

Township of South Hackensack
 PLANNING BOARD
 April 28, 2011
 MINUTES

At 7:36 p.m. this meeting was Called to Order. Pursuant to the Open Public Meetings Act, adequate notice of this meeting was provided to The Record and The Herald News and by posting a copy of the meeting notice on the bulletin board in the clerk's office where notices are customarily posted.

The Chairman led the Flag Salute.
 The Secretary called the Roll.

Members Present

Darren Allen	Pat Spadavecchia
Frank Cagas	Ray DeRiso
Al D'Ambrosio	Frank Capolupo
Leo Rossi	Anthony Vigilanti
Walter Eckel	Elliot Sachs, Boswell Engineering
John Schettino, Esq.	

Minutes

Capolupo **motioned**; D'Ambrosio **seconded** to approve the Minutes of March 24, 2011. DeRiso abstains and the remainder of Board in favor.

Old Business

PB #2010-06 - Rehearing

310 Huyler Street – Bruno
 Block: 37 Lot: 1, 54
 Minor Subdivision, Site Plan, & Variances
 Revised Site Plan Drawing

Mr. William Lindsley
 Attorney for Applicant

Application was initially rescheduled for a motion for reconsideration. This morning in conversation with the board attorney, a second board member is disqualified for the reason he owns property within the 200 foot list.

F. Cages entered the meeting.

Since there are two members who are disqualified from participating the board hearings, the previous hearings are tainted and voided and submit to the Board to start the entire application fresh.

Schettino agrees with the starting over. He stated that the Board members who participated were unaware that the conflict existed. There is a conflict: 1. if you own property within the 200 feet, automatic conflict 2. if employed with a business owner within the 200 feet, is not so much to say that instelf is the conflict. The conflict is the appearance. It could appear to someone that they would have an interest in the application based upon their immediate family being employed by a business within in the area. In this case, the business owner is objecting to the application. Not to say there was something done inappropriately. But by law, if there is an appearance of conflict basically, that individual is disqualified and should not participate. And to clarify, cannot hear the applicant, you cannot sit at the dais, but have to sit actually in the audience. It even suggests that you are not present at the meeting. But that is not to say you cannot. If you wanted to you could. There are some case that judges stated that the best practice is you must remove yourself entirely from the room.

Vigilanti stated that his wife works only 3 hrs every other Saturday and does not work for a business 200 feet from the applicant. She works on the other side of town, on Calicooneck.

Schettino stated that it doesn't matter is she works at which location. The business is owed by the same person. Also, it doesn't matter is she works 10 minutes or a volunteer. Fact of the matter that she is working for the same employer who is objecting. It is to the Board's benefit that something like this is pointed out. Because if you participate and it is pursued and discovered there will be an issue of it not being disclosed.

If you disagree with it, you can write to the State Ethics Board and they will give you an advisory opinion. If you write them, ensure that all the facts are included because the decision is very fact sensitive.

Also, it has been brought to my attention that one Board member may have performed plumbing work for the applicant. In my opinion, if the individual did have a single plumbing job three years ago it would not be a conflict. If someone was hired as a contractor on call this may be considered a conflict.

It was Schettino's recommendation to vacate prior decision and reschedule the matter for a new hearing on May 26, 2011. Applicant will have to renofice, readvertise and present the witnesses.

Rossi motioned, Allen seconded; to vacate prior decision and reschedule the matter for a new hearing on May 26, 2011. All escrows need to be satisfied prior to next meeting.
 Yes: Allen, Cagas, D'Ambrosio, DeRiso, Rossi, Spadavecchia, Eckel.
 No Vote (Recusal): Capolupo; Vigilanti.

Bruno questioned if he could leave the building where it is and open a convenience/wine store.

Schettino advised Bruno that this was a question for the Zoning Officer.

Open To The Public

Vincent Graziano
9 Sievers Lane

Graziano read to the Board: Hughes v Monmouth University; Docket # A222706T2
Appellate Decision: "The court decision on this subject emphasis the fact sensitive of nature of each potential conflict ... the official may have an interest in the subject matter and still vote on the issue if that interest is not sufficient to exert undue influence on his/her decision

Schettino replied that ideally if you have a case that stated you have a board member whose wife is employed by an objector within the 200 feet that would be very valuable. To be sure that some is not going to raise accusations and put in a position that would have to defend self, a written opinion from the NJ State Ethnic Board should be sought. Your position is that the board should avoid counsel because of a dictum you read is you provocative but not mine.

Graziano stated that there should be at time frame.

Schettino stated that would be for the state to decide. If you feel that someone else here has a conflict, please advise the board now. If you made an objection after 45 days of publication of resolution, you will probably be time barred from doing so.

Vigilanti asked, what happens if my wife quits her job?

Schettino said he would have to look into it. If she quits and rehires after the application, you will be opening yourself to potential liability.

Pat Paella
Phillips Avenue

Mr. Paella stated, I wish the benchmark you set here tonight for the decorum for these types of matters could be followed by Congress. And if they did, the light would go off, because it is one big conflict of interest you could not even calibrate. They have business interests in all the business. Why does the matter like this go before a small committee rather than be put up on referendum for a vote?

Schettino stated that the state law permits the municipalities to establish zoning boards. There is a statue that these types of applications be heard by zoning boards.

Unidentified Woman in Audience
Wanted to ask a question about the application.

Schettino stated that the board should not be given statements when the applicant is not present without his attorney. If questions are generic, that is a question the public could ask. The public may speak when the applicant is present with his attorney. It is not appropriate to influence the board without them being present.

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Tony Competellio
Owner of Deli within 200 foot

Competellio asked how deep is the conflict of interest? Mrs. Vigilanti works 3 ½ weeks in a year. Mr. Bruno is a customer of Mr. Rossi. He has more to gain than she.

Schettino replied that you have come forward and have clearly stated the application has a direct impact on you. You have an employee of yours, whose husband on this board and have an opportunity to participate in this application that her immediate employer has already told the board it is of the utmost importance to him. The board is not to weigh how important this job is to them. Because some people if they work 2 or 3 hours a week could mean the difference to them. Just the appearance is enough, I think, for anyone to conclude there is a clear conflict of interest here. But this is my opinion.

Rossi stated that you are saying that the 7-11 will hurt your business. This is competition. This country is based on it. This applicant has been in business for 25 years. After he got put in, Tony G's got put in, he came in and complained. Tony G's still got put in. You came in and put in a deli. There are two other people who got put in. where's does it stop. No one said you could not put your deli there.

Competellio stated that you have more to lose than June does.

Schettino stated that if the facts were this, that Mr. Bruno's brother is owner of the property, this is presently before the board; has an ownership in the property and that the member of the board is a customer that does business with Mr. Bruno. Then it would be a conflict. But Mr. Bruno's brother does not have interest in the property that is before the board. I don't see the conflict.

CLOSED TO PUBLIC

PB 2011-01

Memorialize Resolution

Mansera - 434 Rt 46 West

Block: 1.01 Lot: 4.19

Subway/Mini Mart

Site Plan Application

D'Ambrosio **motioned**; Allen **seconded** to memorialize the resolution;

Yes: Allen, Cagas, Capolupo, D'Ambrosio, DeRiso, Rossi, Spadavecchia, Vigilanti, Eckel.

New Business

Ordinance 2011-07 – Amending and Supplementing Chapter 208 of the Code of Township of South Hackensack entitled “Zoning”; Garfield Park Area.

For Board review and recommendations; comments to be submitted to Township Clerk within 45 days.

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The Board inquired if the Ordinance was specifically for Garfield Park. The following were the Board concerns:

1. **208-59 Definitions, BUILDING HEIGHT.** A clear definition of **BUILDING HEIGHT** is sought from the Committee.
2. **208-60 Permitted Uses VII.** Committee would like a **"PROBITED USES"** with a comprehensive listing. Listing should include places of entertainment and massage parlors.
3. **208-66 Parking Requirements VII.** The Township does not have nonresidential Use standards.
4. **208-65 Architectural Standards and Design Guidelines. A. Massing.** The Committee would like a definition or a simpler explanation.
5. **208-66 Parking Requirements and 208-66 Utilities, Facilities, Landscaping, Lighting and Circulation.** Both share the same number.

The secretary type a letter to the Township Committee regarding the Board's concerns stated above.

Ray DeRiso was asked by Mayor Eckel to contact Kauker and Kauker directly to discuss the Zoning Issues with them.

Public Comments

No Comments

Board Discussion

No Discussion.

At 8:45PM, D'Ambrosio **motioned**; Allen **seconded** to adjourn. **All in favor.**

Respectfully Submitted,



Lydia Heinzelman
Secretary

April 28, 2011

RESOLUTION

PLANNING BOARD OF THE TOWNSHIP OF SOUTH HACKENSACK

Whereas, Manseva, Inc., has applied to the Planning Board of the Township of South Hackensack under Case No. PB 2011-01 for approval for a change of use in order to convert an existing warehouse space into a Subway/QuickMart business on premises located at 434 Rt. 46 West, South Hackensack, New Jersey and designated as Lot 4.19, Block 1.01 on the tax assessment map of the Township of South Hackensack; and

Whereas, the applicant has by affidavit presented proof to the Board that all owners of property situate within and without the municipality and within 200 feet of the premises to be affected have been given notice pursuant to the applicable statute; and

Whereas, an affidavit of publication has also been submitted attesting to publication in The Record on March 11, 2011 of a Notice of Hearing; and

Whereas, on March 24, 2011, the Board held a public hearing at which time they heard testimony and considered the arguments on behalf of the applicant; and

Whereas, at the hearing of March 24, 2011 the applicant presented an application requesting approval for a change of use to convert existing warehouse space into a Subway/QuickMart; and

Whereas, on March 24, 2011, the Board after due consideration and deliberation approved said change of use to convert warehouse space into a Subway/QuickMart; and

Whereas, the following Board Members were present and voted to approve the application: Al D'Ambrosio, Chairman, Frank Capolupo, Frank Cagas, Pat Spadavecchia, Anthony Vigilanti, Ray De Riso, Leo Rossi, Walter Eckel and Darren Allen; and

Whereas, pursuant to N.J.S.A. 40:55D-10(g), said decision must be reduced to writing and include findings of fact, conclusions based thereon; and

Whereas, on April 28, 2011 the Planning Board in an open and public session, does hereby adopt, ratify and confirm the following as its findings of fact and conclusions of law:

1. The applicant, Manseva, Inc., is the lessee of a portion of the premises known as Lot 4.19, Block 1.01 on the Tax Assessor's Map of the Township of South Hackensack, also known as 434 Rt. 46 West.

2. The property is owned by Weedo Enterprises who has consented to the within application.

3. The lot is approximately 32,900 square feet and fronts on Rt. 46 West. The property is located in the "M" District which permits eating and drinking establishments, fast food restaurants and retail sale of goods.

4. There is an existing one-story 9300 square foot masonry building on the site consisting of three (3) commercial uses; a club, a warehouse and vacant retail space.

5. There will be no exterior improvements other than a new façade.

6. The applicant will utilize 3000 square feet of the existing warehouse space and convert it into a Subway/QuickMart.

7. The site presently provides 51 parking spaces; 38 parking spaces are required for the proposed use.

8. The proposed Subway/QuickMart requires ten (10) parking spaces; twelve (12) will be provided and dedicated to said use.

9. No variances are required for the requested change of use and improvements and renovations.

10. The following nonconformities are preexisting:

	<u>Existing</u>	<u>Required</u>
Front yard setback	38.5	45'
Side yard	9.25'	20'
Landscaped area	1%	20%

11. Tsampicos A. Perides; a licensed architect, testified as follows:

There is an existing one-story 9300 square foot commercial building with three (3) uses; a club, a warehouse and

vacant retail space. The applicant will improve the aesthetics of the building by placing a new façade of approximately 20 square feet. The application does not require any variances. The new façade will be a stone face and stucco. The existing sign will be utilized; however, the name and colors will be changed. The parking calculation is based upon one (1) space for every 200 square feet. The club requires fifteen (15) parking spaces; the vacant retail, thirteen (13) spaces and the proposed Subway/QuickMart, ten (10) parking spaces for a total of thirty-eight (38) parking spaces where 51 are provided. There will be six (6) tables and approximately 20-24 seats.

12. Ravi Gupta, the applicant, testified as follows:

The hours of operation will be seven days a week, from 5:00 A.M. to 11:00 P.M. There will be 4-5 employees. Deliveries are made once a week. The existing trash enclosure on the northwest corner of the property will be utilized by Subway/QuickMart. All deliveries will be from the back of the store.

Whereas, the Planning Board, based upon the foregoing findings of fact, hereby concludes that:

1. The granting of approval for a change in use in order to convert existing warehouse space into a Subway/QuickMart is appropriate.

2. The granting of a change of use from a warehouse to a Subway/QuickMart will not be in conflict with or detrimental to the intent and purpose of the zone plan and zoning ordinance as the proposed use is permitted and is consistent with the area.

3. The Board finds that the plan prepared by Tsampicos A. Perides represents an appropriate design for the use of the site and that same is an overall benefit to the neighborhood and community as a whole.

4. The Board further finds that the within application meets the ordinance requirements for the reasons more particularly set forth in the record including the testimony of the applicant's architect, Tsampicos A. Perides.

Now, Therefore Be It Resolved that the Planning Board of the Township of South Hackensack hereby approves the application of Manseva, Inc. for a change in use in order to convert existing warehouse space into a Subway/QuickMart on premises located at 434

Rt. 46 West and designated as Block 1.01, Lot 14.19 on the Tax Assessment Map of the Township of South Hackensack subject to the following terms and conditions:

1. The six (6) tandem parking spaces shall be dedicated for employees only.
2. The two (2) existing handicapped parking spaces shall be relocated to the middle front of the building.
3. All deliveries shall be made to the rear of the store.
4. The applicant shall comply with all recommendations made by the Fire Department and Police Department.

On April 28, 2011 according to the below indicated votes.

<u>Name</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>No Vote</u>
Walter Eckel, Jr. Mayor	✓			
Al D'Ambrosio Chairman	✓			
Frank Capolupo	✓			
Frank Cagas	✓			
Pat Spadavecchia	✓			
Anthony Vigilanti	✓			
Ray DeRiso	✓			
Leo Rossi	✓			
Darren Allen	✓			

APPROVED (9)

DISAPPROVED (2)

MOTIONED: D'AMBROSIO

2nd: Allen

Attest:

Lydia Heinzelman

Approved: *Alfred J. D'Ambrosio* 5/11/11

Lydia Heinzelman
Secretary

Al D'Ambrosio
Chairman

I hereby certify the foregoing to be a true copy of a resolution adopted by the Planning Board at a meeting held on the 28th day of April, 2011.

Lydia Heinzelman
Lydia Heinzelman, Secretary

CERTIFICATION TO THE RESOLUTION
OF THE TOWNSHIP OF SOUTH HACKENSACK

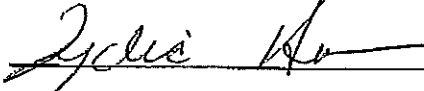
DATED: APRIL 28, 2011

REGARDING THE APPLICATION OF:

MANSEVA, INC.

APPLICATION NO. 2011-01

I hereby certify that the foregoing resolution truly represents the resolution passed by the Planning Board of the Township of South Hackensack on April 28, 2011, 9 members present voting affirmatively 2 members voting in the negative, and 2 members abstaining.


Lydia Heinzelman, Secretary