

Minutes of the Regular Meeting of the Morris Plains Board of Adjustment held on March 25, 2013 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mr. Michael Bozza, Vice Chairman
Mrs. Rosemary Lopez
Mrs. Ruth Mills
Mr. Mark Karr
Ms. Joan Scaccia
Mr. David Schulz
Mr. Roy Stewart, Chairman
Mr. William Denzler, Borough Planner
Mr. Leon Hall, Borough Engineer
Mr. Michael Sullivan, Board Attorney

Absent: Mr. Robert Webster
Mr. Martin Reilly

PLEDGE OF ALLEGIANCE TO THE FLAG

The meeting was called to order by Mr. Stewart. Mr. Stewart 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

Mr. Stewart asked if there were any corrections or additions to the meeting minutes of the February 25, 2013 regular Meeting.

The Board Secretary stated in the motion to adjourn "Reilly" has to be deleted.

Mr. Bozza moved to approve the minutes as corrected, seconded by Ms. Scaccia.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Karr

Nays: None

Abstain: Mrs. Scaccia, Mr. Schulz, Mr. Stewart

Absent: Mr. Reilly, Mr. Webster

Motion carried

COMMENTS FROM THE PUBLIC

Mr. Stewart 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-1-12 Rand Home, Madison Avenue

Block: 53 Lots: 11,12.01

The attorney for the Applicant stated he is awaiting his Applicant's arrival.

This application will be heard following the hearing of BA-3-12.

**BA-3-12 Amidon Holdings, 1767 Route 10 East
Block: 115 Lots: 1-5**

Remo Caputo, Esq. he will be representing the applicant tonight in place of Joseph A. O'Neill, Esq. He provided information relating to this application.

Mr. Sullivan swore in the Borough's Professionals.

Mr. Sullivan swore in Mr. Edward Kloss who provided a mailing address of P. O. Box 197, Pine Brook, New Jersey 07058.

Mr. Hall reviewed some questions and comments he had in connection with this application, including signage, balance of engineer's fees relating to the escrow account and a request that additional funds be deposited in this account, the installation of a sidewalk, garbage, and recycling.

Mr. Kloss occasionally asked for additional information or further clarification in connection with questions being asked by Mr. Hall.

Mr. Stewart opened this portion of the meeting to questions from the public of this witness. Hearing none, he closed this portion of the meeting to the public.

Mr. Sullivan swore in Ms. Laura Cusumano who provided an address of 324 Head House Court, Wayne, Pennsylvania.

Ms. Cusumano advised she is employed by Fitness Together Holdings, the parent company of both Fitness Together and Elements Therapeutic Massage. She represents the franchise and her official position is Director of Operations. She stated their business is a retail massage establishment providing massage sessions of varying timeframes to the general public. It is a membership based model and ideally their customers pay \$59 each month for their monthly massage. All owners are "vetted." Ms. Cusumano explained that after interested parties are accepted as franchise owners, they need to identify real estate/a location. When this has been done, a corporate representative visits to assess the location for approval. She provided a description of the location approval as she believes it to be; she does not conduct the process for location approval. The company has a real estate company that provides the location approval. Ms. Cusumano provided details about the actual business such as the hiring of only licensed, certified massage therapists who have the required liability insurance. She advised that franchisees are expected to conduct background checks. She provided additional information concerning other corporate staff members such as sales employees. The corporate headquarters is located in Denver/Highlands Ranch, Colorado. She stated she works with the new owners using a checklist of items that assists the new owners in successfully completing all that must be done prior to the opening day of business. She explained other elements of the opening support that is provided to new owners. The business focuses only on massage; they do not sell products or provide any other services. After the opening, she maintains contact with

the new business owner to discuss issues relating to supplies and how the business is performing.

Ms. Cusumano stated she has 25 years experience in franchising. She provided specific information concerning the number of their businesses that are currently operational nationally (126) and also how many are anticipated to be opened in 2013 (50-60). Additionally, she provided details on the staff that would be working; for example, that on Thursday and Friday nights, Saturdays and Sundays, there is a requirement that there be two front-desk staff; Mondays, Tuesdays, and Wednesdays are typically slower business days. Seven locations have opened in New Jersey since August 2012, including New Providence, Totowa, Warren, Montclair, Chester, and West Windsor. She expects another ten will open in New Jersey this year. She advised that she generally visits a newly opened franchise business between 60 to 90 days after the opening day to ensure the business is operating properly. She stated the business does sell gift certificates. She advised that there are written standards as to issues such as proper carpeting and related matters, but this is not her specific area of responsibility. Ms. Cusumano provided a description of what she anticipates the storefront/front entrance will look like when finished. Clear glass is recommended for the storefront windows. She again reviewed what typically are the peak hours for the business and provided information on the number of rooms available for massages to be given in (8) and the expected number of staff for the peak hour timeframes. She provided additional information concerning their business's peak hours and non-peak hours timeframes and the staff available for each. The difference between their business and Massage Envy is that they do therapeutic massage only while Massage Envy offers other services and retail products. At this point, the massages are not covered by scripts; however, insurance may cover their massages at some time in the future.

