

# MINUTES OF PLANNING BOARD/BOARD OF ADJUSTMENT OF HIGH BRIDGE BOROUGH

**Meeting Date:** January 11, 2021 - **Meeting Time:** 7:30 P.M.

**Meeting Location:** Zoom virtual meeting

## **1. CALL TO ORDER:**

This is a reorganizational meeting of the Planning/Zoning Board of the Borough of High Bridge. Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act in that a Notice was published in the Star Ledger and the Express Times on December 30, 2020 and the notice of and agenda for this meeting were posted on the bulletin board in the Borough Hall.

**2. FLAG SALUTE:** Led by presiding officer.

**3. ROLL CALL:** P = Present, A=Absent

Coleen Conroy, present; Pablo Delgado, present; William Giordano, present; Joseph Suozzo, present; John Musnuff, present; Tom Wescoe, present; Natalie Ferry, present; Steve Dhein, present; Michele Lee, present.

Board Member Wescoe arrived at 8:08pm.

There were 5 members of the public present at the meeting. Also present were Board Attorney Caldwell, Planner Darlene Green, Board Engineer Kevin Nollstadt and Planning Board Secretary Barbara Kinsky.

**4. PUBLIC COMMENTS:** It is the policy of the Planning Board/Board of Adjustment that all public comments on an issue shall be limited to five (5) minutes per person and no person may make more than one (1) comment per subject. Comments may be made on any subject pertaining to Board issues. Comments pertaining to Public Hearings should be saved for that section of the agenda. No debating between residents. Comments should be addressed to the Chairman and Board members at the public microphone. NONE.

**5. READING AND APPROVAL OF MINUTES:** December 21, 2020 and January 6, 2021

Motion to dispense with the reading of the prior meetings minutes:

Motion: Musnuff Second: Giordano Voice vote: Eight ayes, one absent, motion passed.

Motion to approve the December 21, 2020 and January 6, 2021 meetings minutes.

Motion: Suozzo, Second: Lee Voice Vote: Eight ayes, one absent, motion passed.

## **6. PLANNING BOARD NEW BUSINESS:**

Motion to hold Public Hearing for PBapp-04-2020: 95&97 Cregar Road, Block 19, lots 16&18: Musnuff  
Second: Giordano

Coleen Conroy, no; Pablo Delgado, aye; William Giordano, no; Joseph Suozzo, no; John Musnuff, yes; Tom Wescoe, abstain; Natalie Ferry, no; Steve Dhein, no; Michele Lee, aye.  
Four no's, three, ayes, motion failed.

Questions/comments: Chairman Dhein explained to the Board that the applicant's attorney is disputing the carrying over of the Public Hearing to the next meeting and asked that the Board vote on holding the hearing at this meeting. Chairman Dhein asked Planning Board Secretary to clarify the timing of materials that were received. Planning Board Secretary Kinsky explained that although the plans and newspaper notice were completed within the 10 days prior to the meeting, the application and escrow fees were not received 10 days prior. She explained that the question before the Board and Board professionals is to determine whether they feel they had adequate time to review the application and whether they felt the Public had adequate time to access to the materials should they request to review them.

Chairman Dhein opined that it is a slippery slope to go back on a decision made by the Board at a prior meeting, but he wanted to open it up to the Board to make that decision.

Board Member Suozzo asked if the datelines and guidelines in question are statutory or simply guidelines. Attorney Caldwell replied that yes, these are statutes set forth in the Municipal Land Use Law. Mr. Suozzo then asked if the Board had the authority to move forward. Mr. Caldwell replied that statutes are to be adhered to by the Board and Boards do not have the power to alter a statutory direction from the legislature. The legislature wants statewide uniform policies and procedures so that every Planning Board treats every applicant the same procedurally. The 10 days is in the statute it is not a creation of Board by laws. Mayor Lee inquired about how late the application was received. Planning Board Secretary Kinsky stated that the application was received 5 days prior to the meeting, 5 days late regarding the 10-day statute.

The Applicant's attorney, Mr. Edleston, stated that the other materials and notices were all completed within the 10-day statute. He opined that the application in question is ancillary and merely a supplemental part of the application. Planning Board Secretary Kinsky explained to the Board that they needed to decide if they feel the application is supplementary or not.

Chairman Dhein asked Planner Green how this affected her review. Ms. Green stated that this application did not change her technical review, it merely recognized the variances that were identified in her previous review. Chairman Dhein then asked Board attorney Caldwell if it would pose a problem for the Borough if the Board voted that the material was supplemental and did not have a major impact on the application and then decided to continue with the hearing this evening. Mr. Caldwell stated that it poses a risk to appeal the decision since the material wasn't on file 10 days prior to the hearing, and if a judge agrees with them then the application is coming back. Board Member Suozzo then asked Attorney Caldwell if he felt the Board had the discretion to move forward if the material was deemed to be supplemental, and if so, would they be in violation of the statute. Mr. Caldwell replied that his job is to advise the Board with his understanding of the law. He stated that Planner Green has expressed the impact the late submittal had on her review and the Board is the decider on this issue. Board Engineer Nollstadt stated that he also concurred with Planner Green and had no issue regarding the engineer's report.

Board Member Musnuff asked if the supplemental information received just amplified some of the concerns that Darlene Green had with the application? Mr. Caldwell replied that the supplemental information was an additional application for variances which outlined additional relief that is the applicant is seeking from the Board at the Board at the public hearing.

Board Member Conroy opined that although she believes on making this process as easy for the resident as possible, especially in these difficult times, there are guidelines in place for a reason and we should adhere to them.

Board Member Delgado asked if the Notice that was put in the paper included all the variances that were being applied for. He also stated that he agrees with Board member Conroy in making things easier for the resident. Board Secretary Kinsky stated that all the variances were properly included in the Notice.

The Applicant's Engineer, Wayne Ingram then stated that the plans that were submitted well before the 10-day deadline had a list that indicates the variances applied for. He opines that there is nothing new in the application. Mr. Delgado then opined that if the Notice was done properly, he feels all the information as accessible to the public and although he understands the slippery slope concept, he is not sure it applies in this case.

#### **Board of Adjustment Meeting Begins at this point.**

#### **7. BOARD OF ADJUSTMENT NEW BUSINESS:**

Completeness Review for PBapp-05-2020, 102-104 West Main Street, Block 24 Lot 17, owner Karen Ihling.  
Motion to approve PBapp-05-2020 for completeness: Giordano Second: Musnuff

Coleen Conroy, no; Pablo Delgado, no; William Giordano, no; Joseph Suozzo, no; John Musnuff, no;  
Tom Wescoe, no; no; Steve Dhein, no. Seven No's, motion failed.

#### **Comments:**

Chairman Dhein asked if there was a letter from the Board Engineer, and Mr. Nollstadt stated that there was not enough information for a letter at this time. He felt at a minimum he would need a survey plan of the property. Board Planner Green stated that she needs clarity from the applicants to what relief he is seeking, this will determine what she will still need to obtain. Applicant Mr. Pires briefly described his situation. He is the potential buyer for the property in question and is trying to determine the uses that are permitted on the property.

He stated that the current zoning officer told him the uses currently approved are gas sales and a service station, however according to the current owner more uses are approved. He is attempting to obtain documentation to prove these assertions. Therefore, he is applying for a Certificate of Nonconformity. Ms. Green stated that proving this is the responsibility of the applicant and that Mr. Pires would need to have documentation proving that these uses preexisted the zoning ordinance or preexisted when the zoning was changed and made them nonconforming. The second step is they must prove that those uses have existed continuously since they started. Ms. Green also stated that the applicant does have another route that he could take. That would be to apply for either a D-1 or D-3 use variance. The Board had a general discussion regarding how Mr. Pires could proceed with this application. Mr. Pires stated that his major asset of this property is car sales, but the lure is the gas tanks and UHAUL businesses because they offset the finances. Mr. Pires then asked the Board if he can find documentation from 2009-10 that proves that all the uses were approved would that be all he would need.

Attorney Caldwell stated that Mr. Pires needs to obtain his own land use attorney to guide him along this process. He also stated that often when one applies for a Certificate of Nonconformity, they often also apply for a use variance. This way if they are denied they will not have to come back to the Board twice.

**8. ADJOURNMENT:** Motion to adjourn: Musnuff Second: Giordano Voice vote: seven ayes, motion passed.

**Next Meeting Date:** February 8, 2021

**Meeting Location:** Zoom virtual meeting

**Meeting Time:** 7:30 P.M.