

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT

Regular Meeting

Tuesday, November 29, 2011

—MINUTES—

CALL MEETING TO ORDER:

Chairman Vornehm called the regular meeting of the Bridgewater Township Zoning Board of Adjustment to order at 7:30 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

Filipe Pedroso – **absent**

Paul Riga – **absent**

Lee Schapiro – present

Evans Humenick, Alt. #2 – **absent**

Jay Rosen – present

Jim Scott – present

William Vornehm, Chairman – present

Pushpavati Amin, Alt. #1 - present

Carl Schulz, Alt. #3 – present (left at 8:40 pm)

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

MINUTES FOR APPROVAL:

The October 25, 2011, November 1, 2011 and November 15, 2011 regular meeting minutes are completed; however, they will be presented to the Board for consideration after they have been reviewed and approved by the Board Planner.

MEMORIALIZING RESOLUTIONS:

There are none pending.

HEARING AND DELIBERATIONS:

VFV PROPERTIES

94 Pearl Street; Block 255, Lot 25.01

#15-11-ZB, Bulk Variance Application (new dwelling vacant lot)

Time: 120=2/12/2012

Board Chairman Vornehm announced that the above application would not be heard at this meeting; however, he carried it to 12/20/11 at 7:30 pm in the Municipal Courtroom with no further notice required.

MARTIFER SOLAR USA
400 Crossing Boulevard; Block 552 Lot 4.02
30-11-ZB, Preliminary and Final Site Plan with Variances (solar carport)
Time: 120=11/15/11

Attorney Glenn Pantel was present to represent the Applicant. Sworn testimony was presented by Richard Pantel, PE.

Attorney stated that he concluded the presentation of the application at the prior meeting at which time the Board questioned why the solar panels are not being proposed on the roof of the existing office building.

Engineer Pantel confirmed that he remains under oath. He submitted several exhibits, which were marked in to evidence as follows:

- A-13 11/29/11** Colored Rendering of sheet S-7.0 of the plan set: Shadow Analysis of Roof on Office Building
- A-14 11/29/11** Aerial Photo: rooftop of office building, midday shot
- A-15 11/29/11** Aerial Photo: adjacent building shadow, midday shot

Engineer Pantel referred to exhibit A-13 and described the 16.5-foot high penthouse located in the middle of the roof on the existing office building. He stated that only 2% of the total proposed solar could fit on the south side of the roof top, which would not be feasible. The solar panels can't be placed on top of the penthouse as it is open in the center and there is roof only over the two ends of the penthouse. The solar canopy supports are 9-feet high at the low point and 16-ft at the highest point. Only the two center canopies will have support posts within the parking lot. The solar panels are made in America as shown on sheet PV2.1, Single Line Diagram.

Chairman Vornehm opened the hearing to the public. With hearing none, he closed the public portion of the hearing.

Attorney Pantel summarized the application and urged the Board to vote in favor of the application.

Board Attorney Vastola stated that the application is a d-case and requires five affirmative votes to carry. It was noted that variances were subsumed with the 'd' variance, but the following departures from the existing solar ordinance, for areas permitting this use, were acknowledged and testified to. These are:

1. No ground-mounted solar facility shall be placed in any minimum front yard area
2. A two hundred feet setback from all property lines and rights-of-way is required
3. Within the required setback, a minimum planted buffer width of 100 feet is required.
4. Ground-mounted solar energy facilities and substations shall be screened from view.

The Board deliberated and discussed several conditions including:

- The applicant shall enter into a Developer's Agreement with the Township. In addition to the standard provisions the agreement shall provide for the perpetual maintenance and replacement of the plantings shown on the photos submitted into evidence and the landscaping proposed to replace that to be removed
- Applicant shall submit a landscaping plan to be approved by the Township Planner
- Applicant shall comply with the ordinance regulations for ground mounted arrays in an industrial zone to the extent applicable.
- Applicant shall comply with all of the applicable provisions of the Township's solar array ordinance
- Applicant shall comply with the report of the Township Engineer dated 11/7/11
- The Applicant shall submit a Bridgewater Township Compliance Report prior to the issuance of a certificate of approval

