

**MANALAPAN ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
Thursday, November 1, 2018
TOWNSHIP OF MANALAPAN – Courtroom
Manalapan, NJ 07726**

The meeting was called to order with the reading of the Open Public Meetings by Chairman Stephen Leviton at 7:32 PM followed by the salute to the flag. Chairman Leviton requested for all to reserve a moment of silence after the salute, in honor of the lives lost in Pittsburgh earlier in the week.

Roll Call: Janice Moench

In attendance at the meeting: Mollie Kamen, Terry Rosenthal, Larry Cooper, Eric Nelson, Eve Strauss, Eliot Lilien, Mary Anne Byan, David Schertz, Adam Weiss, Stephen Leviton

Absent from the meeting: None

Also present: John Miller, Esq., Zoning Board Attorney
Nancy DeFalco, Zoning Board Officer
Janice Moench, Recording Secretary
Brian Boccanfuso, Board Engineer
Jennifer Beahm, Board Planner

MINUTES:

A Motion was made by Mr. Cooper, Seconded by Mr. Nelson to approve the Minutes of **September 20, 2018** as written.

Yes: Rosenthal, Cooper, Nelson, Strauss, Byan, Schertz, Leviton
No: None
Abstain: None
Absent: Kamen
Not Eligible: Weiss, Lilien

RESOLUTIONS:

**Memorialization of Approval
Application No. ZBE1830**

Applicant: Peter and JoAnne Becker
Location: 17 Pension Road

A Motion was made by Mr. Cooper, Seconded by Ms. Strauss to approve the Resolution of memorialization for Application **ZBE1830**

Yes: Rosenthal, Cooper, Nelson, Strauss, Byan, Leviton
No: None
Abstain: None
Absent: Kamen
Not Eligible: Lilien, Schertz, Weiss

**** Ms. Kamen arrived to the meeting at 7:40 PM.**

PUBLIC HEARINGS:

Application No. ZBE1828

Applicant: Tracy Station Holdings, LLC
Proposal: Addition
Request: Preliminary & Final Major Site Plan W Use Variance
Location: 85 Tracy Station Station Rd.
Block/Lot: 50/10
Zone: R40/20

The applicant was represented by Noemio A. Vellozzi, Esq. and seeking preliminary and final site plan approval along with a use variance and other bulk variances. These variances are required to put an addition on a pre-existing building. The building is in a residential zone however, it has been at the same location and non-conforming for many years.

Mr. Vellozzi explained to the Board his architect was unable to be present at the meeting. If testimony should be required from the architect Mr. Vellozzi will request a continuance for a later date. It was determined by the Board, the testimony by the architect was not required.

Paul J. Fletcher was sworn in by Mr. Miller. Mr. Fletcher is a Licensed Planner and Professional Engineer in the state of New Jersey. Mr. Fletcher provided his credentials and they were accepted by the Board.

Chairman Leviton confirmed with Mr. Boccanfuso should the Board request a topographic survey of the applicant Mr. Fletcher would be able to provide the document without the need of an architect.

Mr. Fletcher described the subject property known as 85 Tracy Station Rd, Lot 10 Block 50, located in the R40/20 residential zone. The existing property has a smaller home at the front with an industrial building in the rear. The applicant proposes to continue his business of industrial machine repair. The actual repairs are done off site. The building would be used to store parts and manufacture replacement parts. The applicant is proposing to expand the use slightly by squaring off the building with a 20 Ft by 60 Ft addition. The addition will not be visible from the street. Mr. Fletcher explained although the use is not permitted in the zone, the property has been operating with this use for many years. The expansion would be an intensification of a non-conforming use requiring a use variance by the Board. Mr. Fletcher reviewed the other variances required. The one story framed dwelling in the front is 16.3 Ft from the property line where 35 Ft is required. There is insufficient lot width, 192.59 Ft is existing where 200 Ft. is required. The minimum frontage required is 183.93 Ft. where 200 Ft. is required. The area is 323,000 Sq. Ft where 40,000 Sq. Ft is required. Mr. Fletcher states the violation of frontage and lot width are very de minimis in nature. The intensification of the use would be de minimis since being the addition is small and nonobtrusive. With regard to the positive criteria the following would promote the purposes of the Municipal Land Use Law: the use will be efficient; the general welfare is improved; the property owner has taken significant steps to clean up the property and bring it up to the standards of the town. With regard to the negative criteria Mr. Fletcher explained there is no adverse impact to the master plan, zone plan or neighboring properties. Mr. Fletcher referred to the CME report and explained his client will comply with the items requested. The applicant will verify if there are any wetlands on the site.

