

**BOROUGH OF SOUTH PLAINFIELD
PLANNING BOARD MINUTES
October 10, 2017**

Roll Call:

Present:

Mayor Matthew Anesh
Council President Derryck White
Brian Bythell; Alt. 2
Paul Grzenda
Rich Houghton
John Mocharski
Jack Pedersen; Vice Chairman
Bob Ackerman; Chairman

Absent:

Stephanie Bartfalvi; Alt. 1
Michael Pellegrino
Peter Smith

Also Present: Larry Lavender, Esq.; Nicholas Dickerson, PP, AICP

Chairman Ackerman opened the meeting at 7:00 pm saying that this meeting is being held in accordance with the Open Public Meetings Act, by posting a notice to The Observer and The Courier News and providing the same to the Borough Clerk.

It is the policy of the Borough of South Plainfield's Planning Board not to hear any new cases after 10:00 pm and no new witnesses after 10:30 pm.

Minutes: (1) September 12, 2107 Meeting

Chairman Ackerman calls for a motion to *approve* the above listed Minutes. John Mocharski made motion, seconded by Mr. Pederson. Those in favor: Mayor Anesh; Mr. Bythell; Mr. Grzenda; Mr. Houghton; John Mocharski Vice Chairman Pedersen and Chairman Ackerman. Opposed: None

Resolutions:

A. Case #775 - JSM at Tingley (Celebrations)
Block 517; Lot 1; SC-2 Zone
200 South Avenue

Mr. Fisher stated there are several revisions requested by Mr. Bucco and Mr. Slachetka.

Mr. Fisher reads Mr. Bucco's comments to the Board Members:

1. Page 1 – The application number should be PB#776 versus PB#775
2. Page 9 – The second sentence states “condition that the applicant forward to the Board a signed and sealed **letter** from the”. What I had requested was a “Modified Traffic Report addressing a peak hour analysis due to the reconfiguration of the units/site and a contingency parking plan during construction”. I do not believe the word letter adequately describes what was being required by the applicant and would suggest the language be changed accordingly.

Mr. Slachetka reads Nick Dickerson's comments:

1. Page 3, Paragraph No. 6 states that the requested approval affects Buildings 8, 9, 16, 17 and 18, and the addition of Building 19. From our review, we noted that there were also changes to Buildings 3, 6, and 7.
2. Page 5, Paragraph No. 12 shows Mr. Aulenbach's testimony to say that Buildings 1, 2, 4, 5, 6,7, 10, 11, 12, 13, 14, 15 and the clubhouse would remain unchanged from the prior approval. To clarify, my meeting notes do not indicate what buildings Mr. Aulenbach noted as being unchanged, however, similar to the above point, I would assume that this should also include Buildings 3, 6, and 7.

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Mr. Fisher recommends that these items be corrected and a new resolution drafted.

Chairman Ackerman calls for a motion **NOT** to adopted the above resolution. John Mocharski made motion, seconded by Mr. Pederson. Those in favor: Mayor Anesh; Mr. Bythell; Mr. Grzenda; Mr. Houghton; John Mocharski Vice Chairman Pedersen and Chairman Ackerman. Opposed: None

Current Files: None

Informal Hearings: None

Public Hearings: (2)

A. Case #17-04 - Filomeno & Ivana Palma
Block 364; Lot 8.01, 5, 6; R-10 Zone
805 Lorraine Avenue

The applicant is requesting a subdivision approval.

Robert Levinson, Esq, attorney for the applicant requested an adjournment to October 24, 2017 via telephone to the Board Secretary prior to the hearing. Mr. Levinson stated he neglected to send the necessary notices.

B. Case #07-06 - Estate of Harry Popik
Block 347; Lot 8.01, 5, 6; R-10 Zone
415 & 425 Harvard Avenue

Subdivision previously heard on July 12, 2012

Jeremy Solomon, Esq. - Bob Smith & Associates, 216 Stelton Road, Suite B-1, Piscataway, New Jersey – attorney for the applicant addressed the Board. This was a minor subdivision granted in 2012. At the time Mr. Popik was alive and it was not an Estate. We prepared a deed for the subdivision to perfect the minor subdivision by deed. The deed was provided to Mr. Popik who obtained the signature of Mr. Ackerman, Chairman and at that time, Ms. Khidre, Board Secretary. Mr. Popik passed before recording the deed. This did not come to our attention until recently when his Estate and his son moved to make progress on the subdivision. Mr. Solomon is present to request a formal resolution for an extension of time to record as well as to provide a deed for both the Chairman and Secretary signatures so the subdivision can be recorded and perfected by deed.

Mr. Ackerman stated this is the second time for an extension on this application. Mr. Solomon stated he is unaware of that. Mr. Fisher stated originally in 2008, there was a subdivision granted. It appears that applicant failed to perfect that within time prior to the Permit Extension Act. It became void. Came back with the identical application in 2012 which lead to the approval that you are requesting the extension. That was captured as the end of the Permit Extension Act. It is within the 190-day period of the final one (1) year of the Permit Extension Act for certain Sandy affected counties which Middlesex is one. At this point, it expired on June 30, 2017. However, the Board can grant this extension in this matter. For a major subdivision an extension can be granted to 'good cause'. For a minor subdivision under 47F in the MLUL states that *'the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals and that the developer applied promptly for and diligently pursued the required approvals.'* The Board can note that the developer was barred from obtaining the final legal approvals from recording and filing with the Municipal Engineer and Tax Assessor due to death. It is still within the reasonable time when an extension can be granted. It expired three (3) months ago and subsection 47F does permit the extension to be applied for *'either before or after what would otherwise be the expiration date.'*

Chairman Ackerman asked this was for a subdivision. Per Mr. Solomon, it was three (3) lots combined into two (2) lots. Mr. Solomon continued... he has three (3) lots - 5, 8.08 and 8.09.

Mr. Fisher asked if the sanitation sewer - Condition No. 1 on the prior resolution - ever installed. Mr. Solomon stated he does not know.

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Mr. Fisher stated that the Board can put conditions on the extension that the previous conditions are to be met.

Mr. Solomon stated that the project has been taken up by the son, who is now the managing member of the LLC.

Mr. Pederson asked Mr. Fisher to re-read the conditions of granting the extension. Mr. Fisher reads the entire subsection;

'The planning board may extend the 190-day period for filing a minor subdivision plat or deed pursuant to subsection d. of this section if the developer proves to the reasonable satisfaction of the planning board (1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and (2) that the developer applied promptly for and diligently pursued the required approvals.'

Mr. Ackerman asked if the lots are seventy-five-foot feet (75').... 75X100. Vice Chairman Pederson stated he believes that is was three (3) properties fifty foot (50') wide and combined them to create two (2) lots to be more conforming.

Mr. Fisher stated that paragraph 5 of the previous subdivision resolution approval states:

*Lot width 100 foot required, 75 feet proposed;
Lot area 10,000 square feet required, 7,500 square feet proposed; and
Lot coverage – 25% allowed; 33.32% proposed.*

Chairman Ackerman stated he knows the property and has been out there but it has been so long. It's a wooded lot now... but since that point in time, new homes have been built in the area. Right next to it. There are curbs and sidewalks now. Does not remember when this was originally approved and when did we require them to put in the utilities, curb and sidewalks.

Mr. Mocharski stated he thought they had to do the sewer line.

Mr. Fisher stated the Board can add this as a condition if the Board approves the extension.

Mr. Fisher reads from the previous resolution... Item #22:

'The applicant agreed that they would make the installation of the sanitary sewer line down Harvard Avenue making city sewer capacity available to those other residences a condition, if the Board was to grant the relief.'

Mr. Mocharski stated wasn't there other residences in the neighborhood that wanted to connect to the sewer.

