

**Borough of Ho-Ho-Kus
Bergen County, New Jersey
Zoning Board Minutes
October 3, 2013**

Call to Order: Open Public Meetings Act Statement – In compliance with the Open Public Meetings Act of the State of New Jersey, notification of this meeting has been sent to the Ridgewood News, our official newspaper in the Borough of Ho-Ho-Kus and notice has been posted on the bulletin board at Town Hall.

Roll Call: Messrs. Tarantino (absent), Cox (absent), Forst, Ms. Metzger, Messrs. Ianelli, Pappas, Rodger (absent), Chairman Barto

Kristin Gildea Fox and Ryan Fox, 21 Duncan Road, Block 106, Lot 6: applicant seeks to widen the bottom of their driveway; entire driveway will be 18' wide from house to street.

Chairman Barto: stated the Fox application would not be heard this evening because of a notice problem; the application will be heard next month.

Chairman Barto: stated there were no completeness reviews on the agenda for this evening.

Mr. & Mrs. James Mathews, 100 Gilbert Road, Block 210, Lot 1: applicant seeks to place a generator in their front yard; corner property.

Mr. & Mrs. Mathews were sworn in by Mr. Andrew Kohut. (Mr. Kohut is covering for Mr. David Rutherford, Board Attorney who was not present this evening.)

Please Note: Chairman Barto recuses himself from this application due to the fact he is a direct neighbor of the Mathews. Ms. Abigail Metzger is the Acting Chairperson for this application.

Mr. Kohut: instructed the Mathews that they needed to have the majority of the vote to be approved and there are only four Board members hearing their application; this means that three members would need to approve their application; Mr. Kohut further instructed the Mathews that they had the option of proceeding with their application this evening or waiting for a larger Board the following month.

Mr. Mathews: stated he would like to go forward with his application.

Mr. Kohut: stated that Mr. Mathews could choose to carry his application at anytime during his presentation.

Mr. Mathews: described his application; side yard considered front yard due to corner lot; submitted photographs of proposed area.

Exhibit A-1: Six photographs reflecting the property plus survey.

Mr. Kohut: asked when the pictures where taken.

Mr. Mathews: stated the pictures were taken within the last couple of weeks; in addition, Mr. Mathews stated that they get flooding at their NE corner from time to time; if this application was approved, they would also put in a sump pump at the same time; stated the person who was installing the generator was also present to answer any questions.

Mr. Gerardo Pignatelli, Generation 3, Waldwick, NJ, sworn in by Mr. Kohut.

Mr. George Forst: asked about any discussion that had taken place regarding the best possible location for the generator.

Mr. Pignatelli: stated the neighbor on the right side is very close; behind house, close to property line; left side is best location as regards to land size; because a corner lot, the side yard is considered a front yard.

Mr. Mathews: described why the left side of the home was the best location for the generator.

Mr. Ed Ianelli: asked if there was a hedgerow on the Ackerman side.

Mr. Mathews: stated "yes."; there is year round, heavy landscaping.

Mr. Forst: asked how far from the house is the proposed location for the generator.

Mr. Pignatelli: stated it will be a few feet off the chimney; 6 x 6 railroad ties with crushed gravel in the middle so there is no permanent base.

Ms. Metzger: asked if there were any questions from the Board and/or the public.

Please Note: there were no further questions from the Board and no questions from the public.

Motion to Approve Application: Forst, Ianelli

Ayes: Forst, Metzger, Ianelli, Pappas

Mr. Kohut: informed the Mathews they can go ahead and contact the Building Department regarding permits; Resolution will be adapted next month; 45 day appeal period from the day the decision is in the paper.

Mr. Thomas Melone, 9 Boiling Springs Road, Block 403, Lot 21: applicant seeks a variance to install solar panels.

Mr. Christopher Weigl, Attorney for the Melone's; introduced himself to the Board.

Chairman Barto: stated it was his understanding that the original application letter spoke regarding a use variance; asked if it can be agreed that this application is not a use variance.

Mr. Weigl: stated he was in agreement; this application is for an inherently beneficial use which puts it in the realm of a permitted use; rear yard and side yard variances are being sought.

Chairman Barto: stated the side yard setback is 35 feet and the rear yard setback is 20 feet; R1 Zone; the ordinance provisions have been put together and Council has agreed to hand out copies to Board members who may have not seen this part of the code; Solar Panel Ordinance; for the Board's purposes, what are being proposed are ground mounted solar panels, section C of the code number 2 is relevant to this application; agree the variance seeking has to do with section 3; already heard from an engineer; explained in detail; confusing how high the panels will be; but it was understood they will be 18 inches; had to be in this location due to the slope of the land; make sure everyone was in attendance in July or has listened to the tape.

Please note: all members in attendance are familiar with this application and have either been in attendance or have listened to the tapes of this application.

Mr. Weigl: stated he was not in attendance at the July 11, 2013 meeting; described the variance sought; C1 hardship and C2 special reasons; the engineer indicated different locations were explored for the solar panels; NW corner was the only viable area due to the slope; no noise or reflection would occur; referencing the Solar Panel Ordinance, if not to go into the side yard and the set back prohibitions, the applicant would be allowed to put panels up to 8 ft. high at an area that would not be impacted by the rear or side yard setbacks, that would be more of a

problem for neighbors; Mr. Weigl indicated a particular neighbor, Mr. McCarthy.

Mr. Barto: stated that objections are not allowed during testimony; neighbors only allowed to ask questions.

Mr. Doug Bagwill, Pfister Engery, Hawthorne, NJ: sworn in by Mr. Kohut.

Mr. Bagwill: stated he has been involved with this project since November of 2012; number of areas investigated for location of solar panels; fence in the area; no permanent foundation to the ground; two photos shown; pictures taken the day before last month's meeting. (September 4, 2013)

Exhibit A-1 and A-2: 2 Photos of area from setbacks.

Chairman Barto: asked if there was any further information regarding this application that had been submitted.

Mr. Weigl: stated the only other information submitted was the application itself.

Chairman Barto: asked if the fence is the applicant's fence.

Mr. Bagwill: stated "yes."

Chairman Barto: stating that it shows in the pictures submitted that the fence has viewing holes through it; Chairman Barto asked if Mr. Bagwill has walked the entire length of the fence.

Mr. Bagwill: replied, "yes."

Chairman Barto: asked if the fence was uniformly 6' high.

Mr. Bagwill: replied, "yes."

Mr. Ianelli: asked if any of the neighbors on a second story could see the panels.

Mr. Bagwill: stated if the panels are 18" high; believe if the photo was taken at a height of 18" and the neighboring houses could not be seen, he does not believe the neighbors would be able to see the solar panels.

Chairman Barto: stated you could not see a neighbors house from the spot the pictures were taken, but that doesn't mean the neighbors wouldn't see the panels from another spot.

Mr. Bagwill: stated no other houses can be seen from that point of the property.

Chairman Barto: asked, if based on Mr. Bagwill's testimony, no part of the array will be seen by neighbors.

Mr. Bagwill: stated they would not have a view of the array that is subject to the setback requirements.

Chairman Barto: asked if the array was subject to the setback requirements; 10 ft. off the property line, both rear and side line; we should presume there will be no visual line of site from any neighbor's house of the 3,000 square feet of the array.

Mr. Bagwill: stated there will be areas of the array that will be seen further than 20 feet of the rear property line and further than 35 feet from the side property line; the variance would not affect the amount of array that is seen.

Ms. Metzger: stated the deeper you go into the area that the array shouldn't be in, by way of zoning, the less it will be seen by other people.

Mr. Bagwill: stated that was correct.

Mr. Ianelli: asked for confirmation that the Ordinance calls for the array to be fully screened.

Mr. Bagwill: stated Mr. Melone has agreed to put in additional screening/hedgerow or shrubs to increase the height of the screening.

Chairman Barto: asked what would be the length and the width of the screening along the array.

Mr. Bagwill: stated it would be the entire length of the back fence.

Chairman Barto: reviewed the topographical map which showed a drawing of where the array will be, trying to figure out what the slope looks like; asked how the array will sit on the slope; will it be facing the street or the back of the house; hard to visualize; originally imagined the array to be flat; is the plan to dig out part of the property.

Exhibit A-3: Aerial photograph of the property.

Mr. Bagwill: stated there will be a slight amount of leveling; then there will be gravel placed down and the array will sit on top of that; drop of the area that they are grading out is 1 foot; slope is gradual; no retaining wall will be needed.

Chairman Barto: asked why the array would not be put in the buildable area.

Mr. Bagwill: stated the plan does not indicate the water slide on the property; water slide is a permanent structure; no details on the water slide; gave details of the water slide that he has observed while walking the property; built into the grade of the land.

Mr. Forst: asked why the array could not be put in between the tennis court and the water slide/pool; is that the area where it would have to be put at an 8' height.

Mr. Bagwill: stated that, in that location, the house is there; shading effects where the array can be placed.

Chairman Barto: asked how the size of the array was determined; stated it was a very big structure.

Mr. Bagwill: stated the size of the array was the largest that can be used in this area without having to go down onto the sloped hillside; power output will be around 35,000 kilowatt hours per year; approved by PSE&G.

Ms. Metzger: asked if there is a mathematical equation for how big an array needs to be to give the energy needed for the size of the house; is this the only energy.

Mr. Bagwill: stated electrical energy will still be connected.

Ms. Metzger: asked if the array could be smaller.

Mr. Bagwill: stated the array could be smaller but the energy produced would be less and it would also be less of a positive benefit to the environment.

Chairman Barto: stated that the array is beneficial, but would you want to be a next door neighbor of the property that had a variance granted to go within ten feet.

Mr. Bagwill: stated he has walked the property many times and there is very little visible impact from the neighboring properties; little noise; no glare; only noise generated is slight hum at particular times.

Mr. Ianelli: asked what the encroachment was.

Chairman Barto: stated the rear yard set back is 20 ft and the side yard set back is 35 ft.

Mr. Bagwill: stated that the reason for the 10 ft. set back is because of the slide.

Mr. Forst: asked if Mr. Bagwill knew of the type of screening that would be used.

Mr. Bagwill: stated the screening would be natural; bushes, etc.

Chairman Barto: asked if the 6 ft. of hedgerows would have an impact on the array.

Mr. Bagwill: stated no because it is north of the array; on the western side it won't affect it either due to the slope; Mr. Bagwill reviewed the topographical map; the fence line is at 214 ft.

Chairman Barto: asked for confirmation that Mr. Bagwill worked for Pfister.

Mr. Bagwill: confirmed that he did indeed work for Pfister.

Chairman Barto: asked if Mr. Melone had any interest in Pfister.

Mr. Bagwill: stated "no."

Chairman Barto: asked if Mr. Bagwill had done a number of these projects in the past.

Mr. Bagwill: stated that the majority of his projects were commercial; he has been in business for 9 years; installed close to 20 megawatts of solar.

Chairman Barto: asked if this included the ground arrays.

Mr. Bagwill: stated "yes."

Mr. Forst: asked for confirmation that 100% of this array would be used for powering the house; in addition, Mr. Forst asked if there could ever be a situation where a portion of it can be bought back by a utility.

Mr. Bagwill: stated all of the energy will be used for the house; discussed PSE&G program; original array designed for the house would not have provided all the energy for the house.

Chairman Barto: asked the applicant's attorney if any thought had been given to moving the slide.

Mr. Weigl: stated he did not know; but he had seen the property and he is not sure what type of undertaking that would be to move the slide.

Mr. Bagwill: stated the slide is going down the natural slope of the ground.

Chairman Barto: asked for confirmation that even if the slide were taken away, there would be no other location for the array to be placed.

Mr. Bagwill: stated that was correct.

Ms. Metzger: stated that it seems that the way the zoning law is stated, makes it more problematic with how the object is being viewed.

Mr. Weigl: stated the arrays are 18 inches in height and explained the visual impact.

Mr. Bagwill: stated that typically the arrays would be at an angle but Mr. Melone has asked that the arrays be placed flat to the ground to limit the visual impact; this is actually detrimental to the production of the arrays.

Chairman Barto: stated there is no one from the public in attendance; Chairman Barto asked Mr. Weigl if there were any other comments he would like to make.

Mr. Weigl: stated that a case has been made for a variance both on the positive criteria which involves the C1 hardship for the slope and the C2 special reasons; believes there is no detriment, if there was one, it would be minor in regards to the McCarthy property; the screening that is available by way of a fence would take care of that to a great extent; if additional screening by flora was requested by the Board, the Board could place this stipulation in its Resolution and the applicant would be agreeable to that; believes the benefits are they are moving public policy forward in NJ in getting away from fossil fuels for our energy needs; believes a lot more of these applications will be submitted in the future;

believes the benefits outweigh the detriments; this has been designed to limit any possible impact that might be considered negative.

Chairman Barto: asked if there was any thought given in moving the array five feet further off the property line in each direction; stated because there isn't a significant difference in the slope in either direction.

Mr. Bagwill: stated the edge of the array to the west is actually going to be constructed 3 ft. further away from the setback; it will be at 13 ft.

Chairman Barto: asked if another 2 ft. would be possible.

Mr. Bagwill: stated at that point there are modules coming out from the main block; if moved over further, those modules would have to be moved further to the east which would be moving them closer to the sloping section of the property.

Chairman Barto: referred to the map and stated that was not the way he was interpreting the map.

Exhibit A-4: As Built Plan prepared by Donohue Engineering, dated 10/30/02

Chairman Barto: stated that in his estimation, there is no significant difference in the slope of this property moving the array 5 ft. instead of 3 ft. Basically, it would be more acceptable to him, if the array was just moved a little bit further off the property.

Mr. Bagwill: restated that the array will be moved 3 ft. further off the property line.

Chairman Barto: stated this bothers him because that means that the wrong application was being discussed

Mr. Bagwill: stated he did not believe the set back requirements would be an issue.

Chairman Barto: stated he is willing to overlook that, but would like an answer to his question; Chairman Barto stated that maybe he is only asking for 2 ft. in one direction and 5 ft. in another, but is that doable.

Mr. Bagwill: stated that would change the configuration of the array and without going out to the site and sitting down with the engineers and reconfiguring it, he would not be able to answer that question.

Mr. Weigl: stated another issue is the financing because they are under a major deadline because of two meetings which were adjourned because of a lack of a quorum; they may lose the financing which needs to be available next month to start the program.

Mr. Bagwill: explained the PSE&G program in detail; solar loan; under pressure to have this completed; unlikely the extension would be granted; process started back in June, now it is in October.

Chairman Barto: stated he is mindful of the issues involved with this application and that some of the blame does fall upon the Board; stated that Mr. Bagwill was not sure if the array could be moved from its current location; in addition, Chairman Barto stated that Mr. Bagwill seemed generally reluctant to discuss it and the engineering involved would, in effect, spoil the entire deal because of the time factor.

Mr. Bagwill: stated it would certainly set back the progress that has been made; ready to submit permits.

Chairman Barto: asked Mr. Bagwill and Mr. Weigl to have a seat while the Board had a discussion regarding this application; Chairman Barto stated that this was the first, and will not be our last, application regarding solar panels; mindful it is only 18" off the ground and that the applicant will screen it further; appreciates the pictures of the fence; his view of the fence is that it needs vegetative screening no matter what is concluded; it would bother him if he was a neighbor; no neighbors are present this evening; the neighbor who was here the first night might have been satisfied with what he heard but it is not the Board's responsibility to guess what the neighbor's might think, the Board's role is to determine what is best for the Town; believes Mr. Weigl and Mr. Bagwill have made a very good presentation; it bothers him greatly that the position here has more to do with the water slide than it does with much else; not satisfied that it can't be placed somewhere else on the property but the testimony is what it is.

Mr. Ianelli: asked if there could be a stipulation in the Resolution regarding the approval of the neighbors in regards to the screening.

Chairman Barto: stated no, but it can be stipulated that the vegetation be planted at six feet tall; require the vegetation to completely screen the array; we cannot make a property owner build to any neighbor's specifications.

Mr. Weigl: asked if there was a Board Engineer or Borough Engineer that could review the screening of the array.

Chairman Barto: stated there is a code official who will review; in the past it has been required that the code official review before the Resolution is adopted, but because of the special circumstances here, and if the application is approved tonight, they will have to have an immediate Resolution due to the circumstances; the code official will be in charge to make sure our requirements are met and if in fact we add those vegetative requirements, then what he would propose is that the Resolution is adopted tonight, subject to amendment with Counsel's agreement, at our next meeting in November, our vegetative requirements be placed in the Resolution; a Resolution has been drafted; asked if this was acceptable.

Mr. Weigl: stated this was acceptable.

Ms. Metzger: stated, for the record, that what we are looking at is the difference between the common good and the individual good; maybe not meeting the good of the next door neighbor, the good that comes from it for the common good supersedes that; believes the Board is looking at two different "goods".

Chairman Barto: stated this is a project solely for the use of the household; because it takes away the fossil fuels, it could be viewed in that respect.

Mr. Albert Pappas: asked if the array could be reduced, what impact it would have on the production; what if the three panels weren't moved, but eliminated all together.

Mr. Bagwill: stated a certain number of modules are needed; by eliminating three modules you would have to eliminate 15 modules; they need to be in a certain increment.

Ms. Metzger: asked if the array could be split and have different modules at different locations on the property.

Mr. Bagwill: stated theoretically, yes it could be done, but from a site feasibility, without taking more measurements, it would delay the engineering process.

Mr. Forst: stated he agrees with Chairman Barto's comments; screening is a big factor; an assumption can't be made as to why the neighbor is not in attendance this evening.

Motion to Approve: Forst, Metzger

All Board Members present approve application.

Mr. Kohut: stated he did have a resolution with him this evening, but it was not distributed to the Board; this resolution was drafted by Mr. Rutherford due to the time constraints on this project; resolution was done without trying to sway the Board one way or the other and was done as a courtesy to the applicant.

Please Note: At this point in the meeting, Mr. Kohut distributed the resolution to the Board members.

Mr. Kohut: stated there is a provision that states this is a special resolution that can be amended at the next meeting in order to reflect the testimony that was given and the Board conditions the applicant has agreed to.

Chairman Barto: stated that at the next meeting, vegetative planting requirements will be added to the resolution, in order to screen off the entire array from the neighbors; approximately 6 ft. high; Chairman Barto asked if this was acceptable.

Mr. Weigl: stated this was acceptable.

Mr. Kohut: reviewed the resolution.

Chairman Barto: asked Counsel if he would provide Mr. Rutherford with a memorandum of what has occurred at this meeting, including testimony, so Mr. Rutherford can prepare a supplemental resolution and share that with the applicant's counsel so he will be aware of what is included.

Motion to Approve the Resolution as it presently stands: Forst, Pappas

All Board Members present approve Resolution as it presently stands.

Resolution: Mr. & Mrs. Will Layfield, 75 Elmwood Avenue, Block 702, Lot 8: applicants seek side and rear yard setbacks for the construction of a shed.

Chairman Barto: reviewed the application; shed proposed was very large; applicant came back to minimize the shed in a way that was acceptable; it is still within an eyeshot of the property line; but now it is approved; Mr. Rutherford's resolution is very detailed and to the point discussing both the shed itself, the property and the locations of the shed; only members eligible to vote are Chairman Barto and Ms. Metzger.

Motion to Approve: Barto, Metzger
Chairman Barto and Ms. Metzger both approve the application.

Motion to Adjourn: Metzger, Pappas
All Board Members present approve motion to adjourn.

Respectfully submitted by:

JoAnn Carroll
Zoning Board Secretary
December 13, 2013