

VOORHEES TOWNSHIP ZONING BOARD MINUTES OCTOBER 9, 2014

The Chairman called the meeting to order and stated it was being called to the order and is being published as required by law

ROLL CALL

PRESENT: Mrs. Cherylynn Walters, Esq from Platt and Riso, Doug Rohymeyer from CME-board engineer, Neal Cupersmith, Jeff Senges, John Daddario, Hal Willard, Bob Weil, Manny Leoncio, Habib Quarishi and Herb Kerr.

ABSENT: Mr. Cohen

MINUTES FOR APPROVAL:

August 14, 201:

Motion was made by Mr. Weil

Seconded by Mr. Willard

Abstain: Mr. Senges and Mr. Kerr

September 11, 2014

Motion was made by Mr. Weil; Seconded by Mr. Willard. Abstain: Mr. Leoncio

RESOLUTIONS FOR APPROVAL: None

CORRESPONDENCE: NONE

NEW BUSINESS:

Keith Scherzinger

101 East White Horse Road, Block 180, Lot 1

Seeking variances or other relief from Section 152.052 of the ordinance to permit a training facility for a limited number of students in an O-1 zone; relief from Section 152.052 of the ordinance to permit a residence in an O-1 zone which is pre-existing; relief from Section 152-011 of the ordinance to permit parking in an MDR zone which is preexisting; relief from section 154.-10 to permit a pre-existing 8 ft square sign to be at the height as permitted by Ordinance. The applicant is seeking a site plan waiver. The applicant is also seeking any and all other variances and waivers that the zoning board may determine are necessary.

Ann Pearl, Esq. the attorney was present this evening for the applicant. Cherylynn Walters stated that she wanted to interject before she got started on her application to outline for the board and clarify the nature of the application. She had an application in front of her to have an application for an interpretation –Mrs. Pearl withdrew that application –so she is here this evening for a use variance. Mr. Senges stated that he has a problem with that; because there is no notice for a use variance. Mrs. Pearl stated absolutely, Mrs. Walters stated that the language in the notice-she is looking at the published copy which states the nature of relief –the board’s concern –it doesn’t necessarily say use variance or to permit a trained facility for a limited number of students in a O1 zone, where such use is not permitted. Mr. Senges stated that when they reviewed their packages and read the application, and they went through the application –even in caucus the board was unsure as was the professionals as far as if they were coming before the board with the intent or understanding that a use variance was needed, they didn’t know if you thought it was, or wasn’t. Mr. Senges stated that in reading their public notice, it was in the boards’ opinion and the professional’s opinion not clear. Mrs. Pearl stated that she was

taken back because this is the same notice that she has used for 30 years and she has been before the board a number of times. She felt it met the requirements of the MLUL-it is clear that you are asking for relief from a particular section of the ordinance to permit something-very clear as to what the application. Cherylynn stated that she has been rejecting notices left and right for the last 6 months because they are not specific enough in regard to a use. She just saw the notice-it was just pointed out to her. The board's concern-is the guy that lives behind or down the street within 200 ft -that receives this-they may not understand. Mr. Senges stated that the board does not feel that the notice is sufficient or clear-it is not acceptable. Mrs. Pearl would like a minute to review the notice requirements with the board with the MLUL. She would like to review case law. Mr. Senges asked her if she was refusing to renotice? Mrs. Pearl stated that she is here tonight and prepared to go, the notice talks about relief from sections in ordinance, Mr. Senges stated that a layperson does not know what that ordinance reads and it does not state use. Mrs. Pearl wanted to take a break and speak with her client.

5 minute recess

Mrs. Walters stated she reviewed case law that Mrs. Pearl is speaking of and she didn't agree. She stated that it spoke about two cases where the type of notice that was provided in general terms and she does not have a copy of notices in that case to compare here. It speaks about the case with Pellmarver vs Lacey Township Planning Board case-notice provided, conditional use was required and the notice indicated was for commercial lots but it did not inform the public of the nature of the use - the court stressed this information-it informed the public in a common sense matter such as the ordinary lay person could intelligently determine whether it could object or to seek further information-that is the standard. So the common sense required by Pellmar does not require the business be identified -that is fine; but the interpretation the board is taking from this is that it has to be obvious to the layperson in a commonsense way. They are interpreting your notice -it says that you are asking for a variance from this section to permit a training facility. Mrs. Walters stated that it doesn't say you're asking for a use variance for training facility or that you are asking for a variance in a training facility in the o1 zone. Their interpretation -it is not clear. Mrs. Pearl stated that it talks about relief from section 152.052 -it is the uses that are permitted. Mrs. Walters stated that -that assumes that the person that receives it knows what that ordinance says. Mr. Senges emphasized that this is a public notice. It is going to residents and it's going in the newspaper. Your assumption is erroneous stated Mr. Senges. They had clients in the past where the public was quite surprised at the time of the application and after the application was approved-because the notice that was provided to them- it was so vague and incorrect assumptions and were quite upset. This had resulted in them taking our decision to court.

Mr. Senges stated that we are not prepared to cross that bridge again. Mr. Senges stated that we can take this to the board for a vote and see if they felt it was clear. Mrs. Pearl disagreed and stated that if they took this to court -if you are telling us that this is the board's decision-they have no choice but to do renotice. Mr. Senges -they want to make sure that on solid legal ground. She stated that they don't want to file suit-she stated that they don't want to do this.

Jeff Senges wanted to take a straw poll vote from the board.

Cherylynn stated that the application stated that it was on for an interpretation tonight-Mrs. Pearl stated that it was withdrawn with Ms. Powell -letter sent to the township. Mrs. Walters and Mr. Senges were not aware of this issue. Mrs. Pearl went over this with Elaine and was putting the money towards the new application, rather than give them a refund. Mrs. Pearl stated that she is not making this up. Mrs. Walters stated that she did not doubt this; she discovered this with the letter in the file just now; she never saw this. She discussed interpretation in caucus /and then they came out here.

Mrs. Pearl asked if the board reviewed the notice -just now-they received a notice in their packet and they said yes. Mrs. Walters stated that this is why we are at this point.

Mrs. Pearl stated that the layperson has the opportunity to come in and review the file and ordinance in the office. Mrs. Walters stated that the layperson has the opportunity to know this is a use variance. She stated that rejoice will be required and we will give you a new date.

Notice is sufficient-straw poll:

Mr. Weil was questioning in his mind the wording of permitting and change of use -Cherylynn stated that they are two different meanings -a change of use has nothing to do with a use variance-stated Mrs. Walters. To permit a training facility for a number of students-it doesn't say otherwise permitted-

so he felt that was key. He thought that it sounded like we are giving the counsel a hard time and we are not trying or that is not the intent. Yes—he felt the notice was not sufficient.

Mr. Daddario-yes he felt not sufficient

Mr. Kerr-yes

Mr. Willard-in looking at this there is no specific language that states use variance language, however seeing the word relief from an ordinance to permit a training facility he felt conveys what the notice is intended to convey. He voted no to the motion

Mr. Leoncio-he voted no-he felt it was clear enough for him.

Mr. Cupersmith-yes

Mr. Senges-yes

Mrs. Pearl wanted a date to return to the office for another hearing. Mrs. Walters asked the next available date that is open-December 11, 2014. Mrs. Walters stated that the next agenda, the applicant has been before the board twice already-that will be lengthy. Mrs. Marchitto asked to have on record to extend the action date-that is acceptable per Mrs. Pearl. Mrs. Walters wanted that in writing as well.

A motion to carry by Mr. Weil; Seconded by Mr. Willard. The remaining voice vote was in favor.

FERRO:6 Alton Drive, Block 205, Lot 1.01

Mrs. Walters stated that there is correspondence from legal counsel Mr. Damien Delducca, which she read into the record the letter he sent stating that they were retained to represent Gerald Ferro, they request that this application be heard on December 11, 2014-extended their action date until December 31, 2014. Mrs. Walters stated that they would like to do no further notice. This is notice to the public if any one present.

Motion to accept by Mr. Cupersmith with no further notice; Seconded by Mr. Weil; The remaining voice vote present his evening.

OPENED TO THE PUBLIC

Nathaniel Davis

1708 S Fourth Street

He is here to support his neighbor Gene Lista-who is selling his home. He stated that he is a lawyer and a resident and he received notice and it was clear to him that there was going to be a change made and it was not a photography studio anymore and now it will be a training facility.

A motion was made by Mr. Weil; Seconded by Mr. Cupersmith to adjourn the meeting.

Respectfully submitted:

Valerie S. Marchitto, Board Secretary