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**CALL TO ORDER:**

Mr. O'Leary called the meeting to order and stated it was open to the public in compliance with Public Law 1975, Chapter 231, sections 4 & 13.

**FLAG SALUTE**

**ROLL CALL:       Members Present:** Hughes, Fette, Luthman, Randazzo, Corcoran,  
Leuthe, Van Sickle, O'Leary.

**Members Excused:** Didyk, Taylor.

**Members Absent:** None.

**Also Present:** Ursula Leo, Esq.  
Nevitt Duveneck, PE

**EXECUTIVE SESSION:**

A motion to go in to executive session to discuss pending litigation was made by Mr. Corcoran. It was seconded by Mr. Randazzo and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Leuthe, Van Sickle, O'Leary.

A motion to come out of executive session was made by Mr. Randazzo. It was seconded by Mr. Fette and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Leuthe, Van Sickle, O'Leary.

**COMPLETENESS/ HEARINGS/ CONCEPT:**

1.) Alptekin, Ismail                   VAR12-1                   B: 6 L: 17

A motion to carry the application without further notice to the October 25, 2012 meeting was made by Mr. Corcoran. It was seconded by Mr. Fette and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Leuthe, Van Sickle, O'Leary.

2.) Gernat, Chris                   VAR11-2                   B: 18.06 L: 6

Ms. Leo gave an overview of Judge Weisenbeck's decision regarding what the Board could consider in making a decision in this matter. She explained the letter she sent to the Judge. The response from the Judge said it would not give an advisory decision to the Board. Ms. Leo went over the remand to the Board. She gave some case law examples to the Board. She said the issue is the impact the evergreens will have on the Clark's view from their property.

Mr. Leuthe stepped down for this hearing.

Mr. John McDermott, attorney for Mr. and Mrs. Jansen asked the Board if he could present information regarding his clients view to which Ms. Leo said no because it was a remand notice matter. She said he can cross examine based on the Clark's view. Mr. McDermott felt the application has changed and therefore he should be allowed to present his case. The matter before the Board was a remand from the court regarding the Clark's view. Mr. McDermott disagreed with Ms. Leo.

Ms. Megan Ward, attorney for the Gernats explained remand law. She said the proposed array is not being moved so it is the same application. She felt the Jansen's had an opportunity to object earlier and they did not. Ms. Leo said the Board is bound by the decision of the court.

Mr. Matt Morris of 4 Woodcliff Trail, Newton, NJ was sworn in by Ms. Leo. He gave his qualifications as a planner and landscape architect, which were accepted by the Board. He

presented a copy of the revised map dated 7-13-12 which was marked and entered as exhibit R-6. Mr. Morris explained the type of evergreen that was chosen for the screening. He said the Norway spruce is hardy and can be trimmed at different times of the year. There was a lengthy discussion on the way the Norway spruce grows. The trees will be 5 to 6 feet tall at the time of planting. The trees will be installed by a professional. Mr. O'Leary asked how much of the array will be blocked by the trees when they are initially installed to which Mr. Morris said about half of the array will be blocked. Mr. O'Leary asked why they could not install larger trees. Mr. Morris said the trees should be planted and get established before the owner starts trimming them. Mr. O'Leary asked if the tree would be compromised if they are topped. Mr. Morris said the central leader can be re-established on this type of tree so it would not be compromised by cutting the top of it. He said it is a hardy tree and will allow pruning without damaging the tree. They will need routine trimming to keep them at a certain height and in good shape. Mr. Morris said the arborvitae is not as vigorous and does not create as nice a buffer.

Mr. Luthman felt the Norway spruce grows very dense however the branches on the inside do die from a lack of sunlight and then they become sparse and you can see through them. Mr. Morris said that will not happen if they are properly maintained.

Mr. Duvneck asked how the trees will be pruned when they are only seven feet apart. Mr. Morris said it can be done with a ladder. There was a lengthy discussion on how the trees will be trimmed. Mr. Duvneck felt the Clark's would be able to see the top of the solar array from their deck because of the cone shape of the trees to which Mr. Morris agreed.

Mr. Randazzo asked what percent of the panels will be visible when the trees are fully grown and pruned. Mr. Morris said about 25% will be visible. Mr. Randazzo asked if the color contrast between the trees and solar panels is extreme. Mr. Morris said the trees are medium to dark green and the panels are black so it is not an extreme contrast.

Mr. Fette asked if someone was standing on the deck stairs would the trees block the view of the panels to which Mr. Morris said yes. Mr. Fette asked if someone were to stand on the roof of the house would they see more of the panels to which Mr. Morris said yes. Mr. Fette said he felt the trees that are proposed would block a majority of the solar panels and that is the objective of the screening.

Mr. O'Leary opened the meeting to the public. Ms. Debra Nicholson, Esq. said she was representing the Clark's. She asked Mr. Morris what happens to the tree trunk as the tree matures. Mr. Morris explained what happens to the trees as they mature and they are trimmed. Ms. Nicholson asked if a professional needs to trim the trees or could a typical homeowner do it. Mr. Morris said it can be done by a homeowner with a hedge trimmer. Ms. Nicholson asked if Mr. Morris was familiar with the Gernat's and Clark's property to which he said yes. There was a lengthy discussion on how much of the array the Clark's will see as the years progress. Ms. Nicholson asked how much of the array the Clark's will see from their garden. Mr. Gernat said that they will be able to see a portion of the array however he did not know the exact amount. Mr. Morris presented a display of photographs from the Gernat's yard to the Clark's yard which was marked and entered as exhibit R-7. Mr. Morris explained the photos to the Board.

Ms. Nicholson asked if there was another way of screening the arrays so that the Clark's would not have to look at it at all. Mr. Morris said the line of trees could be extended however the plan was put together to address the line of sight from the deck. Ms. Nicholson asked why the Gernat's could not plant trees along the entire property line between the Gernat's and the Clark's. Mr. Morris said it could be done but that was not what was asked of him. Ms. Nicholson asked what would need to be done so the Clark's did not have to see the array. Ms.

Ward objected to the question. Mr. Morris said he cannot answer the question without doing more mapping.

Mr. McDermott asked if the row of evergreens were extended it would block more of the array. Ms. Ward objected to the question because of the topography of the land. Mr. Morris felt it would become a wall of evergreens. Mr. McDermott asked what would happen to the trees if they were not trimmed on a regular basis and then the Gernats tried to cut them back. Mr. Morris explained that the trees would become stressed. Mr. Morris explained how the trees would be planted.

Mr. O'Leary asked what would happen if a tree died in the middle of the winter and how that would impact the Clark's view of the array. Mr. Morris said the tree will not one day be alive and then be dead the next day. He said it dies slowly over a few months. He said they usually die during the summer months. The tree could then be replaced. Mr. O'Leary asked if the leader of the tree is consistently cut will it produce multiple leaders to which Mr. Morris said yes. Mr. Morris said all of the leaders can be cut to keep the tree at a certain size. Mr. O'Leary asked if the trees will lose their conifer shape with continually pruning. Mr. Morris said the tree will keep its conifer shape if it is continuously cut.

Mr. Corcoran asked why the tree height is at 10 feet. Mr. Morris said the added height would eliminate the view from the Clark's property. Mr. Gernat said he would have to look into the shading of the panels with the added height.

Mr. Luthman suggested there be a minimum height of the screening. He asked what would happen to the view if two trees were added to each side of the proposed screening. Mr. Morris said it would provide more screening.

Ms. Leo clarified that the Board should consider substantial detriment to the Clark's view.

Ms. Nicholson questioned Mr. and Mrs. Clark as a rebuttal. Ms. Nicholson asked Mr. Clark to discuss his gardening time frame. Mr. Clark said the array will not be pleasing to look at. He said his property and its view is all natural. Mr. Clark said he will be able to see the entire array from his garden.

Mrs. Clark felt that property setbacks should be honored. She felt there was no extreme hardship in this case. Mr. Clark asked why the discussion is the view from their deck and not from other parts of their property. Mr. Clark said they will be able to see the array from their patio as well.

Mr. Randazzo asked for clarification on where the patio is located on the Clark's property. Ms. Nicholson presented an aerial view of the Clark's property that was marked and entered as exhibit Clark 4. She also presented a survey of the Clark's property which was marked and entered as exhibit Clark 5. Mr. Clark explained where his patio was on the drawing.

Mr. O'Leary closed the meeting to the public.

Ms. Ward gave a closing statement. She said the Board should consider the facts. She said the only objectionable factor was the view from the Clark's deck. She said the testimony given accomplished the remand from the judge and the view of the very top of the array is not detrimental.

Ms. Nicholson gave a closing statement. She felt the array was an industrial fixture. She said it will only be seen by the neighbors and not the homeowners. She felt the judge asked the Board to consider if the row of evergreens will screen the view and she felt it would not. She said the applicant did not meet his burden of proof.

Ms. Leo went over the variances that the Board needs to consider.

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A motion to approve the variance with the following amendments: the trees be a minimum of 15 feet in height and at planting they be 8 feet in height and maintained as long as the solar array is in place and if the trees die they be replaced within 30 days of the death of the tree or 30 days from the end of the frost season, the trees shall be installed professionally and a performance bond in the amount of \$1,440.00 shall be established for 7 years was made by Mr. Luthman. It was seconded by Mr. Hughes and denied with a roll call vote. Ayes: Luthman, Randazzo, O'Leary. Those voting in the negative: Hughes, Fette, Corcoran, Van Sickle.

**AUDIENCE:**

Mr. O'Leary opened the meeting to the public. With nobody coming forward, the meeting was closed to the public.

**OLD BUSINESS:**

1.) Proposed Sewer Service Areas

The Board agreed to carry this matter to the next meeting date.

2.) Reserved Septic System

Mr. O'Leary noted the Board should continue to look at the proposed ordinance. The Board carried this matter to its next meeting date.

3.) Lighting Ordinance

The Board carried this matter to its next meeting date.

Mr. O'Leary discussed the changes the Township Committee was making to the sign ordinance.

**RESOLUTIONS:** None.

**ORDINANCES:** None.

**ZONING REPORT:**

Mr. Fette advised the Board that the new owners of the Merck property took out permits to demolish some of the buildings on the property.

**BILLS:** List #8

Mr. Leuthe went over the bills with the Board. A motion to pay the bills as presented was made by Mr. Leuthe. It was seconded by Mr. Randazzo and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Leuthe, Van Sickle, O'Leary.

Mr. Leuthe discussed the outstanding bill from Finelli Consulting. A motion to pay the Finelli bill was made by Mr. Hughes. It was seconded by Mr. Randazzo and passed with a roll call vote. Ayes: Hughes, Fette, Luthman, Randazzo, Corcoran, Leuthe, Van Sickle, O'Leary.

**CORRESPONDENCE:** None.

**ADJOURNMENT:**

With no further business to come before the Board, a motion to adjourn was made by Mr. Hughes. It was seconded by Mr. Fette and passed with everyone saying aye.

Respectfully submitted,

Stephanie Pizzulo  
Secretary