

**MAYWOOD PLANNING BOARD
MINUTES
September 27, 2018**

A regular meeting of the Maywood Planning Board was held on Thursday, September 27, 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, Secretary Charlotte Panny, Rick DeHeer, Gary Neumann, John Montel, Harry Hillenius, John McManus, Anthony Klymenko and Daniel Nemecek. Zoning Officer James Mazzer, Board Attorney Kara Kaczynski and Board Engineer Brian Gillen (arrived @ 8:06pm) were also present.

Bills

Secretary Charlotte Panny made a motion to accept payment of the bills. Vice Chairman Paul Kuhn seconded the motion. All eligible members present voted in favor of the motion.

Correspondence

- 9/14/18 Public Notice for 200 Route 17 LLC, 200 Route 17 South, Maywood
- 9/18/18 Resolution #145-18 Resolution Approving Settlement of Litigation with Empire Real Estate Holdings, Inc. in the Borough of Maywood, Bergen County, New Jersey
- 9/18/18 letter from Fair Share Housing Center Re: Application of the Borough of Maywood, County of Bergen, Docket #BER L-6216-15
- 9/18/18 Resolution #149-18 Resolution Approving Entry into a Settlement Agreement with Fair Share Housing Center in the Matter of the Application of the Borough of Maywood
- 9/24/18 Public Notice for 200 Route 17 LLC, Unnumbered Address on Midland Street, Rochelle Park

Closed Session

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

BOROUGH OF MAYWOOD PLANNING BOARD
Closed Session Resolution # 2018-12

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: 9/27/18 Time: 7:38pm

Vice Chairman Kuhn 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.

Resolution

**Empire Real Estate Holdings v. the Borough of
Maywood and the Maywood Planning Board
(BER-L-1529-18)
191 West Central Avenue
Block 122, Lots 15 & 16.01
Approving the Execution of the Settlement Agreement
Resolving the Litigation**

Anthony Klymenko made a motion to approve the resolution as written and Vice Chairman Kuhn seconded the motion. All eligible members present voted in favor of the motion.

Rick DeHeer recused himself from the hearing and stepped down from the dais.

Hearing #1

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

Steven Schepis represents the applicant, Empire Real Estate Holdings, Inc. He confirmed that the hearing was noticed properly. The site plan prepared by David J. Egarian dated 10/12/16 with a 9/7/18 revision date was marked as Exhibit A-1. The only remaining issue was the determination of the curb cut locations. The proposed curb cut locations are subject to Board Engineer Brian Gillen's approval. Unfortunately, he is stuck in traffic on his way to this meeting.

The first witness was the applicant's engineer David J. Egarian and he was sworn in. He detailed the modifications that were made to the site plan since it was last presented at the 12/7/17 hearing. At that hearing, there was question to parking spaces 14 and 15 being viable. As part of the settlement agreement, there will be 14 parking spaces in total as parking space 15 was eliminated. The depressed curb would run the length of the property from parking space 1 to 14. Chairman Lichtenberger confirmed that the conditions of the settlement agreement have been reflected in this latest site plan. Vice Chairman Kuhn asked Mr. Egarian to point out on the site plan where the curb cuts were proposed. The depressed curb would run the length of the property from parking space 1 to 14 except for curbing around telephone poles. Board Attorney Kaczynski confirmed that the depressed curbing will be within the Borough right-of-way which was the previous location as well. Mr. Egarian noted that the parking area will remain gravel

while the DEP considers the application to pave the parking area. Vice Chairman Kuhn asked the parking space dimensions and Mr. Egarian answered that the parking spaces are proposed to be 9' x 16' except for the ADA van parking space which is 11' x 18'.

Chairman Lichtenberger asked about the proposed signage. Mr. Egarian replied that the sign would be similar to what is shown on the site plan. Board Attorney Kaczynski approximated that the 44" wide x 60" high translates to 18 square feet. She asked what colors the proposed sign would have and Mr. Egarian was not sure what the colors were. Board Attorney Kaczynski explained that the Borough has a sign ordinance that requires Board approval of all signage. The process does not require a notice but the applicant does need to appear before the Board. There are limits on colors, size and location. She suggested that the applicant review Borough code §209-40 related to signage. Mr. Schepis believes that a construction permit was approved for the existing signage which will be refaced for this tenant. He would prefer for Zoning Officer Mazzer to approve the proposed signage instead of returning to the Board. Board Attorney Kaczynski offered that the applicant would not need counsel representation for the sign application without variance (waiver of notice and site plan). Mr. Schepis was agreeable with this solution.

Zoning Officer Mazzer would like to know how the parking spaces would be marked out while the lot remains gravel awaiting an answer from the DEP on the paving application. Mr. Egarian answered that temporary curb stops will be installed. Chairman Lichtenberger asked for a status on the DEP application. Mr. Egarian said that the application will be submitted within the next 2-3 weeks. Mr. Schepis added that a condition of the settlement agreement is that the DEP application be submitted within 30 days of the settlement agreement execution. Board Attorney Kaczynski reminded the Board that the DEP application is to pave the parking area. Should the DEP require the parking area to remain gravel, the Board would be subject to the DEP determination. Gary Neumann noted that the property is not being maintained and is overgrown. Mr. Schepis believes that the property maintenance would be enforced by Zoning Officer Mazzer. He will contact his client about property maintenance immediately.

Board Engineer Brian Gillen arrived at 8:06pm. He reviewed the latest site plan provided by the applicant and had nothing to add. Board Attorney Kaczynski believes that the Borough Engineer would like to review the curb location although it is proposed to be in the same location. Mr. Schepis believes that the Borough Engineer will participate in the road opening permit process and his client is prepared to provide any necessary bonding.

Chairman Lichtenberger invited the public to ask questions of Mr. Egarian but no one came forward. He then invited the public to comment on the application but no one came forward.

Board Attorney Kaczynski summarized the Board conditions of approval:

- Settlement agreement would be incorporated into the resolution and compliance with the settlement agreement would be a condition of approval
- Curb cuts and reinstallation of the sidewalks would be subject to Borough Engineer review and required Borough permitting
- Signage would need to be submitted to the Zoning Officer to determine if the applicant would need to come before the Board for additional approval

- Applicant would be free to appear with or without counsel

Harry Hillenius made a motion to approve the application as presented with the conditions listed above. Vice Chairman Kuhn seconded the motion. All eligible members present voted in favor of the motion.

A short recess was taken at 8:10pm. The meeting resumed at 8:15pm with all members present.

Hearing #2

200 Route 17 LLC

200 Route 17 South
Block 125, Lots 3 & 4

Calendar #2018-10

Variance & Site Plan Applications

Victor Herlinsky, Jr. of Sills, Cummis & Gross represents the applicant, 200 Route 17, LLC. The application is for preliminary and final site plan approval, use of variance approvals and bulk approvals in connection with a proposed self-storage facility. The site is located at 200 Route 17 South, adjacent to a parcel owned by the New Jersey Department of Transportation and an unnumbered address on Midland Street in Rochelle Park. The Schlüssel family has owned the property for more than 20 years. This location was previously the Sears Service Center adjacent to a Hess gas station. The Hess gas station was demolished as part of the DOT widening Route 17. He noted that the DOT has consented to this application. Since the property is located in both Maywood and Rochelle Park, they are simultaneously presenting this application in Rochelle Park as well. In Maywood, the property is located in the High-Density Office (HDO) zone that has a Sexually Oriented Business (SOB) overlay zone.

Chairman Lichtenberger confirmed that there is no access from Route 17. Mr. Herlinsky stated that the access is through Midland Street in Rochelle Park. Chairman Lichtenberger asked what would happen if either of the Board's deny the application. Mr. Herlinsky answered that the applicant would proceed to the next level. He notified the Board that there is an objector representing the local Harley Davidson dealership. He believes that the objector would oppose any proposed use of the property as they have inquired about purchasing the property in the past. During the Rochelle Park hearing, the applicant had their engineer testify.

Mr. Herlinsky explained that self-storage facilities are not a permitted use in the HDO zone, therefore, they are asking for a use variance pursuant NJSA 40:55D-70d. They have submitted an affidavit of publication and proof of service indicating that the notice was published in the *Bergen Record* and mailed to property owners within 200 feet of the site. They relied on the certified list that was presented to us from the Maywood Tax Assessor. They will be presenting testimony from a civil engineer, an architect and a representative of the operator of the self-storage facility.

He introduced his co-counsel Joseph Fiorenzo. Board Recording Secretary Grunstra confirmed that she received the notice and all the related information.

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. His objection relates to the notice that was provided by the applicant and the site plan.

He stated that if no notice is given or if the notice is in some way defective, this defect affects the jurisdiction of the Board to act and any action taken by the Board in such cases is a nullity. He cited Northgate Condo vs. Planning Board Council where the applicant omitted notice. There are two notices that are involved. The notice to property owners within 200-feet and he believes that his client received all the notices in this particular case. He believes that the applicant failed to satisfy statute NJSA 40:55D-12 notice to the municipality. He made this objection in Rochelle Park last week because the applicant failed to send notice to the Maywood Borough Clerk. The Supreme Court case that required that notice is Quinton vs. the Edison Park Council. With the omission, he does not believe that the Board has jurisdiction to proceed tonight. When this objection was raised at the Rochelle Park hearing, the Board didn't decide and the applicant took the risk to proceed with the hearing. Chairman Lichtenberger asked what the down side of the applicant not sending notice to the Borough. Mr. Torre responded that the Supreme Court highlighted this section and elevated it. The Quinton case enables the Borough representative to be notified in order to make an objection which avoids municipalities not knowing what was going on in adjacent municipalities. Mr. Herlinsky noted that Mr. Torre is making a point of why the Rochelle Park application may be defective but the Rochelle Park Township Clerk was notified for this hearing on September 14, 2018. Mr. Torre disagreed. Board Attorney Kaczynski clarified that there are two separate applications. She asked if Rochelle Park was noticed for this hearing and Mr. Herlinsky answered that they were noticed. Board Recording Secretary Grunstra confirmed that the Rochelle Park Township Clerk was noticed. Board Attorney Kaczynski suggested that a copy of the 200-foot list and a copy of the notice that was provided by the applicant be submitted into the record.

Mr. Torre has another objection to the notice. Under the current law, notices are supposed to be understandable to the public so the layman can understand what is being proposed. He believes that the current notice has omissions that the average person wouldn't understand. The notice included technical measurements but omitted the square footage of the building (155,000-square feet) and the number of units (1,145 units). Chairman Lichtenberger offered that any citizen can come before the Board to learn what's going on, ask questions and voice their opinion. Mr. Torre took exception to the notice including the wording "other bulk variances" since it is vague. The case cited was Rockaway Shop-Rite Associates Incorporated vs. City of Linden. Mr. Herlinsky stated that the notice identifies a use variance and other bulk variances. He further explained that the other bulk variances are being requested and noticed based on the interaction with the Board, additional variances may be requested upon further inspection of the plans. He considers this wording as a common practice. Mr. Torre countered that all required variances should be mentioned in the notice. Mr. Herlinsky then read the notice into the record:

From Attachment 1:1 Schedule A-1 of the Ordinance to permit the continuance of a 0.69-acre lot where the minimum lot area permitted is 1.5 acres.

From Attachment 1:1 Schedule A-1 of the Ordinance to permit a 12.7-foot front yard setback where a minimum front yard setback permitted is 25 feet.

From Attachment 1:1 Schedule A-1 of the Ordinance to permit a 14-foot rear yard setback where a minimum rear yard setback permitted is 15 feet.

From Attachment 1:1 Schedule A-1 of the Ordinance to permit a 0-foot rear yard setback where a minimum rear yard setback permitted is 20 feet.

From Section 40 P (2) (a) [1] of the Ordinance to permit three wall signs where the maximum number of wall signs permitted per street frontage is one and the building only fronts two streets.

Lastly, Mr. Herlinsky explained that they included a catch-all in the notice in case there is anything that was missed. He added that it has been proven time and time again by the courts to be an appropriate use of notice.

Board Attorney Kaczynski confirmed with Chairman Lichtenberger that the meeting should close by 10:30pm. Board Attorney Kaczynski asked Mr. Torre which variances were failed to notice. Mr. Torre answered that the applicant didn't fail to notice but instead that the notice was vague since it didn't include square footage and number of units. Anthony Klymenko noted that the notice identifies that they are seeking for 48 percent building coverage where the maximum building coverage 40 percent. Mr. Torre believes that square footage and number of units should be included in the notice. He added another objection that the statute calls for military facilities within 3,000 feet of the application for development are to receive notice. Mr. Herlinsky pointed out that the applicant sent the Maywood application package to Mr. Torre. Mr. Torre said that the affidavit of service was missing. Board Attorney Kaczynski noted that the Board has a copy of the notice.

Mr. Torre repeated that the military facility was not noticed required under 40:55D-12.4. Board Attorney Kaczynski cited the statute:

In the case of a military facility which has registered with the municipality, and which is situated within 3,000 feet in all directions to the property which is the subject of the hearing.

Mr. Torre represented that the military facility is located within 3,000 feet of the subject property. Board Attorney Kaczynski asked if the facility is registered in Maywood. Mr. Torre answered that it is registered in Lodi. Mr. Herlinsky pointed out that:

The applicant shall be entitled to rely upon information contained in such list and failure to give notice to any owner, to any public utility, cable television company or local utility or to any military facility commander not on the list shall not invalidate any hearing or proceeding.

He continued that if the administrative officer didn't provide the information, according to MLUL 40:55-D12, the applicant is entitled to relief from any oversight. Board Attorney Kaczynski asked about the possibility of re-noticing the hearing to address the issues raised. Mr. Herlinsky believes that Mr. Torre will find something wrong with the new notice. Board Attorney Kaczynski cited the statute:

Any military facility commander interested in receiving notice pursuant to paragraph 2...may register with the administrative officer of their municipality in which the facility is situated and any municipality situated within 3,000 feet...

She believes that it is up to the facility where they want to register and be listed on the municipality's register which is provided to any applicant on the official list that they can then rely upon for providing notice. Mr. Torre accepted her interpretation but warned that the Board may be proceeding without jurisdiction. He cited Shakoor Supermark vs. Old Bridge Township Planning Board.

Mr. Torre has a site plan objection. He explained that on two sections of the site plan, the applicant is supposed to have permission of the property owner, an agreement, a contract or actual ownership. One of the properties was placed onto the site plan but the owner did not agree to it; Block 7 Lot 25.02 in Rochelle Park. Mr. Herlinsky replied that the applicant's engineer will address this issue during testimony as there is a sewer easement. He added that there is also a drainage easement on the other site. The engineer is going to present alternatives that don't require using the easements. Chairman Lichtenberger requested that Board Attorney Kaczynski weigh in on the issues raised by Mr. Torre. Mr. Herlinsky requested that the Board hear the testimony of the operator and Mr. Torre objected. Mr. Fiorenzo noted that the Board Engineer deemed the application complete. He believes that the issues could be clarified with testimony. He has a letter from the DOT that could clear up some of the confusion but Mr. Torre believes that the letter is hearsay. Board Attorney Kaczynski cited the DOT letter dated July 12, 2018:

We consent to 200 Route 17, LLC, making application before the above referenced Boards which is both Rochelle Park and Maywood for land use approvals including site plan with variance and their sole cost expense and risk.

She explained that this satisfies the Board. She noted that the property in dispute is located in Rochelle Park.

Board Attorney Kaczynski suggested taking Mr. Torre's objections one by one. The first objection is that the applicant failed to notice the Maywood Borough Clerk for the Rochelle Park hearing. Mr. Torre believes that the applicant failed to notice the Rochelle Park Township Clerk for the Maywood hearing as well. Mr. Herlinsky stated that he has a copy of the notice sent to the Township of Rochelle Park, 151 West Passaic Street, Rochelle Park, New Jersey 07662. He added that there is an alternative option for the sewer easement issue. Board Attorney Kaczynski requested that the applicant's engineer, Keith Cahill of Bohler Engineering, show her on the site plan. Mr. Cahill explained that if you disturb a property, there is a soil erosion plan with a limit of disturbance. Board Engineer Gillen joined the discussion. Mr. Cahill pointed out the property line and the limit of disturbance on the plan. He noted that they are not proposing to touch anyone's property. He indicated the silt fence location. On the utility plan, he pointed out the sanitary sewer line which comes to the property line. The exact location of the sanitary sewer beam is not known by the MUA but the MUA has advised that it is on the applicant's side of the property. The applicant has not shown that they are crossing the property line. He explained that if they can't find it or they do additional utility search, Midland Street is a dead end and the utility that exists, is on the survey. Either way, the MUA says you can tie into it because they have the rights to that land. They don't propose to cross the property line or dig on anyone's property. Mr. Torre agreed to no more objections, as they are all in his brief submitted to Rochelle Park. Board Attorney Kaczynski requested a copy and Mr. Torre agreed to provide it.

Discussion ensued where multiple speakers were speaking over each other.

Mr. Cahill continued his testimony. He explained that the applicant contacted the DOT to confirm that the proposed grading was allowed. The DOT issued a letter dated 9/27/18 approving the grading. They need to get an access permit to be in the right-of-way. In this case there's no structure, so it's not an issue with proceeding on an engineering site plan application.

Mr. Herlinsky accused Mr. Torre of offering to hire attorneys for the local residents attending this hearing thereby violating the RPCs.

Discussion ensued where multiple speakers were speaking over each other.

Board Attorney Kaczynski offered to render a legal opinion on each one of the issues brought up by Mr. Torre; three notice issues and two site plan issues. Board Engineer Gillen believes that the site plan issues are solvable. Anthony Klymenko made a motion to have Board Attorney Kaczynski render a legal opinion on the issues. She confirmed that the applicant is willing to change the sewer connection so it doesn't go near the other owner's property. Mr. Fiorenzo stated that all of the objections raised at this hearing were also raised at the Rochelle Park hearing and testimony proceeded at that hearing.

A short recess was taken at 9:55pm. The meeting resumed at 10:00pm with all members present.

Vice Chairman Kuhn seconded the motion made by Anthony Klymenko to have Board Attorney Kaczynski render a legal opinion on the objections raised by Mr. Torre. All eligible members present voted in favor of the motion.

Board Attorney Kaczynski outlined the issues. The first notice issue pursuant to 40:55D-12(d) is where failure to notify the Maywood Borough Clerk in connection with the Rochelle Park application. She considers this a nonissue for this Board to consider because it was in connection with the Rochelle Park application not the Maywood application. This Board is required to make sure that people were noticed as required pursuant to the 200-foot list and also that the Clerk of the adjacent municipality (Rochelle Park) was notified. The Clerk of Rochelle Park was notified as per the notice and affidavits submitted to the Board Recording Secretary. There was an issue that was raised with regard to the sufficiency of the content of the notice. Specifically, that it did not reference 155,000-square foot building and 1,145 units. Mr. Torre referenced page 348 of the 2018 Cox Treatise.

On page 349, in the case of *Perlmart vs. Lacy Township Planning Board*:

The court stressed that it is the information that would inform the public of the nature of the application in a common-sense manner such that the ordinary layperson could intelligently determine whether to object or to seek further information. Without that basic information we are not assured that the general public understood the nature of the application.

This notice included reference to a storage facility and a number of variances including a floor area ratio (FAR). She considers the notice sufficient. With regard to the issue of notice to the military facility (40:55D-12.4):

Any military facility commander interested in receiving notice may register with the administrative office of the municipality in which the facility is situated and any municipality situated within 3,000 feet... administrative officer of every municipality in which a military facility is situated shall adopt a registration form and maintain a record of any military facility which has registered with the municipality.

The applicant is entitled to rely on the list provided by the municipality. There is no evidence that the military facility registered with Maywood so the applicant did not have any obligation to notice the facility.

With regard to the two site plan issues which bear on ownership and jurisdiction of the Board because allegedly there is no consent to the owners. With regard to the property owner in Rochelle Park, Board Attorney Kaczynski doesn't believe this Board has any jurisdiction over that issue because that property is located in Rochelle Park. The Maywood Planning Board only has jurisdiction over the portion of the property that is located in Maywood. However, the applicant's attorney has also indicated that they would be willing to relocate that sewer line to completely eradicate that issue and they can address that with Rochelle Park. With regard to DOT, there is a letter that indicates that they have the jurisdiction and the ability to file this site plan application. She stressed that this does not give them any right to build. She is not deciding whether or not a berm is a structure. She recommended that the Board allow the applicant to proceed.

Mr. Fiorenzo called his first witness Keith Cahill of Bohler Engineering, professional engineer. Mr. Cahill marked Exhibit A-1, Aerial Exhibit 2015, prepared by Bohler Engineering on 8/20/2018. He described how the subject property falls within 2 municipalities and detailed the Blocks and Lots. Block 125, Lot 4 in Maywood is currently owned by the DOT but they have agreed in writing to allow a portion to be transferred to the applicant as part of this application. The applicant marked Exhibit A-2 letter from John Sullivan of the State of New Jersey Department of Transportation dated 9/27/18. The letter is a clarification to the 7/12/18 letter of consent for site plan application and the first paragraph:

The New Jersey Departments of Transportation is granting permission for 200 Route 17, LLC to apply for site plan approval with variances, general consent includes the proposed grading into State right-of-way adjacent to Route 17 Ramp 50.

Mr. Cahill explained that the second paragraph refers to 200 Route 17 being approved to purchase and own the triangular parcel of Lot 4. The subject property is split between two municipalities which is a unique condition that is not typically presented for development which presents issues, constraints and hardships with regard to development of this property. He described the surrounding uses as the Harley Davidson facility that has existing storage containers, trash dumpsters and a utility area for external storage. Midland Street which fronts the Harley Davidson property to the west comes to a dead end at the subject property. Since the Route 17 modification, the street was ended and divided in half. Inside of that street, there are typical utilities; water lines, sanitary sewer lines, etc. The town has utility easements on the private property in the right-of-way meaning Midland Street which is the only access point for this property. Further to the west is a residential area. There is a playground, ball field with parking and commercial property on Essex Street. Route 17 is located to the north and the property is surrounded by the exit ramp off of Route 17 South. He noted that there is no access from Route 17 or that ramp that is along the north and eastern property side to the property. Access is through Midland Street via Essex Street.

Mr. Cahill explained about the proposed drainage. There is no proposed disturbance to Block 7, Lot 25.02 in Rochelle Park. The site plan shows the anticipated sanitary sewer connection

easement which is on the subject property. The MUA of Rochelle Park indicated that they believe the sanitary sewer line was on the applicant's side of that property line. It's inside of an easement that is on both sides of the property that has the ability for properties on either side to utilize the sanitary sewer line. On top of Site Plan Sheet C-06 (Utilities Plan), Midland Street shows the corner of the proposed building. There is a proposed sanitary sewer ladder that comes out of building to the property line, but does not cross the property line as they don't intend to disturb that property. However, if they found that it is on the property line or on the adjacent property, they would still be allowed to tie into it because it's in the easement. They could turn the lateral to the south to the right-of-way of Midland Street where that exact same sanitary sewer main exists, they won't go near that property. Board Attorney Kaczynski pointed out a note on the site plan that if there is any conflict with regard to the sanitary sewer location, the applicant can take it out to Midland Street. Mr. Torre objected because his engineer did not attend the hearing.

Mr. Cahill pointed out that there was an objection made that the applicant proposed a structure in the DOT's right-of-way. On Site Plan Sheet C-06 (Utilities Plan), he pointed out that there are no structures proposed for this application to be in the right-of-way. There is a storm water detention basin with minor grading. He described it as up to two and a half feet that would be graded, a berm. Exhibit A-2 is the letter from the DOT states that they will allow grading in the right-of-way. The applicant will also need to receive construction approval from the Building Department. An alternative to the grading would be a little landscape retaining wall, two and a half feet using the decorative blocks. Board Attorney Kaczynski asked what DOT permit would be required for grading and Mr. Cahill answered that the applicant would need a highway occupancy permit.

Mr. Cahill discussed the proposed building and site improvements. He marked Exhibit A-3, Historical Aerial Exhibit 2002, prepared by Bohler Engineering on 8/20/2018. He noted that this was prior to the Route 17 exit ramp modification to Essex Street. The exhibit shows the 30,000-square foot Sears building that was on that property with access off of Route 17. At that time, the property was 3 acres where it is 1.3 acres now. In 2002, the property had access to Route 17 but there is no longer access to Route 17. In 2002, there were 112 parking spaces at the retail facility. He noted that the property is 60% smaller than in 2002 which is why the applicant is requesting a variance for lot size. The setbacks and zoning have not changed.

The application was carried to the 10/25/18 meeting without obligation to re-notify the public.

Rick DeHeer rejoined the dais.

Informal Hearing None

Old Business None

New Business

- 9/18/18 letter from Fair Share Housing Center Re: Application of the Borough of Maywood, County of Bergen, Docket #BER L-6216-15 and 9/18/18 Resolution #149-18

Resolution Approving Entry into a Settlement Agreement with Fair Share Housing Center in the Matter of the Application of the Borough of Maywood

- Secretary Panny made a motion to approve the settlement agreement and Harry Hillenius seconded the motion. All eligible members present voted in favor of the motion except Vice Chairman Kuhn who abstained
- Distribution of Calendar #2018-13 John Malandrucolo, 40 West Passaic Street, Block 95, Lot 7 Variance Application

Open Meeting to the Public

Adjournment

A motion to adjourn the meeting was made by Harry Hillenius. John McManus seconded the motion. The meeting was adjourned at 10:36pm.

Respectfully submitted,

Tara Grunstra
Planning Board Recording Secretary