

## OPEN SESSION

### Hightstown Borough Planning Board meeting April 11, 2005

#### Call to order

Vice-Chairman Mr. Misiura called the Planning Board meeting to order at 7:30 p.m.

Mr. Misiura read the open public meetings act.

#### Flag salute

#### Roll Call

Name	Present	Absent			
Mayor Patten	X				
Mr. Montferrat		X			
Mr. Sikorski	X				
Mr. Searing	X				
Mr. Cuddy	X				
Mr. Jurgens	X				
Mr. Pratt	X				
Mr. Stults	X				
Mr. Misiura	X				
Alternates					
Ms. Harrington		X			
Mr. Byrne	X				

Members present: Mayor Patten, Mr. Sikorski, Mr. Searing, Mr. Cuddy, Mr. Jurgens, Mr. Pratt, Mr. Stults, Mr. Misiura, and Mr. Byrne.

Members absent: Mr. Montferrat and Ms. Harrington.

## **Approval of Agenda**

A motion was made by Mr. Patten, seconded by Mr. Jurgens, to approve the agenda. Roll call vote was all in the affirmative. Motion carried.

## **Approval of Minutes**

A motion was made by Mr. Sikorski, second by Mr. Cuddy, to approve the minutes of the February 14, 2005 Planning Board. Roll call vote was all in the affirmative with the exception of Mr. Byrne, who abstained. Motion carried.

## **Adoption of Resolutions**

### **Resolution #2005-01 – Frank Paladino – Grant a Use Variance for the operation of a Dog Grooming business at 134 Bennett Place.**

Mr. Rosensweig, Attorney for the Hightstown Borough Planning Board, addressed the board in explaining that once Ms. Paladino takes residence at 134 Bennett Place, the Use Variance will no longer be required, and will be deemed cancelled, pursuant to Ordinance Section 28-10.6.

A motion was made by Mr. Cuddy, seconded by Mr. Stults to adopt Resolution #2005-01. Roll call vote was all in the affirmative with the exceptions of Mayor Patten, Mr. Sikorski and Mr. Byrne, who abstained. Motion carried.

### **Resolution #2005-02 – Peddie School – Preliminary and Final Site Plan Approval. for additions and renovations to convert the existing Science Building into a new History Department Building including classrooms and an auditorium addition.**

A motion was made by Mr. Pratt, seconded by Mr. Cuddy to adopt Resolution #2005-02. Roll call vote was all in the affirmative with the exception of Mr. Byrne who abstained. Motion carried.

## **Public Hearings**

### **Application 2005-005 for Peddie School – Block 53, Lot 1.01 – South Main Street, Site Plan Waiver for the construction of a 12' x 12' Fire Pump House to be located near the Annenberg Science Center.**

Mr. Leonard Coates was present as legal counsel for the applicant. Mr. Coates advised the board this application for a Site Plan Waiver for the construction of a 12' x 12' Fire Pump House.

Mr. Coates marked as evidence A-1 – a picture, similar in nature, to what will be built at the site; adding that the structure will be 9’3” in height.

Ms. Roberts, Borough Engineer, advised the board the reason this application is before the board is because it is an ordinance requirement.

Mr. Rosensweig, Planning Board Attorney for Hightstown Borough, advised the board that they could grant approval based on the recommendations of the Borough Engineer, Carmela Roberts, making any of her concerns a condition of approval.

Mr. Pratt asked if the applicant was planning on planting arborvitae around the structure. Mr. Gailbraith advised that they do what is necessary to help conceal the building. Mr. Pratt added that this request should not be made a condition of approval.

There being no public comments on this application, a motion was made by Mayor Patten, seconded by Mr. Cuddy granting Site Plan Waiver to the Peddie School for the construction of a 12’ x 12’ Fire Pump House. Roll call vote was all in the affirmative. Motion carried.

**Application #2005-03 – Wilson Jimenez – Block 16, Lot 11.01, 216 Chamberlin Avenue – seeking a Use Variance to operate a beauty shop, and a Waiver of Site Plan.**

Mr. Leonard Coates was present representing the applicant Mr. Wilson Jimenez. Witnesses in this case are Raquel Baldwin and Sean Baldwin. Mr. Rosensweig swore in all witnesses.

Residing at the property are, Mr. Wilson Jimenez, who owns the property, Raquel Baldwin is his sister, Sean Baldwin is his brother-in-law, and Mr. & Mrs. Baldwin’s two children ages 8 and 6, and Mrs. Baldwin is expecting her third child. Mr. Sean Baldwin, husband of Raquel Baldwin, acted as interpreter for Mrs. Baldwin and Mr. Jimenez.

The following items were marked into evidence:

- A-1 Police Report
- A-2 State Cosmetology license issued to Raquel Baldwin.
- A-3 Mrs. Baldwin’s Business Card
- A-4 Enlarged Tax Map and Enlarged Survey
- A-5 Set of three photographs of 216 Chamberlin Avenue
- A-6 Set of three photographs of neighborhood properties with commercial vehicles.
- A-7 Garage floor plan, front elevation of garage, and elevation of house.
- A-8 Set of four photographs of 216 Chamberlin Avenue
- A-9 Set of three photographs of interior of garage
- A-10 Set of 36 photographs taken by Hightstown Borough Police Department

Mr. Coates outlined the application, advising that the applicant, Wilson Jimenez and his sister, Raquel Baldwin, are seeking a Use Variance to allow the operation of a Beauty Salon in the detached garage on the property located at 216 Chamberlin Avenue. Applicant is also seeking a Site Plan Waiver.

Mr. Coates advised the board Mrs. Baldwin agrees to the following limitations for the operation of the beauty salon: Hours will be Tuesday thru Saturday from 10:00 a.m. to 6:00 p.m., there will be only one hair cutting chair (station), there will be no outside employees, Mrs. Baldwin will be the sole proprietor, business would be conducted by an appointment only basis.

Mr. Coates asked Mrs. Baldwin how many customers she expects to have per day. Mrs. Baldwin, through the interpretation of Mr. Baldwin, advised that on Tuesdays, Wednesdays and Thursdays, she expects to only have between 3-5 customers per day, and on Fridays and Saturdays, approximately 9 customers per day.

Mr. Coates asked Mrs. Baldwin what services she will be providing at the site. Mrs. Baldwin advised that she would be providing haircuts for men, and haircuts and color for women.

Mr. Coates asked Mrs. Baldwin what is the average length of time for a men's haircut and for a women's hair cut and color. Mrs. Baldwin advised that a men's haircut generally takes between 20 - 30 minutes, and full hour for a woman who is having her hair cut and colored.

Mr. Coates asked Mrs. Baldwin what her qualifications are. Mrs. Baldwin advised that she has a Board of Cosmetology and Hairstyling issued from the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, effective 11/1/04 thru 09/30/06.

Mr. Coates asked Mrs. Baldwin if there was a misunderstanding on the part of the State Inspector who issued a report advising that Mrs. Baldwin's license had expired and that she was using an invalid Social Security Number. Mrs. Baldwin advised that when she came to America, she was issued a temporary Social Security Number by the I.R.S., and that was the number she inadvertently put in the Cosmetology License Application. She has since made application using her permanent Social Security Number.

Mr. Coates asked Mrs. Baldwin how long she has lived here in the United States. Mrs. Baldwin advised she has been here for 11 years. Mr. Coates asked Mrs. Baldwin if she was here legally on a green card, and if she was studying to become a naturalized citizen. Mrs. Baldwin replied yes. Mr. Coates asked Mrs. Baldwin if she has a permanent Social Security Number. Mrs. Baldwin answered yes.

Mr. Coates asked Mrs. Baldwin how long she has been a beautician. Mrs. Baldwin replied that she has been a beautician for 15 - 20 years; even before coming to America.

Mr. Coates asked Mrs. Baldwin if it is true that she went to Cosmetology School in Perth Amboy from January 2004 until November 2004. Mrs. Baldwin answered yes. Mr. Coates asked Mrs. Baldwin why she attended cosmetology school. Mrs. Baldwin advised so she could keep up with more modern styles of hair cutting.

Mr. Coates asked Mrs. Baldwin if she has any relatives from Ecuador living in this area, and if so, how many. Mrs. Baldwin stated that she has 28 relatives from Ecuador who live in this area.

Mr. Coates asked Mrs. Baldwin if it was a requirement, while attending cosmetology school, to practice the cuts she learned on people. Mrs. Baldwin answered yes.

Mr. Coates asked Mrs. Baldwin if the people she was practicing her hair cutting skills on were family members. Mrs. Baldwin answered yes.

Mr. Coates asked Mrs. Baldwin if she ever accepted any money from her relatives for cutting their hair. Mrs. Baldwin advised she has not.

Mr. Coates asked Mrs. Baldwin how these family members would come to her house. Mrs. Baldwin replied that the majority would walk, while others drive cars.

Mr. Coates asked Mrs. Baldwin if she instructed people, when coming for haircuts, where to park, and asked that they not interrupt the neighbors by knocking on their doors. Mrs. Baldwin answered yes.

Mr. Coates asked Mrs. Baldwin if she has a sign. Mrs. Baldwin answered yes. Mr. Coates asked Mrs. Baldwin to describe the sign. Mrs. Baldwin advised that it is a small paper sign approximately 1" wide and 3" long with the name "Raquel" pointing toward the garage. Mr. Coates asked Mrs. Baldwin what the purpose of the sign was for. Mrs. Baldwin advised that it was so customers could easily locate her shop. Mr. Coates asked Mrs. Baldwin if she would need any other signage. Mrs. Baldwin answered no.

Mr. Coates asked Mrs. Baldwin if it was a course requirement that she make up business cards. Mrs. Baldwin answered yes. Mr. Coates asked Mrs. Baldwin to identify what is on her business card. Mrs. Baldwin answered it has her name, house telephone number, cell number, and location, along with a picture of a woman.

Mr. Coates asked Mrs. Baldwin if she was aware that the police had been watching her for suspicion of criminal activity. Mrs. Baldwin answered no. Mr. Coates asked Mrs. Baldwin if she had seen the police reports from January and February. Mrs. Baldwin answered yes.

Mr. Coates advised the board that Mrs. Baldwin, a married woman with two children and one on the way, was under suspicion of running a prostitution ring from the subject property.

Mr. Coates asked Mrs. Baldwin if she had ever conducted any illegal activity at this property. Mrs. Baldwin answered no.

Mr. Coates asked Mrs. Baldwin that when she became pregnant with her third child, if she went to her husband and told him that she wanted to open a beauty salon in the garage so she could be home to take care of their children. Mrs. Baldwin answered yes.

Mr. Coates described for the board, the interior of the garage. Mr. Coates stated that the garage is finished, has a 6' x 6' bathroom, is sheet-rocked, has been used by the family for parties, there are a number of chairs in the garage, not to be used for a beauty salon activity. Mr. Coates advised that the garage is merely being used as a playroom for Mr. & Mrs. Baldwin's children.

Mr. Coates asked Mrs. Baldwin if she would like to be able to sell beauty supplies to her customers. Mrs. Baldwin answered yes. Mr. Coates asked Mrs. Baldwin if the sale of these items would be available to the general public, or limited to her customers. Mrs. Baldwin answered they would be limited to her customers.

Mr. Coates asked Mrs. Baldwin if she ceased all illegal activities once advised by the Zoning Officer of the Borough of Hightstown. Mrs. Baldwin answered yes.

