

## **MINUTES - ZONING BOARD**

December 7, 2015

The workshop portion of the meeting was called to order at 8:09 P.M. by Mr. Marotta

### **RESOLUTIONS OF MEMORIALIZATION**

#### **Application #ZBA-15-024:**

**Nicholas Noce, Applicant**

**5 Cherokee Road, Block 620, Lot 7, R-4 Zone**

**To permit construction of a fence that will exceed the maximum allowable height and openness (§136-23.11(2)).**

The Resolution of Memorialization (attached and made part of these minutes) as amended was reviewed by the Board. After discussion, a motion to approve the resolution was made by Mr. Pistol, seconded by Ms. Hay and passed with the following voting in favor of the motion: Mr. Bovasso, Ms. Hay, Mr. Pistol, Mr. Higgins, Mr. Illing and Mr. Mallon

#### **Application #ZBA-15-027:**

**Emanuel Nimrud, Applicant**

**469 Centennial Avenue, Block 594, Lot 8, N-C Zone**

**To permit construction of a new mixed use building with the following variances: mixed use structures not permitted in the N-C zone (§136-32C(1)); less than the minimum required area for a parking space (§136-23.6(3)[a][1]); granite block curb not provided (§136-23.6(8)[g]); no loading or unloading zone provided (§136-23.6(12)); less than the minimum required side yard setback (§136-30, Attachment 1, Schedule 1); and to permit parking located adjacent to a residential zone (§136-23.6(3)(a) \*\*\*\*\* possible impervious surface/lot coverage ((§136-30, Attachment 1, Schedule 1)**

The Resolution of Memorialization (attached and made part of these minutes) as amended was reviewed by the Board. After discussion, a motion to approve the resolution was made by Mr. Higgins, seconded by Mr. Pistol and passed with the following voting in favor of the motion: Mr. Pistol, Mr. Higgins and Mr. Mallon.

### **COMMUNICATIONS:**

None

### **MINUTES:**

Approval of minutes from September 21, 2015, November 9, 2015 and November 16, 2015 were carried to the next meeting.

### **OLD/NEW BUSINESS:**

The workshop portion of the meeting concluded at 8:12 P.M.

**PUBLIC MEETING:**

A public meeting of the Cranford Board of Adjustment was called to order by Mr. Marotta on December 7, 2015 at 8:19 P.M. in Room 107 of the Municipal Building, 8 Springfield Avenue, Cranford, New Jersey. Mr. Bovasso announced in accordance with the terms and conditions of the Open Public Meetings Act, the Westfield Leader or Star Ledger has been notified and the agenda posted in the municipal building as required.

**ROLL CALL:**

**Members Present:**

Mr. Marotta  
Mr. Bovasso  
Ms. Hay  
Mr. Pistol  
Mr. Higgins  
Mr. Illing  
Mr. Mallon

**Members Absent:**

None

**Alternates Present:**

Mr. Salomon

**Alternates Absent:**

None

**Also present:** David Weeks, Esquire and Ruthanne Della Serra, Administrator.

Mr. Marotta explained the protocol, purpose and procedure that will be followed during the hearing.

**1. Application #ZBA-15-019: Continued from September 21, 2015**

**Divyajani Management, LLC, Applicant**

**478 South Avenue East, Block 508, Lot 7, R-4 Zone**

**To permit construction of a day care center in a zone where not permitted with the following variances: R-4 zones does not permit daycare center uses (§136-32A(1) and NJSA 40:55D-70(1)); less than the minimum required rear yard setback for the principal structure (§136-30 Sch. 1 Attachment 1 (rear yard setback)); less than the minimum required side yard setback for the principal building (§136-30 Sch. 1 Attachment 1 (side yard setback)); less than the minimum required combined side yard setback for the principal building (§136-30 Sch. 1 Attachment**

**1 (combined side yard setback); to exceed the maximum permitted lot coverage in the R-4 zone (§136-30 Sch. 1 Attachment 1 (lot coverage); to exceed the maximum permitted building coverage in the R-4 zone (§136-30 Sch. 1 Attachment 1 (building coverage); awnings proposed where not permitted in the zone (§136-23.12); freestanding sign proposed where not permitted in the zone (§136-23.10(6)); less than the required distance for the driveways for other uses than one- and two-family homes to a side or rear property line or the closest right-of-way line of an intersecting street (§136-23.6(1)(d)); no loading zone provided (§136-23.6(12)(a)); and no bicycle rack provided (§136-23.6(13)(a))**

**Previous witnesses:**

Previous Exhibits:

Exhibit A-6 dated September 21, 2015 – aerial photo of the site

Exhibit A-7 - colorized version of site plan

Exhibit A-8 - additional aerial photo in slightly different scale

Exhibit A-9 – revised plans

Exhibit A-10 - details of the proposed reduced monument sign

Exhibit A-11 - depicts the pantry at South Brunswick location

Exhibit A-12 – depicts the outdoor play area at South Brunswick facility for older children

Exhibit A-13 – depicts the younger children's outdoor play area at the South Brunswick facility

Previous Witnesses: Kemlish Shah, Project Architect; Jamie Kanrich, Authorized Representative; Anthony Gallerano, Harbor Consultants, Site Engineer; Arvin Patel, Operational Manager; Harold K. Maltz, Hamal Associates, Inc., Traffic Engineer

Witnesses tonight: Professional Planner

Joseph A. Paparo, Esquire representing the applicant appeared. Presented brief summary and overview of the application. Use variance, child care is classified as an inherently beneficial use. Operation and plan revisions: reduced monument sign, State licensing number calculations, and wall mounted sign facing Thomas street would not be illuminated at any time. One witness tonight Planner McDonough. Confirmed members who were not in attendance at all meetings were eligible to vote and signed certifications.

John McDonough, appeared and was sworn in. His credentials were presented to the Board and he was accepted as an expert in the field of professional planning.

Is familiar with the application and relief sought, will provide planning proofs.

Analysis starts with what is existing at present and is key component. Existing is a substantially oversized lot in a residential zone, however has been a non-residential land use for over a century. Dealing with a corner lot with generous frontage and connectivity to roadway network. In terms of proposed condition: program is complete demolition of existing structure and replacing with new child care center with a parking lot in the rear. Presently 75% is covered with parking lot and building. Licensed facility and requirement of statutory test. Very attractive almost school house appearance, and will fit into the neighborhood and this is a zone that does permit schools.

Access will be off Thomas Street – in and out with 30 onsite parking spaces in center two story building proposed of 12,084 square feet and typical for a center.

Zone from planning standpoint – this zone allows for residential and institutional uses and typically would characterize child care as institutional – house of worship or school is permitted. Child care center is not expressly permitted. Interrelated are 5 bulk variances and 5 design waivers to overall configuration.

Agrees with planner's report and will discuss. Case where applicant has made proposal, public has responded and raised questions as well as the Board with the applicant responding – movement as part of the process.

R-4 zones does not permit daycare center uses (§136-32A(1) and NJSA 40:55D-70(1); - Courts have established use as "inherently beneficial" which automatically satisfies the positive criteria. First prong of the 4 part is test satisfied.

Prong #2 - what the Board does in looking at impact of use at this location (does not get free pass under statute) main negative effects have been well vetted - traffic, noise and parking as detrimental effects. Vetted through prior witnesses. Generally - a weekday use, not night or weekend resulting in nice compatibility. No substantial functional detriment. Bearing context of what has been and what could be on site – another type of use with nighttime or weekend use. Allows the board to eliminate any detrimental effects. Permitted use at location does not give same controls.

Prong #3 – condition that could be imposed to eliminate the detrimental effects - hours of operation, number of staff, reduction of monument sign and elimination of wall mounted signs, green belt around perimeter of property by providing landscaping. Very problematic bamboo exists that will be removed and replaced with evergreens.

Prong #4 – balance of benefits versus detriments, enhances Master Plan goals, provide employment opportunities, stable tax base, privacy to surrounding properties through landscaping. Statutory test is met. Very little detriment

Remaining variances are C variances with less standard of proofs required when considering bulk variances. Connection between application and variances sought. Promotes general welfare, land use that is beneficial, provides for variety of uses in

different locations though better use of property, better visual environment that will blend with surrounding area, efficient use of land and is application that takes what exists and makes it better.

Negative – nothing substantially detrimental.

Rear yard setback – pavement to the property line and applicant proposes a setback with play area. Improvement over existing condition.

Side yard setback – 8.3 proposed where 14.4 is required – result of notch in the property adjacent to the office use and is in an inactive area that will also be softened by landscaping.

Combined side yard setback - 30.2 provided and 43.3 is required and is again function of lot width that are both being mitigated by landscaping and required for movements on site.

Overall lot coverage - 62.0% where as 40% is allowed, but is an improvement over existing of 75% and reduction of 13%.

Building coverage – 37.1% sought with 30% allowed, dealing with site where a building of similar size has been on site and proposed is not substantially different while still reducing lot coverage.

No substantial detriment to Master Plan or Zone Plan

Waivers: applicant must meet standard of reasonableness.

Awnings – architectural drawings very modest and provide accent and do not detract from aesthetic of building

Signage – one roadside sign that has been reduced plus building signs. Replacing one monument with another monument sign. Roadside recognition provides clear recognition of site. Wall signs are function of vantage points of two roadways and provides a visual cue to enter the building itself. Sign on Thomas will not be illuminated while others will as well as the monument sign.

Driveway offset from intersection and has been addressed by traffic engineer, less than 50 feet, and that is necessary for safe circulation.

Loading zone or unloading zone not provided – not necessary for nature of use at most deliveries will be by parcel post, courier or FedEx/UPS. From planning standpoint would be excessive to require on site.

Bike rack not provided – from planning standpoint given age of occupants would not be required. Not essential for this particular land use.

No substantial detriments, benefits outweigh; Looking for standard of reasonableness; purposes of Master Plan have been enhanced; taking land and putting it into functional use; no substantial detriment to zone plan. All tests are met.

Lesser standard of proof as to bulk variances

Questions posed by the Board ascertained the following information:

When reviewing property - is located in the R-4 zone, looked at residential on the subject property versus what is there now from a planning stand point or solely on what is proposed. Did review lot which is 6 times larger and theoretically would be cut up, two would meet full criteria, others would require variances with two or more conflict points. Under pure area would get 5 lots.

Requested example of what the Masons could do that would have children there every day – house of worships could have a lot of comings and goings such as charitable events and the like. Grandfathered use as “assembly” use and fits within the umbrella of an institutional use as places of assembly and house of worship. Height analysis from a planning prospective could one story be viable, is unaware of market research performed but 10,000 to 12,000 square foot building is not unusual for a daycare center and 30 parking spaces is generous.

No further questions posed by the Board.

Mr. Marotta opened the application to the public for questions of the witness with the following appearing:

Andre Sahajdakowski – Questioned clearing of the bamboo and if surprised that it has spread to seven other properties, applicant can only be responsible for his property versus removing off of seven other properties.

William Montani – Take a look at audience not professional planners, for that reason would like to read a report, was one submitted? Was not and not aware of one being required. Mr. Marotta explained expert testimony presented on the record and not required to submit a report.

Shirley Gazzzi – What was taken into consideration from planning standpoint as another daycare very close to proposed location? Competition is not a bad thing and does not have to demonstrate a need, as the use is considered a “inherently beneficial” use. Applicant is operator of a day care center. This area is a historic area and what research was done to determine if compatible as building was built in 1920s? Explain how wrong kind of building can impact historic equality. He has not seen anything that

would indicate a new building would be contrary. Municipality does have a Historic Preservation review that did in fact comment regarding the building itself.

Edward Hobby – Described as oversized lot with generous frontage, existing building fronts on South Avenue and new building will be oriented towards Thomas Street. Traffic stated what is now parking lot was measured at 4 cars entering and leaving from the lot, number of children licensed 180 for example and 180 vehicles entering and leaving – would that be considered substantial? Not a traffic engineer and does not accept fact that 180 vehicles will enter and 180 will leave. Mr. Paparo stated never equated trips with registration. Mr. Hobby countered did not believe statement made that there was no negative impact from traffic and question is as far as local residents are concerned, would not potential for 360 vehicles be a negative impact. Mr. Weeks interjected, hypothetically 180 vehicles entering and leaving and would that rise to a level of substantial detriment? As a planner, would not, has an existing lot that could open up tomorrow with another use that would intensify. Good planning does not look at excessive or unneeded parking. Confirmed provides 30 spaces and is unaware Traffic and Safety required 38.

Does not believe parking lot is especially narrow as exists. Building is located in a sea of asphalt that is not shallow. Anything unique about the parcel – sound like hardship and not justifying under C-1 is under C-2 and should not show both. Mr. Hobby read the statute language, shallow or unusual in attributes and if none exist on what basis that supportable? Mr. Weeks explained either C-1 or C-2, is not showing hardship. Confirmed no substantial safety, welfare or negative effects to area.

Greg Trawinski – Requested clarification as to landscaping re: evergreens. Exhibit A-4 shows the site and indicates the circles of Arbor Vitae and is being proposed around the perimeter. Location of playground explained, impact on rear properties that will no longer have use of the gates in fence. Applicant is not bound to put fence with gates and landowner could eliminate today. Playground is consistent with a back yard playground, if on residential private space usually goes on back of lot and is no limit on number of children that would be using the playground. Hours of operations, was consideration given to people that do not go to work, how is noise dealt with? Explained an assembly use could be there for perpetuity, and no restriction on the hours of operation and would be same disconnect between assembly use and residential. What you are speaking of goes to a specific user and that could change at any given time. Building will be in two levels, why two stories? Meets height requirements and is typical daycare center.

Gerry Randolph – Explained not architect, but the applicant's planner and his job was explained. Questioned traffic expert's projections, he is a retired designer, has no effect but has quite an impact that will land lock various residences. Will return for comments section.

Ellen Corcoran - Parking lot has been used by the neighbors for 15 years, and maintained it, under adverse possession could they be taking that land back? Is legal term and witness not here to speak to those matters and is unaware of adverse possession claim. Applicant is taking into consideration and building to its needs.

Patrick Mason – Question directed to fence line – testimony was told would be part wall and fence on top of the wall, believes testimony is that it would be 8 to 10 feet as property grades down and on other side wall will become 14 feet. Mr. Paparo indicated testimony was not 14 feet. Mr. Mason stated logic would dictate, depending on where you would sit on the line, if on wrong side looking at it. He is speaking as to detriment and was this taken into account? Not aware of any relief the applicant is seeking for the fence. Mr. Paparo's recollection of testimony is that the fence does not require a variance and meets ordinance requirements. Mr. Weeks explained testimony is wall varies generally a foot and half, and fence would be 6 feet. Did not take into consideration, but believes good site plan and design is met. Discussion of fence and wall perceived issue. Gates are not proposed. Mr. Paparo explained tree replacement plan shows which trees are being removed. Sheet #2 in site plan shows 13 trees to be removed in north west corner and a couple in south. Sheet #5 shows replacement plan.

Wayne Ganz – Times of deliveries or garbage pick-up – not his area of expertise. Must adhere to township garbage hauler restrictions.

Kevin Hoey – Regarding the bamboo, right now high and tight and if removed what will it be replaced with. Applicant is proposing evergreen (Arbor Vitae) and shows to 6 to 8 feet on plan. Interest is not to have it long term. Believed strip of land belonged to other property not to Masonic Lodge with Mr. Paparo explaining there are no access easements only drainage, is proposed easement that will be discussed in summation. Will double check the title work, but to their knowledge no title issues. Mr. Paparo confirmed title work shows no easements

Gerry Randolph – Building built in 1920s and asked if oaks that have been there are being removed? He did not review the tree removal plan. Mr. Marotta advised Environmental Commission reviews all applications and indicated their concern with impervious coverage, but makes no reference to the oak trees. Mr. Paparo clarified engineer has addressed onsite drainage and retention. Asked if any Board members were Masons. They were not. Mr. Paparo further explained a tree replacement plan was submitted and must comply.

No one else appeared and this portion of the hearing was closed with the matter referred back to the Board.

Mr. Marotta opened the application to the public for comments with the following appearing:



William Montani, appeared and was sworn in. He stated reasons why there is significant detriments. Traffic study was performed on one day. Did not consider 326 residential units at the Woodmont site, inclement weather was not taken into consideration, increasing darkness not considered, number of student license decreased, but still believes the level of service will degrade from a C to an E and traffic will be diverted. Traffic on South Avenue going westbound extended past Thomas Street. Impervious surface of 62% and is still significantly over what is allowed. Site should consider use of pervious block to reduce further. Fabric of neighborhood could further unravel with increased rush hour traffic.

Theresa Montani, appeared and was sworn in. She stated does not dispute the traffic findings, has lived on Thomas Street for 27 years and traffic patterns have changed. Concerned with present, rarely during rush hour did she encounter a car that caused her to stop, but over the past year when she approaches South Avenue she has had to wait exceedingly long times before being able to enter South Avenue and make a left. Is a definite increase in traffic. Other problem is cars that park on South Avenue that obstruct ones view. If the daycare is to be built, will be children bring dropped off and and most will stop in front of the center and run in with the child rather than entering the parking lot to drop off which will be a detrimental effect to the residents of Thomas Street. Even if only 50 cars, will have significant impact.

Andre Sahajdakowski, appeared and was sworn in. He stated to the best of his memory came to a hearing for a Thomas street resident that was denied. Cannot see application approved due to commercial in residential area as will set precedent that more residences will seek conversion to commercial uses.

Greg Trawinski, appeared and was sworn in. Stated inherently beneficial use. Number of concerns expressed about the project. Biggest issues regarding negative criteria: increase in traffic and noise, small parking lot, increase in traffic on Thomas Street and South Avenue, two story brick building that does not match the area or neighborhood, exit gates will be eliminated, play ground noise, quality of life will be impacted, drainage issues from playground, reduce residential parking due to no longer being able to use the Lodge lot effective tomorrow, does not conform to spirit of the Master Plan, prohibit intrusion of non-residential uses. Believes application should be denied as will impact 3 streets and would hope the Lodge will sell some of the property to residents.

Patrick Mason, appeared and was sworn in. He stated this is a bad deal for Cranford, having grown up in town and was in residence when there was an explosion on Centennial Avenue, and had to evacuate thru the Mason Lodge. Would not be able to use for an emergency if proposal is built. Traffic will increase on Thomas and South with parking issues. Proposal is bad deal for everyone. Original hearing had application for fence and member made comment as to fence facing outside.

Shirley Gazzsi, appeared and was sworn in. Bring up issues as to traffic experience that are becoming more frequent when vehicles are cutting through the neighborhood

streets. Whipping around South onto Thomas presents a very clear safety hazard. Concerned about the water runoff and since South Avenue has been developed, has seen Irene flooding. Lincoln Heights neighborhood has fought to keep appropriate development in the area. What if daycare does not stay in business? Keep historical uniqueness of Lincoln Heights.

Andy Lanset, appeared and was sworn in. He stated he is against the application and is dues paying Mason member and has first-hand experience with traffic in area. He is not in favor of selling the lodge to this applicant. Must now cross over South Avenue at the traffic light, adding to the roadway congestion and is a recipe for grid lock and more accidents. Very limited number of spaces provided and must consider recent developments of Riverfront, Woodmont and PSE&G. Traffic study is flawed as performed prior to Woodmont opening, as well as changes to power station, and retail in Riverfront. Additionally, plans as outlined will not be in best interest of residential home owners. May be more sympathetic if nonprofit organization, however, is for profit while meeting minimum number of requirements. Property is in a residential zone and asks the Board to uphold the residential designation.

Ellen Corcoran, appeared and was sworn in. She stated makes a big deal which direction we take, have a residential area, if she does not have access to neighbors changes whole direction of the town and would be detrimental. Cranford has always been very critical of where the town wants to go moving forward. There are already 10 daycare centers in town.

Robert Hubbuch, appeared and was sworn in. He stated he also opposes the application.

Vicki Goralski, appeared and was sworn in. She stated traffic on Thomas and South has increased dramatically and is dangerous. Concerned will become more dangerous. Also concerned as she lives in a small house and school will be much larger than her and other homes.

Kevin Hoey, appeared and was sworn in. He too is against the application would like to keep Thomas Street residential. Thomas Street will become commercial due to orientation of the day care building.

James Foster, appeared and was sworn in. He is Worshipful Master of Masonic Lodge. Lodge has been in Cranford since 1930 when cornerstone was laid. Has done best to be a good neighbor. Lodge will remain in Cranford although at another location better suited to the size of the lodge. Over a year ago, process started with meetings with the applicant and Board of Trustees to work out any issues with neighbors, thought all worked out. Surprised when notice was received that there was dissension among the neighbors which resulted in changes made to accommodate the neighbors. Has two children one of which is in grammar school, police traffic engineer. Does not believe the impact will be what has been expressed during the hearings. The Traffic engineer

explained there was only one project that he returned to 5 years later and he was spot on. Has spoken to developers for townhouses, condominiums, and the like and they were not interested. Urge approval for relief sought by petitioner.

No one else appearing and this portion of the hearing was closed with the matter referred back to the Board.

Mr. Paparo presented his summation.

DELIBERATION of APPLICATION #ZBA-15-019

**Application #ZBA-15-019:**

**Divyajay Management, LLC, Applicant**

**478 South Avenue East, Block 508, Lot 7, R-4 Zone**

**To permit construction of a day care center in a zone where not permitted with the following variances: R-4 zones does not permit daycare center uses (§136-32A(1) and NJSA40:55D-70(1); less than the minimum required rear yard setback for the principal structure (§136-30 Sch. 1 Attachment 1 (rear yard setback); less than the minimum required side yard setback for the principal building (§136-30 Sch. 1 Attachment 1 (side yard setback); less than the minimum required combined side yard setback for the principal building (§136-30 Sch. 1 Attachment 1 (combined side yard setback); to exceed the maximum permitted lot coverage in the R-4 zone (§136-30 Sch. 1 Attachment 1 (lot coverage); to exceed the maximum permitted building coverage in the R-4 zone (§136-30 Sch. 1 Attachment 1 (building coverage); awnings proposed where not permitted in the zone (§136-23.12; freestanding sign proposed where not permitted in zone (§136-23.10(6); less than the required distance for the driveways for other uses than one- and two-family homes to a side or rear property line or the closest right-of-way line of an intersecting street (§136-23.6(1)(d); no loading zone provided (§136-23.6(12)(a); and no bicycle rack provided (§136-23.6(13)(a)**

Mr. Marotta reviewed the testimony.

Board comments consisted of the following:

Difficult application to decide. Believed in favor as well planned project, inherently beneficial use, pleasing building. Applicant was willing to accommodate which is evidenced by revisions. Property will be developed for some use, Masons have a right to sell and have been generous over the years. Could be more intense development. In listening to the neighbors, oppose the project, does not believe daycare center is as low impact as originally thought, other options such as office buildings with same benefits as to evening and weekend usage. Potential for significant increase in traffic during the rush hours. Would affect residential character of neighborhood as entrance will face Thomas Street. Considerable development along South Avenue that impacts traffic. Very thorough application and commend neighbors on appearing to participate in the process. Parking situation is very unfortunate, but moving forward, not the responsibility of the Lodge or the town to continue the arrangement, fencing within

requirements, not an issue. Does not see that benefits outweigh detriments. Important to hear both sides of an application, especially in difficult proposals. Difficult as Lodge has been there for many years and provided residences with parking, all being said has issue with application: 1 – traffic off of Thomas Street, 2 – noise impact. Not good to have a commercial use in a residential zone. Overall project is well designed and providing additional daycare is a valuable asset to the community, have concerns about the siting of the development especially adjacent to South Avenue, distance of entry drive from South Avenue, does not believe noise is a big concern as all schools within Cranford are situated in a residential neighborhood. Commends applicant and Masons in reaching out to neighbors and making provision as to parking. Hopes that Lodge can move forward. Overwhelming is that although not residential, also not commercial. Does not like shoe horn things onto a lot, and this appears to be doing that. Valid concern in terms of residents parking and traffic increase. Don't disagree with other members all valid points, feels denying this application would be valid, but afraid that what may come after will have far more reaching impact. Unique property in R-4 zone but has not been residential for over 100 years. At this time the traffic is most egregious. Unfortunate so much new development that is causing the traffic issues. Listened to well-prepared professional who provided testimony. Property access, parking, gates are not the obligation of the property owner and nothing the Board can do about that. Appreciates coming before the Board and providing valuable information.

Motion to deny Application # ZBA-15-019 was made by Mr. Pistol, seconded by Mr. Bovasso with the following voting in favor of the motion: Mr. Marotta, Mr. Bovasso, Ms. Hay, Mr. Pistol, Mr. Higgins, Mr. Illing and Mr. Mallon.

#### **PUBLIC PORTION:**

**None**

#### **CONCLUSION:**

There being no further business, a motion to adjourn the meeting was regularly made, seconded and passed. The meeting concluded at 11:26 P.M.

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Jeffrey Pistol, Secretary