

Zoning Board of Adjustment Minutes
Wednesday, November 14, 2012, 7:00 P.M.

Present: John Gladwell
Bruce Kmosko
Peter F. Kremer
Charles Lavine
Samuel Pangaldi
Frank Scangarella, Alt. #1
Edward H. Wiznitzer, Alt. #2
Stephen C. Brame, Chair

Absent: Leona Maffei

Also Present: Brenda Kraemer, P.E., Assistant Municipal Engineer
Brian Slauch, Planning Consultant, Clarke Caton & Hintz
George Dougherty, Attorney, Katz & Dougherty, PC
Susan Snook, Acting Recording Secretary

1. Statement of Adequate Notice

Adequate notice of this meeting of the Lawrence Township Zoning Board has been provided by filing the annual meeting schedule with the Municipal Clerk as required by law; by filing the agenda and notice with the Municipal Clerk, posting prominently in the Municipal Building, and mailing to the Trenton Times, the Trentonian and the Lawrence Ledger newspapers.

2. Public Participation: (None)

3. Application No. ZB-5/11 (Bulk Variance – SANJAY & DIMPLE JAGANI, 24 Richards Road, Tax Map Page 52.04, Block 5201.7, Lot 9.

Robert Ridolfi, represented the applicant. Mr. Ridolfi stated he feels the Board is in a position to take jurisdiction in this matter and briefly described the property. This application is for a rear yard setback variance of 10' that would enable Mr. and Mrs. Jagani to construct a proposed two-story addition to their existing home. Mr. Ridolfi reviewed Mr. Slauch's report of December 7, 2012 and prepared to address the issues raised in his report. Mr. Ridolfi testified that it is a pie shape piece of property; it becomes very narrow as you walk from front of the lot toward the rear of the lot, which creates a hardship, which is unlike many of the other lots in this development. It backs up to the common area in the back of the lot and there is no way to can tell where the property owners lot ends.

Witness Placed Under Oath:

- Sanjay Jagani, Homeowner

Exhibits: Blown up Survey A1, dated November 14, 2012.

Mr. Ridolfi questioned Mr. Jagani. Mr. Jagani stated he is the homeowner of 24 Richards Road and has lived at this residence for 7 years. He lives there with his wife, children and his parents and stated there is not enough space especially for son and daughter so they do not have to share a room. There are currently three (3) bedrooms and the proposed addition will give extra space for the closet in the master bedroom, extra space in daughter's room for bathroom and leaving the other two rooms as is.

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First floor additional space will be used to extend the kitchen and family room and a small amount in the dining room. Mr. Jagani consulted with an architect and could not come up with a plan without applying for a variance because of the lot shape, see Exhibit A1. Mr. Jagani also stated that when he purchased the property he was not informed from the Developer or anyone else about the lot and the zoning restrictions. The Homeowner Association documents do not say anything about zoning restrictions. The back yard contains a deck and there is no fence or hedges, it is all open space. Mr. Jagani has no objection to planting shrubs as a screen to hide the addition, per the report of Clarke Caton & Hintz.

Mr. Slauch questioned the homeowner from his report dated November 7, 2012 regarding that the homeowner was not aware of the PVD zone having a 35' rear setback instead of a 25' rear setback. The addition cannot be placed in any other location without violating a front or side yard setback; the homeowner needs the addition in the back where the needs are. A proposed addition of 9 x 12 could be built on the side yard; however, functionally it would not work. The deck would be removed entirely, except the steps.

Ms. Kraemer concern is the location of the addition. The drainage easement in the rear yard would leave only six-feet of usable rear yard and would be difficult to have a non-conforming deck and the steps will go into the drainage easement and nothing can be planted or erected in the drainage easement. A question was asked about adjusting the easement by taking the open space.

