

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT

Regular Meeting
Tuesday, March 29, 2011

—MINUTES—

CALL MEETING TO ORDER:

Chairman Vornehm called the regular meeting of the Bridgewater Township Zoning Board of Adjustment to order at 7:30 p.m. in the Bridgewater Municipal Courtroom, 100 Commons Way, Bridgewater, New Jersey.

OPEN PUBLIC MEETING ANNOUNCEMENT:

Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act N.J.S.A.10:4-6. On January 20, 2011 proper notice was sent to the Courier News and the Star-Ledger and filed with the Clerk at the Township of Bridgewater and posted on the bulletin board in the Municipal Building.

Please be aware of the Zoning Board of Adjustment policy for public hearings: No new applications will be heard after 10:15 pm and no new testimony will be taken after 10:30 pm. Hearing assistance is available upon request.

ROLL CALL:

Don Sweeney – present	Jay Rosen – present
Filipe Pedroso – absent	Jim Scott – present
Paul Riga – absent	William Vornehm, Chairman – present
Lee Schapiro – absent	Pushpavati Amin, Alt. #1 - present
Evans Humenick, Alt. #2 – absent	Carl Schulz, Alt. #3 – present

Others present: Attorney Lawrence A. Vastola, Land Use Administrator Marie L. Broughman, Board Planner Scarlett Doyle

MINUTES FOR APPROVAL:

March 1, Regular Meeting Minutes – Motion by Mrs. Amin, second by Mr. Scott, the foregoing minutes were adopted as amended on the following roll call vote:

AFFIRMATIVE:	Mr. Sweeney, Mr. Scott, Mrs. Amin, Mr. Schulz, Chairman Vornehm
ABSENT:	Mr. Pedroso, Mr. Riga, Mr. Schapiro, Mr. Humenick
NOT ELIGIBLE:	Mr. Rosen

MEMORIALIZING RESOLUTIONS:

None pending

HEARING AND DELIBERATIONS:

CHESSON MANAGEMENT – CHIMNEY ROCK, LLC

Block 257 Lot 13 (Chimney Rock Road)

#01-10-ZB, Phasing Amendment for Preliminary and Final Site Plan

Attorney Robert Foley was present to represent the applicant. Sworn testimony was provided by peter Chesson.

The applicant did not submit any exhibits.

Attorney Foley stated that the applicant has to get the buses off the Route 22 site to make room for the automobile dealership. The applicant is proposing a phasing plan which includes paving the parking lot, construction of the building addition and landscaping in the front railroad right of way would be made part of Phase II. The remainder of the site work would be completed as Phase I.

Mr. Chesson stated that he does yet not have permission from the railroad to plant landscaping within their right-of-way. He has to refrain from planting 100-ft on each side of the entrance along the right-of-way. In addition, he stated that he does not want to post bonds for the paving of the parking lot as he is running out of money for the project now and he wants to post the paving of the Phase II bonds later. He reviewed the report of the Township Engineer and Board Planner dated 3/25/11.

Engineer Hoder stated that if Mr. Chesson removes any of the items noted in the approvals or conditions of approval from the resolution, he would have to come back to the Board. Attorney Vastola stated that the Board does not have the power to change the resolution at this meeting and applicant would have to provide notice to the property owners within 200-ft and publish notice in the newspaper as required by law.

The applicant stated he does not want to post the bonds now and left the meeting with Attorney Foley.

TOM DELUCA'S TOWING – EMKO ENTERPRISES
Block 135 Lots 4 & 5 (29 Old York Rd.)
#28-10-ZB, Prelim & Final Site Plan, Use Variance & Bulk Variances
Time: 120=6/17/11

Attorney Jeffrey Lehrer was present to represent the applicant. Sworn testimony was presented by Professional Engineer Craig Stires, Applicant Cheryl Deluca, and Professional Planner Christine Cofone.

The applicant submitted several exhibits which were marked into evidence as follows:

- A-1 3/29/11** Colored rendering of site plan, sheet 2 of 8 “Existing Conditions”
- A-2 3/29/11** Overlay of prior approval of “Mulch Supply”
- A-3 3/29/11** Overlay, colored rendering of current proposal
- A-4 3/29/11** Architectural of Butler Building
- A-5 3/29/11** Limit of Disturbance Plan including landscaping
- A-6 3/29/11** Aerial photo

The subject property consists of a tract of land having an area of 1.231 acres. On February 7, 2006 the Board memorialized a resolution granting variances and preliminary and final site plan approval allowing the bulk sale of mulch as part of a garden center use.

The Applicant proposes to use the site for its business which provides towing service and vehicle storage. This use is not permitted in the C-1 Zone; therefore a use variance is requested. In addition the applicant is also seeking a variance from the impervious coverage limitation, 50% permitted, 54.35% proposed, a waiver from the front set back requirement for a sign, and preliminary and final site plan approval.

With respect to this application the Board is in receipt of the following: (a) a report from the Sewer Utility Coordinator dated March 3, 2011, (b) a report from the Fire Official dated March 9, 2011, (c) a report from the Township Planner dated March 16, 2011, (d) a report from the Township Engineer dated February 15, 2011, (e) accompanying the application a plan entitled "Preliminary and Final Major Site Plan Tom Deluca's Towing, Inc. Lots 4 and 5 Block 135 Bridgewater Township, Somerset County, New Jersey", prepared by Stires Associates, P.A., P.E.&L.S., Bridgewater, NJ, dated November 1, 2010, last revised February 11, 2011 and consisting of eight (8) sheets, and (f) accompanying the application an Environmental Impact Statement prepared by Craig W. Stires, P.E., Bridgewater, NJ, and dated January 2010.

Applicant Cheryl Deluca, who is also responsible for the day to day operation of the business, testified that the company has a contract with Bridgewater as well as a number of surrounding municipalities to provide towing services. She described the services rendered to the municipalities as consensual and non-consensual towing. A consensual tow occurs when the owner of the vehicle requests that it be towed, which vehicle may or not be stored at applicant's facility. A non-consensual tow occurs when the police direct the removal of the vehicle, which is then taken to applicant's facility. Applicant provides other services which do not involve applicant's facility.

Engineer Craig Stires described the proposed development of the property. Applicant proposes to construct a building having an area of 7,998 S.F. which was identified as a "Butler Building". Elevations of the building were submitted into evidence as Exhibit A-4. A proposed office will occupy 1,596 S.F., and the remainder will be a garage. The office portion of the building will be two-stories and the garage portion one-story. The entrance to the building will be from the rear. There will be no entrance from Old York Road. All existing improvements are proposed to be removed. The building is proposed to be located at the northeast corner of the property with the driveway to the west of the proposed building. Parking is proposed to be located along the westerly side of the proposed building.

The entire property is located in a flood zone with a portion at the rear being located in the flood way. Applicant proposes to construct a split rail fence at the end of the stone area used for the storage of motor vehicles. Given the fact that the property is located in a flood zone, when this matter was previously before the Board two easements were included as conditions of the prior approval. The first was a conservation easement to the Township covering 3,459 S.F. located in the flood way and the second a limited conservation easement for the remainder of the property. It was the purpose of this limited conservation easement to limit the development of the property to that set forth on the approved site plan. Approval of this application will require an amendment of this easement to be approved by the governing body.

The Board reviewed the reports from Township Agencies and its professionals. The applicant agreed to comply with the comments in the reports of the Sewer Utility Coordinator and Fire Official, referenced in paragraphs 4(a) and (b) hereof respectively. With respect to the Planner's report, the applicant agreed to comply with comments numbered 5, 11, 15, 16, 19, 23, 24, 25, 26, 27, 28 and 29. The applicant agreed to address comment 8 and make the appropriate correction.

Comment 12 of the Planner's report references the sections of the ordinance addressing development in flood prone areas. The proposed building will have a concrete slab floor with architectural block siding at the base of the facade up to the metal building. The Board is satisfied that, if approved the building can be constructed at the proposed elevation. Comment 12 of the Planner's report raises as a concern that any vehicles stored in the gravel area behind the building will be impacted by flood water. The testimony of

applicant's principal with respect to vehicles storage was that only operable vehicles will be stored in this area. Inoperable vehicles, which are those involved in accidents and more likely to produce the concern raised in this comment will be stored inside the building. There was also testimony that the applicant has reached an agreement with another business not in a flood area to locate vehicles at this facility in the event of a flood. It is the Board's conclusion that this concern has been adequately addressed.

Comment 14 of the Planner's report raised as an issue a sump pump 1.5 deep with two connections at the westerly property line. The testimony of the project engineer was that this pump would be removed. Comment 15 of the Planner's report questions whether there will be off-loading of vehicles from the public right-of-way. The testimony was that this would not occur. There are several trees along the easterly sideline of the property. The applicant proposes to save these trees. In comment 19 of the report the Planner questions whether these trees can be saved. The project engineer testified that applicant would guaranty survival for a period of two years. Any trees not surviving this period will be replaced.

With respect to the Engineer's report, the testimony was that the applicant will comply with comments 8, 10 and 15 of the policy section of the report, comments 2, 7 and 8 of the plat details section of the report, comments 6 and 7 of the Stormwater management sections of the report, and comments 1, 2 and 3 of the utilities section of the report.

