

MINUTES - ZONING BOARD OF ADJUSTMENT

Meeting of December 5, 2016

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. Pistol
Mr. Bovasso
Ms. Hay
Mr. Higgins
Mr. Salomon

Members Absent:

Mr. Illing

Alternates Present:

Mr. Weisgerber
Ms. Dehnhard

Alternates Absent:

None

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

COMMUNICATIONS:

None

RESOLUTIONS OF MEMORIALIZATION:

Application #ZBA-16-014
Grunwald Properties, LLS, Applicant
29 Woodlawn, Block 473, Lot 28, R-5 Zone

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, seconded and passed with those members in attendance who voted on the application voting in favor of the motion.

Application #ZBA-16-016
Sam and Erin Saleh, Applicants
102 Herning Avenue, Block 210, Lot 2, R-4 Zone

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, seconded and passed with those members in attendance who voted on the application voting in favor of the motion.

Application #ZBA-16-002
500 North Commons, LLC, Applicants
500 North Avenue East, Block 333, Lot 2, C-2 Zone

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, seconded and passed with those members in attendance who voted on the application voting in favor of the motion:

MINUTES:

Motion to adopt the minutes of September 12, 2016 (as amended) was made, seconded and passed by voice vote.

Motion to adopt the minutes of September 26, 2016 (as amended) was made, seconded and passed by voice vote.

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 December 5, 2016 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 from September 12, 2016.

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).

Mr. Marotta advised there is a matter to be resolved prior to the hearing from one of the objector's attorneys as to being barred by time.

Robert Simon, Esquire on behalf of Mr. & Mrs. LaBrutto – on 9/30 filed an appeal and interpretation in light of what transpired at last meeting. No one representing the Board confirmed that this matter was being placed on the agenda this evening. Uncertain as to how to proceed this evening. In fairness, did make request that his application be consolidated with the instant application in order to expedite matters and for efficiency. Received no communication from anyone.

The Board considered and is open to hearing testimony as to why the objector is not time barred. Mr. Simon indicated not listed on the agenda.

Mr. Giuditta clarified the instant application is in fact on the agenda and being heard. Can be heard whether an appeal or an interpretation, although it is his opinion that the appeal and interpretation are time barred, however testimony can be presented as to why you feel it is not. Fact that agenda doesn't specifically state "appeal" does not make a difference as believes the application is time-barred, however, can present argument if prepared to do so.

Mr. Simon advised his application was not on any agenda for this evening, it has not been given an application number, notice was not given, and has had not communication and now asking that belief is the appeal/interpretation is time-barred. However, the professionals should have had courtesy to provide some form of communication since the objector has in fact filed an application and paid fees. Requested that we be given a chance to make their argument by letter in June and asked to present case, and was told that not certain whether that would be considered which resulted in appeal/interpretation being filed. Blindsided as no notice that it would be heard this evening. Certainly at the last meeting, with the Board being advised not to consider their arguments which is a "refusal", the appeal/interpretation request was filed

on September 30, 2016 requesting to make arguments before the Board and testimony to be considered by the Board. No time limitation as to interpretation. Intends to present a professional planner this evening as to why additional variances are required, appeal was filed within the appropriate time limitations. No obligation for objector or interested member of the public to raise jurisdictional arguments until the application presentation is completed, as a courtesy in order for the application to proceed simultaneously.

Mr. Giuditta indicated will have the chance to present argument, filed appeal/interpretation, believes advised being heard this evening, is his advice that the appeal is out of time as objector was noticed of hearing in September 2015 well prior to filing the appeal and well outside of the time period for such filing. Legal case explained in depth that confirms cannot seek what is basically an 70A appeal request for relief when relying on 70B or interpretation. Does not run from September 25, 2016, but rather commenced November 9, 2015 20 days after objector receiving notice or after Mr. Simon came on board.

Mr. Simon completely untrue he was advised that he was being heard at this evening's hearing and confirmed he is here tonight without being told of hearing. It is not up to the Zoning Officer to make determination as to relief the applicant requires, it is up to the applicant. Just wants to present the case in context of instant application. Submitted letter on June 10, 2016 at Mr. Week's request and wishing the Board to consider substantial information.

