

**MINUTES OF THE PLANNING BOARD MEETING**  
**Thursday, May 26, 2022**

**Present:**

Chairman Larry Lonergan

Mayor Alex Roman

Councilman Jack McEvoy

Mr. Al DeOld

Mr. Jesse Lilley

Mr. Greg Mascera, Planning Board Attorney

Vice Chair Jessica Pearson

Mr. Steven Neale

Mr. Tim Camuti

Mr. Jason Hyndman

Mr. Jeremy Katzeff

Ashley Neale, Planning Board Secretary

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Meeting called to order at 7:32PM by Chairman Lonergan.

**Pledge of Allegiance:**

Chairman Lonergan reads Open Public Meetings Act Statement.

**Public Hearing**

Chairman Lonergan asks if anyone from the public would like to address the board on topics not on this meeting's agenda. No one from the public came forward.

**Approval of Minutes**

Chairman Lonergan asks for a motion to approve minutes from a Regular meeting held on April 28, 2022. Mr. Hyndman makes the motion, Mr. Katzeff seconds. Councilman McEvoy and Vice Chairman Pearson note that they recused themselves from the discussion on 176-200 Bloomfield Avenue. Councilman McEvoy and Mayor Roman note they recused themselves from the application regarding 4 Arnold Way.

Vice Chair Pearson makes the motion, Mr. Freschi seconds. All present vote in favor. Mr. Camuti clarifies that on page 5 he meant an extremely large house was a hypothetical.

**Resolutions**

Vice Chair Pearson asks for a motion to approve resolution 2022-03 approving the Minor Sub-Division for 86 Durrell Street. Mr. Hyndman makes the motion, Mayor Roman seconds. Mayor Roman, Mr. DeOld, Mr. Freschi and Mr. Hyndman all vote in favor of approving the resolution.

**Sub Committee Updates**

Vice Chair Pearson notes that at the last sub-committee meeting they discussed Business Improvement Districts (BIDS) and Special Improvement Districts (SIDS). She notes they reviewed public input from the survey and Community Workshop. Mr. Camuti gives a brief overview of this committee's discussion regarding the Goals and Objectives portion of the Master Plan. Vice Chair Pearson notes that H2M has laid out a schedule and hope to submit a draft to the committee by May 11. Mr. Freschi asks about BIDS & SIDS and Mr. Mascera explains how that could be incorporated into the Master Plan.

## **Hearing Application 2022-01 for 4 Arnold Way- Continued from March 24**

Mayor Roman and Councilman McEvoy recuse themselves from this application, noting it was discussed privately at a Township Council meeting.

Mr. Alan Trembulak introduces himself as the attorney for the applicant, Michael Nicholson. He notes that the applicant is requesting a Minor Sub Division requiring variances. Mr. Mascera notes that anyone sworn in at the last meeting is still under oath. Mr. Trembulak notes that after discussions at the last meeting, they have decided to submit an alternate plan. Mr. Trembulak notes that the new plan will require two variances, one for lot area on the lot with the existing home and the other for lot width on the new proposed lot. He states that the lot area required for this zone is 12,000 square feet and 11,115 is proposed. He adds that the width required is 100 feet and they are proposing 85 feet for the new lot. Mr. Trembulak testifies that they have received Mr. DeCarlo's revised report and agree to any stipulations he included.

Vice Chair Pearson asks why the steep slopes on the plan stop in the middle of the lot. Mr. Trembulak responds that it was most likely done because nothing would be built in that rear section of the property. He adds that anyone looking to develop that site would have to comply with all Township Ordinances, including the tree removal and steep slopes. Mr. Katzeff asks if they would consider moving the lot line a few feet to become fully conforming. Mr. Nicholson notes that it would make putting a house on the new lot difficult. Mr. Trembulak notes that at the last meeting Mr. Steck testified that they would consider dedicating a portion of the property allowing Arnold Way to extend to the rear. Mr. Katzeff comments that another Arnold Way resident submitted a letter to the Board expressing concerns regarding snow removal. Mr. Katzeff suggests putting in catch basin to help with any drainage issues on the property. Mr. Trembulak notes his client will be willing to comply with any drainage improvements deemed necessary by the engineer.

Exhibit A3- Morgan Engineering Revised Sub-Division April 4, 2022 was marked into the record.

Mr. Hyndman asks about installing a seepage pit to mitigate storm water on the existing lot. Mr. Nicholson testifies that he has installed a dry well in the yard that two leader drains are tied into, adding it is about 4 feet wide and 3 feet deep. Mr. Camuti asks if there are any perspective buyers with plans for the new lot. Mr. Nicholson states there are none at this time. Vice Chair Pearson asks how large the easement is, Mr. Trembulak notes the easement is 15 feet wide. Vice Chair Pearson asks if driveways were typically 10 feet wide, then the easement would be approximately 5 feet. Mr. Trembulak states that is correct. Vice Chair Pearson voices her concerns about snow removal on the street. There is discussion on paving the right of way and possibly dedicating it to the Township. Mr. Mascera explains how the Board can be made as a condition of approval, but it is only a hypothetical at this time. Mr. Camuti asks if they spoke to the owners of 80 Fairview, the property directly behind. Mr. Nicholson states he has, and the neighbor did not have any comments one way or the other regarding this application.

Vice Chair Pearson asks if anyone from the public has any questions. Carine Zemokhol from 88 Fairview Avenue asks when Mr. Nicholson first purchased the property was he intending to sub-divide. Mr. Nicholson notes he was always intending to sub-divide the property. Ms. Zemokhol asks if he plans to put an addition on the existing property. Mr. Nicholson notes he does not.

Vice Chair Pearson asks if anyone from the public has any comments for the applicant.

Paul Grimes from 2 Arnold Way- Gives a history of Arnold Way and the previous owner of the subject property. He comments that water from the subject property flows down to his property during heavy storms. Mr. Grimes comments on the traffic concerns, noting Arnold Way is a narrow street and cars have difficulty maneuvering. He adds that the street cannot support another house or the construction vehicles and equipment associated with this project.

Carine Zemokhol and Nick Fradete from 88 Fairview- Notes her concerns about traffic on the narrow street. She comments a UPS truck has hit her car trying to get in and out of the street. She comments her concerns for increased water runoff, adding she has videos of water coming from the property and flowing down Arnold Way. They both note concerns for another house and any tree removal adding to the water issues.



Paul Duffy from 5 Arnold Way- Comments on the slope portion of the property, noting that it would be impossible to pave or plow in that area. He adds his concerns about snow plowing making the street even narrower during winter months. He comments that if the Township were to get involved he would like to see money put into the Green Acres portion instead of paving the right of way.

Mr. Trembulak explains that the traffic concerns on the street are an existing condition that the applicant has no control over. He notes that adding one house would not significantly increase the amount of cars coming or going on the street. He comments that the water runoff is also pre-existing and it is not the applicant's responsibility to improve that condition. He adds the applicant has to mitigate any additional run off created by the project and any developer would have to comply with the Township's storm water ordinance and be subject to review by the engineer. He notes that would be the same for the steep slopes, a developer would have to comply with the ordinance prior to construction. Mr. Trembulak reiterates the variances being requested, one for the lot width of 86 feet where 100 is required and the other for the area of 11,115 square feet where 12,000 is required. He adds there are other non-conforming houses on the street, and that a hardship is created due to the size of the lot. He reiterates that they applicant agrees to comply with all the comments made by Mr. DeCarlo in his review letter.

Vice Chair Pearson asks the Board to deliberate. Mr. Katzeff comments he has concerns about the water runoff, he suggests making conditions regarding catch basins or other mitigation measures on the east side of the property. He adds he feels this property would be a good candidate for an Open Space purchase. Vice Chair Pearson comments her concern about the environmental features of the property making it difficult to develop. Mr. DeOld asks if they are looking at things the wrong way, noting that the applicant is asking for a sub-division with no intentions of developing the property and if someone wanted to develop in the future these concerns should be addressed then. Mr. Hyndman notes that because they require variances they need to prove hardship and positive and negative criteria. He notes that he has not seen evidence that this is not a self-imposed hardship. Mr. Freschi comments that he does not see any value to the neighbors or Township. Mr. Lilley notes his concerns regarding steep slopes and excess water on the property. He adds concerns regarding emergency vehicles being able to access the street. Mr. Camuti echoes the concerns of the other Board members, adding he would like to see the lot be conforming.

Vice Chair Pearson asks for a motion. Mr. Hyndman makes a motion to DENY Application 2022-01 for 4 Arnold Way. Mr. Freschi seconds. Roll call is taken, and the votes are as follows.

Deny: Mr. Katzeff, Mr. Lilley, Mr. Hyndman, Mr. Freschi, Mr. Camuti, Vice Chair Pearson

Approve: Mr. DeOld

Vice Chair Pearson notes that she has to recuse herself for the rest of the meeting and Mayor Roman will continue as Chair.

Mr. Trembulak notes that he is also the attorney representing Application 2022-03 Minor Sub-Division for 19 Parkhurst Place. He notes that he is requesting the application be pushed to the May 26 meeting, with no new notice being required.

The Board takes a break at 9:07 PM and Mayor Roman calls the meeting back to order at 9:17 PM. Councilman McEvoy notes he has to recuse himself due to his proximity to the property.

### **176-200 Bloomfield Avenue – Request for Reconsideration for Extension of Approval**

Derek Orth from Inglesino, Webster, Wyciskala & Taylor notes that he is the attorney representing Mr. Michael Harrison regarding the request for reconsideration. Mr. Mascera gives a brief background and recommends that the Board hear out the applicant on the merits of whether the approval should be extended. Mayor Roman asks for the Board's input. Mr. Hyndman notes he is in favor of allowing them to present their argument, but believes the Board did make a substantive decision based off what was presented to them at the last meeting. Mr. Camuti, Mr. Lilley and Mayor Roman all agree.



Mayor Roman asks for a motion to allow the applicant to proceed, Mr. Camuti makes the motion, Mr. Hyndman seconds. All present vote in favor.

Mr. Orth continues by giving a background on the application. Noting that the Planning Board granted Preliminary and Final Site Plan approval to the applicant in June of 2015. He adds the application called for construction of a 3-story building with approximately 19,000 square feet of retail and commercial space on the first and second floors, and residential apartments on the third. He notes that the application was appealed and the applicant had an initial trial in December of 2016. He continues describing the court history of the applicant, concluding that the appellate division issued a decision affirming the Board's approval on April 2, 2020. Mr. Orth briefly describes the section of the Municipal Land Use Law pertaining to extension of approvals, and notes that Mr. Harrison is here to testify that due to the COVID-19 pandemic his project was significantly delayed. Mr. Orth testifies that on January 28, 2022, they received recertification from the Hudson-Essex-Passaic Soil Conservation District, and in March 2022, the applicant submitted plans to the Township for resolution compliance review. He comments that on March 31, 2022 the Township Engineer confirmed that the applicant's plans were ready for signatures by the Board chairperson and secretary. He adds that County Planning Board approval was obtained in 2017, and they will reconfirm with the County per a comment in the Engineer's report.

Mr. Orth calls Mr. Harrison as his witness. Mr. Mascera swears in Mr. Harrison. Mr. Harrison gives a brief background noting he is the principle owner of DMH 2, LLC, and he originally was only financing the project. He comments that he has incurred many costs pertaining to the project, and that he does have a contract to sell contingent on the extension of approval. He notes that he took ownership in July of 2021 because the previous owner of the company ran into financial hardships and had a physical illness. He comments that it was difficult to get things done because of COVID, specifically with the engineers and Township. He notes that the previous owner attempted to sell but was unable to find a buyer. He adds that in the fall of 2021 he had to obtain a new engineering firm, who had to redo the plans that were then submitted for resolution compliance in March of 2022. Mr. Harrison notes that as part of the approval process he was required to demolish the house located on the property and he has done that. Mr. Orth notes that all this was done during the State of Emergency, which was only lifted in March of 2022. He adds that in the early part of the of the state shutdown no construction activities were allowed to occur. Mr. Harrison states that he believes they have done everything in their power to get things done in the last two years since the court decision, and feels that the extension should be granted.

Mr. Hyndman asks if Mr. Harrison has applied for the COVID Permit Extension Act by registering the approval. Mr. Harrison responds that he took over in July of 2021 and was not aware of that option. Mr. Orth notes that just because he did not file with the state does not undermine the reason the state enacted that provision. Mayor Roman asks how long Mr. Harrison has been part of the LLC. Mr. Harrison notes that Dennis Handel started the LLC in 2012 and purchased the property. Mr. Harrison states he was originally only involved in the financing part of the project. Then in July 2021, Mr. Handel conveyed his entire ownership to Mr. Harrison. Mr. Katzeff asks Mr. Harrison what his profession is. Mr. Harrison notes he is an attorney involved in debt collection. Mayor Roman asks what was the earliest DMH2 could have proceeded with obtaining the last of the government approvals, and what happened between April 2020 and January 2022. Mr. Orth notes that the applicant obtained recertification from the Hudson-Essex-Passaic Soil Conservation in January of 2022. He notes that there was a stay at home order in place and construction was shut down, therefore nothing could happen. He adds that from April 2020 to July of 2021 Mr. Harrison was not the owner of the property. Mr. DeCarlo asks if plans were submitted to the County or State for approvals. Mr. Orth notes they have County approval from 2017 but have no resubmitted at this point. Mayor Roman asks when the last tax payment was made on the property. Mr. Harrison comments he does not recall but may have been December of 2020 or January of 2021. Mayor Roman asks when the property was put up for sale and why DMH2 decided not to develop. Mr. Harrison states he believes the property has been for sale since the approvals came about and that Mr. Handel was having financial difficulties. Mr. Mascera asks when Stonefield Engineering was hired to move the project forward. Mr. Harrison notes it was September or October of 2021.

Mr. DeOld asks about compliance with new Township ordinances. Mr. Mascera explains that if the extension were granted they would only have to comply with ordinances in place at the time of approval, and explains the balancing system the Board should use to determine if the extension should be granted. Mr. Orth continues explaining by noting



there is a flexible extension test and a mandatory extension test under the statute. Mr. Mascera clarifies that the statute reads, "Shall" and would be subject to reasonable satisfaction of proof to the Board.

Mayor Roman asks if the Limited Liability Corporation was always DMH2, LLC, and if so why should the Board take into consideration the Mr. Harrison was not the previous owner. Mr. Harrison notes it has always been DMH2 LLC, and that he believed Mr. Handel did diligently work towards getting the approvals. Mr. Orth notes that Mr. Handel obtained the initial Site Plan approval, County Planning Board approval and the initial Hudson-Essex-Passaic Soil Conservation certification. He adds that Mr. Harrison has not taken the project through resolution compliance and obtained recertification from the Soil Conservation. Mr. Orth reiterates there were several months that no work could be done under the law. Mayor Roman asks if any paperwork could have been submitted during that time. Mr. Orth notes that because of the pandemic government, offices were closed and little could be done.

Mayor Roman asks if anyone from the public has any questions for Mr. Harrison.

Kim Shafer from 17 Westview- Asks how he can say he did not know when he was part of the project since 2012, even if just financially. Mr. Harrison notes he just financed the project.

Monica Vincent from 36 Montclair- Asks if any applications were submitted from 2020 to 2021 and how Mr. Harrison was aware he needed to attend tonight, since he did not attend that last meeting. Mr. Orth notes his is a real estate attorney and he instructed his client to attend.

Lars Sternas from 16 Montclair- Asks when were plans submitted from resolution compliance review. He asks about the back property taxes owed. Mr. Harrison responds that they contacted the town regarding resolution compliance in July of 2021, and that if they taxes need to be paid he will pay them.

Sarah O'Farrell from 27 Westview- Asks why Mr. Harrison did not attend the last meeting, and why the taxes are unpaid. Mr. Harrison reiterates he was not aware he was required to attend.

Terry Moore from 17 Westview- Asks if he is aware of changes to the ordinances since the application was approved. Mr. Harrison notes he is aware and has discussed with the engineer.

Mr. Orth asks for a 2-minute recess at 10:21 PM the meeting is called back to order at 10:24 PM.

Mr. Orth calls Mr. Jonathan Tiger from Monarch Homes as his next witness, and Mr. Mascera swears him in. Mr. Tiger notes that he is the contract purchaser of the property. He adds that he is a developer who has developed numerous properties throughout New Jersey. Through Mr. Orth's questions, he notes that he is familiar with the construction permitting process, and it would take approximately 3 months to obtain building permits for this project. He adds that he has been in contact with architects and contractors that are prepared to move the process along quickly if the extension were to be granted.

Mayor Roman asks for a background on how he became the contract purchaser. Mr. Tiger notes his father is in real estate and thought he may be interested in it and that was in the fall of 2021. Mr. Mascera asks when an agreement in principle was made with Mr. Harrison. Mr. Tiger responds it was about six to eight weeks ago. Mr. Mascera asks if he participated in supervising any of the professionals preparing the plans. Mr. Tiger states that he was only authorized to ask questions

Mayor Roman asks if anyone from the public has questions for Mr. Tiger.

Lars Sternas from 16 Montclair. Asks if he believes the project is a reasonable plan for the location. Mr. Tiger notes he is not a planner but in his opinion, it is.

Sarah O'Farrell from 27 Westview- Asks if he is currently financially involved in the property, and if he has any experience developing a project of this scope. Mr. Tigers states he has made a deposit for the purchase but other than that no. He adds he has experience with multi-unit dwellings specifically 23 townhomes in Toms River.

Mayor Roman asks for any members of the public wishing to make a comment on the topic.

Mary Purcell from 15 Westview- Voices concerns for the blasting affecting her house, and the noise associated with construction.

Chris Budesza from 28 Sylvan- Comments that the year gap where nothing was done is not on the Township, it is on DMH2 adding they should have been applying for the permits.



Lars Sternas from 16 Montclair- Comments that they could have submitted permits a year ago, adding 2 years is ample time and the clock does not start when Mr. Harrison took over. He adds that there is concern that the applicant could run out of money and take a long time and there would be a gaping hole in the middle of Verona.

Lauren Yannon from 23 Montclair- Comments that she is HR and does not feel the applicant is showing any accountability. She comments concerns for the noise from blasting on her 2 year old. She feels that there were many sad excuses made by the applicant.

Kim Shafer from 17 Westview- Comments that the house on the property was torn down about a month ago, and she feels she is the only one who received a letter.

Sarah O'Farrell from 27 Westview- Comments that under the law they must prove that they moved forward with diligence, noting he has had years and not proceeded with acquiring necessary permits. She adds he has not paid his taxes or previous engineer. She comments that COVID should not be blamed and that the Verona Environmental Commission reviewed 12 site plans in 2020 and 26 in 2021. She does not feel that anything new was presented and believes the Board should deny the extension.

Terry Moore from 17 Westview- Comments he is against the extension and feels this project would destroy the neighborhood.

Monica Vincent from 36 Montclair- Thanks the Board for allowing the applicant to be heard, noting it shows the spirit of Verona. Comments that she is not in favor of the extension, adding nothing barred the applicant from moving forward. She applauds the committees that protect the Township ordinances.

Beth Shorten from 21 Montclair- Comments this project has been full of bad decisions but feels the Board made a good decision in denying the extension last month and would like to see good decisions moving forward.

Mr. Orth gives a brief closing statement, reiterating that the applicant was delayed due to the COVID 19 pandemic.

Mayor Roman notes the Board will deliberate each section of the statute separately. Mr. Mascera explains section A of the statute, noting the Board has to consider if the applicant took the necessary steps to prove he acted upon the application in order to grant the extension. Mr. Mascera explains that under section D of the statute the Board has to decide if the applicant has made diligent effort but has not acted upon the approvals, requiring a balancing act. Mayor Roman asks the Board if they feel the applicant has diligently pursued matters that would entitle them to an extension. Mr. Katzeff comments that they have as of lately, but other actions could have been taken to proceed. Mayor Roman comments that the property has remained under the same LLC and does not see anything that would constitute a hardship. He adds they could have submitted for approvals earlier and made necessary payments to parties that they claim caused them financial hardship. Mr. Katzeff notes there were many missed opportunities made by the applicant and they could have foreclosed sooner. Mr. Freschi comments that the project seems to have been poorly managed and that does not constitute a hardship for the applicant, where granting the extension would create a hardship to the neighbors. Mr. Camuti comments that due to the amount of changes the current Township ordinances he would not feel right about moving forward with the extension. Mayor Roman comments that many of the zone changes in the last few years were done with significant public input.

Mayor Roman asks the Board to deliberate regarding section D of the statute. He reads, "The Board shall grant an extension of approval if the developer proves the reasonable satisfaction of the Board that the developer was barred or prevented directly or indirectly from proceeding with the development because of delays in obtaining legally required approvals from other governmental entities and that the developer applied promptly for and diligently perused these approvals." Mr. Katzeff reiterates that he feels there were missed opportunities and diligence has only be showed as of late. He adds that construction was only halted for four months but during that time government agencies were open. Mayor Roman comments that he has heard from the Construction Code office and that there has been a significant number of permits being issued, and other projects have moved forward and received necessary approvals. He adds he does not see how anything other than the applicants own action has affected this project. Mr. Camuti comments that nothing really occurred from April to July, but does not see a reasonable hardship out of the applicant control.

Mayor Roman asks for a motion. Mr. Katzeff makes a motion to DENY the extension of approval for 176-200 Bloomfield Avenue. Mr. DeOld seconds. All members vote in favor and the motion passes 7 to 0.

**Adjourn**

After a motion made by Mr. Katzeff and seconded by Mr. Camuti, there was a unanimous vote to adjourn at 11:20 PM.

Respectfully submitted,



Ashley Neale

Planning Board Secretary

*PLEASE NOTE: Meeting minutes are a summation of the hearing. If you are interested in a verbatim transcript from this or any proceeding, please contact the Planning Board office at 973-857-4805.*