

Minutes of the Regular Meeting of the Morris Plains Board of Adjustment held on January 23, 2012 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mr. Michael Bozza  
Mr. Rosemary Lopez  
Mrs. Ruth Mills  
Mr. Martin Reilly  
Mr. Roy Stewart, Vice Chairman  
Ms. Joan Scaccia  
Mr. David Schulz, Chairman  
Mr. William Denzler, Borough Planner  
Mr. Leon Hall, Borough Engineer  
Mr. Michael Sullivan, Board Attorney

Absent: Mr. John Scagnelli  
Mr. Robert Webster

#### **PLEDGE OF ALLEGIANCE TO THE FLAG**

The meeting was called to order by Mr. Schulz. Mr. Schulz 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."

#### **NOMINATIONS OF OFFICERS**

Mr. Schulz turned the meeting over to the Board Secretary for nominations.

#### **NOMINATIONS FOR CHAIRMAN**

Mrs. Lopez nominated Mr. David Schulz for the position of Chairman, seconded by Mr. Reilly.

The Board Secretary asked if there were any additional nominations for this position. Hearing none, she requested a roll call.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,  
Ms. Scaccia

Nays: None

Absent: Mr. Scagnelli, Mr. Webster

Abstain: Mr. Schulz

**Motion carried.**

The Board offered its congratulations to Mr. Schulz on his position as Board of Adjustment Chairman for year 2012.

#### **NOMINATIONS FOR VICE CHAIRMAN**

Mr. Reilly nominated Mr. Roy Stewart for the position of Vice Chairman, seconded by Mr. Schulz.

The Board Secretary asked if there were any additional nominations for this position. Hearing none, she requested a roll call.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Ms. Scaccia, Mr. Schulz  
Nays: None  
Abstain: Mr. Stewart  
Absent: Mr. Scagnelli, Mr. Webster

**Motion carried.**

The Board Secretary turned the meeting back over to the Chairman.

Mr. Schulz expressed appreciation for being able to continue to serve on the Board.

#### **APPROVAL OF THE BOARD'S LEGAL REPRESENTATION**

Mr. Schulz commented that the Board must approve legal representation for the calendar year 2012. It was recommended that Michael Sullivan, Esq. continue in his role as the Board's legal representative.

Mr. Schulz moved that Michael Sullivan, Esq. be approved as the Board's 2012 legal representative, seconded by Mrs. Mills.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,  
Ms. Scaccia, Mr. Schulz  
Nays: None  
Absent: Mr. Scagnelli, Mr. Webster

**Motion carried.**

Mr. Sullivan thanked the Board.

#### **APPROVAL OF BOARD SECRETARY**

Mr. Schulz stated the next item of business was the approval of the Board Secretary, Karen M. Coffey, for the calendar year 2012.

Mr. Stewart moved to approve this appointment, seconded by Mr. Reilly.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,  
Ms. Scaccia, Mr. Schulz  
Nays: None  
Absent: Mr. Scagnelli, Mr. Webster

**Motion carried.**

Mrs. Coffey thanked the Board.

## **APPROVAL OF 2012 MEETING DATES**

Mr. Schultz stated the next order of business is to adopt the Resolution to approve meeting dates for 2012, Board of Adjustment Resolution #12-01 - “**Notice of Meeting Dates**”. Mr. Schulz read the following Resolution:

### **BOARD OF ADJUSTMENT - RESOLUTION 12-01**

#### **NOTICE OF MEETINGS**

**BE IT RESOLVED** by the Board of Adjustment of the Borough of Morris Plains in the County of Morris and State of New Jersey on this 23<sup>rd</sup> day of January 2012 as follows:

**WHEREAS**, Chapter 231 of the Public Laws of the State of New Jersey for 1975, known and hereinafter designated as the “Open Public Meetings Act”, requires notification of meetings of public bodies as therein defined, in the manner therein set forth.

