

**MAYWOOD PLANNING BOARD**  
**MINUTES**  
**June 27, 2019**

A regular meeting of the Maywood Planning Board was held on Thursday, June 27, 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 @ 7:51pm), Gary Neumann, Paul Kuhn, John Montel (arrived @ 7:34pm), Harry Hillenius, Peter Cicarelli, Secretary Anthony Klymenko and John Gargagliano. Board Attorney Kara Kaczynski, Board Planner Michael Kauker and Brian Gillen were also present.

**Approval of Minutes**

Paul Kuhn made a motion to accept the minutes from the May 23, 2019 meeting. Vice Chairperson Charlotte Panny 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. John Gargagliano seconded the motion. All eligible members present voted in favor of the motion.

**Correspondence**

- 6/7/19 email from David Sumba of NJDEP Re: Empire Real Estate Holdings
- 6/14/19 letter from Donna Canonico of Price, Meese, Shulman & D’Arminio Re: Outfront Media, LLC v. Planning Board of the Borough of Maywood (Docket No. BER-L-4455-19)
- 6/17/19 letter from Patrick Ryan of NJDEP Re: Jeco Corporation
- 6/18/19 letter from Board Recording Secretary Tara Grunstra Re: Use Your Words Hearing Date 6/27/19
- 6/20/19 letter from Board Attorney Kara Kaczynski Re: Empire Real Estate Holdings
- 6/25/19 letter from Steven C. Schepis Re: Empire Real Estate Holdings
- 6/26/19 letter from Board Recording Secretary Tara Grunstra Re: Bellibone Hearing Date 6/27/19

John Montel arrived at 7:34pm.

**Resolution**

**Daniel Oviedo (Margin Dental Studio, LLC)**  
113 East Passaic Street  
Block 77, Lot 20  
**Calendar #2019-07**  
**Sign Application**

John Gargagliano made a motion to approve the resolution as written and Paul Kuhn seconded the motion. All eligible members present voted in favor of the motion.

**New Business**

- Patrick McNamara updated the Board on the recent events related to Housing Element and Fair Share Plan
  - The Fairness Hearing was held on May 30, 2019
    - The Settlement Agreement and Addendum were approved by the Court
  - Special Master Mary Beth Lonergan has a list of conditions that must be satisfied before the next Court appearance
    - A series of ordinances and resolutions by the Mayor and Council must be adopted
    - Areas of the Borough will be rezoned
      - Board Planner Michael Kauker will prepare a study to determine area in need of redevelopment
        - A public meeting will be held to present the results
        - The Governing Body will adopt or modify the Planning Board's recommendation
        - Ultimately, a redevelopment plan will be created
  - The Borough must provide a realistic opportunity for redevelopment to satisfy the low and moderate income housing need
  - The Housing Element and Fair Share Plan must be presented at a public meeting and is effective until 2025

**Hearing #1**

**Lakeya Smith (Use Your Words)**  
141-148 West Pleasant Avenue  
Block 70, Lot 18  
**Calendar #2019-10**  
**Sign Application**

Lakeya Smith is the applicant for Use Your Words and she was sworn in. She is proposing installing a light box with an acrylic panel and a small placard on the door of her speech therapy practice on West Pleasant Avenue:

- One wall sign which measures 2' high x 10' wide (20 square feet) where 30 square feet is permitted (façade is 15' high x 20' wide or 300 square feet)
  - Wall Signage is 3 colors; fuchsia, black and white which conforms to the Borough code
  - Illumination hours will comply to the Borough code

- The small placard (3” high x 12” wide) on the door will have her name and credentials
  - Ms. Smith is renting space from the dental office so patients need to know which door to enter

No members of the public came forward to comment on the application.

Harry Hillenius made a motion to approve the application as proposed. Paul Kuhn seconded the motion. All eligible members present voted in favor of the motion.

**Hearing #2**   **Sophia Magriplis (Bellibone)**  
75C West Pleasant Avenue  
Block 71, Lot 15  
**Calendar #2019-11**  
**Sign Application**

Sophia Magriplis is the applicant for Bellibone and she was sworn in. She is proposing installing a light box with an acrylic panel for her beauty salon on West Pleasant Avenue:

- One wall sign which measures 2.5’ high x 12’ wide (30 square feet) where 34 square feet is permitted (façade is 20’ high x 17’ wide or 340 square feet)
  - Wall Signage is 2 colors; black and white which conforms to the Borough code
  - Illumination hours will comply to the Borough code
  - Existing window decals will be removed

No members of the public came forward to comment on the application.

Harry Hillenius made a motion to approve the application as proposed. Paul Kuhn 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 7:51pm.

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

Board Recording Secretary Tara Grunstra noted that Board member Harry Hillenius read the transcript from the 5/23/19 hearing so he was eligible to vote on the application. Board Attorney Kara Kaczynski confirmed that the extension granted for the Board to act was through 6/27/19. Victor Herlinsky, Jr. and Joseph Fiorenzo of Sills, Cummis & Gross represent the applicant, 200 Route 17, LLC. Mr. Herlinsky does not intend to grant an additional extension. Joseph R. Torre represents Ultimate Force and, indirectly, long-term leasee Harley Davidson. Mr. Torre would like to continue his testimony of his planner, Robert Costa. Mr. Costa remains under oath. He began by stating that the Maywood Fire Department has not issued a report on the application. Chairman Lichtenberger assured Mr. Costa that the Borough Fire Prevention Bureau has reviewed the application. Mr. Costa considers that the lot is undersized and believes that the

applicant could have purchased more of Lot 4 from the NJDOT so that the lot size was conforming. He does not think that the Coventry case applies to this application. He thinks that the applicant was adequately compensated by the NJDOT for the property taken. Mr. Torre does not recognize the applicant's hardship. Mr. Fiorenza explained that the applicant is not claiming economic hardship but the hardship is related to the site itself being located in 2 municipalities with different zoning. Mr. Torre complained that he was not allowed to discuss Rochelle Park zoning related to the application. Mr. Costa summarized the variances that the applicant is requesting, D(1) use, D(4) FAR, minimum lot area, front setback and rear yard setback. He believes that the governing body would have zoned for the proposed use if they intended to permit it. He continued by stating that there are permitted uses that are a less intensive use than what is proposed. Mr. Torre believes that the applicant's hardship is self-created and the number of variances could be lowered if the building was smaller.

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

Mr. Torre indicated that he had 2 witnesses, a shadow witness and a valuation witness, but their testimony relates only to Rochelle Park so he doesn't believe their testimony will be permitted. Board Attorney Kaczynski explained that his witnesses were welcome but could only testify about Maywood properties.

Board Planner Michael Kauker was sworn in. He and his partner have attended every hearing on this application. He has submitted a report for the Board. He listed the variances requested; D(1) use, D(4) FAR, minimum lot area, front setback and rear yard setback. He considers the testimony of the applicant's planner Joseph Burgis as reasonably accurate and compelling. Board Planner Kauker cited the Medici case as it relates to hardship and making reasonable use of the property. The permitted uses would require substantial parking. He reiterated the list of particular suitability characteristic cited by Mr. Burgis. Hardships include property size and location. In support of the FAR variance, the Coventry case is appropriate. The shape of the property gives rise to the bulk variances. Board Planner Kauker cited MLUL purposes such as light, air and open space, health, safety and welfare, diversity of uses. He considers this application approvable. In summary, Board Planner Kauker believes that the variances requested can be granted without substantial detriment and without impairing the intent of the zoning ordinance and zoning plan.

Mr. Torre asked about Board Planner Kauker's report. Board Attorney Kaczynski indicated that the report was distributed to the Board only. Board Planner Kauker said the report was mostly factual and was created approximately 4 months ago. He confirmed that he did not send it to the applicant. His testimony was based off of his personal notes and he does not plan to distribute another report. Mr. Torre confirmed that the purposes of zoning cited in Board Planner Kauker's testimony was for Maywood only and not Rochelle Park. Mr. Torre noted that the Coventry case was for a conditional use which is not the situation with this application. Board Planner Kauker explained that he was the planner for the Coventry application so he was very familiar with the case. He added that the MLUL allowed for density and FAR variances to be adjudicated under the Coventry case. Mr. Fiorenza asked about split lot zoning which created the need for certain variances. Board Planner Kauker agreed that a hardship could arise out of split lot zoning.

Chairman Lichtenberger invited the public to ask questions of Board Planner Kauker but no one came forward. He then asked if anyone in the public would like to comment on the application but no one came forward.

