

Mount Laurel Township Zoning Board of Adjustment
Regular Meeting Minutes
December 1, 2021

Opening

The eleventh Regular Meeting of the Mount Laurel Zoning Board of Adjustment December 1, 2021 was called to order by Chairman Francescone at 7:00 p.m.

Pledge of Allegiance and Moment of Silence were observed

The Open Public notice was read by Suzanna O'Hagan, Board Secretary

Roll call was taken

Board Members in Attendance

Chairman Francescone, Vice Chairman List, Mrs. Andersen, Mr. Gray, Mr. Killen, Mrs. Liciaga, Mr. Sharp, Mr. Kramer, Mr. Holmes.

Absent: None

Board Professionals in Attendance

Joseph Petrongolo, Planner; Michael Angelastro, Engineer; Ed Campbell, Board Solicitor, Brian McVey, Fire Marshall

Announcements and Review of Board Procedures none

Adopting the Minutes

Chairman Francescone asked for a motion to adopt the meeting minutes of 11/3/2021. Mr. Gray moved the motion, Mr. Killen seconded, all eligible members voted affirmatively and the motion was carried.

Memorialized Resolutions

1. **R-2021-ZB27** – Mr. Killen made a motion to approve R-2021-ZB27, Mr. Sharp seconded, all eligible members voted affirmatively and the motion was carried

The Township Professionals were sworn in.

Petitions before the board

1. **Neil Kozarsky**, ZB21-C-30, 16 Lenape Ct. Block 809.01 Lot 18, R-3 zone. This applicant is seeking a bulk variance from section 154-19.2 of the Mt. Laurel Township Ordinance to allow a 160 sf shed where 120 sf is allowed. This applicant has received HOA approval.

Witnesses Sworn:

Neil Kozarsky

Exhibits entered:

none

Mr. Kozarsky's Testimony

Mr. Kozarsky stated that the shed is necessary to clean up yard clutter and to store equipment for gardening and other home activities. He testified that the shed would be well matched to the house.

Mrs. Andersen questioned why the applicant cannot use a shed that meets the ordinance at 120 sf.

Mr. Kozarsky replied that he measured the how much space they would need and although they actually need more than the requested 160 sf they have compromised with the size to minimize the requested variance. He further stated that several neighbors have shed of a similar size.

Chairman Francescone opened the meeting to the public for questions or comments. Seeing none, he closed the public portion.

Chairman Francescone asked for a motion to approve ZB21-C-30. Mr. Killen moved the motion, Vice Chairman List seconded. Roll call vote was taken, all present voted affirmatively except Mrs. Andersen who voted to deny stating that the applicant did not satisfy the requirements for a variance.

2. Megan Kennedy, ZB21-C-32, 2 Wagon Wheel Drive, Block 901.02 lot 9, R-1 zone. This applicant is seeking a bulk variance from section 154-144 of the Mt. Laurel Township Ordinance to allow a fence on a corner lot with a 0-foot setback where 25 feet is required

Witnesses Sworn:

Megan Kennedy and Brandon Kennedy

Exhibits entered:

none

Mr. and Mrs. Kennedy's Testimony

Mrs. Kennedy stated that they are requesting the variance to allow for safer passage on the sidewalk and better site lines for vehicles turning the corner. She stated that the trees along the property line will be removed because they are currently encroaching on the sidewalk. The fence will then be installed.

Mrs. Andersen questioned why they need a fence if removing the trees solves the problems of visibility and sidewalk access.

Mrs. Kennedy stated that the fence will provide safety for their child playing in the yard and that a car previously crashed through the trees. She further stated that the trees are beyond her property line.

Ms. O'Hagan informed the applicant that she cannot remove trees on property other than her own.

Mr. Gray questioned why the fence cannot be placed 25 feet back from the property line conforming with the ordinance.

Mrs. Kennedy replied that it would not leave enough usable space for passage and for gardening.

Mr. Petrongolo commented that there is a driveway on lot 10 adjacent to the applicant's property and that the reason for the setback requirement is so neighbors and people on the street can see onto the road as they make the turn. He noted that there is a 6-foot-high fence currently on that neighbor's property line along the rear property line of the applicant's property. That existing fence is already hindering visibility.

