

MINUTES OF THE REGULAR MEETING OF THE UNION BEACH PLANNING BOARD HELD ON WEDNESDAY, MARCH 29, 2023 IN THE MUNICIPAL BUILDING, 650 POOLE AVENUE, UNION BEACH HELD AT 7 PM.

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The regular meeting was called to order by Chairman Ken Connors who announced that the meeting had been duly advertised in the Asbury Park Press and the Independent in accordance with the New Jersey Open Public Meetings Act, more commonly known as the Sunshine Law.

Roll Call shows the following members were present: Mr. Ken Connors, Mr. Frank Wells, Mr. Llyod Coffey, Ms. Bruna Devino, Ms. Elizabeth Sweeney, Councilman Louis Andreuzzi, Ms. Laura Hallam and Mr. Mike Murray. Patrick McNamara, Board Attorney, Laurette Wade, Board Secretary, Dennis Dayback, Zoning Official and Caroline Reiter, Board Planner were also present. Councilman Cavallo is Mayor Cocuzza's representative. Mr. Shannon Hoadley, Councilman Anthony Cavallo and Mr. Russell Nalick was unable to attend.

The following correspondence was received from Mr. Dayback, the Zoning Officer: B15, L1.02, 502 Dock St; B7, L4, 716 Second St; B199 L10, 615 Central Ave; B217, L6.01, 824 Bayview Ave; B52, L19.01, 717 Eighth St (EC/As-Built); B7, L4, 716 Second St; B214, L14, 814 Park Ave; B61, L15, 115 Campbell St (EC/As-Built); B41, L11, 920 Pine St; B85, L9, 131 Central Ave; B54, L10, 907 Florence Ave; B242, L8, 1247 Route 36; B37, L5, 914 Center St; B149, L12, 340 Lorillard Ave; B85, L7, 126 Park Ave; B78, L20, 214 Bayview Ave; B164, L10 & 11, 403 & 409 Aumack Ave; B223, L12, 811 Prospect Ave; B69, L4, 202 Henry St (2); B125, L16.01, 633 Poole Ave; B244, L6, 348 Bayview Ave; B48, L4.01, 703 Florence Ave; B133, L18, 8 Heckelmann St; B54, L4, 720 Eighth St; B179, L4, 1017 Route 36 B153, L19.01, 411 Bayview Ave; B22, L18, 621-623 Front St; B194, L13, 561 Sydney Ave; B69, L4, 202 Henry St (2); B19, L21, 300 Florence Ave; B84, L14, 103 Park Ave; B105, L2.01, 204 State St; B242, L8, 1247 Route 36; B237, L1, 1200 Paterson Ave. Correspondence were also received from Freehold Soil Conservation District and Monmouth County Planning Board: B61, L6, 136 Herbert St (FSCD); B210, L25 & 26, 300-306 Union Ave (MCPB); B187, L1, 2&16, 710 Union Ave (MCPB); B36, L6.01, 907 Center St (FSCD).

Ms. Hallam moved to approve the minutes of the February meeting and Councilman Andreuzzi seconded the motion. Unanimous voice vote of approval.

Applications for the following will be carried to the April 26, 2023 meeting with no new notice required:

Deputy Ventures, Colts Neck applying to for site plan approval to construct 3 buildings with 2 units each on the property located at 300-306 Union Ave, also known as Block 39, Lots 25 & 26.

Mackus LLC, 18 Tall Woods Drive, Manalapan, NJ applying for a certificate of prior non-conformance for the property located at 531-533 Morningside Ave, also known as Block 193, Lot 13.

Dubleski Custom Homes, LLC, Hazlet appearing before the Board for a "Whispering Woods" hearing for minor subdivision with variances at 204 Morningside Ave, Block 139, Lot 19 & 20.

Motion to carry made by Mr. Wells, Seconded by Mr. Murray. Unanimous voice vote of approval.

60 Creek Road LLC, 1009 Harris Ave, Union Beach is applying for a certificate of prior non-conformance for the property located at 354 Lorillard Ave/401 Spruce Street, also known as Block 149, Lot 16. The subject property is a non-conforming corner lot. It is located in the R8 Residential Zone and consists of two (2) single family residences. The primary structure or principal structure located on the subject property was elevated and reconstructed as part of Zoning Application #1930. At that time, the applicant was advised that since two structures existed on the subject property, which is not permitted use as outlined in Section 13-10.4 within R8 Residential Zone and there is no record of such use being approved by the Land Use Board, a "D1" use variance must be obtained from the Land Use Board for a non-conforming use, to allow two (2) single family dwelling units to be constructed on a single lot. The Municipal Land Use law defines "Nonconforming Use" as "a used or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district for which it is located by reasons of such adoption, revision or amendment" The prospective purchaser, prospective mortgagee, or any person interested in any land upon which a nonconforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the burden of proof. In addition, Chapter 27 of the Municipal Land Use Law states, "There is no question but that the total destruction of a nonconformance use, whether by design or accident, terminates the use."

There was discussion regarding the if block and lot number listed is correct – Block 149, Lot 16 or Block 190, Lot 10.01. It was discovered that Block 149, Lot 16 is correct.

Councilman Andreuzzi recused himself from the meeting.

Mr. McNamara stated that most of the members of the board were here a few years ago when the applicant appeared before the board for a minor subdivision which was denied by the board which resulted in litigation and subsequent ruling by Judge Grasso that was issued in March of last year affirming the denial of the subdivision by the board. The applicant is not here to relitigate that matter but is here seeking relief pursuant to Section 68 of the Municipal Land Use Law which deals with certifying pre-existing non-conformance uses. Under this process the application is heard by the board as a board of adjustment. We have 7 members which is a full board. The burden of proof is on the applicant. Elements of proof is what was the use of the property at the time of the zoning ordinance (1963).

Mr. Dayback and Ms. Reiter were sworn in.

Mr. McNamara asked if the board had any question regarding pre-existing non-conformance certificates. Ms. Sweeney stated that she would like it reviewed. Mr. McNamara explained that Chapter 68 states that any non-conforming structures and uses that existed at the time of the

passage of an ordinance (1963) may be continued on the lot or the structure occupied and any structure may be restored or repaired in case of partial destruction. The burden of proof is on the applicant. It is by majority vote.

Mr. Mirabelli introduced Mr. Dominick Mastrocolar, 1009 Harris Ave, Union Beach and Mr. McNamara swore him in.

Mr. Mirabelli:

Exhibit A1: T&M dated June 21, 2022. Note that the block and lot are incorrect on the letter. It should read Block 149, Lot 16.

Exhibit A2: Paul Mirabelli letter dated May 23, 2022 with the incorrect block/lot. It should read Block 149, Lot 16. There are exhibits attached to this letter.

The applicant would like a certificate of non-conformance use. There are separate single family structures on one lot. He provided Mr. McNamara with a case "Elfin Nuvea (?) v. Keansburg" which set the standard of review for non-conformance use. NJSA 40:55D-5 defines non-conforming use as a use or activity which was lawful prior to the adoption of the ordinance.

Mr. Mirabelli continued that a non-conforming use are permitted to exist, their existence is predicated on the continue maintenance of the non-conforming use. The right of the owner to continue to exercise a non-conforming use is a property right as part of land title that can only be distinguished by an act or omissions indicating an intention to abandon.

With respect to the proofs, attached to Exhibit A2 are: the 1957 assessment list from the borough which shows 2 separate listings, 354 Lorillard, 25X100 lot and 401 Spruce, 50 X100 lot, an aerial photo (1957) which shows 2 separate structures and a garage (the garage is no longer there), Monmouth County tax board which shows 2 different sheets – (1) for 401 Spruce Street a bungalow which was constructed in 1939 with diagram and (1) which is also listed as 401 Spruce Street but shows a different property 2 story colonial built in 1950.

Exhibit A3: UB Tax Map 6-30-22 which shows the property as one lot.

Exhibit A4: Ordinance #43 from 1930 (Handed out by Mr. Mirabelli) paragraph 12 of Exhibit A4 – not more than one dwelling on each 2,000 SF, and corner lots 2,500 SF. Both structures were legal under the 1930 ordinance.

Ms. Reiter asked about the date of the letter. Nobody has it. Mr. Mirabelli stated that he originally was instructed to submit to the board which he did with the date of May 27, 2022. Then I was told to submit to zoning to be denied. Then he resubmitted everything under a cover sheet in October. Ms. Reiter stated that she has a September 29, 2022 letter as well. There were a lot of letters.

The board secretary stated that she does not have that letter from May 27, 2022. Mr. Mirabelli provided the letter and the board secretary copied it for the board members.

Exhibit A5: 1947 Ordinance (handed out by Mr. Mirabelli) A. No Building or premise shall be used except in conformity with the provisions of this ordinance. However, any non-conforming use existing at the time of the passage of this ordinance may be continued provided that the building may not be extended or enlarged.

Mr. McNamara interrupted that subparagraph B states that no building or premise which ceases to actively engaged in a non-conforming use for a period of (1) year shall be allowed to resume such non conforming use but must be altered to conform with the restrictions of the zone which it is located.

Mr. Mirabelli stated that there is no evidence that this was never not used according to the tax map, the records show one building was built in 1930 and the other in 1957.

Exhibit A6: 1963 Ordinance (handed out by Mr. Mirabelli) page 4 Non-conforming uses continued except as otherwise provided in this article lawful use of the lands. Existing as date of this ordiance may be continued provided however that no non-conforming lot be further reduced in size and not enlarged, extended or increased unless such would reduce the degree of non-conformancy. Mr. McNamara stated that the provision that follows discusses abandonment.

Mr. Mirabelli stated that up to the 1963 we had a pre-existing non-forming legal use and predated the ordinance. In regards to abandonment, the case cited earlier there are mentions: 1) Abandonment is a matter of intent; an intentional act or a failure to act on the part of the owner, 2) abandonment is a concurrent of 2 factors – intention to abandon and some overt act of some failure to act.

Exhibit A7: Pre-Sandy Certificate of Occupancies 2006-2011 (handed out by Mr. Mirabelli)

Exhibit A8: Post-Sandy Certificate of Occupancies 2014-2019 (handed out by Mr. Mirabelli) 2014 was a compliant about no CO with people living there. Also included was a letter from the town about not taking care of the property.

Mr. Mastrocola bought the property from BofA in June 2017.

Mr. Murray asked if there were CO between 2011 and 2017. Mr. Mirabelli stated this is what he received from his OPRA request. Mr. Murray asked if anyone was living there in those 6 years. Mr. Mirabelli stated he didn't believe it was.

Ms. Reiter stated that the June 2017 CO stated title change only.

Mr. Murray asked if they wanted to continue the use, why didn't they maintain it. Mr. Mirabelli stated they tried but the town wouldn't allow it. Mr. Mastrocola stated that they were never issued a fine. There were warnings for going a month without cutting the grass.

Exhibit A9: T&M letter March 19, 2019 (handed out by Mr. Mirabelli). Raising of the 401 Spruce St residence. It includes the history of the property. The property had substantial damage during Sandy. The 401 Spruce residence was elevated and renovated (ZA #1930). At the time, the applicant was informed 2 structures on 1 property is not permitted.

Mr. Mirabelli thinks that the proofs he has submitted shows 2 structures legally existed on the property prior to the ordinance.

Mr. McNamara stated that he has a few documents that will need to be copied for the board.

Mr. Wells made a motion to go into recess, Mr. Murray seconded. Unanimous voice vote of approval.

Mr. Coffey made a motion to go back into regular session, Ms. Devino seconded. Unanimous voice vote of approval.

Exhibit A10: Deed to the property (provided by Mr. Mirabelli)

Mr. McNamara referred to the Cox and Koenig Land Use and Administration Treatus which is the bible for land use in this state. Specifically Chapter 27-2 Proofs of Non-Conformity and the burden of proof by the applicant. Chapter 27-3 deals with abandonment.

Exhibit B1: March 15, 2019 letter from T&M to Mr. Mastrocola. Zoning approval letter for the demoltion of the pre-existing one story dwelling at 354 Lorillard Ave.

Exhibit B2: March 12, 2019 Zoning application #2375 from Mr. Mastrolcola to demolish the Sandy damaged home.

Exhibit B3: February 5, 2018 Handwritten note from Mr. Mastracola to Mr. Dayback the zoning official stating that Mr. Mastracola would demolish the one story structure if the board does not approve the subdivision.

Mr. Mirabelli stated that the resolution denying the application was February 27, 2019.

Ms. Reiter: UB Ordinances Section 13-4.2 Abandonment Non-Conforming use or building shall be presumed to be abandoned when there occurs a cessation of the use of activity by an apparent act or failure on the part of tenant or owner to reinstate such use or occupancy in a period of (1) year from the date of cessation of discontinuance. Such use shall not thereafter be reinstated and the structure or building shall not be reoccupied except in conformance with this chapter. The lot is located in the R8 zone which only allows one structure on a property.

Ms. Rieter stated that handwritten letter from Mr. Mastracola and the the demolition permit shows intent to abandon. The single story house on Lorillard has not been raised or lived in for quite some time. It has been abandoned exceeding the time frame that the ordinance allows. Serveral planning practices that this situation conflicts with from zoning to the Master Plan

documents. The development pattern does not conform to zoning – Municipal Land Use Law 40:55B2 A) General Welfare, B) wellbeing of neighborhoods C) Light, Air and Open Space and I) desirable visual impact. Noted that the applicant is not requesting variances.

Mr. Mastrocola stated that he was in financial stress and needed to get one raised. He wrote the letter and then later changed his mind.

Ms. Reiter asked Mr. Dayback if he would have issued the zoning permit to raise the 2-story building if Mr. Mastrocola stated he may change his mind. Mr. Dayback stated no he would not. He did not mention any financial problems to me. Mr. Dayback questioned why did Mr. Mastrocola put in a zoning application to demolish the 1-story structure after the subdivision was denied.

Board members discussed the application.

Mr. Connors opened up the floor for public comments.

Mr. Russell Carhart, 235 First St, Keyport stated that he is partners with Mr. Mastrocola. It was a Sandy damaged property that they purchased. The governor passed regulations that you could raise any house that existed prior to Sandy whether conforming or not.

Mr. Harry Hoff, 242 Front St, questioned if the automatic Sanday law doesn't have an expiration date, and stated all structures damaged or destroyed that existed the night of the storm can be reconstructed, raised or repaired. Wouldn't all structures be protected from abandonment.

Mr. Joe Savi, 117 Henry St, the neighborhood has been under stress for no reason. Without this moving forward tonite, I don't think this will look better in the near future. It will continue to drag on. Same setup of houses across the street.

Ms. Devino moved to approve, Mr. Wells seconded. Voting yes: Wells, Coffey, Devino, Hallam  
Voting no: Connors, Sweeney, Murray

Resolution approving the application of Harry Hoff, 342 Front Street who applied to construct a new mixed use structure at the property located at 915 Union Ave, also known as Block 190 Lot 11. Variances required: Minimum lot area of +4,120 SF, where 15,000 SF is required. \*pre-existing, Minimum lot width of 40 feet where 100 feet is required. \*pre-existing, Minimum lot frontage of 40 feet where 100 feet is required. \*pre-existing, Minimum lot depth of ±103 feet, where 150 feet is required. \*pre-existing

Ms. Devino moved to approve, Mr. Coffey seconded. Voting yes: Connors, Wells, Coffey, Devino, Hallam, Abstain: Murray Voting no: Sweeney

Resolution approving Juan Medina, 2358 Great Harbor Dr, Kissimmee, FL "Whispering Woods" hearing for the property located at 734 Second Street/203 Florence Ave, also known as Block 7,

Lot 11. The application is to demolish the existing 3-family home and construct a 2-family home more conforming to the lot. This is part of the settlement reached in pre-trial litigation.

Ms. Devino moved to approve, Mr. Coffey seconded. Voting yes: Connor, Wells, Coffey, Devino, Sweeney, Hallam Abstain: Murray

Mr. Wells moved to go to closed session, Councilman Andreuzzi seconded at 10:05 pm.

Mr. Wells made a motion and Councilman Andreuzzi seconded to come out of closed session at 10:12 pm.

There being no further business Councilman Andreuzzi moved to close the meeting at 10:12 pm and Mr. Murray seconded the motion.

Respectfully submitted,

Laurette Wade