

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
September 28, 2010
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:41 p.m. The Board Secretary read the Legal Notice.

Pledge

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

Roll Call

Present: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Vivienne Erk, Robert Brady

Also Present: Denyse Todd, Board Secretary

Absent: Arthur McQuaid

Chairman Brady asked Mr. Olivo to sit at the dais in Mr. McQuaid's absence. Mr. Brady gave a brief description of the duties of the Zoning Board. The public portion and the appeal process were also explained. The Board Attorney, Stephen Glatt was introduced.

**GAETANO T. RIDOLFO
USE VARIANCE ZB-06-10-06
Bulk Variance ZB-06-10-06
Block 3702; Lot 1
20 Laurel Ave., R-2 Zone**

Gaetano T. Ridolfo came forward when the application was read. Chairman Brady confirmed that he was requesting a postponement. When asked for the reason he explained that his attorney and planner could not make the meeting. Mr. Wieser gave Mr. Ridolfo a copy of the Board Planner's report to give to his attorney. Mr. Glatt confirmed that the attorney for the applicant is John Barbarula.

Motion by Ada Erik to postpone the application to the October 26, 2010 meeting.

Second by Gian Severini

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo and Robert Brady

No: none

**3023 ROUTE 23 CORP. (Amended)
USE VARIANCE #9740-0288
Preliminary & Final Site Plan #9720-0058AB
Bulk Variance #9730-0289
Block 16001; Lot 9
3021 Route 23 North; HC Zone**

Chris Erd from Williams, Calliri, Miller & Otley, attorney for the applicant. The original application from 1998 was prepared by the owner of the property. This application is Gill Petroleum Inc. He has the owner's permission for the application.

There was an application and approval for Preliminary and Final Site Plan with a D3 Variance for the gas station, which is on the median on Route 23. It is a conditionally permitted use in the Highway Commercial (HC) Zone. They originally could not meet the permit issues back then. In the interim the station was constructed but not by the approved plan. The applicant is before the Board to request an amendment to the original approval for the as-built gas station with a couple of minor changes from the originally approved plans.

The Professional Engineer, Calisto Bertin, 66 Glen Avenue, Glen Rock, NJ was sworn in by the Board Attorney. He has a degree in Civil Engineering from Villa Nova University; a Masters, licensed as a Professional Engineer in New Jersey since 1983 as well as licensed in 5 other states. He

is the Principal of Bertin Engineering. The main office is in Glen Rock with an office in Massachusetts. There are 30 employees. Mr. Brady accepted the credentials of the Engineer.

The applicant's attorney asked the engineer to discuss the application. Mr. Bertin explained that the original approval was granted in 1998. Several years later the property was leased to Gill Petroleum. Gill started construction a few years ago. The contractor who built the site did not construct according to the approved plan, Bertin Engineering did the as-built and when they found out about the discrepancies, everything that could be changed was changed. Landscape islands were moved; aerial lights and signs were moved to get it back where it belonged on the site. There are a few issues that were not easy to move and that is why they returned to the Board. Mr. Bertin explained that anything still not in accordance with the plans was minor in nature. The one visual change is the canopy.

The engineer wanted to address Mr. Kirkpatrick's memo of September 2, 2010. The trash enclosure was the first item to be discussed. The Engineer is referring to an as-built that was submitted with the application and the Board has as well. The as-built is as it stands now. There was a trash enclosure behind the building and it was not taken into account that there was a two foot grade from the back of the building to the property line, it was corrected by building a small retaining wall and placing the enclosure in that and that was one deviation from approved plans.

The second issue was with drainage. The first contractor put in drainage a little differently than what was approved. The drainage for the canopy was to go toward the northbound side of Route 23 but instead he took it to an inlet between the north and southbound side of route 23. This may require an easement from the Department of Transportation however; they put in additional pipes so no matter what the DOT wants them to do they can do it. If they want to connect to route 23 they can, if it is to be left where it is they can do that. The pipe that was put in is too small so they are ready to replace it. It is a deviation but the DOT will let them know how to resolve it. They have a letter from the DOT that states that it should not be an issue and any approval will be subject to DOT approval of the drainage.

