

BOROUGH of GARWOOD
PLANNING BOARD

MEETING of March 22, 2023

Chair Stephen Greet opened the meeting at 7:30 p.m. and read the following:

Pursuant to the Open Public Meeting Law, this is to state for the record that adequate notice of this meeting has been provided to the public by publication in the Union County Hawk on December 29, 2022 and by filing of said notice in the office of the Municipal Clerk. This is a regularly scheduled meeting of the Board.

Flag Salute – Moment of Silence

ROLL CALL

Present: Mayor Jen Blumenstock, Councilman Vincent Kearney, Stephen Greet, Kathleen Villaggio-remotely, Ken Capobianco, William Nierstedt, Richard McCormack, Paul Tarantino, Steve Barcan (Alt. I) Mary Ann Hay (Alt II), (Alt. III) Alt. IV - VACANT

Absent: None

Excused: Stephanie Bianco

Also present were Board Attorney Donald Fraser, Gabe Bailer present for Victor Vinegra, P.E., P.P. (who was attending remotely) and Board Secretary Adele Lewis.

MINUTES

- **MINUTES OF THE JANUARY 11, 2023 PLANNING BOARD MEETING**

On a motion by Ken Capobianco, and seconded by Mayor Blumenstock, the Board voted by general consent to adopt the minutes of the January 11, 2023 Planning Board meeting.

ORDINANCE REVIEW

Pursuant to N.J.S.A. 40:55D-26 review **Ordinance 23-03** to adopt Flood hazard maps and designate a flood plain administrator.

Gabe Bailer explained that this does not affect stormwater ordinance but is replacing the flood damage prevention ordinance. He noted that the ordinance was crafted by the DEP with input from the Borough Attorney. He added the Planning Board is authorized to grant any variances related to this ordinance.

The Board inquired how this ordinance will affect future development, as well as applications in the process of development, such as the PaperBoard site.

Mr. Bailer will research to determine if the new regulations will apply.

On a motion by Kathy Villaggio and seconded by William Nierstedt, the Board voted to recommend the Governing Body adopt the Ordinance 23-03

**(Mayor Jen Blumenstock, Councilman Vincent Kearney Abstained)*

APPLICATION
Case PB22-05

267 Spruce Avenue

Block 511 Lot 1 R-A Zone

Applicant: Frank Kelly, Jr.

Seeking a Certificate of non-conformity for a two-family Residence in the R-A / single family zone.

Stephen Hehl, Esq. of JaverbaumWurgaft, Union, NJ represented the applicant and provided an overview of the application.

Mr. Hehl stated that the Zoning maps will show that the home was constructed when the two-family use was permitted. He stated that the home has always been a two family and was constructed as a two-family Mr. Hehl stated that the property was zoned to one family in 1974.

Chair Greet referenced the Zoning Map from 1922 which show the area was zoned as a two family.

Mr. Nierstedt stated that he was hesitant to approve as the records from the tax assessor only means two residential units, not necessarily a legal two-family home. He understands the significance of the 1922 Zoning Map.

Mr. Hehl noted the CCO signed by 1985 & 1987 signed by the Construction Official identify the property as a two-family residential use.

Mr. Nierstedt spoke to the current condition of the site. He noted the deleterious condition of the property, especially the garage, which he feels is inaccessible as a two-car garage. He asked what the applicant plans to do to clean up the site. Chair Greet concurred and strongly feels that the site needs attention. Mr. Hehl noted that his client is the contract purchaser and does intent to eventually improve the property.

Councilman Kearney inquired if there has been sufficient proof of the continuous two-family use throughout the years as has been demonstrated in similar applications. Board Attorney Fraser noted the construction of the home as a two family and the two utilities could provide inference of the continued use.

Mr. Frank Kelly, 306 Willow Ave. Garwood, contract purchaser was sworn in.

Mr. Hehl asked Mr. Kelly as part of his due diligence what research he uncovered.

Mr. Kelly stated the property came on the market when the elderly owner who occupied the first floor passed away. The tenant was there since 2007 and to his knowledge it has always been occupied. Mr. Fraser noted that typically there is testimony from family or long-time neighbors who can attest to the continuous use of the two-family use. Mr. Hehl stated they will return to the next meeting with additional proofs.

Mr. Capobianco asked for schematics of the floor plans.

It was announced that the application would be carried to April 12, 2023 meeting with no further notice.

RECESS: 8:08- 8:15 p.m.

NEW BUSINESS

Correspondence from Mr. Wine, Esq of Prime & Tuvel re: Garwood Chicken, LLC 10 South Ave. Mr. Fraser stated that Mr. Wine, on behalf of the applicant, was going to come to speak to the Board to request a waiver, however they have withdrawn their request to revisit the fees and will submit the fees as identified by Harbor Consultants. Mr. Bailor explained that this is one tax lot and is impacting the entire lot which dictates the fee.

Correspondence dated 2/17/2023 from Mr. Hehl re: Laxmee, 2 North Ave. request for extension of approval.

Mr. Hehl was present and explained that they are working with the DOT and they are reconfiguring the driveways to eliminate DOT approval. Mr. Nierstedt stated that the driveways are in poor condition. Mr. Vinegra, attending remotely, stated that they will be using the same circulation as presented and approved. Mr. Hehl stated they are seeking an extension through the end of the calendar year 2023.

On a motion by Mr. Nierstedt and seconded by Councilman Kearney, the Board voted to extend the approval through the end of the calendar year 2023 in the matter of Laxmee, 2 North Avenue.

