

19-006

RESOLUTION OF MEMORIALIZATION GRANTING PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVALS WITH A PLANNING VARIANCE; ASSOCIATED BULK VARIANCE RELIEF; AND DESIGN WAIVERS TO PERMIT THE CONSTRUCTION OF A SOLAR GENERATING FACILITY ON LOT 3 IN BLOCK 8

Approved: October 23, 2019
Memorialized: November 20, 2019

WHEREAS, Lot 3 in Block 8 (“Property”) is owned by the Borough of Mt. Arlington and is located along Berkshire Avenue. It is the site of the former municipal landfill for the Borough which closed in 1989;

WHEREAS, the Property is approximately 36.61 acres of vacant land. A portion of the Property has been designated to be in the Highlands Preservation Area as defined by the New Jersey Highlands Water Protection and Planning Act;

WHEREAS, the governing body for the Borough authorized an investigation into whether Property would qualify as being an area in need of redevelopment;

WHEREAS, the investigation concluded that the Property did qualify as an area in need of redevelopment;

WHEREAS, following this finding, the “Mount Arlington Landfill Redevelopment Plan” (“Plan”), dated September 1, 2015 was drafted;

WHEREAS, on October 6, 2015, the Borough passed Ordinance No. 11-15 which adopted the Plan;

WHEREAS, the Plan calls a portion of the Redevelopment Area to be developed with a solar energy generating facility;

WHEREAS, the governing body subsequently issued a Request for Proposals for redevelopment of a portion of the Property with a solar farm;

WHEREAS, HESP Solar, LLC (“HESP”) was the vendor who submitted the successful response that was accepted by the governing body and as such was named the designated redeveloper for the Property as concerning the proposed solar energy generating facility;

WHEREAS, HESP entered into a Redevelopment Agreement with the Borough, and as such was obligated to, among other things, secure the requisite land use approvals to construct the solar facility on the Property;

WHEREAS, the Applicant submitted an Application for Development with the Borough's Land Use Board ('Board') on or about October 11, 2019, seeking preliminary and final site plan approvals, a planning variance, bulk variances and associated design waivers to construct the solar facility;

WHEREAS, the Applicant included with its Application plans entitled "Preliminary and Final Major Site Development Plans," prepared by Gladstone Design, Inc., dated July 12, 2019;

WHEREAS, the application was deemed administratively complete by the Board's engineer on October 23, 2019 and a public hearing was subsequently conducted that day, notice being required and lawfully provided;

WHEREAS, the Board's engineer, David A. Clark, P.E. and the Board's planner, Jessica C. Caldwell, P.P. issued technical reports regarding the application dated October 23 and October 21, 2019 respectively;

WHEREAS, at the conclusion of the public hearing on October 23, 2019, the Board rendered a decision on the application in accordance with the requirements set forth in N.J.S.A. 40:55D-10(g);

WHEREAS, the Board received as part of the hearing process the following testimony and documentary evidence:

The Applicant was represented by Robert F. Simon, Esq. Mr. Simon introduced the application and advised the Board that the Applicant and the Borough had previously entered into a Redevelopment Agreement, thereby obligating the Applicant to secure the requisite approvals to construct a solar facility on the Property. He advised that in order to do so, the Applicant would require preliminary and final major site plan approval, a planning variance, bulk variances related to the height of the fence, buffering, minimum driveway width, lighting, and signage, and various design waivers.

Following Mr. Simon's introduction, he presented Robert Moschello, P.E. of Gladstone Design. Mr. Moschello was accepted as an expert in the area of civil engineering by the Board. Before beginning his formal testimony, he introduced the following exhibits into evidence:

- a. Exhibit A-1 – an aerial map of the Property;
- b. Exhibit A-2 – a map illustrating the environmental constraints impacting the Property;
- c. Exhibit A-3 – a site plan showing the layout of the proposed solar facility;
- d. Exhibit A-4 – a larger site plan illustrating access to the Property from Berkshire Avenue;
- e. Exhibit A-5 – construction details for the ballast mounted solar panels.

Mr. Moschello testified that access to the Property would be by way of a 12-foot wide gravel driveway running from Berkshire Avenue. Although neither the Borough's police, fire or EMS personnel had issued any correspondence or report commenting on the proposed access, Mr. Moschello believed it would adequately support access by emergency vehicles should a crisis arise on the Property. However, the Applicant agreed to submit the plan to the Borough's police, fire and EMS departments for their approval.

Mr. Moschello noted that the facility itself would be surrounded by an 8-foot-high chain link fence with a gate allowing access into the fenced area. He said around the outside of the fenced area would be a 10-foot-wide maintained area designed to allow access to the monitoring wells that were required for the portion of the Property where the old landfill was located.

Mr. Moschello described the proposed layout of the solar panels. He presented Exhibit A-6 which was an alternate layout consistent with that previously presented and approved by the Highlands Council. He stated that there would be 5970 panels to be laid out horizontally facing south. Every thirty to forty panels would be connected to an inverter. The energy generated would then connect to the existing utility lines. He explained that there would be no changes to any existing utility poles along Berkshire Avenue unless upgrades are required by the utility company.

Mr. Moschello testified that the Applicant would maintain the property within the fenced area while the Borough would continue to maintain the area outside. He believed that it would take 3-6 months to build the facility. There would be three utility pads constructed with a small flood light at each in the event maintenance or repairs were required in the evening. In his opinion, no more lighting than this would be necessary.

Mr. Moschello said that the facility would be located at least 600-feet from the nearest residential property. Since no tree removal was proposed, he did not believe that adherence to the Borough's buffering ordinance would be required even though the Plan required a 200-foot buffer and only 64.5-feet was being proposed. In his view, the existing vegetation would more than adequately screen the facility. Additionally, Mr. Moschello stated that no stormwater management was required. He also presented Exhibit A-7 which was a drawing indicating the extent of slope disturbance. He identified two small areas where the proposed fencing would impermissibly encroach into otherwise protected steep slope areas. Mr. Moschello stated, however, that the areas of encroachment were exceedingly small, would not impact the integrity of the grade, and would not result in erosion or other detrimental impacts.

After Mr. Moschello concluded his testimony, the Applicant introduced Andrew Thomas as its professional planner. Mr. Thomas was asked to offer expert planning testimony in support of the variance relief and design waivers sought. Before beginning his testimony, Mr. Thomas presented Exhibit A-8 which was an aerial map of the Property. Relying upon this exhibit, he discussed the surrounding properties and pointed out that the nearest residence was approximately 600-feet away from the facility. He also identified the bulk variance relief needed.

Mr. Thomas stated that in order for the Applicant to obtain bulk variance approval, it would have to satisfy the positive and negative criteria. He opined that all of the variances satisfied the positive criteria. Mr. Thomas testified that the New Jersey Municipal Land Use Law had been amended to add solar facilities as inherently beneficial uses.

Mr. Thomas continued by advising the Board that the Applicant would also have to satisfy the negative criteria. In his estimation the Applicant could do so, because the facility would have few, if any, adverse consequences. He stated that the panels themselves were exempt by state law from being included in any impervious surface calculation. Consequently, the amount of impervious coverage on the Property was negligible. He continued by telling the Board that the nearest solar panel would be 600-feet from any residential home. Mr. Thomas explained that a solar facility was a benign use and did not emit any smoke, fumes, noise, dust or glare. The facility, in his estimation, would have an insignificant effect on traffic, as only one or two vehicles each month would visit the site for maintenance. For these reasons, he felt that the bulk variances were warranted.

For instance, he believed that an 8-foot high fence was justified, even though the applicable ordinance only allowed 6-feet. The higher fence would provide greater safety, keep animals out of the compound and protect the solar assets. Similarly, the Applicant's failure to abide by the screening buffer of 200-feet was justified even though the solar panel apparatus was only 64.5-feet from the property line. He noted that no vegetation or trees was to be removed and the facility itself would be some 600-feet away from any nearby residence.

Mr. Thomas also believed the variance for lighting was appropriate since the facility did not require anything more than security lighting. Moreover, compliance with the applicable standard in the Plan regulating lighting would have a more adverse impact on the surrounding neighborhood. He also explained that a 12-foot wide driveway, when 24-feet is required by the Plan, was also appropriate. Given the sporadic and infrequent use of the driveway, 12-feet was more than adequate to support the one or two vehicular trips each month. He also argued that the small sign identifying the facility was important to allow people to know the whereabouts of the facility and was small enough to not be intrusive. Finally, Mr. Thomas did agree that access to the facility should be approved by the Borough's emergency personnel as a condition of any approval. Mr. Thomas also spoke approvingly of two design waivers that were needed related to screening and disturbance of slopes greater than 30%.

After he had concluded his testimony, Board members and members of the public had questions for the Applicant. Several questions focused upon the solar panels themselves. Consequently, Susan Brodie, Executive Vice-President for the Applicant testified. She informed the Board that the lifespan of the solar panels was 30-40 years with a 25-year manufacturer's warranty. She stated that the lease the Applicant had with the Borough was for 25-years. Upon its expiration, the Borough had the option to buy the panels and operate the facility or have the Applicant remove it.

Debbie Ross, a nearby resident, also had several questions which the Applicant addressed.

WHEREAS, the Board after hearing the testimony and considering the documentary evidence presented, made the following findings of fact and conclusions of law:

1. The Applicant is seeking preliminary and final site plan approval for the redevelopment of a portion of Block 8, Lot 3 for a solar generating facility. In connection with this approval, the Applicant will also require a planning variance as per N.J.S.A. 40:55D-36; bulk variances as per N.J.S.A. 40:55D-70(c); and design waivers.
2. The Board finds that the Applicant appears to be entitled to planning variance relief in accordance with N.J.S.A. 40:55D-36 for the proposed access to the Property seems to be sufficient to support the safe and unfettered access by emergency personnel. Despite the aforesaid, the Board shall rely upon the opinions to be rendered by its police and fire departments as well as its EMS squads.
3. The Board finds that the Applicant's proposal for preliminary and final site plan approval will require bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(2). Specifically, the Board concludes that the Applicant will require variance from Section 17-32.4(b)(2) for the maximum height of a fence whereas 8 feet is proposed and 6 feet is allowed. The Board also finds that the Applicant will need a variance from the Landfill Redevelopment Plan standards that require a 24-foot wide driveway with only 12-feet being provided, as well as a variance from the Plan's requirement for a 200-foot screening buffer whereas only 64.5-feet is being proposed. The Applicant will also need a bulk variance to permit a 3x5 sign identifying its facility and to have no lighting as is otherwise required by the Plan.
4. The Board finds that all of the variances sought and required are warranted in accordance with N.J.S.A. 40:55D-70(c)(2). The Board finds that the Applicant has satisfied the positive criteria required under this analysis. Specifically, the variance relief is in furtherance of a solar facility. The Board finds that such facilities have been deemed by the New Jersey Legislature to be inherently beneficial uses. As such, the facility promotes that general welfare and also promotes the utilization of renewable energy resources. These are identified in the MLUL as purposes a and n, respectively.
5. The Board finds that the Applicant satisfies the negative criteria with respect to each variance sought. None of the variances will be a substantial detriment to the public good nor will any substantially impair the intent and purpose of the redevelopment plan. For instance, the 8-foot high fence will provide for greater safety and will protect the facility by keeping trespassers and animals out of the compound. The Board finds that the 12-foot wide driveway, whereas 24-feet is required, will not have a substantial detriment to the public good as there will be only infrequent and sporadic use of it. The Board finds that a wider driveway will actually have a greater negative impact by requiring more disturbance and coverage on this otherwise vacant piece of property. Similarly, the Board finds that there will be no negative impact from a screening buffer of only 64.5-feet whereas 200-feet is required. The Property

is heavily-wooded and no vegetation is proposed to be removed. Moreover, the nearest residence is over 600-feet away. The Board finds that the Applicant's request to not include lighting is appropriate, since any illumination coming from the facility could have a substantial detriment to the public good through visual glare and light pollution. Further, while the Board finds that no signs are permitted as per the Plan, the small 3x5 foot owner identification sign will actually promote the public good by identifying the Property, thereby aiding emergency or maintenance personnel who may be required to access the facility.

6. The Board also finds that the Applicant is entitled to the two design waivers being requested. Specifically, the Board finds that the application requires design waivers from Section 17-24.7 for buffer zone requirements and a design waiver from Section 17-62.2.A for disturbance of slopes of 30% or more. The Board finds that the heavy vegetation already on the Property will serve as an adequate buffer for the residential zone while the relatively insignificant disturbance in the steep slopes greater than 30% will have no adverse consequence. The disturbance in these steep slope areas is necessary to erect the fence which is needed to provide safety and protection for the facility.
7. The Board finds that with the grant of the planning variance, bulk variances, and design waivers that the Applicant is deserving of preliminary and final major site plan approval. The Board believes that the site plan approval can be granted in accordance with the pertinent requirements of the Plan and the Borough's other applicable ordinances and any deviations from those requirements will not pose a substantial detriment to the public good or substantial impairment to the intent and purpose of the Borough's Ordinances, Master Plan and Redevelopment Plan.

NOW THEREFORE BE IT RESOLVED, that the Land Use Board of the Borough of Mt. Arlington, County of Morris, State of New Jersey, does hereby approve the grant of preliminary and final major site plan approval, bulk variances, a planning variance and design waivers to the Applicant, HESP Solar LLC, more particularly described on the plans entitled "Preliminary and Final Major Site Development Plans," prepared by Gladstone Design, Inc., originally dated July 12, 2019, subject to the following terms and conditions:

1. The Borough's police department, fire department, and EMS squads must approve the proposed access to the Property in writing. If they do not, the Applicant must return to the Planning Board with revised plans incorporating any modifications required by these departments.
2. The Applicant will design its facility in accordance with the array layout identified in Exhibit A-6.
3. The Applicant will participate in a pre-construction meeting with Borough Officials prior to the issuance of a building permit. The purpose of the pre-construction meeting will be to establish, among other things, the hours of construction, traffic

routes for construction vehicles and the procedure or process for requesting inspections.

4. No excavation, other than minor surface leveling for pad mounted equipment, should be allowed unless specifically approved by the New Jersey Department of Environmental Protection, Division of Solid and Hazardous Waste.
5. The Applicant shall comply with all other terms and conditions set forth in the Redevelopment Agreement it voluntarily entered into with the Borough.
6. The Appliance shall provide proof that fees, escrow amounts, real estate taxes and assessments, if any, have been satisfied prior to the issuance of both the Building Permit and the Certificate of Occupancy.
7. The Applicant shall comply with the rules and regulations and ordinances of the Borough of Mt. Arlington applicable to the proposed project.
8. The approval is conditional upon any approvals, permits, or licenses required from any other outside agency exercising jurisdiction of the Property.
9. The secretary of the Board shall file a copy of this Resolution with all governmental bodies, agencies and commissions as shall be deemed necessary and appropriate.

ATTEST:

BOROUGH OF MOUNT ARLINGTON
LAND USE BOARD

Kathy Appleby, Secretary

By: _____, Chairman

DATED:

THE VOTE:

IN FAVOR:

OPPOSED:

ABSTENTIONS:

I hereby certify that the above is a true copy of the Resolution adopted by the Borough of Mount Arlington Land Use Board at its meeting on _____, 2019.

Kathy Appleby, Board Secretary