

**MAYWOOD PLANNING BOARD
MINUTES
March 28, 2019**

A regular meeting of the Maywood Planning Board was held on Thursday, April 25, 2019 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 22, 2018. 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. 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 7:30pm with the following members present: Chairman Frank Lichtenberger, Vice Chairperson Charlotte Panny, Gary Neumann, John Montel, Harry Hillenius, Rick DeHeer, Peter Cicarelli and Secretary Anthony Klymenko. Board Attorney Kara Kaczynski, Brian Gillen and Board Planner Michael Kauker were also present.

Approval of Minutes

Vice Chairperson Charlotte Panny made a motion to accept the minutes from the February 28, 2019 meeting. Rick DeHeer seconded the motion. All eligible members present voted in favor of the motion.

Bills

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

Correspondence

- 3/25/19 letter from Board Recording Secretary Tara Grunstra Re: Stray Cat Brew 108 West Pleasant Avenue Hearing Date 4/4/19

Resolution

Patrick Izzo
14 East Fairmount Avenue
Block 34, Lot 1
Calendar #2018-16
Variance Application

Harry Hillenius made a motion to approve the resolution as written. Rick DeHeer seconded the motion. All eligible members present voted in favor of the motion.

Hearing

200 Route 177 LLC
200 Route 17 South
Block 125, Lots 3 & 4
Calendar #2018-10
Variance & Site Plan Applications

Victor Herlinsky, Jr. of the law firm of Sills, Cummis & Gross represents the applicant, 200 Route 17, LLC. He has two witnesses prepared to testify completing his case. The first witness is the traffic engineer, Charles Olivo of the firm of Stonefield Engineering & Design who was sworn in, qualified and accepted. Mr. Olivo prepared a Traffic Impact Study for the subject redevelopment of the site which is located at the end of Midland Street and proximate to the intersection of Essex Street and Midland Street. Previously, there was a Sears Distribution Center with access to Route 17 located on the subject parcel. As part of the Traffic Impact Study, he did an inventory of the existing roadway conditions; both the roadway that the site is to be located on and also the intersection which is closest to the subject property. He reviewed roadway conditions during peak times of the self-storage facility use and peak times of the roadway conditions themselves. Mr. Olivo conducted existing traffic counts at the subject intersection of Essex Street and Midland Street. Essex Street as a county arterial roadway has vehicles traversing all times of day while Midland Street has very low traffic generation during the peak conditions. When looking at the future condition, he explained that Midland Street is well below 100 peak hour trips while Essex Street during that period is carrying over 2,500 peak hour trips. He also reviewed a 2020 no-build condition which is a future condition that considers growth within the area, ambient traffic growth associated with population growth, site-specific development in and around the area, and utilizing background growth factors which are published by the New Jersey Department of Transportation. He described that the build condition factors in the redevelopment of the site as proposed in the application. With over 128,000 square feet of self-storage facility proposed on the site, he takes the existing condition, fast-forwards to a future no-build condition and then overlays the traffic associated with this type of land use. He explained that self-storage facilities have become a more popular burgeoning use in recent years. Mr. Olivo conducted traffic generation counts at a 100,000 square foot self-storage facility across Route 17 on the northbound side. Additionally, he reviewed the Institute of Transportation Engineers (ITE) Trip Generation Manual which is an industry standard manual that publishes data of counted studied actual operating self-storage facilities to project what the traffic volume of a development such as this would be. Within the ITE, he explained that the self-storage land use category is generally one of the lowest traffic generators per 1,000 square feet of built area for gross floor area of a building. The New Jersey Department of Transportation standards for traffic generation states that anything that is 100 trips or lower during a peak hour is generally considered to be a low generator of traffic and would likely not change the driver's experience through a roadway network. Based on the ITE projections for this type of use for this size, Mr. Olivo detailed that the peak hour generation during the weekday evening peak is 26 vehicle trips which is well below the 100 threshold. He counted the vehicles coming in and out of the self-storage building on Route 17 North which is 100,000 square feet. The counts were multiplied by a 1.3 factor to account for the proposed building square footage of 128,000. As such, he continued that the trip generation is 6 vehicle trips during the evening peak hour, well below the threshold of 100 peak hour trips and would be considered a low traffic

generator that would not impact the roadway networks. From his traffic generation perspective, the as-of-right uses such as office would generate more traffic than the proposed use.

