

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

JULY 18, 2018

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ beginning at 7:31 pm was called to order by Mr. Rabolli, with the reading of the opening statement followed by the flag salute.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

PRESENT:	Mr. Almeda	Mr. Montroy
	Mr. DeSilva	Mr. Rabolli
	Mr. Kearney	Mr. Straffin
	Mr. Larson	Mr. Whiteman

ABSENT: Mr. Dator

ATTORNEY: Mr. Ben R. Cascio, Esq.

I. APPROVAL OF BILLS:

May & June, 2018	\$1,000.00	Ben R. Cascio, Esq. – Attendance Four meetings
May, 2018	\$ 165.00	Ben R. Cascio, Esq. – Miscellaneous Assignments
May 2 & May 16, 2018	\$ 400.00	Maser Consulting – Attendance Two meetings

A motion to approve the bills was made by Mr. Montroy, seconded by Mr. Kearney. A roll call vote revealed 8 aye votes by Mr. Almeda, Mr. DeSilva, Mr. Kearney, Mr. Larson, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

II. APPROVAL OF MINUTES: April 18, 2018

A motion to approve was made by Mr. Whiteman, seconded by Mr. Kearney. All eligible members voted in favor.

APPROVAL OF MINUTES: May 2, 2018

A motion to approve was made by Mr. Kearney, seconded by Mr. Montroy. All eligible members voted in favor.

III. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. None were received.

Mr. Rabolli announced for the record that due to a change in the Zone Code, the Buick-GMC Application is now going before the Planning Board and would be re-noticed.

IV. PUBLIC HEARING(S):

**1. DKT #1438-18 BP PRODUCTS NORTH AMERICA
144 ROUTE 17 SOUTH, BLOCK 132, LOTS 5 & 6**

Application for a “D” Variance for removal and replacement of existing underground storage tanks, existing (5) fuel dispensers and existing kiosk.

Mr. Ben Cascio stated that the notice was in order.

Jennifer Knarich, Esq. of Price, Meese, Shulman & D’Arminio, Mack-Cali Corporate Center, 50 Tice Boulevard, Suite 380, Woodcliff Lake, NJ 07677 approached on behalf of the Applicant. Ms. Knarich stated that the Applicant is seeking approval of variance relief to replace existing pumps and tanks. The property is located in the B40 Highway Business District and is approximately 34,000 square feet. There is presently an existing BP Gas Station in operation with five pumps, an attendant kiosk, an overhead canopy, a 374 square foot Mini Mart pylon sign, and five underground storage tanks. The Applicant is requesting a site plan approval of a “C” Variance relief for proposed signage. The Applicant received prior approval to operate the existing service station. For this Application, the Applicant is proposing to remove the existing underground fuel tanks and replace with three (3) 15,000 gallon tanks to be relocated from the Eastside of the property to the Southwest side. This will be an increase in fuel storage of 9,000 gallons, all underground, and will be an improvement to the site for safety reasons because the existing tanks are 30 years old. It will also reduce the number of fuel deliveries. The Applicant is also proposing to repave the site, replace the five (5) existing fuel pumps, the attendant kiosk in kind, and to add a dumpster enclosure.

Due to questioning which Board should hear this Application, Mr. Rabolli stated that it has been resolved that this Application will continue with the Board of Adjustment. Mr. Rabolli asked Mr. Cascio about the change of the Code. Mr. Cascio replied that it is a Conditional Use in a B-40 Zone and meets all the conditions. Mr. Rabolli described a Conditional Use as being permitted in the Zone if it meets certain conditions generally dealing with the size of the lot and various setbacks. Mr. Cascio added that the two conditions that it technically does not meet under this Application are the same conditions that were given relief on the prior application and approval by this Board; the driveway being within 50 feet of an intersection and the canopy setback being 17 feet where 75 feet is required, that were given prior approval by this Board. Mr. Cascio stated that even though it doesn't meet the only two conditional use regulations, they were previously granted and are variance free. Mr. Cascio commented that the only thing to look at tonight is the "C" Variance for the signage.

