

MINUTES OF THE WORK SESSION MEETING OF THE
HAWTHORNE ZONING BOARD OF ADJUSTMENT
MARCH 21, 2011

The March 21, 2011, work session meeting of the Hawthorne Zoning Board of Adjustment was called to order at 7:00 p.m. by the Chairman. All members were present with the exception of Mr. Silvestri. Charles C. Collins, Jr., Attorney/Secretary, Michael Kelly representing the Borough Engineer and Joseph H. Burgis, the Borough Planner, were also present.

The Board reviewed the bills of the Hawthorne Press and the minutes of the February 28, 2011 meeting.

Mr. Collins advised that the application of Glen Pilkington was to be carried at the request of his attorney to the April 18 hearing date. He described a letter from a photography studio seeking permission to utilize a portion of the second floor of 312 Lafayette Avenue and was instructed to have the appropriate application made to come before the Board.

He further advised the Board that the special meeting for consideration of the Puddingstone Goffle Holdings ("Seven 11") application scheduled for March 28 had to be changed because of the unavailability of Mr. Kelly and the applicant's attorney. The pertinent parties would be canvassed during tonight's meeting to find an acceptable date.

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 REGULAR MEETING OF THE
HAWTHORNE ZONING BOARD OF ADJUSTMENT
MARCH 21, 2011**

The March 21, 2011 regular public meeting of the Hawthorne Zoning Board of Adjustment was called to order at 7:32 p.m. by Chairman Hallock. All members were present except Mr. Silvestri. 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. Hallock 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.

Bills

On motion by DeRitter with second by Terraglia, payment of the bills of the Hawthorne Press for three publications, \$38.22, \$23.40 and \$34.32, was approved.

Minutes

On motion by Terraglia with second by Joustra, Duffy and Hallock abstaining, the Minutes of the meetings, work session and regular, for February 28, 2011 were for approved.

Hearings

The Chairman then called for the continued hearing of the application of **Edward and Joanne Green**, 104 Sixth Avenue, Lot 7, Block 172. Mr. Gallagher assumed the chair pro tem after Hallock's recusal. The applicants appeared described their revised application to erect an above-ground pool in the back yard of a residential property in the R-2 Residence Zone. The proposed side yard variance had been eliminated by reducing the size of the pool. Rear yard variance with minimum permitted distance from principal structure relief were still

requested. The applicants indicated a smaller pool is not available. Mr. Schroter questioned the safety of the pool so close to the railing of the rear yard deck and this concern was joined by Mr. Chamberlin. After discussion, motion by Joustra with second by Terraglia, Duffy and Hallock abstaining and Schroter voting nay, the application was approved.

The next and final 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. Messrs. Hallock and Terraglia recused themselves and Mr. Chamberlin became eligible to vote.

There followed a discussion of available dates for a special meeting for this application and it was agreed to schedule Monday, April 4, 2011 to begin at 7:00 p.m. for that purpose.

Mr. Cook recalled Michael F. Kauker, Kauker and Kauker, 356 Franklin Avenue, Wyckoff, New Jersey, a Professional Planner, for cross examination regarding his previous testimony by James Delia, Esq., Wells, Jaworski and Liebman, Esqs., attorney for the Five Corners Association, a group of neighbors opposing the application.

The cross examination took up the major part of the meeting night ending after 10:00 p.m. In his questioning, Mr. Delia pointed out that the application and notice of hearing said nothing about Seven 11 or about 24 hour operation. He asked about the expected activities if the application were to be approved, traffic, consumption of food and beverages outside the building, garbage cleanup, noise and other conditions generated by the use.

He asked about the history of the use of the property and both sides made extensive use of the specific language of the two zoning board resolutions dealing with the gasoline service station use.

He stressed the contention that the permitted non-residential use was limited to a gasoline service station while Mr. Kauker countered with his contention that convenience store activity is a necessary element of modern service station use.

Questions were raised whether the site is particularly suited to a convenience store use and Mr. Delia cited several nearby competing stores to rebut the contention that the use is appropriate at that location.

Mr. Delia raised the issue of Ordinance 2013-10 adopted in April of 2010 limiting hours of commercial activity in residential zones. The Planner argued that regulation of hours do not rise to the level of use variance quality and because of the original non-conforming use enhanced by variances as time passed, this property should be considered "equal" to a commercial use.

Other questioning raised the issue of impact on quality of life and abandonment of the non-conforming status, with Mr. Delia arguing that the propriety of the proposed use should be measured against uses permitted in the residential zone not the prior service station use.

On redirect, Mr. Cook raised the issue of the timing of ordinance 2013-10 and its introduction by Garret Sinning, a Councilman living across the street from the site in question.

He led Mr. Kauker to say that no mention of the hours of operation appeared in the notice or application because the ordinance didn't exist at that time.

A question was raised about the efficacy of the 1993 resolution permitting the canopy when there were only four affirmative votes but it was suggested that this was the memorializing resolution which didn't require the super majority.

The hearing was opened to the public and Mary Frezzolini, 237 Lafayette Avenue asked about the impact of the Historic site designation of Goffle Brook County Park. Mr. Kauker didn't see any.

Mary Mahon, 64 Emeline Drive questioned the problem of night noises through open windows.

At this point the hearing concluded and on motion by DeRitter with second by Joustra, the matter was carried to April 4, 2011 for either continued hearing.

There being no further business to come before the Board on motion by Joustra with second by Chamberlin the regular public meeting of the Hawthorne Zoning Board of Adjustment for March 21, 2011 was adjourned at 10:46 p.m.

Respectfully Submitted,

Charles C. Collins, Jr.

Attorney/Secretary