

BOARD OF ADJUSTMENT MINUTES
Monday, November 7, 2005

A complete record of this 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
2. Statement by Presiding Officer: Adequate Notice
3. Roll Call - Present were Mr. Biba, Ms Buchanan, Mrs. Dee, Mr. Foster, Mr. Greenebaum, Mr. Hagen, Mr. Negri, Mr. Palomaki, Mr. Salisbury and Mrs. Shea. Mr. Berman was absent.

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

4. Communications - None

5. Minutes

Mr. Negri moved approval of the draft October 25, 2005minutes and Mr. Greenebaum seconded. The motion was approved by voice vote.

6. Vouchers

Kimball, & Kimball: Omnipoint, Appl. #03-22, \$150.00 (escrow) and Ferriero Engineering: Far Hills Country Day, Appl. #03-19, \$157.50 (escrow); Habitat for Humanity, Appl. #04-24, \$315.00 (escrow); PCJ Associates, Appl. #05-03, \$945.00 (escrow); Connolly, Appl. #05-05, \$105.00 (escrow); Chenoweth, Appl. #05-11, \$105.00 (escrow); Bailey, Appl. #05-13, \$105.00 (escrow); Morrison, Appl. #05-14, \$105.00 (escrow); Somerset Hills Country Club, Appl. #05-15, \$210.00 (escrow) for a sub-total of \$ 2,047.50 and a total \$2,197.50. Mrs. Shea moved the vouchers be sent to the Council for payment from the escrow accounts and Ms Buchanan seconded. The roll call vote was:

Mr. Biba	yes	Mr. Hagen	yes
Ms Buchanan	yes	Mr. Negri	yes
Mrs. Dee	yes	Mr. Palomaki	yes
Mr. Foster	yes	Mr. Salisbury	yes
Mr. Greenebaum	yes	Mrs. Shea	yes

7. Resolutions - None

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8. Applications

9. #05-16 Gillis/Keller, 31 Club Lane; Block 23, lot 14, R-2 Zone - additions to house - porch - continued from October 25, 2005

Vincent T. Bisogno, Esq. represented the applicants. The applicants would like to remove the request for the addition and ask only for the porch expansion in the front. Mr. Bisogno said the applicants may come back next year with a new plan for the addition.

The only variance being sought at this time is the roof over the front porch. The major reason is aesthetics and then shelter. There was a short discussion. Mr. Biba moved the variance for the front porch be granted and Mr. Palomaki seconded. The roll call vote was:

Mr. Biba	yes	Mr. Negri	yes
Ms Buchanan	yes	Mr. Palomaki	yes
Mr. Foster	yes	Mr. Salisbury	yes
Mr. Greenebaum	yes		

- A. #05-03 PCJ Associates, LLC, 79 Bernards Avenue; Block 100, lot 2.01, I-2 Zone - allow continued use as storage facility. Carried from September 20, 2005

Vincent T. Bisogno, Esq.
 Michael C. Ferrante, applicant
 Paula Dees, Environmental Commission

There was a discussion between Mr. Lynch and various Board members as to a certificate of occupancy and the steps which lead to it being issued. It was noted that the Board's decision as to variances and site plan is only the first step in the process.

As to this application, Mr. Lynch said the Board must determine first if what is being done is in accordance with the Zone Plan. Or if not, does the applicant have a non-conforming right to do what he is doing (based on the variance apparently granted in 1995). If the Board finds the applicant does not have that right, there is no need for a site plan. If the Board wishes to allow the use, it may grant a variance and then a site plan should be considered.

Mr. Zimmerman asked about the court case. Mr. Bisogno said that is in municipal court over the applicants not having a valid site plan. Their opinion is that they do not need a site plan because they received a variance in 1995 and there were no changes.

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Mr. Biba said the question is whether the present use is the same as the use in 1995 when the variance was granted to the Quarry for a subdivision and a non-conforming use. Mr. Bisogno said a letter from him was cited in the minutes of that application/variance in which he described the uses at that time: storage, parking, equipment, etc. The same things this application wants. There was a discussion about what could be done on the application and whether the present uses are the same as in 1995.

The applicants want to get site plan approval from the Board even though they believe they already have a variance. Mr. Bisogno put the new plan on the easel (Sheet 3 of 3). They have moved the fence back 15 ft. and will be putting up a new stockade fence. There will be no offices on the site. There will be one gate on the lot opposite Pine Street for access for one tenant. The gate is 30 ft. back from the street line. The other tenants will have access through a gate on the interior of lot 13 (also owned by the applicants). Landscaping is planned for in front of the relocated fence. The plan shows storage areas and parking areas on each tenant's section.

Mr. Bisogno said when one speaks about a site plan, they usually refer to buildings and structures. There are none on this site (except for the Port-a-Johns). There will be trailers (movable) on site for storage of smaller items. They will try to locate the piles of materials in the rear right-of-way. There will be a sidewalk constructed across the front of the site to Pine Street. No street lights or security lights are proposed. There is an electric panel in the 15 ft. setback near the Pine Street gate - this was put in for the tenant. The tenants have been told there cannot be any offices - DuBrow's is removing its office.

Mr. Ferrante said the trailers are not offices but are used for storage of small pieces of equipment, i.e.:

lawn mowers, tools, etc. The trailers do not have wheels and Mr. Ferrante agreed they might be better designated as containers. There was a discussion about why electric power was on the site when there are no offices or security lighting. Mr. Ferrante said he understood that sometimes power tools are used and/or batteries charged. The outlets are similar to household outlets - 110s. Mr. Negri said he had no objection to the electric outlets continuing, but other Board members saw no need for them. Trucks and other equipment are stored on-site also. There was a discussion about the amount of noise heard when the trucks are started up.

Mr. Biba said in the earlier variance trucks were stored by the Quarry for a short time, not having regularly stored trucks starting up noisily in the winter. The storage of snow plowing equipment and starting it up during the night was not contemplated at that time. Mr. Negri said at one time the Ferrantes plowed the entire Borough including sidewalks and the equipment was kept at this site. There has been no testimony on that.

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In the ensuing discussion, it was noted that when this site was first used for truck and equipment storage the surrounding area was vacant, without housing. The Board was reminded that at an earlier meeting, a neighbor complained about the noise from stone work that was being carried on at the site. Board members feel that such work is not allowed under the ordinance.

Mr. Biba said he believes that the question before the Board is whether the present use is an expansion or change from what was approved in 1995. Mr. Bisogno said the ordinance on noise says the trucks cannot leave the yard until 7:00 a.m. with the snow plowing as an exception. It has been testified to that from the 1940s there have been trucks of all types, snow plows and other equipment on this site. The site was not rented at that time but used by various members of the Ferrante family. It should not make any difference as to whether the site is rented or not, but rather if the use has continued.

There is no delineation on the ground at the present time between the three sections. Chain link fences with gates are being considered to show the areas for each tenant. The yard is not paved, but gravel. The areas shown as parking spaces are not marked. The only existing delineation at this time is the power line in the rear. Mr. Bisogno said he checked the easement and there is no restriction on what can be stored in the easement, but there cannot be any excavating. The areas for parking shown may be larger depending on the number of employees and the containers/trailers may be placed slightly differently but the tenants will be told this is what they must do. When trucks are being pulled in and out of the yard, it may be difficult to completely control where they park. Material is to be stored under the power lines.

Mr. Bisogno said the applicants cannot tell the Board exactly how much equipment or material will be stored on site. However this is a small yard and the tenants are each only renting a section. There is a natural restriction as to how much can be placed on the site. Mr. Zimmerman said the Zoning Officer recommended that the Board designate areas for each type of item rather than set numbers. There was a discussion about the frontyard setback requirement and how it would apply on this site. The applicants agreed to move the trailers and Porta-Johns toward the rear of the front triangles, keeping the piles of material in the easement. The front could then be used for parking. There was a discussion about ways of arranging the containers/trailers on the site. It was agreed that no 'structure' would be higher than the fence,.

