

**MEETING MINTUES OF THE BYRAM TOWNSHIP PLANNING BOARD: September 7, 2023**

**CALL TO ORDER:** Chairman Shivas called the meeting to order at 7:30 p.m.

**ROLL CALL:**

*Members Present:* Mayor Alex Rubenstein, Cris Franco, Andrew McElroy, Marie Raffay, John Morytko, Greg Smith, Richard Proctor, Chair George Shivas

*Members Absent:* Eric Serrilli, Vicechair Michael Walsh

*Also Present:* Engineer Cory Stoner, Attorney Alyse Hubbard, Planner Paul Gleitz, Secretary Caitlin Phillips

**OPENING STATEMENT:** Adequate notice of this meeting has been published specifying the time and place in compliance with the provisions of the Open Public Meetings Act.

**FLAG SALUTE:** led by Chairman Shivas

**RESOLUTIONS**

WOSP5-2023 Alibi Beach Bar, 172 Lackawanna Drive, Block 265 Lot 287, NC Zone

*Approval for music outdoors on existing deck areas*

Mr. McElroy motioned to approve the resolution, seconded by Mayor Rubenstein:

*Ayes:* Mayor Rubenstein, Ms. Franco, Mr. McElroy, Mr. Smith

*Abstaining:* Ms. Raffay, Mr. Proctor, Chairman Shivas

*Absent:* Mr. Morytko, Mr. Serrilli, Mr. Walsh

None opposed. Motion carried.

SP2-2023 Venture Two LLC, 11 and 13 State Route 206, Block 27 Lots 383, 384, 381.02, VB Zone

*Approval for site changes with apartments and retail space.*

Mr. Proctor motioned to approve the resolution, seconded by Mr. Smith:

*Ayes:* Mr. McElroy, Ms. Raffay, Mr. Smith, Mr. Proctor

*Abstaining:* Mayor Rubenstein, Ms. Franco, Chairman Shivas

*Absent:* Mr. Morytko, Mr. Serrilli, Mr. Walsh

None opposed. Motion carried.

Z15-2023 Nicole Farrell and Mark Brizzolara, 3 Lockwood Avenue, Block 26 Lots 339, R4 Zone

*Approval for 6' fence in the front yard*

Mayor Rubenstein motioned to approve the resolution, seconded by Ms. Franco:

*Ayes:* Mayor Rubenstein, Ms. Franco, Chairman Shivas

*Abstaining:* Mr. McElroy, Ms. Raffay, Mr. Smith, Mr. Proctor

*Absent:* Mr. Morytko, Mr. Serrilli, Mr. Walsh

None opposed. Motion carried.

Z08-2023 Scott Moberg, 13 Rose Trail, Block 181 Lot 12, R5 Zone

*Approval for second story addition and gazebo*

Mayor Rubenstein motioned to approve the resolution, seconded by Ms. Franco:

*Ayes:* Mayor Rubenstein, Ms. Franco, Ms. Raffay, Chairman Shivas

*Abstaining:* Mr. McElroy, Mr. Smith, Mr. Proctor

*Absent:* Mr. Morytko, Mr. Serrilli, Mr. Walsh

None opposed. Motion carried.

Z14-2023 Laura Sullivan and Eric Salvesen, 16 Allamuchy Trail, Block 152 Lots 213, R5 Zone

*Approval for addition on a single-family dwelling*

Mayor Rubenstein motioned to approve the resolution, seconded by Ms. Franco:

*Ayes:* Mayor Rubenstein, Ms. Franco, Ms. Raffay, Chairman Shivas

*Abstaining:* Mr. McElroy, Mr. Smith, Mr. Proctor

*Absent:* Mr. Morytko, Mr. Serrilli, Mr. Walsh

None opposed. Motion carried.

**MINUTES:** August 17, 2023. Mayor Rubenstein motioned to approve the minutes, seconded by Ms. Franco.

*Ayes:* Mayor Rubenstein, Ms. Franco, Ms. Raffay, Chairman Shivas

*Abstaining:* Mr. McElroy, Mr. Smith, Mr. Proctor

*Absent:* Mr. Morytko, Mr. Serrilli, Mr. Walsh

None opposed. Motion carried.

**NEW BUSINESS**

Z17-2023 Frank Diliberto, 11 Brookwood Road, Block 40 Lot 2, R5 Zone

*Approval for deck extension*

Frank Diliberto was sworn in as the applicant. He is planning to extend and replace his deck, which was built by his parents over thirty years ago. The deck and stairs have been rotting, and he wants to extend the deck another five feet.

Chairman Shivas confirmed the deck was already close to the property line. Mayor Rubenstein confirmed the work had started already—Mr. Diliberto was unaware he needed a permit. Ms. Raffay asked about the front of the house. Mr. Diliberto said the deck has been there for awhile, and the stairs were too steep. He moved the stairs to the front of the house. He replaced the decking and railing but didn't change the dimensions. The Board discussed the variances.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Ms. Hubbard confirmed there are sheds on the property. There is a wooden one in the left corner and a plastic one in the right corner. The dimensions are 10x12 and around 6x8. Ms. Raffay confirmed the 10x12 shed is on a gravel pad. The Board discussed setbacks. Mr. Stoner confirmed the fence line goes along the jog of the property. Mr. Morytko entered the meeting. Mr. Diliberto said near the fence is township property. The fence was put up by his parents.

Chairman Shivas opened to the public and no one spoke so he closed to the public.

Mr. Proctor motioned to approve the application including the setback for the shed, seconded by Mr. McElroy:

*Ayes:* Mayor Rubenstein, Ms. Franco, Mr. McElroy, Ms. Raffay, Mr. Smith, Mr. Proctor, Chairman Shivas

*Abstaining:* Mr. Morytko

*Absent:* Mr. Serrilli, Mr. Walsh

None opposed. Motion carried. Ms. Hubbard explained the appeal period.

SP6-2023 Tomahawk Lake, 155 Tomahawk Trail, Block 343 Lots 1, 2, and 3, CR Zone

*Application for amended site plan approval to include Lots 3 and 4 into the site plan for parking, and modify a ticket office for larger square footage*

Attorney Mr. Benkendorf introduced Mr. Wallace the applicant and Vice President of Tomahawk Lake Inc. He noted two of the lots are owned by Fun Valley and one lot is owned by Wendy, Mark, and Lynn Wallace; all three lots are leased by Tomahawk Lake Incorporated. They're proposing to expand the ticket booth and parking on Lot 3 for an additional 174 parking spots. Mr. Kolody, the applicant's engineer, was also present. Chairman Shivas said there's a question of whether or not this is a use variance, so before they proceed, that needs to be resolved.

Ms. Hubbard said she discussed with Mr. Benkendorf and reviewed Mr. Gleitz's report, which reviews ownership. The lots need to be contiguous and of common ownership or a use variance is needed. Lot 3 doesn't have a principle use, just an accessory use that supports the principle use on lots 1 and 2. Ms. Hubbard said this would be a use variance unless the Wallace's convey their property to Fun Valley so that it's all under common ownership, and then Tomahawk Lake could provide testimony that they operate all the sites together. If this is a use variance, it was not noticed for and Board members would need to step down. Mr. Gleitz referenced pages 4 and 5 of his memo, and noted the last time Tomahawk Lake was here, it was stated that lot 3 needs a use variance because it's an accessory use, and lot 3 was removed from the discussion. He reviewed the purpose of having common ownership. Chairman Shivas noted the issue if one lot is sold and what triggers them coming back to the Board. Mr. Benkendorf reviewed Mr. Gleitz's memo. He noted the definition of developer includes having proprietary ownership by way of a lease. Mr. Gleitz noted the properties need to be in common ownership and there needs to be a qualified developer. Mr. Benkendorf said lots 1 and 2 have been before the Board previously and this hasn't been required. It's existed for over 60 years. He argued that lots 1 and 2 have operated prior to the ordinance establishing this rule. Mr. Gleitz said this protects the use and not the owner. Ms. Hubbard said it protects the use and structure. Section 68 has been before the Board previously by way of a certification of pre-existing non-conforming use. She confirmed the lot in Hopatcong is owned by Fun Valley. Mr. Benkendorf said they're not making changes on lot 1. Mr. Stoner confirmed the owners of Fun Valley are Wendy, Mark, Lynn, and Meredith. Mr. McElroy noted this means there's different ownership of the corporations. Mayor Rubenstein asked why not include the other lot. Mark Wallace was sworn in. He said lot 1 was purchased by Chester Wallace (his father), Wendy, Lynn, and him in 1974. There are residential dwellings on it which they rent. He and his sisters inherited ¼ interest. They use it for catering and it's covered by the liquor license. They didn't include it with the other lots because it has residential properties. They've now sold lot 3 to Fun Valley. Mr. Gleitz noted the residential dwelling lot would be the one to have a Section 68 use; they could then transfer the rest of the property to Fun Valley, and have all three lots under common ownership. He noted Meredith is not listed on applicant documents. Mr. Wallace said she is a stockholder in Fun Valley Inc; they're all stockholders in Fun Valley. His sister Lynn and himself are stockholders in Tomahawk Lake Inc. Ms. Hubbard said they can't merge lot 1 with the other lots. Mr. Benkendorf asked if they could have a deed restriction that prohibits selling lots 1, 2, and 3 separately, so they don't need to transfer the ownership and can proceed without the use variance. Ms. Hubbard said deed restrictions mitigate impact from a use variance. A use variance would be required and then it could satisfy the negative criteria. Mr. Benkendorf said these lots have never been in common ownership and have existed that way for 60 years. Mr. McElroy said it seems they're trying to anticipate what the Board is concerned with, and the question is if it meets the law. Right now, to him it doesn't seem to meet the law. Ms. Raffay said when they reviewed this in previous years, they decided this would be a use variance and the applicant decided to remove the use variance from the application. It would be the same thing here—they could still present a use variance. Mr. Benkendorf confirmed they wouldn't need a use variance if the property that's in Wendy, Lynn, and Mark's names was changed into Fun Valley because it would be in common ownership. Ms. Hubbard

said they'd need something showing that Tomahawk Lake is operating all four sites. There was discussion about the approval in Hopatcong. Mayor Rubenstein asked what occurs on lot 1. Mr. Wallace and Mr. Benkendorf said it's picnic tables, parking, bathroom building, the septic tank, a volleyball court, catering, and it's covered by the liquor license, which covers lots 1 and 2. The license is issued through Tomahawk Lake. Mr. Gleitz said lot 3 is the trigger for the analysis; when it was lots 1 and 2 being considered, the Board relied on a decision made in the 1970s that 1 and 2 are together. With the addition of lot 3, it reopens the analysis of the ordinance, and it doesn't meet the definition. Mr. Benkendorf asked for a brief recess to discuss with the applicant.

Mr. Benkendorf said they'd like to bifurcate the application and move forward with the ticket booth, and come back and provide new notice for the parking on lot 3. Mr. Wallace said they could have gone for a use variance previously; lot 1 was never an issue. Mr. Benkendorf understands they can't proceed with the use variance tonight because it wasn't part of the notice. Mr. Gleitz noted the bifurcation is typically reversed where the use is first and if successful you proceed with the site plan approval. He noted the issue is there's a link between the site plan, so if they proceed with the ticket booth, there are lots of other issues about the site plan driven by the use, operations, treatment works, etc. If they hear the testimony for the ticket booth, can the Board vacate the site plan approval if they don't complete the rest of the application and deal with the use and the site plan. The externalities that were going to be part of the discussion are linked to the use of all three sites. Mr. Benkendorf asked what if they drop off lot three and come back with a separate application. Mr. Stoner said the concern is a problem with traffic control, so if this is being opened back up, then all those issues need to be addressed. After the last approval there are still problems. Mr. Benkendorf said they can address those problems now. Mr. Gleitz said this creates a false partition talking about the park and parking capacity when they know lot 3 will be included later. The discussion will be about what's currently there and the follow-up application details will change. The engineer will have a hard time with testimony if the entire plan and design is based on the inclusion of lot 3. Ms. Hubbard said the greater site issues are there whether or not lot 3 is included, and they'll be revisiting everything again with the second application. Mayor Rubenstein said this should be seen as one whole application. Mr. Benkendorf said that's why they submitted the application with lot 3 originally. Mr. Gleitz noted site plan, ownership, and applicant are all different things. There are jurisdictional, administrative, and site plan concerns. Chairman Shivas asked if there are any buildings leased on the Hopatcong side. Mr. Wallace said there is a 50x100 building that was approved by the Hopatcong Board in 2002, and two residential homes that have been there since 1962, owned by him and his sisters, one being rented. Mr. Stoner confirmed they retain access through the Byram property. Mayor Rubenstein confirmed there are three lots in Hopatcong. Mr. Wallace said lot 4 has the Morton building, and lots 5 and 6 have two residential buildings. Ms. Hubbard confirmed lots 5 and 6 are separate entities, not part of Tomahawk Lake. She asked about access. Mr. Wallace said he thinks there was an easement awhile ago along the telephone poles, never developed because they don't use where the easement was; they use through lot 4. Mayor Rubenstein confirmed the Board needs to agree to bifurcate the application. Mr. Benkendorf said if they can't, they still need to provide the notice for the use variance, so the application would need to be carried. He thinks the deed restriction would accomplish what's needed. Ms. Hubbard said it serves the negative criteria for a use variance, but it doesn't satisfy the contiguous common ownership. Mr. Stoner asked how they would handle a bifurcation, since the council members have to step down for the use variance. Mr. McElroy said this application is too complicated when it doesn't need to be, and the number of issues means it's too complicated to bifurcate. He is not in favor of bifurcating the application, and feels it should be re-noticed as a use variance and done as a complete application with all three lots. Mr. Gleitz said they should also amend the application materials to include precisely who the entities are and how they are related. He and Mr. Stoner have problems with the site plan as submitted. The Board has been accommodating, and there are still issues. To fully vet the site plan and operations, they need better documentation. Mr. McElroy noted the application and plans need more detail for the professionals to review correctly.

Mr. McElroy motioned to deny the request to bifurcate the application and noted this needs to be noticed as a use variance, and they need to provide all the appropriate documentation for the professionals to assess the application. Ms. Hubbard noted the notice needs to be amended. This was seconded by Mr. Morytko:

*Ayes:* Mayor Rubenstein, Ms. Franco, Mr. McElroy, Ms. Raffay, Mr. Morytko, Mr. Smith, Mr. Proctor, Chairman Shivas

*Absent:* Mr. Serrilli, Mr. Walsh

None opposed. Motion carried.

Mr. Stoner said this should go through completeness with the Subcommittee again. Mr. McElroy said the applicant should take a close look at the memos to have everything needed. Mr. Benkendorf said they'd need at least three months to get everything together. Mayor Rubenstein they need an appropriate application with an updated site plan; this is a large commercial site with a lot of features, property, and parking. Mr. Stoner said they should locate the parking areas and tree clearings, and how cars fit in. This also calls into question what the number of patrons are and how many people can be on the property. They should see how they can get people off of the roads faster. Mr. Gleitz said dimensions of the roads and site circulation, and dimensioning from the boundaries from key structures on the site are needed, as well as grading, stormwater management, and environmental resource information. There are wetlands areas, and the Environmental Commission has concerns about parking in the areas. They can use state mapping and public information to help better inform what's on the site.

Mr. Benkendorf asked that the application be carried. Ms. Hubbard said they can carry it until they resubmit information and it's deemed complete. The Board discussed withdrawing or dismissing. Mayor Rubenstein motioned to carry the application to December 7<sup>th</sup> with further notice, seconded by Mr. McElroy:

*Ayes:* Mayor Rubenstein, Ms. Franco, Mr. McElroy, Ms. Raffay, Mr. Morytko, Mr. Smith, Mr. Proctor, Chairman Shivas

*Absent:* Mr. Serrilli, Mr. Walsh

None opposed. Motion carried.

#### **REPORTS FROM COMMITTEES**

*Architectural Review Committee:* Mr. Morytko said there's been no meeting.

*Building Committee:* Mr. Morytko said there's been no meeting. Mayor Rubenstein said this should be taken off this list.

*Environmental Commission:* Mr. McElroy said he was not present for their meeting.

*Open Space:* Mr. Morytko said there's been no meeting.

*Township Council:* Mayor Rubenstein said they bought fire and police vehicles, and talked about the budget and ARP funding. The beefsteak dinner is tomorrow which is a rain or shine event, and Byram Fest has been postponed until 09/22/2023.

#### **OPEN TO THE PUBLIC**

Chairman Shivas opened to the public. A resident asked about Tomahawk Lake. Ms. Hubbard noted they can't discuss the application or take any comments until the hearing. New notice needs to be issued. Chairman Shivas closed to the public.

#### **ADJOURNMENT**

A motion to adjourn the meeting was made at 8:52pm by Mr. McElroy, seconded by Ms. Franco. All were in favor. Motion carried. The meeting was adjourned.

Respectfully submitted by Caitlin Phillips