

Call to Order:

The Zoning Board of Adjustment meeting was called to order at 6:31 p.m. on September 21, 2023 by Chairman Cummiskey who read the following statement, “Notice of this meeting was given as required by the Open Public Meetings Act in the Annual Notice of Meetings on January 20, 2023 and a copy was posted on the 2nd floor bulletin board in Town Hall and also posted on the Township’s website. In addition, notice of this evening’s public hearing was published on September 11, 2023. Be advised no new item of business will be started after 10:30 p.m. and the meeting shall terminate no later than 11:00 p.m.”

The Board saluted the Flag.

Roll call; Mr. Colavita, Mr. Cummiskey, Mr. Kerr, Mr. Kozak, Mr. Powers, Mr. Salvadori, Mr. Fiore, Solicitor, Mr. Kernan, Planner, Mr. Sander, Engineer. Also present; Ms. Orbaczewski, Secretary, Ms. Gallagher, Clerk Transcriber. Excused; Mr. Carino, Mr. Rice, Mr. Seidenberg, Mr. Heverly.

Public Hearings:

1. #23-43 – Karen Hutchko – Rear Yard Variance

The applicant is requesting a rear yard variance to allow 2.99 feet where 20 feet is required for the construction of a 12’ x 22’ sunroom, along with any other variances or waivers deemed necessary by the Board. The property is located at 759 Barbados Drive, also known as Block 9.0306, Lot 20 in the RA Zoning District.

Motion passed to deem the application complete. Karen Hutchko and Tom Mazza were sworn in by Mr. Fiore. Mr. Mazza stated they are proposing a sunroom on top of a deck in the rear of Karen’s home. Mr. Kozak asked if the deck was already existing. Mr. Mazza replied no. Mr. Colavita asked if the HOA approved this. Ms. Hutchko replied yes. Mr. Cummiskey asked if there were any drainage problems on the property. Ms. Hutchko replied no.

Motion passed to open the hearing to the public. There being none, motion passed to close the hearing to the public.

Motion to approve by Mr. Colavita, seconded by Mr. Powers. Roll call vote; Ayes- Mr. Colavita, Mr. Powers, Mr. Cummiskey, Mr. Kerr, Mr. Kozak, Mr. Salvadori. Nays- Zero.

2. #23-21 & #523-SP – Noria Chaberton JV, LLC – Use Variance and Site Plan

The applicant is requesting a use variance to allow a secondary/accessory use to the existing resource extraction use on the property by proposing a floating solar array. The property is located on Blue Bell Road, also known as Block 9301, Lots 10 and 11, in the RD-RR Zoning District. The applicant is requesting preliminary and final major site plan approval to allow a floating solar array as a secondary/accessory use to the existing resource extraction use, which will generate power for the mining operation and to Atlantic City Electric for distribution.

Public Hearings: (continued)

2. #23-21 & #523-SP – Noria Chaberton JV, LLC (continued)

Motion passed to deem the application complete. Robert Baranowski was present as attorney for the applicant. Mr. Baranowski stated that they are proposing to develop a floating array of solar to be located on a pond in a previously mined area within an existing active sand and gravel mining site. He stated there are no proposed changes to the mining operation. Mr. Baranowski stated that ground mounted solar would be permitted accessory use in this zoning district but a floating solar array is not. Mr. Baranowski stated that the solar will supply power to the resource extraction facility as well as generating power to be sold to consumers. Mr. Baranowski reiterated that part of the project is in Monroe and part of it is in Franklin Township as well. Mr. Baranowski stated that the panels will not be visible off premise, no glare, and no noise except that equivalent to a small refrigerator. Mr. Baranowski added that it will not affect traffic as there will only be need for minimal maintenance trips. Mr. Baranowski stated they did get a Certificate of Filing from the Pinelands before appearing before this Board. Mr. Baranowski stated that the Pinelands have a provision that states once the mining operations cease, the solar panels must be decommissioned and removed within six months. Mr. Kozak asked if Monroe approves this and Franklin does not what would happen. Mr. Baranowski replied that the project could not go forward if that were to happen.

Dyanna McMullen and Tiffany Morrissey were both sworn in by Mr. Fiore.

