

**TOWNSHIP OF EVESHAM**

**Zoning Board**

**Minutes**

**November 19, 2018**

**7:00 pm**

**Municipal Building**

**Call to Order**

Chairman Parikh made the call to order at 7:23 pm

**Flag Salute**

**Statement of Conformance with Open Public Meetings Act**

Chairman Parikh made the statement of conformance with the Open Public Meeting Act and the Municipal Land Use Legislation

**Roll Call**

**Present:** Alperin, Rodgers, Lutner, Osno, Davé, Wilson, Parikh

**Also Present:** Wieliczko, Walters, Loughney, Arcari, Tadas, Bruder, Kinney, Boulton

**Absent:** Wessner, Shah

**Meeting Minutes:**

**October 15, 2018**

Motion: Rodgers

Second: Alperin

Ayes: Alperin, Rodgers, Lutner, Osno, Davé, Wilson, Parikh

**Unfinished/New Business**

**1. William Norozanick ZB 18-35 12-22-18**

**Use Variance/Minor Subdivision/Bulk Variance**

*79 Hopewell Road, Block 55, Lots 3, 3.17, 3.18 (RD-1 Zone District)*

*Applicant is seeking a use variance to accommodate the residential uses currently located on the lots pursuant to Section 160-29(A) where no new development proposed  
Peter Lange, Attorney for Applicant*

**Witnesses:**

- Peter Lang, Attorney

**Applicant Attorney Overview:**

- Applicant is seeking a use variance to subdivide 3 lot lines
- Simply changing lot lines as they exist on the current division of property
- Predates zoning in the township
- Property in family for generations
- Private easements to get to property and no new development proposed
- Following recommendations by Pineland Commission
- Secession of the ownership of the property to family members
- Minor subdivision of Lot 3, 3.17 and 3.18 off Hopewell Rd
- Lot 3 presently no development; no dwellings and will remain the same; lakebed common areas and green acre areas
- Lot 3.17 has 3 residential dwellings on it and is approximately 8 acres
- If subdivision is granted, will have 2 residential dwellings; will be enlarged to 9.34 acres

- Lot 3.18 has 1 dwelling currently at 5.18 acres and will be enlarged to 11.9 acres; lessing non conformities
- Waivers requested for submission waivers with no change to existing conditions; Board has approved other lot line adjustments
- One bulk variance created for proposed Lot 3.17 which is front yard and will be less than 75ft; making condition based on Pinelands recommendation
- Given existing driveways there is no other way to add without creating the minor bulk variance
- Large parcel of woods and redrawing the lines to accommodate the family

Zoning Board Solicitor:

- No additional lots will be created and will end up with Lot 3, 3.17 and 3.18
- Lot 3.17 has 3 houses on it now that will be decreased to 2 houses
- Lot 3.18 has 1 house that will be increased to 2 houses
- Same 4 houses, just a little different
- Variances required for the front yard setback of lot 3.17; 75ft required is currently existing is over 240ft and proposal is 35.2ft
- Current non-conforming rear yard setback is 33.4ft where 50ft is required and that will remain the same at 33.4ft
- Lot 3.18 as proposed there is a rear yard setback of 38.3ft as exists it is a preexisting non-conforming bulk standard
- Bulk relief is with the front yard setback for Lot 3.17
- Requirement with regard to access to lots from streets; all of the access is by private easement; easements are not maintained by the Township
- Applicant agrees that as a Condition of Approval, there is no responsibility to the Township for the access easements
- Applicant agrees as Condition of Approval to secure Pinelands Approval
- Applicant agrees as Condition of Approval for maps to be filed as evidence of the relationship of the lots and the easements
- Applicant advised that they already received Pinelands approval and are going with the plan as they recommended
- March 15, 2018 letter from Pinelands; Certificate of Filing
- Certificate of Filing will be attached to the Resolution
- The Document itself says the Certificate of Filing is not an actual approval until they look at the plan and give a No Call Up Letter; not done until that point

Leah Fury-Bruder, Township Planner:

- No comments

Bill Loughney, Township Engineer Testimony:

- Improvement of 3 on one Lot to 2 on one Lot
- Accepting that Township has no responsibility for the access
- Maps will be filed

Stacey Arcari, Traffic Engineer:

- No comments

Board Comment:

- As to future conveyance of the property, Mr. Rodgers asked if this would be helping or hindering the property

- Mr. Lang replied that it is going to help and it is contemplated that this will stay within the family
- Applicant doesn't think it will be a stumbling block if sold to a 3<sup>rd</sup> party; could market either property
- It's a benefit for the family and the property will be split between a daughter and son

Public Comment:

- No comments

Zoning Board Solicitor Summary:

- Applicant is applying for a subdivision lot line adjustment only with no new development; no additional lots will be created
- Because of increase, Statute 160.29A currently provides that lots shall have no more than 1 freestanding building; Lot 3.18 currently has 1 building and is not going to have 2, and Lot 3.17 is going from 3 to 2; which necessitates a use variance
- Associated bulk variances all relate to preexisting conditions on site except for the front yard setback
- Private easements not in conformance with the statute so a bulk variance is needed with regard to homes being 25ft from the setback; also a preexisting condition
- Applicant agrees to all Conditions of Approval by Engineer

Motion to Approve ZB 18-35

Motion: Rodgers

Second: Osno

Ayes: Alperin, Davé, Lutner, Rodgers, Osno, Wilson, Parikh

Administrative Officer requested the Board move to Resolutions before hearing FT Equities case while awaiting arrival of Planning Board Solicitor, CherylLyn Waters.

**Resolutions**

ZB 18-30

Motion: Osno

Second: Davé

Ayes: Alperin, Davé, Lutner, Rodgers, Osno, Parikh

ZB 18-32

Motion: Davé,

Second: Osno

Ayes: Alperin, Davé, Lutner, Rodgers, Osno, Parikh

ZB 18-33

Motion: Lutner

Second: Osno

Ayes: Alperin, Davé, Lutner, Rodgers, Osno, Parikh

ZB 18-25

Motion: Lutner

Second: Osno

Ayes: Alperin, Davé, Lutner, Rodgers, Osno, Parikh

*Meeting paused for 5 minutes. Meeting resumed at 7:30pm*

**2. FT Equities LLC ZB 18-31 11-27-18**

**Interpretation of Section 161-1.C.4 or in the alternative,**

**Use Variance/Major Site Plan-Prel/Final**

*600 Route 73 North, Block 6.04, Lot 1 (C-1 Zone District)*

*Applicant is proposing the construction of a 5,371 sq. ft. Royal Farms convenience store with eight fuel pumps Applicant requests an interpretation that the proposed development satisfies all conditions for the proposed use as set forth in Section 161-1.C.4. In the alternative, Applicant seeks use variance approval and preliminary and final major site plan approval*

*Damien O. Del Duca, Attorney for Applicant*

Witnesses:

- Damien Del Duca, Attorney
- Samuel Renauto, SR3 Engineers, Civil Engineer
- John McDonough, Professional Planner

Exhibits:

