

**TOWNSHIP OF WASHINGTON
BERGEN COUNTY, NEW JERSEY
ZONING BOARD OF ADJUSTMENT**

**May 15, 2012 Minutes
Meeting Time: 8:00PM**

Call to Order

Open Public Meetings Act Statement – 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 Taken

Messrs. Asfar, Gerhard, Ms. Merkle, Messrs. Miras, O’Connell, Sonntag, Ullman, Werfel, Chairman Johnson

Ongoing Business

First Hartford Realty Corp., 660-680 Pascack Road, Block 2110, Lotsd 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.

Chairman Johnson: stated that a letter was received from the applicant’s attorney, Mr. Alampi, dated May 15, 2012 asking for the application to be adjourned to the June 19, 2012 meeting. In addition, Chairman Johnson stated that he also received a letter dated May 15, 2012 from Winne Banta, the law firm representing the objectors, Northgate Condominiums, stating they had no objection to the adjournment requested by the applicant.

Motion in favor of the adjournment to the June 19, 2012 meeting:

Ullman, Asfar

Roll Call Taken

Sky Trading, L.L.C Appeal: Board to vote on application. Applicant is seeking to demolish an existing gas station facility located at Washington Avenue and Pascack Road, Block 3104, Lot 1, and construct a 1,206 square foot building which will be utilized as a convenience store, install service islands for four fuel pumps covered by a canopy, and to complete additional site improvements.

Chairman Johnson: stated that the purpose of the meeting was for all members of the Board to ask questions of the Counsel for the applicant, the applicant’s experts, and the Board’s experts and to deliberate the matter then to put it to vote this evening. Chairman Johnson further stated that each

variance would be voted on after its discussion, and that each Board member should state their stipulation for each variance, if they had one, so the Board Attorney can include that in the Resolution. In addition, Chairman Johnson stated that all certifications had been signed by Board members who were not in attendance for all the meetings which included the applicant.

Mr. Richard Miras: stated that there was a discussion regarding steel bollards on the corner but that he did not see them on the drawing and that they should be disguised.

Mr. Bruce Whitaker, McDonnell and Whitaker: stated that he had no objection to the bollards on the corner and to disguising them.

Mr. John O'Connell: asked where the trucks would get into the station.

Chairman Johnson: referred to item G on the applicant's brief which stated that the delivery trucks would come from an easterly direction on Washington Avenue and make a right turn into the site.

Mr. O'Connell: asked how this was going to be done with the weight restriction on Washington Avenue.

Lieutenant Hackbarth: stated that there are no more weight restrictions on Washington Avenue.

Mr. Rick Sonntag: asked when the weight restrictions were lifted.

Lieutenant Hackbarth: stated that the question would have to be posed to the County Council.

Chairman Johnson: asked if there was any reaction by the applicant to the letter received designating the stream to the west of the property as a C1 waterway.

Mr. Whitaker: stated that he was in receipt of the May 15th Azzolina and Feury letter with the recommendation that if the Board were to approve the application that it would then be subject to DEP approval. Mr. Whitaker further stated that he was in agreement with this recommendation.

Exhibit B-1: DEP Determination Letter received

Exhibit B-2: Azzolina and Feury Letter dated May 15, 2012

Chairman Johnson: asked Mr. Slachetka why the three corners of Pascack and Washington have essentially been commercial uses.

Mr. Slachetka: stated that the Township Planning Board wanted to ensure that the commercial uses remain essentially in the downtown core of the Township and that there was intent that there shall be no expansion of the retail uses or the retail area into other areas of the Township. Mr. Slachetka further stated that the Planning Board did not look at specific sites and go and evaluate the land use characteristics on a site by site basis. They were looking at it as part of an overall comprehensive planning activity.

Chairman Johnson: asked if the Planning Board was cognizant of the uses of those properties at the time.

Mr. Slachetka: stated that the Planning Board was clearly aware of the uses because the existing land uses were analyzed and evaluated for the Board as part of the Master Plan reexamination.

Chairman Johnson: asked if the Planning Board could have included a clarifying sentence to say, regarding current lots that have nonconforming uses in a residential area, that they would not want that use to be expanded or modified.

Mr. Slachetka: stated that the Planning Board could have said anything about those sites, but they chose to be more general in their approach.

Mr. Sonntag: asked where that places the Zoning Board vis-à-vis any precedence for looking at the Master Plan.

Mr. Slachetka: stated that in any instance you have to take the actions and the language that is in the Master Plan reexamination report and the actions by the Board creating that reexamination report of the Master Plan land use plan at its face value.

Mr. Sonntag: asked if it would be fair to consider compatibility in terms of less invasive, like no repair bays or a convenience store and would the elimination of it make it more or less compatible.

Mr. Slachetka: stated that you consider both factors.

Mr. Michael Werfel: asked if the Planning Board could have offered an opinion to the Zoning Board during the case since the Zoning Board discussed the Master Plan at length.

Mr. Slachetka: stated that the Planning Board does not typically offer their opinion.

Mr. Miras: asked if the Master Plan was separate onto itself and if it had nothing to do with the Planning Board.

Mr. Slachetka: stated the Planning Board has the responsibility to prepare and adopt a Master Plan for the community as well as a Master Plan reexamination report.

Mr. Miras: asked if the Planning Board ever had put in a plan for this property.

Mr. Slachetka: stated that would be very unusual for a Master Plan reexamination report to get into the level of detail unless there was a specific land use concern or issue that the Board was reviewing at the time that the reexamination report was being done.

Chairman Johnson: asked if, in Mr. Slachetka's opinion, in regards to the purposes of the D2 variance, nonconforming gas station, is the application consistent or inconsistent with the Master Plan?

Mr. Slachetka: stated that it needs to be reconciled with the non-permission for that specific use.

Mr. Werfel: asked if Mr. Slachetka still held the same opinion as he stated on November 15, that it is more beneficial to have a repair use than a retail use, when fitting in with an expansion of a nonconforming use.

Mr. Slachetka: stated that, from his perspective, the retail use will have a lesser overall impact within a residential neighborhood.

Mr. Werfel: asked if it made sense for the Board to take into consideration the current nonconforming use surrounding the property as well.

Mr. Slachetka: stated that the Board can factor in and take into consideration what is happening from a land use characteristic in the surrounding area.

Mr. Michael Ullman: asked if Mr. Slachetka could comment on the canopy.

Mr. Slachetka: stated that the canopy edge is going to be close to the street edge and the Board has a right to evaluate that in terms of looking at it from the standpoint of the intensity of the use that's being proposed on-site and the multiplicity of uses.

Chairman Johnson: asked Mr. Klein to clarify that the applicant's expert testified that the proposed changes to the site would not result in an increase in the traffic flow along the two main county roads.

Mr. Klein: stated he was in agreement with that.

Chairman Johnson: asked if Mr. Klein believed, with the changes being proposed for both variances, would that create a substantial increase in traffic congestion on the two County arteries.

Mr. Klein: stated no because there would not be a lot of new trips to the intersection to that site.

Chairman Johnson: spoke regarding the water well on the property.

Mr. Whitaker: stated the underground storage is more than 50 ft. away from any off-site wells and that it is not marked on the plans but is a stipulation, but that it can be marked on the plans.

Messrs. Ullman, Werfel, Whitaker, Shortino: discussed the tanks being 50 feet greater from any existing off-site wells, property line, rear and side property lines and Exhibit A3.

Chairman Johnson and Mr. Whitaker: discussed the bulk variances, possibility of the gas station being approved and the convenience store not being approved and the calculations, the signage and the canopy.

Ms. Laura Merkle: spoke regarding restricting the 18 wheelers from refueling and had this been added as a stipulation.

Mr. Werfel: stated that the owner agreed to that in May 2011 and that it is on the record.

Chairman Johnson: reiterated that the Board members should state their stipulations so they can be put on the record.

Ms. Merkle: asked if the convenience store where to be approved, are there regulations as to what can be sold.

Ms. Donna Baboulis, Board Attorney: stated that the Board has a right to stipulate what is sold.

Mr. Werfel: stated that no cooking was being done on the premises and that coffee and prepared sandwiches would be sold.

Mr. Whitaker: stated that if there is a change of occupant, an application would have to be made to the Zoning Officer.

Mr. Sonntag: asked Lieutenant Hackbarth if he believed there would be an increased risk of theft in the area due to the fact a convenience store would be on the property along with a gas station.

Lieutenant Hackbarth: stated that he couldn't say for sure if this would occur, but that there would be concerns over watching the convenience store.

Mr. Werfel: regarding the dedication of land.

Mr. Whitaker: stated the dedication occurs not matter what the site plan is.

Chairman Johnson: asked for Mr. Werfel and Mr. Gerhard to give their thoughts since they will not be voting.

Mr. Werfel: stated that his fears are that the Board approves the gas station and then the owner comes before the Board again to say that he has a hardship because he cannot use one of the uses which are the repair use. Mr. Werfel further stated that, as a whole, there will be an improvement to the station.

Mr. Gerhard: stated that Mr. Werfel covered his points.

Vote on D1 Variance, Convenience Store, Variance Approved

Ayes: Asfar, Merkle, Miras, Sonntag, Ullman

Nays: O'Connell, Johnson

Board Comment:

Ms. Merkle: approves the convenience store but would not want it to become more than that. Stipulations: J, K, L, E, C and B. (as stated in the applicant's brief)

Mr. Ullman: approves the convenience store. Stipulations A-N and appendix A-1 in the Azzolina letter dated March 20.

Chairman Johnson: opposes the convenience store because the Master Plan states not further expansion for commercial use in town.

Mr. Miras: approves the convenience store.

Mr. Sonntag: approves the convenience store. Stipulations: Azzolina' memo and the back of the brief.

Mr. Asfar: approves the convenience store. Stipulations: A-N

Mr. O'Connell: opposes the convenience store. He does not see the good in it.

Vote on D2 Variance, Expansion of the Gas Station, Variance Approved

Ayes: Asfar, Sonntag, Miras, Merkle, Johnson

Nays: O'Connell, Ullman

Board Comment:

Mr. O'Connell: opposes the expansion of the gas station.

Mr. Asfar: approves the expansion of the gas station. Stipulations: A-N. In addition, no diesel fuel just gasoline on the site.

Mr. Sonntag: approves the expansion of the gas station. With all the stipulations.

Mr. Miras: approves the expansion of the gas station.

Chairman Johnson: approves the expansion of the gas station. Stipulations: all the stipulations discussed plus no new tanks are to be 50 feet from the property line and no 18 wheelers allowed. In addition, would like to expand "G" to make it clear that no other access will be allowed except as specified for the delivery trucks.

Mr. Ullman: opposes the expansion of the gas station due to the canopy not being removed.

Mr. Merkle: approves the expansion of the gas station with the stipulation the canopy is removed and also that there be three service islands with six fuel pumps. All other stipulations discussed as well to be adhered to.

A 10-minute recess is taken at this point in the meeting for the applicant to discuss the stipulations made by the Board in reference to the expansion of the gas station, D2 Variance.

Mr. Whitaker: spoke regarding the canopy removal/reduction in size and the reduction of the islands. He stated that the applicant would come before the Board again with a revised plan. All other stipulations discussed would be accepted.

Chairman Johnson: with the approval of the Board, stated that the height of the fence would be required to be 8 feet in height.

Chairman Johnson: asked that the attorneys work together to revise the stipulation sheet and return next month with the revised plan and a clean stipulation sheet that the Board can see and that would form the basis of the resolution.

Chairman Johnson: discussed the different variances to be voted on. Coverage, front yard set-back, rear yard set-back and signage.

Ms. Merkle: asked if there would be a change in the front yard setback with the reduction in the service islands.

Mr. Whitaker: responded yes.

Mr. Ullman: stated that he would be opposed to bulk variances one, two and three in relation to the canopy. Mr. Ullman further stated that he would be okay with number four.

Motion to grant the variance for the signage as proposed by the Applicant:
Miras, Asfar

Ayes: Asfar, Merkle, Miras, Sonntag, Ullman, Johnson

Abstain: O'Connell

Ms. Merkle: asked if there would be a change in the 13 foot rear yard setback.

Mr. Whitaker: stated that the building can't be moved up because even though the canopy is being changed there is still a need for proper ingress and egress for the fuel tank delivery.

Mr. Ullman: proposes a motion in the negative.

Mr. Whitaker: stated that if the building were to be moved forward, parking spaces would be lost and they are conforming with parking at this time.

Mr. Ullman: withdrew his motion.

Motion to grant the variance regarding the 20 foot rear yard setback:
Miras, Asfar

Ayes: Asfar, Merkle, Miras, Sonntag, Johnson

Nays: O'Connell, Ullman

Motion to approve the variance requested for the front yard setback as proposed by the Applicant: Asfar, Merkle

Ayes: Asfar, Merkle, Miras, Sonntag, Johnson

Nays: O'Connell, Ullman

Motion to approve the variance regarding the building coverage: Asfar, O'Connell

Ayes: Asfar, Merkle, Miras, O'Connell, Sonntag, Johnson

Nays: Ullman

Chairman Johnson: stated that the applicant would come before the Board at the next meeting with a revised plan reflecting the stipulations and they would be reviewed at that time.

Motion to Adjourn: O'Connell, Asfar

All Board members present approve motion to adjourn.

Respectfully submitted by:

JoAnn Carroll
Zoning Board Secretary
May 14, 2013