

ROBBINSVILLE TOWNSHIP ZONING BOARD OF ADJUSTMENT MEETING
ROBBINSVILLE TOWNSHIP, MERCER COUNTY, NJ
THURSDAY, OCTOBER 7, 2010
7:30 P.M. – SENIOR CENTER
MINUTES

Present: Chairman Kreig, Mr. Shennard, Mr. Patel (arrived at 7:32 p.m.), Mr. Siekerka, Ms. Rogers, Mr. Boyarsky, Mr. Gibeault

Absent: Mr. Kirkpatrick

Also Present: Mr. Herbert, Esq., Board Attorney; Ms. Post, Board Secretary

ROLL CALL

The meeting was called to order by Chairman Kreig. Roll call for the above members was called.

SUNSHINE STATEMENT

Chairman Kreig read the following sunshine statement: "Adequate notice of this meeting has been provided as required under Chapter 231 P.L. 1975 specifying the time and place with such notice as being sent to the *Times of Trenton*, *Trentonian* and the *Messenger Press* and posted on the Municipal Building Public Notice Meeting Bulletin Board."

FLAG SALUTE

The Board members present led the public in the salute to the flag.

CORRESPONDENCE

Chairman Kreig noted that there was no correspondence.

PUBLIC COMMENT

Chairman Kreig announced that the public comment session is open to any member of the public who wishes to talk to the Board about any matter of concern. He invited the public to come forward at this time and make whatever statement that they wish to make.

A member of the public asked if there would also be a public session at the end of this meeting. Chairman Kreig said that typically there are two opportunities for the public. One, the public gets an opportunity at this point to talk about anything other than any application that is before the Board this evening. Later on, the public is allowed to speak on the actual application, but there are no applications on the agenda this evening. If you wish to speak to the Board, now would be the appropriate time.

Mike Morken, 55 Sharon Road, Apartment E22 (spoke earlier without identifying himself), said that he saw signage on the agenda and was curious about it.

Chairman Kreig asked Mr. Morken if he was referring to the Sharbell matter, which was heard earlier in the year by the Zoning Board. This evening is only for the Board to consider if it is appropriate to approve the resolution memorializing the decision, which the Board made when that application was before them. There would be no discussion about the application itself. It would be whether or not the resolution, as prepared by our Counsel, Mr. Herbert, accurately reflects the decisions made by the Board at that time.

Mr. Morken understood that basically it is just approvals for tonight.

Chairman Kreig said that is correct and for any other business that may come before the Board, and then the Board would adjourn. There are no applicants present this evening, so there will be no discussion of any applications.

Mr. Morken said he does not know if the Board is aware of it, but the Township was looking at the fence and signage ordinances.

Chairman Kreig responded that he is aware of possible changes to the ordinance. The Town Council is considering possible changes to our ordinance, but those changes will be before the Town Council not the Zoning Board. The Board does not pass or approve those changes. Town Council makes the decision whether something is necessary or desirable to change. The Zoning Board does not have input into that.

Mr. Morken is curious about those silly signs that people plant around the town and whether there is anything that monitors it.

Chairman Kreig said that at least to his knowledge those signs typically tend to fall into two categories. One, around election time various political parties and candidates place signage on people's front lawns or wherever. There is also temporary signage advertising various events. For example, the local girl scouts are holding a car wash to raise money. He is not familiar with the municipal ordinances that govern that type of signage. That question should be addressed to the town itself not the Zoning Board.

Mr. Morken thanked Chairman Krieg for his response.

George Vardakis, 114 Tindall Road, thanked the Board members who were here for the three day ordeal with the Seven Plus One application. The Board sat and listened and clearly articulated at the end their feelings and belief that this was going to cause an issue in the neighborhood. Unfortunately, Mr. Vardakis believes that the Board's Counsel misled them slightly as far as their obligation or right not to vote against it. Mr. Vardakis was just curious why Mr. Herbert would not allow the Board to listen to the Technical Review Committee (TRC) Meeting that happened when Jack West was our Township Engineer. He requested copies (referring to draft review memos) of it and was told that Mr. Herbert would not release those documents to him. Clearly in those documents, Jack West was adamant that he could not support the placement of that entrance where it would be located and did not believe the Board would support it. That is one of his questions. The other question is the way Mr. Herbert came across at the TRC. He finds it hard to believe that if the Board heard that audio or read that transcript that they would feel comfortable with Mr. Herbert representing them.

Mr. Herbert asked Mr. Vardakis who told him that Mr. Herbert would not allow TRC minutes or tape to be released. Mr. Vardakis said that Ms. Post told him he could not get those documents. He was told by the Mayor and Mr. McGough that the documents were in draft form. When he questioned about the documents being in draft form and the applicant had received a copy of those documents, he asked why the draft documents could not be released. He thinks he received the run around.

