

Stanhope Land Use Board
April 8, 2024
Regular Meeting Minutes

CALL MEETING TO ORDER:

Chairwoman Maio called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE:

Chairwoman Maio 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 Regular Meeting was forwarded to the New Jersey Herald and Daily Record on January 9, 2024, was placed on the municipal bulletin board and on the official website of the Borough of Stanhope.

In the event the Board has not addressed all the items on its agenda by 10:00 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.

At this time, please turn off all cell phones.

ROLL CALL:

Najib Iftikhar – present	Anthony Riccardi – present (arrived @ 7:05pm)
Glenn Kurtz – present	John Rogalo - present
Christine Lipinski – (arrived @ 7:02pm)	Edward Schwartz - present
Thomas Pershouse – present	Paula Zelif-Murphy – present
	Rosemarie Maio – present

Others Present: Board Attorney Glenn Gavan and Board Secretary Ellen Horak

MINUTES

March 11, 2024 Regular Meeting – On motion by Mr. Kurtz, seconded by Mr. Rogalo, the Minutes of the March 11, 2024 meeting were approved by majority voice vote. Mr. Iftikhar and Mr. Schwartz abstained.

CORRESPONDENCE

03-11-24 Eric Keller –Resolution Compliance Review #3 re: Adam Lusardi Variance, Blk 10607, Lot 8
03-13-24 Glenn Gavan – Revised Resolution of Memorialization re: Kaczynski Minor Subdivision, Blk 11106, Lot 6
03-13-24 Glenn Gavan – Resolution of Memorialization re: Montfleury Appeal of Zoning Officer Denial, Blk 11007, Lot 1 and draft deed submitted by applicant’s attorney
03-15-24 Sussex County Dept. of Engineering & Planning – Exempt Site Plan re: Adam Lusardi, Blk 10607, Lot 8
03-22-24 Daniel Benkendorf, Esq. – Application for Interpretation re: Village Way, LLC, Blk 11203, Lot 13
03-22-24 Stephen Krakowski – request for one-year extension of variance granted re: Blk 1110-4, Lot 4
03-25-24 New Jersey Planning Officials – New Jersey Planner (Jan/Feb)
03-27-24 Ellen Horak, Clerk – Chapter 100, Ordinance 2024-04
04-02-24 Eric Keller – Resolution Compliance Review #4 re: Stanhope Fuel LLC, Blk 11702, Lot 5

04-04-24 Tom Dixon, Zoning Officer – Village Way, LLC Request for Interpretation

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

OPEN TO THE PUBLIC FOR NON-AGENDA ITEMS:

Chairwoman Maio opened the meeting to the public for non-agenda items.

Sharon Anderson, 18 Musconetcong Avenue came forward and stated she has lived in her home for almost 24 years and she would like to speak to the Board about the recent clear-cutting of trees behind her house which was part of the 6 Summit Avenue minor subdivision approval, which she has 115 feet of property below that property. Ms. Anderson stated she has had horrible run-off for years for which she contacted the Shade Tree Commission a year ago on April 7, 2023 to ask what was causing it, which communication was not documented in their notes. She did receive a call from someone on the Shade Tree Commission who informed her they have nothing on file for activity on that property and because the property is so large, they are not subject to the Shade Tree Commission rules in removing trees. Ms. Anderson said she also recently went to the town to express her concerns. Ms. Anderson stated that about eight weeks ago a large number of trees were tagged and this past Thursday morning, chainsaws started cutting so she went to Borough Hall and spoke to Tom Dixon, the Zoning Officer. She asked him if they were building a house and taking down trees. He was not sure of the answer and told her he would research it. Ms. Anderson read excerpts from the Minutes of the Council's September 12, 2023 meeting where concerns were brought up about water run-off when discussing tree removal. Ms. Anderson read excerpts from the Minutes of the Land Use Board's August 14, 2023 meeting including Mr. Kandil stating there are large grade trees that block house, which Ms. Anderson said is untrue as she can see the house. Ms. Anderson noted the issue is water erosion. At the meeting, they said they will remove 16 trees, but they have removed much more than 16 trees. They have removed at least 30 trees. Ms. Anderson said she already has horrible water erosion on her property and to take all those trees down behind her house is horrific. Mr. Gavan stated there is nothing the Board can do now, but they will contact the Board Engineer who will follow up on compliance issues. Mr. Gavan noted the applicant applied to the Shade Tree Commission for the removal of 17 trees and the Shade Tree Commission should reject the request. Mr. Gavan noted the Board Engineer is not present tonight, but he should be made aware of these concerns immediately. Councilwoman Maio said the Resolution granted the applicant approval to remove 16 trees and provides for control of water run-off. The Board will inform the Board Engineer about the concerns raised and the Engineer will check to see if the applicant is no in compliance with the approval. Mr. Gavan said if it is found that the applicant violated the terms and conditions of the approval, he will need to come back before the Board. Ms. Anderson said she appreciates the concerns the Board brought up during the hearing about run-off and drainage.

Nancy Stevens, 16 Musconetcong Avenue, stated she has lived in her home for many years. She recalls when the Salmon major subdivision went through it was put that the lots remaining the same way and she questioned how something that was in place at one time can be overlooked and allow something like this to happen. Mr. Gavan stated the application as presented to the Board did not require a variance or any relief and no deed restriction was presented to the Board by the applicant who was under oath. Mr. Gavan noted that is why the Board put all the conditions in the approval so if they want to construct a house, on the lot they must come back to the Board. There was nothing legally that permitted the Board to deny the application. Chairwoman Maio stated there was no legal reason for this Board not to act on the application and the lot size is a legal lot size. Ms. Stevens stated the slope make this an issue. Mr. Gavan responded that is a construction issue. Ms. Stevens expressed her displeasure about all of this.

Scott Stevens, 16 Musconetcong Avenue, questioned if the Board has any right or obligation to notify residents that will be affected by an application. Mr. Gavan responded the State law dictates who has to be notified and a minor subdivision does not require notice. Mr. Stevens said back when it was Salmon Brothers' property and was sold and then subdivided into three specific lots, it was under everyone's impression that they intended to keep those lot sizes. Mr. Gavan said if they put in restrictions at the time, there would be a deed restriction. Chairwoman Maio stated no deed restriction was presented to the Board. Mr. Stevens stated a deed restriction exists. Mr. Gavan asked Mr. Stevens to bring a copy of the deed restriction to the Board.

Seeing no one further from the public wishing to speak, Chairwoman Maio closed the public portion of the meeting.

NEW HEARING:

24-02, Village Way, LLC

Block 11203, Lot 13, Interpretation

Appl Rec'd: 03/22/24

Since this matter is a zoning matter, Councilman Riccardi and Mr. Schwartz stepped down from the dais. Mr. Gavan noted the Construction Official has issued a violation as a product of why the applicant is here, so it is appropriate for him the step down. Mr. Pershouse stepped down from the dais. Mr. Gavan explained this hearing is an Interpretation and it is a legal issue only so it is not opened to the public.

Daniel Benkendorf, Esq. with the firm Askin & Hooker, representing the applicant, Alissa Vasquez, came forward. Mr. Benkendorf stated the property is 20 Main Street, Block 11203 Lot 13 and known as the Tannery. It is a half-acre lot located in the Village Business District. Mr. Benkendorf said when his client purchased the property, she purchased it as a single-family residential dwelling. Mr. Benkendorf said when his client purchased the property for her family to occupy, she intended to home school her children as well as other individuals who would bring their children and home school them there which is still the intent. Mr. Gavan informed the Board that he and Mr. Benkendorf spoke at length about the Interpretation and one of his Interpretations is for this to finally be determined about the single-family residence. Mr. Gavan stated the Borough's Zoning Official issued violations on the property. Mr. Gavan stated this District does allow single-family detached dwellings. He drove by the property and observed this building is a detached building. A single-family residence is permitted, which takes care of that part of the Interpretation. The next part of the issue is the home schooling. The Borough's ordinance does not define home schooling. Mr. Gavan stated he researched home schooling and found two things; being home schooling is the education of your own child in your own home and he found something about home-schooling co-ops, which to him seems like what the applicant is doing. Mr. Gavan stated he found a home school co-op in two other locations, but they were not in private residences, they were in public buildings. Mr. Gavan state the Borough does not define home schooling co-op so there is no way the Board can grant anything for a home-schooling co-op or a multiple home schooling unless this Board determines that home schooling is more than just the people who live in the house. Mr. Gavan stated the ordinance reads unless it is one of these, it is not permitted and, in that Zone, home-schooling co-op is not permitted. Mr. Gavan stated home school is with your own children. Mr. Gavan noted the issue is whether home schooling for more than the people in the home is permitted in the Zone. Mr. Gavan said the applicant's attorney said no money is being charged, but the Zoning Officer issued a violation because he found something on the internet that solicited donations. Mr.

Gavan said the legal issue is whether home schooling of more than just the children residing in the residence is permitted under the ordinance.

Mr. Benkendorf said if not accepted in a single-family home, he would like some advice from the Board on how they can proceed. Mr. Gavan responded that the Board cannot give advice.