Correspondence from Russo Development Re: Redevelopment Plan proposed amendment
Mr. Christopher Minks, Esq. was present and referred to his letter dated 2/24/2023. He noted the challenges of the retail center and stated that it is part of the amenities package. The feedback from the Vermella tenants is for uses that are intended to promote walkability and the transit oriented development. He noted they are in discussion with a small coffee shop and an acai bowl operator. They have been approached by many high-end barber/beauty salons. He noted the tenants are excited about these uses. Unfortunately, he noted, the Redevelopment Plan specifically prohibits pharmacy, beauty and nail salons. He stated retail space is of small size and will not occupy the endcap space reserved for the food uses. He feels the restrictions are unnecessary for the site and they are striving to find national, high quality and desirable uses. He noted they are very particular and discriminate to avoid turnover.

Ms. Villaggio stated that she doesn't have a problem with the pharmacy use, however would have concerns regarding the beauty/barber shops that could potentially hurt the Center Street businesses. Mr. Minks noted that fear of competition is not a valid reason to deny variances. Chair Greet inquired what size would the pharmacy. Mr. Minks stated that it is approximately 2500 sq. ft.

Mr. Fraser inquired if Mr. Minks would be willing to set parameters with a limit of 3000 sq. ft for the pharmacy use. Mr. Minks would like the opportunity to check with his marketing dept. to ensure that is adequate. Mr. Fraser noted that Mr. Minks quoted 2500 sq. ft. and this provides an added cushion.

Mayor Blumenstock inquired what changed in the interim as it was represented that there were several of the permitted uses interested in the site. Mr. Minks stated that it is a completely different environment than the market they were forecasting. They are seeing what the market demands and the preclusion is detrimental in their ability to fill the retail spaces.

Mr. McCormack stated that he feels it is unfair to ask for the change. He brought up the parking impact on the residential streets. Mr. Minks stated that he disagrees and that the Borough implemented a residential parking program to address this.

Councilman Kearney inquired if Mr. Minks was correct that it is not proper to consider competition. Mr. Fraser stated that is not relevant in this case as this is governed by the Redevelopment Plan with a site plan approval. Mr. Minks clarified that he was merely drawing a

parallel. He stated that they are seeking relief and reconsideration to the prohibited uses. Mr. Kearney stated that he does not take issue with the pharmacy but it is hard to parse the beauty / salon uses.

Mr. Fraser inquired what standards would govern the request. Mr. Minks stated that it is subjective and the Board can consider this on the merits and make a recommendation to the Governing Body to amend the Redevelopment Plan.

Ms. Villaggio noted that the additional residents generated by the new developments could justify the additional uses of beauty /barber salons.

Mr. Nierstedt stated that he feels he is consistent and he doesn't support the request at all. He noted that this is a Redevelopment Plan and the developer has spent a significant amount of time and money. Mr. Nierstedt stated that the Russo marketing team is skilled and can fill the space. He noted the thought behind transit-oriented development is to have the residents come into the community as opposed to a 'gated community' or be insular. He doesn't feel this is the intent of the Redevelopment Plan. Mr. Minks stated that they have not created an insular community, rather he is looking for a good mix of uses.

Mr. Tarantino inquired as to the square footage of the retail. Mr. Minks stated the eastern endcap is 8000 sq. ft. and western end cap is approx. 3000 sq. ft. but that space was combined as the demising walls can be moved.

Chair Greet called for a motion and Board Attorney Don Fraser suggested to proceed on a motion on the pharmacy use only and have Mr. Minks return with a schematic of the other space.

Mr. Capobianco stated that he disagreed with this and inquired how the space is being marketed. He inquired about the retail parking spaces. He stated the term "high end" is subjective.

On a motion by Kathy Villaggio and seconded Steve Barcan, the Board voted Affirmative (6) Chair Greet, Ms. Villaggio, Mr. McCormack, Mr. Tarantino, Mr. Barcan, Ms. Hay, Abstention (2) Mayor Blumenstock, Councilman Kearney, Negative (2) Mr. Nierstedt, Mr. Capobianco to recommend to mayor and council that the uses in the Redevelopment Plan subject to the provision that the pharmacy not be greater than 3000 sq. ft.

NEW BUSINESS

Mr. Nierstedt stated that he and Mayor Blumenstock were part of a Complete Street meeting and they would like the Borough to adopt a Complete Street resolution. He requested the Chair appoint a subcommittee for to create recommendations for the Complete Street resolution.

The Subcommittee will consist of William Nierstedt, Steve Barcan, Mayor Blumenstock, and Chair Greet.

CLAIMS- *The following claims were presented and approved for payment:*

Harbor Consultants- December Invoices

Inv. # 02737 from escrow of South Ave. Redevelopment Plan Phase I in the amount of \$1882.50
Inv. # 02738 from escrow of South Ave. Redevelopment Plan Phase II in the amount of \$1865.00
Inv. # 02740 from escrow of 231 North Ave. Dish Wireless in the amount of \$217.50

INVITATION TO ADDRESS THE BOARD

Dan Petracca, 245 Fourth Ave. stated that they received a violation Mr. DeStefano for an oversized fence. He noted their German Shepard can jump the fence so they installed a wire extension to contain the dog. They don't want to take down the extension and have the dog keep escaping. Chair Greet stated that a variance would be required for a fence in excess of 6 ft. Mr. Petracca was given the information on the process of applying for a bulk variance.

ADJOURNMENT - There being no further business, the Board adjourned 10:00 p.m.

The next meeting will be April 12, 2023.

Respectfully Submitted,

Adele C. Lewis, Board Secretary