Mr. Herbert asked Mr. Vardakis if he eventually received those documents. Mr. Vardakis said he did not. Mr. Vardakis stated that he received the audio (TRC Meeting Minutes), but was told the Board was not allowed to listen to it. Mr. Herbert asked who told Mr. Vardakis that the Board was not allowed to listen to it. Mr. Vardakis said one of the Board members. Mr. Herbert stated that TRC Meetings are open public meetings. Mr. Vardakis said that is correct, which is why he could not understand why the Board could not listen to it. Mr. Herbert stated that Mr. Vardakis was allowed to attend the TRC. He recollected that Mr. Vardakis attended at least one if not two TRC Meetings. Mr. Herbert stated that he never said to anyone not to release the audio or the minutes. As far as the statements that were made, Mr. Herbert made a statement to Mr. Vardakis about the pursuit of some of the litigation at one of the hearings. Mr.

Herbert thinks that he has talked to some of the Board members about that concern. Mr. Herbert said that it was sort of an off the cuff comment at the time, but it did not have anything to do with the bias of the application itself. It was a comment about how the litigation was being conducted not the application. This was after Mr. Vardakis's litigation had already been decided. Again, Mr. Herbert understands that Mr. Vardakis has made some comments about him to the Township Council. Mr. Herbert said that Mr. Vardakis has made him out to be the bad guy in the community. Mr. Vardakis said they were dealing with two separate issues.

Chairman Kreig interjected to say this is not the appropriate forum or time to have this discussion. Whatever Mr. Vardakis feels was done incorrectly or inappropriately, the law gives him other recourses. One of which is the Superior Court of New Jersey and the Town Council as well. Tonight, this Board can not and will not do anything to change what has occurred in the past via the Board's action in respect to Seven Plus One. Again, if Mr. Vardakis feels in some way that he was treated wrongly, he would ask that Mr. Vardakis take that up with the proper venue and not the Board this evening.

Mr. Vardakis said that his main reason for coming was to let the members of the Board know that any action that may occur is not based on individual Board members. He urged that for other issues the Board ask for the audio of the TRC meeting and make your decision as to whether it was the right decision that you made.

Bogdan Chivulescu, 119 Rose Court, stated that the main reason he wanted to speak to the Board tonight is the door that is going to be potentially open will set a precedent to allow commercial developers with zoning for one building on their property to use this as a precedent to further develop their property for more than one, two or three buildings where it is clearly zoned for one. The Township is setting themselves up by creating this precedent, which he is really concerned about in trying to build smart. He is afraid of the consequences. This will create a double standard. When he was looking nine years ago to buy a property in Robbinsville, he was looking at 29 Meadowbrook Road. He came to the Township and said the property is not really something he likes as far as the building itself, but he loved the location. He asked if it would be possible for him to build another building in front of it a little further off center from the main road and live on the first property temporarily for three months or however long it takes to build it. He was told that it was zoned for one building. If this individual is allowed to build two buildings on one lot when it is clearly zoned for one building, then why should a commercial be allowed to build two and a residential property owner can not.

Jim Marshall, 308 Meadowbrook Road, is concerned with what he has read in the newspaper in the last couple weeks especially with the Gordon/Simpson Tract. He does not know how they are going to handle that intersection. The other thing he is concerned with is that Mr. Boyne, who is on the Planning Board, said this week in the paper about someone having a concern at the last meeting about Town Center South. He said that Mr. Boyne stated that it was going to be in conformance with Town Center North. Mr. Marshall said that the road where they live is a recreational corridor. We have three baseball fields, three football fields. At any given time in the summer, there are hundreds of kids on that road. He guesses this is a question for the Planning Board for doing this in the first place as to why they let this through. It is going to destroy our neighborhood, but they don't want to mess with Town Center.

Chairman Kreig asked Mr. Marshall to clarify if he is speaking of Sharbell's application with respect to the Gordon/Simpson Tract across from Meadowbrook Road or Town Center South.

Mr. Marshall said he is talking about both adding traffic. Instead of having the 55+ over community out there, you have multiple families with kids, who are going to be seventeen and driving. There will be four cars in every driveway. How do they deal with this? They are not even going to be able to get out of their own road.

Dave Wilson, 314 Meadowbrook Road, said that he was disappointed with the Board's decision. The applicant cross examined the traffic study guy about the intersection. The guy said maybe in the past, if you have an offset like that. He does not think he should have been dealing in the past on what was not right. When you are planning for the future, you want it to be right. If you are going to build this, it should be built with a safe intersection. The Board approved the intersection, which is not going to be safe, on a busy road with trucks going in and out. Parents bring their kids in and out on that road. He is very disappointed with all of the Board. Mr. Wilson thanked the Board for their time.

Chairman Kreig thanked Mr. Wilson for his comments.

Deepak Appaya, 117 Rose Court, wanted to talk about the whole situation here. They come here very concerned about their neighborhood. They were at the meeting where the applicant was talking about putting Seven Plus One in here. They had 200 people here. Everybody was saying "no", they don't want it. One person was saying he wants it. He was leading the Board to say that you got to do it that way. What is going on here? Who are you guys working for, the applicant or us. He does not understand that. You guys are impartial. It is mind boggling to him that they are living here in America. They came here from India because in India, if he gave them money, he could get things done. They have the applicant, who had how many years of making money on that property. The applicant knew that you could only put one building on there. We, the people, are saying no. Our home values and lifestyles are going to go down. All those people who use Meadowbrook Park will be hurt, but nobody cares.

Seeing no one further from the public coming forward, Chairman Kreig announced that the public comment portion of the meeting was closed.

BOARD COMMENTS

Mr. Herbert updated the Board on Mercer Mobile Homes. There is a memo, which he will be sending to the Board. The Township is in settlement negotiations and there is a third party that is coming in to the picture who is wishing to purchase the property. There may be some rezoning issues and some other issues, but the proposal would satisfy our COAH obligations. The settlement negotiations are becoming very fruitful and Mr. Kauffman has been very reasonable. The third party is named Allies, a non-profit organization, who work with disabled people in Robbinsville. Allies is a mobile home operator. Most people in that neighborhood would qualify for a created affordable housing mixed development. It would remain as a trailer park.

Chairman Kreig said that one of the major issues that predated that litigation was the condition of the sewer system. Mr. Herbert said that part of any settlement is that the sewer system is to be fixed and rebuilt. Chairman Kreig asked at whose expense. Mr. Herbert said that it is a negotiation. The commercial property in the front was part of the subdivision. The used car lot, which was part of that application, is gone. Mr. Kaufmann has asked that the front be rezoned as Highway Commercial Zone instead of Town Center to make the land more saleable for a higher level of use instead of a used car lot. Chairman Kreig noted that it is a relatively small piece of property so it would not be suitable for a big box type of operation. Mr. Herbert said that they are looking at smaller uses like a restaurant or office building. Chairman Kreig thanked Mr. Herbert for his report. Mr. Herbert said that things are moving in a positive direction. The matter will have to come back before the Board because of the conditions of approval for the subdivision, which would have to be amended to allow for the sale to go through.

BUSINESS TO DISCUSS

Resolutions

Resolution ZB2010-09 – Seven Plus One, LLC – Approval of a Preliminary/Final Site Plan with Design Waivers. Chairman Kreig asked if there were any comments or concerns from any member of the

Board concerning the proposed language of the resolution. Mr. Herbert said the draft resolution has gone back and forth many times and there have been many changes. There has been a lot of input from all the Board members to make sure that the conditions of approval are correct. There was input from the applicant, but a lot of his changes were batted down. Page 19 shows all the conditions. The applicant is required to apply to NJDOT for the intersection of Route 130 and Meadowbrook Road to alleviate any congestion there. The tractor trailer traffic has to go out to Route 130. The sight triangle must be satisfied. The occupancy rate is 25% office and 75% warehouse. The lighting will be on timers. The hours of operation are restricted to 7:00 a.m. to 9:00 p.m. Signs will be posted for "no idling" and "no parking" as appropriate.

Board members present eligible to vote are: Mr. Shennard, Mr. Patel, Ms. Rogers and Mr. Siekerka. A motion was made by Ms. Rogers and seconded by Mr. Shennard to adopt the resolution.

ROLL CALL:

AYES: Mr. Shennard, Mr. Patel, Ms. Rogers, Mr. Siekerka

NAYS: None

ABSTAINS: None

There being four (4) AYE votes, the resolution was adopted.

ZB2010-14 – Robert Reid – Approval of a Design Waiver & Bulk Variance. Mr. Herbert recalled that the applicant had applied for approval for the construction of a four foot high fence in the front yard of his property and to allow the existing shed to be four feet from the side yard property line. Board members present eligible to vote are: Mr. Shennard, Mr. Patel, Mr. Boyarsky and Mr. Siekerka. A motion was made by Mr. Boyarsky and seconded by Mr. Shennard to adopt the resolution.

ROLL CALL:

AYES: Mr. Shennard, Mr. Patel, Mr. Boyarsky, Mr. Siekerka

NAYS: None

ABSTAINS: None

There being four (4) AYE votes, the resolution was adopted.

ZB2010-15 – Sharbell Building Company, LLC – Approval of Variances for Signage. Mr. Herbert said this application was for the approval of a directional sign and informational sign in front of their building on 1 Washington Blvd. and the removal of a real estate sign. There was testimony that patients were having difficulty finding doctors' offices on Union Street and the signage was to help them find the offices. Mr. Boyarsky had a question. There was a condition that the Township Engineer would approve the final plans and materials. Mr. Herbert said that would be for the replacement of the sign in the back to make sure that they used vinyl posts. Board members present eligible to vote are: Mr. Shennard, Mr. Patel, Mr. Boyarsky and Mr. Siekerka. A motion was made by Mr. Siekerka and seconded by Mr. Patel to adopt the resolution.

ROLL CALL:

AYES: Mr. Shennard, Mr. Patel, Mr. Boyarsky, Mr. Siekerka

NAYS: None

ABSTAINS: None

There being four (4) AYE votes, the resolution was adopted.

ZB2010-16 – Paul Hacker – Approval of Bulk Variances. Mr. Herbert said this application was made by Mr. Hacker for his deceased parent's home. He was looking to upgrade it to make it more livable for him and his wife as they got older. The proposed addition to their house intruded into the setback by two feet on one side and they also had a detached garage with a covered patio in the rear.

Board members present eligible to vote are: Mr. Shennard, Mr. Patel, Mr. Boyarsky and Mr. Siekerka. A motion was made by Mr. Shennard and seconded by Mr. Boyarsky to adopt the resolution.

ROLL CALL:

AYES: Mr. Shennard, Mr. Patel, Mr. Boyarsky, Mr. Siekerka

NAYS: None

ABSTAINS: None

There being four (4) AYE votes, the resolution was adopted.

Mr. Herbert asked Ms. Post if there would be anything on the agenda next month. Ms. Post said not at this time. If an application does come in, he would like to send in another attorney from his office to represent the Board. The Board did not have a problem with Mr. Herbert having another attorney substitute for him.

Mr. Herbert said to the Board that if anyone wanted to go over the various accusations made tonight, he would be glad to go over them. He believed the TRC Meeting was more than two years ago. Ms. Rogers had a question about that. Can we allow them to stand here and make accusations like that. Ms. Rogers did not think Mr. Herbert was biased in any way by talking to the Board and explaining what their position was. Mr. Herbert never tried to lead us. The public does not know land use law. We can try to educate them as much as we can, but it is still a hard concept because you are not here night after night doing this to understand how the process works. He has tried to talk to them outside the meeting about how the process works.

Ms. Post stated for the record that she never denied the TRC records. She did not have the minutes done. If they wanted the TRC minutes, she could provide them with an audio of the meeting, which she did do for one meeting, when requested.

Chairman Kreig said that at public session, the public can say whatever they want.

Mr. Siekerka asked Ms. Post if he was signed up for the League this year. Ms. Post said he, Ms. Rogers, Mr. Patel and Mr. Boyarsky are signed up. Mr. Herbert said he would let them know about what classes they should attend at the league. Mr. Siekerka appreciates Mr. Herbert's recommendations.

Chairman Kreig said that if the intersection of Route 130 and Meadowbrook Road is not appropriate for the traffic volume, hopefully, at some point NJDOT will come back and reconfigure it to make it safer.

Mr. Herbert said that he represents East Windsor, Cranbury and Hamilton, who are very involved with Route 130 applications to NJDOT. They do not want another Route 1. They are very tough on how these applications proceed. If Seven Plus One thinks it was tough here, they are going to have a whole another ball game at NJDOT. Hopefully, the right thing will be done.

Chairman Kreig asked how that it will overlay with Sharbell's plan for Gordon-Simpson. Mr. Herbert said that when the application goes in, the applicant has to state all pending applications to their knowledge. These conversion applications are probably one of the worst pieces of legislation that he has seen in a long time. The towns are specifically zoned for aged restricted residential developments. In East Windsor, they changed from industrial to allow for this development to occur, but now there is going to be residential in an industrial zone. It makes no sense. The builders are all crying. A lot of them have gone bankrupt. In Marlboro, they are going through litigation. Chairman Kreig said the Sharbell application in its present form will be taken into consideration by NJDOT when it looks at Seven Plus One so they are not tearing up that intersection twice. Mr. Herbert said NJDOT takes it all into account.

ADJOURNMENT

With no other business to discuss, a motion was made by Mr. Siekerka and seconded by Mr. Shennard to adjourn the meeting. All in favor. Meeting adjourned at 8:15 p.m.

Respectfully submitted,

Elide M. Post

Elide M. Post
Zoning Board Secretary

ADOPTED: SEPTEMBER 14, 2011