Mr. Fisher continues reading from the previous resolution... Item #23:

'The Board noted that there were property owners within 200 feet that appeared at the meeting in support of the applicant, as long as there would be a condition that the sanitary sewer would be installed and available to the other residences.'

Chairman Ackerman reviews the location and owner names of properties surrounding the site through memory.

Chairman Ackerman questioned if the sewer line was ever installed. A discussion ensued if the existing houses on Harvard Avenue have sewer lines and if so, where are they connected. No one has the answer.

(Council President White arrived.)

Mr. Solomon stated it is unlikely the applicant had done so. However, he must do so if the extension is granted since it is a requirement.

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After reviewing the original case file, Chairman Ackerman reads from T&M Associates review letter dated June 28, 2012 to the Board Members:

- Item B-1 - *'The applicant will extend the exiting sanitary sewers to service the two (2) proposed residences and all the other single family residences in Block 347 and 352 having frontage on Harvard Avenue. The applicant will also install sewer laterals to all the property lines.'*
- Item B-2 – *'The applicant will install curb, sidewalk, driveway aprons and storm sewer cross drain within the right-of-way of Harvard Avenue.'*
- Item B-3 – *'A note on the plans indicates that the limits of surface course paving will be determined in the field by the Borough Engineer. This note shall be revised to include "At minimum, the applicant will be required to install the surface course along the frontage of the proposed lots for the full width of the roadway."'*

Chairman Ackerman stated from the Board's Engineers letter, the applicant is supposed to install curbs and sidewalks for their property and they are supposed to lay in the sanitary sewer lines.

Chairman Ackerman continues reviewing the previous case files.

Mr. Fisher stated if the Board would like or needs additional information for this application, this can be carried and can request that certain questions be answered in the meantime.

Chairman Ackerman stated that Block 352 are the homes on the opposite side of the street. He is assuming since the perfection of the deed was not done, that the sewer was not done. Upon his inspection of the site, the curbs and sidewalks were not completed. If the Board is to grant this extension, all items listed in 2012 which was the last time that this was granted would have to be met.

Mr. Solomon stated they agree to do so.

Mr. Fisher stated these items in the prior resolution would have to be met prior to receiving a Building Permit.

Mr. Mocharski stated the sewer lines would have to be tied into Belmont or the other end of the block.

Chairman Ackerman re-reads Item B-1 to the Board Members.

Mr. Fisher stated that the applicant would have to bond for the sewers and anything else in the letters or complete it prior to getting a Building Permit.

Mr. Solomon stated he has a copy of the deed signed by the Chairman and the Board Secretary at that time that was not perfected – Exhibit A-1. Also, a deed with identical text except for the dates and names – Exhibit A-2.

Chairman Ackerman stated it is JHA Development, LLC which is Jeff Popik and Harry Popik to JHA Development and Estate of Harry Popik.

Mr. Fisher stated a deed cannot be in the name of a deceased... that is why it is in the 'Estate of'.

Mr. Solomon stated the deed in order to perfect the subdivision will require the signature of the Chairman and Secretary. Mr. Solomon asked if another copy of the deed should be sent directly to the Board or the one he presented earlier will suffice?

Mr. Fisher asked Mrs. Broderick if she had additional copies. Mrs. Broderick stated that there are copies in the Board's packets of the original deed.

Mr. Solomon stated his staff made the changes late today and doubts the Board has a copy of the updated deed.

Mr. Fisher stated that the Board would need extra copies.

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Chairman Ackerman asked if he knows moving forward if the applicant will be doing any building. Mr. Solomon stated that that is his understanding. However, he has not spoken directly to the principal.

Chairman Ackerman asked Mr. Solomon if the applicant is going to build or flip the property. Mr. Solomon stated he does not know the answer.

Mr. Fisher advised that if the Board would like that answer, they may ask the applicant to return with the answer.

Chairman Ackerman stated his concern was what was agreed to way back when... that that carries forward if the property is develop.

Vice Chairman Pederson stated all the Board is doing is extending the time. Nothing else would change. Correct? Mr. Solomon stated that that is his understanding.

Mr. Fisher stated if one of the lots is flipped, the new owner would be responsible for at least bonding half of the cost of extending sewer down the street and all other compliance mechanism. It is not called a 'buildable lot' because of the conditions. A buildable lot would be one that you can pull a permit as soon as you wanted to. Just compliance with the municipalities ordinances. The conditions must be met prior to anything being done on the site. Obviously, they will not meet the conditions in 190-days. It seems that in 2012 the Board was inclined to grant the subdivision and have the conditions enforced on the building permit side. Otherwise, it would not be signed by all the officials.

Mr. Solomon stated there is not enough time to complete the conditions. The deed would have to be recorded first. However, does recognize that those conditions apply once the deed is recorded and perfected.

Mr. Fisher stated if the Board is concerned about the enforcement of the conditions, you can request that a copy of the resolution be recorded as an exhibit of the deed or with language. It is better to attach the resolution.

Chairman Ackerman stated let's attach a copy of the resolution to the deed.

Mr. Fisher stated you can put a note stating the condition of the resolution must be met prior to issuance of Building Permit. It also prevents it from being flipped without the new owner properly doing their due diligence.

Chairman Ackerman reviews the previously resolution.

Mr. Fisher stated the Board Professionals would have had to review the resolution prior to the Board adopting it.

Chairman Ackerman reads... *'The applicant will also install all laterals to all the property lines.'* Does that mean he is putting laterals off the mainline to the other properties?

Mr. Mocharski stated he thinks that the applicant was bringing the lines down and leaving hookups for the other residents who would have to do their own hook-ups. The applicant would not do the hook-up. The line would have the connections.

Chairman Ackerman reads... *'The applicant will install curb, sidewalk, driveway aprons and storm sewer cross drain within the right-of-way of Harvard Avenue.'* He does not see that listed in the resolution. Mr. Solomon stated he believes the resolution states compliance with the Professionals letters. Mr. Fisher stated it is not listed specifically as a condition but in the Findings in Fact the Board states that – Item 25 – *'The applicant agreed to comply with all of the requests contained in Mr. Miller's letter.'*

Chairman Ackerman asked Mr. Solomon if he agrees to adding the resolution into the deed. Mr. Solomon stated yes. Mr. Solomon continued... recording the resolution along with the deed makes perfect sense. That puts everyone on notice.

Mr. Mocharski asked if the applicant will have to return with plans and etc. Mr. Fisher, Mr. Solomon and Chairman Ackerman stated that this is an extension and nothing in the approval is being changed... so no.

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Mr. Fisher stated he would like a tight time period to have this completed... 90 days. There are not too many meetings left. Mr. Solomon stated that in the past, other Boards have made a similar requirement that the deed be recorded with the resolution. What we do is we put stock language in the deed itself so there is a reference that there is a resolution being recorded along with this deed. That puts everyone on notice. It cannot be recorded by itself, it must be recorded with that exhibit.

Mr. Mocharski would like to see a 60-90 day time period to perfect the deed. Not necessary the work to be done. Vice Chairman Pederson and Chairman Ackerman both agree.

Mr. Fisher stated that there needs a motion to perfect the deed within 90 days from today – 190- days from the day it expired... June 30, 2017. That will be until the end of the year... December 30, 2017.

Chairman Ackerman asked Mr. Fisher to repeat the motion.

Mr. Fisher stated... the motion would be an extension of 190-days days from June 30, 2017 which brings it to December 30, 2017. Which is also approximately 90 days from today. Also, a copy of the 2012 resolution to be attached to the deed that is being perfected. That there would be a note, to the Board Attorney satisfaction, identifying that the conditions that are defined in the resolution must be met and the review letters must be complied with.

Vice Chairman Pederson made motion, seconded by Mr. Mocharski. Those in favor: Mayor Anesh; Council President White; Mr. Bythell; Mr. Grzenda; Mr. Houghton; Mr. Mocharski; Vice Chairman Pedersen and Chairman Ackerman. Opposed: None.

Mr. Fisher addressed the Board. There is no application form or prescribed procedure for requesting an extension. He would like to know if the Board is interested in having one developed... including escrow. Some municipalities do it by letter. Others by a brief application that simply requires the copy of the resolution, application, reason for the request and / or escrow / fee. Because this is by ordinance it would have to be referred to the Governing Body. Application form and fees are by ordinance. The Board can make a recommendation to have one discussed or prepared to be discussed.

Chairman Ackerman stated he agreed. The issue with tonight was the case was so old that the sanitary sewer could have been overlooked. He believes Mr. Fisher is correct in having a formal application and guideline.

Council President White stated he agreed. We have the seamless software forms that John can create the form with some assistance. This way we have a form and it will be online. Moving forward, people will have access to the form with what we desire to be.

Mr. Fisher stated the extension requests are more streamlined... no need to notice. Usually, the Board would look at prior resolutions with a narrative letter as to reasons the extension is being requested. As well as an application fee and escrow.

Mr. Mocharski stated the word "fee" will make people work harder and faster to get things done within the time frame. This last case has been going on since 2012.

Vice Chairman Pederson stated that one thing that the application will accomplish will be prepared to answer questions. The attorney could not answer the questions. We were reading through resolution looking for the answers. If there is a process before they come to the hearing, they will have to read through the prior resolution, documents, etc. and have the answers to the questions.

Chairman Ackerman stated like the case tonight, this actually went to back to 2008. There was no extension given. Therefore, they had a new application in 2012. Vice Chairman Pedersen stated he believes the 2008 hearing was 'erased' and the application 2012 was a brand new case. They did not do anything between 2008 and 2012 which caused them to return with a new application. We could cause them to do the same.

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Mr. Fisher stated they went further this time. They had gotten the signatures from the Chairman and Secretary. They were one step away from completing.

Chairman Ackerman calls for a motion to request Mr. Fisher to establish an application form for an extension request for the Boards review. Mayor Anesh made motion, seconded by President Council White. Those in favor: Mayor Anesh; Council President White; Mr. Bythell; Mr. Grzenda; Mr. Houghton; Mr. Mocharski; Vice Chairman Pedersen and Chairman Ackerman. Opposed: None

Old Business:

Mr. Mocharski stated he has noticed that the curbing is in place for the development on Foster Avenue at the dead end. One of the conditions was that the hydrant on Foster Avenue was to be moved back further to the corner. It has not been done. Are they still liable? Should I speak to Mr. Abbruzzese? Mr. Fisher stated to speak with Mr. Abbruzzese to see if it was bonded for. Mr. Miller was the Engineer at the time and he would have requested a hefty bond from the applicant. Certainly, that is a public safety item that would have been bonded for.

Mr. Slachetka stated that they have to come back in November for an amendment to the Housing Plan that was previously adopted. This is in response to some of the comments and requirements from the Court Master in the litigation proceedings. We have our Judgement of Propose but there were a variety of conditions that required some follow-up. Therefore, there will be action to adopted a minor amendment to the Housing Element of the Fair Share Plan. Then the Borough Council will introduce a couple of ordinances to amend those as well. Therefore, the Board will have to take a referral action.

Council President White asked what is the time line to coordinate? Mr. Slachetka stated he does not remember the exact end date, but was given 90-days from the original compliance date.

Committee Reports:

- A. **Street Naming Committee** – Bob Ackerman – report progress.
- B. **Environmental Committee** – Rich Houghton & Bryan Bythell - report progress.
- C. **Council Reports** - Council President White – report progress.
- D. **Mayoral Updates** - Mayor Anesh – report progress.

Minor Site Plan: None

New Business: None

Correspondence: None

Audience Comments: None

Executive Session: None

Adjournment: 7:55 pm.

Respectfully Submitted,
Joanne Broderick
Planning Board Secretary