



# Township of Freehold

## OFFICE OF THE PLANNING BOARD

One Municipal Plaza, Freehold, NJ 07728

### REGULAR MEETING MINUTES

#### March 16, 2017

The Regular Meeting of the Planning Board was called to order by Chairman Gatto on Thursday, March 16, 2017 at 7:00 p.m. at the Freehold Township Municipal Building, One Municipal Plaza, Freehold, New Jersey. Mr. Gatto read the Notice of the Open Public Meetings Law: "In accordance with the Open Public Meetings Law, (c.231.P.L. 1975), this meeting was announced by posting the notice on the bulletin board reserved for that purpose; by mailing such notice on January 19, 2017 to the official newspapers of the Township and by filing such notice with the Township Clerk."

**Present:** Mayor Preston, Mr. Ammiano, Mr. Gatto, Mr. Shortmeyer, Mr. Kash, Mr. Bruno, Mr. Kirk, Mr. Coburn and Mr. Asadi.

**Absent:** Mr. Bazzurro and Ms. Kurtz.

**Also Present:** Frank Accisano, Esq.; Paul Phillips, Township Planning Consultant; Andrew Feranda, Shropshire Associates, Township Traffic Consultant; Timothy P. White, Township Engineer; Joseph Ettore, Monmouth County Engineer; Margaret Jahn, Health Officer Danielle B. Sims, Administrative Officer and a court reporter for the MACW applications.

There was the Pledge of Allegiance.

#### **MINUTES:**

A motion to approve the minutes of the October 6, 2016 meeting was made by Mr. Ammiano, seconded by Mr. Shortmeyer and passed with the following roll call vote: Aye: Mr. Gatto, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk and Mr. Asadi.

A motion to approve the minutes of the March 2, 2017 meeting was made by Mr. Ammiano, seconded by Mayor Preston and passed with the following roll call vote: Aye: Mayor Preston, Mr. Ammiano, Mr. Gatto, Mr. Kash, Mr. Bruno, Mr. Kirk and Mr. Asadi.

#### **RESOLUTIONS:**

##### **"C" Variance Application # 002-17**

**Michael Coma**

**Block 105, Lot 29 – 371 Jackson Mills Road**

Mr. Shortmeyer made a motion, seconded by Mr. Kash to approve the resolution. The motion passed with the following roll call vote: Mayor Preston, Mr. Ammiano, Mr. Gatto, Mr. Kash, Mr. Bruno, Mr. Kirk and Mr. Asadi.



**“C” Variance Application # 022-16**

**Laspisa, Louis**

**Block 104, Lot 34.09 – 187 Nomoco Road**

Mr. Kash made a motion, seconded by Mayor Preston to approve the resolution. The motion passed with the following roll call vote: Mayor Preston, Mr. Ammiano, Mr. Gatto, Mr. Kash, Mr. Bruno, Mr. Kirk and Mr. Asadi.

**Preliminary and Final Major Site Plan # 883-16 and Variance # 025-16**

**AAA Club Alliance, Inc.**

**3478 Route 9 Automotive Realty, LLC**

**Block 71, Lot 14 – 3478 US Highway Route 9**

This resolution was carried to the April 6, 2017 meeting. Timothy White and Frank Accisano are reviewing the requests from the attorney for changes in the draft resolutions. Chairman Gatto explained that he remembered the Board requested that the red color be revised and that the logo is not optional. He recollected that they get a clean architectural letter from the Board consultant, Spiezle Architectural Group - Steve Leone and the color of the sign and its location relative to the roadway should be addressed. It was recommended that the color red be modified to be similar to the red at Cheesecake Factory. The Board was very specific about the conditions imposed about the architectural design and the sign. Mr. Ammiano and Mr. Asadi agreed with Mr. Gatto’s summary.

**Soil Removal/Fill Application # SR-07-16**

**AAA Club Alliance, Inc.**

**3478 Route 9 Automotive Realty, LLC**

**Block 71, Lot 14 – 3478 US Highway Route 9**

This resolution was carried to the April 6, 2017 meeting (see SP# 883-16 resolution comment above).

**Variance Application and Conditional Use # 020-16**

**Ray Catena – Mercedes**

**Block 4, Lot 44 – 4380-Route 9**

Mr. Kash made a motion, seconded by Mr. Ammiano to approve the resolution. The motion passed with the following roll call vote: Mayor Preston, Mr. Ammiano, Mr. Gatto, Mr. Kash, Mr. Bruno, Mr. Kirk and Mr. Asadi.

**Amended Preliminary and Final Major Site Plan w/ Conditional Use # 701-5-16**

**Ray Catena – Mercedes**

**Block 4, Lot 44 – 4380-Route 9**

Mr. Kash made a motion, seconded by Mr. Ammiano to approve the resolution. The motion passed with the following roll call vote: Mayor Preston, Mr. Ammiano, Mr. Gatto, Mr. Kash, Mr. Bruno, Mr. Kirk and Mr. Asadi.

Mr. Asadi was seated for Mr. Bazzurro who was absent.

**NEW APPLICATION:****“D” Use Variance Application (Bifurcated) # 006-17****JAT Associates** (Applicant/Contract Purchaser)**Infiniti of Freehold** (Project Name)**Block 80, Lots 6 & 7 – 3413-3415 Route 9**

Bifurcated Use Variance for an automobile dealership (approximately 25,224 sf) in the CMX-3 zone with 263 parking spaces and related site improvements.

Mayor Preston and Mr. Ammiano were disqualified from hearing this “D” variance and the dias.

Mark Aikins, Esq. appeared on behalf of the applicant. Mr. Accisano 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 has jurisdiction to conduct a public hearing. Mr. Aikins had no objection to the exhibits that were marked and Mr. Gatto read the review letters into record. The following witnesses were sworn: Jeffrey Carr, PE and PP; Paul Phillips, Phillips Preiss and Grygiel, Township Planning Consultant; and Timothy P. White, Township Engineer. Additional exhibits were marked.

Mr. Carr, who is a licensed Professional Engineer and Planner, described his qualifications and was accepted by the Board. Additional Exhibits were marked. Mr. Carr described the zoning maps marked into exhibit (A12-A15) and noted all of the CMX-3A zones along the Route 9 corridor. Mr. Carr stated he had reviewed the Township’s Master Plan and Zoning Ordinance, noting that the areas along Route 9 are mostly various CMX zones. In his opinion, the Master Plan explains what the CMX zones contain, but is unclear and apparently random between where the different CMX zones exist. It appeared to him that the CMX-3A zones are wrapped around what were existing car dealerships and doesn’t appear to him that there was much thought put into it. The CMX-10 zone makes sense as they usually contain larger properties, with the exception of two CMX-10 lots which do not have enough property (Days inn by Route 522 and a portion behind JSM-The Edge). However, this application is a request to have a car dealership in the CMX 3 zone, where it is only permitted in the CMX-3A zone. After highlighting the CMX-3A zones on the map, it is clear that many of the properties do not meet the three acre minimum lot size required. In a major CMX-3A area (in the area of Brock Farms), there are stream corridors with 300 foot buffers, making them unusable due to the environmental constraints. Mr. Carr questioned why car dealerships are not permitted in the CMX-3 zone when all of the other requirements are the same between the two. The intensity of a car dealership can be considered, but adjacent to other CMX-3A zones, there is R-40 residential zones. Also adjacent to the subject site, there is a similar R-25 residential zone. Mr. Carr’s conclusion was that the CMX-3a zone boundaries were drawn due to existing dealerships as there is no difference in intensity and appears to be more arbitrary. The current application is a “D-1” use variance. Mr. Carr feels that the light air and space can be reviewed during the site plan review. In reviewing the application and the Master Plan, he feels that the requested D-1 Variance can be granted without being a detriment to the welfare and health.

Mr. Phillips stated that this is a D-1 use variance and is not an inherently beneficial use. He stated that the applicant must prove that this particular site is particularly suited for the use. There is no contiguous CMX-3A zone or any this far South on Route 9. These items were reviewed during the most recent Master Plan review in 2012, where specifically the CMX zones were extensively evaluated and recommendations were made within the CMX-3. He stated that the applicant would need to show how there are changed circumstances since the Master Plan has been adopted (approximately four years ago).



Mr. Aikins had no further comments or testimony.

The application was opened to the public.

James Berencon of 192 Medford Boulevard was sworn in and asked a question about how this application would benefit Freehold. He noted that this particular section of Route 9 is very congested. Most of the testimony refers to properties up north on Route 9 and when the Master Plan was evaluated, this area wasn't considered. He stated that he doesn't see the benefit.

Mike Schiff, adjoining property owner for the GoodYear store, was concerned about the stormwater runoff. Mr. Gatto explained that this application is strictly about the use. He was also concerned about the bulk requests the applicant would be requesting. Most of the existing dealerships are not relevant as they have been around for a long time and most of them have large lots. There are other car dealerships that he feels it is hard to support in Freehold Township. He feels that the rules have been set in place and that this doesn't fit.

James Caruso of 144 Koster Drive was sworn in and stated that he lives around the corner and also has worked for the dealership for 13 years. He believes that this dealership would be beneficial to the Township so they can offer more job openings in the community.

Jennifer Fusco of 157 Juniper Drive was sworn in and asked how this would be beneficial to the town. Mr. Carr responded stating this is particularly suited as the bulk requirements are essentially the same for the buildings in the CMX-3 vs. CMX-3A zones. He also responded that it is an established use already in the town and brings a ratable to the town. It appeared to him that the CMX-3A zoning was created to wrap around the existing dealerships. There are other permitted uses such as retail, restaurants, etc. that can also be built but he feels they can have this use as a benefit to the town and adjoining residents.

Mr. Gatto clarified that if an application is not a use variance, the Board functions to process an application. This is a different case as it is a "D" use variance, which requires strict statutory criteria to meet the burdens of proof and the Board would have to weigh in.

Ms. Catherine Keenan of 62 Sabina Terrace was sworn in and stated she was in favor of the variance as she considered what type of business would be a good neighbor to the community. A car dealership would bring in more revenue to the community and would be good for the neighborhood.

Mr. Dan Sciortino of 35 Jefferson Court was sworn in and stated he was in favor of the use. The Infinity dealership is very charitable to local organizations and would bring jobs to the area.

Louis Almonte of 5 Helen Avenue was sworn in and stated he was in favor of the variance as the dealership would bring jobs to the area. The company is family owned and good for the community. The car dealerships along Route 9 look beautiful and feels this would be the same. There is another location in West Long Branch and feels it is a nice building.

Vincent Masdonati of 198 White Oak Lane was sworn in and stated that he was in favor of the variance since there are many strip malls that are vacant.

Quinton Cowels of 167 Juniper Drive was sworn in and stated he was not sure taxes would benefit the residents. Mr. Gatto explained that the tax revenue is not something that the Board can consider. The proofs have to be met by the land use statues. Mr. Cowels was also concerned about the water. There was a cell tower put up behind his house and since then, he has had water issues on his property. Mr.



Gatto explained that, should the Board grant this use, they would still have to go through site plan review and these type of concerns would be addressed.

Dominck Lomuscio of 145 Jackson Mills Road was sworn in and stated he is in favor of having a dealership over a restaurant or strip mall. He feels the traffic would be less with a dealership.

Mr. Gatto asked if there were any questions from the public. A motion to close the public hearing was made by Mr. Shortmeyer, seconded by Mr. Asadi, all in favor, aye.

Mr. Phillips added that strip malls were not a permitted use in the CMX-3 zone, and gave some permitted uses in the CMX-3 zone as noted in his review letter.

Mr. Gatto noted he felt that the applicant had not met the burden of proof for a D-1 variance. There has not been any demonstration that it would not be inconsistent with the intent of the Master Plan or Zoning Ordinance, there are no special or changed circumstances, and the historical reference of the properties mentioned, there were no special reasons for granting the use, no inherently beneficial use, or an undue hardship, or that this site was particularly suited. They have not met the burden of the negative criteria. The CMX-3A was described by the applicant as a randomness and disagrees with the applicants findings. The Board is very hard on car dealerships and the result is how the buildings look today. The CMX-3A zones had been one of the most discussed. The last Master Plan revision addressed the balancing needs of the undeveloped properties and the needs in the town. The process of re-zoning was reviewed and was recently expanded to where a natural boundary line appeared. He made mention that the property of the AAA application that was recently heard was also evaluated, but was also too small for the CMX-3A zone, although it was previously/historically a car dealership. Mr. Gatto was not in favor of granting the use variance and did not feel they had met any of the required burdens of proof in order for the Board to grant a use variance.

