

**EAST AMWELL
ZONING BOARD OF ADJUSTMENT - MINUTES
Municipal Building – 7:30 PM
March 8, 2011**

Call to order and compliance with the Open Public Meetings Act

The regular meeting of the Board of Adjustment was called to order at 7:30 PM on March 8, 2011 in the Main Meeting Room of the Municipal Building, 1070 Route 202/31, Ringoes, NJ by Chair Schroeder.

In compliance with the Open Public Meetings Act, the Administrative Officer announced this was a regularly scheduled meeting pursuant to the Annual Meeting Notice as published in the January 20, 2011 issue of the Hunterdon County Democrat, filed in the Township Clerk's Office, and posted on the Bulletin Board on March 1, 2011.

Roll Call and Agenda Review

Present: Sherrie Binder
Nancy Cunningham
Gloria Frederick
Gael Gardner
Paul Gavzy
Sue Posselt
Kendra Schroeder - Chair
Diana Garrett – Alt. #1
Anne Williams – Alt. #2
Attorney Waterbury
Engineer O'Neal
Planner Slagle

Absent: No one

Presentation of Minutes

A motion by Nancy Cunningham, seconded by Sherrie Binder to approve the Board's 1/11/11 minutes was approved with Gael Gardner, Paul Gavzy, Sue Posselt and Anne Williams abstaining.

Presentation of Bills for Payment

A motion by Gloria Frederick, seconded by Paul Gavzy to approve the vouchers for payment as listed on the agenda was unanimously approved.

Correspondence

It was noted that the correspondence will be dealt with as it comes up over the course of the meeting.

Applications to be Deemed Complete

George A. Kotzias, Alethea Cleantech Advisors, LLC. - (Everitt Property – 219 John Ringo Road) – Use Variance/Preliminary and Final Major Site Plan Approval – B:3 L:1 & 2.02

Present for this discussion was George Kotzias of Alethea Cleantech Advisors, LLC., Attorney Mark Peck on behalf of the applicant and Jarod Fredericks of Innovative Engineering, Inc.

It was suggested by Planner Slagle to review the submitted documentation prior to hearing from the applicant. Engineer O'Neal reviewed the Preliminary and Final Major Site Plan Checklist submitted with the application. He recommended the following submission waivers:

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- 21. A Municipal Services and Utilities Impact Statement analyzing the probable impact on municipal services
- 28(a). The following items must be shown on the site plat: The names, addresses and block and lot numbers of all property owners within 200' of the limits of the development as they appear on the most recent tax list prepared by the Tax Assessor.

It was noted for the record that Attorney Peck will obtain certified property owner lists from East Amwell Township, Delaware Township and Raritan Township. Attorney Waterbury commented that she would like to see the lists prior to the Board's next meeting. Engineer O'Neal remarked that all of the property owners within 200' of the subject site will need to be listed on the site plan at some point.

- 28(d). The following items must be shown on the site plat: Delineation of any land slope twelve percent (12%) or greater. Elevations shall be related to a bench mark noted on the plat and wherever possible based on USGS mean sea level data.

Attorney Peck noted that the plans will be revised to reflect land slopes greater than 12%.

With regard to the wetlands, Engineer O'Neal commented that the applicant has shown, on the site plan, where they believe the wetlands are. He remarked that the Board should discuss whether or not they feel NJDEP needs to officially accept their interpretation of where the wetlands are. Attorney Waterbury noted that the Township's Solar Ordinance contains guidelines for wetlands as well.

- 28(h). The following items must be shown on the site plat: Existing and proposed streams, including direction of flow, location of all drainage structures, flood plain limits and buffers if required
- 28(i). The following items must be shown on the site plat: Plans, cross sections, center line profiles, tentative grades and details of proposed and existing utilities, drainage and erosion control facilities
- 28(j). The following items must be shown on the site plat: Easement for 25' road right-of-way from centerline of Township roads or greater if required by County of Hunterdon or State of NJ

Planner Slagle commented on the proposed landscape buffering noting that the applicants have shown their landscaped areas on the site plan but this matter needs to be discussed further because she believes there are some issues with what's being proposed. She added that in terms of completeness, they have shown landscaping but the Board will require additional details.

- 28(s). The following items must be shown on the site plat: Location of found and proposed concrete monuments. At least one corner of each lot shall have a permanent concrete monument located at the intersection of the property line and the right-of-way (required for final approval only)
- 28(t). The following items must be shown on the site plat: Utility, well and septic information, including the proposed location of all wells and septic systems

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28(v). The following items must be shown on the site plat: Driveway locations with appropriate corrections and sight triangles provided by easement, if required. When a common drive is proposed, the applicant shall show: Site triangle easement, terms of cross-easement and materials to be used for construction of the common drive

Planner Slagle asked about signage at the proposed solar site. Mr. Fredericks explained there will be a sign posted in the event of emergencies indicating who to contact in order to gain access to the site. He noted the sign will be attached to the chain link fence – not free standing.

Ms. Gardner asked about lighting. Engineer O’Neal commented the plans indicate one security light will be installed at the gate in the driveway off of Route 179. It was noted it will be on a motion sensor. Attorney Waterbury commented the details for this light are included in the site plan.

28(w). The following items must be shown on the site plat: Circulation and parking details including site triangles at intersections, driveways and aisles, parking spaces, ingress and egress, loading, sidewalks, curbs, railroad ties, handicapped parking and curb cuts and improvement details for the above

28(bb). The following items must be shown on the site plat: Lot corners must be “flagged” for purposes of site walks.

Ms. Gardner asked that more flagging be put in for the purpose of the site walk. She suggested the applicant show the property boundaries and where the fencing will be and where the solar arrays will be. The applicant agreed to do so.

Engineer O’Neal recommended the following waivers:

4. Twenty six copies of the Environmental Impact Statement (EIS)

It was noted for the record that the applicant provided 2 copies of the EIS – one copy is in the Board of Adjustment file and the other was given to Engineer O’Neal for his review.

5. Twenty six copies of any protective covenants, easements and/or deed restrictions applicable to the subject site

22. Improvements statement itemizing all improvements to be made on-site, on-tract and off-tract in accordance with the standards specified

23. Traffic impact statement

28(q). Number of proposed new lots

Planner Slagle indicated she believes there are two issues that need to be resolved: (1) The way the solar ordinance is worded regarding the identification of wetlands on the site and (2) The identification of the appropriate setbacks and how they are labeled. Planner Slagle remarked that both issues go to notice requirements.

Attorney Waterbury referred to the Solar Ordinance. She stated that on page 3; section 92-100:B2 the entire section lists all of the different conditions that have to be satisfied for major solar installations. She said, “One of the conditions is that no portion of major solar or photovoltaic energy facilities and structures shall occupy in the areas of land designated and regulated by NJDEP as flood plains, flood hazard areas, wetlands, wetland transition areas or riparian corridors. An applicability determination from the NJDEP shall be provided to document the presence and/or absence of these regulated areas.” Attorney Waterbury commented that if all the Board was talking about was site plan she would recommend that an LOI could be obtained at some point in the future, however, she noted the difficulty here is that one of the conditions of the use that must be satisfied is that no part of the installation can be in the wetland(s) areas. Attorney Waterbury stated the applicant’s plans currently do not show the flood plains at all and with respect to the buffers, they are assumed and therefore there is no way for her to determine whether or not condition B2 is satisfied which goes to the variance, which goes to the notice, which goes to the Board’s jurisdiction. She indicated that the applicant’s ability to obtain a determination from the NJDEP is a critical element that cannot be deferred the way it normally would be. Attorney Waterbury noted that the Board must have an LOI prior to the application being scheduled for public hearing. Attorney Peck commented that they will either need an LOI or seek a variance. Engineer O’Neal commented that the State’s turnaround time for an LOI is approximately 6 months.

Attorney Peck indicated that for the purposes of this evening’s completeness determination they will be proceeding under the assumption that they will be seeking the variance and asked that it be treated as a submission waiver for the moment.

Planner Slagle commented on the setbacks shown on the site plan noting the proposed application shows the solar facility stretching across two lots. She remarked that the plan will need to be revised to indicate the setbacks from the dividing property line that goes through the center of the facility. She stated that when the time comes for public notice to be given, the setbacks must be identified accordingly. Planner Slagle also commented that the ordinance doesn’t give much guidance on how to identify the rear, front and side yards for corner lots which will also be an issue when determining the setbacks that may need to be included in the public notice.

Attorney Peck commented that they will be seeking a 0’ setback variance for the common lot line between Lot 1 and Lot 2.02. He also indicated that the lot closest to County Route 579 is what they consider the front yard for the purpose of this application. Planner Slagle noted that the Ordinance doesn’t quite identify the front yard that way and she noted that for the southern lot, the frontage is actually Rosemont-Ringoes Road. Ms. Binder commented that the plan notes Rosemont-Ringoes Road as Seargentsville Road and she remarked it hasn’t been called that in over 15 years. It was clarified that the subject lots have different front, rear and side yards because they are two separate tax lots and the common ownership is irrelevant.

Planner Slagle commented that the solar ordinance contains specific landscaping requirements which the applicants need to address. She noted one requirement is that the landscaping plan must be prepared by a licensed landscape architect and the submitted plan was not. Additionally she noted that there are no buffers identified to screen from public view from Rosemont-Ringoes Road.

Attorney Waterbury commented on the required contents for the solar facility impact statement noting the Solar Ordinance is very specific with regard to what the impact statement must include. Engineer O’Neal remarked that upon his review of what was submitted, the applicant did not address property values, country side aesthetics or continued farming on the property.

Ms. Cunningham commented that the documents submitted by the applicant indicate that the solar facility will not generate any noise or glare and she asked if there is data available which supports these claims. Attorney Waterbury remarked that this type of information should be addressed at the public hearing.

Ms. Cunningham referenced the height of the proposed solar panels as being 10.5' and asked if they will require a variance since the maximum allowed height is 10'. Attorney Waterbury agreed that the applicants will require a conditional use (D3) variance for structure height.

Mr. Gavzy remarked that there are too many items that the applicant needs to address and he suggested the matter come back to the Board at another meeting. Attorney Waterbury summarized the following items as those that the applicant needs to review:

1. D1 variance for the two principal uses on the property
2. "Yard" setback variances for the two lots
3. D3 variance for the structure height
4. Additional setbacks to be addressed due to the solar array straddling two lots
5. Possible D3 variance for landscaping
6. Determination from NJDEP regarding the wetlands

Mr. Kotzias asked if they comply with the NJDEP setback requirements for wetlands, wouldn't they also comply with the Township's Ordinance. Engineer O'Neal commented that he thought Mr. Kotzias was referring to two separate things. He explained the NJDEP issues the LOI and the LOI will say where the wetlands are as well as the buffer area and tell the applicant that they can not violate either area without a permit. He then noted that the Township's Ordinance says you can not violate either area—period. Attorney Waterbury commented the difficulty with this application is that this issue is not simply a site plan requirement, but rather a condition of the conditional use.

A motion by Paul Gavzy, seconded by Sue Posselt to deem the application incomplete was unanimously approved by roll call vote.

Roll Call Vote: Paul Gavzy: Yes, Sue Posselt: Yes, Sherrie Binder: Yes, Nancy Cunningham: Yes, Gloria Frederick: Yes, Gael Gardner: Yes, Kendra Schroeder: Yes.

It was noted for the record that Engineer O'Neal and Planner Slagle were excused from the meeting at this time, 8:50 PM.

Applications for Public Hearing

It was noted that there were no applications listed on the agenda for public hearing.

Old Business

There was no old business listed on the agenda.

New Business

Discussion: Escrows

Ms. Cunningham referred to the Fiscor application and explained that despite the applicant's escrow account being insufficient, the Board continued to move forward with the application. She commented that this has been done in the past with no problem because the applicant's often replenish their account simultaneously throughout the application process and that the Board's actions were not unusual. Attorney Waterbury commented that this is a problem that occurs in many municipalities. She stated that it has become a practice in her office now that prior to doing any work on an application sufficient escrow funding must be verified.

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Ms. Posselt commented that she knows it has been past practice to proceed with applications even though the escrow account may have been deficient because there were members of the public present at the meeting, but remarked that she believes this practice should not continue. Attorney Waterbury suggested the Board consider incorporating additional language into the escrow agreement to make it more explicit. She also noted that the current escrow agreement contains limitations on the amount of money that can be asked for when replenishment requests are made by Ms. Andrews and suggested there may perhaps be an inconsistency with the Township's Code provisions.

Ms. Posselt asked Attorney Waterbury if she is still required to write the Resolution for an application that proceeds without sufficient escrow funding. Attorney Waterbury said no. She noted that the MLUL does indicate there is a specific period of time within which the Resolution must be adopted, or the applicant has the right to go to Court and compel the Board to do the Resolution. She stated, "But if the reason you haven't done the Resolution is that they are not paying the bills, I think they are going to be hard pressed getting an Order from the Judge compelling you to do it anyway."

Ms. Cunningham explained the following escrow matter is with the Wilkinson application. She remarked how Mr. Wilkinson had come to the Board expressing his desire to seek a refund for the escrow because he believes he should not have to pay since his application helped the Board/Township clarify an issue in the Ordinance and ultimately the Township benefitted. Ms. Cunningham remarked that Mr. Wilkinson plans to speak to the Township Committee regarding obtaining an escrow refund and noted that the matter is listed on the Township Committee's 3/10/11 agenda.

Ms. Cunningham noted that it seemed the majority of the Board was receptive to Mr. Wilkinson's position when he spoke to the Board several months ago and noted that the Township Committee has asked Chair Schroeder to attend their meeting on Thursday and provide input on this matter.

It was noted that Mr. Wilkinson established his escrow with \$650 and the total costs for his application was approximately \$1700.00. Ms. Williams asked if there was any way for applicants to have some idea of the cost ahead of time. Ms. Andrews commented that this is exactly why the escrow fees continue to be a problem noting there is an expectation on the part of the applicant's that the fees being requested will cover the cost of their application and when the escrow is wiped out by one professional bill, it becomes frustrating both on the part of the applicant and administratively. Ms. Andrews also stated that she did not believe any additional language needed to be added to the escrow agreement because the language is clear—if the escrow is deficient, it is understood that all work on the application should stop until the account is replenished.

Attorney Waterbury remarked that she cannot provide escrow estimates in advance. Ms. Posselt commented that with the Wilkinson application, Attorney Waterbury provided an extensive legal memo prior to the meeting and asked if the escrow charges would be less if she explained the Board's responsibility/jurisdiction rather than writing it. Attorney Waterbury indicated that may save a little bit of money but noted there is still an expense associated with her time to prepare for an application.

Ms. Frederick suggested doing a three year look back to determine the average cost of an application. Ms. Binder suggested collecting escrow fees in two parts—one with the application and one prior to the public hearing. Attorney Waterbury indicated she did not believe a two part escrow fee could be collected under the MLUL guidelines.

Mr. Gavzy left the meeting at this time, 9:15 PM.

Ms. Posselt asked if the Township Committee was asking for the Board's guidance on the Wilkinson escrow refund. Chair Schroeder clarified that they are asking for the Board's opinion. Ms. Cunningham commented that in this unique case she supports the Township covering the escrow deficiency. Ms. Gardner and Ms. Frederick disagreed. Chair Schroeder commented that Mr. Wilkinson received a notice of violation and the Board determined that he wasn't doing anything wrong so she understood why he felt he shouldn't have to pay. Ms. Frederick expressed concern for the other ordinances that may be interpreted differently and the implications refunding Mr. Wilkinson's escrow may have in the future.

Chair Schroeder asked if there were anymore comments from the Board Members. Hearing none, she proceeded with the agenda.

Attorney Comments

It was noted that Attorney Waterbury had no comments at this time.

Open to the Public

A motion by Gloria Frederick, seconded by Nancy Cunningham to open to the public was unanimously approved.

Frances Gavigan of 123 Wertsville Road came forward and expressed that in her line of work there is a "root cause and analysis." She commented that many applicants are forced to go before the Boards based on complaining neighbors and suggested that perhaps Zoning Officer McManus can be provided with additional guidance regarding interpreting the Township Code. She also suggested the Board keep a database of the applications and variances being requested so the Planning Board can determine what areas of the Ordinance may need to be reviewed.

A motion by Nancy Cunningham, seconded by Sherrie Binder to close to the public was unanimously approved.

Board Member Comments

There were no comments made by any of the Board Members at this time.

Adjournment

A motion by Gael Gardner, seconded by Sherrie Binder to adjourn was unanimously approved.

The meeting adjourned at 9:30 PM.

Maria Andrews, Administrative Officer