

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

SEPTEMBER 2, 2020

The combined public/work session meeting of the Board of Adjustment held via Remote Zoom Conference beginning at 7:34 pm was called to order by Mr. Rabolli, with the reading of the opening statement followed by the flag salute and a reminder that Board of Adjustment meetings are being videotaped and broadcast live.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

PARTICIPANTS:

Mr. Calijone	Mr. Montroy
Mr. Cannava	Mr. Rabolli
Mr. Jackson	Mr. Straffin
Mr. Kearney	Mr. Whiteman

Mr. DeSilva recused himself from this meeting.

ATTORNEY:

Mr. Ben R. Cascio, Esq.

PROFESSIONALS:

Mr. Michael J. Kelly, PE, Boswell Engineering
Ms. Marcia Shiffman, Planner/Technical Advisor,
Maser Consulting

I. APPROVAL OF BILLS:

None to present.

II. APPROVAL OF MINUTES:

None to present.

III. MEMORIALIZING RESOLUTIONS:

None to present.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. No members of the Public participated.

V. PUBLIC HEARING:

**1. DOCKET #1472-19 – MAHWAH BUSINESS PARK
65 RAMAPO VALLEY ROAD, BLOCK 41, LOTS 1, 2, 9 & 10**

Application for a “D” Conditional Use Variance proposing a 400 parking space lot for the outdoor storage of vehicles associated with Ramsey Auto Group, carried from August 19, 2020. No further notice is required.

Mr. Andrew Kohut, Esq., of Wells, Jaworski & Liebman, LLP, 12 Route 17 North, Paramus, NJ representing the Applicant, addressed the Board’s questions from the August 19th meeting regarding approvals from the DEP and other Governmental entities, as well as drainage and stabilization information submitted by himself and Mr. Ward, the Applicants Engineer. Mr. Kohut listed the Reports and Permits that were previously provided to the Board to be marked as **Exhibit A3**.

It was noted that contact was made with Fire Prevention Code Official, Mr. Michael Roe by the Applicant, Mr. Berdugo of Mahwah Business Park, regarding the cars being parked near the electrical lines easement. Mr. Kohut stated that Mr. Roe has no issues with the layout. There was a miscommunication regarding the easement. The parking plan displaying that the parking is outside the easement was provided to Mr. Roe. Cars will be stored 62 feet from the electrical line easement. Per Mr. Roe, approval from Orange & Rockland is required. The Applicant will work with Mr. Roe and obtain a report confirming the update. Messrs. Whiteman and Kearney commented that they had visited the site and agree that the parking area is well outside the easement area.

Mr. Kohut stated that he and the Applicant agreed to work with Mr. Kelly and Ms. Lawlor making sure the landscaping is up to par as well as the guardrail issue and the ground cover on the slope.

Mr. Rabolli requested that the photos taken by himself and Mr. Whiteman be displayed on the screen and be marked into evidence as:

- Exhibit B1** - Trees and electrical wires and electrical tower
- Exhibit B2** - Additional wires, residence in background
- Exhibit B3** - Electrical tower and additional dwellings

- Exhibit B4** - The field
- Exhibit B5** - Abandoned car

Mr. Whiteman stated that if approved, the Resolution should state that any abandoned vehicles be removed prior to Permitting.

Mr. Kearney commented that the fence was pushed over, not bored into the ground and his concern of anything not embedded in the field. It will be problematic in the way it is proposed. Mr. Whiteman added that plastic Jersey barriers were previously mentioned – concrete is preferred. Mr. Ward stated that Bin Blocks will be placed around the perimeter to support the fence.

Mr. Kohut called the Planner; **Ms. Kathryn Gregory, Gregory Associates, 96 Linwood Plaza #350, Fort Lee, NJ**, representing the Applicant, provided her credentials and was sworn in by Mr. Rabolli as an expert in the area of Planning.

There were no questions from the neighbor, Ms. Magner, regarding Ms. Gregory's qualifications.

Questioned by Mr. Kohut, Ms. Gregory stated that she had reviewed the plans and found them to be for a principal permitted usage, and has also reviewed Mahwah's Zoning Ordinance and Master Plan documentation as they relate to this Application. The usages, including off street parking, were listed for the Board's edification. The Use Variance requested is for outdoor storage of new cars. Outdoor storage is a conditionally permitted use. One condition is that it shall not abut a residential development. A buffer requirement also needs to be met. The Applicant is requesting a Conditional Use Variance which is less burdensome.

The positive criteria is presumptively met in this case:

- Clean outdoor storage
 - o Outdoor parking
 - o Nothing being manufactured
 - o No debris

The negative criteria is being addressed:

- Bordering within the residential zone
 - o The Applicant is complying with buffer requirements of 100'; providing fencing and significant landscaping.
 - o No detrimental effect on the surrounding properties.

The abandoned cars will be removed.

The Application proposed is for creating a parking lot which is a permitted accessory use. The difference being cars stored and parked overnight on a capped landfill.

Variances and Waivers are required. The variances needed are technical in nature. The front yard and rear yard setbacks for existing buildings on the site need site plan approval. The two additional waivers requested are for the total number of required parking spaces and for the parking stall size.

Per Ms. Gregory, regarding the negative criteria – there is no substantial detriment to the public good.

Regarding positive criteria:

- a. Provides light, air and open space
- b. Promotes the following Master Plan goals:
 - #7 To encourage and provide buffer zones
 - #9 To encourage new development and redevelopment to enhance the aesthetic appearance
 - #10 To preserve and enhance the Township's commercial areas
 - #16 Future Development - to minimize damage to life and property from flooding, to preserve the quality of surface waters

Both positive and negative criteria are met for the issuance of Conditional Use Variances and Waivers requested.

Ms. Gregory compared permitted uses to the proposed use, and commented that certain industrial uses have noise and/or odors; which is not the case here. A 50' – 100' buffer and landscaping will lessen the view of the cars from the residential neighborhood. This is a much more benign use than manufacturing or outdoor storage of materials.

A discussion took place regarding the proposal being a permitted use on a capped, potentially toxic dump. Mr. Jackson questioned the testimony that this is a benign use as opposed to other possible uses. Mr. Kelly stated that from a Zoning standpoint, for the testimony provided, it would be permitted. From a situational standpoint, where you have the parking of vehicles on top of a landfill, an amendment to the Landfill Closure Documents for the site was submitted to the NJDEP Division of Solid Waste. Should this be approved, a letter from the DEP stating that the use of putting a parking lot on top of a landfill is required, approving the amendment to the Closure Documents.

Mr. Kohut commented that the property was zoned a certain way whether awareness of the cap existed or not. The Applicant should not be prohibited due to the cap underneath the property. The Town saw fit to zone it to allow certain uses. The proposal does not negatively impact the surrounding residential area as much as other permitted uses might.

Mr. Jake Berdugo, 16 Squadrin Boulevard, New City, NY 10956 was sworn in by Mr. Rabolli and commented that from an ownership perspective, when purchasing property like this with a capped landfill, he would approach his engineers to determine if the proposal was possible, worth spending the money to remediate and build on the property. Technically a manufacturing facility could be built there if determined to be a valuable investment.

Mr. Montroy stated that the Town was aware of the landfill and the problems associated with it when they zoned the property. They knew what the contaminants were and were concerned as to how it would be encapsulated. The landfill is at an angle, stair-stepped to keep any affluent from going into the streams. Most of West Mahwah has contaminants from the brake shoes, going back to the 1890's. The landfill was built that way to try to contain the contaminants. It contained asbestos, lead, brake shoes, contaminants from the brake shoes that were spread out through dust.

Ms. Gregory testified that the NJDEP looks at revitalizing contaminated sites that have existing infrastructure, which is one of the goals of the State Plan. She gave her experience with contaminated sites in other Towns where tennis courts and soccer fields were constructed; which are different from a parking lot.

Mr. Montroy added that from a Construction point of view, it is his opinion that it is easier to put a building on the site rather than a parking lot, as the foundation and the slab for the building would help contain the dust that would be problematic to the neighbors.

Mr. Kearney commented that part of the concern at the last meeting was the impact of a parking lot on a capped landfill, but if it has been capped and sealed appropriately, the probability and potential of it breaking open is minimal. Mr. Kearney asked for Ms. Gregory's opinion of the impact based on her experience; what is the potential of generally damaging the site – putting a parking lot on a capped site? Tennis courts and soccer fields are not the same kind of loading as a parking lot. Mr. Kohut commented that that would be a better question for Mr. Ward, the Engineer.

Mr. Cannava commented that he had read through the DEP documentation provided by Mr. Kohut and researched to try to find precedent for potential contaminations under a capped landfill and was unable to find anything. It is important for the Board to hear about the potential dangers because of the water shed being so close and the residential district bordering the landfill. Ms. Gregory stated that she is not aware of any parking lots on a cap. Mr. Whiteman referenced an annual filing by an LRSP (Licensed Site Remediation Professional) to the NJDEP, who will inspect the site and determine whether the cap is functioning as intended. A Bond would be posted.

Mr. Cannava's question above was deferred to Mr. Ward. Mr. Ward stated that they are providing an additional cap on top of the original cap to protect the cap that is there. Mr. Kohut stated that the private LSRP is legally responsible for the maintenance of the cap, not just the NJDEP. This Applicant is doing everything they are supposed to do as far as the development of this cap.

Discussion took place regarding the amendment to the Closure Plan submission to the DEP and the DEP approval that is required. Mr. Kelly stated that, if approved by the Board, the approval of the DEP could be a condition of approval before they go forward. They have submitted different Government approvals such as Bergen County Soil Approval and Permit Approvals for Wetlands and Hazard areas, which are good and all part of the process, but are not the most important one that has to be provided from the DEP Division of Solid Waste. It has not been provided to date and is required before they do anything. Mr. Kelly added that with respect to landfills or caps being utilized as parking lots; that is common place in New Jersey. Asphalt is considered an acceptable cap for paving. That is not what is being proposed here; they are proposing some sort of soil reinforcement to park cars on the site. This site is already considered capped. What the Division of Solid Waste is going to look at is, is what is being proposed going to disturb the cap? That document that says the amendment to the Closure Documents is acceptable, is needed.

Mr. Rabolli, referring to Mr. Cannava's question, inquired as to when a last inspection of the cap by an LSRP took place, and was a sample taken? Mr. Ward stated it was monitored for 30 years (1984 – 2014) and probably has not had an independent evaluation for the last 5-7 years. A report should exist somewhere. Mr. Gee, LSRP from Westin Solutions, is the LSRP on the project. The Closure Amendment was signed by Mr. Gee. Mr. Kohut added that whatever the DEP requires for the Permit, will be done, making sure it does not impact the Township or the neighbors.

Mr. Rabolli addressed Ms. Gregory, the Planner, and commented; setting aside the Environmental issue, how do we respond to the question of the 60-70 feet in the air hill spanning the length of two football fields, seen from miles away with cars parked on it and sun glare coming from them; what did the Zoning Board do by approving this? Ms. Gregory responded that parking lots are an accessory use, if the DEP approves it, it is part of the land so a land owner should be able to build something on his property.

Further discussion took place regarding the proposed use vs. a parking lot being constructed not on a landfill. Mr. Kelly commented that this is not parking for a building with employees. This is for outdoor storage. The buffer of trees would be the same.

There were no further questions from Members of the Board for Ms. Gregory.

Ms. Merideth Magner, neighboring the site at 62 North Railroad Avenue,
posed her comments and questions to Ms. Gregory:

- 1) When parking cars with a 50' above grade at the bottom, putting a 6' buffer does not buffer the site; the bottom of the mound is lower than the surrounding area; the top of it, the way proposed, is not going to hide the cars.

Ms. Gregory responded that the buffer will be 100' high and the houses will be lower. Mr. Whiteman commented that the trees will be at the top of the hill, not the bottom and stated that he, being 6' tall, stood at the top of the hill attempting to block the view. Mr. Ward stated that the plantings will be a continuous screen around the boarder right at the edge of the slope, 6' higher than the grade; the houses are below, looking up you would see the top of the trees.

- 2) How do the current requirements to cap a landfill differ from the requirements 30 years ago?

Mr. Ward responded that the landfill was closed in accordance with the regulations and procedures at the time; that is how the portion of the property has remained. Now that it is being reused, the requirements of today will be adhered to by going through the process.

- 3) In reading the Zoning requirements for a parking garage, it states that it should be ground level. Since this ground level is 50' higher, would that affect the allowability of this since it does not meet all the requirements and requires a variance?

Ms. Gregory responded that the structure starts at the top of the cap, not ground level, as would be the case for any structure.

There were no further questions for Ms. Gregory.

Discussion took place regarding amendments to the original proposal. Mr. Ward shared the Draft Revised Site Plans entitled Mahwah Business Park dated August 31, 2020 that has not been submitted to the Board for review as of yet. The Plans were marked into evidence as **Exhibit A4**. Mr. Ward informed the Board of the amendments; a striped parking area with 366 spaces for fire access and emergency vehicles, fencing protection – approximately 120 Bin Blocks weighing 2,000 pounds, rectangular shaped concrete at the perimeter of the parking field, spaced to anchor the fence at grade. Enhanced the buffers with 3 species of trees and ground cover. Slope protection, from 2-8 different plants. Grass Protecta, BOD PAVE 25 for the center fire lane; similar to Grass Protecta – more of a cellular structure, interlocking, almost like a paved road.

There were no further questions for Mr. Ward regarding the Plan.

Mr. Kelly requested that as Conditions of Approval, the Applicant provide after the fact:

- 1) A Geo-Technical Analysis of demonstrated stability, including a slope analysis
- 2) Ridding of vehicles – the digging of the material

The Board Planner, **Ms. Marcia Shiffman, Planner/Technical Advisor, Maser Consulting** gave her credentials, was sworn in and recognized as an expert Planner by Mr. Rabolli. Ms. Shiffman stated that she had reviewed the Application and the reports and has the following comments and questions:

- 1) Landscaping would be reviewed by Planning and Engineering.
- 2) Future growth of plants, roots being close to landfill and the cap.
- 3) Visual aspect of the 366 cars located on top of hill; Buffer on the residential side.
What about the other sides, the visual aspect of the hill with car storage from the neighborhood?

Mr. Rabolli informed Ms. Shiffman that there are train tracks on the East side with businesses behind the tracks, which are not an issue.

Mr. Rabolli and Ms. Shiffman discussed her opinion on the 50' – 75' high, 300' long unique mound. Ms. Shiffman commented that the existing conditions of any site have to be addressed. She stated that she was pleased that Mr. Kelly had mentioned a Geo-Tech analysis to ensure stability. The site is unique, but development ability met the positive and negative criteria. Ms. Shiffman stated that she feels that approval could be granted without detriment to the public good from what she heard at this meeting.

Ms. Magner had no questions for Ms. Shiffman, but in addressing Mr. Kelly, inquired about the original cap intent of requirements and would it be different now for a parking lot when the intent was for it not to be disturbed. Mr. Kelly commented that the requirement is still the same – that it be encapsulated.

Further discussion took place regarding what is in the landfill, the materials to be used to protect it from the weight of the vehicles and concern for penetration to the water system.

The purpose of the July 22, 2019 Amendment Documents provided to the DEP Division of Solid Waste to amend previous Closure Documents to include the Applicant's proposal were discussed.

There were no additional questions and no further witnesses.

Mr. Kearney commented that the testimony given overcomes negative and gives positive criteria. The issues raised have been addressed. Approval is contingent on the Engineer and Planner. The DEP will handle the rest.

Ms. Magner, 62 North Railroad Avenue, was sworn in to give her closing argument. Ms. Magner read her objections and concerns and stated that if approved, she is in fear for her family's health.

There were no questions from Mr. Kohut for Ms. Magner.

Parking under the high tension wires was discussed by Messrs. Kearney, Whiteman and Ward.

Mr. Kohut summarized and stated that he totally understands the Board's questions and concerns. The Applicant will follow all the requirements and obtain DEP approval. The cap is undisturbed. The standard for the variance is a permitted use; on a Conditional Use Variance you have to look at the negative criteria. The IP120 Zone is zoned for Industrial Use. This is a less intensive use. The Code requires a minimum of 50', maximum 100' buffer; this requirement is being met. The Applicant is meeting the intent of the Code for buffering in a residential neighborhood. Outdoor storage abutting residential neighborhood – this is clean storage. On the subject of detriment to the public good – requirements are being met. The cars will be raised above the housing; fencing and trees will be installed.

Mr. Kohut also commented that he understands Ms. Magner's concerns and stated that his client also has the right to develop the property and they are taking the residential neighbor's concerns into consideration.

Mr. Rabolli addressed the Members of the Board regarding deliberating on this case. Comments by the Members of the Board included preferring to see a finished Plan and concern with parking under the tension lines, concern with disturbing encapsulation and contaminating West Mahwah, hearing more from the DEP regarding monitoring, hearing from the LSRP, contents of the landfill, weight being added, methane gasses, odors, dangerous toxins, erosion and maintenance.

Per Mr. Rabolli, the Application was carried to September 16, 2020, with no further notice required.

A motion to adjourn was made by Mr. Kearney, seconded by Mr. Whiteman. All voted in favor. The meeting adjourned at 10:08 p.m.

Township of Mahwah
Board of Adjustment Meeting Minutes
September 2, 2020

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on November 2, 2020 for approval at the Regular Meeting to be held on November 4, 2020.