

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
Regular Meeting
Tuesday, October 25, 2011
—MINUTES—

CALL MEETING TO ORDER:

Chairman Vornehm called the regular meeting of the Bridgewater Township Zoning Board of Adjustment to order at 7:37 p.m. in the Bridgewater Municipal Courtroom, 100 Commons Way, Bridgewater, New Jersey.

OPEN PUBLIC MEETING ANNOUNCEMENT:

Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act N.J.S.A.10:4-6. On January 20, 2011 proper notice was sent to the Courier News and the Star-Ledger and filed with the Clerk at the Township of Bridgewater and posted on the bulletin board in the Municipal Building.

Please be aware of the Zoning Board of Adjustment policy for public hearings: No new applications will be heard after 10:15 pm and no new testimony will be taken after 10:30 pm. Hearing assistance is available upon request.

ROLL CALL:

Don Sweeney – present	Jay Rosen – absent
Filipe Pedroso – present	Jim Scott – absent
Paul Riga – absent	William Vornehm, Chairman – present
Lee Schapiro – present	Pushpavati Amin, Alt. #1 - present
Evans Humenick, Alt. #2 – present	Carl Schulz, Alt. #3 – present

Others present: Attorney Lawrence A. Vastola, Land Use Administrator Marie L. Broughman, Board Planner Scarlett Doyle

MINUTES FOR APPROVAL:

September 27, 2011 Regular Meeting – Motion by Mr. Sweeney, second by Mrs. Amin, the foregoing minutes were approved as presented on the following roll call vote:

AFFIRMATIVE:	Mr. Sweeney, Mrs. Amin, Mr. Humenick, Mr. Schulz, Chairman Vornehm
ABSENT:	Mr. Rosen, Mr. Scott, Mr. Riga
NOT ELIGIBLE:	Mr. Pedroso, Mr. Schapiro

October 4, 2011 Regular Meeting – Motion by Mrs. Amin, second by Mr. Sweeney, the foregoing minutes were adopted as amended on the following roll call vote:

AFFIRMATIVE:	Mr. Sweeney, Mr. Pedroso, Mr. Schapiro, Mrs. Amin, Mr. Humenick, Chairman Vornehm
ABSENT:	Mr. Rosen, Mr. Scott, Mr. Riga

NOT ELIGIBLE: Mr. Schulz

October 18, 2011 Regular Meeting – Motion by Mrs. Amin, second by Mr. Schapiro, the foregoing minutes were adopted as amended on the following roll call vote:

AFFIRMATIVE: Mr. Sweeney, Mr. Pedroso, Mr. Schapiro, Mrs. Amin,
Chairman Vornehm
ABSENT: Mr. Rosen, Mr. Scott, Mr. Riga
NOT ELIGIBLE: Mr. Humenick, Mr. Schulz

MEMORIALIZING RESOLUTIONS:

There were no pending resolutions to memorialize.

HEARING AND DELIBERATIONS:

**SOMERSET HOME FOR TEMPORARILY DISPLACED CHILDREN –
BRIDGE HOUSE**

Block 508 Lot 4 & 18

#09-11-ZB, Preliminary & Final Site Plan w/d-variance & c-variances

TIME: 120=9/9/11

Chairman Vornehm rescheduled the foregoing application for 11/15/11 at 7:30 pm with new notice required.

SOMERSET VALLEY YMCA – 601 Garretson Rd

Block 472 Lot 74

#21-11-ZB, Minor Site Plan w/d-variance

TIME: 120=1/10/12

Attorney Lawrence Powers was present to represent the applicant. All of the Board members present are eligible to vote and they have listened to the meeting recordings as needed. Attorney Powers summarized the application stating that the use is an inherently beneficial use and urged the Board to vote in favor of the application.

Board Member Pedroso stated that the ordinance specifically prohibits ground mounted solar in residential zones. Attorney Vastola stated that ordinance #11-03 was recently adopted by the Township Council regarding assembly uses such as, the YM CA, Country Clubs, Open Air Clubs, Houses of Worship and School uses requiring access to major roadways including County, State highway and four segments of specific Township roads. Planner Doyle stated that one of the segments is Garretson Road from Country Club Road to the NJ Route 202-206 Overpass. The Council determined that Garretson Road does not exhibit the strong residential character found in other sections of residential neighborhoods. The Board concurred in that the unique character of this area, as it exists today, includes the Bridgewater-Raritan Regional High School, YMCA, Somerset County Golf Course, Somerset County Tennis Courts, and two Houses of Worship.

Board Attorney Vastola stated that the governing body adopted an ordinance controlling solar arrays, which became effective on June 6, 2011. This application is subject to said ordinance. This ordinance prohibits ground mounted arrays in residential zones, which necessitates a use variance for this proposal. The ordinance anticipates applications for ground mounted arrays in residential zones and provides that the Board must take note that such facilities are specifically prohibited in residential zones. The ordinance further sets forth the following guidelines for the Board when considering a variance from this prohibition: (a) testimony relating to the specific prohibition in residential zone, (b) the setback of the array shall be at least two times the minimum front yard setback; (c) within the front yard setback a minimum landscape buffer of 75 feet shall be provided, (d) a dense impervious buffer screen of a combination of plantings, or earthen berm shall be provided to be maintained at the ground height of the ground mounted structure, (e) a landscape or impervious visual screen shall separate the ground mounted structure from properties in and abutting residential zones, (f) no ground mounted solar facility shall be permitted in the minimum front yard area, (g) landscaping of the buffer area shall be sufficient to achieve a visual screen of the array, and shall not significantly impact the visual appearance as viewed from neighboring properties or across the street, (h) the design of the facility, shall to the extent reasonably possible use materials and landscaping that will blend into the natural setting and existing environment.

Board Attorney Vastola stated that the application is a d-case which requires five affirmative votes to carry. Variances for a ground mounted solar in a residential zone and rear yard setback of 59.9' are requested.

The Board deliberated and discussed several conditions including:

- A plan for the shielding of the proposed under canopy lighting shall be filed and approved by both the Township Engineer and Township Planner.
- Applicant shall comply with notice and labeling requirements of the ordinance relating to solar arrays.
- A developer's agreement shall be required prior to issuance of a C.O. or C.A.
- The height of the solar array structures shall be the minimum height and at the minimum angle for them to function as approved by the Township Engineer and Fire Subcode Official.
- Applicant shall submit a planting plan for approval by the Township Planner. This plan shall provide trees along the easterly side of the parking lot beginning at the first row of cars and going north to the entrance aisle and shrubs along Garretson Road in the front of the parking lot.
- Applicant shall comply with the memo of the Fire Subcode Official referenced in paragraph 4(c).
- The Applicant shall submit and comply with a Bridgewater Township Compliance Report prior to the plans and any deeds being signed, and prior to scheduling the pre-construction meeting and issuance of construction permits.

Motion by Mr. Schulz, second by Mr. Schapiro, the foregoing application was approved with conditions discussed and carried on the following roll call vote:

AFFIRMATIVE: Mr. Pedroso, Mr. Schapiro, Mrs. Amin, Mr. Humenick,

Mr. Schulz, Chairman Vornehm
OPPOSED: Mr. Sweeney
ABSENT: Mr. Rosen, Mr. Scott, Mr. Riga

Board Attorney Vastola read the resolution into the record as follows:

**RESOLUTION
SOMERSET VALLEY YMCA
(RICHARD FORTIN c/o
SUN STREAM PARTNERS)
LOT 74 BLOCK 472
APPLICATION NO. 21-11-ZB
OCTOBER 4, 2011, OCTOBER 18, 2011
AND OCTOBER 25, 2011**

WHEREAS, Richard Fortin c/o Sun Stream Partners on behalf of the Somerset Valley YMCA has made application to this Board for variances from the terms of the land use ordinance and for preliminary and final site plan approval as hereinafter set forth; and

WHEREAS, the matter came on to be heard before this Board at public hearing on October 4, 2011, continued to October 18, 2011 and concluded on October 25, 2011 after which it appeared to the satisfaction of the Board as follows:

1. That due notice of the hearing had been given.
2. That the property is known as Lot 74 in Block 472 of the Tax Map, located on the northerly side of Garretson Road in the R-40 Single-Family Residential Zone, and commonly known as 601 Garretson Road.
3. The subject property consists of a tract of land having an area of 534,962 S.F. It is fully improved and is the site of a YMCA facility. Applicant proposes to construct a ground mounted solar array in the existing parking lot. A variance is required as ground mounted solar arrays are not permitted in any Residential Zone. Applicant is also seeking preliminary and final site plan approval.
4. In support of this application the Board is in receipt of the following: (a) reports from the Township Planner dated September 11, 2011 and October 13, 2011; (b) a report from the Township Engineer dated September 12, 2011; (c) a report from the Fire Official dated October 13, 2011; and (d) accompanying the application a plan entitled "Preliminary and Final Site and Use Variance Plan Bridgewater Y.M.C.A. – Solar Array Prepared For Lot 74 Block 472 Situated In Bridgewater Township, Somerset County, New Jersey", prepared by Van Cleef Engineering Associates, Hillsborough, NJ, dated July 29, 2011, last revised October 12, 2011, and consisting of five (5) sheets.
5. The governing body adopted an ordinance controlling solar arrays, which became effective on June 6, 2011. This application is subject to said ordinance. This ordinance prohibits ground mounted arrays in residential zones, which necessitates a use variance for this proposal. The ordinance anticipates applications for ground mounted arrays in residential zones and provides that the Board must take note that such facilities are specifically prohibited in residential zones. The ordinance further sets forth the following guidelines for the Board when considering a variance from this prohibition: (a)

testimony relating to the specific prohibition in residential zone, (b) the setback of the array shall be at least two times the minimum front yard setback; (c) within the front yard setback a minimum landscape buffer of 75 feet shall be provided, (d) a dense impervious buffer screen of a combination of plantings, or earthen berm shall be provided to be maintained at the ground height of the ground mounted structure, (e) a landscape or impervious visual screen shall separate the ground mounted structure from properties in and abutting residential zones, (f) no ground mounted solar facility shall be permitted in the minimum front yard area, (g) landscaping of the buffer area shall be sufficient to achieve a visual screen of the array, and shall not significantly impact the visual appearance as viewed from neighboring properties or across the street, (h) the design of the facility, shall to the extent reasonably possible use materials and landscaping that will blend into the natural setting and existing environment.

6. While the subject property is in the R-40 Single-Family Residential Zone, it is in an area that is not residential in character. To the east of the Y.M.C.A. building, but on the property is an Elizabethtown Water Company substation. To the east of the substation is a stream corridor with a heavily wooded buffer. To the east of the property are residences located on John Christian Drive. Across the street to the south is the Bridgewater-Raritan High School complex. To the west of the property across from Voorhees Road, is land of the Somerset Park Commission. To the north is a condominium project.

7. It has been determined by the Legislature that the utilization of renewable energy sources is an inherently beneficial use. In considering an inherently beneficial use the Board is to apply the so called Sica balancing test, set forth by the Supreme Court in the matter of Sica v. Board of Adjustment of the Twp. of Wall, 127 N.J. 152 (1992). There are four prongs to this test. First, the Board must identify the public interest at stake. Second, the Board should identify the detrimental effect that will inure from the granting of the variance. Third, the Board should consider conditions that can be imposed to lessen the detrimental effect. Fourth, the Board should weigh the positive and negative criteria and determine whether on balance, the grant of the variance would cause a substantial detriment to the public good.

In this case the public interest at stake is a proposal to provide a renewable energy source which satisfies the first prong of the test. The detrimental effect is primarily visual. The applicant addresses this concern as well as the ordinance prohibition by advancing the argument that the area in which the property is located, although in a residential zone is not residential in character. Merit for this argument comes from the ordinance, which designated Garretson Road in the area of the subject property as an exception to the prohibition of certain institutional uses such as Houses of Worship in residential zones (Sec. 126-131B). However, the fact that the array is proposed to be setback 59.8 feet from the adjoining residential condominium project where 150 feet is required must be taken into consideration. Initially, the applicant proposed the existing 6-foot high vinyl fence as adequate screening. At the hearing of October 4, 2011, the Board expressed its concern as to the adequacy of this proposal and the applicant agreed to provide an impervious visual buffer. The site plan has been amended and the applicant is now proposing 22 Leyland cypress 8 feet in height along the vinyl fence. The October 13, 2011 report of the Township Planner concludes this proposal to be an acceptable buffer, notwithstanding that the setback will be 59.8 feet where 150 feet is required. The character of the

neighborhood is relevant with respect to this issue. Currently, the area visible from the condominiums is a parking lot, and not the typical view expected in a residentially developed area. The landscaping proposed by the applicant will be an improvement to the existing 6-foot high vinyl fence. The October 13, 2011 report of the Planner addresses the other relevant landscaping issues and concludes that landscaping along Garretson Road is sufficient and that landscaping to the east unnecessary due to the vast wooded area to the east.

Another issue relating to visual impact is lighting. Applicant is proposing under-canopy lighting. To assure proper visual screening from the public roadway and abutting condominiums shielding is necessary. The applicant proposes to remove an existing 30-foot light pole, which currently provides lighting for the parking lot. It is applicant's position that replacing this lighting with that proposal will be an improvement. The Board accepts this argument, provided proper shielding is provided.

8. The third and fourth prong of the Sica test will be considered in tandem so that with conditions it is concluded that the balancing required by the fourth prong is in favor of the variance. The Board reaches the same conclusion when applying the negative criteria, so that with conditions the granting of the requested variances and preliminary and final site plan approval with conditions will not substantially impair the zone plan or land use ordinance or be a substantial detriment to the public welfare of the residents of the Township of Bridgewater. The Board does, however, find as an additional condition that a planting plan for the easterly side of the parking lot beginning at the first row of cars to the entrance way and along the frontage of Garretson Road is appropriate.

NOW THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Bridgewater in the County of Somerset that the application for variances as heretofore set forth as well as the application for preliminary and final site plan approval are granted subject to the following conditions:

1. A plan for the shielding of the proposed under canopy lighting shall be filed and approved by both the Township Engineer and Township Planner.
2. Applicant shall comply with notice and labeling requirements of the ordinance relating to solar arrays.
3. A developer's agreement shall be required prior to issuance of a C.O. or C.A.
4. The height of the solar array structures shall be the minimum height and at the minimum angle for them to function as approved by the Township Engineer and Fire Subcode Official.
5. Applicant shall submit a planting plan for approval by the Township Planner. This plan shall provide trees along the easterly side of the parking lot beginning at the first row of cars and going north to the entrance aisle and shrubs along Garretson Road in the front of the parking lot.

Applicant shall comply with the memo of the Fire Subcode Official referenced in paragraph 4(c).

6. The Applicant shall submit and comply with a Bridgewater Township Compliance Report prior to the plans and any deeds being signed and prior to scheduling the pre-construction meeting and issuance of construction permits.

Motion by Mr. Schapiro, second by Mr. Schulz, the foregoing resolution was adopted as read into the record and carried on the following roll call vote:

AFFIRMATIVE: Mr. Pedroso, Mr. Schapiro, Mrs. Amin, Mr. Humenick,
Mr. Schulz, Chairman Vornehm

OPPOSED: Mr. Sweeney

ABSENT: Mr. Rosen, Mr. Scott, Mr. Riga

MEETING OPEN TO THE PUBLIC:

There were no members of the public wishing to address the Board on any matter not listed on the agenda.

OTHER BOARD BUSINESS:

Board Attorney Vastola stated that T-Mobile, #03-11-ZB requested a new date for the hearing rather than 11/15/11 as previously scheduled. He stated that it could be rescheduled for 12/6/11 with new notice required only if the required notice plus additional notice to the public who spoke at the prior meeting was provided by 11/1/11; otherwise, T-Mobile will have to proceed on 11/15/11.

ADJOURNMENT:

It was the consensus of the Board to adjourn the meeting at approximately 9:30 pm.

Respectfully submitted,
Marie L. Broughman,
Land Use Administrator