

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
Regular Meeting
Tuesday, July 5, 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. at 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 – absent	Jay Rosen – absent
Filipe Pedroso – absent	Jim Scott – present
Paul Riga – present	William Vornehm, Chairman – present
Lee Schapiro – present	Pushpavati Amin, Alt. #1 - present
Evans Humenick, Alt. #2 – present	Carl Schulz, Alt. #3 – present

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

MINUTES FOR APPROVAL:

May 24, 2011 Special Meeting – Motion by Mrs. Amin, second by Mr. Scott, the foregoing minutes were approved as amended on the following roll call vote;

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

June 7, 2011 Regular Meeting – Motion by Mr. Schulz, second by Mrs. Amin, the foregoing minutes were approved as presented on the following roll call vote:

AFFIRMATIVE:	Mr. Scott, Mr. Riga, Mrs. Amin, Mr. Humenick, Mr. Schulz, Chairman Vornehm
ABSENT:	Mr. Sweeney, Mr. Pedroso, Mr. Rosen

NOT ELIGIBLE: Mr. Schapiro

June 21, 2011 Regular Meeting – Motion by Mrs. Amin, second by Mr. Schulz, the foregoing minutes were approved as amended on the following roll call vote:

AFFIRMATIVE: Mr. Schapiro, Mr. Scott, Mr. Riga, Mrs. Amin, Mr. Humenick,
Mr. Schulz, Chairman Vornehm

ABSENT: Mr. Sweeney, Mr. Pedroso, Mr. Rosen

June 28, 2011 Regular Meeting – Motion by Mr. Schapiro, second by Mrs. Amin, the foregoing minutes were adopted as presented on the following roll call vote:

AFFIRMATIVE: Mr. Schapiro, Mr. Riga, Mrs. Amin, Mr. Humenick, Chairman
Vornehm

ABSENT: Mr. Sweeney, Mr. Pedroso, Mr. Rosen

NOT ELIGIBLE: Mr. Scott, Mr. Schulz

MEMORIALIZING RESOLUTIONS:

None pending

HEARING AND DELIBERATIONS:

KUPPACHI – 17 Elmara Drive

Block 191 Lot 35

#10-11-ZB, Simple Variance (deck)

TIME: 95=8/15/11

Applicant Krishna Kuppachi was present and represented himself. He presented sworn testimony and submitted the following exhibits which were marked into evidence as follows:

A-1 7/5/11 Photo Board with (20) pictures showing the rear yard

The property is located in the R-20.1 Single-Family Affordable Residential zone with frontage on Elmara Drive consisting of 6,200-sf. It is fully improved with a two story single family dwelling. Applicant proposes to construct a deck to the rear of the dwelling. A variance is needed as the proposed deck will encroach into the rear yard setback, 25 feet is required and 22 feet is proposed.

Applicant Kuppachi testified that he proposes a deck of 18 feet by 10 feet. Adjacent to the rear door from which access to the deck would be obtained, there is an alcove which extends approximately 8 feet. If the applicant were to comply with the ordinance the deck would only be approximately 2 feet wide at the point of the alcove. The photos submitted by the applicant show that there are plantings and a fence along the rear line.

He reviewed the joint report of the Township Planner Scarlett Doyle and Township Engineer Thomas J. Forsythe dated 4/8/11 and agreed to comply with outstanding conditions.

The Board deliberated determined that the shape of the rear of the dwelling and its location on the lot create a zoning hardship. A deviation from the rear yard setback requirement is in the Board's view de minimus and the granting of the requested variance will not substantially impair the zone plan or land use ordinances or be a substantial detriment to the public welfare of the residents of the Township of Bridgewater.

Motion by Mr. Riga, second by Mr. Scott, the forgoing Kuppachi Application was approved on the following roll call vote:

AFFIRMATIVE: Mr. Schapiro, Mr. Scott, Mr. Riga, Mrs. Amin, Mr. Humenick,
Mr. Schulz, Chairman Vornehm

ABSENT: Mr. Sweeney, Mr. Pedroso, Mr. Rosen

WAWA, INC. – Route 28 & Chimney Rock Road
Block 257 Lots 3 & 4
#05-11-ZB, Use Variance (bifurcated) – Mini-Mart & Gas Station
TIME: 120=8/27/11

Attorney Timothy M. Prime was present to represent the Applicant. Sworn testimony was presented by Wawa Real Estate Engineer Mike Ridel, Professional Engineer David Wisotsky of Bohler Engineering, Traffic Engineer Gary Dean and Professional Planner Paul Phillips.

