

UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
SEPTEMBER 13, 2007

The regular meeting of the Upper Township Zoning Board was held at Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey at 7:30 p.m.

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

SALUTE TO THE FLAG

ROLL CALL

Present: Elizabeth Bergus, Mary Jean Burgin, Ted Klepac, Jeffrey Pierson, Andrew Shawl, Christopher Phifer, Lynn Petrozza, and Paul Casaccio.
Absent: Matt Unsworth

Also present were Dean Marcolongo, Board Solicitor; Paul Dietrich, Board Engineer; and Janet McCrosson, Acting Board Secretary.

SWEAR IN BOARD PROFESSIONALS

APPROVAL OF THE AUGUST 9, 2007 MEETING MINUTES

A motion to approve the minutes was made by Mrs. Bergus, seconded by Mr. Pierson. Mr. Shawl & Mr. Casaccio abstained, all others present approved.

TABLED APPLICATIONS

1. THOMAS TOWER / ACTION SUPPLY, INC. – BLOCK 549, LOT 110 – BA17-07

This application was tabled until October 11, 2007, at their request. The applicant has agreed to waive the time in which the board has to act on the application. No further notice will be given.

APPLICATIONS

Chairman Casaccio called on the applicants listed as #3 and #4 on the agenda and gave them the opportunity to table their applications until the next meeting due to the length of the first application. They both chose to stay until later on the chance they might be heard.

1. RALPH HOLT – BLOCK 652.01, LOT 19 – BA01-07

Mr. Casaccio stated that this was a continuation of the August hearing. Jules Konschak represented the applicant. Vince Orlando of Engineering Design Associates had appeared at the previous meeting and was unable to attend this hearing. Joseph Maffei was present to represent the applicant and was sworn in.

To refresh the Board's memory, Mr. Konschak reiterated that their affirmative presentation had been completed, consisting of testimony from Mr. Orlando and the introduction of several exhibits. Mr. Holt also testified under direct examination. Mr. Dietrich made comments. There were neighbor objectors represented by Mr. Waldman. Mr. Waldman cross-examined Mr. Orlando and Mr. Holt. The objectors also indicated they had professionals they wished to testify, but the meeting was held until tonight. Mr. Dietrich and Mr. Marcolongo concurred that this information was accurate.

Marc Stein was present to represent Keith and Sally Jack, and Wayne Jack, neighbors of the site in question. He asked if the Chair would prefer to hear the public or have them testify first. Mr. Casaccio wanted Mr. Stein to proceed.

Lynn Petrozza was not present for the previous hearings and stepped down from the Board for this application.

Mr. Stein introduced one witness to be sworn in. Barbara Allen Woolley-Dillon of 5856 Route 9, Tuckerton, NJ, a Professional Planner. Having appeared before the Zoning Board on prior occasions, her credentials were not in question.

Mr. Stein asked Mrs. Woolley-Dillon if she had reviewed the application and previous testimony, and to state her understanding of the proposed use. She told of the documents she had reviewed, and went to great lengths to describe her understanding of the proposed use and the variances she believed were needed, as well as those already granted. She had prepared a handout showing a comparison of prior approvals and what is there now. This handout was marked as Exhibit P-2, as aerial photographs had been entered as Exhibit P-1 previously. Mrs. Woolley-Dillon detailed each prior approval and how the applicant had exceeded what was approved. These included the buffers, placement of the dumpster, number of uses allowed, number of tables and chairs, regrading the drainage basin and parking.

Mr. Stein then directed his questions to Mrs. Woolley-Dillon as to the D-1 variance to expand the current use to add the upstairs use as a catering establishment. Mrs. Woolley-Dillon again testified at length, stating her opinions about the issues impacting the site. She feels that the applicant failed to satisfy the criteria stated in NJSA 40:55D-2 for being granted a variance of this type.

Mrs. Woolley-Dillon began giving testimony about the number of vehicle trips if the catering operation were allowed, and had a handout for the Board, but Mr. Konschak objected, stating that she was not an engineer, and the stated data was not relevant to the same type of business. Mr. Stein agreed to rely on testimony as opposed to entering the document. Mr. Marcolongo advised the Board members to disregard the document.

Mr. Phifer questioned Mrs. Woolley-Dillon's statistics and was advised by Mr. Marcolongo that these were her opinions, and he had the choice to utilize or disregard her information.

Mr. Dietrich pointed out that since the applicant had already increased the number of tables inside and added outside tables as well, prior to gaining the necessary approvals, that he was asking for “forgiveness” as opposed to “permission”, and the added impact was already in place. Mr. Pierson asked if the figure for the number of vehicles assumed that all operations were functioning at the same time. No, they were figured within a 24-hour period.

It was pointed out that the parking for the facility was already non-conforming and the applicant had been granted relief. The applicant did not comply with that.

Mrs. Woolley-Dillon testified that she had examined the Master Plan’s from 1984 through the present, including re-examinations, and that none recommended that this particular parcel be re-zoned for commercial purposes, or that commercial uses be permitted in residential zones. All surrounding commercial sites are already in commercial zones. This one is sited in a residential district. She feels the expansion of use would create a further encroachment into the intended residential area.

A 2002 aerial photo from the Cape May County GIS web site was introduced and entered into evidence as Exhibit P-3, showing the trees along the property in question, prior to any development taking place on the site.

Mr. Stein asked Mrs. Woolley-Dillon to list some inherently beneficial uses of this property. She stated some would be as a hospital, childcare center or daycare facility. In her opinion this application does not meet any of the criteria of meeting the special conditions to allow this type of variance.

Mr. Stein stated that the neighbors were not present to oppose “any” use of this property, just the addition of outside seating, the second use proposed for upstairs, the location of the dumpster, the parking increase and the reduction of the buffer. They are willing to accept a reasonable increase in the number of seats inside.

Mr. Korschak cross-examined Mrs. Woolley-Dillon. He asked her to show the Board members, on the diagram set up, where the dumpster was originally allowed to be placed. He noted that this was near the home of Mr. Schenk. He then asked her to point out where it is currently located. She indicated the location and stated that it was now directly in front of her client’s house. Mr. Korschak pointed out that her earlier testimony was that it was now closer to residential properties than was originally allowed, but is in fact only closer to her client’s house. Mr. Dietrich interjected that the originally approved location was not at either of the spots indicated tonight. Everyone agreed that it was not as intended and not where it should be. This led to a discussion of the buffer standards in Upper Township. Mr. Korschak’s contention was that the proposed buffer meets the ordinance standards for a commercial next to a residential establishment. Mrs. Woolley-Dillon disagreed. She quoted from the ordinance and noted that a fence was within 10’ of the property line, therefore in the buffer area. Mr. Dietrich explained that the fence around the basin was a safety feature, not part of the buffer. The 6’ high stockade fence along the property line, requested by the neighbors, was to help serve as a buffer. The proposed buffer may comply with the ordinance, but not as well as before the natural vegetation was removed by the applicant in violation of the Township Ordinance and against the direction of the Engineer and Zoning Officer.

Chairman Casaccio asked if what the applicant is proposing would meet the requirements of the prior resolution. Mr. Dietrich stated that yes, if they construct and plant what they propose, the buffer would meet the prior resolution's requirements.

Mrs. Woolley-Dillon took exception to the interpretation of the buffer regulations as stated for the CM Commercial zone. Mr. Marcolongo interjected that the discussion was of a commercial zone requirement, and the property was in a residential zone, which has no buffer standards. The engineer thinks that they generally complied with the intent of the regulations. He stated that it was difficult to apply the standards of the commercial zone to the residential area and that what is there is generally in compliance. Mr. Stein asked Mr. Dietrich if they were to move the basin back away from the property line would there be more room for vegetative buffering. Mr. Dietrich felt the fence protecting the basin was integrated into the landscaping and was not detrimental to the buffer. No one would argue that the buffer is less than it should be, but it is compliant. Mr. Marcolongo stated that the Board had to determine if the proposed landscape buffer was adequate to protect the neighbors.

Mr. Korschak questioned Mrs. Woolley-Dillon as to if and when she had visited the site. She stated the dates and times, and how many vehicles were present each time. She testified that of four times, there were empty spaces in the parking lot, but did not enter or observe how many people were inside. Mr. Korschak reminded her of her earlier testimony about her feeling that the vehicle trips were going to be increased by increasing the number of inside tables, which was already done, and asked if she had observed any parking problems at any of the times she visited the site. She did not observe any problems. He asked if she could compare the trip generation numbers of the Post Office to that of the applicant's store. She felt there was more. Was she aware of the proposed shopping center within approximately 50 yards with over 500 parking places. He named several other establishments nearby and questioned her about trip generation. He then stated that he had no further questions.

At 8:50 pm, Mr. Casaccio asked Thomas and Carolyn Uliase of 1301 Commonwealth Avenue in Strathmere if they would be willing to table their application until the October 11th meeting or continue waiting to see if they would be heard at this meeting. After some discussion, they agreed to table. They were sworn in, and agreed to waive the tolling time, with no requirement to re-notice. They were told they would be first on the agenda for the next meeting.

Mr. Casaccio then asked Ralph Rigg of 25 Foxborough Road in Seaville if he too would want to table his application or wait. Mr. Rigg also was sworn in and agreed to table his application until October 11th, waive the tolling of the time and would not be required to re-notice.

Mr. Casaccio then called for a 10-minute break.

At 9:10 pm, the meeting was reconvened.

Mr. Stein called Wayne Jack of 115 Tuckahoe Road to testify and Mr. Jack was sworn in. He stated he lived directly behind Ralph's Bagels and was not present for the original application because he had no objection at that time. Now the dumpster is directly in front of his living room window and smells. There was a fully wooded buffer which is now 6'-7' Christmas trees planted after Ralph removed the original wooded

buffer. There are various small trees and the basin has been moved towards the end of his house. Mr. Stein asked that if the property were returned to its originally approved condition, would he still object? Mr. Jack said he would not, except for the fact that the trees could not be replaced as before.

The Board was asked if they had any questions for Mr. Jack. No one did. No one had any questions for Mrs. Woolley-Dillon either.

The chairman opened the floor to anyone living within 200' of the property. Firman Schenck of 147 Tuckahoe Road was sworn in. He testified that all of the trees along his property were cut down and now he has water problems on his land from Mr. Holt filling in the retention basin.

Mrs. Burgin asked how far the bagel shop was from Mr. Schenck's property line. Approximately 25'.

Mr. Shawl asked if at the time of the original Resolution BA23-01 the trees were there. Absolutely.

Mr. Casaccio asked if parking was an issue for him. Diesel trucks of customers are left running and the fumes go into his house.

Mr. Pierson asked if Mr. Schenck objected to the expansion they were asking for. He objects to the parking problems now and is concerned about more parking if they expand.

Mr. Klepac asked if he ever discussed the drainage problems directly with Mr. Holt. He discussed the problem with Mr. Dietrich several times, and Mr. Holt once.

Hearing no more from anyone within 200' of the applicant's property, the floor was then opened to anyone outside of 200'.

Wayne Marks of 200 Dove Lane, Marmora was sworn in. He felt the approval of this would help the township with lowering taxes. Mr. Stein interjected that this would not be a legal basis to grant or deny the application and wanted Mr. Marks to understand that. No Board members had questions for Mr. Marks.

Albert Marcelli of 11 Hummingbird in Petersburg was sworn in. Only knows the Holts from the business, not socially. Parking is a problem from 7:45 – 9:00 am, but no other times. He feels they are a nice family that works hard and have invested a lot of money. Mr. Stein asked if Mr. Marcelli would want a business like this next door to him. He stated that if it were like Ralph's Bagels, he would not object.

Russell Graves of 5 Lauradell in Seaville was sworn in. He is a local businessman and looks forward to being able to hold classes in the second floor of the building if it is approved. His current business is located at 299 S. Shore Road in Marmora. Mr. Phifer asked how many people would be in these classes. It would average 3-5, but would not exceed 15. His office is too small. Mrs. Burgin asked when he would want these classes held. Variable times, between 3 –7 pm. Mr. Stein asked if the Recreation Center was available for this type of use. Mrs. Burgin asked if he ever used the Library. He was unaware of either of these possibilities but thanked them for the information.

Adele Coggins of 12 Coventry in Palermo was sworn in. She spoke of the Holt family and felt the Township should support him as he supports various groups in the Township.

MaryLou Leigh of 15 Hilltop in Marmora was sworn in. She is often at the Church of the Resurrection and has never noticed a parking problem throughout the day. Mrs. Bergus asked if she ever noticed cars parked on Tuckahoe Road. Ms. Leigh felt Ralph had no control over where the people parked and she felt it was easier for trucks to park on the road instead of pulling in to the parking lot.

Scott Georgetti of 828 Stagecoach Road was sworn in. He is a frequent customer and has never had a problem with parking. He has pulled on to the shoulder to park at times but will not any more. He doesn't feel any changes Mr. Holt made were done to spite anyone, just to improve his business.

James Ginn of 9 Magnolia Court in Seaville was sworn in. He is often at the car wash, the Post Office and Ralph's. He has never had a problem parking. He supports the expansion request.

Leonard Migliaccio of 18 North Drive in Beesley's Point was sworn in. He is at Ralph's Bagels 2-3 times a day. Never had a parking problem, never noticed a bad odor from the trash, even in the summer.

John Fennekohl of 6 Braden Drive was sworn in. He has known the Holt's for 16 years. They have supported many organizations within the Township and some of these groups could benefit from using this new room. He would like the Township to compromise to find a solution.

Tom Drinkard of 4 N. Alexa Road in Seaville was sworn in. He goes to Ralph's at least three times a week and after Mass on Sundays. He has never had a problem parking. It would be a perfect location for the Knights of Columbus to meet or for small family gatherings. Mrs. Burgin stated that there would not be waitress service there if approved.

Mark Grimes of 1128 S. Shore Road in Palermo was sworn in. He just wanted to support Mr. Holt and his family.

Gary Austin of 48 Evergreen Drive in Seaville was sworn in. He feels this is an injustice to the residents. He knows of no small areas for private parties. He is a retired State Trooper and is unaware of any issues with this property. Mrs. Burgin asked when he retired and when he was stationed at the Woodbine Barracks. He retired in 2004 and was stationed at Woodbine in 2001 and 2002. Mr. Dietrich stated that many complaints had been made about parking on Tuckahoe Road. That was the reason the County placed parking regulation signs along that portion of the road.

Hearing no more, the public portion of the meeting was closed.

Prior to the findings of fact by the Board members, the Chairman stated that he wanted all information clearly stated so that the objectors and the board members would know exactly what was being voted upon, relative to the number of tables, the hours of operation, number of employees, parking spaces, hours of operation both downstairs and upstairs, and to establish timeframes for completing necessary work. Mr. Konschak felt that prior minutes would reflect most of that information.

Mr. Korschak addressed the trees missing from behind the building. Mr. Orlando previously stated the applicant would be willing to add landscaping behind the building and adjacent to lot 20. Mr. Korschak feels the applicant would be willing to work this out to the satisfaction of the Township Engineer. The second item he addressed was to increase the size and number of red maple trees to help shield the adjoining properties. This is additional to what is shown on the original plan. The number and location would be to the satisfaction of the Township Engineer. The next item was the location of the dumpster. Mr. Holt is trying to find a convenient location that will also be acceptable to all. The next item is the time of operation. The hours for the first floor are listed as 6:30 am to 4:30 pm. Mr. Holt testified earlier that the upstairs was not anticipated to be used after 9 pm. He said his peak hours were 8 – 9:30 am and 11:30 am-1 pm. He agreed not to use the upstairs during his peak hours. The question arises if he would use it between peak hours or only after 1 pm. Mr. Phifer asked if it was realistic to think he might not hold a luncheon during peak hours. The upstairs hours must be defined. The seating upstairs needed to be determined. Mr. Marcolongo felt it could be simplified by asking the applicant what he is proposing as far as the hours go, and vote on exactly that. When asked how many actual seats were on the first floor, the applicant answered 24 inside and 12 outside. The second floor is 900 square feet and the Construction Official would determine the occupancy. Mr. Pierson noted that with the addition of 900 square feet, there would be a need for 18 more parking spaces, which is the number being proposed. Mrs. Bergus noted that there would be no BYOB, no storage trailers or sheds, no parking in the loading zone. Mrs. Burgin is concerned about the issue of having only one door upstairs with a kitchen below and would it meet fire regulations. The Engineer stated that's why the occupancy is determined by the Construction Official. Mr. Holt would have to accept the liability of exceeding the maximum occupancy if there were a problem. Parking is based on square footage, not the number of occupants.

Mr. Holt had a condition of limiting the tables on the first floor to three, and is asking for that condition to be relaxed to allow more including three outside tables. The second floor is to be used for buffet and people to sit and is satisfied to allow the Construction Official to determine the occupancy. Mr. Dietrich will find out the number involved.

As to the hours of the second floor, when asked what he is proposing, Mr. Korschak quoted the peak hours as previously testified to by Mr. Holt, and his assertion that he would not use the upstairs during those hours. Mr. Korschak proposed leaving it up to the Board members to decide. Mr. Marcolongo stated that he did not want a situation where his client later appealed a ruling and said he was forced into certain conditions or hours. He wants Mr. Holt to state a specific proposal for the Board to vote upon. Mr. Dietrich urged the Board to make the operations a block of time, not to split the hours. Mr. Holt indicated he could live with the hours of 1 pm to 9 pm. Mrs. Bergus asked how many employees would there be. The maximum number of employees, including Mr. & Mrs. Holt would be 4. The parking ordinance indicates that the spaces for employees are included in the calculation of spaces. Mr. Holt is willing to enhance the buffer with trees and vegetation to a reasonable extent.

During the discussion of the additional trees, Mr. Stein asked Mr. Dietrich if, after the last hearing of this application, was there a function held in the upstairs area of the bagel shop. Mr. Dietrich answered that yes, there was.

Discussion then continued concerning trees. Mr. Klepac asked if the trees would be replaced if necessary. Mr. Dietrich stated the agreement was to have the trees properly irrigated and replaced if they died within the first five years. Mr. Stein asked if that would be bonded. Additional trees in the drainage area would be to help shield the Jack's residence from glare from the Post Office lighting. Mr. Dietrich suggested making a note of the number of employees, but not make it a condition of their approval. Perhaps make a condition that there be no table or waiter service. Mr. Stein asked Mr. Dietrich how ADA impacts the second floor. Mr. Dietrich stated that he had discussed this with the Construction Official and his interpretation of the NJ Rehabilitation Code was that because of the size of the facility handicapped access would not be required on the second floor. Any structure older than one year with a Certificate of Occupancy does not require access. It was noted that this was not for the Zoning Board to decide.

The Chair asked if there were any more questions from the Board about what the applicant is proposing. Mr. Shawl noted that the lighting plan showed one fixture that shined on Lot 18 and would like it to be modified or shielded. Mrs. Burgin asked about the parking spaces. The original approval required 21 parking spaces where there are now only 15. The proposal is for 18 additional, for a total of 33, which includes two handicapped parking spaces. The last item to be determined is the location of the dumpster. Mr. Kenschak had marked a location on the diagram and all parties agreed. Mr. Marcolongo marked it as Exhibit A-5.

Mr. Marcolongo stated that it has been determined exactly what the applicant is asking for. There were 11 conditions as well as the amended site plan, and the use variance. Mr. Stein suggested that there was also a waiver on the size of the proposed parking spaces (10' x 20' required, 9' x 18' requested). Mr. Marcolongo suggested that any conditions placed on this property be placed in a deed restriction for future owners. Mr. Kenschak asked to relax the conditions of the previous approval to allow the increased number of tables on the first floor.

Mr. Stein stated in his summary that this application is not about neighbors who like the owner of a certain property. It's about the Board listening to testimony and making a decision of whether there is sufficient evidence to grant a D-1 variance, the expansion of the use by allowing catering on the second floor. Outdoor tables used for takeout increase traffic and trash in a residential neighborhood. All testimony was to Mr. Holt's character, not as to a reason for granting the variance. The owner contradicted the original resolution by holding a function after the last meeting on this matter despite being told he was not allowed, removing trees, removing the basin. The application was in a residential zone and asked for relief to open a bagel shop. The neighbors had no objection. He then disregarded the approvals granted and now wants to expand the use. The neighbors would agree to increase the inside seating, but do not want seating outside. The second floor use expands the commercial use and the neighbors do object. Mr. Stein asked the Board to deny the application and make the owner go back to the original site plan, allowing the additional tables inside, and set reasonable additional buffers.

Mr. Korschak summarized by stating the application is for a limited area upstairs for use during limited times for limited purposes. This has been before the Board twice. The first was to allow a commercial use in a residential zone. The surrounding area is mostly commercial and allowed the variance. The Board ruled it was not detrimental and did not impair the intent of the zoning. The second time was in 2001 to ask for a specific use as a bagel shop, and again the Board allowed the use. Now, he is not asking to go outside the building, but to use the second floor. If the Board goes back to the original site plan, there would not be additional parking provided, or additional vegetation added. They feel they are exceeding the buffer standards. He is gratified they could meet some consensus with the neighbors concerning the dumpster and the outside tables. The violations to the site plan will be corrected with the approval of the variance with conditions. He feels it makes sense to approve the application.

The Chair went to the Board members for findings of fact.

Mr. Pierson – The applicant was Ralph Holt of 50 Jill Avenue in Marmora for premises at 121 Tuckahoe Road in Marmora, Block 652.01, Lot 19. He requested variances for the expansion of a non-conforming use, a variance for the number of principal uses on a lot, a variance for the number of parking spaces allowed, to add 18 spaces, a waiver for the size of the parking spaces, from 10' x 20' to 9' x 18', and to amend the final site plan. Agreed upon was the location of the dumpster as marked with a X on the diagram provided, with possible accommodations provided for moving it in and out of place, the additional 18 parking spaces for a total of 33, including 2 handicapped spaces, there will be no back lighting onto adjacent properties, no table or waiter service on either floor, there will be irrigation and a 5 year replacement guarantee for the additional trees and vegetation, there will be 3 additional tables inside on the first floor, added trees behind and adjacent to the property to shield Lot 20, there will be increased vegetation around the trash bin, additional trees of a specific height. The first floor business will operate from 6:30 am until 4:30 pm. The second floor will operate from 1 pm until 9 pm. The Construction Official will address the occupancy of the second floor. There will be no BYOB, no trailers or sheds, no parking in the loading zones or on the side of Tuckahoe Road. Approximately 12 people testified for the project and 2 neighbors testified against it. Both neighbors have now agreed to the conditions. Mr. Jack would agree to a reasonable buffer with more height than is now there.

Mr. Shawl – Heard testimony from Mr. Orlando of special reasons this project should go forward. It provides space that meets the needs of the community, a commercial use in the right area for that use, which is not suited for residential development. Heard testimony from Barbara Allen Woolley-Dillon, a professional planner, that there are no special reasons to vote for this variance, and not suited to this use. Mr. Holt testified to various difficulties he has had with the neighbors, Mr. Dietrich spoke regarding drainage issues and vegetative barriers. Neighbors testified about smells coming from the dumpster and smoke coming from idling diesel vehicles. Many customers testified that parking was not a problem and that Mr. Holt provided services to various community groups.

Mrs. Burgin – The entire block is surrounded by roads that are in a residential zone. Commercial establishments are across the street in a commercial zone. Mr. Dietrich testified that the existing 15 parking spaces are not satisfactory. During the week vehicles park on Tuckahoe Road. The applicant proposes 18 additional spaces. A deed restriction will be drafted for future buyers. Mr. Holt agreed to have the trash located where the X was marked on Exhibit A-5. Mr. Holt held a function that was not approved by the Board. Mr. Orlando said catering upstairs would increase space but not intensity. Public comment from people within 200' opposed eating outside and the additional use of the second floor, as well as parking on Tuckahoe Road. Comment from people outside 200' was from 12 people who spoke of Mr. Holt's character and public service as well as that parking was not a problem. The Township revisited the zoning in 1984, 1986, 1994, 2001 and 2002 and did not change the zone from residential to commercial.

Mr. Phifer - The neighbors did not agree to all of the conditions put forth tonight by the applicant, and the location is a block away from a soon to be 500 parking space shopping center.

Mrs. Bergus - Nothing to add.

Mr. Klepac - Various papers were distributed to the Board members. Mr. Stein represented neighbors of Mr. Holt and Mr. Korschak represented Mr. Holt. The Board addressed all of the issues for the applicant to maintain the property.

Mr. Pierson – Mr. Dietrich stated that there were no issues with handicapped accessibility. He is concerned with Mr. Holt's actions after knowing he was not allowed to do them, such as adding inside and outside tables and removing trees. He's concerned he may ignore stipulations that may be set if this application is approved.

Mr. Casaccio - Mr. Orlando testified when he was present that this area is not suited for residential and there was no public detriment. However, the planner for the objectors testified it was not suited for this kind of commercial use and it did affect the light and air in the area. The maintenance bond for improvements is up to the Board, so anyone making a motion must include that.

Mrs. Burgin - The opposition stated that the site should be developed as originally approved.

Mr. Marcolongo requests the applicant provide Mr. Dietrich with an estimate for the replacement of the trees and Mr. Dietrich establish an appropriate maintenance bond. Also that they be required to amend the landscaping plan and plant the trees required within 90 days and complete the drainage basin within 90 days.

Mr. Casaccio indicated again that his should be included in any motion made.

Mr. Pierson made the motion to grant the application for amended site plan approval together with use variance D-1 and D-2, the variance for the parking, the waiver for the size of parking spaces, together with all the conditions set forth (approximately 20 items), along with 90 days to complete the work and the deed restriction.

Mr. Phifer seconded.

Voting in favor – Mr. Klepac, Mr. Pierson, Mr. Phifer, Mr. Casaccio.

Opposed – Mrs. Bergus, Mrs. Burgin, Mr. Shawl.

The application was denied.

RESOLUTIONS

BA06-07 – JCS Real Estate Development Corp.- Block 306, Lot 19.01
Motion to adopt Resolution BA06-07 was made by Mrs. Bergus and seconded by Mrs. Burgin.

In favor: Mrs. Bergus, Mrs. Burgin, Mr. Klepac, Mr. Pierson, Mr. Phifer.

Abstained: Mr. Shawl, Mr. Casaccio.

BA10-07 – Terry & Cindi Henes - Block 838, Lot 9
Motion to adopt Resolution BA10-07 was made by Mrs. Bergus and seconded by Mrs. Burgin.

In favor: Mrs. Burgin, Mr. Klepac, Mr. Pierson, Mr. Phifer.

Abstained: Mrs. Bergus, Mr. Shawl, Mr. Casaccio.

BA13-07 – Catherine Barron-Elsey - Block 453, Lot 70.04
Motion to adopt Resolution BA13-07 was made by Mrs. Bergus and seconded by Mr. Phifer.

In favor: Mrs. Bergus, Mrs. Burgin, Mr. Klepac, Mr. Pierson, Mr. Phifer.

Abstained: Mr. Shawl, Mr. Casaccio.

BA14—07 – Justin & Barbara Georgetti - Block 567, Lot 23.03
Motion to adopt Resolution BA14-07 was made by Mrs. Bergus and seconded by Mrs. Burgin.

In favor: Mrs. Bergus, Mrs. Burgin, Mr. Klepac, Mr. Pierson, Mr. Phifer.

Abstained: Mr. Shawl, Mr. Casaccio.

BA15-07 – James & Nancy Lutz - Block 567, Lot 29
Motion to adopt Resolution BA15-07 was made by Mrs. Bergus and seconded by Mrs. Burgin.

In favor: Mrs. Bergus, Mrs. Burgin, Mr. Klepac, Mr. Pierson, Mr. Phifer.

Abstained: Mr. Shawl, Mr. Casaccio.

BA16-07 – Hall & Debra Zahrend - Block 453, Lot 247.08
Motion to adopt Resolution BA16-07 was made by Mrs. Bergus and seconded by Mr. Klepac.

In favor: Mrs. Bergus, Mrs. Burgin, Mr. Klepac, Mr. Pierson, Mr. Phifer.

Abstained: Mr. Shawl, Mr. Casaccio.

BA18-07 – John McGrath & Patrick Flanagan – Block 567, Lot 50.01
Motion to adopt Resolution BA18-07 was made by Mrs. Bergus and seconded by Mrs. Burgin.

In favor: Mrs. Bergus, Mrs. Burgin, Mr. Klepac, Mr. Pierson, Mr. Phifer.

Abstained: Mr. Shawl, Mr. Casaccio.

BILLS

A motion to approve the bills for payment was made by Mr. Klepac, seconded by Mrs. Burgin, and approved.

CLOSED SESSION

A motion was made by Mrs. Burgin and seconded by Mr. Pierson to go into closed session. Closed session began at 10:45 p.m. and ended at 11:10 p.m.

A motion to come out of closed session was made by Mr. Phifer and seconded by Mrs. Burgin.

A motion was made by Mrs. Burgin and seconded by Mr. Shawl to allow Mr. Casaccio to seek an attorney to represent the Board in the event Mr. Marcolongo should be disqualified.

All members present voted in favor.

ADJOURNMENT

A motion was made by Mr. Pierson and seconded by Mr. Phifer to adjourn the meeting. The meeting was adjourned at 11:15 p.m.

Submitted by,

Janet McCrosson