

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
OCTOBER 26, 12011**

Meeting called to Order by Mr. Novellino at 7:35 p.m.

Reading of Adequate Notice by Mr. Barthelmes.

Salute to the Flag and observance of a moment of silence for the troops.

Roll Call: Present: Curcio, Bailey, Novellino, Lambros, Frost, Morelli, Mostyn, Barthelmes and Conoscenti.

APPROVAL OF MINUTES: September 28, 2011

The Minutes were reviewed and Mr. Barthelmes Made a Motion to approved the meeting Minutes and Mr. Curcio offered a Second. Roll Call Vote: Barthelmes, Curcio, Lambros, Morelli and Bailey voted yes to approve the Minutes.

EXTENSION OF TIME

Z11-05 CHARLES NOREIKA - Block 50, Lots 1.01, 1.02, 1.03 & 2. Located on Paint Island Spring Road and Millstone Road. 30.1 acres located in the R-80 Zone. Applicant Received approval for Preliminary Major Subdivision to develop an (11) lot subdivision consisting of (1) existing residential building lot, (8) new single-family residential lots, (1) lot dedicated for drainage and (1) existing non-conforming commercial lot 7-25-07. Applicant received first one-year extension of time running through 7-24-11. Applicant seeks second one-year extension of time. Application carried form 9-28-11. No noticing required.

Mr. Bailey stepped down for the application. Attorney Vella provided an overview of the project and offered that the original approvals that are protected from any zone changes for three years. He stated that those protections were running on July 2010 so the applicant applied for and received an extension of time through July 2011. The applicant again applied for an extension of time a while back was unable to proceed due to economic limitations.

Mr. Noreika was sworn in and explained the economy value of the lots is now less than half waiting to see if economy turns around. There has been no change in the zoning of the property. There is an existing business with is pre-existing, non-conforming use and since the property zone has not changed, Mr. Vella advised the Board that the applicant has an right to grant this last one year extension under MLUL.

Mr. Barthelmes asked at what point he could move forward. Mr. Noreika explained that the builder who was going to purchase the property backed out then came back and made offer which is acceptable to him.

Mr. Curcio made a Motion to grant the extension of time and Mr. Conoscenti offered a Second. Roll Call Vote: Curcio, Conoscenti, Morelli, Barthelmes, Lambros, Frost and Novellino voted yes to grant the extension.

CARRIED APPLICATION:

Z11-04 ROUTE 537 HOLDING COMPANY, LLC. – Block 56, Lots 13.01 and a portion of Lot 14. Located on Route 537 in the HC-1 Zoning district; Lot 13.01 consisting of 4.163 acres and the application concerns a 2-acre portion of Lot 14. Applicant seeks minor subdivision approval to convey 2 acres from Lot 14 to Lot 13.01 increasing the Lot 13.01 lot size to 6.163 acres. Applicant seeks use variance, bulk variance, preliminary and final site plan approval to develop a miniature golf facility. Deemed Complete 8-18-11. Date of Action: 12-16-11. Heard in part on 9-28-11; carried to 10-26-11 without any further noticing required.

Kenneth Pape, Esq. representing the applicants reported to the Board that the property owners of Lot 14, the Rosansky family, wrote to Mr. Pape advising him that they are on a fact finding mission with County. The County had granted approval and then sent a letter retracting that approval. The County wanted to create a loop road. Mr. Pape advised that the applicant can do that but the County wanted the entire loop and the Rosanskys' Attorney, Mr. O'Connor, and the County need to work it out.

In light of this, Mr. Pape advised the Board that they will put on the use variance portion of the application should the County item not be resolved. They asked that the application be carried to the next Meeting of November 30, 2011. The Board advised the applicant that they would have to renote for the meeting.

NEW APPLICATION:

Z11-06 MILLSTONE CENTER ASSOCIATES – Block 58, Lot 4.06 – Located on Trenton-Lakewood Road consisting of 9.537 in the NC Zone. Applicant seeks use variance approval to construct a solar energy farm which is not a permitted use in the NC Zone. Bulk Variance needed for 8 ft. high fence within front yard setback where 75 ft is required. Applicant further seeks Preliminary and Final Major Site plan approval. Deemed complete 9-14-11. Date of Action: 1-11-12. Noticing required.

Kenneth Pape, Esq., representing the applicant. He explained that the application before the Board is for an electrical generation facility using solar power.

Attorney Vella reported that he had reviewed the noticing packet and found same in order in order to accept jurisdiction over the application.

Marked into evidence are the following Exhibits:

- A-1 Jurisdictional Packet
- A-2 Web Notice
- A-3 Application dated 8-4-11
- A-4 EIS prepared by KZA Consulting Engineers and Land Surveyors dated 7-17-11
- A-5 Stormwater Management Report prepared by KZA dated 7-6-11
- A-6 T&E Species 2001 final Report prepared by Water's Edge Environmental, LLC dated 7/2011
- A-7 Traffic Assessment prepared by Nick Verderese, PE, PTOE of KZA dated 7/25/11 (1 pg)
- A-8 Aerial of premises prepared by KZA dated 5-11-11
- A-9 Use Variance, Preliminary & Final Major Site Plan prepared by KZA dated 7-6-11
- A-10 Survey proposed by Crest Engineering dated May 2, 2004
- A-11 Mounted Aerial of Subject Property
- A-12 Mounted color Rendering of Landscape Plan
- A-13 Mounted Final Plat of Planning Board subdivision approval of 2007
- BOA-1 Engineering Report dated 10/10/11
- BOA-2 Planner's Report dated 10-6-11
- BOA-3 Environmental Commission's Report dated 10-25-11
- BOA-4 NJDEP LOI dated 7-35-07
- BOA-5 NJDEP Natural Heritage Database Findings dated 5-23-11
- BOA-6 Monmouth County Planning Board Request for more information dated 9-12-11

Mr. Pape provided that the State of New Jersey had changed the law finding solar and wind are inherently beneficial and are permitted in all industrial zones under certain criteria. He advised that the Federal government made grants available to build solar energy farms. These laws changed in 2009.

John Martinez, PE. is sworn in by Attorney Vella. He presented his credentials. He graduated from Rutgers in 1986. He advised he was licensed in 1994 in NJ and is licensed in eight other states as well. He was a principal at KZA now has his own firm. Mr. Martinez was an Assistant Township Engineer in Marlboro Township. Board accepts him as a professional engineer.

Entered into evidence:

Exhibit A-11 Mounted aerial of subject property.
Exhibit A-12 Mounted color rendering of landscape plan.

Mr. Martinez offered that the property consists of a little over 9 acres of undeveloped land. The property has frontage on County Route 526. Access to the property is located behind Dairy Queen. The site is surrounded by other residential property on three sides and Dairy Queen and KinderCare on the fourth side.

There is a 50 foot wide conservation easement on the southwest and northeast sides of the property to be respected and remain untouched. At the 50 foot mark, an 8 foot height chain link fence would be installed. Surface treatment of the entire facility will be a grass clover vegetative mixture.

Mr. Martinez advised that a substantial buffer in the 50 foot conservation easement will supplement with evergreen plantings.

The solar panels are to be on an angle of one foot off the ground with a maximum height of 11 feet. The access path to the solar panels is to be gravel. There will be enough space allotted in between the panels to allow for maintenance. No new driveways proposed.

Entered into evidence:

A-13 Mounted Final Plat of Planning Board subdivision approval of 2007

Mr. Martinez advised that the black chain link fence will be buffered by vegetation and will not be visible due to existing vegetation and the proposed supplemental plantings.

Mr. Pape explained that Mr. Martinez has been working with Freehold Soil and they came up with a grass clover mixture to be planted underneath the panels. Mr. Martinez

explained that they chose to vegetate the entire area. It allows for good quality grasses to grow with infrequent need for maintenance (2 times per year they mow). The grass, which grows to be only 18 inches, helps with erosion. The top soil is gone from the site and they will bring top soil in. The grass chosen must be arid tolerant. He explained that utilities are not required at the site.

Mr. Pape explains the history of the property and stated that businesses are moving from that area to the 537 corridor.

Mr. Martinez, referring to A-12, explains how service vehicles traverse the site. No trash dumpsters or nighttime lighting will be needed. South central portion of the site is where the power inverters are to be located. Concerning noise, there is an electric fan to cool the inverters located hundreds of feet from any resident. The topography of the property further buffers the residences to the north from the project. The applicant will have three stormwater basins to collect water into an existing drywell. There will be no standing water. They are going to study this per the County and the Board engineer.

The applicant requests one waiver and that is from counting 10 inch diameter trees located in the conservation easement. The conservation easement will remain..

Mr. Martinez advised that he can satisfy the comments in Engineer Shafai's report.

The fence was discussed. A setback variance is needed for the front where the fence is proposed to be installed. Mr. Pape explained that by moving the fence back, it would limit the amount of solar panels that can be installed. The entire property shall be fenced and a setback variance is only needed for the front.

The system is a 1.8 megawatt system. Panels follow the contour of the land. The applicant will landscape through the driveway area of the conservation easement and show it on the plans. The elevation changes approximately 24 feet from the northeast corner of the site to the lowest level on the site. The Board asked if the solar panels could be seen from the street level.

Board Planner Coppola feels that you can see the panels from the street. Mr. Martinez was asked if any test was done to see if existing vegetation will shade the panels. Mr. Martinez himself has not done such a test. Mr. Coppola expressed that in his experience, trees have had to be cut down after the fact because of the shade. Mr. Martinez advised that there will be shade sometime during the day and as trees grow there will be shade on some panels.

Mr. Pape stated that in the State of New Jersey the panels are set at a uniform angle to maximize the generation of electricity.

The business park's Association members have all been notified of this application.

Applicant agreed to maintain the vegetation permanently.

Mr. Coppola stated that deciduous plants do not screen effectively. He asked if new landscaping plans would be submitted. He feels evergreen trees are needed to supplement the existing deciduous trees. This would be a condition of approval. Attorney Vella suggested that the Board have a professional to review the landscape.

The Board took a break at 9:00 p.m. returning at 9:10 p.m.

Attorney Vella swore in Lloyd Hoffstatter who presented his credentials to the Board. Mr. Hoffstatter received his Bachelor's of Science in Physics. He has is Masters and is a solar installer in the states of NY and PA, NJ and Conn. He is involved in State agency granting programs. He has worked in worked in various capacities installing and training others to install solar equipment. He has his certification from a national board NABCEP. He is accepted as a solar energy expert.

He describes what the solar farm is all about. He explained how the electricity is collected and generated. The power feeds directly feed into the grid. He advised that PJM owns the grid and the lines and they must approve the project. A feasibility study was done and PJM has determined that this location is an approved location. He advised that there is no significant impact on the utility grid due to this project.

Mr. Hoffsatter explained how a panel works. PV panels utilize silicone in a cellular form, very similar to a computer chip. As long as sun hits it, it will produce electricity. Panels are 3 1/2 feet by 5 feet. Aluminum frame tempered glass on the front. The slant to the panel allows rain to run off and keeps them clean.

There is lightning protection for the system. Underground conduit will take this DC electricity to an inverter where it is converted into AC voltage. The AC power then goes to the grid via an existing utility pole. Converting from DC to AC there is about a 4-5% electricity loss. There are four panels and four inverters. Panels are 280 watt panels. There will be 6500-7000 panels.

Comment [M1]: I thought there were only 2 inverters.

There is significant grounding that takes place. The National Electric Safety Codes apply to the installation. All metal parts that could create a potential for shock are properly grounded.

Maintenance activities would include replacing and repairing equipment following the safety procedures. Maintenance activities take place every six months. He explained that maintenance would consist of removing birds' nests, dust, bee hives, check operation and readings of material.

System monitoring takes place on a 24/7 basis via the internet at a master location. This system operates and provides power to the grid only when the sun is shining. There are no batteries to store electricity. Production of 1.8 megawatts of electricity

runs approximately 180 households. Elimination of the carbon dioxide is comparable to taking 4 rail cars of coal off of the grid on a yearly basis.

Attorney Vella swore in the applicant's Planner, Mr. Art Bernard and he presented his credentials to the board. He received his Masters in planning from Rutgers University and has worked in the field for over 35 years. He has worked as consultant for 22 municipalities. The board accepted Mr. Bernard as a professional planner.

He explained how he prepared for this meeting including reviewing the master plan, the new Solar and Wind Ordinance that was recently adopted and he visited the site.

He gave a brief overview of the premises and its topography. The property perimeter is wooded. The site lies in the NC Zone which permits a variety of small scale retail and residential properties. Applicant requires a D1 variance since this project is not permitted in this zone.

There are lands to the south for small retail and service-type business. In visiting the site he feels the use would not have a negative impact on the neighborhood. The landscaping would be enhanced. He stated that the project generates no glare, odors with the site, and offered that there would be hardly any traffic to the site. Mr. Bernard stated that this use would be a good neighbor. The positive criteria include reducing dependency on foreign oil, helping to stabilize the energy grid at such times when that is needed such as during the summer months, etc.

Mr. Bernard feels the need for renewable energy is a substantial public interest. He had reviewed Mr. Coppola's Report and discusses his comments concerning the diminishment of the Neighborhood Commercial Zone. He feels it has already yielded the Dairy Queen, KinderCare and the former Veterinary facility.

The NC Zone's purpose was to promote small scale commercial uses. He reported statistics of small scale retails that were located nearby. He feels the only detrimental impact is that you can see the panels. He feels the applicant is making efforts to buffer, landscape and conceal the panels. He addressed the fence violating the front yard set back standard.

Mr. Bernard discussed the granting of the use variance as it relates to usurping the Governing Body's power to zone and went over Mr. Coppola's report regarding this matter.

At 10:05 p.m., Chairman Novellino opened up the application to the public.

Attorney Greg Vella Swore Deborah Strnad 39 Trenton Lakewood Road. Ms. Strnad stated that she resides directly across the street from the proposed project.

She asked about the topography stating that she does not want to see a sand pit if there is no irrigation. Mr. Martinez explained that the contractor will water the landscaping material to get it established, approximately two years. Once established, he feels it will be fine.

She explained a drainage issue next door. She also asked if they would consider brown fencing rather than black fencing.

Sworn in Pete Johnson, 3 Carrs Tavern. His concerns are running lines underground what is the impact on the well water. He is concerned about buffering to his home and the value of his home. He wants to make sure that adequate plantings for buffering are put in place.

Mr. Hoffstatter advised that the lines are 4-5 feet deep 4-6 feet wide and do not impact the water.

Seeing no further public comment, Chairman Novellino closed that portion at 10:20 p.m.

Mr. Coppola described the NC Zoning district. He read from the Master Plan. The NC Zone is a mix of individual and service areas such as post office and churches. These are for local businesses and some single family homes. The stores are limited to gross floor area of 4,000 s.f. This is the Master Plan. There are 7 NC zones located throughout the Township.

Mr. Coppola stated that this area contains 52.9% of the subject NC district which is more than half. This is the last vacant piece. The size of the property in this zone is zoned NC by the Governing Body and mirrors what is in the recommendation of the Master Plan. The board needs to decide if this impact is so significant that granting a variance would be usurping the sole authority of the Governing Body to zone

Mr. Coppola stated that this use is a inherently beneficial use but the Supreme Court considers some uses more compelling than others. The Governing Body, just one week ago, after a long review process adopted what is a fairly comprehensive ordinance that deals with solar and wind renewable facilities. He stated that residents, farms and commercial farms can have them as accessory. They cannot be the principal use. The industrial zone is the only permitted use area for this use.

Mr. Coppola advised that we have a series of standards now and is concerned we may set a precedent by approving this application. He feels this project in this zone is a detriment to zone plan causing him concern. There is a field that has to be 20 acres in the BP Zone located across the street and solar energy facilities are allowed there. He advised that the Board should consider that the detriments outweigh the benefits.

Mr. Pape noted that the NC Zone is identified in the Zoning Ordinances and Master Plan. He feels the purposes match the application. Mr. Pape offered that the BP Zone

across street is owned by NJDEP and the land is riddled with wetlands. Mr. Pape summarizes the application before the Board.

Board discusses their findings. They discussed the negative impact of diminishing the planned neighborhood commercial area

Attorney Vella stated that even though the Township adopted the new Ordinance which pertained to solar energy facilities after the application was submitted, this use was not allowed in the NC Zone prior to the new Ordinance being adopted and it is still not permitted after the adoption of the new Ordinance. Therefore, the time of decision requirement does not have any bearing on this application.

The Board discussed that by eating up these smaller Neighborhood Commercial zones, more commercial properties would have to be created elsewhere in order to recover. They offered that solar energy is a good use, but this application puts it in the wrong place. They discussed the substantial detriment of this application to the Master Plan and the zone plan.

Mr. Curcio made a Motion to deny the application and Mr. Barthelmes offered a Second. Roll Call Vote: Curcio, Barthelmes, Lambros, Morelli, Bailey, Conoscenti and Novellino voted to deny the application.

NEW BUSINESS:

The Board discussed that some applicants are not complying with the terms of the Resolutions. Mr. Curcio had taken some photographs of an establishment that was recently before the Board. The concern was over vehicles parking on the grass when the Board had discussed with the applicant the need for parking.

Attorney Vella advised this is a clear violation of the approvals and the terms of the Resolution. The Board had directed Attorney Vella to draft a letter of their concerns to Code Enforcement and the Township Committee.

The Board discussed other applications that were before them that are not complying with the terms of the Resolutions.

Seeing no other business, Mr. Curcio made the Motion to Adjourn and Mr. Lambros offered a Second and by unanimous vote, the meeting adjourned at 11:10 p.m.

Respectfully submitted,

Pamela D'Andrea

