

HILLSBOROUGH TOWNSHIP BOARD OF ADJUSTMENT
PUBLIC MEETING MINUTES
May 07, 2014

Chairman Haines calls the Board of Adjustment meeting of May 07, 2014 to order at 7:30 p.m. All stand for the Pledge of Allegiance. The meeting takes place in the Courtroom of the Municipal Complex.

ROLL CALL:

Frank Herbert – Present
John Stamler – Present
Helen Haines, *Chairman* – Present
Curtis Suraci, *Vice Chairman* – Present
Walter Dietz, III – Absent

Frank Valcheck – Present
Shawn Lipani – Present
Kenneth Hesthag (Alt. 1)- Present
Fred Gladstone (Alt. 2) – Absent
Steve Monte (Alt. 3) – Present
Sally Becorena (Alt. 4) - Present

Also in attendance: Mark Anderson, Esq., Board Attorney (Woolson Sutphen Anderson, P.A); David Kois, Deputy Planning Director/Zoning Official, Board of Adjustment Administrative Officer and Secretary; and Lucille Grozinski, CCR.

NOTICE OF MEETING

Chairman Haines announces the meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 (“Sunshine Law”).

DISPOSITION OF MEETING MINUTES

March 19, 2014

A motion to approve as submitted was made by Mr. Stamler, seconded by Mr. Valcheck. All in favor – Aye; Opposed – None. Motion carries.

DISPOSITION OF RESOLUTIONS

Ashraf RAGAB – File #BA-14-01

A motion to approve as submitted, without changes, is made by Mr. Stamler, seconded by Mr. Valcheck.
Roll Call: Mr. Valcheck – yes; Mr. Herbert – yes; Mr. Stamler – yes; Mr. Hesthag- yes; Vice Chairman Suraci – yes; Chairman Haines – yes. Motion carries.

BOARD OF ADJUSTMENT BUSINESS

None

BUSINESS FROM THE FLOOR

None

PUBLIC HEARING - APPLICATIONS

Phillip SABATINO – File #BA-14-03 – Block 205, Lot 17.01 (formerly known as Block 205, Lot 17.A) – 1524 Millstone River Road.

Chairman Haines announced that the application has been withdrawn.

Nelson’s Corner Assoc., LLC (DaVita) – File #BA-14-02 – Block 200.01, Lot 1 (formerly known as Block 200.A, Lot 1) – 601 Route 206.

Mr. Kois introduced the application.

Nick Racioppi, Esq. from the law firm of Riker Danzig, Attorney representing the applicant described the application.

John McDonough, P.P., AICP planner representing the applicant gave his qualifications and they were accepted by the Board. Mr. McDonough was sworn in.

Chairman Haines noted that Mr. Monte (Board Alternate #3) has arrived.

Mr. McDonough, P.P., AICP began by addressing the interpretation request.

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Mr. McDonough, P.P., AICP gave three main points, as follows:

- 1) The use (dialysis center) is permitted in the zone
- 2) Since 2007, when there was an economic crash, the nature of shopping centers has changed.
- 3) Case Law: L&L Clinics, Inc. versus Irvington 189 NJ Superior 332, Appellate Division circa 1983. “Permitted business and professional offices in a business district, a methadone clinic for treatment of problems resulting directly from heroin fell within the ordinance definition.”

There was a series of questions to Mr. McDonough.

Mr. Anderson, Esq. inquired how trends in shopping centers in other towns affect Hillsborough Ordinance and the interpretation of it.

Mr. McDonough, P.P., AICP indicated that the Board has to interpret the intent of the ordinance and he noted as a planner he has to consider industry changes.

Mr. Anderson, Esq. asked if he agrees or disagrees with Mr. Kois’ analysis that something is specifically permitted in one zone and not specifically permitted in another implies that it is prohibited in the later.

Mr. McDonough, P.P., AICP indicated he agreed with the rationale from a general planning standing point, but that this zone permits existing shopping centers with business enterprises within it.

Mr. Kois inquired about the other kind of uses that fall under the term business enterprises.

Mr. McDonough indicated that all the businesses uses articulated in the NAICS Code for retail and commercial type centers such as retail services, a spa, salon, office uses, including medical and recreational enterprises such as a fitness center.

Racioppi, Esq. made some closing comments regarding the interpretation request.

Chairman Haines indicated that she would like to go into closed session to seek legal advice. A motion to go into closed session was made by Mr. Stamler, which was seconded by Vice Chairman Suraci. All members voted in the affirmative. Mr. Anderson, Esq. (Board Attorney) indicated that it the custom of the Board to invite Mr. Kois (Zoning Officer) to the closed session for the purpose of transcribing the minutes as Board Secretary. Mr. Anderson indicated that Mr. Kois will not take the minutes due to the nature of the application with the appeal of the Zoning Officer’s decision component.

There is a recess and the Board went into closed session – 8:23P.M.

The Board returned from closed session and went back on the record – 8:42P.M.

Chairman Haines asked the applicant’s attorney if he is finished.

Mr. Racioppi, Esq. indicated he is finished.

Mr. Lipani made a motion to deny the interpretation for Nelson’s Corner Assoc., LLC (DaVita), which was seconded by Mr. Stamler.

Votes in Favor: Mr. Valcheck, Mr. Herbert, Mr. Lipani, Mr. Stamler, Mr. Hesthag, Vice Chairman Suraci, and Chairman Haines.

Votes Against: None.

Mr. Anderson, Esq. asked the applicant’s attorney if he would like a separate vote on the appeal.

Mr. Racioppi, Esq. indicated that it is not necessary to have a separate vote.

Mr. Racioppi, Esq. requested a short recess.

The Board went on a recess – 8:45P.M.

The Board returned from recess and went back on the record – 8:55P.M.

Mr. Racioppi, Esq. made opening comments regarding the use variance request and called his next expert.

Mr. Matt Henn, Davita’s Regional Director was sworn in.

Mr. Henn provided company background information and explained what a dialysis center does. He further explained the day to day operations.

Mr. Henn indicated the facility capacity is 18 at any given time and a maximum of 50 patients in one day.

Mr. Henn described the next closest facility.

Chairman Haines inquired about medical office space.

Mr. Henn indicated that they did an extensive search and the subject location fulfilled their requirements.

Mr. Lipani inquired about the hours of operations.

Mr. Henn indicated that the hours would be 6:00A.M. to 9:00P.M.

Mr. Monte inquired about the total number of employees.

Mr. Henn indicated that there would be 15 to 20 employees.

No questions from the public.

Mr. Racioppi, Esq. called his next expert.

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Mr. McDonough, P.P., AICP was still under oath.

The following Exhibits were marked into evidence:

- A-1: Aerial photograph with ground photographs

Mr. McDonough, P.P., AICP described exhibit A-1.

Mr. McDonough, P.P., AICP described the existing uses within the center and the parking requirements.

Mr. McDonough, P.P., AICP presented planning proofs that would be required under the Medici case in terms of statutory positive and negative criteria.

Mr. Stamler inquired about the 2005 Master Plan and if the proposal fits within the master plan.

Mr. McDonough, P.P., AICP indicated that the proposed dialysis center does fit within the master plan.

Chairman Haines asked about the possibility of parking in the rear due to safety concerns regarding heavy traffic in the center.

Mr. McDonough, P.P., AICP indicated that the Applicant would be willing to install striping in front of the facility for pedestrians.

The Board went on a recess – 9:45P.M.

The Board returned from recess and went back on the record – 9:51P.M.

Mr. Racioppi, Esq. made closing comments.

Mr. Herbert made a motion to approve the use variance for Nelson's Corner Assoc., LLC (DaVita), which was seconded by Mr. Lipani. The motion was denied (5 affirmative votes needed for a 'd' use variance, where there were only 3 votes for and 4 against the motion).

Votes in Favor: Mr. Valcheck, Mr. Herbert, Mr. Lipani.,

Votes Against: Mr. Stamler, Mr. Hesthag, Vice Chairman Suraci, and Chairman Haines.

Mr. Racioppi, Esq. objected to the closed session.

Richard ZYGADLO / Julita DOMANSKA – File #BA-14-04 – Block 153, Lot 4 – 358 Triangle Road.

Mr. Kois introduced the application.

Richard Zygadlo, applicant, was sworn in.

Mr. Zygadlo described the existing conditions of the property and explained the requested variances in detail.

Mr. Zygadlo indicated that notices were sent to adjacent property owners to purchase additional property, but there was no interest.

Mr. Zygadlo indicated that they intend to connect to the sewer.

There was a discussion regarding the proximity of the proposed structure and the location of the existing well. Mr. Zygadlo indicated that the Health Department a minimum setback of 5 feet.

There was a discussion regarding the size of the driveway and the drainage of the property. Mr. Zygadlo provided clarification.

Comments from the Board Engineer were reviewed and addressed by Mr. Zygadlo.

There was a discussion regarding the proposed maximum impervious coverage and Mr. Zygadlo requested an increase to 20%.

Mr. Stamler made a motion to approve the resolution for Richard ZYGADLO / Julita DOMANSKA – File #BA-14-04, with 20% maximum impervious coverage, which was seconded by Mr. Hesthag. The motion was approved unanimously by all eligible members.

Votes in Favor: Mr. Valcheck, Mr. Herbert, Mr. Lipani Mr. Stamler, Mr. Hesthag, Vice Chairman Suraci, and Chairman Haines.

Votes Against: None.

Correspondence

None

Adjournment

Chairman Haines indicated that a transcript is to be ordered for Nelson's Corner Assoc., LLC (DaVita) – File #BA-14-02. The meeting adjourned at 10:16 p.m.

Respectfully Submitted by:

David Kois

Deputy Director of Planning / Zoning Official

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Board of Adjustment Secretary

APPROVED