

## **BOARD OF ADJUSTMENT MINUTES**

**August 23, 2010**

MEETING CALLED TO ORDER AT 7:30 P.M. by Chairman Holloway.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY OPEN PUBLIC MEETING LAW, AND AS STATED IN NOTICES OF THE TIME, PLACE AND DATE PUBLICIZED IN ACCORDANCE WITH THE STATUTE. IT WAS INCLUDED IN A LIST OF MEETINGS FORWARDED TO THE HERALD NEWS AND THE RECORD AS REQUIRED NOTICES. IN ADDITION, THIS LIST HAS BEEN POSTED IN A PUBLIC PLACE BY THE BOROUGH CLERK, AND A COPY OF THIS HAS BEEN FILED IN HIS OFFICE FOR PUBLIC INSPECTION. PROPER NOTICE HAVING BEEN GIVEN, THIS MEETING IS CALLED TO ORDER AND THE CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THE MEETING.

MEMBERS IN ATTENDANCE: JIM IANNIELLO, RUSSEL JUZDAN, GIANNI INTILI, TRACY KALLERT, PHILIP DICRISTINA, TONY ORLANDO, GARY HOLLOWAY AND VINNIE DECESARE

ALSO PRESENT – JOHN FIORELLO, BOARD ATTORNEY  
TOM SOLFARO, BOARD ENGINEER  
BOB PERRY, BOARD PLANNER

FLAG SALUTE

A motion to approve the minutes of the July 26 2010 meeting was made by Ms. Kallert, second by Mr. Decesare and approved.

### **RESOLUTIONS**

DOCKET # 10-09 – O. & S. ZYM – 59 QUARRY DR. – BLOCK 113 LOT 12.01 – BULK VARIANCE - Application is hereby denied by a vote 6 – 1.

DOCKET # 10-10 – E. GENCARELLI – 30 WEASELDRIFT RD. – BLOCK 85.01 – LOTS 3 & 4 – USE & BULK VARIANCES – Application is hereby denied by a vote of 6 – 0 with one abstention

### **ORDER OF BUSINESS**

Chairman Holloway announced that no proof of notice was submitted for Docket # 10-06 – L. Marulanda & J.I. Torres – 28 Rockland Ave. In addition notice was deficient for Docket # 10-11 –K. Haddouche – 76 Marcellus Ave. The applicant will correct the notice for the September 27, 2010 meeting.

DOCKET # 10-03 – QUICK CHEK, CORP. – BROWERTOWN RD. – BLOCK 122 LOTS 10 & 10.02 – PRELIMINARY & FINAL SITE PLAN – USE & BULK VARIANCES –

Mr. Fiorello noted there was a motion before the Board requesting that Mr. Corradino be disqualified as the objector's attorney because he the municipal judge in Little Falls and the presiding municipal court judge for the county. Mr. Fiorello stated that both parties have submitted briefs and he has submitted his opinion. The Board now has to grant the motion of Quick Chek or deny the motion. A motion to deny the motion by Quick Chek was made by Mr. Intili, second by Mr. Ianniello and denied by a vote of 8 – 0.

Mr. McArthur, attorney for applicant, said he respects the Board's decision and will abide by it but for the record still maintained his objection.

Mr. Corradino asked the Board to direct the attorney for the applicant make an election. At the last meeting amongst other things the attorney addressed certain reliefs that he was seeking from the Board. It was a D variance and multiple C variances and his position was they don't agree they have to get or produce proofs for a D or a C but they were going to submit proofs anyway. He does not understand what that means and felt it was not fair to the Board. He thought it was grossly improper and inappropriate to have a multiple choice thrown at the Board. Either you are going for a D variance because you have to or your not. He felt the same applied for any C variances required. The Board should direct the applicant to make that election.

Mr. McArthur said he did not want to belabor what he said in his opening at the last meeting and felt they were simply arguing in the alternative. It is ultimately up to the Board whether or not it feels variances are required here and if they are they will submit proofs. He asked to call his first witness.

Mr. Corradino asked the Board to decide on his request. Mr. Fiorello felt it was up to the applicant to present his proof and the Board will determine at the end whether or not he has met the requirements of the statute. If he doesn't then he will not get his variance. He cannot tell the applicant how to present his case. The Board will hear the evidence and make the decision. They deny variances where people don't meet the burden of proof and grant them when they do but he can't tell Mr. McArthur how to proceed in this matter. He has made an application and it is up to him to present proof to meet the application. Mr. McArthur said he intends to do so.

Mr. Jeffrey Albanese, real estate manager for Quick Chek Corp., was sworn in. He thanked the Board for their time. He has been with the company for 15 years and before that he worked for another convenience chain in New Jersey. He has run stores and districts of stores and has an operations background. He has been in real estate for Quick Chek for 6 years and is responsible for new site locations. Quick Chek is a privately held company by the Durling family who were dairy farmers in New Jersey. The convenience chain came about when home deliveries of milk stopped. The dairy farmers needed a place for the milk and that is how the milk and jug stores opened up. Quick Chek opened the first store in 1967 and now have 126 locations in New Jersey and New York.

Mr. Albanese stated they are family owned and all locations are run by the company. There are no franchises. All employees are Quick Chek employees. A site like this would bring 30 to 40 jobs to the community. They operate free standing stores and they distribute fuel. The convenience store has become more of a one stop shop for folks. Over the last 10 years the gas stores have been added to convenience stores. Quick Chek has been operating for over 46 years. Quick Chek carries a full line of groceries, 20-minute coffee, full deli with sandwiches, soup and beverages. They operate 24 hours 7 days a week. They would have 8 -10 tractor trailer deliveries a week. Quick Chek gets involved in the community such as local sports and local first aid squad. They look to be active in the community. They sponsor JDRF and have the festival of ballooning every year. A portion of that is donated to charity each year. He stated they will be a good neighbor for the community.

Chairman Holloway stated they will going tonight to 9:00 p.m. and the applicant and objector has agreed to a special meeting to take place on Thursday, September 23, 2010 at 7:00 p.m. in the council chambers.

#### QUESTIONS TO MR. ALBANESE

Mr. Corradino asked if he was the real estate manager for Quick Chek for 15 years. Mr. Albanese said he has been with them for 15 years but has been the real estate manager for the last 6 years. Mr. Corradino asked his specific duties. Mr. Albanese said his duty is to find new site locations for the Quick Chek Corp. Mr. Corradino asked if he was in charge of the criteria that Quick Chek follows to pick sites. Mr. Albanese said he is not in charge of it but they do have criteria in place. Mr. Corradino asked if they had certain criteria in place for sites. Mr. Albanese said it is site specific to communities. Mr. Corradino asked if they advertise the criteria for sites. Mr. Albanese said he doesn't understand advertising the criteria. Mr. Corradino asked if they had a website. Mr. Albanese said they did. Mr. Corradino asked if on that website there was a site criteria. Mr. Albanese said there was. Mr. Corradino asked if that criteria was used by Quick Chek when they are looking for a site. Mr. Albanese said that is the criteria they put up so people can call in sites to them. He would say every site is specific to the community. Mr. McArthur noted for the record that this is outside the scope of cross examination and objected to the line of questioning. Mr. Fiorello said the testimony was that he is responsible for site location and this is directly regarding site location. Objection is overruled.

Mr. Corradino submitted site criteria from Quick Chek's website. He stated it lists requirements for a site. Mr. Albanese agreed it listed site guidelines. Mr. Corradino read the requirements of 2 acre minimum for convenience store and gasoline. The Quick Chek website document was marked O-1. He asked Mr. Albanese if he recognized the document and if it was from his company's website. Mr. Albanese said it was. Mr. Corradino asked if the site criteria indicated a 2 acre minimum for a Quick Chek site. Mr. Albanese said yes. Mr. Corradino asked if this site had 1.01 acres. Mr. Albanese said it did. Mr. Corradino asked if it said minimum 300' frontage and this site had 106.02'. Mr. Albanese said he would agree. Mr. Corradino asked if it said 5400- 7000 sq. ft. facility and this site was 4542 sq.ft. He felt he would be correct in saying that the criteria at this site is well below the criteria set forth in exhibit O-1. Mr. Albanese agreed. Mr. Corradino asked if he was in

charge of approving the sites. Mr. Albanese said they have a real estate committee who approves sites. Mr. Corradino will hold his exhibits until he is done with his case and then proffer them in.

Mr. McArthur referred to exhibit O-1. He asked Mr. Albanese if the criteria set forth on the exhibit are what Quick Chek looks for. He rephrased the question and asked if he could explain what the exhibit means. Mr. Albanese said it is a suggested criteria they put out there but they have developed on smaller and larger lots. They work to the site in the specific community to look for what they need. They are very happy with this site and the location of it. It doesn't specifically meet the suggested site criteria but they do have a prototype for a building and is the one before the Board which is the 4500 store. They felt with the traffic and the demographic here it was the right place to be.

Mr. Corradino asked Mr. Albanese if he agreed that this site falls far below the criteria set forth in O-1. Mr. McArthur objected because it has been asked and answered. Mr. Fiorello did not agree. He asked Mr. Albanese to answer the question. Mr. Albanese said this specific site does not meet the suggested criteria.

#### PUBLIC QUESTIONS TO MR. ALBANESE OPEN – CLOSED

Mr. Intili asked if they looked into other sites in the area of Woodland Park. Mr. Albanese said not since they have had this one under contract. Mr. Intili asked if they looked at only one site. Mr. Albanese said they were under contract for a while so they have been working on this site.

Chairman Holloway asked if they have built this particular size store in New Jersey. Mr. Albanese said yes.

Mr. Juzdan asked if all the new sites are gas and convenience. Mr. Albanese said they only develop new sites with gas and convenience store. Mr. Juzdan asked the minimum level of gas pumps. Mr. Albanese said 6 are the minimum. The size of the stores range from 4500 sq. ft. and their New York stores are 6500 sq. ft. This proposed building is the smallest store they have.

Ms. Kallert asked if they have plans to close the Little Falls store. Mr. Albanese said no. Ms. Kallert asked if they were looking to adding pumps to the Little Falls store. Mr. Albanese said not at the moment.

Chairman Holloway asked if they have looked at any other sites in the Borough. Mr. Albanese said not since they have had this deal in play. Chairman Holloway if they looked prior to that in the area. Mr. Albanese said they looked at the whole market but he could not tell him specifically where they were.

Mr. Corradino referred to O-1 and asked about the criteria for parking of a minimum of 40 spaces and stated the site did not have 40 spaces. Mr. Albanese said he did not think they did.

Mr. Solfaro, Board Engineer, asked if the 8 – 10 deliveries a week were for the convenience store and the gas station. Mr. Albanese said it was for both.

Jeffery Martell, engineer from Bohler Engineering, was sworn in. He stated his qualifications, questions from Mr. Corradino and was accepted as an expert.

Mr. Martell said the property is located on Browertown Rd. and a small portion of the site is located in Little Falls. He marked the rendering of an aerial photo dated 6/18/10 of the site Exhibit A-1. It is an aerial photo with the Quick Chek site plan the Capitol One Bank overlaid on it. The project location is immediately north of Route 46 and surrounding uses are the bank, dry cleaners, bar & grill, storage facility and the shopping center with various stores. They are precluded from accessing the Route 46 ramp.

Mr. Martell marked the survey dated 4/29/09 Exhibit A-2. He stated there are two lots within the Borough and a small lot in the Township of Little Falls. He noted the parcel in Little Falls was highlighted on the plan but they are proposing no development on that parcel. He pointed out an access easement located on 15' of their property and 15' on the properties to the north. The easement runs the full length of their property. It is 30' in total and the existing site has a driveway on the easement and currently has a curb cut on Browertown Rd. The driveway doesn't serve anything except for a small access door of the storage facility. There is a large topographic grade change between the east and west side of the property. There is about a 30' grade change from Browertown Rd. to the shopping center property line. He explained the current drainage to the Board. He marked the site plan exhibit dated 6/21/10 exhibit A-3. It is essentially the plan the Board has in front of them except it has been colorized. The site parcel is 1.086 acres and does not include the easement areas. The proposed store is 4542.5 s.f. , 57' wide and 79' deep. There are seating areas inside and out. The gasoline component is 6 gas aisles totaling 12 fueling positions. Each island you can fuel on the right and left. Two islands have low flow diesel. Associated with the gasoline is a 47' X 90' canopy and four underground storage tanks. Parking for the total facility is 33 proposed stalls where 31 are required. The building has a corner entrance. They have a unique property where they don't have a typical front, side and rear. They have tried to treat this building to accommodate what is really 3 front yards of the property. They have a separate loading zone for the store located on the northern end of the property. There is a trash/recycling area to the northwest corner of the loading zone. In terms of the loading zone for both the store and the gas they are expecting WB50 trucks that are essentially medium sized tractor trailers that would come to the site 8 – 10 times and in addition approximately 5 box trucks will make deliveries to the store each day.

Mr. Martell said the tractor trailers will come approximately 8 to 10 times per week. They are going to limit the hours of delivery by eliminating deliveries at the peak hours of 6 a.m. to 8 p.m. They are doing this as a result of comments from the police department and the county. The delivery route to this store would be the truck making a left from Browertown Rd. off of Route 46. The store delivery will circle around the canopy in a clockwise fashion and pull backward into the loading zone and for the gas delivery they would enter the same way but go in a counter clockwise fashion to line up the truck with the right side of the truck facing Ramp C to go back out on to Browertown Rd. The County is not allowing them to

make a left out of the site. They can make a right and a left into the site and only a right turn out of the site. They did receive conditional approval from the county and they will meet all conditions. They are proposing to modify the striping on Browertown Rd. to provide a small 25' left turn lane that would allow one vehicle to go into the left turn lane separate from the normal Browertown Rd. through movements. They do have an excess of 34' around the canopy area, 35' to the north, 37' to the east and west and 34' to the south of the canopy. They have submitted a truck turning sheet on Sheet 16 of 16.

Mr. Martell said he described a 30' grade change and as a function of any type of development on the site the grade change is going to be a reality. The property is not typical and it is an engineering challenge related to this property independent of the type of use that is put on the property. Most of the development is roughly on grade with Browertown Rd. They have to design a site that is safe for them and the surrounding properties as well. The finished floor of their building will be relatively on grade with Browertown Rd. and what that equates to is a retaining wall. The wall starts at the southeast corner, almost wraps the property and ends on the northern side at about the mid-point of the property from an east/west direction. The modular block wall at its highest will be about 25'. It will be designed in concert with the building foundation in order to add extra stability to the building. They have done landscape treatments on the side of the wall and there are still comments from the Board professionals regarding adding landscaping that they are agreeable to do as well.

Mr. Martell said in terms of storm water management which was a topic of a lot of conversations with the county. The objector's attorney was also at these meetings as well. The design intent is to meet the state regulations. There are 3 criteria, ground water recharge, water quality and run off rate reductions. They are in compliance with this and meet all criteria. All improvements are underground on the east side with a small portion on the south side of the proposed store. The discharge, similar to the existing conditions, discharges to the property owner to the west. Their property is not located in the flood plain and the property next door has some areas located in the flood plain. The state regulations are set up as a regional approach. They are doing their part of the storm water management by meeting all 3 of the regulations in terms of their on site improvements. They are getting gas, electric and water from Browertown Rd. Part of the access easement is also a sanitary sewer easement which services the properties in the area and they will be connecting into that sewer. The site has been designed with all flush mounted down lit lighting. There is a glaze over the lighting to reduce glare. There are lights along the perimeter and on the front and loading doors of the site. They have treated the frontage of Browertown Rd. with some shade trees and shrubs. They do have some small planting and mulch areas with shrubs along the southern retaining wall and the parking islands. They will meet with the Board professionals regarding the landscaping.

Mr. Martell marked a photo exhibit from the bank driveway looking at the proposed Quick Chek exhibit A-4. He described the building façade, signs, canopy and parking areas. He marked a photo exhibit from Modell's looking at the proposed Quick Chek exhibit A-5. He described the exhibit which included the back of the building, wall and fence areas. They

are agreeable to installing a 4' fence instead of a 6' fence. They would still require a variance for the height of the fence.

