

Borough of Lodi
Zoning Board Minutes
August 27, 2009

The meeting was called to order by Co-Chairperson Mr. Avola at 7:00 p.m.

Members Present: Mr. Bene
Mr. Staine
Mr. Gilson
Mr. Gaciofano
Mr. Pinto
Mr. Schrieks
Mr. Avola

Also Present: Zoning Board Attorney Marcel Wurms
Zoning Board Planner Gary Paparozzi
Zoning Board Engineer Thomas Solfaro
Zoning Board Secretary Marlene Muska

Members Excused: Mr. Paladino

There was a motion by Mr. Gaciofano, seconded by Mr. Staine to accept the minutes of the July 23, 2009 meeting. All members present voted in favor of the motion.

There was no representation for Klein Outdoor Signs, and Mr. Wurms suggested we hold this application to the end of the meeting. No one was here in the audience for the application.

The application for 84 Corabelle Avenue will be carried to the September 24, 2009 meeting and no one was here in the audience for that application.

There was a 5 minute recess as Chairperson Mr. Inserra was on his way.

There was an apology from Mr. Inserra for being late.

Roll Call:

Members Present: Mr. Bene
Mr. Staine
Mr. Gilson
Mr. Gaciofano
Mr. Pinto
Mr. Schrieks
Mr. Avola
Mr. Inserra

Also Present: Zoning Board Attorney Marcel Wurms
 Zoning Board Planner Gary Paparozzi
 Zoning Board Engineer Thomas Solfaro
 Zoning Board Secretary Marlene Muska

Members Excused: Mr. Paladino

Application: 050709Z
 SAV EATERY LLC
 Dunkin Donuts
 179 Route 46 West
 Block 228 – Lot 7.1

The attorney for this application, Henry Ramier was present along with the applicant. Mr. Wurms clarified that the affidavit of mailing was turned in. Mr. Ramier stated in the year 2000 BP Products of North America came to the board to demolish an old repair facility and replace it with the BP Gas Station and Convenience Store, within the convenience store was a self service coffee station by the name of Wild Bean Café. Several months ago the owner and operator of the facility decided to replace Wild Bean Café with a Dunkin Donuts. The applicant applied for a construction permit, to make some changes to the interior of the site. Mr. Melfi decided the applicant needed a use variance, and denied the construction permit application.

This will be a two-fold application, one to deny the decision of Mr. Melfi, and/or to approve the use variance Mr. Melfi stated the applicant needed.

The facility has been there since 2000 or 2001, the facility has nice landscaping is kept well and is clean and the use variance that is there now BP Connect seems to work well. As part of the application there will be no change to the footprint of the building, no new structures, there will be replacement signs, for every square foot of replacement signs being put up similar footage of signs will be taken down. There seems to be inconsistencies in the 2000 application, and they are sorry for the inconsistencies and though testimony the attorney feels they will be cleared up.

Mr. Avola questioned if Mr. Ramier was the original attorney, and he was.

Mr. Inserra questioned the back wall which is the west wall and the display on the back wall, which is the area.

Mr. Ramier stated the front of the building and the free standing signs will change.

Mr. Wurms stated the board should first vote for the appeal and then vote for the application (if necessary).

Mr. Wurms stated his proof is both one in the same so therefore we will hear the application.

Mr. William Viola, the engineer for the applicant, gave testimony using sheet 2 of 3 of the site plan the members have in front of them. Using the direction east being the right of the page and west being the left of the page. He pointed the location of Wild Bean Café and this will be converted to the Dunkin Donuts. The portion of the Wild Bean Café is now vacant; however

there are ovens and counter space there. The front of the building is the previously approved signage is, they are requesting to change the previously approved signage to Dunkin Donuts.

Mr. Avola questioned if Mr. Viola was the engineer from the previous application, and Mr. Viola was not, however Boellar Engineering the firm Mr. Viola works for was the original Engineering Company.

Mr. Viola stated on page 3 of 3 of the site plan is the signage detail.

Mr. Inserra stated the back part of the plan will stay the same as a convenience store

Exhibit A-1 is a colored photo of the concept of the new signs, was labeled by Mr. Wurms.

Mr. Viola again stated on page 3 of 3 detail one shows the previous approved freestanding sign and detail two shows the proposed freestanding sign with a change in text only, no increase in sign footage.

Mr. Viola stated parking which was another issue that came up, the applicant calculated the spacing as a retail store and restaurant, they are showing 2 tables with 6 seats and based on those calculations 12 spaces are required, and there are 12 existing spaces on the site.

