

Township of Hillsborough – BOARD OF ADJUSTMENT

APPROVED Meeting Minutes

May 1, 2024 – 7:00 pm

Chairman Herbert called the May 1, 2024 Board of Adjustment meeting to order and led the flag salute.

NOTICE OF MEETING

Chairman Herbert announced 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 2024 Annual Meeting Schedule and additional meeting dates have 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 website <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

Present - Frank Herbert, Chairman	Present - Tom Ramsey
Absent - John Stamler	Present - Jim Wohlmacher, <i>Vice Chairman</i>
Present - Helen Haines	Present - Vivek Rao (<i>Alt#1</i>)
Present - Jarrett Dewelde	Present - Tim Lockburner (<i>Alt#2</i>)
Absent - Peggy Gladstone	

Also in attendance: Marcella McLaughlin, *Assistant Director / Zoning Official / Board Secretary*; Mark Anderson Esq., *Board Attorney (Woolson Anderson Peach, P.C.)*; Mark Mayhew, PE, CME, *Board Engineer (Pennoni Associates)*; Christina Restuccia, CCR, *covering Board Court Reporter*.

CONSIDERATION OF RESOLUTIONS

- None

CONSIDERATION OF MEETING MINUTES

- **March 6, 2024**, regular meeting
 - There was no further discussion.
 - Ms. Haines motions to approve the minutes as written, seconded by Vice Chairman Wohlmacher. All were in favor, none opposed, motion carries.

BOARD OF ADJUSTMENT BUSINESS

- None

BUSINESS FROM THE FLOOR

(Open to public comment for matters not on the agenda)

- None

PUBLIC HEARING - APPLICATIONS

- **Geoffrey and Kathleen Schwint - BA-24-02** - (TOD: 07/09/24-) - Block 151.05, Lot 2 – 25 Fine Road. Applicant seeking two “c” bulk variances for side yard and front yard (corner lot) waivers to construct an in-ground swimming pool on property located in the “AH” Zone/Affordable Housing District. ***Applicant’s notice was deemed insufficient and requests to be adjourned to the June 5, 2024, meeting agenda with re-notice.***

- 1) Chairman Herbert states the application will not be heard tonight.

- 2) Ms. McLaughlin gives background on the application stating the notice was deemed insufficient, only one of the two variances was noticed. They will be heard on June 5, 2024.
- **Bina and Brijesh Patel – BA-23-19** - (TOD 5/31/24 Ext) Block 203.23, Lot 38 (Formerly Block 203, Lot 15.C) - 14 Ivy Lane. Applicant seeking two "c" bulk variance for relief from maximum impervious coverage, where 16.2 % is existing, 17.1% is proposed, and 15% is permitted; minimum front yard setback along Wetherell Road) 50 feet is required and where 45.8 feet is proposed and; and reaffirm the existing nonconforming minimum side yard setback, where 30 feet is required , 28.1 feet is existing to retain existing improvements and construct a 305 SF. addition, on a corner property, located in the R, Residential Zone. ***Application was adjourned from the February 21, 2024, agenda, with re-notice.***
 - 1) Ms. McLaughlin introduces the application.
 - 2) Bina Patel is sworn in. Ms. Patel summarizes their application requests. She describes the current layout of the home and why it would be beneficial to make changes.
 - 3) Ms. Haines asks if there have been any additions or changes since they moved in and if the 300+ foot overage was pre-existing.
 - 4) Ms. Patel states they moved into the house in 2019 and have not made any changes.
 - 5) Ms. Haines asks why it was not possible to put a dry well in to compensate for the new 305 feet.
 - 6) Mr. Mayhew refers to the review letter, with a front cover date of January 9 and second page date of January 8, 2024, where they point out how the applicant's proposal will increase the impervious coverage on the lot above what is allowable in that zone. He explains impervious coverage and how the property is already exceeding what is permitted and that the proposed addition will increase it further. He explains stormwater BMPs, such as a dry well, have been required in similar situations. He explains what a dry well is and how it functions.
 - 7) Christopher Dougherty, architect for the applicant, is sworn in. Mr. Dougherty gives his educational and professional background.
 - 8) Chairman Herbert states the Board accepts his qualifications.
 - 9) Chairman Herbert asks if he has reviewed Mr. Mayhew's engineering report.
 - 10) Mr. Dougherty states he has.
 - 11) Mr. Dougherty states he understands the request for a dry well and will work on a design for the applicant.
 - 12) Ms. McLaughlin asks the Board if they will be remediating the 2.1% over 15.
 - 13) Chairman Herbert asks for clarification on the policy.
 - 14) Mr. Mayhew states there currently is not a policy.
 - 15) There is a discussion on what the quantities.
 - 16) Chairman Herbert opens to public questions for this witness.
 - 17) **Anthony Nicoli and MaryJane Butmy**, 16 ivy Lane. Ms. Butler asks how this will affect the runoff onto their property.
 - 18) Mr. Dougherty explains how the dry well will help alleviate this issue.
 - 19) Ms. Butler asks if someone will come witness what the current situation is.
 - 20) Mr. Dougherty states they could do that.
 - 21) Ms. McLaughlin states this is the first time she has heard about a drainage issue with this property but if they call the town, the engineering department will do an inspection.
 - 22) Chairman Herbert asks where the water on their property is draining from.

