



**Township of Freehold**  
OFFICE OF THE PLANNING BOARD  
One Municipal Plaza, Freehold, NJ 07728

**REGULAR MEETING MINUTES**  
**September 1, 2016**

The Regular Meeting of the Planning Board was called to order by Mr. Gatto on Thursday, September 1, 2016 at 7:00 p.m. at the Freehold Township Municipal Building, One Municipal Plaza, Freehold, New Jersey. He read the Notice of the Open Public Meetings Law.

**Present:** Mr. Ammiano, Mr. Cook, Mr. Bazzurro, Mr. Gatto, Mr. Kash, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk, Mr. Coburn, Mr. Asadi and Ms. Kurtz.

**Absent:** None.

**Also Present:** Roger McLaughlin, Esq., Francis Accisano, Esq., Timothy P. White, Township Engineer; Paul Phillips, Township Planning Consultant and Danielle B. Sims, Administrative Officer.

There was the Pledge of Allegiance.

**MINUTES:**

A motion to approve the minutes of the April 21, 2016 meeting was made by Mr. Shortmeyer, seconded by Mr. Ammiano and passed with the following roll call vote: Aye: Mr. Ammiano, Mr. Bazzurro, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk, Mr. Coburn, Mr. Asadi and Ms. Kurtz.

A motion to approve the minutes of the April 21, 2016 meeting was made by Mr. Ammiano, seconded by Mr. Shortmeyer and passed with the following roll call vote: Aye: Mr. Ammiano, Mr. Bazzurro, Mr. Gatto, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk, Mr. Coburn, Mr. Asadi and Ms. Kurtz.

**RESOLUTIONS:**

**“D” Use Variance Application # 017-15**  
**New York SMSA Limited Partnership d/b/a Verizon Wireless**  
**Block 102, Lot 11 – 363 Monmouth Road**

Mr. Gatto, Mr. Ammiano, Mr. Cook and Mr. Kash stepped down for this vote.

Lynne Dunne, Esq. appeared on behalf of the applicant. Mr. Bazzurro stood in as chairman for this vote.

Mr. Shortmeyer made a motion, seconded by Mr. Bruno to approve the resolution. The motion passed with the following roll call vote: Aye (4): Mr. Shortmeyer, Mr. Bruno, Mr. Coburn and Mr. Asadi. Nay (3): Mr. Bazzurro, Mr. Kirk and Ms. Kurtz. Mr. Accisano explained that since this is a use variance application, an enhanced majority of 5 votes is required for a positive vote, absent this, the application is not approved. Proper procedure would be to put into record the reasons why it was not approved and



cannot support the application. The application has legally been denied. There was a motion made by Mr. Shortmeyer to identify the reasons this application was not approved, seconded by Mr. Bazzurro. Mr. Accisano stated some tentative reasons, of which can be added to by the Board that caused the application to not be approved: the applicant did identify a need, but proved that the service may not be up to their standards, but not that there was no service, that the applicant did not search out a reasonable amount of alternate location sites, the federal regulation allows add-ons for co-locator without municipal approval and the additional height could affect visual impact and real estate values in the area, the bulk variances and separation distance variance cannot be justified with the potential additional height, the site is therefore, not particularly suited and cannot be approved without being a detriment to the public good.

There was a roll call with the following vote: Aye (5): Mr. Bazzurro, Mr. Kirk, Ms. Kurtz and Mr. Asadi (who clarified that his yes vote was to approve the reasons provided). Nay: Mr. Bruno. Abstain: Mr. Shortmeyer.

The resolution will be memorialized on September 15, 2016.

Mr. Gatto, Mr. Ammiano, Mr. Cook and Mr. Kash re-joined the dias.

## **DISCUSSION ITEMS:**

### **Minor Site Plan # 879-15 Primark U Corp. MS Portfolio, LLC Block 69.01, Lot 18.07**

William J. Mehr, Esq. entered his appearance on behalf of Primark. Dante Alfieri, Esq. appeared on behalf of Sears. Barry Stieber, Esq., appeared on behalf of Freemall/Macerich.

Mr. Gatto explained that there was a discrepancy with application that was recently approved by the Board for Primark; whereas the applicant represented at the public meeting and preliminary sign review meetings that the Sears signs were to be removed and thus far, had not been addressed. There had been no resolution regarding this matter.

Mr. Gatto asked the Board to consider having Mr. Accisano notify the Township Committee for their discretion for enforcement and further resolution, as Township Ordinance requires all mall signs to be approved by the Planning Board.

Mr. Gatto also noted that representatives of Macerich were present at the public hearing and they should have known about the sign review requirement. They should have also been aware that the Sears sign was expected to remain, although the testimony said otherwise. All parties were given 30 days to resolve.

Mr. Gatto read an excerpt from the Planning Board Rules and Regulations regarding a re-hearing for applications (Rule 3.2) and explained that it is his opinion that this falls under this provision of the rules and regulations (misrepresentation, fraud, or mistake). He asked that the Board authorize Mr. Accisano to send out notice of a re-hearing to the appropriate parties



For these reasons, the approval of the resolution can constitute grounds for rescission. Mr. Alfieri questioned if he would have a chance to respond. Mr. Accisano responded that he would at the public hearing but would reserve this time for legal arguments.

Mr. Mehr explained that there was a permit issued to Sears by the Township that was installed prior to the Primark hearing. There was an additional Primark sign that replaced another Sears sign. Chairman Gatto was not sure that the signs were there before the Primark hearing.

A motion for the Board to authorize Mr. Accisano to send out the letters as described by Chairman Gatto was made by Mr. Ammiano and seconded by Mr. Shortmeyer. An all affirmative vote was made.

A public hearing date for a re-hearing was set for October 6<sup>th</sup>, 2016 that was made by Mr. Shortmeyer and seconded by Mr. Ammiano. An all affirmative vote was made. Notice would be required in the same as the previous Primark application. Should all parties not be able to come to a resolution regarding the matter, a re-hearing will be held on October 6<sup>th</sup>, 2016.

Mr. McLaughlin took over representing the Board as Mr. Accisano had a conflict with one of the upcoming applications.

## **NEW APPLICATIONS:**

### **Capital Review Project # 862-1-16**

#### **Township of Freehold – DPW Vehicle Storage Building**

#### **Block 84, Lot 3.01 – 66 Jackson Mills Road**

Proposal for a 200' x 80' vehicle storage building at the Township's DPW site.

Mr. Ron Kirk described the proposed Capital Project as a 200' x 80' vehicle storage building to be constructed at the rear of the Township's DPW site. It would primarily be used for storage of plows and sanders and would help protect the investment of the equipment. It would be located in the area of the existing salt storage area.

Though it was not a public hearing, it was offered for public comments and questions. There were none.

Mr. Cook made a motion to prepare a positive resolution and was seconded by Mr. Kash, all in favor, aye.

### **Variance Application # 012-16**

#### **Amended Site Plan and Variance Application**

#### **Errol's Landscaping**

#### **Block 83, Lot 8 – 45 Jackson Mills Road**

Request to excise the condition in previous site plan and variance resolution of approval to allow for the business to lease a portion of the building to another landscaping business.

Mr. Cook and Mr. Ammiano were disqualified and stepped off the dias. Mr. Asadi and Ms. Kurtz were seated.

Patrick Accisano, Esq. entered his appearance on behalf of the applicant. Patrick Accisano described the site as being in the P-1 zone, approximately 2.8 acres and operating as a landscaping use under a previously granted use variance in 2008. He explained that Errol's is requesting the Board to remove



the condition in the previous resolution of approval that prohibits Errol's from leasing a portion of the property. He gave out copies of the previously approved site plan and architectural drawings.

Mr. McLaughlin said he reviewed the proof of notice submitted by the applicant which was correct in form, published and served in a timely fashion so the board had jurisdiction to conduct a public hearing.

Mr. McLaughlin's letter dated August 26, 2016 and Mr. Patrick Accisano's response letter dated August 29, 2016 were marked into evidence. Mr. Gatto summarized that the previous Zoning Board of Adjustment (which is no longer in existence) granted approval with certain conditions. Also, the hurdle for this Board would be to guess what/why the previous Board did at the time when they imposed the conditions. It would be hard to override the conditions previously set.

Patrick Accisano said that they were appearing to testify to the operations.

Roger McLaughlin said that without a specific application and a specific use, it would be hard for the Board to make a determination and that the variance would run with the land. Mr. Accisano explained that the use would be exactly what was previously approved and there would be no changes in the site.

Mr. Gatto stated he was not comfortable with overriding a condition previously imposed, but is not opposed to the applicant filing and amended site plan and getting a modification of approvals.

Patrick Accisano explained that the condition was legally suspect as it imposes prohibitions. There is no substantive difference at all with this condition being removed.

Mr. Gatto explained that the property would be sellable and usable; it would just have the same conditions as imposed as part of the approval.

Mr. McLaughlin questioned the substantive difference

Mr. Asadi interpreted that the resolution shows that as a condition of approval, the offices were meant to be accessory to the operations of the landscape business.

Mr. Gatto followed up that the testimony/findings were never intended to have a second business and the representation is that it is necessary to his business and are ancillary to "his" business.

Mr. McLaughlin explained that the previous application was for an expansion of a non-conforming use and there were several representations on how the property would operate and the Board made a conclusion based on that testimony and the way it was proposed. By expanding/adding businesses to the property, the approvals are open to discussion.

Patrick Accisano explained that they are looking to provide testimony to amend condition No. 6.

Mr. McLaughlin clarified that this was not to Errol, it is to one on-site business. What is being requested should be requested as a "D" variance application for an expansion of a non-conforming use to operate a second business.

Patrick Accisano also explained that this is a de minimus change and there would be no change and should be allowed to provide testimony to show there would be no change.

Mr. Gatto explained that if there was concern with the previous resolution, there were options and means, but the time has passed. He explained that the applicant should come in with an application for an expansion of the use, and does not feel comfortable removing a condition imposed by the previous Board. He understood that they have a right to reconsider the conditions, but feels it is not appropriate.



By renting a portion of the property to a second landscaping business, it would be an application to permit the expansion of a non-conforming use. This would change the underlying nature of the approval if the Board were to remove a previous condition.

Patrick Accisano requested that should they move forward and seek an expansion on a use variance, and that they would not need to submit certain submission documents. Mr. White briefly explained the application process and ability to request a waiver of certain submission documents.

Mr. Patrick Accisano requested that the application be withdrawn without prejudice. The Board accepted the request.

**DISCUSSION:**

Mr. Gatto asked about upcoming applications. Ms. Sims described the upcoming agendas.

**ADJOURNMENT:**

There being no further business, a motion was made to adjourn the meeting and passed unanimously. The meeting concluded at 8:04 pm.

Respectfully Submitted,

Robert H. Shortmeyer  
Secretary