

**GLOUCESTER TOWNSHIP ZONING BOARD OF ADJUSTMENT THURSDAY,
January 28, 2010**

Chairman Richards called the meeting to order. Mr. Lechner read the commencement statement.

Roll Call:	Vice Chairman Simiriglia	Present
	Mr. Marks	Absent
	Mr. Fabricius	Absent
	Mr. Fuscellaro	Absent
	Mr. Bucceroni	Present
	Mr. Domiano	Absent
	Mr. McMullin	Present
	Mr. Gunn	Present
	Mrs. Chiumento	Present
	Mrs. Giusti	Present
	Chairman Richards	Present

**Chairman Richards had the professionals sworn in:
Also Present: Mr. Anthony Costa, Zoning Board Solicitor
Mr. James J. Mellett, PE, Churchill Engineering
Mr. Ken Lechner, Township Planner**

****Substitutions: Mr. Gunn will sit in for Mr. Marks, Mr. McMullin will sit in for Mr. Fabricius, Mrs. Chiumento will sit in for Mr. Domiano and Mrs. Giusti will sit in for Mr. Fuscellaro. *******

MINUTES FOR ADOPTION

Zoning Board Minutes for January 14, 2010.

Motion to approve the above-mentioned minutes was made by Mrs. Chiumento and seconded by Mrs. Giusti.

Roll Call:	Vice Chairman Simiriglia	Yes
	Mr. Bucceroni	Abstain
	Mr. McMullin	Abstain
	Mr. Gunn	Abstain
	Mrs. Chiumento	Yes
	Mrs. Giusti	Yes
	Chairman Richards	Yes

Minutes approved.

****Vice-Chairman Simiriglia states there is an application missing from the for 2009 zoning report, therefore no resolution was passed. ****

APPLICATIONS FOR REVIEW

#092079C

Rehrig, Kenneth W Jr.

Zoned: R1

Block: 17503 Lot: 1

Bulk C Variance

Location: 1214 Jarvis Rd. Erial NJ 08081

Construct Single Family Dwelling On Undersized Lot.

Mr. Costa swears in Mr. Kenneth Rehrig.

Mr. Rehrig explains he can not buy additional land for his lot to meet the 1 acre zoning requirement, as there isn't anymore land available. He states he can meet all other requirements.

Vice – Chairman Simiriglia inquires about the neighborhood houses.

Mr. Bucceroni states the structures existing on the lot now are in great disrepair.

Mr. Gunn inquires about the sewers.

Mr. Lechner asks if the present house is closed.

Mr. Rehrig states "yes".

Opened to the Pubic:

No Comments

Opened to the Professionals:

No Comments.

A motion to approve the above-mentioned application, with the stipulation that all existing buildings be removed, was made by Mr. Bucceroni and seconded by Mrs. Chiumento.

Roll Call:	Vice Chairman Simiriglia	Yes
	Mr. Bucceroni	Yes
	Mr. McMullin	Yes
	Mr. Gunn	Yes
	Mrs. Chiumento	Yes
	Mrs. Giusti	Yes
	Chairman Richards	Yes

Application Approved.

#102006CDMSPFMSP

Revere Run at Park Place

Zoned: RA

Block: 14102 Lot: 17

Bulk C, Use Variance, Minor Subdivision & Preliminary & Final Major Site Plan

Location: Melbourne Lane

100 Affordable Multi-Family Units/Community Center With Associated Site Improvements.

Mr. Costa swears in Mr. Riley (attorney), Mr. Steve Bach PE, and Mr. Robert Hunter. Mr. Riley explains the purchase of land for Revere Run with Stimulus funds and the need for a use variance.

Mr. Steve Bach explains 8.6 acre site and how The Gloucester Township Housing Authority will be managing the site. The development will be COAH applicable.

Mr. Bach hands out photos of the site (aerial), site plan, and zoning uses and variance data sheet with density variance data.

Mr. Bach continues to explain the plans

- 1.) fee simple
- 2.) rental units
- 3.) 3500 sq. ft. community center
- 4.) MeetsHMTA requirements with amenities and apartment size.

Mr. Bach also explains the need for a use variance as the apartments will be in a single townhouse zone. The density variance is needed for 12.29 units per acre, COAH use 12.1 for affordable housing. Mr. Bach continues with positives for granting the density variance:

1. beneficial use
2. guide the development of the land
3. COAH use
4. The C variance is needed for the unique shape of the land.
5. Lot 17 storm water basin will be joined with existing new project.
6. Tax maps will be cleaned up in reference to the lot lines and water basin.
7. ITE traffic, average is 1.6 parking spaces for a 2 bedroom, thus the space provided is sufficient.
8. Architecture will appear to be town houses.

Mr. Lechner reviews submission waivers with Mr. Bach.

Mr. Lechner sites page 3 of the report and all comments.

1. waiver for #2 traffic impact statement.
2. EPA report submitted at final
3. recycling report due at final
4. expansion N/A
5. #5 thru #10 all provided at final
6. # 11 N/A
7. #12, #13,#14, all provided at final

8. Waiver for basketball court and tot play ground
9. If any variances change they will notice and apply
10. They will work with Mr. Lechner's comments.

Mr. Lechner would like upscale, ornamental lighting put in place if the funding is available, this will also be considered at final.

Mr. Bach answers questions about the 1/27/2010 Churchill Engineering report. They will comply with the letter, work on drainage and additional traffic, RSIS standard trips.

Mr. James Mellett PE asks the applicant to check with emergency services, and to contact waste management.

Mr. Bach states they have a pilot agreement with the township.

Mr. Riley states this is a green project with solar on top of the buildings.

Vice-Chairman Simiriglia asks the total of building units.

Mr. Bach replies "16".

Vice-Chairman Simiriglia inquires about the retention basin for the park.

Mr. Bach replies they will remedy the basin.

Mr. Bucceroni asks if eminent domain will be involved.

Mr. Bach states "no" they will be purchased and no other property is considered.

Chairman Richards asks a question about traffic impact.

Mr. Bach states traffic impact is low.

Vice-Chairman Simiriglia inquires about the fire report.

Mr. Bach states nothing is submitted before the final and MUA/Aqua have a lot of pieces left.

Mr. Mellett inquires to trash pickup.

Mr. Bach states they are planning on curbside pickup.

Mrs. Giusti inquires about parking spaces.

Mr. Bach answers there will be no designated spots except for handicap parking.

Mrs. Giusti asks about snow removal.

Mr. Bach states they were planning on shared services with the township.

Mrs. Chiumento asks if the apartments will be handicap accessible.

Mr. Bach states they will be wheelchair accessible and have the capability to be converted to handle disabled.

Mr. Lechner wants to make sure the rents comply with COAH. Mr. Lechner explains the acreage issue, cul de sac, and side yard variances.

Mr. Mellett inquires about the basic maintenance for the buildings.
Mr. Bach states The Gloucester Township Housing Authority will be handling maintenance.

Opened to the Public:
No Comments

Opened to the Professionals:
No Comments.

A motion to approve the above-mentioned application with the following stipulations: resolution will state, density variance, use variance, 5 bulk variances, waivers, and the minor subdivision, was made by Vice-Chairman Simiriglia and seconded by Mrs. Chimento.

Roll Call:	Vice Chairman Simiriglia	Yes
	Mr. Bucceroni	Yes
	Mr. McMullin	Yes
	Mr. Gunn	Yes
	Mrs. Chimento	Yes
	Mrs. Giusti	Yes
	Chairman Richards	Yes

Application Approved.

******10 minute break*******

Roll Call:	Vice Chairman Simiriglia	Present
	Mr. Marks	Absent
	Mr. Fabricius	Absent
	Mr. Fuscellaro	Absent
	Mr. Bucceroni	Present
	Mr. Domiano	Absent
	Mr. McMullin	Present
	Mr. Gunn	Present
	Mrs. Chimento	Present
	Mrs. Giusti	Present
	Chairman Richards	Present
	Mr. Costa	Present
	Mr. Mellett	Present
	Mr. Lechner	Present

#010002CDMSP
Blackwood Storage, LLC
Block: 8301 Lot: 1

Bulk C, use variance, minor site plan & site plan waiver

Location: 851 North Black Horse Pike, Blackwood NJ 08012

Outdoor Advertising Sign With Commercial Message With Changeable Copy.

Mr. Costa swears in Mr. Robert Mintz, attorney, Mr. Canter, traffic expert, Mr. Bruce McKenna PE, Mr. Addison Bradley, planner, and Mr. Jeff Grubb , principle.

Mr. Mintz discusses signage that was denied by a vote of 4 to 3 once before. He explains the need to revisit the zoning issue. Mr. Mintz also states he thinks there was a mistake on the zoning map that made his clients property an IN zone as it was previously a GI zone. If the board finds the map has an error on it, he requests it be corrected.

Mr. Addison Bradley revisits the aerial view of the property and explains why he thinks it was a zoning map error.

Mr. Lechner states it is an IN zone.

Vice-Chairman Simiriglia asks Mr. Costa if the Town Council may have to be used in this case.

Mr. Costa quotes from 4055DB that the board of adjustment must hear and decide zoning map decisions.

Mr. McKenna explains A2 site plan and use variance plan dated 12/2/2009.

Mr. Bradley refers to page 8 of the zoning history master plan that goes back to 1955. He states no ordinance was passed to change the zoning of the applicant's property on the zoning map. The only thing that changed was the zoning map on 6/27/2000 when the property changed from a LI to an I.

Vice-Chairman Simiriglia states it seems out of context for an I zoning. He wishes the governing body to address that issue.

Mr. Costa states even if it's proven that the property should have been left a GI the applicant still needs a use variance for the height of the sign. Mr. Costa explains **Res Judicata** as this application today as being a NEW application NOT a continuation of the previous application.

DEFINITION IS AS FOLLOWS:

RES JUDICATA

“Lat. "the thing has been decided" The principle that a final judgment of a competent court is conclusive upon the parties in any subsequent litigation involving the same cause of action.

The general rule is that a plaintiff who has prosecuted one action against a defendant and obtained a valid final judgment is barred by Res judicata from prosecuting another action against the same defendant where (a) the claim in the second action is one which is based on the same factual transaction that was at issue in the first; (b) the plaintiff seeks a remedy additional or alternative to the one sought earlier; and (c) the claim is of such a nature as could have been joined in the first action. Underlying this standard is the need to strike a delicate balance between the interests of the defendant and of the courts in bringing litigation to a close and the interest of the plaintiff in the vindication of a just claim.

The Full Faith and Credit Act, 28 U.S.C. S 1738, requires that federal courts "give a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered. " *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). Oregon courts adhere to standard principles of claim and issue preclusion. See *Rennie v. Freeway Transp.*, 294 Or. 319 (1982).

The difference between the two concepts has been succinctly described by Justice Potter Stewart: The federal courts have traditionally adhered to the related doctrines of res judicata [claim preclusion] and collateral estoppel [issue preclusion]. Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. *Allen v. McCurry*, 449 U.S. at 94. The collateral estoppel bar is inapplicable when the claimant did not have a "full and fair opportunity to litigate" the issue decided by the state court. *Id.* at 101. Thus, a claimant can file a federal suit to challenge the adequacy of state procedures."

A motion to approve the zoning map is in error (there was a mistake made on the map when printed) and the applicants property should have been left GI was made by Mr. Bucceroni and seconded by Mr. Gunn.

Roll Call:	Vice Chairman Simiriglia	No
	Mr. Bucceroni	Yes
	Mr. McMullin	Yes
	Mr. Gunn	Yes
	Mrs. Chiumento	Yes
	Mrs. Giusti	Yes
	Chairman Richards	Yes

Approved

A motion for Res Judicata (this is NOT the same application) was made by Mr. Bucceroni and seconded by Mr. McMullin.

Roll Call:	Vice Chairman Simiriglia	No
	Mr. Bucceroni	Yes
	Mr. McMullin	Yes
	Mr. Gunn	Yes
	Mrs. Chiumento	Yes
	Mrs. Giusti	Yes
	Chairman Richards	Yes

Approved

Mr. Mintz explains that the size of the sign is smaller because the removed the top banner.

Mr. Bradley explains the application and waivers needed. The site plan impact is minimalistic because the circumference of the pole being constructed is the only impact.

Mr. Lechner states the administrative code states you can't do a site plan without survey data. You have to reference a survey for the site.

Mr. Mintz states the applicant will supply a survey if the application is approved.

Mr. Bradley and Mr. Mintz go through the application considerations in great detail, variance needs, freedom of speech, tag line about Gloucester Township being business friendly, tree trimming, NO removal of trees.

Mr. McKenna and Mr. Mintz discuss the minor site plan, permit to DOT was granted, 1,000 ft. separation, separation between signs 3,000 ft., 91ft. height for the sign. Hand outs showed the board a site image and a hand sketch of the sign. Mr. McKenna continues with an explanation of the cantilevered sign and how it would NOT fall into the roadway because of its design.

Vice-Chairman Simiriglia asks for a clarification of the acceleration lane and the 1,000ft. rule also the definition of an interchange.

Mr. McKenna explains in great detail township vs. state ordinances in great detail.

Mr. Canter discusses design and criteria for the sign plus driver safety. He also discusses traffic studies, human reaction to stimuli, ASHTO control actions and study of interchanges.

Mr. Gunn asks Mr. Canter if there are inconsistencies between state and local regulations. Mr. Canter states "often".

Mr. Mellett ask Mr. McKenna discuss the foundation of the sign. Mr. Mellett requests the Geo tech tests soil, if the installation of the pole will be pile driving, with concrete, with little real impact to the area.

A motion to approve the use and height of variance with a copy of the previous survey was made by Mr. Gunn and seconded by Mrs. Chiumento.

Roll Call:	Vice Chairman Simiriglia	No
	Mr. Bucceroni	Yes
	Mr. McMullin	Yes
	Mr. Gunn	Yes
	Mrs. Chiumento	Yes
	Mrs. Giusti	Yes
	Chairman Richards	Yes

Approved

A motion to approve the waiver of a minor site plan was made by Mr. Bucceroni and seconded by Mr. Gunn.

Roll Call:	Vice Chairman Simiriglia	No
	Mr. Bucceroni	Yes
	Mr. McMullin	Yes
	Mr. Gunn	Yes
	Mrs. Chiumento	Yes
	Mrs. Giusti	Yes
	Chairman Richards	Yes

Approved

A motion to waivers: 5ft. front right of way, lot average 55/ 57.2, height, V-shaped sign size, set back, interchange 685, was made by Mr. Gunn and seconded by Mrs. Giusti.

Roll Call:	Vice Chairman Simiriglia	No
	Mr. Bucceroni	Yes
	Mr. McMullin	Yes
	Mr. Gunn	Yes
	Mrs. Chiumento	Yes
	Mrs. Giusti	Yes
	Chairman Richards	Yes

Approved

1/28/2010 10 10 ZB

#092067CDMSP

T-Mobile Northeast, LLC

Zoned: R1

Block: 15805 Lot: 8

Bulk C, Use Variance & Minor Site Plan

Location: 1858 Sicklerville Rd.

Wireless Communication Facility.

The above mentioned application will be continued to the 2/25/2010 zoning board meeting with no need to re-notice by the applicant.

A motion to adjourn was made by Mr. Bucceroni and seconded by Mrs. Guisti.

Respectfully submitted by Jean Gomez, recording secretary.