Alissa Vasquez was sworn in. Ms. Vasquez testified that she and her family reside in the home. When home-schooling, there are seven families in addition to her family for a total of eight families. Mr. Gavan noted the State visited the residence and said there were sixteen non-resident children present. Mr. Gavan asked Ms. Vasquez if sixteen is the maximum number of children. Ms. Vasquez respond yes sixteen is the maximum. Ms. Vasquez testified that home schooling takes place between 9:00 a.m. and 3:00 p.m. for approximately 3 to 4 days per week. Aside from those times, there is no additional schooling done. Mr. Gavan questioned the number of vehicles on the site during the home schooling. Ms. Vasquez responded including her two vehicles, there are nine vehicles. Ms. Vasquez testified there are no adults there without a child and there are no children there without a parent present and none of the families stay overnight. Ms. Vasquez stated this is more like a home-schooling pod, not co-op. In addition to learning the basics such as math, etc. there is a social aspect. The children get home-schooled and then they go home. The benefit of having multiple families and children is it gives the children an opportunity to have shared projects. Children learn better with more children and there is the opportunity for input from other children. It also helps to have different parents present to teach their strengths.

Mr. Gavan noted a letter sent to Ms. Vasquez from the New Jersey State Department of Children and Families dated January 5, 2024 with the attachment "Unlicensed Provider Processing Request" listing 16 non-resident children and a parent (with no names). It says "does the program qualify for an exemption from licensing and the comment is no, then it says Conclusions and Recommendations, the Provider is "Not in Compliance" and it goes on to state "the constituent states that the children and adults are family and friends gathered at the residence for home schooling purposes." It also states in another section "Stanhope Zoning – Tom Dixon is aware of this situation and has issued violations. Sussex Fire Marshall has also been involved in this issue. I communicated with them and the Stanhope CO prior to investigating." Mr. Gavan asked, if you are not in compliance and they are not doing anything about his, does the applicant have anything from the State that says that. Mr. Benkendorf said, to his knowledge, the compliance complaints were related to the fire inspection which was completed and they do have certification which was submitted with the application. Mr. Gavan stated that has to do with fire, it has nothing to do with zoning, which is the issue. Mr. Benkendorf stated he asked the State inspector if there was anything they needed to file in order for his client to home school at her home and she told him no.

Chairwoman Maio asked Ms. Vasquez about her website called the Awaken Village. Ms. Vasquez responded her husband is a Pastor and that site is their Ministry's website. Ms. Vasquez testified the Ministry is located at another site. Chairwoman Maio commented that the website describes just what she is testifying they are doing at this site. Chairwoman Maio noted the general perception of home schooling is of a parent home schooling their own children, not seven or more families bringing their children together on a regular basis to provide a social atmosphere. Ms. Vasquez stated ever since 2020, this type of home schooling has become popular.

Mr. Gavan said it is his understanding that since the applicant's initial interaction with the Zoning Officer, things were changed in the applicant's approach. Mr. Benkendorf responded in the affirmative.

Mr. Gavan stated that in reading all the documentation, it is his legal opinion that the only way the applicant can do what she is doing is to get a use variance because multiple home schooling is not permitted. Ms. Vasquez asked what the difference would be for her to just have friends over to her house. Chairwoman Maio responded it is not just her having friends over to her house on a casual basis, this is a formal program as described by the applicant. Ms. Vasquez disagreed, stating it is not open to the public, it is very private. Chairwoman Maio noted it is still a formal program. Mr. Gavan asked the use of the downstairs of the residence. Ms. Vasquez responded she has a playroom for her children, a couch where they read and a TV. Mr. Benkendorf stated they will have a problem filing an application because they are not filing an application as a daycare facility, it would be as a home-schooling network or pod. It is not a daycare because the parents are present. Chairwoman Maio commented it may not be a daycare, but it is not home-schooling in the traditional sense and based on that, if they are looking for an Interpretation, hers is that it does not qualify. Mr. Gavan noted the home-schooling cop-ops he found are in commercial buildings.

Ms. Zelif-Murphy asked if there is money exchanged. Ms. Vasquez responded that she receives no money. Chairwoman Maio noted the website asking for donations. Ms. Vasquez responded the donations are for something different. Ms. Vasquez testified she makes no money with the home-schooling co-op.

Ms. Zelif-Murphy asked if the NJDEP would be involved because it is on the water. Mr. Rogalo responded the NJDEP would only get involved if they were constructing something there.

Chairwoman Maio noted the question before the Board is if multi-family home schooling is permitted under the Borough's ordinance. Chairwoman Maio asked if the applicant should still be using the property. Mr. Gavan responded the applicant should not be using the property until it is an approved use. Mr. Gavan stated nowhere in the Borough's ordinance does it state that you can bring in multiple children to home school so for that reason the Board has no alternative but to deny the Interpretation because you cannot create things that the Council has not authorized them to do.

On motion by Mr. Rogalo, seconded by Ms. Lipinski and carried by the following unanimous roll call vote, the Board determined, with testimony as presented, that a multi-family home-schooling with only one resident family and multiple non-resident families is not permitted under the Borough's ordinances.

AFFIRMATIVE: Mr. Iftikhar, Mr. Kurtz, Ms. Lipinski, Mr. Rogalo, Ms. Zelif-Murphy,
Chairwoman Maio
OPPOSED: None
ABSTENSIONS: None

Mr. Pershouse, Mr. Riccardi and Mr. Schwartz returned to the dais.

RESOLUTIONS OF MEMORIALIZATION

23-07, Maria and Jacek Kaczynski

Block 11106, Lot 6, Minor Subdivision Application

Approval Granted: 02/12/24

On motion by Mr. Schwartz, seconded by Mr. Rogalo and carried by the following majority roll call vote, the Resolution of Memorialization granting the minor subdivision application filed by Maria and Jacek Kaczynski for Block 11106, Lot 6 was adopted:

AFFIRMATIVE: Mr. Iftikhar, Mr. Kurtz, Ms. Lipinski, Mr. Riccardi, Mr. Rogalo, Mr. Schwartz,
Ms. Zeliff-Murphy, Chairwoman Maio
OPPOSED: None
ABSTENSIONS: Mr. Pershouse

23-06, Juntos Holdings LLC

Block 11205, Lot 4.01, "D" Variance Application
Approval Granted: 03/11/24

Mr. Gavan noted he has not finalized the Resolution of Memorialization. He forwarded a draft to the Board Engineer and the applicant's attorney for review and comment. Action of the Resolution of Memorialization will be carried to the next meeting.

24-01, Altagrace Montfleury

Block 11007, Lot 1, Appeal of Zoning Officer's Decision
Approval Granted: 03/11/24

On motion by Ms. Lipinski, seconded by Mr. Rogalo and carried by the following majority roll call vote, the Resolution of Memorialization granting the Appeal of Zoning Officer's Decision, filed by Altagrace Montfleury for Block 11007, Lot 1 was adopted:

AFFIRMATIVE: Mr. Iftikhar, Mr. Kurtz, Ms. Lipinski, Mr. Pershouse, Mr. Rogalo, Ms. Zeliff-Murphy, Chairwoman Maio
OPPOSED: None
ABSTENSIONS: Mr. Riccardi and Mr. Schwartz

BILLS:

	Gavan Criscuoli Lenar	
03/11/24	Re: Lynch Subdivision	\$884.00

On motion by Ms. Zeliff-Murphy, seconded by Mr. Riccardi, the aforesaid bills were unanimously approved by the following roll call vote:

AFFIRMATIVE: Mr. Iftikhar, Mr. Kurtz, Ms. Lipinski, Mr. Pershouse, Mr. Riccardi, Mr. Rogalo,
Mr. Schwartz, Ms. Zeliff-Murphy, Chairwoman Maio
OPPOSED: None
ABSTENSIONS: None

NEW BUSINESS:

Stephen Krakowski's Request for One-Year Extension of Variance – Chairwoman Maio noted the Board received a request from Stephen Krakowski for a one -year extension to his variance. On motion by Ms. Zeliff-Murphy, seconded by Mr. Schwartz and carried by unanimous voice vote, the Board granted a one-year extension to the Variance granted Stephen Krakowski for property at Block 11104, Lot 4.

Ordinance 2024-04, “An Ordinance Amending Chapter 100, Land Development by Adding a New Article XXIV, Prohibited Uses, Section 100-175 Uses Prohibited in Every District, Prohibiting Vehicles and Units as Living Quarters” – Chairwoman Maio noted the governing body forwarded a copy of the introduced ordinance for the Board’s review and comment. The Board reviewed the ordinance and had no comments regarding same.

OPEN TO THE PUBLIC FOR NON-AGENDA ITEMS:

Chairwoman Maio opened the meeting to the public for non-agenda items.

Brian Yelinko, representing Juntos Holdings, LLC, asked for clarification on why the Board is holding their Resolution of Memorialization. Mr. Gavan responded he sent the Resolution to the Board Engineer and Mr. Yelinko’s attorney for comment and he is waiting for their comments before he submits it to the Board. Mr. Gavan explained he usually does not share the Resolution with the applicant or their attorney, but due to the uniqueness and long history, he thought it best to give the applicant’s attorney an opportunity to review the Resolution.

Scott Wachterhauser, Borough Councilman, approached the Board to introduce himself and thank the Board for all the work they have done throughout the years.

Seeing no one further from the public wishing to speak, Chairwoman Maio closed the public portion of the meeting.

ADJOURNMENT:

On motion by Mr. Rogalo, seconded by Ms. Lipinski, and carried by unanimous voice vote, it was the consensus of the Board to adjourn the meeting at 7:50 P.M.

Respectfully submitted,



Ellen Horak
Board Secretary