

**Planning Board Meeting
Regular Meeting July 21, 2010**

The regular meeting of the Planning Board took place on the above date. Chairwoman McCabe read the Open Public Meeting Act and requested Mrs. Citterbart called the roll. Board Secretary Mrs. Citterbart stated there was a quorum.

OATH OF OFFICE

Mrs. Kristen Becker
Mrs. Helen LeFrois

MEMBERS PRESENT: Mr. Caffrey, Mrs. Becker, Mrs. LeFrois, Mr. Russo, and Chairwoman McCabe

7:34 pm Mr. LeFrois joined the meeting

EXCUSED: Mr. Flaherty

ALSO PRESENT: Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, Mr. David B. Simmons, Jr., Board Engineer from the firm Harold E. Pellow & Associates, Debra Millikin, Deputy Town Manager and Director of Community Development and Kathy Citterbart Planning Board Secretary.

FLAG SALUTE

CONSIDERATION OF MINUTES

June 23, 2010 – Special Meeting

Mr. Caffrey made a motion to approve the June 23, 2010 minutes. Mr. Russo seconded the motion.

AYE: Mr. Caffrey, Mr. Russo and Chairwoman McCabe

HISTORIC RESOLUTIONS

None

RESOLUTIONS

None

OLD BUSINESS

None

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NEW BUSINESS

**#PB-20-2010- Hayek's Market Inc.
Block 403, Lot 17 – 1 Mill Street
Waiver of Site Plan
Carried to September 22, 2010 @7 pm
No further notice required**

Applicant is proposing to enter an agreement with the NJ Herald to share existing parking spaces by constructing an interconnecting driveway between the two lots.

SWORN: Lawrence Lockwood, 921 Potters Road, Newton, NJ, Licensed Landscape Architect in the state of New York and New Jersey
Daniel Hayek, Owner of Hayek's Meat Market, 4 Fredonia Road, Fredon, NJ

Mr. Lockwood, representing Mr. Hayek, presented his qualifications to the board and his experience.

The board accepted his qualifications.

Mr. Lockwood stated: Mr. Hayek is requesting the board to grant a waiver of site plan for the use of his neighbor the NJ Herald parking lot. I think there are a number of reasons why he wishes to do that. He has a differently configured parking lot. He has a busy and viable business and he is looking for ways to alleviate troublesome parking conflicts. If you have ever been there at lunch time there are some times when parking spaces are hard to find. In addition to that he has had approved the area along Water Street aka Route 206 recently with a patio. Up until this point he parks some delivery trucks in the same location so that is a use conflict there so he seeks to alleviate that condition and then lastly not a subject to this hearing but it is related, Mr. Hayek is considering sometime down the road of expanding the store and at which point he would have to file a site plan with the town and obviously include the county because that site plan would recommend the closing of his Rt. 519/Mill Street point of egress from the store so it is a little bit more involved in the context of that eventual site plan. The outdoor eating space has been a great success for both Mr. Hayek and the people who patronize the store. When he began talking to NJ Herald about a shared use of their parking lot, the question of another outdoor patio space for the Herald might be a good idea. That resulted in a consideration of removing the existing satellite antennae which is kind of outdated in terms of its technology. It has a 6 foot fence securing it and some overgrown landscaping around it and so he is seeking to at least make the planning board aware that he is considering another one of these patio spaces. He also has observed the NJ Herald's use of the lower parking lot is rather limited. He has mentioned three, four, possibly five cars might utilize that lower parking lot at any given time. So my understanding is in his discussions with the Herald is that he would accommodate their use of the space in its current fashion and he would utilize the remaining spaces for employees or customers. On a consistent basis his employees of which at any given time would be 8-10 that work for Hayek's and then there is a printing operation in the lower lot that generally occupies four spaces so there is a need.

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There is a little bit of confusion at some points when large delivery trucks show up and make the deliveries through the front door and displacing otherwise useable spaces so that is in essence of why we are here.

Chairwoman McCabe asked: Mr. Hayek, have you found out that with serving lunch people in that area are parking and staying and that contributes to the no movement?

Mr. Hayek stated: That is part of the issue. You want to bring them in and give them something but now they stay. There are people who just eat in their car and that does add to it.

Chairwoman McCabe asked Mr. Lockwood: You are in receipt of Mr. Simmons's letter dated July 16, 2010 with his comments? Have you had an opportunity to review those comments?

Mr. Lockwood stated: I actually didn't get it until a few hours ago and I haven't had a chance to go through it in detail with Mr. Hayek. At first glance it doesn't seem like anything seems to be unreasonable. What we had hoped to do with this exercise is to open a conversation with the Planning Board realizing we would defer to your engineer for his engineering needs. Obviously, Mr. Hayek's doesn't want to file two site plans if he doesn't have to. Another other point is if he does proceed with an expansion of the store, the use of the lower parking lot would be an asset to his being able to park his customers there while construction takes place.

Chairwoman McCabe stated: Mr. Simmons why don't we go over your report since Mr. Lockwood has not had an opportunity to review in its entirety particularly any items you feel are items of contention and need to be addressed by the board.

Mr. Simmons stated: Under Phase I, Mr. Lockwood talks about the loss of four parking spaces on the Hayek's Market property and three spaces on the NJH lot. The only concern I had about that was whether those loses would increase any previously granted variance or not. I wasn't sure what the status was on the Hayek property or the NJ Herald property and how that might affect the site plan waiver.

Mr. Soloway stated: I certainly do not know what the parking requirement is. I don't think we have enough information to calculate it. If it is deficient technically it would require a variance.

Mr. Simmons stated: I realize it is subject to the application to enhance the parking to shared parking, but I looked at it from the standpoint technically on its own lots of what is has vs. what it needs.

Mr. Lockwood stated: We need to do an analysis for both NJ Herald use and Hayek's.

Mr. Simmons stated: I think so.

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Chairwoman McCabe stated: I need some clarification for myself. We are just addressing the expansion of the parking area tonight the interconnect, correct? We are not addressing any further growth or expansion?

Mr. Lockwood stated: That is correct. The only reason I mentioned it in all the detail that I did was to give you a little context to where this might be three years from now.

Mr. Soloway asked: Is the intent here for Hayek's to have exclusive rights to both parking lots or is the NJ Herald going to retain some rights and does it have rights to use your parking lot because that's relevant to the question of how much parking is being provided as well.

Mr. Hayek stated: The agreement has not been drafted yet. We have talked about what we are going to do. The concept right now is they have four vehicles they park down there that are their own vehicles. Why they keep them down there I don't know. They could technically park them up top if they wanted to because over the years they have reduced their staff to such a level for different reasons a lot of which they have moved the office staff. Their need for parking has really gone down. But as far as if we have drafted a document yet, no, we have not.

Mr. Soloway stated: We do need to know what it is that you are doing.

Mr. Simmons stated: Item 2 regarding the grading of the pavements. There is not any excess grade difference between the two parking lots just so there is not anymore drainage sheet flowed onto one parking lot or another, Mr. Lockwood indicated that it was graded appropriately and I agree with that. Mr. Simmons continued with Item 3, I point out the utility easement which looks like a gas line just with the grading it is recommended to check the gas line. Item 4, I have put forth some suggestions for the limited amount of paving and curbing work that will be required. Item 5, it sounded like the satellite antenna may be a note point based on the conversation we had earlier.

Mr. Lockwood stated: I am not exactly sure the status of that.

Mr. Simmons stated: I did check our files and they did file a site plan for the satellite dish.

Mr. Simmons continued with Item 6 the shared parking concept. There are some issues that Mr. Soloway just described between maintenance and repair, use of new patio paver area, lighting, responsibility, and cost it just has to be developed. Under Phase II, Mr. Lockwood indicated on 519/Mill Street the existing Hayek entrance will be cut off and the only entrance off of Mill Street will be the common one that presumably in agreement would address with the Herald and then the Hayek property.

Mr. Lockwood stated: I would like to clarify that. The second plan that had the grades was really to be considered the final document for exhibit for these purposes. Phase II may or may not involve that sort of driveway configuration. I think we have to do a closer analysis of how that site will be developed.

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Mr. Soloway asked: Does Phase II need to go before the board?

Mr. Lockwood stated: It was not my intent. I apologize if I was misleading with that.

Chairwoman McCabe stated: So we are eliminating the Phase II comment?

Mr. Simmons stated: Just so the board knows for a further site plan if it comes in basically some of my concerns were some additional details on the retaining walls, pavement repairs on Mill Street and if they did close off that entrance off of Hayek's parking lot off of the Mill Street side, there would have to be some additional constructive drainage work. Then I talked about some miscellaneous items such as an as-built plan, a copy of the survey, any approval from the County of Sussex and any work down on their entrances when we were talking about the Phase II that would involve work within their right of way. That is my report.

Chairwoman McCabe asked: Are you in agreement with all of Mr. Soloway's comments?

Mr. Lockwood stated: I don't have any questions and I don't think any of those comments are unreasonable. I do have a question for my own clarification and this on the parking ratios. I would like to know exactly which ones we are using. We are not a supermarket which obviously has a less stringent requirement than a fast food operation so if there is any clarification we can make public now.

Mr. Soloway asked: Do you know what zone the property is in?

Mrs. Becker stated: C3.

Mr. Lockwood stated: C3 – Highway/ Commercial Retail is the zone.

Mr. Simmons stated: One suggestion I may have is when I was looking through the old site plans from many years ago I saw some notes from Larry Palmer, from our office, and I may have some information of what was used at that time as a suggestion if I can get it to Mr. Lockwood. Because I think they dived up some of the uses by Minisink Press and the deli and the grocery store and then the NJ Herald had its own components.

Chairwoman McCabe asked: But Mr. Hayak, you came before this board a year or two ago for additional parking was it when you put the little addition on the front?

Chairwoman McCabe stated: Yes that was it. How was the parking at that time?

Mr. Hayek asked: Did we address it?

Chairwoman McCabe stated: We did. I don't remember if you ever received a variance because you were expanding?

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Mrs. Millikin stated: I don't think a variance was issued. The reason I am saying that is because the addition was so minor.

Mr. Hayek stated: I think it was addressed but I don't think we went too far with it.

Mrs. LeFrois asked: Is it my understanding that you do not have a formal agreement with NJ Herald yet?

Mr. Hayek stated: Correct. We thought we would come here, get the permission and then we will come back. It is something that is going to be obtainable. We know what they want and what we want so we do not see an issue.

Mrs. Becker asked: So if we got that formal agreement on paper it is okay that they do not have to apply to.

Mr. Soloway stated: The NJ Herald since it is their property they do not have to comply but they have to consent in writing.

Mrs. Becker stated: So a formal agreement is needed.

Mrs. LeFrois asked: Can we not make a decision because we do not have the Herald's formal agreement?

Mr. Soloway stated: My answer to that would be yes. If you are filing a site plan application you are required to submit an owner's consent.

Mrs. Becker stated: We do have that.

Mr. Soloway stated: It sounds like to me that we are a little premature on granting anything yet because we need a little information on parking. Mr. Simmons is asking for limited site plan type details as opposed to a complete waiver.

Mr. Simmons stated: I don't think any of the details we talked about are difficult for Mr. Lockwood to put together.

Mr. Lockwood stated: I would be able to show them to you ahead of time if it makes it easier for the board.

Chairwoman McCabe asked: Mr. Soloway are we at the point where we can grant the site plan waiver?

Mr. Soloway stated: My recommendation is that you do not grant the site plan waiver because of the parking counts.

Chairwoman McCabe stated: Why don't we make it very clear to the applicant what they need to come back with to get their waiver.

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Mr. Lockwood stated: I don't you can be constructing anything in the near future. It would have to be passed and a resolution would have to be approved.

Mr. Hayek stated: I don't mind.

Chairwoman McCabe stated: Let's lay out exactly what the applicant has to come back with. Research on the parking, look back at the last time you were here to make sure there were no variances (I know we addressed the parking but I don't know what the outcome was)

Mr. Simmons stated: The details on the pavement and curbing. Some of the spots on the drainage just to verify we aren't impacting one or the other properties, to have a copy of the agreement for who is responsibility for what and who is going to use what.

Mr. Soloway stated: I don't think we need the actual agreement but we will need testimony to the outline of it. Who has the right to what, how are you going to take care of it and who is going to take care of it. We want to make sure we have what is being done.

Mr. Lockwood stated: From a technical standpoint I don't see anything that is troublesome from my end I can't speak for Mr. Hayek as to the legal ramifications but it sounds like some of the things have already been discussed with the NJ Herald.

Mr. Simmons stated: The only other item I can think of is maybe to touch base with the Herald about what they want to do with the satellite dish. I know they maybe going to a smaller dish but where is it going to go?

Chairwoman McCabe opened this portion of the meeting to the public. With no one coming forward, Chairwoman McCabe closed this portion of the meeting.

Mr. Lockwood asked: One question that Mr. Hayek had was should we have Mr. Quinn, Mr. Hayek's attorney with us for next time?

Mr. Soloway stated: On the basis that you explained the ownership, I think not. I am certainly not going to tell you not to proceed with an attorney. It is up to you.

Mr. Soloway stated: The only other thing I would tell the applicant is when you do calculate the parking requirements under the ordinance if you are deficient you probably are going to need a variance which will mean it will have to be noticed.

Mr. Lockwood asked: And that would require a site plan filing?

Mr. Soloway stated: You could ask for the same type of waiver or partial waiver being discussed tonight. You can put that in the notice if you do go to that point. But the board cannot grant variance relief without the proper notice.

Mr. Lockwood stated: We will do our research.

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INFORMAL APPLICATION

Dan Gordon/Triple M. Realty, LLC

Discussion of permitted uses

Arthur Neiss, partner in the firm Stein, Mcquire, Pantages and Gigl LLP representing Mr. Dan Gordon who is the principle of the LLC.

Chairwoman McCabe stated: I do need to tell you for the record when Mr. Gordon was here in 2004 I did recuse myself because my husband Mr. Wayne McCabe did testify on this applicant's behalf so I will leave it up to you whether you would like me to recue myself from this discussion.

Mr. Neiss stated: This is an informal circumstance. I would welcome you to be here as part of this.

Chairwoman McCabe stated: Thank you.

Mr. Soloway stated: I don't think Mr. McCabe would have any interest in this applicant and secondly as Mr. Neiss indicated to discussion the board is not taking any action so I do not have a problem.

Mr. Neiss stated: Just to add to this, if we ever do come to you with a formal application that would change the whole complexion of this, but we are not here tonight do that.

Chairwoman McCabe stated: Please tell us what your issues are.

Mr. Neiss stated: I wrote a letter to the board dated July 13, 2010 to explain where it is we are coming from. Mr. Gordon owns the building on Water Street and most of you are familiar with it. The situation is a problem for Mr. Gordon and his company for the following reasons: The property now has a paved parking lot behind it which is used for all the tenants who are in the building. The first floor is primarily commercial tenants, the second floor is residential and there is not enough parking under your ordinance for the uses that are going on in that building. There never will be enough parking. The problem that he faces is pretty simple and straight forward and it is what it is. When a tenant leaves, Mr. Gordon, as a businessman, has no choice but to bring in a new tenant to replace the tenant. You all know what it takes to run a building and what it takes to run a business so he has to bring in another tenant. It does not make a lot of sense that every time he gets a new prospective tenant he has to come before you each and every time. What he has done in the past is gone to the zoning officer. But what tends to happen because of the resolution the board drafted back in 2004, signals to any zoning officer that rather than grant a waiver in what would normally be an easy circumstance to who can go into the building is very limited because not everyone is going to want to go into a building like this. So every time it seems that he goes before a zoning officer, the terminology in the resolution that was appended to my July 21, 2004, signals to the zoning officer that for any proposed intended use whether it comports to the ordinance or not there has to be some activity before the board because he is never going to have enough parking. This creates a difficult

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burden for Mr. Gordon because in order to satisfy the requirements of the board he has to get a whole site plan review. There is a provision for site plan waiver. That is even burdensome because he has to go through the process to get here before you and it creates a logistically nightmare and a financial burden for Mr. Gordon. What he has proposed and what he would like to be in a position to do is to be able to do what he did in 2004 and that was to put before the board a list of proposed uses that the board would approve. That was an attempt on his part back in 2004 to say let me work with the town let me try and get some clarity as to what is going to be permitted and what is not going to be permitted so that he can go out and secure tenants along that line. The board said in its resolution that would undermine our jurisdiction. In order that the board's jurisdiction not be undermined in the future the applicant would have to come back before you on every potential use that is going to be used at that property. I believe I may not be as clear to you as I would like to be but this resolution phrased the way it has been phrased has become an albatross, a financial albatross, around Mr. Gordon's neck and what we are seeking and if you don't mind I would like him in his own word's to tell you what he has faced as a result of this. What we are seeking is some form of leniency so Mr. Gordon is not required every time he has a new tenant who is going to be paying \$600 a month or so to come back before the board when the board already knows and the town already knows that the parking situation is not going to change. So that is why we are here tonight and I would like Mr. Gordon to express to you how he perceives it from his side as the business owner.

Mr. Gordon stated: I think these tenants are paying \$600, \$700, maybe \$1,000 and are tenants who want to move in and I if I have to come before the board, it may take several months and they may not want to wait for the board to decide whether they can go in or not. It is the same issue over and over again. If the use changed each time no problem. By the way, when we say this parking lot is severely constrained it probably is bigger than most in the town. It is not Spring Street. I probably have 27, 28 parking spaces for a building. I have my accounting firm, there is a physic advisor in there, there is a small office in the front, there is a guy who trades cars in there and then I have a repair shop in the back and a few residential tenants above. If you add all of these the original site plan when we did the research said that I would need 55 to 60 parking spaces for all these uses. The fact of the matter is with all those businesses, if everybody was there, the parking lot would be half empty anyway. Even at full capacity, I don't have a parking problem. This parking problem is a result of an ordinance that doesn't recognize what we are doing and I know you cannot go against the ordinance. There is a paragraph in the resolution that says it ties the zoning officer's hands every time there is a slight change in the use but that slight change could be from an accounting office to a lawyer's office.

Mr. Soloway asked: What paragraph are you particularly referring to?

Mr. Gordon stated: The July 21, 2004 resolution- the board denies the applicant's request for a list of approved uses for the site for the purpose of waiving future site plan requirements. It then goes on to say although it be undesirable for the applicant to return to the board when uses by a perspective new tenants change and it require an applicant be make the board finds that it is necessary for this to be done because if an application is not completed it would undermines jurisdiction as well as the purpose of

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the zoning ordinance and the Municipal Land Use Law. I am not asking for unpermitted uses I am just asking if I want to change the use from an accountant's office to a lawyer's office do I have to come back? If I want to change it from one type of business to another, if I want to change the physic advisor to a barber shop do I have come back? What I would like to do is either get this paragraph rewritten or struck from the resolution so that a zoning officer can look at the site plan waiver on the merits of what it is rather than saying I can't do it because of the wording of the resolution.

Chairwoman McCabe stated: I understand your quandary and I hope you understand ours. I understand you because you went from 55.5 spots to 24 or 27 which was based on the tenants you had at the time. And I understand the board's concern if the use changed sufficiently they would want you to come back here. Personally I don't have any problem with the zoning officer making that determination. I think that is what they are trained to do. I would like the rest of the board to weigh in.

Mr. LeFrois asked: I am confused as to why the zoning said no. I don't see any wording that says they are not allowed to.

Mrs. Millikin stated: I can speak on this because I have dealt with it as the Zoning Officer. I think the problem you run into is when you are changing from a specific type of use that was part of the previous approval from 2004. I think one of the items was a piano repair shop and it was based on its use and then he comes in and proposes some other type of use then you have to account for the parking and that is when you run into the variances that are required for the parking so it does kind of tie our hands. We can calculate the spaces. If you go from one use to another use that are very similar we have always waived it. The problem is when he comes with a different type of use and could generate more parking traffic then what was originally proposed that is when it becomes more difficult for the zoning officer to decided to allow it or not.

Mr. Gordon stated: I would agree. As far as I am concerned it does need to be looked at. If the use is different and has some different parking ordinances we should look at it.

Mr. Soloway stated: The amount of parkers will change. I think Mr. Gordon inadvertently didn't give the best the example. If you are going to change from a physic reader which probably doesn't generate that much traffic to a barber shop with multiples stands it is a little different then changing from an accountant's office to a lawyer's office. It seems to me in order for somebody to get the approval to make a decision on this when there is change of use you don't necessarily need a full site plan but you at least need information on how many employees, what the estimated traffic will be in terms of customers. That really is what the key is.

Mrs. Milliken stated: The problem is when he is purposing a different type of use that would generate more parking traffic.

Mr. Neiss stated: There is always going to be a change of use unless you go from one accounting office to another. Short of that circumstance which is probably rare is the business community, there is always going to be a change in use.

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Mr. Gordon stated: The zoning officer in their professional judgment should be able to make the determination without looking at this.

Mrs. LeFrois stated: It sounds like they have done this. The question come in if there is a change in a tenant that is going to require more parking spots than the existing tenant. The bigger picture needs to be looked at. If by changing the occupancy even by one unit increases the number of spots that are required that will then exceed the spots that are allocated by the total space then it effects the agreement.

Mr. Neiss stated: I understand that but maybe there is way to address that if for example the parking spaces that currently exist on the property were allocated to the current uses you would have a base line. You would know what the uses are and what the parking is and agreed to for that so that if there is a change if you change from a lawyer's office to an accountant's office and you put in a vacuuming cleaning sales office so the amount of parking you are going to need for that constrained tenancy space I don't think will ever rise to the level where it becomes a major problem for the parking in the back.

Mrs. Becker stated: It sounds like we already have a base line based on 2004 and all the variances that have come forward are based on what the base line was so if it is different now and we get a new base line but it is not going to change the fact that if there is change of use your parking is not going to change. You are always going to have x amount of spots. That is not going to change and I don't see how that will change to base line.

Mr. Gordon stated: If I can provide enough parking for the use and it is a permitted use do I need to come back? In terms of me coming up with enough parking, I may have to take a parking spot from a vacant unit, is that a problem?

Mrs. Millikin stated: Then you run into the variance issue with the parking so from the zoning officer's point of view that presents a problem.

Chairwoman McCabe stated: And I think that is something that has to be left up to the zoning officer. Kathy knows best when she looks at a request from you. She can determine if the use is the same and justifies a waiver or does she look at it and say this is double the usage and doubles the parking spots then it requires it to go before the board.

Mr. Neiss stated: The issue for me is what would determine if in your example there was an accountant's office and then the lawyer comes in and brings in four secretaries that would require a variance application before this board which would then necessarily imply a complete site plan with notice with all the bells and whistles of a regular appearance before the board for that circumstance predicated on the use if I understand correctly.

Mr. Soloway stated: I don't know if she is technically saying it would need a variance. I think it comes down to who makes the determination. You obviously have the situation

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that developed with the zoning officer who makes the initial determination and she has been satisfied that in terms of parking impact they are functionally equivalent she is signing off on it. But if not satisfied who gets to decide?

Mr. Neiss stated: I think if you were to add in this paragraph that when an application is made it will go to the zoning officer and he/she will make their initial determination if it complies with parking requirement.

Mr. Neiss stated: We can make it comply by saying okay we have 27 spaces if this use needs 6 spaces, I can give you 6 spaces. If I have full tenancy then it may or may not work. The issue is if there are two types of uses that require the same amount of parking that is still a change of use, however, what we have been able to do both Kathy and Debbie were able to do is say okay we have not changed the use it is an administrative use but it just seems that paragraph each time I come in with an application always seems to be a restriction and I just felt had I never asked for relief I wouldn't be in this situation.

Chairwoman McCabe stated: Let's get an opinion from the board.

Mr. Russo stated: I think it is restrictive. I think there should be some language that yields to the discretion of the zoning officer in his/her judgment there is uncertainty or there is a detrimental parking affect based on the change of use that it kicks to the planning board. It gives the zoning officer a little more lead way in discretion then what I think this currently does which when in doubt automatically kicks it's to the planning board. I think you are looking for a little more leniency and discretion on the part of the zoning officer. I don't have a problem with that because I think it is too restrictive the way it is. Parking will always be an issue at some degree at that location and I don't think the applicant should have to come back every time there is a little bit of uncertainty whether it is an administrative use, retail use. I would rather let the zoning officer make the determination and if he/she is uncertain then I the applicant will have to understand that he/she will have to go to the before the board.

Mrs. Becker stated: As a business owner I have been comfortable with Kathy or Debra to make the decision. I don't have any issue with that. To redo the entire base line I don't think is necessary to right now. I have no problem and I trust Kathy's judgment. I just said if it is major change of use than I trust her judgment to bring it forward to us.

Mrs. LeFrois stated: Let me ask this question, right now are the 28 spots identified and assigned to a particular unit or is it 28 spots that are assigned to the entire building?

Mr. Gordon stated: We have them assigned on each application.

Mrs. Millikin stated: From my memory when the original site plan came in 2004 when we had the whole layout each unit had parking spaces assigned to each unit.

Mrs. LeFrois stated: This is what I understand is being said. If the applicant says Unit 1 has six spots but they really only need four and if Unit 2 comes in and they only have two spots but they really need four they can take from the other. I have an issue with

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that because if the current tenant in Unit 1 has the six spots allocated to them there should be something in writing that says they can give up the extra spots. I am not sure where the responsibility lies in who assigns whose spots if in fact they are already assigned per unit. If the zoning officer is able to make an assessment and say to the tenant that there are four spots, the old tenant moved out, and the new tenant coming in only requires four spots then I am fine with the zoning officer making that decision because it is not affecting the existing agreement that is in place. Where I am not clear about is when there is arbitrarily reassigning a spots.

Chairwoman McCabe stated: I think the question is if a tenant has four spots and needs six spots are we going to leave it up to the zoning officer to make the determination whether or not it has to come before the board because it affects a variance situation or can the zoning officer evaluate the parking situation and make the decision on her own.

Mr. Russo stated: Couldn't the zoning officer say the new use requires six spots your previous tenant had four spots, Mr. Applicant, you need to find the two. It shouldn't be the zoning officer's job to find the two. It should be the applicant's job to tell her where they are taking the other two spots from. If the zoning officer can justify that to her/his satisfaction then it shouldn't have to come before the board.

Mr. LeFrois stated: I am in line with the rest of the folks trying to simplify this as much as possible. I am wondering if we could put together some technical guidance that the zoning officer could use that was pretty clear almost like what Mr. Russo suggested. Basically saying here is the condition today and if anything comes up that materially changes the number of spaces that need to be allocated to each unit that ends up requiring more than the 28 spots assigned then that is an easy decision for her to kick it up to the next level and say we need to have the whole board look at it to make the decision.

Mr. Neiss stated: I actually like that idea.

Mr. LeFrois stated: We can't think about every problem but we can make it pretty general and also clear that if a use comes into a unit that needs more than what was assigned to that unit then it automatically kicks it up to the board to make the decision. There might be some agreements that you may be able to shift from unit to unit as long as it doesn't change the overall need. I don't think there is a need for you to come in front of the board every time.

Mrs. Becker stated: The zoning alone will determine what businesses are allowed and not allowed.

Mr. LeFrois stated: I don't believe the paragraph intended to say what it did. I believe it was to read when new tenants come who require an application be made then it has to come to the board.

Mr. Soloway stated: The subtext to that is the applicant did come in before the board and said here is a list of uses. They are all approved uses in the zone. Where I would

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like the board as far as this application goes is to know what happened. What happened was that if one of those approved uses goes in I don't have to come back to board and the board said no we don't want to do that. Mr. Soloway continued I was provided with a copy of the minutes from that meeting and one board member if not the whole board was pretty adamant that they wanted to really keep their finger on the pulse here and we really need to know what is going on and Mr. Soloway said I think that may be a lot of the reason why the zoning officer is very hesitant on signing off on anything.

Mr. Caffrey stated: I agree with Mr. Russo. I would simplify the accountability where it needs to. Kathy is very capable of making the decision whether or not it needs to come to us.

Mr. LeFrois asked: Have the conditions outlined in the 2004 Resolution been done? Have you repaved the parking and restriped it?

Mr. Gordon stated: The parking lot has been repaved, restriped and it is actually going on the second restriping. There was a condition to install the bumpers. The bumpers were never installed because they are unworkable. If I put a bumper in front of your garage you couldn't pull your car into the garage and that is where one of the board members came up with this great idea of bumpers. When I went and looked at it it was right in front of the garage bays and it would not work so we did not do that.

Mr. Soloway stated: My suggestion would be that since the board has a general consensus on the details of what is going on here, and if you want to proceed in this direction, I think Mr. Gordon needs to make a formal application. I think for the applicant's protection he needs to make an application to amend the prior resolution. I would also suggest that as part of what you are proposing for the process that you be sure to include information that will need to be provided by the applicant each time the applicant goes to the zoning officer specifically details on the use, how many employees, what type to customer flow do you have, etc.? Mrs. Millikin also just pointed out to me that one of those resolutions has a condition that one of those units be used for a piano tuning business and piano tuning business only. You may want to try and amend that to tie into everything else. I do think you need to do this by amendment. I think it should be something formal to get the record straight.

Mr. Neiss stated: I agree with you Mr. Soloway. I think for this board or any board going forward to amend any prior resolutions of the board, it would require a formal notice and I think everyone is agreeable to that. As to providing guideline language, I will give that a try. But it sounds like to me that you understand the situation and I am very grateful and I thank you.

Mr. Gordon stated: One part for me will be to amend the prior resolution that requires me to have a piano tuner only in there.

Mr. Soloway stated: You might want to wait for the next tenant change to make that change.

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Mr. Neiss asked: That was going to be my next question. Would you require that this application amend the resolution to be in conjunction with a new tenant or would the board consider it just as an applicant to amend prior resolutions?

Chairwoman McCabe stated: You can do it anytime.

Mr. Gordon stated: So we are all in agreement that this is the way the application should go.

Mr. Gordon continued: I just want to make sure we are all on the same page. The last time we did this I walked away thinking I had a victory but in reality my hands were tied. That is what I am trying to alleviate here.

Mr. Neiss stated: We will present something to you that hopefully will be agreeable to you and in line with the thinking that you expressed here tonight.

Mrs. Becker stated: I think everyone is on the same page.

Chairwoman McCabe stated: I think so.

Chairwoman McCabe continued: Is there anything else we need to discuss? We are cancelling our August meeting. Our next meeting is September 22.

ADJOURNMENT

Mrs. LeFrois made a motion to adjourn the meeting. Mrs. Becker seconded the motion.

The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 8:20 pm. The next regular scheduled meeting will be held on September 22, 2010 at 7:00 pm in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary

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EXHIBITS

Exhibit A1- Photographs of the current property of Sakel-Grapsas Inc./Waldmere Hotel showing what is currently there dated May 19, 2010.

Exhibit A2- Historic pictures of Waldmere Hotel dated May 19, 2010.