

**DELRAN TOWNSHIP
ZONING BOARD
MUNICIPAL BUILDING
REGULAR MEETING MINUTES
JANUARY 19, 2023 – 7 PM**

OPEN PUBLIC MEETINGS ACT

The Delran Township Zoning Board regular meeting of Thursday, January 19, 2023, was called to order by Mr. Mormando at 7:00 PM in the Delran Township Municipal Building.

The Open Public Meetings Act Announcement was read by Mr. Mormando and the Pledge of Allegiance was performed.

ROLL CALL

Present: Mr. Mormando, Mr. Moore, Mr. Aleszczyk, Mrs. Parento, Mrs. Custer

Absent: Mr. Merced

Professionals: Lou Garty, Attorney, Mr. Ed D’Armiento, Engineer &
Mr. Joseph Petrongolo, Planner

APPLICATIONS

A.

Carr Automotive
2913 Route 130 South
Block 9, Lot 5
ZN2022-12
Appeal of Administrative Decision/Interpretation

Carr Automotive, LLC, (hereinafter referred to as the “Applicant”) filed an application with the Delran Township Zoning Board (“Board”) for the property identified as Block 9.04, Lot 5 on the Township’s Official Tax Map, which is more commonly known as 2913 US Rt. 130, in Delran Township (hereinafter the “Property” or “the site”) to file an appeal pursuant to N.J.S.A. 40:55D-70(a), from the determination by the Township’s Zoning Officer’s determination to deny the Permit Application No. 15961, dated October 4, 2022, and for an interpretation of the Zoning Ordinance pursuant to N.J.S.A. 40:55D-70(b) as to whether the proposed use is a permitted use in the zone; the property is located in the M-2 (General Industrial and Commercial) Zone; and the Applicant submitted Application No. 15961 for a zoning permit for a used car and commercial truck (less than 26,000 lbs.) sales and, storage and showings on the site; and on October 4, 2022, the Township’s Zoning Officer issued a “Refusal of Permit” for Application because the Zoning Officer found that “commercial truck sales are not a permitted use at this location. The original zoning application was to continue the legal, non-conforming use of selling cars.”

on November 1, 2022, the Applicant filed the subject appeal of the Zoning Officer’s Refusal of the Applicant’s Permit Application Permit No. 15961, which filing included a request for an Interpretation of the Zoning Ordinance by the Zoning Board and at the regular Meeting of the Delran Township Zoning Board (“Board”) on January 19, 2023, the Board reviewed the issues raised by the Applicant in the appeal of the determination of the Zoning Officer in denying Permit Application seeking a review of the interpretation and determinations of the Zoning Officer as to:

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(A) whether the property is located in the M-2 Zone;

(B) seeking an interpretation of §355-70(A)(6) as to whether the provisions of the Code apply to used car and commercial truck sales, (including for trucks less than 26,000 lbs.), storage and display for wholesale or individual retail appointment; and

(C) for an interpretation of the Township Code provisions prohibiting parking vehicles on gravel parking areas; and the Applicant was represented by Jason Hyndman, Esq., of Price, Meese, Shulman & D'Arminio, PC; and the Board received the Application and supporting materials dated October 24, 2022, submitted by the Applicant in support of the administrative appeal, including the notice provided by the Zoning Officer, denying the Applicant's request for a permit dated October 4, 2022; and the Board received the comments contained in the Review letter dated December 27, 2022 submitted by the Board's previous Professional Planner, Ms. Corbin; and at the January 19, 2023 regular meeting of the Zoning Board, the Applicant made the following presentation to the Board as to the nature of the interpretation sought and the issues submitted for a determination or interpretation by the Board:

1. The Board's Professional Planner's review letter confirmed that the property is located in the M-2 Zone as set forth in the comment letter and as stated at the hearing.

