

MINUTES OF THE OCTOBER 8, 2014 PLANNING BOARD
BOROUGH HALL, BOROUGH OF HILLSDALE

MEMBERS PRESENT: E. Alter, E. Lichtstein, M. Kates, M. Giancarlo, L. Calabria,
J. Miano, F. Franco, Z. Horvath, Councilman T. Kelley

MEMBERS ABSENT: J. Traudt, Mayor M. Arnowitz

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

Chairwoman Calabria called the meeting to order at approximately 7:10 pm with a reading of the Open Public Meetings Statement.

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

MINUTES:

As the Board did not have sufficient time to review the *September 23, 2014* meeting minutes, they will vote on them at the next public meeting.

BILLS:

Invoices from Gittleman, Muhlstock & Chewcaskie, LLP were approved by the Board for payment.

COMPLETENESS REVIEW:

PZ-06-14; Block 1505, Lots 6 & 7; Carol & Christine Tropea; 116 Clinton Ave.

Bulk variance application for single-family impervious coverage was deemed complete and scheduled for a public hearing on December 3, 2014.

PZ-03-14; Block 503, Lot 4; Saddle Wood Properties, L.P.; 786 Hillsdale Ave.

Minor Subdivision application for the creation of 3 lots was deemed complete and scheduled for a public hearing on December 3, 2014. However the Board Attorney informed the Board that this date did not fulfill the Board's obligation to hear this application within 45 days of it being deemed complete. Applicant's attorney, Allen M. Bell was present and waived the time frame for the Board to act, allowing the Board to hear this application on December 3, 2014.

PUBLIC HEARINGS:

Block 2002, Lot 28; Pascack Valley Tennis Courts; Wood Dale County Park

County Counsel - Kevin Funabashi, Esq.

Mr. Funabashi, an Assistant Bergen County Counsel was sworn in before the Board to testify on work underway on County lands behind the Pascack Valley High School. Five new tennis courts are currently under construction and the 2½ acre site has already been cleared of all trees and

vegetation. The work is being funded by the High School, but implemented by the County on County lands.

Under NJ Land Use Law, the County must provide the Board with an opportunity to review the proposed work and offer recommendations, which are not binding, 45 days prior to the work commencing.

Mr. Funabashi informed the Board that he had met in the field with Board Engineer Statile, Scott Raymond, Meredith Kates and Jack Stubbs of the Hillsdale Environmental Commission on the previous Wednesday to review the ongoing work.

Erik Gunderson, Superintendent of Schools, stated that Pascack Valley High School currently has four tennis courts, but needs five to participate in certain tennis tournaments. He elaborated that the new tennis courts would also allow for some safety improvements at the site by increasing the space between the old courts and the school, which is currently very narrow. He explained that the School District and County plan to work together with Sapienza Gardens and the Borough to create more of a buffer between the tennis courts and the Sapienza Gardens. There will be no lights or electricity to the site, just five courts and a lightning-rod protected gazebo for student safety during thunderstorms.

Mr. Statile confirmed that the County ordinance requires one tree to be replanted for every 6" of tree caliper that is removed in the County right-of-way. Mr. Funabashi informed the Board that the School has offered to implement tree restitution.

Scott Raymond of the Hillsdale Environmental Commission gave an overview of Bergen County's reforestation plan, stating that the County plans to plant nine shade trees and 20 norway/spruce evergreens at this point in time. Mr. Raymond stated that in his opinion, it would be beneficial to have all the trees replanted at one time, not in stages.

Anthony Kurus of Neglia Engineering confirmed for the Board that the tennis courts location had been shifted to the north and that 2.12 acres were cleared, removing approximately 100 trees. He believed there is a 60 ft. buffer of land from the new tennis courts to Sapienza Gardens. Mr. Funabashi then confirmed for the Board that the School will be responsible for maintaining the tennis courts and keeping the area clean. Mr. Gunderson stated that the purpose of installing the tennis courts is to create a safe facility for students with an additional court in order for them to compete in tournaments. It is not meant to attract the public, which is why there will be no spectator areas or lights installed.

Mr. Statile confirmed for Ms. Kates that the County is immune from Borough ordinances. Ms. Kates then expressed concerns she had regarding safety issues, as many of the Hillsdale residents had no idea this project was being undertaken and called the Environmental Commission. Ms. Kates further stated that many heritage trees had been removed, most of them over 100 years old. Mr. Funabashi confirmed that the tennis courts project is the only one that the County has planned for this site; presently, there are no future plans for additional projects on this site.

Mr. Horvath expressed concern about the amount of dust currently at the construction site, stating that this could be hazardous to children who participate in sports and also have asthma or other respiratory conditions. Mr. Gunderson stated that he will bring that concern to the director and ensure that the proper procedures are occurring. Furthermore, he will improve the scheduling and coordination of construction deliveries.

Mr. Statile questioned Mr. Kurus about the relocation of the tennis courts. Mr. Kurus stated the tennis courts were moved further north to avoid grading issues as well as preventing the accumulation of excess soil. Mr. Kurus stated that the downside of having excess soil would be the cost to the School District of transporting it off the site. Thus, moving the tennis courts further north was a cost savings to the School.

At this time, the meeting was opened to the public. Lauren Mitchell, member of the Sapienza Gardens Board of Directors, stated that she found it offensive that Sapienza Gardens never received notification by the County or School that construction was starting on this project. Lorraine Thalman, trustee of Sapienza Gardens Board, also stated her concerns, specifically if tournaments are to occur on this site, seating and lights will need to be installed.

Kevin O'Brien, of 61 Park View Drive, Hillsdale, informed the Board that a tractor trailer arrived while a football game was occurring. He also asked if there is a plan to install restrooms on the site. Mr. Gunderson stated that port-a-johns will be installed.

Jack Stubbs, President of the Sapienza Gardens Board of Directors, explained the history of how Sapienza Gardens came to exist. He then explained how he and his colleagues at Sapienza Gardens did not know anything about the tennis courts project and then suddenly, 60% of the trees had been cut down. Upon realizing there were a few heritage trees remaining, Mr. Stubbs, Ms. Mitchell and Ms. Thalman banded them with yellow tape in an effort to save them. When Mr. Stubbs returned to the site with Mr. Statile, the trees were still standing, but two days after that they were gone. Mr. Stubbs further stated that these trees were in the swale and it would have been beneficial if they remained there because they would have soaked up rain water. Finally, Mr. Stubbs was discontented by the fact that the School District and the County no longer plan to install a water line, as was suggested at the prior field meeting. Mr. Gunderson stated that he feels that he and the County have been very transparent and forthcoming with their plans for this project.

At 8:55pm, Councilman Kelley left the chambers in order to attend another meeting.

Mr. Gunderson stated that although the School owns plenty of property, there is a very limited space of it that they are able to build upon and utilize. Furthermore, he stated that the School will go ahead and plant the 29 total trees, as proposed. He explained that the school's current project budget is the reason for not replanting all of the trees simultaneously, and that next year there will be funds to allocate to this. Mr. Gunderson stated that reforestation for the year 2014 will cost approximately \$16,000. At this time, Mr. Statile advised Mr. Gunderson to put together an application for a Bergen County Open Space grant with the Sapienza Gardens trust or the Borough to get a 50% grant share, thus providing more trees.

Adam Stroebel, head of open space at Bergen County Planning, then came forward to speak. He confirmed that this project would qualify for an Open Space grant, as it is a park improvement. He

explained that water and electric would only be considered “park improvements” if they benefited the outdoors in some way; the open space grant does not fund buildings or bathrooms. However, it does fund lightning detection systems. Mr. Funabashi encouraged the Borough to apply for Open Space funding for Sapienza Gardens.

It was confirmed that the County is in no way obligated to replant 2:1 for every tree removed.

Mr. Funabashi stated that he will continue to periodically provide updates to Mr. Statile or whoever the appropriate individual may be. Mr. Statile will work with the Environmental Commission to keep them up to date on this project as well. Mr. Statile will speak with Sue Witkowski regarding the grant application. Mr. Raymond stated that he would like there to be communication between the Environmental Commission, the contractor, and the County’s landscaping architect.

***PZ-12-12; 225 Washington Ave., MJL, LLC; Block 1406, Lot 3; 150 Magnolia Avenue
Use variance/zoning official appeal to operate recovering substance abuse multi family dwelling
in single family residential zone***

Counsel for the Applicant – Allen M. Bell, Esq.

Opposition witness Diane Scozzafava of 167 Magnolia Avenue, Hillsdale was sworn in before the Board. She presented the remaining slides in her Power Point presentation to the Board. One of her slides featured the NJ Annual Substance Abuse Report. Mr. Bell objected to the slide, as the applicant has a right to cross examine a witness, but a slide of that nature took that right away from the applicant. Mr. Bell objected to another one of Ms. Scozzafava’s slides, which was entitled “DCA Field Inspection: Findings.” Mr. Bell objected because that particular field inspector was found to be inconsistent in his findings. Also, the information in the report was more of a “collection of observations” rather than “findings,” and in Mr. Bell’s opinion, had nothing to do with the application. At this point, Ms. Scozzafava offered a verbal summary to why she feels this application should be denied, emphasizing the fact that this is a for-profit business being proposed in a residential zone.

