

Present: Waterbury, Peterson, Canonico, Stambaugh, Betesh, DeSalvo
Forrester (Attorney)
Cranmer (Planner)
Absent: Walsh, Fisher, Clark

Chairman, Ms. Waterbury, called the meeting to order at, 7:30 p.m.
All saluted the flag, and the presiding officer's statement was read.

Minutes:

A motion was made by Ms. Peterson, seconded by Ms. Canonico to adopt & memorialize the minutes of the May 5, 2010 meeting as submitted.

Planning Board Representative: none

Correspondence: none

Shrewsbury Commons, LLC/Merritt Shrewsbury

Commons LLC

d/b/a Pops Garage

550 Broad St

Bl: 20/21, Lots 1/1.01

Mr. Forrester asked if the board members who were not present listened to the c.d.s
Ms. Stambaugh indicated that she has certified that she did listen

Mr. Rick Brodsky, Esq. represented the applicant.

Mr. Brodsky reviewed for the board the application as follows:

- "D" variance to allow a restaurant use in the Grove West
- the board has heard testimony from the traffic expert, professional planner with regard to the use of the application
- 1,500 sq. ft. restaurant proposed in the existing Grove West building
- no new signage, no site revisions are proposed except for the outdoor seating for 10-12 seats, Mr. James Kennedy will give additional testimony with regard to the outdoor seating
- traffic engineer gave testimony with regard to the parking and that photos were entered to show the availability of parking on site
- the planner gave testimony with regard to the standards of establishing the parameters and justifications for the "D" variance with respect to the 1,500 sq. ft. restaurant this particular location and the suitability of this center for this restaurant in this location.

Mr. Brodsky stated that the trash enclosure issues will be addressed tonight, especially with the new type of enclosure to be proposed which will address the concerns of food stuffs and the gap of pick ups especially for Sunday. He stated that Mr. Kennedy will address any issues.

Mr. Brodsky indicated that Mr. Cole, owner & Mr. Smith, architect are also present in order to answer any concerns.

Mr. James Kennedy, Engineer remained under oath.

Mr. Kennedy stated that there are 3 issues that the board had concerns about with regard to the dumpster area: smells/odors/leakage, and the size of the enclosure

Mr. Kennedy described the proposed dumpster that will be supplied by Marpal, who is the waste management company for the Grove West. Marpal suggested a 6 yard compactor with an ozone generating deodorizer which is built into this enclosed system. He advised that water cannot get into this system which minimizes any leaking.

Mr. Kennedy stated that the enclosure will be made larger to accommodate the compactor and the recycling an 11' x 18' (interior measurement) enclosure is proposed currently the enclosure is not large enough. The new enclosure will have 2 gate openings, 1 for the compactor and 1 for recycling; with new 3 phase power will have to be run to the enclosure. The new enclosure will not affect any parking spaces; they will be using part of the existing loading zone. Mr. Kennedy advised that the garbage pick ups will remain as they are today.

Mr. Forrester marked the following:

A-7: Refuse Enclosure Sketch, 5/17/10, prepared by Kennedy Engineering
Mr. Kennedy described the layout of the enclosure.

Ms. Waterbury asked if the board on board fence encloses the area? Mr. Kennedy said yes, with concrete bollards in the back for protection to the fence with metal posts around the enclosure.

Ms. Canonico if the outside gate, which is open, with an inside gate which will be locked? Mr. Kennedy said that the outside will be opened but the mechanism to the compactor will be key operated, but the door to the compactor can be slid open to allow the trash to be placed inside. To operate the compactor you must have a key to use it. They will meet all of the requirements of the A.N.S.I-Z-245.21 (2008) for The Safety Requirements for Refuse Collection and Compaction Equipment National Requirements for Compactors, and this is a compliant compactor. Mr. Kennedy said that a key would be with the property manager and who ever they decide to give a key to, and it would not be given to someone without training.

Mr. Chris Cole, owner Metrovation, was sworn. He testified that there will be several people with a key, Marpal, the on site manager will have a key, the morning sweeper and the person who will be on site picking up trash, will have keys.

Mr. Forrester asked if the receptacle is designed to compact? Mr. Kennedy said yes, that is why they need electricity out there so it compacts the trash; peak is 76 decibels from 5' away where 72 is normal this is between a vacuum cleaner and dish washer which is without an enclosure or side walls. The fence will deflect some of that noise. Mr. Cole testified that the compacting will not be picked up until 7:00 am - 8:00 am, along with the trash pick up and they will always be responsive to the neighbors if they complain.

Ms. Stambaugh asked how will the doors be kept closed? Mr. Kennedy said they have self closing hinge mechanisms, there will be 4 doors not the usual 2 big doors, each will be 4' 6" door. He explained that McDonalds in Tinton Falls has the same system. Ms. Stambaugh asked who will be cleaning this area now that there is food involved? He explained that if enclosure is rented it will include maintenance it will be cleaned by Eagle Equipment Corp. It has not been determined if it will be rented or if they will buy the enclosure.

A motion was made by Ms. Canonico, seconded by Mr. Betesh to open the meeting to the public. All approved.

There will no comments/questions (no public)

A motion was made by Ms. Canonico, seconded by Ms. Peterson to close the meeting to the public. All approved.

Mr. Terence Smith, Architect, remained under oath.

Ms. Waterbury asked Mr. Smith to describe the proposed awning sign. He stated that it will be a piece of recycled metal that they will be stamping or etching the logo on to it. Ms. Waterbury has concerns with the look of the concept of the metal awning, the proposed garage door in the center, and blending with the garden. She feels that the proposal is more of a SOHO look and she is having a hard time with the softer awnings and how this will look within this area of the center.

Mr. Smith addressed Ms. Waterbury's concerns. He stated that they are going for a LEED Certification and they are looking for all of the requirements to meet this goal. The awning will be more subtle than what it looks like, it won't stand out. The scale of the awning will blend in with the other awnings. The theme from the inside space will carry to the outside space. Mr. Smith stated that if the board requests he would replace the metal sign with a fabric sign, but the metal fits the concept of the restaurant.

Ms. Waterbury asked if the outside dining area will be stamped concrete? Mr. Smith stated that it is a stamped and scored concrete, which will match the concrete floor inside.

Mr. Forrester marked the following:

A-8: Existing California Sunshine sign that is being replaced

Ms. Canonico expressed her concerns with the fact that there is not a back door, she feels now that this is a restaurant and not soft goods; she feels that it is a safety issue.

Mr. Brodsky explained that the fire suppression system, the building will be sprinkled and they will have an ansele suppression system.

Mr. Smith explained that there is a 20' long hood which protrudes 48" over the cooking area; in addition there is an ansele system that will douse any grease fires. The building also has a sprinkler system that will take care of the rest of the space. He feels that the proximity of most of the patrons will be close to the front entrance.

Ms. Stambaugh feels that the employee prep kitchen is in the rear of the store and where the fryers and grills are located is where the potential fires will occur and they will be blocked; she indicated that she has a major problem with the lack of a back door.

Mr. Brodsky indicated that there is a grading issue in the rear and the building is only 5' from the property line.

Mr. Smith testified that he has spoken to the owner of the restaurant about putting an egress window in the office area for easy egress out of the building. Ms. Stambaugh stated that she would have a concern with the office being locked. Mr. Smith indicated that the office will be open when the manager is there. The window would be an option for egress.

Mr. Forrester referred to Section 94-8.34(g) - Prohibited signs and read it into the record; he feels that the board should recognize the sign on the awning, if the awning sign is required.

Mr. Smith testified that if an egress door was added they would have to comply with all of the code issues especially for ramps and railings, and they are very tight with space back there. He stated that currently the building conforms to code, as well as the proposed suppression systems.

Mr. Forrester asked if there is anything within the construction code that would provide for emergency access i.e.: panic bar? Mr. Smith said that there is a specific part of the code that talks about space where they are only required to have 1 means of egress. If you are required to have an egress route then they must conform to all of the requirements. There is a section that describes spaces that are allowed to 1 exit route based on use occupancy, travel distance, etc. and according to the criteria this plan meets building code.

Ms. Canonico feels that they have the potential of having 30 people in this space, and she has never seen that many people in JCrew or Chico's what standards allows that criteria?

Mr. Smith said that the first 60% is where the 30 people will be located and they will exit the front of the building. The sprinkler system will kick on and the ansell system will also be activated. The employee in the back of the store has the longest way to exit and he has a level of comfort with 2 systems of fire suppression in place.

Ms. Stambaugh feels that there will be at least 8 employees that will have difficulty coming down the corridor to exit the store. Mr. Smith feels that an employee could jump over the counter.

Ms. Peterson asked if Bil a Bong has an exit door in the back? Mr. Smith said yes. Mr. Cole stated that the door was required due to the distance to the front door, it's a bigger store. This building is only 60' deep; the total building is only 8200 sq. ft. and the building did not have to be sprinkled, but for safety reasons they did sprinkle the building. If the proposed restaurant decided to go into a bigger space they would have another door. Mr. Cole asked if the space would need another exit, but they are using 2 separate suppression systems; the back could be problematic on getting people from the back of the building with the grading in the rear of the building. He feels that if the Fire Sub Code Official has any problems with the plan they will address them. He feels that a window would cause the same problem with the grading. Whatever they have to do for the fire code they will do, and will address them at the design.

Mr. Forrester asked, if any access was given out of the rear will you then have to comply with other code requirements for the access, and you cannot due to the elevations and available space.

Mr. Smith indicated that the egress window code does not apply to commercial property only residential. They would make sure that the window is the proper height off the floor, which is a criteria for residential but there isn't any outside conditions, the egress code is mainly for windows on the second floor.

Ms. Peterson asked why is this space more suitable than another store in the center? Mr. Cole stated that he felt that this use was a better fit at the Grove West. They originally looked at the Elegant Lighting space but there wasn't any rear door as well, but it was too close to the residential area. He feels that a food use would be problematic for the neighbors, and the neighbors did indicate that they would not have a problem with the old California Sunshine space. In addition that space would be more conducive to solar panels, in front of the organic garden, which she plans to use the produce in her space.

Mr. Forrester asked Mr. Cole if he feels that the food use was a better fit in this space, as opposed to another 1,500 sq. in another space in the center? Mr. Cole said yes, the owner of the restaurant works well with Tula & Bil a Bong, it's more layed in this back center.

Ms. Waterbury asked Mr. Smith if the metal is flat or seamed? Mr. Smith said that they would like a flat piece of dull finished metal and the air stream trailer would be cut out, with the signage etched in the metal, it would not be illuminated only the filtered light from the store would show through.

A motion was made by Ms. Peterson, seconded by Ms. Canonico to open the meeting to the public. All approved.

There were no comments/question, no public.

A motion was made by Ms. Canonico, seconded by Ms. Peterson to close the meeting to the public. All approved.

Mr. Brodsky asked the board to consider this application favorably since they have heard testimony from the applicant's expert witnesses and owners as to the great deal of consideration they have given for this particular use in this particular location. You have heard all of the steps that will be taken to ensure that all of the negative criteria will be met.

Mr. Forrester suggested that a condition be placed on this food use to this location; findings could be included to limit the location within the shopping center. Mrs. Peterson pointed out that this location was chosen to the proximity of the residential area being further away. She feels that Mr. Cole would continue to be "particular" on the types of uses that are coming into the shopping center.

Mr. Forrester stated that if the board determines that this use is appropriate for this location then those conditions could be included in any approval to state why this location "only" is appropriate for the use in order to avoid migration throughout the shopping center. Mr. Brodsky stated that would also limit the size of the space.

Ms. Canonico asked if a condition could be included that any future tenant must be LEED Certified? Mr. Forrester said no, not a condition because it doesn't have anything to do with "land use", a finding could be made that it was taken into consideration. Mr. Betesh said that he would have difficulty making that a condition of approval; he would need to know what the conditions of being LEED Certified were.

Ms. Peterson stated that the location was also chosen for future use of solar panels, and the board should consider that reason as well. Mr. Cole agreed.

Ms. Waterbury stated her concern with the awning and noted that if it is going to be a metal awning she would like to see a smooth or flat finish or non reflective finish in order to eliminate any reflections to motorists. Mr. Cole did not have any concerns adding that as a condition to the approval.

There was a lengthy discussion on the issue of no back door that could be used as a second exit. Board members indicated that they did like the project except for the lack of a back door or some type of exit with either a recessed window or door. Mr. Smith explained that the barrier free and/or handicapped requirements come into play when these items are "added" to a plan. A suggestion was made that the pass through be made to be flipped up in case of an emergency.

Mr. Smith suggested a deep window be added to the back wall, which would not be an official egress, without putting a door in. The window would be in an area that would not be locked so access would always be available. They could just design the egress with a casement window and place the window at least 18" off the floor.

Mr. Betesh suggested that the window be recessed in 18" with a landing on the outside of the ledge and that would give you an approximate 3' drop to the ground.

Mr. Forrester suggested that the emergency egress would be subject to some type of egress out of the back of the building, and if the board grants the application subject to provide some means of Mr. Betesh feels that the board can state that they want a window that "X" size and not stipulate what the window is for. Mr. Cranmer said that he is not comfortable with stating that, if you want a secondary means of egress, then you must call it a secondary means of egress. Mr. Cranmer asked Mr. Smith if there is a code to rely on for guidance? Mr. Smith said no.

Mr. Cole said that they could design a window for people to go through, and put it in for people to get of the building? Mr. Brodsky reminded the board that the building is code compliant, and putting in a window may be disguising it. Mr. Cranmer said that the board is not requiring the window for light, air and open space; it will be for an emergency means of exiting the space. You are asking for secondary emergency egress.

Mr. Betesh feels that opening the counter so the kitchen staff can exit through the front of the store, that will get all of the employee's good access out. Ms. Peterson agreed with Mr. Betesh, she feels that the window will create a security issue. Mr. Betesh feels that the likelihood that you will have people in the back right area, and that the fire would be so severe that the fire suppression system and the sprinkler system are not sufficient enough to protect them for the 30 seconds that its going to take them to exit the building, he feels is too remote to be of a significant concern, he feels that it could be issue but not a concern. The store itself is not that big. Ms. Stambaugh disagreed.

Mr. Forrester stated that Mr. Smith did indicate that the code does not require a secondary exit only an access.

Mr. Betesh said that he wishes it did have a rear exit but it doesn't.....

Mr. Cole asked if there is a resolution for next month he would have a window in the back, which was alarmed, used only in an emergency. The window would have an 18" recessed ledge to sit on, and they would put it on the plans. It would be a decorative feature.

Mr. Forrester suggested that a straw poll vote be taken as to whether or not the board would act favorably on the use variance, and to authorize him to prepare a resolution which would be acted upon next month. Before the final vote they would review the plan, and at that time a final decision would be taken at that time.

Ms. Waterbury asked for a straw poll vote from members:

Mr. Betesh stated that he would approve the application with the additional egress from the kitchen area toward the front of the store, and subject to the conditions as mentioned.

Ms. Peterson stated that she would approve the application, early in the testimony she would have not been inclined to approve the application, but after hearing additional testimony she has changed her opinion due to the fact that there are no residents behind the store and this specific location is important for the type of restaurant that is proposed with the garden, the solar panels are important, and she could support the application. She would like to see a window and the flip up exit out of the kitchen. For the reasons stated she could support the application.

Ms. Canonico agreed with Ms. Peterson, after hearing additional testimony and relevance of the type of restaurant and the location and the changes to the trash enclosure she could support the application. But unless the store has a secondary exit she would not be in favor. She would like to see the revised plan and then she could be in favor.

Ms. Stambaugh said that she will not vote in favor unless there is a secondary exit. She was not in favor at all on this application, since she feels that the Grove West was designed for retail. She feels that there is a traffic flow problem. The garbage issue has been resolved, the neighbors will be happy, and the board is happy with the change. Since day one she has always had concerns with the safety of the employees and patrons. She will have a problem with that unless she sees something different.

Mr. Cole asked would a window be in keeping with what she is thinking about? Ms. Stambaugh said yes.

Mr. DeSalvo feels that the applicant has done a great job and he would vote in favor. He agrees with the accessibility of the counter as an exit, and he also would like to see a window in the rear.

Ms. Waterbury stated that her concerns were with the refuse area, and it has been addressed. She is more comfortable with the awning aspect with it being smooth and that being a condition of approval. She likes that the "Pops Garage" will be etched more than being painted on the metal. She does have concerns with the access and she likes the front egress from the kitchen area, and is interested with the placement of a window in the rear.

Ms. Peterson would like to see that a condition be imposed that this use is for this particular location in the Grove West. All board members agreed.

Ms. Waterbury stated that since this restaurant is bordered by Tula giving a bigger buffer to the residents of this restaurant use and more suited for this location.

Mr. Brodsky asked if they could submit revised plan and if the board would authorize Mr. Forrester to bring a resolution to 7/7/10 meeting would be an acceptable way for them to proceed. Board members agreed.

Mr. Cranmer asked if they will be applying for a building permit to install the window in the back and then submit a plan which shows the window on the plan or are you going to have a new architectural plan which shows the window as part of this application?

Mr. Cole said that they will have a new architectural plan that shows the window and he will go see the Fire Official and talk to him with reference to code.

Ms. Canonico stated that she would like to see the recessed window, not just a window and a 6' drop. Mr. Cole agreed and they will be looking into this as soon as possible. They will look into some type of locking system, and alarm system since this will be the office.

Ms. Peterson stated that the preparation of the resolution will allow them to just review the plan at the next meeting and not "rehash" the application.

A motion was made by Mr. Betesh, seconded by Ms. Peterson to prepare a resolution for Pops Garage in anticipation of a final vote at the 7/7/10 meeting, with the conditions as discussed.

Roll Call:

Affirmative: Waterbury, Peterson, Canonico, Stambaugh, Betesh, DeSalvo

Negative: none

Draft Resolution 7/7/10.....

Ms. Waterbury announced that there was no one in the audience.

Ms. Waterbury announced that this application will be carried to 7/7/10 without further notice.

General Business:

Mr. Forrester advised that he will not be here for the special 6/29/10 meeting he is seeking a replacement for that night either Mr. Mike Steib or Mr. Jim Gorman will be here.

There was a brief discussion on the R.F.P. that will be available for applicants.

Mr. Forrester stated that there isn't a proposal for professional services and there aren't any statutory requirements for bidding under Municipal Contract Law, he doesn't know what the threshold is, but Professional Contracts are exempt from that but with through the years and all of the criticisms for pay to play etc Municipalities have gone to request for proposals. He explained that the Zoning Board is the hiring agent the Borough just funds it, they cannot state who you are going to hire or they don't like who you hire.

Ms. Waterbury suggested that the board secretary touch base with the Mr. Seaman, put out the proposals and receive them back.

Ms. Peterson said that if Ms. Waterbury feels that the advertisement and proposal is acceptable that would be acceptable to the board members since we have to expedite this as soon as possible. Mr. Forrester said that the general feeling is that the board wants to advertise and authorize Ms. Waterbury to approve the language of the advertisement.

A motion was made by Ms. Peterson, seconded by Mr. Betesh to prepare and put out to bid a request for proposals for the position of Zoning Board Attorney, with a deadline of no later than 14 days after the posting of the add.

A motion was amended by Ms. Peterson, seconded by Mr. Betesh to amend the motion to include that the meeting on July 7, 2010 will begin at 7:00 pm to review the proposals that are received.

Roll Call:

Affirmative: Waterbury, Peterson, Canonico, Stambaugh, Betesh, DeSalvo

Negative: None

A motion was made by Ms. Peterson, seconded by Mr. DeSalvo to adjourn the meeting at 9:50 pm. All approved.