Mr. Torre waived summation.

Mr. Fiorenzo summarized the application as needing a use variance and a variety of bulk variances for a unique property. While the proposed use is not permitted, he feels that it is consistent with the permitted commercial uses and is one of the least intensive uses. For the D(4) FAR variance, the Coventry case is appropriate. The unique physical configuration of the site as well as the split lot zones creates hardships requiring variances. He believes that the testimony of his experts supports the granting of the variance reliefs.

Chairman Lichtenberger believes that a condition of approval would need to include that there is sufficient water flow to install fire sprinklers for the entire building. Mr. Herlinsky agreed to that condition. Board Attorney Kaczynski reminded the Board that the applicant is also seeking site plan approval. She then summarized the variances being sought:

- D(1) Use Variance for the HDO Zone
- D(4) FAR Variance: 273% proposed vs. 200% maximum permitted
- Lot Area Variance: 0.69 acres proposed vs. 1.5 acres minimum required
- Front Yard Variance: 12.7' proposed vs. 25' minimum required
- Rear Yard Variance: 0' proposed vs. 20' minimum required

She identified the section of the Cox book related to the Coventry case for a FAR variance:

“However, it’s been held in establishing special reasons for a FAR variance, *Coventry Square versus Westwood Zoning Board of Adjustment* and not *Medici versus BPR* controls”, and that was cited in the *Randolph Town Center versus Township of Randolph*, 324 N.J. Super at 416. And it further cites that "Medici is only appropriate for a case dealing with a permitted use."

It goes on to say "Therefore, the applicant for an FAR D(4) variance need not show that the site is particularly suited for more intensive development. Rather, such an applicant must show that the site will accommodate the problems associated with a floor area larger than permitted by the ordinance."

Mr. Fiorenzo interjected that the FAR was revised to 259% from 273% and Board Attorney Kaczynski agreed.

Chairman Lichtenberger concurs with Board Planner Kauker’s testimony. Brian Gillen of Remington & Vernick is satisfied with the information supplied by the applicant. John Montel feels that the proposed use is a good use of the property. Secretary Anthony Klymenko believes that the land locked nature of the property is a hardship. Gary Neumann has focused on the needs of Maywood. Vice Chairperson Charlotte Panny believes the proposed use is less intensive than the permitted uses. Paul Kuhn believes that the proposed FAR is appropriate. Peter Cicarelli doesn’t see any negatives in granting the requested variance reliefs. Harry Hillenius suggested that the proposed use is an ideal use for the property. John Gargagliano believes that emergency responders will access the property the same that they have in the past, via Essex Street and Midland Street. Chairman Lichtenberger listed the conditions of approval:

- No storage of cars
- No outdoor storage
- Operation and access to the facility within the hours of operation that's allowed by Borough ordinance
- Someone must be present at the self-storage facility during all hours of operation
- A monitoring system and access control system is required
- Common areas would need to be monitored by way of cameras
- The building will be sprinklered with appropriate hydrants installation and water flow study
- No unit or portion shall be utilized for vehicular, residential or dwelling purposes or the storage of any weapons, hazardous waste, hazardous substances or illegal substances

Secretary Klymenko believes that the storage of the above items would be not permitted according to the code. Mr. Herlinsky mentioned that the employees are on-site during regular business hours (Monday-Friday 9:30am-6pm, Saturday 9am-5:30pm, no office hours on Sunday). The hours of operation are 6am-10pm 7 days a week. The code to access the site does not work from 10pm-6am.

Harry Hillenius made a motion to approve the application with the above conditions. Paul Kuhn seconded the motion. All eligible members voted in favor of the motion.

**Closed Session**                      None

**Informal Hearing**                      None

**Old Business**                          None

**New Business** (cont'd)

- Board Recording Secretary Grunstra mentioned that Board Attorney Kara Kaczynski cannot attend the 8/22/19 meeting
  - Chairman Lichtenberger suggested cancelling the 8/22/19 meeting and the Board agreed
- The next scheduled meeting is 7/25/19

**Open Meeting to the Public**

**Adjournment**

A motion to adjourn the meeting was made by Harry Hillenius. Paul Kuhn seconded the motion. The meeting was adjourned at 10:10pm.

Respectfully submitted,

Tara Grunstra  
 Planning Board Recording Secretary