

BOROUGH OF HIGHLANDS
LAND USE BOARD MEETING MINUTES

JUNE 13, 2018

Meeting Location: Robert D. Wilson Community Center
22 Snug Harbor Avenue, Highlands, New Jersey

CALL TO ORDER: 7:35 pm

PLEDGE TO FLAG:

OPEN PUBLIC MEETING STATEMENT:

As per requirement, notice is hereby given that this is a Regular Meeting of the Borough of Highlands Land Use Board and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board. Formal action will be taken.

ROLL CALL:

Present: Chief Burton, Councilman Braswell, Mr. Francy, Mr. Knox, Mr. Lee, Mr. Montecalvo, Mr. Nolan

Absent: Mayor O'Neil, Mr. Colby, Mr. Gallagher, Mr. Stockton

MOTIONS FOR ADJOURNMENT AND ANY OTHER MOTIONS: NONE

APPLICATIONS SCHEDULED FOR COMPLETENESS REVIEW:

- 1) 2018-03 POLARIS RETREAT, LLC, 181 BAY AVENUE – Minor Site Plan & Non-Permitted Use in Zone

Mr. Nolan introduced Mr. Jack Serpico, LUB Attorney, to offer a detailed description on the proceedings on this file for completeness. In his outline, Mr. Serpico stated what was going to happen at this hearing for completeness is that the Board deems complete or incomplete; if complete then a Hearing date will be scheduled. The Hearing is when everyone has an opportunity to question, cross exam, offer opinions and review documents. Completeness is exclusively to present to the Board the technical data to confirm if the application is ready to be put on for a Hearing. There is no public involvement because it is not a matter of public opinion or debate for this meeting. If allowed, some may be for or against anything that is said on the merits of the application and could predigest application to the Board and allowing for a possible appeal. Everyone will be allowed an opportunity to speak, just at the proper meeting.

Mr. Nolan stated that this is a voting process for completeness not a for or against the matter. Mr. Serpico stated that under the law everything has to be done in time order when an application is submitted. The law requires that the Board has an obligation to deem an application complete or incomplete within 45 days. Because this application has a Use Variance with Site Plan involved, the determination must be made within 45 days and must go to Hearing within 120 days. This timeframe can be extended with the consent of the applicant on a complicated case if need be but must comply with the law so the application moves in a timely manner. If the Board fails to stay within the 45-day period to deem complete or incomplete, it is automatically complete and then the 120-day clock starts.

This is not to prevent public their chance to comment, everyone will have their opportunity but we do need to follow these guidelines so everyone's rights are protected.

Mr. Nolan asked if Mr. Serpico could also let residents know the process on who is able to vote, who is not and why.

Mr. Braswell agreed because he stated that the public was going to see him get up in a moment and leave and he wanted them to understand why.

Mr. Serpico went on to say, Highlands is in a unique position where the town has a combine Board. A Zoning Board is comprised of different members than a Planning Board. A Zoning Board is comprised of Class IV members who are residents that don't hold elected positions except Board of Ed members, which we don't have. Planning Board members are comprised of four class members: Class I, Mayor or Mayor's appointee; Class II, an appointed official, Class III an elected official and Class IV general citizens.

This case involves a Use Variance and Site Plan. A Use Variance is heard by the Zoning Board so when we sit on this application, we will be sitting as a Zoning Board. A Zoning Board is comprised of seven (7) members and two (2) alternate members. As such, the Class I and III members are all elected town officials and as such, will be leaving not because they do not want to participate in this application but because we are wearing the hat of Zoning Board and as such, they cannot vote. If the Board grants the Use Variance, Highlands has an ordinance which allows appeals to go to the Mayor and Council. If Use Variance is denied it cannot go to Mayor and Council.

Mr. Francy asked if all Class IV members, Chief Burton, Class II and two alternates, Class IV members move into place can we have a discussion with more than seven (7) members but that the vote is seven (7) members only.

Mr. Nolan asked for the record if it is ok with six (6) members for completeness hearing.

Mr. Serpico responded yes, because not deciding Use Variance which would require five (5) affirmative votes, not seven (7). This is not simple majority, four (4) out of seven (7). This Use Variance is special; it is to determine if application is ready for Hearing date. It is a general administrative task.

Mr. Nolan confirmed everyone at table understood what was to happen; all confirmed.

Mr. Serpico asked for all Class I and Class III member recuse themselves and step down at which time Mr. Braswell recused himself.

Mr. Nolan introduced Mr. Kevin Kennedy, Esq., attorney for this application.

Mr. Kennedy introduced himself and thanked the Board for the preliminary comments of which he totally agreed with all that was said. He stated he was aware of public interest, welcomed it and would address at the correct time.

Mr. Nolan stated the Board had documents for this application including a narrative written by Mr. Kennedy and a punch list dated April 19,2018 sent to Board Secretary.

Mr. Kennedy stated that there was not a lot of site work to be done at the church and that the application is for Use as a residential health care facility. The applicant is going to give a lot of testimony when time is right and based upon limited site work proposed, the applicant is asking that the application be deemed complete with the understanding that if deemed complete, as Mr. Serpico indicated, during the Hearing if additional information is needed the applicant would be happy to supply.

Mr. Nolan questioned as with any other application, if anyone has any questions prior to the next meeting, assuming deemed complete, we would get those answers, correct? It would not have to be held to the next meeting to request?

Mr. Kennedy agreed.

Mr. Serpico suggested that the Board start with Mr. Yuro, LUB Engineer from T&M Associates since his office does the review for technical data and to assure the application has proper information needed to proceed.

Mr. Yuro stated that he and his staff had reviewed the documents and have found them acceptable to proceed. Mr. Yuro confirmed he had proper documents to do a full review and as Mr. Kennedy indicated, if there are any additional documents needed upon further review, that information would be provided.

Comment [NO1]:

Mr. Nolan reiterated, that the letter from T&M dated June 7, 2018 summed up that they believe they are ready to move forward to where we are in this process.

Mr. Serpico questioned Mr. Kennedy about the Use Variance for off-site parking. Mr. Kennedy stated that initially this was part of application but that they were not sure if applicable at this time.

Mr. Serpico reminded applicant that if it is, they will be required to give notice within 200' for that part of the application as well, not just the site itself but the auxiliary sites as well.

Mr. Kennedy concurred.

Mr. Nolan asked Mr. Serpico if there are questions on letter from T&M dated June 7, 2018, which has a slightly different narrative than the original one and can the Board question on some of these points since they could be argued that it could make it complete or not based on this unique project.

Mr. Serpico stated that the Board has to be careful since the Board doesn't want to say anything that appears to be subjective on the application itself because then it becomes fowl of the Completeness Hearing.

Mr. Nolan questioned items #5 and #9 in the new narrative dated April 19, 2018 comparing it to a hypothetical question.

Mr. Serpico said it would be the burden of proof for the applicant and that this was getting into the merits of the case. The file could still go to Hearing at which time you can request additional information.

Mr. Francy stated that reading the narrative provided by Mr. Kennedy and reading through the statement of services provided by Polaris, there is a disconnect; in fact, way different. He questioned that there is a concern for the type of facility and questioned how T&M can provide an adequate completeness review when at this point we think this is way different?

Mr. Serpico again stated that this is the applicants burden of proof. He reminded everyone that as the case evolves you are not going to get just one report, you will probably get several reports and to which you will ask for some additional research.

Mr. Francy questioned that since the clock starts by deeming an application complete, aren't we better off getting some of this stuff as a requirement for completeness which delays dock start?

Mr. Serpico indicated this was getting caught up on details because once the review starts we can always ask the applicant for an extension of time based on the need for additional information. If the applicant does not want to agree, the Board can say then they will vote now on the information given at hand.

Mr. Serpico stated that he felt that with what he sees and with the recommendation from T&M, he believed the Board had enough to deem the application complete from legal perspective.

Mr. Francy questioned if the Board had a legal basis to deeming it not complete. To which Mr. Nolan asked what the definition of complete or not complete is from a legal basis.

Mr. Serpico clarified that as the Borough attorney, he did not deem applications complete or incomplete. This is the job of the Borough Engineer after they see the site plans, review the ordinances and as such, if they feel they have what they need to recommend the file for completeness only then will they indicate that.

Mr. Francy questioned Mr. Serpico on his reference to the ordinance; to which Mr. Serpico stated it was not an ordinance but a section in Cox's most recent addition as a decision as to completeness is quantitative rather than qualitative, 14-1.2 current Law NJ Statue 45, 55D-10.3 which Mr. Serpico read. Mr. Serpico indicated this was done via a check list, which he assumed T&M had a check list.

Mr. Francy stated he thought he heard that a waiver of submission requirement is part of a check list and since Polaris is asking of a waiver, this is the point that the Board should deny. To which Chief Burton added that this could also be asked for at the hearing. Mr. Francy said his inclination is to see this information now.

Mr. Serpico asked Mr. Francy if he had the check list in his papers. To which Mr. Francy said he assumed Mr. Yuro had it.

Mr. Yuro stated he did not have it with him and would have to check in office with the full file.

Mr. Nolan indicated that the check list in front of him was that of Mr. Kennedy's. Mr. Nolan questioned if anyone could tell him, for the record, that the Board has a check list and they went down it and reviewed it.

Mr. Yuro indicated that T&M reviewed the information provided to them and that they are comfortable with this information and felt they had enough information to do a proper review and that T&M recommendation is that the Board move forward as a complete application.

Mr. Nolan again questioned that by Borough ordinance, the Board does not know if they have a check list and don't know if anyone went down it, correct?

Mr. Yuro stated that if submitted to T&M, his staff reviewed it.

Mr. Lee said he would be concerned to deem complete and put the Board under the gun for a decision within 120 days unless the applicant was willing to waive deadline at this point.

Mr. Nolan asked if the Board had any more questions; any motions from the table.

Mr. Francy stated he didn't feel the application was complete as they don't have all the details needed for the Board to review going into this Hearing and as such, made a motion to deny.

Mr. Nolan stated he second Mr. Francy's motion but was going to add that he didn't have a check list and as for any project going forward, we should have one and be using said check list. It is in Borough ordinance and sounds like we didn't do it.

Mr. Kennedy stated that although he certainly understood the sensitivities of applications before the Board in the past and knows of the Board's thoroughness which he can respect, he felt the check list is mostly a list of technical items. One of the first things mentioned was the request for extension and of course we will agree because first it is the right thing to do and if we didn't it would be denied for lack of information. I know and have heard all of the questions and I respect that but some of the concerns voiced such as licensing and LLC information are fair requests but respectfully, this is not part of the traditional completeness checklist and I certainly prefer to have you all push to proceed.

Mr. Nolan stated a motion by Mr. Francy for denial and second by Mr. Nolan

ROLL CALL:

Aye: Chief Burton, Mr. Francy, Mr. Knox, Mr. Lee, Mr. Montecalvo, Mr. Nolan

Nay: None

Abstain: None

Mr. Kennedy stated he would work with the Board Secretary, Engineer and Attorney to request additional information.

Mr. Knox suggested to Mr. Nolan that an explanation be given to the public of what just happened and what is going to happen next.

Mr. Serpico addressed the question of the need for extension which he stated that an extension is not needed at this time because the application has been deemed incomplete so the 120 day clock does not begin until deemed complete.

Mr. Knox asked if the applicant would be back for July meeting. To which Mr. Nolan state that they did not know. It would be up to the applicant who needs to work with T&M to assure they are ready for July meeting.

Mr. Nolan told public they need to keep an eye on Borough website for posting of the Wednesday, July 11 meeting agenda.

The public was directed to feel free to review the Borough ordinances and the actual application forms available at Borough Hall for these types of applications.

Mr. Nolan called for a fifteen-minute break at 8:10; returned 8:16

Mr. Serpico recommended that the Board allow resident, Mike Warren, 254 Navesink Avenue, to have an opportunity to share his general comments.

Mr. Warren commended the Board on the way the process was explained. Voicing his opinion that although they talked through the process well, the general public needs more education because of the vast amount of information to learn.

Mr. Nolan asked if anyone else had any other general comments or questions: None

APPROVAL/DENIAL RESOLUTIONS:

- 1) 2018-01 ARJIKA PROPERTIES, 228 BAY AVE – Bulk Variance to cover a front porch approved; motioned by Mr. Nolan, second Mr. Francy

ROLL CALL:

Aye: Chief Burton, Mr. Francy, Mr. Lee, Mr. Montecalvo, Mr. Nolan

Nay:

Abstain: Mr. Knox

- 2) 2018-02 RUBY, 7 MAINE PLACE– Denial Minor Sub-Division, Bulk Variance to construct three single family dwellings on newly created lots; no motion needed, moved to July 11 meeting.
- 3) 2017-12 OUR LADY OF PERPETUAL HELP – Site Plan Approval with Variances to configure the rectory and part of property for a parking lot; approval motion offered by Mr. Nolan; second Mr. Francy

ROLL CALL:

Aye: Chief Burton, Mr. Francy, Mr. Knox, Mr. Lee, Mr. Montecalvo, Mr. Nolan

Nay: None

Abstain: None

ACTION ON ANY OTHER BUSINESS:

- 1) Review need for Board to hold Completeness Review Meetings versus T&M Review Only; Mr. Francy made a motion to postpone due to lack of members; Mr. Nolan second requested it be put on July 11 meeting.

ROLL CALL:

Aye: Chief Burton, Mr. Francy*, Mr. Knox, Mr. Lee, Mr. Montecalvo, Mr. Nolan

Nay: None

Abstain: None

*Mr. Francy commented that he felt the need look at this issue in light of what has transpired at tonight's meeting because we would not be here if we were going by this process.

APPROVAL OF MINUTES: May 8, 2018

Mr. Nolan asked for comments or corrections; none. Offered by Mr. Nolan, second Mr. Knox.

ROLL CALL:

Aye: Mr. Burton, Mr. Francy, Mr. Knox, Mr. Lee, Mr. Montecalvo, Mr. Nolan

Nay: None

Abstain: None

COMMUNICATION AND VOUCHERS:

- 1) Waterfront Permits

Mr. Francy spoke of his knowledge of the project up on Portland Road starting approximately three years ago. During testimony in hearing there was a commitment by developer to maintain public access to the river. The residents who have written this letter have done some research and there is a pathway down to the river which is part of the phantom pathway that pass through Highlands. There is a stairway that go up out of Highlands that no one owns or maintains. The residents are asking DEP to maintain their rights and the LUB took testimony from applicant when he said he would maintain the rights but it was vague what rights he was maintaining. Mr. Francy stated his interpretation was that of the riverfront, the high tide line. Chief Burton asked but not access to it? To which Mr. Francy said this is exactly what the residents are saying.

The residents have heard there is very little enforcement through the LUB except through a fight and therefore, they want to stay proactive. This is a warning sign to the town and the DEP. Mr. Francy said that these residents approach him to look for how to handle this and it was his recommendation that they write this letter as notification. He continued that in his mind the town has an obligation to review the transcript and hold the applicant accountable.

Mr. Nolan offered a motion to put this item on the July 11 meeting giving Mr. Serpico a chance to review the letter; second by Mr. Knox

ROLL CALL:

Aye: Chief Burton, Mr. Francy, Mr. Knox, Mr. Lee, Mr. Montecalvo, Mr. Nolan

Nay: None

Abstain: None

INVOICE from T&M Associates for \$350: motion offered Mr. Nolan, second Mr. Francy

ROLL CALL:

Aye: Chief Burton, Mr. Francy, Mr. Knox, Mr. Lee, Mr. Montecalvo, Mr. Nolan

Nay: None

Abstain: None

Mr. Nolan made the motion to adjourn; second Mr. Knox

Adjourn 8:30



Nancy O'Neil, LUB Secretary