Ms. Beahm requested the applicant be required to get a Letter of Interpretation (LOI). Mr. Fletcher explained the applicant agreed to the LOI.

Mr. Fletched and the Board agreed if the applicant should gain an approval each point in the CME report would be addressed. Mr. Miller confirmed same for the record.

Mr. Fletcher explained the applicant met with the Environmental Commission one week prior to the meeting. The Environmental Commission asked the applicant to have a Phase One Environmental Site Assessment Report completed.

Mr. Vellozzi explained the Phase One Environmental Site Assessment Report was completed and a copy of the report was given to the Zoning Secretary, Janice Moench this evening.

Chair Leviton asked the Board members if they had any questions at this time.

Mr. Cooper asked how many people will be on the property. Mr. Vellozzi explained his client's testimony will include these answers. The applicant is the property owner and the owner of the entities that will be working in the property.

Mr. Rosenthal asked how the property was developed being the use is non-conforming. Ms. DeFalco explained the site was pre-existing non-conforming.

Chair Leviton asked Mr. Fletcher if the trailers were still present on the site. Mr. Fletcher explained the owner would provide the testimony to answer that question.

Ms. Beahm asked Mr. Fletcher to clarify what type of Use Variance he was testifying to. Mr. Fletcher explained the use is not permitted in the zone. Ms. Beahm explained the applicant is seeking relief for a d(2) variance. Mr. Fletcher was under the assumption relief sought was for a d(1) variance. Ms. Beahm explained the variance would be a d(2) variance because the use currently exists at the site and applicant is looking to expand the non-conforming use. Mr. Fletcher agreed. Ms. Beahm reviewed the statutory requirements; can the site accommodate the use. What impact would the expansion of the use have on Zone Plan and Zoning Ordinance along with the surrounding land uses. Ms. Beahm explained she would like to hear Planning testimony with respect to the d(2) variance specifically.

Mr. Fletcher went into further detail and explained how the site was able to accommodate the expansion of the use, being the addition was small. The site allows for 9.5 percent lot coverage and the site would be at 3.7 percent with the addition. Being the property will continue with same non-conforming use, Mr. Fletcher explained there would be no adverse impact to the Zone or Master Plan by allowing the use with a de minimis increase for storage of materials.

Ms. Beahm asked what would be stored in the expansion. Mr. Fletcher explained it will allow for a more efficient operation of the business.

Mr. Weiss explained the application indicates the addition is a one story fabrication room. Mr. Weiss asked if the applicant use the addition for storage or actual fabrication. Mr. Weiss was advised the owner would be able to provide testimony regarding the answer.

It was requested by Ms. Beahm and Mr. Miller to have the applicant provide operational testimony first and then have Mr. Fletcher come back up to justify the statutory criteria with his testimony.

Mr. Vellozzi agreed and called Mr. Rei to give testimony. Mr. Carlos Rei was sworn in by Mr. Miller. Mr. Rei testified he and his wife are the owners of Tracy Station Holdings, LLC., CRS Machine Rebuilders and Deborah Sales. He stipulated that the site would only have CRS Machinery and Deborah Sales, LLC. operating at the site. Mr. Rei explained that CRS is the manufacturer of industrial sales parts and that Deborah Sales is responsible for the storage of those

manufactured parts. Mr. Rei testified there were iron workers manufacturing steel beams for building on the site prior to his purchasing the property. Mr. Rei further testified CRS Machine Rebuilders is a service company that repairs industrial machinery. The production machinery repaired is mechanical, electrical, and hydraulic. CRS Machine Rebuilders also makes parts. Only when a part is unavailable for purchase when needed to fix a machine. There are no chemicals to make the parts. The parts are made of aluminum, plastic and steel.

Mr. Rei testified that Deborah Sales is a sheet metal company that makes steel parts related to wall and ceiling light fixtures. He purchased Deborah Sales in 2002 and the company has been established in Newark for 18 years.

Mr. Weiss confirmed with Mr. Rei that his intent would be to bring Deborah Sales to Manalapan. Chair Leviton asked Mr. Rei if his intent would be to close his shop in Newark. Mr. Rei confirmed same.

Mr. Miller confirmed with Mr. Rei that CRS Machinery and Deborah Sales make different parts.

Mr. Rei explained the parts and sales for each of the entities, in further detail, for the Board members. Mr. Rei then further testified how the addition will benefit the entities. The proposed addition would house increased storage as well as a new surface grinder. The surface grinder would be used to sharpen blades that are eventually installed in various machines utilized by the applicant's customers.

Mr. Rei further testified that the manufactured repair parts are delivered to the customers and installed at the customer's place of business. The public would not visit the Manalapan site. Mr. Rei explained he has two vans that go out on sight daily and there is adequate parking for employees and the trucks. Shipping/distributing of the parts is mainly done through United Parcel Service. The business would be open from 7:00 a.m. to 3:30 p.m. Monday through Friday. Nine employees would be anticipated.

Ms. Kamen asked what type of license is required. Mr. Rei stated there are no licenses required for sheet metal. Ms. Kamen asked how everything is disposed. Mr. Rei explained a company comes to pick up the regular garbage and steel however the regular garbage cannot be mixed with the steel. They have to be in separate containers and have regular inspections for both.

Chair Leviton reviewed the report provided by Mr. Richards of the Manalapan Township Health Department. Mr. Vellozzi confirmed he received same report from Ms. Moench via email on July 26, 2018. Mr. Miller confirmed with Mr. Rei he will comply with the Health Officers report as a condition of approval should the Board grant an approval.

Mr. Boccanfuso thanked Mr. Rei for his truthful testimony about what his intentions are for the site. Mr. Boccanfuso and Mr. Rei discussed the amount of employees that will be on the site. Mr. Rei explained he currently has six employees however, the number of employees varies between six and nine. There will not be more than nine employees. Nine employees total with four to five on site and the remaining employees will be on the road. Mr. Boccanfuso reviewed the noise ordinance with Mr. Rei. Mr. Rei testified that the proposed surface grinder would not generate additional noise on the site and that he would comply with the Township's noise ordinance. Mr. Rei advised he would not store equipment or materials outdoors and would upgrade the existing residential home to use it for himself should he have to stay overnight. Mr. Rei agreed to bring the building into compliance according to the American Disabilities Act, ("ADA") standards.

Mr. Cooper asked how many square feet the existing Newark location. Mr. Rei said the space in Newark is approximately 6,000 Square Feet.

Mr. Fletcher was called back to finish the Planning testimony. Ms. Beahm explained through earlier testimony it was stated the expansion is on the interior of the site. Mr. Fletcher confirmed. Mr. Fletcher confirmed the expansion would be used for equipment upgrade and storage of the existing operations for both tenants. Mr. Fletcher states in his professional opinion the site can accommodate the modest increase in the building and there is no negative impact associated with impervious coverage. The use creates no negative impact to the surrounding properties and Zone Plan. There will be no negative impact to the surrounding uses by noise being this is a daytime operation.

Ms. Beahm explained to the Board based on the hours of operation and what the applicant is requesting there is no significant detriment associated with the expansion of this use and the site can accommodate the increase. Ms. Beahm states she takes no exception should the Board act favorably on the application.

Mr. Rei further testified that the existing 20' x 20' sign which is currently located in the sightline of Tracy Station Road would be removed and replaced with a conforming sign located 40-50 feet from the right-of-way, subject to the approval of the Board Engineer and Board Planner.

The application is granted subject to the following conditions:

1. The Applicant shall comply with the recommendations contained in the reports of the Board's professionals.
2. Storage of equipment and materials outdoors on the site is expressly prohibited.
3. The Applicant shall submit a L.O.I. issued by NJDEP.
4. The Applicant shall comply with the Township's noise ordinance.
5. The Applicant shall remove the existing front yard sign and replace same with a sign which complies with all Ground Sign requirements of the ordinance. Any sign will be subject to the approval of the Board Engineer and Board Planner.
6. The Applicant shall comply with all drainage requirements.
7. The only tenants on the property will be Deborah Sales, LLC and CRS Machine Rebuilders.
8. The Applicant will comply with Manalapan Township Health Department's report from July 26, 2018.
9. The hours of operation are 7:00-3:30 PM Monday through Friday.
10. The Applicant will not lease the residential home on the property. He will use it for his personal use.
11. A roadway dedication.

Chair Leviton opened the meeting to the public for comment or questions on the application. Seeing there were no comments, Chair Leviton closed public.

A Motion of Approval for Application ZBE1828 was made by Mr. Lilien and Seconded by Ms. Strauss

Yes: Rosenthal, Cooper, Nelson, Strauss, Lilien, Byan, Leviton
No: None
Abstain: None

Absent: None
Not Eligible: Kamen, Schertz, Weiss

At 8:40 PM Mr. Boccanfuso exited the meeting. His services were no longer required for the remainder of the agenda

Application No. ZBE1825

Applicant: Joseph and Melina Dani
Proposal: Ratify Stanchions w winged walls, Columns and Driveway
Request: Bulk variances
Location: 11 Kipling Way
Block/Lot: 2006/53
Zone: R20

This application was before the Zoning Board of Adjustment on August 2, 2018 and was carried to the November 1, 2018 meeting. The applicant, Mr. Joseph Dani was present and sworn in at the last meeting and remained under oath. Professional Planner Allison Coffin was sworn in by Mr. Miller. Ms. Coffin's credentials were accepted by the Board.

Mr. Dani explained to the Board he applied for a variance for winged walls, stanchions and driveway. Mr. Dani explained he hired a planner to further assist with the variance process.

Ms. Coffin explained the property is located at 11 Kipling way, a residential area. The previous owner installed the stanchions and the winged walls without proper approvals. The structures exceed the maximum height in the zone. The applicant is seeking variance relief from the ornamental landscape structure height in the front yard; the ornamental stanchions outside the rear yard are less than 6 Ft. in height but have a zero setback where 5 Ft. is required; the entry post and stanchions on either side of the driveway that have winged walls exceed the height and length that is permitted by the ordinance; the existing driveway is set back at 7 Ft. where 10 Ft. is required. The variances requested are bulk variances. Ms. Coffin discussed the C(2) standard, the flexible "c" standard where the variances are justified by advancing the purposes of the Municipal Land Use Law ("MLUL") and there is no substantial detriment to the zone. Ms. Coffin states, it is her opinion the variances requested can be granted under the C(2) standard. The variances advance the purposes of the MLUL with regard to promoting a more desirable visual environment. The benefit of the variances substantially outweighs any detriments. Ms. Coffin explained her primary concern was the safety impact as far as the height of the walls at the end of the driveway. Ms. Coffin went out to the sight to access the impact of the visibility from cars on the road and parked in the driveway. Ms. Coffin provided a packet containing 14 photographs. This packet was marked as Exhibit A-1. Ms. Coffin explained the photographs taken by herself in further detail. She concluded there was no detrimental impact in terms of public safety resulting in the height of the walls

Ms. Beahm confirmed with Ms. Coffin in the pictures provided she is in an SUV and going head out of the driveway. Ms. Beahm asked Ms. Coffin her thoughts if someone were to be in a sedan and backing out of the driveway, as most people do.

Ms. Coffin explained you may have a harder time visually, however the applicant has a generous driveway at the top and easy to turn around prior to exiting the driveway. Ms. Coffin explained you would have to go very slowly out of the driveway if you were in a sedan, backing out and be careful to make sure visibility wasn't an issue.

Ms. Kamen expressed safety concerns for children riding a bike or scooter in the area. Ms Beahm agreed with Ms. Kamen.

Mr. Weiss asked Ms. Coffin why she didn't complete the photograph test with a sedan. Ms. Coffin thought it would be excessive to rent a vehicle to perform the test.

Ms. Kamen asked if there was any lighting on the stanchions or winged walls. Ms. Coffin stated no lighting currently exists.

Mr. Weiss asked if there was conduit for lighting in the winged walls. Mr. Dani explained there was wiring from the previous owners. Mr. Dani has since disconnected the wiring and confirmed there will be no electrical run to the stanchions.

Ms. Kamen asked the date and time of the pictures provided by Ms. Coffin in Exhibit A-1. Ms. Coffin was unsure of the time she thought it was in the middle of the day. Ms. Coffin researched her photos to find the date to be September 14, 2018.

Ms. Beahm discussed the visual impact during the day as opposed to the night when the road is dark.

Mr. Rosenthal asked how long the applicant has lived in the home. Mr. Dani answered he has lived in the home for three years. Mr. Rosenthal asked if there have been any traffic issues. Mr. Dani answered there have been no traffic issues since he took residency.

Mr. Weiss explained the last time the applicant was before the Board, Ms. Beahm had significant concerns with regard to sight triangles. Mr. Weiss asked Ms. Beahm if those concerns had been allayed in view of the recent testimony provided. Ms. Beahm explained her concerns remain with regard to backing out of the driveway. The Board members and Ms. Beahm discussed the testimony recently provided as well as the safety concerns.

The Board discussed the permitted height and setbacks with the Zoning Officer, Ms. DeFalco.

Mr. Weiss expressed he had a significant safety concerns where small children may be chasing a ball and every second counts.

