

**MINUTES OF THE MAY 26, 2020 PLANNING BOARD MEETING  
BOROUGH HALL, BOROUGH OF HILLSDALE**

MEMBERS PRESENT: E. Lichtstein, E. Alter, M. Kates, J. Miano, S. Raymond, S. Riordan  
Chairman M. Giancarlo, Councilman Z. Horvath, D. Burleson  
D. Friedman

MEMBERS ABSENT: Mayor J. Ruocco

EMPLOYEES PRESENT: N. Nabbie, Esq., Board Attorney  
C. Statile, P.E., Board Engineer  
C. Reiter, P.P., Acting Board Pl  
E. Madger, Acting Deputy Secretary

Chairman Giancarlo called the meeting to order with a reading of the Open Public Meetings Statement at approximately 7:30pm.

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

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

INVOICES:

*Cleary, Giacobbe, Alfieri, Jacobs, LLC Invoices*

A motion was made by Mr. Raymond and seconded by Mr. Alter. The Board was polled and the motion passed. The invoices were approved for payment.

PUBLIC HEARINGS:

*PZ-04-19; Block 1201, Lots 5-7; Built for Success; 10 Orchard Street*

*Major Site Plan with Use & Other Variances application for two-story apartment building of 30 residential units*

Counsel for the Applicant – Jennifer Knarich, Esq.

Ms. Knarich began by reviewing procedural matters with the Board, including determining who is eligible to vote. It was confirmed that eight Board members were eligible to vote.

Ms. Knarich reviewed for the Board what the applicant is seeking. The applicant submitted revised plans which feature a reduced intensity of use from 30 to 24 units as well as several reiterations in terms of architectural and landscape design. The applicant is seeking approval for demolition of the existing buildings and construction of a new building with 24 residential units consisting of a mix of bedroom numbers which will include affordable housing units. The applicant is also proposing lot consolidation of 3 lots along with landscaping, parking, on site lighting, and drainage enhancements. The footprint will be reduced overall. There will be an additional landscaping buffer between the railroad tracks and proposed parking as well as the proposed building. Ms. Knarich stated the testimony the Board is about to hear is regarding the use variance as it relates to relief for signage due to setbacks.

It was confirmed the exhibits provided by Mr. Statile were previously marked. It was also confirmed Acting Board Planner Reiter's review report dated May 19, 2020 was provided to the Board, and the applicant.

At this time, Acting Board Planner Reiter, and Board Engineer Statile were sworn in.

The first witness was John Szabo, P.P. of Burgis Associates who was previously sworn in. Mr. Szabo stated the plan has been substantially revised in response to the concerns previously voiced by the Board, but the testimony for rationale under the previously submitted plan remains unchanged.

Mr. Szabo reviewed the planning aspects of the application including bedroom distribution. There will be seven one-bedroom units, sixteen two-bedroom units, and one three-bedroom unit. Four of these units will be designated to affordable housing as is required. There has been a reduction in density which Mr. Szabo stated is significant as it allowed for a drastic reduction in building coverage. There was also a reduction in impervious coverage resulting from the revisions which were made. The side yard proximity to the railroad was improved and is now 68 ft. which will be landscaped and provide adequate buffer from the railroad tracks. Regarding parking, there are now more parking spaces than what is required by RSIS with plenty of parking for both tenants and any guests. Mr. Szabo stated this mitigates the Board's concerns regarding the potential for additional cars parking on the street.

Mr. Szabo stated the reduction in density will lead to a reduction in traffic, which the applicant's traffic engineer previously found the proposed project would not cause any significant increase in traffic. Given the density has been decreased since then, there will be even less traffic. He stated the proposed development is far less intense than what would otherwise be permitted by right in the commercial zone. Favorable conditions were discussed in relation to other commercial buildings in the area. The site was also discussed in terms of mixed-use buildings in the area, as well as mixed use zones in Hillsdale.

Mr. Szabo explained that aside from the use variance, the only relief being sought by the applicant is a bulk variance for allowing a monument sign where the building is not set back entirely 60 ft. from the property line. Although more than half of the building is set back, due to the reconfiguration of the property, one wing of the building is setback at 20 feet.

Mr. Szabo then concluded stating the significant reduction in intensity of the development further benefits the project in the community. He stated his previous statements regarding the basis for why the use variance could be granted remain valid and are more valid with the revised plan. The special reasons for the use variance were then reviewed by Mr. Szabo. He stated the project would specifically advance purposes A, B, E, G, I and J and elaborated on the details of each. Other positive reasons included the proximity to mass transit, promotion of patronage at local businesses due to the proximity to downtown retail and eatery businesses, consistency with housing element and fair share plan. Regarding negative reasons, Mr. Szabo stated he believes there will be no substantial detriment but rather substantial benefit to the community as stated in summation of positive criteria. Furthermore, the monument sign which requires a variance due to the previously described setback issue will benefit the site as it allows visitors to safely and quickly identify the location without the need for K turns, and causes no substantial detriment but rather it enhances the project.

Board Engineer Statile stated he had no questions of this witness. Acting Board Planner Reiter stated she will reserve her questions until after the Board is given the opportunity to question this witness.

During the questions and concerns raised by Board members, the fence on the west side of the property was discussed. During this discussion, Ms. Knarich confirmed her applicant will remove the existing fence and install a new one which will be 6 ft. white vinyl or whatever the Board requires. Vice Chairwoman Miano inquired about what hardship the applicant is attempting to claim. Mr. Szabo then explained that the criteria for a use variance has special reasons and the applicant is not claiming a hardship here, as it is very difficult to prove hardship with a d1 variance. He further explained that Acting Board Planner Reiter outlined in her report what the criteria were and they are as follows:

- special reasons tied to the purposes of the land use law
- enhanced responsibility to show how the site is particularly suited for the use
- reconciliation of the use with the Borough Master Plan to ensure no inconsistencies are present

He stated he testified to all of the above and stated this project would further purposes of the Master Plan. It was confirmed confusion may perhaps be with c variances wherein an applicant could have a physical hardship related to the property which prevents complying with the code. He explained the applicant is not claiming that either.

A report prepared by the Hillsdale Police Department dated 11/25/19 which was included with their referral to the Board regarding this project was also discussed. Mr. Szabo stated extensive traffic testimony was presented to the Board by the applicant's qualified traffic engineer which demonstrated clearly there was a substantial difference in traffic being generated by a use permitted as a matter of right under the commercial zone, versus the proposed project. He stated the numbers speak for themselves as to significant reductions in traffic and there will be further reductions in traffic now that the number of units has been decreased. The Board continued to discuss the report prepared by the Hillsdale Police Department.

Mixed use buildings in the Borough which include both commercial and residential were discussed in comparison to the proposed project. Regarding parking areas, Ms. Knarich confirmed the applicant agrees to install Belgian block in the area.

The Board returned to discussing the report prepared by the Hillsdale Police Department. Mr. Alter confirmed the report does not take into consideration any units, but rather the traffic in the area. Ms. Knarich stated she does not believe she has seen this report. Board Attorney Nabbie stated this document was not submitted into the record as an exhibit, but was circulated by Mr. Statile to the Board members and applicant's attorney. Mr. Szabo confirmed for the Board the latest versions of documents submitted by the applicant:

- Site Plan – last revised 1/20/2020
- Landscape Plan – last revised 1/30/2020
- Architectural Plans – last revised 1/29/2020

It was confirmed that the Police Department's referral/report was based on an earlier plan, not the present plan.

Mixed uses versus fully residential uses in the commercial district were discussed and compared. Mixed use zones were also discussed. Mr. Szabo confirmed the ability to satisfy the needs of a mixed use commercial development here is absent, and a fully residential use is better suited to the site due to the lot size. Streetscape of the subject area was discussed.

The proposed building's proximity to the railroad tracks was discussed. Mr. Szabo reminded the Board of previous testimony wherein it was explained that the applicant will enhance soundproofing on the side of the building which is closest to the tracks. Furthermore, the building was redesigned due to the Board's concerns regarding this issue and moved 68 ft. away from the railroad tracks to allow for landscape buffering.

Acting Board Planner Reiter reviewed her 5/19/2020 review report, outlining for the Board the items they need to determine. Ms. Reiter stated this application requires a use variance because residential uses are not permitted in the commercial zone, and reviewed that mixed use is also not permitted in the commercial zone. She explained the applicant must show both positive and negative criteria. Positive criteria (special reasons) are said to exist when the purposes of zoning are advanced; Mr. Szabo listed several. Ms. Reiter reviewed he also listed several factors for suitability. Regarding the negative criteria, Ms. Reiter explained the applicant must show that the variance can be granted without substantial detriment to the public good. She also discussed the Master Plan in its relation to same, as well as the Master Plan Re-Examination and its amendments, stating all were completed prior to the latest court decision on affordable housing which occurred in 2015. She explained the requirements for same are different than they were at the time Hillsdale's current Master Plan was completed.

Ms. Reiter explained this is not a site that's recommended for the residential use within the master planning documents nor are they included within the Housing Element. Mr. Szabo stated the fact that they were not included in the Housing Element specifically does not preclude the fact that they're appropriate for this type of development as he testified to. Ms. Reiter explained the applicant must reconcile the use with the goals of the Master Plan, and Housing Element and stated Mr. Szabo has listed many reasons why the project would do so. The Master Plan, Housing Element were further discussed as was the court rulings on affordable housing. Ms. Reiter explained to the Board that although this particular location was not chosen by the Borough, it can still be helpful in meeting the Borough's obligation for affordable housing requirements in satisfying their unmet need. Currently Hillsdale has an unmet need of 199 units.

Chairman Giancarlo stated he has not heard this line of reasoning before on any other application. He inquired if he is hearing the argument that the Board should approve this application because of the extra affordable housing units that are involved. Mr. Szabo and Ms. Reiter both clarified no, that is not what is being said. Mr. Szabo stated he previously testified that this could *help* with the obligation and would be a great opportunity for the Borough, however it is absolutely not the sole reason; the reasons the Board should approve the application are separate and were testified in detail.

Board Engineer Statile discussed the Police Department's comment regarding the intersection being "notorious" for accidents. He stated the traffic report prepared by Stonefield Engineering was based on traffic counts conducted on weekdays as well as Saturdays. On a typical weekday morning, 204 vehicles pass by the site and ingress or egress the intersection. He explained this estimate is based upon the ITE trip generation manual. The morning (heaviest vehicle volume) will bring eleven vehicles onto the roadway during the peak hour of one vehicle every four or five minutes. Evening consisted of fourteen vehicles, and Saturdays consisted of 19 vehicles, with the peak period being 11am. He stated this is a very modest trip generation increase in terms of this site.

Mr. Statile opined the reason crashes have occurred at that intersection are due to the Pascack Auto Body 6 ft. chain link fence which drivers have a difficult time seeing through as it goes up to the property line, interfering with vision northly at the intersection. He stated the Police Department did recommend removing one to two parking spaces on the street to further open the visual corridor. He stated there are far worse and more dangerous intersections than this within the Borough which they

have been trying to improve. Accidents occur at all intersections, but severity is what is most noteworthy.

Density was discussed. The Borough's obligations for affordable housing were discussed in their relation to when they are required to be complete. It was confirmed no height variance is required for the 6 ft. fence the Board requested the applicant install. The size of other residential development properties in the Borough were discussed. Mr. Szabo reminded the Board the discussion regarding other similar sites is informative but should not be used as precedent as each site must stand on its own merits.

At this time the meeting was opened to the public. As no one wished to speak, the meeting was closed to the public. Ms. Knarich then gave her summation comments. The meeting was again opened to the public. As no one wished to speak, the meeting was closed to the public. Board Attorney Nabbie stated the Board must evaluate this application based on the record alone and not base any decision on other approved developments in Hillsdale. Furthermore, Board members must put their reasons for voting on the record regardless of how they vote.

Environmental Commission recommendations/conditions were discussed. It was confirmed additional trees or cash contribution in lieu will need to be provided by the applicant. Ms. Nabbie stated plans revised to show any and all conditions of approval must be submitted by the applicant if approved. Although a list of previously agreed conditions of approval was absent, the Board attempted to recall same. Ms. Nabbie stated any and all conditions previously agreed to by the applicant remain valid and must be adhered to. Some of them were as follows:

- 6 ft. white vinyl fencing along the west side of the property
- Belgian block installed in the parking area
- Enhanced soundproofing and buffering of trees and plantings
- Irrigation of the property

Mr. Raymond made a motion to approve the application with conditions. Mr. Riordan seconded the motion. The Board was polled and each voting members gave their reasoning for the manner in which they voted. As only three members voted in the affirmative, and four members voted in the negative, the motion did not pass. The application was denied.

***PZ-01-20; Block 1501, Lot 2; Ilda & Edward Beja; Niza LLC; 330 Broadway  
Use Variance application to occupy commercial space with a residential unit***

Counsel for the Applicant – Howard Siegel, Esq.

Mr. Siegel began by stating the applicant is requesting a use variance to expand a legal non-conforming use. The subject property is in the commercial zone and the building, as it currently exists, consists of two residential apartments on the second floor and two office spaces on the first floor. The applicant proposes to convert one of the offices on the first floor into a residential apartment. Mr. Siegel informed the Board a survey was conducted by Lantelme Kurens and is available for the Board; Sean McClellan, P.E. of Lantelme Kurens is also virtually present this evening should the Board have questions for him regarding the survey.

The first witness was Ilda Beja, 330 Broadway, Hillsdale who was sworn in. Mrs. Beja stated the building was built in the 1800s as a single-family home. Mr. Siegel stated the report from the Hillsdale

zoning official indicates there were various applications made and a certificate of occupancy was issued in 1996 with the description as business with two apartments. In 2006, the zoning official signed off for a permit that was issued to remodel the two upstairs apartments. A certificate of occupancy was issued for said apartments on 11/28/2006. The present zoning official Anthony Merlino, concluded in his letter that it appears the apartments have existed since 1975 and have been rented non-conforming uses.

Mrs. Beja stated the residential apartments on the second floor are currently occupied. She testified that the structure of the building will not be changed; the only change being made is to paint the interior of the apartment. A floor plan was presented which showed a full kitchen, bedroom, and entranceway. Mrs. Beja stated there will be two ingress/egress; one is through the rear of the building and is wheelchair accessible while the other is on the Broadway side of the building. The surrounding properties were discussed and described, specifically the other residential uses. Mr. Siegel stated there are a number of exceptions to the existing code of the commercial district and many are mixed use buildings with commercial uses on the first floor and residential uses on the second floor.

Mrs. Beja stated she has reasons why granting a variance to expand the non-conforming use would be beneficial. She stated a residential apartment rented to a family versus a commercial use would be beneficial because there would be a reduction of traffic as plenty of parking is on site and fewer people would be visiting the building. She stated she and her husband have been trying to lease the first floor office space for over the past two years without any prospective tenant. She opined vacant properties is not beneficial or attractive for the Borough and with the current pandemic it is unlikely anyone will be seeking to open a new business. She further stated this creates an economic hardship for the owners of commercial buildings and explained her business has been closed for the past two and a half months due to the pandemic.

It was reiterated to the Board that Mrs. Beja is not changing the structure or appearance of the building and intends for it to remain as is. At one time the building was a single family home. It was confirmed there are already two bathrooms (one with a shower), and a kitchen located in the subject unit currently being used as an office space, albeit vacant. Mr. Siegel stated under title 40, the Board has the right to grant the variance by expansion of a non-conforming use.

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

The Board then had the opportunity for questions and comments. Board Engineer Statile presented an exhibit showing the current approved floor plan for the building which he added a red line to in order to highlight the division between the other units and the unit being proposed for use as a residential apartment. Also included on this exhibit was the floor plan submitted by the applicant. The two plans were discussed and debated regarding perceived inaccuracies. Mrs. Beja stated the first floor unit has not yet been modified to change it to a residential apartment. Rather, it was previously used as a residential apartment prior to the purchase of the property by the applicants. Mrs. Beja stated the only change she and her husband made to the building was to erect a wall between the two office units. She confirmed she purchased the property in 2006, and since that time two businesses have leased the unit(s), one of which did apply to erect another wall which she stated she believes is the wall by the waiting area and was erected by the previous tenant.

Mr. Statile asked what type of business most recently leased the subject unit; Mrs. Beja replied it was a therapist's office. She confirmed she has not yet leased the unit as a residence. Mr. Siegel stated the kitchen has been present since the inception of the building and has remained there throughout the

duration of the business tenants. It was confirmed half of the first floor will remain as a doctor's office and the other half of the first floor is what is being proposed for use as a residential apartment. Currently, residential use apartments exist only on the second floor of the building.

Architectural aspects of the application were discussed specifically regarding fire codes and inspections. It was confirmed the unit is approximately 1100 square feet and they will market the apartment as a one-bedroom, if approved. As the multiple surrounding properties being used for residential purposes were again discussed, Mr. Statile confirmed the area to the rear of the subject property is in face the residential zone district. The floor plan and layout of the building at present was discussed in further detail.

Ms. Kates stated although she attempted to inform the Board much earlier, they did not hear her and this applicant is her eye doctor. Board Attorney Nabbie recommended that she recuse herself.

Acting Board Planner Reiter reviewed her 5/18/2020 report on the application. She reviewed for the Board members the relief being sought by the applicants and the procedure regarding same. She explained for an extension of a non-conforming use the Board must first see that the uses were permitted at some point in time whether they predate zoning or there was a zone change. There is validity of the uses from the municipality as certificate of occupancy was issued in 1996 and 2006. She stated she agrees the d2 variance is what must be sought, as she indicated in her review report. Ms. Reiter asked Mrs. Beja if she is aware of when the unit was used as a residential apartment; Mrs. Beja did not know. Ms. Reiter stated there are specific proofs required to be responded to for this application in terms of positive and negative criteria.

Ms. Nabbie stated one of her concerns is that the burden of proof is upon the applicant, and the applicant must provide proof that this is in fact an existing non-conforming use. She stated she is not convinced the Board has seen sufficient evidence or that the applicant has submitted such evidence, for example a contract of sale showing the applicants purchased the property in 2006. Mrs. Beja stated she does have the contract of sale and permits for the renovation are on file with the Borough. Ms. Nabbie stated the Board should have the benefit of those documents. Mr. Siegel stated Mr. Merlino's letter declared this as a non-conforming use and inquired as to why this is not sufficient evidence. Mr. Statile explained that the letter is only referring to the upstairs apartments regarding the non-conforming use, and therefore is not relevant to the application for the first floor. Mr. Siegel expressed understanding and requested additional time to obtain said documents. The Board requested photographs be provided additionally.

Mr. Siegel confirmed the applicant waives all statutory time frames and extends the time for the Board to act. Ms. Nabbie made a formal announcement the application is being carried to June 11, 2020 at 7:30pm and the meeting will be conducted virtually with no additional notice provided to the public.

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

COMPLETENESS REVIEWS:

***PZ-06-18 Block 1308, Lots 15 & 16, RJN 333, LLC, Applicant, 333 Washington Ave.  
Amended to Three - Lot Major Subdivision with Bulk Variances. Revised Plans***

Mr. Statile stated the applicant originally appeared before the Board for townhouses, then a four-lot subdivision, and has since amended their application to a three lot subdivision with bulk variances. The application is complete and ready for a public hearing. It was assigned a meeting date of June 23, 2020.

***PZ-02-20 Block 1212, Lot 15.02 Preserve at Hillsdale, Patterson Street  
40-Unit Apartment approved via Resolution 2017-09 Amended Major Site Plan with Bulk  
Variance for two new Carports and Accessory Building***

Mr. Statile stated this applicant seeks to convert some surface parking and provide a roof or shelter over some of the parking on site. They are not changing the number of parking spaces. An accessory building in the front of the property houses their water service for their hydrant; a backflow prevention meter. Rather than using a “hot box” they build a structure over it which he informed them in an accessory building. He clarified they are applying for those major site plan revisions and confirmed there has not yet been any discussion as to whether or not same reopens the use variance.

In a discussion between Ms. Nabbie and Mr. Statile it was confirmed the applicant’s attorney has argued the application is not an expansion of the use variance and Mr. Statile argued the contrary. He stated he leaves this for Ms. Nabbie to determine as he is told it is based upon case law. Mr. Statile confirmed the proposed car ports are for residential use. He further confirmed he will discuss with the applicant’s attorney if there is a need for an expert on car ports. Mr. Raymond requested photographs of the car ports. Mr. Statile stated architectural plans were provided by the applicant and he will provide same to Board as well as request photographs of the applicant’s attorney. It was determined the accessory structure will affect building coverage but not impervious coverage of the site. Ms. Nabbie stated she will discuss the legal question regarding the expansion of the use variance with the applicant’s attorney. Mr. Statile stated the accessory building has already been constructed and is about 25 ft. long by 10 ft. wide with doors and windows. He confirmed another variance is need because the structure is located in the front yard.

The application was assigned a hearing date of July 9, 2020.

The meeting was adjourned.

Respectfully submitted

CHRISTOPHER. P. STATILE, P.A.