

**MAYWOOD PLANNING BOARD**  
**MINUTES**  
**May 23, 2019**

A regular meeting of the Maywood Planning Board was held on Thursday, May 23, 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, Councilman Richard Bolan (left @ 8:09pm), Gary Neumann, Paul Kuhn, John Montel, Rick DeHeer, Peter Cicarelli, Secretary Anthony Klymenko and Daniel Nemecek. Board Attorney Kara Kaczynski, Board Engineer Tom Lemanowicz (left @ 8:09pm), Board Planner Michael Kauker and Brian Gillen were also present.

**Approval of Minutes**

Rick DeHeer made a motion to accept the minutes from the March 28, 2019 meeting. Gary Neumann seconded the motion. All eligible members present voted in favor of the motion.

Vice Chairperson Charlotte Panny made a motion to accept the minutes from the April 25, 2019 meeting. Rick DeHeer seconded the motion. All eligible members present voted in favor of the motion.

Gary Neumann made a motion to accept the minutes from the May 2, 2019 meeting. Paul Kuhn seconded the motion. All eligible members present voted in favor of the motion.

**Bills**

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

**Correspondence**

- 5/2/19 letter from Board Engineer Tom Lemanowicz Re: PSE&G Substation Expansion Completeness Review
- 5/3/19 letter from Captain Terrence Kenny Re: Maybrook I & Maybrook II Recommendation

- 5/3/19 letter from Captain Terrence Kenny Re: PSE&G Substation Expansion Recommendation
- 5/6/19 letter from Board Recording Secretary Tara Grunstra Re: Maybrook Garden Apartments Hearing Date 7/25/19
- 5/8/19 letter from Bergen County Planning and Engineering Re: PSE&G Substation Expansion
- 5/16/19 letter with enclosures from Brandi Bartolomeo Re: PSE&G Response to Board Engineer's Completeness Review
- 5/20/19 letter from Board Engineer Tom Lemanowicz Re: PSE&G Substation Expansion Completeness Review 2
- 5/20/19 letter from Bergen County Soil Conservation District Re: PSE&G Substation Expansion
- 5/21/19 letter from Board Recording Secretary Tara Grunstra Re: PSE&G Substation Expansion Hearing Date 7/25/19

## Update

**Empire Real Estate Holdings, Inc.**  
 191 West Central Avenue  
 Block 122, Lots 15 & 16.01  
**Calendar #2016-15**

David Egarian is the engineer for Empire Real Estate Holdings, Inc. and Piera DeMarco is the applicant. He updated the Board on the status of the paving project since NJDEP has rendered their decision on the flood hazard permit. Board Attorney Kara Kaczynski asked why Lot 16.01 was not included in the NJDEP application. She noted that the paving project for Lot 15 was approved by the NJDEP. Mr. Egarian answered that the NJDEP review determined that the gravel surface on Lot 15 predated 1995 and approved the paving project for that lot. However, the gravel surface on Lot 16.01 did not predate 1995. Through aerial photographs, the NJDEP determined that Lot 16.01 was disturbed between 2002-2007 without acquiring a permit to do so. As such, the NJDEP Enforcement is currently calculating the penalty for violating the flood hazard rules. NJDEP advised that the permit would be denied if Lot 16.01 was not removed from the application and Lot 16.01 should remain in its current state as a gravel surface. Mr. Egarian explained that the applicant amended the application to keep Lot 16.01 in its current condition and proposed that Lot 15 be paved which was subsequently approved and the application closed. He explained that the applicant is waiting for the NJDEP notice of violation for Lot 16.01. Board Attorney Kaczynski confirmed that wheel stops were installed on Lot 16.01 which may further violate the NJDEP rules. Councilman Richard Bolan clarified that the NJDEP has not approved the current use of parking on gravel for Lot 16.01. Mr. Egarian answered that the NJDEP verbally instructed that the current use could continue but they would not approve the paving of Lot 16.01. Board Attorney Kaczynski asked if Lot 16.01 had the curbing restored which was a condition of Board approval. Piera DeMarco answered that the wheel stops with striping have been installed but they haven't applied for the construction permit to replace the curbing.

Board Engineer Tom Lemanowicz has reviewed the NJDEP approval and contacted the NJDEP directly. It is his understanding that the NJDEP has not approved the continued use of Lot 16.01 as a gravel parking lot. He has contacted Lauren Drumm of NJDEP who reviewed the Empire Real Estate Holdings application and Michelle Agnoli of NJDEP Enforcement. They let him

know that Lot 15 could be paved but they characterized Lot 16.01 as an illegally existing parking lot. Chairman Frank Lichtenberger reminded the applicant that the resolution approved the parking of 14 vehicles, however, Board members have observed more than 14 vehicles parked at the property. Mrs. DeMarco advised the Board that she has repeatedly requested that the tenant abide by the Board's approval limiting parking to 14 vehicles but the tenant refuses to comply. She plans to replace the tenant when the parking lot is paved. Board Engineer Lemanowicz believes that there are issues with the proposed parking configuration. Specifically, he thinks the length of the proposed angled parking spaces need to be extended to accommodate for the angle. While the Board can amend the resolution to reflect the shorter length of regular parking spots, the Board does not have jurisdiction over the ADA parking. Once the parking spaces are elongated, the anticipated vehicle turning movement will extend into the street itself. Mr. Egarian explained that the vehicle turning movement was vetted during the application process. He utilized the computer program Auto-Turn and conducted an onsite turning test where the vehicle remained on the property while reversing to exit. Additionally, the NJDEP is permitting 7'-8' of vegetation to be cleared from Lot 15 so that the parking area will be wider than what is there currently. Mr. Egarian added that he is unsure that the wheel stops are currently located in the correct location.

Councilman Bolan clarified that the property owner was the applicant. He noted that it is up to the property owner to have the tenant comply with the conditions of approval. He advised that the violation would go to the property owner. Mrs. DeMarco pointed out that the resolution specifies that violations would be against the tenant. Councilman Bolan asked how many vehicles are regularly parking at the site and Mrs. DeMarco did not know the answer. Rick DeHeer believes that the resolution is not being complied with. Mr. Egarian confirmed that passenger vehicles were permitted to be parked on Lot 15 while the ambulettes were to be parked on Lot 16.01. Councilman Bolan asked if the applicant is permitted to use Lot 16.01 as a gravel parking lot. Board Engineer Lemanowicz does not believe that the NJDEP condones the use of Lot 16.01 as a gravel parking lot. Councilman Bolan does not think vehicles should be parked on Lot 16.01 and the installed wheel stops should be removed. Board Attorney Kaczynski asked Board Engineer Lemanowicz how to resolve the question whether or not Lot 16.01 can be utilized as a gravel parking lot. He suggested that the applicant could request a Letter of Jurisdictional Determination from the NJDEP. This letter would confirm or deny that the applicant could continue to use Lot 16.01 in its current state. Mr. Egarian did not believe that the applicant has requested the Letter of Jurisdictional Determination. He believes that the applicant is waiting for NJDEP Enforcement to act. He added that as part of the NJDEP approval, they required that he add the statement on the site plan for Lot 16.01, "The existing gravel parking area to remain".

Mr. DeHeer understands that there is confusion about if Lot 16.01 is allowed to be used as a gravel parking lot, but believes that the tenant is not following the conditions of approval. Gary Neumann confirmed that NJDEP approval would be required to restore the curbing on Lot 16.01. Board Attorney Kaczynski believes that she and Board Engineer Lemanowicz will provide options for the Board to pursue. She requested any additional information from the NJDEP that the applicant could provide. Ms. DeMarco promised to contact the tenant to remind him to follow the approval conditions.

**Resolution****Robert Hamburg/Stray Cat Brew**

108 West Pleasant Avenue

Block 82, Lot 4

**Calendar #2019-02****Sign Application**

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

Councilman Bolan stepped down from the dais and left the meeting at 8:09pm. Board Engineer Tom Lemanowicz also left the meeting at 8:09pm.

