

MANALAPAN ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
Thursday, July 16, 2020
TOWNSHIP OF MANALAPAN
Manalapan, NJ 07726

PUBLIC MEETING~ HD OFFICE SUITES

DUE COVID-19, IN ACCORDANCE WITH GOVERNOR MURPHY'S EXECUTIVE ORDER NO. 107, THE PUBLIC WAS PERMITTED TO PARTICIPATE IN THIS MEETING VIA HD OFFICE SUITES BY ACCESSING THE LINK AND MEETING ID

Join OfficeSuite Meeting

<https://meeting.windstream.com/j/11114976662?pwd=Vk81SFdsTkFveGVrTFFKTmdlN2tMQT09>

Password: July162020

Open Public Meetings Act: Stephen Leviton

Roll Call: Janice Moench

In attendance at the meeting: Mollie Kamen, Terry Rosenthal, Larry Cooper, Robert Gregowicz, Eliot Lilien, David Schertz, Robert DiTota, Basil Mantagas, Stephen Leviton

Absent from the meeting: Adam Weiss

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

MINUTES:

There were no minutes offered

RESOLUTIONS:

A Motion was made by Mr. Cooper, Seconded by Mr. DiTota to approve the Resolution of memorialization for **Application ZBE1950 Buehler**

Yes: Cooper, Gregowicz, Schertz, DiTota, Mantagas Leviton
No: None
Abstain: None
Absent: Weiss
Not Eligible: Kamen, Rosenthal, Lilien

A Motion was made by Mr. Schertz, Seconded by Mr. Cooper to approve the Resolution of memorialization for **Application ZBE2017 Desai**

Yes: Kamen, Cooper, Gregowicz, Schertz, DiTota, Leviton
No: None
Abstain: None
Absent: Weiss
Not Eligible: Rosenthal, Lilien, Mantagas

A Motion was made by Mr. Cooper, Seconded by Ms. Kamen to approve the Resolution of memorialization for **Application ZBE2018 Fedyshyn**

Yes: Kamen, Cooper, Gregowicz, Schertz, DiTota, Leviton
No: None
Abstain: None
Absent: Weiss
Not Eligible: Rosenthal, Lilien, Mantagas

PUBLIC HEARINGS:

Application No. ZBE1953

Applicant: G & N Realty Holding, LLC
Proposal: Preliminary & Final Major Site & Use Variance
Request: Change in Use for existing building w/Site Plan
Location: 171 Highway 33
Block/Lot: 78/10.01
Zone: SED 20

Peter Licata, Esq. of Sonneblick, Parker and Selvers was present on behalf of the applicant. Mr. Licata listed his witnesses:

John J. Ploskonka, Project Engineer
John Rey, Traffic Engineer
Barbara Elhen, Professional Planner

John Miller, Esq. swore in John Ploskonka, Professional Engineer and The Board accepted his credentials. Mr. Ploskonka referenced page two of the Preliminary and Final Site Plan with Use Variance dated July 2, 2019. Mr. Ploskonka explained The Applicant purchased the five-acre parcel in September of 2019. The Applicant is seeking approval to permit a general contracting business on the Property, which would consist of an existing one-story building to be used as an office and an adjacent parking area. The existing building is currently vacant and was previously approved as a spa. The Applicant is also seeking approval to legitimize an existing landscaping use which includes a plastic tent greenhouse in the central portion of the Property, a greenhouse near the northwesterly corner of the Property, a metal building located approximately 70 feet from the easterly side property line, a wood building located approximately 60 feet from the easterly side property line and several other accessory structures. The Applicant further seeks use variance relief to permit an existing salt company use on the Property. The subject Property is irregularly shaped with frontage on NJ State Highway Route 33.

