

**MAYWOOD PLANNING BOARD
MINUTES
December 7, 2017**

A regular meeting of the Maywood Planning Board was held on Thursday, December 7, 2017 in the Council Chambers of the John A. Steuert, Jr. Municipal Complex, 15 Park Avenue, Maywood, New Jersey 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 23, 2016. 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, Secretary Charlotte Panny, Councilman Rick DeHeer, Gary Neumann, John Montel, Harry Hillenius, John McManus, Anthony Klymenko, Daniel Nemeczek and John Gargagliano. Zoning Officer James Mazzer, Board Attorney Kara Kaczynski, Board Engineer David Gleassey and Board Planner Michael Kauker were also present.

Approval of Minutes

Councilman Rick DeHeer made a motion to accept the minutes from the November 2, 2017 meeting. John Gargagliano seconded the motion. All eligible members present voted in favor of the motion.

Bills

Vice Chairman Paul Kuhn made a motion to accept payment of the bills. Secretary Charlotte Panny seconded the motion. All eligible members present voted in favor of the motion.

Correspondence

- 11/7/17 letter from Dr. Jay Buchholz Re: Maywood Veterinary Clinic 125 East Passaic Street Request for Return of Escrow Balance
- 11/7/17 Freshwater Wetlands Application Notification Letter for PSE&G
- 11/16/17 letter from Steven C. Schepis Re: Empire Real Estate Holdings 191 West Central Avenue Application Documentation for Board Planner Michael Kauker
- 11/21/17 letter from Board Engineer David Gleassey Re: Empire Real Estate Holdings 191 West Central Avenue Revised Site Plan Review
- 11/21/17 memo from Maywood Police Department Chief David Pegg Re: Empire Real Estate Holdings 191 West Central Avenue
- 11/24/17 memo from Board Planner Michael Kauker Re: Empire Real Estate Holdings 191 West Central Avenue
- 11/27/17 email from Dave Egarian Re: Empire Real Estate Holdings 191 West Central Avenue Revised Site Plan

Resolution

None

Informal Hearing

Luminita Fulop
653 Maywood Avenue
Block 61, Lot 23

Dr. Eugene Fulop and his wife, Dr. Luminita Fulop, wish to convert their one-family home with a medical office into a two-family home when they retire. He believes that the rental income could offset the property taxes. His son-in-law, Tom Slaughter, explained that there is existing parking for 5 vehicles and they are not proposing to expand the parking area. Additionally, no exterior structural changes would be proposed. He also noted that the two-family homes are zoned across the street on the eastern side of Maywood Avenue and behind the property on Oak Avenue.

Chairman Frank Lichtenberger sympathized with Dr. Fulop but believes there are a sufficient number two-family homes within the Borough and does not want to violate the zoning master plan. Board Attorney Kara Kaczynski further explained that professional office use is permitted as an accessory use to the A-1 one family residential use. Chairman Lichtenberger asked the Board for their input. Discussion ensued and many members expressed similar feelings of not wanting to encroach upon the zoning master plan.

Dr. Luminita Fulop reiterated her husband’s earlier comments of wanting to stay in their home after retirement and not downsize to a smaller home in Maywood. Dr. Eugene Fulop suggested subdividing the property but Zoning Officer James Mazzer explained that the office is attached to the residence. Chairman Lichtenberger summarized the Board position and advised that an application can be submitted should they want to proceed.

Councilman DeHeer recused himself from the hearing and stepped down from the dais.

Hearing

Empire Real Estate Holdings, Inc.
191 West Central Avenue
Block 122, Lots 15 & 16.01
Calendar #2016-15
Use Variance, Bulk Variances and Site Plan Applications

Chairman Lichtenberger notified the applicant’s counsel, Steven Schepis, that two Board members (Vice Chairman Kuhn and Daniel Nemecek) listened to meeting recordings in order to participate in this hearing. Mr. Schepis thanked both members. He reminded the Board that at the last meeting on 11/2/17, Chairman Lichtenberger and Board Attorney Kaczynski asked as a condition of Phase 1 approval, if the DEP denied Phase 2 paving approval, Phase 1 site plan approval would be voided. Since that meeting, Mr. Egarian contacted the DEP and feels confident of DEP approval. As such, the applicant will accept as a condition of Phase 1 approval, that should the DEP deny Phase 2 paving approval, the Phase 1 approval would be voided and must return to the Board. Mr. Schepis noted that application materials were sent to Board Planner Michael Kauker. In response to Board Engineer David Gleassey’s 11/21/17

review and Police Chief David Pegg's 11/21/17 memo, Mr. Egarian has revised the site plan with a 11/27/17 revision date (marked as Exhibit A-9).

The first witness was the applicant's engineer David Egarian. He remains under oath and his credentials have not changed since the last hearing on 11/2/17. He confirmed Mr. Schepis' statement about contacting the DEP and his confidence that the DEP application would be approved. There is concern that spaces 14 and 15 back into a curb return so he suggests installing a mountable curb. The applicant agrees to paint the concrete curb around the utility poles bright yellow. Phase 1 will include rubber curb bumpers to delineate the parking spaces. Lastly, the applicant will install two no parking signs along Hergesell Avenue. In total, 15 parking spaces are proposed; 6 spots on the south side of the building (1 of the 6 is ADA van accessible) for the employee passenger vehicles and 9 on the north side of the building for the ambulances/ambulettes. Mr. Egarian continued his testimony by explaining that the applicant's traffic engineer utilized a program called Auto Turn to show how vehicles would enter and exit the property. Based on his personal observations, he believes that the Auto Turn analysis is accurate. The Auto Turn analysis indicated that ambulances on the south side of the building would back into the public roadway and the demonstration proved this true as well. Limiting ambulance parking to the north side of the building will alleviate this problem. Mr. Egarian then referenced an enlargement of the parking layout from the site plan revised on 11/27/17 which was marked as Exhibit A-10. Exhibit A-10 has not been shared with the Board prior to the meeting and the Board did not receive copies of the exhibit.

Chairman Lichtenberger invited the public to ask questions of Mr. Egarian but no one came forward.

Board Engineer David Gleassey referenced his 11/21/17 review letter which was marked as Board Exhibit B-1. He believes that vehicles parked in spaces 14 and 15 will back out into the roadway and interfere with traffic movements to and from the Maywood Health Facility. He recommends that parking spaces 14 and 15 be eliminated. Mr. Schepis offered to eliminate parking space 15 and modify the angle and striping of parking space 14 so that it does not back out onto the roadway. Board Engineer Gleassey replied that he would review the change when the revised site plan is submitted. Mr. Schepis agreed to have Board Engineer Gleassey review a revised site plan and determine if parking space 14 is viable. Board Planner Michael Kauker asked Mr. Egarian if the turn movements of the vehicles can fall within the boundary of the property. Board Planner Kauker believes the vehicle turning movements encroach on the right-of-way which violates the Borough ordinance. Mr. Schepis agreed with Board Planner Kauker's statement but believes that this is a function of the lot's narrowness. The applicant is attempting to have parking on the property which does not back into the roadway. He added that no accidents have occurred since the tenant has occupied the location. He believes that the ambulances are dispatched and stay out servicing calls all day and do not repeatedly enter and exit. Board Planner Kauker noted that the 10' right-of-way that will be used by the applicant generally includes green space, sidewalks and utilities. The applicant proposes to pave the right-of-way as part of Phase 2. Mr. Schepis again agreed with Board Planner Kauker's statement. Harry Hillenius does not remember hearing testimony about the ambulances making one entry and exit per day. Chairman Lichtenberger concurred that the tenant Elidon Deliaj testified that the ambulances make several runs per day.

The applicant Michael DeMarco remains under oath and wished to comment on the tenant's operations. He has observed ambulances leaving for appointments and being radio dispatched to other appointments during the day without returning to the location. He added that the tenant has been successfully parking vehicles as proposed in the site plan.

Chairman Lichtenberger again invited the public to ask questions of Mr. Egarian.

Rick DeHeer of 18 Hammel Place asked Mr. Egarian if the tenant would have sufficient parking given the elimination of spot 15 and possible elimination of spot 14. Mr. Demarco answered that the tenant has removed the non-working ambulances and rented space at another location. Mr. Schepis confirmed that the tenant would comply with the conditions of approval specifically that only 7 ambulances can be parked on the north side of the building.

The next witness was the applicant's planner Lisa Phillips of Kenneth Ochab Associates and she was sworn in, qualified and accepted. Ms. Phillips prepared a planner report dated 10/22/17 which was previously marked as Exhibit A-3. In order to prepare for tonight's hearing, she reviewed:

- Variance application
- Borough zoning ordinance and master plan
- Court documents and case law
- Board Engineer and Board Planner review memos
- Visited the location twice
- Attended the previous hearings on 9/28/17 and 11/2/17

She distributed a two-page photo document that contained 8 photographs, 4 photos on each page. The photos were taken by Ken Ochab on 9/24/17 and accurately reflect the property conditions. The document was marked as Exhibit A-11.

Page 1

- Photo 1: View of the north side of the site
- Photo 2: View of the south side of the site
- Photo 3: View of site from Central Avenue
- Photo 4: View of site from the curve on Hergesell Avenue

Page 2

- Photo 1: View of the car lot across Hergesell Avenue from the site
- Photo 2: View of the existing building on the site
- Photo 3: View of existing vegetation at rear of site
- Photo 4: View of Hergesell Avenue frontages from Central Avenue

Ms Phillips noted that the photos depict 90°(degree) vehicle parking which has changed to 60°(degree) vehicle parking. The tenant has occupied the space for 16 months and there have been no accidents reported in that time. She believes that this is the case for the past 12 years since the applicant purchased the property. She noted that the property lot area is less than half the minimum size required in the Limited Light Industrial (LL) district (14,330 s.f. vs. 30,000 s.f. minimum). She described the surrounding area as having a car dealership, Maywood Center for Health, utility facility and residential homes. The Maywood Center has an access easement on the northernmost portion of the applicant's property. Based on the building square footage, 3 parking spaces are required. However, the accessory use of outdoor parking of vehicles related

to the Metro Ambulance business proposes 13 parking spaces with 1 additional parking space to be determined. She summarized the proposed phases of the project. The applicant is seeking a D(1) use variance with several preexisting lot nonconformities; lot size, lot width, and both side yard setbacks. The LL zone permits light manufacturing, processing, warehousing, enclosed storage and auto sales for lots fronting on Route 17. Conditional uses in the LL zone include hotel and nursing homes and accessory uses in the LL zone include garages or parking areas, and accessory buildings ancillary to the principle permitted use. The subject property lot size and configuration limits the development potential for typical LL zone uses. Ms. Phillips believes that the proposed use as a non-emergency medical transportation business fits the location well.

In support of the D(1) use variance, Ms. Phillips considers ambulance storage as an inherently beneficial use as it promotes the public health, safety and general welfare and serves the community at large. She cited several land use law cases that she feels are applicable; Scholastic Bus Company, Inc. v Zoning Board of Borough of Fair Lawn, 326 NJ Super. 49 (1999), Rolfe v. Borough of Emerson (1976) and Medical Center at Princeton v. Township of Princeton Zoning Board of Adjustment 343, NJ Super 177 (2001). She continued that the proposed use can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the master plan and zoning ordinance.

The applicant would also need a waiver since the proposed use does not meet the design standard. A design waiver is related to site plan design which is different than a variance which is related to zoning requirements. A lot coverage variance is not required since the Borough code §209-25 defining lot coverage as:

The area of a lot covered by the buildings, garage areas, swimming pools (and surrounding decking), porches, decks, cabanas, sheds, gazebos, and/or any other accessory buildings.

The only building on the property is 821 square feet which represents 5.7% of the total (40% maximum permitted).

A short recess was taken at 9:02pm. The meeting resumed at 9:06pm with all members present.

Chairman Lichtenberger invited the public to ask questions of Ms. Phillips but no one came forward.

Secretary Panny asked Ms. Phillips if she would expect the applicant to receive DEP approval for the Phase 2 paving project. Ms. Phillips deferred to Mr. Egarian on this issue. Secretary Panny asked if a formal application to the DEP has been made and Mr. Schepis answered that it had not been made formally. He believes that the DEP would look favorably on the application should the Board grant variance and site plan approval. Both he and Mr. Egarian are confident of DEP approval. John Gargagliano noted that Exhibit A-11 shows the ambulances parked close to the Hergesell Avenue curb. He asked if they will be parked closer to the brook when the curb stops are installed. Ms. Phillips responded that they will be parked much closer to the brook. Board Attorney Kaczynski asked if the ambulances need to back into the parking spaces since that is how they are depicted in the Exhibit A-11 photographs. Mr. Schepis answered that they can pull in or back in to the angled parking spaces. Mr. Egarian confirmed Mr. Schepis' statement. Secretary Panny cited the zoning table on the site plan with the 11/27/17 revision date which says that there are 22 existing and proposed parking spaces. Mr. Egarian admitted that this was a typo. The plan depicts 15 parking spaces but the applicant has agreed to remove space

15 and possibly space 14 based on Board Engineer Gleassey's review.

Board Planner Kauker believes that the tenant provides a beneficial service to patients. He asked if the tenant services hospitals. He believes that this answer will influence the determination that the use is inherently beneficial. He noted that doctors' offices are not considered inherently beneficial. As such, he does not believe that the tenant's use had been determined by any Court as inherently beneficial. He agrees with Ms. Phillips that the private nature of the business does not influence the inherently beneficial use. Using the *Medici* criteria, the site is not particularly well suited as it is undersized and narrow. The size and shape of the property creates a potentially dangerous situation as vehicles are required to utilize the right-of-way in order to enter and exit the location. As such, this use may negatively impact the general welfare and violates the Borough master plan and zoning ordinance. Lastly, he does not believe that the Board has the authority to approve use of the right-of-way or the curb cuts as both are then responsibility of the Borough Mayor and Council. Board Attorney Kaczynski marked Board Planner Kauker's memo dated 11/24/17 as Board Exhibit B-2. She explained that should the Board vote in favor of the application, a condition would be included that the applicant would need to seek approval by the governing body to utilize the right-or-way and cut the curbs. Board Kaczynski asked Board Planner Kauker if the property could be used for enclosed storage and he answered yes. She then asked if the property could be used for parking for less than the number and for different type of vehicles than what is proposed and he answered yes again. He believes that the location is usable as a machine shop or a small light industrial use.

Ms. Phillips responded that if the Board does not wish to apply the *Sica* guidelines of positive and negative criteria, the *Medici* criteria of the particular suitability could be applied. The site has sat vacant for 2 years prior to the Metro Ambulance tenancy so there isn't much demand for a small light industrial use. She believes that the property is too small for typical LL uses. She considers the location near Route 17, HUMC and the Maywood Center is ideal for non-emergency medical transportation. There are only 3 offices workers and the parking area will be striped with angled parking spaces.

Chairman Lichtenberger invited the public to comment on the application.

Rick DeHeer of 18 Hammel Place feels that there is insufficient parking for the tenant staff.

The final witness for this hearing was the applicant Michael DeMarco and he remains under oath. He confirmed Ms. Phillips' statement that the property stood vacant for 2 years without a tenant. Potential tenants were all interested in parking vehicles outside. He has not heard of any accidents by the property since he has owned it over the past 12 years. Board Attorney Kaczynski asked if he requested a police department report and he did not.

Chairman Lichtenberger again invited the public to ask questions of Mr. DeMarco but no one came forward.

Board Planner Kauker asked if Mr. Demarco if a car wash was ever considered for the location. Mr. DeMarco did not feel that a car wash would be appropriate.

Mr. Schepis summarized the application by thanking all of the Board members for attending the meetings and listening to recordings of missed meetings. He conceded that the property size and shape make it difficult for typical LL uses. He believes that the proposed use is most appropriate for the location. He then summarized the changes that applicant has made since the application was submitted and the number of conditions of approval that the applicant has agreed to. Should the application be denied, he suspects that the location will go back to being vacant. He supports Ms. Phillips' testimony that the use is inherently beneficial. He cited a personal example of using non-emergency medical transportation for an elderly client and how helpful the service was.

Chairman Lichtenberger again invited the public to comment on the application but no one came forward.

Vice Chairman Kuhn asked if parking is permitted on Hergesell Avenue. Zoning Officer James Mazzer was sworn in and he replied that parking is not permitted on Hergesell Avenue. Gary Neumann asked if the temporary curb stops were installed at the proposed angle in the proposed locations and Mr. DeMarco said that they were. Chairman Lichtenberger believes that the size and narrow nature of the property makes it difficult to utilize for the proposed use. The location is surrounded by high traffic roadways. He referenced the tenant's testimony about wanting to expand the business and the current practice of jockeying vehicles into and out of parking spaces. Ultimately, there is insufficient parking for the tenant's use. Chairman Lichtenberger does not consider the benefit of granting the use variance outweighing the detriment to the public, master plan and zoning ordinance. Discussion among the Board ensued and many members expressed similar feelings of not wanting to violate the zoning master plan.

Harry Hillenius made a motion to deny the use variance, bulk variances and site plan applications. John McManus seconded the motion. All eligible members present voted in favor of the motion.

Councilman DeHeer rejoined the dais.

Harry Hillenius asked Board Attorney Kaczynski what the next steps were for the applicant's property as the tenant has been occupying the property for nearly 18 months. She responded that Zoning Officer Mazzer will issue a violation giving the tenant time to relocate. The curbing that was removed without a construction permit will need to be replaced by the property owner.

Closed Session

None

New Business

Brad Basile & Susan Dyrness

411 Oak Avenue

Block 104, Lot 19

Calendar #2017-16

Variance Application

Application received and distributed to the Board

Old Business

- Chairman Lichtenberger requested that Fire Official Tom Tuttle and Construction Official James Mazzer meet to resolve the Paul Padro project at 81 West Pleasant Avenue. The windows were removed as part of the demolition which has left the property unsightly and unsecure. Construction Official Mazzer explained that Mr. Padro submitted plans but no construction permit application. They will meet with Mr. Padro and emphasize the need to cover or replace the windows as the highest priority. A fire code violation can be issued but they would prefer to speak with him first.

Open Meeting to the Public None**Adjournment**

A motion to adjourn the meeting was made by Harry Hillenius. Councilman DeHeer seconded the motion. The meeting was adjourned at 10:17pm.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary