

**HILLSBOROUGH TOWNSHIP BOARD OF ADJUSTMENT**

**PUBLIC MEETING MINUTES**

**July 17, 2013**

Chairman Fenwick called the Board of Adjustment meeting of July 17, 2013 to order at 7:30 p.m. All stood for the Pledge of Allegiance. The meeting took place in the courtroom of the Municipal Complex.

Chairman Fenwick announced that the meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 ("Sunshine Law").

**ROLL CALL**

Michael Volpe – Present

John Stamler – Present

Helen Haines, Vice Chairman – Present

Marian Fenwick, Chairman – Present

Walter Dietz, III – Absent

Frank Valcheck – Present

Shawn Lipani (#7) – Absent

Frank Herbert (Alt. #1) – Present

Curtis Suraci (Alt. #2) – Present

Kenneth Hesthag (Alt. #3) – Present

Michele Boronkas (Alt. #4) – Absent

Also in attendance: Mark Anderson, Esq., Board Attorney, Woolson Sutphen Anderson, P.C.; David Kois, Zoning Officer/Assistant Planner/Board of Adjustment Administrative Officer/Secretary; and Lucille Grozinski, CCR.

**ACCEPTANCE OF MINUTES**

None

**ACCEPTANCE OF RESOLUTIONS**

**Belle Mead Tire (LaRue) #BA-12-13**

Board Attorney, Mark Anderson said the Applicant's Attorney, Richard Schatzman, has requested a minor change that deserves to be looked at. My suggestion is to hold off on the vote.

**Long Hill Kennels – Expansion File #BA-13-04**

A motion to approve was made by Vice Chairman Haines, seconded by Mr. Suraci.

**Roll Call:** Mr. Valcheck – yes; Mr. Volpe – yes; Mr. Herbert – yes; Mr. Suraci – yes; Vice Chairman Haines – yes; Chairman Fenwick – yes. Motion carries.

**Courtney and Meredith BARRY File #BA-13-09**

A motion to approve was made by Mr. Valcheck, seconded by Vice Chairman Haines.

**Roll Call:** Mr. Volpe – yes; Mr. Valcheck – yes; Mr. Herbert – yes; Mr. Suraci – yes; Vice Chairman Haines – yes; Chairman Fenwick – yes. Motion carries.

**Scott and Deborah WARNER File #BA-13-11**

A motion to approve was made by Mr. Herbert, seconded by Vice Chairman Haines.

**Roll Call:** Mr. Valcheck – yes; Mr. Herbert – yes; Mr. Suraci – yes; Mr. Hesthag – yes; Vice Chairman Haines – yes; Chairman Fenwick – yes. Motion carries.

**BOARD OF ADJUSTMENT BUSINESS**

None

**BUSINESS FROM THE FLOOR**

None

**PUBLIC HEARING - APPLICATIONS**

Mr. Kois introduced the Muslim Center application.

**MetroPCS (Triangle)** – File #BA-13-10 – Block 151.13, Lot 18 – 249 Triangle Road. **Application WITHDRAWN.**

**Stacy GRAB** – File #BA-13-07 – Block 174.04, Lot 59 (formerly known as Block 174A, Lot 6) – 9 Starview Drive. **Application ADJOURNED to September 18, 2013 with re-notice.**

Mr. Kois stated the MetroPCS application had been withdrawn and that the application for Stacy Grab had been adjourned to September 18, 2013 with re-notice.

**MUSLIM CENTER OF SOMERSET COUNTY** – File #BA-13-12 – Block 152.06, Lot 27 (formerly known as Block 152, Lot 27.C) – 256 Route 206. Applicant seeking d(1) Use Variance to allow a faith based

## BOARD OF ADJUSTMENT MEETING MINUTES

July 17, 2013

educational/religious facility in 4,244 sf (3 units) of an existing shopping center, on property in the C-1 District.  
**Carried from June 19, 2013 without further notice (no testimony taken at 06-19 hearing).**

**Exhibit A-1** – Floor Plans

**Exhibit A-2** – Site Survey

Arthur Skaar, Jr., Esq. said I am representing the Muslim Center of Somerset County which is looking to have a religious facility, also known as a mosque, in the shopping center of Worden and Green, adjacent to the former K-Mart building. Our Planner, Mr. Golden had a conflict for this evening. Filling in for him will be Wayne McCabe. His resume has been provided to the Planning Office for distribution.

Putting a religious facility in the C-1 Zone has been done before in Hillsborough. This Applicant is looking to buy a property where they can build a mosque but have not been successful. They are looking for a place more or less on a temporary basis until they can buy a piece of land to build. This is similar to the Chabad when it was over at 450 Amwell Road on the 2<sup>nd</sup> floor.

Dilshad Khawaja, Ph.D., was sworn in and proceeded to give the following testimony in response to questions asked by Mr. Skaar.

Mr. Stamler noted that the use may be temporary for the Applicant but the granting of the variance would be permanent.

Mr. Skaar said potentially, yes.

Mr. Stamler asked that the testimony mention the other sites that were looked at.

Chairman Fenwick noted that the hearing will break at 8:30 p.m. for a few minutes at the request of the Applicant.

Dr. Khawaja began his testimony saying I have been practicing accounting, tax preparations and tax planning for the past 15 years. I have my own office in Somerville. Prior to that I work in corporate. I have been a resident of Hillsborough for 18 years and have been a member of the Muslim Center for about the same amount of time. I am currently a board member and trainer with the Muslim Center of Somerset County (MCSC). The MCSC was first established in 1992 and is not affiliated with any other organization or government. The support for the Muslim Center comes mostly from the members from weekly and yearly contributions. That is our only source of donations to operate this organization. There are no other mosques in this particular vicinity. The closest one is 12 to 15 miles away. There are mosques in New Brunswick, on Route 1 and Piscataway. As of December, 2012, we have 50 to 55 members on record which equates to 20 to 30 families.

According to our faith, we have 5 prayers: one early in the morning around 4 a.m., midday at 1:00 p.m., end of day at 6:00 p.m., 8:30 p.m. and 10:00 p.m. During the day there are maybe 5 to 10 members who attend for prayers. For Friday's service we have 75 to 125 people from 1:00 p.m. to 2:00 p.m. The organization provides attendees with prayer rugs for worship.

Mr. Stamler asked about the increase in attendance on Fridays.

Dr. Khawaja said we encourage membership but people do come to service without membership and donate as well. He continued with testimony saying the prayer rugs are 4 ft. by 6 ft. for each member. Members position themselves to the Mecca when they pray. If we are in the northeast of the world, we direct ourselves northeast to perform our prayers.

Mr. Stamler asked for clarification on the hours of prayer.

Dr. Khawaja said the Center will be open for the 5 prayer services. Not many people come to the mosque to pray. They can pray at home as well. Other than Friday services, the maximum would be 5 to 10 people for the other prayer times.

Mr. Stamler asked how one would gain access at 4 a.m.

Dr. Khawaja said open door; someone will be there.

Mr. Skaar directed the Board's attention to the floor plans labeled SK-1.

Dr. Khawaja said what shows on the plan as 'Existing Unit #7' and 'Existing Unit #8' would be the prayer area. 'Existing Unit #9' has a step down and is for overflow. The entrance on the far right would be the main entrance. People would be coming in from the back, from the south of the building. That is where the utilities are before you enter the main hall.

Mr. Skaar said the clergy known as the Ammon will be in front of the existing entry doors.

Dr. Khawaja agreed and said that is why we are not using the front entrances. The classroom area in Unit #9 will just be used on Sunday mornings.

**BOARD OF ADJUSTMENT MEETING MINUTES**  
**July 17, 2013**

Vice Chairman Haines asked for more details on the classrooms.

Dr. Khawaja said that area will have 3 designated classrooms. We are planning to have temporary sliding walls.

Mr. Skaar asked if the Muslim Center gets involved with other interfaith organizations.

Dr. Khawaja said we have had many gathering sessions and would be looking to host those sessions here, especially on Sunday mornings.

Mr. Stamler asked to know all of the hours of operation for the facility.

Mr. Skaar said that will be answered shortly.

Dr. Khawaja continued saying we have not had the facility to host before but have gone to other facilities at which there were only 15 to 25 people. We had one that we hosted here at the Municipal Complex in the multi-purpose room where we had around 75 people. The Muslim Center is currently holding services in the Manville/Hillsborough Elks Lodge on Brooks Boulevard. The Sunday school is being conducted in the Bridgewater Middle School September to June. Classes run from 10:30 a.m. to 2:30 p.m. these days. Now we have access to the gymnasium so after the Sunday school activities the children go play. Here without the gym, Sunday school will run 10:00 a.m. to 1:00 p.m. We can have 9 to 15 children. We have a maximum of 5 teachers, 1 or 2 paid and the rest are volunteers.

Mr. Skaar asked Dr. Khawaja to address comments from the Planning report.

Dr. Khawaja said if we had our own space we would run summer camps but we do not have the room to do so at this facility.

Mr. Skaar said the question has been raised that if the mosque were to move to another location, would the Sunday school remain or would you be running them together in the same location.

Dr. Khawaja said the Sunday school would move with the Center. Right now we are in separate places because we do not have a mosque. The idea is to have a Center and then bring the school in it.

Mr. Skaar said we are not looking for variances for 2 separate uses. The educational use is ancillary to the religious.

Dr. Khawaja explained Ramadan saying this year Ramadan started on June 9<sup>th</sup> and will end on August 7<sup>th</sup>. Ramadan moves 10 days every year in accordance with the lunar calendar. Ramadan services start at 10:00 p.m.

Dr. Khawaja said for the past couple of years our focal point has been to look for open property in Hillsborough so we could build. Nothing has worked out so far. We came close to signing a contract with two of the properties we looked at. One was a 16 acre property located on Mountain View Road. There was a pipeline running through the middle of the property so our planners could not come up with a better use of the property. The second was a 5 acre lot next to the Municipal Building. It was approved for 3 houses but was abandoned. That did not work out because we did not have 200 ft. in frontage. We also looked at 2 properties on Woods Road, 1 on Farm Road and 1 on Falcon/Sunnymead Road. We are still looking.

We have been consulting with the Township on properties that seemed promising. We had met with the Township Planner, Mr. Ringelheim many times. This is the first time we considered a property in the C-1 Zone because of our frustration with finding a property. We decided to go with a temporary space while we keep looking for our permanent house of worship.

Mr. Stamler said I know you are looking at this as a temporary solution to your problem of finding property to build. A Use Variance is permanent so when you move out, that usage stays there.

Mr. Skaar said unless it is abandoned and another tenant turns it back into retail.

Dr. Khawaja said among all of the properties in this area, this property in the C-1 Zone seems to be suitable because it has an easy entrance and ample parking for the number of members we are expecting. Most of the people who attend services are local, from Hillsborough and adjacent towns. Muslims do not necessarily have an affiliation with one mosque they have to stick with; they tend to go to the one that is closest. As for the name, my understanding is that nothing was around 20 years ago. Those who came up with the name thought that would be it for Somerset County. Now there are many other towns that have their own Muslim centers. If the approval is based on us changing the name, we will. Growing the congregation depends on the concentration of the population in that area.

We have no plan to change the exterior of the building. We do not have any bells or sound generating devices in the Muslim faith. We will not have live music broadcast outside. There will be no outside voices or sounds; everything is confined to the inside of the building. We will use the signage allowed.

**BOARD OF ADJUSTMENT MEETING MINUTES**  
**July 17, 2013**

Mr. Skaar asked Dr. Khawaja to speak about Exhibit A-2.

Dr. Khawaja said the Site Survey dated 1999 accurately depicts the same layout we have seen. The parking to be used will be on the south side of the building since the entrance will be at the westerly part of the rear of the building.

Vice Chairman Haines asked how much space the Applicant will be looking to rent and what the percentage of parking is overall for the possible 125 attendees.

Mr. Skaar said Mr. Worden will be able to address that later.

Dr. Khawaja said the Muslim Center has been involved in various ways providing volunteers for events hosted by the Township. We offer scholarships of \$1,000 to \$3,000 for the Raritan Valley Community College to 2 students per year. Our Ammon has been very active in volunteering his services and time at the Somerset Hospital and the jail in Somerset County.

Mr. Anderson asked what the maximum occupancy for the space is from a fire safety aspect.

Dr. Khawaja said we have 4,000 sf. in the lease with 3,600 sf. of that for our services.

Mr. Skaar said the Planner will be able to review how many people can be accommodated within this space given we are anticipating one person per prayer rug. My understanding is that the Building Department, specifically Fire Safety, will calculate the capacity for the space so that there is not a hazardous situation. I am not sure why that is of interest in connection with this application. We will comply with the letter of the law.

Mr. Anderson said it would be useful for the Board to know the maximum capacity.

Break

Open to the Public

No questions.

Kenneth B. Worden was sworn in and gave the following testimony in response to Mr. Skaar's questions:

I own about 35% of the shares in the corporation 206 KWMG Associates, LLC which owns this property. 206 KWMG Associates acquired this property in 1999. Mr. Worden confirmed the survey submitted prepared by Bruce Blair, L.S., reflects the current conditions saying, 'they are identical'. We were previously a tenant since 1995 in the building and the managing agent and leasing agent for the previous owner.

I do not think we have anything else set up like this in town. The initial building was built where I am and was later subdivided so that the K-Mart landlord took separate ownership. We have cross easements and shared parking throughout both properties. We also manage the property for the landlord of the K-Mart property. In spite of the vacancy, we still maintain that relationship. I believe the 450 to 459 number of spaces is accurate. There is a light controlled access to the properties. Historically, patrons have used the front spaces near K-Mart for parking, not the south side.

The parking on the westerly side furthest away from Route 206 is rarely used. The property behind the IHOP is undeveloped. I have spoken with the previous owner of the IHOP to see what we could possibly put there to develop that valuable commercial property.

Mr. Stamler said we understand you are looking to make the point that there is ample parking.

Mr. Worden said we have had difficulty getting tenants in without having an anchor store. I am looking to eliminate a vacancy. If we can accomplish this while using a parking area that was valueless to us, it makes sense to look at it even though it is not your traditional retail tenant. There is no vehicular access between the two buildings.

Vice Chairman Haines asked the size of the overall buildings.

Mr. Worden replied our building is roughly 25,000 sf.; the K-Mart itself is roughly 50,000 sf.

Vice Chairman Haines asked about the relocation of the dumpsters should the application be approved.

Mr. Worden said the intent was always there to do that.

Mr. Herbert raised the issue that the fire code requires the dumpster be at least 20 ft. away from the building.

Mr. Worden said I was thinking of getting the dumpsters off the parking lot, along the back row by the IHOP, screened; whatever the town will require.

## BOARD OF ADJUSTMENT MEETING MINUTES

July 17, 2013

Mr. Herbert asked who is responsible for the detention pond in the back.

Mr. Worden said probably jointly. We will want to look at that area back there and clean that up if people are going to be parking there.

Mr. Skaar asked if the Muslim Center were approved, would you object to a condition of the Resolution that if the Muslim Center moved out, it could no longer be used as a mosque.

Mr. Worden said no, we ultimately want this to be retail.

Mr. Anderson briefly reviewed the subject of "abandonment".

Mr. Worden said I am in this building 6 days a week. Besides the economic aspect of it, I believe the Applicant will be able to utilize the property perfectly.

Mr. Hesthag asked are there any additional storefronts available?

Mr. Worden said not right now. We have another one that just got leased. The K-Mart building is still available. I have been trying to get the owner to at least clean up the façade because it is an eyesore.

Mr. Hesthag said I am sure a new tenant would clean that up. My concern is one of the attractions is having a lot of retail stores nearby.

Mr. Worden said we have another 6 that are there. No one wants to come into the center with the 3 vacancies in my building. Our building was in deplorable condition when we bought it but we have brought it up to speed, putting on a new roof and a new heating system. Being able to bring people in is the key in retail. Although this may not be a traditional fit and permitted in the zoning, I felt confident that based on the logistics of the parking that it made a lot of sense for the Muslim Center to be a tenant. If this does not go through I am going to be left with 3 vacant stores. I do not know that anyone else is going to jump in with the anchor tenant not being there.

Vice Chairman Haines asked if this is approved, how long is the lease for.

Mr. Worden said 5 years.

### Questions from the Public

None

Mr. Skaar said I believe an opinion was expressed that possibly having a religious use in your building might discourage a large anchor tenant from coming in and renting the former K-Mart building. Would you agree or disagree with that statement.

Mr. Worden said any tenant mix is something that is going to be looked at.

Mr. Stamler commented that that is more of a concern for the landlord. The Board bases its' decisions on the laws.

Mr. Herbert said it sounds like he is saying it is better that it is occupied than vacant.

Mr. Worden agreed.

Wayne T. McCabe, P.P. was sworn in, gave his credentials, was qualified by the Board and gave the following testimony in response to questions asked by Mr. Skaar.

I have reviewed the submissions to the Board of Adjustment. Mr. McCabe reviewed the aspects of the site again, mentioned earlier. The structure has 12 units in it. The Applicant is looking to occupy 3 of those units, Units 7, 8 and 9. The units were formerly a fitness center. The area in question is 4,244 sf.; the total area of the building is 23,119 sf. The 3 units occupy approximately 23% of the floor area of the building.

Mr. McCabe reviewed the permitted uses for the C-1 and confirmed the use proposed is not a permitted use thereby needing a 'd' variance. Under Section 40:55 (d-2) of the MLUL, there are multiple items that talk about basic planning within the State. Item (e) *'to promote the establishment of appropriate population density and concentrations that will contribute to the well being of persons, neighborhoods, communities and regions as well as preservation of the environment.'* This particular aspect of the law has been met because you are taking an established use from 40 years ago and concentrate development in this area and preserve the environment by not going out of the area to create another impact.

The application meets all of the land ordinances with the exception of an existing condition but nothing is being changed or

## **BOARD OF ADJUSTMENT MEETING MINUTES**

**July 17, 2013**

proposed to alter the building. The westerly parking lot has approximately 75 spaces that have been grossly under utilized or not used over the past 20 years. There is significant access to a major arterial roadway, not only at a light controlled intersection but a 200 ft. southerly access as well to an in and out driveway area on the southbound lane. There is a heavily vegetated buffer to the residential uses to the west of the site.

Knowing that people will place their 4' x 6' prayer rugs to the northeast, it has been calculated that a maximum of 150 can pray there. Based on this and the ratio of 3 seats per parking space when you are dealing with a church, at most 50 parking spaces would be required for the mosque. The rear or westerly parking area is more than adequate to address the needs of the proposed use.

Mr. McCabe reviewed that early morning prayers will be daily at 4 a.m., possibly 5 a.m. in the winter, lasting only a few minutes and are attended by 3 to 7 people; afternoon prayers at 1:00 p.m. and later afternoon around 6 p.m. last only a few minutes and are attended by 5 to 12 people; sunset now at 8:15 p.m. is a 30 minute service with 7 to 15 people in attendance; and the late evening service at 9:45 p.m. lasting 30 minutes and attended by 7 to 15 people. The number of people attending is de minimus to the site in terms of coming and going. On Friday afternoon at 12:30 p.m. is a 1 1/2 hour service attended by approximately 75 to 120 people. The Applicant testified to 100 in attendance. During the 30 days of Ramadan there is service every night at 10:00 p.m. for roughly around the same number of people. These services will have no or a de minimus parking to the site making it a well suited location for this use.

Mr. Skaar reviewed with Mr. McCabe how he came up with the calculations and its connection to the ordinance.

Mr. McCabe continued, a church is not typically identified as one that is identified as inherently beneficial such as a school or medical facility, day care center, museum or library. However, a board could view it in that way if it meets certain criteria. I suggest that an educational religious facility, although not specifically listed as such, can be looked at as such because it serves as a major support facility within a community. Such uses are generally non-commercial, although not necessarily so. Churches have been deemed so valuable by certain Boards of Adjustment in the past that they have been encouraged to give the consideration of being inherently beneficial to those applications. Right now we do not have a mosque serving the Hillsborough area. The proposed mosque will provide a place of worship; a place of gathering and learning for the benefit of common faith; public good; and promotes the general welfare of the community in terms of its relationship to the community as a whole. The mosque also plays a role in terms of interfaith services to try to create an understanding of one religion with another.

There will be no negative impact on the commercial establishments that are present in the building, nor will there be any negative impacts to the westerly residential properties, nor on the other side of Route 206. In terms of the public good, it will continue to provide a religious facility but within a developed commercial and other intense use within the Route 206 corridor. It is for this particular reason that the negative impacts would be de minimus at worst. The use will not create outside noise and could be considered extremely passive. Even though it is not specifically permitted as a principal use, accessory use or conditional use; it is part of a use that is needed in the community. It will comply with the intent of the Master Plan and Zoning Ordinance.

Mr. Skaar asked Mr. McCabe the impact of commercial vacancies in a neighborhood and why the Board should be concerned about it.

Mr. McCabe said as a past president for 4 years of the Greater Chamber of Commerce of Newton, our major commercial area on Spring Street has approximately 65 building areas available, of that 23 are vacant. The vacancy rate is a negative impact on being able to attract other businesses in. It takes heightened efforts for landlords to bring businesses in to retrofit buildings. The more occupancy you have the greater opportunity you have of keeping the businesses in those stores. We have a nondenominational church on our Spring Street area that took the place of a bank. The church has become very successful there. They are working with off time uses so their impact is minimal. It helped to fill a vacancy and brought another use to the downtown area. The same can be said for here. Occupancy is a critical issue.

Mr. Herbert said so you are saying it is better to have everything occupied even if some of them are not retail rather than have vacancies.

Mr. McCabe said in the matter of our downtown, that was the case.

Mr. Hesthag said the parking and the entrances will be from the back so you will not see that from the front. Will the windows be open so you can see something is going on inside?

Mr. McCabe said I understand there will be blinds on the windows. I think that having the sign for the mosque and the blinds on the windows will be better than having 3 vacant stores where you can see through to the back. Mr. McCabe gave another example of a business in his town.

Mr. Stamler made the point that the example given of the church was in a stand alone building, not in a strip mall.

Mr. McCabe acknowledged the difference and said in my opinion this use is suited for this site.

**BOARD OF ADJUSTMENT MEETING MINUTES**  
**July 17, 2013**

Mr. Hesthag asked about other locations the Applicant may have looked at for lease.

Mr. Skaar said other locations did not have the parking necessary. That is why the C-1 was looked at to be able to accommodate a religious facility.

Mr. Stamler asked Mr. McCabe if this application favors the Applicant more or the welfare of the public.

Mr. McCabe said I think it serves both. I think it benefits the Applicant more. Whether in the balance one is greater than the other, I would say it is pretty much equal because we are not adding more traffic on the side roads and we are not having a use that is an intrusion into another area. In this instance it will benefit the Applicant because it provides them with a facility they need to meet the needs of some of the residents of your municipality and at the same time will give them time to find a facility or land in which they can build a facility in which they can settle in permanently.

Mr. Stamler said I totally agree but the zone it is in does not allow it. The Use Variance is permanent and goes with the land.

Vice Chairman Haines said Mr. Skaar has referenced the Chabad having been in the Amwell Mall. Where they in there legally because I do not recall them coming before this Board for approval.

Mr. Anderson said I do not think the presence or absence of another institution relates directly to this application. I encourage the Board not to consider whether another use was or was not appropriate.

Vice Chairman Haines said the implication is that the Chabad was an approved use. I am not sure it was.

Mr. Anderson said I recognize that the Applicant brought that forward several times but I think the Board ought to ignore that.

Mr. Skaar said to Mr. McCabe, we have a 54,000 sf. vacant space in the K-Mart building and a 4,200 sf. vacant space in this building. Is a 4,200 sf. space going to draw a 54,000 sf. tenant in?

Mr. McCabe said no, not as a single entity. The 4,200 sf. space is not the anchor. However, the reverse is true. It would not only help to fill them but to keep them occupied.

Vice Chairman Haines said then isn't that further supporting that this use is not the best to go in there because eventually Applicants might be interested in leasing this space. Wouldn't it be detrimental to this shopping center to lose this commercial space?

Mr. McCabe said you are predicating that on the immediate occupancy of the K-Mart building. It has been testified that that has been problematic at best.

Vice Chairman Haines commented tomorrow someone could come in and sign a lease; we do not know.

Mr. McCabe agreed. After reiterating points made earlier he said it takes time to negotiate a contract and retrofit a building. I am looking for the short term, for the next few years.

Mr. Hesthag agreed with Vice Chairman Haines' earlier comment and said I am not looking at the short term. I believe it could have a negative impact if the smaller spaces were not available. It has been said that this is a temporary location but the Center has not had a location in 20 years. So there is a good chance it can be there another 20 years until a permanent location is found.

Mr. Skaar asked Mr. McCabe, what is going to get a landlord a higher rent, retail or office?

Mr. McCabe said I believe office but I am not a real estate expert.

Mr. Anderson said to Mr. McCabe, there have been a number of comments made that if the Use Variance is granted it is permanent, as long as it is not abandoned. By implication, it does not have to be the same tenant. You have talked about parking specifically for this Applicant and for the timing of use. I would like to hear what you can tell us about if this were approved and this Applicant found its' permanent location, and this space were occupied by a different religious organization whose timing of services are different. Do you see anything to preclude that and secondly, can you offer anything that might mitigate the Board's concern that this particular religious organization might be compatible where a future organization might be incompatible?

Mr. Skaar asked for a specific religious organization.

Mr. Anderson said I think my question stands for itself. Either the witness can answer it or he can't.

## BOARD OF ADJUSTMENT MEETING MINUTES

July 17, 2013

Mr. McCabe said we have in the past when we knew a Use Variance would only go for a certain period of time, that there was a statement or agreement entered into as a stipulation of the approval and by a legal agreement, that upon an abandonment of use, if this church were to leave to go to another location that the Use Variance would dissolve. Thereby eliminating the concern that you raise of another applicant coming in and avail itself of the Use Variance for the current applicant.

Mr. Anderson said I do not think we have heard that being offered. I certainly do not believe the Board can impose that.

Mr. McCabe said it is not something the Board could impose but something the Applicant could say we are agreeing to. It would be an expression of yes, we are amenable to this.

Mr. Anderson reiterated, there has been no such offer. My question remains. Let me suggest something to you. Do you think it would mitigate a potential concern for the future if the application were granted that the Board imposed a condition something along the lines of the occupancy would not exceed some relatively small number, lets say 20, except between the hours of 9 p.m. to midnight. I picked this example because I am trying to find something consistent with the testimony. That would be a more appropriate type of condition for this Board to consider. Do you think that kind of condition could mitigate concern?

Mr. McCabe agreed.

### Questions from the Public

None

Break

***Luiz PEREIRA*** – File #BA-13-08 – Block 8, Lot 11 – 717 Amwell Drive. Applicant requesting Certificate of Nonconformity to recognize the existing use of the property as a legal prior existing nonconforming use as a two-family house on property in the AG District. ***Adjourned from June 05, 2013 without further notice.***

After returning from break, Chairman Fenwick announced that the Pereira application will be carried to September 18, 2013 without further notice. (No new testimony taken after 10:00 p.m.)

The Muslim Center of Somerset County application continued.

A motion and second to go into Executive Session to discuss attorney-client privilege matters regarding the Muslim Center application was made. All were in favor; none opposed. Motion carries.

Executive Session: 10:18 p.m. to 10:29 p.m.

A motion and second was made to come out of Executive Session. All were in favor; none opposed. Motion carries.

Mr. Skaar gave his closing statement saying there was a question as to whether or not we needed a variance for parking. Parking requirements are in the Design Standards section of the Ordinance. If churches were not allowed in town perhaps we would need a variance but since there are zones in town that allow churches, there is a standard for parking. We have demonstrated that parking will be more than adequate because of the unused parking.

I also want to focus on the fact that there are no objectors here for this application. There is a strong culture of people in Hillsborough letting their views be know. No one has stepped forward and said this application should not be granted. Mr. Worden who is a realtor has testified he has not been able to attract retail tenants in the absence of the anchor store. He has rented for office use and now is willing to rent for religious use. That speaks volumes because he wants a big anchor tenant. I do not think Mr. Worden is going to do something contrary to his economic interest and create a situation that is going to make it less likely for the anchor store to fill up with a suitable tenant.

In reviewing all of the testimony, there is no basis for the Board to find that the mosque will discourage the 54,000 sf. tenant from occupying the former K-Mart building. I confirmed that my client is not eager to have a variance which they can then hand off to another religious community. Their lease is not going to have a value that they can capitalize on. To the extent that it would be possible to agree that the variance be abandoned or that my client can take some affirmative action to see to it that the facility would not be used for religious community after the end of the lease. All are in favor that can be done.

Mr. Herbert said I am in favor of this application for a lot of reasons. We had a lot of talk about what could be but if you look at what has been there over the past 15 years, that building has always had vacancies even when the K-Mart was there. The dumpsters are all over the place. The owner has agreed to clean that up and screen the dumpsters. Since K-Mart has left there are very few cars in the parking lot.

## **BOARD OF ADJUSTMENT MEETING MINUTES**

**July 17, 2013**

Mr. Stamler said I hope the Applicant finds a permanent home. This is a very nice organization. The problem I have is that it is a temporary issue for you but not a temporary issue for the town. It would be nice to have this Applicant in there because I think you are a good fit. I feel this is a good thing for the Applicant but not for the town even though this area is hurting. We want that place filled but with retail. I want to see you in town. I know this will fill your need temporarily but I would like to see you find something permanent.

Vice Chairman Haines said I echo what Mr. Stamler said. This is a very difficult decision since I would very much like to see you have a permanent home in Hillsborough. The concern is the zone and that we cannot give you a 5-year Use Variance. We do have several zones where a religious organization is a conditional use. The permanency of granting the Use Variance is a concern for me in this zone.

Mr. Herbert said if this building remains vacant it is not getting retail. It could cause it to fail and then we have a dead building.

Chairman Fenwick said my sense from the testimony of the first witness is that they are making a sincere effort to find a permanent place in Hillsborough. I think it would be fantastic if you find something that will fit your needs in a location that will be very accommodating. It is difficult in a retail center but this retail center has been a dive for a very long time. I do not really see anything that is coming our way that will suddenly make it wonderful. The economy has hit this community very hard; we have vacant storefronts up and down Route 206. I do not think that is going to change any time in the near future. I think this is a start for you here. I think you will be successful and find that place where you can build your facility and your congregation can grow as well.

A motion to approve the application with the condition that the owner screens in the dumpster area so it is not unsightly in compliance with the original site plan was made by Mr. Herbert.

Mr. Kois added since we are having difficulty tracking down the original site plan where the rules may have been different, I ask that part of the Condition of Approval could say that it is going to comply with the current Land Use standards because we do have standards for screening dumpsters.

Mr. Herbert agreed.

Mr. Anderson asked if the Board would like to include a condition for maximum occupancy.

Mr. Herbert said I do not think it is necessary based on the 75 parking spots available.

Mr. Hesthag noted the Fire Marshal controls the maximum number of occupancy.

Mr. Herbert said you should check with the Fire Marshal to see how many people you are allowed to have.

Mr. Skaar said we are working with an architect who does not see any problems.

Chairman Fenwick said I imagine when they go for their occupancy the Fire Official will inspect.

Mr. Anderson said the Board's approval, if it were granted, does not override the fire safety by the Fire Marshal.

A second to the motion was made.

**Roll Call:** Mr. Valcheck – yes; Mr. Herbert – yes; Mr. Volpe – yes; Mr. Stamler – no; Mr. Suraci – no; Vice Chairman Haines – no; Chairman Fenwick – yes. Motion denied.

Mr. Anderson confirmed for the Board that 4 votes in favor is not sufficient to grant a Use Variance.

Chairman Fenwick announced that there are no meetings in August. The next meeting will be September 18<sup>th</sup>.

Mr. Kois mentioned the applications scheduled to the September 18<sup>th</sup> agenda.

### **ADJOURNMENT**

The meeting adjourned at 10:47 p.m.

Submitted by:  
Debora Padgett  
Planning Board/Board of Adjustment