

**MINUTES OF REGULAR MEETING OF THE
JACKSON TOWNSHIP BOARD OF ADJUSTMENT FEBRUARY 17, 2021**

The February 17, 2021 Jackson Township Board of Adjustment Meeting was called to order at 7:00 p.m. with a salute to the flag by all present. Attorney Sean Gertner read the Open Public Meetings Act Statement and announced that adequate notice has been provided for this meeting.

ROLL CALL:

Jeanine Fritch	Kathryn McIlhinney, Board Secretary
Stephen Costanzo	Scott Najarian, Board Vice Chairman
James Hurley	Carl Book, Board Chairman
Toni Ann Comello- Alt. #2	

Also Present: Sean Gertner, Board Attorney, Evan Hill, Board Engineer, Ernie Peters, Board Planner, Frank Miskovich, Board Traffic Engineer, Jeffrey Purpuro, Zoning Officer, Fran DiBella, King Reporting and Diane Festino, Alternate Zoning Board Recording Secretary.

APPROVAL OF MINUTES: Motion to approval of regular meeting minutes of February 3, 2021 by **McILHINNEY/NAJARIAN**. **Yes:** Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian, Book.

APPROVAL OF VOUCHERS: Motion to approve a voucher for Fran DiBella, King Reporting in the amount of \$250.00 for February 17, 2021, with Diane Festino in the amount of \$150.00 for the meeting of February 17, 2021 Motion to approve by **McILHINNEY/NAJARIAN**. **Yes:** Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian, Book.

RESOLUTIONS:

2021-04: Sommer, Block 14501, Lot 4.01, 1 Summers Drive - Granting a variance to construct a fence. Motion to approve by NAJARIAN/ McILHINNEY. **Yes:** Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian, Book.

2021-05: Van Shoick, Block 2201, Lot 47, 636 William Street - Amending prior approval to add goats to variance as emotional support animals and service dogs. Motion to approve by McILHINNEY/NAJARIAN. **Yes:** Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian.

2021-06: Listash, Block 23202, Lot 42, 536 Whitecomb Street - Granting Administrative Approval to modify the plan. Motion to approve by NAJARIAN/McILHINNEY. **Yes:** Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian, Book.

2021-07: Flood, Block 5602, Lot 15, 7 Highland Drive - Granting approval of a variance to construct a deck. Motion to approve by NAJARIAN/McILHINNEY. **Yes:** Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian, Book.

DISCUSSION: Mr. Pfeffer informed the D'Amore Site Plan documentation was not completed in time and requested to carry to the next hearing. Mr. Book confirmed March 17th and Mr. Pfeffer agreed to the waiver. Attorney Gertner announced for the public's edification that Variance #3343, (Application #2), D'Amore will be carried to the March 17th meeting and Mr. Pfeffer will renounce as it is the third time it is carried. Attorney Gertner informed the Board that Judge Ford's opinion was in favor of the Board regarding A&A Truck Parts. The Board was pleased with the decision.

Court Reporter, Fran DiBella swore in the Board's Professionals, who identified themselves and their positions with the Township.

APPLICATIONS:

1. Frank & Francine Siegel, Block 4605, Lot 31, 6 Elmswell Court, sworn/affirmed - Mrs. Siegel advised the couple is getting older and it is difficult carrying items up/down the stairs. The new deck will be in the backyard and Mr. Book, referring to the survey, confirmed the existing concrete patio is highlighted in yellow and the proposed deck will sit over the existing concrete. The top picture is their home and the bottom picture is a photo of the exact deck within their development they are seeking to build. Mr. Gertner asked if there are any impervious issues and advised it is the Board's policy prior to any approval that the applicant obtain HOA approval.

Mr. Hill explained wood decks are not considered impervious and the existing patio is impervious. He confirmed they will be placing the deck on top of the existing patio and believes there is no increase of impervious conditions. Mr. Hill confirmed it is 15' deep being 1' off of the property line; Mr. Siegel informed it will be 15' x 27'. For drainage, Mr. Hill stated the grades are already established and there will be no adverse impact. Mr. Book confirmed the right side is the common side and left side is their property and the rear is the rear lot line. Mr. Book confirmed they are the original owners & and the builder built the concrete patio and the new deck will be 1' in. Mr. Costanzo confirmed it will not go past the existing concrete and there will be a 1' setback on the rear. Mr. Costanzo was advised by Mr. Gertner the application was necessary because of the rear lot line and rear yard site lines and Ms. Fritch confirmed stairs will be to the side. Mr. Book confirmed all common grounds are maintained by the HOA and that is why all the lots are so small with swales between homes & rear swales. Mr. Book confirmed the deck will be made from composite trex with railings.

Mr. Hurley confirmed the Siegel's spoke to their immediate neighbors with no objections. He asked how would you feel if the neighbor behind you built this deck and Mrs. Siegel felt the rear neighbor would have to build an 80' deck. She stated they obtained HOA approval and all the neighbors were notified. Mr. Costanzo confirmed the deck will be raised 22" with lattice & the skirt as show in picture #2. Mr. Book and Mr. Hurley had concerns for the rear owner of Lot 24 having budding concrete patios and Mr. Gertner informed the rear home is 70' back from the line.

Opened public comment - Mr. Book advised there are 21 attendees

Elenor Hannum, 7 Evergreen Court, sworn - questioned how many residents are in the meeting and Mr. Gertner explained they make an announcement when public comment is opened as people go in & out.

Public comment is closed.

Mr. Costanzo confirmed they have a slight medical hardship and have the approval of their HOA. The deck will be inside or along an existing patio and Mr. Gertner believes the deck is a nicer aesthetic; it is a C2 variance.

Motion to approve by a 15' x 27' deck over an existing concrete patio, 22" in height with side steps by **NAJARIAN/McIlhinney**. **Yes:** Costanzo, Fritch, Hurley, McIlhinney, Comello, Najarian, Book.

2. Green Apple Holding LLC, Block 12004, Lot 62.01, 32 Bennetts Mills Road - Adam Pfeffer, Attorney for the applicant felt the Board was familiar with the current site as JR Custom Landscaping. He stated it is a bifurcated use in the R3 Zone proposing 40,000 sq. ft. in retail & (2) 5,000 sq. ft. buildings with 280 car parking. Brian Flannery, Engineer, credentials accepted, sworn. Mr. Peters wanted to be clear and confirmed with Mr. Pfeffer that this application is a use variance only. Mr. Flannery informed the Board that this project has been in the works since 2019 with the contract purchaser, subject to use approval & public sewer from the JTMUA. There is interest from Starbucks (pre COVID) and they anticipate the building site might shrink. They believe it to be a good location for a drive thru and will come back with fully engineered plans. Mr. Gertner stated should the Board act favorably, he confirmed they will obtain the JTMUA approval & sewer and come back with approvals or they would be asking for waiver. Mr. Flannery felt the sewer service amendment is the biggest hurdle from the NJDEP. Mr. Gertner stated the concept of 50,000 sq. ft. in retail commercial space with use variance conditions and the entire space requires sewer to service as confirmed by Mr. Flannery.

Ms. McIlhinney stated approval but not JTMUA, is it possible? Mr. Flannery stated they acted favorably and WaWa & Speedway would pick up the sewer. We can't build without sewer. It is a 6.5 acre site currently in the R3 Zone. The residential zone is 1 acre and it is not a desirable location for a house. It is a D-1 variance in the Neighborhood Commercial Zone and the applicant is not married to any particular use. The design is 60% impervious cover, limit to less than 50,000 sq. ft. & less than 60% impervious. The uses are similar to professional NC Zone with a convenience of not driving to Howell or Lakewood.

Exhibit A-1, shown in red, the property shows nearby Speedway & WaWa, the R3 Zone is the Hope Cathedral & Methodist Churches and Lot 61 is a single-family dwelling. For the residence, we would enhance the buffering in that area to the west of Speedway & Lots 65 & 66 on Cedar Swamp (for sale sign for years) and Lot 67 is a single-family dwelling. **Exhibit A-2**, shows churches, Speedway & WaWa along with homes previously described. Evergreen Court is to the rear. **Exhibit A-3**, same super imposed exhibit showing the proposed site layout with a 30' minimum buffer to supplement the existing vegetation. **Exhibit A-4**, larger blow up showing the existing business, the left & rear sides have trees and most of the site is open & disturbed. **Exhibit A-5**, proposed layout with supplementing buffers, a minimum 30' buffer where 25' is required. The layout will change & parking might change. **Exhibit A-6**, shows a single-story retail building with smaller satellite buildings. The center building reduces visual impact by breaking up the site. Mr. Book questioned if Exhibit A-6 is to scale and Mr. Flannery stated the building up front looks bigger with an accurate view on Exhibit A-5.

Mr. Flannery referred to the professional's reports. The site is occupied by JR Customer Landscaping.

1) parking, the applicant is not requesting parking variances. Mr. Gertner asked what standard and Mr. Flannery replied the R3 Zone doesn't have a standard. It is a different use and the R3 zone is 1 space/200', **2)** stalls, they will complete for the NC site, **3)** traffic impact, we haven't gotten it yet and we will do County approval with an upgrade to the intersection, I'm sure. There are 120 trips entering/exiting 120 trips that are making it anyway. **4)** Mr. Hills report (updated survey) ROW - any improvements and the applicant is not looking for relief; it will be a first-class facility, **5)** parking plan count will be provided according to the ordinance, **6)** presence of environmental constraints, we met with the NJDEP, the County and the JTMUA (at the DEP request); if there are issues, it will be dealt with **7)** improvements at the driveways are consistent with approvals, **8)** storm water, there are new regulations requiring different treatments in March **9)**, some bio garden porous pavement will comply with the new standard **10)** waivers (none), **11)** curbs/sidewalk at the whole site with crosswalks for pedestrian safety, **12)** a positive meeting with the JTMUA, **13)** will indicate buffering when we come back with a 30' buffer existing along with new vegetation and **14)** trash, when we come back.

Remington Vernick report - a D-1 use variance in the R3 zone which is not permitted. If the Board acts, we will comply with the ordinance standards. Mr. Flannery stated the maximum building coverage in the R3 Zone is 15% maximum and we're asking 17.6% for 50,000 sq. ft. The building standards adjust to the standards and 17.6% makes sense; the facility is a great ratable. The surrounding land uses are ok and the commercial/retail uses can be a beauty store, book store, candy, flower, ice cream, jewelry and professional offices. The benefits of this site is better than going out to a County Line store & better than the big box store. Mr. Book stated the list is not in front of me and confirmed he only read about half the list.

Mr. Gertner stated for restaurants, drive thru's are not permitted and Mr. Peters stated there is no negotiating. It is a use variance application with comparison to NC Zone and you need to stay with the NC Zone as a comparison; if not then leave and go to the Planning Board. Mr. Book stated you're applying for a use variance using the constructs of the NC Zone, any use in the NC Zone. Mr. Peters stated no, the application was for retail and our plans list retail. The NC Zone permits professional office space which is not retail. Mr. Peters stated the NC Zone has 40 permitted uses & 5 conditional uses and he went through the code. The drive thru NC Zone prohibition on drive thru is not using the NC Zone specifically. We permit drive thru in the Highway Zone. The Board in granting a use variance and you need to be fairly specific. Mr. Flannery stated they're asking for retail/commercial & the concept for small retail uses. He stated it is limited to what he foresees as retail/commercial uses, artist studio, barber/beauty shop, book shop, business office, bank, candy, convenience store, deli, florist, and gift household supply, jewelry, ice cream & liquor store. All within those confines and in 3 years when we come back, if we feel it might change. Mr. Peters stated it sounds like an application for rezoning and we can't do that. Mr. Hurley stated if the applicant intends to proceed, I'd vote no as I'm against bifurcation; a vote for a D1 variance is 5 of 7 votes. Site plan requires the majority of those present and I have a problem with it. The applicant has to prove negative criteria for a C variance. There are no C variances here, and you don't use residential for a gas station. The lots don't apply with what the specific uses are. I'm inclined to reject for negative criteria. We shouldn't give away D5 variances easily. I believe this to be an insufficient application. You cannot come in and say use the NC Zone. Mr. Hurley asked if they made an application to the Governing Body for rezoning. Mr. Flannery stated the Governing Body didn't feel rezoning was appropriate. Mr. Hurley felt they were asking for a rezone. What are the uses? This is not a C variance and I feel that you are wasting my time. Mr. Flannery stated if the Board feels an advantage to make a formal request for rezoning, then we need more time; we'll do it. Mr. Hurley stated it is not an appropriate application for bifurcation.

Mr. Flannery stated if we can strike, I'll ask again, just retail with parking for retail. If the size gets reduced, the parking is 1/200 sq. ft. The building is not closer to the lines shown on the plan. Retail commercial, stores that sell products. Mr. Peters confirmed the office is off the table. Mr. Flannery stated architectural plans are to be submitted; full plans. Parking is based on 1/200' or 250 parking and we provided 280. Soil testing, the existing site is open and the environmental consultant did borings; there are no wetlands. Deliveries, a drive isle behind the building with an identification sign; we will comply with the ordinance. A letter from the NJDEP with no wetland/issues. For public water/sewer and landscaping; we will comply. Private pick up of trash and there is justification for the D5 variance. A hardship which enhances the public good and referred to the Master Plan where rural is 1 acre to 3 acres based on sewer. Nitrate - a public benefit to bring in sewer, 49,000 sq. ft. could be constructed under the current regulations. The non-residential development is on the low side and this is a better fit with better ratables. Goals, we had an environmental scientist look into it and based on that with the existing landscape business, it is an appropriate location. The 2019 re-examination of the Master Plan in 2000-2017, 14,000 - 21,000 and if you figure 2% of the land use, 25.4%, in my opinion, is a low number. The commercial site fits and is reduced by the buffers. Commercial redevelopment, highway commercial is underdeveloped and I think it is an appropriate place. Commercial development on County Line with Sr. housing/apartments and the Township is trying to encourage good clean ratables. I think it's a good location and under MLUL Law, it meets public safety and with the additional buffering and the public benefits of sewer.

D variance - special reason is the property is suited adjacent to the NC Zone with the Speedway & WaWa in the NC Zone. The road is not conducive to residential and the Board approved JR Custom Landscaping years ago and they are still there now. It is appropriate and by extending public water/sewer & picking up 2 commercial uses that are on septic. Relief was granted without detriment of public good and the balance is that you don't want residential development to overpower uses that are there. Exhibit A-2 depicts the impact on the neighbors and there is 1 house already right next to JR. His operation is open & more noisy than the impact from this site. The property is for sale on Cedar Swamp and he could sell it for the same use. Traffic, the aesthetics benefits the neighbors and we're not generating additional traffic and will be paying into the impact fees and providing public sewer. The variance could be granted without detriment to the public good and it is suitable for the use.

Mr. Book referred to the 1 house on Bennetts Mills and confirmed that they had not reached out. Mr. Flannery stated they would if the Board acts favorably but it is a long road to go; we can't proceed without public sewer. Mr. Miskovich stated it would not generate additional traffic but the driveway would have 100% of all movements. He didn't hear volumes by the existing facility; 200 peak for proposed and if it is shopping then 200-300. I'd have to see how the Board considers the impact of the roadway and can traffic be mitigated. The Zoning Board granted approval for JR which has less of a traffic impact. Mr. Flannery stated it was granted because it is not suited for residential development located between the Church & gas station. It is a heavy traffic road for a residential development property. The applicant would need to do improvements to satisfy the County. Mr. Miskovich stated JR is low intensive and feels this would be more intensive. He stated you need to show negative impacts and what it could be rather

than waiting to come back. Can you give what might have to be done and Mr. Flannery explained the intersection improvement with traffic counts in 2019-2022 and if the Board wants, the applicant could carry & get those counts. Mr. Miskovich stated the Site Plan states it be provided now and Mr. Book felt it is hard to evaluate without specific uses. We really don't know the real traffic and how to get it with the COVID delay. Mr. Miskovich stated ITE definition of a shopping center, states the neighborhood commercial should fit into the larger building. The application for the Town Center use variance of additional retail; they did 35,000 and you reported 50,000; the Board is not comparing apples & apples. Mr. Hill stated the Board has to look at the use variance application and this application has no concept plan, no substance, and no traffic impact statement to give the Board an idea. No EIS or preliminary data on impact soils and we don't know how much vegetation is to be cleared. This information is not with what we're used to seeing.

Mr. Peters had 2 comments to Mr. Flannery's testimony, he takes no exception to the testimony except that Cedar Swamp has nonresidential as there is not a piece of nonresidential until Glorys. The site is not being developable for 2 single-family dwelling lots and financial is not an issue for the Board to take into consideration. 6 acres are referred to and Exhibit A-1 shows the site with Evergreen Court, Juan Drive, Rutherford, Teri Court, Morning Star Lane, Cherise, Mill & Honeysuckle. There are 2 County roads and transitional zones are at 4 corners and how far from the light is reasonable. Northwest of Speedway is wetlands with access from Speedway undeveloped by the Switlik/Memorial property. There is no residential zone at Speedway & WaWa. There is no drive thru permitted in the NC Zone only in the Highway Commercial Zone. If the applicant wanted to include stand alone with drive thru as part of this, the NC Zone has 40 uses. The applicant is limited & removed office use. From a building perspective, the larger building is 100' wide, the building something not desirable. The entrance is on the side of the building and retail commercial is usually front loaded.

In the 4/28/20 report, page 3, maximum impervious coverage, the intensity is impacted by density or impervious which allows 60% & highway 70%. Buffers, the building area and take no exception to the submitted plan; 49,945 sq. ft. with a 30' setback and what it meant to be a buffer? Mr. Flannery stated if the application came in nonresidential, the perimeter buffers would be 25' and with a use variance, we may choose adjacent properties. Mr. Book advised Mr. Pfeffer the need for additional information and suggested carrying and he will provide to give the best application. Mr. Pfeffer stated he knows bifurcated applications and this application is different. Keep in mind we can't consider without sewer. It was good to hear feedback. I'll speak with Mr. Flannery for a hearing before we come back. We're open to hear more feedback to address those comments and Mr. Book agreed.

Recess at 9:03 p.m.; meeting reconvened at 9:15 p.m.; 26 attendees & 2 raised hands

Elenor Hannum, 7 Evergreen Court, sworn - stated they don't know the history of the land and the residents. People lived there and there always wasn't a massive project. In 1999 they were permitted to sell flowers and trees and no residents had any issued. He didn't notice for 37 Bennetts Mills road as the notice was sen to the Mother's house in New Egypt. The proposed square footage is half the size of the Howell Shoprite. The traffic study does not suffice because of COVID and the High School is out so there is no buses. We're being solicited by realtors in the area and it is questionable in the intent that might go here. Mr. Pfeffer advised the certified list was given by the Tax Assessor provided by the Township and it had to be sent there.

Joseph Ricchiuto, 7 Cory Way, sworn - what does the Township require for commercial and are they required to hook up or can they stay on septic? Mr. Flannery explained the Township doesn't dictate as the County administers the rules. This site would need sewer and it would be a JTMUA line and they could hook in; I believe they would be happy. Mr. Ricchiuto felt septic is not beneficial to hook up and pay a bill.

Mr. Gertner wanted Mr. Pfeffer to check with the JTMUA if Speedway & WaWa would be required to tie in? Mr. Ricchiuto confirmed no drive thru and Mr. Gertner explained as part of the traffic request, the applicant would have to come back to delineate the uses; the next meeting dictates what type of uses.

Kelly Hobbs, 5 Mills Lane, sworn - a lot of neighbors don't want retail this size and we have conveniences there already. This is not what I thought that space would become.

Closed public 9:29 pm

Mr. Book advised the applicant would come back and Mr. Pfeffer informed once he get the reports he will renotece. Mr. Gertner announced that Application #3 is carried indefinitely, the applicant agrees to waive time and will renotece.

Motion to adjourn at 9:30 p.m. by NAJARIAN/COSTANZO. Yes: Among those present.

Respectfully submitted,

Diane Festino,
Alternate Zoning Board Recording Secretary