

**Stanhope Land Use Board
January 9, 2012
Reorganization Meeting
Minutes**

CALL MEETING TO ORDER:

Attorney Thomas called the meeting to order at 7:30 p.m.

PLEDGE OF ALLEGIANCE:

STATEMENT:

Adequate notice for this meeting has been provided according to the Open Public Meetings Act, Assembly Bill #1030. Notice for this Reorganization Meeting was forwarded to the New Jersey Herald and Daily Record on January 11, 2011 and was placed on the municipal bulletin board.

In the event the Board has not addressed all the items on its agenda by 11:00 p.m., and it is of the opinion that it cannot complete the agenda in a reasonable period, the Board may exercise its option to continue this meeting at an agreed time and place, within ten (10) days of this meeting.

At this time, please turn off all cell phones.

OATH OF OFFICE

Attorney Thomas administered the Oath of Office to Thomas Pershouse and William Thornton

ROLL CALL:

Michael Depew - present	Thomas Pershouse - present
Margaret Findley - present	William Thornton - present
Janice Hunts - present	Joseph Torelli - present
Rosemarie Maio - present	Paula Zelif-Murphy - present
Andrew Orinick, Alt #1 - present	John Maguire - present

Others present: Roger Thomas, Esq. and Board Secretary Ellen Horak

REORGANIZATION

Election of Chairman:

On nomination by Ms. Zelif-Murphy, seconded by Mr. Pershouse, John Maguire was elected Chairman on the following unanimous roll call vote:

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zelif-Murphy, Mr. Maguire
OPPOSED: None
ABSTENSIONS: None

Election of Vice-Chairman:

On nomination by Ms. Hunts, seconded by Mayor Maio, Paula Zelif-Murphy was elected Vice-Chairman on the following unanimous roll call vote:

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zelif-Murphy, Chairman Maguire
OPPOSED: None

ABSTENSIONS: None

Resolutions

**Board Secretary RESOLUTION OF THE STANHOPE LAND USE BOARD
APPOINTING BOARD SECRETARY**

WHEREAS, there exists the need within the Land Use Board (the "Board") for the retention of personnel to perform such secretarial services/clerical duties and office work as required by the Board's job description to hold a monthly public meeting, at the monthly compensation of \$707.00, and in addition, other such work as deemed necessary by the Board at a \$20.00 hourly rate or other rate negotiated per task;

WHEREAS, the monthly compensation rate of \$707.00 for the Board Secretary is the salary paid for the year 2011; and

WHEREAS, upon determination of the salary increase for Borough employees, the Board will determine the salary increase for the Board Secretary, which increase shall be retroactive to January 1, 2012; and

WHEREAS, the funds for such duties and services are available for this purpose;

NOW, THEREFORE, BE IT RESOLVED by said Board that it hereby appoints Ellen Horak as the Board's Secretary, to be retained for the calendar year 2012 to perform such duties and office work outlined in the Board's job description, with reimbursement for all expenses, at the monthly compensation of \$707.00;

BE IT FURTHER RESOLVED, by said Board that, after a salary increase has been determined for Borough employees, the Board shall determine a salary increase for the Secretary which salary increase shall be retroactive to January 1, 2012;

BE IT FURTHER RESOLVED, by said Board that if the Secretary should not be available during the year for the above services, she is to provide coverage at her expense.

On motion by Mr. Torelli, seconded by Ms. Zelif-Murphy and carried by the following unanimous roll call vote, the above resolution was adopted.

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zelif-Murphy, Chairman Maguire

OPPOSED: None

ABSTENSIONS: None

**Board Attorney: RESOLUTION OF THE STANHOPE LAND USE BOARD
APPOINTING BOARD ATTORNEY**

WHEREAS, the Land Use Board of the Borough of Stanhope is in need of Professional Legal services; and

WHEREAS, R.S. 40A:11-5 specifically exempts professional services from this provision of the local public contracts law of 1971,

NOW, THEREFORE, BE IT RESOLVED that the firm of **Dolan & Dolan** is hereby appointed as Attorney for the Land Use Board of Stanhope for a period of one year, to December 31, 2012, with the understanding that **Roger W. Thomas, Esq.** will be primarily responsible for the work done for the Board.

BE IT FURTHER RESOLVED, that the aforesaid is a member in good standing of his profession.

BE IT FURTHER RESOLVED, that this Resolution is contingent upon receipt of a fully executed professional service contract with attached fee schedule established for Dolan & Dolan's professional services.

BE IT FURTHER RESOLVED, that this Resolution is contingent upon the receipt of a completed C.271 Political Disclosure Form pursuant to N.J.S.A. 19:44A-20.4 et. seq., commonly known as the Pay-to-Play Law.

On motion by Ms. Findley, seconded by Mr. Depew and carried by the following unanimous roll call vote, the above resolution was adopted.

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zelif-Murphy, Chairman Maguire
OPPOSED: None
ABSTENSIONS: None

Board Engineer: **RESOLUTION OF THE STANHOPE LAND USE BOARD
APPOINTING BOARD ENGINEER**

WHEREAS, the Land Use Board of the Borough of Stanhope is in need of Professional Engineering Services; and

WHEREAS, R.S. 40A:11-5 specifically exempts professional services from the provisions of public bidding as provided in the Local Public Contracts Law;

NOW, THEREFORE, BE IT RESOLVED that the firm of Golden & Moran Engineering is hereby appointed as Engineer for the Land Use Board of Stanhope for the period January 1, 2012 through December 31, 2012, with the understanding that **Joseph Golden, P.E.** will be primarily responsible for the work done for the Board;

BE IT FURTHER RESOLVED, that the aforesaid is a member in good standing of his profession;

BE IT FURTHER RESOLVED, that this Resolution is contingent upon receipt of a fully executed professional services contract with attached fee schedule established for Golden & Moran Engineering professional services, and

BE IT FURTHER RESOLVED, that this Resolution is contingent upon the receipt of a completed C.271 Political Disclosure Form pursuant to N.J.S.A. 19:44A-20.4 et. seq., commonly known as the Pay-to-Play Law.

On motion by Ms. Zeliff-Murphy, seconded by Mr. Torelli and carried by the following unanimous roll call vote, the above resolution was adopted.

Mayor Maio asked if the Board has considered retaining the same engineer as the Borough. Chairman Maguire responded that in September the Board discussed re-appointment of the Board's Professionals and, at that time, the Board was satisfied with the professionals and did not want to make any changes. Mayor Maio expressed concern with additional costs associated with having two engineers review an application that affects the Borough's infrastructure. Mr. Pershouse recalled when the Board solicited proposals from engineers, it was decided that they did not want to retain the same engineer as the Borough. Chairman Maguire noted the present Borough engineer's hourly rate was much higher than the hourly rate charged by the Board's engineer. Mr. Pershouse noted it was agreed that Engineer Golden would speak with the Borough Engineer regarding applications that affect the Borough's infrastructure.

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zeliff-Murphy, Chairman Maguire
OPPOSED: None
ABSTENSIONS: None

Board Planner: **RESOLUTION OF THE STANHOPE LAND USE BOARD
APPOINTING BOARD PLANNER**

WHEREAS, the Land Use Board of the Borough of Stanhope is in need of Professional Planning services; and

WHEREAS, R.S. 40A:11-5 specifically exempts professional services from this provision of the local public contracts law of 1971,

NOW, THEREFORE, BE IT RESOLVED the firm of **John Cilo, Jr. and Associates** is hereby appointed as Planner for the Land Use Board of Stanhope for a period of one year, to December 31, 2012, with the understanding that **Scarlett Doyle, P.P.** will be primarily responsible for the work done for the Board.

BE IT FURTHER RESOLVED, that the aforesaid is a member in good standing of her profession.

BE IT FURTHER RESOLVED, that this Resolution is contingent upon receipt of a fully executed professional service contract with attached fee schedule established for John Cilo, Jr. and Associates professional services.

BE IT FURTHER RESOLVED, that this Resolution is contingent upon the receipt of a completed C.271 Political Disclosure Form pursuant to N.J.S.A. 19:44A-20.4 et. seq., commonly known as the Pay-to-Play Law.

On motion by Mayor Maio, seconded by Ms. Hunts and carried by the following unanimous roll call vote, the above resolution was adopted.

Mr. Depew questioned recent billing by Ms. Doyle. Chairman Maguire responded he spoke with Ms. Doyle and Mr. Cilo regarding the bills being protested. They reviewed the bills in question and they agreed to remove anything that may have been an engineering issue.

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zeliff-Murphy, Chairman Maguire
OPPOSED: None
ABSTENSIONS: None

Official Newspaper: **RESOLUTION DESIGNATING OFFICIAL NEWSPAPER FOR THE 2012 CALENDAR YEAR**

BE IT RESOLVED, by the Land Use Board of the Borough of Stanhope that they New Jersey Herald is hereby designated the official newspaper of the Land Use Board for the calendar year 2012; and

BE IT FURTHER RESOLVED, that the New Jersey Herald and the Daily Record are hereby designated to receive all notices of Land Use Board meetings in the calendar year 2012 as required under the Open Public Meetings Act.

Meeting Dates: **RESOLUTION ESTABLISHING MEETING DATES FOR THE CALENDAR YEAR 2012**

BE IT RESOLVED by the Land Use Board of the Borough of Stanhope that the following schedule of dates for Regular Meetings be established for 2012 and that all scheduled meetings shall convene at 7:30 p.m. at the Stanhope Municipal Building, 77 Main Street, Stanhope, NJ:

January 9
February 13
March 12
April 9
May 14
June 11
July 9
August 13
September 10
October 15
November 19
December 10

BE IT FURTHER RESOLVED, that the Annual Reorganization Meeting shall be on January 14, 2013, at 7:30 p.m.

On motion by Mayor Maio, seconded by Mr. Depew and carried by unanimous voice vote, the above two resolutions were adopted.

MINUTES

December 12, 2012 Regular Meeting– On motion by Ms. Zeliff-Murphy, seconded by Mr. Pershouse, the Minutes of the December 12, 2011 Regular Meeting were approved on majority voice vote. Mayor Maio, Mr. Orinick and Mr. Thornton abstained.

CORRESPONDENCE

12-14-11 James Sweizer – Variance Application re: Blk 11601, Lot 21
12-16-11 Sussex County – Lot Line Relocation re: Tucker, Blk 10901, Lots 14 & 23
12-20-11 Sussex County – Lot Line Relocation re: Tucker, Blk 10901, Lots 14 & 23
12-21-11 Stanhope Fire Dept. – Tucker Lot Line Application, Blk 10901, Lot 14/23
12-22-11 New Jersey Planning Officials – New Jersey Planner, Nov. 2011
12-27-11 Stanhope DPW - Tucker Lot Line Application, Blk 10901, Lot 14/23
01-03-12 Ellen Horak, Borough Clerk – Mayor and Council Reorganization Resolutions
01-04-12 James Sweizer – amendment to variance application re: Blk 11601, Lot 21

On motion by Ms. Zeliff-Murphy, seconded by Torelli, and carried by unanimous voice vote, the Correspondence List was accepted and placed on file.

OPEN TO THE PUBLIC FOR NON-AGENDA ITEMS:

Chairman Maguire opened the meeting to the public for non-agenda items.

Seeing no one from the public wishing to speak, Chairman Maguire closed the public portion of the meeting.

RESOLUTION OF MEMORIALIZATION:

11-06, Kamlesh Patel

Block 11402, Lot 58, “D” Variance

Approval Granted: 11/14/11

11-05, Hoer Properties, LLC

Block 11801, Lot 12, Final Major Subdivision

Approval Granted: 12/12/11

Attorney Thomas advised that due to extraordinary circumstances he has been involved with, he has not completed the above Resolutions of Memorialization. Attorney Thomas stated he will have both resolutions available at the Board’s February meeting.

COMPLETENESS:

11-08, James Sweizer

Block 11601, Lot 21, Variance

Appl Rec’d: 12/14/11 45 days: 01/28/12

Chairman Maguire reported that the Completeness Review Committee has reviewed the application and recommend it be deemed complete.

On motion by Chairman Maguire, seconded by Ms. Hunts, and carried by the following unanimous roll call vote, 11-08, James Sweizer, Block 11601, Lot 21 Variance Application was deemed complete.

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zeliff-Murphy, Chairman Maguire
OPPOSED: None
ABSTENSIONS: None

Attorney Thomas noted this hearing will be scheduled for the February 13, 2012 meeting at 7:30 p.m. with notice required.

UNFINISHED HEARINGS

11-04, Daud Ahmad

Block 10301, Lot 11.01, "D" Variance

Deemed Complete: 7/11/11

120 days: 11/08/11 (Extension Granted)

Daud Ahmad, 155 Princeton Road, Parlin, New Jersey 08859 and Patrick Turzi, 58 Brooklyn Mountain Road, Montville, NJ approached the Board. Attorney Thomas noted that Mr. Ahmad and Mr. Turzi remain under oath. Mr. Turzi briefly recapped the application and discussion at the last meeting. The applicant is seeking to convert a three bay auto repair shop into a small convenient store. At the last meeting there was discussion on whether there was implementation of a previous use approval and abandonment of the approval. Mr. Turzi expressed his opinion that there was no abandonment of the use.

Mr. Turzi presented correspondence from Express Fuel Management who is the sole tenant at the premises. The letter states that Express Fuel Management has full control of the property and building and that, if approval is granted, the applicant has the authority to perform any and all interior and exterior building improvements necessary. Mr. Pershouse asked if Express Fuel Management is the owner of the property. Mr. Turzi responded in the negative and advised that Express Fuel Management is the tenant. Ms. Findley questioned the owner's permission to make changes to the property. Mr. Turzi responded that the lease agreement with Express Fuel gives them full control over the property including maintenance, repairs and improvements and Express Fuel is giving that right to Mr. Ahmad. Attorney Thomas noted the letter from Express Fuel Management to the Borough of Stanhope dated January 9, 2012, which letter was marked Exhibit A-1. Chairman Maguire read the entire context of the letter. Ms. Findley asked that the Board be provided with a copy of the lease that states the tenant has the authority contained in the letter since Express Fuel Management is the tenant and not the owner of the building. Mr. Turzi stated he is not privy to all of the details of the lease and the tenant may not want to disclose the lease information. Mr. Turzi will request the information from the tenant. Attorney Thomas suggested asking the tenant to provide a copy of the lease agreement with redactions. Mr. Turzi noted previous discussion regarding available parking on the site. The Borough's ordinance for a retail store or service business requires one parking space for every 200 square feet of building area. The 1995 site plan application shows approximately 20 parking spaces. There are presently at least 18 parking spaces. The convenience store would only be required to provide 8 parking spaces. The six (6) parking spaces to the right of the building will be used for employee parking and the twelve (12) parking spaces on the left of the building will be for customer parking.

Mr. Depew noted previous discussion where the applicant stated the convenience store would be open until 11:00 p.m.; however the 1985 resolution states the hours of operation will be from 6:00 a.m. to 9:00 p.m.

Ms. Zeliff-Murphy said one of the resolutions indicates that the gas station portion will only use the outside pumps and not the inside pumps. Mr. Turzi said he read both resolutions. They are not replicating exactly as in the past. They are asking for some minor changes. The two islands will remain. Mr. Pershouse noted the second island was recently renovated with new pumps. Ms. Findley expressed concern with vehicles moving between the two islands. Chairman Maguire noted gas tanks are on different sides of cars and he questioned enforcement on restricting use of one of the pumps. Ms. Findley noted that one resolution prohibits outdoor storage. Mr. Turzi stated the prohibiting of outside storage is acceptable to them.

Attorney Thomas stated he conducted extensive research on the issues discussed regarding this application in relation to implementation and abandonment of approved variances. Attorney Thomas read Mr. Cox's book on Municipal Land Use Law and Section 13-2.1 makes reference to the fact that while a variance may be abandoned, it is not lost through non-exercise or the absence of a time limitation set forth with regard to a variance and where there is a zoning ordinance. It goes on to indicate in Section 13-2.2 that some Boards limit the time within which a variance may be exercised. He also indicates that it is preferable to do this by way of an ordinance. Attorney Thomas advised that in 2002 there was an amendment Section 100-110 of the Borough's Land Use Ordinance. Attorney Thomas read the following excerpt from Section 100-110 – Expiration of variance. "Any variance from the terms of this chapter permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance or unless such permitted use has actually been commenced within one year from the date of publication of the notice of the judgment or determination or the date of the filing of an appeal." Attorney Thomas stated the facts are that there was an approval in 1973 for a gas station, then a resolution in 1985 authorizing the gas station to continue, but use the repair bays as a convenience store. There was an additional resolution in 1995 authorizing a convenience store, but on a more limited basis which was to be operated out of the office and leaving the bays for auto repairs. Attorney Thomas advised that the amendment to the Borough's ordinance was adopted in 2002 and from that time on, all variances that occur after 2002 are subject to the time limitation reflected in the ordinance. Attorney Thomas cites the case of Price v. Martinetti as a matter similar to the one before the Board. Attorney Thomas summarized the case in which it was concluded that, in the absence of an ordinance or provision in the subsequent land use approvals conditioning those approvals upon rescission of the original approvals, a landowner that has obtained the approvals required for a development project different from the one originally approved retains the right to develop the property in accordance with the original plan. Attorney Thomas applied this case to the matter before the Board. The applicant is trying to come up with a plan to have a convenience store in the three bays. In 1985 a resolution was adopted for a convenience store in the bay area. The 1995 application was similar, but the applicant only sought to sell a few items in the office portion. Attorney Thomas advised that the Board must decide if the 1995 resolution voids the 1985 resolution. The Board must also decide if there was ever implementation of the 1995 resolution and if not, it converts back to the 1985 resolution. Attorney Thomas noted testimony from the public that there was the sale of milk and bread which could be implementation of the 1995 resolution.

Attorney Thomas noted the resolution contains a condition that the “applicant shall install a passage door in one of the service bay doors in order to allow pedestrians access from the exterior premises directly to the service bay area without opening the large overhead bay door”; which was never done. Attorney Thomas also noted a memorandum from the Zoning Office dated January 4, 2012 that was distributed to him and the Chairman. Attached to the memorandum was a letter dated May 19, 1986 from Thomas A. Shepard, Jr., Esq. to the then Borough of Stanhope’s Zoning Officer. The letter indicated that he represented Messrs. William Rempfer and Anthony DiLauri in connection with their proposed purchase of the referenced property. The letter indicates that his clients wanted to go back to solely and exclusively using the property for the repair of motor vehicles and sale of gasoline, motor fuels and other oil products. Attorney Thomas said that if the sale took place, the intent of the letter could be to advise that they are abandoning the 1985 resolution and they want to go back to a gas station or to say the property has not been used as a gas station and they want to know if they can use it as such. The Board questioned if the sale ever took place. Attorney Thomas noted there is no indication as to whether or not the sale went through.

Mayor Maio asked Attorney Thomas for clarification on termination of a variance and asked if a variance is granted after 2008, i.e., approval to install a shed and, after a year, the person does not act on it, are they prohibited from installing the shed. Attorney Thomas responded in the affirmative, but noted the variance presently before the Board was authorized before the 2002 amendment to the ordinance.

Attorney Thomas advised that the issue is whether or not there has been an abandonment of the 1985 resolution. The 1995 resolution saying they wanted to use the property differently does not abandon the first use. Attorney Thomas noted it is important to know if the applicant is looking to implement the 1985 resolution and whether they want to implement it exactly as written or if they want to do something different. The 1985 resolution is specific with issues such as hours of operation. If the applicant is looking for something different, the resolution would need to be amended. The applicant must inform the Board of the modifications they seek. Attorney Thomas reiterated that the 1995 resolution does not abandon the 1985 resolution.

Mr. Torelli said he read both resolutions. The 1985 resolution indicated someone looking to put in a normal convenience store, but with no cooking on site. The 1995 resolution appears to be a “trimming down” of the 1985 application being the gas station with a small convenience store and retaining the repair bays. Mr. Torelli expressed his opinion that the 1985 resolution and 1995 resolution justifies having something at the site. He believes the 1985 resolution is still in effect and the 1995 resolution was an attempt to appease all parties. It is Mr. Torelli’s opinion that the 1995 resolution was never implemented.