**Hearing****200 Route 17 LLC**

200 Route 17 South

Block 125, Lots 3 &amp; 4

**Calendar #2018-10****Variance & Site Plan Applications**

Joseph Fiorenzo of Sills, Cummis & Gross represents the applicant, 200 Route 17, LLC. Joseph R. Torre represents Ultimate Force and, indirectly, long-term leasee Harley Davidson. Mr. Torre will continue to cross examine the applicant's planner, Joseph Burgis. Mr. Burgis remains under oath. Mr. Torre asked Mr. Burgis about overflow and auctions. Mr. Burgis believes that there will be adequate parking and agreed with the traffic report prepared by Mr. Olivo. Mr. Torre asked about the Statement of Principal Points that was submitted with the application. Mr. Burgis did not prepare the document but agreed with the content. The Statement of Principal Points was marked as Exhibit #O-1. Citing the exhibit, Mr. Torre questioned why the property was "well situated". Mr. Burgis answered that the site's location without access to the adjacent highway will not generate significant traffic. Mr. Torre asked about the permitted use of an office building. Mr. Burgis believes that office use would generate more traffic. Mr. Torre cited Mr. Olivo's traffic report that the both uses would produce the same amount of traffic; 26 peak hour trips. Mr. Burgis replied that the traffic counts based on the ITE Handbook did have the same traffic generation potential but the actual traffic counts at an existing self-storage facility were 6 peak hour trips. Mr. Torre had page 4 of the Stonefield 6/13/18 Traffic Impact Report marked as Exhibit #O-2. Mr. Burgis noted that the revised traffic report reflecting the decreased size of the proposed building has a lower traffic generation number than this exhibit. When reviewing the traffic information, he focused on the local as counted numbers over the ITE Handbook which is based on national averages. Mr. Torre asked Mr. Burgis why Mr. Olivo didn't perform as counted numbers for the permitted use and Mr. Burgis didn't know the answer. Mr. Torre returned to Exhibit #O-1 Statement of Principal Points. He asked about the phrase "site particularly suited". Mr. Burgis cited his direct testimony where he identified the seven specific special reasons that the site is particularly suited for the proposed use including lack of access to Route 17, low traffic generator, the duality of zoning split by the municipal boundary and consistency with the Borough Master Plan goals and objectives. Mr. Torre asked if the proposed use was a better zoning alternative to the permitted office use and Mr. Burgis agreed that the proposed use would be a better zoning alternative based on his previous testimony. Mr.

Torre questioned why Mr. Burgis considers the proposed use to be “least intensive”. Mr. Burgis replied that a proposed use of fewer than 6 peak hour trips would be hard to find. Mr. Torre confirmed that Mr. Burgis did not compare the proposed use to assisted living facilities. Mr. Burgis compared the proposed use to as-of-right restaurants (permitted in Rochelle Park), office space and SOB retail uses. Mr. Torre confirmed that Mr. Burgis did not prepare a written report but instead provided testimony.

Mr. Torre repeated his previous request that he discuss the Rochelle Park zoning for this application. Board Attorney Kara Kaczynski reaffirmed that the Board cannot consider Rochelle Park zoning in relation to this application.

Mr. Torre questioned Mr. Burgis if there are special reasons that affirm the positive criteria of the statute as stated in Exhibit #O-1 Statement of Principal Points. Mr. Burgis replied that there are special reasons and reminded the Board that he testified about them at the previous hearing on 3/28/19. Mr. Torre asked Mr. Burgis to clarify the phrase “large-scale office use” from the exhibit. Mr. Burgis answered that he did not author the exhibit so he doesn’t know what the author meant. He added that the phrase “large scale” could vary by municipality. Mr. Torre confirmed that the Board would prefer for the hearing to end by 10pm.

A short recess was taken at 9:08pm. The meeting resumed at 9:14pm with all members present.

Mr. Torre continued his cross examination of Mr. Burgis. Mr. Torre inquired if the zoning environmental considerations are almost always mentioned in Municipal Land Use Law (MLUL). Mr. Burgis disagreed with this statement. Mr. Torre confirmed that Mr. Burgis did not review environmental reports for the site and that there was no ongoing environmental remediation. Mr. Torre concluded his cross-examination and complained that he could not discuss Rochelle Park.

Chairman Lichtenberger invited the public to ask questions of Mr. Burgis but no one came forward. Mr. Fiorenzo confirmed that the applicant had no further exhibits or witnesses.

Mr. Torre called his first witness. Robert Costa who was sworn in, qualified and accepted as a professional civil engineer. Mr. Torre would like Mr. Costa accepted as a professional planner as he is licensed as such in New Jersey. Mr. Fiorenzo asked Mr. Costa if he has created a municipal master plan and Mr. Costa answered that he had not. Mr. Fiorenzo asked if Mr. Costa has ever been hired by a municipality to work as a professional planner and Mr. Costa replied that he has not. Mr. Fiorenzo asked Mr. Costa if he had been hired by a municipality as an engineer and if he had provided testimony on a variety of site plan related issues. Mr. Costa confirmed that he has been hired as a municipal engineer and provided testimony on site plan related issues. Mr. Fiorenzo believes that Mr. Costa is a qualified civil engineer but objected to him being qualified as a professional planner. Peter Cicarelli asked if Mr. Costa has performed the duties of a professional planner and Mr. Costa answered that he has. Rick DeHeer asked if Mr. Costa performed the day-to-day duties of a planner and Mr. Costa answered that he has testified in front of Boards as a planner and provided Fair Lawn as an example. Chairman Lichtenberger suggested qualifying Mr. Costa as both an engineer and planner and the Board may apply appropriate weight to his testimony.

Mr. Costa started his testimony by stating that the Board does not have jurisdiction. He asked to mark Bohler Engineering site plan revised 1/10/19 as Exhibit #O-3. He emphasized that the title identifies the site as Block 125, Lot 3 and a portion of Lot 4. Mr. Costa asked that NJDOT General Property Parcel Map be marked as Exhibit #O-4. Exhibit #O-5 New Jersey Asset Disposition Form was marked for identification purposes. Mr. Costa summarized that the applicant purchased a portion of Lot 4 from the State of New Jersey. He explained that the applicant would need to get a subdivision for Lot 4. There was objections and discussion on this issue. Mr. Costa asked the Board to turn to sheet C-06 of the site plan. He believes that the applicant is showing improvements on a piece of property that they don't own, specifically gas connections on the State-owned portion of Lot 4. Board Attorney Kaczynski clarified that the gas and water connection described by Mr. Costa are new. Mr. Torre objected to the Board's jurisdiction because the applicant did not notice property owners within 200 feet of the perimeter of Lot 4. More objections and discussion ensued. Mr. Costa believes that the applicant will be doing grading work on the portion of Lot 4 that is owned by the NJDOT. Anthony Klymenko asked about an easement and read Note 11:

Water easement shown as per plans entitled Amerada Hess Corporation Drainage and Utility Plans (1988).

Mr. Costa does not believe that the easement applies but Mr. Klymenko does. Mr. Cicarelli noted that the connections are in Rochelle Park. Discussion ensued where multiple speakers were speaking over each other. Chairman Lichtenberger requested that Mr. Costa continue with his engineering testimony. Mr. Costa believes that it is significant that the Maywood Police and Fire Departments have not issued reports on the application. He is concerned about how first responders will access the site. He does not think the applicant will be able to access the stormwater detention system for maintenance. Chairman Lichtenberger suggested that the Fire Department would use a Knox Box to access the site. Mr. Costa cited the RSIS in that a 40' radius turnaround is required and the applicant has provided 38' radius. He added that the proposed parking spaces in Maywood do not include ADA accessible parking spaces.

The application was carried to the 6/27/19 meeting without obligation to re-notify the public. Mr. Fiorenza extended the time for the Board to act to 6/27/19.

**Closed Session**                      None

**Informal Hearing**                      None

**Old Business**                              None

**New Business**

- Distribution of Revised Plans for Calendar #2019-06 PSE&G Substation Expansion, 186 West Central Avenue, Block 124, Lots 80-91, Variance and Site Plan Applications
- Board Attorney Kaczynski notified the Board that use variances cannot have an Informal Hearing
  - The two upcoming Informal Hearings will be cancelled and their fees will be returned

**Open Meeting to the Public**

**Adjournment**

A motion to adjourn the meeting was made by Paul Kuhn. Rick DeHeer seconded the motion. The meeting was adjourned at 10:14pm.

Respectfully submitted,

Tara Grunstra  
Planning Board Recording Secretary