

Florence, New Jersey 08518-2323
June 26, 2012

A special meeting of the Florence Township Zoning Board of Adjustment was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Zekas called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Member Taylor then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Brett Buddenbaum	Candida Taylor
Keith Crowell	B. Michael Zekas
John Groze	Lou Sovak
Larry Lutz	Anant Patel

ABSENT: William Bott

ALSO PRESENT: Solicitor David Frank

Chairman Zekas said there is one application on the agenda for the evening, ZB#2012-05, Florence PV, LLC. Applicant is requesting use variance and preliminary and final major site plan approval to permit construction of a solar photovoltaic electricity generating facility for property located on Bustleton Road, Florence Township, Block 160.01, Lot 5 and Block 170, Lot 1.01.

Chairman Zekas said there was correspondence from the applicant's attorney requesting the application be continued to the next scheduled meeting of the Board. The next scheduled meeting of the Board is July 24, but there are already four applications on the agenda for that meeting. He said the application will be heard at another special meeting on July 31, 2012 at 7:30pm in the Municipal Building.

Motion of Taylor, seconded by Lutz to grant the applicant's request for a continuance.

Upon roll call the Board voted as follows:

YEAS:	Buddenbaum, Crowell, Groze, Lutz, Taylor, Zekas, Sovak
NOES:	None
ABSENT:	Bott

Solicitor Frank responded to a question about postponement. He said it is possible that the applicant would continue again. Board members said they do not have control over

that. Solicitor Frank said it is possible for the public to have a hearing postponed under certain circumstances. He said as he understands it, this specific postponement by the applicant is because the applicant plans to introduce new drawings that will address some of the concerns raised at former meetings. He said if the drawings are delivered to the Board so late that the Board and public would not have an opportunity to review the new drawings, he said the individuals or their counsel could request an adjournment so there was ample time to review. He said he thinks there should be sufficient time for drawings to be submitted, and he said hopefully public comment will be condensed.

Motion of Taylor, seconded by Groze to open the meeting to the public.

Solicitor Frank advised everyone that the applicant is not present so no comments on the application or any other applications can be made. Comments are only allowed on action the Board took tonight or on procedures going forward.

Joseph Johnson, 2022 Bustleton Road, Florence, asked if there is a requirement for how far in advance the revised plans need to be submitted. Solicitor Frank said according to Statute, the applicant must have the drawings submitted ten days prior to the meeting, but nothing precludes an applicant from bringing supplemental material to the hearing. He said if the changes are significant the ten day window would apply, if there were only small changes they could present at the meeting.

Mr. Johnson asked if the town received paper and electronic copies of the plan. He was advised that only paper copies are submitted.

Dave VanCamp, 7 Canidae Street, Burlington, said he is concerned about the logistics for the next meeting. He said he feels the venue will be too small to hold all of the people who would like to attend. He said it was an effort to get people to stay home from this meeting after they were informed the hearing was going to be continued to another meeting. He asked if there was a way to consider a larger venue. Solicitor Frank said there has been a lot of discussion on this issue, He said it creates a lot of problems such as recording, public notice of the change; he said it is hard to move a meeting. He said the preference is to have the meeting at the current location, but there is an occupancy limit. He suggested waiting to see what is submitted and gauge the level of public concern after review. He noted that if Mr. VanCamp can supply a firm headcount before time, it would help. Solicitor Frank explained that there is research being done into a different venue, he asked that residents stay in communication with the Board if they feel there will be many people.

Fred Heydorn, 2018 Bustleton Road, Florence, asked when the board was made aware of the applicant's desire to continue to another meeting. Solicitor Frank informed him it was yesterday. Mr. Heydorn asked if there was a requirement for an applicant to inform the Board a certain amount of time before. He was told there is no requirement.

John Duffy, 2023 Bustleton Road, Florence, asked if there is any disqualification for a continuation. He wanted to know if the applicant would be able to just continue each

month. Solicitor Frank said reasonable requests for adjournment need to be accepted. The Board has an obligation to provide the applicant with due process and also the public must be given due process. He said the Board can dismiss an application with or without prejudice. If it is without prejudice the applicant can reapply at a later time. He said it would be unreasonable for the Board to jump to dismiss the application at this point. He said the applicant's planner and engineer were not available, and they would need to be present to answer questions.

Motion of Crowell, seconded by Taylor to close the public portion of the meeting.

CORRESPONDENCE

- A. Letter from William J. Kearns, Esq., dated June 19, 2012 regarding Florence PV, LLC.
- B. Letter from Anthony J. Carnevale, Jr., Burlington Township Municipal Clerk, dated June 20, 2012 including a copy of Burlington Township Resolution 2012-R-153.
- C. Letter from Scott W. Hatfield, PE, CME, Director, Burlington Township Department of Engineering, dated June 22, 2012 regarding Florence PV, LLC.

Chairman Zekas said all three letters deal with the application but were really for informational purposes.

Motion was made by Taylor, seconded by Groze to receive and file Correspondence A through C, as well as a June 18, 2012 letter from the Board of Chosen Freeholders. Motion unanimously approved by all members present.

Member Crowell directed everyone to review the letter from the Board of Chosen Freeholders dated June 18, 2012. He said it proposed many changes for the project.

Solicitor Frank advised that members not discuss the specifics of the project with the applicant not present.

There was discussion about the plans being published on the internet. The plans are available for public review even though it is a copyrighted document. Solicitor Frank said there is a fair use argument that it can be photographed and published on-line.

Solicitor Frank said he would like to discuss the nature of evidence. He said it important that the Board understand there is a difference between opinion and evidence. Decisions must be based on competent evidence. He said a legislative body can look at a situation and can say it is just wrong. This Board has to look at the evidence and decide.

Member Taylor said that the people come to the meetings to speak based on their opinion; she said she will not discount what they say because there is not a documented

list of evidence. Solicitor Frank said photos and computer renderings were shown and they are evidence. An opinion is not evidence. He said when a decision is made you need to be able to point to evidence to back it up.

Member Taylor disagrees that opinion should not be considered. Solicitor Frank said the applicants are entitled to a decision based on evidence and not opinion. He gave an example of how opinion should not be used for a decision at a hearing saying if someone were on trial for their life and all kinds of groups and individuals wrote letters saying the person was guilty, it would not be fair to base a decision just on those opinions. The facts need to be presented and an unbiased decision made.

Member Taylor said it is not really the same thing because the applicant will not go to jail for life. She said that if the people's opinion won't count why bother having them come here. Solicitor Frank said the process of presentation and the voicing of opinions usually ends up as a compromise and change to make both sides happy. He said the Board must also weigh the credibility of the evidence. The decision must be based on what you saw.

Chairman Zekas said that this shows the importance of evidence. If an application did go to court, the evidence would support how a decision was reached. He urged the members to keep this in mind when you cast a vote or make a motion.

Solicitor Frank said there are built in proofs for commercial variances. He said these are tools for the Board to use to weigh the good versus the bad.

Member Taylor said she has been thinking about inherently beneficial uses. She said not everything is suited even though it is an inherently beneficial use it might not be the right place, time, look, etc. Solicitor Frank said that is correct, but you need to express that with facts. Solicitor Frank said that applicants must prove the bad criteria. There have been applications that were denied appealed and the determination was upheld because of the negative criteria.

Member Crowell asked if there is a way to require electronic copies of submitted plans. Solicitor Frank said some towns require that by ordinance. Members discussed getting the plans electronically. The pros and cons were discussed. Members would like to save the paper, but there would need to be more software and possible problems with the space the files take up.

Member Patel asked about Burlington officials, if they would be considered experts or regular members of the public. Solicitor Frank said they would be sworn in as experts.

Member Crowell said there are experts on both sides with opposite opinions. Solicitor Frank advised members to weigh the credibility and see what evidence is stronger. He said the public will give their opinions and the professionals on both sides will give their presentations.

PUBLIC COMMENTS

There was no public in attendance to offer any comments.

There being no further business motion was made by Buddenbaum, seconded by Lutz to adjourn the meeting at 8:29 p.m.

William E. Bott, Secretary

WEB/aek