

MAYWOOD PLANNING BOARD
MINUTES
August 6, 2015

A regular meeting of the Maywood Planning Board was held on Thursday, August 6, 2015 in the Council Chambers of the John A. Steuert, Jr. Municipal Complex, 15 Park Avenue, Maywood, New Jersey at 7:30 P.M. “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 December 11, 2014. 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.”

Flag Salute

Call to Order: The meeting was called to order at 7:30pm with the following members present: Chairman Frank Lichtenberger, Vice Chairman Paul Kuhn (arrived at 7:32pm), Councilman Rick DeHeer, John Montel, Harry Hillenius, Charles Goebel (left at 8:42pm), John McManus and Anthony Klymenko. Also present were Board Attorney Kara Kaczynski, Board Engineer Tom Lemanowicz (left at 8:42pm) and Board Planner Michael Kauker (arrived at 7:50pm).

Approval of Minutes: Harry Hillenius made a motion to accept the minutes from the June 25, 2015 meeting. John McManus seconded the motion. All eligible members present voted in favor of the motion.

Bills: John McManus made a motion to accept payment of the bills. Vice Chairman Paul Kuhn seconded the motion. All members present voted in favor of the motion.

Correspondence:

- 1) Rutgers Continuing Studies Planning & Zoning Program Fall 2015 Schedule
- 2) 7/31/15 memo from Board Engineer Tom Lemanowicz Re: Ordinance Review
- 3) 8/3/15 letter from David Garval of Azzolina & Feury Engineering, Inc. to Board Engineer Tom Lemanowicz Re: Petrigliano Bulk Variance Application for 33 West Magnolia Avenue
 - o Board Engineer Lemanowicz explained that the applicant’s letter is to satisfy the conditions of the resolution
- 4) 8/4/15 email from NJRA Re: RTI Redevelopment Planning Law Course on 9/30/15 & 10/1/15

Resolutions: None

Hearing: **Maywood Physical Therapy, LLC**
119 East Passaic Street
Block 77, Lot 20
Calendar #2015-09
Sign Application

Applicant Daniel Hanna represented Maywood Physical Therapy, LLC. He provided an overview of the sign application:

- One (1) 8' x 2' illuminated wall sign (16 square feet)
- Four (4) 5' x 1' window signs (20 square feet)

Zoning Officer James Mazzer was not in attendance but provided a summary of the application to Planning Board Recording Secretary Tara Grunstra. She explained the dimensions of the property as:

- Front 11' x 30' = 330 square feet
- Band 2' x 30' = 60 square feet
- Total square feet is 390
- 10% is 39 square feet available for signage
- Proposed signage is 36 square feet leaving a balance of 3 square feet

Harry Hillenius asked about a previous sign on the band where the wall sign is planned for installation. Mr. Hanna confirmed that there was a sign in that location previously and it was illuminated by the fluorescent light bar that is shown in the photo of the proposed signage. The sign maker will remove the fluorescent light bar when installing the wall sign. Mr. Hillenius suggested lowering the wall sign so that it is flush with the top of the band. This would make the sign compliant with the Borough code and Mr. Hanna agreed to the change. The wall sign will be illuminated and Mr. Hanna was instructed for it to be no more than twelve (12) inches deep.

Harry Hillenius made the motion that the application be approved based on the condition that the wall sign is lowered to be flush with the top of the building. Vice Chairman Paul Kuhn seconded and all members voted in favor of the motion.

Informal Hearing: None

Old Business:

- 1) Recommended Amendments to Chapter 209 of the Borough of Maywood Land Use Ordinance – 7/31/15 memo from Board Engineer Tom Lemanowicz & 8/6/15 memo from Board Attorney Kara Kaczynski
 - a. Board Attorney Kaczynski suggested defining a shed as: “A structure measuring 100 square feet or less in size which is utilized to store equipment and which does not contain any heating or plumbing.”
 - i. Board Engineer Lemanowicz noted that Chapter 209 Attachment 2-Schedule 2, Limiting Schedule for Accessory Buildings in All Districts states: “Notwithstanding any provision of Schedule A-2 to the contrary, one storage shed not exceeding 100 square feet in area, having a height of eight feet or less and not exceeding a width or length of 10 feet may be located in the rear yard of premises used for residential purposes within the A-1 or A-2 Residential Districts less than five but not less than two feet from the side or rear property line.”

- ii. He recommends removing a width/length restriction as 8' x 12' sheds are a standard size and measure 96 square feet which complies the 100 square foot limit.
 - iii. Sheds measuring 8 feet in height are the standard.
 - iv. The Board agreed with keeping the rear setback requirement to 2 feet and revising the side setback language to 2 feet from "less than five but not less than two feet" to simplify the setback rule.
 - v. §209-25B Accessory Building: Revise the limit from 50 square feet to 100 square feet in order to be consistent.
- b. Board Attorney Kaczynski suggested defining a "front yard" as: "The front yard of a corner lot, as defined herein, shall be that portion of the property that is adjacent to the street that is listed as the mailing address of the property".
- i. Board Engineer Lemanowicz believes that it should be based on a zoning definition.
 - ii. Board Attorney Kaczynski offered Teaneck's zoning as an example; designating zone districts based on property size and orientation.
 - 1. Both Board Engineer Lemanowicz and Board Attorney Kaczynski agreed that the property owner should not be allowed to designate the property's front.
 - 2. On corner lots, the front setback requirements could be applied to two frontages and the remaining sides would need to meet the side yard setback requirements.
 - a. Vice Chairman Paul Kuhn noted that this change would result in most Borough corner properties becoming non-conforming.
 - b. Board Engineer Lemanowicz explained that the Board wanted to specify front vs. side yards to allow for reduced setback requirements for homeowners.
 - iii. Chairman Lichtenberger reminded the Board that the goal is to simplify for future development.
 - iv. Board Attorney Kaczynski provided the current front yard definition from §209-25: "An open, unoccupied space on the same lot with a building situated between the front line of the lot and the nearest part of the building and extending from one side line of the lot to the other."
 - v. Anthony Klymenko suggested that the frontage be dictated by the orientation of the majority of houses on the block.
 - vi. Chairman Lichtenberger cited a property on Golf Avenue and Sinniger Place which was intentionally oriented sideways many years ago and has non-conforming yard setbacks.
 - vii. Board Planner Michael Kauker said that the definition of front yard varies by municipality.
 - 1. He suggested that differentiating between main streets vs. side streets. Homeowners would prefer to have the frontage of their property on the less busy street. He noted that wouldn't help a property if both streets have similar traffic levels.

2. Many municipalities allow the developer or homeowner to decide.
 3. Some communities base the frontage on where the front door is located.
- viii. Chairman Lichtenberger offered that the 25' setback could help determine the front if combined with the mailing address and front door criterion.
 - ix. Harry Hillenius felt that basing the front on the street address is simplest but Board Attorney explained that it may not work if the Tax Assessor can change the address without notice.
 1. Councilman DeHeer asked about the authority of the Tax Assessor to make address changes.
 2. Board Attorney Kaczynski suggested adding a question about address change on the variance application in order to identify any applications that use address change to establish an existing non-conforming property.
 - x. Board Engineer Lemanowicz believes that basing frontage on property orientation with the front on the shorter property line would apply to approximately 95% of houses in Maywood.
 1. Harry Hillenius noted that there are several “sideways” homes with the front door on the side.
 - xi. Vice Chairman Paul Kuhn felt proceeding with the proposed definition based on street address would be simplest.
 1. He also suggested contacting Mayor and Council about the Tax Assessor’s authority to change addresses.
 2. Board Attorney Kaczynski proposed that notifying the Board of any address changes and the Board Secretary can keep a log.
 3. Chairman Lichtenberger noted that the Tax Assessor should notify the Board if any properties switch zoning from one-family to two-family.
 4. Board Attorney Kaczynski explained that the Board does not have the authority to require address change approval but can require notification.
 5. She then clarified that if someone changes their address causing their property to be non-conforming, the Board would not know until they propose construction requiring a variance.
 - xii. Chairman Lichtenberger tabled the discussion in order to allow enough time for the Housing Element and Fair Share Plan scoping session.
- 2) Scoping Session for Kauker & Kauker, LLC Housing Element and Fair Share Plan – Michael Kauker took the Board through the current status and history of COAH in Maywood
- a. Most recently:
 - i. Patrick J. McNamara, Esq. of Scarinci Hollenbeck filed a Declaratory Action and Motion to Maintain the Borough’s Immunity from Mount Laurel Lawsuits on 7/8/15.

- ii. Dr. Robert Burchell, professor at Rutgers University and COAH expert, has offered to prepare a report on fair share numbers and provide expert testimony for a consortium of municipalities. Municipalities participating in the consortium would pay \$2,000 maximum for:
 - 1. Access rights to the Round 3 fair share numbers and calculations.
 - a. Dr. Burchell prepared the Round 2 fair share numbers for COAH.
 - 2. Use of Dr. Burchell to testify, be deposed and assist in deposing FSHC/NJBA expert witnesses in court proceedings on a per diem basis.
 - 3. Unofficially, Mr. Kauker has heard that 90 municipalities have joined the consortium.
 - a. Currently being considered by the Administrator, Mayor and Council.
- b. Historically:
 - i. Lydecker Manor's 1983 construction of 136 Low and Moderate Income Senior Housing Units (federally subsidized under the Section 202 Senior Housing Program) count towards Maywood's fair share units.
 - 1. Low and Moderate Income Senior Housing built after 1986 can only count towards 25% of a municipalities' fair share obligation.
 - ii. Maywood's Round 2 Low and Moderate Income Housing obligation was 46 units which was further reduced to 28 units based on the 2000 Census.
 - 1. Maywood had a 108 unit surplus (136-28) after Round 2 data.
 - iii. The Round 3 fair share numbers prepared by Dr. Burchell did not get adopted as the COAH council deadlocked 3-3.
 - 1. Maywood's surplus decreased by just 1 unit to 107.
 - 2. The methodology has been in dispute and has been argued in Supreme Court.
 - iv. There are 3 components to determining the fair share obligation model:
 - 1. Tax rateables
 - 2. Vacant land availability
 - 3. Unknown
 - v. The prior cycle limit for Maywood is zero and Mr. Kauker believes that this is a result of lack of vacant land.
 - vi. Round 3 provided a need for Low and Moderate Income Housing at 13 units over the ten year period of 2014-2024.
 - 1. Mr. Kauker believes that Borough can apply the 107 surplus to this obligation.
 - vii. Chairman Lichtenberger noted that the three Spectrum for Living facilities may qualify as Low and Moderate Income Housing.
 - 1. Mr. Kauker explained that Section 8 Housing are not recognized by COAH as satisfying the fair share obligation.
 - 2. Chairman Lichtenberger believes that there is a Bergen County Social Service facility in Maywood but he isn't sure of the location.

- viii. Round 3 identified an indigenous need of 45 units over the same time period (2014-2024).
 - 1. Existing homes that need rehabilitation based on the age of the home.
 - 2. Mr. Kauker recommends a windshield study to determine the accuracy of this number.
 - a. This would take into consideration that houses have been updated over the years.
 - b. The windshield study would identify deficiencies that would indicate the need for rehabilitation based on visual observation.
 - 3. Programs to facilitate rehabilitation must be available.
 - a. He believes that the municipality would need to fund a grant for \$12,000 per unit identified as needing rehabilitation.
- c. Chairman Lichtenberger asked if rent controlled apartments would qualify as Low and Moderate Income Housing and Mr. Kauker believed that they may qualify.
- d. Board Attorney Kaczynski asked about timing and Mr. Kauker explained that the need and indigenous need for Low and Moderate Income Housing would need to take place over the ten years starting in 2014 and ending in 2024.
- e. Chairman Lichtenberger asked how the Board should expect to proceed.
 - i. Mr. Kauker explained that if the municipality had an unfulfilled obligation for fair share units, the Board could:
 - 1. Zone potentially available sites for inclusionary housing.
 - 2. Require 10% of any proposed units to be Low and Moderate Income Housing moving the obligation to the developer.
 - a. If developers are not proposing new projects, the Borough would need to actively pursue development through RFPs.
 - b. The developer is responsible for screening potential recipients of the Low and Moderate Income Housing units while the municipality should assign an overview committee.
 - 3. Apply for a vacant land adjustment request if there was no vacant land to develop.
 - 4. Issue a development fee ordinance assessed to new construction for 1.5%-3% of the sale value of the project for both commercial and residential development.
 - a. Most communities impose the fee to commercial and multi-family unit development rather than 1- family residential development.
 - 5. Cannot purchase surplus units from other municipalities since Regional Contribution Agreements (RCAs) were discontinued in 2008.

- f. While Mr. Kauker is developing a Housing Element and Fair Share Plan at the request of the Mayor and Council, it is a component of the Borough Master Plan which is under the Planning Board purview.
 - i. The Mayor and Council can implement any legislation resulting from the Master Plan.
 - ii. The Housing Element and Fair Share Plan will be presented in court, but must first be approved by the Planning Board.
 - iii. Mr. Kauker believes that it will take 45 days to present a draft to the Board for review and approval in a work session before it is finalized and is presented at a public hearing.
 - 1. Once the final plan is approved by the Planning Board, it becomes a component of the Master Plan.
 - 2. Much of the information gathered for the Housing Element and Fair Share Plan and the Route 17 Redevelopment Plan overlap with the Master Plan.
 - iv. Most Low and Moderate Income Housing development is for multi-family development and is seldom for single family houses because of the economics. Townhouses could be Low and Moderate Income Housing.
 - v. Mr. Kauker's Housing Element and Fair Share Plan will be presented in court and the Borough has a five month window in which to submit it.
 - 1. The court has a Fairness Hearing where the judge reviews the plan, allows public input and listens to testimony from FSHC experts if they attend.
 - a. FSHC attends hearings in communities that they feel are not following the Fair Housing Act (FHA).
- g. Mr. Kauker would like to have the scoping session for the Route 17 Redevelopment Plan at the next Board meeting on August 27th.
 - i. If it is determined that the Borough has a Low and Moderate Income Housing rehabilitation obligation, he explained that a development fee ordinance would be appropriate for this project.
 - 1. The fees collected would be used to subsidize the \$12,000 per unit rehabilitation grant.
- h. Councilman Rick DeHeer asked to clarify Dr. Burchell's relationship with the state and Mr. Kauker explained that the state as COAH hired Dr. Burchell to produce both the Round 2 and Round 3 Low and Moderate Income Housing obligation numbers.
- i. Mr. Kauker would like to present the draft of the Housing Element and Fair Share Plan at the September 24th Board meeting.

New Business: None

Open to the Public: None

Adjournment: A motion to adjourn was made by Harry Hillenius. Chairman Lichtenberger seconded the motion. The meeting was adjourned at 9:26pm.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary