

Minutes of the Regular Meeting of the Morris Plains Planning Board held on December, 7, 2015 at 7:30 P.M. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Present: Mr. George Coogan
Mr. Andre Jensen
Mrs. Sydney Leach, Vice Chair
Mr. Ralph Lopez, Chair
Mr. Leo Nichols
Mr. Hank Sawoski
Mayor Frank Druetzler

Leon Hall, Borough Engineer
William Denzler, Borough Planner
Christopher Falcon, Board Attorney

Absent: Mr. Salvatore Cortese
Mr. Vincent Novak

PLEDGE OF ALLEGIANCE

The meeting was called to order by Mr. Lopez. Mr. Lopez made the statement that adequate notice of this meeting has been published and posted in accordance with Chapter 231 of the Public Law of 1975, "Open Public Meetings Act."

COMMENTS FROM THE PUBLIC

Mr. Lopez opened the meeting to the public to speak on matters other than those on the agenda. Seeing no one, he closed this portion of the meeting to the public.

APPROVAL OF MINUTES

Mr. Lopez requested a motion for the approval of the meeting minutes of the Board's Regular Meeting held on November 9, 2015.

Mr. Nichols moved that the minutes as circulated be approved, seconded by Mr. Coogan.

Roll Call

Yeas: Mr. Coogan, Mr. Jensen, Mr. Lopez, Mr. Nichols,
Mr. Sawoski, Mayor Druetzler
Nays: None
Abstain: Mrs. Leach
Absent: Mr. Cortese, Mr. Novak

Motion carried.

CORRESPONDENCE AND BILLS

Mr. Nichols read the vouchers for approval.

Maraziti Falcon LLP P.O. #98672 Total \$4,622.05

For Professional Services rendered to the Planning Board - M & M Soil

Disturbance Permit \$ 842.25

For Professional Services rendered to the Planning Board, *M&M at Morris*

Plains v Morris Plains Docket No. MRS L 296 13 PW \$3,779.80

Disturbance Permit \$ 842.25
For Professional Services rendered to the Planning Board, *M&M at Morris
Plains v. Morris Plains*, Docket No. MRS-L-296-13 PW \$3,779.80

Maraziti Falcon LLP P.O. #98676 Total \$2,972.40

For Professional Services rendered to the Planning Board, *M&M at Morris
Plains v. Morris Plains*, Docket No. MRS-L-296-13 PW \$1,939.90

For Professional Services rendered to the Planning Board, *JMF v.
Borough of Morris Plains, et al* \$ 157.50

For Professional Services rendered to the Planning Board
November 2015 \$ 875.00

Mr. Nichols moved that these vouchers as read be approved, seconded by Mr. Sawoski.

Roll Call

Yeas: Mr. Coogan, Mr. Jensen, Mrs. Leach, Mr. Lopez, Mr. Nichols,
Mr. Sawoski, Mayor Druetzler

Nays: None

Abstain: None

Absent: Mr. Cortese, Mr. Novak

Motion carried.

APPLICATION

**PB-4-15 Morris Plains Holding UE LLC – Completeness/Public Hearing
Block: 161 Lots: 1 & 3, Block: 161.50 Lot: 3.01
1701, 1705 & 1711 Route 10 E and Littleton Road**

Mr. Remo Caputo, Esq., the attorney for Urban Edge, introduced himself to the Board. He stated that Urban Edge was formerly known as Vornado.

Mr. Hall reviewed his checklist items relating to the completeness of this application. He also briefly commented on a prior application and resolution. He advised that the Applicant was unable to locate the previously approved site plan, although one plan was located showing electrical, lighting and parking details. This plan shows the layout of Phase I and Phase II buildings. He stated he is comfortable proceeding with a public hearing based on the plan submitted. He also recommended the granting of the requested waivers. He deemed the application complete.

Mr. Denzler referred to his December 1, 2015 report stating they also recommend this application be deemed complete and provided brief comments as to why they are making this recommendation.

Mr. Caputo advised that the Board Secretary provided significant assistance in helping the Applicant locate documentation from the prior application and resolution.

