

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

Meeting Date: April 19, 2021 - Meeting Time: 7:30 P.M. - Meeting Location: Zoom virtual meeting

## 1. CALLED TO ORDER BY CHAIRMAN STEVE DHEIN

## 2. FLAG SALUTE LED BY CHAIRMAN STEVE DHEIN

## 3. ROLL CALL:

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

Also present were Attorney Todaro, Board Planner Green, Board Engineer Ruschke, Planning Board Secretary Barbara Kinsky, Planning Board Alternate Benjamin Yu, and seven members of the public and press.

## 4. PUBLIC COMMENTS: NONE

## 5. READING AND APPROVAL OF MINUTES: March 15, 2021

Motion to dispense with the reading of the prior meeting's minutes:

Motion / Second: Suozzo / Ferry. Voice vote: 9 yes votes. Motion passes.

Motion to approve the March 15, 2021 meeting's minutes with the following correction: "Board Member Suozzo did not cast a vote for PB-10-2021". Motion / Second: Musnuff / Giordano

Voice vote: 9 yes votes. Motion passed.

## 5. PLANNING BOARD NEW BUSINESS:

### a. Motion to approve the Planning Board/Board of Adjustment Annual Report for 2021:

Motion / Second: Giordano / Suozzo.

Roll call: Conroy, yes ; Delgado, yes ; Giordano, yes ; Suozzo, yes ; Musnuff, yes ; Wescoe, yes ; Ferry, yes ; Dhein, yes ; Lee, yes ; Motion passed: 9 yes votes.

### b. Motion to approve Resolution PB-11-2021 adoption of the Master Plan Re-examination

**Master Plan:** Motion / Second: Suozzo / Ferry

Roll call: Conroy, yes; Delgado, yes ; Giordano, yes ; Suozzo, yes ; Musnuff, yes ; Wescoe, yes ; Ferry, yes ; Dhein, yes ; Lee, yes ; Motion passes: 9 yes votes.

Board of Adjustment Meeting begins at this time. Mayor Lee and Councilperson Ferry departed.

## 6. BOARD OF ADJUSTMENT NEW BUSINESS:

### a. Motion to approve Resolution PB-12-2021 for PB-app-03-2020, Block 33, Lot 45, 22-24

East Main Street, owner: Drew Elsaesser

Motion / Second: Musnuff/Giordano

Roll call: Conroy, yes; Delgado, yes; Giordano, yes ; Suozzo, yes ; Musnuff, yes ; Wescoe; Dhein, yes. Motion passed: 7 yes votes.

**b. Public Hearing for PB-app-05-2020, 102-104 West Main Street, Block 24 Lot 17, owner Karen Ihling.**

Motion to open Public Hearing for PBapp-05-2020

Motion/Second: Giordano/Musnuff Voice vote: 7 yes votes. Motion passed.

Attorney Todaro confirmed for the record that all noticing, and publication requirements had been satisfied. Mr. Todaro then swore in all parties that planned to testify at the public hearing: Karen Ihling, Sergio Pires, Jon Valenta and Mark Desire.

The applicant's Attorney, Mr. Thatcher called Karen Ihling to testify first.

Ms. Ihling testified that she currently resides at 573 East Hill Road in Glen Gardner, New Jersey, that she is the applicant and owner of 102-104 West Main Street in High Bridge, New Jersey, that she and her late husband have been the owners of this property since 2000 and leased it from 1998 prior to purchasing, that the current uses of this property are gas sales, car repairs and service, used car sales, convenience store and U-Haul rentals, that the purpose for coming before the Board is to verify that all current uses are permitted, that she spoke to the Borough's zoning officer, Alison Witt, and was told to apply for a Certificate of Nonconformity because of zone changes, that no variance was suggested from the zoning officer, that she was told by the zoning officer that a site plan would not be necessary, that the gas station use has existed since she owned/leased property in 1998, that the repair and service use has been continuous for the past 22 years, that her late husband was the mechanic for the business, that used cars have been sold on the property since 1958 when the business was a Nash Dealership, that the used car sales have been a continuous use since she owned the business up until present day, that UHAUL approached her in 2003 and it was at that time UHAUL vehicles have been for rent on the property and this had been continuous up until present day, that the only issue she encountered with UHAUL rentals was the parking of trucks and trailers on the property next door at 100 West Main Street and although she did have the property owner's permission the town would not allow it, that she did receive Planning Board approval, that she asked for the records from the Borough regarding this approval and these records could not be located, that Jon Valenta and Mark Desire were on Council at the time of this approval and they will testify regarding this in their testimonies, that the convenience store was started in approximately 2005, that she does have copies of Board of Health documents that support this, that the convenience store has been a continuous use since its onset.

Mr. Thatcher then turned the testimony over to the Board for questioning of Ms. Ihling.

Chairman Dhein asked a question regarding UHAUL trailer sales, and it was clarified that the terminology "sales" referred to the sale of a rental agreement of the trailer. Chairman Dhein also inquired as to the size of the convenience store. Ms. Ihling replied that it is small and approximately 10 by 12 feet. Board Member Suozzo asked how long the used car sales has been in continuous operation, and to explain the gaps in submitted license documentation. Ms. Ihling replied that she is not required to keep past years' licenses. She stated that the State requires that the license be continuous to receive a renewal and that she does have a current license that is renewable March 2021.

Board Member Musnuff asked if the convenience is currently in operation, and Ms. Ihling replied that it is, and she sells coffee, soft drinks, and water.

Board Planner Green asked if during the pandemic it was permitted to have convenience stores open. Ms. Ihling replied that as of March 22, 2020 coffee sales were not permitted, so she only sold bottled water and soda in a self-serve capacity.

Ms. Green also asked what occurred before the Planning Board in 2010 regarding a letter from previous Zoning officer John Barzack who cited a violation for the UHAUL rental business. Ms. Ihling explained that the Borough asked that they not park UHAUL vehicles on the adjacent property. She stated that she did go before Council in 2009. Ms. Green clarified for the Board that a zoning ordinance was adopted in 2010 by Council which allowed the rental of vehicles.

Ms. Green asked if Ms. Ihling had obtained a zoning permit for the convenience store and the applicant responded that she had, but the Borough was not able to find the documentation for this approval.

Board Member Delgado asked if there was a limit put on the number of cars for sale at a given time. Chairman Dhein replied that this will be addressed when Jon Valenta testifies.

The applicant's Attorney called Mr. Sergio Pires to testify. Mr. Pires testified that he currently resides at 7 Cheshire Court in Lebanon, New Jersey, that his occupation is dealing in classic cars in Easton Pennsylvania, that he brokers deals for clients who want high end and classic cars, that he is the purchaser under contract for 102-104 West Main Street, that in order to pay for the property he will need to continue the current uses on the property, that he plans to renovate the building to be a vintage looking service station, that he plans to have classic cars on the premises, that he plans to sell and service the cars, that the UHAUL business will be located to the back right corner of the lot so as to have the spotlight vehicles out front, that he renovated an old janitorial warehouse in Easton and made it a showroom for classic cars, that the proposed improvements made to the property will not trigger the need for a site plan, that he has no plans to change the footprint of the building

Chairman Dhein asked Mr. Pires how many cars he anticipated having at any given time and to clarify where the UHAUL vehicles will be stored. Mr. Pires answered that he planned to have five to eight classic and high-end cars along the left-hand side of the lot and the UHAUL vehicles will be located to the right rear corner of the property.

Board Member Wescoe asked Mr. Pires to explain his plans for the convenience store, and what the parking space allotment would be. Mr. Pires responded that he plans to retain this aspect as a matter of convenience for those who use the gas station in town. Mr. Pires stated that some of the patrons would be stopping into the convenience store whilst filling up for gas and others would park on the right-hand side of the lot. He anticipates having three to five spaces available for parking.

Chairman Dhein inquired whether Mr. Pires will increase the square footage of the convenience store and Mr. Pires stated that presently there are no plans to expand the square footage.

Board Member Conroy asked Mr. Pires if improvements on the property would include realigning the parking area and she inquired as to the number of UHAUL vehicles expected on the lot at a time. Mr. Pires replied that his intention would be to pave the property and clean it up. Ms. Ihling replied to the UHAUL inquiry stating that the number of trucks is not a set amount and is constantly in flux dependent upon the need.

Board Member Musnuff asked if the rear of the lot was paved. Mr. Pires replied that it is stone, and he will keep it stone for the time being.

Board Member Suozzo asked if Mr. Pires had obtained any architectural plans. Mr. Pires replied that as of now he has not and does not plan in investing that kind of money unless the application is approved.

Mr. Thatcher called Mr. Jon Valenta to testify. Mr. Valenta testified that he served one term on Council for three years, that he was present during the Ordinance change in 2010, that he was also on the Planning Board, that the Planning Board made a recommendation to the Council to adopt a new Ordinance, that Ordinance 2010-01 was passed and allowed the rental of UHAUL vehicles which made it unnecessary for Ms. Ihling to obtain a variance for the rental of vehicles, and that he feels the uses on 102-104 West Main Street are conforming uses.

Chairman Dhein stated that he was also on the Board at this time and recalls the situation that Mr. Valenta is referring to.

Board Attorney Todaro asked that it put on record that the Board is not giving this property owner a hard time, this is a request to the Board to effectuate the sale of the property.

Board Planner Green stated that the ordinance Mr. Valenta spoke about is in the Borough's Code and was adopted on February 11, 2010, but it makes no mention of allowing a convenience store use. Mr. Valenta stated that at that time there was no complaint about the convenience store so it was not addressed in that Ordinance.

Chairman Dhein asked Ms. Green to read that section of the code to the Board. Ms. Green read aloud the requested section of the code to the Board.

Ms. Green then went over her April 6, 2021 report. The report gave a history of zoning related to the site. Ms Green stated that the only use that was not addressed in the zoning code for that lot is the convenience store. Ms. Green stated that in reviewing the various Ordinance changes, at no point in time was convenience store mentioned as one of the uses that was associated with a gas station, nor is it listed as an accessory use to a gas station.

Board Member Musnuff stated that since the convenience store has been in operation since 2005, he feels that the use has been continuous.

Board Member Delgado stated that he agrees with Mr. Musnuff regarding the convenience being continuous.

Board Attorney Todaro stated to clarify that the Board is simply being asked to issue a Certificate of Nonconformity. If it had been requested within the first year of the Ordinance change, the zoning official would have issued it. Mr. Todaro asked why the applicant was seeking the Certificate of Non-conformity. Mr. Thatcher stated that the Certificate of Nonconformity is required so that his client can sell the property with all the current uses.

Board Member Conroy stated that as residents we appreciate all the years of service to the community. But as a Board, they are just trying to make sure that whatever is approved is in line with what our current ordinances are, and to make sure things are done correctly.

Board Member Wescoe stated that graphics and plans would aid him in understanding the intentions of the prospective new owner.

At this time, the Chairman asked for public comment.

Barbara Desendorf stated she lives across the street from the applicant's property. She feels that this area is the gateway to High Bridge. She feels what is being proposed for the property would be an improvement and is in favor of the application. She feels that the town would benefit. She also stated that she had lived in her home since 1979 and the gas station has been there.

Chairman Dhein then read a letter from Carol Mowrey that was also in favor of the application.

Board Alternate Yu stated that Ordinance 2014-16 permitted retail stores in the MUC zone and asked if there was a difference between retail and convenience stores? He opined that convenience stores seem to be a smaller retail store.

Mr. Thatcher called Mark Desire to testify at this time. Mr. Desire had stepped out for a work commitment and was able to rejoin the meeting at this time. He testified that in his 12 years as Mayor of High Bridge this property has always had a gas station, repair shop, used car sales and UHAUL rentals, that the only issue was parking the UHAULS on the adjacent property which was resolved, that there were a few complaints regarding the junk cars on the lot, that the owner's deceased husband, Rocky, had supported the Borough during hurricanes and gas shortages, that he is in favor of the sale and the proposed classic car shop.

At this point the Board Members gave opinions prior to voting.

Board Member Musnuff stated that the vote before the Board is whether the five uses have been continuous, not based on if the Board is in favor of having the five uses in existence on one parcel.

Board Member Delgado spoke to the convenience store use. He stated that he does not see how the Board of Health could have issued a certificate if the use was not permitted. He opined that the store has been a continued use for a long time.

Board Member Suozzo stated that he is not sure the use of the convenience store was entirely proved to be continuous. He also asked if the prospective buyer would accept having a size limitation on the store should the application get approved and then he inquired from the professionals if this limitation could be imposed.

Board Engineer Ruschke stated that this is not an application for a site plan waiver. He opined that there was not enough testimony given to the Board regarding changes in architectural floor plans to make any rendering regarding if a site plan is required. As long as he does not meet those requirements of an alteration, then he wouldn't require site plan approval, but more information needs to be submitted for the zoning officer to make that determination. He also stated that an alteration, such as modifying the wall, so that a use is intensified and would change parking demands or other demands which could trigger site plan. Mr. Ruschke feels that the information presented in front of the Board is to look at the present uses and make the determination if they are non-conforming or continuous uses.

Board Member Conroy asked Planner Green what her bottom-line concern was with regards to this application. Ms. Green responded her concern is that the current uses on the site have grown over time, and that they will continue to grow and will detract from the "gateway". She expressed concern that with a new owner there could still be the same issues with the site without any controls if a certificate is issued.

Board Member Conroy asked if conditions could be place on the applicant regarding approval of the application. Board attorney Todaro stated that conditions could not be imposed because if approval is granted it would just confirm that the current uses are permitted. However, limitations that are present in the current code would be enforceable.

Motion to close Public Hearing for PBapp-05-2020  
Motion/Second: Giordano/Musnuff Voice vote: 7 yes votes.

Motion to approve PBapp-05-2021 Giordano/Musnuff

Conroy: Yes, she feels they proved their case but has concerns and hopes that improvements will be made because if is the "Gateway" to High Bridge.

Delgado: Yes, he feels the evidence provided proves the continuous and concurrent uses. He concurs that all those uses have been there the whole time. Also, he hopes that the plans in place will move this business into a more modern facility.

Giordano: Yes, he has known of that shop for well over 20 years and it's been same uses. He feels they have proved the uses with the licenses and everything else. He stated that the State would not grant a continuing used car license if it was expired for a year.

Souzzo: No, he found the owner's testimony, very straightforward, honest, and compelling. He felt she had answers for all the questions posed. He was persuaded with respect to the testimony regarding the gas station, the repairs in the service, the used car sales, and the U haul business, but did not think they proved their case with respect to the convenience store.

Musnuff: Yes, he feels they have met the burden of proof on all uses. He feels that there have always been those uses. He wishes success to the applicant and prospective buyer.

Wescoc: No, He wished Sergio the best luck with this property and hopes he pursues it. However, he felt the testimony was confusing on many fronts. He felt he would need some additional persuasive elements and would like to see a rendering of what is being proposed, rather than a continuance of the somewhat congested arena that goes on there now.

Dhein: Yes, he wants to put it into the record that he feels it has been constant with the uses in question. He feels it is very unfortunate that there were documents missing and does not want to put the fault on anyone, but also does not want to penalize the applicant because of missing documents.

5 yes votes, 2 no votes. Motion passes.

#### **10. PUBLIC COMMENTS:**

Barbara Deezendorf congratulated the applicant and said she is looking forward to a nice shiny red Lamborghini..

Jessica Biehl stated that she is looking forward to all the changes happening across the street from where they live.

#### **11. ADJOURNMENT:**

Motion to adjourn: Motion / Second: Musnuff / Suozzo

Voice vote: 7 yes. Motion passes.

Next Meeting Date: May 17, 2021 - Meeting Time: 7:30 P.M. - Meeting Location: Zoom virtual meeting