

MINUTES OF THE WORK SESSION MEETING OF THE
HAWTHORNE ZONING BOARD OF ADJUSTMENT
FEBRUARY 28, 2011

The February 28, 2011, work session meeting of the Hawthorne Zoning Board of Adjustment was called to order at 7:10 p.m. by the Vice Chairman. All members were present with the exception of Messrs. Duffy, Hallock and Silvestri. Charles C. Collins, Jr., Attorney/Secretary, Michael Kelly representing the Borough Engineer and Joseph H. Burgis, the Borough Planner, were also present.

The whole work session was taken up with a discussion of the Puddingstone Goffle Holdings (“Seven 11”) application.

The minutes for the January 17, 2011 meetings was reviewed.

Respectfully Submitted,

Charles C. Collins, Jr.

Attorney/Secretary

MINUTES OF THE REGULAR MEETING OF THE
HAWTHORNE ZONING BOARD OF ADJUSTMENT
FEBRUARY 28, 2011

The February 28, 2011 regular public meeting of the Hawthorne Zoning Board of Adjustment was called to order at 7:40 p.m. by Vice Chairman Gallagher. All members were present except Messrs. Duffy, Hallock and 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. 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.

He then called for the hearing of the application of **Edward and Joanne Green**, 104 Sixth Avenue, Lot 7, Block 172. The applicants appeared and were sworn. They described their application as one to erect an above-ground pool in the back yard of a residential property in the R-2 Residence Zone. Side and rear yard variances are sought together with minimum permitted distance from principal structure. The Board questioned the size of the proposed pool and its orientation. Mr. Collins explained that the only hardship created was caused by the size of the pool; variances could probably be avoided by reducing the size and changing the orientation. The Board urged the applicants to reconsider their project and return with a revised plan at the next meeting. On motion by Terraglia with second by Joustra the matter was carried to the March 21, 2011 meeting date.

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. Mr. Terraglia recused himself and Mr. Chamberlin became eligible to vote. Mr. Cook recalled Joseph Medici, Realtor and Appraiser, to amplify his prior testimony on sales of two residential properties abutting gasoline service stations, 59 and 75 Pasadena Place. Mr. Medici pointed out that 59 Pasadena Place had been listed for sale at \$425,000.00 and sold for \$420,000.00 while 75 Pasadena Place had been listed for sale at \$269,000.00 and sold for \$289,000.00. He argued that these sales showed proximity to a gasoline service station does not adversely affect value.

Antoinette Brienza, a realtor, 308 Voorhis Avenue, Wyckoff, New Jersey and Mary Mahon, 64 Emeline Drive, Hawthorne, New Jersey attempted to get Yes or No answers to questions but were unsuccessful. Medici concluded by saying That the only defect on the subject property is the canopy which will be removed for the convenience store project.

A short recess was taken at 8:46 PM and the meeting resumed at 8:54 PM.

The next and final witness for the applicant was Michael F. Kauker, Kauker and Kauker, 356 Franklin Avenue, Wyckoff, New Jersey, a Professional Planner. Mr. Kauker testified that he had attended every meeting and listened to the testimony. He described the application as two-pronged. First, for an "interpretation" under NJSA 40:55D-70(b) that the gas station use authorized by resolution of the Board in 1969 "embraces" both gas station and convenience store use. Second, for a use variance in the event that "interpretation" argument failed.

In support of the "interpretation" argument he offered three reasons: (1) the *de minimis* sale to soda and cigarettes over the years, (2) A definition in the Moskowitz book of Development definitions that states the named "automobile service station" is probably a misnomer because "many" gas-only stations sell

convenience food and articles as an “accessory” use and (3) two resolutions of the Board in the past have authorized the merger of gas stations and mini-marts in the B-2 Neighborhood Commercial Zone.

He argued that the 1969 resolution authorized the “commercial” use of the property in question thereby endowing it with the status of the B-1 zone.

Referring to the 1993 resolution of the Board when Shell Oil renovated the property and erected the present canopy, he sees the stated finding that the property is particularly suited for gas station use as enhancing the “commercial” character of the property.

He then argued that a Seven 11 is “significantly less intensive” than a gasoline service station even with 24 hour operation which a gasoline service station doesn’t enjoy.

He opined that the Passaic County approval effectively trumped and traffic concerns and went on to describe the following as advantages:

- The convenience store would be cleaner;
- It is “more compatible” with a residential area;
- Provides convenient shopping for the neighborhood;
- Canopy will be removed;
- Proposed addition to the south end of the building is an added buffer;
- Decrease in building coverage;
- Present intrusive parking angles to be corrected/removed;
- Environmental cleanup;
- Reduction of lighting;
- Improved site circulation and pedestrian access; and
- 10% increase in landscaping.

He adopts the findings of the Board in its resolutions of 1969 and 1993 supporting the grant of the variances given.

When asked for compliance with the negative criteria required he cited:

- Better use for the community and neighborhood;
- Closer co-existence with residential use;
- More peace and quiet for residents;
- Headlights won't be visible;
- Auto door closing won't be audible; and
- No realistic prospect of loitering.

He admitted a negative impact from 24 hour operation but feels that is mitigated by the advantages just stated.

He finds no substantial impairment to the zone plan and ordinance and no harm to the public good.

He did admit another business without 24 hour operation could be installed there.

Mr. Cook will submit a brief on the issue of abandonment and Mr. Delia will respond. All to be completed and available for the April 18, 2011 meeting.

The matter will be carried to March 21 for either continued hearing or rescheduling.

Minutes On motion by DeRitter with second by Joustra, the minutes of the January 17, 2011 work and regular sessions, were approved.

There being no further business to come before the Board on motion by DeRitter with second by Joustra the regular public meeting of the Hawthorne Zoning Board of Adjustment for February 28, 2011 was adjourned at 10:17 PM.

Respectfully Submitted,

Charles C. Collins, Jr.

Attorney/Secretary