Ms. McMullen, professional engineer for the applicant, gave the Board a summary of her credentials and was accepted by the Board. Ms. McMullen started by referring to Exhibit A-1, which is an aerial view of the entire site. She pointed to the floating solar array and indicated there is a portion of solar on the Monroe Township side, and that is the only part of the project that will impact Monroe Township. Mr. Baranowski asked Ms. McMullen if she could explain how the solar panels will be installed and how they will be connected to land. Ms. McMullen stated that the solar panels are on floating docks that are anchored to be stationary and they are all tethered together. Ms. McMullen stated there is an interconnect that way all the panels are connected and able to transmit power to the inverter. She stated that the inverter is located on the Franklin Township side of the site. Ms. McMullen stated there will be a buried line that will travel along the existing access road and connect to the poles along the road, also located in Franklin.

Ms. McMullen stated that the pond is down about 15 feet from the surrounding area that is buffered by woods so there would be no opportunity for glare or sound issues. Mr. Baranowski stated that there was over 300' of wooded buffer. Ms. McMullen affirmed. Mr. Baranowski asked if wooded buffer would also help mitigate any sound issues from the inverter. Ms. McMullen affirmed. Mr. Baranowski asked if the noise from the equipment was similar to a refrigerator. Ms. McMullen agreed. Mr. Baranowski asked if the position of the panels prevent glare applies to the panels and the supports that hold them. Ms. McMullen replied yes. Mr. Baranowski asked if the solar was being placed in a non-active area of the mine. Ms. McMullen replied yes, this area has been mined to completion.

Public Hearings: (continued)

2. #23-21 & #523-SP – Noria Chaberton JV, LLC (continued)

Mr. Kozak asked why would they put the solar in the water instead of on the land. Ms. McMullen replied that it's the least impactful and this area has already been disturbed and they wouldn't have to take any trees down. Mr. Kozak asked if this solar could pollute the pond water. Ms. McMullen stated that there's no pollution that can be caused by the floating solar. Mr. Kozak asked how deep it was. Ms. McMullen replied it's about ten feet deep in that area. Mr. Fiore asked about cleaning the panels. Ms. McMullen stated there are no cleaners used on the surface of the panels. Mr. Kozak asked if there is typically any maintenance on the pontoons. Mr. Baranowski replied they compare it to a floating dock.

Mr. Kerr asked if it would interfere with airplanes. Mr. Baranowski submitted a letter from the FAA as Exhibit A-2. He stated that the letter indicated the panels were of no hazard to air navigation. Ms. McMullen agreed. Ms. McMullen referred to an array of photos labeled Exhibit A-3. She described that they were photos of current site conditions in the area where the panels would go. Mr. Kerr asked if there was a fence around the property. Ms. McMullen replied that would be part of the mining operation. Mr. Baranowski added that the mining company actively monitors who accesses the property to make sure no one is trespassing.

Tiffany Morrissey qualified herself for the Board and was accepted as a professional planner. Ms. Morrissey stated that the MLUL reads that a solar operation is considered an inherently beneficial use. She stated that if you are found to be inherently beneficial, you automatically meet the positive criteria. Ms. Morrissey stated that the Pinelands Certificate of Filing states that when the resource operation is done, the solar must be decommissioned. Ms. Morrissey explained why this is an inherently beneficial use and references the State's Energy Master Plan. Ms. Morrissey described the proposed site area and pointed out how the pond is below ground level and there is a substantial buffer of trees so there will be no visual impact. Ms. Morrissey stated that the solar panels have an anti-glare surface, and referred to the FAA letter. Ms. Morrissey stated that the inverter will be in the Franklin Township portion of the property and this is no louder than a standard HVAC unit. Ms. Morrissey stated there is a decommissioning requirement and the required documents will be turned in to the Board as a condition of approval.

Ms. Morrissey stated that she believes this proposed use does not impair what is intended in the zoning ordinance. Ms. Morrissey stated that the updated Master Plan includes goals for sustainable energy and this project enhances that goal. Ms. Morrissey referred to Mr. Kozak's previous question if the solar could pollute the pond. She stated that in Short Hills, there is a large solar array on a water reservoir and that is a testament to the fact that the solar panels would not be a pollution issue. Ms. Morrissey stated that there is no substantial detriment to the zoning ordinance, the Master Plan, or to the public good. Mr. Kozak asked what is the physical size of the portion of solar that will be in Monroe. Ms. McMullen stated the total array is about 10 acres, and the portion in Monroe will be 2 acres. Mr. Kozak asked if they wanted to expand in the future would they have to come back before the Board. Mr. Fiore replied yes, that they would have to come back to the Board.

Public Hearings:

2. #23-21 & #523-SP – Noria Chaberton JV, LLC (continued)

Mr. Sander stated that he does not have a problem with the project. Mr. Fiore asked if counsel has agreed to all the comments in Mr. Sander's report. Mr. Sander replied yes. Mr. Fiore ordered Mr. Sander's report to be marked Exhibit A-4.

Mr. Kernan asked Ms. McMullen about the colors and textures of the panels. Ms. McMullen stated that it won't be an issue because you won't see it. Mr. Kernan agreed that that doesn't apply here. Mr. Kernan asked about the surfaces of the framing and asked if they were non-reflective. Ms. McMullen affirmed. Mr. Kernan added that the Township also has their own abandonment requirements. Mr. Baranowski stated that he agreed with those.

Motion passed to open the hearing to the public.

A. William Blaney was sworn in by Mr. Fiore. Mr. Blaney passed out packets he brought. Mr. Fiore ordered the packet to be marked as Exhibit Blaney 1. Mr. Blaney stated that he believes there is a statute that says you aren't supposed to put solar on a sand mine that is subject to restoration. Mr. Blaney believes this section is supposed to be restored. Mr. Blaney believes that any overflow could pollute the streams and lakes. Mr. Blaney stated there is no fence. Mr. Blaney stated there are kids on dirt bikes out there all the time. Mr. Blaney disputes that this is an inherently beneficial use. Mr. Blaney believes this does not fit the Master Plan.

Mr. Kerr asked if the neighbors were notified. Mr. Fiore stated the he believes notice was given but will defer to the applicant's attorney. Ms. Orbaczewski stated that adequate notice was given, the applicant resubmitted for a list of names for every lot for that mining operation and all the people within 200' including the Franklin Township people. Mr. Blaney replied he was fine with that. Mr. Kerr asked if the site was supposed to be restored why wasn't it followed up on. Mr. Fiore explained that enforcement is not the Board's jurisdiction. Mr. Fiore stated that the applicant's attorney can speak on that.

Mr. Blaney stated that he believes they are violating the ordinance. Mr. Fiore stated that they are not cited or violated at this time. Mr. Fiore explained that the Board cannot deny based on the allegation that they are in violation. Mr. Kozak stated that the applicant said they got a Certificate of Filing. Mr. Fiore stated that the Pinelands can make their own regulations and that trumps the state statute.

Seeing no other public wishing to testify, a motion passed to close the hearing to the public.

Mr. Baranowski stated that Ms. Morrissey will address. Ms. Morrissey stated that the statute is referenced in the MLUL and it states it has to be permitted on any resource extraction location. Ms. Morrissey read directly from a few other references that this should and can be permitted. Mr. Baranowski stated that the mining pond stays a pond and the solar doesn't change any of the mining operations. Mr. Baranowski believed Mr. Blaney's interpretation of the statute is incorrect. Mr. Baranowski stated that after Mr. Blaney brought issue of the notice, the applicant did renounce

Public Hearings: (continued)

2. #23-21 & #523-SP – Noria Chaberton JV, LLC (continued)

to all property owners within 200’ of the entire mining property. Mr. Baranowski stated that the drainage issue indicates that it is an unlikely event that the pondwater would rise to cause overflow. Mr. Baranowski stated that he believes the mining property would not tolerate children running around and that statement by Mr. Blaney is inaccurate. Mr. Baranowski added that it would be highly unlikely they would be able to expand due to energy limitations.

Mr. Cummiskey asked Mr. Blaney if he had anything to add. Mr. Blaney stated that he did see children out there. He added that the planner cannot testify to legal opinions. Mr. Baranowski stated that Ms. Morrissey can certainly give her opinions of how the laws and regulation work together. Mr. Baranowski stated they would never have gotten the Certificate of Filing if the proposed use was inconsistent.

Mr. Fiore summarized the application for the Board.

Motion to approve the use variance by Mr. Kozak, seconded by Mr. Powers. Roll call vote; Ayes- Mr. Kozak, Mr. Powers, Mr. Colavita, Mr. Cummiskey, Mr. Kerr, Mr. Salvadori. Nays- Zero

Motion to approve the preliminary and final site plan by Mr. Powers, seconded by Mr. Kerr. Roll call vote; Ayes- Mr. Powers, Mr. Kerr, Mr. Colavita, Mr. Cummiskey, Mr. Kozak, Mr. Salvadori. Nays- Zero.

3. #23-33 & #526-SP – Ayaans Holding, LLC – Use Variance & Prelim & Final Site Plan

The applicant is requesting a use variance to allow more than one principal use on the property, as well as preliminary and final major site plan approval to allow the construction of an 11,520 square foot multi-tenant office/warehouse building with associated stormwater, parking and various other improvements to the site. The property is located at 1085 N. Black Horse Pike, also known as Block 1301, Lot 3, in the Commercial Zoning District.

Mr. Sander stated that the application is not complete, he recommends a waiver for topography. Motion passed to deem the application complete with the waiver.

Mr. Schwartz was present as attorney for the applicant. Also present; Asfar Ahmad, Brian Seidel and William Gilmore were all sworn in by Mr. Fiore. Mr. Schwartz stated in the back of the property, the applicant wants to add an 11,520 square foot multi-tenant warehouse building. Mr. Schwartz stated the only access to the property is from the Black Horse Pike.

Mr. Gilmore presented Exhibit 1 which he described as a color version of the site plan that was submitted. Mr. Gilmore certified himself and was accepted by the Board. Mr. Gilmore stated the rear of the building is stone and was used for parking and there is a small retention basin. Mr. Gilmore stated they plan to remove the stone and replace it with a warehouse/office building. He

Public Hearings: (continued)

2. #23-21 & #523-SP – Noria Chaberton JV, LLC (continued)

stated that the intent is to offer storage for the local tradesman to be able to get their equipment and trucks out of residential neighborhoods. Mr. Gilmore stated that they plan to add a 30' lane around the building and will provide parking. Mr. Gilmore stated that the stormwater management meets regulations. He added that they do not propose any improvements that will impact the DOT drainage at the highway. Mr. Gilmore stated they will provide drainage to the basin in the rear by the powerlines.

Mr. Gilmore stated the offices will have water, sewer and electric which will be brought in by the Pike. Mr. Gilmore stated they received a letter of no interest from NJ DOT. He stated the only change to the plan tonight is that they no longer want the fence that was going to separate the two uses on site. He added that it will be easier for circulation and in case of emergencies to not have a fence. Mr. Gilmore stated the trash enclosure will be in the back with an enclosure. Mr. Gilmore stated there are some existing nonconformities which Mr. Seidel will go over. Mr. Gilmore stated they meet the parking spaces requirement. Mr. Schwartz asked about the buffer in the rear that exists and that none of those trees would be removed. Mr. Gilmore agreed.

Mr. Kozak asked what type of building would it be. Mr. Gilmore replied a single floor pole barn. Mr. Kozak asked if there would be 10 spaces. Mr. Gilmore replied each space would have a place they could park a truck. Mr. Kozak asked if the trucks would be parked inside or outside. Mr. Gilmore replied that the units are deep to park trucks and trailers. Mr. Kozak stated that he's concerned about the renters keeping equipment outside. Mr. Kozak asked if there would be someone on site in an office. Mr. Ahmad replied that he will have a person there from 9-5.

Mr. Fiore asked about the parking when the future tenants have their employees parking there as well. Mr. Ahmad stated that each unit will be about 900 square feet and there is plenty of space inside the units to park vehicles as well. Mr. Gilmore stated they could try to add another row of parking in the rear. Mr. Kerr asked about sprinklers and HVAC. Mr. Kozak stated that is all covered under the Construction Office. Mr. Colavita asked if there was residential right behind the site. Mr. Gilmore replied yes, Fox Hollow.

Mr. Seidel reviewed the application for the Board and some of the previous testimony by Mr. Gilmore. Mr. Seidel stated that there is a 50' buffer requirement, but there are provisions that allow that down to 10'. He stated that the neighboring business has approximately 10' buffer and they are requesting 15'. Mr. Seidel stated they are not requesting relief regarding the buffers between the site and the residential property line. He stated that buffer will be a minimum of 91' to the rear property line. Mr. Seidel stated the use variance is needed due to the number of principal uses on the lot. Mr. Seidel stated that he does not believe this use to be characterized by light industrial. He believes the plan advances the purpose of zoning and enhance the general welfare. Mr. Seidel stated that there is no detriment to the public good.

Public Hearings: (continued)

3. #23-33 & #526-SP – Ayaans Holding, LLC (continued)

Mr. Schwartz handed out Exhibit A-2 which was an aerial context map of the site. Mr. Seidel pointed out the distance in the rear of the property to the residential area and the significant buffer that currently exists. Mr. Kozak asked what was the distance in the back to the residential. Mr. Seidel stated there was 143' from the proposed building to the rear property line and approximately 360' from the proposed building to the closest dwelling. Mr. Kozak asked what was the proposed height of the garage doors. Mr. Seidel replied 14 feet. Mr. Schwartz handed out Exhibit A-3 which was not the actual building plan. Mr. Kozak asked what color the building would be. Mr. Ahmad replied it would be neutral or off-white.

Mr. Sander stated that the applicant submitted stormwater management report and drainage plans that were acceptable. Mr. Sander stated that the lighting plan should be revised. Mr. Gilmore stated they will comply.

Mr. Kernan stated that he was satisfied with Mr. Seidel's testimony. He believes that the proposed use does fit the definition of light industrial, but he agrees that it's not light industrial that is anticipated. Mr. Kernan asked if additional parking would be added in the rear. Mr. Gilmore replied they could modify the parking. Mr. Kozak asked what type of vehicles would be allowed to be stored. Mr. Sander stated it is for motor vehicles. Mr. Kozak added they have to be registered. Mr. Kernan stated that he's not concerned with the proposed 15' side buffers. He stated that he would like to see a row of arborvitae in the back along the row of parking. Mr. Ahmad stated that Atlantic City Electric has historically used his property in order to access their easement in the back of the property. Mr. Schwartz added that's why they were no longer proposing a fence and also had not planned to add any vegetation to the back buffer. Mr. Fiore stated that he would add that they have to submit a new landscaping plan and revised parking for Mr. Kernan to review. Mr. Kernan asked if the lights would be on a timer. Mr. Ahmad replied they would be on a timer. Mr. Kernan asked about trash. Mr. Gilmore stated they will put an enclosure in the right rear. Mr. Cumiskey asked about hours of operations. Mr. Schwartz replied the tenants should be able to access it anytime.

Motion passed to open the hearing to the public.

- A. James O'Donnell of 1111 Black Horse Pike was sworn in by Mr. Fiore. Mr. O'Donnell is the owner of the Woodworks business next door. He stated he does not object to this application. He is concerned about trash or construction debris from the tenants that may end up on his property.
- B. Jeff Byorick of 1021 Woodhill Court was sworn in by Mr. Fiore. Mr. Byorick pointed out his home on the plan. Mr. Cumiskey asked if he had to look past Auto Lenders to see this new proposed building. Mr. Byorick replied he has a two-story house. Mr. Byorick stated he would like more of a buffer of trees. He is concerned about the noise from box trucks. Mr. Byorick is concerned about the lighting. Mr. Kozak stated that was already discussed and they will be on a timer. He is concerned about the drainage and possible flooding to his yard.

Public Hearings: (continued)

3. #23-33 & #526-SP – Ayaans Holding, LLC (continued)

Motion passed to close the hearing to the public.

Mr. Kozak asked Mr. Sander about the drainage. Mr. Sander stated that it flows back to the basin and infiltrates into the ground. Mr. Kozak asked about a 200-year storm. Mr. Sander replied if we have a 200-year storm water will be everywhere. Mr. Sander stated that the overflow drainage would be less than it is now. Mr. Gilmore stated that they did all the analysis with the new regulations. Mr. Gilmore stated they are proposing a larger basin and adding capacity to what is existing now. Mr. Kozak asked if they could put a little more of a buffer on the side. Mr. Gilmore replied they could find something to do there.

Mr. Ahmad stated that he already has a similar facility to this and that it would be very rare that a tenant would be there in the middle of the night with a box truck. Mr. Kozak stated they will put a condition until 10 pm. Mr. Ahmad stated he could add that in the lease. Mr. Kozak stated it should be a condition that there's no manufacturing or fabrication on site. Mr. Ahmad agreed. Mr. Fiore asked the hours of operation. Mr. Ahmad replied 7 to 10.

Mr. Fiore reviewed the application for the Board.

Motion to approve the use variance and the site plan by Mr. Powers, seconded by Mr. Colavita. Roll call vote; Ayes- Mr. Powers, Mr. Colavita, Mr. Cummiskey, Mr. Kerr, Mr. Kozak, Mr. Salvadori. Nays- Zero.

Public Portion:

Motion passed to open the hearing to the public. There being none, motion passed to close the hearing to the public.

Reports:

Ms. Orbaczewski reminded the Board of the special meeting on 9/27 at 6:00.

Minutes:

Motion passed to approve the meeting minutes from the September 7, 2023 regular meeting.

Adjournment:

Meeting adjourned at 9:48 p.m.

These minutes are an extract from the meeting that was held on the above date and are not a verbatim account or to be construed as an official transcript of the proceedings.

Respectfully submitted by: Amy Gallagher, Clerk Transcriber