The meeting was then opened to the public and Hillsdale resident Kevin O’Brien came forward to state his opinion on previous testimony given by professional planner Joe Burgess for the applicant. The meeting was closed the public. The meeting was then re-opened to the public and Mr. O’Brien returned before the Board. Mr. O’Brien raised various concerns he had with this application and outlined several factors as to why he opposes this application.

Mr. Bell gave his closing statement, outlining various points for the Board to consider when voting on this application. Specifically, the Applicant requested an interpretation of the Borough’s zoning ordinance pursuant to NJSA 40:55D-70b. Mr. Bell opined the residents constituted a family, pursuant to the Borough’s Zoning Ordinance and that the writing issued by Tracey Jeffery constituted a certificate of non-conformity pursuant to NJSA 40:55D-68. The Board, after due consideration of the evidence, testimony and advice of its professionals, disagreed as no evidence was presented by the Applicant that the alleged “certificate” was issued within one-year of the date that the use or structure was rendered non-conforming. Pursuant to applicable case law, only a Board of Adjustment has authority to grant a Certificate of Non-Conformity outside of that one-

year period. The Board, as a whole and in relevant part made certain factual findings and conclusions of law as follows:

The Applicant filed an appeal pursuant to NJSA 40:55D-70b. It was the Applicant's position that the subject premises is a legal, non-conforming two family dwelling and that the proposed recovering male substance/alcohol abuse residents who intend to occupy one of the "units" are a family within the meaning of the Borough's Zoning Ordinance. The Board determined the Applicant was not entitled to the requested relief as the testimony and evidence failed to demonstrate that the subject premises is a legal, pre-existing non-conforming 2 family dwelling. No proofs were presented by the Applicant or her professionals that she made timely application for a certificate of non-conformity to Tracey Jeffery. Similarly, there were no proofs presented by the Applicant that the residents will function as a family. The Board specifically found the residents will not function as a family unit, based on the proofs presented by the Applicant. There will be separate "lease" agreements with each of the residents. There was no specified term in each such "lease." The length of stay of each resident could vary widely. If a resident was determined to be using drugs or alcohol, that resident would be asked to leave the premises. The Applicant failed to address the Board's questions as it related to urine testing of the residents. The Applicant presented the Board with her version of a lease agreement. The proposed lease agreement did not contain terms typically found in a residential form of lease. The Applicant testified rent will be paid separately by each resident. The Board determined the Applicant failed to demonstrate that the proposed living arrangement would result in permanency and stability in accordance with applicable law.

Alternatively, the applicant requested a use variance. Mr. Bell stated that if people can successfully recover from addiction, they and the public would benefit, which would make this a "beneficial use."

The Board's Planner, Paul Grygiel, gave a summary of this application from a planning point of view, speaking to the Master Plan, as well as applicable case and statutory law. Mr. Grygiel stated that a "beneficial use" is one which is universally considered of value to the community, etc. He further explained how, according to the four-part test of the Sica case law, some beneficial uses are more beneficial than others and that it is up to the Board to determine where this would fall in terms of how beneficial it is or is not. The Board must also consider how this application relates to the Master Plan and its intention. Mr. Grygiel spoke about the certificate of non-conformity and how the zoning official has the right to grant this certificate if the applicant applies within 1 year of a zoning change pursuant to NJSA 40:55D-68, and the Applicant did not provide evidence to that effect.

Vice Chairman Giancarlo made a motion that the Applicant was not entitled to relief pursuant to NJSA 40:55D-70b for the reasons expressed by the Board. Dr. Lichtstein seconded the motion. The Board was then polled. Mr. Alter, Dr. Lichtstein, Ms. Kates, Mr. Franco, Ms. Miano, Vice Chairman Giancarlo, and Chairwoman Calabria all voted in the affirmative.

The Board then considered the Applicant's request for a use variance pursuant to NJSA 40:55D-70d(1). Dr. Lichtstein made a motion that the Applicant had not met its burden of proof pursuant to applicable case and statutory law to warrant the grant of a use variance. The Board was polled. Mr. Alter, Dr. Lichtstein, Ms. Kates, Mr. Franco, Ms. Miano, Vice Chairman Giancarlo, and Chairwoman Calabria all voted in the affirmative.

The application was therein denied.

The meeting was adjourned at approximately 12:00am.

Respectfully submitted,

Caitlin Chadwick
Acting Deputy Secretary