

MINUTES OF THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF PENNSAUKEN

A public meeting of the Zoning Board of Adjustment of the Township of Pennsauken, in the County of Camden, in the State of New Jersey was held on the above date via Zoom Video Communications. Chairwoman Butler called the meeting to order at 7:00 P.M. and led the flag salute. Roll call disclosed the following members present: Paul Hoyle, Lysa Longo, Darlene Hannah, Shirley Butler, Diane Piccari, Patrick Olivo, Osvaldo Alves and Duke Martz. Acting Solicitor Steve Boraske, Esq., Zoning Board Engineer, Douglas White, Planning and Zoning Coordinator, Gene Padalino and Secretary Nancy Ellis were also on the video call.

Chairwoman Butler announced that the meeting was being held in accordance with the Open Public Meetings Act, notice has been sent to two local newspapers, and also posted on the Bulletin Board in the Municipal Building.

Patrick Olivo assumed the seat of absent member Lou Morales.

HEARINGS:

SOLAR LANDSCAPE (Continued from February 3, 2021)-Seeking a use variance to permit community solar panels which are not a permitted principle use in an LI district and also minor site plan approval in connection with the community solar project. The applicant is proposing to make improvements to site's parking lot as detailed in site plans including but not limited to the addition and re-striping of 247 parking stalls, raising the number of parking stalls from 257 to 504 parking stalls. The parking stalls will be 9' x 18' and as such they are seeking a variance from Ordinance Section 141-73 which requires parking stalls to be not less than 10' x 20'. Stalls are being re-striping to be 9' x 18'. The applicant is also seeking submission waivers. Premises located at 7245 Westfield Avenue, Block 1104, Lot 44 in Zoning District LI (Westfield Redevelopment Zone).

Donna Jennings, Esq. came forward to represent the applicant and stated they have two new exhibits to introduce that will address concerns that were raised by the board and by the public at the last hearing on February 3rd and they believe the changes will prove helpful.

Corey Gross, Operations Manager, Solar Landscape 522 Coekman Avenue, Asbury Park, NJ, Andrew Janiw, Professional Planner, Beacon Planning and Consulting Services, 315 State Route 34, Suite 129, Colts Neck, NJ, Ahmad Tamous, Civil Engineer, Bohler Engineering, 10000 Midlantic Drive #410W, Mount Laurel, NJ and Douglas White, Zoning Board Engineer, T&M Associates, 200 Century Parkway, Suite B, Mount Laurel, NJ all were previously sworn by the Solicitor to testify and all were accepted by the board as expert witnesses. Mark Schottinger, co-owner and General Counsel for Solar Landscape was also on the video call.

Mark Schottinger, 1605 Holly Boulevard, Manasquan New Jersey came forward to testify and was duly sworn by the Solicitor.

Mr. Schottinger presented Exhibit A-9 which depicted a reduction of the carport solar facility in the north parking lot and he stated wanted to address the concerns presented at the last meeting. Mr. Schottinger referred to Exhibit A-3, which depicted the original design and compared it to the new design and stated that they reduced the system size by one third in the north parking lot and there are no panels in front of the resident, Mrs. Dixons's house on Cooper Avenue. Besides reducing the system size by 33%, they are also proposing to plant 12-foot trees along the site on Cooper Avenue rather than 8-foot trees as originally proposed. Mr. Schottinger further testified that they will also be reducing the height of the facility by 25% by further scaling the height back so that the solar modules will not be seen through the trees from either Cooper Avenue, Derousse Avenue or Westfield Avenue on the North side of the parking lot. Mr. Schottinger presented Exhibit A-10 which depicts what the new design will look like from the corner of Cooper Avenue and Derousse Avenue with the trees completely blocking the carport solar facility and the visual impact will be blocked at planting rather than waiting a few years for the trees to mature. Mr. Schottinger further testified that they have been working with the neighbors for approximately a year, they have heard their concerns and they want to be good neighbors. They want to bring jobs to the area, clean energy and do good things. They want to beautify the parking lot and make changes to be good neighbors.

The public testimony continued.

Ms. Marabella Ortiz, 1505 Velde Avenue came forward to testify and was duly sworn by the Solicitor.

Ms. Ortiz testified she is glad to hear of the changes and she believes the trees will beautify the property and solar energy will be a great asset to the community.

Ms. Kay Soltero, 7538 Forrest Avenue came forward to testify and was duly sworn by the Solicitor.

Ms. Soltero testified she has lived in the community for 11 years and she was concerned the solar facility would be an eyesore. She stated she likes the revisions and she doesn't want to see the solar panels.

Ms. Angelina Dixon, 7235 Cooper Avenue came forward to testify and was duly sworn by the Solicitor.

Ms. Dixon testified she lives directly across the street from the church and she does not want the trees planted in front of her home. She is concerned the trees will block her view from seeing what's going on at the church property and feels it's a safety issue. Ms. Dixon also expressed her concerns for fires starting from the solar panels.

Mr. Schottinger informed Ms. Dixon that they will not install trees directly in front of her home and they will be installing surveillance cameras at the facility.

Mr. Roy Bundy, 7360 Pleasant Avenue came forward to testify and was duly sworn by the Solicitor.

Mr. Bundy testified that the people of the community are looking for fairness and they do not want another non-conforming use in the Morrisville-Delair community.

Ms. Danette Thomas-White, 7575 Boulevard Avenue came forward to testify and was duly sworn by the Solicitor.

Ms. White testified that she has been a resident of the community all of her life and her main concern other than the esthetics from the facility are the negative health effects from the solar panels.

Mr. Schottinger informed Ms. White that there are no negative health effects or hazards from solar panels.

Ms. Kim Hunter, 1709 Derosse Avenue came forward to testify and was duly sworn by the Solicitor.

Ms. Hunter testified that her family lives in the community and she has no problem with the church having solar panels on their roof. However, she does not want solar panels in their parking lot.

Mr. Joe Kusy, 6713 Walnut Avenue came forward to testify and was duly sworn by the Solicitor.

Mr. Kusy testified he moved to Pennsauken from Philadelphia and he believes it is a good thing to consider clean energy, bringing jobs to the area and to local individuals. Mr. Kusy stated that solar is not dangerous in any way and we need to do something for the environment. He is starting a family here and wants cleaner energy for his son.

Ms. Cynthia Samuels-Bundy, 532 Bethel Avenue came forward to testify and was duly sworn by the Solicitor.

Ms. Bundy testified that she does not want the solar panels across from their community and the negative effects that they will cause on her property and she believes the solar facility will be an eyesore and have an impact on the property values in the community. Ms. Bundy further testified she does not oppose solar energy or helping the church. However, the proposed panels should be moved on the rail road track side of the property away from the residential area. Ms. Bundy presented slides of other solar projects done by Solar Landscape and it was marked into Evidence as P-1. Ms. Bundy further testified she is concerned about water drainage from the site and she believes the negative impact outweigh the benefits for their community.

Mr. Clifton Martin, 7502 4th Avenue, Elkins Park, PA came forward to testify and was duly sworn by the Solicitor.

Mr. Martin testified he is a World Harvest board member and stated that the church is not just trying to get a roof. They believe the project will be a blessing to the community by creating clean energy and jobs for families that need work. Mr. Martin further stated that the church is not the enemy and it is not the mission of the church to fight with or harm the community.

Mr. Fred Chinn, 2021 Horner Avenue came forward to testify and was duly sworn by the Solicitor.

Mr. Chinn testified that the church is a friend to the community and that World Harvest is a mission minded church. They helped him when he was in despair and they are about saving lives and doing good for the community.

Ms. Genice Williams, 1031 Derosse Avenue came forward to testify and was duly sworn by the Solicitor.

Ms. Williams testified that she doesn't want the solar panels in her neighborhood. She wants to see the church get what they need and not what they want. Ms. Williams further stated that she is not opposed to the church getting the solar panels on their roof or in the back near the railroad tracks.

Ms. Cathy Samuels, 406 Park Boulevard, Moorestown, New Jersey came forward to testify and was duly sworn by the Solicitor.

Ms. Samuels testified that she and her sister still own the home in Delair. Through the years their community has been inodiated with projects that have been gradually ruining and harming their community and she does not want another project such as the proposed in their community.

Mr. Sunil Kumar, 14 Rollingwood Drive, Voorhees, New Jersey came forward to testify and was duly sworn by the Solicitor.

Mr. Kumar testified that he has been a member of World Harvest Christian Center for 20 years and the church ministers to families. He stated that clean energy is the energy of the future, he supports clean energy, it reduces pollution and it is beneficial to the community.

Ms. Teresa White, 2140 Scovel Avenue came forward to testify and was duly sworn by the Solicitor.

Ms. White testified that she has lived in Pennsauken for 20 years and she loves this town. She stated that what makes Pennsauken special is that there are many commercial areas in town that help to keep the residents' taxes lower. She stated that she volunteers at the World Harvest and they do great things for the community and they are very much a part of the community as well. The church is located in an industrial area with the residential area across the street. Ms. White stated that she believes that the project at the church and providing residents with renewable clean energy is beneficial to the town.

Ms. Haven Hall, 7523 Boulevard Avenue came forward and was duly sworn by the Solicitor.

Ms. Hall testified she raised her family in the community. She believes in clean energy and she believes that it would be more esthetically pleasing to install the solar panels on the roof of the church and in the rear by the train tracks away from the neighborhood.

Eileen Thomas, 7623 Tripoli Avenue came forward to testify and was duly sworn by the Solicitor.

Ms. Thomas stated that they live in a residential area and she does not want solar panels in their neighborhood.

Upon query, Kay Saltero was informed by Mr. Tamous that they will be reconfiguring the carport structures. There will be no changes to striping the lot and the number of parking spaces. They will be reducing the amount and size of the canopies that will house the solar panels.

Ms. Trace Batchelor, 3548 Boulevard Avenue came forward to testify and was duly sworn by the Solicitor.

Upon query, Ms. Batchelor was informed by the applicant that they are increasing the amount of parking spaces on the lot for it to look consistent and uniform. They do not plan on increased traffic or the need for more parking. Striping the lot is more for esthetics and to identify the drive aisles on the lot for safety.

Upon query, Mrs. Longo was informed by the applicant that solar cannot put the solar panels on grass toward the rail road tracks because of the laws of the Board of Public Utilities. Mr. Schottinger further stated they are not in the position to flip the green area to the residential (north) side of the site.

Mr. Schottinger testified that he will agree to construct solar modules only on the rail road track side and on the roof of the church. There will be no solar modules on the north side of the parking lot, they will not be striping the whole parking lot and they will not install the evergreen trees on the residential side.

There being no one else who wished to speak, the meeting was closed to the public.

The Solicitor made the following factual findings: This is an application to permit the accessory solar system at 7245 Westfield Avenue, Block 1104, Lot 44 in the LI (Limited Industrial) Zoning District. It is the property located right on the edge of the LI District and it is also in one of the township's Redevelopment Zones. The principal use of the property is an existing church and the development that is proposed requires many approvals by the board. The main approval is the request for a use variance. In addition to a use variance, the applicant requested submission waivers which were set forth in our engineer's review letter and the board generally had no objection to them. To clarify, these are waivers from completeness items, one of which was depicting topography on the applicant's site plan designs. However, there are some submissions items such as evidence of Camden County Soil Conservation District approval. The board was OK with submission waiver and it doesn't have to be submitted to be heard by the board. The board has no authority to waive the approval of an outside agency. Just so the board understands, we permitted the applicant to proceed in absence of some submission items, which is very common and a board typically does and we are not waiving any outside agency approvals or information that the applicant is obligated to provide. The board has to determined tonight whether to grant the use variance, bulk variances, submission waivers, one

design waiver as well as site plan approval. The record before the board consisted of the application, materials, documents and plans everything that was submitted by the applicant including the exhibits from when the applicant appeared on February 3rd and tonight, as well as all testimony, the verbatim record of the two hearings, evidence and exhibits also submitted by the public, the testimony of the public that was provided by the members once they were sworn in is also considered part of our record here for this application. For any use variance, the board has to consider certain factors and criteria, including the public interest at stake, which here is the renewable energy. The second factor is detrimental effects of the application, which we heard and the public expressed concerns, primarily about the visual impact of the solar project on the neighboring residential property as well as other concerns such as environmental, drainage and there was testimony from the public regarding the health effects. The board can weigh the concerns of the public testimony and creditability of the witnesses. The applicant as well as the members of the public. The third factor the board has to consider is are there any conditions that alleviate the adverse effects. The applicant had revised their plans after the February 3rd meeting to scale them back and also tonight the applicant agreed to a condition to approval that any panels will be installed towards the back of the property by the railroad tracks, which is further within the Limited Industrial Zone and not as close to the side that borders the residential zone that are on Drouse Avenue and Westfield Avenue. The board can consider that revision to the plan that may lessen the public detriment of the application, in which we heard from the members of the public primarily concerned with the visual appearance of the solar panels and the carports. Finally, the board has to consider as to whether the positive and negative criteria set forth in the land use law have been satisfied. The board knows that for a use variance, the positive criteria exists when the applicant proves special reasons, when the refusal to allow the project would impose an undue hardship or when the project carries out the purpose of zoning and there is an inherited beneficial use, which is proposed here, community solar. The municipal land use law and legislator has determined that the example of an inherently beneficial use, meaning the use proposed presumptively satisfies the criteria for the variance. So, there is a presumption here that the solar project is going to promote the general welfare and generally advance the purposes of the land use law and be will be consistent with the goals of the state that the community solar use is beneficial and satisfies the positive criteria necessary to grant the use variance. At the last meeting on February 3rd, the applicant's planner also presented testimony that the application furthers additional purposes of the land use law beyond what the board presumes with an inherently beneficial use. The applicant's planner also testified that the application is consistent with the 2013 governing body ordinance. There was testimony from members of the public that objected and disagreed that the board could also keep in mind that with a use variance even one with an inherently beneficial use, the board has to consider to the negative criteria and the applicant has to prove that the application can be granted without substantial detriment to the public good and that the application can be granted without substantially impairing the intent and purpose of the township master plan and our zoning ordinance. The first prong of the negative criteria is the public detriment, a substantial detriment to the public good. It's a consideration of the impact of the variance on nearby properties. The board has to evaluate the impact of the use upon the adjacent properties and determine whether or not such damage to the character of the neighborhood as to constitute a substantial detriment to the public good. The key here is that it's a balancing test that with a substantial detriment, the balance the board has to consider is that the greater benefits of the project, the greater the detriments must be to achieve the quality of being a substantial detriment. So, the board should consider many of the concerns of the public, the issue perhaps with the visual, the impact on the property owners as well as the testimony of the applicant who felt that there wasn't any substantial detriment. So, the board has to consider that testimony and consider the witnesses and the creditability and ultimately make a determination as to whether or not there is a substantial detriment resulting from the application. For the second prong of the negative criteria, we have to determine to the extent of which that granting the variance would constitute an insertion of governing body authority, meaning where the use is consistent with the master plan and the zoning ordinance where it constitutes a substantial impairment to our zoning ordinance, a use variance cannot be granted. The applicant's planner addressed the second prong of the negative criteria, explaining that the master plan was last written in 1998 and it didn't contemplate renewable energy resources at the time and the age of the plan. However, the applicant's planner testified that the application promotes the purposes of the master plan such as underutilization of land as well as an energy program established by a 2013 governing body