- A1: Aerial View colorized. Dated October 16, 2018
- A2: Colorized render of Playset at The Orchards. Dated October 16, 2018
- A3: Colorized rendering of Royal Farms with Canopy. Dated October 16, 2018
- A4: Colorized renders of Site Plan. Last revised August 15, 2018
- A5: Page from Moscowitz/Lindbloom 4<sup>th</sup> edition Playground Definition
- O1: Steck Planning Summary. Dated November 7, 2018
- O2: Steck Planning Summary. Dated November 19, 2018
- O3: Property Record Card for HOA site

Planning Board Solicitor Overview:

- Procedure for the Zoning Board of Adjustments in a quasi-judicial proceeding; can take testimony and comments from public but can only consider that which is legally relevant to the issues that are before them
- Interpretation of the Ordinance; use variance and site plan approval
- 2 Phases; 1<sup>st</sup> is Interpretation and public round of comment will be open only to the Interpretation and not about the use
- Board has a policy on a time limit per person and they do not take repetitive testimony
- Request that everyone remain polite and professional
- Applicant already received variance and Site Plan approval
- Interpretation must be approved or denied
- Interpret first then move to Professionals and the Board for comment
- Will then open to Public Comment and everyone will have a chance to be heard

Applicant Attorney Overview:

- FT Equities owns the property at 600 Rt. 73N
- Currently an office building and Applicant is proposing to demolish and construct a Royal Farms convenience store with gas station
- Over 13 months ago, Applicant filed an application with the Planning Board and received site plan and conditional use approval; granted unanimously
- Conditional Use is a use that is permitted so long as meet specific stated conditions in your Ordinance
- In Evesham, when selling gasoline at a retail location, Ordinance defines it as a Service Station
- Not a Service Station as would classically be seen historically; with gasoline and repair on site
- There will be no repairs, oil changes, or auto service on this site
- Service Station is a Conditional Use under our Ordinance in this zone – C1
- C1 zoning district permits many different types of commercial uses including a convenience store
- Applied for Conditional Use and provided evidence that all conditions were met
- Review letter from Township Planner was provided and Planning Board granted unanimous approval; also granted preliminary and final Site Plan Approval
- The property is located across from residential community; The Orchards development
- The Orchards were well represented at the Planning Board meeting and their attorney was also present
- The Orchards filed an appeal on 6/21/18 and hired a new attorney
- Complaint was filed with Superior Court in Burlington County, stating that this application did not meet all of the conditions; stating that the proposed Service Station/Auto Repair Shop shall not be located within 500ft of a playground
- Ordinance states that “No Service Station/Auto Repair Shop shall be located within 500ft of any firehouse, school, playground, church, hospital, public building, or institution or within 2000ft of an existing service station”
- The Orchards did not raise this issue in front of the Planning Board
- Approximately 9 or 10 conditions that a Service Station needs to satisfy under Evesham Conditional Use Ordinance
- This one is the only condition that The Orchards alleges and now claims it was not satisfied
- Specifically, The Orchards alleges that the Planning Board did not have jurisdiction to Land Use Law and Zoning Board has to make the call on this case determining whether The Orchards “Playground” is located within 500ft and requires a D3 variance (Conditional Use under Land Use Variance Law) only granted by Zoning Board
- At the appeal, Court agreed an application be filed with Zoning Board for approval and the appeal of the Planning Board approval is pending
- Application was filed on August 28, 2018 for Conditional Use Variance and Site Plan Approval; Planning Board already granted approval for Site Plan and any other variances required
- Applied for all approvals if interpretation is not decided in favor
- Amended Application to include the request for an interpretation
- Interpretation is the application at presented satisfies all the conditions of the Conditional Use Ordinance 161-.1C4; including the issue of having a playground within 500ft of a proposed Service Station

- The Board shall consider the interpretation after hearing evidence that we satisfy all conditions; and if Board agrees then that concludes the proceedings before the Zoning Board
- If Interpretation is granted, Planning Board approval for Site Plan, Condition Use and all variances are in place and matter will cease
- If Interpretation is not granted or agreed upon, will prepare an application for a Use Variance (D3 Conditional Use Variance) as well as Site Plan approval and other variances for the Zoning Board
- Zoning Board has authority to interpret Ordinances and special questions related to Ordinances
- Ordinances rarely perfectly drafted, therefore, Zoning Board must use experience to interpret what the Ordinance means
- Issue of whether a Playground is located within 500ft of a proposed Service Station
- No definition of what a playground is in the Ordinance or Master Plan
- Competing views of what a playground is and whether this condition is satisfied
- A portion of the site is defined as a Service Station because of the sale gasoline
- Exhibit A1 is an aerial view showing the proposed Site Plan and Service Station and gas canopy is in the bottom portion; outlined in a yellow box
- Measurement from gas sales and not from property line or from the convenience store which is a permitted use
- Pumps are under the canopy further away; are not within 500ft of a playground
- Sale of gasoline is what makes this a Service Station
- The Orchards located across the street as seen on Exhibit has parking lot, stormwater basin, basketball court, 2 tennis courts, a swimming pool and small playset
- The Orchard's position that the entire property is a playground and therefore within 500ft of the Service Station
- Yellow line from gas canopy on Exhibit A1, depicts the 500ft radius around the Applicant's property as it relates to The Orchards
- Only portion of The Orchard's property within the radius is a corner of the swimming pool
- Ordinance did not intend to restrict the retail sale of gas rather, the proximity ordinance (500ft setback) arises for the more classic use of a traditional Service Station as it used to be defined with an auto repair shop (air tools, repair, oil change, etc.)
- No definition in Ordinance for Auto Repair Shop
- Intent of limiting a playground in close proximity to use of this nature relates to the repairs and not gasoline sales
- Nothing that supports the interpretation that the entire lot is a playground
- More reasonable interpretation to measure 500ft from the gasoline sales to specific structures on an adjoining or nearby property
- Isn't practical and wasn't intended that an entire property is the playground
- A stormwater basin isn't a playground, nor is a parking lot, swimming pool or grass
- As shown on Exhibit A1 nothing constitutes a playground
- Exhibit A2 shows a small playset; nothing in Ordinance defines a playground; this playset doesn't constitute a playground
- Ordinance defines what a playground must have in a subdivision ordinance
- 2 witnesses; sworn in by Board Solicitor

Sam Renauro, Engineer Testimony:

- Accepted as expert witness by the Board
- Provided plans and testimony to Planning Board in April
- Mr. Del Duca accurately explained and described the interpretation
- Royal Farms does not propose any storage of or selling of fluids, air tanks, etc.
- Royal Farms will only sell gas as a typical gas station and safety guidelines will be followed as all other gas stations; including restrictions
- Royal Farms will obtain all necessary permits for the sale of gasoline
- In Exhibit A1, rectangular in shape is the outline of the proposed gas canopy and also includes the underground gas tanks and where they will be stored
- Using Exhibit A1, bright yellow line is measured from the furthest point from the gas canopy or the gas tanks were conservative showing 500ft from those lines
- Measured from furthest point of gas canopy to the Tot Lot playset
- Portion of The Orchards lot located within 500ft of the gas canopy is a portion of the stormwater basin, swimming pool and a grass lot
- Exhibit A1 has a pink line which is a 500ft radius from the property line of the Applicant's property; odd shaped extended around the property
- The gas station is not within any proximity to a church, hospital, firehouse, institution, school, etc.
- There is no existing service station within 2000ft
- The closest Sunoco is 2100ft from this location
- Conditions:
  1. Minimum lot size 20,000, property is 107,000 sq. ft.
  2. 150ft of frontage is required, Royal Farms will have 283ft
  3. Appliances, pits, storage areas and trash facilities located in the building; doesn't apply here as not being proposed
  4. Gas, filling pump shall be permitted no closer than 50ft of any Right of Way line; Royal Farm canopy is 72ft from the Right of Way
  5. Canopy has to be at least 40ft from any Right of Way line; Canopy is further away from the pumps
  6. No repairs, lubrication or similar on site; no dismantled parts
  7. No repair of any vehicles
  8. Landscaping will be provided in front yard area equal to at least 25% of the front yard area; Royal Farms has 56% green area and can easily meet landscaping 25%
  9. Not proposing exterior display or parking of boats
  10. Adequate parking spaces; 54 parking spaces where 53 are required
  11. Parking doesn't interfere with aisles or lanes of Service Station
  12. No car wash is being proposed
- In summary the application complies with all of the conditional uses

John McDonough, Planner Testimony:

- Accepted as expert witness by the Board
- Reviewed application and interpretation of a playground is pretty straightforward
- Proximity Ordinance has 3 elements
  1. Measurement which is a 500ft requirement
    - Testimony as well as Exhibit A1 shows that the Tot-Lot isn't within 500ft

- Separation of at least 650ft
- 2. Service Station definition
  - In Ordinance, implies a more antiquated type of service station; Dates back to 1950's
  - This is the contemporary or modern version of Service Station with components built into it which meet or exceed all environmental and fire regulations
  - Different land use and less evolved than today
  - No protection of fire safety to the degree in place today
  - Evolved use; convenience sales with gasoline; so common today
- 3. Playground
  - Old language in separation type ordinances
  - Only guidance we have as to what constitutes a playground is what comes from Ordinance
  - Elements of playground are not here at particular parcel in questions
  - The Orchard is block 6.03 / Lot 2
  - 2.78 acres in size not 3 acres; element for requirement of playground
  - No football field, soccer field, etc.; all required elements of a playground
  - Only a playset with 2 slides, no swings
  - Not what the Ordinance intended to regulate
- Planning standpoint measurement aside, this isn't a Service Station; actually an evolved use;
- Convenience store with the sale of gas
- One use that has a natural nexus between the 2
- Land use that has come full circle; modern version of a General Store with pumps out in front; outdated version had service station (repairs)
- Service is outsourced to auto dealership
- Convenience of a one-stop shop and fill up is a natural marriage
- Not one of the elements are met here
- Very straight forward conditional use interpretation that has been met
- Undisputed; permitted use application
- Distance from the station to slide playset is 650ft
- Swimming pool is not part of this Ordinance
- An entire lot does not constitute a playground; less than 3 acres so doesn't comply
- Physical separation of objects; not property line to property line
- Not property line to gas canopy

Kevin Aberant, Taenzer, Ettenson & Aberant, P.C. Attorney, The Orchards HOA

Cross Examination:

- Asked John McDonough about the interpretation of the playground
- What part of the Ordinance specifies that you measure from the Canopy or the gas tanks?
- John replied that it was implied and not stated anywhere in the Ordinance; Ordinance is clear as to what constitutes a Service Station; Service Station is regulated as a conditional use; a convenience store is a permitted use; clear distinction in the way the two are treated under the Ordinance

- Asked Sam Renauro how he measured the Site to the closest Sunoco 2100ft; canopy to canopy or property line to property line
- Sam replied that the measurement wasn't specifically property line to property line as he stopped short; realized over 2000ft requirement
- Any parking spots specific for the Service Station use?
- Sam replied no
- Have you been to The Orchards property?
- Same replied no
- The yellow line that goes thru the swimming pool, where the yellow line is touching, do you know what this is?
- Sam replied he doesn't recall what this is on the Exhibit
- That is a Kiddie pool according to the attorney

Leah Fury-Bruder, Township Planner Testimony:

- Review letter dated November 19, 2018
- An additional perspective as a Township Planner for almost 13 years
- Site is within C1 zone has a variety of permitted uses
- Service Station use; no separate definition for gasoline filling stations or gas stations
- Conditions in 161-1C from a practical standpoint, definition is antiquated as to how it applies to a gas filling station; gas station is not together with the service garage as it had been intended in the typical model in the past
- Modern convenience store with a gas station is a completely different model
- Definition was clearly not intended to cover the convenience store situated together with a gas station; this is a full retail store 5,000+ sq. ft.
- Makes sense to consider the gas station and not the convenience store as the Service Station part of the property; practical standpoint and intent of the Ordinance that makes sense
- What constitutes a playground; we have a common knowledge of what it is
- Code definition doesn't include a playground
- Would be helpful if there was a definition in the Ordinance
- Applicant has referenced the section of the Code which is Site Plan and Subdivision standards for residential subdivisions; recreational amenities that go with subdivision; description for what is desired for residential development
- Not only definition of a playground
- Elements of the site that are like a playground
- Amenities go with it when in the residential tract
  1. 3 acres, tot lot, basketball court, baseball field, etc.
- Does not meet standards; however, doesn't define playground either
- Detention basin is the closest proximity; not a playground
- Swim pool; from a planning standpoint, not understood as a playground
  1. Recreation but a regulated use; limited access
  2. Not an open area for play
  3. Separately defined in Township Code
  4. Lifeguards
- Other facilities; tennis court and tot lot can reasonably be considered a playground but outside the proximity measurement

- Interpretation is a legal issue; from planning standpoint have to be flexible in order to determine the best land use for the Township

Board Comment:

- Mr. Alperin asked Township Planner's perspective if the Ordinance is antiquated and gas/convenience store was the new model, if the Ordinance was re-written, would the new model negate the 500ft limit?
- Leah replied that if she was drafting a new Ordinance, there would be no proximity standard
- Mr. Alperin asked as a general rule, does Township measure from property line or from the facility in question?
- Leah replied that the way we measure quickly and fairly accurately, is to use Google Earth to look around but never had to determine point to point
- Mr. Rodgers asked what the original intent was of 500ft measurement
- Leah said that it was most likely the noxious aspects of the gas stations in the past environmental issues with fumes as well as the sounds
- Things have evolved and everything is contained today
- There are no open containers, oil changes, etc. at this facility
- Today don't need proximity standard
- Mr. Wilson commented that this is a retail convenience store that provides for the retail sale of gas and not the other way around

William Loughney, Township Engineer Testimony:

- All was addressed with the previous plan
- No comment on the interpretation

Stacey Arcari, Traffic Engineer Testimony:

- No comment on the planning interpretation
- Applicant's Site Plan sheet 6 has traffic entrance and exit off Rt. 73 circulates around the canopy area around the tanks towards the south corner
- Fuel tankers stay around the canopy area
- All traffic in and out on same side of the site

Kevin Aberant, Taenzer, Ettenson & Aberant, P.C. Attorney, The Orchards HOA

Cross Examination:

- Asked Leah how long she has been Township Planner
- Leah replied since 2006
- Asked Leah if she handles Planning Board and Leah replied yes
- Leah advised that the Master Plan was last updated in 2012
- Attorney asked if Leah looked at these new models when they last revised the Master Plan
- Leah couldn't recall if they did or not
- Attorney then asked if in Leah's opinion what were the elements of a playground vs. not a playground and what criteria went into determining it
- Leah replied that a pool is not a playground
- Leah's opinion is because they don't have the benefit of a definition of a playground

- Pools typically have membership, require lifeguards, employees not typical of a playground
- It is a recreational amenity, but under common knowledge or understanding of what a playground is; the Master Plan refers to it as a recreational amenity but not a playground
- Is it defined in the Zoning Code of the Ordinance
- Leah replied yes
- Are you familiar with any of the requirements that The Orchard's puts on the tennis courts or basketball court areas?
- Leah replied no
- With regard to the Proximity Requirement, are you familiar with Evesham Township's sex offender registry
- Leah answered no
- So you could not answer the question if that measure from the property line or the sex offender's house to a playground
- Leah said no, that is not something she is involved with
- Evesham Township has laws they enforce with regard to Drug Free School Zones; do you know if they measure from the property line?
- Leah advised that she has no idea
- Planning Board Solicitor advised that these Chapters he is referring to are enforced by someone else in the Township, not Ms. Furey
- Planning Board Solicitor said these are not relevant for here; it is a legal issue and enforceability issue; not within this Board's or Leah's purview

Kevin Aberant, Taenzer, Ettenson & Aberant, P.C. Attorney, The Orchards HOA:

- Peter Steck, Planning Expert sworn in and accepted as expert witness
- Inspected Orchards property and gas station property on 2 occasions
- Reviewed Zoning Ordinance, the Master Plan and latest plans submitted
- Professional opinion of the Orchard's recreation site across the street; entire lot is a playground
- Condition is not met by the Applicant
- Playground not defined in our Zoning Ordinance; trying to garner meaning of playground outside Zoning Ordinance
- Used current Webster dictionary to define playground
- Reviewed Planning Source in NJ (Publication) "Latest Illustrated Book of Development Definitions" by Harvey Moscowitz & Carl Lindbloom, 2004 edition
- NJ centric publication done by Rutgers
- Page 295; suggested definition of playground; "active recreation area for children..."
- Pedestrian point of view and specialized zoning point of view the term playground does not mean it has to be 3 acres or more
- Meaning of playground in typical zoning terminology does not refer to the specific piece of equipment; it's the area where the children play
- Also reviewed how the word playground is used in our Zoning Ordinance
- Playground is used even though not defined; can be public playgrounds, municipal facilities and uses, parks and playgrounds
- Public area can include a public park and playground and other recreational areas
- Subdivision refers to use within 5 or more homes; which doesn't apply here

- Fence section refers to the word playground
- Provision 160-26 in Flood Plains says can have park/playground as a permitted use in a Flood Plain; use of the term is the common sense meaning of it
- Another Conditional Use in section 161-1C7; adult bookstores and adult retail cannot be within 1000 feet of a community center, park or playground
- Again common sense meaning of a playground where kids can play
- Applicant is stating that you measure from components
- The Orchards are all 1 piece of property
- No segregation of parking on the Site of Royal Farms
- Fumes that exit from the tanks drift distances away from the tanks
- Impacts of gas station not confined to the pumps themselves
- Measured from NJDEP website, distance from this property to the Sunoco and from property line to property line it is 2100 feet
- If measured into it; pumps to pumps it is further
- Park land must be looked at also; kids are not confined to the playset
- Kids go to the pool and recreation area
- Opinion is that most Ordinances regulate it property line to property line as easiest way to measure
- Many Municipalities that have separation distances; no trend that says they are illegal
- Applicant is suggesting this is an old Ordinance; can't make up new law
- Ordinances and Master Plans are supposed to be re-examined every 10 years
- Convenience stores with gas stations have been around for while
- Township chose not to amend its Ordinance
- Suggests that Ordinance is really up to date; looking at Conditional Use Standards of a Service Station
- Conditional Use I example; drafters of the Ordinance knew convenience store can be included with a gas station
- Many Ordinances in NJ which do not allow convenience stores with gas stations
- Many Ordinances that have governing bodies that have elected not to change their definition
- This Township allows convenience stores with service stations
- This Ordinance would still apply if this was a gas station that didn't have any repairs
- No specialized definition; proper interpretation means what would rational person understand when they read the Ordinance
- Opinion that most Ordinances; common interpretation is property line to property line; unless stated differently in Ordinance
- Rational basis for it; fumes, aesthetics, traffic
- Further variances that need to be addressed is the Applicant's floor plan; doesn't show anything on the inside
- Tour a Royal Farms and you will see seating inside
- Royal Farms in Magnolia is open 24 hours a day, 8 fueling pumps, interior seating for 12 people; not shown on Applicant's plans but willing to bet that is what is proposed here
- There are 24 seats outside the facility in Magnolia; Site Plan shows same outside seating here

- Magnolia facility cooks chicken and fries on site; different type of convenience use than the Wawa's or Quick Checks which do not fry food
- Royal Farms website shows fried chicken and fries as a big draw; known for the chicken and the fries cooked on the premises
- Applicant states they serve gas; therefore, they are a Service Station
- Expand to say that this is a Fast Food Restaurant; which is another Conditional Use in the zone
- Definition of Fast Food Restaurant per Evesham Township's Ordinance was read
- This is a Use that fry's food on the premises, guessing seats inside even though floorplan is uninformative; this type of Use is not permitted in this zone
- It is a Conditional Use; per the conditions it has to be part of a shopping center
- Municipality doesn't want freestanding Fast Food operations
- Not just a service station with a convenience store; this is a service station with a convenience store that has a fast food operation
- Preparing food in this extent produces more traffic, more vapors, disposable issues; whole different set of conditional use standards per our Ordinance
- Ordinance allowing service stations as a convenience use did not anticipate a fast food operation along with it
- New set of criteria which Applicant has not even acknowledged
- Nothing in Ordinance says that you measure from the gas pump to the climbing apparatus in the playground
- Impacts of gas station are further than just the gas pumps; fumes, traffic, noise
- Ordinance set a standard to segregate climbing apparatus as the playground
- Opinion that this application represents a playground 66ft from the subject property
- Applicant does not meet the Conditional Use criteria; D3 Variance
- Planning Board never had jurisdiction of the bulk variance application or the Site Plan

Board Comment:

- Mr. Alperin asked Mr. Steck if he were to recommend the drafting of a new Ordinance to meet the new model of convenience store with gasoline, would you include a proximity area?
- Mr. Steck replied that it is a policy decision and this Municipality has not gone that direction
- Mr. Parikh asked Mr. Steck for his expert opinion would he recommend a proximity?
- Mr. Steck replied it is a policy decision of the Planning Board with the advice of a Planning Consultant
- Safety concerns with gas stations, fumes that travel 300ft – so there is a good justification for the proximity distance
- Mr. Alperin advised that Ms. Furey indicated the technological advances and safety standards in place today, given the chance to rewrite the Ordinance, she would not use a proximity distance. On that basis, what is the professional judgement?
- Mr. Steck replied there is a still a need for the separation
- Publication states they should be 300ft away due to fumes
- Gas is still flammable; don't spill as much