The Applicant submitted several exhibits which were marked in to evidence as follows:

- A-1 7/5/11** Colored Rendering – Variance Plan
- A-2 7/5/11** Use & Operations Statement
- A-3 7/5/11** Aerial Map

That the property is known as Lots 3 and 4 in Block 257 of the Tax Map, located on the southeasterly side of New Jersey State Highway 28 (Union Avenue) in the M-1A Manufacturing Zone, and commonly known as 580-582 Union Avenue. Applicant proposes to construct a gasoline station and food mart at the site. A retail uses not permitted in the M-1A Zone. Gasoline stations are a permitted conditioned use; however, Applicant does not meet all of the required conditions. Variances are, therefore, required. Applicant has elected to bifurcate the application so that the only issue before the Board is the request for variances. If the application is granted the applicant must apply to the Board for site plan approval.

With respect to this application the Board is in receipt of the following: (a) reports from the Township Planner dated April 30, 2011 and June 15, 2011; (b) a report from the Township Engineer dated May 13, 2011; (c) a report from the Sewer Utility Coordinator dated May 2, 2011; (d) a report from the Fire Official dated March 25, 2011; (e) a statement from the Environmental Officer advising that the property is on the NJDEP list of known contaminated sites; (f) accompanying the application a plan entitled "Use Variance Plans Proposed Food Market and Gasoline Filling Station for WAWA, Inc.", prepared by Bohler Engineering, Warren, NJ dated February 28, 2011, last revised April 4, 2011, and consisting of four (4) sheets; (g) accompanying the application elevations for the proposed fuel dispensing canopy and food-mart

prepared by JMA Architects, LLC, Blue Bell, PA, dated March 30, 2011 and consisting of one (1) sheet, and (h) Traffic Impact Study, dated April 18, 2011, prepared by Dolan & Dean, Martinsville, NJ.

Sec. 126-136 A of the ordinance sets forth the uses permitted in the M-1A Zone. Retail is not a permitted use, therefore it is prohibited. Sec. 126-316C of the ordinance does permit service stations as a conditioned use. The standards for this use are set forth in Sec. 126-352 of the ordinance all of which are not met by the applicant.

Applicant's real estate engineer described the proposed operation as a food-mart with a gasoline filling station component. For the food-mart a building with an area of 5,025 S.F. is proposed. For the gasoline filling station eight dispensers for gasoline under a canopy are proposed. No automotive services other than gasoline will be offered. Initially, the Board must characterize the nature of the proposed use, whether a service station with a convenience store or a food-mart with a gas-dispensing component. The applicant's planner testified that in his opinion the latter best characterizes applicant's proposal. The Board's agrees with this characterization. The sale of gasoline is no longer the province of traditional service stations that offer services related solely to motor vehicles. The dispensing of gasoline is now associated with convenience stores or food-marts such as proposed by the Applicant. The Board, therefore, views this proposal not as a conditional use service station, with food-mart component, but as one use, which is not permitted in the zone.

The subject property consists of a tract of land having an area of 105,471 S.F. (2.4 acres). It is improved with 3 one-story buildings and one two-story building. A substantial portion of the property is paved so that impervious coverage is 92.85%. The property was not developed in an orderly fashion and, aesthetically, leaves much to be desired. Applicant proposes to raze all improvements and reduce impervious coverage by 30.05% to 62.8%. The property consists of two separate tax lots, in common ownership which the applicant proposes to merge. Given the fact that neither lot meets the 5 acre area requirement of the M-1A Zone, they are merged as a matter of law.

Applicant as previously stated, proposes to develop the site with a one-story building have an area of 5,025 square feet proposed to be set back 235.4 feet from the northerly sideline of Route 28. The 8 gasoline dispensers are proposed to be located under a canopy proposed to be set back 53.3 feet from said sideline. With the exception of a trash enclosure at the rear of the building, no other structures are proposed. There will be 59 parking spaces each being 10 feet by 20 feet. Only one means access and egress, located at westerly side of the Route 28 frontage, is proposed.

The property is separated from Chimney Rock Road by a Consolidated Rail Corp. rail line which runs along the easterly side of the property. The zone line for the M-1A Zone runs along a portion of the westerly sideline of the property. The adjoining property is in the C-1 Neighborhood Business Zone, and is improved with a strip mall. All properties to the west of the subject are in the C-1 Zone which permits retail uses.

In order for the Board to grant a use variance, for other than an inherently beneficial use, the applicant must satisfy the special reasons requirement of the statute as well as the so called negative criteria. Applicant's planner testified that the purposes of zoning addressed by the proposal are those set forth in N.J.S.A.40:55D-2, A, G and I. In summary, he testified that the properties to the west of the subject are located in the C-1 Zone which permits retail uses; that the M-1A Zone has a minimum lot requirement of 5 acres, which is twice the size of the subject, making it unsuitable for traditional industrial uses; that the size of the property is sufficient for the proposed use; and the proposal will introduce a suitable use at the intersection of State and County road.

With respect to the negative criteria, applicant's planner testified that there is no adverse impact on the public good as the proposed use is compatible with the zoning to the west and will act as a buffer to the uses on the M-1A Zone to the east. The applicant also recognized the requirement of satisfying the Medici standard which imposes an enhanced quality of proof when the use is not permitted in any zone. In addressing this standard, applicant's planner testified that the master plan reexamination focused on the M-1A Zone and recommended zoning options for commercial opportunities for this zone.

In considering this matter the Board finds that the proposed use promotes the general welfare as the site is particularly suited for this use. The site does not meet the 5 acre area requirement for the M-1A Zone. Its size, however, is suitable for the proposed use. The suitability of the site is also demonstrated by its location at the intersection of a State Highway and a County Road. The proposal will also eliminate an unsightly use replacing it with one that will act as a buffer for the uses to the west. From the testimony and the reasons stated herein the Board is satisfied that the applicant has satisfied the special reasons requirement.

With respect to the negative criteria the Board recognizes, as it has in the past, that the Route 28 corridor, has a variety of uses many of which are nonconforming, and that the Board should look favorably on a use which will improve the character of the area. The master plan reexamination recognizes the need to consider commercial uses in the M-1A Zone. The proposal is such a use and it will improve the character of the neighborhood without a substantial adverse impact on the area. The Board, therefore, is satisfied that the applicant has met its burden and that the granting of the variance will not be a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

It is important to note that this is a bifurcated application, which brings before the Board only the use. The applicant must return to the Board for site plan approval, at which time the applicant must again address the negative criteria. With respect thereto the Board notes that it makes no finding as to the adequacy of only one point of access and egress to the site, which remains an issue of concern. With respect to that issue, the applicant's traffic engineer testified that the proposed access and egress is existing which will not require N.J.D.O.T. approval and that an additional access will. Given the application costs and time involved the applicant chose not to make a site plan application at this time. The Board is not satisfied from the testimony presented on this issue that method of ingress and egress is satisfactory. There was also testimony that the applicant is attempting to acquire an easement across the Consolidated Rail Corp. property which

would give access secondary to Chimney Rock Road. The acquisition of an easement is likely to be a consideration when addressing this issue at site plan.

In addition to the use variance, there are a number of bulk variances sought, some of which are subsumed by the use variance but all of which need to be addressed by the Board. These variances include the following: Lot area, 5 acres required, 2.4 acres existing. The needed variance is subsumed by the use variance. Front yard 100 feet required, 53.3 feet proposed. This variance is necessitated by the proposed location of the canopy. Given the access/egress issue the Board makes no decision on this variance and leaves it to site plan. Improved lot coverage, maximum permitted 60%, 62.8% proposed. Given the size and number of parking spaces proposed, the Board leaves a decision on this variance to site plan. The other variances sought involve design issues and can be left for site plan. Parking stall dimensions will be a matter of site plan review.

The Board is satisfied that a use variance for this site to be used as a food-mart with gasoline dispensing can be granted, and that the granting thereof will not be a substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance.

Motion by Mr. Scott, second by Mr. Schapiro, the WAWA, INC. Bifurcated Use Variance Application was approved on the following roll call vote:

AFFIRMATIVE: Mr. Schapiro, Mr. Scott, Mr. Riga, Mrs. Amin, Mr. Humenick,
Mr. Schulz, Chairman Vornehm

ABSENT: Mr. Sweeney, Mr. Pedroso, Mr. Rosen

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.

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: 8/2/11