

**TOWNSHIP OF SADDLE BROOK
ZONING BOARD OF ADJUSTMENT**

Following are the minutes of the Saddle Brook Zoning Board of Adjustment's regular session, held on Monday, October 1, 2018.

1. At 7:30 p.m., Vice Chairman Schilp called the meeting to order.

2. **Salute to the Flag.**

3. **Roll Call:** Mr. Gatto, Mr. Mazzer, Mr. Schilp, Mr. Ratajczak, Mr. Esposito, Mr. Tokosh, Mr. Manzo and Mr. Duffy - PRESENT Mr. Sibani and Ms. Murray – ABSENT Also present were Stephen Pellino, Board attorney, Robert Costa, Board engineer and Gary Paparozzi, Board planner.

4. NEW BUSINESS

A.) Katherine Leone

198 Colonial Avenue, Block 1202, Lot 16

Katherine Leone & her daughter, Kathy Lou Leone were sworn in.

Mr. Schilp – The lot size, single side yard, combined side yard and lot coverage are pre-existing, and they are requesting a lot coverage variance.

Ms. Kathy L. Leone – Mom had a garage built in back of her house and she wants to extend the drive way to that garage.

Mrs. Leone – The garage was built for my children to house their 1964 Mustang.

Mr. Ratajczak – How did you expect to get from the existing driveway to the new garage?

Ms. Kathy L. Leone – Our builder told us it would be fine. We were told we could put stone or pavers. When we went to do that, we were told we would need a variance.

Mr. Gatto – I don't see a problem. They're going from 17.2% to 20.9% accessory coverage.

Mr. Schilp – The maximum lot coverage is still under at 42.7%.

Mr. Tokosh – I don't have any objections to it. There are other extended driveways in the neighborhood.

Mr. Gatto made a motion; seconded by Mr. Tokosh to open the meeting to the public. All in Favor – YES
No public participation.

Mr. Gatto made a motion; seconded by Mr. Manzo to close the meeting to the public. All in Favor – YES

Mr. Pellino – This would be considered soft C variances; a minor deviation. In order to approve this application, the Board would have to find that the benefits outweigh the detriments.

Mr. Gatto made a motion; seconded by Mr. Esposito to approve the application. VOTE: Mr. Gatto, Mr. Mazzer, Mr. Schilp, Mr. Ratajczak, Mr. Esposito, Mr. Tokosh and Mr. Manzo – YES

APPLICATION APPROVED

B.) Select Medical Corporation (a.k.a. Kessler Institute)

300 Market Street, Block 512, Lot 1

James Fant, attorney for the applicant, came forward.

Mr. Fant – We are seeking site plan approval for a concrete pad in the service area of the facility for the

installation of two oxygen tanks to service this facility. We are prepared to offer proofs for a use (D3) variance, as this zone is not for a hospital use and C variances for accessory lot coverage, total lot coverage and accessory structure height.

Mr. Pellino – Mr. Paparozzi and I respectfully disagree on the nature of this application. Council has indicated that it is his belief that this is a D variance, an expansion of a nonconforming use. Our planner doesn't think that's the case. In my opinion, if the application does not require a use variance, I don't think we have the authority to hear it. I think it would go to the Planning Board.

Phillip John Driscoll, CEO of Kessler Saddle Brook campus was sworn in.

Mr. Driscoll – This facility is a 112-bed acute rehabilitation hospital. The oxygen supplied through this project will be directed to the patient units on second and third floors. Over the last five years, the hospital has experienced a significant increase in the medical complexities in the patients we treat. The number of patients requiring supplemental oxygen has increased by thirty percent over the last five years, which is the reason for this project. The availability of wall oxygen and suction will greatly facilitate our nurse's ability to care for critically ill patients. Currently, we are using 135 small portable oxygen cylinders and 23 large T cylinders for a total of 153 cylinders. In patient rooms these are bulky objects for bedside nursing. This will help us improve patient safety. The cylinders are large, heavy and unwieldy. They are difficult to maneuver. This will also decrease campus traffic. We expect oxygen deliveries to decrease by two thirds.

Mr. Pellino – Do you have the original approval?

Mr. Driscoll – I do not.

Mr. Pellino - Should we address the D variance first, rather than wait to the conclusion of the hearing?

Mr. Fant – The hospital, under case law is an inherently beneficial use.; therefore, there's a presumption that any accessory hospital use is a minor expansion.

Mr. Costa to Mr. Pellino – I think we would have to rely on the Township Zoning Official. He sent it here. He's saying it needs a D variance.

Mr. Pellino – Part of the application that was submitted is a Zoning Board resolution, dated 07/07/14. On page 2 it says, "Whereas the use is a pre-existing, nonconforming use and therefore is permitted", which if that's the case, we have the authority to hear the application. We may want to make this a preliminary determination before listening to the testimony.

Mr. Paparozzi – Mr. Ambrogio explained to me that the Township always sent back an application to the Board that gave them the original approval. My position is this, almost 70 years ago it was an R-1 zone. The hospital had to come in front of the Zoning Board to get approved. The zoning was not changed any time prior to that. After the use was granted and the construction was done, now it's a hospital zone. The bulk requirements should go under a hospital, not a one family home. The Township zoning map has not been updated. Since the zoning chart doesn't have bulk requirements for a hospital zone, the closest is the OMR (Office Mid-Rise), which allows medical and dental offices and clinics. The Municipal Land Use Law says if you're going for a use change for a hospital, you have to take the bulk requirements for a hospital, not one family houses. If you want to hold it as an expansion of a nonconforming, you still have to use the bulk requirements of the OMR zone, and the only variance then, along with the Expansion, which is taken in by the inherently beneficial would be an increase in total lot coverage. That increase is only 0.2%

Mr. Mazzer- Doesn't that have to be designated by the mayor and Council.

Mr. Paparozzi – The Planning Board would approve that after the mayor and Council review it.

Mr. Pellino – I respectfully disagree. Only the mayor and Council can change the zone.

Mr. Costa – The bottom line, in my opinion is that they're in an R-A zone, so they're at the right Board. Also, the bulk requirements go with the zoning for the property.

Mr. Pellino – I suggest the we poll the Board to make a finding as to whether or not this is a D variance. If so, the Zoning board can hear the application.

J. Michael Petry, architect, engineer and planner for the applicant, was sworn in.

Mr. Petry – In 2014, we were before this Board to modify parking for that the lot. At that time, we presented that application as a D2 variance, because anything we do on that property to modify the property, in that instance it was to expand the number of parking spaces and in this instance, it is to add another structure to the facility. That is, in my opinion, considered an expansion of a nonconforming use and it requires a D2 variance. We always present the bulk standards of the zone in which it's in. The fact is that the municipality has maintained this as a residential zone and in doing that has maintained the control at this Board's level.

The Board was polled to determine that this application is the expansion of a nonconforming use (requires a D variance):

Mr. Gatto, Mr. Mazzer, Mr. Schilp, Mr. Ratajczak, Mr. Tokosh and Mr. Manzo – YES Mr. Esposito – NO

Kevin J. Brancato, a representative of AGL Welding Supply Company, was sworn in.

Mr. Brancato marked handouts of National Fire Protection Association setback sheet Exhibit A-1 and an oxygen safety data sheet Exhibit A-2.

Mr. Brancato – We're an industrial gas company servicing every major hospital, except Englewood. We're proposing a 1,500 gallon liquid oxygen tank for the main source and a 500 gallon reserve unit (for emergency reserve). The reserve supply is probably a 72-96 hour supply based on estimated usage. The main tank is tied into a control panel that would automatically switch to the reserve if something happened or the main tank became empty.

Mr. Tokosh – How large are trucks to refill these tanks? Tractor trailers?

Mr. Brancato – We will probably use straight trucks with a 3,000 gallon tank on it. We anticipate that the usage will be approximately 1,000 gallons per month. A truck would probably come once every 4-5 weeks. The fill would take about one hour.

Mr. Tokosh – Is the gas effected by the ambient temperature?

Mr. Brancato – It could possibly be. There are vents on the tanks. There are redundant spring-loaded safety relief devices (first safety). There are also positive burst disks (second safety).

Mr. Tokosh – So it's not flammable?

Mr. Brancato – Absolutely not. We probably have no more than 10,000 cubic feet of oxygen on site in the current cylinders. This would give you 150,000 cubic feet of oxygen availability. Driver's do inspections when they deliver. Once a year we perform a preventive maintenance inspection.

Mr. Mazzer – That's in a flood zone. What precautions will you make?

Mr. Brancato – They are elevated 3 feet. The tank has legs on them and they are anchored. The other

equipment, regulators, vaporizers, the switches are elevated as well.

Mr. Ratajczak – Maybe they should be higher.

Mr. Gatto – How many feet will it be with the legs and platform?

Mr. Brancato – Three feet plus the extension. It's roughly four feet.

Mr. Ratajczak – Will they take away any parking spaces?

Mr. Brancato – Not to my knowledge.

Mr. Costa – That area certainly floods. I think the Board can give a little more height. Raise the platform and add some stairs.

Mr. Brancato – If raised, the operator may not be able to reach the valves. We'd have to look into it.

Mr. Tokosh – Will you have to rearrange the parking spaces for your truck to get in?

Mr. Brancato – No.

Mr. Costa – You should put bollards around this. The setback requirements shown on Exhibit A-1 should be listed in the resolution, if there is an approval.

Mr. Brancato – We do have bollards shown and we will meet the setback requirements.

Mr. Gatto made a motion; seconded by Mr. Esposito to open the meeting to the public for questions for Mr. Brancato. All in Favor – YES

No public participation.

Mr. Gatto made a motion; seconded by Mr. Manzo to close the meeting to the public. All in Favor – YES

Mr. Petry – Our team was hired to prepare a partial topographic survey of the area and work with the architect and manufacturer to establish the most appropriate location on the site for this particular pad. We were then required to prepare the design for that pad, the associated platform and the calculations for that platform and then to prepare the necessary zoning calculations that were associated with this site plan application. Subsequent to that, we were to prepare planning testimony for this evening.

A color version of page SP1 was marked Exhibit A-3. A color version of page SP2 was marked Exhibit A-4. The total area of the parcel is 6.2 acres. The entire site is in a flood plain. The flood hazard elevation is 48.0 feet. It's an irregular-shaped building with a four-story tower in the center with one story wings on each side of the tower. The entrance driveway is on the northeast side and the exit driveway is on the northwest side. The parking is in the rear. In the center is a courtyard and a series of utilities that are located immediately outside that courtyard. Those are separated by landscaping or a landscape wall. This area is immediately adjacent to the loading areas. Deliveries will come in and out the same way and will not affect the parking or loading. This doesn't increase our impervious significantly. It meets the standards for setbacks from the patient areas of the building. The one thing we're stuck with is, it is located over the existing sanitary sewer line that services the property. We're going to wrap it around it if we can. The spot ends up being pretty good from all perspectives. It's screened from the property owners to the right and left of the building by the wings in front of it. While it is not screened from the properties in the back, it's 185 feet from the rear property line. The applicant is seeking approval to construct this pad in this location in the same service area that services our condenser units and mechanical equipment just outside of the courtyard area. The pad itself is 21.5' x 18.5' and there is a 12' x 12' fill pad area immediately outside of that. The tank itself and all of the feeders have been designed on extension legs to be above the flood hazard area elevation. The platform is at the flood

hazard elevation. There are stairs on the sides and the back. The electricity is fed from the building. There will be lights on the pad for service or emergencies. The Fire Department asked for a 20 foot fire lane. We can stripe it. There is considerably more than a 20' drive aisle. He also asked that the pad be sufficient to hold the weight of a fire truck. The pads are designed for H2O loading, so the trucks coming in to fill the tank are going to be as heavy as a fire truck, so the pad will definitely accommodate that. Regarding the sanitary sewer line, we have prepared the calculations. We would accept that as a condition of any action the Board takes that the pipe has sufficient capacity for the flow. The existing pipe will be abandoned in place. Minimum pipe slope allowed by DEP is 3/10% and we have 6/10%, so we are double. Pipe has five feet of cover, DEP requires four feet of cover. We believe that we're going to have sufficient capacity. The only landscape we propose to remove is that in the immediate area. The pad will not interfere with the flow of traffic. There are bollards around all but the approach for the fill pad area. The existing property is in the R-A zone. Hospitals are not a permitted use in this zone. However, the use has been previously approved. Anything we do requires a D2 (expansion of a nonconforming use) variance. There are three bulk variances cited by the zoning officer: maximum accessory lot coverage 54.5% proposed, 18% permitted, 54.2% existing; maximum total lot coverage 74.46% proposed, 44% permitted, 74.2% existing, and accessory structure height 19.07' proposed, 15' required. The description says building, which this is not a building, but perhaps it could be interpreted as a variance. The tanks are required to be raised above the flood hazard elevation. That is what would drive that variance. With regard to the positive criteria, hospitals are considered an inherently beneficial under the MLUL. Accessory uses that are directly related to the operation of those facilities have been granted the same status. Therefore, the positive criteria is met. With regards to the negative criteria I offer that the delivery of oxygen to this site already occurs. The proposed pad represents an improvement from all aspects; safety and traffic. Right now, we have individual canisters being moved constantly that will be piped directly to the patient's rooms. The reduction in deliveries will be 33-50%. The placement of the pad has very limited obstruction to the site and to the neighbors because of where it's located, therefore in my opinion there is no substantial detriment to the public good. In fact, I believe it is an improvement to the public good by the virtue of traffic reduction. I believe this is in the best location and that the proposed expansion does not impose a substantial impact on you zoning plan or zoning ordinance.

Mr. Costa – For clarity, basically slab on grade and on top of it a platform.

Mr. Petry – Yes. The extension legs sit on the platform itself. Those legs raise the bottom tank about four feet off the ground. The platform is so that the people who service and fill the tank can get to the tank because it's usually 10" off the ground. The platform will hold the controller unit as well.

Mr. Costa – Just so the Board knows. There's a slab and then there's metal grading and stairs. Based on the calculations, it looks like the grading is only 2.8 feet above the slab elevation. The slab is at 44.

Mr. Petry – Yes.

Mr. Tokosh – Could the slab settle?

Mr. Petry – Our calculations for the slab assume the worst case in the flood zone.

Mr. Costa – You might have to come up a foot. Also, where the tank is being filled, you need bollards. You could do a slide gate with a couple of bollards, one on each side of the gate.

Mr. Brancato - We could do that.

Mr. Paparozzi – I agree with Mr. Petry about the inherently beneficial use of the hospital and the accessory use. I disagree on the variances requested. If we are calling it an expansion of a use, we use bulk requirements for the use that is requested. Under MLUL there is only one variance, not three as Mr. Petry has indicated. The requirements should coincide with the use.

Mr. Gatto made a motion; seconded by Mr. Manzo to open the meeting to the public for questions for Mr. Petry. All in Favor – YES

No public participation.

Mr. Gatto made a motion; seconded by Mr. Manzo to close the meeting to the public. All in Favor – YES

Mr. Fant summarized the testimony of the applicant's professionals.

Mr. Costa – For clarity, what is the size of the pad and size of the tank? Different plans show different sizes? Also, is there a fence around this?

Mr. Petry – 18.5' x 21.5 and 1500 gallons and 500 gallons. Yes, there is a fence.

Mr. Costa – Is it an anti-climb fence?

Mr. Petry – Yes.

Mr. Schilp – Will they remove the existing pipe?

Mr. Petry – We said we would abandon it.

Mr. Costa – You should remove it. Also, you're calling for PVC STR35. Instead you should C900. It's a better pipe.

Mr. Petry – Okay.

Mr. Pellino – I think Mr. Petry gave the Board the correct analysis; this is an inherently beneficial use. They satisfy the positive criteria. In order to grant the variance, you would have to determine that in fact granting the use variance would not substantially affect the public good negatively and that it would not substantially subvert the zone plan or zoning ordinance. We've also got three variances. I think you do measure it from the R-A standards. Those variances are relatively minor: maximum accessory coverage, maximum lot coverage and maximum height of an accessory building (tank). Those are C2 variances. In order to grant them, the Board would have to find that detriment from the deviations is substantially outweighed by the benefits of the deviation and that they satisfied the negative criteria. There are some conditions that the Board was interested in: anti-climb fence, remove sanitary line, must give calculations to Board engineer, use C900 pipe, two additional bollards and a slide gate in loading area.

Mr. Costa – There was a letter from our Fire Dept. The slab is currently proposed at 6", but that is subject to the soil conditions. You may have to make that slab a little thicker. Make the whole thing 10". We're asking for fibercrete. Also, the slab shows 6 x 6 wire on the top and rebar on the bottom. Just make it a double mat rebar, because nobody pulls the wire up.

Mr. Petry – The plan shows privacy slats. If you switch the fence to anti-climb, you've eliminated that.

Mr. Ratajczak – Public service is using a fence now that has a backing.

Mr. Costa – Could you put a screen behind it? Maybe a canvas screen.

Mr. Fant – We have no objections to any of those conditions.

Mr. Ratajczak made a motion; seconded by Mr. Gatto to approve the application with the conditions listed by Mr. Pellino and Mr. Costa.

VOTE: Mr. Gatto, Mr. Mazzer, Mr. Schilp, Mr. Ratajczak, Mr. Tokosh and Mr. Manzo – YES Mr. Esposito - ABSTAIN

APPLICATION APPROVED

5. MINUTES

Mr. Tokosh made a motion; seconded by Mr. Schilp to approve the minutes of the September 10, 2018 meeting. VOTE: Mr. Schilp, Mr. Tokosh and Mr. Duffy - YES

6. COMMUNICATIONS

Mr. Gatto made a motion; seconded by Mr. Tokosh to receive and file the communications. All in Favor – YES

7. VOUCHERS

Mr. Gatto made a motion; seconded by Mr. Tokosh to pay the 09/21/18 voucher for Dominick Galluzzo (\$166), provided funds are available. All in Favor - YES

8. OPEN AND CLOSE TO THE PUBLIC

Mr. Tokosh made a motion to open the meeting to the public.

No public participation.

Mr. Tokosh made a motion; seconded by Mr. Gatto to close the meeting to the public.

9. MISCELLANEOUS

Mr. Pellino – Pursuant to state statute, one of our jobs is to make a yearly report to the mayor and Council concerning the review of the applications that come before us and any recommendations that you may have to the Council as to amendments to the zoning ordinance. I suggest that Jayne circulate a list of the applications that we've had the past year and a brief description of what they were and then we could discuss that at the next meeting. One of the things that occurs to me is that we've had numerous applications before us that have had property that is only 50 feet wide, where the requirement is 65 feet.

10. CLOSED SESSION

The Board went into closed session to discuss litigation

11. ADJOURN

Mr. Tokosh made a motion; seconded by Mr. Schilp to adjourn the meeting. All in Favor – YES

Meeting Adjourned at 9:34 p.m.

Respectfully Submitted,

Jayne Kapner, Secretary