

**MAYWOOD PLANNING BOARD
MINUTES
August 23, 2018 Closed Session #2018-11**

Vice Chairman Paul Kuhn made a motion to go into Closed Session. Chairman Frank Lichtenberger seconded the motion. All eligible members present voted in favor of the motion.

**BOROUGH OF MAYWOOD PLANNING BOARD
Closed Session Resolution # 2018-11**

BE IT RESOLVED by the Planning Board of the Borough of Maywood, pursuant to the provisions of the Open Public Meetings Act, that the Maywood Planning Board met in closed session to discuss the following subject matter(s): Pending litigation

which subject matter(s) is (are) permitted to be discussed in closed session pursuant to the following designated sub-section(s) of Section 7 of the Open Public Meetings Act:

- Sub-section 1 dealing with material rendered confidential by express provision of Federal or State law
- Sub-section 2 covering a matter in which release of information would impair a right to receive federal funds
- Sub-section 3 involving disclosure of material that would constitute an unwarranted invasion of privacy, including material related to an individual's personal and family circumstances, without the express written consent of the individual involved
- Sub-section 4 pertaining to collective bargaining agreements and the terms, conditions and negotiations thereof
- Sub-section 5 dealing with the acquisition of real property, the setting of bank rates, or the investment of public funds where discussion thereof would adversely affect the public interest
- Sub-section 6 dealing with tactics and techniques used in protecting the safety and property of the public where disclosure could impair such protection or investigation of violation of the law
- Sub-section 7 dealing with pending or anticipated litigation, contract negotiations, or matters falling within the attorney-client privilege
- Sub-section 8 concerning personnel matters dealing with employment, appointment, termination, or terms and conditions of employment of any person or persons, or the evaluation, promotion or disciplining of employees unless all employees involved consent to disclosure thereof

() Sub-section 9 involving deliberations after public hearing on a matter which may result in the imposition of a civil penalty or the suspension or loss of a license

AND BE IT FURTHER RESOLVED that, as precisely as can be determined at this time, the discussion conducted in the said closed session can be disclosed to the public upon taking final action thereon, provided disclosure shall not violate the attorney-client privilege or constitute an undue invasion of privacy; and

BE IT FURTHER RESOLVED that the Planning Board of the Borough of Maywood
(X) Will return to open session after this meeting.

() Do not envision that they will return to open session after this meeting but reserves the right to do so.

Date of Passage: 8/23/18 Time: 9:42pm

Board Attorney Kara Kaczynski updated the Maywood Planning Board on the status of the Empire Real Estate Holdings, Inc. vs. Borough of Maywood and Maywood Planning Board litigation. A counter proposal in response to Board Attorney Kaczynski's 8/15/18 letter was sent on 8/16/18 by the plaintiff's counsel, Steven C. Schepis. The counter proposal consists of:

- 14 parking spaces on the property
 - Ambulances, ambulettes and vans would be parked on the north side of the building
 - Passenger cars would be parked "elsewhere"
 - We assume that the plaintiff is referring the south side of the building closest to West Central Avenue
- Pursue approval from the NJDEP to pave the parking lot
 - Will not install stormwater management improvements unless required by NJDEP
 - Use of the parking lot on the north side of the building for ambulances, ambulettes and vans, not vans only
 - Board Attorney Kaczynski doesn't quite understand this issue as the Board has not made this request
- Approval for any subsequent tenant that would have a similar business such as HVAC, plumber or electrician which would have vans or other commercial-type vehicles other than passenger vehicles
 - Commercial-type vehicles would be required to park on the north side of the building only
 - Commercial-type vehicles would be no larger the current tenant's ambulances/ambulettes

When asked if the Court recognizes that the Board is trying to cooperate, Board Attorney Kaczynski stated she believes that the Court considers all the information. She added that the prerogative writ trial could be dismissed since the Board was not arbitrary, capricious nor unreasonable but the civil rights trial will follow which may be lengthy. The non-binding mediation settlement will occur while both parties prepare for trial. She then asked Board Engineer Brian Gillen if 14 parking spaces are possible on the property. He replied that the DEP buffer size would impact the parking layout but the buffer size was not yet determined by the DEP.

Anthony Klymenko pointed out that should the DEP approve the plaintiff's proposal, the lot coverage on the property will be 100%. He then asked if there are any zones that permit 100% lot coverage. Board Attorney Kaczynski referenced the Borough Chapter 209 Schedule A-1 Limiting Schedule:

- Limited Light Industrial (LL) zone which is the subject property's zoning – 40% maximum lot coverage
- High Density Office (HDO) zone – 80% maximum lot coverage
- Restricted Commercial (RC) zone – has a dash for maximum lot coverage which Zoning Officer Mazzer explained that there are no limits for lot coverage in this zone

Board Attorney Kaczynski notified the Board that the mediation is scheduled for Thursday, 8/30/18.

Chairman Lichtenberger asked when we would expect a determination on the buffer size from the DEP. Board Attorney Kaczynski answered that she didn't know where the plaintiff was in the process. She knows that Borough's Joint Insurance Fund (JIF) counsel, Mary McDonnell, was checking with her DEP contact. Zoning Officer Mazzer believes that the DEP prefers to have municipal approval before rendering a decision. Anthony Klymenko has experienced working with the DEP in the past. He has had the DEP require approval from the municipal engineer or Planning/Zoning Board prior to giving a decision. Ultimately, DEP jurisdiction supersedes municipal approvals. In his experience, the DEP wants to review a specific proposal rather than provide general guidelines. Gary Neumann added that the DEP process can be very slow. He witnessed the DEP taking 6 years to approve the closing of the Borough Pump House. This has also been Zoning Officer Mazzer's experience.

Gary Neumann noted that the plaintiff's tenant, Metro Ambulance, is already in place at the location and he has observed more than 20 vehicles parked on the property. Gary Neumann added that when the DPW was cleaning up the area by the bridge to the Maywood Center for Health and Rehabilitation, they accidentally cut the overgrown vegetation on the subject property. He considers the subject property to be in violation of the Borough property maintenance ordinance. Board Attorney Kaczynski believes that Zoning Officer Mazzer could level property maintenance fines to encourage clean-up. Zoning Officer Mazzer said that the Superior Court Judge instructed him to stop fining the plaintiff. Board Attorney Kaczynski believes that property maintenance fines would be permitted and offered to research that option.

Chairman Lichtenberger would be comfortable with allowing 14 parking spaces on the property and members of the Board agreed. Board Attorney Kaczynski proposed writing a letter listing the conditions of a counter-proposal:

- 14 parking spaces with no restrictions on which vehicles will park north or south of the building
 - Anthony Klymenko confirmed that ambulances parked south of the building would not block visibility on West Central Avenue
- Pave the parking area
 - If the DEP buffer changes from what was proposed in the site plan, the plaintiff would need to come before the Board for site plan approval

- Vehicles must park head-in and back out to exit
- Repair the curbing once the curb cuts are determined
- Necessary stormwater management
 - Anthony Klymenko added that the stormwater management plan is not necessarily the same as the DEP and/or Borough requirements
- Limit use to Metro Ambulance only
 - Unpermitted uses must come before the Board

Zoning Officer Mazzer noted that the current Certificate of Continued Occupancy (CCO) does not specifically permit outside parking of vehicles. Board Attorney Kaczynski quoted Borough ordinance §209-50 (K) (2):

The Construction Official shall not issue a building permit until the completion of a review of the provisions of this subsection and any approval granted thereunder and only after the Construction Official issues a zoning permit. A zoning permit is required as a condition precedent to the commencement of a use or the erection, construction, reconstruction, alteration, conversion or installation of a structure or building. A zoning permit may be issued only if the Construction Official determines that the proposed use, structure, or building complies with the provisions of this subsection, or the terms and conditions of any variance or other approval granted by the Planning Board which may be satisfied before construction begins.

Zoning Officer Mazzer quoted Borough ordinance §209-30 (B):

In all districts, a certificate of continued occupancy must be issued if the use of any building or structure is changed. A certificate of continued occupancy is required if a change of occupancy occurs in any dwelling unit or nonresidential unit, as set forth in Chapter 141 of this Code. In all other instances, certificates of continued occupancy shall be required and issued in conformance with P.L. 1975, c. 217, and Maywood Borough Ordinance No. 7.29, entitled "An Ordinance Establishing an Enforcing Agency for the Administration and Enforcement of the State Uniform Construction Code."

Chairman Lichtenberger quoted the final paragraph of Steven C. Schepis' 8/16/18 letter:

Lastly, my client requires that the approval likewise be issued for any subsequent tenant that would have a similar business such as HVAC, plumber or electrician, noting again, that vans and other commercial-type vehicles other than passenger vehicles, would be parked on the north side of the building only. We can agree on a limit of length on those vehicles, to be no larger than the ambulances and/or ambulances [sic] that are the subject of this matter.

Zoning Officer Mazzer believes that the Mayor and Council are considering an ordinance permitting residents to park their commercial-type contractor vehicles on their property. He reiterated that the CCO is required for all changes in ownership or tenancy. Board Attorney Kaczynski agrees that a CCO is required for future tenants but permitted uses are not required to come before the Board. Anthony Klymenko asked what was the current use of the building on the subject property. Board Attorney Kaczynski answered that the current use was as an office

to the non-emergency transportation business. She clarified that office use was not permitted in the Limited Light Industrial (LL) zone and quoted a portion of the Borough ordinance §209-37 (A):

The LL Limited Light Industrial District is intended for light manufacturing, processing, warehouses or enclosed storage.

Chairman Lichtenberger believes that a landscaper was occupying the subject property prior to ownership by Robert Paglinco who had operated a mechanic shop at that location. Board Attorney Kaczynski confirmed that maximum lot coverage in the LL zone is 40%. She added that the plaintiff cannot waive the stormwater management requirement. After some discussion, the Board agreed that acceptable businesses on the subject property would be:

- Offices and vehicle storage
- One business only – no parking space rental

She warned that the property cannot be zoned into obsolescence; inverse condemnation clause.

When asked, Zoning Officer Mazzer estimated that there are \$19,000-\$20,000 worth of fines against the subject property. Anthony Klymenko mentioned that the gravel in the roadway around the location is a hazard. He added that roadways by construction sites need to be swept of debris.

Board Attorney Kaczynski summarized the counter proposal:

- 14 parking spaces with no restrictions on which vehicles will park north or south of the building
- Pursue DEP approval for buffer limits
 - If the DEP buffer changes from what was proposed in the site plan, the plaintiff would need to come before the Board for amended site plan approval
- Pave the parking area
- Repair the curbing once the curb cuts are determined
- Vehicles must park head-in and back out to exit
- Necessary stormwater management
- Office and vehicle storage will be permitted
 - All new tenants must acquire a CCO prior to tenancy
 - One business only – no parking space rental
 - Commercial-type vehicles cannot be larger than ambulances/ambulettes/vans

A motion to return to the regular order of business was made and seconded. All eligible members present voted in favor of the motion.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary