

# BOARD OF ADJUSTMENT MINUTES

May 1, 2006

A complete record of this regular meeting is contained on the audio tape of the meeting which may be listened to at the Bernardsville Municipal Building. Information on how to obtain a transcript may be had by contacting the Administrative Officer of the Zoning Board of Adjustment.

Call to Order

Statement by Presiding Officer: Adequate Notice

Roll Call: Members present were Mr. Biba, Ms Buchanan, Mrs. Dee, Mr.

Fell (arrived at 7:35 p.m.), Mr. Foster, Mr. Greenebaum, Mr. Hagen, Mr. Negri, Mr. Salisbury and Mrs. Shea. Mr. Berman was absent.

Also present were Scott Parente, Esq., sitting for John T. Lynch, Esq., Board attorney; Robert Brightly, P.E., Ferriero Engineering, Board engineering consultant; and P. David Zimmerman, P.P., Board planning consultant.

Communications - None

5. Minutes - None

Vouchers

P. David Zimmerman, P.P.

1. Fehnel, Appl. #05-25 (escrow) \$562.50 Mr. Biba moved the voucher be sent to the Borough Council for payment

from the escrow account and Mr. Negri seconded. The roll call vote was:

Mr. Biba yes Mr. Hagen yes

Ms Buchanan yes Mr. Negri yes

Mrs. Dee yes Mr. Salisbury yes

Mr. Foster yes Mrs. Shea yes

Mr. Greenebaum yes

7. Resolutions - None

Pending Applications

#04-20 Weichert Realtors, 67 Morristown Road; Block 64, lot 1 and 1.02; Block 67, lot 9, C-1 & R-4 Zones - use variance /bulk variances - new plans. Carried from March 6, 2006

Vincent T. Bisogno, Esq.

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Matthew Jaref, AIA, applicant's architect

Craig Villa, P.E., applicant's engineer

Brian Bozenberg, LA, applicant's landscape architect

Joseph MacDonald, regional v.p., Weichert Realtors

David Budd, v.p., Great Swamp Watershed Association

Joann Wissinger, 81 Washington Corner Road

Rosalie Ballentine, Environmental Commission

Peter Miller, Environmental Commission

Louis Matlack, Shade Tree Committee

Sherry Frawley, Environmental Commission

Exhibits: A-4B - rendering; A-5B - sample of bricks; A-6B - slate roof sample; A-7B - pictures of nearby buildings; A-8B - landscape; A-9B - revised tree replacement schedule

There was a short discussion as to this being a continuation of the application or a new application since there are new plans. It was decided to continue this under the #04-20 application number. Mr. Bisogno noted that the previous testimony will be repeated, giving the changes under the new plans. At the last meeting on March 6, 2006 this was discussed and the new plans were not submitted until this meeting because they were waiting for the landscape plans and stormwater report which are now included. The new plan from the engineer is dated April 12, 2006 and the new landscape plan is dated April 17, 2006. The latest report from the Shade Tree Committee has been placed on page 3 of the latest landscape plan.

Mr. Bisogno noted the application is for site plan approval with variances. The new site plan shows the new location of the building and the revised parking plan. The new stormwater plan is very detailed and has been reviewed by the Board engineer. The variances sought are: a use variance because a portion of the lot is in the R-4 Zone; a setback variance for 30.8 ft. vs required 42 ft.; a parking variance, 68 parking spaces requested vs 78 to 95 required; and slope variances in all three categories. (Mr. Fell arrived.) They would like to reduce the parking spaces to 67. The Board traffic engineer had said there could be one space for every 200 S.F., not the 150 S.F. in the ordinance.

There are some technical variances: 1. no loading space; 2. driveways crossing property lines vs 10 ft.; 3. lighting may go over the property line into the street (but will comply); and 4. 5% landscaping in the parking lot (may cause removal of 1 more parking space). Mr. Bisogno reviewed the easement that Weichert has with the Board of Education for the parking area which has been signed by Mr. Weichert. However, there are some changes to be made at the request of both parties so it has not been finalized.

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Mr. Jaref submitted a rendering of the proposed building (Exhibit A-4B) which he described. Not only is the building shown, but also the pocket park, the retaining wall, etc. along Rt. 202. The rendering (somewhat three-dimensional) is faithful to what is proposed. The windows have a residential feel with brick sills to match the real brick of the building (A-5B). There is a white architectural trim below the roof line. The roof is a bluish-gray synthetic slate (A-6B). The entrance way is white wood with two pilasters. The white arch above the door contains "Weichert" in black. The small freestanding Weichert sign is also shown near the street.

Mr. Jaref said the proposed building fits into the neighborhood, is the scale of the surrounding buildings, is two-storys, fits into the slope of the hill, sitting a little up from the road. He pointed to the "pocket park" which will provide public space for anyone who passes.

Mr. Jaref said the building is 75 ft. by 60 ft. or 4,500 S.F. for each floor. The total for both floors is 9,000 S.F. There is an appendage to the building for the fire stair which is not usable for office space

and is 423 S.F. Thus the total for the entire building is 9,846 S.F. of which 846 S.F. represents the stairway/atrium area.

Mr. Jaref submitted pictures (A-7B) of surrounding buildings to show the context - the existing Weichert building, the retail shopping center (Bernardsville Centre), the PNC bank and the Audi car dealer across the street. He included the PG bank at the next corner. Picture #1 is of the present sign and immediately below it is the proposed sign which meets the ordinance. The sign will be ground-lit. The pictures show that most of the neighboring buildings have slanted roofs, residential-type. The PG Bank is also a large brick building with a slanting roof. It is probably close in size to the proposed building but is higher above the road.

Mr. Biba suggested Mr. Jaref consider making the pictures of the neighboring buildings so they are the same scale as the proposed building. Then the Board could see how this building will fit. The PNC bank (2 storys) and the Audi dealership both look lower than the proposed building but have larger footprints. The existing Weichert building has a high roof and thus might be comparable. However, that building is on the sidewalk while the proposed building will be set back. (It will need a frontyard setback variance - 30.8 ft. vs 42 ft.). Mr. Jaref said with regard to a possible height variance, the building will be complying with the ordinance - 30 ft. to the midline.

There was a discussion about stairwells being excluded when figuring the floor area. Mr. Bisogno said he believes the Planning Board includes stairwells which means 4 more parking spaces are needed. There is a basement but it will only be used for

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storage. There is no attic *per se* but rather space for mechanicals behind the sloped roof.

There will be an interior sprinkler system.

The question of what would happen if the building met the 42 ft. front setback was discussed. The applicant feels if the building met the setback, the parking would have to be in front and he does not want that. Several Board members also do not want parking in front. The building has been reduced in size already and the applicant did not want to further decrease it. There was a general discussion of possibilities of changes in the building and/or changes in the parking and how the changes would affect the perceived height of the building (from the street) and the proposed landscaping. Granting a greater parking variance in exchange for meeting the required front setback (or at least moving the building 8 to 10 ft. back) was discussed. Some Board members agreed to the building and the landscaping changes and some did not. The “darkness” of the building adding to the “looming” problem was also cited.

Mr. Budd asked about the size of the building, particularly the stairwells, to make sure the total is 9,846 S.F. The facade of the building is 30.8 ft. from the front property line. He asked what is the setback of the PG bank - someone said it complies at 42 ft.

Mr. Budd asked about the height of the building. It is 30 ft. measured to the midline of the roof (as required by ordinance); 34 ft. to the ridge line. The roof is actually a facade with space behind it for the mechanical equipment. On impervious coverage, Mr. Zimmerman said the zone maximum is 85% and the applicant is at about 60%.

Mr. Villa described the changes that have been made in the plans since the last meeting. He outlined the stormwater designs as per DEP regulations and the new ordinance adopted by the Borough.

Included are how runoff will be handled both from this site and from the high school site, either into the DOT drains or the Board of Education property. The runoff from the site will not be increased as much of it is being recharged. Mr. Villa said his staff reviewed the comments from the Board engineer and they will be able to satisfy those concerns. Mr. Brightly reviewed some of his concerns. Asked about the additional costs caused by the new regulations, Mr. Villa said he would estimate between \$50,000 and \$75,000.

There was a discussion about the runoff the school system would be handling. Because the school system construction and inspections are under the state, the Borough engineer has not seen the calculations. Mr. Villa said he is trying to get copies of them to

make available to Mr. Brightly. Mr. Zimmerman said it would be good to know that a portion of the runoff from this site can be handled by the school system. He noted the Planning Board has had applications east of this property where neighbors have concerns about runoff. Mr. Villa said the runoff to be handled by the school system will run

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behind Bernardsville Centre (shopping center). He feels that the problems of the present time will be handled better when this system is in. The runoff will follow the natural drainage of the area to the stream to Rt. 202.

Mr. Zimmerman asked if there is going to be more or less runoff. Mr. Villa said there will be more control of peak flows from the Weichert property. Mr. Salisbury said he understands the school system is meeting the stormwater standards because it is not exempt from them. His concern is whether their plan anticipated the additional flow. Mr. Villa said yes, they have been working with the school system from early on. Mr. Salisbury said he would like confirmation of that. Mr. Bisogno said there is no drainage easement in the easement agreement just concluded. A new one would have to be made.

Mrs. Wissinger said there are over 600 trees on the property now handling the water. They will not be there with development. Mr. Villa said if this property were flat he would agree. However, with the slopes, in heavy storms, the trees do not get a chance to absorb the runoff. The school system actually took part of the drainage area by raising part of their property.

It was decided to have Mr. Villa and Mr. Brightly meet to resolve many of the concerns Mr. Brightly has. If there are any items which they feel should go to the Board, that can be done at a subsequent meeting.

Asked about traffic, Mr. Bisogno said the applicant's traffic expert, Gary Dean, will be returning at a subsequent meeting. Because of the changes in the project, it is expected he will say there will be less traffic, but he will be present.

Mrs. Wissinger asked if Mr. Villa had considered non-structural storm water management rather than all of the structures shown in the plans. Mr. Villa said the runoff from the additional impervious coverage will go into the recharge basins. They will be meeting the requirement that they must recharge an amount equal to what is already being recharged. Mrs. Wissinger said there are ways to have slow absorption from the parking area. Mr. Villa agreed but said the Borough ordinance requires the parking lot to be paved. They have met the water quality and quantity requirements, in fact exceeded them. Mr. Bisogno said there are small things that can be done - recycling water collected in barrels, etc.

Ms Ballentine asked about using porous surfaces in the parking lot. Mr. Villa said

there is a problem in the winter due to the surface freezing. Ms Ballentine said it is great that they are not allowing additional runoff but she is concerned about the water returning to the soil from the underground basin. Mr. Villa said the basin allows the water to return

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to the soil. Mr. Bisogno said the applicant is willing to do what needs to be done and they can meet with the Environmental Commission to discuss this.

Mr. Miller said in the Management Manual the first recommendation is for non-structural devices. He asked if the Board could make the variance for fewer parking spaces so there could be more natural absorption. Mr. Villa said one of the reasons they are trying to maintain the northwest corner in its natural state is to keep some open area. They are also adding landscaping islands in the parking area. They thought of leaving the “pocket park” area natural but everyone liked the idea of the park.

Mr. Miller asked where the two stormwater lines went. Mr. Villa said they are connected into the DOT stormwater line in Morristown Road. They are for normal runoff up to the 100-year storm runoff. Eventually the water gets to Penn’s Brook. Mr. Miller said that is a degraded stream and he is concerned about adding more water to it.

Ms Buchanan asked about water and debris coming down the present site driveway from the school project during a recent storm. Mr. Villa said he is not aware how that project is proceeding - he would have to speak to the school’s engineer. He said this applicant will be fulfilling all of the requirements of the Soil Conservation District with regard to erosion and runoff.

Mr. Budd said the Watershed group is very concerned about water and what ends up downstream. He commended the applicant for a design which meets the letter of the law. It is possible to use both a porous surface and a collection system during the winter. During the warmer weather that would provide a larger absorption surface than just the basin. However, the question is how expensive would it be, and whether the Board could attach a requirement to a variance. He asked about the agreement the applicant has with the school with regard to the amount of runoff each would handle and whether the school is meeting the letter of the law. He would like the Board to have the answer to that before a variance is granted. Mr. Bisogno said he would have information on that for the next meeting as he did not realize that was something the Board might want.

Mr. Villa returned to the changes in the plan: regrading the parking lot; increasing the height of the walls slightly at the rear of the pocket park; eliminating some steps to make them level with the sidewalk, thus making it more handicap accessible; widening the ingress/egress at the card gate; widening the entrance to the school parking lot; adjusting the 27 parking spaces in the upper parking lot; increasing the landscaping within the parking lots, eliminating 3 parking

needed to be added to the 81 spaces based on square footage); and those stormwater controls details already discussed as well as responses to Mr. Brightly's comments.

Mr. Villa said the rear retaining walls are between 10 ft. and 15 ft. high with a 4 ft. chainlink fence and a guard rail at the top. There was a discussion about whether this might be a hazard for high school students walking through the area to the shopping center or to a driver who might put a car in drive instead of reverse. A 5 ft. fence would be installed. The school has filled the portion of its property going down to the former tennis courts which affects the wall. Mr. Villa said the applicant will be doing whatever the DCA requires - the presumption is that the school system is doing the same.