Attorney Thomas said the Board must decide if the 1985 resolution remains in full force and effect and, if so, they must find out how the applicant wishes to modify it.

Chairman Maguire said the case law mentioned by Attorney Thomas makes it seem as if the 1995 resolution does not apply and the site reverts back to the 1985 resolution.

On motion by Mr. Pershouse, seconded by Mr. Torelli and carried by the following majority roll call vote, the Board accepted that the 1985 resolution is in full force and effect and that the 1995 resolution was never implemented.

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Pershouse, Mr. Torelli, Ms. Zeliff-Murphy, Chairman Maguire
OPPOSED: None
ABSTENSIONS: None

(Mr. Thornton and Mr. Orinick were not eligible to vote.)

Attorney Thomas asked the applicant to review the 1985 resolution and to advise whether or not they wish to implement that resolution or request modifications to the resolution. Attorney Thomas noted that this will be a modification of a "d" variance and, therefore, the Mayor and Council Representative are not eligible to participate and must step down from the dais.

Mr. Turzi stated they would like to expand the hours of operation. Mr. Turzi and Mr. Ahmad stepped out of the meeting to review the resolution in order to determine the modifications they will seek.

Chairman Maguire advised that the Board will move on to New Hearings and will continue with Mr. Ahmad's application after he and Mr. Turzi have had an opportunity to review the resolution.

NEW HEARINGS

11-07, Rose & Gary Tucker

Block 10901, Lot 14/23, Minor Subdivision

Deemed Complete: 12/12/11

45 days: 1/26/12

Ashely Dorn, Esq. of the firm of Norrie & Associates, 500 International Drive North, Mount Olive, New Jersey appeared on behalf of the applicants Gary and Rose Tucker. Ms. Dorn stated the application is for a lot line adjustment of property owned by her client and the Stanhope Board of Education. The present lot line is an odd shape and they would like a more uniform line. There will be no change in the square footage for either of the lots. The square footage for both lots will remain the same. Ms. Dorn also stated that there will be no affect on drainage or any municipal or county road.

Gary Tucker, 4 Spencer Street, Stanhope, NJ was sworn in. Mr. Tucker testified that the property line between his property and the Board of Education's property is a very unusual shape. The purpose of the application, and their only intention, is to take an unusually shaped lot and make it more regular. Attorney Thomas asked if the square footage will remain the same to which Mr. Tucker responded in the affirmative. Attorney Thomas noted the subdivision map submitted by the applicant shows certain improvements to the lot and he asked if those improvements are presently as shown on the map to which Mr. Tucker responded in the affirmative. Mr. Tucker testified that the map provided is an accurate representation of his present lot. Mr. Tucker also testified that he received approval by the Board of Education for the lot line adjustment.

Chairman Maguire opened the meeting to the public for comments on this application only. Seeing no one from the public wishing to speak, Chairman Maguire closed the public portion of the meeting.

Chairman Maguire noted the lot line adjustment is an attempt to correct a miss-engineered lot. Chairman Maguire also noted that there is complete agreement between the owner and the Stanhope Board of Education.

On motion by Mr. Depew, seconded by Mr. Torelli, and carried by the following unanimous roll call vote, the Board approved 11-07 Rose and Gary Tucker, Block 10901, Lot 14/23 Minor Subdivision (Lot Line Adjustment) Application.

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zeliff-Murphy, Chairman Maguire
OPPOSED: None
ABSTENSIONS: None

UNFINISHED HEARING: (Continuation of Mr. Ahmad's Hearing)

Chairman Maguire re-opened the unfinished hearing of Daud Ahmad. Mayor Maio and Mr. Depew stepped down from the dais.

Mr. Turzi stated he and Mr. Ahmad reviewed the resolution and the only two items they seek to amend is reference to the closing of one of the pump islands because they do not have the authority to do so and they would like to amend the hours of operation. The opening hour of 6:00 a.m. is acceptable; however in order to have a viable business, they would like to remain open until 11:00 p.m. Chairman Maguire questioned the possibility of closing at 10:00 p.m. Mr. Turzi responded closing at 10:00 p.m. would be acceptable.

Mr. Pershouse stated he does not believe the applicant not being able to close the island is an issue. Chairman Maguire asked that the applicant suggest to the customers that they do not use that area as a walkway. Ms. Zeliff-Murphy suggested signage for customer parking. Mr. Turzi offered to line-stripe a walkway to the entrance of the convenience store for pedestrians which will keep them from walking across the pump island. Mr. Turzi asked the Board to consider permitting the hours of operation to 11:00 p.m. on Friday and Saturday and to 10:00 p.m. on Sunday through Thursday.

Chairman Maguire opened the meeting to the public for comments on this application only.

Kevin Coyle, 4 Sparta Road approached the Board. Attorney Thomas reminded Mr. Coyle that he remains under oath. Mr. Coyle expressed concern with the hours of operation and he noted that it will be the only business in the area opened past 6:00 p.m. which is why he believes the hours of operation was limited to 9:00 p.m. in the previous resolution. Mr. Coyle said the property is in a residential area and being allowed to operate until 11:00 p.m. is unacceptable. Mr. Coyle also expressed concern with the narrow space between the island and the store. He is concern that someone will run out the front door and cars will be moving right outside the door. Mr. Coyle also spoke about the poor maintenance of the property over the years and the lack of concern by the property owner and tenant. Chairman Maguire noted property maintenance is a zoning issue and should be brought to the attention of the Zoning Officer.

Pat Cherry, owner of the home behind the gas station approached the Board. Attorney Thomas reminded Ms. Cherry that she remains under oath. Ms. Cherry said she is not in favor of the application being approved. Ms. Cherry spoke of past and present issues at the site regarding

garbage and poor maintenance of the property. The fumes from the gas station go into her yard and at one time gas came into her yard. When the gas station was first approved, it was to be only a gas station with a "green" yard. Chairman Maguire noted that most of the comments relate to the gas station. Ms. Cherry said there was a previous issue with rats at the property and she questions the problem re-occurring with the convenience store. Ms. Cherry noted this is a residential area and she is not in favor of the application.

Seeing no one further from the public wishing to speak, Chairman Maguire closed the public portion of the meeting.

Ms. Findley said she recalls a requirement that when a commercial property is next to a residential property, there must be a 25 foot buffer between the two properties.

Mr. Turzi presented a portion of the 1995 site plan which he noted shows a location for a dumpster. Mr. Pershouse stated the site will need to be inspected by the Board of Health.

Ms. Findley asked if there will be lighting in the parking lot. Mr. Turzi responded they are not proposing to change the site plan. Whatever is presently there will remain. There are some lights that are not working which will be repaired.

Attorney Thomas spoke about the site plan previously submitted showing a stockade fence. Mr. Turzi acknowledged that the stockade fence is in bad shape. Attorney Thomas asked how much property is between the property line and the existing fence. Mr. Turzi responded there is approximately 4 feet between the fence and the property line. Chairman Maguire noted the site plan shows a grassy area.

Chairman Maguire said the Board will need some kind of drawing that shows exactly what will be done. The zoning officer and construction official will need something on paper indicating what is to be done. Mr. Turzi asked that approval be granted pending submittal of the drawing.

Attorney Thomas asked how Mr. Turzi and Mr. Ahmad will be improving the building. Mr. Turzi responded the bay doors will be removed and replaced with glass doors; the light fixtures will be replaced and repaired and the building will be painted to look more aesthetically pleasing. Chairman Maguire asked that lighting at the site be contained as not to shine onto the residents' property. Mr. Pershouse suggested any approval be subject to the applicant coming back to the Board with a representation on what they propose to do at the site.

Ms. Hunts asked if there will be an entrance through the office. Mr. Turzi responded customers will only enter through their store. Mr. Turzi directed the Board to the floor plan and he noted discussion at the last meeting regarding access to the restroom. The floor plan shows the front office that the gas station uses and will remain. The restroom will be accessed through the convenience store. Mr. Pershouse noted that one of the restrooms may need to be handicap accessible.

