

**TOWNSHIP OF FRANKLIN
ZONING BOARD OF ADJUSTMENT
COUNTY OF SOMERSET, NEW JERSEY**

**VIRTUAL MEETING
June 4, 2020**

This Regular Meeting of the Township of Franklin Zoning Board of Adjustment was held virtually at 475 DeMott Lane, Somerset, New Jersey and was called to order by Chairman Thomas at 7:30 p.m. The Sunshine Law was read, and the roll was called as follows:

PRESENT: Anthony Caldwell, Laura Graumann, Alan Rich, Gary Rosenthal, Robert Shepherd, Joel Reiss, Cheryl Bethea, Richard Procanik, Kunal Lakhia, and Chairman Thomas

ABSENT: Bruce McCracken

ALSO PRESENT: Daniel Lagana, Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

HEARINGS:

- **DIAMOND INVESTORS & BUILDERS, LLC / ZBA-19-00030**

“C” Variance in which the Applicant was looking to build a 2-story single family dwelling at 61 Juliet Avenue, Somerset; Block 160, Lot 1.01 in an R-10 Zone - **CARRIED TO JULY 2, 2020 – with further notification required.**

DL - 7/31/2020

- **ELION ACQ., LLC / ZBA-19-00043**

D(1) Use Variance, “C” Variances, Minor Subdivision & Site Plan in which the Applicant was subdividing the property into two lots and will be constructing two warehouses – 1) Building 1 with 425,250 sq. ft. and 2) Building 2 with 118,800 sq. ft. at 47 Veronica Avenue and 74 & 102 Bennetts Lane; Somerset; Block 88.02, Lots 13, 25, 26, 71, 72, with portions of the property in the M-2, R-40, (A) Agricultural and (O-P) Office Professional Zones - **CARRIED TO JULY 02, 2020 – with further notification needed.**

DL - 7/31/2020

Chairman Thomas then indicated to the listening public this statement – For those wishing to participate via Virtual WebEx Meeting, the event address for attendees will be posted on the Township’s website at:

<https://www.franklintwpnj.org/Home/Components/Calendar/Event/15599/2193>

For those wishing to listen via telephone the call-in number is: +1-408-418-9388 and the access code is: 129 106 6395

- **1340 HAMILTON STREET, LLC / ZBA-20-00004**

Mr. Kenneth Pape, Esq., Attorney, appeared before the Board on behalf of the Applicant, 1340 Hamilton Street, LLC. He indicated that the Applicant had already received approvals for Site Plan and Use Variance and that the Applicant was now requesting a modification of a condition of approval that was imposed by the Board on the Applicant in 2015. He indicated that the Applicant would like to operate the service station 24-hours/7 days a week at 1340 Hamilton Street, Somerset; Block 80, Lot 1.01, in an M-2 Zone – **CARRIED FROM MAY 7, 2020 – with further notification required.**

Mr. Pape indicated that the center had been granted approval to operate the 7-11 convenience store for 24 hours/7 days a week in 2017 and had been operating very successfully for 2-1/2 years since December of 2017. He then went on to state that the 25% of lighting captured under the fuel canopy, which was deemed necessary for safety, had been accomplished. Mr. Paper then indicated that people coming to the convenience center and coming into the 7-11 store were also attempting to purchase fuel and were complaining that that portion of the site was not open. The Applicant, at this time, would like to operate the service station 24-hours/7 days a week.

Mr. Felix Bruselovsky, Managing Member/Applicant, 1340 Hamilton Street, LLC, came forward and was sworn in. Mr. Bruselovsky indicated that the center had been a success since its opening in December of 2017. He noted that the 7-11 operation was a 24-hour operation and that their clientele also come to the site assuming that the fuel service area was also a 24/7 operation. He described the frustration of the customers who beep their horns in the middle of the night to try to get the attention of the 7-11 employees, and then give them attitude about not having the fuel service available as well. That evening, since the center had been successfully operating for 2-1/2 years, they felt it was particularly important that they be able to open the gasoline portion of the operation to service those customers. Mr. Bruselovsky then told the Board that they operate over 30 gas stations throughout the State of New Jersey, with 10 locations partnered with 7-11. He noted that they were in the process of getting multiple locations approved at that time, with many operating both services 24/7. He also told the Board that the two operations help each other by bolstering sales of the other operation when customers come into the center for just one (1) service. Mr. Bruselovsky then spoke of the security systems in place, stating that all facilities were equipped with 24-hour surveillance with cameras throughout the entire site, including the subject property. He then told the Board that they had not had any security issues at the site since they opened the site in December, 2017.

Mr. James W. Higgins, Professional Planner, came forward and was sworn in. The Board accepted his qualifications. He told the Board that he had visited the site on many occasions,

including at night so he could see the levels of lighting there. Mr. Higgins indicated that they were seeking relief from the conditions of the approval that included the fuel pumping area be closed between the hours of 11:00 p.m. and 5:00 p. m., that the lighting be reduced to 25% under the canopy during those hours as well as the price signs for the gasoline station be turned off during those hours. He stated that he understood the reasons the restrictions were placed upon the original approval because it was an unknown situation in terms of what the impacts would be for the use on the surrounding properties, particularly the residential properties across the street on Hamilton Street. Since the operation had been doing business for 2-1/2 years, he indicated that it was clear that the site did not have any substantial negative impact on the residential properties across Hamilton Street. He told the Board that for those reasons, he did not think there would be any substantial negative impacts to those residential properties if the fueling portion operated during the hours of 11:00 p.m. and 5:00 a.m. Mr. Higgins indicated that the primary impact would be the lighting of the canopy, but that the lighting was clearly directed downward and did not spill off the site even if it were visible from off the site. He testified that he did not believe it would negatively impact the residential properties across the street. Mr. Higgins then addressed the signage for the gasoline station, noting that there were two price signs, with one located on Veronica Avenue as far away from Hamilton Street as it could be, and the other located on Hamilton Street and oriented to be perpendicular to Hamilton Street so that the residences across the street would be looking at the side of the sign or a bleak view of the sign. Mr. Higgins testified that he didn't think there was any substantial negative impacts from the operation of the site for 24/7, and would be less impactful than the noise generated from customers beeping their horns to try and get fueling services from the hours of 11:00 p.m. to 5:00 a.m. He then added further that the customers on the site already patronizing the 7-11 would be on the site already to use the fueling services.

Chairman Thomas made mention that he remembered that the testimony given by the Applicant at the original hearing was that the site was not equipped to service the 18-wheeler tractor trailers. He added that he could see that being an impact on the use if the pumps were made available to the larger trucks. Mr. Pape indicated that Mr. Bruselovsky had made it clear in his prior testimony that his facilities were only equipped with a 1-inch pump and 1-inch nozzle and a low-flow pump on the diesel pumps.

Mr. Bruselovsky indicated that their service stations, including the subject property, were not servicing the tractor trailers and were not set up to do so; however their neighbors at the Delta service station do service tractor trailers and have a stand alone dispenser/pump that was specifically set up to cater to the tractor trailers with a high speed diesel pump on the side of the building. He added that the radius to enter and exit their location could not accommodate tractor trailers

Vice Chair Graumann then asked how many fuel servicing customers would they anticipate having during the period of 11:00 p.m. and 5:00 a.m. Mr. Bruselovsky indicated that he could not give an exact number, but that having up to ten (10) people asking for fueling services per hour during that time frame would be a lot for that location.

Mr. Reiss opened a discussion about his frustrations of applicants receiving approvals and then coming back at a later date asking for relief of conditions imposed. Board Attorney, Mr. Lagana, then told the Board that it was completely within the Applicant's rights to come back before the Board for this type of relief. A discussion ensued, with Mr. Pape reminding the

Board members that they requested 24/7 operation hours for the entire site at Use Variance hearing as well as a Site Plan hearing and indicated that they reserved the right to come back after the operation had been running for a while with support to show that there would be no substantial negative impacts in doing so and based upon the time and experience of the operation of the site.

Ms. Bethea then asked whether the LED lighting would be lit to 100% for the overnight hours as well as the canopy lighting if the fueling operation was approved for 24/7. Mr. Pape indicated that the parking lot lights would be reduced overnight to 50% and that the canopy lights would be illuminated to a safe level and somewhere between 75% and 100%. He reiterated that the canopy lighting would be the only lighting lit at the higher levels during the overnight hours.

Ms. Bethea then asked if the Applicant or their representatives had been to the area to speak to the residents regarding the lighting issues for overnight hours. Mr. Higgins stated that he didn't usually speak to residents, particularly with the situation that currently existed, but that he did observe the site and rode around the neighborhood to view the site from across the street to see if there was anything visible. He indicated that there was nothing visible except from the residents on Hamilton Street, but with no light spillage coming off the site.

Mr. Bruselovsky stated that along Hamilton Street and Veronica Avenue, they had berms so that the light from headlights were not going past the site and disturbing the neighbors, with everything being contained on the site. A discussion ensued

Mr. Shepherd asked if there would be attendants at the gas pumps during the extended hours, and Mr. Bruselovsky answered in the affirmative stating that the attendant would be an employee of a company that was operated by himself and not affiliated with 7-11. Mr. Shepherd then asked how many customers were creating problems with the gas station not being opened overnight. Mr. Bruselovsky indicated that the 7-11 employees are having to deal with multiple incidents per night

Board Attorney, Mr. Lagana, referred to Ms. Bethea's questioning regarding canopy lighting, indicating that there did not seem to be any specific amount of lighting that would need to be provided during those extended overnight hours. He then asked the Chairman if there were any standards for the acceptable lighting percentage for fueling canopies. Mr. Lagana also stated that he had been involved in several applications where the lighting was subject to a 6-month review period, at the end of such time could be adjusted, if necessary. Mr. Pape stated that they would be agreeable to those terms, and Chairman Thomas indicated that they could consider that as a condition of any approval.

Chairman Thomas then asked if there were any questions/comments from the public, and Mr. Healey then unmuted the public to see if there was anyone wishing to speak.

Mr. John Borders, 1361 Hamilton Street, Somerset, NJ, came forward. Mr. Borders indicated that he lived directly across the street from the site. He stated that he was disappointed that Mr. Higgins, the Planner, did not speak with the residents because whenever the sun goes down, he said that the headlights from the cars on the site point directly into his front, bay window. He added that the community did not mind the 7-11 open 24/7 but did not want the extra traffic throughout the night hours that the gasoline pumps would attract. The resident

then mentioned that there were six (6) other gas stations within the next intersection that were already open 24/7 that increased the traffic there.

Mr. Grecco stated that he lived across the street and was continually having to pick up gloves/masks and has headlights shining into his home at all hours of the night. He vehemently expressed his opposition against this operation and the extension of the fuel pump hours.

Mrs. Sandra Grundfest, 19 Hill Avenue, Somerset, NJ came forward and was sworn in. Mrs. Grundfest indicated that there was a lot of noise coming from the site and how busy the intersection of Hamilton Street and Veronica Avenue had become in the past two (2) years. She added that it is very busy and noisy all day long in that area, so to have additional services added overnight, there would be no relief when residents in the area want to rest. She suggested that the police drive by and monitor the situation with people honking horns and harassing the 7-11 employees when the gas station portion was closed late at night and not reward bad behavior. Mrs. Grundfest then asked who residents should call to make complaints regarding the site.

Mr. Jerry Grundfest, 19 Hill Avenue, Somerset, NJ, came forward and was sworn in. Mr. Grundfest thanked the Board for their service and for limiting the nighttime hours of the site. He stated that the 7-11 has deliveries almost every day by a semi-truck with a freezer running and the noise from the idling when the deliveries are being dropped off is disturbing to the residents.

Mr. John Borders, 1361 Hamilton Street, Somerset, NJ, added additional testimony by saying that he was concerned about property values due to the 7-11 being right there.

Ms. Carol Peterson, 12 Lake Avenue, Somerset, NJ, came forward and was sworn in. Ms. Peterson complained about the lighting on the site, particularly in the wintertime, because she said they set the property up so high. Secondly, she indicated that gas is frequently spilled and gas fumes were wafting into her home from the site. She also indicated that the traffic flow in and out of the site was not meeting the standards the Board set up for the Applicant through the County. Ms. Peterson also stated that many motorists use the nearby residential streets for u-turns and that many trucks enter the site. She then added that there was no other business in the area that operate past 10-11 p.m. at night and the noise from the site is already bothersome to the residents in the area. She also added that she has experienced trucks idling on the site from 5:00 a.m. to 7:00 a.m., which prompted her dog to start barking and waking her up. Ms. Peterson reminded the Board that 7-11 used to stand for a convenience store that was open from 7 a.m. to 11 a.m. and not the 24/7 operation that it has become.

Chairman Thomas then reminded the residential callers that the night's hearing was not a forum to close the 7-11's operation down overnight because they did receive approval for a 24/7 operation. He reiterated that the hearing was to discuss the Applicant's request to allow the fuel pumping area to be allowed to be open 24/7 on the site.

Mr. Vincent Vignuolo, 1347 Hamilton Street, Somerset, NJ, came forward and was sworn in. Mr. Vignuolo indicated that the password had not been given to log into the hearing, some Board members were not muted during the public comment section and some of their

comments were not nice, and finally, he indicated that his quality of life has suffered since the site has become operational. He stated that his bedroom was in line with the gas pumps and the lights come right through his window along with any associated noise from the site all throughout the night. Mr. Vignuolo added that he can no longer keep his windows open due to the noise and the gas fumes when the wind is blowing in his direction. He then noted that the berm put in place to block the light is now covered with dead trees and the gas price signs are currently on all night long. Mr. Vignuolo also stated that there had also been an increase in garbage strewn about the area.

Hearing no one coming forward, Chairman Thomas then closed the meeting to the public.

Mr. Pape indicated that they had recorded all the comments and concerns from the Board and residents and asked that they be given an opportunity to investigate the property. He asked the Board for their indulgence to carry the matter to the next available hearing date. A discussion ensued among the Board members regarding the residents' expectation that the Applicant should have engaged with the community and asked questions about their experiences living near the subject site. Mr. Reiss then reminded the Board that they put caps on the hours of operation because it was in a residential area and that they were concerned about the quality of life of the residents.

Ms. Bethea asked whether this was the only 7-11 and gas station operations located in New Jersey that was placed in a residential neighborhood and did the Applicant have these same issues at his other locations. Mr. Bruselovsky indicated that they have several other similar operations located in residential areas. Mr. Reiss asked if they could get the addresses of those other locations so that they could inspect them, and Mr. Pape answered in the affirmative.

It was agreed by the Board and Applicant to carry the hearing - **CARRIED TO JULY 2, 2020 – with further notification required.**

For those wishing to participate via Virtual WebEx Meeting, the event address for attendees will be posted on the Township's website at: <https://www.franklintwpnj.org/Home/Components/Calendar/Event/15599/2193>. For those wishing to listen via telephone the call-in number is: +1-408-418-9388 and the access code is: 129 106 6395

WORK SESSION/NEW BUSINESS:

There was no work session or new business discussed.

MEETING ADJOURNED:

A motion was made to adjourn the meeting at 9:00 p.m. and the motion was seconded. All were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
August 3, 2020