Ms. Cusumano explained that they do not have much time for overlap. A massage is about 50 to 55 minutes in duration. It would be rare to see more than six people waiting for their massages. While there are similar businesses in the surrounding area, she believes having several provides consumers with a choice. Corporate generally maintains consistent operation hours on a national basis; however, if there is a reason or need to deviate from these hours, franchisees are offered the flexibility to do so.

Mr. Hall asked about how much on-premises time a franchisee owner would have. He asked about how the business qualifies a person to become a franchisee.

Ms. Cusumano replied she thinks franchisee owners would be there a significant amount of the time, but would certainly be there if the store manager was not there. She provided what she knows about the process of a person qualifying to become a franchisee owner, stating this is not one of her direct responsibilities.

Mr. Denzler asked about membership at the business.

Ms. Cusumano advised him the fee is \$59 a month for a once-a-month visit.

Mrs. Mills asked about parking.

Mrs. Mills was advised that there will be another witness who can better discuss issues relating to parking.

Mr. Stewart opened this portion of the meeting to questions from the public of this witness. Hearing none, he closed this portion of the meeting to the public. He thanked Ms. Cusumano for her testimony.

Mr. Sullivan advised Mr. Amidon was sworn in at the Board's January meeting.

Mr. Amidon provided information concerning hours of operation as well as discussing what he anticipates will be the peak hours for the business. He also reviewed the anticipated staff expected during the peak and slower timeframes.

Mr. Stewart opened this portion of the meeting to questions from the public of this witness. Hearing none, he closed this portion of the meeting to the public.

Cross discussion about anticipated signage for this business.

Mr. Sullivan swore in Mr. David Karlebach who provided an address of 38 East Ridgewood Avenue, Ridgewood, New Jersey. He advised he is a licensed professional planner in the State of New Jersey and has been for 18 years. He also provided specifics about his schooling and having previously qualified before Boards of Adjustment throughout the State.

Mr. Stewart stated he was accepted as expert witness.

Mr. Karlebach stated he is familiar with this application. He described the use variance that is being sought, stating that the local land use ordinance was recently amended to permit retail sales and service at this location. It has been determined that the proposed therapeutic massage business does not qualify as a retail service establishment and a use variance will be required. He also referred to another relevant section of the ordinance that relates to what the definition of what a massage service is, Section 13-2.1, and read the portion he considers relevant. He stated he believes this ordinance is attempting to exclude all sexually-oriented businesses, and the proposed business is not one of those businesses, it is a legitimate use.

Continuing, Mr. Karlebach stated he does not believe the proposed business is out of character with what this Board had previously approved in 2007 and again in 2010. He also referred briefly to parking spaces. His understanding of his reading of the ordinance is that the proposed use is not a prohibited use in this zone. He referred to Resolution #BA-04-11. He also commented on a parking study/analysis and parking issues in general.

Cross discussion of prior Board requirements for parking spaces and how the various timeframes such as peak hours, lunch hours, and the slower timeframes could affect overall parking.

Mr. Karlebach stated he saw two separate and distinct parking areas when he visited the site. One is a part of the retail center; the other is the parking area at the proposed wholesale distribution facility; two separate buildings. The parking during the noon hour at the retail center is probably close to 95 percent occupied. Once the lunch hour is over, at approximately 1:30 p.m.; the parking situation opens up quite a bit. He will speak to both the positive and negative criteria.

Continuing, Mr. Karlebach stated he believes part of the positive criteria is to encourage the appropriate use of development of land in a manner that will promote the public health and general welfare. The proposed use is an appropriate use of this location. It is a logical extension of the permitted uses in this zone and it is consistent and compatible with the currently existing uses at the site and compatible with the uses that are permitted in this zone. Another purpose of zoning is to encourage land development with a view of lessening the cost of such development and to the more efficient use of the land. This proposal is consistent with the smart growth directive of promoting infill development and concentrating development in areas of existing infrastructure. Everything (parking, lighting, landscaping, and utilities) is in place right now for this tenant. He believes this site is well suited for the proposed use for several reasons: (1) highway access on Route 10 and (2) proximity to an established retail service corridor.

Mr. Karlebach stated he does not believe there are any significant negative criteria nor any substantial detriment to public good. The proposed business is not significantly different from other personal services establishments that exist in other strip shopping centers along Route 10; it is a legitimate business with licensed professionals. He read a passage from the ordinance. This O-B Zone that exists is sandwiched between two C-1 Zones. The adoption of the new ordinance essentially has unified the O-B Zone surrounded by C-1 Zones. There is no substantial impairment that exists. The Board has determined on previous occasions that non-permitted uses such as restaurants and realtors' offices are appropriate at this location. The proposed business is not inconsistent with the Borough's Master Plan.

Mr. Denzler asked Mr. Karlebach if he believes there will be any parking issues specifically in connection with the restaurants.

Mr. Karlebach responded that he does not and does not believe there are problems today primarily because there appears to be a rather high turnover of traffic. Even though at the lunch timeframe, the parking associated with the retail strip center is close to 95 percent occupied, driving around would identify an open parking space. There is not long-term use of this lot. The adjoining lot did not appear to have many cars parked in it; it may have been parking for employees. He did not observe long-term parking in front of the retail strip center and does not anticipate it in the future.

Cross discussion concerning peak hour parking issues that might occur, including that Mr. Karlebach commented that deferral to the traffic expert's report would be appropriate and it would be better to rely on this information.

Mr. Hall asked about issues relating to the storefront's square footage and the parking needs.

Mr. Karlebach replied that the proposed business's anticipated peak time will be Thursday and Friday nights, and Saturdays and Sundays.

Cross discussion as to precisely what timeframes are anticipated to be peak hours – is it Thursday and Friday and Saturday nights or just Thursday and Friday nights and Saturdays and Sundays?

Mr. Karlebach commented that a church parking lot is not designed for use on Easter Sunday and explained what the expectation is for the proposed business's parking needs in terms of employees and customers. He did not use the ITE parking generation information and stated he does not use this manual for several reasons: (1) it often uses a small sample size; (2) it does not take into account whether parking is free and other unstated reasons. He commented on the American Planning Association Bulletin - Parking Standards. He advised this Bulletin makes reference to parking demand for massage establishments that puts the demand at between four and six spaces for 1,000 SF of floor area or a range of 8.3 spaces and 4.4 spaces based on 2,074 SF of floor area. This range is consistent with what was planned for this site.

Cross discussion about parking issues, including the number of parking spaces needed for the various businesses at the site, parking spaces needed at various peak need times, the number of the spaces being used, are the numbers of spaces being used correct, and that the landlord has reserved a certain number of parking spaces for specific uses.

Mr. Kloss stated that he is at the site four or five times a week and he has never observed any parking problems. He also commented on certain signs that have been installed relating to parking. He believes about eight parking spaces are reserved spaces, so allocated by one or more tenants.

Mr. Kloss was asked about prior testimony that was about weekly meetings at the realty business. Mr. Kloss stated he did not know precisely why the realty business felt the need to reserve certain parking spaces.

Cross discussion about the eight signs for the reserved parking and related parking issues, including that based on the Borough Engineer's review of this situation that these signs might need to be removed, and that the site plan does not show that these signs were ever approved.

Mr. Hall stated he could enforce this situation and the signs would need to come down tomorrow; however, at this time he is willing to allow these signs to remain and if they become an issue, he will review the matter again.

After continued cross discussion, Mr. Sullivan stated that the signs will need to be removed, and if Coldwell Banker wants to have a policy indicating where their employees will park, then that will be up to them.

Mr. Kloss commented on the issue of Coldwell Banker having eight parking spaces and the signs installed to that effect.

Mr. Hall provided additional commentary regarding the reserved parking spaces.

Mr. Stewart opened this portion of the meeting to questions from the public of this witness. Hearing none, he closed this portion of the meeting to the public.

Mr. Hall stated that the discussion that has taken place so far is satisfactory to him at this point in time.

Various Board members commented on several issues of this application. There were no conflicts regarding the information provided in answers.

Mr. Sullivan explained that prior to the meeting he had discussed the anticipated Board vote at tonight's meeting with Mr. O'Neill with regard to the fact that while there are seven Board members present, only six members are able to vote. Mr. O'Neill indicated at that time that he was willing to proceed at that time and is still willing to proceed. He reminded that five affirmative votes are required for this application to be approved.

