

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT

Regular Meeting
Tuesday, November 1, 2016

—MINUTES—

CALL MEETING TO ORDER:

Chairman Sweeney called the meeting to order at 7:30 pm in the Bridgewater Municipal Courtroom, 100 Commons Way, Bridgewater, New Jersey 08807

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 25, 2016 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 Accommodation will be made for individuals with a disability, pursuant to the Americans With Disabilities Act (ADA), provided the individual with the disability provides 48 hours advance notice to the Planning Board Secretary before the public meeting. However, if the individual should require special equipment or services, such as a CART transcriber, seven days advance notice, excluding weekends and holidays, may be necessary.

ROLL CALL:

Don Sweeney – present	Beth Powers – present
Pushpavati Amin – present	James Weideli, Alternate #1- present
Paul Riga – present	Dawn Guttschall Alternate #2 – present
Michael Kirsh, – present	John Fallone Alternate #3 – present
Evans Humenick – absent	Jeff Foose Alternate #4 – present
Alan Fross – absent	

Others present: Board Attorney Steven Warner Esq., Board Planner Scarlett Doyle, Stephen Rodzinak, Deputy Zoning Officer and Construction Official and Ann Marie Lehberger, Planning Division Secretary

MINUTES FOR APPROVAL:

September 20, Regular Meeting

Motion by Mrs. Amin; Second by Mrs. Powers, the foregoing minutes were adopted on the following roll call vote:

AFFIRMATIVE:	Mrs. Amin, Mr. Riga, Mr. Kirsh, Mrs. Powers, Mr. Sweeney, Mr. Weideli, Mr. Fallone
ABSENT:	Mr. Fross, Mr. Humenick
NOT ELIGIBLE:	Ms. Guttschall, Mr. Foose

MEMORIALIZING RESOLUTIONS:

No Resolutions were pending for Board action

HEARING AND DELIBERATIONS:

TERRENO MIDDLEBROOK LLC- Chimney Rock Road & US 22

Block 356 Lots 1 & 3

#16-021-ZB- Certificate of Non Conforming Use

Attorney Michael Osterman was present to represent the applicant. Mr. Osterman explained the application as follows: Terreno Middlebrook is the owner of the subject property located at the intersection of Chimney Rock road and Route 22. The property is in the HEC Highway Enterprise Zone. When Terreno acquired property in 2010, it was zoned M1-A Manufacturing. Five days after acquiring the property the new zoning went into effect making it HEC. The property consists of 18 buildings with about 580,000 square feet of

leasable space. In 2010 when the ordinance changed 91.2 % of the leasable area was then being used for light industrial uses that included warehouse, distribution and light manufacturing. The remainder of the space was then being used for office and indoor recreation. When the Zoning changed to HEC in 2010, the warehouse distribution and light manufacturing uses became preexisting non conforming uses and the office and indoor recreation uses became permitted uses. The applicant is seeking a certificate of non conforming use for the property. Mr. Osterman Esq. submitted an Exhibit that was marked into evidence as follows:

A-1 12/15/16 Memorandum of Law dated 10/27/16

Mr. Osterman summarized his Memorandum for the Board and stating that, under governing law, the applicant was free to continue the non-conforming uses on the Property to the same extent that said uses existed on September 28, 2010, prior to the zone change.

Michael Murray, Vice President of Asset Acquisitions for Terreno Realty Corporation was sworn in for testimony. The following exhibits were marked into evidence as follows:

A-2 12/15/16 A comparison of the existing or last tenant uses as of September 28, 2012 and as of November 1, 2016.

A-3 12/15/16 A comparison of total square footage by tenant uses and corresponding percentages as of September 28, 2010 and November 1, 2016

Stephen Rodzinak, Deputy Zoning Officer and Construction Official and Board Planner Scarlett Doyle were sworn in for testimony.

Mr. Murray explained the data that was presented in the exhibits and provided testimony as follows: On September 28, 2010, 85.5%, or 495,614 square feet, of the total rentable area (579,532 square feet) was used for warehouse and distribution; 5.7%, or 32,658 square feet, was used for light manufacturing; 5.8%, or 33,600 square feet, was used for indoor recreation, and the remaining 3.0%, or 17,660 square feet, was used for office space. As of November 1, 2016, 72.4%, or 419,634 square feet, was used for warehouse and distribution; 14.2% or 82,348 square feet, was used for light manufacturing, 10.8%, or 62,800 square feet, was used for indoor recreation, and the remaining 2.6%, or 15,060 square feet, was used for office space. On September 28, 2010, under the then newly adopted HEC Zone standards, 8.8% of the rentable area of the industrial park qualified as conforming, whereas on November 1, 2016, the percentage of conforming uses had increased to 13.4%. The reduction in the area occupied by nonconforming uses and increase in the area occupied by conforming uses was mainly due to a permitted indoor recreational use moving into the industrial park.

The Board questioned how the building vacancies were accounted for on the chart. Mr. Murray explained that if there were vacancies, the data of the most recent tenant was used.

Mr. Murray continued his testimony as follows: The shift from warehouse and distribution uses to light manufacturing uses has resulted in less truck traffic on the property, which has reduced the detrimental impact on the surrounding properties. The applicant had sought, and received, the appropriate approvals required by the Township whenever there was a change in tenancy. Mr. Rodzinak, the Deputy Zoning Official, explained the process currently used when an applicant seeks a CCO (Certificate of Continued Occupancy)

The Board questioned how buildings are classified if they contain both a warehouse and an office. Mr. Murray stated that it is classified as a warehouse, noting that most of the warehouses have a small amount of office space.

—MINUTES—

The Board discussed at length how to appropriately compare the extent of the pre-existing uses with the post-zone change uses at the industrial park. The Board concluded that comparing the deviation from the pre-existing uses on a square footage (rather than percentage) basis, and on a site-wide basis, rather than on a lot-wide, building-wide or tenancy-wide basis made the most practical sense. The Board concluded that a square footage cap could be set as the “initial baseline” for such pre-existing non-permitted uses, so long as the “initial baseline” cap square footage was the lower square footage figure of non-permitted uses in existence as of November 1, 2016, rather than the higher square footage figure of non-permitted uses in existence as of September 28, 2010, and that cap would be reduced in square footage when any nonconforming use was replaced by a conforming use. The Board also determined that the applicant would need to return to the Board to request a variance if a change in tenancy would result in a total square footage of nonconforming uses at the property exceeding the “initial baseline” cap. The Board also determined that if a nonconforming use was replaced by a conforming use it would not by itself constitute an abandonment of that pre-existing nonconforming use. Finally the Board concluded that the applicant would be required to seek certification from the Zoning Official through a zoning permit process for every change of tenancy at the property.

Chairman Sweeney opened the public portion of the meeting. There were no questions or comments.

Mr. Osterman provided closing comments.

The Board deliberated and discussed conditions.

Motion by Mrs. Powers; Second by Mrs. Amin, the foregoing application was approved with the conditions as discussed on the following roll call vote:

AFFIRMATIVE:	Mrs. Amin, Mr. Riga, Mr. Kirsh, Mrs. Powers, Mr. Sweeney, Mr. Weideli,
NEGATIVE:	Ms. Guttschall
ABSENT:	Mr. Fross, Mr. Humenick
NOT ELIGIBLE:	Mr. Fallone, Mr. Foose

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:

HALL’S WAREHOUSE CORP. - Foothill Road, Block 233 Lot 4
Application #15-036-ZB- Minor Site Plan with Variances for Outdoor Storage

Attorney Kathryn Kopp was present to represent the applicant. Ms. Kopp stated that, on behalf of the applicant she is requesting that the previously withdrawn application be reinstated so that they could continue where they previously left off and allow the Board to make a determination.

Board Attorney stated that it would be considered a request to withdraw the previous withdrawal request and allow the matter to continue since the Board never formally adopted a resolution, the application is still pending.

It was noted that new notice would be required.

Chairman Sweeney opened the public portion of the meeting.

Thomas Sohn of 236 Foothill Road was present and stated that he was not in favor of the application moving forward. Mr. Sohn stated that lights shine into his home every night and he is concerned that the issues that are currently on the site could potentially become worse.

Motion by Mr. Weideli; Second by Mrs. Powers, to allow the applicant to withdraw their request to withdraw and continue with their application was approved on the following roll call vote:

AFFIRMATIVE: Mrs. Amin, Mr. Riga, Mr. Kirsh, Mrs. Powers, Mr. Sweeney, Mr. Weideli, Ms.
Guttschall
ABSENT: Mr. Fross, Mr. Humenick
NOT ELIGIBLE: Mr. Fallone, Mr. Foose

ADJOURNMENT:

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

Respectfully submitted,
Ann Marie Lehberger
Planning Secretary