

MEETING MINTUES
BYRAM TOWNSHIP PLANNING BOARD
SPECIAL MEETING, JANUARY 28, 2021

CALL TO ORDER

Chairman Shivas called the meeting to order at 7:30 p.m.

ROLL CALL

| | Mr. Chozick | Ms. Franco | Mr. McElroy | Mr. Morytko | Ms. Raffay | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|---------|-------------|------------|-------------|-------------|------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| HERE | H | H | H | H | | H | H | | H | H | H |
| ABSENT | | | | | | | | | | | |
| EXCUSED | | | | | E | | | E | | | |
| LATE | | | | | | | | | | | |

Also present: Attorney Alyse Hubbard, Esq.
 Engineer Cory Stoner, P.E. C.M.E.
 Planner Paul Gleitz, P.P. A.I.C.P.
 Secretary Cheryl White

STATEMENT BY CLERK

Both the Federal and State governments have declared a state of emergency in response to the outbreak of the Covid-19 Virus, that limits the number of people allowed to gather, and requires social distancing. To continue Planning Board business, the regularly scheduled meeting for January 28, 2021 is being held by remote video or audio connection only. This service allows the Board, it’s professionals, applicants, and members of the public to participate.

Adequate notice of this meeting has been published specifying the time and access information in compliance with the provisions of the Open Public Meetings Act. Notice of this meeting is on file in the office of the Planning Board Secretary, posted on the main door, and on the bulletin board in the Municipal Building, and on the Township website at: https://www.byramtwp.org/index.php/meetings/committees/planning_board and has been forwarded to those persons requesting notice.

FLAG SALUTE led by Chairman Shivas

OLD BUSINESS

SP2-2020, Byram Route 206 Developers, LLC., 75-77 Route 206, Block 34 Lots 14 & 15, V-B Zone (carried from November 19, 2020)

To construct a 5,585 sq. ft. food market with fueling stations, and associated site improvements; parking, lighting, landscaping, and utilities.

Ms. Franco and Mayor Rubenstein stepped down for this application.

Mr. Selvaggi said Mr. McDonough, P.P. for the applicant will review the bulk variances needed for this project and address any planning questions. He said however at the last meeting a question was brought up about critical lot disturbance on the site and Mr. Sharo, P.E. will address that concern tonight.

Mr. Sharo, who is still under oath said after reading Byram’s code he reviewed Exhibit A8, which was previously submitted, and said the hatched grey areas show areas of disturbance where the grade is greater than 25% adding that the total area of critical disturbance is 5,257 sq. ft., or 6% of the area. It said it is important to note the grade is manmade, perhaps by a previous user, or when CVS was developed, but the slopes are not natural, but either way, a variance is required. He said any development on this property would require the disturbance of critical areas. Mr. Gleitz asked if the design presented by the applicant could be changed to keep out of the critical tract. Mr. Sharo did not believe so. Mr. Gleitz asked if the disturbance of these areas will exasperate stormwater runoff. Mr. Sharo said with the Stormwater inlets the applicant proposes are improving stormwater.

Mr. Selvaggi called Mr. McDonough, who is still under oath, and he provided an overview of his previous testimony reiterating that this lot has been vacant since 1935, it is located in the heart of Byram’s Commercial Zone, and is mostly surrounded by mostly woods, with a small group of homes to the rear and CVS, and other commercial business close by. He said the proposed use provides transportation service on a service road. He said the new development pulls in landscape amenities, nice lighting and will be astatically pleasing to look at. He said the property is underutilized and the proposed use will add to the vitality that Shop Rite brought to Byram. He said it is a perfect location, on a signalized intersection and the site is suitable for this use. He spoke about how the retail aspect of this project is permitted in the zone and over the course of time fuel and retail have become come hand in hand. He said this store will be more contemporary and the site offers good site circulation, and with shared access to CVS, and it will make a good compliment to CVS. Mr. McDonough talked about the stagnant development along Route 206 and the lack there of, and that Wawa is a name brand and wants to come to Byram noting that the D1 relief is needed for this project, since fuel is expressly prohibited in Byram. He talked about site suitability, and that this project offers service and convenience on a service road and identified the goals of the MLUL this project promotes; purpose A, G, H, I and M. He said this project has no substantial adverse impacts on traffic, engineering, the environment, or public safety and prohibitions of this use or any adverse impacts have been addressed by the applicant. He said it is consistent with Byram’s Master Plan bringing people and activity together and is a sustainable use. He said it is a good addition to the southbound corridor and he said the quantity of bulk variance needed will not have an adverse effect, and reiterated site suitability, and how the oversized lot is great for this development and it is a customary use on a highway, and is proposal is an efficient use of the land. He said this project offers convenience and that most fueling stations come with a convenience store. Mr. McDonough confirmed that this proposal promotes the general welfare of the surrounding municipalities and is not contrary to the County’s goals and promotes land use patterns to enhance a reliable base without causing a determent and added that this project avoids strip style development.

Chairman Shivas wanted to hear more justification for granting a use variance when there are other fueling stations in proximity. Mr. Gleitz added he would like to hear more about site suitability, and the need for a sign variance may prove this site is not suitable since there is limited sight because of a curve in the highway, and site topography. He said the applicant did an extensive study revealing that an 18 ft. sign is recommended. He said even if the proposal was a permitted use, he believes any applicant would be asking for the same relief and the need for the sign height is not only inherent to the use, but the site. Mr. Gleitz said because the site has been vacant doesn't support granting this use. Mr. Gleitz said the Master Plan and the Governing Body made it clear when drafting the MP, and again during the 2012 Re-exam they were specific to maintain that this use shall remain to be prohibited.

Mr. Gleitz asked Mr. McDonough to justify the need in Byram for the concentration of this type use. He said this use benefits more people outside the community, and does not promote the pedestrian friendly, walkable development Byram anticipates. He said Byram has done extensive studies and the community spoke out that Byram is overburdened with automotive/service type businesses. Mr. McDonough said most of the stations are older and their sustainability is unknown, and he believes the Governing Body encourages more contemporary businesses in this area and it offers a competitive market which consumers like.

Mr. McDonough reviewed Exhibit A13, which was previously submitted, and depicts the required bulk variances for this development and he noted that since some signage was reduced, and buffer requirements are not exact, some of the variances may change. He also provided justification for design waivers requested. Mr. Walsh asked if the applicant has committed to a sign height; 18ft. vs. 16ft. Mr. Selvaggi said for safety reason, the applicant believes an 18 ft sign is needed.

Mr. Morytko said the justification that this highway has a fast lane is not true, the speed limit is 35mph, and he asked Mr. McDonough to expand on his statement at a previous meeting that this site is free from constraints when there is a conservation easement on the site. Mr. McDonough acknowledged the site is not free from environmental constraints. Mr. Selvaggi reiterated that the applicant must rely on DEP approval based on the site design approved by this Board and if the DEP comes back with a response that impact the approvals obtained, the applicant will be required to return to this Board. Ms. Hubbard said she will craft language in the resolution that will be clear that this approval is based on buffer areas presented in the plan submitted, and any changes to the buffers or the site design by the DEP, this approval is void. Mr. Morytko said in May 2020 the classification of Lubber's Run was changed to a C1 stream, which has more protection, and he believes that re-classification will impact the buffers set in the submitted plan. Mr. Selvaggi said Mr. Galiano's testimony was that he believes this development is allowed under DEP permitting and the applicant has met those standards. Mr. Walsh said he believes if language is contained within the resolution that this Board's approval is subject to the approval of all outside agencies, those issues will be addressed by those agencies. He believes it's not this Board's jurisdiction and believes the applicants understand their obligation to return to the Board if those approvals are not met.

At 9:30 pm the Board took a five-minute break.

At 9:10 pm the meeting resumed.

Mr. McDonough provided more testimony justifying the need for this use. He said the use serves the public good. He said Wawa is a recognized brand and will enhance the image of the community and will send an impression this is a place where popular trends want to be. He said Byram has a limited development area and this brand will add confidence to the community and Byram will be a place that businesses want to invest in. Mr. Morytko wanted to hear Mr. McDonough's special reasons for this use, and underlined the statement made earlier that if this application is approved that conditions are tied into the resolution requiring outside agencies approval to the plan submitted and approved.

Mr. Walsh asked if it is Mr. McDonough belief that the older stations have poor site circulation and are not as up to date, and this is a reason for justification for the need. Mr. McDonough said planning and design standards have evolved as well as regulations, so sites are designed better. He added that any issues brought up by this Board have been well vetted by the applicant.

Mr. Sharo reviewed the 18 ft. sign detail plan submitted. A straw poll was taken with regards to the sign height; 18 ft. vs. 20 ft. and most of the Board members were ok with either or. Mr. Walsh believed the applicant presented a good plan, but he disagreed and believed the sign, even at 18 ft., is too high.

Mr. McElroy asked how the Board decides how much is too much with regards to the density of this type use. Mr. McDonough said there are no standards, but the Board has to look at what's better for the community, and providing competition is good for the consumers. Mr. Gleitz said no one knows their community better than their Planning Board. He reiterated that fueling station/fuel industries are prohibited in Byram's Master Plan because of light, noise, pollution, etc., and this Board must decide how much is too much and if this proposal creates a bigger density that could impact Byram's quality of life. Mr. Gleitz spoke about the Economic Development Study and the people of Byram spoke loudly that the town is overburdened with auto service industry uses.

Mr. Selvaggi believes Byram's zoning has not caught up with today's gas stations as they have evolved today offering fuel and convenience. Mr. Smith asked for statistics on many consumers stop only for fuel, only for retail, or for both fuel and product. Mr. Verterese, Traffic Engineer and is still under oath said these numbers are generic but about 25% to 30% of customers do both, convenience and gas, the remainder is split in half.

The Board had no further questions for Mr. McDonough.

Chairman Shivas opened to the public for any questions relating to Mr. McDonough's testimony.

Mr. Chris Corallo, 18 Briar Lane asked if Wawa would consider a store without fueling stations because he has concerns about the density of fueling stations in Byram.

Mr. Selvaggi said no, that's not Wawa's model.

Mr. Earl Riley, 5 Louis Drive was sworn in and asked what Lubber's Run has to do with this application.

Mr. Sharo said there is a tributary to Lubber's Run located on the south end of this property.

Mr. Riley said he has been in town a long time and he welcomes this development and he hopes the Board approves this application.

Mr. Scott Olson, 194 Glenside Trail said on Oct. 29 there was testimony that this site would require little earth work and he believes due to site grading a large amount of earthwork will occur.

Mr. McDonough did not recall that it was his testimony that there will be no earthwork.

Mr. Olson believes the property has remained vacant for year because of the sale price, and that the proposed use is a density of this type in Byram.

Mr. Scott Yappen, 5 Catherine Terr., asked if Wawa will partner with Byram to improve some of Byram's amenities, and commit to building a stronger community by investing in Byram.

Mr. Redel, Operations Manager for Wawa, and is still under oath, said can't commit to what that partnership will be but said Wawa has donated 50 million dollars over the last ten years to local and regional support groups and to communities and will be involved in Byram's community.

Donna Griff, 71 Brookwood Road does not believe bringing a "brand" name into the town will enhance the town's image.

Mr. McDonough said Wawa is a recognizable brand that people want, it offers competition which consumes want.

Ms. Griff asked why does need another gas station when Byram's fuel industry is already excessive.

Mr. McDonough reiterated it offers choice for consumers, which people like.

Steve Wszolek, 19 Manor Drive asked why Lubber's Run was classified a C1 stream.

Mr. Selvaggi said a C1 stream is classified because it has been identified as protected by the DEP.

Mr. Wszolek does that mean it is trout stocked.

Mr. Selvaggi said not necessarily so, it could be re-classified due to the protection of other natural sources. Mr. Selvaggi explained what the setback requirement was to a C1 stream and that DEP will review this plan and their approval is required.

Mr. Wszolek wanted to know how far the development is to the tributary.

Mr. Sharo said about 56 feet.

No one else from the public had further questions. Chairman Shivas closed to the public.

The Board had no further questions.

Chairman Shivas opened to the public to express their comments relating to this application.

Scott Olson, 194 Glenside Trail was sworn in and said that Byram's Economic Development Plan explicitly expressed that Byram has too many fuel related industries. He added that the LOI for this property was done in 2006, extended in 2011 and then again extended in 2016. He said in May 2020 the DEP re-classified some waterways, including Lubber's run, and that the plans submitted does not represent the correct buffers required for a C1 stream. Mr. Olson believes the DEP looks more favorable on applications that have already received local approval. He understands is it customary to get local approval prior to DEP approval, however with this application he believes DEP approval should be obtained prior to this Board makes any decisions.

He also had concerns with the amount of earthwork needed on the property, the density of this use, and important details concerning this application that the Board has not been provided in advance to make a good decision. He urged the Board to vote no on this application.

James Braun, 51 Lackawanna Drive was sworn in and asked if a 24-hour store is permitted.

Ms. Hubbard said yes.

Mr. Earl Riley, 5 Louis Drive was sworn in said he believes the applicant has worked with the Board and that this application is in line with what Byram needs. His only negative comment is trash collection early in the morning saying that CVS testified that garbage collection would occur before 7:00 a.m., and they show up before 6:00 am.

Mr. Selvaggi assured Mr. Riley that the applicant agreed that no garbage collection would occur before 7:00 am.

Mr. Riley said he hopes the Board approves this application.

Ms. Donna Griff, 71 Brookwood Road said this project is not good for the community, it is a prohibited use for a reason, and if the Board believes the Master Plan is outdated, they should revisit it. Her main concerns were for the environment, and the protection of Byram's natural resources; water, clean air, and open space and that the community relies on this Board to protect it, not the DEP, and she urged the Board to vote no.

Steve Wszolek, 19 Manor Drive was sworn in and stated his is not in support this development saying it will cause other local fuel related business to close, leaving vacant buildings along our business corridor. He believes other investors will find interest in Byram and wants to preserve the natural aspect of Byram, and protecting the stream would be his precedence over having a Wawa, and urged the Board to vote no.

Ms. Katie Parrish, 5 Ross Road was sworn in and said Byram is a township of lakes and protecting water quality should be Byram's priority. Contamination of soil from TCE that occurred in Byram from an incident years ago is still being remedied. She has concerns for future drinking water since a breach cannot be guaranteed by the applicant.

Earl Riley, who is still under oath said because of the topography of the land, if an incident did occur it would take weeks, maybe months to reach Lubber's Run which would allow time for a through clean up. He said he is on the Board of the Lake Musconetcong Regional Planning Board, and the Lake Musconetcong Watershed Association and water quality is paramount, and he believes this use will not be a deterrent to Byram, or neighboring communities' quality of water.

Ms. Anneliese DeMagistris, 9 North Shore Road said she believes this development will be a great addition to the community and as a local business owner she is confident that the DEP will remain steadfast enforcing their rules and regulations. She said Route 206 is a business highway good for business rateables. She added that Byram has plenty of open space and other natural features, such as trails and lakes that will remain undisturbed. She hopes the Board approves this application.

Megan Griff, 71 Brookwood Road was sworn in and said Byram has too many gas stations and that the beauty of Byram is being destroyed. She has experienced the affects to one's health and water quality because of soil contamination from TCE. She said this need is already fulfilled in Byram, and urged the Board to vote no.

No other public came forward.

In closing Mr. Selvaggi said this applicant values the opinions of the Board and will agree to reduce the sign height to 16 ft. He added that Wawa has been willing to work with the community and has agreed to include solar infrastructure and charging stations in their plan, they reduced lighting, added landscaping, upgraded stormwater control measures, added additional buffering, are using state of the art underground storage tanks and will

comply with all outside agency requirements to ensure water quality and a safe environment saying Wawa wants to be a good neighbor and a positive addition to the community.

Mr. Morytko wanted confirmation that the applicant agreed to solar energy and charging stations. Mr. Sharo said the infrastructure for charging stations and solar energy is included in the plan, and would like assurance that the resolution will be clear and firm that this Board that the did not have a clear and precise plan relating to a C1 stream setback and the disturbance of the conservation easement.

A motion to approve this application subject to conditions discussed and that approvals of all outside agencies must be obtained was made by Mr. Chozick. The motion was seconded by Mr. McElroy.

The following vote was taken.

Ms. Hubbard asked when making your vote state their reason for their decision.

Mr. Chozick votes yes, this location, on a highway corridor, is suitable for this use, and the applicant fully cooperated with the Board.

Mr. McElroy votes yes, because of site suitability for this use and, he believes it will not be a deterrent to the zone and will provide convenience to the public.

Mr. Morytko votes no, saying he was not satisfied with the positive criteria presented which did not convince him enough to consider overruling zoning, or the Governing Bodies decision.

Mr. Serrilli votes yes, saying the applicant presented a good application and was willing to work with the Board. He conveyed Lubber’s Run is a concern but believes the applicant will comply with DEP regulations. He said this development moves the Town in the right direction.

Mr. Smith votes yes, saying that the applicant listened to the Board, and public concerns, and worked together to address those concerns. He feels they provided good testimony to justify the use and he believes the site is suitable for the use proposed.

Mr. Walsh votes yes, saying the applicant has met the positive criteria.

Chairman Shivas votes yes, saying this was a difficult decision for him and has concerns about the density of this use in Byram, and for the protection of Byram’s water quality, but believes the applicant presented a good application and worked with the Board and addressed the Board and public concerns.

| | Mr. Chozick | Ms. Franco | Ms. Raffay | Mr. McElroy | Mr. Morytko | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|----------|-------------|------------|------------|-------------|-------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| MOTION | √ | | | | | | | | | | |
| SECONDED | | | | √ | | | | | | | |
| AYE | √ | | | √ | | | √ | | √ | √ | √ |
| NAY | | | | | √ | | | | | | |
| ABSTAIN | | | | | | | | | | | |
| ABSENT | | | | | | | | | | | |

Motion carried.

Ms. Hubbard said she will draft the resolution and circulate it to the professionals for review, before sending to the Board.

On Time Sign and Design, LLC, 10 Route 206, Block 42 Lot 112, V-B Zone.

To Amend a condition of a previously approved resolution, approved on November 19, 2020, specifically on page 11, Condition 4. b. relating to the wetlands buffer.

Mr. Gleitz explained that during the hearing there was discussion that the applicant removed vegetation on this property near a wetlands area and that this area be re-vegetated. It was determined during the hearing that the applicant’s professionals work with Byram’s professionals to determine the area of disturbance, and a planting plan to revegetate that area. The night the resolution was to be memorialized, the applicant or their professionals were not present, and a Mr. Olson said he believed the buffer was 300 ft., which should be revegetated, so a condition that the entire 300 ft. buffer be re-vegetated, and was added as a condition to the resolution. When Mr. Selvaggi, the applicant’s attorney received the final copy of the resolution disagreed with that condition being added saying that Mr. Glasson, the applicant’s engineer submitted a planting plan which was approved by Mr. Gleitz which included the re-vegetation of a 50 ft. buffer. Mr. Selvaggi requested that the resolution be amended to correct the required buffer distance and the type of plantings as previously agreed by Mr. Gleitz and Mr. Glasson.

The Board agreed with this amendment and the resolution was amended to read that the area of disturbance would be 50 ft and it was to be re-vegetated with ground cover and shrubs and the resolution was corrected to reflect that change.

A motion to accept this change and to approve the amended resolution was made by Mayor Rubenstein.

The motion was seconded by Mr. Morytko. The following vote was taken:

| | Mr. Chozick | Ms. Franco | Ms. Raffay | Mr. McElroy | Mr. Morytko | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|----------|-------------|------------|------------|-------------|-------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| MOTION | | | | | | √ | | | | | |
| SECONDED | | | | | | | | | | | |
| AYE | √ | | | | √ | √ | | | | √ | √ |
| NAY | | | | | | | | | | | |
| ABSTAIN | | | | | | | | | | | |
| ABSENT | | | | | | | | | | | |

Motion carried.

Chairman Shivas opened to the public.

Donna Griff, 71 Brookwood Road was disappointed in the Board’s decision to approve the Wawa application and did not understand that when Byram’s Master Plan prohibits gas stations and the plan was drafted to protect Byram’s resources, why is it not being adhered to. Mr. Walsh explained that this Board does not have protection of waterways. Ms. Hubbard explained that the Board must look at each application separately and the merits of each application presented. Chairman Shivas explained that the purpose of the Planning Board is to allow applicants to deviate from municipal regulations, and if the applicant’s proofs/reasons are valid, then the Municipal Land Use Law allows for that deviation by granting variances. Ms. Griff said this Board speaks to the future and character of Byram, and this use is was not what the people in Byram want.

Mr. Scott Yappen, 5 Catherine Terrace and said the rateables aspect of this application can justify the need. Ms. Hubbard said the Board is not permitted to base a decision on what rateables base the application will bring to the Township.

No one else from the public came forward. Chairman Shivas closed to the public.

ADJOURNMENT

A motion to adjourn the meeting was made at 11:30 p.m. by Mr. Chozick. The motion was seconded by Mr. Serrilli. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted,
Cheryl White