- Still a valid planning tool to have a separation distance; don't know of an Ordinance where it was voided
- Mr. Lutner asked what the 66ft reference distance meant
- Mr. Speck said that the closest point of the property to Lot 2, Block 6.03 (recreational facility) is the width of the Right of Way of Lincoln Drive E
- Mr. Wilson asked if there were any statistics regarding the vapors and the distance of their effect on the community?
- Mr. Speck advised that there is research from a University that suggests the vapors from the tanks travel 300ft
- Mr. Wilson asked about the playground definition and wanted to know where the area may stop – interpreting where the kids play – it is very vague? Is there something that would define where a playground would stop
- Mr. Speck advised that on 6/21/12 was the Ordinance's latest Open Space and Recreation Plan which lists 44 playground areas; 22 on private property, 7 on school property, 15 in the Township and they list the locations
- Mr. Speck advised that they listed this for some type of protection
- Governing body picked a standard per Mr. Speck and advised that it makes no sense that they ignored the kiddie pool or recreation area
- Facilities on the Orchards property are a principal use (tennis courts, pools, basketball courts, etc. are a playground area)
- Mr. Parikh asked if Mr. Speck reviewed how the Applicant would control the gas fumes and the cooking food
- Mr. Speck said he read the transcript and they admitted they could not control all of the fumes; recollection of transcript
- Mr. Speck advised that it cannot be ignored that a gas station and a fast food restaurant are both on the property
- Mr. Speck stated that all conditions have not been met; Mr. Parikh advised that Board is not here to interpret if this is a Fast Food restaurant
- Board Solicitor stated that the Objector is now asking the Board to interpret the Use as proposed convenience store use as a fast food restaurant
- Mr. Parikh advised we do not have the testimony on fast food restaurant
- Board Solicitor advised that we should reserve it at this point; but cannot be separated
- The Objectors interpretation is that it is a fast food with a service station; both conditional uses
- Don't have testimony on what the Use is; but can't separate the 2; they are saying that is part of the interpretation problem
- Per the Board Solicitor it would require an additional D3 Variance under different standards
- Mr. Alperin said the Board cannot respond to this without different testimony
- Board Solicitor agreed and advised that they are asking the Board to interpret the Use as a fast food restaurant instead of a convenience store
- Mr. Speck replied that what they are actually asking the Board to determine if the Applicant has submitted a conforming application; witness is saying they haven't asked for a conditional use variance for fast food
- Board Solicitor said that is not what they applied for and need to streamline; here for an interpretation as to what has been proposed by the Applicant meets the conditions of the Conditional Use standards for a service station

- Board Solicitor advised that if Objector wishes to make an argument that the Applicant requires an additional D3 Use Variance, a) that they didn't apply for, and b) they didn't give enough evidence on, then it needs to be done if we get past the interpretation on the issue that was presented to the Board
- Mr. Parikh advised that Mr. Del Duca will have a chance to respond to this as well
- Mr. Aberant advised that Mr. Del Duca's letter says this is amending the pending application to include a request for interpretation that this application, the proposed plan, satisfies all conditions
- Mr. Aberant stated that they do not satisfy the conditions for the fast food
- Board Solicitor advised that they didn't apply for fast food approval
- If convinced that this is not a convenience store and it is fast food after the testimony, then we would have the discussion at that point; it is not before the Board right now; right now it is the proximity requirement for the service station
- Mr. Parikh advised that Mr. Speck said the floorplan doesn't show the seating area inside
- Mr. Aberant asked Mr. Speck what research he conducted to conclude that this Royal Farms is a fast food restaurant
- Mr. Speck replied that he toured the store at 340 East Evesham Ave, in Magnolia and it has 24 outdoor seats and this Applicant's site plan show 24 outdoor seats, the Applicant's floorplan shows no information on the inside; it's the business model for Royal Farms which is a convenience store with a gas station and a fast food restaurant; Ordinance has a definition for a fast food restaurant which refers to fried chicken and therefore, this is a fast food restaurant in addition to the other uses
- Different parking requirements, different traffic production and different conditional use standards
- Board Solicitor questioned why Whole Foods and ShopRite, who prepare foods onsite and have seating areas, not considered fast food restaurants
- Mr. Speck said it is rare for convenience stores to cook to this degree; Royal Farms markets their fried chicken and fries and customers go there for it
- Mr. Parikh advised that Wawa does the same thing but isn't considered a fast food restaurant
- Board Solicitor advised that the food is not prepared on site at Wawa; prepare sandwiches but don't cook onsite
- Mr. Speck advised that the Royal Farms is more similar to Burger King and KFC
- Mr. Alperin asked Board Solicitor for the procedure here given the Board was asked to Interpret proximity and now presented with fast food conditions; if Board rules it is not a playground in the Interpretation, will the issue of fast food be raised before Zoning or Planning Board?
- Board Solicitor advised it would remain with the Zoning Board because it is another Interpretation question
- Township Planner asked for clarification as the Objector is not here to ask for an interpretation; Objector hasn't applied for anything
- Township Planner advised that the Applicant asked for an interpretation of a specific condition before the Board
- Board Solicitor advised that we are focused on interpretation requested by the Applicant

- If the Board agrees with interpretation, then Objector has an opportunity to appeal and ask for an interpretation that the convenience store should be deemed a fast food use
- If Board does not favor Applicant interpretation, move onto the Use Variance and they can use as part of objection testimony

Applicant's Attorney Cross Examination:

- Mr. Del Duca asked Mr. Speck when he was hired to review
- Mr. Speck replied a month ago
- Attorney questioned Planners reference of 44 playgrounds noted in the 2012 Recreation Plan, is The Orchards playground one of those 44?
- Planner said it isn't identified but states that some are privately owned, publicly owned and on schools; doesn't identify by size or acreage
- Did the Plan you referred to include any reference to this property?
- Planner said you don't know because there isn't an inventory of the 44 sites; need backup data
- In your opinion is a swimming pool a playground?
- Planner responded it can be part of a playground
- Is the swimming pool at the Orchards site part of the playground?
- Planner said it is part of the playground; Moscowitz and Lindbloom reference it as not a playground, that a swimming pool has to have a fence around it and it can be part of recreational facility that is a playground in my opinion; especially if it has a kiddie pool
- Attorney gave Planner 2 pages from a copy of the Moscowitz/Lindbloom 4<sup>th</sup> Edition
- Planner stated he looked at the later edition
- Attorney gave Planner page which has definition for playground and asked Planner to read what was circled and marked as Exhibit A5
- Attorney asked if Mr. Speck was a professional planner and he responded yes
- Attorney stated that Planner was not an expert on regulation or safety issues that pertain to sale of gas
- Planner stated he was only aware of it from planning point of view
- Correct that same vapors a child would inhale from any gasoline station are those as sitting in the parent's car while getting the gas
- Planner answered no because fume from car is a different substance than that from the tank
- Attorney restated that vapors associated from this gasoline facility were referenced
- Planner advised vapors associated with the gasoline station are from underground tanks
- Attorney said they are the same vapors from any gas station if sitting in the car getting gas
- Planner said vapors will be blown by the wind; depends on the wind direction; if in a car somewhat insulated from air
- Attorney asked if Wawa was a fast food restaurant under the Evesham Ordinance
- Planner said he didn't research Wawa because they don't fry chicken
- Attorney asked if Quick Check was a fast food restaurant
- Planner said no, don't think so because they assemble sandwiches but don't cook

- Attorney asked if Planner had a definition of fast food restaurant
- Planner gave a copy of his definition
- Attorney asked if he had definition of restaurant
- Planner said no
- Attorney read the definition of fast food restaurant prepared by the Planner
- After reading definition, asked Planner if it was his opinion that Royal Farms is a fast food restaurant but Wawa and Quick Check are not because Royal Farms fries chicken rather than just heat it up
- Planner replied that Royal Farm is different because they do everything a fast food restaurant does; website also says they have world famous fried chicken with fresh, never frozen, hand breaded chicken cooked around the clock.
- Attorney asked that because of the way they cook chicken it makes them a fast food restaurant
- Planner said use being proposed has a fast food component and land use impact not being considered
- Applicant is silent about the floorplan; not disclosed to the Board
- Attorney asked if having seating inside makes this a fast food restaurant
- Planner said no; Ordinance definition doesn't state seating makes it one; but Royal Farms has a land use impact that is different than a typical convenience store
- Planner read definition of playground suggested in the Ordinance again per Orchard's Attorney

Board Attorney Summary:

- Before opening up to public, reiterated that all comments are limited only to the interpretation issue and not the use of a Royal Farms
- Will take in order of names listed on the sign in sheet
- Mr. Parikh advised that 2 minutes per person

Public Comment:

Nancy Lapidow-Johnson, 6201 Red Haven Drive sworn in

- Confused about what she could add to the definition or the interpretation not being an expert
- When do we as the public get to tell you from the heart what our concerns are; so nothing to add

Marjorie Robbins, 6101 Red Haven Drive sworn in

- Grateful to speak; grateful that so many neighbors came out to speak
- Lives directly behind the playground for 28 years
- Area is a property called "The Commons" and its common ground
- Daughter went to all of the local public schools and noted you cannot fence in children
- Children need to be in green area with all of their equipment looking for a place to play and this is a play area
- Teacher whole life and kids need to play; this is the area that kids play
- The kids need to roam and to make a fort, play with other children
- Care about our children in this community, their safety, their health

- This is not being addressed; keep your definition of a playground to a playset but you are missing the point

Bridget Nelson, 1504 Johnathan Lane sworn in

- If you have been to the Orchards you will see this is a playground
- Referred to the Resolutions and everything described makes it a playground (1978-79)
- Township intended for this to be a playground in the recreational area
- 13-year-old daughter, lived here since born and played in all of these areas
- Personal opinion this is a playground
- Determining distance from canopy to the tot lot; if it has to be from certain location have to separate the property
- Can't separate the fact that it is a convenience store with a gas station
- Per husband doesn't believe gas station is powered by gas pumps but from the convenience store; then you would have to go from convenience store as power comes from there
- Even though antiquated, fact is these are the definitions we have to go by and as of right now this is what we have
- Property for the playground is designated as a recreation site by the tax records

Sheila Billow, 1204 Roberts Lane sworn in

- Has anyone been to this area in question and have they been through the Orchards where most of us live
- Very important for you to do that and this is something that needs to be dealt with a little more intelligently

Julie Brown, 4406 Red Haven Drive sworn in

- Agrees with everyone that has already spoken
- Seriously think this will affect our quality of life in the Orchards

Lance McCurley, 4406 Red Haven Drive sworn in

- Not much to add
- Pretty clear this is a playground area and within 500 feet

Rebecca Keen, 3303 Auburn Lane sworn in

- Remiss if I didn't speak; backup what everyone said
- It is considered a playground
- 13-year-old son plays here and hangs out with friends
- Crime that could come from putting a Royal Farms here and very concerned
- Support fellow neighbors

Rachel Dichter, 502 Johnathan Lane sworn in

- Presence of everyone gives the human side to this situation
- Royal Farms website does mention under their vision – they are a quick and friendly restaurant of choice
- Vapors that may emanate from this use, from human side of things and the use of walking along; per the condition it cannot be located by a school; however, this is

a school bus stop right across from this location at corner of Harvest and Lincoln; whether crime or vapors wanted to make sure Board knew this information

- This is a playground and if walk by any time after school, see all the kids that play here

Domenico Mignacca, 5202 Red Haven Drive sworn in

- Always see that kids play here in the playground; which is why it is called a playground
- If gas station goes in, there will be a lot of traffic and will make this very dangerous for the kids that run across the street
- Consider it a playground and think of our kids

Joseph Storck, 119 Ramsey Drive sworn in

- Lived on Johnathan and children grew up playing on this playground
- Now 5 grandchildren who play in this playground; swim there and parties are conducted in the community center with children
- Raise question to the Planning Board is the Blue Barn complex considered part of the recreation center or playground; if it is then the pool and recreational area should be considered part of the playground which is well within 55-70ft

Amanda Magitz, 1501 Johnathan Lane sworn in

- Just purchased house in March of this year at highest property value of \$250K
- Have 2 little boys and we live within that yellow circle
- Can say for sure as a mother that the whole area is a playground
- Go outside the area and not fenced into just the playground; ride bikes all over the back there
- Hearing all of this and other considerations of safety, we just moved in and I want to make sure children aren't being exposed to carcinogens because of gas or increased risk of asthma
- May consider putting house back on the market and moving where kids will be safe beyond just the playground area

Wendy Knouse, 1402 Johnathan Lane sworn in

- When comparing exposure to picking up food when getting gas to the kids who are playing on the entire land we are calling a playground
- The kids are there every day and not just for 5 minutes getting gas
- The kids go all over that area; play there for extended hours of time and it is considered a playground

Pat Haynes, 21 Evans Road sworn in

- Director of Recreation and Parks for Evesham Township for 17 years; one job was to inspect playgrounds
- Inspections began at the parking lot; included all walkways to and from; the fences around the playground from Consumer Product Safety Standards
- When new equipment for the playground was brought in, the Orchards asked me to inspect it
- Made recommendations on what needed to be improved and corrected when it was installed

- Not sure what happened since I left; but when I was there the whole area was considered a playground according to the Consumer Product Safety and Standards Guidelines (which can be found online)

Bonnie Sanders, 2402 Elberta Lane sworn in

- Lived here since it was built (1983)
- Raised 3 children here and played in playground and in the swimming pool
- Now have 2 grandchildren and take them to playground every weekend
- Playground is the whole play area
- Tennis court, basketball courts, etc... whole area is a playground

David Lemberger, 1301 Roberts Lane sworn in

- Space in Township is premium
- Orchards is a small community; no room in houses or yards for kids to play
- Playground is very important to the children in this community
- Our kids need to run without borders
- The hill gets the most activity in winter storm
- To arbitrarily choose the furthest point from the gas pump to do the measurement to the nearest point and then exclude everything beyond is arbitrary
- Need to go from property line to property line
- Playground and community is well within that range
- Look at the law but have to use common sense to judge it
- Kids can make playground out of any area where they are

Rich Malatesta, 2403 Elberta Lane sworn in

- In automotive business for 30 years
- With regard to fumes, something definite that says they only travel so far
- On a humid day fumes hang low for hours
- More than just gasoline; they are going to sell antifreeze, motor oil and if you do not know how to use it, it can be very dangerous

Daniel Coelho, 164 Greenbrook Drive sworn in

- Clear that it is a playground
- Parents live in the Orchards
- I played there and other playgrounds in the Orchards
- Measurements are disturbing to measure from the tank to the tot lot; it's dishonest
- Don't measure from a bedroom or a garage; everyone measures property line to property line
- If it was in your backyard you would have the same concerns

Velda Morris, 5201 Red Haven Drive sworn in

- Felt compelled to speak after hearing Township Planners opinion
- When stating that 500ft is not defined and if a new definition was created, she would plop a gas station anywhere?

Leah Fury-Bruder, Township Planner

- In response to above replied there is a better way to measure, other standards, but doesn't feel comfortable using proximity standards

- Haven't written it yet but wouldn't use proximity standards

Velda Morris, continued testimony

- Educator for 31 years
- Going to and evaluating schools, playgrounds come in all shapes and sizes
- School playgrounds have their own laws to keep kid's safe
- Cannot believe township doesn't regard playground in a development and regard in the same way for kids to stay safe
- This propose area is where children and adults walk and play; disabled children as well
- We don't want a gas station that brings in this additional activity whatever it may be
- It makes a difference to us; very serious to us and I hope you keep citizens of your township safe

Thomas Pastuszek, 403 Jonathan Lane sworn in

- The number of people that showed up here should show the board the impact this decision is going to have on our lives
- Lived here 38 years; walked dogs here; past the play areas, swimming pools etc.
- Children don't have boundaries and they move fast
- Recreational area in the winter time next to swimming pool, there is a drainage pit and the whole neighborhood comes to slide down the hill
- These children don't know about all of the regulations
- Ask that you give us the same quality of life that everyone else in Marlton came to live here for – that is why we came tonight

Isabelle Abrau, 214 Hamilton Road sworn in

- Definitely a playground; pretty clear what the definition of a playground is
- Thank you Mr. Del Duca, you actually made a valid point by asking, "Why are we making a simple question so complicated"
- It's not a complicated question
- We know what the definition is and it's not defined by 3 acres
- If you have children, you know what a playground is
- Mr. Del Duca made it complicated
- I ask the Board to use common sense in determining the definition
- The space counting 500ft from the canopy – when building my new house, the Ordinances that the township asked us to abide by
- Had to build within 10ft of neighbor or had to ask for a variance; it's property line to property line
- Qualified Township Planner gave an outdated definition but as recently as 2012 Township got together and decided to make Master Plan but decided not to revise and didn't decide then that it was outdated

Susan Murphy, 3 Harrowgate Court sworn in

- Owns 6204 Red Haven Drive
- Lives ½ mile from property line to property line from house at Harrowgate
- Bought house when 1<sup>st</sup> married 13 years ago
- Wanted place to raise our kids

- Own the place directly behind the playground
- Biggest thing proud of is close proximity to living behind the tot lot and the center of that community
- Have 2 kids and the community uses this property there is activity all around
- Don't want to see an accident happen

Christopher Dell'Olio, 6203 Red Haven Drive sworn in

- Within purple circle there is a second playground that hasn't been pointed out
- Fuel trucks coming in and out of 73; watched trucks make U-turns constantly; are the tanks directly above where they are putting the fuel or is that at a different location?
- Board Solicitor replied that Applicant hasn't gotten to the Site Plan yet so we don't have an answer yet

Tim Westerside, 5003 Red Haven Drive sworn in

- Been in automotive industry since 2001; work for Bosch
- Issue raised about vapors of gasoline; since in the industry over 19 years, I know what harm gasoline can cause
- 2 different types of vapors; out of pipe or nozzle are different from those out of the tailpipe
- Read expert analysis from a scientific publication called Healthline
- Defines harms of the vapors of gasoline
- One of greatest risks of gasoline exposure is harm it can do to your lungs when fumes are inhaled
- Long term exposure in the open can also cause damage to lungs
- Have 2 children that play on that playground
- I know the effects that gasoline can cause to the lungs
- Would you put a place near your home knowing your kids would be exposed to this?
- I certainly don't want that

Applicant Attorney Closing Statement:

- Issue of interpretation; heard all of the comments and testimony
- Board's role now to determine the interpretation of the Ordinance regarding a service station being 500ft from a playground
- Planner for Objector raised issue of fast food restaurant
- Only issue ever raised was that of the service station conditional use ordinance
- Issue of playground within 500ft of service station; think it is a straightforward issue
- Have to weigh the evidence and determine what did this Ordinance intend
- Most persuasive evidence was the evidence that it is not a playground within 500ft; was that of Professional Planner for 13 years (Ms. Fury Bruder)
- Wouldn't make sense to measure from property line; measure from gas sales
- Yellow rectangular box on the plan shows the tanks on Exhibit A1
- Nothing in the Ordinance supports otherwise
- Evesham's Ordinance states it's a service station; sale of gas
- Measure from gasoline sales area; what is within 500ft
- Look at elements of the site to determine what is part of a playground
- Pool is not part of a playground

- Stormwater basin is not part of a playground
- There are other recreational areas on the site, but they are not within 500ft and that is the issue
- Since not within 500ft then the condition is satisfied
- If Ordinance wanted to measure property line to property line, it would say that
- Condition for a service station/auto repair shop shall not be located within 500ft of a playground; none of the things where the children play is a playground
- Anyplace where children play is a playground, it is net opinion; not based on any evidence heard tonight except personal opinion
- If that is what it meant, we wouldn't have gasoline sales in Evesham
- Children play everywhere but that is not what the Ordinance intends; fact they play on the entire lot does not make it a playground
- 500ft radius falls in the middle of the swimming pool; would have to define that a swimming pool is a playground to have the condition be violated
- Contrary to Township Planners opinion and is just common sense
- Master Plan revised isn't persuasive evidence as this issue is coming up now
- Don't pick up every problem that may be associated with interpreting an Ordinance
- Intended to be left the way it is
- Amended but may not have looked at this specific issue; doesn't mean that this Ordinance was intended for a classic auto station
- May not be popular but the issue is clear
- Is there a playground under the intention of this Ordinance within 500ft of the service station; weigh the evidence fairly
- There is no playground within 500ft of the service station
- Fast food issue is being raised for the 1<sup>st</sup> time; didn't request an interpretation because it was never brought up
- Ordinance of fast food restaurant merely talks about the preparation of food
- Just because Royal Farms cooks the food vs. warms it up does not make it a fast food restaurant

Board Attorney Summary:

- Application for an Interpretation to determine (Exhibit A1 reference) whether yellow area is the service station and measured from there, there is no playground within 500ft
- In making consideration; Applicant is asking you to interpret the T shaped rectangle area as shown on Exhibit A1 is the service station area and the play area/recreation site across Lincoln is not a playground
- Issue is with the single use – convenience store use is a permitted use in the zone; so to measure property line to property line you would be imposing a 500ft requirement on a permitted use and that is not what the code says
- Problem with conflating 2 uses together; convenience store itself is a permitted use
- Issue with regard to fast food; restaurant has a different definition; we are not there yet
- Decision made tonight will dictate addressing that issue at a later time
- Should not get caught up in that right now
- Role is to address application as it has been presented to you for interpretation for this conditional use variance service station to playground

- Interpretation is to look at either component by component (equipment by equipment) or look at it as a whole
- Applicant is asking that you look at the components that are within 500ft; swimming pool and detention basin
- Objector is asking you to look at the site as a whole because as the public testified it is used as a whole
- No evidence produced in this record as to what the Master Plan Re-exam report said
- Key when looking at whether or not governing body took action under a Master Plan Report; report makes multiple recommendations
- Without Master Plan Report in possession or read into the record or anyone having reviewed it, don't know if this issue was addressed in the report
- Can't say that because Master Plan was adopted 2012 that didn't include this change that the governing body intentionally chose to or not to make a change; we don't know that unless we know a recommendation was made in that report
- Mr. Alperin inquired the only thing we should be considering is the playground, but on the agenda it indicates what we are proving is that the development satisfies all conditions of the proposed use; now that question of fast food has been raised, isn't that a factor?
- Board Solicitor replied No
- Mr. Alperin said Board has not had the opportunity to review for Site Plan use and don't know what fast food really means or what percentage of the convenience store is dedicated to fast food vs. convenience items
- Township Planner asked if he was reading the Application or the Agenda
- Mr. Alperin answered the agenda, and said that the wording that it satisfies all the conditions then that is not just whether a playground is within 500ft
- Mr. Alperin said there is now a question hanging over the Board
- Mr. Parikh said that these are the conditions that we have been supplied thus far
- Board Solicitor reiterated that the conditions for a conditional use service station; whether or not fast food restaurant is not before you
- If you interpret the code that the playground is within 500ft then they need a conditional use variance and application goes on
- If interpretation is favorable to the Applicant, then Application is done Planning Board will revisit the proposal to determine if they need a use variance for a fast food restaurant; not proposed here this evening
- If Board finds there is a service station within 500ft of a playground then the application goes on and the Applicant needs a conditional use variance at that time Board, Applicant and Objector will address the issue
- Not the only Royal Farms presented to the Township and it has never been considered a fast food restaurant
- Interpretation before you is the service station (9) conditional use standards; meets (8) of them
- Mr. Osno inquired to Township Planner what difference if it was 2 properties
- Township Planner replied if you took position to measure proximity standards of property line; then lot line would change and depending where line is, it would change things but can't say unless you know where the line is drawn
- Board Solicitor advised that the reason this difficult is because there is permitted use and non-permitted use on the same site; Ordinance doesn't require the 500ft condition for the convenience store

- If interpretation is made in the Applicants favor, then conditional use variance is not required and this Board is divested of jurisdiction and Planning Board approval stands subject to pending appeal
- Mr. Parikh asked if the Applicant was to separate the lots; lot plan would change; would that fall into the 500ft
- Board Solicitor said it is a hypothetical we cannot answer; depends on where the lot plan line would be

Board Comment:

- Mr. Rodgers in testimony became clear Township never defined the space as a playground
- Board Solicitor advised that it indicated there are 44 playgrounds, but doesn't specify which 44 they are identifying; so no way to determine
- Township Planner said there is a way to determine it; but we hadn't looked at it
- Mr. Rodgers said we are being asked to determine that and if the Township already determined it why are we doing this; would already know the answer
- Mr. Alperin advised then the question would become what becomes a playground; Applicant is talking about the small area as a playground
- Mr. Rodgers said if the Township declared the entire lot a playground then problem is solved; if not then it is up to interpretation by the Board
- Township Planner said that is correct
- Mr. Rodgers said that the residents seem to think the entire lot is a playground and can understand that; when he was a child he played in the street and that wasn't a playground and at parking lot of hospital but that wasn't a playground
- Board as a group needs to define what is a playground on some technical term and are stretching to find one
- Best basis would be if town had already declared it a playground and we would know; we don't have the answer to that
- Mr. Alperin said it is a subjective thing and we have different opinions of what is a playground; don't have a definition; spent entire professional life in recreation and it would be wrong to consider this little area as the only thing called a playground
- Mr. Alperin said obviously if there are fields, kids play ball in the area, I don't know how we can't call it a playground; wish we weren't forced to make this decision and that we had evidence before us to allow us to interpret clearly
- If forced to make the decision tonight, then there is a playground within 500ft
- Ordinance is outdated and ought to be changed
- Township Planner stated that to split hairs over a technical definition; when going through report from a practical standpoint it is a playground; but also suggesting is that it is a multiple use lot
- Detention Basin is not functionally supposed to be part of the playground; it serves the community and performs a stormwater function; that could be subtracted from what would be considered a playground
- Mr. Alperin stated that if you looked at the intent of the Ordinance framers were concerned with whatever would come forth from the area could be harmful for the children within 500ft; a strong case was made that a lot of children are going to be within 500ft

- Question is whether Applicant ought to be granted a variance because project is overwhelmingly positive is a judgement Board can make; if asked only on this very narrow determination then don't know how we can move for the Applicant
- Mr. Rodgers asked Township Planner what is says for this area in the Plans on file
- Township Planner stated the approved Site Plans for the area were not looked at because they are from the 1970's
- Board asked if we find out if it is in the inventory
- Mr. Parikh asked Mr. Steck if any information was in his report
- Mr. Steck repeated that the report itself does not identify by lot and block number of the 44 playgrounds; identification is not specifically in the document
- Township Planner stated her opinion that Planner of Delaware Valley received a grant and prepared this document which was adopted by the Planning Board; meant to provide a list of properties that have playground equipment
- Having it included in the report makes it an official playground; but is that the entire parcel per Mr. Rodgers
- Having block and lot included on a list wouldn't necessarily infer that it is a playground by the Township; not the entire property vs. the tot lot
- Mr. McDonough stated that the 1<sup>st</sup> thing he looked at was the Open Space Plan, a 240-page document; typed in block and lot; tables list existing and proposed inventory of recreational site within the Township and this site did not come up
- Public had opportunity to speak at Planning Board when Application was considered; where variance was not required
- If interpretation is favorable to the Applicant, variance is not required and Planning Board approval stands subject to pending appeal
- If Board determines interpretation in favor of Objector proposal, then a conditional use variance is required and Applicant has asked for that in the alternative and they will present that use variance application and site plan application to Zoning Board at future meeting
- This requires a majority vote not unanimous for interpretation
- Board Solicitor advised that the Township Planner has in her possession The Open Space and Recreation Plan dated December 2012 prepared by DVRPC
- Board Solicitor stated that after brief review section 5.1.1 entitled Existing Active Recreation Facilities lists many private and public recreation facilities throughout the township and at schools; this property is listed Orchard's at Greentree as a Recreational Facility; doesn't say playground
- Board Solicitor read the section to the Board
- Mr. Del Duca said that is not the issue; recreational sites clearly exist on the property; that is not a playground and the testimony from the other Planner is there were 44 playgrounds listed; it's an important distinction
- Mr. Alperin advised it is not the term but it is the best we have to go on right now
- Mr. Parikh asked for a motion to approve or deny
- Board Solicitor advised that an Aye to motion below is a vote that interpretation should be denied and a Ney is a vote against the motion

Motion to Deny the Interpretation ZB 18-31

Motion: Alperin

Second: Osno

Ayes: Alperin, Davé, Lutner, Osno, Wilson

Ney: Rodgers, Parikh

**Communications/Organization**  
Next Meeting: December 17, 2018

**Meeting adjourned at 11:45 pm**