

**SPARTA TOWNSHIP
ZONING BOARD OF ADJUSTMENT
MEETING OF MARCH 14, 2018**

The Zoning Board of Adjustment Meeting of the Township of Sparta was held in the Sparta Township Municipal Building and was called to order by Chairman Wilbur Goldschmidt at 7:30 PM, with announcement that adequate notice of this meeting had been given to the public and the press under provision of the "Open Public Meetings Act".

Members Present: William Makowitz, Tim Parker, Ellen Maloney, Michael Jozefczyk, Richard LaRuffa and Wilbur Goldschmidt

Members Absent: Thomas Molski, Kenneth Laury and Randy Burke

Others Present: Christopher Quinn, Esq.
David Manhardt, P.P.
David Simmons, P.E.
Maureen R. Donnelly, Zoning Officer

**SCHEDULED APPLICATIONS:
LAKE MOHAWK COUNTRY CLUB # 2-18**

MINUTES APPROVED:

Dr. Parker made a motion to approve the minutes of February 28, 2018. Mr. LaRuffa seconded the motion and the roll was as follows:

Mr. Makowitz	Yes	Dr. Parker	Yes
Mr. Jozefczyk	Yes	Mr. LaRuffa	Yes
Ch. Goldschmidt	Yes		

**PUBLIC HEARING:
LAKE MOHAWK COUNTRY CLUB # 2-18
11 WEST SHORE TRAIL**

Chairman Goldschmidt advised that it is the practice of the Board to adjourn at 10:30 and not to start any new applications after 10:00 PM. He advised the Applicant that the Board has only six members in attendance and asked if they wanted to proceed with the hearing?

Kevin Kelly and Megan Ward, of Kelly & Ward in Newton appeared for the Applicant. Mr. Kelly asked Dr. Parker if he felt he could be impartial since he had voted no on the Planning Board application?

Dr. Parker stated that he has reviewed the same information that all the Zoning Board members received and feels he can sit on this application and be impartial.

Mr. Kelly requested a 10 minute recess to confer with the Applicant.

The hearing reconvened at 7:45 PM and Mr. Kelly advised that they will proceed with the six members present. He explained that they are here to settle the case at the request of the Judge who requested they apply to the Zoning Board due to a jurisdictional issue regarding

non-member user fees. The Judge advised them to take the Planning Board record to the Zoning Board to determine whether a use variance is required. Mr. Kelly reviewed the letter of Dec. 8, 2017 to the Judge which indicates the application is for settlement purposes only. He reviewed the history of the application which started in September, 2016 with four hearings before the Planning Board that ended on March 1, 2017 with a tie vote. The application is for an amended site plan to “spruce up” the parking lot. When the Club was planning the improvements the issue came up as to who pays for the maintenance of the lot since it is used by the public as well as members. During the hearings, all the land use and site plan issues were resolved with conditions of approval in the resolution. The parking lot is an existing accessory use dating back to the 1920’s and is a grandfathered use. They request recognition of it as an accessory use and an Interpretation that a variance is not required to charge user fees. Mr. Kelly referred to case law in the *Bellevue v. Parillo’s Inc.* case which requires Boards to focus on the quality, character and intensity of the use. “The inquiry must address the basic character of the use before and after the change.” Mr. Kelly explained that only Lake Mohawk members pay for the maintenance of the lot and the only change here is that non-members will contribute, but the same people will be parking there. There will be no change to the percentage of members versus non-members and the improvements will add 18 new spaces from re-striping.

Thomas Lemanowicz P.E., P.P. of C. P. Engineers was sworn in to testify. He is a licensed P.E. and Planner since 1998 and represents both Applicants and Boards. He referred to his Planners Report dated March 8, 2018 which was marked as Exhibit A-1. He explained that non –members who are wedding guests for the Club will not be charged, but people who are going to places other than the Club facilities will be charged. They are requesting an Interpretation that a variance is not required for a pre-existing lot from the 1930’s and referred to the aerial photo in the report from 1956 that shows the existing lot. The question of whether it is a principle or accessory use is not listed in the ordinance which was written after the lot existed. He referred to Appendix # 3 of the report which is a Parking Agreement from 1982 between the Club and the owners of 27 West Shore Trail for six parking spaces which was a condition of approval from the Planning Board’s resolution. In 2003 and 2008 resolutions of the Planning Board also included parking agreements with other parties for the leasing of 10 parking spaces including for the Township Firehouse property and the buyer of the firehouse. The agreement included a deed of cross easements with the Township and the Club based on an annual fee of \$170 per space which is referenced in Appendix 6 of the report, “Deed of Cross Easements for Access and Parking with Township of Sparta.” At this time, the Board recognized paid parking as a permitted accessory use. In addition, under this agreement, the Club was authorized to gate off the parking lot under item (e) which states, “LMCC reserves the unilateral right to install a gate”. This indicates that the lot has historically been considered an permitted accessory use with payment for parking spaces and the permission and right to gate the lot as approved since 1982.

Ch. Goldschmidt stated that renting spaces by the hour is different than leasing spaces and referred to renting an entire house or renting out rooms by the hour. He also referred to the ordinance which states that no business can be conducted outside the confines of a building, and stated that this is a retail business.

Mr. Lemanowicz stated that he disagrees since the case law states that the standard the Board must focus on is changes and impacts to the neighborhood which is different than renting a two family home.

Mr. Kelly disagreed and stated that this is not a landlord/tenant situation.

Dr. Parker stated the first step is for the Board to determine if this is a D variance or not and then the Applicant can present their proofs for the Use. Based on the proposal to charge people for parking which is not in the ordinance or Master Plan it would need a D variance and he would recommend a motion for this.

Ch. Goldschmidt asked that they focus on the Interpretation request first to resolve that question before testifying on the D variance.

Mr. Kelly explained that they are putting the legal criteria on the record at the direction of the court and have testimony to present on the Interpretation. He asked Mr. Lemanowicz if the parking lot is currently used by members and non-members? He also asked if an approval is granted will there be any change to who uses the lot?

Mr. Lemanowicz stated the parking lot is used by both members and non-members currently and the approval will not change that. Based on the case law the issue is the intensity of the use and if there are any impacts to the neighborhood.

Mr. Kelly stated that only members pay for the maintenance of the lot and if the Board grants approval for non-member paid parking will there be any impacts to the neighborhood?

Mr. Lemanowicz stated that it will provide parking for the businesses and better funding for the maintenance and for the use of White Deer Plaza customers.

Mr. Kelly referred to the recorded Cross Easement Agreement found on page 34 of the report and asked Mr. Lemanowicz to explain paragraph E-1.

Mr. Lemanowicz stated the agreement reserves the unilateral right for Lake Mohawk Country Club to install a gate or restrict access except for the owner of the Firehouse who retains the use of 10 spaces under the agreement with the Township Council signed in March, 2009. He explained that there is no change in the intensity of the use or any changes to the agreement from the proposal.

Ch. Goldschmidt referred to the application and stated that it asks for three things, an Interpretation, a D variance if necessary and Site plan approval if the use is approved. Since the Interpretation must be determined first, he requested a motion on the Interpretation.

Dr. Parker made a motion for the Board to find on the Interpretation request that paid parking is not part of the zoning ordinances or Master Plan, is not permitted and requires a D variance. Mr. Makowitz seconded the motion and the roll was as follows:

Mr. Makowitz	Yes	Mr. Jozefczyk	Yes
Dr. Parker	Yes	Mrs. Maloney	Yes
Mr. LaRuffa	Yes	Ch. Goldschmidt	Yes

Mr. Kelly requested a 10 minute recess at this time.

The Board reconvened at 8:46 PM and Mr. Kelly stated they are ready to proceed with the Use variance testimony.

Mr. Lemanowicz was previously sworn in to testify and reviewed section 18-4.24, d-2 Prohibited Uses of the zoning ordinance, which states that any use conducted outside the confines of a building is prohibited. He compared this to outdoor dining with service outside and described the parking use as an accessory use. He reviewed the use variance criteria under 40:55-70d and stated that under purposes (A), “promoting the public health and safety”, the collecting of funds for maintenance will enhance White Deer Plaza and provide a better business environment for the community. Referring to page 22 of his report, he read from the Planning Board resolution # 489, which states, “the Planning Board commends LMCC for its significant improvement efforts in the Township and in this particular property and further finds that the benefits to the purposes of zoning include the provision for an appropriate parking area in a historical commercial district in the Town Center of the Township of Sparta”. Under Purpose (H) “promoting the free flow of traffic”, there is insufficient parking in the Plaza and it would severely impact the businesses if the lot is gated off. Under Purpose (I) “creating a desirable visual environment”, the funding to improve the lot will improve the visual appearance and share maintenance expenses would be spread out evenly over the users. Under Purpose (M) “coordinate more efficient use of land”, they can operate a larger facility with more efficiency than individual smaller lots and the Plaza is a unique area and the LMCC supports it.

Mr. Lemanowicz continued his testimony with “Special Reasons” #1, stating that although the use is not “Inherently good”, it is particularly suited being situated behind the businesses and allows the environment to exist and it is easily accessible with no negative visual impacts. In addressing # 2, the “hardship to the property”, he stated that it is funded 100% by LMCC members and leases but LMCC uses less than 60% of the lot which is an unfair burden. Under # 3, “serving the general welfare”, the property is particularly suited and has served White Deer Plaza since the 1930’s. Under the negative criteria to charge a fee for parking is no different between daily, hourly, monthly or annual rates since there are three existing parking agreements for paid parking currently. The Planning Board required a parking agreement for 27 West Shore Trail and the Township paid for parking spaces for the Firehouse and also for the agreement regarding the sale of the DPW property. There was no zoning issue for paid parking for the past 36 years. In addition he reviewed the Master Plan from 1984 which encouraged the “vitality of the Lake Communities and amenities including parking lot improvements, drainage, circulation and water quality”. The Master Plan Amendment from 1997 also mentions White Deer Plaza in the goals section under “maintain the economic vitality of the existing land uses, improve access, circulation and parking and coordinate the planning of the Main Street area with the improvement in the design of amenities of other commercial areas such as White Deer Plaza”. He explained that the proposed improvements include a monument sign, upgraded sidewalks and landscaping, 18 additional parking spaces, and enclosure of the dumpster area. The plan will provide for the Club to support the Plaza with parking and not overcharge patrons but work together. He explained that under “Historic Considerations” in the Master Plan, the Plaza and Club area is a designated Historic area and enhancing the parking lot will preserve the area. The

plan will reduce impervious coverage, add parking spaces, and limit the expansion of other smaller parking areas with minimal visual impacts since it is behind the buildings and they will be adding new sidewalks and landscaping. He also referred to the Goals and Objectives of the Master Plan Amendment from 2002 and referred to item # 16 “encourage development and redevelopment for planned growth in the identified Town Center consistent with historic character of the White Deer Plaza and Main Street”. He concluded his testimony stating that the change to charge a parking fee to non- members is not a substantial change to the current approved use of the lot and is only to assist in sharing the costs of the lot.

Ch. Goldschmidt asked if the specific request is to charge individuals to park by the hour with collection in the parking lot? He also asked if the application is bifurcated from the site plan?

Mr. Kelly stated the variance relief is limited to the issue of “non-member” fees and they will bifurcate the site plan application.

Stanley Puszcz the Chief Engineer of C. P. Engineers was sworn in to testify. He is a licensed Professional Engineer for 30 years and testified before the Planning Board at the last hearing. He reviewed the plan and stated that currently the parking lot exceeds the required number of spaces by 77 and they will be adding 18 new spaces. The proposal is to create revenue from the operations directly to the Capital accounts for maintenance of the lot. The cost estimate for the proposed improvements necessitate the mechanism to allow the patrons to contribute and the only way to do this is for the fee to be charged at the entrance.

Ch. Goldschmidt asked how the fee will be collected?

Mr. Puszcz replied the plan is to install a gate entrance where you would collect a ticket to park and then when you are leaving there will be a kiosk to pay the fee before leaving through the exit gate.

Ms. Ward asked if LMCC will remain the Operator and also if the proposed improvements will improve and bring the lot into compliance with drainage, aisle widths, handicap requirements and vehicle circulation?

Mr. Puszcz replied yes the improvements are expensive capital improvements and all the costs including taxes and maintenance are paid by the members. He explained an analysis that was done of the use of the lot and it indicated that LMCC uses less than 60% of the lot for their facility and the demand of the businesses is 56% which is a disproportionate share of the costs and burden. The proposal will defray the costs since non-members use adds wear and tear on the lot maintenance at the cost of the members. If the lot is gated off it will impact the businesses.

Mr. Makowitz asked if the businesses are members of LMCC?

Mr. Puszcz explained that the 1929 bylaws stated that homeowners are members and certain properties within White Deer Plaza are members but the tenants are not members. The property owners and business owners may not be the same.

Mr. Makowitz asked how many owners use the parking?

Mr. Puszcz stated that currently tenants and customers do not have the right to park there but they do since several businesses have limited spaces.

Mr. LaRuffa asked if they could clarify the Planning Board resolution and agreement for Dr. Duddy to pay for parking since the Board did not authorize the paid parking. He also asked if the Duddy property will have rights to their spaces through the gate?

Mr. Puszcz explained that as part of the PB resolution # 2327, the Board recommended the property owner enter into an agreement with the Club for parking spaces. It is not the purview of the Board to address costs or fees but they directed the property owner to obtain them. The property owner of 27 West Shore will retain access to their spaces under the agreement.

The Board discussed this further and asked how the lot will be accessed.

Ms. Ward explained that the members will receive a “fob” to access through the gate as well as the Township Utility, emergency vehicles and day care drop offs without any charges. The property owners with the recorded agreements will also enter this way.

Dr. Parker asked how the guests for a wedding at the Club will access? He also asked about the employees of the businesses?

Ms. Ward stated the guests will be provided with temporary codes for any events held at the Club facilities.

Mr. Puszcz explained it is up to the business operators where their employees will park. The diagonal spaces in the Plaza are also owned by LMCC and the Club also pays for their maintenance. The County owns 45 feet for the right of way through the Plaza, but LMCC owns the parking spaces and the sidewalks and is also responsible for their maintenance.

Mrs. Maloney asked if LMCC has talked to the business owners about contributing to the costs?

Mr. Puszcz replied yes, there have been many discussions with the owners and some have agreed to contribute rather than have the lot closed off but currently the businesses are operating with no costs to them. The businesses could also do a voucher system to cover the parking fees for their customers similar to what is done in other communities.

Mr. Makowitz asked if the use could be intensified from the paid parking and it will become a public parking lot?

Mr. Puszcz explained they are only proposing 18 additional spaces for the same use. The parking is limited in the Plaza and the use will remain the same. This is the only private lot that is serving this economic zone of the town and it will remain private. Parking will not intensify and the lot will be improved but the costs will be shared proportionately.

At this time, Ch. Goldschmidt asked for a summary of the testimony since the Board will adjourn at 10:30 PM and they may not get a resolution tonight.

Mr. Kelly requested the Board go past 10:30 if necessary to present all the testimony since this is a unique case.

Dr. Parker asked if the business owners were notified of this matter since they are not in attendance and there was a lot of public participation at the Planning Board hearings?

Mr. Quinn confirmed that the notice was served to the property owners and in the newspaper as required.

Mr. Kelly advised that the business owners are aware of the application since it is an ongoing matter.

Mr. Jozefczyk asked how the public will be notified of the change to pay for parking?

Ms. Ward stated that they will be coordinating a campaign with the Township Police to notify the public of the changes and install new signage.

The hearing was opened to the public and no comments were heard.

Dr. Parker asked Mr. Manhardt and Mr. Simmons if there were any outstanding issues to clarify?

Mr. Manhardt asked if they could clarify how the members versus non-member patrons of the Club will be handled?

Mr. Puszcz explained the users of LMCC facilities will not be charged and the lot exceeds the parking requirements for the Club facilities. Only non-members and non-patrons of the Club facilities will be charged.

Mr. Simmons referred to his last report of 2/1/17 for the Planning Board and stated that the majority of the site plan issues were addressed and all conditions have been agreed to be complied with.

Mr. Kelly summarized the application stating that the days of free parking for non-members is over and the Trustees of the Club have authorized this plan in order to assist with the maintenance costs. The only other option would be to keep the lot private and close it off to non-members. They hope it doesn't come to that but they need relief from this situation. They request variance relief for non-member user fees primarily by the hour but also in a lease for business owners.

Ch. Goldschmidt asked if the request is specifically to charge for parking by the hour?

Mr. Kelly stated the request is for variance relief primarily by the hour or by a lease with the property owners by month, year or long term guarantees.

The Board discussed this further and Mr. Makowitz asked if any other options were considered?

Mr. Kelly replied yes many others have been considered and the plan to defray costs has been endorsed by the Trustees and the Membership.

Ch. Goldschmidt requested a motion at this time.

Dr. Parker made a motion to approve a D variance only and not a site plan to charge fees for parking in an area that is not permitted by the zoning or Master Plan according to the plans and testimony and the PB record provided. Mr. LaRuffa seconded the motion and under discussion, Mr. LaRuffa clarified that the lot will not become public but will remain private, this revision was accepted and Ch. Goldschmidt requested a clarification that the variance is to operate a parking lot as a business and sell parking spaces by the hour. This was accepted and seconded and the roll was as follows:

Mr. Makowitz	No	Mr. Jozefczyk	No
Mrs. Maloney	No	Dr. Parker	No
Mr. La Ruffa	No	Ch. Goldschmidt	No

Ch. Goldschmidt advised that the motion has been denied.

With no further business, the meeting was adjourned at 10:21 PM.

Respectfully submitted,

Maureen R. Donnelly
Land Use Administrator