

**Minutes of the Planning Board of the
Township of Hanover
March 23, 2021**

PUBLIC MEETING 7:00 P.M. VIA ZOOM WEBINAR ONLY

PUBLIC BUSINESS

I. STATEMENT BY PRESIDING OFFICER

Chairman Peter De Nigris called the Public Meeting to order on Tuesday March 23, 2021 at 7:01 PM by Way of Zoom Webinar Only and read the Open Public Meetings Act into the record.

II. ROLL CALL

Board Secretary, Kimberly Bongiorno took the Roll Call.

In attendance were Members: Byrne, Deehan, Chairman De Nigris, Dobson, Mayor Ferramosca, Gallagher, Glawe and Olsen

Absent were Members: Critchley, Mian and Monzo

Members of the Public were: Terri Baird

Also present were: Attorney for the Board Michael Sullivan
Board Secretary Kimberly A. Bongiorno, LUA
Township Engineer Gerardo Maceira, P.E.
Township Planner Blais Brancheau

III. RESOLUTIONS

CASE NO.	19-10-15-R1
APPLICANT/OWNER	RIVER PARK BUSINESS CENTER, LLC
LOCATION:	34 EDEN LANE, WHIPPANY
BLOCK: 3801	LOTS: 2 ZONE: RIVER PARK
REDEVELOPMENT PLAN	

Applicant sought Preliminary and Final Site Plan, Preliminary and Final Major Subdivision approval to construct a four-story 81-unit apartment building, including temporary office space, parking garage and related improvements and to subdivide the existing 73-acre tract into four lots. APPLICATION APPROVED WITH CONDITIONS FEBRUARY 16, 2021

There were no questions, comments or corrections offered by Board Members.

A motion to approve the resolution as written was moved by Member Deehan and seconded by Member Gallagher.

Members Deehan, Dobson, Glawe, Olsen, Byrne, Gallagher, Mayor Ferramosca and Chairman De Nigris voted in favor to approving the resolution as written.

2) **CASE NO.** 20-5-7
 APPLICANT/OWNER CARMELA POLISE KRAUEL TRUST c/o Gerald
 Oliverie, TTEE
 LOCATION: 563-565 ROUTE 10 EAST
 WHIPPANY
 BLOCK: 4203 **LOTS:** 5 **ZONE:** B-10

Applicant sought Preliminary and Final Site Plan and “C” Variance relief to stripe the rear paved area for parking and dumpster area. A variance was requested for parking setback where the current pavement is less than 5 feet from the side yard. New lighting (full cutoff) is proposed for the rear parking area. APPLICATION APPROVED WITH CONDITIONS FEBRUARY 23, 2021

There were no questions, comments or corrections offered by Board Members.

A motion to approve the resolution as written was moved by Member Byrne and seconded by Member Dobson.

Members Deehan, Dobson, Glawe, Byrne, Gallagher, Mayor Ferramosca and Chairman De Nigris voted in favor of approving the resolution as written.

IV. MINUTES – February 16, 2021
 February 23, 2021

There were no questions, comments or corrections offered by Board Members.

A motion to approve the Minutes of February 16, 2021 and February 23, 2021 was moved by Member Deehan and it was seconded by Member Olsen.

In voice all present voted in favor of approving the minutes of February 16, 2021 and February 23, 2021.

For the record Mayor Ferramosca and Member Gallagher recused from the following case and for the rest of the evening.

V. PUBLIC HEARINGS

1) **CASE NO.** 18-3-6-R1
 APPLICANT RJ PARENT INVESTORS, LLC (LOWE’S)

OWNER RJ PARENT INVESTORS LLC
LOCATION: 230 HANOVER AVENUE
CEDAR KNOLLS
BLOCK(S): 601 **LOT(S):** 1 **ZONE(S):** IB-3

Applicant is seeking amended approval requesting a reduction in number of required replacement trees from the approved site plan application for preliminary and final site plan approval as well as “C” variance relief to construct a +/-138,954 SF. Lowe’s home improvement and garden center along with a +/- 5,585 SF convenience store and service station. The applicant further proposed parking areas and driveways, stormwater management facilities, associated utilities, landscaping, and related site improvements. Application approved April 17, 2018 and resolution memorialized May 8, 2018

Copies of the filed Application forms and supporting documents submitted by the applicant can be reviewed at the following link:

<https://www.dropbox.com/sh/tfurpvkja7ool1r/AACzR0DBV3P4f7KHt8UFE6yJa?dl=0>

Board Action Date – MARCH 31, 2021

James L. Lott, Jr. – Attorney for the Applicant

- Gave a brief overview of the Applicant and gave the name of his witness for the evening.

The Township Engineer Gerardo Maceira P.E., the Township Planner Blais Brancheau and the Township Arborist Richard Wolowicz were sworn in by the Attorney for the Board Michael Sullivan.

William Hamilton – Planner for the Applicant was sworn in by the Attorney for the Board Michael Sullivan.

William Hamilton – Planner for the Applicant

- Gave an overview of his professional background.
- Accepted by the Board.
- Answered questions made by Mr. Lott.

Exhibit ‘A’

- Titled ‘Landscape Plan’ with the same revision date and the one previously submitted to the Board.
- Gave the total number of trees required to be planted and stated it satisfies that requirement.
- Specifies the number of trees, the location, how they will be planted, spacing between trees and the type of trees to be planted.
- Stated no detriments to the Public and further explained.
- Went over the review letter prepared by Mr. Maceira dated 3/22/2021, a second review.
- Item ‘1’ it related to outside agencies which we will touch each one individually.
- Item ‘2’ the applicant has tested that soil and it was clean filled when it was installed it has environmental signs off’s and further explained.

- The applicant does not feel is essential to do a complete soil analysis because it has been already prepared and that information has been submitted to the Township.
- His third comment is the 'NJ Department of Environmental Protection' requires the planting of the 'saplings' within the buffer area and further explained.
- My understanding is that there was a 'Soil Erosion Plan Approval' for the initial project for 'Lowes' further explained.
- We have no issue with the maintenance bond stated in section '5A' we do not believe we need any tree payment in lieu of planting as indicated in '5B' so we think that the comment is not applicable.
- The second review letter goes back to section '1 – A' of Gerry's letter; the Township Arborist's comments and further explained.
- Recapped the numbers as requested by the Attorney for the Board Michael Sullivan.
- Within the wooded area we are proposing 356 trees where we had originally 208.
- We added a little more variety of species.
- Most of them conform with the size, except the eastern red cedars '143' of those proposed along slopes within the berm area those will not conform, they are 4 ft.
- The area in the 'wet land buffer' proposed 80 trees previously 228 proposed, with heights of 4 ft. and they do not conform for the same reason as the Eastern Red Cedar trees and further explained.

James L. Lott, Jr. – Attorney for the Applicant

- Important to recognize that we meet the overall number of trees that are required.

William Hamilton – Planner for the Applicant

- Reviewed the Township's Planner letter, Mr. Brancheau dated 3/18/2021 reference page '2'.
- The first one he indicates he is somewhat concern with the size of the trees that are being proposed in the wetland buffer area and further explained. We have provided an option to that.
- Number two; the applicant is agreeing with whatever the Township requirement is with respect to maintenance bonds.
- Item 'B' I think this is somewhat of a move wipe because we have changed the whole dynamics of that transition area and further explained.
- Item 'C' we have changed the standard and have increased the spacing.
- Item 'D' we believe that the trees that we have chosen based on the species and the size are appropriate of that area.
- Item '3' I need a little explanation from the planner I am not sure of what that refers to, we can come back to that.
- Item '4' we do not need that for 'NJDEP' we will provide that information that we have already received from the 'NJDEP' with respect to the 'NJDOT'

Township Planner Blais Brancheau

- Addressed Chairman De Nigris comments and questions.
- The main issues before the Board are the small size of the number of trees which delays the benefits of the larger trees that the code is seeking to do and further explained.

Attorney for the Board Michael Sullivan

- I though what you indicated was on the approved plan it said 436 or whatever the number of trees is, was going to be addressed by virtue of in lieu payment.

Township Planner Blais Brancheau

- That is correct.

Attorney for the Board Michael Sullivan

- The fact that they are here now I think is clear they have not made such payment.
- So that the board understands, '436' trees times \$400 a tree is \$174,400.

Member Glawe

- So, to be even we need \$174,400 worth of trees and shrubs etc. is that what you are trying to say?

Township Planner Blais Brancheau

- No, that is not correct and further explained.

Chairman De Nigris

- The replacement cost since the town owns the land it would be the town's responsibility, would it not?

Township Planner Blais Brancheau

- No, I do not believe that and further explained.

Member Byrne

- I have a question for the applicant, Was the berm a condition of approval? And Why did you build it?

James L. Lott, Jr. – Attorney for the Applicant

- I was not involved in the negotiations either, but I understand that the berm it was suggested by Township and further explained.
- It was built at the expense of the applicant at the request form the Township.

Member Byrne

- When you say at the request of the 'Township', what do you mean? Since it was not part of a condition of approval, Was it an informal request? And further elaborated.
- The construction of a berm of this size seems to be a very expensive thing to do, someone please correct me if I am wrong here or if I am out of line, the applicant could have cut us a check for \$175,000 or \$176,000 and not build the berm and further explained.

James L. Lott, Jr. – Attorney for the Applicant

- The construction of the berm was nothing more than an attempt to be a good neighbor in response to a suggestion by the Township.
- Now that the berm is there it presents another opportunity for us to be able to provide the required compensatory plantings.

Township Arborist Richard Wolowicz

- Addressed Chairman De Nigris question.

Township Engineer Gerardo Maceira P.E.

- A little clarification on item '2' on my report my comment is more related the nutrient level in the berm and explained further.
- I would be satisfied with some random sampling of the soil to make sure that it is suitable to sustain this planting.
- If soil amendments are required, then I think those are appropriate.

Member Deehan

- Blais in your item number '1' what would be the proper size for those seedlings?

Township Planner Blais Brancheau

- If you were to plan full size trees you would probably see fewer planted than what it is here, I cannot give you a number.
- In some respect no and further explained.

Joe Forgione was sworn in by the Attorney for the Board Michael Sullivan

Joe Forgione

- 80 South Jefferson Road Suite 202, Whippany, New Jersey.
- Mr. De Nigris brought up a question and whether the plantings, the lack of plantings, if the difference in size of the planting will not help the environment, I just want to remind you Mr. De Nigris that this was a contaminated site that sat dormant since 1985 and if it were not for us this site would be continuing to impact the ground water.
- We acquired the property and are continuing to monitor the ground water and to natural attenuation have been able to decrease the contaminants and further explained.
- Trees or not trees what we did in this site, to develop this site I think that planting 1 or 574 trees would not make a difference.
- We made the difference from what we did.
- Also, the site... I am going to talk about safety bringing in the light, installed the light on Hanover Avenue, so I think we have addressed impact on the environment and safety which no one asked.

- With regards to Mr. Byrne's question and I apologized for some reason I could not answer you Mr. Byrne, we stated this project in and around Thanksgiving, the site was generally cleared.
- All back along with the common the property line with the old Route 24 right of way, when we were cleaning it, it was during the late fall early winter when it was a direct line to Forest Way and there was an open area that was already cleared when South East Morris Utility connecting from Hanover Avenue to Forest Way, what a great place to build a berm that would block the line of sight because that was the corner where the loading dock was and the outside storage was proposed for and approved by Lowe's.
- Mr. De Nigris the plan while it said that we were short, it always gives the applicant to make an application for that tree removal in lieu of fee making the plantings.
- While Blais will tell you that the ordinance is set up that you want to replace it, we have already approved time and time again, the ordinance is about money because you cannot physically plant the number of trees.
- I think even Blais said that if it not for this berm you cannot plant these trees, that is because you cannot physically plant them.
- Back to berm, when we constructed the berm, right side of the office, municipal complex, let us start by one to the left side building in the right of way, route 24, the kind and political, capital that was used to get a license from 'NJDOT' I cannot even begin to tell you.
- We received a license to install a berm, all 'DOT' said is that when you install the berm, we would like you to install '250' trees, we do not care size, species, type the Town is going to take over let them decide.
- The second was when we built the berm, again the left side and the right side I do not know who form Engineering/Planning called 'NJDEP' and said that we installed the berm on the wetlands, we got an 'LOI' and everyone knows that when you submit for an 'LOI' they just do not check the wetlands on your property, they check the wetlands along the perimeter.
- It took forever, we finally got 'DEP' to confirm that we are not in wetlands.
- Then someone from the Municipal complex I do not know if it is from Engineering or Planning called the forestry, we had to prove that in instructing the berm we did not cut any trees, we completed that.
- Lastly someone Engineering or Planning called South East Morris Utility company and said that we installed this berm on top of the water line.
- South East Morris Utility called us and said you must move the berm, before we started, we estate down the water line and we found that the municipality and yes you will not believe this be the South East Morris County Municipal authority was using the wrong map that took months to accomplish and further explained.
- Mr. Byrne I will tell you that the cost of that berm far exceeds writing a check for the tree removal, okay.
- It is crazy that it is 3 years later, and we are still here.
- Guys this is ridiculous we are planting trees back to wetlands.
- We are installing trees on a berm and the berm itself is with construct ... 356 trees on a berm which the berm alone has been seeded, Gerry the material is ...it has been seeded, growing and if it were not for the fact that we are going to install plants, we were going to final seeding, but we are not because we are anticipating installing trees.
- I also want to go backwards because I was asked by the Engineering department to prove and you must be an idiot if you are going to put contaminated material on 'NJDOT' property which will eventually become the Township.
- We went out and did 74 soil tests that confirmed the material is clean.

- Then I received a phone call from the Township's environmental firm that they have received the tests and said what the hell did you test it for, we already did it.
- So, I do not know how much more I can tell you. That berm is probably 3 times whatever check I can write for the tree removal.
- We took a contaminated site that is now clean and the impact to the ground water was supposed to be at 25 years for natural attenuation, we believe is down to 3.
- Not only did it help Hanover, Morris Township and Morris Plains because of the gradient, the way the water slows the ground water swelling.
- I cannot believe that we are having a discussion, to be frank with you. I mean we all know the place was a dust ball ... and look what we have here and further explained.
- Here we are Mr. De Nigris, I am sorry I had to jump in but your tree removal ordinance it is not, not, not for the environment. It is for buffer and it is for money we all know it so that is the elephant in the room that is the truth.
- It is money, money, and buffer and that is it, that is the truth.
- I did not have to spend \$474, 000 to build a berm.
- I cannot even begin to tell you how much money between the approvals and Blais turning me in and this again so here we are.
- My position is let us put a couple of hundred trees on the berm and let us call it the day, that is it.
- Forget about what the plan say it is reality it is what we should be doing.
- We are installing trees to comply with an ordinance which is backing up to wetlands, who is going to benefit from that?

Chairman De Nigris

- Thank you, Mr. Forgione I appreciate it, thank you for the background.

Joe Forgione

- Thank you.
- I am sorry guys.

Chairman De Nigris

- No problem.
- My question it still is, we are not talking about the berm we are talking about these trees and I get the impression listening to Blais and our arborist that they are not going to survive.
- Something ought to be done now to make it workable and we certainly agreement to any reasonable solution.
- Blais, the arborist and Gerry help me in terms of what it appears to be a reasonable approach, or what are the options that we can talk to Mr. Lott and Mr. Forgione and everyone else.

Township Planner Blais Brancheau

- I would like to note for the record, I take strong exception to several statements from the last witness.

- There was no turning in of anybody, when somebody does something in or around a wetland area, we want to confirm as we are required by law to do, that they have prior approvals or that they do not need approvals.
- Several statements alluded to ‘people from Planning or Engineering’, I think that you need to identify somebody or do not make vague references to people in your statements.
- I challenge anybody to proof that I or Engineering did anything other than what the law and the Public interest require.
- I do take offense at some of those statements, now I would like to ask some questions to Mr. Hamilton.
- Bill you asked me to comment on item ‘3’ on my report. What I was asking is, I realize that trees are planted but what is planted under the trees and on slopes and in the transition area as a ground cover. Is it mulch, is it grass, is it something else?
- What is being done and are there any maintenance items or is it the intent to just let it grow wild?

William Hamilton – Planner for the Applicant

- That is a good question Blais and further explained.

Township Planner Blais Brancheau

- As far as soil erosion goes, I know Gerry asked for a soil erosion plan, because of the steepness of those slopes, are there any special measures being taking to ensure that what gets planted it does not get washed away?

William Hamilton – Planner for the Applicant

- Addressed Mr. Brancheau’s questions.

Attorney for the Board Michael Sullivan

- Clarified with Mr. Maceira as follows: Item number ‘2’ is still an open item, item ‘3’, item ‘4’, item ‘5A’, we also include our outside agencies Item ‘1’.
- Mr. Wolowicz’s report was regarding the prior plan, so in the event of an approval of this plan we would need to know if there were any portions of his memo that would need to be carried forward.

Township Planner Blais Brancheau

- Made a comment of item ‘5A’ of Mr. Maceira’s report.
- I would ask the Board to consider either perpetual or a longer term than the typical maintenance guarantee for the survival of the trees that are on the ‘DOT’ parcel.
- Addressed Chairman De Nigris questions.

Township Arborist Richard Wolowicz

- The congestion has always been a concern and further explained.

Chairman De Nigris

- Mr. Sullivan my feeling now is if approval is granted it must be based on review by Blais, Gerry and Richard and it must be satisfactory to them before any final approval is granted otherwise it must come back to the Planning Board.

Attorney for the Board Michael Sullivan

- Mr. Chairman before we get to that point where we may consider taking final action lets open it up to the Public.

James L. Lott, Jr. – Attorney for the Applicant

- There were several comments with respect to the bonding guarantee and addressed it further.

Attorney for the Board Michael Sullivan

- The Municipal Land Use law says that the Township is entitled to a 2-year maintenance guarantee, so that money posted to ensure that those trees remain, if they do not, and the applicant fails to replace them then the township can go in and can replant those trees.
- I think what the arborist and Mr. Brancheau suggested is not posting a financial guarantee for 10 years because that is not authorized by the 'MLUL' the 2-year one is, I think what they are saying is that just like in any other site approved plan, if there are trees dying that they must be replaced.

James L. Lott, Jr. – Attorney for the Applicant

- Held a discussion with Mr. Sullivan regarding his statement and noted that we will know what trees are going to survive and what trees are not going to make it.
- In this circumstance we have a very large requirement to plant that we cannot plant on site and further elaborated.

Chairman De Nigris

- Mr. Lott I can assure you money is not our most important issue.
- We have our professionals say that they have some doubts, the financial interest it is not what you are stating in my opinion.
- I just want to make that clear that is not our most important issue, we are talking about trees we have some reservations our people have some reservations, and I would like to come up with some options that will make us all relatively happy.

Open to the Public for questions and comments

Terri Baird was sworn in by the Attorney for the Board Michael Sullivan

Terri Baird

- 180 Parsippany Road, Whippany.

- How many properties/trees do not follow the tree ordinance that we have here in town? Total?

Attorney for the Board Michael Sullivan

- Addressed Mrs. Baird's question.

Terri Baird

- Is it possible because these trees are smaller that are being planted, to have more trees but plant them someplace else or offer an incentive to homeowners to adopt trees and have them put in their yards because you are giving us 4 ft. trees when we should have 7 ft. trees so you are kind of putting a half a size tree or half of an age of a tree that you would normally get?

William Hamilton – Planner for the Applicant

- Addressed Mrs. Baird's question.

Terri Baird

- Expressed her view on his response.
- Expressed her views on the purpose of the ordinance.

Closed to the Public.

James L. Lott, Jr. – Attorney for the Applicant

- Gave his closing comment.

Board

- Chairman De Nigris expressed his view on the matter.
- Member Byrne addressed his question to Mr. Brancheau.

Township Planner Blais Brancheau

- Addressed Member Byrne's question.

Attorney for the Board Michael Sullivan

- Clarified, Mr. Lott you have heard the sentiments of the Board which seemed reasonable, to allow our professionals to review the plan the was presented tonight which is significantly different to what was initially submitted and reviewed.
- To do that, we would need to carry this to a subsequent meeting, after confirming with the Board Secretary Kimberly A. Bongiorno, LUA and with Mr. Lott's consent this case is carried to the May 25 2021 at 7:00 PM meeting.

- The log in instructions will be posted on the Municipal website and on the doors of the Municipal building.

A motion to carry this case to May 25, 2021 was moved by Member Deehan and seconded by Member Glawe.

In voice all present voted in favor of carrying this case to May 25, 2021.

VI. OTHER BUSINESS

None

VII. ADJOURNMENT

A motion to adjourn the meeting was made by Member Olsen and it was seconded by Member Glawe. All present in favor of adjournment.

Meeting Adjourned at 8:42 PM

KIMBERLY A. BONGIORNO, LUA.
BOARD SECRETARY
PLANNING BOARD
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY