

**BOROUGH OF WASHINGTON, WARREN COUNTY, NEW JERSEY
BOARD OF ADJUSTMENT MINUTES
OCTOBER 26, 2010**

Roll Call: Durfee, Mangiacotti, Post, Truman, Vitalos, Eller – 6 Present

Absent: None Absent

Vacancy: 3 Vacancies

Also Present: Steven P. Gruenberg, Esq., Board Attorney
William Gleba, Board Engineer
Peter Tolischus, Board Planner (attending for Paul Gleitz)
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 – September 28, 2010

Chairman Eller entertained additions or corrections to the minutes. Hearing none, it was moved by Truman, seconded by Mangiacotti, that the minutes of the regular meeting held September 28, 2010 be approved as submitted.

Roll Call: Durfee, Mangiacotti, Truman and Eller –
Ayes: 4, Nays: 0, Abstained: 2 (Post, Vitalos)
Motion carried.

RESOLUTIONS:

Case #2010:9– Pasquale Dattolo – 6 New Street

Mr. Gruenberg explained this resolution is memorizing the Board’s decision to allow the applicant to withdraw his application without prejudice. He will be allowed to re-file this application if necessary. It was moved by Mangiacotti, seconded by Truman, that the resolution be adopted as approved at the September meeting, allowing the application to be withdrawn without prejudice.

Roll Call: Durfee, Mangiacotti and Truman –
Ayes: 3, Nays: 0, Abstained: 3 (Post, Vitalos, Eller)
Motion carried.

Case #2010:11 Richard Allen – 14 Nunn Avenue

It was moved by Truman, seconded by Durfee, that the resolution be adopted as approved at the September meeting, granting the construction of a garage.

Roll Call: Durfee, Mangiacotti, Truman and Eller –
Ayes: 4, Nays: 0, Abstained: 2 (Post, Vitalos)
Motion carried.

APPLICATIONS:

Case#2010:8 – Praful Patel/P&P of Washington – 66 Route 31 North, Block 56, Lot 1 – B1 Zone

This application is continued from the August 24th meeting. Attorney Alan Lowcher was in attendance for the applicant and stated the property was purchased last year as a retail liquor store. The property is across from a residential zone and has a pre-existing, non-conforming house on it. The applicant has received the necessary permits for renovations and signage. The previous Zoning Officer advised the applicant relief was needed from the Board only after a cement pad was installed. The applicant's minor site plan changed to a major site plan classification. The applicant's professionals have been meeting with the Board's professionals and a subdivision was discussed in order to eliminate the need for variances for non-conforming use and two principal uses. Lot 1 would be the liquor store and Lot 1.1 would be the residential use. He stated Mr. Gleba recommended a driveway to provide off-street parking. Mr. Lowcher stated he takes no exception to Mr. Gleba's and Mr. Gleitz's reviews.

Chairman Eller noted for the record he has listened to the recording of the August meeting and therefore will be able to cast a vote. The Board took a 5 minute recess and returned with all members present.

Mr. Jess Symonds was sworn in for his testimony at the August 24th meeting and remains under oath. Mr. Symonds gave an overview of the project and discussed Sheet 1 where the statement of operations was added. This was marked as Exhibit A-1. Sheet 2 showed the width of Gibson Place will be made 40' wide. Chairman Eller asked if the street was marked out as previously requested and would there be changes to the existing sidewalk or road in front of the residence. Mr. Symonds replied that the street was marked and there would not be any changes to the sidewalk or section of the road in front of the residence. Mr. Symonds continued saying there would be grass planted in the islands and planters added around the sign as suggested by Mr. Gleba. Sheet 3 will be modified to show that the pole sign will be 48' x 60' and 5' off the right of way line. The sign will be approximately 12' from the curbing and will incorporate the 2 existing lights. The wall mount sign above the entrance door will be 48" by 96". A "No Left Turn" sign will be added at the entrance. Removable bollards will be added and removed for delivery trucks. The loading area is approximately 20.3' deep. Chairman Eller feels delivery trucks will park parallel on Gibson Place. Mr. Lowcher stated this can be a condition of the variance. Two paved parking spaces will be provided for the residence.

Chairman Eller asked where the measurements were taken from between the two buildings as shown on the site plan. Mr. Symonds stated they were taken from exterior wall to exterior wall. Chairman Eller noted a one foot overhang on each building shortens the distance. Therefore, the drip line is two feet closer than what the plans reflect. Mr. Tolischus stated the sign will comply and be 5'. He would like it to be dimensioned on the plan. Mr. Symonds agreed.

The two existing lights will be supplemented as necessary with shielded lights on the building. A night light test will be performed. There will be no lights placed on the south side of the building. Both the pole and wall signs will be internally lit. Mr. Lowcher will submit findings of the night light test and make any necessary adjustments.

Chairman Eller questioned the maintenance of snow removal. Mr. Symonds stated snow will be pushed onto the adjacent lot which the applicant also owns. Chairman Eller is concerned with grass as the area for snow and feels it's not sufficient at it will make a mess. Mr. Lowcher noted the snow removal is no different than how it has been handled for years.

Chairman Eller noted there was no one in the audience with any questions at this point.

Board of Adjustment Minutes
October 26, 2010

Mr. Gleba confirmed the sign will be internally lit with a yellow background and black lettering. A color copy will be provided for Mr. Gleba's file. Mr. Gleba stated he met with Mr. Sniffen and addressed items regarding the subdivision. Mr. Sniffen will be accommodating Mr. Gleba's requests. Mr. Gleba noted the easement will be extended 10' from the east. Mr. Gleba feels the additional area for snow removal will be better than it was before. Chairman Eller suggested grass pavers to allow the plow truck easier access to the area. Mr. Lowcher agreed to provide.

Mr. Tolischus stated Mr. Gleitz had strongly suggested the planter area be more than what is proposed. He would like that area revised and reviewed by his office. In regards to the island buffer, he suggested mulch and low landscaping rather than grass that needs to be mowed.

Mr. Gruenberg asked if there was anyone in the audience with questions for Mr. Symonds. There were none.

Mr. Gary Dean was sworn in for his testimony at the August 24th meeting and remains under oath. He addressed the loading situation and stated two removable bollards will be in place. Trucks will enter from Route 31 and park parallel to Gibson Place. They can unload from the side or rear of the truck. Trucks will not be on the road when unloading. Spaces are being designated as employee parking. Mr. Dean provided photos taken within the past month of the view looking from the northwest corner of the building at Route 31. These photos were marked Exhibit A-2.

Mr. Gruenberg stated the governing body will need to approve the buffers and their maintenance. Mr. Gleba stated he would highly recommend to the Municipal Engineer that the plans discussed be an acceptable solution as they are consistent with the ordinance.

Mr. Dean stated the commercial structure is conforming; however, the residential structure is not. This would stay the same as Mr. Gleitz and Mr. Gleba had suggested. A lot will be created for the residence as a permitted use. This creates the need for a use variance as an undue hardship and pre-existing use on the property. By keeping the house, it provides a buffer from the commercial use to the residential use for other homes in the area. Mr. Dean stated the subdivision promotes a desirable visual environment as well as good civic design and arrangement. It promotes sufficient space for a variety of uses. He feels it meets the requirements for granting a use variance.

In regards to the bulk variance, Mr. Dean stated the setback distance from the front to the street line should be 25'. It is 19.31' for the commercial building and 17.62' for the residential building. A hardship would be that the building would have to be knocked down to comply with the zoning plan. Mr. Gruenberg noted that extending the line of a non-conforming structure is the actual variance.

Mr. Dean will work with the Board's professionals to provide an acceptable design waiver plan. He feels there are enough parking spaces and that they conform to standards and that the tract to be divided can't comply because of the lot size. He feels the benefits of doing the subdivision outweigh the detriment. The free standing sign can't meet the requirements.

Mr. Tolischus noted that 16 parking spaces are necessary. The plans are one space short. Mr. Symonds noted the east side of the building is refrigerated coolers and not to be considered in determining parking spaces. Glass doors access additional storage, and cases are stored behind. Both Mr. Gruenberg and Mr. Tolischus agree the word "cooling" in the ordinance refers to heating, cooling and mechanical pieces, not refrigerator units. Therefore, 20 parking spaces are required and the plans show four less spaces. Mr. Dean suggested removing some of the landscaping to create one more space, but feels the landscape is necessary to provide a

Board of Adjustment Minutes
October 26, 2010

buffer between the house and store. Chairman Eller asked if there will be a dumpster on –site. Mr. Symonds replied there will not be. Material will be kept internally. Chairman Eller questioned the safety of backing into the driveway of the entrance of the property. Mr. Dean replied there is a clear line of visibility for entering and exiting the property. Chairman Eller feels the entrance to the store is blocked when exiting the handicap spot. Mr. Dean replied the site triangle was developed to ensure clear vision for the drivers.

Chairman Eller noted there was no one in the audience with any questions at this point.

Chairman Eller asked that if all delivery trucks enter from Route 31 to the front or to Gibson Place and park in the three spots on the northerly side of the property, how they would exit. Mr. Dean replied trucks exit onto Gibson Place by pulling forward since they have backed in. Box trucks are able to make either a right or left turn. Chairman Eller discussed delivery issues with Mr. Dean. He would like signs to prohibit trucks from going into the residential area. Mr. Dean stated that would need to be set by the governing body. Local delivery trucks are exempt anyway. A sign stating “No Right Turn” for trucks can be added at the exit of the parking lot.

Mr. Gruenberg asked if there was anyone in the audience with any questions for Mr. Dean. There were none.

Mr. Lowcher stated that Mr. Symonds and Mr. Dean have addressed the letters of Mr. Gleba and Mr. Gleitz. They have worked with the professionals on the design. The applicant is a commercial owner in the Boro and would like to redevelop a commercial site and make dramatic improvements. The applicant can control the deliveries.

Mr. Gruenberg asked if there were any public questions or concerns. There were none.

Mr. Tolischus asked the color and materials of the façade. Mr. Patel was sworn in for his testimony. He stated the outside of the building will be done in neutral colors. The windows will be clear glass with LED signs in the windows. The building will meet all conditions set for by Mr. Gleba’s October 22nd report, which was marked Exhibit B-1 and Mr. Gleitz’s October 22nd report, which was marked Exhibit B-2.

Mr. Gleba stated that with the posting on the Route 31 egress with “No Left Turn” sign, Title 39 jurisdiction will allow enforcement by police. The requirement on non-residential fee will need to be taken care of. The sewer charges will need to be set up.

Chairman Eller stated in regards to the residence, the buffer with the hedgerow covers the expansion of the coolers. He feels the bushes should be removed and a chain link fence erected from the property line to the building to disallow access from building to building. Mr. Mangiacotti noted a parking space could be added by the hedgerow; however, Chairman Eller feels all parking should be on the west side of the property and suggested moving the loading area to the east. Mr. Tolischus recommended a 6’ board on board fence.

A motion was made by Mangiacotti, seconded by Truman, to close the public portion of the meeting.

Roll Call: Durfee, Mangiacotti, Post, Truman, Vitalos and Eller –
Ayes: 6, Nays: 0, Abstained: 0

Motion carried.

Mr. Gruenberg stated the variance required two use variances. The subdivision means there is now one use variance for the residence on a lot of reduced size in a business zone. The applicant needs to show undue hardship. The applicant’s professionals showed there was sufficient space for a variety of uses (G in the code

Board of Adjustment Minutes
October 26, 2010

book) and that they will be promoting visual design (I in the code book). Negative criteria have been satisfied and there is no impairment to the zone plan. Chairman Eller stated he disagrees with the visual design and feel the cooler makes it less aesthetically pleasing. Mr. Durfee feels the cooler may be noisy. Ms. Truman and Mr. Vitalos feel the renovations to the building are better than what is currently there. Chairman Eller allowed Mr. Lowcher to read from the Planner's letter regarding the use variance.

A motion was made by Truman, seconded by Vitalos, to approve the use variance due to the fact the hardships comply with items G and I in the code enforcement book subject to site plan and subdivision approval with further conditions and bulk variance approval. The variance can be granted without detriment to the public good or zoning ordinance.

Roll Call: Durfee, Mangiacotti, Post, Truman, Vitalos and Eller –
Ayes: 6, Nays: 0, Abstained: 0
Motion carried.

A motion was made by Vitalos, seconded by Truman, to grant bulk variances to allow a front yard setback of 19.31' for Lot 1 on Gibson Place and a front yard setback of 17.62' for Lot 1.01 on Adams Street. The proposed subdivision does not change the dimensions based on the existing lot. There will be no detriment to the public good or zone plan.

Roll Call: Durfee, Mangiacotti, Post, Truman and Vitalos –
Ayes: 5, Nays: 1 (Eller), Abstained: 0
Motion carried

A motion was made by Vitalos, seconded by Truman, to grant site plan approval with the design waivers subject to the following conditions. The pole sign shall be modified on the plan and be 5' off of the right of way. The loading and unloading shall be done on the property only. A night light test shall be done and the Board has lighting jurisdiction. There shall be no lighting placed on the south side of the building. Grass pavers shall be placed in the easement. Landscaping shall be done to the satisfaction of the Board Planner. Council approval of curb returns onto Gibson Place is required. Signage shall be added to instruct trucks there is no right turn onto Gibson Place. Compliance of Mr. Gleba's report (B-1) and Mr. Gleitz's Report (B-2) is required. A 6'x6' board on board fence shall be attached to the building from Gibson Place to the Northeast right of way and relocation of the hedgerow is required. The loading zone shall be relocated further east. An additional parking space shall be added. Deliveries shall be made on the property only. A non-residential impact fee, Title 39, and sharing sewer in compliance with Chapter 70 is required. The door swing opening in the loading area shall be changed. "No Left Turn" signage onto Route 31 shall be added. The Board is allowing 16 parking spaces where 20 are required.

Roll Call: Durfee, Mangiacotti, Post, Truman and Vitalos –
Ayes: 5, Nays: 1 (Eller), Abstained: 0
Motion carried

A motion was made by Truman, seconded by Mangiacotti, to grant the minor sub-division with the same conditions, also including Mr. Gleba's condition regarding the extension of the common easement on lot 2 and existing deeds on Lots 2 and the NJDOT right of way.

Roll Call: Durfee, Mangiacotti, Post, Truman and Vitalos –
Ayes: 5, Nays: 1 (Eller), Abstained: 0
Motion carried

Board of Adjustment Minutes
October 26, 2010

Mr. Gleba and Mr. Tolischus left the meeting at this point. The Board took a ten minute recess and reconvened at 10:41 p.m. with all members present.

Case #2010:12 – Kathy LaCorte – 5 E. Washington Avenue, Block 94.01, Lot 2 – B2 Zone

This application is filed for the purpose of expanding the use to include a Tea Room with food service. In the Zoning Officer's Refusal of Permit, this request is denied for non-compliance with the provisions of Section(s) 94-73.3 of the Municipal Zoning Ordinance for the following reason: No more than one permitted principal use.

Mr. Gruenberg stated he reviewed the notices and found them to be in order. The Board has jurisdiction to proceed and Ms. Kathy LaCorte was sworn in for her testimony. Ms. LaCorte stated she disagrees with the Zoning Officer and would like to appeal her decision. Attorney Benbrook had advised her on her application, but she will be representation herself. Ms. LaCorte would like to move her existing business currently located in Hackettstown into Washington. She began her business in 1993 as Kathy's Kove Antiques and always had a nook for coffee and seating. Clock repair was added in 2008 and would now be called Kathy's Kove and Kafe. A tearoom was added in 2000 and has been operating the tearoom ever since. She feels an antique shop encompasses many things but is one business. Ms. LaCorte provided the Board with a copy of her 2-page menu which was marked Exhibit A-1. Ms. LaCorte will need a 3-bay sink and the same kitchen facilities found in an employee lounge area. There is no oven or open flame. She stated Mr. Benbrook had felt her intended use may be excluded from the definition of restaurant. Mr. Gruenberg read the definition of a restaurant to the Board and explained this is a unique type of use and not a full restaurant.

Ms. LaCorte read an e-mail from a long-time customer which states there are stores in South Jersey that mix tearooms with antiques. The customer feels this is an appropriate combination as the tearoom is part of the experience. Chairman Eller noted it makes the store a social gathering place and it would be good to have people come to the town. Mr. Post stated there was a bookstore in town that had a tearoom.

Mr. Vitalos questioned the types of food to be available. Ms. LaCorte explained she purchases some packaged food and makes things like salads, homemade dressings, and gourmet sandwiches. There would be no grill. She would be making scones in a convection oven.

Chairman Eller noted there was no one in the audience in regards to this application. A motion was made by Truman, seconded by Post, to close the public session of the meeting. All were in favor. Motion carried.

A motion was made by Truman, seconded by Durfee, to grant the appeal based on the Board's interpretation that it is one use rather than two.

Roll Call: Durfee, Mangiacotti, Post, Truman, Vitalos and Eller –
Ayes: 6 Nays: 0, Abstained: 0

Motion carried.

REPORTS:

There were no reports at this meeting.

COMMUNICATIONS:

An E-mail from Attorney Gruenberg regarding COAH rules being invalidated was received.

Board of Adjustment Minutes
October 26, 2010

REMARKS:

There were no remarks at this meeting.

Hearing no further business to come before the Board, a motion was made by Truman, seconded by Durfee, that the meeting be adjourned at 11:04 pm.

Ayes: 6, Nays: 0
Motion carried.

Respectfully submitted,

Frank Mangiacotti, Secretary