

**TOWNSHIP OF BORDENTOWN
ZONING BOARD MEETING**

January 26, 2017

The Bordentown Township Zoning Board Meeting was called to order at approximately 7:30 PM in the main meeting room of the Municipal Building on Municipal Drive.

PRESENT: Michael Carney, Chairman
David Caldwell
Danielle Esser
Erica Bowyer
Amadeo Dela Cruz
Mark McTamney
Rick Simpson
Linda Schiano, Alt. #1
Charles Kolsinski, Alt. #2
Brian J. Carlin, Attorney, Law Office of Brian J. Carlin
Brian K. Johnson, Secretary, Dir. of Community Development

ABSENT:

The meeting was opened by Secretary Johnson. The Board and public participated in the salute to the flag. The open public meetings announcement was read by Secretary Johnson.

REORGANIZATION OF THE BOARD:

RESOLUTION #2017-7-28 FROM TOWNSHIP COMMITTEE DATED 1/7/17:

4 Year Term Expiring 12/31/20	Michael Carney
4 Year Term Expiring 12/31/20	Mark McTamney
2 Year Term Expiring 12/31/18, Alt. #1	Linda Schiano
2-Year Unexpired Term Expiring 12/31/17, Alt. #2	Charles Koslinski

The Oath of Office was simultaneously administered to those members by Attorney Brian Carlin.

Roll call:

Present: Koslinski, Schiano, Bowyer, Esser, McTamney, Dela Cruz, Caldwell, Simpson, Carney

Absent: None

Nominations for Chairperson for 2017 were entertained by the Board. . Mr. Simpson nominated Mr. Carney; seconded by Mr. Dela Cruz.

There were no other nominations. Nominations were closed.

All were in favor.

Motion carried.

Meeting was turned over to Chairman Carney.

Nominations for Vice-Chairman were entertained by the Board. Mr. Carney nominated Erica Bowyer; seconded by Ms. Esser.

There were no other nominations.

Motion to close was made by Mr. Koslinski; seconded by Mr. Caldwell.

All were in favor of nomination for Vice-chair.

Ms. Bowyer abstained.

Motion carried.

Mr. Carney announced the position for Board Secretary. Mr. Carney nominated Mr. Johnson for the position of Board Secretary; seconded by Mrs. Schiano.

There were no other nominations for Board Secretary. Motion to close the nomination was made..

All were in favor.

Motion carried.

Swearing in of Zoning Board Professionals, Engineer - Brian Boccanfuso and Planner – Megan Stanley was done by Attorney Brian Carlin.

MINUTES:

Motion to approve the December 15, 2016 minutes was made by Mr. Simpson; seconded by Mr. Caldwell.

All were in favor.

Mr. Kolsinski abstained from the vote.

RESOLUTIONS:

RESOLUTION Z-2016-10 – MEMORIALIZING THE ACTION OF THE ZONING BOARD OF ADJUSTMENT ON APPLICATION OF APCO PETROLEUM CORPORATION FOR THREE ONE YEAR EXTENSIONS FOR THE PROPERTY DESIGNATED AS BLOCK 121, LOT 3 ON THE BORDENTOWN TOWNSHIP TAX MAP, MORE COMMONLY KNOWN AS 247 ROUTE 130.

RESOLUTION Z-2016-11 -was adopted; which carried the application to January 26, 2017 meeting – APCO 1080 Rte. 206.

Motion made by Mr. Caldwell; seconded by Ms. Esser.

Roll Call:

AYE: Bowyer; Esser; McTamney, Dela Cruz, Caldwell, Simpson; Carney

Motion carried.

<p>ZB(UV)-2012-01 Rec'd 6/29/2016</p>	<p>APCO – PETROLEUM CORPORATION Applicant is seeking Extension of prior approvals. <u>REPORTS BY BOARD PROFESSIONALS:</u> None required</p>	<p>Block 134.01 Lot 2 1080 Rte. 206. Zone is HC</p>
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Mr. Kevin Moore, Esq. provided an overview of the application. Applicant is APCO Petroleum 1080 Route 206, Bordentown, NJ. The applicant is seeking 3 – one year extensions of prior approvals from February 22, 2012 - Resolution Z-2012-10.

He provided extensive information regarding the past approvals to the board members. He stated that many of the conditions of the prior approval have not been met. He gave reasons why they were not met to the board members.

This service station, located at 1080 Rte. 206, will be built after the 247 Rte. 130 service station location.

Mr. Gill, applicant, was sworn in by Zoning Board Attorney Brian Carlin.

Mr. Gill was asked when construction of 247 Rte. 130 will start. He answered he would like to start construction in April 2017. He stated estimated time of construction would take is 4-5 months. He stated by December 2017 the construction will be fully complete.

The applicant stated that economically he cannot have both locations closed at the same time. Therefore; the applicant is seeking three one-year extensions of prior approvals.

Mr. Moore stated that when the 247 Rte. 130 location is open and sufficient revenue is being met, that is when the demolition and construction will start at the 1080 Rte. 206 location.

The applicant will not be financially able to have two locations closed at the same time. The economic conditions have not been strong which is why they haven't started between 2012 and now.

Mr. Moore stated the economic conditions are a bit better now.

Mr. Moore stated work at 1080 Rte. 206 location is expected to start late in 2018 as of now.

This location did not have sewer capacity until recently. No sewer was available at the time of the past approvals.

Ms. Bowyer reiterated that the requirement is that construction must start by June 2019.

Mr. Carlin again stated the applicant should have their building permits and put a shovel in the ground in order to perfect the approvals by June 2019.

Mr. Carlin continued stating that the township ordinance and the MLUL can limit the length of time to extend the variance to a one year extension. He continued that in order for this application to work the site plan approval should be granted 3 one year extensions.

Chairman Carney opened the meeting to the public. Seeing no one was from the public; it was closed to the public.

The board granted the applicant three one year extensions of preliminary and final site plan approvals through June 30, 2019. The board also granted a one year extension of the variances through June 30, 2017 with an understanding that the board will accept a letter from the applicant to extend this extension to run concurrent with the site plan approvals.

A motion to approve was made by Mr. Caldwell; seconded by Mr. McTamney.

Roll call: AYE: Bowyer, Esser, Dela Cruz, McTamney, Caldwell, Simpson, Carney
 NAY: None
 ABSENT:
 ABSTAIN: None
 NOT VOTING: None

<p>ZB-2017-0001</p> <p>Rec'd 12/21/2016</p> <p>Noticing complete</p> <p>Escrow fees: Paid</p>	<p>TITO VITERI, ISLES, LLC</p> <p>Amendment or Revision to an approved Site Plan.</p> <p><u>REPORTS BY BOARD PROFESSIONALS:</u> To be provided</p>	<p>Block 30, Lot 14</p> <p>79 Old Amboy Rd.</p> <p>Zone is HC</p>
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Brian Carlin shared with the board why the applicant was in front of the Zoning Board and that is to seek a Use Variance to allow applicant to sell trucks from this site.

Mr. Viteri, the applicant and Mr. Dan Bloch, from Maser Consulting - Planner, were sworn in by Attorney Brian Carlin.

Seth Josephsen, attorney for the applicant gave an overview of the application. Mr. Viteri delivered for Sleepy's, which was sold to Mattress Firm, and a number of contracts were pulled. Mattress Firm uses freight delivery from a broker.

Mr. Viteri owns the trucks and the property. His property is not a car lot. He does have between 30-35 trucks on that site now. There will be no loading and unloading of mattresses on this site. The trucks will do that at the warehouse which is located in Robbinsville.

Mr. Carney inquired what the hours of operation will be.

Mr. Viteri answered 8 am until 5pm Monday thru Friday. Saturday hours of operation will be 8 am until 12 noon.

Mr. Josephsen continued his overview to the board members the state of NJ requirements are that a new sign replace the sign that is on the property already. It will be the same size 3 x 5 that exists now.

Mr. Caldwell asked if the applicant will become an active dealer.

Mr. Josephsen stated the applicant will not become an active dealer.

Mr. Carlin expressed concern whether or not Mr. Viteri, if granted the use variance, will be a perpetual sale / lease business. Mr. Carlin was under the impression this would be a short-term liquidation of the trucks the applicant currently had.

Mr. Viteri gives his testimony on why he has the overflow of trucks at his location. Mr. Viteri had a contract for deliveries with Mattress Firm/Sleepy's. This contract was dropped in December 2016.

He would like to be granted the Use Variance in order to lease or sell his trucks.

Mr. Viteri stated some of his ex-employees are interested in leasing trucks from him once he gets his approval to lease/sell the trucks. He has fifteen trucks ready to be leased.

Mr. Viteri has been in the trucking business for the last 18 years. When he started he had zero trucks. During his success in business he once owned 102 trucks. He has never been in the business to sell/lease trucks before losing his contract with Mattress Firm/Sleepy's.

Mr. Carlin asked Mr. Viteri how many vehicles he will be selling. His intention is to sell every truck. Mr. Carlin then asked the applicant what the percentage will be in leases. The applicant continued stating if someone wants to rent or lease one of his trucks, he will do that. If someone offers a fair price to buy the truck, he will sell.

Mr. Carlin continued explaining that at some point the board will have to put a label on what Mr. Viteri is doing at this site. The township ordinance is written that it allows a big box car dealer to sell cars/trucks at this location. Mr. Viteri has a Conditional Use as a service station. Lease, sales or rentals are very different from one another.

Mr. Viteri's approvals are for repairs on his trucks only. Mr. Carlin explained that if they are leased or rented they will then be in someone else's name. Mr. Carlin tried to get a definitive answer as to what is permitted and what is not.

The applicant stated his business changed drastically. One day he has the contract and the next he didn't.

Mr. Josephsen asked about the frequency of the trucks movement on and off the premises. Rentals and leases would, in theory, be more truck traffic that he had before. Mr. Josephsen explained Mr. Carlin's concern is when the truck is leased, how long is the lease for?

Mr. Viteri stated it will be a long term lease.

Ms. Esser asked about daily rentals. Mr. Viteri stated again there will be no daily rentals.

Mr. Carlin asked the applicant if granted approvals would he agree not to park any trucks on the adjacent properties. These vehicles would be parked on his site or at another facility. The applicant stated he would consider that.

Mr. Viteri stated the property adjacent to him may be for sale and is interested in purchasing it.

Mr. Simpson questioned what the applicant is asking for exactly. It sounded to him that the applicant is applying for a typical car dealer use.

Mr. Josephsen explained that once the trucks are leased they will leave the property and traffic from leasing clients will be minimal. The leasing contract will be yearly or longer. When a truck is sold it will never come back onto the property.

Mr. Caldwell asked if the applicants main focus is to liquidate/sell the trucks and will the ongoing business be in leasing the trucks that are not sold. He asked if the applicant is becoming a dealer to sell and lease cars.

Mr. Viteri answered that his intention is to become a dealer and sell/lease vehicles on this property.

Mr. Carlin explained that the leasing part of this business, the vehicles will leave and not be kept on the lot.

Mr. Esser asked the professionals and the board members that if Mr. Viteri were to sell his property, can another car dealer come. This is what they have to determine when changing the zone of the property.

Ms. Bowyer asked for an explanation regarding the concern of the board's attorney.

Mr. Carlin explained his concern stating, the applicant has an approval for a service station, which is a conditional use. Under the conditional use it specifically says that the exterior display and parking of motor vehicles, trailers, boats and other similar equipment for sale shall not be permitted as part of the service station. Truck repair is limited and permitted only on the trucks that are owned by Mr. Viteri.

The applicant came to the board to get a new Use Variance.

This property is in the HC zone. Used car sale or the leasing of vehicles is not permitted. This is not permitted in the approvals that he was granted before for the service station.

Ms. Bowyer questioned whether there was a used car dealership on the corner of Groveville Rd. and Route 130.

Mr. Johnson answered yes. The owner came to the board and was granted a very specific use variance.

Ms. Esser asked the applicant for an estimate regarding the number of trucks that are there now and an estimation of the daily truck traffic, should the applicant be granted this Use Variance, in one year from now.

Mr. Viteri answered that as of now there are 31 trucks on the site. He also has 10 trucks on the adjacent property, parked on grass. The trucks should be parked on blacktop surface.

Mr. Viteri continued that there was an average of 3-4 trucks per day with Sleepy's. The number of trucks on site will be reduced now due to having no contract. Also, there will be no trucks on the side.

Ms. Stanley stated in the Resolution Z-2011-09 there's a condition that said the applicant is not able to have more than 12 trucks on site. She asked if this is a number he can and will get down to on his site and comply with the approvals.

Mr. Viteri said yes. Due to not having the contract since December, this is the reason why he has so many there now.

Mr. Boccanfuso asked the applicant if he would agree to a condition of approval that 12 trucks would be the maximum at any given time. The trucks were stored at Sleepy's when he had the contract with them.

Mr. Viteri agreed.

Mr. Boccanfuso continued with the site was never intended to be a long term permanent storage facility. It is a paved lot.

Mr. Carlin continued that this property is an auto repair /auto body shop, under the township ordinance this is classified as a service station.

Mr. Carlin asked if the applicant is continuing to do auto repair and auto body work. He also asked if the applicant will continue to do truck repair.

The applicant stated yes he would continue to do this work at this property.

Mr. Carlin stated to the applicant, if the board grants the approval, the applicant will be permitted to work on his trucks only.

Mr. Viteri agreed to this.

The applicant also has a towing business at this location. He stated he has two employees and this number will not change. The same two employees work all job duties at this facility.

Mr. Boccanfuso asked the applicant if cars are towed and stored at this location. The applicant answered yes.

Mr. Boccanfuso made it known to the board members that cars being towed and impounded at this location, this would constitute yet another use for this property.

Mr. Carney asked if the applicant has a contract with Bordentown Township Police Department regarding towed vehicles.

Mr. Viteri stated he has a contract with the City of Bordentown Police Department.

Mr. Carney stated that now the applicant's hours of operation is 24 hours a day, not 9-5.

Mr. Josephsen asked the applicant approximately how many calls he will get per month for tows. Mr. Viteri stated 5 calls per month after hours.

Mr. Carlin asked the applicant if he will sell any impounded cars that are left at his shop.

He stated no he will get rid of those vehicles at a salvage yard.

Mr. Boccanfuso asked the applicant about short term leases.

Mr. Josephsen asked the applicant if he will have no leasing less than a six month lease. Applicant agreed.

Chairman Carney announced the board will take a five minute break.

Meeting is back in session at 9:38

Mr. Daniel Bloch, Maser Consulting Firm, planner for the applicant gave testimony about what is occurring on the site now and what will be occurring. The applicant's intention is to reduce the truck inventory over time and continue to be in the truck moving business.

He continued the number of trucks in the prior approval was 12 at any given time.

Mr. Bloch stated the principal use of the property will continue to be auto repair and auto body work. The truck business is a side business.

He continued that the intention of the applicant is to comply with the previous plan approvals.

Mr. Boccanfuso stated he was not able to view the set of plans with the same revision date as the one which was viewed at the meeting. He would like to see an as built so there is a record.

Mr. Bloch testified on the review letter from the township professionals.

Megan Stanley, board's planner, spoke of the D 2 Variance in her review letter; this will be changed to a D1 Use Variance. It is multiple principal uses and the township ordinance prohibits against this.

Mr. Bloch continued stating what the applicant is seeking a D1 Use Variance. He is not seeking an amendment to the plan.

Mr. Carlin asked about the bulk variance.

Mr. Bloch stated in the future if they need to amend it they will at that time.

Mr. Boccanfuso stated if the site is brought into compliance with the site plan's previous approvals therefore the bulk variance is not needed.

Mr. Boccanfuso commented on the township's ordinance prohibiting parking within 50 ft. of the front property line set back requirement.

Mr. Josephsen stated it is the intention of the applicant to comply with the site plan.

Mr. Carlin suggested that code enforcement department make sure the applicant is in compliance with the approvals if granted to the applicant.

Mr. Boccanfuso commented on the application. He stated the board needs to focus on that this is a Use Variance applicant. The site is not in compliance with the prior approvals. However the board can encourage the applicant to get in compliance with the previous approvals. Ultimately the Zoning Board will need to decide whether the positive and negative criteria have been addressed at the meeting for the granting of the Use Variance that the applicant is seeking.

Ms. Stanley stated the applicant has met the positive criteria. She continued that it is not a detriment to the surrounding properties. It is a HC zone. It is set back. She continued stating it is less of a negative criteria impact than having a full service car dealership. Conditions should be to have the applicant bring up the site which is on the site plan.

Mr. Josephsen stated the board is bound by the past approvals of having 12 trucks on that property at any given time.

Mr. Carlin suggested to the board members they adjourn the meeting. Also, that the board members give guidance to Mr. Carlin as to what they want from the applicant. He will craft a resolution that will incorporate all the other approvals and conditions into one document. It will address conditions that have been met as well as set a time line on new conditions. The board members will have the opportunity to digest it, ask questions then conceivably approve and memorialize on the same evening.

The meeting is opened to the public. Seeing no one was there, the meeting was closed to the public.

All were in favor.

Brian Johnson recommended one of the conditions should be no left turn out of the applicant's property for trucks.

Mr. Carlin stated no further noticing is required.

A motion to approve to authorize Brian Carlin to prepare a resolution to present at the February 23, 2017 Zoning Board meeting was made by Mr. Caldwell; seconded by Ms. Esser.

Roll call: AYE: Bowyer, Esser, McTamney, Dela Cruz, Caldwell, Simpson, Carney
 NAY: None
 ABSENT:
 ABSTAIN: None
 NOT VOTING: None

It was suggested by Mr. Carney and Mr. Johnson that the applicant removes any vehicles from the adjacent property before coming to the February 23, 2017 meeting.

Resolution Z-2017-01 Meeting dates for 2017 was approved. Motion was made by Ms. Esser; seconded by Mr. McTamney.

All were in favor.

A motion to go into closed session to discuss the board professionals assignments for the year 2017 was made by Mr. Carney; seconded by Mr. Caldwell.

Roll call: AYE: Bowyer, Esser, McTamney, Dela Cruz, Caldwell, Carney
 NAY: Simpson
 ABSENT:
 ABSTAIN: None
 NOT VOTING: None

Mr. Carlin requested that the Planner and Engineer leave for the night.

Resolution Z-201-02 – Appoint Board Professionals

Mr. Carney made a motion to appoint all four professionals that currently serve the Zoning Board; seconded by Ms. Bowyer. They are Mr. Brian Carlin, Board Attorney – Law Offices of Brian J. Carlin, Mr. Brian Boccanfuso, Engineer – CME Associates, Ms. Megan Stanley, Planner – CME Associates and Mr. James L. Kochenour, Traffic Engineer – Arora and Associates.

Roll call: AYE: Bowyer, Esser, McTamney, Dela Cruz, Caldwell, Simpson, Carney
 NAY:
 ABSENT:
 ABSTAIN: None
 NOT VOTING: None

A motion to open to the public and close to the public seeing no one was from the public was made by Mr. Carney; seconded by Ms. Esser. All were in favor.

Motion to adjourn the meeting was made by Mr. Carney at 11:10 pm.