

BRIDGEWATER TOWNSHIP  
**ZONING BOARD OF ADJUSTMENT**

Regular Meeting

June 20, 2017

—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.

**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 18, 2017 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

Pushpavati Amin – present

Paul Riga – absent

Michael Kirsh, – present

Evans Humenick – absent

Alan Fross – present

Beth Powers – absent

James Weideli, Alternate #1- present

Dawn Guttschall Alternate #2 – present

John Fallone Alternate #3 -absent

Jeff Foose Alternate #4 - present

Others present: Board Attorney Steven K. Warner and Planning Division Secretary Ann Marie Lehberger

**MINUTES FOR APPROVAL:**

There were no minutes presented for approval

**MEMORIALIZING RESOLUTIONS:**

**LCS DEVELOPMENT LLC-** Frontier Road and Foothill Road

Block 711 Lot 13

#16-039-ZB- Preliminary & Final Major Site Plan with Variances - Independent Living, Assisted Living and Memory Care Facility

Decision: Approved with conditions 5/30/17

Motion by Mr. Kirsh, second by Mrs. Amin the foregoing resolution memorializing the approval on 4/18/17 was adopted as amended on the following roll call vote:

AFFIRMATIVE: Mrs. Amin, Mr. Kirsh, Mr. Fross, Mr. Sweeney,

ABSENT: Mr. Riga, Mr. Humenick, Mrs. Powers, Mr. Fallone

NOT ELIGIBLE: Mr. Weideli, Ms. Guttschall, Mr. Foose

**HEARING AND DELIBERATIONS:**

**EAST RIDGE DEVELOPMENT LLC-** 966 Route 22 East

Block 200 Lot 2

#16-034-ZB- Minor Site Plan with Variances-Proposed Restaurants (Current La Catena Site)

Chairman Sweeney announced that the East Ridge Development LLC application will not be heard this evening as scheduled stating that the applicant has withdrawn their application.

**SONNER-** 85 Loeser Ave.

Block 300 Lot 10  
#14-009-ZB- Minor Site Plan with Variances- Landscape Business

Attorney Robert Foley was present to represent the applicant Robert Sonner. Mr. Foley provided some background on the status of the application up to this point and explained that the applicant was present this evening because they have an objection to condition #14 of the resolution draft which indicates that the owner or operator of the property shall be the owner, or operator of the business. Mr. Foley stated that this paragraph indicates that the approval constituted an extension of the home occupation use requiring that the future owner and/or operator of the business shall be the occupant of the dwelling as a principal resident. Mr. Foley further explained that he has provided some case law in his memo dated June 16, 2017 and stated that the applicant believes that the current law regarding land use does not permit a municipal authority to limit the use of the property by ownership or tenancy restrictions. Mr. Foley noted that the applicant is willing to provide testimony as to the history of the property revealing that the owner of the property, the occupant of the residence and the operator of the business were not always a single entity.

Board Attorney Steven Warner explained that the basis of the condition in the resolution came from item #11 of the Board Planner Scarlett Doyle's report dated March 28, 2017 which provides as follows:

“The Sonner's currently live on the property. It should be made clear that this is an extension of the Home Occupation use, and the user of the land for landscaping must also be the occupant of the dwelling as the principal residential use (not office use).”

Mr. Warner further noted that the minutes from the meeting of April 4, 2017 reflect that the applicant had no objections to any items listed in the Township professional's reports and stipulated to same.

Mr. Warner, in response to Mr. Foley's memo dated June 16, 2017, stated that while the identity of who is requesting the variance does not matter, the association or relationship between the owner of the property, the occupant of the dwelling and the operator of the business, particularly in the instance of a preexisting non conforming use, is a very different and distinct issue. Mr. Warner noted that as part of the application, a D-1 use variance was not granted for two principal uses, being both residential and commercial on the same lot. He explained that the Board determined the parameters of the existing uses on the lot and it was determined by the Board that from 1999 to present there was an occupant of the premises that owned the property and also operated the business. Mr. Warner further stated that if there was no relationship between them, there would be two principal uses on one lot. Mr. Warner explained that the relationship is what establishes the baseline for the Zoning Officer. Mr. Warner further explained that any dissociation between the two uses would constitute an expansion or intensification of the pre-existing nonconforming use.