As to the wall along the driveway, Mr. Villa said it would be up a slope and then be 6 ft. high. As one drives west on Morristown Road, one would see it. On the site, however there will be landscaping on the slope and in front of the wall. The sidewalk will be on the other side of the driveway. The Fire Department requested the driveway at the card gate be widened to 12 ft. on each side of the 3 ft. wide island. The driveway is 20 ft. wide at Morristown Road as required by the DOT. They tried to use the smallest amount of asphalt possible. Parking spaces are 9 ft. wide as required by the ordinance. The requirement used to be 8-1/2 ft. but was widened by the Council. Applicants can put in 8-1/2 ft. spaces for employee parking. It was suggested the spaces be marked with double lines to help drivers to center their cars or for the spaces to be 10 ft. wide.

Mr. Bozenberg said he prepared the plan before the Board. He met with the Shade Tree Committee on site and they have had subsequent discussions. The plan follows the tree protection requirements. The lot contains an "urban forest"- trees which grow in poor soil - ash, locust, Norway maple, etc. The trees are in various conditions. There are no historic or specimen trees on site. He submitted Exhibit A-8B which is a coloring of the landscaping plan submitted with the site plan.

Mr. Bozenberg explained how they attempt to scale the new buildings with the existing landscaping and any new landscaping with the new buildings. Coming from Olcott Square, one sees large trees in the streetscape. Thus, the proposed new trees will grow into the same scale. They plan a variety of trees to prevent sameness and future disease problems. The trees are being given enough space to fully mature and to be on a scale with the proposed new building. He pointed out the suggested large trees as well as some ornamental flowering trees. The idea is to create a comfortable space both for someone walking to the pocket park and someone driving by the building. He described the pocket park as an interesting idea, with benches, nooks and flowering trees.

Mr. Bozenberg said in developing the landscaping on the edges of the site, they

again looked at the scale of the building. They specified certain types of trees and shrubs; the trees

growing taller, softening and shielding the building. The driveway will have trees on each side. Asked about the recommendation for more trees in the parking lot, Mr. Bozenberg said they could put more in but they would have to remove one or two parking spaces. They already have a landscaped area extending into the parking area as one exits the rear door. Shrubs will surround the building also to soften it. Hedges will be put in to help screen the parked cars from Rt. 202. Evergreens will be used to soften the wall to the rear.

Mr. Bozenberg said they counted the number of trees on the site. They had made a mistake originally. He explained the mistake on Exhibit A-9B. In total, 437 trees are to be removed. Asked how they knew a number of trees are missing, Mr. Bozenberg said several years ago Yannaccone surveyed the lot and numbered the trees. In the plans there is a page with all the trees numbered and located so one can walk through the site and locate each tree. No one knows who took the trees or when.

Mr. Bozenberg said the ordinance requires replacing the 437 trees with 794 trees. Of those 437 trees, 88 trees are either dead or diseased and in danger of falling over. They may request a permit to remove the dead and diseased trees without a replacement requirement. With the Shade Tree Committee's agreement, they can subtract 188 trees from the 794 trees and now have a total of 606 replacement trees required. They will be planting 77 trees per the landscaping plan. The ordinance does not allow the shrubs to be included in the calculations. It would be unwise to try to squeeze more trees onto the site because there is a need for balance and room for the proposed plants to develop. There is a wood lot remaining on lot 9 where they will be adding trees on the edge behind the present building. Mr. Bozenberg said his firm will be involved in the planting of the site and will make sure all precautions will be followed.

As to the lighting plan, Mr. Bozenberg said the plan meets all of the standards of the ordinance except in the front of the site on Rt. 202. In some areas, they exceed the maximum allowable footcandle level. The plans will be modified.

Asked about when the landscaping would look like the drawing, Mr. Bozenberg said the saying is: nothing seems to happen in the first three years but by the fourth year, growth is very apparent. To get the effect they are seeking here, they have a window of 5 to 7 years. The plants will have doubled in size by then. They plan to put in substantial trees to begin with - 3 to 3-1/2 in caliper. There was a discussion about what specific plants are proposed, where and how high and dense they will be. Board members asked about how the sidewalk, stairs, wall and plantings in the rear of the property will interact.

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Mr. Zimmerman asked whether the retaining wall/stairs will be visible from the front sidewalk and cars driving by. Mr. Bozenberg said over time the proposed trees will shield the wall/stairs to a great extent. He also feels the eye will be drawn to the park rather than trying to look through to the area behind the building. They can add climbing vines to the staircase also.

Mr. Biba asked Mr. Bisogno what will be done about the remaining number of replacement trees. Mr. Bisogno said he had not yet discussed it with Mr. Weichert. There are legal matters involved - off-site improvements, i.e., planting trees on Borough property. The tree ordinance does not give a price, and although the Shade Tree Committee has set a price, it is really up to the Borough Council. There may even be a constitutional question - this might be considered a "taking". Mr. Parente agreed with Mr. Bisogno. The Borough and the Board have a presumption that the ordinance is valid.

Asked about guaranteeing the plantings, Mr. Bisogno said the ordinance includes a requirement that the plants be guaranteed for a certain period. So far no decision has been made about putting in-ground sprinklers in. They feel the plants can be watered the first 2 years but after that the plantings should adapt to the site and be watered naturally.

Ms Ballentine asked if the street trees are under the utility wires. Mr. Bozenberg said he believes they have moved the plantings back far enough. There may be a couple of small trees under the wires.

Mr. Brightly asked what type of housing the “colonial”-type lighting has. Mr. Bozenberg said he would have to check. He feels the light source is hidden by shields but would like to be sure. Either way, the applicant will see that the light source is shielded, directing the light down. There will be security lighting. The standard lighting would be tied to the business hours. The facade of the building will not be illuminated. He did not know if the standing sign would be illuminated. The building sign would not be illuminated. There will be bollard lighting in the pocket park but 14 ft. standards elsewhere. The lighting fixtures were chosen to fit with the proposed architecture.

Mr. Matlack asked about using thorny material as a discouragement if there is concern about high schoolers jumping over the wall. Mr. Bozenberg said they would consider it. Mr. Matlack asked if the off-site plantings might be placed on school property. According to the ordinance, the Board could so direct the applicant. It was recognized that this would not change the constitutional issue, but it is something the Board might consider. The ordinance states that the funds are to be used to place trees on public property so the Board could direct the trees go onto school property.

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There was a discussion about where and how a thorny plant might be used. Mr. Bozenberg also suggested that the 4 ft. fence be raised to 5 ft. The difference in “boosting” oneself up is quite a bit. The vines previously suggested would also climb the fence which would add to the “greening” of the area.

Mr. MacDonald said he has been with Weichert for 19 years and oversees various offices in New Jersey and Pennsylvania. There are 4 full-time employees in the office - sales manager, gold service manager (loan officer), ad man and marketing person. Sales associates come and go different days and hours - 79 licenses are active here. The sales associates use the office to meet with clients and to use the phones and computers. With advancing technology, sales associates can log-in from the field or their home. Some associates are in every day and some only once or twice a week. There are 29 desks in the present office; some are assigned, some are shared and some are for general use. The hours are 8:30 a.m. to 9:00 p.m. Monday-Friday and 9:00 a.m. to 6:00 p.m. on Saturday and Sunday.

There has never been a parking problem at this site. The Basking Ridge office does not have a parking area but Mr. Macdonald said he has never had a problem finding a parking spot on the street. Based on his experience, he feels there will be more than enough parking space as proposed.

Mr. MacDonald described the proposed building in contrast to the present building. Basically it will allow more space and a better waiting area for the public. The basement will be used for file storage, storage of signs and other materials. The largest delivery is from a UPS truck so no loading space is needed. This 9,000 S.F. building is not larger than other Weichert offices. There are smaller ones. Sales meetings are held at different places and do not include everyone. He noted that there are no assigned areas as such - all associates are encouraged to offer all available sites no matter the area.

Mr. MacDonald was asked if, since Weichert now offers home insurance, will there be a need for an

insurance officer. He said no, since the gold service manager would be sending it on to the office in Morris Plains where all the title work, insurance, etc. is taken care of.

Asked if any of the nearby office would be moved to this office, Mr. MacDonald said no. The present building will be rented to another business and the local workers will only go into the new building. He stipulated no medical offices or retail use will go into the present building. The presumption is that it will be rented to a business, a lawyer or other professional. There will be no restriction on parking as long as Weichert owns both lots. All ingress will be through lot 1.02 and the egress through lot 9. If the user

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changes and the parking requirements change, that user will have to go to the Board.

Mrs. Frawley asked if the applicant ever considered removing the present building and putting one building on the two lots. Mr. MacDonald said it was the applicant's decision - he does not know why. As to lot 10 on the western side, the topography would have made it difficult to expand in that direction.

Mrs. Frawley asked about the expansion of the Weichert offices in Bedminster and Basking Ridge as to size and what experience the applicant had before those Boards. As to the relevance, Mrs. Frawley said the applicant renovated in Basking Ridge. She wanted to know why that option was not pursued here. Mr. MacDonald said he did not know.

Because of the hour, the application was held to August 7, 2006 (changed to August 21, 2006).

Old Business

New Business

11. Comments from Members

Comments from Staff

Adjournment

Mr. Negri moved the meeting be adjourned at 10:55 p.m. and Mr. Biba seconded.

Respectfully submitted,

Joy W. Vavrek

Administrative Officer

5-1mins.06