

The meeting was opened by Chairman Palmieri at 7:30 p.m.

Chairman Palmieri read a statement of compliance with the *New Jersey Open Public Meetings Law* as follows:

*This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the The Coaster and the Asbury Park Press.*

Chairman Palmieri then led the meeting in a salute to the flag.

Ms. Connolly took roll call.

Present Chairman Palmieri, Mr. Battista, Mr. Lomangino, Mr. Porzio, Mr. Brawner, Mr. McKinley, Ms. Hatami

Absent: Mr. Slazyk, Ms. Berk

Also present: Mr. Steinberg substituting for Mr. Hirsch  
Mr. Neff, Board Engineer  
Ms. Zincavage, Board Planner  
Ms. Connolly, Board Secretary

Chairman Palmieri read a statement of procedural guidelines.

### **Business**

Chairman Palmieri states that the first matter is BA 2017-19, Tinton Falls Solar Farm Use variance for expansion of a non-conforming use and bulk variances.

Mr. Steinberg states that he has reviewed the proof of mailing and affidavit of service and find same to be in order.

Motion is made by Mr. Battista and seconded by Mr. Porzio to accept service. All in favor.

Jeffrey Chang, Esq., Heilbrunn Pape, states that he represents the applicant and proceeds to give an opening statement, including the history of the site. Mr. Chang states that the applicant will be seeking a use variance and amended site plan to maintain a permanent office with traditional residential features to that building and three storage trailers.

Mr. Chang discusses the particulars of the proposed office which is approximately 1,440 sq. ft. and the storage trailers are approximately 1,000 sq. ft. each.

A minimum front yard setback variance is requested where 19 ft. is provided on Tormee Rd. and where 45 ft. is required by ordinance and a maximum of two (2) accessory buildings on the property, where applicant is requesting one office and three (3) trailers.

Also, there is a requirement that there be six (6) parking spaces for the office but applicant is proposing four (4) spaces be provided.

Mr. Chang explains that the purpose of the storage trailers is to store materials such as the panels and the office is for the one individual to maintain those panels during the hours of 8:00 a.m to 4:00 p.m. Monday through Friday. There will be no public at the office.

Mr. Chang calls as his first expert Mr. Stuart C. Challoner, P.E., PP, 201 Mail Street, 2<sup>nd</sup> Floor, Toms River, NJ 08753. Mr. Challoner is sworn in by Mr. Steinberg and his credentials are accepted by the Board.

Mr. Chang wishes to mark A-1 as the overall site plan rendering dated January 2, 2018.

Mr. Challoner speaks as to the storage trailers that were on site during construction and after construction they are being used for storage of panels and equipment. He states that the trailers are at least 1,000 feet from West Park Avenue. One of the trailers is being used by the employee who maintains the solar farm. The applicant is willing to construct a permanent structure with a foundation for the employee.

Mr. Challoner states that the structure proposed is 60' x 24' which is 1440 sq. ft. Chairman Palmieri questions the size of the office for one person. Mr. Challoner states that there is staff that comes a couple times a year for meetings. The office will have a conference room and a rest room.

Mr. Neff asks for particulars of the proposed permanent building and wants to make sure it is simply not a trailer on a foundation. Mr. Challoner states that it is not a trailer.

Mr. Neff asks if applicant has looked at proposing a larger building that can provide storage in order to do away with the additional proposed trailers. Mr. Challoner states that it is not a consideration due to available space that does not impact the solar panels.

Mr. Lomangino requests detailed information with regard to the proposed building and the exterior and roof.

Mr. Brawner asks why this building was not proposed during construction. Mr. Challoner states that this is the second largest solar farm in New Jersey and the owner anticipated that the site would be monitored off-site. The reality is that there has been more maintenance needed that must be attended to than had been originally anticipated.

Multiple board members discuss the size of the proposed office building, as well as the trailers that are still on the site from the time of original construction (almost eight (8) years ago). They also ask what exactly will be housed inside of the proposed office building.

Ms. Zincavage suggests that it may be advantageous to bifurcate this application.

Mr. Battista states that more information is needed from the applicant regarding this application, specifically the details of the proposed office building.

