

MINUTES OF THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF PENNSAUKEN

The meeting of the Zoning Board of Adjustment of the Township of Pennsauken, County of Camden, State of New Jersey was held on the above date at the Municipal Building, 5605 N. Crescent Boulevard, Pennsauken, New Jersey.

Chairwoman Shirley Butler called the meeting to order at 7:00pm. Chairwoman Butler announced that the meeting was being held in compliance with the New Jersey Open Public Meetings Act and had been duly advertised. The Chairwoman led the salute to the flag.

Roll call showed the following members to be present: Dianne Piccari, Paul Hoyle, Ozzie Alves, Vice Chairwoman Hanna and Chairwoman Shirley Butler. Members Lysa Longo, Duke Martz and Luis Morales were not present. Also present were: Stephen Boraske, Solicitor, Doug White, Consulting Engineer and Gene Padalino, Planning and Zoning Coordinator and Acting Secretary.

Mr. Padalino announced that Stix Cigar Lounge was off the agenda and was not sure if the application would be coming back before the Board. The William Deputy application would be continued until July 21, 2021 with no further noticing required and also that the M&G Detailing application would be continued until August 4 as there was an issue with advertising.

The Zoning Board agreed to both continuances.

Hearings

**Adalgisa Ogando** is seeking 5 feet of relief from the house setback requirement of 15 feet for a 9' x 15' aboveground pool 4' in depth and any other variances and waivers that may be required by the Pennsauken Zoning Board. Premises located at 6528 Walnut Avenue Block# 3104 Lot# 11 on the Tax Map of the Township of Pennsauken, Zoning District R-3.

Ms. Adalgisa Ogando (6528 Walnut Ave. Pennsauken, NJ 08109 and Ms. Gisely Castillo (226 New Jersey Rd, Brooklawn, NJ) were sworn in and prepared to testify.

Ms. Castillo stated that Ms. Ogando purchased the home at 6528 Walnut Avenue with the pool. The pool did not have a permit. They received a temporary CO with the agreement that they would come to the Zoning Board to seek a variance for the pool.

There is currently a fence around the property and they have hired a company to help with the pool and they will do everything that needs to be done to comply. They currently have a 6' fence around the property.

Ms. Piccari stated that she had visited the property and spoke with the applicant. They have a fence around the property and they will have electrical installed by a state licensed electrician.

There were no other questions from the Board.

Mr. Boraske asked if the pool caused any danger to the house.

Applicants answered no.

Chairwoman Butler closed the questioning from the Board and opened the meeting to questions from the public. There was no one from the public who wished to comment and Chairwoman Butler closed the public portion.

Zoning Board attorney Boraske did fact finding. He stated that this was an application for a bulk variance and sought 5 feet of relief from the 15' setback required from the home for a pool. The bulk variance is a C-1 substantial benefit variance or C-2 hardship variance. He stated that the Board must look the matter from a substantial benefit and also the negative criteria. An applicant cannot create their own hardship. The Zoning Officer had stated that when the applicant moved in the pool was already there.

Vice Chairwoman Hannah made a motion to accept fact finding and this was seconded by Ms. Piccari.

Mr. Hoyle made a motion to grant the relief sought, as the pool was already there and is in a safe place. He also stated that it would be a hardship to take the pool down. The motion was seconded by Vice

Chairwoman Hannah. She stated that she supported the application for the same reasons as Mr. Hoyle and did not see it as a detriment.

All members present voted Aye on Roll call vote. (Alves, Hoyle, Piccari, Hannah, Butler).

**EJ Montgomery Realty, LLC** is seeking an interpretation from the Board that the continued renting of parking spaces to 12-15 trucks for commercial purposes is permitted in the LI-Light Industrial zone where the property is located. In the alternative the Applicant seeks a use variance and site plan waiver if the use is determined not to be permitted. The applicant shall also seek approval of all other variances and approvals that may be required, if it is determined that any additional variances or approvals are required. Premises located at 9215 Collins Ave, also known as Block 2601, Lot 5 on the Tax maps of the Township of Pennsauken in Zoning District LI

Ms. Laura D'Alessandro of Del Duca Lewis was representing the applicant. They are seeking an interpretation from the Board and in the alternative a use variance. Only have 5 voting members for a use and she would like to consult with client as to whether to proceed with the use variance. They can proceed with interpretation as only a majority needed. If need use variance they will ask that the matter be tabled.

Ms. D' Alessandro submitted a copy of an aerial photograph to the Zoning Board. This would be Exhibit A-1.

The location has been a EJ Montgomery Contracting Inc. contracting business since 1996. In May 2019 the applicant purchased the property. He went from being a tenant at the property to the owner of the property. The building at the location is 4,960 square feet building and has office space and the applicant stores vehicles in a two bay garage. He also rents out parking space to 18 to 20 trucks for commercial purposes and has done so since 2019. The previous owner rented out space since 1996. The spaces are rented out in a monthly basis. The owners of the trucks pick them up at between 6:00am and 6:30am and take them out and come back at the end of the day.

They are seeking an interpretation. This is a contracting business in an LI zone and the rental of spaces is permitted in LI since all uses in C-2 are permitted in an LI zone. This is a commercial parking lot. He had applied for a CO and the issue of renting of trucks laid open and was issued a ticket for a zoning violation. They want to correct zoning violation. If board does not agree that it is a permitted use they would seek a use variance to keep use on site.

The following were present to testify and were sworn:

Edward Montgomery, 9215 Collins Ave, Pennsauken, NJ

Creigh Rahenkampf, PO Box 222 Riverton, NJ

Douglas White, T & M Associates

Gene Padalino, Planning & Zoning Coordinator

Mr. Montgomery is president of the company. He became owner of property in May of 2019. Since April 1996 he was a tenant of the prior property owner. The prior property owner had rented out spaces for trucks. There are 6 tenants and about 15 trucks. A tenant may have more than one truck. They are dump trucks and tractor trailers.

The owners of the trucks pick up and return trucks during regular daytime hours. There is a fence around property and it is padlocked. Each driver has a key and it is a month to month rental based on a verbal agreement. The gate is usually locked between 4:00pm and 4:30pm.

There have been no incidents at the property. There are striped parking spaces for the employees. There is no issue with parking spaces for the business. The truck rental parking is not in conflict with the owners use. There is also no problem with turning radius for the trucks.

There is asphalt where the trucks are parked. The entrance has been paved in the last year and pot holes have been repaired.

Mr. Rahenkampf is a Planner for 25 years with a valid NJ licence. He has attended over 100 hearings and trials is certified as an expert by the Board.

Mr. Rahrenkampf said that he reviewed the site and looked over the Township code and the July 7 review letter from T & M. The renting of third party trucks is permissible and contracting a well. He said that both uses are permitted- 141-82(a) (10) C-2 business and professional office and (17) wholesale criteria. Also, 141-82(a)(22)-C-2 commercial-parking lots is specified. There are two permitted uses. There is no prohibition of two uses on same lot. This use has been on the site for sometime. This is not a zoning violation. There is no change of use, rather it is a change of ownership.

Chairwoman Butler asked if Mr. Montgomery would be acquiring more trucks. Mr. Montgomery said no, just what he had.

Mr. Montgomery said that he has been there since 1996. He has 8 employees. The employees drive to the job sites. There are 3 on site employees.

Mr. Hoyle looked at property but this has been there for a time.

Mr. White asked about 2 trailers and type of contracting work.

It was said that there are two trailers onsite, one is for EJ Montgomery and one is for a driver.

They do excavation work, bring heavy machinery to locations, they are parked in stone area.

Mr. White said that there is some outside storage of materials.

Mr. White's letter agrees with Mr. Rahrenkampf's interpretation. The Board should look at item 3 of his July 7 letter which states that change of use variance is required.

Mr. Rahrenkampf stated that this is not a change of use but a change of ownership. Mr. White said he is not sure that the distinction is appropriate.

Mr. White said that Item 4 of his letter talked about site plan as there is maintenance at the site that needs to be addressed. The sidewalk and curb are not in good condition. Some are site condition issues. They did not provide a site plan, just a survey. He also wanted to address the issue the number of trucks. It is assumed that the trucks fit at the location, the Board may wish to limit the number of trucks and if there is an increase in the number of trucks would come back to the board.

The trucks can turn and back in with no problem. The trucks are always in front. The building trucks are in the corner.

Ms. Picarri addressed some property maintenance issues. She said that she had looked at the property Monday and there was a truck in the street that was not the owners and there is overgrown grass at the location.

Board exhibit from Ms. Picarri. (photos)

Vice Chairwoman Hannah said that this has stayed the same from the beginning and he was renting from 1996. There have always been trucks parked there.

Ms. D'Alessandro stated that the building has not changed hands in 20 years. Mr. Montgomery was issued a ticket in April 2021 as a result of the change ownership matter.

Mr. Rahrenkampf stated that it hasn't been established that there is a violation, is it a permitted use, just did not get paperwork for certificate.

Ms. Hannah asked if there was any residential near the location.

The answer was no.

Mr. Montgomery had failed to get a CO for the trucks said Ms. D'Alessandro.

Mr. Hoyle stated that the trucks have been there for 25 years, there have been no complaints and there is no residential nearby. They were renting in 1996 and everything in the area looks the same.

Ms. D'Alessandro said she would be looking for an interpretation and a site plan waiver.

Mr. Boraske stated that they are testifying that the two uses seem to be permitted. The change of use ordinance is from 1986. The Board will voting on an interpretation if the 2 uses are permitted.

Ms. D'Alessandro stated that the change of use ordinance is tricky and has seen anything like it in any other town and may not be permitted under MLUL. She asked the Board Ask to vote on interpretation first.

Mr. Rahrenkamp said that there is no prohibition on two uses.

Ms. Piccari said that it is not being run as a business as there is no contract for the truck parking.

Ms. D' Alessandra said can have an oral agreement and it is paid monthly.

Chairwoman Butler opened the meeting up to the public.

There was no one from the public who wished to comment.

Mr. Boraske stated that the Zoning Board had the power to interpret the zoning ordinance. He said that applicant is looking for an interpretation that the continued renting of parking spaces is a permitted use in the LI zone as any use permitted in C-2 is permitted in LI.

The C-2 zone allows he commercial parking. The primary use is the building/ construction equipment/office space. The second use is the parking spaces. Are both of these uses permitted in the LI zone is the question before the board?

The interpretation is whether the renting of parking spaces of trucks is permitted in the LI zone?

Ms. Piccari made a motion to accept fact finding and this was seconded by Vice Chairwoman Hannah.

Mr. Hoyle made motion that both uses are permitted at the location and take into consideration Mr. White letter and this was seconded by Vice Chairwoman Hannah.

All present Aye in Roll Call vote. (Alves, Hoyle, Piccari, Hannah, Butler).

Ms. D'Alessandro said that they would comply with Mr. White's letter.

Mr. Boraske stated that there is still the unresolved issue of whether can have the two uses together at the same time.

This matter would need to come back to the board. Ms. D'Alessandro asked that the Board members not present listen to the tape of the meeting.

Mr. Rahrenkamp said that this may be a legally non-conforming use.

Mr. Padalino said that the matter can come back before the Board at the July 21 meeting.

Mr. White asked if Ms. D'Alessandro would provide a letter to the Board about the explanation of the interpretation. Ms. D'Alessandro said she would do so.

Mr. Padalino stated that there were no minutes to be approved.

Mr. Padalino read a Thank you card from Chairwoman Butler. Ms. Butler thanked the Board for condolences on the loss of her daughter.

There was no Zoning Coordinators report.

Vice Chairwoman Hannah made a motion to adjourn and this was seconded by Ms. Piccari.

All Aye on Voice Vote.

The Meeting adjourned at 8:41 pm.

  
Respectfully Submitted,

Gene Padalino

Acting Zoning Board Secretary