It was noted that under the new plan, 3 of the 4 tenants (there being one on lot 13 also) will be entering the site through one gate on lot 13. The 4th tenant (Dubrow) will have a gate opposite Pine Street. There will be landscaping along the front and a sidewalk between the two entrances.

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There was a discussion about the term 'storage'. The question was whether a snow plow which is to be used at any time can be considered to be 'in storage' at that time and how could the noise ordinance then be applied. Also discussed was the fact that Dubrow had an office on-site and what might happen once that is removed along with the electricity. The question was 'dead storage' vs active business.

Mr. Lynch said the question is: what is meant by storage and if vehicles are going in and out during the day, picking up materials, can that be called storage. Board members agreed. They also agreed that no office should be on-site, no record keeping, etc. On the question of 'semis', it was noted there is an ordinance limiting the weight of trucks on Bernards Avenue, the access to Pine Street.

Mr. Lynch said the Board should be deciding if it is allowing a storage facility or on-going businesses, i.e.: landscapers. Both large trucks making deliveries and small trucks going in and out are issues. It was suggested that only one access point to all tenants be through lot 13 since it is owned by the applicant. A driveway could be placed along the fence on the inside serving all tenants (parallel to the sidewalk outside the fence). Mr. Ferrante said there are 4 openings now; it is unreasonable to now have only one. When they spoke with Mr. Zimmerman, it was felt that having a gate on the furthest lot (opposite Pine Street) and one for the others on lot 13, was reasonable. Unique Landscaping (in the center section) does snow plowing. The applicant agreed that no 18-wheel trailers would be dropping off loads.

Mr. Lynch told the Board that it should make any conditions it wants site-specific and situation-specific and not be concerned about Borough ordinances or State law. Mr. Bisogno said the point is that the site is being used for parking and storage, no matter what business is using the site. That is what the applicant has been asking from since the beginning, continuing what was on-site since the 1940s. There was a discussion on terminology.

Mr. Lynch reviewed *Belleville v. Parrillo's, Inc.* which he said could be applied to this matter. The State Supreme Court said the effect on the neighbors had to be considered with the change (from a sit-down restaurant to a disco), even though technically food is still being served, music played, etc. The Court said the change was significant. Mr. Lynch applied this to the PCJ matter, noting that the 1940 use was that trucks/equipment stayed on site for a week or more at a time and then went out on a job, often staying on the job site for a week or so at a time. Now the landscaping trucks go back and forth every day. There was a discussion about the types of noises on the site and how they might be handled.

There was a lengthy discussion about what should be permitted and what not permitted on the site, should the Board decide to allow the continued use. It was finally agreed Mr. Bisogno, Mr. Lynch, Mr. Brightly and Mr. Zimmerman would propose an agreement reflecting what the Board seems to wish, and return with it to the Board. It would not be a resolution but rather a statement for the Board to discuss.

The matter was then held to December 13, 2005 (for various reasons, the December meeting was canceled, so this was carried to February 14, 2006 with the concurrence of the applicant).

9. Old Business
#04-20 - Weickert

Vincent T. Bisogno, Esq., attorney for the applicant, asked that the hearing scheduled for December 13, 2005 be postponed until February 14, 2006 so new plans can be submitted. The Board agreed. Mr. Bisogno added that if there are sufficient changes to warrant it, he would start the application over again.

9. New Business

11. Comments from Members
12. Comments from Staff
13. Adjournment

Mr. Negri moved the meeting be adjourned at 10:00 p.m. and Mr. Hagen seconded.

Respectfully submitted,

Joy W. Vavrek
Administrative Officer

11-17mins.05