

**BOROUGH OF MIDLAND PARK - ZONING BOARD OF ADJUSTMENT MINUTES**

**May 13, 2009**

PLEASE TAKE NOTE:

ON WEDNESDAY, MAY, 13, 2009, THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MIDLAND PARK HELD A REGULARLY SCHEDULED MEETING IN THE MIDLAND PARK COUNCIL CHAMBERS, 280 GODWIN AVE., MIDLAND PARK, NJ. THE FORMAL MEETING BEGAN AT 7:30 P.M.

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FORMAL MEETING

READING OF THE OPEN PUBLIC MEETINGS ACT

PLEDGE OF ALLEGIANCE

ROLL CALL:

Ms. Linda Herlihy	present	Mr. David Zuidema	present
Ms. Patricia Jeffer	present	Mr. Glen Biswurm	present
Mr. Douglas Feick	present	Mr. John Meeks, Alt. #1	present
Mr. Richard Kroitsch	present	Richard Formicola- Alternate #2	present
Peter Braunius	absent		

Daniel Zwillenberg, Esq. , replaced D. Doyle as Board Attorney and Ken Karle, Board Engineer, were also present on behalf of the Board.

Kent Rigg, Class 4 Planning Board member, was present as he was requested to participate in the Children=s Therapy use variance application.

Mr. Kroitsch and Mr. Formicola were sworn in as Board members.

Minutes of the April 8, 2009 meeting were approved.

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**NEW BUSINESS:**

URBAN MOTOR CAR CO., INC- Block 17 Lot 2.01- 146 Godwin Ave- Mr. Biswurm stepped down for this application due to a conflict. Charles Graf, sole proprietor of Urban Motor Car, sworn in. Mr. Graf submitted an application for site plan waiver to comply with a condition of a use variance previously granted. Mr. Graf advised that there are no changes to the site other than a change of first floor use from residential to commercial. Urban Motor Car intends to take over remaining first floor space. Mr. Karle advised that the concern is if there is adequate parking for the use change from residential to office. Ms. Herlihy advised that the use variance was granted as a separate item in order for Mr. Graf to occupy the space quickly with condition that a site plan application would be filed; she does not believe the site plan waiver meets that condition. Mr. Graf believes that the site plan waiver is appropriate; physically the site has not changed. Board questioned the current car activity re: number of cars on site. Mr. Graf has submitted an as-built survey plan. Ms. Herlihy does not believe a site plan waiver complies with the condition of the use variance. Motion by Ms. Jeffer to deny application for site plan waiver, seconded by Mr. Feick, all voted in favor. Mr. Biswurm returned to the dais.

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**PUBLIC HEARINGS:**

CENTRAL AUTOMOTIVE ENTERPRISES, LLC- Block 41 Lot 1 - Mr. Kroitsch has listened to the recording of the prior meeting, has so certified, and is therefore eligible to vote. Atty. Bruce Whitaker, representing applicant, continued from previous meeting. Applicant has submitted revised plans; board engineer has reviewed. Atty. Whitaker, in response to question about plans for the existing building, advised that the interior and exterior of the building will be completely refurbished. Brian Shortino, Professional Engineer, previously sworn, reviewed revised plans, Exhibit A-9, 7 sheets rev. date 4/22/09, page 1-6 & SV-1. 20' Easement has been located on the plan, canopy has been reduced in size by 4' to 64' and moved slightly to the east, further away from Godwin Ave. 0' set back at the northeast point of the canopy has been increased to 1.6' set back. Spacing between dispensers has been reduced from 24' to 22'; space between the front of the building and face of island has been reduced from 32' to 30.7'. Landscaped islands have been added to the corners of each side line and existing planters along the side lines have been increased from 3.5' wide to 5' minimum width; reduced impervious area and eliminated one existing variance; maximum improved lot coverage is 75%, existing was 77.6% and proposed is 74%. Existing set back to island of 14.4'; set back proposed is 14.4', maintaining existing set back to island. No legal easement previously existed; if application is approved, the applicant agrees to record the 20' legal easement. Mr. Shortino commented on LAN letter dated 4/30/09; easterly parking spaces can be designated as employee spaces, if required. Three smaller islands are proposed with one kiosk, spacing between islands is a design norm; leaves space for water drainage; no tripping hazard; bollards can be placed, if required. Property will be resurfaced as part of the overall upgrade of the site. Three pump islands are proposed with three dispensers; outermost dispensers will have gasoline and diesel product and the center island will only have gasoline. Mr. Shortino reviewed overall traffic flow; Exhibit A-10, Truck Path Plan, identified as TP-1 dated 5/12/09 re: LAN comments #7&8. Comment #9, Landscaping; will comply; Atty. Whitaker stipulated to agree with what engineer proposes. Landscaped area along property lines; has been sent to county; plantings can be supplemented and accommodated. Lighting has been revised; canopy lights will be recessed; 8 lights total, 4 between Godwin and pump islands and 4 between pump islands and building. Four lights between Godwin and pump island reduced to 175W and four lights between pump island and building have been reduced to 250W. They are still in excess of 1.0 foot candle on Godwin Ave, public street. IESNA recommends lighting levels for uses; recommends 3 foot candles under canopy; should be able to comply. Building and architectural design will remain the same; will be refurbished. Board questioned plantings on easterly side; under 30" height on curbed island, and the extension of the canopy past the pump islands on each end. No air tower or vacuum is proposed. Board questioned where diesel will be located; on each of the outmost pumps, and what vehicles will be attracted by diesel fuel. Board questioned proposed signage; applicant does not believe they require any variances for proposed signage; Board advised that they are not approving any signage on drawings; no relief or variances are requested or granted. Freestanding sign is existing and will remain. Atty. Whitaker advised that the security fence has been re-installed and confirmed with the Code Enforcement Officer. Atty. Whitaker will provide an update as to the status of the remediation. Board questioned the number of proposed signs; canopy signs are lighted letters only; not backlight. Meeting opened to the public. Richard Groves, 24 Park Ave, questioned what type of landscaping is proposed to alleviate the 18' height of the proposed canopy. Mr. Whitaker advised that no existing trees in the rear of the property will be touched. Meeting closed to the public. Mr. Karle commented on sign ordinances 34-17.10d and 34-17.8e. Roger DeNiscia, Licensed Professional Planner, 66 Glen Ave, Glen Rock, sworn in, accepted as expert. Mr. DeNiscia prepared Exhibit A-11, photo exhibit, 7 photos of site. Site developed as a service center, triangular shaped property with county easement, underground stream in the middle of the property which requires an easement. Fuel islands are very close to right of way at 20', when county took easement the fuel islands moved closer to the street. Site has two driveways however westerly drive is an entrance only; considerable number of limitations. Site is in a state of disuse; not in good

condition; negative influence in area.

Significant planning benefits: cosmetic improvements, delineation of parking, paving and landscaping, use of the site to restore a community economic element and elimination of non-conforming condition for coverage. Site is in B-1 zone, permits service stations as a conditional use, site is deficient of three standards; two existing conditions, less than 200' from a public park and westerly driveway is too close to Central Ave, 50' required where 40' exists. Fuel dispenser set back required is 60'; this falls behind the existing building; set back has been increased from 13.6' to 14.4', the visible set back from the roadway is almost 30' and would not have any impact on roadway or adjacent properties. None of the deficiencies would compromise the function or operation of the site. Cannot meet the 25' set back for the canopy; constraints of site. Size of existing ID sign is 32 sf and maximum sign area is 30sf; no change proposed.

In Mr. DeNiscia's opinion, what is achieved vs. the variances required; the variances are minimal and reasonable re:40:55d-70, C-1 and C-2. Strict compliance with ordinance would preclude any development of the site and would leave the conditions as they are. Planning benefits outweigh any substantial detriments; advance directly the purposes of planning under 40:55d-2. There are no substantial zoning detriments; no impairments on the intent and purpose of the zone plan; no overuse of property. Application meets all positive and negative criteria for Board to approve. Variances requested are for preexisting conditions, improved aesthetics should be considered. Board noted that the preexisting non-conforming structures were smaller than what is now proposed. Meeting opened to the public, with no questions, meeting closed to the public. Meeting opened to the public. Richard Groves, 24 Park Ave, sworn in, concerned about site lines, lighting, diesel fuel and increase in pump islands and truck traffic. Meeting closed to the public. Board discussed the number of pumps and the increase in truck traffic, size of canopy and driveway aisles. Atty. Whitaker summarized application; upgraded site and an asset to the community, meets criteria under c-1, hardship criteria based upon property conditions, and c-2, benefits outweigh detriments. Applicant will agree to work with board engineer to tweek site conditions if issues arise. Board questioned Mr. DeNiscia on the addition of the canopy in a colonial designed area and the location of the canopy off the curb line. Motion by Mr. Kroitsch to approve application, seconded by Ms. Jeffer; Board members Jeffer, Feick, Kroitsch, Meeks, and Herlihy voted to approve, Board members Zuidema and Biswurm voted to deny, application was approved.

CHILDREN'S THERAPY CENTER- Block 25.10 Lot 4.01- 311 Prospect St- L. Herlihy, D. Feick, and R. Kroitsch stepped down for this application due to conflict. Board consisted of five eligible zoning board members; P. Jeffer, D. Zuidema, G. Biswurm, J. Meeks, R. Formicola, and one planning board member; Kent Rigg, for a total of six members for this application. Atty. Les Andersen advised that the applicant wished to proceed with the hearing with six members for a use variance which requires five affirmative votes. Ms. Jeffer was acting chairperson for this application. Notices are in order. Applicant is seeking a site plan waiver. Per Board Engineer letter, applicant agrees to repair and maintain the driveway and submit an as built survey with all improvements shown as conditions of approval. Board discussed the use variance criteria; a use variance is requested for two principle uses on the same site as the school is not an accessory use of the church. The use variance for a school is an inherently beneficial use, positive criteria are presumed to be satisfied; this school also qualifies for special reasons for particularly suitable use. Mr. Marvin Leiken, Executive Director & Principal of Children's Therapy Center. Children's Therapy Center is a state approved school for special needs children with multiple disabilities, fragile population, wheelchair or stroller bound; proposed age range is 7-13. School follows state curriculum with extensive therapy's, physical, occupational and speech therapy provided. School was established fifty years ago; current location is in Fair Lawn; expansion is for continuation of program for older children. Mr. Leiken described the nature of the student population; usually referred by a school district. Anticipate opening with 24 students with a maximum of 40 students; 8 students in a class. Staff at maximum of 40 students would be 5 classrooms; 5 teachers, 5 occupational, physical, and

speech therapists; approx. 42 or 43 with administrative staff. Hours of operation are 8:45am - 2:45pm.

Most students are transported via school bus; anticipate 8-10 school buses. Exhibit A-1, Site Plan by Down Town Architect Group, dated 12/15/08, 4 sheets, titled A-0 thru A-3. Mr. Leiken described the particular suitability of this building for their use. Mr. Leiken has established a relationship with the Midland Park High School for students to experience community and volunteering. Meeting opened to the public, with no comments, meeting closed to the public. Peter Willcox, Licensed Architect, accepted as expert, sworn in; described physical features of site. School building has a total of 12 existing classrooms and gymnasium building; wing of building is invisible from Prospect St. and set back. There is no access through Oak Hill Road, driveway access is suitable for bus transportation. There are a few changes to site; small roof top units will be blocked in the rear from the taller roof of the gymnasium; low fencing can be supplied, if board requires. A canopy will be added to the rear entrance of the building and will serve as the main entrance. Exhibit A-2, photograph, 1 sheet 10 x 13. Canopy is 12' high at the front; it is necessary to protect students from weather. Three small lights will be added under the canopy; will not be used often as the school hours are mostly during daylight hours; no other changes to existing site lighting. Mr. Willcox stated that parking is sufficient for all uses at the same time; church and school will seldom use the parking simultaneously. Board questioned if any signs are proposed; Mr. Leiken advised that they would like two signs, one at the main entrance and one for bus direction. Any signs must meet ordinance requirements. Meeting opened to the public. Nancy Alexander, 30 Canterbury Dr., questioned the location of the main entrance and the school bus entrance. Meeting closed to the public. Father Peter Funesti, Pastor, Church of the Nativity, sworn in. Father Funesti advised that the school activity will not impede the activities of the Church; vast majority of church events will occur during non-school hours. Meeting opened to the public, with no comments, meeting closed to the public. Michael Kauker, Professional Planner, accepted as expert, sworn in. Mr. Kauker agrees that the use variance is for a second principle use on the site which the ordinance does not permit. Basis for use variance is four part SECA test; 1<sup>st</sup>, public interest is served by providing an education for a handicapped age group not now served by this applicant; 2<sup>nd</sup>, 180 students were served by previous use; proposed use is 40 students; no identifiable site related impacts, 3<sup>rd</sup>, any impacts of the associated use should provide mitigating measures, no impacts are identified and 4<sup>th</sup>, balance of positive vs. negative impacts; impacts are positive; inherently beneficial use, site is clearly particularly well suited for the use, idealized access, oversized site, larger classrooms, wide hallways, wider door ways; ideally suited to accommodate the needs of this special purpose population, circulation pattern and the current number of parking spaces of 159 exceeds the required 146. Two principle uses can co-exist on site without negative impacts; positive effects far outweigh any negative impacts. Meeting opened to the public, with no comments, meeting closed to the public. In response to Atty. Zwillenberg question of negative criteria, Mr. Kauker advised that the basis for concluding that the negative criteria associated with the use is satisfied by the capacity of site to accommodate the proposed use, lack of interface between church and school activities, and virtually no changes to structures, road system or open space. The non-conforming front yard set back is pre-existing and the activity associated with the proposed use is behind the site. Atty. Andersen summarized application; three areas of relief, site plan waiver, use variance and confirmation of existing non-conforming front yard set back. Basis for request for site plan waiver; virtually no substantial changes to site plan on file however, applicant has agreed to conform with the engineer's request to provide an as-built with all improvements on the site and also that the driveway will be repaired and maintained. The proposed use is a school; inherently beneficial use, case of Children's Institute vs. Verona, Appellate Div. noted that a school for handicapped children is near the top of the scale of inherently beneficial uses. Meeting opened to the public for comments or questions, with none, meeting closed to the

public. Motion by Mr. Zuidema to approve a waiver of site plan, use variance, and a variance for a front yard set back, seconded by Mr. Biswurm, all voted in favor.

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Meeting was adjourned at 11:25 PM  
Janet Giardino, Board Secretary