

March 23, 2023

Township of Randolph
Randolph, NJ 07869
March 23, 2023

A regular meeting of the Randolph Township Board of Adjustment was called to order at 7:30PM by Chairman Sesko. Adequate notice of the meeting was given to the official newspaper and an agenda was posted on the Township bulletin board.

ROLL CALL:

Present: Comrs. Asbaty, Bell, Norman, O'Neill, Stracco, Vice Chairman Dunn, Chairman Sesko, Darren Carney, Assistant Manager/Planning and Zoning Administrator, Richard Schneider, Board of Adjustment Attorney

Absent: Alts. Tatch, Fiscella

ACTION ON MINUTES OF:

PUBLIC COMMENTS: None heard.

MEMBERS COMMENTS:

CORRESPONDENCE:

RESOLUTION:

DATE CREATED: February 27, 2023
REVISED

**TOWNSHIP OF RANDOLPH
BOARD OF ADJUSTMENT**

**RESOLUTION MEMORIALIZING THE DENIAL OF A REQUEST
FOR AN INTERPRETATION PURSUANT TO N.J.S.A. 40:55D-70b
RELATING TO PROPERTY LOCATED AT 256 ROUTE 10 AND**

**DESIGNATED AS BLOCK 137, LOT 29 ON THE OFFICIAL TAX
MAPS OF THE TOWNSHIP OF RANDOLPH**

NAME OF APPLICANT: Dirty-Jerzy Supplies, LLC

LOCATION OF PROPERTY: 256 Route 10
Block 137, Lot 29
Randolph, NJ

APPLICATION NO: 22-17

ZONE: B-2

WHEREAS, Dirty-Jerzy Supplies, LLC (“Applicant”) has applied to the Randolph Township Board of Adjustment (“Board”) for an interpretation that, pursuant to N.J.S.A. 40:55D-70b, the Applicant’s current business operation is a convenience store, as defined by the Randolph Township Land Development Ordinance, and in accordance with the terms of its approval as a convenience store (under Application No. 33-02); and

WHEREAS, the Board conducted a public hearing on January 26, 2023 in accordance with the jurisdictional requirements of the Randolph Township Land Development Ordinance and the New Jersey Municipal Land Use Law; and

WHEREAS, the Board hereby makes the following findings of fact and conclusion of law:

1. The Applicant was represented by Legal Counsel, Thomas Ambrosio, Esq. and presented the testimony of Michael Ligus, a representative of the Applicant. No expert witnesses were presented on behalf of the Applicant.
2. The matter before the Board is a request for an interpretation pursuant to N.J.S.A. 40:55D-70b. This section of the Municipal Land Use Law grants to the Board of Adjustment the power to hear and decide requests for interpretation of the ordinance or for decisions upon other special questions. In this case, the specific relief sought by the Applicant is a request for an interpretation that the current operations of the Applicant, as presented at the public hearing, constitutes a convenience store as defined by the Randolph Township Land Development Ordinance, which convenience store was approved as an accessory use pursuant to a Resolution of Approval granted by the Board to a predecessor in interest of the Applicant under Application No. 33-02.

3. It is important to understand the background of the matter that leads to the present application before the Board. On July 8, 2004, the Board adopted a Resolution memorializing an approval granted to the Applicant's predecessor in interest to construct a gasoline station and convenience store located at the subject property. In conjunction with said application, the Board granted a variance pursuant to N.J.S.A. 40:55D-70d(3) for the gasoline station. At that time, Section 15-35.3C.2 prohibited any part of a public gasoline service station to be used for any other purpose; hence, the proposed use of the property for a convenience store was not permitted. A use variance pursuant to N.J.S.A.4055D-70d(1) was required for the proposed use as a convenience store. The Board granted to the Applicant the requested use variance relief for the proposed use of a convenience store. In large measure, the Board's approval, at the time, was in part based on a determination that a convenience store is necessary for the gas station to effectively and financially operate and that a convenience store, as that term was understood at the time, was an appropriate and compatible use to the gas station in this particular location. Further factual findings were made that the convenience store, in this particular location, would not be the originator of any additional significant traffic and would not create any substantial detriment to the public good. As historically was often the case, convenience stores were routinely approved as an accessory to the gas station based on that use being one that was deemed to be customarily accessory to the gas station. Paragraph 11 of the aforesaid Resolution more particularly set forth the factual findings and conclusions of law in support of the requested relief at that time.
4. To further provide critical background information, summonses were issued relative to the operation of the convenience store for a violation of certain provisions of the Randolph Township sign ordinance as well as a summons relating to the current use not constituting a convenience store, as that term is defined under the Randolph Township Land Development Ordinance. Significantly, the Applicant plead guilty to both summonses, including the Applicant pleading guilty to the current use not constituting a convenience store. In response to the plea of guilty, the Municipal Court granted to the Applicant the right to seek appropriate relief and approvals from the Randolph Township Board of Adjustment for the purposes of determining if the current operation constitutes a convenience store as defined by ordinance.
5. Convenience stores are specifically defined under Section 15-2.2 as follows:

“Convenience store means any retail establishment offering for sale prepackaged food products, household items, newspapers and magazines, and sandwiches and other freshly prepared foods, such as salads, for off-site consumption”.

Based on this definition, the Board is required to interpret whether the current operations of the Applicant constitute a convenience store as defined by ordinance and consistent with the intent of a convenience store as approved in the 2004 application.

6. The Applicant presented the testimony of Mr. Michael Ligus, a representative of the Applicant. Mr. Ligus acknowledged that the Applicant did plead guilty to operating a retail establishment that was not a convenience store as defined by the Randolph Township Land Development Ordinance. The current retail establishment is located in an 800 square foot building to the rear of the existing gas station located off of Route 10. With specific reference to the nature of the products being sold (which inquiry is critical to a determination as to whether the proposed use constitutes a convenience store), the Board is objectively constrained to note that there was a lack of creditable testimony as to the specific nature of the use currently operating and that certain photographs submitted into evidence as Exhibits A-1 through A-7 do not objectively provide a current, accurate assessment of the nature of the products being sold. In this regard, the Board notes as follows: Mr. Ligus indicated that the store in question was now opened to the general public. However, Mr. Ligus acknowledged that almost up to the day of the public hearing there existed a sign prominently posted on the door of the alleged convenience store prohibiting access by any person under the age of 21. The explanation for said sign was that no one under 21 is able to consume tobacco products and since the predominant use of the premises was for tobacco products, such signage was necessary. That argument runs counter to the ultimate argument advanced by the Applicant that its current use constitutes a convenience store. A convenience store, as one reasonably understands its customary usage, is a store that is generally made available for use by the general public, including individuals under the age of 21 for products understood to be generally offered by a convenience store such as newspapers, magazines, sandwiches, prepared foods for off-site consumption, etc. The signage that would restrict access to those under 21 flies in the face of the argument that the current use constitutes a convenience store that would generally be available to all members of the public.
7. The Board made a significant inquiry of the representative of the Applicant to try to understand the exact nature of the products being dispensed at the premises. Objectively, the testimony was less than clear. As best as the Board could understand the ultimate testimony by Mr. Ligus, approximately 75 to 80 percent of the premises is devoted to tobacco or related products. This would include 20% to 25% of the store's product line being devoted to "paraphernalia" related to tobacco products such as products commonly referred to as "bongs" and a similar product line. For example, reference is made to Exhibit A-1, which depicts prominently the physical product line being sold. Additional photographs, such as Exhibit A-5 show the prominent display of hemp products. Additional evidence was referenced containing

the signage of the property, which reflected the use of the property as a “smoke shop” and the sale of such products as CBD, Delta 8, Vape and other associated tobacco products. Ostensibly, the evidence reflected a predominant use of the store as a “smoke shop” selling the aforesaid products, inclusive of related paraphernalia that often is used in conjunction with cannabis, and only a limited portion of the use of the property for products normally associated with a convenience store, such as prepackaged food products and household items, including beverages. Reference in that regard is made to Exhibit A-3, which does show a portion of the store being devoted to refrigerated beverage, as well as Exhibit A-4, which shows the sale of prepackaged snacks. However, by the Applicant’s own admission, a predominant use of the store is devoted to the sale of hemp and related products and paraphernalia constituting a smoke shop and not a convenience store, as defined by ordinance and as specifically was intended to be approved as part of the 2004 approval. The Board further recognizes the sale of clothing, backpacks and related products, and concludes that such products are generally not consistent with the definition of a convenience store (see Exhibit A-7).

8. It should be noted that the Board takes no position as to whether the Applicant has the appropriate licensing to sell the products being sold, and such a matter is beyond the jurisdiction of the Board as it relates to the request for an interpretation pursuant to N.J.S.A. 40:55D-70b. The Board further takes no position as to any aspects of the record that may suggest that there is the sale of cannabis at the premises, which would require a retail cannabis license. All such matters are beyond the jurisdiction of the Board. Based on all of the foregoing, a majority of the Board is unable to find that the current business operation of the Applicant constitutes a convenience store, as defined by ordinance and one which was approved as an accessory use to a gasoline service station in furtherance of the 2004 approvals. Critical to the Board’s decision is the specific definition of a convenience store, which provides for an establishment offering for sale prepackaged food products, household items, newspapers and magazines, and other freshly prepared foods for off-site consumption. Clearly, that is not the nature of the operation presently being conducted. With the exception of an apparent limited use of a portion of the property for beverage products, there appears to be no use of the premises, let alone a significant predominant use of the premises for any of the items that are contained within the definition of a convenience store. It is important to note that the Applicant was specifically offered the opportunity to present a detailed floor plan, which would more clearly identify the totality of the operation for the purpose of putting the sale of tobacco products and paraphernalia in the context of the overall use of the current establishment, the Applicant declined that offer, and the Board is constrained to note that the photographs do not provide a current actual depiction of the totality of the products being sold so that it may find that the establishment constitutes a convenience store. The Board accordingly is constrained based on the actual photographs that were submitted to find

that the establishment has morphed into what is essentially a smoke shop selling tobacco products, including products containing hemp and vape products, all of which the Board is able to conclude are not the type of products that were contemplated as constituting a convenience store consistent with the prior approvals. The Board may well have reached a different conclusion if there was only a limited portion of the products being sold that constituted tobacco and related paraphernalia, but clearly that is not the conclusion the Board is able to draw based on the evidence and photographs presented. The Board is further constrained to note the prohibition of individuals entering the store under the age of 21 (until at least the day of the hearing) as not being consistent with the well-recognized use as a convenience store, a term which would constitute an establishment available to patrons of any age. Based on all of the foregoing, the Board therefore denies the Applicant's request for an interpretation pursuant to N.J.S.A. 40:55D-70b and concludes that, based on the evidence presented, the current use of the premises does not constitute a convenience store as defined by ordinance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Randolph that the interpretation request of the Applicant pursuant to N.J.S.A. 40:55D-70b is hereby denied.

The foregoing Resolution is memorialized on March 9, 2023, pursuant to N.J.S.A. 40:55D-10(g)(2), memorializing a decision of the Board at a meeting of the Board held on January 26, 2023.

APPROVAL OF THE RESOLUTION.

Comrs. Norman, Stracco

OLD BUSINESS:

NEW BUSINESS:

23-01 Susannah Pitman and Micheal L'Eplattnier

B 146 L 78.02, 30 Pierson's Hill Road

C Variance

Alexander Rodriguez, architect, Susan Pitman and Michael L'Eplattnier home owners were all sworn.

Mr. Rodriguez explained the application and noted that the front yard setback is currently 3.35 feet and the proposed front yard set is 1.55 feet. The front door had a covering that will be removed. There will be a new two car garage that will have a 1.55 feet front yard setback. The house will have a mud room that has stairs up to the first floor. The driveway will be made smaller on the as the entrance will change.

Ms. Pitman noted that they own another older home and wish to keep the structure and make in new.

Chairman Sesko asked if there was anything needed for the new driveway.

Mr. Carney noted that a road opening permit from the engineering department.

There was no public present for public comment.

CASE REVIEW:

The Board discussed the application.

Vice Chairman Dunn made a motion and Comr. O'Neill seconded the motion.

ROLL CALL:

AYES: Comrs. Bell, Norman, O'Neill, Asbaty, Stracco, Vice Chairman Dunn, Chairman Sesko

NAYES:

ABSTAIN:

Motion carries.

COMMENTS OF THE BOARD:

ADJOURN: A motion and a second to adjourn.

Attest:

Kimberly Coward
BOA Secretary

TIME: 7:54PM