Comment 9 of the policy section of the Engineer's report, similar to comment 12 of the Planner's report, references the section of the ordinance which address development in flood prone areas. The comment particularly references Sec. 126-296B(2) which requires that the lowest floor level of structures built on fill be at a minimum of one foot above the flood hazard design elevation. The proposed building does not meet this standard as the lowest floor level is 0.1 foot above the flood elevation. The proposed building, as previously stated will have a slab floor with block up to the steel frame, so that the intent of this ordinance is not violated.

Comment 11 of the technical section of the report questions the need for a NJDEP wetlands permit. The project engineer testified that in his opinion there are no wetlands and that a NJDEP permit is not needed. The Board's Planner suggested the in lieu of a permit an absence or presence determination by an environmental professional will suffice.

Applicant has obtained a NJDEP Stream Encroachment Permit. Comment 13 under the technical section of the Engineer's report raises as an issue the fact that the proposed landscaping area was not included in the area of disturbance. The project engineer, in anticipation of addressing this comment, prepared a plan allegedly demonstrating that inclusion of this area would not affect the permit application. This plan was marked A-5 in evidence.

Comment 4 of the plat details section of the Engineer's report references Sec. 126-195F(11) of the ordinance which requires a sign of less than 25 S.F to be a minimum distance of 20 feet from the property line. The applicant proposes a sign 3.4 feet from the property line. Therefore, a waiver is required. The proposed sign shown on sheet 6 of the site plan is proposed to be located at the edge of an area to be landscaped. Locating it further from the property line would require a reduction of the propose landscaping which in the Board's view is not warranted. For this reason there are grounds for a waiver. The sign is proposed to be externally illuminated.

Comment 6 of the plat details section of the report notes that a minimum slope of 2% in grassed areas is required in order to provide positive drainage. Engineer Stires testified that the topography of the site did not permit a slope of 2%, but that it could be graded to avoid ponding.

Comments 8, 9 and 10 of the Stormwater Management section of the report raised issues that must be addressed. Comment 8 references the installation of a stone trench requiring the removal of additional trees. The project engineer testified that every effort will be made to save as many trees as possible. Comment 9 questions the angle which the roof drain leader enters the stone trench could result in a potential by-pass of the trench during heavy rainfall events resulting in soil erosion. Engineer Stires testified that this could be corrected. Comment 10 questions the cover of the perforated roof leader drainage system being one-foot or less, which may subject it to freezing. He further testified that this could also be corrected, or a satisfactory alternate solution could be developed with the Township Engineer.

The Board also heard the testimony of a Professional Planner Christine Cofone who addressed the proofs which must be satisfied for the requested variances. She described the surrounding area as one containing a number of auto related uses including a towing and rigging operation, an auto window repair facility, a tire and muffler facility and adjacent to the subject property an auto body shop. Directly across from the subject property on Old York Road is a fire house. This, in her view, is a factor making this property particularly suited for the proposed use. Particular suitability is also supported by location of this property near major highways which she stated makes the property accessible. She concluded her testimony on the positive criteria by stating that this proposal fulfills the following purposes of zoning, (a), (c), (h) and (i) of the purposes of zoning as set forth in N.J.S.A.40:55D-2.

With respect to the negative criteria Planner Cofone acknowledged that any development contrary to the ordinance has an impact, but in this instance the impact is not substantial. Applicant is proposing to improve the appearance of the property by eliminating all improvements on the property, providing landscaping, removing gravel and fill from the floodway and by defining this area by the erection of a split rail fence at its beginning point on the property. With respect to the enhanced burden of proof required by Medici she stated that the proposal is low intensity and will have no negative impact.

The C-1 Zone has a coverage limitation of 50%, existing is 70% and proposed is 54.35%. Applicant has requested a variance allowing the proposed coverage. Although coverage exceeds that permitted in the C-1 Zone, the reduction from 70% to 54.3% makes the increased coverage requested de minimus entitling the applicant to a variance.

From the testimony presented the Board is satisfied that adequate reasons exist for granting the variance for the proposed use as well as that for coverage and for the waiver. The need fulfilled by the proposed use promotes the general welfare and the Board finds, for the reasons given by applicant's planner that the site is particularly suited for this use. Also, with conditions the Board finds that granting the requested variances, waiver and preliminary and final site plan approval will not substantially impair the zone plan or land use ordinance or be a substantial detriment to the public welfare of the residents of the Township of Bridgewater.

A member of the public was present as follows:

William Sedlazek questioned what will happen to the storm water runoff along the swales on the property lines and if new trees would be planted for the ones being removed. Engineer Stires explained the proposal and confirmed that new trees will be planted for those that can't be saved.

The Board deliberated and discussed several conditions including:

- Applicant shall comply with the comments contained in the report of the Sewer Utility Coordinator referenced in paragraph 4(a) hereof.
 - Applicant shall comply with the comments contained in the report of the Fire Official referenced in paragraph 4(b) hereof.
 - Applicant shall comply with the following comments contained in the Planner's report referenced in paragraph 4(c) hereof: 5, 11, 15, 16, 19, 23, 24, 25, 26, 27, 28 and 29.
 - Applicant shall comply with the following comments contained in the Engineer's report referenced in paragraph 4(d) hereof: 8, 10, 15 of the policy section, 2, 7 and 8 of the plat details section, 6 and 7 of the Stormwater management section, and comments 1, 2 and 3 of the utilities section.
 - There shall be no parking, storage, and unloading of vehicles on Old York Road, nor any delivery of vehicles on Old York Road. All activities relating to the business shall occur on site, and not on Old York Road.
 - Only operable vehicles can be stored in the graveled area. All other vehicles shall be stored inside the garage.
 - All vehicles stored outside shall be removed from the site at the outset of a flood event. Applicant shall keep on file with the Township Engineer an agreement with another similar facility outside the flood area allowing the storage of said vehicles in such an event. Should the current agreement with Colonial Motors, Inc. submitted with the application be revoked then a similar agreement with another facility shall be obtained and filed with the Township Engineer. Failure to comply with this condition shall revoke the right given to the applicant for the outdoor storage of vehicles as stated herein.
 - The sump pump referenced in comment 14 of the Planner's report shall be removed.
 - The fence demarcating the floodway shall be a split rail fence.
 - The applicant shall guaranty the survival of the existing street trees for a period of two (2) years.
 - Applicant shall demonstrate to the satisfaction of the Township Engineer that there is adequate turning radius on site for emergency vehicles and trash removal vehicles to operate.
- The elevations of the building to be constructed shall be as shown on Exhibit A-4 in evidence. Said building may be constructed 0.1 foot above the flood elevation.
- Applicant shall obtain and file with the Board Secretary and Township Engineer a determination by a qualified environmentalist that there are no wetlands on nor is the property affected by any wetlands that may be located on surrounding properties. This determination must be satisfactory to the Township Engineer. In the event it is determined that there are wetlands or that the property is effected by wetlands, then applicant shall comply with all N.J.D.E.P. wetland regulations.
 - The plan submitted by the applicant and marked A-5 in evidence shall be approved by the Township Engineer. If not approved then applicant shall comply with applicable Township and N.J.D.E.P. regulations.
 - Applicant shall satisfy the Township Engineer that the grassed areas can be properly grade without a 2% slope.
 - Applicant shall address comments 8, 9 and 10 of the Stormwater Management section of the report to the satisfaction of the Township Engineer.
 - The hours of operations shall be from 8:00 a.m. to 6:00 p.m. seven days per week. All lights with the exception of security lighting shall be turned off one-half hour after closing. Security lighting shall be approved by the Township Engineer.
 - The site plan shall be amended to set forth the conditions listed here
 - The applicant shall obtain from the governing body an amendment of the existing limited conservation easement allowing the proposal as shown on the approved site plan.

- Applicant shall enter into a Developer's Agreement with the Township.

Motion by Mr. Sweeney, second by Mr. Rosen, the Board approved the use variance for Tom Deluca's Towing on the following roll call vote:

AFFIRMATIVE: Mr. Sweeney, Mr. Rosen, Mr. Scott, Mr. Schulz, Chairman Vornehm

OPPOSED: Mrs. Amin

ABSENT: Mr. Pedroso, Mr. Schapiro, Mr. Riga, Mr. Humenick

Motion by Mr. Rosen, second by Mr. Schulz, the Board approved the Preliminary and Final Site Plan, c-variances and waivers for Tom Deluca's Towing on the following roll call vote:

AFFIRMATIVE: Mr. Sweeney, Mr. Rosen, Mr. Scott, Mrs. Amin, Mr. Schulz,
Chairman Vornehm

ABSENT: Mr. Pedroso, Mr. Schapiro, Mr. Riga, Mr. Humenick

MEETING OPEN TO THE PUBLIC:

There were no members of the public wishing to address the Board on any matter not listed on the agenda may do so at this time.

OTHER BOARD BUSINESS/ADJOURNMENT:

It was the consensus of the Board to adjourn the meeting at approximately 10:45 pm.

Respectfully submitted,
Marie L. Broughman,
Land Use Administrator

ADOPTED: 4/26/11