

**BOROUGH OF SPRING LAKE HEIGHTS
BOARD OF ADJUSTMENT
VIRTUAL MEETING MINUTES
August 27, 2020 at 7:30 P.M.**

MEETING CALLED TO ORDER AND SALUTE TO THE FLAG

THIS MEETING IS CALLED PURSUANT TO THE PROVISIONS OF THE OPEN PUBLIC MEETING LAW. NOTICE OF THIS MEETING WAS INCLUDED IN A LIST OF MEETINGS SENT TO THE COAST STAR AND ASBURY PARK PRESS, POSTED ON THE BULLETIN BOARD IN THE MUNICIPAL BUILDING AND ON THE BOROUGH WEB-SITE.

Roll Call:

Brian Brendle – Present
Susan Lalji - Absent
Donald Nolan – Present
Owen Quinn – Present
Bruce Waitzel - Present
John Tangeman - Absent
Chairman Dennis Pearsall - Present

Also Present:

Mark Kitrick, Board Attorney
Louis Lobosco, Board Engineer
Christine Bell, Planner
Mary Ellen Karamus, Board Secretary

Alternate #1

Thomas Martin – Present

Mr. Kitrick stated that a request to carry the Alburus 559 Ocean Road application to the September 24 meeting has been made. Mr. Kitrick stated that the applicant is required to renounce the application. Mr. Kitrick stated that anyone from the public who is in the meeting and has been noticed for the application, will be noticed again.

Approval of Minutes:

June 25, 2020 Motion by Mr. Brendle, seconded by Mr. Waitzel.

Roll Call Taken as Follows:

AYES: Mr. Nolan, Mr. Waitzel, Mr. Quinn, Mr. Martin, Mr. Brendle

NAYS: None

ABSTAIN: Chairman Pearsall

Correspondence:

None

Old Business:

Stephen Miles

Application No. ZB 2020-01

610 Highway 71

Block 72 Lot 15

Expansion of a non-conforming use; adding a walk-in freezer and walk-in refrigerator

Mr. Shaw, attorney for the applicant stated that Charles Spitz, architect planner; Mr. Carpenter and Mr. Miles will be testifying at the meeting.

Mr. Shaw reviewed the February 27, 2020 meeting presentation.

Mr. Kitrick stated that Mr. Lobosco and Mr. Miles were sworn at the February 27, 2020 meeting and are still under oath.

Charles Spitz, Ray Carpenter and Christine Bell sworn by Mr. Kitrick

Chairman Pearsall stated the board is familiar with Mr. Carpenter's credentials.

Chairman Pearsall asked Mr. Spitz his professional history. Mr. Spitz stated his credentials.

Chairman Pearsall accepted Mr. Spitz's credentials to appear before the board.

Mr. Miles stated he has a contract through approximately October of 2020 with Acorn Food Services to use his kitchen in Spring Lake Heights to prepare meals for the National Guard facility in Sea Girt while their kitchen is being renovated.

Mr. Miles stated that due to the corona virus, his operation was shut down temporarily, but currently his facility is providing 375 meals, three times a day, 7 days a week to the facility and he needs to have a walk-in freezer and refrigerator for the increased need. Mr. Miles added the units will decrease food deliveries to his site.

Mr. Miles stated the freezer compressor will be installed on the ground opposite to neighbors. Mr. Miles added that the walk-in refrigerator is between the neighbor and the compressor. Mr. Miles stated the compressor will not be loud. Mr. Miles stated with the new refrigerator and freezer, there would be 1 or 2 deliveries per week. Mr. Shaw asked Mr. Miles if the refrigerator and freezer are the two reasons why Mr. Miles is before the board for a use variance. Mr. Miles stated yes.

