

## ***FEBRUARY 16, 2021 - Minutes***

A regularly scheduled hybrid public meeting, in person and by way of Zoom, of the Wantage Township Land Use Board was held on Tuesday, February 16, 2021. The meeting was held at the Beemerville Firehouse, 227 Route 519, Wantage NJ. The meeting was held in compliance with the provisions of the Open Public meetings act, P.L. 1975, Chapter 231. It was properly noticed and posted to the public.

### **SALUTE TO THE FLAG**

Board Chairman Victoria Gill invited all persons present to participate in the Pledge of Allegiance.

### **ROLL CALL**

PRESENT: Ron Bassani, Larry Bono, Bill DeBoer, Joanne Kanapinski (virtual arrived 7:05 pm), Joseph Konopinski, Michael Walther, Victoria Gill. Alternates: Justin Dudzinski, George Unverzagt. Absent: Chuck Meissner, Jon Morris, Joseph Greenaway. Also present, Attorney, Ursula Leo. Engineer, Harold Pellow, Secretary, Jeanne McBride

### **EXECUTIVE SESSION**

Ms. Gill ask for a motion to go into Executive Session to discuss Attorney/Client advice and to update the Board on the Franek litigation. The minutes are expected to be approved and released. Mr. Konopinski made the motion seconded by Mr. Bono; the Board unanimously agreed.

Mr. DeBoer made the motion seconded by Mr. Bassani to return to the regular order of business, a voice vote was unanimously in favor.

Mr. Bassani left the meeting at 7:30 P.M. due to a "D" Variance application.

### **MINUTES**

Mr. Konopinski made the motion seconded by Mr. Walther to approve the January 19, 2021 minutes. Yes, Carried.

### **APPLICATION**

L-2020-06  
Keith Albinson  
Preliminary & Final Site Plan  
Block 17, Lot 14  
205 Route 565

The Applicant is proposing to construct an office, storage building and outside storage for their towing business. The lot is located in the NC Neighborhood Commercial District, a towing business is not a permitted use.

The application has been carried from the January 19, 2021 meeting.

Jessica Caldwell a Professional Planner of Newton was sworn in. Ms. Caldwell described the property, the proposed business application and the surrounding property. The application requires a “D” Use variance since the proposed use is not permitted in the Neighborhood-Commercial zone. The property is over five times larger than the minimum lot size in the zone. The site has ample parking. Permitting the towing business on the property provides the opportunity to improve the under-utilized commercial zoned lot in the Township. The proposed use is in keeping with the surrounding commercial uses permitted in the Neighborhood Commercial and Highway Commercial Districts.

### **POSITIVE CRITERIA**

**A.** The proposal also furthers a number of the purposes of the Municipal Land Use Law.

- Encourages appropriate use of all land within the state that will promote health, safety and general welfare.
- The site is currently a vacant, under-utilized commercial lot.
- The site is larger than the minimum lot size, and has adequate space for the buildings and infrastructure.
- Direct access to County Route 565.
- Adequate parking.
- The site is a transitional site in the NC Zone between Commercial and HC uses.
- The use is in keeping with the Commercial uses in the area

**G.** Provide sufficient space for a variety of agricultural, residential, recreational, commercial and industrial uses.

- The proposal provides for the construction of an office/garage building as envisioned by the 2009 Master Plan Reexamination Report to preserve natural resources as well as in keeping with the existing development of the area.

**I** Promote a desirable visual environment through creative development techniques and good civic design and arrangement.

- The site is currently vacant. The applicant proposes to construct a building containing an office and garage/shop, vehicle storage area and parking. This will maintain the automotive-related commercial character of the area.

**M** Encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and a more efficient use of land.

- The development of this site would provide for a positive and efficient use of the under-utilized lot in the NC District.

## **NEGATIVE CRITERIA**

To address the negative criteria the applicant must demonstrate the granting will not be a detriment to the public good nor will the variance substantially impair the intent and purpose of the zone plan.

No substantial detriment to the public good;

- The site will retain the existing character of the neighborhood, which is predominantly commercial and residential in character.
- The site will not generate noise that could impact adjacent properties. The applicant will adhere to all state noise standards.
- There will be no substantial detriments to the neighborhood.

No substantial detriment to the zone plan.

- The proposal is in keeping with the character of the area without impairment to the zone plan or zoning ordinances.

## **CONCLUSION**

Ms. Caldwell believes the applicant has met its statutory burden for the requested variance, and the Board is within its rights to grant the variances.

Ms. Gill opened the application to the Board for any questions for Ms. Caldwell.

Ms. Gill asked if any other sites were considered. Mr. Albinson explained to the Board, his business needs to stay in Wantage for its central location to his contracts, there are not many commercial properties available in Wantage and he owns the property he wishes to develop.

General discussion took place regarding the paved parking spaces, the two-foot overhang and the variance that is needed. There is room to increase the size and in doing so they would not require a variance. Mr. Albinson agreed to increase the size to 10' x 20' to comply with the ordinance.

Mr. Walther asked for a description of the sand filter, Mr. Stewart explained how it works. Mr. Stewart added the sand filter must be maintained by NJ Stormwater Regulations. The filter is inspected after storm events and at least two times per year. The owner is responsible for getting the filter cleaned and must follow the maintenance manual. Mr. DeBoer asked Mr. Stewart if, in his opinion, there would be any problems with the filter, Mr. Stewart does not believe there will be any problems.

Mr. Pellow added, the filter must be built to NJ standards. Mr. Walther asked how the filter works in the winter, Mr. Stewart stated, as long as the filter is maintained properly the filter will work in all weather.

Ms. Gill closed the discussion with the board and opened the application to the public for any questions for Ms. Caldwell.

Mr. McBriar is the Attorney for Mr. Emil Conforth, the neighbor to the north of the property opposing the application.

Mr. McBriar and Ms. Caldwell discussed the surrounding properties noting the commercial soil business across the street is preexisting non-conforming. Mr. McBriar repeated the number of calls the applicant receives each month and asked Ms. Caldwell if an alternate location was considered, she explained Wantage has very limited commercial property available and, the applicant needs to stay in Wantage for the central location for his contracts, so no other properties were considered.

Mr. McBriar discussed the Master Plan and the fact that the property could have been rezoned in 2009, to permit this type of use, but Wantage did not. He also discussed noise studies, fluids escaping from vehicles and storm water management.

Robert Lange of Lewisburg Road owns the dairy farm operated by Jeff Vander Groef. Mr. Lange feels the area surrounding the property is one of the most environmentally sensitive areas in the township. There are farms, creeks and wetlands in the surrounding areas. He does not feel the property is best suited for this type of business, and is concerned on behalf of the flood plain, fish and the drainage impact on the environment. Mr. Lange also maintained he has never opposed another application that has been before the Land Use Board on the property. Mr. Lange provided two exhibits.

Exhibit RL 1 is a picture of the farm  
Exhibit RL 2 is a map of the drainage and creek.

Mr. Lange would like the Board to consider the residential nature of the area and protect the land and waterways from pollutants. When Mr. Lange sold the drainage easement it was for the proposed storage units, the drainage easement rights stay with the land.

Mr. McBriar who represents Emil Conforth, offered a summation,

- The application did not satisfy the elements to approve.
- The property is not suitable for the proposed use.
- There will be an increase in noise, pollution and traffic.
- The applicant does not satisfy 3.02 and 3.08 of the Master Plan.
- The applicant did not satisfy the Positive Criteria (D2).
- It does not satisfy the Negative Criteria; lack of compatibility with nearby residential uses, can negatively impact the health and welfare for those living nearby.

Mr. McBriar read a letter supplied by Mr. Conforth, it was entered into the record.

Mr. Conforth stated in his letter:

- K&A Towing is a business with large trucks.
- Vehicles are likely to pollute and leak fluids.
- The property is not intended for mixed commercial uses.
- Car lots and junk yards are not allowed in Wantage
- The building setback is not in line with the existing buildings on neighboring lots.
- The lockup area is unsightly.
- The gravel parking area will produce runoff.
- The trucks are noisy and produce fumes.
- There are drainage concerns.

The letter was signed by Emil Conforth.

Ms. Leo swore in Emil Conforth. Mr. McBriar asked Mr. Conforth questions pertaining to his opposition to the application. He explained he has lived on the property adjacent, to the north, for fifteen years. Mr. Conforth opposes the application because it is out of character with good planning, it is an industrial use, consider the noise, air pollution and the disruption during the night. He does not believe the buffers and setbacks are appropriate. The neighboring properties are residential and farmland. He fears the multiple issues, including noisy engine brakes, backup beepers, fumes and lights will degrade the properties. Mr. Conforth's final comments were asking the Board to respect and protect the environment, and for balanced development. The business is inconsistent with the surrounding areas, and will degrade property values

Ms. Gill closed the application to the public and opened it to the Board.

Ms. Gill asked Mr. Pellow if residential is a permitted use in the NC zone, he said it is a permitted use. Mr. Conforth's property is also in the Neighborhood Commercial Zone.

Mr. DeBoer asked Mr. Albinson to explain the process of disposal of the fluids after an accident, as that is a large concern of the Board. Mr. Albinson replied most of the fluids usually drain at the accident site, there, it is cleaned up with speedy dry. When the vehicles are brought back to the yard, pans are placed under the vehicles to collect any additional fluid that may drip. Mr. Albinson also clarified of the 1300 calls he receives each month, most of them are AAA calls, a great number of the calls are from location to location and the vehicles never come to the yard. The facility is for cars that are inoperable or impounded.

Mr. Dudzinski asked Mr. Albinson to describe the current lockup area in comparison to the proposed lot. Mr. Albinson stated the current lockup area is smaller, he needs the additional space to protect the vehicles in the lot. He cannot allow the vehicles to get damaged in his lot. He is doing the work of the insurance adjuster, due to COVID. He has been in operation since 2007 and has never received a complaint from Wantage Township.

Mr. Conforth, emphasized the rural character of the area, adding WED zone is across the street. This type of business is not permitted in the WED zone.

Mr. Bono, added, as a fireman attending many accidents, K&A cleans up at the site, also stating the newer trucks, including fire trucks, have an exhaust system that does not omit an odor.

Mr. Walther asked how many heavy-duty calls are answered by K&A, Mr. Albinson said approximately one a month, stating this area does not average a lot of truck traffic similar to highways. The average car total on the lot is between 12-15 cars. The largest truck he owns is a 75-foot tractor trailer.

Discussion continued regarding the amount of activity that will take place in the office building, Mr. Albinson explained with today's technology most of the calls are received by cell phone.

Mr. Unvergast questioned the slope in the driveway and was it too steep for the trucks; Mr. Pellow replied the slope is permitted by ordinance.

Ms. Leo reminded the Board, when deciding, would permitting the tow business create a substantial detriment to the zone plan?

Conditions discussed:

- Submission of LOI
- Additional landscaping for Board Engineer approval
- Upper Delaware Conservation District approval
- No cars sold on the property
- No equipment rentals
- Hours of operation 8-6 Monday through Friday 9-1 Saturdays, appointment only on Saturday during COVID-19, 24-hour towing
- Maximum number of vehicles is 15 trucks, and 15 autos
- No flammable liquid storage
- No body repairs
- Submission of the storm water maintenance manual
- 6-foot fence on the property is solid throughout
- Parking stall size 10' x 20'
- Comply with all noise standards
- No refueling trucks.
- Improve aesthetics of the building
- Submission of stormwater maintenance manual
- Largest truck on site, 75 foot maximum
- Mr. DeBoer included in the conditions; turn off the back up beepers especially after hours and no throwing the tow chains onto the bed after hours.

After some discussion regarding pavement, gravel, and cement, the Board agreed dense aggregate would make the most sense.

Mr. Bono asked if the building could be set back another 10 or 20 feet, Mr. Albinson explained the turnaround for the trucks would be tight and the setback on the building is almost double what the Township ordinance requires.

Mr. DeBoer made the motion seconded by Mr. Bono to approve the Use variance. Ayes: Bono, DeBoer, Konopinski, Walther Dudzinski, Unverzagt, Gill. Nays None.

Mr. DeBoer made the motion seconded by Mr. Bono to approve the towing business and storage yard, with the conditions cited. Ayes: Bono, DeBoer, Konopinski, Walther, Dudzinski, Unvergagt, Gill. Nays: None.

Ms. Gill opened the meeting to the public for any general concerns they may have.

Mr. Conforth stated he was very disappointed with the decision of the Board.

Mr. Robert Lange said he believes this is the wrong place for the business, the Board should have thought of the people who live there. Neither neighbor is happy with the business.

### **ADJOURNMENT**

Mr. DeBoer made a motion, seconded by Mr. Konopinski to adjourn at 9:30 PM. The Board unanimously agreed.

Respectfully submitted,  
Jeanne M McBride, Secretary