

**TOWNSHIP OF MAHWAH  
BOARD OF ADJUSTMENT**

**MINUTES**

**MARCH 2, 2016**

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ, beginning at 7:45 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. Larson Mr. Straffin  
Mr. Montroy Mr. Whiteman

**ABSENT:** Mr. Dator  
Mr. DeSilva  
  
Mr. M. Kelly, PE  
Mr. J. Layton, PP

**ATTORNEY:** Mr. Ben R. Cascio, Esq.

**I. APPROVAL OF BILLS:**

2/3/16; 2/17/16 \$500.00 Ben R. Cascio, Esq. – Attendance  
Two meetings

A motion to approve was made by Mr. Whiteman, seconded by Mr. Montroy. 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.#1399-15 – RICHARD S. NUDELMAN  
132 GROVE STREET, BLOCK 50, LOT 73**

Resolution granting impervious lot coverage and setback variances to install an in-ground pool.

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

**B. DKT.#1400-16 – JOSEPH & BARBARA SCHENK  
145 AIRMONT AVENUE, BLOCK 123, LOT 19**

Resolution granting a Certificate of Non-Conformity for the purpose of maintaining two pre-existing residences on one lot.

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

**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.#1393-15 – KULDIP SINGH  
40 FRANKLIN TURNPIKE, BLOCK 68, LOT 5**

Application for a Use Variance, Preliminary and Final Site Plan with Bulk Variances and Waivers to construct a gas station (carried from February 17, 2016).

Mr. Joseph R. Mariniello, Jr., Esq., of Mariniello and Mariniello, PC, approached on behalf of the Applicant. He presented an overview of new plans that were submitted based off of comments and concerns heard at the February 17, 2016 meeting with the property being over-developed. The new plans contain significant changes, which decreases the intensity of the use, decreases the variances and waivers proposed, and decreases the intensity of the variances proposed. The changes include the removal of the proposed convenience store.

Mr. Rabolli announced that signed Certifications have been received from Mr. Montroy and Mr. Whiteman for the February 17, 2016 hearing, allowing voting eligibility.

Mr. Mariniello recalled Mr. Brian Shortino of Bertin Engineering, Glen Rock, NJ. Mr. Shortino was previously sworn in and remains under Oath. Mr. Shortino referred to the revised site plans that were marked as follows:

- Exhibit A-3 Preliminary & Final Site Plan; Service Station w/C-Store, Block 68, Lot 5; 40 Franklin Turnpike, dated 6-26-15 with a revision date of 1/29/16; prepared by Bertin Engineering
- Exhibit A-4 Colorized Landscape Rendering and Revised Site Plan, Graphical Representation for Visual Purposes

Mr. Shortino described the proposed changes in detail. He indicated the proposed convenience store has been eliminated with the revised plans allowing the canopy to be moved further back from Franklin Turnpike. A small service building is proposed on the southerly side of the property. Upon questioning by Mr. Mariniello, Mr. Shortino explained the pump and parking changes and referred to Exhibit A-3, Sheet C2.2. He confirmed he reviewed the Boswell McClave Engineering February 26, 2016 as well as the Maser Consulting February 29, 2016 reports.

The front-yard setback requirement is 40 feet. Although a variance is still required, the setback has increased from the previously proposed 2.5 foot canopy setback to a 20-foot setback. The convenience store was proposed with a 5-foot rear-yard setback, and the 40-foot rear-yard setback requirement was mentioned. Due to the elimination of the convenience store, the canopy was moved and the proposed rear-yard setback has increased to 24 feet but still requires a variance. The side-yard as well as the improved lot coverage variances previously requested have been eliminated with the plan changes. Mr. Shortino noted several waivers, such as the parking stall size and off-street parking, previously requested have also been eliminated.

Mr. Mariniello questioned the canopy. Colored photographs of another similar canopy located in Jersey City, NJ were presented and marked as Exhibit A-5(A) landscape mode and Exhibit A-5(B) portrait mode. Mr. Shortino commented on drainage and described the drywell and runoff. Referring to suggestions made in the Boswell February 26, 2016 report, Mr. Shortino described the proposed truck circulation and presented a new plan, shown as a poster board, which was marked as Exhibit A-6. Upon several questions by Board Members, Mr. Shortino described the anticipated truck length and height, circulation, movement on site, and delivery times. Mr. Montroy questioned parking prompting a discussion on whether there should be two, three or four parking spaces and where each space should be located. Mr. Mariniello noted the intent is to not have customers park and reiterated the proposal removed the store so there shouldn't be a need for customer parking. Mr. Kelly mentioned a waiver for a parking setback to the rear property line may be necessary. Mr. Mariniello commented the Applicant is willing to work with the Board regarding parking.

Details regarding truck access continued. Mr. Kelly questioned delivery truck access in and out of the site while passenger cars are queued on site and may be blocking traffic. Mr. Mariniello indicated the Applicant is a fuel distributor and has complete control over the delivery times. Times can also be enforced by the local Police Department. Mr. Kelly noted monitoring delivery times are difficult to enforce and could become a safety issue. Enforcement would also put ownership on Township resources. He suggested delivery times be between the hours of 7:00 pm – 6:00 am. Mr. Whiteman pointed out

that there are safety issues and concerns with not only trucks, but with passenger vehicles, all along Franklin Turnpike, with vehicles (many with New York license plates) queuing in the street waiting for fuel. Mr. Whiteman commented that the curbing and proposed landscaping between the driveways may deter some of the chaotic queuing at this site.

Mr. Kelly asked if there was any known contamination on site with respect to soil or ground water. Mr. Mariniello replied there are no open / active DEP files for this property. At Mr. Kelly's request, the Applicant will provide the Township with a copy of the Phase 1 report when it is prepared.

Upon questioning by Mr. Kelly, Mr. Shortino stated an application package was submitted on February 20, 2016 to Bergen County. It is unknown if any Right-Of-Way dedication will be required at this time. Mr. Kelly suggested the Applicant follow up with Bergen County.

Mr. Layton suggested more trees be proposed as there is a considerable amount of impervious coverage. There is a large tree that potentially may be able to be saved. Mr. Shortino will look into this. Street trees and streetscape requirements such as sidewalks, decorative lights and benches were discussed. Mr. Mariniello indicated the Applicant will comply with all landscaping that is required. Mr. Layton questioned the pitch of the proposed canopy as compared to the canopy shown in Exhibit A-5. Mr. Shortino replied the proposed canopy pitch will be steeper than the sample shown.

Mr. Rabolli opened the hearing to the Public.

Mr. Thomas Reichmann, Operations Manager of Tatilla Petroleum at 48 Franklin Turnpike, approached. He questioned if a variance was needed for the egress from the site. Mr. Shortino indicated the requirements for the distance from an intersection is 50 feet; where the proposed egress is 20 feet, and a variance is being requested. Mr. Reichmann continued questioning the ingress, which led to a short discussion on both the ingress and egress of the site and the width of the driveways.

There were no further questions from the Board or the Public for Mr. Shortino.

Mr. Mariniello called Mr. Eric Hough, of Bertin Engineering, 66 Glen Avenue, Glen Rock, NJ. Mr. Hough was sworn in by Mr. Rabolli. After presenting his credentials, Mr. Hough was accepted as an expert traffic engineer. Mr. Hough prepared a Traffic Impact Study dated July 6, 2015, with a revision date of February 18, 2016. He presented an overview of the area and discussed all approaches to the site. It was noted there was an increase in southbound traffic in the A.M. hours, and an increase in northbound traffic in the P.M. hours. Mr. Hough continued testifying to queuing, traffic activity, trip generation, and a capacity analysis that was performed to determine the Level of Service at the Franklin Turnpike – Fox Lane intersection. He read his conclusion as noted in Section 9.0 of his report into the record.

Mr. Mariniello referred to the Boswell Engineering report prepared by Gary M. Ascolese, to which Mr. Hough confirmed he has reviewed. Mr. Ascolese's report was discussed in detail, including vehicles making left-turns at the intersection, lane width, stacking on and off the site, truck route of travel and the price differential between the New York and New Jersey fuel prices. The price difference alone is a traffic generator in the area. Mr. Kelly questioned the maximum number of vehicles during peak hours on site, to which Mr. Hough replied approximately 16 total is possible. Mr. Kelly reiterated the safety issue on and off the site with vehicles queueing. Mr. Montroy questioned why the traffic study was not performed on a Friday to show a worst-case scenario as it is common knowledge there is an increase in traffic on Friday afternoons in the area. Striping was briefly mentioned. There were no further questions from the Board or the Public for Mr. Hough.

Mr. Rabolli called a recess at 9:25 pm

The meeting reconvened at 9:34 pm.

Mr. Mariniello called Mr. Roger DeNiscia, 347 Upper Mountain Avenue, Montclair, NJ. Mr. DeNiscia was sworn in by Mr. Rabolli. After presenting his credentials, Mr. DeNiscia was accepted as a professional planner. Mr. DeNiscia reviewed the application, the Township Zoning Code and the Master Plan. He presented a photo exhibit which was marked as Exhibit A-7. He described the photos and the existing conditions of the site. He noted poor conditions, minimal landscaping, the site being in a state of disuse, no existing drainage and the large amount of impervious coverage. Mr. DeNiscia stated the site is in need of redevelopment and gave an overview of the proposed gas station application. The proposal is a substantial improvement which will include landscaping, improved drainage and signage. Goal #9 of the Master Plan was read into the record. The initial intensity of the site has lessened due to the removal of the proposed convenience store.

Mr. DeNiscia continued describing the existing conditions and surrounding area in detail. He noted the site is located in the B-12 Zone. The proposed use is a conditional use that is permitted in the area; however, the Applicant does not meet one condition; the location of the existing driveway being closer than 50 feet to an intersection. He mentioned the variances being requested for the canopy and pylon freestanding sign. In Mr. DeNiscia's opinion, the benefits of the proposed application outweigh any substantial detriments and recommends that the application be approved. He believes that the proposed redevelopment will improve the area.

The condition that a service station shall not be located where vehicular access is closer to the intersection of any two street lot lines than 50 feet continued to be discussed. Mr. DeNiscia stated the application is consistent with the Master Plan and the Zoning Code and is a permitted use with conditions. Mr. Whiteman questioned the anticipated volume of deliveries. Mr. Mariniello replied the gas sales would be approximately 20,000-30,000 gallons per day with 2-3 truck deliveries per week. There were no further questions from the Board or the Public for Mr. DeNiscia.

Mr. Mariniello would like to proceed with a vote this evening, conditioned upon Bergen County Approval, which would be part of the resolution if the application was voted upon favorably.

Mr. Rabolli opened the hearing to the Public.

Mr. Paul Baum, Esq., approached on behalf of Super Value, which owns the Citgo Service Station located at 48 Franklin Turnpike, Mahwah. Mr. Baum commented on the variances being requested and believes they are significant noting the driveway access being too close to the intersection and potential problems being created at a signalized intersection. He mentioned the proposed canopy still encroaches and although several waivers have dissipated with the revised plans, there are still conflicts with the Master Plan Goals. He asked the Board to keep traffic issues in mind when making their decision. Mr. Baum stated a service station may be permitted with conditions in the zone, but he does not believe this is a good location for such. Referring to the Master Plan, Mr. Baum stated the area is served adequately with service stations and does not believe the proposed application will aesthetically improve the Franklin Turnpike corridor. He indicated the hardships discussed were created by the Applicant as the Applicant is seeking to build something that does not conform to the Township's Zoning Code. He noted the proposal will be detrimental and does not provide any benefits to the public good.

There were no further questions from the Board or the Public.

Mr. Mariniello gave a closing statement mentioning the amended plans are less intense than previously submitted, and the number of variances and waivers being requested were cut in half. He believes the site can handle the vehicular ingress and egress.

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

## **VI. WORK SESSION:**

### **A. DKT.#1393-15 – KULDIP SINGH 40 FRANKLIN TURNPIKE, BLOCK 68, LOT 5**

Application for a Use Variance, Preliminary and Final Site Plan with Bulk Variances and Waivers to construct a gas station (carried from February 17, 2016).

Mr. Rabolli summarized the application noting several pros and cons with Board Members voicing their opinions. While the application proposes to clean up the site from its current state, the general concern of the Board was the traffic and safety issues the site would create. Removing the proposed convenience store makes the use of the site less intense, but the vehicular access is a major concern as well as the site location being less than 50 feet to an intersection.

Mr. Rabolli called for a straw poll which resulted in three members voting to approve the application and three members voting for a denial. There was a short discussion on the permitted signage in the zone.

A motion to approve was made by Mr. Montroy, seconded by Mr. Whiteman. A roll call vote revealed 3 aye votes by Mr. Montroy, Mr. Rabolli and Mr. Whiteman and 3 nay votes by Mr. Ervin, Mr. Larson and Mr. Straffin.

A motion was made by Mr. Montroy seconded by Mr. Larson to move out of Work Session with all voting in favor.

## **VII. ADJOURNMENT:**

The meeting adjourned at 11:01 pm on a motion by Mr. Whiteman, seconded by Mr. Montroy.