

MINUTES - ZONING BOARD OF ADJUSTMENT

Meeting of March 13, 2017

The workshop portion of the meeting was called to order at 8:00 P.M. by Mr. Marotta, Chairman.

ROLL CALL:

Members Present:

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

Members Absent:

None

Alternates Present:

Mr. Trelease
Ms. Dehnhard

Alternates Absent:

None

Also in attendance: Patricia Cullen, Assistant Zoning Officer/Board Administrator, Madeline Colandro, Interim Assistant, and Nicholas Giuditta, Esquire.

COMMUNICATIONS:

None

RESOLUTIONS OF MEMORIALIZATION:

Application #ZBA 16-003:

7-Eleven Inc., Applicant

Jason Tuvel, Attorney

49 South Avenue West, Block: 473, Lot: 1, Zone: ORC Zone

Permit to construct a convenience store. The applicant proposes a new convenience store use on the subject property (§136-32C(1) NJSA 40:55D-70(d)(1); The proposed front yard setback for the principal building will be 22.7 feet along South Avenue West (§136-30 Schedule 1 Attachment 1); The applicant proposes expanding the existing building which has a non-conforming side yard setback of 4.8 feet (§136-30 Schedule 1 Attachment 1§ 136-38B); The proposed parking spaces will be 162 square feet in area (§136-23.7(3)(a)(1); The proposed

parking will be located in front of the principal structure (§136-23.7(3)(a); The proposed sign will project 6.25 inches from the wall of the principal structure (§136-23.10(4)(b)[3]; The proposed wall mounted sign will be located less than 150 feet from the adjacent residential zone (§136-23.10(4)(b)(1); The proposed freestanding sign shall: Have a sign area of 29.3 square feet; Have an overall height of 5.4 feet. Will be internally illuminated (§136-23.10(4)(f); The proposed loading zone will be located the front and side yard (§136-23.7(12)(b).

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 Mr. Bovasso and passed with the following voting in favor of the motion: Mr. Marotta, Mr. Illing, Mr. Pistol, Mr. Bovasso, Mr. Higgins, Ms. Hay and Ms. Drake.

MINUTES:

Adoption of minutes was carried.

OLD/NEW BUSINESS

None

The workshop portion of the meeting concluded at 8:13 P.M.

PUBLIC MEETING:

A public meeting of the Cranford Board of Adjustment was called to order by Mr. Marotta on March 13, 2017 at 8:15 P.M. in Room 107 of the Municipal Building, 8 Springfield Avenue, Cranford, New Jersey. Mr. Marotta 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.

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

Application #ZBA 15-31: Continuation

Wardens & Vestry of Trinity Episcopal Church, Applicant

215 North Avenue East, Block: 315 Lot: 6 Zone: ORC

Minor site plan approval to construct an expanded parking lot on subject site with the following variances: expansion of a non-conforming use (§136-32C(1) and (§136-35B(16); less than the minimum setback for a parking lot (§136-23.6(3)[a]; less than the minimum required area for parking spaces (§136-23.6(3)[a][1]; no island breaks provided (§136-23.6(8)[c]; granite block curb not provided (§136-23.6(8)[g]; no loading or unloading zone provided (§136-23.6(12);

and less than the minimum number of on-site parking spaces provided (§136-23.39A(1)).

Robert Simon, Esquire on behalf of Mr. & Ms. LaBrutto
Jay Delaney, Esquire for John Schmidt, Esquire on behalf of Mr. & Ms. Steinbach
Joseph Triarsi, Esquire on behalf of applicant

Robert Simon, Esquire appeared, confirmed representing and speaking on behalf of objectors, Mr. & Ms. LaBrutto

Has two witness tonight traffic & circulation engineer and professional planner.

Jay Delaney, Lindabury McCormick substituting for John Schmidt, Esquire and representation of Mr. & Mrs. Steinbach.

Al Simoff, Simoff Engineering, appeared and was sworn in. Credentials presented to the Board and accepted as an expert in the field traffic engineering and planning.

Mr. Simoff testified to the following through questions posed by Mr. Simon.
Familiar with application and property. Reviewed TV35 televised meetings, zoning ordinance, master plan, multiple site inspections, meeting minutes and professional reports.

Overview background presented by Mr. Simoff of surrounding neighborhoods, located in ORC zone, parking restrictions, North Avenue traffic flow, 4 uses on the property: 2 single family homes, school and church. Church and facility has been in existence for a good number of years with limited parking provided and most parking is street. Reviewed ordinance requires 83 spaces and approximately 5 or 6 existing onsite and proposes adding 6 spaces which will be insufficient to meet the needs of the facility. No parking study has been submitted by applicant. Daycare and preschool does not require parking per ordinance although provides provision for alternative site parking and applicant does not provide that either. 21 spaces proposed 3 of which will be handicapped and one on single resident on Hamilton and 6 are on rectory property showing most spaces will be on residential lots. House on lot 6 is rental although owned by the church and in ORC zone.

Mr. Triarsi objected. Mr. Simon clarified that Mr. Simoff quailed as both engineer and planner.

Mr. Simoff continued. Access is provided through neighborhood roadways not an arterial road as contained in the master Plan and is not a proper use for a residential neighborhood: proposal does not make a dent in the parking requirement; neighborhood functioning over the years without this parking; would place a commercial type use on the residential street.

Mr. Triarsi objected, sustained. Mr. Simoff explained must have arterial road access for proposed parking lot, has performed studies for major day care provider and explained in depth. If new traffic, 80 to 90% is part of another trip and is why this location is suited as can travel through access and egress from North Avenue, by adding the parking and overlapping on lot 6 takes away the residential character of the home and introduces traffic into the residential neighborhood and concentrates the traffic in one area while presently spread out. Reviewed off set from Sylvester, is contrary to residential site improvement standard should line up or be 150 feet separated and the proposed is neither. Discussion on need for parking, but parking is not needed for the daycare and very little discussion as to need of the church and functions, therefore no need for this use which is a "D" variance and is negative impact.

Mr. Simon continued – Ingress from Hamilton and egress to North as per previous testimony was reviewed, has alternative plan. Review all elements and suggest a parking lot can be built on front of North Avenue with minor application to NJDOT and proposal would meet their requirements. Prepared sketch marked as LB-1 and distributed to the Board and counsel.

Plotting of alternate parking lot plan LB-1 on aerial photo obtained from Google prepared today. 2X3 Board is a larger version of LB-1 and shows the location of church, residential character on north and east and uses opposite the church on North Avenue. LB-2 is a canned of the applicant's site plane and then plotted parking lot in eastern knee of existing building where playground is located, outside of lot 6 and 18 spaces which includes on handicapped as well as turn around slot. Parking lot on LB-1 shows access form North Avenue.

LB-1 wanted direct access to arterial route as required for institutional uses; eliminate access to Hamilton; set back form the property line on west side 22 feet and east side 18-19 feet; east side is sidewalk; driveway is halfway between Forest and Arlington. Reviewed traffic flow versus entrance off of North or side street - suggesting with access in middle of the block the entering and existing traffic can take same signal gaps and believes DOT application would take approximately 30 days for review and decision as has to meet minor standards of access point and fact that it is a minor. Three types of DOT review/applications explained. Criteria Look at safety of the design, site distance, street network and evaluate each individual application on its merits. Easy permit to obtain \$435.00 fee.

Area currently devoted to playground, is sufficient space referencing state code for requirements would be adequate area. 2100 square feet to 3000 square feet. Good portion of the layout is single loaded aisle and is less impervious surface than applicant's proposed parking lot and more efficient. Reduced amount of disturbance, lighting is protected by existing building, all on main lot, and cleaner more efficient layout. Trees to be removed in current proposal (5 trees) his sketch call for removal of no trees and trees could remain in playground area.

LB-2 stall sizes are 9X 8, handicapped provided as an existing door in the area as well as sidewalk to door. Also, area in corner of the parking lot to act as a turn-around area. Optional sidewalk for pedestrian access included. Pedestrian circulation explained in depth. Sufficient distance of 18 feet from the lot line with DOT requiring 12 feet. Believes his proposal is superior to applicant's proposal as his proposal meets the intent of the Master Plan and Zoning Ordinance and eliminates one variance that is being proposed.

Mr. Triarsi ascertained the following through questions posed to Mr. Simoff:
Zoning of the property confirmed ORC, permits both office and residential, in property in question two residences exist. Across North Avenue from subject property are predominantly commercial zone. The principal residential area is to the east, lot 4 and 5 on North Avenue to Arlington and to the other side are other lots zone ORC. Church exists as a pre-existing nonconforming. Confirmed 83 parking spaces are needed for the church and only 5 or 6 in place. Does not know if were to be totally developed for church purposes would require entire site to be paved over, uncertain if changed to commercial. Questions posed as to traffic studies/counts regarding peak hours – agreed to counts presented by Mr. Moltz and his reputation is respected, merely difference of opinion.

Referenced residential site standards and applicability to the proposed application, is located in residential zone, but subject property is not in residential zone and same explained. Proposed use bring property more in conformance with the ordinance is closer to the ORC zone requirements but not as to arterial access.

Relocation of children's play area is not attached to the school but did not determine relocation, property is large enough to accommodate moving the play area. Did not examine access to the school, but believes enough flexibility that it can be fit in. Enough doors and multiple access points to provide for access not crossing the proposed lot. Did not speak with Traffic & Safety Department before this evening. Confirmed that said department stated would be an improvement. Not aware of Fire Department. He proposed an alternative layout that comes closer to the ordinance, one is to leave alone as is, offered alternative.

Saw curb cuts (2) on Hamilton, did not drive in, did not walk site. Cars were parked onsite in the east side of the property (rectory) and the additional parking area where applicant's proposal is to be located and is presently in use. Proposal is to create a lot of 8400 square feet out of 72,000 square feet.

Questions posed by the Board ascertained the following:
Confirmed church has other functions that will also use the lot and improvements give look of a commercial parking lot such a lighting, drainage, although good thing, etc. Proposal concentrates parking in one area and to driveway opposite of Sylvester. There has been no evidence presented that existing configuration provides additional

safety, no accidents, no incidents and would suggest it should continue that way. His review of videos 90% of discussion was to parking for daycare, and does not recall testimony as to ancillary uses of the church.

Mr. Triarsi objected, Mr. Simon claimed rules of evidence not applicable, is case law, proposes to be open and Board make an informed decision. Mr. Triarsi believed putting in testimony and is improper. Mr. Giuditta ruled while rules of evidence don't strictly apply, must not lead the witness. Mr. Delaney agreed with Mr. Simon, and leading questions are appropriate in Planning and Zoning Board hearings and will be asking similar questions. Mr. Giuditta explained matter of degree, will give some leeway and is more appropriate to provide an appropriate question.

In response to member's question, Mr. Simoff stated proposal would adversely impact the Hamilton/Sylvester intersection as not properly designed and concentrates traffic to one location, now 15 or so cars are spread out over entire frontage of Hamilton. Traffic volumes on Hamilton and Sylvester are very low, not certain as to positive, but definitely negative and is inflicting nonresidential traffic into a residential neighborhood. May be one street space lots with proposed lot. RSIS applies to residential development – member clarified ORC is office residential character, not office and residential.

Confirmed alternative access is for major applications, proposed would generate 36 movements per hour and is significantly less doesn't deserve or warrant major review for 500 trips per day. What DOT usually looks at is proposed building and this application does not propose any new building. Three types of DOT review/applications explained.

Fenced in area of the playground close to building since care facility for children should be relocated in rear, as multiple access points to the building, north side of the school building and recollects limited doors to playground now. Fenced in so closer to street would not be affected, not used after hours and is a residential character of any neighborhood.

Driveway directly across the street is an exit only for New Jersey Family Medical and does not believe turning restrictions. No issue with existing from making left on North Avenue as would be no different than others on North Avenue.

There were no further questions posed by the Board.

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

Barbara Notarelli – Used to work at Geraldine and occupied the building that is now being used as nursery school, if moved to side of street closer to Hamilton Avenue, would that be safe. Yes.

John McDougall – Has never seen anyone using playground, every single day off the property away from the building, proximity of playground makes no difference as not used.

Deb Murphy – How important is it to have the playground close to the building, must have access and be a safe path.

Albert Lenquil – New proposal onto North Avenue, at peak hours, will left hand turn be permissible. Confirmed that would be determined by DOT. Would be safe time to make left from Forest.

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

Mr. Delaney ascertained the following through questions posed to Mr. Simoff:
Testified 3 areas of expertise, traffic, planning and engineering. Drove the neighborhood and walked frontage of site. Hamilton Avenue is quiet neighborhood and proposed lot will appear as commercial with lighting, curb stops, etc. Opinion it will be detrimental to this neighborhood. His intent was to bring closer in compliance through access to arterial street and in his professional opinion application should be denied and applicant should seek alternative location.

Redirect by Mr. Simon –

Did not find evidence of traffic counts presented during the evening or on Sundays when reviewing materials. For travel purpose will vary between 14 feet to 19 feet with parking on both sides of the street. No parking permitted on North Avenue. No crosswalk on Hamilton and Sylvester nor is there a stop sign. Whether his proposal nor applicant's buses are not contemplated entering the parking lot; cars will need to use North Avenue for travel. Does not recall State requirement for playgrounds access to building. His proposal provides one additional parking space and less area.

Andrew Thomas, appeared and was sworn in. Credentials presented to the Board and accepted as an expert in the field professional planning.

Mr. Thomas testified to the following through questions posed by Mr. Simon.
Detailed the materials he reviewed in preparation of his testimony this evening. Has certain professional planning opinions as follows:

1. Applicant's notices published in the Westfield Leader and only included parking and lot deficiencies;
2. Notice to the property owners did not include request for a use variance was required –

Mr. Triarsi objected as about to embark on decisions that Zoning Officer and municipality made at onset of the application and based upon which applicant

proceeded to this date. Reiterated that Mr. Simon previously came before the Board to reverse or amend decision, and discussion was held and the Board supported the decision of the Zoning Officer and Planner at that time and to attempting to reopen. Confirmed this point has already ruled. Mr. Simon stated issue reviewed was what a zoning officer does and burden of the applicant to identify what relief is needed and cited case law that states that both the zoning officer and Board are each under duty to be cognizant of what relief is required independent of each other. Stated before in multiple hearings over multiple years that end up going to Court and turns out the Board did not review all variances needed. All trying to do is point that out and believes legally correct and board has legal obligation to consider all arguments as to what relief is required and at end of case make decision.

Board member indicated not certain what the purpose of having objector's professional witness testify as to what is required, and believes should be permitted to present said testimony, ruled on whether the Board was to second guess municipal zoning official, believes different as to a planner being brought by objector to present testimony and in his opinion inclined to hear.

Mr. Giuditta stated disagrees, this has been decided, variances required were determined almost year and a half ago, objector submitted an appeal from the Zoning Officer's decision that was decided and a resolution adopted denying that appeal request. Appears the objector is now attempting to present testimony in that regard during their affirmative case basically as to what variance relief is required and again seeking an interpretation, do not look backwards. Objector is seeking that this application should have been noticed as a D-1 use variance and also law recited that not been presented to the Board which specific case law is stated in the adopted resolution.

Mr. Simon confirmed many more sections of ordinance that require variance relief in addition to those requested by applicant, whether those omitted and an objector has a legal right under case law and land use law to present testimony in that regard and whatever is believed relevant for a full and fair determination to be made by the Board and is what being asked for. Member of the public should not be foreclosed from presenting objections as a matter of law.

Mr. Triarsi indicated this entire line of questioning has been addressed and going on two years this case has been in the process of being presented. Ruling has been made and at same point again, planner speaking in regard to planning concept would be acceptable, however, cannot bring in another planner to sit in the shoes of the municipal zoning officer and any such testimony can be ignored as not an official zoning arbiter of the municipal ordinance and have a right to rely on the township's officials. Issue has been decided and litigated and the Board is not required to reverse township professionals opinions and this testimony cannot proceed.

Mr. Simon stated Board has never made decision as to applicability of additional relief and foreclosed as a matter of law from presenting proofs and analysis in support of that position. Mr. Giuditta confirmed the Board decided this issue as contained in the Resolution that has been adopted and distributed, applicant cannot now come attempt to present the subject testimony. Mr. Simon wanted to remind the Board that it is not bound by any determination by municipal zoning officer, attorney, municipal professional, engineer or planner, can rely on own experts but has legal obligation to hear from all experts before making a determination.

Remainder of hearing dealt with legal interpretations discussed by Mr. Simon, Mr. Triarsi, Mr. Delaney and Mr. Giuditta as well as Board members as to whether objector can proceed with planner testimony as to issue previously decided.

Mr. Simon requested a vote be taken as to prohibiting any member of the public's ability to present testimony as to required variance relief be taken. As believes no basis in law.

Mr. Giuditta asked that the witness, part of testimony will include as to variances requested/noticed and can testify to that aspect. As to the use variance, explain to the Board or make a profer as to why required. Mr. Simon indicated both he and Mr. Schmidt were asked to submit a brief in June 10, 2015, no response was received, appeared to the Zoning Office for discussion and to this day has not received a response either written or verbal as to relief that is required above and beyond what the applicant requested. Mr. Simon explained that MLUL does not take into account ownership of the property, it relies on zone. In this case, the applicant is proposing a use on a residential lot that is not permitted and therefore requires relief. It is not accessory to use that is on same lot and explained that it becomes a second use on lot 6 and requires D-1 use variance. Need to look at application in terms of church lot and residential lot when considering violations and variance relief. Additional variances were reviewed.

Mr. Giuditta summarized, objectors position is that because a house in on lot six and portion of the parking lot will cross over from lot 1.01, the parking lot requires a use variance. Does not make sense as the lots are merged, and lot 6 is an undersized lot. Appear separate lots on the tax map. The idea that a D-1 use is required, merely because of the house, the lot is in the ORC zone. Mr. Simon stated residential use is permitted in the ORC zone, separate from the church use, permitted based on the R-5 zoning. In R-5 zone, the lot is not undersized.

Member confirmed Mr. Simon never received a response to his June 10, 2015 letter. Mr. Simon met with the former zoning officer, asked 4 questions and then was advised would receive a response. Member advised, that may change opinion re: allowing testimony.

Mr. Triarsi indicated does not understand the angst or anger that is being portrayed during this hearing or frustration being occasioned here from allowing the church to get a decision. Go from one month to the next, and then the next month. Mr. Triarsi advised Mr. Hudak did (9/20/2016) address all the concerns exactly to what is being discussed here. Found out about the witnesses yesterday or today. That is the problem here and over what a small parking lot, and how much more is this going to go on. Issues were raised in multiple hearings and is objecting to every question this witness is asked. Point is let's bring this to a head, let him present his case, let the public ask questions, make comments and bring the matter to conclusion.

Chairman indicated Mr. Simon is putting a lot of theories out there, as said months and months ago, we need information to move forward and make a decision. Mr. Simon indicated that is his intention by presenting planner testimony as to deficiencies and all the relief that is really required and try to convince the Board burden of proof has not been met, has alternative that is better and require less variance relief, and that is what he wants to present.

Mr. Giuditta advised the Board, what is before it for consideration is the applicant's application, what is not before the board is are there are one, two or three better alternatives options. Not the point, it is whether the applicant presented meet the conditional use variance standard, not whether there are other alternative locations for a parking lot. Is the applicant entitled to the relief requested.

Mr. Simon indicated big difference with applicant seeking 6 versus 16 variances and whether D variances. Chairman if made simple, they have issues throughout all the hearing that the church quite frankly agreed to correct. What is it that the objectors really do not want. All they want to do is present case so it is on the record and if appealed at later date, should be on the record due to rules. Have not presented any proofs yet as to variances and whether they meet positive and negative criteria. Chairman questioned whether a technicality of law, to which Mr. Simon responded not so, must meet positive and negative criteria and are rules of the game. Mr. Giuditta stated the applicant is not disputing that they have to prove their case, however, objector is stating that the relief being sought qualifies as a D-1 variance, and I am advising the Board that I do not believe that it is, plus all the other 14 variances claimed missed by the zoning officer and municipal professionals, the Board is not required to do that. Have planner testify as to undisputed issues and my view is that testimony is not permitted as to D-1. Up to the Chair whether planner testifies tonight, however, whenever that may be if carried, should deal strictly with requests made by the applicant.

Mr. Triarsi advised if not resolved tonight will have same issues at continuation hearing. Asking that a decision be made on merits of relief he was advised was needed and proceeded on that basis. Chair understands, this is a community and a church, what are the other issues, Mr. Simon objected to term technicality. Member clarifies your

planner needs to present negative criteria versus positive criteria, have planner testify in that regard. Mr. Simon advised his intention but is intertwined with believed additional variance relief that are needed. If Board deliberates and decides that all additional relief is not required, but at least have a record and whatever happens, happens. Would like vote taken as to whether testimony may be presented as to additional variance relief that the applicant has not requested or noticed for.

Mr. Triarsi indicated questioned, who is going to be the arbiter, many times have stood here and this is one of those cases that needs to be appealed, then let him do so and let the higher court decide, but we need to get to that point and are no close. Three traffic experts and each gave different opinion, engineers the same, with only binding is zoning officer's opinion.

Mr. Giuditta advised completed, have planner proceed in opposition to variances sought, free to have planner testify. Clarified that he cannot testify as to D-1 and 14 other variances. Mr. Simons seeks vote as to issues raised in June 16, 2015 letter. Mr. Giuditta believes Board is to decide whether the variances are needed and the Board is not going to do that, wants vote as to issues raised. Argument back and forth between Mr. Simon and Mr. Triarsi as to whether that was already addressed.

In fairness, needs vote as to what the planner can testify on, Mr. G indicated can testify tonight as to relief sought by the applicant, nothing in ordinance that says what variances are required is binding upon a Zoning or Planning Board. Discussion as to difference whether C or D variance proofs and amendment of application at hearing – are completely different. Mr. Giuditta has already advised Board in the instant case, objector seeking to change from D-3 variance to D-1 which is entirely different application and does not believe the change is warranted. Member asked Mr. Simon what the outcome is being sought, Mr. Simon indicated the Board is not throwing out the D-3 request, need to consider there are additional variances required and believes the evidence should be presented/heard and is reason asking for a vote.

Mr. Triarsi suggested the Board advise exactly what the planner may testify on as a policy procedure. Chair requested what the objection is to the parking lot, location, lighting, what? Mr. Simon advised planner will testify to that aspect. Already voted, can consider other variances and Board can make its own determination. Mr. Triarsi advised already ruled on, will not permit testimony as to 14 additional variances, not fair to his clients, not the Board has been a ruling and counsel knows where it can proceed if not happy with the decision. Mr. Simon requesting the Board to listen and consider. Want open and fair process. Need to know how to prepare his witness, present testimony.

Discussion as to how best let the Board understand the point of opposition. Chair advised zoning official, not available, can try to have present at next meeting, Mr. Simon reiterated Board can make decision as to relief required on its own. Mr. Giuditta

repeated his advice to the Board and is his legal opinion, Board not required to review all believed variance, should the Board wish to hear testimony as to D-1 variance, they are free to do so. Mr. Triarsi stated D-1 requires planner testimony and was never contemplated, should he go back and initiate such an application. Mr. Simon advised number of D variances, Mr. Giuditta advised D-3 which is lesser standard.

Mr. Triarsi advised Mr. Hudak responded to Mr. Simon's letter at hearing on the record, Mr. Giuditta also addressed at hearing and on the record, need to move the application forward. Mr. Marotta advised the Board is not taking a vote, Mr. Simon reiterated his request. Mr. Giuditta confirmed can present testimony. Mr. Marotta clarified testimony believed the Board is seeing, can present what he wishes, but the Board really wants assistance. Other member questioned, after testimony presented is the objector going to ask the additional variances be included. Mr. Simon clarified.

No new testimony presented. Hearing continued to May 22, 2017 re-notice is not required.

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 11:34 P.M.

Jeffrey Pistol, Secretary