

**BOROUGH OF WASHINGTON, WARREN COUNTY, NEW JERSEY**  
**BOARD OF ADJUSTMENT MINUTES**  
**May 27, 2008**

**Roll Call:** Durfee, Eller, Mangiacotti, Post, Semonche, Truman, Vitalos – 7 Present.

**Absent:** None

**Vacancy:** 2 Vacancies

**Also Present:** Stuart Ours, Esq., Board Attorney  
Ann Kilduff, Clerk

Chairman Eller led the members of the Board in the flag salute and read the Open Public Meetings Act into the Record.

**MINUTES:**

**Regular Meeting – April 22, 2008**

Chairman Eller entertained additions or corrections to the minutes. Hearing none, it was moved by Post, seconded by Truman, that the minutes of the regular meeting held April 22, 2008 be approved as submitted.

Roll Call: Durfee, Mangiacotti, Post, Truman, Vitalos, Eller  
Ayes: 6, Nays: 0, Abstained: 1 (Semonche)  
Motion carried.

**RESOLUTIONS:**

**Case #2008:2 – Asmaa Ahmed – 3 Hillcrest Avenue**

It was moved by Post, seconded by Truman, that the resolution be adopted as approved at the April meeting approving the expansion of the parking area.

Roll Call: Durfee, Mangiacotti, Post, Truman, Vitalos, Eller –  
Ayes: 6, Nays: 0, Abstained: 1 (Semonche)  
Motion carried.

**APPLICATIONS:**

**Case #2008:6 – Cory & Shelby Orlando – 122 Myrtle Avenue – Block 44 Lot 18 – R2 Zone**

Chairman Eller noted this application has been postponed until the June 24, 2008 meeting. Mr. Ours stated the applicant will need to re-notice the newspaper.

**Case #2008:9 – Kenneth Hale – 51 Broad Street; Block 95 Lot 20 OB Zone**

This application is filed for the purpose of performing automotive repair and storage. In the Zoning Officer's Refusal of Permit this request is denied for noncompliance with the provisions of Section(s) 94-82 A of the Municipal Zoning Ordinance for the following reason(s): This zone does not permit automotive repair and storage facilities.

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Attorney Ours stepped down due to a conflict of interest. Attorney Baucom reviewed the notices and declared all were in order. The Board has jurisdiction to hear this case. Mr. Baucom swore in Mr. Hale of 51 Vannetta Street and Mr. Gesner of 44 Route 57 West for their testimony.

Chairman Eller asked the applicant what he is doing on the property. Mr. Hale replied he is storing and repairing his own automobiles. He stated the previous owner did repairs and he isn't doing anything different.

Attorney Baucom recapped that in June 2007, Mr. Gesner, the owner of the property, requested the variance for a model business be vacated by the Board. The property was returned to its previous zoning status. The Board found there was no abandonment of retail auto parts sales use. The variance was to the model business; there were no requirements it be sold for such use. The property is in the OB Zone. Attorney Baucom stated the Board needs to hear testimony to determine if Mr. Hale is using the property in the same manner as Mr. Gesner.

Mr. Gesner read from a prepared statement. He stated that Mr. Hale wanted to store cars there without a variance. Mr. Ours said he could and the sale went thru. Mr. Gesner stored up to five cars there at one time. Passers by would believe it was a garage if not taking notice of the sign. Mr. Hale doesn't want to sell parts or fix customers cars. The use of the building is for Mr. Hale's hobby. Mr. Hale feels pressured by Rudy Bescherer. Fire inspections were valid. The State was brought in and wrongly decided it was an unsafe building. Mr. Hale removed a non-supporting wall, not a supporting wall. The State found him correct and no permit was necessary. Mr. Gesner feels the use of the building is valid and no variance is needed.

Mr. Hale stated he will do retail business if he has to, but doesn't really want to. He collects antique cars and parts and restores them in his spare time. All of the cars are his. He does not sell cars and is not open to the public. He currently has seven cars on site. Mr. Hale stated he was told by Mr. Bescherer he needed a license to sell parts. Mr. Gesner added that the Zoning Officer feels it is a repair garage. Mr. Hale does not want to service the public.

Chairman Eller questioned the state inspector not knowing what he was doing. Mr. Hale replied the State sent two different inspectors the next time.

Mr. Baucom asked Mr. Hale how often he would sell a car. Mr. Hale replied he has 50 cars and hasn't sold one yet. He never will.

Mr. Vitalos asked if the content in the applicant's application reflects his true intentions. Mr. Gesner replied Mr. Hale is appealing the need for a variance; he feels Mr. Bescherer made a mistake.

Mr. Post asked who owns the flatbed. Mr. Hale replied he does. Chairman Eller asked Mr. Hale if he has a car dealer license. Mr. Hale replied he does not as he is not a used car dealer. He has no employees or sub-contractors and no public traffic.

Chairman Eller entertained comments from the audience.

Ralph Martin, 103 Broad Street, was sworn in for his testimony. Mr. Martin asked if any of the board members have ever been inside the building. No one has. Mr. Martin has concerns about the noise and nuisance Mr. Hale is creating. There are cars parked half inside the building. Smoke from Mr. Hale's property has entered his house. He provided the Board with pictures of a car blocking the road. Mr. Martin also provided the Board with pictures of the past owner's parked cars on the sidewalk and feels it will happen again. He is concerned

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residents will need to walk in the street and that is unsafe. Mr. Martin stated grinding can be heard when the garage door is closed.

Ralph Ortiz, 13 Monroe Street was sworn in for his testimony. His property is next to Mr. Hale's property. His concern is with the cars leaking oil that went down the street and into the storm water drain. He testified Mr. Hale brought an oil tank and put it in the back of the building and feels this was illegally taken out of another house. Mr. Ortiz feels the outside of the property is a hazardous junkyard. Mr. Ortiz has a handicapped daughter that walks on the street. He is also concerned the place will catch on fire and wants a fire alarm installed so neighbors have time to react. Mr. Ortiz claims there is an unregistered vehicle outside the building and the grass is overgrown. Mr. Ortiz stated he never had a problem with Mr. Gesner when he owned the property as he was respectful of his neighbors.

Mr. Vitalos stated there seems to be a difference in the application vs. audience testimony. It sound like the use in the audience testimony is better suited for Route 31. He is concerned with the oil tanks. Mr. Baucom stated regulations need to be met for hazardous substances.

Mary Zajac, 48 Broad Street, was sworn in for her testimony. She stated that Mr. Gesner never sold auto parts in his last three years at the property. Large rolls of paper have been brought in by tractor trailer. Ms. Zajac stated the oil tank is underground and is an environmental hazard. This morning Mr. Hale was changing tires in front of his property. She stated there is a completely burned out car on the property.

Chairman Eller stated the Board has no jurisdiction over the oil tank. The Board's responsibility is to determine if the property can be used as intended.

Mr. Gesner stated Mr. Ortiz was a good neighbor to him. Mr. Hale is willing to work with the neighbors. Mr. Hale may have made some mistakes and may need to adjust things.

Chairman Eller asked what the difference is between a hobby and a business. He feels the services the applicant is doing are not in conjunction with the zone and cannot be grandfathered. Mr. Semonche stated he has a problem with the amount of cars and feels the property is a junkyard. He hasn't seen any pictures of antique cars. Mr. Gesner stated Mr. Hale doesn't want a variance as he feels one is not necessary.

Mr. Baucom stated the Board needs to decide if the operation by Mr. Hale is retail auto parts sales.

Frances Martin, 103 Broad Street, was sworn in for her testimony. She stated that when Mr. Gesner owned the property, the place was immaculate and she never worried about a fire. Now she is worried for herself and her neighbors of a fire. It is not a good thing.

Chairman Eller noted there were no other audience members in regards to this application.

Chairman Eller asked Mr. Hale about the noise and if he planned on using the oil tank to heat the garage. Mr. Hale replied he can have the tank removed, but he will use it eventually. Chairman Eller asked if the oil spill came from his property. Mr. Hale replied no, he does not know where it came from.

Mr. Gesner asked if everything would be OK if Mr. Hale opens a parts store. Mr. Baucom stated Mr. Hale would have to deal with the Zoning Officer.

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The Board noted it is written on Mr. Hale's application the property is to be used to store vehicles and parts to be sold. Mr. Hale stated he is not on the property very often. Ms. Martin stated Mr. Hale is there every day. Mr. Gesner feels this is a non-conforming use that hasn't been abandoned and it should be grandfathered.

Mr. Baucom stated the parts sales portion was the part that wasn't abandoned. The use proposed by Mr. Hale is not a use as a retail auto parts and not grandfathered use. He is not continuing a non-conforming use. It has been abandoned. Mr. Semonche stated the Board will be making a determination whether to uphold Mr. Bescherer's decision. According to the applicant's testimony, it is not an approved use.

It was moved by Semonche, seconded by Post, to make a determination the intended use by Mr. Hale is not allowed and not grandfathered.

Roll Call: Durfee, Mangiacotti, Post, Semonche, Truman, Vitalos, Eller –  
Ayes: 7, Nays: 0, Abstained: 0  
Motion carried.

Chairman Eller told Mr. Hale he is to stop doing what he is doing. Mr. Baucom stepped down and Mr. Ours continued with the meeting.

**Case #2008:7 – Matthew Miller – 15 Monroe Street; Block 95 Lot 22 OB Zone**

This application is filed for the purpose of increasing the size of the drive apron and parking area. In the Zoning Officer's Refusal of Permit this request is denied for noncompliance with the provisions of Section(s) 94-53 K1, 2 & 7 of the Municipal Zoning Ordinance for the following reason(s): There shall be no parking in the front yard. No driveway shall be located less than five feet from the perpendicular extension of the property line to the curb line. Macadam, concrete or pavers shall be used. This application has been tabled from the April 22, 2008 meeting.

Attorney Ours stated the applicant remains under oath. Mr. Miller requested additional time. He has received an estimate to remove the front porch and currently in the process of trying to make arrangements with the previous owner.

The applicant granted the Board a 30-day extension. This application is tabled until the June 24, 2008 meeting.

**Case #2008:8 – Cathy Witte – 91 S. Lincoln Avenue – Block 98 Lot 29.01 – R3 Zone**

This application is filed for the purpose of constructing a two-family dwelling.

In the Zoning Officer's Refusal of Permit, this request is denied for non-compliance with the provisions of Section (s) 94-77 B5 of the Municipal Zoning Ordinance for the following reason(s): There shall be at least 11,250 square feet for a two-family dwelling.

Mr. Ours stated for the record that he had previously represented Ms. Witte's father, but never represented Ms. Witte herself. Mr. Ours stated proper notices had been sent. The Board has jurisdiction to hear this case. Mr. Charles Farley and Ms. Cathy Witte were sworn in for their testimony.

Mr. Farley stated they would like to construct a two-family house for their immediate family to live in. The eave pictured in the plans would not be on their house. There would be a driveway along the north side into the backyard to a six car parking area. They plan on meeting all yard setbacks and feel the house would be a good fit for the neighborhood.

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Ms. Truman asked if the parking area would be paved over the grass. Mr. Farley replied not all, just enough for up to six cars to allow visitors to have off-street parking. Chairman Eller asked the width of the driveway. Ms. Witte stated it will be nine feet up to the parking area with a six foot set back. Chairman Eller noted they will need to take the turn around of the cars into consideration.

Chairman Eller stated the applicant needs to prove a hardship where a two-family house is needed. The area is not zoned for two-family homes and feels it should be a single family home. Ms. Witte replied she is worried about her family. Her son and his wife who would live on one side of the house are hearing impaired and she would like to see them be able to go right next door to family in case of an emergency. She was told by the Zoning Officer that the zone allows for two family homes; hers is just slightly larger. Mr. Farley doesn't feel a two-family home would generate that much more traffic. Chairman Eller asked if there are any entry doors on the driveway side of the house. Ms. Witte replied there is not.

Mr. Semonche stated he would like to see drawings of the parking area. Ms. Witte replied they will do the parking area as required by the Board. Mr. Ours stated a buffer and concrete curbing is necessary for six or more parking spaces and suggested having only five spaces. Ms. Truman is concerned with water run-off from the driveway.

Mr. Semonche noted there would be no absentee landlord. Ms. Witte stated she wants to keep her family in the Borough. She grew up here and her families are currently here as well.

Chairman Eller entertained comments from the audience.

Gina Appleby, 28 Willow Street, was sworn in for her testimony. Ms. Appleby stated she is concerned with the drainage as they currently have a problem in the area. She suggested the applicant look into other lots. She is concerned with the transfer of sale. Ms. Appleby is concerned with traffic and the pavement in the backyard. She doesn't see how a two-family home would benefit the neighborhood.

Ray Little, 82 S. Lincoln Avenue, was sworn in for his testimony. Mr. Little stated he shares the same concerns as Ms. Appleby. He owns a two-family house across the street from the property and is concerned with absentee landlords in the future. Mr. Little asked about snow removal. Mr. Farley stated they would push the snow straight back into the yard.

Mr. Ours asked the proportion of single, two-family and three-family homes in the neighborhood. Ms. Appleby stated there are mostly single family homes. Chairman Eller feels there are a good number of two-family homes as well.

Mr. Post noted the Board denied another applicant for this property because of the size of the house. Mr. Farley stated they looked at other properties as well as existing houses. Some of the houses are in poor condition. He wants his family to be safe. He feels a single family house could be on the property with the same number of bedrooms and cars as they are proposing.

Chairman Eller noted there were no other audience members regarding this application. Mr. Ours stated there is nothing particular about this property to justify granting a variance.

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Mr. Semonche stated the Board already denied a two-family house because of lot size, not because of anything else. The lot is too small. Personal information needs to be taken out of factor.

It was moved by Post, seconded by Semonche, to deny the construction of a two-family dwelling due to the size of the property. The Board feels a two-family home on this property would be a detriment to the public good.

Roll Call: Durfee, Post, Semonche, Truman, Vitalos, Eller –  
Ayes: 6, Nays: 1 (Mangiacotti), Abstained: 0  
Motion carried.

**COMMUNICATIONS:**

A memo from Manager Corica regarding the Grasso application was duly noted. This case will be heard at the June 24, 2008 meeting.

**REPORTS:**

There were no reports at this meeting.

**REMARKS:**

Chairman Eller stated there was a lot of emotion at this meeting. The Board is only here to decide on facts.

Mr. Ours stated he had told Mr. Hale and Mr. Gesner to check with the Zoning Officer to see if what Mr. Hale wants to do is allowed.

Hearing no further business to come before the Board, a motion was made by Post, seconded by Durfee, that the meeting be adjourned at 9:55 p.m.

Ayes: 7, Nays: 0.  
Motion carried.

Respectfully submitted,

Frank Mangiacotti, Secretary