

**Minutes of the Board of Adjustment of the  
Township Of Hanover  
December 18, 2014**

Chairman Benjamin Stanziale called the Meeting to order at 7:36PM 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 Vigilante

Absent were Members: Linfante, Olsen

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

**Cases Presented**

**I. RESOLUTION TO BE MEMORIALIZED**

<b>1)</b>	<b>CASE NO.</b>	1747
	<b>APPLICANT</b>	GREATER MORRISTOWN YMCA
	<b>OWNER</b>	SADDLE RD. LLC
	<b>LOCATION:</b>	25 SADDLE RD.
		CEDAR KNOLLS
	<b>BLOCK: 701</b>	<b>LOT: 9</b>
		<b>ZONE: I</b>

Applicant sought Preliminary and Final Site Plan “C” and “D” variances to construct a Greater Morristown YMCA Youth Annex on currently vacant land located at the above address. Application approved November 20, 2014. Adoption deferred to a later date.

Greater Morristown YMCA Deferred to January 6, 2015 meeting.

## II. PUBLIC HEARINGS

- |    |                    |                                |
|----|--------------------|--------------------------------|
| 1) | <b>CASE NO.</b>    | 1724-R1                        |
|    | <b>APPLICANT</b>   | WHIPPANY LODGING, LLC          |
|    | <b>OWNER</b>       | HANOVER ASSOCIATES             |
|    | <b>LOCATION:</b>   | 1255 ROUTE 10 EAST<br>WHIPPANY |
|    | <b>BLOCK: 1102</b> | <b>LOT: 2</b>                  |
|    |                    | <b>ZONE: I-B</b>               |

Applicant is seeking amended final site plan approval to modify requirements relating to filing of complete plans. **Applicants notice was defective. Case carried by letter to January 15, 2015**

Letter from the Applicants attorney read into the record by Board Secretary.

***Board decision due by: JANUARY 30, 2015***

- |    |                        |                                |
|----|------------------------|--------------------------------|
| 2) | <b>CASE NO.</b>        | 1761                           |
|    | <b>APPLICANT/OWNER</b> | HANOVER DEVELOPMENT, LLC       |
|    | <b>LOCATION:</b>       | 168 PARSIPPANY RD.<br>WHIPPANY |
|    | <b>BLOCK: 8305</b>     | <b>LOT: 9</b>                  |
|    |                        | <b>ZONE: R-40</b>              |

Applicant is seeking to construct a second floor addition above an existing first floor. Applicant is seeking relief from section 166-167 B (1).

***Board decision due by: MARCH 10, 2015***

Douglas Asral – Architect for applicant was sworn in by the Board Attorney.

Lenny Salese – Partner with the Hanover Development LLC was sworn in by the Board Attorney.

Mr. Bernstein – Clarified that an LLC should be represented by their attorney. An attorney was listed on the application. Because this is a single family home, second floor addition it is the board's decision to make.

Board – is agreeable with the Architect giving his testimony and the applicant not being represented by an attorney.

Mr. Asral – gave his overview of violations and proposed a project.

- A second floor addition is to be added and all living quarters will be moved upstairs. The living space downstairs will be expanded to have a more open plan, but there will be no addition or excavation downstairs.

Ms. Fomchenko – questioned the age of the home.

Mr. Salese – believes the house was built in the 1960's but is not definitely sure.

Mr. Asral – discussed the outside design of the home.

7:48PM – Opened to the public.

7:48PM – Seeing none, closed to the public.

Mr. Salese – The garage will be re-done at this time also. It is not structurally sound.

There are no sheds on this property.

This property will be renovated and resold.

7:49PM - Open to Public

Terry Baird – 180 Parsippany Road, Whippany

Ms. Baird is concerned about the mold in the basement of this home and the future landscaping being done to the property. She is also concerned about storm water runoff.

Mr. Salese – Will have the home tested and remediated of mold, if necessary.

Mr. Asral – Nothing will be affecting the surface of the property. The only outside changes to this property is the pool being removed.

Ms. Baird – Described where her home is located in reference to this property.

Mr. Salese will work with the county to try and cure the runoff problem.

Mr. Bernstein – Reviewed the conditions of approvals should the application be approved.

Mr. Maceira – There is no way to eliminate the runoff from a county road.

Motion to Approve with conditions.

Moved by member Hingos, Seconded by Neidhardt

Members Voting “AYE” Vigilante, Fomchenko, Hingos, Neidhardt, Donaldson, Caruso, Stanziale.

Members Voting “NO” - None



- Feels Mr. Brancheau's design does not work because it is more parking than they would need if the building were to be repurposed.
- 53 parking spaces is the requirement. They are providing 33. He feels they really only need approximately 20.

Mr. Maceira –Feels that if you square off the building, provide 6 ft. sidewalks, take some area from the sand filter, and move the driveway further from the building, he feels they can probably make the 14ft. needed for the island.

8:22PM – Opened to the Public

Lane Miller – Representing Lightbridge Academy

- Questioned repurposing the building if no longer a gun range and the design of the building.

Mr. Fantina – The design works if the building is repurposed.

Mr. Peter Steck – Sworn in the Board Attorney.

- Exhibit A-6 – A 4 page handout report prepared by Peter Steck .
- Described the handout.
- Page 1 is an aerial showing the property and the surrounding area lots as well as a drawing of the proposed site.
- Page 2 – is 3 panorama photographs taken by Peter Stock.
- Page 3 – Photo views of the surrounding uses.
- Page 4 – Shows rendering of floor plan of proposed site and google photographs of the RTSP Range in Randolph.
- Described the lot for the proposed development.
- Described wetlands and the buffer.
- Recapped the application.
- Demolish existing dwelling currently onsite.
- Construct a rectangular building with a 28 foot setback. The parking will be in the side yard and use will be a shooting range.
- Two of the ports will be for a rifle practice.
- Discussed the sound attenuation, air system, and many security features. The interior is a specialized building, but the outside will look like an industrial type building.
- Discussed the surrounding uses and distances from this site.
- Lightbridge Academy is over 500 feet away from the subject property.
- This site does not have a regional accessibility.
- This area and zone have a very mixed group of uses.
- Described the Master Plan and recommended uses for this area.
- Read 2 short excerpts from the 200 re-examination of the Master Plan pertaining to suggested changes for the area.
- Read how indoor physical fitness uses are described in the code and in Mr. Brancheau's report dated December 15, 2014.
- Addressed the standard of proof. Referred to the Medici decision.
- This is a very highly unusual use and relatively unique use.
- Aspects of use goes beyond just recreation.

- Police and security need to be recertified and would be able to qualify at this site and this would advance the public welfare. There is a public purpose attached to this use rather than just a commercial use.
- This building could easily repurpose for industrial use if the need should ever occur.
- Described how the proposed development will improve the site.
- Discussed the other areas of relief needed.
- Front setback.
- Parking.
- Addressed the negative criteria.
- This is a relatively small building.
- Intrusion in front yard setback is less than what is there today.
- Parking is functional in the side yard.
- The use does not flow to other properties.
- Protective aspects of this use: sophisticated noise attenuation and air handling and policing of this use.
- This is a commercial recreation type of use.
- The applicant is confident that if for some reason this business does not succeed, the applicant is committed and has the expertise to turn this property into a standard industrial use property.

9:03PM – Break.

9:24PM – Back on Record.

Mr. Steck – Reviewed the aerial photo of the RTSP site in Randolph. Homes within 250 feet and they share the building with a Kumon Learning Center.

Mr. Brancheau – Clarified the ordinances intent of parking. The ordinance specifically permits parking in the front yard but must have a 75 foot setback.

Mr. Donaldson and Mr. Steck – Discussed the unique issues of this property and the special demand for the longer range.

- Suitability of this use on the site.

Mr. Neidhardt - Discussed the exceptional location and the benefit of the use. 1. Educates and trains the public. 2. Provides law enforcement with training area. 3. Provides second amendment rights.

Mr. Steck – There will be nine 25 yard bays and two 75 yard bays.

- There is a social factor to this type of use.

Mr. Stanziale and Mr. Steck – Discussed parking and discussed calculations of how many people may be present.

Mr. Brancheau – Ordinance allows retail as an accessory to the use.

Mr. Steck – In his opinion the sales are an accessory use to the range.

Mr. Bernstein – crossed examined Mr. Steck regarding his testimony.

Mr. Brancheau – Clarified some issues with FAR.

Mr. Pryor - Asked re-direct questions.

10:16Pm Opened to the Public.

Lane Miller – Attorney for Lightbridge Academy cross-examined Mr. Steck.

- Questioned commercial recreational category
- Indoor physical fitness uses.

Mark Siegel – Pastor at Abundant Life

- Questioned negative impact to existing surrounding businesses.

10:38PM Closed to the Public

Mr. Patrick Turzi – General Manager for Applicant

- Owner has been developing properties for 50 plus years. They are developers and real estate managers.

Exhibit A-7 – Photos of warehouse on 105 West Dewey Avenue in Wharton showing how they have been able to successfully repurpose buildings once the original use is no longer viable.

Lane Miller – Attorney for the Objector Lightbridge Academy.

David G. Roberts – Planner for objector was sworn in by the Board Attorney.

- Gave professional and educational background.
- PowerPoint outline of testimony in opposition to D(1) and C Variances.
- Reviewed Exhibit.
- Existing Zoning
- Master Plan land use plan.
- Master Plan proposed zoning.
- Aerial view of area.
- Aerial of proposed firing range.
- 2<sup>nd</sup> aerial of proposed firing range.
- Proposed site plan.
- Subject site view from South Jefferson Road.
- Rainbow/Lightbridge Academy street view.
- South Jefferson Road Existing uses.
- East side of Jefferson Road office uses across from subject site.
- More Compatible zones – IB3 East Hanover Corridor (showing old Airtron/Grummond Site)
- Positive criteria – must be met
- Negative criteria – must be addressed

- Discussed the location of the site and the proximity to the road due to the wetlands pushing it forward and the surrounding uses in the area.
- Discussed reasons for 75 foot setback.
- Does not feel that this would be an inherently beneficial use.
- Issues – nothing particularly special about this zone that makes the use beneficial to this zone.
- The proposed use dictates the shape of the proposed building.
- The road is very busy with no shoulder.
- Agrees that towns are loosening up their standards in order to allow for additional uses in the industrial zones.
- Concerned with the other uses in the area such as child care center being close to this proposed use.
- Incompatible with the sensitive uses in the area. (church and child care)
- The use is a perfectly fine use, just not on this site due to its proximity to sensitive existing uses.
- The kind of use although not defined or spelled out in the ordinance would not exempt it from use.
- Discussed opinion on retail accessory use.
- Summarized the negative criteria.
- Feels the parents and congregation of existing churches will reconsider attending in the area if this use is approved.
- Feels there is not enough room on the side of the road for a shoulder. This will create a safety hazard.
- This type of use for this building will not be beneficial to other existing uses in this zone.

Dan Bernstein – Questioned knowledge of traffic uses in this area.

- Mr. Bernstein questioned Mr. Roberts.

Mr. Neidhardt – Questioned sensitive uses and why one site would be sensitive and not others.

- Suggested a staggered traffic pattern at the gun range compared to peak traffic at the church and daycare.

Mr. Hingos clarified there is 28 feet to the right of way line. There is approximately 38 feet to the pavement of the road.

Mr. Pryor – Crossed examined Mr. Roberts.

- He addressed the testimony of the turning movement hazard.
- He questioned Mr. Roberts as to when was his last time at a gun range.

Mr. Roberts – Has not been within the last 10 years.

Mr. Pryor – continued with cross examination addressing negative impact testimony given by Mr. Roberts.

12:05AM – Opened to the Public. Seeing none.

12:05AM – Closed to the Public.

Mr. Miller – Redirect questions to clarify inconsistent uses.

Mr. Phil Harvey, President of Lightbridge Academy (formerly Rainbow Academy) – was sworn in by the Board Attorney.

- Site has been under Rainbow Academy for the past six years.
- He described the training and security measures implemented by Lightbridge Academy and described what families are looking for when choosing a particular daycare center.
- He discussed concerns raised by parents.
- 166 children are currently attending the Lightbridge Academy at this time.
- Teachers have already asked for transfers to different locations, if the proposed use is approved.
- Parents have expressed concerns.
- Mr. Harvey has made a decision to not talk to parents about this development. He does not want to create an alarming situation or be an alarmist.
- He feels this is the wrong place to put this use. It is right between two childcare centers and a church.

Mr. Bernstein – Questioned Mr. Harvey.

- What studies have you done to research the safety or lack of safety at gun ranges?
- Questioned Mr. Miller if there was a distinct case where perception has been allowed as a reason for denial of an application.

Mr. Miller – Was not aware of a case where perception had been allowed as a reason for denial.

Mr. Pryor – Offered his knowledge of a cell tower case where perception was used as a denial and the Supreme Court found that the board could not deny a case on the basis of perception.

Mr. Harvey stated he will need to be proactive in dealing with the parents if the Board approves this application.

12:29AM Open to the Public

Mark Siegel – Pastor of Abundant Life Worship Center was sworn in by the Board Attorney.

- Parents have stated that they will not enroll their children in daycare, if the gun range is approved. Safety is their main concern.
- Mr. Siegel is very much against the gun range being approved here.

12:31AM – Closed to Public

Mr. Miller – summarized objectors case.

- Does not feel the applicant has met the criteria in order for the board to approve.
- Gave closing arguments.

Mr. Pryor – Gave closing statement.

Mr. Bernstein – Board has the right to bifurcate the use.

Mr. Pryor – Continued to summarize.

Mr. Bernstein – Summarized conditions.

- Suggested bi-furcating the case and voting on the use and defer the conditions to site plan and bulk variance to a later date and the site plan would be represented.

Motion to bifurcate and approve use.

Moved by member Neidhardt, Seconded by member Hingos

Members Voting “AYE” Hingos, Neidhardt, Caruso

Members Voting “NO” – Vigilante, Donaldson, Stanziale

Motion failed, application denied.

### **III. ADJOURNMENT**

A motion was made to adjourn the meeting. All members present in favor.

Meeting Adjourned at 12:53 A.M. on December 19, 2014

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