Mr. Martell addressed the C variances that are required. He referred to the Board Planner's letter dated 5/13/10, page 7, which addresses the 7 variances. The convenience store is a permitted use but the gas is not and this is why they are before this Board. He would not testify to the use variance. The requirement for side yard setback is 20'. They have interpreted that the side yard is the northern property line. They have made the interpretation that the ramp and Browertown Rd. should be treated in a typical front yard treatment and the rear yard is to the west. In that case they would need 20' from the property line to the north and they have identified a variance for the canopy and that setback is 17.2'. They had to take many elements into account with this site which include circulation for tractor trailers and emergency vehicles. They have looked to maximize their dimensions in a north south direction. They have looked to provide the minimum 18' depth for parking stalls. They also had to look at 3 key dimensions in a north south direction which are the drive aisle on the south end of the canopy, the spacing between the pumps and the drive aisle on the north side. The circulation elements for Quick Chek are critical to the operation from a safety perspective as well as the efficient operation of the site. They ended up deciding on a 34' dimension, 25' pump to pump dimension and a 35 ½' circulation aisle to the north end of the canopy. What that does is puts the canopy around the pumps 3' into the side yard setback. The open air nature of the canopy which is simply an overhang and the fact they have the 15' access easement they are essentially using as part of the site they can essentially gain proper use of the north side of the canopy by providing the full circulation aisle. This is somewhat unique and not anticipated in a normal side yard setback scenario. They have safely shown the emergency vehicles going around the site which have been submitted to the Fire Official. For all these reasons they feel the canopy 3' within the side yard setback is something this Board should consider. The fence height of 3' is required they are proposing 6' but are willing to go to 4' as a function of the safety of why that fence exists for fall protection on top of the wall which is significant in height and feel it is appropriate for the Board to consider that variance. In terms of the signs the summary lumps them into two groups which are number and size of secondary signs and area and height of the freestanding sign. The ordinance gives a higher allotment to the primary sign and a smaller allotment to the secondary sign. They have interpreted the front as the Southside for calculation. A total of two signs are permitted and they are proposing three. Given the visibility of the parcel that is highly visible from 3 sides they would like to have a sign on all three sides. That is part of the variance and the second part of that variance is the area of those signs. The principal sign is allowed at 101.4' and the secondary sign is allowed at 30.4'. Those are calculations taken off the elevations of the building which are on the site plan sheet. They have listed requirements for signs in the Neighborhood Commercial zone and signs specific to gas stations. They have compared themselves to the NC zone but have listed both for informational purposes. This all equates to variances for the size of all of the signs. They are proposing a total of 104.3 sq. ft. because they feel they have 3 primary facades given their visibility and they have more or less geared their signage package in that fashion. In terms of the canopy you could follow the NC criteria where they would require variances or the gas station criteria where they would not require variances. They have conservatively identified those variances as if the NC zone applied and would

leave that up to the Board professionals to decide. Where the NC zone applies the principal sign allowed is 13.5' and the secondary would be 4.1'. The gas station criteria allow 24' and they are proposing 20.3' on the east and south and here they comply with only having two signs. If the Board feels they need to comply with the NC zone requirement then they need a variance for the size of those signs. The second portion relates to the free standing sign. There is the same scenario between the NC zone and the gas station requirements. The sign area allowed in the NC zone is 12' and the gas station is 24'. They are proposing 79.6' as a function of their need to advertise both the Quick Chek element and the four grades of gasoline. In the NC zone there is a sign height requirement and then there is a gas station sign height. NC zone requires 10' and gas station is 18', they are proposing 17' so they comply with the gas station criteria and not the NC zone.

Mr. McArthur asked Mr. Martell to go to the Neglia letter dated 2/3/10 and revised 6/2/10. He referred to Page 3 of the letter under site plan comments #6 and asked him to address the concern. Mr. Martell said they met with Neglia the question was what the fuel tank vents were and they showed them on the site plan where they are located. They did provide a photo of that as well and it is essentially a part of the vapor recovery system as well as the product piping for the gasoline component. There are vents that go 12' in the air and what they did was provide Neglia with the photo of that element. The building department will review a detailed set of drawings to make sure they meet all regulations should the application be approved.

Mr. Martell addressed # 9 on the same page of the Neglia letter. What they have done in terms of the landscaping and guiderails as well as bollard design around the site is snow storage and where the snow goes in the winter. They have pushed the landscaping back on the east side approximately 10' off the curb. Typically you see the landscaping right up against the curb and when you go to plow it becomes difficult to keep the material alive. On the west side they have provided a guiderail with an offset off the curb so the trucks can push snow up against because if there is a guiderail immediately up against it they wind up breaking it or the snow ends up in the parking area.

Mr. Martell addressed page 3, item # 2 of Neglia's letter. The utilities are located immediately adjacent to the property frontage. They will have to make application to the both the sewer and water service authorities as a condition of any approvals. There is a small recharge basin identified as infiltration chambers that are located in proximity to the underground storage tanks. There was a reference to any interaction between them and the underground storage tanks. He does not see the concern here but understands the thought process. In terms of safety elements they are double walled and in full compliance in terms of monitoring. There are no restrictions in terms of the underground storage tanks to the recharge system. The proximity there in his opinion is not a concern and they will act independently and there is no negative or detriment the tanks can cause on the chambers and vice a versa.

Mr. Martell said there is a 15' wide access easement on the adjacent property that compliments the 15' wide access easement on their property which is essentially granted to both property owners. They do have asphalt and curbing improvements, grading

improvements to accommodate the proposed constructed access which was what was anticipated within those easements. They believe all the construction is consistent with the easements they do have on those properties.

Mr. Martell said it is customary for them to have certifications for clean fill. They can provide that documentation to the engineer as they receive it.

Mr. Martell stated they are agreeable to any reasonable requests the Borough professional's have for the lighting fixtures. They show the proposed fixtures on the plan. They think it looks good and compliments the site but agree to work with the professionals. They are agreeable to comply with the request for an initial planting height. He said when they met the intent was to replace the striped island with a planted landscaped island. They have mixed feelings on this and do not want to landscape that area. They felt landscaping too close to the front door becomes a garbage can. They have many products with small wrappers that end up in the bushes. They are agreeable to some type of hardscape there but do not want to make it a landscaped area. Mr. Martell said they had some discussions with Neglia in regard to a small mulched area in between the southern end of the parking area adjacent to the underground storage tank and the southern property line. The request is to provide a minimum of 5' and they are close to it. They have approximately 6 1/2' from the curb to the property line and within that area they have to put the wall that is low in that area and a fence for fall protection and bollards for any potential of cars going over into that area. The planting area itself it approximately 4' so it is not the full 5' there. It is difficult to plant a material which will sustain in the foundation with the fence and bollards. They would like to propose a modified fence or something else that would provide the intent which he believes is the headlight screening that area. If they increase it to 5' they do not think it will be enough for the material to live. They suggested to have the chain link fence with the bottom 3' solid with privacy slats. They are also agreeable to a 4' solid fence. They would like to look at fence elements as opposed to landscaping to meet the intent there.

Mr. Martell said they are agreeable to a landscape treatment along with the quantity level and species. In the northeast corner of the property as they discharge on to the neighbor's property as a function of the review of the county and the objector's presence at the meeting in regard to the discharge on to the neighbor's property was a level spreader. The intent is essentially to reduce any soil erosion elements at a discharge. When you concentrate storm water via the inlets that collect the parking lot then discharge via a pipe there is a lot of energy associated with it. So in this case they have directed it parallel to the swale and to a small ditch on their property which is the level spreader that it allows it to fill up and spread it evenly. There is about 15' of grass area between their property line and the gravel area on the west of their property and it will be put in that area.

Mr. Martell said they are agreeable to the planting density for the lower portion of the wall. It is a treatment intended to soften the retaining wall.

Mr. Martell said the design in terms of the southwest portion of the site after additional conversations with the engineer they can revisit snow storage and landscaping to make small

modifications. A decorative metal picket fence is being suggested and they are flexible with the type of fence.

Mr. Martell said there is a landscape island on south side of building and they are wrestling back and forth with putting a tree in the area given the retaining wall location. They can look into it with the Board's engineer.

Mr. McArthur said this may be an appropriate point to adjourn at this time. Chairman Holloway asked if Mr. Martell could come back on the September 23, 2010 in order for Mr. Corradino to ask questions.

Mr. Intili said he cannot make the meeting on the 23<sup>rd</sup>. Chairman Holloway stated it was the only time the chambers were available. It was agreed that Mr. Intili can review the tape of this meeting. Chairman Holloway asked if everyone else would be able to make the meeting. Mr. Ianniello said there is a possibility he would not be there. The other members are available on the 23<sup>rd</sup>. Ms. Patterson will be asked to review this meeting tape.

The application will be carried until the September 23, 2010 special meeting at 7:00 p.m. with no further notice. Applicant agrees to waive time.

BREAK – Call to order 9:30 p.m.- Roll call – All present

DOCKET # 10-08 – 75 JACKSON AVE.,LLC – BUSH AVE. – BLOCK 42 LOT 36.01 – BULK VARIANCE

Mr. Joseph Petriello, attorney for applicant, stated they are here for a single variance. The owner has a lot on Bush Ave. that is undersized and seeks to build a two-family home on it. He meets all the requirements considering some variances that were granted to him when he had the lot subdivided by the Planning Board. He has every thing he needs except a variance for the open space requirement. He seeks to build a two family and there is an open space requirement for two family homes. He is deficient with the requirement by 594 sq. ft. They are seeking a variance as to that requirement.

Chairman Holloway asked Mr. Fiorello to explain the reason the letter of denial states there is a requirement for a minimum lot size variance as well because the size of the lot is 70' X 70' or 4900 sq. ft. where the ordinance requires 6000 sq. ft. However the Planning Board granted a subdivision of this lot with an adjacent lot and at that time granted a variance for the area of the lot. The area of the lot has already been granted a variance from the Planning Board when they subdivided the lot in 2008. He did not feel they needed another variance for the size of the lot but does need the open space variance because he now wants to put up a two-family house whereas the Planning Board granted the variance for a one-family house on that lot as requested by the applicant when he got the subdivision.

Matthew Evans, architect, was previously before this Board and was accepted as an expert and was sworn in. He designed the plans for this project and the design meets all the requirements considering the variances already granted by the Planning Board except for

one variance for the open space. The proposal is basically a two-family, townhouse style structure which is similar to the house on Jackson Ave. that is already built. The house will be the same footprint and area around the house that was previously approved. They are proposing they are deficient on the open space because they have created two parking areas in lieu of a parking garage and parking in front. They have a parking area that takes up approximately 400 sq. ft. The remainder of the property is basically green area in the rear and sides.

Mr. Evans said he has looked at the neighborhood which is a Residential C zone which permits one & two family homes. He has surveyed the area which is shown in a graphic attached to the plan which shows 11 single family homes and 35 two family homes. He said the lot is consistent with other two family homes in the area and would not be more intense than the existing homes. They are also on undersized lots. The negative criteria of this would be that the lot size and depth which are pre-existing, non-conforming conditions would not change whether it would be a one-family or the two family they are proposing. The open space which is required is 3500 sq. ft and they are proposing 2900 sq. ft. but the extent of the open space which is in the rear, is a large expanse that 25' deep by 75' wide which is ample space for both families to use. The dwelling is side by side so one person could have full access to one space and the other family would have its own space as opposed to a stacked two family home. If they were to provide a 2 car garage and have parking in front they could remove the parking pad with 2 cars and add another 400 sq. ft. of open space. The plan provides for a deck for each unit which are 6' X 9' which would allow for more open space. He does not think the deck area is spelled out in the ordinance but the deck would serve the same function as the open space.

#### PUBLIC OPEN – questions to architect – PUBLIC CLOSED

Mr. Intili asked how many stories there were all together. Mr. Evans said from Bush Ave. it is a 2 ½ story structure and to the rear with the outside walkout basement it would increase the height in the rear portion of the house. Mr. Intili said there is a basement floor plan, a first floor plan, second floor plan and an attic floor plan that is all livable space. Mr. Evans said there is some portion of the basement level that would be occupied. Mr. Intili asked if they were proposing a bathroom in the basement. Mr. Evans said there is no bathroom proposed in the basement. Mr. Intili asked why they can't propose garages for the units. Mr. Evans said they could provide the garages but it would increase the scale of it from Bush Ave. Mr. Intili asked if there was a height regulation under the zoning regulations. Mr. Evans said by creating that they would be pushing the building up a considerable amount to get the garage underneath once they got to the higher part of Bush Ave.

Mr. Fiorello said on the plans they have a two-car garage. Mr. Petriello said the original plan they submitted did include a garage but at the suggestion of the zoning official they eliminated the garages and revised the plan. Mr. Fiorello said if there are now no garages there is an ordinance requiring one garage for each dwelling unit in this municipality and a variance would be required.

Mr. Petriello said if the Board prefers they will revise the plan to include a garage they will do that. Mr. Fiorello said it is not what the Board requires it is what they are proposing and what the ordinance requires. Chairman Holloway noted they did not notice for that variance. Mr. Petriello agreed that he did not notice for that particular variance. Chairman Holloway read the garage requirement in the zoning ordinance.

Mr. Fiorello stated they would need a variance to eliminate the garages or if they decided to include the garages they could need a height variance.

Mr. Petriello discussed it with his client and they agreed to carry the application to the September 27, 2010 meeting and waived time restraints. He will notice for any additional variances required for that meeting.

DOCKET # 10-12- LIVING WATER CHURCH OF GOD – 20 ANDREWS DR. – BLOCK 122 LOT 3.02 & 3.03 –USE VARIANCE/PRELIMINARY & FINAL SITE PLAN/C.O.OVER 5,000 SQ. FT.

Richard Briigliodoro, attorney for applicant, stated they have 3 witnesses tonight, the pastor of the church, the architect and the planner. They would like to locate the church in an Industrial zone which would require a use variance. The courts have determined that churches are inherently beneficial uses so they have satisfied their special reasons and their focus will be on the negative criteria which is whether or not the variance can be granted without substantial detriment to the public good or the zone plan and zoning ordinance.

Pastor Joel Latorre, was sworn in. He stated the church is a protestant, evangelical church. He has been an ordained minister for two years and has operated the church since 9/21/08. They are currently at the WP First Aid squad and it is their intention to move to 20 Andrews Dr. and will no longer operate at the first aid squad building. They have church activities during the week usually on Monday night between 7:30 & 8:30 p.m. They are not usually operational on Tuesday nights. Wednesday they have prayer and weekly bible study from 7:30 to 9:30 p.m. There are usually 25 to 40 individuals at the church on Wednesdays. There are no activities on Thursday or Friday. On Saturdays they usually have an activity of some sort once a month for about 25 to 40 people. The most intense use for the church is on Sunday. They did operate from 1:00 to 2:00 for prayer and at 2:00 the service would begin. Now they will be having prayer services from 10 to 11 a.m. and starting the worship service from 11 a.m. and ending at 1 p.m. They would have from 80 to 100 people on Sunday. He has not looked at any other sites for his church because this site fits their needs. There are two other businesses on the site that are operated by the owner. The owner moved his second business here from Hackensack due to the economy. Mr. Briigliodoro noted that the bookbinding business that was moved to this location was recently approved by the Woodland Park Planning Board. Chairman Holloway stated that was correct. Pastor Latorre said the reason why the site interested him was because he did not feel there was a conflict with the other businesses that operate there. The church operates in the evening and on Sundays and when he visits the site at that time Andrews Dr. is almost deserted.

Pastor Latorre said there is an existing freestanding sign cabinet which at this time does not have a sign in it. It is his intention to place a sign in the existing sign cabinet and will not be any larger.

#### PUBLIC QUESTIONS FOR PASTOR LATORRE – OPEN – CLOSED

Ms. Kallert asked about the parking listed at 16 Andrews Dr. and if they had permission to use the lot. Pastor Latorre said 16 & 20 Andrews Dr. are owned by the same person and he has no issues with them using both lots. There is not a separate business at 16 Andrews Dr.

Mr. Dicristina asked if they would be occupying the second floor and entering on the first floor. Pastor Latorre said that was correct. The main entrance for the church would be 20 Andrews Dr. and the business clients always use 16 Andrews Dr. Mr. Dicristina said there is a lot of debris in the parking lot and was flooded the day he went there. He asked if the owner would remedy that for the safety of the church. He felt it was littered and there were abandoned trucks and a boat in the rear of the property. Pastor Latorre said he is aware of it and has offered the services of the church to assist him with cleaning up the area. There is a clogged drain there but that has limited parking. He will help the property owner clean up the site.

Chairman Intili asked about the entrances of the site. Pastor Latorre said the owner's clients enter at 16 Andrew Dr. which is on the left. The church would enter at 20 Andrews Dr. which is on the right. Mr. Juzdan asked if there was only one entrance to the church area. Pastor Latorre said there are a total of 3 entrances/exits to the area. Mr. Juzdan asked if there were bathrooms on the second floor. Pastor Latorre said there are a total of 6 bathrooms.

Ms. Kallert asked if they would be having weddings, baptisms or christenings where there would be more than 120 people at the site. Pastor Latorre said he conducts ceremonies inside the temple but parties and banquets will not occur. They will not rent out the facility. There will be no pews inside the church.

Mr. Solfaro, Board engineer, asked if the property owner has given any thought to cleaning up the site like concrete work, sealing cracks or striping the lot. Pastor Latorre said he has discussed it with the owner. He has not discussed concrete with him but they have discussed striping the lot and sealing the cracks.

Mr. Perry, Board Planner, asked if they have any intention of having day care or any type of school at the site. Pastor Latorre said no it is his anticipation to grow and get out of there.

Michael Kuybida, architect, was sworn in. He has been previously qualified by the Board and was accepted as an expert witness. He prepared the plans that have been submitted to the Board for the existing building at 16-20 Andrews Dr. The space is on the second floor and consists of 4,699 sq. ft. Mr. Briadoro said in the application he has indicated the space is over 5,000 sq. ft. but when he filed the application it was not a definite. The Borough requires Board approval for spaces over 5,000 sq. ft. and they wanted to get the

application in to the Board. Mr. Fiorello said in that case the Board will not have to consider the 5,000 sq. ft. certificate of occupancy issue.

Mr. Kuybida referred to the drawing 7/12/10 which shows the parking as it exists and a second floor plan. They do not have to make any modifications to the space at this time. The drawing also shows the entrance at 20 Andrews Dr. They did address the parking and it exceeds the requirement for an assembly use. There is an existing door out the side of the building. There is another stair with an emergency exit that goes down to the outside.

Mr. Kuybida said he did a review for the change of use which triggers certain requirements and they comply. There is nothing required as far as the change is concerned and since nothing was triggered they do not require handicapped spaces. They will be utilizing the existing sign and just be adding the name.

Mr. Kuybida said he went out to look at the lights at night and he has changed the drawing. He submitted the revised plan dated 8/23/10 and it was marked A-1. He described the lighting as shown on the plan.

Mr. Solfaro said the nature of his comment regarding the lights is they are concerned about safety and night functions. They have to make sure they are adequately protected. Mr. Brigliadoro said they applicant will talk to the landlord about any requirement for additional lighting.

Mr. Brigliadoro referred to Mr. Solfaro's report. They will revise the plan to include both lots 3.02 & 3.03, the notice to the paper included 3.03. Mr. Solfaro asked about 12 parking stalls and the dumpster area that appears to be partially on the neighbor's property. He asked if they had permission to use the property. Mr. Kuybida said as far as he knows it has been like this for 20 years and he does not know if there was any permission granted between owners. This may have been agreed upon many years ago and this plan shows the existing conditions and it is what it is.

Mr. Dicristina said when he drove in last evening the bay on the side was completely flooded. There were parking spaces under water. If in this climate with rain and snow there could be a problem and it should be addressed by the landlord. If there had been a church service last night they would not have been able to park. Mr. Kuybida said there is a drainage ditch in the rear of the property. They could discuss it with the landlord.

Mr. Intili said there is an existing use and existing conditions. He asked what the use is now for the 2<sup>nd</sup> floor. Mr. Kuybida said it is offices and with the church there would be a change in use. Mr. Intili asked about the Rehabilitation Code. Mr. Kuybida said he went through the code and found it was a lesser hazard and therefore you do not have to change anything. All requirements of the church are a lesser hazard than offices.

Mr. Intili asked Mr. Solfaro how the change of use complies. Mr. Solfaro said if the Board is going to require new striping and obviously there is enough space in there with 54 spaces to make it advisable to stripe ADA spaces. The Board can impose reasonable conditions.

Mr. Kuybida agreed there are enough spaces to provide the handicapped spaces but was just trying to say they were not required by code. Mr. Solfaro recommended 3 spaces with one being van accessible.

Mr. Intili asked if the congregation would enter the site on the driveway next to 20 Andrews. Mr. Kuybida said they would enter there. Mr. Intili asked if they would then circulate around the building. The spaces are angled so that they can come in both driveways. Mr. Intili said the conditions are existing but felt they could improve the circulation. He asked if they would be providing any signs indicating how to get in the parking lot. Chairman Holloway felt it is set up to pull into 20 and 16 Andrews.

Mr. Decesare asked how the handicapped would get upstairs. Mr. Kuybida said accessibility is not required. If they were changing the second floor in any way they would trigger the requirement and have to meet the code. But since they are not doing anything to the second floor they are not required to meet the code.

Mr. Kuybida described the way trucks make deliveries at the site. Mr. Intili said they were talking about the church congregation parking their vehicles. Mr. Briigliodoro said the commercial use of the site may conflict with one way circulation. Mr. Intili asked if they could make a turn and circulate back. Mr. Kuybida said there was enough room in the rear. Mr. Intili said there are 11 spaces against the property line and there 16 on an angle. He asked how wide the aisle was. Mr. Kuybida said it was about 13'. Mr. Fiorello said he would assume people who work in the building pull in and out without a problem. Mr. Intili felt there would be quite a number of people coming in on a Sunday. He felt they would be providing an adequate number of parking spaces. They have two different types of operations with a business that requires the circulation to operate in a certain way and now you have a different use which may require something different. Mr. Fiorello said obviously you can not change the requirements for one and not the other.

Mr. Ianniello asked what time the bookbinding business operated. Chairman Holloway said he believed there were two shifts. The night shift has very few employees. The church should not conflict with the other businesses at all. Mr. Briigliodoro said the property owner has reviewed the application and has signed off on it. If he thought there would be a conflict he would not have done that.

Ms. Kallert said she agreed with the engineer that the lot needs to be repaved and striped. She felt the flooding was an issue and thought the Board should put conditions on any approval.

Chairman Holloway asked Mr. Fiorello if they could put conditions on an approval without the owner present. Mr. Fiorello said there is a site plan application before the Board and if the property is in a condition they do not feel is safe or useful the Board can impose a condition that the applicant speak with the owner. The question would be who would pay to repave the lot and if the owner won't do it there would be a problem. Mr. Solfaro felt the striping would be the minimum needed. There are some tripping hazards in the lot that are a concern.

Mr. Dicristina asked if he was saying the lot needed some attention. Mr. Solfaro said that was what he was saying. Mr. Dicristina asked about the exit in the rear and asked where the stairs go. Mr. Kuybida said the door would be blocked up and they would have the other 3 exits.

Mr. Fiorello asked Mr. Solfaro what the minimum necessary to improve the parking lot. Mr. Solfaro said a sealant for the existing cracks and striping of the lot. Some small pavement patches may be necessary and he would be willing to go back out to the site and point out some areas for the owner and applicant. They are not talking about a complete repaving of the lot. Mr. Fiorello felt the Board could require minimal repairs to make it safe as a condition of approval.

Mr. Solfaro said he believes the applicant's attorney has agreed to come back and address the lighting with him. He said they could look at the circulation more closely with them also. The whole lot needs to be restriped but the orientation could change specifically with the 12 spaces pointing to the west. There could also be some repair to damaged curbs on site along Andrews Dr. but that is the discretion of the Board. Mr. Briigliodoro stated they want a safe site but the Board should keep in mind they are a church and are a non-profit organization. They are not the owner of the property and they can't speak for him. He did not want to get into a situation where the number of improvements or the degree of improvements could jeopardize their ability to move in.

PUBLIC OPEN – Questions to architect. – CLOSED

Chairman Holloway stated it was almost 11 o'clock and asked if the Board would continue tonight. The Board agreed to continue.

Jill Hartmann, planner, was sworn in. Ms. Hartmann has appeared many times before the Board and has been qualified as an expert witness.

She stated they discussed the property description. She described the area which includes industrial buildings, office buildings, warehouses and a large recycling business. It is an entrenched, older, industrial park that is a little faded and needs some landscaping. They are requesting a use variance for a house of worship. NJ has determined a church is an inherently beneficial use. They have satisfied the positive criteria. It is her opinion it can be granted without substantial detriment to the public good or zone plan. The church facility will be located in the building that has substantial vacancy for a long time. The area needs improvement and this use will bring in a non-impactful use to the area. The use of this structure will not impact local residents or local streets. The use is compatible and complimentary to the surrounding uses. It will not increase traffic during peak hours and they will not be in competition with the existing businesses. The parking provided exceeds all requirements. Church use has become a complimentary use in these type of district because of the off hour use. She felt this use has no negative impact at all.

Mr. Perry said he was satisfied with Ms. Hartmann's comments.

PUBLIC OPEN – questions for planner. – CLOSED

Mr. Fiorello stated the Medici principal should be met by reconciling the proposed use with the zoning ordinance. Ms. Hartmann said she looked at the Master Plan and re-exam report and felt the use encourages the development of facilities to serve the needs of the Borough residents and help maintain a stable tax base. It brings new life to the neighborhood and takes down a for rent sign that improves the general character of the neighborhood. She felt it promotes the general welfare and will have no negative impact on the industrial uses.

Mr. Perry said his concerns have been addressed.

PUBLIC OPEN – CLOSED

Mr. Briigliodoro stated this is a good use and the Pastor already operates within Woodland Park. They feel this is a good place for his church and did not think there would be any conflicts with other businesses. The church operates at times that compliment other businesses. They appreciate the professionals trying to be fair to the applicant.

Mr. Intili made a motion with the following conditions, Items 7, 8 & 9 in the Board engineer's letter should be addressed, a circulation plan should be provided, striping, 3 handicapped spaces located close to the entrance door and dimensions of aisles and distances between parking spaces and size of spaces. Mr. Fiorello asked with regard to the circulation plan if they should show one way in and one way out. He asked if the owner says no that would be the end of the approval. Chairman Intili said yes. Mr. Ianniello said they are not forcing the owner to do that now. He did not think it should be put on the applicant. Ms. Kallert felt it was unfair to the applicant to make a condition that might affect the owner's business. Mr. Juzdan felt if there was proper lighting and they can see where they are going to make it safe it would be enough. He did not think it was necessary to change the circulation of traffic. Mr. Briigliodoro stated that they are reasonably willing to re-stripe the lot, provide the 3 ADA spaces, work with the Board engineer to make sure the lighting is satisfactory and clean up the debris on the property. They agree that Mr. Solfaro will go out to the site and point out areas that need to be patched or repaired. There was no second of the motion.

A motion was made by Mr. Decesare with the condition that the lot is restriped, patching and repair of the lot will be determined by Mr. Solfaro, lighting to be approved by Mr. Solfaro, 3 ADA spaces will be provided and striped and the site will be cleared of debris, second by Ms. Kallert and approved by a vote of 7 – 0.

A motion to adjourn was made by Ms. Kallert, second by Mr. Ianniello. All in favor. Meeting adjourned.

