

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

MARCH 18, 2015

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ, beginning at 7:35 pm was called to order by Mr. Rabolli, Chairman, 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. Ervin Mr. Rabolli
Mr. Kezmarsky (in at 7:53 pm) Mr. Straffin
Mr. Larson Mr. Whiteman
Mr. Montroy

Mr. Mike Kelly, PE

ABSENT: Mr. Dator Mr. DeSilva

ATTORNEY: Mr. Ben R. Cascio, Esq.

I. APPROVAL OF BILLS:

2/4/15; 2/18/15 \$500.00 Ben R. Cascio, Esq. – Attendance
Two meetings

A motion to approve was made by Mr. Whiteman, seconded by Mr. Ervin. A roll call vote revealed 6 aye votes by Mr. Ervin, Mr. Larson, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

II. APPROVAL OF MINUTES:

None to present.

III. MEMORIALIZING RESOLUTIONS:

**A. DKT.#1380-14 – A.D.P.P. ENTERPRISES, INC.
261 ROUTE 17 NORTH, BLOCK 59, LOT 17**

Resolution granting conditional use, bulk variances and site plan approval for an existing gas station.

A motion to approve was made by Mr. Montroy, seconded by Mr. Straffin. A roll call vote revealed 4 aye votes by Mr. Larson, Mr. Montroy, Mr. Rabolli and Mr. Straffin.

**B. Dkt.#1386-14 – KARL & FRANCINE KERN
784 WYCKOFF AVENUE, BLOCK 165, LOT 1**

Resolution granting site plan approval with related bulk variance relief in connection with a prior use variance approval.

A motion to approve, with conditions, was made by Mr. Whiteman, seconded by Mr. Larson. A roll call vote revealed 6 aye votes by Mr. Ervin, Mr. Larson, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

IV. OPEN TO THE PUBLIC:

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

V. PUBLIC HEARINGS:

**A. Dkt.#1262-08 A-1 – PILOT TRAVEL CENTERS, LLC
230-250 ROUTE 17 SOUTH, BLOCK 136, LOTS 2 & 3**

Request to appeal Administrative Officer's denial to add a Cinnabon kiosk and associated signage and a request for an interpretation of the prior resolution, Conditions #18f and #19.

Mr. James L. Lott, Jr., Esq., of Riker, Danzig, Scherer, Hyland & Perretti LLP, approached on behalf of the Applicant.

Mr. Steven R. Tombalakian, Esq., of Vogel, Chait, Collins and Schneider PC, approached on behalf of an Objector, Paks Fast Service, Inc.

Mr. Rabolli called a recess at 7:47 pm.

The meeting reconvened at 7:53 pm.

Note: Mr. Kezmarsky in at 7:53 pm.

Mr. Rabolli summarized Pilot's past history for the benefit of newer Board members. Mr. Cascio indicated all notices were in order.

Mr. Lott began stating the Applicant is appearing before the Board for an appeal of the Zoning Officer's decision as well as an interpretation of the zoning ordinance based off of a denial of a previously submitted application. There was a short discussion regarding the record of the appeal. Mr. Tombalakian questioned the validity of the notice and the possible request for a use variance. He also stated an amended site plan should have been submitted. Mr. Cascio replied the notice was adequate and noted site plans are usually for exterior changes.

Mr. Lott referred to his appeal letter dated January 23, 2015 to Mr. Michael J. Kelly, which was marked as Exhibit A-1. He referred to Mr. Tombalakian's objection that the appeal was not filed in time. He presented a copy of the letter to Mr. Tombalakian noting the appeal was filed on time, to which, Mr. Tombalakian withdrew the objection.

Mr. Lott described Pilot's current grab-and-go offerings as well as the proposed Cinnabon kiosk. There was a discussion on the notice and exactly what the Board would be hearing and voting on. Both Mr. Lott and Mr. Tombalakian commented.

Mr. Lott called Mr. Paul Grygiel, Phillips Preiss Grygiel LLC, 33-41 Newark Street, Hoboken, NJ, who was sworn in by Mr. Rabolli. Mr. Grygiel presented his qualifications and was accepted as an expert Professional Planner. Mr. Grygiel described the area in question within the current Pilot store. The application proposes interior modifications to approximately 250 square feet within the existing store. Mr. Grygiel referred to the approved resolution and read Condition #18f and Condition #19 into the record. Mr. Grygiel does not believe the application would be in violation of either condition. He then read the Mahwah Zoning Ordinance's definition of 'restaurant' into the record. He does not believe the addition of a Cinnabon kiosk would include anything to be prepared differently than how the current products offered are prepared. Upon questioning by Mr. Lott, Mr. Grygiel confirmed the application proposes some internal changes and no seating or exterior changes are proposed.

Mr. Lott referred to Mr. Grygiel's letter to the Township of Mahwah Zoning Board of Adjustment dated February 23, 2015, which was marked as Exhibit A-2. He also presented two photographs, marked as Exhibit A-3, which illustrate Cinnabon kiosks within existing Pilot facilities. It is Mr. Grygiel's opinion the kiosk would fit within the existing convenience store and the permitted uses in the zone. He again reiterated there would be no separate operation, seating or staffing. It is his opinion that the granting of a zoning permit to install a kiosk would not be inconsistent with the Board's prior approval. Mr. Lott concluded his questioning of Mr. Grygiel.

Mr. Cascio requested testimony and clarification on the actual process for the Cinnabon kiosk. Mr. Grygiel indicated he has spoken to Pilot representatives, and it is his understanding the buns are all heated up at one time, put out for display and kept heated. The buns are not customized or individually prepared. Mr. Larson questioned why a restaurant was not approved as part of Pilot's original application. Mr. Lott recalls the Board had a concern with 'Subway's' being added to the Objector's client's gas stations without approval from the Board. Mr. Cascio commented a restaurant franchise would be a destination address whereas grab and go foods are accessory. Mr. Lott added

the concern also included having multiple principal uses on one site. Signage was discussed and Mr. Lott indicated a sign was part of the building application, but it is not essential.

Mr. Straffin questioned the preparation process again noting the Cinnabons are delivered frozen, prepared, heated and glazed. He stated this is a cooking process and not just reheating of food. Upon further questioning by Mr. Larson, a discussion ensued regarding the definition of restaurant franchise. Mr. Cascio stated the Board needs to look at the Mahwah's definition of restaurant, and not the industry standard. Mr. Grygiel commented that parking and seating are associated with a restaurant, to which neither are being proposed with this application, nor will there be additional employees.

Mr. Kelly questioned whether a bakery, which is a permitted use in the zone, would be an accessory use to a gas station. Mr. Grygiel replied bakeries are not customarily associated with a gas station. Mr. Kelly continued referring to the resolution and read Condition #19 into the record. It is his opinion the proposed use, which would include baking frozen dough as well as a separate kiosk that includes a sink, register and credit card machine, is different than just reheating prepackaged foods. He commented he does not think this is what the Board envisioned or intended in the conditions of the original resolution.

The discussion continued regarding the actual preparation of the Cinnabons using the terminology of pre-cooked, pre-baked, raw, frozen, heating and reheating. Mr. Tombalakian questioned Pilot's business relationship with Cinnabon, to which Mr. Lott objected. Mr. Rabolli stated the Board is concerned with the 'magical appearance' of some corporate entity without the proper approvals. Mr. Tombalakian indicated the Subways were approved. Destination sites were discussed as well as parking being an issue.

There was a lengthy question and answer discussion period regarding the interpretation of Mahwah's definitions and code between Mr. Larson, Mr. Lott and Mr. Grygiel. Mr. Tombalakian referred to his March 13, 2015 letter to Mr. Charles Rabolli, Jr., Chairman, which was marked as Exhibit O-1, and questioned the term of 'baking.' Referring to Condition #19, he questioned warming, baking, reheating and food preparation. After asking several questions on the purpose of the sink, Mr. Grygiel replied that testimony was for the appeal and interpretation only.

There were no further questions for Mr. Grygiel from the Board, the Objector or the Public.

Mr. Lott and Mr. Tombalakian both gave closing statements.

A motion was made by Mr. Whiteman seconded by Mr. Kezmarsky to close the Public Hearing of the meeting and move into Work Session. All voted in favor.

VI. WORK SESSION:

**A. Dkt.#1262-08 A-1 – PILOT TRAVEL CENTERS, LLC
230-250 ROUTE 17 SOUTH, BLOCK 136, LOTS 2 & 3**

Request to appeal Administrative Officer's denial to add a Cinnabon kiosk and associated signage and a request for an interpretation of the prior resolution, Conditions #18f and #19.

Mr. Rabolli reviewed what was presented before the Board to either affirm or deny the Zoning Officer's prior decision to deny the proposed application. He cited Section 40:55D-70a, entitled "Powers," from the Municipal Land Use Law and asked each Board member for comments. Mr. Whiteman stated his concern is not so much with Condition #18, the franchise issue, but the baking of the product, which is much different than reheating as noted in Condition #19. Mr. Montroy agrees with the Zoning Officer's interpretation, and if food is proposed to be prepared, the Applicant would need to go for a variance. Part of the resolution is "no food preparation." He also noted the proposed use would need to be licensed by the Mahwah Health Department and inspections would be required. Mr. Ervin, Mr. Kezmarsky and Mr. Straffin agree with the Zoning Officer's determination. Mr. Larson considers the proposed use as food preparation, a franchise and believes it would be a destination site.

After Mr. Rabolli summarized, a motion affirming the interpretation of the Zoning Officer to deny the application was made by Mr. Whiteman, seconded by Mr. Montroy. A roll call vote revealed 7 aye votes by Mr. Ervin, Mr. Kezmarsky, Mr. Larson, Mr. Montroy, Mr. Rabolli, Mr. Straffin and Mr. Whiteman.

VII. ADJOURNMENT:

The meeting adjourned at 9:19 pm on a motion by Mr. Whiteman, seconded by Mr. Montroy.