

## REGULAR MEETING OF AUGUST 14, 2006

The regular meeting of the Fair Lawn Planning Board of Monday, August 14, 2006, was called to order 7:30 p.m. by Chairman Winston in the Council Chambers of the Municipal Building.

Notice of the Open Public Meeting Law was read stating that the newspapers were notified and notice posted on the first floor bulletin board of the Municipal Building.

### **ROLL CALL:**

Chairman Barry Winston, Mayor Marty Etlar, Todd Malkin, Deputy Mayor McCarthy, Alan Neggia, Peter Kortright, III, Joseph D'Arco, Phil Cassidy, Harvey Rubinstein, Michael Cohen Absent: Al Palmieri, Honey Morgenstern Also present: Engineer John Rottenbucher, Board Attorney Douglas Bern and Board Secretary Cathryn Hochkeppel

### **Approval of Escrow bills:**

Upon motion by Todd Malkin and a second by Joseph D'Arco, the escrow bills were unanimously approved. AYES: Malkin, McCarthy, Neggia, Kortright, D'Arco, Cassidy, Rubinstein, Cohen, Winston

### **Approval of minutes:**

Upon motion by Peter Kortright and a second by Owen McCarthy, the minutes of the work session of May 15, 2006, work session and regular meeting of June 12, 2006, and work session and regular meeting of July 10, 2006, were unanimously approved. AYES: Malkin, McCarthy, Neggia, Kortright, D'Arco, Cassidy, Rubinstein, Cohen, Winston

### **Memorializing resolutions**

*The Cohen Plaza; Block 3513, Lots 1-11 & 18-23, site plan*

Douglas Bern explained the memorializing resolutions and answered questions from the Board members. Upon motion by Deputy Mayor McCarthy and a second by Phil Cassidy the resolution was unanimously adopted. AYES: Kortright, D'Arco, Cassidy, Palmieri, Rubinstein, Morgenstern, McCarthy, Winston

*Bernard Oster, Inc.; Maple Avenue; Block 6801, Lot 17, site plan*

Douglas Bern explained the memorializing resolution approving the site plan. It was suggested that the Board Secretary send a copy of the traffic report and a memo stating the Board's position regarding the traffic light.

Upon motion by Peter Kortright and a second by Owen McCarthy the resolution was unanimously adopted. AYES: Kortright, D'Arco, Cassidy, Palmieri, Rubinstein, Morgenstern, McCarthy, Winston

### **General Public Comment**

Felice Koplik, 6 Reading Terrace, stated that she felt the master plan needed to be redone. She added that there are a lot of sites that are asking for variances and zone changes and she felt one of these reasons is because there is no solid overview of the town. Ms. Koplik stated that certain elements should be updated. Ms. Koplik also stated that there should be a better height definition and asked about the FAR ordinance.

Deputy Mayor McCarthy explained that there was a subcommittee formed by the Planning Board that would report back the Board regarding recommendations for a height and FAR ordinance.

Jane Diepeveen, 14 Ryder Road, stated she doesn't think the whole Master Plan needs to be redone from scratch. She thinks the Board needs to focus on what is a good development on the Naugle House, Haywood Tract and the Clariant site. Ms. Diepeveen stated that she believes the zoning ordinance for the Clariant tract is reactive and designed to fit what the developer what it wants. She urged the Board to think about the Land Use Plan comprehensively.

Pam Coles discussed brownfields and the need to keep children safe. She wondered if there were local regulations in place that dealt with the environmental issues as she believes it is important to have safety mechanisms. Deputy Mayor McCarthy explained about the Council's powers to invoke emergency measures for the health and safety of residents but only in emergent situations. Attorney Bern explained that the actual jurisdiction of brownfields is at the state level and regulated by the DEP. It is beyond the scope and expertise of this Board. The Planning Board would require that the appropriate approvals be received from DEP prior to any construction.

Lou DiGeronimo, 16 Beckman Place, complimented the Board for working on the FAR ordinance and trying to improve the situation. He stated that he believes this community is unique in that it has several historic properties.

