

# West Windsor Township Zoning Board of Adjustment

## Minutes – Regular Meeting

September 26, 2019

The regular meeting of the Zoning Board of Adjustment was called to order at 7:00 p.m. on Thursday, September 26, 2019 by Chair Abbey in Meeting Room A of the Municipal Building.

### STATEMENT OF ADEQUATE NOTICE

Pursuant to the Sunshine Law, a notice of this meeting's date, time, location and agenda was mailed to the news media, posted on the Township bulletin board and filed with the Municipal Clerk as required by law.

### ROLL CALL AND DECLARATION OF QUORUM

Present: Susan Abbey  
John Church  
Michael Garzio  
Curtis Hoberman  
Henry Jacobsohn  
Daniel Marks  
Aleta Ricciardi  
Carl Van Dyke

### CHAIR'S COMMENTS & CORRESPONDENCE

No comments were provided.

### PUBLIC COMMENT

No comments were provided.

### RESOLUTIONS:

- a) **ZB12-02 TRI-STATE PETRO**  
Extension of Use Variance Approval  
Block 22, Lots 3.01 and 3.02

Motion was made by J. Church to approve the resolution for ZB12-02, seconded by Chair Abbey. The vote was 6-0 in favor. Motion carried.

FOR: Church, Garzio, Hoberman, Jacobsohn, Marks, Abbey  
AGAINST: None  
ABSTAIN: None

### APPLICATION

**ZB 19-07 JAMES M. KOPLEY**  
"c" Bulk Variance  
Block 7, Lot 30; 580 Alexander Road  
Property Zoned: R-30 District  
MLUL: 12/17/19

Trishka Cecil, Esq., legal counsel for the Board, stated that proof of notice is in order and the Board has jurisdiction.

James Michael Kopley, Applicant, was sworn in. Samuel Surtees, Zoning Officer/Land Use Manager and David Novak, planning consultant for the Board were sworn in.

Mr. Kopley stated that the property is 2.5 acres in size, after the right of way and easement were in place the property was reduced to approximately 2.33 acres. Since he purchased the property in 1975, the surrounding area has developed greatly including an office building and a four lane roadway. He has 400 plus feet of frontage and the proposal is to construct an 8-foot privacy fence on 200 feet of his property on Canal Pointe Boulevard. The fence will take up a small portion of his property that faces Canal Pointe, traffic on Canal Point Boulevard backs up in front of his home and the fence is proposed to provide privacy.

He distributed photographs of the traffic on Canal Pointe Boulevard (Exhibit A-1) and the three story office building. Exhibit A-2 is a photograph of cars backed up 400 feet from Alexander Road; Exhibit A-3 shows the parking lot for the office building; Exhibit A-4 is a photograph of a limousine bus and several school buses and Exhibit A-5 is a photograph of a NJ transit bus. He stated that the pictures hopefully represent what he sees inside of his property every day. He had planted shrubbery in the past to buffer the view but deer ate the deer resistant shrubbery. Chair Abbey asked if greenery can be inside of the fence, Mr. Kopley responded that it could be. The fence would be made of wood with posts and horizontal boards for a solid wooden fence design.

C. Van Dyke stated that the fence is not measured from the ground, an 8-foot tall fence is proposed but due to the grade in some areas the fence may be 9 to 10 feet. Chair Abbey asked if it will be in a straight line. Mr. Kopley stated it will be close but not perfectly straight. Although his property is 12 feet below grade, the fence will not be taller than 8 feet from the public side and it will be set back 17 feet from the sidewalk.

J. Church stated that a six-foot fence set back 40 feet does not require a variance. Mr. Kopley responded that a taller fence would be needed because there is a berm in this area. J. Church felt that a six-foot fence near the dog fence should provide the needed screening. Mr. Kopley stated that he believes the fence would have to be much higher if it is set back 40 feet. Mr. Surtees advised that it can be an 8- to 10-foot fence set back 40 feet.

Mr. Kopley stated that the fence will be stained. Chair Abbey advised that the Board does not typically allow a 10-foot fence but as testified the fence is not 10 feet above street level she feels this is not a problem. There are a lot of trees in the area so the fence would not be sticking out.

David Novak, planning consultant for the Board, stated that he did not review this proposal.

H. Jacobsohn stated that the Site Inspection Commission reviewed the site, they appreciate the problem that the applicant has but there is a concern about the fence being a little high and recommended a lower fence. Mr. Kopley advised that the fence will be no closer than 17 feet from the sidewalk.

C. Van Dyke stated that he is concerned about the fence being 10 feet in height where the driveway is

located.

Catherine Kopley, applicant/owner, was sworn in and stated that the trees were installed at 14 feet in height and they are close to 20 feet tall at this time. Mr. Kopley advised the gate of the existing fence is 17 feet from the sidewalk.

C. Hoberman stated that the fence will be 8 feet from the grade wherever the grade is.

H. Jacobsohn stated that he is concerned about setting a precedent for a 10-foot fence. Mr. Surtees stated that the applicant did a good job describing the uniqueness of property. He does not see this proposal as setting a precedent.

The meeting was opened to the public. No one addressed the Board therefore motion was made to close the public portion was made by C. Van Dyke and seconded by J. Church. Motion carried.

C. Van Dyke stated that the approval would be for an 8-foot privacy fence measured at sidewalk grade so the fence could be more than 8 feet tall but the physical fence should not exceed 10 feet in height no matter the grade.

Motion was made by C. Hoberman to approve the application for ZB19-07, the motion was seconded by A. Ricciardi. The vote was 7-0 in favor. Motion carried.

For: Church, Hoberman, Jacobsohn, Marks, Ricciardi, Van Dyke, Abbey  
Against: No one  
Abstain: No one

The reasons for the approval are as follows:

The applicant has proven that the property is unique.

There are many changes made to this lot by the Township including the lot size, the creation of a new roadway and grade changes for the overpass.

The property is across the road from a three-story office park.

The applicant testified that they have tried to use trees for screening but this was not successful.

The fence is needed because the applicant has a lack of privacy.

The fence will be at least 17 feet from the sidewalk and no higher than 8 feet at the sidewalk level and 10 feet at ground level.

- b) **ZB19-09 ALASTAIR BELLANY & DEBORAH YAFFE**  
d-4 Variance  
Block 24, Lot 7.05; 211 South Mill Road  
Property Zoned: R-20 District  
MLUL: 1/2/2020

C. Van Dyke recused himself because he knows the applicant.

Trishka Cecil, Esq., legal counsel for the Board, stated that proof of notice is in order and the Board has jurisdiction.

Alastair Bellany and Deborah Yaffe, applicants, were sworn in. Mr. Bellany stated that the garage is in poor condition, it is currently not being used as a garage so they wish to preserve the footprint and renovate it for a home office and storage. The structure could revert back to a garage in the future. He stated that homes directly across the road (#209, #212 and #214) have received similar approvals. Mr. Novak was asked if they are all in the same zone and he responded that they are, they are in the R-20 zone and the R-30 district is to the south of this property.

Chair Abbey asked if there will be any new utilities and Mr. Bellany stated there will only be upgrades. Ms. Yaffe stated that a new split system will be installed, the garage is in very poor shape and cannot be used. Mr. Bellany stated that he plans to continue parking in the driveway.

J. Church feels that this will be an improvement to the neighborhood.

Chair Abbey asked if this will be a home occupation use with customers. Mr. Surtees stated that the applicant advised that this is personal accessory space, not home occupation.

Mr. Novak stated that the window will not face the neighbor. The design is fine, the only way to expand on this property would be to expand the dwelling.

The meeting was opened to the public.

Susan Appelget, 215 South Mill, stated she has no problem with the proposal and requested that this not be used as an apartment for the future owners.

Motion was made by C. Hoberman to close the public portion of the meeting, seconded by J. Church. The vote was 7-0 in favor. Motion carried.

Motion was made by M. Garzio to approve the application, seconded by A. Ricciardi. The vote was 7-0 in favor. Motion carried.

For: Church, Garzio, Hoberman, Jacobsohn, Marks, Ricciardi, Abbey  
Against: No one  
Abstain: No one

Chair Abbey noted the reasons for the approval are as follows:  
The property is a non-conforming lot that is smaller than surrounding lots in this zone.  
The footprint will not be changing.  
The property can easily accommodate the intensity.  
An attached garage is consistent with the neighborhood and it still looks like a garage.  
There was no objection from the neighbor next door, no new utilities, no additions or expansions.  
The driveway can accommodate this use.

- c) **ZB 18-05SP VCC PRINCETON JUNCTION LLC**  
Preliminary/Final Major Site Plan; Bulk Variance & Sign Waiver;  
Extension of Prior Use Variance  
Block 12.04, Lot 8; 47 Princeton-Hightstown Road  
Property Zoned: RP-7 District

MLUL: 10/1/2019

Trishka Cecil, Esq., legal counsel for the Board, stated that proof of publication is in order and the Board has jurisdiction.

Kevin Moore, Esq., legal counsel for the applicant, stated that this is a mixed-use project, there will be two buildings, 10,000 sf retail on the ground floor with apartments on the second floor in one building and a day care facility in the second building. The proposed use is permitted in the zone. Julia Algeo, civil engineering consultant for the applicant, was sworn in.

The following Board consultants were sworn in: Samuel Surtees, Zoning Officer/Land Use Manager; Daniel Dobromilsky, Town landscape architect; Ian Hill, Engineering Consultant; David Novak, Planning Consultant; William Day, traffic consultant.

An aerial of the site (Exhibit A-1) dated 1/3/19 and colored landscape plan (Exhibit A-2) were presented. Ms. Algeo referenced Exhibit A-1 identifying the parcel and the surrounding uses. She advised that after the County road right-of-way dedication, the total size of the parcel is 93,904 sf.

Ms. Algeo referenced Exhibit A-2 and stated one driveway is proposed off of Princeton-Hightstown Road along with a connecting drive with Princeton Ascend. There will be two buildings separated by the driveway; the building parallel to Princeton-Hightstown Road will be set back 15 feet from the right-of-way. The plane of the building will follow that line.

Mr. Moore stated that a condition of approval could be that if approval by the State of New Jersey for the day care facility is not obtained within two years of the Board's approval then the approval is void.

Chair Abbey asked if there is a connection to Carlton Place from this lot. Mr. Surtees stated that there is no public connection.

Ms. Algeo stated that they have coordinated with the County on the road improvement project and the buildings will be in alignment with the Princeton Ascend building. The County is still finalizing their road improvement plans but the plans for this site have not changed. She advised the project will be done in two phases. The improvements to the streetscape will comply with the standards for this district. There will be a grade change of five feet from the road to the building. She stated the child care building is an L-shaped building 12,900 sf building located on the westerly corner of the site. There will be a controlled entrance with sidewalks on both sides of the building including an internal sidewalk for the child care facility and another by the roadway. A five (5) foot wide sidewalk is proposed in an easterly direction between the parking area and building and a 6.5-foot wide sidewalk is proposed for the north side that wraps around building. The sidewalk will vary in width from 10 feet back to 6.5 feet. A fence is proposed for the day care facility and eight parking spaces are provided near the child care facility. Wheel stops for those parking spaces are not proposed. A retaining wall and a fence is proposed along the southern boundary, the chain link fence with vinyl slats is designed not to be scalable by children. Chair Abbey asked if it could be a decorative fence. Mr. Moore stated that this will be done.

C. Hoberman stated that lamp post L1 meets our design standard for improvements along that section of Route 571 and asked if the County has lighting standards. Mr. Dobromilsky stated that the town is

currently in discussions with the County about lighting standards; this applicant needs one light at the driveway and this will be the standard light for this streetscape. Trees in front of the building are proposed and they are working with the applicant on the design at this time.

Chair Abbey asked how far the lights are for the Princeton Ascend property. Mr. Dobromilsky advised that it is approximately 50 to 60 feet away. Chair Abbey stated she wants to establish a consistency about lighting. Mr. Dobromilsky stated a standard must be established.

The second building is the mixed-use building containing 10,500 square feet of commercial space. The building is 55.3 feet wide. A patio is proposed on the west side which will be public space. There will be enough room for five tenants and a cafe/restaurant with bike storage area by entrance. The second story of this building is the residential component, the main entrance will be from the east side of the building. A retaining wall is proposed along the east side of the building. There is parking on the Princeton Ascend property behind the retaining wall but there will be no break in the wall so pedestrians would have to walk around the wall.

C. Hoberman asked why pervious surfaces are not being used. Ms. Algeo responded that the applicant has concerns about safety and maintenance. She stated that concrete wheel stops are proposed for the parking area in the front row of parking for the retail building. In addition, there is a concrete retaining wall along the northern property line and the wall will be topped with a chain link fence. Chair Abbey stated that there are no chain link fences anywhere in the district.

Ms. Algeo advised that one loading space is proposed to serve the mixed-use building (14' x 32'). One space is also required for the child care building but they are requesting a variance for the second loading space. A trash refuse area (22' x 12') is positioned in the parking lot so trucks can easily access the receptacle and leave the site. Regarding storm water management, recharge and infiltration systems are proposed along with permeable pavers in the patio space of the retail building. Recreation flex space is proposed at the northeast corner of the site and the rooftop of the retail building offers passive recreation space. Safe pedestrian and bike access is provided to the train station and the applicant is preserving the trees along the easterly property line by Carlton Place. The impervious coverage is being decreased, 80% exists and 77% is proposed. An underground basin with recharge is proposed for storm water management and the storm water will be put through two treatment devices.

Chair Abbey questioned the grade differences between the Princeton Ascend property and the Weichert property. Ms. Algeo stated that there is a five-foot change from the Ascend property and a larger grade change for the Weichert property. Mr. Hill stated that the northern wall has a 6'6" grade change.

Ms. Algeo referenced the grading/drainage plan (Exhibit A-3) and stated that the wall on the applicant's property will be four feet to eight feet in height and four feet closer to the highway. C. Hoberman asked the height of the Sun Bank property and Ms. Algeo responded it is 100.5 feet. Regarding signage, a monument sign is proposed north of the driveway, she stated the signage is appropriate for the commercial tenants and the child care facility. C. Hoberman noted that the monument sign at Ellsworth shopping center is unreadable when you drive by, the tenant signage is too small. Mr. Novak advised one monument sign is permitted 10 feet from the right-of-way and there are no lettering requirements. Chair Abbey stated that the proposed monument sign fits our requirements. He stated that monument signage is needed because the front of the two buildings do not face the road.

Rob Powell, construction manager for the applicant, was sworn in and stated that janitorial services will be provided for trash removal and there will be space within the buildings for the trash which will be removed daily.

Adam Alexander, landscape architect for the applicant, referenced the color rendering of the landscape elements (Exhibit A-4) prepared by Spiegle and stated that the child care playground area will be a safe space with two playground structures in natural tones. The lighting plan will follow the ordinance standards and will be compatible with the other lights in the district. One light fixture will be proposed at the driveway. They will be requesting a waiver to shield that light because shielding is not proposed.

Chair Abbey asked about the height of the lighting near the residences. Mr. Alexander referenced Sheet L4 (Exhibit A-5) and stated that the LED lights in the parking lot are proposed to be 16 feet in height, shielded and will remain on all night. The lighting plan (Exhibit A-6) shows the photo metrics and he stated that the lighting meets the ordinance requirement for no light along the property line. The applicant is also proposing landscaping as a buffer in this area so the source of light will not be seen. There is existing landscaping that will remain and be supplemented so there will be a natural buffer approximately 25 feet from the back of the curb line to the property line. There are also ongoing discussions with the County to refine their lighting plan.

Mr. Dobromilsky stated that there are three decorative lights across the frontage and he estimates three to four lights may be needed for lighting consistency. C. Hoberman asked if lighting relief has been requested and Mr. Alexander confirmed that .65 foot candles is higher than what is permitted but the requirements are met at all the property lines. At all of the residential entries, exterior lighting will be on from dusk till dawn. The parking lot lighting will be lowered at 11, some of the lights will remain on but not close to the residences.

Mr. Alexander referenced the landscape plan Sheet L1 (Exhibit A-7) and stated that deciduous and ornamental trees are proposed. All of the healthy trees will remain and the understory will be supplemented with shade tolerant plants and shrubbery. He presented the front elevation (Exhibit A-8) for the retail building. Mr. Dobromilsky stated he recommends smaller trees along the frontage because there is a lot going on in front of the property and the rendering is not consistent with the front of the property. Mr. Alexander referenced Exhibit A-4 and stated a seat wall is proposed adjacent to the residential entrance, landscaping and a retaining wall is proposed behind that area. He presented details about the proposed planters, monument sign, bike rack and black iron fence. A vinyl fence is proposed for the child care playground area. A beige vinyl is being considered to blend with the colors of the building.

At this time it was determined that the discussion for this proposal will continue to October 24th, Mr. Moore advised that their civil engineer is not available on that date so the meeting was opened to the public for questions relating to the engineer's testimony.

Charlene Borzak, Berkshire Drive, stated that she is concerned about the lighting by their properties and she is not in favor of raising the lighting poles in the rear of the site. Mr. Alexander stated that all of the lighting will be focused on the property and eliminating light trespass over the property line. Ms. Borzak asked how the odors from the trash area will be controlled and noted concern about the noise from the truck during trash pick-up. Mr. Dobromilsky stated that the distance between the refuse area and the property line is 25 feet; then there is Carlton Place; and the property line for their development

is approximately 50 feet away.

Marilyn Hynes, 9 Berkshire Drive, asked about pick up of children and vehicular circulation on site.

Ms. Yan, resident, asked if the improvements will impact the bike lane. Ms. Algeo stated that the County improvements on the roadway will have an impact to the bike lane.

Victor Hall, 15 Berkshire Drive, asked how high the building will be from his property. Mr. Dobromilsky stated that a section drawing of the development as seen from the homes would be very helpful. C. Van Dyke stated the light poles at 16 feet high are below the height of the retaining wall; he recommended the applicant make sure that this is reflected in the cross section plan.

Mr. Kochenour asked the height of the retaining wall on the south side of the property adjacent to the Weichert property. Mr. Algeo stated that it starts at two feet and increases to eight feet. Mr. Kochenour asked if a cross access or an easement is possible for a shared driveway and Mr. Algeo responded that this is not possible.

Motion was made and seconded to continue review to October 24, 2019.

Being that there was no other business before the Board, the meeting was adjourned at 10:10 p.m.

Respectfully submitted,

Kerry A. Philip  
Recording Secretary