

# **MINUTES**

## **BOARD OF ADJUSTMENT**

### **TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY**

Regular Meeting

April 23, 2020

The Regular Meeting of the Board of Adjustment was called to order at 7:41 PM via Zoom virtual meeting service.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted on the Township website. The Agenda for the meeting, as well as instructions for public participation in the meeting, have also been posted on the Township website and sent to the newspaper of record. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

#### **Roll Call:**

Members present were Mr. Siburn, Mr. Boyer, Mr. Delia, Mr. Coviello, Mr. Ringwood and Mr. Pereda. Mr. Steve Warner, Board Attorney, Daniel Lee, Board Engineer, and Keenan Hughes, Township Planner, were also present.

#### **Adoption of Minutes:**

February 27, 2020

A motion was made by Mr. Coviello, seconded by Mr. Ringwood, and carried by unanimous voice vote to adopt the minutes of the February 27, 2020 Regular Meeting as presented.

#### **Application for Review:**

#### **CARRIED FROM FEBRUARY 27, 2020 with no further Notice Required:**

#### **App.#22-19 Angad Fuel, LLC, 713 Plainfield Ave., Bl. 3102, L. 33 (R-20 Zone)**

Proposed renovation and expansion of an existing gasoline service station located in a residential zone. The gas station is considered a prior nonconforming use. The relief requested includes site plan approval, expansion of preexisting nonconforming use pursuant to section 70(d)(2) and amendment to conditions of prior approvals.

Mr. Warner advised that in view of the change of location the applicant was required to re-notice. Mr. Warner confirmed that the notice was sufficient and that the Board had jurisdiction to hear this application.

August Santore, attorney for the applicant, provided an overview of the application and stated that the applicant has completed its testimony. Mr. Santore reviewed the letter that was received from the Department of Economic Development of Union County. The applicant will comply with the points raised in the letter with respect to sidewalks and curbing. With respect to the right of way encroachment of the sign, the County stated that if the Board is inclined to approve the sign location then the County will grant a waiver for that item. If the applicant obtains the Board's approval they will proceed to obtain the waiver from the County.

Mr. Warner noted that the applicant will stipulate that if there is an approval it would be subject to all the items contained in the County letter and if the County does not waive the right of way encroachment the applicant cannot proceed without coming back to the Board with a revised application. Mr. Santore acknowledged the stipulation.

### **Open to Public**

The hearing was opened to the public for comments or questions with regard to the application. Mr. Warner explained the process to be followed for public comments and advised that each member of the public would be limited to ten minutes in which to make their comments.

Karen Damato, 704 Plainfield Avenue, was sworn and asked questions with regard to the new information presented by Mr. Santore with respect to Union County and how the applicant will comply. She asked if clearance issues were looked at with respect to landscaping trucks.

Tyler Vanderwalk, engineer, previously sworn, explained how the applicant will comply with the Union County requirements. He said he does not anticipate any impact on the clearance around the pumps or the sidewalks and landscaping.

Ms. Damato stated that she is in favor of the new higher quality tanks in view of safety and contamination issues. She expressed approval of the improvements to parking, removal of the window signs, discontinuance of other business operations on the property and the focus on pedestrian safety. She expressed concern with regard to the increase of signage, the increased hours of operation, the increase in tank capacity, the increase in the number of pumps and the addition of the kiosk.

She stated that she is opposed to the LED price signs which are incongruous in a residential neighborhood. She would also like the Sunoco sign to conform to the signage requirements of the downtown district and she is concerned about the brightly lit price signage that she will have to look at from across the street. With respect to the hours of operation, Ms. Damato stated that the proposed hours are not in keeping with the residential character of the neighborhood and she believes there is no justification for expansion of the hours and that such expansion will negatively impact those who live close to the station. She asked that the Board deny the request for expansion of the hours.

Sunitha Kandula, 710 Plainfield Avenue, was sworn and stated that she supports the applicant's improvement of the business, clean-up of the property and improvement in safety of the tanks. She is concerned about the variances being requested and she believes that just because something has been there for 60 years it does not mean it is right. Ms. Kandula also expressed concern about the expanded hours and the impact on the school bus and the safety of the children.

John Ninivaggi, 4 Janet Lane, was sworn and asked questions regarding the ownership of the property and the business. He stated the belief that under the 2011 Resolution regarding the property a change in ownership would mean that the property could not be used as a gas station. Mr. Ninivaggi also asked about the equipment in the rear of the property that creates a loud noise and if that machinery would continue to be used.

Mr. Warner advised that the 2011 Resolution does not prohibit the future use of the property as a gas station. Mr. Santore advised that the machinery referred to by Mr. Ninivaggi relates to the remediation of the property being conducted by Getty and it is not under the control of the applicant. He will reach out to Getty and convey Mr. Ninivaggi's concerns.

Mr. Ninivaggi suggested that the applicant put in some shrubbery.

Kathleen Williams, 695 Plainfield Avenue, was sworn, and stated that she lives directly across the street from the station. She expressed concern regarding the expanded hours because of the school bus and the negative effect on people living on Plainfield Avenue going out to work in the morning. She noted that there are a frequent number of near misses now and expansion of the hours will make it worse. As a resident she would prefer that the station close at 7 pm in order to retain the residential atmosphere of the neighborhood.

In response to questions regarding near misses, Ms. Williams stated that she has heard and seen many near misses. She believes the expansion of the hours increases the danger at the intersection and asked that the Board consider the impact on the community.

John Ninivaggi expressed the opinion that there is no reason for the expanded hours and it is the duty of the Board to keep the neighborhood safe.

Greg Fevola, 723 Plainfield Avenue, was sworn and stated that there are already two gas stations in town that are open until 9 pm and there is no need for another one. He lives next to the gas station and having the station open for the proposed extended hours would be a problem for him.

Jagannadha Kandula, 710 Plainfield Avenue, was sworn and expressed concern about the expansion of the hours of operation, particularly the safety of children, the impact of the later hours on the neighborhood and the financial impact on their properties. He stated that he would strongly object to the expanded hours and he thinks there is a need to reassess the traffic pattern and signage. Also, the gas station should not be allowed to sell items other than gas station-related items.

The public hearing was closed on the motion of Mr. Delia, seconded by Mr. Boyer and carried 6-0.

Mr. Santore summarized the application and the testimony provided. He stated that the proposed hours of operation comply with the municipal ordinance and the absence of mechanical use is justification for the expanded hours. Mr. Santore reviewed the variances being requested and the proposed setbacks. The applicant is requesting that the Board approve the sign in its present location. He requested that the resolution of approval provide that the applicant will not have to return to the Board in the event the brand changes.

Mr. Warner advised that the determination as to a brand change should be left with the zoning officer and, in his opinion, it would not be appropriate for the Board to make that determination.

Keenan Hughes, Township Planner, noted that if the existing pylon sign is not approved by the County the applicant will have to come back to the Board.

In response to a question regarding the fence around the property, Mr. Santore stated that the wood fence is not on the applicant's property. The chain link fence does belong to the applicant and it will be repaired. The applicant will also cooperate with the adjoining property owner to facilitate repairs to the wood fence.

Daniel Lee, Township Engineer, stated that their comments have been addressed.

Board Discussion

Discussion took place regarding five items that are part of the application. With respect to the fuel tanks, the kiosk and the increase in the number of fuel dispensers, the consensus of the Board was in favor of approval.

With respect to the signage, the consensus of the Board was in favor of approving the signage but it was noted that a reduction in the size of the lettering for the pricing would be preferred and a question was raised about how late the signage would be lit. Mr. Santore stated that the applicant would agree to reducing the lettering from 12” to 10” and to turning off the signs 30 minutes after closing.

With respect to hours of operation, concern was expressed about the impact on the neighbors of the extended hours and discussion took place regarding a compromise. The applicant is seeking hours of 7 a.m. to 9 p.m. Following discussion, it was agreed that the hours permitted would be 7 a.m. to 7:30 p.m.

In response to a question regarding painting of the building, Mr. Santore stated that the applicant would agree to match the standards for the downtown district subject to review by the Township Planner.

Mr. Warner reviewed the conditions of approval.

A motion was made by Mr. Coviello, seconded by Mr. Boyer, with respect to App. #22-19 Angad Fuel, LLC, 713 Plainfield Ave., Bl. 3102, L. 33 (R-20 Zone) to approve the application with requested variances, subject to the conditions discussed and subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The roll call vote was 6-0 with Mr. Siburn, Mr. Boyer, Mr. Delia, Mr. Coviello, Mr. Ringwood and Mr. Pereda voting in favor and none opposed.

**Adjournment:**

A motion was made by Mr. Delia, seconded by Mr. Coviello, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:22 PM.

Regina Giardina, Secretary Pro Tem