Chairman Maguire noted that the applicant has indicated he will be making improvements to the exterior of the building; he will also re-delineate the parking spaces, fix the fence and will make cosmetic improvements to the site.

Ms. Hunts asked that some kind of planting, i.e. a hedge, shrub or tree, be planted on the homeowner's side of the property. Chairman Maguire suggested the area behind the fence for the plantings that will create a vision block and beautify the area.

The Board discussed the hours of operation and noted the applicant's testimony that in order to have a viable business they need the extended hours of operation. Ms. Findley noted the applicant is subletting the property and she questioned what would happen if the gas station tenant loses the lease. Mr. Turzi responded it would most likely result in a lawsuit. Mr. Turzi said Mr. Ahmad will be investing a great deal of money in the business and the site and it would be in the best interest of the owner, not to have a vacant property.

Chairman Maguire noted that the applicant offered to compromise on the hours of operation from 6:00 a.m. to 11:00 p.m. every day to 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday. Ms. Zelif-Murphy agreed with the compromise.

Attorney Thomas suggested the Board call for a motion to decide whether or not the Board would be willing to authorize hours of operation as indicated in discussion. The motion would be a procedural motion only and not an approval of the application. Attorney Thomas added that the Board can impose the location for the dumpster or recycling area.

Chairman Maguire opened the meeting to the public for comment.

Pat Cherry expressed concern with the late hours of operation. She said she is in bed by 10:00 p.m. and, if the business is open until 11:00 p.m., lights will be shining into her house.

Seeing no one further from the public wishing to speak, Chairman Maguire closed the public portion of the meeting.

On motion by Ms. Findley, seconded by Chairman Maguire and carried by the following majority roll call vote, the Board authorized the hours of operation for the convenience store at this facility to be 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday, subject to conditions and guidelines outlined during the course of the hearing where the applicant will come back before the Board and provide information on the issues discussed, i.e. lighting, façade, etc. before final approval is given.

AFFIRMATIVE: Ms. Findley, Ms. Hunts, Ms. Zelif-Murphy, Chairman Maguire

OPPOSED: Mr. Pershouse

ABSTENSIONS: Mr. Torelli

(Mr. Thornton and Mr. Orinick were not eligible to vote.)

Attorney Thomas advised that this matter will be carried to the February 13, 2012 meeting with no further notice.

Mayor Maio and Mr. Depew returned to the dais.

NEW BUSINESS:

Annual Report – Chairman Maguire noted the Secretary has provided an Annual Report on Variance Applications submitted for the year 2011. Chairman Maguire noted reference to a 6 foot front yard setback indicated under Mr. Sweizer’s application should be revised to read an 18 foot setback.

On motion by Ms. Zeliff-Murphy, seconded by Mr. Torelli, and carried by the following unanimous roll call vote the Annual Report, as amended, was accepted.

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zeliff-Murphy, Chairman Maguire
OPPOSED: None
ABSTENSIONS: None

BILLS:

Dolan and Dolan		
11/30/11	Re: Patel	\$257.52
11/30/11	Re: Hoer	\$173.52
11/30/11	Re: Ahmad	\$ 89.52

On motion by Ms. Zeliff-Murphy, seconded by Mr. Torelli, the aforesaid bills were approved on the following unanimous roll call vote.

AFFIRMATIVE: Mr. Depew, Ms. Findley, Ms. Hunts, Mayor Maio, Mr. Orinick, Mr. Pershouse, Mr. Thornton, Mr. Torelli, Ms. Zeliff-Murphy, Chairman Maguire
OPPOSED: None
ABSTENSIONS: None

DISCUSSION

Chairman Maguire said there is presently a seat vacant on the Completeness Review Committee and he asked if a Board member would like to serve on the committee. Ms. Hunts offered to serve on the Completeness Review Committee until one of the newer members becomes more familiar with the process.

ADJOURNMENT:

On motion by Mr. Pershouse, seconded by Ms. Zeliff-Murphy, it was the consensus of the Board to adjourn the meeting at 9:35 P.M.

Respectfully submitted,



Ellen Horak, Board Secretary