

**TOWNSHIP OF EVESHAM**

**Zoning Board**

**Minutes**

**6:30 pm**

**January 28, 2018**

**Municipal Building**

**Call to Order**

Alt Chairman Rodgers made the call to order at 6:35 pm

**Flag Salute**

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

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

**Roll Call**

**Present:** Davé, Lutner, Student, Wessner, Osno, Shah, Thompson, Rodgers

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

**Absent:** Alperin, Parikh, Wilson

**Continuation of Scheduled Matters**

**ZB 18-37      Soboleski      2-25-2019**

**Meeting Minutes:**

December 17, 2018

Motion: Osno

Second: Lutner

Ayes: Lutner, Wessner, Osno, Shah, Thompson

**Resolutions**

ZB 18-34

Motion: Osno

Second: Lutner

Ayes: Lutner, Wessner, Osno, Shah

ZB 18-35

Motion: Osno

Second: Shah

Ayes: Lutner, Wessner, Osno, Shah

ZB 18-38

Motion: Osno

Second: Wessner

Ayes: Lutner, Wessner, Osno, Shah

**Unfinished/New Business**

**1. Lincoln Investment Planning, LLC    ZB 18-39    3-2-19**

**Signage**

*10000 Sagemore Dr., Block 33.10, Lot 10 (C-1 Zone District)*

*Applicant is proposing to add (1) 67.5 sq. ft. sign on the second story north facing façade of a multi-story office building*

*Amee S. Farrell, Attorney for Applicant*

Witnesses sworn in:

- John Natale, Regional VP, Lincoln Investments
- Bob Wurz, Owner, Wurz Signs

Exhibits:

- Exhibit A1 – Wurz Sign Depiction, Dated September 13, 2018 last modified October 19, 2018

John Natale Testimony:

- Lincoln Investment based at 10,000 Sagemore; previously located at 8000 Sagemore for 9 years
- Needed to expand
- Worked closely with Mitchell Davis, owner/landlord
- Move gave visibility needed; 11000 sq ft leasing
- We are major tenant in the building; other office in building are Physician, Financial Services, Law firm
- Wells Fargo has other sign
- Wells Fargo is less than 11000 sq ft being leased
- Condition of Approval to confirm size of square footage being leased by Wells Fargo
- Confirm that only other sign on the building is Wells Fargo
- Lincoln Investments represent about 25000 clients in NJ
- 19000 school district and administrators
- Focus on education marketplace
- Activity of visitors to the office; sign is important because of visibility off the road
- Many clients are first time; confusing complex
- Part of agreement with Mitchell Davis was to have a sign

Bob Wurz Testimony:

- Own Wurz Sign Systems; in business 14 years
- Exhibit A1 is accurate depiction of sign requesting variance for placement on façade of building
- Relationship with Mitchell Davis; done other signs for them; referred by them to Lincoln Investments
- Proposed Sign Exhibit A1
- Consistent with all signs in Sagemore Corporate Center
- Brush Aluminum with Halo lighting – face of sign doesn't light
- Approximately 67.5 sq ft
- Exactly same size as Wells Fargo
- 2<sup>nd</sup> sign was installed without permit; has since been removed; not installed by Wurz
- Wasn't Lincoln Investments sign – was QED; prior tenant
- Sign removed was approximately 65 sq ft

Leah Fury-Bruder, Township Planner:

- Review letter dated January 7, 2019
- Variances acceptable; fairly large office building

- 2 main tenants have the signs
- 67.5 sq ft is proportionate to the building
- Channel letters acceptable
- Planning and development standpoint, makes sense for strategic placement
- Attracts good tenants
- Everything in letter has been addressed

Board Comment:

- Mr. Student asked where the sign was place when they were at 8000 Sagemore
- Mr. Natale replied that they did not have a sign there
- Mr. Student asked for a breakdown of the retail clientele that would come to the 10000 building
- Mr. Natale replied that most are educators, working as teachers, administrators or staff; put on seminars and various events
- Mr. Student asked how many people come a year, what percentage of the business
- Mr. Natale answered that it is probably 150 people per month
- This represents a small percentage of the clients in NJ

Public Comment:

- No comments

Zoning Board Solicitor Summary:

- Applicant is seeking a variance for a proposed façade sign; 2 variances requested
- Ordinance permits one façade sign in this zone
- Proposed 2 facade signs; existing Wells Fargo sign and the new Lincoln Investment sign
- 2<sup>nd</sup> variance requested; sign permitted can be no larger than 80 sq ft; existing plus proposed will be 135 sq ft
- Agreed to Condition of Approval to install signs consistent with Township Ordinance of Channel Letters
- Agreed to Condition of Approval to provide square footage of Wells Fargo tenancy

Motion to Approve ZB 18-39

Motion: Lutner

Second: Davé

Ayes: Davé, Lutner, Osno, Shah, Rodgers

Nay: Student

**2. FT Equities LLC ZB 18-31 1-28-19**

**D(3) Conditional Use Variance & Prel/Final Major Site Plan**

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

*Applicant is proposing to demolish the existing structure on the property in order to develop the site with a 5,371 sq ft Royal Farms convenience store and a gasoline filling station (16 fuel pumps)*

*Damien O. Del Duca, Attorney for Applicant*

Witnesses:

