

**MEETING MINTUES  
BYRAM TOWNSHIP PLANNING BOARD  
MEETING, FEBRUARY 04, 2021**

**CALL TO ORDER**

Chairman Shivas called the meeting to order at 7:30 p.m.

**ROLL CALL**

|         | Mr. Chozick | Ms. Franco | Mr. McElroy | Mr. Morytko | Ms. Raffay | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|---------|-------------|------------|-------------|-------------|------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| HERE    | H           | H          | H           | H           | H          | H                | H            | H             | H         | H         | H               |
| ABSENT  |             |            |             |             |            |                  |              |               |           |           |                 |
| EXCUSED |             |            |             |             |            |                  |              |               |           |           |                 |
| LATE    |             |            |             |             |            |                  |              |               |           |           |                 |

Also present: Attorney Alyse Hubbard, Esq.  
 Engineer Cory Stoner, P.E. C.M.E.  
 Secretary Cheryl White *and* Caitlin Phillips

**STATEMENT BY CLERK**

Both the Federal and State governments have declared a state of emergency in response to the outbreak of the Covid-19 Virus, that limits the number of people allowed to gather, and requires social distancing. To continue Planning Board business, the regularly scheduled meeting for February 04, 2021 is being held by remote video or audio connection only. This service allows the Board, it's professionals, applicants, and members of the public to participate. Adequate notice of this meeting has been published specifying the time and access information in compliance with the provisions of the Open Public Meetings Act. Notice of this meeting is on file in the office of the Planning Board Secretary, posted on the main door, and on the bulletin board in the Municipal Building, and on the Township website at: [https://www.byramtpw.org/index.php/meetings/committees/planning\\_board](https://www.byramtpw.org/index.php/meetings/committees/planning_board) and has been forwarded to those persons requesting notice.

**FLAG SALUTE** led by Chairman Shivas

**MINUTES**

Approval of the January 21, 2021 Meeting Minutes

A motion to approve the minutes as written was made by Mr. Serrilli. The motion was seconded by Mr. Chozick. The following vote was taken:

|          | Mr. Chozick | Ms. Franco | Ms. Raffay | Mr. McElroy | Mr. Morytko | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|----------|-------------|------------|------------|-------------|-------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| MOTION   |             |            |            |             |             |                  | √            |               |           |           |                 |
| SECONDED | √           |            |            |             |             |                  |              |               |           |           |                 |
| AYE      | √           | √          | √          | √           | √           | √                | √            |               | √         | √         | √               |
| NAY      |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSTAIN  |             |            |            |             |             |                  |              | √             |           |           |                 |
| ABSENT   |             |            |            |             |             |                  |              |               |           |           |                 |

Motion carried.

**COMPLETENESS REVIEW**

SP5-2020, Mountainside Country Store and Garden Center, 198 Route 206, Block 226 Lot 3, N-C Zone

Conversion of a restaurant to a retail store and garden center, and associated site improvements.

Mr. Walsh said the site plan subcommittee, and Mr. Stoner met prior to the regular meeting and reviewed the application and materials submitted. Mr. Walsh said that initially this application was deemed incomplete because it was lacked some checklist items. Since then the applicant has provided most of the items previously identified as deficient, such as grading, fence details, and drainage information, the committee believed the application can be deemed complete. However important items that applicant did not provide, such as vehicle circulation/truck turning template, and signage details Mr. Stoner believes that because of the nature of the business, utilizing large trucks on a busy highway, a truck turning template must be provided. The committee agreed and added that a signage plan should be provided. Mr. Stoner also said some fire protection details are vague, but he will leave that up to the construction department and when the fire department reviews the application, they will have an opportunity to provide comment. He added that waivers requested by the applicant, such as an Earthwork Summary, and Environmental Impact Study, and Type of Fill report he does not object to these waivers being granted because the site is already fully developed.

In conclusion Mr. Stoner recommended that the Board request that a Truck Turning Template and a Signage Plan be provided prior to the hearing for his review. The Board agreed.

A motion to deem this application complete with the understanding that the applicant provide a Truck Turning Template and a Signage Plan prior to the hearing date was made by Mr. Walsh and to set a hearing date of April 15<sup>th</sup>.

The motion was seconded by Mr. Morytko. The following vote was taken:

|          | Mr. Chozick | Ms. Franco | Ms. Raffay | Mr. McElroy | Mr. Morytko | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|----------|-------------|------------|------------|-------------|-------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| MOTION   |             |            |            |             |             |                  |              |               |           | √         |                 |
| SECONDED |             |            |            |             | √           |                  |              |               |           |           |                 |
| AYE      | √           | √          | √          | √           | √           | √                |              | √             |           | √         | √               |
| NAY      |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSTAIN  |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSENT   |             |            |            |             |             |                  |              |               |           |           |                 |

Motion carried.

Z14-2020, Safa, LLC (aka Joe Ahmad), 16 Weaver House Cove Road, Block 109 Lot 2, R-5 Zone, (carried from December 03, 2020)

A request was made by the applicant’s attorney, Alan J. Mariconda, Esq. requested that this application be carried. The Board voted to carry this application to April 01, 2021. Ms. Hubbard said re-noticing would not be required unless substantial changes are made to the application.

A motion to carry this application was made by Mr. Walsh. The motion was seconded by Mr. Morytko. The following vote was taken:

|          | Mr. Chozick | Ms. Franco | Ms. Raffay | Mr. McElroy | Mr. Morytko | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|----------|-------------|------------|------------|-------------|-------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| MOTION   |             |            |            |             |             |                  |              |               |           | √         |                 |
| SECONDED |             |            |            |             | √           |                  |              |               |           |           |                 |
| AYE      | √           | √          | √          | √           | √           | √                |              | √             |           | √         | √               |
| NAY      |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSTAIN  |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSENT   |             |            |            |             |             |                  |              |               |           |           |                 |

Motion carried.

**OLD BUSINESS**

Z11-2020, John Petersen, 6 Ascot Lane, Block 337.11 Lot 32.15, R-3 Zone (carried from November 19, 2020)

To install 1,204 sq. ft. of ground mounted solar array panels.

Mr. John Peterson, owner and applicant, and Mr. Justin Hellhake, Director, Northeast Operations acknowledged they are still under oath. Mr. Hellhake said they revised the plan to move the structure out of the Township easement and he reviewed the reviewed plan with the Board. He discussed items submitted such as the profile of the array panels, photos of the trees to be removed and trees to remain, and the revised setback that are a result of the structure being moved out of the easement.

There was a lengthy discussion about the height of the structure, which is 17 ft. at the northeast corner because of the grade of the property, and 9 ft. at the southeast corner. They discussed the overall size of the structure: 1,257 sq. ft., the visual impact, and the trees to remain and be removed. The Board reviewed photos that were submitted to demonstrate to the Board, with the removal of trees, the visibility of this structure from the street and surrounding neighbors. Mr. Walsh pointed out that some of the trees that are supposed to provide a buffer are located within a township easement and if those trees had to be removed, a buffer would no longer exist. Ms. Hubbard confirmed that statement. Chairman Shivas believed those trees were planted as a buffer at the time that development was constructed. Mr. Stoner added that if in the future work in the easement requires tree removal the township is not obligated to replace the trees.

The Board discussed various options with the applicant such as reducing the size of the structure, changing the pattern of the array, changing the location. Mr. Hellhake said the applicant wishes to get as much production of energy as possible. Mr. Smith suggested locating some panels on the roof, and some on the ground. Mr. Hellhake said that is an option. The Board is in favor of solar energy and green infrastructure; however it was the consensus of the Board that the proposed structure is too large, and intrusive for a residential neighborhood.

Chairman Shivas opened questioning to the public.

Ms. Kelly Swiencki, 4 Ascot Manor said this structure is too large and industrial looking for a residential neighborhood, adding that the applicant is not providing any buffering to obstruct her view. She said the applicant’s pool and lounge area sit above this structure, so it will not be seen by them, however it will always be in their view and she objects to the application as proposed.

No one else from the public came forward. Chairman Shivas closed to the public.

Chairman Shivas told the applicant that he believes most of the Board agrees that the structure is too large, and visually will have a negative impact to neighbors and from the street. He asked if the applicant wanted the Board to take a vote on the application as it stands, or is the applicant willing to consider other options and come back to the Board. The applicant, and Mr. Hellhake said will work together and look at other options such as relocating, reducing, or sectioning the array panels to the Board’s satisfaction and requested this application be carried.

A motion to carry this application to May 6, 2021 without further notice was made by Mr. Serrilli. The motion was seconded by Mr. Chozick. The following vote was taken:

|          | Mr. Chozick | Ms. Franco | Ms. Raffay | Mr. McElroy | Mr. Morytko | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|----------|-------------|------------|------------|-------------|-------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| MOTION   |             |            |            |             |             |                  | √            |               |           |           |                 |
| SECONDED | √           |            |            |             |             |                  |              |               |           |           |                 |
| AYE      | √           | √          | √          | √           | √           | √                | √            | √             |           | √         | √               |
| NAY      |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSTAIN  |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSENT   |             |            |            |             |             |                  |              |               |           |           |                 |

Motion carried.

**NEW BUSINESS**

Z15-2020, Toedter Uwe, 135 Lackawanna Drive, Block 271 Lot 788, R-5 Zone

Relief sought for a setback to a body of water to keep an already installed outdoor kitchen.

Mr. Uwe Toedter, owner of the property was sworn in and said he constructed an outdoor kitchen not knowing a variance was required due to a mountain stream close to his property. He said the engineer’s report he received stated that no permits were required. Mr. Stoner clarified that his report stated that this appears to be an intermittent mountain stream and would not be under State jurisdiction because it is not classified as a stream, so no special permitted is required, however the applicant still must comply with local regulations, and based on Byram’s code, a 50 ft. setback to water is required. The applicant’s kitchen and patio are 3 feet from the water’s edge, which requires a variance of 47 ft. Mr. Toedter said the house was built in the 1920’s and is also 3 ft. from the stream. He said the patio has helped with water run-off from the slope behind his house. Chairman Shivas asked what was there before the patio and kitchen, Mr. Toedter said grass and mud, saying so much mud he lost a pair of shoes. Mr. Toedter said with the improvements made, the property no longer has water issues. Mr. Stoner said he believes this request will not cause run off problems to the area or stream, and he believes a vegetative buffer requirement should not apply. The Board agreed and had no further questions.

Chairman Shivas opened to the public. No one from the public came forward. Chairman Shivas closed to the public.

A motion to approve this application was made by Mayor Rubenstein. The motion was seconded by Ms. Shimamoto. The following vote was taken:

|          | Mr. Chozick | Ms. Franco | Ms. Raffay | Mr. McElroy | Mr. Morytko | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|----------|-------------|------------|------------|-------------|-------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| MOTION   |             |            |            |             |             | √                |              |               |           |           |                 |
| SECONDED |             |            |            |             |             |                  |              | √             |           |           |                 |
| AYE      | √           | √          | √          | √           | √           | √                |              | √             |           | √         | √               |
| NAY      |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSTAIN  |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSENT   |             |            |            |             |             |                  |              |               |           |           |                 |

Motion carried.

716-2020, Hassenfeld James, 92 Birch Parkway, Block 308 Lot 1847, R-5 Zone

Relief for a side yard setback and a setback from a principal structure to an accessory structure.

Mr. James Hassenfeld and Mrs. Catherine Marcus, owner’s and applicants were sworn in. Mr. Hassenfeld said because of the narrowness of the lot, and the lot topography, they want to install a two-person, tri-angular in shape hot tub on a pre-existing concrete patio which will not meet the required setbacks. He said there is no other location to put the tub. He said he understands the Board may have concerns about the proximity of the hot tub to the property line if repair or maintenance is needed, but he pointed out that the type of tub they propose is accessed from the front, towards the house, so there will be no need to go on the neighbor’s property.

Ms. Hubbard talked about the Zoning Officer’s Memo regarding his review of the applicant’s survey and pre-existing, non-conforming structures on the property: an in-ground pool, shed and outdoor kitchen. She said these conditions may have predated zoning and the matter before the Board to consider is the hot tub. She added that it was discovered that 3 construction permits for a generator, and two permits for oil tank removal remain open and need to be closed by the applicant.

Joe Sabatini, Township Manager said because these conditions could have pre-dated zoning, and since the Township’s zoning records only date back to 2001, and based on other records in the town it appears that these structures may have existed on the property for a long time, possibly thirty-years, and could have been constructed prior to the creation of the UCC code which was established in the late 1979’s. He said the current owner should not be held accountable these accessory structures.

Mr. Hassenfeld said in August 2020 he purchased the home and prior to the purchase he submitted an Open Public Records request to verify there were no open permits on this property. He said at the time of closing it was discovered two tanks needed to be removed and it was his understanding the estate was responsible for obtaining and closing any permits. They believed they did everything in accordance with Township rules. Mr. Sabatini explained that the response to his Open Public Records request was provided prior to new permits being opened, so at that time, there were no open permits. The permits were opened after the request was complete. Mr. Sabatini added that final inspections were never done, and he encouraged the applicant to close these permits. Mayor Rubenstein asked if it is appropriate to make the approval subject to the closing of the three permits mentioned. Ms. Hubbard some permits may take time to close, which would delay the applicant in being able to obtain a permit to install the hot tub, if this application is approved.

Ms. Hubbard said the Board does not need to recognize variances for this pre-existing, non-conforming items and the hot tub is for Board consideration this evening.

Chairman Shivas asked about the outdoor kitchen. Mr. Hassenfeld said he would not call it an outdoor kitchen, saying it’s a sink embedded into the concrete retaining wall. Mr. Hassenfeld said he believes the sink has been there if the pool. Chairman Shivas disagreed with Ms. Hubbard and believed the applicant should seek relief for the nonconformities on the property or have them removed.

The Board asked Mr. Hassenfeld if the hot tub could be located on the patio in the rear of the home, since it is so close to the side yard property line. Mr. Hassenfeld said they considered that but there is a door in that location and the hot tub would obstruct that door. Mr. Hassenfeld said they even considered moving the door but the layout of the house that would not work. Exhibit B1, a Property Record Card Photo, was presented showing the rear of the home, and the Board agreed, it would not be a good location.

Chairman Shivas opened to the public. No one from the public came forward. Chairman Shivas closed to the public.

There was discussion if the non-conforming items should be mentioned in the resolution and Ms. Hubbard said it could be noted within the resolution that these structures pre-existed on the property but also that this resolution is not an approval for those structures. As far as a condition that any open permits be closed, and Mr. Hassenfeld said he would commit to closing out the open permits as expeditiously as possible. Mr. Walsh recommended language in the resolution acknowledging the pool, shed and outdoor kitchen and to close out permits.

A motion to approve this application was made by Mr. McElroy. The motion was seconded by Mayor Rubenstein. The following vote was taken:

|          | Mr. Chozick | Ms. Franco | Ms. Raffay | Mr. McElroy | Mr. Morytko | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|----------|-------------|------------|------------|-------------|-------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| MOTION   |             |            |            | √           |             |                  |              |               |           |           |                 |
| SECONDED |             |            |            |             |             | √                |              |               |           |           |                 |
| AYE      | √           | √          | √          | √           | √           | √                |              | √             |           | √         |                 |
| NAY      |             |            |            |             |             |                  |              |               |           |           | √               |
| ABSTAIN  |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSENT   |             |            |            |             |             |                  |              |               |           |           |                 |

Motion carried.

**REPORTS FROM COMMITTEES**

Architectural Review Committee – Ms. Shimamoto said the meeting is next week.

Building Committee – Mr. Morytko February 9th is the joint meeting with the Township Council and the Building Committee, and he encouraged people to join the call.

Environmental Commission – Ms. Shimamoto currently said the zoning officer is reviewing a proposed ordinance for lot coverage and soon the Board will be asked to review the proposed ordinance for comment and consistency.

Open Space – Mr. Morytko said the next OS meeting is Monday, February 8<sup>th</sup> . Mayor Rubenstein announced Russ Raffay as a new volunteer member on the Open Space Committee.

Township Council – Ms. Franco said she had nothing new to report.

Chairman Shivas reminded the Board, and Board professionals that if they have any recommendations/changes to the zoning codes, please provide them to Cheryl so that he can include them in the Planning Board Annual Report, which goes to the Council.

**WOSP1-2021**

Extreme Gym, Gordon Byram Associates, 90 Route 206, Block 226 Lot 14 V-B Zone

Change of tenant, approved by the Zoning Official

The Board had no questions about this waiver.

**CONSISTENCY REVIEW**

Stormwater Control Ordinance

Mr. Stoner said that Byram’s Storm Water Management Plan was updated in 2020. This Storm Water Control Plan is a result of changes to the Highlands Regional Master Plan, and requirements by DEP to implement green infrastructure improvements such as rain gardens, swales, etc. He said previously green infrastructure designs were recommended but now they will be mandatory. He said when vacant land is developed, 20 % of green infrastructure must be incorporated into the development. He said green infrastructure requirements are more stringent and incorporate the use for example of pervious pavers, and more environmentally friendly elements and will make development more difficult. Ms. Franco asked if these rules apply to current applicants. Ms. Hubbard said no, it would only apply to applications that are filed after the ordinance is passed. Any applications that were deemed complete before the ordinance was passed, are grandfathered to prior conditions.

A motion that this ordinance, which promotes water quality and Township goals, is not inconsistent with Byram’s Master Plan was made by Mr. McElroy. The motion was seconded by Mr. Chozick. The following vote was taken:

|          | Mr. Chozick | Ms. Franco | Ms. Raffay | Mr. McElroy | Mr. Morytko | Mayor Rubenstein | Mr. Serrilli | Ms. Shimamoto | Mr. Smith | Mr. Walsh | Chairman Shivas |
|----------|-------------|------------|------------|-------------|-------------|------------------|--------------|---------------|-----------|-----------|-----------------|
| MOTION   |             |            |            | √           |             |                  |              |               |           |           |                 |
| SECONDED | √           |            |            |             |             |                  |              |               |           |           |                 |
| AYE      | √           | √          | √          | √           | √           | √                | √            | √             | √         | √         | √               |
| NAY      |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSTAIN  |             |            |            |             |             |                  |              |               |           |           |                 |
| ABSENT   |             |            |            |             |             |                  |              |               |           |           |                 |

Motion carried.

**BILLS**

Law Office of Larry Wiener (4 bills) \$1,005.00

A motion to approve Ms. Hubbard’s bills was made by Mr. McElroy. The motion was seconded by Mr. Serrilli. All were in favor. Motion carried.

Chairman Shivas opened to the public. No one from the public came forward. Chairman Shivas closed to the public.

**ADJOURNMENT**

A motion to adjourn the meeting was made at 10:200 p.m. by Mr. Chozick. The motion was seconded by Mr. Serrilli. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted,  
Cheryl White