

BOARD OF ADJUSTMENT MINUTES

Special Meeting

Tuesday, September 20, 2005

A complete record of this special 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 can be had by contacting the Administrative Officer of the Zoning Board of Adjustment.

1. Call to Order

Statement by Presiding Officer: Adequate Notice

3. Roll Call: Present: Mr. Biba, Ms. Buchanan, Mr. Foster, Mr. Greenebaum, Mr. Hagen, Mr. Negri and Mr. Salisbury. Absent: Mr. Berman, Mrs. Dees, Mr. Palomaki and Mrs. Shea.

Also present were John T. Lynch, Esq., Board attorney; Robert Brightly, P.E., Ferriero Engineering, Board engineers; and P. David Zimmerman, P.P., Board planner.

Communications - None

Minutes - None

6. Vouchers

A. Ronald E. Graiff, P.E.

1. Omnipoint, Appl. #03-22(escrow)
\$3,867.60

B. Kimball & Kimball

1. Omnipoint, Appl. #03-22(escrow) \$ 960.00

Total \$4,828.05

Mr. Negri moved the vouchers be paid from the escrow accounts and Mr. Hagen seconded. The roll call vote was:

Mr. Biba yes Mr. Hagen yes

Ms Buchanan yes Mr. Negri yes

Mr. Foster yes Mr. Salisbury yes

Mr. Greenebaum yes

Resolutions - None

Applications

A. #05-03 PCJ Associates, LLC, 79 Bernards Avenue; Block 100, lot 2.01,1-2
Zone - allow continued use as storage facility. Carried from July 26, 2005

Vincent T. Bisogno, Esq.,
represented the applicants

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Thomas Carton, witness

Donald Knudsen, questioner

Dina Priovolos, 15-17 Pine Street, neighbor

Mary' Ann Streiter, 15-09 Pine Street, neighbor

Adrian Humbert, P.P. applicant's planner

Paula Dees, Environmental Commission member

Exhibits: A-12 - minutes from 1995; A-13 - minutes, Nov. 13, 1995; A-14 - zoning memo to Kevin Page, re: lot 2.01; A-15 - zoning ordinance #155, July 5, 1950; A-16 - letter to Wm. Dinger from V. Bisogno, Esq., re: uses on lot 2.01; A-17 - 2002 aerial photograph of site; A-18 - 1994 aerial photograph of site; A-19 - 1995 aerial photograph of site; A-20 - seven photos on board submitted by Mr. Humbert

0-1 through 0-9 - 11 pictures submitted by objectors in plastic holders

Mr. Bisogno reviewed past testimony that this site had been used for truck parking since the 1940s. The Board of Adjustment granted a variance in 1997 which the applicants believe is a use variance for this site. Mr. Bisogno introduced a site plan showing locations for each of the companies renting space from the Ferrantes. The Environmental Commission report noted concern about hazardous materials. The materials to be stored on site are sand, stone, mulch, wood, brick, etc.; items used in landscaping. One driveway will be eliminated. Two driveways will remain: one opposite Pine Street and one into lot 13 and then into lot 2.01. A third entry will be from lot 13 to the north. Trucks would enter through lot 13 to take supplies to the storage area, staying off Bernards Avenue as much as possible. The applicants are seeking a determination (or a variance) allowing the use to continue on the site. There may be bulk variances. Mr. Negri said he felt the Board granted a use variance in 1997.

Mr. Carton said in 1955-59 the quarry used a portion of the site for storage of vehicles, dismantled and/or excess equipment. There were times when there was no quarry equipment on site and times when there were several very large vehicles as well as equipment. These would be located at the end of Pine Street. This use continued until the quarry sold the site to the Ferrantes in 1996. He was working for the quarry when it purchased the property in 1987. Asked if he was involved in 1995-96, Mr. Carton said yes and described the application - the cell tower, the residential area, this site and the industrial site on the quarry floor. This site apparently was not fully discussed because the cell tower was the main question.

Mr. Negri said a use variance was granted and Mr. Lynch disagreed, saying the

1996 application was for a subdivision. Mr. Carton said he doubted Mr. Ferrante would have purchased the property unless he was sure the use was legal.

Both Mr. Lynch and Mr. Bisogno (neither of whom were involved in the 1995-96 BOARD OF ADJUSTMENT MINUTES p. 3 September 20, 2005

application) agreed that apparently the main focus was on the cell tower and the 49-lot residential subdivision. The zoning report from 1995 recognized the non-conforming use and said it could be considered "grandfathered". It was noted in the January 22, 1996 minutes that Mr. Vastola (the Board attorney for this matter) said that both the NYNEX (cell tower) lot and the Amper lot (this site) required variances because the uses are nonconforming.

The applicant purchased this site relying on it being a 'grandfathered' use. At that time, the Ferrantes were leasing the property from the quarry for storage of landscaping and construction equipment. Mr. Bisogno said the applicants wish to resolve the site plan issue. They believe they have a use variance and the Zoning Officer said they need a site plan.

Mr. Knudsen asked about how long the various pieces of equipment were stored on site by the quarry - over night or for a long time. Mr. Carton said it depended on what the equipment was and if it were needed. Most of it was there for some time. Ms. Priovolos asked about the number of employees who came and how much equipment they took. Mr. Carton said it varied - sometimes no equipment was moved for a long time. The quarry operation did not include landscaping. He did not know if the other company renting space there included landscaping. Asked about phones and office equipment on site, Mr. Carton said the quarry did not have any. Since the Board does not want office equipment on site, Mr. Bisogno said if tenants do have a phone or office equipment, the applicant will make them remove it.

Mr. Humbert described the site and some of its history. This is a mixed use area.

It was zoned industrial in 1950. Mr. Humbert cited the zoning memo of September 28,

1995, i.e.: heavy equipment and construction material were a pre-existing condition. He went into the Razberry case: concerning the need for a use variance when a subdivision makes a non-conforming site smaller. A memo from the Zoning Officer (October 10,

1995) stated that a technical variance was required to create new lot 2.01 unless the Board decides it is not needed. There was a discussion of the 1950 zoning ordinance. Mr. Humbert said he felt the 1950 ordinance changed the zoning from residential to industrial by map.

Mr. Negri reminded the Board that historically it does not make interpretations. If the Board feels something is right, it grants a variance.

Mr. Bisogno said this is not a landscaping site.. it is a storage yard. The tenants may change at any time. An electrician or a plumber or a different type of contractor may rent the space. Mr. Zimmennan said the Board has to know what the proposed use is. Mr. Bisogno said the use is storage of vehicles and materials. They also park the employees' vehicles there. There was a discussion about what exactly should be shown on the site

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plan or even if anything needs to be shown.

Mr. Humbert said he believes the Board did decide in 1995 that a technical use variance was required and granted it Tom Collins, Esq., attorney for the quarry, had stated at the hearing that the quarry was asking for a use variance for lot 2.01 as a preexisting, non-conforming use.

Mr. Humbert cited testimony from January 22, 1996 that a variance was being requested for the subject lot. The applicants were asking this site continue as an industrial use although it recently was made residential. The space is used for parking trucks and other equipment - there are several small buildings and trailers (offices and workshops) on the site and stockpiles of materials. A letter from Mr. Bisogno was read at the November 13, 1995 meeting, listing the uses on the site: storage of topsoil, common fill, sand, stone, construction materials, pipes and pallets.

Mr. Humbert said in the negative criteria, the Board must be satisfied that a variance, if granted, will not have a substantial detrimental effect on the zone plan,

zoning ordinance or the public good. Mr. Bisogno noted the applicant purchased the property for commercial purposes in 1997 and has used it for commercial purposes. Mr. Humbert said his conclusion is that the Board understood in 1995/96 that this was a nonconforming use and heard a subdivision application which, in effect, reduced the size of the property and granted a use variance.

Mr. Zimmennan said he believes a use variance is warranted because the site is being used more extensively now than in 1995. He is basing his opinion on the 1994 and 1995 photographs submitted earlier as well as the aerial picture from 2002. Expansion of the use is evident in the pictures - going from a use of 50% to 60% of the site to 100%. Mr. Zimmennan said the variance is dependent on a certain percentage but it is being used more intensely now. In other words they have expanded their use without getting a variance to do so. Mr. Hagen said while he agrees there has been intensification, he feels it is the same usage. There was a discussion about what the photographs (Exhibits A -17, A-18 and A -19) actually show with reference to areas of disturbance and areas of non-disturbance.

Mr. Knudsen asked about current zoning. Mr. Humbert said this is 1-2, light industrial; zoned in 1996. The property was purchased by PCJ in 1997 and there are currently 3 landscaping businesses on the site: Dubrow came in 1998, Franco in 2001 and

Unique in 2001. They park their vehicles, equipment and supplies on the site, taking out what is needed for work each day. There is a storage use on the site (trucks, equipment and workers' cars), a continued use. He is not sure whether the storage of landscaping material is included. Mr. Humbert submitted 7 pictures, taken in May 2005. He described the photos as showing some of the site and the surrounding area.

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Ms Priovolos submitted 11 photographs (marked Exhibits 0-1 through 0-9 and taken in 2004) which she identified. Among the problems she sees is delivery by 18wheelers (3 to 5 times a week) and work trucks going back and forth during the day to drop off waste and pick up supplies. The 18-wheelers do K-turns to get into the property.

There is a police ordinance (7-10) stating that vehicles over 2 tons are not allowed on many of the streets in the area including Pill Hill Road, Pine Street, Bernards Avenue, Maple Street or Dayton Crescent. Most of the vehicles that deliver are larger than a

dump truck. Another concern is that, although the trucks are supposed to only use Bernards Avenue, they use Dayton Crescent, Pine Street and Maple Street, all of which have school bus stops. The truck drivers cannot see the kids waiting and since there are no sidewalks, they are waiting on the streets. There is a fourth renter on the site, Gladstone Masonry. The workers have apologized for the noise they make when stone cutting and drilling. Ms Priovolos described the pictures and the concerns the neighbors have about the property. One concern is the odors that come from the open mulch bins.

When the police were contacted, the response was that they could not do anything unless the trucks totally block the street. The police finally said until the matter before the Board is settled, they will not take action. There had been some problems with the day workers but the applicant has spoken to them and some things have been solved.

There had been a fire on the site and with the pesticides stored at Dubrows, people are concerned about pollution. Also Dubrows is using one of the trailers as an office with telephone lines and people staying all day. Mr. Bisogno said that is true, he had seen the office. Unique Landscaping had been parking on Bernardsville mountain until it was told to move and it then came to this site.

Ms Priovolos summarized by saying this started with a few stored vehicles to housing three landscaping companies with trucks and bins of supplies, as well as trailers. The point is that these are not the same as the uses prior to the late 1990s. It feels like one is living on a construction site. The

trucks go out and then come back to drop off items and pick up other items, Monday through Saturday. They had started before 7:00 a.m., but now wait until 7:00 a.m. The Borough did a traffic count for putting sidewalks on Bernards Avenue. In the winter the equipment starts as early as 2:00 or 3 :00 a.m. because they do snow removal.

Ms Priovolos said she recognizes there has been a commercial use for many years but the present uses are affecting the residential neighbors' quality of life. The neighbors recognize that Mr. Ferrante and his family work very hard but they want to be able to live with their windows open and do things outside.

Ms Streiter said she has lived in Bernardsville for over 25 years, moving into Pine

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Ridge in 1995. She spoke about the changes on the site. One of her concerns are the children who use the 'tot lot' and the ball field and ride their bikes to get there. When there is a ball game, cars are parked all over the area.

Mrs. Dees reiterated the report submitted by the Environmental Commission.

Mr. Knudsen said Mr. Bisogno has rightfully stated that the history of this site is storage. However, he said he believes a lawn service site is not a storage facility and the Board should not so decide.

This matter was carried to November 7, 2005.

9. New Business - None

Old Business - None

11. Comments from Members - None

Comments from Staff - None

Adjournment

Mr. Negri moved the meeting be adjourned at 11: 15 p.m. and Ms Buchanan seconded. The motion was approved by voice vote and the meeting ended.

Respectively submitted,

Joy W. Vavrek

Administrative Officer

keywords - PCJ-landscapers

9-20mins