

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
Regular Virtual Online Meeting
Tuesday, March 2, 2021
—MINUTES—

1. CALL MEETING TO ORDER:

Chairman Mr. Foose called the Virtual Online meeting to order at 7:30 pm.

For the duration of the Corona virus Health Emergency, meetings will be held digitally, connected by conferencing software provided by RingCentral.com. Members of the public are invited to view meetings live using RingCentral webinar, which also allows them to "raise a hand" and contribute when they are invited to do so during public portions of the meeting. Instructions for Virtual online meeting:

1. Download RingCentral meetings on preferred device: <https://www.ringcentral.com/apps/rc-meetings>
2. At the advertised start time of the meeting, enter: <https://webinar.ringcentral.com/j/1481419794> into your browser. **This method allows listening & participation.*

Please Note: You may also join via telephone: Dial: +1-(623)-404-9000, Webinar ID: 1481419794 **telephone access allows only listening and not participation.* If you would like to ask a question, you can do so via audio and video through RingCentral.com, just audio via RingCentral.com, or via text 1(908) 912-4247 with name, contact information and the questions for the applicant's witness or the Board and the questions will be read into the record. However, if you wish to make public comment/testimony, you **must** do so through both audio and video through RingCentral.com pursuant to N.J.A.C. 5:39-1.7(c).

2. OPEN PUBLIC MEETING ANNOUNCEMENT:

Both adequate and electronic notice of this meeting specifying the time, place and manner in which such notice was provided in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, and recently enacted Emergency Remote Meeting Protocols for Local Public Bodies, N.J.A.C. 5:39-1, et seq. Specifically, on **January 13, 2021** 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 at the Municipal Building. Public meetings are held with participants at remote locations, connected by conferencing software provided by RingCentral.com. Members of the public are invited to attend and participate in live meetings either by using the RingCentral client, which allows audio and video participation, or by phoning into a meeting for audio only participation. The required access information is provided in the notice, as well as set forth on the agenda. The procedures and requirements for making public comment are as follows: Attendees are admitted to meetings via the waiting room and microphones are muted until enabled by the host. Members of the public may participate in meetings at certain designated times as announced by the Board Chair. Members of the public will be allowed to address applicants and their experts, ask questions and/or make comments as appropriate once recognized to do so. Attendees may request to be heard by 'raising a

hand', either physically or virtually. Regulation of conduct by members of the public on the remote public meeting shall be consistent with law and practices followed if a member of the public disrupts an in-person meeting. Specifically, if a member of the public becomes disruptive during any period for public comment, the member of the public shall be muted and warned that continued disruption may result in him or her being prevented from speaking during the remote public meeting or removed from the remote public meeting. Disruptive conduct includes sustained inappropriate behaviors, such as, but not necessarily limited to, shouting, interruption, and use of profanity. A member of the public who continues to act in a disruptive manner after receiving a warning may be muted while other members of the public are allowed to proceed with their questions or comments. If time permits, the disruptive individual shall be allowed to speak after all other members of the public have been given the opportunity to make their comment. Should the person remain disruptive, the individual may be muted or kept on mute for the remainder of the remote public meeting, or removed from the remote public meeting. Please be aware of the Zoning Board of Adjustment policy for public hearings: No new applications will be heard after 10:00 pm and no new testimony will be taken after 10:15 pm.

3. SALUTE TO FLAG:

4. ROLL CALL:

Jeff Foose - present	Donald Sweeney -present
James Weideli - present	Bruce Bongiorno-present
John Fallone - absent	Kevin Wrobel - present
Dawn Guttschall- present	Andrew Fresco -present
Pushpavati Amin-present	Gary La Spisa - present

Others present: Board Attorney Mr. Steven Warner, Esq., Board Engineer Mr. William Burr, IV, PE., Board Planner Ms. Scarlett Doyle, PP., and Land Use Coordinator Ms. Zuzana Karas.

5. MINUTE(S) FOR APPROVAL:

November 17th, 2020 Meeting Minutes

Chairman Foose asked the Board if any comments/changes wanted to be made to the minutes from the November 17th, 2020 Zoning Board meeting. No comments were made.

The chairman asked the Board for a motion and a second to approve the November 17th, 2020 meeting minutes.

Roll Call Vote:

Motion of approval was made by Mr. Sweeney with a second by Mr. Weideli.

AFFIRMATIVE: Mr. Foose, Mr. Weideli, Mr. Sweeney, Ms. Guttschall, Ms. Amin, Mr. Fresco, and Mr. La Spisa.

ABSENT: Mr. Fallone.

ABSTAIN: Mr. Wrobel and Mr. Bongiorno.

DENIAL: None.

December 1st, 2020 Virtual Meeting (pending)

December 15th, 2020 Virtual Meeting (pending)
January 19th, 2021 Virtual Meeting (pending)
February 2nd, 2021 Virtual Meeting (pending)

6. MEMORIALIZING RESOLUTIONS:

SKYMANOR PROPERTIES, L.L.C. - 5 SKY HIGH TERRACE - Denial

Block 904, Lot 5

#20-007-ZB - Variance -Construct New Home on Vacant Lot

Chairman Foose asked the Board if any comments/changes wanted to be made to the resolution listed. Some comments were made towards the language used. Board attorney, Mr. Warner, confirmed the changes suggested would be reflected in the final draft.

The chairman asked the Board for a motion and second to approve the resolution of denial with the amended changes.

Roll Call Vote:

Motion of approval was made by Mr. Weideli with a second by Mr. Sweeney.

AFFIRMATIVE: Mr. Weideli, Mr. Sweeney, and Ms. Amin.

ABSENT: (Mr. Fallone)

ABSTAIN: Mr. Foose, Mr. Fallone, and Ms. Guttschall.

DENIAL: None.

FERNANDO & ALEXANDRIA BATISTA - 744 OLD FORGE RD

Block 718 Lot 2

20-025-ZB- Simple Variance

Chairman Foose asked the Board if any comments/changes wanted to be made to the resolution listed. No comments were made.

The chairman asked the Board for a motion and second to approve the resolution of approval with conditions.

Roll Call Vote:

Motion of approval was made by Ms. Guttschall with a second by Mr. Weideli.

AFFIRMATIVE: Mr. Foose, Mr. Weideli, Ms. Guttschall, Ms. Amin, and Mr. Fresco.

ABSENT: Mr. Fallone.

ABSTAIN: Mr. Sweeney.

DENIAL: None.

MARTIN LUTHER KING YOUTH CENTER, I.N.C. - 1298 PRINCE RODGERS AVENUE

Block 515 Lot 4

#20-029-ZB – Sign Variance

Chairman Foose asked the Board if any comments/changes wanted to be made to the resolution listed. No comments were made.

The chairman asked the Board for a motion and second to approve the resolution of approval with conditions.

Roll Call Vote:

Motion of approval was made by Ms. Amin with a second by Mr. Weideli.

AFFIRMATIVE: Mr. Foose, Mr. Weideli, Mr. Sweeney, Ms. Guttschall, Ms. Amin, and Mr. Fresco.

ABSENT: Mr. Fallone.

ABSTAIN: None.

DENIAL: None.

7. MEETING OPEN TO THE PUBLIC:

Members of the public wishing to make a comment to the Board on any matter not listed on the agenda were able to do so at that time. As noted, under the Municipal Land Use Law and case Law, any questions or comments about a pending application would have to be held until the hearing on that specific application.

No member of the public wished to address the Board.

8. HEARING AND DELIBERATIONS:

TESLA, I.N.C. - 582 UNION AVENUE

Block 257 Lot 3.01

20-035-ZB- Amended Site Plan Approval

Board attorney, Mr. Warner, advised the Board that the applicant had requested to be carried to the April 20th meeting date. This request was to provide enough time to supply new plans as per the comments made by the Board's professionals. Mr. Duncan Prime, the applicant's attorney, was also present and confirmed Mr. Warner's update was accurate. The applicant was not required to issue notice before the April 20th meeting.

NY SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS & T-MOBILE NORTHEAST LLC

ROUTE 202/MOUNTAIN VIEW AVE (Carried from 2-16-21)

Block 483 Lot 20

21-001-ZB- Preliminary and Final Major Site Plan with Variance Relief/Public Utility within Wireless Communications Attachement

The application was carried from the Board's March 2nd, 2021 hearing.

Mr. Purcell provided a summary of the testimony provided at the prior hearing. Mr. Purcell advised that, although the Board inquired about the antennas being split between the two posts of the "Y" shaped replacement tower, it could not be done. This was also confirmed by the Board's own independent R.F. expert, Mr. Menkes.

Ms. Connolly, the applicant's professional engineer, introduced into evidence, as Exhibit A-20, a letter dated March 2nd, 2021, from Mr. Anthony Suppa, Jr., P.E., of PSE&G. The letter advised that the replacement tower on which the antennas are being relocated to have already been

fabricated. Ms. Connolly confirmed that since the tower itself had already been constructed and ready for installation, it could not be modified.

No member of the public commented on or objected to the application/testimonies given.

After reviewing the evidence submitted, the Board, by a vote of 7 to 0, found that the applicant is entitled to preliminary and final major site plan approval for the proposed wireless telecommunications facilities development project. The applicant satisfied the positive and negative criteria for the requested d(1) use, d(6) height, and bulk (setback) variance relief, as well as fence height relief for the 8-foot tall fence proposed around the perimeter of the equipment compound.

The Bridgewater Board of Adjustment approved preliminary and final site plan approval, with d(1) use, d(6) height, and bulk (tower setback and fence height) variance relief, subject to any stipulated and imposed conditions.

Roll Call Vote:

Motion of approval was made by Mr. La Spisa with a second by Ms. Amin.

AFFIRMATIVE: Mr. Foose, Mr. Weideli, Mr. Sweeney, Ms. Amin, Mr. Fresco, Mr. La Spisa, and Mr. Wrobel.

ABSENT: Mr. Fallone.

ABSTAIN: Ms. Guttschall.

DENIAL: None.

Following the application, Chairman Foose advised the Board of Mr. Purcell's request for a special meeting. Mr. Foose emphasized the importance of the proposed cell towers and thanked the Board for their time spent on the many applications already heard. The special meeting, though scheduling confirmation, was set for March 30th. Mr. Purcell thanked the Board and asked that an amendment to a condition of approval on the resolution for application #20-018-ZB also be addressed on March 30th.

TERRENO MIDDLEBROOK LLC - CHIMNEY ROCK ROAD AND ROUTE 22

Block 356 Lot 1 & 3

20-039-ZB- Use Variance

The applicant, Terreno Middlebrook, L.L.C. came before the Board, seeking approval to expand a non-conforming use located at an industrial park known as 'Middlebrook Crossroads'. The property identified as Block 356, Lots 1 and 3 on the Tax Map, currently violates Section 126-359.

The applicant seeking to increase the "initial baseline" cap from 499,272 square feet to 521,272 square feet would allocate the applicant to lease Building #2E to a tenant or tenants who would use the space for a non-conforming light manufacturing and/or warehouse and distribution use. The zone, Highway Enterprise Center ("H.E.C."), however, only permits business, professional, service offices, and establishments. Hotels and extended stay lodges. Conference centers, medical support centers, banquet centers, health clubs, day spas, and gyms. Adult medical daycare, indoor commercial recreation, and research laboratories/research facilities.

As per the 2017 approval, the applicant's request to exceed the "initial baseline cap" of 499,272 square feet by 22,000 square feet, for a total of 521,272 square feet, now requires the applicant to return to the Board for variance relief pursuant to N.J.S.A. 40:55D-70(d)(2).

Mr. Michael Osterman, Esq., of Osterman Law, L.L.C., on behalf of the applicant, explained that, since the 2017 approval, the leasable area currently occupied, or last occupied, by a non-conforming use had decreased to 499,272 square feet. (As per the 2017 Approval, constitutes the "then-current baseline" cap.) Mr. Osterman further explained that, as a result of the current pandemic, one of the largest conforming use tenants, 'Hardcore Paintball', occupying Building #2E, went bankrupt and vacated its lease. He advised that Hardcore Paintball's lease was terminated on April 30, 2020, and that the applicant has since been unable for almost one year to re-lease the space to a conforming use tenant. Mr. Osterman further advised that the applicant has not received any proposals from prospective conforming use tenants but instead received multiple proposals from prospective non-conforming use tenants. The desired interest in leasing Building #2E is mainly for light manufacturing and/or warehouse and distribution uses.

The Township Planner, Scarlett Doyle, P.P., the Township Engineer, William H. Burr, IV, P.E., and Land Use Coordinator/Zoning Officer, Zuzana Karas, were duly sworn according to law.

The following was provided/reviewed in accordance with the application: A report from the Township Engineer, William H. Burr, IV, P.E., and the Township Planner, Scarlett Doyle, P.P., dated February 23, 2021, a Memorandum from Zuzana Karas, the Land Use Coordinator/Zoning Officer, dated April 13, 2021, a copy of the Form #3E Application and supporting documents, and a Middlebrook Crossroads Parking Improvement Plans prepared by Daniel Miola, P.E., of Langan, dated June 27, 2014, last revised August 7, 2014.

Upon questioning as to whether the applicant had complied with the conditions of approval set forth in the 2017 approval, including, but not limited to, filing applications for zoning permits for each and every change in tenancy and recording were raised. Mr. Osterman initially advised the Board that the applicant had not done so and noted that the staff had changed in the interim, which may have been the reason for the oversight.

Mr. Alex O'Laughlin, the Vice President of Terreno Realty Corporation, was duly sworn according to law. Mr. O'Laughlin testified that he joined Terreno after the applicant obtained its 2017 approval and is now managing the project. Referencing the February 23rd, 2021 Review Memorandum prepared by Ms. Doyle and Mr. Burr, Mr. O'Laughlin testified that he did not believe the applicant had complied with the conditions of approval outlined. He continued to explain that, after his predecessor left the company, no one else was familiar with such requirements. Mr. O'Laughlin testified that, on behalf of the applicant, he is working with Mr. Osterman to comply with all of the conditions, including the recordation of the Resolution/deed restriction, and he stipulated, as a condition of approval, to not re-leasing Building #2E until this has been satisfied.

During questioning, the applicant stipulated, as a condition of approval, to submitting a "rent roll" or tenancy report by a specific date every year so that the Zoning Officer can reconcile the tenant change forms submitted for such year. This would ensure that all tenant change forms are in fact, submitted.

During questioning as to whether the required landscaping had been installed along Route 22, per Sections 126-190 and 126-191 of the Ordinance, Mr. Osterman advised that the applicant instead had contributed to the Township's Tree fund. During further discussion, the applicant stipulated to complying with the landscaping requirements outlined in the 2017 approval and the referenced sections of the Ordinance.

During a discussion of why the applicant had not been able to secure tenants with conforming uses, Ms. Doyle inquired whether it may be related to the exterior appearance of the property, which appears to be an industrial site. During questioning whether there had been any interest in the property from potential conforming use tenants, Mr. O'Laughlin testified that the applicant had received applications from only non-conforming use tenants. During questioning on the adequacy of parking, Mr. O'Laughlin explained that the existing parking is sufficient for conforming recreational uses. If the Board granted the requested relief, even more, parking would be available to the non-conforming uses since less parking is required.

During questioning whether the "then-current baseline cap" had ever been lower than 499,272 square feet, Mr. O'Laughlin advised that it had not. Mr. O'Laughlin testified that it is in the applicant's best interest to secure conforming use tenants because they pay a premium for the space. The applicant expressed its been challenging to do so, given the pandemic and the restrictions imposed on social gatherings. During questioning as to how the applicant had attempted to solicit conforming use tenants, Mr. O'Laughlin explained that the property has had multiple upgrades. The upgrades include paint jobs, roof repair, HVAC repair, paving of the parking lot, L.E.D. lighting, repairing floors, repairing windows, and more. They also confirmed that upgrading each space as it becomes available, in addition to hiring a third-party property manager, has been added. A leasing broker with an office onsite is present, which offers to assist potential tenants with improvements so they can utilize the space effectively. He further explained that the leasing broker communicates with other brokers and potential tenants, including making cold calls and sending out unsolicited communications advertising the subject property. Mr. O'Laughlin testified that, despite the applicant's best efforts, Building #2E has remained vacant for approximately 300 days.

