

**MONTGOMERY TOWNSHIP ZONING BOARD  
MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY  
SPECIAL MEETING  
JULY 7, 2015**

**MINUTES**

Chairman Cheskis called the meeting to order at 7:43 p.m. and read the opening statement which affirmed that adequate notice of the meeting had been posted and sent to the officially designated newspapers.

**BOARD MEMBERS PRESENT:** Chairman Cheskis; Vice Chairman Voitach; Mr. DeRochi; Mr. Post; Mr. Thompson; Ms. Brach, Alternate #2; Ms. Chenette, Alternate #4

**ALSO PRESENT:** Mr. Drollas, Jr., Board Attorney; Mr. Sullivan, Board Planner; Mr. Cline, Board Engineer; Mr. Palmer, Zoning Officer

**I. SALUTE TO THE FLAG**

**II. MINUTES**

**May 19, 2015 – Regular Meeting**

A motion to approve the minutes was made by Mr. Thompson and seconded by Mr. Post. The motion carried on the following roll call vote:

Ayes: DeRochi, Post, Thompson and Voitach

Nays: None

**May 26, 2015 – Regular Meeting**

A motion to approve the minutes was made by Mr. DeRochi and seconded by Mr. Post. The motion carried on the following roll call vote:

Ayes: Chenette, Cheskis, DeRochi, Post and Voitach

Nays: None

**June 23, 2015 – Regular Meeting**

A motion to approve the minutes was made by Mr. Thompson and seconded by Mr. Post. The motion carried on the following roll call vote:

Ayes: Brach, Chenette, Cheskis, DeRochi, Post and Thompson

Nays: None

**III. APPLICATION**

**Case BA-07-13            Applicant: Montgomery 206 Realty**

Block 28005 Lot 64

“d”(3) Conditional Use Variance, Bulk Variance and Preliminary and Final Major Site Plan

Expiration Date – 8/31/15

Affidavit of Notification and Publication Previously Submitted and Found to Be In Order

Jeff Lehrer, Esquire represented the applicant.

Elizabeth C. McKenzie, 9 Main Street, gave the Board her qualifications and was accepted as a professional Planner.

Ms. McKenzie described the documents she reviewed for the application. She referenced a display board which was marked as Exhibit A-4 (Mr. Drollas and Mr. Lehrer will work out the number if it isn't correct) showing the surrounding uses and the subject property. The property has a gross lot area of 0.5197 acres which will be reduced to 0.5107 acres due to the 10' dedication to Somerset County along Route 518. The prior use of the property was a gas station and still contains the building and pavement. The gas tank and pumps have been removed. NJDEP has issued a no further action letter indicating the site is not contaminated. There are several properties in the area that are for sale and quite a few vacant commercial and office spaces. This site is important because the building is vacant and the site is an eyesore. The site is a fairly critical gateway location. Its current condition does not reflect well on the business community in this area. The existing 1,400 square foot building and pump islands will be demolished and replaced with a 1,880 square foot Dunkin Donuts store with a drive-up window. Ms. McKenzie described the access to the site, how the drive through functions and how the building will function internally. There will be a night manager on site between 2:00 and 3:00 a.m. for the donut deliveries. The Dunkin Donuts restaurant use is permitted in the HC zone but the drive through window is permitted as a conditional accessory use subject to four conditions. Two of the conditions that will not be met are that the restaurant is part of a shopping center or otherwise associated with a shopping center with direct vehicular access thereto and that the restaurant does not have direct driveway vehicular access to a public street. The two conditions that are met are that they must be at least five hundred feet from any residentially zoned land and landscaping shall be provided to visually screen the window, signage and driveway from adjacent properties.

Ms. McKenzie listed the bulk variances required. The lot does not meet the minimum 1-acre size. As a result of the small lot size the maximum permitted lot coverage is being exceeded. It will be increased slightly to 75.8% where 73% currently exists. The required 50' rear yard building setback will be 33.5' measured to the canopy over the drive through window. The required setbacks for parking and driveway improvements and the depth of landscaped areas are not being met along Route 518 which will have 4' to the parking, along Route 206 where there will be 10' to the parking or along the western property line which will have 4.9'. A formal loading space is not proposed to be provided. The loading will be accommodated from the bypass lane and/or drive aisles. There are deviations from the design standards relating to lighting intensity, planting area and signage and the design of buildings.

Ms. McKenzie testified that the property is located at a critical gateway intersection for Montgomery Township. The derelict condition of the property does nothing to enhance other businesses in the area and detracts from the area. The proposed redevelopment will bring significant improvement to the aesthetics of the property. There are not a lot of other uses that could use a site of this size and not have many of the same variances. The offsite impacts of queuing for the drive through while still providing sufficient room for deliveries, parking etc. was a concern of the Board planner. The applicant has provided testimony that there is enough stacking on the site and sufficient parking on the site so there will not be a queuing problem onto the surrounding streets or parking on neighboring lots. The site generated traffic associated with the use is unlikely to have a substantially negative impact on area traffic, especially when compared to the former service station use. Dunkin Donuts tends to draw its customers from the bypass traffic on the adjacent roads. Due to the sites unique gateway location and the type of customer traffic it is well suited for the Dunkin Donuts use with its drive through window despite the deviations from the two conditional use requirements. It is possible that the applicant could just ask for the restaurant without the drive through window but at peak hours the restaurant would require people to pull in and park and there would be much more use of parking spaces. That might exceed the sites capacity since it is only a ½ acre site. The drive through will work better at this location and it accommodates the type of customer needs at this location. The benefits of the development will substantially outweigh any potentially detrimental impact that might be anticipated based on deviating from two of the conditional use standards. Granting the variances are justifiable under the Coventry Square criteria but also the site is suitable for the use in that it promotes a number of the public purposes set forth in the Municipal Land Use Law. Granting the two "d" variances can be accomplished without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. Having the future interconnection to Lot 59 with a driveway system that will result in a more controlled access point will help to create more of a shopping center environment at this intersection. The bulk variance for the undersized lot is something the applicant can't correct. Efforts were made to purchase additional property. The lot has had nonconforming lot area since at least the 1970's and supported a viable gas station for a number of years. The lot size has given rise to some of the other bulk variances sought. When a lot cannot meet all of the setback requirements from all lot lines and still have a viable building envelope a balancing act must be done to figure where deviations can and cannot be made. On a conforming lot the coverage could be up to 23,958 square feet of land. In contrast, the impervious coverage on this undersized lot will encompass only 16,855 square feet of land. If this was a 1-acre lot this would not be a lot of development on the lot. The applicant will agree as a condition to provide additional landscaping if required by the Board. There is a hardship element to the deviations from the coverage and rear yard setback requirements and driveway and parking setbacks. All of the purposes of zoning that are promoted by granting the "d" variances to allow the site to be developed as proposed support the granting of the "c" variances and design deviations.

The Board questioned Ms. McKenzie about sidewalks, the connection to Lot 59 and the connection to Tiger's Tale requested by the County.

Ms. McKenzie was sworn in.

Mr. Nader who remains under oath testified that the donut deliveries come sometime between midnight and 3:00 a.m. There is no manager on site when the donut deliveries are made.

Mr. Voitach asked about the comparable sites that were given at the last meeting. Mr. Nader testified that this site will be busy but not as busy as the comparable sites. He owns the restaurants on James Street and on Vineyard Road in Edison. This facility will not have the same volumes but it is designed to take that much volume. James Street does not have a drive through. There is an entrance onto Route 27 and no exit. There is a two way exit onto James Street and cars can turn left or right. The Vineyard Road facility has a drive through. The Vineyard Road site has less parking than what is proposed for the Montgomery site. James Street has approximately 15 parking spaces. If the James Street facility had a drive through it would be 50% busier. A drive through operation is much easier and much faster for the customer.

Mr. Nader testified that it takes 120 seconds from placing the order to getting the order at any hour of business. The facility in Shop Rite will remain if Shop Rite allows it. Ninety-five percent of the customers will buy and leave the facility; they will not eat on site. Employees will arrive on site around 4:30 a.m. to open at 5:00 a.m. They store will shut down at 10:00 and employees will leave by 10:45 p.m. Volume will drive the number of employees per shift. There could be up to five employees on Fridays and Saturdays.

Chairman Cheskis was concerned that there are only two parking spaces allocated for employees. Mr. Nader testified that most employees are driven to the site and dropped off, take the transit or car pool.

Chairman Cheskis listed the open items; water quality monitor design, bike rack, outdoor seating and sidewalks. Mr. Cline said he will work with the applicant's engineer on the water quality monitor design as a condition of any approval.

Mr. Lehrer said the applicant agrees to install a bike rack. If the Board would like outdoor seating the applicant will install it. The applicant would like to post an escrow so sidewalk can be constructed along the frontages at such time as the intersection improvement has been completed.

Mr. Yesowitz who remains under oath testified that sidewalk could be put on the subject property if it can fit in an area that is not in the DOT right-of-way. However, there is not much point to sidewalk if it is not going to take you to the crosswalk to cross at the intersection. The intersection improvements are already committed by Montgomery Promenade so there is no fair share contribution for intersection improvements.

Mr. Lehrer said that Mr. Ferriero can work with Mr. Cline regarding sidewalk location. Mr. DeRochi suggested a loop sidewalk on the site that doesn't touch the curb. A conceptual plan will be submitted to Mr. Cline to show sidewalks along the Route 518 and Route 206 frontages.

Chairman Cheskis opened the meeting to the public.

Michael Fedun, Esquire, representing American Realty, discussed his client's concerns regarding the proposal. The property is undersized and the coverage is over what is permitted by ordinance which leaves less area for landscaping. The bypass lane is very close to the common lot line of the Tiger's Tale. The ordinance requires 15' between parking and the property line. There is hardly any space between the bypass lane and lot line and there will be a moving line of cars. The site is dysfunctional because it doesn't allow for the type of traffic flow that is necessary on a site of this nature. This intersection is the most dysfunctional intersection in the Township and it doesn't work. A dysfunctional site is being put at a dysfunctional intersection. Exiting onto Route 518 from the site will be problematic. A person waiting for a long time to exit the site may do something that isn't wise, potentially causing an accident. If DOT isn't going to approve the application if the left turns are prohibited on Route 518 that tells us there is a problem. There is a concern about trucks parking in Tiger's Tale parking lot to go to Dunkin Donuts because the Dunkin Donuts parking lot is designed not to accommodate trucks. The site looks bad and is the Township's gateway but it is not going to work.

There were no further public comments.

Daniel Flynn, an engineer with Ferriero Engineering, was sworn in. Mr. Flynn asked for clarification on what is to be shown on the concept sidewalk plan. Mr. Cline suggested sidewalks be shown outside the right-of-way and within the right-of-way without approaching the corner that will trigger the DOT intersection improvements.

The application was continued to the July 21, 2015 meeting. No further notice is required.

There being no further business to come before the Board, the meeting was adjourned at 10:05 p.m.