

MINUTES OF THE REGULAR MEETING OF THE UNION BEACH PLANNING BOARD HELD ON WEDNESDAY, JANUARY 26, 2022 IN THE MUNICIPAL BUILDING, 650 POOLE AVENUE, UNION BEACH HELD REMOTELY AND IN PERSON DUE TO SOCIAL DISTANCING RESTRICTIONS CAUSED BY COVID19.

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. Kenneth Connors, Mr. Frank Wells, Mr. Lloyd Coffey, Mrs. Laurette Wade, Ms. Bruna Devino, appeared via Zoom, Ms. Elizabeth Sweeney, Councilman Louis Andreuzzi, and Councilman Anthony Cavallo. Patrick McNamara, Board attorney, Mr. Dennis Dayback, Zoning Officer, Stan Slachetka, Board planner and Madeline Russo, Board secretary were also present. Mr. Shannon Hoadley, Ms. Laura Hallam and Mr. Murray were unable to attend. Councilman Cavallo is Mayor Smith's representative.

The following correspondence was received from Mr. Dayback, the zoning Officer: Block 36, Lot 9, Block 179, Lot 4 017 Route 36, Unit 3 903 Center Street; Block 134, Lot 17; Block 6, Lot 8, 9 & 10 430 Front Street; Block 106, Lots 11 & 12; 219 Broadway; 6 Haug Street; Block 45, Lot 6; 806 Fifth Street; Block 244, Lot 4 1209 Patterson Avenue; Block 106, Lots 11 & 12.

Ms. Sweeney moved to approve the minutes of the December 13<sup>th</sup> meeting and Mr. Coffey seconded the motion. The motion was approved by a unanimous voice vote of approval. Mr. Coffey moved to approve the minutes of the December 20<sup>th</sup> meeting and Councilman Andreuzzi seconded the motion. The motion was approved by a unanimous voice vote of approval.

Mr. McNamara introduced the Hoff application. He advised that this is a unique case and that the Board is probably aware from the file and the record of this case with a long history of property ownership and whether it was properly subdivided. There was subsequently an issue following the decision of this Board which was brought before Judge O'Hagan. In 2001 it was again put before the Board. There was a resolution which was adopted on April 25, 2001.

Mr. McNamara interrupted this explanation in order to advise the audience that two cases which were to be heard, Servidio, 901 & 903 Sixth St and Piccinich, Front & Florence requested to be carried until the February 23<sup>rd</sup> meeting. There will be no further notice required by the applicants. Mr. Coffey moved to carry both applications and Mr. Wells seconded the motion. Voting yes: Connors, Wells, Coffey, Wade, Devino, Sweeney. Abstaining: Andreuzzi and Cavallo.

Mr. McNamara continued and advised of the threshold issue as to whether the Board should hear the Hoff case. After consideration, while not waving any of the Boards' rights, to stand behind the prior decision that was affirmed by Judge Lawson that this is not a legal subdivision

or legally formed lot. Because of that, we are able to afford Mr. Hoff the opportunity to present it before the Board with full reservation rights on the part of the Board with regards to its ability to determine if this still remains an illegal subdivision and as such, as per the letter of the zoning officer, there is nothing that can be acted upon and if the Board wishes to act upon the merits, Mr. Slachetka is here, and the applicant has a planner also. So, the Board can then make its decision.

There was an issue raised in Judge Lawson's decision as to the issue of res judicata. Mr. McNamara wanted it on record that the applicant, Harry Hoff was not a party of that case. As such a question would be raised, as to whether the lead documents of res judicata and collateral estoppel would apply in this instance. As the court previously affirmed this Board's denial. Though the plaintiff's application based on the court's prior determination by Judge O'Hagen that lot 4.01 was illegally created without proper subdivision approval. So, the Board can make two findings. If they make that finding, then that is it. If you still want to go forward and make the determination separately as to whether the variance relief that is being sought should be granted. We can take that decision as well.

Now for the record, I am referring to an opinion from Judge Lawson that was decided on November 27, 2001. This Board was represented by Robert McLeod and the plaintiff by Kenneth Pape. There was a letter submitted on June 13, 2019, by Mr. Dayback as a result of an application by Mr. Hoff, for this property seeking variance relief. Mr. Dayback denied on the grounds that the prior decision, issued by Judge Lawson, still remained in place.

The most recent application resulted in another letter by Mr. Dayback dated October 22, 2021. The applicant submitted an application for the development of the property. Mr. Dayback issued a letter that said this lot has still been created without subdivision approval as per the decision of Judge Lawson, citing the Docket number of that decision and any application for bulk variance to construct a single family dwelling on the property that was denied by the Board and upheld by the court and for reasons outlined in the courts decision, he denied the application. That now brings the applicant before you this evening.

Mr. McNamara reminded the Board of correspondence received from Mr. Mirabelli a letter with documents. Mr. Mirabelli marked the following into evidence:

- A- Judge Lawson's decision
- B- Mr. Mirabelli's letter with attachments dated 12/1/2021
- C- Mr. Mirabelli's letter with attachments dated 12/17/021
- D- Planning; resolution dated 4/25/2001

Mr. Slachetka and Mr. Dayback were sworn in and accepted as experts by the applicant's attorney. Mr. McNamara announced that Mr. Mirabelli's letter of December 17<sup>th</sup> is a 2-page letter with attachments that are drawn in reference to the text of the letter itself. Many of the documents refer to ownership and tax responsibilities for the subject property from 1959 with a property convenance in 2003 and quick claim deed from 1995.

Mr. Mirabelli stated this property was a result of some prior application. Eventually it would up in front of Judge Lawson and his decision is the exhibit marked "A." It is important that we note the conclusion which is on the last page of the decision. Based upon the foregoing, the court finds The Planning Boards' denial of the plaintiff's application based upon res judicata, was harmless error. Clearly Judge Lawson found that res judicata doesn't apply in connection with his opinion. He does go on to say the reason it was harmless error as evidence indicates, was a different application. However, the court affirmed the Planning Board denial based upon this Board's prior determination that lot 4.01 was illegally created without proper subdivision approval.

Mr. Mirabelli introduced Mr. Hoff who will be presenting his ??? of the property and all the documents in connection with the 12/1 and 12/17 letters, they were not presented to the Planning Board before they made their decision and were certainly not presented to Judge Lawson when he made his decision.

Mr. Hoff read an excerpt from Judge Lawson's decision dated 11/27/2001 and parts of the Board's resolution dated 4/25/2001. The Board found that at present lot 4.01 was created when it was separated from the former by the tax assessor in June 1996 without application or review by the Planning Board. The action of the Board's tax assessor constituted an unauthorized subdivision, contrary to the requirements of the Municipal Land Use Law. Based on these facts the board denied the variance in a resolution adopted by the Board on April 25, 2001.

On February 16, 2000, the court signed a judgement and confirmed the Planning Board's decision and that the lot 4.01 doesn't exist as a matter of law or as a proper lot. The action was caused entirely by the result of owner, Robert and Mary McCarthy who abandoned the property over 50 years ago and Bird Dog, Inc who created an illegal subdivision by deeding half the property to the present owner without obtaining subdivision approval.

The applicant revised the application and submitted it to the Board at the regular meeting. On March 28, 2001. The Planning Board heard the application and found that it did not differ in any from the earlier application in any significant manner.

Based on the foregoing, this court affirms the Board's denial. On October 14, 198 this court found that the record below was incomplete and remanded the matter back so the Plaintiff

may have a plenary hearing. At this hearing, in October the Planning Board denied the application for Res Judicata, more specifically, the resolution revealed that the plaintiff's application did not differ from the original application in any significant manner. The Board specifically, stated in their resolution, that there had been no change. Although the plaintiff's application is not barred by res judicata, any consideration of the application would have been fruitless, given the lot's status.

Mr. Wells inquired as to where Mr. Hoff was reading, he was not able to follow. Mr. Hoff advised that he was reading from his notes that were taken from several sources as previously state.

Mr. Hoff stated that at the first Planning board hearing, the attorney barely touched on the positive criteria, as it was referenced in the brief. The first court case was remanded du to incomplete record. The second application was never heard by the Board based on res judicata. The Court decided the denial by res judicata was wrong as the record indicated the application had changed.

The refusal to hear the second application also meant that the documents he is going to present have never been before the board as they were not listed as exhibits. Therefore, not the same application.

Mr. Hoff went on to reference "Pennington vs Monmouth Beach" and "Allied reality vs Upper Saddle River". The parcel in Monmouth Beach was subject to four separate variance applications; 1984, 2990, 2014 and 2018, where there is sufficient change in the application or conditions involving a property res judicata is not to be applied rigidly and any subsequent applications must be judged on its merit and heard in its entirety.

Specifically reading from Judge Lisa Thorton's /?? ---- Allied realty vs Upper Saddle River. This is from 1987.

The court case is 2018 Although the Board was under the impression that it was constrained to deny the plaintiff's application based on t he board' prior variance denial on the same lot Judge Thorton concluded res judicata does not need to apply rigidly, and the Board may grant a new hearing, even in the absence of changed circumstances. The Board was instructed to hear the application on its merit following a full hearing regarding the application. The Board may ???? on res judicata or if the board finds that res judicata is????? On its merits and proceed to deny or grant the application based on its merits. This decision applies to tonight's application.

Mr. Hoff read the following correspondence: (1) Dated 3/3/1995 (attached to Mr. Mirabelli's Letter of 12/1/2021) From General Land Abstract Company

(2) Letter from Warren Brumell to Robert Thaler

(3) Letter from Thaler to Mr. & Mrs. Kurminski returning taxes paid on the lot.

He referred to NJSC18-23 Chapter 175 Which states the tax assessor has the power to maintain and adjust the tax maps.

Other correspondence: tax list of 1995 and 1996

The Tax lists were marked exhibit F. Including years 1957,1958,`959,1960,1961, and 1962 also tax maps of 1930, 1941, 1961,1962 and new 1962 where the block changes to 165.

Mr. Hoff's summary of the information begins here.

As he finished the summary the Board took a break for five minutes.

Roll call on return: Mr. Kenneth Connors, Mr. Frank Wells, Mr. Lloyd Coffey, Mrs. Laurette Wade, Ms. Bruna Devino, appeared via Zoom, Ms. Elizabeth Sweeney, Councilman Louis Andreuzzi, and Councilman Anthony Cavallo. Patrick McNamara, Board attorney, Mr. Dennis Dayback, Zoning Officer, Stan Slachetka, Board planner and Madeline Russo, Board secretary returned to the meeting.

Mr. Marc Leber, planner, was sworn in and accepted as an expert. Mr. Leber distributed tax maps 24 and 25 (a two sided paper) which was marked into evidence as J. Mr. Leber gave testimony about the lot in question and the surrounding properties and the neighborhood where this lot is located.

The exhibits included in the above application:

A- Judge Lawson's decision

B-Mr. Mirabelli's letter with attachments dated 12/1/2021

C-Mr. Mirabelli's letter with attachments dated 12/17/021

D-Planning; resolution dated 4/25/2001

E-Mr. McLeod's brief

F-Tax List

G- Text message from Michael DelRe

H-Thomas Finnegan's letter

I-Letter to neighbors and Mail receipts

J- tax map pages 24 and 24

Mrs. Wade moved to carry the application until the February 23<sup>rd</sup> meeting. Councilman Andreuzzi seconded the motion. Voting yes: Connors, Wells, Coffey, Wade, Devino, Sweeney, Andreuzzi and Cavallo.

The Resolution denying the application of Tony Medina, 2358 Great Harbor Drive Kissimmee, FL for a Use variance was introduced to the Board.

In accordance with Section 13-10.4, R8 Residential Zone, two-family structures are not permitted. It shall be noted, upon review of files for the subject property, there is no record of such use being approved by the Planning Board, the subject development for a two-family structure for the above referenced property shall require 'D' variance relief, as well as site plan approval from the Planning Board. Additionally, bulk variance relief shall be required for the following, as shown on the survey provided:

Section 13-10.4 f.1.(a) – Minimum lot area of 5,000 sq ft were 10,000 sq ft is required.

\*preexisting 2. Section 13-10.4 f.2.(a) – Minimum lot width of 50 feet on Florence Avenue where 100 feet is required. \*pre-existing 3. Section 13-10.4 f.3.(a) – Minimum lot frontage of 50 feet on Florence Avenue where 100 feet is required \*pre-existing 4. Section 13-10.4 f.4.(a) – Minimum lot depth of 50 feet on Second Street where 100 feet is required \*pre-existing UBCH-G2004 October 14, 2020 Le: Tony Medina Page 2 Re: Zoning Permit Application No. 2960 Block 7 Lot 11 734 Second Street 5. Section 13-5.5 d – The total lot coverage of the square footage of the ground floors of all buildings located on a lot in any residential zone shall not exceed 25% of the total square footage of the lot as shown on the survey provided. The proposed lot coverage is 26.4%

Ms. Sweeney moved to approve the resolution and Mr. Coffey seconded the motion. Voting yes: Connors, Wells, Coffey, Wade, Devino, Sweeney. Abstaining: Andreuzzi and Cavallo.

The resolution approving the application of the applicant, Deputy Ventures, LLC for the Prospect and Union project located at 300 Union Avenue Block 210 lots 25 & 26. The applicant requested the following: bulk variance(s) for the two three story buildings being proposed by the applicant, (a) the maximum permitted height each structure is 2 stories or 30 feet above BFE, the proposed two structures will be three stories and 32 ft.10 inches BFE when measured to the approximate location of the collar tie of the third story, (b) the maximum setback from Union Avenue is required to be 15 feet, where 3 feet is proposed. The applicant also seeks the following design waivers: (a) proposed parking spaces that are 9 x 18 where 10 x 20 spaces are required, (b) the reduction of landscaping requirements for twenty-foot buffer areas along all side and rear property lines which abut areas zoned residential where five feet is provided for a portion of the buffer area (c) proposed parking and refuse enclosure located within the buffer area, (d) reduced screening area within the buffer where a minimum of 20 feet in width is required, (e) percolation and soil log information, (f) letters from the utility companies, (g) letter from Sewer Authority, (h) Environmental Impact Study report, (i) providing dimensioned loading areas, (j) parking analysis including trip generation, (k) providing cross section and profiles of all existing streets, (l) providing a drainage area map, (m) Storm Drain calculations for 100

year storm, (n) signed contract for water and letters of service from other utilities, (o) providing location profiles and cross sections of all water courses and drainage facilities (p) parking spaces that are 9 x 18 as opposed to 10 x 20, (q). Together with such other variances and/or waivers as may be required by the Board or its professionals.

Mr. Wells moved to approve the resolution and Mr. Coffey seconded the motion.

Voting yes: Connors, Wells, Coffey, Wade, Devino, Sweeney, Andreuzzi and Cavallo

There being no further business before the Board, Mr. Wells moved to adjourn the meeting and Mrs. Wade seconded the motion. The motion was carried by a unanimous voice vote of approval.

Respectfully submitted,

Madeline Russo