

**BOROUGH OF RARITAN**  
**Planning Board Regular Meeting**  
**MINUTES**  
Wednesday, March 23, 2016

**CALL TO ORDER**

Chairman Miller called the meeting to order at 7:00 p.m. in the Raritan Municipal Building. He read the Open Public Meetings statement as follows: This meeting is called pursuant to the provisions of the Open Public Meetings Act. Notice of this meeting was published in the Courier News on January 30, 2016. In addition, copies of the notices were posted on the bulletin board in the Municipal Building, on the Raritan Borough website and filed in the Office of the Borough Clerk. They were also sent to those people who have requested and paid the cost for mailing same. Notices on the bulletin board have remained continuously posted. Proper Notice having been given, the Board Secretary is directed to include this statement in the Minutes of this meeting.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**Present:**

Mayor McMullin  
Councilman Z. Bray  
Chairman R. Miller  
Mr. T. Brown  
Ms. D. Thomas  
Mr. E. Wilde  
Mr. M. DiCicco  
Mr. J. Gausz  
Mr. W. Cunningham  
Mr. D. Fortkus  
Mr. N. Carra  
Mr. J. Krajewski

**Also Present:** S. Rubright, Esq.  
S. Schrek, VCEA  
L. Gara, Zoning/Construction

**Absent:** Mr. R. Zack  
Mr. N. Carra

**APPROVAL OF MEETING MINUTES**

- February 24, 2016 TRC Meeting

**Motion** by Ms. Thomas, **seconded** by Mr. Gausz to approve the Minutes of the 2/24/16 TRC meeting, as written by voice vote.

- February 24, 2016 Regular Meeting

Two typographical errors on page 2 were pointed out. **Motion** by Mr. DiCicco, **seconded** by Mr. Fortkus to approve the February Minutes, as amended by voice vote.

- February 24, 2016 Executive Session

**Motion** by Councilman Bray, **seconded** by Mr. DiCicco to approve the Minutes of the February Executive Session, as written by voice vote.

**ENGINEERING & ZONING REPORTS**

Mr. Schrek advised that Tim Horton's opened. Not released from performance guarantee yet. Mr. Gara indicated that he had nothing new to report.

## **TRC MEETING UPDATE**

Vice Chairman Brown indicated that a meeting would be held on March 30.

## **MISCELLANEOUS**

Mr. DiCicco asked about the backhoe in front of 102 Second Avenue. Mr. Gara related that permits had been filed and that the owner has another couple of weeks before the building must be razed. Chairman Miller indicated that the matter would be discussed at the next TRC meeting.

## **OLD BUSINESS**

### **Viktor & Ruta Buchholz (Block 2, Lot 21 – 1126 Route 202)**

*Appeal of "d" variance and any other associated relief for replacement of professional office with single family residential use contrary to zoning.*

The Chairman announced that the Buchholz application was being carried to April 27 without further notice and that an extension of time had been granted through May 26; not May 19 as the agenda indicated. The Board Attorney suggested that the applicant be required to re-notice if they do not appear in April. Mr. Gara advised that they were contemplating revising the application and that if they do, would have no choice but to re-notice. Ms. Rubright spoke to the protocol for carrying an application in response to a question from the Mayor regarding same.

## **NEW BUSINESS**

### **Humberto Hidalgo (Block 35, Lot 2 – 415 Raritan Avenue)**

*Appeal of "d" variance and any other associated relief in accordance with 207-108A of the Borough of Raritan Zoning Ordinance.*

**John Kelleher, Esq.** appeared on behalf of the applicant. He advised that the applicant purchased the home in question in 2000 as a two family house and that it appeared to have been a two family house in the 1990's. He explained that the applicant discovered that the property was not listed in official records as a two family house during the course of attempting to sell it and that he would either need a resolution confirming status as a two family or in the alternative, a variance. He clarified that it was not a conversion and offered that in addition to paying a registration fee for a tenant, the applicant had obtained a fire inspection certificate in 2000 identifying it as a two family house.

In response to a question from Chairman Miller as to whether two family homes were permitted in the zone when it was purchased by the applicant, Mr. Kelleher related that it was listed as a single family home in the Borough's records but sold and financed as a two family home. He asserted that his client believed it to be a two family house and that it physically functioned as such.

There was a discussion about how the property is identified in the tax records. Mr. Kelleher indicated that the property was reassessed in 2003 as a two family home. Mr. Schrek acknowledged that his understanding was that there was an issue with how it was being carried on the tax rolls but that given certain parameters, the Borough ordinance allows continuation of a non conforming use.

In response to a question from the Board Attorney, Mr. Gara confirmed that a change in zoning became effective in 2006. Ms. Rubright outlined the procedure under the MLUL that a homeowner would

undertake in order to confirm that a property is a pre-existing non conforming use. Mr. Gara confirmed that when the reassessment was done in 2003, the house was picked up as a two family despite any proof of conversion on record. Ms. Rubright asserted that in order to be classified as a legal non conforming use, it had to have been legal upon creation. She advised the applicant's attorney that it was up to him to make the proofs demonstrating that the use was legal at the time the ordinance changing the zoning was enacted. Mr. Kelleher explained that the proofs could not be made; thus the application for a d variance.

There was an extensive discussion about tax records and payments as they relate to the status of the property. Mr. Kelleher confirmed that the tax bill identifies the property as a two family. The Chairman cautioned that this was not a discussion about the tax classification. Calling it "indicative but not dispositive," of how the property was legally used, the Board Attorney indicated that permits would be evidence of a conversion prior to 2006.

In response to a question from Mayor McMullin as to whether the applicant was in a position to attest that he purchased the property as a two family and did not convert is as such, Mr. Kelleher indicated that he was. Mr. Schrek offered that since this was not converted by permit or with any site plan that it may have issues with variance requirements for impervious lot coverage given the parking lot in the rear. Mr. Gara offered that no site plan would have been necessary for a single family home. Mr. Schrek asked how he got 56% lot coverage. Ms. Rubright offered that relief would be needed from those conditions as well.

Mayor McMullin and Councilman Bray were recused at 7:30.

**Humberto Hidalgo** was sworn in. Mr. Hidalgo testified that he purchased the property in 2000 as a two family home with tenants upstairs. He indicated that it had been a two family during the time he owned it and he affirmed that he did not convert it. He testified that to the best of his knowledge, he was paying taxes on it as a two family residence.

Mr. Kelleher marked **Exhibits A1 and A2** (a certificate of inspection for smoke detectors in one and two family buildings dated March 31, 2000 and a code enforcement housing registration), respectively, into testimony. Mr. Hidalgo testified that he moved in to the first floor of the house on May 1, 2000 and that he had paid a housing registration fee for his tenant annually since. Mr. Gara explained that the ordinance requiring the housing registration became effective in 2010 and that prior to that, it was only required for non owner occupied properties. He asked whether the house was always owner occupied. Mr. Kelleher indicated that Mr. Hidalgo obtained it under the New Jersey Landlord/Tenant Act and that it was being presented as evidence of the property being a two family home. Mr. Gara confirmed that he would not have that document if it were a single family home.

There was a brief discussion about the frequency of and protocol for fire inspections and the difference between fire prevention and property maintenance inspections. The Chairman opened the floor to public comment.

In response to a question from Mr. Brown as to whether he knew the owner that he purchased the property from personally, Mr. Hidalgo testified that he did not.

**Ken Warren** of 415 Raritan Avenue asked Mr. Gara whether there had been any permits for construction during the last 7 or 8 years. Mr. Gara indicated that he did not recall specifically but indicated that there none for work that would have been bonded such as a conversion. In response to a question from Mr. Warren about whether he recalled responding to the property while a truck removing construction debris was leaving, Mr. Gara indicated that he did. The Board Attorney asserted that questions were supposed to be directed to the applicant and offered that Mr. Gara might need to be sworn in. In response to a question from Mr. Warren as to whether he had done any construction or made changes to the interior of the building since he had moved in, Mr. Hidalgo related that he had replaced the kitchen and bathroom cabinetry in the downstairs apartment as well as the front porch. In response to a question from Ms. Rubright as to second floor renovations, Mr. Hidalgo testified that he recently replaced the sink and faucet.

**Vera Delosh** identified herself as a resident of Foothill Road who would be moving back to Raritan. Ms. Delosh asked the applicant a series of questions about the annual fee he paid for registration of his home, prior ownership and tax classification. The Chairman closed the public comment portion of the hearing.

In response to a question from Ms. Thomas, Mr. Hidalgo related that all of the utilities except water were separate.

**John Chadwick, P.P.** was sworn in. There was an extensive discussion as to the relevance of the legality of the use. Mr. Chadwick offered that the ordinance speaks to the use. The Board Attorney asserted that case law dictates that in order for it to be considered pre-existing, nonconforming, it had to have been legal at the time. Mr. Chadwick indicated that it was zoned for and existed as a two family house in 2006. The use as it existed in 2006 was discussed at length. Mr. Chadwick spoke to the fire inspection certifying it as a two family home which was conducted when the property was purchased in 2000. He asserted that the use was continuous and as such, never abandoned. He suggested that the Board consider through the testimony provided whether there were enough proofs to substantiate that it was a permitted use in the zone, occupied as a two family house prior to adoption of the ordinance and that it remained as such presently. He offered that it had been inspected as such by several agencies.

There was a brief discussion about the relevance of permits/records showing when the conversion took place. The Board Attorney reiterated that in order for it to be considered a pre-existing non conforming use, it had to have been created as such. Mr. Schrek indicated that there was a one year grace period when people could come in for a certificate for continuance. He asked whether the Building Department went back to check if it was legally constructed. Mr. Gara indicated that when the ordinance was changed, not one owner of the 500+ two family homes in the Borough came.

Making reference to the Master Plan, Mr. Chadwick offered that ordinance was constructed to maintain the single family character of the neighborhood while recognizing that two families existed in the single family zone. He offered that it did not explicitly state that one had to come in and register but rather, that there was compliance in the absence of any expansion. There was an extensive discussion about the legality of the use and the definition of lawful. Mr. Kelleher asserted that no one received notice about the ordinance change and that if the owner had, he could have readily obtained a certification from Mr. Gara. A discussion continued as to the relevance of whether or not the site was conforming. The Board Attorney acknowledged that two families were permitted at the time of the ordinance change. Mr. Gara

spoke to the ability to issue continued certificates of occupancy as a vehicle for making the use a legal non conforming one. There was a discussion as to whether a use variance was necessary or if a continuation of the non conforming use could still be granted. Mr. Kelleher asserted that at the time the ordinance was changed that two families were permitted so going in any other direction was “substance over rationale.” He asserted that there was no illegal conversion that anyone was aware of.

The Chairman asked whether the Board members had any questions for Mr. Chadwick. There were none. He opined that Mr. Chadwick had summed up what the intent of the ordinance was in saying that it was to “move away from two families without penalizing existing property owners.”

In response to a question from Ms. Rubright as to what would be done procedurally if it was a two family at the time the ordinance was implemented and currently complies with all building requirements, Mr. Gara related that it would be handled as a Continued Certificate of Occupancy instead of a use variance or a certificate of non compliance. Ms. Rubright indicated that the Board could vote that the use was a permitted at the time the ordinance was adopted and that it is a nonconforming use, authorizing the Construction Official to issue whatever certificate needs to be issued.

Mr. Hidalgo testified that the paving in the rear/parking area was there in response to a question from Mr. Brown. The Chairman opened the floor again to questions for Mr. Chadwick.

Vera DeLosh indicated that the reason she came to the hearing was because she understood from the notice that there was going to be a two family house which was contrary to a denial she and her husband received in the R4 zone as a result of the 2006 ordinance. Mr. Chadwick informed her that she must have misinterpreted the Notice as there was no new construction intended. Ms. DeLosh spoke at length to her efforts to build/convert two family houses in a two family zone between 2004-2006. Chairman Miller advised her that it was not an appropriate forum to make a case on her property/issues.

Mr. Warren asked whether it was the applicant’s position that there was a mistake in the tax roll at the point of sale and what defines the property a two family, if not the tax record. Mr. Chadwick deferred to the Assessor as far as any mistake and offered that it is the use that defines it. Chairman Miller reminded everyone that there was a document issued by the Fire Department in 2000 identifying it as a two family residence. The Board Attorney offered that a decision should be made upon the testimony of Mr. Hidalgo and Mr. Chadwick in conjunction with the evidence (Exhibits A1 and A2). She spoke to case law which showed precedent for proof of use prior to an ordinance rendering it non conforming based upon a Certificate of Occupancy and tax certifications.

The Chairman opened the floor to public comment.

Vera DeLosh stated that they were not in opposition as their application was dismissed without prejudice. Ms. Rubright offered that the Board could not provide an advisory opinion. There was further discussion about acceptable methods of proof in response to a comment from Mr. Warren.

The public comment session was closed at 8:25

The Board Attorney offered that the Board should be voting on whether, based on testimony and evidence presented, that at the of the ordinance change, the use was a two family residence and if so,

would authorize Lou Gara to issue a Continued Certificate of Occupancy with the caveat that there was no finding as to compliance with permit/code issues.

**Motion** by Mr. DiCicco, **seconded** by Mr. Gausz to find that the use was preexisting, non conforming based on the testimony and evidence presented and to authorize Mr. Gara to issue a Continued Certificate of Occupancy as such.

**ROLL CALL**

**Aye:** *Chairman Miller, Mr. Brown, Ms. Thomas, Mr. Wilde, Mr. DeCicco, Mr. Gausz, Mr. Cunningham, Mr. Fortkus, Mr. Krajewski*

**Nay:**

**Abstain:**

**RESOLUTION**

**PB-2016-07**

**Motion** by Mr. Gausz, **seconded** by Mr. Fortkus to adopt resolution # PB-2016-07 authorizing a professional services agreement appointing Paul Grygiel as special planner with respect to a preliminary investigation study of Block 81, Lots 1-3.01, 4, 5, 6.01, 6.02, 6.03, 7-9.01 and 10 to determine whether this area constitutes an "area in need of redevelopment."

**ROLL CALL**

**Aye:** *Chairman Miller, Mr. Brown, Ms. Thomas, Mr. Wilde, Mr. DeCicco, Mr. Gausz, Mr. Cunningham, Mr. Fortkus, Mr. Krajewski*

**Nay:**

**Abstain:**

**DISCUSSION**

Chairman Miller asked the Board Engineer whether there were any updates on Redevelopment. Mr. Schrek indicated that Mr. Grygiel had asked for municipal records which were being assembled. Timeframes for completion of the investigation/report were discussed. Ms. Rubright confirmed that he funding was in place in response to a question about same from Mr. Brown.

The Chairman opened the floor to public comment.

**PUBLIC COMMENT**

**John Roglieri** of 34 Vones Lane asked about the fee for the Planner. The Board Attorney explained that he estimated the cost of the hearing and preparation of the agreement at \$9-10k based on a discounted hourly rate of \$150. With respect to attorney's fees, Ms. Rubright explained that they would separate, minimal and would come from escrow along with the Engineer's fees. Mr. Roglieri provided his contact information in order to receive a copy of the funding agreement and resolution. There was a brief discussion about the number of homes on Third Street that the contractor was attempting to purchase.

A resident who identified himself as **Edward Chalupa** commented on the new jug handle. Mr. Gara suggested he raise his question at the Council meeting. Mr. Schrek indicated that there would be a public information session.

Mr. DiCicco asked about the post office. Mr. Gara indicated that the architect took the plans back and will return them. He related that the developer wants to start the project.

With respect to the Barbieri project, Mr. Schrek indicated that the bond had not been transferred to the developer. Mr. Gara confirmed that there had been no changes to the site plan and that they had received prior approvals in addition to paying the sewer fee. Mr. DiCicco commented about a certification on the foundation. Mr. Schrek indicated that the escrow was deficient and that they can't transfer the bond.

With respect to the intent of the TRC, Mr. Schrek indicated that it was designed for more advanced applications with completeness issues in mind; not for opinions. There was a brief discussion on a proposed mural for Animerge which was shown.

Speaking to the recent declaratory judgment action, Ms. Rubright provided a brief update on COAH in response to a question from Mr. DiCicco.

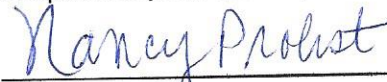
Mr. Brown spoke about his recent attendance at the County Partnership Forum.

There was a brief discussion about the status of the "River project" in response to a question from Mr. Cunningham.

#### **ADJOURNMENT**

**Motion** by Mr. Fortkus, **seconded** by Mr. Brown and unanimously carried to adjourn the meeting at 8:54.

Respectfully submitted,



Nancy Probst  
Planning Board Secretary

**APPROVED 04/27/16**