

Minutes of the Zoning Board Public Meeting of Wednesday, August 27, 2014

Present are Mr. Falco, Mrs. Gotell, Mr. Phillips, Mr. Phelps, Mr. Byock

Also present are Marc Leckstein, Esq., Leckstein & Leckstein, Anthony Rodriguez, T&M Associates and Tim Gillen, CME Associates

Absent are Mr. Bucco, Mrs. Anderson and Mrs. Friedman

New Business, V 14-107/Gephardt, Applicant and Property Owner: Margaret and Michael Gephardt, 893 Brookside Avenue, Block 350, Lot 2, Variance request to maintain 12 ft. round above ground pool 6 ft. and 7 ft. to side property lines where 10 ft. minimum is required, and 6 ft. to rear property line where 10 ft. minimum is required, and reaffirm variance condition of 1.1 ft. +/- to side property line of existing home, where 7 ft. minimum required, and Lot Area of 2,500 sq. ft. where 5,000 sq. ft. minimum required, on property located in the R 50 single family residential zone.

Mr. Leckstein marks as Exhibit A-1 a survey undated but stamped in July 24, 2014, prepared by Caulfield Associates, LLP, with the existing pool drawn in. Marked as Exhibit A-2 are a series of eight photographs depicting the property.

Mr. Leckstein swears in Mr. And Mrs. Michael Gephardt, the applicants. Mr. Gephardt states they are asking for variances for a pool they put in; they were not aware they needed permits, although they had permits for a roof and fence. They were told the pool must be at least 10 ft. from the side lines and rear lines, and they don't have that.

Mr. Leckstein swears in the Board's professionals.

Mr. Leckstein verifies they need three variances, two sides and the rear.

Answering Mr. Phelps, Mr. Gephardt says he was not able to purchase any additional property; he could not even attempt to purchase property because everyone owns a house there.

Mr. Falco moves to approve the application, seconded by Mr. Byock.

Yes: Mr. Falco, Mrs. Gotell, Mr. Phillips, Mr. Phelps, Mr. Byock

No: None

Abstain: None

New Business, V14-101/Calvary Community Church, (formerly Missions Beyond Borders Corp.), Applicant: Calvary Community Church, Property Owner: Pamela Faber and Andrew Piscatelli, 111 Highway 35 at County Road, Block 227, Lot 1, Block 231, Lot 1, Use Variance application to permit Calvary Community Church to occupy two units in a retail shopping center in the "LI" (Light Industrial) Zone, where churches or houses of worship are not a permitted use.

Mr. Leckstein swears in the Board's professionals.

Mr. Leckstein marks as Exhibit B-1 a CME letter dated July 14, 2014, revised August 11, 2014, marked Exhibit B-2 is a T&M letter dated August 7, 2014, marked as Exhibit A-1 is a site plan prepared by E.J. Hoder Associates dated October 10, 1985; marked as Exhibit A-2 is a hand drawn exhibit of the first and second floors of the proposed church, undated; marked as Exhibit A-3 is a weekly calendar of events; marked as Exhibit A-4 is the planner's report, prepared by Michael K. Mueller, Mueller & Associates, dated August 19, 2014; marked as Exhibit A-5 is a narrative prepared by Raul Nassar.

Joseph Pasqueletta, Esq., attorney for the applicant, states he is here with his client, Calvary Community Church, formerly known as Missions Beyond Borders Corp., for a use variance to conduct a church from Commerce Plaza.

Mr. Pasquelletta introduces his client, Raul Nassar, who is sworn in by Mr. Leckstein, as is the applicant's planner, licensed in the State of New Jersey, Michael Mueller.

Mr. Pasqueletta says the site is a five acre tract, consisting of 19,000 sq. ft. of commercial rental space. There are two buildings, T shaped; the back building use to house Fun Time America, but is now vacant. In the front part of the site is the portion his client intends to rent for the church. There is the Buy Rite Liquors on the front side, facing the Highway, and a nail salon. His client intends to occupy the space formerly occupied by Absolute Fitness. The site is basically vacant except for those two tenants, and he hopes his client will enhance the site.

Calvary Chapel is a Christian faith nonevangelical, nondenominational congregation. They are the birth child of Calvary Chapel of Old Bridge, a world wide organization that has over 1,000 churches in the United States and in many other countries. They represent a fellowship of churches to study the Word of God chapter by chapter, verse by verse. The testimony tonight will be geared to the issues raised by the Board's professionals.

Under questioning by Mr. Pasquelletta, Pastor Raul says his title is Pastor of Calvary Community Church, and his duties include overseeing the congregation in a spiritual aspect as well as physical needs, teaching and instructing the World of God, and handling the various ministries in the church. In Old Bridge he was Associate Pastor for three years, and did missions, hospital visits, helping out in the community and doing outreaches to the community as well as being involved in both men and women's ministries in the church, counseling, encouraging people to the Word of God. Moving forward with Calvary Community, his responsibilities in Old Bridge will diminish as they have started to already.

He has been involved with the community for over 20 years; moving from New York in 1997, getting involved in Calvary Chapel, Old Bridge, helping out in the Old Bridge community, taking part in Old Bridge Day, providing things for the community, inflatables and things of that nature for children to enjoy, visiting nursing homes in the Old Bridge and Hazlet areas, and the Pastors of Calvary Old Bridge as well as the congregants became part of CERT, the Community Emergency Response Team, so they could come along side the first responders, police and fire, and help in emergencies or in the event of a disaster. He personally has been involved in disasters and emergencies such as Ground Zero, serving there over three or four months, bringing teams in from different churches. He was involved in Hurricane Katrina, he was there helping out for several weeks, as well as Hurricane Floyd in Florida, and when the earthquake struck in Haiti in 2010, his group was there four days afterward helping out the people affected by the earthquake. He helped out in Hurricane Irene and Super Storm Sandy.

Pastor Raul says when Super Storm Sandy struck the Bayshore area, his desire was to be available to his community to help out. He lives in Middletown, and felt the need to go out and help. He has been involved in various mission trips, going to places like the Dominican Republic, Cuba, El Salvador, Nicaragua. He was glad to be able to help in his own community in time of need. Churches from all over the United States were calling asking how could they help. Besides the local churches, churches from both inside and outside the United States began to mobilize. They were here for one year, trying to help people with the damage done to their homes, cleaning out their homes of water, taking out the walls, helping the place to dry out and helping to rebuild, and spreading the Word through that and the love of Jesus Christ as they show people they care about them. It was amazing to see people asking why do they do this, they are not asking for money; they would tell them they know what God has given them so they want to give back to the community. It was amazing to see the response from people throughout the world coming to help people recover from Hurricane Sandy.

As they were serving in the Bayshore area, they saw the need of people looking for more than just physical help, namely spiritual help. As they started talking to people, they realized maybe Old Bridge is a little too far to go to congregate. They asked these people if they had a church in the area, would they be interested in coming; they responded they would love that. A Bible study was started in Middletown, and they do activities in other places, like Airport Plaza.

A year ago June they looked at different places where they could bring a church to the community, that people not currently in a church could come to and be part of. They set up temporary location in the West Keansburg Firehouse, on Eighth Street and Laurel Avenue about five months ago; the firemen are excited to have them there, but they are limited there to meeting once a week. They would like a place where they can do more and involve more of the community in what they are doing. They currently average about 50 congregants.

Referring to the Weekly Calendar, Exhibit A-3, Pastor Raul says they currently meet at the firehouse on Sunday for worship service, followed by coffee fellowship. Every other Wednesday at a local Middletown home they have a Bible study as well as holding a Bible study in Airport Plaza, at Absolute Music Studio. They also meet with people on an as need basis.

While there are other churches in the area, Pastor Raul says what makes Calvary unique is they go verse by verse, chapter by chapter, so when you attend church over a span of two to three years, you will have the entire Word of God, not just parts and pieces.

In his conversation with the landlord of Commerce Plaza, it was intended to lease adjoining spaces of 7,200 sq. ft., two floors. The one space is wide open, 40 x 60. Space 1 will consist of an open space of two rooms, separate men and women's bathrooms. The upstairs is three rooms, open space, bathrooms. It is a 40 x 60 space right now. His intention is to have a worship service on Sunday and a midweek Bible study and to be open for counseling. As the congregation grows, he would like to bring the women's and men's prayer groups that currently meet in homes into this site, so he can incorporate in one location. He would also use the downstairs space for the service so the elderly do not have to go up the stairs. As they grow, the adjoining space will become the main sanctuary. Upstairs will be the children's ministry for Sunday School; there are

three rooms up there they can utilize to separate the children age wise, and hopefully do something with the youth in that area as well, because they know how important that is. They want to give the youth of the community a safe environment they can come to. Once they move to the second area, the maximum number of people would be 192. They would like to do some cosmetic work and build a chancel platform in the front for the worship team and do worship at the Sunday service. The maximum number now is 39 to 40.

Right now there is plexiglass advertising the Absolute Fitness gym they are looking to rent, and they will reface that sign for the church. There is a plaza sign on Route 35 that they would like to utilize as well. It would be helpful in identifying the church inside the Plaza. They would like to put etching on each of the front doors with the name, phone number and hours. They do not anticipate changing the size of the existing sign on the building as it is in a box.

Pastor Raul said he is aware the Township notified the landlord of outstanding fire violations; and he is confident the landlord will address the fire department.

Answering Mr. Phelps about their affiliation with CERT, Pastor Raul says they are in Old Bridge, but without a doubt would be interested in joining Aberdeen.

Answering Mr. Phillips, how do they feel about a liquor store being on the corner; Pastor Raul says need to hear the word of God too, and the church should be part of the community and not shy away from things. They have to be available for the community to see them, and they are ok with that.

Answering Mr. Phelps, Paul Raul says they do not do baptisms, but they could have one at the ocean or YMCA, but as the congregation grows they might need a place for a wedding ceremony and other activities. No receptions, however. They would not necessarily use it for a funeral with a body, but a memorial service could be held..

Mr. Gillen, addressing the applicant, says the municipality is involved with a difference of opinion with Addison Park regarding people making a U Turn through the Route 35 access to Addison Park and crossing the Highway to go County Road or left back onto the Highway. Would the applicant be willing to post a notice to their congregants if that turn is taken away by the DOT. Pastor Raul says they want to be good neighbors, there is a sign there now stating no turns, and he hope the congregants would obey the law.

Mr. Pasquella calls Michael K. Mueller, already sworn. Under questioning by Mr. Pasquella, Mr. Mueller says he has reviewed the application and states the use is not permitted in the zone and not in the shopping center. What has occurred thru the application process, the Pastor has given a description of what would take place in the spaces to be utilized for the church.

Regarding parking, he provided to the Board a report that flushes out the concept of the parking. He made the assumption utilizing 7200 sq. ft. for the church use and applied the parking required as presented in the *Land Ordinance*, and the number of congregant seats proposed, and came up with the 39/40 number. He took the remaining space in the center and applied the commercial factor to that. They essentially satisfy the standard minimum for the church, It is based on the number of seats, for both temporary and transitional phase, not on square footage. For the 50 seats, you need less parking. There are over 100 parking spaces on site.

Referring to Exhibit A-4, what is unique about this, it is a church use; and places of worship have been found to be inherently beneficial in court cases. It is understood to promote the public interest and general welfare. That satisfies the positive criteria.

Moving on to the negative criteria, the first question to consider is to identify the public interest at stake. There are three identified areas in which the public interest is identified: (1) support a new church unique in terms of mission and purpose, as stated by Pastor Raul, and is unlike other churches in the area; (2) to contribute to and support the revitalization of Commerce Plaza shopping center, where there are only two uses currently; (3) to provide a worship facility that can service nearby residential neighborhoods on County Road and residential neighborhoods off Route 35. This is an industrial area on a major roadway in a residential neighborhood.

He was hard pressed to identify detrimental effects; but one is greater use of the parking lot and increased traffic. That comes along with commercial use of the space as well, so it is a stretch to identify those as being detrimental impacts.

Regarding reducing the detrimental impacts or the effects of those impacts by proposing reasonable conditions, he does not think conditions have to be imposed because they do meet the current parking standards. With regard to traffic, they do want to take up space in a shopping center on a Highway two major roadways with a traffic signal, and with access from both roadways. This does not rise to the level of being detrimental or have a substantial detrimental impact, in his mind. Also, they are going to utilize signage to clearly identify the church in the shopping center by way of the free standing and the façade signs.

Mr. Mueller hands out photographs taken when he visited the site, showing the location, where the church would be located in the shopping center, photographs of the shopping center parking lot, signage and some of the perimeter and landscaping buffer around the site. The photographs were taken on a Sunday afternoon in July, just after noon, so you can get a sense of what the shopping center looks like at that particular time. The series of pictures are marked.

Reviewing the negative criteria and balancing the positive and negative, Mr. Mueller does not believe there is a substantial detrimental impact to the situation.. One of the things as part of the review of an inherently beneficial use, he does not have to provide an analysis of the suitability of the site. He did, however, venture into that area and found the site is particularly suited for: (1) the site has been developed; (2) existing vacant space within the shopping center that can utilize the use; (3) access to and from existing roadways; (4) no off site noise impacts.

With respect to the zoning map, *Master Plan* and Master Plan Maps and review of existing conditions, he found the uniqueness of the site comes out in that this is the only shopping center on Route 35 within the industrial zone.

His conclusion is, the use does not impair the intent and purpose of the *Zone Plan* and *Zoning Ordinance*; the proposed use satisfies all the performance standards for all uses found in *the Land Development Ordinance*; there is nothing about the proposed use that would be out of character with other uses of the surrounding property because the use itself will be established in the middle of the site, furthest away from the edges of the site and nearby residential properties. This is sort of a store front situation with signs, and it

will not stand out any more than other uses in the shopping center or Commerce Plaza building on the site.

Mr. Mueller believes the Board has the ability to, and should, approve the application for the use variance. In the engineer's memo checklist items have been identified; they are not proposing changes to the site so no site plan is needed except perhaps for a handicap parking stall.

Mr. Leckstein asks the location of the free standing sign; Mr. Mueller says they will be slipping a panel into that free standing sign existing at the intersection of Route 35 and County Road.

Mr. Mueller says he visited the site a few times, reviewed the documents and site plan and had the opportunity to review the professionals' memos. He believes he has addressed all the comments either tonight or in his memo.

Mr. Gillen, referring to the fire issue, states there is a criteria for aisles and length of aisles, and asks if the facility is sprinklered. Mr. Mueller does not know, but the matters pointed out in the memo are agreeable to the applicant and will be addressed as they move forward. Mr. Gillen says they may have to make modifications to the sidewalk in front of the building to conform to the latest ADA handicap requirements; it will not require a full blown site plan but merely a sketch for modification to the approved site plan.

Mr. Mueller, answering Mr. Phelps, has not discussed the church application with the other businesses and how it will affect their parking; Mr. Mueller says there are 107 parking spaces in the center, and they have the correct number of parking spaces for the seats. Although it is a parking lot for the center, people can park wherever they want; it is a shared parking aspect like any shopping center. People will park where they want to, how far they want to walk, if they have a new car they don't want dinged up. Looking at the photographs, the center is not particularly busy on Sunday afternoon. He believes they can all get along with the demands on parking at the entire site. Mr. Phelps says there are no businesses here tonight, so he is representing them,.

Mr. Rodriguez says Mr. Mueller has satisfied the positive and negative criteria needed to grant use variance relief for this application. Under Section 4E of his memo regarding the expansion of the sanctuary would require an additional use variance for the expansion of a nonconforming use. However, the application material was unclear to him in that the applicant was going to rent two spaces simultaneously rather than rent the second space later and expand the sanctuary into that space. The applicant is requesting approval for the entire space at this time, so if he builds the sanctuary at a later time the D2 variance is not required.

Answering Mr. Phillips, Mrs. Rescorl states the taxes have been brought current. The applicant agrees to any requirements as stated in the professionals review letters. Mr. Gillen says being it is an existing facility a contribution to the Affordable Housing Trust Fund may not be required, and they are a nonprofit.

Mr. Byock moves to grant the use variance, seconded by Mrs. Gotell.

Yes: Mr. Falco, Mrs. Gotell, Mr. Phillips, Mr. Phelps, Mr. Byock

No: None

Abstain: None

New Business, **V14-108/Piscatelli, Applicant: Andrew Piscatelli, Jr., Property Owner: Pamela Faber and Andrew Piscatelli, 111 Highway 35 at County Road, Block 227, Lot 1, Block 2321, Lot 1, Interpretation** to determine if the former use of the property, commonly known as Commerce Plaza, can be applied to the proposed business (Air + Company) seeking to occupy a large portion of the vacant units formerly occupied by Fun Time America, which was an amusement arcade, as a Conditional Use, since abandoned. If the interpretation is denied, the applicant is applying at the same time for a **Use Variance**. Existing signage to be refaced.

Mr. Leckstein swears in the Board's professionals.

Andrew Piscatelli, the applicant, is sworn in by Mr. Leckstein, and states he and his sister are owners of the property, and he is representing himself.

Mr. Leckstein says the applicant is here asking for an interpretation whether the use they want to put into this place is going to be the same as permitted under the Ordinance, namely the former Fun Time America spot. The definition of amusement park ***shall be any buildings, structures or any place of amusement operated upon open area or private ground, permanent in nature and operated by private enterprise for profit for entire year or part thereof, whether admission charged or not.***

Mr. Leckstein says there is no real definition of what an amusement park is, just using the Uniform Code definition, NJAC13:3-1.1, defining arcade ***where a player may play any machine or device to obtain prize, tickets redeemable for a prize, for payment of a feeor token is awarded. Recognized amusement parks commercially operated as a permanent business open 31 consecutive days, whose acreage is designed and themed to participate..... amusements, rides according to State statute. Food and merchandise concessions are permitted. Nothing shall prevent license from being issued that has a licensed issued prior to the effective date of this amendment.....***

Mr. Piscatelli says he is looking to put in what has been operating 21 years. Fun Time has been there for 20 years, operated by his family. They had an array of games and activities geared to physical activities, such as ping pong, batting cages, instructional sporting events with coin operated video games and merry go rounds. When the business sold and with changing times, the console video games coming in, changing from active to more passive amusements, laser tags, video games, trampolines, rock climbing, bumper cars.

A prospective tenant is looking to more what was done originally, trampolines, having coin operated machines shooting basketballs, air hockey. The original intent was always to have an amusement park; now the attraction are more active than simply putting quarters in the machine. The business plan is evolving as we sit here tonight, and there may be additional types of video games in there. It is a 30,000 plus square foot building, and they are looking for clarity on whether they can continue the original vision rather than what has gone on for the last 10 years.

Mr. Leckstein says the Board was given a narrative, marked as Exhibit A-1, prepared by the applicant. This was sent to the Board for an interpretation because the *Ordinance* identifies Fun Time America, and this is a different company. Rather than go to the use variance, with no input from the professionals, the Board can find that this is the same use or not, or they can deny the interpretation and have the applicant apply for the use variance. .

No one is present from the public to address this application.

Note that Mrs. Gotell left during the hearing.

Mr. Falco moves in favor of the interpretation, seconded by Mr. Phillips.

Yes: Mr. Falco, Mr. Phillips, Mr. Phelps, Mr. Byock

No: None

Abstain: None

Meeting adjourned.

