

SPECIAL MEETING
ZONING BOARD OF ADJUSTMENT MEETING
Hopatcong Borough Hall, Hopatcong, NJ
July 29, 2004

CALL TO ORDER: Chairman Francis called the meeting to Order at 7:30PM

CHAIRMAN'S STATEMENT: Chairman stated that this meeting is held in accordance with the Open Public Meetings Act N.J.S.A.10:4-1 et seq. Annual notice having been forwarded to the New Jersey Herald, the Sunday Herald and posted on the bulletin board maintained in the Municipal Building for public announcements.

SALUTE TO THE FLAG: The Members joined in a salute to the Flag.

ROLL CALL PRESENT: Roy Winfield, Michael Collins, Clifford Lundin, Robert Daddis, Ken Trumpore, Robert Hastings, Stephen Wenz, Chairman Michael Francis
Zoning Officer – William Donegan
Board Attorney -William Haggerty, Esq.
Board Engineer John Ruschke
Substitute Board Planner Russell Stern

NEW APPLICATION:

QUICK CHEK FOOD STORES, INC. BLOCK 10701, LOT 2 40 Lakeside Blvd.

Applicant is seeking relief from 242-58B, criteria for gasoline stations; 242-14B, Principal structure and uses; 242-26, parking within 50' of Residential Zone, 242-25C, required buffer.

Applicant wants to build a 5431 square foot Quick Chek Convenience Store with gasoline only service to include eight multiple product dispensers.

Henry Kent-Smith, Esq. from Saul Ewing LLP represented the applicant. Borough Attorney Haggerty emphasized that this hearing was specific to variances to determine if this is an acceptable use on this site according to Municipal Land Use Law. The property is in two zones B-2 and R-1, this is a permitted use in the B-2 zone.

Mr. Kent-Smith would appreciate any suggestions on requirements on site plan approval but that would be a separate application. Presently, this property has a nightclub, Tonic, on it. It is adjacent to the Civic Center.

Mr. Valerio, the Real Estate Manager for Quick Chek explained why this is a good site for the proposed Quick Chek. Quick Chek has done a traffic study and the demographics are good for the site. The combination gas-convenience store represents 80% of convenience stores and 92% of the newly built stores. They will be doing no auto repair work and will follow all NJDEP gas regulations. They will employ 25-35 people total, at least two employees in the store and two at the dispenser at all times. They will have 6 tables with 18 seats for their customer's convenience. They will be open 24 hours, there will be not long hauler diesel facilities.

They expect 5-7 deliveries of food and 5-7 gas deliveries per week. Smaller trucks will also deliver. They will control delivery times through a district manager. Quick Chek is New Jersey based, not franchised, with 104 stores in New Jersey.

They will maintain the site with a high pressure hose for cleaning and a vacuum system. This free standing site allows for better maintenance control. They will have two 20,000 and one 12,000 gal.tanks.

The meeting was open to the public. John Gunico, Esq. representing opposition Cumberland Farms said this hearing is for three uses: gas, convenience store and restaurant because of the seating and the advertisement did not indicate the restaurant use so the notice was improper.

There was discussion on the deli and restaurant aspect of this application and our ordinances definition. The notice was read into the record.

A motion was made to define convenience store to include the extension of tables for eating was made by Lundin, seconded by Daddis.

Roll call: Winfield – yes, Collins – yes, Daddis – yes, Trumpore – yes, Lundin – yes, Wenz – yes, Francis – yes.

The Board felt the notice informed the public as to what was intended in this hearing

A motion was made to accept the notice as covering all the aspects of the application by Daddis, seconded by Collins.

Roll call: Winfield – yes, Collins – yes, Daddis – yes, Trumpore – yes, Lundin – yes, Wenz – yes, Francis – yes.

Applicant's engineer, Keith Cahill of Bohler engineering was accepted as an expert witness. He presented a topographical survey of the property, marked A-1. The parcel is 2.7 acres and the zone line is 300' from Lakeside Boulevard. The existing building is 3 ½' from the sideline and the parking lot now encroaches on the adjoining property. A-2 was an aerial view of the property taken in 2002 that showed the location of the adjacent Civic Center, school, fields, the tire and body shop and the retail stores. The slope of the property was 60%. All proposed improvement will be in the B-2 zone and the applicant is willing to have a conservation easement on the R-1 portion of the property. They will be decreasing the impervious coverage and will comply with DEP regulations.

The building will be 77' x 68' with a masonry garbage enclosure, a canopy covering 16 fueling positions for cars only and 43 parking stalls for customers are provided.

Exhibit A-4 indicated the truck delivery pattern that he felt was safe, efficient operation. The gas trucks would fill the tanks that were located in the front of the tanks near Lakeside Boulevard and the food deliveries would be made to the back of the building with a circular flow to access the locations.

The building and parking lot will be visible from the picnic area of the civic center, more so in the winter as the screen was deciduous but the applicant will screen with evergreens. They will remove the existing asphalt from the Civic Center and bring the new building into conformance by providing the appropriate setbacks. The new parking lot will be 7 ½ feet from the Civic Center property line. There will be a 7% decrease in impervious coverage. A-5 was a rendering of what the building will look like from the side and front elevation.

The meeting was open to the public. John Gunicoo asked if they had considered alternative locations for the tanks, further away from the Civic Center. Mr. Cahill said they had considered alternate locations.

The meeting was closed to the public.

Elizabeth Dolan was sworn as an expert witness with a specialty in traffic engineering and design. Her Traffic Impact Analysis was incorporated into the record. A traffic study was done in November of 2003 concentrating on peak rush hours. She had not looked at the County traffic study. She anticipated 90% of the customers to be pass by, 10% new trips but used the Trip Generation's calculations that were 60% pass by and 40% new. She also factored a 2.5% growth rate to determine the level of service at "D" making the driveway design acceptable. The number of cars in peak hour in the morning was estimated at 124, evening, 165.

She felt a traffic light at the Civic Center would provide gaps for the traffic to pull out. The estimated traffic impact of the Quick Chek was 2%. The existing Quick Chek will not be closed.

The meeting was open to the public. Eleanor Shelling felt a light was needed. It is very difficult to pull out into traffic during rush hour and they might need more stacking.

The last witness for the applicant, Paul Phillips was accepted as an expert witness. He had reviewed the Master Plan, ordinance, plans, application, traffic study, reports and made a site inspection.

In the B-2 front portion of this property a convenience store is an allowed use and gas station is permitted. The proposed gas station does not meet the spacing requirement of 2500 feet to the nearest gas station that is 500 feet. The proposed gas station also does not meet the spacing requirement of 1000 feet to a public building. The store and separate canopy result in more than one principal building on the property. The canopy will provide protection from the elements to the employees and customers.

Mr. Phillips felt the public health spacing requirements are obsolete with the current technology of gas stations and fire prevention. The school is on the other side of the hill and the Civic Center will have visual impact, however, they can landscape.

He felt the location was good on a main route and that the lot was big enough and the rear of the site will not be developed.

One of the goals of the Master Plan is to continue the upgrade of Lakeside Boulevard. The combination of gas and convenience is compatible and the size and site appropriate for this use with green space provided. The zone plan is not impacted, both uses are allowed just not together, however, this is a new trend. The need for a required residential buffer is eliminated if the property has a conservation easement.

Planner Russ Stern felt the 7 1/2 foot parking buffer to the Civic Center was not enough. He also said the ordinance does not provide for loading areas in the front of the property. The applicant said the tanks could be moved to the side. This will be addressed in the site plan review.

The applicant said this Quick Chek will not have a liquor license.

Atty. Haggerty presented a ruling on an appeal for a similar case marked ZB Exhibit 1. The spacing requirement in Montague for 2000' distance to a neighboring gas station and 200' to a public place was deemed invalid.

Attorney John Gunico wanted to know if there would be any benefit to dividing the property and putting one business on each. The planner felt there would be more open space if they were on the same lot because of the economy of scale.

Mr. Junko also felt that if the combinations of gas and convenience stores that has been a trend for the last fifteen years, that the Zoning Board should have addressed this trend and made a recommendation to the Council.

The meeting was open to the public. Richard Hodson requested that for the public good, Quick Chek should acquire the liquor license and retire it.

Planner Andrew Janniw from Beacon Planning on behalf of the opposition was accepted as an accepted planner. He submitted a photo board of the site and adjacent properties marked O-1. His conclusion was different from Mr. Phillips'. He focused on compatibility and the nuisance issue with regard to the Civic Center. This would also impact businesses that the Master Plan intended on protecting. The site is not uniquely or particularly suited for this use. The traffic pattern of the nightclub was more compatible to the existing traffic situation. The nuisance should be addressed more in the use variance to prove there is no negative impact.

Planner Russ Stern commented on the enhancement aspect of Borough Planner, Ken Nelson's report. The elimination of the tanks in the front of the property and landscaping would provide a buffer. Possibly the pumps could be setback more. The lighting, noise, odor control would be site plan issues. Landscaping was minimum and the potential congestion in the parking lot would be self-policing. Nelson's report of 7/22/04 was marked as Exhibit ZB-2.

Borough Engineer John Ruschke felt the traffic study should have been done seasonally. The waste water flows should be equal or less than existing and the applicant needs to provide a waste flow report. They needed an on-site oil water separator. His letter of

June 7, 2004, was marked ZB Exhibit 3. Additionally, the applicant should review the old site plans for the Tonic and address recharge. Compliance would be positive criteria.

The opposition was given an opportunity to summarize his position. Mr. Gunico felt the notice was improper; there is a failure to meet the special reason standard and there is little compliance with the Master Plan and its intention and there is no demonstration that is doesn't upset the zone plan by putting two uses on one site. Also the Master Plan encourages compatible uses not creating something predatory to diminish existing businesses. The case for special reason has not been created.

Mr. Haggerty clarified that it was the canopy that was considered a building that was not permitted not the two uses.

Mr. Kent Smith summarized by saying this was the first application of this kind to come before this Board and assured the Board that this is going to be a very high quality project in the best interest of the Borough through its Master Plan. The can comply with all the professional's comments when they come back for site plan approval. This will safeguard the public's interest.

Wayne Higgins from the public was sworn in. He is the owner of J & B Video is in favor of this application. Jay Alsmith who manages J & B Video also thinks this would be much more convenient for the residents and would be good for the community.

A motion to grant the variances with the following conditions: there be a conservation easement; as part of the site plan, the applicant provide a water quality plan that meets New Jersey NJAC7:8; that the applicant provide a detailed landscaping plan; the site plan include a sidewalk area and mitigation for light, noise and odor and studies from ZB2 and ZB3 be addressed and that the Board retain jurisdiction on this matter was made by Lundin, seconded by Daddis.

Roll call: Winfield – yes, Collins – yes, Daddis – yes, Trumppore – yes, Lundin – yes, Wenz – yes, Francis – yes.

ADJOURNMENT:

A motion to adjourn was made by Lundin, seconded by Hastings

ALL IN FAVOR, MOTION CARRIED.

The meeting was adjourned at 10:50 p.m

Eugenia Wiss, Secretary