

**READINGTON TOWNSHIP
BOARD OF ADJUSTMENT MEETING
February 18, 2016**

The Meeting was called to order by Chair Goodwin at 7:33 p.m. stating that the requirements of the Open Public Meeting Law have been satisfied. The meeting had been duly advertised.

Members present: Michael Denning, Meredith Goodwin, Alan Harwick, Karen McCullough

Also present: Geoffrey Goll, Environmental
John Hansen, Engineer
Andrea Malcolm, Planner
Roger W. Thomas, Attorney
Jay Troutman, Traffic

Members absent: Joanne Sekella, Britt Simon, Richard Thompson

Diana Hendry *arrived at 8:00p.m.*
Patrick Ryan *arrived at 8:00p.m.*

Chair Goodwin led those present in the *Salute to the Flag*.

MINUTES:

A Motion was made by Mr. Harwick, seconded by Ms. McCullough, that the Minutes of January 21, 2016 be approved. Motion was carried with the following roll call vote:

Ayes: Mr. Denning, Mr. Harwick, Ms. McCullough, Chair Goodwin

Nays: None recorded.

Ms. McCullough and Chair Goodwin abstained from the vote.

A Motion was made by Mr. Harwick, seconded by Mr. Denning, that the Executive Session Minutes of November 19, 2015 be approved. Motion was carried with the following roll call vote:

Ayes: Mr. Denning, Mr. Harwick

Nays: None recorded.

CORRESPONDENCE

Hunterdon County Planning Board's unconditional approval of the AOG East Real Estate LLC application was acknowledged.

PUBLIC HEARING

Ms. Hendry recused herself from this matter.

**Plaza 22 Corporation
B 36, L 65
Appeal of Decision of Zoning Officer**

Present for Applicant: Ernest Renda, Esq.

In October 2015, Applicant filed a zoning permit for a diner on the property in question; said permit was denied by the Township zoning officer. Attorney Renda advised that the Applicant was before the Board of Adjustment (the "Board") to appeal this decision. Attorney Renda indicated that the Board cannot invalidate a prior variance approval; even though the February 11, 2016 report submitted by Clarke Caton Hintz ("CCH") reads that because of certain zoning changes, the Board can. Readington Township (the "Township") Land Use Ordinance §148-94G reads, in part, that if only a variance was granted, and not acted upon within twelve (12) months, it becomes invalid; but if the variance includes a site plan, the variance is valid for as long as the site plan is approved. The Township does not have an ordinance pertaining to the expiration of site plan approval. The CCH report advised that since approval, there have been changes to the Township's stormwater management, buffer and tree distribution requirements. Applicant understands that they are subject to the new requirements; and that's a decision to be made by the construction and engineering officials as part of Applicant's submission for construction.

Exhibit A-1 was introduced: Site Information for the Whitehouse Diner, prepared by Perry M. Chevestick, PE (date illegible)

Exhibit A-1 shows site access via Route 22 only because a condition of approval was that there would be no access onto Mullen Road. **Exhibit A-1** was submitted to the Township engineer as part of the former applicant's compliance efforts.

Attorney Thomas advised that on page 2 of Attorney Renda's brief, he makes reference to the fact that the 1989 variance was for a 5,700 square foot facility. Also on page 2 of the brief, Attorney Renda indicates that in March 1994 there was a bifurcated

application with regard to use and bulk variances for a 5,088 square foot facility. **Exhibit A-1** does not comply with either, rather it shows a 5,500 square foot facility.

Attorney Renda indicated that **Exhibit A-1** was not submitted for substance, but rather as it pertains to CCH's report. The CCH report references a tree distribution requirement wherein there is (1) tree for every three (3) parking stalls. **Exhibit A-1** does not show the required trees because it was not required at submission. Attorney Renda also noted that the plan provides for 68 parking stalls, and only 55 are required per ordinance.

Exhibit A-2 was introduced: Drainage Plan for Development, prepared by Perry M. Chevestick (date illegible)

The CCH report indicates that the Township adopted a more stringent stormwater management ordinance prior to the Permit Extension Act. As the approved site plan requires changes to comply, the CCH report states that the variance is invalid. Attorney Renda advised that the Board doesn't have the authority to invalidate its approvals. Applicant is seeking the opportunity to comply with the applicable Township ordinances.

Ms. Malcolm referenced the use of the term "valid" within the CCH report and advised that a better term would have been "viable." The CCH report focuses on the site plan approval, not the variance approval. She noted that the current ordinances would likely require changes to the approved site plan.

Attorney Thomas asked if, but for the site plan approval, the variance approval that was granted in 1989, would be invalid. Attorney Renda agreed.

Attorney Thomas confirmed with Attorney Renda that Applicant is relying on the 1995 approval for a 5,088 square foot facility, together with the fact that in 1989 the Board upheld that the diner was a pre-existing non-conforming use.

Attorney Thomas inquired about changes in ordinances affecting the site plan. Attorney Renda indicated that the Applicant must show that they can comply with the ordinance changes. He refers to *Friendship, Inc. v. Township of New Hanover* 2012 WL 715988 (App. Div. 2012) wherein a township contended that a stormwater management ordinance was adopted, and believing applicant couldn't comply with the ordinance, the prior approvals were invalid. The Court specifically said that the township did not have the authority to do that. Approvals can be affected by ordinance changes, but they don't invalidate them.

Mr. Denning inquired if Mr. Hansen could confirm the required changes were viable. Mr. Hansen testified that he had not reviewed the plans to that extent, but indicated that compliance with the stormwater ordinance could be completed in a number of ways.

Madam Chair inquired if Applicant was aware of the prior approvals. Attorney Renda advised that they became aware in August 2015 during a separate application before the Board relating to this property. Following a response to an OPRA request, Applicant filed the zoning permit in October 2015.

Madam Chair inquired if the diner would be demolished. Attorney Renda advised that the site plan requires it.

OPEN TO PUBLIC

Attorney Thomas advised that the 1989 determination that the site is a pre-existing non-confirming use remains valid. While this site was not used for an extended period of time, it would seem to be abandoned, but case law doesn't support that.

Attorney Thomas's opinion is that because the site plan was approved, the attached variance remains in force and effect for a 5,088 square foot facility. He also believes that the site plan must comply with the intervening ordinances as they currently apply.

Mr. Denning concurred with Attorney Thomas.

A Motion was made by Mr. Denning, seconded by Mr. Harwick, confirming that the 1995 use variance approval remains in force and effect and that the site plan is subject to review of ordinances outlined in CCH's report and any other ordinances that may apply after further investigation and ultimate determination by the zoning officer and/or the building official with the advice of the township engineer. Motion was carried with the following roll call vote:

Ayes: Mr. Denning, Mr. Harwick, Ms. McCullough, Mr. Ryan, Chair Goodwin

Nays: None recorded.

AOG East Real Estate LLC

B. 15, L. 19

D Variance

Present for Applicant: **Kevin J. Moore, Esq.**
 Mark E. Zelina, Engineer
 Nancy Dougherty, Architect
 Karl A. Pehnke, Traffic
 Keenan Hughes, Planner

Attorney Moore advised that the property consists of 5.891 acres located at 3494 Route 22 West. Although the property is located in both the Professional Office ("PO") and Agricultural Residential ("AR") zones, Applicant proposes development only in the PO zone. The property currently has a 3,394 square foot one story bank building with drive-thru canopy, 2 one-way driveways, 27 parking stalls and related site improvements. Applicant is requesting a D variance as medical offices are not a permitted use in the PO zone. The existing building will be demolished, and a new 5,035 square foot medical building will be built.

Exhibit A-1 was introduced: Aerial of Project and Project Site with Surrounding Area. Site Proposal is Super-Imposed dated 2/18/16

Exhibit A-1 shows the subject property outlined in blue. Two acres are developed, and Applicant's proposal will not disturb any additional property. The dumpster enclosure shown will be relocated, negating the need for a variance. Mr. Zelina testified that the overall area of site disturbance is the same, but impervious coverage will be reduced as the exit onto Route 22 will be narrowed. The site entrance is to the east, vehicles will circle behind the building and exit to the west. Parking will be provided on the east and rear of the building, for a total of 39 parking stalls. The number of parking stalls was determined by utilizing the patient flow and number of employees at Applicant's other business locations. Applicant is seeking a variance for the stall size as they will be 9x18.

Mr. Denning asked for clarification on the parking configuration and the parking stall size. Mr. Zelina testified that to the east of the building there will be 18 parking stalls, two (2) of which are handicapped. Parking in the rear of the building will have eight (8) parallel and nine (9) angled stalls. Mr. Zelina indicated that the requested width of nine (9) feet is common in this setting; as a ten (10) foot wide stall is more appropriate for a daycare or retail setting. Discussion continued regarding the parking stall width.

Mr. Zelina indicated that there would be no loading area as supplies are delivered by UPS-sized trucks. Waste pick-up will be handled by a dumpster enclosure on the

northwestern side of the property. Medical waste is stored in appropriate containers inside the facility and picked up quarterly by a licensed hauler.

Mr. Zelina testified that utilities are serviced by well and septic system. Applicant will construct a new septic system and is in receipt of a review letter from the Township Board of Health. On the eastern side of the property, two (2) concrete slabs with water tanks are proposed, subsequent to the preparation of these plans we consulted with the Township fire official and determined that the tanks are not required. As a result, Applicant will not remove trees in that area to accommodate the concrete slabs.

Mr. Hansen expressed the need to clarify the fire official's February 8, 2016 correspondence as it pertains to the fire suppression system and the need for water tanks. Mr. Hansen pointed out that the letter also references the installation of a fire hydrant. Attorney Moore advised that Applicant will not install a hydrant. Further discussions with the fire official revealed that it was a suggestion, not a requirement. Mr. Zelina revealed that there is a hydrant 370 feet in the easterly direction of the building and one 430 feet in the westerly direction.

Attorney Thomas requested a revised letter be submitted by the fire official clarifying both matters.

Mr. Zelina stated that new site lighting would be installed. Applicant proposes 1.8 footcandles in the paved areas for patient safety. This is an increase from the ordinance requirement of 1.0 footcandles. Applicant will reduce the footcandles along the drives, they prefer to keep the proposed intensity around the building and pedestrian areas.

Mr. Zelina indicated that the business will be operated from 8:00 a.m. until 5:00 p.m. Monday thru Saturday and possibly up to two (2) nights a week until 8:00 p.m.

Attorney Thomas inquired if the lighting would be reduced or eliminated during closed hours. For security reasons, the lighting would remain on, but reduced.

Applicant is adding a number of trees and shrubs between the pavement and wooded lots on either side of the property. Five (5) shade trees will be planted along Route 22, but Applicant is seeking a waiver from the eight (8) required by ordinance. Applicant is also seeking a waiver for the four (4) foot buffer along the rear perimeter of the parking lot. The rear parking lot is cut into a six (6) foot embankment and Applicant feels this, along with the woods, provides for the required buffer. Applicant is unable to provide a full ten percent (10%) of landscaping in the parking lot because of their desire to maintain the current parking lot. In lieu, additional trees will be provided along the driveway.

Mr. Zelina advised that he prefers not to use shrubs in islands or along perimeters of parking lots as snow plowing often destroys the shrubs. Ms. Malcolm indicated that the shrubs are for screening as trees are often bare on the bottom. Mr. Zelina indicated that Applicant will work with the Planner on site landscaping.

Ms. Hendry requested clarification as to the buffer. Ms. Malcolm confirmed that a waiver would be granted for the rear of the property, but the front and sides would be further discussed.

Madam Chair inquired about the number of doctors and patients that would be on-site each day. Mr. Zelina advised that the facility would have approximately ten (10) to fifteen (15) employees and average 70 patients a day.

Ms. Hendry inquired about the minimum number of parking stalls for a building this size. Ms. Malcolm estimated twenty-six (26) parking stalls as per building size. Amy Rubin, Applicant's business manager, testified that Applicant's other locations average two (2) doctors who see up to 30 patients, and a sonographer who sees up to ten (10) patients each day. On most days all 39 parking stalls will not be utilized. She confirmed the other sites parking stalls are 9x18, and that the employees will utilize the rear parking lot.

Mr. Denning asked if people would be likely to make a U-turn by the dumpster enclosure if they didn't initially park. Mr. Zelina testified that the site would be signed one-way.

Mr. Zelina continued his testimony by advising that the site would be completed in two (2) phases: 1) demolish the existing building and decommission the septic system; and 2) construct the new septic system and building. Applicant also proposes to mill the parking lot and lay a new 1 ½ inch top surface. Currently the site has concrete curbing, but today's standards require block curbing. Applicant seeks to only repair the current curbing, not replace it.

As submitted, the plan shows a gravel tracking pad at the site exit in order that construction vehicles do not track material onto the highway. Following discussions with the soil conservation district, this will be removed, and other measures will be taken to eliminate bringing material onto the highway.

Madam Chair asked if Applicant considered using the AR zone for better parking circulation. Mr. Zelina indicated that the rear of the parking lot is a steep embankment, and removal of vegetation and soil from the site would be costly and require a variance.

Mr. Zelina advised that Applicant must follow NJDEP 7:8 standards for stormwater management. Applicant will not increase runoff with the proposed development, and is seeking a waiver of the Township stormwater requirements. Mr. Zelina referenced ordinance §148-65-2(d)(3) "to be eligible for a waiver the applicant must demonstrate to the satisfaction of township officials that immediately downstream waterways will not be subject to deterioration of existing culverts, bridges, dams and other structures." Attorney Moore pointed out that under NJDEP regulations because Applicant is reducing impervious coverage, no stormwater management is required.

Exhibit A-2 was introduced: Truck Turning dated 11/16/2015

Exhibit A-2 shows how a refuse truck and standard 46 foot fire truck would traverse the site. Mr. Hansen indicated that Applicant intends to move the dumpster enclosure out of the AR zone and inquired if it would affect the travel lane. Mr. Zelina testified that it would not.

BREAK at 9:21 p.m.

RECONVENE at 9:28 p.m.

Mr. Hansen referenced his February 10, 2016 report and asked Applicant's response to the comments and suggested changes. Attorney Moore advised that most of the report's comments had been addressed or would be addressed by Ms. Dougherty's testimony and all other items Applicant would comply with or agreed to.

Mr. Goll questioned the label on the southwest corner "overgrown wash out". Mr. Zelina advised that it is a depression that needs further investigation and Applicant will do so before the next meeting.

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William Muller – family owns property to the south on Route 22 East - asked for an explanation of the term "wash out." Mr. Zelina advised that the term is strictly from the land surveyor and is an area on the property that needs to be investigated.

Mr. Muller explained that his property has a drainage easement from the State, and the runoff from Applicant's property runs into the wash out, travels a few hundred feet and deposits onto his property. He asked what impact the development would have regarding erosion and/or run-off damage to his property. Mr. Zelina confirmed that Applicant's property slopes from the rear to Route 22. He is not aware of where the run-off leads after it leaves the property. He reiterated that Applicant's proposal is to not increase run-off. Attorney Thomas indicated that Applicant intends to maintain or

reduce run-off, but asked if they had plans to divert or relocate the runoff from where it is going now. Mr. Zelina testified that they did not.

Mr. Muller inquired about the water tanks. Mr. Zelina advised that the fire official confirmed that they are not required, and thus, they are no longer part of the application.

Discussion ensued regarding the septic system. Mr. Zelina advised that the system will be located in the front on the eastern side of the property. The current proposal will be a level unit, and will be confirmed following groundwater monitoring.

Exhibit A-3 was introduced: SP-4, Photos dated 11/06/15

Ms. Dougherty advised that the footprint of the building comes in at just over 5,000 square feet. The total height of the building is 28 feet 9 inches with an attic. The building will be comprised of vinyl siding, stone, deep overhangs, timber framing finished in white, and asphalt shingle roofing. There are two (2) entrances, a main/patient entrance on the easterly side and a second entrance on the north side for employees, deliveries and medical waste removal. The interior will have a generous waiting room, six (6) exam rooms, sonogram room, six (6) bathrooms, clinical hub, physicians' offices and pantry with staircase leading to the attic. The attic will house mechanical equipment.

Exhibit A-4 was introduced: Rendered Top Elevation SP-2 dated 11/06/15

Applicant is requesting three (3) variances related to signs. The proposed façade sign is 94 square feet, but the ordinance allows for a 24 square foot sign. The highway monument sign will be 9.5 feet off of the pavement, wherein the ordinance allows for the sign to be no more than 8 feet off the pavement. Additionally, the highway sign will be "V" shaped, and the ordinance allows for a parallel double sided sign. **Exhibit A-3** shows an example of the type of sign Applicant is proposing.

Discussion ensued regarding placement of the façade sign. Madam Chair felt that the façade sign was redundant.

Several Board members inquired about details of the attic space. Ms. Dougherty indicated that the specifics of the space had not been designed. There will be a subfloor to access the mechanicals and file storage. Windows will be included for light, but will not open. At its peak, the ceiling height is 6.5 feet; not tall enough to meet code as a habitable space.

Exhibit A-5 was introduced: Picture of Sample Eldorado Stone

OPEN TO PUBLIC

Ms. Hendry confirmed that Applicant is seeking a variance for a medical building, not a specific medical practice.

Attorney Thomas questioned Applicant's development in only the PO zone when the property includes three (3) acres in the AR zone. He wanted to know if it was Applicant's intention to indicate to the Board that there will be no further subdivision of the property. Attorney Moore advised that Applicant has no current plans for a subdivision or further development, but they would like to keep their options open.

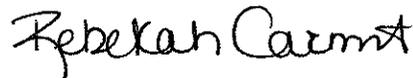
This matter was carried until the March 17, 2016 Board meeting with no further notice required.

ADJOURNMENT:

A Motion was made by Mr. Harwick, seconded by Ms. Hendry to adjourn the meeting. The motion was carried with a vote of all ayes, nays none recorded.

The meeting was adjourned at 10:25 P.M.

Respectfully submitted,



Rebekah Harms
Board of Adjustment Secretary