

**MINUTES OF THE ANDOVER TOWNSHIP LAND USE BOARD MEETING HELD
MARCH 6, 2012**

OPEN MEETING: Chairman O'Connell called the meeting to order at 7:30 p.m.

FLAG SALUTE: Chairman O'Connell led the flag salute.

ROLL CALL:

Diana Boyce – Excused
Suzanne Howell – Present
Gerald Huelbig – Present
Gail Phoebus – Present
Ellsworth Bensley Jr. – Present
CeCe Pattison – Present
Christine Kretzmer – Present
Rick Melfi – Present
Paul Messerschmidt (Alt.1) – Present
Ken Roberts (Alt. 2) – Present
Chairman John O'Connell – Present

PROFESSIONALS PRESENT: Richard Briigliodoro, Esq.; Joseph Golden, P.E., P.P.

OPEN PUBLIC MEETINGS ACT NOTICE: Chairman O'Connell read the following statement: This is an open public meeting of the Andover Township Land Use Board. Notice of this meeting was given in accordance with the Open Public Meetings Act, Chapter 231, Public Law 85. The rules are generally as stated on the agenda.

RULES: Chairman O'Connell read the following rules: No new cases after 9:30 p.m. or testimony after 10:00 p.m. Comments from each member of the public are limited to 5 minutes during the public portion of the meeting. Transcript requests are to be in writing with check for 100% of costs. Material for the meeting is to be filed fourteen days before the next meeting once it has been heard for completeness. Individuals or members of a partnership must be present at the meeting or be represented by an attorney. Testimony is under oath. False testimony constitutes perjury.

MINUTES: *Minutes of the Andover Township Land Use Board Meeting Held*

February 21, 2012: A motion to approve was made by Suzanne Howell and seconded by Paul Messerschmidt. Roll Call: Ellsworth Bensley, Jr., – yes; Suzanne Howell – yes; Gerald Huelbig – yes; Christine Kretzmer – abstain; Rick Melfi – yes; CeCe Pattison – yes; Gail Phoebus – yes; Paul Messerschmidt – yes; Ken Roberts – yes; John O'Connell – yes. The motion carried.

RESOLUTIONS: There were no resolutions scheduled for review.

COMPLETENESS REVIEW: There were no matters scheduled for completeness.

HEARING: A-1-12-3, Dina's LLC d/b/a Casa Bellisima, Amended Preliminary and Final Site Plan, "C" Variances, Block 106 Lot 19: Bennett Wasserstrum, Esq., appeared on behalf of the Applicant. Owen Dykstra, PE, and Jason Dunn P.P., Landscape Architect, were sworn and accepted by the Board as expert witnesses. Both professionals confirmed that their New Jersey licenses were current. Eddie Xhudo, Principal, was sworn.

Board members reviewed Board engineer Golden's report dated March 1, 2012. Mr. Dunn confirmed that the lighting does not meet ordinance requirements. He stated the proposal provides an adequate lighting plan, and the Applicant would like to maintain the ambiance of the site. He stated the plan was submitted in an effort to maintain site continuity and not brighten the whole area. He stated the lighting has been in place for three years, it is good, and creates a safe situation. Mr. Dunn presented that the lights installed were different from those approved on a previous plan due to a misunderstanding. He noted that the Applicant tried to get to final through the as built. Mr. Dykstra presented an overview of the development's history. Mr. Golden discussed the lighting plan changes noting that the lights were not installed in the same location as the previously approved plan. He stated the lighting is clearly below the standard. Mr. Dykstra stated lighting consistency is desirable. Referencing sheet 3 of 3 of the plan set, Mr. Dunn explained the site's illumination. He stated he could add a light in the patio area. Mr. Golden confirmed that a design waiver would be required from §131-38. He stated he did not recommend the use of shoebox lighting. He stated he could not confirm that the lights were in an appropriate location without a lighting plan to assess. Mr. Dunn questioned if the Board wants three times the light. Board members discussed the matter. Mr. Dykstra stated the Applicant would change the fixtures and poles approved in 2009 utilizing the footings in existence provided they work to achieve the standard.

Board members discussed the movement of the trash enclosure and outdoor storage.

Mr. Xhudo described the outdoor storage material. Mr. Wasserstrum agreed that the outdoor storage would be removed within thirty days. Referencing sheet three of three, Mr. Dunn explained the change stating the change improved circulation. With reference to the fence detail noted on the 2009 plan, Mr. Dunn stated a different fence was installed. The Applicant agreed to provide a conforming gate. He stated the dumpsters and grease container would be put back into the enclosure.

Mr. Golden provided an overview of the site history with respect to waste management, storm water management, and drainage. With reference to storm water, he stated NJDEP standards have not been met. Mr. Dykstra stated the development never met the definition of major development and is not technically required to meet the requirements. He reviewed the Township ordinance requirements. Mr. Dykstra stated the storm water is compliant; and the Applicant went through the process in 2009 obtaining a NJDEP and Township permit.

Mr. Golden presented ordinance changes that occurred through the developments approval processes.

Mr. Wasserstrum confirmed that the Applicant designed the drainage to include the patio in 2009 but did not pursue the approval for same due to budgetary considerations. He confirmed that the

drainage calculations included the additional impervious coverage of the subject application's patio. The engineers discussed the matter. Mr. Golden submitted Exhibit B-1, a 9/21/06 site plan from the original approval and explained it. Mr. Golden further noted the water quality reports have not been provided and should be maintained. Mr. Wasserstrum stated the Applicant would provide a report.

With reference to the sheds installed in the setbacks, Mr. Dunn stated the sheds are functional and help maintain a neat site. Richard Briigliodoro, Esq., confirmed that variance relief was required for the sheds as well as the trash enclosure. Mr. Dykstra noted there is less visibility where they are. Mr. Xhudo stated he has no basement. He stated he took it upon himself to put up the sheds in an effort to keep things nice and neat. He stated it was not his intention to go against the town. Mr. Dunn confirmed there is an increase in grade, and Mr. Dykstra stated there is less visibility by locating the sheds closer to the wall. Mr. Xhudo presented that the sheds are 10 x 10 and 10 x 6 respectively. It was noted the sheds are located on a concrete pad

With reference to the patio, Mr. Dunn stated 2460 sq.ft. of brick paver patio is proposed along with a 3.5 ft. high freestanding wall in front of the patio. He stated the wall would feature five-foot high decorative columns at the ends. Board members discussed the height of the wall. Mr. Dunn identified three lights and ornamental trees also proposed in the patio area. He confirmed there is no overhead canopy or structure proposed; and there would be no need for building modifications. He explained the patio's drainage plan. Mr. Dunn identified the access area to the outdoor dining area for the staff and customers.

With reference to the outdoor seating count, Mr. Dunn confirmed that no more than a total of 99 seats — inclusive of the interior of the restaurant and patio area combined, are proposed. Ms. Phoebus expressed a concern about septic capacity and suggested increasing the septic. She stated there have been problems with septic. Mr. Wasserstrum noted there is a new system in place. He explained that the bar section has 28 seats, and the Applicant proposes to close the bar seats to accommodate the seating requirements. The Applicant presented that the ownership controls the seating. Multiple seating control mechanisms were discussed. Chairman O'Connell expressed concern about enforcement. Mr. Huelbig expressed concern about parking noting issues with parking in the past. Mr. Golden noted the proposed parking is conforming. Ms. Phoebus stated the Applicant might want to protect the septic system. Board members discussed the septic approval.

Mr. Xhudo stated he maintains the property, wants the business to go right, and wants Andover to be happy that he is there. He confirmed that the business is an ala carte restaurant that can accommodate small parties. He stated the proposed patio is part of his dream. Mr. Melfi asked if the patio would be used for outside parties. Mr. Melfi and Mr. Xhudo discussed the definition of catering. Mr. Dunn confirmed that there are 28 seats on the patio. Mr. Dunn suggested that 99 seats be permitted. The Board agreed that the seating would be in accordance with the County limit of 99 seats. Members suggested a time limit of operations from Memorial Day through September 30 and agreed that no limit was necessary.

With reference to landscaping, Mr. Dunn identified the plantings and the amendments to the plan. Mr. Golden stated he has no issue with the landscaping changes.

Chairman O'Connell opened the meeting to the public. Mr. George Frizzell was sworn. He stated the Applicant has done a great job. He stated he is located across the street from the restaurant, has had no problems, and it has been a great ratable for the town. He stated he agrees that the Applicant has made mistakes. He stated he would like to see the matter approved.

William T. Haggerty, Esq., appeared on behalf of Mr. Grenewicz. Mr. Grenewicz was sworn. He stated that he is the adjoining property owner. He presented that peak customer drop-off on his site is between 6 p.m. and 10 p.m. and overflow parking from the Applicant's business has had a great impact on his business. He stated his parking lot was full on a Christmas recital occasion. He stated he received tickets for his own cars. He stated he bought a tow truck to address the problem. He stated that in the past year he has written tickets. He stated one or two nights per month there are parking issues. He expressed concern about enforcement and the impact on his business should the patio go in.

Mr. Grenewicz stated the storm water issues have been addressed. Mr. Grenewicz noted two occurrences where the Applicant's septic overflowed on his property. He stated that sometimes it still smells like sewer at times. He stated he knows the septic pump motor has been replaced several times.

Mr. Haggerty noted that his client wants to preserve his business and this has had an adverse impact on the business. He stated the conditions must be reasonably enforceable and that he hoped the impacts would not be adverse. He noted there is a history of noncompliance.

Mr. Wasserstrum inquired about parking on Christmas. Mr. Grenewicz confirmed that he had occasional problems with parking since 2007. He confirmed that he has called the police to address parking issues. With regard to parking problems over the last year, Mr. Grenewicz stated he had occasional problems, particularly on holidays and at graduation times. He stated he did not have enough time to bring all the tickets he has written this year.

Mr. Grenewicz stated he could not repeat the Applicant's initial response to a parking issue. He stated he had a problem with a patron pounding on his door. He stated he does not speak with the Applicant.

No other members of the public addressed the Board on the matter. Chairman O'Connell closed the meeting to the public.

A motion to approve the application and variances for setback encroachments by the sheds and the trash enclosure subject to the conditions listed below was made by CeCe Pattison and seconded by Gail Phoebus. Roll Call: Ellsworth Bensley, Jr., – yes; Suzanne Howell – abstain; Gerald Huelbig – no; Christine Kretzmer – no; Rick Melfi – no; CeCe Pattison – yes; Gail Phoebus – abstain; Paul Messerschmidt – no; John O'Connell – yes. The application was denied.

The conditions denied were noted as follows: conform lighting to the 2009 plan with the location of the lighting poles subject to the Board engineer's approval; return dumpster to the enclosure; modify the gates to conform to the 2009 plan detail; remove outdoor storage within 30 days; submit storm water inspection logs to the town on an annual basis by December 31 of each year; outdoor dining permitted conditioned upon a total of 99 seats onsite; add landscaping

including a Purple Leaf cherry tree, a Japanese Maple, and shrub clusters by the three light poles; and add one *No Parking* sign to advise patrons not to park next door.

UPCOMING MEETING: Chairman O'Connell confirmed the March 30, 2012 and April 3, 2012 hearing dates.

PUBLIC PORTION: Chairman O'Connell opened the meeting to the public. No members of the public addressed the Board. The meeting was closed to the public.

VOUCHERS: There were no vouchers scheduled for review.

OLD/NEW BUSINESS: Appointment of Conflict Counsel — Board members discussed the matter. A motion to appoint David Brady, Esq., was made by Ellsworth Bensley, Jr., and seconded by Suzanne Howell. All were in favor. The motion carried.

Mr. Golden reported that he was corresponding with PSE&G and had not received a status report as of yet. Ms. Phoebus reported that additional power was being routed to the quarry.

ADJOURNMENT: Having no further business, a motion to adjourn was made by Paul Messerschmidt and seconded by Ken Roberts. The meeting was adjourned at 11:05 p.m.

Minutes respectfully submitted by:

/s/ Anne-Marie Wilhelm

Anne-Marie Wilhelm
Land Use Administrator