

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

**REGULAR MEETING
April 7, 2016**

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

PRESENT: Raymond Betterbid, Alan Rich, Robert Shepherd, Gary Rosenthal, Joel Reiss, Cheryl Bergailo and Chairman Thomas

ABSENT: Laura Graumann, Donald Johnson, Bruce McCracken and Anthony Caldwell

ALSO PRESENT: Patrick Bradshaw, Board Attorney, Mark Healey, Planning Director, and Vincent Dominach, Senior Zoning Officer

MINUTES:

- **Regular Meeting – December 17, 2015**

Mr. Shepherd made a motion to approve the Minutes as submitted. Mr. Rich seconded the motion and the roll was called as follows:

FOR: Mr. Rich, Mr. Rosenthal, Mr. Reiss, Ms. Bergailo and Chairman Thomas

AGAINST: None

- **Regular Meeting – February 4, 2016**

Mr. Betterbid made a motion to approve the Minutes as submitted. Mr. Rosenthal seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Mr. Rosenthal, Ms. Bergailo and Chairman Thomas

AGAINST: None

RESOLUTIONS:

- **Montauk / ZBA-16-00001**

Mr. Betterbid made a motion to approve the Resolution as submitted. Mr. Rosenthal seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Mr. Rosenthal, Ms. Bergailo and Chairman Thomas

AGAINST: None

- **DeSapio / ZBA-15-00028**

Mr. Betterbid made a motion to approve the Resolution as submitted. Mr. Rosenthal seconded the motion and the roll was called as follows:

FOR: Mr. Betterbid, Mr. Rosenthal, Ms. Bergailo and Chairman Thomas

AGAINST: None

- **NY SMSA, LP / ZBA-15-00026**

Mr. Shepherd made a motion to approve the Resolution as submitted. Mr. Rosenthal seconded the motion and the roll was called as follows:

FOR: Mr. Shepherd, Mr. Rosenthal, Ms. Bergailo and Chairman Thomas

AGAINST: None

DISCUSSION:

Vouchers:

- **Patrick Bradshaw – April Retainer - \$865.00**

Mr. Shepherd made a motion to approve the Vouchers as submitted. Mr. Betterbid seconded the motion and all were in favor.

Extension of Time:

- **CAAM Development Group, Inc. / ZBA-14-00005**

Seeing that Mr. Peter U. Lanfrit, Esq., Attorney, was not present at the hearing for this matter, the Board decided to table the matter until the first meeting in May, 2016 – **CARRIED TO MAY 5, 2016 – with no further notification required.**

HEARINGS:

- **TABATCHNICK FINE FOODS, INC. / ZBA-15-00018**

Mr. Francis P. Linnus, Esq., Attorney, appeared before the Board on behalf of the Applicant, Tabatchnick Fine Foods, Inc. Site Plan w/Variations in which the Applicant was proposing an addition at 1230 Hamilton Street, Somerset; Block 92, Lots 5-48 in the R-10 Zone.

Mr. Dominach's Zoning report indicated that the Applicant was proposing an addition to their food processing building in the R-10 Zone and that the following variances were required:

1. D-1: Use Variance: Food processing is not permitted in the R-10 Zone.
2. D-6: Building Height, where 38.5 ft. is proposed and 35 ft. is permitted.
3. Front yard setback (Hamilton Street): 40 ft. minimum and 25 ft. is proposed for the addition.
4. Front yard setback (Codington): 25 ft. minimum and 15 ft. proposed for the refrigeration units.
5. Lot coverage: 20% maximum and 41.8% proposed
6. Impervious coverage: 30% maximum and 71.8% proposed
7. Sign: One sign on building permitted and two proposed.

Mr. Linnus stated that they were there that evening for a Use Variance Application to construct a 31,188 sq. ft. expansion of Tabatchnick's food processing facility. He added that they were also seeking Preliminary and Final Site Plan approval and other variance relief. He described the property as a 2.84-acre site located on the southwesterly corner of Hamilton Street's intersection with Wheeler Place, within the R-10 zoning district. Additionally, Mr. Linnus indicated that the site also fronts Codington Avenue, which runs parallel with Hamilton Street. He noted that the site was currently developed with a 28, 220 sq. ft. food processing business on the easterly portion of the site while the westerly portion of the site is undeveloped and forested. Mr. Linnus went on to further state that the site received Use Variance and Site Plan approval in 1997 to expand the non-conforming manufacturing use through a 13,090 sq. ft. addition to the building along with variances with respect to lot coverage and impervious coverage. Mr. Linnus told the Board that in 2007, the Site that was before them that evening was also the subject of a Use Variance and Site Plan approval for Anthony's Plumbing, Heating & Cooling, Inc. for the construction of a two-story office and warehouse plumbing, heating and cooling facility that also included variances with respect to lot coverage and impervious coverage. He then indicated that the approval was not constructed, and Tabatchnick subsequently purchased the adjoining property for the sole and express purpose of expanding its food processing facility on the property.

Ms. Rita Tabatchnick, President of Tabatchnick Fine Foods, Inc., came forward and was sworn in. Ms. Tabatchnick entered into the record as Exhibit A-1, a series of slides that was shown during the hearing and proceeded to review them with the Board. In the series of slides, Ms. Tabatchnick went through the history of Tabatchnick Fine Foods, Inc. She indicated that they were unable to include their peanut butter line of foods because they didn't have the space, but rented space in a plant in Georgia in 2007, near where the peanuts are grown. She then detailed a product line called RUTF, which were ready to use therapeutic foods given to malnourished children that they want to bring the manufacturing of to the New Jersey facility. She indicated that she was seeking to expand the facility here in Somerset to accommodate that product line because the plant in Georgia was not large enough to fulfill demand for the products. She noted that Tabatchnick Fine Foods, Inc. was only one of three national companies that were certified by the USDA to make the RUTF products. Ms. Tabatchnick discussed how these products were distributed and through what organizations. She then moved on to the description of the operations of the present facility here in Franklin Township. She detailed the number of employees (between 31-35 currently that include salespeople that live in multiple states outside New Jersey). She indicated that the cooks come in at 1:00 a.m. and stay still 9:00 a.m., with the manufacturing employees' shift starting at 7:00 a.m. till 3:00 p.m. and office staff staying till 5:00 p.m. She stated that the parking has not been an issue, especially since they have a lot of local people (approximately 20%) who work there and they walk to work. She indicated that they also have many legacy employees (parents/children) who carpool together, including herself and her children who live with her. She then discussed deliveries, including types of vehicles and frequency, noting that their hours run between 7:00 a.m. and 3:00 p.m. and include tractor trailers as well as smaller vehicles. She stated that she expected 4-5 trucks per day just for the peanut butter manufacturing expansion being proposed with 19 additional employees over two shifts of operation as detailed earlier.

Ms. Tabatchnick then discussed the staff reports, agreeing to an Engineering comment to fulfill punch list items back from the 1997 approval. She also indicated that in regard to the request to add curbing, she stated that there were trees planted there with picnic tables under them for employee use, but would take them down if the Board felt they wanted her to include the requested curbing there. She also agreed to pay affordable housing fees as requested in Mr. Healey's Planning report.

Ms. Tabatchnick then discussed why the expansion here in Franklin Township was important to Tabatchnick Fine Foods, Inc., Franklin Township and the world. She described building a new facility, with state of the art equipment, in order to increase capacity while running operations only four (4) days per week and one day to clean the machinery, with no hours of operation on the weekend. She also testified that she would not have to run three (3) shifts a day, six (6) days a week like was done presently in the rental space in Georgia.

Mr. Reiss inquired as to additional shifts/days of operation as demand increases for the peanut butter products. Ms. Tabatchnick indicated that an additional shift might be necessary, or she could put in an additional machine to run during the same hours that were testified to.

Mr. Healey mentioned that one of the requested variances was for a refrigerator unit. Ms. Tabatchnick indicated that the other witnesses would be able to testify to the placement of the unit. Mr. Healey then asked what measures would be employed at the new facility to reduce odors coming from the plant since there had been some complaints of odors from surrounding residents in regard to their present operation. She indicated that the building would be state of

the art and would contain all odors and then described the production process as very fast heating, cooling and packaging.

Mr. Oliver Wilhelm, Architect and Principal of Cybul, Cybul Wilhelm Architects, came forward and was sworn in. The Board accepted his qualifications. Mr. Wilhelm discussed the manufacturing process and how the building was set up with efficient use of space in both the manufacturing and warehousing portions of the operations. He testified that the loading docks were located such that there would be adequate turning radius for tractor trailers to maneuver through the site without disturbing the flow of traffic on Hamilton Street. Mr. Wilhelm utilized exhibits during his testimony that were an enlarged version of the plan submitted to the Board. He showed the next exhibit that was the detail for the second floor portion of the building to accommodate the office staff for the operation as well as a small roof deck and storage areas for both raw product and finished product. The next item discussed were the elevations for the expansion. He marked into evidence as Exhibit A-2, a rendering of the south elevation on Codrington Avenue, which was not included in the submission package. He then marked into evidence as Exhibit A-3, which was a 3D aerial rendering of the existing building as well as the expansion, with parking in front of the building, fenced in loading area. Mr. Wilhelm then entered into the record as Exhibit A-4, which was a rendering of the western elevation entranceway that was a glassed in two-story with small lobby and an elevator and small staircase going up to the second floor. He noted that the rendering also included a small monument sign at the street level. He also then discussed the landscaping that was incorporated into the design to minimize any perception of a large building. He then entered into the record as Exhibit A-5, which was a rendering of the loading dock area. He moved on to a discussion regarding building materials, noting that his firm was heavily involved in the food manufacturing business. Mr. Wilhelm indicated that insulated metal panel construction does two things that included an attractive exterior product, providing the insulation properties necessary to maintain the proper temperature inside the building while also providing an easily washable product that can be painted any color.

Mr. Shepherd asked for the color choices for the exterior, and Mr. Wilhelm indicated that they were going to utilize a beige color.

Mr. Wilhelm discussed the height of the building, noting that zoning in the Township allowed for 35 ft. and the Applicant was asking for a variance for 38.6 ft. He stated that the machinery to produce the peanut butter product required additional height. Mr. Wilhelm indicated that he could take 6 inches off the second floor office ceiling side and be able to create a 38 ft. height. Mr. Healey opened a discussion regarding the need to exceed the maximum height, and Mr. Wilhelm stated that he needed the extra height to accommodate the required machinery for the peanut butter processing. He then discussed the need for a lot coverage variance, noting that it was dependent upon the manufacturing needs and the quantities necessary to produce the means to produce the product. Mr. Wilhelm then discussed the proposed signs and their potential locations on the site.

Utilizing Exhibit A-4, Mr. Wilhelm described the proposed signs, with one going on the street side of the awning for the entranceway on Hamilton Street and one on the other side of the awning as well as a monument sign that was facing east/west on Hamilton Street. Mr. Wilhelm testified that the proposed sign would be architecturally in scale with the size of the building.

Mr. Wilhelm then addressed Mr. Healey's comment in his March 15, 2016 Planning report regarding the justification of the placement of the refrigerator units in the unimproved front yard facing a portion of Codington Avenue. He indicated that they were placed in proximity to where they were required to work the most efficiently and effectively as possible. Mr. Wilhelm stated that he would make sure that the site and architectural plans conformed with one another regarding the placement of the building-mounted lights.

A discussion ensued regarding the term "manufactured for Tabatchnick Foods" and Ms. Tabatchnick explained that was because she was renting manufacturing space in Georgia and that they were manufacturing the peanut butter product for Tabatchnick Foods.

Ms. Bergailo opened a discussion regarding materials used to construct the awnings. Mr. Wilhelm stated that it was made of metal with screen-printed lettering with the name "Tabatchnick Fine Foods" illuminated by building mounted lights. He indicated that the monument sign would be ground lit. He stated that the existing building was beige in color and would coordinate with the color of the new building.

Mr. F. Mitchell Ardman, Engineer employed with The Reynolds Group, came forward and was sworn in. The Board accepted his qualifications. Mr. Ardman entered into the record as Exhibit A-6, which was the colorized version of the dimension plan with the Landscaping Plan superimposed on it. Mr. Ardman then discussed the proposal for the site, locating the existing driveway and front parking area along Hamilton Street. He then detailed the vacant, wooded site on the westerly side of the property that was purchased by the Applicant in order to accommodate the expansion of their manufacturing business. Mr. Ardman then located the residential properties close to the site and where the paved Codington Street ended and where the paper street portion continued. He discussed the courtyard design within the L-shaped building that he felt would be a positive for the site plan and for the neighborhood as it would enclose the parking, loading and tractor trailer functions where it presently was open to Codington Avenue residential neighbors. He then described the location of the loadings docks and dumpster and expanded parking area to the west side of the property. Mr. Ardman then detailed the location of the new driveway off of Hamilton Street and the inclusion of 18 new parking spaces(a few being ADA accessible) as well as the new main entrance and glass tower portion would be located at the northwest corner of the building.

Mr. Ardman then compared the variances previously granted (in 1997 and the 2007 Anthony's Plumbing approval) to those that were being requested that evening. He utilized the M-2 standards for comparison as they were located in an R-10 residential zone.

Mr. Shepherd discussed the setbacks to the refrigeration units with Mr. Ardman for clarification.

Mr. Ardman then addressed the need for s lot coverage variance, noting that they could not utilize the existing warehouse since the products needed to be kept separate. He indicated that it was a similar situation for the impervious coverage variance requested. He included the balance that was necessary to make sure they provided enough parking for the employees as well that impacted the additional impervious coverage on the site.

Mr. Ardman then addressed the Township staff reports, first addressing the Engineer's report dated April 5, 2016 by stating that they would be able to comply with all items listed on the

report. As part of the submission, Mr. Ardman indicated that he included a storm water management plan, first in August of 2015 and then updated in January of 2016. He detailed the storm water plan, which included a bio-retention basin, which he stated would provide better storm water management than what was presently on the property today. Mr. Ardman testified that the D&R Canal Commission had signed off on the storm water management plan as well.

Mr. Ardman then discussed the issue of curbing and stated that they wanted to preserve as many trees as possible on the site and would work with Township staff to their satisfaction. He then discussed the outside agencies' status, indicating that soil erosion control, County and D&R have all signed off, but final approval was pending based upon the outcome of the hearing. He testified that the Sewerage Authority, Fire Safety Bureau, Traffic Safety, and Somerset County were all fine with the plan. Mr. Ardman indicated that he would be able to comply with all comments in Mr. Healey's Planning report. He testified that he submitted and Environmental Impact Statement to make part of the record. He added that the design of the building was going to serve as buffer to cut off any light spillage onto neighboring properties and there would be no need for building mounted lighting on Codington Avenue. He also didn't see any concern for any noise pollution from the manufacturing process and would be contained within the courtyard area.

Mr. Shepherd asked if there would be any lighting on the property on the Wheeler Avenue side of the building. Mr. Ardman indicated that there was no need for lighting on that side of the building either.

Ms. Bergailo questioned the paving of Codington Avenue, and Mr. Ardman indicated that they would be paving that street out to the location that was requested.

Mr. Ardman felt that the impervious coverage variance could be granted based upon the storm water management plan that was going to be put in place.

The Traffic Impact Study was discussed, and Mr. Healey stated that he didn't see any negative comments in the Somerset County report regarding Hamilton Street, which was a County roadway.

Mr. Kevin O'Brien, Planner, came forward and was sworn in. The Board accepted his qualifications. He spoke about the peanut butter product being manufactured for malnourished children as being a positive, promoting the good worldwide, not just locally. He indicated it would bring 19 new manufacturing jobs to the area and spend their hard earned money here in Somerset, NJ. He discussed the variance relief that was granted to Tabatchnick back in 1997 and recognized the proximity to transportation and meeting the USDA requirements for plant cleanliness, which justified the relief back then. He quoted directly from the 1997 Resolution that stated "this was an appropriate use for the site" and "the granting of the use variance, bulk variances and site plan approval will not alter the general character of the neighborhood." He then went on to state that in 2007, Anthony's Plumbing, Heating & Cooling came to the Board for approval for a warehouse as well as an office and was granted an approval, but did not get constructed due to the downturn in the economy at the time. He indicated, however, that the Board's findings in the 2007 approval indicated that "this is a good transitional use between residential and commercial uses which exist in the area", that "the site is particularly suited for the proposed use" and there is "no detrimental impact on the neighborhood and that traffic to and from the site will be minimal." Also noted in the 2007 Resolution was that "the application

can be done in a manner which will minimize any negative impact.” Mr. O’Brien indicated that the site continues to be close to transportation and was the same type of operation as what was previously approved with a warehouse and office space in that they were proposing a manufacturing facility and office space. He added that the proposed extensive Landscaping Plan as well as the design of the new building would screen the operations. Mr. O’Brien then discussed the following goals listed in the 2006 Master Plan; encourage commercial and industrial development and spoke about access to transportation networks, locating major employment and traffic drawing uses in areas where they will least impact residential neighborhoods and goes on to speak about adequate community facilities and those that serve the public good. He then delved into the Municipal Land Use Law (MLUL) that addresses the proposed Application. Mr. O’Brien testified that he did not believe that there would be any negative impacts from the expansion of the facility. On the contrary, he stated he felt there would be a benefit to the surrounding area with the inclusion of the storm water management facility planned with this project. He went through the three-pronged process for the project to meet the burden of proof, including special reasons that he believed were demonstrated by conforming to the MLUL in items e, f, g and m. Mr. O’Brien indicated that it provided manufacturing jobs in an area that was particularly suited to it.

Mr. Shepherd opened a discussion of how close other industrial uses were to the proposed site. Mr. O’Brien detailed the locations of other industrial sites in the area. Mr. Shepherd then asked the Board Attorney, Patrick Bradshaw, if the Board would be allowed to limit the manufacturing of the particular RUTF product that they were utilizing as part of the positive criteria in providing nutritional support worldwide to those in need. Mr. Bradshaw indicated that the Board could give its direction upon a vote and he would do his best to include such language in the Resolution. Mr. Linnus offered that they could include language that would also include the manufacture of food products/nutritional supplements that would be in line with the same need that the peanut butter product was providing since they do not know what might happen in the future and what other nutritional food product might also be beneficial for the same need. A discussion ensued among the Board.

Chairman Thomas made a motion to open to the public. Seeing that there appears to be no general public present and no one coming forward, the meeting was closed to the public for comment.

Mr. Linnus then made his closing statements and asked for the Use Variance and other variances as well as the Site Plan approval.

Mr. Shepherd made a motion to approve the Use Variance and Site Plan with Variances, subject to the following conditions. The building and the landscaping, when constructed, shall be in accordance with the designs and the examples shown in the documents at the hearing and that the building will be painted a beige color that would also be used on the existing building to obtain consistency. Additionally, the Applicant should work with Township staff regarding the issue with the curbing and the trees on Codington Avenue and Wheeler Place. Seeing that the expansion would be a positive use due to the nature of the product proposed to be made there and would not create an odor or other disturbance due to the method of manufacture and would serve as a good light manufacturing use in accordance with the zone plan. Mr. Betterbid seconded the motion and roll was called as follows:

FOR: Mr. Betterbid, Mr. Rich, Mr. Shepherd, Mr. Rosenthal, Mr. Reiss, Ms. Bergailo
and Chairman Thomas

AGAINST: None

WORKSESSION/NEW BUSINESS

There was no new business

MEETING ADJOURNED

A motion was made to adjourn the meeting at 9:04 p.m. and the motion was seconded. All were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
May 12, 2016