

READINGTON TOWNSHIP BOARD OF ADJUSTMENT
MINUTES

August 16, 2012

A. Vice Chairperson Simon called the meeting to order at 7:30 p.m. announcing that all laws governing the Open Public Meetings Act had been met and that the meeting had been duly advertised.

Members present

Mrs. Flynn	present
Ms. Hendry	present
Mr. Hendrickson	present
Mr. Simon	present
Mr. Stettner	present
Mrs. Goodwin	absent
Mr. Thompson	present
Mr. Denning	absent

Donald Moore, Esq., Kelleher & Moore
John Hansen, Ferriero Engineering, Inc.
Michael Sullivan – Clark Caton & Hintz

B. APPROVAL OF MINUTES:

1. May 17, 2012 (June and July meetings cancelled) – Keith Hendrickson made a motion to approve the minutes. Richard Thompson seconded the motion. All in favor, No Nays recorded.

C. CORRESPONDENCE -

1. Letter from Robert Boak dated July 24, 2012 regarding Oh Harvest Group

No comments from the board.

2. Letters from Mark Peck, Esq., regarding Winfield Management Resolution No. BOA 2012-246 with attachments

Attorney Moore read into the record his letter in response to Mr. Peck's multiple letters. The board members reviewed the resolution and determined that the relief Mr. Peck is requesting cannot be granted without amending the applicant's approval, thereby requiring a public hearing.

In addition, Mr. Hendrickson commented that there are numerous dead trees around the playground at the Winfield Management site. Mr. Barczyk will be contacted for his review and/or enforcement.

D. TECHNICAL REVIEW COMMITTEE:

1. Ryland Office Park, LLC/Walgreens
Minor subdivision/lot line adjustment
Preliminary major site plan
Action date: August 25, 2012

Mrs. Flynn stated that the Technical Review Committee reviewed the application and determined that it remains incomplete.

2. Quality Auto Service
Variance
Block 39, L. 53.19
Action Date: August 31, 2012

Mrs. Flynn informed the board that the Technical Review Committee reviewed the application and recommends that this application be deemed complete.

Mrs. Flynn made the motion to deem the application complete. Mr. Thompson seconded the motion. All in favor, No Nays recorded. M. Stettner recused.

E. NEW BUSINESS:

1. Professional Services Contract award
for Traffic Engineer

The board is interested in reviewing the resumes for traffic engineers. Therefore this matter will be carried to the next meeting.

F. OLD BUSINESS:

1. 25 Ridge Road Realty, LLC
Bifurcated application for Interpretation
25 Ridge Road
B. 38, L. 52 (continuation)

Roy Kurnos, Esq., stated that he is the attorney for the applicant. He stated that this is a continuation of prior hearings. Mr. Kurnos acknowledged on the record that those members of the board who were absent at prior meetings have listened to the tapes.

Barry Becker was sworn. Mr. Becker stated that he is the manager/owner/applicant and president of the various companies that use this facility.

Mr. Becker testified that he is involved in truck and warehouse businesses. He became aware of the property in 2010 through a real estate broker. There were multiple tenants using the property at that time. The site was overgrown with vegetation and a collection of old cars and debris. Mr. Becker applied for a zoning permit. Mr. Becker testified that trailers are retrieved and stored overnight until they are delivered to their destination the next day. Mr. Becker stated that he did tell the zoning officer that he wanted to have a truck loading business and to use the facility as a repair shop and warehouse. He stated that he received an approved zoning permit issued on August 31, 2010. Based upon receipt of the permit, Mr. Becker applied for and obtained a mortgage in order to purchase the property. On December 16, 2010 he applied for another permit. That permit was never finalized. Mr. Becker testified that he closed title on the property on January 21, 2011. There is approximately 2,500 square feet of office area in the building. The remainder of the building is 52,000 square feet situated on an 8.24 acre site. After the building was purchased, he never received any complaints from his neighbors. Mr. Becker removed the several tenants and re-graded the property. The abandoned cars and trailers were removed and the property was cleaned up. Mr. Becker was not aware of any complaints regarding the property until he received a letter from the Township's Attorney, Sharon Dragan. At that time, Mr. Becker decided to apply to the Board of Adjustment for the interpretation of the ordinance.

Vice Chairman Simon asked if the professionals and board members had any questions at this time. There were no questions.

Mr. Kurnos presented his summation to the board. He felt that the zoning officer issued the permit correctly and it should not have been rescinded. He felt that his client did not do anything underhanded. Mr. Becker relied on the zoning permit and the closing on the property took place. On May 27, 2012 Attorney Dragan notified Mr. Becker that this use was not allowed.

Mr. Moore informed the board that it is clear that the applicant was conducting a trucking operation which included a trucking depot, truck repair, storage of merchandise that was not screened from view and in addition a small metal fabrication business on the property. The current zoning ordinance, not the amended zoning ordinance, provides that this property is located in the ROM-2 zone and under Section 148-24 the zone does not include trucking. It also limits the type of use to one use. It prohibits storage when it is not screened from view. The 2.5 acre lot requirement has been met, but notwithstanding there are 3 violations of the zoning ordinance by this applicant. Therefore it leaves the board to make a decision as to whether or not this present use can be classified as a pre-existing non-conforming use, or is it prohibited. That is the function of this board. The prior use was a metal fabrication of large vessels with ancillary delivery of raw materials and exiting of materials by trucking. This was established by a prior resolution adopted by this board years ago. The only function of the board pursuant to N.J.S.A. 40:55-70 (a) is to determine if there was an error in the decision of the zoning officer in the terms of revoking that initial permit. The board is called upon to decide whether the present use proposed by the applicant is a valid continuation of the non-conforming use or not. As far as the legal arguments are concerned, they are not for this board to decide. The simple decision resides around as to whether this is a continuation of a non-conforming use.

Mr. Moore informed the board that regarding the estoppel, when a matter becomes urgent to the township due to safety, the township attorney has every right to intervene. She specifically stated in her letter that the applicant should submit a variance application. The estoppel argument should be pursued by the applicant in a court of law. The 20 day restriction that Mr. Kurnos refers to is not applicable. The issue of estoppel or fairness doesn't apply to the board's decision. The issue as to whether or not the township's attorney, Sharon Dragan, was correct by interfering in the zoning officer's decision and the issue within the 20 day rule does not apply. This board is strictly being called upon to make a determination as to whether the present non-conforming use is a continuation of a prior non-conforming use.

The question to the board was whether John Barczyk in his rescinding of the zoning permit acted correctly or incorrectly.

Marygrace Flynn made a motion to uphold John Barczyk rescinding of the zoning permit. Britt Simon seconded the motion.

Marygrace Flynn withdrew her motion.

Marygrace Flynn made the following motion: Is this is a continuation of a prior non-conforming use? Britt seconded the motion.

Roll call:

Marygrace Flynn Nay

Diana Hendry Stated that based upon the testimony and on the instruction by counsel she is obligated to vote no. She stated that the use is similar, but it is not a continuation of a pre-existing non-conforming use.

Eric Stettner Aye – he felt that it was a continuation of a pre-existing non-conforming use.

Richard Thompson Nay – He stated that he feels for the applicant but this is not a continuation of the pre-existing non-conforming use.

Keith Hendrickson Aye – he felt that it was a continuation of a pre-existing non-conforming use.

Britt Simon – Nay – He stated that the use is not similar to the prior pre-existing use. He recommended that the applicant file an application for a variance. He did attend the site visit and felt that the facility was beautified since the applicant has purchased the property. The board has a narrow scope to consider when they cast their votes. The uses are clearly not the same.

G. **VOUCHER APPROVAL:** Marygrace Flynn made a motion to approve the vouchers as submitted. Richard Thompson seconded the motion. Diana Hendry abstained.

H. **PUBLIC HEARINGS**

None

I. ADJOURNMENT:

Marygrace Flynn made a motion to adjourn the meeting. Eric Stettner seconded the motion. Motion was carried with a vote of Ayes all, Nays none recorded.

Respectfully submitted,

Linda Jacukowicz