

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of January 2, 2008 to order at 7:15 p.m.

MEMBERS PRESENT: Elliott Averett, Morris Bauer, Craig Schwemmer, Anthony Spina, John Turick

Alternate Members: Frank Baguiao

Members Absent:

Others Present: Clerk Kesper, Attorney Fraser, Planner Banisch, Engineer Hall

STATEMENT OF COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT

- Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 12, 2007 and posted on the Bulletin Board on the same date.

** Mr. Graziano, Mr. Ort and Mrs. Walter term expired and are on the Township's Appointment Agenda, however, the Township Committee have not yet had a reorganization meeting. Therefore, Mr. Ort and Mrs. Walter did not participate in the reorganization meeting but were present in the audience, Mr. Graziano was absent.

Pledge of Allegiance

MINUTES

1. December 5, 2007 Regular Meeting

Mr. Spina made a motion to approve the minutes, seconded by Mr. Averett. A voice vote was taken; all were in favor and the motion carried.

RESOLUTIONS

NONE

The meeting was opened to the public for items not on the agenda. There were no comments from the public and the meeting was closed to the public for items not on the agenda.

APPLICATIONS

1. Colonial Investment – Block 56 Lots 10 & 11 – West Valley Brook Road – R-5 Zone – 4.259 Acres – Request for Steep Slope Variance, Ridgeline Variance – Deemed Complete December 6, 2006 – Previously Heard December 6, 2007 and February 7, 2007, May 2, 2007 -Public Hearing Continued – Expires – February 6, 2008

Mr. Schwemmer announced that this application was adjourned at the applicant's request to February 6, 2008

2. Galloway

The requested was reviewed.

Mr. Bauer made a motion to grant the applicant an extension of time to May 31, 2007. Seconded by Bauer. A voice vote was taken; all were in favor and the motion carried.

2. 28 Route 46 Realty, LLC – Block 4, Lot 1 – 28 Route 46 (Diner Property)– C-2 Zone – 1,263 Acres – Request for Use Variance to permit a new car dealership

Michael Selvaggi, Applicant's Attorney
Drew Peicon, Applicant
Andy Bartushak, Applicant's Engineer
P. David Zimmerman, Applicant's Planner

Mr. Selvaggi reviewed the completeness waivers for taxes and key map. A check has been given to Ms. Kesper. He explained that this property is in foreclosure and the applicant intends to purchase the property if the use variance is received. He was asking for a waiver on the payment of taxes and stated that he has given Clerk Kesper a check to pay the taxes to be held in escrow and deposited if the variance is approved.

Ms. Fraser stated that it was acceptable for the Board to grant the waiver if they were inclined to do so.

Mr. Selvaggi told the board that the diner is now closed.

Mr. Bauer made a motion to deem the application complete granting the requested waivers for the key map and taxes for completeness only.

Seconded by Mr. Spina. A voice vote was taken; all were in favor and the motion carried.

Mr. Selvaggi stated that new car dealerships are allowed in the C-2 zone as a conditional use, but they do not meet two of the conditional use standards, which are the size of the lot and the size of the dealership structure. The site is now fully developed and they are looking to redevelop it.

Drew Peicon was sworn in by Attorney Fraser and stated that he is a principal in the LLC.

Mr. Peicon stated that this property is in foreclosure and they are a contract purchaser and would purchase the property upon receiving a use variance. He currently owns a Ford Dealership in Belleville and a Ford/Hyundai in Phillipsburg. He would be involved in the daily operation of the proposed dealership. He stated that Hyundai has identified this area as a target marketing area. He explained that the property is a suitable place because of the traffic and the fact that this is a smaller satellite dealership. He explained that the major service work would be done at their Phillipsburg location.

Mr. Peicon answered the board that the hours of operation would be Monday thru Thursday 9 – 9; Friday 9-8 and Saturday 9-6 and that they would be closed on Sunday. There would be nine to ten employees, including himself. The employees would be: 3 in service, 3 in sales, 2 in management and 1 clerical. The majority of the office work would be done in Phillipsburg. Service hours would be Monday to Friday 8-5 and 8-12 on Saturday. He expected that on a daily basis they would have 30 to 35 customers for sales and service spread throughout each day. The dealership would get four to five deliveries per day - parts, cars, etc. Trash removal would be between 7:00 a.m. and 8:00 a.m., once per week.

Mr. Peicon referred to a colorized site plan of the plan submitted to the board, which was marked A-1 and stated that the existing diner would be turned into the automobile showroom. The applicant proposed to change the current exterior walls to glass. There would be four to five cars on display in the showroom. They propose an addition of 1,038 feet for a service area. He stated that he has reviewed the reports submitted by the board professionals and the driveway in the front would not be installed and they would rehabilitate the existing sidewalk and it would be a walking area only, not a driveway and no trees would be removed. Employee parking would be in the rear corner. 30 to 38 new cars would be displayed on the lot and between 15 and 17 used cars would be on display. Service car parking spaces would be between 10 and 15. They

have provided 20 parking spaces on the plan. There is no proposal to add additional pavement then shown on the plan. He noted that the barn on the property would be removed and that is where the employee parking would be for nine cars. The traffic patterns would remain identical as they are today for the diner. The car carrier – four car carrier – would unload only in their lot. There will be no “string” lighting. After hours of operation the parking lot would go dark, except for security lighting on the building. He stated that their lighting plan would comply with the Township lighting ordinance.

Mr. Peicon stated that all oil and other products would be disposed of according to state DEP requirements. Prepping of cars would be for vehicles sold from this location only and service would consist mainly of oil and tire changes. The cars would be driven through the service area into the show room. They propose five service bays. Three doors to enter the three areas in the rear and on the westerly side there would be two doors. The water usage would be reduced from the current use. He explained that the cars would be coming from overseas or Alabama and that the cars come wrapped in plastic. The basement of the existing building would be used for storage of parts. The impervious pavers on the east side is for open space, not for car display. He stated that the car carrier would be able to drive through the parking area from East Avenue to Route 46 without interference by parked cars, etc. He explained that the car carriers that would be coming to this site are similar in size to a garbage truck. New Car delivery would be during hours of operation only. The oil would be stored in a double walled container surrounded by a catch basin. He explained the types of deliveries the dealership would receive as: new car deliveries, parts, drop off of service cars, UPS, Fed Ex, customers picking up new cars. New car carrier deliveries would be one to two times per week. Parts are not delivered by tractor trailer.

The meeting was opened to the public for questions of Mr. Peicon.

Alice Davis – 54 East Avenue – Asked if the current barrier (fence/landscaping) on the property would be maintained?

Mr. Peicon stated that they would keep the existing fence and landscaping. They will supplement the plantings if necessary.

Paul Evans – 52 East Avenue - asked about the storage of tires.

Mr. Peicon stated that all tire and accessory storage would be inside the building and the old oil will also be in a container inside the building.

Mr. Peicon – nothing will be stored outside the building except vehicles for sale.

There were no further questions of Mr. Peicon and the meeting was closed to the public for questions of Mr. Peicon.

Andy Bartushak was sworn in by Attorney Fraser and presented his qualifications to the board as an engineer.

Mr. Schwemmer accepted Mr. Bartushak as an expert in the field on engineering.

Mr. Bartushak submitted copies of Exhibit A-1 to the board, which also included a parking schedule. He described the property and the circulation pattern. He reiterated and confirmed Mr. Peicon's testimony regarding oil and product storage, the removal of the barn for employee parking and car carrier deliveries. He stated that the car carrier would be able to navigate the parking area and he would show this on the future site plan. The current impervious coverage is 75.4%. The current FAR is .185%. The FAR will be reduced somewhat to .163% when the barn is taken down. The impervious coverage will be increased slightly. The display parking area is 10,034 or 18.2%, which he noted was less than allowed by ordinance. He explained he used 9' x 18' parking spaces to calculate this percentage. Employee parking was not included. He stated that lighting would be provided that meets township ordinances. There will be a landscape boundary along the northeast boundary where the residential neighbors are located. The proposed lighting would be an improvement over what is currently on the site. He answered Mr. Hall that 96 spaces are what they are showing on the plan. Five of the spaces are inside the service bays.

Mr. Hall stated that the township ordinance requires 10' x 18' spaces. Angled parking spaces allows only one way travel. Conforming ADA parking spaces must be shown. He stated that the plan would have to be revised to confirm that the parking meets ordinance requirements. He noted that a waiver could be requested for the 9' x 18' spaces.

Mr. Banisch noted that the angle spots are for used car display and is controlled parking, as is the new car parking. The customer parking would need to meet ordinance requirements.

Mr. Selvaggi stated that the Planners testimony was going to address parking and request the parking space size design waiver.

Mr. Peicon confirmed that a salesman would be bringing the car up front for the customer to test drive.

Mr. Hall stated that 25' is required in the employee parking area and the parking isle for the used car display and he would not recommend a

waiver to 20' in these areas. It was his opinion that the use variance is tied to the parking requirements.

Mr. Peicon stated that if he had to limit the number of cars on the lot to less than on the plan he could comply with that because this is a satellite dealership.

Mr. Hall pointed out that ordinance 217-68 D – conditional use standards - calls for a setback of 25' from the right of ways and property lines.

Ms. Fraser informed Mr. Selvaggi that there are only six members of the board eligible to vote and asked if Mr. Selvaggi was willing to go to a vote on this application with only six board members present.

Mr. Selvaggi stated that he was prepared to proceed and seek a vote with six members and explained the circumstances regarding timing of the foreclosure and creditors.

Mr. Hall stated that the biggest issue for the Board is whether the board is willing to grant the 25' buffer as stated in the ordinance. He noted that the applicant has stated they are flexible in the number of cars they need to have on display, therefore, the aisle width and angle parking could be worked out at the time of site plan. He answered the board that there is currently a driveway in the 25' buffer area.

The meeting was opened to the public for questions of the engineer, Mr. Bartushak.

There were no questions of Mr. Bartushak and the meeting was closed to the public for questions of Mr. Bartushak.

David Zimmerman was sworn in by Attorney Fraser and accepted by the Board as an expert in the field of Planning.

Mr. Zimmerman referred to the ordinance and that it does permit car dealerships as a conditional use and reviewed each of the standards. He stated that for a full service dealership five acres is appropriate, but based on the testimony for this type of unique satellite dealership proposed, the 1.8 acres is acceptable. The proposed 8,994 sq. ft. (10,000 required by ordinance) is sufficient for the light service proposed and testified to by the applicant. He pointed out the adjoining uses. He referred to and marked as exhibit A-2 a photograph board which showed the barn on site and the adjoining uses. He noted that one of the adjoining uses is Midas Muffler and currently pavement is to the property lines. He pointed out the dense evergreen buffer that currently

exists. He stated that the applicant would accept a condition that a fence be put up in this area.

Mr. Zimmerman testified that the proposed use is a considerable reduction in intensity from the past use as a diner, when there would be much more traffic and parking. He stated that the lighting would be shielded. He addressed the size of parking spaces and stated that because of the controlled use, 10' would not be appropriate and 9' would be reasonable and satisfactory as the cars would not be constantly being moved in and out. He stated that the applicant has agreed to provide the 10' spaces in the active customer area. He addressed the impact of the proposed satellite car dealership and stated that the proposed use is less intense than the previous diner use. It was his opinion that this change in use would be an asset to the community.

The meeting was opened to the public for questions of Mr. Zimmerman. There were no questions of Mr. Zimmerman and the meeting was closed to the public for questions of Mr. Zimmerman.

Mr. Peicon stated that Audi of Bernardsville and the dealership in Peapack are very similar satellite dealerships to what the applicant is proposing.

Mr. Schwemmer stated that he would like to see more landscaping and maintaining the existing shade trees etc. and that they are important issues to the impact of this application.

Mr. Zimmerman stated that they would work on this with a revised site plan.

The board deliberated on the application.

Mr. Averett made a motion to approve the use variance for a satellite car dealership without full service but limited to light service and preparation with the conditions that there be a 6' high fence along the northern property line; subject to site plan approval and it is noted that the site plan submitted with the use variance does not comply, but based on testimony it appeared that a parking plan that complies with ordinances could be accommodated; new, used and employee parking design waiver for 9 x 18, but customer parking 10 x 18; at site plan aisle width must comply with the 25' driveway width or prove it could accommodate the car carrier and safe car maneuvering with a narrower driveway; all parts, tires, etc will be stored in the inside the building; hours of operation would be Monday thru Thursday 9 – 9; Friday 9-8 and Saturday 9-6 and that they would be closed on Sunday. Seconded by Mr. Spina. A roll call vote was taken:

Ayes: Averett, Bauer, Schwemmer, Spina, Turick, Baguiao
Nays: None Abstentions: None Absent: Graziano
Ineligible: Ort, Walter

DISCUSSION - CORRESPONDENCE

1. Year End Report

Mr. Banisch reviewed the draft report regarding the definition of garage and steep slope exemption.

The board reviewed the report.

The board concluded that they did not want to include the suggestion on the exemption of steep slopes at this time.

Mr. Spina made a motion to adopt the report and resolution 08-06 as amended this evening, seconded by Mr. Bauer. A roll call vote was taken:

Ayes: Averett, Bauer, Schwemmer, Spina, Turick, Baguiao
Nays: None Abstentions: None Absent:

2. Vouchers

The vouchers were reviewed. Mr. Averett made a motion to approve the vouchers reviewed by the Chairman and found in order and send same on for payment. Seconded by Mr. Turick. A voice vote was taken; all were in favor and the motion carried.

Mr. Bauer made a motion to adjourn, seconded by Mr. Turick. A voice vote was taken; all were in favor and the meeting was adjourned at 10:00 p.m..

Virginia R. Kesper, Clerk