**NOW, THEREFORE**, for purposes of compliance with the “Open Public Meetings Act” aforesaid, the Planning Board of the Borough of Morris Plains hereby makes the following designations:

1. The *Morris News Bee* and the *Morris County Daily Record*, or as an alternate, *The Star-Ledger*, are hereby designated as the two newspapers to receive notice of meetings as required by any and all sections of the “Open Public Meetings Act”, or as an alternative, *The Star-Ledger*, it appearing that those newspapers are most likely to inform the local public of such meetings.
2. The location for the posting of the Notice of Meetings shall be the bulletin board of the Borough Hall, 531 Speedwell Avenue, Morris Plains, New Jersey where notices of this kind are normally posted.
3. The schedule attached hereto and made a part hereof entitled, “Notice of Scheduled Meetings for the Remainder of the Year 2012” is hereby adopted and the Secretary of this Board is authorized and directed within seven (7) days of this scheduled meeting to:
  - a) Post said meeting schedule and maintain the same posted throughout the year on the bulletin in the Borough Hall, 531 Speedwell Avenue, Morris Plains, New Jersey;
  - b) Mail a copy of the same to the *Morris County Daily Record* and the *Morris News Bee*;
  - c) Mail a copy of the same to those persons who may request such a mailing provided they comply with the regulations providing for a mailing of such notice;
  - d) The sum of \$5.00 per notice is hereby fixed as the amount to be paid by any person requesting individual notice of meetings as provided in Section 14 of the Open Public Meetings Act and file a copy of said schedule with the Clerk of the Borough of Morris Plains.

- e) The Morris Plains Board of Adjustment has their meeting date on the fourth Monday of every month except for May and December 2012 when the meetings are scheduled for the third Monday.
4. Notice of Schedule of the meetings for the remainder of the year 2012: Please take notice that the Board of Adjustment of the Borough of Morris Plains, will meet to discuss or at upon public business at 7:30 p.m. prevailing time of each of the dates set forth below in the Council Chambers, 531 Speedwell Avenue, Morris Plains, NJersey: February 27, March 26, April 23, May 21, June 25, July 23, August 27, September 24, October 22, November 26 , December 17, and January 28, 2013 at 7:30 p.m.
5. All meetings of the Planning Board shall be open to the public. I, Karen Coffey, Secretary of the Morris Plains Planning Board, in the County of Morris, and State of New Jersey, do hereby certify the foregoing to be a true copy of a Resolution adopted by the said Morris Plains Board of Adjustment on the 23<sup>rd</sup> day of January 2012, at a meeting duly convened by said body.

Mr. Stewart moved that Board of Adjustment Resolution 12-01 be approved, seconded by Mr. Reilly.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,  
Ms. Scaccia, Mr. Schulz

Nays: None

Absent: Mr. Scagnelli, Mr. Webster

**Motion carried.**

### **APPROVAL OF MINUTES**

Mr. Schulz stated the next agenda item is approval of the meeting minutes of the Regular Meeting on Decembeber 19, 2011.

Mr. Reilly moved the minutes be approved, seconded by Ms. Scaccia.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Reilly, Mr. Stewart,  
Ms. Scaccia, Mr. Schulz

Nays: None

Abstain: Mrs. Mills

Absent: Mr. Scagnelli, Mr. Webster

**Motion carried.**

### **COMMENTS FROM THE PUBLIC**

Mr. Schulz opened this portion of the meeting to comments from the public. Hearing no comments from the public, Mr. Schulz closed this portion of the meeting to the public.

**BA-5-11 Kelido, Inc. (Dunkin Donuts) – 246 Littleton Road  
Block: 161 Lot: 2.04**

Mr. Schulz stated this matter is on tonight's agenda for completeness only.

Mr. Alan Hantman, Esq., of the firm of Morris & Hantman introduced himself to the Board and Professionals.

Mr. Hall provided information on his review of the application, site plan submitted, and checklist. He also gave general commentary as well as on certain documentation provided that appears to have some discrepancy. He stated that based on his review findings, the application is deemed incomplete.

Mr. Denzler referred to their January 23, 2012 memorandum and provided commentary on the application, site plan submitted, and checklist. He also deemed the application to be incomplete.

Mr. Hantman stated he understands the concerns of the Board's Professionals, but that they disagree. He provided information relating to why they disagree. He first referred to requesting a waiver for a formal site plan based on the insignificance of the application presented; this issue has not been addressed by anyone. He gave a brief historical summary of the Dunkin Donuts site. This application seeks to moderately enlarge an existing building that has been approved by this Board on three prior occasions; the Applicant wants to expand the existing space by 435 SF. Another 47 SF is to be done to permit Bottle King to install an elevator. Nothing is being changed outside the building, and no changes in parking or drainage are being sought. Most of the lighting, except for one light shown on the plan, is on the building. There is one lighting change being requested and this is clearly shown in detail on the architectural plan.

Continuing, Mr. Hantman addressed the issue of the deed discrepancy, explaining why it exists. He also advised of his efforts to try to rectify this situation since a survey will not help. He believes he will be able to submit a title search and expert testimony to the Board that will provide sufficient evidence that the Applicant has a right to use this property and to allow for approval of this application. He also stated he understands his obligations under the Land Use Act and use variances. Referring to the 30-year existence of this business structure, prior approvals by the Board, the title search, and expert testimony to be given, he stated he believes this criteria entitles the Applicant to go forward. He believes all dimensional information was submitted, that the engineer, planner and architect will submit/re-submit documentation as required, and a title search will be submitted.

Cross discussion of this application, including how the determination of what relief is required needs to be made and issues relating to the deed and the tract outbound, topography, and area.

Mr. Hall believes that the issues of the deed and the tract must be resolved prior to the public hearing so that proceeding will start with a clear record. This information needs to be known and verified prior to the public hearing, and not through testimony.

Mr. Sullivan suggested that a title report theoretically could resolve the issue. If the title search was received prior to the public hearing in sufficient time for a thorough review, it may provide the needed data. The completeness hearing is to balance the nature and scope of the application and occasionally waivers are granted. At other times, there is agreement to continue the completeness portion to the next meeting and allow for noticing of public hearing, based on the expectation that the issue will be resolved.

Mr. Hantman again referred to the fact that this is the calculation of an existing site that the Borough and this Board has used on two prior occasions. To be questioning this now is reinventing the wheel.

Mr. Sullivan asked Mr. Hall when the last application before this Board for this Applicant was.

Mr. Hall responded he would need to review the file. It appears the most recent applications were in 1992 and/or 1994. He stated he is unfamiliar with what these applications show in relation to the question about tract outbound and lot area.

Mr. Hantman commented on previous application documentation prepared by RBA Engineers & Architects that has a date of January 1, 1988, and updated through August 13, 1992 for the entire tract. It shows both that area and the reserved area. The search for the current application has been ordered.

Mr. Sullivan stated that the Board wants to be comfortable that the number is accurate. Before granting a floor area ratio variance, the Board needs to know to what extent it is being granted. This issue must be resolved. He suggested that if the title report/search can resolve this question, provide it as soon as possible to Mr. Hall for his review.

Mr. Hantman repeated he does not believe there are any modifications proposed for outside the building. He referred to how the ramp is going to work is an engineering issue. There is no intention to do anything outside of the building meaning the four corners.

Mr. Hall stated this is incorrect. The Applicant is proposing of a new handicapped access ramp, new striping, and new signage. He also asked about the request for a waiver of site plan. On the Applicant's application form under Site Plan it says "Minor – Change of Use." Is there really a request for a waiver of the site plan?

Cross discussion about the matter of a request for a waiver of the site plan.

Mr. Sullivan stated that he believes there can be agreement that the application is for a minor site plan. He asked Mr. Hall if there are other items in his January 18, 2012 report that are problematic if the Board waives them or can the Board consider them as part of a waiver?

Mr. Hall replied he needs to review the site plan in more detail and provided additional commentary on checklist items.

Mr. Hantman provided a summary regarding his requests for prior information from the owner and/or Applicant such as a copy of the deed. The owner and/or the Applicant could not provide much data. He said he has tried to obtain certain information, and if he could get it, he would be happy to provide it to the Board and Professionals. Information was also requested from a prior owner, but little or no documentation was received. If the Applicant will need to re-certify a survey, he thinks the entire tract would need to be surveyed. He also referred to this application's site plan as well as two other plans referenced in the Resolution he provided the Board.

Mr. Hall commented on surveys in general and the possible need for a survey of the site in question. He also stated that if one of the earlier applications contains a tract outbound survey, then Mr. Hantman could reference it.

The Board Secretary advised the previous applications have been reviewed by Mr. Hantman and by the Engineer. She explained what was able to be found. She suggested that perhaps with the deed there is a verbal survey or there might be a survey with the deed.

Mr. Hantman explained some of the difficulties relating to the deed and survey. If he could get a title policy from the other people, he would be able to determine what they think they bought.

Mr. Schulz asked Messrs. Hall and Denzler about lighting and the relatively small nature of the addition, are there any other larger concerns?

Mr. Denzler provided his comments concerning setbacks and several checklist item issues.

Mr. Sullivan stated that waiving checklist items 16b, 26, and 27 seems to be a comfortable action for the Board. He asked Mr. Hall about this.

Mr. Hall stated he agreed and suggested granting a partial waiver to checklist item 18g discussed at the bottom of Page 1 of his report.

Mr. Sullivan recommended a motion that checklist item 16b could be waived, checklist item 18g could be partially waived as outlined by Mr. Hall, and that checklist items 26 and 27 could be waived. He suggested deferring checklist item 18a for now.

Mrs. Lopez moved that the checklist items as indicated immediately above be fully or partially waived, seconded by Mr. Bozza.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,  
Ms. Scaccia, Mr. Schulz

Nays: None  
Absent: Mr. Scagnelli, Mr. Webster

**Motion carried.**

Mr. Sullivan suggested that this application could be deemed incomplete and reviewed at the next meeting based on what is submitted or the Board could give Mr. Hantman an opportunity to submit the title report. This is a submission that the Board and Professionals do not know if it will actually happen. The public hearing could be scheduled.

Mr. Hantman suggested he could amend the application to show a greater deviation from floor area ratio and believes this action would allow the application to be deemed complete. His searcher advised he will be able to provide him with a title search within 10 days, and he will then be able to provide the search information to the Board and Professionals.

Mr. Sullivan asked if the Board is willing to allow Mr. Hantman the time to address the outstanding issue with regard to checklist item 18a and also allow noticing for public hearing.

Mr. Schulz stated this is correct and put the risk on the Applicant to provide the needed documentation. He noted that all re-submittals must be received at least 14 days prior to the February Board meeting which is February 27, 2012.

Mr. Sullivan encouraged Mr. Hantman to have the Applicant's engineer speak with Mr. Hall as needed.

Mr. Hall advised he has already spoken with the Applicant's engineer and will continue to speak with him as needed to resolve the outstanding matter.

Mr. Sullivan stated that the next motion should indicate that checklist item 18a remains incomplete and that the completeness hearing on this item will occur at the Board's next meeting, and that the Applicant is allowed to notice and the public hearing will be scheduled anticipating that the outstanding issue will be resolved in a timely manner.

Mr. Reilly moved that the application is incomplete with reference to checklist item 18a, with waivers for checklist items 16b, 26 and 27 and a partial waiver for item 18g, and allowing the Applicant to move forward toward a public hearing, assuming receipt of necessary documentation, seconded by Mr. Stewart.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Mr. Reilly, Mr. Stewart,  
Ms. Scaccia, Mr. Schulz

Nays: None

Absent: Mr. Scagnelli, Mr. Webster

**Motion carried.**

Mr. Hantman thanked the Board and Professionals for their time and consideration of this application.

### **CORRESPONDENCE AND BILLS**

There was no correspondence and no bills.

### **OLD BUSINESS**

#### **Escrow Report**

Mr. Schulz asked why the General Plumbing Supply is still on this report. Are they fully complete?

Mr. Hall replied there is still an issue with rusty shelving at the rear of the site that needs to be addressed or possibly removed.

Mr. Sullivan asked whether there is a Developer's Agreement that may address this issue.

The Board Secretary reviewed other escrow report issues for the Board, including that the Yuliano application most likely will be on the February agenda and explained the matter of the request addressing the completeness clock and how the Applicant would like to distribute the report(s). The attorney, Mr. Rago, will be sending a letter to this effect.

Mr. Sullivan requested this letter be sent to him upon receipt.

Mr. Hall advised that additional funds (\$1,000) should be requested from EJK.

### **NEW BUSINESS**

None.

There being no further business, Mr. Reilly moved the meeting be adjourned, seconded by Mr. Stewart. Voice vote. All in favor. Motion carried.

Karen M. Coffey  
Commission Secretary

Maureen Sullivan