

**MINUTES OF THE REGULAR MEETING
OF THE TOWNSHIP OF JACKSON
ZONING BOARD OF ADJUSTMENT
JANUARY 18, 2006**

The January 18, 2006 Jackson Township Board of Adjustment meeting was called to order at 7:36 p.m. with a salute to the flag by all present. Attorney Mark Kitrick read the Open Public Meetings Act Statement.

ROLL CALL: Peter Clute, V. Chair Kevin Sullivan
Larry Hartman Scott Weinstein, Sec'y.
Peter Maher Donna Hopkins, Alt. #1
Scott Najarian Michael Kelly, Chairperson

ABSENT: Howard Falkowitz, Alt. #2

ALSO PRESENT: Richard Megill, Director of Planning and Zoning
Mark Kitrick, King, Kitrick, & Jackson LLC
Philip Kavanaugh, T&M Associates
Leah Furey, Ragan Design Group
Jackie Wahler, Substitute Court Reporter

MEMORIALIZATION OF RESOLUTIONS:

2006-01—Election of Officers and Professionals for 2006 – Motion to approve by Weinstein/Clute. YES: Clute, Hartman, Maher, Najarian, Sullivan, Weinstein & Kelly. **APPROVED**

2006-02 – Location of meeting times, dates and location – Motion to approve by Weinstein/Clute. YES: Clute, Hartman, Maher, Najarian, Sullivan, Weinstein & Kelly. **APPROVED**

2006-03 – Charles & Sylvia Monjoy - Block 144.01, Lot 15.06 – Motion to approve by Sullivan/Clute. YES: Clute, Maher, Najarian, Sullivan, Weinstein, Hopkins & Kelly. **VARIANCE GRANTED**

2006-04 – Kenneth & Kimberly Lum – Block 126.10, Lot 4 – Motion to approve by Weinstein/Clute. YES: Clute, Maher, Najarian, Sullivan, Weinstein, Hopkins & Kelly. **VARIANCE GRANTED**

Motion to approve the minutes of the January 4, 2006 meeting by CLUTE/Weinstein. YES: Clute, Maher, Najarian, Sullivan, Weinstein, Hopkins and Kelly.

Motion to approve the voucher for the recording secretary by WEINSTEIN/Hopkins. YES: Clute, Hartman, Maher, Najarian, Sullivan, Weinstein and Kelly.

Mr. Megill introduced himself as Zoning Officer, Philip Kavanaugh of T&M Associates, and Leah Furey of Ragan Design Group. He stated there would be no announcements other than they would be hearing Application #2 on the agenda first. Jackie Wahler, court reporter, swore the professionals.

APPLICATIONS:

2. **APPLICANT: K. HOVNIANIAN AT JACKSON (USE VARIANCE #2516)**
BLOCK: 111.03 LOT: 1 ZONE: HC
LOCATION: N. COUNTY LINE ROAD/SECTION 3-SOUTH KNOLLS

Applicant is seeking a use variance to construct 55 age-restricted lots and an RV parking area located in the HC zone. Ray Shea of Levin, Shea & Pfeffer represented the applicant. Mr. Kelly asked Mr. Shea what was different in this application from the previously denied use variance on the same block and lot a few months earlier for 64 age-restricted lots. Mr. Shea said there was a similar application in 2005, but he preferred the Board listen to testimony from Timothy Lurie of D.W. Smith Associates, the applicant's engineer. Timothy Lurie was sworn by substitute court reporter, Jackie Wahler. Mr. Shea reminded the Board this application was only for a use variance. He indicated he was in possession of the professionals' reports from Ragan Design Group and T&M Associates. Mr. Kelly asked again what was different about this application. Mr. Shea said he was shocked to hear that question at this stage of the hearing, after the application was accepted and the escrow money of his client spent. He then stated the application in 2005 was for an expansion of the existing South Knolls planned retirement community. He said when the Planning Board initially approved this project in the 1980s, it was for 1,360 units, later reduced to 950 units and then to 800+ units. He thought the Zoning Board denied the previous application in 2005 for more age-restricted units in the Highway Commercial zone due to a lack of an adequate buffer and other minor issues, and stated he felt there were advantages to a residential use in that it was not as intense as a Highway Commercial use. He said his client had a right to reapply with different configurations and the increased buffer.

Mr. Najarian asked Mr. Megill if the current plan is altered from the previously denied plan. Mr. Megill said it did not state it was a like application. He said a use variance is a use variance, and the law says he had to accept the application. Mr. Kitrick then swore Mr. Megill. Mr. Megill said any legal questions should be directed to the Board attorney. Mr. Najarian asked Mr. Kitrick if the plan was altered. Mr. Kitrick said he was not the Board attorney when the previous application was heard, and suggested the Board's professionals may be able to answer that question. However, to assist the Board, Mr. Kitrick said we need to establish the application in 2005 was for a use variance and denied, and Mr. Shea agreed. Ms. Furey stated the applicant needed to provide proof of substantial difference from the previous application. Ms. Furey sworn by Jackie Wahler. Ms. Furey said the difference between the last application and this one

is the last application was for a use variance to allow 64 age-restricted homes in the Highway Commercial zone. This application is also for a use variance for 55 age-restricted homes, so the difference is only in the number of homes. We are not here to consider the subdivision, just the use, so she sees this application as the same use variance as previously denied.

Mr. Kelly said maybe he should ask the Board for a vote as to whether they feel this application is substantially different from the use variance previously denied. Mr. Shea said he just wants to finish testimony before the Board votes. He said the application is similar to the one in 2005, but has fewer units and includes a relocation of the RV parking. The RV parking was included in a previously approved section of the Planned Retirement Community and they want to relocate it to this lot. He said he wanted to submit a consolidated application between this application and Item 3 on tonight's agenda, but it was denied and requested he resubmit separately. He felt the consolidated application would have given the Board the "big picture" of what they were proposing here. Mr. Kelly persisted in asking what the difference was in the use variance. Mr. Shea stated Mr. Lurie would testify to that. Mr. Megill said he was told by Mr. Shea that he 'must accept' the application and the Board 'must hear' the application. Mr. Kitrick told Mr. Shea when the previous application was denied, he could have appealed the Board's decision. Mr. Shea said yes, he could have appealed, or submit a substantially different application. He furthered he couldn't understand why the application was accepted if there was a question of res judicata.

Mr. Lurie began testimony by stating the site is at the entrance of the existing South Knolls planned retirement community. They propose 55 single-family lots with a berm and 100' buffer along County Line Road. This application proposes fewer units than the last use variance request, and they propose to relocate RV parking from a previously approved area of the existing community. Ms. Hopkins asked for clarification that this application was for the same lot as before, and Mr. Lurie said yes. Mr. Najarian began saying the number of units was changed from 64 to 55, and Mr. Lurie finished by stating they added a buffer, berm and RV parking. Mr. Shea said they are recommending a mixed use, but instead of doing so on the same lot, they are proposing another commercial development on a separate lot [Application #3 on tonight's agenda]. He is asking the Board to hear this application in fairness. Mr. Kelly stated 'we are going forward'. Mr. Shea answered they are only here for the use variance; if the Board feels the application is inadequate or insufficient, they have a right to reject it. The applicant wants to expand his existing residential use. Mr. Lurie stated the existing planned retirement community ended with 833 units, and three units were removed for additional recreation area parking, so now the total is 830 units. Mr. Kelly asked if previous approvals granted any other units for the lot in question, referring to the 950 units that could have been built under the old approvals. Mr. Shea said no, the future development [on this lot] was supposed to be commercial in nature. They are asking not to detract from Highway Commercial zoning, just a natural extension of what exists.

Exhibit A-1 was marked; a color rendering of page 4 of 4 of the Composite Sheet, and exhibit A-2 was marked; an overall scale of development.

Ms. Furey thought it beneficial for the public to hear the applicant is asking for a use variance to allow housing in the Highway Commercial zone. The Jackson Township Master Plan denotes this piece for Highway Commercial uses, and the applicant must prove this application is not detrimental to the public good and that it fits in with the Master Plan of the Township. Mr. Shea said they were trying to relocate the RV parking to increase commercial usage.

Mr. Lurie addressed the positive and negative criteria for this application. For the positive criteria, he stated this would be a good transition from the existing residential site, senior developments have no impact on the schools, that it is a good ratable, there would be no increase in the number of children attending schools, and there would be less traffic impact than a commercial use. Also, there would be not much dust or noise associated with large impervious areas in commercial development. As far as negative criteria, Mr. Lurie simply restated the positive criteria in different words. He moved on to the Ragan Review letter of January 5, 2006, stating they already addressed items 1 & 2.

Mr. Shea asked the Board to hear from Tom Bovino regarding fiscal impacts at full build out. Tom Bovino sworn. He is part of Jackson Development Company LLC, and is authorized to provide testimony for the Company. He used information from the Tax Assessor to obtain information for Board members to understand his point. If this site was commercial, it would be approximately 1/3 the size of the current Shop Rite shopping plaza. The tax on this piece would be calculated on 80,000 square feet of space, with tax revenue of \$80,000. Fifty-five homes at \$6,500 per home would yield \$357,000 in tax revenues with no impact to the schools. He said that would be five to six times greater tax ratable to the town. He said the demand for adult communities is strong. Mr. Megill noted the expenses for having homes on this property, such as plowing the streets and lighting, and these things cost the town money. Mr. Shea agreed, but said Mr. Bovino was comparing gross basis to gross basis.

Mr. Maher asked who the owner of Jackson Development is and Mr. Shea answered Mitch Leigh. Mr. Lurie said the number of units referred to in the Ragan review letter of 1-5-06, item 4, needed clarification. As far as affordable housing, they would defer to a future date if necessary. There were no further comments. Ms. Furey reserved the right to comment on anything in the future, and Mr. Shea so stipulated. Mr. Shea stated the applicant agreed to everything in the T&M review letter of January 9, 2006. Testimony was concluded. Mr. Najarian added the tax numbers were good to tell the public, but it can't be the sole reason for a Board member's vote.

PUBLIC SESSION OPENED

Marsha Greenblum, 78 Marlow Drive, sworn. She has been a South Knolls resident since September. She moved here from New York and does not want commercial property in front of this development. She is happy with a residential use here.

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Gerald Pims, 18 Moss Lane, sworn. He is a resident of Jackson for about two years and is not in favor of the housing. A lot of commercial development is proposed for the western side of town, so he does not want it here. He would prefer more residential, or would like office commercial here.

Gasper Mogilnicki, 122 Marlow Drive, sworn. He objects to additional homes as it is a strain on the clubhouse and amenities.

Frank Ricucci, 23 Moss Lane sworn. He would welcome the homes because then there is control over what will go there.

Mrs. Menkes, 84 Huntington Drive, sworn. She is on the Board of Trustees for the South Knolls Planned Retirement Community and wishes to express the consensus of everyone at the meeting last night at South Knolls regarding this application that they are in favor of allowing homes on this property.

Mrs. Phillips, 518 Moores Court sworn. She is a resident of one year, and feels the quality of life would be enhanced with homes rather than commercial. It would maintain a rural atmosphere.

Daniel Slocum, 509 Moores Court, sworn. He is for the homes for safety reasons. He spoke of traffic impacts if the land would be commercial.

Joyce Scarano, 55 Marlow Drive, sworn. She moved here 4 months ago to get away from Route 9, and wants residential on this lot.

Ilya Lioznyansky, 79 Huntington Drive sworn. She wishes to see residential use on this property for safety reasons. She said people would be worse drivers in 10 years and safety would be an issue if this were commercial.

Mrs. Liebowitz, 495 Huntington Drive, sworn. She said there would be a devaluation of homes if retail. Commercial development would block the beauty of the development. She wants residential, not commercial.

Mr. Shea testified there would be no strain on the clubhouse. The parking lot was expanded and the clubhouse is good up to 950 units. This application would leave the number within the confines of that amount. He said the adjoining community has spoken. He said when the application was proposed 15 years ago, all the commercial development in existence now wasn't there then, so the commercial piece is not needed here now.

Mr. Najarian asked the people in the audience how many were for this application. There was applause. When asked, two members of the audience raised their hands in opposition to the application. Mr. Maher noted everyone here spoke about the retail uses for the Highway Commercial zone, and there are other permitted uses in the HC zone. Mr. Shea answered he didn't identify those uses because it could be intimidating. He said there was no attempt by Mr. Bovino to hide the fact there could be an office building or the like. He just said commercial uses would increase traffic.

Gerald Pims, 18 Moss Lane, previously sworn. He said if the property was left Highway Commercial, it could be retail or office, but there is a fear of what it could be in the future. Mr. Kitrick stated the zoning requirements would have to be met. Mr. Pims replied they would have no control down the road.

PUBLIC SESSION CLOSED

Motion to approve the use variance based on public feelings by NAJARIAN/Hartman. YES: Hartman, Maher, Najarian. NO: Clute, Sullivan, Weinstein, and Kelly.

Mr. Kitrick stated the application is denied.

Recess at 8:40 p.m. Reconvened 8:55 p.m.

- 1. APPLICANT: TLC LEARNING CENTER (P/F SITE PLAN #630 W/COND. USE)
BLOCK: 145.01 LOT: 5.02 ZONE: HC
LOCATION: 339 JACKSON MILLS ROAD**

Catherine Reid, applicant and owner, sworn. **Peter Maher stepped down for this application.** Mr. Shea introduced William Peck of Tom Ertle Engineering Associates. He was sworn and his credentials accepted. Mr. Shea began testimony by referring to the Ragan review letter of 12/28/05 and the T&M review letter. The application is for a childcare center in the highway commercial zone. He said the use is permitted, but there are existing conditions that can't be met and require a use variance. He stated Ms. Reid is a graduate of Georgian Court College and is licensed by the Department of Youth and Family Services for the State of New Jersey.

Mr. Peck gave an overview of the application, first stating there would be a circular driveway with a drop off area and the exit would allow left and right turns onto Jackson Mills Road, a county road. Any approvals would be subject to county approval as well. The building is proposed to be constructed in the center of the site. City water will be provided, but they will utilize a septic system as the closest sewer line is 1000' away. The applicant proposes vegetative screening with 4' of fencing for the recreation area. Pursuant to the engineer's report, Mr. Peck clarified the fence would be a 4' vinyl fence, and he spoke about the storm water recharge system. He expects to address the fire prevention comments, resulting in a reduction of parking spaces by two to 17, well above the number required by ordinance. Mr. Najarian commented he still doesn't feel that is enough parking; it is not safe and he is concerned about that. Mr. Shea countered Ms. Reid would speak about the parking. Mr. Peck stated there is a drop off area, and Mr.

Shea added the application meets the requirements for parking. Exhibit A-1 was marked, a composite of the site plan, grading and landscape plans.

Mr. Shea introduced Catherine Reid, the owner and applicant, who spoke of the parking and her experience with parking at the day care centers, as she owns other TLC Learning Centers. She said she has been in Lakewood 13 years with 9 parking spaces and 49 children. The pick-up and drop-off works with slight problems at certain times. They are open 6:30 a.m. to 6:00 p.m. and the drop-off times are staggered. The time between 4:30 p.m. and 5:00 p.m. could be a problem, but it always works out. There are all different sessions. Mr. Kelly asked with 12 employees and 20 spots, what happens when the first class has 15 students? Traffic could back up. Ms. Reid answered the pick-up and drop-off is done very quickly; the drivers don't linger, and she has never had any traffic violations. She doesn't foresee a problem. While she has 12 employees, their hours are staggered during business hours. Ms. Furey asked how many employees are there at once, and Ms. Reid said 12, not including herself. As the caregivers go home, the amount of people lessens. Ms. Furey noted the questions on parking always come up, and perhaps they should ask the Township Committee to amend the ordinance. She said while Ms. Reid has expertise in her field, is only 4 spaces sufficient for pick up and drop off? Ms. Reid said yes. Mr. Najarian commented there is nowhere else for [overflow] parking and feels the residual 4 spaces are unsafe. Ms. Furey asked where people would park for special events, a show or party. She also asked if there would be an after school bus. Ms. Reid responded there would be no buses, but the facility offers after school care. Ms. Furey asked how the children get there for after school care. Ms. Hopkins noted there are vans and buses at her other location [in Lakewood]. Mr. Kelly said they would absolutely need more parking, and possibly widen the spaces. Ms. Hopkins felt this spot is not safe for parking. Mr. Shea asked Mr. Peck if the parking could possibly be rearranged. Mr. Peck said he could not find more parking on the site. Ms. Furey, however, said there is an alternative, stating the building could be altered, reduced or changed, and one 24' driveway could be utilized for additional parking while making the other driveway and entrance and exit. She said this is a good location for the use, but it needs additional parking for that use. She said the parking was too tight. Mr. Weinstein suggested flipping the building, or moving it back more to allow more space in the front. Mr. Kavanaugh asked if Mr. Peck was an expert in the traffic field. Mr. Peck said no, he tried to maximize the parking with drop off as shown. Mr. Kavanaugh asked if the number of students was taken into consideration. He recommended the plan be changed. Ms. Hopkins said she likes the application, but safety must be taken into consideration. Mr. Kelly recommended this application be carried to March 1 to present the revised plans.

Motion to carry this application to March 1, 2006 by Weinstein/Hopkins. YES: Clute, Hartman, Najarian, Sullivan, Weinstein, Hopkins and Kelly.

Attorney Ray Shea on behalf of the applicant at the applicant's request withdrew application 3, Jackson Development Company, Block 111.03, Lots 105 & 107, during the break.

Mr. Kelly asked for Board discussion regarding the Land Use Disclosure Statement forms recommended for use by Board attorney Mark Kitrick.

Motion to approve to use the Land Use Disclosure Statement forms by Clute/Weinstein. YES: Clute, Hartman, Maher, Najarian, Sullivan, Weinstein, and Kelly.

A stipulation was made to use the aforementioned forms for all applications posting an escrow, to differentiate those applications made by residents for basic bulk variances.

Mr. Najarian suggested police testimony for applications, as occurred for the Goddard School application.

Mr. Kelly thanked Mr. Kavanaugh for covering for Al Yodakis, who was ill.

Motion to adjourn at 9:33 p.m. Yes by affirmation.

Respectfully submitted,

Janice Kisty
Zoning Board Recording Secretary