**BOROUGH OF MOUNT ARLINGTON**

**LAND USE BOARD MEETING MINUTES**

**August 28, 2013 -7:00 PM**

### Regular Meeting

# Meeting called to order at 6:54 p.m. “Pledge of Allegiance to the Flag” recited.

This meeting was advertised in the Daily Record and the Roxbury Register.

Roll Call. Present: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, van den Hende, Windish, Ondish. Absent: Fostle.

Motion to Approve Minutes, July 24, 2013. Motion by: Simard, second by Cerasoli. Yes: Keuntje, Driscoll, Hallowich, Loughridge, Simard, Wilson, Cerasoli, Fostle, van den Hende, Rinaldi, Windish, Ondish. No: None.

Motion to Approve Vouchers, August 28, 2013. Motion by: Simard, second by Windish. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, van den Hende, Rinaldi, Windish, Ondish.

Correspondence distributed. Originals on file with secretary.

Memorialization of Resolution:

**A Resolution of the Land Use Board of the Borough of Mount Arlington, in the County of Morris, State of New Jersey Approving Appointment For Coded System Codification and Supplementation Services.**

Motion to memorialize resolution by Wilson, second by Cerasoli. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, van den Hende, Rinaldi, Windish, Ondish. Motion approved.

Completeness:

**Windemere Associates - Block 38, Lot 4** – Application for development of a primary single-family residence and the reconstruction of the boathouse.

Recues: van den Hende

Cohen advises the Board that a motion needs to me made to accept a Board member to fill-in when there is an absence of the Vice Chair.

Motion made to accept Cerasoli as a temporary Chair by Windish, second by Simard. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, Rinaldi, Windish, Ondish. Motion approved.

Cohen reports to the Board a letter from Mr. Selvaggi dated August 27 that deems Windemere Associate incomplete. Basically, because they failed to make an application for a ratio variance which they needed as well as other items sighted in the letter.

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There was a request that at the September meeting if the applicant is deemed complete whether or not the applicant can resume, if the applicant serves proper notices, to a public hearing?

Motion to deem the application incomplete by Simard, second by Windish. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, Rinaldi, Windish, Ondish. Motion approved.

Discussion takes place whether the applicant is allowed to proceed with public hearing at the September meeting provided that he is deemed complete and has provided proper notice.

Phil mentions that since this would be a brand new application it would then go to the new Land Use Board Engineer for completeness.

Windish comments that the applicant would have to provide the necessary information 10 days prior to the meeting and if he misses the 10 days then it would fall to the following meeting.

Cohen asks if we can provide the applicant the information, if the applicant is deemed complete at the next meeting can he move ahead to the Public Hearing; if proper notice has been given. He just wants to know if he should serve notice.

After discussion the Board decided that the applicant would not be able to move to the Public Hearing if the application is deemed complete.

van den Hende moves to the Chair position

Recues: Ondish and Windish

Public Hearing:

**Times Square Church, Inc. - Block 9, Lot 2.01 –** Application for change in use from Banquet Hall to place of worship and variance due to zoning ordinance front yard requirement and impervious lot coverage.

Cohen states that there is a Certification of the Audio Recording that Carolyn Rinaldi did listen to the July 24, 2013 Land Use Board meeting. Pursuant to the statute she would be allowed to participate in this hearing and would be allowed to vote on this application. I am so notifying the applicant.

Nusbaum states that revised were submitted to the Planner and Engineer who each gave reports just recently. We are prepared to put on testimony relating to the planning and engineering reports. We are essentially in agreement with your reports.

Careaga takes the stand. Since the last meeting we did have corredspondance with Suburban Engineering and have modified the plans. Suburban suggested that re-striping the parking lot to have better circulation on the site. Also, discussed was to reduce the impervious coverage if at all possible.

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With Suburban’s help we did submit revised plans that narrow the entrance width of the driveway. It was a little bit confusing. It will be more of a conventional type circulation pattern with a much better flow of traffic.

In front of the building we are proposing curbing that will clean up the site. We will add landscaping, reducing pavement and reducing impervious coverage. Another comment that Mr. Phil had was to put a curb around the building. We looked at this but since the parking lot is so flat, you basically walk from the first floor level and into the building. There is very little edge between to put curbing around the building we would have to cut a lot of the parking lot and would have to make substantial changes to the site to put in curbing. The intent of the application was to not really change anything.

We really had no problems with comments that Phil stated.

Nusbaum asks if it would be fair to say that we accept all of the conditions of the report other than under number 3 additional comments. Where it says it is recommended that curbing be provided around the building.

Careaga states: Yes

Cohen asks Nusbaum if he was referring to Phil’s report from August 27.

Nusbaum: Yes

Nusbaum says he has no further questions of Careaga

Van den Hende asks Phil if he has any comments.

Phil gives general comments about curbing. Curbing is added for protection, but if it has to lower the site and cause drainage problems then that is not what we were intending to do. He continues commenting that at the North side where there is parking against the garden area, maybe cross hatching will help as well as adding additional landscaping on the interior of the site.

van den Hende states that this is contingent on the County approval as well.

