

**HIGHLAND PARK PLANNING BOARD
HIGHLAND PARK BOROUGH HALL
221 South Fifth Ave.
Highland Park, NJ
MINUTES - - OCTOBER 19, 2017**

Call to Order

The October 19, 2017 regular meeting of the Highland Park Planning Board was called to order in accordance with the rules for the Open Public Meetings Act by Chairperson Kim Hammond at 7:35 pm; Ms. Hammond indicated the location of the fire exits.

Roll Call:

Present	Kim Hammond, Rebecca Hand, Alan Kluger, Paul Lanaris, Judi Shade Monk, Susan Welkovits, Allan Williams, Clifford Gibbons, Esq., Substitute Board Attorney
Absent	Scott Brescher, Padraic Millet, Stephen Nolan, Roger Thomas, Esq., Bruce Koch, Engineer
<u>Board</u>	Roger Thomas, Esq. Board Attorney, Jim Constantine, Board Planner
<u>Professionals</u>	Bruce Koch, Borough Engineer

Approval of Minutes:

March 9, 2017

It was MOVED by WILLIAMS and seconded by LANARIS that the March 9, 2017 minutes with revisions be approved, and with a voice vote from all present five (5) ayes and two (2) abstentions from Mr. Kluger and Ms. Monk the minutes were approved.

April 20, 2017

It was MOVED by LANARIS and seconded by WILLIAM that the April 20, 2017 minutes with revisions be approved, and with a voice vote from all present six (6) ayes and one (1) abstention from Mr. Kluger the minutes were approved.

Memorization of Resolutions

Resolution P2017-03 Action on Amendment to Highland Park Redevelopment Plan for
Redevelopment of Block 173, Lots 36 and 37

Rosanne Baruh, Chairperson, Highland Park Redevelopment Agency, sworn and affirmed, said that conditional redeveloper/owner for this property is Anton Popov. After a long process, we have a satisfactory plan with retail in the front, four apartments on the second floor, a fifth apartment on the first floor in the rear for handicap accessibility and ADA compliance and this is where the first amendment is needed. The plan as currently written does not permit residential housing on the ground floor an amendment is required.

Ms. Hand asked if there was anything in the Plan that would ensure that he make the entire apartment ADA Compliant, wider doorways, etc. Mrs. Baruh indicated that could be made a contractual obligation. Mr. Constantine added that he would not be able to pull a construction permit; it has to satisfy the Construction/Code Official.

Mr. Kluger said that “required” was used twice, by whom is having an ADA apartment required and is it required to have an apartment on the first floor. Mr. Constantine said it is required by the state and ADA and his other choice would be to have an elevator to a 2-story building to service 4 units, which is costly.

Mr. Kluger asked if he is required to have an ADA accessible apartment because there is only 4-5 apartments it would be cost prohibitive to have it on the second or third floor with such a small building. Mr. Constantine replied yes.

Mr. Gibbons said that each application must be considered on its own merits as a matter of law.

Mr. Kluger said that the second use of the word required, it was stated that the amendment was required. Technically speaking the applicant could come before the Board and request the relief from Board as part of site plan review as opposed to doing these one off amendments. Ms. Hammond indicated but at that point, they would not know as they develop their project whether or not they would get that relief.

Mr. Kluger asked if that was common in the Redevelopment world and as each developer comes along is this going to be the process. Mrs. Baruh indicated that one of the differences they have is that there is one plan for the entire area, many towns have a plan per property or parcel, and it is common practice to have a redevelopment plan for each parcel

Mr. Gibbons indicated that what is being proposed is not unusual and sometimes the most practical way to do that is through an amendment to the plan, and go from there. You could seek variance relief but it has a different dynamic and the law exists and permits a developer, property owner or redeveloper to have those plans amended through this process.

Mrs. Baruh said that the next provision in the amendment is the parking requirements, this was something that has been seen before for this developer and the language has been simplified carrying the basic requirement which is that he must acquire five parking spots within 1,000' for each residential unit because the property will have no on-site parking.

Mr. Kluger indicated that this had been approved previously; Jennifer attached the previous amendment and asked how this one was different.

Mrs. Baruh said that the previous amendment included language about the setback. The first amendment did carry with it the expectation that somehow, the parking requirement would run with the land and a modification to the deed in some way so that every property owner would be obligated to find five parking spots. The Agency Counsel felt that was not consistent with usual practice and suggested that we simply require that there be five parking spots.

Mr. Kluger asked if they were being asked to remove the last line, "This restriction shall be recorded and run with the land." Mrs. Baruh agreed.

Ms. Hammond said that would need to be clearly reflected in the recommendation back to Council.

Mrs. Baruh indicated that the Agency Counsel thought that this was an undue burden to the property owner.

Ms. Hammond indicated that the Board's recommendation back to the Council properly states the elimination of the last sentence.

Mr. Williams asked if Mr. Popov sold the property would the parking become invalid. Mr. Constantine said no, it would be subject to a redevelopment agreement, Board approvals etc.

