

Township of Hillsborough – PLANNING BOARD

APPROVED Public Meeting Minutes

November 10, 2022

Chairman Carl Suraci called the Planning Board Regular Public Meeting of November 10, 2022 to order at 7:30 pm. The meeting was held in the Courtroom of The Peter J. Biondi Building. All stood for the flag salute.

NOTICE OF MEETING

Chairman Suraci announce the meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 (“Sunshine Law”). Notice of the 2022 Annual Meeting Schedule has been provided to the officially designated newspapers, the Township Clerk, posted on the Township’s website and available at the Hillsborough Township Municipal Complex.

Application documents have been made available on the Township’s web site <https://hillsboroughnj.civicclerk.com/>. Complete applications files are available in the Planning and Zoning Department for inspection, in accordance with the public meeting notice.

ROLL CALL

Mayor Shawn Lipani -	present	Nathan Santaromita -	Absent
Robert Wagner, Jr -	Absent	Ron Skobo -	Absent
Deputy Mayor Frank DelCore -	Absent	Kenneth Hesthag, Secretary -	Absent
Robert Peason -	Present	John Ciccarelli (Alt #1) -	Absent
Carl Suraci, Chairman	Present	Patricia Smith (Alt #2) -	Present
Neil Julian, Vice Chairman -	Present		

Also in attendance: David Kois, PP, AICP, *Interim Township Planning Director/Deputy Zoning Officer*; Eric Bernstein, Esq., *Board Attorney (Eric M. Bernstein & Associates)*; Todd Hay, PE, CME, *Board Engineer (Pennoni Associates)*; Michael Lombardozzi, CSR, CCR, *Board Court Reporter.*; Caz Bielen, *Township Videographer (Premier Video)*

Chairman Suraci announces as of last night the Deputy Mayor is now Frank DelCore.

CONSIDERATION OF MEETING MINUTES

- **None**

CONSIDERATION OF RESOLUTIONS

- **Harvard Way (JMJ4, LLC) – File 21-PB-09-MSPV**

Mr. Bernstein announces all members are eligible to vote.

A motion to adopt the resolution is made by Mr. Peason, seconded by Mayor Lipani.
No comments.

Roll Call:

Mayor Lipani -	Yes	Chairman Suraci -	Yes
Vice Chairman Julian -	Yes	Ms. Smith (Alt #2) -	Yes
Mr. Peason -	Yes		

Motion carries

PLANNING BOARD BUSINESS

- None

CONSIDERATION OF ORDINANCES

- None

BUSINESS FROM THE FLOOR *(public comment for matters not on the agenda)*

Chairman Suraci opened comments from the public, asks them to state their name and address for record and reminds there is a five-minute limit (per speaker).

- **David Brook** – 7 Winding Way
Mr. Brook states a few months ago he asked if the Planning Board could return to paper for the residence. He explains how the paper renderings applicants submit are helpful to residents, specifically when they are hung up on the wall. He asks if the Board can request the applicants to provide paper renderings for the public to see during meetings.
- **Maria Janucik** – 720 E. French Ave., Manville (resident) / 2155 Camplain Rd., Hillsborough (property owner)
Ms. Janucik asks why the zoning was changed for the M & M Realty Partners application for the Glengarry project.

Chairman Suraci states he believes this has been addressed in a previous meeting.

Mr. Bernstein states this is a question for the Township Committee since they determine the zoning.

Chairman Suraci explains it most likely had to do with Affordable Housing settlements and is nothing unusual.

- Ms. Janucik states her understanding is the Glengarry project will not have any Affordable Housing units and questions why it's necessary to change the zoning. She states the environmental issues with the property and questions why M & M Reality has not yet been available for questions pertaining to their report. She questions why the application is being done in "drips and drabs". And points out an ordinance for impervious surface was changed and increase which would add to potential flooding.

Mr. Bernstein states for the record the reason no Affordable Housing is being built on the site is because it is being built on another site in order to reduce the number of units. The applicant had originally wanted to build to build 1500 units on the site. The court approved the zoning, there will be Affordable Housing built as part of the project. The rest cannot be discussed as it is an application currently pending before the Board.

APPLICATIONS – PUBLIC HEARING

- **Weston Rd., LLC** (Guastella) – **File 22-PB-03-MSPV** (TOD: 12-22-22) – Block 185, Lot 1 – Weston Rd. Applicant seeking preliminary and final major site plan approval; 'c' bulk variances; and waivers, to construct a 135,000 square foot warehouse building with stormwater, parking, and associated improvements, on Property located in the I-1, Light Industrial District. (EC Review: 10-24-22)

Participating: Michael O'Grodnick, Esq. of Savo, Schalk, Corsini, Warner, Gillespie, O'Grodnick & Fisher, P.A.; Jeffery Change, Esq. of Fox Rothschild LLP; Michael K. Ford, PE of Van Cleef Engineering Associates; Steve Radosti, AIA of Perez & Radosti Architecture; Thomas Auffenorde, PE of EcolScience; Peter Downham, LSRP of Roux Associates; Gary Dean, PE, PP, of Dolan & Dean Consulting Engineers, LLC; and Keenan Hughes, PP of Philips Preiss LLC

Mr. O'Grodnick, counsel for the applicant, introduces himself, describes the site and explains the application.

Mr. O'Grodnick gives a brief history of the property including but not limited to the ownership, testing done on the property, lawsuits, resolutions, applications and subdivisions associated with the property.

Mr. O'Grodnick explains this is not a speculative warehouse. The applicant does have an end user, a web-based textile company, who is willing to testify. The company is called Miracle Brand.

Mr. O'Grodnick states the application only has one bulk variance which is for height. He states this application is compliant for greatly exceeding minimum lot area; 18.2 acres proposed (one acre required); 800 ft lot depth (200 ft required); front, rear and both side yards are compliant and notably the front yard is proposed at 173 ft buffer (50 ft required); I-1 Zone lot set back proposed at 883 ft (minimum 200 ft required); 49.4 ft impervious coverage (60% required). Their sole variance is for the building height is proposed at 38.4 ft (height 35 ft required). Mr. O'Grodnick next reviews the waivers identified in Mr. Kois' memo dated November 10, 2022

Mr. O'Grodnick lists his witnesses.

Vice Chairman Julian asks if Mr. Ford will be responding to the environmental questions since no one from eco-sciences is present.

Mr. O'Grodnick confirms.

Chairman Suraci states the multi-purpose room has been set up with a live audio feed of the meeting for overflow of public.

He states for anyone not having attending a Planning Board before meetings end at 10:30 pm sharp and testimony for new witness will not be taken after 10:00 pm. Once a witness has provided their testimony, the public will have the opportunity to ask questions with regards to that witnesses' testimony.

Michael Ford applicant's Engineer from Van Cleef Engineering is sworn in. Mr. Ford provides his credentials and confirms all licenses are current. He is accepted by the Board. Mr. Ford summarizes exhibit A-1 the Proposed Condition Exhibit, which is a colorized version of the site plan last revised July 29, 2022. He also points out the Uses of neighboring lots including the parcel of land that was originally part of the tract but later sold by the Township. Mr. Ford highlights the fresh-water wetlands area and discusses the site-specific study done by Equal Sciences which was submitted to New Jersey Department of Environmental Protection with the conclusion that included a site visit in January 2022.

He also explains the permit issued on June 11, 2020 for a disturbance of a Riparian Zone which included a Flood Hazard Area Verification. He states they are not proposing any disturbance to the Riparian Zone as part of this application.

Next Mr. Ford explains the public sewer access for the site, stating it would be serviced by public water and sewer. A connection permit will be submitted to the Hillsborough Township Municipal Utilities Authority. While this permit has not yet been submitted, they have "Will Serve" letters have been submitted to various utilities, including Hillsborough Township Municipal Utilities Authority and American Water.

Mr. Ford begins to discuss the proposed site improvements.

Mr. Bernstein interrupts asking if the proposed building height Mr. O'Grodnick referenced, 38.4 ft, earlier is correct.

Mr. Ford explains that is a relief associated with the building which will be addressed by the architect and planner. It's not a site engineering issue.

Mr. Bernstein asks at what point will the seeking of a "d" variance, a Use Variance, be address which this Board does not have jurisdiction over.

