

**MAYWOOD PLANNING BOARD
MINUTES
February 22, 2018**

A regular meeting of the Maywood Planning Board was held on Thursday, February 22, 2018 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, 2017. 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, Mayor’s Designee Rick DeHeer, Gary Neumann, John Montel, Harry Hillenius, John McManus, Anthony Klymenko and John Gargagliano. Zoning Officer James Mazzer, Board Attorney Kara Kaczynski and Board Engineer Brian Gillen were also present.

Approval of Minutes

Harry Hillenius made a motion to accept the minutes from the February 1, 2018 meeting. John Montel seconded the motion. All eligible members present voted in favor of the motion.

Bills

Gary Neumann made a motion to accept payment of the bills. Chairman Frank Lichtenberger seconded the motion. All eligible members present voted in favor of the motion.

Correspondence

- 2/1/18 letter from Susan R. Rubright counsel for Maywood Realty Associates Re: Outfront Media Variance Application
- 2/2/18 letter from James E. Jaworski Re: Jay Zee Realty Corp. Affidavit of Publication
- 2/2/18 letter from James E. Jaworski Re: Outfront Media 99 Essex Street Affidavit of Publication
- 2/5/18 letter from Bergen County Department of Planning and Engineering Re: Jay Zee Realty Corp. Application
 - Board Attorney Kara Kaczynski recommended that Board Engineer Brian Gillen review the letter since it was received after the application was approved
- 2/5/18 letter from Construction Official James Mazzer Re: Empire Real Estate Holdings, Inc. Resolution Received and Inspection Scheduled 3/1/18
- 2/12/18 Public Notice for Brad Basile and Susan Dyrness 411 Oak Avenue, Maywood
- 2/12/18 Public Notice for Best Buy Bergen Town Center, Paramus
- 2/13/18 Public Notice for Bergen Town Center, Paramus

Resolution

Suburban Revival
9 East Pleasant Avenue
Block 76, Lot 1
Calendar #2017-17
Sign Application

John Montel made a motion to memorialize the resolution as written. Harry Hillenius seconded the motion. All eligible members present voted in favor of the motion.

Hearing

Brad Basile & Susan Dyrness
411 Oak Avenue
Block 104, Lot 19
Calendar #2017-16
Variance Application

Since the application involves an expansion of a preexisting nonconforming use, a D use variance is required. Mayor's Designee Rick DeHeer stepped down from the dais.

Chairman Frank Lichtenberger confirmed that the latest site plan has a revision date of 1/17/18.

Brian Campion of Kelly, Kelly, Marotta & Tuchman is the attorney for the applicants, Brad Basile and Susan Dyrness. He summarized the application as a legal preexisting nonconforming use as a two-family home in a one-family zone. He considers the expansion of living space in the existing building as insubstantial but will provide the proofs supporting D variance relief. The property was built as a two-family home in 1920 and predates the zoning ordinance. There is a basement, first-floor apartment and second-floor apartment with attic access. The applicants are the owners and occupy the first-floor apartment. After making improvements to the first-floor apartment, they decided to update the second-floor apartment and attic space. During the planning phase with their contractor and architect, they discovered that the roof structure was in disrepair and needed replacement. Plans were prepared, submitted the Building Department and construction permits were issued. The work commenced but during an inspection Construction Official James Mazzer determined that the attic space would be considered a third-story where 2.5 stories are permitted. Construction halted and the variance application was submitted. Mr. Campion explained that the Borough code definition of a story is based on the ceiling height and square footage as it relates the floor below. The height of the building will not change and conforms to the Borough code to not exceed the 35' maximum at 34'-10".

Board Engineer Brian Gillen believes that the applicant's attic space constitutes a third-story. In the Board Engineer's 1/19/18 completeness review, a survey was requested and has been provided by the applicant. Additionally, he needs to know if the existing structure can support the proposed improvements. He would like to have the beams and rafters evaluated to determine if they can carry the load. There is also a question of settlement based on the additional weight of the proposed improvements. Lastly, he recommends that Fire Official Tom Tuttle review the application to determine if another access point is required for the third-story.

Board Attorney Kaczynski summarized the completeness items from the Board Engineer's 1/19/18 completeness review that have been satisfied by the applicant.

- A(4) Requires submission of additional items as may be required by the Board. The applicant shall provide documentation to the Board that the subject property is a single-family or two-family residence.
- B(2)(3) Receipt indicating all applicable taxes/fees are paid.
- C(7) Requires current land survey information. N.J.A.C.13:40-7.2, titled DEPICTION OF EXISTING CONDITIONS ON A SITE PLAN, subpart "a" requires that a site plan application must be accompanied by a survey showing existing conditions and exact location of physical features including metes and bounds, drainage, waterways, specific utility locations, and easements. It permits the survey information to be transferred to the site plan if duly noted as to the date of the survey, by whom, and for whom. Lastly, it requires that a signed and sealed copy of the survey be submitted to the reviewing governmental body with the site plan submission. In this case, a boundary survey has not been provided with the application.
- C(9) Requires a key map.
- C(11) Requires the Block and Lot numbered in conformity with the Municipal Tax Map.
- C(14) Requires signature block for the Chairman and Secretary of the Board.
- C(15) Requires the names of all property owners within 200 feet of the subject property.
- D(6) Typical floor plans and elevations. A first-floor plan and basement plan has been added to the plans.

Mr. Champion believes that waivers for B(8) and B(9) can be granted since the building is existing, no site changes, footprint changes nor soil movement are proposed. As such, he does not think that these submissions are required and Board Attorney Kaczynski concurred.

Gary Neumann made a motion to grant the following completeness waivers:

- B(8) Written proof of submission to Bergen County Planning and Economic Development or exemption from the County Planning Board's jurisdiction.
- B(9) Written proof of submission to any governmental agency that may have jurisdiction, or exemption from same.

Anthony Klymenko seconded the motion and all eligible members present voted in favor of the motion.

Mr. Champion called his first witness which is the applicant Brad Basile who was sworn in. Mr. Basile owns and resides at 411 Oak Avenue with his wife, Susan Dyrness. He then provided the history of the property. He has lived there since 1989. His father purchased the property in 1969 and kept the existing tenants in place until the 1980s. His sister, Bonnie Basile, moved into the second-floor unit and he moved in to the first-floor unit. In 1996 or 1997, his sister moved out and his brother moved into the second-floor unit. In 2002, he purchased the home from his father. The house was built in 1920 by Henry Shumacher and was purchased by Camille Ast as a two-family house. In 1934, the house was converted to a three-family home. When his father purchased the property in 1969, the house was still being utilized as a three-family home but his father converted it back to a two-family home. The house has remained a two-family home since 1969. At the time of purchase in 1969, the seller Camille Ast prepared an affidavit detailing the history of the property. This affidavit is part of a packet provided by the applicant on 1/19/18

which was marked as Exhibit A-1. Board Attorney Kaczynski advised the Board that affidavits are generally not accepted if the individual is not available to testify. Chairman Lichtenberger informed the Board that the affidavit is a matter of record as it is a part of a variance application from 1969 to convert the two-family home to a three-family home. The Zoning Board of Adjustment denied the application and the home reverted back to a two-family.

Mr. Basile described the basement as being used as a for mechanicals, laundry and storage. The first-floor is being used as a residence for himself and his wife. The second-floor is the second unit which has been occupied by his brother, Barry Basile. The third-floor is a loft area for the second unit and is used as a living space. There was existing rough plumbing and electricity in the loft area. Of particular concern for him was bringing the electric and plumbing systems for the second and third floors up to code. As stated previously, the roof was in disrepair and needed to be replaced. Mr. Basile then reiterated Mr. Campion's summary of the events leading to the variance application submission. He pointed out that there are several other two-family homes in his neighborhood.

Chairman Lichtenberger clarified with Mr. Basile that the first-floor divider was removed in 1969 converting the first-floor back to one unit from two units. Chairman Lichtenberger then relayed the story of a fire in the home where there was a fatality. John Gargagliano confirmed that the home will remain a two-family and the attic space is part of the second unit. Chairman Lichtenberger questioned the improvements being made to the third-story. Mr. Basile explained that since the second-floor space is so small at approximately 600 square feet, the attic area was used as additional living space. Board Attorney Kaczynski asked who has access to the basement. Mr. Basile replied that both units have basement access. He went on to describe the access from the first-floor to the second-floor and the second-floor to the third-floor. Chairman Lichtenberger noted that there is a full bathroom in the basement. Mr. Basile answered that the bathroom was in place prior to his purchasing the property. John Montel confirmed that the entire roof, including the rafters, was removed and replaced. Harry Hillenius clarified that the building height was unchanged, 34'-10".

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

The applicant's next witness is Perry M. Chevestick and he was sworn in, qualified and accepted. He will be testifying as an engineer, architect and planner. He provided his history in relation to the application. He explained that the building footprint and square footage have not changed. He recommended replacing the stairs from the second-floor to the attic to bring them to code. As mentioned previously, the roof was in terrible condition with wood rot and undersized supports. He created the site plan with 1/17/18 latest revision date which was submitted with the application. Mr. Chevestick explained that the building is construction type 3B which means that the exterior walls are noncombustible (masonry blocks) with a wood framed interior. This type of construction is more durable and fire retardant than typical wood framed exterior and interior construction (5B). He observed that the foundation is in good condition with no evidence of cracking and considers the entire structure as solid. He believes that confusion with the attic space being considered a third-story was because he was following the building code and not the Borough zoning code. Once he reviewed the Borough zoning code, the attic space

being defined as a third-story was appropriate. Mr. Chevestick sent a letter to Fire Subcode Official Charles Eyer on 1/17/18 explaining the International Residential Code 2015, New Jersey Edition definition of Habitable Space and Habitable Attic. This letter was included in the revised variance application that was submitted on 1/19/18 and was marked as Exhibit A-1. A summary of the 1/19/18 revised variance application:

- Letter from applicant's attorney
- Revised Notice of Appeal
- Addendum to the Notice of Appeal
- 11/8/17 denial letter from Zoning Officer Mazzer
- 1/17/18 letter from Perry M. Chevestick to Fire Subcode Official Charles Eyer
- 10/2/69 affidavit from former property owner Camille Ast
- 11/10/17 property survey prepared by Thomas G. Stearns, III
- 12/12/17 200-foot list of proximity property owners
- 4-page site plan with 1/17/18 latest revision date

Mr. Chevestick summarized the site plans that he created. Sheet 2 details the existing conditions for the basement and the first-floor, and there are no proposed changes. Sheet 3 details the existing conditions and proposed changes to the second and third floors as well as the roof. The biggest change to the second-floor is the replacement of the stairwell leading to the third-floor. The closet adjacent to the kitchen will be removed allowing for a dining table to be added. The third-floor roof will be replaced and the existing dormer on the front on the building will be removed. There is an existing dormer on the left side of the building which will be replaced and a new dormer on the right side of the building will be constructed. The left dormer will be a bathroom using the existing rough plumbing and the right dormer will be a closet. A small gas fireplace will also be installed on the third-floor. Mr. Chevestick considers the second-floor apartment to be small at 635 square feet. He believes that the additional living space in the third-floor attic space (210 square feet habitable area) as an improvement to the unit.

Board Attorney Kaczynski asked if the third-floor could be converted to a separate unit. Mr. Chevestick does not believe that this is possible since the only access would be through the second-floor unit. John Gargagliano asked if there will be a bedroom on the third-floor and Mr. Chevestick does not think a bed would fit. Knee wall to knee wall is approximately 8'. The distance between the back wall to the gas fireplace is approximately 6'. All of the electric and plumbing on the second and third floors will be replaced and brought up to code. Smoke and carbon monoxide detectors will be added. John Gargagliano is concerned about a fire hazard on the third-floor if it is being used as a bedroom.

Mr. Chevestick explained that height of the building has not changed and remains at 34'-10". The footprint of the building will not change either. No site work or soil movement is proposed. He has observed that there are a number of homes in the neighborhood that are similarly constructed to the subject property. Bringing the second and third-floor electric and plumbing systems up to code is considered an improvement to the property. The exterior finishes will be an aesthetic improvement to the neighborhood. He does not believe that the proposed renovation will have a negative impact on the neighborhood nor on the Borough zoning plan.

John Gargagliano clarified that the second-floor apartment would be considered a one-bedroom

unit. Board Attorney Kaczynski asked about the fire egress for the second-floor and Mr. Chevestick answered that the internal stairwell leads to the front door. A secondary means of egress is not required. Anthony Klymenko asked if the third-floor bathroom and closet are included in the floor area. Mr. Chevestick explained that the building code specifically does not include bathrooms and closets in the habitable area for attics. The stairway from the second-floor to the third-floor was removed and brought up to code.

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

Board Attorney Gillen noted that the roof rafters were undersized and rotten and he would like confirmation that the floor beams can carry the load. Mr. Chevestick evaluated the floor joists and they are solid and the spans are shorter than what he observed in the roof. Additionally, he inspected the basement and there is no sign of foundation repair, damage or settlement.

Zoning Officer James Mazzer provided a summary of the construction permit and variance application process for the subject property. Zoning Officer Mazzer concurred with Mr. Chevestick's testimony that the discrepancy on the third-floor determination was because the building code is not as stringent as the Borough zoning code when determining what constitutes a third-story. The applicant provided him several versions of plans with an early version including a kitchen on the third-floor. Mr. Basile interjected that they were proposing wet bar and not a kitchen. Zoning Officer Mazzer explained that the latest version of the construction permit plans omitted the third-floor wet bar. Chairman Lichtenberger asked about the third-floor egress. Zoning Officer Mazzer recommends adding conditions of approval that the third-floor could not be rented as a separate unit, cannot be used as a bedroom and must have hardwired smoke detectors. Chairman Lichtenberger is concerned that a fire on the second-floor could prevent escape from the third-floor. He would like Fire Official Tom Tuttle to review the application and make a recommendation. Unfortunately, he was unable to attend the hearing. Chairman Lichtenberger would like to adjourn the hearing to the next meeting which is one week from today on Thursday, March 1, 2018. Mr. Champion has completed his direct presentation but would like to reserve the right to respond should Fire Official Tuttle's testimony require a response. Chairman Lichtenberger agreed to that request. John McManus asked about a third-floor fire escape and Mr. Chevestick replied that fire escapes are not permitted. He went on to explain that if the attic space was a full third-story and not a habitable attic, the building code would require multiple modifications including sprinkler systems, fire rated sheetrock and another means of egress. Chairman Lichtenberger questioned the need for a full bath on the third-floor when there is a full bath on the second-floor. Mr. Chevestick will not be available for the next meeting on Thursday, March 1, 2018 but Mr. Champion believes that some accommodations can be made. Mr. Champion requested that Fire Official Tuttle's report be forwarded to him prior to the next meeting, if a report is created. Chairman Lichtenberger adjourned the application to the 3/1/18 meeting without need for further notice

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

Mayor's Designee Rick DeHeer rejoined the dais.

Closed Session None

Informal Hearing None

Old Business None

New Business Potential Upcoming Applications

- Donald Blake 19 West Pleasant Avenue Block 61, Lot 35
 - Wants to share office space with Birthright
 - 3 days for each business (closed Sundays)

- Carvana 167 Route 17 North Block 124, Lot 2
 - Contacted by Kimley Horn Engineers to gauge the upcoming hearing schedule

- Lori Mercer 214 West Spring Valley Avenue Block 21, Lot 19
 - Preparing a front yard setback variance application for a front porch addition

Open Meeting to the Public

Adjournment

A motion to adjourn the meeting was made by Harry Hillenius. John McManus seconded the motion. The meeting was adjourned at 8:51pm.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary