

**TOWNSHIP OF MANSFIELD
ZONING BOARD OF ADJUSTMENT**

Monday, October 1, 2012

Work Session

The regular work session meeting of the Mansfield Township Zoning Board held on the above shown date was called to order at 7:06 p.m. by **William Tahirak** with the following in attendance: Robert Harrison, John Kampo, James Soden, William Tahirak, Richard Tarantino, Jeanne Zalegowski and Michelle L. Gable, Secretary. Randy Allen, Ralph Wainwright and Alfred Vardalis were absent.

The Zoning Board and Professional's reviewed the following agenda item:

Application Number ZB12-03UV: MLC Developers – Block 3, Lot 6.08:

Application for Use Variance to permit the operation of a liquor store at Mansfield Square located at 3224 Route 206 in the C-2 Highway Commercial Zoning District.

Mark Malinowski said they are proposing a liquor store within an existing strip store in Mansfield Square; it is not a specified use in the zoning so they are seeking a use variance. They did not supply anything other than the application and their intent. For checklist items, completeness generally development plans are required, proof that any conditions resulting from prior approvals on the property have been fulfilled, submission to the Township Environmental Commission and also submission of Environmental Assessment report are typical checklist items, which they will need to ask for a waiver for, which he does not have any engineering concerns regarding waiving those items. They just need to provide some testimony with regards to the use and the impacts of the site.

Al Litwornia said they want testimony on how big the store is going to be and as far as numbers of trips go, they are only talking about one trip per thousand square foot in the morning and about four trips per thousand square foot at night. They also need testimony on how they are going to handle loading and unloading as it can be noisy.

Lou Glass said Mark and Al are looking at it from site plan but he would like to advise the Board about all the commercial zones in the Township and why the use is allowed in one zone and not in another. What he is reviewing is not in application because they are not aware of what he is going to say on this issue but it is complete as far as he is concerned.

Solicitor Petrone said he would be concerned with the number of parking spaces. **Mr. Litwornia** said there might be a question if there was a problem but there are so many parking spaces he does not see any problems because there is ample parking.

There being no further discussion a motion was offered by **John Kampo** and duly second by **Richard Tarantino** to close the work session at 7:12 P.M. Motion carried.

Regular Meeting

The regular meeting of the Mansfield Township Zoning Board was called to order by **Chairman Tahirak** at 7:30 P.M. on the above shown date followed by the Flag Salute and the following opening statement:

The notice requirements provided for in the 'Open Public Meetings Act' have been satisfied. Notice of this meeting was properly given in the annual notice, which was adopted by the Mansfield Township Zoning Board on January 4, 2012. Said resolution was published in the Burlington County Times on January 9, 2012, e-mailed to the Burlington County Times, Trenton Times and Register News, filed with the Clerk of the Township of Mansfield, posted on the official bulletin board at the Municipal Complex, filed with the members of this body, and mailed to each person who has requested copies of the regular meeting schedule and who has prepaid any charge fixed for such service. All the mailing, posting and filing having been accomplished on February 1, 2012.

Those in attendance were as follows:

Board Members:

Robert Harrison, John Kampo, James Soden, William Tahirak, Richard Tarantino, Ralph Wainwright, Jeanne Zalegowski and Michelle L. Gable, Secretary. Randy Allen and Alfred Vardalis were absent.

Professional Staff:

Charles Petrone, Solicitor; Louis Glass, Planner; Mark Malinowski, Engineer; Al Litwornia, Traffic Consultant.

PUBLIC COMMENTS:

Chairman Tahirak opened the public comment's portion of the meeting.

Hearing no comments a motion was offered by **John Kampo** and duly second by **Ralph Wainwright** to close the public portion of this meeting. Motion carried.

MATTERS TO BE CONSIDERED BY THE BOARD:

COMPLETENESS & PUBLIC HEARING:

Application Number ZB12-03UV: MLC Developers – Block 3, Lot 6.08:

Chairman Tahirak introduced this Application for Use Variance to permit the operation of a liquor store at Mansfield Square located at 3224 Route 206 in the C-2 Highway Commercial Zoning District.

COMPLETENESS:

A motion was offered by **John Kampo** and duly second by **Richard Tarantino** to deem **Application Number ZB12-03UV: MLC Developers – Block 3, Lot 6.08** complete. Motion carried.

TESTIMONY:

Patrick McAndrew was present representing the applicant and asked that Charles Keintz and Lou Ference be sworn in to give testimony on this application.

Solicitor Petrone swore in Charles Keintz and Lou Ference to give testimony on this application.

Mr. McAndrew said this is a little bit unusual. They are asking for a use variance to allow basically a 4,200 square foot liquor store in this retail building. He said in the C-1 Zone, which is neighborhood commercial you are allowed to have the sale of liquor and beer and they are in the C-2 Zone, which is highway commercial on Route 206 and it does not use the same language there but it does allow general retail including a tavern but it does not include the language of liquor and beer so they are here for a use variance. This project has been reviewed and underway for a number of years, which was mostly before the planning. He then asked Mr. Keintz to describe the overall project. **Mr. Keintz** said they have 64,000 square feet approved and they have built 2 buildings, 16,000 for retail, 16,000 for office. They have Virtua hospital in the back, Medford Pediatric and another small office. In the front, they have eleven stores, 16,000 square feet and they have Bagelissimo, Bella Mia, Dry Cleaner, Nail place and the liquor store is the next thing. **Mr. McAndrew** asked in terms of what the planning board approved it is three medical buildings and one retail building. **Mr. Keintz** confirmed it was three medical and one retail. **Mr. McAndrew** asked the medical on the left side there are 151 total parking spaces associated with that. **Mr. Keintz** said yes. **Mr. McAndrew** asked then the medical in the back is a total of about 68 spaces. **Mr. Keintz** said yes. **Mr. McAndrew** asked then the retail, which is up front, is about 89 total spaces. **Mr. Keintz** said yes. **Mr. McAndrew** asked there are cross easements so people could park wherever they want on the overall site. **Mr. Keintz** said yes. **Mr. McAndrew** said the Board has to look at the liquor store here in terms of why here, what makes this ideally suited for a liquor store. **Mr. Keintz** said it is not in a neighborhood, it is not clogged up into a residential area it is on a highway, it is easy to get to, he believes it is the most desirable place in the Township, it is plenty of parking and easy access off of Route 206 and this is the design of it. **Mr. McAndrew** asked the other uses that are in this shopping area, the retail building, are they complimentary to this. **Mr. Keintz** said without a doubt, with the food and Bella Mia its perfect. **Mr. McAndrew** asked are there some uses like a bagel shop that would be busy in the morning when the liquor store is not busy. **Mr. Keintz** said Bagelissimo's hours are 6 a.m. to 4 p.m. and the Pizza place opens at 10:00 a.m. so they all have different peaks that

work together. **Mr. McAndrew** asked how big is the space the liquor store will take. **Mr. Keintz** said a little over 4,100, it is a total of three stores. **Mr. McAndrew** asked the number of employees and hours of operation. **Mr. Keintz** said three and the hours would be 10:00 a.m. to 10:00 p.m. and he thinks Sunday the law allows 1:00 p.m. to 6:00 p.m. **Mr. McAndrew** asked about deliveries. **Mr. Keintz** said they have a loading zone out back so it is designed and it has already been approved. **Mr. McAndrew** asked if he thinks this use will help move the center along. **Mr. Keintz** said it is going to help everybody, the center and the community. **Mr. McAndrew** asked about signage. **Mr. Keintz** said it is box letters like what are already there. **Mr. McAndrew** asked when you add all these factors together do you feel this site is particularly well suited for this use. **Mr. Keintz** said 100%. **Mr. McAndrew** asked if the Board were to grant this use variance and distinguish this are there any negative impacts of anything. **Mr. Keintz** said not that he is aware of or that he can think of.

PROFESSIONAL COMMENTS:

Mark Malinowski, Engineer referred to his report dated September 27, 2012. They described the use variance, they indicated the completeness items, which the application is being deemed complete, they do have some review comments on the second page of the report asking the applicant to provide testimony for:

1. Support for granting the requested variance some information has been provided.
2. The square footage of the proposed liquor store has been provided.
3. The number of employees is three.
4. Hours of operation has been provided.
5. The parking, loading accommodations and number of deliveries per day, which are two (2) deliveries during normal business hours
6. Applicant provided information on the signage.
7. Trash and recycling disposal is 95% recyclable cardboard and they will provide another disposal container for recycling.
8. General description of the uses of the surrounding area. The surrounding area is mostly commercial and some homes.
9. Recommended some exhibits depicting the area to help the Board in their decision.
10. Generally this type of application is subject to site plan review, however, since this involves an existing building the applicant has indicated that there are no additional construction proposed and no extension of on-site parking improvements therefore that requirement would not be applicable. **Mr. McAndrew** said in terms of the site plan review issue it was designed for retail about three or four years ago they are not off the bond and they are still working on site. **Mr. Malinowski** said you are not done working on the site but the improvements for that specific retail use are complete. **Mr. McAndrew** said yes.

Al Litwornia, Traffic Consultant referred to his report dated September 27, 2012. As a result of the testimony it shows there will only be two a.m. peak hour trips and six p.m. peak hour trips at the most so it is not going to be an intensive use. He asked the time of deliveries and **Mr. Keintz** responded they would be before 4:00 p.m. They looked at the parking and feel there should be no parking problem. He asked the number of employees, which is three. The applicant went over the trash enclosure and asked that as a condition of approval that the fire chief to look at it to determine if there is a need for any other trash enclosures after six months of operation and did not know if any additional lighting was needed. **Mr. McAndrew** said the site was approved for retail use and the lighting should be sufficient and there is some back lighting on the back doors for security and access so it should work fine.

Lou Glass, Planner stated that Mansfield Township has three commercial zoning districts and it is typical of what they find in many other townships. They follow the same pattern that is from low density commercial to high density commercial. The first zone in Mansfield Township is really for the Village of Columbus, it is called the C-1 Zone Neighborhood Commercial, which is very low intensity. The second zone is C-2 Highway Commercial, which is the highest intensity in the Township, which is located along Route 130, Route 206 and for a short ways along Route 68 where it intersects with Route 206. The last commercial zone is called C-3 Office/Residential, which is an extension of the Village of Columbus to allow mostly office buildings and a mixture of small low intensity commercial uses in the Township. When you go to the C-2 Highway district, which encompasses the applicants' development it gives you a total list of uses. As the applicant's attorney mentioned in the C-1 zone for the Village of Columbus it allows beer and liquor sales, which is unusual in a small village commercial zone. The reason probably is because we have the Columbus Inne and the Corner House. So what they did was make sure those were grandfathered in as permitted use because normally you would not find that at a small village setting. When you get to the C-2 district on Route 206 you have 29 different commercial uses listed, which means they are the highest intensity and beer and liquor sales are not mentioned by name, however one of the uses reads as follows: Retail stores, including supermarkets, bakeries and confectionery shops. It could be interpreted that retail stores was an all encompassing phrase to bring into account the fact that this is the highest intensity commercial district up and down Route 206 and anything that is a retail use would be allowed in there without going into a renumeration of every single item otherwise you would have three or four pages with a hundred different uses listed. He believes they could have been all consolidated into the phrase retail stores. However, the Zoning Officer chose not to go that route and ruled that it is not allowed in that particular zone. This is where he mentioned there could be some confusion as to how do you interpret the word retail stores are permitted whereas beer and liquor is permitted in Columbus, so she chose to make the ruling and bring it before the Board. It could have been brought to the Board as an interpretation but it was not. So, with that as background he has to indicate the fact that they have done a lot of work in other Township's and they create various zones from the low intensity to the high intensity for commercial and in their other Township's that they advise liquor stores are a common use in the highway commercial zones. So Mansfield Township would fit that pattern in this particular case. He brings that up because of our history of having advised other Township's as to where liquor stores are allowed and their advice is always been through the years that they belong in a highway commercial district. He also mentioned that Country Walk was allowed as part of the planned development zone, it is not in a separate commercial zone by itself but there was an addendum to the approval that allows that shopping center to have all the uses that are permitted in the C-2 Zone.

BOARD COMMENTS

John Kampo was concerned with how the delivery trucks will exit the facility as turning left onto Route 206 is very dangerous and had a concern with the delivery truck existing through the nearby development. **Lou Ference** said the latest deliveries would be 4:00 p.m. noting that most deliveries happen between the time he opens and 2:00 p.m. They do have another entrance on Route 206 that they can make a left out of also besides White Pine Road. He said he cannot speak for the truckers but they could tell the tenant that the trucks would have to use the Route 206 entrance. He also noted his average deliveries a week are about 4 to 6 spread over Monday thru Saturday.

James Soden noted there are no left turns out of White Pine Road onto Route 206 and it was then suggested the road could be signed no truck traffic by Mr. Litwornia.

Chairman Tahirak asked the intensity of the store. **Mr. Keintz** said it is going to be like the place in Fieldsboro across from Acme, it is going to be a regular liquor store not a discount store.

PUBLIC HEARING:

Judy Harrison, Mansfield Road West addressed signage and said they would be disregarded anyway. Additionally, she thinks it would behoove the Board to address the traffic situation on Route 206 because this is going to be an ongoing problem, which is not going to get better it is going to get worse. Route 130 is unique because it has an island and would allow for a slow down lane, which Route 206 does not have. There are signs up for no left turns onto White Pine and Route 206 and they are disregarded. **Mr. Litwornia** said the State has jurisdiction and basically he would like to have excel and decel lanes for all these type driveways but the State says they can just use the shoulder for it instead. He feels the State has been rather lax in some of their reviews on Township projects.

Hearing no further comments the public hearing was closed on this application.

SOLICITOR'S COMMENTS:

Solicitor Petrone said the motion would be to grant the use variance as requested by the applicant together with the waivers identified in the review letter of Stout & Caldwell by Mr. Malinowski in particular the site plan waiver because this is an existing site without any new construction for the proposed use with the understanding that the fire marshal will be requested to review the trash enclosures situation six (6) months after opening to make sure that the existing trash enclosure are acceptable for the amount of new cardboard generated trash or whether a new enclosure or larger enclosure will be required. Also, deliveries will be limited to the hours of 10:00 a.m. to 4:00 p.m. and the owner/operator of the liquor store will be encouraged to encourage his delivery people to exit away from the neighboring residential development. Everything the applicant has testified to this evening will be incorporated into the resolution that is the 10 to 10 Monday thru Saturday and 1 to 6 Sunday, it is 4,100 square feet, parking is adequate, the lighting is sufficient for the needs of the liquor store in conjunction with all the other retail uses at the center. It was noted that Sunday sales would be in conjunction with the Township ordinance.

MOTION FOR APPROVAL:

A motion was offered by **Richard Tarantino** and duly second by **James Soden** to grant a use variance to permit a liquor store and as stated above to **Application Number ZB12-03UV: MLC Developers – Block 3, Lot 6.08** located at 3224 Route 206 in the C-2 Highway Commercial Zoning District. The motion carried on a roll call vote taken as follows:

Aye: Harrison, Kampo, Soden, Tarantino, Wainwright, Zalegowski, Tahirak
Naye: None
Absent: Allen, Vardalis

RESOLUTION NUMBER 2012-10-11

(A copy of the foregoing Resolution is spread on the following pages.)

MEMORIALIZATION OF RESOLUTION:

Resolution Number 2012-04-10: Granting **Application Number ZB11-11UV: Brian & Jennifer Noble, Block 51.02, Lot 11.01** Use Variance approval to operate a silk screening business in the garage area which is attached to the residence located at 2320 Old York Road in the C-3 Office Residential & R-1 Residential Zoning Districts.

A motion was offered by **John Kampo** and duly second by **Ralph Wainwright** to memorialize **Resolution Number 2012-04-10**. The motion carried on a roll call vote taken as follows:

Aye: Kampo, Soden, Tarantino, Wainwright, Zalegowski, Tahirak
Naye: None
Not Voting: Harrison
Absent: Allen, Vardalis

APPROVAL OF MINUTES:

A motion was offered by **James Soden** and duly second by **Ralph Wainwright** to approve the minutes of April 2, 2012 regular meeting. Motion carried.

CORRESPONDENCE:

Litwornia Associates

1. Date: September 27, 2012
Re: MLC Developers – Mansfield Square
Use Variance – Liquor Store
Block 3, Lot 6.08 – 3224 Route 206

Stout & Caldwell Engineers

2. Date: September 27, 2012
Re: MLC Developers – Mansfield Square
Use Variance – Liquor Store
Block 3, Lot 6.08 – 3224 Route 206

NJPO

Re: The New Jersey Planner
Date: March/April 2012
Date: May/June 2012
Date: July/August 2012

BILL LIST:

Louis Glass

Noble March 2012 \$ 163.00
Wesley United Methodist March 2012 \$ 294.00

Litwornia Associates

Wesley United Methodist Inv.#11893 \$ 345.00
Tuskarora Inv.#11860 \$ 358.75

Raymond, Coleman & Heinold, LLP

Noble Inv.#12776 \$ 112.00
McVay Inv.#10811 \$ 42.00
Byberry Inv.#12700 \$ 756.00
Zoning Board (Litigation) Inv.#12928 \$ 390.00
Zoning Board (Litigation) Inv.#13170 \$ 70.00
Wesley United Methodist Inv.#12960 \$1,115.00
ZB – Litigation – Wesley Inv.#12817 \$ 420.00
ZB – Litigation – Wesley Inv.#12928 \$ 390.00
ZB – Litigation – Wesley Inv.#13066 \$ 761.00
ZB – Litigation – Wesley Inv.#13236 \$ 70.00
ZB – Litigation – Wesley Inv.#13415 \$ 84.00
ZB Inv.#13292 \$ 70.00

Stout & Caldwell Engineers

Byberry MZB-12-001-0002 \$ 512.50
McVay MZB-10-004-0001 \$ 281.25
McVay MZB-10-004-0001 \$ 300.00
Wesley United Methodist MZB-11-008-0006 \$ 668.75
Wesley United Methodist MZB-11-008-0004 \$ 406.75

WESLEY CHURCH:

Chairman Tahirak asked if there was an update regarding the Wesley Church matter. **Solicitor Petrone** said there is something scheduled coming up in front of the Judge but he is not sure of the exact date and stated the Church feels the revised plans, which they had worked out with a couple members of the Board is as far as they will go. He said the Judge can make the determination that the Board was arbitrary, capricious and unreasonable and its actions with respect to the application be it the first application or maybe he will see fit to ask the church to go with its revised plans if the church is willing to and added that when a Judge overturns a decision of the Board it is not a car blanch approval. He is still going to require the applicant to satisfy the professional review letters.

NEXT SCHEDULED MEETING:

It was noted that the next scheduled meeting will be held on Monday, November 5, 2012.

MOTION FOR ADJOURNMENT:

There being no further business, a motion was offered by **John Kampo** and duly second by **Jeannie Zalegowski** to adjourn the meeting at 8:11 p.m. Motion carried.

Respectfully submitted,

Michelle L. Gable, Secretary

December 3, 2012
Approval