Mr. Miles stated that repainting stripes for parking spaces and adding a handicap space and a handicap parking sign is being proposed. Mr. Miles stated there are currently 7 parking spaces with bumper stops. Mr. Miles added that the spaces are tight. Mr. Miles stated that there are 3 employees parking at the site at a time and that is the only traffic to and from the property. Mr. Miles stated there is a fence-enclosed dumpster on the eastern side of the property. Mr. Quinn asked if the dumpster, which is visible from the street, will be covered. Mr. Miles stated a truck needs access to the dumpster and a fence cannot be put there. Mr. Brendle stated he does not see a second dumpster on the plan. Mr. Miles stated there is 1. Mr. Lobosco stated the proposed plan shows the dumpster being moved slightly and being fenced. Mr. Shaw stated Mr. Carpenter can talk about that.

Mr. Miles stated it is an honor to provide food to the base; an opportunity to help first responders and a nice opportunity for his business and a better operation for his facility.

Chairman Pearsall clarified that the request for the freezer and refrigerator is for a temporary amount of time.

Mr. Miles stated the freezer would be temporary and that he would like to keep the walk-in refrigerator on the eastern side of the property. Mr. Nolan asked where the compressor is proposed. Mr. Miles stated that for each walk-in unit, the compressors will be on the ground next to the unit on the opposite side of the neighbors with a housing covering the unit to protect from weather and to baffle sound. Mr. Nolan asked what the housing looks like. Mr. Miles stated a box that goes over the entire compressor. Mr. Nolan asked if that is the north side of the refrigerator. Mr. Miles stated yes, and on the western side of the freezer closer to the house. Chairman Pearsall asked if that changed from the initial request. Mr. Miles stated the air conditioning refrigeration gentleman suggested it would be better on the ground. Chairman Pearsall asked if there is anything on the roof. Mr. Miles stated an existing exhaust fan and blower for the a/c unit.

Mr. Kitrick stated that, after speaking to Mr. Rubino and researching, he is satisfied that a temporary use variance with a limited time frame is permissible under Municipal Land Use Law. Mr. Kitrick stated use variance standards still have to be satisfied.

Voice of the public open to questions of Mr. Miles

Michelle Wood, 608 Highway 71, Spring Lake Heights, stated she owns the property next door to Mr. Miles' property.

Ms. Wood asked Mr. Miles to identify 3 items on the roof. Mr. Miles stated a/c compressor, exhaust fan and a vent for the kitchen. Ms. Wood played a video recorded outside her door to demonstrate noise. Chairman Pearsall stated he could not hear anything. Ms. Wood stated if she cannot show video and pictures, the board cannot make a fair appraisal of what the neighborhood is seeing, feeling and hearing. Mr. Kitrick stated that the fact that her video is not playing as she wishes does not mean the hearing does not go forward. Mr. Kitrick stated the same standard applies to the applicant.

Ms. Wood showed pictures of the garbage area from her second floor. Ms. Wood stated the pictures were taken over the last year. Ms. Wood showed Mr. Miles' water storage tank running. Ms. Wood stated that there are no

evergreens that belong to Mr. Miles. Ms. Wood stated there is a lot of noise. Ms. Wood asked Mr. Miles what the noise is. Mr. Miles stated he does not know, but there is a squeaking fan on Doolan's roof similar to the video she played.

Mr. Nolan asked Mr. Miles to describe the water harvesting. Mr. Miles stated that it is a 300-gallon rain harvesting system that has a garden hose attachment to run the overflow water to the parking lot which drains to the street. Mr. Nolan asked if that existed or if Mr. Miles put it in. Mr. Miles stated that was part of the 2010 application and he put it in. Mr. Lobosco stated that was agreed to instead of a drywell system. Mr. Nolan stated it is not working as intended if it goes into the street. Mr. Miles stated the water is used for watering or overflowed into the parking lot.

Ms. Wood asked when the lease will expire. Mr. Miles stated it was scheduled for October, but it can be extended depending on construction at the Sea Girt facility. Ms. Wood asked if Mr. Miles will keep the equipment in the back near her and other neighbors' bedrooms. Mr. Miles stated he would like to keep the outdoor refrigerator and remove the freezer. Ms. Wood asked if Mr. Miles would move the refrigerator back up to the house and put a garden back in. Mr. Miles stated he would have to discuss that with the experts.

Mr. Waitzel asked hours of operation. Mr. Miles stated meal prep begins at 4 or 5 in the morning to about 6:30 p.m. Mr. Miles stated there are 10-12 people who work on the property, 3 or 4 at the same time.

Nancy Maclearie, 809 Central Avenue, Spring Lake Heights, asked if the contract with the base is with Mr. Miles or someone else. Mr. Miles stated it is with him. Ms. Maclearie asked if anyone leases the space. Mr. Miles stated no. Mr. Miles stated Acorn is his only tenant, and they cook for the base. Mr. Miles stated he is working with Acorn. Mr. Miles stated Acorn has the lease with him; he is leasing his facility to them. Ms. Maclearie asked when the use will increase, and will it increase to more than 375 meals three times a day. Mr. Miles stated it changes all the time. Ms. Maclearie asked how meals get to the base. Mr. Miles stated he has a small delivery van. Ms. Maclearie asked Mr. Miles if he wants to run a commercial kitchen in a residential zone. Mr. Miles stated it is on a state highway in a R-5 zone and it has been in operation for at least 6 years.

Joan Brady, 600 Essex Avenue, Spring Lake Heights, asked how Mr. Miles can guarantee that delivery trucks stay on 71 and not come down her street. Mr. Miles stated Doolan's gets deliveries all day. Ms. Brady asked Mr. Miles how he can predict and control commercial traffic multiple times a day down her street. Mr. Miles stated there will be no more traffic than what there is now, and it will not go past her house. Ms. Brady asked how Mr. Miles can predict that. Mr. Miles stated there has been no increase in the last 9 months. Mr. Miles stated he will put in writing that there will be no traffic from his establishment going past 600 Essex Avenue.

Michelle Wood asked Mr. Miles to verify the number of employees. Mr. Miles stated 4 or 5 people work at the base and 3 or 4 work at his property. Ms. Wood asked Mr. Miles about his stormwater in-ground system. Mr. Miles stated the rain harvesting system was done in lieu of what is stated in the resolution. Ms. Wood stated it was a condition to have the in-ground system.

Ms. Maclearie asked why the board would want water running into the street. Mr. Kitrick stated that that point can be made during the public portion of the meeting under oath.

Chairman Pearsall asked if there were further questions of Mr. Miles.

Mr. Brendle made a motion to close the voice of the public to questions of Mr. Miles, seconded by Mr. Martin.

Roll call taken as follows:

AYES: Mr. Nolan, Mr. Waitzel, Mr. Quinn, Mr. Brendle, Mr. Martin, Chairman Pearsall

NAYS: None

ABSTAIN: None

Ray Carpenter stated he prepared a site plan regarding proposed improvements to Applicant's property. Mr. Carpenter described the walk-in freezer and refrigerator location as they currently exist. Mr. Carpenter stated Mr. Miles had told him he needed the additional storage facilities for providing services to Sea Girt Camp. Mr. Shaw asked Mr. Carpenter about noise. Mr. Carpenter stated that compressors have changed over the years, and they have become relatively silent. Mr. Carpenter stated that the compressors being on the ground and covered help muffle the noise.

Mr. Carpenter stated that the dumpster depicted on the northeast corner of the property shown on the plan will be enclosed on all 4 sides with an existing fence being part of the enclosure and with a gate on the street side. Mr. Carpenter stated that the water harvesting system is significant and contains 300 gallons of water. Mr. Carpenter added there is no place for a drywell on the property that would work properly. Mr. Carpenter stated that the building did not have a drainage system previously and the existing system was previously approved for the site.

Mr. Carpenter stated there are 8 parking spaces on the site; one is handicap. Mr. Carpenter stated he measured the spaces and they are all legitimate spaces. Mr. Carpenter stated the handicap space meets ADA compliance as well as the handicap sign. Mr. Carpenter stated he has never seen more than 2 or 3 cars at the site at one time. Mr. Carpenter stated the parking is more than adequate for the proposed use.

Mr. Carpenter stated that there were things left over from the previous application to be done. Mr. Carpenter stated he feels they have taken care of those deficiencies referred to in Mr. Lobosco's report, such as the bumper curbs, fire suppression system, shed removal, dumpster, delivery hours, landscaping, plantings and gravel removal. Mr. Carpenter added that if the gravel is removed, there will be dirt, and grass will never grow there.

Mr. Brendle asked Mr. Carpenter the size of the parking spaces. Mr. Carpenter stated 9 by 18. Mr. Brendle referred to the previous resolution indicating 7 10 by 20 spaces and asked if there is a change in the variance request. Mr. Carpenter stated that 1 handicap space is required. Mr. Carpenter stated there were 7 parking spaces, but not a handicap space so to include the handicap space, by reducing the size, they still have 7 parking spaces. Mr. Brendle stated he sees nothing saying they are reducing parking space size.

Mr. Brendle asked what happens to runoff once water is collected. Mr. Carpenter stated that there is a pump that pumps water to the front of the building, plants are then watered, then the remainder is discharged into the parking lot. Mr. Carpenter added that prior to the previous application, there was no stormwater management at all. Mr. Brendle stated that requirements have changed and now there is a new application. Mr. Carpenter stated that is what was approved. Mr. Brendle stated he does not believe the prior approval was to collect water and put it on the other side of the building into the street. Chairman Pearsall asked Mr. Carpenter if excess water can be pumped onto grass in front of the house or in a grass area so it is not pumped into the driveway into the street. Mr. Carpenter stated with the pump and hose, it can be dispersed anywhere.

Mr. Lobosco asked Mr. Carpenter to explain the west side addition of the parking lot. Mr. Carpenter stated that cars were using that stone area to park to provide access to the last parking spot. Mr. Carpenter stated a decision was made to pave it. Mr. Lobosco stated a small amount of the parking lot is being enlarged. Mr. Nolan asked Mr. Lobosco if the proposed trash enclosure and retention tank are included in overall lot coverage. Mr. Lobosco stated unless it is concrete, the trash enclosure is not included. Mr. Carpenter stated that it is sitting on grass now. Mr. Carpenter stated it gets moved to be emptied. Ms. Bell clarified that the dumpster gets moved and put back on the same patch of grass. Mr. Carpenter stated yes. Mr. Nolan asked if the enclosure was included in impervious coverage what the percentages would be. Mr. Lobosco stated at least another hundred square feet.

Ms. Bell clarified that applicant was previously approved for 7 10 by 20 parking spaces and are now proposing 7 9 by 18 spaces. Ms. Bell stated that the borough ordinance requires spaces to be at least 9 by 20 so a variance is needed. Mr. Carpenter stated that the parking spaces extend beyond the property line into the right of way on public property.

Mr. Lobosco stated that the plan shows reconstruction of the curb along the parking lot. Mr. Carpenter stated that is a proposed improvement due to a depressed curb along Sussex Avenue that is in poor condition, so they are proposing to replace it. Mr. Shaw asked if all of the parking space sizes were changed. Mr. Carpenter stated that they are now all the same size.

Mr. Nolan asked if the drywell could be put in now. Mr. Carpenter stated there is no space for the drywell. Mr. Carpenter added that it would depend on utilities, water table and soil conditions. Mr. Carpenter said he would have to explore the conditions where the drywell would exist. Mr. Nolan asked if a drywell system is a better system than a tank system. Mr. Carpenter stated a drywell system is more desirable. Mr. Lobosco stated a drywell system for an addition was not required by ordinance in 2010.

Mr. Brendle made a motion to open the voice of the public to questions of Mr. Carpenter, seconded by Mr. Martin.

Roll call taken as follows:

AYES: Mr. Brendle, Mr. Nolan, Mr. Waitzel, Mr. Quinn, Mr. Martin, Chairman Pearsall

NAYS: None

ABSTAIN: None

Nancy Maclearie, 809 Central Avenue, asked Mr. Carpenter the noise decibel of the units if approved. Mr. Carpenter stated they will supply that as a condition of approval to the board. Ms. Maclearie clarified that it won't exceed the maximum state standard for decibels in a residential property. Mr. Carpenter said yes. Ms. Maclearie asked the fencing material around the dumpster. Mr. Carpenter stated wood fencing with a gate big enough to roll out the dumpster. Ms. Maclearie asked if it is a permanent dumpster that will be emptied and put back. Mr. Carpenter said yes. Ms. Maclearie asked how the dumpster will be cleaned out. Mr. Carpenter stated he believes that bags, not food is dumped in the dumpster directly. Mr. Carpenter added that Mr. Miles can answer that. Mr. Miles confirmed that the dumpster will be cleaned out on a regular basis.

Ms. Maclearie asked Mr. Lobosco if the proposed paved area of gravel has been calculated into impervious coverage. Mr. Lobosco stated the additional pavement for the parking lot is small. Mr. Lobosco stated that most of it is in the right-of-way and not on the property, so it does not increase the impervious coverage.

Ms. Maclearie asked how children can walk there if cars are parked in the borough right-of-way. Mr. Lobosco stated that is an existing issue. Ms. Maclearie asked if the area to be paved is included in impervious coverage. Mr. Lobosco stated whatever is on the property is included. Ms. Maclearie asked if the building is an accessory or principle structure and what the setback is from the street after the right of-way. Mr. Lobosco stated it is an accessory structure and the setback is 18 feet.

Joan Brady, 600 Essex Avenue, asked Mr. Carpenter how the 7 open garbage cans that do not have covers on them will be addressed Mr. Carpenter stated he does not know what is there but his diagram shows 4 garbage cans and a dumpster being proposed. Ms. Brady asked if the 7 are needed because they are preparing more meals. Mr. Carpenter stated she needs to ask Mr. Miles that.

Mr. Waitzel made a motion to close the voice of the public to questions of Mr. Carpenter, seconded by Mr. Nolan.

Roll call taken as follows:

AYES: Mr. Brendle, Mr. Nolan, Mr. Waitzel, Mr. Quinn, Mr. Martin, Chairman Pearsall

NAYS: None

ABSTAIN: None

Charles Spitz stated he was retained by Mr. Miles to testify as land use planner and architect. Mr. Spitz stated that Mr. Miles needs the refrigerator and freezer to store fresh and frozen food to serve daily meals at the National Guard facility. Mr. Spitz described his personal experience with the facility over the past 16 years. Mr. Spitz stated that Mr. Miles will be able to store at least a week's worth of fresh food in the refrigerator and a week to 10 days' worth of food in the freezer, reducing the number of necessary food deliveries.

Mr. Spitz stated the rain harvester makes sense to keep and after looking at the site plan, it makes no sense to put drywells in. Mr. Spitz said it is practical to use the system to water the lawn.

Mr. Spitz stated the positive aspect of the project is the facility is capable of providing 350-375 meals three times a day within a short travel distance to the National Guard which is important to the National Guard and entities that use the facility. Mr. Spitz added that construction has been delayed at the National Guard and that the kitchen may not be operational until going into next year.

Mr. Spitz stated that the compressor noise is not significant. Mr. Spitz stated when on site the a/c unit on top of Doolan's is the most noise he heard.

Mr. Quinn stated that noise from the refrigerator or freezer is not known yet since it has not been installed. Mr. Spitz stated there has been testimony that it will not be high.

Ms. Bell stated that the application requires a D2 variance relief to expand a nonconforming use. Ms. Bell asked how the application meets the positive/negative criteria required for a use variance. Mr. Spitz stated that he already gave positive criteria. Ms. Bell asked Mr. Spitz if the project furthers any goals of zoning under

Municipal Land Use Law. Mr. Spitz stated he does not understand the question. Ms. Bell asked if there are any goals of zoning under the Municipal Land Use Law that the granting of the variance would further for positive criteria. Mr. Spitz stated that the positive criteria is that they are providing meals to the National Guard on a daily basis that cannot be provided due to construction of the commissary. Mr. Lobosco stated that is not zoning. Ms. Bell stated that is not a goal of zoning under Municipal Land Use Law. Mr. Spitz stated he does not agree. Ms. Bell asked Mr. Spitz if the proposal meets any specific goals of zoning under MLUL. Mr. Spitz stated he does not have the goals in front of him so he cannot answer her question.

Ms. Bell said there are also a number of C variances associated with the application. Ms. Bell asked Mr. Spitz for planning testimony on why variances for building coverage, lot coverage, and amount of accessory buildings should be granted. Mr. Spitz stated for the same reasons he has already given; they are necessary to provide meals to the National Guard facility. Ms. Bell asked if the positive impacts of granting the variances outweigh the negative impacts from the deviations from the master plan, zone plan. Mr. Spitz stated yes. Chairman Pearsall stated that Ms. Bell's questions may be better answered by Mr. Carpenter. Mr. Kitrick stated that Mr. Spitz is offered as an expert in architecture and planning and he is providing the planning testimony. Chairman Pearsall asked Mr. Carpenter if he had any answers to Ms. Bell's questions of Mr. Spitz. Mr. Carpenter stated yes. Mr. Carpenter stated that not under MLUL, but under In the Best Public Interest, they are providing a service that cannot be provided by anyone else. Mr. Carpenter stated that the facility is already a catering facility looking to expand the use to provide a special need that will go away. Mr. Carpenter stated it is a temporary variance, a short-term event.

Ms. Bell asked to meet the variances required, how the use can be expanded without detriment to public good; how the increase above what is permitted in coverages is not providing a substantial detriment to zoning and public good,

Mr. Kitrick stated that the temporary variance does not relieve the obligation of the applicant to prove the use variance, the standard still has to be met. Mr. Carpenter stated that truck traffic is the detriment. Mr. Carpenter stated that without the refrigerator and freezer, meals cannot be stored. Mr. Carpenter stated that the two facilities alleviate deliveries. Mr. Carpenter added that once the need is gone, the facilities will be gone. Mr. Carpenter added that the number of employees does not change whether the refrigerator is on site or not. Mr. Brendle asked Mr. Spitz if the operation could continue without the refrigerator and freezer but that more deliveries to the site would then be needed. Mr. Spitz said yes, it would be significant. Mr. Spitz added it would mean daily truck deliveries.

Mr. Martin made a motion to open the voice of the public to questions of Mr. Spitz, seconded by Mr. Waitzel

Roll call taken as follows:

AYES: Mr. Brendle, Mr. Nolan, Mr. Waitzel, Mr. Quinn, Mr. Martin, Chairman Pearsall

Nancy Maclearie, 809 Central Avenue, asked Mr. Spitz how he can say it is better to have the truck deliveries than to have noise and smell 24 hours a day, 7 days a week, 365 days a year.

Mr. Spitz stated he does not think there will be smells. Mr. Spitz added that the sound from the compressors will not be louder than the existing sound from Doolan's. Mr. Spitz stated that noise can be baffled.

Joan Brady, 600 Essex Avenue, asked Mr. Spitz how truck traffic would not be passing her home. Mr. Spitz stated that trucks can turn around. Ms. Brady asked if trucks can safely turn with shrubs blocking views and employees' cars parked on the gravel area. Mr. Spitz stated it is his opinion that a truck can turn around in front of the property. Ms. Brady asked if they could turn safely. Mr. Spitz stated yes. Ms. Brady asked how often there will be delivery trucks. Mr. Spitz stated that it is his opinion that there will be fresh food deliveries once a week. Ms. Brady asked if they will be turning onto Essex Avenue, then turning around and going back to 71. Mr. Spitz stated yes.

Mr. Nolan made a motion to close the voice of the public to questions of Mr. Spitz; seconded by Mr. Brendle

Roll call taken as follows:

AYES: Mr. Brendle, Mr. Nolan, Mr. Waitzel, Mr. Quinn, Mr. Martin, Chairman Pearsall

Mr. Shaw asked Mr. Miles if a fire suppression system had been installed. Mr. Miles stated approximately 9 years ago, yes. Mr. Miles added that it is inspected and serviced every 6 months. Mr. Brendle asked Mr. Miles if the 2 units are not currently up and running. Mr. Miles stated yes. Mr. Brendle asked how often food is currently delivered. Mr. Miles stated 3 deliveries a week depending on need. Mr. Miles added that the operation has not been a full operation for 4 or 5 months due to corona.

Mr. Brendle made a motion to open the voice of the public for comments; seconded by Mr. Nolan
Roll call taken as follows:

AYES: Mr. Brendle, Mr. Nolan, Mr. Waitzel, Mr. Quinn, Mr. Martin, Chairman Pearsall

Patricia Wright, 602 Essex Avenue, sworn by Mr. Kitrick stated she has concerns. Ms. Wright stated she has been in Spring Lake Heights 15 years and is concerned with growing the operation. Ms. Wright stated that she is concerned with a set time of a variance and an exact date. Ms. Wright stated she is concerned that Mr. Miles would like to keep the refrigerator. Ms. Wright stated that many people in the neighborhood have concerns about another growing business in the residential area. Ms. Wright stated that traffic has not been an issue to now and she does not want to see that grow. Ms. Wright said she pays sufficient taxes and wants to prevent eyesores like Doolan's. Ms. Wright stated she is concerned that there are outstanding conditions from a previous resolution. Ms. Wright stated she is concerned with the board approving something and it not being followed up on to make sure all is in place and/or not impacting negatively on the neighborhood residential area. Joan Brady, 600 Essex Avenue, sworn by Mr. Kitrick, stated she concurs with what Ms. Wright said. Ms. Brady said she is concerned with professionals and specialists giving opinions, not studies. Ms. Brady stated that, impervious run off, written promises, uncovered garbage, exposed garbage cans, does not serve the public good of a residential neighborhood. Ms. Brady stated it is wonderful that veterans are being taken care of; her father is a veteran, but it might not be appropriate in light of impervious coverage, sound, traffic patterns and the application is inappropriate and harmful and is not beneficial to the neighborhood.

Michelle Wood, 608 Highway 71, sworn by Mr. Kitrick thanked Ms. Bell for stating which variance is being looked at, as it was not clear by expert witness and testimony. Ms. Wood said that Mr. Miles has outgrown his conditional use permit for a home\occupation. Ms. Wood asked the board for a thoughtful, careful decision when voting. Ms. Wood stated she does not feel the noise, the trucks, any of the application is an appropriate commercial use for a beautiful residential area. Ms. Wood thanked the board.

Marybeth Johnsen, 608 Essex Avenue, sworn by Mr. Kitrick, stated she is a new full-time resident. Ms. Johnsen stated that she supports the National Guard but is asking the board to restrict the application. Ms. Johnsen said there may be a better location for the business. Ms. Johnsen said that she shouldn't be worried about trucks on the street, there are new parcels of homes on the street and the town is enjoying an increase in the value of homes. Ms. Johnsen said that extending commercial variances with noise and traffic encroaches on their beautiful property.

Nancy Maclearie, 809 Central Avenue, sworn by Mr. Kitrick stated that she agrees with all of the women who have spoken. Ms. Maclearie stated if the number of trucks is decreased, there will be a bigger truck delivering. Ms. Maclearie stated that Essex Avenue is a fire street; the fire department is down the street and they cannot and should not wait for a commercial food truck delivery to an operation in a residential area when they are needed. Ms. Maclearie said that there is garbage, impervious coverage, increased sounds, and increased use of a property which was originally a home profession with one chef which is now up to 10-12 people. Ms. Maclearie said she did not hear anything that is of any benefit to the public good from the professionals. Ms. Maclearie stated she is in support of armed services but there are better places for the operation. Ms. Maclearie said that Highway 71 is a school route and that there is the train station nearby, so it is a pedestrian route. Ms. Maclearie asked the board to please deny the application.

Mr. Brendle made a motion to close the voice of the public to comments; seconded by Mr. Quinn.
Roll call taken as follows:

AYES: Mr. Brendle, Mr. Nolan, Mr. Waitzel, Mr. Quinn, Mr. Martin, Chairman Pearsall

Mr. Shaw stated that he believes that positive criteria under Land Use Law has been met by what exactly the contract with the National Guard facility is and the people it serves. Mr. Shaw said that the public concerns are

mainly noise and traffic. Mr. Shaw said that based on what was heard at the meeting, with new compressors on the ground noise is at a minimum. Mr. Shaw added that the reason for the application for the refrigerator and freezer is to cut down on traffic with less deliveries. Mr. Shaw said that those two things are taken care of and he is asking for the application to be approved.

Chairman Pearsall asked for a motion.

Mr. Waitzel made a motion to approve the application. Mr. Waitzel stated that it has never been the board's purpose to close or shut the operation down. Mr. Waitzel stated that the overall public good of the community is being served by the operation. Mr. Waitzel stated that the water storage area should be reviewed by Mr. Lobosco if it is an issue. Mr. Kitrick stated it could be a condition on the resolution that it is subject to the board engineer's approval.

Mr. Kitrick asked, with a time limitation, there is a distinction between the refrigerator and the freezer or if the motion is addressing them the same way as it was addressed in the application.

The board discussed the motion.

Mr. Waitzel stated the motion is to approve what has been proposed by the applicant. Mr. Waitzel stated that the existing versus proposed lot and building coverage going up less than 3%, should be considered by the board. Mr. Waitzel stated that the overall public good of the community is being served by the operation. Mr. Waitzel stated that if the water storage area is a concern, then Mr. Lobosco should review it to determine if it should be tied into a recharge area in the front yard along Highway 71. Chairman Pearsall clarified would that be a condition on the resolution: Mr. Waitzel replied yes. Mr. Waitzel stated it was never the intent of the board to close the business down so to make those minor changes makes perfect sense to him.

Mr. Kitrick clarified that the approval would allow the refrigerator and freezer to remain until the kitchen is completed on the base, and not to exceed 3 additional months thereafter. Mr. Waitzel stated that is correct.

Mr. Brendle asked if both pieces of equipment will be removed then. Mr. Waitzel stated that is not part of his intention. Chairman Pearsall asked what Mr. Waitzel's intention is. Mr. Waitzel stated that he does not see an effect that the equipment has other than alleged noise problem which he believes will not exist.

Mr. Kitrick stated there is a limitation on the use until the base is completed and not to exceed 3 months thereafter so if the motion is seconded and ultimately approved, the use will expire during that timeline. Mr. Waitzel stated he understands.

Mr. Kitrick stated Mr. Brendle's question posed is the reality that the use will expire, as he understands the motion.

Mr. Brendle stated if the use expires then the two pieces of equipment become obsolete and should be removed.

Mr. Martin added that they wouldn't be needed any more. Mr. Kitrick stated that would be the practical effect of that; Mr. Waitzel stated that is understood.

Chairman Pearsall seconded the motion as stated.

Roll call taken as follows:

AYES: Mr. Brendle; Mr. Waitzel, Mr. Martin; Chairman Pearsall

NAYS: Mr. Nolan; Mr. Quinn

ABSTAIN: None

Mr. Kitrick stated the application is denied. Mr. Kitrick stated that pursuant to Municipal Land Use Law, a use variance requires 5 affirmative votes; so application is denied.

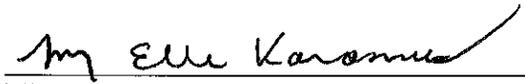
New Business:

James Alburtus – Requested to carry to September 24, 2020
Application No. ZB 2020-03
559 Ocean Road
Block 23 Lot 31
New Home

Adjourn:

On a motion by Mr. Brendle; seconded by Mr. Quinn the meeting was adjourned at 9:49 p.m. without objection

Submitted and Approved:



Date: September 24, 2020

Mary Ellen Karamus
Board of Adjustment Secretary