Mayor Druetzler moved that this application be declared complete, seconded by Mr. Nichols.

Roll Call

Yeas: Mr. Coogan, Mr. Jensen, Mrs. Leach, Mr. Lopez, Mr. Nichols,
Mr. Sawoski, Mayor Druetzler

Nays: None

Abstain: None

Absent: Mr. Cortese, Mr. Novak

Motion carried.

Mr. Caputo referred to historical information going back to 1984 relating to the shopping center. He stated for the record that this application concerns Block 161, Lots 1, and 3 and Block 161.05, Lot 3.01 in the Borough of Morris Plains. The resolution refers to Block 161, Lots 1, 2D and 3 and Block 161.05, Lot 3.01. He explained that he and the Board Secretary concluded that there is no longer any lot designated as 2D and are unsure at this point in time where a Lot 2D

and 3 and Block 161.05, Lot 3.01. He explained that he and the Board Secretary concluded that there is no longer any lot designated as 2D and are unsure at this point in time where a Lot 2D may be within the shopping center. The addresses are 1701, 1705 and 1711 New Jersey Route 10.

Mr. Caputo advised that in the prior resolution there was a restriction that no restaurant or food preparation use would be permitted to occupy the Phase I. In documentation that was distributed, only two references can be found to this issue. One reference is in the minutes that locates Phase I and Phase II on the property. There is another reference in the April 1984 minutes, at the bottom of Page 165, discussing types of tenants that might occupy space. This discussion also had references to the possibility of a restaurant ever occupying space. On Page 178 of these minutes a Mr. Brice talks about a “concern he had relating to a restaurant on a row of stores adjacent to the residential zone”. There is also reference to a Vornado representative advising that “management had come to the conclusion that they are willing to agree that no restaurant will be in that area; however, maybe a bakery”.

Mr. Caputo stated that this was back in 1984 and much change has happened in this area. He asked Mr. Aanen Olsen, the Project Manager and Vice President of Development & Construction for Urban Edge, to provide information as to the Applicant’s intent. He reminded that the Applicant is before the Board only to attempt to remove this restriction; they are not requesting any change of use or application. He stated that the Borough’s ordinance is clear that if they want to have a tenant that is a restaurant, they must re-appear before this Board to answer questions regarding the specific tenant. He explained that Urban Edge is experiencing difficulty in attracting such a tenant to the shopping center because of this existing restriction. Once the restriction is removed, they believe they will have a tenant(s) willing to consider coming into the shopping center, but until such time possible tenants do not want to spend funds toward a business that may be denied. He stated he understands the Applicant will need to return once again before the Board after this restriction is eliminated and before any work begins for a restaurant with the proposed site plan and to answer any questions about the specific restaurant or food use. He anticipates this next appearance would be in one to two months.

Mr. Olsen was called to testify and Mr. Caputo advised he has an exhibit to be marked as Exhibit A-1.

Mr. Olsen was sworn in by Mr. Falcon and the Borough Professionals.

Mr. Aanen Olsen provided his name, stating he is the Vice President of Development & Construction for Urban Edge Properties. He is responsible for all development, construction and design for Urban Edge Properties. He provided specific information about Urban Edge Properties advising it was spun off from Vornado earlier in 2015. It is a separately publicly traded company and it was the retail portion of Vornado’s portfolio and includes roughly 84 properties and 14 million square feet in New York, New Jersey, Pennsylvania, northern Maryland and southern Connecticut.

Using Exhibit A-1, Mr. Olsen pointed out specific information relating to the application as well as historical information about the property as a whole. Mr. Olsen stated that the goal of this application is to eliminate the restriction on restaurants in a specific portion of the shopping center. The Applicant is seeking to attract a restaurant that has a fast and casual nature, not a sit-down restaurant nor a drive-through fast food restaurant. He explained that a fast and casual restaurant is very important to the health of a shopping center in that it brings a variety of trips, a variety of shoppers, and people with different kinds of hours.

