

**CITY OF NEW BRUNSWICK  
PLANNING BOARD  
SEPTEMBER 9<sup>TH</sup>, 2014  
MINUTES  
7:30 p.m.**

**I. ROLL CALL**

X	Suzanne Ludwig
X	Linda Hunter
	David Fitzhenry
X	Joseph Catanese
	DayraAzcona
X	Carly Neubauer
X	Clary Barber (Class I)
X	Kevin Jones (Class II)
X	Betsy Garlatti (Class III)
	Josepha Rojas(Alternate #1)
X	Andy Kaplan (Alternate #2)

Staff Attending:

X	Board Attorney Benjamin Bucca
X	Board Secretary/Director of Planning Glenn Patterson
X	Principal Planner Mark Siegle
	Board Planner Henry Bignell
X	Board Planner Todd Bletcher
X	Board Engineer Tom Guldin
	Conflict Engineer Chas. Carlie

**II. PUBLIC ANNOUNCEMENT (OPEN PUBLIC MEETING ACT)**

**III. SALUTE TO THE FLAG**

**IV. MINUTES OF THE BOARDS AUGUST 12TH, 2014 MEETING**

**Motion to Approve: Catanese**

**Second: Neubauer**

**Approved by unanimous voice vote**

**V. COMMUNICATIONS AND REPORTS**  
Resolutions of Memorialization

A. None.

**VI. OLD BUSINESS**

A. None.

**VII. NEW BUSINESS**

**A. DAVID NAIM ABISLEIMAN, PB-2014-11** , Site plan and variance application for the construction of a mixed use building located at 50 Easton, Block 49, Lot 30.01, Zoning District: C-4

**Peter Lanfrit, Esq. – the application is for site plan approval with a bulk variance.**

**Thomas Kelso, Esq. – representing 135 Somerset LLC, the adjacent property owner, the development entity owned by Boraie Development. 135 Somerset LLC has jurisdictional objections that should cause the hearing to not be held tonight.**

**Mr. Kaplan advised that he serves on a condominium board with Sam Boraie at One Spring. Boraie is a trustee of the condo association and he retains a seat on the board. Mr. Bucca asked if Mr. Kaplan would benefit financially from the association. Mr. Kaplan said he would not. Mr. Lanfrit asked how long he has been involved with the condo board. Mr. Kaplan replied he had been involved for several years. It is a 5 member board. Mr. Kaplan said he had not discussed this application or 135 Somerset Mews with Mr. Boraie. Mr. Lanfrit said he did not object to Mr. Kaplan participating.**

**Mr. Kelso discussed his objections. He discussed the contested easement that came before the board at the 135 Somerset application and which is subject to litigation. The Abislieman application relies on the disputed easement area on his client's property for essential functions of the Abislieman property. The Abisliemans are claiming the 135 Somerset approval is invalid. If the Abisleimans prevail, they will overturn the approval for 135 Somerset on which their 50 Easton design relies. If the Boraies prevail, the easement is extinguished and the Abisliemans can't use their design for 50 Easton. Therefore, they have no site control for the plan they are presenting as either outcome for the lawsuit they initiated results in the Abisliemans not being able to build the plan as presented to the Board.**

**Secondly, the Abisliemans allege that Boraie is was not permitted to build 1<sup>st</sup> floor retail with residential above, but this is what their application is for in the same zone. It is a disingenuous application where they want to have it both ways. If the Abisliemans prevail in court, they invalidate their own approval if it is approved. It is**

not right for them to come before the board when they are challenging this. They can not waive this issue either.

Third, on their plan they identify a height that requires a variance, as the height is 42 feet. They did not notice this variance. They allege a structure on the roof is a mechanical room. They do this to have its height exempted, otherwise they would be before the Zoning Board, not the Planning Board. Also, the maximum height of an accessory structure is 15 feet, where as their building is 20 feet tall.

Fourth, the parking variance is not properly calculated as 59 are shown as needed on their plan, whereas 63 spaces are really required. Therefore the notice is defective.

The applicant has not identified the accessory height variance, the roof height variance and the parking calculation.

There are four separate jurisdictional issues that can not be waived, Mr. Kelso stated. He encouraged the board attorney to review this before the application goes forward. At the least, the application is premature in his view.

Mr. Lanfrit said the application was originally submitted as a zoning board application, but they reduced the height and that it was then a C variance. The notice for the application has a catch-all phrase regarding approval of all variances raised.

The elevator room should not be considered in the height as the ordinance exempts structures such as this.

Regarding the easement, when 135 Somerset was before this board, Mr. Bucca decided that the easement was an issue for the courts, not this board. This ruling should apply to this application also. If the easement is not upheld, they will have to revise the application.

Regarding the use variance issue, the court will determine who is correct and the City's staff said this was the appropriate board. The fact his client objected to jurisdiction with 135 Somerset doesn't mean this board doesn't have jurisdiction in this case as the facts are different.

Mr. Kelso said the Abisliemans can't have it both ways regarding the use variance issue. They are the ones raising the issue and it is not a site specific issue.

The easement dispute is something that this board can not determine, Mr. Kelso stated. But how the dispute has developed means that no matter what the outcome of the legal issue, this plan can not continue. Even if they are successful in their arguments, they can't build this plan as it relies on what 135 Somerset has designed.

The two site plans are intertwined. This creates a site control problem for their application.

Mr. Bucca asked Lanfrit if the plans were intertwined. Mr. Lanfrit said if his side wins they still have their easement. His client has a building permit now from the 2006 approval for the 50 Easton site by the Zoning Board and that they can start to build tomorrow and that that design relies on the easement.

Mr. Bucca said that the board does not want to hear an application and then depending on what the court says have to hear it over again. The court case is far along and there are hearings and meetings to be held soon. Perhaps these issues can be resolved in conference with the court. He suggested that the board wait to hear the application until after the October 1 court conference. Ms. Garlatti said she was comfortable with this strategy and found the legal arguments to be complex; having the court address these issues would be helpful to the board. Chairman Ludwig concurred.

Mr. Bucca said there can't be any meaningful prejudice to the applicant as they have said they have a valid building permit.

Mr. Belcher said there were various planning details that have been outstanding that the applicant hasn't addressed, including the building height. They should submit revised plans.

Mr. Kaplan asked if there were implications as to time constraints. Mr. Bucca and Mr. Seigle said no.

The board discussed rescheduling to the November 18 meeting. Ms. Garlatti moved to adjourn the hearing until the November 18 meeting with the applicant granting any necessary time extension through November 18. Mr. Kaplan seconded. Mr. Patterson announced the rescheduled date to the public. The board approved this by unanimous voice vote.

#### **Other Business:**

##### **17 Mine Street Follow Up:**

Mr. Bucca advised the board that Charles Kratovil filed an ethics complaint against him related to the 17 Mine Street application related to Rutgers former ownership of the property, his employment by Rutgers and statements he allegedly made at one of the hearings on this matter. There will be a hearing before the Ethics Board. He expects to be exonerated.

Mr. Kaplan stated he is also a Rutgers employee and he discussed this with a legal advisor. He will ask the applicant and objector if they have an objection to his participating.

**Mr. Bucca discussed changes in the attorney conflict standards by the NJ Supreme Court regarding attorney conduct.**

**Ms. Neubauber said her employer is an approved vendor of Rutgers and was unaware that Rutgers was involved with the 17 Mine application. Her employer is not involved with the 17 Mine application related to their representation.**

**Adjournment: 8:30 PM**