

Minutes of the Board of Adjustment of the
Township Of Hanover
May 18, 2017

Chairman Stanziale called the Meeting to order at 7:38PM and The Open Public Meetings Act statement was read into the record:

Board Secretary, Kimberly A. Bongiorno, LUA, took the Roll Call.

In attendance were Members: Caruso, Donaldson, Fomchenko, Hingos, Neidhardt, Stanziale and Walsh

Absent were Members: Iradi and Linfante

Also present were Board Attorney, Daniel Bernstein, Township Planner Blais Brancheau and Township Engineer, Gerardo Maceira, PE.

Public Business Presented

I. RESOLUTION TO BE MEMORIALIZED

- | | | |
|----|--------------------|--|
| 1) | CASE NO. | 1801 |
| | APPLICANT | BRIGHTSTAR HOSPITALITY, LLC |
| | OWNER | EPCO SERVICES, INC. |
| | LOCATION: | 262 ROUTE 10 WEST
WHIPPANY |
| | BLOCK: 7301 | LOT: 9.01, 13 & 14 ZONE: I-B |

Applicant sought preliminary and final site plan approval to construct a four-story hotel encompassing 127 guest rooms, parking lot area for a total of 148 spaces, 127 to be constructed and 21 to be banked, parking islands, landscaping, associated utilities, signs and lighting. Applicant is also sought "C" variance relief for signage, front yard parking as well as a design exception for the height of the light poles. Applicant also requested an extension of the "D" variance approval that was granted on May 21, 2015.

APPLICATION APPROVED WITH CONDITIONS APRIL 20, 2017

The above resolution has been deferred to a later date of June 6, 2017.

Mr. Maceira

- Discussed the measurements of the shed on the applicant's property which measures 9 x 8.

Mr. Brancheau

- Summarized the violations of the shed on the applicant's property.
- The allowable height is 13 ft. and the height of the shed that was built is 16ft.
- The allowable square footage is 450sq. ft.
- The coverage combined is 667 square feet where 450 square feet is allowed.
- The allowable for the shed is 150 square feet and what they have is a total of 667 square feet.

Ms. Recchia

- This shed has been up for about a year which has her mother's belongings in the new shed because her mom is in assisted living.

Mr. Neidhardt

- Questioned the joist and span of the building.

Mr. Hingos

- Questioned if the shed was built on concrete slab and if you can pull a car into it.

Ms. Recchia

- The shed is built on concrete pilings and built from stick. It will not have garage doors on it and you cannot pull a car into the shed because there is not a driveway to the shed.

Mr. Donaldson

- Questioned why they did not come before the town to find out what the requirements were for the shed.

Ms. Recchia

- We did not go to the town for a permit because there is no lighting, electric or water to this structure and were unaware that they needed a permit or a variance.

Mr. Brancheau

- The ordinance that covers this was adopted in 2005 and only original structures are grandfathered not replacement structures.

Opened to the public
Seeing and hearing none
Closed to the public

Mr. Brancheau

- Since this structure is raised, how would someone get in the shed?

Ms. Recchia

- There will be a stairs so someone can get inside the shed.

Mr. Brancheau

- If a ramp or stairs are built it may affect the coverage.

Mr. Brancheau and Mr. Bernstein discussed coverage issues.

Mr. Hingos

- Questioned if any homes in the neighborhood have sheds of this this size.

Mr. Caruso

- Questioned taking down the smaller shed.

Ms. Recchia

- The smaller shed is on a concrete slab.

The Board discussed removing the smaller shed and building stairs at the man door and at the barn doors on the front.

Mr. Bernstein read the conditions if approved.

Mr. Brancheau

- Suggested a shielded light over the door and inside for safety and to modify to allow electric for safety.

Mr. Maceira and Mr. Brancheau were both sworn in by the Board Attorney.

Mr. Michael Tobia – Professional Planner for the applicant

- Sworn in by Board Attorney.
- Gave an overview of his professional and educational background.
- Accepted by the Board as a Professional Planner.
- Is familiar with the property and the surrounding area and zoning.
- Discussion regarding exhibit A-1 which is a colored site plan rendering that was prepared by Bowman Consulting dated May 13, 2017.
- A hundred and forty one proposed rental units, one hundred and seventeen flats proposed and stacked townhouse units which would be twenty four units.
- Parking would be on surface and underground.
- The density works out to about 12 units per acre.
- The current site is a mess and an environmental clean-up is required.
- It is zoned BP-2 so the use is permitted; it's the density that is the issue.
- There are ten other bulk requirements that are met by the application.
- This is largely a compliant project.
- Density D5 variance 8 units per acre is permitted 12 is requested
- Height is permitted is 45 feet and 3 stories. Proposed is 4 stories at 60 feet
- The height is a D6 variance.
- These are the two reasons why we are before this board and not the Planning Board.
- Referred to the April 4, 2017 Township Planner's report.
- Discussed the reasons why this belongs before the Board of Adjustment.
- It's the only property in the zone that has 10 acres.
- There is no other piece in the zone that could come close to the acreage to allow for the multifamily.
- Addressed the height issue and why and how this is a major deviation.
- It is a permitted use in the zone and meets the majority of the requirements in the zone.

Mr. Neidhardt

- Questioned the height and the loft in some of the premium units.
- Referred to Exhibit A-2 Cross section of buildings dated May 18, 2017.

Chairman Stanziale

- The town created the ordinance for this zone and it is not a general zone of other properties.
- The Township says that this property should be a density of eight.
- Zoning is clearly specific for this property.

Mr. Tobia

- This site can accommodate more units per acre.