Mr. O'Grodnick states there has been some commentary between the Board professionals and the applicant with respect to the definition of building height. His understanding is that historically building height has had an interpretation. He reads into the record the definition as codified in Section 1883 of the Township Code; building height *"the vertical distance from the grade to top of the highest gable slope of a hip roof or otherwise the highest point of the roof. When a building faces more than one street the height shall be measured from the average of the grades at the center of each street front"*. He states they have always understood the building height to mean from the average grade pertaining to the front wall of the building facing the roadway to the highest point of the roof.

Next Mr. O'Grodnick reads an email from Planning and Zoning dated January 24, 2021 which states the building height should be taken from the average grade pertaining to the front wall of the building (facing the roadway) to the highest point on the roof.

Mr. O'Grodnick questions if the Board has now changed the interpretation of how building height is calculated.

Mr. Bernstein suggests the Planning Department has produced an opinion which is contrary to the opinion Mr. O'Grodnick believed they were responsible for. The Board has taken no action.

Mr. Kois states as the interim Planning Director and the person assigned to do the staff review of the application, based on the architectural plans provided it appears the building is larger than 38.4 ft on the loading dock side of the building and therefore its greater than a "c" bulk variance. It is a "d" variance. He has asked the applicant to provide architectural, grading plans and any additional information for it to be addressed but has not yet received any updated information.

Mr. O'Grodnick asks if this is the first application that differs from the historic interpretation of Building Height.

Mr. Kois addresses Mr. O'Grodnick's use of the term "historic" by stating he cannot speak to how the capacity of the staff reports for the last seven or so years. He can only offer comment on what he has been involved in. Mr. Kois asks if Mr. O'Grodnick has a formal Zoning Officer determination from the current staff.

Mr. O'Grodnick states they received a Review Memorandum today and an email from Planning and Zoning several weeks ago. He states the rules have changed within two weeks of the hearing. It was submitted in January, deemed complete in September and they just received a new interpretation of building height. He states the applicant will revise the plans to meet the interpretation albeit they think erroneously based on the history of the definition within the Township. They will have to redesign the building based on the new interpretation which is why it is not completed for today. His understanding is the next hearing is many months away so they will submit revised architectural elevations showing all four elevations, respecting the 38.4 ft maximum height. They will comply but the applicant needs time to redesign the project.

Mr. Bernstein asks Mr. O'Grodnick if it makes sense to pursue the existing application in its current configuration if the building may change to a point it impacts the application as a whole.

Mr. O'Grodnick says no there will not be any substantive changes to the application.

Chairman Suraci asks Mr. Kois what he calculates the height of the building to be.

Mr. Kois states it is larger than 38.4 ft and asks it be put on the record that the architect did not include a graphic scale on the plans and used a scale that is not normally available to staff to use. He explains how the scale is represented and the language, the plans were not very apparent or clear. He would ask for the plans from the architect to be much clearer and provide a graphic scale.

Mr. Hay states he reviewed the architectural plan agrees with Mr. Kois that the scale being used is very difficult to ascertain and there should be a graphical representation. His office communicated to the applicant there was a mis-interpretation because they could not find anything graphical.

Chairman Suraci asks Mr. O'Grodnick if they can make the 38.4 ft.

Mr. O'Grodnick confirms but this should not delay the site plan, the traffic and etc.

Chairman Suraci agrees.

Mr. O'Grodnick states the current plan is to resubmit architectural renderings which he projected the earliest to be March of 2023.

Mr. O'Grodnick states for the record he believes there are some issues with changing the historic interpretation based upon principles of Equitable Estoppel, based on principles of the time of application, issues of waiver, issues of due process of selective enforcement.

Chairman Suraci interrupts stating there is no Selective Enforcement.

Mr. O'Grodnick begins to say the rule just changed.

Mr. Bernstein interrupts to state for the record to let Mr. O'Grodnick put his record on; by no means in anyway shape or form is the record he is placing necessarily agreed to by the Board Council or the Board.

Mr. O'Grodnick continues stating if they disagree with the new interpretation of the Ordinance then they would be compelled to seek and interpretation before the Board of Adjustment in turn causing the Planning Board to lose jurisdiction. They intend to get through the site plan and traffic at tonight's meeting. And expect to have to all the four elevations with measurements when they return. He agrees there is currently an issue with the loading area, historically since that area does not face the street it would have been permitted to exceed the prior interpretation but they will supplement the record with whatever is requested with respect to the building height. The intention is to keep under the 38.4 ft which is within the jurisdiction of the Planning Board so as to avoid the variants before the Board of Adjustment.

Mr. Ford continues summarizing exhibit A-1 including but not limited to loading and parking areas, traffic access, site lighting, natural buffers, easement, and wetlands. Next Mr. Ford highlights outside two agency approvals they have received. The Somerset Union Soil Conservation District which has jurisdiction over soil erosion and sediment control measures, issues on September 16, 2022. And the Somerset County Planning Board which has regulatory authority on any land development application approved the project in a letter dated August 26, 2022.

Mr. Ford next explains the other waiver which pertains to a small portion in the rear loading area and explains the layout, landscaping, stormwater management feature, tree mitigation, and stormwater management.

8: 45 pm Chairman Suraci calls for a 10-minute recess.

8:55 pm Chairman Suraci calls the meeting to order and points out a rendering now hanging on the meeting room wall.

Mr. Ford continues his testimony starting with the groundwater recharge element of stormwater management. He then discusses the report received from the Delaware Raritan Canal Commission (DRCC) dated October 24, 2022, file number 22-2840b. The DRCC primarily looks at stormwater management and stream quarter protection. Mr. Ford reads into the record sections of the DRCC report regarding to stream-corridor, stormwater quality, and brown-water recharge and summarizes the DRCC found them to be in compliance with their regulations which also reference the state standards.

Mr. Ford next reviews the Township staff reports. He states they will comply to the items listed in the Fire Marshal's memo to the Board dated October 24, 2022. In regards to Mr. Pennoni's, the township Engineer, report also dated October 24, 2022 there are many straight-forward items that will be complied with. Items asking for testimony Mr. Ford addressed include but are not limited to on-site handling of refuge, Electric Vehicle (EV) charging stations, solar panels, operation of the facility, site lighting, and retaining walls.

Mr. Hay asks if Mr. Ford could elaborate on the parking and loading space variances.

Mr. Ford explains the reduction in parking area size and states they have a planner who can testify to the waiver.

Mr. Hay states he believes this covers the first memorandum but it does not cover the supplemental report, which he believes was prepared on Oct. 27, 2022, with respect to environmental measures.

Mr. Kois asks Mr. Ford to clarify if it is parking spaces are 9 x 18 or 10 x 18 since there is some discrepancy between notice, site plan documentation, scale and Mr. Kois calculations.

Mr. Ford states he may be mistaken that they provided 10 ft wide spaces. If the scale states 10 ft wide spaces, then there would be no need for the waiver since that exceeds industry standard.

Mr. Hay states he does not have an issue with 9 x 18 spaces but would like to hear what the Traffic Engineer as well as the Planner.

Mr. Ford continues stating he has found the October 27, 2022 review memo by Pennoni & Associates and references various issues address in the memo including but not limited too Environmental Impact report, soil erosion, ground-water impacts, and total impact of the site.

Vice Chairman Julian asks how it works if Mr. Ford cannot answer or address the issues Eco-science needs to address and they are not here to testify.

Mr. Bernstein the burden of proof rests with the applicant. If the Board does not have the necessary evidence before them regarding environmental issues it may impact the Boards ultimate decision. Its up to Mr. O'Grodnick and his client.

Mr. O'Grodnick asks what the Board desires since historically environmental testimony was limited to the Environmental Commission. They could provide environmental testimony in a live hearing.

Vice Chairman Julian states he recommends this for various reasons.

Mr. Ford begins his review of the Environmental Commission's report. Issues he addresses include but are not limited to total suspended solids removal as part of the stormwater quality measures, stormwater management features and the Delaware Raritan Canal Commission report.

Mr. Peason asks Mr. Ford to address the note at the bottom of the three DRCC memos which reads "we do not recommend" and explain what that means.

Mr. Ford explains as a matter of practice the DRCC lists, at the end of every report, items they require or questions they have. They require copies of the County approval letter and Township resolution of approval. They see themselves as the final arbiter of review. Once the DRCC receives the County approval letter, Township resolution and, in this case, the Conservation and Maintenance Agreement then they will remove that statement.

Mr. Peason states this seems to be a Catch-22 since the Board's approval is based upon approval of all outside agencies. And this outside agency is basing their approval on the Board's approval.

