

MINUTES OF THE JANUARY 14, 2016 PLANNING BOARD MEETING
BOROUGH HALL, BOROUGH OF HILLSDALE

MEMBERS PRESENT: E. Lichtstein, J. Miano, F. Franco, M. Kates, Z. Horvath
Vice Chairwoman L. Calabria, Chairman M. Giancarlo

MEMBERS ABSENT: Mayor D. Frank, Councilman F. Pizzella, G. Biener, J. Traudt

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

Chairman Giancarlo called the meeting to order with a reading of the Open Public Meetings Statement at approximately 7:00pm.

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

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

RESOLUTIONS:

Resolution No. 2016-1; Appointment of Board Planner

Resolution No. 2016-2; Appointment of Board Engineer

Resolution No. 2016-3; Appointment of Board Attorney

Resolution No. 2016-4; Reorganization/Appointment of Planning Board Non-Professionals

All of the above resolutions were approved by the Board.

PUBLIC HEARINGS:

“Whispering Woods” Hearing for 225 Washington Avenue, MJL, LLC

Board Attorney Nabbie explained what a “whispering woods” hearing is and the protocol that the Board should follow. Chairman Giancarlo explained that Ms. Nabbie advised the Board not to respond to any emails received from members of the public, however all emails were forwarded (unopened) to Ms. Nabbie. During the upcoming hearing, Chairman Giancarlo also explained that he will not tolerate any disparaging remarks from the public nor the Board, and also asked everyone in the audience to do their best to avoid repetition when speaking.

Allen Bell, Esq. of Jacobs and Bell, counsel for the applicant, explained that in his recent letter to the Board, he stated that his client agrees to the conditions of settlement - one lease for all tenants and one checking account for the tenants’ rent/lease payments. Mr. Bell also provided transcripts of all public hearings that occurred for this application, PZ-12-12, and offered the transcripts as evidence.

Ms. Donna Lally, applicant, was sworn in for testimony. Mr. Bell asked her if she agrees to accept one lease for all tenants and one checking account for all tenants as the two conditions of approval and she confirmed that she does agree.

The meeting was then opened to the public. Theresa Henry of 14 Cross Street, Hillsdale asked questions about the lease agreement and the joint checking account. Mr. Bell explained that when one

tenant leaves, that tenant name comes off the lease, and a new tenant's name will be added to the lease. Mr. Bell also stated that the joint checking account can be in a trade name, for example, "upstairs apartment;" and the tenants will be responsible for opening and maintaining the joint checking account. Ms. Henry also had general comments which she stated on the record.

Mary Ellen Breen of 183 Magnolia Avenue, Hillsdale and Burton Hall of 98 No. 5th Street, Park Ridge had general comments which they stated on the record. Kevin O'Brien of 71 Park View Drive, Hillsdale had several comments and concerns. As Mr. O'Brien's comments became personal to actions taken by members of the Board outside of the public hearings, Board Attorney Nabbie informed him that he needs to refrain from singling out specific Board members. Ms. Nabbie also informed everyone present that a Board member had received an unsigned, hand delivered letter in their private mailbox and the language of the letter had remarks similar to those of Mr. O'Brien just directly quoted on the record. Ms. Nabbie reminded Mr. O'Brien and the public that it is inappropriate for anyone to deliver letters to Planning Board members in an attempt to persuade their vote a certain way at this hearing or future public hearings.

Matthew Scozzafava of 167 Magnolia Avenue, Hillsdale had concerns about the definition of a "family," as well as whether or not Ms. Lally is qualified to run her facility/business. Mr. Scozzafava also reminded the Board that during past public hearings, Ms. Lally testified that this will be a "for-profit" "business."

Diane Scozzafava of 167 Magnolia Avenue, Hillsdale spoke about the previous zoning official, Tracy Jeffery's testimony. Ms. Scozzafava informed the Board of a petition which has 692 signatures on it and inquired about presenting it to the Board. Mr. Bell objected and Ms. Nabbie agreed that the petition could not be presented at the public hearing. There was a discussion about ensuring tenants are in recovery before they lease at 150 Magnolia and Mr. Bell confirmed that all tenants will be required to provide a referral from an in-patient rehabilitation facility stating that they have completed treatment. Ms. Scozzafava voiced concerns about how this is a business in an R-4 residential zone, and also asked Ms. Nabbie if she could mention conditions for settlement for the Board's consideration. Ms. Nabbie agreed and reviewed the several conditions for settlement, as follows:

- A licensed professional running the home
- Rules and policies for the home submitted to the Borough
- 24-hour oversight of the home
- Written contracts for referrals
- Installation of a "drug-free zone" sign on Magnolia Avenue
- Potential additional police resources
- Require Ms. Lally to live on the ground floor and the four tenants live only on the top floor
- Adequate parking in the rear of the home
- Confirmed testing on-site performed weekly and at random by a qualified person
- Scheduled counseling sessions required of all tenants with record keeping
- Guidance for implementing a community watch program

Ms. Kates addressed the public that the Board has thought of and listened to everyone previously regarding the recommended conditions, however the Board was advised specifically as to which conditions are and are not within its jurisdiction to request given the settlement agreement. Ms. Scozzafava asked Ms. Nabbie about the Board's jurisdiction in the settlement and Ms. Nabbie

responded by stating there is only so much that is within the Planning Board's powers and the Planning Board cannot impose unreasonable conditions on this applicant.

Mary Anne Sanford of 103 Conklin Avenue, Hillsdale spoke about her concern regarding this application. Her comments became personal and specific to Board members' actions, Ms. Nabbie reminded her that this was inappropriate. Ms. Sanford continued to speak about her concerns. Earl Sanford of 103 Conklin Avenue, Hillsdale spoke addressed the Board about alcoholism and offered personal testimony regarding his previous experiences with it, in addition to stating his concerns of the applicant. Laurie Corliss of 24 Washington Avenue, Hillsdale voiced concerns about the children in the community. Mary Ellen Breen of 183 Magnolia Avenue, Hillsdale voiced concerns about the definition of a "family unit."

Tina Lowry of 15 Beech Street, Hillsdale asked what controls will be available to ensure a tenant follows the policies of the home, who determines whether or not that tenant is required to leave, and when a tenant is required to leave, where will they go and how will Ms. Lally can physically evict him from the home. Mr. Bell responded that in that event, the evicted tenant will be provided with temporary quarters or a hotel room.

At this time, 9:39pm, the meeting was closed to the public.

Chairman Giancarlo asked the Board if they would like to consider additional conditions of settlement. Mr. Bell stated that there was testimony regarding parking at one of the previous public hearings, and the site has the ability for only four to five cars to park. Mr. Bell also informed the Board that his client does not want to have a licensed professional running the house because that would make it a "facility" for treatment, and not a "family." Requiring tenants to receive counseling services presents a similar issue. Ms. Nabbie stated that she feels Ms. Scozzafava's other conditions are out of the Board's jurisdiction. The question was raised as to whether or not a lease document can be submitted prior to issuing a Certificate of Occupancy.

At 9:48pm, Ms. Miano made a motion for the Board to take a short recess. At 9:58pm, the Board returned from recess. The Board asked for proof of one joint checking account and one lease for all tenants and Mr. Bell confirmed he has no objection once his client has her four tenants. At this time, Chairman Giancarlo asked for a motion to approve the settlement with the two initial conditions. Dr. Lichtstein made a motion to approve the settlement with the two conditions and Ms. Miano seconded the motion. The Board was polled and the members voted as follows: Dr. Lichtstein and Ms. Miano voted in the affirmative. Mr. Franco, Ms. Kates, Mr. Horvath and Vice Chairwoman Calabria voted against the motion. Chairman Giancarlo voted in favor of the motion.

Ms. Kates explained her reason for voting against the motion to settle. She would like an added condition that the applicant provide proof that her tenants are in substance recovery. Mr. Bell asked Ms. Kates specifically what the applicant should submit to provide this proof. There was a discussion about submitting tenant drug test results to the Borough, and whether it is permissible under HIPPA laws. At 10:15pm, the Board took a brief recess. At 10:35pm, the Board returned from its recess. At this time, Mr. Horvath made a motion to go into closed session, seconded by Ms. Miano. The Board then went into closed session to discuss this new, potential condition of settlement.

At 11:10pm, the Board returned to open session. Ms. Nabbie announced that the Board discussed in closed session the condition mentioned by Ms. Kates and the Board reached an agreement with Mr. Bell, that the applicant is willing to have an outside agency perform random drug testing on the tenants six times per year. If a tenant's drug test shows positive results, he will be immediately expelled from the home and the applicant's failure to expel the individual will result in a violation of the Board's approval. Furthermore, as testing is performed by an outside drug testing agency, the applicant will submit invoices from that agency to the Borough Attorney in order to provide proof that the testing is being performed while maintaining anonymity for the tenants. Mr. Bell confirmed that his client agrees to this condition.

The meeting was then opened to the public. Theresa Henry of 14 Cross Street, Hillsdale had concerns about how anyone will know that Ms. Lally is going to adhere to this new condition, etc. Dr. Lichtstein replied that under the Municipal Land Use Law it's not the Planning Board's role to require this new condition of the applicant however, Mr. Bell offered this up as a condition of settlement and has agreed to this condition. Diane Scozzafava of 167 Magnolia Avenue, Hillsdale commented that Ms. Lally's expert witness suggested testing would be performed once a week. Ms. Nabbie stated that these four males are being recognized as a "family."

Burton Hall of 98 North 5th Street, Park Ridge voiced concerns regarding the Board's decision to go into closed session suggested that a deal was made between Ms. Nabbie and Mr. Bell. Ms. Nabbie stated that this is a hearing to consider a settlement and the Board went into closed session to consider a condition which was presented publicly. Furthermore, she continued that it is lawful for the Board to go into closed session at any time during a meeting. Mr. Bell stated that he and his client were asked to consider a condition and had an issue with what was originally stated by Ms. Kates. However in discussing it further with Board Attorney Nabbie, both parties reached this agreement. Ms. Nabbie and Mr. Bell explained that this is not an unusual occurrence for a "whispering woods" hearing.

Vice Chairwoman Calabria stated that perhaps the Board should heed the comments of all and take more time before acting on this matter. Mr. Bell stated that the Consent Judgement called for this "whispering woods" hearing to occur in December and in one hearing, and he is not in a position to agree to allow a postponement.

Chairman Giancarlo asked for a motion. Ms. Miano made a motion to approve the application under three conditions:

- Tenants will have a joint checking account.
- There will be one lease for all tenants which will be submitted to the Borough once the home is populated.
- The applicant will have an outside agency perform random drug testing six times per year, per resident. If a tenant tests positive for alcohol or for illicit drug use the applicant will expel him from the home. Failure to expel the applicant will result in a violation of the approval granted by the Planning Board. Proof via invoices of testing will be submitted to the Borough Attorney in the form of an invoice from the testing agency.

Dr. Lichtstein seconded the motion. The Board was polled. Dr. Lichtstein and Ms. Miano voted in favor of the motion, Mr. Franco voted against the motion, Ms. Kates voted in favor of the motion, Mr. Horvath and Vice Chairwoman Calabria voted against the motion, and Chairman Giancarlo voted in favor of the motion.

The motion passed and the Planning Board approved the applicant with the three conditions.

The meeting was adjourned at 11:30pm.

Respectfully submitted,

Caitlin Chadwick
Deputy Secretary