



ANDOVER TOWNSHIP

SUSSEX COUNTY • NEW JERSEY

Land Use Board
Andover Township Municipal Building
134 Newton Sparta Road
Andover, NJ 07860
MINUTES
October 5, 2021
7:30 p.m.

CALL TO ORDER:

Mr. Messerschmidt called the meeting to order at 7:30pm.

PLEDGE OF ALLEGIANCE:

Mr. Messerschmidt led the Board in a flag salute.

OPEN PUBLIC MEETINGS ACT NOTICE:

Mr. Messerschmidt read the following into the record.

This is an open public meeting of the Andover Township Land Use Board to be conducted in-person only at the Municipal Building, 134 Newton Sparta Road, Andover, NJ 07860. Notice of this meeting was given in accordance with the Open Public Meetings Act, Chapter 231, Public Law 85. The rules are generally as stated on the agenda. No new testimony will be taken after 10:30pm. Adequate notice of this meeting has been provided, with an electronic copy posted on the Andover Township website at www.andovertwp.org.

ROLL CALL:

Janis McGovern – Present
Eric Olsen – Present
John Carafello – Present
Suzanne Howell – Present
John O’Connell – Excused
CeCe Pattison – Present
Richard Skewes – Present
Steven Kepreos – Absent
Joseph Ordile – Present
Joseph Tolerico – Present
Eric Karr – Present
Paul Messerschmidt – Present

Also Present:

Richard Briigliodoro, Esq.
Cory Stoner, PE
Stephanie Pizzulo, Secretary

ADMINISTRATIVE ITEMS:

Approval of Minutes: September 21, 2021

A motion to approve the minutes of the September 21, 2021 meeting was made by Mr. Skewes and seconded by Ms. Howell. Roll Call: Janis McGovern – yes, Eric Olsen – yes, John Carafello – yes, Suzanne Howell – yes, CeCe Pattison – yes, Richard Skewes – yes, Joseph Ordile – yes, Joseph Tolerico – yes, Paul Messerschmidt – yes. Motion passed.

RESOLUTIONS: None.

COMPLETENESS REVIEWS: None.

HEARINGS:

2.) Jump, Richard B:151 L: 19 A20-5

An appeal of Notice of Alleged Violation dated June 1, 2020.

Mr. Messerschmidt recused himself from this hearing and stepped down from the dais. Ms. Howell chaired the meeting from this point on.

Mr. Gary Kraemer, Esq. said he was representing Mr. Jump.

Mr. Briigliodoro gave a brief overview of the nature of the application. He said the application is for an appeal of the Zoning Officer’s determination and is being prosecuted under the Municipal Land Use Law. He read sections of the Municipal Land Use Law to the Board.

Mr. Briigliodoro swore in Mr. Richard Jump of 197 South London Station Road, Tucson, AZ.

Mr. Kraemer presented a survey of the property located at 310 Stickles Pond Road, Andover, Block 151, Lot 19 with a date of 4/26/2018 which was marked and entered as exhibit A-1.

Mr. Jump said he acquired the property in 1999 and it is the site of the former farmer’s market. He said the property is a flat wooded lot with a parking lot and a building that was partially taken down. He said the parking area is not paved; it is gravel. He indicated on the map the location of the parking area.

Mr. Jump said the property consisted of a parking area and building when he purchased it 1999 and has not substantially changed since then. He said there is fill on the property, which was part of a Land Use application from 2002. He said there is no striping in the parking area because it is all gravel.

Mr. Jump said there were customers who used the property for parking when he purchased it in 1999. He said they parked there for a fee. He indicated where the trucks parked on the property. Mr. Jump said there were six or seven trailers and five or six tractors parked on the property. He said Fast Express, Jadach, MXI Express and Waterman were parking on the property when he purchased the property in 1999. He said they paid a month stipend to park on the property. He said that arrangement has continued up to the present. Mr. Jump said the same operators are still parking on the property. Mr. Jump said in June of 2020 there were two tractors, four trailers, two trucks, two tankers and a flatbed truck parked on the property. All vehicles were licensed and registered. He said the vehicles were regularly used on the road and came to and from the property on a regular basis. Mr. Jump testified that none of the vehicles were abandoned on the property.

Mr. Kraemer presented a copy of the Notice of Violation dated June 1, 2020, which was marked and entered as exhibit A-2. Mr. Jump read the first violation to the Board. Mr. Kraemer asked Mr. Jump if there was anything in the entire document that describes what the alleged present use is that he is being accused of as constituting a violation. Mr. Jump said there was nothing in the Notice of Violation that told him what the violation was. He said there was nothing in there that mentioned parking of vehicles.

Mr. Kraemer presented a two-page document consisting of a copy of the current Andover Township ordinance 190-21, Outdoor Storage and Ordinance 2017-08 showing when the amendment was adopted which was marked and entered as exhibit A-3. Mr. Jump read the last sentence from ordinance 2017-08. He noted the amendment was adopted about 18 years after he purchased the property and had a parking use on the property. He said the parking use on the property was established and ongoing before he purchased the property.

Mr. Carafello asked Mr. Briigliodoro if the use is "grandfathered". He said he did remember the farmer's market on the property and assumed if there were a farmer's market, there would be trucks parked on the property. Mr. Briigliodoro said the term "grandfather" is a nonprofessionals' term. He said what is being alluded to is, if there was a pre-existing, non-conforming use. He said the pre-existing, non-conforming use has a specific definition under the Municipal Land Use law. He explained the use had to be a permitted use and then an ordinance is enacted which makes that use no longer permitted. The law says you have vested rights in that use because that use pre-existed before the zoning changed. He said one of the key things the applicant has to demonstrate is at the time the use was introduced, under the Andover Township zoning code, was that use lawful.

Mr. Olsen asked for clarification on the number of trucking companies that are still leasing since 1999 and how many are new. Mr. Jump said there are five companies currently leasing space, which are fast Express, Jadach, Allied Van Lines, MXI Express and Waterman. Mr. Jump said there was one company with a flatbed trailer that no longer leases space. Mr. Olsen asked about the remaining violations listed on the Notice of Violation to which Mr. Kraemer said they

are only appealing the first violation listed and they do not know what they were being charged with.

Mr. Ordile asked Mr. Jump if he had contacted anyone for clarification on the violation. Mr. Jump said he called Mr. Bollmann and they talked but he was not sure what they discussed. He said he knew it was a pre-existing, non-conforming use and when he purchased the property, the trucks had been there for 10 or 15 years prior. Mr. Jump asked how he was to know it was no longer an allowed use. He said truck parking is prevalent in Andover Township. He said he bought the property as is and the Zoning Officer at the time made no objection to it.

Mr. Ordile asked Mr. Jump what his intended use of the property was when he purchased it. Mr. Jump said he intended to continue the use of the auction market however; it was not cost effective to keep the building open. Mr. Ordile asked about the type of agreements Mr. Jump has with his customers. Mr. Jump said they are verbal, month-to-month agreements. Mr. Ordile asked how Mr. Jump monitors the property since he lives in Arizona. Mr. Jump said it is handled on an honor system. He said if someone parks there on a regular basis, he will receive a phone call from someone and then he will contact the truck owner to advise of the monthly fee. Mr. Ordile asked if he has a responsibility to maintain the property for the tenants to which Mr. Jump said no. Mr. Ordile asked if each renter is assigned a spot to which Mr. Jump said no. Mr. Jump said they park wherever. Mr. Ordile asked if any of the truckers or owners are living on the property to which Mr. Jump said no. Mr. Ordile asked who is living in the camper on the property. Mr. Jump said it is empty and it belongs to the owner of the Waterman trucks. He said it is new to the site and had just noticed it this past Sunday.

Mr. Ordile asked which customer has the most trucks parked on the property. Mr. Jump said it is MXI with five trailers and two heavy-duty pickup trucks. Mr. Ordile asked if anyone is doing maintenance on the trucks on the property. Mr. Jump said no; except for changing a lightbulb or adding a quart of oil. He said they are not doing major repairs on the trucks.

Mr. Ordile asked if all of the trucks and trailers were licensed and insured to which Mr. Jump said yes. Mr. Ordile asked how Mr. Jump knows this. Mr. Jump said he takes the word of the truck owner but he does not know if they are licensed or insured. Mr. Jump said it is the honor system. Mr. Ordile asked if only trucks and trailers are to be stored on the property to which Mr. Jump said yes. Mr. Jump said he was on the site on Sunday and was not aware of anything stored on the property other than trucks and trailers.

Mr. Ordile asked for clarification on which violations were being appealed. Mr. Kraemer explained what they were appealing.

Mr. Ordile said he saw a "For Sale" sign on the property and asked if Mr. Jump was trying to sell the property. Mr. Jump said it had been for sale for about 5 or 6 years. Mr. Jump said he has a contract on the property and the prospective buyer has been in contact with the Zoning Officer. Mr. Jump said it was his understanding the use will be similar to what is currently there. Mr.

Kraemer said there is a contract on the property and the perspective buyer will be submitting an application to the Land Use Board in the near future.

Mr. Olsen asked Mr. Jump what he felt the current, existing use is on the property. Mr. Jump said it is the parking of trucks and trailers. Mr. Olsen said it is not a permitted use per the ordinance.

Ms. McGovern asked about the other violations. Mr. Jump said the property has been cleaned up and he did not understand the rodent infestation charge. He felt it was just included because of the application before the Board on the adjoining property. Ms. McGovern felt the property did not look good. Mr. Jump said he is selling it and felt the new buyer would clean up the property.

Mr. Jump said the trucking companies leasing space from him had no connection to the farmer's market use on the property. He said when the farmer's market closed down, the truck parking continued.

The Board took a 10-minute break.

Mr. Briigliodoro swore in Mr. Craig Bollmann, Andover Township's Zoning Officer. Mr. Bollmann said he toured the Township with the former Zoning Officer who indicated properties with known or possible violations and one of those properties was Mr. Jump's property. He said he had seen previous notices of violations and summons and he started to pursue the issue.

Mr. Bollmann said the ordinance only allows for parking as an accessory use to a permitted principal use. He said he had never witnessed any use on the property other than the parking. He said the building is dilapidated and the principal use was abandoned at some point. Mr. Bollmann said he found a zoning permit from 2017 that allowed Mr. Jump to partially destroy the building on the property. The principal use on the property was destroyed. He investigated the property on May 18, 2019 and saw there were vehicles being park, equipment being stored and materials being stored on the property. He said he took photos of the vehicles on the property.

Mr. Bollmann felt the outdoor storage was part of the non-permitted use.

The Board took a short recess.

Mr. Bollmann said on May 18 2020 he took photos of vehicles and equipment being stored on the property.

Mr. Bollmann presented a photo he took of a MXI trailer and the NJ pool water tanker vehicles parked on the property with a date of 5/18/2020, which was marked and entered as exhibit ZO-1.

Mr. Bollmann presented a photo he took of a Flatbed and MXI trailer parked on the property with a date of 5/18/2020, which was marked and entered as exhibit ZO-2.

Mr. Bollmann presented a photo he took of a side view of large unmarked trailer and debris on the property with a date of 5/18/2020, which was marked and entered as exhibit ZO-3.

Mr. Bollmann presented a photo he took of a tractor and forklift on the property with a date of 5/18/2020, which was marked and entered as exhibit ZO-4.

Mr. Kraemer had no objection to the photos being presented.

Mr. Bollmann explained the photos to the Board. He felt the photos fairly and accurately depict the site. He said there was parking on the site. He said the present use of the site is outdoor storage since there is no principal use.

Mr. Bollmann said he did not know if there was ever a Township ordinance that allowed parking as a principal use. He felt he would need to do more research. He requested additional time to research the ordinances.

Mr. Stoner asked what happens with all of the violations that are not being challenged by Mr. Jump. Mr. Briigliodoro said that is a matter for the Municipal Court.

Mr. Bollmann presented two summons from August of 2020; summons numbers 000249 and 000250 to which Mr. Kraemer felt they were not relevant.

Mr. Briigliodoro read a letter sent by Mr. Kraemer to the Board Secretary dated September 17, 2020 requesting the two summons, complaint number 000250 and 000249, be incorporated into Mr. Jump's appeal.

Mr. Briigliodoro explained the pre-existing non-conforming use to the Board.

Ms. Howell asked who is responsible to provide the burden of proof that the use is a pre-existing, non-conforming use. Mr. Briigliodoro explained the process.

Mr. Carafello asked how long the farmer's market was on the site. Mr. Jump said it was constructed in the late 1940's. Mr. Carafello said he was not sure the record would show the use was conforming.

Mr. Kraemer felt the Notice of Violation did not specifically identify what Mr. Jump was being charged with. He said the notice said the present use is not conforming and he did not know what the charge is. Mr. Carafello felt the notice was not clear. He suggested the notice of violation be rewritten. There was a discussion on the deficiency of the notice.

Ms. Howell opened the meeting to the public.

Mr. Briadoro swore in Mr. Neil Hubbard of 12 Caitlyn Court, Andover. Mr. Hubbard said he built his house in 1989 and did frequent the farmer's market. He said he has seen trucks parked there when he moved in however, the number of trucks has increased significantly. He said around 2000 he witnessed an expansion of the parking area with millings being dumped and spread on the property. He said he has a document from 2013 from the D.E.P. that only allows for an impervious surface. He said in the early 2000's he witnessed Mr. Waterman completely rebuild two of his trucks. He said it went on for weeks. He said recently one of the trucks was being welded and another truck was having maintenance being done. He felt there should be written leases for the parking. He felt the use should not be allowed to happen by the town.

Mr. Kraemer said they are challenging the notion of parking because of the way the notice was written. He said ordinance 190-21 is about storage and not clear on parking. He said they are appealing the constitutional due process and the parking use was a non-conforming prior use. He said they are entitled to a clear explanation on what they are being charged with.

Mr. Karr felt the Township is obligated to provide a record of what they are being charged with.

A motion to grant the appeal for violations on Block 151, lot 19, 310 Stickles Pond Road, Andover Township solely on the basis of due process with no findings being made on the merits of the remainder of the notice of violation was made by Mr. Karr. It was seconded by Mr. Skewes. Roll Call: Janis McGovern – yes, Eric Olsen – no, John Carafello – yes, CeCe Pattison – yes, Richard Skewes – yes, Joseph Ordile – no, Joseph Tolerico – yes, Eric Karr – yes, Suzanne Howell – yes. Motion passed.

Mr. Messerschmidt returned to the Dais.

ORDINANCES: None.

OLD BUSINESS:

1.) Permitted Uses in Various Zones

Mr. Olsen asked if the GI zone was proposed to be removed. The Board Secretary said it was not proposed to be changed. Mr. Olsen suggested it could be consolidated with the LI zone.

The Board Secretary noted the ordinance does not have definitions for a good number of the terms used in the ordinance. She suggested the Board define the various terms used in the ordinance. There was a discussion on defining the terms. Mr. Stoner said the definitions would need to cross over into the site plan section of the ordinance. The Board agreed to work on the definitions.

NEW BUSINESS: None.

LIAISON REPORTS:

Township Committee – Janis McGovern

Ms. McGovern said she had nothing to report.

Environmental Commission – Suzanne Howell

Ms. Howell said she had nothing to report for the Environmental Commission. She said the Open Space Subcommittee had moved the open house meeting to the end of the month and discussed ways to get the survey out to the public.

Sustainable Andover – Eric Olsen

Mr. Olsen said they would conduct the Sunflower Event next year with a focus on the agritourism portion. He said the Buy Local Guide will be printed and a designer is working on the Buy Fresh/Buy Local Guide.

Economic Development Committee – John Carafello

Mr. Carafello said he had nothing to report.

Zoning Map/ Zone Changes Subcommittee – Paul Messerschmidt

Mr. Messerschmidt said he had nothing to report.

Redevelopment Subcommittee – Joseph Ordile

Mr. Ordile said the subcommittee met with Jessica Caldwell, PP and were asked to define the types of uses they would like to see along Route 206 and possibly create a new zone.

Master Plan Subcommittee – Joseph Ordile

Mr. Ordile discussed adding a member to the subcommittee who is not a member of the Land Use Board. He said he checked with the Board Attorney and it is allowed under the law. He said the subcommittee has still not drafted the RFP.

VOUCHERS:

Company	Purpose	Amount	Paid By
Vogel, Chait, Collins & Schneider	BHT Properties Group	\$280.00	Applicant’s Escrow

A motion to pay the voucher as presented was made by Ms. Howell and seconded by Mr. Olsen
Roll Call: Janis McGovern – yes, Eric Olsen – yes, John Carafello – yes, Suzanne Howell – yes, CeCe Pattison – yes, Richard Skewes – yes, Joseph Ordile – yes, Joseph Tolerico – yes, Eric Karr-yes, Paul Messerschmidt – yes. Motion passed.

CORRESPONDENCE:

- 1.) To: Ms. Maria Tsitsiragos
From: Patricia L. Bussow, Municipal Clerk
Re: Adding Block 155, Lot 7 to the Redevelopment Study

PUBLIC PORTION:

If a member of the public has a question or comment, please raise your hand and wait to be recognized by the Chairperson to speak. When called, please come to the microphone, state your full name, address, and spell your last name for the record. Please refrain from asking questions or making comments about any pending application before the Board, as the applicant may not be present for cross-examination. The Chairperson has the right to limit the amount of time a person from the public has to ask questions and make comments so all members of the public may have a chance to speak.

Mr. Craig Bollmann of 3 Ramsey Ct, Newton, NJ and Zoning Officer of Andover Township said he has had a few inquiries from various cannabis companies. He felt most of the commercial properties in town are not wide enough to comply with the cannabis ordinance requirements in respect to the distance from residential zones.

UPCOMING MEETINGS: October 19, 2021, November 16, 2021

The Board Secretary advised the Board that she will be attending the League of Municipalities in November and will not be at the November 16, 2021 meeting. The Board discussed options and decided to keep the current meeting date.

ADJOURNMENT:

With no further business to come before the Board, a motion to adjourn was made by Mr. Karr. It was seconded by Mr. Olsen and passed with everyone saying aye.

Respectfully submitted,

Stephanie Pizzulo
Land Use Administrator