

**MINUTES
BOROUGH OF WATCHUNG
BOARD OF ADJUSTMENT
APRIL 19, 2012**

Chairman Cronheim called the meeting to order at 7:30 pm and stated that notice of this meeting has been posted in Borough Hall, filed with the Borough Clerk and given to the Echoes-Sentinel, Journal and the Courier-News in conformance with the N.J.S.A. 10:4-6 et seq. The salute to the flag followed.

Present on roll call: Fechtner, Hunsinger, Dallas, Brown, Kita, Bell
Panzarella, Clemens
Absent on roll call: Chairman Cronheim
Also Present: Edward P. Bennett, Jr., Zoning Officer, John P. McDonald, Esq.,
Attorney

CONTINUED APPLICATIONS:

BA 02-12 Bottone, 127 Sunlit Drive, Block 301 Lot 10 – Any and all variances needed to build a driveway that does not meet the required setback.

The Board approved the application. The Board determined since presently the driveway encroaches on the neighbors property, although the driveway will not meet the Ordinance to be at least 10 feet from the property line, it will be 1 foot, it will ease the non-conformity.

APPLICATIONS:

BA 04-12 Menrad, 16 Upper Drive, Block 5101 Lot 15 – Any and all variances needed to build an addition: a garage, one story addition and a two and half story addition, on an existing non-conforming.

The Board approved the application. It was determined that the non-conforming issues of front yard set back and impervious lot coverage will not be increased in the case of impervious lot coverage it will decrease the non-conformity, although variances for side yard and total side yard set back will be added they will be 4 ft and 14 ft respectfully.

RESOLUTIONS:

BA 03-12 Home Depot, Route 22, Block 5703 Lot 2.01/3.01- Any and all variances needed to allow temporary/seasonal outdoor displays and sales.

Approved

There being no further business before the board, the meeting was adjourned until the next regularly scheduled meeting of May 3, 2012 at 7:30 pm.

Respectfully submitted,

Catherine M. Hammel
Clerk. Board of Adjustment

**BOROUGH OF WATCHUNG
BOARD OF ADJUSTMENT**

APPLICATION NO. 2012-3
The Home Depot USA, Inc.
Watchung Square Mall
Watchung, New Jersey
Block 57.03 Lots 2.01 & 3.01

RESOLUTION BA 2012-1

RESOLVED that the Board of Adjustment made the following findings and determinations respecting the above-captioned application.

1. This is an Appeal pursuant to the provisions of N.J.S.A. 40:55D-70(d). The applicant seeks a temporary use variance to permit it to use a portion of the site for exterior displays and sales of home garden and plant materials. The applicant seeks the variance for approximately ninety days: from April 1, 2012 through July 5, 2012.
2. The subject property is located within the Watchung Square Mall on the north side of Route 22. The property contains a mixed-use retail mall.
3. In past years, the Board approved the use described in paragraph one for a period of 30 days. The applicant now plans to request the ninety-day use every year and will come before the Board annually.
4. The permitted uses of the site do not include outside display or retail sale of goods except by special permit, which is limited to 30 days per year.
5. The applicant appealed to the Board of Adjustment on application filed on February 17, 2012. The matter was heard by the Board on March 1, 2012.
6. The applicant was represented by Joseph Murray, Esq.
7. The applicant submitted:
 - a. Seasonal Sales Plan prepared by David Kazerooni, PE dated January 3, 2012;

- b. An undated photograph depicting the outdoor display area as approved by the Board in 2011; and
 - c. An Amended Engineering Site Plan, last revised March 18, 2005 which depicts the parking spaces lost to the proposed outside display area.
8. Mr. Francesco Mezzina, an employee of Home Depot, testified in support of the application. He described the need for the outside display and sales area. He also testified about the success of the outdoor center in past years when the Board had approved a special permit for 30 days.
9. There were no objectors present. The Application is hereby granted for the following reasons and on the following conditions:

Reasons:

- 1. In order to obtain a Use Variance, the applicant must show that:
 - a) special reasons exist to justify the relief; b) there will be no substantial detriment to the public good; and c) the relief will not substantially impair the intent and purpose of the zone plan and zoning ordinances.
- 2. The applicant does not argue that the proposed use is "inherently beneficial."
- 3. The applicant proved at the hearing that special reasons (positive criteria) existed to grant this application. The special reasons are those set forth in N.J.S.A. 40:55D-2 and included the following:
 - g) To provide sufficient space and appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to the respective environmental requirements in order to meet the needs of all New Jersey citizens; and
 - i) To promote a desirable visual environment through creative development techniques and good civic design and arrangement.
- 4. The applicant satisfied the positive criteria of the Municipal Land Use Law as set forth above.

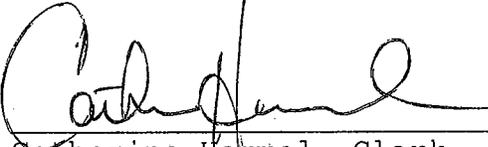
5. In order to obtain relief pursuant to Use Variance, the applicant must prove that the proposed development will not be a substantial detriment to the public good. In other words, the applicant must prove that the development would not adversely affect the surrounding properties. Here, the applicant has proved that the temporary display and sales area will have no negative impact to the surrounding community.
6. The Board heard many details of the applicant's plan which clearly establish that: a) no permanent changes will be made to the property; b) there sales and display are is simply an extension of the uses conducted inside the building; and c) the parking spaces lost to the display are not needed as there is plenty of parking elsewhere.
7. Additionally, the use is compatible with permitted uses in this zone.
8. The applicant is also required to prove, under an enhanced burden of proof, that the proposed use can be reconciled with omission of that use from those permitted in the zone. Stated another way, the applicant must prove that the proposed use will not substantially impair the intent and purpose of the zone plan. The applicant has also met that burden.
9. The Borough Ordinances permit the commercial activities that will be used in the outside display area.
10. For these reasons, the Board finds that the applicant has shown special need and has satisfied, by enhanced proofs, that the negative criteria do not exist. The Use Variance is granted subject to the conditions set forth below.

Conditions:

1. The Use Variance is only for the period of April 1, 2012 through July 5, 2012. The time limitation is that requested by the applicant. The applicant shall apply anew for any similar relief in the future and the granting of this temporary Use Variance will not bind the Board in any future year.
2. No fences shall be erected around the temporary display area.

On Motion duly made and seconded, the Board approved the Resolution:

Roll Call		Approved: 3/1/12				Adopted: 4/19/12			
Member	Y	N	NV	ABS	Member	Y	N	NV	ABS
Cronheim, Ch.				✓	Kita <i>2nd</i>	✓			
Hunsinger, V. Ch.	✓				Panzarella	✓			
Dallas <i>1st</i>	✓				Bell (Alt.1)	✓			
Fechtner	✓				Clemens (Alt. 2)	✓			
Brown			✓						
x = indicates vote NV = Present but not voting ABS = Absent									


 Catherine Hammel, Clerk