During questioning, Mr. O'Laughlin testified that Building #2E is the only vacancy at the property. Mr. O'Laughlin testified that the space at Building #2E could not be reconfigured because it would require installing additional doors and amenities.

Mr. Keenan Hughes, P.P., of Phillips Preiss Grygiel Leheny Hughes, L.L.C., was duly sworn according to law and accepted by the Board as an expert in the field of professional planning. Mr. Hughes provided an overview of the property's zoning history and the 2017 approval.

Mr. Hughes summarized the applicant's proof is required to put forth in obtaining subsection d(2) use variance relief. He explained that the applicant is not seeking approval to physically expand the non-conforming uses on the property but instead seek flexibility to allow the applicant to re-lease Building #2E. Mr. Hughes requested that the initial baseline cap be increased by 22,000 square feet to provide additional flexibility to help the applicant re-lease Building #2E. He suggested that the additional flexibility would allow the applicant to fill a currently vacant space and be more beneficial to the community than maintaining an empty building, particularly one that is highly

visible from Route 22. Mr. Hughes further added that the vacancy could ultimately reduce property values and, potentially, become an eyesore. He contended that granting the requested relief would advance purposes (a) and (g) of N.J.S.A. 40:55D-2 in that it would promote the general welfare and accommodate an appropriate commercial/industrial use that has historically been accommodating to such uses.

As to the negative criteria, Mr. Hughes opined that granting the requested relief would not cause a substantial detriment to the public good or substantial impairment of the Master Plan and Zoning Ordinances. He explained that the overall use of the property is not changing and that accommodating a slight increase in the square footage of the non-conforming uses will not impact the neighborhood. He suggested that granting the requested relief also would not impair the Master Plan or Zoning Ordinance, particularly given the magnitude of the requested relief. Mr. Hughes concluded that the applicant had satisfied both the positive and negative criteria for the requested relief.

During questioning regarding the appropriateness of the property's current zoning, Mr. Hughes stated that the zoning is appropriate but that converting all eighteen buildings into conforming uses would take time. Mr. Hughes testified that the applicant could improve the property's aesthetics to help facilitate the conversion of the non-conforming use tenants into conforming use tenants. This could include installing perimeter landscaping and making physical improvements to the buildings visible from the right-of-way. Mr. Hughes stated that, as to what uses are best suited for the property, he suggested that commercial uses and health club uses are most suitable. This is followed by office/laboratory space uses and explained that the property is not currently set up for such uses. During the discussion of whether the applicant had sought a rezoning of the property, Mr. Hughes testified that the applicant had not done so. He also added that he could not evaluate whether a rezoning would be more appropriate in this situation.

The Board expressed its concern that the applicant had not made sufficient efforts to solicit conforming use tenants and had not made enough effort to make capital improvements to the property, attracting conforming use tenants. The Board noted that the applicant had not yet secured a conforming use tenant for the space and suggested that the applicant work harder to reduce the magnitude of the existing non-conforming uses. This being in accordance with the provisions of the 2017 approval. Members of the Board expressed significant concern about whether the applicant would comply with future conditions of approval if the applicant had not complied with the initial conditions of approval.

When the Board deliberated, and the applicant heard that most of the Board were not in favor of the applicant, the applicant's attorney requested the applicant be carried. The request to come back before the Board, at a later date, with more acceptable plans/proposal was granted. The application, as requested, was carried to the April 20th meeting with no further notice required.

9. OTHER BOARD BUSINESS:

None.

10. EXECUTIVE SESSION:

There was no need for an Executive Session

11. ADJOURNMENT

The meeting was adjourned at approximately 10:30 pm with a motion made by Mr. La Spisa and a second by Mr. Wrobel.

ADJUSTMENT

BRIDGEWATER TOWNSHIP
ZONING BOARD OF

Regular Meeting
Tuesday, March 2, 2021
-Minutes-