

Approved
10/17/20
BAK

**TOWNSHIP OF NUTLEY
PLANNING BOARD MEETING MINUTES
Wednesday, September 16, 2020**

A meeting of the Planning Board of the Township of Nutley was held via Zoom. Adequate notification was published in the official newspapers of the Herald News, the Star Ledger and the Nutley Sun on November 28, 2019 and posted on the Township website and at the Township of Nutley Municipal Building, One Kennedy Drive.

Roll Call

Ms. Castro – Excused
Mr. Malfitano – Present
Mr. Contella – Present
Mr. Kirk – Excused
Mr. Greengrove – Excused
Ms. Kucinski – Present
Mr. Del Tufo, Secretary – Present
Mr. Arcuti, Vice Chair – Present
Mr. Smith - Present
Ms. Tangorra, Chair – Present
Mr. Kozyra – Present
Commissioner Scarpelli – Present
Mayor Tucci – Present

Meeting Minutes

The Meeting Minutes for the September 2, 2020 meeting were accepted by the Board.

Communications/Bills

An invoice for Gail Santasieri in the amount of \$150.00 for her attendance at and preparation of the September 2, 2020 Meeting Minutes was approved by the Board.

A refund to Prism Property with respect to the On3 property in the amount of \$29,526.50 was approved by the Board.

Old Business

Hearing for 52 Passaic Avenue Preliminary/Final Subdivision

A Resolution approving the Preliminary/Final Subdivision for 52 Passaic Avenue was approved by the Board.

Mr. Malfitano – Yes
Mr. Contella – Yes

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.

Ms. Kucinski – Yes
Mr. Del Tufo – Yes
Mr. Arcuti - Yes
Mr. Smith - Yes
Ms. Tangorra – Yes
Commissioner Scarpelli –Yes
Mayor Tucci – Yes

New Business

Hearing - Hoffman LaRoche Phase 3 Redevelopment Consistency Review

Paul. Ricci reviewed the Master Plan and the Redevelopment Plan and stated that his findings are that the proposal is consistent with the Master Plan. He feels that the Phase 3 Plan gives the Township more power and control over the roadways in and out of the Township. The intent of the Master Plan was to not have the campus broken up into multiple pieces and fragments for development but to redevelop it as a whole. He feels that at this time he finds nothing about the proposed Phase 3, in his professional opinion, to be inconsistent with the Master Plan.

He stated that when a redevelopment plan is introduced it is referred to the planning board first for it to make a recommendation as to whether it is consistent with the master plan. He further stated that there could be legal implications if a board finds a redevelopment plan to be inconsistent with the master plan and a Board of Commissioners votes to approve the plan.

Mr. Arcuti made a motion to recommend this to the Board as to its consistency of the Master Plan.

Mr. Malfitano – Yes
Mr. Contella – Yes
Ms. Kucinski – Yes
Mr. Del Tufo – Yes
Mr. Arcuti - Yes
Mr. Smith - Yes
Ms. Tangorra – Yes
Commissioner Scarpelli –Yes
Mayor Tucci – Yes

Public Comments

None

Hearing for PB Nutcliff Master, LLC – 111 Ideation Way Parking Lot Preliminary/Final Site Plan and Preliminary/Final Subdivision Approval – CONTINUATION

WITNESSES: Eugene Diaz, 200 Metro Boulevard, Suite 1300, Nutley, NJ
Richard Procanik, PE, Greenberg Farrow, 92 E. Main Street, Suite 410,
Somerville, NJ
David Novak, PP, AICP, Burgess Assoc., 25 Westwood Avenue, Westwood, NJ

Meryl Gonchar, Esq., Sills Cummis & Gross, One Riverfront Plaza, Newark, NJ, represents the Applicant, PB Nutcliff Master LLC. Ms. Gonchar reiterated her opening statement from the previous hearing. As to the comments in Mr. Ricci's letter, she stated that the Redevelopment Plan has a specific provision with regard to building setbacks and indicates that setbacks (skywalk) shall be permitted to be zero feet when an existing condition is between 0-5 feet. Therefore, no deviation is required. The Redevelopment Plan was also approved with the understanding that there would be off-site parking. She also stated that the buffer between the parking lot and Montclair Avenue is much larger than originally stated in the Plan.

Paul Ricci – Stated that he reviewed the Applicant's parking calculations and he found them to be accurate based on the Redevelopment Plan. He feels that the existing facility is working well today and there are no functional changes to the facility from a planning perspective, so there should be no reason why it would not continue to work well. Regarding the newly created lot, under the Redevelopment Plan that lot will have to stand on its own. Meaning, any new building will be responsible for its own amount of parking spaces.

Commissioner Scarpelli asked if approving the reduction in parking would make this a variance because of the square footage of the building and Mr. Ricci replied yes, but when you are dealing with a redevelopment plan it is called a deviation, which is the same as a Type C variance. Commissioner Scarpelli asked if there will be any other deviations and Mr. Ricci replied that everything else in his letter would be considered an existing condition. Commissioner Scarpelli asked if future tenants would affect the parking situation and Mr. Ricci answered that it is the Applicant's burden to justify.

Mayor Tucci asked where people are parking now given the proposed reduction of 142 spaces and Mr. Ricci replied that with the 200 off-site parking spaces and the 156 on-site parking spaces it might be the Applicant's position that they have an adequate number of spaces to service the facility. Mayor Tucci stated that he has questions regarding off-site requirements and wanted to know if they are included in the land leases.

Mr. Del Tufo asked if the Board should be concerned about the 200 off-site spaces being located on a different lot in a different municipality. Mr. Ricci answered that he feels there should be legal documentation legally binding those spaces to this job, which he believes Ms. Gonchar has agreed to do.

Eugene Diaz - Mr. Diaz stated that the building in discussion was built in 1974 as a biology/chemistry research laboratory. It is not suited for any other use other than a research/development laboratory. He stated that tenants in this building may change but the operations will stay the same. He further stated that they have added a significant number of parking spaces for the existing office building in comparison to when Roche occupied the campus. He further stated that they came to the decision on parking spaces solely based upon the leases they had signed at the time and the number of people that were expected with each tenant. The pilot plant that Modern Meadow was planning to build, but has since been waived, was also included in the original parking space totals. The overall parking plan not just for Ideation Way, but also included 100 and 200 Metro Way. With respect to Mayor Tucci's question earlier regarding the 142 spaces and where are these people parking now, he stated that that was a theoretical number based on the leases' maximum number of people that would be working in the building(s); that number of people have never been there and they never will be. That number was based upon the densities requested. All of the current leases have reduced their number of required spaces. With respect to the parking garage being built in Clifton, there is an easement in perpetuity stating that 205 spaces will be allocated to Ideation Way tenants. Ms. Gonchar asked if it was his testimony that between the on-site, street and garage parking they are able to meet the 380 spaces which is the demand reflected in the leases and he replied, "That's correct." Regarding the 1.2 acre lot, she asked if it was his testimony that if he proposes an application for development of that lot that he will be required to satisfy the parking requirements for that lot as provided in the Redevelopment Plan, that is, it will be handled separately from 111 Ideation Way and he answered, "Yes."

Mr. Kozyra stated that when he figured all the spaces he came to a total of 361, not 380. Mr. Diaz stated that he was missing the off street parking on Ideation Way in Clifton. Ms. Gonchar stated that the Redevelopment Plan allows for additional on-street parking within 50 ft. of the building.

Mr. Del Tufo asked what a pilot plant is and Mr. Diaz responded that it is a micro manufacturing building where you scale up the manufacturing of what has been designed in your research/development laboratories. Not for full production, just to see if the product actually works on a larger scale than in the laboratories.

Mr. Malfitano asked who is in possession of the garage currently being built and Mr. Diaz answered that it belongs to a PB affiliate, PB MedRight, which was formed solely to hold title of the medical building. There is an easement in perpetuity that any tenant of 111 Ideation Way has rights to the parking spaces in that garage. Mr. Malfitano stated that his understanding of not needing all the parking spaces is based on what the tenants are requiring in their leases, not the building's square footage. He wants to know why they have to add parking spaces to the empty lot if there are more than enough spaces now. Mr. Diaz answered that they are doing the improvement to provide the requisite number of parking spaces on site. He stated that they are

short by 60+ parking spaces. The extra spaces will be used as a combination of Modern Meadow and Hackensack employees. Mr. Malfitano asked what happens if, in the future after a building is sub-divided and sold off, one of the tenants comes before the Board saying that they want to expand the open space for another parking lot. Mr. Diaz replied that the tenants do not have the right to make land use applications with respect to the owner's property. The management of the property in terms of interaction with the municipality is solely the owner of the building. Mr. Kozyra clarified that the owner could come back someday and say that it needs more parking, but not the tenant.

Mr. Kozyra put it in perspective as when this was originally approved at 498 spaces, the number was even higher than that. The 498 spaces was a number that the Board ended up approving with the split (in terms of where the parking was supposed to be located) was to be in Clifton in the garage that is being built currently and the balance to be in Nutley. The approval did not *require* that all the spaces be built in Nutley because the parking spaces might not be needed. Mr. Diaz has found out that the 498 spaces are no longer needed because of the garage parking, on-site parking and street parking. If somethings gets built on the 1.2 acre lot then parking will become the burden of that owner.

Mayor Tucci asked if the land leases have been modified to reflect the reduction and Mr. Diaz answered, "Yes." He believes that the Town's redevelopment counsel received copies of Hackensack and Modern Meadow's executed documents which reduce the spaces.

David Novak - Ms. Gonchar asked Mr. Novak to confirm his testimony that nothing that was added tonight changes his testimony in support of a C2 variance and the two elements of negative criteria that he testified to earlier. Mr. Novak stated that Mr. Diaz' comments were very helpful in providing some additional information with regard to the C2 variance and his opinion has not changed. He stated that the redevelopment and the deviation in parking allows for an additional buffer area between the parking lot and the residential area. He stated that it is an efficient use of land and there is less impervious coverage. He states they are meeting some of the goals of the Phase II redevelopment plan and are promoting the purposes of the municipal land use law. Ms. Gonchar asked if he agreed that the standards he previously stated still abide and he responded, "Yes."

Richard Procanik – Ms. Gonchar asked him to address the fire chief's review letter and to explain if there have been any further discussions since the first part of the hearing. Mr. Procanik replied that he accepted two stipulations – the emergency fire lane was to be paved and be straight. He stated that he enhanced the Plan to show how they will accommodate those stipulations. They will provide striping, additional text in the fire lane, and three additional no parking signs. He stated that Messrs. Hay and Cafone both approved those changes. Ms. Gonchar asked for clarification that what the Township was looking for was a road that allowed a fire engine to back into the area and then be able to pull out without having to turn around. Mr. Procanik replied that it was accessible for ambulances and any other emergency vehicles.

Ms. Gonchar asked him to explain any conversations he had with respect to the September 1, 2020 letter from the Forester. Mr. Procanik responded that the Forester wants more trees planted. He stated that they will be planting one tree for every five spaces in the new parking lot area. Another statement was the need for more shade in the parking lot. Mr. Procanik stated that they will be adding five more trees around the parking lot area.

Regarding Mr. Hay's letter, Mr. Procanik stated as follows:

Comment 1 is to identify our site on one of the maps, and they agree to do that.

Comment 2 is to have both proposed easements shown on the subdivision plan, and the surveyor has agreed to do that.

Comment 3 is to have the gas utility easement shown on the subdivision plan, and they agree to do that.

Comment 4 is to have lot numbers assigned by the tax assessor, which they have already reached out to the assessor.

Comment 5 is to have the 88 spaces in the new parking lot marked on the map, and they agree to do that.

Comment 6 is to have the existing rectangular shape that overlaps the proposed outdoor patio be shown on the plan, and they agree to do that.

Comment 7 is to get approval from the fire department regarding the fire lane, which was previously addressed.

Comment 8 is to have the proposed flared shape feature that leads to the proposed outdoor patio area (retaining structure) to appear on the map, and they agree to do that.

Comment 9 is relating to the retaining wall around the proposed patio, and they agree to those grades.

Comment 10 has to do with the information used to approach their calculations. He has been speaking with Mr. Hay and he is hopeful they will be able to reach a resolution shortly.

Comment 11 is that they apply for a soil erosion permit and that is a standard permit that they have obtained.

Mr. Hay further stated that he has no other issues regarding his letter and the steps that the Applicant is taking to satisfy his concerns.

Mr. Malfitano asked if the second gate at the back of the Clifton property has been brought before Clifton's Board and Ms. Gonchar replied, "No."

Mr. Malfitano asked Mr. Kozyra to explain what they are actually approving because the application refers to a pilot plant, which is no longer being built. Mr. Kozyra responded that they are being asked to approve a preliminary and final site plan and a preliminary and final subdivision plan for the two lots. Essentially, the hearing is consistent with the application and there are some conditions and stipulations that have been placed on the record by both the Applicant and the Applicant's counsel, which will appear in the Resolution.

Mr. Malfitano asked what happens when things get out of control because one tenant got something and now another tenant wants the same thing regarding the parking requirements. Mr. Kozyra responded that because we now know exactly how many spaces are needed (380), there will be a condition stating that now and in the future that number will not get any larger. Additionally, the application tonight is for less spaces than was previously approved.

Commissioner Scarpelli made a motion to approve the preliminary and final site plan and preliminary and final subdivision for the property contingent upon the deviations, variances and stipulation that Mr. Kozyra enumerated.

- Mr. Malfitano – No
- Mr. Contella – Yes
- Ms. Kucinski – Yes
- Mr. Del Tufo – Yes
- Mr. Arcuti - Yes
- Mr. Smith - Yes
- Ms. Tangorra – Yes
- Commissioner Scarpelli –Yes
- Mayor Tucci – Yes

Public Comments

None

Committee/Sub-Committee Reports

None

The meeting concluded at 9:02 p.m.

The next meeting is scheduled for Wednesday, October 7, 2020 at 7:00 p.m.