- Damien Del Duca, Attorney

- Matt Orsini; Fire Prevention Mt. Laurel
- Gary Brown, Environmental Engineer
- Nathan Mosley, Shropshire Associates, Traffic Engineer
- Matthew DiGuilio, Royal Farms Representative, West Chester
- Samuel Renauro, 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
- A6: Fuel Canopy Side and Front Elevation. Dated July 31, 2017
- A7: Tax Parcel Map 600 Route 73, Dated November 18, 2018
- A8: Aerial Map 600 Route 73, Dated November 18, 2018
- A9: Land Use Map 600 Route 73, Dated November 18, 2018
- A10: Zoning Map 600 Route 73, Dated November 18, 2018
- A11: View of 600 Route 73, Dated November 12, 2018
- A12: Royal Farms Fuel Operations Program/Procedures
- A13: 1993 Evesham Ordinance, Chapter 161 Zoning Exceptions, Modifications, Additional Requirements
- A14: Resolution Township of Sparta, QuickChek Corp 29-09, decided January 27, 2010
- A15: Montville Planning Board Minutes; March 23, 2017
- P1: Steck Planning Summary. Dated January 27, 2019
- P2: Steck FT Equities Application 4 pgs. Photographs, Dated January 27, 2019
- P3: Property Record Card for HOA site

Planning Board Solicitor Overview:

- Set ground rules; in a quasi-judicial hearing
- Process where hearing is on record; 8 Members on Board will hear the Application; Board is here as a judge and a jury
- Applicant will present application with their witnesses
- Board will go to its professionals for comments
- Board will then ask comments of the Applicant
- Following will be opportunity for public to be heard
- Public will be sworn in and everything is under Oath
- Everyone has an opportunity to be heard; Applicants burden to prove their case
- Not one sided; Attorney for HOA and their Planner agreed to hold questions until open public portion
- No questions to the Board
- Important that everything is on record; no shouting out or interrupting Applicant and vice versa
- Level of decorum; all questions and comments in the order addressed above
- Application may not be completed this evening; every person who has interest has right to be heard; redundant testimony will be stopped
- Application is a continuation from the Interpretation; which was denied

- Applicant is here for a Conditional Use Variance and Site Plan approval to construct a Royal Farms gas station and convenience store
- In order to succeed, need 5 out of 7 votes from Zoning Board in favor then will proceed
- If vote in favor, move to vote on Site Plan, need 4 out of 7 for approval
- If not granted, it does not proceed to site plan approval
- If Conditional Use Variance is not granted, entire application is denied
- Respect the Board; will make determination based on facts
- Cannot attack anyone for opinions; opinions have to be relevant
- If break; do not discuss application; everything must be on the record

Applicant Attorney Overview:

- FT Equities LLC, owns the property at 600 Rt. 73N and Lincoln Drive
- Proposed Royal Farms with convenience store and not meeting one condition in the Ordinance, when selling gasoline at a retail location, Ordinance defines it as a Service Station
- Royal Farms is permitted in this zone if they meet the stated conditions in the zone
- 10 Conditions proposed; meet 9 out of the 10
- Ordinance requires a Service Station to be 500ft from a playground
- This Ordinance has been on the books since 1993 or before
- Many changes since 1993; 26 years ago
- No Amazon 26 years ago, No Yahoo, No Google; not for another 5 years
- A lot has changed
- Relation to sale of gasoline especially and convenience stores selling gasoline which are a part of our daily life
- 1<sup>st</sup> Super Wawa was in 1996 in Delaware
- NJ was years after 1996
- Service Station is an old concept diminishing
- In November, Township Planner testified that this Ordinance and the proximity requirement is antiquated
- Ordinance is on the books
- Governing body was focused on Service Station as they were defined back in 1996
- Conditional use if meet all requirements
- Very clear law; Coventry Square
- D3 Variance differs from D1 Conditional use is appropriate
- Deviates from 1 requirement
- Can be accommodated by the site
- Can the Applicant satisfy this burden to accommodate the sale of gasoline if less than 500ft from a playground
- Permitted use as convenience store
- No clear direction what a playground is
- Gas sales is 358ft; 655ft total from tot lot
- Effect of 358ft vs 558ft; will not have significant effect on residents or children
- Accommodates sale of gas; different business today
- Double walled tanks; not significant rust
- Vapor recovery systems; fewer vapor emissions
- Cars are also made different, safer today
- Exhibit A4 show Recreational Facility in the top left

- Gas canopy at the bottom on Rt 73
- Exhibit A7 shows Aerial View of the site plan
- C1 zone; diverse uses; shopping centers, medical centers, restaurants, taverns, banks, convenience stores included
- Planning Board met on April 5, 2018 and granted approval with bulk variances
- Residents attended from the Orchards raising claims but none were related to proximity
- The Resolution was adopted in May, 2018
- The case was Appealed and is still pending
- Required a Conditional Use Variance so case went to the Zoning Board to pursue Site Plan and Bulk Variances required
- Ordinance is invalid for the record; based on case law
- Exhibits A1-A5 already exist; A6-A12 presented tonight are all new
- Exhibit A-13 is a copy of the 1993 Ordinance
- Board Solicitor interjected that it is a Conditional Use and it deviates from 1 point in the Ordinance; asked to strike what Mr. DeDuca said about the Ordinance being invalid
- Never raised in litigation; Ordinance is what it is and the interpretation is what it was according to Board Solicitor; Conditional vs Use; different standards, not lesser
- Witnesses were sworn in

Sam Renauro, Engineer Testimony:

- Accepted as expert witness by the Board
- Worked on 10 Royal Farms projects; testified at all Royal Farms hearings
- Exhibit A6 Aerial 360 degree image using drone, 30 days ago; existing conditions; no changes
- Lincoln and Route 73; curve
- 3<sup>rd</sup> side is the AMC Marlton 8 Theater
- Cross access to AMC; 20000 sq ft existing
- 107 parking spaces; 2.4 acres
- Exhibit A6 shows Recreational area; lot 2; parking, pool, tennis courts, small tot lot and basin
- Exhibit A4 is color rendering proposed site plan; added color and landscaping
- Royal Farms convenience store; 5300 sq ft
- 8 filling dispensers
- Right in/Right out entrance on Route 73
- Existing entrance on Lincoln Drive
- Stormwater management existing; impervious coverage
- Parking in rear of site (13 parking spaces)
- Application proposes parking to 30ft from existing condition
- Dumpster will be away from the residential area
- Front parking and pavement setback matches; 5ft existing and 5ft proposed
- Generous landscaping plan
- 54 parking spaces
- Gasoline sales out front; no sales of parts and no service on site
- Air pump only
- In compliance with all code requirements

- Adding driveway on Route 73
- Driveway on Harvest remains
- Site distance; Exhibit A11 – site travel profile
- Obstructions – site triangle
- Profile looking to right; gray
- Site distance lines shrubbery and terrain as is proposed condition
- Lower than site line; will be maintained
- Exhibit A4; site plan shows fuel delivery will enter from Route 73 and bear right to underground gas tank on right side of canopy
- Trucks exit Route 73; enter and exit same way
- Proposed sale of gasoline cannot be 500 ft from playground; reference Township Planner's review letter
- Proximity requirement 500ft complies with that aspect in all areas but the playground
- Exhibit A7 Aerial of gas canopy; 655ft from tot lot; 540ft from tennis courts
- Yellow circle on Exhibit 7 is radius around gas canopy; extent from tanks or canopy most conservative approach
- 500ft line runs through middle of south side of pool and continues along detention basin
- 38000 sq ft less than 1 acre; 30000 sq ft  $\frac{3}{4}$  of the area of lot 2
- Noise or light is not more than what would be permitted use
- Bulk variances – side yard Exhibit A4
- 5ft existing and proposed 5ft; not 15 because of curve at Lincoln Drive
- 3 front yards create a unique condition
- Maintaining existing condition made more sense but creates other variances
- Front yard or reduce parking spaces
- Loading area in front of the site; gas tanks located on Route 73 away from residents
- 3 front yards vs 1 small yard is unsafe
- Impervious 55% proposing 59.4% reducing from existing
- Still larger than maximum 55%; 59.4 % now vs 59.1% proposed
- Parking requirement
- Retail use adequate drive aisles for trucks to make turns
- Parking within first 50ft existing is only 22ft
- Applicant is improving or leaving the same
- Includes drive aisles; Eastern corner (right side of Exhibit A4)
- Existing not conforming 40ft setback drive aisle
- Proposed is 37.8
- Front and rear façade signs comply with but not in number but not in size
- Front above the entrance referring to Exhibit A3; color version façade sign similar on rear side of the building
- Ordinance 15ft buffer; we propose 5 matching existing condition side of the movie theater
- Exhibit A4; Applicant is seeking relief show 3 shade trees and replacing 1 along Lincoln Drive
- 1 where the driveway exists; 40ft spacing
- Route 73 has 3 street trees where 7 are required; 40ft spacing rule

- Street trees; 3 on Route 73, 1 infill on Lincoln Drive; require 5 street trees where 13 are required and 8 are proposed
- Proposed sign on Route 73 entrance
- Exhibit A3 shows the proposed canopy and façade sign on both sides of the canopy (short ends)
- Review letter comments regarding brick installment is mortar joints realistic brick veneer
- Elevation of the canopy
- Exhibit A9 shows striping and loading area complies
- Received questions regarding adding stone around free standing sign and will comply
- Installing Oden Visionaire parking lot lights; promenade fixtures per Township Planner
- Fire Official recommended adding a fire hydrant in January 22, 2019 letter; will comply
- Turning templates were provided and does meet Township requirements
- No issues related to safety; comply with all comments

Matt DiGuilio, Testimony:

- Real estate representative; very familiar with application; testified at 40 public Planning and Zoning Board meetings present and previous
- 2 Royal Farms based in Maryland
- Morphed into convenience store; 1959 was the 1<sup>st</sup> one
- Now 200 in VA, MD, DE and PA
- Exhibit A3 color rendering proposed convenience store to see common household goods; “to go” items
- Prepared items such as world famous chicken
- Drug store items
- Similar to items sold at a Wawa
- Royal Farms is expanding
- Would not open a store without a gas station
- Evolution of convenience store based with gasoline
- Exhibit A3 shows seats in front outside store and inside store
- Based around customer convenience; food consumed on site and convenience of eating
- Based on experience; roughly 25% gross sales consumption on site
- Of the 25% (could be eaten outside), 1/3 of consumption occurs on site
- Food primarily consumed off site
- Operating hours are 24/7
- At peak shift; 10 employees including gas attendants
- Typically 40-50 employees part time and full time employees; 70/30 split
- Deliveries will be off hours
- Trash/recycle pick up will be 3-4 times per week
- No idling laws in New Jersey; will comply
- No tractor trailer deliveries to the site, smaller boxed truck deliveries only

Nathan Mosely, Traffic Engineer Testimony:

- Accepted as expert witness

- Updated 2018 trip report; original trip report used previous trip generation
- Updated to 10<sup>th</sup> edition Super Convenience with
- Exhibit A4
- Have DOP permit needed
- Average daily volume 43000 vehicles/day
- Peak hours 3000-3500 vehicles north and south
- Traffic study did counts
  1. 7am-9am
  2. 4pm-6pm
  3. Saturday 11am-2pm
- Super convenience store with gas
- Uses newer; reflected 10<sup>th</sup> edition
- Trip generation analysis
- Pass by trips
- Already existing traffic
- Drivers pull in get stuff and pull back out and go on their way
- Studies show 76% or 3 out of 4 are pass by trips
- New trips generated (non- pass by trips)
- AM Peak Hours – New Trips
  1. Peak 7:45am – 8:45am; 113 in and out
  2. Afternoon 4:15pm – 5:15pm 88 trips in and out
  3. Saturday 12:30pm – 1:30pm 86 trips in and out
- 1-2 new trips per minute / 50-55 vehicles
- Distribution between Route 73 and Lincoln Drive
- Gravity model, population center
- 3 miles around the site; mostly local users
- Volumes northbound – north and south on Lincoln
- Estimate
  1. 69% using Route 73 in the AM hours
  2. 55-60% using Route 73 in the PM hours
  3. 65-70% using Route 73 on Saturday
- Permitted uses in C1 zone comparison like Whole Foods or standard restaurants and stand along convenience store attracting new trips
- No detriment to existing areas
- Level of service change to intersection is level service D to level service E
- 2-3 seconds average delay on Lincoln due to increases
- Exact same levels of service everywhere else
- No adverse wait times
- No significant increase to Lincoln Drive traffic
- No pass by trips; pass by intensive use is drawing from what is already out there
- No substantial change
- Enough room for cars to stack back at red light
- Approximately 500ft
- Max queue lengths 200-225ft less than ½
- Left out of driveway onto Lincoln
- Rely on ASHTO standards (American Association State Highway Officials) design guidelines

- Area clear of any obstructions
- 250ft to come to complete stop
- Sufficient and clear stopping distance
- 2-3 vehicles / minute
- 140 vehicles in and out morning peak hours
- Accident reports 2016/17/18 show only 2 accidents in 2015
- 1 was a single car accident
- No accidents in 2016 or 2017
- Meets all applicable code requirements 350ft in Ordinance and applicant provides 390ft
- Gas is ancillary use; most trips are for convenience store
- Exhibit A6; if left is restricted can go through the movie theater but is that better or worse

Matt Orsini, Fire Marshall Mt. Laurel Testimony:

- 10 years at Fire Marshall; 20 year's volunteer
- Accepted as expert witness
- Reviewed the site plan and visited the property as well as the recreational facility
- Reviewed Captain Freedman's reports and would ask the same thing
- Not endangering or hazard to the public
- Today's standards and codes changed so much
- Construction code changed; annual inspections
- Control logs and leak reports are kept
- Charged with enforcing
- NJ State Uniform Fire Code
- Register with the state
- Required to inspect annually
- Maintain shut off valves; manually tripped 1x/year
- Qualified training for employees at pumps
- Meet NJ fire code
- Proposed construction / gas canopy has to comply with applicable code "maintenance code"

Gary Brown, Environmental Engineer, Testimony:

- Professional Engineer in 18 states
- Accepted as expert witness by the Board
- Impact of Royal Farms vapors specifically to the playground; concentrations in ambient air
- Vapor from tank goes back into the tank
- Circulation back; emissions not allowed out
- Reformulated gasoline
- Air from cars emitting Benzene had to be cut back
- Weather; in warmer weather conditions a different formulation of gas was created
- Trends constantly going down
- Ambient measurements of Benzene in the air
- Was 5 now down to 1; down by 80%
- Trends in NJ over the last 5-10 years

- NJ air emissions; most stringent state next to CA
- Right now, changing the gas hoses so vapors cannot get thru the rubber
- Changing rubber to be safer
- One of the most densely populated states
- Gas stations; on road mobile vehicles 52%; non road (farm equipment/construction) 29%
- Point sources - 1% Refineries
- Service Stations – 17%
- Cars – 80%
- Improvements in vapor recovery controlled at every level
- Every stage of gasoline out and back in is controlled
- Sale of gasoline here has no significant adverse effect
- Exhibit A12 Royal Farms fuel operations program and procedures
- Hoses and piping; vents; operation and maintenance
- Most in depth follow up and maintenance around
- Most comprehensive over and above by 20-30% checks and balances and regular inspections
- Automatic alarms on site and at headquarters
- 10-20% over state of the art facilities
- NJ one of the toughest states with inspections
- Double wall tanks
- If leak with DEP, Royal Farms has monitoring well and will empty tanks
- Written procedures – “Tank Leaders” at the pumps that respond immediately
- Recreational facility is uphill from the facility
- If leak, it will migrate away from the recreational facility

John McDonough, Professional Planner, Testimony:

- Accepted as expert witness
- Conditional Use Variance; C1 commercial district
- 142 ft short of requirement
- Permitted use subject to 500ft
- Referenced Coventry Square Case
- Focus on deviation not on the use
- Positive / Benefits
- Public and applicants
- 40-50 jobs created to local youth
- Stable/economic development use
- Convenient access to food and fuel
- Efficient use of the land – one stop shop symbiosis
- Major transportation artery attracting already existing traffic
- National Association Convenience Stores statistics
- 80% fuel is purchased at a convenience store with gasoline
- Redevelopment of already developed site
- Accommodates current demand
- Very popular use / serves population well
- Desirable visual environment
- Fresh new image

- Convenience for the public's benefit
- Negative
- Environmental protection – meet or exceed NJ DEP
- Fire protection
- Sound, noise, aesthetics
- Safely and efficiently without negatively affecting the area around
- Visual impact
- Standards are antiquated different types of use – repair garage component
- Food/retail with food – one use category dual nature
- 2 components morphed into one
- 1990 Evesham Master Plan – up to 2011 read Most Recent Master Plan
- Route 70-73 present challenges and opportunities
- Need for rehabilitation and redevelopment; goals right on point
- Advancing goals of Master Plan
- TSI case – not applicant's job to reconcile
- Legal / Planning background
- Bulk Variance
- Parking setback 5ft where 15ft are required; matches existing
- Relief relates to shape of the property; curved
- C2 – fold benefits; relief to effectuated
- Impervious coverage
- Loading area in the front yard
- Location of tanks follow location of trucks
- Parking setback less than 50ft; 20XX to 38ft improvement over existing
- 37 to 85 sq ft free standing sign
- Façade 91.86 where 80 is maximum allowed
- Tasteful and fits well architecturally
- Perimeter buffer
- Meet burden; approval is warranted
- 5 shade trees short
- Provides nice green edge and good balance
- Bulk variances – all relief relates to specific developed piece of land

Stacey Arcari, Traffic Engineer Testimony:

- Second letter supersedes November 18 letter
- Clarification on truck circulation; plan shows box trucks using Lincoln Drive; could they use Route 73
- It works either way; so if no reason have them use Route 73 access
- Hours of delivery; none between 10pm and 6am
- Applicant responded that box truck deliveries are off peak; mid-afternoon to early evening, generally speaking yes but do not have direct control over it
- If overnight; will be dry goods, prepared foods etc.
- Frequency of deliveries are 2-3X a week
- 4-5 deliveries per day
- Can restrict trash and recycling to and from Route 73; restrict access overnight hours

- Traffic report worked together with Mr. Mosely; anything needed will be accommodated
- Applicant's attorney agreed
- Applicant provided number of parking spaces and 2 oversized
- Internal circulation impact; Mr. Mosely advised he doesn't anticipate a large increase
- Left turn out onto Lincoln Drive; site distance shows 292ft
- Vegetation is low enough but buffer site triangle; curve unique layout

Planning Board Solicitor Overview:

- Response to recommendation of No Left Turn on Lincoln Drive
- Mr. Del Duca advised it was a question for the board; believes it is safe and meets all applicable standards
- Would work with restriction on the Left Turn 7-9am and 3-5pm
- Traffic Engineer advised that her professional opinion remains that it is not safe at any time

Board Comment:

- Mr. Student asked Mr. Mosely if there isn't much traffic onto Lincoln; limited number now from the bank, why is there a need for the left turn out of Lincoln
- Mr. Mosely replied morning peak of 147 trips in and out of driveway
- Not having Left turn will impact business
- Convenience store entering and exiting for convenience
- Majority of traffic on Route 73
- Gasoline doesn't increase traffic; 80% of sales – fuel consumed in the US is convenience store
- Mr. Student asked if there was an ATM on site
- Mr. Mosely replied yes
- Mr. Student inquired about the number of trips the ATM generates
- There are 2 ATM's onsite according to Mr. Mosely; 19 trips in the morning, 15 trips in the afternoon and 14 trips on Saturday
- Mr. Wessner advised that he wouldn't want to make a Left onto Route 73 towards Berlin; Lincoln to Greentree – Route 73 and make the right onto Greentree instead

Rohan Tadas, Environmental Engineer:

- Applied pesticides/arsenic historically
- Investigations status; remediation status
- Flow of water was mentioned in testimony; how was it determined
- Release rate to detect using certain procedures
- Royal Farms has more redundancy because it over inspects manual and censors

William Loughney, Township Engineer Testimony:

- Review letter dated November 19, 2018
- Reviewed by Planning Board
- Grading, stormwater management
- Conforms to requests
- Same conditions of approval apply here

Leah Fury-Bruder, Township Planner Testimony:

- Review letter dated January 2, 2019
- D3 variance testimony required
- Lighting recommendation; Board needs to approve
- Plans revised to reflect Condition of Approval to lighting
- Sign variances are needed but proportionate to the building and internally illuminated
- Ad stone base to free standing sign
- Making landscaping adjustments per request
- Mr. Del Duca agreed to all comments

Board Comment:

- None

Alternate Chairman Rodgers requested a 5 minute break at 10:17pm  
Resumed session at 10:30pm

Melanie Levan, Dash Farrow, Attorney The Orchards HOA:

- Re-examined Mr. DiGuilio and inquired about how he represented over 30 properties and was familiar with branding and operation
- Inquired about Royal Farms being famous for fried chicken and western fries
- Cooked on site; raw and deep fried
- Not frozen; all prepared on site
- Royal Farms website makes a point touting “Makes world famous chicken”
- Sets them apart from other chicken places
- Hoagies are assembled not cooked; they are reheated
- Royal Farms – “Always fresh, never frozen”
- Royal Farms does catering also; buy trays; call ahead and order
- There is indoor seating for convenience
- 6 tables proposed; 4 seats per table
- 25% revenue from food sales
- Hot food; chicken “prepared foods”
- 1/3 people buying food eat on site; general operation of general store
- Deliveries are 10pm – 6am
- No gas deliveries on site
- Box trucks limit to no deliveries between 10pm – 6am
- Can agree to trash but not box trucks as no difference than regular pedestrian vehicles

Peter Steck, Professional Planner:

- Sworn in and accepted as expert witness
- Very familiar with application and exhibits
- Exhibit P1 is memorandum January 27, 2019; 5 pages with 1 appendix of photos
- Fast food categorized accurately; food activity influences to the land use
- Most gas stations with convenience stores don’t fry food or cater food
- Logically effects whether it’s a destination or a pass by
- 8 pumps / 16 fueling locations

- Playground wasn't a tot lot; it was kids all over the site
- Fast food still not addressed by the Board
- Important if Fast Food component; it effects intensity of use and standards Board would apply
- Very unusual for operation like this to do extent of food preparation; with 36 seats
- 24 seats outside and 12 seats inside; standard format
- Not categorized as other places like QuickChek or Wawa
- National Data; store has a 3<sup>rd</sup> component to define it as a Super Convenience Market / gas station
- Definition of fast food restaurant and service station
- C1 Zone as permitted use doesn't allow fast food restaurant or service stations
- Applicant skirted the issue
- Different standards for service stations and fast food restaurants
- First Ordinance description
- Impact; application requires a Condition for fast food restaurant
- Not in site plan or application
- 500ft / operates as one use now is a new use; wouldn't have anticipated then use is not permitted in the Zone
- Doesn't automatically mean it is a permitted use
- 2011 revisited the Ordinance
- No recollection to change or revise this point
- Outvoted isn't a reason to grant a variance
- Applicant doesn't accurately describe the use; public notice was inaccurate
- Exhibit P2; 4 page document; 1) aerial view photo 2016 vacant property well maintained and landscaped
- Page 2; photographs NE across Route 73 buffering nice trees
- Page 4; Proposed property to the playground
- Use to the property except from the property line
- 66ft away from the playground
- Exhibit A4 color rendering doesn't show street trees
- Benefits; existence of building today not a detriment to the area
- Misreading Ordinance with different measuring points
- Ordinance is clear; measure property line to property line
- Applicant's exhibit measures property line to property line for another gas station
- Comparing apples to oranges; depending on what suits their needs
- Definition in Ordinance clarifies this as a fast food restaurant
- Modifies land use impact; not standard QuickChek or Wawa
- Applicant has not addressed properly; not part of a shopping center
- Applicant suggesting this is new use; things have changed but doesn't automatically make it a service station as stated in Ordinance
- Applicant bears burden of proof and hasn't met it
- Composite use; attracted due to food not just the convenience store items
- Doesn't meet negative criteria
- Applicant hasn't adequately addressed 66ft separation distance
- Applicant hasn't shown valid walking distance; driveway on Lincoln is the worst place
- Dangerous; detriment to the public

Applicant's Attorney Cross Examination:

- Mr. Del Duca referenced D3 variance for 500ft distance requirement; anything that leads you to conclude it isn't justified
- Mr. Steck stated the Ordinance is the Ordinance; children play in the backyard; service station use should not be proximate to a playground
- Mr. Del Duca asked what distance would be safe to have a playground from a gas station
- Mr. Steck replied 500ft; governing body already said and I agree
- Testified on behalf of QuickChek in Sparta
- Mr. Del Duca pointed out that lot was partially in residential zone and adjacent to a house
- Mr. Steck advised to get the facts; already gas station there
- In Sparta, condition use variance was gas station couldn't be within 300ft of school, etc.
- HOA Attorney objected
- Board Solicitor overruled; witness testified 500ft is safe; Alt Chairman agreed and overruled
- Mr. Steck agreed it was about 15 years ago; very small station
- Exhibit A14; Resolution Sparta Zoning Board of Adjustment 1/27/10
- Mr. Steck stated different zones, different parts of the state; and no chicken
- Needed variance because intensifying use that was already there
- Sparta measures property line to property line
- Mr. Del Duca advised that in Montville Mr. Speck testified for developer of Wawa; conditional use variance for Super Wawa; measure canopy to canopy
- Mr. Steck couldn't recall
- Exhibit A15; Mr. Steck advised argument wasn't applicable to Redevelopment Plan; predated adoption
- Facts were different in that case
- Mr. Steck read definition of fast food restaurant in testimony
- Different definition of restaurant
- Mr. Del Duca stated that fast food restaurant is a type of restaurant
- Mr. Steck said no, not in terms of this Ordinance
- Over the counter service, limited menu of prepared foods
- Uses have evolved over the past 15 years
- Food is a small component of supermarkets; not fast food
- Royal Farms have substantial seating, all of the cooking tools found in traditional fast food restaurants
- Advertise themselves for fried chicken and fries
- Mr. Del Duca asked why Royal Farms is a fast food restaurant
- Mr. Speck replied that Wawa is designed for over the counter service, limited standardized menu; fast food is prepared, packaged, seating inside
- QuickChek and Wawa do not serve or promote dinner; do not have full scale kitchens

Melanie Levan, Attorney, The Orchards HOA:

- No redirect

### Board Attorney Summary:

- Asked Mr. Speck in relation to Exhibit P1, page 4; restaurant or fast food, read the definition of restaurant in Evesham
- Mr. Speck advised that the definition is for a general category, food sold on the premises; subcategory talks about fast food restaurants; ordinance makes a distinction
- Board Attorney advised that it's the Board's decision and asked if there was any evidence in the record that this was a fast food restaurant
- Mr. Speck advised that primary consumers of food do not consume food on the premises
- HOA Attorney asked if you have a restaurant that has seats on site; understanding of restaurant, fast food, is defined not only by consuming food on premises; whether or not interior seating; must be 2 different things
- HOA Attorney follow up questions for Professional Engineer
- Asked Mr. Mosely if he was aware of bus stop
- Mr. Mosely responded yes from previous hearing
- Trip generation was done during summer time when school was out and no traffic

### Public Comment:

Nancy Lapidow-Johnson, 6201 Red Haven Drive sworn in

- Hope since last meeting that some of Board members visited The Orchards
- Calm quite community; set back from Route 73
- Close eyes and visualize 24 hour convenience store to impose itself in our back yard
- Many concerns; safety, kids at bus stop, unwanted, unwelcome strangers, property values dropping
- Not zoned for fast food restaurant or for a gas station
- No compelling reason to put this behind neighborhood

Karen Varinecz, 904 Roberts Lane sworn in

- Decline in property values by a gas station; drops 9-16%
- Combination of fast food restaurant with gas station
- Increases risk of explosions
- Traffic all day to already busy intersection
- Robbery of facility due to cash on hand
- Gang activity
- Children don't always have adult supervision
- Fear of predators
- Invites crime
- 24 hour business causes transients to gather
- Sell alcohol in VA and MD
- Crime study done to see how it affects The Orchards

Marjorie Robbins, 6101 Red Haven Drive sworn in

- Tax payer
- 29 years living in the community
- 3<sup>rd</sup> meeting attended
- Disturbed greatly by not real sense of disclosure

- Mr. Del Duca stating this is like a Wawa is false
- Quality of life of children and young adults living in this community
- Don't want them wandering
- Loitering all night long
- Always emphasize on convenience store and not on fast food restaurant
- Truth and democracy very sad
- Application is missing detailed information
- 300 townhouses right behind the property; don't care about the neighborhoods
- Never talked to HOA or prospects of what this would do to our neighborhood

Tim Westerside, 5003 Red Haven Drive sworn in

- Live in Orchards
- Substantial study on different harmful effects of gas station fumes
- Using professional studies
- Columbia University study – October 4, 2018
- Mr. Del Duca objected to use of study as he hadn't reviewed
- Board Solicitor overruled
- Examined release of vapors from gas pipes
- Vapors are toxic chemicals; carcinogens
- Dictionary.com definition of carcinogen
- Published February 7, 2011
- The Seeker; higher levels of Benzene and leaks contaminate
- Department of Health and Human services; causes leukemia
- Columbia researchers took measurements over a 3 wk period
- 1.4 lb and 1.7 lb per 1000 gallon dispensed
- .11 lt per 1000 gallon
- California air resources
- 300ft or 3 meters; fuel vapor carried in air to 3 thresholds exceeded at both locations
- Exposure level distances greater than 500 meters
- Exceeded in 7 or 8 meters
- Gas fumes contaminate the air
- 300 homes on Lincoln Drive; 100 meters = 128 feet
- Residents are 200ft from Royal Farms
- Pool to Royal Farms – vapors travel

Shelley Rossell, 703 Jonathan Lane sworn in

- Traffic
- Significant backlog at light on Lincoln
- School bus stop there
- People trying to get out
- Certain it will make it worse
- Sincerely concerned about lack of interest from the Applicant about the restaurant usage
- Outdoor seating encourages outdoor loitering
- How do you control sex offenders

Craig Stanger, 1401 Jonathan Lane sworn in

- Lived in Orchards for 23 years
- Back of property faces Royal Farms
- Proximity not within legal limits to pass
- Applaud decision to
- Worked in convenience store
- Type of consumer frequents store
- After hours; partiers, loud, nuisance
- Too darn close to homes
- Robberies – the Orchards is a place to hide
- Don't want to smell fried chicken 24 hours a day
- Rodent infestation
- Potential hazard to impact
- Traffic accidents potential
- Too darn close
- Competitor Wawa, doesn't build in neighborhoods

Joe Storck, 119 Ramsey Court sworn in

- Lived in Orchards for 33 years
- Father in law lives next door to Mr. Stanger
- Children play and visit here
- Bus stop too close
- No room
- No arms on trucks as there are on busses
- Arms on busses for a reason
- 18 wheeler pulling out onto Route 73; how long does it take to get up to speed
- Movie theater loaded to capacity; impact there
- Witnessed a tanker explosion; too hazardous, emissions
- Olga's up the street, too much in one spot

Rachel Dichter, 502 Jonathan Lane sworn in

- Lived here 14 years
- Quite community
- Mentally challenged or group homes; individuals live here
- Noise; light pollution
- Box trucks delivering all hours day and night; won't limit to certain hours
- Effects how we will enjoy the community we live in
- Rodent population
- Already have skunk/cat problem
- Trash will increase that problem
- Loitering problems
- Robberies in convenience stores, 49 published in 2007
- National problem
- Putting this in our back yard

Bridget Nelson, 1504 Jonathan Lane sworn in

- Royal Farms directly behind house

- Interpretation testimony – 5-2 voted declined not safe
- For number of reasons
- Environmental impact; fumes; safety
- Current offices have normal business hours; now 24 hours a day
- Pose threat
- Registered sex offenders
- Loitering encouraged outside seating
- 13 year old daughter
- LEAD program
- Shouldn't put store within 500ft of playground or children
- Safety school busses
- Agree with Traffic Engineer; explained the left turn issue
- Buffer / screen shall be placed 160.1 ft
- At November 26 meeting, Township Planner when out of way to state sufficient buffers
- Board Solicitor opposed to apply

Daniel Coelho, 164 Greenbrook Drive sworn in

- Parents live in the Orchards at 54 Red Haven
- I lived there as well
- Intent of Ordinance is safety reason for 500ft barrier between homes and a service station
- New model is convenience store with gas station
- Should measure property line to property line
- Disturbed by dishonesty of Royal Farms; downplaying hazards and safety
- Don't track types of sales; find it hard to believe
- Haven't been forthright
- How many variances is too many to approve
- Not a lawyer
- Ask board; consider this as if this was you, would this Royal Farms improve your property
- Consider if this was happening where you live

Thomas Pastuszek, 403 Jonathan Lane sworn in

- Oppose Royal Farms
- In business to make money, understand
- When write the law, should think do they want a service station 500ft from a home
- Live in home 38 years
- All farmland being developed
- Live in Marlton for a certain quality of life
- Not complicated
- Concur with neighbors and friends

David Lemberger, 1301 Roberts Lane sworn in

- Royal Farms is asking for what was not necessarily intended in Master Plan
- Ask trash truck not to come between certain hours; they come when they come

- No control over it; WE have to live with consequences
- Once approvals are given, they go out and do what they want to do
- Left turn issue; close to my heart
- People don't follow signs
- South Jersey Radiology has No Exit sign
- Global Sales on Greentree Road; no left turn; people still continue to make a left
- Sign is ignored
- Royal Farms creates the situation; make alterations by putting the sign up
- Try to restrict but doesn't work
- Once approved, it becomes that indefinitely
- Abandoned gas stations
- No one wants to pull them out; stuck with them
- Existing property; landscaping needs maintenance; need more of a setback not less
- Storm sewer clogged, debris
- Size 12ft in to size 6ft box
- Traffic citation issue; didn't discuss speeding
- Light at Route 73 they speed up

Bonnie Sanders, 2402 Elberta Lane sworn in

- Testimony given that this won't cause more traffic or more accidents
- What is the recourse if we find this isn't true if it goes forward
- Alt Chairman Rodgers added, if approved/granted, it gets built
- Board Solicitor added that if decided, is there any legal recourse? If granted and everything Royal Farms said isn't true, there is no recourse. Proof is based on scientific standards

Jeff Konrad, 24 Euston Road sworn in

- Royal Farms doesn't have the right
- Variances and hardship cases
- Can't come in and do what they want
- Involved with Walgreens many years ago
- Civil Engineer; if not right, go in and fix it
- Island or some system needs to go in
- Restrict it with mechanical system

Isabelle Abrau, 214 Hamilton Road sworn in

- Opposed to variance
- Same reasons as already heard
- Thanks to the Board for responsibility held
- Traveled to many places there are homes next to dumpster
- Most important thing here is the variance
- Rules in society for a reason
- Ordinance wrote 500ft for a reason
- Important because of safety
- Definition of playground fit; voted in our favor
- Look out for residents of this township

- Reasonable in business; this is beyond reasonable
- Most crucial; implore you to use the power that you have

Applicant Attorney Closing Statement:

- Appreciate our time; narrow issue
- Can this site accommodate and meet 500ft condition with testimony
- Traffic; no disagreement by Engineer
- Understand public opinion
- Have to evaluate legal competent evidence
- Significant testimony; didn't say weren't going to add traffic; doesn't alter traffic
- Accommodate gas even though within 500ft from playground
- Technology has changed
- Bulk variances not significant
- Planning Board granted approval for a reason
- Lot over 5x bigger than minimum size for a service station
- Conditional Use Variance; standard isn't to comply
- Is there a unique condition, benefits yes
- Very unique shape property
- Traffic; compared to permitted use; trips are comparable
- Standard isn't popularity
- Not NIMBY standard; heard a lot
- Have to consider all evidence; D3 conditional use variance should be granted; evidence is overwhelming
- Convenience store that sells food; not fast food restaurant

Board Attorney Summary:

- Application for Conditional Use Variance to deviate from condition of proximity between gas station and playground less than 500ft
- Seeking Preliminary and Final Site Plan Approval for 5300 sq ft convenience store; 16 location fueling pump gasoline station
- Seeking number of bulk variances will address
- Recommend to bifurcate decision and need to address Conditional Use Variance first; if pass, then summarize the site plan issues

Motion to Approve Conditional Use Variance

Motion: Lutner

Second: Shah

Ayes: Lutner, Student, Wessner, Osno, Shah, Rodgers

Ney: Davé

- Presume you believe it is a gas station with convenience store
- If you believe it is a Fast Food restaurant; do not vote for the Application
- Approved – move to second half of Application
- Preliminary and Major Site Plan convenience store with gas station
- Agreed to 9 Bulk Variances; side yard setback, loading areas, impervious coverage, parking; sign size, façade and free standing, buffer/ shade trees, canopy signs
- Applied for as brand new variances
- Agreed to all comments in the Planner's report
- Agreed to all review letters

- Agreed to no fuel deliveries or trash removal between 10pm and 6am
- No truck exits on Lincoln Drive; exception is box trucks
- No limitations to box trucks
- No left turn onto Lincoln Drive at any time, exiting site onto Lincoln Drive
- Applicant opposed to any restriction on Left Turn
- Alternative none at peak hours; No Left Turn from 7-9am or 3-5pm

Motion to Approve with NO LEFT turn at anytime

Motion: Wessner

Second: Student

Ayes: Lutner, Student, Wessner, Osno, Shah, Rodgers

Abstain: Davé

**Communications/Organization**

Next Meeting: February 25, 2019

The meeting on February 25<sup>th</sup> will begin at 6:30pm; Mr. Osno advised that he will not be present

**Meeting adjourned at 1:45 am**