Phil agrees

Van den Hende says he has no other questions for the applicant or engineer and opens it up to the other Board members; no further questions were asked.

Cohen states that there needs to be clarification to the reduction of impervious coverage. What was the reduction to the impervious surface coverage? We should have testimony from the Engineer what was the pre-existing impervious surface and what was it reduced to. Additionally, parking is going to be re-striped for additional parking spaces. If we can have a count as to the number of spaces that are now on the plan as opposed to what exists presently. I know there was an issue with ADA parking and if we can have testimony on that from Careaga.

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Careaga states that ADA parking has been added. He continues to reference Phil’s letter. The existing impervious coverage is 27.7% and it’s reduced to 23.1%. There is a 4.6% reduction in impervious coverage.

Parking is proposed at 101 spaces and it was 95 spaces.

Cohen says he understands that the building will be placarded at 300. Is that correct?

Careaga states yes.

Cohen explains that it would have to be placarded based on the parking requirement which is one space for every three occupants, so that 101 spaces would allow for 300 persons, that being a round number. One of the conditions would be; that it could not be occupied by any more than 300 at any one time.

van den Hende asks if it is a Fire occupancy issue.

Cohen says the question is if the building could be occupied by more than 300 based upon the fire code they would agree not to exceed 300 and that would be on the placard.

Nusbaum says we have two limitations: One is the fire code and the other is based on the formula of 3 to 1.

Cohen states if the fire code would not permit 300 but permits 275 then that is what the placard. The placard would have to be at a 300 even if the Fire Code is more than 300.

van den Hende asks what if they were walking in or other means to get there.

Cohen again states the building cannot exceed 300 occupants even if there are three buses and no cars.

Discussion continues about the number of occupants.

Cohen suggests again that the condition would have to be that the building should be placarded for no more than 300 people even assuming the Fire Code allows for more than 300 people. If the Fire Code requires less than 300 then that would be the maximum amount.

Loughridge states at the last meeting the attorney for the School Board had some questions.

Cohen advises the Board that he spoke with the attorney from the Board of Education. Both the Board of Education representatives and the Church representatives had met and resolved their issues and the Church would not be attending the meeting tonight.

van den Hende asks the Board and professionals if they have any questions of Careaga.

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Caldwell notates that the change in impervious coverage does neccesitate a C variance. It did not prior because it was a pre-existing condition but now that they are changing the impervious coverage then it does require a C variance.

Cohen agrees. They did not need one before because it was a pre-existing condition therefore did not need a variance. Now with the reduction in impervious coverage; it now needs a variance. They technically need a variance because the Ordinance states a 10% impervious surface coverage and now they propose 23.1% where 27.7 % existed.

Cohen says we will go through the variances and conditions.

van den Hende opens the meeting to the public.

van den Hende closes to the public.

Cohen suggests that if the Board is considering this favorable that we then go through the conditions that would be imposed in the resolution so that the applicant and Board understand the conditions.

van den Hende asks Phil to address what conditions that we might want to imposed on this application.

Phil states that in his report from August 27, other than the items listed on page 6 actually the initial report has the same conditions, I was not aware if we received any items from the Morris County Planning Board and if not then our resolution should cross reference that and any comments that they may have.

Cohen comments about the existing sign. It is now proposed that a new sign will be used and that they have submitted a conceptual plan. I believe a condition should be that they will submit a formal submission of the sign and would comply with all the requirements of the Borough ordinances with reference to the sign.

Phil states that we probably need testimony that we don’t need a variance.

Cohen says they have to submit the actual design plans of the sign since right now it is only conceptual so that they comply with Borough Ordinances.

Nusbaum states that they will be using the existing sign and only changing the sign to say New Times Church. We will not be erecting a new sign.

Cohen clarifies that the lettering is changing and should submit the plan through the town in any case.

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Cohen outlines all the items that have to be considered:

* As indicated there is a C variance for maximum impervious surface coverage with maximum 10% permitted. 27.7 % exists and now they have 23.1% proposed; reducing it. You would have to grant a C variance.
* Then there are D variances for the conditional use. A church or house of worship is a conditional use in this zone. There are certain conditions which the applicant does not meet. There is a question as to whether or not the applicant meets the other condition. The Board will have to determine if the condition is met.
* Variances
  + Landscaping - Each property shall be appropriately landscaped, screened and buffered. You have to determine that the proposed landscaping by the applicant is not just using the existing landscaping and now by the revised plan; is going to be adding more landscaping; and does it meet that condition of the conditional use. If you believe that it does then you don’t need to issue a variance for that.
  + The other two variances are that no parking should be permitted in the minimum required open spaces including side yards. They are proposing parking within the front yard setback. In addition to that, the front yard setback is required to be 60 feet and they are proposing 27.2 feet; which is exists. That has not changed as a result of the new plan.

Phil agrees it has not changed.

Cohen continues. That this is a variance on the variance on a condition of the conditional use. They don’t meet one of the conditions of the conditional use and therefore they must grant a variance for that which is similar to a C variance.

Parking exists in the front yard setback.

The other is a two acres minimum; they have 5 acres so they meet that.

Landscaping; if you deem that the landscaping and screening is sufficient then you do not need that variance.

There is a C variance on the impervious surface.

van den Hende asks Phil if he is happy with the landscaping plan and that it meets the requirements.

Phil states that there is extensive landscaping and that there was testimony that was accepted. The fact that this is sitting in a location that is not adjacent to residence and is below Howard Boulevard. It is buffered and hidden. We did not ask for any detail on it.

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van den Hende states that he thinks the landscaping is sufficient.

Cohen states that if the Board agrees that the proposed landscaping provides proper screening and buffering then no variance is needed.

The other two variances is the parking within the front yard and the front yard setback for the conditional use. The test to reference those is a little bit different.

1. You must determine whether or not the variances that they seek, the parking within the front yard and the front yard setback, that the site will be able to accommodate these changes; these variances. That you are able to work the site practically and that they will not create a problem in the functionality of the use.
2. Whether you have to consider it in the negative criteria and will it affect and damage the character of the surrounding neighborhood. You may take into consideration that these two variances do pre-exist but you need the variances because of the conditional use they are proposing now. You may also take into consideration the testimony that we have already heard and the pre-existing use is really a non-conforming use. We don’t know if they ever obtained a variance for it or it was done when it was conforming. But it was a non-conforming use based upon the permitted use in the zone and this is a conforming use (a church is a conforming use) in the zone provided you meet the conditions.

Cohen asks Caldwell if there is anything else she would like to add.

Caldwell states she wants to add that there is parking in the side yard setback.

Cohen adds that there was a previous issue with the parking however that has been addressed. The parking has been increased to 101 spaces and the building occupancy has been restricted to no more than 300.

Van den Hende states the number of variances we are seeking is 3.

Cohen agrees. They are:

1. C variance for the impervious surface coverage.
2. The front yard setback
3. The parking within the front yard and side yard setback

Cohen states that numbers 2 & 3 are D variances although not the traditional D variance such as a use variance there is less of a standard.

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Motion to deem the application accepted where we have one C variance for impervious coverage, one D variance for front yard setback and a second D variance for parking within the front yard and side yard setbacks and to accept the approval of the site plan as proposed in accordance with the latest plans submitted August 14 and the conditions as outlined by the Engineer and conditional upon approval of the site plan by Morris County Planning Board by Wilson, second by Foley.

Van den Hende asks if there is a need for discussion from the Board.

Cohen suggests that we should break this down.

Wilson withdraws her motion.

Van den Hende asks the Board for their opinion of the landscaping. Brief discussion by the Board.

Motion is made that the landscaping is deemed compliant with the condition of the conditional use of the landscaping by Hallowich, second Foley. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, van den Hende, Rinaldi. Motion approved.

Motion to deem the application accepted where we have one C variance for impervious coverage, one D variance for front yard setback and a second D variance for parking within the front yard and side yard setback and to accept the approval of the site plan as proposed in accordance with the latest plans submitted August 14 and the conditions as outlined by the Engineer and conditional upon approval of the site plan by Morris County Planning Board by Wilson, second by Foley. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, van den Hende, Rinaldi. Motion approved.

There is a discussion about the issuance of the Certificate of Occupancy. It is not the Board’s decision regarding the Certificate of Occupancy.

Cohen states that we approved the plan and once the conditions have been met and the only other item is the Morris County Planning Board which I don’t envision any problems because no changes are being made to the intersection or access to the property. The placard for 300 persons should not be a problem.

The Zoning Officer and Construction Official have to get involved with the Certificate of Occupancy. The Board only gets involved if the Board decides to agree that the building can be occupied prior to the C of O.

Nusbaum wants to close title with the Certificate of Occupancy.

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Motion is made to have a letter written to the Zoning Officer and Construction Code Official that the Planning Board does not have any objection to an issuance of a Temporary Certificate of Occupancy provided that the improvements are constructed by a certain period of time and approved by the Borough Engineer though this does not mean it will be issued by the Construction Code Official by Simard, second Wilson. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, van den Hende, Rinaldi. Motion approved.

7:53 Open Executive Session:

Motion is made to go into Executive Session for the purpose of Appointing Professional Services Contracts for the Remainder Of The Calendar Year 2013 – Land Use Board Engineer by Simard, second by Cerasoli. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, van den Hende, Rinaldi, Windish, Ondish. Motion approved.

8:03 Closed Executive Session:

Open to the Public

Motion is made to adopt a resolution for Appointing Professional Services Contract for the Remainder Of The Calendar Year 2013 – Land Use Board Engineer to CP Engineers and Architecture by Foley, second by Wilson. Yes: Keuntje, Driscoll, Hallowich, Foley, Loughridge, Simard, Wilson, Cerasoli, van den Hende, Rinaldi, Windish, Ondish. Motion approved.

Motion to adjourn by Ondish, second by Wilson. All in favor. Motion approved.

# Meeting adjourned at 8:06 p.m.

Debra-Ann Halik

Secretary to the Land Use Board

Approved: 09-25-13