

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

The October 18, 2006 Regular Meeting of the Jackson Township Board of Adjustment was called to order by Chairman Sgro at 7:04 p.m. with a salute to the flag by all present. Attorney Sean Gertner read the Open Public Meetings Act Statement.

ROLL CALL: Jeffrey Bowen Peter Maher
Barry Calogero Kevin DiGesu, Alt. #1
Stephen Costanzo Glen Bouthillette, Alt. #2
Diana LaBianca, Secretary Joy Ann Harmer, Vice Chair (7:12 p.m.)
Vincent Sgro, Chairman

ABSENT: No one

ALSO PRESENT: Richard Megill, Director of Planning and Zoning
Sean Gertner, Board Attorney
Mark Muraczewski, Planner
Steven McCrystal, Court Reporter

APPROVAL OF RESOLUTIONS

Recording Secretary Janice Kisty announced the following resolutions and named those eligible to vote:

Resolution 2006-91 – Women’s Massage Center

Motion to approve this resolution by CALOGERO/DiGesu. YES: Maher, Calogero, Costanzo, DiGesu, Bouthillette, Sgro.

Mr. Megill stated there was an issue regarding resolution #2005-17, for Preliminary and Final site plan for Jackson Academy Child Care Facility on Block 108 and Lot 4. Mr. Megill and Mr. Muraczewski were sworn by Steve McCrystal. Mr. Megill explained a fence was shown on the original plans and discussed by the prior board, but it was not included in the resolution of approval due to an error on former attorney’s part. The variance should have been stated. Mr. Gertner, as an officer of the municipality, stated that Mr. Megill is asking this board without testimony except his own statement, to approve the fence that was previously approved and not memorialized. Mr. Sgro asked why this board should decide that without testimony, and Mr. Gertner said they would have to vote on the resolution anyway. A new resolution will have to be drafted to include the fence. Mr. Calogero asked if the fence was included in the public notices, and Mr. Megill said yes.

Motion to approve the amended resolution to include the previously approved fence by MAHER/DiGesu. YES: Maher, Bowen, Calogero, Costanzo, LaBianca, DiGesu, Sgro.

PAYMENT OF VOUCHER

Motion to approve the voucher for Recording Secretary for tonight’s meeting by MAHER/Bowen. YES: Maher, Bowen, Calogero, Costanzo, LaBianca, DiGesu, Sgro.

ANNOUNCEMENTS

Mr. Megill spoke of the applicant that wanted to rebuild the house on Elm Street. This application was heard at the October 4 hearing, and the applicant now wants to withdraw the application. Mr. Gertner said the application is approved and not memorialized, and he has to research if he can withdraw the application before the resolution is memorialized. Mr. Gertner said the house can stay the way it is; once the board has spoken and it is of record, he must research if the Board has the ability to withdraw its finding. Mr. Megill said the question arises if the dwelling currently is uninhabitable. He does not believe there is a certificate of occupancy.

MATTERS FOR DISCUSSION

Board member Peter Maher stated he will step down for this application because he feels he knows both applicants and should not be voting on the application. Mr. Gertner said there will still be a quorum. He asked that the board members agree they have read the transcripts and are eligible to vote. Mr. Megill said the office received only 3 copies and made more copies for everyone. Each board member affirmed that he was present at the previous meetings or read a transcript of the meeting he was not present for and is comfortable voting on this application. YES: Bowen, Calogero, Costanzo, LaBianca, DiGesu, Bouthillette, Harmer, Sgro.

Recess at 7:20 p.m. Reconvene at 7:30 p.m.

Mr. Shea arrived at 7:30 p.m. and apologized for his lateness. Mr. Gertner informed him of the members’ vote that they are eligible to vote on this application. Mr. Shea asked if the Board members received the fiscal impact analysis and was told yes.

APPLICATIONS

- 1. APPLICANT: LAKESIDE LAND HOLDING COMPANY LLC (USE VARIANCE # 2567)
BLOCK: 145.01 LOT: 3.02 ZONE: HC
LOCATION: JACKSON MILLS ROAD**

APPLICANT IS SEEKING A USE VARIANCE FOR 113 AGE-RESTRICTED CONDOMINIUMS IN THE HC-ZONE WHICH IS NOT A PERMITTED USE. (CARRIED FROM THE SEPTEMBER 6, 2006 MEETING)

Mr. Maher stepped down as previously stated.

