

BOROUGH OF WIND GAP

ZONING DEPARTMENT

29 MECHANIC STREET, WIND GAP, PA 18091

P.610.863.7288—F.610.863.1011

E-mail: windgap@rcn.com

www.windgapborough.org

ZONING HEARING BOARD

IN ATTENDANCE:

Members: Sam Nittle, Kelly Ronalds, Deborah Roseberry
Professionals: John Molnar, Solicitor
Jodi Phillips, Zoning Officer

Joseph Posh (Posh Properties) Case No. 4-2006

At 7:32 p.m. John Molnar calls the Zoning Hearing Board meeting of May 3, 2006, to order.

Mr. Molnar states that Mark Sharp is not present. Sam Nittle requests that Mr. Molnar handle the introductions. Mr. Molnar states that we have two hearings tonight and the first case is 4-2006 for the Joseph Posh application. Mr. Molnar asks anyone that is present for the Joseph Posh application to stand and be sworn in. All persons are sworn in by the stenographer. Jeff Ott, the owner and president of Ott Consulting, Inc., will be handling the appeal of Mr. Posh.

Jodi Phillips submits Zoning Officer exhibit one, the legal notice that was posted and published, the application from Mr. Posh requesting a variance for section 305.F, preliminary plan, one page of residents within 200 feet of said property and four pages of Northampton County tax records.

Mr. Ott states he is here to request a variance from section 305.F, minimum front yard requirement, for Mr. Posh. Mr. Ott submits the preliminary plan, C-1.1, that was filed with the application as applicant exhibit one. The property is located in the R-8 and R-12 zoning districts. The parcel is undeveloped except for an area situated at the end of First Street that contains an existing home. Mr.

Posh is requesting the development of a twelve (12) lot single family residential. The variance request is for a thirteen (13) to eight (8) foot encroachment on the existing house. Mr. Ott states that they have taken First Street as far north and as far south as they could and there is a physical constraint by way of an existing single family dwelling to the north and by way of an existing single family dwelling to the south. They are going to put First Street between those boundaries and in doing so they will need the variance for the encroachment of the front yard. Deborah Roseberry asks how much of a variance is being requested. Mr. Ott states the existing home will be thirteen (13) to eight (8) feet from the property. Ms. Roseberry asks how many lots are involved. Mr. Ott states only one. Ms. Roseberry asks if that is keeping in nature with the rest of the road except that the house will sit closer to the front. Mr. Ott states yes. Mr. Nittle asks Mr. Ott to repeat the information regarding the extension of First Street and the encroachment of the existing property at the terminus of First Street. Mr. Ott states that he found a deed from 100 years ago and First Street was generally plotted exactly where they are going to be constructing it. Mr. Nittle asks if the street is definitely extending to Broadway. Mr. Ott states that they are currently discussing that with planning and Borough Council did make a motion that they do want First Street to continue to Broadway. Ms. Roseberry asks if the variance is not granted then the home can't be built. Mr. Ott states that the home already exists and the extension of First Street through the development will cause the encroachment. Ms. Roseberry asks if Mr. Posh owns the existing home. Mr. Posh states that the existing home is owned by Mr. Cortazzo and that Mr. Cortazzo will keep the existing home after the development. The home will be a freestanding lot in the development. Mr. Molnar confirms that Mr. Cortazzo will own Lot number twelve (12) and Mr. Posh will own Lot numbers one through 11 (1-11). Mr. Molnar asks if Mr. Ott has any further information he would like to present. Mr. Ott states no. Mr. Molnar asks the board if there are any questions. The board states no. Mr. Molnar asks if there is anyone present that has a question for Mr. Ott. Carlton Snyder who resides at 142 East First Street stands to question Mr. Ott. Mr. Snyder wants to get familiar with the development plans since the property is close to his residence. Mr. Ott shows Mr. Snyder his home on the preliminary plan, the lay out of First Street and that the front setback is for Mr. Cortazzo's home only. Mr. Ott also points out the proposed boundary line of First Street that is the same layout as the old tax maps he acquired. Mr. Snyder acknowledges that the variance is for Mr. Cortazzo's property only. Mr. Molnar asks Mr. Ott how far along he is with the subdivision planning. Mr. Ott states that they will be in front of the planning commission tomorrow night and will hopefully receive a recommendation for approval of the preliminary plan. Mr. Molnar asks if the Borough is interested in extending First Street to Broadway. Mr. Ott states that Council passed a motion to extend First Street all the way to Broadway. Mr. Molnar asks if this is acceptable to Mr. Posh. Mr. Ott says yes, but the development can function with or without the extension. Ms. Roseberry asks if Mr. Cortazzo is all right with this. Mr. Posh states that his plan is identical to the plan that Mr. Cortazzo submitted before he (Mr. Posh) bought the property. Mr. Molnar asks if Mr. Cortazzo's planning started before Mr. Posh bought the property. Mr. Posh says yes. Mr. Molnar asks the board if there are any additional questions for Mr. Ott. The board states no. Mr. Molnar asks Mr. Snyder if he has any additional questions or comments for Mr. Ott. Mr. Snyder states that he is concerned that he was not informed of the development going through planning and this is a major