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

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

ABSENT: Mr. Pedroso, Mr. Riga

NOT ELIGIBLE: Mr. Rosen

Board Attorney Vastola read the following resolution into the record:

RESOLUTION
MARTIFER SOLAR USA, INC.
LOT 4.02 BLOCK 552
APPLICATION NO. 30-11-ZB

NOVEMBER 15, 2011 AND NOVEMBER 29, 2011

WHEREAS, Martifer Solar USA, Inc. has applied to this Board for variances from the terms of the land use ordinance as hereinafter set forth and for preliminary and final site plan approval; and

WHEREAS, the matter came on to be heard before this Board at public hearing on November 15, 2011 continued to and concluded on November 29, 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 4.02 in Block 52 of the Tax Map with frontage on the southerly side of Interstate 287, the westerly side of North Bridge Street and the northerly side Pannone Avenue, and located in the Regional Center Zone District, with an underlying zone of C.2, and commonly known as 400 Crossings Boulevard. Applicant proposes to install solar arrays at the property both ground mounted and on top of an existing parking deck. Ground mounted solar arrays are not permitted in the Regional Center Zone; therefore a use variance is required.
3. In support of this application the Board is in receipt of the following: (a) a report from the Township Planner dated November 2, 2011; (b) a report from the Township Engineer dated November 7, 2011; (c) a report from the Fire Official dated October 28, 2011;

(d) a report from Sewer Utility dated November 4, 2011 concluding no impact on the sanitary sewer system; (e) accompanying the application a plan entitled “Minor Site Plan 1.433 MW DC Photovoltaic Solar Canopy 400 Crossing Boulevard Bridgewater, NJ”, prepared by TectoniCorp, P.C. Princeton Engineering, Flemington, NJ, dated October 28, 2011 and consisting of eight (8) sheets; and (f) a decommissioning plan prepared by the applicant and dated October 28, 2011.

4. In support of this application the Board heard the testimony of the project engineer. He began his testimony by stating that the applicant has elected to have the Board consider only that portion of the application for the ground mounted solar array and holding in abeyance consideration of the proposal on top of the existing parking deck.

With respect to the proposed ground mounted solar array, the project engineer submitted into evidence a series of photos, which show a planting of large evergreens around the perimeter of the property. These planting if properly maintained, will act as a buffer from the proposed solar arrays.

5. The Legislature has determined the utilization of renewable energy sources to be an inherently beneficial use. When considering such a use, the Board is to apply a four prong test established by the Supreme Court in the matter of Sica v. Board of Adjustment of the Township of Wall, 127 N.J. 152 (1992). The first prong of this test requires the Board to identify the public interest at stake. In this instance it has been legislatively determined that the utilization of renewable energy sources promotes the public interest. The energy source proposed by the applicant will consist of a total of 3,381 panels mounted above the parking stalls in the paved parking lot. The arrays will be the property of the applicant, and REIT, LLC the property owner will purchase the energy produced from the applicant. It is projected that all energy produced will be used by the property. Maintenance, repair, replacement and decommissioning will be the responsibility of the applicant. The Board finds that the energy to be produced satisfies the mandated renewable energy source contemplated by the statute. The second prong of the test requires the Board to identify the detrimental effect that will ensue from the grant of the variance. The primary detrimental effect of this proposal as well as any ground mounted array is aesthetic. For this reason the ordinance controls ground mounted arrays by limiting them to certain industrial zones on properties having an area of twenty acres and in all permitted areas setbacks and buffering are required. The proposal under consideration does not meet any of these standards. The Board finds, however, that the location of this property is such that the detrimental effect of the proposal is minimized. To the north of the property is Interstate 287 with the closest residences being on the northerly side of the highway separated from it by a noise attenuation wall. To the south on the southerly side of Pannone Drive and to the west is a P.S.E. & G. substation. To the east is the North Bridge Street ramp from Highway 22. Given its location and the existing plantings as shown in the photos the Board finds the detrimental effect of this proposal to be minimal. The third prong of the test requires the Board, in some situations, to impose conditions to minimize the detrimental effect. In this instance the Board finds the maintenance of the existing buffer plantings as shown in the photos to be sufficient. Finally, the Board should weigh the positive and negative criteria and determine if, on balance, the grant of the variance would cause a substantial detriment to the public good. The location of this property is the primary reason enabling the Board to conclude that the balance is in favor of granting the variance.

6. The Board reviewed the reports of its professionals with the project engineer. Each of the comments in the Planner's report, pertaining to the proposed ground mounted solar array were addressed to the satisfaction of the Board. Comment 12 suggested that the Board consider a Developer's Agreement to insure the perpetual maintenance and replacement of the existing plantings shown in the aforesaid photos and the landscaping proposed to replace that to be removed. The applicant agreed to comply. Comment 14 recited the regulations contained in the ordinance for permitted ground mounted arrays in industrial zones. The applicant shall comply with the regulations which apply to its proposal. With respect to the Engineer's report, applicant shall comply with comments 1 through 9 under subsection 3(f) of the Policy Section of the report.

7. The Board is satisfied that the balance is in favor of granting the requested variance and for the reasons set forth herein the granting of the variance and preliminary and final site plan approval, with conditions will not be a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and land use ordinance.

NOW THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Bridgewater in the County of Somerset that the application for a variance for the ground mounted solar array is heretofore set forth and for preliminary and final site plan approval is granted subject to the following conditions:

1. The applicant shall enter into a Developer's Agreement with the Township. In addition to the standard provisions the agreement shall provide for the perpetual maintenance and replacement of the plantings shown on the photos submitted into evidence and the landscaping proposed to replace that to be removed.

2. Applicant shall submit a landscaping plan to be approved by the Township Planner.

3. Applicant shall comply with the ordinance regulations for ground mounted arrays in an industrial zone to the extent applicable.

4. Applicant shall comply with all of the applicable provisions of the Township's solar array ordinance.

5. Applicant shall comply with comments 1 through 9 under subsection 3(f) of the Policy Section of the Engineer's report referenced in paragraph 3(b) hereof.

6. The Applicant shall submit a Bridgewater Township Compliance Report prior to the issuance of a certificate of approval; and

BE IT FURTHER RESOLVED, that the application insofar as it requests approval for an array on top of a building is dismissed without prejudice.

Motion by Mr. Sweeney, second by Mr. Scott, the Board adopted the foregoing resolution granting approval to construct a canopy solar facility over the existing parking lot with variances, which carried on the following roll call vote:

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

ABSENT: Mr. Pedroso, Mr. Riga

NOT ELIGIBLE: Mr. Rosen

SOMERSET HOME FOR TEMPORARILY DISPLACED CHILDREN

Bridge House; Block 508 Lot 4 & 18

#09-11-ZB, Prelim & Final Site Plan w/d-variances & c-variances (group home, 10-units)

Time: 120=Extension to 11/30/11

Attorney Robert Foley was present to represent the Applicant. Sworn testimony was presented by Executive Director Jeffrey Fetzko and Professional Engineer David A. Stires.

The Applicant submitted several exhibits which were marked into evidence as follows:

- A-1 11/29/11 Aerial Photo of neighborhood, dated 6/28/11
- A-2 11/29/11 Report to the Community
- A-3 11/29/11 Colored Rendering: Site Plan composite of sheets 2 & 3, rev. 5/17/11
- A-4 11/29/11 Photo: Block 508, Lot 9 – f.a.r. 0.6 & coverage 45%
- A-5 11/29/11 Photo: Block 509, Lot 2 – f.a.r. 0.3 & coverage 53%
- A-6 11/29/11 Photo: Block 508, Lots 5 & 6 – f.a.r. 0.32 & coverage 45%
- A-7 11/29/11 Photo: Block 509, Lot 7 – f.a.r. 0.34 & coverage 52% with 15-parking spaces
- A-8 11/29/11 Photo: Block 508, Lot 3 – f.a.r. 0.42 & coverage 42%
- A-9 11/29/11 Photo: Block 508, Lot 15 – f.a.r. 0.65 & coverage 48%
- A-10 11/29/11 Photo: Block 508, Lot 16 – f.a.r. 0.72 & coverage 50%
- A-11 11/29/11 Photo: Block 508, Lot 17 – f.a.r. 0.11 & coverage 23%
- A-12 11/29/11 Photo: Property in Question
- A-13 11/29/11 Photo: Block 507, Lot 4 – f.a.r. 0.3 & coverage 25%
- A-14 11/29/11 Photo: Block 508, Lot 1 – f.a.r. 0.22 & coverage 29%

Executive Director Fetzko provided his educational and professional background stating that he has been the executive director of the Somerset Home for temporarily Displace Children for 28-years. Mr. Fetzko discussed the group home in depth stating that there are five facilities total with one on Brahma Avenue and four, including the proposed site, in the proposed neighborhood. In 1970, the group home was certified as a youth shelter, but not for delinquent or mental health agencies. The group home provides social services and employees a total of seventy people. The program services older adolescents who are not yet adults ranging in ages from sixteen to twenty-five who had been in foster care during their youth. He stated that he is willing to sign a COAH agreement and participate if he qualifies.

Board Member Schulz recused himself from the following application due to a potential conflict of interest. He stated that he works for a company that donates to this organization and he is on the COAH Advisory Board. He stepped down from the dais and left the meeting room at approximately 8:40 pm.

Mr. Fetzko stated that transportation is available 24-hours each day with one staff member on each 8-hour shift. He explained that they have numerous counselors with doctorate and master degrees, case managers, and resident advisors. There are two to five staff members in the neighborhood during the day hours. Approximately two-thirds of the resident adolescents are out of the house at all times at work or school. They are all from New Jersey and the group home facilities are licensed by the State

and they receive funding from the State in addition to numerous other funding sources. He referenced exhibit A-2 stating that details of the group home programs and donors are presented in this booklet.

Chairman Vornehm opened the hearing to the public.

Members of the public were present as follows:

Bucky Boccanfuso, 20 Third Ave., requested Mr. Fetzko to provide some negative experiences that occur at the group homes. Mr. Fetzko stated that there no tolerance with drugs or violence, which would result in an immediate discharge from the program. He addressed concerns with a lot of cars in such a small area and road improvements that are needed on Third Avenue. Mr. Fetzko stated that no road improvements are proposed; however, the entrance to the site is being moved from Third Ave. to Fourth Ave. Planner Doyle stated that the Fire Official will write a report on the existing conditions of the roads.

Yan Ho Huang, 1 First Ave., addressed concerns about potential noise on the weekends and noise after 10:00 pm. Mr. Fetzko stated that the noise ordinance will be adhered to and landscaping between the properties will be provided.

With hearing no further questions from the public, Chairman Vornehm closed the public portion of the hearing at 9:50 pm.

Professional Engineer Stires discussed the existing conditions and proposed plans as shown in exhibit A-3. There is an existing 1½-story dwelling on a 20,000 square foot lot with access to both Third and Fourth Avenues. The proposed dwelling and dumpster will be located on Third Avenue; however, parking will be located on Fourth Avenue. Recessed shoebox lighting is proposed with 0.0 foot candles at the property lines. Engineer Stires reviewed the LUA Report, Planner Doyle's report dated 5/3/11 and the Township Engineer's report dated 6/22/11 and agreed to comply with the outstanding items. He discussed the floor area ratios and improved lot coverage other properties in the neighborhood and referenced exhibits A-4 through A-14. The proposed basement will house the washer/dryer, fitness room, and storage. The f.a.r. is 39.7% without the basement.

Chairman Vornehm opened the hearing to the public.

Members of the public were present as follows:

Yan Ho Huang, 1 First Ave., addressed concerns about stormwater in her basement during Hurricane Irene and possible runoff from the property in question. Engineer Stires stated that the water from the roof leaders and site parking area will be collected onsite and piped underground to the manhole in the road and then across to the storm drain. He stated that Mrs. Huang's basement issue may be due to an existing ground water condition as the Applicant's property slopes away from hers.

Due to the late hour of the meeting, Chairman Vornehm carried the hearing to 1/17/11 at 7:30 pm in the Municipal Courtroom with no further notice required.

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:

There was no other business discussed.

ADJOURNMENT:

It was the consensus of the Board to adjourn the meeting at approximately 10:45 pm.

Respectfully submitted,
Marie L. Broughman,
Land Use Administrator