Mr. Gibbons indicated that the redeveloper agreement will run with the land and that will be valid and enforceable.

Mr. Constantine said that Mr. Baumann was concerned with asking an applicant to get that restriction imposed on another property owner as in the church land. The issue was trying to get the church or some other party to agree to a deed restriction on their land and that is what Mr. Baumann was concerned with and that was why it was taken out.

Mrs. Welkovits indicated that they would not receive a certificate of occupancy until those parking spaces are in place and that is something Code Enforcement could manage that aspect of it. She said Mr. Baumann said that it was not practical to impose this on a third party i.e. the parking lot and the responsibility should be on the property owner.

Ms. Hammond asked if what we want to have happen is ensured through the language in terms that this will be a constant requirement no matter who the owner is.

Mr. Gibbons answered that he conferred with Mr. Thomas today and he did not see any trouble with what was proposed. He said that he does not see this as a problem, and if Mr. Popov sells the property, he sells all his right title and interest including anything that has to do with the redevelopment agreement and whomever buys the property succeeds to those rights, they are not extinguished unless the redeveloper and the municipality get together and change the agreement.

Mr. Kluger said that issue that Mr. Baumann and maybe the property owner is that the word land may be construed to be talking about where the parking spaces are and if that is the case, we can better define and leave the language in there. He does not think that anyone is arguing that the restriction stays with the land and the property.

Mrs. Baruh suggested Counsel Mr. Thomas and/or Mr. Schmierer discuss because this will ultimately be an action taken by Council, that there be some added language here to ensure that this remain an obligation of the property owner.

Mr. Gibbons noted that the duty does not go away it remains effective, and the language as it exists is pretty expressed now.

Ms. Hammond said that the language to Council could be to examine the language to ensure that the parking requirement would still run with the land regardless of ownership. Mrs. Baruh agreed.

Mrs. Baruh said that the final change is a general change to the plan; the plan currently states that no Borough funds shall be used for acquisition of real property required for redevelopment projects. She said that there is an exception that the Borough is going to seek to acquire property as it becomes available so it can be used for redevelopment and the current language would prohibit that.

Ms. Welkovits added that when meeting with the NJDCA it was one of their recommendations that in some situations you would want the Borough purchase the property first and not exclude ourselves from that type of opportunity.

Mrs. Baruh indicated that Highland Park was made up of a lot of little lots and in order to develop you have to buy 4-5 lots and to assemble the property like that is very difficult. If the Borough takes an active role in making that happen, we have a better chance for better redevelopment projects.

Ms. Hand asked if there was concern with possible future accusations of favoritism if the Borough gets involved in redevelopment projects.

Ms. Welkovits said that she could not speak historically why that language was placed in there but municipalities like Woodbridge and New Brunswick have successfully built around an Arts facility and received a lot of government funding and that was predicated that the municipality purchase some of the land first. She said that they did not want to exclude themselves from that type of opportunity especially if there is funding for something like that.

Ms. Hammond indicated that at the time when the Plan was written it spoke of eminent domain and people were upset and a lot of other towns do use eminent domain and Highland Park made it clear that we were not going to use eminent domain and this language was part of the reassurance that people were not going to wrestled out of their properties. She said that maybe the language is limiting.

Mr. Kluger indicated that their goal back then was for property owners do redevelopment for themselves and some of that language was in there to ensure people that we were not coming and buying up people's properties away. He said that we all want a better developed downtown and wanted to give existing property owners to do the work themselves and now someone can argue that it has been 12 years, things have not happened so maybe the Council could have a different view now and maybe the people in town have a different view now. He said that he believes this to be more of Council's call then the Board's call. Ms. Hammond agreed.

Mr. Constantine indicated that this would give the Council another tool; the Redevelopment Plan has not yielded itself results the way it was initially envisioned in part because of what Mrs. Baruh indicated you have a lot of little parcels and a parcel may become available where the Borough may decide to acquire and allow for a larger assemblage to occur versus a pattern that has been difficult. He said that was the feedback that the Borough had been getting there is difficulty sometimes because they have tried to assemble parcels where one was in the redevelopment area, one was out, and that has been resolved with the Area in Need of Rehabilitation.

Ms. Hammond asked Mr. Constantine or Mr. Gibbons to speak about their familiarity with other towns redevelopment plans, how standard or not standard that concept is for the town to use town funds to acquire land.

Mr. Gibbons indicated he does special redevelopment counsel for a couple of towns. He said to have that language it is important to distinguish if the municipality wants to free up funds for the purpose of assemblage of lands that is not in any way an implication that are going to be exercising condemnation powers. It is very practical in this day and age especially with the greater popularity of redevelopment and the amendments to the statute that a municipality have the freedom do a lot of assemblage. He does redevelopment in Hoboken and without that ability; you could not do some of the projects in a city like that and add to the quality of life and it has nothing to do with "jumping in" and taking someone's property it is simply a matter of pragmatic assemblage of lots into what could be project. The municipality is not the redeveloper, at the end of the day the redeveloper would purchase the property from the municipality under the local lands and building law. He said that this was not a slippery slope

that is going to turn into rampant trouble. He said that it has been used in Hoboken, Summit, and other major cities right outside of Highland Park.

