

BOROUGH OF PEAPACK & GLADSTONE

LAND USE BOARD

June 6, 2018

Opening Statement: Adequate notice of this meeting of the Land Use Board of the Borough of Peapack & Gladstone was given to the Courier News on January 10, 2018 and was posted at the Municipal Complex, 1 School Street, Peapack; The Peapack Post Office, 155 Main Street, Peapack; and the Gladstone Post Office, 266 Main Street, Gladstone, New Jersey on January 10, 2018.

Salute to the Flag

Roll Call:

Present:

Greg Yannaccone, Chairman
Chris Downing
Mark Corigliano, Councilman
David DiSabato
Judy Silacci
James Heck, Alternate # 2
Mayor William Muller
Susan Rubright
Peter Sorge, Alternate # 1
Matt Sutte, Alternate # 4

Absent:

Joan Dill, Class IV
Kingsley Hill
Lisa Saunders, Alternate # 3
William Ryden, Borough Engineer

Also Present:

David Nowak, Planner standing in for John Szabo
Roger Thomas, Esq. Board attorney

Meeting convened at 7:05 p.m.

• **Request for extension of zoning protection**
P-G- Residential Developers,L.L.C. – Block 33, Lot 10, 11, 11.01

Douglas Janacek, Esq. was present representing the applicant. He explained the request and the statutory regulations which allows such request and approval. There is no requirement for public notice. Upon a question by Christopher Downing, Mr. Thomas explained that this is an extension of Final approval and there is no requirement of notice for final approval. The applicant is requesting a 4-year extension. Mr. Downing questioned why a request for 4 years when there is a pending ordinance making this site inclusionary. Mr. Thomas explained that if the ordinance is changed they still are protected and that under the land use law section 52-B allows the planning board to approve the extension upon request. It is up to the board's discretion to determine the extension limit. The approval would be starting from May 17, 2018. Alan Goldman of R-G properties was sworn in as a witness. He advised that the request is the result of the

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change in economics and that senior housing has found difficulty in finding a market. The tax law has made people look at renting rather than owning. He suggested that they would like to see how things go for the next few years. They are committed to the removal of the age restrictions; this is an interim move. The process started 14 years ago and the ordinance will be introduced within the next month. He emphasized that they are committed to the new ordinance and will provide affordable housing. Mayor Muller reiterated that this builder could still build age restricted units even after the adoption of the proposed ordinance. Mr. Thomas explained that the law allows the approval of the extension of the original approval by the Land Use Board which does allow them to build age restricted development. There is no obligation to build affordable units under the old approval. They are protected as long as the ordinance does not change. Mr. Thomas discussed limiting the number of years that the approval is to be extended to.

Public Portion – was opened and closed since no one wished to question the witness.

The board members questioned the request and discussed the proposed ordinance which would change the use on the property. The Board members discussed the length of time for the extension. Mr. Thomas cautioned the board in extending for only 1 year and suggested a minimum of 2 years and perhaps longer; Susan Rubright suggested an extension of 3 years; Councilman Mark Corigliano and Mayor Muller each suggested an extension of 3 years. Mrs. Rubright deferred to the knowledge of the mayor and councilman who have been involved in this over several years.

Greg Yannaccone made a motion to extend the approval for 3 years; Judith Silacci seconded the motion which was approved by the following roll call vote:

AYES: Yannaccone; Rubright; Silacci; Muller; Corigliano; Downing; DiSabato; Sorge and Heck.

NAYS: None

Matt Sutte did not vote; since the board is a 9 member board, only 2 alternates were needed to vote.

➤ Mayor Muller and Mark Corigliano both left the meeting.

• **PUBLIC HEARING/APPLICATIAON:**

Michael J. Virzi – Block 26, Lot 6 – 16 Tainter Street – Application deemed complete 2-2-18. Toll time is July 1, 2018. The plans have been amended addressing the concerns and comments of the board at the April 4th meeting. Mr. Virzi was reminded that he had been sworn in at the April meeting. He testified that he had hired a new architect Tim Eagles from Unionville, Ct. Mr. Eagles was sworn in and accepted as an expert witness. He advised that he owns a firm of 30 people and holds a license in New Jersey and is a registered architect in 7 other states. He went over the changes to the plans which went from a 3 to 4 bedroom home with a 135 s.f. addition. The existing house remains with the addition of a new mudroom and entry porch. The expansion on the 2nd level consists of a master bedroom and bath. The style of the home is a Cottage style. The new siding and roof will remain the same as the existing. There will be no removal of trees. It is a modest size house for a family of 6; the roof lines are in keeping with the bungalow style; new

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roof will match up with the existing roof; no metal roof. Shingle siding will match up with existing siding. Floor plans sheet A-1 site plan plus 3 additional sheets.

