as the findings in the letter that there are other non-compliance that the Zoning Official listed.

Chairman Fulper opened questions to the public:

Frank Ritette, neighbor - 453 Rt 31, Ringoes, NJ- Expressed that the Messick's are a good neighbor, the house looks nice. Stated that he has two concerns; a lot of growth and development that took place that maybe extended a bit beyond the bounds, a lot of trucks, house looks nice but the property is starting to look unsightly. Doesn't think it is good for the property values in East Amwell or West Amwell. Concern is with compliance with use of the property; plumbing and heating is ok, but Mr. Stinky's is a septic pumping service and the storage of 12, 15, or even 20 porta potties doesn't comply with the use of the property, stating that he can see the porta potties when sitting at his dining room table in the winter.

Kathleen Ritette, neighbor - 453 Rt 31, Ringoes, NJ- expressed concerned with the aesthetic appearance of Route 31, stating it is an important roadway, for many it is how they know what East Amwell and West Amwell looks like.

Lonnie Baldino – Zoning Officer West Amwell Twp. - was sworn in by Attorney Palilonis – stated Mr. Messick made application for the pole barn in question, denial was issued for pole barn. There is a time limit on an application, expiring one year from the time of issuance, if it is not used; an appeal from the board expires in 18 months, if it is not acted on it does die, no extension was applied for. The building dept. shows no inspections for the pole barn permit, therefor the permit extension act was good for 3 years, it died in January 2011. Mr. Baldino added, the permit as far as zoning went, triggered the construction permits has expired. They did get a permit from the building dept. but no work has been started. They demolished a building but can't be proven; Mr. Baldino stated that he went back several years on Google Earth and can't see where the structure was. They have been issued a permit for reconstruction, but can't see any sign of construction, the building dept. has no record of construction; therefore the zoning permit that was attached to their building permits has expired. Mr. Baldino stated, it was explained to Michael Messick they will need to make application to the

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Zoning Official, it will require denial because of everything that was found, and be sent back to the Zoning Board, at that time the board will look at everything. Mr. Baldino testified that Gene Venettone's letter was brought to him after everything was said and done with the denial, which shed some light on things. A letter may have been issued by Gene but we can't let the letter live on in perpetuity. Mr. Messick was instructed to ask the board for relief to put the structure up; it was oversized, over 1200sq.ft. and over in height, it is over 15ft. At that time, research was done and found the Planning Board resolution which had to be incorporated in the denial.

Attorney Palilonis questioned whether the 2007 permit has any validity, in response Mr. Baldino stated no, it expires after one year. Under the municipal ordinance, a zoning permit is good for 12 months.

Hearing no other questions, the floor was closed to the public (10:20PM)

Chairman Fulper related that the applicant has choices; their attorney can advise them that he believes the permit is valid and go on their way, they can ask for the appeal; vote tonight and see whether the board agrees or disagrees with what they are appealing, or they can think this over and decide whether they want to apply for a variance for the building.

Mr. Baldino referred to a plan approved on 11/7/06 by Gene Venettone for the pole barn in question. The permit was dated 12/5/07 signed by Christopher Rose, Construction Official.

Chairman Fulper inquired how the applicant would like to move forward, in response, Attorney Walheim stated they would like to continue with the appeal and have a decision on the issues, with a vote on each issue.

Chairman Fulper addressed the board, stating the applicant would like to move forward with appeals on the Zoning Officers denial.

The first appeal being applied for is the Zoning Officers denial to grant a zoning permit for the 2800sq.ft accessory structure.

Attorney Palilonis suggested that we need to review each of the six paragraphs in the denial and decide whether any one of the six negates the zoning permit, in other words, supports the decision of the zoning officer.

Board members requested clarification on the issuance date of construction permit; construction permit signed on 12/5/07 and paid for on 2/14/08. The zoning permit was issued on 11/7/06, documented on the plan submitted by Michael Messick to the Zoning Officer.

Chairman Fulper related that we are running out of time for the night and doesn't believe the board feels comfortable casting a vote tonight.

Chairman Fulper informed the applicant they will be carried to the June 28, 2011 meeting, they will be placed first on the agenda and given one hour to present, unless we are close to a decision in which case time will be extended. They need to decide if they are coming back as a public hearing, if so they need to send out notifications. Attorney Walheim informed that they already sent out notices. Attorney Palilonis informed Mr. Walheim that we will need an affidavit of service.

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Chairman Fulper related to the public that the notices were being reviewed, although not necessary for the appeal hearing, if the applicant decides to come back for a public hearing in June the notifications will be required. Proofs of publication and service were reviewed by Attorney Palilonis and found to be in order. Members of the public were advised that the appeal hearing would be continued to the June 28, 2011 meeting of the Board at 7:30 PM. No additional notice will be made (10:40 PM)

CORRESPONDENCE:

The following items were distributed as correspondence:

Ordinance9, 2011 an ordinance to amend chapter 109 of the code of the Township of West Amwell – amount of fees and escrow deposits – first reading April 27, 2011, final adoption May 25, 2011. Secretary Hall stated that Ordinance6, 2011 special meeting fees, was voided and Ordinance 9 was introduced. Apparently our current fee structure already included a special meeting fee of \$250.

A letter was sent to Green Power and Breen Color requesting a check be sent to cover the special meeting fee. Payment has been received from Breen.

Notice of Violation, dated 5/3/11 for **Block 23 Lot 1, Quick Chek Corp**, Rt.31 South, for numerous violations (missing signage) observed, was received from Zoning Official Baldino

Notice of Violation, dated 5/10/11 for **Block 28 Lot 22.01, Dufresne**, 247 Goat Hill Rd., violation of Home Occupation Permit and Zoning Board Resolution of Approval was received from Zoning Official Baldino.

Membership Certificate from NJPO with signed member cards

Mayors Advisory re: Regulating Solar Panels

Approval of Bill List 5/24/11:

Secretary Hall stated that the invoice for \$75.00 from Hintz has been voided and deducted from the total bill list. New total for 5/24/11 bill list is \$3578.11

A motion by Cronce, seconded by Fitting to approve the vouchers for payment as listed on the Board's 5/24/11 bill list was unanimously approved by voice vote

DISCUSSION:

The floor was opened to the board for discussion, hearing none, the floor was closed.

OPEN TO PUBLIC:

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

ADJOURNMENT:

A motion by Sanzalone, seconded by Cronce to adjourn was unanimously approved by voice vote (10:52PM)

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Respectfully submitted,

Ruth J. Hall