

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
December 18, 2012
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:40 p.m. The Board Secretary read the Legal Notice.

Pledge

The Chairman asked all in attendance to join in the Pledge of Allegiance.

Mr. Glatt asked Mr. Siesta and Mr. Gerst to sit at the dais. Brady explained to the public about the Board of Adjustment, explained the Open Public Meetings Act of the State of New Jersey. Appeals go to the Superior Court of the State of New Jersey. He introduced the Board Attorney. The applicant explains the application first then anyone speaking for or against the application is given the opportunity to do so. The Meeting follows a printed agenda. If needed a break will be at approximately 9:00. There are no new applications after 10:30, no new testimony after 11:00.

Roll Call

Present: Russell Curving, Steven Castronova, Frank Curcio, Arthur McQuaid, Michael Siesta, Michael Gerst Robert Brady

Also Present: Stephen Glatt, Board Attorney, William H. Drew, Board Planner, Michael Cristaldi, Board Engineer, Michael Hakim, Landscape Architect, Denyse Todd, Board Secretary

Absent: James Olivo, Vivienne Erk

MEMORIALIZATIONS

**DAVID & HELEN WALL
RESOLUTION NO. 17-2012
BULK VARIANCE #ZB04-12-05
Block 3511; Lot 4
74 Lakeside Road; R-1 Zone**

Motion by Steven Castronova to memorialize Resolution No. 17-2011

Second by Arthur McQuaid

Roll Call Vote:

Yes: Russell Curving, Steven Castronova, Frank Curcio, Arthur McQuaid, Robert Brady
No: none

**JOSEFA CUBELO
RESOLUTION NO. 18-2012
BULK VARIANCE #ZB07-12-10
Block 2509; Lot 1
50 Passaic Drive, LR Zone**

Motion by Arthur McQuaid to memorialize Resolution No. 18-2011

Second by Russell Curving

Roll Call Vote:

Yes: Russell Curving, Steven Castronova, Frank Curcio, Arthur McQuaid, Robert Brady
No: none

Mr. Glatt explained to the Board and the audience that the Appeal application for Haftek Properties, LLC was withdrawn on December 12, 2012 and Haftek Properties, LLC Use Variance ZB08-12-01 that was granted on the 12th.

NEW APPLICATIONS

MC DONALD'S CORP.
USE AND BULK VARIANCE #ZB11-11-14
PREL & FINAL SITE PLAN ZB11-11-14
Block 6303; Lot 14 & 15
41 Marshall Hill Road, CC Zone

Preliminary and final site plan, d (3) conditional use variance, d (1) use variance and associated bulk variance approvals for the reconstruction of the McDonald's. The proposal is also for installation of a freestanding sign and other improvements there are other pre-existing nonconforming site conditions associated with the application.

John Wyciskala, Attorney for the applicant from the firm of Inglesino, Pearlman, Wyciskala & Taylor, LLC. The property is located at 41 Marshall Hill Road, Block 6303; Lot 15. The property is adjacent and partially surrounded by the ShopRite, Marshall Hill Shopping Center. Mr. Wyciskala is also representing Inserra, the owners of the ShopRite and the shopping center. He represented Inserra for the approved Planning Board application. Inserra and McDonald's got together to discuss pre-existing easements and some things and were able to work out a resolution that allowed Inserra to return to the Planning Board modify the approvals so the Inserra project will proceed this year, hopefully early spring.

The existing McDonald's is approximately 30 years old; the store is approximately 3,437 square feet. They are looking to take down the existing building and construct a building largely within the existing foot print. The new restaurant will be slightly larger at 3,652 square feet which is basically from squaring the building off. The reason before the Zoning Board and not the Planning Board is because although restaurants are permitted conditional uses, and the applicant does not satisfy all of the conditions. They are pre-existing, there is a sign being proposed on the adjacent lot, Inserra's lot, which creates a d variance in conjunction with the application.

McDonald's is changing their look and it is being done nationwide. It is called MRP program, a rebuild program. The purpose is to change the look and appearance and replace it with a more contemporary look by getting rid of the red manzar roof look on a nationwide basis. They will enhance the efficiency and operations and ADA requirements within the restaurant. They will be improving the drive thru facilities. The attorney indicated that the project does not typically result in an increase in volume of the operation; it is more about the efficiencies of scale. There is an increase in the drive thru, it is not like the number of customers will expand exponentially. They hope there will be a larger customer base in West Milford but generally the customer base does not grow that much but it is a better experience. He indicated that the project will match up with the center and finish off the last piece.

There will be 2 witnesses, Joe Sparone, Project Engineer from Dynamic Engineering, John McDonough, Planner will explain the variances that are requested. The Traffic Consultant is present and Chad Adams from McDonald's.

Joseph Sparone, Dynamic Engineering 245 Main Street, Chester, NJ was sworn in by the Board Attorney. He graduated from Rutgers with a B.S in civil engineering, he has been practicing in the field for about 10 years. Licensed Professional Engineer in the State of NJ. He has been before various zoning and planning boards in the state.

Mr. Sparone explained the site using sheet 2 of the site plan that was provided to the Board it was marked into exhibit as A-1. It is an aerial view of the entire site. The McDonald's property is located at lot 14, which is in the Southeast corner of the Shop Rite Center, located on Marshall Hill Road. McDonald's owns its own lot it is Block 6303; Lot 14. It is approximately 145 X 155 feet basically a rectangle. The access is through the shopping center access drives. There are 3 curb cuts along Marshall Hill Road and two along Union Valley Road, customers would come through one of the curb cuts and drive through the parking lot to the McDonald's.

Currently the restaurant is 3,437 square feet in size with 103 seats. It was constructed in 1981 about 30 years, a pretty long life for any restaurant. Existing parking is about 12 spaces and 75.9% impervious coverage. Parking is fronting Marshall Hill Road circulation is counter clockwise around the building, people using the drive thru will access it at the southwest corner of the building, drive along the front parallel to Marshall Hill Road counter clockwise around the rear of the building to the drive thru pick up window located along the rear of the building and exit at the northwest corner. The proposal is just for McDonald's A-2 is a colorized version of sheet C-3 and it is the entire site. This was the plan that was approved by the Planning Board recently where they received approval to

reconfigure the parking lot with delineated drive lanes and additional landscaping. The McDonalds will be dove tailed into the overall shopping center.

They want to knock down the building and build a modern building in the same location along with modernizing the existing site improvements, redoing the parking, improving site circulation. A-3 is the site plan that was submitted and the subject at hand. It is sheet 5 in the Board's plan colorized version with landscaping superimposed over it. The new building will be 3,652 square feet with 54 seats, existing has 103 seats, the building area slightly increases the cause being modern kitchen larger, meet current codes, ADA bathrooms and facilities. Site circulation will remain, as it is today basically counter clockwise around the building. The existing site has 12 spaces and 18 spaces are proposed. This was achieved with just more efficient use of the space. There will be additional impervious coverage, about 1,250 square feet due to having to move things around the site having to expand the footprint. Most is due to additional pedestrian walkways and the increase in the building, the actual drive in does not increase that much. The building and drive thru will be modernized. There was discussion about the menu board the plan before the Board proposes 2 menu boards. With the modern facilities and bigger kitchen more orders can be placed and filled more quickly and it would be a better customer experience. The majority of the improvements will be on site, however, there will be some overlapping with the shopping center because of the nature of the building and the location, and it is a tight site. The property has curbing and sidewalks, which will be replaced; the building is right on the property line. They will tie into existing utilities; some are offsite on lot 15. The majority of the work will be on lot 14.

The lot has existing non-conformities such as lot area, dimensions width and depth none of that is changing. The building presently is square and it will be a rectangle with different bump outs so there is not really a change to the setbacks a little variation but only a couple of feet. The front yard is currently 77.8 feet and proposed is 82.3 feet. West side yard 1.5 feet currently and it will be 1.2 feet under the proposed plan, the east side is currently 49.3 and will be 55.8 that will increase. The rear yard is 11.3 and it will be 9.7. The impervious coverage will increase slightly to 1,250 square feet. Currently coverage is 75.9% and the proposed is 82.1% allowable is 60%, which will require a variance. The lot size is 0.46 acres.

A drive-in fast food restaurant is a conditional use in the zone. He reviewed the conditional uses. The vehicular circulation must be 15 feet from any door because of the size of the site they do not meet that condition. The distance from the entrance to the drive thru is only 2.7 feet. There is a railing to block drive thru the railing will guide to parking lot not drive thru. McDonald's will maintain their site as a matter of protocol. Landscape area at least 20 feet wide provided on any property line, there is 0 feet existing and 0 feet proposed that's adjoining property lines north and west there's asphalt running across the property line it is part of the shopping center, operates like a lease area would but it is its own little property.