Mr. Olsen commented that when Shop-Rite was in this shopping center he believes they did some cooking and food preparation. There was a kitchen. He is unaware of any complaints being made against shop-Rite with regard to cooking odors or cooking and food preparation in general. He provided information as to existing restaurants in the surrounding area. There is no specific tenant designated at this time. He confirmed that there has been trouble getting any restaurant to commit due to the restriction in the prior resolution.

general. He provided information as to existing restaurants in the surrounding area. There is no specific tenant designated at this time. He confirmed that there has been trouble getting any restaurant to commit due to the restriction in the prior resolution.

Mr. Hall asked if the Applicant is anticipating one restaurant or multiple restaurants.

Mr. Olsen responded that with 25,000 SF available, they are anticipating several restaurants. Most of the current tenants have “term” – their leases have term remaining on them or they are relatively new tenants. They are currently targeting the former Marty Shoes space as the location of their first restaurant; this space is approximately 3,188 SF.

Mr. Hall asked about a current boundary survey.

Mr. Olsen replied he is uncertain if they have a more current boundary survey, but would be willing to produce one and provide it to him.

Mr. Hall asked about compliance with conditions of all past approvals, specifically mentioning a restriction that there be no outside storage anywhere on the site. He reported there are five large containers behind Atlanta Bread. He asked whose containers these are and how long will they be there.

Mr. Olsen advised these containers belong to Kohl’s and are extra storage space for goods at this holiday time of year. He provided information about such storage in past years and also about a recent large paving project this past fall of the entire back parking lot. The Kohl’s storage containers will be gone at the end of the holiday season.

Mr. Hall asked about any proposed technology that would address smoke and noise from a restaurant.

Mr. Olsen responded that he is unable to testify to any such plans. He also explained there are eating establishments that actually do no cooking on site such as Panera Bread (food cooked off premises and microwaved on premises) or Starbucks.

Mr. Caputo reminded that once a specific restaurant(s) is decided on, the Applicant will be returning before the Board and at that time will have much more detailed information as to the operations of that specific establishment(s).

Mr. Denzler stated he had no additional questions since most of his concerns were addressed by the answers to Mr. Hall’s questions. He did discuss the probable future need to discuss odor and noise control to ensure no chance for problems occurring. He also touched on disposal issues tied to change of use.

Mr. Hall asked how many restaurants the Applicant expects to have in the end.

Mr. Olsen replied he cannot say at this time.

Mayor Druetzler commented on trucks in the back. He advised that the Zoning Officer permitted these trucks during the holiday season and would work with Kohl’s in this regard.

Mr. Olsen commented on the overall issue of wanting this restriction lifted for the entire affected wing(s) of stores at the shopping center so that there will not be a need for them to return twice before the Board each time they would like to rent to a new restaurant. Restaurants are a permitted use. They also understand the potential concerns of their neighbors; they certainly do not want to alienate the neighborhood. All such concerns of the Board and the neighborhood would be able to be discussed at each change of use hearing before the Board.

Cross discussion about how best to move forward with this request: should the Board approve for just this one available storefront now, determine how everything goes, and then consider removing the restriction for all storefronts or simply remove the restriction right now. There

for just this one available storefront now, determine how everything goes, and then consider removing the restriction for all storefronts or simply remove the restriction right now. There were references to possible odor, noise control, parking, and garbage problems in the future that may need “major issue” consideration.

Mr. Denzler raised a concern about future vacancies and how possible new tenants, particularly other restaurants, might approach the landlord.

Mr. Falcon provided commentary on these issues, particularly with reference to the one existing vacant space at this time – the former Marty’s Shoes storefront – and the issues of odor and noise control. He also explained that initially the reason for the restaurant restriction related to the fact that on the western side which is somewhat higher land would allow for too much cooking smoke to flow into the residential area. However, today there is no doubt technological equipment that can take care of this.

Mrs. Leach expressed concern that careful attention be paid to the issues of garbage disposal, including “specialty” disposal issues related to restaurants.

Mr. Caputo stated he understands the Board’s processes and how they work; “these are normal things for a Board to do”. He is hoping that Mr. Olsen will be able to continue to work with the two or three possible tenants he has and tell them that the restriction has been lifted, but that a change of use hearing must still take place, including providing a floor plan, hours of operation, number of employees and other related matters. He would prefer that possible tenants not be “facing a restriction before they sign on the dotted line”. The Board would still

have control over each potential successive restaurant tenant because “they would be subject to the same scrutiny as the first one was”. Various determinations would need to be made and justified when potential applicants came before the Board.

Mr. Nichols asked if the tenant who has expressed interest in coming into the shopping center would be planning to operate 24/7. He mentioned a diner as an example.

Mr. Caputo replied that he does not believe most diners today operate 24/7. He does not think the type of operation the Applicant is referring to (fast food casual) will be looking to operate on a 24/7 basis.

Mr. Lopez opened this portion of the meeting for questions from the public of the testimony provided by Mr. Olsen.

Mr. David Marcantonio, 7 Briarcliff, Morris Plains, asked about what could possibly happen in the future if the restriction was lifted, specifically as to other restaurants wanting to rent more storefronts.

Mr. Lopez explained that for now only one unit/storefront is being discussed – the former Marty’s Shoes store. This will be treated more or less as a trial to determine how things go. If everything goes well, that will most likely open the way for additional restaurants in this shopping center.

Cross discussion about why the Board is preferring to start with lifting the restriction for this one space right now, whether the Zoning Officer has any role at this point, the square footage (3,188 SF) of the available unit, and that every tenant for any storefront would need to come before the Board for a change of user in any event.

Mr. Falcon described the general conditions of approval and read proposed text that addressed the lifting of the restriction for only the space formerly occupied by Marty’s Shoes to allow a restaurant to occupy this space. A new restaurant/food preparation tenant would need to demonstrate to the Board’s satisfaction that whatever system was in use relating to their operations was acceptable and working properly as determined by the Board.

demonstrate to the Board's satisfaction that whatever system was in use relating to their operations was acceptable and working properly as determined by the Board.

Mr. Caputo again reminded that some restaurant/food preparation operations do not actually cook on premises.

Mr. Hall advised that he received a call recently from a potential restaurant tenant. He described some of the discussion he had which included talking about grease

and grease traps. He also instructed the Applicant that when they return before the Board that they have information on signage.

Mayor Druetzler advised that the Zoning Officer has recommended that the names of the stores in the shopping center be displayed on the large sign(s) at the shopping center so that passing traffic knows what stores are in the shopping center.

Apparently, the individual store name will be placed on display signage at the shopping center at some point in the future.

Mayor Druetzler moved that the application be approved lifting the restriction for the one unit formerly occupied by Marty's Shoes, seconded by Mr. Coogan.

Roll Call

Yeas: Mr. Coogan, Mr. Jensen, Mrs. Leach, Mr. Lopez, Mr. Nichols,
Mr. Sawoski, Mayor Druetzler

Nays: None

Abstain: None

Absent: Mr. Cortese, Mr. Novak

Motion carried.

The resolution will be memorialized at the Board's January 2016 meeting.

Mr. Caputo thanked the Board and the Professionals.

**PB-04-06 900 American Road, LLC, Block: 11 Lot: 6
Requesting Extension of Site Plan Approval**

A letter was received requesting that this application be carried to the Board's January 2016 meeting. It will be placed on the January 2016 agenda. The Board Secretary will send a letter advising of this rescheduling.

COMMITTEE REPORTS

Minor Site Plan Committee

No report was presented at this meeting.

Master Plan Review Committee

No report was presented at this meeting.

NEW BUSINESS

None.

OLD BUSINESS

Mayor Druetzler asked about the status of certain Planning Board revisions.

Mr. Falcon replied that he was hoping to have revisions within the next few weeks.

ADJOURNMENT

Mr. Nichols moved that the Meeting be adjourned, seconded by Mrs. Leach. Yeas:

ADJOURNMENT

Mr. Nichols moved that the Meeting be adjourned, seconded by Mrs. Leach. Voice Vote. All in Favor. **Motion carried.**

Karen M. Coffey
Commission Secretary

Maureen Sullivan
Recording Secretary