

# *Borough of West Paterson*

*Board of Adjustment*



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## BOARD OF ADJUSTMENT MINUTES MAY 24, 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: JERRY KISS, GIANNI INTILI, PHILIP DICRISTINA, GARY HOLLOWAY, TONY ORLANDO, VINNIE DECESARE AND TRACY KALLERT.

ALSO PRESENT – JOHN FIORELLO, BOARD ATTORNEY  
JOHN SPEER FOR TOM SOLFARO, BOARD ENGINEER  
ROBERT PERRY, BOARD PLANNER

FLAG SALUTE

Mr. Vincent DeCesare was sworn in as a new alternate member by Mr. Fiorello.

A motion to approve the minutes of the March 22, 2010 meeting was made by Mr. Kiss, second by Mr. Dicristina and approved.

### **RESOLUTIONS**

DOCKET # 10-04 – E. MARITATO – 215 SALOMONE AVE. – BLOCK 44 LOT 1 & 2 – BULK VARIANCE – Application is hereby denied by a vote of 4 – 2.

### **ORDER OF BUSINESS**

DOCKET # 10-03 – QUICK CHEK, CORP. – BROWERTOWN RD. – BLOCK 122 LOTS 10 & 10.02 – PRELIMINARY & FINAL SITE PLAN – USE & BULK VARIANCES – APPLICANT HAS REQUESTED THE APPLICATION BE CARRIED UNTIL JUNE 28, 2010 MEETING WAIVING TIME RESTRAINTS – APPLICANT MUST RE-NOTICE FOR JUNE MEETING

DOCKET # 10-01 – E. SCHUMACHER – 1231 MCBRIDE AVE. – BLOCK 96 LOT 13 –  
USE VARIANCE/PRELIMINARY & FINAL SITE PLAN

Mr. John Pogorelic, Jr., attorney for applicant, stated they have two witnesses tonight, Mr. Kuybida, architect and Mr. Mileto, planner for applicant. Mr. Fiorello swore in Mr. Kuybida and Mr. Mileto.

Mr. Pogorelic stated this is an application for use variance approval for his client to have a restaurant in Suite 2 of his building. The applicant is the owner of a 5 tenant building and the property is located at 1231 McBride Ave. The applicant is proposing to convert one of its leasable spaces that currently serves as office space into a 52 seat restaurant. While restaurants are not permitted in the zone the crux of this application is they are not seeking to create another non-conforming use but just seeking to expand slightly an existing non-conforming use because a variance for a 2,000 sq. ft. restaurant was previously approved by the Board for this property. The applicant leased Suite 5 to a Subway franchise that only utilized 870 sq. ft. of the 2,000 sq. ft. permitted. The proposed restaurant will be 1,602 sq. ft in Suite 2. The total square footage of restaurant space calculates to 2,472 sq. ft. which is a mere 472 sq. ft. over the permitted area previously approved by the Board.

Mr. Fiorello asked if his proposal was an expansion of an existing non-conforming use and asked if this was not a new use. Mr. Pogorelic said they have the planner here who will testify but the use itself is a restaurant use and that has been established for 2,000 sq. ft. Mr. Fiorello felt that was for one restaurant and they now wanted a second restaurant which would be a new use and not an expansion of an existing restaurant. Mr. Pogorelec said he is arguing as an analogy but they did advertise for a use variance. Mr. Fiorello said that would be fine. Mr. Pogorelic said the planner will testify for the expansion but it was properly advertised as a use variance.

Mr. Michael Kuybida, architect, was sworn in and has previously been qualified as an expert witness by the Board. He was accepted as an architect.

Mr. Kuybida identified the plans he prepared dated 11/09 and revised 12/09. He described the plans for the Board. They are proposing Space # 2 as a new restaurant. Space 1 & 2 were occupied by the insurance agency because at the time a large area was dedicated for files and today documents are being stored electronically and the area is not needed. This opens up available space for space # 2 where they are proposing the restaurant. He described the floor plan of the proposed restaurant. There are no changes to the exterior of the building and the only thing that would change would be the signage which would comply with all regulations. He calculated the parking requirement of 42 cars and 56 spaces exist today. They have more than sufficient parking for the building.

Mr. Kuybida said he has reviewed the Board professional's reports. He stated he took the worse case scenario in calculating the restaurant parking. The kitchen is not completely designed yet but the exhaust fan would be roof mounted. The sign will be in compliance with ordinances. He felt they had sufficient parking. Currently there is a fenced in dumpster area. There are 2 containers now but it can accommodate 4 containers.

He has reviewed the County report and all items will be addressed.

PUBLIC OPEN for questions. CLOSE PUBLIC

Bob Perry, Board Planner, stated he believes this is not an expansion of a non-conforming use. If they were expanding the Subway it would be an expansion. They did advertise for a use variance and asked him to state at least one purpose of zoning under special reasons. Mr. Kuybida thought the planner could better answer that question. Mr. Speer, Board Engineer, asked if deliveries would come to the rear of the building. Mr. Kuybida said yes. Mr. Speer asked what type of trucks would be coming in to the property. Mr. Kuybida said he did not know but previous uses have had 40' – 45' straight trucks on site. Hours of operation have not been determined.

Mr. Intili asked why there are two letters from the County. Mr. Pogorelec felt it may have been that they were required to re-notice for this application and the County received two notices.

Mr. Kiss asked about waster disposal. He asked if anything has been taken into consideration for solid waste. Mr. Kuybida said they would address it with the Board of Health. Mr. Kiss asked about grease or fat used in the process. Chairman Holloway noted the secretary informed him that restaurants must be approved by the Board of Health.

Chairman Holloway asked why they did not reduce the seating to 50. Mr. Kuybida said he was trying to show they had more than adequate parking with 52 seats.

Chairman Holloway said he knows the site and there are loading docks in the rear. He asked if there was a walkway located in the rear. Mr. Kuybida said yes. That area would be used for deliveries.

Mr. Orlando asked about restrooms. Mr. Kuybida pointed out the restrooms on the plan.

Mr. Fiorello said if this was a stand alone restaurant they would have some side and front yard requirements. He asked if they have looked at that. The general comments of the Board engineer was the site was deficient for restaurants based on the side and front yard requirements. Mr. Kuybida said this is an existing building and it is all interior. He asked why he would be concerned with setbacks. Mr. Fiorello said it is a use that is being put somewhere where it is not permitted. Mr. Kuybida felt it made no difference whether it met side or front yard requirements. Mr. Fiorello asked if he was a traffic engineer. Mr. Kuybida said no. Mr. Fiorello asked if they made a study of what type of traffic would be generated by this use as opposed to what is there. Mr. Kuybida said he only stated that the amount of parking was more than sufficient. They have not done a study of increased traffic. It was his position that when it was approved it was based on parking that would generate traffic. Mr. Fiorello said that was based on a commercial site and it is no longer commercial but a restaurant. Mr. Pogorelic said Mr. Mileto, planner, would be testifying to many of these issues. Mr. Fiorello said Mr. Kuybida testified there would be no problem

with parking so he wanted to know if he had made any studies of it for the Board to be aware of.

Ms. Kallert asked if the outside seating for the Subway was part of the 870 sq. ft. shown on the plan. Mr. Kuybida said it is the building itself. Ms. Kallert asked if the outside area was considered part of Subway. Kuybida said the outside seating is there but it is not part of Subway.

Mr. Fiorello asked if he had knowledge of hours of operation or what type of restaurant is proposed. Mr. Kuybida said he did not know.

Mr. Pogorelic said they are aware they would need a variance as they did for the Subway if the sign does not comply.

Mr. Intili asked if the outdoor area was a seasonal sitting area. Mr. Kuybida said yes. Mr. Intili asked if he knew the size of that area. Mr. Kuybida said it was approximately 270 sq. ft. Mr. Intili asked if there was a permit required for outside seating. The Board Secretary said the only restriction was they cannot block the sidewalk with tables or chairs.

Frank Mileto, planner, stated his qualifications and was accepted as an expert. He stated he has reviewed the application and visited the site. He has reviewed the zoning ordinance and Master Plan. He is familiar with the MLUL. He prepared a planner's report for this application.

Mr. Mileto said there has been several applications over the years for this piece of property. The last of which was in 2007 which established permission to use 2,000 sq. ft. for a restaurant use. The facts during that case exist today and nothing has changed since 2007. The difference that was explained was the Subway space did not need 2,000 sq. ft. and took only 870 sq. ft. The rest of the square footage was not utilized but the Board did grant the use variance for 2,000 sq. ft. The Board did find that this use as a restaurant is an appropriate use for this property and they stand on that resolution and finding of the Board at that time. At this time the Master Plan and zoning has not changed since 2007 and it is his opinion that the findings in 2007 stand today. The applicant did have a planner then that did testify that the applicant would not be in contrary to the MLUL. This additional restaurant would blend with the rest of the neighborhood. This would be a neighborhood restaurant and serve the people and offices in the area. He felt 52 seats is a relatively small restaurant. The hours of operation granted in the previous applicant were 11:00 a.m. to 11:00 p.m. and there would be no operation after midnight. He felt they would stick with those hours of operation for the new restaurant. He felt this was a reasonable condition of approval. There are no negative concerns in his opinion. The restaurant will have to comply with all Health Dept. regulations. The potential for traffic increase in his opinion is it will not create any more traffic than any other use in the building. If a business use established there sold small ticket items there would be more traffic than they would have at a restaurant. It is his opinion that other businesses they could establish there would create more traffic. McBride Ave has the ability to handle traffic. He did not do traffic counts but

is giving his opinion as someone who knows the area. Restaurant peak hours are after peak hours for offices.

Mr. Mileto said the proposal meets the provisions of the MLUL and the purposes of the acts. It is his opinion it is an appropriate use and would be small enough to blend with the surrounding properties. The existing office does not need to be as big as it is now and that area would accommodate a small restaurant. There is no public present this evening which means other restaurants in the area have no negative impact. It is his opinion the variance can be granted with no negative impact on the area.

Mr. Mileto said he reviewed the Board professional reports. He stated there will be no changes to the exterior of the building. They exceed the parking requirements under the ordinance and seek no changes. They have taken the worse case scenario for parking and still meet the requirements. The lighting fixtures are an existing condition and the county has no objections to them being in the right of way. There will be no detriment in them remaining where they are. Deliveries were discussed previously. They do not know who the tenant will be so they do not know the number of employees. In his opinion there would probably be no more than 4 or 5 employees based on the size of the restaurant. The exhaust hood will go straight up through the roof and will meet the requirements of the Health Dept. and State law. There is a large sanitary sewer main in the area and he doubts there will be a problem. The unit will shut down if the grease is not removed. The frying oil and cooking oil is recycled and does not go into the garbage. The applicant will repair any damaged sidewalk if necessary.

Mr. Mileto referred to the Board Planner's report. He noted there would be no negative impact on the area and is compatible with surrounding areas. In 2007 it was found to be an appropriate use for this property by the Board. If they need to they will pickup up garbage twice a week instead of once. They will continue the hours of operation. They will abide by the ordinance for signage.

Mr. Mileto said he reviewed the county letter and said they will comply with what they require. They will probably object to the \$ 4,000 contribution the county is requesting.

PUBLIC OPEN for questions. PUBLIC CLOSED

Bob Perry, planner, stated he believed Mr. Mileto has satisfactorily addressed his concerns in his letter. He asked about circulation on the site and asked how the deliveries would be achieved. Mr. Mileto said they will pull straight in, back up and do a K-turn and pull back out. There will be no tractor trailers just vans and straight trucks.

Mr. Speers noted they have satisfied his concerns in his letter. Chairman Holloway asked if they were satisfied with the sanitary sewer items. Mr. Speers said he was.

Mr. Intili referred to the county letters and the file numbers. Mr. Mileto said the application has a file number from 2006 but the letter is from this year for this application. Mr. Intili asked about the contribution of \$4000 and if the applicant was going to ask for relief. Mr.

Mileto said they ask for contributions for an enhancement program but they felt the amount was a little high for what they are proposing. Mr. Pogorelic said his client will act in good faith and take it up with the county. They have never asked for monetary contributions in the past.

Mr. Kiss asked Mr. Speer about a comment in the letter. He asked if a restaurant was considered retail. Mr. Speer said it is another category but the code only gives the option of one parking space for 300 sq. ft. There are other sections of the code where restaurants are a permitted use which states if you have more than 50 people the requirement is one space for every 100 sq. ft. The applicant took it upon themselves to include the proposed restaurant and the existing Subway to calculate the parking. So they were more conservative than they were in the calculations.

Mr. Fiorello said they should be familiar with the concept that just because a variance for a restaurant was granted does not mean another one should be granted in the same area. Mr. Mileto said this was on the same building and property and a use variance was granted for 2,000 sq. ft. He did not feel it made any difference if it was one restaurant or 2 as long as they totaled 2,000 sq. ft. Mr. Fiorello asked if it was granted for one restaurant. Mr. Mileto said it did not say that and if they wanted to put four small restaurants in there it would be fine. Mr. Fiorello said the prior resolution says an approval of a variance for a restaurant. Mr. Mileto said as a zoning officer he would grant one or three or five restaurant as long as they totaled 2,000 sq. ft. Mr. Fiorello asked how he reconciles the plan does not permit restaurants in this area. Mr. Mileto said you cannot plan for an entire zone and there could be exceptions. They believe this piece of property was found to be acceptable in 2007 and it should be acceptable now. Mr. Fiorello said what he is saying if a Board grants a variance for a one family to be a two family they should grant them right down the street. Mr. Mileto said no because they are different pieces of property but this is one piece of property and they are asking for the same use that was granted and that is why he at first thought it was an expansion. He agreed that it was a new use. Mr. Fiorello asked if the applicant tried to rent the space as an office. Mr. Mileto did not know. Mr. Mileto said a zoning ordinance cannot be designed to be adequate and proper for each piece of property in the zone. He felt they showed tonight that they can grant this just as they did in 2007. He did not think they needed the enhanced proofs because they have already established a restaurant on the site. Mr. Fiorello asked how many restaurants are in the vicinity and if they adequately serve the neighborhood. Mr. Mileto said these things are market driven and there is obviously a reason for it.

Mr. Dicristina said the property immediately next door to this property is in a different zone and is a restaurant. There is another property adjacent to it on Lackawanna that is also a restaurant. The applicant's property was an office but was developed as a commercial retail strip mall. It does not look like an office building and looks more like a building that would house a restaurant and even if it is not in a zone where a restaurant is permitted he thought the use for the purpose of the request before them meets it better than a doctor's office would. Directly across the street there are several commercial properties. He felt when they came to develop this property someone should have said it looks like a strip mall and not an office but they did not.

Chairman Holloway stated that this Board has made many recommendations to the Mayor & Council to change the zoning along McBride Ave. Mr. Juzdan, a member of this Board, has been attending Master Plan meetings with Planning Board members.

#### PUBLIC OPEN

Mr. Pogorelic felt the applicant has met the positive and negative criteria based on testimony. He asked the Board to act favorably on the application.

Mr. Intili said he has no problem with granting a variance for the second restaurant. He said he would like to include conditions of approval. One would be to satisfy the requirements from the County. Any issues with lighting outside the property line should be fixed. He felt the use should be a restaurant and not for fast food, pizzerias, sandwich shops, etc. and should be a condition of approval. Chairman Holloway agreed. He felt the area did not need another sandwich shop or pizzeria. The applicant agreed to a fine dining restaurant.

Mr. Kiss asked if the Planning Board has made any attempt to change the zoning. The Board Secretary said they are addressing the Master Plan and then they will address the zoning ordinances. There are been no changes in zoning as of now.

A motion to approve the use variance and preliminary/final site plan with the conditions noted previously was made by Mr. Intili, second by Ms. Kallert and approved by a vote of 6 - 1.

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