

**BOROUGH OF BOUND BROOK
PLANNING BOARD MEETING
APRIL 22, 1999**

The meeting of the Planning Board was called to order by chairman Lyle Strain at 7:33 in the municipal chambers, 230 Hamilton Street, Bound Brook, NJ.

ROLL CALL

The following members were present: T. Ruscetta, F. Ryan, A. Gaglia, L. Strain, P. Pournaras, E. Custy, K. Krauser, M. Anderson, and J. Thompson. Also present were B. Malone, Recording Secretary; M. Rodgers, Esq., board attorney; and S. Doyle, Planner.

COMPLIANCE STATEMENT

This meeting is being held in compliance with the "Open Public Meetings Law." The requirements of the Law have been met. The Annual Meeting Notice has been posted in the Municipal Building, filed with the Municipal Clerk and forwarded to the Bound Brook Chronicle in January, 1999.

AGENDA

Mr. Strain announced the following items on the agenda:

**#13-99 Peacock (Site Plan Waiver)
Proposal from John Cilo & Associates
Proposed By-Law Amendment
Sign Ordinance
Various Correspondence**

OPEN TO PUBLIC (NON-AGENDA ITEMS)

No comments or questions were presented at this time.

#13-99, Peacock (Site Plan Waiver)

Mr. Strain explained the purpose of this hearing to the applicants. He indicated that the committee had reviewed this application and asked Mr. Krauser to report on their findings. Mr. Krauser said that all committee members had visited the site separately and all felt that the site was in fair condition with minor problems. Their question was whether this was a permitted use in a B2 zone. They indicated they would like to see a full site plan because of the planned construction.

Mr. Strain asked the Peacocks for testimony as to what they plan to do with the property. Mr. Peacock replied that he plans to store landscaping supplies such as decorative stone, mulch and topsoil, and to store trucks for landscaping maintenance, installation and construction. He plans to sell such things as seed and fertilizer and to house offices. There are three trucks, two rack body mason dumps and one pickup, and he

plans to add another pickup. When asked by Mr. Gaglia if the business will be wholesale and retail sales, he replied in the affirmative. For this type of business, he expects the trucks to leave early in the morning and return late. Mr. Gaglia said that retail/wholesale is a permitted use, but the number of trucks would be an important consideration. Mr. Peacock stressed that this will not be a nursery, and he will not sell plants.

Mr. Gaglia asked Mr. Peacock if he is aware of the problems with bin storage of mulch and topsoil in a flood prone area. Mr. Peacock indicated most of the storage would be at ground level and he is aware of the problems; of course, stone will not present a problem. The bins are being designed with all this in mind. Anything in the building will be bagged.

Mr. Strain reminded the board of requirements in a B2 zone: It is limited to retail sales and business, professional and administrative offices. Prohibited uses include outdoor amusements and warehouses *unless as an accessory*, storage buildings and any industrial use.

Mrs. Pournaras asked what percentage of the business would be on the premises, and Mr. Peacock replied that he is phasing out the maintenance crews. Current plans are to be 70% garden center and 30% off site business. Mr. Anderson wondered what precautions they plan to take to avoid mud on the street. Mr. Peacock replied that any trucks leaving the yard will have their loads tarped and trimmed and rules will be posted.

Mrs. Doyle indicated she feels the board has a lot to consider. The board has to consider whether or not the pre-existing use is *very, very* similar to the proposed use. If it is, the board can entertain a site plan waiver. Considerations include:

1. Was there outside storage before?
2. There are flood-prone regulations to assure that it will be appropriate in a flood prone area.
3. Is the use permitted?
4. The property is on East Main Street. The board should evaluate whether they need a picture of what is there. Stone parking areas are rarely condoned by this board.

Mr. Peacock pointed out that the parking lot on the left side of the area is macadam. Mr. Krauser asked what type of equipment they plan to use for loading and unloading materials. Mr. Peacock said he plans to use a 400 series Ford backhoe and a forklift inside the building.

There was some discussion about the previous tenant, Safety Kleen, which collected solvents and recycled and also housed vehicles. This could be construed to be a substantial change. Mr. Ruscetta explained that there was definitely outside storage, and approximately 30 trucks were parked there. The division was just opposite to what

is proposed; a small portion was retail. But the use is pretty close in his opinion. They also had forklifts, as well as some pretty good sized trucks. Mrs. Pournaras expressed her concern that this would be a true retail use. She would expect to see a full site plan.

Mr. Strain noted that the board has to determine whether or not they accept the contention that the proposed use is permitted by the zone. If not, the applicant would have to file for a variance. Once that is determined, the board would have to determine whether or not the change is such that a full site plan is needed to deal with the issues that concern the board. It certainly would seem that the property is able to house many of the things the applicant proposes to sell there. The outside is do-able, except for the concerns related to the flooding and materials stored outside.

Mrs. Pournaras expressed another concern regarding other companies that have opened in town, starting out small, and ending up with big pieces of heavy duty construction equipment parked all over the place. This can become an eyesore on a main road.

Mr. Peacock reiterated that this would be a garden supply center, with bins being build of angle iron. Mr. Strain stated that some companies have started out small and neat and evolved into something entirely different, which is why in his opinion the board needs a little more detail. The applicant would then know exactly what was granted. He explained that Main Street is very important to this board. The ideas presented could very well be something attractive for Main Street, or not. He again wondered if this use would be within the parameters set forth in this zone.

Mr. Anderson pointed out that a landscaping supply sales yard is a nice thing to have in the town. The issue is that the board needs to have something demonstrated that says: "Here is what we want to do." Mr. Strain agreed he would like to see a more detailed description of what is going to be sold and housed there. Then the board could handle both the use question and the kind of site that would be beneficial to downtown. Mrs. Pournaras asked Mr. Peacock if his building would be set up similar to Ferris Brothers in Middlesex, but he replied that they have more of a greenhouse setup. He does not plan that type of sales.

Mrs. Doyle explained to the applicant that the board is trying to grasp what he is trying to do. She asked if he is currently in business, or if there is another similar type of business the board could look at. Mr. Ruscetta suggested Cedar Hill on a smaller level, and Mr. Peacock replied that would be a fair comparison as they maintain their equipment on site. Mrs. Doyle was concerned about an on-site workshop, and Mr. Peacock explained that they would just be sharpening blades, not repairing machinery.

Mr. Krauser said he still feels the need for a site plan; there is still a question of use. He feels a B2 zone is not intended for storage of loose materials and running a backhoe. Done in the right way, he feels it could work, but he would like to see it presented as a site plan with a use variance attached. Mr. Peacock asked what it would show, and Mr.

Krauser replied that bins, shrubbery, parking and trash disposal are examples. Mrs. Doyle explained that this is a very important site on Main Street, and we certainly would like to see that building used. Mr. Strain further said that, done properly, it could be a very attractive business.

Mrs. Peacock assured the board that they plan to plant shrubbery and improve the building. Mr. Strain agreed that some sort of screening would be appropriate for the neighbors. Mr. Peacock had brought computer generated printouts as to how the property will look when it is planted and again in three years. There is a planting of forsythia. When asked if the fertilizer would have an odor, Mr. Peacock replied that it would be bagged. Mr. Strain suggested that the board deny the site plan waiver and request a site plan. They may then decide whether or not they should deal with the use question. The board may be convinced that use is not an issue.

Mrs. Doyle asked the board to consider the applicants' predicament if they submit a site plan and a use variance, and the use variance is denied. They will have gone to that expense for nothing. If the board could possibly make a determination as to use, it would eliminate this possibility. Mr. Rodgers interjected that the 30% storage issue in a retail zone is, at best, borderline. He cautioned the board that if they interpret up to 30% as consistent with a retail use they will be stuck with that interpretation in the future. He just wanted to be sure the board was aware of the implications of setting a precedent. The board should consider what the ordinance is trying to accomplish.

Mrs. Doyle said the board needs to interpret the zoning ordinance. Mr. Peacock explained that he owns and operates a landscaping company in Long Hill Township; he plans to close down the maintenance company. His plan is to move toward 100% retail within two years. Actually, 100% of the materials leaving that building will be retail sales. The workers would come in and get their assignments and leave within ten minutes.

Mr. Gaglia referred back to Mr. Krauser's suggestion that the application be made for a use variance and a full site plan. He felt the applicant would serve himself best that way. The planner would provide input as to what is appropriate in the flood zone; it is not a realistic area for a very intense retail use. People come out onto Main Street from the site.

Mrs. Peacock wondered how Safety Kleen got in. Those present on the board now don't remember or were not members at that time. Mrs. Peacock explained that she and her husband would be owners and her son would operate the business. She wondered what they should do next. Mrs. Pournaras mentioned her concern as to what the business will turn into and suggested looking at what else is in the area. She was concerned about the bins being like those on the Public Works site. Mr. Krauser indicated that a site plan would tie that issue down.

Mrs. Peacock explained to the board that she had been advised to apply for a site plan waiver, and the board's reaction would give her an indication as to what would be

required down the line. Mr. Strain said he could understand their confusion, and the fact that the process is very difficult for them. All the board can do is explain their concerns and hope they will be addressed in the next step of the process. The applicant will have to decide if it is worth the cost and effort to proceed.

Mr. Thompson asked the board to decide on the use issue before the applicant spends money on a site plan. Mr. Strain said that if the board passes a motion, they have the authority to decide that the use is within the zoning ordinance. Mr. Rodgers explained that if the use is 100% retail a variance would not be needed. If the applicant decides to present it as 100% retail there is no need for a use variance, but if it turns out that it is not quite what was expected there could be questions. If the applicants apply for and receive a variance to cover any ambiguities, they're home free.

Mrs. Doyle pointed out that outside storage of materials does not mean a business is not retail; outside storage is not prohibited, but the magnitude of that storage has to be weighed by the board. Mr. Anderson noted that he had not heard anyone say "we can't have a garden center." They are just saying they would like to see a site plan to explain what the applicant is actually planning to do. Mr. Thompson did not understand why the applicants should spend the money on a site plan if it may not be allowed as a permitted use and wondered why the board could not make that decision. Mrs. Doyle explained they could bifurcate and just talk about the use variance at this meeting.

Mr. Rodgers asked Mrs. Doyle if she was saying that the area does not have a problem with outside storage of materials. Mrs. Doyle told the board they cannot grant permission to operate an "illegal operation" for one year. Mr. Peacock indicated the trucks will stay, for deliveries, even after the landscaping business is discontinued. Mr. Rodgers asked Mrs. Doyle if she would be comfortable with the use as permitted if the landscaping business was eliminated from the picture, and she indicated she would, assuming that the warehousing is absolutely accessory.

A motion was presented by Mr. Ruscetta and seconded by Mr. Custy to approve this use. Motion was later withdrawn by Mr. Ruscetta.

Mr. Anderson indicated he felt the motion was unnecessary because of testimony given by the applicant. Mr. Rodgers agreed that if the 30% was removed it would be a retail operation. The resolution will spell out what the applicant proposes to do, and it sounds like they don't need a use variance.

Mr. Anderson pointed out that now the applicant needs a site plan waiver or a site plan, and he feels this is an appropriate business for the town.

A motion was presented by Mr. Krauser that the waiver be denied and the applicant be asked to bring in a full site plan. Mr. Anderson seconded the motion and it carried unanimously.

PROPOSAL FROM JOHN CILO & ASSOCIATES

Chairman Strain asked Mrs. Doyle to look into compliance review in Bound Brook. She is not involved in any politics, which would make her more effective in this regard. She provided the planning board with maps of the area as Phase I of the compliance program by lot and block numbers. She will ascertain if the site plan fits and will then report to Mr. Gupko. She will not be overly "picky" and will try to be constructive. Her time will be billed by the hour and would be expected to average about an hour per property. It is set up so other people could also handle it, or if the board wants her she will be happy to do it. There are 22 properties in the first phase, covering Mountain Avenue, East Main and East Street on the easterly side of town. She cannot evaluate for sign or bulk variances -- there are officials to do that -- but for anything related to the maintenance code. She can report, but not enforce, but this would provide the help the board has felt Mr. Gupko needs.

Mr. Strain explained that it is his understanding that this would give the board and the borough council an idea of what kinds of violations of zoning ordinances and maintenance codes are out there. Mrs. Doyle will also provide a picture.

Mr. Rodgers wondered where the information will be found. There could be variances, non-conforming use determinations, etc. Mrs. Doyle explained that she has everything that was ever approved, catalogued by lot and block numbers. Mr. Strain explained that the council will know what kind of violations exist and make a plan to get them corrected. Mrs. Doyle suggested that if Phase I works, Phase II can be initiated. She cannot go into the businesses, though it will be difficult to pick up illegal houses from outside. Mr. Strain pointed out that as a follow-up an official could go in and make an inspection. Mr. Ryan suggested Mrs. Doyle might want a police officer to accompany her, but she plans to go alone.

Mr. Ruscetta asked who will pay for this service, and Mr. Strain indicated the planning board does not have the funds. If the borough supports this effort, they will have to procure the necessary funding. Mrs. Doyle explained she has set up the program and anyone could carry it out. Mr. Krauser reminded the board that if they agree to do this they will have to amend the by-laws to set up a Compliance Review Committee. He asked Mrs. Doyle if she would mind the chairman coming along as a training experience, and she said she would not mind. Mr. Rodgers asked what would happen if a politician should call with a particular concern. Mrs. Doyle replied she would make her report, and at that point it becomes the council's business as to what they choose to pursue. She would not know or care who owns the property.

A motion was presented by Mr. Krauser to support this concept, and send it to the borough council for funding, as inherently beneficial to this town. Seconded by Mr. Custy and carried (one abstention, Mr. Ruscetta) Mr. Rodgers expressed his gratitude that Mrs. Doyle is willing to do this.

Change to By-Laws

Mr. Strain expressed concern that when the board creates conditions for an applicant to do something they may not be met, and if not, why not? For example, there is a ramp on Union Avenue that came into being a couple of months ago, and there are some concerns about it. This committee would address this type of concern, either of its own volition or from complaints by board members or community members. The committee would be asked to take a look and file a report back to the board. The board would then review the reports and make a determination as to what further action they deem appropriate. It seems there is no shortage of potential for this committee to investigate. Mr. Rodgers helped prepare the amendment, and Mr. Strain indicated it clearly defines the purpose the committee would be charged with.

Mr. Anderson mentioned that he had some difficulty in gaining access to public records and wondered if the by-law change could address the question of access to borough tax records. The staff was very helpful but did not have the authority to grant such access. Mr. Rodgers indicated that the planning board does not have the power to tell the tax office what to do. He suggested that the committee talk to either the borough attorney or himself for guidance. Mr. Ryan will talk with the tax assessor himself, since he is here on a part-time basis. The problem is probably just a matter of communication.

Mr. Gaglia asked Mr. Anderson what records he could not access regarding the ramp on Union Avenue. He thought Mr. Gupko kept his own file on certificates of occupancy. Mr. Anderson replied that he just wanted to let the planning board know what is going on and did not go out of his way to follow up. Mr. Gaglia assured Mr. Anderson that Mr. Gupko has records in his office of any permits issued. Mr. Ruscetta said if a c/o is issued all that information is in the tax records. Mr. Strain said there is a separate book that contains all resolutions. Mr. Anderson had a list of about 60 properties with two mail boxes and two electric meters that are in R1, R2 or R3. His intention was to see if they were legitimate. Anything greater than two families was listed.

Mrs. Pournaras reported that the board of adjustment had lists that were checked out. Someone will bring in a copy. Most of the two families were at least paying taxes on two families, but without the tax records one can't make a determination.

Mr. Gaglia made a motion to approve the proposed by-law amendment as presented to the board, seconded by Mrs. Pournaras. Unanimous.

Mrs. Doyle reported that there is a master plan for the billboards and, if the planning board is satisfied with that, they need to schedule a public hearing for the master plan. Mr. Anderson asked if the board had discussed changing zoning on one strip of this area. Mrs. Doyle replied it goes down parallel to Tea Street to the railroad. There is a 10 foot jog. In order for the governing body to change the zone, they have to have a public hearing in accordance with the municipal land use law. Mr. Strain indicated the board should be able to put that together in time for the next meeting. Mrs. Doyle

reminded him that the board needs to advertise and notify. She will remove the word "draft" and have them reprinted. Mr. Thompson asked if the air rights to the signs should be included, and Mrs. Doyle said it was discussed with Mr. Brodbeck.

Mr. Gaglia made a motion to accept the Master Plan Re-examination Report with the amendment and instruct the secretary to get together with the attorney and take care of necessary advertising for the second May meeting. Mr. Anderson seconded the motion. Unanimous.

Mrs. Pournaras asked if approving bulletin boards within the boundaries of Bound Brook might open the door to allow them in other places. Mr. Thompson wondered if the borough could stipulate what could be put on them, and Mrs. Doyle replied that would be up to the borough. Mr. Ruscetta said he is sure they will be advertising the new stores. Mrs. Doyle suggested that the planning board could write a letter to the council indicating their concern.

Advance

Mrs. Doyle reported the neighbors behind Tea Street have two concerns: lights along the side of the building and unauthorized parking. Mr. Ryan said it is the loading dock lights that are the problem. Mrs. Doyle had notified Advance of the problems and Mr. Connelly responded that he does not see a problem with the lights. At the time of the application, they had said "the first objection we get they will be shielded." On the approved site plan, there were no lights in this area.

The more difficult issue is the parking. Shop-Rite employees are there 24 hours a day. He will check with the night supervisor to see if there is a protocol the employees use. Chief Henderson was contacted, and he is opposed to the whole thing but he will work with it. Mr. Anderson feels the board should pursue it. He really doesn't care if people park there; we all firmly believe the apartments are over crowded. If it becomes unpleasant the apartments would not be so crowded. Mr. Krauser feels it is the property owner's responsibility to identify the cars of their employees. Mr. Ruscetta feels it is not a high priority. That section of the apartments is probably the best part of the complex. When the parking was eliminated on Tea Street, they needed someplace else to park. Mrs. Pournaras thought that Shop-Rite would care that their customers could not park near the store because of the apartment dwellers. Mr. Strain suggested that perhaps they don't want to make enemies of potential customers. Mrs. Doyle said there was a discussion on parking and Shop-Rite meets all the requirements for parking. The board decided to prohibit unauthorized parking because they wanted that facility to succeed. Mr. Thompson suggested that any complaint should come from Shop-Rite. Mr. Gaglia noted that when all the stores are occupied they will have to do something. Mrs. Doyle said she was asked to look into it and will pursue it until she is told not to. Mr. Strain suggested that this is not a planning board problem; they had enough parking to meet the ordinance.

Resolution: Hagan #10-99 (Funeral Home)

Mr. Rodgers reported the resolution has been revised; Mr. Hagan's attorney was supposed to send copies of his letter to all board members. His main objection was to the word "easement" instead of "lease" in relation to the parking lot. He also objected to the fact that the least is "recordable" and one or two other things that Mr. Rodgers considered minor. Anyone who does not agree with the changes can let Mr. Rodgers know; otherwise he will assume everyone is content with it. Mr. Krauser recalled that it was clearly the intent of the board that the least be recorded with the property. Mr. Rodgers recalled it was approved for "special reasons." The applicant had an attorney and presented a case.

Mr. Krauser made a motion to approve the revised resolution, seconded by Mr. Gaglia and carried unanimously.

Mr. Strain reported he received a letter today that Mr. Rodgers has not seen yet from an attorney representing Manor Care Health Services in Rockville, Md. They plan to purchase, construct and operate a 64 bed Alzheimer's care facility on Lots 1 and 1.03, Block 96 (westbound Route 22, R1 zone). There is a question on the dividing line between Bridgewater and Bound Brook regarding zoning jurisdiction. Mr. Rodgers had received a call from this attorney; the question is whether they need a variance or just a site plan. Institutional uses are permitted under certain circumstances, but only non-profit. They will probably ask for an interpretation as to whether they need a variance.

Sign Ordinance

Mr. Strain suggested that, in view of the hour, it might be late to get into a discussion. He suggested moving it up to the top of the next agenda since the board really needs to focus on this. Mrs. Doyle suggested that the board will want a discussion on neon and backlit signs.

Compliance Review Committee

Mr. Custy, Mr. Thompson and Mr. Anderson will start to do what the board wants them to do.

Adjournment

Motion presented by Mr. Krauser to adjourn the meeting, seconded by Mr. Gaglia. Unanimous.

Respectfully submitted,

Barbara A. Malone
Recording Secretary