Mr. Paparozzi disagrees with Mr. Viola, Mr. Paparozzi cited the borough ordinance 195-11 page 11, number 54 the gross floor area, which states will be measured by the exterior faces of the exterior walls. Mr. Viola dissected the building and created a retail and restaurant. Mr. Paparozzi the gross floor area is measured 1 space for 250 square feet by using the exterior walls. Mr. Paparozzi stated if he is reading this incorrectly and Mr. Viola is correct they are creating a D Variance, because they are using 3 principal uses on one lot. They are expanding the non-conforming use they have now. Mr. Viola is using retail, restaurant and gas station. Mr. Paparozzi stated in his report that he used it as retail and measurements per the ordinance, and since they are using tables and chairs I asked for 2 additional spaces.

Mr. Avola stated according to Mr. Paparozzi's report they are losing a space with the air pump, and they would only have 11. And according to Mr. Paparozzi's report you are required 14 spaces.

Mr. Ramier stated they requested for a D Variance in the advertisement.

Mr. Wurms stated the notice is sufficient, it does cover the appeal and a use variance is involved.

Mr. Paparozzi stated he does feel the parking requirement should be 14 and they are providing 11 and there are only 7 striped.

Mr. Ramier stated the sale of the coffee is not new to the site. It was approved in 2000.

Mr. Ramier questioned Mr. Viola in the event the board deems necessary to get a variance for parking are there places on the site for defacto parking. Mr. Viola stated the pump spaces can be used as defacto parking spaces. Mr. Viola stated he thinks the parking spaces are striped now. The geometry is not changing, they will stripe the spaces as per the original approval, and 5 spaces available along with spacing in front of the store will be 7 and the 12 defacto spaces under the canopy will be 24 spaces.

Mr. Bene questioned along the back fence isn't there spaces, along the northern part of the site.

Mr. Paparozzi stated in the 2000 approval he believes they were not allowed to park there.

Mr. Gaciovano questioned deliveries.

Mr. Viola stated there will be a box truck delivery every day once a day for the delivery of the donuts. Width wise they will be able to park in a regular space or there is an area at the front of the site a curb line they can use for approximately 30 minutes, takes place early in the morning. The once a week deliveries for the cups and paper products will be used by a tractor trailer which will be approximately 1 hour.

Mr. Ramier stated no donuts will be made at the site.

Mr. Gaciovano questioned how many doors will be used to access the building.

Mr. Viola stated there is one door – the existing door.

Mr. Gaciovano requested bollards be used to prevent cars going into the building.

Mr. Inserra questioned if there is a delivery space available.

Mr. Paparozzi stated there is nothing marked.

Mr. Viola stated the space is just beyond the landscaping area.

Mr. Viola stated the number of employees will increase by approximately 1-2 employees from what is there today.

Mr. Viola stated a lot of the employees either come by bus or walk.

Mr. Avola questioned what if these employees leave and the new employees do not use public transportation.

Mr. Wurms questioned the engineer regarding the parking.

Mr. Solfaro agrees with Mr. Paparozzi with the measurements of the exterior walls and 14 spaces should be required.

Mr. Avola feels we will be losing 2 parking spaces if the employees will at sometime drive.

Mr. Wurms stated under the ordinance with the off street parking he agrees with Mr. Paparozzi with the gross footage, certain use retail and restaurant does not require spots for employees. The defacto parking does not qualify with the ordinance in his opinion.

Mr. Paparozzi stated in the 2000 application that there was no parking on the north side of the building as there was a complaint by a neighbor Mr. Parisi.

Mr. Wurms stated there is a curb cut on North Savoie Street and there is no parking allowed by the driveway.

Mr. Staine stated there are possibly 3 different businesses and how many employees will be there.

Mr. Ramier stated there are 2-3 for the convenience store / gas station and 1-2 for the Dunkin Donuts. So a total of 5 when it is busy. They can park in the remote spaces on the other side of the canopy.

Mr. Inserra stated that speaking to parties are any spaces rented out.

Mr. Ramier stated the landscaping that is missing along the Route 46 grassy area, they agree to put in the landscaping along the Route 46 right of way. If the board agrees they will put in an equivalent amount in another space, but if the board feels they will put it in along the Route 46 right of way.

Mr. Viola stated the discrepancies in the construction of the building the 100 square feet is related to the as built survey. It is a prefab building and the as built survey picks up the corners of the building and takes the area of that. He believes there were discrepancies in the as built survey.

Mr. Avola asked if Mr. Viola can read the lighting conditions paragraph in Mr. Paparozzi's report.

Mr. Avola stated according to the paragraph there was nothing done correctly as to the 2000 application. The building is larger, the building is set in a different location, the landscaping issues and the parking issues.

Mr. Ramier stated lets talk about the size of the building, the discrepancies is about 3% of the total area of the building. There might be discrepancies in measuring differences. The ordinance requires a minimum area of 4000 square feet and so they are still within the minimum square footage of the ordinance.

Mr. Paparozzi stated if you are approved for a building of 1500 square feet you are required to put a building up that is 1500 square feet. Regardless if it makes it less of a variance. It is suppose to be ½ foot from the property line.

Mr. Inserra stated his concerns are for applications that come before this board for the second time when the obligation of the first application is not met. We are having a meeting regarding resolutions and this board wants them to be followed to the "T". If the applicant makes all kinds of commitments and they don't follow them 100% they should never get a C.O. and they should come back to this board and explain why.

Mr. Viola stated the original approval was for 5 feet rear yard set back and the as built survey picked up in the north west corner is 4.6' which is approximately 5 inches, the south west corner is 4.9' which is 1 inch. The overall effect is diminimus they are up against an adjacent parking lot.

Mr. Paparozzi questioned Mr. Wurms the air pump was not in the original application. The ordinance states it has to be 25 feet from the property line or street line, in this case there is no distance on it but in scale it is approximately 15 feet. That was never picked up in 2000. It was just an oversight then. No one picked it up.

Mr. Wurms stated if it was approved in 2000 then there is nothing that can be done now.

Mr. Staine questioned where they think they can landscape.

Mr. Ramier stated as a condition of approval they will put the landscaping in where BP did not or did put in and let die.

Mr. Avola stated if we approve or disapprove this application, they still have to put in as per the original resolution.

Mr. Gilson questioned the freestanding signage, you are showing 6 panels on the original and 5 panels on the proposed signage. Looks like you eliminated a gas grade.

Mr. Viola stated they would like to use that 6th panel in reserve and leave it empty for now.

Mr. Gaciovano stated if a buffer can be used along the back wall.

Mr. Inserra stated there is a 6 foot fence.

Mr. Paparozzi stated there is a vinyl fence that should be an ample buffer.

Mr. Wurms questioned the parking.

Mr. Viola stated there are 12 striped parking spaces now, 7 on the west side – 5 on the east side. The 12 fueling position can be used as parking, as customers do use the fueling positions and use the store at the same time. The whole gross area and then the use of the restaurant use you are using the gross area twice. They split the use and that is how they came up with the spaces.

Mr. Paparozzi stated that if you use the whole gross area and adding the tables and chairs it is not unreasonable to ask for the 2 additional spaces. The space in front of the air pump, you can not either use the space or the air pump. I do believe 14 spaces is the number by ordinance interpretation, not using the defacto spaces. I do believe you need a loading and unloading area designated. I do believe the Borough Engineer should review a final as-built survey or make a final inspection to verify compliance, should the board approve this application.

There will be a 5 minute recess.

Roll Call:

Members Present: Mr. Bene
Mr. Staine
Mr. Gilson
Mr. Gaciofano
Mr. Pinto
Mr. Schrieks
Mr. Avola
Mr. Inserra

Also Present: Zoning Board Attorney Marcel Wurms
Zoning Board Planner Gary Paparozzi
Zoning Board Engineer Thomas Solfaro
Zoning Board Secretary Marlene Muska

Members Excused: Mr. Paladino

Mr. Inserra stated the application for 080509Z Selangor Inc will be postponed to the September 24, 2009 meeting. Mr. Inserra stated he ask the applicant to re-advertise.

Mr. Wurms stated he would like to see the proof of mailing.

Mr. Avola questioned the proposed signage shows for future use.

Mr. Viola stated the 6 panel areas are approved and they just wanted to reserve it for another grade of gas, not another business.

Mr. Avola questioned that that reserved panel not be used for an additional business in the future.

Mr. Gaciofano questioned the egress and ingress on Savoie Street.

Mr. Gary Dean the Traffic Engineer who prepared the Traffic Impact Assessment for the applicant. There will be an increase in traffic with the change in use, however within a mile and a half to two mile radius there is 8 other Dunkin Donuts in the area. In this report they counted traffic at a typical Dunkin Donuts during the morning peak hours in which 70 to 75% of their work will be done. There are approximately 950 to 900 vehicles that pass route 46 during peak

hours and 70 vehicles that pass on Savoie Street. Out of that number of vehicles 40 were seen at the gas station. Out of those 40 cars seen at the gas station 25 vehicles gained access through Route 46 and the remaining 15 cars entered through Savoie Street. Based on some data which has less Dunkin Donuts in the area there are approximately 70 cars that will use Dunkin Donuts per hour, so this site might see 50 cars using the Dunkin Donuts facility, might be less seeing how this is the come home side of Route 46 and that there is a larger facility on Main Street. Referencing the future “build” level of service in Mr. Dean’s report there is no change in traffic during the peak hours. Mr. Dean feels the seven parking spaces will be enough for the Dunkin Donuts facility, however the turn around time will be approximately 15 minutes. The employees are either driven to the site, use common transportation, or other means of transportation is used. The 12 spaces that are appropriate are sufficient.

Mr. Dean presented to the board Exhibit A2 which was a satellite colored photo of the site. Showing enough parking spaces on this site. A typical highway service station has 6 dispensers so there is no line and customers will not pass the station to look for a service station with no lines.

Mr. Schrieks questioned there will be 1 or 2 employees at the Dunkin Donuts site. You claim they will be handling the 70 customers within the hour. You also stated anyone who works at this place will never have a car.

Mr. Dean stated the 5 other spaces on the site can be used for the employee parking.

Mr. Avola questioned the 70 customers per hour averaging a 5 minute stay. That’s 14 people for 5 minutes. This is not a self service facility anymore. The tables and chairs will not have a 5 minute turn around.

Mr. Dean stated if the customers do stay in there 5 minutes the 7 spaces will turn over 12 times an hour allowing 84 customers. At the bulk of our business at 7:30 in the morning there will be a turn around, the tables will really not be used during the peak hours.

Mr. Staine stated the 12 spaces are there, however you will be moving the pump, because technically you are losing the space.

Mr. Avola stated the air pump space is for you to use the air pump.

Mr. Ramier stated this was approved during the previous application.

Mr. Bene questioned if anyone ever got hit in this parking lot.

Mr. Gilson would like to ask the owner a question.

Mr. Yucel Edebalı is one of the owners of the company that owns the gas station. No one was ever hit in the parking lot. The parking spaces are almost always empty, unless someone is in doing maintenance on the station. There is a similar station in Edison that Mr. Edebalı owns and they pump approximately 300,000 gallons of gas at this station, all six pumps are filled only

during busy hours. The gas station in Lodi only pumps 3000 gallons a day, this is a very weak station. Most of the customers are gas pump customers at the Lodi station. Only ½ the pumps are full at the busy hours. The store customers are mostly the pump customers, going into the store while the attendant is pumping the gas.

The owner showed the following exhibits so the board is aware of the station and the site.

A3- Savoie Street side of the station

A4- Corner of Savoie Street and Route 46

A5- West side of building looking towards Savoie Street

A6- Mini Mart across Savoie Street

A7 – Route 46 and Savoie Street Driveway

A8 – Savoie Street Entrance

Mr. Edeballi feels his station is the best looking station around, the convenience store is the cleanest around.

Mr. Edeballi stated the air pumps and vacuum are designated spots, however if a customer uses the spot as a parking space he loses revenue.

Mr. Edeballi will replant the landscaping that was originally there, the salt and plowing done on Route 46 will kill the landscaping again.

Mr. Avola questioned the shrubbery along Route 46 – what is the purpose for that, we can overrule the previous resolution.

Mr. Wurms questioned the engineer as for the D.O.T. granting approval of the shrubbery.

Mr. Solfero stated it would probably only be something that can grow only 20 inches.

Mr. Avola feels as long as the area is neat and clean – he feels the shrubbery is not necessary.

Mr. Gilson questioned who owns the property.

Mr. Edeballi stated they own the property for approximately three years. They have a lease with BP for 25 years having 22 more years for the lease.

Mr. Gilson was satisfied that there is not a chance for off-brand gas to be put in the pumps, as that will impact the amount of traffic.

Mr. Wurms stated he can put that in the resolution.

Mr. Edeballi stated the industry is very unstable at this point. Exxon turned into Gulf, Shell stations are being sold. The original resolution stated for 6 pumps, if I were to put in a diesel pump I would have to come back to the board. But if BP were to change the name, how can I legally agree to that.

Mr. Inserra stated if BP is at fault, and BP makes him change, it is not Mr. Edeballi's fault.

Mr. Gilson agrees to that, however it is a very gray area. The gas station, the convenience store and the Dunkin Donuts is that one complete company or separate entities?

Mr. Edeballi is renting the part to Dunkin Donuts, he owns the gas station and convenience store.

Mr. Wurms feels this is an added use, he sees a restaurant use.

Mr. Avola questioned changing brands, if you own the business and you change the name to John's Gas, or Joe's Gas, we do not want people parking 1-1/2 miles down Route 46.

Mr. Edeballi stated the gas station can purchase the same gas, but the pricing is different.
Mr. Edeballi stated he never saw the lines at Jazz Gas being that long.

There is a five minute recess at the request of Mr. Ramier.

Members Present: Mr. Bene
 Mr. Staine
 Mr. Gilson
 Mr. Gaciofano
 Mr. Pinto
 Mr. Schrieks
 Mr. Avola
 Mr. Inserra

Also Present: Zoning Board Attorney Marcel Wurms
 Zoning Board Planner Gary Paparozzi
 Zoning Board Engineer Thomas Solfaro
 Zoning Board Secretary Marlene Muska

Members Excused: Mr. Paladino

Mr. Ramier stated during the recess the applicant proposed to remove the tables and chairs and they would agree to put a stripe along the northern side of the property as a walkway for pedestrians. If the majority of the board members would like to put the landscaping back they will. With that in mind Mr. Ramier summed up his testimony. The facility is clean, no source of trouble and the parking spaces are adequate there is no pressure at the pumps, and the 12 fueling spaces if you may consider them reserved parking.

Mr. Wurms asked if Mr. Ramier would like to speak regarding the appeal of Mr. Melfi.

Mr. Gaciofano questioned if the bollards will be places in the front of the stores.

Mr. Gaciofano stated if the bollards are put in place the tables and chairs can stay.

There was a motion by Mr. Avola, seconded by Mr. Gaciovano to uphold Mr. Melfi's decision to deny the Certificate of Occupancy. All members present voted in favor of the motion.

Mr. Wurms stated the appeal was denied and a vote is need for the variance set forth in this application this evening.

Mr. Inserra asked if there was anyone in the audience that wished to be heard for or against this application. There is no one in the audience that wished to be heard.

There was a motion by Mr. Avola, seconded by Mr. Pinto to approve this application.

Mr. Avola questioned are we talking about 14 spaces.

Mr. Paparozzi stated no the 12 spaces are sufficient.

Mr. Wurms stated the motion is to approve the application as is with the following changes:

1. Require to stripe a pedestrian walkway along the fence and place four No Parking Signs along the fence.
2. To place bollards in front of the parking spaces along the building.
3. The board will retroactively waiver the requirement for additional landscaping along Route 46, just to keep it the way it is now.

Mr. Paparozzi stated in the resolution should state that there is 2 tables and 6 chairs, and the engineer should verify that everything is completed.

Mr. Wurms stated all the resolutions state it, and they have 60 days to make modifications.

Mr. Ramier stated his client would rather have concrete planters instead of bollards.

Mr. Avola stated that would be subject to the boards Engineer for approval.

Mr. Wurms stated there is grass along the Route 46 strip now, just so the resolution is correct.

Mr. Solfaro questioned are we going to get a no letter of interest from the N.J. D.O.T.

During the roll call Mr. Avola stated as long as all the changes and subject to any other approval he voted yes.

All other members voted in favor of the motion.

Mr. Inserra stated this particular station, he wishes all stations would be like this. This station operates a very clean station and with that said he votes yes.

Old Business:

Mr. Gaciofano questioned the completion of Avenue E. Mr. Melfi stated a time limit should be given to a temporary C.O. What can be done now.

Mr. Wurms will write a letter to the zoning department and we will give 11 Avenue E 30 days for completion of the recommendations in the resolution.

The striping is not done, the door is not down and the enclosure of the dumpster is not done.

Mr. Schriecks questioned if the ordinance passed regarding the enclosure of the dumpsters.

Mr. Wurms stated what the resolution said.

Mr. Gilson stated the building was painted twice.

Mr. Gilson questioned Klein Outdoor Signs.

There was a motion by Mr. Schriecks, seconded by Mr. Pinto to adjourn.

Respectfully submitted,

Marlene Muska