

File

TOWNSHIP OF ABERDEEN
ZONING BOARD OF ADJUSTMENT
MONMOUTH COUNTY, NEW JERSEY

APPLICANT: Julius Ausch
APPLICANT'S ATTORNEY: Ronald H. Gordon, Esq.
APPLICATION NO.: SP-89-107
Block 12, Lot(s) 6

RESOLUTION
GRANTING PRELIMINARY AND
FINAL SITE PLAN WITH WAIVERS *+VARIANCES*

WHEREAS, Julius Ausch (hereinafter referred to as the "Applicant") filed an application with the Zoning Board of Adjustment of the Township of Aberdeen (hereinafter referred to as the "Board") seeking Preliminary and Final Minor Site Plan approval with numerous bulk variance request and design waivers; and

WHEREAS, the Applicant has submitted to the Board for study and review a site plan prepared by Maser Sosinski & Associates dated September 20, 1989 with latest revisions of October 4, 1989 consisting of one page and a letter from Line Road Associates dated October 4, 1989 to Blair Line Realty Corp. relevant to the shared parking; and

WHEREAS, all notice requirements were satisfied by the Applicant, and the Board had jurisdiction to hear, consider and determine the application at issue; and

WHEREAS, the Board did on October 25, 1989 and November 15, 1989 conduct a public hearing on said application, at which time various members of the public in attendance were afforded the opportunity to make comments, observations and recommendations concerning the subject application; and

WHEREAS, the Board, after carefully considering the materials submitted and received by it, in addition to careful consideration of the evidence presented at the aforementioned public hearing, in addition to careful consideration of the points raised by adjoining property owners and the general public at the aforementioned public hearing, has made the following factual findings:

1. The Board has proper jurisdiction over this application.

2. Applicant is the owner of the subject premises and was previously granted a use variance by this Board on September 27, 1989 to permit an indoor softball facility in the R0 District.

3. Paul Sterbenz, an engineer licensed in the State of New Jersey, testified on behalf of the Applicant that he prepared the landscape, lighting plan and minor site plan on behalf of the Applicant. Mr. Sterbenz further testified with respect to the physical, on-site condition and has requested on behalf of the Applicant the following variances;

- a. Lot area of 118 thousand square feet where 120 thousand square feet is required;
- b. Side yard of 29.9 feet where 50 feet is required;
- c. Front yard setback of 49.7 feet where 75 feet is required;
- d. Rear yard setback of 45 feet where 50 feet is required;

4. Mr. Sterbenz also testified that the Applicant will be requiring the following design waivers;

- a. Waiver request for submission of an environmental impact statement;
- b. Waiver request for submission of a traffic impact statement;
- c. Waiver request for submission of the delineation of marshes/ponds within 100 feet of the site because no off-site or on-site improvements will take place;

5. The site is located in the R0 Zone and all requested variances are existing non-conformities.

6. Applicant further testified that the required number of parking spaces for this zone is 160 spaces however, the Applicant is proposing 57 spaces on-site with the ability to provide 45 additional spaces off-site on a contiguous piece of property and therefore a variance for the number of parking spaces is also required.

7. The plans and specifications submitted to the Board have been reviewed by Frank W. Hahne, the Board's engineer and have also been reviewed by Richard Thomas Coppola & Associates, the Board's planners.

8. The Board concurs with its engineer's and planner's judgment that the plans and specifications as aforesaid mentioned properly address all relevant concerns and that the Applicant has and will properly address all said concerns.

NOW, THEREFORE, BE IT RESOLVED, by the Board that it adopts the aforesaid findings of facts, and specifically makes the following conclusions:

1. The Applicant has demonstrated the necessary hardship to sustain the granting of the requested variance.
2. The Applicant has demonstrated that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment to the neighborhood and zone.
3. The Applicant has proven to the Board that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and the Zoning Ordinance of the Township of Aberdeen.

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Aberdeen on this 15th day of November 1989 that the application of Julius Ausch for preliminary and final site plan approval with bulk variances and waivers is hereby granted, subject to the the following conditions:

1. Applicant shall comply with paragraphs 4, 5, 6, 7 and 8 of Frank W. Hahne & Associates' letter dated October 12, 1989.
2. Applicant's engineer and the Board's engineer shall agree with respect to the planting as discussed in paragraph 9 of Frank W. Hahne & Associates' letter dated October 12, 1989 and Applicant shall satisfy the Board's engineer with respect to same. Applicant shall comply with any and all requests from the Township of Aberdeen Fire Marshall.
3. There shall be not less than 57 on-site parking spaces and not less than 43 off-site, shared parking spaces.
4. The only waivers granted are those contained within this resolution and Applicant shall comply with any and all waiver requests which were not granted.
5. Applicant shall satisfy the reasonable requirements of the Board's attorney that the proposed shared parking plan is feasible and enforceable by providing such documentation as is necessary for the Board attorney to make said determination.
6. In the event that the shared parking is approved by the Board attorney and said agreement is terminated by the provider of same then, in that event, Applicant shall be required to re-apply for site plan review and approval.

7. Applicant shall satisfy any and all conditions as set forth herein and in the resolution granting Applicant the use variance, said resolution being incorporated herein and dated September 27, 1989.

Moved By: *Mr. Horn*
Seconded By: *Mr. Leach*

Henry C. Arnold
HENRY C.F. ARNOLD, Chairman

Roll Call Vote:
Affirmative: *7*
Negative: *0*
Absent: *0*

CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Board of Adjustment of the Township of Aberdeen at a meeting held on November 15, 1989 as copied from the minutes of said meeting.

Adelaide Bernhardt
ADELAIDE BERNHARDT, Secretary
Zoning Board of Adjustment
Township of Aberdeen

RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ABERDEEN

BLOCK 6 LOT 12
Application # SP-97-109

WHEREAS, Good Sports USA, Inc., has applied to the Board of Adjustment of the Township of Aberdeen for modification of an approved site plan concerning Lot 12, Block 6 located at 17 Blair Road, Aberdeen Township, New Jersey so as to permit a walkway and additional signage and whereas this Board has continuing jurisdiction by reason of a variance granted said applicant (Resolution dated January 24, 1996) and a quorum being present and all persons having an interest in said application having been given an opportunity to be heard at the September 24, 1997 public meeting of the Board; and

WHEREAS, the applicant has provided notice in accordance with NJSA 40:55D-12;

NOW THEREFORE, be it Resolved by the Board of Adjustment of the Township of Aberdeen that the following findings of facts and conclusions are made:

1. The applicant received previous approval concerning their variance and site plan application and now seeks to construct a wooden walkway from the applicant's site to an adjoining parking lot.

2. The original plan provided for said walkway to be concrete, but the applicant has chosen to construct the walkway out of wood.

3. The drainage pattern and elevation will remain the same and the wooden walkway actually improves, to a slight degree, the drainage of the site.

4. The applicant seeks to set back a sign ten feet from the curb and two feet from the property line in order to afford the sign visibility along Blair Road.

5. The applicant testified that the location of the sign would not interfere with visibility either to the left or the right

of the driveway on Blair Road.

6. The Board Engineer stated that from an engineering standpoint the location of the sign as requested by the applicant would not be a safety hazard or design problem.

NOW THEREFORE, be it further resolved by the Board of Adjustment of the Township of Aberdeen, that the application of Good Sports USA, Inc. to modify the site plan previously approved by the Board so as to provide a wooden walkway rather than a concrete walkway to the adjoining parking lot and to permit a non-illuminated sign of identification ten feet from the curb and two feet from the property line be approved, subject to the following conditions:

1. All previous approvals and conditions of the applicant shall remain in full force and effect.

2. All representations made under oath by the applicant or his agents shall be deemed conditions of this approval, and any misrepresentations or actions by the applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

3. The action of the Board of Adjustment in approving this application shall not relieve the applicant of responsibility for any damage caused by this development, nor does the Board of Adjustment of the Township of Aberdeen or its reviewing professionals and agencies accept any responsibility for the structural design of the proposed improvements or for any damage that may be caused by the development.

4. The applicant must publish adequate notice of this Resolution in the official newspaper of the Township of Aberdeen at their sole cost, within ten days, and provide proof of publication within thirty days.

