

**MONTGOMERY TOWNSHIP ZONING BOARD
MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY
REGULAR MEETING
JULY 21, 2015**

MINUTES

Chairman Cheskis called the meeting to order at 7:40 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. O'Brien; Mr. Thompson; Ms. Brach, Alternate #2; Mr. Kristjanson, Alternate #3

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. RESOLUTION

Case BA-02-15 Applicant: Robyn Nini
Block 33001 Lot 21.02
Bulk Variance

Richard Schatzman, Esquire represented the applicant. He requested the resolution be amended to allow two years to obtain a building permit and two years to obtain a Certificate of Occupancy. The applicant has indicated that it will take the architects a while to get the final architectural drawings done and it will take one and a half years to build the house.

A motion to memorialize the resolution as amended was made by Mr. DeRochi, which was seconded by Mr. Thompson. The motion carried on the following roll call vote:

Ayes: DeRochi, Post, Thompson and Voitach

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. At the last meeting, the Board had requested that the applicant prepare a conceptual sidewalk plan.

Mr. Ferriero who remains under oath referenced the sidewalk exhibit. The sidewalk is shown half in and half out of the County right-of-way along Route 518 with enough of a setback from the road and from the parking lot. The sidewalk runs along the Route 18 frontage to the property line to the west. The sidewalk along the Route 206 frontage is outside the right-of-way and runs along the frontage up to the common lot line with Tigers Tale. However, there is an issue with a portion of the sidewalk between the Dunkin Donuts entrance drive to Tigers Tale property line. Based on the proposed grading of the site, the sidewalk in that area is steeper than what is permitted under ADA. It is Mr. Ferriero's recommendation that the sidewalk be extended to the driveway on Route 206 with a stub extending into the site towards the building. The sidewalk increases the lot coverage from 76.1% to 77.9% or 1.8%. The landscaping as proposed will not be affected.

Mr. Cline said the slope along the Route 206 frontage looks like a 5% slope. He asked if it would be feasible to adjust the grading so the more gradual slope maintained. Mr. Ferriero said it may be possible and if it works his recommendation would change to install it at that grade to the lot line. Mr. Cline said if the grading doesn't work and the sidewalk can't be installed to the property line, the truncated dome landing spot should be placed on the other side of the driveway. Mr. Ferriero will work with Mr. Cline.

Chairman Cheskis opened the meeting to the public.

Mr. Fedun on behalf of American Realty asked about the tie into the sanitary sewer and whether there would be a business disruption to the Tiger's Tale. Mr. Ferriero said the installation will be staged and will require coordination with the Tiger's Tale. There would be no trenches open at night; at a minimum they would be plated. It will not impact the operation of Tigers Tale.

Thomas Giacobbe, 30 Bedford Drive, was sworn in. Mr. Giacobbe said he is concerned with the traffic at the intersection. He urged the Board to not approve the application.

Mr. Lehrer commented that this is the fourth hearing and the applicant had a traffic expert for a full night. The parties had an opportunity to be here and didn't come. Mr. Yesowitz provided testimony that the site can function.

Dennis Hancy, 33 Milford Place, was sworn in. Mr. Hancy is also concerned with the traffic and in particular the left turn onto Route 518 from the site. Other development in the area has added to the traffic. Promenade is being counted on to resolve the traffic issues at this intersection. Traffic at this intersection will only get worse.

Joe Calamoneri, 3 Portland Drive, was sworn in. Mr. Calamoneri questioned the traffic study which is over a year old. One hundred and ninety homes have been added to this area. He testified that by 8:45 a.m. the traffic on Route 518 is still backed up past the bank. No more than four cars can make a left from Route 518 with the green arrow light. A traffic study for the County and one for the State needs to be done.

Mr. Lehrer clarified that the last traffic report update prepared was in December 2014, not a year ago.

Bonnie Giacobbe, 30 Bedford Drive, was sworn in. Sharbell has purchased the Kepner Tregoe property and that will be developed which will add to the impact. She has seen accidents when people inch between the stopped cars to make a left out of the Wawa onto Route 518. That is the concern with Dunkin Donuts.

Keith Sagers, 10 Bristol Court, was sworn in. Most of the business will be coming south on Route 206 and they will want to continue south. Traffic will be a mess. Four hundred homes are being constructed up in Belle Mead. Traffic will continue get worse. A low volume business would be better suited for this site.

Jeff Sands, 9 Bristol Court, was sworn in. Adding a Dunkin Donuts to the intersection does not improve the traffic flow in and out of the main intersection of the Township.

There being no further public comment, a motion to close the public hearing was made by Mr. Post and seconded by Mr. Thompson. The motion carried unanimously.

Mr. Lehrer made his closing statement. The applicant has been before the Board for four hearings. The Board has heard testimony from the architect, site engineer, traffic engineer, applicant and planner. The applicant has addressed the comments of the Board and the Board's professionals and the plans have been modified to address most of those comments. The applicant is taking a gateway site in the Township that is in a blighted condition and is transforming it into a state of the art and architecturally attractive Dunkin Donuts restaurant which is one of the few uses that will work on this site. The use is a more functional use than what existed before. Traffic is a central issue. The intersection is a difficult intersection no matter how the site is developed. This site is too small for other permitted uses as is evidenced by the fact that it has been vacant for quite some time. The applicant's traffic expert has provided testimony that the site will function. When this site is built it will have gone through an extensive review process with regard to traffic. A future connection in the northwest section of the site to Lot 59 has been provided. When Lot 59 is developed, the connection will help alleviate some of the concerns on Route 518. When the Promenade is built significant intersection improvements will be made relieving some of the pressure at this intersection. The standard for a conditional use variance are whether the site can reasonably accommodate the drive-through facility despite the fact that it is not located within a shopping center and has direct access to two public streets. The applicant believes he has met the intent of the ordinance by assisting and working with the Board. The site can function with a drive-through since there is sufficient room for both parking and loading and the site can efficiently accommodate a drive-through facility. The site generated traffic associated with the use is unlikely to have a substantial negative impact on the area traffic especially when compared to the former service station use. The future interconnection to Lot 59 demonstrates an intent to comply with the conditions in the ordinance. The existing undersized lot is not within the applicant's power to correct. Efforts were made to purchase additional lands from both adjacent property owners but neither has expressed an interest in selling any portion of their land. The lot size deficiency is somewhat exacerbated by the County requirement of additional right-of-way along Route 518. Testimony has been provided on how the site will function from an operations perspective. This is an "A" site in terms of its desirability. This is and will remain an economically viable site. Local workers will be hired. The unloading of product and garbage pickups will be scheduled at non-peak times to promote a more efficient operation.

Mr. Sullivan testified that the use itself is a permitted use. The drive-through is the issue and the focus is to look at the implications of the drive-through. The issue is whether the drive-through, that doesn't meet the conditions in the ordinance, can be accommodated on the site in a way that doesn't substantially impair the public, health, safety and welfare. The drive-through is adding impervious cover to the site. Impervious cover has visual implications as well as runoff implications. What does the drive-through do to the position of the building? The required setbacks are not met. They are providing plantings and sidewalks so they have been able to accommodate some level of planting and sidewalk. Is the level of plantings and buffer space acceptable given the drive-through? In terms of the access there has been testimony about the stacking and number of cars that could be stacked which is consistent with industry standards. Is the Board okay with the amount of stacking on site? The traffic was talked about at length. Is the increase in delay times at the intersection okay or is it too much? The owner testified that the drive-through represents a 50% increase in business. There was testimony that some of those trips are already passing by but some of them aren't. The left turn movement out onto Route 518 was not readily quantifiable by Mr. Yesowitz and some of the experiences from the public ring true. Does the increase of the left turn movements out of the site represent a substantial detriment? In terms of the Master Plan policies, the Master Plan calls for retail and business uses here. Ms. McKenzie testified there is no viable building footprint that can be built there. Mr. Sullivan disagrees. There are other uses that can be put on the site. It is an existing undersized site so that may push things a little tighter. Regardless, when the drive-through is added does it create conditions that are substantial detriments to the public welfare? The sidewalk solves some of the policy issues and the

fact that it is retail/restaurant use in the zone is supportive of the project. On balance, do the other elements of it overwhelm that?

