

**PLANNING BOARD OF RUTHERFORD**  
**Minutes of Regular Meeting**  
**May 17, 2007**

<b>Present:</b>	<b>Councilman Frazier</b>	<b>Absent:</b>	<b>Mr. Elliot</b>
	<b>Mr. Boyle</b>		<b>Mayor McPherson</b>
	<b>Mr. Kuruc</b>		<b>Ms. Watson</b>
	<b>Mr. Neumann</b>		<b>Councilman Sommer</b>
	<b>Mr. Rizzo</b>		
	<b>Ms. Russell</b>		
	<b>Mr. Uhl</b>		

Also present were Brian Eyerman appearing for Anthony Suarez, Board Attorney; Ralph Tango, Board Engineer; and Mary Ellen Sartori, Recording Secretary.

The meeting was called to order at 7:05 p.m. and the Sunshine Law was read by Vice Chairman Rizzo, followed by a salute to the flag.

**MINUTES:**

Ms. Russell made a motion to accept the minutes of the March Special Meeting which was seconded by Mr. Neumann; and with Mr. Kuruc abstaining, the minutes were accepted.

The Recording Secretary stated that due to a recording error, the tape was inaudible and the minutes for the April meeting were prepared from notes. She asked the Board members to review same and address comments to her for inclusion in the minutes which will be presented for approval at the June meeting.

**NEW BUSINESS:**

**Rottini Bros.**  
**10 Hastings Avenue**  
**Case**  
**Resolution**

Mr. Uhl stated that this case involves the subdivision application which was approved by this Board one year ago and the time lapsed for the applicant to sign the deed. Nothing has changed from the original application and some item was not executed at the County level and the application needed to return to this Board for reapproval.

Councilman Frazier moved for adoption of the resolution with Mr. Boyle seconding. The Recording Secretary took roll call and all affirmed with Mr. Kuruc abstaining.

### **Nereid Boat Club**

Vice Chairman Rizzo read a letter to the Board regarding improvements to the bulkheads at the Nereid Boat Club property on Riverside Avenue. Mr. Kuruc recuses himself as he resides within 200 feet of the property. Mr. Uhl states that an application came before the Borough many years ago and they have been waiting for approval from the State DEP and Army Corps of Engineers, which has been granted for funding to restore the bulkhead which is in disrepair. The new bulkhead is to meet the present code and all State requirements. Work has not begun, they are in the final stages of approval and this letter is one of the requirements. Mr. Tango clarified that this applicant is obligated to notify the Board of their intentions. The improvements to be done to the site are in accordance to an agreement with the Borough regarding certain waterfront improvements including a new bulkhead and park amenities. They have retained, at their own expense, a consultant to do their site work and another to do the permitting. This letter is notification that the application is moving forward. It was submitted to the Board as an informative, courtesy review. The Council has previously endorsed this project.

### **Meadowlands**

Mr. Tango clarifies this project is a drainage ditch that runs from Route 17 out to Berry's Creek, this is a cleaning project. The second part of this project that the Board will be notified of is the upgrade to the tide grate along Berry's Creek. This letter is notification that the application is moving forward. It was submitted to the Board as an informative, courtesy review.

Vice Chairman Rizzo asked Mr. Tango if he had any problems with either project. Mr. Tango stated that the Meadowlands project will hopefully provide relief to the Route 17 problems. There is another project going on at the intersection of Route 17 & Highland Cross with the DOT, whereby they have an agreement with the Meadowlands Commission to have their work incorporate the drainage issue at Route 17 and the rail bridge. There are no concerns on our part and this will go before the next Council meeting as the Meadowlands Commission's contractor will need access to the drainage ditch through our DPW site. This is a positive project for the Borough. Mr. Tango could act as liaison to the Council if the Board has any questions on either project.

There is no action required of this Board on either project; they are provided for informational purposes. Councilman Frazier asks if the Board should acknowledge receipt and Vice Chairman Rizzo makes that acknowledgement along with there being no comments by the Board. Vice Chairman Rizzo opened the hearing to the public on the issue of the Nereid Boat Club improvements.

Tom Kuruc, 217 West Newell Avenue

He would like to see this project go through as it would be an improvement to the neighborhood; the Nereid is a great neighbor and good tenants for the town. They have already improved the boat house that was there and this bulkhead will enable them to make improvements to the waterfront area.

There being no further comments by the public on the Nereid Boat Club issue, Vice Chairman Rizzo closed that hearing to the public.

Vice Chairman Rizzo then acknowledged receipt of the documentation regarding the drainage ditch system. There were no comments by the Board. Vice Chairman expressed that this would be a major improvement to the area and then opened the hearing to the public on this issue. There being none, he then closed this hearing to the public.

Councilman Frazier stated that he was glad the drainage ditch issue was acknowledged because even though the Planning Board's job might be "perfunctory", he feels it is important that this step was taken because this problem has existed for many years and its important that its shown that the Board has not stood in the way of this issue.

