

II. APPROVAL OF MINUTES:

1. MINUTES OF APRIL 21, 2021

A motion to approve was made by Mr. Kearney, seconded by Mr. Cannava. All eligible Members voted in favor.

III. MEMORIALIZING RESOLUTIONS:

**1. DOCKET #1489-21 – NICOLE REUTER
102 SOUTH MAHWAH ROAD, BLOCK 93, LOT 1.02**

Resolution of Approval of a “C” Variance for exceeding maximum lot coverage to install an in-ground pool.

A motion to approve was made by Mr. Kearney, seconded by Calijone. A roll call vote revealed 7 aye votes by Mr. Calijone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Rabolli and Mr. Whiteman.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. No members of the Public participated on the Zoom call or wrote in comments.

V. PUBLIC HEARING(S):

**1. DOCKET #1492-21 – RYAN FREITAG
9 ARMOUR ROAD, BLOCK 87, LOT 33**

Application for “C” Variance for a side-yard setback of 5.1 feet where a minimum of 10 feet is required to construct an addition to the existing home.

Mr. Cascio stated that the Notice was in order.

Mr. Rabolli explained the Public Hearing process to Mr. Freitag.

Being sworn in by Mr. Rabolli, Mr. Freitag stated that the Variance request is for an addition to extend the existing kitchen. The back yard is the main recreation area and will remain to maximize the flat outdoor space. The front is not suitable for the addition. The extension would be out to the side. The line of site will not be affected. There are existing shrubs and trees; also adding landscaping for privacy. No fence is proposed.

Mr. Rabolli opened questioning to Members of the Board for Mr. Freitag.

In discussion with Mr. Kearney, Mr. Freitag confirmed that the property is uniquely shaped and is on a high hill, offset from the neighbors by 100 feet and should not encroach the neighbor's property. A hardship is caused by the slope. The 1904 home, referred to as a Craftsman Bungalow, is set back from Armour, sharing a driveway from Alcott.

A discussion took place with Mr. DeSilva regarding the back yard space and the garage on the property.

There were no further questions from Members of the Board for Mr. Freitag.

Mr. Rabolli opened the questioning to members of the Public.

Ms. Martha Steinbach, 8 Wanamaker Avenue questioned if the 1904 home, being one of the original homes in Mahwah, would maintain its original character with the proposed addition. Mr. Freitag commented that the main reason he purchased the home was for its character. It is not officially an Historic House. The character will remain the same, just larger.

Mr. Girish Walke, neighbor at 5 Armour Road commented that he has no objection to the plan as long as it does not cause runoff.

Mr. Kelly confirmed that plans have to have zero runoff. Mr. Freitag will need a Soil Movement Permit Application. One of the requirements is not to direct additional runoff to your neighbor. The proposed additional is 197 square feet. A 28 square foot portico is being removed. Mr. Kelly stated that with under 200 square feet of additional impervious coverage, the property should be bermed up to direct any runoff away from the neighbor.

A motion to move into Work Session was made by acclamation. All present Members voted in favor.

Note: Work Session immediately followed the Public Hearing for this Docket.

**2. DOCKET #1484-20 – PIKE ENTERPRISES, LLC
149 FRANKLIN TURNPIKE, BLOCK 70.02, LOT 121**

Preliminary and Final Site Plan Application for Conditional Use and "C" Variances to demolish the existing service station and construct a new service station with a canopy, a Dunkin Donuts with drive through, signage, parking lot, drainage, lighting, landscaping improvements and Soil Movement Permit Application, carried from May 5, 2021.

Mr. DeSilva recused himself from the hearing of this Application.

Mr. Andrew Kohut Esq., Wells, Jaworski & Liebman, 12 Route 17 North, Paramus, NJ, representing the Applicant, summarized the Application, commented that the previous hearing of May 5, 2021 left off with testimony from **Civil Engineer, Mr. Joseph Vince, Schwanewede/Hals Engineering, 9 Post Road Oakland, NJ**. Mr. Vince, remaining under Oath, is present at this hearing for questioning.

Mr. Rabolli opened the questioning to the Board Professionals for Mr. Vince.

Mr. Kelly's questions/comments for Mr. Vince pertained to the volume of fuel to be delivered with the 2-3 deliveries per week, the size of the underground tanks (proposed and existing), the setback from the right-of-way easement, the Variance condition, the hardship, the number of fuel positions, location of the dumpster, site distances, ADA parking, ground water, lighting, curb radius, turn radius for Franklin Turnpike and Stephen's Lane per Ordinance, setbacks, parking, all bulk requirements and the installation of a flag pole.

Regarding the volume of fuel and the size of the existing tanks, Mr. Vince stated that the Operator would testify. The site is not deep enough to meet the required 30 foot setback and the County wanted a road widening easement. The Dunkin Donuts building has to meet certain standards. Only one pump does not adhere. There are currently four fuel positions; the proposal is for eight. The dumpster will be in the optimum location, and will serve the need and be maintained. Adequate site distances will be exhibited. Mr. Vince was not aware if a Phase I Environmental Study was done and was not able to comment on ground water. A written report was done on lighting; standards are met. An Apron Style is being used for curbing the driveway. A flag pole will be installed.

Mr. Kohut commented that Franklin Turnpike is a County Road – jurisdiction is of the County.

A discussion took place regarding an exhibit to demonstrate the two conforming lots. Per Mr. Vince, the "Use", the actual activity of pumping gas is not next to residents. Mr. Kohut commented that it was anecdotally – they are not proposing to create two lots. Mr. Kelly stated that the Code clearly states the use of the property – not from the pumps, and requested it be put on the record that he does not agree with the Applicant's interpretation of the Code.

Ms. Lawlor's questions/comments pertained to access to the dumpster area through the queue lane - what is the timing for pickup; having five spaces, will the morning rush hour interfere with the gas pumps; and time of fueling.

Mr. Vince stated that the dumpster pickup would be during hours when Dunkin Donuts is closed, the morning rush hour should not interfere with the gas pumps. Mr. Kohut added that fueling would be done during off peak hours.

There were no further questions from the Board Professionals for Mr. Vince.

Several discussions took place with Members of the Board regarding managing traffic flow with the doubling of the intensity of use; internal circulation; access and egress; exiting onto Stephens Lane; one Application requiring a Conditional Use Variance; and betterment or detriment to the Public.

Mr. Kohut commented that he understood the concern of traffic backing up, however Dunkin Donuts is a permitted use in the Zone and the gas station is a conditionally permitted use; off-site traffic is Case Law, not something to go before the Board of Adjustment – this is a Zoning issue, not a Site Plan issue.

There were no questions from members of the Public for Mr. Vince.

Mr. Kohut called his next witness; **Mr. Joseph Staigar, 245 Main Street, Chester, NJ** was sworn in by Mr. Rabolli and recognized as a Traffic Expert.

In response to Mr. Kelly's Boswell Report dated March 31, 2021, Mr. Staigar referenced the Traffic Impact Study dated March 25, 2021 (Exhibit A-7) and his April 20, 2021 response to Mr. Kelly's report, stating that the updated traffic counts of March 20, 2021 indicated that traffic was the same in the morning, but increased in the evening. The study was explained in detail along with the proposed improvements to the site.

Further discussion took place regarding traffic congestion, length of time for ordering, stacking of cars and striping.

A color rendering of the Site Plan (**Exhibit A-10** dated June 1, 2021) and Mr. Staigar's Diagram (**Exhibit A-11** dated June 1, 2021) were displayed on the screen by Mr. Staigar.

The question was posed by Mr. Kearney that if the traffic becomes a problem, could the owner approach the County to change the timing of the light for more green time to Stephen's Lane. The Applicant has no issue with approaching the County. Mr. Kelly commented that his main concern is with onsite circulation.

There were no further questions from Members of the Board for Mr. Staigar.

Questions from Board Professionals and members of the Public will be heard at the next hearing for this Application.

Mr. Rabolli announced that continuation of the hearing for Pike Enterprises is carried to July 7, 2021. No further Notice is required. An extension of time to July 7, 2021 was granted by Mr. Kohut.

VI. WORK SESSION

1. DOCKET #1492-21 – RYAN FREITAG 9 ARMOUR ROAD, BLOCK 87, LOT 33

Application for “C” Variance for a side-yard setback of 5.1 feet where a minimum of 10

Mr. Rabolli summarized the Application. The size is less than 200 square feet – runoff was addressed by Mr. Kelly. The location is appropriate.

A motion to approve was made by Mr. Calijone, seconded by Mr. Kearney. A roll call vote revealed 7 aye votes by Mr. Calijone, Mr. Cannava, Mr. DeSilva, Mr. Jackson, Mr. Kearney, Mr. Rabolli and Mr. Whiteman.

Mr. Rabolli explained the Resolution and the appeal process timeframe of 45 days. And informed Mr. Freitag that his Application is approved but he would be proceeding at his own peril prior to the 45 days.

Mr. Kearney suggested that Mr. Freitag reach out to the Historic Society.

A motion to move out of Work Session and back into the Public Hearing Portion of the Hearing was made by Mr. Kearney. All voted in favor.

A motion to adjourn was made by Mr. Kearney, seconded by Mr. Jackson. All voted in favor. The meeting adjourned at 10:38 p.m.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on July 16, 2021 for approval at the Regular Meeting to be held on July 21, 2021.

Township of Mahwah
Board of Adjustment Meeting Minutes
June 2, 2021