The third item is the signs. There were two freestanding identification signs approved there are two on the plan. The one on the southbound side was moved from the west corner of the site to the east corner of the site because of a sign on the property next door that would have blocked the sign. Both I.D. signs are on the west side of the property. The original proposal had signs all around which said deli, food...and this building has a Food Mart sign, and two other signs, there are fewer signs than original building. The square footage of the new building is a little bit bigger. They meet the limitations for building signs 280 square feet is allowed 28.5 square feet was originally approved and they have 44.5 square feet that they are seeking approval for. It is still well below the maximum permitted. The original canopy had four signs at 4 square feet each for a total of 16 square feet. Now there are 4 signs 2 are 8 square feet and 2 are 19 ¼ square feet. The new total is 70.5 square feet. For the original plans, 183 square feet was permitted. The Sunoco sign will be larger. The engineer is showing the signs on a board that he brought for the meeting and explaining about the signs and what you would see from each direction. The planner was at the site and the Nascar sign is there. A 15 foot draft was approved under the canopy with a 3 foot fascia. A Board Member asked how tall a tanker truck was and it is less than 10 feet high. The canopy height is common the approval was 15 feet under the canopy and then a 3 foot fascia. What was built was the same as approved. They used to build them at 13 feet and 15 became the standard because a truck with a ladder would be taller. The amount of pumps under the canopy was not increased. It is 2 islands with 3 pumps each, both sides working. The original approval had 4 dispensers each and they have 3. There were no questions of Board Members at this time.

The applicant's attorney wanted to go back to the site plan for minor set back deviations. The Landscape Plan is less cluttered and he will reference sheet C1.2. The side yard set back on plan was approved at 11 ½ feet and it was built at 11.2 feet, a .3 difference which was caused by the thickness of the siding on the building. The front yard of the building was approved at 28.7 feet and it is now 31.2 so it has a slightly larger front yard. The front yard of the canopy has gone down slightly originally approved at 3 feet and it is now 2 ½ feet, caused by not using a surveyor to stake. All of the landscape islands were ripped up and put back to where they were supposed to be. The canopy was not as easy to move. There was a minor deviation in the floor to area ratio, which was .07 and now .08 this takes into account the outside dimension of the wall and it was just how it was calculated. The impervious area went from 93.3 to 89.9 the engineer felt it should stay the 93.3 because of how the area in question was calculated it is gravel under the canopy and rainwater will not get there. The building height came down from 16 feet to 14 feet. The set back for the right of way around gas pump was approved at 15.5 and as-built at 14 which is 1 ½ feet closer, which is again because of the way the canopy was laid out. The air pump and vacuum are adjacent to the I.D. signs. The maximum building coverage increased slightly from 7 to 8%. The canopy fascia

being sloped as opposed to a flat canopy is different and that was part of the conditional use requirement and part of the plan, their clients received building permits for the style and it was what Sunoco used to use in the 70's this needed to be addressed.

Robert Kirkpatrick, Interim Board Engineer mentioned that he went to the site to re-inspect per his September 2, letter. The handling of the dumpster was better than what was shown on the original plan. The contractor that was hired stepped up to the plate on that and did a very good job. He has no problems with the safety issues or the physical issues on the site now. William Drew, Board Planner was also out to the site and the deviations being requested are minor in nature, he noticed propane tanks and wanted to know if there were any intentions to sell propane for grills or was it for use by the store and it is for store use. The applicant stated there was no intention to sell propane just for store use.

Mr. Brady asked if Board Members have questions or comments. The outstanding issue is the DOT and whether an easement will be granted. So if it is not granted they will be required to remove the pipe that runs on DOT property which means they will use their alternate drainage system that they built already which was the original approval and will mean that they connect to the drainage system under the curb on the north bound side of RT 23. It will not cause a great deal of construction but they would need to take pipe away from DOT property. ADA needs were met. Mr. Glatt asked Mr. Kirkpatrick if a condition of approval stated that the applicant could either wait for the DOT to make their decision on the drainage or if they go with the alternative. Mr. Kirkpatrick felt the question was how long to wait. If it is decided to just put on Northbound side Mr. Kirkpatrick does not have a problem with it because it would bring it back to the way it was originally approved. The applicant's attorney said that would be fine.

The applicant's attorney feels that the changes are minor and that corrections were made to the Board's satisfaction and they request an approval.

Chairman Brady opened the meeting to the public.

The Board Attorney swore in Jessica DeGraf, 179 Paradise Road has concerns regarding the lighting. She asked if it was a 24 hour gas station and was told yes. The Board Attorney explained that approvals were received way back when. There were hearings then and the public was invited to comment on anything to do with the application. After the hearings, the Board approved and granted site plan approval. When the original contractor went in they deviated from the approvals. The new contractor before coming to this meeting chose to correct all of the other matters especially those to do with safety and public health. Unfortunately, the Board does not have the jurisdiction to go back and re-visit the other issues. If there are concerns perhaps she can talk to them and see if they can do it. The only reason we are at this meeting is to discuss the issues listed. Ms. DeGraf asked if the change in canopy sign difference would change the amount of light. The Engineer does not feel it should change all that much, from a distance you will see it but it will not make it bright enough to read by. Some of the homes are within 200 feet and she feels it will make a difference. The Board Attorney explained to the engineer that residents are not concerned with reading but about their privacy. The applicant's engineer agreed there is more wattage, since the sign falls within the parameters of the ordinance, stations re-brand and different signs will be put up. The Chairman explained there is zoning in place that allows for certain wattage on signs in commercially zoned areas and as long as they stay within that they do not need a variance. There is testimony from the applicant and Board experts that they have not exceeded that. Mr. Kirkpatrick explained it was foot candles on the site. The applicant's engineer explained that although it is a bigger sign it doesn't emit more light. It will not emit light far away. You will not be able to measure the light from the canopy, you will see it but that is it. Ms. DeGraf would like to know the difference between what was approved and what was built. The attorney explained that they could go bigger if they wanted. They proposed a smaller size originally, and there is square footage that the applicant is allowed. The applicant's engineer was trying to explain that there would be no difference in the light that hits the house. It will not emit more light. Any environmental issues of concern are probably not under the Board's jurisdiction and this application is past that. The applicant's engineer stated the environmental issues fall under The Department of Environmental Protection, a State Agency. The construction of this site helped remediate the site. There is ongoing remediation and monitoring, the state is on top of that and it is under the purview of the State. She is an environmental consultant. The applicant is not the owner of the property. The remediation was done before the applicant was involved with it. Ms. DeGraf is concerned about the ground water and the school within the vicinity. The information about the sign was now available and the sign allowance is up to 20% of the side of the building. The drainage was the next concern for Ms. DeGraf, she wanted to know about the effect on the downgrading of properties if they connect to the highway or not how long will it take. The applicant's engineer said the site is connected now, they inserted a 4" pipe when they really need a 6" pipe, will a change be noticed, the water will build up on the canopy and flow a

little slower she would not notice a change. The drainage being discussed is the canopy drainage. There will not be storm water runoff, it is going to the state drainage system, it is roof runoff so it does not have to be treated. Water flows into highway drainage system. Sheet flows off of site some onto grass area, which contains the inlet and some out the driveway aprons into the highway drainage the only drainage is what does not fall onto the canopy. Ms. DeGraf asked if the trash enclosure was bear proof and was told it had cedar planked siding.

Chairman Brady asked if there were any other community members who would like to speak for or against the application.

Mr. Glatt, Board Attorney swore in Michael McFarlane of 50 Paradise Road, he moved in after the original approvals were in place. The light issue is causing a problem. Mr. McFarlane stated when they are on it is like Yankee Stadium in his living room. He asked if anyone wanted to look at it. The Chairman suggested that the applicant do a light study to see if they were in compliance. The applicant's engineer explained to their attorney that the suggestion was to go out and do measurements to see if they are in compliance with the municipal and state ordinances. Mr. McFarlane explained that where his house is located it is beneath the canopy and it is like a spotlight in the house. He would have brought this up sooner if he had known or if the previous owner had told them the information. Mr. Glatt explained that if the hearings were pending perhaps they should have been noticed but he does not know. Mr. McFarlane just found out about the previous leak but Mr. Glatt explained that it was before this owner. Every approval this Board makes is subject to local state and federal regulations so this Board does not have control over environmental impact. They should be able to contact the DEP for that information. Mr. Hannan explained that the scope of this Board is very limited and in this application is extremely limited. They can only consider things at present that is the law. The decisions made are based on Municipal Land Use Law as well as state local and federal regulations. Mr. McFarlane asked who should have informed them of the situation and it is unsure whether anyone needed to, it might be a buyer beware situation. When this came back to the Board, everyone within 200 feet had to be notified because that is the law. It would be the responsibility of the homeowner prior to owning check out the neighborhood and see what is going on. You would be able to find out information by seeing officials in Town Hall. As far as notification he does not feel it would be anyone's responsibility to notify him or her before purchase. Mr. Glatt explained that they need to stay within a certain percentage for signs as the Chairman stated earlier and as long as they stay within that percentage then they would not require a variance. When they did the site plan it is their intention of what they plan to do but things change and the company changed as long as they stay within their maximum, just like they eliminated or reduced some variances.

Mr. Glatt mentioned that it was up to the Board but he would suggest to the Board to vote on the application this evening but as a condition of the approval at this point that their client do the lighting study recommended by the Board Engineer and make sure they meet the requirements for the purpose of the applicants and everybody if for some reason it is too bright. Mr. Kirkpatrick explained it is an as built illumination plan taken after the sun is down to determine what the level of the lighting is and if it falls between the minimum and maximum then it is an acceptable plan if it too low or too high then they can make an adjustment. The applicant's attorney asked about the time period to have the study done and Mr. Glatt explained that the Board would vote on it tonight and the memorialization would be in October. Ideally, if it could be given to Mr. Kirkpatrick at least 10 days before the meeting and the interested members of the public can view it 9 days before the meeting, Mr. Kirkpatrick can review it and give the Board the report and if within the allowed limits, there is no problem and if not they can return and have a solution so the public knows there is a solution. The applicant's attorney wanted to speak with his client on the suggestion. The applicant's attorney said that his client is in agreement with the condition. They want to do the lighting study as quickly as possible because it has not been operational for 4 years. They can do anything else they need to do. If it needs to be reduced, reduce it before the meeting. They want to get a temporary C.O. and Mr. Glatt explained that we do not do that and it has been discussed before. The Board is concerned for them and it is understood if they made a mistake it will be corrected and if within bounds of ordinance than the Board's hands are tied. They are willing to go through time and expense to have study done. Mr. McFarlane asked if it was within the boundary if they could be required to put in bushes and Mr. Glatt said no that would be state land. Mr. Glatt asked for all to see what the study says see what is most offensive and if something could be done maybe they could talk to the applicant. They do not have to but you never know maybe they want to be good neighbors.

Ada Erik after seeing no one additional for or against the application moved to close the public portion.

Second Gian Severini

All in favor to close the public portion

The applicant's attorney came back for the summation and said it was all the same as his previous closing but they would also do the lighting study to accommodate the residential neighbors which they agree to and they will meet the lighting ordinances and any other additional legal lighting requirements with the additional condition he asks that the application be approved.

Mr. Brady asked the Board for any additional discussion or perhaps a motion.

Mr. Drew asked for as-built signage plans since there were questions of the residents. Which will entail one revised sheet showing the signs.

Motion by Francis Hannan to approve the application for amended site plan approval for 3023 Route 23 Corp. (Gill Petroleum), Use Variance # 9740-0288, Preliminary and Final Site Plan #9720-0058AB, Bulk Variance #9730-0289, Block 16001; Lot 9, 3021 Route 23 North, HC Zone. The applicant showed that from the original site plan that most of the things they are asking for are de minimus, they already went out before coming to the Board and corrected the more egregious errors from the original contractor, the front yard, side yard, and front yard canopy, the fact that the canopy is flat and not sloped, some things were reduced from the original plan for example building height, impervious surface even though it will be about the same, it will not be increased. This is subject to a couple of conditions, Department of Transportation to approve the right of way for the drainage and also replacement of the proper piping on that drainage or hook up to the original plan out on to Route 23. They will do an as-built illumination lighting plan and do a study to see if they meet the criteria of the ordinance and also the condition of a revised signage plan which will be submitted and all should be in before the memorialization.

Second by Ada Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Robert Brady

No: none

The applicant's attorney did not want to interrupt the vote but he does not think he will have information from the DOT by the date requested and Mr. Hannan and Mr. Glatt explained that the choice was theirs and the wording was the applicant would do this or that.

Mr. Glatt told the public that they could check with the Board Secretary 9 days before the meeting for the information on the lighting study.

APPROVAL OF INVOICES-BOARD PROFESSIONALS

Motion by Ada Erik to approve invoices for Stephen Glatt

Second by Gian Severini

All in favor to approve the invoices

Motion by Ada Erik to approve invoices for Robert C. Kirkpatrick

Second by Gian Severini

All in favor to approve the invoices

The New Jersey Planner newsletter was in the Board packet and Mr. Brady found it very informative, the Highlands Act went to the Federal Supreme Court and there was no comment, which means affirmation of the lower courts judgment. The Highland's Act is in force.

Motion by Ada Erik to approve the minutes of August 24, 2010

Second by Gian Severini

All in favor to approve the minutes.

DISCUSSION

The Chairman commented that the only Engineer Proposal received was from Mr. Kirkpatrick, did the Board want to carry it for another month, and it was noted that the date given in the request was for a deadline date of October 15, 2010. Hopefully there will be interviews at the November meeting.

Motion by Ada Erik to adjourn the meeting of September 28, 2010

All in favor to adjourn the meeting

Meeting adjourned at 8:46 p.m.

Adopted: October 26, 2010

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment