

**PLANNING BOARD MINUTES**

**December 19, 2019**

**REGULAR MEETING**

**Salute to Flag: 8:05pm**

**OPENING STATEMENT:**

**This is Regular Meeting of the Wanaque Planning Board and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends on January 30, 2019, and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque and a copy thereof has been on file with the Borough Clerk and posted on the Borough's website.**

**ROLL CALL: Chairman Gilbert Foulon, Vice Chairman Joseph Graceffo, Mayor Daniel Mahler, Councilman Dominick Cortellessa, Members Kevin Platt, Charles Strobel, David Slater, Jack Crilly, Jack Jordan, Donald Pasquariello and Mary Leonard**

**PRESENT: Attorney Steven Veltri and Engineer Michael Cristaldi**

**MINUTES: from the October 17, 2019 Meeting**

**MOTION TO APPROVE MINUTES WITH CHANGE: made by Vice Chairman Graceffo, seconded by Member Platt. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Slater, Crilly, Jordan, and Leonard.  
Members Strobel and Pasquariello abstained.**

**COMMUNICATIONS/REPORTS: No questions on communications sent to the Board Members.**

**APPLICATION STATUS: All I have is what is on the agenda tonight.**

**NEW BUSINESS APPLICATION: Mexico In My Kitchen**

**Property Owner: Ahmad Faquiryon, 19 Myrtle Avenue, Wayne, NJ**

**Property Address: 548 Ringwood Avenue, Wanaque, NJ**

**New Tenant: Conor Guzman/Jailenne Guzman, 16 Sunset Road, Ringwood, NJ**

**Carlos Guzman, father of Jailenee Guzman, testified that we are going to open a Mexican restaurant at 548 Ringwood Avenue.**

**Chairman Foulon: Is that going to be a sit down restaurant?**

**Mr. Guzman: Sit down restaurant, take out and full service.**

**Chairman Foulon: How many tables?**

**Mr. Guzman: 49 seats**

**Chairman Foulon: What about parking?**

**Mr. Guzman: We have parking in the front for 1 hour parking to cover probably 8 to 10 cars. We also have outside parking in the street and in the back we have 8 parking spaces available; 3 for tenants and 5 for customers.**

**Chairman Foulon: What is our ordinance on parking for restaurants? I know we are supposed to have so many parking spaces per table.**

**Councilman Cortellessa: Your intent is to park on Melrose, Laura and Furnace Avenues. Is that the intent; side street parking?**

**Mr. Guzman: Yes. I also spoke to my landlord and across the street at the nail salon and florist there is parking available so probably we can work with the landlord across the street. It has 25 parking spaces. Maybe we can occupy some of the spaces in the front.**

**Chairman Foulon: They are allowing you to use there parking?**

**Mr. Guzman: Not yet; I haven't talked to them yet. The landlord told me to speak to the owner and maybe we can come up with something.**

**Member Platt: The owner is here (Member Jordan).**

**Councilman Cortellessa: What is the parking answer owner?**

**Member Jordan: I have to talk to my partners.**

**Mayor Mahler: There was a restaurant/diner there forever.**

**Chairman Foulon: When do you plan on opening?**

**Mr. Guzman: As fast as we can get approval.**

**Councilman Cortellessa: I assume that the bathroom is ADA compliant?**

**Mr. Guzman: Yes. We just had the Passaic County Health Department inspect about three weeks ago and he approved the bathroom and also I made him a plan where all the kitchen equipment will be designed and he approved that also. When we open, the fire inspector will set an appointment so he can be inside.**

**Councilman Cortellessa: Do you have a liquor license?**

**Mr. Guzman: No, we are not serving alcohol; BYOB.**

**Member Crilly: Hours of operation?**

**Mr. Guzman: Hours will be from 12pm until 9pm on weekdays, and on weekends probably 10pm the latest. We will be open 7 days.**

**Councilman Cortellessa: In terms of food and beverage deliveries into the restaurant, the trucks that come in are they large trucks?**

**Mr. Guzman: The food supply that I am getting is located in Passaic and they don't do deliveries. I have to do my own purchases.**

**Chairman Foulon:** How many seats do you have?

**Mr. Guzman:** I have plenty of seats and tables, but with only one bathroom, I am only allowed to have 49 seats.

**Chairman Foulon:** You need 1 off-road parking space for every 4 seats. I don't think you have that.

**Board Planner Fred Suljic:** I don't know if the Zoning Officer reviewed the application to make sure it is consistent unless we have a pre-existing situation where there were 49 seats that existed before.

**Chairman Foulon:** I don't believe there has ever been 49 seats in there.

**Member Jordan:** I bet it was close, especially with the counter.

**Member Mahler:** The last owner there had a lot of seats.

**Member Jordan:** You had the counter and 5 tables at minimum in the old space.

**Board Planner Suljic:** As long as they are continuing a similar use by not changing the use from restaurant to office or office to restaurant, you just need a verification as to how many spaces were there before how many seats were there, and if they didn't have enough parking before.

**Chairman Foulon:** I don't think we're going to get that information. I am sure the previous owner is gone.

**Attorney Veltri:** We have a checklist and a sign off from the Building Inspector indicating that this is the same use as the prior business. No change in use and he is permitting the use so as long as the seating is no more than the prior use, I think we can vote on the application. If you are considering putting more seating in, that is going to be an issue.

**Chairman Foulon:** How many seats were there before?

**Mr. Guzman:** I don't know.

**Member Jordan:** I would guess it was close to that.

**Attorney Veltri:** What we are saying to you is that it can be no more than the prior owner.

**Member Platt:** In order to come up with a number, someone has to give an occupancy load first using the square footage and figure out how many people are allowed in there. I don't know what kind of configuration he has.

**Councilman Cortellessa:** Are you using the existing kitchen? Do you have a seating plan because that will really tell you how it flows in a restaurant?

**Mr. Guzman:** I will be using the existing kitchen. I don't have a seating chart but I will prepare one for you now.

**Chairman Foulon:** We saw the seating plan and marked it as A-1.

**Councilman Cortellessa:** It has to be the same parking spaces as previous.

**Chairman Foulon:** There are only 5 parking spaces in the back, correct?

**Mr. Guzman:** Yes. There are 8 parking spaces, but 3 are for the tenants upstairs and 5 for the restaurant.

**Chairman Foulon:** You also need employee some parking. Where is that going to be?

**Mr. Guzman:** We were going to use the parking on the street.

**Councilman Cortellessa:** Let's say the turn around and say it's not 49 seats, its 30 seats or 35 seats, what is the impact on your business and would you look at it differently and what would be the implications to your business?

**Mr. Guzman:** I don't think it will affect me that much.

**Chairman Foulon:** I know the Borough put restrictions of Tree Tavern based on his parking and the amount of people allowed in the building and I think they set a precedent

by doing that. If we can tell, based on your parking, you can only have 4 tables, then you have to make a decision as to if you are going to make enough money to stay here or not.  
**Councilman Cortellessa:** It appears you have 32 people sitting at tables and 10 at the counter.

**Chairman Foulon:** I think we are in a quagmire here and I think probably what we should do is put you off until you can come back to us with your parking plan. Talk to your neighbor across the street and hopefully you can work out something with them since that would be the best situation.

**Mayor Mahler:** Could we approve it subject to the same number as the last business.

**Attorney Veltri:** If it complies with the current use in terms of seating and parking, and there is no variance triggered, then we can approve it. However, if it does not and you are proposing more seats or you get less parking than the prior, it is going to trigger a variance and whatever we do tonight is going to be null and void and you are going to have to come back for the variance application. Do you understand?

**Mr. Guzman:** Yes

**Attorney Veltri:** I don't have an objection if the Board wants to vote on it conditioned upon the exact same number of seats and parking as the prior use. If that is what it turns out to be, then he's fine.

**Member Jordon:** I don't know if you noticed, but the old counter used to run right to the back wall. It ran front to back; the whole length of the building. There was more seating there than there is now, and there were tables. I could ask my sister since it was her business.

**Attorney Veltri:** So the public is aware, we have 11 Members here tonight. We have 2 Alternates and 9 Regular Members so when we do the Roll Call Vote the Regular Members are going to be voting on the applications. The Alternates are here and they are going to be participating, but they are not going to be voting tonight. Only 9 people will be voting.

**Mayor Mahler:** Motion is to Approve the Application Subject to the fact that the seating and parking is the same as the previous tenant in the property. If the Applicant has a lot more, they have to come back for the variance application.

**Councilman Cortellessa:** Can I just ask a question? The issue is really the parking. If the restaurant's capacity can actually more than what was prior, I don't see anything wrong with that. It is the parking that is the issue, not whether a restaurant can handle 20 seats or 30 seats, I would suggest as a thought, and I could be wrong, that we talk about it based on parking, not necessarily seating. The parking is going to limit the seating. If he can only put in 10 parking spaces, assuming 4 people in a car, the maximum he could have in the restaurant is 40 people.

**Chairman Foulon:** Right now he only has 3 spaces.

**Attorney Veltri:** What this Board is not doing tonight is granting a variance. Another way of saying it is if a variance is triggered by this use and parking, what we are doing tonight is null and void and he needs to come back with a site plan variance application.

**Member Crilly:** If we know there are 5 dedicated spaces and everything else is street parking, does the town allot parking for that business?

**Chairman Foulon:** No

**Member Crilly:** We have 5 spaces and street parking. So if we already know that 5 would not be adequate based on this configuration, and it's all street parking, why is parking even an issue?

**Councilman Cortellessa:** It is an issue because if we are limiting the number of parking spaces based on the prior number of spaces. That is the issue.

**Member Crilly:** None of the parking was designated to that business, nor this business.

**Councilman Cortellessa:** But that was the restriction that was placed on the prior businesses, I believe.

**Member Crilly:** How did we do that? How do you allocate a public space for a specific business?

**Chairman Foulon:** You don't. Street parking cannot be included in the parking for the restaurant.

**Member Crilly:** So if we are talking about a ratio of some sort, it just seems to be that if people want to walk five blocks to the restaurant, they can walk five blocks to the restaurant.

**Vice Chairman Graceffo:** This is a pre-existing condition. Whatever business was there and operated, you want a business to be there and operate again. No application can come in right now and establish itself with the parking that is on the property. It would have to be all off-street parking, and there is no limit to that based on the location of the restaurant.

**Member Crilly:** I don't know what was done in the past and maybe we do have to get a variance, whatever it is subject to, but I'm not even understanding why parking is even brought up here if it can't be binding to that particular business.

**Chairman Foulon:** Because we have an ordinance that you need so many spaces per seats.

**Attorney Veltri:** The real property is this that we don't have all the documentation on the prior use and approval. This is put on for a business use tonight. Our professionals have not looked at the application; we do not have the resolution or minutes from the prior approval. Everyone is going from member and, apparently, what I heard and I could be wrong, that the prior owner had an agreement for off-street parking with another property owner that he doesn't have currently but said he was going to speak to someone after tonight's meeting.

**Member Crilly:** Why don't we just table this? There just seems to be too many open ends.

**Attorney Veltri:** We can do that as well.

**Chairman Foulon:** That is my thought exactly. We are opening up ourselves to some litigation based on previous history with a restaurant being restricted to the number of people based on parking spaces. The history of that place there used to be many more people in that restaurant then there were parking spaces available. However, this town put a restriction on that person that he can only have so many people in that building because of the number of parking spaces he has. I think we are opening up a can of worms if we vary from that. It doesn't matter what they had before; we've restricted a restaurant recently with no history being based.

**Engineer Cristaldi:** Was the restaurant in the correct zone or in a zone where a restaurant was permitted?

**Chairman Foulon:** No, the restaurant was grandfathered. I think we should just table it.

**Member Jordan:** This business is smaller than the business that was there though. No matter how you look at it. The counter used to run to the back wall and this was all open where it is closed now, so this is actually smaller than the store was.

**Chairman Foulon:** It doesn't matter. What I am saying is it doesn't matter what was there before. This town set a precedent by restricting occupancy. I think we should table it. We'll try like hell to come up with a solution for you, but I just don't want to come up with number.

**Member Jordan:** You are never going to let another business in town open then.

**Councilman Cortellessa:** It is my understanding that we are saying that a business, that may have limited parking, does not have access to local street parking to run their business. Is that what we are saying?

**Chairman Foulon:** They can't include it in their business parking.

**Councilman Cortellessa:** That would mean that we would restrict them to only their parking spaces and the use of local streets would not be allowed.

**Chairman Foulon:** Right. You can use the local streets. This guy could have a parking lot to fit 200 cars in it. People are still going to park on the street. There is nothing we can do about that, but we cannot include those parking spaces on the street as part of this business.

**Member Slater:** What you are saying Gil is that, even though there is available public parking on the street, it can't be included in his allocation.

**Member Strobel:** If he can make an agreement with the neighbor there is an assumption that after the 3 or 5 spots provided are taken, they will park there.

**Chairman Foulon:** Let's just table.

**Attorney Veltri:** From my point of view, I would like to know what the prior tenant did and how many parking spaces he had, off-street parking. I think I need to start with that to make a proper legal analysis.

**Chairman Foulon:** He has the same off-street parking.

**Mr. Guzman:** Yes

**Attorney Veltri:** But did he an agreement with someone else?

**Chairman Foulon & Mr. Guzman:** No

**Chairman Foulon:** He is going to try to make an agreement with a property owner nearby, across the street.

**Mayor Mahler:** I withdraw my Motion.

**Attorney Veltri:** Maybe we should figure out what that is.

**Mr. Guzman:** There is a one hour parking limit in front of the building for 5 to 7 cars. That is the only part of Ringwood Avenue where you are allowed to park.

**Member Crilly:** Printing Images is there and the Barber Shop. Those 7 spaces are only available if no one is parking for any of the other businesses. This also doesn't preclude people from parking on the surrounding roads.

**Chairman Foulon:** If they wanted to, they could park at the First Aid Squad. They have a lot of room there.

**Attorney Veltri:** From what I am hearing, the Board does not want to vote on the application tonight since it may involve a site plan application and/or possibly a variance application. We need to get more information on that and you can certainly do your

investigation as well. If you need to apply for a site plan or variance, you can do that and we'll hear you at our next meeting.

**Chairman Foulon:** We will table this New Business Application until our January 16, 2020 Meeting.

**APPLICATION #PB2019-11 – Tilcon New York, Inc.**

**Preliminary And Final Site Plan For Construction of Access Road Per Susquehanna  
Redevelopment Agreement and Plan**

**Authorized Agent: Brian R. Tipton, Esq. of Florio, Perrucci, Steinhardt & Cappelli, LLC**

**Properties: Block 468-Lot 2.01  
Block 475-Lot 1  
Block 470-Lots 1,2,3,4,5,6,7,8  
Block 471-Lots 1,2,3,4,5,6,7,8  
Block 472-Lots 1,2,3,4,5  
Block 473-Lots 1,2,3,4,5,5.01**

**Brian Tipton, Esq., appearing on behalf of the Tilcon New York, for the Preliminary & Final Site Plan Application. Our witnesses tonight are Charles (Chuck) Olivo, Wayne Ingram and Vince Gallo. Before we get into that portion of the application, due to the fact that this is a Redevelopment Plan Project, Bob Benecke and Fred Suljic are going to provide some testimony and background on the redevelopment process.**

**Attorney Veltri swore in all witnesses.**

**Chairman Foulon:** I think it should be noted that this Applicant appeared before us in September, 2019 and the application was denied, and I think they are resubmitting with some major changes. Correct?

**Attorney Tipton:** That is correct. This is a new application, new Plans, new escrow and fees and new testimony and you are going to see some significant changes in the operations testimony as well as with the traffic improvements that are being proposed. In totality, it is a new application. That being said, I guess we need to deal with completeness first.

**Engineer Cristaldi commented that the application is complete.**

**MOTION MADE TO DEEM THE APPLICATION COMPLETE: made by Member Crilly, seconded by Member Strobel. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Strobel, Slater, Crilly and Jordan.**

**Applicant's Exhibit**

- A Redevelopment Plan Adopted March 12, 2019**
- B Ordinance 1-0-19 dated March 11, 2019**
- C Private Roadway Plan dated December 19, 2019**
- D Aerial Plan Prepared by Stonefield Engineering Showing  
Route 287 Exhibits 55-53-52 and Broad Street (12/19/19)**
- E Aerial Plan Prepared by Stonefield Engineering Showing  
Susquehanna Avenue & Union Avenue (12/19/19)**
- F Borough Planner's Report dated September 17, 2019**
- G Drone Study**

**See Attached Transcript**

**Attorney Veltri:** I would like to clarify for the Board and the record this concept of substantial changes and what it means and what I would like the Board to consider before we delve further into this application. This Applicant was here for an approval of an access road in September, we heard an application in September and that application was Denied. There is a concept in the law called *res judicata* which says if the same parties come back with the same application, without substantial changes, then that case/application could be dismissed on the grounds that we already decided it. What happened tonight is the Applicant has listed for us what they believe the substantial changes were. I didn't comment fully on it because I did want to hear the application and the presentation myself. But they have outlined some changes for the record. They feel they're substantial, but the Board has to decide that. We have a Planner here, an Engineer here and I am going to ask Mr. Suljic, on the record, what his opinion is regarding these alleged changes.

**Planner Suljic:** After seeing what was submitted by them and what they presented tonight, I think there is sufficient information that the Board can consider that there are substantial changes. I think they updated enough data and presented it to you. I think what they presented in the aerial and also with the drone gave you significant information based upon questions that have come up before and I think a lot of clarifications have been done tonight to present to the Board that you should consider the substantial changes and decide whether to vote to approve or deny it.

**Attorney Veltri:** Mike, do you have an opinion?

**Board Engineer Cristaldi:** I remember the last application as well and I don't remember the whole traffic issue really being addressed the way it was tonight so I feel like the second half of the application that they addressed the problems that were never addressed before.

**Attorney Veltri:** I think certainly the road widening and the traffic light issues were clearly delineated tonight. I didn't get that impression in September.

**Planner Suljic:** I think the improvements are a key to this Steve and Mr. Chairman. The improvements that they are willing to make and even some of the comments that they said that if the County did not require a traffic signal at that intersection, they were willing to put up some monies to have that done so I think they have gone much more beyond then what they did at the September hearing.

**Attorney Veltri:** Any discussion from Board Members on this issue?

**Chairman Foulon:** So it's satisfied?

**Attorney Veltri:** It's satisfied.

**Chairman Foulon:** I will entertain a Motion to Approve the Application as presented tonight with conditions of County Approval and any other authority that's required.

**Attorney Veltri:** And the Representations put on the record by the Applicant. Some of the conditions that I think I heard tonight and maybe the Board can consider and discuss. Some of the issues in the Application that I would like you to discuss and consider:

1. This property and project is located in the Highlands Planning Area and the Applicant has to satisfy all Highlands Requirements.
2. If this was approved, they have to enter into a Redevelopment Agreement with the municipality.
3. They need to comply with all the terms and conditions as outlined in the Wanaque – Susquehanna Avenue 2019 Redevelopment Plan that's been marked as Exhibit A, and the Wanaque Ordinance #1-0-19 that's been marked as Exhibit B.
4. Road widening improvements that are described in Section 3, specifically pages 8 and 9 of the Redevelopment Plan.
5. They would bear the cost of possible traffic signal in the vicinity of Union Avenue and Susquehanna Avenue subject to County Approval. The Applicant did state for the record that regardless of County approval, they would agree to make the intersection "signal ready" by install junction boxes and wiring.
6. They would near to comply with the all the Reports from the Board Planner, which was marked as Exhibit F, and that Report is dated September 17, 2019, and the Board's Engineer, Alaimo Engineering, Report dated September 16, 2019.
7. This is obviously subject to County Planning Board Approval and if the County Planning Board disagrees with any of our specific traffic improvements as outlined in our Redevelopment Plan, then the Applicant would need to come back for the Board to consider those changes.
8. Subject to NJDEP Approval, Hudson-Essex-Passaic Soil Conservation District Approval and, as I said previously, Highlands Approval.

Those are my conditions and I'll defer to any other Board Members or Professionals.

Mr. Benecke: The only issue with the Highlands is, if necessary.

Attorney Veltri: The other thing I do want to mention is that there was as, Mr. Benecke stated at the beginning, there was a Deviation from the Steep Slope Ordinance. There is an excess of 30 acres of disturbance and 20.79 acres is the standard in the Ordinance, no more than that. I think the Engineer's Report does outline some reasoning for that Deviation of why I can be granted in that we are dealing here with a lot of rock blasting, not loose soil, and that would lessen the erosion concerns that the Ordinance was based on. There was also a Waiver for Contour Intervals. The Applicant gave us 10' intervals in the Plan, rather than less than that which is required, and the rationale for that would be that we are dealing with a large area and it would make sense to have a 10' interval, rather than a smaller interval.

So that was my checklist Mr. Chairman, but I'll defer to other Members and Professionals.

Chairman Foulon: Anyone wishing to add anything to the Conditions. Roll Call:

**MOTION TO APPROVE TILCON'S APPLICATION WITH OUTLINED**

**CONDITIONS:** made by Member Slater, seconded by Member Crilly.

Voting Yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Members Platt, Strobel, Slater, Crilly and Jordan

Voting No was Councilman Cortellessa

Motion Passed – Application Is Approved

**RESOLUTIONS:** None

**VOUCHERS:** submitted by Steven J. Veltri, Esq. for attendance at the December 19, 2019 Meeting in the amount of \$400; and submitted by Alaimo Engineering for the September Tilcon New York, Inc. Application PB2019-06 in the amount of \$190.

**MOTION TO APPROVE VOUCHERS:** made by Member Crilly, seconded by Mayor Mahler. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Councilman Cortellessa, Members Platt, Strobel, Slater, Crilly, Jordan, Pasquariello and Leonard.

**PUBLIC DISCUSSION:** Let the record show no one in audience to come forward.

**DISCUSSION:** Mayor Mahler advised the Board that we received some information from the Passaic County Planning Board. They want to construct a trail and they gave us all the paperwork/plans for it. They want us to give commentary at our next Meeting and decide whether or not we want them to come and give us a presentation or not. Chairman Foulon commented they are going to build it no matter what we say. Member Slater commented I guess we'll never see a bypass road. Mayor Mahler continued we will decide in January whether we want them to appear in February or not.

**MOTION TO ADJOURN AT 11:12 P.M.:** Motion to adjourn meeting made by Chairman Foulon. Motion carried by a voice vote.

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**Jennifer A. Fiorito, Planning Board Secretary**