- 23) Mr. Mayhew states he will visit the property to review the concerns to determine where the water is coming from. He explains the suggestions the Board is discussing would make current drainage issues better.
- 24) There are no further questions from the public.
- 25) Chairman Herbert opens to public comment.
- 26) **MaryJane Butmy** and **Anthony Nicoli** are sworn in.
- 27) Ms. Butmy explains the issue of water in the rear of their, applicant and neighboring properties. She offers pictures. She explains the history of the properties. She states there is one drainage culvert and a second was recently put in, but the water issue has not improved, their backyard still floods.
- 28) Ms. McLaughlin recommends presenting their pictures and explaining the issue to the Tom Balenger in the Engineering Department, who will be able to look into if that area has been maintained correctly, how it was originally done, do a site visit etc.
- 29) Ms. Butmy discusses the debris that is being a neighbor's fence in this area which she speculates is contributing to the issue.
- 30) Ms. McLaughlin speculates this may be a drainage easement and items are being dumped illegally. She states Engineering can look at this as well since it would contribute to a drainage problem.
- 31) Chairman Herbert offers what the applicant is looking to do will aid to improving the water issue.
- 32) Mr. Nicoli discusses the issue of construction debris, from a previous project, not being properly cleaned up and ending up in their property.
- 33) Ms. McLaughlin clarifies this would be considered a property maintenance issue.
- 34) Ms. Nicoli asks if there is a rule for construction debris to be cleaned up within a certain time frame.
- 35) Mr. Anderson explains that is an enforcement issue, not in the purview of the Board, so she will need to connect with the township.
- 36) Mr. McLaughlin states the Health Department is the one they would want to contact. She will provide them with a name.
- 37) Mr. Nicoli reiterates their concern with the construction debris left by those who their neighbor has hired in the past and hopes that now they know there are concerns they will work to rectify the issue and not let it happen with any upcoming work.
- 38) Ms. Butmy adds they are not looking to prevent their neighbors from doing what they want on their property so long as it doesn't impact their property but due to a serious of issues over the last year, they now have concerns with how the project, specifically the clean-up, will be handled. She asks that debris from their projects be cleaned up in a timely fashion.
- 39) Chairman Herbert opens to public questions for this witness.
- 40) **Susan Gulliford** - 7 Hunt Club Road.
- 41) Ms. Gulliford asks what work the applicant had been doing as they previously testified, they had not made any changes since purchasing the property.
- 42) Ms. Butmy states she has no knowledge of what their project was, just that there was obvious construction debris in their yard for what seemed longer than necessary.
- 43) Chairman Herbert states the applicant will be able to address this.
- 44) Ms. Patel explains the construction was interior work, the addition of a closet. They were away for a portion of the project so were unaware of the debris issue for some time. The project took longer than anticipated.
- 45) Mr. Mayhew has no further questions.

- 46) Mr. Ramsey asks Mr. Mayhew if they would be able to quantify how much will be removed with regard to the walkway.
- 47) There is a discussion about this being part of the motion or resolution.
- 48) Chairman Herbert calls for a motion.
- 49) Vice Chairman Wohlmacher motions to approve the project with the understanding the stormwater will be mitigated down to 15% limit through reduction of impervious surface or stormwater management, i.e. drywell, seconded by Ms. Haines.

Roll Call:

Yes - Ms. Haines	Yes - Vice Chairman Wohlmacher
Yes - Mr. Dewelde	Yes - Mr. Rao (<i>Alt. #1</i>)
Yes - Mr. Ramsey	Yes - Mr. Lockburner (<i>Alt. #2</i>)
	Yes - Chairman Herbert

Motion carries

- **Hillsborough Crossings, LLC - BA-23-25** (TOD 5/21/24) - Block 178, Lot 18.01 (previously lots 17.01 & 18) - 692 Route 206, Hillsborough Township. Applicant seeking “d” use variance to increase previously approved variance for 10 one-bedroom units (BA-18-13) to 11 one-bedroom units on property located in the GA, Gateway A District. Adjourned from the April 3, 2024, agenda with re-notice.

Participants: Kevin H. Morse, Esq., Kevin H. Morse, LLC, - applicant’s attorney.

- 1) Ms. McLaughlin introduces the application for the record.
- 2) **Kevin Morse**, attorney for the applicant, introduces himself. He states his history with the application and explains the reasons for the application.
- 3) Mr. Morse asks Mr. Anderson to confirm there is jurisdiction so he may proceed.
- 4) Mr. Anderson states based on his understanding; everything is in order.
- 5) Mr. Morse summarizes his witness list: Felix **Borogaty**, principal of the applicant having testified on the original approval, Richard Schroeder, architect for the original project, Todd Gannet, licensed realtor, Allison Kopsco, from the original planning firm.
- 6) Mr. Morse gives the background of the application. He states the original site plan was compliant with required number of parking spaces and remains so plus one more spot; he offers Exhibit A-1, a color board with color photos. He states while the building is ready for occupancy, the applicant has been waiting over a year for PSE&G to power the building. And they have recently been informed the building is not ADA compliant. Mr. Morse explains the circumstances of **the ADA** compliance issue, that it was an over-site.
- 7) Mr. Morse asks in the spirit of cooperation if the Board were to look favorably on this application to specifically designate only a third Affordable Housing unit in the building.
- 8) Mr. Anderson asks him to be specific as to the range of affordable.
- 9) Mr. Morse states he believes it would be consistent as to the same range as the two other units previously designated for this building.
- 10) Mr. Anderson states he suspects the other two units are not the same, that one may be moderate, and neither is variable income as now is necessary.
- 11) Mr. Morse briefly confers with his client and states his client has agreed to let the Board determine the affordable range of the unit.
- 12) Mr. Anderson explains the three ranges and that it is not the Board which would make that determination.

- 13) Richard Schroeder is sworn in and states his professional background and licensing and confirms he was the original architect.
- 14) Chairman Herbert states the Board accepts him as an expert witness.
- 15) Mr. Morse asks Mr. Schroeder if the picture of the building is his original design.
- 16) Mr. Schroeder confirms and states it was the style the Township requested at the time.
- 17) Chairman Herbert asks what the style is.
- 18) Mr. Schroeder states it is an English Tudor type of style.
- 19) Mr. Morse asks if at the time of the original design they went through many different versions of styles until settling on the final and if along the way the ADA compliance element was accidentally overlooked.
- 20) Mr. Schroeder confirms.
- 21) Mr. Morse asks if one option for meeting the current standard is to place a one-bedroom unit on the first floor.
- 22) Mr. Schroeder states that is correct.
- 23) Mr. Morse asks where the first-floor unit would be located.
- 24) Mr. Schroeder describes the layout of the building; where to access the second-floor units and where the first floor is in relation.
- 25) Mr. Morse asks, for the record, if the current square footage of the ground floor of the building is 7,783 sq. ft. with a proposed reduction of 848 sq. ft. bringing the proposed total square footage of the remaining commercial space to 6,935 sq. ft.
- 26) Mr. Schroeder states this is correct.
- 27) Mr. Morse asks if the new apartment would be 904 sq. ft. which includes a small area under stairs in the original plans.
- 28) Mr. Schroeder states this is correct.
- 29) Mr. Morse asks if the proposed apartment can be constructed without any changes to the exterior.
- 30) Mr. Schroeder states not quiet and explains adjustments needed to window placement.
- 31) Mr. Morse asks if it is correct that no changes need to be made to parking or the egress of the building.
- 32) Mr. Schroeder states this is correct.
- 33) Mr. Morse asks if the proposed location of the ground floor ADA compliant unit is the logical place for such a unit.
- 34) Mr. Schroeder confirms and explains why it is an appropriate location.
- 35) Mr. Morse asks if the addition of the proposed unit would, in his opinion, negatively impact the architectural look of the exterior of the building and if the front façade would change.
- 36) Mr. Schroeder states it would not.
- 37) Ms. Haines asks what would prevent a member of the general public entering the ADA unit thinking it is a store.
- 38) Mr. Schroeder explains why the public would not use this entry.
- 39) Vice Chairman Wohlmacher asks if the access door was previously on the side and where the original access was to this space.
- 40) Mr. Schroeder explains there was previously a door on the side but that was not the access to this space.
- 41) There is a discussion about previous designs.
- 42) Mr. Morse asks Mr. Schroeder to confirm the side-entrance is for residential only, no commercial traffic uses it and the additional residential unit on the ground floor will enter in the same way as the other residence.
- 43) Mr. Schroeder confirms.

