

**MAYWOOD PLANNING BOARD
MINUTES
August 23, 2018**

A regular meeting of the Maywood Planning Board was held on Thursday, August 23, 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. 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 Chairman Paul Kuhn, 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.

Bills

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

Correspondence

- 8/21/18 letter from Board Engineer Brian Gillen Re: 200 Route 17 LLC Completeness Review
- 8/21/18 Public Notice for SB One Bank 125 West Pleasant Avenue, Maywood

Resolution

None

Informal Hearing

Maybrook Gardens, Inc.
Maybrook Drive & Demarest Place
Block 131, Lot 10
Block 133, Lot 1
Block 135, Lot 1
Parking proposal for garden apartments

James Jaworski of Wells, Jaworski & Liebman represents Maybrook Gardens, Inc. He introduced Zach Pearl, property manager for Maybrook Gardens and Hal Simoff, traffic engineer. Mr. Jaworski explained that there is a demand for more parking in this garden apartment complex. Maybook Gardens consists of 140 units. The Borough of Maywood now requires 2 parking spaces per unit in the Garden Apartment GA zone. Currently, there is

approximately 1 parking space per unit provided (146 assigned parking spaces). While there is no affirmative obligation to bring the number of parking spaces up to code, the tenants desire more parking. Hal Simoff has provided 4 parking exhibits based on Borough tax maps for the Board. He reminded the Board that the Borough prohibits overnight on-street parking. Mr. Simoff then detailed the 4 exhibits for the Board:

- Exhibit A is the current conditions with 17 on-street parking spaces for visitors during the day
- Exhibit B is proposing creating 71 parking spaces by utilizing the Borough right-of-way for 90° parking spaces
 - The curb would be moved back and the sidewalks replaced
 - This option would require Mayor and Council approval
- Exhibit C is proposing creating 67 parking spaces in the 2 green spaces on the owner's property
 - All of the parking spaces would be assigned
 - 2 on-street visitor parking spaces would be eliminated
- Exhibit D is a combination of proposals B & C which would provide 131 parking spaces

Mr. Simoff believes that some residents park in commercial parking lots overnight although they risk receiving a parking violation. All the proposed parking spaces are in accordance with the code; 9' x 18'. Mr. Jaworski believes that there may be a coverage deviation but site plans have not been created.

Chairman Frank Lichtenberger commended Maybrook Gardens for attempting to alleviate the parking problem. He feels that the Exhibit B option creates problems for plowing snow, finding fire hydrants, emergency services navigation, etc. He believes that Exhibit C is the most viable option. Mr. Simoff indicated that he will create a site plan using the Exhibit C model. He is hoping to identify additional parking spaces after having a survey conducted. Gary Neumann clarified that the existing 146 parking spaces are not garages or covered. He has personally observed children playing in the grassy areas that were identified as potential parking areas. Mr. Simoff pointed out on Exhibit C other grassy areas where children can play. Board Attorney Kaczynski confirmed that there was a park with a playground in the neighborhood. Harry Hillenius agreed that creating parking off-street makes sense. Rick DeHeer believes that the Exhibit B option would be dangerous to have cars reverse into roadway traffic. Mr. Jaworski indicated that the Exhibit C option will be pursued. Mr. DeHeer walks in the area and is concerned about removing too much of the grassy areas. Mr. Jaworski assured him that the site plan will balance green space with parking. Mr. Simoff said that the site plan will maximize the number of parking spaces but they would be willing to remove some parking spaces if the Board desires. He indicated that they may return for another informal hearing.

Hearing

32 Fairmount Avenue LLC
32 East Fairmount Avenue
Block 34, Lot 9
Calendar #2018-06
Variance Application

Michael Halkias represents the applicant 32 Fairmount Avenue LLC which is partially owned by Carmelo Oliveri. Mr. Halkias explained that Mr. Oliveri and his family would like to move to Maywood from North Arlington. They are planning to raze the dwelling and replace it with a larger home that suits their needs. The applicant is seeking four variances:

- Front yard setback: 17.8' proposed vs. 25' required
- Lot coverage: 34.5% proposed vs. 30% maximum permitted
- Accessory side yard setback: 1' proposed vs. 5' required
- Accessory rear yard setback: 1.5' proposed vs. 5' required

Mr. Halkias then called his first witness, David Bailey of Forefront Designs, the applicant's architect. Mr. Bailey was sworn in, qualified and accepted. He prepared the drawings that were submitted with the application dated 4/19/18. Mr. Bailey asked that the Board review sheet PH-1 which shows the existing condition of the property. The existing dwelling is narrow and small in size. The photographs of the basement on sheet PH-1 show that it is old and he described it as decrepit. Mr. Bailey then requested that the Board review sheet SP-1. Directing the Board's attention to the existing basement plan, he detailed that the foundation would be removed with the exception of 2 foundation walls. He then pointed out on the existing site plan that there is an existing front yard setback deviation. On the proposed site plan, the front yard setback deviation would be less than is existing. Mr. Bailey directed the Board to sheet A-3. The solid gray walls on the proposed basement plan are foundation walls that will remain and the hatched walls are new construction. The proposed front yard setback is 17.8' where 25' is required. Both side yards and rear yard setbacks follow the Borough code. The proposed first floor consists of a mudroom, kitchen, dining room, living room and family room. Additionally, they are proposing an elevator that runs to all floors of the dwelling since the applicant wishes to age in place. On sheet A-4, the proposed second floor consists of 2 bedrooms with a shared bathroom, a master bedroom suite with bathroom, elevator and a laundry room. The proposed attic consists of an office, guest room, bathroom and elevator. The elevations are depicted on sheets A-1 and A-2. The proposed dwelling would be stucco with stone accents and dormers on the top floor. The proposed detached 1-car garage would require side yard and rear yard setback variances. He asked that the Board return their attention to sheet SP-1. On the proposed site plan, Mr. Bailey explained that in order to fit the proposed garage, the variances were required. The garage is standard sized; 13' wide x 21' deep. He noted that the application conforms to the impervious coverage code (63.9% proposed vs. 65% maximum permitted). However, the lot coverage is 34.5% proposed vs. 30% maximum permitted. The proposed garage represents 5.5% of the lot coverage which accounts for the overage. The proposed garage is 1-story and meets the Borough code for height at 15'. Sheet A-5 provides the proposed garage details. Mr. Halkias confirmed that the variance relief being sought for the front yard setback is less than the existing deviation. The lot coverage deviation of 4.5% is due to the proposed garage. The proposed garage location is so that a car can enter and exit. Mr. Bailey repeated that a car could not enter or exit the garage if the setback requirements were met.

Chairman Lichtenberger asked about the property to the west. He believes that there is a vacant lot in that location. Mr. Halkias answered that his client does not own that property. Harry Hillenius suggested making the proposed garage smaller to allow the ability to walk around and maintain it. Mr. Halkias believes that the size is appropriate to allow entering and exiting the vehicle while in the garage. Mr. Hillenius noted that the standard size parking space is 9' wide x

18' deep which allows for entering and exiting the vehicle. John Gargagliano asked if the garage could be pushed an additional 1' over. John Montel said that even moving it 1' over would still violate the setback. Chairman Lichtenberger questioned the size of the home. He followed up with a question as to why the applicant chose to design a new home that would require so many variances to build. Board Attorney Kaczynski asked for clarification on how the garage impacts the lot coverage. She asked Mr. Bailey to provide the difference in lot coverage for the proposed home vs. the existing home. He answered that the existing first floor is 547 square feet vs. the proposed first floor is 1,199 square feet. The existing second floor is smaller than the existing first floor vs. the proposed second floor is 1,190 square feet. The proposed attic space is 475 square feet.

Anthony Klymenko confirmed that the rear cantilever was calculated in the coverage. Chairman Lichtenberger noted that there is living space on the proposed third floor. John Gargagliano noted that on a previous application with third floor living space, the Board requested a sprinkler system and egress ladder. Chairman Lichtenberger explained the fire implications for living space in the attic. He repeated his earlier question why the applicant chose to design a new home that would require so many variances to build. Mr. Halkias believes that the proposed 1-story detached garage triggers 3 variances; lot coverage, side yard and rear yard setback deviations. Chairman Lichtenberger clarified that the proposed fireplace 3' from the side yard property line does not violate the 5' side yard setback requirement. The proposed rear yard setback is 41.5' where 30' required. The proposed patio does not count against setback requirements. No deck is proposed. Harry Hillenius asked why the applicant is installing an elevator and Mr. Halkias replied that the applicant wishes to age in place. Gary Neumann asked why the applicant is proposing to keep the 2 foundation walls when the architect indicated that the foundation is in poor condition. Chairman Lichtenberger advised that the setback requirements benefit the Fire Department when fighting a fire. He has fire safety concerns about the proposed attic living space. Additionally, he has trepidation about future owners dividing up the home to create an illegal multi-family dwelling. Mr. Halkias stated that the applicant wishes to use the home for his family only and can't control what future owners do to the property. He added that other than the front setback deviation, all the other setback requirements for the home are met. John Gargagliano clarified that the 5' attic window wells on sheet A-4 are not terraces.

Board Engineer Brian Gillen asked why the applicant is proposing to keep the 2 foundation walls when the architect indicated that the foundation is in poor condition. Mr. Bailey answered that the existing basement Lally columns, girders, joists and beams will be replaced by timber framing. The 2 foundation walls that are being kept will not be load bearing. The new Lally columns and girders will span over these 2 foundation walls and carry the load. Chairman Lichtenberger asked if the basement floor level will remain the same or if they are planning to dig deeper. Mr. Bailey replied that the basement level will stay the same but will expand to accommodate the larger basement footprint. They are increasing the ceiling height by raising the house with additional block work. Chairman Lichtenberger believes that there may be a septic system in the backyard. Carmelo Oliveri was sworn in. He had the property swept for tanks and nothing registered. Board Attorney Kaczynski asked if there was an engineering review or stormwater management review conducted and Mr. Oliveri answered that they have not. Anthony Klymenko asked if eaves that are greater than 4" were considered in the setback and coverage calculations. Mr. Bailey responded that the overhangs were included in the lot

coverage calculation but not the setback calculations since they are not required similar to chimneys. Mr. Klymenko then cited Borough code §209-25 (B):

BUILDING AREA

The maximum horizontal projected area and its accessories; roofed-over porches or similar extensions of a building shall be considered parts of the building. Any eave or similar projection in excess of four inches shall be considered as part of the building in the computation of side yards and land area coverage.

Therefore, he explained the side yard setback on the west side of the property would be 3'-4" which takes into consideration the 20" eave. There would be no deviation on the east side. Vice Chairman Paul Kuhn thought the Borough code permitted 2 ½ stories and not 3 stories in the A-1 residential zone. Mr. Bailey directed the Board's attention to sheet A-1 which has a portion of the Borough code §209-25 (B) definition of half-story:

STORY, HALF

...headroom of five feet or less occupies not less than 40% or more than 60% of the total floor area of the story directly beneath.

Vice Chairman Kuhn believes that the ceiling height is greater than 5'. Mr. Bailey explained that the area that is 5' or less falls between 40% and 60%. He added that 40% of the space can be greater than 5'. The rafters touch the attic floor. Mr. Klymenko reminded the Board of a previous application in which the Board requested the applicant to have a door that could close at the top of the stairwell as a fire safety precaution. Harry Hillenius asked Zoning Officer James Mazzer if the proposed home would be considered new or an addition since 2 foundation walls were remaining. Zoning Officer Mazzer answered that the proposed dwelling would be considered an addition. Board Engineer Gillen confirmed with Mr. Bailey that the remaining 2 foundation walls would not be load bearing. The new Lally columns would sit on standard 3' footings. Mr. Klymenko asked how the front existing foundation wall would not be load bearing. Mr. Bailey responded that when creating the framing plan, the floor joists, beams and girders will span over the wall. There was discussion about weight, force and soil pressure. Ultimately, Board Engineer Gillen was satisfied with the applicant's plan.

Chairman Lichtenberger asked why the applicant was keeping the 2 foundation walls when they serve no purpose. Board Attorney Kaczynski asked for clarification on the half-story determination. Zoning Officer Mazzer cited Borough code §209-25 (B):

STORY

That part of a building between the upper surface of one floor and the upper surface of the floor next above or between the top floor and ceiling or flat roof. In the case of a building having a sloping roof, if the line of intersection of the sloped ceiling and the wall face is more than three feet above the floor level or if the floor area with head room of more than five feet occupies more than 60% of the total floor area of the story directly beneath it, it shall constitute a story.

