

Minutes of the Regular Meeting of the Morris Plains Board of Adjustment held on March 26, 2012 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mr. Michael Bozza
Mrs. Rosemary Lopez
Mr. Martin Reilly
Mr. John Scagnelli
Mr. Roy Stewart
Ms. Joan Scaccia
Mr. Robert Webster
Mr. David Schulz, Chairman
Mr. William Denzler, Borough Planner
Mr. Leon Hall, Borough Engineer
Mr. Michael Sullivan, Board Attorney

Absent: Mrs. Ruth Mills

PLEDGE OF ALLEGIANCE TO THE FLAG

The meeting was called to order by Mr. Schulz. Mr. Schulz made the statement that adequate notice of this meeting has been published and posted in accordance with Chapter 231 of the Public Law of 1975, "Open Public Meetings Act."

Mr. Schulz asked the Board Secretary to confirm if any Board member who was absent from the February 27, 2012 Regular Meeting came to the Board Secretary's office to listen to the meeting minutes of the February 27, 2012 Regular Meeting.

The Board Secretary replied that Board member Mr. Roy Stewart listened to the complete recording of the meeting minutes of the February 27, 2012 Regular Meeting. She has signed documentation supporting this.

Mr. Schulz stated that since he listened to the meeting minutes of the February 27, 2012 Regular Meeting he is eligible to approve the meeting minutes and to participate in any vote the Board takes at tonight's meeting.

APPROVAL OF MINUTES

Mr. Schulz referred to Page 99, the sixth complete paragraph that begins with "Mr. Sullivan . . ." He then read the correct information in quotes beginning "The Applicant shall be permitted to develop the parking areas to the site on the basis of 58 spaces rather than 72 spaces. . ."

Ms. Scaccia moved that the minutes of the February 27, 2012 Regular Meeting be approved as revised, seconded by Mrs. Lopez.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Reilly, Ms. Scaccia, Mr. Webster, Mr. Schulz
Abstain: Mr. Scagnelli, Mr. Stewart

Nays: None
Absent: Mrs. Mills
Motion carried.

COMMENTS FROM THE PUBLIC

Mr. Schulz opened the meeting to the public to speak on matters other than those on the agenda. Hearing none, he closed this portion of the meeting to the public.

BA-5-11 – Kelido, Inc. (Dunkin Donuts) – 246 Littleton Road Block: 161 Lot: 2.04

Mr. Schulz stated this application is on tonight's as a continuation of the public hearing begun at the February 27, 2012 Board meeting.

Mr. Hantman re-introduced himself to the Board and stated this is a follow-up from the previous meeting. He has no additional witnesses.

Mr. Sullivan swore in the Board's Professionals.

Continuing, Mr. Hantman commented on the updated information obtained from the owner of the property and provided additional commentary concerning the Applicant's request to the property owner. This referred to property dedication issues and site alterations in connection with ADA compliance, and modification/alteration of the driveway radius. The property owner was not willing to comply with the requests. Normally the County would be the one requesting a dedication. As a result of the landlord's refusal, certain information was removed from the Applicant's application. All the Applicant's alterations will be ADA compliant.

Mr. Sullivan read Mr. Hantman's February 28, 2012 letter to the property owner which is addressed to a Mr. Friedman. This letter conveys the requests of the Board to the Applicant at the February 27, 2012 Board meeting. He also read a letter response from Richard C. Stewart, Esq. of Lasser Hoffman dated March 6, 2012 addressed to Mr. Hantman. The Stewart letter explained why the requests were being denied by their client.

Mr. Hall stated he has a number of comments. He advised he spoke with Christine Marion, Director, Morris County Planning Board regarding the right of way issues relating to this application. She indicated the County did not take the right of way for two reasons: (1) the scope of the project is minor in nature and (2) she is unaware of any immediate plans for either the County or State to improve this section of Route 202. He suspects that at some time in the future improvements will be needed to be done. She stated that taking the right of way at this time was not appropriate in their opinion. He still believes it is a waiver from the Borough ordinance, but recommended that the Board grant the waiver. Mr. Hall addressed the ADA compliance issue and conforming access. He is referring to the northwest corner of the tract near a crosswalk coming out of the northwest corner of Bottle King. He is uncertain whether the Board has

jurisdiction to require ADA conformance on a site-wide basis; however, he will always bring this information to the Board's attention.

Mr. Sullivan provided commentary and referred to Mr. Hall's February 17, 2012 memorandum and paragraph 3(g). He recommended a condition that would read: "That the plans shall be revised to conform to all applicable ADA compliance including but not limited to the rehabilitation and barrier-free subcodes contained in the State Uniform Construction Code Act as determined by the Construction Code official." He believes this is what would normally occur. This would be the appropriate way to handle this.

Mr. Hall commented on the matter of the radius for the entrance driveway that was previously discussed. This radius is indeed on the Applicant's site, and he considers it an on-site improvement. A problem is that trucks are "hopping the curb" in order to make the necessary maneuver to avoid hitting a car coming out of the driveway. For safety of egress and ingress, he recommends that the radius on the southerly side of the intersection only and that is on site be increased significantly (he cannot provide precise measurements of increase) to allow beer delivery box trucks to make the necessary maneuver easily without hopping the curb.

Mr. Hantman spoke on what he believes the Applicant will be able to do with regard to the matters raised by Mr. Hall. He stated he believes that asking the Applicant to be responsible for some of these issues is at least somewhat unreasonable.

Mr. Denzler stated he agrees with the comments made by Mr. Hall.

Mr. Hantman provided a summary of the Applicant's proposal. He believes that all appropriate justification in support of this application has been provided.

Mr. Sullivan stated the application is for site plan approval, a floor area ratio (FAR) D variance, a front-yard setback variance, a variance for less than required on-site parking, a waiver to allow three parking spaces to be 9' wide where 10' is required, and a waiver for the dedication of front area. He provided information that if the application is approved regarding standard conditions and other conditions that should be included relating to this application.

Mr. Schulz opened this portion of the meeting to comments from the public regarding this application. Hearing none, he closed this portion of the meeting to the public.

Mr. Reilly commented that the Bottle King driveway has been there for many years and the Planning Board, this Board or any other Borough authority has never done anything with it. Since it has been this way for at least 10 years, he has mixed emotions about this Applicant now having to make a site improvement of the driveway. It seems unfair.

Cross discussion about Mr. Hall's recommendation concerning the Bottle King driveway, including exactly who or what authority has the jurisdiction to force an improvement to

the driveway and other expenses (Bottle King's new elevator for example) the Applicant has already agreed to related to their proposed project. Also included was a question of whether this issue could be included as a factor for approval of an application involving the landlord; can it be cited now as a concern that will require improvement in the future/in a future application.

Mr. Reilly moved that the application be accepted voiding the radius on the driveway and including all other conditions as enumerated by Mr. Sullivan, seconded by Mrs. Scaccia.

Mr. Schulz stated Mr. Scagnelli will not be able to vote on this application and reviewed the names of those who will be able to vote.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Reilly, Mr. Stewart, Ms. Scaccia,
Mr. Webster, Mr. Schulz

Abstain: Mr. Scagnelli

Nays: None

Absent: Mrs. Mills

Motion carried.

Mr. Sullivan stated this application is approved and the Memorializing Resolution will be scheduled to be adopted at the Board's April meeting on April 23, 2012.

CORRESPONDENCE AND BILLS

Ms. Scaccia provided information on the one bill for payment.

Mr. Scaccia moved this bill be approved for payment, seconded by Mr. Reilly.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Reilly, Mr. Scagnelli, Mr. Stewart, Ms. Scaccia,
Mr. Webster, Mr. Schulz

Nays: None

Absent: Mrs. Mills

Motion carried.

NEW BUSINESS

None.

OLD BUSINESS

Escrow Report

While there is no Escrow Report, the Board Secretary advised she believes they are doing very good with everything and EJK is almost complete.

There being no further business, Mr. Scagnelli moved the meeting be adjourned, seconded by Mrs. Lopez. Voice vote. All in favor. Motion carried.

Karen M. Coffey
Commission Secretary

Maureen Sullivan
Recording Secretary