

**BOROUGH OF WOODLAND PARK  
BOARD OF ADJUSTMENT MINUTES  
November 22, 2010**

MEETING CALLED TO ORDER AT 7:34 P.M. by Vice Chairwoman Kallert.

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: RUSSEL JUZDAN, TRACY KALLERT, RUTH PATTERSON, TONY ORLANDO, 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 October 25, 2010 meeting was made by Ms. Patterson, second by Mr. Decesare and approved.

A motion to approve the minutes of the October 14, 2010 special meeting was made by Ms. Patterson, second by Mr. Juzdan and approved.

**RESOLUTIONS**

DOCKET # 10-08 – 75 JACKSON AVE.,LLC – BUSH AVE. – BLOCK 42 LOT 36.01 – BULK VARIANCE – (amended resolution) Application is hereby denied by a vote of 4 -2.

DOCKET # 10-13 – B. VANDER VOORT – 4 RIDGEVIEW DR. – BLOCK 56.05 – LOT 1 – BULK VARIANCE – Application is hereby approved by a vote of 7 – 0.

**ORDER OF BUSINESS**

DOCKET # 10-03 – QUICK CHEK – BROWERTOWN RD. – BLOCK 122 LOT 10 & 10.02 – PRELIMINARY/FINAL SITE PLAN – USE VARIANCE – BULK VARIANCES

Mr. Azrak, attorney for applicant and Mr. Corradino, attorney for objector stated they were present. Mr. Fiorello said he believed they left off last time having to continue with Mr. Corradino's cross examination of Ms. Hartmann, applicant's planner.

Mr. Corradino said it was his understanding that they schedule this evening for the purpose of just concluding his cross examination of Ms. Hartmann. He submitted a copy of the transcript to the Board because he intended to use part of it in his cross. The last 3 pages show that it was the decision of the Board they continue the conclusion of Ms. Hartmann's cross examination.

Mr. Fiorello asked if it was the entire transcript. Mr. Corradino said it was the entire testimony of Ms. Hartmann. A portion of the transcript, page 75 – 130, was marked O-3.

Mr. Corradino asked if she recalled being asked questions concerning the area she referred to throughout her testimony and asked what the specific area was that was going to be benefited by this application. Ms. Hartmann said she did not understand. Mr. Corradino said during her testimony she referred to areas that were benefitted by this application using the phrase sector. Ms. Hartmann said she remembered. Mr. Corradino read from the transcript and asked when she referred to this area of town what specific area she was referring to. Ms. Hartmann said generally it would be the neighborhood to the east, somewhat to the north and somewhat to the west. Mr. Corradino felt that covered the entire area. Ms. Hartmann said it really does not because there are several other gasoline services stations and store uses throughout other areas of this town. This area of the municipality does not have this type of use. Mr. Corradino asked where the area was. Ms. Hartmann said she just explained that. Mr. Corradino said he asked that question last time and her answer was the south, central, eastern section. Ms. Hartmann said that is what it is. Mr. Corradino asked for the zoning map to be marked. Mr. Azrak said it was already marked A-15. Mr. Corradino asked for it to be marked an O exhibit. Mr. Fiorello said the map had markings on it and asked if Exhibit A-15 had the same markings. Mr. Azrak and Mr. Corradino agreed it was the same map. The zoning map was marked O-4. Mr. Corradino asked Ms. Hartmann to circle the area on the map. Ms. Hartmann circled the area of south, central eastern area she referred to. She said it was the generality of it. Mr. Corradino asked her to shade in the area. She agreed there are 5 stations with stores in town. Mr. Corradino asked if the negative criteria require proof there is no substantial detriment to the public good. Ms. Hartmann said that was correct. Mr. Corradino asked her to assume this application would create drainage problems, flooding problems to the west of this site and if that were true would she agree that would be a detriment to the public good. Mr. Azrak objected and he was assuming facts not in evidence. He asked what an expert is supposed to do with a hypothetical of things not in evidence. Mr. Fiorello said she could answer if she can. The question was repeated. Ms. Hartmann said she would like to answer with more than a yes or no. Mr. Corradino asked if she would agree if the application created flooding problems to the west of the site that would be a detriment to the public good. Mr. Azrak objected and asked for a more specific question on the definition of detriment. Mr. Corradino felt they were referring to a detriment she has been referring to throughout her testimony. Ms. Hartmann said her answer would be if the property was not properly developed and you had issues then there is a potential for a flooding issue. Whether under the MLUL purposes it