Mr. Keith Cahill of Boehler Engineering, 35 Technology Drive, Warren, NJ approached and was sworn in by Mr. Rabolli. Mr. Cahill was recognized as a qualified Engineer that has appeared before this Board in the past. Mr. Cahill stated for the record, that the older single wall steel tanks are being removed. There are five (5) tanks that handle four (4) different products. There are four (4) 8,000 gallon tanks and one (1) 4,000 gallon tank. There are two (2) tanks that are diesel; an 8,000 gallon and a 4,000 gallon. The other three (3) are regular, mid, and high test. The proposal is to remove the older, out of date tanks and replace them with three (3) double walled tanks, resulting in three (3) products instead of four (4). There will be 15,000 gallons of regular, 15,000 gallons of high test and 15,000 gallons of diesel. Regular will be blended at the dispensers rather than having three (3) different products in the tanks. Less tanks in the ground and double walled tanks that comply with and exceed all the State regulations, mean a better job environmentally; central location, better access, better safety, and better environmental safety. The site had prior contamination. Soil will be removed and replaced with clean soil. The entire lot will be repaved. There will be no increase in impervious coverage; it is actually decreasing. There will be no changes to storm water. Everything is staying the same.

In terms of the canopy, a Variance is required for the addition of three (3) signs on the canopy where two are permitted. It is a small sign displaying the logo only, no words. The diameter was measured for the circular logo of BP, taking the largest area. The proposed three (3) signs are 16.4 square feet. Mr. Cahill noted that the Northbound side of the highway had the same measurements for the sign and that he had followed suit. The building is 374 square feet. The proposal for the sign on the building is 8 feet long by 21 inches high spelling out the word S H O P, which requires a variance, as the Ordinance is 18 inches high. Mr. Whiteman asked if the Shop (Convenience Store) was previously approved. Mr. Cascio responded that it was part of the canopy approval, as was access. Mr. Cascio made reference to the addition of a garbage enclosure. Mr. Cahill confirmed that there would be a garbage enclosure adjacent to the building, and also striping of four (4) parking stalls, three (3) standard 9 x 18 and 1 ADA Handicap stall.

Mr. Rabolli asked Mr. Cahill if he had reviewed Mr. Kelly's Boswell Engineering Report dated July 12, 2018. Mr. Cahill replied that he had. Mr. Rabolli drew attention to page 4, #12B; the driveway, and read the second paragraph as follows: **"The entrance and exit driveways are located on the Route 17 access ramp. Our office is not in support of this waiver. The access/weave condition at the east side of the site is unacceptable."** Mr. Rabolli asked Mr. Cahill if he had any thoughts or suggestions on modifying the entrance and exit or if they were remaining the same. Mr. Cahill responded that it is anticipated that they will remain the same. Mr. Cahill explained that heading Southbound, there is a shoulder leading into the driveway, not in a travel lane, but on the shoulder going across. The configuration of the site provides the ease and convenience of the person filling up to pull straight through the site verses going to a second entrance and out a rear exit. Mr. Cahill stated that there would be no increase in the amount of disturbance, no exposure of the 5,000 square feet of soil, no requirement to go to soil erosion. Mr. Cahill also stated that the County has no jurisdiction on this, as the driveway location is not being changed and there will be no intensification of use. Changing the tanks will also reduce the number of times a tractor trailer pulls in. Going from four (4) tanks to three (3), there should be approximately 25% reduction in the number of trips to the site. Mr. Rabolli inquired about the size of the tankers vs the tanks. Mr. Cahill explained that the tankers could hold an average of 8,400 – 9,000 gallons in a truck. When a third grade is carried, more deliveries to the site will be required. Going to larger tanks and blended tanks will result in less deliveries and improvement to the environment. Mr. Cascio stated that the access was approved with the prior Application.

There were no questions or additional comments from the Applicant. Mr. Rabolli asked if the Board had any questions. Mr. Kearney asked for conformation that the access was prior approved and there were no changes. Mr. Cascio confirmed. Mr. Kearney questioned if there was intent to attract tractor trailers for filling, or primarily for regular consumers, with no impact to the ingress/egress. Mr. Cahill stated that everything would remain the same while updating to today's standards using modern technology. Mr. Kearney referenced a prior environmental issue, and asked if there were any issues beyond that might exist. Mr. Cahill responded that there is an active remediation process by BP. Mr. Montroy asked if changing the tanks to double walled was driven by the DEP environmental requirements. Mr. Cahill replied that back in 1997 Regulations wanted to eliminate single wall tanks. That was done by the prior owner, but they did not change to fiber glass tanks. BP is converting the tanks to double walled fiber glass. The system also has monitoring. Mr. Montroy, in the form of a question, stated, you will get all appropriate requirements and inspections under the UCC, and make the site much more environmentally safe than it is now? Mr. Cahill replied, correct.

There being no additional questions from the Board or the Public, the next witness was called by Ms. Knarich; Mr. George Williams, testifying in the capacity of Planner. Mr. George Williams of The Nishuane Group, 105 Grove Street, Suite #1, Montclair, NJ approached and was sworn in by Mr. Rabolli. Mr. Williams had not appeared before this

Board in the past. Mr. Williams gave an overview of his qualifications and his practice of Land Use and stated that he has appeared before numerous Boards in the State of New

Jersey and has also served as Board Planner representing many Boards in New Jersey. Mr. Rabolli stated that the Board recognizes Mr. Williams as an expert Planner.

