

**TOWNSHIP OF DENNIS
CONSOLIDATED LAND USE BOARD**

**571 Petersburg Road
Dennisville, NJ 08214
(609) 861-9705**

MARCH 28, 2013

MINUTES

This meeting was published in accordance with the "Open Public Meetings Act". Notice of this meeting was published in an annual meeting notice in the Cape May County Herald and posted in Township Hall.

The meeting was called to order by Chairman Butto. The following members were present: Mr. Butto; Ms. Baldwin; Mr. Stafford; Mr. Burian; Mr. Esposito; Mr. Watson; Mr. Germanio; Mr. Pettit; Mr. Daniels; and Mr. Cherry. Also present were Jon Batastini, Esquire, Board Solicitor ; Carl Gaskill, Board Engineer and Michael Fralinger, Jr.

Mr. Butto advised that there are new members who need to be sworn in. Mr. Batastini called Mr. Cherry, Mr. Esposito, Mr. Burian and Mr. Gaskill forward and administered the oath to each of them. Mr. Butto welcomed the new members to the Board.

APPLICATIONS:

OCEAN FOOD AND FUELS, LLC - Block 64, Lots 20 and 21.01:

Located in a Historic Commercial (HC) Zone on Route 47 in Dennisville. Applicant seeking amended site plan approval, as well as a use variance, to convert an existing 1,378 square foot Unit C from a previously approved office use to a take-out ice cream parlor with parking in front of the building.

James Pickering, Esquire appeared as attorney for the applicant (Mr. Kahn) who is a tenant of the property. He advised that they were here previously, and the Board gave them a chance to revise their application. Since so many members are new, he

said he will start as if this was a new application. Mr. Pickering provided background and described the location of the property and the surrounding area. He indicated that the site contains a gas station and a building with 3 units, of which 2 are occupied by a pizzeria and a store. The third unit is empty and is the subject of this application.

This unit was previously granted approval for an office unit, and the applicant now would like to put an ice cream parlor at this location. Originally the site was 2 lots, and they were asked to consolidate the lots as a condition of approval. That was impossible to do due to the fact that there is an existing mortgage. The applicant is now asking for cross-easements rather than consolidation.

Mr. Batastini administered the oath to Abdul Kahn and Vincent Orlando, P.E. He also recommend that Mr. Orlando be accepted as expert.

Mr. Pickering then directed questions to Mr. Kahn.

In response to Mr. Pickering's questions, Mr. Kahn testified that Unit A is a convenience store; Unit B is a pizzeria and Unit C is vacant. He has operated at the site for 5 years. Unit C was previously used by the DOT as an office and there was a tenant after that. He would now like to convert the unit to a take-out ice cream parlor, with no window service, and no seating. He testified that there is plenty of parking in front and on the side of the building. He indicated that most patrons use that parking, but some park in the front. He has had "No Parking" signs in front of the building and has told people not to park in front. He can't stop them from parking in these areas, but usually about 2 minutes is the amount of time they are parked in front. He testified that there has never been an accident because of parking in front. He also said there is no difficulty for cars to pass those parked in the front. If approved, he hopes to be open this summer, and would like to stay open year round. This unit will not be connected on the inside to the other units. Mr. Kahn said that customers will have to physically go into the building, and that there will be no window service.

Mr. Pickering then directed questions to Mr. Orlando.

In response to Mr. Pickering's questions, Mr. Orlando testified that he had prepared the plan, (Exhibit A-1 - plan). He discussed traffic flow. He testified that he has seen cars parking in front of the building. One of the reasons people park in front is because there is 63 feet of asphalt, which is equal to a drive aisle and parking spaces on either side (he used the Acme parking lot as an example of space comparison of 63

feet). Currently there are 31 parking spaces, where 24 are required. He said that basically people are lazy and it's more convenient to park in the front. He believes it is prudent that parking be put in the front and to make it safe. They have made the spaces 10 feet wide with 2 feet in between, making the spaces essentially 12 feet wide. Typically a drive aisle is 24 feet (2 way traffic) and the applicant is proposing a 30 foot wide drive aisle. They have also angled the parking spaces. They are proposing 3 signs stating "10 minute parking". Everything else will pretty much stay the same. The applicant needs a D variance because of the gas station and they are changing the use of the overall project. He advised that the gas station is not changing whatsoever.

Mr. Pickering added that no additional use of Lot 20 is permitted per previous approvals and he then read from the previous Resolution.

Mr. Orlando continued by saying he believes the site is being enhanced and allows for better traffic flow and circulation on the property; parking on the side works well and gets utilized quite a bit; and the proposed parking spaces in front will have no impact on the gas station traffic flow.

Mr. Pickering indicated that the requested use variance is to allow the ice cream parlor, and that the unit was previously approved for an office use.

Mr. Orlando indicated that any change in this project requires a use variance because of the gas station. He discussed the special reasons - more efficient use of land, site is being made safer, and the project will not impair the public good. He described the surrounding land uses - commercial and residential. He advised that a previous condition of approval was to consolidate the 2 lots, but this was impossible. However, cross-easements will operate the same way as would the consolidation. He referred to the Maser report and indicated that they can comply.

Mr. Watson described the traffic conditions on Route 47 during months of June, July, August and September and indicated he had concerns with the amount of traffic and this site.

Mr. Orlando agreed that traffic on Route 47 is a nightmare due to the amount of summer traffic, which is mostly on Friday night and Saturday through the afternoon. He testified that there is not a left turn lane heading north into this property. There is

a left turn lane heading south to turn onto Tyler Road. He does not know the number accidents in this area. There is usually a heavier volume of traffic going one way or the other in the summer. That number is not changing because of this site. The ice cream facility will generally be used in the night hours and not during peak traffic time. The gas station would get more traffic than the ice cream parlor. Does not know how many signs are on property now, one pole and one building sign are permitted. Mr. Watson said he counted 15 signs today and believes that some signs have been taken down, and that the property looks like a used car lot.

Ms. Baldwin wanted to know that if no parking was available in front of the building, how would some one coming south and turning into the property know that there was parking in the rear. Mr. Orlando said they could include a "parking in rear" sign, and he thinks it would be a good idea to help navigation through parking lot.

Mr. Butto wanted to know if it would it be possible to paint arrows showing a driving pattern to the back of the property. Mr. Orlando said that with a sign and additional arrow, he thinks it would help.

Mr. Pickering referred to permitted uses in an HC Zone, and that an ice cream parlor is not listed, but would seem to be a fit. Mr. Orlando said he agrees with Mr. Pickering that an ice cream parlor fits in with other permitted uses listed.

Mr. Esposito asked how many handicapped parking spaces were proposed. Mr. Orlando indicated that there is currently 1 on the side and they will be adding 1 more. They will be in compliance with the number of required handicap spaces.

Mr. Germanio said the applicant is in a food service business, and he doesn't believe they even have to come before the Board for approval for this. The project is not going to change the amount of traffic; and parking spaces in front will make it safer.

Mr. Butto said he believes it may slow people down; and feels traffic is not a concern.

Mr. Batastini asked if there were any more questions for Mr. Orlando. He asked Mr. Pickering how cross-easements will be worded.

Mr. Pickering asked for a paragraph in the new Resolution that a paragraph in the previous Resolution is removed and that the current Resolution reflect same and refer to

traffic circulation.

Mr. Gaskill presented his engineer's report. He referred to the previous report of Andrew Previti, P.E. and takes no exception to same. He suggests additional pavement markings and signs to direct traffic to rear may be helpful. He also suggested that instead of "10 minute parking" signs be delineated as "parking for pick-up". Mr. Orlando said his only concern with a "pick-up" sign is people are also going into the convenience store. Mr. Burian agrees and likes "10 minute parking" signs better.

Mr. Gaskill added that they could have a condition that all non-compliant signs be removed. Mr. Kahn said that he also operates the gas station, and doesn't have a problem with removing non-compliant signs. Mr. Pickering, speaking to Mr. Kahn, indicated that there are a number of temporary signs and a number are not compliant with site plan. He asked Mr. Kahn if he understands that Mr. Gaskill is proposing that before he can get a CO for the ice cream parlor, he would have to remove non-compliant signs, which Mr. Pickering believes is a reasonable condition. Mr. Kahn indicates his understanding of the proposal.

Mr. Burian indicated that he will not stop at a gas station that doesn't show the gas price (as an example); and certain signs are needed.

Mr. Batastini advised the new members that this Board is not in charge of violations; and there are other personnel for that.

Mr. Pickering indicated that he is willing to talk to the Zoning Official and have that person come out and indicate which signs are not compliant and they will be removed.

Mr. Gaskill said a cross-easement should cover traffic, drainage and lighting on both sites. Also, there are 4 handicap parking spaces on this site. (Only 1 is required)

In response to Mr. Butto, Mr. Orlando advised that the entrances in rear of units are for employees. Mr. Kahn confirmed that the rear doors are not used by customers.

Mr. Butto asked if there were any other questions from the Board. He then opened the meeting to the public, there being no public comment, the public portion of was closed and the matter returned to the Board.

Mr. Batastini asked Mr. Pickering if he had anything further to add. Mr. Pickering responded that he did not.

Mr. Batastini suggested starting with the use variance first. He then presented a form of motion and advised the members to indicate why they voted as they did.

Mr. Watson indicated that he believes that since the project is on a State highways it requires consideration of a Traffic Impact Study or the waiver of same. Mr. Pickering then referred to Section 165-54(h) and read same. He said the applicant is asking to amend an existing site plan; and is not proposing any changes to the building and he doesn't believe a Traffic Impact Study is necessary. However, if Board feels it's necessary, he will ask to amend the application and will request a waiver of the requirement. Mr. Gaskill indicated that the State will look at the application and make its determinations as to what they think is required, and there is no clear answer to solving the problem. He suggests a generic caveat as to requiring any and all approvals necessary from any other agencies, etc.

Mr. Batastini advised that the Board should first make a decision as to whether or not to waive requirement for a Traffic Impact Study. Mr. Germanio said he doesn't think the Board needs to make a decision since nothing is changing. Mr. Butto asked if a motion was necessary. Mr. Batastini advised that is was. He also said that there is a section regarding an Environmental Impact Study, which may also be waived.

A motion to waive both the Traffic Impact Study and Environmental Impact Study was made by Mr. Stafford, seconded by Mr. Germanio and carried by all members voting on same, which each member stating their reason for their vote.

Mr. Batastini then presented a form of motion for the approval of a use variance, with conditions. A motion to approve was made by Mr. Pettit, seconded by Mr. Stafford, and carried by all members voting on same.

Mr. Batastini then presented a form of motion to approve the amended site plan (allowing 4 parking spaces out front). A motion to approved was made by Mr. Germanio, seconded by Mr. Pettit and carried by all members voting on same.

Mr. Batastini then called for a short recess.

WALTERS, WILLIAM AND RONALD - Block 224, Lot 74.03:

Located on Woodbine-Ocean View Road in the B (Business) District. Applicant seeking a use variance to operate an 8,220 square foot gym and fitness facility out of a previously approved 15,000 square foot building.

Mr. Butto called the meeting back to order after the short recess. Ms. Baldwin and Mr. Stafford both indicated that they would be stepping down from hearing this application. Mr. Esposito then advised that he must step down as well. Mr. Burian and Mr. Cherry will be voting on this application.

Mr. Pickering had a discussion with Mr. Batastini as to who can vote on this application - technical issue as to whether Mayor and other representative of governing body does or does not vote on D variances. Mr. Pickering had a question as to whether or not the Class II member votes or not on D variance and he believes they do. Mr. Batastini read from the Land Use Law.

Mr. Pickering appeared as attorney for the applicants, William and Ronald Walters. They have been before the Board on prior occasions for approvals on this site. Over the years they have had 2 use variances - to add a gymnastics facility and to add a sports facility. There are two buildings on the site - one for the sports related activities and the other is now vacant, having previously housed Dock Connections. That building is the subject of this application. The proposed use would compliment the other use and make it a sports/family facility.

Mr. Batastini swore in the witnesses - Allison Meredith; Ronald Walters and Matthew Ecker.

Mr. Pickering directed questions to Mr. Walters.

In response to questions from Mr. Pickering, Mr. Walters testified that they developed the site about 7 or 8 years ago; they received appropriate approvals for development; and that each building is 15,000 square feet. The front building to the east is used by a gymnastics facility (about 8000 square feet of that building). He runs a youth sports facility in the rear portion of that building and spends a lot of time on the site - 7 days a week; during the week from 5:00 to 8:00 p.m.; weekends from 12:00 to

5:00 or 8:00; and it is somewhat of a seasonal operation. The east building has limited usage. They propose leasing a portion of the west building to Miracles Fitness. He thinks it is a perfect fit for all of the businesses on the site; it would fill a significant portion of an empty building; and it will not be a detriment to the public.

Mr. Butto asked for any questions. There were none.

Mr. Pickering then directed questions to Ms. Meredith.

In response to the questions by Mr. Pickering, Ms. Meredith testified that she is proposing to relocate her business to this site. She has looked at other sites and this site works best as to site location, size of building, as well as financially. She is proposing more of an adult operation - ages 16 and over. Business hours would be roughly 4:30 a.m. to 9:00 p.m. She stated her prior experience in the fitness field. She believes this building is perfect for her business - building can be fitted out and is a good location.

Mr. Cherry advised that he knows Mr. and Mrs. Elisano but has no financial connection. (Ms. Meredith is purchasing from them.)

Mr. Pickering then directed questions to Mr. Ecker.

In response to Mr. Pickering's questions, Mr. Ecker began by stating his qualifications. (He was accepted by the Board as an expert.) He indicated that he had prepared the original site plan that was approved. He has been to the site recently and it has been developed as to the site plan. The site is well suited for the intended use. He discussed parking issues. He believes the proposed use fits in well with the other commercial uses in area with respect to traffic. There is no detriment to public good. He discussed the positive criteria - is a re-use of building. He discussed the negative criteria - less intensive use than what is permitted. He believes that there will be no impairment to the Zoning Plan or Zoning Ordinance. No changes are proposed to the site plan; no changes to square footage of sign - no changes to site plan whatsoever. Just seeking use variance.

Mr. Butto asked if there were any questions for Mr. Ecker.

Mr. Germanio asked if just a portion of the building or the full building was

involved. Mr. Pickering indicated that the applicant was here for just a portion of the building Mr. Germanio said that they have come for variances for other uses; and he suggested adding approvals for the rest of building as well. Mr. Batastini advised that the Board cannot do that. A period of general discussion followed.

Mr. Gaskill presented his engineer's report, and indicated that his concerns have been addressed.

Mr. Butto opened the meeting to the public. There being no public comment, this portion of the meeting was closed.

Mr. Pickering indicated that he had nothing further.

Mr. Batastini presented a form of motion for approval of the use variance. A motion to approve was made by Mr. Pettit, seconded by Mr. Germanio, and carried by all voting members.

Mr. Pickering asked for a waiver of site plan for the application and referred to the Land Use Ordinance and read from same.

Mr. Batastini presented a form of motion for approval of such waiver. A motion to approve was made by Mr. Watson, seconded by Mr. Cherry and carried by all voting members.

BONJORNO, JOSEPH, JR. - Block 237, Lot 20:

Located on Route 9 in Ocean View in an R-3 (Moderate Density Residential) Zoning District. Applicant seeking variances for a 15 foot side yard accessory setback and 10 feet from wetlands buffer, whereas 35 feet is required, in order to construct a 768 square foot garage on an existing lot containing a single family dwelling.

Mr. Cherry will be stepping down on this application. Ms. Baldwin and Mr. Stafford will return to their seats on the Board.

Mr. Batastini administered the oath to Joseph Bonjorno and Vincent Orlando, P.E. Mr. Orlando was accepted as an expert.

Mr. Bonjorno advised that he is the owner of the property; and he proposes to build a garage on his property.

Mr. Orlando indicated that this was a simple application. Additional set back to wetlands buffer; has 35 foot side yard setback plus 35 foot buffer. He referred to an aerial photo and described the location. The applicant is proposing to remove the existing shed. (Aerial photo - A-1) He described the adjacent property - that site, along with Mr. Bonjorno's property is not wet. The applicant wants to construct a garage with a 15 foot set back - he explained reasons for same. He further indicated that looking at overall properties in the area, it keeps with the scheme of the neighborhood and presents no impact.

Mr. Batastini asked if there were any questions for Mr. Orlando.

In response to Mr. Burian, Mr. Orlando referred to a "footprint of disturbance" prepared for neighbor, Mr. Staglio. Mr. Batastini marked the "footprint" as A-2. Mr. Orlando referred to A-2 and discussed same. He advised that the wetlands are off-site, and that it would be a financial hardship to require applicant to map wetlands. He is confident that subject property is not in wetlands and is greater than 150 feet from any wetlands, and that the bottom line is that the Construction Official has the final say on this issue.

Mr. Butto was curious as to why the applicant wants to place the garage in location this location. Mr. Bonjorno testified that his neighbors are fine and nice people, but he is looking for some privacy and placing the garage as proposed is more aesthetic to the property.

Mr. Orlando testified that the rear yard set back is required to be 35 feet, and they are asking for 15 feet; in addition the Ordinance requires that in addition to the wetland buffer there needs to be a total of 150 feet. That wetland line is grossly inaccurate in favor of the DEP and is the worst case scenario if the wetlands are not mapped and the applicant is agreeable to accepting that, which means that he is 10 feet off. The cost of mapping is at least \$4,000.00. Where he is putting garage is 185 feet from the wetlands.

In response to Mr. Germanio, Mr. Orlando said to move it in the 35 feet would put it directly behind the house, and the applicant wants to keep an "open" feeling.

There is an existing shed that sits closer and that shed will be removed.

Mr. Bonjorno indicated that his neighbors have no problem with what he is proposing, and he just wants a place to store his antique car and have some storage of personal items.

Mr. Gaskill presented his engineer's report, and indicated that his issues have been addressed.

Mr. Butto then opened the meeting to the public for comment. There being no public comment, this portion of the meeting was closed and the matter brought back to the Board.

Ms. Baldwin indicated that the public was notified of the application and had the opportunity to view it if they wished.

Mr. Watson asked what type of vegetation was between the shed and proposed garage. Mr. Bonjorno indicated that there was a row of wild cherry trees, then cedar trees.

Mr. Orlando indicated that he had nothing else to add.

Mr. Batastini then presented a form of motion to grant side yard set back variance. There was then a period of general discussion regarding set back and buffer. Mr. Gaskill suggested generic language to cover issue or waive buffer altogether.

Mr. Batastini then presented a form of motion to allow a side yard set back of 15 where 35 required for building as proposed. A motion to approve was made by Mr. Pettit. Before proceeding further, Mr. Batastini described a "Soft C" or C-2 variance to the Board members. He advised that is was similar to a D variance in the sense that you look for special reasons why the applicant is advancing the purposes of the land use law, such as aesthetics, air and open space, impact on neighbors.

A motion to approve was re-made by Mr. Pettit, seconded by Mr. Germanio, and carried by all members voting on same.

Mr. Batastini then presented a form of motion to allow a 10 foot buffer from the

wetlands buffer line. A motion to approve was made by Ms. Baldwin, seconded by Mr. Stafford and carried by all members voting on same.

ANDERSON, ESTATE OF JAMES B. - Block 251, Lot 101:

Located on Main Street in Ocean View in an R-3 (Moderate Density Residential) Zone. Applicant seeking minor subdivision approval, as well as variances for lot area, lot width and lot frontage to create 2 separate lots from the existing 33.28 acre lot. **(Continued to April 25, 2013.)**

Mr. Batastini advised that the Anderson application had an issue as to notice, and a determination could not be made as to the date notices were sent out. The Applicant will re-notice.

Other Business:

Correspondence: None.

Resolutions:

DALEY, WINIFRED JOAN - Block 246, Lot 4:

Mr. Batastini advised that one change had been made to this Resolution requiring an easement to be made with respect to the driveway.

A motion to approve was made by Mr. Germanio, seconded by Mr. Pettit and carried by those members voting on same.

HANSON AGGREGATES - BMC - Block 120, Lots 63-67, 74, 75:

A motion to approve was made by Mr. Pettit, seconded by Mr. Germanio and carried by those members voting on same.

Minutes: March 7, 2013 (Work Session Notes)

Bills:

A motion was made by Ms. Baldwin, seconded by Mr. Germanio and unanimously carried to pay all outstanding bills.

Mr. Butto asked if there was any public comment. There was no public comment.

There being no further business to come before the Board, a motion to adjourn was made, seconded and unanimously carried to adjourn meeting.

Meeting adjourned at 9:51 p.m.

Carla _____ *A.* _____ *Coffey*

Carla A. Coffey, Secretary
Dennis Township Consolidated Land Use Board