

**BOROUGH OF UPPER SADDLE RIVER PLANNING BOARD**

**MEETING MINUTES – WEDNESDAY MAY 8, 2013**

Mr. Virgona called the meeting to order at 7:35 p.m. The following statement was read:  
Pursuant to The Open Public Meetings Act P.L. 1975, Chapter 231, proper notice of this meeting has been provided to The Record and The Ridgewood News on December 28, 2012 and April 26, 2013 at which time the date, time, place and purpose of the meeting was set forth and notice was posted on the official bulletin board in the Borough Hall.

**PLEDGE OF ALLEGIANCE**

**Present:** Mr. Virgona, Mr. Polizzi, Mayor Minichetti, Mr. Friedman, Mr. Prober,  
Mr. Stutman, Mr. Wortmann, Mr. Richardi, Ms. Rosenthal

**Absent:** Councilman DeBerardine, Mr. Preusch, Mr. Abramson, Ms. Miller

**Also Present:** Mark Madaio, Esq., Planning Board Attorney  
Joel Minch, P.E., for Christopher Statile, P.E., Planning Board Engineer

**WORK SESSION**

**New Business**

1. Application of **Nemec**  
**577 West Saddle River Road – Block 104 – Lot 9**  
(Re-Approval of 2006 Subdivision)

Bruce Whitaker, Esq. represented the applicant. Mr. Whitaker explained in 2008, Mr. & Ms. Nemec, the current owners, purchased the property from Sol Menche, who had been granted minor subdivision with variances for this property by the Zoning Board of Adjustment in 2006. However, Mr. Menche never perfected the subdivision for which time constraints to file the Deeds and to file the map for purposes of finalizing the subdivision has expired. The Nemecs are therefore, requesting the Board reapprove the subdivision so they may move forward and have the appropriate Deeds filed as required in the Resolution dated August 17, 2006.

Discussion followed regarding the prior history of the application for subdivision that had originally been denied by the Planning Board and subsequently approved by the Zoning Board.

Mr. Whitaker requested a public hearing date for the purposes of re-approving the subdivision. In response to comments from the Board, Mr. Whitaker advised the variances granted run with the land. There have been no changes in the Borough's Ordinances or to the conditions that existed at the time the subdivision was approved.

Mr. Virgona opened the Meeting to Members of the public. No one appeared to provide comment.

Mr. Virgona scheduled the application for a public hearing on Wednesday, June 12, 2013 at 7:30 p.m.

## **Adjournment**

A motion by Mr. Polizzi to adjourn the Work Session seconded by Mr. Wortmann was unanimously approved by all Members present. Meeting adjourned at 7:57 p.m.

## **REGULAR MEETING**

Mr. Virgona called the meeting to order at 8:04 p.m.

**Approval of Minutes:** A motion by Mr. Prober seconded by Ms. Rosenthal to adopt the minutes of the April 25, 2013 meeting was unanimously approved by all Members present.

## **RESOLUTION** (*Memorialization*)

1. Application of **Ramsey Nissan** *Approved*  
**401-415 Route 17 South – Block 1015 – Lots 1 & 2**  
(Amended Site Plan w Variances: Use Variance/*New Truck Dealership/Offices*)

Mr. Madaio confirmed with Mayor Minichetti that the recently amended Zoning Ordinance adopted by the Mayor and Council permits the proposed use in the H-1 R Zone.

Mr. Madaio advised the Board may adopt the Resolution subject to the applicant complying with the comments provided in Mr. Statile's review letter dated May 8, 2013.

A motion by Mr. Richardi seconded by Mr. Friedman to adopt the Resolution as presented subject to the conditions stipulated in Mr. Statile's review letter dated May 8, 2013.

## **Roll Call**

**Ayes:** 8 Mr. Richardi, Mr. Friedman, Mr. Prober, Mr. Wortmann, Mr. Stutman, Ms. Rosenthal, Mr. Polizzi, Mr. Virgona

## **PUBLIC HEARING**

*Ms. Rosenthal recused herself from this application and stepped down from the dais.*

1. Application of **Joseph & Diana Wolf** (*Continuation of April 25, 2013 P. Hearing*)  
**3 Strawberry Lane – Block 810 – Lot 10.0-1**  
(Interpretation; Request to Amend 2009 ZB Resolution of Approval)

Robert Inglima, Esq., representing the applicant, recalled at the April 25, 2013 meeting, the Board voted upon and approved the variances needed to construct the 54 inch all metal fence encircling the property. Mr. Inglima submitted a photograph identified as A-41, depicting the doors on the attached garage and the same doors photo-shopped and super-imposed upon the existing detached garage. Mr. Inglima advised if the request to maintain the detached garage was to be approved; the applicants have stipulated they will match the garage doors of those at the house.

In response to Mr. Madaio, Mr. Inglima confirmed the purpose of matching the doors is to show the garage will be beautified in conformance with the house.

Mr. Inglima briefly summarized issues with the proposed pool and detached garage.

Mr. Inglima stated it is the applicant's position an error was made by the Zoning Officer in his interpretation of the Zoning Ordinance related to the proposed location of the pool on the property deemed to have three (3) front yards. Mr. Inglima stated the pool is to be tucked in behind the house, as the rear yard has to be in the rear of the house. The pool is modestly designed, smaller than many pools in the R-1 Zone, and shaped in order to be used with a motorized cover.

Mr. Madaio confirmed the appeal for the fences is now mute, as the Board previously voted to approve the request for variances associated with the fence.

The existing garage is a small 2 bay free-standing structure located in the north east corner of the lot. The applicants built the new house with an attached 2 bay garage, and have testified they didn't know there was a requirement to remove the free standing garage.

Mr. Inglima reviewed the following appeals and requests for variance relief regarding the detached garage: 1<sup>st</sup>: The applicants maintain the Zoning Board Resolution departed from the action of the Board; 2<sup>nd</sup>: Rescind the condition of the original Resolution and impose a modification of the condition based on the legal argument the Board exceeded its authority in requiring the garage to be removed; 3<sup>rd</sup>: In the alternative, if the Board does not agree, the applicants request variances to maintain the garage in its original location.

Mr. Inglima recalled Mr. Steck's testimony: the garage was constructed pre-dating the Ordinance, is not out of character for the area, is permitted in the R-1 Zone, and does not provide any detriments or adverse conditions by allowing a garage that has been there for more fifty (50) years; and that no one has appeared in opposition of the garage.

Mr. Inglima reiterated the applicants have already beautified the garage and will go further with new doors and consider any conditions as to landscaping. By requiring its removal, the applicant will have to build another structure for storage, serving a need they have today and the future. The garage will look beautiful, and there is no reason to require it to come down. Therefore, the applicant respectfully requests there be an equitable resolve to the application request.

Mr. Virgona opened the Hearing to members of the public. No one appeared to provide testimony.

Mr. Virgona closed the Hearing. Discussion followed.

In response to comments from the Board, Mr. Inglima stated the legal requirement that a house has to have a rear yard, is not addressed in the Ordinance for this hybrid lot, having three (3) front yards. The pool is proposed in the rear of the house, the only viable location.

Board Members agreed to discuss the pool and garage separately.

Members reviewed the variances necessary to permit the location of the pool.

In response to comments from the Board, Mr. Inglima advised that for privacy, the applicants are working on the planting plan, and will provide screening closer to the pool for privacy.

A motion by Mr. Friedman seconded by Mr. Wortmann to grant the variance to permit the pool to be located 83 ft. from the east lot line lot line and 93 ft. from the north lot line ft. conditioned upon submitting a planting plan to provide screening from the street.

**Roll Call**

**Ayes:** 8 Mr. Friedman, Mr. Wortmann, Mayor Minichetti, Mr. Prober, Mr. Stutman, Mr. Richardi, Mr. Polizzi, Mr. Virgona

Mr. Madaio advised the issue of the detached garage will be handled in the order in which the appeals were presented.

*1. Zoning Officer Made an Error*

Mr. Madaio instructed the Board to consider if the Zoning Officer acted appropriately; or overturn the decision of the Zoning Officer regarding the detached garage.

A motion by Mr. Friedman seconded by Mr. Wortmann to affirm the Zoning Officer acted appropriately.

**Roll Call**

**Ayes:** 7 Mr. Friedman, Mr. Wortmann, Mayor Minichetti, Mr. Stutman, Mr. Richardi, Mr. Polizzi, Mr. Virgona

**Abstain:** 1 Mr. Prober

*2. Applicant's Claim Zoning Board Resolution Was Not Correct*

Mr. Madaio advised the Board must make the determination whether it was unlawful for the Board to impose the condition that the garage be removed. Discussion followed regarding further clarification if when the house was being built, was the applicant planning to use it as a garage or as a pool shed.

A motion by Mr. Wortmann seconded by Mr. Richardi to uphold the conditions imposed in the 2009 Zoning Board Resolution.

**Roll Call**

**Ayes:** 7 Mr. Wortmann, Mr. Richardi, Mayor Minichetti, Mr. Friedman, Mr. Stutman, Mr. Polizzi, Mr. Virgona

**Abstain:** 1 Mr. Prober

*3. Grant Variances Necessary to Maintain Existing Free Standing Garage*

A Board Member commented that in 2009 the applicant requested to keep the old house and detached garage until the new house was completed. Circumstances and conditions have since changed; the new house has been completed, the old house was demolished, and the applicant, now building a swimming pool, has requested to maintain the detached garage for use as storage. Discussion followed.

A motion by Mayor Minichetti to permit the existing free standing garage to remain and to be used as a shed and shed only. Discussion ensued regarding suggestions for further embellishment of the structure to look more like that of a house; provide additional landscaping; provide size of the shed doors and also the granting of variances for the structure being almost twice the size of a normal shed.

Mr. Inglima suggested it be called an accessory building, which would lock it down and limit its use.

Mr. Madaio advised if the Board is considering approving the request for the structure to remain, the applicant should provide a drawing depicting the modifications and planting plan and; the Board consider that design for use as an accessory storage structure.

Mr. Inglima advised the applicant will come back with the plan for the garage and extended the time for the Board to vote on this issue.

Mr. Virgona announced the application is carried to the Wednesday, June 12, 2013 meeting at 7:30 p.m.

2. Application of **GaGa Realty**  
**209 Route 17 South – Block 1301 – Lot 12**  
(Preliminary Site Plan w Variances/*Construction New Commercial Building/Retail Use*)

Bruce Whitaker, Esq., representing the applicant, stated since last meeting with the Board at the April 10, 2013 Work Session, at which the application was deemed complete, the applicant has revised the plan and is no longer proposing a restaurant. The plan now before the Board is to demolish all the existing buildings and redevelop the entire site on speculation to provide a 5,010 s.f. one- story retail facility, having as many as three (3) tenants.

Mr. Whitaker advised from a Planning concept the proposed development will eliminate the unsightly location and the following existing non-conformities: front yard setback, side yard buffer, and rear yard setbacks. Because of the site and its irregularity, some variance relief is required and appropriate. Recognizing the environmental constraints, applications with the DEP and the DOT are pending. Changes have been made to the proposed ingress and egress after receiving input from the Fire and Police Departments.

Robert Weissman, P.E. was duly sworn by Mr. Madaio. Mr. Weissman testified to preparing the Existing Condition Plan, identified as *A-1*. Mr. Weissman described the existing conditions as a 25,288 s.f. lot located in the H-1R Zone, containing several detached buildings, shed, (2) large undefined exit ways, retaining walls, macadam paving, and a stream located to the west of the property flowing from north to south.

Mr. Weissman testified to preparing the Site Plan dated April 22, 2013 last revised May 8, 2013 as per Mr. Statile's review letter dated May 3, 2013 - identified as *A-2*. Mr. Weissman reviewed the existing setbacks and proposed location of the 5,010 s.f. all retail building being 26 ft. off the bank of the stream, the firm or ECO Science has been retained to file the application with the DEP. Mr. Weissman reviewed the Emergency Turn Radius Plan, identified as *A-4*. The Site Plan has been revised to provide 25 ft. width entrance and exit aisles. The free-standing sign has been relocated to the south end of the property, having a setback of 25 ft. from the curb line. The applicant is requesting variances for the

parking stall size. (30) 9 ft. x 18 ft. spaces are proposed, (10) spaces are located along the Route 17 frontage, (12) spaces across the front of the building, (7) spaces to the rear side of the lot; and (1) space to the side of the enclosed dumpster pad, which will be designated for employee parking only.

Mr. Weissman reviewed the following requested waivers: Depicting storm water drainage systems within 500 ft.; Minimum separation from building to parking – 5 ft. required 2 ft. proposed; Parking space size: 10 ft. x 20 ft. required – 9 ft. x 18 ft. proposed; End of parking aisle: 10 ft. island required – none proposed; Loading space: 12 ft. x 50 ft. required – none proposed.

In response to comments from the Board, Mr. Weissman testified deliveries would occur in the off hours and the dumpster's proposed location in the rear of the lot will be enclosed as per Mr. Statile's recommendation.

In response to comments from the Board with regard to the proposed ingress and egress, Mr. Weissman testified the proper approach has been taken by accounting for an acceptable acceleration and deceleration when entering and leaving the site. The sign is non-conforming as to location and size area; the proposed location for the sign is set back much further than the existing sign. In order to create as many parking spaces as possible the size of the parking stall has been reduced.

Mr. Weissman reviewed the requested variances. Size yard buffer: 5 ft. required – 0 proposed; Rear yard buffer: 5 ft. required – 0 proposed; Free standing sign: 35 ft. front yard setback required – 19.3 ft. proposed; Free standing sign: 35 ft. side yard setback required – 2 ft. proposed.

Mr. Weissman testified the proposed storm water management system as depicted on A-2 will comply with water quality requirements. The system will provide filtration units within the inlets with a 2 point discharge from the site. (1) to the south of the site, and (1) in the rear of the site addressing the drainage pattern with flow from the northerly to southerly direction.

In response to comments from the Board, Mr. Weissman testified the existing well is to be abandoned; the applicant is proposing to utilize the existing sanitary connections permitted under the Ten Cee's Agreement with the Borough of Ramsey.

In response to Mr. Statile, Mr. Weissman advised the plans will be revised to provide more lighting at the entrance and exit that conform to Borough standards.

John Montoro, A.I.A., Architect, duly sworn by Mr. Madaio, testified after having been to the site, designed the Architectural Plan, for the proposed building to accommodate the irregular shaped lot and parking parameters, identified as A-5. The 5,010 s.f. building will be constructed utilizing interesting materials and open glass to attract people to the small building and provide exposure to Route 17. Three (3) separate entry doors with canopies will be provided in the front for each of the retail spaces as well as (3) separate doors in the rear of each unit for emergency exit. The building's classic design architecture is similar to other buildings located on Route 17 and will attract better retailers.

Mr. Montoro testified to having prepared the Proposed Free Standing Monument Sign Plan, identified as A-6. The pylon sign was designed to be more classic and in keeping with the architecture of the building.

William, B. Glaner, Landscape Architect, duly sworn by Mr. Madaio, testified to having visited the site and preparing the Landscape Plan dated May 7, 2013, identified as A-7. Mr. Glaner reviewed the proposed plans and photos of the existing conditions. Mr. Glaner testified to (9) existing trees at the site. The applicant is proposing (24) trees for planting, and an overall proposal of 100 landscaping plants to accentuate the building.

Mr. Virgona opened the Hearing to members of the Board.

In response to comments from the Board, Mr. Weissman testified the proposed parking spaces are 9 ft. x 18 ft. throughout the site. Mr. Weissman reviewed the parking configuration, advising (2) specific spaces were targeted for employees only: (1) in the rear of the lot and (1) along the side of the enclosed dumpster. The remaining spaces will be scattered; other employees will park in the (5) spaces furthest away from the building. The applicant is seeking variance relief for the number of parking spaces and stall size. The three doors in the rear of the building are for emergency exit. The rear grading will be raised to provide clearance for access.

In response to Mr. Minch, Mr. Weissman testified a basement is not proposed.

Discussion ensued regarding the safety issue of those cars attempting to maneuver out of the dead ended parking aisle by backing up and conflicting with those trying to enter the site from Route 17.

Mr. Whitaker advised the applicant is seeking a waiver from the requirement not to have vehicles parked against the building. The total size of the existing buildings is 3,656 s.f. as per the building department records.

In response to comments pertaining to the building interior, Mr. Whitaker stated the toilet facilities will be located in the rear of each of the (3) units, the concept is to build the building and finish for flexibility.

Mr. Virgona opened the meeting to Members of the public.

Daniel Shamah, 1 Parkway, commented the proposed building while not being used for a restaurant, could be used for the retail sale of food for off premises consumption.

Mr. Whitaker advised he would like to bring back the Engineer and the Planner to provide testimony at the next meeting.

Mr. Virgona announced the application is carried to the Wednesday, June 12, 2013 meeting at 7:30 p.m.

### **Adjournment**

A motion to adjourn by Mr. Friedman seconded by Mr. Polizzi was unanimously approved by all Members present. Meeting adjourned at 10:40 p.m.

Respectfully submitted,

Linda Marmora  
Clerk & Recording Secretary

