

**Stanhope Land Use Board  
December 10, 2018  
Regular Meeting  
Minutes**

**RECEIVED**  
JAN 15 2019  
STANHOPE  
BOROUGH

CALL MEETING TO ORDER:

Chairman Maguire called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE:

Chairman Maguire invited all those present to stand in a salute to the colors.

STATEMENT:

Adequate notice for this meeting has been provided according to the Open Public Meetings Act, Assembly Bill #1030. Notice for this Reorganization Meeting was forwarded to the New Jersey Herald and Daily Record on January 10, 2018 and was placed on the municipal bulletin board.

In the event the Board has not addressed all the items on its agenda by 11:00 p.m., and it is of the opinion that it cannot complete the agenda in a reasonable period, the Board may exercise its option to continue this meeting at an agreed time and place, within ten (10) days of this meeting.

At this time, please turn off all cell phones.

ROLL CALL:

Nicholas Bielanowski - present  
James Benson - absent  
Raymond Cipollini, Alt #1 – present  
Rosemarie Maio - present  
Thomas Pershouse - present

Thomas Romano - present  
John Rogalo – present  
Joseph Torelli – present (arrived @ 7:15 pm)  
Paula Zelif-Murphy - present  
John Maguire - present

Others present: Board Attorney Glenn Gavan, Board Engineer Eric Keller and Board Secretary Ellen Horak

MINUTES

**November 19, 2018 Meeting** – On motion by Mayor Maio, seconded by Ms. Zelif-Murphy, the Minutes of the November 19, 2018 Meeting were approved on majority voice vote. Mr. Romano abstained.

CORRESPONDENCE

11-27-18 New Jersey Planning Officials – New Jersey Planner (Sept./Oct.)

On motion by Ms. Zelif-Murphy, seconded by Mr. Bielanowski and carried by unanimous voice vote, the Correspondence List was accepted and placed on file.

OPEN TO THE PUBLIC FOR NON-AGENDA ITEMS:

Chairman Maguire opened the meeting to the public for non-agenda items. Seeing no one from the public wishing to speak, Chairman Maguire closed the public portion of the meeting.

NEW HEARING:

**18-01, Juntos Holdings, LLC**

Blk 11205, Lot 4, Amendment to Condition of Variance Approval

Deemed Complete: 11/19/18

Mr. Gavan noted this application relates to a "D" Variance and therefore the Mayor and Council Representative cannot participate. Mayor Maio and Mr. Romano stepped down from the dais. Ms. Zeliff-Murphy, being a property owner within 200' of the applicant's property also stepped down from the dais.

Alan Fox and John Fiorilla, of the firm Capehart & Scatchard, of Mount Laurel, New Jersey, attorneys for the applicant came forward. Mr. Fox stated they represent the applicant, Juntos Holdings LLC with regard to property located at 1-3 Kelly Place which is located in the Historic Village Residential Zone and has a pre-existing non-conforming and operates in accordance with a use variance granted by the Zoning Board dating back to 1996 and more recently by a resolution adopted in 2006. They are before the Board to address one issue with the 2006 resolution. Mr. Fox noted he provided the Board Secretary with an affidavit of service and notice of publication for notice provided for this application.

Mr. Gavan advised the Board that he was contacted by counsel retained by a resident, who indicated he has a question as to the validity of the notice provided by the applicant, which is a jurisdictional issue that should be addressed.

Bernd Hefele, Esq. came forward and stated he represents Mr. O'Bitz, who lives at 19 New Street, Stanhope, New Jersey. The issue he has with the notice is two-fold in terms of the notice itself and the application in terms of what is actually being request by the Board. The notice specifically states the applicant is looking for a change to one of the conditions of the 2006 resolution, which in fact they are doing. It then goes on to say they operate a lawfully existing warehouse use of the property to which they want to change a condition. Mr. Hefele said his issue with the notice and with the way the applicant is proceeding on this is that the notice is really an attempt, in his opinion, to side-step the process and to notice this and call the application a validly existing warehouse use only for the modification of a condition when in fact, there is a lot more to this application is a problem with the notice and with the application. Mr. Hefele said he would like to put facts on the record because he does not think the current notice is correct under the circumstances. Mr. Hefele noted the application proceeds under the 2006 resolution, which is the resolution the applicant references and seeks to modify. Mr. Hefele presented a copy of the 2006 resolution, marked Exhibit 01. The resolution lays out exactly how that resolution was put in place and specifically references the prior litigation that took place regarding this property. The 2006 resolution was the incorporation of the litigation and settlement agreement and states that the permitted use for the property is office with assembly and light manufacturing. That is the permitted use for this property. There was a current tenant, BASF that had used at that property that was warehousing and the Board said that warehousing use could remain; however, the conditions for that warehousing use were laid out and that was one of the conditions. The applicant is seeking to modify the routing condition contained in the resolution. Mr. Hefele stated the problem is that the resolution and the settlement agreement and the approval to permit that warehouse use was put in place with a contemplated tractor trailer use of four (4) trucks per year. Mr. Hefele stated the Borough's Zoning Officer confirmed this. The 4 trucks per year contemplated in 2006 was conditioned by routing

them through the town in the best way possible. Mr. Hefele noted he applicant is seeking to change the route, to which he is not opposed. He has no issue with the application, but what he has a problem with and believes the Board will have a problem with is that the contemplated four trucks in 2006 has increased and operating in terms of tractor trailer traffic was 156 in 2007 and in 2018 is over 300 tractor trailer trucks (double the amount of 2017). From the 4 truck per year that the Board was very concerned about in 2006, they are now running over 300 trucks to the site. Mr. Hefele stated his client lives at the intersection of New Street and Plainview and he presented as Exhibit 02, a spreadsheet prepared by his client showing all the truck traffic that took place between 2017 and 2018. The spreadsheet shows each and every day the tractor trailers came in, when they came in, the size of the trailers and what happened in terms of property damage, police reports, etc. Mr. Hefele stated Exhibit 02 represents all of the truck traffic and substantiates those counts in terms of the amount of truck traffic. The neighbors have complained about the amount of trucks and the Zoning Officer got involved. The resolution has provisions in it that call for the Zoning Officer to be involved if the warehouse use gets changed to approve the use. The applicant submitted a zoning application to the Zoning Officer but did not give her all of the information. In their 2017 application they indicate to the Zoning Officer they are going to have a warehouse office and storage use. Mr. Hefele stated they failed to include that they have warehousing and distribution use of 300 trucks per year. Mr. Hefele presented a copy of the referenced Zoning Permit Application as Exhibit 04. Mr. Hefele noted he also wanted to present, as Exhibit 03, six pictures showing how the trucks are continuously at the site. Mr. Gavan stated in order to have the pictures entered into evidence, the Board would need testimony. Mr. Hefele presented as Exhibit 05, a letter dated December 13, 2017 from the Zoning Officer to the applicant. Mr. Hefele read the letter aloud, a copy of which is attached hereto.

Mr. Fox asked the Board to hear the application. Mr. Fox stated he does not believe the information being presented by Mr. Hefele is relevant and that his objection goes to the resolution of 2006. His client had an opportunity to appeal the 2006 resolution and did not. The appeal period has expired. Mr. Fox noted the resolution does not put a limitation on the number of trucks permitted.

Mr. Gavan stated he and the Board have serious concerns on what is going on at the property, noting what they have just heard from Mr. Hefele, which they were not aware of. There is also a concern that all of the conditions of the resolution were not perfected which would void the entire approval. There was a requirement of a turn-around and the mere fact that the predecessor did not do it, does not forgive the applicant nor give them the right to use it. If the Board determines that was a critical condition of the approval, the applicant would not have any variance approval.

Mr. Fox stated they are here to address those conditions. The condition mentioned which is modification of the corner, which is now owned by the State, dealt with a turning radius from the existing realm going down New Street to make a right onto Plainview. They will present testimony from their expert showing that route is not the appropriate route to get to their property. They will give a better alternative that will make the turning radius easier and will also keep the trucks from going over residents' property. Mr. Fox stated the condition of the 2006 resolution requiring the trucks to go up Kelly Place and come down New Street then making a right is no longer a viable choice. Mr. Fox said the Board has the option to excise the condition, which in his opinion they should do, or provide an alternative. They will give expert testimony showing a better truck route that will make it safer, make the turning radius easier, will void the trucks going over Mr. Hefele's

client's property and the need to modify the corner noted in the resolution will become moot. Mr. Fox asked to allow them to give their presentation.

Mr. Gavan stated the point is, if they get through this, and the Board determines that things have to be done that are not included in the notice, the entire application will fail and the applicant will need to start all over. If the Board hears testimony from either the applicant or the public or their own experts and they determine they need more information with regard to site and what is going on at the property, it opens the entire "box" of what is going on at the property, not just the single condition noted. Mr. Fox responded this is not an application for an expansion of the use. Mr. Gavan agreed, but added that the testimony may present that they have de facto expanded the use. Mr. Hefele stated that is exactly the issue. Mr. Fox stated that is an enforcement issue, which is why you have a Zoning Officer, it is not a Board issue.

Mr. Gavan asked what exactly the applicant before the Municipal Court for. Mr. Fox responded it is because they had a problem with the truck route. They could not go over with the existing condition because they had blockage so the trucks were using an alternate route. They were cited for not complying with the prior condition. Mr. Fox claimed there were property owner cars blocking the intersection and they could not get the trucks into their driveway so they had to offload them on the street, which they were also cited for. Mr. Fox noted State statute states you are not allowed to block an intersection, but yet there are members of this community who do just that. Mr. Gavan stated that issue is not for this Board to determine, consider or even hear about. Mr. Fox stated the Board can send a letter to Council saying that they think that the intersections should not have parking. Mr. Gavan questioned why the Board would do that since it is already State law to which Mr. Fox responded because it is not being informed. Mr. Gavan stated it is not the responsibility of this Board to tell the governing body what to enforce and what not to enforce. Mr. Fox stated if the Board is going to provide a truck route, it must allow for free flow of traffic. Mr. Gavan stated, based on the Zoning Board, they do have a valid truck route. Mr. Fox responded they do not have a working truck route. Mr. Gavan noted the truck route worked in 2006 when approved and questioned what changed from then to now. Mr. Fox stated it no longer works and they will provide testimony of a better alternative route. Mr. Fox said they will provide testimony that if the intersections are left to be free, which is what law requires, the trucks would be able to get in and out in less than 3 minutes. The problem is when people block intersections the trucks cannot get through. Mr. Gavan asked if they made that argument to the governing body who controls this. Mr. Fox responded in the affirmative, adding the governing body said they are waiting to see if and how this Board acts and they will act on the recommendation of this Board. Mr. Gavan questioned why the Board would go through the time and expense to enact an ordinance that is State law. Mr. Gavan again stated this is not within the jurisdiction of this Board. Mr. Gavan stated he believes the Board, by their 2006 resolution, that the route indicated was the best and most economic route to access the property. Mr. Fox responded circumstances have changed and they do not believe that route is still the best route to the property.

Mr. Hefele stated circumstances in terms of trucks and truck turning has not changed. This application of changing the route is nothing more than a red herring; an attempt to get, as the Board's Attorney mentioned, de facto approval of an expansion of a non-conforming use. Mr. Hefele noted Exhibit 05, the Zoning Officer's letter, in which she concludes, after advising them that it was approved for four tractor trailer trucks per year and they are beyond the scope of that and she advises them to make a new application to the Land Use Board for the expanded use and their



inability to follow the terms of the resolution with regard to when and where truck deliveries are made. She directed them to contact the Land Use Board Secretary for a variance application,

Mr. Fox objected to the comments made by Mr. Hefele and stated there is no condition in the resolution limiting the truck traffic to four per year. Mr. Gavan agreed.

Mr. Hefele stated the Zoning Officer directed the applicant to make an application to the Board for the expansion of a non-conforming use; however, that is not what the applicant submitted to the Board. The applicant submits a request to change a condition on the routing. Mr. Hefele said if this Board changes the route knowing the truck traffic has increased from 4 to over 300 per year, it is a de facto approval of this Board of an expansion of that non-conforming use. Mr. Hefele stated if that is what the applicant wants, they must make a proper application that the Zoning Officer told them to make. The Zoning Officer interpreted the prior approval to be 4 trucks per year pursuant to the resolution and settlement agreement. If they want to have the 300 trucks permitted, they must make the proper application for it and present proper evidence. Mr. Hefele stated this is why the notice is incorrect.

Mr. Gavan stated he would like testimony from the Zoning Officer so the Board will have a better understanding of what is going on with this property and he recommended the matter be carried to the next meeting. Chairman Maguire agreed, adding he sat on the Zoning Board at that time and he recalls conversation about the 4 trucks.

Mr. Fox stated they are ready to move forward and would like to have testimony from their experts tonight. Mr. Gavan noted this relates to a variance and the Board has 120 days from the date deemed complete to take action.

Mr. Fiorilla stated the applicant received a copy of the 2006 resolution prior to purchasing the property and knew there was no mention of the number of trucks; however, they found out that one of the conditions they cannot do because the property for the turn-around was sold. Mr. Gavan responded the applicant had the resolution and purchased the property with that knowledge.

Mr. Hefele stated the second to last Whereas paragraph in the resolution states the Board reviewed the terms of the settlement agreement, a copy of which has been submitted to the Board as A-1. The Board had that settlement agreement and the agreement indicates 4 trucks. The settlement agreement was referenced in the 2006 resolution.

Mr. Fox stated they are not bound by the terms of the settlement agreement, only the conditions in the 2006 resolution. Mr. Hefele disagreed stating the truck traffic number was not mentioned in the resolution but, the Board in 2006 was operating within their mind of 4 trucks after reviewing the settlement agreement. It may not have been put in the resolution, but they never contemplated 300 trucks. The settlement agreement was referenced in the resolution and the Municipal Court Judge also said for them to go back to the Board about the number of trucks and to get an "Interpretation." Mr. Hefele stated the application should be for the expansion of a non-conforming use for going from 4 trucks per year to 300 trucks per year.

Board Engineer (and Borough Engineer), Eric Keller, stated facts on what he has seen on his visits to the property. There was a survey included with the application he reviewed. At the request of

the Zoning Officer, he looked at the site in September and again yesterday. Mr. Keller stated there have been improvements/modifications to the property that are beyond what is shown on the survey received which is dated November 14, 2016. There has been gravel areas added, there have been trees removed on the property on the Plane Street side a sidewalk has been added also on the Plane Street side. On the Plainview Street side, a gravel area has been added by the loading area at the southwesterly side of the building. There are improvements that have been made that have expanded the impervious coverage at the site. Also, a retaining wall has been added. Mr. Keller said, to his knowledge, there has been no application submitted to the Board for those improvements. Mr. Keller stated, on the Plane Street side, the work that was done in September has been added to; the gravel area now goes up to the grey house that is on Plane Street. These improvements which are part of this property owner's activities have extended onto an additional lot. Mr. Fiorilla stated the applicant has purchased that lot. Mr. Keller responded the lot is a residential lot. Mr. Gavan noted a site plan should have been filed with the Board.

Mr. Pershouse stated he would like to have the Zoning Officer present. Chairman Maguire agreed, noting questions have been brought forward that only the Zoning Officer can answer.

Shari Spiridigliozzi, the applicant, stated her experts are present and although she knows the Board cannot make a decision tonight, she asked the Board to let her experts testify. Ms. Spiridigliozzi stated it is very expensive to have the experts appear and she will be travelling out-of-town the next three months. She asked the Board to hear their presentation. Chairman Maguire responded that there are questions and they need to hear more information from the Zoning Officer. The Board agreed they need more information from the Zoning Officer.

Chairman Maguire announced this matter will be carried to the next meeting, scheduled for January 14, 2019 at 7:00 p.m. with no further notice.

Mr. Fiorilla asked that the Board give a formal request that the Zoning Officer attend. Mr. Gavan stated, if the Zoning Officer is unable to attend the next meeting, they will move forward with the testimony.

(Mayor Maio, Mr. Romano and Ms. Zelif-Murphy returned to the dais.)

ADJOURNMENT:

On motion by Mr. Rogalo, seconded by Mr. Torelli, it was the consensus of the Board to adjourn the meeting at 8:30 P.M.

Respectfully submitted,



Ellen Horak, Board Secretary

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**Borough of Stanhope**  
*77 Main Street*  
*Stanhope, NJ 07874*

November 13, 2017

Juntos Holdings, LLC  
Att: Shari Spiridilaizzi  
125 Main Street  
Netcong, N.J. 07857

RE: Land Use Board Resolutions for 1-3 Kelly Place

Dear Ms. Spiridiglaizzi:

Over the last several months I have received multiple complaints weekly, in writing, and in pictures from neighboring property owners regarding delivery trucks driving the wrong way, tractor trailer deliveries in the morning before 7:00 AM, and oversized tractor trailers damaging private property because the trucks are too large to make the turn onto Plainview Street safely. They have also complained about the fact that on some weekdays employees have worked until after 9:00 PM. On Saturday October 28<sup>th</sup> your employees worked until 6:16 PM and on Sunday November 12<sup>th</sup> employees were working. The residents have also complained about not being able to park their vehicles in front of their homes because of the potential of damage.

In the court settlement of 2001, and "Review of Litigation Settlement Application No. 04-12" approved on February 13, 2006, the terms and conditions of the settlement and the resolution were listed as to the permitted uses, times and locations of deliveries, etc. In section D of the terms and conditions all trucks with trailers of 53' were prohibited from entering Plainview Street from Kelly Place and required to follow Waterloo Road to New Street and then turning right onto Plainview Street. The resolution also stated that the trucks are "to proceed on Plainview Street only a sufficient distance to access the Area B loading dock in a safe manner." Truck deliveries according to the resolution terms and conditions section #6, are between 8:00 AM and 6:00 PM, Monday through Friday only. The testimony that was presented to the court by the former owner and described in Settlement Terms-RHM, Section 2, D., states that "A full size tractor trailer is utilized to make deliveries to and pickups from the site three or four times per year," in Section C, it states that "A 24 foot straight truck is generally utilized to make deliveries to and pickups from the site."

Over this past year the use has expanded substantially regarding approved conditions in the resolution and court settlement. In past discussions we have had regarding the failure of your drivers to follow the road signs you have argued that you have no control over which way they drive in to make deliveries. You have been aware of the safety issue for several months as residents have complained to you and to the Borough of Stanhope regarding the oversized trucks running over their property and causing damage. The number of deliveries made by tractor

trailers has increased substantially based on the testimony presented to the court in the Settlement Agreement. At last count through October 31<sup>st</sup> not including June and part of July 98 tractor trailer deliveries were made. Deliveries are made earlier than 8:00 AM, and apparently the operation of the building has extended beyond the hours of operation approved in the resolution. In reviewing the resolution and settlement agreement, and speaking with the Borough Attorney it is apparent your business activity does not fit with the approvals granted the former owner therefore you will need to make a new application to the Land Use Board for the expanded use and your inability to follow the resolution regarding where and when truck deliveries are made. Please contact Ellen Horak for a variance application. If you have any questions I am in the office on Monday between 9:00 AM and 3:00 PM and on Wednesday between 12:30 and 5:50 PM at 974-347-0159.

Regards,



Arlene Fisher  
Zoning and Code Enforcement Official