

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

**July 17, 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**

Present: Messrs. Gerhard, Miras, O’Connell, Sonntag, Werfel, Chairman Johnson

Absent: Messrs. Asfar, Ullman, Ms. Merkle

**Ongoing Business**

**Day Pitney** - Motion to carry Cingular Wireless and Omnipoint Communications application open until December 31, 2012. Letter was received from the applicant.

**Motion to Carry:** Miras, Sonntag

**Roll Call Taken**

**Resolution of Denial – John and Lori DeFina, Block 2412, Lot 24-278**

**Wilson Avenue:** applicant denied variance for lot coverage to expand the existing one car garage on the southerly side of the home and along a portion of the rear of the home. Resolution read aloud by Board Secretary.

**Please note: Mr. Michael Ullman has joined the meeting at this point.**

**Motion to adopt Resolution:** Werfel, Ullman

**Roll Call Taken: Please note Mr. John O’Connell abstained.**

**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. Carmine Alampi, Attorney for Applicant:** introduced himself to the Board.

**Mr. Tendai Richards, Attorney for the Objectors:** introduced himself to the Board.

**Mr. Alampi:** spoke regarding the DEP determination letter and his exception to it; request by the Objector's attorney for the Board to suspend the proceedings at the municipal level while the issue is pending with the DEP; does not agree with the DEP's determination.

**Chairman Johnson:** stated that the DEP has now taken a position that is adverse to CVS.

**Mr. Alampi:** stated that the decision is not a final determination and the decision will require CVS to pursue other remedies, permits and other avenues of relief. Mr. Alampi further stated that it will have an impact on the development potential, but it will not block it.

**Chairman Johnson:** stated that he was in favor when the DEP decision was speculation, but now that they have made a definitive decision, he feels that staying the application would be prudent.

**Mr. Alampi:** spoke regarding Mr. Neil Yoskin's letter, who is an attorney with considerable knowledge of the DEP, and that Mr. Yoskin was asked what avenue the applicant should take and if the DEP should be petitioned for a hearing.

**Chairman Johnson:** stated that Mr. Yoskin's letter stated that the determination effectively precludes any use of the property much less the construction of a CVS.

**Mr. Alampi:** stated that the DEP needs to back up and proceed with a fair and open process.

**Mr. Christopher Statile, Board Engineer for CVS application:** stated that the applicant could appeal the information that Mr. Statile himself provided to the State, the applicant could go with the State's determination that Statile obtained from the state or they could seek a hardship waiver.

**Mr. Richards:** stated that he believes the meetings should be stayed because the piece of property cannot be developed because the DEP declared its prior 2009 applicability determination as null and void and it is now determined that the tributary is a C1 protected waterway.

**Chairman Johnson:** asked if either of the attorneys believed that the Board could decide this evening to say the application pending a resolution.

**Mr. Richards:** referred to Mr. Alampi's testimony on January 16, 2012 in opposition to the application to the Board.

**Mr. Alampi:** stated that Mr. Richards was taking the letter and Mr. Alampi's representation of it totally out of context. Mr. Alampi further stated that the Board has the ability to continue or to weigh in and regulate on a municipal level within the constraints of the Municipal Land Use statute but to be mindful that the exclusive jurisdiction of the DEP to water courses and interpretation of its own regulations. Mr. Alampi then stated that he sees no authority in the law for the Board to stay the application.

**Mr. Richards:** stated that there may not be explicit authority in the statute, but there certainly is case law.

**Chairman Johnson:** asked if what was being addressed is if the application is not complete, it can't be heard.

**Mr. Richards:** stated that an application can't be heard if there is missing information that would allow it to be approved or actually developed.

**Ms. Donna Baboulis, Board Attorney:** asked how do you get around the decision where the Court held that the Board should have conditionally approved the site plan subject to the applicants obtaining the necessary DEP approvals and permits.

**Mr. Richards:** stated that the application as it stands is a futile exercise.

**Ms. Baboulis:** stated that this was the opinion of the objectors but the Board doesn't know that to be the case because they don't have a "crystal ball."

**Mr. Ullman:** asked, hypothetically, if the Board was to approve the application that evening, and the letter NJDEP letter exits, the applicant could not build tomorrow.

**Ms. Baboulis:** stated Mr. Ullman was correct.

**Mr. Ullman:** asked if the applicant would need to appeal through an individual hazard permit or hardship that may or may not be granted.

**Mr. Statile:** stated that this is not the only permit the applicant has to get. They have to go to the County Planning Board for approval, they have to get Soil Conservation Service approval and they have to get a BCUA Utilities Commission approval.

**Chairman Johnson:** stated that the distinction he draws is that the Board is where they were before the DEP letter was received. Chairman Johnson

further stated that the problem he has is if the Board has the ability to say to Mr. Alampi and his client that the Board will not hear his application until such time as the DEP letter is cleared up.

**Mr. Stanley Slachetka, T&M Associates, Planning Consultant for the Board:** stated that the regulatory determination of the DEP has to be considered and evaluated within the context of the use variance application.

**Chairman Johnson:** stated that being confronted with a letter which states the applicant will not be allowed to build on the site.

**Mr. Alampi:** stated that the DEP has reversed its decision and the applicant is stating that a full and complete hearing is required. In addition, if the decision should hold, this opens the door to the hardship application. Mr. Alampi further stated that the Board does not have the authority to dismiss the application until such time all their issues are straightened out.

**Chairman Johnson:** asked if it were possible for the issue to be briefed on whether or not the Board has the ability to stay the application.

**Mr. Alampi:** asked if Chairman Johnson wanted a memorandum specifically on the Municipal Land use statute.

**Chairman Johnson:** stated yes and that he is interested if the Board is confronted with a fact that is left un-remedied, would it kill the application.

**Mr. Richards:** stated that he believes it makes absolute sense for the Board to have as much information as possible with regards to the law and the ability to stay or not.

**Chairman Johnson:** asked if the information could be available at the next meeting and that, in the meantime, the applicant would be allowed to continue.

**Mr. Alampi:** stated he believed he would be able to obtain that information.

**Mr. Richards:** stated if the DEP denies their appeal, the hardship application will be stronger and feels Mr. Alampi has misstated the regulations of the law in regards to that because one of the major issues with regard to a hardship waiver is that the hardship can't be self-imposed.

**Chairman Johnson:** asked if anyone on the Board had issue with handling the application the way described.

**Mr. Richard Miras:** asked if the DEP letter affects all the houses on the west side of the stream.

**Mr. Statile:** stated “no” and that the 300 foot Raparian buffer rules are different for different circumstances.

**Mr. Alampi:** stated that he believes properties can be affected, but it doesn’t mean you can’t have your house where it is.

**Mr. Richards:** asked how far in advance of the next meeting did Chairman Johnson want to receive the briefs.

**Chairman Johnson:** agreed that the fifteenth would be an acceptable date because the next meeting is scheduled for the twenty-first.

**Robert Gehr, Larson Design Group sworn in by Board Attorney, Ms. Donna Baboulis.**

**Mr. Robert Gehr:** stated that he has been involved with this project since 2011 and has met with the engineer and they have been involved with putting together some of the building designs. Mr. Gehr discussed the outline plan (floor plan of the proposed building); elevations; detailing incorporated into the building per meeting with Joseph Bruno; drive thru-feature; detailing that picks up on some of the residential detailing of the surrounding houses; building footprint is 14,508 sq. ft.; no basement or crawl spaces; entrance location; pharmacy location; stock room location; receiving area location; baler located inside the property; dumpster will be located outside of the building for garbage; ADA requirements met throughout the store.

**Mr. Ullman:** asked a question regarding the “L” shape area on the layout and what was contained there.

**Mr. Gehr:** stated this area was a walk-in cooler for beverages, cold drinks and some pre-packaged cold food and stated there is no food preparation at a CVS store.

**Mr. Ullman:** asked if the pallets work into the surface area and is there a loading dock.

**Mr. Gehr:** stated there is a roll-up loading door, the tractor trailer will drop the pallets to the ground level with a tail lift, and then they’ll be pulled into the store with a pallet jack and then placed in different locations.

**Ms. Baboulis:** asked if there is an emergency exit.

**Mr. Gehr:** stated there is an emergency exit for customers in the retail area.

**Mr. Michael Werfel:** asked if the truck backs up to offload or is it a side.

**Mr. Gehr:** stated the truck would pull in to the back.

**Please note: a short recess is taken at this point in the meeting.**

**Mr. Gehr:** continued to discuss the front elevation; the height; gable roof; stone water table; pilasters; two-color stucco finish; windows; side elevation; length of the building; left side elevation; incorporation of a mock element to resemble a window that faces the residents; no lighting on the exterior of the building on this side of the building; rear elevation; drive-thru; cloth canopy; window graphics.

**Mr. Alampi:** asked if there was anything in the building design that would trigger a variance other than the peaked gable roof.

**Mr. Gehr:** responded “no.”

**Mr. Werfel:** asked why the excess height is needed for the gable roof.

**Mr. Gehr:** stated it is because they were trying to incorporate the features that would be found on a residential building.

**Mr. Alampi:** asked what would happen if there were still be a gable roof and entrance foyer if there was a three foot reduction.

**Mr. Gehr:** stated that portions of the building would start to become unusable from a commercial standpoint.

**Chairman Johnson:** asked if the only reason was aesthetics.

**Mr. Gehr:** responded “yes.”

**Mr. Statile:** stated that the applicant exceeds the height by ten percent.

**Mr. Alampi:** stated that they would have to revisit the issue and possibly alter it by five or six inches.

**Mr. Joseph Bruno, Architect for the Board:** stated that bringing the maximum height to within the required amount should not pose any hardship for the applicant at all.

**Mr. Ullman:** asked where the mechanical units would be placed on the roof because they are not shown on the plans.

**Mr. Gehr:** stated there would be six mechanical units that would be on the roof and that they are not shown on the elevation.

**Exhibit A-18: Site Sections, dated March 21, 2012, showing the roof top units by Larson Design Group, marked July 17, 2012.**

**Mr. Gehr:** stated the function of this exhibit is to show the view lines from nearby properties. In addition, the roof top mechanical units are indicated on this exhibit. Mr. Gehr discussed six roof top units and a compressor for the coolers; location on the roof; view of these units from different angles; noise attenuation and control of noise emission (not as an expert); units are fenced; noise level reflected upward.

**Mr. Ullman:** asked how tall the parapet is.

**Mr. Gehr:** stated the parapet is 6'3" from the roof line to the top of the wall at the high point and 4'3" high on the two ends.

**Mr. Bruno:** asked what the sight line would be if a person were standing in the second floor of one of the neighboring houses.

**Mr. Ullman:** asked if Mr. Gehr could extend that to Pascack Road where there are residents on that side and also provide a sample of the graphics that were discussed. In addition, Mr. Ullman asked if what type of drive-thru would be installed.

**Mr. Gehr:** stated the drive-thru would be one where the window opens and there is a face to face conversation with the customer.

**Mr. Ullman:** stated that he would also like to know if a roof of the type shown needed any special firefighting apparatus, i.e. a ladder truck, or would standard firefighting equipment suffice.

**Mr. Gehr:** stated he could certainly speak with the local fire department to see if there are any concerns, and further stated the building is completely sprinkler covered.

**Mr. Miras:** asked why all brick wasn't used on the proposed site and why a cupola wasn't considered.

**Mr. Gehr:** stated that a cupola could be done.

**Mr. Statile:** stated he wanted to hand out to the Board a couple of photographs of CVS buildings which show soffit lighting and down lighting.

**Chairman Johnson:** asked if there were any soffit lighting on the proposed building.

**Mr. Gehr:** replied “no.” In addition, Mr. Gehr stated that there is now proposed a hundred watt full cut-off light underneath the drive –thru awning; a 70 watt metal recessed light fixture over the main entrance pushing light straight down and then at the back elevation, there is 270 watt, the full cut off metal lights.

**Mr. Statile:** asked if those were the lights used at the building in Fair Lawn.

**Mr. Gehr:** stated he believed they were but a lot brighter.

**Mr. Werfel:** asked if Mr. Gehr could give us an example of current CVS locations that have the lighting that is being proposed in the Township.

**Mr. Gehr:** stated he wasn’t sure if there was an example because the lighting was recently scaled back on the proposed Township store.

**Mr. Alampi:** stated that there may be other lighting applications, but what has to be considered is the testimony given by this witness under oath about the proposed CVS in the Township.

**Mr. Statile:** stated that lights are not represented on the plans.

**Mr. Gehr:** pointed out to lights on the rear side.

**Mr. Statile:** stated he had a picture of the CVS in Whippany which is all brick with ornamental lights and wanted the Board to realize there are plenty of choices with the design.

**Mr. Werfel:** stated he would like the applicant to present different options and aesthetically, rather than ad hoc pictures, and that the design presented he is not happy with.

**Mr. Statile:** asked with the tonnage of the six roof top units are.

**Mr. Gehr:** stated he believed the biggest one is 10 tons but he would find out that information to confirm.

**Chairman Johnson:** asked why Mr. Statile was concerned with the weight of the units.

**Mr. Statile:** stated the tonnage is the cooling capacity and if all the units are being run at once, they may generate a lot of noise in a residential area.

**Chairman Johnson:** asked if the units get rated for noise.

**Mr. Gehr:** stated that he would be able to provide the decibel levels for each unit.

**Mr. Statile:** stated that sound packages are offered for these units.

**Mr. Richard Sonntag:** asked if Mr. Alampi could stipulate that the noise levels would meet the local ordinance.

**Mr. Alampi:** stated he would find out what the local ordinances are and have his mechanical people check the systems and render a report to the Board. Mr. Alampi further stated that he would hopefully exceed the ordinance.

**Mr. Bruno:** stated that penthouses can also be used to house the units and asked Mr. Alampi to not only have his engineers consider the single unit effect, but the cumulative of all the units running together.

**Mr. Statile:** stated the noise levels are given at the property line not at the house.

**Mr. Richards:** stated that his questions pertained to the roof mechanics and noise levels and design functions of the roof and if the applicant will be addressing those, he will not be addressing them at this time.

**Motion to Adjourn:** Ullman, Werfel

**All Board members in attendance approve motion to adjourn.**

Respectfully submitted by:

JoAnn Carroll  
Zoning Board Secretary  
June 4, 2013