



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

**REGULAR MEETING MINUTES**  
**May 18, 2017**

The Regular Meeting of the Planning Board was called to order by Chairman Gatto on Thursday, May 18, 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 (left early), Mr. Gatto, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk, Mr. Coburn and Ms. Kurtz

**Absent:** Mr. Ammiano, Mr. Bazzurro, Mr. Kash and Mr. Asadi.

**Also Present:** Frank Accisano, Esq.; Kate Keller, Phillips Preiss and Grygiel, Township Planning Consultant; Timothy P. White, Township Engineer and Danielle B. Sims, Administrative Officer.

There was the Pledge of Allegiance.

**Ms. Kurtz was seated for Mr. Kash.**

**MINUTES:**

The Minutes from the January 26, 2017 Planning Board meeting were carried to next meeting agenda.

**RESOLUTIONS:**

**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**

**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**

Mr. Gatto stated that there is a change in the resolution regarding the sign whereas the red and blue colors will now be black on Sign #6. Mayor Preston made a motion, seconded by Ms. Kurtz to approve the applications and to memorialize the resolutions, together. The motion passed with the following roll call vote: Mayor Preston, Mr. Gatto, Mr. Bruno, Mr. Kirk and Ms. Kurtz.



**Minor Site Plan # 742-2-17**  
**HOPE Lutheran Church**  
**Block 84, Lot 1.01 – Elton Adelpia Road**

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

**Mayor Preston left the dias for the evening.**

**“C” and “D” Variance Application # 008-17**  
**Joseph Rossler**  
**Block 37, Lot 3.16 – 16 Palomino Court**

Mr. Accisano noted that he added to the draft resolution that the cellar cannot be used for habitable space. He also clarified the Board recommended that the applicant be given 30 days to perform or the Board would recommend that the Township take action to demolish the improvements. Mr. Shortmeyer made a motion, seconded by Ms. Kurtz to approve the resolution. The motion passed with the following roll call vote: Mr. Gatto, Mr. Shortmeyer, Mr. Kirk, Mr. Coburn and Ms. Kurtz.

**NEW APPLICATION:**

**Amended Preliminary & Final Major SP w/ Waiver of SP Details # 631-2-17**  
**TD Bank, N/A – To take jurisdiction only**

**TO BE CARRIED TO JULY 20, 2017 at 7:00 PM WITHOUT FURTHER NOTICE**

Block 85.12, Lot 23 – 600 West Main Street Request to excise the condition of the previous approval (SP#631-1-16) in regards to reconfiguring the existing two-way on-site circulation to only allow one-way counter-clockwise circulation.

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. He noted that the Applicant has requested that this matter be carried to the July 20, 2017 hearing. The application was carried without further notice to July 20, 2017 on a motion made by Mr. Shortmeyer, seconded by Ms. Kurtz. The motion passed with the following roll call vote: Mr. Gatto, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk, Mr. Coburn and Ms. Kurtz.

**CONTINUED APPLICATIONS:**

**Preliminary and Final Major Subdivision # 856-2-16 - Carried from 2/16/17**  
**TO BE CARRIED TO AUGUST 17, 2017 at 7:00 PM WITHOUT FURTHER NOTICE**

**Fitzpatrick, John** (Owner & Applicant)  
**Block 105, Lot 42 & 43**

Proposal to subdivide two existing lots into four new lots with two new homes being proposed. One of the lots was subject of a previous subdivision by the same applicant (SD# 856-04 & SD#854-1-06).

Mr. Gatto noted that the Applicant has requested that this matter be carried to the August 17, 2017 hearing. Mr. Shortmeyer made a motion and was seconded by Ms. Kurtz, to carry the matter without further notice to August 17, 2017. The motion passed with the following roll call vote: Mr. Gatto, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk, Mr. Coburn and Ms. Kurtz.

**Appeal of Zoning Officer's Decision and "D" Use Var. # 004-17 - Carried from 4/20/17****Broadway Associates, LLC (Owner)**  
**Colonial Foods, Inc. (Abraham Opatut)**  
**Block 28.13, Lot 7.03**

Applicant is appealing the Zoning Officer's Notice of Violation dated 1/4/17. They are alternately seeking a bifurcated "D" Use Variance for trucking and warehousing.

Mr. Salvatore Alfieri, Esq. appeared on behalf of the applicant. Kevin Starkey, Esq. appeared, representing some neighbors of the site. Mr. Gatto explained that the Board started the hearing on this application and described where Mr. Accisano stated that the applicant 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. Williams had no objection to the exhibits that were marked and Mr. Gatto read the review letters into record. The following witnesses were sworn: Abe Opatut, Owner (previously sworn, acknowledged he was still under oath); Christine Ann Nazzaro-Cofone, Cofone Consulting Group LLC, Planner; Kate Keller, Phillips Preiss and Grygiel, Township Planning Consultant; and Timothy P. White, Township Engineer.

Mr. Abraham Opatut continued from the previous hearing (April 20, 2017) describing the exhibits that were marked into evidence. Mr. Opatut stated that in 2009 and 2011 aerials, it shows approximately 40-50 trailers on the property and the trailers were about 20' straight box trucks and there were trailers were approximately 40'-42' long. Referring to A-39, the aerial photo dated in 2014, there are even less trailers on the site. The site is serviced by well water and is inspected quarterly and the reports are filed with the state. The site is serviced by sanitary sewer, but previously was serviced by septic. When the adjacent homes were built at Freehold Pointe, the developer tied his property into the sanitary sewer service. Regarding the tire company on site, roughly 2/3 of the tires have been removed and approximately 5 trailers of tire trailers are left outside and on the ground. The tenant has been evicted and locked out. Mr. Opatut is trying to work with the previous tenant to get the items off site, but he has had some health issues.

There currently is only one business operating from the site and it is the trailer company. The company leases trailers to companies (usually for a few months at a time). The tenant has been operating on the site for approximately 19 years. Part of the business is the leasing company repairs the trailers once they are returned from the lease. Mr. Gatto said he visited the site and asked that Mr. Opatut describe the nature of the repairs. Mr. Opatut described that once the vehicles are returned, if the truck walls are ripped, they would replace a panel. Mr. Gatto asked if it is similar to a body shop typically for cars. The repairs are done both in the garage and in the yard. The garage is 48' x 60'. Mr. Gatto made the observation that if trucks are in the garage, there would be no room to perform repairs.

Mr. Starkey cross-examined Mr. Opatut. Regarding the history of the property, he asked how long the birds (chickens) were on the site, Mr. Opatut stated it was approximately in the 60's. The egg distribution center ceased operation in approximately 2009-2010 and garage center use continued. Originally, they processed and warehoused eggs. The raw eggs from farms would be put in cartons and sent out to stores and warehouses for delivery. The property was used for both egg storage and for distribution. Mr. Starkey asked about the truck leasing operation, starting in approximately 1997, where there any other businesses operating from the site. Mr. Opatut stated it was only the egg distribution company and real estate offices. In approximately 1997, the trailer leasing company moved in and the egg distribution ceased in approximately 2009. Approximately 5 years ago, the tire company moved onto the site. The site contains a garage (4,800 sf) and a warehouse (30,000 sf) and the garage is used by the trailer leasing business. The tire company used the warehouse for the last 5 years. Previous to the



tire company, there were other businesses including an office supply company. The garage was used to repair the egg distribution vehicles.

Ms. Christine Nazzarro-Cofone was qualified as a licensed professional planner and appeared on behalf of the applicant. She stated that the appeal is of the zoning officer's notice of violation that the applicant is not a legal non-conforming use. Freehold adopted a zoning ordinance in 1953. In 1960 there was an approval to expand the egg operation on the site and the resolution reads that the site predated the zoning. Therefore the site use of warehousing and trucking is pre-existing non-conforming. Mr. Opatut testified that the site has maintained about 45 trailers on the site and that the trailers have always been maintained inside the garage and outside. Repairs in her opinion, would be oil changes, tire changes, but is not aware if they would do things such as body work on the truck. The truck repairs have also been done, according to the testimony and proof, continuously. The Applicant stated that the tire company is under eviction and will be removed completely from the site no later than June 30, 2017. The noise, hours of operation and the employees are big factors affecting the neighboring residents, as she understands.

The non-conforming use ordinance deals with the use, not the operator, Ms. Nazzarro-Cofone explained. Therefore this doesn't make the business non-conforming. The Planner's review even states that the operations are substantially similar to that of the former business. This has always been, historically a trucking facility. The uses are similar; it is likely that the uses can continue. From a planning point of view, although not previously required, and that there are now adjacent residential properties surrounding the property, she feels that the Board can impose reasonable conditions. She said that from a planning point of view, whether the trucks enter and exit the site, it doesn't change the operations if they are carrying eggs.

Kate Keller feels that the outdoor storage of the trailers was accessory when the operations were egg distribution, whereas the truck leasing is now shifting the primary use to outdoor storage and outdoor repairs.

Mr. Gatto commented that if Mr. Opatut was asked what type of business they were in when he and his father ran the business, Mr. Opatut would likely say the egg business. If you were to ask the same of current business, they would likely say the trucking business.

Mr. Starkey cross-examined Ms. Cofone. In about 1997, the trucking company stated and Ms. Cofone stated she believes that the site has been zoned residential ever since zoning existed, however the site and operations predates Freehold Township's zoning. If you look at the historic aerials, you would not be able to recognize any change in the site operations; this goes back multiple decades and prior to the zoning ordinance. Mr. Starkey asked about the trailer repairs. Ms. Cofone stated the primary use is the leasing of the trailers, but the repairs are ancillary to the primary use. She does not feel that the term "body shop" accurately depicts the operations on the site. She acknowledged that there are no egg operations on the site. The land use law would favor more conforming uses; however there are protections for non-conforming uses. Mr. Starkey asked if the site had additional uses on the site, if they came in for a use variance. Ms. Cofone doesn't feel this is relevant, but if Mr. Opatut would like to add an additional use, going forward it is likely that the applicant would have to come in for a use variance, unless there is something in the Ordinance that allows for something of this nature.

Mr. Starkey stated he believes this is a clear change of use that requires a use variance to continue.



Mr. Accisano stated that the Board needs to evaluate if the Zoning Officer acted in error in stating that the current use is protected as a prior non-conforming use or if they should have come in for a zoning permit and site plan application.

Mr. Gatto stated he feels that the business has migrated and that the trailers were ancillary to the egg distribution use. He feels, that the site is now a tractor trailing rental facility. He continued to conclude that it appears that operations once performed for egg distribution, inside the buildings, have now moved outdoors for storage, repair and warehousing of trailers.

A motion was made by Mr. Shortmeyer to uphold the Zoning Officer's determination, seconded by Ms. Kurtz. Mr. Accisano confirmed that the Board is took the action to uphold the Zoning Officer's determination and will memorialize this action with a resolution to follow. The motion passed with the following roll call vote: Mr. Gatto, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk, Mr. Coburn and Ms. Kurtz.

Mr. Alfieri asked for a short recess. Mr. Gatto indicated that there will be a short break and resumed at 8:23 pm.

The applicant returned to continue with their filed request for a bifurcated "D" variance application.

Ms. Cofone acknowledged that she was still under oath. She read the Planners review letter regarding special reason. Ms. Cofone feels that this would be considered an undue hardship. She stated that there was a use on the property and in 1960 was granted approval to expand on the business. When the adjacent subdivision was approved, there was no buffering required. This can push this to be considered a hardship case. She cited a case for an expansion of a non-conforming use. Some reasonable amount of warehousing and distribution on the site with reasonable conditions and can include limiting the hours of operation and adding some buffering to the neighboring properties. The Board should look at the hardship and permit the property to reasonably operate the site. The site has clearly been used for warehousing and distribution and should be allowed to continue. The purpose of the LTW 40 zone is to establish land use and developmental controls. While this is not consistent with the zone requirements, it was not introduced to the adjacent residential homes; this site has been in operations long before the homes were introduced. Frank Accisano explained that a hardship with a "D" variance states they cannot use the property "profitably" if compelled to conform to requirements of the zone; it would be an overall hardship.

Mr. Gatto asked about the reasonable conditions and the negative criteria required as part of a hardship case. He asked if it would be reasonable to maintain a 25' buffer on the East side. If the Board were to limit the number of trailers, how many could reasonably be put on the site while maintaining buffers. Ms. Cofone stated 40 is a reasonable maximum. Her reason is that the trailers are currently half-hazardously parked (resulting in about a 20% reduction of trucks). Ms. Keller stated she feels that this would be a reasonable condition.

A minor subdivision was granted in 1978 by the Planning Board. And if the site was subdivided, and was considered to be an expansion of a non-conforming use, it would have been heard by the Zoning Board. In 1980, the Planning Board took additional action on the property, not the Zoning Board. As this site appears that the site has been operating as a permitted use since that time.

Mr. Starkey explained that there are other uses that are permitted on the site. He believes it is fair to say that the property, where the houses that the homeowners purchased, was once owned by the Opatut Family. He would like to present his clients to allow them to offer their comments and concerns. And in essence showing why the negative criteria have not been satisfied. The Municipal Land Use Law speaks of the general negative effect.



Mr. Starkey introduced Mr. Duong Thai of 14 Hanging Rock Road, who was previously sworn and stated that when he purchased the house, it was disclosed to him that there was an egg farm next to the house he was going to purchase. Trucks sit idling much longer than the allowed 3 minutes permitted. He has lived there for seven years and does not feel comfortable even letting his daughter outside to play in the yard. He showed video of trucks idling for more than three minutes, loud noises outside his window including Sunday and operation of trucks after 4:32 am in January 17, 2017. Mr. Thai resides immediately to the south of the site.

Ramesh Agnihotri of 26 Great Bridge Road was sworn in. He stated they are inflicting noise, air and ground water pollution on the site. Air impact wrenches, grinders, sanders, hammer heads, truck beeping noise and other violations all exist on the site. Any noise over 85 amplifies; all of the listed are listed by the DEP as over 85. Professional maintenance trucks and crews grinding, chipping, cutting and sawing, washing, are all done 50' from the bedroom windows and affect the ability to enjoy their home. Groundwater pollution is occurring as they wash and use chemicals that wash into the ground and the adjacent pond. Air pollution prohibits him from even taking his dog into his yard. He asked that the Board denies the application for "D" variance. Mr. Agnihotri showed video and photos of the power washing of trucks and use of chemicals that drains into the pond, hammering and grinding noises. Mr. Alfieri stated that the tenant explained how they contain the washing, but the tenant is not here to testify. Mr. Agnihotri stated that the photo was taken after trucks were washed with chemicals and resulted in the white foamy material on the pond.

Kalpesh Patel 12 Hanging Rock Road was sworn in. He stated he is a sleep study physician and described that lack of or interrupted sleep. His sleep is disturbed at least 3 times a week due to the noise on site. The sleep deprivation has affected his life. He stated that there is a fence between his house and the site. The truck noises typically occur between 2:00 am and 4:00 am and he has called the police several times about this matter.

Dr. Mrudula Mehta of 32 Great Bridge Road was sworn in. Her property is adjacent to the site. She is a practicing OBGYN physician. She is very concerned that when she comes home and her young daughter states she is scared of the loud noises, the daughter calling them a bomb or an attack. She is disturbed by this situation. She also noted that there has been a great increase in the number of mosquitos in the area and believes the increased site operations attribute to this increase. Also, her family goes out of her way to eat organically and healthy, but then goes outside and is disturbed by the pollutants going into the ground and water. When she purchased the home, she was given a disclosure statement from the seller stating there is an egg farm. She solicited the neighbors about the site and they stated the site wasn't noisy. She feels that the noise has increased over the years. There is also a smell of fuel outside.

Sharon Thompson of 17 Hanging Rock Road was sworn in. She purchased the house in 2007 and was told that this was an egg farm/distribution and had little noise and limited hours of operation. She does not live adjacent to the site, however still hears the noise and sees the trucks and has noticeably seen the increase over the years. She does not necessarily hear the night noises, but the daytime noises affect her ability to enjoy her yard.

Kulbir Walia of 29 Great Bridge Road was previously sworn in and acknowledged he is still under oath. He feels that if the variance is granted, cardiovascular disease, cancer and respiratory problems. He moved in 2009 and is a practicing physician and is concerned about the trucking business in the middle of a trucking facility, where the trucks emit pollutants. The exhaust hangs in the air and it goes into the lungs.



Dr. Jenan Agnihotri 26 Great Bridge Road stated she loves Freehold Township and wants to raise her family in a nice safe and healthy environment. Kids cannot go outside with the noise and pollution. She stated that she has witnessed the truck washing procedure, stating a little white truck that comes in to service the containers. The containers stay where they are and the truck moves around to was/service in place.

Michael Bain of 25 Great Bridge Road was sworn in. He works late hours and sees and hears the trucking operation at all hours and every day. He sees the site directly from his house. His property value is affected by the site operations and if the variance is granted, he feels it will likely diminish the property value further.

Michael Bartelli of 15 Hanging Rock Road was sworn in. He has noticed an increase in rodents in the neighborhood and this week alone he scooped four rodents from his pool. He stated he is concerned about the employees on the site integrated into their neighborhood.

Aleksey Kasavin 301 Schanck Road was sworn in and stated feels that the business has acted in bad faith.

A motion to close public by Mr. Shortmeyer and seconded by Mr. Kirk, with all in favor, Aye.

Mr. Alfieri offered a closing statement. He said that there is a hardship on the property owner and has suggested that if a use variance is granted, the applicant would have to come back with a site plan and the Board can impose reasonable conditions. He reminded the Board that the Township has treated this property through Planning Board as a permitted use, a commercial use. The applicant is willingly agreeing to reasonable conditions. The bifurcated “D” variance relief can be granted as Mr. Starkey summarized and stated that a “D” variance is the hardest to gain. He disagrees that this is a long standing use and that once the trailer leasing company occupied the property, they should have been required to gain a use variance. The Board may have added buffers had they known the use of the property was other than the egg farm. Ms. Cofone stated that there is no permitted uses that can be used on this site. Mr. Starkey disagreed, stating that that the applicant has an option to clear the site and build single family residential homes and alternately can apply for a less intense use variance. This current operation, he feels, is one of the most intense industrial uses and it is butting right up against a neighborhood with no buffers. He stated that this proposed (current) use is a substantial negative affect on the neighboring community. He stated there are districts that permit this type of use (M-1 and M-2) and there is a 100 foot buffer required. By applying reasonable conditions, he feels it would not solve or overcome the overall non-conforming use.

Rich Gatto suggested that he believes that approving the use with conditions, including subject to site plan approval, and would suggest that the Board look towards some interim conditions until site plan approval. No automotive or mechanical repairs or maintenance of any kind. The hours of operation would be Monday-Friday, 9am – 3pm. No tractors would be allowed on the south side within 60 days of adoption of resolution. A site plan application will be made. He is suggesting this to balance the concerns of the residents and the applicant. Mr. Kirk stated that the conditions are the most important part based on concerns of residents. Mr. Bruno, trying to use common sense said he cannot cast a yes vote for this proposed use. Mr. Coburn agrees that the variance should be granted, but with strict adherence of conditions. Mr. Shortmeyer is concerned how the restrictions would be complied with and how they would operate on the site. He would not be in favor of granting the variance. Ms. Kurtz understands the concerns, but if the “D” variance was granted, some relief would be immediate. She also felt the applicant would need to come back for site plan approval.



Mr. Gatto made a motion to authorize Mr. Accisano to prepare a positive resolution with the noted immediate restrictions and conditions, which was seconded by Mr. Shortmeyer.

Mr. Accisano confirmed that the relief requested is only for the proposed use. Any additional use in the former tire space or other use would require a use variance.

**DISCUSSION:**

Mr. Gatto reviewed the upcoming agenda.

**ADJOURNMENT:**

There being no further business, a motion was made to adjourn the meeting and passed unanimously. The meeting concluded at 10:07 p.m.

Respectfully Submitted,

Robert H. Shortmeyer  
Secretary