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 Wednesday, March 6, 2019.

1. At 7:30 p.m., Chairwoman Murray called the meeting to order.

2. Salute to the Flag.

3. Roll Call: Mr. Gatto, Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Duffy, Mr. Bennett and Ms. Murray - PRESENT Mr. Esposito, Mr. Sibani and Mr. Tokosh - ABSENT
Also present were Stephen Pellino, Board attorney and Chris Briglia, Board engineer.

4. APPLICANT #1 – Gina & Ryan McMahon
79 Strathmore Terrace, Block 1808, Lot 36
Gina and Ryan McMahon were sworn in.
Mr. McMahon – We are looking to put on a single story addition the existing width of our house extended out 12 feet and additional pavers to extend back 12 feet from the addition from the point even with the left side of the house and to the fence on the right side.
Mr. Gatto – When were the pavers put in?
Mr. McMahon – The driveway was original with the house (2016). The paver in the back were done the following year.
Mr. Gatto The original site plan doesn't have the shed or the pavers. Did you get permits?
Mrs. McMahon – We did for the pavers, but not the shed.
Mr. Gatto – The shed is supposed to be 5 feet from the property lines.
Mr. McMahon – It can be moved.
Mr. Pellino – We can make It a condition.
Mr. Briglia – An additional variance should be requested for the shed and the distance from the rear property line.

Mr. Mazzer made a motion; seconded by Mr. Gatto to open the meeting to the public.
No public participation.
Mr. Schilp made a motion; seconded by Mr. Bennett to close the meeting to the public.
Mr. Pellino – The variances requested are for minimum combined side yard – 18' existing, 22.5' required, 14' proposed; maximum building coverage – 24.8% existing, 26% code, 31% proposed; maximum accessory coverage – 9.6% existing, 18% code, 18.6% proposed; maximum total coverage – 34.4 existing, 44% code, 49.6% proposed; and minimum single side yard setback – 6' existing, 10' code, 6' proposed, but they are extending the house. The analysis is under c2 part of the statute. This is where the Board determines that the deviations would advance the purposes of the Municipal Land Use Act and that the benefits outweigh any of the detriments. They also have to satisfy the negative criteria ich is that the variances can be granted without doing substantial harm to the zoning plan or to the community.

Mr. Mazzer made a motion; seconded by Mr. Schilp to approve the application.
VOTE: Mr. Gatto, Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Duffy, Mr. Bennett and Ms. Murray – YES

APPLICATION APPROVED

5. APPLICANT #2 – 270 Market, LLC

270 Market Street, Block 512, Lot 2

Victor Herlinsky, Jr., attorney for the applicant came forward.
Mr. Pellino – I would like to explain to the Board the relief that the applicant is asking for. They are asking for a certificate of nonconformity. That's a power seldom used by a Zoning Board. That is to allow an applicant to establish once and for all that use or structure, in this case they're asking for both, pre-exists the change in the zoning ordinance. Under the zoning law, if you have a use that is legal and then the ordinance changes, you're allowed to continue that use forever, provided you don't alter or expand it. I think the applicant is saying that the warehouse use and structure does not conform with the zoning ordinance today. There are several bulk variances. One of the things the applicant is asking for is the Board to grant a certificate, which would be putting in writing and stamping it forever that they have the right to continue the use and the building even though it doesn't conform. It is the applicant's burden to demonstrate that they qualify for that; that this use and structure predates the change in the zoning ordinance. Alternatively, if the Board is not convinced, the applicant is saying that they would like you to grant a use variance and bulk variances. Also, the site plan application is being withdrawn because they have no tenant.
Mr. Herlinsky – It's hard to rent out a warehouse when you can't guarantee the tenant will be able to use it as that. It's been used as a warehouse since 1968. We had a tenant, but they found space somewhere else. There is a procedure with the Planning Board for a site plan when a tenant is coming in. If someone has to worry about the use, a lot of times, they don't have the patience. We have a large space, totally vacant. We want to have the ability to market it. N.J.S.A.40:55D-68 provides that any nonconforming use or structure existing at the time of passage of the ordinance may be continued upon the lot or in the structure so occupied that such structure may be restored or repaired in the event of partial destruction. We're saying it's always been a warehouse. There was a statute after it was built that allowed for this to be a warehouse as an ancillary use to retail. This has never been an ancillary use to retail. Dress Barn had a 5,000 square foot store in the 80's. This is a 100,000 square foot facility. When it was originally built, Roman's Mail Order may have had a couple thousand square feet of retail. It wasn't known as a retail space. It's a big building. You wouldn't have enough parking for a retail use. Since 1968, this building has been almost exclusively used as a warehouse. We would like the Board to give us a certificate of legal nonconforming use of structures. Whenever we get a tenant, we'll still have to go to the Planning Board, but hopefully we would be able to move a little faster than this time.
Ken Schier, architect for the applicant was sworn in.
Mr. Schier – Exhibit A-1 is a drawing that reflects the existing conditions of the site: outline of the property, footprint of the building, internal configuration, setbacks, loading areas, columns and parking spaces. It also indicates a key map. There is site and zoning data. It's a copy of a drawing prepared 30 years ago for the Planning Board. At that time, the applicant wanted to add additional loading doors on

the warehouse. I updated that drawing for tonight's hearing to show the proper curb cuts along Finnegan and the reconfiguration of some parking spaces up front to satisfy the requirement for handicap spaces. The existing building is approximately 77,500 square feet, mostly warehouse space. It's a one-story masonry warehouse building surrounded entirely by asphalt. The loading docks face east, office space faces north (Market St.) and the balance is warehouse space. There is a partial mezzanine, solely for mechanical equipment. An aerial view of the building was marked Exhibit A-2. The existing lot area is just under 163,000 square feet. The lot width is 464 feet approximately; front yard 42'; side yard facing the street is 50.64'; side yard is 33.62'; side yards combined is 84.26'; rear yard is 40'. The current property is in compliance with all this criteria as developed. It is not compliant on the improved lot coverage, which is 83.86%, where 50% is allowed. Maximum building height allowed is 30 feet; we have 25 feet. Another example of where it deviates from the requirements of the zoning criteria is on the floor area ratio where 0.25 and existing is .479. There are 130 parking spaces on site currently. Reconfiguring it to include the handicap space, we lose one space, bringing us to 129. When we submitted this along with site plan, the Board engineer listed the handicap space as a requirement. A copy of a site plan provided to Mr. Schier in 1988 was marked Exhibit A-3. It was a 1974 plan approved by Bergen County Planning Board that reflected the construction of an addition to the warehouse. The warehouse was expanded as shown. I show this to establish a timeline. The main building was constructed in the 1960's and then in the mid 70's there was an expansion to the building. There was a de minimus retail area in the front of the building near Market Street. Since 1975, the building footprint has remained unchanged. Mr. Paparozzi sent a letter with respect to the parking. That will be addressed when there is a tenant for the building. He also commented about ingress/egress on Finnegan Ave. was depicted incorrectly. We have revised the curb cuts. The requirement was that 5 handicap parking spaces should be indicated. We have done that, including one van accessible. Also, he had a condition that the parking be restriped. The engineer comments wanted proof of submission to the county. I'm not sure it's appropriate. We're not doing anything that would affect any county infrastructure because it's all existing. The size of the parking spaces is 9' x 18' (except handicap) and the loading areas are approximately 10' x 50'.
Mr. Briglia – Bergen County Planning was recommended because the original application had a proposed tenant. In the future, then you get a tenant, they should send an application to the county.

Mr. Gatto made a motion; seconded by Mr. Duffy to open the meeting to the public.
No public participation.
Mr. Schilp made a motion; seconded by Mr. Gatto to close the meeting to the public.
Joseph Burgis, planner for the applicant was sworn in.
Mr. Burgis – We requested a lot of background information. Going back to the 1937 zoning ordinance (marked Exhibit A-4). The site was in an "E" zone, which permitted warehouse and distribution and ancillary retail facilities. There were no bulk requirements at that time. This project was approved and built in 1967 and first occupied in 1968 by Roman's Mail Order; a warehouse and retail use building. We could not find a permit but found a newspaper article (Exhibit A-5), dated 08/27/68 saying Roman's Mail Order and Retail Outlet Opens. Exhibit A-6 includes the following items: 1.) an August 1975 Certificate of Occupancy #1345 for Roman's Mail Order Company; 2.) Certificate of Occupancy for Fashion Barn

retail store, office & warehouse; 3.) a letter, dated 11/17/88 from Construction Official stating that the uses as proposed are conforming in the B-2 Zone; 4.) certificate of occupancy #88-270, dated 12/23/88 for Commit Leather Goods office, retail outlet, warehouse and finishing of a variety of garments; 5.) a Planning Board Site Plan approval resolution granting six additional loading docks; 6.) Bergen County Planning Board approval, dated 11/23/93; 7.) 06/15/94 certificate of occupancy for Porcelanosa warehouse/office/wholesale-retail sales of ceramic tile and related products; 8.) 05/12/95 construction permit for United Supply Corp for new offices, bathroom and warehouse; 9.) 02/27/96 letter from Construction Official stating that the building was built in accordance with all zoning regulations and ordinances that were in existence at the time; 10.) 03/13/06 certificate of approval for renovation for Porcelanosa; 11.) 05/24/07 certificate of occupancy for BCI Communications Inc. offices administration and warehouse; and 12.) 10/16/12 certificate of occupancy for Best Carpets & Interiors carpet and flooring retail sales. In October of 1984, you adopted your new zoning ordinance (Exhibit A-7). It placed the site in a B-2 zoning district. That permitted a variety of retail uses: banks, offices, restaurants, distribution, shopping centers, warehouses.
MLUL recognizes that there are some uses that may become nonconforming uses. It would be inequitable to strip away a person's lawfully asserted property right retroactively. They provided this Article 68 proceeding to allow applicants to appear before a Zoning Board of Adjustment to obtain a certificate of legal nonconformity. Typically, one has to prove the existence of this preexisting nonconforming use or structure. Since 1968, this building has been occupied and marketed for that warehouse use. Based on the info presented, I think that's clear and the Board can grant the Article 68.
Mr. Pellino – We agree that today this use is not permitted by the zoning ordinance, correct?
Mr. Burgis – Yes.
Mr. Pellino - When did the ordinance change, making it nonconforming?
Mr. Burgis – 1984.
Ms. Murray – Our planner couldn't be here tonight but sent an email. In it he states that he doesn't have an aversion to it being considered a warehouse, but as you get tenants, he does think its necessary for you to come back and have the parking verified and any other issues that might require a variance.
Mr. Herlinsky – That would be required by local ordinance that we go to the Planning Board.

Mr. Schilp made a motion; seconded by Mr. Gatto to open the meeting to the public.
No public participation.
Mr. Schilp made a motion; seconded by Mr. Duffy to close the meeting to the public.
Mr. Pellino – A certificate requires a simple majority, not a super majority that a use variance would require. The certificate would be for the use as well as the nonconformities of the building itself. The parking would be taken care of when they come in with a tenant to the Planning Board.
Mr. Herlinsky – The other things like impervious coverage and other bulk variances, we're asking to include in the certificate.
Mr. Schilp – I been in town since 1966 and its always been mostly warehouse space.
Mr. Gatto – The loading zone are a mess, windows are broken, it's a mess. I would suggest they try to clean it up.

Mr. Schilp made a motion to approve the issuance of a certificate of nonconformity to confirm that the standalone use of a warehouse is a prior nonconforming use and that the structure, as it exists has nonconformities for impervious coverage, floor area ratio, buffer and parking in the front yard; seconded by Mr. Duffy to approve the application, as the applicant has carried that burden.
VOTE: Mr. Gatto, Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Duffy, Mr. Bennett and Ms. Murray – YES

APPLICATION APPROVED

6. RESOLUTIONS
Mr. Schilp made a motion; seconded by Mr. Manzo to adopt the resolution of approval for Edith Moreno, 590 Willow Avenue, Block 1807, Lot 23.
VOTE: Mr. Gatto, Mr. Mazzer, Mr. Schilp, Mr. Manzo and Ms. Murray – YES

7. MINUTES
Mr. Gatto made a motion; seconded by Mr. Schilp to approve the minutes of the February 4, 2019 regular meeting.
VOTE: Mr. Gatto, Mr. Mazzer, Mr. Schilp, Mr. Manzo, Mr. Duffy, Mr. Bennett and Ms. Murray - YES

8. VOUCHERS
Mr. Schilp made a motion; seconded by Mr. Gatto to approve payment of the following vouchers provided funds are available:

Basile Birchwale & Pellino, LLP, 03/01/19, R & R Plaza, $375
Basile Birchwale & Pellino, LLP, 03/01/19, Moreno, $375
Basile Birchwale & Pellino, LLP, 03/01/19, 270 Market, LLC, $62.50
Basile Birchwale & Pellino, LLP, 03/01/19, Scaduto, $62.50
Return Unused Escrow, 03/06/19, Sobocinski, $20.88
Return Unused Escrow, 03/06/19, Giovannone, $9.24
Return Unused Escrow, 03/06/19, Brickley, $18.24

All in Favor – YES

9. OPEN AND CLOSE TO THE PUBLIC
Mr. Schilp made a motion; seconded by Mr. Gatto to open the meeting to the public.
No public participation.
Mr. Gatto made a motion; seconded by Mr. Schilp to close the meeting to the public.

10. ADJOURN
Mr. Gatto made a motion; seconded by Mr. Mazzer to adjourn the meeting. All in Favor – YES

Meeting Adjourned at 8:47 p.m.

Respectfully Submitted,
Jayne Kapner, Secretary