

**MAYWOOD PLANNING BOARD  
MINUTES  
November 5, 2020**

A regular meeting of the Maywood Planning Board was held on Thursday, November 5, 2020 via the “Zoom” online meeting platform at 7:30pm. “This meeting was called pursuant to the provisions of the Open Public Meetings Act. Notice of this meeting was published in the Our Town and The Record newspapers on or about November 21, 2019. In addition, copies of this notice were posted on the bulletin board in the Maywood Municipal Building at 15 Park Avenue, filed with the Borough Clerk and distributed to all persons, if any, requesting copies of the same pursuant to said act. On October 21, 2020, adequate notice of this meeting being conducted via the “Zoom” online meeting platform in lieu of its in-person meeting which was previously advertised in the Council Chambers of the Maywood Municipal Building was posted at the entrance to the Maywood Municipal Building, filed with the Borough Clerk, sent to the Mayor and Council, Borough Administrator, Borough Attorney and Board Attorney, forwarded to the Our Town and The Record newspapers for publication, posted on the Borough website and distributed to all persons, if any, requesting copies of the same pursuant to the Open Public Meetings Act. This meeting is being recorded both audio and video and may be rebroadcast. This meeting is a judicial proceeding, any questions or comments must be limited to the issues that are relevant to what the Board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all times.”

**Flag Salute**

**Call to Order**

The meeting was called to order at 7:31pm with the following members present: Chairman Frank Lichtenberger, Vice Chairperson Charlotte Panny, Mayor Richard Bolan, Gary Neumann, Paul Kuhn, John Montel, Harry Hillenius, Rick DeHeer, Peter Cicarelli, Daniel Nemecek and John Gargagliano. Board Attorney Kara Kaczynski, Board Engineer Gregory Polyniak and Board Planner Michael Kauker were also present.

**Bills**

Harry Hillenius made a motion to accept payment of the bills. Rick DeHeer seconded the motion. All eligible members present voted in favor of the motion.

**Correspondence**

- 10/20/20 memorandum from Board Planner Michael Kauker Re: GFR Maywood, LLC 18 West Passaic Street and 521 Maywood Avenue Planning Review
- 10/27/20 Adopted Resolution #165-20 Resolution Authorizing the Planning Board to Remove Various Properties from the Study to Determine if Certain Properties are Eligible to be Designated as a Non-Condemnation Area in Need of Redevelopment in the Borough of Maywood
  - Board Attorney Kara Kaczynski provided a summary of the actions leading up to this resolution
  - The Board scheduled the public hearing at the 12/3/20 meeting

- 10/28/20 letter from Steven C. Schepis, Esq. to Mayor Richard Bolan and Borough Council Members Re: Empire Real Estate Holdings, Inc. Request to Utilize Right-of-Way
- 10/29/20 letter from Board Engineer Gregory J. Polyniak Re: GFR Maywood, LLC 18 West Passaic Street & 521 Maywood Avenue Completeness, Planning and Engineering Review
- 10/30/20 letter from Brian M. Chewcaskie Re: NYCE Tattoos 946 Spring Valley Road As Built Drawing Delivery Date
  - Board Attorney Kaczynski offered to write a letter giving the applicant until 11/19/20 to deliver the completeness materials
- 10/30/20 Court Order and Decision on Ultimate Force, LLC and Arpad Kertesz v. Zoning Board of the Borough of Maywood and 200 Route 17, LLC

**Resolution**

**Stepan Company**  
 100 West Hunter Avenue  
 Block 124, Lots 31-33 & 40-48  
**Calendar #2020-07**  
**Variance & Site Plan Applications**

Mayor Richard Bolan made a motion to approve the resolution and Vice-Chairperson Charlotte Panny seconded the motion. All eligible members present voted in favor of the motion.

**Completeness Hearing**

**GFR Maywood, LLC**  
 18 West Passaic Street & 521 Maywood Avenue  
 Block 95, Lots 7 & 8  
**Calendar #2020-13**  
**Variance & Site Plan Applications**

Kevin Kelly represents the applicant, GFR Maywood, LLC. Per Board Engineer Gregory Polyniak’s 10/29/20 review letter, the applicant is seeking completeness waivers for item 14 and 15. He then read the items into the record:

Item 14: Location of existing buildings and structures, including fences and retaining walls on the subject tract and within 200 feet of all boundary line, including existing driveway openings.

Item 15: Locations and profiles of all water courses and drainage facilities within 200 feet of the subject tract.

Board Attorney Kaczynski reminded the Board that the applicant is seeking a D(1) variance. As such, Mayor Bolan will need to recuse himself from the hearing. Mr. Kelly introduced Eric Hough of Bertin Engineering to provide testimony regarding the requested waivers. Mr. Hough was sworn in. He addressed Item 14, the location of existing driveway openings are shown on the 200’ radius map. Additionally, he explained that all existing buildings and structures on the adjacent properties to the west and south are shown on the survey. He stated that any other existing buildings and structures within 200 feet that is not on the survey will not impact the proposed development. With regard to Item 15, Mr. Hough noted that the closest water course is Coles Brook which is much further than 200 feet from the subject property. Also, he explained

that there are no drainage facilities within 200 feet of the subject property. Board Attorney Kaczynski confirmed that a waiver for Item 15 is requested but does not apply to this application. Board Engineer Polyniak concurred with Mr. Hough's testimony and recommended that the Board deem the application complete. Paul Kuhn made a motion to grant the two completeness waivers and deem the application complete. John Montel seconded the motion and all eligible members voted in favor of the motion.

After some discussion, the application hearing was scheduled for the 12/3/20 meeting. Board Attorney Kaczynski requested digital copies of any exhibits be provided to the Board Recording Secretary by 11/19/20 to be posted to the Borough website.

**Application Hearing**                      **Derek Eisenberg**  
121 Belle Avenue  
Block 64, Lot 13  
**Calendar #2020-09**  
**Variance Application**

Derek Eisenberg is the applicant and is representing himself. He was sworn in. He would like to install a pool in the side yard of his property. As the property is located on a corner, the side yard setback is required to be the same distance as the front yard setback. He is also requesting a variance for the setback between the pool and dwelling. Board Attorney Kaczynski marked the following exhibits:

- A-1 Application and Supporting Materials including the 3/21/2002 G. B. Associates, Inc. Survey
- P-1 Board Engineer Polyniak's Review Dated 9/22/20
- P-2 Board Planner Kauker's Review Dated 6/30/20

Board Engineer Polyniak had several engineering comments as noted on page 4 of his 9/22/20 review. He noted that he does not consider the comments to be major in nature and could be conditions of approval should the Board choose to grant the requested variances. He requested a construction detail for the proposed patio area and 4' fence. He also requested that the plans be revised to reflect the proposed gate. Board Engineer Polyniak noted that comments 5-8 are regarding protecting the property and neighboring properties during construction. He asked that notes be added to the plan for disturbed work area stabilization, fixing damage incurred on neighboring properties, keeping the sidewalk and roadway clear of soil and any soils imported would be certified as clean. He has requested that the plan include notes regarding drainage and stated that the required freeboard would be 4.25". He has asked that the plan reflect where the proposed pool equipment will be located. Lastly, he has requested that the applicant ensure that any new lighting installed not spill onto neighboring properties.

Board Planner Kauker directed the Board's attention to page 3 of his 6/30/20 review. He has identified the application as needing three variances. The first variance is for the side yard setback and he cited §209-31.3(4):

Where such residential property is a corner lot or where such private swimming pool is to be constructed, installed or maintained in a side yard, no such private swimming pool or any walkways, buildings, structures, equipment, fences or

other appurtenances thereto shall be located less than the minimum depth of setback from any street line as established by the Zoning Ordinance of the Borough for front yards in the zone in which such residential property is located, and in no event shall said private swimming pool or any walkways, buildings, structures, equipment, fences or other appurtenances thereto have a front yard setback from any street line less than any existing building on said lot.

He explained that the code requires the side yard setback to be equal to the existing front yard setback. As such, the applicant would need a side yard variance of 4.87' proposed where 26' minimum is required. The second variance he identified from §209-31.1(B) is for the corner lot fence height where 6' is proposed vs. 3'-6" maximum permitted. The third variance is for the pool setback distance as identified in §209-31.3(A)(3) where 6.5' is proposed while 15' minimum required. Board Planner Kauker summarized that the applicant is seeking C variances whereby exceptional conditions and circumstances may be shown by the applicant resulting in an undue hardship if the variances were not granted.

Board Attorney Kaczynski invited the applicant to provide testimony in support of the Board granting the requested variances. Mr. Eisenberg believes that the proposed pool location is most suitable for this property configuration. He considered locating it in the backyard but believe that it would impact the driveway leading to the garage. He also has an existing deck and patio in the backyard. Regarding the existing 6' fence, he did acquire a construction permit and pass inspection.

Chairman Lichtenberger invited Fire Official Tom Tuttle to comment on the application. Fire Official Tuttle believes that access to the property in case of a fire will not be impeded by the proposed pool. Board Attorney Kaczynski inquired if Mr. Eisenberg has spoken to his neighbors regarding this application. He replied that he had spoken to a number of his neighbors and none have objected including his closest neighbor on Grant Avenue adjacent to the driveway. He added that all property owners within 200' were notified of this hearing as required. Chairman Lichtenberger confirmed that the pool will be below ground. Mr. Eisenberg stated that his property is 75' x 100' where 50' x 100' is most common in his neighborhood.

Chairman Lichtenberger has concerns regarding the side yard setback. He then invited the Board member to ask questions of Mr. Eisenberg. John Gargagliano clarified that the existing 6' fence along the property line will remain. Mr. Eisenberg added that the proposed 4' fence inside the property will be along the patio and walkway. Paul Kuhn asked if the pool could be relocated to the backyard. Mr. Eisenberg answered that the existing driveway and garage limited the proposed pool location. He noted that variances would still be needed should the pool be relocated between the driveway and the existing deck. The only open space on his property without existing encumbrances is the side yard.

Chairman Lichtenberger invited the Board professionals to ask questions of Mr. Eisenberg. Board Planner Kauker believes that the pool could be relocated to the backyard but it would require that applicant to remove a portion of the driveway width. He noted that variances would still be required in this location. When asked by Chairman Lichtenberger, Board Planner Kauker confirmed that a lot coverage variance would not be required for the proposed project. Chairman Lichtenberger invited the public to ask questions of Mr. Eisenberg but no one came forward.

Board Attorney Kaczynski confirmed that no questions or comments from the public were emailed to Board Recording Secretary Grunstra. John Gargagliano asked about replacing the existing concrete patio and walkway. Mr. Eisenberg answered that he didn't plan to replace the patio and walkway as they are both in good condition. Mr. Gargagliano then confirmed that all the construction would be limited to the side yard. Rick DeHeer feels the proposed layout is a better solution than relocating the pool to the backyard in terms of egress.

Chairman Lichtenberger feels that the number of variances is excessive. He would prefer if there were fewer variances required. Each Board member then commented on the application. Some members were concerned about the variances requested while others felt that the proposed location was appropriate although it triggered variances. Vice Chairperson Charlotte Panny asked where the pool heater and filter would be located. Mr. Eisenberg answered that the pool heater and filter would be placed next to the two air conditioning units in the front yard. Additional landscaping to shield them from public view would be added. Chairman Lichtenberger invited the public to comment on the application but no one came forward.

Board Attorney Kaczynski offered to summarize the conditions that were discussed. She noted that the conditions were listed in Board Engineer Polyniak's 9/22/20 review on page 4. Additionally, she asked to include that the pool have the barrier code compliant fence in connection with an in-ground pool and that all pool related equipment be installed in a code compliant location. If the applicant cannot comply with these conditions, they would need to reappear before the Board. Paul Kuhn confirmed that if pool equipment is not permitted in the front yard, the applicant would need to return to the Board.

Paul Kuhn then made a motion to grant the requested variances with the conditions as summarized by Board Attorney Kaczynski. Rick DeHeer seconded the motion. All eligible members present voted in favor of the motion except Chairman Frank Lichtenberger and Harry Hillenius who both voted against the motion. The motion carried.

**Informal Hearing**                      None

**Closed Session**                      None

**Old Business**                         None

**New Business**                        None

### **Open Meeting to the Public**

### **Adjournment**

A motion to adjourn the meeting was made by Harry Hillenius. Rick DeHeer seconded the motion. All members present voted in favor of the motion. The meeting was adjourned at 8:47pm.

Respectfully submitted,

Tara Grunstra  
Planning Board Recording Secretary