

MINUTES OF THE SPECIAL WORK SESSION MEETING
OF THE
HAWTHORNE ZONING BOARD OF ADJUSTMENT
APRIL 4, 2011

The April 4, special work session meeting of the Hawthorne Zoning Board of Adjustment was called to order at 7:00 p.m. by the Vice Chairman. All members were present with the exception of Messrs. Hallock and Terraglia. Charles C. Collins, Jr., Attorney/Secretary, Michael Kelly representing the Borough Engineer and Joseph H. Burgis, the Borough Planner, were also present.

The Board discussed the procedures for consideration of the request for issuance of subpoenas to Councilmen Sinning and Bertollo and the witness list from the attorney for the Five Corners Association.

The remainder of the work session was taken up with a discussion of the Puddingstone Goffle Holdings ("Seven 11") application and the procedure for bringing it to a close.

Respectfully Submitted,

Charles C. Collins, Jr.

Attorney/Secretary

MINUTES OF THE SPECIAL MEETING OF THE
HAWTHORNE ZONING BOARD OF ADJUSTMENT
APRIL 4, 2011

The April 4, 2011 special public meeting of the Hawthorne Zoning Board of Adjustment was called to order at 7:33 p.m. by Vice Chairman Gallagher. All members were present except Messrs. Hallock and Terraglia. In addition, Charles C. Collins, Jr., Attorney/Secretary, Joseph Burgis, the Borough Planner and Michael Kelly, P.E., representing the Borough Engineer were present.

Mr. Gallagher opened the meeting with the flag salute and announced that notice of the meeting had been published and posted in accordance with the requirements of the Open Public Meetings Act.

Hearings

The only matter to be heard was the continuation of the hearing of the application of **Puddingstone Goffle Holdings, LLC.**, 896 Goffle Road, Lots 10 & 11, Block 267, for interpretation/variance to erect a 7-11 Convenience Store on the site of a former Shell Oil Service Station requiring a use variance and an impervious coverage variance in the R-1 Residence Zone. The applicant was represented by Harold P. Cook, III, Esq., Harold P. Cook, III Esquire and Associates, 886 Belmont Avenue, North Haledon, NJ.

Mr. Collins described the procedure to be followed by the Board to determine whether to issue the subpoenas to Councilmen Bertollo and Sinning requested by Mr. Cook because objections had been raised by the Borough Attorney and Mr. Delia, attorney for the Five Corners Association opposing the application.

Mr. Cook was asked to proceed and he argued the subpoenas should issue because Mr. Delia had raised the point that Ordinance 2013-10, proscribing commercial activities in residential zones between the hours of 11 PM and 7 AM, was applicable to the matter before the Board. Although the applicant takes the position that the property in question is “commercial” or has “commercial qualities” because of previous use variances and is therefore exempt from the ordinance’s application, the adoption of the ordinance was orchestrated by Councilman Sinning who lives directly across the street from the subject property and was clearly directed solely at the proposed convenience store for the personal benefit of the councilman. Accordingly the ordinance is not valid.

Michael Pasquale, Esq., Borough Attorney, appearing on behalf of the two councilmen, argued that the Zoning Board has no authority to adjudge the validity of a Borough ordinance no matter the facts produced. It must consider the ordinance and apply it under the “time of decision” rule and objections would be decided by the Superior Court.

Mr. Delia attacked the contention that “commercial qualities” existed to exempt the property from the limitations of the ordinance citing the use variances were limited to a gasoline service station only. He pointed to a 1984 ordinance of the Borough limiting the hours of gasoline service stations.

When asked why the applicant hadn’t challenged Ordinance 2013-10 within the required 45 day period after its enactment, Mr. Cook said he and Mr. Kauker concluded the ordinance didn’t apply to the subject property and the Council was unaware that use variances had changed the character of the lot.

After discussion, on motion by DeRitter with second by Silvestri, Joustra voting nay, the Board denied the request for subpoenas.

Mr. Delia was than requested to present his witnesses.

The first witness was Albert Maas, 192 Watchung Drive. He testified to his previous experience as a police officer and the congested traffic conditions on Watchung Drive during the commuter hours. He described visits he made to local Seven-11's and the problems witnessed, i.e., noise and litter.

The next witness was Lois Larro, 233 Pasadena Place, who described the development of the area after 1958 retaining its mainly residential character and told of nearby stores where products to be sold by the Seven-11 were readily available. She also described the hours of operation of the former Shell Oil station at the subject location.

The next witness was Donald Keiser, 87 Wayne Court, North Haledon, NJ. He testified that he had worked at the gas station from 1984, first as an employee, then as manager and finally as proprietor. He described the hours of operation for gas pumping as 6 AM to 11 PM weekdays and for car servicing and auto repair as 8 AM to 5 PM. Gas pumping took place 7 days a week whereas auto repair took place for a half day on Saturday and not at all on Sunday. He said there had been at its peak, three vending machines, two outside for soda, water and juice and one inside the building for cigarettes. Later the cigarette machine was discontinued but the sale of cigarettes continued. Soda was also sold by the case and stored under the canopy until the witness was advised by the Borough that this was not permitted. No other non-petroleum related products were offered for sale. Truck traffic by tanker trucks was three times a week for a total time of ninety minutes. Only one employee was on duty after 9 PM and no activity occurred after midnight.

A short recess was taken between 9:25 and 9:39.

The next witness was Sgt. Mark Michalski of the Hawthorne Police Department. He testified that he is assigned to the Department's plainclothes unit dealing with "quality of life" issues. Shown an "activity log" of reported events at

the Seven-11 at 100 Goffle Road, he commented on complaints of suspicious persons loitering, urinating in public, narcotics arrests, etc. He said Goffle Road and Lincoln Avenue are considered corridors for illegal drug trafficking and some of the products sold at Seven-11 stores could be used for drug use. He expressed an opinion that the number of "quality of life" complaints noted in the five pages of logs shown him is directly related to 24 hour operation. He called the Seven-11 location "convenient" for drug activity.

The next witness was Suzanne Korpics, 242 Pasadena Place. She described the neighborhood as "quiet" but confirmed the traffic congestion photos offered earlier.

The final witness was Michael Mariani, 890 Goffle Road, abutting the proposed site to the south. He expressed concern for the safety of his wife returning home late at night if there were drug deals and public urination taking place behind the hedge lining his driveway. He stated the canopy didn't bother him so its removal wouldn't be important and he was never bothered by the gas station because the brunt of its activity was during the daylight hours when he and his wife were at work. He concluded by worrying about rats from the county park invading the proposed Seven-11 looking for garbage.

At this point Mr. Gallagher advised the attorneys that the testimony of Mr. Troast for the opponents and Mr. Burgis for the Board would have to await another night and May 16th was indicated to be that date.

Mr. Collins advised the attorneys that he would advise them by letter the dates for submission of memos on the issue of abandonment.

On motion by Joustra with second by DeRitter the matter was carried to May 16, 2011.

There being no further business to come before the Board on motion by Silvestri with second by Joustra the special public meeting of the Hawthorne Zoning Board of Adjustment for April 4, 2011 was adjourned at 10:41 p.m.

Respectfully Submitted,

Charles C. Collins, Jr.

Attorney/Secretary