

Planning Board

February 1, 2023
Work Session
Minutes



THESE PROCEEDINGS WERE HELD VIRTUALLY

CALL TO ORDER

8:00pm

ATTENDANCE

Present

David Barad, MD- Class IV/Chairman
Dean Paltos- Class IV/Vice Chairman
John Glidden- Class I/Mayor
Tsun-Yam Tam- Class II/Borough Historian
Victoria Amitai- Class III/Councilperson/Council Liaison
Robert Di Dio- Class IV/Full Member
Ansar Batool- Class IV/Full Member
Angela Ferullo- Class IV/Full Member
Conway Wong- Class IV/Full Member/Environmental Commission Liaison
Avia Blum- Class IV/Alternate #1
Zachary Messinger- Class IV/Alternate #2
Jason Cherchia, Esq.- Acting Board Attorney
Nicholas De Nicola, PE- Board Engineer
Paul Demarest- Board Coordinator/Secretary

Absent

n/a;

CORRESPONDENCE

Chairman Barad read mail received by the Board into the record.

OPEN TO PUBLIC

Steven Isaacson, 97 Columbus Avenue, Closter, New Jersey, introduced himself and opined that the Board should require its applicants to submit geotechnical boring results, not merely drainage calculations, prior to the Board's adjudication. He



also suggested real estate agents advise purchasers of potentially flood-prone parcels in a more deliberate manner than what is now required of them.

MINUTES

A motion was made by Mr. Di Dio and seconded by Vice Chairman Pialtos to approve the minutes for the January 26, 2023 Meeting. The motion passed (10-0-0):

Yes- Messinger; Blum; Wong; Ferullo; Batool; Di Dio; Amitai; Tam; Pialtos; Barad;

No- n/a;

Abstain- n/a;

Late Arrival- Glidden;

RESOLUTIONS

n/a;

CASELOAD

n/a;

LIAISON REPORTS

Councilwoman Amitai briefed the Board on the following:

- 1.) Mayor Glidden's Committee on Council on Affordable Housing (COAH), unaffiliated with Board's COAH Subcommittee, finalized request for proposal (RFP) to be published this week which seeks developers to convert former Village Middle School (511 Durie Avenue) to 35-unit affordable housing complex as per Borough's court-approved settlement with fair housing advocate (Fair Share Housing Center) replacing corporation affiliated with Bergen County Housing Authority which withdrew from project;
- 2.) upcoming musical performance, sponsored by Mayor Glidden's Committee for the Arts, will be held at Closter Public Library;

Mr. Wong briefed the Board on the following:

- 1.) irrigation system will be installed at Buzzoni Farm Park as part of upgrade to existing pollinator garden;
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MISCELLANEOUS

Chairman Barad informed that the Board's 2023 Planning Board Attorney Select Subcommittee would soon make its recommendation upon having a virtual interview with Mr. Cherchia this week.

In connection with the letter recently prepared by Mr. Cherchia's associate, Daniel Steinhagen, Esq., and transmitted to the Governing Body, Chairman Barad expressed concern about the Borough not assuring that requirements of prior Board decisions for certain non-residential projects are adhered to both during and post-construction. He noted that Chapter 173-27C of the Borough Code dictates when Site Plan Approval is required by a land use board while Chapter 173-35C mandates that any deviation from a Site Plan Approval granted by a land use board requires Amendment Approval. He said the loss of required landscape buffers and the resulting drainage problems is of particular concern, noting there is often no vegetation planted as a replacement, or if there is, it is inadequate.

Mr. Cherchia informed that any interested party, which is very broad in meaning, can appeal a Borough enforcing agent's decision, but usually jurisdiction is with the Zoning Board of Adjustment, not the Planning Board, except when it relates

signage and maybe a few other instances; he noted that if Amendment Approval is required, the land use board which granted the original Site Plan Approval would retain jurisdiction. Furthermore, he said that statutes of limitations may become a factor for older Board approvals which have since not been adhered to in terms of site conditions being maintained; he mentioned the legal doctrine of laches which highlights the importance of the Borough promptly informing a property owner who may be violating a prior Board approval, and stressed there is no definitive amount of time in which a condition is no longer enforceable but rather it involves a fact-sensitive discussion on a case-by-case basis.

Chairman Barad opted to organize a subcommittee to identify particular sites which were granted relief by the Board but the conditions within the memorialized Resolutions and/or approved plans have not been adhered to and, ultimately, should be compelled to return to a land use board potentially for Amendment Approval. Vice Chairman Paltos, Councilwoman Amitai, Mr. Di Dio and Ms. Blum volunteered to serve. Mr. Cherchia advised that only those instances which are most egregious and involve Board approvals not dating back too far should be pursued, especially since property owners who may be relying on approval from the Zoning Officer and/or Construction Official to deviate, could be adversarial. Chairman Paltos stressed that the Board should do all it can to relay to its applicants that any deviations from its memorialized Resolutions and/or approved plans requires a return to the Board for its consideration.

Chairman Barad discussed the factors which the Board should consider when adjudicating Major Soil Movement applications as listed in Chapter 167-5G of the Borough Code, noting such allows for broader purview beyond merely soil movement calculations; Mr. De Nicola emphasized that transportation routes of trucks importing/exporting soil, preferably via county thoroughfares, as well as retaining walls, particularly the wall height to setback ratio, are important considerations. Ms. Batool noted that the Board has spent most of its time, as of late, deliberating about tree removal and less time on the parameters set forth in the soil movement ordinance, often without receipt of administrative reports prepared by the Borough Tree Expert, Shade Tree Commission and/or Environmental Commission. Mr. De Nicola noted that 3 current Major Soil Movement applications have been arduous to review because they all involve permitting required by the New Jersey Department of Environmental Protection due to nearby waterways. To lessen the amount of discussion regarding trees during the Board's review of an application, he stressed the Borough's administrative reports should be provided in a timely fashion but also that the Board should defer to the authors' expertise. Mr. Demarest noted that often tree removals applied for with the Building Department are not identified on-site which causes a delay in the Borough Tree Expert's administrative report being filed, in spite of the Tree Removal Permit Application specifically stating such must be completed within 24 hours of its submission.

Based on the evening's discussion, Mr. Cherchia agreed to research the legalities of the following Board requests:

- 1.) empower newly-created subcommittee with guidelines to advise Board on how to further compel, beyond letter of concerns transmitted to Governing Body, prior Board applicants to return to Board to be advised whether deviations from memorialized Resolutions and/or approved plans are de minimis in nature or require Amendment Approval while taking into account both severity of violations and statutes of limitations;
- 2.) reduce maximum allowance for impervious coverage if certain threshold of tree removal is reached as part of Major Soil Movement application to counter resulting loss of groundwater absorption;
- 3.) require Tree Removal Permit Application, responding Borough Tree Expert's administrative report as well as applicant's tree mitigation plan to be submitted before completeness review is conducted by Planning Board as well as codify all Major Soil Movement application checklist items currently followed by Board into Borough Code (Zoning Permit is currently required when filing Major Soil Movement application as per internal policy);

Regarding Case P-2022-06 (259 Closter Dock Road/Hardino, LLC), Mr. Demarest reminded that Mr. De Nicola discovered the memorialized Resolution wrongly indicates that the subject parking lot shall be reconfigured to consist of 18 parking spaces; he said the Board-approved site plan correctly reflects 11 parking spaces. Mr. Cherchia said the Resolution would be revised accordingly.

Vice Chairman Paltos inquired about when the Borough would host its next Joint Meeting at which the Board gathers with the Governing Body, Zoning Board of Adjustment, Historic Preservation Commission, Improvement Commission, Shade Tree Commission and Environmental Commission to discuss land use matters, without taking formal action, but rather brainstorm how to improve upon the Borough's existing ordinances and enforcement agencies; Mayor Glidden replied the next Joint Meeting would likely be convened in late spring.

Mr. Cherchia advised he would draft and circulate standards and procedures, similar to that of the Zoning Board of Adjustment, which dictate how the Board should be conducting its virtual proceedings in time for a vote at its February 23, 2023 Meeting.



ADJOURNMENT

9:12pm

