

August 22, 2013

The Board secretary called the regular meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m.

Open Public Meetings Act Notice: I would like to have placed in the minutes that the Open Public Meeting Requirements of Law have been satisfied by our notices dated January 17, 2013, as published in the Hunterdon County Democrat and January 15, 2013, as published in the Courier News. A copy of the notice has also been posted on the Township Website, the Bulletin Board in the Municipal Building and a copy has been filed with the Clerk.

Members Present: Ms. McBride, Mr. Nace, Mr. Ryland, Mr. Kastrud, Mrs. Church

Members Absent: Mr. Bischoff, Mr. Walchuk, Mrs. Corcoran, Mr. Badenhausen, Mr. Ford, Mr. Kirkpatrick

Others Present: Atty. Mark Anderson, Atty. Christopher DeGrazia, Jane Manzione, Leslie Kulick, Loretta Calvet

Appointment of Temporary Chairperson: In the absence of the Chairman and Vice-Chairman, a motion was made by Mr. Ryland to appoint Mayor McBride. Mrs. Church seconded the motion.

Vote: Ayes: Mr. Ryland, Mrs. Church, Ms. McBride, Mr. Nace, Mr. Kastrud

Approval of Minutes: Mr. Nace made a motion to approve the minutes of the July 25, 2013 meeting. Mrs. Church seconded the motion.

Vote: Ayes: Mr. Nace, Mrs. Church, Ms. McBride, Mr. Ryland, Mr. Kastrud

Memorialization of Resolution Amending Condition of Approval: P.S. Construction/Rolling Hills, Block 22, Lot 27, Race Street: Mr. Ryland made a motion to memorialize the Resolution. Mrs. Church seconded the motion.

Vote: Ayes: Mr. Ryland, Mrs. Church, Ms. McBride, Mr. Nace, Mr. Kastrud

Issue of Completeness: Sungevity: Block 25, Lot 37.09, 72 Perryville Road (Manzione Property)

Ordinance Interpretation or Variance: Atty. Christopher DeGrazia, representing Sungevity and property owner Jane Manzione, gave an overview of the application. Mr. DeGrazia said that the solar panels had been installed due to some miscommunication between Sungevity and the State Code Enforcement Office. Thereafter, the Zoning Officer took the position that the installation did not meet requirements of the Ordinance which prohibits solar voltaic systems from facing streets and that a variance would be required. Atty. DeGrazia asked for an interpretation of the Ordinance, claiming that the solar installation complies with the Ordinance. He asked the Board to confirm that a variance is not required. If the Board is not in agreement, applicant would request variance relief.

Atty. Anderson said the Board should take action on the Issue of Completeness. Mr. Nace made a motion to deem the application complete. Mrs. Church seconded the motion.

Vote: Ayes: Mr. Nace, Mrs. Church, Ms. McBride, Mr. Ryland, Mr. Kastrud

Atty. DeGrazia asked to proceed with the Interpretation issue. Mayor McBride said to proceed. Mr. DeGrazia presented an Aerial Photograph showing the property and surrounding street. It was marked Exhibit A-1. The Exhibit shows the access to the property which consists of approximately forty-four acres and is in the AP2 Zone. The property is Farmland Preserved. The house on which the solar panels were installed is on a two-acre restricted parcel. Atty. DeGrazia said solar panels are permitted by Ordinance; however, there is a provision in the Ordinance that states that roof-mounted systems shall not be located facing the street. Mr. DeGrazia said the provision was probably included because such an installation would not be aesthetically acceptable. He noted that the house with the solar panels is six-hundred feet from the street, at the closest point and is not visible. Atty. DeGrazia displayed a photograph showing two measurements from the house to Perryville Road. The photograph was marked Exhibit A-2. Atty. DeGrazia said the next photograph was from the entrance of the lot. It was marked Exhibit A-3. The photograph marked Exhibit A-4 was taken from the shortest distance from Perryville Road. Mr. DeGrazia showed another photograph that was marked Exhibit A-5.

Atty. DeGrazia emphasized the drive toward reducing dependence on foreign oil. Renewable energy resources are a means of achieving that goal. The State has deemed renewable energy as inherently beneficial and the Township adopted an Ordinance to facilitate issuance of permits. Mr. DeGrazia cited the uniqueness of the lot because it doesn't have a street. He said if you were to say the dwelling is facing a street, every single facility on every building in the entire Township would actually be facing a street. Atty. DeGrazia said you would have to cross two lots from the subject site to get to a street. He thought the interpretation question before the Board was whether they thought the solar installation faced the street. Mr. DeGrazia said there was no definition of facing in the Ordinance. Facing is defined in the American Heritage Dictionary, Second Edition, 1982 as "to front upon" and the definition of front is "the area, location or position directly before or ahead". Black's Law Dictionary defines face as "that which particularly offers itself to the view of a spectator", therefore, facing either implies proximity or visibility. Atty. DeGrazia indicated that there was neither proximity nor visibility in this situation. He said that was the issue of interpretation.

Mayor McBride asked for questions from the Board. Mr. Ryland said he had no problem with the request. However, he wanted to know how the system had been installed without first obtaining required permits. Atty. DeGrazia, basically, reiterated what he said at the beginning of his presentation. There was some miscommunication. Mr. Ryland said he would like to make a motion to grant approval.

Atty. Anderson said the question for the Board is a matter of interpretation. He thought the limited interpretation requested was that the particular installation does not, in the words of the Ordinance, face the street.

If the Board was satisfied that the Ordinance should not be interpreted to prohibit the installation as it is currently in place, then the motion would be to interpret the Ordinance that this particular installation does not face Perryville Road. Mr. Kastrud asked if the Board was coming to that conclusion because it could not be seen from Perryville Road because of trees, screening, other homes, etc. What if the trees were removed? Atty. DeGrezia said 1), because you can't see it and 2), when you move off the property you are not on a street. You have to go through two-hundred feet of your neighbor's property to get to the street. Mr. Kastrud said if there was an elevation change and the house in the rear sat fifty to a hundred feet above the homes in the front then the system would be facing the street. He said it wasn't an issue in this instance. Atty. Anderson said the Board should confine its decision to this particular situation.

Mr. Nace seconded the motion made by Mr. Ryland previously.

Vote: Ayes: Mr. Ryland, Mr. Nace, Ms. McBride, Mrs. Church

Nay: Mr. Kastrud

Leslie Kulick and Loretta Calvet, Perryville Road residents, commented about clarifying, revising and updating the Renewable Energy Ordinance. Mayor McBride said she would discuss the issue with the Township Committee at their next meeting. Ms. McBride asked Board members for input. Mrs. Church and Mr. Nace thought the Ordinance should stand. Mrs. Church said as issues arose, they could be decided on an individual basis. Mr. Kastrud thought the Ordinance should be modified.

Atty. Anderson said the Sungevity Resolution will be memorialized at the Board's next meeting.

Update on Ordinance Revisions: Atty. Anderson said he had spoken to Carl Hintz. He said the issue pertains to the Milligan Property. Board members were in agreement that the matter should be discussed when there were more members present.

Correspondence: None

Comments from the Public/Other Discussion: None

Motion to Adjourn: Mr. Nace made a motion to adjourn. Mrs. Church seconded the motion. (7:40 p.m.)

Vote: All Ayes, No Nays, Motion Carried

Grace A. Kocher, Secretary