Mr. Williams began by stating that the Application is for the Sign Variances. There are two C Variance contexts. The first is a C1 – Traditional Hardship Variance, which requires a showing that the site is an unusual shape, size, topography or the structures roughly there on, making it impractical to comply with the strict application of the Code. The other context, which comes from the Kaufman Court Case, is the C2 – Flexible C – which allows the Applicant to show that the benefits of granting the requested approval outweigh the detriment or that the proposed application is a better zoning alternative than a strict application of the Code. The Applicant is seeking three (3) Variances; for the installation of three (3) canopy signs where two (2) are permitted, the sign area for square foot permitted and the 7.3 proposed, and for the store signage where no sign is permitted. Mr. Williams stated that, in his professional opinion, the standard that is most appropriate is the C2 – Flexible C. The 1992 Board Resolution approving the canopy also included the approval of the three (3) canopy signs, but with different dimensions. The focus is now on the dimensions of the signs and the store sign. Mr. Williams made reference to the American Planners Association's Planners Advisory Service Report (PAS) called Street Graphics in the Law, which is very helpful when discussing relief for signage under the C2. The report mentions the importance of signage that alerts vehicular traffic to where structures on the site are located so that traffic traveling both ways on Route 17 can easily identify the site by looking at the canopy sign that is being proposed, as well as when coming from the Route 202 access point. The literature talks about the need for the signs to be conspicuous, legible and readable. The PAS report also mentions that iconic memory is often helpful for vehicular traffic, creating a safer visit to the site. The iconic memory of the BP Gas logo is important in the context of safety and maneuverability. Mr. Williams made reference to other court cases that talk about signage and discussion why Boards should consider granting C2 Variances, i.e., signage not large enough to be readily readable by passing vehicles can create traffic hazard, also that the required Variances advance the purposes of zoning representing a more practical zoning alternative and allow the site to be developed in conformity with the intent of the District, which is to encourage major commercial concentrations with easy highway access.

Mr. Williams further stated that if granted the request for relief, Sub-section A would be advanced to promote general public health, safety and welfare. Sub-section I is to promote a more desirable visual environment through good civic design. In terms of the benefits vs. the detriments, if granted the relief to permit the three (3) signs, there would be no detriment to the public good. The benefit would be easy identification of the site as BP Gas, allowing vehicular turns to be made safely. The Code does not necessarily permit a store sign. There is currently a small store with no sign. Adding the sign, in his professional opinion, would improve the site by clearly identifying where to go versus asking at the kiosk. Mr. Cascio asked what the sign over the store says and for the size. Mr. Rabolli responded that sign says Shop and it is 20 square feet. Mr. Williams stated that it is 20 square feet; 21 inches by 11.4 feet. Mr. Kearney asked if the entire sign, the green had to be considered or just the lettering. Ms. Lawlor asked if the green was

actually the sign. Mr. Cahill responded that the green is the face of the building. The lettering is the sign.

Mr. Rabolli asked if there were any other questions for the Planner from Members of the Board or Members of the Public. There were none.

A motion was to move into Work Session was made by Mr. Montroy, seconded by Mr. Whiteman. All eligible members voted in favor.

V. WORK SESSION:

**1. DKT #1438-18 BP PRODUCTS NORTH AMERICA
144 ROUTE 17 SOUTH, BLOCK 132, LOTS 5 & 6**

Application for a “D” Variance for removal and replacement of existing underground storage tanks, existing (5) fuel dispensers and existing kiosk.

Mr. Rabolli summarized and stated that the Applicant is proposing to modernize the site. All old single wall tanks are to be replaced by modern double walled fiber glass tanks. The prior Resolution approved three (3) signs on the canopy. The addition to the application is the sign to go over the convenience store spelling S H O P. Mr. Rabolli stated that he agrees with the idea of iconic memory as an identifier. The Applicant is also proposing the installation of the iconic BP logo signs providing visible access to the site.

A motion to approve was made by Mr. Kearney, seconded by Mr. Montroy. A roll call of eligible voters revealed 8 aye votes by Mr. Almeda, Mr. DeSilva, Mr. Kearney, Mr. Larson, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

V. ADJOURNMENT:

A motion to adjourn was made by Mr. Montroy, seconded by Mr. Whiteman. All voted in favor.

The meeting adjourned at 8:11 pm.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on September 14, 2018 for approval at the Regular Meeting to be held on September 19, 2018.