

**VERNON TOWNSHIP LAND USE BOARD
REGULAR MEETING MINUTES
June 10, 2009**

CALL THE MEETING TO ORDER

Mr. Theobald called the meeting to order at 7:12 p.m.

STATEMENT OF COMPLIANCE:

Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975 adequate notice as defined in Section 4D of Chapter 231, P.L. 1975 has been transmitted from the Vernon Municipal Center to the New Jersey Herald, Star Ledger and Advertiser News on January 23, 2009. Notice is posted on the bulletin board and filed with the office of the Township Clerk.

PLEDGE OF ALLEGIANCE

ROLL CALL

Andrew Borisuk	P
Mayor Carew -	P
Mark Nelson -	NP
Richard Spoerl -	P
Martin Theobald -	P
Sam Lewin, Alt. #1 -	P
Chris Hack, Alt. #2 -	NP (excused)
David Gornstein -	P
Vincent Zinno -	P
Gary Grey -	P
Andrea Cocula -	P
Jack Smith, Alt #3	P
Gino Misciagna	P

ALSO PRESENT

Patrick McNamara, Esq., LUB Attorney
Louis Kneip, P.E. Township Engineer
Cynthia Davis, Recording Secretary
Jessica Caldwell, Planner

Mr. Hack advised the Board that he would not be in attendance this evening.

Mr. Nelson - Resignation

Ms. Cocula made a motion to accept Mr. Nelson's Letter of Resignation from the Land Use Board. Mr. Borisuk seconded the motion. ROLL CALL: BORISUK - Y, CAREW - Y, SPOERL - Y, GREY - Y, ZINNO - Y, GORNSTEIN - Y, COCULA - Y, LEWIN - Y, SMITH - Y, MISCIAGNA - Y, THEOBALD - Y.

PUBLIC HEARINGS

MERCK

PB # 1`-08-9

Block 127.03, Lot 29

Lot Line Adjustment

Mr. Merck and Mr. Kenneth Wentink, Licensed P.E. and L.S. came forward and were sworn in together with Mr. Kneip and Ms. Caldwell. Mr. Wentink advised that Mr. Merck is proposing to adjust the lot lines which will expand the lots (29 & 30) located on Summit Drive and Lake Walkkill. There will be no changes to the frontages of these lots. The adjustment will be at the back of the lots located in the R2 zone with the front of the lots located in the PLC zone. There is no bulk variance relief required.

The applicant spoke with the Lake Walkkill Association and they had no objection to the lot line change.

Mr. Spoerl made a motion to deem the application complete. Mr. Gornstein seconded the motion. ROLL CALL: BORISUK - Y, CAREW - Y, SPOERL - Y, GREY - Y, ZINNO - Y, GORNSTEIN - Y, COCULA - Y, LEWIN - Y, SMITH - Y, MISCIAGNA - Y, THEOBALD - Y.

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OPENED MEETING TO THE PUBLIC

No one came forward.

CLOSED MEETING TO THE PUBLIC

Mr. Borisuk made a motion to approve the lot line change application. Mr. Zinno seconded the motion. ROLL CALL: BORISUK - Y, CAREW - Y, SPOERL - Y, GREY - Y, ZINNO - Y, GORNSTEIN - Y, COCULA - Y, LEWIN - Y, THEOBALD - Y.

A&P Supermarket

LU # 4-09-7

Block 145 Lot 1.05

Interpretation of Zoning Ordinance (pursuant to Section 70(b) of the MLUL)

Mr. McNamara advised the Board that in this application they will be functioning as a zoning board of adjustment. Accordingly, the Mayor, Mr. Gornstein, Mr. Theobald and Mr. Grey recused themselves and Mr. Borisuk served as acting Chair.

Interpretation is requested by the applicant to help to determine whether outdoor storage is allowed in this zone and in this location (under the overhang).

Ms. Suzanne J. Frankland, Esq., Mr. James DeBarbieri, Architect, and David O'Sullivan, Director of Site Planning for A&P, appeared on behalf of the applicant and were sworn in together with Mr. Kneip and Ms. Caldwell.

Ms. Frankland explained that the applicant requested an interpretation whether the area under the front overhang was considered part of the "building" or "structure." If it is considered part of the building or structure, it is their position, that the subject area is therefore not in the front yard area and would not be precluded as a space for an outdoor display and would not violate the outdoor storage ordinance. The applicant submitted definitions of "building," "structure," "yard," and "front yard."

Ms. Frankland explained that the submitted definition of building requires a permanent, temporary or continuous use and it is the applicant's position that the area in front of the building has always been used by the A&P since it opened in 1973 as an area for outdoor display/sale. It wasn't until the last 18 months that it became an issue. Therefore the applicant feel that there has been a "continuous use" of the area.

Ms. Frankland explained that the submitted definition of yard requires that the yard be unobstructed and unoccupied. It is the applicant's position that because the overhang is there, it is both obstructed and occupied and it appears that the parking lot is an obstruction and an obstruction of the front yard also. The applicant submits that the front yard goes from the road to the end of the planted area and would end at the front of the parking lot or at the front of the overhang. It is the applicant's position that the overhang area is part of the building or structure and therefore would allow for space for outdoor display.

Jessica Caldwell, Planner

The Planner's Report dated June 2, 2009, which was marked as **Exhibit A1**, was discussed by Ms. Caldwell. She commented that she understands the applicant's interpretation of building and structure but doesn't feel it's the standard interpretation that's been used by the Township and feels it raises several issues. First, the area under an overhang can be a public sidewalk. Second, if the area under the overhang is interpreted to be part of the structure it no longer falls under "outdoor" storage and will become a use outside of a building that is in public view with no regulation under the ordinance. You would have to create another ordinance to regulate this.

Several photographs were marked as exhibits:

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Exhibit A2 - far right end of the building

Exhibit A3 - left end of building

Exhibit A4 - center portion of building

A lengthy discussion ensued regarding many issues.

The issue of the inaccessibility of the entrance from the handicapped parking spaces due to the obstruction of the Belgium block curbing and shopping carts was discussed. The applicant agreed to address this issue.

Four parking spaces have been displaced by the cart corrals. Ms. Frankland advised that the 1997 calculation was 5.5 spaces per 1000 square feet = 520 spaces of which the A&P installed 527 spaces. The A&P has met that requirement even with the displacement.

The amount of pedestrian space required in a display area - Mr. DeBarbieri advised 4' is required by the ADA. Mr. McNamara asked that this be confirmed.

Where to measure the setbacks from if the area is considered a part of the structure or building.

Whether the outdoor storage is in the front yard.

Mr. Kneip

Mr. Kneip read Section 330-192 of the outdoor storage portion of the ordinance which states:

“Outdoor storage is prohibited in all residential zoned districts. In nonresidential districts no article, object or material shall be kept, stored or displayed outside the confines of a building unless the same is screened by special planting or fencing and is otherwise approved pursuant to approval by the Planning Board.....no storage shall be located in the front yard or yard abutting a street.”

Mr Kneip considers this a front yard area and outdoor storage is not allowed.

Mr. Kneip read the NJ Administrative Code, Title V, Chapter 23, Section 1.4, definition for building and structure which explains that a building requires walls.

Mr. McNamara read from the **Town Center guidelines** under ordinance 0802, subparagraph (l), page 32, Section 10 where it states:

“The storage of any materials, products, debris, signs or any bulk item on any premises is prohibited.....”
“.....Displays limited to the premises or the products or services are permitted directly in front of the establishment along the sidewalk as long as there is at least 6 feet of clearance maintained as to a front entrance. Displays are permitted in rear and side yards of premises as long as they are temporary defined as being readily removed and not a permanent fixture and may not exceed 6 feet in height. Only solid displays or sample products are permitted to be displayed.”

Mr. McNamara suggested that the applicant come back with a site plan that addresses the issues including the ADA barrier-free requirements for the parking inaccessibility.

OPENED MEETING TO THE PUBLIC

Martin Theobald

Mr. Theobald commented that if you stand on your porch, you are considered “outside.” He feels that outside the A&P, under the overhang would be not be considered inside the “building.” He feels the applicant should honor Vernon Township codes.

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Mr. McNamara read the following definitions:

Building as defined by the **Vernon Township Land Use Board ordinance**: “A combination of materials to form a construction adapted to permanent, temporary, continuous occupancy and having a roof.”

Building as defined by the **Uniform Construction Code**: Building means a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing shelter, enclosure and support of individuals, animals or property of any kind. When used herein building and structure shall be interchangeable except where the context clearly indicates otherwise.”

Structure as defined by the **Vernon Township Land Use Board ordinance**: A combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land.

Structure as defined by the **Uniform Construction Code**: A combination of materials for form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land.

Gary Gardner

Mr. Gardner advised that the area in question is not being taxed as retail space. Mr. McNamara advised that how the area is being assessed is not necessarily germane to the interpretation of the zoning ordinance by the board.

Mr. Zinno made a motion that the area under the roof canopy does not meet the definition as part of the building. Ms. Cocula seconded the motion. ROLL CALL: BORISUK - N, SPOERL - Y, ZINNO - Y, COCULA - Y, LEWIN - Y, SMITH - Y, MISCIAGNA - N. (5-2 vote the area is NOT a building).

Mr. Spoerl made a motion that the are under the roof canopy meets the definition of part of the structure. Mr. Smith seconded the motion. ROLL CALL: BORISUK - Y, SPOERL - Y, ZINNO - N, COCULA - Y, LEWIN - Y, SMITH - Y, MISCIAGNA - N. (5-2 vote the area is part of the structure).

Final vote: The area under the overhang of the A&P meets both the definitions as part of the building and part of the structure.

OPENED MEETING TO THE PUBLIC FOR ITEMS OTHER THAN THOSE LISTED ON THE AGENDA

No one came forward.

CLOSED MEETING TO THE PUBLIC

MINUTES

May 13, 2009

Mr. Gornstein made a motion to approve the minutes from the May 13, 2009, Land Use Board meeting. Mr. Lewin seconded the motion. ROLL CALL: BORISUK - Y, CAREW - Y, ZINNO - Y, GORNSTEIN - Y, COCULA - Y, LEWIN - Y, SMITH - Y, THEOBALD - Y.

RESOLUTIONS

Metairie Corporation

Preliminary & Final Site Plan Approval for Phases A & B, Preliminary Site Plan Approval for Phase C.

LU #2-09-3

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Ms. Cocula made a motion to approve the resolution. Mr. Gornstein seconded the motion. ROLL CALL: SPOERL - Y, GREY - Y, ZINNO - Y, GORNSTEIN - Y, COCULA - Y, LEWIN - Y, BORISUK - Y, THEOBALD - Y.

ESCROWS AND VOUCHERS

A. Escrows

Board Engineer - Louis M. Kneip, P.O., P.E., CME

Verizon - LUB # 1-09-1 DOS 5/4/09 - 5/5/09 (\$2,053.50)

Noto - LUB # 4-09-06 DOS 5/20/09 (\$264.23)

NS Enterprises - LUB # 1-09-02 DOS 5/26/09 (\$27.75)

Board Attorney - Patrick McNamara, Esq. - Scarinci & Hollenbeck

Verizon - LUB# 1-09-1 - Services through 5/31/09 - (\$375.00)

Metairie Corp. - LU# 2-09-3 - Services through 5/31/09 - (\$1,125.00)

Glenn McLaughlin - ZB# 11-08-16 - Services through 5/31/09 - (\$105.00)

A&P Supermarket - LU# 4-09-7 - Services through 5/31/09 - (\$210.00)

Township Planner - Jessica Caldwell, AICP - Harold E. Pellow & Associates

Verizon - LU# 1-09-1 - DOS - 4/30/09 - (\$280.50)

Metairie Corp. - LU# 2-09-3 - DOS - 4/30/09 - (\$935.69)

GDS Enterprises - LU# 9-06-12 - DOS - 4/30/09 - (\$327.25)

Mr. Spoerl made a motion to approve of the escrows, above. Ms. Cocula seconded the motion. ALL WERE IN FAVOR.

B. Board Fees

1. Cynthia Davis

Land Use Board Business - DOS 5/11/09-5/22/09 - (\$57.00)

2. Board Attorney

Land Use Board Business - Services through 5/31/09 - (\$1,875.00)

Northwoods Redevelopment - Services through 5/31/09 - (\$345.00)

3. Township Planner - Jessica Caldwell, AICP - Harold E. Pellow & Associates

Land Use Board Business - DOS 4/30/09 - (\$140.25)

Mr. Smith made a motion to approve of the Board Fees, above. Mr. Gornstein seconded the motion. ALL WERE IN FAVOR.

C. Bond Reductions

None

D. Request for Escrows to be closed

Eric Gabriele, LU#3-09-4, Deck Variance, Block 159.01, Lot 5

Ms. Cocula made a motion to close the above escrow. Mr. Smith seconded the motion. ALL WERE IN FAVOR.

LAND USE BOARD DISCUSSION ITEMS

Highlands transfer of development rights bank.

Mr. McNamara advised that as part of the implementation of Highlands laws, the Highlands Council are working on creating operating procedures called the Highlands Development Credit Bank. This is tied to the TDR process in the Highlands program where towns may look to transfer certain development rights between municipalities that are under the jurisdiction of the Highlands Council. They are soliciting comments on these rules by June 26, 2009.

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Status of Pending Applications

Mr. Kneip reviewed the upcoming applications.

ADJOURNMENT

Mr. Borisuk made a motion and Mr. Zinno seconded the motion to adjourn the meeting at 9:15 p.m. All were in favor.

Transcribed by Cynthia Davis on June 14, 2009.

CERTIFICATION

I, the Board Secretary, hereby certifies that the above minutes were approved at the regularly scheduled meeting of the Land Use Board on June 24, 2009.

Respectfully submitted,

JOHN HANLON
Board Secretary
Land Use Board
June 10, 2009