

WASHINGTON TOWNSHIP LAND USE BOARD

PUBLIC MEETING MINUTES

September 24, 2008, 7:30 p.m.

CALL TO ORDER and PUBLIC NOTICE

Chairperson Kerry Pflugh called the meeting to order at 7:35 p.m. Ms. Pflugh said this is a regular meeting of the Land Use Board of the Township of Washington. Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act in that a Notice was published in *The Star Gazette* and *Express Times*. Notice was posted on the municipal bulletin board in the Township Administration Building in Washington Township, New Jersey, and notice was filed with the Township Clerk.

ROLL CALL

Present: Robert Klingel, Jim Vergos, Kerry Pflugh, Efrem Zaret, Leonard Artigliere, Mark Rossi, R. J. Strunk, Jon Grdovic, Erich Sodtalbers

Absent: Mayor Dempski, Evan Howell

Professionals: Steven Gruenberg, Esq.; William Gleba, P.E., Scarlett Doyle, P.P.

MINUTES

Minutes of 8/27 were held pending confirmation of Len Artigliere's voting eligibility re Hackett.

Erich Sodtalbers confirmed that he had been appointed a Class IV member of the Board.

Minutes of 9/10 were corrected to confirm Mr. Rossi's absence. Motion to approve the minutes as corrected was made by Efrem Zaret and seconded by Erich Sodtalbers.

Members in favor: Jim Vergos, Kerry Pflugh, Efrem Zaret, Leonard Artigliere, Jon Grdovic, Erich Sodtalbers

Members abstaining: R. J. Strunk, Robert Klingel, Mark Rossi

RESOLUTIONS

Warren Properties -- #2008-02, Block 46, Lot 13

Minor site plan approval with a variance. Mr. Gruenberg articulated revisions.

Members eligible to vote: Evan Howell, Mark Rossi, Leonard Artigliere, R. J. Strunk

Motion to approve was made by Mark Rossi and seconded by Leonard Artigliere.
Members in favor: Mark Rossi, Leonard Artigliere, R. J. Strunk

Garcia -- #2008-07, Block 66, Lots 2, 6 and 17.01

Minor subdivision.

Members eligible to vote: Evan Howell, Leonard Artigliere, James Vergos, Efrem Zaret.

The Board received advice from Finance that this escrow account is deficient. Mr. Gruenberg confirmed that this resolution will be available for the Board meeting of 10/8.

PUBLIC HEARING ITEM

Hodges Melrose LLC, #2008-17
Block 23, Lot 12

Preliminary and Final Site Plan with variance relief for a Walgreen's Pharmacy.

Escrow having been paid and jurisdiction established, Alan Lowcher, Esq., introduced himself on behalf of the applicant.

Frederick F. Azerak, Esq., Azerak & Associates, represents I. C. Washington. Mr. Azerak objected to jurisdiction. He contended this is a use variance, and it has not been so noticed. In addition, Mr. Azerak noted that the Zoning Code permits pharmacies, but it does not permit a pharmacy with a drive through.

Mr. Gruenberg explained that the Board had dealt with this issue previously and determined that drive through is customarily incidental to a pharmacy use. Mr. Azerak disagreed citing case law. He suggested that the Washington Township Zoning Code is specific as to drive through use, and pharmacies are not noted in the code.

Mr. Gruenberg suggested Mr. Azerak provide a letter brief citing his jurisdictional issues. Mr. Azerak argued that the meeting be stopped for lack of jurisdiction. Mr. Lowcher requested a recess to consult with his clients.

Mr. Lowcher cited a Superior Court ruling holding that a drive through is incidental and accessory to a pharmacy use.

Mr. Azerak said the case did not apply because this is a different municipality with its own zoning code. He noted Mr. Gleba's report of August 25, 2008, referenced the drive through.

Mr. Gruenberg reiterated that Mr. Azerak should prepare a letter brief.

Mr. Azerak noted there are other jurisdictional issues. He said waivers were not noticed. The site plan does not delineate waivers according to Mr. Azerak.

Mr. Gruenberg responded that he had reviewed the notice, and he found the notice to have sufficient detail. Mr. Gruenberg confirmed that he found the notice more than adequate for the Board to act.

Mr. Gruenberg offered Mr. Lowcher the opportunity to be responsive. Mr. Lowcher did not agree that re-notice was appropriate. Further, Mr. Lowcher indicated that applicant is prepared to proceed.

Mr. Azerak raised additional jurisdictional issues: final site plan, subdivision and fairness.

As to filing for Final Site Plan approval, Mr. Azerak said the ordinance does not permit filing of final with preliminary. Mr. Azerak was specific that conditions and terms must be met prior to filing for final. He referenced the 8/25/08 letter of William Gleba regarding determining the final site plan incomplete.

Mr. Azerak requested a ruling from the Board.

Mr. Azerak referenced subdivision approval. He noted the property is one tract, which is a merged lot. He contended there should be an application for subdivision.

Further, according to Mr. Azerak ownership is confusing and not correctly stated on the site plan.

Mr. Azerak referenced Variances for the site. First, he addressed the rear yard. Mr. Azerak contended the application is erroneous. He noted 71 parking variances since the plan provides for 10' x 18' spaces, and the ordinance defines a parking space as 10' x 20'.

Mr. Azerak observed that the documents must be available for review during regular office hours. He said his experts have not had an opportunity to review the file.

Mr. Azerak raised an issue regarding conflict of interest. He indicated it is improper for the Deputy Mayor to be in the room. He noted there should be no perception that there is a conflict of interest.

Mr. Azerak contended that the proceedings are suspect. He noted the Board professionals should not sit because as professionals paid by the Township there could be a perception of impropriety. Mr. Gruenberg asked for case law indicating Board professionals should step down. Mr. Azerak confirmed there is no case law. He noted at this point the Township is still the owner of the property, rather than the applicant.

Mr. Gruenberg noted the objector had made oral argument. There has been no brief

submitted.

Mr. Azerak contended the application had been fast tracked.

He pointed out that NJDOT and NJDEP mandate notice must be made to the owner of the property, in this case the Township.

Mr. Lowcher was invited to be responsive. Mr. Lowcher said opposing counsel seemed well informed. Mr. Lowcher indicated he believed the arguments should be briefed. He said he was satisfied with the content of the notice. He disagreed that a subdivision is required. As to final site plan, he noted that applicant was authorized to advertise for both providing the final was deemed complete.

Mr. Gruenberg addressed subdivision. He observed that the Township and Borough lots are separate. There is one deed citing two tracts. Mr. Lowcher explained applicant is developing one lot.

Mr. Lowcher indicated applicant would like to proceed. Mr. Gruenberg said Board should decide whether to proceed or await briefs. The Board agreed applicant could proceed.

Preliminary was deemed complete. Final remains incomplete. Mr. Lowcher confirmed that final is incomplete.

Mr. Azerak asked that the final site plan be withdrawn.

Mr. Lowcher said final site plan application is withdrawn.

Motion LA JV to deem final incomplete and acknowledge withdrawal was made by Len Artigliere and seconded by Jim Vergos.

Members in favor: Robert Klingel, Jim Vergos, Kerry Pflugh, Efrem Zaret, Leonard Artigliere, Mark Rossi, Jon Grdovic, Erich Sodalbers

Mr. Azerak asked for a copy of the contract between the Township and applicant.

Mr. Lowcher represented that the Township owns both parcels, one in the Township and one in the Borough. Mr. Azerak again raised the issue of subdivision being required.

Motion to proceed and acknowledge that there is jurisdiction and arguments are to be briefed was made by Erich Sodalbers and seconded by Mark Rossi

Members in favor: Robert Klingel, Jim Vergos, Kerry Pflugh, Efrem Zaret, Leonard Artigliere, Mark Rossi, Jon Grdovic, Erich Sodalbers

Committeeman Strunk left the room, and the Board took a five minute break.

The Board reconvened.

Mr. Lowcher said this is an application for preliminary site plan approval with variance relief to permit a 14,174.5 sq. ft. pharmacy with drive through. The property located on the corner of Rt. 57W and Brass Castle Road is known as Block 23, Lot 12. Pharmacy is a permitted principal use. Drive through is customary. He pointed out that the free standing sign is not permitted. Applicant proposes six signs attached to the building. Application was deemed complete on 8/27/08.

Mr. Lowcher introduced his witnesses:

Laurence Murphy, P.E., was sworn and his credentials accepted by the Board.

John Harter, P.E., was sworn and his credentials as a traffic expert accepted by the Board.

Meghan Hunscher, P.P., was sworn and her credentials accepted by the Board.

Mr. Murphy was called. He referenced an aerial view of the property, which was marked A-1. He described the location of the property, noting it is 2.9 acres, zoned General Commercial. He noted the property had been used as a bank and is currently used for municipal offices. There are existing 3 accesses and two buildings. Mr. Murphy testified there are a number of non-conformities and deficiencies existing on the lot.

Mr. Murphy introduced a rendered site plan, which was marked A-2. He confirmed the application is for a Walgreen's with 71 parking spaces (10' x 18') and two access points. Trees along Rt. 57 are proposed to be preserved. Two septic fields, primary and reserve, are proposed. Applicant seeks approval for a single monument sign. He explained the circulation plan. Mr. Murphy referenced loading space and noted it is compliant with the ordinance. He reviewed the storm water management system, which he noted is compliant with DEP and Township requirements. The proposed lighting consists of 25' high fixtures, and the lighting is compliant with municipal requirements according to Mr. Murphy. Landscaping is proposed. Mr. Murphy noted Walgreen's proposes security lighting as well.

Mr. Gleba's technical review letter of 9/23/08 was marked B-1. Mr. Murphy had reviewed the letter and discussed the concerns raised with Mr. Gleba. Mr. Murphy noted applicant is willing to comply with most of the items. Item #18 suggests a larger curb radius – County road will be widened. Mr. Murphy contended applicant's proposal is adequate. He referenced NJDOT provisions. Mr. Azerak raised an objection. Mr. Gleba clarified that the intersection is under the jurisdiction of NJDOT and Warren County Engineer's office

The Preliminary Site Plan revised 9/12/08 was marked A-3. Mr. Murphy described the detention basin. He explained there is maintenance conducted on the basin with old sand being removed. Environmental concerns were raised as to the basin. Catching oil

from the parking lot is an issue for the Board. Mr. Murphy noted the sand filter removes more pollutants than some other systems. He pointed out that the detention basin has been designed to handle 2-year storm, 10 year storm and 100 year storm.

Question was raised as to traffic from the public roadways. Mr. Murphy deferred to the traffic expert.

Application was adjourned to October 8, 2008, at the new Municipal Offices located at 211 Rt. 31N.

Letter briefs will be due in the Board office 10 days prior to the meeting.

OLD BUSINESS

NEW BUSINESS

Escrow issues:

The Board received a copy of a memo to Richard Cotton regarding his escrow status. Ms. Pflugh noted that although Finance indicated escrow was adequate, the professionals found that there are substantial sums of money owed. Mayor Dempski asked professionals submit to the Township the amounts owed.

There was discussion as to handling escrow billings.

Ms. Pflugh should sign off on bills. It was suggested that Committee liaison, chairperson, treasurer and Board secretary meet to discuss procedures.

The plans for Village Shoppes require signatures. Finance has verified that there is enough money for the Board to act. Ms. Pflugh indicated that the Finance Dept. had to confirm that the professionals had been paid prior to her signing the plans.

New building:

The Board Secretary indicated that the next meeting would be held in the new building at 211 Route 31N. Notice has been provided to the newspaper. It is expected that the Board office will be moved to the new space prior to October 1.

ADJOURNMENT

Meeting was adjourned at 11:25 p.m.

These minutes were approved October 8, 2008.

Alice Oldford, Secretary to the Board