Mr. Ford confirms and states it is an administrative function at that point since the staff has already identified all the aspects of the application that are in accordance with the regulations.

Vice Chairman Julian states in regards to the green infrastructure the township should make sure what is referenced in the report is suitable. He also states his concern for the increased volume of runoff water for the 100-year storm.

Mr. Ford says they will consider Vice Chairman's concerns and suggestions and will work with the Board engineer to make modifications to the quantity aspect. Mr. Ford explains they are connecting to an existing stormwater pipe, which connects to the basin in the community across the street, that also has a restriction. They are not asking to replace the pipe with a larger one.

Vice Chairman Julian reiterates this needs to be part of the review and discussion.

Mr. Hay reminds the applicant while they have shown compliance there is always a concern about volume and what it could do if the applicant thinks they can modify the 'wet pond' he does not see any reason to not work with them to address it. He would like to see them put together a point-by-point response to show what the reduction would be. He does not have any concerns but would like to look at the soil logs with respect to separation of seasonal hot groundwater as well as perched ground water conditions.

Vice Chairman Julian asks to verify what Dr. Obropta had brought up at the Environmental Commission meeting in regards to the green infrastructure.

Mr. Ford states it is green infrastructure (GI). He emailed the BMP manual to Dr. Obropta the following day. He will also provide the Township a copy from the NJDEP website which identifies the underground small-scale infiltration basins as qualifying for GI.

Mr. Hay asks Mr. Ford to read into record the tables in the BMP manual meeting GI requirements.

Mr. Ford is not sure of the exact section 9-6 or 9-7 is small scale subsurface infiltration basins. He again states he will send a copy to the Township.

Mr. Hay asks that the BMPs are pointed out in the introduction and conclusion of the revised stormwater report.

Vice Chairman Julian asks Mr. Ford to continue reviewing the points on page two of the Environmental Commissions report starting with the request for the applicant to provide calculations for the cut and fill.

Mr. Ford states they will do that.

Vice Chairman next addresses need for 97 additional parking spaces and the impact on stormwater.

Mr. Ford states the parking spaces will be addressed by facilities, when they testify regarding the ownership and operation of the property, along with their planner and traffic engineer. Mr. Ford explains how bank parking could be an option.

Mr. Hay agrees this is a common option especially in Somerset County.

Vice Chairman Julian next asks about air admissions. He states the Environmental Commission requests the applicant conduct an air quality analysis to assess the impact of the emissions from the diesel trucks and notes the community across the street consists of residents 55 years and old many of whom may have respiratory issues.

Mr. O'Grodnick states they are interview potential experts in the field.

Mr. Ford has found section of the BMP Manual in question, 9.8 Small-Scale Infiltration Basins.

Mr. Hay notes for small scale Green Infrastructure they want it at the source. If this is employed, they should have no issue.

Vice Chairman Julian points out the 'no idol' regulation that would need to be complied with.

Mr. Ford agrees.

Vice Chairman Julian references the 'four files' identified as not provided in the preliminary report dated April 29th. The Environmental Commission is requesting to see the draft preliminary assessment from peak, the 2021 site investigation report, the 2005 remedial investigation summary letter report and the 2007 remedial investigation work plan. They also asked for some discussion relative to the two NJDEP site remediation cases.

Mr. Ford agrees.

Vice Chairman Julian states the Environmental Commission requests information about attendance and the hours of operation. Next is the issue of the traffic impact analysis from Dolan and Dean dated July 22, 2022.

Mr. Ford states it would be addressed by the traffic engineer. He continues the vernal pool referenced in the report was explained by their expert, Mr. Aufferorde from EcolScience, at the Environmental Commission, but he will ask him to provide, in writing, what he stated at the meeting.

Mr. Hay asks if since they are seeking two General Permit number 10s, assuming they are crossing the wetlands, department approval will probably exonerate them of any further internal habitat of Threatened Endangered Species.

Mr. Ford states this is correct.

Mr. Hay explains the General Permits they will be seeking will show if there are any habitats that may be disturbed and specify the operation house for building the crossings.

Vice Chairman Julian asks if Mr. Auffenorde can provide that testimony too when he is before the Board.

Mr. Ford confirms.

Vice Chairman Julian continues stating in regards to truck traffic noise is also a concern so the Environmental Commission requests the applicant to submit a noise analysis to prove the increase of noise levels due to the truck traffic traveling on the roads will not increase above the residential noise standards.

Mr. Ford states he is not a noise expert.

Mr. Hay explains noise levels have to be measured from the point of noise. The noise expert can provide a report and testimony but Mr. Hay cautions they are going to have traffic operation going through ingress and egresses which is not typically done for vehicles. It is normally done for the idling ordinance and for generator facilities.

Vice Chairman Julian next addresses the Environmental Commissions request for the applicant to consider removing the extra parking spaces to allow the impacts to the Hillsborough Twp Stream Corridor to be zero.

Mr. Ford states they are considering this modification.

Vice Chairman Julian next addressed various issues with the EIS report including but not limited to inadequate alternatives, why a flood hazard area permit and verification are included which reference a different parcel of land and subdivision and tree mitigation plans showing different numbers. And in summary Vice Chairman Julian references the numerous public questions from the Environmental Commission meeting and reminds they are part of the record too.

Chairman Suraci asks who has control over the basin across the street.

Mr. Ford states they are not using the basin across the street, it is for runoff.

Mr. Hay clarifies it is one runoff point source but the point source will be controlled by an outlet control structure, he assumes in the wet pond.

Mr. Ford confirms.

Mr. Hay continues explaining the outlet control structure will control the three designated design storms that the DEP promulgates. That is what the applicant has to meet since this is a major development.

Ms. Smith asks if the basin across the street is already at flood point, for example at 100 yr. flood point, what will happen if more water is added in from the property in question.

Mr. Ford explains how the system and basin work in a rain event with a greater volume of water and a higher peak. He states they have had numerous conversations with the applicant about the public's concerns. The action they have taken is contacting the township to obtain a copy of the

drainage report for the project associated with the basin. Mr. Ford discusses findings when they did walk through in the area affected by Hurricane Ida.

Vice Chairman Julian states he has two questions about the wet pond. First, is there any kind of aeration to keep the water from getting stagnant and if so will the aeration feature be maintained by the applicant.

Mr. Ford confirms.

Vice Chairman Julian's second question is how far above level must the water get before dumping into the relief pipe.

Mr. Ford states as soon as water starts to rise above the permanent pole it will be allowed into the outlet control device and then into the existing pipe in Weston Road. Mr. Ford clarifies within the outlet structure there would be multiple different hydraulic mechanisms.

Chairman Suraci notes it is almost 10:30 pm and states the next meeting will start with the questions from the public.

Mr. Bernstein states his office gets transcripts for the meeting. Once received they will provide copies to the Planning Office and request they upload to Civic Clerk for access by the public well before the next meeting. Mr. Bernstein suggests the Board request information regarding the applicant's prospective tenant, mentioned in Mr. O'Grodnick's earlier statement. He also suggests the next witness, after Mr. Ford is done, be the applicant's representative rather than Mr. Dean to get an idea for the public and the Board as to how this proposal is going to operate.

Mr. Bernstein next states there is no schedule for Board meetings yet established for calendar year 2023 except for the reorganization meeting on January 12, 2023. He asks the applicant continue through January 12th but for the public's understanding the applicant will not be heard on January 12th due to other applications before this one.

Mr. O'Grodnick agrees and states if the members of the community want to meet with members of their professionals, perhaps review off-site impacts which they can address, he is happy to set that up.

Mr. Bernstein states they need to be made aware of those conversations after they occur. Mr. Bernstein states the final housekeeping item is a motion to continue the application to January 12, 2023.

A motion to continue the application to January 12, 2023 at 7:30 pm for the purpose of establishing new hearing dates without further notice and with extension on the time of decision through at least January 31, 2023 is made by Mayor Lipani, seconded by Mr. Peason.
No comments.

Roll Call:

Mayor Lipani - Yes
Vice Chairman Julian - Yes
Mr. Peason - Yes

Chairman Suraci - Yes
Ms. Smith (Alt #2) - Yes

Motion carries

Chairman Suraci reminds the Board their next meeting is on December 1, 2022

ADJOURNMENT

A motion to adjourn was made by Mayor Lipani, seconded by Vice Chairman Julian. Motion carries unanimously.

At approximately 10:30 pm the meeting is adjourned.

*Submitted by Robyn Bittle-Abramo
Recording Secretary*