Mr. Giuditta reiterated his advice to the Board and presentation of a planner to provide testimony as to why the relief requested by applicant is incomplete and is precluded. Mr. Simon objected. Mr. Giuditta explained planner can testify to whatever he wishes as relates to the application and the Board will make a determination. Does not believe the application should be upended and applicant should start all over again. Mr. Simon countered any member of the public has an opportunity to present relevant material and if additional ordinances being required are heard all the time.

John Schmidt, Esquire – agrees with Mr. Simon that the Board has the obligation and opportunity to hear testimony as to why additional relief may be necessary. Up to the Board to decide if the applicant has met and included all relief necessary and additional variances should be considered by the Board.

Joseph Triarsi, Esquire – not certain if he wishes to address these issues. Reminds the Board hearings have been ongoing for a year and a half, issues have been before the Board, prior counsel dispatched some of the issues. To appear after applicant's case is rested and present testimony that should have been heard long time ago, 20-day time limit cannot be waived. Has right to present whatever they wish in their own case, but

he will not allow 20, 50, or 100 issues to be presented without my objection and is lubricous. Had opportunity to present his application in timely manner, jurisdictional matter. Case cited is on point, his decision is to get to it as assembled tonight and move the case forward. Could be winding up on courts and so be it. Let's move the case forward and will deal with it if it ends up in court. No legal to allow objector to proceed at this time.

Mr. Simon explained why appeal and interpretation was included in their application. Objector has right to present any information that is unduly burdensome.

Mr. Giuditta explained content of motion and provided legal advice. Once the decision is made will determine whether objector proceeds to present testimony or not.

Board comments consisted of the following:

Need to take advice of counsel that objector is out of time to file appeal. Believe outside of 20-day time frame, and would encourage the objector to present case as to why Zoning Officer's decision was incorrect/incomplete.

Motion to deny objector's application was made by Mr. Higgins, seconded by Mr. Bovasso with the following voting in favor of the motion: Mr. Marotta, Mr. Pistol, Mr. Bovasso, Ms. Hay, Mr. Higgins, Mr. Salomon, Mr. Weisgerber and Ms. Dehnhard.

Robert Simon, Esquire was requested to present planner, however, he believes he should go after Mr. Schmidt's presentation who also has witnesses.

John Schmidt, Esquire appeared, confirmed representing and speaking on behalf of objectors, Ann and George Steinbach.

Claire Minic, landscaping professional, appeared and was sworn in. Credentials presented to the Board and accepted as an expert in the field of landscaping/horticulture and master gardener.

Mr. Triarsi asked if she was a licensed landscaped architect – is not.

Ms. Minic through questions posed by Mr. Schmidt testified as follows.

She has reviewed the landscape plans submitted. The plans proposed rhododendron and believes they are an unusual choice for a parking lot area as required perfect conditions and drainage. Grow best under dappled light under trees, cannot take southern or western exposure – not full sun plant. Proposed is not in shaded areas although proposal will include maples, but initially when first planted will not provide shade. Better choices explained. Plan states 6-feet tall at planting but has not seen

any available maybe 42 inches although could have different source. Cyprus buffer explained as soft wood and would not be good planting for screening in area where proposed but will need careful irrigation and due to nearness if one starts to brown others will also. Plants will not survive without irrigation system.

Mr. Triarsi ascertained the following through questions posed:
Plants are Highwoods not native which could be quite tall but open at the bottom. Low probability of being a successful planting – would recommend hollies that are substantial plants and easier to grow. Cyprus is a good screening plant that can grow into a hedge and all plants will need water and care. In lieu of Cyprus would plant native Juniper, also hollies that are upright. All plants require water and care irrespective of what is planted.

Mr. Simon ascertained the following through questions posed:
Regarding to suggestion of replacing the Cyprus with cedars or hollies how high would they could grow 25 feet 10 feet wide and would be planted farther apart and fewer. Anything to prevent installation of double row of hollies to provide extra screening/buffering – nothing to prevent, all rows of things and could bunch together or alternate. If mixed, hollies and Cyprus or Juniper and Cyprus would be more beneficial.

Questions posed by the Board ascertained the following:
Is a western Arbor vitae that's planted all the time, skip laurels are dense and strong – are other choices.

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:

Deb Murphy confirmed there is the opportunity to stagger plants with different textures and heights and is a parking lot with surrounding area presenting opportunity to create diversion from the parking lot.

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

Ann Steinbach, appeared and was sworn in.

Through questions posed by her counsel, Ms. Steinbach testified to the following:
Lives at 1 Hamilton directly across the street from the subject property. Property across the street was very different than what exists now. Garage was removed in 2006. Has never complained against church parking or facility parking from herself or neighbors.

The pre-school opened about 10 years ago and changed hands till now under purview of the church. Never experienced congestion or pedestrian issues by patrons of the pre-school. Buses have a minor issue with idling and nursery school will take care of it. The street floods – entire corner – every time there is a storm. Neighbors plus employees of school have to come out during a half hour storm to move the cars.

Previously marked Exhibit O-3

Tab 1 – is house where pastor lives taken about 30 years ago and taken by Ms. Steinbach. Depicts good amount of landscaping until 2011 when it was removed.

Tab 2 – is her home when they were working on it, depicts forsythia bushes along Hamilton on church property and removed 2011-2012

She or husband either took photos

Tab 3 – pastor's house showing no landscaping

Tab 4- same view in Tab 2 with shrubs removed – was never informed as to why the church removed

Tab 5 – depicts where the garage stood and installed and expanded blacktop. Did not have appropriate permits at that time – obtain afterwards

Tab 6 – depicts the flooding from Irene in front of pastor's house from her front porch

Tab 7 – depicts Irene and building where nursery school is located with neighbor's house and corner flooding

Tab 8 – church to left and Hamilton Avenue where children are in canoe from her house looking towards Forest during Irene. Significant storm, however, floods during thunderstorms (30 minutes) during the summer and cannot pass thru corner hour to dissipate

Tab 9 – where the garage stood and church property

Tab 10 – same as Tab 9

Tab 11 – shows church property with back yards of Arlington Avenue showing lack of landscaping. Church put in Memorial Garden next to the building and half of plants have died due to lack of water

Tab 12 – what she sees across street from her home and where lot is proposed

Tab 13 – is standing on church property side looking down Forest – no sidewalks on church side of the street not on Hamilton.

Tab 15 – shows driveway off North Avenue

Tab 16 – Sidewalks along North Avenue

Tab 17 – yard of the rental house form North Avenue. Building on left is nursery school and entrance

Tab 18 – shows playground that is in L shape of education building without any screening

Ms. Steinbach attested to the accuracy of the photos and Mr. Schmidt requested O-3 be moved into evidence.

Exhibit O-4 – depicts in July 2016 a thunderstorm that lasted half hour and corner.

Exhibit O-5 – shows similar and nursery school with education buildings in background and corner is flooded. Is typical of thunderstorms during the summer season.

Exhibit O-6 – series of three pictures were identified by Ms. Steinbach and is Temple Emmanuel landscaping showing parking lot at temple.

Exhibit O-7 – Was in attendance at 1st hearing and recalls testimony of church elder. Shows of the swimming pools on Hamilton Avenue side, no screening and fence taken this summer after testifying the church did not wish to use Hamilton Side as a play area. Taken by her husband.

Mr. Triarsi ascertained the following through questions.

Unaware of number of cars that park in the Temple lot, maybe 20 or so. Lot is not that much larger than proposed. Unaware of lot dimensions, and got an idea of number of spaces while driving thru but did not count. Confirmed about a foot of water of more during the July storms. Aware that Irene dumped largest amount of rain water in Cranford in states history? – not sure. Confirmed no issues with street parking, no issues with day school, no complaints of double parking – only discomfort is some busses idle. Aware that Traffic & Safety review the application and site, and indicated no negative and provides safer result? Mr. Simon – objected. Yes, read the traffic report and is aware of the findings. Asked if Fire report was reviewed – Yes. Aware that Fire Department stated no negative impacts – yes, but does not believe study done during flooding.

Questions posed by the Board ascertained the following:

Photos were taken about a year and half ago 2014. About 9 – 10 children in pools a various times, dangerous situation, has toddlers. Mr. Triarsi objected – school has numerous supervisors.

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:

Tom Karcher, church member. Has she been at all meetings to date – yes. Hear testimony that cause of flooding is undersized sewer pipe? Email by past engineer as to why flooding occurs, written in 2008 and problems never fixed. Uncertain what the fix would be. Email is available. Hear testimony that lot with detention basin would deliver less water into the street than today? She believed would be less water if landscaping was left rather than removed. Does not understand relevance of flooding photos – how would vehicles get thru or emergency vehicles. Agreed naturally occurring flooding would be a danger to getting in and out of the school. Advocating no school at all? Suggested that lot be put off of the North Avenue.

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

Lee D. Klein, Klein Traffic Consulting, appeared and was sworn in. Credentials presented to the Board and accepted as an expert in the field and traffic engineering.

Mr. Klein testified to the following through questions posed by Mr. Schmidt.

Has been asked to review safety and traffic issues in the design of parking lots for preschool center. And review the application and visited the site April 11th and past site 3 or 4 times 7:55 to 9:15 AM. Observed vehicles coming to park and drop off children in the morning, noted time they arrived and time left for duration. Did not notice traffic on North Avenue initially but reviewed on other applications and familiar with traffic patterns. Noted 6.5 minutes for drop off, most park on church side of Hamilton, staff parked in the lots, noticed 3 cars on north side of Hamilton. Noticed no traffic congestion during these times on Hamilton Avenue, for most part people would find direct park space, no urban parallel parking. Unaware if enrollment size is increasing. No parking requirements for pre-schools or daycare centers anywhere in the State statutes or Cranford's ordinance. Initially 17 spaces proposed revised to 16 for parents to drop off and pick up and reviewed proposal. Current situation people park on south side of Hamilton Avenue, without crossing streets, parking lot plan will introduce, people will be off the street, but will need to pull into lot unaware of full or not, and will need to walk across a drive aisle. Introducing a conflict between vehicles and pedestrians which is not there today. Due to commercial element of the pre-school, North Avenue would be a more appropriate side to construct a parking lot. If designing from a safety prospective and outside of locating the parking lot on North Avenue, most appropriate scenario if there was ability to design entrance off of Hamilton, staff members could retrieve the children without need for parent to leave the vehicle, which would eliminate any conflicts, and exit to North Avenue and if need to park to meet with the staff would still have ability to park on Hamilton Avenue. Is definitely something that one could approach DOT. 37 entering equates to about 88 students at one AM peak hour, during the day would be less. DOT has standards and if show them it is less than 115 students, less than 500 trips per day is a minor application, and easier to submit, although they may impose some turn restrictions, all that could be workable. Believes applicant should approach DOT at the very least to see what they have to say.

Mr. Triarsi ascertained the following through questions.

Knows who Harold Maltz is – share same discipline. Did not conduct traffic counts – on North Avenue on clear day reflected a total of 1,719 vehicles across the front of church property – does not have any counts that would dispute those numbers. Also, conducted count on April 7, 2016 on intersection of Hamilton & Sylvester during peak hours, morning 81 vehicle and afternoon 83 vehicles, has no contrary information. Still

believes safer to exit onto North avenue despite less traffic on Hamilton Avenue. Familiar with NJ Access Management Code – alternative access – another access point other than a State Highway. Definition read into the record - agreed. DOT's prospective on a road cut onto its highway, does it favor alternative highway, not necessarily can have both. Read section of State regulations seeks to limit access to a State highway. Requested opinion as to still holding that alternative proposal is safer and would be approved. Mr. Schmidt objected. Turn over within a parking lot explained with desire to create less conflict between vehicles and pedestrians. Testimony confirmed by board chairman. Is uncertain as to the nearest intersection east of the church property; where is nearest west – Forest Avenue which is about 250 to 300 feet; easterly intersection from Arlington would be almost the same. Would certainly place another curb cut between these two intersections. Aware that cars que past Arlington on North Avenue, not the same type of congestion on Hamilton.

Questions posed by the Board ascertained the following:

Terms of proposed alternative access, no parking within the lot, just paved area coming in from Hamilton and exiting onto North Avenue – correct. Existing 5 spaces could be reconfigured to prevent any conflict. State encourages shared access – more likely shared with two streets – no by businesses or commercial properties. Did not observe inclement weather conditions to make determination how children would access the school. Was a simple “U” driveway considered off of Hamilton? Would still need to fit into that width which is another piece of property. And would be no reason as low traffic in peak hours off of Hamilton, not necessary, just remain as is. Discussion on same, does not see need as taking away street parking spaces to create “U”. Board has many options and testimony to review, must take into consideration what church, state, neighbor's wish to do – is it better to remove the pick-up and drop off to an off-street area or leave it as it is? Believes when compared to the proposal, leaving as is would be safer, second would be to place on North Avenue side.

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:

Justin Durning – daughter is student of school. Did not discuss with the school as to methods of dropping off for the children, rather than via sight. Explained alternative as to staff retrieving children.

John Witherington – church's volunteer garbage man, on Monday's take garbage out, Tuesday morning take cans back in from Hamilton Avenue. How long did it take an individual to drop off child? Some were 3 minutes and some 35 minutes. Gave example of situation for response. Range of 3 minutes some quick some 35 minutes.

Believes it takes 1 to 1.5 minutes to take child out of car seat, during which time vehicles are coming down the Hamilton Avenue creating an unsafe situation. Mr. Marotta explained better to perform this transaction off the street by either method, the parking lot or a pass thru-driveway. For most part believe people work with their child on the street side, so cars do not interfere.

Deb Murphy – if lot were installed, entrance and exit onto Hamilton, you would want to leave at least a 50-foot sight angle, how many on-street spaces would be lost, probably lose two, one on either side. No stop sign at the intersection, yes noted, and would not want to park near the intersection and again would be loss of two spaces, maybe 3 to 4 on Sylvester. On all landscaping proposed around the parking lot, would people need to check on space availability, if none, would then have to park at parsonage where there is no sidewalk, again creating a conflict between vehicles and pedestrians. Verified that application has been revised to 16 spaces and police report was prepared prior to the reduction, process explained. Mr. Triarsi advised 16 spaces proposed, does not recall if any were designated, if there were would reduce number of rolling spaces, and plans specifically note 4 designated spaces. Where would turn around be located – eliminated one space at end of the lot. Cars would be turning around when pedestrians would be moving throughout the lot. Believes better left as is.

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

Robert Simon ascertained the following through questions posed:

Current parking lot will not accommodate a bus. Ever seen an application as proposed, guardrail, lighting, etc. next to residential property? No has not. Ingress and egress onto Sylvester do not line up, there movement therefore is an odd jog and should be separated or lined up. In terms of moving the lot could be moved to area where playground currently is located, believes that can be accommodated with same or more spaces and still be able to provide direct sidewalk access. The playground is not usually in the front of the buildings, if relocated lot, could still have the playground in rear of the building and may possibly not involved lot 6. With regard to the stop sign, Mr. Klein confirmed the Zoning Board does not have the jurisdiction to determine whether an applicant meets the NJ State Highway Access Code, that is a separate process and considerations. One of Board's directive is to find safe and efficient access for both vehicles and pedestrians, believes proposes an unsafe condition. Peak period in the afternoon is 2:30 to 3:30 and not peak period for North Avenue in the afternoon.

Mr. Triarsi followed-up.

Did not have chance to review the Traffic & Safety report. Presented to Mr. Klein, who read conclusion of that department into the record – paragraphs 3 and last paragraph. Was at site for hour and a half in the morning, and has reviewed many applications for

Boards as well as applicants and will advise the client accordingly if believes not as safe as it could be and reiterated his conclusion.

Mr. Schmidt followed-up.

Confirmed Traffic & Safety are making their report based on the plans the applicant submits and does not contain options to chose from. Mr. Klein reiterated best options would be to either leave the drop-off/pick-up as exists or to create the driveway with drivers stopping and having the staff retrieve or deliver the students to the parents.

Mr. Simon confirmed there is no State or ordinance parking requirement for a child care center and that such a center could exist without providing a single parking space.

Mr. Triarsi asked if aware that the church is sponsor and operator of the center? No. does it make a difference if the church is a conditional use in the zone and one condition is adequate amount of off-street parking be provided – concedes that.

Mr. Schmidt rested.

Mr. Marotta asked if Mr. Simon wanted to start testimony or best to carry. Mr. Simon agreed an hour and best to carry. Next available date would not be to after reorganization and Mr. Simon asked if new members would be required to read and/or watch the prior proceedings or if members could be brought back. Members could not be brought back and only one more meeting and schedule is full. Next date would be in February, most likely second Monday but no date until after the reorganization meeting. Mr. Marotta asked if meeting could be conditionally set or is notice required. If bound to notice, then notice would be required, and would request that notice be provided to attorneys. Thanked all for patience.

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 10:46 P.M.

Jeffrey Pistol, Secretary