

**New Milford Zoning Board of Adjustment  
Work Session  
May 10, 2016**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:30 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelung	Present(740)
Ms. DeBari	Absent
Mr. Denis	Absent
Mr. Joseph	Present
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Absent
Mr. Schaffenberger- Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic	Present

**REVIEW MINUTES OF THE WORK AND PUBLIC SESSION – April 12, 2016**

The Board Members reviewed the minutes and there were no changes.

**RESOLUTION**

**16-01 Schiffman – 1000 Ridge Court – Block 412 Lots 11,12,21**

Three Story dwelling/Soil Moving Permit

The Board Members had no comments or changes.

**NEW BUSINESS**

**16-03 Puglisi – 61 Bulger Avenue – Block 706 Lot 9**

**SOLAR PANEL INSTALLATION**

The Board Attorney commented that this was the first application of its kind that the board has heard as a result of an ordinance adopted for solar panel installation where the solar installation would not be located in the rear of the house. He added the standard of proof among others things were why the solar panel installation is to be located in the front. The Board Attorney stated he received a call this morning from the borough attorney indicating at their mayor and council meeting last night the topic of this ordinance was discussed. It appears that the Mayor and Council will take up the issue of this ordinance and the prohibition contained within and it was reasonable anticipated that a new ordinance that would remove that prohibition would likely be introduced in the upcoming sessions. Mr. Sproviero said he communicated that to the applicant through the solar installer who would be making the presentation this evening. He gave them the option if they wanted the application heard at this time or to carry the application until

such time as the Mayor and Council may act on the ordinance that would render this mute before this board. He understood the applicant's determination was they wished to proceed.

The Chairman said for the record Mr. Adelung was present.

Motion to close the work session was made by Mr. Loonam, seconded by Mr. Rebsch and carried by all.

**New Milford Zoning Board of Adjustment  
Public Session  
May 10, 2016**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:48 pm and read the Open Public Meeting Act

**ROLL CALL**

Mr. Adelung	Present
Ms. DeBari	Absent
Mr. Denis	Absent
Mr. Joseph	Present
Mr. Loonam-Vice Chairman	Present
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Absent
Mr. Schaffenberger-Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic – Engineer	Present

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK SESSION – April 12, 2016**

Motion to accept the minutes was made by Mr. Loonam, seconded by Mr. Adelung and carried by all.

**OFFICIAL MINUTES OF THE PUBLIC SESSION – April 12, 2016**

Motion to accept the minutes was made by Mr. Stokes, seconded by Mr. Adelung and carried by all.

**RESOLUTION TO BE MEMORIALIZED**

**16-01 Schiffman – 1000 Ridge Ct – Block 412 Lots 11,12,21**

**Three Story dwelling/Soil Moving Permit**

Motion to memorialize the resolution was made by Mr. Joseph, seconded by Mr. Loonam

A motion passed on a roll call as follows:

For the Motion: Members Joseph, Loonam, Adelung

Approved 3-0

**NEW BUSINESS**

**16-03 Puglisi – 61 Bulger Avenue – Block 706 Lot 9**

**SOLAR PANEL INSTALLATION**

Mr. Clark Pegler, director of system design for NRG home solar, was sworn in by the Board Attorney.

The Board Attorney asked if they understood that in a few months this application might not be necessary. Mr. Pegler understood and explained that the way the projects were funded there were deadlines for the applicant to have no out of pocket expenses. Mr. Pegler said within a month the fund for the applicant's project could be expired and would have to go thru it again with a possible higher rate. The Board Attorney understood. The Chairman clarified if they got the variance they would have to wait a month to have it memorialized. Mr. Pegler understood but said there were steps they could take to ensure to the fund this would be done in a timely manner.

Mr. Sproviero asked if he understood the standard he needed to demonstrate. Mr. Pegler did not. The Board Attorney asked if he read the ordinance. Mr. Pegler did and explained the Puglisi's residence had a fantastic home for solar but the fantastic roof plane for the solar was in front of the house. He added the production that would be generated abiding by all the fire setbacks and other requirements would generate 5,293 kWh offsetting 47% of their current consumption. Mr. Pegler explained that if they looked at utilizing the rear roof they would not qualify. They can only sell solar if they would save money and they would not be able to save them money if it was installed on the rear roof.

The Board Attorney asked if he could explain the proposed installation layout. Mr. Pegler said it had two rows of eight solar panels. They had a form which outlined the difference in production from the front roof to the rear roof and how it justified the need to install in the front. He explained that solar needs a large surface area to capture sunlight to produced electricity. The technology is not the most efficient technology so that is why the modules were 3' 3"x 5'5". The only option for this residence was the front roof, said Mr. Pegler. The Board Attorney asked what other options were there. Mr. Pegler said there was no better technology when it comes to solar panels that were available to them. To his knowledge, the technology is top of the line technology but there have not been any outstanding improvements to solar module manufacturing in the last 15 years. He said that other options would be roof planes that would be viable like an east and west facing roof.

Mr. Sproviero asked what would happen if it was installed in the rear other than there would not be enough energy generated to facilitate a savings. Mr. Pegler said there would not be electricity produced if modules were placed on the rear roof because there was no surface area for the sunlight to hit to generate a significant amount of electricity.

The Chairman clarified that Mr. Pegler said this situation was not optimum. Mr. Pegler said the rear roof was not but the front roof was the most optimal solar roof he has seen in a long time. The Chairman asked if there were larger panels that would work better. Mr. Pegler said no and added the most efficient solar modules that he knew was 33 percent efficient. The Chairman asked if the homeowner was buying the panels. Mr. Pegler said there was no out of pocket payment from the homeowner. The Chairman questioned if the applicant was leasing the company's roof. Mr. Pegler said no they were providing the homeowner with an option to choose how they get their electricity. The Chairman asked if they pay for their electricity. Mr. Pegler said they do at a reduced rate which they would not be able to provide them if solar panels were installed in the rear. The Chairman asked if the resident owned the panels. Mr. Pegler said their company provides the equipment and installation for no money out of pocket and will

charge the resident monthly for the electricity generated by the equipment. The Chairman asked if any of that electricity went anywhere else. Mr. Pegler said solely to the resident.

Mr. Loonam asked how many kilowatt-hours it would produce if the panels were installed in the rear. Mr. Pegler said they estimated roughly 2,379 kWh. Mr. Loonam said they were asking for relief from the ordinance. Mr. Loonam asked if the panels in the rear that would produce 2,379 kWh was enough energy for them to gain electricity to their house. Mr. Pegler said yes. Mr. Loonam clarified if they were not getting enough energy from the solar panels then it was not cost effective for the business to install the solar panels. Mr. Pegler explained a fund would not pick their job up which would pay for the labor and equipment. There was funding in solar and they would benefit from tax incentives for investing in green business. They fund residential solar projects but they will only fund projects that were viable solar projects. They will not fund projects that will not produce savings for the homeowner or electricity worth the value of the equipment.

Mr. Loonam had questions on how the company charges for the electric. Mr. Pegler said everyone pays for their electricity in the rate per kilowatt hour which currently averaged \$0.18/kWh. The rate per kilowatt hour for the Puglisi was roughly \$0.15/kWh. They were not offsetting the entire electric bill but they were offsetting 47 percent of the electric bill. Mr. Loonam asked if they were charging them 53 percent. Mr. Pegler said no.

Mr. Adelung said they would always have electric at their house and clarified that the solar would not 100 percent run their house. Mr. Adelung said they were not living off the grid.

Mr. Pegler said there was a process called interconnection where the solar company installs a meter on the side of the house as well as the utility installs a meter.

The Board Attorney clarified that 53 percent of their energy consumption would come from the traditional utility and 47 percent would come from solar installation. Mr. Pegler agreed and said that was what their estimated production guarantee was to the Puglisi's. Mr. Loonam asked if the resident could buy their own solar panels and install them on the rear of the home which would reduce their electric bill. Mr. Pegler said anyone could hire someone to put solar panels on the house as long as they had the money that it would take to buy and install them. He said no one would put it on the rear of the house. The Board Attorney clarified that it was not that they would receive a bill for the 47 percent but their bill would be reduced by 47 percent. Mr. Pegler agreed. Mr. Loonam said to Mr. Pegler that it was not that they could not put panels on the rear of the house but his company would not do it because it was not optimal. Mr. Pegler said it was not optimal and would not be advised by anyone because of the inefficient manner it would operate. Mr. Loonam clarified it would work but not be as efficient. Mr. Pegler said if you drove around you would not see solar modules on a northern facing roof because the sun is in the southern hemisphere.

Mr. Adelung asked for the size of the roof. Mr. Pegler said the front roof was 537.54 sf. and the array was 282.63 sf but he did not know the size of the back roof. Mr. Adelung asked if the ordinance was in place because of aesthetics. The Board Attorney said the ordinance does not express an aesthetic concern. Mr. Adelung asked if there were more solar panels on the rear roof

would they be able to obtain what they need. Mr. Pegler said with their house they could not install enough panels in the rear to match the 5,379 that they would be getting. Mr. Adelung said that assessment was important to know and thought they should be asking for relief with a different type of potential. Mr. Pegler thought that was a good suggestion. Mr. Pegler thought this was an aesthetically pleasing system.

The Board Attorney read the ordinance and the amended ordinance into the record. Mr. Sproviero said if it was denied, it comes to the Zoning Board of Adjustment as an appeal of the zoning officer's determination. He explained, because this was an appeal of the zoning officers' determination and an appeal of the ordinance that was not within the zone ordinance but rather a building ordinance, the traditional standards may not be applicable. The Chairman asked if the board had jurisdiction. The Board Attorney said the board had jurisdiction and the board had jurisdiction under section 70(c)(3) to hear an appeal of the zoning officer's determination. The MLUL, other than that part which says they can hear appeals of zoning officer's determination, isn't necessarily otherwise impacted.

Mr. Loonam had questions on how the board was to make their determination. The Board Attorney read the ordinance regarding determination "applicant must present valid reasons.....why a front roof is the only effective or possible means for utilizing solar energy on the property." He read the amended ordinance that read "roof-mounted solar panels shall not be permitted on the front roof of a structure which faces the street." He said it comes down to the issue of effectiveness. The Board Attorney stated that they have heard testimony on why the front installation is effective and why rear installation was otherwise ineffective. The Chairman questioned that it said "effective or possible". The Chairman said it was possible but it was not cost effective. The Board Attorney discussed the amended ordinance and the standard. The Chairman questioned how the Board would make this determination with the new ordinance.

Mr. Stokes said the amendment said they could appeal. The Board Attorney said no that the amendment said "...all front facing installation should be reviewed by the Zoning Board of Adjustment." The Chairman asked if this would be dealing with positive and negative and hardship criteria. The Board Attorney thought they were back to C1 – hardships. He added the topographic configuration of the home that it faces south. The Board Attorney told Mr. Pegler that it was not the job of the Board Attorney to represent the applicant and that was why he should have come with a lawyer.

Mr. Pegler said he was sorry. The Board Attorney said the only reason he was doing this was for the applicant. Mr. Pegler said he did not really have to be here tonight. The Board Attorney said he did because he was the testimonial component but he needed a lawyer to represent their interests with these complex land use issues. Mr. Sproviero said another issue was if this was an inherently beneficial use and was this any less inherently beneficial then when PSEG came in and asked for relief to upgrade their substation. Mr. Loonam said the difference was that they asked for it to be an inherently beneficial use.

Mr. Pegler asked if this could be an inherently beneficial use. The Board Attorney said he would entertain that request if he could tell him what an inherently beneficial use was. Mr. Pegler asked if he could use a "life line" and call his uncle lawyer.

Mr. Stokes asked why there was the funding for the project. Mr. Pegler said it was to help homeowners go solar and helps business meet certain tax requirements. Mr. Stokes asked if there was tax requirements because the federal government wants alternative energy. Mr. Pegler said there were goals for states to reach certain renewable energy production.

The Board Attorney asked if it was the state or federal government that administers the fund. Mr. Pegler said it came from banks and thought the Puglisi's were in the Bank of America fund. He explained their company searches out funding for their projects. The Chairman asked if that should matter to the Board. The Board Attorney said there was a federal legislative goal that was being achieved by this which adds to the positive criteria but that is not the answer in evidence.

Motion to open to the public was made by Mr. Loonam, seconded by Mr. Stokes and carried by all.

Hedy Grant, 175 Boulevard, said she came across in her research that NJ considered solar energy an inherently beneficial use. The Board Attorney said he also read that and had done some independent research and had not found a reported case that solar was inherently beneficial. He also agreed it was an inherently beneficial use. Councilwoman Grant asked if there needed to be a reported case. Mr. Sproviero answered no. Councilwoman Grant confirmed that the ordinance was likely to be changed in a relatively short amount of time. Up until he heard there would be potential funding impacts to the homeowner as a result of any further delay, the Board Attorney said in the absence of that fact he thought it lunacy to proceed tonight. Councilwoman Grant understood why they were proceeding.

Motion to close was made by Mr. Rebsch, seconded by Mr. Stokes and carried by all.

The Chairman asked if, as the ordinance was written, was this a hardship or not. Mr. Loonam clarified that the hardship was based on the topography because of the direction the house faces. The Board Attorney and Mr. Stokes said orientation. Mr. Loonam said they were not contemplating the inherently beneficial use. Mr. Sproviero said the overriding legal principle here is hardship based on topographical orientation.

Mr. Loonam asked if it would still qualify as hardship if the solar could still generate electricity in the rear but just not to the same extent. The Board Attorney believed so because the purpose of a solar installation was to derive the most possible energy possible and if there was a deviation of energy generation based on those topographic factors that it would come into play.

Mr. Adelung did not think they had enough information to determine if the front non-conforming use is the 100 percent correct installation. He added that they did not know if they put on 30 panels on the rear roof it would get them what they would need and would comply with the ordinance but cost the installer another \$10,000.00. Mr. Sproviero said the members were the finders of fact.

Ms. Batistic said the rear of the roof was a lesser area than the front so they would need 3x more area in the back to get the same amount of energy. Mr. Adelung wanted to know more

information about the size of the rear roof. Ms. Batistic said the survey and satellite photo looked about the same area but to achieve the energy in the back it would need much more roof than they had. Mr. Adelung said maybe another combination with some on the front and some on the rear. He said all they have was the front of the roof was the best way to do this. Mr. Adelung said he would love to say come next month with more information but he understood there was a timing issue. The Board Attorney said that was not the Board's fault.

Mr. Loonam asked what this timing issue was all about. Mr. Pegler said it was the leasing that they have now but if it runs out they will present them with another lease. He added that the fund might not have the same pricing as this one. Mr. Loonam said it could go lower. Mr. Pegler said it normally does not go lower. Mr. Pegler explained they would install panels on their rear roof but they would have to pay their business an out of pocket amount of money because it was ineffective. Mr. Loonam said that was his question regarding hardship and financial. The Board Attorney was interested to hear what the energy generation was because that is where the hardship kicks in and why it was less effective. The purpose of the solar installation is to optimize the solar energy generation.

Mr. Pegler said it was rare that they come into towns that don't allow front facing modules. He added the document in their packet showed the difference of the front and rear roofs.

The Chairman said the hardship could not be a financially hardship and asked if, without the inherently beneficial use, isn't this whole thing financial driven. The Board Attorney said the overriding relief is under 70(c)(1)-hardship. The Chairman asked if the Board makes the decision whether it is an inherently beneficial. The Board Attorney said yes. Mr. Loonam questioned that the applicant did not request that or produce proofs. The Board Attorney said the Board had to assess the proofs before them.

The Board Attorney asked the applicant if they want the Board to take a vote. Mr. Pegler said if that would get them their solar on the front of the roof then yes if it will not then no. The Board Attorney said that he had no idea on how this works. Mr. Pegler said he would like a motion.

Mr. Loonam thought the Mayor and Council were on the right track to review the ordinance and possibly change it. He thought the ordinance was terrible. Mr. Loonam said as a resident of New Milford if someone asked if he had a problem with solar panels in the front of the house, he would say no. As a member of the board who has to only consider the existing ordinance that you are seeking relief from, Mr. Loonam felt they have not done it. If he was asked to vote, he would say he could not vote for relief under the hardship variance because there were other ways that the applicant could in fact accomplish putting solar panels on the house and getting energy. He agreed it would not be as effective, not as optimal and from a financial standpoint it was probably not as good but as a member he did not think proofs have been met for him to grant a variance.

Mr. Pegler asked what happens if the vote is no. The Board Attorney said they would not get the variance. Mr. Pegler said if they don't get it tonight then in a month if the ordinance is lifted they could proceed. He thought it was a win/win for the Puglisi's.



The Board Attorney said he respected and understood the fact that he did not understand what the board needs to do to apply the law and the applicable standards to grant the residents the relief that they need. Mr. Pegler understood that he was not prepared to state the case on behalf of this resident. The Board Attorney stated that he spoke to a representative of his company this morning to explain the anticipated change in the ordinance and options available and his response was he would get a determination. Mr. Pegler said he was sticking to his commitment to make sure he was present at the meeting. The Board Attorney said they would stick to their commitment to enforce the law.

The Chairman asked if they wanted a vote or have the application carried.

Mr. Pegler discussed the matter with the applicant and they decided to carry the application to the regular scheduled June meeting. The Board granted the applicant their request.

The Board Attorney stated that there would be no new notices issued and they would resume the application at the June 14 meeting.

.

As there was no further business to discuss, a motion was made to close by Mr. Rebsch seconded by Mr. Stokes and carried by all.

Respectfully submitted,  
Maureen Oppelaar