

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

**MINUTES APRIL 14, 2021
APPROVED FEBRUARY 2, 2022**

TIME AND PLACE OF MEETING

The regular meeting of the Cranbury Township Zoning Board of Adjustment was held at the Cranbury Township Hall Municipal Building, 23-A North Main Street, Cranbury, New Jersey, Middlesex County on April 14, 2021, at 7:00 p.m.

CALL TO ORDER

Ms. Meacock called the meeting to order and presided over the meeting.

STATEMENT OF ADEQUATE NOTICE

Adequate notice as well as electronic notice of this meeting was provided in accordance with the requirements of the Open Public Meetings Act and the regulations governing remote public meetings. The notice included the time, date and location of the meeting and clear and concise instructions for accessing the meeting. A copy of the agenda for this meeting was made available to the public for download on the Township's website, and all documents and other materials pertaining to any applications listed on the agenda were posted electronically and made available for download at least forty-eight hours prior to the meeting.

All participants in this meeting are required to keep their microphones muted until recognized or directed otherwise. The Board would engage the Zoom "mute" function until the time for public comment was reached.

Members of the public who wish to make a comment are required to use the "Raise Hand" feature in Zoom, or, if participating by telephone, by pressing *9. Once recognized by the chair, the participant would be able to unmute his or her microphone and offer a comment. Interested parties wishing to ask a question or make a comment during a public hearing on an application would be sworn in and asked to provide their name and address before proceeding. The Board Chair or his designee would manage the order of the comments.

Comments or questions sent via chat would not be accepted and would not be made part of the record or minutes.

MEMBERS IN ATTENDANCE

- ☒ Joseph Buonavolonta
- ☒ Sean Deverin
- ☒ Robert Diamond
- ☒ John Hoffman
- ☒ David Nissen
- ☒ Neal Wagman (arrived at 7:12 PM)
- ☒ Frank McGovern (Alternate #1)
- ☒ Richard Kallan (Alternate #2)
- ☒ Marilee Meacock

PROFESSIONALS IN ATTENDANCE

- ☒ Trishka Cecil, Zoning Board of Adjustment Attorney
- ☒ Josette C. Kratz, Secretary
- ☒ Richard Preiss, Planner
- ☒ Elizabeth Leheny, Planner
- ☒ Andrew Feranda, Traffic
- ☒ David Hoder, Engineer

APPLICATIONS

ZBA334-20 Rajesh Wadwa/Shubham LLC
 Block 18.02, Lot 4, Zone V/HR
 2709 US Route 130
 Use Variance, Preliminary and Final Major Site Plan

REPRESENTATIVES: Francis Brennan, Attorney
 Rajesh Wadwa, Applicant/Property Owner
 Lorali Totten, P.P. & P.E., Manager of Engineering & Executive
 Vice President at Crest Engineering Associates Inc

Ms., Cecil stated that proper notice was provided in accordance with all applicable requirements so the board could take jurisdiction over the application.

Mr. Brennan introduced himself and those that would be presenting testimony. They are seeking a use variance and other variances, which were part of this application. This was a small property located on Route 130 South (in Cranbury), this was a unique property in that it was collocated on Route 130 and surrounded by residential development. Constructed and used for several decades as a commercial property; however, it was currently in the Village/Hamlet Residential Zone, never intending for this property to be a residence and yet that was the only under zoning restrictions that it could be used for (residential).

Mr. Brennan stated, facing the challenge that every non-residential use, which an applicant wants for this property, must come before the zoning board for a use variance, turning away many that did not want to face the expense of seeking use variance are asking the board to grant a variety of uses within a use variance. This way the applicant may present prospective tenants with an approval in place for an appropriate use. The nature of the use variance sought this evening was for office and retail uses. They would be seeking uses permitted in the Village/Commercial Zone not the Commercial Highway Zone, keeping within the residential /mixed commercial use.

Mr. Brennan stated there would some existing condition that necessitates bulk variances; front yard and side yard variances. There are also very little improvements proposed for the property, other than general maintenance and upkeep pf parking lot and landscaping. There could be a re-striping of the parking lot, which Ms. Totten would address to allow a few more parking spaces within the existing asphalt area and trash enclosure.

Ms. Cecil swore in the applicant's consultants and the Board's professionals. And she stated that board members Mr. Wagman has joined and since no testimony has been presented yet he would be able to participate and vote on this application.

Mr. Wadhwa, sworn, explained the previous approval he sought for this property. He was had been thinking of setting up his own practice at that time so they tried to investigate, bought and sought approval. When the time came to set up he stated his professional life changed and left correctional medicine business and the economic situations changed, and so did his professional life taking up obligations as Chief Medical Doctor for Continental Airlines out of Newark (now United).

Mr. Wadhwa explained that those interested in the property did not want to undertake the legal proceedings to obtain a use variance; therefor, Mr. Wadhwa was seeking those approvals now to assist in the sale of the property.

Ms. Leheny asked if the applicant had received interest for retail uses. Mr. Wadhwa stated this has been mentioned by his realtors from time to time. This has been constant traffic of requests.

Mr. Deverin asked what the building was presently outfitted for; offices? Mr. Wadhwa testified that the building has a small office and main hall kept open for any use to be built out.

Mr. Kallan he made a summary time line. One the 2006 application approved as medical office, an addition to the 750 SF addition to the existing 1,300 SF was approved, redesign and reface the existing parking, expensed parking to 14 spaces, install six foot fence along south and west property lines, and lights should be turned off by 9 p.m. In 2011, postpone improvements for full site plan and use only as site to review and secured patience files for a period of two years, no more than five staff positions, inclusive of physicians shall be permitted on site at any time. Install fence and pave, top coat, mark and strip parking lots, limit signage to one sign on door to identify the premises occupants, and lights to be turned off at 9 p.m. and grant a two year calendar for improvements. Mr. Kallan stated the conclusion he reached, per the site plan sketch the proposed building addition was not to be built with the fence (looks like they were installed), expensed use with retail and office services, expansion of hours of operation, expansion to nine parking stalls, and no mention of any new signage proposal.

Mr. Deverin asked for clarification, stating it was not usual for an approval with a time limit on it, was it was that it was approved for a medical office for two years? Or was it approved with two years?

Mr. Wadhwa stated the two year approval after the 2006 approval was that they were not sure what they planned on doing after the two-years. His job was leading him more as a legal medical expert in a certain area. They did not anticipate what the plans would be after two years.

Mr. Deverin commented that the applicant has stated everything about his personal career and what you attended and what changed, but he stated he was more interested in the uses being asked to be approved, because they go with the property forever regardless of the applicant and his career and everything else. Mr. Deverin commented that he wanted to understand, the previous approval for the two years mentioned was that two year period was to make the improvements or two years as temporary use approval.

Mr. Brennan stated he was not representing the applicant at that time, Mr. Driggers has passed away, it was his understanding he was asking for two years to keep it simple and was not imposed by the board. Mr. Wadhwa figured he would be there for two years and asked for two years.

Ms. Meacock opened the floor to the public.

Ms. Cathleen Argiriou, sworn, 11 Stockton Drive, she received both certified and regular mail and the green card was already removed from the certified mail envelope. She was not sure if that makes a difference. She questioned the property backing up to residential housing and to give blanket approval; however, if there would be a business that closes they would like to know exactly what it was. The applicant was requesting to increase the parking spaces, for the traffic to leave there, based on type of business and amount of traffic, they would make a right out of the parking lot onto Route 130 south you cannot make a U-Turn they might make a right and cut through the development to Station Road to Route 130 or go to the circle. Activity and timing could create traffic through a residential area.

Mr. Brennen mentioned that his paralegal actually took pictures of the way the mailing went out because the post office has been having some issues and disappointing level of service over the last few months they did not have faith anything would go out and received by anyone.

Mr. Brennan offered Ms. Totten as an expert in both planning and engineering this evening. Ms. Totten, sworn, gave her credentials and was accepted. Ms. Totten shared her screen using Exhibit A-1 listed in their exhibit list. She described the property and the edge of property heavy landscaped. The would be maximize the number of parking spaces to nine spaces, including one handicapped space. Additional arrows and stop bar added and shrubbery cleaned up. Minimal improvements would be landscaping in the gap and cleaned up.

Ms. Totten explained historical uses of the property I research a number of sources, and as early as the 1950's this site had a gas station surrounded by farmland./ In the 1970's and into the 1990's the site was used as a baked goods store, Arnold Thrift Store. Afterwards used by a computer chip manufacture. She reviewed ordinances back to 1984 to the current ordinances. In 1984 Planned Development Medium use and in 1995 it became Village/Hamlet Residential as current and in summery the non-residential uses are home occupations, day care, bed and breakfast, and community residence for the disabled.

Ms. Totten referred to this lot as an "orphan lot", through time become the only non-conforming lot in the area where all the surrounding developments were built in conformance with the zone. In the past this non-conforming use were continuous; however, now it has been not used for a few years and therefor those uses there in the past, because they were not continuous and not permitted uses could no longer be the uses. There are not too many other lots like this along Cranbury's border on route 130, exception was the medical supply store further south and has been continuously occupied.

Ms. Totten stated, regarding the current permitted use are listed in Mr. Preiss's review letter, many of these uses are not suitable for residential use because of their access directly to Route 130. All the lots around the property along Route 130 have reversed frontage. Residential for

this lot was an idea situation. She went through all the permitted uses, explaining why each was not suitable for this particular site. At the time they prepared this application they reviewed the ordinance for all of the other commercial types of use that might be applicable and could up with a list of uses they felt were suitable for this site. These uses are taken from all parts of the ordinance, and organized by number of parking spaces permitted. Ms. Totten stated small service, retail and office uses, limit to the size of the site. Ms. Totten went through the positive and negative criteria arguments applicable to this application. On the positive side the applicant would have a viable tenant and making the site look more attractive. There was no substantial impairment to the intent and purpose of the zone and zone plan and truly was a unique piece of property, with the exception of the medical supply building further south on Route 130. This site was even smaller than that site. The variance was not inconsistent with the purpose and intent of the Master Plan and zoning ordinance.

Ms. Totten explained that the parking lot would be cleaned up, they would add site lines, repair broken areas of the pavement, proposing to erect a trash enclosure in the parking space closest to the open space top the north (5.5 ft. board on board enclosure, dark brown or dark green, holding domestic size containers). Ms. Totten stated she felt the existing lighting was appropriate, single light 20 to 25 ft. in height, show box downward facing, and adequate for the nine spaces shown. They could provide information should the board approve this application. There are five to seven lights across the underside of the overhang of the roof. She testified they would stripe the parking lot and other recommendation made by the traffic consultant. She did not believe a turning analysis for the trash vehicle was necessary. This was not a situation where there would be hauler. A concrete slab under trash bin was only necessary when there would be a heavy dumpster. Since this would be residential sized trash containers no concrete slab would be necessary and asked for a design waiver. Requesting a waiver from the loading zone requirement, feeling that the truck would come in and stop in front of the building with room for another vehicle to pass by if needed.

Ms. Totten addressed the signage, there are a number of uses being sought and the tenant was not known at this time, therefore signage would be only a guess and feel if the tenant requires signage than the tenant would need to return to the board for approval. Mr. Brennan requested allowing the applicant to follow the Village Commercial standards for signage to avoid returning to the board.

Ms. Totten state the traffic would not be large, nine spaces takes into account the person that work at the site and the potential visitors. She stated she did not see a significant amount of traffic generated.

Mr. McGovern did not feel that the applicant should box themselves into the village signage; the site was commercial in nature and did not feel a little sign would be appropriate on w highway where traveling 55 MPH. He asked if the 2006 approval still apply, such that if the applicant was

granted the variance today and decided and ad 750 SF and fourteen parking spots could the applicant still did that or has that lapsed? Ms. Cecil answered that she would pull up the resolution, but normally variances did not lapse. Mr. McGovern agreed with Mr. Brennan that the second approval expired due to its own terms; however, he questioned that the first approval would still be in place. Ms. Cecil said she would confirm that in a minute.

Mr. Brennan stated although in 2006 the applicant received Cranbury Zoning Board approval for that expanded site he did not ever complete a resolution compliance. Mr. Brennan did not know if there were site plan requirements attached to those approvals. The applicant would have to return and complete all of the improvements, which he did not did.

Mr. McGovern stated one of his tenants may want to. Mr. McGovern asked, if the board was approving this application tonight could this site be used as a Dunkin Donut, Starbucks or Marijuana distribution center facility?

Ms. Cecil stated that anticipated a question she was going to raise with the applicant. She questioned that the application was very open ended in terms of speaking to retail and office uses, whereas Exhibit A1 contains a specific list and was finite list. She questioned if that was the sub-total of the uses that the applicant was asking the board to approve or are there other uses not identified on Exhibit A-1. The list would give the board something to actually analysis.

Mr. Brennan stated that in the previously approval that the variances would expire if not done within the time period and the construction never happened and would make the 2006 approval invalid because of its terms.

Mr. McGovern asked if marijuana distribution be included in health and personal care/health supplements. Ms. Cecil stated that on the retail cannabis there are specific licenses and there are specific uses; and she did not feel that it could just 'fall in' these large umbrella categories. She added there are six different types and they all require different types of license. She felt that was not something that the board needed to be concerned about, due to the legislation. Mr. Brennan stated that Cranbury had until August 21st to say yes or no to the various six categories, but this application would accept, as a condition, that he would not put in a retail cannabis dispensary. Ms. Cecil asked if a municipality allowed it would that condition remains. Mr. Brennan said, in fairness he would leave it up to the municipality.

Mr. Deverin, directing question to Ms. Totten, asked about the medical supply about 600-ft south on Route 130 and that Mr. Brennan had state retail uses that are finite, commenting [Mr. Deverin] that there are a lot of them. He added that it was mention that like those of the VC Zone and a lot of those uses within the VC Zone are a lot that are on Exhibit A-1. He stated that the lot if the use was granted the building could be expanded in anyway in such that it did not require a variance, provided it did not violate setbacks and so forth and so on. The applicant was

also looking for uses from the GC Zone, what makes sense to this space should be such as the one that was happening 600-ft south. That one falls under HC Zone, smaller, regional oriented and similar uses. Mr. Devin stated that the uses being requested were broad and blanketed. Ms. Totten stated it was her understanding that the applicant would have to come back to the board for just about any changes to the site plan, and could make it a condition that any change to the size, spaces, etc., must come back to the board. Mr. Brenna stated that was true and would accept that as a condition, any changes to building or parking lot spaces would have to come back for approval.

Ms. Cecil stated, the concern was not whether one could expand the building without further site plan approval she felt the concern was the impact to the uses that you are asking the board to improve. If the basis or request was that the uses would not have a negative impact because the building was small and that was going to limit the intensity of the use, well if it gets bigger what happens to the limitation of the intensity of the use. She added that she wasn't intending to put words in Mr. Deverin's mouth, however she felt that was where he was trying to get at. Mr. Deverin agreed. Ms. Cecil added the condition would not be about returning to the board for site plan approval or amended site plan approval, she felt the condition would really be linking the use to the size of the building. If there was an expansion to the building or the amount of parking the board could also reevaluate whether the use variance itself was appropriate. Mr. Deverin stated he wanted, on the record, the response from the professionals that if he was not mistaken we had this volley of conversation about that make the site lit for safety reason or to clean it up. In October, the applicant asked for fifteen waivers. In the February update the applicant reduced that fourteen waivers, eliminating the garbage one.

Mr. Deverin asked to clarify that the applicant was still asking for the fourteen waivers. Ms. Totten stated they agreed to provide details on the lighting, per the request of the Township Engineer. Mr. Deverin added they mentioned cleaning up the site but the landscape plan was another waiver, as was the current survey, traffic impact. He felt the resident brought up an important question to the heart of all the uses being requested. The applicant was asking for a waiver on the traffic study with a breath of uses that a person could or could not know where they were going depending on the use. The applicant was requesting signage such as we have in the downtown commercial area, which would be a bit scary on highway Route 130. He felt if this was going to be a bakery, which could have 50 or more persons coming and going these uses should be stated; the explicit nature should be stated. He felt that the board should not grant these waivers, and felt the applicant should have to supply the information to the Board because this applicant was seeking too broad of uses.

Mr. Kallan questioned, with respect to the 2011 application the resolution indicated parking lot to be paved/top coat, was that ever done? Mr. Wadhwa stated it was, yes. Mr. Kallan stated he was concerned with respect to the hours of operation and he said he got the impression of hours of operation, implied from 5:30 a.m. to 11:00 p.m. and asked if that was really realistic. Mr.

Brennan stated that was probably not really realistic. Mr. Kallan interjection, which was what the application was requesting. Mr. Brennan said yes, that was a broad request. Ms. Totten stated an appropriate limitation would be (for general uses) 7:00 a.m. to 6:00 p.m.; however, the bakery would stand out to have earlier hours although being a bakery does not necessarily mean they are baking there. She added that maybe a reduction to 6:00 a.m. to 9:00 or 10:00 p.m. would be more appropriate.

Mr. Kallan stated that previously they said lights should be turned off by 9:00 p.m. and he stated that it seems that 9:00 p.m. seemed to be a reasonable cut off hour and suddenly it was to expand to 11:00 p.m. Mr. Kallan stated he did not have an impression as to what the early hour was. Mr. Brennan stated the applicant has indicated 6:00 a.m. to 9:00 p.m. would be acceptable were inclined to grant the approval. There was security light on the property, which was typical for any commercial property. Mr. Kallan said those hours seemed reasonable, in his opinion.

Mr. Buonavolonta asked about medical marijuana and could it go into this facility. Ms. Cecil stated there has to be specific licenses and zoning requirements and she was not even aware if Cranbury Township allows medical dispensaries. It was not the sort of thing that would just fall under an 'umbrella category'.

Mr. Brennan stated the applicant would agree to no cannabis sales at this property regardless of whether the Township permits it or not.

Mr. Buonavolonta asked about adult entertainment. Mr. Brennen stated he did not know and would like to stay away from those restrictions. If it was permitted in the State and Zone he would be hesitate to place that restriction on this applicant in that respect.

Mr. Diamond said, looking at the allowed and dis-allowed uses in different zones in Cranbury saying that they are permitted in other zones in Cranbury leaves this site wide-open, in terms of uses. This was allowing any possible use in any part of Cranbury to be located on this site.

Ms. Cecil stated that was why she asked Mr. Brennen or Ms. Totten for clarification about was it just the uses listed in Exhibit A-1, which was finite; however, still a very long list. Mr. Diamond stated that the prohibitions that are listed in the other zones are not listed here. Mr. Deverin agreed with Mr. Diamond. Mr. Diamond felt that was important.

Mr. Brennen stated they found A-1 to be more finite. These were the uses that were appropriate for a site of this size with the parking limitation that this site has. When one looks at office uses as a general category it would not surprise that a law office, architect office, medical office, etc., would be included in that so their list includes all of those professions but in general it was an office use and was specific in the types of offices uses/services.

Mr. Nissen stated understanding the dangers in which Mr. Deverin raised that the uses might expanded if listing a lot of them, the building was inherently uncomfortable to the bulk standards on the property and although they may not expand the physical size without a variances for the bulk standards so any threat that would be thought of would mean the applicant would have to return to the Board for approval.

Mr. Deverin felt there was still a lot of building envelope remaining on this lot; the assessments of all of these uses (27 different broad service and retail uses listed on A-1) and to Mr. Diamond's point there are no restrictions. Each zone, on their own have less than twenty allowable uses with restrictions.

Mr. Brennen stated the applicant would agree to no cannabis establishments and has agree to make the changes to the parking lot and lighting per the professionals recommendations.

Mr. Nissen stated the business strategy was for the applicant to market the property, having restraints makes the property less marketable.

Mr. Antonio Evidente of 21 Bergan Drive, sworn, stated they have been in Cranbury since 1998 and this building has been vacant with the exception of the computer chip use. He was concerned, consistent with what Mr. Deverin was stating, the uses are so broad and there are concerns with vermin, traffic, etc., and questioned the fencing from his property into that lot from the large opening between the berm and the fencing.

Ms. Leheny stated the lot was unusual and everyone has noted that. This Board in prior iteration has acknowledged was unusual qualities of being on Route 130 and in the VH/R Zone. She stated she also consulted with Mr. Preiss and his work on the Master Plan over the fifteen years, and to Mr. Deverin's point her interpretation of the zoning map was the two sites fronting on Route 130 but not a residential use. She assumed that they did not want to fit these two parcels in another zone because here may be uses not appropriate uses that take into account a use so close to residences. She stated that Mr. Preiss's attitude was that they should look at the VC Zone, because the VC Zone takes into account there are residential uses nearby. Carefully vetted the used because of their proximity to residential uses. She criticism she had with Ms. Totten's testimony was that uses could all be the same size and parking requirements but they could have different impacts on their neighbors, in terms of order, noise, hours, deliveries, trash removal, etc. Which impact the neighbors.

The applicant would address the concerns of the Board and come back in at the May 5, 2021 at 7:00 p.m. via same Zoom link.

ADJOURNMENT OF MEETING

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

CERTIFICATE OF SECRETARY

I, the undersigned, did at this moment certify;

That I am duly elected and acting secretary of the Cranbury Township Zoning Board of Adjustment and, that the preceding minutes of the Zoning Board of Adjustment, held on April 14, 2021, consisting of 11 pages, constitute a true and correct copy of the minutes of the said meeting.

IN WITNESS of which, I have hereunto subscribed my name of said Zoning Board of Adjustment this August 4, 2021.

Josette C. Kratz, Secretary

/jck