

**MINUTES OF A SPECIAL MEETING OF THE PLANNING BOARD
OF THE BOROUGH OF MOUNTAIN LAKES**

April 15, 2021

Chair Martin Kane read the Open Public Remote Meeting Notice published in the Citizen and Daily Record on March 24, 2021: Adequate notice of this meeting was posted with the Borough Clerk on March 25, 2021 and on the Front Door on March 22, 2021 and made available to all those requesting individual notice and paying the required fee.

Start: 7:04 PM

ROLL CALL:

Members Present: Kane, Holliday, Coppola, Shepherd, Stern, Berei, Menard, Russo, Lane and Leininger

Absent: Horan

Also, Present: Attorney, Glenn Kienz, Engineer, Bill Ryden, Environmental Engineer, Peter Black, Traffic Engineer, Joseph Fishinger, Planner, David Novak

REVIEW OF MINUTES: David Shepherd made a motion to approve the minutes of the March 11th Board meeting and Nick Coppola provided the second. The minutes were approved by all eligible members present.

Tom Menard made a motion to approve the minutes of the March 18th Board meeting and David Shepard provided the second. The minutes were approved by all eligible members present.

RESOLUTIONS: none

PUBLIC COMMENT: none

PUBLIC HEARING:

Highview Commercial, LLC	Appl. # 20-273
372 Route 46E	Blk. 2, Lots 2, 5. 5.01
Major Site Plan & Minor Subdivision	Zone B
Setbacks: Front (2), Rear & Side, Pervious Buffer (2), Front Landscape Area (2), Parking Stalls,	
Signs: Area (2), Number, Height (2), Proximity to the Lot Line & Illumination, Accessory Structure Height, Improved Lot Coverage	

Attorney, John DeLaney would be representing Ms. Ellison who is in opposition to this development application. He told the Board there was a potential conflict since he represented the applicant years ago. He reviewed the situation with the applicant's attorney and his client, both were fine with him continuing to represent Ms. Ellison at the hearing. Mr. Kienz asked if there were any conflicts with Board members. Board members did not have any conflicts. Mr. Veteri said they would present the Planner's testimony first. Ms. Cofone would also present the information on the new proposed signage. The rest of the information provided were

answers or responses to public and Board requests. Mr. Veteri introduced Christine Nazzaro-Cofone, a licensed Planner in the state of NJ. John Veteri asked her to present the current list of variances for the Wawa and Hilton Hotel.

Mrs. Cofone said the proposed hotel and gas station were permitted as conditional uses in the B Zone. The applicant needs 10 variances for the Wawa. Five of the variances were for the physical site, particularly along the internal lot line. A 2.5ft pervious buffer was required along the rear and side setback lines. There is one point near the underground storage tanks at 0ft. They need a front yard setback for the required 10ft landscape buffer along the right of way and again there was a small section that was at 0ft. The underground fuel tanks and the air pumps do not meet the 50ft front yard setback, the trash enclosure was at 11.1ft along an irregular rear property line and did not meet the required 20ft setback. Accessory structures can be no more than 20ft in height and the canopy was 25ft tall. The Improved Lot Coverage cannot exceed 80%, the Wawa site was over at 83.2%. Again, she mentioned the two sites combined being under the required 80% coverage or 76.4%. The proposed signage package requires the balance of the 5 variances. The first was for the number of signs allowed. Our Ordinance permits 2 signs. They are proposing 7 signs in total. One sign on the canopy (9.03sqft), 2 for the building, the front facing sign (67.7sqft) and the rear facing sign (36.9sqft), the 2 spanner signs on pumps (39.3sqft each), and the phylon on Route 46 (93.0sqft). The second variance was for sign height. The Route 46 phylon sign was 19.17ft tall where 18ft is permitted. The phylon sign on Fox Hill (35sqft) is 7.83ft tall and the height of the signs on the building are at 21ft. If the building signs were lower, they would conflict with the canopy. The third variance was for exceeding the allowed 40sqft of total signage. The fourth variance is for a setback of 5ft for the proposed Route 46 sign. And the fifth variance was for the multicolored bulbs needed for gas pricing.

The Hilton Hotel requires 8 variances. Parking is required to be 10ft from the front property line. They have 1 space that is 6.6ft from the property line. They also have parking spaces setback 2.5ft along the internal property line. They need a variance for the required 2.5ft pervious coverage along the rear and side property lines. They are at 0ft along the side property line for the cross-access driveway. This lot also requires a front yard landscape area of 10ft from the property line. Again, they only have 2.5ft at one point. They need a variance for the size of the parking stalls on the hotel property. Theirs are 9ft wide and 10ft is required. They are proposing 2 signs on the property, the area of those signs is 87sqft, since only 40sqft is allowed they require a variance. They need a variance for the height of the sign. The sign will be 35.75ft above grade on the building and 18ft is permitted. The last variance was for the setback of the pylon sign. A sign can be no closer than 10ft from the property line and they are proposing the pylon sign be 5ft from that line.

Highview is only seeking bulk variances for this application. They can seek relief under C-1 because the use is permitted in the zone, but you could also apply the C-2 criteria. Under the C-1 criteria the property has a few unique site conditions. They have a 40ft setback from the front property line due to the right of way for Route 46. The internal lot line causes a lot of the variances needed. The 2013 Master Plan encourages redevelopment of the Route 46 corridor and suggests providing a more coordinated and flexible approach to development to make the area more visually attractive. Ms. Cafone stated the cross-access easements would be a benefit and consistent with the Master Plan. The Board could also approve the application if they found the

project would advance one or more of the purposes of the Land Use Law. Ms. Cafone cited criteria G - *To provide sufficient space in appropriate locations for a variety of ... commercial and industrial uses... in order to meet the needs of all New Jersey citizens.* This development thrives on pass by traffic. Master Plan encourages the redevelopment of the Route 46 corridor and greater flexibility in the design standards. The cross-access easements support the efficient use of the land as cited in C-2 criteria M - *To encourage coordination of various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land.*

They are requesting 7 signs on the Wawa property. Since there are two structures on the Wawa site and they have been asked to provide greater pedestrian access to the building so there should be signage on the back of the building. The area of the signs on the building walls are to scale. The building's front facing sign is 3.54% of the wall area of the building. The rear facing sign is 1.93% of the wall area. The new pylon sign is 30ft further back than the current Zeris sign or almost 50ft from the road. They reduced the sign size on Fox Hill Rd as requested since it is their secondary access. As to the height of the building sign, if they lower the sign it conflicts with the canopy. The colored lights are needed to advertise their gas prices as required by law. The Improved Lot Coverage for the whole site is under the total coverage allowed. The lot line through the site creates many of the issues. They could have gerrymandered the line but that would not have been good planning. The irregular lot line in the back causes the need for a rear setback variance for the trash enclosure.

The Hilton Suites Hotel variances are a bit redundant. The need for the Front Yard Setback is caused by one parking space and the landscape area is narrow in one location along the frontage. Both are not substantial detriments. The width of the parking stalls is undersized at the hotel. You do not have a high turnover of vehicles for this use. A stall size of 9ft x 18ft is appropriate. They made changes to the building sign placement by moving it from the short side to the long side of the building. It now faces the Wawa. The relocation helps the neighbors across the highway plus the sign is smaller. There will be a pylon sign perpendicular to Rt 46. This eliminates the glare the neighbors were concerns about. This sign is 5ft rather than 10ft from the property line.

Ms. Cafone concluded there was no substantial detriment to the zoning plan or public good. The Master Plan supports the redevelopment of this area and flexible planning. The current zoning Ordinances do not consider cross-access easements or driveways crossing an interior lot line. The Master Plan encourages business owners to work together and suggests zoning regulations could be revised to revitalize the B zone. They have made many modifications to the development plan. They have introduced rain gardens, reduced the size of the signage, and modified the sign plan. There are betterments with this development plan such as reducing the ILC, move back signage on the highway and the introduction of cross-access easements. The application supports the Borough's development goals and objectives.

Ms. Cafone explained how the hotel signage had been changed based on Board and public feedback. *Sign A* on the site plan would now be located on the front of the building rather than the side facing the highway. It is smaller than originally planned at 37.36sq ft or .324 % of the wall area. The ground sign, on the site plan as *Sign C* is located 5ft of the property. It is 49.91sqft and 18ft tall. The total sign area is 87.27sqft where 40sqft is permitted. The ground sign is now

perpendicular to the highway. The building and pylon sign will use LED lighting that has a dimmable power supply. The beacon will be covered to prevent up lighting and turn off at midnight. They agreed this could be made a condition of approval. In conclusion Ms. Cafone added when the Board contemplates the height of the Wawa open air canopy, an accessory structure at just over 25ft tall, it needs to consider it is open on all 4 sides making it better than a solid building.

Chairmen Kane asked if the Board member and professional had any questions for Ms. Cafone. Tom Menard asked what the height of the Wawa sign was versus the Hilton sign. She answered the Wawa sign was 19.17ft and hotel sign was 18ft. Mr. Menard requested the signs to be the same height. She thought the slight difference would be hard to see. Jeff Berei asked what the revised total signage square footage was for the Wawa. It was a total of 320.20sqft. How far apart are the two pylon signs. They are 123ft apart. Bill Ryden asked about the air pumps. Ms. Cafone said these accessory structures along Fox Hill will function like a parking space with landscaping around them. Mr. Ryden asked does the possible generator and car charging stations at the hotel require variances. Ms. Cafone answered the charging spaces may be because they are along the interior lot line. The generator was not in the setback area. David Novak, the Planner for the Borough, asked about the hotel free standing sign. The Master Plan encourages consistency of design. How would they make the two signs consistent? Ms. Cafone said they would be setback about the same distance and the heights will be similar. They will not be the same colors since the signs will coordinate with their company colors. Glenn Kienz asked if the lighting systems would be the same for both signs. John Veteri responded they would. David Novak asked the size of the existing sign. Ms. Cafone did not know its size. Mr. Menard suggested the signs have the same pedestals or other consistencies.

John DeLaney asked Ms. Cafone if she walked the site. She answered she had been there three times, the last time was a few weeks ago. Doesn't she think they are requesting a lot of variances? She did not when you consider the number that are the result of the interior lot line. Mr. DeLaney asked if you are going to clear the whole site why not develop the site without any variances. Ms. Cafone replied they were repurposing the site in a creative and flexible way. We as Planners are asked to balance competing interests. She felt this was a substantially conforming application. Mr. DeLaney asked had she ever worked on a combination application like this before. She could not say if she did, but she may have. The use was permitted so she did not feel she needed to look back at her previous work. Could the Board deny the application? She thought that would be difficult since this development meets a lot of the planning laid out in the Master Plan and was a permitted use. The Board would have to identify a substantial detriment to their zoning plan. Mr. DeLaney asked the applicants Planner to review the height variances. He asked her if she was concerned about the environmental impact of the gas station. Christine Nazzaro-Cafone answered that was not her area plus a gas station was allowed in this location. Would she reduce the hours of operation? Mr. Veteri answered this was already discussed and they are not willing to do so.

Board took a break and reconvened at 8:40PM.

Upon returning John Veteri said the applicant would work with the Borough to make the signs consistent. He also reminded everyone the Board's professionals accepted the Well Head Protection Report and the Environmental Impact Statement.

The Chair opened the meeting to the public for questions of Ms. Cafone. Dena Muniz, of 7 Rainbow Trail, asked if they could build a fully conforming project. Yes, they could but that was not the standard for granting a variance. Could you build below the maximum limits? Ms. Cafone said, we already are, we are below most of the setback requirements, the coverage for the buildings and total ILC for both sites combined. Ellen Foppes, of 29 Rainbow Trail, asked about environmental issues. Ms. Cafone did not testify on environmental issues. Ed Stroh, of 4 Maple Lane Parsippany, asked if 9' x 18' parking spaces were acceptable based on their experience? Mr. Veteri said yes because of the lower vehicle turnover for this type of use. Did the smaller spaces increase the number of spaces? Yes, and the number of spaces comply with the Borough Ordinances. Angela Tsai, of 9 Lakewood Dr, asked if any of Ms. Cafone's other Wawa applications require variances for signage. Ms. Cafone could not recall any that did not require them. Michael Hollick, of 9 Lakewood Dr, asked what the architectural consideration was for the canopy. Ms. Cafone could not speak to that consideration but felt since it was open all the way around it would not have a substantial detriment to the zone plan. Why was the canopy not built to conform? Would it work any less? She thought the corporate branding could suffer but it would still cover the customers. John Veteri reminded the Board the front complied and only the rear of the canopy did not. Did they look at the signs in the surrounding area? No, she did not. Did they consider the dwellings across Route 46? Yes, they did, this can be seen in the changes made to the signs since the last meeting. Did they consider the cumulative impact of excessive signage? Yes, they did. This was evident when they gave us the percentage of the signage on the buildings. They also consider safety when determining signage. If the signs complied with the 40sqft allowed, would they be ineffective? Ms. Cafone thought they would. Seth Johnston, of 49 Lakewood Dr. Denville, asked the setback variances requested at the back of the property be clarified. The air pumps are along Fox Hill and the trash enclosure is at the back of the property, both require a variance. What was the height of the Wawa sign compared to the Zeris sign? The Zeris sign was 20ft tall by 10ft wide and in the right of way. The Wawa sign will be 19ft tall and not in the right of way. Is the proposed sign brighter than the existing sign and will there be light spillage? The current sign has light spillage the new one will not. How big was the generator for the hotel? What is needed has not been determined. Is there one for Wawa? The Wawa will bring a generator in if needed. Briana Ostrosky, of 8 Rainbow Trail, questioned the location of landscaping along the front lot line. Ms. Cafone answered the landscape package was appropriately designed. You do not want to make the site disappear you want the traveling public to see it. Mark Odenwelder, of 6 Pinewood Lane, asked if Ms. Cafone could review the list of permitted uses. She explained the gas station and hotel were conditionally permitted uses. He asked how the lighting would be controlled. John Veteri responded the hotel has agreed to dim the lights at midnight. In your opinion is a project that needs so many variances a good plan. This is a good project for the community especially based on the Master Plan. Jen Lynch, of 1 Fernwood Trail, said the canopy elevation appeared to be 5ft higher than Route 46. Did Ms. Cafone think the difference would appear higher from the road. She thought the grade would not affect the canopy appearance; it would screen the light spillage. Is there a typical height for canopies? She did not think any canopy would be radically different than what was proposed. Brian Lynch, of 1 Fernwood Trail, asked if 80% coverage was reasonable? It is reasonable for a commercial zone. Mr. Lynch thought most of these types of developments were located at major

intersections and this was not one. Ms. Confone disagreed this was a substantial corner since it was a signaled intersection on a major highway. Joseph Sarnoski, of 4 Ironwood Trail Denville, asked about drainage which Ms. Cafone did not testify about. Tara Baumann, of 51 Lakewood Dr Denville, asked if there was any coordination between the planning and environmental aspects of the project. Ms. Cafone answered they are a development team with each professional bringing their expertise to the project. Bob Grant, of 114 Ridgewood Parkway East Denville, asked if she felt it appropriate to ask for a variance based on branding. She answered the Board can consider it, but they should not make their decision based on it. Did she know of a project that was built even though it was denied? Ms. Cafone explained that would not be permitted. Was the generator an afterthought? No, they have always planned an on-demand generator for the Wawa, and they have added a location for the hotel. He asked about the safety of the electrical charging stations. They are safe and being required at commercial sites and in new housing developments. Did they measure the light intensity across the highway? She pointed out they meet the lighting requirements of the Ordinance. Ryan Gorman, of 37 Rainbow Trail, asked if the pylon sign could be made shorter and smaller. With the heights and installation of both pylon signs at 5ft off the property line would the motoring public be able to see them? Ms. Cafone said they could, however what they are asking for is appropriate for the site. The curve in the road determines the location of the signage. Andy Sadowski, of 29 Highview Road Denville, asked about the variance for the 2.5ft property setback line. Ms. Cafone answered that was the internal lot line that separates the two properties. The 2.5ft was for the one parking space too close to the line. Mr. Sadowski asked about the trees being removed and what they would be replaced with. They will remove some of the existing vegetation and will install new trees and shrubs. Joi Squillace, of 58 Foxcroft Road Rainbow Lakes notice there was fencing along the back of the Zeris property will they be replacing it. Yes, they are planning a 4ft fence on top of a 4ft wall.

Michael Pessolano, a licensed Planner in State of NJ, was representing Ms. Ellison. Jay DeLaney asked Mr. Pessolano to place his thoughts of the application on the record. Michael Pessolano stated most of the signage along Rt 46 was modest and within the regulations. This site is on a corner lot which is good thing for this type of development. There are numerous lakes in the area. This development is in a Tier 3 Wellhead Protection Area. There is no magical number of variances for a development however when you have proposed redevelopment on a large level area, he found it hard to see the request for numerous variances under the C-1 hardship criteria. Particularly the requested variances along the front property line because of the road right-of-way. The DOT has the right to expand the width of Route 46 at any time. The right-of-way is not a hardship. He felt the applicant needed to seek relief under the C-2 criteria. Does the application advance one or more of the purposes of the land use law? Do the benefits out way the detriments? Mr. Pessolano referenced the case of Pullen vs South Plainfield as a good example of a balancing the merit of the whole application verses all its detriments. If you look at the whole application, does it make a better fit in the community. Would the Master Plan be advanced by the application? There is a pervasive public concern about protecting the water quality and increased traffic. The Council did consider updating the zone but did not consider revising the sign Ordinances. The request for sign variances were excessive, especially the signage on the Wawa site. This serves Wawa not the community. The hotel signage was

reconfigured. There is no planning reason to make the hotel sign so tall. Mr. Pessolano thought the light dimming should apply to the gas station as well. The applicant should look at its signage package, especially for the Wawa, and reduce it. He thought the Stormwater Management proposed was not a favorable design. The protection of water quality needs to be considered by the Board. The traffic along Route 46 is currently getting it gas and sandwiches elsewhere. This site will attract new business. The traffic impact should be considered by the Board. Mr. Pessolano said C-2 criteria J - ... *to prevent urban sprawl and degradation of the environment through improper use of land* needs to be considered in the Board's analysis. They should consider the environmental issues and the risks involved in using hazardous substances in water quality protection areas. He felt the site was large, they could eliminate the intensity of the use if the project were reduced in size and some of the variances disappeared. The variances along the cross-access driveway would remain. The signage request was excessive in a zone where so many others have complied. There was no hardship for the applicant they could produce a conforming site. Mr. Pessolano spoke to the traffic study and the new traffic drawn to the area. He evaluated the use of 16 fueling stations and felt the only way to reduce the effects on the water quality was to reduce the number of stations. He thought the Board could control the number of parking spaces. He felt there was not enough effort on the part of the applicant to comply. Jay DeLaney asked Mr. Pessolano if he was recommending the application be denied. Mr. Pessolano said he recommended the Board deny the application as presented. Chairmen Kane asked if there were any questions for Mr. Pessolano. David Novak, the Board Planner, asked if he disagree with the variances listed by Ms. Cafone. He thought there might be another variance related to the signs. Tom Menard asked what he thought was a reasonable request related to Stormwater Management. Mr. Pessolano answered, there should be an 8% reduction for a 100-year storm. 80% was the standard everywhere and would be a reasonable request. John Veteri asked what data Mr. Pessolano was relying on when he speaking about the signs in the area? He was basing it on his observation. Did he hold an Engineering licensing? No, he did not and was not representing himself as one. Mr. Kane opened the meeting to the public for questions of Mr. Pessolano. Several members of the public tried at ask questions and make comments that were not related to the testimony provided so the public portion of the hearing was closed. The Board will continue this hearing on May 20th at 7pm without further notice.

Other Matters –

Committee Reports - none

Martin Kane made a motion to close the meeting at 10:48PM.

Respectfully submitted,

Cynthia Shaw, Secretary