Mr. Cline reiterated that the sewer connection is subject to Township Engineering review and approval. The County Engineer had commented that it may be in the applicant's interest to place an easement along the western property line for access to the neighboring lot since it is unknown how the neighboring property will be developed. This allows flexibility to locate the access when the neighboring property is developed in the future.

Mr. Lehrer said the applicant will work in good faith with the County and the adjacent property owner to come up with a mutually agreeable access point.

The Board discussed whether they had the power to prohibit the left turn out of the site. The drive-through is the issue and the question is whether the site can accommodate the drive-through in a way that doesn't substantially jeopardize the public health, safety and welfare.

Mr. DeRochi said the Wells Fargo is a drive-through that conforms to the ordinance. It has no negative impact and there are no curb cuts on Route 206 or any other street. That is the kind of drive-through that was intended by the ordinance, not this kind of drive-through. The applicant has every right to have a Dunkin Donuts, he has a right to the curb cuts but it doesn't mean that he can add to that with the increased traffic from the drive-through. The traffic on the site will be increased because of the drive-through. The Board does not have an obligation to add more cars to the intersection. The site could be designed with a parking lot and a slightly smaller Dunkin Donuts without the drive-through. It would have the right coverages, landscaping, setbacks, etc. The grading is to make the drive-through work. The drive-through is creating problems on the site.

Chairman Cheskis agreed the drive-through is the biggest concern. The application is a significant improvement to the site. The traffic has been studied extensively and it is a mess. The site has limited uses. With the plans as amended to include the sidewalk, the cross access and landscaping it conforms to the Master Plans. The biggest concern is the left turn onto Route 518. The plan has all the aspects to make it a positive site for the Township.

Vice Chairman Voitach said he was concerned with the left turn movement and would want to restrict the turn.

Ms. Brach said the Board wants to see the corner improved but is concerned with the left turn movement as well.

Mr. Lehrer said that Mr. Nader has always said that he is not opposed to a condition restricting the left turn movements. The Board could condition the application that there is no left turn unless overruled by the County or the NJDOT.

Mr. Yesowitz said the NJDOT generally requires left turns out of all the corner properties on a State highway because they don't want people to make a right out onto Route 206 and then cross into the left turn lane to go east on Route 518.

Vice Chairman Voitach said there is so much about the application that is good for Montgomery. He does not see that the Dunkin Donuts will add traffic that is not going through the intersection anyway. The positive and negative on the community in terms of traffic overall does not appear to be bad but there are unintended consequences. He cannot see approving it if the left turn is allowed. There has not been any testimony presented on the number of accidents in the area. Nothing tangible has been presented on whether it is a dangerous corner or not.

Mr. DeRochi opined that the applicant has a right to have a business there. However, he doesn't have a right to put more turning movements into that intersection than would be accommodated by a legal application. The drive-through creates more traffic than a standalone business without a drive-through would. It is a bad intersection. Something can be done on the site that would conform.

The Board discussed having a condition that no left turn onto Route 518 be permitted. Other conditions of the application would be items in the professionals review letters and the submission of a grading plan to permit the connection of the proposed sidewalk.

Mr. Kristjanson asked if a restriction on the left turn during peak hours could be imposed.

There was concern about enforcement. The applicant could grant Title 39 powers to the Township so that the restriction could be enforced. The driveway onto Route 518 could be designed to prohibit the left turns.

Vice Chairman Voitach made a motion to approve the application with the condition that there are no left turn movements onto Route 518, submission of a grading plan for the sidewalk, the cross access easement to Lot 59 and comments in the Board's professional's review memos. The motion was seconded by Mr. Thompson and carried on the following roll call vote:

Ayes: Cheskis, Post, O'Brien, Thompson and Voitach

Nays: DeRochi and Brach

IV. MINUTES

July 7, 2015 – Special Meeting

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

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

Nays: None

There being no further business to come before the Board, the meeting was adjourned at 9:22 p.m.