Mr. Asadi added that the only special reason given was that the CMX-3 and CMX-3A, zones are similarly located, that any CMX-3 could be considered for a CMX-3A zoning, but he felt that this was not the intent.

Mr. Shortmeyer moved that a negative resolution be prepared based on the comments, seconded by Mr. Kash, all in favor, aye.

Mayor Preston and Mr. Ammiano returned to the dias.

## **CONTINUED APPLICATIONS:**

### **Preliminary & Final Major Site Plan and Variances #868-15**

#### **MACW Freehold, LLC – Phase I**

#### **Block 70.05, Lot 17**

Site plan approval in order to construct site improvement infrastructure necessary to support Phase 1 of a new mixed use development on the subject property (formerly known as the Bellemead Tract).

### **Preliminary & Final Major Subdivision #894-15**

#### **MACW Freehold, LLC (Applicant/Owner)**

#### **Block 70.05, Lot 17**

The applicant is seeking preliminary and final major subdivision approval in order to subdivide the existing Block 70.05, Lot 17 into five new lots (in conjunction with SP# 868-15)

**Preliminary & Final Major Site Plan #869-15****Freemall Associates, LLC** (Applicant/Owner)**Block 69.01, Lot 18.02**

Modifications to existing parking lot to accommodate site plan applications associated with Bellemead General Development Plan (GDP). (Jug handle at Route 537/Trotter's Way northeast corner).

**Preliminary & Final Major Site Plan #870-15****Liberty House** (Project name)**Roseland Freehold, LLC** (Applicant)**MACW Freehold, LLC** (Owner)**Block 70.05, Lot 17 (proposed Lot 17.03)**

Residential component of the Phase I Development of MACW for 400 luxury residential apartments. The proposed residential development is located on the 20.9± acre (future lot 17.03) at the southern corner of the 77.3± acre Bellemead Tract. The proposed development consists of six (6) four-story residential buildings containing a total of 400 individual residential units, an approximate 10,000 s.f. clubhouse, a three-story parking structure, nine (9) single level free-standing garages, and all associated site infrastructure.

**Soil Fill Application # SR-05-16****Roseland Freehold, LLC** (Applicant)**MACW Freehold, LLC** (Owner)**Block 70.05, Lot 17 (proposed Lot 17.03)**

Proposal to import approximately 3,000 c.y. of fill to the Roseland Property site in conjunction with SP# 870-15, Roseland Freehold, LLC.

Chairman Gatto explained that the four applications are carried and would be presented together. Mr. Accisano reviewed how the application is part of the General Development Plan. The applicant has opted to phase the plan. Under the General Development Plan (GDP), it must be realized that the issues of concern of the Board while approving the GDP are not relative to phasing. The Board's overall concerns will be addressed including the Board's traffic concerns and the Board is not bound by that. The subject of the relocation of the Bank of America jughandle was discussed as there is a stipulation of settlement agreement that was entered in the Superior Court that the jughandle must be relocated. The applicant is proposing to not do this, but rather to have a right in/right out only onto Route 9. If this jughandle relocation is not going to occur, Mr. Accisano stated it is the opinion of the Township Attorney's office that there would need to be an amendment of the stipulation of settlement. There are also other traffic concerns that may need to be addressed. The applicant is free to present the application in phases, however, under the GDP, the improvements are supposed to be addressed.

Mr. Mehr pointed out in the GDP and in the Developer's Agreement, it contemplates phasing as being proposed. The proposed right turn in and right turn out was approved by the State NJDOT, but no permit has been pulled yet, and the County, who has indicated that Phase I traffic has been approved by the Monmouth County Engineering Office. He also explained that there was much discourse about the stipulation of settlement (dated 1994) with Mr. Munoz, Township Attorney. He stated that he had not heard anything to the contrary or disagreeing since his last letter to Mr. Munoz. Mr. Mehr referenced a January 16, 2017 letter from Mr. Mehr to Mr. Bob Munoz, Township Attorney, in response to discussions about the settlement agreement. He stated he has not had any response from Mr. Munoz. Mr. Gatto stated that there is a letter from Mr. Munoz dated October 12, 2016 (later marked as MACW



P-12) to Mr. Accisano and the Planning Board regarding this and tried to establish a timeline. There is also a letter from Mr. Munoz to the Planning Board dated September 28, 2016 (later marked as MACW P-11). Mr. Accisano stated that his opening statement accurately represents the opinion of the Township Attorney in regards to the settlement agreement. Mr. Gatto offered a recess for Mr. Mehr to review the correspondence and would mark all the correspondence from the attorneys into evidence.

There was a 5 minute recess so the applicant's attorney could review the letters being marked into evidence and copies were made.

The Board went back into session 8:41 pm. Mr. Mehr asked if he could read a portion of the Stipulation of Settlement (A-7 under SP# 868-15), there was no objection. The stipulation agreement referred to this area as Bellemead North and explained that it would be developed with a GDP and can be phased. He also read a portion regarding the NJDOT and zoning. He then stated that the stipulation was never recorded and the Township changed the zoning in accordance with the stipulation (7/5/94). Subsequent to the stipulation agreement, there was an amendment that did not effect this property. Macerich later purchased the property, but was not aware since it was never recorded and the zoning had already been changed.

The Board offered two letters into evidence from the Township Attorney, Robert Munoz, regarding the stipulation agreement. Mr. Mehr offered two letters into evidence where he responded to Mr. Munoz on October 11, 2016 (A-48) and January 16, 2017 (A-49), copies were provided to the Board and a break was given to the Board to review the letters. Mr. Gatto noted the meeting will go until 9:30 pm.

The Court reporter left due to a personal emergency.

Mr. Mehr read the letter he wrote to Robert Munoz dated January 16, 2017 (Exhibit A-49) into evidence (verbatim). Mr. Mehr added that they negotiated the developer's agreements and it pointed out that everything was in compliance with the GDP and at no time did the stipulation come up in discussion during the GDP approvals. The stipulation had no effect on the applications. The only question that may still be open would be the Trotter's Way extension. This decision would be up to the DOT and some concept plans have been submitted in this regard.

Mr. Accisano asked of Mr. Mehr if it was fair to say that he was aware that the jughandle would be relocated as part of this development. Mr. Mehr responded that it would be restructured and possibly relocated and cannot answer if it would definitely be relocated as they would still need to go back to the NJDOT for design on this.

Assuming everything is built, Mr. Accisano asked if there was always the intent that the jughandle would be relocated/reconstructed, probably involving Bank of America. Mr. Mehr stated that in order to complete Phase II, some work would need to be done at the intersection, and would be subject to approval of the NJDOT.

Mr. Gatto asked if what he was requesting was for the Board to disregard the stipulation of settlement from 1994 and to rely on the 2015 GDP approvals. Mr. Mehr confirmed that this was his request.

Mr. Gatto explained that the terms of the GDP were not conditioned on phasing, and that there was specific emphasis that there would not be any negative impact and conditions on the Township. Mr. Gatto confirmed with Mr. Mehr that at the time the GDP was being processed by the Board, Mr. Mehr had requested softened language in the approvals, but always recognized the concerns of the Board. The Chairman stated that traffic was always a concern of the Board, going back to the Master Plan Committee meeting, and even going back to the meeting with the NJDOT regarding access to Route



33. There were meetings leading up to the GDP approval, and the Board had always expressed its concern on the project in its entirety.

Mr. Mehr introduced Robert Kasuba, Esq., who had been hired as co-counsel and would be taking an active part in the proceedings. Mr. Silva requested that there be transcripts made of the recordings and reviewed for what was discussed.

Mr. Gatto explained that there is a disconnect, as Mr. Mehr continued to describe the application in phases. There are concerns that were explained at the Master Plan meeting and at the GDP public hearing.

Mr. Kasuba stated that he would feel it would be more appropriate to have transcripts for the Board's review. Mr. Mehr recalled some references back in 2012.

Mr. Ammiano also recalled that there was a meeting and he was 40 minutes late. He purposely took Route 537 to prove that the traffic situation is a mess. At that meeting, he explained the point he was making by taking that route and that there indeed is an issue with traffic. Mr. Mehr recalled that this was a Mall Subcommittee Meeting and after the GDP application. Mr. Ammiano explained that he feels the traffic concept being proposed would not work.

Mr. Kasuba again stated he would request that transcripts be made for the Board to bring everyone on the Board up to speed. It would also allow everyone to know what led to the GDP approval and to follow proper course.

Mr. Gatto stated that the Board is trying to keep this application moving forward and also to balance the right of the applicant with the concerns of the residents and the Township. This is why the Board moved forward with the GDP. With the GDP approvals, it was represented that the applicant was fairly confident that they would get an interconnection with the State. The GDP evolved out of a representation that they would go to the State and they would get access to Route 33 (a direct interconnect). An April 20, 2015 letter to the Board was read by Mr. Gatto regarding a request made to Frank Accisano, Board Attorney, by Mr. Mehr, Applicant's Attorney. The letter to the Board responded to Mr. Mehr's requests including that the resolution was amended in some regards, but noted that other requests for changes were not made, specifically in regards to future applications. Additional requests for changes were made by Mr. Mehr in May of 2015. Per Mr. Accisano's response, future applications should not be given automatic approval by means of the GDP approval. Instead, the property would be protected against changes in zoning. Mr. Gatto followed by stating that nowhere in the requests is phasing ever brought up.

The applicant requested a continued meeting date. The applicant was offered April 20<sup>th</sup>, 2017, but both of the applicant's attorneys were not available. The next available hearing date would be June 1, 2017.

Mr. Joseph Ettore, County Engineer, stated the County did receive plans for Phase I and had only been given information regarding Phase I, no representation was given for Phase II. A conditional approval was given to the applicant for Phase I only.

Margy Jahn, Freehold Township Health Officer, was present and would have a review letter prepared before the June 1<sup>st</sup>, 2017 public hearing.

Mr. Mehr asked that the Environmental Commission review their new material submitted at their next meeting.



Mr. Gatto explained that the reports still will need to be read into record as this is the procedure of the Board. The Board has great respect for Macerich and its partners, but the issues have been there since day 1, all in the best interest of the Township.

Mr. Accisano stated that there would be no further notice and the application would be carried to June 1, 2107 at 7:00 pm in the same meeting room.

Mr. Gatto thanked the Monmouth County Engineer, Joe Ettore, for attending the meeting.

## **DISCUSSION:**

Waiver of Site Plan Requirements applications: Mr. White described the process of the revitalized application procedure. The purpose would be to help expedite the application process for applications such as changes in use, façade renovations and sign applications. It would require the applicant's to submit a much less detailed application and plan.

Mr. Gatto explained that this is why he feels the Waiver Submission Subcommittee would be utilized. The relief can be recommended by the Waiver Committee. Mr. Gatto explained that the Committee would recommend as to what would need to be submitted.

Mrs. Sims explained that this type of application would be processed easier as there would be less required of the applicant to submit, less to process and quicker to review.

Mr. Accisano clarified that the Submission Waiver Committee would usually be used for bigger applications. It would be for checklist submission waiver requests.

Mr. Gatto described that currently, a small applicant is burdened of providing a site plan, for example the Pediatric Health application. Mr. Accisano explained that an application such as this with site improvements would not be eligible for a Site Plan Waiver, even if it is only landscaping. An example of a Site Plan Waiver would be a strip mall with a retail use changing to a permitted personal service use.

Mr. Ammiano explained that with the recent Ocean First sign application, it cost the applicant a significant amount of money and time whereas every other town it was simply a building permit. Mr. White stated that this would be the purpose of the Site Plan Waiver application and would help this.

Mr. Mehr noted that a problem he comes across is that an applicant may not have a copy of an old site plan. Mr. White stated that in this case, he would provide a copy of the old site plan to the applicant. The applicant can scan it and show on the old plan exactly what they are looking to do.

Mr. Gatto said to submit a copy of the application and work out the fees with Mr. Accisano.

## **ADJOURNMENT:**

There being no further business, a motion was made to adjourn the meeting and passed unanimously. The meeting concluded at 9:45 p.m.

Respectfully Submitted,

Robert H. Shortmeyer  
Secretary