

TOWNSHIP OF MARLBORO

ZONING BOARD OF ADJUSTMENT

1979 TOWNSHIP DRIVE

MARLBORO, NJ 07746-2299

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Michael Steib, Esq.

Engineer

Gravatt Consulting Group

David Thesing, P.E., P.F.

Planner

Thomas J. Scangarello, P.P.

Planning Design Collaborative, LLC

Administrative Officer

Zoning Officer

Sarah Paris

MINUTES

ZONING BOARD OF ADJUSTMENT

December 2, 2008

REGULAR MEETING

SALUTE TO FLAG

SUNSHINE LAW READ

ROLL CALL

PRESENT: Glenn Malysz, Michael Mahon, Adrienne Spota,
Michael Fishman, Jennifer Bajar, Matthew Weilheimer,
Lewis Wildman

ABSENT: Robert Knight, Steven Pitchon

ALSO PRESENT: Michael Steib, Esq. Board Attorney
David Thesing, Engineer
Thomas Scangarello, Planning

The Board accepted the minutes of November 25, 2008

MINUTES APPROVED:

Offered:	Glenn Malysz	Second:	
Ayes:	6	Nays:	0
Absent:	3	Abstain:	0

Public Session – None.

Mr. Wildman was appointed Acting Secretary. Offered by Mr. Malysz and seconded by Mr. Mahon. All in Favor.

ZB 06-6241 A – Beacon Hill Self Storage, LLC

Continuation of a public hearing for Site Plan approval to construct a self-storage facility with five self-storage buildings of varying sizes, located on the corner of Tennent and Greenwood Road, Block 122, Lot 39, in the C-2 zone.

- A – 61 Received from Monmouth County Planning Board, Hall of Records Annex, One East Main Street, Freehold, NJ dated 8/11/08. Request for Additional Information drawn by Kee Engineering dated 5/1/08.
- A – 62 Memo from Salvatore Alfieri, Esq. dated November 11, 2008 regarding EPA and Kee Engineering memos.
- A – 63 Memo from Michael Steib regarding Beacon Hill dated November 11, 2008.
- A – 64 Memo from David Thesing regarding Beacon Hill dated November 11, 2008.
- A – 65 Memo from Robert Kee, Kee Engineering Enterprises, 51 Gerard Avenue, Matawan, NJ, dated 11-14-08 with attachments of the above memos.

Mr. Alfieri noted he has not heard from the EPA regarding the above noted emails. They are not able to remediate yet because of the contamination. The drainage overflow into Orchard Street may also be an environmental issue. It is hoped they will be able to go forward by summer. Mr. Alfieri stated that there may be arsenic located in the rear of the basin by Orchard Street. The drainage flows over the property.

Mr. Alfieri asked his professional, Mr. Thomas Olenik, to address the technical issues. Mr. Thomas Olenik, Engineer, 4 Peggy Road, East Brunswick, NJ, 08816 is sworn in and accepted as a professional.

Mr. Olenik stated that in order to establish the grading, retaining walls are a necessity.

Mr. Alfieri stated that on both the Orchard Street and the building side there will be landscaping buffers. The fence is for security. The applicant is willing to lower the height of the fence.

Mr. Olenik stated he has reviewed all the professional's reports and is ready to address.

Mr. Thesing recommended they comply with the eight foot dedication and asked if they will be able to adhere to buffers other than the wall. The 8½ feet off Orchard Street will dictate to slide the buildings to the west. There should not be any variances on the west side.

Mr. Scangarello stated that there were concerns from the Orchard Street residents. He believes everything should be done showing quality of material. He also stated six to eight feet would be a preferable condition. Mr. Alfieri answered that the applicant will comply and that they have been in contact with CME and they do want an 8½ foot dedication. He said they will submit a compliance letter and will work with Mr. Scangarello.

Mr. Alfieri stated there are two fences. Mr. Olenik stated the fence is attached to the building with a gate. Sheet 5 of plans shows extensive landscaping. Mr. Olenik agreed to the extensive use of evergreens. He also stated all water issues will be taken care of according to the latest request from the DEP.

Mr. Alfieri agreed that there would be no construction until the DEP declares it is okay.

Mr. Malysz said there will be two conditions for the resolution: the first being the drainage and second, the arsenic remediation. Mr. Alfieri said that the DEP also wants to test Orchard Street.

The fence, which is also a security fence, should be 6 feet and black.

Mr. Scangarello stated that there should be no outside storage anywhere on the property and should also be stated in the resolution. The hours of operation for a key holder are limited from 7:00 a.m. to 10 p.m.

Sidewalks were discussed. Since Tennent Road is a County road, Mr. Alfieri said the County must be consulted.

There were no other questions or comments from the public.

Workshop:

Offered By: Glenn Malysz Second: Adrienne Spota

The Board discussed the fact they are in favor and that the sidewalks are not a must. The applicant has made the attempt to keep the architecture with the structure of the neighborhood with landscaping to blend.

Mr. Malysz agreed that the application will be a good addition to that area and agreed that the sidewalks should be left up to the applicant.

Out of Workshop:

Offered By: Glenn Malysz Second: Lewis Wildman

Mr. Thesing said that a variance for a retaining wall, 40 foot setback, 8.5 feet proposed. Fence will be permitted on setback. The chain link fence is to be six feet. There are six parking stalls proposed and no loading zones. The driveway permit is deferred to the Township Engineer.

The EPA must approve as clean and the drainage settled before construction approved by the EPA. All technical items will be finalized, with landscaping changes, the fence to be 1¼. The Township Engineer will be consulting regarding the right of way. There will be no outdoor storage and everything will be cleaned up.

Motion to Approve:

Offered By: Glenn Malysz Second: Michael Mahon
Ayes: 6 Nays: 0
Absent: 3 Abstain: 0

Motion Approved.

Mr. Malysz left the dais at 9:15 p.m.; Mr. Fishman, the Vice Chairman will conduct the meeting.

ZB 08-6338 – Schechter Enterprises Appeal

Public Hearing to appeal “Notice of Violation” of Sections 82-14 and 84-75C, at 158 Tennent Road, Block 147, Lot 34 in the C-2 zone.

John A. Giunco, Esq., Giordano, Halleran & Ciesla, 125 Half Mile Road, Red Bank, NJ, is here to continue to appeal the violation issued by the Zoning Officer.

Andrew Janiw, AICP, Beacon Planning, Highway 34 South, Colts Neck, New Jersey sworn in and accepted as professional.

Survey of old Block 37 Lots 9, 9A & 30, prepared by Charles W. Thomas, 484 Amherst Drive, Bricktown, NJ, dated 9-30-81.

The following additional evidence was entered:

- A – 22 Overall Utility Plan, prepared by Lorali E. Totten, Crest Engineering Associates, Inc., Crest Professional Plaza, PO Box 1210, State Hwy. 33, Hightstown, NJ 08520 dated 7/03/02.
- A – 23 Grading & Utility Plan, Panel-A, prepared by Lorali E. Totten, Crest Engineering Associates, Inc., Crest Professional Plaza, PO Box 1210, State Hwy. 33, Hightstown, NJ 08520 dated 7/03/02.
- A – 24 ZB02-6054 Resolution dated August, 2004.
- A – 25 Photoboard depicting 5 photographs showing 7 to 8 foot retaining wall prepared by Andrew W. Janiw, AICP, Beacon Planning, Highway 34 South, Colts Neck, NJ, October 20, 2008.
- A – 26 Photoboard depicting 2 photographs showing four foot fence prepared by Andrew J. Janiw, AICP, Beacon Planning, Highway 34 South, Colts Neck, NJ, October 20, 2008.

Mr. Janiw presented the survey of the property known as 158 Tennent Road. He stated the rear wooded lot is underdeveloped. Tennent Estates is northeast of the property. There was a slight deviation on the survey marked at the last meeting. He stated the August, 2004 resolution for Tennent Estates stated nothing about buffers at that time. He also stated that the location is specifically suited for residential use with no negative impact to the surrounding neighborhood. This was a thirty-five lot subdivision with no buffer required. Mr. Steib asked to review the resolution (A-24).

A-22 and A-23 show the grading and utility plan. The grade elevation shows a differential between Tennent and Schechter, about a ten to eleven foot difference. An eight foot fence would be would have little impact on the view; the view would clearly be over the top of the fence on the two homes in A-22.

A-25 depicts photos taken while touring the property and shows seven to eight foot retaining wall with four foot Schechter fence about 3/5 of the wall. A-26 shows the four foot fence between the central portion of the property. There are two outlets towards Tennent. The outlet has created a drainage issue; the attempt to solve this was to install a pipe. There is swampy land that is not good for moving heavy equipment.

Mr. Janiw believes the salvage industry was legitimate in the 1980's with licenses. They believe it to be a pre-existing conforming use. Mr. Janiw said the eight acre portion was cleared and intended for junkyard use. Trees around the perimeter were removed except where it drains. They clearly intended to stabilize for ongoing utilization and would like to cure the drainage issue. The Schechter's always conveyed the intent of ongoing business; all acts pointing to maintain integrity of use.

Mr. Janiw stated that licenses are annually filed. Mr. Giunco asked Mr. Janiw about an act of abandonment committed. The nonconforming uses are existing at time of the ordinance. The Schechter's continue to operate. Mr. Janiw said there is no act of abandonment; the licenses continue to be filed. He stated that based on his physical inspection, the "L" shaped area outline has been intended as the auto salvage junkyard area.

Mr. Giunco asked Mr. Janiw if there was any practical purpose for maintaining a fence thirty feet off the property line. Mr. Janiw said there was nothing much that could be done on the Schechter's side of the property.

Mr. Fishman asked if the Board had questions. Mr. Steib asked to see a copy of the ordinance, since their take on it is that it only applies to residential zones. Ms. Spota presented an ordinance copy (82-14) saying a fence above shall be constructed and maintained at all times, and says nothing about what it's next to.

Ms. Bajar questioned if the area was secured by the fence. Mr. Janiw answered that it is possible to get in if deliberately try to break in, even though the fence does enclose the property.

Mr. Steib stated that the ordinance talks about providing a screen with a plastic coating. The ordinance does not apply to residential use but, to residential zone. These properties are not in a residential zone.

Mr. Giunco stated the fence permit application was denied.

Mr. Janiw presented the following additional evidence:

A – 27 Resolution for Preliminary Major Subdivision Approval Variance Application for ZB02-6054, dated November 12, 2003.

A – 28 Final Major Subdivision Approval, Variance Application for ZB02-6054, dated August 11, 2004.

Ms. Bajar asked if the dwelling requires specific acreage for use, as do animals. Mr. Janiw replied that minimal acreage is not required in a commercial area. The horses do not require specific acreage, and may also use the area of the junkyard.

Mr. Paul Schaflin of 21 Stonehenge Way, Morganville, sworn in. He questioned the “extent” of operation. Mr. Guinco stated that cross-examination should be based only on tonight’s testimony.

Mr. Schaflin stated regarding the fence ordinance, if next to a residential zone, does the fence have to have interweaving? This was about twenty-seven years of not complying with the ordinance (I believe this was around 1982); they should have applied within 80 days.

Mr. Fishman responded that this is up to the Board to determine.

Mr. Schaflin asked if horses are appropriate. If you have a part of the yard set aside for the house, what part is set aside for the horses?

Mr. Schaflin also asked if Mr. Giunco reviewed the documentation regarding removal of vehicles, did you study the records. Mr. Guinco said the vehicles and their numbers are all recorded. Mr. Schaflin asked, “Where are the records?” Did this planner ever look to see if there were enough vehicles to fill the yard.

Mr. Schaflin still contends the property was not bought into compliance.

Mr. Janiw said that the Schechter’s have maintained all licenses not to be abandonment. Mr. Fishman said the filing of these forms is relevant and maybe Mr. Guinco will review these forms.

Mr. Schaflin believes the facility was never bought into compliance.

Ms. Tracey Pereira, 31 Ellis Court, Marlboro, is sworn in. She states that there were twenty to thirty foot trees knocked down. The trees were taken down prior to the October 20, 2008 pictures. How could you then put cars there?

Mr. Steib asked Mr. Janiw if he was aware that this open treed space was cleared? Mr. Janiw said it was his understanding the central area was cleared.

Mr. Janiw presented the following additional evidence:

0 – 01 Photograph submitted which demonstrates 8 acres with perimeter of the fence

Mr. Gersharanjit Sant sworn in; he resides at 32 Ellis Court. He asked how many times Mr. Janiw was there. Mr. Janiw was there twice prior to the October 20, 2008 date. He also examined records at the Township. He said he examined licenses, that they are properly maintained and properly inspected.

Mr. Thomas Alber, 248 Spring Valley Road, Morganville, NJ sworn in. He stated that the Schechters had the junkyard and he has purchased parts for thirty plus years; the parts were for scrap.

There were no questions from the Board.

Mr. Clyde Cameron of 266 West Prospect, Keyport, NJ sworn in. He stated he did scrap business with the Schechter's; the cars on site were older cars.

Mr. Guinco stated all available witnesses are here today. He has one witness that is out of state and one not here due to surgery.

Mr. Fishman asked if he was closing and Mr. Guinco replied "yes".

No further public questions or statements.

He said his client contends they have a legal entitlement to operate. Since inception, predating the 1980 ordinance, they fully intend and intended to operate for that business. The site was defined by the perimeter road with a haul road. They have a pipe built under the haul road for purpose of continuous use. They intend to operate, subject to inspection by the township. There has been no evidence that the use was abandoned. They have continued to obtain permits. They have a right to use property as was intended. The vehicles are stored, parts taken and vehicles taken across the street to be crushed. There were permits issued by the DEP for crushing purposes. In each instance, there is no intention to abandon.

The permit for the fence was not issued. Today, is it now reasonable that when Tennent Estates were built, that it is now the client's responsibility to provide for buffering on their site when it was a use variance?

Relief of construction of eight foot fence is sought. When we did seek a permit, it was noted that it was not known where to put it.

Mr. Fishman confirms that eight foot fence would not make a difference. He does not think this is a setback as it related to the use of the site.

Mr. Steib speaks regarding the violation:

- I. Violation says that there is no eight foot fence nor a thirty foot setback.
 - a. Regarding the violation, no eight foot wall or fence on record by ordinance. Thirty foot not required before, does ordinance apply?
 - b. If not, do you want relief from putting up fence?
- II. Is it expansion or non conforming use. What is extent of non conforming use?

Mr. Fishman asked Mr. Giunco what does your client want to do?

Mr. Giunco said the haul road runs along the boundary of Tennent Road with the pipe put under the haul road from, front of site to back. His client contends that the entire area was junkyard, most likely the haul road will be within the thirty feet.

Mr. Weilheimer said that Adam Schechter had fencing to put up. Mr. Giunco said they were going to put the fence at the thirty foot line. Mr. Schechter said the haul road was within the thirty feet, from the property line and between thirty feet is the haul road. They need that thirty feet.

Mr. Giunco said the retaining wall is a couple of feet (2 to 3 feet) from fence.

Ms. Spota said the issue is Appeal of Notice of Violation, not a permit or denial of permit.
Mr. Fishman commented that you do not have eight foot fence and not thirty foot setback.
Mr. Weilheimer asked about aerials, there is only the 0-1 evidence.

Mr. Giunco said there is a six foot chain link fence there, also a concrete wall. Who put up the wall? Mr. Steib reminded Mr. Schechter was under oath.

Mr. Adam Schechter said Morris Schechter put up the wall; it was the only open area and he put it up for privacy purposes.

No questions of Adam Schechter from the public.

Mr. Fishman said if there has been no expansion of this use, the ordinance does not apply. Do not need use variance. If they cut down trees and expanded use, then they would come back to the Board. They need use variance.

Workshop:

Offered By: Michael Fishman Second: Lewis Wildman

There was discussion regarding whether there was expansion or not. Is the expansion permanent or not, the trees are gone. Some Board Members believe it is abandonment.

Mr. Steib said the there was testimony that the property was used for more aged vehicles, testimony says they went through that tree line to get to the back. If so, this is part of the preexisting non conforming use. The Schechter's want to use as part of their operations.

Mr. Fishman believes they intended to expand. That they are not doing it now, it is no longer expansion. You cannot enforce ordinance. How do we enforce the fact that they cannot expand. He believes the business is operating now. He believes the applicant should become good neighbors, maybe meet half way (fifteen feet and buffer). Believes the ordinance cannot be enforced.

Mr. Mahon agreed with Mr. Wildman that there is no expansion.

Ms. Spota stated this is unfortunate for every body. You need an eight foot fence with a thirty foot setback. She believes the denial is correct.

Mr. Fishman believes we need clearer direction.

Ms. Bajar said it is expansion. Sarah Paris correct in the violation. They did remediate the problem.

Ms. Bajar asked what were they using all these years, if they expanded on this in any direction, isn't this expansion. What space was being utilized in 1982? We must be accurate with our information.

Mr. Fishman stated, "so at the present time, they are not expanded. If they do again, they will be in violation".

Mr. Steib said if they do again they should go to court. If Sarah Paris is correct and they go beyond the line, then they are in violation.

Mr. Weilheimer said we do not know what was there fifty years ago.

Mr. Steib said you either have to tell them they can use or not.

Out of Workshop:

Offered By: Michael Fishman Second: Jennifer Bajar

Motion to Approve.

Any expansion into a cleared area is an expansion of a non conforming use and is a violation. A yes is an affirmative.

Motion to Approve:

Offered By:	Michael Fishman	Second:	Adrienne Spota
Ayes:	3	Nays:	3
Absent:	3	Abstain:	0

Regarding the three Affirmative votes and the three no's, Mr. Steib said we will have to continue deliberation and come to a decision. The absent Board Members will have to listen to the tapes. We will need another vote that night with the regular members.

Mr. Fishman said if we were reopening the public hearing, can we bring in the aerial shots. Mr. Weilheimer would like any other photos to be bought in; any evidence that shows they used the whole site.

Mr. Giunco objected. Mr. Fishman stated we went into work shop, voted

Matter being carried to December 16, 2008; no further notice.

MEMORIALIZATION

ZB 08– 6344 – Leonardi, Michael & Carol

Memorialization of a Resolution granting approval to construct a front portico with insufficient front yard setback exceeding permitted lot coverage for principal structure, at 14 Halifax Drive, Morganville, New Jersey, Block 266, Lot 17. Said property is located in the R-20 residential zone.

ZB 08-6341 – Marnie Potterton

Memorialization of a Resolution granting approval to construct an addition, with insufficient front and side yard setbacks for principal structure and insufficient side and rear yard setbacks for accessory structure exceeding lot coverage for principal structure, total building and total lot coverage at 21 John Street, Morganville, New Jersey, Block 115, Lot 12. Said property is located in the R-60 zone.

Meeting Adjourned.

Respectfully,

Yvonne M. Cautillo