Board Attorney Kaczynski requested to see the calculation. Mr. Bailey explained that the roof pitches shown on sheets A-1 and A-2 intersect with the attic floor on all 4 sides. Mr. Klymenko reminded the Board of a previous application in which the Board requested the applicant to have a door that could close at the top of the stairwell as a fire safety precaution. Mr. Bailey agreed to wall in the stairwell to the third floor and add a self-closing door for 1-hour fire rating. He added that the elevator shaft will also be fire rated. Rick DeHeer noted that the applicant's plans list the attic space as the third floor. Gary Neumann asked Zoning Officer Mazzer how the attic

space is considered in the building code. Zoning Officer Mazzer answered that the proposed structure would be considered 2 ½ stories according to the building code. Mr. Neumann asked what happens if the 2 foundation walls crumble during construction. Zoning Officer Mazzer explained that the building permit would be processed for an addition not new construction. Board Attorney Kaczynski reminded the Board that they cannot consider tax implications when voting on an application.

Chairman Lichtenberger feels that there are too many variances being sought. Mr. Oliveri explained that the home is being built to accommodate his immediate family and possibly his parents as they age. Harry Hillenius pointed out that the basement could easily be converted into an illegal separate unit given the half bathroom, wet bar/kitchen and separate exterior entrance. Mr. Oliveri does not intend to convert the space into a separate unit. John Gargagliano explained to the applicant that on previous applications with attic living space, the Board requested a residential sprinkler system and egress ladder. Mr. Oliveri agreed to incorporate the recommended fire safety precautions; self-closing door in an enclosed staircase, residential sprinkler system and egress ladder. Mr. Gargagliano believes that the proposed garage location is too close to the property line. Mr. Halkias asked Mr. Gargagliano what would make him more comfortable in relation to the garage. Mr. Gargagliano replied that he would prefer moving the garage over so that it would be further away from the neighbors. Mr. Bailey believes that moving the garage a further 1' from the side and rear yard property line would be possible. John Montel believes that the 5' setback for side and rear yard should be done in consideration of the neighbors. Mr. Halkias believes that complying with the setbacks will not allow the applicant to have his car enter and exit the garage. Mr. Hillenius would be satisfied if the proposed garage was 2' from the side and rear yard property lines. Mr. Halkias indicated that the applicant would accommodate that change. He added that keeping the garage at the proposed size will allow vehicle and garden tool storage.

Board Attorney Kaczynski asked if the impervious coverage would increase with the proposed garage in the new location. Mr. Bailey replied that believes that the impervious coverage would remain the same. Chairman Lichtenberger confirmed that the proposed driveway width of 9'-9" would be sufficient. Mr. Hillenius asked the purpose of the narrow hallways in the proposed basement depicted on sheet A-3. Mr. Bailey answered that those spaces are for utility access. Mr. Hillenius thinks that the meter spans across the width of the hallway and asked how a person would access the area beyond it. Rick DeHeer believes that the code requires a minimum of 3' clearance in front of an electrical panel but the hallway width is only 2'-5". Mr. Bailey offered to widen the hallway. He added that the plans depict the location of the existing electrical panel which will be replaced and will mostly be moved to another location. Mr. Hillenius believes that most meters are located on the exterior of homes. Mr. Bailey mentioned that the utility locations will be finalized in the building plans when they submit construction permit applications. Gary Neumann asked what will be placed in the basement utility room and Mr. Bailey answered that the HVAC will be located there. Mr. Hillenius would be concerned that the remaining foundation walls may not provide sufficient moisture barrier since they are over a century old. Chairman Lichtenberger has some concerns that the basement could easily be converted into an illegal separate unit.

Rick DeHeer confirmed that the applicant will not be running his business out of the home. Per Mr. Halkias, the proposed attic office space would be a home office/study. Mr. Hillenius feels that the proposed attic office space could be easily converted to another bedroom. Mr. Bailey disagreed with that statement explaining that there is already a bedroom proposed for the attic space. Mr. Oliveri understands the Board's concerns but stated that he intends to utilize the home as presented in the plans. He added that he intends to reside in the home for a long time which is why he wants to install an elevator. Chairman Lichtenberger asked Mr. Oliveri about his business and Mr. Oliveri answered that he owns 311 units in Newark, Jersey City, Hackensack and Bayonne. He emphasized that all of his properties are legal units and he would not risk tenant lives with illegal units.

Board Engineer Gillen would like to review the calculations for the basement foundation and supports. He had concerns about mold growing on the existing foundation walls which were shown on sheet PH-1. He included in his completeness review that the applicant would need to provide where the demolished moldy foundation walls would be disposed of. He would also like to review the plans for the French drain/sump pump design. Since the impervious coverage is increasing from what is existing, Board Engineer Gillen would like the applicant to provide a stormwater management plan.

Board Attorney Kaczynski noted that the property owner is Oliveri Development LLC. Mr. Oliveri confirmed that the deed is in the name of Oliveri Development LLC which he owns 50% of with Frank Oliveri. He and his family will reside in the proposed home and will eventually transfer ownership over to himself. He added that all of his properties are owned in a corporation for tax purposes. He will pay rent to the corporation.

Harry Hillenius asked why the applicant does not plan to remove the entire foundation and have new construction. Mr. Oliveri answered that there is a tax savings with having the construction as an addition instead of new construction. Chairman Lichtenberger feels that there are too many variances being sought. He feels that the neighbors will be impacted with the dwelling as it is proposed. Given that the building is being razed, he feels that the design should meet the Borough code requirements. Vice Chairman Paul Kuhn feels that the setback variances will negatively impact the neighbors. John Montel would like the applicant to meet the Borough code requirements. Anthony Klymenko noted that the side yard setback deviation of 3'-4" where 5' is required. He believes that the increase in impervious coverage requires a stormwater management plan. Gary Neumann thinks that the neighbors will be crowded since all four setback requirements are being violated.

Chairman Lichtenberger invited the public to ask questions of Mr. Bailey or Mr. Oliveri or to comment on the application, but no one came forward.

Zoning Officer Mazzer had nothing to add when asked by Chairman Lichtenberger. Board Attorney Kaczynski asked if the applicant wished to add anything prior to the Board rendering their decision. Mr. Oliveri offered to withdraw the proposed detached 1-car garage from the application thereby removing a side yard and rear yard setback deviation and the lot coverage deviation. As such the remaining variances needed were:

- Front yard setback: 17.8' proposed vs. 25' required

- Side yard setback: 3'-4" proposed vs. 5' required

Chairman Lichtenberger asked if the applicant could downsize the home in order to meet the Borough code requirements. Mr. Oliveri believes that the proposed room sizes are standard. He reminded the Board that he agreed to incorporate the recommended fire safety precautions for the attic space; self-closing door in an enclosed staircase, residential sprinkler system and egress ladder. Anthony Klymenko asked where the driveway would end since the proposed garage has been withdrawn. Mr. Oliveri estimated that the proposed driveway would end in the middle of the house approximately 3 car lengths. Mr. Halkias does not think that applicant can meet the front yard setback requirement of 25'. Mr. Klymenko believes that with the proposed garage removed, the home could be pushed back since the proposed rear yard setback is 41'-5" where 30' minimum is required leaving 11'-5". Therefore, the front yard setback would conform to the Borough code. Mr. Halkias explained that since the other houses on the block violate the front yard setback requirement, the proposed home would be out of conformity with the neighborhood if it met the front yard setback requirement. Chairman Lichtenberger did not believe that would be an issue. Mr. Halkias feels that the applicant has made several compromises to satisfy the Board. He considers the side yard setback violation for the overhang minimal since it is only because of the eave. He would like to keep the front yard setback as proposed. Chairman Lichtenberger asked if an engineer was consulted for this application and Mr. Bailey replied that he did all of the calculations.

Harry Hillenius made a motion to deny the application and John McManus seconded the motion. All eligible members present voted in favor of the motion except John Gargagliano who voted no.

Closed Session

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

(X) 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

Rick DeHeer made a motion to return to the regular order of business. Chairman Lichtenberger seconded the motion. All eligible members present voted in favor of the motion.

Open Meeting to the Public

Old Business

None

New Business

- Revised Rules on Citizen Input During Planning Board Meetings for Sustainable Jersey Certification
 - Rules were adopted on 11/3/16 & re-adopted annually at the re-organization meeting
 - Board Recording Secretary explained that Sustainable Jersey requested minor changes to the rules
 - Chairman Lichtenberger made a motion to adopt the Revised Rules on Citizen Input During Planning Board Meetings. Gary Neumann seconded the motion and all eligible members present voted in favor of the motion

Adjournment

A motion to adjourn the meeting was made by Harry Hillenius. Rick DeHeer seconded the motion. The meeting was adjourned at 10:32pm.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary