

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of September 7, 2005 to order at 7:05p.m.

**MEMBERS PRESENT:**

**Present:** Elliott Averett, Felix Graziano, Harvey Ort, Craig Schwemmer, Anthony Spina, John Turick,  
**Alternate Members:** Frank Baguiao, Dorothy Walter  
**Members Absent:** Bauer, Graziano  
**Others Present:** Clerk Kesper, Attorney Brigliadoro, Engineer Hall, Planner Banisch

STATEMENT OF COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT  
 - Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 15, 2005 and posted on the Bulletin Board on the same date.

***MINUTES***

1. June 1, 2005 Regular Minutes

Mr. Averett made a motion to approve the minutes, seconded by Mr. Turick. A voice vote was taken; Mrs. Walter and Mr. Ort abstained, all others were in favor and the motion carried.

***RESOLUTIONS***

05-24 Molnar – Block 9, Lot 16.24 – 4 Yorkshire Drive – R-5 Zone – 1.848 acres – Approval of rear yard setback and insufficient lot size variance

Mr. Spina made a motion to approve Resolution 05-24, seconded by Mr. Averett. A roll call vote was taken:

Ayes: Averett, Baguiao, Spina, Schwemmer, Turick,  
 Nays: None Abstentions: None Absent: Graziano  
 Ineligible: Ort, Walter, Bauer

05-25 Hatcher – 50 Parker Road – Block 61, Lot 16 – R-5 Zone - .921 acres – Approval of front, side and rear yard setback, steep slope, non-conforming structure and insufficient lot size variances

Mr. Averett made a motion to approve resolution 05-25, Seconded by Mr. Turick. A roll call vote was taken:

Ayes: Averett, Baguiao, Spina, Schwemmer, Turick,  
Nays: None Abstentions: None Absent: Bauer, Graziano  
Ineligible: Ort, Walter

05-26 Landmark – Block 38, Lot 3.03 – Parker Road – R-5 Zone – R-5  
Zone - .92 Acres – Approval of variance for insufficient lot size and  
side yard setback

Mr. Turick made a motion to adopt resolution 05-26, Seconded by Mr. Baguiao. A roll call vote was taken:

Ayes: Averett, Baguiao, Spina, Schwemmer, Turick,  
Nays: None Abstentions: None Absent: Bauer, Graziano  
Ineligible: Walter, Ort

05-27 Rin Robyn Pools – Block 2, Lot 5 – Route 46 – C-1 Zone, .807 acres  
– Approval of Preliminary and Final site plan for expansion and  
renovation of existing office/retail building, including parking and  
signs

Mr. Spina made a motion to adopt resolution 05-27, Seconded by Mr. Baguiao. A roll call vote was taken:

Ayes: Averett, Baguiao, Spina, Schwemmer, Turick,  
Nays: None Abstentions: None Absent: Bauer, Graziano  
Ineligible: Walter, Ort

05-28 Hotz – Block 29, Lot 10.12 – East Mill Road – R-5 Zone – 1.010  
Acres Denial of Steep Slope Variance without Prejudice for Lack of  
Prosecution

Mr. Ort made a motion to adopt resolution 05-28, seconded by Mr. Spina. A roll call vote was taken:

Ayes: Averett, Baguiao, Ort, Spina, Schwemmer, Turick, Walter  
Nays: None Absent: Bauer, Graziano

05-30 Seals & Coccoziello – Block 54 Lots 43 and 49 – Mallard Cove Road  
- Deny application for permission to build with on a lot without  
frontage on a public street and steep slope variances without  
Prejudice for Lack of Prosecution



the corner of the existing building. She presented a photographic board of seven photographs of the property which was marked exhibit A-1. She stated that she took the photographs yesterday. She described the photographs to the board. The deck is currently built to the 25' setback line. She answered the Board that they would not be exceeding the setback of the house.

Mr. Quick stated that the applicant needs a 3' variance to bring the deck to the edge of the existing home.

Mr. Gruss stated that the septic and water are in the front and the oil tank is on the side of the house.

The meeting was opened to the public for questions and comments. There were no questions or comments from the public and the meeting was closed to the public for questions or comments on this application.

Mr. Turick made a motion to approve the variance as discussed this evening, seconded by Mrs. Walter. A roll call vote was taken:

Ayes: Averett, Baguiao, Ort, Spina, Schwemmer, Turick,  
Walter            Nays: None            Absent: Bauer, Graziano

3.     Goncalves – Block 9, Lot 11.07 – Drakestown Road – R-5 Zone –  
       3.103 acres – Request for Steep Slope Variance – Previously Heard  
       June 1, 2005 – Expires September 7, 2005

David Fantina, Applicant's Engineer  
Jose Goncalves, Applicant

Mr. Hall arrived and joined the meeting.

Mr. Fantina stated that since the June meeting the applicant has applied to the DEP for a wetlands permit. In addition they have met with Mr. Hall and discussed stormwater management and there are now extensive drywells on the plan. He stated that the Township has revised the steep slope ordinance and they have revised the plan accordingly and now require additional variance relief, but that the slopes being disturbed are still only along the driveway. He noted that this is a flag lot off of Drakestown Road and that a driveway currently exists but that the applicant needs to widen it; add passing zones and a K-turn to meet Township ordinances, which requires a disturbance of steep slopes. There are no other variances required to develop the lot. He explained to the board that as previously stated by Mr. Hall, there is a blue line stream that is shown on the USGS maps but that the stream does not actually exist on the property. He stated that he has spoken to the DEP

about this and was told that the applicant would be exempt from the 300' setback regulation even if the stream did exist because it is a pre-existing lot of record.

Mr. Fantina answered the board that Mr. Goncalves has owned the property before the enactment of the highlands and that the lot was created through a minor subdivision application at the planning board in 1977 and that it met the flag lot requirements at that time. Regarding Mr. Hall's letter of August 25<sup>th</sup>, II C stormwater comments, the applicant will would comply with the requirements.

Mr. Hall stated that he has been on the site two times and concurred that the bulk of the slopes were man made at the time the existing driveway was put in years ago and that the slopes are being disturbed to widen the driveway. He did not see a detriment to the downstream homes or the environment if the Board granted the requested steep slope variance. He reviewed his letter of August 25.

Mr. Fantina agreed to all items in the report with the exception of the circular driveway. He asked that it be allowed by using porous materials.

Mr. Banisch arrived and joined the meeting.

Mr. Hall answered the board that 15% is the maximum impervious coverage allowed under township ordinances and that the applicant is below this requirement.

Mr. Goncalves stated that from the K-turn to the home he wanted to use brick pavers and from the K-turn down to the street down he wanted it paved. He did not want a gravel driveway because of the winter maintenance.

Mr. Hall answered Mr. Schwemmer that there are no steep slopes in the area of the circular driveway.

The Board reviewed the circular driveway and the pavement of the road vs. stone and concluded that they did not have a problem with the driveway and circular area as proposed by the applicant.

Mr. Hall wanted the stormwater management maintenance agreement attached to the deed of the property. He reviewed for the board the maintenance of the dry wells that will have to be done by the property owner.

Mr. Fantina stated that the manual would be revised as requested by Mr. Hall and made part of the deed documents.

Mr. Fantina answered Mr. Hall that it was his opinion that the easement on lot 11 for ingress, egress and utilities would allow drainage under the utilities section.

Mr. Brigliadoro stated that a new easement could be required between the two property owners and they could make this a condition of the approval or the board could proceed under the current easement. He noted that if the owner of lot 11 did not believe the drainage improvements were allowed under the easement, this would become litigation between the two owners of the easement and not the township.

Mr. Fantina stated that PSE&G owns the easement on adjoining lot 11 and it is quite a distance to any home.

Mr. Hall answered the Board that this application is different then some previous drainage discharge situations because of the minimum volume of discharge and that it is not an increase from what is currently happening.

The Board discussed the issue and concluded that a new easement would not be a requirement of approval.

The meeting was opened to the public for questions and comments. There were no questions or comments and the meeting was closed to the public on this application.

Mr. Averett made a motion to authorize the board attorney to draw up a resolution of approval subject to the DEP wetlands permit and stormwater management plan revisions, revised plans, compliance with Mr. Hall's letter as discussed and all other discussions on this application this evening and at the June meeting. Seconded by Mr. Spina. A voice vote was taken; all were in favor and the motion carried.

Eligible: Averett, Baguiao, Spina, Schwemmer, Turick, Walter  
Ineligible: Absent 6-1-05 Bauer, Graziano, Ort – Absent 9-7-05 – Bauer and Graziano.

4. Sardeira/Vieira – Block 47, Lot 23.05 – 40 N. Mt. Lebanon Road - R-5 Zone – 4.8379 acres – Request for side yard setback variance – Expires September 7, 2005

Marco Sardeira, Applicant  
Isabella Vieira, Applicant



Mr. Lavery marked the proposed site plan as exhibit A-1, which was the same plan previously submitted to the board.

Mr. Skapinetz stated that the applicant is proposing to build a 6,887 auto parts facility on two lots. He referred to sheet two of the plans that had been colorized, which was marked exhibit A-2. The property is approximately 40, 000 sq. feet on Route 46 East. He reviewed the plan and noted that there will be only one driveway off of Route 46.

Mr. Skapinetz briefly reviewed the site plan including lighting, siding, signs, etc. He stated that in addition to the use variance relief sought this evening there are three other variances: side yard setback - 50' required and provided; number of parking spaces provided - 36 provided and 46 required by ordinances. It was his opinion that 36 spaces are sufficient for this type of facility. On other similar facilities the applicant has as few as 27 parking spaces.

Mr. Banisch explained to the board that the variance being asked for this evening is the use variance and that the applicant was giving the board an overview of the site plan and site plan variances as it relates to the use variance.

Mr. Hall read the ordinance regarding retail parking space and it was his opinion that the applicant would need 1 space per 175 sf, not 1 space per 150 sf because the building is over 2000 sf.

Mr. Skapinetz stated that based on Mr. Hall's reading of the township ordinance the application would require 40 spaces vs. the proposed 36 spaces.

Mr. Hall advised the applicant that for the parking space variance the applicant should present evidence such as field counts from their other stores that their proposal is sufficient.

Mr. Skapinetz answered Mr. Averett that the applicant is proposing 10' x 20' spaces, which complies with Township ordinance.

Mr. Skapinetz answered Mr. Schwemmer that 70% impervious coverage is allowed by ordinance and that 59% is proposed and, therefore, the applicant does not need a variance for impervious coverage.

Mr. Banisch read the ordinance regarding permitted uses under the township's C-1 neighborhood business.

Mr. Lavery stated that the Zoning Officer, Fred Jordan, stated that this use was not specifically allowed as it was not listed in the ordinance and that is the reason they are before the Board of Adjustment.

Mr. Hansen reviewed the proofs required for the board to approve the requested use variance. Regarding the site being particularly suited, he stated that

- There are other non-specifically allowed uses on route 46 such as the sports store, paint store and pool store.
- There are no wetlands or floodplains on the property.
- The uses in the area are similar to the proposed use.
- This property is in the highlands planning area.
- The property is a redevelopment site as the buildings currently existing on the site have fallen into disrepair.

Mr. Hansen stated that regarding the special reasons this use would promote the purposes of the MLU. He enumerated the purposes advanced as:

- Safety and general welfare – traffic can get in and out without disturbing local roads
- The site is specifically suited for this commercial use as it has highway frontage and is surrounded by other similar commercial uses.
- It improves the visual environment of the area by removing the buildings that have fallen into disrepair and building a new structure. He referred to a photograph he took today of the site from across the street which was marked A-3.
- This application eliminates one driveway, which improves safety on the road.

Mr. Hansen stated that regarding the master plan this use advances the goals of the master plan such as:

- The Land Use Elements goal of a wide range of commercial uses
- The Circulation plan – no impact on local roads as it is on a state highway.
- The Economic Plan – this development furthers this goal.

Mr. Hansen addressed the negative criteria. He stated that there would be no substantial detriment to the public good, zone plan or ordinance. This use is compatible to other uses in the area and that the applicant would be removing a substandard lot by combining two lots to create a conforming lot. It was his opinion that there would be no detriment to the public good and that this site could be a catalyst to improve this area.

Mr. Banisch stated that regarding the redevelopment and the visual improvement, the board has not seen an architectural plan of the proposed building and it was his opinion that the building being proposed may not be particularly attractive. He stated that the photograph presented by the applicant did not show some of the business that has a residential look. He would like the applicant to provide the board with a photograph or rendering of the proposed building.

Mr. Skapinetz showed the board a sketch of the building plan, which was marked A-5.

Mr. Banisch stated that the board should look for more of a gable roof instead of the long horizontal line pictured on the exhibit. He noted that the Sherman Williams paint store is a similar structure, but it was his opinion that we should not be encouraging this type of structure.

Mr. Skapinetz stated that the design shown is the prototype building used by the applicant.

Mr. Lavery stated that the style of building does not go directly to the granting of the use variance.

Mr. Banisch answered the board that he objects to the design of the building as it degrades the neighborhood zone business character in the area.

Mr. Lavery disagreed with Mr. Banisch regarding the character of the area.

Mr. Hansen stated that they are not trying to build a residential building, but a clean commercial building and this is cleaning up the site.

Mr. Lavery stated that he has discussed this issue with his clients and they would be willing to work with the board to come up with an acceptable building design with the board during the site plan application.

Mr. Banisch reviewed the growth share COAH housing obligation being generated by this site. It was his opinion that this property would lend itself to having a second floor that could accommodate affordable housing on the site. He thought this was an ideal site for affordable housing.

Mr. Hansen stated that by providing living units the parking would have to be increased. He did not know if the site could accommodate a septic

system for mixed use. It was his opinion that this was not a practical site for COAH housing.

Mr. Ort asked if an applicant did not need a use variance would the ecstatic of the building be an issue the board could review.

Mr. Banisch stated that the board would work with the applicant to get the best possible plan.

Mr. Lavery stated that a fully conforming application could not require architectural changes.

Mr. Briigliodoro stated that this is a use variance and he has not heard use variance testimony regarding hours of operation, what will be stored on site etc.

Mr. Lavery stated that those items go more to a site plan review more then a use variance.

Mr. Briigliodoro disagreed with Mr. Lavery.

Mr. Banisch stated that there are residential uses within 200' of the property.

Mrs. Walter asked if this use would generate more traffic then the previous uses did.

Mr. Skapinetz stated that previously the property had a bank and an office and that based on that type of use, not a traffic generation study, a bank use would generate more traffic then the proposed use.

Mrs. Walter asked that the applicant have hours of operation, number of employees, etc. for the board to weight with the use variance.

Mr. Spina asked that historical data on traffic and parking requirements for stores of this type in this area be given.

The meeting was adjourned to October 5<sup>th</sup> for the applicant to address the architectural design, parking, hours of operation and the affordable housing obligation that this use would generate and the types of materials being handled and stored at the site.

The meeting was opened to the public for questions on the testimony given this evening. There were no questions and the meeting was closed to the public for questions on the testimony presented this evening.

Eligible: Averett, Baguiao, Graziano, Ort, Spina, Schwemmer, Turick,  
Walter  
Absent: Bauer, Graziano

6. Frayne – Block 13, Lot 1.10 – 337 Flocktown Road – R-5 Zone –  
5.761 Acres – Request for Use Variance to permit more than one  
principal structure on a lot

Adjourned at the applicant's request to October 5, 2005

7. Long Valley Village – Block 28, Lot 18.02 – East Mill Road – C-1  
Zone – Request for Use Variance for dry cleaners with processing –  
Expires December 22, 2005 -

Adjourned at the applicant's request to October 5, 2005

***DISCUSSION -  
CORRESPONDENCE***

1. Vouchers

The vouchers were reviewed. Mr. Ort made a motion to approve the vouchers reviewed by the Chairman and found in order and send same on for payment. Seconded by Mrs. Walter. A voice vote was taken; all were in favor and the motion carried.

Mr. Averett made a motion to adjourn, seconded by Mrs. Walter. A voice vote was taken; all were in favor and the meeting was adjourned at 9:30 p.m.

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Virginia R. Kesper, Clerk