

**TOWNSHIP OF WASHINGTON  
BERGEN COUNTY, NEW JERSEY  
Zoning Board of Adjustment  
Minutes  
January 24, 2012 (CVS Special Meeting)**

**Call to Order:** In compliance with the Open Public Meetings Act of the State of New Jersey, notification of this meeting has been published in the Ridgewood News, our official newspaper in the Township of Washington, notice has been advertised on the official Township of Washington website, and posted on the bulletin board at Town Hall.

**First Order of Business:** Salutation to the Flag

**Roll Call:**

Messrs. Asfar, Gerhard, Ms. Merkle, Messrs. Miras, Sonntag, Ullman, Johnson, O'Connell (absent), Werfel (absent)

**Ongoing Business**

**First Hartford Realty Corp., 660-680 Pascack Road, Block 2110, Lots 6,7,8,9,10-** Applicant seeks site plan approval, use variances, sign approval and major soil movement permit for the construction of a CVS Pharmacy.

**Mr. Christopher Minks, Winne Banta, on behalf of Northgate Condominiums (Objectors):** stated that there was a flaw in the application. There are summonses pending on the property in question in the Municipal Court. The summonses deal with tree removal which affects drainage. Mr. Minks feels the applicant should not be heard by the Board at this meeting due to the fact changes have been made to the property and there is no way to determine what state the property was in before the changes were made.

**Chairman Johnson:** asked if there was any legal grounds to his objection to the applicant being heard at this meeting

**Ms. Donna Baboulis, Board Attorney:** stated there is no legal basis for not hearing the applicant. There are assertions of violations but no determination has been made.

**Mr. Alampi, Applicant's Attorney:** submitted the summonses numbers as: 2143, 2144 and 2145 which all dealt with tree removal

**Mr. Michael Ullman:** stated that there is no way to know what the state of the property was before the changes were made so how could the Board go forward and hear the application

**Ms. Baboulis:** stated the matter is not adjudicated and that there is no legal basis for the applicant not to be heard.

**Ms. Laura Merkle:** asked about the tree removal that had been done on the property and was confused on how to proceed with the application when they do not know what the property was like before the trees were removed.

**Ms. Baboulis:** stated that the Board can take the matter of the state of the property into consideration when they render a decision on the proposed project, but it does not prevent the applicant from presenting to the Board.

**Chairman Johnson:** stated that the Board will hear the applicant at this meeting

### **Opening Arguments**

**Mr. Minks:** spoke regarding the field case and further stated that the decision by the DEP that the area is in a C1 tributary will have to affect the Board decision regarding this application.

**Chairman Johnson:** asked if Mr. Minks feels the application is incomplete

**Mr. Minks:** responded that the application being incomplete is part of his argument

**Chairman Johnson:** stated that **Mr. Christopher Statile, Board Engineer for CVS Application**, had previously confirmed that the application is complete.

**Mr. Minks:** asked if taxes had been paid on Lots 1 and 2

**Mr. Alampi:** stated there has been no new certification

**Chairman Johnson:** stated that he wants issues presented to the Board in a fair and reasonable manner and does not want arguments thrown at the Board without prior knowledge as to what the arguments are.

**Ms. Baboulis:** stated the Board requires tax information for any *approval* from the Board

**Chairman Johnson:** stated that Mr. Alampi should get the information regarding the tax issue and provide that information to Mr. Minks.

**Mr. Minks:** stated that the basic argument is not a question of permissibility but feasibility. Mr. Minks further stated that the Board is being asked to make a decision based on information that is not correct.

**Mr. Alampi:** spoke regarding the DEP determination letter, the Town's ordinance dealing with stormwater management and the Town's site plan checklist.

**Mr. Minks:** stated that the information given to the DEP was false and it would not be possible for the application to be approved. Mr. Minks further stated that this application is not feasible and that the application could not receive approval from the DEP to go forward with this project.

**Mr. Alampi:** stated the DEP issued a determination that will stand and Mr. Alampi also made reference to Mr. Statile's letter.

**Mr. Statile:** stated that he would query the DEP to show why he believes the drainage area is greater than 50 acres. Assuming he is correct, the applicant would look to obtain a hardship waiver. He could not say for sure if the permit would be issued.

**Chairman Johnson:** asked Mr. Statile feels the Board can grant a conditional approval pending a certification from the DEP

**Mr. Statile:** stated that the Board could grant preliminary approval and the applicant would then have three years to seek other higher jurisdictional approval, and if obtained, the applicant could come back to the Board.

**Mr. Minks:** asked what exception to the law allows hardship waivers within the first 150 ft

**Mr. Statile:** stated that under the flood hazard rules there is a procedure for a hardship waiver

**Mr. Michael Werfel:** asked if this application belongs in front of a higher jurisdiction

**Mr. Statile:** stated at this point the DEP has determined it is under 50 acres

**Mr. Ullman:** asked who would contact the DEP to press them regarding the amount of acreage

**Ms. Baboulis:** anyone, including the public, could query the DEP

**Chairman Johnson:** suggested a vote be taken to have the Board's CVS Engineer, Mr. Statile, contact the DEP for guidance/input.

**Mr. Rick Sonntag:** asked what the ramifications of taking this vote would be. Mr. Sonntage further stated that the DEP has already ruled that they do not have to regulate the stream, what would be the outcome of the vote and what would the Board have gained.

**Mr. Alampi:** stated that he has a strenuous objection to the procedure because the applicant went through all the proper procedures and applications.

**Mr. Statile:** stated that if he has given a letter from the DEP stating that there is a wetlands are within 150 ft. of a proposed site, he will accept that as fact. He has to go on face value. Once it comes to a public forum, it is the right of the Board to tell him he was wrong.

**Mr. Ullman:** stated that in his view the Board can consider asking our engineer to question the DEP on this issue

**Chairman Johnson:** stated the he believed the Board should vote on the request by Mr. Minks to stay the application, and that it is within the Board's right for Statile to question the DEP; Chairman Johnson then read a quote from Fields which he reads as the Board has the right to grant preliminary approval to a project conditional upon the DEPs ruling.

**Ms. Baboulis:** asked Mr. Minks that if the allegation is that this application is a feasibility issue, why hasn't the Objectors obtained the same evidence the Board is asking Mr. Statile to obtain.

**Mr. Minks:** stated that no application has been submitted to the DEP.

**Mr. Miras:** posed a question to Mr. Statile asking what happens when someone asks for a determination with one piece of information and someone asks for the same determination with a different piece of information.

**Mr. Statile:** responded that he would submit new documentation and let the DEP know the original information was not complete and to make a new determination which will supersede their prior decision. It takes approximately a month or two to get a determination from the DEP.

**Mr. Miras:** asked what the ramifications are if the DEP determines that nothing can be done by the stream

**Mr. Statile:** stated that the DEP would say this stream has a flood hazard area associated with it and therefore it triggers certain new rules.

**Ms. Merkle:** stated that the Board's expert has raised a flag regarding the tributary and she feels it would be irresponsible not to recognize the flag that has been raised. Ms. Merkle further stated that she is confused as to if the Board's expert should obtain information from the DEP while the Board is still hearing the case.

**Mr. Ullman:** stated that he believes the Board can hear the application

**Mr. Sonntag:** stated that as a Board we have been dealing with suppositions of future states and we can only deal with the current state.

**Mr. Alampi:** stated that he has a strenuous objection to the procedure

**Chairman Johnson:** stated that he believes the Board should hear the application, but should address the concerns raised by Mr. Statile.

**Ms. Merkle:** spoke regarding Mr. Statile stating he is also the Engineer for Hillsdale and we should heed his findings.

**Motion to Approve the request of the Objector to stay the application:**

Ayes: Merkle

Nays: Asfar, Gerhard, Miras, Sonntag, Ullman, Johnson, Werfel

**Motion to direct the Board's Engineer for the CVS application to seek a review of the determination letter from the DEP from the applicant:**

1. Asfar 2. Sonntag

All Board members in favor of motion.

Five minute recess taken.

**Mr. David Caruso, Engineer for applicant** introduced to Board by Mr. Alampi

Board determined Mr. Caruso was still under oath.

**Exhibits presented at this meeting were as follows:**

- A1 Newspaper Notice
- A2 Plans dated 10/3/11
- A3 Supplemental Plans dated 11/10/11
- A4 Stormwater Management Plan
- A5 Geotech Report
- A6 Pronesti Survey
- A7 Topographic Survey, existing conditions/features described

Mr. David Caruso discusses Exhibit A7. Mr. Caruso references a retaining wall and new lot size of 1.91 acres (without Lot 11). Lot 6 is undeveloped except for a driveway that serves Lot 7. Lot 11 has been eliminated from the plan.

Exhibit A8 Zoning schedule boxed out showing Lot 1 and Lot 2

Mr. Caruso discussed set-backs, road improvements, parking, drive-thru (single lane), driveways, curb cuts, county roads, compactor relocation, soft canopy (canvas) cover and exit options.

**Mr. Sonntag:** asked if the proposed county plan would eliminate any parking spaces

**Mr. Caruso:** responded "no"

**Mr. Ullman:** posed a question regarding the southern exit and if someone would be able to enter the left hand turn lane from this particular exit

**Mr. Caruso:** responded "yes", but that this is more of a question for the traffic expert

**Mr. Miras:** asked how many parking spaces were proposed for this site

**Mr. Caruso:** responded "66". Mr. Caruso further stated that, in this type of location (suburban), CVS likes to have between 60-70 parking spaces.

**Mr. Statile:** stated he would like to see information on other CVS operations which are under a year old which would include parking utilization and an occupancy study.

**Mr. Alampi:** stated that Mr. Caruso would prepare and give this information to Mr. Statile.

**Mr. Lee Klein, Traffic Expert:** stated he has an issue with the relocation of the bus stop and asked if the County had any comment regarding this issue.

**Mr. Caruso:** stated the County did not have comments regarding the bus stop relocation.

**Mr. Klein:** discussed the steepness of the full access driveway

**Special Meeting scheduled for Thursday, February 23, 2012 at 7:00PM**

**Ms. Baboulis:** commented that the experts on the application will be reappointed in February.

All members of Board in favor of adjournment.

Respectfully Submitted by:

JoAnn Carroll  
Zoning Board of Adj. Secretary  
April 11, 2013