

WASHINGTON TOWNSHIP LAND USE BOARD

PUBLIC MEETING MINUTES

December 10, 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.

FLAG SALUTE

Ms. Pflugh led the Board and members of the public in the flag salute.

ROLL CALL

Present: Dave Dempski, Jim Vergos, Kerry Pflugh, Mark Rossi, Erich Sodtalbers, Leonard Artigliere, Robert Klingel, R. J. Strunk

Absent: Evan Howell, Efreem Zaret, Jon Grdovic

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

EXECUTIVE SESSION

Motion to go into Executive Session was made and seconded with all members in favor.

RETURN TO OPEN SESSION

Mr. Gruenberg provided legal analysis as to scarce resource restraint. Board will continue to act and conditions of approval will apply to approvals:

- (1) Approval will be conditioned upon property being exempted from scarce resource restraint or waiver or exemption from Highlands restrictions;
- (2) Approval does not vest until scarce resource restraint order is satisfied.

Notice of conditions will be announced at every meeting. Attorney Gruenberg will prepare a notice to applicants advising of the Board's policy. Minutes of the Executive Session will be made available.

Motion to approve was made by James Vergos and seconded by Mark Rossi.

Mr. Artigliere indicated he believed the ruling should be challenged although this is currently the prudent method of processing applications.

Members in favor: Dave Dempski, Jim Vergos, Kerry Pflugh, Mark Rossi, Erich Sodtalbers, Leonard Artigliere, Robert Klingel

MINUTES

Motion to approve the minutes of the meeting of November 12, 2008, was made by James Vergos and seconded by Erich Sodtalbers.

Members in favor: Jim Vergos, Kerry Pflugh, Erich Sodtalbers, Robert Klingel

Members abstaining: Mark Rossi, Leonard Artigliere, David Dempski, R. J. Strunk

RESOLUTIONS

Hackett – #2004-26

Use Variance

Members eligible to vote: Robert Klingel, Jim Vergos, Kerry Pflugh, Leonard Artigliere and Jon Grdovic

Mr. Benbrook has requested that the resolution be considered at the next meeting to allow time for his review.

REQUEST FOR EXTENSION

Richard Keiling, Esq., introduced himself on behalf of the applicant, Bruce Apgar. He noted that escrow has been posted. Request is made for reasonable extension of the time for professionals to review the deeds.

Bill Gleba indicated that Finelli Consulting had not received revised plans. These must be submitted prior to reviewing deeds.

Scarlett Doyle said extension should be conditioned on applicant complying with current COAH regulations.

Concern was expressed that the escrow be replenished. Additional \$1300 should be paid for escrow.

Motion was made by Mark Rossi and seconded by Leonard Artigliere to extend to February 28, 2009, conditioned on escrow replenishment of \$1,000 + any additional escrow as required.

Members in favor: Dave Dempski, Jim Vergos, Kerry Pflugh, Mark Rossi, Leonard Artigliere, Robert Klingel, Erich Sodtalbers.

Opposed: RJ Strunk

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

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

Mayor Dempski and Committeeman Strunk recused themselves.

Members eligible to vote: Robert Klingel, Jim Vergos, Kerry Pflugh, Efrem Zaret, Leonard Artigliere, Jon Grdovic, Erich Sodtalbers

This hearing is continued from November 12, 2008.

Josh Mann, Esq., attorney for applicant, announced the following would be called as witnesses:

John Harter, Traffic Engineer
Larry Keller, Whitestone Associates
Michael Tobia, Planner

Josh Mann, Esq., requested vote on appeal.

Members in attendance who are eligible to vote: Erich Sodtalbers, James Vergos, Mark Rossi, Kerry Pflugh, Leonard Artigliere.

Mr. Mann asked about Mr. Gibbons' experts.

Mr. Gibbons said he had not produced witnesses to deal with interpretation issues.

Mr. Gibbons raised an issue of conflict of interest with Mr. Lowcher being the chair of Economic Development Committee for Washington Township. Mr. Mann indicated he did not believe this is a conflict. This is a separate independent board.

Board and Mann requested that a letter be submitted by Friday as to the contention that a conflict of interest exists.

Larry Keller, P.E., geotechnical expert, was called and sworn. His credentials were accepted by the Board.

Mr. Keller described the soils and subsurface investigation. He noted carbonate rock was found, and this is typical of the area. Mr. Keller confirmed that he designed the septic system and storm water management system. He testified that applicant had designed the septic to go above and beyond what would be usual for the area. The capacity is more

than adequate. Mr. Keller observed he is in consultation with the Township geotechnical expert. He testified additional netting is added as “an early warning system” should there be any failure.

Mr. Keller was asked whether he would respond to the Warren County Health Department review. Bill Gleba indicated he had received calls from the Health Dept. with their concerns. Thirteen items were identified. (Attach Health Dept. review letter). Mr. Keller noted applicant intends to comply with the review comments. Mr. Keller confirmed applicant had been in contact with Washington Borough, and there is no capacity available.

Question was raised as to wastewater management plans, which will be adopted by the Township in 2009. It was noted that inquiry must be made with Washington Borough as to availability of connection.

Mr. Gibbons asked for Keller’s response to item #5 of Health Dept. letter. Mr. Keller said the system meets code. Mr. Mann noted applicant will comply with County requirements and Township ordinances.

Mr. Gibbons asked whether the septic would be adequate for another use. Mr. Mann noted a change of use would require another site plan application.

Mr. Gibbons asked how applicant would address the wetlands, item #7. Larry Murphy, P.E., Bohler Engineering testified application had been submitted to NJDEP, and NJDEP noted there were no transition areas or wetlands issues applicable to the site.

Mr. Gibbons asked about #12, and Mr. Keller indicated applicant is in discussion with the Board of Health, and decision has not yet been made.

Mr. Gibbons inquired as to the alternative systems. Mr. Keller indicated he believe the applicant had proposed the best system.

Michael Tobia, PP, was introduced and sworn. Mr. Tobia’s credentials were accepted by the Board.

Douglas Henshaw, Esq., of the Porzio firm introduced himself as the member of the firm who would conduct the questioning of Mr. Tobia.

Mr. Henshaw raised the question of the drive through and whether this is customary. Mr. Tobia referenced Exhibit A-4. He discussed the drive through on the northeasterly side of the building. There is a canopy over the drive through window. This is a single lane. Dropping off and picking up prescriptions are the uses. This type of use came to favor approximately 10 years ago for the convenience of the consumer. This is a very low volume use. Question is whether this is an accessory use. Mr. Tobia said it is now customary and incidental for a pharmacy use. Zoning ordinances are comprised of permitted and accessory uses. Accessory uses are regulated differently than principal

permitted uses. Mr. Tobia contended many accessory uses are not identified in the ordinance. He referenced that the accessory use should be “customarily associated, subordinate and incidental”. Mr. Tobia testified that this use meets the necessary criteria.

Mr. Tobia indicated there are a number of accessory uses on the site plan, which are not specifically enumerated in the zoning ordinance.

Mr. Tobia indicated in his experience this is commonplace and customary to pharmacies.

Asked about drive through uses typically in fast food and banks, Mr. Tobia testified fast food restaurants take 40-50% of their traffic through the drive through. Banks generate 50% of their business through drive through windows. Those uses tend to require greater scrutiny. Pharmacies have limited scope. Prescriptions only may be dispensed at the drive through. Drive through window is a medical convenience.

No ATM will be associated with the drive through window.

Mr. Gibbons asked what Mr. Tobia had reviewed. Mr. Tobia said he had reviewed the zoning ordinance, site plan, site visit, and Ms. Doyle’s report. Mr. Gibbons asked about reviewing Section 123.4 saying “any use not expressed is prohibited”. Mr. Tobia indicated it is intended to apply to principal uses. He noted a follow up in another section of the ordinance.

Asked whether the ordinance permits drive through windows, Mr. Tobia indicated that banks and fast food restaurants are referenced. Mr. Gibbons asked why it did not apply. The important distinction is that banks and fast food require more significant planning. Mr. Tobia contended many ordinances are similarly structured.

Mr. Henshaw requested that the Board deliberate on the interpretation of whether the drive through requires a use variance. Applicant contends this is a usual and customary accessory use.

Members eligible to vote: Erich Sodtalbers, James Vergos, Mark Rossi, Kerry Pflugh, Leonard Artigliere

Mr. Sodtalbers noted there is precedent for the drive through pharmacy use. Mr. Artigliere referenced the objector’s memo. Mr. Artigliere asked about reference to 123.4. He asked for clarification as to the reference to principal as opposed to accessory uses. Mr. Gruenberg said there is a different portion of law that deals with accessory uses. Incidental or subsidiary uses are considered to be accessory. If the use is defined as accessory, it need not be referenced in the ordinance. There is case law on the issue.

Mr. Gibbons contended the Washington Township ordinance would have referenced pharmacy drive through windows if, in fact, that was the intention.

Motion to deem drive through use as permitted accessory use customarily incidental to

the pharmacy use was made by Erich Sodtalbers and seconded by James Vergos.

Mr. Sodtalbers noted there is precedent. Mark Rossi observed it is incidental since it is only to dispense meds. Leonard Artigliere referenced the Stotchel case, which found the drive through to be an accessory use handled outside of 123.4.

Members in favor: Erich Sodtalbers, James Vergos, Mark Rossi, Kerry Pflugh, Leonard Artigliere.

Mr. Henshaw indicated that applicant would seek testimony from Mr. Tobia on the signage on the site. Ms. Pflugh indicated the Board preferred professionals to receive the plans prior to next week's hearing.

Poll was taken as to which Board members were available for the meeting scheduled for December 17.

Unable to attend: Erich Sodtalbers, Kerry Pflugh, Efrem Zaret

Available: James Vergos, Robert Klingel

Uncertain: Mark Rossi, Leonard Artigliere, Jon Grdovic

Motion to carry the hearing to the meeting on Weds., Jan. 14, was made by Erich Sodtalbers and seconded by Robert Klingel. All members concurred on voice vote.

Request was made to identify objector's witnesses. Mr. Gibbons said he had not yet made a decision.

OLD BUSINESS

NEW BUSINESS

I. Email has been received from Fairway Mews prospective developer. Mr. Dempski encouraged the Board to pursue this as helping the Township meet its affordable housing obligations. The developer will post an escrow and meet with Board professionals on Monday.

Ms. Doyle referenced the Fair Housing Act and indicated the governing body can extend for 30 years. Ms. Doyle recommended that the attorney be authorized to research the possibilities.

II. Professionals were requested to provide their proposals for 2009.

III. 2009 Land Use Board Budget

There was discussion as to professional fees for master plan re-examination, COAH

and wastewater management plan.

Board secretary was instructed to use 2008 numbers + additional \$20,000 for COAH. Money should be earmarked from the Affordable Housing Trust fund.

Ms. Pflugh expressed her gratitude to the Board for their service to the community as well as Board secretary.

MERRY CHRISTMAS

PUBLIC COMMENT

ADJOURNMENT

The meeting was adjourned at 10:45 P.M.

These minutes were approved 1/7/09.

Alice Oldford, Secretary to the Board