

**MINUTES
OF THE
ZONING BOARD OF ADJUSTMENT
CRANBURY TOWNSHIP
CRANBURY, NEW JERSEY
MIDDLESEX COUNTY**

**MINUTES OF MAY 5, 2010
APPROVED ON AUGUST 4, 2010**

TIME AND PLACE OF MEETING

The regular meeting of the Cranbury Township Zoning Board of Adjustment was held at the Township Hall Municipal Building, Main Meeting Room, 23-A North Main Street, Cranbury, New Jersey, on May 5, 2010, at 7:30 p.m.

CALL TO ORDER

Dale Smith, Chairman of the Cranbury Township Zoning Board of Adjustment, called the meeting to order.

STATEMENT OF ADEQUATE NOTICE

Pursuant to the Sunshine Law, adequate notice in accordance with the Open Public Meetings Act was provided of this meeting's date, time, place and agenda was mailed to the news media, posted on the Township's Bulletin Board, mailed to those requesting personal notice, and filed with the Municipal Clerk.

MEMBERS IN ATTENDANCE

Mr. Gerberich, Mr. Hasselbach, Mr. Hebert, Mr. Johnson, Ms. Kemp, Mr. Lehr, Mr. Patterson, Mr. Shea, Mr. Smith

PROFESSIONALS IN ATTENDANCE

Mr. Steven Goodell, Esquire; Ms. Virginia Guinta, Court Reporter; Ms. Josette C. Kratz, Secretary/Land Use Administrator; Ms. Cathleen Marcelli, Board Engineer; Mr. Richard Preiss, Board Planner; Andrew Feranda, Traffic Consultant

**RESOLUTION RECOGNIZING ADRIENNE KEMP'S TIME SERVED ON THE
ZONING BOARD**

Mr. Smith announced the resignation of Ms. Kemp. He said Ms. Kemp has certainly been extremely reliable, efficient, and dedicated to this Board. We will miss her insight and abilities dramatically. In honor of that, he read the following aloud:

**BOARD OF ADJUSTMENT
TOWNSHIP OF CRANBURY**

RESOLUTION

WHEREAS, Adrienne Kemp resigned her position as a member of the Cranbury Township Zoning Board of Adjustment as of May 2010; and

WHEREAS, Adrienne Kemp began her service with the Board in March 1999, and served the Board with dedication and distinction for over 11 years; and

WHEREAS, during those years in office Adrienne Kemp personified the highest ideals of public service; and

WHEREAS, Adrienne Kemp's service to the Board and to Cranbury Township has helped to preserve the unique character of Cranbury Township; and

WHEREAS, the Board will miss Adrienne Kemp's insight, enthusiasm and copious note taking. In addition, she has shown true dedication through her attendance and early arrival every meeting and her focus on and attention to the critical issues being discussed. Her insights into the nuances of the applications were a great asset during the Board's deliberations.

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Adjustment of the Township of Cranbury hereby expresses its appreciation and thanks to Adrienne Kemp for her 11 years of service to Cranbury Township and her many contributions to the Board.

BE IT FURTHER RESOLVED, that the Zoning Board of Adjustment of the Township of Cranbury extends to Adrienne Kemp its best wishes for many years of happiness in the future.

BE IT FURTHER RESOLVED, that this Resolution be entered into the minutes of the Board's meeting, and that the original Resolution be formally presented to Adrienne Kemp.

CERTIFICATION

The foregoing is a true copy of a Resolution adopted by the Board of Adjustment of the Township of Cranbury on the 5th day of May 2010.

Mr. Shea motioned for the approval of the resolution. Mr. Hasselbach seconded the motion.

VOTE ROLL CALL

AYES: Mr. Gerberich, Mr. Hasselbach, Mr. Hebert, Mr. Johnson , Ms. Kemp, Mr. Lehr, Mr. Patterson, Mr. Shea, Mr. Smith
NAYS: None
ABSTAIN: None
ABSENT: None
INELIGIBLE

TO VOTE: None

MOTION CARRIED

APPLICATIONS

**ZBA 181-10 Edward & Kari Novak
12 Jackson Court
Block 20.06, Lot 33, Zone RLD-1
Basketball Court- Bulk Variance**

REPRESENTATIVES: Edward Novak, Applicant

Mr. Novak being sworn gave testimony. Proper notice was given and the Board had jurisdiction to hear the matter.

Mr. Novak explained he was asking approval for a multisport court in their backyard. They have met with their immediate neighbor where they intend to locate the court and worked it to minimally impact the neighbor while trying to comply with the setback requirements.

The Novacks met with the DRC and realized some of the goals were not optimal and perhaps they needed to see if they could come closer to compliance. It was suggested by the DRC to have the property surveyed to assure no encroachment on the flood plain, conservation easements, and wetlands.

The Novacks employed Princeton Junction to survey the property. They were able to satisfy the side yard setbacks and all of the State requirements. Because of a septic line and leech field which runs in the rear of their property, they were limited on where they could place the court.

They are requesting a variance to light the multisport court and an encroachment on the rear yard setback. They chose a lighting system that would prevent further light spillage. They have a review letter from the Board engineer stating the lights have to be no higher than 18' which the applicant would comply. Mr. Novak explained that he worked in the city, and this will enable him to use the court certain times of the year. The tennis court portion was 60' x 120', the basketball portion overlaps perpendicular at 180 degrees with additional space was 20' x 60'. There would be approximately 350-ft of fence as not to enclose the entire court it would be open to the landscaped patio area. There would be six poles with two lamps per pole. Their intention was to only have the lights on when the court was in use.

Mr. Smith asked if there would be a time limit on how late the lights would be on. Mr. Novak said that he was usually in bed by 10:00 p.m. during the week, and he would limit use to 10:30 p.m. and weekends 11:00 p.m. Mr. Smith said, in addition to a light issue for the neighbors, there was also a sound issue as well. Mr. Smith explained that it would give some consistency in the event it became a continual problem or if the property changed hands to insure the Zoning Officer would have some enforcement power.

Mr. Novack said they altered the landscaping keeping the neighbors in mind and would comply with the Board Engineer's report. The court would be behind the berm, the trees would take several years to have an impact. On the berm the trees will be about five feet high and will

accommodate what they are trying to do sooner to provide the screening. There will be 17 evergreen trees planted.

Mr. Goodell asked if this plan was a new landscaping plan that he handed the Board. Mr. Novak said it was.

EXHIBIT A-1 Landscaping plan revised

Ms. Marcelli asked what the height of the trees that the Novaks intended to plant. Mr. Novak answered they were calling for 6' to 8'.

Mr. Smith opened the floor to the public.

Mr. Nicola Kadar, 11 Jackson Court, sworn, was complimenting the Novaks for placing landscaping and being sensitive to the neighbors since the other tennis court on Jackson Court was an eyesore.

Mr. John Michel of 19 Scottsdale Court he asked the Board to take in consideration that they are stargazers and to be sensitive to the ambient lighting.

Mr. John Sullivan of 15 Scottsdale Court said that their children are always playing in each other's yard and felt this would be an asset to the neighborhood. He also said that there are about 30 men around his age who like to play basketball at the school weekly and are always trying to find an outdoor basketball court in the summer where the children run could around and play. He felt the lighting would not be an issue since there are about three acres of woods between their property and relation to Mr. Sullivan's property.

There were no other comments to the public and the floor was closed.

Mr. Johnson didn't feel the lighting would be much of a problem, but more of a noise issue by allowing the use of the court beyond what the noise ordinance allows. He said that there are a lot of people that like to sleep with their windows open.

Mr. Novak said he did not feel they would have a problem with the time limitation and felt they were very conscientious.

Mr. Goodell mentioned his concern was not just for the Novaks, but went on to explain that the variance, if granted, would run with the land and any subsequent property owner also inherits the benefit of the approval.

Mr. Shea asked that they would share with the engineer the type of lights and engineering of the lights.

Mr. Novack said that the shoebox was designed into the light.

Ms. Marcelli said that the lights in the photometric plan provided was for a 20' to 25' high light, she added that even though it was a downward light it is pretty intense so there will be "sky glow".

Mr. Hebert asked what the objective was for the lights. Was it so that they could play in the spring and the fall before dinner when it is dark around 5:00 p.m.?

Mr. Novak said it was more for the spring and fall when he gets home at 6:30 p.m. and it is already dark.

Mr. Hebert asked if the applicant would be willing to offer a curfew on the lights before 10:00 p.m.

Mr. Novak said he didn't see how they would be using it consistently every night. They have twins in first grade and a little one in kindergarten so they didn't foresee moving in a long time and their intention was to remain living here in Cranbury. He would be as flexible as possible but would like to retain some right to go beyond. He felt that 10:30 p.m. on weekdays and 11:00 p.m., weekend (Friday being a weekend evening and Sunday being a weekday evening) would be acceptable.

Mr. Preiss said the State noise standards changeover daytime versus nighttime at 10:00 p.m. So if the concern was both lighting and noise, then past 10:00 p.m. would not be consistent with the noise standards, but that would be at the discretion of the Board.

Mr. Hebert said he agreed some people do go to bed early and what would the mechanism for Cranbury if the next owner abuses the code and the neighbors have to listen to the noise every day. Will they have recourse to come and complain or would the Board be reasonable for allowing this to happen?

Mr. Smith felt this was unique that these courts are so remote from adjacent properties and almost any other site would probably be inappropriate. This is down and behind the berm.

Mr. Hasselbach said he flew over the area himself. He said looking down at it that from the nearest house it is such a far distance away and all the vegetation that he felt this placement would have the least impact. He mentioned that the houses along Route 130 have continual noise so that 10:30 p.m. should give plenty of time although if applicants get complaints he was sure they would curtail the activity.

Mr. Smith felt the restriction only implied the court lighting and not the low lighting around the patio.

Mr. Preiss introduced a document from Bing.com a oblique aerial, a bird's eye view of the property entered in as Exhibit B-1 2010 Microsoft Corporation. It shows the middle of the house and driveway viewing toward the neighbor affected and the berm. The next neighbor's view would be block by the house itself.

Mr. Smith asked the Board to make a motion. He indicated the desire to have the time limit in the motion but that the stipulation was also that the lights would remain off until sunrise the next morning, so that they don't turn them off and then on again.

Mr. Shea made a motion to approve the application for the C2 variance, with the lowered lighting to 18-ft, lights off by 10:30 p.m. on weekdays and 11:00 p.m., weekend (Friday being a weekend evening and Sunday being a weekday evening) and remain off until sunrise the following day, screening as discussed and minor comments as mention in Ms. Marcelli's report.

Ms. Kemp seconded the motion.

Mr. Preiss felt that one of the reasons the Board was comfortable with this application was the remote location of the tennis court to the south and east was Township owned property and significant berming across the property berming it from north and west.

VOTE ROLL CALL

AYES: Mr. Hebert, Mr. Johnson, Ms. Kemp, Mr. Lehr, Mr. Patterson, Mr. Shea, Mr. Smith
NAYS: None
ABSTAIN: None
ABSENT: Mr. Gerberich
INELIGIBLE
TO VOTE: Mr. Hasselbach

MOTION CARRIED

Mr. Smith explained that the resolution would be approved at the next meeting but that if the Applicant needed to do anything in advance of that to speak with Ms. Kratz.

**ZBA 160-08 AVN Holdings, LLC
Block 7, Lots 1 & 2
Route 130 & Half Acre Road
Preliminary & Final Site plan, Use Variances**

REPRESENTATIVES: Peter Lanfrit, Esquire
David Wallace, Architect

Mr. Hasselbach and Mr. Johnson recused themselves.

Mr. Lanfrit mentioned this was the third hearing date, (February 3rd and March 3rd, were the first and second, respectively) when testimony regarding this application was presented. This was an application for a use variance and site plan approval.

The use variance was involved because there currently is a structure on the site occupied by the liquor store, which was previously granted use variance. Parts of this application were to demolish the liquor store structure and re-build it using the same square footage. The applicant felt they are not expanding it but rather rebuilding it.

The other part of the application was the construction of a hotel and a restaurant/banquet facility. Both of those are permitted uses within the zone. Variances are needed for the hotel because of the height and number of stories. The ordinance permits three-stories, but the applicant is requesting four-stories. They exceed the 35-ft height limit.

Mr. Lanfrit said at each meeting they have been asked to bring back additional data or information.

To give the Board the benefit of the architect's analysis of the three-story versus the four-story hotel, traffic testimony was presented. They have some additional engineering testimony and then planning testimony, in addition to architectural concerns with the wine shop.

Mr. Lanfrit offered that there was a Geophysical Investigation Report requested from Mr. Crow by the Board, prepared by SubTerra GeoServices. The study involved electromagnetic terrain conduct electrometric survey and ground penetrating radar survey. The report was submitted to the municipality and, based on the study; the applicant did not find anything on the subject property.

Ms. Kratz announced she did not recall receiving that, but that it may have been submitted with Mr. Lanfrit's other application for the same site.

Mr. Lanfrit said they were submitted at the same time.

Mr. Frank Brennan, Esquire, asked to review the study and that he reserves the right to re-question Mr. Crow with regard to the study once the public has the opportunity to review it.

Mr. Wallace, still under oath from being previously sworn, said their intent was to pull the building away from the edges of the site in consideration for the neighbors and the Township.

The four-story building versus the three-story was the creation of a smaller building footprint, which allowed them more flexibility locating the buildings on the site. In the exhibits with a three-story building, they have to move the building further to the south of the property and closer to the neighbors' property line. It also decreases the amount of circulation around the building which they found undesirable, and closer to the road by 25-ft, which is also undesirable. With a four-story plan they are able to pull the building back an additional 25-ft and move 30 to 40-ft further away from the south property line.

The height of the additional floor was approximately 10-ft, floor to floor. The stepped façade vertically and horizontally in depth, was used to break the length of the building so it did not look like one large mass.

Mr. Wallace said the three-story building would have a larger presence closer to the property line than the pulled back four-story building. The site line study shows the adjacent grades at eye-level using the buildings along Route 130. Looking over the top of those buildings, all one sees is sky.

Mr. Brennan objected. Mr. Goodell overruled the objection stated but they can certainly go over those objections in cross-examination.

Mr. Gasiorowski asked about the line of site study.

Mr. Wallace said it had already been submitted as EXHIBIT A-3 marked February 3, 2010 which shows the line of sight.

Ms. Kratz said the Exhibit has been on record and a copy of it is available for review in the PB/ZBA office as part of the file.

Mr. Goodell confirmed the exhibit was marked by the Board, entered and authenticated and is part of the record and available.

Mr. Lanfrit asked Mr. Wallace if he had visited the Marriott site on Route 130. Mr. Wallace indicated that he had visited the site, and the hotel is a three-story hotel with a very steep pitched roof. The hotel is 15 to 20-ft closer to the road than this proposed building. It does not have the benefit of the portico which pushes the building back an additional 35 to 40-ft from the setback line. Their building would have less of a vertical impact, visually, than the Marriot does.

Mr. Lanfrit said there were concerns at the last meeting of the look and colors of the wine shop.

Mr. Wallace confirmed they redesigned the wine shop. They came back with a revised color scheme for the wine shop using earth tones.

EXHIBIT A-9 Rendering, Sheet No. AR 1.2, dated 4/27/10

Mr. Wallace explained the changes. There was concern from the public on the colors. They changed them to the earth tones found elsewhere on the site and redesigned the façade on Route 130 since comments were that it was too plain/flat so they introduced some false columns along the wall and added windows to break it up. Mr. Wallace said as the distance increased there was less detail that could be seen.

Mr. Shea asked about the residences along Half Acre Road and questioned what would the hotel guests be able to see out of the four-story guest windows.

Mr. Wallace said they looking from that general direction. Rooms along the south are separated by a 60 to 70 ft to the property line. The three-story looks to be about 40–50-ft.

Mr. Smith asked if the renderings reflected the wine shop of the four-story model or the three-story model.

Mr. Wallace answered the wine shop was the same either way.

Mr. Smith said it did not look like that from the plans, certainly there is a different geometry.

Mr. Wallace said the wine shop was transferable and could work on either site.

Mr. Preiss asked if they could put 113 rooms in the three-story hotel.

Mr. Wallace answered they could.

Mr. Preiss asked if under that scheme, they could have a hotel of a compliant height with the same 113 rooms and additional features on the property.

Mr. Wallace said yes. The drawback would be being closer to the south property line as well as closer to Route 130, with a lack of pavement circulation for the Fire Department access and parking spaces further away than needed.

Mr. Preiss said the height was not being requested in this situation to allow additional rooms and additional spaces. So the advantages are the aesthetics of the hotel to have the signature blade

feature as well as a means pulling the hotel away from the edges of the property. He asked if they could have a hotel of a compliant height of 35-ft.

Mr. Wallace answered yes.

Mr. Patterson asked if they were stating they could meet the ordinance's height requirement and still have the same amount of rooms. He stated that was not what was shown on the layout to the left.

Mr. Wallace said they did not change the roof line. By interpretation of the code, it allows a slope roof to meet the midpoint of the roof as opposed to the peak. On a flat roof the code talks about the peak. The blade is sloped so they are using the peak of the blade as the worst case scenario because most of their roof is in fact flat.

Mr. Smith asked about the other elevations. Mr. Wallace answered that they only did the front elevation.

Mr. Hebert indicated if the applicant went with a pitched roof it would be able to fit the number of rooms in the three-story building and would be more in line with the character of the town. He asked if they considered that.

Mr. Wallace said it would be difficult to get that approved at the brand level, but it could be done and had been done before with other brands. The height of the peak of the pitched roof is still the same as it is on the four-story building and yet the building is closer to the road so therefore has a more mass of presence.

Ms. Kemp asked if they went to three-story would there be room for vehicles to get around.

Mr. Wallace said a three-story building would have to use grass pavers.

Mr. Brennan said it was mentioned in the testimony of Mr. Wallace that there was a need to have 113 rooms because that was economically feasible. He asked if there was evidence that supports that statement.

Mr. Wallace replied it was anecdotal.

Mr. Brennan asked if he was familiar with the property on the corner of Prospect Plains Road and South River Road.

Mr. Wallace said he was not.

Mr. Brennan said on the landscaping plan for the three-story, one of the things with that concept was to put grass paver fire access. He then asked why as grass pavers opposed to regular pavers.

Mr. Wallace said due to the impervious surface ratio.

Mr. Brennan asked if that meant if they used regular pavers versus grass pavers would they need additional waiver or variances.

Mr. Wallace said he did not calculate that, but that was a calculation for the civil engineer.

Mr. Brennan said it was indicated that they could build a three-story hotel and obey all the setback variances.

Mr. Wallace stressed they could meet the requirements. Currently, the four-story building exceeded the setback requirements. They could meet the requirements for setback and still build a three-story building with 113 rooms.

Mr. Wallace said that one does not build commercial buildings like big houses.

Mr. Brennan asked if it was fair to say this was not compatible architecture.

Mr. Lanfrit objected.

Mr. Brennan asked if it would be possible to construct the building at the site in a way that was more harmonious with the style of Historic Cranbury.

Mr. Lanfrit objected.

Mr. Goodell questioned the relevancy.

Mr. Gasiorowski had variance questions regarding the same.

APPROVAL OF BILLS

Upon a motion and second of the approval of bills, the Board unanimously approved.

ADJOURNMENT OF MEETING

There being no further business, on a motion duly made, seconded and carried, the meeting was thereupon adjourned.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that I am duly elected and acting Secretary of the Zoning Board of Adjustment and that the foregoing minutes of the Zoning Board of Adjustment meeting, held on May 5, 2010, comprised of 10 pages, constitute a true and correct copy of the Minutes of the said meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my name of said this August 4, 2010.

Josette C. Kratz, CPS

/jck