Parking will increase currently 12 will be 18, the buffers will change required 20 in front and 10 around remainder currently front 10.4 feet existing it will be 10.8 under proposed. East side 0 feet existing 0 feet proposed, the west side has 9.7 feet provided to trash enclosure and it will be 2 feet. The new building and more efficient drive thru needed to expand out the back of the building to have an easier time navigating the drive thru, it is a little tight right now. The building changed shape and pushed out the back a little. There is an existing fence with privacy slats the will not go further than that fence. In front of the fence is currently a mulch area, pine trees, they will encroach in the mulch area on the side but not any further.

The signage will be slightly different, currently 2 signs on the building one on the west side facing toward Union Valley Road, on the south side facing Marshall Hill Road, there is a larger logo sign about 24 square feet the I.D. sign is about 41.4 square feet. The west side will have a McDonald's ID sign which will face Union Valley Road, there will be a separate logo sign (arches). The off site signs are about 50 or 60 feet off site. They put the sign off site so it is easier to see for the access to the McDonald's site. The same signs will be on the shopping center sign. The free standing sign will be closest to the access point to get to the restaurant it will be 99.2 square feet is proposed the height is about 20 feet. it will be set back about 15.2 feet from the right of way. They believe that size and height is in line with what is proposed and what exists with the remainder of the shopping center. The sign will be located about 50 or 60 feet from the southwest corner off of Marshall Hill Road. It will be to the right of the first access drive near McDonald's.

The applicant handed out a similar architectural plan to what the Board has already it has colors to show the materials, colors and proportions of the building it will be marked as exhibit A-4 consisting of 2 sheets different angles of the rendering of the building. The building depicted is a little larger

than what is proposed, the proportions and colors the materials will be the same, how the signage will fit on the façade will be the same. The new look is different from the way it was will be more modern, fresher cleaner look, with softer earth tones examples are the brick façade with tile will frame the main entrance points, the front windows will have the canapés and the signage ties in to the architecture.

There is a storm line underneath the building and it conveys the storm water flows from the remainder of the site. The storm line will be relocated around the building so if there are any future issues all they need to do is dig up asphalt. There will be a little off site work associated with that to tie in to storm sewer line and sweep it around the building. Also, tying into utilities, sewer will continue to be served by the septic system on the Inserra property. The water will be provided by a domestic well the existing well will be abandoned, it will not work with the location of the building. A new well will be drilled, gas and electric will remain the same.

There will be additional landscaping, 5 trees, 66 shrubs, 27 ground cover plantings as depicted on the color rendering. The lighting design was intended to match the shopping center, they worked with Inserra's engineers. The lighting exceeded the height of the building, the building is about 18 to 19 feet to the top of the parapet with roof elements is about 23 feet 4 inches, the lighting proposed is 25 feet mounting height which matches what was approved for the shopping center. There are five 400 watt 25 foot high metal halide lights, which are similar if not the same as what was proposed for the remainder of the shopping center. There will be two decorative 12 foot high 175 watt metal halide fixtures along the frontage to continue the streetscape design that Inserra started.

Mr. Wyciskala commented that he handled the Inserra applications, he reiterated that this property stands alone with respect to size, coverage and the like. There is a slight increase of impervious coverage, a slight increase in the size of the building. Overall with respect to the Inserra shopping center since it fits in as a part, there is an overall reduction in impervious coverage, significant increases to landscaping. Although Shoprite is doing a bump out the coverage is going to be reduced. The theater building will come down and replaced with a smaller retail site.

Mr. Glatt asked about the lease agreement or easement agreement between McDonalds and Inserra he asked how long it would be in effect. Mr. Wyciskala indicated that these are not lease agreements and he is not handling that. The agreements are in perpetuity, the agreements are for utilities, an agreement to waive certain conditions for some of the prior center restrictions. He indicated he does not believe any are ending in the short term and both entities own their own properties.

