Borough of Woodland Park

Board of Adjustment

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WOODLAND PARK
BOARD OF ADJUSTMENT MINUTES
May 18, 2015

MEETING CALLED TO ORDER AT 7:30 P.M. by Chairwoman Patterson.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY OPEN PUBLIC MEETING LAW, AND AS STATED IN NOTICES OF THE TIME, PLACE AND DATE PUBLICIZED IN ACCORDANCE WITH THE STATUTE. IT WAS INCLUDED IN A LIST OF MEETINGS FORWARDED TO THE HERALD NEWS AND THE RECORD AS REQUIRED NOTICES. IN ADDITION, THIS LIST HAS BEEN POSTED IN A PUBLIC PLACE BY THE BOROUGH CLERK, AND A COPY OF THIS HAS BEEN FILED IN HIS OFFICE FOR PUBLIC INSPECTION. PROPER NOTICE HAVING BEEN GIVEN, THIS MEETING IS CALLED TO ORDER AND THE CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THE MEETING.

MEMBERS IN ATTENDANCE: RUTH PATTERSON, SEAN LIJOI, JOSEPH PASCRELL, PHILIP DICRISTINA, TIM BARGIEL, ROBERT GITHENS, STEVE FAZIO AND RUSSEL JUZDAN

ALSO PRESENT –JOHN FIORELLO, BOARD ATTORNEY
THOMAS LEMANOWICZ, BOARD PLANNER
BOARD ENGINEER

FLAG SALUTE

A motion to approve the minutes of April 27, 2015 was made by Mr.Juzdan, second by Mr. Bargiel and approved.

ORDER OF BUSINESS

DOCKET # 14-07 – N. MARINO – 199 BROWERTOWN RD. – BLOCK 60.01 LOT 7 – USE VARIANCE – *Applicant has requested the application be carried until the June 22, 2015 meeting and must notice to be placed on the agenda.*

DOCKET # 15-02 – 1265 MCBRIDE AVE., LLC. – MCBRIDE AVE. & LACKAWANNA AVE. – BLCOK 121 LOTS 1.01, 2, 3, 5 & 5.01 – AMENDED SITE PLAN/BULK VARIANCE/SEEKING RELIEF FROM CONDITION # 5 OF RESOULTION # 12.01 - *Applicant has requested the application be carried until the June 22, 2015 meeting with no further notice unless further variances are required.*

DOCKET # 15-01 – SAFARI ENERGY HOLDINGS, LLC – 1 & 3 GARRET MOUNTAIN PLAZA – BLOCK 32 LOTS 1, 1.01 & 2 – USE VARIANCE/BULK VARIANCES/PRELIMINARY & FINAL SITE PLAN –

Chairwoman Patterson recused herself from this application because she is a property owner within 200' and was noticed of this application. She is reserving the right to testify if she so desires. Vice Chairman Juzdan will be chairing this application.

Michael Beck, attorney for applicant, stated he has no objection to the Vice Chairman running this meeting and agrees Ms. Patterson's recusal was proper.

Mr. Beck said this application is in regard to property known as 1 & 3 Garret Mountain Plaza. This is in the PUD –A zone. They are requesting site plan approval and use variance approval along with bulk variances to install 18 carport canopies at 1 GMP and 10 carport canopies at 3 GMP. They require a use variance because the Borough does not have any type of solar ordinance. There are elements of the Master Plan that deals with renewal energies and their planner will address those items. The canopies are intended to house solar panels and provide power to the existing commercial buildings at the site. It's important to note that the solar panels are intended to provide power to the buildings and is not a commercial scale to sell back to the utility providers.

Mr. Beck said the proposed canopies will have a minimum clearance of 8'6" on the low side and a maximum height of 12' on the high side. In addition to the use variance they are seeking one bulk variance with regard to a side yard setback. The Board Planner has raised questions about whether other variances will be required and their engineers and planners will address those alternate variances as well. They are in regard to landscaping and impervious coverage.

Richard Ivins, electrical engineer, was sworn in. He stated his qualifications and was accepted as an expert. He prepared the electrical design for the project. He is certified in regard to solar installations. He described a solar system including the mounting system that will hold the panels up, solar panels and the inverters. The sunlight hits the panels and gets converted to DC electricity and the inverters then convert it into AC which the buildings are using. They are mounted on the canopies up high on them. The inverters are about 18" wide by 2 ½' tall and 6" deep. The panels are about 6' X 3' and they don't touch each other but there are gaps. The gaps are for the mounting system and the clamps and it also helps with the air flow and the rain. The panels are not a weather proof enclosure. There is a 3 degree incline. When snow falls on the panels it starts to melt and flows through the holes. There will be a snow guard to help prevent any buildup of snow.

Mr. Ivins stated he designed the electrical system and said all wiring will be underground that go to panel boards. This is a net metered system which gives you credit for electricity that is not used such as on weekends. The systems are designed to not exceed the annual usage to the buildings. When they design the system they take into consideration the usage of the building. It must be sized appropriately as to not exceed the usage.

Mr. Ivins said the solar panels are designed to be absorbing and not to reflect light because that is what it needs to do. It has an anti-reflective coating on it.

Mr. Githens asked what the snow weight limitations would be. Mr. Ivins said the structure itself must be designed to carry the weight and the calculations are done for snow loads in New Jersey.

Mr. Bargiel asked if there is one inverter on each panel. Mr. Ivins said they are going with string inverters where they have a lot of smaller inverters. Each canopy is going to have anywhere between one and three of these at the top of the poles. There will be many small ones instead of a few larger ones. Mr. Bargiel asked where the inverters were located. Mr. Ivins said they would be underneath the solar panel but as far up on the pole as they can get them.

Mr. Juzdan asked if this is a typical project. Mr. Ivins said it is pretty cut and dry and the general layout and equipment are typical for a parking lot.

Mr. Fiorello asked about the net meter system and how the annual basis is figured out. Mr. Ivins explained how it is calculated. It is the kilowatt hours that is not going to exceed the annual usage. They looked back several years to calculate usage. Mr. Fiorello asked if for some reason you exceed the annual base if there is a problem with the energy building up. Mr. Ivins said it does not build up and if it is not being used it is going back to the grid.

Mr. Fazio asked if they limit it for safety reasons or if they would be considered a power generation center. Mr. Ivins said if they had the land and space they could put more but they are limited by space right now. They would love to put more solar because they have more generation than they can service. It is not because it's a safety issue but the utility does classify you differently. If you generate more each year than they are using they classify you as a power plant more or less. There would be all different rules and different amounts that your pay and get paid for. The incentives are also different. It is not from a technical or safety standpoint but just the rules of the facility.

Mr. Ivins said houses that have solar are net metered and this project is just a scaled up version of that. He said it is all traditional electrical engineering. It is very safe and compliant to the code. Once you get to the top where you have the inverters it is also code compliant and very safe. The system is also remotely monitored. Each inverter is tied into a system to see how it's doing right now and a month or year ago. If there is a problem the system automatically e-mails the appropriate party. There is very minor maintenance. They go out every 6 months to make sure it is performing properly. The system is designed to last for at least 25 years. The panels have warranties over the full life.

Mr. Lemanowicz, Board Planner, asked with respect to the trees around the perimeter of the parking lot particularly on the Route 80 side that they are encroaching on the parking lot. He asked if something needs to happen there. Mr. Ivins said it depends on what side of the canopy the trees are on because it makes a difference. If they are on the north side they would not be creating a shading condition as they would on the south side. Mr.

Lemanowicz said it looks like the trees will physically conflict with the installation of the panels. Mr. Ivins said he would like to leave it with the engineer who put together the tree removal plan.

Mr. Solfaro, Board Engineer, asked if they could put in a learning center kiosk to be used as a learning tool for members of the public. Mr. Ivins said the monitoring system he mentioned has a user friendly kiosk type screen. If you go to the right web page it will pull up that portal.

Mr. Fazio asked if there was any area where they would not recommend putting panels. Mr. Ivins said on a roof that needs to be replaced soon. Mr. Beck said you don't want to put them perpendicular across the drive aisle. You have to be careful to orient them in a certain direction. They must be placed where you get maximum sun.

Mr. Fiorello asked in regard to this site there are tall buildings and trees and was any of that taken into consideration as to where to put the panels or not to put the panels. Mr. Ivins said a little bit of shade is okay. It really comes down to shade tolerance and how much energy you can lose. You have to make sure you are generating enough to make sure the project pays for itself. They do have some shading issues so they are proposing to remove some trees. Mr. Fiorello said there is quite a bit of tree removal all together and ask if it was because with the existence of the trees it would be economically not feasible. Mr. Ivins said the project as a whole would still be feasible but maybe just a certain area wouldn't be. Most of the trees were physical obstructions more than shading. They would like to remove more but didn't want to take down too many so they can live with some shading. They need to put the canopies in the islands so they have to remove the trees that are there. Some columns and panels are around the perimeter also so they have to remove some trees. The trees along the perimeter would have an affect with the shade. Mr. Fiorello said there is a difference between functional and profitable. Mr. Beck said the next engineer could better answer the question. Mr. Fiorello asked if anything was determined to save the maximum amount of trees. Mr. Ivins said there is a tool that actually does that is a solar pathfinder which takes a fisheye view and then imposes on the picture the path of the sun. You can see on the photo where the buildings and trees are and it calculates the shade that is being lost. They do it for all projects so they can understand how much shade they are losing.

PUBLIC – OPEN FOR QUESTIONS
PUBLIC CLOSED

Christopher Rosati, engineer, was sworn in. He stated his qualifications and was accepted as an expert. He prepared the plans for the project.

Mr. Beck said they will remove 148 trees, 83 trees to be replaced, 396 shrubs to be planted on the site. There will be 65 additional trees. The Borough has a tree ordinance that calls for tree replacement on a one to one basis or in the Board's discretion the applicant can place money in the Borough's shade tree fund in lieu of providing the additional plantings. They understand the concern about removing trees and will work with the Board engineer in regard to the trees and shrubs or put money in the fund.

The colored rendering of the site plan Page 3 of 11 was marked A-1. Mr. Rosati said there are 3 buildings in Garret Mountain Plaza. The solar arrays are for 1 & 3 Garret Mountain Plaza only. Garret Mountain 2 is not involved at all. There are 149 trees actually coming down and the bulk of those trees are actually coming down in the landscaped islands in the parking areas. These trees are physical obstructions that are in the way of the solar panels they are proposing to install. Along New St. the first row of panels are close to the existing landscaped area that separates New St. from the parking area. There is about 20 trees along that area that have to come down. Some are physical obstructions but it is mostly from a shading perspective. When they talked about replacement trees and where they are going they knew this area was going to be affected from a visual perspective. So they designed an enhanced landscape buffer along New St. to softened the view shed. They are proposing a berm with plantings on top. This will give a 4 season buffer from New St. into the parking lot. Mr. Fiorello asked if they will grow as high as the trees being removed. Mr. Rosati said not all of them because ornamental trees do not grow as high as other trees. There are some trees that can get to a substantial height. Mr. Fiorello asked why remove them in the first place. Mr. Rosati said they are removing the ones that are closer to the proposed array and installing them closer to New St. so they get the clearance. They are being removed for shade. Mr. Rosati pointed out where the arrays would be located. Most of the trees will be removed from the islands and that area along New St. They will also be trimming some of the trees that are not really physical impediments.

Mr. Lemanowicz pointed out that the Environmental Impact Statement shows an area where there is a curb and guardrail. They will have room to put them in the area of guardrail and will just be trimming the trees. The arrays will be pointed downward into the parking lot.

Mr. Juzdan thought the driveways are in need of repair and asked if that would be done. Mr. Rosati said it is not part of this project and it's the owner's responsibility to improve and maintain.

Mr. Solfaro said in his 4/24/15 report he had a concern relative to the drive aisles and pavement and there condition. They noted it would be better to address it now as opposed to after construction of arrays. The Board may want to consider it and have it as a condition of approval. It is not the entire lot but there are many areas of concern that may need to be addressed. Mr. Rosati said it is an item for the owner of the facility but once the arrays are up there are ways to get the lots paved.

Mr. Juzdan asked if the grass area is going to be removed also. Mr. Rosati said they are proposing to leave the grass and the rock coverage will stay also. They are planning some shrubs on the edges of the islands. Mr. Rosati said they would need to plant shade tolerant shrubs.

Mr. Rosati said the site is served by a loop road and off that road are the parking areas. They are proposing the arrays in the parking areas. In Garret Mountain 1 they are proposing 6900 modules in 394 strings. In Garret Mountain 3 they have 2500 modules and 142 strings. There will be two types of arrays. The arrays will be tilted to the path of the sun. Along New St will be the low side and the high side will be toward Garret Mountain 1.

They will all be facing in the same direction. They are honoring the drive aisles that exist and they will maintain the current width. There will be no arrays along the loop road so they have full movement there. They are not showing any arrays in the garbage areas. They are keeping all the arrays in the parking areas away from the buildings.

Mr. Juzdan said for the record the other building is Garret Mountain 5 and not 2.

Mr. Rosati said they will be removing some lights and to supplement they will be installing LED lights.

Mr. Juzdan said there is some parking under the building and asked if it would get dark. Mr. Rosati said there are no arrays around the perimeter of the building. The closest array is on the other side of the loop road. Any lighting that is not in a place where there will be an array will remain in place.

Mr. Rosati referred to Mr. Solfaro's review letter. He described the proposed footings and how they would be secured. The plan is to have a pier footing. The columns will be 18' on center. There will be no blasting to get the foundations installed. This facility is designed in compliance with all the building codes.

Mr. Rosati said there are ADA parking spaces under the building at 3 Garret Mountain Plaza but there are also several on the north side of the perimeter and they will update the plan to show they are striped handicap spots. There is additional striping on site but if it is determined more is required they will revise the plan accordingly. They are honoring the loop road and the areas of the perimeter of the buildings so for emergency purposes they are not impeding the flow of those vehicles.

Mr. Rosati said in regard to the impervious coverage the maximum allowable is 65%. So they looked at it on a lot to lot basis. Lot 1 existing is 52.7% and proposed is 57.29%. Lot 1.01 existing is 51.33% and proposed is 51.56%. Lot 1.02 existing is 2.85% and they are proposing 2.86% and Lot 2 existing is 60.34% and proposed is 60.37%. There are no variances required. Mr. Solfaro asked that all the information be sent to the Board professionals and made part of the plans. Mr. Beck agreed.

Mr. Rosati said they will provide the Board professionals with all calculations, revised plans and surveys that are noted in the letters.

Mr. Solfaro asked if a review was done by the Fire Official. Mr. Rosati said they did not receive a report. Mr. Solfaro felt that a review should be done to confirm the witness's testimony. Mr. Beck had no objection to making it a condition of approval. The applicant has no objection to meeting with the Fire Official.

Mr. Lemanowicz asked where the proposed trees located relative to New St. Mr. Rosati said off the paved right of way it looks like the closest is about 10' from the traveled right of way. The power lines cross to the opposite side of the street before that. The berm is about

5' at its highest point. Mr. Lemanowicz said a garbage truck is not going to make it under the panel. Mr. Rosati said he will work it out with the Board engineer.

PUBLIC OPEN – Questions
PUBLIC CLOSED

John Towle, Senior VP of Safari Energy, was sworn in. He said a kiosk is not planned here because the customer has not requested it. They have done it before and would be happy to do it here. He said there are vehicles for milling, maintenance, snowplowing and paving after the arrays are installed. Mr. Towle said on a monthly basis the customer is credited on a retail basis for the power that flows back to the grid and the amount of power that they get from the grid. Each bill from the utility then shows what is due. In this case they would be paying about 20% of what they were paying before for the power that was sent to the site. At the end of the year whatever happened to be net credited going the other way does not get reimbursed at a retail rate but at a rate called cost of avoided generation which is almost like a wholesale rate. They do not profit from any extra being generated.

James T. Kyle, Planner, was sworn in. He stated his qualifications and was accepted as an expert. Two aerial photos from his 5/7/15 report was marked A-2. He marked a series of 4 photos regarding lighting and the type of carport to be installed on site A-3. He pointed out the inverters which are relatively small on the photos. He has visited the site and reviewed the Master Plan and Zoning Ordinance , all the plans and professional reports.

Mr. Kyle stated the site is located to the south of Route 80. New St. is to the east, Squirrelwood Rd. to the south and the college is located to the south. He described the area. The project is located in the PUD-A. He described the permitted uses and noted there are no accessory uses permitted in the zone. Solar installation is not addressed in any Borough ordinance so they are requesting a use variance. There are also some bulk variances needed which is 13.8' front yard setback at the northwest corner of the lot where 30' is required. The planner also identified the side yard setback variance that is needed for each lot because the panels run from lot to lot which creates a 0' setback. There is also a rear yard condition on Lot 1.01 for the same thing.

Mr. Kyle stated his report has been officially made a part of the record so he summarized his report. He stated that the legislature amended the MLUL in 2002 to include solar and wind generated facilities as an inherently beneficial use. That type of use enjoys more leeway in terms of the legal proofs that need to be presented. If the use is inherently beneficial it presumptively satisfies the positive criteria. They do not have to show that the site is particularly suited for the use. The other part of the criteria that has been modified by the court relates to the negative criteria. The court recognized there was a difference between the level of proof that has to be done for an inherently beneficial use. There is a 4 part test identified by the court for the negative criteria. In terms of the public interest at stake what they are proposing here will offset a fairly sizable amount of the power these office buildings use on a monthly and yearly basis. The obvious benefit is reduction on coal and other carbon burning sources used to provide energy. When you look at the energy Master Plan in NJ they talk about how these type of projects benefit the area. New Jersey has to

sometimes go out and buy power from other states. This type of project would eliminate some of this. The Borough adopted a sustainability element which specifically said the Borough wants to promote the use of solar panels. They feel there is a benefit to the public good. In his estimation this is a passive type of installation with no moving parts or motors. It is relatively benign. The carports systems have come much lower to the ground so they are more of an accessory structure on the site. There are residential uses along the perimeter but the site is dominated by these office buildings. There is a significant amount of natural buffering. They met on the site and felt if they increased the buffering they could cut off a lot of the visual impact along New St. He described the proposed landscaping. He said when the roadway project was done on Squirrelwood Rd. they put in a retaining wall that varies from 12' to about 8'. He said for the most part along Squirrelwood Rd. you would only be looking at the top of the carports. The first car port at 1 Garret Mountain Plaza will be visible but the rest would be less visible. Based on what they have seen he doesn't feel there will be a detrimental impact to the area.

Mr. Kyle described the lighting. He pointed out the lighting on the photos. He said with the canopies above the cars they will actually cut a lot of glare.

Mr. Kyle said they will be adding the landscaping or contributing to the fund. They are open to discuss it with the Board professionals. He felt if you compare the benefits to the detriments the benefits would outweigh the detriments substantially in this case and the Board could grant the D variance. Mr. Kyle felt the bulk variances are relatively minor and could be subsumed in the use variance. Based on the evidence and information they have provided the Board can grant the use and bulk variances. There will be no detriment to the surrounding area as a result of this project and no substantial impact on the intent and purpose of the zoning ordinance.

Mr. Fazio said he has seen other solar carports and remember them being very high and his concern is that at 8' on one end he thinks some people could get on top of them. Mr. Towle said the lower structures are a visual element. He did not think you could jump up on an 8 ½ ' structure but they could be made higher if the Board would like.

Mr. Bargiel said his concern is height. He asked about garbage trucks and fire trucks being able to maneuver the site. He asked about a car fire. Mr., Ivins said there are disconnects in multiple locations. You can throw a single switch and shut down the whole thing. There are also subpanels where you can shut off certain areas. There are code requirements on the labeling that the fire department is used to seeing.

Mr. Fiorello asked if the applicant would comply to all reasonable requests by the Fire Dept. once they get a report and that would be a condition of any approval.

Mr. Juzdan asked about the replacement of trees. Mr. Lemanowicz said he was not sure what the tree ordinance requires but they could go out and walk the site and determine what could be reasonably replaced and the rest would go to a tree fund.

Mr. Fiorello asked about the tree ordinance and who would make the determination that they should be replaced. Mr. Beck said the tree removal and protection ordinance which calls for a one to one replacement or in lieu of that provide a sum of money equal to the cost of those plantings. In this instance the proposed removal was about 65 trees more than they have currently shown as being replaced. They will work with the Board professionals to determine the replacement or providing money to the fund.

The Board Secretary advised the Chairman that the DPW Superintendent enforces the tree ordinance and it should be addressed to him. Mr. Solfaro said he has a good relationship with the DPW and he will discuss it with him. They will be removing 149 trees, a replacement of 92 trees and also proposing 396 shrubs. They did not know if the ordinance gives credit for shrubs. They will not be replacing 57 trees and it will be determined how they will proceed as a condition of approval.

Mr. Dicristina said along New St. there would be some trees to remain. Mr. Rosati said the trees they are removing near New St. are mainly along the border of the parking area because they are going to shade the array. They are leaving the area along the outcropping that they are not touching. Mr. Dicristina asked if they were leaving some of the mature trees. Mr. Rosati said yes.

Mr. Lemanowicz said he is not getting the same number of trees. He said they are proposing ornamental trees that don't grow as large as other trees and he did not know if they could be counted as replacement trees. Mr. Juzdan thought the DPW Superintendent should review the plan and make a decision on the count. Mr. Solfaro will review the plan with Mr. Galbraith. Mr. Fiorello felt the Board should make the decision. Mr. Rosati said there are several type of trees on the schedule. He noted that the replacement ordinance does not say it has to be the same tree. He suggested reviewing it with the DPW Supervisor and determine what is needed and they will comply with the township tree ordinance. The size of the trees must meet the ordinance requirements to count as a replacement.

Mr. Githens asked how many of the trees are coming off the islands. Mr. Rosati said about 90% of them.

Mr. Lemanowicz said in his report he noted the ordinance gives some maximum area for building coverage and it is broken down in stories. The panels are mounted as carports and that would seem to be a building which has a roof and therefore would seem that item should be acknowledged. Mr. Beck respectfully disagreed and felt that this was not a building. It is simply a steel structure that is open and it is an accessory structure. Mr. Lemanowicz said the issue is that the ordinance specifically limits visible mass. The ordinance adjusts the coverage based on the height. Mr. Juzdan said when he thinks of a roof he thinks of something that would completely cover and area and these have slots and openings. Mr. Lemanowicz felt the intent was to control the visibly mass of structures or buildings on the property. Mr. Beck again disagreed and said it was not a building. Mr. Juzdan asked him to sum up his thought. Mr. Lemanowicz said the ordinance provides limits for building coverage based upon height. He is saying there seems to be some contemplation that this could be considered a one story building because it has a roof like

structure and people occupy it on a temporary basis. Mr. Beck read the Board the definition of building. He said it does not have a roof and it is not for occupancy and it is not a building in his opinion. Mr. Beck said his professional and legal opinion is there is no one story building being proposed on this site. The portion of the ordinance clearly regulates mid-rise office buildings which are permitted in the zone. Mr. Kyle said the way this is written it was clearly aimed at office buildings. Mr. Fiorello agreed.

Mr. Lemanowicz said obviously this is an inherently beneficial use but in this case they are sacrificing a very vegetated site for solar. He said when the solar panels are there it will look like an empty black parking lot but what you won't have are the trees that are substantially higher than the solar panels that block the office building. This is a different application then they are used to seeing. Here we have two issues that are environmentally beneficial. Mr. Juzdan asked if the Board was okay with what is being explained by their planner. This is the first time that this type of decision has to be made by giving up one type of green for another. Mr. Fazio felt they are progressing.

PUBLIC OPEN

Ruth Patterson, 229 New St., was sworn in. She felt that reports from the fire and police departments are important. She said she can't visualize these carports over all the parking lots. She asked if there would be security cameras under the solar panels for the people. Mr. Beck said there are no new security cameras proposed. She felt there would be no coverage on Squirrelwood Rd. She felt the county should have input. Mr. Beck said an application was made to the county and the only comment was that they wanted a contribution of moneys. There were no additional comments. The county letter for the conditional approval dated 1/30/15 was marked A4.

Ms. Patterson felt the berm should be a substantial buffer. This is a big thing to look at. She felt ornamental trees were too small. She said her home faces the buildings and right now there are huge pine trees that block the buildings from her view. She felt this is the type of coverage New St. should have. She felt this covering will look terrible and felt they should be on the roof.

Mr. Rosati referred to A-1. He said the proposed berm is approximately 80' in length. Along New St. there are areas higher in elevation and then there is an area that has a view into the parking area. They are raising the area and on top and sides of that they are planting evergreen trees, ornamental trees and shrubs. A 6' tall person would be looking at the bottom of the berm and the trees and shrubs would be above the berm. The berm is there to be planted upon. They are also planting in front of the rock outcropping. The berm will be approximately 30' wide. Mr. Solfaro asked about the trees in the berms and asked how high they would grow to. Mr. Rosati said based on his experience he thought they would grow to 20' -30'. The shrubs and ornamental trees would not grow that high.

Ms. Patterson said the other issue is Squirrelwood Rd. where there is nothing to buffer that. Mr. Juzdan asked if they would be planting on Squirrelwood Rd. Mr. Rosati said on Squirrelwood Rd. they are at a huge disadvantage because they have no room to plant

anything because of the new wall that the county installed. The county did not plant anything on the top of the wall but there are some at the base of the wall. They were planning on additional plantings in the area but it is not on their property.

Ms. Patterson thought this zone was very carefully thought about and they may not have thought about solar at the time it was done but they would like to keep the woods in Woodland Park. They also want to take the reservoir up the street and put cement in. She felt they would not be living up to Woodland Park by removing trees. She said she knows they are replacing trees but did not feel the project fits in. She asked what the benefit to the town was. Mr. Kyle said at its core it's a benefit to people in the state and county and if you look at the Master Plan it specifically promotes solar panels. If they had enough roof area to do this type of install here they would. It supports existing businesses, its economic development policies and Master Plan sustainability policies. He understands it's a tradeoff but with the tree replacement they are offering it's a benefit. Any detriment has to be very substantial when you are talking inherently beneficial use. This goes to the Master Plan policies that it promotes. Ms. Patterson asked if this would add tax ratables. She knows some of the sites with arrays but felt most of them were out of the public view. Mr. Rosati pointed out where the arrays would be located.

PUBLIC CLOSED

Mr. Beck stated this has been legislatively determined to be an inherently beneficial use. The Board has to weigh the positive and negative. In his opinion the impact isn't necessarily the tree removal because the applicant has agreed to replace the trees and build a berm and adding additional shrubs. The applicant is making a good faith effort to be a good neighbor. He believes the Board can grant the variance because there is no detriment to the zoning ordinance or Master Plan. The applicant has agreed to all conditions. He requested the Board consider granting the application.

Mr. Fiorello explained the use variance application. Special reasons have to be proven and the negative requirements must be met. The legislature has taken part of that away from the Board by amending a statute that says this type of use is inherently beneficial so that meets the special reasons. They still must meet the negative criteria that is set forth in a case called Sica which is a 4 part test. You have to determine the public interest at stake, identify the detrimental effects if you grant the variance, determine whether they can reduce the detrimental effects by imposing reasonable conditions and they must weigh the positive and negative criteria to determine a substantial detriment to the public good. Normally in a special use case you have to say whether it violates the Master Plan and it does not in this case because it specifically includes this type of use but is not in the zoning ordinance yet.

Mr. Githens felt it was a difficult decision to make. Mr. Bargiel said he is for going green and it is the way of the future. He is not too concerned about the tree removal and replacement. The only thing that troubles him is other towns have done it but they have many regulations. He felt the Borough should have an ordinance. Mr. Fiorello said the Board has their expert's opinions on the application and conditions can be used. Mr. Fazio asked if structure of this size have been built in other communities. Mr. Towle said this is a

large project but it is not huge. There are some that are 3 to 4 times bigger. Some have been installed in highly visible areas to show support of solar energy. They install one about the same size at a mall. Mr. Beck said in Ocean County at Great Adventure the board has approved a project that is 5 times the size of this project to run the entire amusement park.

Mr. Fazio asked about kiosk and the benefit of it. He asked if that would be educational. Mr. Juzdan said that could be a condition. Mr. Beck said the applicant would agree to install the kiosk.

Mr. Lemanowicz stated this is a difficult position for the Board because they are choosing between two things that are both promoted in the Master Plan. He suggested the end islands keep some trees to compromise. Mr. Juzdan felt people would not notice trees were left on the ends but thought they would be awed by the project. He felt it was everyone's own perception.

A motion to approve with the conditions that the Fire Dept. review the application and recommendations be complied with, engineer reviews the height of garbage trucks, the kiosk be put in the middle school and the library, tree replacement be reviewed by the DPW Superintendent, Police Dept. review the application, revise the survey and compliance with all Board, County, State and other government agencies was made by Mr. Lijoi, second by Mr. Githens and approved by a vote of 5 -2.

A motion to adjourn was made by Mr. Dicristina, second by Mr. Mr. Bargiel, all in favor. Meeting adjourned.