

ALPINE ZONING BOARD OF ADJUSTMENT

Regular Meeting

Thursday, May 15, 2014 - 7:30 P.M.

(This meeting was taped in its entirety).

CALL TO ORDER/PLEDGE OF ALLEGIANCE/PUBLIC ANNOUNCEMENT

This regular meeting of the Alpine Zoning Board of Adjustment was called to order by Chairman Glazer at 7:30 p.m., Thursday, May 15, 2014 at the Alpine Borough Hall, the Pledge of Allegiance recited and the Public Announcement read according to the requirements of N.J.S.A. 10:4-6 et seq.:

In accordance with the provisions of the Open Public Meetings Law, the notice of this regular meeting held Thursday, May 15, 2014 has met the requirements of the law by being published in The Record as part of the Annual Notice on January 8, 2014, posted on the bulletin board in the lobby of the Borough Hall and a copy filed in the office of the Borough Clerk.

ROLL CALL

Richard Glazer	Present	Bob Burns	Present
Tony Clores	Present	David Kupferschmid	Present
Anne Ronan	Present	Richard Bonhomme	Present
Larry Shadek	Present	Steve Cohen, Alt I	Absent
		Anthony Barbieri, Alt II	Absent*

*Mr. Barbieri attended but left only when it was apparent his services as alternate were not needed this evening.

Staff Present on Dais: Board Attorney Michael Kates,
Borough Engineer Gary Vander Veer, Board Secretary Nancy Wehmann

COMMUNICATIONS - none

CONTINUED HEARINGS

Mewani Block 49.02 Lot 24 – 30 Haring Lane (continued from January 16, 2014)

Letter received from Applicant's attorney dated May 15, 2014 requesting this matter be continued to Thursday, June 19, 2014. The public was so advised. The reason given was that two of their experts could not attend. Attorney Kates noted this matter has been carried since January. Although not an entitlement, the Board has made an effort to provide Mr. Watkins with a full complement and this is the second consecutive meeting where members of the Planning Board made themselves available to sit on this matter. It was the Board's consensus that Mr. Kates advise Applicant's Counsel that if they are not prepared to proceed in June the Board will move to Dismiss With Prejudice meaning they would have to refile and start over.

NEW BUSINESS

Alpine Citgo Block 49 Lot 8 1026 Closter Dock Road (continued from April 17, 2014)

Attorney Jaclyn S. D'Arminio, Esq. of the Law Offices of Elliot W. Urdang, 19 Engle Street, Tenafly, NJ again appears on behalf of and with applicant, Anil Kumar for Alpine Citgo, Inc. and Charles Hoffmann, son of and representative for the property owner. Also appearing for Applicant is Michael Hubschman, PE, PP of Hubschman Engineering, 263A Washington Avenue, Bergenfield, NJ 07621. Applicant appeals the Zoning

Officer's finding that the proposal represents an expansion of an existing non-conforming use; a commercial use in a residential zone more particularly replacement of an underground storage tank.

Also appearing is Alden Blackwell, Alpine Construction Official and Zoning Officer.

Exhibits received subsequent to this meeting:

- A – 15 NJDEP Tank Closure Permit Approval Case ID # C09-6580 approving the removal of the tank under the NJDEP requirements, dated 11/3/2008
- A – 16 Local Tank Removal Permit #09-127, dated 11/5/2008, with related attachments
- A – 17 NJDEP No Further Action Letter and Covenant not to Sue regarding Case ID #C08-6580 requiring no further action or remediation in relation to the removal of the 8,000 gallon underground storage tank, dated 9/30/2009.
- A – 18 Affidavit dated May 5, 2014 from member Steve Cohen listened to tape of April 17, 2014
- A – 19 Affidavit dated May 15, 2014 Tony Clores listened to tape of April 17, 2014
- A – 20 Affidavit dated May 15, 2014 David Kupferschmid listened to tape of April 17, 2014

Attorney D'Arminio recalled questions arose at the last meeting regarding environmental conditions on site. Documents have been provided from NJDEP and Building Department records indicating no further action is required in terms of the tank removal. Mr. Vander Veer confirmed the documents appear to create the history of the removal of the 8,000 gallon tank in 2008 and there are no additional state requirements as pertain to the tank removal. The letter notes monitoring wells were installed for a previous and unrelated matter.

Michael Hubschman, PE, PP, remains under oath provided refresher testimony. This is a 70(a) appeal of Mr. Blackwell's interpretation that the proposal is an expansion of nonconforming use and possible abandonment.

The new exhibits provide the Board with the environmental information requested. An 8,000 gallon underground storage tank on the westerly corner of the property was removed because a crack was detected in the outer (not inner) wall during a routine air test. There was no fuel leak. They propose to install a new 8,000 gallon double-walled two chamber tank with an eight inch thick mat over it. With the two existing 6,000 gallon tanks on site, total volume will be 20,000 gallons, the same as before. The old tank was right on the property line and the new tank would be re-located to comply with the code which requires at least five feet to the property line. This will enable the station to once again provide diesel fuel in addition to regular and super gasoline. The addition of the tank will not intensify the use as a gas station. They are not expanding the building. The diesel pump was never removed and the number of pumps remains the same. They do not anticipate an increase in traffic. Fuel deliveries will remain at 1-2 per week early in the morning. There was no abandonment. Delay in replacement was due to financial considerations. Abandonment Doctrine requires an overt act or failure to act specifically implying abandonment such as removing the building or pumps or a subjective intent to abandon the use. They were mandated to remove the old tank when it cracked but continued to function as a gas station and did not remove the diesel pump. He compared this to a bakery that replaces an oven noting the oven is

not the use but rather the building's function as a bakery would be the use. In this case the tank is not the use. The gas station is the use.

Chairman Glazer and Ms. Ronan questioned whether the availability of diesel fuel would add to traffic even though he understands the use would be similar to six years ago. Mr. Kupferschmid offered that is a moot point if this is not deemed an expansion.

Alden Blackwell remained under oath and stated when the application was submitted for installation of a new tank there was no mention that this was a replacement so he viewed it as an increase in the use of the property as a gas station. They proposed increasing supply the same as if you were to add extra storage in a warehouse. Attorney Kates asked if he would have changed his interpretation had he been supplied with the facts and history presented this evening. Ms. Ronan provided Mr. Blackwell with her copy of exhibits A-15 to A-17 for review after which he responded no because he felt the original tank was abandoned since they removed it 8 years ago and provided no information indicating plans to replace the tank in the future.

The Board noted abandonment is a legal doctrine beyond the Zoning Official's scope and Attorney Kates clarified mere nonuse or discontinuance of use does not constitute abandonment. Rather the determination is very fact sensitive as to the state of mind of the property owner and whether they have done anything inconsistent with the notion that they were downsizing or changing the use. Although the property owner has testified to financial issues they should illicit additional testimony to clarify those issues.

Charles Hoffmann remains under oath and clarified that while his father is the property owner he handles the business aspects. Per the records the tank was removed around November 5, 2008, the date the permit was issued. Since that time the site has been continually used as a gas station. They always intended for the tanks to go back in but it was just a question of finance, logistics and trying to figure out the proper plan. The diesel pump stayed in place so of course it was their intent to put the tank back in and restore it to what it was; that was always the plan. The operation never ceased and they never intended to change the use in any way. They never listed the property with a broker for purposes of sale.

Chairman Glazer opened to the public for questions. There were none. Chairman Glazer opened to the Board for questions.

Richard Bonhomme questioned "new siphon bar" on the plan. Mr. Hoffmann explained this is an instruction to the installer regarding the reconfiguration of the piping system.

Mr. Kupferschmid questioned who provides design approval and Attorney D'Arminio responded the Building Department based on their engineer's stipulations and compliance with DEP regulations.

Ms. Ronan asked for more information regarding the prior environmental case. Mr. Hoffmann advised it is a work in progress dating back before his time. Tanks were originally installed in the 1930's. Somewhere along the line, in the process of removing and installing tanks, DEP required testing and monitoring wells were installed. Ms.

D'Arminio added that she had spoken with Applied Earth Solutions, the company that handles DEP compliance monitoring for the site for Mr. Hoffmann. They could not be here tonight but explained a test back in 2000 indicated there was some contamination. Monitoring will continue through at least 2017. No active remediation is required as of this point but could be in future. It is not uncommon for these cleanups to go on for extended periods of time. Mr. Kupferschmid asked if DEP has taken any action to limit what they do with the site. Mr. Hoffmann replied no. The firm they hired has an environmental engineer registered with DEP who monitors the wells, keeps them informed of DEP requirements and would devise and implement an action plan if DEP says they need one. This firm will be on site with the installer and DEP will be consulted as needed.

Being no further questions, Attorney Kates provided considerations for the Board. This is an (a) appeal of Mr. Blackwell's determination the proposed represents an expansion of a nonconforming use based upon the addition of an 8,000 gallon tank that had no history, at least, when it was before him for review. The threshold issues are:

1) Whether adding gallonage in and of itself expands a nonconforming use. Mr. Hubschman has viewed expansion in terms of surface structure where this is underground. Mr. Kates noted the Board could find to the contrary where adding gallonage adds potential for greater usage which intensifies use.

2) Whether there was an abandonment of the potential for an 8,000 gallon tank. This analysis involves several specific questions:

1) Was there justification for discontinuance of the 8,000 gallon tank? Applicant indicated they had to remove the tank due to a break in the outer wall.

2) Has the applicant done anything inconsistent with the continued operation of the gasoline service station per se on the understanding that the tank was not quickly replaced over the course of five years? The uncontroverted testimony is that the service station continued operations.

3) During the five year period did the applicant manifest anything contrary to the intention of continuing the use as a gasoline service station? Board members without dissent agreed the answer was no.

Attorney Kates cited a finding by [Superior Court] Judge Harris in a Closter case that even a property owner listing the property for sale doesn't defeat the issue of abandonment because in this day and age a property owner can't be faulted for trying to do something with his property.

Mr. Kupferschmid offered they should first address the issue of abandonment noting the station had 20,000 gallons to begin with. If there is no abandonment then the proposed is not an expansion of that use. The applicant is seeking to return it back to the original condition prior to the equipment being damaged. Board members concurred and no one objected to this interpretation. Chairman Glazer called for a motion.

Resolution: Upon a motion by Mr. Kupferschmid, seconded by Mr. Clores to reverse the determination of the Zoning Official and acknowledge that the applicant is not expanding the pre-existing nonconforming use.

Vote: Ayes: Burns, Kupferschmid, Ronan, Shadok, Bonhomme, Clores, Glazer

MOTION CARRIED

On behalf of the Board Chairman Glazer thanked Mr. Blackwell for his work in this matter noting he did not have all the information to start with and the Board appreciated his appearing tonight and sharing his knowledge.

PROCEDURAL MOTIONS

Resolution: Approval of Minutes: Regular Meeting April 17, 2014 Upon a motion by Mr. Shadek, seconded by Mr. Bonhomme and approved by all at this regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, May 15, 2014 to approve the minutes of the regular meeting held on April 17, 2014.

MOTION CARRIED

Resolution: Return of Escrow On a motion by Mr. Bonhomme, seconded by Mr. Shadek and approved by all at this regular meeting of the Alpine Zoning Board of Adjustment held on Thursday, May 15, 2014 to approve the return of the following Escrow as approved by the Board Attorney and Borough Engineer:

Wellington Trust AC70134	Block 55 Lot 12 954 Closter Dock Road	Application 11/8/2013 Resolution 2/20/2014	\$427.01
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MOTION CARRIED

OTHER BUSINESS

2013 Annual Report The 2013 resolutions adopted by the Board did not evoke any issues worthy of new recommendations. The list of resolutions will be transmitted to the Planning Board and Mayor and Council as the Board's Annual Report as required per N.J. S.A. 40:55D-70.1.

Mayor Tomasko issued an invitation for the Memorial Day parade Monday, May 26, 2014.

ADJOURNMENT at 8:13 p.m. upon motion by Ms. Ronan and seconded by Mr. Shadek and approved by all.

Respectfully submitted,

Nancy Wehmann, Secretary