As no other public wished to be heard, Chairman Winston closed the time for public comment.

**Basse Nuts and Dried Fruit; 34-02 Broadway, Block 2215, Lot 24, food handler**

Jack D'archi appeared on behalf of the applicant. He explained that the application is for a retail store that is selling fruits and nuts. There will be two roasters that will be used for roasting walnuts and pumpkin seeds, and a machine to salt.

Todd Malkin asked about the drive through on the plan.

Joe Malke, of Glen Rock, was sworn in and testified that there is no drive through. It is a door for loading and unloading. There is no elevator. The plan changed and there will be a conveyor instead. Harvey Rubinstein asked about the dumpster on west side of the building. He suggested that the area be cleaned up and a place designated for the dumpster. Mr. Malke explained the dry roasting process which takes 25-30 minutes.

Chairman Winston opened the matter to the public.

Mayor Etlar asked if the roasting aroma will be offensive to the surrounding neighbors. Mr. Malke explained that there is no smell.

Don Smartt appeared on behalf of Broadway Improvement Corporation. He expressed concern about the aromas and the roasting process. Chairman Winston explained that all items were to code. Mr. Smartt was concerned about the neighbors if there were problems. Chairman Winston stated that there are enforcement agencies to deal with issues. Kenny Rogers received a summons. Mr. Smartt stated that there does not seem to be a method for public input. Ms. Hochkeppel explained that all records are public but the only reason this applicant is before the Board is because they sell food. It is retail to retail and there is no intensification of use. New tenants are not required to come before this Board unless they sell food and can get their Certificate of occupancy from the Building Department. Mr. Smartt explained that there is a signing and grant program. He wished the applicant the best of luck.

Jane Dipeveen, 14 Ryder Road, asked if the entire product was going to be sold at the premises or if it would be distributed wholesale. Mr. Malke testified that everything will be sold retail at the premises.

Greg Miller, 5 Ramapo Terrace, asked if the process of roasting nuts will emit oil that has to be collected. Mr. Malke explained it is a dry process and no oil will be involved.

As no other public wished to be heard, Chairman Winston closed the time for public comment.

Upon motion by Todd Malkin and a second by Michael Cohen, the application was unanimously approved subject to the dumpster being kept in a designated location. AYES: Malkin, McCarthy, Neggia, Kortright, D'Arco, Cassidy, Rubinstein, Cohen, Winston

**Zerega; 20-01 Broadway; Block 4301, Lot 1, site plan application**

Michael Pasquale, Esq., appeared on behalf of the applicant and explained that this is a simple application. The primary purpose of the addition is to house modern equipment to allow this business to remain in town.

John Vermyllion of Saddle River, New Jersey, principal owner was sworn in. He explained that the business has been in Fair Lawn for 55 years. The business in Fair Lawn is pasta making. Mr. Vermyllion explained that the electrical gear is going into the shed. The addition will clean up the processing area. Washing equipment and storage will be in a separate area. Three small offices will also be moved to a separate area on the plant floor where they don't belong. Vacuum pumps that are in the processing area will be isolated and kept away from employees. It will be more comfortable. Mr. Vermyllion explained that they have outgrown the power system and need to put in an additional switch gear. Mr. Vermyllion testified that there will be no new employees. The head count has been gradually dropping with modernization. They have approximately 142 employees and operate three shifts. The peak number on the site is approximately 90. There are no parking problems.

Harvey Rubinstein confirmed the location of the addition in the rear. Mr. Rottenbacher commented that there is an existing catch basin and he suggested that a filter fabric be inserted to hold the material run off during construction. There is a significant dry well. Phil Cassidy asked about the gravel. Mr. Vermyllion explained that historically there were drainage problems and they didn't want to pave. The drainage problems are now under control.

Pam Coles, 13-34 George Street, asked about drainage from the washing of equipment. Mr. Vermyllion explained that the process is inside the building and goes into the sanitary sewer.

Don Smartt, Broadway Improvements Corporation asked if this addition was needed in order for the company to remain viable and continue to be a good neighbor and Mr. Vermillion responded affirmatively.

As no other public wished to be heard, Chairman Winston closed the time for public comment.

Upon motion by Todd Malkin and a second by Owen McCarthy, the application was unanimously approved. AYES: Malkin, McCarthy, Neggia, Kortright, D'Arco, Cassidy, Rubinstein, Cohen, Winston

**Plymouth Park Shopping Center, Saddle River Road; sign variance**

Mr. Gerald Platt was sworn in and stated that on the recommendation of the Board he met with the owner of the neighboring property and they agreed to combine the two signs. There will be exterior lighting on the sign. It will not be internally lit.

Mr. Platt explained that there will be no lighting of the whole area. The sign is being lowered to 13 feet. John Rottenbacher stated he will need the calculations for the footings.

Peter Kortright noted that the applicant has reduced the height from 18 feet to 13 feet and combined two signs into one. Chairman Winston opened the time for public comment and no public wished to be heard.

Todd Malkin moved that the application be approved subject to providing new calculations for the footings and a letter agreement with the neighboring property. Deputy Mayor McCarthy seconded the motion which was unanimously approved. AYES: Malkin, McCarthy, Neggia, Kortright, D'Arco, Cassidy, Rubinstein

**Community Church of Radburn; 10-10 Maxwell Place, Block 2522, Lot 8; site plan extension**

Pastor Claude Hubbard one of the Pastors of the Community Church of Radburn was sworn in and explained that the previous approval had expired. Pastor Hubbard testified that the church agency they are responsible to is the Classes. It took a great deal of time to get the required approvals. He explained that they have now obtained the approvals and have the funds to proceed.

Douglas Bern explained that the Board may grant three one year extensions. Chairman Winston opened the matter to the public.

Mayor Etlar stated there has been no change in this area. Mayor Etlar commented that this request is diminimus. Upon motion by Todd Malkin and a second by Michael Cohen, it was unanimously agreed to grant a one year extension *nunc pro tunc*. Ms. Hochkeppel stated that she believed the applicant required more than a one year extension. Todd Malkin and Michael Cohen amended the motion to a two year extension and it was unanimously adopted. AYES: Malkin, McCarthy, Neggia, Kortright, D'Arco, Cassidy, Rubinstein, Cohen, Winston

#### **41-41 Dunkerhook Estates; Block 1702, Lots 4 and 10; site plan**

Douglas Bern, Esq. stated that this application came before the Board on a conceptual matter in January and received a more formal review on March 17, 2006, notwithstanding the fact that there were a number of outstanding items. There was another hearing in April. There were items missing required by the Engineer professional and Planning professional. Mr. Levine has asserted that he is seeking an automatic 95 period approval because he is claiming the application was complete in March. Mr. Bern explained that the applicant was seeking preliminary and final site plan approval together with several variances which statutorily is 120 days. There is the outstanding issue regarding RSIS standards for the required width of the roadway. There are still a number of incomplete items. Mr. Bern explained that Mr. Levine was asked to attend tonight's meeting. He declined to appear asserting his right to automatic approval. He is going to seek automatic approval based upon what asserts is the time frame and the Board disagrees.

John Rottenbacher, Planning Board Engineer was sworn in and explained his credentials and licenses. He testified that Boswell Engineering had prepared five separate review letters, dated July 5, 2006, June 26, May 17, April 6, and March 3. These reports are part of the documents filed with the Planning Board. Some of the major outstanding items not provided by the applicant include updating the environmental report. Nothing was received in response to Boswell's report. In addition calculations on the stormwater management to our comments see letter dated April 6, 2006, marked as B-1 were not received. Matthew Fox, PE, for the applicant stated that they will provide the documentation after the scope of the project is more concrete. Mr. Rottenbacher stated that they have never received the detailed calculations.

He explained that the applicant responded to some of the issues raised but the major outstanding items are the drainage calculations and environmental report. There is also an outstanding issue relative to the design of the roadway and compliance with RSIS standards. Mr. Rottenbacher testified that he did not speak with the engineer there but the issue was never resolved.

Chairman Winston recessed the meeting for ten minutes at 10:15 p.m. The meeting reconvened at 10:25 p.m. with all members present as previously indicated.

Mr. Rottenbacher referred to his letter of June 26, 2006, marked as Exhibit B-2. The response letter from Canger Engineering dated June 26, 2006, was marked as B-3. Mr. Rottenbacher explained that the engineer was basically paraphrasing the attorney's letter and reiterated that there is no roadway and it does not have to comply. Prior to that time, there was correspondence to the Borough of Fair Lawn dated May 17, 2006, (marked as B-4) advising the Borough Planning Board what the Department of Community Affairs defines a

driveway road. In correspondence, Boswell Engineering told the applicant that it should revise the proposed Rio Vista Roadway to meet the standards. Mr. Rottenbucher testified that his position is that RSIS always applied. The applicant did not request a waiver of the standard at any meeting of the Board to his knowledge.

Cheryl Bergailo, professional planner, was sworn in and explained her licenses and professional qualifications. She explained she was retained to review plans. Taylor Design prepared the first planning review dated March 30, 2006 that was marked as Exhibit B-5. Ms. Bergailo testified that they identified two existing variance conditions on the site which are minimum lot area and minimum lot depth. Other variances requested include minimum rear yard setback as they were providing 15 feet where 20 feet are required. A variance from the 35 feet buffer as only 15 feet was being required. It was suggested that the units be pulled eastward to meet this requirement even though it might result in a loss of a unit. The minimum front yard setback proposed was 22.7 feet where 25 feet is required. Taylor Design recommended that the units be pulled further away from the Naugle House. The maximum building coverage is 20% wherein 20.09% was proposed. The impervious coverage was proposed at 49.5% where 45% is permitted. There was a variance request for the number of townhouse units in a row, the distance between the townhouses, the evergreen buffer between the common parking lot and units and the evergreen buffer requirement between the parking area and property line. Ms. Bergailo stated that the Board heard no planning testimony about that variance as well as the other variances. The plans submitted subsequent to this report did not include any substantive revisions. Ms. Bergailo stated that the applicant did not respond with any changes to the plan to make the application more conforming. This Board never heard testimony from a professional planner justifying the variances. Ms. Bergailo stated that many of these variances could be eliminated with better design. There was no attempt to comply with the suggestions regarding impervious coverage or the impacts around the Naugle House. Ms. Bergailo explained that a second letter was sent on May 30, 2006 (marked as B-6) in response to architectural drawings regarding suggestions to better incorporate the project into the site in order to least impact the Naugle House visually. A response letter prepared by Mr. Levine date June 30, 2006 (B-7) basically stated that the comments were not relevant. Ms. Bergailo stated that she never received revised architectural plans. Ms. Bergailo testified that one of Mr. Levine's letter opines that the review architectural plans are not in the purview of the Planning Board. Ms. Bergailo stated that she disagreed. The applicant is requesting seven variances. One variance that comes to mind is the 35 foot buffer. She had asked for rear elevations as there are sliding glass doors. Mr. Levine responded that there will be no patios. Ms. Bergailo questioned the purpose of glass doors and believes people would be sitting in the buffer area. Ms. Bergailo stated that these variances would require the C(2) proofs. The applicant would have to prove that his plan is better than what the zoning ordinance requires and one of the ways to make those proofs is that it is more aesthetically pleasing.

The plans go to the proofs that the applicant is required to put forward. There is a deviation on one of the standards of ordinance. The applicant had to prove that it was an improvement to the area and would not have a negative impact. Those proofs were not presented to the Board.

Mr. Bergailo explained that she attended the meeting in April and reviewed the minutes of the March meeting.

Cathryn Hochkeppel, Land Use Administrator was sworn in and explained that she has been employed by the Borough for 15 years and has been the administrative officer and secretary for the Planning Board for the last 10 years. She stated that on May 24, 2006, (B-8) she sent a letter to Mr. Levine reminding him of items that had not been received and requesting that he forward the items in a timely manner. Ms. Hochkeppel testified that subsequent to her letter she had a telephone conversation with Mr. Levine who stated that he would not be able to supply the documentation prior to the June meeting and the matter would be carried to the July meeting. Ms. Hochkeppel added that the RSIS issue relative to the roadway was not resolved by July meeting. Ms. Hochkeppel stated that she called Mr. Levine and said that the matter would be heard in August as there were still questions regarding the roadway. Mr. Levine was not pleased but did not mention any time frame issues to Ms. Hochkeppel.

Chairman Winston opened the time for public comment.

Louis DiGeronimo, licensed professional planner and architect, was sworn in and explained that he was asked to look at Naugle House and prepare a report regarding the building with regard to uniform construction code. One of the issues that he noted, also mentioned by the Board Engineer, is water retention because of the volume of water and retention of water on the site. The other issue was the proximity of one of the units to the Naugle House. Mr. DiGeronimo stated that his testimony is to reinforce that there were other concerns that have not been addressed by the applicant.

Jane Diepeveen, 14 Ryder Road, and a member of the Fair Lawn Historic Preservation Committee stated that she is very concerned about the Naugle House and that the Board should consider that the applicant can get a demolition permit and tear the house down. Chairman Winston stated that the Board only has limited jurisdiction, not many options and there is an uncooperative applicant. The Board was led to believe that there would be additional testimony. Attorney Bern commented that the applicant is trying to evade the proper scrutiny of the Board. He stated that if the Board members feel that the applicant has not provided complete information or proven its case for the many variances, then the Board has no choice but to deny the application.

Chairman Winston stated that he has no difficulty in making up his mind as the applicant has continually failed to submit information in a timely fashion and has

yet to properly deal with the RSIS standard for the roadway. The applicant has not provided drainage information, failed to agree with any of the recommendations of the Board's planner and has consistently showed a lack of interest in working with this Board or other organizations who sought to be involved in this application. The Chairman reminded the Board that at no cost to the applicant, this Board provided a special conceptual meeting held on January 30, 2006, in an effort to work with the applicant. This applicant demonstrated in the subsequent meeting that it was completed unprepared to proceed and did not wish to work with this Board. Chairman Winston moved that the application be denied and Peter Kortright seconded the motion.

Joseph D'Arco stated that it is clear that this Board has not received the necessary information. Al Neggia commented that the lack of correspondence between the professionals was appalling. Deputy Mayor McCarthy stated that he concurred with the prior statements given. He added that this was one of his first applications and this Board spent in excess of three hours offering suggestions to the application. There was little or no response to the Board members suggestions. Deputy Mayor McCarthy added that there were very limited responses to the Board's professionals including the recycling coordinator's comments regarding the roadway. Peter Kortright stated he is disappointed that the applicant did not work with the Board to bring this project to fruition. He noted that seven variances were requested and there was no testimony from a professional planner on behalf of the applicant. Compliance with RSIS for the roadway is also a critical issue and a waiver from the standards was not requested. Todd Malkin indicated he reviewed his notes on the application and the record does speak for itself. At the March meeting, it was noted that the Fire Official was not previously notified as required. This Board made many suggestions but the applicant did not respond to the requests from the Board or to the Board's professionals. Dr. Cohen stated that he agreed with the Board's professionals that a complete application has not been presented. Harvey Rubinstein added that he had made suggestions regarding moving the units away from the Naugle House and the narrow area between the roadway and first building. He also suggested that the buildings be moved eastward so that a wider roadway could be provided. There was no response to the elimination of the 190 trees. The parking was questionable. There was no testimony that the positives outweigh the negatives. The applicant was nonresponsive to this Board and this application still is not complete. Phil Cassidy added that few, if any, of the Board's concerns were addressed.

Upon roll call of the Board, the motion to deny the application was unanimously passed. AYES: Neggia, D'Arco, Kortright, McCarthy, Malkin, Rubinstein, Cassidy, Winston

## **Adjournment**

Upon motion by Harvey Rubinstein and a second by Peter Kortright, the meeting was unanimously adjourned at 11:30 p.m.

Respectfully submitted,

Cathryn Hochkeppel