Mr. Warner explained that if condition # 14 was removed from the resolution it could be perceived that the Board granted a use variance to the applicant.

Chairman Sweeney explained that the Board's main concern was the intensity of the preexisting non conforming use and that is why they had asked Mr. Sonner to provide a site plan of what was currently existing on the property so they would have a baseline that could be used as a means of control.

Mr. Foley explained that the controls would be enforceable against the owner whoever it is.

Mr. Warner stated that applicant is entitled to ask for more relief than has already been given by the Board but if the condition is removed it could appear that the use variance relief was already given.

Robert and Jill Sonner, the applicants were sworn in for testimony.

Mr. Foley submitted exhibits that were marked into evidence as follows:

**R-1 6/20/17 Copy of Deed from 1974**

**R-2 6/20/17 Copy of Deed from 1977**  
**R-3 6/20/17 Copy of Deed from 1999**

Mr. Foley explained that the testimony is to provide a history of the ownership of the property showing that the owner of the property, the occupant of the residence and the operator of the business were not always a single entity.

Mrs. Sonner provided testimony as follows: Her family purchased the property in 1977 but did not reside on the property. There was a reverend that resided in the home on the property with his family and there was some type of a business being run in the back portion of the property by other people who did not reside in the home. The reverend moved out in 1988 and her brother moved into the home.

Mr. Sonner provided testimony as follows: He moved into the home in 1988 with Mrs. Sonner's brother. His landscape business at that time was located in South Plainfield but he soon moved his business to the property. In 1989, Mr. and Mrs. Sonner got married and they purchased the property in May 1999. In December 1999, the zoning of the property was changed from M-2 to R-10. He has continued to live in the home and run the landscape business without interruption since 1988.

Board Attorney Mr. Warner questioned if the lot was ever subdivided. Mr. and Mrs. Sonner answered that it had not been subdivided. Mr. Warner also questioned if the applicant knew if there was ever a landscaping business on the property at any time prior to 1988. Mr. and Mrs. Sonner stated that there was some type of business on the property but they could not confirm what type of business it was.

Board Attorney Mr. Warner explained that the applicant has to establish that prior to the zone change in 1999 that there was both a residential use and a commercial use, specifically a landscape use on the property and that those two uses were at some point before the ordinance change separate and apart from each other. Mr. Warner clarified that meant that it wasn't the same person or family member operating the landscaping business and living in, or owning, the home. He further explained that the applicant also has to prove that they did not abandon the use.

Mr. Foley provided closing comments contending that the testimony provided a history of the ownership of the property showing that the owner of the property, the occupant of the residence and the operator of the business were not always a single entity, and that the applicant had not at any time abandoned the use.

Mr. Warner stated that the applicable time frame for establishing the pre-existing nonconforming use is when the ordinance had changed in 1999, noting that at the time the ordinance changed in 1999, the applicants confirmed that they owned the property, lived in the residence and operated the business.

The Board deliberated and determined that the resolution should remain as drafted to include condition #14.

Motion by Mr. Amin, second by Mr. Weideli the foregoing resolution memorializing the approval on 4/18/17 was adopted as amended on the following roll call vote:

AFFIRMATIVE: Mrs. Amin, Mr. Kirsh, Mr. Fross, Mr. Sweeney, Mr. Weideli, Ms. Guttschall, Mr. Foose  
ABSENT: Mr. Riga, Mr. Humenick, Mrs. Powers, Mr. Fallone

**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:**

There was no other business discussed.

**ADJOURNMENT:**

It was the consensus of the Board to adjourn the meeting at approximately 10:30 pm.

Respectfully submitted,  
Ann Marie Lehberger  
Planning Secretary