

The meeting was opened by Chairman Palmieri at 7:30 p.m.

Chairman Palmieri read a statement of compliance with the *New Jersey Open Public Meetings Law* as follows:

This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the The Coaster and the Asbury Park Press.

Chairman Palmieri then led the meeting in a salute to the flag.

Ms. Connolly took roll call.

Present Chairman Palmieri, Mr. Battista, Mr. Slazyk, Mr. Lomangino, Mr. Porzio,
Mr. Brawner, Ms. Hatami

Absent: Mr. McKinley, Ms. Berk

Also present: Mr. Akins substituting for Mr. Hirsch
Mr. Neff, Board Engineer
Ms. Zincavage, Board Planner
Ms. Connolly, Board Secretary

Chairman Palmieri read a statement of procedural guidelines.

Minutes

Chairman Palmieri states that the minutes from February 1, 2018 have been previously distributed to the Board for review.

Motion is made by Mr. Lomangino and seconded by Mr. Porzio. All in favor.

Chairman Palmieri states that the minutes from March 1, 2018 have been previously distributed to the Board for review.

Motion is made by Mr. Battista and seconded by Mr. Porzio. All in favor by those eligible to vote.

New Business

Chairman Palmieri states that the first matter that is on this evening is BA 2018-3 Mazza, Yvonne 11 Hialeah Court, Blk 64.02 lot 7.

Mr. Akins states that he has reviewed the service package and fine same to be in order and consistent with the provisions of the Land Use Law.

Motion is made by Mr. Lomangino and seconded by Mr. Porzio to accept service. All in favor.

Yvonne Mazza, 11 Hialeah Court, is sworn in by Mr. Akins. Ms. Mazza states that she is seeking a building coverage variance in order to build a roof over part of her deck that is being expanded. Building coverage permitted is 2,610 sq. ft. and 2,725 sq. ft, is proposed. Ms. Mazza states that she is approximately 115 sq. ft. over the 8% that is allowed. It is almost 8.4% with the proposed roof.

Chairman Palmieri states that he has the survey before him dated February 25, 2016. Chairman Palmieri summarizes where the nearest homes are in relation to Mrs. Mazza's property lines and the landscaping and trees that are existing. Chairman Palmieri summarizes the proposed deck addition with the size of the proposed roof over the deck. The proposed roof is 12' x 24.' The application is further discussed and it is confirmed that the shingles on the proposed new roof will match the existing home. It is also stated by the Chairman and confirmed by the Board Engineer that should the homeowner wish at some time to enclose the porch using the same 12' x 24' size, a further variance will not be needed, just a permit because the building coverage numbers would not change.

Chairman Palmieri asks if there is any public in attendance that wishes to ask a question or make a comment regarding this application. None heard.

Motion is made by Mr. Battista and seconded by Mr. Slazyk to close the public portion of this application. All in Favor.

Motion is made by Mr. Lomangino and seconded by Mr. Porzio to approve this application.

Ayes: Mr. Lomangino, Mr. Porzio, Chairman Palmieri, Mr. Slazyk, Mr. Battista,
Mr. Brawner, Ms Hatami

Nays: None

Absent: Mr. McKinley, Ms. Berk

Mr. Akins states that for the record, regarding BA 2017-23 **Stavola Realty, 20 Hockhockson Road, Blk 105 lot 11,** - Mr. Falvo, attorney for the applicant, has requested specifically that adoption of the resolution be deferred to the May 17, 2018

meeting so as to afford the client to conclusively locate the home that the purchaser desires on the lot and satisfy the conditions set forth in the resolution. Mr. Falvo also consents to the time of decision with regard to adoption of the resolution.

Continuing Business

Chairman Palmieri states that he has a conflict with this next application and will be stepping down and Vice-Chairman Battista will be chairing the rest of the meeting.

Rite Aid of New Jersey – Zoning Interpretation continued from March 1, 2018.

Vice-Chairman Battista states that Mr. Carton would like to make a brief statement as he represents the landlord.

Peter Carton, Esq., 17 Wigwam Road, Middletown Twp., NJ is sworn in by Mr. Akins. He wishes to enter an appearance on the landlord's behalf. The landlord is the Bower's family – John and Samantha Bowers, both of whom are in attendance this evening. Mr. Carton summarizes the background history of the property. The landlord believes that there is no parking problem on the site as a result of the Dunkin Donuts drive thru during the entire day. Mr. Bowers has taken steps to alleviate the busiest time of the morning rush for the drive-thru which is until 9:00 a.m. by insisting that all of the Rite Aid, Dunkin Donuts and Dry Cleaning employees park only in the rear. Also, Rite Aid will not open the Redi Clinic until 9:00 a.m.

Mr. Neff clarifies that the Rite Aid would still be open during early morning hours, just the Redi Clinic would be delayed until 9:00 a.m.

Bill Harrison, Esq., Genova Burns, states that he will be continuing to represent Rite Aid pertaining to this interpretation.

Mr. Harrison gives a statement regarding the major points of the request for interpretation. Mr. Harrison states that Rite Aid recognizes the site issues and has retained a traffic engineer. Rite Aid has agreed to be flexible with the opening time of the Redi Clinic. The applicant believes the use is a shopping center and that the clinic is a health service which is permitted.

Mr. Harrison calls Jennifer Hart who gives testimony as to what the clinic does and how that is different from medical offices and urgent care centers. Mr. Akins swears in Ms. Hart, 1814 Beach Blvd., Pt. Pleasant. Ms. Hart states that she is employed by Hackensack – Meridian Health and is employed as a clinical coordinator for the redi clinics in New Jersey. Ms. Hart states that she has visited the site and states her parking observations. Ms. Hart states that the care that is provided by the redi clinics encompasses simple sick visits and immunizations as well as basic children's sports physicals.

Ms. Hart states that the average redi clinic in New Jersey sees between five and ten patients per day. The first Rite Aid redi clinics in New Jersey were opened in October 2016. She states that no chronic conditions are treated. She describes some of the differences between a medical office and a clinic. She explains the difference between a redi clinic and an urgent care facility. Ms. Hart states that their visits are usually 15 – 20 minutes. She explains the process in which a patient can register for an appointment or walk in.

Mr. Porzio comments that he believes the number of visits during the day may be more than expected due to the high density of residents in the immediate area.

Mr. Slazyk asks which of the redi clinics are housed in stand-alone Rite Aids.

Vice-Chairman Battista asks how having 7 – 10 patients per day is profitable. Ms. Hart states that the redi clinics get a higher pay rate because the redi clinic is under the Hackensack-Meridian list of payors.

Mr. Porzio comments that he believes there could be an over-lapping waiting period for the appointments.

Ms. Zincavage discusses that the Red Bank redi clinic and the Red Bank ordinance present a different situation than what we have here in Tinton Falls as the Red Bank redi clinic is discussed.

Mr. Slazyk asks for further clarification from Ms. Hart as to what is and is not performed at the Redi Clinic.

Vice-Chairman Battista asks if there is any public in attendance that has any questions of Ms. Hart.

Vice-Chairman Battista asks Ms. Hart why there are two exam rooms.

The landlord, Mr. John Bowers, 866 Rte. 34, Colts Neck, NJ is sworn in by Mr. Akins. Mr. Bowers gives the history of the shopping center along with its expansion and also compares the Tinton Falls and Red Bank Rite Aids.

Mr. Slazyk asks if there has been a five or ten year outlook prepared based upon prospective growth. Ms. Hart states that there is not a specific forecast for five or ten years down the road.

Mr. Brawner brings up Rite Aid's literature that shows a patient forecast and that in actuality the numbers were higher than predicted. Ms. Hart states that she believes there are urgent cares opening up and that all patients would not be going to redi clinic but would be going to the urgent care facilities as well thus limiting the growth of the redi clinic

Mr. Harrison recalls Mr. Lawrence Hill, district manager of redi clinics. Mr. Hill explains that most of the growth pertaining to the redi clinics is expected to be existing customers that will utilize the redi clinic. Vice-Chairman Battista asks Mr. Hill under what circumstances would Rite Aid not add a redi clinic. Mr. Hill states that proximity to another redi clinic would be a factor – such as within three miles. Ms. Hatami asks if Rite Aid needed a variance in Red Bank and is told no.

John Manganelli, 17 Hazelwood Terrace, Tinton Falls, has been previously sworn in and asks if there is a Rite Aid redi clinic scheduled for the Rite Aid in Lincroft and is told no.

Mr. Harrison calls Karl Pehnke, traffic engineer, and is sworn in by Mr. Akins. The Board accepts Mr. Pehnke's credentials. Mr. Pehnke states that he has conducted a traffic study to determine the availability of parking spaces during the period of time in which the Dunkin Donuts queue is busy as well as during the times when the redi clinic would be open. Mr. Pehnke discusses his observations; including that Friday is the busiest day and Sunday is the least busy day and that the time period of 7:00 a.m. and 9:00 a.m. is the busiest time of day for the Dunkin Donuts drive thru queue.

Vice-Chairman Battista asks if there are any members or professionals that wish to ask any questions of the traffic engineer. Mr. Neff states that this was not a site plan application, so there was not a traffic analysis done and we have not seen a traffic report from the applicant. Going back to the original shopping center approval, there was a parking deficiency and a previous parking variance granted at the site.

Mr. Porzio states there is a concern with cars backing up and getting out of the lot with all that is going on in that tight parking lot.

The parking situation is further discussed among the professionals and the Board members.

Mr. Harrison calls his professional planner, Christine Nazzaro Cofone, 125 Half Mile Road Ste. 200, Red Bank, NJ 07701, and she is sworn in by Mr. Akins. Her credentials are accepted by the Board.

Ms. Cofone states that she frequents the subject property a couple of times per week and is familiar with the shopping center. She reads the ordinance definition of shopping center and also reads the way the ordinance defines retail sales. Ms. Cofone reads the way the ordinance defines retail services and states that she believes that the health services definition applies in this matter. She discusses several types of medical offices, health services and personal services and why she believes the proposed redi clinic can come in under health services. Ms. Cofone discusses the distinctions between a stand-alone clinic and a redi clinic that is part of a shopping center.

Vice-Chairman Battista asks for clarification between principal and primary use and discussion ensues.

Mr. Neff reiterates that this zoning interpretation is not in any way tied to the size of the redi clinic size. It is a zoning interpretation of whether redi clinics are permitted in a shopping center. Discussion ensues as to whether the size of the redi clinic affects this application.

Ms. Cofone further states her case that health services are permitted and how this applies to this interpretation and there is continuing discussion among professionals and board members.

Ms. Hatami begins a discussion about the main use of the building and if there can be some verbiage in the interpretation with regard to limitations. There may be a time that the pharmacy will be the principal use. She asks if restrictions can be imposed upon the interpretation. Further discussion ensues pertaining to limitations and how it pertains to an interpretation.

Vice-Chairman Battista asks for clarification of staffing. Ms. Cofone states that there would be a clinical assistant and a nurse practitioner.

Further discussion about what is permitted and not permitted in a shopping center at this point in time.

Mr. Akins offers looking at this in another way. He suggests instead of working up from the health services aspect; can we work down from the medical offices aspect. Are there any objective standards there that would say if we reach this level of square footage or employees, we clearly are conducting a medical office. Is there anything in our ordinance to that effect? Discussion ensues.

Mr. Neff says that the applicant can come in with a use variance application and we can put restrictions on it. That is not the case at this moment. We are not changing the ordinance. What we are here for is an interpretation of the existing ordinance. Not how the ordinance may be changed in the future.

Ms. Cofone states that this Board understands a clinic to be not a medical office, a clinic that does not have more than two practitioners. There is a way to craft the interpretation. This Board is interpreting what you think a redi clinic is and what it is not.

Mr. Lomangino asks for clarification of what the task of the Board of Adjustment is this evening and reiterates his understanding of the task. He discusses that the Board members are here for an interpretation of what we have. Not to determine what it should be, what we can change it to. If we agree with the Zoning Officer then the applicant must come before us for zoning relief. If we do not agree with the Zoning Officer, then the applicant does not need to come for relief.

Ms. Zincavage agrees with Mr. Lomangino's assessment. She states that we have heard testimony tonight that this type of redi clinic was not in place in New Jersey until 2016. Therefore, the last time the master plan was contemplated was before that and this kind of

use was not in existence. It is a gray area, which is why we are here. It is a situation for a "D" variance but the applicant will need to come before the Board and request that variance for this type of use.

Mr. Brawner states that he is using his experience in the military (28 years) to form his opinion. He states that in the military, there are health service technicians, which seem to him, to be the same kind of service as the service the redi clinic offers. He states that he would go to a health services technician for an earache or normal issues. Should the need arise, for instance stitches, he would be referred to a medical officer. My opinion is that we are looking at a health service and not a medical office.

Further discussion regarding the amount of space the redi clinic occupies in the Rite Aid store and how it affects the interpretation is discussed.

Mr. Neff reiterates that this is an interpretation as to whether redi clinics are permitted in a shopping center. It is not whether a redi clinic should be permitted in any pharmacy, it is whether or not it should be permitted in a shopping center. This interpretation is specific to shopping centers. It is not should a redi clinic be permitted in a free-standing Rite- Aid. That is not what is being asked, it is being asked if redi clinics are permitted in a shopping center.

Mr. Akins states that this is not an appeal, it is an interpretation. It is broader than an appeal.

Mr. Harrison states that it is specific if it is permitted in a shopping center. It is for the redi clinic that is being proposed here, not a generic clinic of unspecified size or number of employees. It is limited to two employees and it is of specified size.

Mr. Akins states that once this Board determines, from an interpretive standpoint, that it is permissible, the size does not matter.

Ms. Cofone again discusses the differences between a redi clinic and a medical office. Further discussion ensues.

Mr. Akins reiterates that when there is a denial, an applicant can appeal that denial. Also, an applicant can seek an interpretation and possibly get denied. An applicant could seek a use variance. This applicant, at this time, is seeking just an interpretation. This applicant is saying that on the basis of the testimony that is given by the witnesses and whatever was previously testified to prior to tonight, the Board should find that it interprets the ordinance, that this use is identified by these witnesses, it constitutes a health service that is otherwise permissible in a shopping center under our ordinance.

Vice-Chairman Battista asks if the Board professionals have any further comments with regard to Ms. Cofone.

Hearing none, Vice-Chairman Battista asks if there are any public in attendance that has any comments.

Mr. John Manginelli, 17 Hazelwood Terrace is reminded that he is still under oath. Mr. Manginelli states that he finds it surprising that Rite Aid does not have a five-year plan because if it was just for 5 or 10 patients a day, I would not be up here making a statement. But as we all know, health care is changing and I have had some experience in this regard. I have set up clinics not in New Jersey and they are going to grow rapidly. They are used as alternatives to emergency rooms. The primary care physician is vanishing. The parking lot cannot handle any more than five or 10 patients. Mr. Manginelli further discusses the reasons he is against having the redi clinic in this shopping center.

Vice-Chairman Battista asks for a motion to close the public portion. Motion is made by Mr. Lomangino and seconded by Mr. Porzio. All in favor.

Vice-Chairman Battista asks if Mr. Harrison wishes to give a closing statement. Mr. Harrison just wants to reiterate that peak time for the Dunkin Donuts is 7:00 – 9:00 a.m. and Rite Aid has agreed to not open the redi-clinic until 9:00 a.m. He wishes to stress that Rite Aid is requesting a specific interpretation. It is an interpretation of whether a 495 sq. ft. clinic with two exam rooms, with no more than 2 employees, whether or not that qualifies as a health service. Mr. Harrison further discusses the major points of his client's request for interpretation.

Mr. Akins states that there are six members present and this requires a simple majority.

Mr. Slazyk makes a motion to deny the applicant's request and was seconded by Mr. Lomangino.

Mr. Akins clarifies the motion's meaning is to deny the request made by the applicant to interpret the Borough's ordinances that a redi clinic is permitted as health service in a shopping center. If you vote yes, you are voting against this application. To pass this motion, a majority will rule being 4 out of 6. If you vote yes, it means no to the applicant.

Again, Motion is made by Mr. Slazyk and seconded by Mr. Lomangino.

Ayes:	Mr. Slazyk, Mr. Lomangino, Mr. Battista, Mr. Porzio,
Nays:	Mr. Brawner
Abstain:	Ms. Hatami
Absent:	Chairman Palmieri, Mr. McKinley, Ms. Berk

Mr. Akins states that the tally is Four (4) yes votes; One (1) no vote and One (1) abstention. The motion carries. The interpretation is denied.

Business

Vice-Chairman Battista states that the final item of business is the resolution adopting the annual report of 2017 that it has been previously distributed by email to the Board members. Vice-Chairman Battista asks if anyone has any questions or comments. Hearing none, motion is made by Mr. Slazyk and seconded by Mr. Porzio to memorialize the annual report.

Ayes: Mr. Slazyk, Mr. Porzio, Mr. Lomangino, Mr. Battista, Mr. Brawner,
Ms. Hatami
Nays: None
Absent: Chairman Palmieri, Mr. McKinley, Ms. Berk

Motion to Close

Motion is made by Mr. Porzio and seconded by Ms. Hatami to close the meeting at 9:55 p.m. All in Favor.

Respectfully submitted,

Colleen Connolly
Zoning Board Secretary

Approved at Board of Adjustment
Meeting on May 3, 2018