The foregoing was Moved by Mr. Sidoti

Seconded by Mr. Brenner and on Roll Call, the following vote was recorded:

Affirmative: 4
Negative: 0
Abstentions: 3

The foregoing is a true copy of a Resolution adopted by the Board of Adjustment of the Township of Aberdeen as copied from the

RESOLUTION OF FINDINGS AND CONCLUSIONS
BOARD OF ADJUSTMENT
TOWNSHIP OF ABERDEEN

BLOCK 12 LOT 6
Application # V-04-026 and (Z) SP 04-111
CDRT Real Estate Co., LLC
17 Blair Road

WHEREAS, CDRT Real Estate Co., LLC has applied to the Board of Adjustment of the Township of Aberdeen for permission to construct a 13' by 33.5' vinyl awning over the front entrance to the building and an 8' by 10' enclosed area for a recycling bin in the parking lot adjacent to the existing garbage bin on property designated as Block 12, Lot 6, located at 17 Blair Road, as shown on the Tax Map of the Township of Aberdeen; and

WHEREAS, at the regularly scheduled meeting of the Board, due notice having been given the adjoining property owners and publication having taken place in accordance with *N.J.S.A. 40:55D-1* et seq., as appears in the applicant's proof of service, this Board gaining jurisdiction and a quorum being present, and any other person having an interest in said application being given an opportunity to be heard; the application was heard by the Board; and

WHEREAS, the Board having carefully considered the evidence and exhibits presented by the applicant;

NOW THEREFORE, be it Resolved by the Board of Adjustment of the Township of Aberdeen that the following findings of facts and conclusions are made:

1. The premises are located in an RO Zone and an indoor sports center is not a permitted use within the Zone.
2. The applicant has withdrawn a request for a swing set.
3. The applicant seeks to construct a recycling bin in an 8' by 10' enclosed area and to construct a 13' by 33.5' vinyl awning over the front entrance to the building.
4. The awning constitutes an expansion of a non-conforming use.
5. The report of the Township Planner indicates that the awning will enhance the building and will add aesthetic value which would constitute a special reason to grant the expansion of a non-conforming use.
6. The awning will be brown in color and will not be lit except for the existing lighting and the lettering will say "Tab Ramos Sports Center" in lettering the size of which is set forth in the design plan survey last revised 6/23/04.
7. The applicant is in agreement with the Township Engineer's and the Township Planner's memoranda.
8. The Board determines that granting the variance will not cause substantial detriment to the Zong Plan, Zoning Ordinance and public good.

NOW THEREFORE, be it further resolved by the Board of Adjustment of the Township of Aberdeen, that the application for premises designated as Block 12, Lot 6, also known as 17 Blair

Road, be granted subject to the following conditions:

1. Conformance with the Township Engineer's and Township Planner's memoranda.
2. This approval does not grant the applicant the right to erect a swing set, which was withdrawn from the application.
3. The awning shall be erected in accordance with the plans submitted to the Board and as testified to by the applicants.
4. The recycling area shall be enclosed with arbor vitae around both bins.
5. All representations made under oath by the applicant or his agents shall be deemed conditions of this approval, and any misrepresentations or actions by the applicant contrary to the representations made before the Board shall be deemed a violation of this approval.
6. This application is granted only in conjunction with the conditions noted herein and but for the existence of the same, the within application would not be approved.
7. Compliance with the Aberdeen Township Affordable Housing Trust Fund as required by the Aberdeen Development Ordinance.
8. The action of the Board of Adjustment in approving this application shall not relieve the applicant of responsibility for any damage caused by this project, nor does the Board of Adjustment of the Township of Aberdeen or its reviewing professionals and agencies accept any responsibility for the structural design of the proposed improvements or for any damage that may be caused by the development.
9. The applicant must publish adequate notice of this Resolution in the official newspaper of the Township of Aberdeen at their sole cost, within ten days, and provide proof of publication to the Board Secretary within thirty days.

The foregoing was Moved by

M. Wysniarski

Seconded by
recorded:

M. Ciagala

and on Roll Call, the following vote was

Affirmative:

3

Negative:

0

Abstentions:

0

The foregoing is a true copy of a Resolution adopted by the Board of Adjustment of the Township of Aberdeen as copied from the Minutes of its meeting on November 10, 2004.

Maxine Rescorl
Maxine Rescorl, Secretary
Board of Adjustment

11/10/04

RESOLUTION GRANTING
PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL
WITH VARIANCES AND DESIGN WAIVERS
SO AS TO REDESIGN EXISTING PARKING LOT

BOARD OF ADJUSTMENT
TOWNSHIP OF ABERDEEN

BLOCK 12; LOT 6
Application # SP 10-507
CHRIS GOSHA
(CDRT REAL ESTATE CO., LLC d/b/a TAB RAMOS SPORTS CENTER)
17 BLAIR ROAD

WHEREAS, Chris Gosha and CDRT Real Estate, Co., LLC have applied to the Board of Adjustment of the Township of Aberdeen for preliminary and final major site plan approval, with bulk variances and design waivers, so as to redesign the existing parking lot serving the Tab Ramos Sports Center, which is located at 17 Blair Road, and officially designated as Block 12, Lot 6, as shown on the Tax Map of the Township of Aberdeen; and

WHEREAS, the applicants have provided notice to all property owners within two hundred feet and have caused notice to be published regarding said application in accordance with N.J.S.A. 40:55D-1 et. seq., this Board gaining jurisdiction thereunder; and

WHEREAS, public hearings were held in the within matter at a regularly scheduled meetings of the Board of Adjustment held on June 23, 2010, August 25, 2010, April 13, 2011, November 9, 2011, and December 14, 2011, at which time all persons having an interest in said application were heard; and

WHEREAS, the Board having carefully considered the evidence and exhibits presented by the applicant and the review of the Township experts;

NOW THEREFORE, be it Resolved by the Board of Adjustment of the Township of Aberdeen that the following findings of facts are made:

1. This application constitutes a request by the Applicants for preliminary and final major site plan approval, with bulk variances and design waivers, to redesign an existing parking lot serving the Tab Ramos Sports Center, which is located in the Township's Research Office (RO) Zone at 17 Blair Road and officially designated as Block 12, Lot 6 on the Official Tax Map of the Township.
2. Throughout all aspects of this application, the Applicants were represented by legal counsel. Initially, during the public hearings held on June 23, 2010, August 25, 2010 and April 13, 2011 the Applicant was represented by Gerald A. Marks, Esquire of the law firm Marks & Klien, LLP. During the final two meetings, held on November 9, 2011 and December 14, 2011, the Applicants were represented by Michael A. Bruno, Esquire of the law firm Giordano, Halleran & Ciesla, P.C.

EXHIBITS

3. The following exhibits were submitted by the Applicants into evidence:

- Exhibit A-1: Letter dated November 18, 2008, written by Steven L. Lange, Esquire to Good Sports USA, Inc. advising as to "Notice of Sale - Termination of Lease" and demanding the vacating of premises located at 675 Line Road, Aberdeen, New Jersey no later than February 28, 2009.
- Exhibit A-2: "Check List: Details Required For Preliminary Major Subdivision Plats and Preliminary Major Site Plans"
- Exhibit A-3: Color photograph of children's soccer team run by the non-profit arm of the Tab Ramos Sports Facility.
- Exhibit A-4: "Site Plan For Tab Ramos Sports Center", prepared by Robert T. Kee, Jr., P.E. & L.S. of Kee Engineering Enterprises, Inc., dated March 1, 2010, last revised August 1, 2010.
- Exhibit A-5: Letter dated August 16, 2010, authored by Robert T. Kee, Jr., P.E., P.L.S., of KEE Engineering Enterprises, Inc., to Maxine Rescorl, Secretary of the Aberdeen Township Zoning Board of Adjustment, addressing the traffic generation comparison between previous site layout and proposed Site Plan layout. ****Marked for identification purposes only****
- Exhibit A-6: Letter report dated October 27, 2011, authored by John H. Rea, P.E. of McDonough & Rea Associates, Inc., to Aberdeen Township Planning (*sic*) Board, attesting to Applicants' plans having been prepared in accordance with proper traffic engineering principles and as to internal circulation and access to Blair Road operating safely and efficiently.
- Exhibit A-7: Aerial photograph of Applicants' property, dated 2010, as downloaded by the offices of Andrew Janiw, P.P. of Beacon Planning.
- Exhibit A-8: Photo board, consisting of four photographs of the Applicants' property, taken by Beacon Planning on November 1, 2011.
- Exhibit A-9: Letter dated November 19, 2008 from Robert Hall, partner in FH Line Road, LLC, to the Applicant Chris Gosha, offering to talk about entering into a new lease for premises located at 675 Line Road.

4. With regard to Exhibit A-2, the Board notes the Applicants had initially submitted this application as being one requiring Minor Site Plan review. However, all parties ultimately agreed it constituted a Major Site Plan and the application proceeded as such thereafter.
5. With regard to Exhibit A-5, it was determined by the Board during the course of the hearing held on April 13, 2011 that since Robert T. Kee, P.E. had conceded under cross-examination to not being a traffic engineer, he was not qualified to offer testimony related to traffic issues. The report which Mr. Kee prepared related to traffic generation and therefore could not be accepted into evidence. The Board wishes to make clear in this Resolution that since Exhibit A-5 was not accepted into evidence, instead being marked for identification purposes only, it was in no way considered by the Board and the exhibit did not play any role in the Board's conclusions relative to this application.
6. In addition to the Applicants' exhibits, the Board marked the following exhibits of its own:
 - Exhibit B-1: Resolution of the Board of Adjustment of the Township of Aberdeen, Application # V-04-026 and (Z) SP 04-111, adopted on November 10, 2004, granting the Applicant, CDRT Real Estate Co., LLC, permission to construct a recycling bin and awning.
 - Exhibit B-2: Resolution of the Board of Adjustment of the Township of Aberdeen, Application # V-89-25, adopted on September 27, 1989, granting the Applicants' predecessor, Julius Ausch, use variance relief to operate an indoor softball facility.
 - Exhibit B-3: Letter reviewing application, dated April 26, 2010, authored by the Board of Adjustment's Engineer, Timothy W. Gillen, P.E. of CME Associates.
 - Exhibit B-4: Memorandum reviewing application, dated April 30, 2010, authored by the Board of Adjustment's Planner, Coppola & Coppola Associates.
7. Throughout the course of the proceedings, FH Line Road, LLC, owning property located at 675 Line Road, Aberdeen, appeared as an objector to the application. The objector was represented at all times by Scott C. Arnette, Esquire of the Arnette Law Firm, LLC.
8. In furtherance of its opposition to the application, FH Line Road, LLC submitted the following documents into evidence:
 - Exhibit O-1: Resolution of the Board of Adjustment of the Township of Aberdeen, Application # SP-89-107, adopted on November 15, 1989, granting the Applicants' predecessor, Julius Ausch, Preliminary and Final Minor Site Plan approval with bulk variances and design waivers.

- Exhibit O-2: Lease, dated December 1, 1989, entered between Tenants "Blair-Line Realty Corp. and Julius Ausch" and the Landlord "Line Road Associates (a Partnership)" for the rental of the "rear parking lot situated at 675 Line Road, Aberdeen, New Jersey".
- Exhibit O-3: Resolution of the Board of Adjustment of the Township of Aberdeen, Application # V-92-17, adopted on August 12, 1992, finding that the Applicants' predecessor, Good Sports USA, Inc., does not require use variance relief to operate an indoor recreational use consisting of soccer and beach/sand volleyball.
- Exhibit O-4: Resolution of the Board of Adjustment of the Township of Aberdeen, Application # V-93-15, adopted on March 9, 1994, granting use variance relief to the Applicants' predecessor, Good Sports USA, Inc., for the right to serve alcoholic beverages in conjunction with the previously approved recreational facility.
- Exhibit O-5: Lease Agreement, dated October 5, 1992, entered between Landlord "Line Road Associates (a partnership)" and Tenant "Good Sports USA, Inc." for the rental of "Sixty-three (63) parking spaces situated at the west end of the parking lot" of premises located at 675 Line Road, Aberdeen.
- Exhibit O-6: Lease Agreement, dated October 12, 1993, entered between Landlord "Line Road Associates (a partnership)" and Tenant "Good Sports USA, Inc." for rental of "Sixty-three (63) parking spaces situated at the west end of the parking lot" of premises located at 675 Line Road, Aberdeen.
- Exhibit O-7: Lease Agreement, dated August 10, 1999, entered between Landlord "Line Road Associates (a partnership)" and Tenant "Good Sports USA, Inc." for the rental of "63 parking spaces situated at the West End of the parking lot" of premises located at 675 Line Road, Aberdeen.
- Exhibit O-8: Lease Agreement, dated July 29, 2001, entered between Landlord "Line Road Associates (a partnership)" and Tenant "Good Sports USA, Inc." for the rental of "63 parking spaces situated at the West End of the parking lot" of premises located at 675 Line Road, Aberdeen.

- Exhibit O-9: Lease Agreement, dated May 16, 2003, entered between Landlord "Line Road Associates (a partnership)" and Tenant "Good Sports USA, Inc." for the rental of "63 parking spaces situated at the West End of the parking lot" of premises located at 675 Line Road, Aberdeen.
- Exhibit O-10: Letter dated November 18, 2008, written by Steven L. Lange, Esquire to Good Sports USA, Inc. referencing the sale of 675 Line Road and advising all rental payments should now be made to the new owners.
- Exhibit O-11: E-mail dated Tuesday, January 5, 2010 from Jay Teitelbaum, an owner of the Applicants' property, to Bernard Friel, a partner in FH Line Road, LLC, making an offer to rent premises at 675 Line Road.
9. The Board also heard from a resident, Joseph Lioi, of 48 Halleran Court, Aberdeen who appeared Pro Se. Mr. Lioi offered the following items into evidence:
- Exhibit L-1: Printout from Tab Ramos Sport Center's website advertising "Adult and Private Parties" of a minimum of 25 people wherein alcohol is served. Website was printed on June 16, 2010.
- Exhibit L-1 (12/14/11): "Notice of Violation" dated February 19, 2010, issued by Aberdeen Township Zoning Officer, Maxine Rescorl, against CDRT Sports Center (Tab Ramos Sports Center), for violation of site plan approval by failing to maintain required parking spaces.
- Exhibit L-2: Four (4) photographs, dated November 24, 2011, taken by Mr. Lioi of his Jeep Grand Cherokee parked in a stall in the Tab Ramos facility on Thanksgiving Day.
- Exhibit L-3: Eight (8) photographs, dated 2010, taken by Mr. Lioi of vehicles parked in the street sometime after a snow storm.

BACKGROUND OF APPLICANTS' PROPERTY

10. In 1972 the Mayor and Township Council affirmed a use variance previously granted by the Board of Adjustment allowing predecessors of the Applicants to construct indoor tennis courts on the subject premises. (§ 3 of the September 27, 1989 Resolution entered into evidence as Exhibit B-2)
11. In 1989 the Applicants' predecessors returned to the Board of Adjustment seeking permission to convert the existing tennis courts into an indoor softball facility. Finding such a conversion would require minimal changes to the interior and exterior to the building and would not substantially increase the use of the premises, such approval was granted by the Board on September 27, 1989. (§'s 9 through 11 of the September 27, 1989 Resolution entered into evidence as Exhibit B-2)
12. A condition of the September 27, 1989 use variance approval was that there would not be any alcoholic beverages allowed on the premises. (Condition # 3 of the September 27, 1989 Resolution entered into evidence as Exhibit B-2)
13. A further condition of the use variance approval was that the application would be subject to site plan approval from the Board. (Condition # 5 of the September 27, 1989 Resolution entered into evidence as Exhibit B-2)
14. During the subsequent site plan phase of the 1989 application, the Board of Adjustment focused upon the amount of parking spaces which would be necessary to accommodate the softball facility. Although 160 spaces would have been required by ordinance, the Applicants' predecessor proposed to provide 102 parking spaces for the premises. 57 spaces would be located on-site while an additional 45 spaces would be provided off-site on a contiguous piece of property. (§ 6 of the November 15, 1989 Resolution entered into evidence as Exhibit O-1)
15. Although the Applicants' predecessor offered to provide 102 parking spaces, the Board granted a variance requiring the Applicant to only provide 100 parking spaces. In granting the parking variance, the Board would hold there could not be less than 57 on-site parking spaces and not less than 43 off-site shared parking spaces. The off-site shared parking agreement would have to be reviewed by the Board's attorney to ensure it was feasible and enforceable. (Condition #'s 3 and 5 of the November 15, 1989 Resolution entered into evidence as Exhibit O-1)
16. A further condition of this use variance approval was that if the shared parking agreement was ever terminated by the provider of the spaces, then the applicant would be required to re-apply to the Board of Adjustment for new site plan review. (Condition # 6 of the November 15, 1989 Resolution entered into evidence as Exhibit O-1)

17. In compliance with the conditions set forth by the Board of Adjustment, the Applicant's predecessors did enter into a Lease Agreement, dated December 1, 1989, with the owners of contiguous property located at 675 Line Road, Aberdeen for the rental of its rear parking lot. (Exhibit O-2)
18. The owners of 675 Line Road were the predecessors of FH Line Road, LLC, the objectors to the current application, which is the subject of this Resolution.
19. In 1992 the Applicants' predecessors once again returned to the Board of Adjustment seeking permission to convert the indoor softball facility into an indoor soccer and volleyball facility. The applicant sought an interpretation from the Board as to whether such a change would necessitate use variance relief. The Board found the proposed soccer and volleyball facility to be "so similar" to the previously approved softball facility that a use variance would not be required. (August 12, 1992 Resolution entered into evidence as Exhibit O-3)
20. The Applicants' facility has continued to operate as an indoor sporting venue through the present day, and further use variance relief has not been necessary in response to the sporting activities conducted within the building. The continuing usage of the facility as an indoor sports venue was testified to by its general manager, Chris Gosha, during the public hearing held on August 25, 2010.
21. Beyond the determination reached by the Board of Adjustment that further use variance relief would not be required, the interpretation Resolution of August 12, 1992 (Exhibit O-3) also held that unless the Township's Planning Board found new site plan review was necessary, the Applicant must continue complying with all conditions of the previous site plan approval resolution of November 15, 1989. (Exhibit O-1). No such additional site plan approval was required and therefore, per the August 12, 1992 Resolution, the parking variance requirement of 100 spaces set forth in the November 15, 1989 Resolution remained in place.
22. Although the Township of Aberdeen never mandated an increase in the 100 space parking requirement, the Applicants' predecessors took it upon themselves to increase the number of spaces being rented at 675 Line Road. Beginning with a Lease agreement dated October 5, 1992, the Applicants' predecessors began to rent a total of 63 parking spaces on the contiguous property. (Lease Agreement entered into evidence as Exhibit O-5)
23. The shared parking relationship of 63 spaces between the Applicants' predecessors and the predecessor owners of 675 Line Road would continue throughout the years by way of entry into a series of lease agreements authorizing the use of 63 spaces on the contiguous property. (Lease Agreements entered into evidence as Exhibits O-6, O-7, O-8 and O-9)

24. In 1994 the Applicants' predecessors returned to the Board of Adjustment seeking use variance relief to allow it to sell alcoholic beverages on the premises. Such a use had been prohibited by Condition # 3 of the Resolution dated September 27, 1989. (Exhibit B-2)
25. The requested use variance relief to sell alcoholic beverages was ultimately granted by way of a Resolution dated March 9, 1994. (Exhibit O-4)
26. During the course of the application seeking use variance relief to sell alcoholic beverages, testimony was given on behalf of the Applicant's predecessors establishing that the indoor sports facility presently provided 57 on-site parking spots and 63 off-site parking spaces for a total of 120 parking spaces. (¶ 3 of the Resolution dated March 9, 1994 entered into evidence as Exhibit O-4)
27. Although the availability of 120 parking spaces had been testified to, the 63 off-site spaces being those leased from the owners of 675 Line Road, the Board nevertheless would decline revisiting the parking variance of 100 spaces established by Condition # 3 of the Resolution granting Site Plan Approval dated November 15, 1989. (Exhibit O-1) Rather than finding a new parking variance would be necessary, the Board specifically held: "The applicant shall not be required to make any further allowance for additional parking. The Board finds that no additional variance is required to provide any additional parking." (Condition # 7 of the Resolution dated March 9, 1994 and entered into evidence as Exhibit O-4)
28. The variance allocation of 100 parking spaces has not been revisited since the adoption of the March 9, 1994 Resolution holding further relief would not be necessary.
29. Since receiving approval to sell alcoholic beverages in 1994, the Applicants' property has remained relatively unchanged. The only notable expansion of the Applicants' use, which did not impact any parking requirements, occurred in 2004 when the Applicant, now having purchased the property, sought relief to construct a recycling bin in an 8' by 10' enclosed area and to construct a 13' by 33.5' vinyl awning over the front entrance to the building. Permission to construct the recycling bin and awning was granted by the Board of Adjustment by way of a Resolution dated November 10, 2004. (Exhibit B-1)
30. The parking agreement commenced between the Applicants' predecessors and the former owners of 675 Line Road remained essentially unchanged from its inception on December 1, 1989 (Lease Agreement marked into evidence as Exhibit O-2) until 675 Line Road was sold to its current owner FH Line Road, LLC on or about November 18, 2008. (See letter of Steven L. Lang, Esquire, dated November 18, 2008, announcing sale of property which was marked into evidence as Exhibit A-1)

TERMINATION OF THE SHARED PARKING AGREEMENT AND
CONSEQUENCES OF THAT TERMINATION

31. On November 18, 2008, 675 Line Road was sold to its current owners, the objectors to the within application, FH Line Road, LLC. The Applicants were advised of this sale by way of a letter authored by Steven L. Lang, Esq., dated November 18, 2008. (Exhibit O-10)
32. In addition to announcing the sale of the property the former property owners sent a second letter, also dated November 18, 2008, which indicated the following: "Please be further advised that your lease provides (at paragraph 28 thereof) that upon the sale of the premises, the lease is subject to termination upon 90 days notice. This letter shall serve as Notice of the sale of the premises here at issue, and written Demand that you vacate the premises no later than February 28, 2009; and this shall further serve as Notice of Termination of your lease as of February 28, 2009." (Exhibit A-1)
33. As correctly stated in the second letter dated November 18, 2008 letter from Steven L. Lang, Esq. (Exhibit A-1), the Lease Agreement then in effect between the Applicant and the owners of 675 Line Road did contain a paragraph 28 which stated in full: "If the premises leased herein under or of which the leased premises are a part, shall be sold during the term hereof, the Tenant agrees to vacate the premises, remove all the Tenant's property and deliver up peaceable possession thereof to its Landlord within 90 days of written demand therefor, and the term hereof and this lease shall terminate upon the dated fixed in said demand." (Lease Agreement dated May 16, 2003, marked into evidence as Exhibit O-9)
34. Having terminated the Lease Agreement permitting the Applicants to utilize the parking spaces located at 675 Line Road, the new owners of the property, FH Line Road, LLC, sent the Applicants correspondence dated November 19, 2008 indicating the company would like to talk about entering into a new lease agreement. (Exhibit A-9)
35. As evidenced by testimony presented during the August 25, 2010 Board of Adjustment hearing by the general manager of the Tab Ramos Sports Center, Christopher Gosha, negotiations did commence with regard to entering into a new lease agreement with FH Line Road, LLC. Those negotiations proved to be unsuccessful however, and the Applicants were eventually precluded from utilizing the parking lot spaces located at 675 Line Road.
36. With access to 675 Line Road no longer permitted, patrons of the Applicant began to park along the residential streets abutting the Applicants' property. Local resident, Joseph Lioi, of 48 Halleran Court, Aberdeen, testified during the public hearing held on December 14, 2011 that the situation became unlivable. According to Mr. Lioi, the Applicants' patrons would park in front of driveways, obstruct stop signs and block fire hydrants.

37. As evidence of the situation which existed when the Applicants' patrons were unable to utilize the parking at 675 Line Road, Mr. Lioi introduced a series of eight photographs he had taken depicting cars parked along his street sometime after a snow storm. (Exhibit L-3)
38. The situation which had developed at the Applicants' property and the surrounding neighborhood eventually led to the issuance of a zoning violation letter, dated February 19, 2010, from the Township's Zoning Officer, Maxine Rescorl. (Exhibit L-1 - 12/14/11) In this violation letter, Ms. Rescorl cited the Applicants for being in violation of Condition # 3 of its 1989 site plan approval which had required 57 on site parking spaces and not less than 43 off site shared parking spaces. Ms. Rescorl also cited Condition # 6 of that same site plan approval which required that in the event the shared parking agreement was ever terminated by the provider of same, the Applicant would be required to re-apply for site plan review and approval. (See November 15, 1989 Resolution entered into evidence as Exhibit O-1)
39. The issuance of this violation notice (Exhibit L-1 - 12/14/11) led the Applicants to file the new site plan application before the Board of Adjustment. It is this new application which is the subject of this current Resolution.

THE CURRENT MAJOR SITE PLAN APPLICATION

40. As recognized in the Engineering Review letter dated April 26, 2010, authored by the Board of Adjustment's Engineer Timothy W. Gillen, P.E. of CME Associates (Exhibit B-3) and the review memorandum authored by the Board of Adjustment's Planner Coppola & Coppola Associates dated April 30, 2010 (Exhibit B-4), the applicants propose through various site plan improvements to provide all of its parking spaces on site for a total of 103 parking spaces, three more spaces than required under the original site plan approved by the Board in its November 15, 1989 Resolution. (Exhibit O-1)
41. Both Mr. Gillen and Allen Schectel, P.P., on behalf of Coppola & Coppola Associates, were sworn during the public hearings and testified in further support of their respective professional review letters. Accordingly, those review letters are incorporated into this Resolution as if they were transcribed herein.