

MINUTES OF THE SEPTEMBER 10, 2015 PLANNING BOARD MEETING
BOROUGH HALL, BOROUGH OF HILLSDALE

MEMBERS PRESENT: Councilman F. Pizzella, L. Calabria, F. Franco, M. Kates
Z. Horvath, J. Miano, E. Lichtstein

MEMBERS ABSENT: M. Giancarlo, T. Maalouf, J. Traudt, G. Biener

EMPLOYEES PRESENT: Nylema Nabbie, Esq., Board Attorney
Christopher Statile, P.E., Board Engineer
Paul Grygiel, P.P., Board Planner
Caitlin Chadwick, Deputy Secretary

Acting Chairwoman Calabria called the meeting to order with a reading of the Open Public Meetings Statement at approximately 7:40pm.

OPEN TO PUBLIC (for matters not on the Agenda):

Marisa Cefali of 6 Manson Place voiced concerns regarding information in the August 13th meeting minutes that she believed was incorrect. The Board would review her contentions.

Kevin O'Brien of 61 Park View Drive voiced concerns regarding posting of the agenda prior to the meeting, as well as fulfillment of OPRA requests. As his statements became specific to a current application, Board Attorney Nabbie asked him to bring up his comments for the specific application at the next scheduled public hearing.

As no one else wished to speak, the meeting was closed to the public.

MINUTES:

The *August 25th, 2015* meeting minutes were approved by the Board.

BILLS:

Invoices from the Board Engineer's office and the Board Attorney's office were approved by the Board for payment.

COMPLETENESS REVIEW:

PZ-13-15 Nolan Partnership; Block 1523, Lot 3; 262-270 Broadway; Major Site Plan application with Use Variance for Multi-Family Housing in Commercial Zone was deemed incomplete.

PZ-16-15 Joseph & Samantha Gallucci; Block 1316, Lot 2; 253 Hillsdale Ave.; Bulk Variance Application for Addition to Single-Family Dwelling was deemed complete and scheduled for a public hearing date of October 8, 2015.

PUBLIC HEARINGS:

PZ-12-15; Kevin Collins; Block 1903, Lot 26; 243 Everdell Avenue

Bulk variance application for fence on a corner lot

Acting Chairwoman Calabria announced that the applicant is her neighbor and therefore has a conflict of interest; she recused herself from the chambers. Mr. Franco then acted as Chairman. Mr. Collins of 243 Everdell Avenue, Hillsdale was sworn in before the Board. Mr. Collins stated that he is requesting a variance for fence height & fence placement. He also explained to the Board that he lives on a corner lot, near a school. In the past, Mr. Collins had a 6 ft. hedgerow, but it became diseased and he had to take it out. He would like to install the fence to obtain some privacy. The meeting was then opened to the public. As no one wished to speak, the meeting was closed to the public.

Ms. Nabbie then marked into evidence two separate documents provided by Mr. Collins:

Exhibit A-1: Photographs of subject property from and in relation to various locations

Exhibit A-2: Site Plan, dated 7/24/15, designed by William R. Vogt, P.E. of L2A Land Design, LLC

The meeting was then opened to the Board for discussion. Dr. Lichtstein asked how high the fence will be, Mr. Collins responded 6 ft. Councilman Pizzella stated that the home is in a very busy location and he can see why the applicant would want to address the privacy issue in this way. Ms. Miano agreed. Board Engineer Statile asked Mr. Collins if he was going to place the fence on a berm of soil; Mr. Collins responded no. Ms. Kates asked about the photo on the last page of the packet Mr. Collins provided and he confirmed that the photo was an example of what the fence will look like once completed and is not a photo of his property, just of the type of fence he will be installing. Ms. Nabbie asked if the location of the diseased hedgerow is an indicator of where the fence will be and Mr. Collins responded yes. The meeting was then opened to the public. As no one wished to speak, the meeting was again closed to the public. Acting Chairman Franco asked Mr. Collins if the smaller existing fence on the side of his property going to be replaced and Mr. Collins answered no, it will remain the same. Councilman Pizzella made a motion to approve this application and Ms. Miano seconded the motion. The Board was polled, and the motion passed. The application was approved.

PZ-05-14; JKD Inc; Block 1205, Lots 15 & 16; 30 Lake Drive

Application to Appeal the Administrative Officer's Decision; Site Plan Approval & Supplemental Notice of Approval

Counsel for the Applicant – John Lamb, Esq.

Mr. Lamb began by reviewing the history of this lot, explaining previous approvals granted by the Hillsdale Planning Board and the Borough of Hillsdale. Mr. Lamb spoke about the 1988 and 1991 Resolutions between previous owners of the lot and the Hillsdale Planning Board. He also stated that his client purchased the property in December 2000, and that parking on this site has always been insufficient since the beginning.

Mr. Lamb stated that he spoke to the former Hillsdale Zoning Official, George Lucia, who confirmed that he was there for the construction of the retaining wall, as was New Jersey Transit. Mr. Statile expressed concern about the proximity of the retaining wall supporting the railroad tracks and embankment, and stated that he wants to see something officially from New Jersey Transit that certifies they allowed construction of the retaining wall. Mr. Lamb then stated that the client has the right to rely on a zoning permit from a Zoning Official.

