

**MEMORIALIZING RESOLUTION OF THE
BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF FREDON
APPROVING THE APPLICATION OF
COUNTY WICKLOW HOLDINGS, L.L.C. FOR
AN EXTENSION OF USE VARIANCE AND
PRELIMINARY SITE PLAN APPROVAL**

DECIDED: DECEMBER 8, 2015

MEMORIALIZED: JANUARY 12, 2016

WHEREAS, by memorializing Resolution adopted on January 10, 2012, the provisions of which are incorporated herein by reference, the Fredon Township Board of Adjustment (hereinafter the “Board”) approved the application of County Wicklow Holdings, L.L.C. (hereinafter the “Applicant”) for a use variance pursuant to N.J.S.A. 40:55D-70d(1), and related preliminary site plan approval to permit the location of a solar energy facility, and for bulk variance to permit an eight-foot high fence, for property located at 232 Willows Road, which is known and designated as Block 801, Lot 28 on the tax maps of the Township of Fredon; and

WHEREAS, the statutory three-year period of protection for that approval against any change in the general terms and conditions on which it was granted, as specified in N.J.S.A. 40:55D-49a, has expired, as has the Township Ordinance period of protection for the underlying use variance; and

WHEREAS, the subject property is located in a so-called environmentally sensitive area, and as such, the approvals granted by the Board summarized above are not eligible for automatic extension pursuant to the so-called Permit Extension Act; and

WHEREAS, the Applicant has now applied to the Board for two separate one-year extensions to the January 10, 2012 approval pursuant to N.J.S.A. 40:55D-49c; and

WHEREAS, the Board of Adjustment of the Township of Fredon hereby makes the following findings and conclusions based upon the evidence submitted to the Board at the hearing.

1. The Applicant was not represented by counsel in connection with its extension application. Sworn testimony in support of the application was given by Louis Terranova and by Jeffrey Wiley.
2. The Applicant explained that the economic climate during the last few years has not been favorable, both in general, and in connection with underlying uncertainties in the Solar Renewable Energy Credit market. Accordingly, the Applicant has not been able to implement the approval. The Applicant believes that that market has now stabilized, and would like to move swiftly on the project and implement it in 2016.
3. Pursuant to N.J.S.A. 40:55D-49a, the preliminary site plan approval that was the subject of the January 10, 2012 Resolution was, in terms of the statutory rights conferred upon the Applicant, effective for a period of three years, and accordingly, lapsed on January 10, 2015.
4. Pursuant to N.J.S.A. 40:55D-49c, an Applicant is allowed to apply for, and a reviewing Board is permitted to grant, extensions of preliminary approval for additional periods of at least one year, but not to exceed a total extension of two years.

5. The Board finds, based upon the testimony of the Applicant, that there is good cause for the granting of the requested extension. The Board accordingly grants two separate extensions of the approval that is the subject of its January 10, 2012 memorializing Resolution, one from January 10, 2015 to January 10, 2016, and the second from January 10, 2016 to January 10, 2017. The extension granted by the Board herein specifically extends to and includes the use variance and bulk variance that were also approved in its January 10, 2012 memorializing Resolution.
6. The Applicant shall continue to be required to comply with all conditions and requirements of the January 10, 2012 Resolution.

SO RESOLVED, as aforesaid:

AYES: 5

NAYS: 0

ABSTENTIONS: 0

The foregoing is a true and correct copy of the Resolution of Memorialization of the Fredon Township Board of Adjustment made pursuant to N.J.S.A. 40:55D-10(g) and adopted at a regular meeting assembled on January 12, 2016 memorializing the Resolution of Intent of the Fredon Township Board of Adjustment at a regular meeting assembled on December 8, 2015.

FREDON TOWNSHIP BOARD OF ADJUSTMENT

BY: _____

**MEMORIALIZING RESOLUTION OF THE
BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF FREDON
APPROVING THE APPLICATION
OF DANIEL AND LAURA HAUG
FOR A SIDE YARD SETBACK VARIANCE
FOR A NEW GARAGE ON PROPERTY
KNOWN AS BLOCK 404, LOT 4.04**

**DECIDED: SEPTEMBER 13, 2016
MEMORIALIZED: OCTOBER 11, 2016**

WHEREAS, Daniel and Laura Haug, with the address of 43 Van Horn Road, Newton, New Jersey 07860 (hereinafter the “Applicant” or “Applicants”) applied to the Fredon Township Board of Adjustment (hereinafter the “Board”) for a variance to permit the construction of a new garage with a 12 foot side yard setback instead of the required 25 feet, for property located at 43 Van Horn Road, Township of Fredon, which is known and designated as Block 404, Lot 4.04 on the Tax Maps of the Township of Fredon, in accordance with a Variance Map and Architectural Plans prepared by Samuel Ahren Wykoff Architect LLC, with the latest revision date of August 28, 2016, and consisting of three sheets (hereinafter the “Approved Plans”); and

WHEREAS, the matter was heard before the Board at a public hearing of the Board of Adjustment on September 13, 2016; and

WHEREAS, it has been determined that the Applicant has complied with all of the procedural requirements, rules and regulations of the Board of Adjustment of the Township of Fredon and that all required provisions of procedural compliance have been filed with the Board; and

WHEREAS, the Board of Adjustment of the Township of Fredon hereby makes the following findings and conclusions based upon the evidence submitted to the Board at the hearing:

1. The Applicant was not represented by counsel. Sworn testimony in support of the application was given by Daniel Haug, and by Samuel Wykoff, whose qualifications as a licensed architect were accepted by the Board.

2. The Applicants are proposing to remove an existing shed and construct a new three car garage on the westerly side of their existing lot. The Applicants have a growing family, and wish to convert the existing garage (which is part of the dwelling house) into a recreation room, and to construct a new detached three car garage on the westerly side of the property. Mr. Haug states that the garage is sized in that manner because he needs space for two cars, as well as certain equipment, specifically a four wheeler with a plow and a commercial grade mower utilized both for his property and for the property of his sister, which adjoins the Applicant's property.

3. The proposed garage will be 864 square feet in area, and pursuant to Section 550-27G of the ordinance, a side yard setback of 25 feet is required. (That ordinance section requires a 25 foot setback for accessory structures between 501 and 1,000 square feet.) The Applicant is proposing a 12 foot side yard setback, which requires variance relief. The Applicant testified that the location proposed was the only feasible one for the proposed garage. There is a pond located in front of the dwelling, and a hill immediately behind it. On the easterly side of the property, there is an existing disposal bed or leaching field, which cannot be built over. On the westerly side where the new garage is proposed, there is an existing well, and pursuant to the requirements of the County Board of Health, the garage needs to be at least 10 feet away from it. That

well is located between the home and the area of the proposed garage, so the garage would need to be at least 10 feet to its west.

4. Under the circumstances, the Board finds that it is appropriate to grant variance relief pursuant to N.J.S.A. 40:55D-70c(1). The combination of existing natural features (i.e. the hill to the rear) and improvements for the disposal bed and well seem essentially to dictate the location of the new garage. (Even in the absence of the pond, the front yard would not be feasible, because pursuant to Section 550-27E of the ordinance, accessory structures are not permitted in the front yard.) Because of these existing features, strict application of the side yard setback requirement would make it impracticable for the Applicant to be able to construct a garage, which is an appropriate and typical structure in a residential neighborhood. Thus, the Applicant has demonstrated the existence of a hardship, thereby satisfying the so-called positive criteria required for variance relief. The Board further finds that the requested variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance. The Board notes in particular that there are at least some trees along the westerly boundary area between the subject property and the one that adjoins it, and that more importantly, the dwelling on that property is approximately 150 feet to 200 feet away from where the garage will be located. That house will also be separated from the garage by an existing paved common driveway located on that adjoining property. Thus, the impact of having the garage 13 feet closer to the boundary line than is permitted by the ordinance will be minimal in terms of that adjoining property, and also will not cause any substantial impairment to the intent and purpose of the zone plan and zoning ordinance. The Board finds that it is therefore appropriate to grant the application, subject to the conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Fredon, County of Sussex, State of New Jersey, that the application of Daniel and Laura Haug for a side yard setback variance to allow construction of a new three car garage with a 12 foot setback instead of the required 25 foot setback is hereby granted, subject to the following terms and conditions:

1. The Applicant will comply with the Approved Plans, and with all representations made to the Board during the course of the hearing, which are specifically incorporated herein by reference.

2. The cupola on the top of the roof of the garage shall not be more than four feet higher than the top of the highest point of the roof of the garage.

3. The Applicant shall, upon completion of the garage, provide an as-built survey prepared by a licensed New Jersey land surveyor, to the satisfaction of the Township Engineer.

4. The Applicant shall obtain approval from any other governmental agencies with jurisdiction relating to the property or the application.

6. All fees, taxes, escrows and other monies due to the Township of Fredon shall be paid in full.

7. The Applicant shall comply with all rules, regulations, statutes and ordinances of the United States of America, State of New Jersey, County of Sussex and the Township of Fredon.

SO RESOLVED, as aforesaid:

AYES: 4

NAYS: 0

ABSTENTIONS: 0

The foregoing is a true and correct copy of the Resolution of Memorialization of the Fredon Township Board of Adjustment made pursuant to N.J.S.A. 40:55D-10(g) and adopted at a regular meeting assembled on October 11, 2016 memorializing the Resolution of Intent of the Fredon Township Board of Adjustment at a regular meeting assembled on September 13, 2016.

FREDON TOWNSHIP BOARD OF ADJUSTMENT

BY: Joanne Charner

**MEMORIALIZING RESOLUTION OF THE
BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF FREDON
APPROVING THE APPLICATION OF
MICHAEL PROTZEL AND ANDREA REMEZ
FOR VARIANCE RELIEF RELATING
TO GROUND MOUNTED SOLAR
PANELS ON PROPERTY
KNOWN AS BLOCK 2005, LOT 28**

**DECIDED: OCTOBER 11, 2016
MEMORIALIZED: NOVEMBER 8, 2016**

WHEREAS, Michael Protzel and Andrea Remez, with the address of 39 Warner Road, Newton, New Jersey 07860 (hereinafter the “Applicant”) applied to the Fredon Township Board of Adjustment (hereinafter the “Board”) for variance relief in connection with the construction of a proposed solar array for property located at 39 Warner Road, Township of Fredon, which is known and designated as Block 2005, Lot 28 on the Tax Maps of the Township of Fredon, in accordance with a Property Survey of Block 2005, Tax Lot 28, prepared by L.J. Brill & Associates, P.A., dated April 6, 1994, revised June 7, 1994, with handwritten dimensions showing the proposed solar array; an Impact Evaluation prepared by Paradise Energy Solutions, undated and unsigned; and Details of the Proposed Solar Panel Arrays, consisting of Drawing V-03, Racking Structure Sheet with the latest revision date of February 11, 2015, Drawing No. V-03, Racking Structure Sheet 2 with the latest revision date of February 11, 2015, a One-Line Diagram with the latest revision date of July 12, 2016, and a System Layout Plan with the latest revision date of June 29, 2016, all of which are collectively hereinafter referred to as the “Approved Plans”; and

WHEREAS, the matter was heard before the Board at a public hearing of the Board of Adjustment on October 11, 2016; and

WHEREAS, it has been determined that the Applicant has complied with all of the procedural requirements, rules and regulations of the Board of Adjustment of the Township of Fredon and that all required provisions of procedural compliance have been filed with the Board; and

WHEREAS, the Board of Adjustment of the Township of Fredon hereby makes the following findings and conclusions based upon the evidence submitted to the Board at the hearing:

1. The Applicant was not represented by counsel. Sworn testimony in support of the application was given by Michael Protzel and by Curtis Ulrich, who is a representative of Paradise Energy Solutions, the solar contractor that put together the application package and will be performing the installation.

2. The Applicant is seeking authorization to construct a ground mounted solar array in the front yard of their residential property, which is located in the AR Agricultural Residential zone. The proposed array will consist of 66 solar panels, each 39 inches wide by 6 foot 5 inches tall. After installation, the panels will be just over eight feet above ground at their highest point. The total length of the installation will be approximately 108 feet, and will occupy approximately 1,296 square feet. The proposed panels will have a capacity of 20.46 kilowatts.

3. The property is 46.407 acres, and has a single family residence and various accessory structures on it. While it is technically landlocked, it is held in common ownership with Block 2005, Lots 27 and 27.03 (which have a combined area of 18.353 acres). Those lots have frontage on Warner Road, and driveway access to the subject property is from Warner Road and across Lot 27. The Applicant stated that the three lots had been merged by deed.

4. “Small solar systems” are permitted as accessory uses in the AR zone pursuant to Section 550-51E of the zoning ordinance. They are limited, however, to the lesser of 15 kilowatts or 110% of the average of the three prior years’ electrical energy consumption, and because a 20.46 kilowatt system is proposed, (the Applicant only produced evidence of electrical energy consumption for one prior year), variance relief is required. In addition, pursuant to that ordinance section, solar arrays are prohibited from being located within the front yard, thus necessitating an additional variance. Finally, in an essentially overlapping ordinance provision for purposes of this application, accessory structures are not permitted in the front yard pursuant to Section 550-27E of the ordinance, so a variance is also required from this section.

5. Mr. Ulrich testified that the Applicant wishes to install the solar panels to ease the burden on the environment, and to ease his own energy burden. When asked why the panels could not be installed in a conforming location on either the roof of the dwelling house or in the rear yard, Mr. Ulrich responded that there would be insufficient sun clearance in either location to make it feasible. When questioned about the ordinance provision that limits solar systems to the lesser of 15 kW or 110% of the average of the three prior years’ electrical energy consumption, and why the application was seeking authorization to install a 20 kW system, the Applicant was not sure why his energy consumption during the past year was so much higher than the ordinance limit, but did state that he generates a lot of power and that he had recently gotten a hot tub, which uses a lot of power.

6. Addressing several questions set forth in a September 23, 2016 report of the Board Engineer, Mr. Ulrich stated that the panels and racks will be set up in a manner where they follow the existing gently sloping terrain, so that no grading will be required to install the rack system. No fencing is proposed because of the physical remoteness of

the property. The utilities and wiring will be installed below ground. Mr. Ulrich also testified that based upon the information submitted from the manufacturer, which was marked into evidence as Exhibit A-1, the installation would comply with all applicable noise regulations. No lighting is proposed for the facility, nor will any existing lighting be left on for security.

7. The Board finds after considering all of the evidence that the application satisfies the criteria for granting a hardship variance pursuant to N.J.S.A. 40:55D-70c(1). The Applicant may satisfy the so-called positive criteria of that statute by demonstrating that physical features or other extraordinary and exceptional situations uniquely affect a property, or the structures lawfully existing thereon, would cause a hardship to an applicant if the ordinance provision at issue were strictly enforced. Based upon the testimony, the Board finds that because of the lack of sufficient sun clearance to make a conforming installation on the roof or in the rear yard workable, a hardship within the meaning of the statute exists. While it might theoretically be possible to eliminate that hardship by cutting down trees, the Board is unwilling to force the Applicant to do so because it would undermine the ordinance goal to protect forested areas, and because, as discussed below, no detriment will be caused by allowing the deviation. The Board further finds that a hardship exists with regard to the 15 kW ordinance limit in this particular case, because adhering to that limit, based upon the testimony, will be insufficient to provide the needed power in the case of this particular applicant. Solar panels and solar arrays are to be encouraged. In fact, the Municipal Land Use Law specifically deems them to be an inherently beneficial use. Where, as here, an application is made to exceed the allowable kW limit based upon the demonstrated need at a particular property, such an application should be looked at with an open mind when

the applicant demonstrates that allowing the greater kilowatt installation will not cause any meaningful impact on any adjoining property.

8. The Board further finds that the Applicant has satisfied the so-called negative criteria for the granting of the requested variance relief. This is a very large property, more than 46 acres, and when it is considered in conjunction with adjoining Lots 27 and 27.03, the total area is almost 65 acres. The house on Lot 28 is approximately 7/10 of a mile from the driveway terminus on Lot 27, and the lot is heavily wooded. Because of these factors, the proposed installation in the front yard should not even be visible to anyone off the property. Nor, based upon the information from the manufacturer as to the decibel levels, should it be audible. Accordingly, the grant of the requested variance relief will not cause any substantial detriment to the public good (i.e. to neighboring properties). The Board believes that the ordinance prohibitions against locating solar installations in front yards, and in exceeding the 15 kilowatt limit, are intended to limit any off-site impact from solar installations. Because of the complete lack of off-site impact, and the unusual characteristics of this property, the Board finds that the grant of the requested variance relief to allow this beneficial use will not substantially impair of the intent and the purpose of the zone plan and zoning ordinance.

9. The Board accordingly finds that because the application otherwise complies with applicable ordinance requirements, it merits approval, subject to compliance with the conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of Fredon, County of Sussex, State of New Jersey, that the application of Michael Protzel and Andrea Remez for variance relief to allow construction of a new solar panel and solar array as aforesaid is hereby granted, subject to the following terms and conditions:

1. The Applicant will comply with the Approved Plans, and with all representations made to the Board during the course of the hearing, which are specifically incorporated herein by reference.
2. The installation, when installed, shall not exceed 21 kilowatts.
3. The Applicant will comply with the ordinance requirement that after completion of installation, written notice of the existence of the installation shall be served on emergency service providers (Fredon Township Fire Department and Fredon Emergency Medical Services) identifying the property by lot and block and street address, with a graphic plan identifying the location of the electrical service disconnect for the solar energy system. The Applicant will further comply with any requirements imposed by the aforesaid emergency service providers.
4. The noise level from the system shall comply with all NJDEP and Township noise level standards, to the satisfaction of the Board Engineer.
5. The Applicant will provide details on the size and location of the equipment warning signs to the Board Engineer.
6. The Applicant shall provide further details regarding the dimensions and the height of the electrical equipment, and construction details regarding the inverters and concrete pad to the Board Engineer, to the satisfaction of the Board Engineer.
7. Upon completion of the project, an as-built plan prepared by a New Jersey licensed land surveyor shall be provided to the Board Engineer.
8. The Applicant shall obtain approval from any other governmental agencies with jurisdiction relating to the property or the application.
9. All fees, taxes, escrows and other monies due to the Township of Fredon shall be paid in full.

10. The Applicant shall comply with all rules, regulations, statutes and ordinances of the United States of America, State of New Jersey, County of Sussex and the Township of Fredon.

SO RESOLVED, as aforesaid:

AYES: 4

NAYS: 0

ABSTENTIONS: 0

The foregoing is a true and correct copy of the Resolution of Memorialization of the Fredon Township Board of Adjustment made pursuant to N.J.S.A. 40:55D-10(g) and adopted at a regular meeting assembled on November 8, 2016 memorializing the Resolution of Intent of the Fredon Township Board of Adjustment at a regular meeting assembled on October 11, 2016.

FREDON TOWNSHIP BOARD OF ADJUSTMENT

BY: Suzanne Roland

