

**WEST AMWELL TOWNSHIP  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
July 23, 2013**

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:35PM 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 31, 2013. 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 a copy of the 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, Ruth Hall-present, Brian Fitting-present, John Dale-present, John Ashton-present, Rob Borden (ALT. #1)-present, Robert Fulper-present.

Kevin Koveloski (ALT. #2) arrived at 7:42pm

Absent: Joe Romano

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

**Regular Meeting Minutes – June 25, 2013** – Motion was made by Dale with a second by Ashton to accept the minutes with minor revision's as discussed, with attached June 25, 2013 transcript. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Dale-aye, Ashton-aye, Borden (ALT. #1)-aye, Fulper-aye.

**RESOLUTION(S) OF APPROVAL:**

**Garden Solar LLC – Block 18 Lot 1– Brunswick Pike** Use Variance/Site Plan Approval. Motion was made by Ashton with a second by Dale for approval of the resolution with accompanying letter of conditions as amended. Roll call: Cronce-aye, Hall-aye, Dale-aye, Ashton-aye, Fulper-aye  
Motion carried.

**APPLICATION(S):**

**Carried/Completeness/Public Hearing: Messick – Block 21 Lot 7 – Route 31** – Appeal/Variance Request– Height/Accessory Structure (7:49 PM)  
Application, checklist, and plan titled Plot Plan comprised of one sheet; sheet 1 of 1 and prepared by Goldenbaum Baill Associates, Inc. dated November 21, 2012, were distributed.

Notices of service and publication were reviewed by Attorney Palilonis stating the Affidavit of Service was missing and suggesting moving forward with the hearing. Stating the applicant is to submit the original Affidavit of Service prior to memorialization of any action taken.

Erik Peterson, attorney for the applicant, stated the application consists of two parts; the first part is an appeal from the denial of permits for the construction of a 40' x 70' pole barn to house four trucks for the business situated on the property.

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

Mr. Messick stated that he owns and operates the plumbing, heating, and air conditioning business at 462A Route 31, adding that in the past they also operated a porta-potty business on the property that has since been sold.

Attorney Peterson provided a history of the property, purchased by the Messick's in 2000, prior to purchase of the property the business was being operated out of the home. Stating that 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.

Attorney Peterson entered a Plot Plan prepared by Goldenbaum Baill, dated November 21, 2012 as Exhibit M-2. Mr. Messick testified the plot plan was a plan of his property depicting where the buildings are located as of November 21, 2012. At the time of purchase, the new office building did not exist, having been added in 2004 with construction permits. Mr. Messick stated that all other buildings existed at the time of purchase including just the foundation and footings from a building that was removed by the previous owner. Mr. Messick stated that the previous owner informed him that he could reconstruct the building and to also speak with the Zoning Official, Gene Venettone. Upon speaking with Mr. Venettone, he received permission to reconstruct the building.

In response to a Board member's questions regarding what structures existed at the time of purchase, Mr. Messick confirmed at the time of purchase there was a two-story dwelling unit, 400sf cottage, 100sf shed, two existing one-story buildings that are in the far back, and a foundation. Attorney Peterson stated the building that is just a footing and foundation is the building that is in question.

Engineer Decker referred to two plans, the oldest was dated January 22, 1990 prepared by Usmiani and Associates, Preliminary and Final Site Plan, entered as Exhibit B-1, the second plan dated March 9, 1990 by Goldenbaum Baill, Site Plan, Lot 7 Block 21, entered as Exhibit B-2. Mr. Decker referred to exhibit B-1 stating there is a barn labeled as being repaired/reconstructed, indicating there is a record of a building being there at one time. Adding however, that comparing the plan as submitted to exhibit B-1 and B-2 where the proposed building is located is not in the same location as the original barn and also appears to be a bit larger in size. Mr. Decker stated that the 1990 plans are referenced in his letter dated March 25, 2013.

Mr. Peterson stated that they had never seen the 1990 plans prior to this evening. Referring to the location of the barn, the depiction on the plot plan could be adjusted to where it prior existed. Adding, when the foundation was removed, the footings were installed for the pole barn.

Mr. Messick stated that they already had permits for this building and started the job but because of a bad economy the permits ran out prior to completion. Testifying that they located footings for over hangs, Mr. Messick then spoke with Gene Venettone, Gene said they could go out to the footings. Permits were issued and work was started.

Mr. Peterson stated that permits were issued to construct the 40' x 70' pole barn in February 2008, the work began and then there were concerns with the economy. Mr. Messick decided to hold off on the construction, while continuing to do excavation work. When the plot plan was done the excavation work was already completed in the area where the barn previously existed, Mr. Messick had already removed the foundation to be able to put in the footings for the pole barn.

Mr. Decker stated that on Exhibit B-1 and B-2 there is a pond shown on the plan in the vicinity of the proposed barn, he then asked Mr. Messick if the pond is still there. Mr. Messick responded that the pond was not there when he bought the property. Mr. Peterson offered an aerial photograph from 1979, stating there is no pond depicted in the photo. Entered as Exhibit M-3, Aerial Photograph 1979.

In response to questioning by Mr. Peterson, Mr. Messick agreed the only change to the plot plan was the office building that he constructed, adding that he picked that location because Mr. Venettone told him to locate it there, using the two corners of an existing two-story barn; shown as a one-story barn on the plan. Permits and approvals were secured for the office building. Mr. Messick stated that no additional structures have been constructed on the property, adding that a sign was erected at the front of the property with required permits.

Mr. Peterson referred to Exhibit M-1 adding that it states to reconstruct pole barn on existing foundation, asking Mr. Messick where the pole barn was to be reconstructed, Mr. Messick replied it was to be reconstructed in the same location as indicated on the plan. Mr. Messick stated they started in the project 2007 or 2008, starting the excavation for the foundation which is when they found the footings. Adding that he talked to Gene Venettone about making the building bigger because they found the overhangs, Mr. Venettone said he would take a look. After a site visit Mr. Venettone said everything was okay to move forward. Mr. Messick secured the required permits and started the work until the economy declined.

Board member Fitting questioned whether Mr. Messick had zoning approval to do the work, Mr. Messick stated Mr. Venettone approved it, clarifying that Gene Venettone gave the approval not the Zoning Board.

Board member Cronce stated that Mr. Venettone didn't have the authority to give the approval in the manner in which he did. Attorney Palilonis stated that there is a plot plan and a piece of paper with Gene's signature on it, asking if that is what they are relying on.

Mr. Peterson entered as Exhibit M-4, Construction Packet, and three pages, dated 2/14/08. Mr. Peterson referred to the first page as *Application for Zoning Permit*, dated 12/19/2006, second page being the *Construction Permit*, dated 12/5/2007, date permit issued 2/14/2008, final page showing approval by Zoning Officer dated 12/19/2006.

Mr. Messick stated that he provided plans for the building when he applied to replace the existing structure. The building size as depicted on the plans and submitted to the construction dept. for permits was 40'x70', stating that the plans were the same as those supplied to and approved by Gene Venettone. The intent was to rebuild on the same footprint as the previous structure. The permits were issued, work started by removing the foundation and footings and re-grading the site. Work stopped when the economy was failing, not wanting to get in financial trouble.

Mr. Messick stated that he wanted to reduce the height of the building to approx. 25' from 32'; removing the 2<sup>nd</sup> floor storage area, making it a one-story building, no additional changes were being proposed.

Mr. Palilonis provided an overview for the Board, stating that construction stopped in 2010. Mr. Peterson clarified saying that construction never stopped; Mr. Messick went to the construction office to change the height. Mr. Palilonis continued, stating at that time the construction office would not allow him to proceed. Mr. Messick appealed to the Zoning Board in May 2011, the conclusion was that the appeal of the denial of the zoning permit for the accessory building was granted subject to the condition the permit extension act applies, stating apparently it did not.

Mr. Peterson provided an overview of the permit extension act, adding that certain areas; mostly environmental areas, which is where the property is situated, falls within DEP regulations.

Mr. Decker stated that this isn't an area that was determined by DEP, this is part of the NJ State planning area, this area was designated area 4-b with environmentally sensitive areas. It is a NJ wide planning tool, most of Hunterdon County is in planning area 4; some areas are within environmentally sensitive areas,

while others are not. Stating there may be portions of West Amwell in planning area 4-a, but not 4-b, because they fall in planning area 4-b the permit extension act does not apply to them. It is not a matter of specific environmental constraints on the lot; it's because of the planning area in which it is and that planning area having been designated as environmentally sensitive. Adding that as of right the permits are non-extended, if the board that has jurisdiction over those permits elects to extend them, that's at their discretion.

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

Lonnie Baldino, Zoning Officer - West Amwell Township

Mr. Baldino stated that it was after the 2011 meetings and resolution approval that the DEP contacted him with information stating that the Messick property was within area 4-b and 5, therefore no application for projects in this area are eligible for the extension under the permit extension act of 2008. Stating that Mr. Peterson was contacted with this information and informed that the zoning permit of 12/19/06 and construction permit 07-218 had expired for the property.

Mr. Palilonis questioned Mr. Baldino on why he believes the zoning permit expired, asking if it has a life. Mr. Baldino responded yes, and referenced COX, reading; under regulations pursuant to UCC NJAC 5:23-2.16b.

Discussion among the Board members and professionals regarding the life of a zoning permit resulted in a difference of opinion on the interpretation of the code and the life of a zoning permit.

*(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed (8:52 PM – 9:02 PM)*

Mr. Peterson stated that he reviewed the citations made by Mr. Baldino and he concurs with Mr. Palilonis in that the construction permit does not shelter from zoning changes and because they expire, adding that there is nothing in the section (UCC NJAC 5:23-2.16b) stating that they expire. Explaining that you are given a time period which the zoning permit protects you from zoning changes, if there are subsequent zoning changes then you are not protected, stating which is not the case here.

Mr. Peterson referenced UCC NJAC 5:23-2.16b stating that the construction permits are good for 12 months after issuance or if, the work is suspended or abandoned for a period of 6 months after commencement. There has been no testimony that work was ever abandoned or suspended, in fact what we have is a change in plans, and the work stopped because the permits were taken away.

Board member Fitting stated that the applicant testified he stopped work because of financial reasons. Mr. Peterson stated that the height was changed for financial reasons.

Mr. Messick responded to questions by Mr. Peterson, agreeing that he received construction permits, stating that the last date that work was done on the project was 11/22/2010.

Board member Fitting asked when the footing inspections were done, in response Mr. Messick stated that no inspections were done, everything was removed and no footings were added.

Mr. Peterson stated at the time Exhibit M-1 was signed, zoning was different, permitted uses were different. In 2004 zoning changed making this a permitted use.

Mr. Palilonis stated that this business has operated for 13 years under questionable approval, arguably in good faith. The question is what do we want him to do within the frame work of the law?

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Board member Cronce suggested they come in with a site plan, tell us what they want to do with the buildings, adding that there are health department issues and suggested to start fresh and cleaning it up.

Mr. Peterson stated that this was all done because they were asking for a use variance which is substantially different than the permit to build a conforming structure on a property in a zone where the activity taking place is permitted.

Board member Fitting pointed out that the size and height of the building is not conforming. Mr. Palilonis stated that there is no use variance involved, it is strictly site plan.

Mr. Peterson stated that the issue is that a zoning permit was issued, Mr. Messick goes to change the height and everything comes to a halt, all permits are taken away being told that if he does any work he will be fined. This was a project that was contemplated and relied on, stating that it's a re-building of a structure on the same footprint.

Board member Fitting disagreed and stated that to date the foundation has been removed leaving an excavated site. In his opinion no construction has been done. Exhibit M-1 states; reconstruct pole barn on existing foundation, adding that the removal of the foundation should never have happened.

Mr. Peterson stated that Mr. Venettone was consistent in referencing the footprint not the foundation when referring to the size of the building to be reconstructed. Adding that Mr. Venettone had plans that referenced a 40'x70' structure based on what was there prior to the excavation work being done; which is when the permits were issued; prior to the excavation work being done.

Mr. Decker referred to Mr. Baldino's memo dated March 21, 2013 referencing aerial photos that show the location of the barn. The first photo, dated 12/31/2001, shows the actual structure in existence.

Mr. Palilonis commented on the appeal, stating the use is questionable but the applicant has been there for 13 years. Passage of time is also an issue when weighing the equities, protecting the integrity of the zoning ordinance, and what you allow in the township vs. what a developer has done in reliance on certain acts of officials in good faith. Adding that what it comes down to is under what terms will the Board allow him to have a zoning permit for the 40' x 70' structure.

Discussion ensued among Board members regarding the permit extension act and how it is affected by areas 4b and 5 as determined by the DEP.

Mr. Palilonis stated if it is in 4b it is permissive, if it's in 5 the act doesn't apply, and Mr. Baldino has determined that it is in area 5, in which case it has expired.

Mr. Baldino stated that the DEP determination he received by email states that it covers two zones; 4b and 5, the permit extension act does not apply.

Mr. Peterson referred to the detriment of weighing the equities, stating that the exhibit M-1 letter sets forth exactly what he wanted to do with the property in order to run the business, adding that Mr. Messick is not asking to do the second part, which is to expand the two existing rear barns into one large barn to house the plumbing trucks, which is also included in the letter. Mr. Messick would just like to build this structure to house four trucks, which will enhance the property and enhance the location, which does not change the activity on the property. The property is surrounded by woods and no neighbors, no one will be impacted. Adding, from the beginning this was an intended building on the site which was relied on when they purchased it and then pursued all the way through.

Mr. Palilonis requested clarification that the building was there when Mr. Messick took possession of the property; Mr. Messick stated that just the foundation and footings were there.

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Chairman Fulper referred to Mr. Baldino stating, if the applicant came to you with an application for this building, does the denial that you wrote reflect what he would need to be able to put building up? Mr. Baldino responded they would need a variance for height, and size of the structure; he is requesting a 2800sf structure and accessory uses can only allow 1200sf. Adding that an unlimited number of accessory structures may be added until the impervious coverage limit is met. Impervious coverage has not been met for the property, just over in size limit for the structure.

Mr. Peterson disagreed with the interpretation of the ordinance for garages, stating the ordinance does not say that garages are subject to the 1200sf limit.

Mr. Baldino referred to Definitions 109-4 for Garages, Public or Commercial, restating it was height, size, and if over 500sf it would then have to meet the principal building setback requirements of 20ft off the property line.

Mr. Peterson clarified, reading from the notice of zoning denial and stating that the 1200sf limitation doesn't apply but the FAR and impervious coverage does apply. Stating that the property with the amount of buildings on it, and size of the property, it doesn't come close to the limits. Adding that the proposed size is not the issue, it's the height which is why they are here.

Mr. Decker referred to ordinance 109-117 D; interpreting it as size does matter.

Chairman Fulper stated that the applicant is appealing the zoning officers' decision, adding that he had a resolution that allowed him to move forward as long as the permit extension applied. Mr. Baldino determined that the extension did not apply. Mr. Palilonis related that the back part of the property is in area 5 and the front of the property is in area 4b, not being sure where the line is.

Motion was made by Fitting with a second by Cronce to deny the appeal of the Zoning Officer's decision. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Dale-aye, Ashton-nay, Borden-nay, Fulper-aye Motion carried. (10:05 PM)

With reference to the variances requested, Mr. Peterson entered as Exhibit M-5, Floor Plan, sheet A-1 prepared by Ruff Engineering, dated 1/14/11 and Exhibit M-6, Front Elevation/Rear Elevation plan , sheet A-3 prepared by Ruff Engineering, dated 1/14/11. Mr. Messick referred to exhibit M-5, stating the proposed building size will be 40ft x 70ft, approx. 25ft in height, with four bay doors; 14ft x14ft. The larger trucks are 30ft. long, 10 ft. wide, 11ft. high. The four garage bays are on the 70ft side of the building. Height of the two existing buildings is approx. 15ft. high, and height of the office building is approx. 30ft. high.

Mr. Messick stated the reason for building the garage is to store the trucks to reduce the visual impact and allow easier access for performing maintenance on them and less mechanical problems from storing in the elements.

Entered as Exhibit M-7 Right Side Elevation/Left Side Elevation plan, sheet A-4 prepared by Ruff Engineering, dated 1/14/11. Mr. Messick referenced the two man doors as depicted in exhibit M-7, stating the overhangs are to provide cover for the doorways.

Mr. Messick related that he would not be increasing the number of employees or trucks. He also stated that constructing the proposed building would not increase the number of customers or vehicles that visit the site. Adding that the only change will be the trucks being housed in the structure vs. outside, that there is no other structure that currently exists on the property that can house the trucks. The building color will be similar to that of the office building, a light tan. No landscaping is necessary as it sets back with a forest behind it. There will be electric in the building, but no plumbing.

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

Peter Turek, Engineer – 5 Baptist Church Rd., Hampton, NJ

Mr. Turek offered his credentials and testimony experience and was accepted as an expert witness.

Mr. Turek addressed the negative criteria stating that he visited the site, becoming familiar with the proposed location. Mr. Turek opined that the proposed structure is consistent with the zoning for the site. Adding that the current FAR and lot coverage are below the limitations. The current FAR is 4.25%, with the proposed structure the FAR would increase to 5.4% whereas the maximum allowable is 15%. The lot coverage is currently at 15%, with the proposed structure the lot coverage will increase to 16.2% whereas the maximum allowable is 50%. Adding that the proposed development of the site is consistent with what was intended for the zone.

Mr. Turek stated in his opinion, a 25ft. high building is certainly consistent with the type of operation and what is needed for the site. Stating, through testimony provided they have demonstrated the benefits of any deviation outweigh any detriments in this instance.

The benefits are that the intended use of the building is for commercial vehicles, requiring the 16ft clearance to be able to get the vehicles in, adding that this is not a typical residential type garage it is a commercial garage. This will benefit the business by being able to store the vehicles indoors. Opining that there is no detriment because it's still a structure that is less than the maximum height permitted for the principal structure. The visual characteristics or aesthetics of the building aren't an issue; it is set back far enough from the highway and is surrounded on three sides by preserved land. Mr. Turek stated in his opinion there are no detriments from having the building on this site.

Mr. Decker questioned if there are any site plan improvements associated with the proposed structure, Mr. Peterson stated there is a small amount of walkway being proposed. Mr. Decker asked if the gravel parking is being brought up to the garage, Mr. Peterson stated it was and suggested the plot plan prepared by Goldenbaum Baill, dated November 21, 2012 be updated upon project completion. Engineer Decker agreed and stated that all information on the current plan has been field located, suggesting that an *As Built* be provided, it will confirm that it complies with the setback lines and also establish a record of what is there today.

In response to site detail questions from Board member questions, Mr. Messick responded, stating that the the apron in front of the garage will be concrete, not stone. Lights will be installed over each garage door and entrance door. With a sensor light at the rear of the building for security purposes.

Mr. Palilonis stated the area of the building is a "C" variance and the height is a "D" variance.

Chairman Fulper opened the floor to the public. Hearing no comments/questions, the floor was closed. (10:32 PM)

Motion was made by Fitting with a second by Cronce to grant 10ft of height relief and construction of a 2800sf building with a waiver of site plan with contingency of a provided "As Built" Roll call: Cronce-aye, Fitting-aye, Hall-aye, Dale-aye, Ashton-aye, Borden-aye, Fulper-aye Motion carried. (10:33 PM)

**CORRESPONDENCE:**

The following items were distributed as correspondence:

Code supplement packets will no longer be provided from the clerk's office. Deputy Clerk Haberle will supply a set for the Board's copy of the book and Secretary Hall will photo copy the set for members. A 3-ring binder will be provided to replace your current code book as the supplement copies will be 3-hole punched.

May/June 2013 Planner

**Approval of Bill List 6/25/13:**

A motion by Dale, seconded by Cronce to approve the Bill List for payment was unanimously approved by voice vote.

**DISCUSSION:**

We are currently operating without adopted by-laws, in 2010 it was the consensus of the Board not to adopt the by-laws. On request, a copy of the by-laws is being provided to the public through the clerk's office. Secretary Hall will email a copy of the by-laws for review, with follow up discussion at the August meeting.

Zoning Officer Baldino commended the Board for their diligence on all the difficult cases heard. Mr. Baldino announced that this will be his last meeting, stating that he has resigned as the Zoning Officer. Attorney Palilonis wished him well and hoped we get as good a replacement as Mr. Baldino has been.

**OPEN TO PUBLIC:**

The floor was opened to the public for comments/questions, hearing none the floor was closed (10:43PM)

**ADJOURNMENT:**

A motion by Ashton seconded by Dale to adjourn was unanimously approved by voice vote (10:43PM)

Respectfully submitted,

Ruth J. Hall