Mr. Challoner explains where the proposed three storage trailers are to be placed.

Mr. Porzio asks if the storage trailers will be used to house materials from any other site other than this one and is told no.

Chairman Palmieri asks if there is any public in the audience that may questions about the testimony given. Hearing none, this portion is closed.

Chairman Palmieri asks Mr. Chang how long he would like to have to gather the additional information to be presented to the Board. Mr. Chang states that June 7, 2018 would be amenable and grants any all extensions that are needed.

Mr. Chang indicated that since the exhibit(s) are glued to the boards, he will bring file-friendly exhibits back for the June 7, 2018 continuation.

**BA 2017-23 Stavola Realty, 20 Hockhockson Road, Blk 105 Lot 11 – Lot width variance.**

Peter Falvo, Esq., states that he is representing the applicant in this matter.

Mr. Steinberg states that he has reviewed the affidavit and proof of service and find same to be in order.

Mr. Falvo states that he wishes to mark A-1 as the variance plan from Two River Engineering signed by A.J. Garito, Jr., dated 12-04-17. A-2 is a color version of the variance plan. A-3 is a grouping of six (6) color photos of surrounding properties that will be resubmitted to the Board once they are taken off of the mounted board. A-4 is a copy of a letter to Mr. and Mrs. Brian Whitman, who are adjacent property owners regarding this property. A-5 is a copy of a letter to Christine Sodano who is an adjacent property owner.

Mr. Falvo brings forth A.J. Garito, Jr., engineer with Two River Engineering as his expert and he is sworn in and his credentials are accepted by the Board.

Mr. Garito explains the frontage variance that is requested. He states that the property is approximately 1.26 acres in area between Phipps Place and Pinebrook Road. The

property has an unusual shape in that the front width is 67.97 and is approximately 550 feet in depth and is approximately 135 feet wide at the rear of the property. The minimum lot size in this zone requires 30,000 sq. ft. and this lot is slightly over 55,000 sq. ft. The minimum lot width is 120 ft. and this lot is only 67.97 ft. wide. A variance is needed for lot frontage. The applicant wants to build one single-family home on this property.

Mr. Garito states that, with regard to Mr. Neff's review letter, the driveway is five (5)' from the neighbor's property line and that an underground detention basin or storm sewer system will be needed to collect the increase in runoff, which the applicant states they will do.

Chairman Palmieri asks Mr. Garito to explain how far the neighbors' property lines are as well as structures and residences.

Mr. Neff states that he has an aerial view of the property and it is marked A-6.

Mr. Battista asks how far back from the street would the home have to be to have a width of 90 feet. The answer is that it is almost to the very back of the lot taking into account the side yard setbacks as well.

It is discussed that the applicant has offered to buy part of adjoining lots in order to try and conform with the 90 foot lot width.

Mr. Battista asks about the history of the lot and if it was meant to be developed.

Mr. Steinberg states that the lot is a pre-existing non-conforming lot. The applicant is applying for variances so that it can be used. The adjoining property owners have been noticed that they can buy it or they could sell portions of their property so that it can be expanded. As of now, no one has made an offer either way. If a variance is not granted, it is being zoned into utility and then there is a reverse-condemnation situation. The lot is zoned as residential. Mr. Steinberg states that it is not known how the lot created. He states that the lot has more than enough square footage. It is the width that is deficient.

It is discussed by Mr. Neff that, even though they will be coming back with a plot plan and formal approval, they are not proposing any variances that they are creating.

Mr. Falvo states that the building envelope that is shown is for a two-story house that can be in the range of 3000 sq. ft.

Chairman Palmieri opens up the floor to the public for questions relating to the testimony given by the expert or if there are additional questions. The time for comments and statements will be later on. . All people asking questions were individually sworn in by Mr. Steinberg.

The first person that has a question is Mr. Herb Boyd who owns property at 75 Squankum Road. He asks if he was notified in order to possibly purchase this property. Mr. Falvo states that he notified the two adjacent property owners on Hockhockson Road in order to try and have the front width expanded. Mr. Boyd asks how wide the driveway is intended to be. It is stated 12 feet, which is conforming. Mr. Boyd asks for confirmation that it is one house proposed for this property. Mr. Boyd asks for confirmation that there will be adequate drainage put in. Mr. Boyd asks about fire protection for this property. Mr. Neff explains the differences between Mr. Boyd's property, in which he created a subdivision, and this property, which is an existing lot.

The second person with a question is Mr. Brian Whitman, 3 Phipps Place, lot 12.01. Mr. Whitman states that on his letter from Mr. Falvo, the address was referenced as 201 Hockhockson Road, not 20, and the frontage width is stated on the tax map as 55 feet and on the letter it states 67 feet. Mr. Neff states that the tax map is not a survey and the number is incorrect. Mr. Whitman states that if he sold part of his backyard, his property would then be non-conforming. Mr. Whitman states that he believes this lot hardship was self-created.

Mr. Battista asks about the "other issues" that Mr. Whitman references in his testimony. Mr. Whitman states that there is a temporary cul-de-sac in place on Phipps Place and discussion takes place regarding this issue.

Mr. Whitman asks what "fair market value" is. Mr. Steinberg states that it means what the land would be worth today if it were appraised today as a buildable lot. Mr. Whitman asks why this proposed home is going to be so close to his property. Discussion continues regarding how far away the building envelope would be from the common property lines.

Mr. Robert Ivanke (inaudible), 312 Hockhockson Road, asks when the lot width was changed to 120 ft. and if it wasn't changed, then why are we building on less than 120 ft. Chairman Palmieri explains what pre-existing non-conforming means and that a building lot is based upon a square piece of land, which lots seldom are. Chairman Palmieri explains why there is a Zoning Board of Adjustment. Chairman Palmieri explains why this lot is considered a buildable lot and that it needs one variance.

Ms. Tara Tote, 10 Phipps Place, states that she has an ongoing issue regarding a temporary cul-de-sac and has brought this matter to Council and Planning Board. Ms. Tote asks why the matter of this lot being non-conforming wasn't taken into consideration when the lot lines were drawn up. Chairman Palmieri states that he does not know the answer to this question and the questions from the public should pertain just to this lot and the testimony given.

Chairman Palmieri states that if there are no more questions, then it is time to move on to the comment portion. . All people giving comments were individually sworn in by Mr. Steinberg.

Mr. Brian Whitman, 3 Phipps Place, He states that building a home on this property will result in a devaluation of the surrounding properties. The cutting down trees from this property will result in a direct sight line to Route 18. The removal of these trees will also result in the lack of filtering for the smell of asphalt. Chairman Palmieri states to Mr. Whitman that he will need evidence to back up his conclusions of the devaluing of the property values as well as other negative impacts he is stating.

Tara Tote, 10 Phipps Place, discusses in detail the history of a temporary cul-de-sac issue and how it affects her property. Mr. Steinberg asks Ms. Tote to comment on Lot 11 only. Ms. Tote states that she objects to grant the frontage variance allowing the building of this lot until such time as the cul-de-sac issue has been resolved. Ms. Tote states that she believes lot 11 should have been incorporated into lot 13.

Mr. Robert Ivanke, 312 Hockhockson Road. He states that his property is lot 10. He asks how far from the property line does a fence need to be. Chairman Palmieri states that the building department would have the answer to that question. During discussion it is stated that his lot is approximately 70 ft. wide for frontage and is approximately 600 ft. deep. He has been in this house since approximately 1998. Mr. Ivanke states that if had known this property could be developed, he would have never bought his home.

Mr, William Polvino, lives at 5 Phipps Place and also owns 10 Churchill Downs Drive. Mr. Polvino states that he has just moved into 5 Phipps Place and has lived in Tinton Falls for 19 years. Mr. Polvino states that he was not notified about this proceedings. Mr. Steinberg states that the 500 ft. search list is dated February 2, 2018 and it usually takes some time for the Deed to be filed and for the list to catch up. Mr. Polvino states that the entire neighborhood is here. Mr. Polvino discusses the history of why he purchased this home and about why he feels a part of this community.

Discussion among the Board members, engineer and attorney regarding the preservation of trees is discussed, conservation easement possibilities are discussed as well.