- 44) Vice Chairman Wohlmacher states it is still not clear what happened to the previous side door. It is determined this will be addressed by another witness.
- 45) Ms. Haines asks if all of the upstairs units are one-bedroom units.
- 46) Mr. Morse confirms they are no two-bedroom units, though some are studio units.
- 47) Vice Chairman Wohlmacher asks if the proposed entry into the first-floor unit is under the stairs to the second-floor units.
- 48) Mr. Schroeder confirms and explains how it allows to create an entry space.
- 49) Chairman Herbert asks how they would have solved the ADA compliance issue five-years ago.
- 50) Mr. Schroeder explains how they could have put in a lift, or elevator, but how that would have impacted the other units and second floor space and potentially causing a reduction in total units.
- 51) Ms. Haines asks if they are making four of the units COAH units.
- 52) Ms. McLaughlin and Mr. Morse explain there are two COAH units and that the applicant is offering to add an additional one.
- 53) Vice Chairman Wohlmacher asks what was the original reasoning was for separating residential and commercial by way of separate floors that no longer hinders the proposed design which includes them on the same level.
- 54) Mr. Schroeder states there was no architectural benefit but rather based on the owners request for a certain amount of commercial space and so separating by floor made sense. He states with the proposed design there is still a degree of separation and believes this satisfies all needs and maintains pleasant aesthetics.
- 55) Chairman Herbert opens to questions from the public for this witness. There are none.
- 56) There are no further questions from the Board for this witness.
- 57) Mr. Morse asks the Board profession if they have any questions as it pertains to the memo dated March 25, 2024.
- 58) Mr. Mayhew states that as it pertains to that memo they did not establish or identify any site issues to be concerned with, so they have no further comments.
- 59) **Felix Borogaty**, the applicant, is sworn in and reviews how he came to be the owner of the property.
- 60) Mr. Morse asks if originally the residential access was proposed to be on the front of the building.
- 61) Mr. Borogaty states this is correct and explains how the Board at the time suggested moving it to the side so as to better separate residential access from commercial.
- 62) Vice Chairman Wohlmacher asks if, when this space was supposed to be a commercial space if it had a door on the north side of the building.
- 63) Mr. Borogaty shows on the drawings where the door was proposed and states that door is gone.
- 64) There are no further questions for Mr. Borogaty.
- 65) **Todd Gannet** is sworn in and states his educational background and professional credentials. He is a licensed realtor.
- 66) Mr. Morse asks the Board that he be considered as an expert in the field of commercial real estate.
- 67) Chairman Herbert states the Board accepts his qualifications.
- 68) Mr. Morse asks details of Mr. Gannets commercial real estate experience.
- 69) Mr. Morse asks if, as a realtor, he has an opinion on if a ground-floor residential unit will impact the viability of this mixed-use building.
- 70) Mr. Gannet states it is his opinion that the commercial use will not be affected negatively and if anything, the commercial unit closest to the residential unit despite

- losing a few hundred feet will become a more usable unit, more conducive to certain types of businesses.
- 71) Mr. Morse asks if the residential unit will be visible to the public visiting the commercial spaces.
 - 72) Mr. Gannet explains how the residential unit will not be visible and the positive aspects of having this unit on the ground floor. He offers statistics on the number of residential units rented in Hillsborough Township and average time on the market.
 - 73) Chairman Herbert asks what the demand is for commercial space in Hillsborough.
 - 74) Mr. Gannet states it is improving and the absorption rate is between 10-15 months. He explains how it is improving.
 - 75) Chairman Herbert asks if these spaces will help with this.
 - 76) Mr. Gannet agrees and explains how it will aid the absorption rate. He states there is currently a sign outside the site and they have already had inquiries but due to the electricity issue they have not been able to move forward.
 - 77) Mr. Rao asks what types of business they are anticipating will be interested in the spaces.
 - 78) Mr. Gannet states they have **inquiries** in the food industry but they have explained that restaurants are not permitted. He states they have had an inquiry from a liquor store to combine two of the spaces. Laundry would be permitted as well.
 - 79) There are no further questions for Mr. Gannet.
 - 80) **Allison Kopsco** is sworn in and gives her educational background and professional credentials as a professional planner.
 - 81) Mr. Morse asks if she worked on the original plan.
 - 82) Ms. Kopsco confirms.
 - 83) Chairman Herbert states the Board accepts her as an expert witness.
 - 84) Mr. Morse asks if she has reviewed the proposed plan and visited the site.
 - 85) Ms. Kopsco states yes.
 - 86) Mr. Morse asks her to offer any professional opinions and conclusions she has reached based on analysis of the site and plans.
 - 87) Ms. Kopsco gives a summary of the application, reviews the requirements of mixed-use buildings for the zone and provides negative and positive criteria. She states in her opinion the site is suited for mixed use with the residential unit on the ground floor for several reasons including but not limited to: the site is twice the required size, existing environmental characteristics, serves purpose A of the MLUL, purposes E, G, and J.
 - 88) Ms. Kopsco states there is no substantial impairment to the zone plan or zone ordinance and believes it furthers numerous goals and objects which she reviews. She states it is not anticipated to have any substantial detriment to the public good.
 - 89) Mr. Morse asks if these are the same justifications and testimony that were originally placed on the application in 2019.
 - 90) Ms. Kopsco states that is correct.
 - 91) Mr. Morse asks if there is a benefit to the municipality, from the planning perspective to the applicants offer of adding a third COAH unit.
 - 92) Ms. Kopsco confirms and explains why.
 - 93) Ms. Haines asks if they are agreeable to any of the three COAH categories.
 - 94) Mr. Morse confirms.
 - 95) Vice Chairman Wohlmacher asks what the requirement is.
 - 96) Ms. Kopsco states she believes it is 20%.
 - 97) There is discussion about the zoning in the GA Zone.
 - 98) Mr. Morse clarifies they are modifying the mixed-use variance.

- 99) Mr. Ramsey asks if this unit may only be rented to people who meet the ADA requirements.
- 100) There is a discussion regarding compliance and terms.
- 101) Chairman Herbert opens to questions from the public; there are no.
- 102) There are no further questions for Ms. Kopsco.
- 103) The Board expresses their thoughts on the testimonies.
- 104) Chairman Herbert calls for a motion.
- 105) Vice Chairman Wohlmacher motions to approve with the condition of an added single designation of affordable unit to be designated by the Township, with a total of three affordable units, seconded by Ms. Haines.

Roll Call:

Yes - Ms. Haines	Yes - Vice Chairman Wohlmacher
Yes - Mr. Dewelde	Yes - Mr. Rao (<i>Alt. #1</i>)
Yes - Mr. Ramsey	Yes - Mr. Lockburner (<i>Alt. #2</i>)
	Yes - Chairman Herbert

Motion carries

ADJOURNMENT

A motion to adjourn was made by Ms. Haines, seconded by Mr. Ramsey. Motion carries unanimously.

9:00 pm meeting is adjourned.

*Submitted by Robyn Bittle-Abramo
Recording Secretary*