The following Exhibits were entered into evidence:

A-5 - photos of existing home

A-6 - rendering of the proposed home

A-7 -architectural A-1 thru A-3 and site plan dated 5-18-18 consisting of one sheet.

A-8 - additional rendering of north side of the house

A-9 – rendered site plan.

The public portion was opened to questions of this witness and since no one wished to question the witness, the public portion was closed.

John Szabo's report dated 5-30-18 was referred to by David Nowak.

Mr. Eagles explained the changes to the plan reflected in Mr. Szabo's report. Mr. Eagles concluded his testimony.

James J. Chmielak, Jr. PE, PP - 360 Nassau Street, Princeton – Kensho Resources LLC, was reminded that he had been previously sworn.

Using Exhibit A-9 Mr. Chmielak explained the site and the requested variances. He testified to the 590 s.f. addition to the second floor; the proposed 33.5% FAR variance request and explaining that it is smaller than what was originally proposed. The efficiency of the driveway has been increased providing adequate parking in the driveway; provided are 2 parking stalls and space for a 3rd parking space. There is a proposed shed for the lawn mower and bikes as suggested by the Board members at the April meeting. He went over the required setbacks of 15 feet and a combined 35 feet as shown on the plans. Schedule I on the plan shows the setbacks. The applicant's schedule I is correct. Exhibit A-9 shows the location of the neighboring residential structure which is 30' away from the property line. The variances requested are; 1) combined side yard setback; 2) principal building coverage- this is because the lot area of the property is substantially less than required; 3) FAR – the net increase is 715 gross s.f. divided between two floors. Mr. Chmielak concluded that this property is the 2nd smallest lot on Tainter Street. The proposed home is a relatively modest house with upgrades to the driveway and the house.

The board members questioned the witness. Mr. Chmielak, when questioned, agreed that the new architecture conforms to the neighborhood. The board questioned the slope of the property and Mr. Chmielak agreed that it does slope away from the neighboring house toward the street. He also testified that he had studied aerials of the properties in the neighborhood and feels that the proposal conforms to the neighborhood. Mr. Chmielak reviewed the square footage of the properties on the street. The board discussed the windows and a possible privacy issue. Susan Rubright felt that the FAR variance was reasonable and felt that Mr. Virzi was proposing a very modest improvement which has been artfully and carefully and sensitively designed. The size of the 2,608 s.f. proposed house was discussed and the applicant agreed to extend/expand the existing plantings along the north side. They intend to keep the vegetation on the south side.

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The public portion was opened to comments from the public about this application.

Todd Kouflie lives at 14 Tainter Street was sworn in and addressed Mr. Heck's issue with the parking. He lives in his grandparents' home and has done so all of his life. He addressed parking of cars at the neighboring houses and does not feel there is an issue with the parking on the site. He has no issue with the proposal and feels that it will enhance the neighborhood. He feels that the addition of kids in the neighborhood will be a significant improvement. He hopes that the decision of the board will be in favor of this proposal. He has no problem with his privacy and the windows. He has no concerns.

Laura Kouflie lives at 15 Tainter Street; directly across the street. She is Todd Kouflie's mother. She stated that she has no problem with the proposal. This is a good proposal.

The public portion of the meeting was closed since there were no other comments about this application.

Mr. Thomas advised the board on the action to be taken and suggested a motion to approve the 'd' variance; there is no intent to influence the board members; this is a procedure. If approved then the other variances will be addressed.

Susan Rubright moved to approve the 'd' (FAR) variance; Peter Sorge seconded the motion. A roll call vote was started and then stopped. Mr. Thomas then realized that there may not be enough eligible members to vote because the applicant needs 5 affirmative votes for a 'd' variance. Mr. Thomas then informed Mr. Virzi of the situation. Mr. Virzi then decided to wait and have a vote taken at the June 20th meeting after all of the members who were absent either at the April 4th meeting or tonight's meeting have listened to the tapes of those meetings. The secretary will make arrangements for the appropriate members to listen to the tapes. Mr. Thomas carried the hearing to the June 20th meeting without any further notice.

