

The meeting was opened by Chairman Palmieri at 7:30 p.m.

Chairman Palmieri read a statement of compliance with the *New Jersey Open Public Meetings Law* as follows:

*This is a regular meeting of the Zoning Board of Adjustment of the Borough of Tinton Falls and is being held in compliance with the New Jersey Open Public Meetings Law. Adequate notice of this meeting has been given by posting on the bulletin board of the Municipal Building and by publishing in the The Coaster and the Asbury Park Press.*

Chairman Palmieri then led the meeting in a salute to the flag.

Ms. Connolly took roll call.

Present Mr. Palmieri, Mr. Lomangino, Mr. Battista, Ms. Hatami, Mr. Porzio, Mr. Brawner. Ms Berk present via cell phone/on courtroom speakerphone

Absent: Mr. Slazyk, Mr. McKinley

Also present: Mr. Hirsch, Esq.  
Mr. Neff, Board Engineer  
John Barree, Board Planner  
Ms. Connolly, Board Secretary

Chairman Palmieri read a statement of procedural guidelines.

**BA-2016-07 Massaro Realty, LLC., Block 145 Lot 14.01; 3250 Shafto Road**  
Seeking approval for multiple variances

Mr. Hirsch explains that this matter was most recently carried from February 2, 2017 as there was not a full Board. The applicant wished to carry to today's date in the hopes that there is a full Board in attendance. The Board then ran into an issue having seven (7) members in attendance for tonight's meeting. After discussion with Mr. Berube, it was decided that Ms. Berk would be participating via phone. This would give us a full Board. Ms. Berk stated her name on the record and Mr. Hirsch asked Ms. Berk to state if at any time she was unable to hear the testimony to please say so. Mr. Hirsch also explained to Ms. Berk that it is just like she is physically here on the dais and to feel free to speak and vote as normal.

Mr. Hirsch states that this procedure has been discussed between Mr. Berube and his client and has been agreed to and consented to.

Mr. Hirsch states that Ms. Berk has all of the pertinent documents in her possession, as well as tonight's additional exhibits (A-9, A-10). Ms. Berk was texted photographs of the first five pages of the new DEP permit dated March 2, 2017), as given to Ms. Connolly by Mr. Berube, just prior to tonight's meeting at approximately 7:00 p.m. Ms. Berk confirmed receipt of the emailed photos and was able to read same by 7:30 p.m.

Mr. Berube states he wishes to enter into evidence an amended plan. It is confirmed that Ms. Berk has this amended plan in her possession and acknowledges this fact over the speaker phone.

Mr. Berube gives a summary of the application since it has been quite some time since the initial testimony has been heard.

Mr. Berube states that since the last Hearing, the initial plan that was marked A-3 was revised at the request of the DEP.

Mr. Berube calls the applicant's engineer Daphne Galvin, 611 Industrial Way West, Eatontown, NJ . Ms. Galvin was previously sworn in and is reminded that she is still under oath. Ms. Galvin states that she has prepared the layout plan outdoor storage plan which is a revision dated January 20, 2017 to the original documents that were submitted. This revision is marked A-9. Ms. Galvin testifies as to the revisions on A-9 which make it consistent to the plan submitted to the DEP and addresses two concerns of the Zoning Board Engineer (modify pavement section that was proposed and to modify the signature block.

Mr. Hirsch asks questions about the use of the term "temporary storage." Mr. Berube states that Mr. Christopher Massaro will address this issue.

Mr. Neff asks Ms. Galvin if we are still looking at one (1) deficiency and seeking the appropriate variance. Ms. Galvin state the twenty nine (29) spaces are the same and will be seeking a variance for the one space deficiency.

Chairman Palmieri asks if any of the Board members have any questions of Ms. Galvin. None at this time.

Mr. Christopher Massaro is recalled as the next witness. Mr. Massaro is reminded that he is still under oath from the first hearing and states that he understands.

Mr. Berube asks Mr. Massaro how the materials are labeled upon entry to the facility and upon processing or decomposition. Mr. Massaro points and explains where the proposed outside storage is located on the plan and the capacity and volume of storage. Mr. Massaro explains all aspects of the proposed outside storage, containers and locations on exhibit A-9.

Mr. Massaro explains the different kinds of materials that are by-products of the electronics recycling and which materials are transported to the Mazza facility. Mr. Massaro also explains the label of temporary unprocessed or processed material.

Mr. Hirsch states that it seems that there will always be something stored outside because materials are always coming in to replace what has gone out.

Mr. Berube introduces the State of New Jersey – Department of Environmental Protection permit that has just been issued on March 2, 2017 and which Mr. Hirsch now marks as Exhibit A-10. Ms. Berk confirms via phone that she has received photo text messages of this exhibit tonight prior to the 7:30 p.m. start of this meeting.

Mr. Berube reiterates with Mr. Massaro that this is the permit issued by the DEP for all of the operations involved in a Class D recycling facility.

The process of the logging of materials is discussed.

Mr. Battista notes that on page 2 of the permit under Facility Description, the paragraph is unfinished.

Mr. Berube and Mr. Massaro discuss what is permitted within the DEP permit including roll off areas 1,2, and 3.

Mr. Hirsch brings up the issue from a zoning perspective of calling the proposed outside storage “temporary storage” as the outside storage will never go away. Discussion ensues.

Mr. Berube states that it is the applicant’s position that this issue is pre-empted from zoning limitations that may be contained in your ordinance.

Mr. Hirsch states the Board is not going to be making a ruling on determining if the town’s ordinance is invalid as a result of pre-emption. The Board’s statutory authority is limited to interpreting the zoning ordinance, not to declare portions of the zoning ordinance invalid or inoperative either for pre-emption or any other reason.

Further discussion ensues among board members and Mr. Hirsch regarding the definition of the term of temporary storage and what materials are proposed to be stored outside and also as to whether or not materials are processed or unprocessed as well as the DEP plan.

Mr. Neff states that the DEP plan may be similar but it is separate.

Mr. Berube and Mr. Massaro state that a variance for outside storage has been granted to the property directly to the south of Mr. Massaro’s property which is Tinton Falls Service Contractors Center, LLC, BA 2005-32 granting flex space and outside storage in

addition to seeking site plan approval. Discussion continues regarding differences and similarities of this resolution among Mr. Hirsch, the applicant and Board members.

Mr. Hirsch reminds the Board members that in some zones outside storage is permitted but certain conditions have to be met.

Mr. Palmieri states that the DEP permit and the copy of the Resolution BA 2005-32 have just been presented and would have preferred more time to look at it.

Discussion ensues regarding the BA 2005-32 site comparing the sites. Mr. Neff adds that these are two different sites and it is tough to compare the two. The uses are different. While there is outside storage next door. The comparison is not the same.

Mr. Battista brings up the Heyer & Gruel review letter with the copies of photographs attached. Discussion ensues regarding the outside storage photographs and how proposed outside storage will be stored.

Mr. Brawner asks what a "single stacked height is" which is referenced in the permit. Mr. Neff indicates that on the plan it is listed as 9 ft.

Mr. Brawner asks about fire suppression inside and outside of the building. The fire marshal's report is brought up indicating the request of an additional hydrant at the intersection of the access road, should this application be approved.

Mr. Hirsch states that if the application is approved, one of the conditions could be that the applicant will discuss the fire marshal's recommendation as outlined in the fire marshal's report and will agree to be bound by the ultimate decision.

Mr. Barree states that there is an inconsistency between the storage capacity amounts listed in the permits on page I-6 of I-9 and on the plans. The amount listed is greater on the plans than what is listed on the permit. Mr. Berube states that it may be a mistake. The numbers are what is limited to the permit. Mr. Hirsch states that there needs to be clarification from DEP as to either amending the plan or amending the permit, so that there is one number.

A break is requested by the Board members. A break was taken from 8:53 until 9:03 p.m.

Mr. Berube recalls Ms. Allison Coffin, licensed professional planner, 823 West Park Avenue, Ocean Twp., NJ. Mr. Hirsch reminds Ms. Coffin that she remains under oath.

Ms. Coffin gives a brief overview of her testimony from August as well as summarizes what variances are needed.

Mr. Hirsch asks specific detailed questions of Ms. Coffin with regards to the D variance.

Ms. Hatami asks a question about DEP inspections and the frequency of same.

Mr. Neff states that the DEP has inspected during the time that there has been the outside storage and has not done much about it.

Mr. Brawner asks if Monmouth Wire has been fined or received notices of violation. Mr. Massaro answers in the affirmative and explains.

Mr. Brawner and Chairman Palmieri also bring up the pictures attached to the Heyer & Gruel review letter and these pictures are discussed at length as well as how the pictures would change should the variances be granted.

While discussing the outside storage, Mr. Neff states during the discussion that a condition of approval could be that these areas would have to be permanently marked out on the asphalt.

Mr. Neff states that going back to the original approval, the entire building was approved for the applicant's operations and then the applicant came back for amended approval saying that only a small portion of the inside of the building was for applicant's operations and that the applicant was going to lease out some of the other units. At that time, there was no need for outside storage. It was a condition of that approval that there would be no outside storage and it is still a condition of the current ordinance which is the reason for this application. It was previously brought up about moving outside storage to the inside of the building. Mr. Neff asks if there has been any more thought given about moving the outside storage inside. The original intent was to keep all storage inside the building. Mr. Massaro states that the building is fully rented and the leases are long term. Mr. Massaro also states that every time they touch a palette, it costs money. Mr. Massaro further states the reasons why he cannot put the outside storage inside the building.

Mr. Berube verbalizes his closing statement.

Mr. Brawner has further comments relating to the permit, under paragraph 57, regarding vertical and height markers.

Chairman Palmieri asks if there are any further questions or comments from either the public or board members, none heard.

Motion is made by Mr. Battista and seconded by Mr. Porzio to close the public portion. All in Favor.

Discussion ensues regarding this application among board members and questions were asked of Mr. Hirsch.

After the discussion, Mr. Hirsch advises as to what kinds of motions are needed along with what is in place at this time with regard to the original Resolution.

Mr. Battista makes a motion to approve the D variance and is seconded by Mr. Brawner. Along with this motion is a strong recommendation for specific markings on the site plan where storage is going to be outside; compliance with Fire Marshal recommendations; if there are any DEP violations, then the Zoning Officer must be notified.

Roll Call

Ayes: Mr. Battista, Mr. Brawner, Chairman Palmieri, Mr. Lomangino, Mr. Porzio, Ms. Berk (via phone), Ms. Hatami  
Nays: None  
Absent: Mr. Slazyk, Mr. McKinley  
Not eligible: None

Mr. Brawner makes a motion to approve site plan and any other bulk variances and is seconded by Mr. Porzio

Roll Call

Ayes: Mr. Brawner, Mr. Porzio, Chairman Palmieri, Mr. Lomangino, Mr. Battista, Ms. Berk (via phone), Ms. Hatami  
Nays: None  
Absent: Mr. Slazyk, Mr. McKinley  
Not eligible: None

**BA 2016-22 IPP Solar/Stavola– 175 Drift Road, Blk 111 Lot 4.01**

Mr. Hirsch indicates that he has reviewed the affidavit of publication and proof of service and finds same to be in order as to form.

Motion is made by Mr. Battista and seconded by Mr. Lomangino to accept service. All in favor.

Chairman Palmieri states that the Board is in receipt of a letter from the attorney for applicant, Peter S. Falvo, Jr., asking to carry this matter until April 6, 2017. Mr. Hirsch states that Mr. Falvo has granted full waivers related to the statutory time frame. The request to carry is granted.

**BA 2016-20 Johnson, 49 Dellwood Lane, Blk 47.02 lot 66**

Chairman Palmieri states that the Resolution in this matter has been previously distributed and reviewed by all board members.

Motion is made by Mr. Battista to memorialize this resolution and seconded by Mr. Lomangino. All in favor by those eligible to vote.

**Minutes of February 2, 2017**

Chairman Palmieri states these minutes have been previously distributed and reviewed.

Motion is made by Mr. Lomangino and seconded by Mr. Battista to accept these minutes. All those in favor by those eligible to vote.

Motion is made by Mr. Lomangino and seconded by Mr. Battista to close the meeting at 10:00 p.m. All those in favor.

Respectfully submitted,

Colleen Connolly  
Zoning Board Secretary

Approved at Board of Adjustment  
Meeting on April 6, 2017