

**BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JUNE 1, 2023**

The meeting was opened by Chairman Battista at 7:38pm.

Chairman Battista 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 Coaster and the Asbury Park Press.

Chairman Battista led the meeting in a salute to the flag.

Ms. Zibrin took roll call.

Present: Chairman Ronald Battista, Vice-Chairman William Kuzmin, Mr. Ronald Palmieri, Mr. Charles Lomangino, Mr. Steven Porzio, Mr. Marc McKinley, Ms. Sheila Hatami, Ms. Emily DeMaio, Mr. Scott Provines

Absent: None

Also Present: Ms. Trish Zibrin, Board Secretary
Mr. Thomas Neff, Board Engineer
Ms. Christine Bell, Board Planner
Mr. Thomas Hirsch, Esq., Board Attorney

Chairman Battista read the Statement of Procedural Guidelines for Public Hearing.

MINUTES

Chairman Battista indicated that the minutes of the regular meeting held on April 4, 2023, have been previously distributed via email for the Board Members to review.

Ms. Hatami expressed concern regarding the minutes for the April 4, 2023, meeting being less detailed than she would prefer, particularly regarding the traffic pattern changes for the Applicant before the Board. Attorney Hirsch and Chairman Battista concluded that this is a procedural concern which can be further discussed out of the public meeting space.

Mr. Lomangino offered a motion to approve the minutes of the April 4, 2023, meeting. The motion was seconded by Mr. Palmieri.

ROLL CALL:

AYES: Chairman Battista, Vice-Chairman Kuzmin, Mr. Palmieri, Mr. Lomangino, Mr. Porzio, Mr. McKinley, Ms. DeMaio, Mr. Provines

NAYES: Ms. Hatami

ABSENT: None

BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JUNE 1, 2023

INELIGIBLE: None

RESOLUTION

BA2022-19

FLM Associates, LLC
3212 Shafto Road
Block 145, Lot 15.01
Use Variance, Site Plan Approval

Chairman Battista advised that the proposed Resolution in this matter has been distributed to the Board Members prior to tonight's meeting. The Board approved this application on April 6, 2023.

Chairman Battista asked if any Board Members have any comment regarding the Resolution.

Mr. Porzio offered a motion to memorialize Resolution BA2022-19. The motion was seconded by Mr. Lomangino.

ROLL CALL:

AYES: Mr. Porzio, Mr. Lomangino, Chairman Battista, Mr. McKinley, Ms. Hatami, Ms. DeMaio, Mr. Provines

NAYES: None

ABSENT: None

INELIGIBLE: Vice-Chairman Kuzmin, Mr. Palmieri

CONTINUED BUSINESS

BA2022-13

Stavola Realty Company
157 Hamilton Road & 1810 Wayside Road
Block 109, Lots 12.01, 13.01, 15, 16, 18-24, 29.02
Use and Bulk Variance, Site Plan Approval

Attorney Hirsch stated for the record that the proofs and affidavit of service from the Applicant have been previously approved. He stated that all is in order as to form and that the Board has jurisdiction to hear this matter.

Mr. Peter Wolfson, Attorney for the Applicant, reviewed the prior proceedings regarding the application to date. Based on feedback from the Board Members, Mr. Wolfson identified the primary concerns of the Board as being related to the number of proposed parking spaces being insufficient, the accuracy of the traffic counts, the size of the proposed signs and the safety of pedestrians traveling from the Capelli Sports Complex. He detailed the Professionals who will be testifying on behalf of the Applicant.

James F. Thaon, P.E. Bohler Engineering NJ, LLC, 125 Half Mile Road, Red Bank, NJ

Having been previously sworn, Mr. Thaon introduced Exhibit A-8, entitled Parking Exhibit revised 5/16/2023. He testified to the decrease in square footage of the Burger King, the addition of parking spots and the addition of signs prohibiting trucks from entering the site. Mr. Neff mentioned that the addition of the 11 parking spots

BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JUNE 1, 2023

adjacent to the retaining wall interfere with the former design which included an evergreen buffer in that location. He advised the Board that there can be conditions for trees to be included in the new design if the Board deems it so. In response to questions from Mr. Palmieri, Mr. Neff identified the ITE parking requirements for both QSR's and pointed out that the Applicant exceeds these requirements.

Chairman Battista asked if the Board has any additional questions for the witness. Hearing none, he asked the public if there were any questions for the witness. Hearing none, the Applicant called the following Professional to testify. Attorney Hirsch swore in the following witness.

Charles P. Dietz, The Dietz Partnership, LLC, 90 East Halsey Road, Parsippany, NJ

Mr. Dietz placed his credentials on the record and the Board accepted him as an expert witness in the field of Architecture.

Referencing drawing entitled Building C Plan, sheet A-1 dated 5/16/2023, Mr. Dietz stated that the only change has been to the footprint of the Burger King, which has been reduced. There are no other changes made to Burger King as far as design. There are no changes to Dunkin Donuts. Referencing the drawing entitled Pylon Monument sheet A-6, Mr. Dietz stated that the Applicant reduced Monument sign 1 and lowered the square footage. He stated that there is no sign pollution or clutter and that these signs are critical to directing the public to the site. Vice-Chairman Kuzmin asked if the signs will affect the sight triangle of the vehicles leaving the site. Mr. Dietz said the sight triangle considerations are included in the submitted plans, however, can be addressed in later testimony by the traffic engineer.

Attorney Hirsch swore in the following witness.

John Harris, 26 Orla Court

Mr. Harris asked if the Burger King and Dunkin Donuts signs are seeking additional candlelight. Mr. Dietz responded that those signs conform to the ordinance.

Chairman Battista asked if there were any more questions from the public for the witness. Hearing none, Mr. Wolfson called the next witness, Justin Taylor.

Justin Taylor, 1904 Main Street, Lake Como, NJ

Having been previously sworn, Mr. Taylor testified that there is more than adequate parking for the site. Addressing Chairman Battista's concern that this site will be intensified in use due to the proximity to the Garden State Parkway, Mr. Taylor contested that some of the traffic on the Parkway will exit to Route 36 East. He stated that any travelers headed further south on the Parkway will encounter and rest stop within two miles.

Mr. Taylor addressed the concerns that the traffic counts are outdated. He testified that a new study was conducted on Tuesday, May 2, 2023, and on Saturday, May 6, 2023. The study included counts at the Capelli Sports Complex during peak times. He stated that the intersection of Stavbro Lane and Wayside Road will operate at a D Level of Service.

BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JUNE 1, 2023

Mr. Taylor addressed his past testimony that asserted that the proposed use would have the same traffic impact as the approved use (gas station and convenient store). Based upon ITE trip generation data, Mr. Taylor testified that the level of traffic would be intensified by approximately 100 trips in the peak morning hours, and 200 trips in the peak evening hours with the approved use. Vice-Chairman Kuzmin asked if these numbers are theoretical. Mr. Taylor responded that the projections are based in analytical quantitative data for these uses. Ms. Hatami asked if the data is based upon numbers collected across the entire country. Mr. Taylor confirmed that is the case. Mr. Taylor detailed the process of ascertaining appropriate figures for a suburban area. Chairman Battista asked if Mr. Taylor would agree that the location of the proposed site plays a role in the final projections. Mr. Taylor agreed that the location would play a role.

Mr. Palmieri questioned the alignment of Stavbro Lane and expressed concern for the safety of the motorists attempting to access the site. Mr. Taylor stated that there will be updated lane designations and that the Applicant will work with the NJ Turnpike Authority to post a thru-movement sign.

A discussion ensued regarding the timing of the light at the intersection of Stavbro Lane and Wayside Avenue. Average times were discussed as well as steps that would need to be taken to adjust the timing, if needed. Vice-Chairman Kuzmin reasserted his concern regarding the negative impact of additional traffic during the summer and the volume caused by the visitors to Capelli Sports Complex.

Mr. Taylor explained that the intersection was designed to accommodate the approved use, (gas station and convenience store), which generates substantially more trips than the proposed use. Mr. Lomangino contributed that he travels the area daily and has seen an increase in the volume as the summer season has begun. He pointed out that the fact that there will be times when the flow of traffic is heavy has been well established and encouraged the Board to move on to further testimony.

Vice-Chairman Kuzmin revisited the issue of what time of year the traffic analysis was conducted. He pointed out that none of the data reflects the higher summer traffic volume. Mr. Wolfson contributed that the analysis is based upon the ITE which is the industry standard.

Mr. Taylor explained the research that was conducted to evaluate the route between the proposed site and the Capelli Sports Complex. He concluded that there are significant visual and physical barriers in place. He stated that there is no pathway or any other indication that a pedestrian should travel to the proposed site. He pointed out that there is food offered at Capelli Sports Complex as well as the option to utilize DoorDash.

Chairman Battista asked if the Board has any addition questions. Upon hearing none, he asked if the public had any questions.

John Harris, 26 Orla Court

Mr. Harris asked if a study was conducted to consider holiday shopping? Mr. Taylor responded that there was not and pointed out that the proposed retail space is not significant enough to warrant such a study. Mr. Harris asked for explanation as to how emergency vehicles can circulate the site, which was provided by Mr. Taylor. Mr. Harris asked if the cold smoke from Burger King would affect the traffic? Mr. Taylor said that consideration was not included in his analysis.

BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JUNE 1, 2023

Chairman Battista asked if there were any more questions from the public for the witness. Hearing none, Mr. Wolfson called the next witness, Ms. Christine Nazzaro Cofone. Attorney Hirsch swore in the following witness.

Christine Nazzaro Cofone, P.P. 125 Half Mile Road, Red Bank, NJ

Ms. Cofone placed her credentials on the record and the Board accepted her as an expert witness in the field of Planning.

Ms. Cofone stated that the proposed uses are appropriate for the IOP Zone. She stated that the application meets the economic objective of the Master Plan which includes strengthening the tax base. She stated that there is not a substantial detriment to the public. She testified that the Applicant is not being held to a standard that there are no detriments, but rather that the benefits to granting the variance outweigh any detriments. The traffic concerns expressed by the Board are concerns that the Borough will contend with regardless of the use being permissible in the IOP Zone.

Discussing the Borough's sign ordinance, Ms. Cofone pointed out that the site operates as one site with many common features and therefore doesn't present as multiple lots. She concluded that the proposed signage is appropriate when the whole of the site is considered.

Ms. Cofone identified a statement from the 2019 Master Plan which states that there should be an effort to limit new large-scale developments particularly in IOP Zone which further supported her position that the proposed site is particularly suitable for the proposed use.

Ms. Cofone stated that she does not foresee much pedestrian traffic between Capelli Sports Complex and the proposed site. She reminded the Board that the site has already received approval for a gas station and convenience store from the Planning Board and concluded by stating that the Board should feel comfortable approving the application without substantial detriment to Zone Plan or to the public good.

Chairman Battista asked if the Board has any questions. Mr. Palmieri asked for details of the negative criteria. Ms. Cofone reiterated that, although there are negative criteria, it is not beyond what would exist with permitted uses listed in the IOP Zone.

Chairman Battista asked if there were any more questions for Ms. Cofone. There were none, however, Vice-Chairman Kuzmin had a conversation regarding the specific research methods and analytics of the traffic study with Mr. Taylor.

Chairman Battista asked if the public has any comments.

John Harris, 26 Orla Court

Mr. Harris stated his concern with the traffic the proposed uses will create. He feels that the site can handle one or the other of the proposed QSRs, but not both.

Chairman Battista asked if the public has any additional comments. There were none.

BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JUNE 1, 2023

Mr. Wolfson addressed the Board stating that there have been significant reductions in the plans since its initial submission which were based, in part, on feedback from the Board. He reiterated that there are many approved/permitted uses which would have a more intense impact on the site.

Mr. Porzio made a motion to close the public discussion, which was seconded by Mr. Palmieri. All present voted in favor.

Mr. Palmieri made a motion to approve BA2022-13. The motion was seconded by Mr. Lomangino.

Attorney Hirsch explained to the Board that they should vote on the use variance first and that 5 of the 7 votes will need to be in favor of the application for it to pass. There was discussion about what would be entailed in the vote, and it was concluded that the first vote will be for the use variance and the second will be for bulk variance and site plan.

Chairman Battista asked why restaurants are not allowed in an IOP Zone. Christine Bell responded that a sit-down restaurant would not be an appropriate establishment for the zone.

Vice-Chairman Kuzmin reiterated his concern about traffic concerns and stated that neither QSR is beneficial to the Borough. Mr. Palmieri stated that there will be increased traffic regardless of which businesses inhabit the site and he feels that the proposed uses have less of an impact than the approved use does. Ms. Hatami said that she is not convinced that the proposed use is less intense than the approved use or that the proposed uses promote the generally welfare of the Borough. She further stated that she is not convinced that the negative criteria standard has been met.

Mr. Porzio expressed his concern with safety due to the increase in traffic.

Mr. McKinley stated that while he has concerns with the increase in traffic volume, he understands that the proposed use is less intense than the previously approved use. He struggles with the idea that Tinton Falls may become the "flex space" town.

Ms. DeMaio stated that she is concerned about the traffic impact.

Mr. Provines stated that the proposed use is less intense than the approved use.

Chairman Battista contributed that during the review of the Master Plan in 2019, the proposed uses were considered and rejected. In light of that consideration, he is not comfortable with the idea of approving two non-permitted uses.

Chairman Battista asked for a motion.

Mr. Palmieri made a motion to approve the use variances of BA2022-13. Mr. Lomangino seconded the motion.

Roll Call

AYES: Mr. Palmieri, Mr. Lomangino, Mr. McKinley

NAYES: Chairman Battista, Vice-Chairman Kuzmin, Mr. Porzio, Ms. Hatami

BOROUGH OF TINTON FALLS
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JUNE 1, 2023

ABSENT: None

INELIGIBLE: Ms. DeMaio, Mr. Provines

Attorney Hirsch stated that, because of the denial of the use variances, there is no need to continue to the bulk variances vote. The remaining variance requests for Lot F will be carried to July 6, 2023, without further notice.

Vice-Chairman Kuzmin offered a motion to Adjourn. Mr. Palmieri seconded the motion. All present voted in favor.

Time: 10:13pm

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Regina Acken", with a stylized flourish at the end.

Regina Acken
Zoning Board Secretary

APPROVED AT A BOARD OF ADJUSTMENT MEETING ON: August 3, 2023