

**WEST AMWELL TOWNSHIP  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
August 23, 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, Ruth Hall-present, Dave Sanzalone-present, John Dale-present, John Hoff (ALT. #2) -present, Robert Fulper-present.

John Ashton (ALT. #1)- arrived at 7:34PM

Absent: Joe Romano

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

**PRESENTATION OF MINUTES:**

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

**RESOLUTION(S) OF APPROVAL:**

**Messick – Block 21 Lot 7 –Route 31** – Appeal of Zoning Officers Denial. - Resolution as prepared by Attorney Palilonis was distributed. A copy was provided to the applicant's attorney prior to the meeting.

Attorney Palilonis reported on the meeting attended by the applicant, their attorney and Mr. Palilonis, stating that Mr. Baldino will conduct a site visit and discuss how to proceed. Upon seeing the resolution from the PB, Attorney Peterson was surprised and understands that until they get site plan approval it is not a good situation. This Board is approving the zoning permit, if the Permit Extension Act doesn't apply, it expired.

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Motion was made by Hall with a second by Cronce for approval of the resolution as written. Roll call: Cronce-aye, Hall-aye, Sanzalone-aye, Dale-aye, Ashton (Alt. 1)-aye, Fulper-aye. Motion carried

Cronce stated that he “votes aye because we can deal with only the information that was presented at the time to make that decision”

**APPLICATION(S):**

**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. (7:41PM)

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. Report from HCPB; Conditional Approval Not to Construct dated May 5, 2011, D&R Canal; Drainage Report dated June 8, 2011 were previously distributed. Overall Soil Erosion, Sediment Control and Landscaping Plan, sheet 6, revision dated August 12, 2011, prepared by Engineering & Land Planning Associates, Inc. were distributed.

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

Walter Wilson, attorney for the applicant, appeared on behalf of the applicant Garden Solar LLC, (property owner, West Amwell Properties, LLC) stating a copy of the July 26, 2011 meeting transcript was provided. Also submitted, within the allowed time frame was a revised landscape plan based upon comments provided by Engineer Decker and Planner Mercantante.

Mr. Wilson called Engineer Nusser to provide testimony on the revised landscape plans.

Mr. Nusser offered as Exhibit GS-7 Overall Site Plan, Clean Generation Solar Energy Farm W2-076 Block 18 Lot 1, Soil Erosion, Sediment Control and Landscaping Plan, sheet 6, prepared by Engineering & Land Planning Associates, Inc., stating this is a colorized version dated August 23, 2011, a representation of the plan revision dated August 12, 2011.

The main areas of change were along the frontage of both route 518 and Rock Road West Ext. and Rock Road in the rear. Earlier plan was a single row of evergreen trees spaced at 20ft on center, now two rows of evergreen trees with reduced spacing to increase the buffering. Along the frontage where the arborvitaes are behind the architectural fence; instead of having two rows staggered with 10ft spacing in between the arborvitaes, the plants in the individual rows are spaced 8ft apart and the rows are spaced 6ft apart bring them closer together.

In response to Mr. Wilson, Mr. Nusser stated in his opinion, as reconfigured this new plan meets the ordinance requirement of 75% at the 5year grow in.

Entered as Exhibit GS-8 Photos and Renderings, consists of 3 photos - page 1 is a photo taken from Rock Road originally entered as GS-5. Page 2, originally entered as GS-6, and shows originally proposed landscaping. Page 3 is a rendering showing the proposed revised

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landscaping. The area was calculated using CAD engineering tool and shows the facility as more than 90% screened at 5 year grow in.

Entered as Exhibit GS-9 Photos and Renderings, consists of 3 photos. Mr. Wilson stated, the first sheet is the photo, second sheet is the original depiction rendering, and the final sheet is the revised rendering. Mr. Nusser stated the first sheet is consistent with GS-3; it was taken from route 518 looking north east into the site, and also depicts the mason supply. The second photo is the same as GS-4, the photo rendering at 5 years of growth for the previously submitted landscaping. The third sheet is the revised rendering.

Mr. Nusser stated, additionally the rows were tightened from 10ft. to 8ft. along the rows and from 10ft. between the rows to 6ft. The height along the front row was increased from a 4ft/6ft to 6/8ft height at planting. The rendering depicts the landscaping after a 5 year grow in period. Based on the analysis of the rendering, the facility is more than 90% screened, meeting the ordinance requirement of 75% at 5 year grow in.

