

**READINGTON TOWNSHIP BOARD OF ADJUSTMENT
MINUTES
December 21, 2006**

Chairperson Fort called the meeting to order at 7:35 p.m. announcing that all laws governing the Open Public Meetings Act had been met and that the meeting had been duly advertised.

A.

Mrs. Fort	present
Mrs. Flynn	present
Mrs. Goodwin	present
Ms. Hendry	present
Mr. Stettner	present
Mr. Shepherd	present – arrived at 7:50 p.m.
Mr. Staats	absent
Mr. Thompson	present
Mr. Denning	absent

Donald Moore, Esq., Kelleher & Moore
John Hansen, Ferriero Engineering
Michael Sullivan, & Brent Kasner, Clarke, Caton & Hintz

B. APPROVAL OF MINUTES:

1. November 16, 2006 Mrs. Flynn made a motion to approve the minutes. Mrs. Goodwin seconded the motion. *Motion was carried with a vote of ayes, nays none recorded.*
2. November 21, 2006 Mrs. Flynn made a motion to approve the minutes. Mrs. Goodwin seconded the motion. *Motion was carried with a vote of ayes, nays none recorded.*

C. EXECUTIVE SESSION:

**RESOLUTION
(Open Public Meetings Act – Executive Session)**

WHEREAS, N.J.S.A. 2:4-12, Open Public Meetings Act, permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist:

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Readington, County of Hunterdon, State of New Jersey, as follows: The public shall be excluded from discussion of the hereinafter specified subject matters.

1. Potential litigation
2. Wilmark v. Readington Township Board of Adjustment et. als.

It is anticipated at this time that the above matters will remain confidential because litigation remains pending.

This Resolution shall take effect immediately.

Certified to be a true copy of a Resolution adopted on December 21, 2006.

Linda Jacukowicz, Coordinator

Mrs. Flynn made a motion to approve the resolution and go into executive session. Mrs. Goodwin seconded the motion. *Motion was carried with a vote of ayes, nays none recorded.*

Mrs. Flynn made a motion open public session. Mr. Shepherd seconded the motion. *Motion was carried with a vote of ayes, nays none recorded.*

The board reconvened at 8:12 p.m.

D. CORRESPONDENCE:

Ms. Tubman addressed her recent correspondence regarding the YMCA. They are preparing to file for final site plan approval. She stated that following preliminary site plan approval the applicant revised the plans and made all of the technical changes that were requested and those plans have been signed. The checklist for final approval requires that they provide 22 sets of the prior plans. As a matter of expense and because they no longer have the same architect, they are asking to be relieved of the obligation to submit the 22 plan sets. They will demonstrate satisfaction of all conditions of preliminary.

The board determined that the YMCA should supply 8 sets of final plans.

E. TECHNICAL REVIEW COMMITTEE:

1. Cellco Partnership d/b/a Verizon Wireless
Block 17, Lot 9
384 Route 22,
Variance
Action date: January 6, 2007

Marygrace Flynn stated that the TRC reviewed the application for completeness and they have determined that it remains incomplete. The applicant will be notified of the items that must be submitted.

F. VOUCHER APPROVAL

Mrs. Goodwin made a motion to approve the vouchers as submitted. Mr. Thompson seconded the motion. *Motion was carried with a vote of ayes, nays none recorded.*

G. PUBLIC HEARINGS

1. Joazee
Appeal Zoning Officer's Decision
-and-
Waste Management of NJ
Appeal Zoning Officer's Decision

Mr. Moore swore in the board's professionals.

Mr. Hansen stated that he informed the board that he could obtain aerial photographs of the site. The board gave him permission to obtain photographs from the 1970's, 1980's and early 2000.

Mr. Moore informed the board that he created a time line to show the history of the zoning. This is the reason why John Barczyk, Zoning Officer was instructed to generate his report regarding the past history. Madam Chair stated that the applicant did not provide the board with this information.

Nicholas Lochetta, counsel for Joazee and Thomas Sweet, counsel for Waste Management, both placed their objection on the record regarding the new exhibits.

Exhibits:

D-3 Aerial photograph dated April 16, 2004 showing the subject site – authored by Atlantis Aerial Survey Company, Budd Lake, New Jersey.

D-4 Aerial photograph dated March 21, 1979, 2004 showing the subject site – authored by Atlantis Aerial Survey Company, Budd Lake, New Jersey.

D-5 Black and white aerial photograph dated March 11, 1974 showing the subject site – authored by Atlantis Aerial Survey Company, Budd Lake, New Jersey.

The board reviewed the exhibits.

John Barczyk, Zoning Officer, stated that he was required to develop a time-line of when the zoning was created in the B-zone along Route 22. He was able to obtain from the township archives old zoning ordinances. Upon review of the ordinances, the B-zone existed back to 1976. Prior to that time, the zone was called Highway Commercial which goes back to 1961. The property owned by Mr. Sadano in 1979 was zoned Business. The ordinance affirmed that the principal uses were almost exactly as what is permitted in today's ordinance. Mr. Barczyk stated that at that time, a Certificate of Occupancy should have been obtained from the zoning official. There was no record of that taking place. The main issue is the increase in traffic that is created by Waste Management. This is an expansion of a non-conforming use.

Ms. Hendry wanted to know what the significance would be to obtain a Certificate of Occupancy at that time. Mr. Barczyk stated that the issuance of a Certificate of Occupancy would have given the applicant authorization that this is a permitted use.

Therefore, Ms. Hendry stated that the Certificate of Occupancy basically gives permission for the use at that time. Mr. Barczyk answered that that was correct.

Mr. Lochetta asked Mr. Barczyk if the township retained every Certificate of Occupancy issued in 1979. Mr. Barczyk answered that he did not know. Mr. Barczyk stated that the burden of proof is not on the township, but on the applicant to provide their copy of the Certificate of Occupancy. He stated based upon all of the information that he had available; it was his interpretation that this is an expansion of a non-conforming use. In 2005, when Mr. Barczyk issued the Continuing Certificate of Occupancy he felt that they were operating under a legal Certificate of Occupancy.

Mr. Sweet asked if Mr. Hansen had counted the number of trucks on the site. Mr. Hansen stated that he had not, but it could be quantified.

Ms. Hendry stated that regarding exhibit D-4 dated 3/21/79 she counted 4 trailers, 1 tractor and multiple cars. Regarding exhibit D-5 dated 3/11/74, she counted 9 trailers and multiple cars. However, she stated that she cannot distinguish between cars and cabs. She stated that she counted 15 that could be trailers. Regarding exhibit D-3 dated 4/16/04 Ms. Hendry counted 39 trailers and 3 structures that look like trailers but are open at the top. Ms. Hendry informed the board that these numbers and identifications are her observations. She is not an expert on trucking, trailers, etc. She observed other objects on the photo that could be piles of boxes or they could be pickup trucks.

PUBLIC COMMENTS:

David Simpson, 651 Route 523, Whitehouse Station. Mr. Moore swore in the witness. Mr. Simpson stated that his interest in this matter was piqued by a newspaper article indicating that there was an increase of use at the facility. He has lived here for 9 years and was impressed with the clean up that took place after Waste Management began their lease.

Madam Chair asked the board if they felt they had enough information to vote on the appeal.

Mr. Shepherd - yes.

Ms. Hendry – yes

Mrs. Flynn – yes

Mrs. Goodwin – yes

Mr. Thompson – yes

Mr. Stettner – yes

The board took a 5 minute break.

Ms. Hendry made a motion to uphold the decision of John Barczyk, Zoning Officer. Mr. Shepherd seconded the motion.

Ms. Hendry She stated that she agrees that there has been an expansion of the use at the site. There was a lot of time spent on counting the number of trucks in various photographs. She felt that at times there have been ebbs and flows in terms in the number of vehicles on the site. But as to the nature of the use, she felt that earlier on in the history of the site there was the sale of trucks and parking of trucks, but that the current use is not only the parking of trucks on a daily basis, but there has also been the introduction of the element of dumpsters and trash containers located on the site. This changes the nature of the use. There is the potential that the nuisance was not caused by Waste Management, but she felt that this issue is not the crux of this hearing. The noise complaints can be an issue that can be raised with the application for a variance. She felt that there was never a valid Certificate of Occupancy issued. There are unresolved issues with the documentation of the destruction and retention policy, but the zoning officer has searched for files and has never seen the Certificate of Occupancy. In fact the applicant has not been able to produce a Certificate of Occupancy that dates back to the purchase of the property. If a Certificate of Occupancy was never given, then the township never gave permission for that use back in 1979. Therefore, any allowance by this board for a continuation of the present use is really not bounded. The scope of that use is not defined. The proper procedure is for the applicant is to make an application for a variance. The board could then consider the nature of the current use. There was an estoppel argument that the township had okayed a prior use and that our hands are tied in not approving the continuation of that use. She disagreed with the argument. The board and the zoning officer have a daily obligation to enforce the zoning ordinances as they are written.

Mrs. Flynn Stated that she agreed with Ms. Hendry's comments. The applicant did not receive a Certificate of Occupancy. There was no testimony that the zoning officer at the time had authority to approve the operation. She stated that Mr. Barczyk concluded that this is not a permitted use or a continuing use.

Mrs. Goodwin She stated that there was not too much she could add to what has already been stated. She agreed to uphold Mr. Barczyk's decision. After review of the testimony, it appears that there have been multiple uses on the property. She is surprised that they have not been before the board prior to this time. The aerial photographs prove that there has been an expansion in the use. She did not see any documentation to prove that this had been approved by the township.

Mr. Stettner He stated that he has always known that the property operated as a truck repair/truck sale. He stated that if it was his business that was being moved into the site, he would not have brought in the dumpsters. This is an expansion of the use.

Mr. Shepherd – He stated that there is a tremendous amount of conflicting testimony from what the residents say to what the various witnesses for Joanzee stated. It is difficult to determine what the intensity of the use is. Mr. Shepherd stated that during the hearing on September 21, 2006, Mr. Sadano testified that he purchased the property from Mr. & Mrs. Vaughn and that at that time Diamond Rio trucks were sold at the site. He mentioned that his son operated a trucking business and they repaired trucks at the site. Subsequently, there have been all kinds of vehicles coming and going there at different times. At times it appears as though it was a very active site and at other times it could go for weeks without much moving at all. At some point in time, it clearly became a nuisance to the residents of Lake Cushetunk. The daily operation of garbage vehicles going in and out of the site is potentially a noisier operation. These are 2 different types of operations. He is not sure if it was ever a conforming use at any point in time. The idea to allowing it to expand does not make sense.

Mr. Thompson He stated that for multiple reasons all of which have been stated, including the lack of a valid Certificate of Occupancy, the expansion use, the reported disturbances, he feels that they should uphold Mr. Barczyk's decision.

Madam Chair she stated that she agrees with everyone. She observed that this is a use that has grown. The photographs indicate that most of the equipment on this site is trailers that were being stored for a period of time. It appears that there has been an expansion regarding the traffic. The type of truck has changed. The trucks are now garbage trucks. They are not

tractor trailers. The trucks are in and out of the site all of the time. There are numerous dumpsters/roll offs stored on the property which is an expansion of the use. There has only been licensed equipment stored on the property in the past. The dumpsters are an expansion. She stated that she will vote to uphold Mr. Barczyk's decision.

Roll Call:

Mrs. Flynn	aye
Mrs. Goodwin	aye
Ms. Hendry	aye
Mr. Shepherd	aye
Mr. Stettner	aye
Mr. Thompson	aye
Madam Chair	aye

The board took a break

2. **Nicholas Villa**
Use Variance & Preliminary Major Site Plan
135 Main St.
Block 23, lot 5
signed extension to December 21, 2006

Lloyd Tubman, Esq., stated that she is the attorney for the applicant. She stated that since the last meeting the applicant has met with Mr. Sullivan. The applicant has new photometrics to present to the board this evening. There are two issues, which are the intensity of the light and the other is whether or not the lights should remain on near the adjacent residence.

Mr. Villa referred to Exhibit A-2 which shows the layout of the site. The area in question is the adjacent residents (lot 6, block 23) and what the impact of the lighting would be from the parking lot. He referenced Exhibit A-3, which shows the light fixture.

Exhibit A-7 – Updated version photometrics produced by Dynamic Lighting dated 12/2/06.

Mr. Villa requested that the manufacturer supply him with information indicating what the lighting impact would be on the site and what the impact would be if the lights were turned off at night. There is an average of 1.19 which according to the manufacturer is appropriate lighting. The lighting has been reduced as much as they can since they are using the historic lighting fixtures. As far as off lighting, the residential lot will be receiving .01 or .02 lighting. Along the property line, the photometrics do not

show that there is a fence and trees. For liability purposes and safety purposes they should leave those lights on.

Mr. Moore wanted to know if drawing 2 is the impact with the lights turned off. Mr. Villa answered that was correct. That would be the result if the two lights along the residential line were turned off. The lights located along the lawyer's office will not be turned off after hours because it is a business and there is a driveway. The lights will remain on all night.

Ms. Hendry wanted to know what the reason was for leaving the lights on all night. Mr. Villa answered that they are concerned because there are residents living in the apartments. If the tenants come home after hours, he wants to make sure that there is light in the parking lot.

Mr. Sullivan stated that he received the newly revised photometric drawing. He reviewed it internally. His comments have not been expressed to the board. He suggested to Mr. Villa to bring an expert to testify to this topic. Mr. Sullivan stated that normally when they receive a photometric report, they need to see the uniformity ratio. The plans do not indicate the uniformity ratio. It shows the maximum ratio to the minimum ratio. Without having the calculations, it is difficult to determine the uniformity ratio for the parking area. The spillage is minimal along the south side even with the higher light. The intersection near the rear of the lot is significantly brighter than the parking lot. Mr. Sullivan did have concerns about the lighting uniformity along the walkway in the front of the building. It is significantly brighter in the front of the building than to the rear of the building. This could be a hazard. In looking at this exhibit and not knowing what the uniformity of either of the sidewalk or the parking area, he suggested that the sidewalk has to be brighter.

Mr. Villa stated that he understood that he could go back to the manufacturer, and a lot of time was spent revising the lighting, and it may not be perfect, but this is the best he can do.

Mr. Moore wanted to know if it would be more appropriate to have the lighting expert testify so the items could be ironed out rather than going back and forth. Mr. Sullivan answered that this was created by the manufacturer, but the parameters have to be set up.

Mrs. Fort wanted to know if the lighting located at the rear of the building would be adequate. Mr. Sullivan answered that he could not make that determination because there is no isolated calculation for the walkway.

Mrs. Fort wanted to know if Mr. Villa could get that information to the board. Mrs. Flynn stated that Mr. Villa is using the manufacturer as his lighting expert. She stated that on other applications, when information is requested, the applicant does provide it.

Mr. Shepherd stated that the lighting plan could be a condition of approval. Mr. Sullivan informed that board that it would be acceptable. Mr. Villa answered that they would meet the standard for the lighting uniformity for the parking lot and for the walkway.

Mr. Shepherd stated that it was his understanding that this application would attract some green commuters. He wanted to know if they were proposing in using any green building design/materials, etc. Mr. Villa answered that they are proposing to use as many natural materials as possible. But they cannot incorporate solar because it is too constrained.

Mrs. Tubman addressed Michael Sullivan's report dated November 6, 2006. The applicant will comply with most of the items. The low wall on the site will be removed. Mr. Sullivan stated that if the wall is removed, what is the condition of the area? Mr. Villa testified that he had a discussion with the architect and the engineer and they felt that it was safe. There is no code requirement. Mr. Sullivan wanted to know if they would revise the plans. Mr. Villa answered yes. Regarding Section 8 wherein it was requested that a split rail fence be installed, the applicant is requesting that the detail not be included on the plan. Mr. Sullivan stated that it has to be identified on the plan. Section 8, Mr. Sullivan's report requests that a 6 foot solid wood fence along the residence should be installed; the neighbor already has a 6 foot fence. Ms. Tubman requested that this item not be required. Regarding Section 10, the storage shed is a part of the building which is the trash enclosure. This is shown on the plan. The materials used will be compatible. Regarding Section 11, involves lighting. Mr. Villa stated that it is important to keep the building historically accurate. They looked at the lights and style of light fixtures and they do not feel that the bollard lights are appropriate. Number 16 is a matter for the township committee. This involves the length of rent control for the moderate income units.

There was a memo from the Planning Board wherein they discussed this application and the moderate income apartments that are proposed. Mr. Sullivan stated that there are issues. There are 4 moderate income apartments. He stated normally if this was a development that the township recommended, they would want 2 moderate and 2 low income units. There would be a balance of bedrooms and units. The units that are being provided will not count toward the 3rd. round affordable housing obligation, unless the township pays or creates 4 units to balance. Mr. Sullivan informed the board that they can be created and they won't count now, but there is going to be a 4th round, perhaps, and the units will be monitored. There has to be a deed restriction that has to be in place to make sure that they are for moderate income. Mr. Sullivan stated that this is the reason that the applicant is obtaining sewer capacity. Mrs. Flynn stated that the Planning Board agreed that the restriction would have to be extended. Mr. Sullivan stated that at the very least, this application should be deed restricted for a minimum of 30 years. But because the apartments are not going to count until the 4th COAH round, he suggested that there should be an extension that would insure that

it would extend at least 30 years past the effective date of the start of the 4th COAH round. The township earmarked sewer capacity for affordable housing units; therefore this applicant received sewer capacity. Mr. Sullivan stated that technically the township is taking on this applicant's obligation for the 3rd. COAH round. Mr. Sullivan stated that he was trying to craft a condition that although a 30 year deed restriction is acceptable for now, but if that expires the township has to find a way to extend those controls, or they will lose those units.

Mr. Villa stated that when he started the process a year ago, they agreed at that time that they would provide 4 moderate units with a 30 year deed restriction. He stated that they have proceeded with the application, and the engineering and the architectural based upon that agreement. Now it is an undefined period of time. He stated that this is a very difficult and the additional time is an unfair burden because this was not a part of the sewer agreement.

Mr. Moore disagreed with Mr. Villa. Ms. Tubman suggested that this matter be a condition of approval with the Township Committee. Mr. Sullivan stated that the condition should be locked up before the Board of Adjustment. The way the 3rd COAH round works, the in lieu payment is over \$120,000 for a unit. So the township is subsidizing this amount. He would like to have the condition of approval include that the application will comply with the recommendation of the governing body and the Fair Share Plan.

Mrs. Flynn stated that when this project was presented originally, it appeared that this was going to help the township with the affordable housing. To put it bluntly, the township does not need this offer for the current round. This is going to cost the township. Based upon the best interest of the taxpayers who will be subsidizing this project, the applicant needs to give something back. She agreed with Mr. Sullivan that the terms must be ironed out here with the Board of Adjustment. The Planning Board was uneasy with this proposal. This will not help the township. It would cost money and would place an obligation on the township.

Mr. Shepherd stated that if there was a deal struck with the sewer advisory committee and the applicant based his application on that deal, he did not want to step in and change conditions.

Ms. Tubman stated that she is not certain that what she has in writing specifies a term. She is willing to accept a condition that this be resolved with the township committee. Additionally, there may never be a 4th round and this might be for a term of 40 years or forever. Mr. Sullivan assured the board that there will be a 4th round because affordable housing will be here forever. He stated that if we can insure that these units last through the deed restrictions, the township will find a way to make them count. But this has to be monitored.

Mrs. Fort recommended that this item be a condition of approval.

Mr. Sullivan wanted the board to know that there are no guarantees at this time if they don't deed restrict beyond the 30 years.

On another note, the Historical Commission report stated that the applicant will use authentic material. Mr. Villa proposes to use authentic reproduction material.

PUBLIC COMMENTS:

There were no comments from the public.

James A. Madden, Jr. was sworn in by Mr. Moore. He stated that he is a Licensed Professional Planner in the State of New Jersey. He has appeared before this board on other occasions.

Mr. Madden stated that the applicant is proposing to renovate 2 existing buildings. The larger building will be increased from 5,180 square feet to 10,360 square feet. The smaller "barn" building is going to go from 10,095 square feet to 21,090 square feet. In the main building they are proposing to have 6 retail tenants. On the second floor they are proposing 5 apartments. In the barn building they are proposing 1 retail store and one apartment on the second floor. As part of this application, they are proposing 4 affordable housing units. The applicant is proposing paved parking. Access to the facility will be via James Street and Main Street.

Exhibit A-9 – Photograph of existing conditions at the site.

Mr. Madden stated that the applicant is requesting a variance to exceed the Floor Area Ratio requirement. Additionally, the two other buildings on the site would require a D variance. The relief requested would not be detrimental to the zone plan, the zoning ordinance or the neighboring properties.

Regarding the negative criteria, the master plan speaks to the village commercial zone. In terms of the public good, they are upgrading the existing buildings. They will add to the commercial uses in Whitehouse Station. They will provide affordable middle housing.

PUBLIC COMMENTS:

There were no comments from the public.

Ms. Hendry made a motion to grant the application including the variances requested with the conditions that the board previously discussed with regard to uniformity of lighting and the drafting of the conditions regarding

the COAH language subject to Mr. Sullivan's review and the township committee's approval and to comply Mr. Hansen's letter which states that should the township extend the water line and install a hydrant the applicant will pay their pro rata share. Mr. Shepherd seconded the motion.

Roll call:

Mrs. Flynn	nay
Mrs. Goodwin	nay
Ms. Hendry	aye
Mr. Shepherd	aye
Mr. Stettner	nay
Mr. Thompson	nay
Madam Chair	aye

Mr. Thompson added that he wanted to clarify his vote. He was concerned about the intensity that was proposed for this site. The development that is proposed would create a traffic problem.

Mrs. Flynn stated that the applicant was unwilling to increase the time frame for the deed restriction. The planner used the affordable housing units as part of the positive criteria, and she disagreed.

**3. CharDham Hindu Temple/Readington
Use Variance & Preliminary Site Plan
25A Coddington Road**

Madam Chair stated that this matter is carried to January 18, 2007, without further notice.

H. ADJOURNMENT:

**Ms. Hendry made a motion to adjourn. Mr. Shepherd seconded the motion.
*Motion was carried with a vote of ayes, nays none recorded***

Respectfully submitted,

Linda A. Jacukowicz