

**TOWNSHIP OF WASHINGTON
BERGEN COUNTY, NEW JERSEY
ZONING BOARD OF ADJUSTMENT
September 18, 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, 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, Applicant Attorney: identified himself for the Board.

Mr. Tendai Richards, Objectors Attorney: identified himself for the Board.

Mr. Alampi: spoke regarding the Board stopping the proceedings because there were other complications, factors or issues that can be decided by different agencies. Mr. Alampi stated that it is not appropriate to suspend the proceedings. Mr. Alampi further stated that Mr. Neil Yoskin was in attendance and would be acting as Mr. Alampi’s co-counsel with regards to the DEP application and the appropriateness, if any, of the Board suspending the application.

Mr. Richards: spoke regarding whether the DEP matter was an appropriate circumstance to stop the Board from hearing the CVS application.

Ms. Donna Baboulis, Board Attorney: asked Mr. Richards how he could get around the issue that the applicant complied with the site plan ordinance, provided the application that’s deemed complete and have the Board deny the application.

Mr. Richards: stated that nothing can be built on that application.

Chairman Johnson: asked for clarification from Mr. Richards that his argument at this time was that the Board has the ability to vote prior to the applicant's case being closed to deny their application based upon the existence of the DEP letter.

Mr. Richards: stated that was basically his argument.

Chairman Johnson: asked if the Board has the obligation to let an applicant finish its case and present all its evidence before the Board can make a final ruling.

Mr. Richards: stated that he thinks the Board has the discretion under these extreme circumstances when everyone admits that with the hardship, unless they get the hardship waiver, nothing can happen.

Mr. Alampi: stated that his position is based on the fact that the Board on its own initiative cannot suspend proceedings over the applicant's objection.

Chairman Johnson: stated that he hears nothing that said the Board has the power to vote on an application prior to the applicant completing its case.

Ms. Laura Merkle: stated that the trouble she is having with the application is the NJDEP has stated the land cannot be built upon and that it is not right the way it is. Furthermore, she feels the Board is "putting the cart before the horse."

Mr. Michael Ullman: asked if the determination had been made prior to the application coming before the Board, would there have been some level of hurdle that they didn't pass that prevented them from coming before the Board.

Ms. Baboulis: stated they would have to comply with the site plan ordinance.

Mr. Joel Minch, on behalf of Mr. Christopher Statile, Board Engineer for the CVS application: are of the opinion that the Board can continue to hear the application, from an engineering viewpoint.

Mr. Stanley Slachetka, T&M Associates, Planning Consultant for the Board: stated that if the Township had an ordinance that defined a C-1 waterway, the issue would be pretty clear. If the determination was made prior to an application being filed, that the DEP made a determination that it was in a C-1 corridor, then the Board would not necessarily have jurisdiction if certain types of development activity were prohibited or prevented in those stream corridors. In addition, an ordinance or some type of legal regulation is needed to be able to make those determinations.

Mr. Alampi: stated that the Township of Washington does not have such an ordinance.

Chairman Johnson: stated that the dilemma is that neither counsel has cited authority that says the Board can vote in the middle of an application.

Mr. Richards: stated that there are other procedures available.

Ms. Merkle: stated that she is struggling with the issue of evidence that came up midstream and that it was addressed and dealt with and it has seem to change the tides.

Mr. Miras: asked if there were not an answer from the DEP in three years' time, what would the Board do at that point when they would be ready to vote?

Ms. Baboulis: stated that you get preliminary approval or deny it.

Chairman Johnson: stated that the statute he has been citing would give the Board the ability to vote on it conditional upon them moving the immovable object.

Mr. Richards: stated that a C-1 waterway determination cannot be appealed but a hardship can be sought.

Mr. Alampi: stated that the use variance may be warranted but the ability to build upon the site is a different issue.

Chairman Johnson: stated that the question before the Board is: does the Board believe that it has the ability to vote the application mid application? Chairman Johnson further stated that would have no bearing on what Mr. Alampi's expert would have to say.

Ms. Baboulis: stated that she believes it should be the issue of whether the Board has the legal authority to deny the application at that time.

Mr. O'Connell: asked if the Board had the authority to decide whether the application is complete or not.

Ms. Baboulis: stated that the engineer has deemed it complete.

Mr. O'Connell: stated that he feels the application is full of blemishes.

Chairman Johnson: stated that he feels the only issue at this time was does the Board have the ability to vote this matter now, notwithstanding the applicant has not closed its case.

Mr. Miras: asked if the motion or the request to carry is only from the applicant and not from the Board.

Chairman Johnson: replied yes.

Ms. Baboulis: stated there are time requirements and the Board is required to hear applications, and that is the statutory requirement of the Board.

Ms. Merkle: asked if she could make a motion to deem the application incomplete after the engineer deemed it complete.

Ms. Baboulis: stated she could not.

Mr. Werfel: asked if this was so notwithstanding the new evidence.

Ms. Baboulis: stated that was not within the ordinance and the Board only has jurisdiction to hear matters pursuant to the site plan ordinances and it was deemed complete pursuant to that.

Mr. Ullman: stated that he has an idea of how he would vote on this application, but does feel the applicant has the right to be heard and if the DEP opines a later date or their hardship is not granted, then that is the law of the land, but he doesn't think that should prevent the Board from making a decision based on the evidence that's presented to the Board based on the land use laws and ordinances.

Mr. Werfel: stated that he disagrees with Mr. Ullman.

Chairman Johnson: asked if the Board has the authority to make a determination on this application prior to the applicant closing its case.

Mr. Alampi: stated, for the record, that he is opposed to the motion.

Chairman Johnson: explained that a vote of yes means that the Board would consider whether to deny the application right now. A vote of no means the Board will not consider that and will allow the applicant to proceed with the case.

Motion: Sonntag, Merkle

Chairman Johnson: stated that the Alternates do not vote on this matter.

Ayes: Merkle, O'Connell

Nays: Asfar, Miras, Sonntag, Ullman, Johnson

Chairman Johnson: stated the motion has been denied and the Board will proceed with hearing the application.

Mr. Alampi: stated that if his expert, Mr. Yoskin was not allowed to testify, he would object to the Objector's expert to testify as well.

Mr. Richards: stated that he came to the meeting that evening to make the arguments and hear from the experts and have the architect finish up. His traffic expert was not in attendance.

Chairman Johnson: stated that the architect would be heard then the meeting would be adjourned.

At this point in the meeting a brief recess is taken.

Mr. Alampi: stated that Mr. Robert Gehr, the project architect, would continue his testimony.

Exhibit A19: Applicants Architectural Plans by Larson Design Group (5 sheets), dated August 14, 2012

Exhibit A20: Site Views and Sounds by Larson Design Group (1 sheet), dated August 14, 2012

Mr. Robert Gehr: spoke regarding the above mentioned exhibits, outlying plan back up, orientation of the layout, height of the building, gabled roof, roof line, shingled mansard, placement of mechanicals, asphalt shingle, architectural materials to be used, brick façade, left side elevation, light fixtures on the outside of the building and a fabric canopy.

Mr. Ullman: asked if the signs were going to be lit.

Mr. Gehr: stated the signs would be internally illuminated.

Mr. Werfel: asked what the lumens were on the 70 watt entranceway light.

Mr. Gehr: stated that lights operate at about 80% of their actual efficiency once they burn in which is at about 100 hours. The lumen output would be 4,200 lumens for the 70 watt and 7,500 lumens for the 100 watt.

Mr. Gehr: spoke regarding the technology used to create the diagram of the proposed site.

Mr. Alampi: stated that he was in possession of information from Mr. Gehr regarding the noise from the mechanical devices, and that this information would be sent to the Board and to Counsel for review.

Mr. Ullman: asked what you would see from View 27 looking out the window of a two-story home from the second floor.

Mr. Gehr: stated that your eye would have to be 27.5 inches plus to start to look down into the roof.

Mr. Werfel: spoke regarding a cupola option presented in the design option.

Mr. Joseph Bruno, Zoning Board's architectural consultant: stated that he viewed the Westwood site and the cupola was barely visible from the street and did not fit with the building. He would not suggest it to the Board. Mr. Bruno further stated that the original design had stone with a bit more stucco which lends itself to a softer, lighter appearing building than brick.

Motion to Adjourn: Ullman, Werfel

All Board members present approve motion to adjourn.

Respectfully submitted by:
JoAnn Carroll
Zoning Board Secretary
May 16, 2013