*Chairman Fulper opened questioning to the Board members:*

Chairman Fulper questioned where the extra row of evergreens were added as a double row; Mr. Nusser stated they were added along the northeast corner along the western edge, along the north.

In response, Mr. Nusser stated the trees are 15ft. on center, staggered row, with 7 ½ ft. between rows.

Mr. Wilson responded, the maintenance plan provides for the entire life of the solar system (facility), the trees will be maintained/replaced.

*Chairman Fulper opened the floor to the public for comments/questions of the applicant's engineer or planner:*

David Arnone, 631 Brunswick Pike –questioned the height of the plantings when planted, and a description of the fence. Mr. Nusser stated the arborvitaes would be 6-8 ft. in height and the fence is a 5ft. architectural fence. There is no barbed wire on the 6ft. chain link fence. Mr. Arnone quoted the ordinance section III, 5.c (1) regarding screening, and questioned whether the view of the solar panels would be screened to block the view from his sight as per the ordinance. Mr. Chmielak, applicant's planner, responded, as indicated on cross section plan sheet 11 of 14, the distance of approx. 240ft. to the Arnone property, a height of approx. 15ft to the second floor of residence. No substantial impact to the view line is anticipated, there may be instances where the array is visible through the tops of the trees but no substantial impact is anticipated. Mr. Chmielak stated the trees will be replaced for the lifetime of the facility, at the size listed in the landscape plan. Discussion ensued regarding noise study, stating it was based upon site readings obtained on a similar installation at the Landis facility in South Jersey and applied to this site. Confirmatory on site testing was done and that determined what the frequency distribution would be, that was applied in the report in order to confirm compliance. In response, Mr. Chmielak stated there would be two 1megawatt inverters or four 500 megawatt inverters located on the two inverter pads in the central portion of the property.

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Dan Goodman, 31 Ferris Wheel Drive – related concern with deer along route 518 and the plantings close to the roadway. Mr. Nusser stated the plantings along route 518 are within the fenced area.

Ernie Andreoli, 4 Hunter Road – questioned the spacing between the architectural fence rails, and arborvitae as a landscaping choice. Mr. Nusser stated the rails are a typical 4 inches on center, arborvitae will provide a hedge behind the fence and a more aesthetically pleasing view and buffer than perhaps white pines. Mr. Andreoli related arborvitae is deer food and also has many problems; like splitting under heavy snows. Additionally stating the fence railing is just the right distance apart for the deer to pop their head through to eat the plantings. Mr. Nusser related the distance from the fence to first row of arborvitae is approx. 10ft.

Justin Holohan -120 Rock Road West- questioned whether the community would experience lower property taxes with the installation of the solar farm. Mr. Wilson stated he wasn't sure they had the ability to answer, adding the facility will pay more taxes on the property than are paid now, how that impacts the entire municipal budget, he wasn't sure. In response Mr. Wilson stated it may be built and operated by someone other than Garden Solar. In a generalized sense, you will have a more reliable electric service, not necessarily from the facility alone but from the nature and type of solar development. The State of NJ has identified solar as an inherently beneficial use. Mr. Holohan expressed concern with the possibility of a change in the traffic pattern or addition of a traffic light, Mr. Chmielak responded, pending outside agency approval, the site will be accessed through one location; an existing driveway in the central portion of route 518. Snow removal is handled on as need basis, not normally a significant issue. Panel surfaces tend to warm up and snow melts off.

In response to Engineer Decker's question regarding construction traffic, Mr. Chmielak stated during construction, approx. 4 months, it is anticipated that access would be provided through the route 518 access. Provisions are made on-site for parking of construction workers, possibly with some off-site provisions being made at the time of the building permit application. Applicant is willing to accept a condition of approval there be no parking along any roadway. Mr. Decker expressed concern with construction parking at the existing mason supply lot, stating it would reduce the number of parking spaces for customers of the mason supply. Mr. Chmielak stated they would be willing to develop a construction phase staging and parking plan to be submitted at the time of pre-construction meeting for Mr. Decker's review and approval. In response to Attorney Palilonis, Mr. Decker agreed the county would probably be interested, as part of their approval, in the construction entrance since it is located on a county road.

Pam Bland, 121 Rock Road West – questioned the composite of the solar panel, asking if it was a cadmium panel, Mr. Wilson responded stating no, it was not cadmium telluride. Mr. Nusser provided a description of the panels as; silicon based crystalline technology, panels consist of aluminum frame, glass for the surface, and silicon oxide and quartz stone to comprise the inside of the panel with an aluminum frame on the outside, mounted on a galvanized steel post and an aluminum rack.

Jennifer Andreoli, 16 Hunter Road – referred to a mayor's advisory letter dated June 7, regarding large solar projects focused towards large commercial land field and brown field sites. Mr. Chmielak responded that he was aware of the advisory, stating the energy master plan was

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reissued as a draft, a lot of policy decisions at the state level are coming together to serve the renewable energy implementation. Referring back to testimony, this is a permitted conditional use in the NC zone, this application is for relief for one specific condition of the ordinance and that is the lot size.

*Chairman Fulper closed the floor to the public for comments/questions of the applicant's engineer or planner:*

Completeness and Technical Review#1, dated May 20, 2011, prepared by Board Engineer Tom Decker was previously received and distributed. Board and applicant reviewed the *Zoning* and *Plan Review* sections, applicant agreed to comply with items as discussed during review.

#### *Plan Review*

Item #4 thru 10 – current items of nonconformity at existing Mason Supply.

*(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed (9:02 PM – 9:12 PM))*

Review letter, dated June 24, 2011, prepared by Board Planner Anthony Mercantante was previously received and distributed. Attorney Wilson provided a review of the *letter*, indicating all items have been addressed, hearing no comments from the Board.

*Chairman Fulper opened the floor to the public for comments:*

Pam Bland, 121 Rock Road West - expressed appreciation to the Board for their time and commitment to the citizens of West Amwell. Also, there should be other ways to address the Board if one cannot be in person to address the Board. Expressed concern with whether this land should be used for a solar facility. Stated the applicant is seeking a variance to the renewable energy code, additionally the applicant is seeking conditional use of 9 acres zoned for NC use. Concerned that approval of this application will set a precedent for use of other small fields of land for solar farms. Encourages a denial of this application to maintain the rural character West Amwell Twp. If the application is approved, require that 1) the inverter buildings be moved to further behind the West Amwell Supply buildings and further from the residences. Moving the inverter buildings would make them less visible and decrease the noise. 2) a drainage ditch should be constructed to divert the rain/snow runoff from the adjoining residential property toward the road.

Robin Horsnall, 136 Rock Road – expressed concerns of allowing the use on a small piece of property, variances allowed on property with dual use.

Dan Goodman, 31 Ferris Wheel Dr.- expressed concern with approving the application and ignoring the recently approved renewable energy ordinance, adding we would be back to a time before zoning and ordinances because they obviously won't mean anything.

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Ernie Andreoli, 4 Hunter Road – stated if adding nonconformities for the Mason Supply, add noise, the 7:30am delivery of gravel plus the frontend loader moving it. Related the concern of having route 518 dotted with solar facilities.

Max Rivers, 7 Hunter Road – requests the application not be approved, enjoys West Amwell as a rural community, the rural look. Permitting the solar field would change the aesthetics; this is not the right location for the solar facility.

Justin Holohan, 120 Rock Road West – suggested using the land for what it was intended. Requested the application be denied.

Dave Arnone, 631 Brunswick Pike- requested the application be denied. Concerned too many unanswered questions, doesn't want this to be what you see when driving through West Amwell. Doesn't believe this is the proper location for a solar facility.

Jennifer Andreoli, 16 Hunter Road – expressed concern with replacing farmland with solar facilities. Requesting the renewable energy ordinance be adhered to and deny the application.

*Hearing no other comments, the floor was closed to the public (9:35 PM).*

*Chairman Fulper opened the floor to the board professionals for comments:*

Planner Mercantante stated it comes down to a zoning issue, there has been no testimony regarding property values, pro or con, so it's not part of the case. The law allows people to use their land in a certain way, they do have to prove that there is a benefit; they do have to prove that the use is appropriate given the zoning standards, questioning whether the use should be permitted on an undersized property.

Attorney Palilonis reiterated this is a conditional use, a d3 type variance. The use is permitted; the standard of proof is not as high as it would be for a use that is not permitted in the zone. The only relief they are seeking is from the 20 acre requirement. Adding, it is an inherently beneficial use. We are left with the *negative criteria*; substantial detriment to the public good, site plan requirements that are set in the ordinance. Stating, that generally covers what the public would be concerned with, if you think there are any other issues that go beyond the scope of the ordinance that haven't been covered by the applicant, these would have to be legally sustainable /objectable issues. Adding, we are left with *substantial impairment of the zone plan*, this would seem to relate to the 20 acre requirement. The board's decision comes down to whether or not this site is appropriate/suitable for this particular use.

Board discussion ensued regarding the renewable energy ordinance, minimum lot size, Attorney Palilonis read section III.1 of the ordinance, also referencing the Coventry Square case.

Mr. Wilson added, they believe the Coventry Square case is relevant, reiterating they don't need to show the particular suitability, whether they look at it solely as a d3 or inherently beneficial use, they are eliminating the suitability and eliminating the positive criteria. Stating testimony was provided as to some of the benefits under the MLUL. Because the inherently beneficial statute imposes on you the obligation to accept it as an inherently beneficial use, which takes

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away the positive criteria aspect from your determination, review is limited to the negative criteria. Limited to, by not meeting the condition; the 2.1 acres that's not there, does that somehow eliminate the permissible aspect of this use, a use that is permitted on 20 acres of land area on a parcel. Mr. Wilson opined, in looking at the negative criteria, is there a substantial detriment to the public good and the zone plan and the area surrounding the property by not meeting the 20 acres, stating there is not a substantial detriment because there is no factor that will be impacted by it not being 20 acres. Every other aspect of the conditional use and every other aspect of the zone is met for the solar facility. Adding, if there was an additional 2.1 acres, the solar facility would just be bigger and it would be conforming.

Seeking preliminary and final site plan approval, d3 use variance, approx. 17.9 acres total, solar energy facility to be constructed on approx. 10 acres inside the fence, currently in an agricultural use, available for agriculture use after this facility serves its life. A decommissioning plan that has been submitted, calling for minimal, if any grading. This application provides up to 2megawatts of clean renewable electric energy to the distribution grid. The 20 acres seems to have come from the statutory reference to 20 acres in an industrial zone, that says not only is it an inherently beneficial use in an industrial zone, but if you have 20acres and you're in an industrial zone irrespective of what your zoning ordinance allows, it will be a principally permitted use. If that provision applies, there are no further enhancements to that principally permitted use. The fact that it is a conditionally permitted use allows the municipality to provide for enhanced landscaping. Adding, there could be a development under the existing ordinance that could allow five additional lots that would each meet the minimum lot size, with minimal buffering. Believing this application is less intrusive, the panels are not substantially visible from adjoining residence. Adding, appendix b, PJM feasibility impact study, has approved this site. Unlikely there will be repeated applications for sites whether on 20 acre parcels less or more, because there are limits to the distribution system and the capacity of the lines that exist.

Mr. Wilson offered that testimony was provided regarding night time noise, stating the system shuts down at night time, there will be no noise generated from the facility at night. The noise study was site specific as provided in appendix j. Mr. Wilson opined they have met every aspect of the conditional use ordinance that was in the solar renewable energy ordinance recently adopted, with the exception of having 2.1acres too little land. Stating, there is no impact as a result of that, meeting every requirement as imposed to allow this use. In the NC zone district, this use is permissible on 20 acres with no detriment of being permissible on 17.9 acres. For all those reasons it is believed every criterion has been satisfied and request approval.

Board discussion ensued regarding lot size and the newly adopted renewable energy ordinance. Reference to the recently received mayor's advisory on solar facilities, Attorney Wilson expressed objection to the mayor's advisory, having not received a copy.

Motion was made by Ashton with a second by Hall to grant relief requested on acreage and two principal uses. Roll call: Cronic-nay, Fitting-nay, Hall-nay, Sanzalone-nay, Dale-aye, Ashton (Alt. #1)-aye, Fulper-aye, Motion did not carry, resulting in a denial. Resolution to be prepared for September meeting. (10:20PM)

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*(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed (10:21 PM – 10:26 PM)*

**Public Hearing: East Coast Colorants, LLC d/b/a Breen Color Concentrates –Block 8 Lot 23.03 - Kari Dr.** – Amended Site Plan Application /Use and Bulk Variance Application - Public Hearing (10:26)

Application, and plan titled “Preliminary and Final Major Site Plan, East Coast Colorants, LLC d/b/a Breen Color Concentrates” comprised of eleven sheets and prepared by Goldenbaum Baill Associates, Inc. dated October 4, 2010, revised May 31, 2011, Plans titled “New Warehouse Buildings for Breen Color Concentrates” comprised of four sheets prepared by William Charleroy Architects dated April 1, 2011, West Amwell Twp. Zoning Board Resolution No ZBA2011-07 were received and distributed

*Chairman Fulper related that due to conflict Board Member Sanzalone recused himself from the Breen Color Concentrates hearing.*

Attorney Scholl related a meeting was scheduled with neighboring property owners at 7:00pm this evening to address any questions, explained stormwater design. The property owners were satisfied with the explanations they received and chose not to stay for the public hearing.

Don Scholl, attorney for the applicant stated they have a 12,000 sf addition and a 9,600 sf addition, a 3,000 sf addition to an existing building and down to a 6,000 sf addition to building #3, and a 1,500sf lab expansion.

Attorney Palilonis stated that we are treating this as an amended application; all previous witnesses are still under oath.

Mr. Scholl stated in terms of variance relief, pre-existing front yard setback, pre-existing minimum lot size, eliminated the FAR that was previously granted and also eliminated the rear yard setback with the relocation of the building improvement.

**Witness #1** - Howard DeMonte, Company President – with the proposed addition, the existing processes and raw materials and products made will be exactly the same. There will be no change; the company operates in full compliance. Breen is considered a non-hazardous waste generator and the dumpster is considered industrial residual waste. There are permitted dust collectors on all equipment and comply with all stated and federal regulations. The 6,000 sf building will be used for storage, as explained at the original hearing the company acquired their largest competitor, all business and production was transferred to this location. Mr. DeMonte testified regarding traffic circulation, stating that only the WB-40 wheelbase trucks fit on the property.

**Witness #2** - Eric Rupnarain, P.E. - Mr. Rupnarain was previously accepted as a witness. Site plan dated October 10, 2010, rev. August 3, 2011. Overall plan showing existing improvements, shows the 1,600 sf addition proposed to the rear of building #1, and also shows the 6,000sf

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addition proposed to the west of building #3, also proposing to relocate the existing gravel drive that's presently adjacent to building #3, to the west of the new addition. The drive is used for access to the rear of all the existing buildings and also used for trash collection at the back of building #1. Additionally, there are six parking spaces being proposed adjacent to the existing parking lot in front of building #3, these parking spaces were part of the original application.

Two variances are required for existing conditions, one for the front yard setback requires 250ft, and present setback is 50.05ft of frontage along Kari Dr. For building #2 the existing setback is 97.4 ft., where 250ft is required by ordinance.

Technical Review #4, dated August 18, 2011, prepared by Board Engineer Tom Decker, Board and applicant reviewed *Plan Review* section, applicant agreed to comply with items as discussed during review.

**Witness #3** – William Charleroy, Architect- Mr. Charleroy was previously accepted as a witness. Stated they are proposing the addition of 6,000sf to building #3, a continuation of the existing building; a metal pre-engineered building with a 4ft.high block foundation wall around the perimeter, matching the roof height, the gutter line height, the metal panel, the existing roof, and the color. The other addition is to the lab, a 1,600 sf addition, a pre-engineered building, metal panel siding. Entered as Exhibit B-6 consist of 4 sheets. Building #3 has one door and will have lighting for safety egress. The purpose is to light the doorway for safety, per code. The building's will be heated and cooled with nothing mounted on the roof, everything will be located inside.

Attorney Scholl requested the Board favorably consider approving the variance request and amendment to the existing resolution for site plan approval.

Motion was made by Dale with a second by Cronce to approve use variance for the expansion of a preexisting nonconforming use with amended preliminary and final site plan approval. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Dale-aye, Ashton (Alt. #1)-aye, Hoff (Alt. #2) aye - Fulper-aye, Motion carried to approve. Resolution to be prepared for September meeting. (10:47PM)

**CORRESPONDENCE:**

The following items were distributed as correspondence:

Email from Clerk Olsen re:NJLM S-2950/A-4128 allows modifications to land use approvals

Memo Planning Board: Heritage Consulting Engineers, re: "Creekside Preserve".

**Approval of Bill List 8/23/11:**

A motion by Cronce, seconded by Hall to approve the Bill List for payment was unanimously approved by voice vote. Revised total \$2,333.44

**DISCUSSION:**

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None at this time

**OPEN TO PUBLIC:**

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

**ADJOURNMENT:**

A motion by Hoff, seconded by Fitting to adjourn was unanimously approved by voice vote (10:51PM)

Respectfully submitted,

Ruth J. Hall