

Township of Hillsborough – BOARD OF ADJUSTMENT
APPROVED Meeting Minutes

March 5, 2025 – 7:00 pm

Chairman Frank Herbert called the March 5, 2025, Board of Adjustment meeting to order at 7:00 pm and led the flag salute.

NOTICE OF MEETING

Chairman Herbert stated this 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 Board of Adjustment 2025 Annual Schedule of meetings 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 website: <https://hillsboroughnj.portal.civicclerk.com/>. Complete application files are available in the Planning and Zoning Department for inspection, in accordance with the public meeting notice.

ROLL CALL

Present - Frank Herbert, <i>Chairman</i>	Present - Tom Ramsey, <i>Vice Chairman</i>
Present - Tim Lockburner	Present - Jim Wohlmacher
Present - Helen Haines	Present - Robert Movshin (<i>Alt#1</i>)
Present - Jarrett Dewelde	<i>Absent</i> - Mildred Molina (<i>Alt#2</i>)
Present - Marguerite Gladstone	

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

CONSIDERATION OF MEETING MINUTES

- **February 5, 2025** regular meeting
 - Vice Chairman Ramsey motions to approve the minutes as written, seconded by Ms. Haines, There were no further comments from the Board

Roll Call:

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

Motion carries.

CONSIDERATION OF RESOLUTIONS

- **None**

BOARD OF ADJUSTMENT BUSINESS

- **Cancellation of March 19, 2025, meeting**

- Chairman Herbert explains this meeting was originally added to the Board schedule in January 2025 in case a winter meeting was canceled due to snow. As this was not the case he suggests canceling the meeting.
- Ms. Haines motions to cancel the meeting, seconded by Ms. Gladstone. All were in favor, none opposed, motion carries.

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

- None

PUBLIC HEARING - APPLICATIONS

- **John Lazorchak - File BA-24-12** (TOD 06/30/25) - Block 11, Lot 18 – 703 Amwell Road. Applicant seeking "c" bulk variances and waivers to remove the existing shed; renovate and construct an addition to the existing single-family dwelling; construct a new patio and driveway; construct a new septic system, and associated improvements, on Property located in the AG, Agricultural Zone within the Neshanic Historic District (Site #26 on the National Register of Historic Places Inventory). Applicant carried without notice from the February 19, 2025 agenda. ***Applicant carried from February 19, 2025 agenda without further notice.***
 - 1) 7:03 pm – start of hearing.
 - 2) Chairman Herbert explains why the applicant needs to reschedule.
 - 3) There is a discussion as to when to reschedule.
 - 4) There is a motion and second to carry the application to June 2, 2025. All are in favor, none opposed, motion carries.
 - 5) 7:04 pm – end of hearing.
- **Chick-Fil-A - BA-24-05** - (TOD 04/30/25 EXT) Block 152.03 (previously Block 152), Lot 14 (previously Lot 36A) - 296 Route 206. Applicant seeks "c" bulk and "d" use variances to construct a 6,100- sf. Chick-fil-A, a quick service restaurant with dual drive-through lanes on the current Exxon gas service station, on property located in the OLC/Office Light Commercial Zone District. ***Applicant adjourned from the December 4, 2024, agenda with re-notice and has requested to be rescheduled to a future agenda TBD with notice.***
 - 1) 7:04 – Chairman Herbert summaries why the applicant is in need an undetermined amount of additional time before they are able to appear. He suggests withdrawing them from the schedule until they request to be put back on.
 - 2) Mr. Anderson recommends that the Board take no action this evening and review again at the application's TOD.
- **Yasir Farooq and Saba Yasir Farooq - BA-23-26** - (TOD 04/31/2025 EXT) - Block 40, Lot 8 - The property is currently vacant land in Flagtown, on the corner of Sixth Street and Clawson Avenue. The applicant proposes to construct a 2,397-sf. detached single-family residence and 1,056-sf. driveway and 583-sf. of walkways on .53 acres in the CR- Central Residential zoning district. The proposal requires three, "c" variances. The first "c" variance is for the front yard setback to Sixth Street where 35.25 feet is proposed and 40 feet is required. A second "c" variance is required for the existing non-conforming Minimum Lot Width at setback where 110 feet is proposed and 120 feet is required. The third "c" variance is for the construction of the detached single-family residence on an undersized lot without both public water and

sewer (property would have well water) where .53 acres is proposed and 2 acres is required (Per Chapter 188, Attachment 2, note 2). ***Applicant continued from the December 4, 2024 agenda with re-notice.***

Participants: Jordan S. Friedman, Esq., Applicant's attorney - Vastola & Sullivan; Ashraf M. Ragab, AIA., Architect – Amrarch Design Studio; Henry Hinterstein, LLA, PP, Professional Planner; Pam Mathews, PE, LS. Engineer – Van Cleef Engineering; Yasir Farooq and Saba Yasir Farooq – Applicant.

- 1) 7:07 pm – start of hearing.
- 2) **Jordan Friedman** introduces himself and summarizes the status of the application and lists his witnesses.
- 3) **Paul Christopher**, engineer for the applicant, is sworn in and states his educational and professional background.
- 4) Mr. Christopher reviews the plans created by Van Cleef Engineering which include the Plot and Grain Plan, Location Survey, and Soile Erosion Sediment Control Plan.
- 5) Mr. Friedman ask him to discuss the proposed site improvements and placement of a well,
- 6) Mr. Christopher discusses the Township Engineer's Report dated February 26. 2025 specifically items on which the applicant is not willing to comply.
- 7) Ms. Haines asks about interference tests.
- 8) Mr. Christopher discusses if interference tests are necessary or a requirement.
- 9) Mr. Anderson reminds of the Board's authority to make conditions.
- 10) Mr. Friedman objects to the application of ordinance 350-6 B & C.
- 11) Mr. Christopher summarizes the storm water report and discusses the comments which they have no issue with.
- 12) A Board member asks Mr. Mayhew to discuss his intention behind point number 14.
- 13) Mr. Mayhew discusses the road intersection and the deteriorating condition of the road.
- 14) Mr. Haines asks if they are proposing a paved driveway and if so why not also pave or fix-up the road area in front of the property as well.
- 15) Mr. Anderston asks questions pertaining to the possibility of combining Lots 6 and 7, and repairing impervious coverage,
- 16) Chairman Herbert asks if there were discussions with the owners of Lots 9 and 10 about possibly changing the property line and correcting the encroachment.
- 17) Mr. Friedman discusses options for dealing with the encroachment.
- 18) Chairman Herbert opens to questions from the public for this witness.
- 19) **Lynn Berry**, Sixth Street, asks questions pertaining to the current well and the proposed well
- 20) **Patrick McNaw**, 858 Riverside Dr., states he is a NJ licensed pump installer, asks about the integrity of the existing wells and offers some of industry information.
- 21) Mr. Christopher states wells are not his area of expertise.
- 22) Mr. Anderson suggests Mr. McNaw make a statement with his well knowledge during the public *comment* portion of the hearing.