In terms of parking, Mr. Olivo explained that there are 21 parking stalls proposed on the site and 6 loading areas. As such, there's 27 vehicle positions on the site where vehicles can be staged or parked. The Institute of Transportation Engineers publishes a Parking Generation Manual similar but not exactly the same as Trip Generation Manual. The 5th Edition of the Parking Generation Manual was published last month, so this data is very new. He reviewed the number of vehicles parked on built sites throughout the country and this use is an extremely low generator of parking as well. When he was analyzing the self-storage data over the years, the parking demands or the number of parking stalls that are actually being used during peak times continues to trend downward. He observed the number of parked cars at the self-storage facility on the Route 17 North and the ratio is 0.05 parked cars per thousand square feet. Based on 130,000 square feet of self-storage, he projects that 6 parked vehicles would be on-site during the peak time. He summarized that the applicant has more than enough parking to accommodate the expected demand. When asked by Mr. Herlinsky, Mr. Olivo believes that there will no discernable impact for a driver based on the amount of traffic in Maywood.

Chairman Lichtenberger asked about the traffic light to the east side of the Route 17 exit and the traffic light on the west side. Mr. Olivo responded that the intersection at the Route 17 ramp is about 250 feet to the east. He added that the intersection to the west is Riverview Avenue and there are two gas stations on either side, so it's about 500 feet. He explained that those two traffic lights are closely spaced which allows for gaps in traffic to allow vehicles to progress out or onto Midland Street. Chairman Lichtenberger inquired if Bergen County approval was required since Essex Street is a County roadway. Mr. Olivo explained that typically for an application like this, the civil engineer would file for county exemption. The subject property does not have direct access to the county roadway. As such, he would file more of a traffic-related application to the county, but he suspects that given the amount of traffic, the County would not likely have an opinion about the impact. Chairman Lichtenberger observed that there are no other buildings on Midland Street and Mr. Olivo concurred. Peter Ciccarelli asked about Saturday peak times. Mr. Olivo answered that while there are 40 to 50 peak hour trips on a Saturday, the ambient traffic on Essex Street is 25% less vehicles compared to the weekday rush hour. However, Route 17 remains just as busy. Brian Gillen asked Mr. Olivo about the ITE number if all 26 additional vehicles traveled on Route 17. Mr. Olivo answered that Route 17 carries 10,000 to 15,000 vehicles during the peak hour and 26 additional vehicles would have an imperceptible impact on traffic.

Joseph R. Torre represents Ultimate Force at 124 Essex Street in Rochelle Park. He also indirectly represents Harley Davidson since the dealership has a long-term lease with Ultimate Force. He asked if a traffic report was submitted. Mr. Herlinsky clarified that the traffic report dated 7/13/18 was submitted as part of the application. A supplemental report dated 1/18/19 was submitted with the amended application when the applicant lowered the height of the building from six stories to five stories. The amended application was marked as applicant's Exhibit #A-14. Mr. Torre asked Mr. Olivo a number of questions related to parking on the site. Mr. Olivo answered that there are 7 parking stalls, a turn-around area, a drive aisle, a loading zone, and a portion of another loading stall located within the Borough of Maywood. Mr. Torre began to ask

about garages within the building but Mr. Herlinsky objected as Mr. Olivo is a traffic engineer and the units Mr. Torre described as garages are actually storage units. There was much discussion and objections. Mr. Herlinsky stated for the record that no cars would be stored in any of the storage units. Mr Torre asked about overflow parking. Mr. Olivo answered that the applicant has provided more than adequate parking on the site. Mr. Torre asked about the facilities bordering Midland Street. Mr. Olivo replied that there is a recreational area across the street from the subject property and a medical office closest to the intersection. Mr. Torre asked if a study of Midland Street was conducted. Mr. Olivo stated that Midland Street was included in his analysis and the proposed parking is more than adequate. Mr. Torre asked about self-storage unit auctions. There was much discussion and objections. Mr. Olivo answered that based on his discussions with the operator, auctions occur once per month and approximately 5-10 people attend. His parking analysis would not change based upon this information. Mr. Torre provided hypothetical situations prompting discussion and objections. Mr. Torre referenced Mr. Olivo's 7/13/18 Traffic Impact Letter Report. Table 1 compares prior-use and as-of-right development trip generation. Mr. Torre noted that the ITE land use for a 154,340 square-foot self-storage facility at weekday evening peak hour at 26 movements while the as-of-right development for a 22,500 square-foot office building was also 26 movements. Mr. Olivo clarified that the self-storage facility cited is about seven times the square footage as the office building. Additionally, he noted that during the morning peak hour, the movements for the proposed use is significantly lower than the office use. Mr. Torre asked about traffic counts for a nursing home use and Mr. Olivo answered that nursing homes and assisted living facilities have low traffic volume. When asked by Mr. Torre, Mr. Olivo confirmed that he reviewed the circulation aisle design and parking stall dimensions with the site engineer who prepared the plans. Mr. Torre asked what "mini warehouse" use was. Mr. Olivo answered that the general name within the ITE Trip Generation Manual that applies to this use.

A short recess was taken at 9:00pm. The meeting resumed at 9:04pm with all members present.

Mr. Torre asked who designed the site circulation plan. Mr. Olivo answered that the site engineer designed the plan and he reviewed it. Mr. Torre asked about on street parking on Midland Street. Mr. Olivo answered that Midland Street on street parking was reviewed as part of his analysis.

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

The applicant's second witness is their planner, Joseph Burgis. Mr. Torre explained that he and Mr. Burgis have worked together previously. Mr. Burgis was sworn in, qualified and accepted. He began by identifying three notable features of the property. One is that the property is bisected by the municipal boundary line between Maywood and Rochelle Park which affects the site's development and how certain ordinance requirements are imposed. Secondly, a portion of the tract has been condemned for the Essex Street/Route 17 ramp. Prior to the taking, the site occupied an area of 2.86 acres (2.2 acres in Maywood and 0.58 acres in Rochelle Park). A total of 1.59 acres was taken for the interchange improvement which resulted in the site's current size of 1.27 acres (0.69 acres in Maywood, and 0.58 acres in Rochelle Park). The third issue is the lack of access from Route 17 or Essex Street which has an effect on the site's development potential. Mr. Burgis reviewed both the 2003 Maywood Master Plan and the 2009 Re-

Examination Report. He noted that the 2003 Master Plan designates the site for a restrictive commercial business land use designation. While the Master Plan goals are very general, he considers the two most pertinent to this case to be encouraging and establishing a well-defined commercial development pattern in this area designed to encourage and enhance economic growth for the municipality and to promote a variety of land uses to enhance the economic character of the community. The 2009 Master Plan Re-Examination Report basically reiterates and reaffirms both the land use designation as well as the goals and objectives of the 2003 Master Plan. He explained that the zoning is designed to implement the Master Plan recommendations. The site is zoned as High-Density Office (HDO) with a Sexually Oriented Business (SOB) overlay. The permitted uses for the HDO zone are office, governmental uses and related facilities, along with the sexually-oriented business uses as an overlay. Mr. Burgis then described the proposed development. The applicant is proposing a five-story 128,440-square-foot self-storage facility that includes 750 square feet of office space to serve the self-storage building. There's a total of seven parking spaces in Maywood plus an additional 14 parking spaces in the Rochelle Park for a total of 21 parking spaces to serve the needs of the facility. There are buffers around the perimeter of the property particularly serving the residential development to the east, which is in Rochelle Park. He noted that the applicant has eliminated one floor and increased the setback on Madison Street in order to address some of the concerns raised by the residents.

Mr. Burgis then began to summarize the variances relief that the applicant is seeking. Self-storage facilities of this kind are not a permitted use in this zone. The applicant is requesting two related D variances; a D-1 use variance and a D-3 floor area ratio (FAR) variance. Additionally, the applicant needs a minimum lot area variance (1.5 acres required vs. 0.69 acres proposed) and a lot depth variance (150 feet required vs. 115 feet proposed). The applicant is seeking two setback variances; front yard (25 feet required vs. 12.7 feet proposed) and rear yard (20 feet required vs. 0 feet proposed) since the municipal boundary line bisects the property base almost in half. Lastly, the applicant needs a floor area ratio variance (200% permitted vs. 273% proposed). The Borough ordinance does not have a specific parking standard that relates to this kind of a use, but the applicant is proposing 21 parking spaces with 7 of the 21 in Maywood.

Mr. Burgis then provided the justifications for the use variance pursuant to N.J.S.A. 40:55D-70d(1). He began by explaining the statutory criteria that the applicant needs to identify special reasons (positive criteria) and the twofold test for negative criteria. The first prong being that there's no substantial detriment to the public good and no substantial impairment to the intent and purpose of the zone plan in the community. Additionally, for a D-1 use variance the Medici test is a higher standard where the applicant must identify not only the particular suitability of the site, but also an enhanced burden of proof. Based on his analysis, there are seven special reasons that exist to support the special reasons arguments for this application. First is the issue of lack of access off the highway which precludes a lot of the commercial development that was contemplated in the ordinance for this site. He noted that this particular type of use does not need access from a major highway which makes it the most appropriate use for this property. The second issue special reason relates to the fact that the proposed use is the least intensive use of the property given its location and access which doesn't generate a lot of traffic. The third special reason relates to how the need for this use is strong. The standard design criteria for this use in any one region is about 8.33 square feet per capita. He reviewed that within a three-mile

radius that there's approximately 2.5 square feet of this kind of use per capita. When he factored in approved projects that have not yet been built, the number remains below half of the 8.33 square feet per capita. The fourth special reason relates to the complicated nature of the site's duality of zoning designations with half of this site under Maywood's zoning and the other half under Rochelle Park zoning. The permitted uses, setback and coverage requirements are different in the two municipalities which affects the ability to develop the site in a meaningful way. The fifth special reason is consistency with the Maywood Master Plan goals which reference promoting a balance of land uses and economic development while not adversely affecting the surrounding neighborhood. The sixth special reason is furthering a number of the purposes of the Municipal Land Use Law itself which identifies fourteen different purposes. He believes that there are minimally four that are being affirmed by this particular application. One is encouraging the appropriate use or development of land in a manner that promotes the public health and safety. The proposed use promotes the public safety since it doesn't generate a lot of traffic. Second is ensuring development in one municipality that doesn't conflict with development in the neighboring municipality. The third purpose of the act is providing sufficient space in appropriate locations for a variety of uses that meets the needs of all New Jersey citizens, not just the locality in which the site is located in. He reminded the Board of his earlier testimony that there is a need that's being addressed and encouraging a use that has a limited amount of traffic generating potential. The fourth purpose is providing or securing safety from flooding and other manmade disasters which also links into the final purpose of the special reason. The applicant is proposing a drainage improvement in Rochelle Park which will benefit the region. In terms of the negative criteria, when he was reviewing the Master Plan and the Re-Examination Report, he concluded that there isn't any substantial impairment to the intent of the plan goals and objectives. With respect to the second prong, a substantial detriment to the public good, he thinks the minimal traffic impact and drainage improvements demonstrate no impairment to the public good. In terms of the Medici enhanced burden of proof, he doesn't believe there is an affirmation of the enhanced burden of proof because the site is particularly suited for this particular use.

The other D variance relief being sought is for floor area ratio. Mr. Burgis explained that floor area ratio is a ratio of floor space to lot area. The site once encompassed 2.86 acres but because of the loss of so much of the site to the Essex Street/Route 17 ramp, the FAR variance is needed. He cited the Randolph Town Center case where the Court said that the Coventry decision should provide guidance in terms of evaluating the merits of FAR variance relief. He summarized the Coventry decision in Westwood. The applicant was seeking to build roughly 360 apartments on Old Hook Road immediately west of the hospital and apartments were identified as a conditional use. The applicant violated two conditions of the conditional use; side yard setback and front yard setback. The front yard setback requirement was equivalent to one-third the depth of the property. The applicant's property was 1,400 feet deep resulting in a front yard setback requirement of over 300 feet. The applicant argued that the requirement was excessive for the Old Hook Road location and the design functioned well. Coventry Square appealed the Board's decision. Coventry Square is a roughly 30-unit apartment building across the street that didn't want competition. They appealed up to the New Jersey Supreme Court. The Court determined that the site function for a conditional use, despite not complying to code, that the governing body intended that the use was appropriate at this location, thereby setting the new standard for conditional use. Mr. Burgis explained that over time, the courts have used that rationale to water

down the basis for a D variance including FAR variance. With the Randolph decision, the Court said to apply the Coventry standard. The proposed development design criteria functions well which allows him to conclude that the applicant affirms the Randolph/Coventry standard and enables the Board to grant relief. Two of the other bulk variances that are required are lot area and depth. These two variances are required since the size of the property was greatly reduced in the taking. He considers the rear yard variance as a technical variance because it is a function of the rear lot line being measured from a municipal boundary line through the center of the building. He believes that the front yard variance is the result of the taking. He concluded that there is enough there to allow the Board to approve the application in terms of the positive and the negative criteria. Mr. Herlinsky clarified that the FAR was reduced to 227% after the proposed building reduced the number of floors from six to five.

Mr. Torre believes that his cross-examination will exceed the remaining time in the meeting as Chairman Lichtenberger prefers for the meeting to end by 10pm. Mr. Torre asked why Mr. Burgis cited the Coventry case as the proposed use is not conditionally permitted. Mr. Burgis answered that Randolph case relates to FAR and weighs heavily on the Coventry case. Mr. Torre questioned if the applicant is claiming a hardship as the reason for a use variance. Mr. Burgis answered that the applicant is claiming the site is particularly suited for the use and cited the specific seven special reasons that he believes supports that reasoning. Hardship is identified in the special reasons that he enumerated. Mr. Torre requested that he repeat the hardships. Mr. Burgis answered that the lack of access from Route 17 and the lack of access from Essex Street. Public storage is the least intensive use of the subject property that has very limited accessibility. Mr. Torre asked if there are any other permitted uses on this site that are in the minimum traffic category that this one is in. Mr. Burgis answered that the permitted uses are office, government office and sexually-oriented businesses. He cited Table 1 Mr. Olivo's (Stonefield) report dated 7/13/18 that the proposed use is a least intensive use. Mr. Olivo did traffic counts at existing self-storage facilities of a similar size, and his analysis indicated that peak hour (weekday evening) a total of 6 trips and the ITE standard for a 22,500-square-foot office building he anticipates 26 peak hour trips.

After much discussion, the hearing was adjourned to a Special Meeting on Tuesday, 4/2/19 with notice to be published in the newspaper. The regular meeting for Thursday, 4/4/19 was cancelled. Mr. Herlinsky extended the time for the Board to act to 4/25/19.

Closed Session None

Informal Hearing None

Old Business

- Gary Neumann asked about the status of the Empire Real Estate Holdings approval given the DEP determination
 - Board Attorney Kaczynski has been in contact with the applicant's attorney
 - Board Engineer Tom Lemanowicz is reviewing the DEP determination
 - He is awaiting the requested escrow to proceed
 - Board Attorney Kaczynski instructed Board Recording Secretary Grunstra to send another escrow request

- Secretary Anthony Klymenko and Gary Neumann have personally observed the tenant violating the conditions of approval by parking 17 or more vehicles where parking was limited to 14 vehicles
- Board Attorney Kaczynski indicated that the applicant will need to appear before the Board but the additional escrow would need to be received in order to proceed
 - The application will need to be amended based on the DEP determination
- Gary Neumann mentioned that the On the Spot signage is still on the property and was to be removed as a condition of approval

New Business

- Distribution of Calendar #2019-02 Stray Cat Brew, 108 West Pleasant Avenue, Block 82, Lot 4 Sign Application
 - The hearing will be moved to the 4/25/19 meeting since the 4/4/19 meeting was cancelled

Open Meeting to the Public

Adjournment

A motion to adjourn the meeting was made by Harry Hillenius. Vice-Chairperson Panny seconded the motion. The meeting was adjourned at 10:22pm.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary