

TOWNSHIP OF MARLBORO

ZONING BOARD OF ADJUSTMENT

1979 TOWNSHIP DRIVE

MARLBORO, NJ 07746-2299

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Chairperson

Glenn Malysz

Vice-Chairperson

Robert Knight

Secretary

Lewis Wildman

Members

Michael Mahon

Jennifer Bajar

Matthew Weilheimer

Michael Shapiro

Paul Schlaflin - Alt. #1

Zoning Board Clerk

Yvonne Cautillo

Attorney

Michael Steib, Esq.

Engineer

Gravatt Consulting Group
David Thesing, P.E., P.P.

Planner

Planning Design Collaborative, LLC
Thomas Scangarello, P.P.

Administrative Officer

Zoning Officer

Sarah Paris

Traffic Engineer

Medina Consultants
Mark Kataryniak, P.E.

MINUTES

ZONING BOARD OF ADJUSTMENT

MAY 5, 2009

8:00 P.M.

SALUTE TO FLAG

SUNSHINE LAW READ

PRESENT: Lewis Wildman, Michael Mahon, Matthew Weilheimer, Jennifer Bajar, Paul Schlaflin, Michael Shapiro

ALSO PRESENT: Michael Steib, Esq., Sarah Paris, Administrative Officer David Thesing, P.E., Kendra Lelie, P.P. Thomas Scangarello, P.P.

ABSENT: Glenn Malysz, Robert Knight

Appoint Lewis Wildman Acting Chairman

Offered: Matthew Weilheimer

Seconded: Michael Shapiro

The Board is all in favor. None opposed.

Appoint Matthew Weilheimer Acting Secretary

Offered: Lewis Wildman

Seconded: Paul Schlaflin

The Board is all in favor. None opposed.

The Board accepted the minutes of April 21, 2009.

| | | | |
|-----------------|----------------------|-----------------|-----------------------|
| Offered: | Lewis Wildman | Second: | Paul Schlaflin |
| Ayes: | 5 | Nays: | 0 |
| Absent: | 2 | Abstain: | 1 |

No public comment.

ZB 08-6348 – Outdoor Media Systems, LLC

Continuation of a Public Hearing for approval for a use variance to construct a billboard sign on a commercial property as an additional non-conforming use at 409 Route 9 South, Marlboro, Block 288, Lots 372 & 373, located in the C3 Community Commercial zone.

Michael Shapiro stated he listened to a tape of the March 3, 2009 hearing.

John Giunco, Esq. recalled they heard previous testimony of William Stapleton and Ms. Lorali Totten of Crest Engineering Associates, Inc... He now introduced William Stapleton, principal of Outdoor Media Systems.

Mr. Stapleton, 34 Roosevelt Avenue, East Brunswick, NJ is sworn in. He discussed the separation distance required between the poles and cables, so that they do not interfere with the billboard. He contacted Jersey Central Power & Light and received information from a lab technician based on the pole number. The top high voltage in their transmission line is 34.5 KV. A design with a minimum of 10 feet is needed, not 13 feet clearance as originally designed.

The following evidence is presented

- A – 34 Jersey Central Power & Light letter states information required regarding clearance dated April 3, 2009.**
- A - 35 Excerpt from JCP&L Website per OSHA safe working clearance.**
- A - 36 Photo of labeled power lines.**

The pole is close to the property looking north and he was able to identify each of the lines. This is a sixty foot pole with forty-eight feet above the ground. This is the information requested of the Board at the previous meeting.

Mr. Nicholas Bellizzi, PE, 28 Dora Lane, Holmdel, NJ, is sworn in. The Traffic Engineer stated the traffic on the road will not be affected; this is not a traffic jam maker. The parking for the site will remain the same. The main concern is the visibility of the bill board. Route 9 is flat, level, and straight with no impediments. The Department of Transportation would look at this site impact.

- A – 37 State of New Jersey Permit No. 7496, Department of Transportation Outdoor Advertising for William Stapleton (submitted originally with application as A-18).**

Mr. Bellizzi stated that at a speed limit of 50 mph you travel 90 feet per second and in 6 seconds you have more than enough time to view this sign. It is a very good location and the driveway, stop sign and placement of pole is not affected.

He also stated there are no standards governing billboards. You want it placed so the north and south traffic so each side can view it. The billboard is 14' x 4', with 1600 square foot on each side. All the boards are basically the same size; they are standard for the industry. It cantilevers over the

parking area and is high enough not to impede anything, including emergency vehicles. He sees no reason not to approve from a Traffic Engineer's view.

There were no questions from the Board and no questions from the Public.

Mr. Lester Nebenzahl, 40 Brunswick Woods Drive, East Brunswick, NJ, Bernard & Nebensahl, LLC, a licensed consulting firm, was sworn in. He is a licensed since 1977 as a Certified Planner and is accepted as a professional. Mr. Nebensahl stated he visited and reviewed site and examined documents that were already submitted. He re-examined the report prepared in 2003, and adopted Master Plans in various years. He also reviewed resolutions from 1986 back to 1974 regarding road signs. He also reviewed state rules, the Supreme Court decision of 1988, and also the Gravatt and Planning Design Collaborative reports.

The proposal is to construct a two sided billboard on the north side of Route 9 to be viewed by the public. It would be located on the northeast corner. There are numerous mixed uses surrounding with residential uses about 300 feet away with power lines adjacent to site. The zoning is C-3 with many different uses. There are no design standards governing use. No discussion anywhere on prohibition of the billboard.

Relief is being requested from 84:52 ordinance, where signs are not permitted. 84:62B(5) prohibits signs to advertise where the product is not sold on the premises and 30E(2) prohibits all billboards. 84:75C states not to be put where multiple uses are. Use variance is required where no non conforming use may be expanded; variance also required per 84:62C(12) regarding height of 25', where 49' is proposed.

Mr. Nebensahl reviewed a list of positive criteria stating that the goals and objectives of municipal land use would be furthered. He believes the general welfare of the people will be served with the approval of this billboard. The various commercial uses are to meet the needs of all New Jersey citizens.

The prior granted variances are existing situations. Since billboards are not permitted, there are no requirements set forth.

A list of bulk variances are permitted for normal signs. The height and area setbacks are due to the nature of the proposed use. They are safe for the public.

A setback relief of 8 feet is proposed. A sign area of 816 square foot is needed; total signage of 1100 square foot is proposed. Lot coverage of 60% needed; they are applying for an increase of impervious coverage.

The benefits of deviation outweigh the detriments and there are no substantial detriments.

Regarding the negative, there is no noise, traffic or air pollution. The landscaping is not impacted; nor is the character of the neighborhood impacted. The courts say free speech should be permitted.

Thomas Scangarello, the Board's Planner of Planning Design Collaborative is sworn in. History of billboards is not permitted. In this case, the free speech idea is not an issue. There is a difference between commercial and non commercial billboards. It has been found that when approving you are improving the aesthetics of a particular area that contribute to the well being of the municipality. The general welfare would only be served if it is identifying something such as directions. This is the difference from the commercial that is here. They must be related to that sight and what is

going on at that sight. You must look at all the facts. You want it to look better; it does not satisfy the purposes of zoning. You have the protection of cases going back to 1974. The governing body must say that the aesthetics is affected; you do not have any benefits for something that is not happening on site.

Mr. Shapiro asked about billboards. If it is offensive, we can not stop what goes on. You cannot guarantee what goes on it. Mr. Giunco suggests a basic message, our constitution says you can hear, but do not have to accept.

Mr. Giunco stated the content cannot be regulated; it is there to advertise.

Mr. Scangarello stated you have to consider both sides, commercial and non-commercial speech. Developers have used the First Amendment as a shield.

Ms. Bajar asked how it benefits the local business in town. Mr. Giunco said he believes everyone would benefit.

Mr. Stapleton is already doing advertising in Woodbridge on the Turnpike.

Mr. Shapiro inquired how long is the lease for the billboard. Mr. Stapleton said it is long term; it is the most cost effective way.

Questions followed regarding looking into other sites. Ms. Bajar also inquired as to the safety of children climbing up to do graffiti.

Mr. Weilheimer asked why not a more northern site? Mr. Giunco answered they do have limitations and it is more sight specific; we have a right to express ourselves.

Ms. Bajar asked if you have other billboards on sites owned by the same owner.

Mr. Steib asked if the applicant looked into other sites. Mr. Stapleton stated they want quality sites.

Mr. Giunco stated they will provide transcripts once again; and will wait for a full board.

Workshop:

Offered By: Lewis Wildman

Second By: Matthew Weilheimer

Mr. Shapiro stated that he is not totally against the billboard but, he would like to see something that is not offensive in the message.

Ms. Bajar stated that safety is her concern. Route 9 is commercialized, and we do not need signage in our faces. She did not know if she is comfortable with the application. Aesthetically, we are losing the small town feeling.

Mr. Mahon is opposed, the town ordinance does prohibit.

Mr. Schlaflin is against the billboard. This site is sandwiched between two senior communities. The entire property is to be looked at; along with the safety issue. We have denied additional signs to other properties and he would like to urge the board to vote against it.

Mr. Weilheimer believes the presentation is good, but it is not a suitable location. He believes a site further north would be better. He does not buy into the positive criteria as it is already overdeveloped.

Mr. Wildman believes that an existing business on the site should be the one to advertise.

Motion out of Workshop

Offered By: Lewis Wildman

Second By: Michael Mahon

Motion to Approve Application ZB: 09- 6348.

Offered By: Lewis Wildman

Second By: Matt Weilheimer

Ayes: 0 Nays: 6

Absent: 2

Motion denied.

ZB 08-6342 – KEA Design, Inc. LLC

Continuation of a Public Hearing for approval of a use variance and associated bulk variances to construct two buildings (1,760 square foot and 3,520 square foot) with associated parking and outdoor storage area for a landscape contractor's business at 120 Tennent Road, Morganville, Block 120, Lots 15 and 17, located in the C-2 zone.

Mr. Steib noted that KEA Design, Inc. LLC did renote.

Richard J. Pepsny, Esq., said the applicant would like to vote next meeting on the required use variance. The C-2 zone is perfectly suited for this area. They are a small business that would like to store equipment and have a small office inside. Because of wetlands, it is not desirable for residential. They would like it gated. It is undesirable to other applicants because of the wetlands, frontage, etc.

Mr. Jeff Carr, 146 Drum Point Rd, Brick, NJ, a Professional Planner is sworn in. Want to bifurcate. The property is located on Tennent Road. It is an odd shaped lot with wetlands.

- A – 31 Freshwater Wetlands Letter of Interpretation Application submitted by Edward Karol, 120 Tennent Road, Marlboro, Dated February 23, 2009.
- A - 32 Aerial Map, Lindstrom, Diessner & Carr, PC, 136 Drum Point Road, Ste 6, Brick, NJ.
- A – 33 Color Rendering Preliminary & Final Major Site Plan, for KEA Commercial, prepared by Lindstrom, Diessner & Carr, PC, 136 Drum Point Road, Ste 6, Brick, NJ date 7/23/08. (Sheet 3 of 8)
- A – 34 Preliminary & Final Major Site Plan, Existing Conditions Plan, prepared by Lindstrom, Diessner & Carr, PC, 136 Drum Point Road, Ste 6, Brick, NJ date 7/23/08. (Sheet 2 of 8)
- A – 35 Official Zoning Map of Marlboro Township, copied from Maser Consulting PA, adopted 1/24/91.

The landscape design contractors will leave unused products to store, likened to having a showroom. There will be parking spaces. Your ordinance does not allow specifically for this use. Ms. Paris said it is now permitted in a light industrial zone. The applicant is one business owner, with two crews of two individuals. There will be left over sand or gravel supplies to be stored and no gasoline will be stored on this site.

The D-1 Variance allows granting for something not allowed in this zone; it is an undue hardship. Permitted uses cannot reasonably be built on this site. The lot size and frontage inhibit the development of this property. There are environmental constraints.

Regarding the positive criteria, there is no negative harm to the town, master plan, land uses. We can do this satisfactorily. Sec 84-51 what types of establishments that are allowed (14 are allowed). This is not included but in this specific use we fall into the business services group. We do offer a service to the public, landscaping and patio installation. This is the best fit for this category.

Exhibit A - 35 Township Zoning Map shows the various districts in town. It is a single zone that differs from the rest.

Mr. Shapiro stated the LI zone is pretty close to this property; Mr. Carr said they did look at other zones, but they do not fit in.

Mr. Schlaflin inquired if the activity can be limited. Mr. Steib stated that you can put conditions as to the number of employees, types of vehicles, or hours of operations.

Mr. Carr answered they have no problems with restrictions. The industrial zone does fall into the business services category. It is predominantly residential surrounding the property.

Undue hardship does not have to be proved. The allowable frontage of 300' required. It is an odd shaped property with three acres required. No development can occur in front of site due to the environmental constraints.

Mr. Carr referred to Exhibit A-33. The undue hardship does not allow any other applicant to reasonably use this site. Municipal activity will promote the general welfare of the public. Regarding traffic, it serves the area. Trucks leave in the morning and return at the end of the day. There is adequate light, air and open space. It is environmentally served and maintains the open space. It is creative development and a good civic design.

Mr. Scangarello, Planning Design Collaborative, questioned the proposed woodline. We can argue that you can put a lot of things in this area. Wouldn't it make sense, to make it look as residential as you can and to narrow the driveway to lessen the aesthetic impact. He would like the board to find that it can be a little more residential friendly.

Mr. Carr stated all the residential constraints go with the land, is this piece of property unique? It is unique and cannot be reasonably developed. A house can be, but it is not a reasonable use.

Mrs. Joann Denton, who resides at 54 Tennent Road, Morganville is sworn in. Mrs. Denton questioned the office building and landscaping, with regard to the location of the parking spaces. There are other possible uses. A nice office building, with reasonable hours, would be a good neighbor.

Mr. Byron Denton, 54 Tennent Road, Morganville is sworn in. Mr. Denton asked about the spring that feeds into the wetlands. He inquired if you develop the property as it is should be developed, will this affect his property? It should be developed as a permitted use.

An extension is signed and is scheduled for June 2, 2009.

MEMORIALIZATIONS

ZB 09- 6352 – New Cingular Wireless PCS, LLS d/b/a AT&T Mobility

Memorialization of a Resolution granting approval to place six antennas on existing water tank and related equipment cabinets at base of tank at the Service Road off of Beacon Hill Road, Marlboro, NJ, Block 132, Lot 19, located in the LC Land Conservation zone.

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| Offered: | Lewis Wildman | Seconded: | Michael Mahon |
| Ayes: | 5 | Nays: | 0 |
| Absent | 2 | Abstain: | 1 |

ZB 09- 6353 – Red Hill, Inc. d/b/a Marlboro Veterinary Hospital

Memorialization of a Resolution granting approval of a free standing sign on property known as 26 North Main Street, Marlboro, Block 218, Lot 1, located in the C-1 Village Commercial zone.

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| Offered By: | Lewis Wildman | Seconded: | Michael Shapiro |
| Ayes: | 5 | Nays: | 0 |
| Absent | 2 | Abstain: | 1 |

Meeting Adjourned at 11:00 p.m.

Respectfully submitted,