Mr. Lamb continued, stating the retaining wall extension goes to the North, and that New Jersey Transit received notice of this application. He also stated that his client rents space to Falasca Auto Repair. The 1991 Resolution of Approval has a notation saying no overnight parking or overnight storage is permitted in the front yard and Falasca has testified that they will only have one car there on occasion. When the building permit was issued, Hillsdale Construction Official Ms. Wood never required that the client should also receive site plan approval. Everything currently being proposed is shown in red on the site plan.

Witness Rick Eichenlaub of R. L. Engineering was then sworn in to testify as an expert in civil engineering. Mr. Eichenlaub stated that he prepared the 1991 site plan for Mr. DeVito (DeVito Landscaping), who purchased the site when it was in a state of disrepair.

Several documents were marked as follows:

Exhibit A-29: Site Plan Layout prepared by R.L. Engineering, Inc. (Richard Eichenlaub, P.E.) dated 8/1/13 last revised 3/25/15

Exhibit A-2: Site Plan of DeVito Landscaping, Inc. dated 5/14/91, prepared by R.L. Engineering, Inc. (with note 11 “no automobiles will be allowed to remain parked in front of the building overnight and weekends”)

Exhibit A-4: Planning Board Resolution dated 7/16/91 (P-5-91).

Exhibit A-8: Documents on retaining wall extension – no site plan approval required

Exhibit A-7: Letter of Keith Durie, Zoning Officer, confirming request for occupancy, together with Zoning Permit approval with Continuous Certificate of Occupancy granted to JKD.

Exhibit A-9: Construction Permit of Michelle Wood for building (extension of retaining wall) (est. cost of \$2500, with description of work) (“move Keystone Wall Back for Garbage Containers”) (no site plan approval required) (with Construction Permit Notice)

Mr. Lamb instructed Mr. Eichenlaub to read portions of **Exhibit A-4** resolution including paragraph 7 and paragraph 4.

As Mr. Lamb had no further questions for this witness, the meeting was opened to Board discussion. Councilman Pizzella had questions regarding the retaining wall and Mr. Statile stated that it was constructed by Mr. DeVito. **Exhibit A-7** shows this was approved by Mr. Durie, Zoning Officer at that time. Mr. Statile asked Ms. Nabbie if in the event that there was a Developer’s Agreement filed in 1991, would that agreement also apply to the next owner of the property. Mr. Lamb stated that a Developer’s Agreement is a contract and that the agreement only lasts for six years, according to the statute of limitations. Ms. Nabbie stated that she tends to agree with Mr. Lamb and the issue she has is with what authority Mr. Durie had to issue the zoning permit. The Certificate of Continued Occupancy says the construction was done appropriately and the zoning

permit says it is in compliance with the Borough's zoning ordinance. The last sentence of **Exhibit A-7** states "You may consider this transmittal a zoning permit and a promise of occupancy." Ms. Nabbie stated that this is an issue.

Mr. Statile testified on the record that it was not Mr. Dutra, but Mr. DeVito who put up the tent and the retaining wall, as well as expanded the parking lot. Ms. Kates asked about trees on site, as trees have not yet been mentioned as part of the agreement. Mr. Lamb stated that his client will add trees regardless of whether or not there was a tree restitution ordinance in place in 1991. Ms. Kates stated that the Environmental Commission noted dead trees along the wall, which is stated in its report on the application.

Mr. Statile asked where the storm drains at the back of the property drain to and Mr. Eichenlaub stated that he thinks they go to seepage pits, but is not certain; Mr. Dutra will know. Mr. Horvath asked how close the retaining wall is to the parking lot and also asked Mr. Statile if there is any stipulation for emergency vehicles. Mr. Horvath and the Board expressed concern regarding emergency vehicles being able to get on site. The Board resolved to wait for referrals from the Hillsdale Fire Department. Dr. Lichtstein asked if it will be stipulated no parking in the back which was confirmed, yes.

The meeting was then opened to the public. James Mallet of 34 Lake Street, Hillsdale, stated that he never had any issues with Mr. Dutra and the property seems to be well maintained. Kevin O'Sullivan of 26 Lake Street, Hillsdale, stated that he's lived at 26 Lake Street for 14 years and has never had any problems with Mr. Dutra. Mr. O'Sullivan stated that his property faces the cars that are parked on Mr. Dutra's property and a tow truck comes in and drops off cars and then it is gone. There is not activity on site during the late evening hours, it is quiet at night. Mr. O'Sullivan also stated that he sees New Jersey Transit regularly testing the transit line behind his home. Mr. Statile stated that this is called high-railing and is federally required that passenger lines be visually checked once a week; Kevin O'Brien of 61 Park View Drive stated that he lives adjacent to the property and expressed concerns. The meeting was then closed to the public. At this time Mr. Eichenlaub left the chambers.

Mr. Donald Nemcik, Esq., of 185 3rd Ave., Westwood was then sworn in as Counsel for Mr. Falasca. Mr. Carl Falasca of 11 Cherry Court, Cresskill, was then sworn in. Mr. Falasca owns Falasca Auto Repair located on Mr. Dutra's property, and entered into the lease on September 1, 2011. Mr. Falasca also owns the Valero Station located at 318 Broadway, Hillsdale. In August 2011, during Hurricane Irene, there was a fire at the Valero Station which was what led Mr. Falasca to his current location leased from Mr. Dutra. Mr. Falasca made arrangements to rent this property so he could continue to repair his business at the Valero Station. Mr. Falasca only has 2 hydraulic lifts for repairing cars. Mr. Falasca does not own a tow truck, does not plow the lot as Mr. Dutra takes care of that, does not store anything in the back of the building, and has not had any violations. Mr. Dutra has a used car dealer license which allows him to have a car without a license plate that is registered to the state. Mr. Falasca does not have "For Sale" signs on cars; if he buys a car from a customer, it's because the customer doesn't want to pay to repair it, so Mr. Falasca will fix it and if he knows of other customers who need a car he contacts them to see if they would like to purchase it. Mr. Falasca does not do any body work on vehicles. Mr. Statile stated that there is a new ordinance in Hillsdale that prohibits commercial sale of new or used vehicles anywhere in town. Mr. Nemcik stated that 80% of Mr. Falasca's customers are Hillsdale residents. Mr. Falasca

stated that when he applied for his used car license, he applied for it via both the State and the Borough of Hillsdale, and that when it was granted, the stipulation was no "For Sale" signs. It was then determined that Mr. Falasca will not be selling new or used vehicles from this location. It was also confirmed that there will be no outdoor storage of parts. There will be six parking spots and two hydraulic lifts. Outdoor plastic storage bins were then discussed and Mr. Lamb stated that if they Board does not want them, they can be removed. As Mr. Nemcik had no further questions for Mr. Falasca, the Board then had an opportunity to question him.

Dr. Lichtstein asked why there are two dumpsters on site and if tenants share them. Mr. Falasca stated that one dumpster is his and one is for another tenant who had no other location for the dumpster; tenants do not share dumpsters. Mr. Statile stated that the site plan needs to be modified to show whose dumpster is whose. Councilman Pizzella expressed concern regarding emergency vehicles, as there does not appear to be sufficient room for them to access the site. Mr. Falasca confirmed that the site has been fire inspected and is inspected once a year; no fire violations have ever been found since he has occupied the site. Ms. Kates asked when the last time a zoning official inspected the site and Mr. Falasca stated maybe a couple months ago. Mr. Falasca stated that he will be storing old tires on site, but not storing many there at a time as he tries to get rid of them right away. Mr. Dutra asked him to move the oil tank. Ms. Nabbie asked Mr. Lamb to ensure that when the amended site plan is submitted, the applicant includes a list of tenants and which units they will occupy.

At this time the meeting was opened to the public. Mr. O'Brien of 61 Park View Drive came forward to speak. Mr. O'Brien had questions about the area between the island and the building and why there were six vehicles parked there on April 6, 2015 at 10:09am. At this time, Mr. Lamb asked Mr. O'Brien if his lease is more than a year in length and Mr. O'Brien responded no. Mr. Nemcik asked Mr. O'Brien if he owns real estate in the state of New Jersey or any other piece of property in Hillsdale and Mr. O'Brien responded no. Mr. Lamb stated that Mr. O'Brien is a temporary tenant under a short term lease and therefore is not a property owner or a taxpayer. Mr. Lamb asked Mr. O'Brien what his interest is in this application and Mr. O'Brien responded his health. Board Attorney Nabbie stated that there is no doubt that Mr. O'Brien is not a resident or property owner within the Borough of Hillsdale, and also is not within 200 feet of the site. Mr. Nemcik referred to the common law statement of what constitutes a freeholder. Mr. O'Brien stated that he has lived at his current location for four and a half years. Acting Chairwoman Calabria stated that regardless of anything, the Board is interested in what Mr. O'Brien has to say and will continue to allow him to speak when the meeting is open to the public. Ms. Calabria asked Mr. O'Brien if he understood that and he responded that he understands. Mr. O'Brien then continued with his question for Mr. Falasca regarding the parked vehicles and Mr. Falasca stated that the vehicles were not his and may have belonged to C + C Metals.

Mr. O'Brien asked Mr. Falasca if a woman named Dina is his office manager and Mr. Falasca responded she is not, Raul is. Mr. O'Brien also asked Mr. Falasca about a black, white and red vehicle that had no license plate and Mr. Falasca explained that it was a vehicle being repaired and needed an engine. The meeting was closed to the public.

Mr. Lamb stated that he grants the Board an unlimited waiver to act and the meeting was carried to October 8, 2015, without further notice to the public.

The Board then went into Closed Session to discuss pending litigation. It returned from Closed Session and announced that no official action was taken.

The meeting was then adjourned at 11:20pm.

Respectfully submitted,
Caitlin Chadwick, Deputy Secretary