Board members and Mr. Miller discussed the ramifications to the Board and the applicant if the application were to be approved and a tragedy should occur as a result of the stanchions/walls remaining.

Mr. Nelson explained he concurred with Mr. Weiss. The pedestrian safety has not been addressed. Mr. Lilien also agreed with Mr. Nelson and Mr. Weiss.

Ms. Coffin explained she does not feel the winged walls create a safety hazard that the Board is hypothetically concerned with. There could be landscaping that would create the same visual obstruction. Ms. Coffin explained the majority of the time the applicant would be going forward out of the driveway because there is no reason to back out of the driveway unless the driveway is full.

Mr. Nelson asked Ms. Coffin to consider the child not looking out for the motorist. Ms. Coffin replied that could happen if the walls were present or not.

Mr. Cooper explained the zoning ordinances for the height are in place for a reason. Ms. Dani testified at the last hearing, that the construction department advised the applicant would need to secure permits for the walls, prior to them purchasing the home.

Ms. DeFalco explained the applicants purchased the home "as is" which required them to apply for the permits.

Chair Leviton opened the meeting to the public for comment or questions on the application. Seeing there were no comments, Chair Leviton closed public.

The Board discussed if the application were to be bifurcated. Mr. Miller advised the Board they can decide what they will allow.

Ms. Moench advised Ms. Kamen, Ms. Strauss, and Mr. Eliot are not eligible to vote on this applicant due to their absence at the first hearing on August 2, 2018.

Mr. Miller advised Chair Leviton to call for a five-minute recess allowing the applicant and his professional time for discussion. At 9:05 PM the Board took short recess.

The meeting was called back to order at 9:14 PM. Ms. Kamen left the meeting during the recess being she was unable to vote on the application.

Mr. Dani explained he had discussed reducing the height of the winged wall with a mason. In the mason's opinion the wall cap would crumble and the mason was not comfortable with reducing the size.

The Board and the applicant discussed reducing the length of the walls so the visual impairment would be less. The applicant agreed to cut back the wall approximately three feet in length.

Mr. Lilien explained to the Board any solution that is negotiated will leave the view obstructed.

Mr. Rosenthal explained the wall stanchion and the wall would need to be lowered.

Chair Leviton explained the Board is not permitted to redesign the wall or stanchions for the applicant.

Mr. Weiss suggested bifurcating the application and voting on the other variances requested.

Mr. Miller explained the applicant should redesign the stanchions along with the walls and submit the new designs the Board Secretary.

Mr. Weiss wanted to clarify his position to the other Board members. His concern is not the stanchion at the end of the wall. His concern is the height of the wall.

Mr. Dani explained he spoke to a mason regarding reducing the height and lowering the wall would be an issue. Mr. Dani said he is not willing to modify the height.

Chair Leviton explained the winged walls and stanchions would have to be removed. Mr. Dani said he understood the wall.

Ms. Beahm recommended bifurcating the application so the Board can vote on the other variances applied for the in application and come back to the Board for the winged walls and stanchions.

Mr. Miller explained to the Board members the variances still pending and what the Board would take action on this evening, based on Ms. DeFalco's letter of denial.

Chair Leviton opened the meeting to the public for comment or questions. Seeing there were none, Chair Leviton closed public.

A Motion of Approval for all variance items, with the exception of issue G of the Zoning Certificate (winged walls and stanchions), was made by Mr. Weiss and Seconded by Ms. Byan.

Yes: Rosenthal, Nelson, Byan, Schertz, Weiss, Leviton
No: Cooper
Abstain: None
Absent: None
Not Eligible: Kamen, Strauss, Lilien

Mr. Dani consented to a verbal waiver on the record to allow the remainder of the application to be carried to the January 17, 2019 Zoning Board meeting.

At 9:41 PM a Motion was made to move into executive session by Mr. Cooper and Seconded by Mr. Weiss. All were in favor, none were opposed.

The Board Attorney briefly updated the Board members regarding pending litigation on the Boundless Adventures application. Executive session closed at 9:46 PM

Chair Leviton re-opened the meeting to the public for any non-agenda items, seeing there were no public comments, he closed public.

ADJOURNMENT:

A Motion was offered by Mr. Weiss and agreed by all to adjourn the meeting at 9:48 PM

Respectfully Submitted,

Janice Moench
Recording Secretary

RECORDED COMPACT DISCS OF THE ZONING BOARD OF ADJUSTMENT ARE AVAILABLE FOR REVIEW, IN THE PLANNING/ZONING BOARD OFFICE BY APPOINTMENT.