Mr. Raymond Shea represents this applicant. He thanked the Board for meeting specially for this application. When the last meeting ended, there was a division among Board members on their readiness to vote, and the applicant's offer to provide a fiscal impact analysis was taken. Mr. Shea thought it was readily understandable. The opposition and property owner criticized the statement that their proposal was a superior ratable, and that they did not have a certified person prepare the report. Mr. Shea said they did engage a qualified professional. If the Board is asking if this proposal is inherently beneficial to the town, it probably is not, but Municipal Land Use Law says if an applicant is seeking a special reasons variance, they must satisfy at least one of the positive criteria, and they do – that of an active adult community. He also feels this particular property is peculiarly suited to the use. The prior planner's report said they should not deviate from the Highway Commercial corridor. Mr. Shea said the area in the Highway Commercial zone is in the green belt and the actual development is occurring on Jackson Mills Road. This is not a question of choosing what was granted, just what is being proposed. This project is not more economically advantageous. Profit to the property owner cannot be the sole criteria for granting the variance. The Supreme Court said it cannot be sole reason for granting of variance but it can be a reason. His office furnished transcripts to the board members by mail, and said it is sometimes better to read than rely on what you hear.

Mr. Muraczewski said the project is in the Highway Commercial zone and does not front on County Line Road, which contains the Highway Commercial Zone Corridor. He reviewed the fiscal impact study and he feels the township would receive more revenue with this project than with the Continuing Care Retirement Community [CCRC] that was approved. The project is age-restricted and would fit in that area. Mr. Calogero said the fiscal impact study said it analyzes age-restricted versus CCRC, but asked if that spot couldn't be another commercial use. Mr. Shea referred to the report, page 40, showing a comparative fiscal impact analysis of the three uses – the proposal shows a surplus of \$333,000, a shopping center (as zoned) of 35,000 square feet gives \$100,000 of surplus and the CCRC produces \$136,000. This is not the sole criteria to be looked at. This can only be one of the criteria. He feels the positive criteria is furthered by providing active adult housing. Mr. Calogero said there is no deficit, but Mr. Muraczewski and Mr. Shea said there is. Mr. Calogero asked if they could state there would be no children living there - no one under 18 living there and going to school. Mr. Shea swore to that. Mr. Bowen asked about the number of jobs to be created. Mr. Shea said a 35,000 sq. ft. shopping center would generate more jobs of a certain level than the age restricted use. You have staff management, maintenance staff. There are more entry level positions if a shopping center is successfully built and filled. Mr. Bowen asked if a commercial property is leased, doesn't that generate revenue? Mr. Shea said yes, that is in there. Mr. Sgro said he thought the question by Mr. Bowen was if stores are paying rent, does the town get revenue, and the answer is no. Mr. DiGesu asked if there will be a retail feature in the proposed age-restricted development and Mr. Shea said yes, and the types of retail would cater to the residents. Mr. Sgro asked the cost of the units and Mr. Shea said \$250,000.00.

Mr. Muraczewski said the report is pretty well accurate. Mr. Sgro said they made a good point this is not on the Highway Commercial corridor. Mr. Calogero asked what portion of the 5.9 acre lot is on County Line Road versus Jackson Mills Road. Mr. Shea said that was a good point. Mr. Megill said there are 4 properties that are commercial in the area. Mr. Shea said they testified there is no development in the commercial corridor. Mr. DiGesu asked if the entrance is on Jackson Mills Road and how far from the right turn intersection. Mr. Shea said it is on Jackson Mills Road and the distance is 270' from County Line Road. They have County approval. Mr. Costanzo asked if it has a single entrance. Mark Kataryniak of Birdsall Engineering, applicant's engineer, said it is a bifurcated driveway, low traffic generator, no tractor trailer delivery vehicles. Moving vans will come in and out. Mr. Shea said there is less turnover in this use versus the CCRC. Mr. Megill pointed out the area of use on the zoning map called Board 1. Mr. Muraczewski showed an aerial map from the NJDEP GIS data base dated 2002 labeled Board 2. He pointed out the location on that map. A discussion ensued to the location of the project and the objector's property. Mr. Muraczewski explained it further.

Mr. Bowen asked about the entrance and if it is a controlled intersection. Mr. Kataryniak said there is no traffic light planned as there is not enough volume. The exit from the site will be controlled by a stop sign. There will be a left turn lane into the site from Jackson Mills Road. Ms. Harmer asked if there is a guard house going in and out and Mr. Shea said no. She understood the low traffic going in or out. Mr. Kataryniak said the entrance is free flowing in or out and there is no guard house to slow it down. Everyone agreed. Mr. Costanzo asked if Jackson Mills Road would be widened and was told no. There is enough roadway to do add a left turn lane and it is part of the county improvements. Ms. LaBianca asked the speed limit and was told 45 mph. Mr. DiGesu asked if the right hand turn onto Jackson Mills from County Line is a clear line of sight. Mr. Kataryniak said the 270 feet mentioned earlier is greater, more like 300' and there is a clear line of sight. The channelized left makes it safer as well. Mr. Gertner reminded the Board this application is for the use variance and if granted, the site plan application would be addressed by this Board. Mr. Megill said there

would be police comments and then they would ask for county approval also. Mr. Bowen asked about the Master Plan, and the fact the County Line Road is a commercial corridor. What about Jackson Mills Road? Mr. Shea said it is not in the corridor. This Board just approved Sunrise Assisted Living Facility in the commercial zone. The Board is free to vote how they feel right. The horse farm in question is 75 acres and will remain.

Mr. Weinstein, attorney for the objector said he is aware this is not a court of law. He wants the Board to understand he is not going to be overly technical. He said the Fiscal Impact Study is not signed, and no one is named as to who prepared it, just a company. There is not a person that could testify and be subject to cross examination. The first 45 pages is historical information and contains very little on fiscal impact. Even if it is accurate, he said the applicant is here to make more money. This does not mean they can utilize a use variance to do so. Mr. Waitzman will testify. Mr. Weinstein said the Master Plan is like the bible. As far as the corridor, that has been magnified beyond its importance. It does not mean if a small part is on the corridor, you can ignore the rest of the property. You can't go against the Master Plan. Mr. Sgro asked if he ever appeared before a zoning board to ask for a use variance. Mr. Weinstein said yes. Mr. Calogero said the Master Plan clearly states the County Line corridor is envisioned because it is close to 195, and the easiest way to get there is via Jackson Mills Road. Mr. Bouthillette asked if could be overturned in court, and Mr. Weinstein said it is not as easy as that. You must establish facts and criteria. The function of this Board is to hear and decide and make recommendations.

Mr. Waitzman said he would address the fiscal impact report. First, he wanted to clarify that Mr. Shea said they disagreed with some of the positive proofs, but one of the purposes is to provide active adult communities. Mr. Waitzman testified at a previous hearing regarding Senior Citizen housing opportunities. This is not an active adult community. He also testified that the report of the prior planner stressed the importance of the County Line corridor and proximity to 195. This is part of that corridor, and the Board should not lose sight of that. He then moved on and spoke of his opinion of the fiscal impact report. He agreed with the methodology used but had a problem with other comparisons. The comparison to the CCRC use is irrelevant compared to what a retail development would provide. He explained how the numbers are arrived at and comes up with a ratable. This is legitimate, but it is based on an application that shows a density that is significantly higher than what would be there if building a permitted use. A PRC density is 22 units per acre; this is 19 units per acre. He is concerned the density is significantly greater, and disagrees with the comparison to the retail development figures. This is not a corner lot. Building coverage is allowed up to 30% and impervious of 75%, so they could have put a 65,000 square foot commercial use there, not 35,000 square feet. He passed out an exhibit marked A-9, Mr. Shea stipulated it would be whatever number it needs to be. It is titled COAH Third Round Substantive Rules. He handed out another exhibit to show the larger the building, the larger the tax revenue would be. A smaller building would generate not as much tax revenue. Using Mr. Redding's numbers, Mr. Waitzman came up with a comparison of the fiscal numbers, and he was trying to prove they are asking for a greater density. He said they misrepresented the density and that Lakeside Landings is asking for 19 dwelling units/acre but the PRC zone only allows 6 du/acre. Employment numbers were discussed. The bottom line showed the fiscal impact analysis versus his own analysis of the same numbers. The retail rating provides a greater surplus than Lakeside Landings. He said this case should not be decided based on fiscal impact but whether there is a positive benefit. Creating ratables is not the only answer here. Fiscal impact methodology has been refined and he agreed with the method but has serious concerns with this application. They are not deciding only a use variance but a density variance as well. Mr. Muraczewski asked where the PRC zone comparisons are coming from. Mr. Waitzman said Shea said he is comparing it to the PRC zone. Mr. Megill asked Waitzman if he is saying the CCRC was the better use. Waitzman said no. He said the zone was changed here to provide for a commercial use. Mr. Muraczewski thought they were comparing the use to the commercial zone. Mr. Waitzman said they raised the question of proper advertising. He quoted Mr. Shea from the July 19 transcript, saying Mr. Shea testified they are comparing this to the PRC district during that hearing. Mr. Waitzman said he feels the application needs a density variance, and has heard nothing to that effect.

Recess 8:53 p.m. Reconvene 9:00 p.m.

Mr. Gertner reminded Mr. Weinstein the issue before the Board is a use variance in the HC zone and they have gotten off that subject. They submitted their rebuttal and their point has been made. Ms. Harmer asked what their main objection is to this application. Mr. Weinstein said this is the third time that question has been asked and Ms Harmer said she did not get a straight answer. Mr. Weinstein said he doesn't have to give a reason. She asked if they don't want this, would they rather something commercial? Do they think there will be more traffic with a commercial use? Mr. Calogero said we are here to decide a use variance. Mr. Sgro asked if Mr. Muraczewski thought this was good or bad. Mr. Muraczewski said they have two choices; the township needs commercial development along commercial corridors, and Jackson Mills Road is also commercially zoned. On the other side, he doesn't think there would be a negative impact to the area if the age-restricted development is there. The Board would have to decide. He did not agree with the Ragan letter of June 1 per say. Mr. Calogero said the June 1 letter offered comments for board consideration. With regard to use, the Board must decide if fits with the township plan for the area. Mr. Muraczewski agreed but said this does not front on County Line Road. Mr. Megill said 130 residential lots across the street was approved but not built because the town bought the property. Mr. Bouthillette said HC property is scarce and they must be careful what they approve there.

Recess 9:15 reconvene 9:17

Ralph Laks, 83 Greenwood Drive, Freehold, sworn. He is the son of the adjoining property owner who is objecting. He read a prepared statement to the Board. He stated the applicant has failed to meet the burden of proof and did not show special reasons. The purpose behind MLUL has not been met. They did not show a need is being met, a cornerstone of any use variance. Mr. Sgro asked if Mr. Laks objected to the CCRC and was told yes. Mr. DiGesù asked what they are looking for in that space and was satisfied with the court order. He feels this application is against the intent of the master plan. Mr. Laks went on, stating this is a bifurcated application and still more variances may be required. He said the applicant has not demonstrated he has met the negative criteria. The burden of proof is unmet and no hardship established. The applicant has voluntarily put himself in this position. He asked the Board to consider the use variance carefully. Mr. Gertner said that portion regarding the CCRC is irrelevant to the argument because the Board already went past that when they retained jurisdiction. Exhibits were handed to the board all marked O-11, consisting of 11 pages of a prepared statement regarding the CCRC. Mr. Shea had no objection to the submission of the exhibit. Mr. Shea questioned Laks, who agreed his opinion was based on what his experts told him.

There were no further comments from the professionals.

Mr. Weinstein summarized, saying he had 5-6 typewritten pages to refer to and passed it out to the board members and was marked O-12. Mr. Shea had no objection to its submission. Mr. Weinstein said this is a use variance, not inherently beneficial. The applicant has the burden of proof and must establish what is needed for a use variance, usually special reasons. He cited a case, stating not every legitimate use results in a use variance. The governing body has determined where this proposed development can be constructed. The master plan shows the intent of the governing body for this area. The Board must ask how the proposed use fits in with the master plan. This property won't be zoned into idleness. The lot is not unusually shaped. He asked whatever decision is made, they review his letter first.

Mr. Shea summarized as well, had no objection to Exhibit O-12, stating Mr. Weinstein is entitled to his view. Mr. Shea disagrees and believes the board has a firm grasp of what is being proposed, but referred to the June 1 Ragan report and the discussion between the Board and its professionals. The Ragan Group supported the South Knolls expansion and the Sunrise Assisted Living Community, both in the HC zone. In her letter, Ms. Furey did not categorically state this site could not be used for commercial, she said "largely commercial". She is not absolute, which leaves her the opportunity to support the other developments that are not commercial. Mr. Shea said the Master Plan notes County Line Road and Route 537 are two primarily commercial roads. Largely commercial utters the spirit of what that says. This application does not violate the intent of the Master Plan. Variations will take place should certain proofs be offered. Mr. Shea said the applicant gave up what he fought so hard to achieve with the CCRC. This is his choice. He should not be given a replacement use, but has the right to ask you to consider a different use for what is allowed and what was approved. Thousands of cases in New Jersey deviate from the master plan. This is not an active adult community. He does not know the charters of the active adult communities in town, but has represented clients who had to be over 55 to join those communities. He must acknowledge there is a switch in strategy by the opposition because this is a use variance and they were using the PRC zone as a guide. The opposition says the PRC allows 6 units/acre and this far exceeds that. They wouldn't need a variance if this property was in the PRC zone. This does not need a density variance. They are seeking a use variance. Is this site suitable for a use variance? He thought the transition was smoother with this development. Mr. Sgro asked for clarification of 22 or 6 dwelling units. Mr. Gertner said no one was incorrect but it is 22. In the case of a vertical density, 22 is acceptable, and a horizontal community is 6 dwelling units/acre. Mr. Shea said he never said this is not a corner lot; and he took issue with the 65,000 square foot development. He conceded maybe it should be more than 35,000 square feet, but he was not sure it could be 65,000 square feet. There would be more jobs in a commercial development. The more jobs, the more COAH obligation there is. They will comply with third round requirements. As far as establishing a need, he said that it is not necessary to prove a need. An active adult community is recognized as a positive criteria. He thanked the board for their time and attention to this case. There is one applicant and one objector. He is confident the record shows they have advanced the master plan, fiscal impact and it is not a negative impact on the master plan. This application requires 5 votes. He hopes his testimony has met his burden, thanked the Board for this special meeting to conclude this application.

Mr. Megill referred to the map about frontage on Route 526, and the realignment of County Line Road and with widening, it does front on County Line Road.

Public Session Closed

Mr. Bouthillette referred to the two Zoning Board approvals for Sunrise and South Knolls and asked how this is the same or different. Mr. Shea said all three applications are different. South Knolls is a horizontal, expanded community. Sunrise is an assisted living facility and this is typical of the ordinance for a vertical active adult community. Mr. Shea said he did not mean this should be approved based on those applications. Mr. Calogero stated much time was spent on this application and he heard all the testimony. When he was nominated, He was given a handbook. Board members have no reason to feel compelled to grant a use variance to an applicant. The handbook talks about a "D" variance. This demands close scrutiny. A use variance should be granted if the public and voters interest is better served by it. In the Master Plan, County Line corridor is envisioned as a commercial corridor because it is close to 195. Jackson Mills Road provides access from 195 to County Line Road. Granting the variance should not create an undue problem with neighbor's properties. The Ragan letter, with regard to use, asked if this fits the vision for this area. If this outweighs the benefits of a residential area, the roadway is being improved for future non-residential

development. The Board has an obligation if in the best interest of township to change to a high-density residential use. Mr. Megill said this is a County Road.

Mr. DiGesu asked Mr. Shea if the applicant owns land and was told yes. He said the lawyers did a wonderful job.

Ms. LaBianca thanked the applicant for forwarding the information and stated this property is zoned commercial, and they are talking of increasing the population to more residential use.

Mr. Bouthillette said he disagreed with the statement there would be no impact to the master plan. They need to take the taxpayers into consideration.

Mr. Sgro said with all due respect, we have all new board members, and he goes with what the Board's professionals recommend. His view is not as negative as the Board's thus far. This project is not adding to the schools and is located off the County Line Road corridor. Mr. Calogero said remember, this is for a use variance. Mr. Sgro said no Master Plan is perfect. Mr. Calogero said he has not heard the planner agree to this project. Mr. Muraczewski said they are looking for commercial ratables in town, but this project will not impact the area negatively, either.

Mr. Bowen asked what is more important to the town, and the Planner said commercial development.

Mr. Sgro said the professionals know best.

Mr. Costanzo was concerned with activity and pedestrian traffic to and from the new soccer park 800 yards away.

Mr. Gertner summarized if this approved, an age-restricted development would fit in the area. Mr. Megill said towns in area that have Highway Commercial zones try to bring in senior housing because they are customers and will contribute to the commercial success of an area.

Motion to approve by HARMER/Sgro.

Mr. Bowen stated both parties were well-represented, and based on the planner's testimony, he voted **yes**.

Mr. Calogero said there was a lot of testimony, he considered the Master Plan calls for a use variance, this is not the best use for the site and he voted **no**.

Mr. Costanzo thanked all for their thorough testimony, he read the transcripts, and in viewing the Master Plan and limited commercial zoning in town, he felt the use is not appropriate, and he voted **no**.

Ms. LaBianca thanked all for their testimony and forwarding the transcript. She said this is a commercially zoned area, not appropriate for a use variance because of the density. She voted **no**.

Mr. DiGesu thanked all and voted **no** because Jackson Mills Road is not zoned commercial all the way. It is the only way to Route 526 from Route 195. Increased traffic there is consistent with the Master Plan.

Ms. Harmer said this proposal is a good idea in that area. She doesn't think the impact of 195 there warrants more traffic from shopping malls. She voted **yes**.

Mr. Sgro voted **yes**, agreeing with the township professionals and valuing their opinion. He appreciated everyone's efforts.

The vote to approve the use variance was **three yes, four no**. The Use Variance was **denied**.

Motion to adjourn by **HARMER/Calogero** at 10:25 p.m. YES: By Affirmation.

Respectfully submitted,

Janice Kisty
Zoning Board Recording Secretary