Vito Perillo, Mayor, 30 Clearview Drive, states that he has been listening to the comments of the residents present and asks the Board to not approve this variance.

Chairman Palmieri states that with all due respect to the Mayor, this property is still a buildable lot. Even if this Board denies this variance, the applicant would bring it to the Superior Court of New Jersey and the ruling would be overturned as a rule of law. Chairman Palmieri summarizes the main points of the residents' comments.

Adam Minto, 6 Phipps Place, comments that when he came before the Board a few years ago for a pool, he feels he had to go through a lot in order to put in his pool and feels that his application had no impact upon his neighbors. Mr. Minto feels that this application has much more impact on the residents that his application did and this applicant is being handed this variance.

Mr. Battista asks Mr. Minto to elaborate and asks him what more could this Board do?

Mr. Neff addresses that the applicant did not create this variance and that when a homeowner needs a setback variance or a lot coverage variance, it is self created.

Mr. Tote, 10 Phipps Place. States that he has issues with the way the Stavola Company handled the subdivision on the other side of Phipps Place. Mr. Tote states that he built Phipps East. It has always been a temporary cul-de-sac. Mr. Tote believes this lot in question should have been used for the cul-de-sac.

Mr, Brian Whitman, 3 Phipps Place, has questions about the conditions that can be associated with the variance. As a whole, Mr. Whitman objects. Mr. Whitman would like the home to be built a considerable distance from the street and would like as many of the trees in the back yard to be saved as possible. Multiple Board members discuss.

Tara Tote, 10 Phipps Place, states she is so disappointed with the way this application is going. Ms. Tote states that she is very frustrated and that they have consulted an attorney.

Mr. Falvo gives his closing statement reiterating the facts of the case.

Mr. Neff reiterates that this application is only for the variance for lot width. It is not a site plan application.

Multiple board members discuss possible conditions that can be attached to this variance. The back width of the property is 134.99 ft. wide. Mr. Neff states that the plan shows the house situated 170 ft. back in order to give it a width of 90 ft.

Mr. Lomangino makes a motion to close the public portion of the application and it is seconded by Mr. Battista. All in favor.

Chairman Palmieri asks if the Board has any comments.

Mr. Battista discusses that the lot width is 55.8% of what it should be. It is a significant difference. Mr. McKinley states that in addition to Mr. Battista's comment is that the house will be twice as deep as where the neighbor's houses are located. Chairman Palmieri states that the lot easily meets the side yard setbacks. Mr. Lomangino asks Mr. Steinberg for his legal opinion.

Mr. Steinberg states that it is a pre-existing non-conforming lot. As a result of that, he needs to notify the property owners on either side to either buy or sell and if they are in the negative for both, the Board is under case law and required to grant the variance.

Discussion among various Board members and Mr. Steinberg continue. It is also discussed that conditions may be attached to the variance as long as they are reasonable.

Mr. Lomangino wishes to make a motion to approve the lot width variance with the condition that the house must be at a minimum depth of 170 ft. and keep the property/trees undisturbed 140 ft. from the rear property line going toward the house. Seconded by Mr. Porzio.

Roll Call

Ayes: Mr. Lomangino, Mr. Porzio, Mr. Battista, Chairman Palmieri, Mr. Brawner, Ms. Hatami  
Nays: Mr. McKinley  
Absent: Mr. Slazyk, Ms. Berk

A ten minute break is given to the Board members at this time.

**BA 2018-01 Rite Aid of New Jersey – Zoning Interpretation**

Re: 596 Shrewsbury Avenue, Blk 15.0 lot 16.06

Bill Harrison, Esq., Genova Burns, LLC, states that he represents Rite Aid in this matter.

Chairman Palmieri states that he has a conflict and will need to stand down. Mr. Battista assumes Chairman Palmieri's place on the dais.

Mr. Harrison states that Rite Aid, CVS and Walgreens are establishing clinics within their existing drug stores. Nine have been established in the State.

Mr. Steinberg states that an interpretation is when the applicant disagrees with the determination of the zoning officer and has the right to come before the Board of Adjustment and ask for an interpretation. Public is not noticed on this.

