

Approved
12/6/17
BML

**Township of Nutley
Planning Board
Meeting Minutes
Wednesday, November 15, 2017**

A 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 newspapers of The Herald News, the Star Ledger and the Nutley Sun on December 1, 2016.

Roll Call:

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

Meeting Minutes:

Meeting Minutes for October 18, 2017 were approved by the Board.

Invoices:

An invoice for Debra Fontana for attendance and preparation of the October 18, 2017 Meeting Minutes was approved by the Board.

An invoice for Pennoni Associates, Inc. for professional services through September 24, 2017 regarding the Roche Redevelopment was approved by the Board.

An invoice for Pennoni Associates, Inc. for professional services through September 24, 2017 regarding the Arbor Hills Apartments - Site Plan Review and Meeting Attendance was approved by the Board.

The proceedings in this matter were voice recorded. The recital of facts in the Minutes is not intended to be all-inclusive, but is a summary and highlight of the complete record made before the Planning Board.

An invoice for Pennoni Associates, Inc. for professional services through September 24, 2017 regarding the Seton Hall Medical School Site Plan Review was approved by the Board.

Site Plan Application
Parking, Streets and Roads at Seton Hall Medical School

Mr. Kozyra stated that he sent the Board several communications earlier in the day to review. The last communications that was received for the Board's consideration was a request by Mr. Coakley, counsel for Kingsland Street Urban Renewal, LLC to adjourn tonight's vote on the Resolution until November 29, 2017. Mr. Coakley waives approval time periods occurring between November 15, 2017 and November 29, 2017.

Mr. Kozyra stated that it is his understanding that they are continuing to work on their end to come up with documentation that will accept the amendment to the Redevelopment Plan that the Commissioners have approved and presented. Mr. Kozyra would not be able to confirm if they will be ready on November 29, 2017, but hopes they will be ready and able to move forward with the application. To allow time to accomplish that task the Board will have to grant the applicant's adjournment request.

Mayor Scarpelli stated that the applicant continues to work on their internal agreement with their Boards to return the signed amendment to the Commissioners. The amendment will need to be signed before the applicant moves forward with construction because signing would eliminate any potential litigation in the future.

Both the Mayor and Mr. Kozyra confirmed that the Commissioners passed an amendment to the Redevelopment Plan. However, the amendment has not been accepted by the applicant. The Board will need the amendment to be approved by the applicant because it will incorporate some of the things discussed at the hearing. Once they have agreed and signed, the applicant will have to ask the Board to reopen the application. If the Board grants the request, the applicant will have to re-notice the public and republish (since it has been so long) and present testimony and evidence consistent with the amendment. There will be a hearing date and applicant can present any expert that it wants with the public having an opportunity to address those witnesses.

Mayor Scarpelli moved to grant the applicant's request for the adjournment. The Board voted unanimously to grant the applicant's adjournment request.

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145-149 Franklin Avenue
Subdivision Hearing
(Approved - Vote - 6-0)

Thomas DiBiasi, Attorney for Applicant

Mr. DiBiasi thanked the Board and Mr. Kozyra for moving this application so quickly and getting the applicant on the agenda. He stated that his client is requesting a subdivision line to be drawn between 145 and 147 Franklin Avenue. Mr. DiBiasi told the Board that Angela Sicoli is present, who has put the real estate transaction together along with his clients, Mr. and Mrs. Naik. Mr. and Mrs. Naik are currently under contract to purchase 145 Franklin Avenue, if the Board approves the subdivision. Mr. DiBiasi offered testimony from Paul Bauman, Planner and George Anderson, Surveyor.

Mr. DiBiasi stated that the proposed plans show an existing narrow driveway that has been "cut" right down the middle with cross easements to both 145 and 147 Franklin Avenue for access in and out. Mr. DiBiasi stated that there are two old structures on the property that have a common driveway that would be much wider if constructed today. He also stated that his client has no plans to change the configuration of the buildings when he buys the property.

George Anderson, Land Surveyors

Mr. Anderson stated that he has been retained to do the subdivision drawings for this project, and has also prepared prior surveys on this property. In reviewing his file, he found records from 1948 showing that this property had been two separate lots. He again prepared a survey of the property for real estate purposes in 2000 and the property was still two separate lots.

The lot line disappeared as a matter of law, and applicant now seeks to reset the lot line to a better position than it once was. The lot lines splits the driveway up the middle equally so each building is approximately four feet off the property line. Within the four feet, the applicant also created counter easements for each property so there are never any problems or issues with the ingress and egress to the rear of the properties. The lot line that is being proposed is in his personal view good planning and will allow better access to the rear of the properties.

Public Comments:

No Public Comments.

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Paul Bauman, Planning Consultant

Mr. Bauman stated that he has been retained as the planning expert, and has done site visits of the property. Applicant is requesting a variance on both new lots for the four-foot-wide strip of land that is being referred to as the driveway. This driveway is going to be shared by cross easements from one property owner to the other property owner. The variance could be granted as part of a C-2 analysis with the benefit of gaining access to both lots through a common driveway. Mr. Bauman thinks by having the cross easements both parties will share the same privileges and is a better planning option for the Board's consideration.

Mr. Bauman stated that the individual variance on the proposed lot 14.01 is only 30.75 feet with a front yard setback of three feet. To create this arrangement, there is a 75-foot-wide lot that is presently lot 14. By putting the line along the midpoint, the result is that one lot will be 44.25 feet and the other lot will be 30.75. He explains it is the most equitable way to provide commonality to the access of the rear of the property. The three-foot setback on the front yard is a fixed site issue that has more to do with the existing conditions on the site.

In proposed lot 14.02, there is an encroachment of a little over half a foot into the Township right of way in the front of the building. He believes it is a minimal encroachment and it is an existing condition of the building. Mr. Bauman believes that this is a good plan, prepared with good judgment and believes the benefits of the variances outweigh the detriments. Mr. Bauman stated there is flexibility on where the lot line can be established, and it would not do any harm to the property.

Public Comments:

No Public Comments.

Maheshkum Naik, Applicant

Mr. Naik addressed the Board that he is currently under contract to purchase 145 Franklin Avenue and has been in negotiations to purchase the property for well over a year. He has been a tenant at that location since 2006 with his business being a beauty salon with his wife who is a licensed beautician for the past eleven years. The owner decided to sell the property only if the Board agrees to the subdivision.

Mr. Naik stated that there are no obstructions in the back of the property and he confirmed that there will be no future obstructions built when he purchases the property. He also

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stated that if the Board approves the subdivision and he purchases the property he will clean out the back of the property, make it look nicer and both he and his wife will park their cars there.

Public Comments:

No Public Comments.

At this time there was no further discussion from the Board. Prior to the vote Mr. Kozyra stated the following conditions that were agreed during the hearing:

1. Correct the drawings to be consistent with the testimony this evening;
2. The deed restrictions would be provided on revised survey;
3. If there is any future construction on either of the properties, it would be subject to site plan approval;
4. The applicant has already indicated that the proposed easements would be furnished prior to any deed being reviewed and recorded; and
5. Requirements from the Construction Code Official as to the location and description of monuments on the property as well as the utility layout will need to be added to the revised drawings.

Mayor Scarpelli made a motion for approval of the subdivision with Mr. Kozyra's conditions, seconded by Mr. Algieri and approved by the Board with a vote of 6-0.

Future Workshop Session - Recreational Marijuana Issues

Mayor Scarpelli addressed the Board about conducting a workshop session to discuss pending legislation regarding recreational marijuana issues.

Mr. Kozyra stated that he understands the Board's concerns but will need some additional information and legislation. Mr. Kozyra expects that the Board will have as much discretion with the new product line as the Board would with alcohol, across the country at the states that have already taken the steps to legalize recreational use, there is very little done. Some of the states that have adopted have gone forward but others are in limbo. The medical use states seem to be more progressive in the terms of accomplishing something, but the recreational use seems to still be somewhat up in the air throughout the country. He stated formal legalization is one thing but the enforcement such as limitations on licenses in school zones, public consumption, age restriction, use of the product and driving need to be examined.

Mr. Kozyra suggested that the Board forward to him any information and it will be circulated for the Board's review.

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Historical Preservation Ordinance

Mr. Kozyra advised the Board that a revised Historical Preservation Ordinance was passed, and the Board will be receiving applications for buildings to receive a designation. Mr. Kozyra does not expect much controversy because the way the ordinance was redrafted, the property owner decides yes or no whether they receive the designation and the owners want the designation for the future applications that will be heard by the Board. Mr. Kozyra will circulate a copy of the revised ordinance to the Board.

The meeting concluded at 8:01 p.m.

The next meeting is scheduled for Wednesday, November 29, 2017 at 7:00 p.m.

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