Chairperson Brame questioned the Master Deed; even if this space is delineated by boundaries, there is still common areas and seems the master deed would have made it clear that is a master area and possibly amending the master deed or the open space could be amended in such a way to permit that use. Mr. Ridolfi answered to into this area you would have to approach the Department of Community Affairs, New Jersey Department of Environmental Protection, the Association, 100 members of the Association and it would be a nightmare and the expense. Mr. Ridolfi notified the Association and Association did not contact him to say they have an objection to this variance application.

Ms. Kraemer stated the shape of this lot is not unique to this development. On Page 3 of 5 of Clarke Caton & Hintz report there are several pie shaped lots. In response to a question from the Board, on whether the application qualified for a variance under certain key terms of the Municipal Land Use Law providing relief for owners of properties having "unique" shapes or dimensions, Mr. Ridolfi noted that there were no irregular properties known to him which had the same combination of a narrowing to the rear lot which opened onto common area open space, thus the property is unique.

Mr. Dougherty advised that the granting of the pending variance could stand as precedent set for and applicable to future applications having the same features, but cautioned that the task of the Board is to use its power of granting relief from a hardship is a matter to be determined by the Board after weighing the benefits against the negatives and after giving due regard for the fact that the governing body established the zoning regulations, in this particular case, as the result of a legal settlement and that zoning regulations are not to be freely issued.

Mr. Dougherty clarified his prior advice by advising the Board that its task, just as that of a judicial panel, is to be careful, in granting a variance, to specify the very unique features of the particular application so that the grant is not used as precedent for cases which lack those distinguishing features.

PUBLIC COMMENT:

Ketan Chanpura, 29 Richards Road; offered a comment in support of the Applicants noting that they had a unique situation with a relative living next to them and that they had a reason for not opting to move away to seek a larger home.

Suzanne Camlin 102 Traditions Way; who requested the Board to consider the importance of helping the Applicants provides separate rooms for their boy and girl.

4. Application Nos. ZB-14/10 & SP-11/10 (Remand of Use Variance & Minor Site Plan), Simone Investment Group, LLC, 100 Federal City Road, Tax Map Page 27.03, Block 2701, Lot 81.01

Mr. Gladwell, Mr. Lavine and Mr. Wiznitzer stepped down from the proceedings due to conflicts.

Mr. Dougherty gave a brief summary of the Court's review of the record of the proceedings, the findings of the Board, the record of evidence to support a proper review and decision.

Mr. Kremer observed the Court's decision, while declaring the proposed use within the PO Zone was an inherently beneficial use, recognized also that all beneficial uses are not of equal rank in terms of the actual benefit that they bring to the community. Noting that the Court's decision drew attention to the "Salt & Light" case; he read the case and found it to be important to him in his approach to the Sica test to be performed by the Board. Drawing the manner in which the Appellate Division decided that case, Mr. Kremer gave this opinion that the detoxification operation for which the use variance was sought was of limited benefit to the community in which it was to be situated and was of a lesser benefit than would otherwise be provided by a service which was rendered to all local people in need of the service on referral from local hospital and public safety agencies. Mr. Kremer referred back to his comments made in support of the decision to deny the variance initially.

Mr. Kremer expressed the opinion that the public interest in maintaining the integrity of the zoning ordinance and observing the limits to which a zoning board should and could legally intrude upon the legislative domain of the governing body, the Township Council, which had actually ordained, in 2004, against such intense use as proposed. Mr. Kremer explained that 24 hour, seven day a week nature of the operation conflicted with an essential focus of the re-zoning for this: to make it a Professional Office zone which would bar uses which were 24 hour operations. Mr. Kremer conclusion that allowing a residential; 24 hour operation in a zone which excluded such activities would constitute a substantial detriment to the Zoning Ordinance outweighing the limited benefits of the detoxification operation to the community.

Mr. Scangarella, affirming that he reviewed the facts in light of the Sica test and was troubled by attempting to accommodate a 24-hour use in the PO Zone. He expressed an interest in hearing what other Board members had to say.

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Mr. Pangaldi, in his opinion, the proposed use did indeed serve the "public interest" describing that interest as being served by having such a facility in place, because it offers an opportunity to the people who need that service. He explained the factual difference between the pending application and the Salt & Light case, noting that Salt & Light involved replacing a single family home with a larger, duplex building in a single-family neighborhood, whereas, in the present case, the buildings are already in place and would not become larger to accommodate the detox center.

He viewed the negative criteria identified by those opposing the application were based on activities which were not be visible from the neighborhoods or the public roadways and considered the negative aspects to be based on anticipated activities which were to be contained within the walls and grounds of subject property, rather than the 24 hour nature of the operation. The real basis for public opposition was controllable with conditions to be applied to the grant of a variance. Those conditions would include screening the actual interior operations from view by requiring a ten-foot fence on the side adjoining the residential properties and six foot fences on the street side. He proposed imposing a condition that security guards be employed to allay the fears of the residents of the adjoining zones as to potential intrusion in their neighborhoods by persons released from Sunrise's facilities. He also proposed controls to be imposed on the emissions from the kitchen service to be approved by the Township Engineer, lighting emission controls and delivery hour limitations. With such conditions in place, Member Pangaldi offered the opinion that, even though he regarded the application as not posing a "substantial" negative impact to the public interests, the imposition of the suggested conditions would be a satisfactory adjustment which would be found to be acceptable by the public.

Mr. Kmosko expressed agreement with the comments made by Mr. Kremer, stated that he did not see public safety being a factor. He considered the community intended to be served by the Sunrise use to be a much larger area than the County of Mercer and felt that the service was of limited benefit because it was not intended to include indigent and needy. His view was that the 24-hour operation was a clear detriment to impair the purpose of the zoning, referring to the record of the governing body's emphasis on excluding from the PO Zone 24-hour operations.

Chairperson Brame focused his initial remarks upon the legislative history and purpose of the creation of the PO zone, which, in his view, was designed as an overlay district in which its structures were to mimic the nearby residential structures. Chairperson Brame noted that the PO Zone was ordained to provide for a less intense use than had previously been permitted on the site in question. It enunciated Lawyers, Doctors offices Governmental uses and child care – a less intense use that is nestled between two residential units. He read for the record from the Zoning Ordinance's Educational, Governmental and Institutional (EGI) Zone, when the Township council abandoned the EGI to make it PO in 2004, it intentionally reduced the scope of activity and the image of the structures within PO zone to reduce the contrast between intense operational uses and the more tranquil residential districts adjacent to it. He noted that for eight years, since the adoption of the PO Zone, prospective buyers in the two adjacent residential zones most likely settled upon their choice of residence in reliance on the restrictions applicable in the PO zone. Chairperson Brame noted that the former EGI zone would have allowed laundry and food service 24 hour for regional hospitals and that the proposed use is clear a high intensity, 24 residential use which cannot be ameliorated by conditions affecting trash pickup and 24 hour service. Chairperson Brame concluded that the detriment of putting this in the PO zone greatly outweigh the benefits to a limited number of the public. "In my view it is not that compelling a use that I would overturn a PO zone to support it."

Mr. Pangaldi moved to approve the application with conditions. Mr. Kremer seconded the motion. The motion was denied; one in favor, four opposed and therefore, the application was denied.

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5. Resolution of Memorialization 16-12z approving Certificate of Non-conforming Use Application No. ZB-4/11; **Womanspace Holding Co., Inc.**; 856 Strawberry Street & 1530 Brunswick Avenue; Block 401, Lot 81.01

Resolution 16-12z was approved.

6. Minutes for Approval:

Wednesday, April 18, 2012 and Wednesday, May 16, 2012 were approved.

Adjournment

There being no further business to come before the Board, the meeting was adjourned at 9:05 p.m.

Digital audio file of this meeting is available upon request.

Respectfully submitted,

Susan Snook
Acting Recording Secretary

MINUTES APPROVED: 1-13-2013