Resolution to be adopted

Block 33, Lot 15 – 145 Route 206 – ORL Zone

Greg Yannaccone moved to approve the corrected resolution; Judy Silacci seconded the motion which was approved by the following roll call vote:

AYES: Greg Yannaccone; Susan Rubright; Judy Silacci; Chris Downing; James Heck

NAY: None

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RESOLUTION OF MEMORIALIZATION**

Approved: April 18, 2018
Memorialized: June 6, 2018

**IN THE MATTER OF
MANJIT SINGH BAJWA AND RAVINDER KAUR
BLOCK 33, LOT 15
BULK AND USE VARIANCE APPLICATION**

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WHEREAS, Manjit Singh Bajwa and Ravinder Kaur, (hereinafter known as the “Applicants”) filed an application for use and bulk variance approval with the Borough of Peapack and Gladstone Land Use Board (hereinafter known as the “Land Use Board”) on November 2, 2017, and

WHEREAS, the matter was deemed complete on November 11, 2017, and

WHEREAS, public hearings were held on January 17, 2018 and April 18, 2018, with notice being required, at which time the Land Use Board rendered its decision on the application in accordance with the requirements of N.J.S.A. 40:55D-10(g), and

WHEREAS, it has been determined that the Applicants have complied with all of the rules, regulations and requirements of the Land Use Board and that all of the required provisions of compliance have been filed with the Land Use Board, and

WHEREAS, the Land Use Board has received as part of the hearing process the following testimony and documentary evidence submitted by the Applicants and their consultants, the Land Use Board staff, and members of the public:

The Applicants are the contract purchasers of property known as Lot 15, Block 33 on the Tax Map of the Borough of Peapack and Gladstone. The property is located in the ORL Zone and consists of approximately 5.01 acres. There is currently located on the site an abandoned restaurant, club, and apartment, as well as a communications tower. The Applicants propose to build a fueling station with a convenience store. The Applicants are seeking “d” variance approval only. As part of this application they are deferring, or “bifurcating”, site plan and bulk variance applications pending the outcome of the “d” variance review. The Applicants’ attorney, Mr. Robert Simon, conceded that in the event of the “d” variance approval, the Applicants will during site plan review be required to reprove the negative criteria from the “d” variance approval. Nevertheless, the Applicants provided the Board with a “Variance Plan” depicting the currently contemplated layout of the proposed use.

Mr. Paul Fox, a Professional Engineer in New Jersey, testified on behalf of the Applicants. He indicated that the site was west of Route 206 and consisted of 5.01 acres. He testified that there is currently a communications tower on the site which is approximately 600 feet from Route 206. The front of the site is currently developed with the Elks Club which contained a restaurant and apartment. The restaurant and apartment are no longer in use. The ORL Zone in which the property is located requires a 40-acre minimum lot size. Mr. Fox indicated that at one time he believed that there was a gas station on the site. He presented photos of the site showing the remnants of that prior gas station. He noted that the lot was clearly undersized for the ORL Zone in terms of acreage. It also lacked adequate frontage. The zone requires 500 feet of frontage. The lot has only 367 feet of frontage. The required front yard setback under the Ordinance is 200 feet. Existing setback to the Elks Club building is approximately 32 feet and the setback to the portico is approximately 15 feet. The proposed front yard setback for purposes of this bifurcated application is 20 feet.

The Applicants proposes to install six (6) pumps with 12 fueling stations. The Applicants also propose to have 18 parking stalls. Mr. Fox indicated that he believed that there was adequate circulation for tractor-trailers to deliver on site. The initial proposal was to have right-turn-in and right-turn-out only. He further indicated that there would be limited tree removal which would primarily occur on the southwesterly corner of the site by the retaining wall that is being proposed. He also testified that there would be no high-flow diesel provided on the site; that only low-flow for cars and pick-up truck type vehicles.

The Applicants presented Mr. Michael Byrne, an architect in the State of New Jersey. He testified that the minimart proposal would be one (1) story and 1,953 square feet. The main entrance would be on the northerly side with a glass front. They proposed a fieldstone façade. The canopy was proposed to be 54.6 feet by 131.8 feet. The height would be 32.66 feet. The Applicants propose a freestanding sign of 41.6 feet at a height of 15 feet. There would be a kiosk in the center of the canopy which

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would be nine (9) feet by five (5) feet. The roof of the canopy would be the same as the building. The canopy would have a sign on the northerly side of the structure.

Mr. Judd Rocciola, a Traffic Engineer on behalf of the Applicants, testified. He indicated that this is an Access Level Two (2) road, which is the second most restrictive access in the State system. He indicated to the Board that he believed that only one (1) access would be permitted. He testified that the State would allow 150 trips in the peak hour. He advised that there would be initially a limitation of no left turns into the site. He testified that approximately 65 percent of the traffic that would be coming to the site is pass-by traffic, which means it's already on the highway and is not specifically coming to the site as new traffic. The initial design had an island at the access.

Members of the Board and members of the public and the Land Use Board staff had questions regarding the application. As a result, modifications to the plans were submitted. As a result, the island in the access was removed and the driveway width was modified to 32 feet. The curb to curb radius was 50 feet at 206, which was reduced from 80 feet. It was noted by Mr. Fox that the proposal indicated 20 percent lot coverage where 50 percent is authorized in the zone. He also indicated that a turning movement exhibit for trucks was presented and showed that the internal circulation was sufficient to accommodate those sized trucks.

Mr. Rocciola again testified. He resubmitted traffic data. The Board's traffic expert, Mr. Eric Keller, submitted reports that indicated that his office verified that the allowable trip limits under the DOT Access Code were 190 trips during peak hour. The Applicants indicated that although they had the right to increase the size of the minimart and still stay under the 190 trip threshold, they intended to keep the minimart the same size as originally proposed (under 2,000 SF). Also, the Applicants indicated that they would be removing the island from the access. They also revised the plan to show this was an all-access full movement driveway. Mr. Rocciola testified that he believed that the other permitted uses recommended in the Master Plan Reexamination Report of 2015 would generate traffic in excess of what is proposed by the Applicants including but not limited to shopping center, bank and a pharmacy. As a result of the recalculations and discussions between Mr. Rocciola and Mr. Keller, Mr. Keller believed that the access was safe and compliant with NJDOT Standards.

Mr. Charles Horn testified on behalf of the Applicants. He is a commercial real estate broker with sales experience since 2002. He testified that he listed the property from November of 2014 until May of 2016 and again from May 2016 to December of 2016. He advised that there had been between 90 and 100 inquiries but only three (3) offers. He testified that there had been 25 inquiries from gas stations, one (1) from a cell tower and three (3) from restaurants.

Ms. Elizabeth McKenzie, a Professional Planner in the State of New Jersey, testified on behalf of the Applicants. She indicated that the "d (1)" standard is governed by N.J.S.A.40:55D-70d. She acknowledged that the Applicants must prove that in particular cases special reasons are advanced. She opined further that the case of Medici governs the application. Its enhanced criteria require the Applicants to establish why the proposed use was not contemplated in previous Master Plan reviews.

She noted that the lot is undersized for the ORL zone, which requires a minimum lot area of 40 acres, but that it is large enough for a gas station and mini-mart, and that the proposed development will not use most of the site. She believes that the project has been tailored to the opportunities and limitations of the site. She testified that the property is isolated from other commercial development. She believes that other uses permitted in the zone would require more parking and more site disturbance. She also acknowledged that the existing structure on the site is an eyesore and does not benefit the property in question or the Borough.

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She stated her belief that the site is well-suited for its intended use because of its access to and visibility to Route 206, which is a major State highway. The proposed use will provide services to both local and regional traffic using Route 206. She believes that most of the customers during peak hours will be coming from the north and heading south on Route 206. There is an existing gas station and mini-mart along the northbound lane of 206 to the south of the site that will likely capture more of the northbound traffic.

She believes that the Purposes of Zoning found in N.J.S.A.40:55D-2 are advanced. She indicated that Purpose (a) is advanced as the use is appropriate to the particular site given its size, access, location, visibility and condition. She also believes that Purpose (f) is advanced as the use of the developed portion of an already developed site represents an efficient use of land and provides gas station and minimart services for existing cars using a major public highway (Route 206). She believes the site is ripe for redevelopment. It is an eyesore, and the approval of the proposal will promote Purpose (i) of the MLUL. Further, she believes that Purpose (g) is advanced since the project will provide a use that will serve travelers along Route 206 as well as local residents, thereby promoting the needs of all New Jersey citizens.

With regard to the negative criteria, she does not believe that the proposed development of the site will be substantially detrimental to the public good since it is well screened from surrounding properties to the west and north. Although the proposed use is not listed as permitted in the ORL zone, it is at the edge of the zone, and it is uniquely suited for the type and scope of the development that is proposed for it. She also noted that this is not a site that can support the type of development envisioned for the ORL Zone, given its size limitations. She described the Elks Club site as presenting a zoning quandary. She further indicated that in her opinion the site is not a good site for residential development, given the steep slopes across most of the central portion of the lot.

She testified that she reviewed the Master Plan Reexamination Report of 2015. While the report does not appear to include a gas station as a recommended use, she noted, on page 12 of the report, the expressed intent to have retail sales and service uses for the residents of the Borough as well as to the people traveling along U.S. Route 206. She is of the opinion that this project advances that intention. She also noted that the Community Commercial zoning recommended for this site was never translated into an ordinance whereas other recommendations of the 2015 Reexamination Report were, in fact, adopted as ordinances. She further noted that the uses listed for the CC Zoning District might well require more site disturbance than this project would require or than the site should support. She believes that the other proposed uses such as restaurants, offices and banks would result in greater site disturbance and more traffic than might be permitted by the New Jersey Department of Transportation. In fact, the Board noted that, when it was preparing, reviewing and approving the 2015 Reexamination Report, it was not aware that NJDOT regulations would preclude the recommended uses that generate more traffic than the proposed use.

In addition to the application submissions and the testimonial evidence, the Applicants submitted the following documentary evidence:

- A-1: Photo of the existing building from the south.
- A-2: Photo of the existing building from the street.
- A-3: Revised variance plan dated 4/3/18.
- A-4: Turning Movement Plan dated 4/3/18.
- A-5: Revised variance plan dated 4/17/18.
- A-6: Revised Turning Movement Plan dated 4/17/18.

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A-7: Photo of the site from the south.

A-8: Photo of the site from the north.

A-9: Curriculum vitae, Ms. McKenzie.

A-10: Aerial of the site taken 2011.

The Board's consultants submitted reports in regard to this application including Mr. Ryden's report of November 27, 2017, Mr. Szabo's report of January 3, 2018, Mr. Keller's reports of February 8, 2018 and April 15, 2018. All those reports were made a part of the record.

This meeting was open to the public and public comment was received.

WHEREAS, the Land Use Board, in reviewing the foregoing testimony and documentary evidence, makes the following findings of fact and conclusions:

The Applicants are seeking only approval of a "d" variance for the use proposed. The Applicants must establish that in particular cases and with special reasons that the variances can be granted. The Applicants must establish that the site is particularly well-suited for its intended purpose. Further, the Applicants acknowledge that the requirements of the Medici case must be advanced in that negative criteria must be proved, in that the Applicants must establish that there is no substantial detriment to the public good and there is no substantial detriment to the intent and purpose of the Zone Plan or the Zoning Ordinance. Further, under Medici the Applicants must meet the enhanced criteria proving as to why the use was not permitted in reexaminations reports and the Zoning Ordinance. The Board took into account the testimony of the Applicants and the exhibits as well as the comments and testimony of its consultants as well as their reports and finds that the Applicants have established the basis for the "d" variance. This is based on the following facts:

The Board finds that the site is particularly well-suited for the intended purpose since it is a minimart and gas fueling facility that is related to the traffic that is already on Route 206. While this use is not permitted in the zone, it is a relatively new use. The Board also finds that the site is in fact a "zoning quandary" in the ORL Zone as indicated by Ms. McKenzie, in that it is a rather small site of approximately five (5) acres where 40 acres is required. It is further noted that the New Jersey Department of Transportation will limit trips to and from the site in a significant manner.

The Board also finds that certain Purposes of Zoning will be advanced by the approval of the variance. The Board finds specifically that Purpose (i) is advanced since the existing development on the site is in a substantially deteriorated condition and that the proposal will eliminate that condition subject to vigorous planning review as part of the site plan approval process. The Board also finds that granting the variance would effectuate efficient land use policies, thereby promoting Purposes (f) and (g) by providing a gas station servicing the public using Route 206.

With regard to the negative criteria, the Board finds that there is no substantial detriment to the public good. The site is isolated, is buffered from other residential sites by a substantial slope, and a substantial treed barrier. It is across the street from other commercial development. The Board finds further that there is no substantial impediment to the intent and purpose of the Zone Plan or the Zoning Ordinance. The site is unique in that it is only five (5) acres in a 40 acre zone. It has limited trip capacity where the Zone Plan calls for rather substantial development. With regard to the Medici criteria, the Board finds that the proposed CC Zone that is found in the 2015 Reexamination Report has never been implemented. The Board also finds that some of the suggested uses for this site would be problematic in that they generate more trips than can be accommodated on the site.

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NOW, THEREFORE, BE IT RESOLVED that the Land Use Board of the Borough of Peapack and Gladstone does hereby grant the “d” variance requested by the Applicants to authorize a fueling facility and minimart. This approval is subject to the following terms and conditions:

1. The Applicants are subject to the submission of a full site plan recognizing that the Applicants shall be required to establish the negative criteria under the “d” variance standards.
2. This fueling facility will not be authorized for use by tractor-trailers in that any further approvals will limit diesel pumps to be low-flow pumps that service cars and light truck vehicles.
3. This approval is subject to the payment of all appropriate fees and taxes.

Minutes of May 16, 2018 – The minutes were approved as changed.

A motion to adjourn was made and seconded and the meeting was closed at 9:00 p.m.

Sarah Jane Noll
Secretary/Administrator