Mr. Angelastro noted that in front of the adjacent property there is a shoulder on the road approximately 14 feet wide, this shoulder provides sufficient site for the neighbor to safely exit their driveway.

Mr. Gray commented that the neighbor across the street has a compliant fence.

Mrs. Andersen noted that the fence on lot 10 does not extend to the sidewalk.

Mr. Petrongolo stated that that fence comes up to the Right of Way line which is 1 or 2 feet from the sidewalk.

Mrs. Kennedy stated that the neighbors fence comes to the tree line which is her property line.

Mr. Francescone asked Mrs. Kennedy if she is requesting her fence to corner right where the neighbors fence ends.

Mr. Kennedy explained that the trees are on an easement that is approximately 7-10 feet wide, the trees are the same width as the easement and their property line is at that is on their house side of the easement not encompassing the trees. He clarified that they are requesting the fence to go on the property line.

Mr. Petrongolo clarified that the space is not an easement it is a Right of Way.

Mr. Francescone asked the applicants if it is possible to install the fence with the trees in place. Mr. Kennedy responded it is possible.

Mr. List noted that the trees are already a visual impediment and putting a fence behind the trees means you would not see the fence therefore the fence would not be a visual impediment.

Mr. Petrongolo recommended that the fence line up with the neighbor's fence.

Mr. Kennedy clarified that the existing neighbors fence extends beyond where they are proposing the fence and their property ends before that.

Chairman Francescone opened the meeting to the public for questions or comments. Seeing none, he closed the public portion.

Chairman Francescone reiterated to the applicant that their proposal is to keep the fence on their property line and it will not extend beyond their property. He stated that the board cannot grant permission to remove the trees.

Mr. and Mrs. Kennedy responded affirmatively.

Chairman Francescone asked for a motion to approve ZB21-C-32. Mr. Gray moved the motion, Mrs. Andersen seconded. Roll call vote was taken, all present voted affirmatively and the motion was carried.

Chairman Francescone called for a brief recess at 7:43 and reconvened the meeting at 7:49.

2. Sammy's Express Car Wash, ZB21-D-12, 3209 & 3211 Rt. 38, Block 301.06 Lot 1, and Block 301.05 Lots 1 & 2 B-zone. This applicant is seeking Use variance from Mount Laurel Ordinance 154-43 to construct a 4,275 sf express car wash as well as related bulk variances and submission waivers. This application is being continued from 11-3-2021

Witnesses Sworn at the previous hearing on 11-3-2021:

Robert Giannone, Owner of Sammy's Car Wash; Brian Cleary, Engineer, Pettit Group; Nathan Mosley, Traffic Engineer, Shropshire Associates and Randall Barranger, Shropshire Associates and Tiffany Morrissey, Planner

Sworn at this meeting

Joseph Abbruzzi, owner of Abbruzzi and Giunta

Exhibits Entered at the previous hearing on 11-3-2021

A-1, Aerial photograph of the site with proposal overlay; A-2, Use variance Site Plan; A-3 color rendering of the proposed building 3 pages and A-4, Video.

Damian DelDuca, Esq. represented the applicant. Mr. DelDuca stated that the applicant was asked to take a look at video footage of the stacking at the Maple Shade location in response to a comment by board member Mr. Killen at the 11-3-2021 hearing that cars were stacked onto Route 38. He stated that Mr. Mosley has reviewed that footage and can confirm there were no stacking issues, he would like to provide brief testimony on that issue. Joseph Abbruzzi will also testify at this hearing.

Mr. Mosley's Testimony

Mr. Mosley testified that he reviewed video footage at the Maple Shade location from Saturday October 2, 2021, Saturday October 16th, Sunday October 17th, Saturday October 23rd, Sunday October 24th, and Saturday October 30th. These observations were done for the peak times of day being between 12:00pm and 3:00pm. Mr. Mosley stated that he did not observe any point at which cars stacked onto Route 38. He stated that sometimes cars will back up from the nearby lights or from vehicles moving into the shoulder of the road in preparation to enter the exit ramp. In response to a question from Mr. DelDuca, Mr. Mosley stated that when the que was at its longest at the site it took approximately 2 or 3 minutes to reduce the que. He testified that the Maple Shade facility stacking area can accommodate 16 vehicles and the Mount Laurel location can accommodate 21 vehicles.

Mr. Abbruzzi's Testimony

Mr. Abbruzzi testified he is part owner of Abbruzzi and Giunta's market and has been in business here for 30 years. He stated that he has other offers to purchase the proposed lots, he chose this opportunity because he wants to have a property that aligns with his market. He found the owner, Mr. Giannone, has a compelling story and is motivated and believes the project will fit on the unique land. He believes it will be aesthetically right and compliment his existing business. The project also improves the market's lot. In reference to the buffer Mr. Abbruzzi stated he has not had any complaints from the neighbors. He stated that with the proposed concept is even better than it was. He stated that 17 years ago he had to obtain relief from the buffer requirement for the current site.

Chairman Francescone opened the meeting to the public for question or comment regarding the testimony given. Seeing none, he closed the public portion.

Mr. Petrongolo reviewed his report dated 10-21-2021. He stated that a lot of his comments have been addressed. He stated that the applicant is asking for a Use variance along with bulk variances however, he cannot recommend the board consider the bulk variances tonight because the plan is only conceptual in nature and therefore the impact of the bulk variances cannot be evaluated. Mr. Petrongolo reviewed the applicants burden to prove the positive and negative criteria for a Use variances and those arguments made at the 11-3-2021 hearing. He asked that the applicant to provide further testimony on how the site is appropriate for the use if they cannot meet the buffer standards. He clarified that the applicant is requesting a Minor Subdivision however, the application requires a Major Subdivision per our ordinance. He reiterated the buffer requirements vs. the buffer proposed. He made the applicant aware that the site will generate an Affordable Housing obligation.

Mr. DelDuca acknowledged the obligation.

Mr. Gray referenced figure 2 on page 7 of the sound report. He stated that the report does not tell us what the sound impact will be on the residential side of the project. He questioned what can be done along the rear of the property to minimize the sound to the residential area.

Mr. Petrongolo stated that that is one of the reasons for the buffer requirement and for vegetation to have any significant impact to reduce the sound it needs to be a very wide landscaped area where here we will have as little as 15' which will not reduce sound and the proposed vinyl fence will have little to no impact at all. A thick sound wall would help reduce the noise.

Mr. List explained the engineering that is involved with noise abatement, specifically that a barrier would need to have mass and that sound dissipates with distance.

Mr. Petrongolo asked Mr. Angelastro if the applicant meets the noise standards.

Mr. Angelastro replied that their sound study indicates that at the time of the study the daytime range was 50-55 decibels without traffic. That is acceptable for the daytime hours but exceeds the nighttime

hours standards. He stated his concern about the noise study not being directly comparable to the proposed site. He noted that in his report dated 10-25-2021 he requested that should the board grant any approval, the approval be conditioned upon a post construction noise study to make sure the applicant is not exceeding the daytime sound limit per state statute. He further requested that a nighttime study be done with the existing retail use to be sure they conform to the noise standards.

Mr. DelDuca clarified, through questions and answers between himself and Mr. Cleary, that the shortest buffer width being proposed is 15.4 feet which is a slight improvement over what is there today. Mr. Cleary read the widths of the buffer from one end of the property to the other as shown on the Use Variance Plan. Mr. DelDuca asked Mr. Barranger, in reference to Mr. Grays question of whether we know the noise level on the residential side of the site, to comment. Mr. Barranger stated that he conducted his study onsite and is not authorized to go on the residential property. He stated that the further back from the road you go the lower the noise level will be. The sound level will reduce in half by doubling the distance from the source, in this case the highway. He would anticipate the sound level at the residential site to be lower than those taken on the proposed site. The ambient level measurements he took ranged from 48 to 73 decibels because the primary source of noise is Route 38 and during the moments when traffic is stopped on Route 38 the decibel levels dropped. When traffic was present the ambient measurement ranged from 66 to 73 decibels. He clarified that this is ambient sound, having nothing to do with the site and any sound associated with public road ways is exempt from the state noise control act. He stated he did not take night time measurements because the facility is not open during night time hours. Mr. Barranger stated that he expects the car wash to comply with the Noise Control Act for daytime noise limits based on his measurements at the comparable site and ambient levels at the proposed site. Mr. Barranger noted that the site map in his study is mislabeled Mount Laurel and should be labeled Maple Shade. He further stated the it is his opinion that the sound associated with the vacuum units would comply, at the residential property line.

Mr. Giannone stated that the noise created by the car wash is lower than the ambient noise of the site.

Mr. Barranger explained that his objective is to isolate the ambient noise from the car wash noise. In this case the noise levels were comparable.

Mr. Petrongolo asked Mr. Barranger, what is the impact of this proposed site on the adjacent residential properties from a noise standpoint, is the ambient noise going to increase.

Mr. Barranger responded that in this case the sound associated with the car wash will be comparable or lower than the ambient noise. He does not believe the carwash will be in excess of the sound that is present today.

Mr. Petrongolo stated that at the property line today the noise level is approximately 70 decibels and asked what the anticipated noise level will be when the car wash is working.

Mr. Barranger replied that the sound level will be comparable to the current levels.

Mr. Gray referenced the sound report reading citing B2 on table 4 stating the ambient levels shown are between 58.1 and 69.1 then on location B1, by the vacuum, the ambient levels show are between 68.5 and 73.4 noting the levels at B1 are higher.

Mr. Barranger explained the procedures in the State Noise Control Act of isolating noise. He stated that you take the highest ambient measurement and subtract that from your lowest source on measurement. He explained the process by which he made his conclusions.

Mr. Sharp questioned, wouldn't the constant noise of the vacuums be more of an impact on the nearby residents than the on and off noise of the highway.

Mr. Barranger explained that the vacuum sound measurement is taken 6 feet from an active vacuum and noise dissipates over distance, therefore the noise level at the residential property line will be lower and will comply with the state Noise Control Act at or below 65 decibels. He stated that the vegetation will not provide any appreciable sound attenuation and the rule of thumb is that you need at least 100 feet of solid woods for any appreciable sound attenuation.

Mr. Angelastro reviewed his report dated 10-25-2021. Because the applicants sound engineer did not follow the state standards due to the car wash noise being negative when compared to the ambient noise, he is concerned about the comparability of the Maple Shade location to the proposed Mount Laurel location. He recommends that if the board were to grant any type of approval that it be conditioned upon a post construction sound study during the daytime hours and during the nighttime hours for the existing retail use. If the study shows that the applicant exceeds the daytime standards they will have to mitigate the impact.

Mr. DelDuca stated he is aware of the standard and will comply.

Mrs. Andersen asked what kind of mitigation would be required.

Mr. Angelastro replied that mitigation measures would have to take place at the individual units in order to bring the noise down to the state and Mount Laurel's statute.

Mr. Giannone stated that Mr. Barranger did not follow the state statute for calculating the impact of the car wash because it was impossible to do because the road was louder than the car wash.

Mr. Barranger concurred and stated that if he had used the State methodology the number would be even lower and that the method he used was the most conservative.

Mr. Gray asked if sound wall can be added to cut down on the noise to the residential use.

Mr. Giannone responded that he wants to be a good neighbor and he guarantees that no sound created by the carwash will emanate to the property line at more than 65 decibels. Additionally, the building orientation, being parallel to the road will provide some buffering to the residences to the rear. He stated that after the carwash is built they will do a sound study and if the study shows the sound over 65 decibels at the property line then he will put up a wall. He agreed to this as a condition of approval.

Mr. Sharp asked if the applicant can do a sound study at the property line now in the current condition and then again after construction and agree to mitigate if the sound shows higher after construction.

Mr. DelDuca responded that he does not believe it would be a reasonable condition to ask the applicant to meet a lesser standard than the state standard or to reduce the ambient noise because the property is in the business zone and there will be noise including the ambient noise even if the site is developed for an approved use. He noted that the state standard noise level does not require the applicant to count the ambient noise level, they are not responsible for that.

Mrs. Andersen stated that a sound wall is not necessarily a positive, and expressed concern about how the people living in the residential area may not want a sound wall behind their homes.

Mr. List stated that he is an engineer and that sound is a pressure wave and you cannot necessarily stand 100 feet away from something and pinpoint where it is coming from. He explained how sound travels and stated that the sound of the carwash would be a lower sound pressure than that created by the highway. It may be higher localized but would be equivalent to a smaller speaker compared to the large speaker of the highway.

Mr. Abbruzzi stated that the market closes by 5pm.

Mr. Petrongolo expressed concern about the applicant's testimony that the site is suitable for the use when they need a variance for the buffer.

Mr. DelDuca replied that the applicant has to show that the site is suitable for the use based upon its characteristics and he believes they have demonstrated that because they meet virtually all of the bulk requirements with few exceptions including the buffer width requirement. He stated that the buffer variance has nothing to do with the use, it has to do with the shape of the property. He stated that the need for a buffer variance does not disqualify the use from being particularly suitable for this site. Whatever use is approved in the future will need the same buffer width variance and could be a gas station with car wash among other approved uses in the Business zone.

He stated that the suitability of the site is best proven by the fact that the property is in the B zone which permits a myriad of uses all of which create noise and have impact on neighbors, they are on Rt. 38, a state highway, the shape of the lot lends itself to this building and the shared access creates benefits. He stated that they are not going to impact the neighbors to the north in any substantial way because they are going to meet the statewide noise standard and provide a substantial buffer and fencing. He reminded the board of the testimony provided that while the proposed use is more impactful than the house that is there now they are not more impactful than some of the permitted uses that could be developed there including a fast food restaurant with a speaker open late at night.

Mr. Kramer asked if the trees on the residential side of the property line will provide sound buffering.

Mr. Barranger stated that he did not go on the neighboring property to study the sound.

Mr. Killen asked the board what commitment the applicant would have to make to eliminate sound as an issue.

Chairman Francescone asked Mr. Barranger if it is true that if the noise level at the property line is not higher after construction than it is before construction then it can be concluded that the carwash has not added noise.

Mr. Barranger confirmed that that is true.

Mr. Gray stated that the installation of something more substantial than a vinyl fence would help him.

Mr. Giannone said they can install a board on board wood fence and that if the post construction sound is higher than the preconstruction sound he agrees to make mitigation measures.

Mr. Petrongolo recommended that the board vote on only the use tonight because the bulk variances cannot be appropriately evaluated without a full site plan.

Mr. DelDuca agreed that the board has the right to defer the bulk variance to the Site Plan hearing.

Mr. Angelastro continued his report review. He noted that an access permit from NJDOT will be required for Site Plan approval.

Mr. DelDuca clarified that the ambient noise level post construction will be compared to the noise level with the car wash and vacuums running and not compare the pre-construction noise level.

Chairman Francescone asked for a motion to continue the hearing past the 1.5 hour point. Mr. List made the motion Mr. Sharp seconded. All member voted in favor.

Mr. McVey reviewed his report dated 12-22-2021. Mr. McVey stated concerns regarding site access and circulation. If the use is approved there are many things that need to be worked out for Site Plan. The use variance circulation plan does not work. He believes the problems can be potentially hashed out.

Mr. Campbell iterated the conditions of approval if the board approves the application as the following:

- 1.) A post construction sound study will be conducted using the same methodology as employed for support of their application.
- 2.) If, as a result of the post construction sound study, it is determined that the sound level has increased, the applicant will utilize mitigation efforts such as a fence or wall so as to achieve a sound level no greater than the levels identified in the submitted with the application.
- 3.) The use is conditioned upon the applicant obtaining Site Plan approval.

Chairman Francescone asked for a motion to approve the Use only, deferring the bulk variances to the Site Plan hearing, for application ZB21-D-12 with the conditions stated. Mr. Killen moved the motion, Vice Chairman List seconded, roll call vote, all members voted affirmatively except Mrs. Andersen who disagreed stating she does not believe the applicant has met the requirements for a use variance and the application has too many problems.

Chairman Francescone read a Resolution of Appreciation for Vice Chairman List.

Vice Chairman List thanked the Board, Township Council and Board Secretary.

The board discussed recommendations they would like to make to council based on the finding of facts for the year 2021. The board stated they would like to recommend changes to the ordinances regarding stand-alone atm's, stand-alone car wash's, allowable size of sheds relative to the size of the property, solar panel canopies, adult day care, medical use in retail zones and animal hospital allowed in medical use zones.

Adjournment:

Chairman Francescone asked for a motion to adjourn. Vice Chairman List moved the motion. All present voted affirmatively. Meeting adjourned 9:47 P.M.

Adopted on: January 12, 2022

Suzanna O'Hagan, Secretary
Zoning Board of Adjustment