

Minutes of May 5, 2016

The Regular Meeting of the Hazlet Township **Land Use Board** scheduled for May 5, 2016 was called to order at 7:30 PM with a Salute to the Flag followed by a Moment of Silent Prayer and a Reading of the Letter of Compliance.

ROLL CALL:

Present: Mr. Tyler, Mr. Lavan, Deputy Mayor Kiley, Mr. Rooke, Mr. Solomeno, Mr. Vignola, Mr. Glackin, Mr. Grossman, Mr. Moore

Absent: Mayor Aagre, Mr. Byrne, Mr. Sanfilippo, Mr. Mann

Professionals: Mr. Vella, Esq., Mr. Otto- CME, Mr. Rodriguez-CME, Mrs. Keegan

Motion: To approve the minutes of regular meeting March 17, 2016

Offered By: Vignola **Seconded By:** Solomeno

<u>ROLL CALL</u>	<u>YES</u>	<u>NO</u>	<u>AB</u>
Mr. Byrne	_____	_____	_____
Mr. Glackin	_____	_____	X
Mr. Lavan	_____	_____	X
Mr. Tyler	X	_____	_____
Mr. Solomeno	X	_____	_____
Mr. Vignola	X	_____	_____
Mr. Rooke	X	_____	_____
Deputy Mayor Kiley	_____	_____	X
Mayor Aagre	_____	_____	_____
Alt #1 Mr. Mann	_____	_____	_____
Alt #2 Mr. Moore	X	_____	_____
Alt #3 Mr. Grossman	X	_____	_____
Alt #4 Mr. Sanfilippo	_____	_____	_____

MOTION: To approve the minutes of the Regular Meeting of April 7, 2016.

Offered By: Lavan **Seconded By:** Tyler

<u>ROLL CALL</u>	<u>YES</u>	<u>NO</u>	<u>AB</u>
Mr. Byrne	_____	_____	_____
Mr. Glackin	X	_____	_____
Mr. Lavan	X	_____	_____
Mr. Tyler	X	_____	_____

Mr. Solomeno	<u> X </u>	<u> </u>	<u> </u>
Mr. Vignola	<u> X </u>	<u> </u>	<u> </u>
Mr. Rooke	<u> X </u>	<u> </u>	<u> </u>
Deputy Mayor Kiley	<u> </u>	<u> </u>	<u> X </u>
Mayor Aagre	<u> </u>	<u> </u>	<u> </u>
Alt #1 Mr.Mann	<u> </u>	<u> </u>	<u> </u>
Alt #2 Mr. Moore	<u> X </u>	<u> </u>	<u> </u>
Alt #3 Mr. Grossman	<u> X </u>	<u> </u>	<u> </u>
Alt #4 Mr. Sanfilippo	<u> </u>	<u> </u>	<u> </u>

Memorial Resolution Case#15-02L: M&S Waste Services-10 7th Street; Block 24, Lots 3&5, R-70 zone. Applicant was approved for expansion of non-conforming use at March 3, 2016 meeting with the condition that site plan approval is required to be filed within 6 months.

Offered By: Vignola

Seconded By: Lavan

<u>ROLL CALL</u>	<u>YES</u>	<u>NO</u>	<u>AB</u>
Mr. Byrne	<u> </u>	<u> </u>	<u> </u>
Mr. Glackin	<u> </u>	<u> </u>	<u> X </u>
Mr. Lavan	<u> X </u>	<u> </u>	<u> </u>
Mr. Tyler	<u> X </u>	<u> </u>	<u> </u>
Mr. Solomeno	<u> X </u>	<u> </u>	<u> </u>
Mr. Vignola	<u> X </u>	<u> </u>	<u> </u>
Mr. Rooke	<u> X </u>	<u> </u>	<u> </u>
Deputy Mayor Kiley	<u> </u>	<u> </u>	<u> X </u>
Mayor Aagre	<u> </u>	<u> </u>	<u> </u>
Alt #1 Mr.Mann	<u> </u>	<u> </u>	<u> </u>
Alt #2 Mr. Moore	<u> </u>	<u> </u>	<u> X </u>
Alt #3 Mr. Grossman	<u> X </u>	<u> </u>	<u> </u>
Alt #4 Mr. Sanfilippo	<u> </u>	<u> </u>	<u> </u>

Memorial Resolution Case# 16-02L: Korbul, 56 Briscoe Terrace, Block 252, Lot 1, R-70 zone. Applicant was approved for installation of 12x24 inground pool and pool patio with 6.1 ft. side and rear yard setbacks and 1.2 ft. rear yard setback to retain shed at April 7, 2016 meeting.

Offered By: Tyler

Seconded By: Moore

<u>ROLL CALL</u>	<u>YES</u>	<u>NO</u>	<u>AB</u>
Mr. Byrne	<u> </u>	<u> </u>	<u> </u>
Mr. Glackin	<u> X </u>	<u> </u>	<u> </u>
Mr. Lavan	<u> X </u>	<u> </u>	<u> </u>

Mr. Tyler	<u> X </u>	_____	_____
Mr. Solomeno	<u> X </u>	_____	_____
Mr. Vignola	<u> X </u>	_____	_____
Mr. Rooke	<u> X </u>	_____	_____
Deputy Mayor Kiley	_____	_____	<u> X </u>
Mayor Aagre	_____	_____	_____
Alt #1 Mr.Mann	_____	_____	_____
Alt #2 Mr. Moore	<u> X </u>	_____	_____
Alt #3 Mr. Grossman	<u> X </u>	_____	_____
Alt #4 Mr. Sanfilippo	_____	_____	_____

Deputy Mayor Kiley recused from Use Variance hearing at 7:40 pm.

Carry Over Case #15-11L: First Hartford Realty Corp/CVS; Highway 36 and Laurel Avenue; Block 134 Lot(s) 1, 15, 15.01 & 16, BH Zone and R-70 Zone. Applicant is seeking Preliminary and Final Site Plan & Subdivision approval, Use variance approval and several bulk variances to construct a new CVS store.

Attorney Vella introduced Craig Gianetti, representing First Hartford Realty.

Mr. Gianetti: Spoke about the traffic engineer contacting DOT about a possible signal change at the intersection of Route 36 and South Laurel Ave. They would work with the township to submit a problem statement to DOT in order to bring the intersection to their attention. First Hartford agrees that those could be conditions of any approval. He called the architect, Mr. Gehr, to address the proposed color of building and to correct his testimony about rooftop units.

Attorney Vella advised Mr. Gehr still under oath.

Mr. Gehr: Offered different color swatches (A-15, A-16) to address board’s comments about the proposed color being too yellow.

Mr. Tyler: Asked about the design of the CVS being built in Wall with a brick exterior and if they could offer a similar design here.

Mr. Gehr: Explained that they started with the typical CVS prototype design and there is flexibility in color choice, they were attempting to find a more neutral color.

Mr. Gianetti: Explained that Wall store was in the West Belmar Gateway Redevelopment Zone that called for colonial style buildings.

Mr. Tyler: Discussed the brick exterior as a possibility that would fit in better with the surrounding neighborhoods.

Mr. Gehr: Corrected his testimony about the rooftop units. They do not shut off completely at night, they go into power saving mode. Spoke about the noise levels and explained the analysis done shows sound attenuation was not necessary but will be done. Nighttime operation of units will be less than 50 db.

Attorney Vella introduced Mr. McKenna, attorney representing SREP, property owner on Liberty Place. Began cross examination of architect, Mr. Gehr.

Mr. McKenna: Asked about the size of CVS stores and discussed smaller stores being built in other areas. Questioned whether the percentage of glass contained in the design was less than what the ordinance calls for.

Mr. Gehr: Responded that smaller CVS stores have been built and the amount of glass was what was part of the original design.

Mr. McKenna: Asked about the 50 decibel level of rooftop units equating to normal conversation and 75 equating to noise on a busy street. Questioned whether someone in their backyard would hear the noise of the rooftop units running.

Mr. Gehr: Explained that he uses standard templates to establish the noise levels. The levels were measured at the property line and if you were standing at the property line of an adjacent property you would hear the units running.

Mr. McKenna: Asked about employees using the sliding window on the drive through pharmacy as an alternative to using the microphone and whether it would be used in inclement weather.

Mr. Gehr: Answered that he did not have any information on how often the sliding window would be used but that an awning would be present over the sliding window.

Attorney Vella announced that Mr. Gianetti would redirect after Mr. McKenna questioned all witnesses. Mr. McKenna called Mr. Verderese, traffic engineer.

Mr. McKenna: Asked if he was aware that a pharmacy is not listed as a permitted use in the Business Highway zone, only in BP-1 zone. Questioned what products CVS sells in their stores.

Mr. Verderese: Was not aware of the zoning.

Mr. Gianetti objected to questioning Mr. Verderese about the products CVS sells.

Mr. McKenna: Read list of products and services from CVS website. Questioned whether the additional items sold would change the number of trips generated in the study.

Mr. Verderese: Explained that the data utilized was the pharmacy category which includes CVS, Walgreens, Rite-Aid etc. and is accepted by the DOT and state agencies.

Mr. McKenna: Questioned the reported number of trips generated by CVS in traffic study and his testimony.

Mr. Verderese: Confirmed 147 trips estimated to be generated by the CVS per day during the pm peak hours.

Mr. McKenna: Pointed out that equates to 25% increase in traffic during pm peak hours, where the traffic already backs up. Explained if the gas station was operating, the trips generated would be 111 during the same time. Since it is not operating now, the increase will be 147 cars during pm peak hours and a 44% increase during the summer months equaling an estimated extra 200 cars.

Mr. Verderese: Explained that the summer increase is already there, not caused by the addition of CVS.

Mr. McKenna: Questioned how likely it would be for drivers on South Laurel Avenue to allow cars exiting the CVS to make a left turn. Stated that traffic going southbound on Laurel Avenue will also inhibit a driver's ability to make a left turn out of driveway as well.

Mr. Verderese: Stated there is the possibility of traffic queuing up to and beyond the new driveway location during peak times in summer months and drivers might have to rely on courtesy gaps or wait for the traffic to clear to exit the driveway. Explained that due to alternating traffic signal patterns, the southbound and northbound traffic won't be moving at the same time.

Mr. McKenna: Spoke about tractor trailer access being only from South Laurel Avenue. Asked whether a developer could come in and reopen gas station without disturbing the adjacent residential area. Questioned the condition agreed upon to ask DOT for signal timing changes at the intersection of Route 36 and Laurel.

Mr. Verderese: Explained that cars get backed up onto the highway from the jughandle because there is not enough signal time to clear which could be relieved by adjusting the timing and direction of traffic flow. He felt that DOT might look favorably upon this request because it alleviates traffic backing up onto the state highway. They would submit a problem statement to DOT on behalf of township.

Mr. McKenna: Stated there is no guarantee whether the state would agree to address the issue or not.

Mr. Verderese: Stated that in his professional opinion, he is relatively confident that they would agree to some changes because it affects the highway.

Mr. McKenna: Explained that his level of success in his dealings with DOT over the years had been less than desirable. Many of his requests had been denied. Asked about traffic exiting CVS needing to go south on Laurel Ave. and whether Liberty Place would be used. Questioned traffic counts being done during off peak seasons, not taken during summer months.

Attorney Vella advised Mr. John McDonough, planner, had been previously sworn and was still under oath.

Mr. McKenna: Asked about permitted uses in BH zone and BN-1 zone.

Mr. McDonough: Explained the retail uses permitted in the zone and spoke about the intent of the zoning not being exclusive to only what is listed. Planners look at how the zoning has been applied in the past.

Mr. McKenna: Questioned the Route 36 corridor study done and whether this intersection was listed there as an area in need of redevelopment.

Mr. McDonough: Explained that it was cross referenced in the regional study and this location was identified as a node to be redeveloped.

Mr. McKenna: Questioned whether this location was particularly suited for CVS rather than retaining the three existing residential properties. Also, questioned the height of the building and the inability to obscure it from the adjacent homes with landscaping.

Mr. McDonough: Explained that this site is ideally suited to physically accommodate the CVS use and that there could be other uses in those areas that would be more intense than what is proposed. A large, landscaped area will buffer the adjacent homes under this use in order to maintain separation between the commercial use. The property could be subdivided and buildings would be much closer to the existing homes.

Mr. McKenna: Questioned how this use would serve the public good as testified to previously, considering there is a CVS already existing up the street. The building being proposed is the largest model that CVS builds. Questioned how putting a commercial use in a residential zone would not impair the intent of the zoning and how this could represent a better zoning alternative for the neighbors as Mr. McDonough had testified.

Mr. McDonough: Explained that the existing CVS is a much older one and that retail land uses need to evolve in response to market demand. Design of the new building is typical, modern and what the market calls for. The commercial use stops before getting into the residential area striking a good balance between the negative and positive aspects. It takes the unknown out of the equation for the neighbors since CVS is a well-known, national brand with familiar design. His planning conclusion is that the impact on the surrounding neighborhood will not be substantial.

Attorney Vella invited the board to ask questions about issues raised during the cross examination.

Mr. Solomeno: Asked for clarification on testimony given by Mr. McDonough referencing someone building an estate on the property.

Mr. McDonough: Explained that this is an oversized piece of property in the residential zone where one large home could be built or it could be divided into three lots.

Mr. Solomeno: Expressed his concern that the development would impair the intent of the zoning because the governing body zoned it residential and if they had wanted the commercial zone to be larger, they would have done so.

Mr. McDonough: Explained that zoning boards exist in order to weigh factors and information that weren't available when the zoning was drawn. This is where use variances come into play.

Mr. Solomeno: Questioned his assessment that the site is particularly suitable for this use.

Mr. McDonough: Explained that the site won't require a substantial amount of earth work and there aren't many environmental issues to deal with. Its proximity to a highway and an off ramp make it particularly suitable as well.

Mr. Vella: Questioned how far the commercial zone creeping into the residential zone would still be considered particularly suited i.e. where should the end of the business highway zone be since three residential properties are being cut out by this application?

Mr. McDonough: Explained that the board has the authority to deal with a use variance and not rezone the whole area which only the governing body could do. This is a very specific piece of property with residential properties tucked in the center of this tract of land. They are on the edge of a residential neighborhood, not really part of it.

Mr. Vella: Pointed out that the rear lot is surrounded by residential only, only one of the three residential lots is adjacent to the commercial lot.

Mr.McDonough: The two upper lots are not immediately adjacent to the business highway zone, they have been combined. They have distinct characteristics different from the rest of the neighborhood such as non-uniform geography not typical of the area. These areas will not be commercially used but will be the green area.

Chairman Tyler called for a five minute break.

Attorney Vella announced the meeting will go to 10:00 tonight and then the case will be carried to June 2 and then June 16 in order to get all witnesses done.

Mr.Gianetti began cross examination of Mr.McDonough.

Mr.Gianetti: Addressed his testimony about the lots being adjacent to business highway zone and whether this was a typical scenario. Questioned whether the rear lot was currently being used as residential.

Mr.McDonough: It is not being used as residential and will essentially be used a buffer.

Mr.Gianetti: Questioned the residential lot on South Laurel closest to proposed driveway being adjacent to a strip club and an off ramp of highway 36 and whether this was common. Asked Mr.McDonough to explain the particular suitability standard and whether it was more particularly suited to have a commercial use next to a strip club, off ramp and highway rather than a residential use.

Mr.McDonough: Explained that it is more common to have a commercial use across from a strip club, an off ramp and a state highway than a residential use. Explained that the particular suitability standard looked at the physical attributes of the property as well as the surrounding land uses and context. Answered that it was more particularly suited to have a commercial use next to a strip club, off ramp and highway.

Mr.Gianetti: Asked Mr.McDonough about the substantial impairment to the zone plan and whether the fact that the use is not permitted in a zone means that it substantially impairs the zone plan.

Mr.McDonough: Answered no it does not mean that it impairs the zone plan. This is a relatively benign land use extending into the residential zone.

Mr.McKenna on redirect to Mr. McDonough.

Mr.McKenna: Questioned whether the fact that these properties are across from a strip club means their rights are not protected when the town zoned these properties as residential.

Mr. McDonough: Responded that the question he answered was whether it was more common for a residential or a commercial use to be opposite a strip club and that the factual answer from a planning standpoint is that typically a commercial use is common there.

Mr. Vella: Asked whether Mr. McDonough had gone by other strip clubs to observe what the typical land uses surrounding them were.

Mr. McDonough: From a planning standpoint it is more compatible to have a commercial use opposite a strip club rather than a residential use.

Mr. McKenna: Asked if it was compatible land use for the residential lots to remain next to each other until you get to the highway zone. Spoke about the existing gas station being adapted to other uses that would not encroach into the residential zone.

Mr. McDonough: Responded that an applicant has the right to make an application and submit a use variance request. The applicant found a piece of land that was suitable for their use and is attempting to be sensitive to the surrounding neighborhood. From a land use standpoint, the impact is not substantially detrimental to the surrounding area. The development and change of this property is inevitable, this application can have conditions set upon it by the board that may not be realized under other uses.

Mr. McKenna: Asked how this land use can be benign if an adjacent residential property will be looking at a large wall from their backyard instead of a house.

Mr. McDonough: The level of impact on the surrounding neighborhood does not rise to the level of being substantial. The visual impact is compatible with the zoning plan. From a performance and visual standpoint, this is not a substantial departure from what is envisioned under the zoning plan.

Mr. McKenna: Talked about the increased traffic and associated noise not being benign.

Mr. McDonough: Explained that the property could have a car wash built behind it and a church or playground next to it. The CVS is a predictable land use that the board can regulate.

Mr. McKenna: Responded that the traffic generated by a church would only be one day a week and a park would be beautiful and green, rather than an asphalt parking lot.

Mr. McDonough: Explained that churches have various uses that go on during the week as well. There are other activities that go along with possible other uses.

Mr. McKenna: Asked what statute shows the particular suitability criteria.

Mr. McDonough: Explained the statute that says sites that are particularly suitable for the use is a basis for the special reason aspect of a use variance.

Mr. Gianetti began cross examination of Mr. Verderese.

Mr. Gianetti: Asked Mr. Verderese to explain the total new trips that would be generated by the CVS over an existing gas station and the pass by traffic aspect.

Mr. Verderese: Explained that 60% of the traffic generated would be pass by traffic already on the highway and stops at the CVS. Actual new traffic to the area would be 11 vehicles during the pm peak hour, which translates to one vehicle every 5-6 minutes with approximately three of them in the northbound traffic stream of South Laurel. This would not have a substantial impact on the existing traffic.

Mr. Gianetti: Questioned the ability to make a left turn out of the existing gas station driveway and whether that traffic would use Liberty Place.

Mr. Verderese: Responded that it would be much more difficult to make a left out of the existing driveway compared to the proposed CVS driveway so it would be easier for people to use Liberty Place to cut through.

Mr. Gianetti: Asked about the effect of asking the DOT to adjust the traffic signal and patterns at the intersection.

Mr. Verderese: Responded that it would be fixing an already existing condition rather than mitigating an impact from a project.

Mr. McKenna on redirect to Mr. Verderese.

Mr. McKenna: Asked for clarification on the difference between traffic pulling in to a gas station and continuing on as compared to the traffic shopping at the CVS.

Mr. Verderese: Explained that industry data shows 50-60% range for pass by traffic for both a gas station and a pharmacy.

Mr. McKenna: Asked about traffic generated by alternate uses such as a bakery, book store or barber shop.

Mr. Verderese: Explained that he did not study those types of uses.

Mr. Gianetti on redirect to Mr. Verderese.

Mr. Gianetti: Suggested that a proposed use for this location could be a Dunkin Donuts or a restaurant and the effect that would have on traffic.

Mr. Verderese: Responded that he had not studied those but that they are typically higher trip generators.

Mr. Solomeno: Asked if the traffic numbers were seasonally adjusted.

Mr. Verderese: Answered no but that there is no concrete data stating that the trips would increase based on season. The overall traffic on highway 36 does increase during the summer which is an existing condition.

Attorney Vella spoke about a letter from Hazlet PD in 2009 that identified this area as a traffic problem with suggestions on how to address the problem. The change in traffic light timing was never applied for by the township.

Mr. Tyler: Questioned where the 44% traffic increase statistic during the summer came from and whether that would increase the pass by traffic.

Mr. Verderese: Responded that it came from DOT data that covers recreational roadways. The data is averaged over all time periods so it doesn't change based on the season.

Attorney Vella confirmed we will carry the case to June 2, 2016 at 7:30 pm.

Citizen Hearing:

No one spoke.

Offered By: Vignola

Seconded By: Tyler

VOICE VOTE: Yes

Motion to Adjourn:

Offered By: Vignola

Seconded By: Tyler

VOICE VOTE: Yes

Next Meeting: May 19, 2016

Respectfully submitted: Laura McPeck