Ms. Hand asked if it would be helpful to flip the language in order to express the purpose of doing this from a simple deletion to something more along the lines of the Borough shall be permitted to use funds in order to foster redevelopment as such opportunities may be available in order to assemble. She suggested something on a positive note in order to assemble and fully explain the purpose of changing the redevelopment plan.

Mrs. Baruh indicated that there was language in the provision of the plan “pursuant to the statutory site 40A:12A-7a that properties in the redevelopment area may be acquired to further the purposes of the Redevelopment Plan but does not say by whom.

Mr. Gibbons concurred and indicated that it was not so vague that it could be manipulated, there are already many constraints within your redevelopment plan and within the law; it does not imply and adds power to begin to operate like a redeveloper on your own. He said what is being proposed is consistent with the intent.

Ms. Hammond suggested making two separate recommendations: in regards to Block 173, Lots 36 and 37 the Board agrees to the first amendment change regarding residential on the first floor and in regards to the parking requirement the question was raised about the requirement running with the land and whether that language should be removed versus improved to ensure the intention and separate out the third amendment as a general amendment. Mrs. Baruh agreed there should be two separate amendments.

Mr. Kluger said that there was also language in the first amendment regarding the parking and it indicated that there would only be parking requirements so long as there are residential units in the property. If the property is sold and there are no longer residential units, the parking requirement would not be necessary.

Mrs. Baruh recommended to amend and restate, restate the entire parking requirement as a whole so that there is no need to consult two different documents and consolidates and incorporates all of the concerns. If there are residential units, they must have at least one spot per unit within 1,000’ of the building, whomever owns said building must comply with this requirement so long as there are residential units; this shall supersede any other requirement pertaining to parking.

It was MOVED by HAMMOND and seconded by LANARIS making the following recommendation back to Borough Council in regards to Block 173, Lots 36 and 37 in the Highland Park Redevelopment Plan the Board agrees to the first amendment change regarding residential on the first floor and the recommendation for the parking be amended and restated as follows: If there are residential units, they must have at least one spot per unit within 1,000’ of the building, whomever owns said building must comply with this requirement so long as there are residential units; this shall supersede any other requirement pertaining to parking, be approved.

ROLL CALL: Ayes – Hand, Kluger, Lanaris, Monk, Welkovits, Williams, Hammond
Nays – None

There being seven (7) ayes and no nays, the Planning Board makes the following recommendation: in regards to Block 173, Lots 36 and 37 the Board agrees to the first amendment change regarding

residential on the first floor and the recommendation for the parking be amended and restated as follows: If there are residential units, they must have at least one spot per unit within 1,000' of the building, whomever owns said building must comply with this requirement so long as there are residential units; this shall supersede any other requirement pertaining to parking, was approved.

Ms. Hammond asked that the recommendation be drafted up for the Board to review to ensure that the Board's concerns were captured prior to it going back to Council.

Mr. Gibbons said that he would work with Mr. Thomas on the recommendation.

Ms. Hammond open the floor to public comment, there being no public, public comment was closed.

It was MOVED by KLUGER and seconded by WILLIAMS that the general amendment in regards to the entire Highland Park Redevelopment Plan and recommend to Borough Council that the Planning Board has determined that it is better within Council's prevue to make the decision on whether to remove the language currently in the Redevelopment Plan regarding the use of funds for the acquisition of real property within the Borough of Highland Park for redevelopment projects, be approved.

ROLL CALL: Ayes – Hand, Kluger, Lanaris, Monk, Welkovits, Williams, Hammond
Nays – None

There being seven (7) ayes and no nays, the general amendment in regards to the entire Highland Park Redevelopment Plan and recommend to Borough Council that the Planning Board has determined that it is better within Council's purview to make the decision on whether to remove the language currently in the Redevelopment Plan regarding the use of funds for the acquisition of real property within the Borough of Highland Park for redevelopment projects, was approved.

Correspondence and reports:

Ms. Hammond indicated that there have been on-going meetings of the screening committee, made up of people from Redevelopment, Main Street, Zoning and Planning Boards, have been seeing applications, and has been a successful forum in terms of getting feedback out to potential applicants before they get to far down the wrong path. She said that they are getting feedback that they would get before the board but prior to investing too much into their project and hopes to see applications before the Board in the upcoming months.

Action of any other business and work session: None

Public comment on any item not on the agenda: None

Ms. Hammond opened the floor to the public. No one appearing Ms. Hammond closed the public discussion.

Adjournment

There being no further business a motion was made to adjourn from Mr. Nolan with a second from Mr. Williams and at 8:34 PM, the meeting was adjourned.

Respectfully submitted,

Jennifer Santiago, Board Clerk