

**TOWNSHIP OF WALL
ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
HELD IN THE MUNICIPAL MEETING ROOM
MAY 5, 2004**

The Regular Meeting of the Wall Township Board of Adjustment was called to order by Vice Chairwoman DeSarno at 7:30 P.M. Members present were 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 Hoover 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.

NEW APPLICATIONS

CASE #BA2-2004 – Date application complete: March 3, 2004

APPLICANT: PATRICK DOUGHERTY

PROPERTY: 2568 Algonkin Trail, Block 350, Lot 11, R-7.5 zone

RELIEF REQUESTED: Bulk variance

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

Sworn by Reporter Arnone: Patrick Dougherty

Mr. Dougherty said he is proposing to put an addition on a single story dwelling. The addition would be a covered front porch. He explained a 25' setback is required and he is proposing 23.2'. He said he has a revised plan to show to the Board. He explained he wanted to add on a garage but he will not be doing that. The existing garage will be torn down.

Entered into Evidence:

A-1 Revised plans

Mr. Dougherty went over the revised review letter from Mr. Gerken. The letter is dated April 27, 2004. Mr. Dougherty said on page 3, Item 5, Mr. Gerken asks for testimony regarding the ability of the existing utilities to service the proposed addition. Mr. Dougherty explained he will upgrade the electric and water if it needs to be done. Regarding Item 6, Mr. Dougherty said he will not be adding the garage and there will be no re-grading to the site. He said he does not think he needs a grading plan. Regarding Item 7, he said he will not be adding the driveway so he will not need that.

Attorney Hirsch asked you need a variance just for the front yard setback. Mr. Dougherty said that is correct.

Attorney Hirsch asked if the porch will have a roof. Mr. Dougherty said yes.

Attorney Hirsch asked for the dimensions. Mr. Dougherty said it will be 7' X the length of the house, 32.1'.

Attorney Hirsch asked what is on the adjoining properties. Mr. Dougherty said the house to the north, from the common property line, is about 10' off the property line and mine is 14'. Attorney Hirsch asked how far that house was from the front property line. Mr. Dougherty said it is almost right up to it. Attorney Hirsch asked about the house to the south. Mr. Dougherty said that house is about 10' off the property line and mine is about 30' – 35'. There is a row of shrubs between the properties.

Attorney Hirsch asked how far that house from the street is. Mr. Dougherty said it is almost lined up with mine, within 2' – 3'.

Mrs. Morrissey asked if Mr. Dougherty needed a signed and sealed survey. Mr. Hoover said no.

Mr. Gray asked if the driveway was going to stay. Mr. Dougherty said yes.

The application was open and closed to the public.

Mr. Gray moved to approve the application for bulk variance. Mrs. Morrissey seconded the motion, which was unanimously approved by a roll call vote. (Mr. Gray, Mrs. Morrissey, Messrs. Cinelli, Palmer, Kerr and Mrs. DeSarno voted yes.)

CASE #BA3-2004 – Date application complete: March 8, 2004

APPLICANT: HARVEY & DONNA WHILLE

PROPERTY: 1302 Evans Road, Block 130, Lot 8, R-7.5 zone

RELIEF REQUESTED: Bulk variance

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

Sworn by Reporter Arnone: Harvey Whille
Donna Whille
Mary Hearn, Architect

Mr. Whille said he is proposing to extend the width of the drive 20' put a master bedroom over the garage.

Ms. Hearn gave her credentials which were accepted by the Board.

Entered into evidence:

A-1 Site Plan

Ms. Hearn explained the existing building is a single family residence. It is one storey. It is located at the corner of Diana and Evans Road. It is located in the R-7.5 zone. The house fronts on Evans Road. There is a one car garage and driveway with the entrance on Evans Road. We are proposing to change the driveway to go out to Diana Road. We are proposing to put a master bedroom above the garage. We meet all setback requirements. A variance for impervious coverage is required. The existing impervious coverage is 47.82% and with the addition it will be 50.24%. 40% is allowed. Ms. Hearn said she reviewed the letter from Mr. Gerken. She stated they can meet all the requirements. If this application is granted we will submit a drainage plan. We can also provide a grading plan.

Ms. Hearn went over Mr. Gerken's letter. Under Comments on page 2, Item 3, the utilities are fine. Item 4, we just need a curb cut.

Ms. Hearn said the addition will be on the north side of the building. The addition would be 26½' from our property line.

Attorney Hirsch asked if there was any existing buffer, fence. Ms. Hearn said there is quite a bit of vegetation.

Entered into evidence:

A-2 Board of Photos

Mrs. DeSarno asked if the large trees in the back will remain. Ms. Hearn said only one will have to go. We would like to keep as many of the trees as we can.

Mrs. DeSarno asked, looking at the plans, if the driveway coming in the front will be a circular driveway. Ms. Hearn said it is just a walkway.

Mrs. Morrissey said she went out and visited the property. She asked if they will be removing the shrubs on the corner. The Engineer mentions in his review letter that all fences, landscaping be removed and the grading revised to allow for sight visibility. He also stated the Board many want to require a Sight Triangle Easement. Ms. Hearn said if the engineer requires it we will.

Mr. Cinelli asked what the square footage of the existing garage is. Ms. Hearn said about 200 s.f. She said the proposed garage will be about 400 s.f. The master bedroom will be about 590 s.f. Mr. Cinelli asked about proposed living area. Ms. Hearn said there is about 604 s.f. of living space to be added for a total of 2200 s.f.

Ms. Hearn stated if the existing water line needs to be changed they will do it. Mr. Hoover said they may have to go into the street. Ms. Hearn said she will check.

Ms. Hearn said there is a split rail fence. We would be closing off the opening and keeping the fence.

Mr. Kerr asked about the street opening. Mr. Hoover said he would be surprised if it was not 4'. If the water line ran in the street you would have a minimum of a 5' – 8' trench. This can be accomplished by using infra red heating.

Mr. Gray asked how wide the existing driveway is. Ms. Hearn said 12'. Mr. Gray asked how wide the proposed path is. Ms. Hearn said 4'.

Entered into evidence:

A-3 Colored front elevation

Ms. Hearn explained the elevation.

The application was open and closed to the public.

Mr. Cinelli moved to approve the application subject to the comments in Mr. Gerken's letter of April 8, 2004. Mr. Palmer seconded the motion which was unanimously approved. (Messrs. Cinelli, Palmer, Gray, Mrs. Morrissey, Mr. Kerr and Mrs. DeSarno voted yes.)

CARRIED APPLICATIONS

Case #1-2004 – Date application complete: March 2, 2004

APPLICANT: MIKE MILLER

PROPERTY: 1851 Carmerville Road, Block 920, Lot 16, R-20 zone

RELIEF REQUESTED: Bulk variance

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

Sworn by Reporter Arnone: Mike Miller

Mr. Miller explained he is trying to build a 20' X 40' attached garage with living space above it. The living space will be a master bedroom.

Attorney Hirsch asked if there was a garage now. Mr. Miller said no.

Attorney Hirsch asked if Mr. Miller had a survey. Mr. Miller said no.

Attorney Hirsch said the proposed setback is 5'. Mr. Miller said that is what he is proposing. Attorney Hirsch said 15' is required. He said 8.75' minimum rear yard setback is being proposed and 15' is required. Mr. Miller agreed.

Attorney Hirsch asked why this particular location. Mr. Miller said because there is an easement owned by Wall Township. Pass my house it turns to dirt. There is no access.

Attorney Hirsch asked what is on lot 15. Mr. Miller said a cabin and old garage. Attorney Hirsch asked if it was detached. Mr. Miller said yes.

Attorney Hirsch asked how far the house would be from the neighbor's garage. Mr. Miller said about 20'. Attorney Hirsch asked what is behind your property. Mr. Miller said that is open space, Wall Township property.

Mr. Gray asked what is going on after the dirt road ends. Mr. Miller said a septic system.

Mr. Gray said you are proposing a garage with living space above it. Your driveway will go right into the garage. Will the shed be removed? Mr. Miller said yes.

Mrs. DeSarno asked where the septic system is. Mr. Miller said on the opposite side of the proposed addition. Mrs. DeSarno asked how far off the house. Mr. Miller said about 20'.

Mr. Slocum asked if he was proposing a detached garage. Mr. Miller said no attached.

Mrs. Morrissey asked if any trees will be removed. Mr. Miller said nothing needs to be removed.

The application was open and closed to the public.

Mr. Gray moved to approve the application subject to the comments in Mr. Gerken's letter. The shed must be removed. Mr. Palmer seconded the motion which was unanimously approved by a roll call vote. (Messrs. Gray, Palmer, Cinelli, Mrs. Morrissey, Mr. Kerr and Mrs. DeSarno voted yes.)

Mr. Cinelli and Mr. Palmer recused themselves on the DeFeo application.

CASE #BA36-2003 - Date application complete: October 1, 2003. Carried from December 3, 2003, January 21, 2004 and March 17, 2004

APPLICANT: SAM & CHRIS DEFEO

PROPERTY: 1726 Highway 35, Block 78, Lots 2 & 3, HB-40 zone

RELIEF REQUESTED: Use/Bulk/Site variances

Timothy B. Middleton, Esq. appeared for the applicant.

Attorney Hirsch stated there are only five Board members present tonight. Attorney Middleton said he would not request a vote tonight.

Attorney Middleton said this is the fourth hearing. The applicant has put on its Engineer and Planner. We have heard from Mr. DeFeo and Mr. Jost. There was testimony regarding the proposed operation. This is a pre-existing, non-conforming use

Tom Thomas is still under oath.

James Gorman, Esq. represents Food Circus.

Mr. Gorman asked Mr. Thomas if he was present at all the meetings and heard all the testimony. Mr. Thomas said yes.

Mr. Gorman said Mr. Thomas used to be the Township Planner. Mr. Thomas said from 1988 – 1995.

Mr. Gorman asked if he helped to prepare the ordinances and Master Plan. Mr. Thomas said just the ordinance the Master Plan was done in 1986.

Mr. Gorman asked when the new zoning put into effect was. Mr. Thomas said 1990 – 1992.

Mr. Gorman asked when the ordinance was prepared did you prepare the ordinance regarding HB zone. Mr. Thomas said he did not recall.

Mr. Gorman asked were new and used car dealers permitted. Mr. Thomas said no.

Mr. Gorman said this is the HB zone. Mr. Thomas said correct.

Mr. Gorman said new and used car dealers were not permitted within two miles of each other. Was that changed? Mr. Thomas said no. Mr. Gorman said that was designed to keep new car dealerships separate. They did not want the cluster. Mr. Thomas said at the time that is correct. Mr. Gorman said when you were planner there was two mile separation and that did not change. Mr. Thomas said that is correct. Mr. Gorman said used cars are not permitted anywhere. Mr. Thomas said that is correct.

Mr. Gorman asked if Mr. Thomas knew the SIC codes. Mr. Thomas said yes. Mr. Gorman asked what they are. Mr. Thomas said they are quality standards. Mr. Gorman said NAICS is used now. Mr. Thomas said yes. Mr. Gorman asked what it does. Mr. Thomas said it establishes a quality of use and identifies the use by retail, etc. It identifies an existing use within a particular category. Mr. Gorman said Wall Township follows that. Mr. Thomas said yes. Mr. Thomas said motor vehicle dealers are listed under NAICS 44.

Entered into evidence:

O-1 2002 NAICS definitions - 44

O-2 2002 NAICS definitions - 81

Mr. Gorman asked if Mr. Thomas was familiar with OI – O2 zones and the Township ordinances. Mr. Thomas said yes.

Entered into evidence:

O-3 Wall Township Ordinance No. 3-2002

Mr. Gorman said Mr. Jost testified 60% of the business was detailing and rust proofing. Mr. Thomas said that is correct. Mr. Gorman said Mr. Jost testified 25% of his work was in the paint

booth. Mr. Thomas said he did not recall the percentage. Mr. Gorman said Mr. Jost testified 10% of the business was the sale of trucks and Winnebago. Mr. Thomas said correct. Mr. Gorman said that is not in 81 codes. Mr. Thomas said correct. Mr. Gorman said what use is Mr. Jost using. Mr. Thomas said in 81 it provides for sale of vehicles. Mr. Gorman said was the selling of new and used vehicles ever his primary function. Mr. Thomas said yes, he testified to that. Mr. Gorman said you are saying this is not a change in use. Mr. Thomas said correct. Sales of new and used vehicles are one of the uses on site. Mr. Gorman said sales are a small percentage. Mr. Thomas said correct. Mr. Gorman said can you say what use it is. Mr. Thomas said this is already an existing use. It was grandfathered in.

Mr. Gorman said NAICS deals with the primary use, correct? Mr. Thomas said yes.

Mr. Gorman asked if Mr. DeFeo was going to perform any of the items we went over. Mr. Thomas said yes. You can ask Mr. DeFeo what, I don't recall.

Mr. Gorman said repair services fall under 44. Mr. Thomas said anything under 44 is provided for.

Mr. Gorman asked if the Township Committee changed the two mile requirement. Mr. Thomas said no.

Mr. Gorman asked if Mr. Jost had a sales display center. Mr. Thomas said yes, outside.

Mr. Gorman asked in 2001 what was the primary use of the property under 44 or 81? Mr. Thomas said he would say that they both existed. Bulk was 81.

Mr. Gorman asked where do you find what Mr. DeFeo wants to do in the code. Mr. Thomas said it was pre-existing for 30 years.

Mr. Gorman said the engineer's report states a use variance is required. Ms. Bergalio's letter of January 14, 2004. Mr. Thomas said he read the letter and the ordinance was amended to allow pre-existing uses. Mr. Gorman said would you class it as a new and used dealership. Mr. Thomas said there have been sales of new and used vehicles.

Attorney Hirsch said when we left off at the last meeting I had written down some notes. Assume that the Board was to decide that this is not a new and used car dealership and the two mile limit was not grandfathered. What would be your opinion, as a planner, to justify a use variance as to the conditions concerning the two mile limit? If the Township Committee has not changed the two mile limit how would you reconcile it? Mr. Thomas said the proposed use is going to expand a portion of the activity for the sales. Through that expansion it is going to enhance the site and neighborhood. It will improve the aesthetics, lighting, buffering, etc. This proposed use would still warrant a use variance. This is a unique portion of Route 35. There is a car wash, repair shop and dealership in the area. This section is already auto oriented. The only thing that is different is the swimming pool facility.

Attorney Hirsch asked do you believe the failure to meet the two mile limit is a detriment. Mr. Thomas said I don't think it would be a detriment. The site did provide for sales. If Mr. Jost

wanted to put in a showroom he could do that. It has been there for 30+ years. Sales were done all through those 30 years according to Mr. Jost.

Attorney Hirsch asked would the addition of a showroom be an expansion. Mr. Thomas said it would be yes. There will be a paved parking lot. There will be more cars on site. There will be an increase in use.

Attorney Hirsch asked how you would apply Coventry Square to that. Mr. Thomas said since this is a pre-existing use Mr. Jost could change the balance of activity on the site to more of a sales type of facility within a use variance. Under the grandfather clause Mr. Jost can do more than 50% of sales without going before this Board. This application provides a similar type of use that has been going on for 30 years.

Attorney Hirsch asked is it more suited to allowing the variance for the 2 mile limit than if there was another use unrelated to sales. Mr. Thomas said if it was a permitted use it would not be before the Board. It is an existing facility.

Mr. Slocum asked if Mr. Gorman was the attorney for Food Service. Mr. Gorman said yes.

Mr. Slocum asked how is this relative. Mr. Gorman said they want the ordinance enforced. Attorney Hirsch said all Mr. Gorman has done is ask questions.

The Board recessed at 9:20 P.M.

The meeting resumed at 9:35 P.M.

Attorney Middleton said he just had a few questions.

Attorney Middleton asked Mr. Thomas if he was familiar with CSO. Mr. Thomas said yes. Attorney Middleton asked if that case was handed down through the New Jersey Supreme Court. Mr. Thomas said yes. Attorney Middleton said Coventry Square indicated that with conditional use the applicant has to show he meets certain criteria even though it doesn't comply. Mr. Thomas said yes.

Mr. Thomas said the site is well suited for this particular use. It will improve the drainage. It will improve the esthetics to the site and buffer to the adjacent food store, which is in in deplorable condition.

Attorney Middleton said there will be no body work on site. Mr. Thomas said no body work, no painting, and no outdoor work.

Attorney Middleton asked about negative criteria. Do you believe that this applicant can obtain approval with the conditions set forth in the ordinance without substantial impact to the neighbors? Mr. Thomas said yes, it will prove an enhancement. There will be a berm. It will shield the lighting. There will be extensive landscaping on both sides of the fence.

Mr. Gorman asked did Coventry Square remove the problems. Mr. Thomas said no.

Mr. Gorman said directly across the street is another car dealership. How far away is it? Mr. Thomas said it is not directly across the street. It is within 200'.

Mr. Gorman said how do you justify locating a dealership that close. Mr. Thomas said it is a pre-existing use. This will improve the neighborhood.

Mr. Gorman said can you show the Board where the sales are on the existing site. Mr. Thomas said, using A-2, the area basically is the area to the south along the southerly portion of the site.

Mr. Gorman asked, show me where there is a showroom or display area. Mr. Thomas said, using A-4, you can see where the trucks and Winnebago are.

Mr. Gorman said can you show me where there are new vehicles. Mr. Thomas said no he can't he did not take the photos.

Mr. Gorman said did you see the sale of new vehicles. Mr. Thomas said there are different vehicles. I don't know if they were new. It was testified to by Mr. Jost.

Mr. Gorman asked Mr. DeFeo, Mr. DeFeo is still under oath, about truck deliveries of new vehicles. Sea Breeze has deliveries in the A.M., how can you control that. Mr. DeFeo said we can tell the dealers only to deliver certain times of the day. We have someone check the vehicles to see if there is any damage.

Mr. Gorman asked is there some way you would not allow them on your property before opening hours. Mr. DeFeo said yes.

Mr. Slocum asked if new car deliveries will enter from the south side. Mr. DeFeo said we can instruct them to do that.

Mr. Gorman said he may have a planner testify at the next meeting, May 19, 2004.

Ken Critchlow, 1719 Grove Street, was sworn. Mr. Critchlow said he has been at all the meetings. He said he would just like to add his comments. Mr. Jost has been a very good neighbor. There has been no noise or disturbances. This project will improve the neighborhood. It will let me use more of my property for my own use. I don't have to have my buffer. I had questions and they addressed all my concerns. Mr. Critchlow said he thinks the Board should approve this application.

Mrs. Morrissey asked if there was a way to soften the look on Route 35. Maybe put a little landscaping in the front. Ms. Hoffman said, using A-5, the front will be landscaped. The display area is 55' from the existing curb line on Route 35. There will be perennials and ornamental trees.

Attorney Hirsch said this application will be carried to May 19, 2004.

Attorney Middleton waived the time limits.

Attorney Hirsch said no further notice is required.

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MINUTES TO BE ADOPTED: Mr. Gray moved to approve the minutes of the study session and regular minutes of March 9, 2004. Mr. Kerr 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 10:00 P.M.

Respectfully submitted,

Betty Schinestuhl
Recording Secretary