The applicant proposed the following uses to remain on the property:

- A general contractor use with outdoor storage identified as “Building 4” on the Site Plan;
- A single-family home identified as “Building 3” on the Site Plan which is currently occupied by an employee of the Applicant. Mr. Ploskonka explained that two (2) parking spaces would be assigned exclusively to the existing single-family home;
- Allan Landscaping” which Mr. Ploskonka testified has been in existence on the Property since 1972. He stated that Allan Landscaping occupies “Building No.1” as identified on the Site Plan, which he described as a plastic greenhouse, and “Building No. 2” as depicted on the Site Plan, which he identified as a plastic tent greenhouse. He then testified that Allan Landscaping would operate between the hours of 7:30 a.m. to 6:00 p.m. Monday through Friday and sometimes on Saturday. He further testified

that Allan Landscaping would be closed between the months of December through February. Mr. Ploskonka then explained that four employees currently work on the site and that two trucks and one pickup truck are stored on the site;

Mr. Ploskonka explained that "NJ Salt" occupies "Building No. 6" as identified on the Site Plan. He stated that two trucks make a few trips to/from the Property each day to deliver bagged salt to customers. NJ Salt customers do not visit the subject Property.

Mr. Ploskonka then testified that the Applicant would occupy "Building No. 4" on the subject Property for his contracting business. The existing building which was previously used as the spa, would be used as the Applicant's office. Mr. Ploskonka further testified that Building No. 4 would be occupied by six employees.

Mr. Ploskonka then explained that the subject Property was bordered by the Manalapan Brook. He further testified that the subject Property was constrained by wetlands. The corresponding wetlands buffer area is also located in a Flood Plain that is subject to the Manalapan Township Stream Corridor Buffer Requirements. Mr. Ploskonka further testified that the Applicant had applied to NJDEP for a Flood Hazard Area Permit and a Letter of Interpretation in February 2020. He explained that the NJDEP had yet to act. The precise buffer requirements were therefore not known. Mr. Ploskonka predicted that the NJDEP would require a 50-foot buffer from the Manalapan Brook. He then explained that all vehicles currently stored outdoors within the potential 150-foot buffer would be moved outside that buffer on the subject Property.

The Board's Planner, Jennifer Beahm, P.P., AICP, testified that Building No. 4 and its adjacent outdoor storage and parking area were located well beyond the potential buffer area to be designated by NJDEP.

Mr. Ploskonka then reviewed the Board Engineering Report dated March 13, 2020. The bulk variance relief requested by the Applicant was necessitated because the subject Property contains 4.66 acres where a minimum 20-acre lot is required in the SED-20 Zone. Mr. Ploskonka further testified that the Applicant would comply with all ADA requirements particularly related to handicapped accessible parking and barrier-free accessibility from those handicapped parking spaces. The Applicant would satisfy the Township Board of Health and Environmental Commission Reports. He added that the Township Police Department, Fire Department and Tax Assessor did not provide comments on the application. Mr. Ploskonka explained that the Monmouth County Planning Board determined that it had no jurisdiction in this application. He also added that the Freehold Soil Conservation District requirements were not applicable to the subject Property.

The Applicant's Traffic Engineer, John Rea, P.E., testified that the proposed general contracting use would add three trips during the peak hours to and from the subject Property. He stated that the previous spa use was more intense than the proposed general contracting use. Three driveways currently provide access along Route 33. In his opinion, NJDOT would likely issue a Letter of No Interest. Mr. Rea further testified that the Applicant has submitted an application to NJDOT for such a letter but had yet to receive a response.

Mr. Rea explained that there would be one additional peak hour trip during the day. He believed the increase of three vehicles would be well short of NJDOT's new permit threshold. The proposed uses (with the exception of the general contracting use) have all been operating on the subject Property for years without any problems. All of the uses, existing on and proposed, for the subject Property are low traffic generators. Mr. Rea reiterated that the circulation plan had long been in place and has worked well. He stated that the low intensity of the general contracting use would not result in any circulation issues. Mr. Rea further testified that adequate parking exists and that most of the proposed parking spaces are located outside of any potential NJDEP or Township Stream Corridor or Buffers.

The Board's Planner agreed that the proposed general contractor use would be less intense than the previous spa use in Building 4.

The Applicant's Planner, Barbara Ehlen, P.P., AICP, testified that the Applicant was seeking use variance relief to permit the proposed general contracting use with outdoor storage; the existing landscaping use with outdoor storage and the existing NJ Salt use. She explained that the Applicant was also seeking use variance relief for an existing single-family home on the subject Property.

Ms. Ehlen then testified that the Master Plan had been amended on February 23, 2012 and had contemplated an expansion of uses for properties located in the SED-20 Zone along the Route 33 corridor. She, therefore, concluded that the subject Property was particularly suited for the multiple uses which currently exist, as well as the general contracting use which is proposed for the subject Property. She compared the proposed uses on the subject Property to flex space uses which she opined are encouraged in the SED-20 Zone pursuant to the February 2012 amendment. She added that the subject Property is well buffered by the Manalapan Brook. Ms. Ehlen further testified that the proposed uses would provide a negligible increase in traffic and that the operations conducted on the site generate little or no noise.

She added that the following bulk variance relief was being requested:

	<u>Required</u>	<u>Existing</u>
Minimum Lot Area	20 acres	4.65 acres*
Minimum Lot Frontage	800 feet	678 feet*
Minimum Lot Depth	800 feet	641 feet*
Minimum Front Yard Setback (Single-Family Home)	200 feet	50.2 feet
Minimum Side Yard Setback (Building 6)	100 feet	26.7 feet
Minimum Front Yard Setback (Shed)	100 feet	48.8 feet
Minimum Side Yard Setback	100 feet	46.98 feet
Maximum Gross Floor Area	10,000 s.f.	2,892 s.f.
Minimum Improvable Area	10 acres	0.33 acres
Minimum Improvable Diameter	650 feet	108 feet

She further testified that the bulk variance relief from front yard setback requirements where 48 feet is proposed, and 100 feet is required is mitigated by the fact that the uses on the subject Property are buffered by the existing vegetation along Route 33. Ms. Ehlen further testified that there is no detriment to the zone plan or zoning ordinance or the neighborhood as a whole and that the positives far outweigh the negatives for this application.

The Board reviewed and discussed all of the variances requested and found no substantial detriment to the Zone Plan or Zoning Ordinance. The negative criteria has been satisfied.

Chair Leviton opened the meeting to the public for questions or comments on this application. There were no members of the public expressing an interest in this application. Chair Leviton closed public

The application is granted subject to the following conditions:

1. The development of this site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application except as modified herein.
2. The Applicant shall comply with the recommendations contained in the reports of the Board's professionals.
3. Storage of equipment and materials outdoors on the site is expressly limited to area outside the 150-foot buffer from Manalapan Brook.
4. The Applicant shall return for final major site plan approval for the area on the subject Property located outside the 150-foot buffer.
5. The Applicant shall submit a F.H.A. determination and L.O.I. issued by NJDEP.
6. The Applicant shall comply with the Township's noise ordinance.
7. The Applicant shall comply with all drainage requirements.
8. The Applicant shall provide a certificate that taxes are paid to date of approval.

A Motion of Approval for Application ZBE1950 was made by Mr. Cooper and Seconded by Mr. Gregowicz

Yes: Kamen, Rosenthal, Cooper, Gregowicz, Lilien, Schertz, Leviton
No: None
Abstain: None
Absent: Weiss
Not Eligible: DiTota, Mantagas

Application No. ZBE2011

Applicant: Yum & Chill TB Holdings, LLC
Proposal: Demo service station/Proposed Taco Bell Restaurant
Request: Preliminary & Final Major Site Plan w/Use Variance & FAR
Location: 199 Highway Route 9 South
Block/Lot: 18.01/1.03
Zone: OP3

Prior to testimony Board Attorney, John Miller, Esq. confirmed an end time for the meeting to avoid the visual/audio ending without the Board being prepared. Chair Leviton and the other Board members agreed to extend the meeting to 10:45pm.

Peter Licata, Esq. of Sonneblich, Parker and Selvers was present on behalf of the Applicant. Mr. Licata called his first witness, Project Engineer, Marc Leber of Eastpointe Engineering located in Marlboro, New Jersey. Mr. Leber was sworn in by Mr. John Miller, Esq. and The Board accepted his credentials. Mr. Leber referenced photos he obtained at the site earlier in the day. Ms. Moench confirmed she was able to obtain the photos and upload them for the Board and public to review prior to the meeting. The photos were marked as Exhibit. A-1 consisting of 13 Photos of the site. Mr. Leber provided an overview of the application and referenced an aerial view of the property located at 199 State Highway 9 South, also known as Block 18.01 Lot 1.03. The property is situated on the corner of Highway 9 with a frontage and Taylors Mills Road and Route 9. The lot is a total of 77 acres located it the OP3 Zone District. The property is

surrounded by commercial uses. Currently there is a Shell Service Station on site. Mr. Leber lists the non-conformities presently on the lot:

- The minimum lot Size is 3 acres where 77 acres exists;
- The frontage required is 300 ft. where there is 227 ft. frontage on the Taylors Mills side and 151 ft. frontage on the Highway 9 side;
- Lot depth required is 250 ft. where there is 150 ft.;
- Total lot coverage permitted in the zone is 65 percent where there is 89 percent existing;
- The existing building has a rear yard setback of 2.86 where 50 feet is required

Mr. Leber reviewed the 13 photos he took earlier that day previously marked as Exhibit 1A

- Photo 1: A view of the site from Taylors Mills Rd.
- Photo 2: A view looking east on Taylors Mills Rd. showing the two driveways to the site on Taylors Mills Rd.
- Photo 3: Taken from the site facing Taylors Mills Rd. showing the Jug-handle from Route 9
- Photo 4: Another view looking east
- Photo 5: View showing the driveways on Taylors Mills Road to Wendy's
- Photo 6: View looking north taken from the corner of the site
- Photo 7: View looking southbound on Route 9
- Photo 8: Looking North from Route 9 showing the two driveways to to the site from Route 9
- Photo 9: View looking West on Taylors Mills Road
- Photo 10: Picture showing existing trees on the south lot line that are proposed to remain on site
- Photo 11: Existing trees
- Photo 12: Existing trees

The applicant is proposing to remove all existing structures on the property and build a free-standing Taco Bell restaurant with a drive-thru. A drive-thru is not permitted in the zone so use variance relief is requested in addition to Site Plan. Mr. Leber referred to sheet three of the Site Plan previously submitted with the application. The site will have indoor dining with an additional three tables outside on the south side of the building. There will be a total of 25 parking stalls and a new trash enclosure in the corner of the lot. The two driveways on Taylors Mills Road, nearest to the intersection, will be closed off and filled in with new curbing. There will be one ingress/egress from Route 9 and one ingress/egress from Taylors Mills Road. A left hand turn out will be prohibited on the Taylors Mills side. Traffic will direct counter-clockwise on the site. There will be new landscaping with LED lighting. The hours of operation will be 7AM to 11PM daily and the drive-thru will be open until 2:30AM and a new digital menu board. There can be up to eight employees present during an eight-hour shift. There will all new utilities installed underground. The deliveries will be between 3AM and 5AM in box trucks and tractor trailers. Trash hauling is through a private company twice a week and the recycling will be collected once a week. There are various signs on the building proposed and one free standing sign. There will be ancillary signs throughout the property relating to the drive thru. Mr. Leber reviewed the layout of the inside of the building along with elevations of the building. Both elevation and floor plans were submitted with the application. Mr. Leber referenced both of these.

Mr. Licata referred to the CME Engineering report section titled Stormwater Management Grading and Utilities. Mr. Licata asked Mr. Leber to review the items listed in the report. The applicant agreed to everything listed in this section

of the report. The site has received a “clean bill of health” concerning any environmental issues.

Mr. Boccanfuso confirmed with Mr. Leber that the comments on traffic and circulation in the report will be addressed by Mr. Troutman. Mr. Boccanfuso discussed the delivery times being prior to the peak morning hours.

Mr. Licata testified that statutory and regular DEP required permits will be obtained prior to building. However, the Response Action Outcome (“RAO”) from the DEP will require more time to obtain. The Applicant to agreed to the condition; while waiting for the RAO prior to development, to have the applicant obtain a letter from the entity overseeing the remediation that there is no issue with the development as seen on the site plan.

Mr. Leber testified the landscaping plans will be revised in response to the comments noted in the CME report. There were no further questions for Mr. Leber.

Mr. Licata called his next witness Jay Troutman, Traffic Consultant with McDonough and Ray. Mr. Troutman was sworn in by Mr. Miller and The Board accepted his credentials. Mr. Troutman testified The Applicant is proposing a right in and right out access from Route 9 Southbound in one driveway. This driveway will be located far away from the Taylors Mills side as possible. This will result in the closure of the Route 9 driveway closest to Taylors Mills Road and will bring the property into conformance with regard to the (“NJDOT”) New Jersey Department of Transportation access code. Currently there are two unrestricted driveways on the Taylors Mills side of the property allowing both right and left turns out of the property. The applicant is proposing to restrict the Taylors Mills side driveway to right in and right out only. Peak site traffic impact will occur during lunch and dinner hours for this use. Approximately fifty percent of the traffic is drawn by the traffic passing by the site. The property is under DOT jurisdiction on Route 9 and on Taylors Mills Road due to the jug-handle access. Mr. Troutman analyzed the change in use from gas to the drive-thru with regard to the trip patterns. This use did not generate a significant increase in traffic. This would allow the applicant to secure a Letter of No Interest from the DOT. However, the applicant has chosen to close two driveways and redesign the access ways resulting in the application for a permit with the DOT. The application was filed with the DOT in April 2020. They are still in the first review stage. Mr. Troutman analyzed the parking supply on site. The parking of 25 spots at this location matches supply he has at six other sites by this owner. Mr. Troutman explained the owner advised there have never been no parking issues or “parking crunches” within the sites. Mr. Troutman testified this was consistent with the findings in his report. There is plenty of parking for employees and customers. Approximately 60 percent of the patrons use the drive-thru under normal circumstances and under COVID restrictions the number is higher. The reduction in curb cuts and restriction of turning movements along with the fact there is not a significant increase in traffic are all favorable traffic points on this application.

Mr. Boccanfuso confirmed the DOT jurisdiction of all driveways with Mr. Troutman. Mr. Troutman testified if he had to guess the jurisdiction map would include all of the ingress and egress to the site currently both on Route 9 and Taylors Mills Road. Mr. Troutman testified he did not anticipate any issue with the DOT in restricting the left turn out on the Taylors Mills Road side. Mr. Troutman and Mr. Boccanfuso discussed the NJDOT mandates the traffic consultant use the (“ITE”) Institute of Transportation Engineers trip data for fast food drive thru. They do not allow user specific data for well established uses like fast food. Mr. Troutman confirmed he has been to the site and Route 9 drives enough volume to say it is above average. Mr. Troutman explained the new traffic design would serve as a deterrent for traffic cutting through the site from Taylors Mills Rd onto Route 9. Mr. Boccanfuso asked Mr. Troutman if he had

any data and/or study in writing to submit in support of the drive-thru not cueing onto Route 9. Mr. Troutman explained he would compile a report.

Chair Leviton asked Mr. Troutman to explain to the public how he compiled his calculations with regards to the ITE.

Ms. Beahm discussed signage and pavement markings in more detail with Mr. Troutman regarding safety. Ms. Beahm further confirmed with Mr. Troutman that the parking on the site was considered to be safe in his opinion. Ms. Beahm had no further comment.

Mr. Cooper asked Mr. Troutman for further comment on delivery times. Mr. Troutman explained the delivery trucks would enter and exit the site from Route 9 South. The deliveries will be completed before 7 AM. Mr. Licata clarified the deliveries will be two days a week and occur no later than 6 AM.

Ms. Kamen asked for clarification on traffic exiting the site but wanting to head west on Taylors Mills Road. Ms. Kamen voiced concerns for motorists traveling through residential areas. Mr. Troutman explained a bi-product of a right in and right out pattern only would result in motorists exiting east on Taylors Mills Road or South on Route 9 and then the use of other roadways to get to their ultimate destination.

Mr. Rosenthal asked how many employees will use of the 25 of the parking spaces. Mr. Troutman explained the employees use 2 or 3 spaces and mostly use public transportation. Mr. Rosenthal asked how long the trucks take to unload. Mr. Troutman responded the trucks typically take one hour to unload.

Ms. Beahm asked how many parking spots will be allocated for employees should there be no ride sharing or public transportation. Mr. Troutman responded that there would be 8 employee spots designated. Ms. Beahm confirmed there is adequate parking.

Ms. Kamen asked if Taco Bell participated in Door Dash. Mr. Troutman explained they use Uber Eats.

At 10:37 Chair Leviton opened the meeting to the public to asked questions of Mr. Leber and Mr. Troutman.

Mr. Ian Bloom of 34 Saratoga Drive was sworn in by Mr. Miller. Mr. Bloom asked for clarification on when the traffic report was done with regard to quarantine. Mr. Troutman explained the report was compiled before quarantine. Mr. Troutman explained his firm has many years of experience with the intersection and compiled a report specific to traffic with data provided prior to 2020. Mr. Bloom expressed concerns for the traffic on the Briar Hill and Country Lane behind the Taco Bell.

James Cuthill of 4 Hollyhill Road, Marlboro, NJ was sworn in by Mr. Miller. Mr. Cuthill expressed concerns on cueing and stacking on route 9. Mr. Troutman addressed the concerns.

Mr. William Thies of 9 Syngele Way, Morganville, NJ was sworn in by Mr. Miller. Mr. Thies expressed concern regarding traffic and congestion on Route 9. Mr. Troutman addressed the concerns.

Mr. Daniel DePippa of 11 Patterson Lane was sworn in by Mr. Miller. Mr. DePippa expressed concerns regarding traffic and the traffic study. Mr. Troutman addressed the concerns.

Mr. Jason Ilishayev of 14 Jason Court, Morganville, NJ was sworn in by Mr. Miller. Mr. Ilishayev expressed concern for overflow traffic from Wendy's. Mr.

Ilishayev also expressed concerns about the New Jersey Transit buses using that area on Route 9 for a bus station. Mr. Troutman addressed the concerns.

Ms. Dina Lorenzo of 21 Elm Place, Milltown, NJ was sworn in by Mr. Miller. Ms. Lorenzo expressed concerns that there were no traffic studies completed during a pandemic previously to base traffic analysis information on. Mr. Troutman addressed the concerns. Ms. Lorenzo then asked Mr. Leber what time the pictures were taken at the sight earlier in the day. Mr. Leber replied he was at the sight to take pictures approximately 2 PM.

Rex Lazewski was present and raised his hand (virtually) however, the audio on his computer was not working. Chair Leviton explained to Mr. Lazewski the public portion was to adjourn shortly and the applicant would need to return to the Board for another meeting date. Chair Leviton explained to Mr. Lazewski that he would have another opportunity to express concerns and ask questions on this application.

Chair Leviton closed public.

Mr. Miller advised the public the applicant would be back before the Board for a continuance. The public would have the opportunity to make comments and asked questions during the public portion of the next meeting.

Mr. Licata requested the Board carry the application without further notice. It was agreed to carry this application to the to the August 20, 2020 meeting with no further notice to the public.

Ms. DeFalco, the Zoning Officer and Mr. Miller advised the public there will be no further notice to the public. If the public received a notice for the meeting, they will not receive another notice. The next meeting will be held, virtually, on August 20, 2020 at 7:30 PM. The virtual instructions and documents relating to this application can be found on the Township website.

ADJOURNMENT:

A Motion was offered by Mr. Cooper to adjourn the meeting at 11:15 PM. All were in favor and none were opposed.

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.