

**TOWNSHIP OF WALL
ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
HELD IN THE MUNICIPAL MEETING ROOM
MARCH 3, 2004**

The Regular Meeting of the Wall Township Board of Adjustment was called to order by Chairman Clayton at 7:35 P.M. Members present were Chairman Clayton, Vice Chairperson Mary DeSarno, Dominick Cinelli, Wilma Morrissey, Jim Gray, Wayne Palmer, first alternate Bob Kerr, second alternate Ray Slocum, Attorney Hirsch, Planning Coordinator Roberta Lang, Recording Secretary Betty Schinestuhl, Engineer Gerken and Reporter Arnone.

SALUTE TO THE FLAG

Attorney Hirsch 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.

CARRIED APPLICATIONS

CASE #BA31-2003 – Date application complete: September 6, 2003. Application carried from September 17, 2003, October 15, 2003, December 3, 2003, January 14, 2004 and January 21, 2004.

APPLICANT: SPEEDWAY PROPERTIES, LLC

PROPERTY: 1803 Route 34, Block 922, Lot 3, OR-10 zone

RELIEF REQUESTED: Use/Site

Mark Aikins, Esq. appeared for the applicant. Attorney Aikins said at the last meeting we ended with Mr. Seymour, Project Engineer.

Mr. Gerken said he just received the drainage plans two days ago. He has not been able to get a report done.

Entered into evidence:

A-13 Revised Preliminary and Final site plan dated February 25, 2004

Mr. Seymour is still under oath. Mr. Seymour said they relocated the handicap spaces. We have two additional stalls within the paved area. They will all be together.

Mr. Seymour explained the low area goes toward the east. We did percolation test. The rate was four times faster than what was in my report. The overflow will go across the drive to a depressed area. The water will not go to Route 34.

Mr. Gerken said it is a little difficult to comment when I just got the report. We said there was a run-off problem. We asked the applicant to put in some type of system. We were not provided

with information regarding stone, etc. In theory we want to have something to reduce the run-off to Route 34. They could have a collection trench to a detention area.

Attorney Hirsch said the Board Engineer needs more time to review the report.

Mr. Gerken said they have ample room to put in a basin. Attorney Aikins said there is room. It is just a question of engineering it. Attorney Aikins said they would work with the engineer.

Mr. Slocum asked, the trench on the east side coming to Route 34S, is that going to be under the main driveway. Mr. Seymour said it will be at the west side of the guardrail. Mr. Gerken said he would like to have this resolved before any resolution is done if the Board approves this application.

There were no questions for Mr. Seymour from the public.

John Halecky was sworn. Mr. Halecky said he is president of Tandemedia, LLC. Attorney Aikins asked Mr. Halecky to explain what Tandemedia does.

Mr. Halecky explained Tandemedia is involved in the acquisition of movie theaters and drive-ins. He said they started movies in the parks.

Attorney Aikins asked Mr. Halecky if he has reviewed other drive-ins in the area and operations as they exist. Mr. Halecky said in 2001 he reviewed operations of about 12 drive-ins and the day to day operations. He discussed operations with the owners. Drive-in theaters went from 300 cars to 1200 car. They are located in New York, Maryland, Pennsylvania and Massachusetts.

Attorney Hirsch asked Mr. Halecky to indicate how many he has reviewed. Mr. Halecky gave a list he had visited. Mr. Halecky said he also collected information from Associated Drive-In Association.

Attorney Aikins said regarding stacking of vehicles, ticket booth, and traffic concerns, etc., you have heard the concerns. Mr. Halecky said yes. Attorney Aikins said have you had the opportunity to see how their operations went. Mr. Halecky said yes. He said most drive-in theaters open two hours prior to show time. The stacking issue in operating drive-ins does not occur prior to the feature. People arrive earlier because parking is on a first come first serve basis. People may like to park together. Concession stands open before show time so people can enjoy themselves and wind down before the movie starts. Most theaters can stack 100 – 200 cars in their driveway. It is a question of monitoring when cars arrive to avoid stacking problems. If a problem occurs the normal thing to do would be to add more ticket takers. The primary stacking is when the gates open 1 – 2 hours before the movie starts. That is when it is predominant.

Attorney Aikins asked Mr. Halecky to give testimony regarding processing of the tickets. Do you have some comment? Mr. Halecky said in discussion with other operators most drive-ins have even dollar amounts so as not to make change.

Attorney Hirsch said the testimony that you are providing regarding the number of cars stacked in the driveway at opening, is that based on information supplied to you or is that based on your observations. Mr. Halecky said it is based on notes that he has. It was taken from conversations with owners and his own observations. Attorney Hirsch asked when you said observed is that from information provided to you or you own observations. Some of this information is hearsay. When giving statistics tell the Board if it is based on personal information.

Attorney Aikins asked Mr. Halecky how the stacking at Wall Township compares to the ones you have observed. Mr. Halecky said based on the size of other driveways it appears that Wall Township's ability to hold vehicles in the incoming lanes far exceed by more than double the other driveways. I have seen two drive-ins operating at capacity. In the survey responses I have received my findings were on Friday and Saturday evenings during peak season a capacity of 100% could be expected. During off-season the reports state they would be at 10% - 30% of capacity. In Wall Township that would be between 60 – 180 cars.

Mrs. DeSarno asked what the capacity is for stacking at the Wall Township site. Attorney Hirsch said he is not a traffic expert. He has not been qualified as an expert.

Mr. Cinelli said in Mr. Halecky's study of drive-ins which is comparable with the Wall Speedway and will there be an increase of traffic. Mr. Halecky said the Maine drive-in and the one in Pennsylvania are comparable. Mr. Cinelli said Mr. Halecky gave testimony earlier stating there was stacking on Friday and Saturday nights. Mr. Halecky it all depends on what type of film, the weather, etc.

Mrs. Morrissey asked how many drive-ins were on a major highway. Mr. Halecky said he does not have the addresses so he can't identify them. There were a few.

Mr. Palmer asked if Mr. Halecky has seen similar structures of the type of screen that is proposed here. Mr. Halecky said the construction method is something that has been used. He said they used this method to build a very large screen in Central Park. It is also the method used for temporary screens.

Mr. Kerr said based upon Mr. Halecky's review of these facilities how long have they been in operation. Mr. Halecky said one has been in operation for 30 years, another since 1949, another 30 years and there were two new ones. They have been in operation since about 1990. Mr. Kerr asked if the newer ones had larger capacities. Mr. Halecky said the one in Ohio has a 645 car capacity.

Chairman Clayton asked if the applicant would meet with the Police Department to establish adequate security. Mr. Halecky said absolutely. He said there was a question asked by Attorney Hirsch about drive-in rules. Of the six drive-ins I have surveyed four hand-out rules at their business offices. We would hand out the rules and also post it on the existing structure. When the gate opens we would put on the screen intermittently the rules and etiquette. He said they will enforce the rules. We do not want the audience not to enjoy themselves. We also reserve the right to eject.

Attorney Aikins said Mr. Halecky to explain the benefits of this to Wall Township. Mr. Halecky said the revival of drive-ins in New Jersey. There will be some jobs created. There will be a place for the family to go.

Mr. Halecky said he asked the other drive-in theater operators if they have ever had a complaint about noise, etc. They said no, never. The other question was do they utilize local Police Department. Two Police Departments stated they drive through on show nights. One drive-in operator said they had to use the local Police Department to have someone vacated. Mr. Halecky said six drive-in theater operators responded to his survey. Attorney Hirsch asked if he verified the answers. Mr. Halecky said no.

Mr. Halecky said another benefit to the township is that some people that are handicapped cannot get into a regular movie theater. They can come and watch a movie at a drive-in.

Attorney Hirsch asked if patrons, at other drive-ins, use lawn chairs. Mr. Halecky said yes, and pick-up trucks turning around backward were common. Attorney Hirsch asked how they heard the movie. Mr. Halecky said by walkman, portable radio, etc. Some drive-ins keep a few radios around. Attorney Aikins asked if those drive-ins had any complaints regarding the noise being too loud. Mr. Halecky one of the questions on his survey was how they deal with neighbors, how close is the nearest neighbor. He said Pittsburgh had residents within 500' and they reported no problems. The Rodeo Drive-In has neighbors within 200' and has no problems. The El Rancho has residents' right next door and they have no problems.

Mrs. Morrissey asked what Mr. Halecky thought the negative impact to the township would be. Mr. Halecky said he would not enter this project if it gave any negative impact to the town.

Mrs. Morrissey asked how many responses Mr. Halecky got back or are you reading certain ones. Mr. Halecky said the survey was informally done. I asked about 12 operators. There were several responses that I did not put into file. Some did not respond. Three did not do a good job of answering the questions. Attorney Hirsch asked if Mr. Halecky could provide the survey to the Board. Mr. Halecky said yes.

Attorney Aikins said it is important that the Board members consider that the same things would not have the same effect on Wall Township. He said we don't have any good factual basis in New Jersey.

Chairman Clayton asked if the cars ran during the summer or winter months. Mr. Halecky said drive-ins have a 'do not run your car' policy.

Chairman Clayton asked if the drive-ins that were surveyed ran seven nights a week. Mr. Halecky said most tend to operate right about now and operate on a relaxed schedule for a month or two. As the weather improves they go to seven nights a week.

Chairman Clayton asked about the reflective markers. Mr. Halecky said people opt to do it in different ways.

Mrs. Morrissey said you mentioned jobs as being a benefit to Wall Township. How many jobs are you talking about? Mr. Halecky said there will be six additional days of man hours. It may be the same people working a lot more hours or some additional employees being teenagers and some being seniors.

Mr. Slocum asked if Mr. Halecky observed in the surveys people complaining about running their radios without the car running. Mr. Halecky said car radios will pull the same amp as one start of the car. There were no problems.

8:55 P.M. the Board recessed.

9:10 P.M. the Meeting resumed.

Texanna Kowalsky, 1731 Martin Road, asked how many sites have you seen that have dual uses. Mr. Halecky said regarding the existing Speedway and proposed drive-in, it appears that additional uses are not all that uncommon. Some have flea markets, race tracks, etc. Mr. Kerr asked if they were zoned for that. Mr. Halecky said he is not a zoning expert.

Mr. Bongiovanni said the ones you have seen have multiple uses. Mr. Halecky said he has seen them. Two have enclosed restaurants. Some have car shows and other types of events that would require an outdoor venue. Mr. Bongiovanni asked if any of those were pre-existing, non-conforming uses. Mr. Halecky said he is not a zoning expert.

Mr. Bongiovanni asked if any of the ones Mr. Halecky observed have gravel driveways. Mr. Halecky said yes. Mr. Bongiovanni asked if they were the older ones. Mr. Halecky said some have grass, some have gravel and some are paved.

Mr. Bongiovanni said according to Mr. Halecky's findings he counts 18 screens with 308 cars per screen. Wall Speedway drive-in will be double. Attorney Aikins said I am sure if there is any basis for average number of cars per drive-in theater we never put them together. Attorney Hirsch said based on the math Mr. Bongiovanni has do you believe there is a basis for an average number of cars per screen. Mr. Halecky said I guess you could average it out. Mr. Bongiovanni said what is proposed here is double the average. Attorney Hirsch said Mr. Halecky does not know the average. You have to establish the foundation for that.

Mr. Bongiovanni said the survey covered six out of 400 drive-ins nationwide. Mr. Halecky said that is correct.

Mr. Bongiovanni asked if any of the drive-ins that Mr. Halecky personally observed restrict R-rated movies. Mr. Halecky said not to the best of his knowledge. Mr. Halecky said Freddy vs. Jason and Matrix were rated R.

Mr. Bongiovanni said these movies will end at midnight. Mr. Halecky said the movies start when it gets dark outside.

Mr. Bongiovanni said there will be multiple showings of the same film. Mr. Halecky said that is correct. Mr. Bongiovanni asked how that would be regulated. Mr. Halecky said we will show

one movie per night at one price. Mr. Bongiovanni said none of the drive-ins have multiply showings of the same movie. Mr. Halecky said in multi theaters you may go from one screen to another.

Mr. Bongiovanni asked Mr. Halecky if he was a partner in any other drive-in or in any theaters. Mr. Halecky said yes.

Pam Gaidis, 1735 Azure Drive, said Mr. Halecky tried to compare this drive-in to the one in Pennsylvania. Mr. Halecky said yes. She said Route 462 is Market Street. She said she asked her brother if you can compare that road to Route 34. Attorney Hirsch said you can just ask questions. You are making a statement. Ms. Gaidis asked if Mr. Halecky lived in New Jersey. Mr. Halecky said yes. He had an office on Route 35. Ms. Gaidis asked if you can compare that to what we have on Route 34 when people come down for the summer. Is that a true comparison? Attorney Hirsch said he did compare. Ms. Gaidis asked if Mr. Halecky still thinks that is a fair comparison. Mr. Halecky said he cannot speak for the traffic pattern just the congestion.

Ralph Addonizio, 3402 Shoreline Drive, asked Mr. Halecky for his title. Mr. Halecky said he is principal business owner. Mr. Addonizio asked Mr. Halecky how long he was involved in the movie industry. Mr. Halecky said since 1996. Mr. Addonizio asked if he has appeared before Planning Boards and Board of Adjustments. Mr. Halecky said yes.

Mr. Addonizio asked if Mr. Halecky took into consideration that the traffic is 7 – 8 times worse in the summer. Mr. Halecky said he did not. He said he did use Maine as a comparison. They have additional seasonal traffic.

Mr. Addonizio asked Mr. Halecky if he contacted the Wall Township Police Department and compared the police facts. Mr. Halecky said no.

Mr. Addonizio asked if Mr. Halecky gave the Board a copy of his survey. Attorney Aikins said that was asked before and Mr. Halecky will supply the back-up data.

Mr. Addonizio asked if the other drive-ins use credit cards. Mr. Halecky said he made a few calls and to the best of his knowledge he does not know of any drive-in that uses credit cards.

Mr. Addonizio asked how many drive-ins are in the U.S. Mr. Halecky said about 400 maybe 460.

Mr. Addonizio asked how accurate could the survey be when you are asking them to state negatives on their business. Mr. Halecky said the information was accurate enough to serve my interest.

Loren Diedrichsen, 1412 Cortland Drive, said he has been to drive-ins. He said he has grandchildren. He can see some of the movies at his grandchildren's house during the day. Mr. Halecky said there have been changes in motion picture theaters since the VCR. VCR's were supposed to kill the theaters. It has been unsuccessful. Last year was the highest in revenue for movie theaters.

Mr. Diedrichsen said his question is about the drive-in. He said he thinks the drive-in is a different story. Mr. Halecky said families may opt to go to a drive-in movie to get out of the house.

Mr. Diedrichsen asked how much credibility you can give when you only received six surveys out of 460. Mr. Halecky said his business needs were met by the information he received.

Robin Cervates, 2009 Tally Ho Drive, said you will be open six days a week. How will the turn out be? Mr. Halecky said that is a business judgment call. It will be impacted by attendance, availability of new product. Being open six days a week depends on how the audience acts and what the suppliers have to offer.

Ms. Cervates asked would you consider an R-rated movie unsuitable. Mr. Halecky said no for various reasons.

Frank Addonizio, 3402 Shoreline Drive, said he has a general statement. I don't know how many more witness the applicant has but this should be voted on tonight. Attorney Hirsch said the Board has to give the public the opportunity to ask questions.

Attorney Aikins said they are going to run after 10:30 P.M. He said they have homework to do. We will be back. I don't think we should start another witness tonight.

Sharon Plinio said the applicant stated they would show only G-rated and PG-rated movies. Tonight your testimony is different. You are saying there may be R-rated movies shown. Mr. Halecky said from a business standpoint our objective is to try and bring family oriented films. We will consider P-rated and PG-rated movies. I don't know of any theater or drive-in that has a restriction of what type of films they can show. Our interest is trying to cater to the family market. There may be a flurry of good family films released and then we may get others and then through the summer family films again. The period of time that we would anticipate when other films will be released is when the children are in school.

Mr. Cinelli said his notes do reflect that there would be no R-rated movies shown. You are saying tonight you are going to be showing R-rated movies.

Mr. Kerr said according to prior testimony it will be family oriented. Mr. Halecky said there may be from time to time some slight deviation. Mr. Kerr said primarily family. Mr. Halecky said primarily G-rated and PG-rated.

Mr. Gray said R-rated movies will be shown at times when children wouldn't be there. Mr. Halecky said autumn is the time for more adult movies. Mr. Gray said most of the time children would be in school at that time. He said in the summer you will be showing G-rated and PG-rated. During many months when you would remain open, late winter or early spring, children wouldn't be able to attend on school nights. Mr. Halecky said we can have a restricted schedule in the spring. Scooby Doo II is coming out next week. There will be kids and families seeing it on Friday, Saturday and Sunday nights. Mr. Gray said the Speedway does not have Saturday nights. Mr. Halecky said if the drive-in opened next week we would still show Scooby Doo on Friday and Sunday.

Mr. Cinelli asked what movie now rated R would you put in your business office. Mr. Halecky said from the films that are playing right now there are no R-rated films that I think would be good for the drive-in.

Mr. Gray asked if you were open now, what you would be showing. Mr. Halecky said Sponge Bob Square Pants. Mr. Gray said this project is being presented to us as family oriented. Attorney Hirsch said first of all there is no way, if the application were granted, you can control which movie he could show or couldn't show. Attorney Hirsch said whatever the decision on this is it has to be based on zoning and planning. If you can related the content of a movie to a zoning issue these conversations may have be relevant. We are not censors of the first amendment rights.

Chairman Clayton said this application will be carried to March 17, 2004

Attorney Hirsch said no further noticing is required.

Attorney Aikins waived the time limits.

MINUTES TO BE ADOPTED: Mr. Cinelli moved to approve the minutes of the study session and regular minutes of January 21, 2004. Mr. Gray 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 10:25 P.M.

Respectfully submitted,

Betty Schinestuhl
Recording Secretary