2. The Board's professional Planner confirmed that the §355-92(S) of the Township Code expressly states and requires that all parking areas, accessways, driveways, drive aisles, loading areas and parking bays or other parking facilities shall be paved and curbed under the provisions of Chapter 310, Subdivision of Land, and Chapter 290, Site Plan Review, of the Code of the Township of Delran, such that the Township Code expressly prohibits parking vehicles on gravel parking lots. The section mentioned above of the Township Code was outlined in the Planner's comment letter and was confirmed by the Planner as stated at the hearing.

3. At the hearing on the second issue presented by the Applicant, namely as to the appeal of the Zoning Officer's denial of the permit requested and for an interpretation of §355-70(A)(6) of the Township Code determining that the existing use for sales of commercial trucks is not permitted in the zone, requiring a Use variance to continue its present operations, the Applicant presented testimony as to the present use of the property and the Board asked questions of the Applicant and its consultants, and considered the comments by its professional consultants.

4. The Applicant's counsel, Mr. Hyndman, Esq., provided the Board with an overview of the history of the site, namely that the Applicant has been operating the business under a zoning permit which was issued in April of 2022 and that there were questions as to the storage of trucks on the site, that the business does sell commercial trucks at that site and that while the property in question is in the M-2 zone, that most of Rt. 130 is in the C-2 zone where that type of retail sale is prohibited.

5. The Applicant's counsel, Mr. Hyndman, Esq., presented sworn testimony to the Board by the authorized representative of the Applicant, the owner, Ms. Maureen Grams who testified as to the following facts:

The Applicant owns Carr Automotive and used a "DBA" designation for the operation of the business as "Truck Stop," which has been utilizing the site since April 2022. She testified that Carr Automotive is an authorized used car dealer that sells medium-sized cars and commercial trucks. She testified that to her knowledge, the site was previously operated as a used car dealership. With respect to the use of the site, she testified that it contains a building and a triangular-shaped paved area for parking

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vehicles, with a gravel parking area directly behind the paved triangular lot. Ms. Grams testified that the Fire Official came on the site with vehicles and that as directed by the Fire Official, her staff moved various trucks from where they were parked to other areas within the site to provide room to demonstrate how emergency vehicles would be able to gain access to the site in the event of an emergency.

Ms. Grams testified that there are two approved curb cuts for access to the property from Rt. 130 and described the commercial uses on the immediately adjacent sites, noting that there are no residential properties which abut the site. Ms. Grams testified as to business practices, that sales staff schedules appointments in advance for the customers to view the vehicles and that the business on the site consists mostly of retail sales of vehicles, that 75% of the sales are of commercial trucks, but that Carr Automotive does not have any vehicles on the lot, including trucks, which weigh more than 26,000 lbs.

6. Three Exhibits were identified, marked and accepted into evidence at the hearing:

Exhibit A-1: Aerial view of the site plan cover page;

Exhibit A-2: Prior Resolution of the Planning Board approving a site plan for the property (Resolution No. PP2019-14 relating to Application No. PN 2019-03);

Exhibit A-3: Photos of the site taken by the Applicant

7. The Board heard and considered the comments by the Township's Fire Official, Mr. Bauer who provided the following sworn testimony:

Mr. Bauer provided testimony as to his review of the site, noting that the 2019 Site Plan Application by the prior owner was approved by the Board, which allowed parking vehicles on the property. Mr. Bauer testified that he had a ladder truck brought to the property to see if it could be used on the site and as testified, was able to obtain circulation with the revised location of the vehicles on the site. He testified that due to the location of water sources serving the site, access would also be required for a pumper vehicle, and that based upon his review of the site, with designated emergency access aisles, there is adequate area for simultaneous access by a pumper vehicle to provide water for fire suppression.

8. There were comments and testimony provided that the development granted by the prior approval of the site plan design from approximately 2019 (identified as Exhibit A-2) had not been acted upon and the conditions imposed for that development had not been met or satisfied by the prior owner. There were comments and testimony provided that the conditions of approval for the previously approved site plan design, approved in approximately 2019 (identified as Exhibit A-2) had not been met or satisfied by the prior owner. There was a discussion indicating that the prior site plan approval still governs the site such that any deviation from that site plan requires a new site plan application or a minor modification of the prior site plan to be submitted and approved. The Applicant's counsel indicated that the Applicant is also seeking to pave the existing lot, but would not expand the building and that a new site plan Application would be submitted shortly to obtain approval of that type of site design improvement. The Board's professionals indicated that the submission must designate drive aisles, provide for emergency vehicle access areas and provide paved areas designating the location for parking the vehicles on display for sale, as well as for employee and visitor parking.

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9. There was a discussion about the type of sales conducted, noting that the Applicant testified as to the sales being largely retail sales, by appointment, with some wholesale walk-ins. The Applicant testified that they would eventually like to expand operations to include retail sales by walk-in, which the Board's professionals noted requires Use variance relief. There was a discussion about the Code provision being interpreted, §355-70(A)(6), which defines and describes the activity permitted on the site as "Automotive-related enterprises...rental and sales (wholesale only), *including retail sales by individual appointment only*, between the hours of 9:00 a.m. and 9:00 p.m." There was an inquiry to the Applicant about the hours of the sales, which under the Code, for sales appointments, is limited to the hours of 9am to 9pm. The Applicant confirmed in her testimony that the business had and would comply with that limitation as to the hours of operation. There was a discussion by the Board, noting that the focus in the Code is on the type of sale (wholesale or retail), that trucks or cars are permitted and that retail sales are to be "by appointment."

10. The Board invited public comment but there were no members of the public who commented on the matter.

11. There was a discussion by the Board members concerning the definition of the term "truck" as it relates to the type of passenger (light truck) vehicles described by the Applicant which the testimony stated were being sold at the site and whether trucks and light trucks used as commercial vehicles are included within the term "automotive" as outlined in this section of the Code.

Based upon the recommendations of the Board's professionals and the review of the Applicant's submissions and the comments and findings of the Board as stated at the meeting:

1. The Board's Professional Planner's review letter confirmed that the property is located in the M-2 Zone as set forth in the comment letter and as stated at the hearing. The Board confirmed that finding/determination. The Applicant did not object to or oppose this finding by the Board.

2. The Board's professional Planner confirmed that the §355-92(S) of the Township Code expressly states and requires that all parking areas, accessways, driveways, drive aisles, loading areas and parking bays or other parking facilities shall be paved and curbed per the provisions of Chapter 310, Subdivision of Land, and Chapter 290, Site Plan Review, of the Code of the Township of Delran, such that the Township Code expressly prohibits parking vehicles on gravel parking lots. The aforementioned section of the Township Code was outlined in the Planner's comment letter and was confirmed by the Planner as stated at the hearing. The Board confirmed that finding/determination.

3. As to the interpretation of §355-70(A)(6) of the Township Code defining the permitted activities in the zone for this site, and in applying that section of the Code to the operations of the Applicant as submitted in the Applicant's documents and the testimony at the hearing, with the Exhibits presented, the Board reasoned as follows:

- A. The term "truck" as it relates to the type of passenger (light truck) vehicles and commercial trucks described in the Applicant's testimony as being displayed and offered for sale at the site, is included in the term "automotive" as that term is used in this section of the Code;
- B. That both wholesale and retail sales are permitted, but retail sales have to be conducted by appointment only, which may take place between the hours of 9am-9pm

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and that the sales of commercial trucks (wholesale or retail) is permitted for trucks described by the Applicant's testimony as weighing less than 26,000 lbs.

4. The Board further found that the use of the site and the design, including the parking area being utilized, is different than the existing site plan approved in 2019. Accordingly, to the extent that the current design of the site is different from the prior Site Plan approved, an application for approval of a modification to the prior Site Plan or a new Site Plan approval is necessary

5. Consistent with the requirements of the Code, the Board finds that §355-92(S) of the Township Code expressly states and requires that all parking areas, accessways, driveways, drive aisles, loading areas and parking bays or other parking facilities shall be paved and curbed per the provisions of Chapter 310, Subdivision of Land, and Chapter 290, Site Plan Review, of the Code of the Township of Delran, such that the Township Code expressly prohibits parking vehicles on gravel parking lots all vehicles parked on the site are required to be parked on paved areas, the dimensions of which are required to be consistent with the prior approval, pending any amendment to the site plan approved to authorize such a revision.

6. If the use of the site is expanded to include the retail sale of commercial vehicles as described by the Applicant as being part of the existing and planned expansion of the site's operations, such an expansion of the type of sales proposed is a use which is not presently permitted for this site in the M-2 zone and the Applicant will be required to submit an Application for a Use variance to permit such a use.

7. Based upon the aforementioned findings, the Board made a motion to adopt the above-described findings as to the interpretation of the Township Code, and to reverse the Township Zoning Officer's denial of Permit Application No. 15961, dated October 4, 2022, to permit the use described at the hearing on the Appeal of the Zoning Officer's determination, namely: that both wholesale and retail sales of vehicles, including trucks, is permitted, but that retail sales have to be conducted by appointment only, which may take place between hours of 9am-9pm. The sale of commercial trucks (wholesale or retail) is permitted for trucks weighing less than 26,000 lbs.

8. Within ten (10) days of this Resolution, the Township Zoning Officer is directed to issue a zoning permit for the use requested in Permit Application No. 15961.

9. Pending the Application for Site Plan Approval or any application for Use variance relief, as may be appropriate as to the latter, the Applicant may not expand the operations at the site or undertake any development activities that are subject to site plan review.

10. Pending the Application for Site Plan Approval or any application for Use variance relief, as may be appropriate as to the latter, the Applicant is required to comply with the Fire Official's directives, as testified at the hearing for maintaining safety, including maintaining adequate drive aisles and areas to allow for emergency vehicles to access and circulate onto the site in the event of an emergency.

11. The Board determined that the use of the site must be in a manner consistent with the operations as testified to by the Applicant's Owner at the hearing on the appeal of the Zoning Officer's interpretation of the applicable section of the Code and that all other provisions of the Code, including restrictions and standards for use, are still applicable.

12. The within Resolution is an amended Resolution clarifying certain findings and language as to the Board's action as contained in the prior Resolution #ZZ 2023-05, such that this Resolution replaces and supersedes Resolution #ZZ 2023-05.

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Based upon the recitation and summary on the record, and incorporating the reasons and conditions of approval, a motion was made by Mr. Mormando and was seconded by Mrs. Parento.

Voting in favor of approval of the interpretation: Mr. Aleszczyk, Mrs. Custer, Mr. Moore, Mr. Mormando, and Mrs. Parento

Voting against the interpretation: None

Abstain: None

Absent: Mr. Merced

B.

Jakub & Anita Malesa
4327 Bridgeboro Road
Block 110, Lot 7
ZN2022-13
Bulk Variance

In December of 2022, the Applicants, Jakub and Anita Malesa, filed an Application with the Zoning Board seeking bulk variance relief as to the width of the subject lot to be permitted to construct a house on an undersized “flag” lot which is irregularly shaped, and sought such other relief as to non-conforming conditions on the subject property to be determined if applicable and/or as necessary.

A hearing on the Application was conducted at the January 19, 2023 Board meeting. At the January 19, 2023 hearing on the Application, the Applicants presented testimony in support of the Application and sworn testimony and comments were taken from the Fire Official who noted that he had concerns about emergency access to the property, that there needed to be a 25 ft. turning radius which does not appear to exist based upon the Applicants’ survey as to the proposed location of the structure. At the hearing on the Application, questions were raised concerning the site access in terms of the driveway apron width, which is not wide enough, and because the Applicants do not have a site plan designating where the apron would be located. The Application proposes for the property owner to gain access to the property from Bridgeboro Road, which is a County Road, such that any new access, including the placement and width of the driveway apron, would require an application for and approval by the Burlington County Planning Board.

At the hearing on the Application, questions were raised concerning the drainage, the amount of impervious coverage, the need for a grading plan and to address stormwater management. Questions were also raised during the public comment portion concerning the existing buffering along the proposed driveway and whether the Applicants had removed trees on the property without first obtaining a required tree removal permit from the Township and there was a comment that at the time of the hearing, there was still debris on the site, including tree stumps from the trees removed.

Mr. Malesa confirmed that he had removed trees from the site to clear the area and stated that the stumps and debris would be removed promptly.

The Applicants acknowledged that a timely request to the adjacent property owners had not been made seeking to purchase a part of the neighbor’s lot. The Applicants’ counsel sought to ask the

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owner to agree to sell an unspecified portion of the adjacent lot to the Applicants for an unspecified sum of money. A question was raised as to whether or not the property had previously been subdivided, and the Applicants acknowledged that a full title search had not been performed by the Applicants in advance of filing the Application.

The hearing was then adjourned at the Applicants' request to the March 16, 2023 Zoning Board meeting. They toll the time for the Board to act.

C.

Adeel & Umair Rama (Starz Auto Group)

9008 Route 130 North

Block 128, Lot 15

ZN2022-08

Bulk Variance

(Adjourned until January 31, 2023 Zoning Board Meeting)

The Applicants requested that the matter be adjourned from the January 19, 2023 meeting and carried over to the January 31, 2023 Zoning Board Meeting. They toll the time for the Board to act.

RESOLUTIONS

A.

3001 Bridgeboro Road, LLC

3001 Bridgeboro Road

Block 102, Lot 51

ZZ2023-01

Minor Subdivision

Mr. Mormando made a motion to adopt Resolution ZZ2023-01. Mrs. Parento seconded the motion. The results are as follows:

Ayes: Mr. Mormando, Mrs. Parento, Mr. Moore & Mrs. Custer

Abstain: Mr. Aleszczyk

Absent: Mr. Merced

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B.

3001 Bridgeboro Road, LLC
3001 Bridgeboro Road
Block 102, Lot 51
ZZ2023-02
Use Variance

Mr. Mormando made a motion to adopt Resolution ZZ2023-02. Mr. Moore seconded the motion. The results are as follows:

Ayes: Mr. Mormando, Mrs. Parento, Mr. Moore & Mrs. Custer

Abstain: Mr. Aleszczyk

Absent: Mr. Merced

C.

Todd Craig Enterprises (Ott's Tavern)
3112 Bridgeboro Road
Block 118, Lot 3.02
ZZ2023-03
Minor Site Plan

Mr. Mormando made a motion to adopt Resolution ZZ2023-03. Mrs. Parento seconded the motion. The results are as follows:

Ayes: Mr. Mormando, Mrs. Parento, Mr. Moore, Mr. Aleszczyk & Mrs. Custer

Absent: Mr. Merced

OPEN/CLOSE TO THE PUBLIC

Mr. Mormando opened this portion up to the public. Seeing no members of the public who wished to speak, Mr. Mormando closed this public portion of the meeting.

MINUTES

Mrs. Parento made a motion to adopt the Minutes from the Zoning Board Meeting on September 15, 2022. Mr. Moore seconded the motion. The results are as follows:

Ayes: Mr. Mormando, Mrs. Parento, Mr. Moore, Mr. Aleszczyk

Abstain: Mrs. Custer

Absent: Mr. Merced

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ADJOURNMENT

Mrs. Parento made a motion to adjourn the meeting at 9:24 pm. Mrs. Custer seconded the motion. The results of the motion are as follows:

The motion passed with a unanimous voice vote.

Respectfully submitted,

Colleen Kohn,
Planning & Zoning Board Secretary