may or may not qualified, she did not know. She said there are many parameters and aspects if there is development of a site without any drainage or meeting any state standards. Mr. Corradino said he question was to assume the fact be accurate and true that this application as presented caused a flooding condition to the west of this property would that in her opinion be a detriment to the public good. Ms. Hartmann said under the purposes of the MLUL it is not within her prevue to answer that question. They have engineer's that have designed the site. Ms. Hartmann said she could not answer that question. Mr. Corradino asked if she recalled referring to the situation of flooding and drainage in her testimony. Ms. Hartmann said she answered that question and if she referred to that it was because they have properly designed the site to handle drainage. They have met and exceeded the state standards and it is a totally different situation to what if there was no drainage on the site, what if they created a flooding problem. The fact is their design and what their engineer's have testified to will not create a flooding hazard or drainage problem. Right now the site has potential issues just because of sheet flow and runoff but they will be improving the conditions. Mr. Corradino said he is not asking what the site is doing now but his question was to assume the following facts to be true that this project would create flooding to the west of the property and in her opinion create a detriment to the public good. Mr. Azrak objected because it was asked and answered. He asked to qualify what flooding is. Mr. Corradino has all the transcripts of the testimony and he should be specific. Mr. Fiorello said he can't force her to answer the way Mr. Corradino would like her to. Mr. Corradino said let's assume the project creates unsafe traffic conditions and asked if in her opinion as a planner would create a detriment to the public good. Mr. Azrak objected. Ms. Hartmann said they needed more parameters than just more traffic. If he would like to give her a complete scenario of the development of the site with a variety of parameters than maybe that is possible. Mr. Corradino said unsafe traffic conditions. Ms. Hartmann said she did not know what unsafe to him is. Mr. Corradino asked if she did not know what unsafe traffic conditions meant. Ms. Hartmann said in this particular instance she does not know what he is considering unsafe traffic conditions. Mr. Corradino said to assume this project would create the following, the left turn into the site is too short and trucks entering into the site that were stopped in the left lane would protrude into the northbound lane being an unsafe condition. He asked if that would create a detriment to the public good. Ms. Hartmann said she is not a traffic expert and like it or not she cannot answer certain questions that are specific in regards to that. Mr. Corradino asked if she testified the negative criteria was satisfied by this. Ms. Hartmann said she did testify that in her opinion there would be no substantial detriment to the public good. Mr. Corradino asked if she considered any affect this application may have on traffic. Ms. Hartmann asked him to let her answer the question. She did testify that she felt this development would not have substantial detriment to the public good or the Master Plan or Zone Plan and that it met the purposes of the MLUL. Mr. Corradino said he understands that but his question was in order to give the opinion did she review the traffic criteria that was presented by this application. She said she did and sat here through the testimony. He asked her to assume that criteria produced the following, that the left hand turn into the site is too short and trucks would back up into the through northbound lane creating a traffic hazard. He asked if that would be a detriment. Ms. Hartmann said that would not be an appropriate design. Mr. Corradino asked if he asked her about the design. Ms. Hartmann said no. Mr. Corradino asked what the question was he asked. She said that was her answer and she cannot answer

any questions that have single parameters without a whole picture. Mr. Corradino asked if when she reviewed the traffic information did she conclude it was a safe design. She said she relied on the experts, their reports and the design of the plan. She also relied on facts and not hypotheticals. Mr. Corradino asked if she conclude as a planner that it was not detrimental to the public good. Mr. Azrak said it was asked and answered 5 times. Ms. Hartmann said on reliance of her experts the answer is yes. Mr. Corradino said assuming the experts gave the following opinion, that the traffic created by this design would be unsafe and create hazardous conditions would she agree it would create a detriment to the public good. Mr. Azrak said it is absolutely not in the record. He is asking someone about facts not in evidence and the parameters are not set. He also keeps asking the same type of question. The fact is her opinion is based on what is in the record and asking hypothetical questions do what. Mr. Corradino said this is proper cross examination and he is attacking her credibility. Mr. Azrak felt he should attack credibility on the facts that are in the record and not on assumptions.

Mr. Fiorello said it is perfectly proper to ask a hypothetical question on facts not in the record. Mr. Azrak said she is relying on testimony and can't testify on traffic because she is not an expert. Mr. Corradino said she is giving an opinion to the Board there is no detriment to the public good but a hazardous traffic condition is obviously a detriment to any public good. Mr. Fiorello said if the question was asked that the traffic design was something else other than what was testified to would your answer be the same and felt there was nothing wrong with the question. Mr. Azrak felt the question was way outside the parameters. Mr. Corradino said he would like her to answer the question whatever the answer is.

Mr. Corradino asked Ms. Hartmann to assume the driveway is insufficient in width to accommodate a right turn exit on to Browertown Rd. and assume in attempting to make that turn you would enter the northbound lane, a unsafe condition, would that be a detriment to the public good. Ms. Hartmann asked if every car and truck did it consistently. Mr. Corradino said a tractor trailer. Ms. Hartmann said it is done all the time where tractor trailers exit and cross over from her understanding of traffic.

Mr. Corradino asked if she agreed that this project should not impair the intent of the zone plan and zoning ordinance. She agreed. He asked if the area in question was originally zoned for the Highway Commercial district. She said yes. She would agree that the zone would permit service stations and gasoline sales and stores which is a permitted use. The HC zone permitted this specific zone. This area was removed from the HC and they created the NC zone that it is presently in. They did not list as a permitted use, gasoline sales in the new zone. It would make the use requires a use variance. They also expressly prohibited motor vehicle service stations. He asked if that indicated to her the intent of the town of not wanting this type of use in this area. Ms. Hartmann said there are a number of things involved with this. Mr. Corradino asked if she could answer the question. Ms. Hartmann said she cannot answer the question. He asked if she agreed that violating this ordinance based on the history he just gave it wouldn't violate the intent and philosophy of the zoning ordinance. Ms. Hartmann said she can't answer with a yes or no. Mr. Corradino had no further questions.

Mr. Azrak asked Ms. Hartmann to finish answering the question about prohibiting motor vehicle service stations. She said in her opinion the town has a definition for motor vehicles service stations and it also has requirements for motor vehicles. A motor vehicle service station is defined as an establishment not used as a public garage for automobiles to be serviced with gas, oil, grease and accessories for profit. When you go to specific requirements for a motor vehicle station it talks about the number of vehicles can be on the site for repair and how long they can be there. It includes maintenance of vehicles as well as the retail sale of gasoline. What is being proposed is a retail sale of gasoline. What is traditional is the convenience store and what is not traditional is the evolution of the sale of gasoline that has become a retail sales use. The Master Plan re-examination and zoning ordinance never considered this type of retail sales. They considered it a combination service station with repairs. The proposed use variance is for the retail sale of gas only. It is a contemporary retail sales use that has been evolving over the years. The town just did the re-examination report in 2009 and if they wished to prohibit the retail sale of gas it would have been in the report with potentially amendments to the zoning ordinance and that did not happen. There may be reconciliation between the Master Plan and zoning ordinance where the proposed use that they are proposing would not substantially impair the intent or purpose of the zoning ordinance or Master Plan.

Ms. Hartmann said in regard to other gas stations that have stores attached they were former bays that were made into stores. What they are proposing is a large scale convenience store with gas sale and without any motor vehicle repair or storage. This is a difference in the variety items sold in the small stores in gas stations and what Quick Chek offers.

Ms. Hartmann said the bulk of her testimony discussed the fact that this is really a convenience use and sale of gasoline for the surrounding neighborhood and is not meant to provide an easy on/off to Route 46. It is not there to provide a regional service and is really there to service the local residents and people who traverse Browertown Rd. Someone from the area would have to go on to Route 46 to the LukOil or others further down on McBride Ave.

Mr. Corradino asked if she agreed the application needs a use variance. Ms. Hartmann said yes. Mr. Corradino said she indicated that residents from Briarwood Ct. could come across and buy convenience items. He asked if resident from the condo complex could come up. Ms. Hartmann said she did not know what complex he was talking about. Mr. Corradino explained where the complex was. She was not familiar with the complex. Mr. Corradino said when they come in to the site to make a purchase how would they get back home. Ms. Hartmann said they would have to make a right. There are a variety of ways to get back by going on to the highway or turn around and come back. They are not permitted to make a left out of the site. Mr. Corradino asked if she was making a decision as to what is being sold at a Quick Chek and what is being sold at other stores as to the need in the area. Ms. Hartmann said it was just a discussion on the different types of convenience stores.

PUBLIC OPEN FOR QUESTIONS – CLOSED

Mr. Decesare asked if she was saying no one was going to come off Route 46 and just the neighborhood is coming to the store. Ms. Hartmann said she cannot tell him who is or is not coming to the store. She is saying it is not convenient for Route 46. Mr. Decesare asked if they took into consideration the traffic that would come off the ramp. She said they have.

Ms. Kallert said she kept referring to it as a gasoline retail sales. She asked if someone pulls in and asks for the oil to be checked what they provide that service. Ms. Hartmann said no. Ms. Kallert asked about cars over heating and supplying antifreeze. Ms. Hartmann said she did not know. They might be able to purchase it as the site but there is no servicing of vehicles. Ms. Kallert said she keeps saying it is a convenience to the neighborhood which she lives in. She stated they would not need to get on the highway to make a purchase but the only way to get back to their homes is to get on the highway. At this point she would pass the A&P, Shoprite and two gas stations with convenience stores. She asked if she was passing all those stores what the need for this one would be. Ms. Hartmann said she was not familiar with the A&P. Ms. Kallert said it is on Route 46. She could also choose to go through Little Falls where she would pass a Quick Chek. Ms. Hartmann said from the traffic expert it is mostly passerby traffic that is coming and going. If she has to get on the highway it would not be convenient. It will be a convenience for others. Ms. Kallert asked who can go to that store from the area she shaded on the map without going out of their way to get home. Ms. Hartmann said they can do it on their way when going the other way because you can make a left into the site and a right out of the site. She stated it can be done. Ms. Kallert said when you make a right that is for Little Falls residents and everyone that lives in West Paterson is to the left. If you can't make the left how do you get back to their homes without going on the highway which they are trying to alleviate for residents but if you have to go on the highway just to go home how is that convenient. Ms. Hartmann said the use itself has a great variety of things other than the small LukOil in products that are sold. It may not be as easy but you don't have to go on the highway, you can go down the street and turn around. Ms. Kallert asked if it was an illegal turn. Ms. Hartmann said you can go into the ShopRite parking lot. Ms. Kallert asked if she would encourage her to go into that parking lot, make a turn and impede on their traffic to go home. Ms. Hartmann said if it is not convenient you should not do it. It can be convenient depending on where you are going like if you are on your way out.

Mr. Azrak said he wrote to the Board suggesting another special meeting after the 29<sup>th</sup>. He talked to Mr. Corradino and he has 3 witnesses for the 29<sup>th</sup>. Mr. Corradino said they would need another date for early December. The Board Secretary noted there is a regular scheduled meeting for December 13<sup>th</sup>. She agreed to come back with additional dates on November 29<sup>th</sup>. Mr. Azrak will contact her with possible dates.

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

