

Minutes of the Regular Meeting of the Morris Plains Board of Adjustment held on December 17, 2012 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Present: Mr. Michael Bozza
Mrs. Rosemary Lopez
Mrs. Ruth Mills
Mr. Roy Stewart, Vice Chairman
Ms. Joan Scaccia
Mr. Robert Webster
Mr. David Schulz, Chairman

Absent: Mr. Martin Reilly
Mr. John Scagnelli

Mr. William Denzler, Borough Planner
Mr. Leon Hall, Borough Engineer
Mr. Michael Sullivan, Board Attorney

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."

APPROVAL OF MINUTES

Mrs. Mills moved that the minutes as circulated for the November 26, 2012 Regular Meeting be approved, seconded by Mrs. Lopez.

Roll Call

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

Nays: None

Absent: Mr. Reilly, Mr. Scagnelli

Motion carried.

COMMENTS FROM THE PUBLIC

Mr. Schulz opened the meeting to the public to speak on matters other than those on the agenda. No comments were forthcoming, and this portion of the meeting was closed to the public.

BA-6-11–Denise Yuliano, Trustee/49 Dogwood Road (rear) Block: 72 Lot: 12

Mr. Schulz stated this matter is on tonight's agenda for completeness only. He asked if the applicant was present. He asked that it be noted that the applicant is not present.

Mr. Hall referred to their December 14, 2012 report and reviewed various checklist items. He recommended deeming this application incomplete from an engineering perspective.

Mr. Denzler stated he did not receive any information on this application.

The Board Secretary indicated that she received the information from Mr. Hall.

Mr. Bozza moved that this application be deemed incomplete, seconded by Mrs. Scaccia.

Roll Call

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

Nays: None

Absent: Mr. Reilly, Mr. Scagnelli

Motion carried.

BA-3-11–Amidon Holdings/1767 Route #10 Block: 115 Lots: 1-5

Mr. Schulz stated this application is reviewed for completeness only at tonight's meeting. No one was present on behalf of the Applicant.

Mr. Denzler referred to their December 17, 2012 memorandum which recommends this application be deemed incomplete. He provided the reasons why the incomplete determination was being made.

Mr. Hall commented that his report is very similar to Mr. Denzler's report as to the reasons for the determination of deeming the application incomplete.

Ms. Scaccia moved that this application be deemed incomplete, seconded by Mrs. Lopez.

Roll Call

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

Nays: None

Absent: Mr. Reilly, Mr. Scagnelli

Motion carried.

BA-1-12–Rand Homes Corp. Madison Ave. Block: 5372 Lots: 11,12.01

Mr. Schulz stated this application is on tonight's agenda because it is a continuation of the public hearing that began at the Board's September 2012 Regular Meeting. It has been carried since this meeting. He advised he listened to the recorded audio file of the September meeting and signed an attestation to confirm this.

Mr. Sullivan swore in the Board's Professionals.

Mr. Mark A. Blount, Tesser & Cohen, Attorneys at Law, attorney for the Applicant, introduced himself to the Board and the Professionals. He

provided a summary of what has occurred thus far before the Board in connection with this application. He also confirmed that he had received a copy of the Fire Department's review of this application.

Mr. Sullivan then swore in the Applicant, Mr. Aasmaa 261 Main Street, Ledgewood, New Jersey. He introduced himself to the Board and the Professionals. He provided information on the reasons for the revisions to the initial plan, such as testimony from neighbors and updated data concerning certain surrounding property issues. He displayed several exhibits and provided commentary on what it represents.

Mr. Sullivan asked for confirmation as to what each exhibit was reflecting. There appears to be sheets from various plans, and he requested information as to which plan they are seeking approval of.

Mr. Aasmaa responded to this question and indicated that Sheet 3 is for illustrative purposes. He provided additional comments relating to this issue. He spoke about the cul-de-sac, the future road/street plan, fair-share cost, curbing, pavement, utilities, and a turnaround area. He also commented on what he believes the benefits of this plan and improvements are. He displayed Sheet 3 of 3 and described what it is showing.

Mr. Sullivan commented on undue hardship issues and information being provided in connection with this application. He also stated that the Board will not be making the fair-share determination and would make no findings with respect to this matter. It would go to the Borough Council for this and for the right-of-way. He also discussed several options that may exist at that time.

Cross discussion on the issues of fair share, Borough Engineer comments, the Fire Department review and the possible need for an additional review, and off-track improvements.

Mr. Aasmaa spoke about the fair-share determination stating that in their view is different in this scenario since the property owners across the street do not benefit from the road half way across. Other property owners will benefit by having the curb and the road entirely built in front of their property(ies). He referred to his letter of December 3, 2012 and its contents - costs relating to water and sewer, storm sewer, and road improvements and how these costs could be split.

Continuing, Mr. Aasmaa reviewed Mr. Hall's comments contained in his December 14, 2012 memorandum. He provided commentary as appropriate, especially when comments appear to refer to the earlier plan, not to the revised plan and the checklist items that the Applicant does not believe apply to its application.

Mr. Hall commented on various information contained in his December 14, 2012 memorandum and the commentary provided by Mr. Aasmaa

in connection with this memorandum. His comments included statements relating to blasting; reasonable and necessary improvement to provide adequate access to emergency vehicles; the report provided by the Fire Department and Fire Department code(s); Sheet 1 of 3 and Sheet 3 of 3; the possible need for the Fire Department to re-review the application in light of the various revisions; his recommendation that the Applicant contact the utility companies to explore the possibility of underground installation, and comments made in his prior reports.

Mr. Schulz asked if the Board members had any questions on the testimony. There were no questions.

Mr. Schulz asked about the November 11, 2012 Fire Department letter, minimum clearances, code sections, and whether Sheet 1 of 3 complies with the Fire Department's recommendations.

Mr. Aasmaa stated he does not agree with this and provided reasons why, especially length of roadways, and data about the turnaround and the driveway.

Mr. Blount suggested that since the revised plan may be reviewed differently by the Fire Department, the best recommendation is to re-submit the current plans to the Fire Department for a second review.

Mr. Schulz opened this portion of the meeting to questions from the public on the testimony provided by the Applicant. Hearing none, he closed this portion of the meeting to the public.

Mr. Sullivan commented on the recommendation made to refer the current plan back to the Fire Department for a second review. This would include a request that the Fire Department issue a new report.

Mrs. Lopez moved that this recommendation be accepted, seconded by Mr. Schulz.
Roll Call

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

Nays: None

Absent: Mr. Reilly, Mr. Scagnelli

Motion carried.

Mr. Sullivan stated this public hearing will be carried to the Board's January 28, 2013 meeting at 7:30 p.m. with no requirement for further notice. All necessary documentation must be submitted to the Board Secretary by January 14, 2013.

Mr. Blount will issue a written consent to this matter being carried to the Board's January 28, 2013 meeting. He offered to submit certain additional

information to the Board Secretary.

BA-2-12 - Anne Riker-Jolly - 546 Speedwell Avenue Block: 27 Lot: 26

Mr. Schulz stated this is a continuation of a public hearing carried from the November 26, 2012 Board of Adjustment.

Paul Rusen, of Collins, Toner & Rusen, the attorney for the applicant and introduced himself to the Board and the Professionals.

The Applicant will provide testimony tonight.

Mr. Sullivan swore in the Board Professionals and the Applicant, Anne Riker-Jolly.

Mr. Rusen provided a summary of what is being proposed and sought in the application and of the applicant's previous testimony as well as information relating to issues of parking raised in comments of the public and comments from the Board.

Mr. Rusen asked the Applicant as to what steps she has taken to explore whether there might additional parking available in the area.

Ms. Riker-Jolly provided information about her efforts to identify additional parking for her proposed business. The existing Speedwell Avenue businesses she contacted included Dangler Funeral Home, Breton Woods (awaiting reply), and Acme. Two out of the three advised they could not provide parking for her business. She also contacted the Presbyterian church and was also advised that no parking would be available. At this point she sent a letter to the Mayor and Borough Council to request parking spots at Simon's Park. She was granted three parking spots at Simon's Park for employee parking. She also mentioned there would be two parking spots at Municipal Parking Lot #1 which would be for employees. Additionally, there would be eight parking spaces in Municipal Parking Lot #1 that would be available for up to two hours between 8:00 a.m. to 6:00 p.m., Monday through Saturday. There are 18 parking spaces in the same parking lot that would provide one hour parking between 8:00 a.m. and 6:00 p.m., Monday through Saturday. Her neighbor, Mr. Blocker, the accountant, granted her two parking spaces on Saturdays, May through December. She added there would be on-street parking available on Glenbrook Road, Hillview Avenue, Morris Plains Avenue, and Allen Place. She provided information about the parking timeframes for these streets. The three on-site parking spaces would be for customers.

Mr. Schulz asked if there were any questions from the Professionals.

Mr. Denzler stated he had no additional questions. He did comment on the

parking situation and the overall area where the on-site parking is located.

Mr. Rusen advised that the property owner's attorney indicating the property owner is willing to address and possibly install a fence or barrier between the two properties to prevent people from either driving across or even walking across. He believes this should alleviate some of the concerns of that property owner. Both the property owner and his attorney are present at this meeting.

Mr. Hall asked about information about employee parking in municipal parking lots contained in a certain Borough ordinance.

Mr. Rusen stated the Applicant will apply to receive the appropriate employee parking permits.

Mr. Schulz opened this portion of the meeting to questions from Board members about this testimony.

A question was asked about the on-street parking and the matter of certain timeframes that parking is allowed. The Applicant provided information.

Mr. Schulz opened this portion of the meeting to questions from public about this testimony.

Ms. Alice Collopy, 540 Speedwell Avenue, Morris Plains, asked about parking. She asked how many parking spaces exist at the Applicant's present location on West Hanover Avenue. She asked about square footage.

Ms. Riker-Jolly replied she has eight parking spaces, four for employees, but generally only three employee cars are parked at any one time. The existing business has 405 SF and the proposed new business would have 751 SF, but it is still a relatively small space.

Mr. Sullivan swore in Alice Collopy so that she could distribute an exhibit she had and also ask questions about the exhibit. Her exhibit was marked as Exhibit 0-3.

Ms. Collopy distributed an affidavit along with photographs she took at the Applicant's current location at 90 West Hanover Avenue on various dates. She wants to ask specific questions about this exhibit. The Applicant was also given this information, and she took time to review it.

Continuing, Ms. Collopy reviewed the photographs she distributed. She asked why the cars are parked in back of one another, asked the Applicant to identify certain vehicles, why the patio table and chairs are at the location, the Applicant's plan to somewhat grow her business, and whether

she offers waxing

Ms. Riker-Jolly stated they are parked this way because it works for her at this location. She identified the parked vehicles as requested. She replied that the patio furniture is not often used; some clients like to sit here and wait on nice days; she thought the furniture looked pretty. She provided more details about anticipated employees and proposed work stations as well as the need to have a washer and dryer, most likely the stackable type. She said she does not want her business to grow tremendously, but just a small amount, just large enough to survive as a business.

Mr. Sullivan asked a question relating to the maximum number of employees working at any one time and also how many customers.

Ms. Riker-Jolly replied the maximum number of employees at anyone time would be six. The maximum number of customers at any one time would probably be six or seven. In general only three employee parking spots would be used since two employees car pool. Facial waxing is done.

Mr. Sullivan marked a new exhibit as Exhibit 0-4.

Ms. Collopy distributed copies of this exhibit. It is an item found in the Morris Township/Morris Plains *Patch* with a date of November 27, 2012. This exhibit will allow her to question the Applicant about services she offers.

Mr. Sullivan stated this exhibit is not being offered to prove what is contained in this item.

Ms. Collopy asked about the service listed as "Shaves." Are shaves given?

She cuts men's hair and a limited service of cutting children's hair. The waxing is done by Patty with the customer sitting in the pedicure chair or her own chair that tips back. It consists of eyebrows and some facial hair, no bikini waxes or full leg waxing. She reviewed the services to be offered.

Mr. Schulz asked if any other member of the public has questions of this witness. Hearing none, he closed this portion of the meeting to the public.

Mr. Schulz asked if any member of the public wishes to comment or provide testimony on this application. Hearing none, he closed this portion of the meeting to the public.

Mr. Carlucci, 540 Speedwell Avenue, Morris Plains, asked a question about the fence suggested by Mr. Denzler.

Mr. Denzler provided a plan that he believed would help prevent people from going from Mr. Carlucci's property to the hair salon at the rear of the property.

Mr. Carlucci stated he did not think this idea would stop the cars from parking and people getting out of their cars and walking to the hair salon.

Cross discussion between the Mr. Carlucci and Mr. Denzler about the best method to ensure that people would not park in Mr. Carlucci's parking lot.

Mr. Schulz asked if there were any additional comments on the testimony of the witness. Hearing none, he closed this portion of the meeting to questions from the public.

Cross discussion about details of how the day-to-day work at the hair salon would take place, including anticipated number of customers at one time; how the various types of work would flow; that the Applicant did a good job of identifying additional off-site parking; general parking issues observed in the past at various places; that the Police Department had no objections to this application; visits to the site; the true number of actual parking spots in the rear; and parking observed for events held at The Sports Page.

Mr. Sullivan stated that for purposes of this discussion, there are nine (9) lawful spaces in the lot.

Mr. Carlucci discussed possibly installing a specific length of fencing together with signage indicating the parking was not for employees.

The Applicant was asked if she would accept conditions if appropriate fencing in the rear that meets with the approval of the Borough Engineer and Borough Planner along with signage stating that employee parking is prohibited.

Mr. Robert Costello, Esq., introduced himself as the attorney for the property owner Dominic Alberto. He advised the landlord is agreeable to the installation of fencing in the rear.

Mr. Dominic Alberto, the landlord and property owner, introduced himself to the Board and the professionals. He was sworn in by Mr. Sullivan. He confirmed that he is willing to install the fencing and accept the condition that it be subject to the approval of the Borough Engineer and Borough Planner. This also applies to the actual location of the fencing.

Cross discussion concerning the fencing, parking, and the signage.

Mr. Schulz opened this portion of the meeting to comments and/or testimony regarding this application. Hearing none, he closed this portion of the meeting to the public.

Mr. Sullivan asked the Professionals if there are any comments in their memoranda that require a condition(s).

Mr. Schulz suggested that the condition that all work must comply with applicable construction codes should be included. A condition should also apply the designated parking issues.

Mr. Sullivan discussed the wording of required signage with Mr. Hall. He also commented on parking and the number of parking spaces which he believes is three legal on-site parking spaces. He asked if the Board might want to address the matter of off-site parking in some specific manner. He advised the conditions he would plan to include are: (1) customers only sign, (2) the fencing, and (3) the fencing location and installation being subject to Borough Engineer and Borough Planner review. He asked if the Board wanted to include any other conditions.

Cross discussion concerning issues relating to the installation of the fencing, including the need for a surveyor to ensure accuracy in the proper locating of the fencing on the property owner's property. The property owner would be responsible for ensuring that the fencing is installed on his property.

Mr. Sullivan commented on the D variance part of this application and that five Board members must voted affirmatively.

Mr. Stewart commented that he believes the Board and the Professionals may be being a bit too hard on the Applicant.

Mr. Sullivan suggested including reference to the type of fencing to be installed.

Mrs. Lopez moved that the application be approved with the stated conditions, seconded by Ms. Scaccia.

Roll Call

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

Nays: None

Absent: Mr. Reilly, Mr. Scagnelli

Motion carried.

Mr. Schulz advised that the Resolution memorializing this approval will be on the agenda for the Board's January 2013 Regular meeting.

CORRESPONDENCE AND BILLS

Mrs. Mills advised of two bills and moved that they be approved for payment, seconded by Mr. Bozza.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Stewart, Ms. Scaccia,

Mr. Webster, Mr. Schulz

Nays: None

Absent: Mr. Reilly, Mr. Scagnelli

Motion carried.

Escrow Account Review

The Board Secretary reported on the status of the escrow account.

NEW BUSINESS

Mr. Schulz advised that the Board members are invited to attend the Borough Council's Re-Organization Meeting on Monday, January 7, 2013.

OLD BUSINESS

Mr. Schulz reminded of the Board's Re-Organization Meeting in January 2013 and also the need for another member to be tapped to serve as the Board Chair.

Mr. Bozza moved that the meeting be adjourned, seconded by Mrs. Lopez. Voice vote. All in favor. Motion carried.

Karen M. Coffey
Board Secretary

Maureen Sullivan
Recording Secretary