Mr. Neumann asked if a motion was needed regarding these issues. Mr. Eyerman stated that while a motion to accept receipt is not needed, it may be done. These become a part of the record and may be reviewed or questioned at any time; the engineer may be questioned regarding these.

**OLD BUSINESS:**

The Vice Chairman reviewed the status of the Master Plan. The Recording Secretary stated she received an email from David Maski who stated that there will not be a June Master Plan meeting, but the draft plan will be discussed at the Planning Board meeting on June 21 and the Board members will have a final draft for review before them. The week of July 9 will be scheduled for a public meeting with the next Planning Board meeting to finalize changes. Dates for final adoption need to be reviewed and discussed. The Vice Chairman asked the Board members for their comments regarding the Master Plan process. Mr. Uhl stated the process is moving very well and he will be reviewing the zoning map with Mr. Maski for accuracy and inconsistency. They will then review the B zones and even out the commercial areas. Mr. Uhl's knowledge of the town and Mr. Maski's expertise will achieve the goals.

Mr. David Crook, Esq., questioned the issue of apartments over the B1, B2, B3 zones because the ordinance is not effective at this point. He has given the town the language used by other towns to make this effective as a permitted rather than an accessory use. We need to deal with the percentages of commercial to residential. Mr. Crook thought they were going to push that faster than the Master Plan because its known that a master plan takes longer than an ordinance. Mr. Crook has a few applications that he is holding until this issue is clarified. He feels the Planning Board is the correct board to deal with this issue.

Mr. Uhl replied that through his work with Mr. Maski, as they walk the business districts they will note how many residential units are above commercial. Mr. Uhl asked if Mr. Crook is questioning the ratio of square footage of commercial vs. residential, but Mr. Crook stated conversely that the opposite approach states that if you call the apartments

above to be permitted use then they are no longer accessory use, according to the Supreme Court. Unless the ordinance is spelled out, then its questionable no matter what the ratio is, but when you look around Park Avenue, there are 3 stories and there is always commercial down below and 2 stories above so as long as commercial takes one third of the formula if you use ratios, then you are OK, but other town's ordinances say yes it is permitted no matter what the ratio. Mr. Crook sent this wording to the town for review and since the Visioning Statement says that we should feed the businesses, it should be decided since I've had cases sitting for several months while waiting for this clarification.

Right now, cases must come before the Board of Adjustment for a use variance instead of being a Planning Board issue.

Mr. Uhl stated that parking was a big concern and the applicant had to prove they could provide offtrack parking.

Vice Chairman Rizzo stated this item will be addressed. Mr. Uhl asked Mr. Crook if he had presented this to Mr. Maski and was told yes and that he would be provided with another copy for review with Mr. Maski.

Mr. Kuruc asked for clarification on the areas in question. Mr. Uhl stated that they were delineated on the maps provided by Mr. Maski and that these areas will be thoroughly reviewed and the zoning structured to provide the best outcomes. Mr. Neumann asked if the Transit Village designation affects this in any way and was told that the Transit Village supports this.

Mr. Crook further stated that the Zoning Board is overloaded because of there being too many times when a use variance is required but the case should really be before this Board.

Mr. Uhl stated that the commercial on Union Avenue is broken up and on Park Avenue is basically all business with some properties having businesses on the second and third floors and some having residential above them, in response to Mr. Neumann's question as to differential. Park Avenue is more concentrated with business than is Union Avenue. Mr. Neumann further stated we would see more residential usage if we examined all of the business districts and looked at the permitted use above.

Mr. Uhl addressed another concern of Mr. Crook regarding the definition of average front yard setback. Mr. Uhl stated that most questions regarding a definition of one of the zoning ordinances come before the Board of Adjustment for interpretation. Mr. Uhl spoke with Mr. Suarez and will ask him for a review of the definition but feels this will probably fall back to the Board of Adjustment. There is a question of intent and past practice. Mr. Crook states that Rutherford's ordinance states that the front yard setback should be 20' unless other properties on the road are less than 20'. The definition of average front yard setback in this town is 200' of either sideline of the property that promotes an existing setback. Mr. Crook stated that he used to do it the way Mr. Uhl was, by taking 100' on both sides of the property for a total of 200' but upon reading the ordinance again, discovered the word "either" not "both", so this definition allows you to pick which side creates the average front yard setback.

Mr. Eyerman asked the Board not to comment on this until review of a particular application; Mr. Crook stated he was only looking to bring it up as it affects many applications.

**VOUCHERS:**

A Voucher from Anthony Suarez, Esq. was presented for payment in the amount of \$1044.99. Mr. Neumann made a motion to pay which was seconded by Councilman Frazier. The Recording Secretary took roll call and all affirmed.

Vouchers from Schoor DePalma were presented for payment in the amounts of \$108, \$270 and \$189. Mr. Kuruc made a motion to pay which was seconded by Ms. Russell. The Recording Secretary took roll call and all affirmed.

With no further business to discuss, the Chairman adjourned the meeting at 7:40 p.m.

Respectfully submitted,

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Mary Ellen Sartori, Recording Secretary