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

Mr. Sullivan reviewed the conditions that are appropriate to be made a part of the resolution related to this application.

Mr. Schulz moved that this application be approved, seconded by Mrs. Lopez.

Roll Call

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

Nays None

Abstain: Mr. Karr

Absent: Mr. Reilly, Mr. Webster

Motion carried

Mr. Stewart stated the application has been approved and advised the approval will become official at the Board's April meeting when the resolution is memorialized. In the meantime he reminded of the cautions of beginning any work now.

The applicant and his attorney thanked the Board for its time and consideration.

BA-1-12 Rand Home, Madison Avenue

Block: 53 Lots: 11,12.01

Mr. Stewart stated this is a continuation of this matter from a previous matter.

Mark Blount, Esq., of the firm of Tesser & Cohen, introduced himself stating he is appearing on behalf of the Applicant Mr. Andrus Aasma, a principal of Rand Homes Corporation.

Mr. Sullivan swore in the Borough Professionals for this matter. He stated that Mr. Aasma was sworn in at the last two meetings and is therefore still under oath.

Mr. Blount provided information to bring the Board up to date on this matter since the last Board meeting at which this hearing was conducted. He commented that the primary issue at the point was whether the Fire Chief at the time his report was issued in November actually had the revised set of plans to review. Since that meeting the plans have been sent to the Board Secretary's office. He provided information concerning the various efforts made to contact or meet with the Fire Chief. He stated that several weeks ago Mr. Sullivan advised him that the Fire Chief "did not want to sit down and review the plans." Since their efforts to speak with or meet with the Fire Chief were not successful, the Applicant sent him a letter dated February 25, 2013.

Mr. Sullivan advised the initial Fire Department report was dated November 11, 2012, then there was a follow-up e-mail dated January 28, 2013 (which acknowledges that the revised plans were received), and then there was another e-mail that the Fire Chief sent to Mr. Hall dated February 22, 2013. He does not believe any of the subsequent e-mails said anything different than what was really in the first e-mail. This is what will have to be dealt with.

Mr. Aasma reviewed his February 25, 2013 letter to the Fire Chief. He provided additional information as questions were asked about each paragraph of the letter; for example, details relating to the outriggers and also the driveway situation as shown in the photograph attached to this letter. He also commented on fire hydrants, the number of and locations of.

Mr. Sullivan stated all Board members have received copies of this letter and it is therefore part of the record.

Cross discussion concerning the Board's duty in connection with State statutes, particularly as they relate to fire codes and fire department requirements.

Mr. Sullivan reviewed the Applicant's proposal of a 12' wide paved road and 2' stone shoulders on either side with no curb. The Fire Department wants 20' wide unobstructed. He asked how wide a fully-conforming road would be.

Mr. Aasmaa replied that ultimately a fully-conforming road in this location would be 28' wide.

Continued cross discussion in connection with the proposed width of the road, the width of a fully-conforming road, the crushed stone portion of the road, fair-share issues relating to the road, the temporary cul-de-sac, the driveway proposed for off the cul-de-sac for this one house, future extension of the road, fire trucks being able to turn around in driveways, the issue of a property owner fully paving the road and that property owners are not made to do that – property owners would only be compelled to pay what reasonably benefits the individual property owner, and possible safety issues.

Mr. Sullivan referred to Sheet 1 (approval was sought for) and Sheet 3/Option 2 (an attempt to meet the Engineer's requirements).

Mr. Hall provided commentary on the issue of whether the fully-conforming roadway was an engineered plan.

Mr. Sullivan stated Option 3 is termed the "fully-conforming road." The Fire Department appears to be requesting something between Option 2/Sheet 3 and Option 3. Is this an option that would be on the table?

Mr. Blount stated there is a concern that without meeting with the Fire Department it will be difficult for the plans to be redrawn. He believes the Fire Department may indeed be seeking something in between Options 2 and 3, but this information has not been stated to him or to the Applicant.

Mr. Sullivan stated that the Fire Department wants a 20' wide unobstructed "road." If the Board determined that this was the appropriate means to provide adequate access for emergency vehicles, wouldn't this subsequently be able to be resolved between the Borough Engineer and the Fire Chief. The Board is making a recommendation to the Governing Body.

Mr. Blount commented on Mr. Sullivan's statement. If the Board's direction was that it comply with the letter and there be a 20' wide unobstructed road, then plans would be revised accordingly. He believes this could be subsequently complied with as a condition imposed by the Board.

Mr. Sullivan stated they understand that the Applicant believes Sheet 1 complies.

Mr. Blount responded that they believe it is a reasonable alternative and that it meets the requirement for adequate access for emergency vehicles. He also spoke about the 20' width and curbing.

Mr. Stewart opened this portion of the meeting to questions from the public of this witness. Hearing none, he closed this portion of the meeting to the public.

Mrs. Lopez asked a question as to whether the Applicant and his attorney have any firefighting experience and whether they believe they have knowledge as to what fire departments need.

Both applicant and his attorney stated No.

Mr. Blount stated they observe what other municipalities do and look at general practices throughout the State. He also mentioned a reasonable balance in relation to there being a fair share of costs. Whatever goes beyond their fair share will become a burden to someone else. He also again stated the Applicant's desire to be able to speak directly with the Fire Chief and ask questions regarding the needs of the Fire Department.

The Borough Professionals did not ask any additional questions.

Mr. Blount summarized the application as it stands now, commenting on possible conditions the Board might impose.

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

Cross discussion regarding possible conditions, including the contents of a letter and as future discussions may result in amendments.

Mr. Sullivan commented that Mr. Hall stated the Applicant applied under 13-4.15 with respect to off-tract improvements. The Board will need to determine the need for off-tract improvements. He believes everyone agrees that off-tract improvements have to be made in order to provide emergency vehicle access. A second determination that is needed is to determine the total cost of the off-tract improvements; this will need to be based on a subsequent submission subject to approval of the Borough Engineer. The third item is to determine the amount, if any, by which there will be any special benefits to the Applicant's property and other property owners. The last item is to forward a report detailing the findings for the prior three items to the Governing Body. The cost estimate of the off-tract improvements needs to be finalized and submitted. There is no plan in conformance with the Fire Department's report. There would need to be ultimate approval by the Fire Department and the Borough Engineer. He believes this is the direction the Board wants to go in. He also commented on procedures that would take place between the Governing Body and the Applicant. He also spoke about what may still need to be heard before this Board. He commented that the Governing Body can take all the Board's findings and ignore them in favor of something else that is completely different.

Cross discussion as to the best way of proceeding at this time. Is there a way to keep this moving along or must jurisdiction be attained over it?

Mr. Blount stated he believes the only way to keep this moving forward is to condition it on necessary submissions to the Board or some other mechanism by which the Board provides alternate oversight.

Continued cross discussion on these various matters such as costs, improvements to be installed, partial reimbursements, benefits to other property owners, conditions, persons responsible for certain actions/meetings, the Governing Body, final actions, Options A and B, future meetings on this matter, and related matters.

Mr. Hall recommended that no further action be taken until the submissions of revised documents and new information are received. If the Board was comfortable, it could delegate to him to be responsible for the actions and items discussed that fall within his areas of responsibility.

Mr. Sullivan stated a consensus of the Board is needed as to whether it is comfortable delegating that level of uncertainty to the Borough Engineer.

Mr. Blount advised that after conferring with the Applicant that they are willing to return before the Board with the necessary updated and new information that is needed.

Mr. Sullivan advised the Applicant and his attorney regarding what is and what is not defined as off-tract improvements. This is in connection with the cost estimate. They need to return with a plan that in their best estimate will satisfy the Fire Department and also provide an adequate cost estimate.

Mr. Bozza moved that this hearing be carried to the Board's April 22, 2013 meeting, seconded by Mrs. Scaccia.

Roll Call

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

Nays None

Absent: Mr. Reilly, Mr. Webster

Motion carried.

CORRESPONDENCE AND BILLS

Mrs. Mills presented a voucher for payment for Anderson and Denzler.

Mrs. Mills moved that this voucher be approved, seconded by Mr. Bozza.

Roll Call

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

Nays None

Absent: Mr. Reilly, Mr. Webster

Motion carried.

NEW BUSINESS

None.

OLD BUSINESS

A question was asked as if there was any update on an earlier application by Ms. Yuliano.

Mr. Stewart stated there was nothing new since the last re-submittal.

Annual Report

Mr. Stewart stated there was a slight oversight of the Annual Report. A motion is needed to approve the 2012 Annual Report that will be forwarded to the Governing Body.

Mrs. Mills moved that the 2012 Annual Report be approved, seconded by Mr. Karr.

Roll Call

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

Nays: None

Absent: Mr. Reilly, Mr. Webster

Motion carried.

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

Karen M. Coffey
Commission Secretary

Maureen Sullivan
Recording Secretary