

BOROUGH OF SOUTH PLAINFIELD
ZONING BOARD OF ADJUSTMENT MINUTES
August 16, 2016

Chairman Leonardis opened the meeting at 7:00 pm.

Please stand for the PLEDGE OF ALLEGIANCE.

This meeting was being held in accordance with the Open Public Meeting Act and as such, proper notice of this meeting was published in The Observer and The Courier News & providing same to The Borough Clerk.

It is the policy of the South Plainfield Zoning Board of Adjustment, not to hear any new applications after 10:00 pm and no new witnesses after 10:30 pm.

ROLL CALL:

Present:

**Gino Leonardis, Chairman
David Miglis, Vice Chairman
Kenny Bonanno
Maria Campagna
Cindy Eichler
James Gustafson
Robert Hughes
Frank Lemos, 1st Alternate
Darlene Cullen, 2nd Alternate**

Absent:

Also attending: Larry Lavender, Esq.; Nicholas Dickerson, PP, AICP; Robert Kuhne, PE

MINUTES: August 2, 2016 Meeting.

Mrs. Eichler made motion, seconded by Mr. Lemos, to accept the above stated Meeting Minutes. Those in Favor: Mr. Bonanno; Mrs. Campagna; Mrs. Cullen; Mrs. Eichler; Mr. Lemos and Chairman Leonardis.

RESOLUTIONS:

- A. Case # 7-16 -- John & Eugene Pesaniello (Gene's Auto Wreckers)
Block 390: Lot 18 & 28: M-3 Zone
459 & 499 Hollywood Avenue**

Mr. Bonanno made motion, seconded by Mrs. Cullen, to accept the above Resolution. Those in Favor: Mr. Bonanno; Mrs. Cullen; Mr. Gustafson; Mr. Lemos; Vice Chairman Miglis and Chairman Leonardis.

HEARING: 2 (1 residential application - 1 commercial application)

- A. Case # 16-16 -- Brian Figueiredo
Block 206: Lot 11: R-10 Zone
191 Ten Eyck Street**

The applicant is appealing the Zoning Officer's denial of constructing a deck with a proposed nine (9) foot rear yard setback – twenty (20) foot rear yard setback is required.

Mr. Lavender has reviewed the Affidavit and Notice of Publication. The Board has jurisdiction.

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Brian Figueiredo is sworn in. He purchased the home in July 2003. There was a pre-existing standard wooden deck. Through the years, the deck was power washed and painted. In 2016, the deck became structurally unsound. Therefore, he decided to repair the deck, board by board, using the same foundation. The deck was so unstable and wobbly the contractor who came to look at it would not stand on it.

When he applied for a zoning permit the request was denied due to the setback requirement. The deck had a nine (9) foot rear setback – twenty (20) foot is required. Mr. Figueiredo was told that the deck was built in 1980's and built illegally.

Mr. Figueiredo had many questions that were not answered... Including why he was able to purchase the home if the deck was built illegally even though it is on the survey.

Chairman Leonardis questions Mr. Figueiredo

- Is the deck on the survey dated July 10, 2003 and before the Board in the same location? *Yes.*
- Was it ever extended? *No - has not done anything to the deck except for power washing it and staining it.*
- Where is the kitchen? Upstairs? Is the kitchen on the right or left when you enter the home from the front steps? *The kitchen is straight ahead. The dining room is to the right which has the double doors that lead out to the deck.*
- Is the grill to the left side of the deck? *It is on the deck. It is positioned to the left.*
- Is the deck wider than what is on the survey? *No - I do not know how that could be.*
- Does the deck end in the center of the home or to the edge of the home? *The deck ends in the center of the home.*
- When you bought the house, was it all wood? *Yes.*
- Now the deck has PVC rails? *Yes, the railings will be white.*
- Chairman Leonardis states that he drove pass the home and noticed people were walking on the deck. Is the deck is such disarray that people were standing on it? *The deck was approximately seventy (70) percent complete when he realized he needed a permit. The contractor helping with the deck said that since the footings are not being removed or changed that he did not need a permit to replace the existing deck.*
- What is left to be completed? *The stairs on the side.*
- Looked like the landings were done. *No - not completely.*

Mrs. Campagna states that according to the building permit record, it indicates a deck. According to this record, it is not an illegal deck.

Jim Gustafson requests a clarification. Is Mr. Figueiredo in front of the Board for an Appeal of Zoning Officers decision or bulk variance – setback. Per Mr. Lavender, the denial states that the permit was denied because of the setback and is required to go before the Board. Therefore, this is a bulk variance issue.

Mr. Miglis discusses with Chairman Leonardis whether he was concerned that the deck is larger than shown on the survey... That even prior to Mr. Figueiredo purchasing the home the deck may have been enlarged. Chairman Leonardis states that when he drove by, the grill looked more towards the edge of the home than in the middle. Mr. Lavender reiterates that Chairman Leonardis is concerned that the deck may have been altered from what is shown on the survey. Mr. Figueiredo states that the survey is accurate and the deck size has not been altered in any way. The deck is on the same concrete footings and exactly as it was.

Mr. Miglis questions the construction and safety of the deck using the same footings. It is determined by the Board that once permits are issued, the deck will be inspected to make sure it is up to code.

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Mr. Figueiredo states that the Inspector who was at a neighboring home for an unrelated inspection had seen the deck being built. He was asked if he had a permit - No. Was told to get one. The Inspector did not give him a Stop Work order. If the Inspector would have looked at the footings, he would have noticed they are the same and nothing was changed. That same day, Mr. Figueiredo came to the Building Department to apply for the permit. He was told by someone in the 'Permit Office' - 'couldn't you just change a board or two'. He thought that was very unprofessional for a deck in such bad shape. Mr. Figueiredo was bothered by the statement made by the 'Permit Office' and the unwillingness of the Inspector to look at the footings.

Mrs. Campagna questions Mr. Figueiredo as to what size is the lot - that it is not indicated on the survey. Mr. Figueiredo does not know. After further review of the survey, it is discovered the lot size is 120' X 85'.

Since the property is a corner lot, it is considered to have two (2) front yard setbacks.

With no additional questions from the Board and no questions from the audience, Chairman Leonardis calls for a vote. Chairman Leonardis advises the Board that the vote is for a nine (9) foot rear setback... required is twenty (20) foot rear setback. Mrs. Eichler made motion, seconded by Mrs. Cullen. All those in favor: Mr. Bonanno; Mrs. Campagna; Mrs. Cullen; Mrs. Eichler; Mr. Gustafson; Mr. Hughes; Mr. Lemos; Vice Chairman Miglis and Chairman Leonardis.

Mr. Lavender explains the process to Mr. Figueiredo. The Resolution will be drafted and voted on at the next meeting which is scheduled for September 6, 2016. If the Resolution is accepted, there is a forty-five (45) day appeal period. On the forty-sixth (46th) day, he may start the permit process.

**B. Case # 10-16 -- GMP Contracting LLC
Block 297: Lot 4: M-3 Zone
2240 South Clinton Avenue**

The applicant is requesting a Preliminary and Final Site Plan with Bulk and Use Variances to use the existing building for maintenance and service of its vehicles as well as outdoor storage of dump trucks, pick-up trucks and tractor-trailer.

Mr. Lavender has reviewed the Affidavit and Notice of Publication. The Board has jurisdiction.

Steven S. Polinsky, Esq., (Deutch & Associates, LLC) applicants' attorney; Christian M. Kastrud, PE, CME, (Kastrud Engineering LLC) applicants' engineer; Keith S. Ottes (Langan Engineering) applicants' planner; and Joseph Porchetta, principle owner of GMP Contracting LLC, the applicant are present.

Mr. Polinsky hands Chairman Leonardis Mr. Ottes's signed Political Contribution form.

Mr. Polinsky addresses the Board. He calls on his first witness, Christian M. Kastrud, PE, CME from Kastrud Engineering LLC who is sworn in and is accepted as a Professional Civil Engineer.

Mr. Kastrud proceeds to describe the area using Exhibit A1 and A2 – Site Plans. The same plans are before the Board to review.

- The site is between South Clinton Avenue and Parker Avenue - three hundred (300) feet from New Market Avenue.
- Currently, has three (3) Uses on one (1) lot in an industrial area – M-3 zone.
- The property is approximately 150' X 400' or 1.3 acres.
- West side of the property is used by Pittenger Paving as a storage yard for their machines and materials.

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- The center is utilized by the applicant, GMP Contracting Company Inc., which has an office, and garage. The garage is used to repair their own machines.
- East side (front part) is utilized by PM Engine Repairs which faces South Clinton Avenue. Small engine repairs.
- Easterly and westerly of the property is separated by a chain link fence creating the middle portion.
- Parking stalls are delineated on the southerly side.
- GMP Contracting and PM Engine Repairs access the property from South Clinton Avenue.
- The storage yard is accessed from Parker Avenue.

Mr. Polinsky questions Mr. Kastrud. There is currently no new construction being proposed. It is Mr. Kastrud's understanding that the applicant through a separate entity is the contract purchaser of the property and would like to secure the Use prior to the completion of the purchase. There is concern that the parking stalls on the south side encroach the property next door. If the parking stalls are moved northerly and restriped, there is adequate room for vehicles passing the PM Engine Repairs building to reach GMP Contracting Inc. building. There are currently fifteen (15) delineated parking stalls available to GMP Contracting Company Inc. All on the southerly side. However, there is room for more. There are pre-existing non-conforming bulk requirements. The property width is 125 feet... the required is 200 feet. That will not change for the Use or the application. The front yard setback from the PM Engine Repair building to the right-of-way of South Clinton Avenue is 36 feet... the required is 50 feet. The side yard where the PM Engine Repairs and GMP Contracting building is 14.75 feet... the required is 30 feet. There are no plans for proposed improvements.

Waivers are being requested for: Topographic Contours; Environmental Impact Statement; detailed lighting plan, Traffic Impact Statement and Storm Water drainage plans. The reason for the waivers is that there are no changes to the site and the property is functioning currently as its designed, laid out and utilized.

Chairman Leonardis clarifies to the Board Members that there are three (3) separate business operating on one (1) lot.

Mr. Polinsky states that the applicant occupies space, he is not an owner. However, an entity connected to Mr. Porchetta is contracted to purchase the property. In the process of due diligence in purchasing the property it became clear that the Use of Mr. Porchetta is consistent with the area, but it is not listed in the M-3 zoning Ordinance.

Mr. Miglis questions Mr. Polinsky. Do all current businesses on the property have CO (Certificate of Occupancy)? He does not know. Currently, only a tenant. Does GMP Contracting have a CO? Does not know. However, Mr. Porchetta may know.

Mr. Gustafson advises the Board that the only entity that had a CO was the original owner - Federated Fire. Federated Fire separated the use of the buildings to PM Small Engines and Electrical Alarms. Does not know who Electrical Alarms are. PM Small Engines is out of business. Therefore, no current tenants have CO's.

Mr. Lavender questions Mr. Polinsky why isn't this a subdivision. Per Mr. Polinsky, currently they are tenants - not owner.

If the tentative purchase is complete, there is a possibility that all of the uses will be under GMP Contracting Inc. or may subdivide.

GMP Contracting Company, Inc. has been in this location for approximately 1 year or less.

Mr. Miglis requests an explanation from Mr. Kastrud. What is a Con-Ex? There are several on the property. They are storage trailers. Two (2) land/sea boxes are forty (40) feet – 8' X 40'. What is stored in them? *Does not know what's in them but the applicant may know.*

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Joseph Porchetta - 7 Beverly Drive, Holmdel, New Jersey – principle of GMP Contracting is sworn in. Mr. Porchetta addresses the Board.

- President and owner of GMP Contracting Company, Inc.
- Has been in business for six (6) years.
- Does site construction – develop properties which involves earth moving, underground utilities etc. They prepare the sites for further development – building.
- Currently occupies one (1) one (1)-story building (shown on Exhibit A2) on the property.
- Would like to store four (4) to five (5) company pick-up trucks, tractor trailer and one (1) dump truck.
- Garage area of the building is used to repair his own equipment. All repairs are done inside.
- Accesses the site from South Clinton Avenue.
- Pittenger parks their vehicles on the gravel area. No office use.
- Maximum number of employees at the site - three (3) at the most. There is always one (1) person in the office. The mechanic would be present one (1) to two (2) days a week only when the equipment cannot be repaired on work site.
- Not proposing any new construction.
- Has another company that is currently under contract to purchase the property. Upon purchase the only anticipated change would be moving the offices to the front of the building.
- Requested an inspection from the Fire Department. Up until that point was not aware there were no CO. He did receive a code violation that is why he is in front of the Board for the Use Variance so he may receive a CO. Has not been summoned to Municipal Court.

Vice Chairman Miglis questions Mr. Porchetta:

- How many total employees does GMP Contracting Company Inc. currently employ either on-site (property) or off-site (work site)? *Forty-two (42).*
- Any pavers? *No pavers. Sub-contracts all paving.*
- What type of heavy equipment does GMP Contracting Company Inc. own:
 - *Twelve (12) Excavators*
 - *Seven (7) Dozers*
 - *Two (2) Back Hoes*
 - *Four (4) Dirt Rollers – Compaction Rollers*
 - *One (1) Tri-Axle Dump Truck*
 - *Two (2) Off-Road Dump Truck*
 - *One (1) Low Boy*
 - *One (1) Twenty (20) Ton Tag Along*
 - *One (1) Seven (7) Ton Tag Along*
 - *Several Three (3) Wheelers – all on work site*
- Where are your large equipment stored? *All are currently on job sites – Old Westinghouse Building in Edison, New Jersey. Another in South Brunswick, New Jersey. When not in use, the large equipment is stored on a friend's farm in Hillsborough, New Jersey.*
- What are the pick-up trucks used for? *For employees to get to work sites. Sometimes they bring their personal vehicle and leave it. Other times they get dropped off and take the pick up to the job site.*
- Any plows? *Five (5) plows stored on the property.*
- Any storage containers? *Currently, using one (1) land/sea box which is currently storing pipe fittings.*

Mr. Gustafson questions Mr. Porchetta. If the purchase of the property is successful, are you going to remove the illegal tenant and use the back portion of property to store your equipment? If the equipment is on the property he's not making money. Would like to access the property from the Parker Avenue side... so yes. If you have a conditional approval, would you be willing to come back with a site plan? Absolutely.

Mr. Gustafson states that all the equipment would not fit on the back portion of the property. Mr. Porchetta agrees.

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Mrs. Campagna asks where Mr. Porchetta was before this location. He was subletting from a company in Green Brook - Corroca. This is his first location in South Plainfield. What does GMP stand for? Originally was his and his partner's initials but then bought his partner out. Also daughter's initials.

Mr. Malinowski currently owns the property.

Mr. Polinsky questions Mr. Porchetta. Who occupied the middle portion of the property where you currently occupy? Mr. Porchetta states Mr. Malinowski - Federated Fire. They built fire trucks.

Mr. Bonanno ask Mr. Porchetta what type of maintenance do you do? Oil changes, undercarriage, re-captures and recycles oil, etc. The trucks are fitted with pumps that pull out the oil.

Mr. Porchetta removed a five hundred (500) gallon surface fuel tank per the request of the South Plainfield Fire Marshal.

Mr. Porchetta states there is no need to improve site at this time... just wants Use Variance. Currently he is only a tenant. If and when the purchase is complete, he intends to return to the Board with site plans for improvement of the property. However, currently is a tenant.

Mr. Lavender re-iterates that this application is for the middle portion of the property at this time.

Discussion among Board Members on how to proceed with the application - the application is requesting a Final & Preliminary Site Plan as well as a Bulk and Use Variance. The applicant is a tenant.

Chairman Leonardis calls for a five (5) minute recess.

The meeting is called to order.

Mr. Polinsky addresses the Board. The applicant is aware of the improvement that is needed on the property. Upon his purchase, he will address those issues and will return to the Board with improvements shown on a Site Plan. However, tonight's application is for Use Variance for the section of the building that GMP Contracting Inc. is utilizing. That is the only portion he has control off.

Mr. Leonardis states that the application does not indicate that the application is only for the middle third of the lot. The application states Preliminary and Final Site Plan for the entire lot 4.

Vice Chairman Miglis states his concerns as to how the application has been submitted. If he says yes to the application, that he is saying yes to the whole property... not for the middle section only. He understands that the applicant is looking to get a Use Variance to get a CO.

Mr. Lavender advised the Board that it has been discussed that the focus will be made on the center portion... from fence to fence – 5,000 square foot building. It can be memorized as such. The Board Members are concerned that the other tenants can come in for a Use Variance... therefore creating three (3) uses on the same property. If a decision is made on the center portion and Mr. Porchetta indeed purchases the property, he will have to come back to address the entire lot.

Mr. Polinsky states that the Ordinance states that a tenant Use Variance requires a Site Plan. However, at this moment he is a tenant. He will return to the Board with a formal Site Plan when the purchase is complete. He is only following the Ordinance.

Mr. Porchetta addresses the Board. He has several family members who own property in South Plainfield. He likes South Plainfield. In order to go forward with the purchase, Mr. Porchetta wants to make sure he is able to conduct his business on the property. That is why he is applying for a Use Variance. Since he does not own the property, he is not going to put a lot of money into improvements. However, upon purchase he intends to return to the Board with a formal Site Plan with improvements.

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Per Mr. Porchetta, Malinowski currently owns the property. He has no affiliation with him.

Chairman Leonardis questions why the applicant did not apply for a bifurcated application for a Use Variance and Preliminary Site Plan with his company that is purchasing the property. Then return after the purchase for the Final Site Plan. Per Mr. Polinsky states that the applicant would like to secure the Use Variance prior to the purchase. Currently, GMP Contracting Inc. has no intention of doing any improvements as a tenant.

Chairman Leonardis reiterates that the application is for the approval of a Use Variance – contractor yard – maintenance. However, the exhibits show bold typing which is an indication of proposed changes.

Chairman Leonardis questions Mr. Kastrud as a Professional Engineer that bold lettering / diagram / lines etc. on plans represent proposed new construction or changes. Mr. Kastrud agrees.

Chairman Leonardis reiterates with Mr. Porchetta that he is here to get a Use Variance so he may get a CO and remain on the property. The Site Plans indicate items that are bold showing changes. However, they are existing items.

Mr. Polinsky states that they can only seek Site Plan approval for the middle portion that GMP Contracting uses.... Not for the whole property since they are not the owners.

Chairman Leonardis reiterates that the application is for the entire lot. There is no indication that it was for the middle portion.

Mr. Lavender explains that the resolution can indicate only the middle portion of the property.

Mr. Polinsky is agreeable in returning to the Board with a proper Site Plan. However, he would like to have a decision on the Use Variance tonight.

Chairman Leonardis has concerns as how to approve a Use Variance with on an application that indicates the entire lot.

Keith Ottes – 526 Gladstone, Langhorne, Pennsylvania - is sworn in and is accepted as a Professional Planner. He was previously in front of the Board in January for Ryder Trucking.

Mr. Ottes shows the board Exhibit A-3 – various photos of the site. The aerial photo focuses on the applicants site.

Mr. Ottes addresses the board with positive criteria:

- Building is in an industrial area not in a residential area.
- Similar Use as previous tenant – maintenance of vehicles.
- This Use is similar to the area around it. However, this particular Use is not listed in detail in the Ordinance.
- Uses in the area are much more intense – heavy industrial.
- There is sufficient space for the Use.
- Has highway access.
- Has good civic design. It is set back and fenced off. You cannot see it from the road.

Mr. Ottes addresses the board with the negative criteria:

- There are two (2) residential units near the property. However, residential units are prohibited in an industrial area.
- The area has a feel of an industrial zone.
- The site and Use is fitting for the area.

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- Per 2014 re-examination of the Master Plan, there was a suggestion for the inclusion of landscaping yard / contractor yard as a Conditionals Use. However, no action has been taken place to amended as so.

Nick Dickerson reiterates that it is similar Use and less intense for the area. This is an industrial zone, but this Use is not specified in the Ordinance. Provides access to highway. Promote visual design.

Vice Chairman Miglis states that the previous tenant out-fitted new fire trucks with new equipment. There was no long length of time of outdoor stored trucks or equipment. It was all brand new equipment to outfit new fire trucks.

Chairman Leonardis states that the application lists Bulk Variances - which ones? For the lot width for lot 4? Did the applicant receive permission from the current owner to request these variances? They require front yard setback (building that previous had PM Parts as a tenant) which is outside of the GMP portion of the property. Side setback which is directly involved with GMP Contracting Company Inc.

Federated Fire occupied both buildings and bulk variances approved.

Mr. Gustafson gives some background of the site. Federated Fire used the front building as an office and the garage to outfit brand new fire trucks. They did not repair them at this site. They repaired fire trucks at a site closer to Route 287. When the company was dissolved, the separate companies became tenants. Mr. Gustafson was unaware of the back lot. Thought the back lot was a separate property.

Mr. Polinsky states that the bulk variances are not in the portion of the property that GMP Contracting Company Inc. occupies. All the variances are pre-existing conditions non-confirming. The application is only for the center section of the property. Mr. Polinsky requests a recess. Recess granted.

The meeting is called to order. Mr. Polinsky requested an adjournment so the applicant and professionals may address the concerns of the Board.

Chairman Leonardis reviews what type of information the Board is seeking:

1. A letter from the existing owner giving the applicant authorization to seek relief for all the bulk and use variances.
2. Show site improvements and cleanup of site.
3. Clarify engineering drawing... what the applicant is looking for. If looking for Bulk Variance show on the plans. Also landscaping, lighting, parking, dumpsters, beautification etc.
4. What will happen in the front building, middle building and back.
5. Address comments and concerns listed in Najarian's letter... topography/grades/drainage etc.
6. Outdoor storage lay-out. How dense will the lot be? How much equipment would be stored?
7. Site logistics – movement of equipment... heavy equipment moving through the lot.
8. Esthetics.
9. Possible two (2) phase plans - What Mr. Porchetta will do now as a tenant and after purchase as owner.
10. Start and completion dates of improvements.
11. Clarification on footnotes on existing plans. Currently, do not match up.

Proposed improvement for the entire lot can be done as a conditional approval pending sale.

Any contractual issues pertaining to the purchase, Mr. Polinsky will address them with Mr. Lavender.

The adjournment has been granted and GMP Contracting Company Inc. will return on September 20, 2016.

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INFORMAL HEARINGS: None

OLD BUSINESS: None

NEW BUSINESS: None

CORRESPONDANCE: None

EXECUTIVE SESSION: None

ADJOURMENT: 9:55 PM

Respectfully Submitted,
Joanne Broderick
Recording Secretary