

GREEN TOWNSHIP LAND USE BOARD MINUTES  
REGULAR MEETING, March 14, 2024  
Green Township Fire House

**CALL TO ORDER:** The March 14, 2024 Regular meeting of the Land Use Board was called to order by the Land Use Chairman, Mr. Scott Holzauer, at 7:02pm. He then led everyone in the PLEDGE OF ALLIGIANCE.

Recitation of the OPEN PUBLIC MEETING STATEMENT by Mr. Holzauer

**ROLL CALL:** Present: Mr. Robert Cahill, Mr. Joseph Cercone, Ms. Kate Douglass, Mrs. Jenny Kobilinski, Mr. John Lynch, Mr. Jason Miller, Mr. Rick Wilson and Mr. Scott Holzauer

Also present: Mr. David Brady, Board Attorney, Mr. Cory Stoner, Board Engineer, Mr. Paul Gleitz, Board Planner and Ms. Kim Mantz, Board Secretary

Members Absent: Mr. Sam Diaz, Mr. Jim DeYoung, Mrs. Sharon Mullen and Mrs. Margret Phillips

A motion was made by Mr. Lynch to excuse absent members and was seconded by Mr. Wilson  
All Ayes. No Discussion. Motion Carried. Abstentions: none

**MOTION TO APPROVE MINUTES:**

Land Use Board Minutes of February 8, 2024

A motion was made to accept the minutes by Mr. Wilson and seconded by Ms. Douglass  
No Discussion. All Ayes. Abstentions: None

**RESOLUTIONS:** None

**OLD BUSINESS:** None

Mr. Holzauer thanked Mr. Porzilli and Mr. Lynch and the Green Township Fire Department for allowing use to use the firehouse, Craig Bollmann for helping purchase and set up the equipment and the Green Township DPW for helping with the parking outside.

**NEW BUSINESS:**

Application: LU#2309

Owner/Applicant: SAKS Properties, LLC

Block 35 Lot 8 – 57 Decker Pond Road, Andover, NJ 08721

Action: Completeness, Interpretation, Public Hearing

The applicant has applied for the following:

Minor Subdivision

Preliminary and Final Major Site Plan

Interpretation

Bulk Variance

Deviations in Waivers and Exceptions

Mr. Jason Rittie, Attorney for the Applicant, began with a brief background of the application.

The subject property is located in the Neighborhood Commercial Zone (NC) and the applicant is proposing to subdivide into two conforming lots, one remaining Lot 8 and proposed Lot 8.01 and seeking to construct an approximate 9558 square foot commercial building on proposed lot 8.01 and the existing structure on lot 8 will remain. The Applicant is also seeking approval for related surface parking, utilities, stormwater management facilities, landscaping, lighting, freestanding signage and other site improvements.

Mr. Rittie went on to say that as part of the initial application, the applicant was seeking approval to relocate the existing liquors/convenience store to the new proposed lot. The applicant is withdrawing that request and the existing Brix Liquor Store will remain in the existing building. The applicant did notice for an interpretation for moving the liquor store to the new proposed lot which required an interpretation of the ordinance which we are no longer requesting.

Legal notices were mailed to the property owners within 200 feet on February 29<sup>th</sup> and notice was also published in the NJ Herald. Mr. Brady explained he reviewed the notice and all was in order.

Mr. Brady asked Mr. Rittie about representing a Land Use Board Member, Ms. Kate Douglass. He explained he represented her for an application for a fence in 2021 and has not represented her since. Mr. Simon, the Attorney for the opposition, Mr. and Mrs. Seaman, introduced himself. After a brief discussion he stated that he was ok with this and it is unnecessary for Ms. Douglass to recuse herself. No one else in the room had any issues either. Ms. Douglass stated she could represent the Board fairly and impartially.

Mr. Brady explained to the public the process of completeness, interpretation, testimony, questions only of the professionals and applicant and then public comments towards the end and finally a decision. The decision may not be made tonight due to time constraints. The meeting would then be carried to the next meeting date without additional notice.

Mr. Stoner began by listing the items in his report dated February 5th, 2024.

Address.

#8 - The letter interpretation - It does not appear there's any wetlands that are known to be on this site, so Mr. Stoner believes this item could be waived. If something comes up during the hearing, he said it can be addressed at that time.

#31 - The Environmental Impact Statement - The applicant has requested a waiver. I have no objection to the waiver as long as the testimony provided to the board tonight will address sewage disposal, water supply, drainage, solid waste disposal, air pollution, light pollution and impacts the critical impact areas.

#34 - Proposed Lot Numbers – Mr. Stoner has no objection to this request. This is something that is assigned by the Tax Assessor and should really be more of a condition of approval.

#42 – Corner Stakes and Flags – Mr. Stoner believes this item can be waived for purpose of hearing the application.

#50 – Written Description of Proposed Project – Mr. Stoner has no objection to waiving this item provided the Applicant will discuss all of these items during the testimony.

#56 – Two Copies of As-Built or Constructed Drawings – Mr. Stoner believes this can be waived for the purpose of hearing this application, but an as-built plan will be needed as a condition of any approval granted.

Mr. Rittie stated the Applicant filed on February 28<sup>th</sup> for the Environmental Impact Statement that was filed as well as copies of the application for The Letter of Interpretation.

Mr. Stoner asked about the application for the absence/presence letter. Waiver numbers 8 and 31 are no longer requested and Mr. Stoner believes #34 is a condition of approval so there are only three waivers left, #42, #50 and #56.

A motion was made by Rick Wilson to deem application LU#2309 complete and was seconded by Kate Douglass. Roll Call Vote: Mr. Cahill, Mr. Cercone, Ms. Douglass, Mrs. Kobilinski, Mr. Lynch, Mr. Miller, Mr. Wilson and Mr. Holzhauer.

Mr. Brady suggested we start with the Interpretation and suggested we begin with Mr. Rittie. Mr. Brady swore in Ms. Donna Holmqvist of Preferred Planning Group LLC, the Planner for the Applicant. She listed her credentials and the Board and Mr. Simon accepted her as a professional in good standing.

Mr. Rittie asked Ms. Holmqvist to explain why this proposed building is not considered a “strip center”. Ms. Holmqvist submitted Exhibit A-101 – a color coded aerial map titled 57 Decker Pond Road, dated January 28, 2024, prepared by Preferred Planning Group, LLC. Ms. Holmqvist stated this shows the land uses in the area and indicated the proposed site. She then submitted Exhibit A-102 – a color coded aerial map showing the zoning districts near 57 Decker Pond Road, dated January 28, 2024, prepared by Preferred Planning Group LLC. This map shows the zoning districts and that the proposed site is in the Neighborhood Commercial Zone (NC). The other zone in the area is the AR5/2 zone.

Ms. Holmqvist noted that in the land use exhibit two of the properties adjoining to the proposed site, to the north and west, are existing residential uses, but are also located in the NC district. The regulations in the NC district identify residential uses as conditional uses and establish a minimum lot area which those properties do not meet.

Section 30-45.4 of the Green Township code lists prohibited uses and one of the prohibited uses is a strip shopping center. Strip shopping center is defined in the ordinance as “a commercial use or uses contained in one structure having a linear orientation which is approximately parallel to a roadway with the majority of off-street parking located between the commercial structure and the roadway”.

Ms. Holmqvist submitted Exhibit A-103 – a plan titled Neighborhood Context showing the aerial image with the proposed site superimposed and the immediate surrounding area, dated January 28, 2024, prepared by Preferred Planning Group, LLC.

Ms. Holmqvist stated the following about the proposed building and site:

- Courtyard shopping.
- Not parallel to the roadway.
- Certain sections are different distances from the roadway.
- The shape is varied, it is an L shaped building.
- It converges and diverges; it is not linear.
- The majority of tenants face away from the road.
- The location of parking, most of the parking is in the “courtyard” area.
- There are 48 spaces on the property and only 14 of them, or 30%, are between the building and the road.
- The majority of the parking, or 70%, of the parking on site is either in the “courtyard” or behind the building.

- Setbacks - the closest corner is 136 feet and the other portion of the L shape, which is set back even further is about 200 feet from the road.
- The applicant has provided a wraparound buffer.
- Located at the intersection of two major roadways in the community.
- Very large, landscaped area with terraced retaining walls that further separate the building and improvements from the right of way.

She went to on explain what Green Township is looking for based on the 2005 Master Plan: a country crossroads. The ordinance talks about providing “convenient facilities, places of employment, and opportunities for investment for local residents”. It goes on to state that the intent of the NC Zone is “to encourage a reasonable amount of new commercial and retail development designed to accommodate the natural characteristics of the land and take advantage of its location along rural lanes to provide controlled economic development throughout the Township”. Ms. Holmqvist believes that is exactly what's being achieved with this proposed plan and that the Applicant is furthering the purposes and objectives of land use planning in the community.

Mr. Simon, Attorney for Mr. and Mrs. Seaman asked Ms. Holmqvist some questions about when she was brought in as a Planner for the Applicant. Ms. Holmqvist stated it was around February or March of 2024, but she wasn't sure of the specific date. She was not part of any revisions that were made regarding the drive thru being eliminated.

Mr. Simon felt the liquor store remaining where it was and being removed from the site plan could be a Razberry matter of intensifying a non-conforming use by way of subdivision. A discussion followed between Mr. Simon, Mr. Brady and Mr. Rittie.

*Mr. Simon:* There was no communication or correspondence to this Board or to my office until this evening regarding the liquor store remaining on lot 8. There is a premise in the law made famous by a case called Razberry's that indicates when you have a nonconforming use, a prohibited use, and you reduce the area it constitutes an intensification of that use and it requires a variance under the Municipal Land Use Law 40:55-70d2. The application triggers a D2 variance or a D1 variance depending how you look at it, but either way it requires a form of use variance.

*Mr. Brady:* The existing liquor store was approved in 2017. Because the term “liquor store” is not found in the ordinance anywhere, it was approved as falling within the convenience store definition which is permitted in the zone as long as it's under 1500 square feet. The liquor store has an existing approval as a permitted use. If the liquor store was shifted into the new building, it's appropriate to question as to whether the use and operation still fit the convenience store definition. This Board is not a board of enforcement and it's not necessarily appropriate to go back and reexamine a decision that was made in 2017.

*Mr. Rittie:* The fundamental flaw with Mr. Simon's argument is that this is not a prohibited use. This was approved in 2017, the appeal periods long expired and the liquor license at the site has been renewed continuously for years. This should not be revisited.

*Mr. Simon:* The decision made in 2017 was not an interpretation application or a site plan application. It was a site plan waiver. This is different than the property that is being proposed this evening that would be significantly reduced in size.

It is a use and there is nothing in the Municipal Land Use Law or any applicable case law that restricts the Board from reconsidering, looking at a new or otherwise, a particular use that is now before the Board. When the Applicant, any Applicant, comes before any Board, the Board is not constrained to determine based on the ordinance at the time, facts at the time, objectors at the time or interested parties at the time, to determine what the use is for which the applicant is requesting relief.

Mr. Brady suggested we start off with the issue of the strip mall. He spoke about the Razberry case that is being referred to by explaining it is a case where there was a use that was pre-existing, it was not conforming in the in the zone and there was an application to shrink the property was located on. It stands for the proposition that when you have a nonconforming use and you shrink the property, you need a special type of variance, a D2 variance.

Mr. Simon asked Ms. Holmqvist questions regarding the “strip shopping center”.

Ms. Holmqvist responded by saying the language in the Green Town ordinance under prohibited uses, narrows the concerns to just a couple of design issues. Steps were taken by the applicant to vary the elements of the design of the building, the physical layout of the building, and the parking which did not constitute a strip center, it is a retail shopping center. The parking areas were discussed. Mr. Simon then brought up the linear orientation of the building. Ms. Holmqvist referred to Mr. Ken Fox, Architect for the Applicant, but stated the 133-foot dimension runs north to south parallel to Kennedy Road and the 118-foot dimension runs east to west parallel to Route 517. The dimensions were discussed.

The design waiver relief for having retail signage not facing the road was discussed.

There was a discussion regarding the placement of the building to the roadway and where the parking was located.

The public was invited to ask questions pertaining to what was just discussed.

Kevin Christie – 67 Decker Pond Road - asked a question about the lighting and signage for this property. There was no answer on the recording. (This was not the right time for this question was said by Mr. Dave Brady as was heard by members of the Board)

Laura Bugay – 3 Fieldview Road – abbreviated version of discussion.

Is retail use the same as commercial?

Ms. Holmqvist: A retail use is a commercial use.

Is that L-shaped considered one structure?

Ms. Holmqvist: Yes, it is one structure.

Does it have a linear orientation?

Ms. Holmqvist: We have variations in the facade which the architect is going to go into a lot of detail about.

It is approximately parallel to 603, correct?

Ms. Holmqvist: There are small portions of the building that are but there is no frontage on Kennedy Road.

Where is most of the parking located?

Ms. Holmqvist: There is some parking closer to the roadway, some in the courtyard area and some in the back.

Ms. Bugay then started using the exhibits as part of her questioning and exactly what she was talking about could not be determined based on audio only.

How many parking spaces?

Ms. Holmqvist: 14 in the very front, 34 in the combination of courtyard and behind the building.

Mr. Brady stated, after looking at the plans, there were 14 spaces in the front, 15 within the courtyard, 6 spaces at the end and 13 behind the building.

Mr. Ken Fox, Architect for the Applicant from Fox Architectural Design, was sworn in by Mr. Brady and his credentials were presented to the Board. Although Mr. Fox is a Professional Planner, his testimony will be only as an Architect.

Mr. Fox states that regarding an architectural definition of linear orientation, this building does not qualify based on the shape and façade.

Exhibit A-104 - A professional rendering of the left side of the building was submitted.

In 30-17.3B(6) Building Design and Placement.

C. No building shall measure more than 120 feet in any plane.

D. Building offsets of a minimum of four feet shall be provided at a minimum of every 40 feet along each building wall to provide architectural interest and diversity. Roof lines and exterior surfaces shall complement these offsets.

E. The complementary relationship of one building's roof lines, materials, colors, and floor and window placement to adjacent buildings shall be considered to avoid strip type development.

The definition of a plane is a surface containing all the straight lines that connect any two points. Mr. Fox went on to describe all the reasons this is not one plane and therefore not linear. This building was designed based on the ordinances.

A discussion between Mr. Fox and Mr. Simon ensued regarding the design of the building.

Mr. Fox stated the following:

- The building was designed based on the township's ordinances.

- There is linear 88 feet of signage for the retail stores.

- There were offsets of 5 feet placed along the wall parallel with Kennedy Road when only 4 feet is required.

- Complimentary relationship of the roof line.

- It is not linear.

- By creating the courtyard area this building is not linear.

- The signage is on two different planes.

- Large offsets are 40 feet, 28 feet and another one is 40 feet for a total of 108 feet in one plane. The interior indentations are 10 feet each for a total of 20 feet in the second plane.

The meeting was opened up to the public to ask questions of Mr. Fox.

Mr. Ed Proskey – 29 Meadow Lane – asked about the loading docks in the rear of the building and if they are able to handle 40 and 53 foot trailers. Mr. Brady explained this was a question for a different time once we are past the strip mall determination.

Kathy Bombaze – 11 Rydell Road, Allamuchy – a member of the Tranquility Methodist Church – asked What is the distance from the building edge to this building edge referring to Exhibit A-103? Mr. Fox stated one is 133 feet and the other is 118 feet. Mr. Brady suggested using sheet A2 of the architectural plan to show the dimensions. Ms. Bombaze then stated that it was one plane of 133 feet. Mr. Fox disagrees because of the offsets.

Laura Bugay - 3 Fieldview Road – Referring to sheet A2 of the architectural plan Mrs. Bugay asked if there were any passage ways between the buildings. Mr. Fox said no. Mrs. Bugay went on to say then this is a strip of stores without separation. Mr. Fox does not think it is a strip mall.

Mr. Brady suggested Mr. Simon provide expert testimony regarding the same issues.

Mr. Brady swore in Mr. Andrew Thomas of Thomas Planning Associates, planner for the opposition, Mr. & Mrs. Seaman, and he provided his credentials to the Board. He was accepted by the Board.

Mr. Thomas stated the following:

- He believes this is a prohibited use
- The definition of a strip shopping center is a commercial use or uses contained in one structure, he believes this meets that first part of the definition. The definition goes on to state that a strip shopping center has a linear orientation which is approximately parallel to the roadway. The 118-foot side of the building that runs east and west is generally parallel to the roadway which means a significant portion of the building is parallel.
- This building can only be 120 feet in a linear plane and is almost meeting the maximum size. Section 30-17.3B(6) that is referred to is actually for architectural design standards. The longest plane of the building is only permitted to be 120 feet and the longest side of this building is 133 feet.
- He believes the offsets are only for architectural diversity.
- This building only has 2 planes; one is 133 feet and one is 118 feet.
- The third part of the definition is the majority of parking is located between the building and the street. He believes that is the case with this plan. A total of 19 spaces are located on either the side of the building or in the back of the building which is 40%. That leaves 60% in the front of the building which is the majority.
- He believes this proposed building plan clearly meets two of the three parts of the definition of a strip shopping center.

Mr. Simon stated exception relief for the signage and the longest plane only permitted to 120 feet is needed and he believes this is not a variance but an exception under Section 51B? of the Municipal Land Use Law. Mr. Simon also stated that there is nothing preventing the Applicant from complying with the ordinance and reiterated that this is a prohibited use. Mr. Thomas agreed on all accounts.

Mr. Rittie requested a short recess.

The meeting broke for a 10-minute recess at 9:41pm.

The meeting was back to order at 9:55pm.

There was a discussion between Mr. Rittie and Mr. Thomas.:

Mr. Rittie asked a series of questions about what is considered a strip shopping center including if the existing Brix liquor store falls under that definition. Mr. Thomas stated that he measured the front yard setbacks from the right of

way or the front property line to the front of the nearest portion of the building and that he believes the majority of the courtyard area is in the front. Mr. Simon Interjected about the parking and the majority of it being in the front between the building and the road. Mr. Brady asked if the ordinance allowed for the parking to be on the sides of the building and in the rear to be considered in the back. Mr. Thomas stated that the ordinance allowed that.

Mr. Rittie feels this building does not fall under “a linear orientation” because it has two different planes and is an L shape, but Mr. Thomas disagrees because it still has “a linear orientation”.

Mr. Lynch from the Land Use Board asked if part of the building was removed and the remaining portion was perpendicular to Route 517 where most of the parking would now be between the property line and the building. Would that still be considered a strip shopping center? Mr. Thomas stated it would be a permitted use in that case.

Mr. Brady announced the next meeting would be April 11, 2024 at the Firehouse and no new notice would be given. Mr. Simon most likely has a conflict so the next meeting could be carried to May 9,2024 at the firehouse. Kim announced to watch the Township’s Facebook, Instagram and Twitter pages for updates but that it would also be on the website and published in the paper.

A motion to adjourn was made by Mr. Wilson and seconded by Ms. Douglass. The meeting was adjourned at 10:09pm.

Respectfully Submitted:



Kim Mantz, Land Use Board Secretary

Date approved: 5.9.24