ordinance. Again, there was contrary testimony from members of the public. The board has to look at the balancing test and consider the benefits of the project, which again, is an inherently beneficial use considering the conditions that are attached and the revision by moving the solar panels and ultimately determine the balance and whether or not the negatives substantially outweigh the positives. Those are the use variance considerations. The applicant also requested the submission waivers, the bulk variances for the parking striping, the ADA parking space dimensions, design waiver for drive aisle width and the items that were called out in our engineer's review letter. The bulk variances, the board knows that the positive and negative criteria which are generally similar considerations as to the use. Waivers generally must be reasonable under the circumstances and justified by the testimony of the applicant's witnesses and evidence. Finally, beside a use variance, bulk variances and waivers, the applicant has also requested minor site plan approval. Minor site plan approval is appropriate where development generally meets the conditions and criteria, our site plan ordinance and zoning ordinance and taking into account any variances and waivers to permit any deviations. So, the if the board feels the use variance is justified, the bulk variances as well as the waivers warrant approval, then presumably the site plan complies with our site plan ordinance and so minor site plan approval would also be appropriate. The conditions of approval generally compliance with our engineer's review letter, the comments and recommendations as written and the condition to approval that the site plan be revised to be consistent with the representations of the applicant's witness and what was agreed to tonight on the record. Specifically, no solar panels in the north side of the parking lot closer to the residential properties and the applicant also mentioned that they will not be landscaping on that side of the property. They will not be planting the trees that they proposed. Also, as a condition we also require the applicant to submit a revised final site plan to the board engineer and the board professionals that is consistent with what was agreed to tonight.

Miss Piccari motioned to accept the fact finding. Mr. Hoyle seconded.

Mr. Hoyle motioned to grant the use variance subject to the conditions stipulated. Mr. Hoyle further stated that he believes there is a balance that by the applicant agreeing to move the solar panels away from the residential area addresses most of the residents' concerns. He further stated that there won't be a lot of traffic or noise created by the solar panels and this use is benign compared to the uses that are permitted at the property. Miss Piccari seconded. Roll call: Paul Hoyle, Lysa Longo, Shirley Butler, Diane Piccari and Duke Martz-Aye. Patrick Olivo and Darlene Hannah Opposed.

Miss Piccari motioned to grant the minor site plan approval with bulk variances and waivers subject to the conditions stipulated. Mrs. Longo seconded. Roll call: Paul Hoyle, Lysa Longo, Shirley Butler, Diane Piccari and Patrick Olivo and Duke Martz-Aye. Darlene Hannah Opposed.

CORRESPONDENCE:

None

MINUTES:

None

RESOLUTIONS:

None

BILLS:

None

COORDINATOR'S REPORT:

Not at this time.

There being no further business; it was moved, seconded and unanimously agreed to adjourn the meeting at 10:40 P.M.

Respectfully submitted:



Nancy L. Ellis, Board Secretary