Mr. Calli

- This applicant has had meetings with the Planning Board which there was discussion about rezoning this site.
- The applicant tried to work with the Governing body and the Planning Board.
- The discussion was offered to see if more properties could be acquired and the applicant pursued and could not acquire more properties to help increase the acreage of the site.

Chairman Stanziale

- The applicant testified and gave the impression that the property cannot be used for residential development.
- Explained that the applicant isn't stuck and can build a conforming density and height project.
- Would like to know where the line is drawn between a variance and a rezone?

Mr. Tobia

- Feels that this is an open and shut variance case.

Open to the public

Matt Nilsen-Remedios – Resident at 17 Parsippany Road

- A resident who lives across the street from the proposed site, who is concerned with the height and the setback.

Mr. Bernstein explained the specialized mini hearing regarding board jurisdiction and if this board will retain jurisdiction.

Gretchen Schoenhaar – Resident at 15 Parsippany Road

- Lives across the street from this property.
- Questioned the special reasons for this case.

Mr. Bernstein

- The special reasons are required for “D” variances and the Board is trying to decide if they have jurisdiction at this time.
- Questioned why they were not noticed of the meetings that were before the Planning Board and the Township Committee for re-zoning requests.

Mr. Tobia

- Explained why no notice was required for the informal reviews that took place before the Planning Board and Township Committee.
- Discussed the presentations that took place before the Planning Board that were informal in nature.
- There was not a denial before the Planning Board or the Township Committee as they chose not to take action.
- This is an option permitted by law to come before the Board of Adjustment.

Mr. Brancheau

- Explained the notice that would have to be given if the Planning Board and the Township Committee did decide to rezone.

Fred Meola – 28 Whippany Road

- Questioned what other properties were approached for inclusion in the site.
- Also, questioned what the prior zoning was and what did it allow as the zoning was changed for this property to allow for the density of 8 per acre.

Mr. Brancheau

- This property was Zoned I – Industrial and corporate mailings was an allowable use.

Mr. Meola

- The current zone was molded for this lot and now you want more.

Mr. Tobia

- The zoning to date has not cleaned up this property.

Closed to public

Mr. Brancheau

- Reviewed his report dated April 4, 2017.
- Discussed the zoning history, the intent of the zone and the issue of zoning by variance issue.
- Discussed the history of the zoning of this site and the surrounding zoning of surrounding properties.
- Read the highlights from his report.
- A consensus was not reached for the density rezoning so action was not taken by the Planning Board or the Governing Body.
- Addressed if this is a legitimate variance that the board can approve.

- The testimony to date differs and takes a harder view on where the line is drawn between rezoning and variance approval.
- There needs to be exceptional reasons for the board to grant “D” variances.
- What we have in this situation is that it occupies a little more than 50% of the zone.
- The height and density are significant deviations and the application also requires several other variances. The 3 story is a 45 ft. restriction and the density of the initial six and then the eight were specifically put in place for this property.
- Feels the degree of violations is what the board needs to consider when deciding if this is a variance of rezoning because a 50% increase in density and 33% in height is significant.

Mr. Calli

- Referred to the December 19, 2016 Technical Review report and the January 31, 2017 report, stating there was just under 4 hours of technical review meetings regarding this site.

Mr. Brancheau

- Clarified what Mr. Calli was asking and described how the completeness review in Hanover Township works.
- It is done face to face with the applicant and it is an efficient process where we try to raise any red flags during the time of the review.
- Discussed what he and Mr. Maceira look for and try to accomplish during the completeness review meetings.
- Indicated that there was two variances being requested which are density and height.
- Rezoning was not mentioned in either report.

Mr. Calli

- Not raising an estoppel, but questioned if the issue of jurisdiction ever came during their completeness meetings

Mr. Brancheau

- Discussed other applications where he has discussed and raised issues of rezoning.
- The role in both of the procedures before the Planning Board he was not asked for a report or his opinion. The Board never got to that point and no one asked what the appropriate density was.
- Does not remember a board ever declining jurisdiction.
- The density per acre across the street from this site is close to 12 per acre at the Oak Ridge development.
- His opinion is to hear whole case and then deliberate if it is considered rezoning and can save time on deliberations.

Opened to public

Gretchen Schoenhaar – Resident as 15 Parsippany Road

- Questioned the density at the condos across the street and when it took place.

Mr. Brancheau

- It was a part of the original Mount Laurel litigation in the 1980's and doesn't know how the density was arrived at.
- The Master Plan in Hanover is over 60 years old and the latest amendment was in 2013.

Closed to public

Mr. Calli

- Would like to know what the Board thinks as the applicant is concerned about how the Board feels after hearing from both Mr. Tobia and Mr. Brancheau.

A short break was taken.

Mr. Calli

- Asks the Board to vote on the threshold and jurisdiction.

Mr. Walsh

- Feels that the Board needs to hear evidence that is sufficient to render a decision and gave reason why they feel they need more testimony.

The Board deliberated regarding how they would like to proceed.

Mr. Walsh made a motion to grant applicant a full plenary hearing subject to all the boards' rights. Member Hingos seconded this motion.

Members Caruso, Hingos, Neidhardt, Donaldson, Walsh and Stanziale were all in favor.

Member Fomchenko voted against going to hearing and believes that this is a clear case of rezoning by variance.

Case has been carried to June 15, 2017.

IV. ADJOURNMENT

Meeting Adjourned at 10:39P.M.

KIMBERLY A. BONGIORNO, LUA.
BOARD SECRETARY
BOARD OF ADJUSTMENT
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY