

**BOARD OF ADJUSTMENT OF WHITE TOWNSHIP
RESOLUTION MEMORIALIZING FINDINGS
AND GRANTING CONDITIONAL APPROVAL
Case #447**

In the Matter of the Application of Clean Jersey Solar LLC, Block 62, Lot 24.

WHEREAS, an application to the White Township Board of Adjustment has been made for: Use Variance Approval; Bulk Variance Approval; Design Waivers; and, Preliminary and Final Site Plan Approval so that subject property can be used for the installation of solar photovoltaic panels for purposes of generating approximately 12 megawatts of electricity which will be conveyed into the electric grid servicing this area of the State of New Jersey; and

WHEREAS, a Public Hearing on this matter was held on September 15, 2010, a quorum of the Board being present and the Applicant being represented by Kenneth L. Pape, Esq. (Board Member Shoemaker recused himself); and

WHEREAS, public notice was given wherein the Board had jurisdiction to hear the within matter; and

WHEREAS, the owner of the subject property, the Estate of Gyorgy Stampf through its attorney Carl W. Nelson by letter dated July 27, 2010 consented to the within application. (The Applicant is the contract purchaser of the subject property.); and

WHEREAS, the Applicant submitted the following in support of their Application:

1. Preliminary & Final Site Plans (Sheets 1-14 dated July 1, 2010);
2. Use Variance Plans (Sheets 1-2 dated July 12, 2010);
3. Survey Plans prepared by Eldon D. Allen, NJPLS;
4. Existing Condition Survey by Edwin J. Hale, NJPLS;
5. Development Impact Statements (dated July 13, 2010);
6. Stormwater Management Reports (dated June 14, 2010);
7. Applications for Variance (Parts I, II & III);
8. Variance Checklists & Preliminary/Final Site Plan Checklists;
9. Corporate Disclosure Form;
10. List of Professionals;
11. W-9 Form; and
12. Contract for Purchase;
13. "Generation Interconnection Feasibility Study Report" dated July 10, 2010;

14. Engineer's estimate for costs of improvements or bond estimates; and

WHEREAS, the Board had for its review and consideration the following additional professional reports:

1. Board Engineer Modzelewski's review letter dated September 1, 2010;
2. Applicant's Engineer Challoner & Associates LLC's response letter dated September 3, 2010; and
3. Board Attorney William J. Gold Esq.'s review letter of September 7, 2010; and

WHEREAS, at the Public Hearing, the following exhibits were introduced into evidence:

1. A-1, which is Sheet 3 of 14 of the Site Plan;
2. A-2, which is a 2007 New Jersey DEP aerial photo of the subject site;
3. A-3, which is Sheet 13 of 14 of the Site Plan with the proposed buffering enhanced by green colors;
4. A-4, a letter dated August 25, 2010 from Grape Solar, the manufacturer of the proposed PV panels indicating the materials used in the panels; and
5. A-5, a color photo depicting the appearance of the arrays of panels. (Applicant will have meadow grass rather than gravel under the panels); and

WHEREAS, the subject property consists of 78.06 acres wherein approximately 59 acres of ground and existing vegetation would be disturbed for the proposed installation of a photovoltaic array consisting of 51,264 fixed-angle, ground-mounted solar panels. The subject property is located within the R-1 Single-Family Residence and the H-D Highway Development districts. White Township Ordinance 71-77B(2) permits public utility facilities and uses as Conditional Uses in all zone districts, provided that the Applicant comply with seven specified conditions; and

WHEREAS, the Applicant requests from the White Township Board of Adjustment the following approvals:

1. Conditional Use Variance Approval pursuant to N.J.S.A. 40:55D-70(3);
2. Variance Approval pursuant to N.J.S.A. 40:55D-70(c) with regard to White Township Ordinance 71-76V(3), Disturbance of Slopes, where Applicant proposes to disturb 5.6 acres of critical slope;
3. Waivers for paving of all interior roads and curbing of paved interior service roads;
4. Variance Approval pursuant to N.J.S.A. 40:55D-70(c) for grading within yard setbacks contrary to White Township Ordinance 71-76L(4);

5. Variance pursuant to N.J.S.A. 40:55D-70(c) with regard to White Township Ordinance 71-76T for an 8-foot high chain link security fence topped with three strands of barbed wire to enclose the proposed 30 foot x 30 foot electrical sub-station; and

WHEREAS, the following persons offered testimony at the Public Hearing:

1. The Applicant's New Jersey licensed engineer and planner, Stuart Challoner, in support of the application;
2. Frank Wheatly, a member of the public, in opposition to the application; and
3. Ivan Somyk, a member of the public, in opposition to the application; and

WHEREAS, during the course of the Public Hearing, the Applicant offered the following amendments/stipulations to its application:

1. Applicant will, to the satisfaction of the Board Engineer, provide for a berm of approximately 20 feet wide and 4 feet high, where Applicant's property is contiguous with the Residential Zone. The berm is to be planted with 6-foot to 8-foot high evergreens of a type recommended by the Board Engineer, preferably Norway Spruce.
2. All disturbed top soil to remain on site and re-graded prior to the installation of the solar arrays. Soil disturbed from the re-grading of the slopes may be used for the buffer berms.
3. There will be no encroachment in wetland buffer/transition areas.
4. The proposed access drive will be paved for the first 100 feet with plan revisions satisfactory to the Board Engineer.
5. Interior roads that are to be constructed of gravel will be subject to approval by the Board Engineer and/or applicable Fire Official. Plans to be revised to satisfaction of Board Engineer.
6. No grading, fill or excavation will be done within five feet of a property line.
7. There will be no on-site lighting.
8. No toxic heavy metals shall be used in the solar panels.
9. Upon approval of the within application, the prior approval for this property for 17 Residential Uses will be void.

10. All gravel interior roads will be designed to handle fire trucks and fire fighting equipment; and

WHEREAS, the White Township Board of Adjustment takes notice of the recent amendment to the MLUL N.J.S.A. 40:55D-4, which defines a solar or photovoltaic energy facility or structure as an “Inherently Beneficial Use” and N.J.S.A. 40:55D-2(n), which sets forth the promotion of the utilization of renewable energy resources as an intent and purpose of the MLUL.

NOW THEREFORE, Be It Resolved on this 21st day of October, 2010, that as a result of: the application documents submitted; the stipulations offered; the testimony presented; the exhibits submitted; and the Board professionals’ reports, the White Township Board of Adjustment makes the following findings of fact and conclusions of law:

1. The White Township Board of Adjustment finds that the Applicant is a “Public Utility Facility”. White Township Ordinance 71-5 (the definition section) broadly defines “public utility facilities” as “...electric lines, poles, equipment and structures...operated and conducted for the service, convenience...of the general public whether owned by any arm or creature of the local, state or federal government or by any privately owned public utility corporation.” As to the issue of whether or not the Applicant is a “public utility corporation”, there is some guidance in the New Jersey Statutes, specifically N.J.S.A. 48:2-13, which defines a “public utility as an association or corporation which owns, operates a power plant or equipment for public use.” The electricity that the Applicant will generate will be used for public consumption.
2. White Township Ordinance 71-77B(2) provides that public utility facilities and uses are permitted as Conditional Uses in all zones in White Township. Applicant, through its Engineer and Planner, offered testimony that the proposed solar farm was “Approved” by PJM, which is the entity responsible for coordinating all electrical providers in this region. All power to be produced from this site will be fed into the JCP&L/PJM grid to be utilized by JCP&L customers and others in accordance with applicable electricity distribution regulations. Additionally, the State of New Jersey has set renewable energy goals, which this Applicant through its power production will help meet. The Applicant seeks a Variance pursuant to N.J.S.A. 40:55D-70d(3) from the Ordinance’s requirement of paving of parking areas and interior roads. The Applicant has presented testimony that once the facility is built, there will be no regular on-site presence of employees, and monitoring of the functioning of the facility will be done remotely by electronic monitoring. Accordingly, it is Applicant’s position, that this Board accepts, that interior gravel roads, with the exception of the first 100 feet paved, are adequate for the site and will facilitate stormwater management and recharge.

Accordingly, the White Township Board of Adjustment finds that the Conditional Use requirements as set forth in White Township Ordinance 71-77(2), a through g, are satisfied with a specific Variance granted for subsection (d) to allow gravel roads and parking areas after the initial 100 feet of paved entrance road. The Board further finds that White Township Ordinance 71-77 (N)7 is satisfied in that:

- A) The Conditional Use complies with the Ordinance except as to the Variance for paving and parking; and, the other Variances and Design Waivers granted herein;
- B) The use at the specified location will not impair the welfare or convenience of the public in that there are no emissions, noise, glare, dust, toxic substances at the boundary property lines;
- C) The use will not cause undue depreciation of property values in the neighborhood in that the proposed use is an inherently beneficial use and is specifically encouraged by the MLUL;
- D) The use will not prevent development and use of neighboring property due to the screening and buffering of the site, the minimal amount of traffic generated and the fencing to protect the public welfare;
- E) The proposed use is inherently beneficial and aids the State of New Jersey in meeting its renewable energy and land use goals;
- F) All power needs will be generated on site and the solar arrays constitute pervious coverage and as such will maintain adequate drainage;
- G) Minimal on site traffic will be generated by this facility and accordingly, there will be no traffic hazards or congestion.

The Board is further guided by the standards as set forth in Coventry Westwood, 138 NJ 285, (1994) and the inherently beneficial nature of this project. The Board further finds that the Variance requested can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Ordinance in that the Conditional Use Variance is for interior roads and parking areas in a facility that will have minimal or no everyday human presence other than occasional and routine maintenance. The Board further finds that the Applicant has demonstrated that “special reasons” exist to grant this Variance since the paving of interior roads and parking areas are not necessary given: the minimal post construction traffic; the lack of public access; and, the enhancement of stormwater recharge by eliminating extensive paving (except for the first 100 feet of the access drive which will be paved to minimize mud, dirt and gravel being tracked onto the public roadway).

3. With respect to the remaining Variances and design Waivers for: disturbances of slopes; design requirements for paving; grading within set back areas; disturbance of slopes; and an 8 foot high fence with three strands of barbed wire surrounding the electrical substation, the Board, pursuant to N.J.S.A. 40:55D-70(C)(2) finds that the purposes of the MLUL would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would outweigh any detriment in that the proposed facility will promote the purposes of zoning as set forth in N.J.S.A. 40:55D-2(N) and will advance State and Federal goals to promote renewable energy uses.
4. The 51,264 solar panels will be ground mounted and sloped at a 20 degree angle toward Route 46 and away from the Residential Zone thereby eliminating any glare from the panels. The panels will have a maximum height of 8 feet (measured from the bottom of the panel). The entire site will be surrounded by a 6 foot high chain link fence which will be located within the berm/landscaped area which will separate the site from the Residential Zone and, accordingly, the visual impact of the fence viewed from the Residential Zone will be minimal if any. There will be nine electrical transformers cooled by fans which will shut off when the sun goes down. Each fan will produce approximately 45 decibels with the closest fan approximately 400 feet from the Residential Zone.
5. The Applicant has represented that this specific site has been “approved” as feasible by the PJM power consortium for the supply of electricity into the grid to be utilized by JCP&L and its customers and other users in accordance with applicable electricity distribution regulations.
6. The Applicant has represented that the facility will be subject to local property taxes as a commercial energy production facility.
7. Applicant has further stipulated that it will demonstrate to the Board Engineer that stormwater runoff will be equal or less post-development than pre-development.
8. Applicant has made application to the White Township Board of Adjustment for Preliminary and Final Site Plan Approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 in accordance with the Site Plans submitted as referenced above. The Board finds that the Site Plan submission is in accordance with the applicable Statutes and Ordinances in that the detailed drawings, specifications, and estimates of the Application for Final Approval conform to the Ordinance standards subject to the conditions as set forth. The Board further finds that due to the minimal post construction on site traffic, there is no necessity for “off site” or “off tract” improvements. The Board further finds that the project as constructed in accordance with the approved Site Plan will enhance the public good and will effectuate the intent and purpose of the Zone Plan and Zoning Ordinance.

Now Therefore, Be It Resolved on this 21st Day of October 2010 that Applicant's Request for: Variance Approval; Design Waiver Approval; and, Preliminary and Final Site Plan Approval is Granted by unanimous decision of the Board, so that the Applicant can utilize the property to construct and install a "solar farm" to generate approximately 12 megawatts of electricity utilizing photovoltaic panels, subject to the following terms and conditions:

1. Subject to the compliance by the Applicant of all of the stipulations and representations contained herein and as set forth on the record in this matter.
2. Subject to the Applicant complying with the engineering terms and conditions and Site Plan revisions of Board Engineer Modzelewski's review letter of September 1, 2010, the terms and conditions of which are incorporated herein as if set forth at length.
3. Subject to the Applicant's timely payment of all review and escrow fees.
4. Subject to the Applicant revising its landscaping and buffering plans to the Board Engineer's satisfaction.
5. Subject to the Applicant's compliance with the representations as contained in their Engineer and Planner's letter of September 3, 2010.
6. All prior Residential Subdivision Approvals are hereby rescinded.
7. Subject to the Applicant posting a performance bond in an amount and for such items as is recommended and approved by the Board Engineer, together with necessary inspection fees.
8. Subject to a two-year maintenance bond for all landscaping and additional items as recommended and approved by the Board Engineer, together with necessary inspection fees.
9. No top soil shall be removed from site. In the event Applicant intends to remove any "soil" from the site, Applicant shall comply with White Township Ordinance 91-1, which defines "soil" broadly.
10. Applicant to meet with the fire sub-code official for recommendation as to site fire safety. The specifications of all interior roads shall be determined by the Board Engineer.
11. Warren County Planning Board Approval.
12. Warren County Soil Conservation District Approval.

13. New Jersey DEP Land Use Regulation if there is a disturbance of soils in wetlands transition areas.
14. Applicant shall not be restricted in its choice of Solar Panel Manufacturers provided that the panels do not contain toxic heavy metals. Sizing and quantity of panels may vary provided that overall electrical output of the project is substantially the same.

A copy of this Resolution shall be sent by the Board of Adjustment Secretary to: the applicant by Certified Mail No. _____, Return Receipt Requested; the White Township Clerk; the zoning officer; and, the building inspector within ten (10) days of the date hereof.

JOSEPH MAGNINI, Chairman
White Township Board of Adjustment

I hereby certify the above to be a true copy of the Resolution adopted by the White Township Board of Adjustment at its regular meeting on October 21, 2010, and further certify that same is a true memorialization of the Official Action taken by the said Board at its regular meeting on September 16, 2010.

ALFIA SCHEMM, Secretary
White Township Board of Adjustment