

**TOWNSHIP OF WALL
ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
HELD IN THE MUNICIPAL MEETING ROOM
MAY 19, 2010**

The Regular Meeting of the Wall Township Board of Adjustment was called to order by Vice Chairwoman Morrissey at 7:30 P.M. Members present were Vice Chairwoman Wilma Morrissey, Jim Gray, Ray Slocum, Robert Morris, Nance-ellen Draper, first alternate Mary L. Burne, second alternate Mark Margadonna, Attorney Cramer, Planning Secretary Roberta Lang, Recording Secretary Betty Schinestuhl, Engineer Gerken, Planner Bergailo and Reporter Arnone. Mrs. DeSarno and Mr. Orender were not in attendance.

SALUTE TO THE FLAG

Attorney Cramer announced that all requirements under the Open Public Meetings Act had been complied with for this meeting and read the purposes of the Board of Adjustment.

NEW APPLICATION

#BOA 4-2010 – Date application complete: March 18, 2010

APPLICANT: SUSAN PASSARELLA

PROPERTY: 509 Asbury Road, Block 913, Lot 4, OR-10 zone

RELIEF REQUESTED: Use

Attorney Cramer reviewed the file and stated the Board had jurisdiction to proceed.

Vice Chairwoman Morrissey said the Passarella application will be carried to June 16, 2010.

CARRIED APPLICATION

#BOA 19-2008 - Date application complete: June 20, 2008. Carried from August 20, 2008, September 17, 2008, November 12, 2008, December 3, 2008, February 4, 2009, March 18, 2009, April 1, 2009, May 20, 2009, July 15, 2009, November 4, 2009, March 3, 2010, March 17, 2010 and April 21, 2010

APPLICANT: SQUAN RIVER GROUP

PROPERTY: 2655 River Road, Block 886, Lot 1.01 & 24, R-30 zone

RELIEF REQUESTED: Use

Attorney Aikins stated he submitted a reply to Attorney Steinberg's memo. Attorney Cramer said everyone received it.

Attorney Cramer asked if the 30 additional seats on the deck were going to represent 30 new patrons or is the applicant going to remove 30 seats from the existing floor plan so that there are

no new seats should the Board grant the application. This would only be when the deck was open. It was stated the small area to the right, private room, would be blocked off when the deck was open.

Attorney Cramer said he did provide to Roberta Lang your memo and it was e-mailed to the members. The Board is prepared to vote tonight regarding res judicata.

Attorney Steinberg said all the questions have been asked of this planner. I will not cross examine him. I will present my planner.

Andrew Janiw, 315 Highway 34, Colts Neck was sworn.

Mr. Janiw gave his credentials which were accepted by the Board.

Mr. Janiw said he visited the site and reviewed the plans submitted. He also has attended the hearings. The property is in the R-30 zone which is a residential zone. It is surrounded by residential homes.

Mr. Janiw used an aerial to show the houses in the neighborhood.

Entered into evidence:

O-3 Two sided Board showing aerial

O-4 Reverse side of board containing photos showing residential area

Mr. Janiw said the site is located at the intersection of River Road and Old Bridge Road. It is between Brielle and Wall Township. You can see the character of Wall which is residential in nature. He used O-4 to show the homes along River Road and Old Bridge Road. These photos were taken in March 2009. Mr. Haus' property is next to Harpoon Willy's.

Mr. Janiw explained the photos. One was taken looking down River Road showing the garage, one photo of frontage was taken from the garage looking across the back of the property.

Mr. Janiw said the bar and restaurant is a pre-existing non-conforming use. The use pre-dates the ordinances in Wall Township. It is non-conforming and pre-existing. He explained the applicant is asking for an expansion of a pre-existing non-conforming use. He is asking to accommodate 30 additional patrons. Variances are required, residential buffer variance, impervious coverage variance, parking, etc. The parking required is 98, 66 are proposed. There is a proposal for shared parking in Brielle. There have been agreements provided.

Mr. Janiw explained the applicant is providing 66 stalls on site with the balance off site. There is an agreement in place for 22 stalls with limitations. The lease agreement provides parking for 6:00 PM – 1:00 AM, Monday thru Friday. There is no off site parking provided any other time.

Attorney Steinberg asked Mr. Janiw if he has researched the requirements of Brielle. Mr. Janiw said yes and an additional 19 stalls will be provided at the marina which will be available seasonally.

Attorney Steinberg said the parking stalls will be available in the summer time. Mr. Janiw said when the boats are in the water. Brielle does regulate parking. I contacted the zoning officer and went over their ordinance.

Attorney Steinberg asked are we talking about Brielle's ordinance. The case is in Wall. The Board should have knowledge of Brielle's ordinance. Attorney Cramer said the Board is aware that the parking site is in Brielle. Any decision from Brielle has nothing to do with this. Attorney Steinberg said the Board should know what the next step is. They may not be able to get parking as proposed. Attorney Cramer said if approved it would be contingent upon the parking in Brielle. Attorney Aikins said it is not for this Board to determine that this applicant can get approval in another town. Attorney Cramer said the Board knows there are conditions in Brielle. Attorney Steinberg said we are telling you it may be impossible to get those spots. Attorney Aikins said that is for Brielle to decide.

Mr. Janiw went over the Brielle ordinances. Harpoon Willy's cannot meet the parking requirements. Will Brielle agree to police these sites? You are asking the municipality to provide policing and emergency services. There is a bulk variance required for the size of the parking stall.

Mr. Janiw said this site is zoned residential. He reviewed the 1999 and 2005 Master Plan.

Attorney Steinberg asked according to the 1999 and 2005 Master Plan this property is in a residential zone. Mr. Janiw said yes.

Attorney Steinberg said if destroyed can it be built the way it is. Mr. Janiw said no it would revert to the zoning of today.

Mrs. Burne said she thought you could rebuild. Mr. Gerken said if 50% is destroyed no.

Mr. Janiw went over the Master Plan of Wall.

Attorney Steinberg said their planner made a presentation stating there is a need for this. Mr. Janiw said water front dining, it should say desires. The Master Plan has nothing about water front dining. It is silent on the matter.

Mr. Janiw said the experts said that the current use does violate the ordinance relating to noise. Patrons park illegally in a residential zone. There are a number of calls on record. There is an increase in impervious coverage. It is over already. The proposal states it must rely on off site parking. The ordinance discourages expanding a pre-existing non-conforming use.

Mr. Janiw went over res judicata. He said he reviewed the prior resolution. Some aspects have changed but they are both dealing with outdoor dining on an outdoor deck. They are introducing outdoor dining in a pre-existing non-conforming zone. There are already violations to the site.

Attorney Steinberg asked for the impact on the neighborhood. Mr. Janiw said he contacted Wall Township Police, Fire Department and First Aid. The Police Department provided records for the last eight to nine years. There were 27 parking violations, 20 motor vehicle and First Aid

calls. They are applying for a D2 variance, parking, setback and coverage. The use requires five yes votes. The use is permitted to continue. The law states it should be brought into conformity.

Attorney Steinberg said the burden of proof is on the applicant. They have to prove this should happen. Mr. Janiw went over the Kohl case.

Mr. Janiw went over Mr. Kociuba's testimony. The applicant has to prove to this Board that there is a special reason to grant these variances. They have not demonstrated any special reasons. I see no special reason in the testimony given. It is a detriment to the general welfare of the community. He said he did not hear any testimony that would make this a public benefit. This is in a residential zone. The town leaves it as non-conforming. It does currently have a negative impact on the neighbors. There is overdevelopment of the site.

Attorney Aikins said Harpoon Willy's has had about 24 calls in five years. That is less than five calls per year. Mr. Janiw said correct.

Attorney Aikins said regarding the need for impervious coverage did you hear Mr. Gerken there was no longer a need for impervious coverage based on Wall's ordinance. Mr. Janiw said yes.

Attorney Aikins said just as the condition would run with the land so would any and all improvements. Mr. Janiw said he agrees with that with the exception of the parking.

Attorney Aikins said a lease when signed is binding whether it is recorded or not.

8:55 P.M. the Board recessed.

9:10 P.M. the meeting resumed.

Ms. Bergailo said her letters were referenced. They are part of the record. With respect to expansion of a non-conforming use, some of the testimony was not reflecting my letter in context. She read what her letter actually said, page 3 of 4. She did report as to what the Master Plan calls for. A variance for impervious coverage will not be needed.

Mr. Janiw said, regarding parking, if a restaurant has people waiting outside that is an additional parking requirement. Mr. Gerken said do you know if any towns have ordinances for people waiting. Mr. Janiw said no.

Ms. Bergailo said Wall does not use overlay zone. This is an isolated lot. Wall does not zone individual small lots for individual use. Regarding special reasons there was testimony. We heard testimony stating because of the location of the restaurant on the water front it is a desirable visual environment, etc.

Mr. Gerken said they proposed certain expansion of the parking area to make them more conforming.

Kevin, 2625 River Road, was sworn. Kevin said Runway 34 has an outdoor deck. It is not in a residential zone. This would be the first outdoor deck in Wall in a residential zone. Is this

setting precedence? Mr. Janiw said yes. Attorney Cramer said every application is determined on its own.

Mark Brosnan, River Road, was sworn. Mr. Brosnan asked if they surveyed the community to find out what the needs or desires are. Mr. Janiw said no.

Mr. Brosnan said he demonstrates his desire to have that deck.

Mr. Brosnan asked how many restaurants have you testified in favor of, Red Bank. Mr. Janiw said no.

Mr. Brosnan said Harpoon Willy's is one of the only restaurants that can provide this. I need a restaurant near my home that I can enjoy sitting outside looking at the water.

Robert Giaquinto, 2648 River Road, was sworn. Mr. Giaquinto asked how many people here live near Harpoon Willy's and how many do not.

John Harkrader, 2649 River Road, was sworn. Mr. Harkrader asked what happens when people are waiting. Mr. Janiw said they will park as close to the property as possible.

Mr. Harkrader asked if he has reviewed those leases. Mr. Janiw said yes. Attorney Steinberg said they have been supplied to me. They are public record. They are on file.

Mr. Harkrader asked when you reviewed them did it say they were leases forever. Attorney Steinberg said they have a term.

Mr. Harkrader asked what happens when it ends. Attorney Steinberg said it ends in 20 years. Attorney Cramer said with an option to renew. Attorney Aikins said there are four five year terms. Attorney Cramer said those leases are available in the Land Use Office.

Mr. Harkrader said Harpoon Willy's is not a very unique area. There is enough clientele right now. They are looking for additional profit.

Gary, 251 Tennis Court, was sworn. He asked how long it has been a restaurant. Mr. Janiw said it pre-dates the ordinance in Wall.

Gary asked if anyone knows when it was built. Attorney Aikins said early 1800's.

Gary said the residents knew this was a bar when they bought their home. Mr. Janiw said the expansion is the problem.

Gary said you talked about needs; do we need a deck out there? No. It just enhances the town. It is a good thing for the town. I have never had a parking issue in three years I've been going there.

Frank Gallo, 2517 Highway 35, was sworn. He asked if the Blue Peach had outdoor dining. Mr. Janiw said yes.

Mr. Urgola, 2630 River Road was sworn. He said he understands his neighbor's problems but since the new owners took over it has been an enhancement to the neighborhood.

Michael Clayton, First Avenue, was sworn. Mr. Clayton said this has been a bar since 1792. It is unique to this township. Where can you sit in a building over 200 years old? It attracts people to our township. Our farms are non-conforming as well. Should we rid our town of them too? No. He said he has lived here his entire life and he would like to see this approved.

Martin Seidenstein, 2627 Ramshorn Drive, was sworn. He said he has been a resident for over 40 years. The restaurant has gone through changes. It is a pleasure to have it here. We are close to the restaurant. We have had no problems and love going there. He said he hopes the Board approves it.

Joe Martone, Fox Lane, was sworn. Mr. Martone said he's lived here for 30 years. The new people have done a good job. He said he is not opposed to them making a living bit he doesn't want them to do it at his expense. He said he hears the noise. I knew the bar was there when I bought my house. I have no problem with it. My problem is the expansion. This should have never gotten this far. This is the same application that was heard in 1986. Nothing has changed. They want to put a deck on.

John Pekarchik, 2650 River Road, was sworn. Mr. Pekarchik said he has been a resident for 38 years. He knew the restaurant was there. He knew it when it was the Red Ranch. This is the same thing as in 1986. I have been bothered with parking for years. The cars turn around in my driveway. I love the job that the new guys have done there. The food is great. This should not be approved. This is going to change our life style.

Rein Haus, 2653 River Road, was sworn. Mr. Haus said he's lived here for 33 years.

Attorney Steinberg asked what was next door to you. Mr. Haus said the Red Ranch.

Attorney Steinberg asked what was in the rear portion of that building. Mr. Haus said grass, no cars parked back there.

Attorney Aikins asked what the relevance is. Attorney Steinberg said this is a pre-existing non-conforming use. It did not always exist in its present use. It morphed into its present condition. Attorney Aikins said there is no testimony for that.

Attorney Steinberg asked what was behind the building. Mr. Haus said grass, carriages and a walkway to the river.

Attorney Steinberg asked what it did previously. Mr. Haus said it served drinks and sandwiches.

Attorney Steinberg asked about the hours. Mr. Haus said mid afternoon to late.

Attorney Steinberg asked it was the same sized building as today. Mr. Haus said same building.

Attorney Steinberg asked about notices regarding site plan approval. Mr. Haus said after the 1986 application they wanted to put docks outside for boats. They had some problems with the State.

Attorney Steinberg asked if he knew of any other applications that you were noticed for. Mr. Haus said no.

Attorney Steinberg asked if the parking was behind Harpoon Willy's. Mr. Haus said people are parking there now. He said on the 1986 site plan they showed all the existing parking. Attorney Steinberg asked if there was any parking provided in the back of the building. Mr. Haus said people started parking on the grass. When I moved there there was one dumpster now there are five.

Attorney Steinberg asked if there was a site plan approval for the additional parking. Mr. Haus said no. Attorney Steinberg said this parking did not pre-exist the zoning. Mr. Haus said no.

Attorney Steinberg said you purchased your property knowing this was next door. Mr. Haus said yes in 1978.

Attorney Aikins said you knew you lived next to the neighborhood tavern you knew it was there and had no problem with it. Mr. Haus said he planted trees. He said recently they started using the back door. He said he is just going to be blasted by noise.

Attorney Steinberg asked you have no objection to the way it is. Mr. Haus said no.

Attorney Steinberg asked you were present when the applicant presented his sound engineer. Mr. Haus said yes. Attorney Steinberg asked if he agrees with the sound engineer. Mr. Haus said no I have a report. I would like to present it to the Board. The applicant's report claims that there will be an overall improvement in noise. That it will be 80 decibels. I went over the applicant's noise report. Noise levels in a restaurant are 80 – 110 decibels. There is a band there three nights a week. He said the biggest difference he saw was the study included bar/restaurant. He said they said the noise level at the property line will not exceed the ordinance. The maximum noise will be much more than that. It will be as high as 110 decibels. The applicant is currently exceeding the noise ordinance. They plan to exceed the noise level on the eastern property line.

Mrs. Draper said on a slow night when there are only ten people you are not going to have a high amount of noise. It varies. You are not going to have it consistent. Mr. Haus said correct it is more in the summer months.

Mr. Gerken asked if Mr. Haus has taken any of his own readings. Mr. Haus said yes he did. He did it shortly after they bought the restaurant. There are very noisy pieces of equipment. There was a very noisy hot water heater. When I was complaining about that they talked to me about putting up an outdoor deck. I told them it was already denied once. They didn't do anything about the water heater noise. It took over a year. They have to maintain that equipment. I told them what needed to be done. I took all the readings and compared them against Wall's code. I did a memo to the code enforcement officer and my lawyer and one of the owners of Harpoon Willy's. I finally got them to fix it. They still have noise problems.

Entered into evidence:

O-5 Document supporting Mr. Haus' testimony

Mrs. Morrissey said this application will be carried to September 5, 2010.

Attorney Aikins asked for a special meeting. Attorney Cramer said the Board doesn't do special meetings.

RESOLUTIONS TO BE MEMORIALIZED:

ANGELO DEBARTOLI - #BOA 6-2010

Block 710, Lot 12

Morris/Burne

ARLENE GLADE POLCARI - #BOA 5-2010

Block 338, Lot 60

Morris/Burne

MINUTES TO BE ADOPTED: Mr. Gray moved to approve the minutes of the study session and regular minutes of March 17, 2010. Mrs. Burne seconded the motion, which was unanimously approved. Mrs. Burne moved to approve the minutes of the study session and regular minutes of April 14, 2010. Mr. Slocum seconded the motion, which was unanimously approved.

There being no further business to come before the Board, a motion was made, seconded, and unanimously approved to adjourn the meeting at 10:30 P.M.

Respectfully submitted,

Betty Schinestuhl
Recording Secretary