- 23) **Adrian Dziwak**, 84 sixth street, asks if his basement will flood.
- 24) Mr. Friedman objects to the form of the question.
- 25) Mr. Christopher states they will be providing the storm water BMP per the Township Engineers recommendations which will also meet the state and manual BMP regulations.
- 26) Ms. Haines asks where the proposed swale will carry water to and will function well in both small and large storms.
- 27) Mr. Christopher explains how it drains away from Clawson.
- 28) Ms. Haines asks questions pertaining to flow of storm water.
- 29) Mr. Mayhew discusses water flow rate and is pertains to the swale.
- 30) Mr. Christopher discusses how the site currently drains toward the swale and where stormwater flows.
- 31) **Kevin Presley**, 76 Seventh St., asks how to tell how the water currently flows on the lot and if the water table will change once the area is flattened and foliage and such are removed.
- 32) Mr. Christopher explains how they analyze a lot in its current stage and proposed state.
- 33) **Santiago Urosa** asks if he has seen the larger map of the Flagtown area which shows the flooding that happens around the park area.
- 34) A Board member asks if their plan is to do no harm, is there a plan capable of improving water flow.
- 35) **Colleen Colber** states she is the neighbor with the encroachment and asks what would happen to her property if the gravity drain was removed.
- 36) Mr. Christoher states he does not know the answer to her question.
- 37) **Chris Colber** explains the gravity drain running from their house.
- 38) Mr. Anderson ask clarifying question regarding placement of the gravity drain, how it functions and where it drains currently.
- 39) Chairman Herbert asks him to point out on the map where the gravity drain is located.
- 40) Mr. Mayhew points out a note on the drawing on Plot and Grading Point which points out a four-inch PVC vent pipe discharge from adjacent lots nine and ten.
- 41) There is a discussion about the possibility of relocating the pipes.
- 42) **Graham Watts**, Ninth St. and Clawson Ave., asks the intent or purpose of the ordinance requiring two acres for a lot to have a well
- 43) Chairman Herbert and Mr. Anderson explains the ordinance .
- 44) Ms. McLaughlin states the ordinance is in every residential zone.
- 45) **Kevin Gervono**, 750 Clawson Ave., asks what the impervious coverage percentage is and if there is a way to determine where the displaced water will go.
- 46) Mr. Christopher states he is not sure he understands the extent of the question but are working to meet all the requirements.
- 47) Mr. Wohlmacher asks how deep the basement will be in the proposed building and if it will have a sump pump in it.
- 48) Mr. Christopher states he does not know the answer to these questions.
- 49) Mr. Mayhew notices the basement depth and grading info on one of the submitted documents.

- 50) There is a discussion regarding the possible need for sump pumps.
- 51) Mr. Urso asks if the plans include a patio or door footprint including impervious coverage.
- 52) Mr. Christopher states there is going to be a deck.
- 53) There are no further questions from the public.
- 54) Chairman Herbert calls for a ten-minute recess.
- 55) Chairman Herbert calls the meeting back into order.
- 56) **Henry Hinterstein**, applicant's planner, is sworn in and states his educational and professional background.
- 57) Mr. Friedman asks if he has visited the area and if so to give a summary of the sight and neighborhood.
- 58) Mr. Hinterstein submits Exhibit A-1 tax map over leigh of the neighborhood and discusses. He explains why he believes the 10 ft variance is de minimis in nature and makes the lot width impossible to correct without causing issues for the neighboring lot. He discusses negative criteria, lot widths of neighboring homes and possible impact on neighboring properties.
- 59) Mr. Hinterstein reviews positive criteria and relevant case law pertaining to undersized lots. He reads into the record a portion of Graves vs Bloomfield 1967. He also reads the purposes of zoning as outlined in the MLUL.
- 60) Ms. Haines asks about the size of the proposed house and if the size fits in with the neighborhood. Mr. Hinterstein and Ms. Haines discuss neighborhood character, home sizes, requirements and different size options. Ms. Haines expresses concern the proposed size is does not fit in with the neighborhood.
- 61) He discusses the rear and front yard set-back.
- 62) Mr. Anderson asks about the zone pattern on the other side of Clawson Ave.
- 63) Chairman Herbert opens to questions from the public for this witness.
- 64) **Lynn Berry** asks questions pertaining to the legal case Mr. Hinterstein referenced and how it applies to Flagtown. She asks if he saw any other two-story houses in the neighborhood.
- 65) **Kevin Presley** asks where in Flagtown he saw similar sized houses.
- 66) There is a discussion about square foot of the house foot print vs the entire floor area of the house. Mr. Hinterstein is not able to provide the measurement for the interior floor area of the house.
- 67) There are no further questions from the public for this witness.
- 68) Chairman Herbert asks if their architect is still present to clarify questions on the overall square footage of the house.
- 69) Their architect was not able to remain at the meeting.
- 70) Ms. Haines asks for clarification on if the house is four bedrooms or three bedrooms with a study, how the rooms will be utilized with the current potential owners and with future owners. She expresses concern with the impact on the well if it is used as four bedroom in the future.
- 71) Mr. Friedman states they have no more witnesses.
- 72) Chairman Herbert opens to comments from the public for this application.

- 73) **Patrick McNaw** is sworn in and states he is a NJ licensed well installed for 45 years. He stated his concerns with drilling the proposed well so close to the existing well as those are all grandfathered in. He explains NJ current requirements are 50 feet of casing while Flagtown requires 80 feet due to contamination. He states his concern for how the older wells, which have less casing, will be impacted by a new, deep well. He is concerned it will cut their water off.
- 74) Mr. Anderson explains since some of his testimony is based on his professional experience he should submit his credentials to the Board for consideration, as witnesses do, so the Board may decide if they accept his qualifications. Mr. Anderson explains further why this needs to be done.
- 75) Mr. Anderson asks him to state his qualifications again.
- 76) Chairman Herber states the Board accepts his qualifications as an expert.
- 77) Mr. Friedman objects to the Board will be listening to testimony based on experience and no reports and studies to back-up the expertise.
- 78) Mr. Anderson acknowledge the objects and explains why the Board is able to proceed.
- 79) Mr. McNaw states residents are concerned with the impact the new well will have on their wells and he explains possible impacts including water becoming dirty or being cut-off.
- 80) Chairman Herbert asks him to explain who this would happen.
- 81) Mr. McNaw discusses possible scenarios. He states they follow state regulations which require a well to be 20 feet from the house and 100 feet from another well but suggests running a scope underground to better understand the water table and bring in an appropriate environmental expert. He reminds that in Flagtown there is a rule that the well must be drilled before construction of the house. He states he has never drilled a well on a lot as small as this one and know of two well companies who have already turned down the job.
- 82) Chairman Herbert asks when does an interference test fail and how is it quantified
- 83) Mr. McNaw states if the water level drops dramatically and dries the well but he cannot testify to quantification as it has been a long time since he has performed an interference test.
- 84) Mr. Mayhew states he reviewed plans and it appears Lot Nine has a well approximately 140 feet from the proposed new well location.
- 85) Ms. Haines asks this helps with the aquafer issue.
- 86) Mr. Mayhew states he cannot comment on that as there is no information submitted on the aquafer.
- 87) Chairman Herbert asks him to discuss what would cause water to turn dirty and how long would it last.
- 88) Mr. Friedman asks if he received written notification of the application, aware of the December 2024 meeting and aware of the meeting that was scheduled for June 2024.
- 89) Mr. McNaw states he does not live within 200-feet for written notifications but friends who were notified him and expressed concern. he was in attendance at the December 2024 meeting and was aware of the schedule June 2024 meeting.

- 90) Mr. Friedman asks if during the past nine-months it has always been his intention to offer comments when the opportunity presented itself.
- 91) Mr. McNaw confirms and explains he lives nearby and services majority of the neighborhood wells; some of the people are friends, some are customer and states he is here for those people and looking out for their welfare.
- 92) Mr. Friedman asks if between the initial notification of the application and today he has done any studies particular to this property and well and or prepared any kind of reports.
- 93) Mr. McNaw states no.
- 94) Mr. Friedman asks why he did not do those things.
- 95) Mr. McNaw states he is there to state his opinion.
- 96) Mr. Friedman asks with regard to needing to drill down 80 feet, has he had to replace any wells in the area.
- 97) Mr. McNaw states yes and explains he has had to deal with pump failures. He explains the difference between replacing a well and installing a new well. He discusses the impact of the current drought on wells.
- 98) **Barbara Merdinger**, 767 Clawson Ave, is sworn in. She discloses a conversation she had with the previous owner of her house at the time of purchase, many years ago; he explain after the construction of a house across the street, the well (at 767) went dry and had to be drill a new well.
- 99) **Kevin Presley**, 76 Seventh St., is sworn in. He discusses his experience with their well three years ago during a summer draught, their decision to retain their well rather than spend \$30,000 on a new one and he discusses the concept of case law as it pertains to allowing development on an undersized lot, “flag lot” and the possible impact of starting the trend of building on flag lots in Flagtown.
- 100) **Colleen Koval** is sworn in. She discuss an issue they had with their well 10-years ago when the water was brown and they had conserve. She states while it took about a month to return to normal they have adjusted their usage habits to compensate and even more so during times of draught such as currently. She asks if an escrow or bond is something the Board would consider in case area wells did go dry.
- 101) Ms. Haines asks the size of her house.
- 102) She states it is a cape cod style house which they recently put an addition on.
- 103) Ms. Haines asks if it is around 4,600 square feet and if not how many bedrooms her house has
- 104) Ms. Koval states her house is about 1,300 square feet and has 4 bedrooms one of which is only 8'x9'.
- 105) Mr. Friedman states their response to the inquire about the lot was they would be interested in purchasing a portion of the lot, he asks if they would consider purchasing the whole lot.
- 106) Ms. Koval states possibly, but it is her understanding that buy law it would have to be purchased at the value it was granted for development.
- 107) Mr. Friedman asks for a recess to speak with his client.
- 108) There is a 10-minute recess.

- 109) Mr. Friedman states the parties are not going to enter into a transaction.
- 110) **Santiago Urosa**, 59 Fifth St., is sworn in. He explains his property is located at the end of Sixth St. and discuss the current state of yard is very “swampy” due to the water that comes down Fifth St. He discusses the “water run” in the area and how it is currently already full. He expresses concern the water situation will get worse with more construction.
- 111) **Adrian Dziwak**, 84 Sixth St., he describes the current state of his back yard as “a mudslide” and discusses his concern with his well drying out with construction.
- 112) **Lynn Berry**, is sworn in, states she would like to re-enforce the suggestion for an escrow or bond account for the area to protect their wells.
- 113) There are no further comments from the public.
- 114) Mr. Friedman has no further witnesses and states he renews their request for an approval. He states they believe this application proposes appropriate use of the property on appropriate scale and fits in well with the residential district. He acknowledges the hardships the applicant will have to endure and notes they are from pre-existing conditions. He states they tried to work with the neighbor who had an interest in purchasing the property, but they could not make it work.
- 115) Mr. Anderson suggests the Board not deliberate tonight but rather spend some time considering tonight’s testimony and reviewing previous testimony as this application spanned three meetings over six months.
- 116) Mr. Wohlmacher states he is still curious about the interference test and what sort of information it would provide.
- 117) Mr. Anderson explains his understanding of the purpose and relevance of the interference test.
- 118) Board members discuss the issues with this property and application, the possibility of adding a condition of an interference test and dates if they carry the application.
- 119) Mr. Anderson explains the consequences of a failure to extend.
- 120) Board members state they would like some time to think on the matter but if the applicant wants a decision tonight, they will respect that.
- 121) Mr. Friedman states the Board should deliberate as they see fit.
- 122) Mr. Wohlmacher motions to carry the application to April 2, 2025 without notice, seconded by Mr. Movshin. All are in favor, none opposed. Motion carries.
- 123) Mr. Anderson explains to the public the Board has voted to carry the matter to April at which time they will render a decision but there will be no more testimony.
- 124) 10:15 pm – end of hearing.

ADJOURNMENT

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

10:17 pm meeting is adjourned.