Mr. Harrison states that the question before the Board is that the shopping centers are defined as including retail sales, retail services – retail services are defined as including health services. Is the use a health service that is permitted within a shopping center or is it something else. Mr. Harrison states that basically, the planner's report and Ms. Paone are saying that this is more akin to an urgent care center medical use. The witnesses I have are going to describe what is in a traditional pharmacy, what is in the proposed clinic and distinguish that from what occurs in an urgent care center. I have a planner that will give testimony as to why this should be considered a permitted use.

Mr. Battista asks to hear from Ms. Paone. She states that Rite Aid had previously been granted an approval for an area that they could give flu shots in and a private area where the pharmacist could have a consultation if needed. Now, Rite Aid is proposing, what I perceive to be, is a doctor's office. Basically, an appointment can be made to see the doctor or physician's assistant, you could have a sports physical, more like a doctor's office, not just simply a place where you can go get a flu shot. It is going to have office areas and see people similar to a doctor's office. I do not consider this a permitted use.

Mr. Harrison brings his first witness, Larry Hill. Mr. Hill, is sworn in by Mr. Steinberg. Mr. Hill states that he is a District Manager and this store is in his district and is familiar with it's operation as well as the operation of Redi Clinics.

A pamphlet entitled "Hackensack Meridian Health in partnership with RediClinic" is market A-1 by Mr. Steinberg. A "Patient Traffic Report, RAD Clinics, Period 12-Week 51 is market A-2.

Mr. Harrison asks multiple general questions of Mr. Hill who states that there is no addition proposed and all physical changes are located inside the store for two exam rooms and a waiting area. The hours of operation for the RediClinic will be 8 a.m. until 8:00 p.m. M-F and 8 a.m. until 5:00 p.m. Saturday and Sunday. One nurse practitioner is the only additional staff needed, no doctor. Patients can make appointments or walk in. Medical equipment is discussed. Testimony is given that other RediClinics in the State of New Jersey are seeing eight (8) patients a day and this proposed RediClinic is expected to be equal to that number.

Mr. Hill discusses the services provided and references A-1. Mr. Hill states that a nurse practitioner, for all intents and purposes, takes the place of a primary care physician.

Mr. Hill states they are different than a doctor's office because chronic diseases are not treated. Instead of being in an e.r. for hours to obtain a flu shot or treatment for u.t.i. or a sinus infection, you now can be seen quickly and obtain treatment in a timely fashion.

Discussion continues between Board members, professionals and Mr. Hill regarding the similarities and differences between a doctor's office and a RediClinic. Mr. Hill states that there are no follow-up appointments, just follow-up calls. Ms. Zincavage asks if patient files are kept, which they are.

Mr. Steinberg states the issue is if it is a second use between a pharmacy and a RediClinic, not a RediClinic and an urgent care.

Mr. Harrison states his view is that in a shopping center definition, retail services are allowed and the retail service definition allows health services and he believes that what is being described as services being done in the clinic is a health service. He believes the question is where do you draw the line between a medical use vs. a health service.

Vice-Chairman Battista opens the floor to any public who may have questions for Mr. Hills.

John Manginelli, 17 Hazelwood Court, states that he wants to make sure that the Board members take a look at this Rite Aid on Shrewsbury Avenue. His question is how long do you anticipate each patient to stay at the pharmacy and he is answered 15 – 20 minutes.

Vice-Chairman Battista asks if there is any additional public that has questions. None heard.

Mr. Lomangino makes a motion to close the public portion of the meeting pertaining to Mr. Hill and it is seconded by Mr. Brawner. All in Favor.

This matter is being continued to April 5 for conclusion.

**Resolutions**

BA 2017-21 LaVergne, Arthur 21 Wyncrest Lane, Blk 147 Lot 22 – Building and Lot Coverage

Motion made by Mr. Porzio and seconded by Ms. Hatami to memorialize this resolution.

**Motion to Close**

Motion is made by Mr. Porzio and seconded by Ms. Hatami to close the meeting at 11:00 p.m.

Respectfully submitted,

Colleen Connolly  
Zoning Board Secretary

Approved at Board of Adjustment  
Meeting on April 19, 2018