impact on the neighborhood. Mr. Molnar states that the Zoning Hearing Board is required to notify residents within 200 feet of said property and that Lillian Snyder, Mr. Snyder's spouse, acknowledges receiving the notice. Mr. Molnar is unsure of what notifications are made regarding the planning side of the development and any concerns should be addressed to the borough. Mr. Snyder confirms that he did receive the Legal Notice in regards to the variance request but nothing regarding the planning meetings. This project is a major impact on the neighborhood and he will contact the borough to see why he was not notified. Mr. Molnar states that only the variance is being considered tonight, asks if there are any more questions and closes the hearing portion upon no questions needed. Ms. Roseberry states that she can see if the plan is approved that the extension of First Street will be necessary and the only person affected is Mr. Cortazzo and he is fine with the plans. Ms. Roseberry is in favor of the variance. Mr. Molnar states that Ms. Roseberry cannot vote on the variance request since she is an alternate member and is only needed when there is not a quorum but she can state her opinions. Mr. Nittle makes a motion that the variance is granted. Kelly Ronalds seconds the motion. All are in favor. Variance is granted.

James McIntyre (Brymac, Inc.) Case No. 5-2006

Mr. Molnar states that we will start the hearing of Brymac, Inc., case number 5-2006 and asks anyone that is present for the Brymac application to stand and be sworn in. All persons are sworn in by the stenographer.

Jodi Phillips submits Zoning Officer exhibit one, the legal notice that was posted and published, the application from Mr. McIntyre requesting a variance for section 311.F, site plan, one page of residents within 200 feet of said property and four pages of Northampton County tax records.

Jim Zulick, attorney, with Peters, Moritz, Peischl, Zulick and Landes, LLP, is representing Charles McIntyre, who is the president of Brymac, Inc. Frank Korpics is present as an expert witness for Mr. McIntyre. Mr. Zulick states that according to the modified Municipalities Planning Code rules the alternate member can vote if the member is used to fill the compliment of the board to the normal number that is generally serving to eliminate an even number of votes. Mr. Molnar states that if there are no objections to Ms. Roseberry voting, she will be allowed to vote on this case. Mr. Zulick would like to acknowledge that tonight's application involves the same property that was brought before the board in January 2006. The board denied the variances that were requested in January 2006 and an appeal was filed against the board's decision. Mr. Zulick's opinion of the decision is that his client can reduce the number of requested variances. Tonight's application is an attempt to come back with something more acceptable to the ordinance. Mr. Zulick would like to present a copy of a case from 1998 Supreme Court of Pennsylvania, Hertzburg vs. Zoning Hearing Board of Pittsburgh, 721A second 43, regarding the statement of a dimensional variance request

being treated differently than a use variance request. Mr. Zulick's applicant's request involves a dimensional variance request and not a use. Tonight's application to construct a car wash is a permitted use in this zoning district. Mr. Zulick states that they have tried to eliminate any need for a variance; however, the variances needed are for a front yard setback, rear yard setback and buffer zone. They believe that there is a natural buffer that already exists behind the property and nothing is going to be done to that natural buffer, it will still be in existence. Mr. Zulick calls his first witness, Mr. McIntyre.

Mr. Zulick questions Mr. McIntyre:

Q: Who are you in regards to Brymac, Inc.?

A: The owner.

Q: The plan you are showing now is the original plan from January 2006?

A: Yes.

Q: Are you still requesting the use of a car wash?

A: Yes.

Q: Did you file an appeal for the January 2006 decision?

A: Yes.

Q: Did you file tonight's application?

A: Yes

Q: Is it your desire to get an approval for tonight's variance request?

A: Yes

Q: If the variance is granted will you withdraw the January 2006 application and appeal?

A: Yes

Q: Describe the old plan versus the new plan.

Mr. Molnar states to mark the old plan as applicant exhibit A1. Questioning continues.

A: The old plan shows the car wash encroaching on the side yard setback. The size of the bays were reduced from forty (40) feet to thirty-five (35) feet, the elimination of an existing club house and a driveway and now it is fifty-nine percent (59 ½ %) impervious.

Mr. Molnar states to mark the new plan as applicant exhibit A2. Questioning continues.

A: The new plan has more green space and the entire building was moved over to reside within all of the setbacks. There is now only one cart-way for entrance and exit.

Q: Do you still need a front yard setback variance and is that because of the vacuum service area in the front?

A: Yes.

Q: Is there a ten (10) foot buffer between the vacuum area and the sidewalk?

A: Yes.

Q: There is a twenty-five (25) foot setback requirement and you are asking for a variance for a ten (10) foot se

A: Yes.

Q: Could you also point out to the board where the trash container is located?

A: Yes, the receptacle was moved from the original corner to another corner to allow for easier pick up and removal.

Q: The variance was denied for the rear buffer yard requirements from January 2006?

A: Yes.

Q: What is next to the buffer zone?

A: A heavily wooded area.

Mr. McIntyre submits applicant exhibit A3, aerial photo of the property and applicant exhibit A4, close picture of a wooded lot located to the rear of the property. Mr. Zulick points out the provision of a buffer zone from the Zoning Ordinance section 404.D.3.a 'Each buffer yard shall include a planting screen of trees, shrubs and/or other plant materials extending the full length of the lot line to serve as a barrier to visibility, airborne particles, glare and noise.' Questioning continues.

Q: Do you believe the wooded area provides an adequate buffer?

A: Yes.

Q: Can you explain exhibit A4?

A: This photo is a close view of the wooded lot.

Q: What exists now on the property? A miniature golf course?

A: Yes.

Q: What amount of impervious coverage exists today?

A: Approximately eighty-eight percent (88%)

Q: What has the amount of impervious coverage been reduced to?

A: Fifty-nine and one half percent (59 ½ %)

Q: Is it a fair statement to say that the Golf Course encroached on all setbacks?

A: Yes, very dramatically.

Q: Tonight's application is only requesting a variance from rear and front yard setbacks?

A: Yes.

Q: Is the building itself within the setbacks?

A: Yes.

Q: Is it your observation that tonight's application is less nonconforming than the application from January 2006?

A: Yes, very much less.

Q: Are the surrounding business properties using the front yard setbacks for business purposes?

A: Yes.

Q: Are you aware of any encroaching the side and rear yard setbacks?

A: Yes

Q: Are you aware of any impervious coverage exceeding the 60% requirement?

A: By far.

Q: Any recent ones?

A: Yes, CVS may be ninety percent (90%) impervious.

Q: Is your use a reasonable use for the property?

A: Yes.

Mr. Zulick has no further questions of Mr. McIntyre. Mr. Molnar defines that the variances being requested are for the front and rear yard setbacks and the rear buffer area. Mr. Molnar asks if the board has any questions for Mr. McIntyre. Mr. Nittle asks if there is an appeal for the January 2006 denial. Mr. Zulick states yes. Mr. Nittle asks if there is a favorable ruling for tonight's application that the appeal will be withdrawn. Mr. Zulick states the appeal and January 2006 application will be withdrawn and the applicant will only go with the application of tonight. Mark Minotti, an attorney with Minotti & DeEsch, is present and representing Shop Quik.

Mr. Minotti questions Mr. McIntyre.

Q: Was the golf course closed in 2003 because it was not making enough money?

A: The business was really seasonal.

Q: Was there any attempt to re-open after 2003?

A: No.

Q: Have any efforts been made to consider any other permitted uses?

A: Yes.

Q: Have you made any plans for other options?

A: No.

Q: So you only wanted the car wash?

A: Yes

Q: Have you attempted to see if you can build any other permitted uses without the request for a variance?

A: No.

Q: Have you considered the water run off issue?

A: Yes

Q: The car wash plans have how many bays?

A: Six (6), one (1) auto, five (5) self serve.

Q: Will there be an employee on the premises?

A: Yes, one person approximately thirty to thirty-five (30-35) hours per week for general maintenance.

Q: What will you do if there is a problem and no one is there?

A: There is a closed circuit television and emergency phone.

Q: How many people will be handled per hour?

A: There was a study completed to determine the average number of cars in one day, which would be approximately thirty-five (35) through the self-serve and forty (40) for the automatic wash. So an

average total of seventy-five (75) cars.

Mr. Minotti has no further questions. Mr. Molnar asks if there are any additional parties present that have questions.

John Barto III, owner of Burger King, questions Mr. McIntyre:

Q: Are you the owner of the property behind the golf course?

A: No.

Q: so, the owner can remove the trees?

A: Yes

Q: Then there would not be a buffer?

A: Yes.

Q: Is there any way to build the car wash without the variances?

A: No, it will reduce the feasibility of the car wash.

Mr. Barto states that he tried to build a car wash in 1995 and was denied the same variance request. Ms. Roseberry states that the questioning is getting off the subject of the variance hearing. Mr. Barto states that he has no further questions. Mr. Molnar asks for any additional questions. Ms. Ronalds asks who owns the wooded lot. Mr. McIntyre states that Mr. Cortazzo is the owner. Ms. Ronalds would like to know where the First Street extension is located from this property. Mr. Zulick uses the preliminary plan from Mr. Ott as applicant exhibit A5 to show Ms. Ronalds that the First Street extension is far to the north of Mr. McIntyre's property. Mr. Molnar asks if there are any additional witnesses. Mr. Zulick calls Frank Korpics as a witness.

Mr. Zulick questions Mr. Korpics:

Q: Have you been assisting in the plan and serving as the advisor for the installation of the car wash?

A: Yes.

Q: What is your expertise?

A: I have been building car washes for twenty (20) years from Maryland to Pennsylvania. Studying traffic flows and working with the engineers.

Q: Did you review plans with me and Mr. McIntyre for the possibility of reducing the nonconforming features of the car wash?

A: Yes, we tried to reduce according to the January 2006 testimony and opinions.

Q: Is the impervious coverage in compliance?

A: Yes.

Q: No side yard setback issue with the building?

A: No.

Q: The clubhouse is gone?

A: Yes

Q: Why does the car wash need the vacuum station in the front yard?

A: Most car washes, fast food or gas stations always encroach on the front yard setbacks because there is a flow of traffic, like putting roads on the property.

Q: Can you explain the traffic design?

A: Yes, we try to keep one directional flow of traffic. It's better to have one entrance and exit so all people enter in one flow and exit in one flow.

Mr. Zulick submits applicant exhibit A6, the front elevation of the building. Questioning continues.

Q: Is this the front elevation of the building?

A: Yes, we tried to keep the building in line with the aesthetics of the surrounding area and bring the traffic through to enter the building from behind.

Q: Do you believe the car wash can handle the traffic volume?

A: Yes

Q: Is there any problem with it impeding the traffic on Route 512?

A: No, the traffic will be entering the bays at the rear of the property. If they have to back up it will be done at the rear. There is also an area for people to leave without going through the car wash.

Q: Can you explain the trash container change?

A: The trash receptacle was moved to the right side of the rear property so the truck will come in the entrance and the back of the truck will already be facing the receptacle.

Q: What is the distance the trash container encroaches on the rear yard setback?

A: Twenty-five (25) feet is required and the trash container is about eight (8) feet off of the property line.

Q: Concerning the stormwater run off or water running out to Route 512, how were the issues addressed?

Mr. Korpics submits applicant exhibits A7, photo of drainage for each bay, and A8, photo of washing mechanism. Questioning continues.

A: There is a drainage system in each bay, leading to the sanitary sewer system not the storm sewer. Planning Commission will decide the stormwater run off requirements.

Q: Do you believe the plans will be acceptable to planning for meeting the requirements of the stormwater run off?

A: Yes.

Q: How were the safety issues of the mechanical features of the automatic bay addressed?

A: The mechanics of the cleaning system will move to the side if bumped. It stops and pages someone. The auto cashier also shuts off.

Q: Can the occupant in the car get out?

A: Yes

Q: Any other information you would like to share?

A: The sensor devices are located on the walls in the bay. It will alert the cars to move forward or

backward.

Mr. Zulick has no further questions. Mr. Molnar asks the board if they have any questions for Mr. Korpics. The board does not. Mr. Molnar asks if a subdivision and land development plan has been submitted to the planning commission. Mr. Korpics states that they were going for the variance first. Mr. Molnar asks if the Wind Gap Sewer Authority has been contacted. Mr. Korpics states not yet. Mr. Minotti states he would like to know, during peak hours, if the cars will be handled in the same manner as presented in January 2006. Ms. Roseberry asks that we only discuss topics related to setbacks and buffers. Not usage and stormwater issues.

Mr. Minotti questions Mr. Korpics.

Q: Is there any way for the car wash to be built without the variances?

A: No

Q: Were you asked, according to your expertise, as to any other uses being considered?

A: No, a permitted use was chosen.

Mr. Minotti has no further questions. Mr. Molnar asks if anyone else has any questions for Mr. Korpics. There are no questions. Mr. Barto would like to offer a ruling in 1995 that unanimously denies a variance request for section 311F. Mr. Molnar enters it as exhibit B1. Mr. Zulick would like to remind the board that they are here to request a dimensional variance for the front yard setback, rear yard setback and waiver of the buffer yard requirement because of the physical circumstances of this lot and the surrounding uses with similar physical circumstances. Presently a natural buffer exists for the rear yard of this property and all the adjacent properties. Mr. Molnar reiterates the applicant will continue with the planning commission and sewer authority and the appeal and previous application will be withdrawn if tonight's variance is granted. Mr. Minotti asks the board to look at all the points of granting a variance in section 804, not just one, when considering this request. Mr. Molnar states that the hearing is closed and all applicant exhibits A1-A8, Zoning Officer exhibit ZO1 and additional exhibit B1 are accepted. Ms. Roseberry states that the impervious coverage has not been increased, the wetlands would most likely not be developed and other businesses do encroach on the front yard setbacks. Permitted uses are all permitted and only one has to be chosen. Ms. Roseberry is in favor of the car wash. Ms. Ronalds states she has an issue with the rear buffer since it is not their land. Even though there are wetlands there you can't say what will happen in the future and it could be developed one day. The rear yard buffer is not permanent enough. Mr. Nittle believes the wetlands will most likely be there forever. Ms. Roseberry agrees that there are too many steps to try and build on wetlands and they will most likely be left as wetlands. Mr. Nittle likes the changes that were made to the new plan and would not mind granting the variances. Mr. Nittle motions to grant the variances contingent upon the subdivision and land development and sewer authority approvals and the withdrawal of the appeal and January 2006 application. Ms. Roseberry seconds the motion. Vote 2-1. The variance is granted with the three conditions.

Ms. Ronalds motions to adjourn the meeting. Ms. Roseberry seconds the motion. All are in favor.

Meeting adjourns at 9:03 pm.

Jodi Phillips
Zoning Officer