

**TOWNSHIP OF WASHINGTON
BERGEN COUNTY, NEW JERSEY
ZONING BOARD OF ADJUSTMENT
March 18, 2014
Minutes**

Meeting Called to Order at 8:15PM

Open Public Meetings Act Statement – In compliance with the Open Public Meetings Act of the State of New Jersey, notification of this meeting has been published in the Ridgewood News, our official newspaper in the Township of Washington, notice has been advertised on the official Township of Washington website, and posted on the bulletin board at Town Hall.

Read Aloud by Board Attorney

Also in Attendance: Ms. Donna Baboulis, Board Attorney; Ms. JoAnn Carroll, Board Secretary

Salutation to the Flag

Ms. JoAnn Carroll, Board Secretary: read aloud the following terms of office:

- Mr. Richard Miras** Term Commencing 1/1/2014 and terminating 12/31/17
- Mr. Thomas Asfar** Term Commencing 1/1/2014 and terminating 12/31/17
- Mr. George Mouravieff** Term Commencing 1/1/2014 and terminating 12/31/16
- Mr. Allen Kenny** Term Commencing 1/1/2014 and terminating 12/31/16
- Mr. Salvatore Rappa** Term Commencing 1/1/2014 and terminating 12/31/15
- Mr. Arthur Cumming** Term Commencing 1/1/2014 and terminating 12/31/14
- Mr. Richard Smith** Term Commencing 1/1/2014 and terminating 12/31/14
- Mr. John O'Connell** Term Commencing 1/1/2012 and terminating 12/31/15

In addition, Ms. Carroll read aloud an email received from Ms. Laura Merkle that was received this same evening stating Ms. Merkle was resigning from the Zoning Board; Mr. Smith will become Alternate #1 due to Ms. Merkle's resignation.

Oaths of Office: administered by Ms. Donna Baboulis, en masse to Messrs. Miras, Asfar, Mouravieff, Kenny, Rappa, Cumming, Smith.

Nomination of Chairperson, Richard Miras: Asfar, Kenny

Ayes: Miras, Asfar, Mouravieff, Kenny, Rappa, Cumming, Smith

Absent: O'Connell

Nomination of Vice Chairman, Mr. Allen Kenny: Kenny, Asfar

Ayes: Miras, Asfar, Mouravieff, Kenny, Rappa, Cumming, Smith

Absent: O'Connell

Nomination of Secretary, Ms. JoAnn Carroll: Mouravieff, Asfar

Ayes: Miras, Asfar, Mouravieff, Kenny, Rappa, Cumming, Smith

Absent: O'Connell

Resolution of Attorney: Read aloud by Board Secretary.

Motion to approve Resolution of Attorney naming Ms. Donna Baboulis Board Attorney for the year 2014: Kenny, Smith

Ayes: Miras, Asfar, Mouravieff, Kenny, Rappa, Cumming, Smith

Absent: O'Connell

Resolution of Meeting Dates: the following dates were read into the record by the Board Secretary.

**TOWNSHIP OF WASHINGTON
BERGEN COUNTY, NEW JERSEY
ZONING BOARD OF ADJUSTMENT
2014 MEETING DATES**

January 28, 2014*

February 18, 2014

March 18, 2014

April 15, 2014

May 20, 2014

June 17, 2014

July 15, 2014

August 19, 2014

September 16, 2014

October 21, 2014

November 18, 2014

December 16, 2014

All meetings are held on the third Tuesday of each month, *except where noted, and begin at 8:00PM. Meetings are held in the Municipal Courtroom, 350 Hudson Avenue, Township of Washington.

Motion to approve 2014 Meeting Dates: Kenny, Asfar

Ayes: Miras, Asfar, Mouravieff, Kenny, Rappa, Cumming, Smith

Absent: O'Connell

Approval of Minutes: Miras, Asfar

December 17, 2013

Ayes: Miras, Asfar

First Hartford Realty Corp. – 660 -680 Pascack Road, Block 2110, Lots 6,7,8,9,10 -
Applicant withdraws application without prejudice to its rights to reapply at a later time.

Mr. Carmine Alampi, Applicant's Attorney and Mr. Tendai Richards, Objector's Attorney, introduced themselves to the Board and placed their attendance on the record.

Mr. Alampi: stated that, on behalf of First Hartford, a letter was sent to the Board to withdraw the application without prejudice; applicant and/or the property owner preserves their right that at a later date they may re-file an application; a new application may be similar or may be different; requested the matter be withdrawn; mostly the issue is the applicant ran out of time; First Hartford was under a lease agreement contingent upon the zoning approval process and development and the process went beyond 2.5 years; as a result, the lease had been extended on one or two occasions, but the lease expired at the end of December 2013; contacted by his client who engaged Mr. Alampi to not negotiate the terms of the lease but rather to present the zoning application and to secure the necessary approvals and they directed Mr. Alampi, that since the lease was no longer in effect, the applicant could not proceed legally with the application and they asked the application to be withdrawn; the letter was sent in January and to his surprise, the Board had all of its members' terms come to conclusion and so this is the first opportunity the Board had to accept the letter of withdrawal; normally, Mr. Alampi would not come before the Board and follow through on the letter because it is an administrative task; felt the application was pending for so long and even if individually the members at this time were not members of the Board through the time the application was heard, out of respect to the members of the Board and the tens or hundreds of hours spent on the application, he and his client wanted to extend their sincere appreciation for all the Board's professionalism, patience, interest and for protecting the interest of the community and the residents; felt it was appropriate he should appear once again to say thank you for the way the Board handled the application; let the public know, even if there were disagreements regarding what would be the appropriate development of the site, the public's input and interest is respected as is their community; very happy to come before the Board; hopefully he will be able to come before the Board on other matters as well.

Chairman Miras/Ms. Baboulis: thanked Mr. Alampi for his professionalism; on behalf of all members, including the ones no longer on the Board, the sentiments are the same.

Mr. Richards: reflected on the application; wanted to thank the Board for their time, effort and patience; mostly wanted to thank the audiences that showed up and who supported their community and let their voices be heard; the Township of Washington demonstrated their interest in their community; it has been a privilege and an honor to come before the Board and the public and put up a fight for his client.

Ms. Baboulis: thanked Mr. Richards for his professionalism as well.

Chairman Miras: asked if there were any comments from the Board.

No Board Comments.

Chairman Miras: asked if there were any comments from the public.

Ms. Grace Hogan, 898 Washington Avenue: congratulated the new Board; thanked Mr. Alampi and his client for coming to the consensus to withdraw the application; before the

Board votes on the withdrawal, asked the Board to consider stipulating some terms of the conditions so it is not a total open ended deal; doesn't want the applicant to be able to return to the Board to revisit the proposed CVS; referred to Samsung Oldsmobile Cadillac vs. Shrewsbury Board of Adjustment; there is also a DEP application pending for a permit approval; application expands the scope of the CVS project to approve Lots 1, 2 and 3; keeping CVS project alive for the DEP application.

Mr. Alampi: stated he was familiar with the case Ms. Hogan cited; the issue at hand is not the issue Ms. Hogan raised; applicant wishes to withdraw their application; Boards generally and usually grant such a request; if not granted, it runs the risk of litigation; in regards to the withdrawal, the applicant doesn't have an absolute right to withdrawal; the Board could insist the application proceed and continue to a vote; this case is different because they are not the owner of the property; First Hartford had signed a lease agreement with 660 Pascack Associates; lease had specific terms and a duration; lease had run its course and the parties negotiated a 6 month extension; ran again; another 6 month extension was negotiated; finally a decision was made that it was not feasible to keep extending the lease; this application cannot proceed as a matter of law since First Hartford no longer has a financial interest or a legal interest in the property itself; controlled by contract law and the underlying lease; equally, the owner of the property is 660 Pascack which is an entity owned by James Kourgelis and his family, the owners of Seasons; action cannot be taken as to the applicant that would be binding upon the property owner when the property owner is not part and parcel of the withdrawal; 660 Pascack, as the property owner, is continuing the DEP application process because issues were raised the setback requirements and the flood plain requirements might interfere with the future development of the property; 660 Pascack has an application with the DEP represented by a different attorney; Ms. Hogan wrote a letter that he received; she stated her objections; the venue for those conditions that Ms. Hogan addressed is in Trenton with the DEP; the jurisdiction is with the DEP and not with this Board; withdrawing the application on the municipal level for the municipal approval process; appreciates the Board's courtesies; doesn't believe a motion is required; environmental issues are exclusively with the DEP; active application; there is opposition to it; does not know what will happen at that level; suspects there will be some relief in regard to the grade and re-grading and fill in of that property so that there can be an opportunity at a future date for some type of development.

Ms. Baboulis: suggested, if the Board is inclined to accept the withdrawal and if the applicant ever seeks to reinstate this application, there would be a new application subject to the current requirements, fees and conditions at the time of the filing of the new application; basically, the applicant would have to re-file.

Mr. Alampi: stated Ms. Baboulis is correct; sometimes when an application is withdrawn, the applicant attempts to re-file under the same docket number with the same processing; this would not be the case; the applicant understands that if any application would be filed it would be filed as a new application; it could not rely on the previous record that it had made; when an application is dismissed however without prejudice, the applicant can file a similar application, but it would be a new and distinct and separate application.

Ms. Rosa D'Ambra, 423 Colonial Boulevard: stated she believes there should be stipulations to this withdrawal; not a good idea to have a CVS; DEP matter; discussed a court matter regarding trees.

Ms. Baboulis: stated the questions/comments asked/made can only be regarding the withdrawal of the application.

Chairman Miras: stated there are two separate issues involved; motion is to withdraw the application and if the applicant wanted, they can return with a new application; no old testimony comes into play.

Ms. Baboulis: stated it is not for the Board to say what a new application, if there was one, would be; the applicant is withdrawing without prejudice.

Chairman Miras: asked for confirmation that the three years of testimony could not be considered in regards to a new application.

Mr. Alampi: stated that a new application can't rely on testimony by handing in the transcripts; consultants would have to be retained; application would start all over; it is possible that a similar type of application could be filed on this property and it is possible that it would never be filed; they do not know; if the ground lease ran its course and expired, what is the likelihood that that particular tenant would reappear on the site?; it is improbable, but not impossible; appreciated all of the effort and energy that was expended; his client spent well over \$400,000.00 on the application, not taking it lightly; a lot of engineering and detail work was done; does not know what the future is for the site.

Mr. Joseph D'Urso, 12 Viola Terrace: asked how the current Board could vote on the withdrawal without prejudice when there are only two members from the previous Board on the new Board; also, how can only two members vote on the minutes.

Ms. Baboulis: stated two members can vote on the minutes; that is a quorum of the Board for the minutes; in regards to the motion to withdrawal without prejudice, the applicant has made its argument to withdraw, the Board has listened and the public has been heard.

Mr. D'Urso: asked how the Board, other than Members Miras and Asfar, can vote on the withdrawal.

Ms. Baboulis: stated the issue before the Board is a motion to withdraw, the issue is not on the merits of the application.

Mr. D'Urso: asked how the Board could make a decision when they don't know the details of the application.

Ms. Alampi: stated that statements are being made that don't agree with the law; the Board is a continuous body; members change; how and why the Board came up to term at the same time was a clerical mistake; with regard to that continuity, the concept has always been Board members replace Board members and a verbatim record is kept so they can vote; not unusual if an application carries over from December to January of the next year that some of the Board members have changed, but since the new Board members have the benefit of reading the transcripts they can participate in that vote; stated nothing has to be known about the application itself because they are not talking about the merits of the application; procedural presentation regarding withdrawing the application.

Ms. Baboulis: stated that First Hartford does not have standing to continue the application.

Chairman Miras: asked if there were any questions from the Board.

Mr. Kenny: asked if there are time limits for a new application to be resubmitted; a new application, if submitted, would be brand new and there would be nothing from the past that would be applied to a new application.

Chairman Miras: stated Mr. Kenny was correct.

Mr. Alampi: stated he currently has an application in Paramus; stated a change in the application was made to turn the building around; same building size; had to re-file a new application; stated the Board was wrong, but it didn't make sense to litigate it; a whole new application was filed; will bring all witnesses back; made it clear, that if there was a new application before the Township of Washington Zoning Board, it would be a new application; they are withdrawing because in legal terms, if there is no lease, there is no standing; legal impossibility; if there is no ability to proceed contractually, cannot proceed with application because he would be perpetrating a fraud.

Motion to accept the withdrawal of the First Hartford application: Kenny, Mouravieff

Ayes: Miras, Asfar, Mouravieff, Kenny, Rappa, Smith

Abstain: Cumming

Absent: O'Connell

Resolution of the withdrawal of the First Hartford application: read aloud by Board Secretary.

Motion to accept Resolution: Asfar, Kenny

Ayes: Asfar, Kenny, Miras, Mouravieff, Rappa, Smith

Abstain: Cumming

Absent: O'Connell

Chairman Miras: stated the next meeting will be held on April 15th.

Motion to Adjourn: Smith, Kenny

All Board members present approve motion to adjourn.

Meeting Adjourned: 9:00PM

Respectfully submitted by:

JoAnn Carroll

Zoning Board Secretary

April 7, 2014