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**Township of Nutley  
Planning Board  
Meeting Minutes  
Wednesday, April 4, 2018**

A special meeting of the Planning Board of the Township of Nutley was held on the third floor of the Township of Nutley Municipal Building, One Kennedy Drive, Commission Chambers. Adequate notification was published in the official newspaper of The Herald News on March 30, 2018.

**Roll Call:**

Mr. Contella - present  
Mr. Malfitano - present  
Ms. Castro - present  
Mr. Kirk - present  
Mr. Greengrove - excused  
Ms. Kucinski - present  
Mr. Algieri - excused  
Mr. Del Tufo, Secretary - present  
Mr. Arcuti, Vice - Chairperson - present  
Ms. Tangorra - Chairperson - present  
Mr. Kozyra - present  
Commissioner Evans - present  
Mayor Scarpelli - present

**Meeting Minutes:**

Meeting Minutes for February 28, 2018 were approved by the Board.

**Invoices:**

An invoice for Debra Fontana for attendance and preparation of the February 28, 2018 Meeting Minutes was approved by the Board.

An invoice for Pennoni Associates for professional services through January 21, 2018 for the Roche Redevelopment Project Compliance Review was approved by the Board.

An invoice for Pennoni Associates for professional services through February 25, 2018 regarding the Roche Redevelopment Project was approved by the Board.

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An invoice for Pennoni Associates for professional services through February 25, 2018 regarding the Arbor Hills Apartments Complex was approved by the Board.

An invoice for Pennoni Associates for professional services through February 25, 2018 regarding the property located at 367-371 Franklin Avenue was approved by the Board.

An invoice for Robert Fredericks for the reimbursement of escrow fees for the property located at 567 Bloomfield Avenue was approved by the Board.

An invoice for Ricci Planning for professional services for the property located at 367-371 Franklin Avenue was approved by the Board.

**Correspondence:**

Correspondence from David Antonio, P.P., AICP dated February 28, 2018 from the County of Essex Department of Public Works regarding the property located at 599 Franklin Avenue was reviewed by the Board.

Mr. Antonio stated that a meeting was held on February 27, 2018 approving this application with the following conditions:

- A maintenance schedule for storm water detention and drainage facilities shall be shown on the plans including the name of responsible party.
- Two notes are to be placed on the plans:
  - A permit is required from the Office of the County Engineer prior to beginning any work along Franklin Avenue.
  - All work within the County Road Right-of-Way shall be according to Essex County Standards.

No action required by the Board.

Correspondence from Matthew J. Ward, Chairman of the Hudson-Essex-Passaic Soil Conservation District to Fernando Michelon dated February 5, 2018 regarding the remittance of recertification fees for the SESC application for the property located at 140 Spatz Avenue was reviewed by the Board.

Mr. Ward stated that plan has been recertified with the following conditions:

- The District must be notified by mail 48 hours prior to the commencement of any construction activity.
- A copy of the certified plan must be kept on the job site at all times.

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- The applicant or contractor must request a final inspection (once landscaping and final soil stabilization is complete) prior to seeking a temporary or permanent Certificate of Occupancy.
- The District must be provided with written notification of any conveyance of this project, subject property, or portions thereof, including individual residential lots if applicable. Said notice must provide the names, addresses, and telephone numbers of subsequent owners.
- The District must be informed of address and or telephone number changes of owners, agents responsible for site construction, and job supervisors.

No action required by the Board.

Mr. Kozyra addressed the Board that he received correspondence from Meryl Gonchar of Sills Cummis & Gross at his office late that day. Ms. Gonchar is the attorney for Prism as to the Kingsland project. The letter states that Kingsland will need approvals for the interior roads with respect to project and will be supplementing the application to amend the preliminary site plan that was previously approved. The letter also states that Mr. Coakley has submitted the application, and plans have been delivered to the Code Enforcement Department. As of this date, the plans have not been delivered to the Board.

Prior to the scheduling of the hearing Mr. Kozyra is requesting that the Township Engineer and Planner, Mr. Coakley and Ms. Gonchar schedule a special meeting to review the applicant's specific requests. This meeting will be beneficial to the Board once the hearing has been scheduled. Mr. Kozyra has had some preliminary discussions with Mr. Hay and Mr. Ricci about the special meeting and does not think there will be a problem scheduling the meeting quickly.

Once the Board receives a copy of the application and the plans, the Board will determine what professionals are needed and confirm a date for the hearing, probably May 2, 2018. Kingsland was requesting a date in April, but that does not seem feasible.

**April 25, 2018 Meeting Cancelled:**

Several members of the Board will be attending the cocktail party in honor of Ruth Bedford's 100th birthday scheduled on April 25, 2018. Since there will not be a quorum, the Board approved cancelling the meeting.

**Executive Session**

At 7:17 p.m. Mayor Scarpelli moved, seconded by Mr. Arcuti and approved by the Board, to go into Executive Session to discuss potential litigation.

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When the need for confidentiality no longer exists, there will be further disclosure of the Executive Session discussion as appropriate.

The Executive Session ended at 7:25 p.m.

**Public Session**  
(Resumed at 7:28 p.m.)

Mr. Kozyra advised the public the reason the Board went into Executive Session was to discuss correspondence received from S.M. Chris Franzblau of Franzblau Dratch P.C. addressed to Angelo Cifelli of Piro, Zinna, Cifelli, Paris & Genitempo dated April 3, 2018 regarding the Diamond Spring Real Estate Investment, Inc. v. Township of Nutley, et al., matter.

Mr. Kozyra stated the letter reads as follow:

Dear Mr. Cifelli:

I have just learned that there is a Planning Board meeting scheduled for April 4, 2018 at 7:00 p.m. pertaining to density in mixed use developments and that formal actions may be taken. In view of the Order of the Court dated March 29, 2018 rendered at 3:00 p.m., the Township was to refrain from any proceedings or changes until May 30, 2018 or further Order of the Court.

S.M. Chris Franzblau.

Mr. Kozyra discussed the letter with Mr. Cifelli, who represents the Township of Nutley, the Planning Board and Zoning Board in the litigation. No Order has been entered by the Court. In addition, Mr. Cifelli does not believe that the Order will be entered as proposed. Mr. Kozyra stated the Board will proceed with the workshop meeting, and discuss and address recommendations to the Board of Commissioners for mixed-use developments as previously scheduled.

**Workshop Session -**  
**Density Recommendations for Mixed Use Applications**

Ms. Tangorra thanked the Zoning Committee members of Mr. Arcuti, Mr. Malfitano, Ms. Kucinski and Mr. Del Tufo for their hard work. She also thanked the Town Officials, who met with the Committee members and provided their input.

Mr. Arcuti told the Board that over the last few months the members of the Zoning Committee have reviewed all the prior mixed-use density recommendations, along with discussions pertaining to parking and the size of retail spaces. Mr. Arcuti thanked Mr. Intindola and Mr. Berry for spending hours with the Zoning Committee and providing input. He stated

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that without Mr. Intindola's and Mr. Berry's assistance the Zoning Committee would not have been able to prepare recommendations for the Board of Commissioners.

Mr. Arcuti addressed the Board with the Zoning Committee mixed-use density recommendations as follows:

#### General Comments

- Mixed Use Buildings in Section 700-40 shall control and govern any reference in the Schedule of Regulations As to Bulk Height and Other Requirements which shall only reference Mixed Use Buildings by citing Section 700-40.
  - Mr. Arcuti stated the easiest way to explain would be that the Section code language would be followed not the Schedule.
- Any use not listed as a "permitted use" in a Zone or District is prohibited.
- If there is a conflict in the Zoning Ordinance between sections, the more restrictive of the two requirements shall govern.

#### Definition of Mixed Use to Change

- Section 700-40 shall be amended to read as follows:

A building containing more than one use such as professional and business offices, restaurants and bars which serve food (first floor only), service establishments (personal and household); retail stores; and residential (not permitted on the first floor), as outlined in the Permitted Use for each District as per Article V. General Regulations.

#### Schedule Regulations as to Bulk, Height and Other Requirements (Schedule)

- Obvious errors in the Schedule such as allowable building height being *40 stories* vs. *40 feet* should be corrected. Certain information on the Schedule was placed under the wrong column header. The units in column header for Minimum Lot Size/Width shall be changed from square feet to feet.
- Any mention of a Mixed Use building in the Schedule shall refer back to Section 700-40 only. The bulk specifications in the Schedule for Mixed Use in a B-3 district shall be left blank.
- Section 700-16 (I) referencing "mixed use" shall be deleted and no longer listed as a Type of Use in a B-2 District.

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- Mr. Arcuti explained the reason the Zoning Committee made this election is because the Schedule identifies Mixed Use and refers to 700-40, but it also lists residence on the second floor of a business building which in a B-2 Zone is the typical “mom and pop” stores and shops. The B-2 Zone is not for a business located on, for example, Franklin Avenue, but on a side street. All present uses of the second floor for residential uses shall be continued.
- Add: Mixed Use, See 700-40 as to the Type of Use in a B-3A District, “Residential use is prohibited in B-3A District”.
- Mixed Use is allowed in the M-1 and M-2 Zoning Districts and the B-4 Districts. Residential use is prohibited in the M-1, M-2 and B-4 Districts.

#### Chapter 700-40. Mixed Use

- Remove reference to the B-2 District in the first paragraph of Section 700-40. Add in the second line after, residential and business uses “except in a B-3A District” (where residential use is prohibited). Residential use shall be permitted on the second and third floors. Residential use is to continue to be prohibited on the first floor of a Mixed Use building. The first floor of a building shall be determined by “street level entry” to the building regardless of topographical conditions.
- Paragraph E, change to: The maximum height of a mixed-use building shall be three stories and/or 40 feet whichever is less. At-grade parking below a building is considered to be the first floor of a building.
- Add, new Section I: Every room area of 69 square feet or more (except the kitchen and the living/dining rooms) shall be considered as a bedroom, regardless of the building plan designation.
- Add, new: Garden Apartments shall not be permitted in any District except as presently exist in the R-3, M-1 and M-2 Districts.

#### Chapter 700-40. Mixed Use: Paragraph H

**Remove:** “shall not apply to a mixed use”.

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**Add and Replace:**

1. The Maximum Density for a Mixed Use building is 30 dwelling units per acre.\* (This calculation and recommendation was discussed and to be reduced after recalculating for a larger apartment size and additional parking.)
2. 30% of the first floor of a Mixed Use building shall be non-residential interior space based on the footprint of the largest floor.
3. 30% of the residential units in a Mixed Use building shall be one bedroom units and 70% of the residential units shall be two bedroom units or more.
4. The minimum size of a one-bedroom unit shall be 850 square feet. Additional bedrooms shall be a minimum of 250 square feet.

**Requirements as to Bulk in a B-3 District shall be**

1. Minimum Lot Size/Area is 5,000 square feet.
2. Minimum Lot Size/Width is 50 feet.
3. Minimum Lot Size/Depth is 100 feet.
4. Minimum Size Dwelling Unit is 1,452 square feet.
5. Minimum Front Yard Setback is three feet.

**Parking Requirements for Mixed Use Buildings**

There shall be two parking spaces for each one bedroom unit and an additional .5 parking space for each additional bedroom.

After Mr. Arcuti addressed the Planning Board with the Zoning Committee recommendations, the following comments were made:

Ms. Tangorra felt the 850 square feet was small for a one-bedroom unit and would like to see the units larger to bring in a certain demographic.

Mr. Arcuti responded that the square footage of the one-bedroom units would have to fit in the Town of Nutley. As Nutley does not have large pieces of property for development, a building that has a second or third floor that is 300 square feet will take out the common areas. Units that are too large will stress the number of apartments in the building.

Mr. Malfitano stated that a building with one bedroom units limits the full scope of current demographics. He stated that there are certain groups that are attracted to apartment living, but it may not be for everyone. There are millennials who cannot afford to move into a traditional home, so the Board should not limit the mixed use buildings to one-bedroom units alone. In addition to millennials, a self-employed businessman could utilize a two-bedroom apartment and have one of the bedrooms used as an office. A two-bedroom unit can also be utilized by baby boomers that are looking to downsize.

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Mr. Malfitano said he and the Zoning Committee reviewed a dozen or more towns similar in size and demographics and reviewed what those towns were doing. The Zoning Committee looked for a balance in the Nutley community with open space, and the right number of parking spaces for a mixed-use building. The Zoning Committee did not want to solely concentrate on apartment living. They took into consideration when someone is moving from a traditional house to an apartment, making a tough adjustment to a smaller 850 square foot apartment, as well as someone who is familiar with living in an apartment, or moving into their first apartment concluding that 850 square feet would be comfortable.

Commissioner Evans stated that people are changing their desires with the type of housing that they want. The younger people are not necessarily looking for a traditional home because they cannot afford a house, or they just may not want the burden of the debt and responsibility in owning a home. There are also people that are getting older and do not want to own a traditional home and worry about maintenance, but still want to stay in town.

#### **Paul Ricci, Township Planner**

Mr. Ricci stated that the recommendation to the Commissioners should be consistent with the density standards in the Master Plan and recommended the Master Plan might be amended prior to the recommendation being presented to the Commissioners. Mr. Ricci felt that the Master Plan should be amended first, and the Zoning Ordinance should be changed afterward. Mr. Ricci also observed that the square footage of 850 for a one-bedroom unit is small.

#### **Discussions**

Mr. Arcuti stated that the Board should advise if they have any specific changes to the Zoning Committee's recommendation, so Mr. Kozyra can prepare the final recommendation to the Board of Commissioners. Mr. Kozyra stated that most of the discussion centered on the 850 square feet minimum size for a one-bedroom unit, and the 250 square feet minimum size for any additional bedrooms. Mr. Kozyra asked the Board if they wanted to go higher for the minimum one-bedroom unit size.

Ms. Tangorra suggested that the minimum be increased since developers will probably come into the town and look to the Zoning Board to get a lower number if wanted. So, if the Zoning Ordinance starts at a higher point, the applicant may end up in the same place. Mayor Scarpelli stated that he feels 1000 or 1250 square feet will be too big for a minimum size and would prefer somewhere in the range of 900 or 950 minimum square feet.

The Board agreed to change the minimum size for a one-bedroom unit to 950 square feet, with 250 for the additional bedrooms. The Board recognized that the proposed density of 30 units per acre would have to be recalculated and become the number recommended to the Commissioners. In addition, the Board agreed on 2.0 parking spaces for a one-bedroom unit and

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an additional .5 parking space for any additional bedrooms, i.e., 2.5 parking spaces for a two bedroom unit and 3.0 parking spaces for a three bedroom apartment.

**Public Comments:**

Rory Moore  
Tammy Rossi  
Michael Odria  
Penny Landry

Members of the public addressed the Board with comments on the Board's discussions and their concerns.

**The Board's Vote**

After listening to the public comments and the Board discussions, Mr. Arcuti made a motion, seconded by Mr. Del Tufo, with a unanimous decision (8-0) by the Board to approve the mixed-use density recommendations with the modifications as discussed on the record to be presented to the Board of Commissioners for their consideration.

**Board Roll Call**

Mr. Contella - Yes  
Mr. Kirk - Yes  
Ms. Kucinski - Yes  
Mr. Del Tufo - Yes  
Mr. Arcuti - Yes  
Ms. Tangorra - Yes  
Commissioner Evans - Yes  
Mayor Scarpelli - Yes

The meeting concluded at 9:51 p.m.

The next meeting is scheduled for Wednesday, April 11, 2018 at 7:00 p.m.

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