Next was the Board professional comments, November 18 from William H. Drew. Number 1 will be handled by the Planner. No. 2 discusses converting the drive out along the west side to one way. This would be off site so that could be a problem concerning parking spaces and also approvals with Inserra. Mr. Drew commented that this site really functions as a part of Inserra, you cannot access it without going through the supermarket property. The traffic circulation is really 2 separate traffic circulations. One is a complete 2 way traffic flow on the Shoprite property and the other on the McDonald's site is a one way flow. It could be confusing or contradictory to a driver when traversing around the area of the parking lot. He indicated that his thought was a one way pattern was continued onto the Inserra parking lot in front of McDonald's property then entering into the site. It would be a one way ingress into the site and then instead of having a two way driveway where you would turn right off of the ingress, it would become a one way heading into McDonald's and then if you wanted to continue in front of the McDonald's it would be a one way pattern in a northerly direction until you got past the drive thru and when you got past the drive thru it would remain a two way access as currently exists. The one row of parking could be angled in front of the restaurant, which complements a one way access. It may be able to increase the landscaping in front of the restaurant as well. Also, the variance requirement that states the access to the building must be 15 feet away from a traveled road, right now it is shown at 1.2 or 1.7 feet, by reconfiguring this the driveway can be moved further away from the front of the building which will increase the distance and would lessen the variances. He suggested that the applicant's engineer may be able to provide a sketch to show what is being discussed.

Mr. Wyciskala commented that agreements between McDonald's and Inserra took about two years and as result they are not amenable to any modifications in this regard and an agreement could take a while. Mr. Glatt asked if there was a representative who could agree to the comments made and there is. Mr. Wyciskala again stated that the length of time it took to get the agreements was a while and he spoke with Inserra today and Inserra are not interested in revising plans. Mr. Hakim, the landscape architect added that he was also the professional landscape architect on the Inserra project and it was his understanding that the revised plans were to be submitted to his office for landscape review, and the potential is there that they will need to return. Mr. Hakim agreed with Mr. Drew as

to the benefit of the one way access. There was additional discussion with the one way egress. If the roadway on the west side is one way north bound it would dissuade vehicles from making an illegal turn and running into a bottleneck with vehicles entering and exiting the site. There are two landscape sections. There is no need for a 24 foot so it could be more narrow for a one way drive. You could have a landscaped area on that side of the building. Mr. Hakim would like the Board to look at the renderings and the plan. They are attractive but they do illustrate where there is landscaping on at least two if not three sides of the building if you look at the site plan and landscape plan as proposed, there is really only landscaping on one side of the building, and it is a little misleading, the rendering was submitted for the building purposes not landscaping but it was agreed it was a little misleading Mr. Hakim indicated making it a one way would improve aesthetics and the circulation at the same time.

Mr. Drew discussed the plan and indicated as the plan is drawn it depicts a 30 foot wide driveway aisle which is excessively wide and this should not impact Inserra.

The engineer for the applicant explained that McDonald's would like to keep it two ways to maintain the flexibility as far as cars being able to come from Shoprite and go in first entrance and go to McDonald's. Mr. McQuaid is in agreement with the Board Professionals and feels it will be safer having a one way. Mr. Brady also agrees with the planner and would like to see drawings. There was further discussion about the one way. Mr. Glatt asked if they had a sketch of the close up of the traffic flow around the site. Mr. Drew also stated there would be additional comments and they really need a sketch. Perhaps the traffic engineer could explain the pros and cons at a future meeting.

By Board Motion and Second, there was a break at 8:52 p.m.
Return from break at 9:10 p.m.

Mr. Wyciskala indicated that the applicant's professionals had a discussion during the break and have decided to look at the issues. McDonald's takes a look at circulation they have 14,000 similar designs. The design is the same as it has been for 30 years. They appreciate the comments and will take a look at them. They have a sense of the angled parking and what Board professionals would like to see and the feasibility of it. It will require them to approach Inserra and possibly result in modifications in their site plan as well and that could be a challenge.

Mr. Wyciskala asked if there was anything else not in the reports that they would like addressed because they will probably have one chance with Inserra.

Mr. Castronova made a point that this site is very small compared to others in New Jersey.

Mr. Glatt asked the professionals to comment on what they want taken care of.

Mr. Drew added about the parking use area, testimony be provided what that means, number of parking spaces etcetera, delivery off site and also on building. Proposed floor plan with regard to increase to the building. A rain garden is to be looked into for the site, which is a water quality improvement feature. A sketch will be brought for this purpose.

Mr. Wyciskala assured the Board that they will address other items at the next meeting. He advised the Board that the County report with regard to the curb widening is acceptable but the County suggests moving the building and changing the orientation and they will not do that if that is insisted upon then this McDonald's will remain and the application will be withdrawn. For the Board's edification, Mr. Glatt added that was not the Board's concern. Mr. Drew asked if they could bring building material samples of the façade, brick, tile, the said they would. There are no plans to bring in an architect.

Mr. Cristaldi was asked for comments. He had a little bit of a question on the storm water management and the rain garden and the engineer should take care of it. The roof leaders will be piped into the system he does not want them to drain, a little of their site drains off into the parking lot for shopping center, so there is some runoff and he does not want it to leave the site. The easements would have to be in place, Mr. Wyciskala commented that all that would be conditions of approval. Mr. Cristaldi also asked about vacating of the sanitary sewer easement but there is a manhole there that they will reset, and he did not understand why they would do that it is being removed. Also, curb lines that seem to be outside the property lines on the north and west side of the building and are there today. They will have the ones that straddle the property lines, on the north and west, they are there today, the landscape aisles, the drive-thru is basically centered on the property line, the sidewalk curbing in the front of the building overlaps the property line. There are

previous agreements that the questions will cover. Mr. Cristaldi also indicated that they should shield their light to keep on their property.

Michael Hakim was given the opportunity to discuss his concerns and all comments are just to improve and they have value.

Number 1 on Mr. Hakim's list was also storm water, water quality, rain garden and he thought it could be located in the Southeast corner which is the low point of the site one parking stall would be lost but they could get it back on the west side of the row. The 2004 State storm water regulations promote the rain gardens it would be a great improvement. There are wetlands and a stream adjacent to the property. Number 2 trees are A rated most White Pine They could be preserved with a slight change in circulation drive where people drive to order boards. The applicant's engineer mentioned sweeping radii that would promote ease of circulation. Mr. Hakim is asking for the first turn to the order boards make it a larger radius and pull the roadway in towards the building. All that will be lost is a little lawn area adjacent to the building and the benefit is pulling disturbance away and preserving the white pines along the boundary. They will take a look at it. There is excessive pavement on Marshall Hill Road. He wants the retaining wall removed and they could save a beautiful Sugar Maple Tree. There are no overhead power lines so they could have a wider landscape front yard between Marshall Hill Road and the parking lot it will mimic the streetscape design in front of Inserra it will help to maintain the continuity. He hopes the sidewalk does not have to go in front of the site it does not meet anywhere, a comment was made that it would not be extended. Mr. Wyciskala said they would take care of it, they will address the items.

Mr. Brady reiterated that the applicant's professionals would discuss with Board professionals and get the appropriate drawings in time for the next meeting, January 22, 2013.

Around the back and side of building it is a one way.

Motion by Steven Castronova to carry the application to January 22, 2013.

Second by Frank Curcio

All in favor to carry the application

No further notice required.

Motion by Steven Castronova to approve the 2013 calendar

Second by Russell Curving

All in favor to approve

All in favor to accept Mr. Glatt's Attorney bills

All in favor to accept Mr. Drew's Planning bills

All in favor to accept Mr. Cristaldi's Engineering bills

All in favor to accept Mr. Hakim's Landscape Architect bills

Mr. Glatt explained that the matter was remanded back to the Court and it was scheduled and on the calendar and subsequent to that we heard that the applicant was not going to proceed with the additional testimony and was going to submit another application, Mr. Glatt has not heard from the applicant, he did have an attorney on the appeal. The attorney advised him that he was not retained to do any subsequent applications and it is his intention to write to the Court and advise the Court that contrary to the Court's order to send it back, that the applicant has decided to not come back before the Board and then therefore, ask direction from the Court because the Court may decide on what's been heard, reverse it. He is not sure, there are outstanding issues with the matter.

Mr. Brady asked if he knew what might happen and Mr. Glatt indicated that the Court may direct him to send a letter to the applicant whether he will proceed or not. Mr. Glatt could not get too involved with the discussion because the Board may have to hear it again. The site as presented was not exactly what is there. There were some Board Members that performed a site inspection. There was an aerial photograph done of the property which puts everything in a clear perspective.

Motion and Second to approve the minutes of September 18, 2012

All in favor to approve

Everyone have a Happy and Safe Holiday.

Motion by Steven Castronova to adjourn the meeting of December 18, 2012.

Second by Michael Gerst

All in Favor

Meeting adjourned at 9:40 p.m.

Adopted: February 19, 2013

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment