

**Borough of Ho-Ho-Kus
Bergen County, New Jersey
Zoning Board Minutes
July 11, 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. **Read Aloud by Board Attorney.**

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

Also in Attendance: Board Attorney David Rutherford

Chairman Barto: stated this was not an easy month to put this meeting together; next month will be difficult as well because Chairman Barto will be on vacation; Mr. Tarantino will be in charge.

Mr. Leonard Tarantino: confirmed he would be in attendance at next month's meeting.

Chairman Barto: stated the Layfield application will be on the agenda for the August meeting.

Please Note: Mr. Franklin Cox has arrived at this point in the meeting.

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

Mr. David Rutherford, Board Attorney: stated the Board has in their possession a colored aerial map and two copies of citations from Lexis Nexis; these were provided to Mr. Rutherford by the applicant directly; presumes the applicant will want to rely upon those in their presentation; did arrange for preparation of the notice and publication of same in the Bergen Record; the applicant did provide proof of service in a timely fashion; jurisdictional requirements have been met.

Mr. Andrew Nekus, Pfister Energy, Hawthorne, NJ: introduced himself to the Board; hired by Mr. Melone to design and install the solar array.

Chairman Barto: asked if Mr. Melone would be in attendance this evening.

Mr. Nekus: stated that Mr. Melone would not be in attendance.

Chairman Barto: stated that neither the applicant nor an attorney is present to represent this application.

Mr. Rutherford: stated that this is an issue and he was not aware that the applicant would not be in attendance; the Chairman does raise a good point that there are provisions with respect to the unauthorized practice of law; Mr. Rutherford is not implying that Mr. Nekus is an attorney, but MLUL does provide that in the absence of an applicant it is best if the applicant be represented by an attorney who could speak for the applicant; the applicant's presence is not required; the issue is if the Board can hear this application without an attorney presenting the matter.

Mr. Nekus: stated the issue at hand is a simple setback question; where they are proposing to put the array as opposed to what the setback requirements are; not giving legal advice; will speak to the proposed location of the array.

Chairman Barto: asked if Mr. Nekus was the source of the two Lexis Nexis documents that the Board received.

Mr. Nekus: stated "yes."

Chairman Barto: proposed that the Board hear the testimony this evening then the Board can determine if the application should be carried; either an attorney or Mr. Melone can be present at the next meeting.

Mr. Tarantino: asked how long Mr. Nekus' presentation was.

Mr. Nekus: stated his presentation was short and it was his understanding it was one question dealing with setbacks.

Mr. Tarantino: suggested the Board not hear the testimony; doesn't feel the Board can render any decision except to carry this application and the Board should hear the entire application at one time.

Mr. Nekus: stated again that his presentation is short.

Mr. Tarantino: stated his objection remains.

Mr. David Rodger: stated he posed the question at the last meeting to which this presumably is a response from Lexis Nexis about the area

that the array covers and the extent to which the soil below it is now precluded from certain circumstances and whether or not is any different from a gravel driveway or paved driveway or walkway, etc.; is not sure that the Nexis Lexis is giving him the answers he was seeking.

Mr. Rutherford: stated, that legally speaking, this use is permitted in the Borough's ordinance; the MLUL recognizes, even in situations where these uses are not called for in the ordinance, specifically provided to be inherently beneficial uses, the Lexis Nexis documents are simply statutory sections from the MLUL, which goes along with the fact they are found to be inherently beneficial and precludes the Board to count solar panels as part of impervious cover; the setback variance is the issue before the Board; the Board will have to hear testimony regarding the installation of the array.

Mr. Nekus: stated there are close to 1,000 megawatts of solar in New Jersey and much of that is ground based and it is all built under the statute that it is not part of the impervious surface.

Mr. Tarantino: asked Chairman Barto if the Board had agreed to take testimony this evening.

Chairman Barto: stated "no."

Mr. Frank Cox: stated he believes it would be useful to hear Mr. Nekus' testimony and also believes it would be useful to defer action on this application due to the fact neither the applicant nor the applicant's attorney is present.

Chairman Barto: stated he believes this was the advice of the Board's attorney to hold off on action; the other question is if the Board should hear from the witness; believes the Board should hear from the witness.

Mr. Rutherford: stated testimony would be heard this evening from Mr. Nekus; Mr. Melone's presence is not needed at the August meeting but he will need to be represented by an attorney if he is not present; asked Mr. Nekus to give an overview of his expertise and his dealings with the installation of solar arrays.

Mr. Nekus: stated he is a registered, professional engineer in the state of NJ; has been involved with the power generation business his entire career; worked for PSE&G; has been involved with solar for several major firms; asset management; project management; currently VP of Business Development with Pfister Energy.

Mr. Tarantino: asked if Mr. Nekus has made presentations to other Planning and/or Zoning Boards in the State of New Jersey.

Mr. Nekus: stated “yes.”

Mr. Tarantino: asked Mr. Nekus if he has been qualified as an expert.

Mr. Nekus: stated he has not attempted to get himself qualified as an expert; he has represented different developers.

Chairman Barto: stated that Mr. Nekus is essentially a witness to certain facts regarding array installations.

Mr. Nekus: stated this is a relatively small array compared to other arrays being built in New Jersey; roughly 62 feet by 35 feet; most arrays are tilted at a 20 degree tilt; staggered about 20 ft. apart in rows; in this case the panels are flat, slightly worse yield, but the profile from any neighboring site is very minimal; the property is on the other side of Route 17 and it is high up; when standing in the front yard you do not see any neighbors; discussed different distances from where the array will be placed to the neighboring properties; the only property which is the same level as the Melone residence but the fence is five foot and the array will be lower than the fence; if the neighbor was on the second floor of his home he might be able to see the corner of the array; will put in a landscaping buffer between the array and the fence.

Mr. Rutherford: asked how high the array would be.

Mr. Nekus: stated the array would be approximately 3.5 feet in height; stated there is an existing array at the home already; seeking to add to the capacity of this system.

Chairman Barto: stated he understood why it was placed in this corner because it appears out of the way, but it is still within the setback; was thought given to placing it anywhere else on the property.

Mr. Nekus: explained the different types of installation procedures for solar arrays; they are using a ballasted design; wanted to have a level area to place the array; the back of the property is the only area that is level; different areas would mean trees would have to be taken down; there was no desire to place it in the front yard.

Chairman Barto: asked why it couldn't be placed in the front yard.

Mr. Nekus: stated he believed it had more to do with the setbacks being different in the front in relation to the back and for aesthetic reasons;

believes the homeowner wanted the array to be out of site; arrays are not offensive, but others might think so.

Chairman Barto: asked what the cost to install this array would be.

Mr. Nekus: stated he wasn't involved with that part of the process.

Chairman Barto: asked if it would be easier to flatten out an area on this large property to make sure the array was within all the setbacks.

Mr. Nekus: stated it is a fairly rocky area and it might be difficult to dig.

Chairman Barto: stated the area couldn't be too rocky because there is already a tennis court, fountain area and a putting green; the truth is they are looking to use the property more intensively and taking up space in the setback area.

Mr. Nekus: stated he stands behind his previous testimony that the area proposed for the array has the least visibility to the house and the surrounding properties; discussed the PSE&G connection and how it would differ from different locations on the property; cannot find another spot on the property that is better for the neighbors; the issue at hand is to have the least impact on the neighbors.

Chairman Barto: stated the matter at hand is to prove to the Board that this application merits a variance; stated he is not sure that Mr. Nekus' testimony proves a hardship but realized Mr. Nekus is before the Board this evening to discuss solar information.

Mr. Allen Wahlberg: referred to the property proposed construction calculation form, it states that the height of the solar panels will not be higher than 18" from the ground and that is not what was discussed.

Mr. Nekus: stated they would be higher than 18 inches; stated that another member of his firm prepared the calculations and was not available to attend the meeting; Mr. Nekus has visited the site twice and has met with PSE&G to discuss the installation; Mr. Nekus stated he did believe the array would be 3' off the ground.

Mr. Wahlberg: asked if the plans needed to be resubmitted if the numbers did not match up.

Mr. Rutherford: stated the public notice that the applicant prepared specifically included the statement that the solar panels would not be more than 18" in height.

Mr. Nekus: stated he amended his testimony because he believes the 18” height is correct.

Mr. Rutherford: stated that if the arrays are 18” in height, a re-notice is not necessary.

Mr. Nekus: asked what the side yard setback was.

Mr. Rutherford: stated the side yard setback is 35 ft.; the setback variance is what brings the application in front of the Board.

Mr. Cox: asked if the height of the array would change Mr. Nekus’ testimony as regards to the pilings.

Mr. Nekus: stated the blocks are precast cement; nothing being poured into place; blocks with pins coming out of them; arrays are attached to them.

Mr. Rutherford: stated for the record, the Board and Mr. Nekus were discussing page E4 of the plans prepared by Pfister Energy which shows the mounting details and type of installation.

Mr. Nekus: stated the arrays are 18” after referring to these plans.

Mr. Cox: asked about the height of the arrays and how the wind would affect them.

Mr. Nekus: stated his experience has been that as the arrays are moved off the ground there is more opportunity for the wind to get underneath.

Mr. Cox: asked if the arrays are so close together that rain would not permeate.

Mr. Nekus: stated there is no major spacing; they are an inch or so apart so water will run off; there is a slight slope to the south and they intend to follow that slope.

Mr. Cox: asked what the square footage of the array would be.

Mr. Nekus: stated the calculation was approximately 3,000 square feet.

Mr. Cox: asked what the installation plans do with the run off.

Mr. Nekus: stated the run off will go off of each panel which is considered impervious and will follow the current natural slope; the panels are flat, glass panels.

Mr. Cox: asked if the spacing between the panels was sufficient enough to avoid run off.

Mr. Nekus: stated “yes.”

Mr. Vince McCarthy 56 Jacquelin Avenue: stated his property was right behind Mr. Melone’s and encouraged the Board to visit the property in person.

Mr. Rutherford: stated that at this point of the application, only questions could be asked of Mr. Nekus regarding the installation of the arrays and the matter was not being decided this evening and Mr. McCarthy would have another chance to come forward and make statements and ask questions during another meeting.

Mr. McCarthy: asked why anyone would want to place this array on their property.

Mr. Nekus: stated that solar power is a great way to have reduced reliance on fossil fuels; less air pollution; Mr. Melone is environmentally concerned; stated not a flat property.

Mr. McCarthy: stated that from his home, he can see Mr. Melone’s home and pool and now he would be able to see this array.

Mr. Nekus: stated that Mr. Melone has made it very clear from the beginning that he would put whatever is necessary as a screening on the property so the array would be blocked from view.

Mr. McCarthy: asked if Mr. Melone would be removing the generators on the other side of his property.

Chairman Barto: stated that this question is not apropos to what the Board is here to determine which is a land use issue; directed Mr. Nekus to let Mr. Melone know that either he or his attorney is expected at the next meeting; the public will more than likely be present with questions.

Mr. Nekus: asked if there is a preliminary indication of a quorum for the next meeting.

Chairman Barto: stated he was not sure at this time.

Mr. Rutherford: stated the application should be carried with the indication that the Board sometimes does have an issue with a quorum in August; the Board will be polled between now and the next meeting

and will let the applicant/Mr. Nekus know if the meeting will be held; informed Mr. McCarthy that he could call Mr. Rutherford's office directly or the Borough Hall to see if the meeting would be taking place in August; if not, the meeting would be held in September.

Mr. Nekus: stated that if the Board had any questions, they could email Mr. Nekus.

Mr. Rutherford: stated that was appreciated but everything is on the record in a public forum.

Mr. Cox: asked if Mr. Melone would be present at next month's meeting.

Mr. Nekus: stated Mr. Melone was hoping the application would have been approved this evening.

Mr. Rutherford: stated there would have to be contact between the Board and the applicant between now and the next meeting.

Mr. Nekus: asked if Mr. Melone could testify to any questions in writing.

Mr. Rutherford: stated that written statements and/or letters are not acceptable; the matter of Thomas Melone, 9 Boiling Springs Road is being carried to the next meeting which is scheduled to be held on August 1, 2013; no further notice is required.

Mr. & Mrs. Michael Sparago: 8 Riverview Lane, Block 305, Lot 3: applicants seek a front yard setback variance.

Mr. Robert Schlicht, Architect for the applicants: introduced himself to the Board; stated his client was not able to be in attendance this evening.

Please Note: Mr. Cox is recused on this matter.

Mr. Schlicht: asked if he could testify without his clients present.

Mr. Rutherford: stated that technically and legally if applicants are not personally present they need to be represented by an attorney; Boards do not always enforce this ruling.

Mr. Schlicht: stated the application is regarding a portico with a pre-existing condition; does not feel this is a complicated application.

Chairman Barto: stated he would like to proceed with hearing Mr. Schlicht's testimony.

Mr. Tarantino: stated he maintains the same objection as before.

Mr. Schlicht: stated he would not be present at next month's meeting but his applicant will.

Mr. Rutherford: stated that Mr. Schlicht is qualified as an expert in the field of architecture; asked if Mr. Schlicht's licensing and qualifications are the same.

Mr. Schlicht: stated "yes" and he just recently renewed his license for three years.

Mr. Rutherford: stated the application will be heard this evening and then carried to next month's meeting where the applicant's will be in attendance; they will be given an opportunity to give any added testimony; members of the public can then ask questions; then the Board will deliberate and decide on the matter; there will be an issue because there are only four members this evening; could ask the absent members to listen to the tape to render themselves eligible; assuming that all members except Mr. Barto are present.

Mr. Schlicht: stated that the vote could wait until September if it is more convenient.

Mr. Rutherford: stated the application will be carried to the August meeting; there may be an issue with a quorum or the number of members who are authorized to decide the matter; applicant's can appear in August or September.

Mr. Schlicht: handed out photographs and full plans of the addition; full plans were requested by Mr. Wahlberg.

Exhibit A-1: Photographs

Exhibit A-2: Plans dated May 8, 2013

Mr. Schlicht: stated the photographs are the front and rear elevation of the existing structure taken by his office approximately during the spring of this year; **Exhibit A-2** is the remainder of the project which consists of a right side and rear addition; they were submitted to Mrs. Phillips between last meeting and this meeting and she has deemed them compliant with all of zoning so there are no additional variances; for informational purposes, Mr. Schlicht will walk the Board through what is proposed; removing garage; drawing A-4 is the first floor plan; thrust of the addition is the back and the right; presently there is a two car garage; a third will be added; in the back a family room and a mud room

entrance will be added, and an expansion of the breakfast kitchen area; the main body of the house on the first floor which faces the street stays intact with the proposed portico by the front door; this is the only element that needs a variance; drawing A-5 shows the main body of the house remains the same; there is an addition on the second floor above the existing garage and the new garage; all are compliant additions in regards to setbacks, lot coverage and height; discussed lot coverage and setbacks numbers; large lot; there are no additional variances; only variance is for the portico; in regards to the application itself, the present property is in an R1 zone; single family house with a 2-car garage; drawing A-1 shows the property is located on a curve in the road; the site has two preexisting non-conforming zoning conditions; presently the existing front steps are 44' 8" front the front yard setback vs. 50' so there is already an encroachment; discussed left side of home; the garage's front left corner is non-conforming; the home was probably built in the 70s; the proposal was to redesign the front of the house; referred to photos; unbalanced pattern of windows; simplistic in its shape and roof forms; front steps are open; no roof covering; house will not be made bigger; same façade; windows are being left where they are; they have created a reorganization of the façade by changing the window sizes and the siding and then false roof forms that one centers itself over the front door and the closed portico and then a larger form springs off of that; there are different areas that look balanced on their own; proposing to build a true portico with brick columns; no walls; traditional detailing; discussed depth, number of steps, width; integrate with the bulk of the home; four columns; all zoning requirements are met; setback would be 42.5 feet from the front yard per the existing 44.66 feet; it does come in further to the front yard setback; based on creating a landing and then the steps that would allow to have the architectural portico; the hardship is the present location of the existing building; minimal negative impact; open structure; interesting architectural solution that will take a rather simplistic building and turn it into a more traditional, sophisticated façade and there is no solid improvement that are encroaching, only the open portico.

Chairman Barto: stated he believed it was a beautiful plan; asked if Mr. Schlicht could reach Mr. Sparago at this time; simple application; beautiful plan; de minimus increase in the setback; simply get Mr. Sparago on the phone by conference call; Chairman Barto believes it can be done at this time.

Mr. Wahlberg: stated the hardship is clear by the placement of the home.

A few moments are taken for Mr. Schlicht to try to reach Mr. Sparago via cell phone; Mr. Schlicht was not able to reach either the applicant or his wife via cell phone.

Mr. Rutherford: stated, that if the Board were inclined to approve the matter, he could prepare a resolution and have it ready for the August meeting.

Mr. Tarantino: asked when the construction would begin.

Mr. Schlicht: stated plans were filed with the non variance without the portico; the applicant could start 99% of the back.

Mr. Tarantino: asked what the anticipated start date would be.

Mr. Schlicht: stated the anticipated start date would be as soon as the permits are received.

Mr. Tarantino: asked how long the project would take.

Mr. Schlicht: stated the project would take between 4-6 months.

Mr. Rutherford: asked for permission from the Board to prepare a resolution; applicant's would be present in case there is anything further that the Board wants to ask; if there is no meeting in August, the Sparago's can appear in September; matter carried to August 1, 2013; no further notice is required.

Mr. & Mrs. Will Layfield, 75 Elmwood Avenue, Block 702, Lot 8: applicants seek a variance to construct a covered open portico with steps on the front of the house.

Mr. Rutherford: stated the Layfield application has been carried to the August 1, 2013 meeting at the request of the applicants; with the proviso that if there is no meeting, the application would be heard in September.

Resolution: Mr. & Mrs. Robert Males, 147 Sheridan Avenue, Block 216, Lot 14: approval for an improved lot coverage variance and required set back for patios; Board heard matter last month and approved it; replacing a deck with an open patio which violated the side yard setback and required a coverage variance; board saw fit to grant the variance.

Please Note: Mr. Sparago has called into the meeting at this time.

Mr. Sparago identified himself for the Board and confirmed he was the owner of the property located at 8 Riverview Lane and that Mr. Schlicht was authorized to appear before the Board this evening on his behalf.

Chairman Barto: stated the Board would count this phone call as Mr. Sparago being present at the meeting.

Mr. Rodger: stated that in light of qualified architect's testimony, he finds the hardship does exist because the property lot line abuts the original home and but for the plans that have been proposed, the only alternative to have a portico is what the plan has been presented tonight; finds the variance requirement of 2' is de minimus in nature and request this motion be approved.

Motion to Approve: Rodger, Wahlberg
Ayes: Barto, Tarantino, Wahlberg, Rodger

Motion to Approve Male's Resolution: Wahlberg, Rodger
Ayes: Barto, Wahlberg, Rodger

Motion to Adjourn: Wahlberg, Barto
All Board Members present Approve Motion to Adjourn.

Respectfully submitted by:

JoAnn Carroll
Zoning Board Secretary
January 27, 2014