



**Neptune Township ~ Zoning Board of Adjustment
Regular Meeting Minutes
Wednesday, June 5, 2019 at 7:30 PM
Municipal Complex, 2nd Floor, 25 Neptune Boulevard**

ATTENDANCE:

Present: Dr. James Brown, William Frantz, James Gilligan, Thomas Healy, Frances Keel, Michael Pullano, Naomi Riley, Ashley Vidal, Paul Dunlap, Monica Kowalski, Esq. – Board Attorney, Jennifer Beahm, PP, AICP - Board Planner, Matt Shafai, PE, PP, CME – Board Engineer, George Waterman – Zoning Officer, and Torro Reporting, LLC.

Absent: Barbara Bascom

OPENING: Meeting called to order by Chairman Paul Dunlap at 7:30 PM. Chair Dunlap advised the public of fire exits and how the meeting will proceed.

CORRESPONDENCE: None.

RESOLUTIONS MEMORIALIZED:

Memorialization of Resolution for Denial of Use Variance & Minor Site Plan w/Bulk Variances for Outfront Media, LLC – Block 1004, Lot 3 – 55 Highway 35 – postponed until August 7th or September 4th with consent from Mr. D’Arminio per Monica Kowalski, Esq.

ZBA#19/10 – Approval of Bulk Variances for Additions to Single Family Dwelling – Irene Shenouda & Andrew Orefice – Block 5601, Lot 2 – 506 Concourse West

WAIVER HEARING:

ZB19/04 – (Use Variance) - Collard Realty, LLC – Block 1002, Lot 16 – 1906 Rutherford Avenue – Applicant is seeking a Use Variance to add warehousing/self-storage by a single user in the building. It is necessary for the Board to review the waiver requested/associated with the project prior to the application being deemed complete and/or further consideration by the Board. This application had been deemed incomplete on May 21, 2019 by Matt Shafai, PE – Board Engineer. Applicant is represented by Peter S. Falvo, Jr., Esq. ****RECEIVED CALL FROM APPLICANT’S ATTORNEY THAT HIS CLIENT DOES NOT WISH TO SEEK THE WAIVER FOR THE COMMUNITY IMPACT STATEMENT AND THEREFORE WILL SUPPLY SAME SO THIS WAIVER HEARING IS NO LONGER NECESSARY****

EXECUTIVE SESSION:

Mr. Frantz makes a motion to move into executive session to discuss ongoing litigation matters, seconded by Mr. Healy – all members present in favor. Paul Dunlap makes a motion to return to regular meeting, seconded by Mr. Frantz.

DISCUSSIONS:

ZB19/02 - Use Variance for Shed with Overhang as Principal Structure also requiring Bulk Variance Relief – Christian & Catherine Corbett – Block 5608, Lot 6 – 41 Albany Road (Bulkhead Property) – Applicant is proposing to install a 10’ x 13.5’ structure consisting of a 10’x4’ storage shed with a roof and overhang extending an additional 9.5’ to provide a covered counter area on the subject property.

Christian and Catherine Corbett – Applicants/Owners – both sworn in.

Shed is being proposed on the West Concourse Bulkhead portion of the property.

Monica Kowalski, Esq. inquires whether the applicants have spoken to a professional planner and/or engineer. They indicate no.

It is asked whether they received a CAFRA Permit as this is a Zone A flood zone and flood insurance may be required as the home is in a flood zone. The neighbors who have similar sheds on their bulk head properties may have pre-existing conditions prior to Super Storm Sandy and/or the permit extensions that were in place after Sandy. Those allocations have been taken away and therefore this application would now be subject to a CAFRA.

NJDEP regulates structures in flood zones.

It is indicated that the applicants must apply for a State Permit before the Board can move forward with this application. The d1 Use Variance that is being requested is discussed and that the applicants will have to prove the positive and negative criteria associated with same.

1. NJDEP Permitting necessary 2. Construction methods to be used if DEP approved 3. Requirements under the law that will need to be met.

The applicants request an adjournment and ask that the application be placed on hold until further notice. Should the applicants return for variance, new public notice will be required for the new hearing date.

ZB17/06 (Use Variance and Preliminary & Final Site Plan) – 756 Holding, LLC – Block 903, Lot 2 – W. Bangs Avenue – Applicant is seeking a Use Variance and Preliminary and Final Site Plan approvals to construct 19 Townhouses on this property. **PARTIALLY HEARD ON FEBRUARY 6, 2019******

Applicant is represented by Jennifer S. Krimko, Esq.

Exhibit A-7 is passed around to the Board to refresh their memory.

Tom Healy questions whether the lot is wooded? Ms. Krimko indicates the application was bifurcated on the record at the last hearing and they are only seeking a Use Variance at this time.

Open to Public for Comments:

Angelica DeSilva – 2211 West Bangs Avenue – questions on traffic and how it is going to effect where she lives. She has lived there for 20 years and is concerned with the egress of 19 townhomes – doesn't feel it is safe and they would not be doing any of the existing properties any good. Jennifer Krimko recites the traffic study results – Ms. DeSilva indicates she does not believe them.

Jennifer Krimko, Esq. summarizes the application and the proofs required and reasons supporting the approval of this application for Use Variance.

Mr. Healy questions whether or not the easement issue will be resolved? Monica indicates there was issue with the language and she will work on this with Ms. Krimko should the Board feel the Use Variance is appropriate.

Mr. Frantz questions the Board Professionals whether the basin, stormwater, and sewer are sufficient if the Use Variance is granted and if they are comfortable with the future development.

Matt Shafai indicates he is uncertain as nothing has been designed. They could come back.

Jennifer Krimko indicates they can't satisfy there is no Site Plan approval. If the plan became substantially different it would need a new Use Variance approved if a Use Variance is granted subject to Site Plan approval.

Monica Kowalski indicates Matt Shafai cannot make a determination because he has no information.

Matt Shafai indicates the basin is 6 feet from the neighbor which could have a negative impact and therefore he has concerns.

Jennifer Beahm indicates she cannot say definitively that there will be no negative impact. She has concerns as there are a lot of question marks with the application.

Naomi Riley questions if Ms. Krimko wants the Board to approve a Use Variance with no details? Jennifer Krimko, Esq. indicates no and proceeds to explain her position.

Thomas Healy – indicates this is the difficulty with bifurcating applications as there may be 15 more appropriate uses, but he doesn't know.

Bill Frantz indicates he feels the same as Mr. Healy and not happy with being married to 19 townhomes on the site.

****THE BOARD TAKES A BRIEF RECESS @ 9:18 PM – 9:21 PM THE BOARD RETURNS AND ALL MEMBERS ARE STILL PRESENT****

Paul Dunlap indicates this is a difficult decision – the basin being so close to the neighbor is a problem for him. This is essentially a determination on ideas and not engineered drawings. There are drainage concerns no matter what, but either way we are guessing – has concerns and doesn't know.

Tom Healy indicates he could approve if said "up to 19 units" but feels in the dark approving at this point. He understands, but it is difficult to approve 19 units and then worry about how it is going to work later.

Dr. Brown indicates he feels there are health and safety issues. He finds there is heavy traffic and if the retention basin is not maintained properly it can get deadly mosquitoes, etc. He feels there are a lot of issues.

Based upon the application submitted and the testimony provided to the Board, Dr. James Brown makes a motion to deny the application as submitted and discussed, moved and seconded by William Frantz.

Those who voted YES: Dr. James Brown, William Frantz, Thomas Healy, Frances Keel, Naomi Riley, and Paul Dunlap

Those who voted NO: James Gilligan

Those who ABSTAINED: None.

Those ABSENT: Barbara Bascom

****THE BOARD TAKES A BRIEF RECESS AND RETURNS at 9:44 PM – ALL MEMBERS STILL PRESENT ****

ZB19/03 – (Appeal of Zoning Officer's Determination) – College Achieve Public Charter School, Inc. – Block 3101, Lot 2 – 3455 W. Bangs Avenue – Applicant is seeking an Appeal of the Zoning Officer's Determination that the proposed school would impermissibly create two principal uses on the property.

Applicant is represented by Andrew J. Karas, Esq. of Fox Rothchild. Mr. Karas indicates the questions regarding the amendment had nothing contrary to which they relied on at the last hearing.

Ordinance 02-14 – Mr. Karas indicated he did not receive; however, responded “Thank you” in an e-mail. Mr. Karas was given a copy of same and provide with time to review said ordinance.

Monica Kowalski, Esq. describes the Ordinance – and that the check mark in the table or “P” notation is an error. Ms. Kowalski prefaces the Board this is an appeal of the zoning officer’s determination not a Use Variance application. This is to determine whether or not the Zoning Officer made the proper determination.

Mr. Karas provides a summation of the existing conditions and application before the Board and the denial of the Zoning Officer.

It is indicated the school is accessory to the church and elementary schools are permitted uses in the Zone.

Mr. Karas reviews case law with regard to principal/accessory uses for childcare vs. K-8 school. He indicates 2 uses exist on the site and the school has not been abandoned.

Mr. Karas indicates there are 2 principal structures not uses existing on the lot.

Chair Dunlap questions Shim case and who operated the uses.

Monica Kowalski indicates we are here to determine whether or not Mr. Waterman was correct in his determination.

Dr. James Brown – questions whether the building is going to be rented. It is indicates yes they will be renting the building from the church. It is asked how many students? It is indicated that is not relevant.

Open to the public for questions/comments:

Richard Briigliodoro, Esq. – Representing Neptune Township Board of Education – indicates he was in attendance at the May 1, 2019 meeting in support of the Zoning Officer’s Determination.

Mr. Karas questions if any of the Board Members are employed by the Neptune Township Board of Education or if any of their close family members are employed by them. There appears to be none.

Richard Briigliodoro, Esq. of Weiner Law Group appears on behalf of the Neptune Township Board of Education.

Mr. Briigliodoro indicates we need to look at Ordinance Section 403.01 – Holy Innocence is located in an R-1 Zone where churches are permitted where school uses are not permitted, as well as Ordinance Section 411.05 - Number of Principal Buildings and Principal Uses in a Residential Zone District which states...Unless otherwise specified in this Ordinance, not more than one principal dwelling or principal building shall be permitted on one lot in any residential zone district. He also indicates the Board should consider the definitions contained within Section 201.

Public Portion is Closed

Dr. Brown agrees with the Zoning Officer’s decision, but not how it is written.

Mr. Frantz agrees with the Zoning Officer’s determination and has nothing against a charter school, but the Zoning Officer is correct.

Based upon the application submitted and the testimony provided to the Board, Naomi Riley makes a motion to deny the request for appeal and uphold the Zoning Officer's decision, moved and seconded by William Frantz.

Those who voted YES: William Frantz, James Gilligan, Thomas Healy, Frances Keel, Naomi Riley, and Paul Dunlap

Those who voted NO: Dr. James Brown

Those who ABSTAINED: None.

Those ABSENT: Barbara Bascom

ADJOURNMENT:

A motion was made by William Frantz and seconded by Thomas Healy to adjourn the meeting at 10:35 PM. All in favor. The next meeting of the Zoning Board of Adjustment on July 3, 2019 will be cancelled; therefore there will be a Regular Meeting on Wednesday, August 7, 2019 at 7:30 PM which will be held here at the Neptune Township Municipal Building, Township Committee Meeting Room, 2nd Floor.