Mr. Coates asked Mrs. Baldwin if it is correct that she never sold cigarettes to customers, but that her brother, Wilson Jimenez, for a New Year's party, bought the cigarettes. Mrs. Baldwin answered yes.

Mr. Coates asked Mrs. Baldwin if it was true that there was, due to a language barrier, a misunderstanding between herself and the Borough of Hightstown Police Department when she told the officer that she was charging between \$3.00 and \$5.00 per hair cut, that she meant that she had between 3 and 5 customers per day. Mrs. Baldwin answered yes.

Mr. Coates then asked Mr. Wilson Jimenez to come forward and give testimony.

Mr. Coates asked Mr. Jimenez where he lives. Mr. Jimenez answered that he lives in the basement of 216 Chamberlin Avenue.

Mr. Coates asked Mr. Jimenez what he does for a living. Mr. Jimenez advised he does collections for a coin-operated laundry.

Mr. Coates asked Mr. Jimenez if he had a New Year's Eve party, and supplied cigarettes for his guests, and that is why the police found cigarettes in the garage. Mr. Jimenez replied yes.

Mr. Coates asked Mr. Jimenez how long he has lived in the United States. Mr. Jimenez stated he has lived here for 11 years.

Mr. Coates advised the board he also represents Mr. Jimenez in the Municipal Court summons issued to him by the Borough of Hightstown.

#### Comments from the Board

Mr. Jurgens asked if there would be any overlapping in appointment times; will there be people waiting while someone is getting their hair cut. Mrs. Baldwin advised she would schedule the appointments with ample time as to avoid any overlapping or waiting time.

Mr. Jurgens asked if the Planning Board has jurisdiction to hear this case since there is pending municipal court action. Mr. Rosensweig advised that this hearing would clear up any zoning concerns regarding the municipal court summons.

Mr. Cuddy asked the applicant if they would require additional signage.

Mrs. Baldwin advised they would not be seeking additional signage.

Mr. Pratt asked if the applicant anticipated having only one customer at a time with one vehicle, or if there will be multiple vehicles parked, and if so, where will the vehicles park.

Ms. Baldwin advised there should only be one vehicle parked at a time to receive services, but any additional vehicles will park in the driveway, not on the street.

Mr. Cuddy referred to the police report and asked about the sale of phone cards along with beauty supplies and cigarettes.

Mr. Coates advised that these items are not before the board tonight, and should not be part of their consideration of this application. Mr. Coates further added that these items were never sold by the applicant at this location, that there was a misunderstanding on the part of the Borough of Hightstown Police Department because the officer did not speak or understand Spanish. Mr. Coates further added that the applicant tried to explain to the officer why those products were on the premises with price tags on them, and that the police department chose to produce a one-sided police report ignoring the facts the accused provided.

Mr. Searing asked how many personal vehicles are stored of the premises. Mr. Jimenez advised there are three vehicles; however, his vehicle and Mr. Baldwin's vehicle are generally gone during normal working hours.

Mr. Szymansky, a Professional Planner, presented his qualifications to the board, and was accepted by the board as a professional witness.

Mr. Szymansky referred to items A-5, and A-6, which shows commercial vehicles, parked in the neighborhood, making the presumption that if these vehicles are on the premises, the owner is operating a business out of the dwelling.

Mr. Szymansky reiterated what Mr. Coates said in his opening statements, reviewed the essence of the application and stated the granting of this application will have no negative impact on the neighborhood, there will be no detriment to the good of the public, there are no proposed changes to the site or building, no impact with additional vehicles, and no negative impact on the values of the homes.

Mr. Szymansky advised there would be no noise, odors, or deliveries being made to the premises, unlike surrounding properties.

Mr. Szymansky went on to say that the activities that occurred on these premises does not violate the zoning ordinance. Adding that the request before the board meets the requirements of a home occupation as per Ordinance #28-10.6. Mr. Szymansky stated that as long as there is no exchange of money, Mrs. Baldwin could continue doing what she is doing without a variance.

Mr. Szymansky stated, in reference to the sign that was being questioned, that he never saw any such sign on the premises; even though the owner has confirmed there is a sign.

Mr. Szymansky stated this site is compatible with the use being requested, and that a beauty salon is a good use for the garage. Mr. Szymansky offered that the owner would build a connection from the principal dwelling to the garage.

Mr. Rosensweig stated that one of the objectives of the Master Plan is to segregate non-residential uses from residential uses. Adding that the Home Occupation Code does exclude a certain list: barber shops, beauty shops, clinics, hospitals, eating and drinking establishments, real estate and insurance offices, or similar uses which generate customer activity comparable to a business.

Mr. Rosensweig asked Mr. Szymansky whether or not he agrees that section could be founded exactly with the Master Plan about encouraging commercial uses downtown rather than in residential areas.

Mr. Szymansky stated that from a planning point of view, he agrees.

Mr. Rosensweig reiterated the fact that the ordinance contains an "or" clause, not an "and" clause.

Mr. Pratt asked if the garage and bathroom would have to be modified to comply with handicapped requirements; which is something that would need to be determined by an architect.

The board asked Mr. Wetterskog, Zoning Officer for the Borough of Hightstown to present give a history of this property.

Mr. Wetterskog stated that he has spoken with Mr. Jimenez on numerous occasions, and advised Mr. Jimenez that business activities were not permitted at this location.



Mr. Wetterskog advised that when the original builder came to him and requested to put a bathroom in the garage, the builder was advised that property was not a permitted use for any business. The builder left the garage in a non-finished state. Later, the owner wanted to install sheetrock, electric, and a drop ceiling. At that time, Mr. Wetterskog explained to the owner that the garage could not be used as a business. Right from the start, Mr. Jimenez was advised that a business would not be permitted to operate from the garage.

Mr. Wetterskog then stated that he began receiving complaints regarding alleged business activities being conducted from the garage. Mr. Wetterskog again informed the owner, and issued a municipal court summons, and the activities continued.

Mr. Cuddy asked Mr. Wetterskog if he felt there was a language barrier between himself and Mr. Jimenez, and whether or not Mr. Wetterskog's instructions were clear to Mr. Jimenez. Mr. Wetterskog replied that there was no language barrier, and that Mr. Jimenez was completely clear on what Mr. Wetterskog had advised.

Detective Benjamin Miller addressed the Planning Board.

Detective Miller advised the board he had been receiving complaints for approximately one year; he provided a set of photographs for the board to review. Upon investigation, Det. Miller observed a display of various beauty supplies, cigarettes, and telephone cards with written price tags, which appeared to be for sale. Detective Miller also stated that although there was no money found on the premises, there was a ledger in a drawer showing monies collected, appointment dates, and customer names.

Mr. Pratt asked Detective Miller if the handwriting on the price stickers appeared to be the same. Detective Miller said that he could not be sure.

### **Public Comments**

Mr. Charles Byrd of 208 Chamberlin Avenue was present to object to the granting of this application stating the steady stream of customers and vehicles would create a safety concern, and would be disturbing to the peace of the neighborhood.

Mrs. Kathleen Mortimer of 213 Wilson Avenue stated that she believes that business should be in the downtown area where they are permitted, not in a residential zone.

Mr. Paul Talmazon of 214 Chamberlin Avenue prepared written notes that he read to the board. Mr. Talmazon stated he objects to the granting of this application. He has had people trespassing on his property, looking into his windows, going into his garage, and ringing his doorbell in the later evening hours, looking for haircuts. The business has become a nuisance for Mr. Talmazon, and he has concerns for the safety of the neighborhood.

Mrs. Sandra Rosenthal, whose mother lives at 219 Chamberlin Avenue, presented a letter of objection to the board on behalf of her mother. Mr. Rosensweig advised Mrs. Rosenthal that the Borough would place the letter on file; however only as a courtesy.

The letter will have no bearing on these proceedings. Mrs. Rosenthal testified that while visiting at her mother's home, she has observed vehicles carrying 3-4 passengers at a time, has observed people parking in front of her mother's home who are going to 216 Chamberlin Avenue, and also raised traffic safety concerns.

Mr. Vern France, who lives at 178 Chamberlin Avenue, was present to object to the granting of the application stating if the board grants this variance, it will only be a matter of time before other business uses will be granted in the residential neighborhoods.

Mr. George Snook of 221 Chamberlin Avenue was present to object to the granting of this application stating that the residential zone should remain residential.

This ends the public comments portion of this application.

Mr. Jurgens advised that he has not heard or seen any positive comments regarding this application. The use being requested is specifically not permitted according to local Borough Ordinance, and sees nothing compelling to support the granting of this application.

Mr. Cuddy agreed with Mr. Jurgens adding that the site is not suitable for this type of business. The applicant has failed to present any hardship, nor have they presented any special reasons for the granting of this application.

Mr. Byrne advised that the objective of the Borough Zoning Ordinance is to encourage this type of business in a commercial zone, and urged the applicant that they should find a more fitting location within the Borough.

Mr. Stults advised that he agrees with the comments made by the other board members.

Mr. Misiura stated that history validates the zoning reasons for the exclusion in the Borough Ordinance.

Mr. Searing also stated that he agrees with the comments made by the board members, and cannot find reason to grant an approval on this application.

A motion was made by Mr. Pratt, seconded by Mr. Jurgens to deny the request for a Use Variance and Site Plan Waiver. Roll call vote was all in the affirmative. Motion for denial carried.

**Application #2005-04 – Brett Olma, Block 32, Lot 4, 109 Forman Street – seeking a Bulk Variance to construct a 16' x 21' two-story addition to the rear of his home. The applicant is seeking a Bulk Variance for the rear yard setback. The proposed addition will encroach 2' on the rear yard setback requirement of 35'. The applicant is also seeking relief on the existing conditions for the front yard setback requirements, side yard setback requirements, and lot size.**

Mr. Olma advised that he and his wife reside at 109 Forman Street and are expecting their first child. Mr. Olma advised the existing house is approximately 340 square feet and they need to expand their living space. The proposed addition is in keeping with existing neighboring properties.

Borough Engineer, Carmela Roberts referred to her report of 03/30/95, page 2, which has a table indicating all required, existing and proposed conditions along with the corresponding ordinance section; and reviewed the variances required.

Mrs. Roberts' only concern was runoff water, and as a condition of approval, requested the applicant pipe the runoff water to the front of the property.

Mr. Pratt asked Mr. Wetterskog, Borough Construction Official, if there were any building concerns with the proposed addition only being 14' away from the neighboring home. Mr. Wetterskog stated that he has advised Mr. Olma that no windows would be allowed on the right side of the home.

There being no public comment on this application, a motion was made by Mr. Jurgens, seconded by Mr. Cuddy to grant the Bulk Variances to Mr. Olma subject to the concerns of the Borough Engineer of piping the water to the front of the property. Roll call vote was all in the affirmative. Motion carried.

## **Unfinished Business**

Approval of revisions to the 2004 Reexamination Report.

Mr. Rosensweig advised the board that there were some minor changes made to the language in the 2004 Reexamination Report, and that is what the board is acting on this evening. A motion was made by Mr. Jurgens, seconded by Mayor Patten to accept the revisions to the 2004 Reexamination Report. Roll call vote was all in the affirmative with the exception of Mr. Byrne who abstained. Motion carried.

## **Adjournment**

The Planning Board meeting was adjourned at 11:15 p.m.

Respectfully Submitted,

Debra Bodine-Kolo

