

II. APPROVAL OF MINUTES:

1. MINUTES OF DECEMBER 2, 2020

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

III. MEMORIALIZING RESOLUTIONS:

**1. DOCKET #1486-20 – PEGGY AND MICHAEL GROSS
40 FRANKLIN STREET, BLOCK 178, LOT 8**

Resolution of Approval of a “C” Variance for exceeding lot coverage to construct a circular driveway in front of the home.

A motion to approve was made by Mr. Kearney, seconded by Mr. Cannava. A roll call vote revealed 7 aye votes by Mr. Calijone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Straffin and Mr. Whiteman.

**2. DOCKET #1466-19 – HMH CARRIER CLINIC, INC., PHASE II AND III
RETREAT AND RECOVERY AT RAMAPO VALLEY
1071 RAMAPO VALLEY ROAD, BLOK 23, LOT 45**

Resolution of Approval of a “D” Variance and Preliminary and Final Site Plan Application with additions and improvements to utilize the site and existing structures for a Behavior Health, Substance Abuse, Detoxification and Residential Rehabilitation Center.

Mr. Cascio discussed the comments made by Mr. Kelly and revisions to the Resolution for this Application on pages 1, 2 and 3.

A motion to approve with revisions was made by Mr. Cannava, seconded by Mr. Jackson. A roll call vote revealed 5 aye votes by Mr. Calijone, Mr. Cannava, Mr. Jackson, Mr. Kearney, and Mr. Whiteman.

IV. OPEN TO THE PUBLIC:

Mr. Whiteman opened the meeting to the Public for general questions or statements. No members of the Public participated on the Zoom call or wrote in comments.

V. PUBLIC HEARING(S):

**1. DOCKET #1481-20– GARY ROSCOE
116 EAST CESCENT AVENUE, BLOCK 120, LOT 53**

Application for a “C” Variances for rear and side-yard setbacks, exceeding size of an accessory structure to construct an addition to an existing detached garage, continued from January 13, 2021.

Mr. Cascio stated that the last exhibit was A-10, the next will be A-11. Mr. Ridkes was previously sworn in and remains under Oath.

Mr. Howard Ridkes General Contractor, 107 Highland Place, Ridgefield Park, NJ informed the Board that the size of the proposed structure is being shrunk to 833 square feet, the minimum possible, as shown on the revised Plans. Mr. Ridkes commented that Mrs. Roscoe had researched the cost of leasing space for the vehicles and found it to be \$500 per month, per car. Mr. Roscoe would not be permitted to work on or even polish the cars there, which may possibly be considered a hardship now. Mr. Ridkes continued, stating that the house in New York where the cars are currently kept is being sold, and repeated from the previous meeting that if the garage was attached, it would be a non-issue. It is Mr. Ridkes’ opinion that the size of the lot should be considered in making decisions for accessory buildings. Only one neighbor has an objection to the proposal. Other neighbors are here this evening in support of the application.

Mr. Whiteman opened questioning from the Members of the Board for Mr. Ridkes.

Mr. Calijone offered other options at other locations that he had looked into, (Motor Car Manor being one of them), the monthly rates per car, size of cars, size of facility, as well as other options of revising the Plan, including the possibility of a second level utilizing a lift that requires 11 – 12 feet.

A discussion took place regarding the roof peak elevation being 19’, 2”’; the average roof height here is 16’, lower than permitted, the fact that going taller would not eliminate the setback issue, and consideration of changing the plan to two bays instead of three. Mr. Ridkes stated that the width had been reduced to 18’, 33” to allow for three cars across. The discussion continued with the size of the cars being addressed.

Mr. Montroy reminded the Board and Applicant of the reason the Ordinance was changed to a maximum of 1,000 square feet for an accessory structure was that cars were being sold out of the garage on the same street by previous owners.

Mr. Kearney added that the Variance does not run with the owner, it runs with the land. The issue all along has been that this is an excessive structure for an accessory and the future has to be kept in mind.

Mr. Cascio commented that from a legal aspect, when weighing positive and negatives of the Application, the fact that the building sits in a specific location, it affects the side yards whereas it would not have as great an impact were it set back in the middle of the lot or did not require any variances. That is why you have the side and rear yard variances in the Ordinance because the closer it is to the side yard the greater impact it has on the surrounding properties. If it was moved further away from the side yard, it would not have as great an impact which is criteria the Board would take into consideration when granting variances.

Mr. Thomas Vitulano, Neighbor at 105 East Crescent Avenue, diagonally across the street, was sworn in by Mr. Cascio. Mr. Vitulano commented that his 6-car, 1,716 square foot, 42 x 42 garage was there when he purchased his home eleven years ago and believes it was built in the 80's. The structure looks like a barn and adds to the property. If Gary Roscoe was able to build, it would probably be even better, with landscaping – a plus to the neighborhood. Mr. Vitulano continued, referencing the 4-5 car garage at 295 East Crescent with a second level, and voiced his opinion that it is like a slap in the face to Mr. Roscoe if he is denied the opportunity to build the garage as proposed. Instead of having to reduce the size, the beauty should be considered, not just the footage. Trees would also beautify. The properties in this neighborhood are an acre plus. Adding a structure would not offend the neighbors. Also, developers from outside of Town are building on small properties.

It was brought to the Board's attention that Mr. Vitulano's property was built prior to the Code change, and in fact is the one that triggered the Code change.

A brief discussion took place regarding the setbacks at both Mr. Thomas Vitulano's and Mr. Roscoe's properties. The requirement for accessory structures in the R-40 Zone is 20' for the rear yard and 15' side yard. Mr. Vitulano's rear yard setback is 100', the side yard is 20', both are compliant. Mr. Roscoe's rear yard setback and side yard setback are both at 6'.

Mr. Cascio added to the record, based on Mr. Whiteman's reading of the property map submitted, that it reveals that the nearest home to the rear of the structure is on Robin Road, the estimate setback is 200' rear yard, 30' side yard.

Mr. Kenneth Londahl-Smidt, 110 East Crescent Avenue was sworn in by Mr. Cascio. Mr. Londahl-Smidt stated that his property is 30' off the side yard property line, plus Roscoe's 6'. Mr. Londahl-Smidt commented that he shares the property line closest to the

structure and he has no problem with the proposed structure. It would fit in with the neighborhood and is not noticeable from the road. In Mr. Londahl-Smidt's opinion, you rarely see Mr. Roscoe in the garage; no repairs are done, he basically is storing the cars and keeping them in good condition. There is no concern.

Mr. Roscoe stated that he will not be installing car lifts.

Ms. Anastasia Azevedo, 98 East Crescent Avenue was sworn in by Mr. Whiteman due to Mr. Cascio experiencing a power outage. Ms. Azevedo stated that she lives at the end on the curve, her house sits catty-corner on the property and she has a clear view of the garage that is there now, and cannot imagine twice the size and higher. This area is residential, not zoned for a parking garage. The only hardship is being infringed on her. In her opinion, she can see this monstrosity from anywhere in her backyard and is extremely opposed to this structure being built on an acre of property.

Mr. Roscoe stated the garage will be the same height, huge arborvitae trees will be planted. The size and future uses were further discussed by Mr. Vitulano, Mr. Roscoe and Ms. Azevedo.

Mr. Whiteman stated that there has been a lot of talk about potential uses and things done in years gone by, legally or illegally. Addressing Mr. Cascio and Mr. Kelly, Mr. Whiteman asked what is permitted under the Code for a 1,000 foot accessory structure. Mr. Cascio stated no commercial use. Mr. Kelly added it is an accessory use to the principal use, no retail, classes or living in the structure.

Ms. Azevedo questioned what happens if the Application is granted and activity is illegal? Ms. Entrup stated that if a use is happening that has not been approved, it would be brought to the attention of the Planning and Zoning Department and Property Maintenance would issue a summons requiring Court, and it would be handled in Court.

Ms. Suzanne Roscoe, 47 East Ramapo Avenue was sworn in by Mr. Cascio and stated that no neighbors within the 200' radius of the property boundary have raised concerns.

There were no questions for Ms. Roscoe.

Mr. Cascio explained the dispossessions and ramifications; the Board would need to make a decision to either approve or deny. The Applicant could be asked, based on the Board's comments, if he wishes to make further modifications prior to a decision being made. From a ramification standpoint, if approved, an objector has 45 days from publication of the Resolution to submit an appeal to Hackensack, and if disapproved, the Applicant has 45 days from publication of the Resolution to challenge the disapproval in Hackensack. If the disapproval stands, the Applicant has options in the future regarding

an accessory build out with any substantial modification. If the Applicant does not want the Board to vote on something, he may withdraw the Application so that the substantial condition is not present for future modifications.

Mr. Roscoe commented that he has changed the Plans and reduced the size of the garage. Mr. Ridkes gave a plea to Ms. Azevedo on behalf of Mr. Roscoe; is there anything that he could do in the site view of the garage to her house to make her not object to the project?

Ms. Azevedo replied no, the size of the structure is too large for the neighborhood.

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

Note: Work Session immediately followed the Public Hearing for this Docket.

**2. DOCKET #1484-20 – PIKE ENTERPRISES, LLC
149 FRANKLIN TURNPIKE, BLOCK 70.02, LOT 121**

Preliminary and Final Site Plan Application for Conditional Use and “C” Variances to demolish the existing service station and construct a new service station with a canopy, a Dunkin Donuts with drive through, signage, and parking lot, drainage, lighting and landscaping improvements.

Mr. Cascio stated that the Notices were in order.

Mr. DeSilva recused himself from the hearing of this Application.

Mr. Andrew Kohut Esq., Wells, Jaworski & Liebman, 12 Route 17 North, Paramus, NJ, representing the Applicant, stated that the property was located in the B-10 Zone on the corner of Franklin Turnpike and Stevens Lane. The proposal is to redevelop and upgrade the property with a Dunkin Donuts drive through which is a permitted use. The Dunkin Donuts abuts the residential Zone. There will also be a gas station with four fuel stations under a canopy – no building, no service; gas station and Dunkin Donuts only.

The two most important variances: 1) Gas stations cannot be within 25’ of any boundary line of a residential district. The gas station use is greater than 25’ from the residential district. If the lot was subdivided, there would be two conforming lots and the lot that contained the gas station would not be within 25’ of a residential zoned district.

2) Parking Variance - currently have 8 parking spaces, however the Code requires a minimum of 40 spaces for restaurant use, however going by the formula in the Code, the number of parking spaces is complied with. Variance for two uses proposed are existing

already on Franklin Turnpike. The Dunkin Donuts located less than a mile away would be relocating to the proposed site and the gas station is existing.

Mr. Kohut called his first witness; **Mr. Thomas Ashbahian, Architect, 39 Spring Street, Ramsey, NJ** was sworn in by Mr. Cascio and recognized as an expert in Architecture. Mr. Ashbahian stated that he was familiar with the Application, Site Plans, and Mahwah's Zoning Ordinances and Master Plan as it relates to the Application. Mr. Ashbahian commented that this is a clean slate rebuild Application with an existing fuel and service station being combined with a Dunkin Donuts, removing the building, islands and tanks. Eliminating auto repair and maintenance; the location will be for fueling and Dunkin Donuts only. The new improvements on the site will include a canopy, new gas pumps, new lighting, a trash area, and the Dunkin Donuts drive through. Everything built will be in conformance with current Codes, Standards, Requirements, Environmental Safeguards, etc. The proposal is to eliminate all the repair bays, the exterior air compressor, the exterior waste oil storage, the exterior vacuum machine and virtually all the pavements that extend uncurbed and uninterrupted from Franklin Turnpike into the site. There are four current curb cuts on the corner that will be removed. Only two curb cuts and one exit curb cut will be established. The Dunkin Donuts building conforms to bulk regulations of the Ordinance.

There will be three employees on site at any given time; one at the gas station, two at Dunkin Donuts. No vehicles will be parked on site. Employees live locally and will arrive on foot, bicycle or will be dropped off. Dunkin Donuts will have only 10 seats; many customers will be for the gas station or drive through. The current Dunkin Donuts has 2,600 square feet, this one will have 1,800 square feet including storage inside the building.

Dunkin Donut deliveries of donuts and fresh product are every midnight by their van. Once a week a tractor trailer delivery is made in the early morning. Fuel is delivered 2-3 times per week depending on demand and delivery hours can be scheduled by the operator. There will be a private carting service 2-3 times per week primarily for Dunkin Donuts. No overnight parking. No outdoor sales or storage of products associated with either business.

Signage on the building is in conformance. Comments in reports will be addressed during the Permit Application.

The following Exhibits were marked into evidence:

Exhibit A-1 - Floor Plan of Dunkin Donuts and Floor Elevations prepared under the direction of Mr. Ashbahian.

Exhibit A-2 - Elevations of a typical Dunkin Donuts drive through design; colors, features, a composite or laminate material; durable, weather resistant, almost indestructible.

Signs will not be more than 10% of the façade. No cooler or freezer boxes will be outside the building. Everything will be kept inside, creating a very clean exterior.

In Mr. Ashbahian's opinion, the proposed rebuild is night and day from the existing (60-70 year old) to new. Not revising the building, constructing a completely brand new building. During peak hours, 20 – 25 walk-in customers per hour are anticipated; relatively lower than the drive through. The Traffic Engineer will provide testimony.

Mr. Whiteman opened questioning for Mr. Ashbahian.

Mr. Kelly requested the hours of operation and estimated fuel sales in gallons. Mr. Ashbahian stated the hours will be 5:00 a.m. – 10:00 p.m. seven days a week. Fuel will be delivered 2-3 times per week; number of gallons will be later addressed. Dunkin Donut deliveries will be by a 22' – 24' van – around midnight of each day. Mr. Kelly requested a Traffic Impact Study be provided in advance of testimony. Mr. Kohut commented that it will be provided prior to the next meeting.

Concern with the dramatic increase in usage of the site was discussed. Mr. Kohut clarified that his intent was to state that these are two familiar uses in the area, not less use. Other comments were that this corner already has traffic issues, backup onto Franklin Turnpike, and that removing curb cuts is a great first step in alleviating the traffic problems, but the Board is very interested in the traffic flow at this site.

Per Mr. Kohut, the Traffic Engineer will address traffic issues, parking, and workers getting to the site. The Engineer will address Mr. Kelly's question on size of the fuel tanks. Mr. Ashbahian testified on the building signage; the Engineer will provide testimony on the pylon sign area as well as the canopy.

Ms. Lawlor requested that queuing of parking and circulation on the site be addressed in the report for the next meeting.

Another concern brought up by Mr. Whiteman was managing clients in the circulation plan. Vehicles enter the site from any angle, any direction. Proposed changes are a good start, but the Board would like to hear more.

Mr. Whiteman opened questioning to the Public for Mr. Ashbahian. There were none.

Mr. Kohut called his next witness; **Mr. Joseph Vince, Schwanewede/Hals Engineering, 9 Post Road Oakland, NJ** was sworn in by Mr. Cascio and recognized as a Civil Engineer.

Mr. Vince stated that he was familiar with the Application, Site Plans, the property and Mahwah's Zoning Ordinances as they apply to this site.

The following additional exhibits were entered into evidence and described in detail by Mr. Vince:

- Exhibit A-3** - Plan 149 Franklin dated May 21, 2020; 8 sheets
- Exhibit A-4** - Survey, two sheets - Colorized dated May 21, 2020
- Exhibit A-5** - Aerial – two sheets – Google Earth, dated February 12, 2021
- Exhibit A-6** - Photos of Site – 17 sheets – 34 photos, dated February 12, 2021

Mr. Whiteman commented that the implication is that this development will clean up the site - the Applicant owns the site, it is his garbage. Mr. Vince responded that the proposed use will eliminate the use causing the mess – non-working cars will be gone.

Mr. Vince described the Applicant's proposal in detail including demolition and all improvements to the site. The canopy will improve safety, protection from the elements for the attendants and cars, and will improve runoff quality. The gas station is a conditional use within the Zone. Dunkin Donuts is a permitted use.

There are no schools, playgrounds, churches, hospitals, public libraries or institutions for dependent children within 500' of the site which is one of the conditions of the Conditional Use.

Access to the site will be through two two-way driveways; one from Franklin Turnpike and the other from Stevens Lane. There will also be a one-way exit driveway from the drive through onto Stevens Lane. There are currently four access driveways, two very close to the intersection that are not in conformance with County standards as this is a County road. The proposal is to close those driveways and curb the entrances to make them more formal driveways.

The proposal includes a bypass lane. The site is designed for circulation of tractor trailers that will have the ability to enter Franklin Turnpike from both directions and exit onto Stevens Lane and also have the ability to drive around the back of the building and out the one way exit.

Mr. Vince continued, discussing the 20' x 40' loading area in the rear, lot coverage, the conformance of setbacks, the corner lot having two front yards where setbacks have to be

met for both streets, revision of the chart, the Zoning Table, and the waiver request for the 30 feet from the street parking requirement.

A discussion took place regarding the circulation plan and the backup due to the line for Dunkin Donuts and/or during fuel deliveries. There will be room for vehicles to move, backup or go around with the 11 feet – two cars can pass side by side. The fuel pumps will be positioned further from the street. The corners will be blocked with landscape.

Mr. Kelly stated his concern for backup during fuel deliveries. Messrs. Whiteman and Kearney commented that the proposal is a great improvement but still has potential for bottlenecks. Mr. Kohut commented that the end user has the capability of scheduling delivery time. Mr. Cascio stated that in light of the unique circumstances, it should be added to the Resolution that all refueling be done at night. Mr. Vince added that there are options now with the relocation of the pumps where cars could enter and get around the truck delivering fuel.

Ms. Martha Steinbach, Homeowner at 8 Wanamaker Avenue asked for the name of the fuel company, will it continue being Delta? Relative because Delta is very cheap and brings in customers from New York. Mr. Kohut commented that he would find out. Ms. Steinbach stated that it is a 3-ring circus...how does this fit in with downtown development?

Mr. Whiteman commented that it is an existing lot, it is part of the downtown district so that there are some aesthetic Ordinances, that are required to be adhered to. This application is not part of the old Post Office area redevelopment.

Mr. Whiteman announced that the extension of time has been granted and the Application is carried to April 7, 2021, split with Monarch then April 21, 2021 if available. No further Notice is required.

A motion to move into Work Session was made by Mr. Kearney, seconded by Mr. Jackson. All voted in favor.

VII. WORK SESSION

1. DOCKET #1481 – GARY ROSCOE 116 EAST CESCENT AVENUE, BLOCK 120, LOT 53

Application for a “C” Variances for rear and side-yard setbacks, exceeding size of an accessory structure to construct an addition to an existing detached garage, continued from January 13, 2021.

Comments from Members of the Board included; would like to see it work for Mr. Roscoe as a long time Mahwah resident, no hardship, there are alternatives, the Variance stays with the structure, dangerous to nullify the Code when there is no hardship, maybe the Applicant will consider attaching the garage, although the property is overly large with distance between properties, the law is in place that a hardship must be shown, the size is excessive and not necessary for the Zone Plan, do a straw poll; the Applicant might decide to withdraw, the Homeowner is a nice man that has a very well kept yard but the job as a Board is to remove emotion; it would have to be 1,000', not giving a false sense that 1,200' is okay, more concerned with height than footprint, having lived through the first situation, the reason for the Code change, not in favor of approving.

Mr. Roscoe was asked if he wanted the Board to proceed with a vote. Mr. Ridkes requested that the Application be carried to give time to consider the 1,000 square feet.

Mr. Whiteman announced that the Application is being carried to April 21, 2021 – not to further debate – only new Plans. No further Notice is required. The extension of time is granted.

A motion to move out of Work Session and return to the Public Hearing portion of the meeting was made by Mr. Kearney, seconded by Mr. Montroy. All voted in favor.

1. OLD BUSINESS
2020 BOARD OF ADJUSTMENT ANNUAL REPORT

Mr. Whiteman stated that the 2020 Board of Adjustment Annual Report is being carried to the March 3, 2021 meeting.

A motion to move out of Work Session and adjourn was made by Mr. Straffin, seconded by Mr. Kearney. All voted in favor.

The meeting adjourned at 10:43 p.m.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on April 1, 2021 for approval at the Regular Meeting to be held on April 7, 2021.