

**BOROUGH OF PALMYRA LAND USE BOARD MEETING**  
**VIRTUAL MEETING MINUTES**  
**September 15<sup>th</sup>, 2021 -7:00 PM**

**CALL TO ORDER**

The Borough of Palmyra Land Use Board Reorganization meeting was called to Order by Land Use Board Chairman, Lewis Yetter at 7:00 pm.

The pledge of Allegiance was recited.

**OPEN PUBLIC MEETINGS ACT**

Chairman Yetter read the following into the record:

In accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., and in consideration of Executive Order No. 103, issued by Governor Murphy on March 9, 2020, declaring a State of Emergency and a Public Health Emergency in the State of New Jersey, the Palmyra Land Use Board does hereby notify the public that to protect the health, safety and welfare of our citizens, and to reduce the potential spread of COVID-19 and its variants, while ensuring the continued functioning of the Board, this meeting of the Palmyra Land Use Board will be held Virtually. Members of the public are invited to “attend” the Virtual Land Use Board Meeting but all members of the public participating in the meeting may be muted and their video image disabled. Notice of this meeting was published in the Burlington County Times on January 26<sup>th</sup>, 2021. Notice was posted on the Official Bulletin Board and electronic signs on August 25<sup>th</sup>, 2021 and the Borough of Palmyra Website on September 14<sup>th</sup>, 2021 and notice was given to all Land Use Board Members.

**ROLL CALL**

Secretary Jackson called the roll of the board:

PRESENT: Chairman Yetter, Vice-Chairman Beck, Mayor Tait, Councilwoman Cloud, Mr. Gural, Ms. Belton, Ms. O’Connor, Mr. Rossignol

ABSENT: Mr. Robinson, Mrs. Melvin, Mrs. Hui

## **MINUTES**

Chairman Yetter asked if there were any questions or comments regarding the May 19<sup>th</sup>, 2021, Land Use Board Meeting minutes. Hearing none, he requested a motion to approve the minutes as written.

Mayor Tait made the motion to approve the minutes as written and Vice-Chairman Beck second the motion. Chairman Yetter asked for a call of the roll.

### **At the call of the roll the vote was as follows:**

AYES: Chairman Yetter, Vice-Chairman Beck, Mayor Tait, Councilwoman Cloud, Mr. Gural, Ms. O'Connor, Mr. Rossignol

NAY: None

ABSTAIN: Ms. Belton

Chairman Yetter asked if there were any questions or comments regarding the August 18<sup>th</sup>, 2021, Land Use Board Meeting minutes. Hearing none, he requested a motion to approve the minutes as written.

Mayor Tait made the motion to approve the minutes as written and Mr. Gural second the motion. Chairman Yetter asked for a call of the roll.

### **At the call of the roll the vote was as follows:**

AYES: Chairman Yetter, Vice-Chairman Beck, Mayor Tait, Mr. Gural, Ms. Belton, Ms. O'Connor, Mr. Rossignol

NAY: None

ABSTAIN: Councilwoman Cloud

## **CORRESPONDENCE**

Chairman Yetter acknowledged the following correspondence:

Gene Padalino, Planning & Zoning Coordinator, Township of Pennsauken

Mia C Baker, Secretary to the Burlington County Planning Board

## **BOROUGH COUNCIL UPDATES**

Councilwoman Cloud indicated she had nothing currently to report. Mayor Tait noted the Community Garden was open for anyone wishing to pick and or help weed the garden. Mayor Tait stated that

Borough Hall is again closed to the public; noting the Covid Vaccines are available in the Community Center on Tuesdays from 9:00 am to 1:00 pm. and the Town wide yard sale will be held September 18<sup>th</sup>, 2021.

**OLD BUSINESS**

Chairman Yetter introduced the following resolution for approval:

**Resolution 2021-16** Memorialization in the Matter of Wilco Properties, LLC – 5 St & Rt. 73 N, Blk 71 Lot 16 -Application 2021-LUB05

**BOROUGH OF PALMYRA  
LAND USE BOARD  
RESOLUTION 2021-16  
RESOLUTION OF MEMORIALIZATION  
IN THE MATTER OF 600 NJSH ROUTE 73 WILCO PROPERTIES, LLC  
APPLICATION NO. 2021-LUB-05**

**WHEREAS**, Wilco Properties, LLC (“Applicant”) is the owner of property located at 600 NJSH Route 73, Palmyra, New Jersey, more particularly described as Block 71 Lot 16 on the Tax Map of the Borough of Palmyra, (“subject property”); and

**WHEREAS**, the subject property is located in the HC (Highway Commercial) Zone; and

**WHEREAS**, Applicant filed an application for approval to replace/reconstruct two pole mounted pylon signs on the subject property, with two related bulk variances, where the proposed sign along Route 73 has a zero-foot setback where a minimum of fifteen (15) feet is required; and the freestanding sign along West Broad Street is less than 15 feet from the nearest property line, whereas a minimum of fifteen (15) feet is required (“Application”); and

**WHEREAS**, the subject property is owned by the Applicant; and

**WHEREAS**, the purpose of the Application is to provide updated signage in conformity with other improvements at the subject property; and

**WHEREAS**, Section 1006, Subsection C.6, requires that freestanding signs must be fifteen (15) feet from property lines; and

**WHEREAS**, the proposed sign replacement and two bulk variances for setback from property lines constitutes the “Application”; and

**WHEREAS**, the Board considered the following documents submitted by the Applicant:

1. Land Use Board Application Form;
2. Site Plan of Block 71 Lot 16, prepared by Tristate Engineering and Surveying, PC.
3. Photographs of the subject property;
4. Construction details for the proposed freestanding pylon signs.

**WHEREAS**, James Winckowski, P.E. the engineer for the Land Use Board provided a review letter of the Application dated June 15, 2021 which was reviewed by the Applicant; and

**WHEREAS**, the Land Use Board held a public hearing on August 18, 2021; and

**WHEREAS**, the Applicant was represented By Kristopher Berr, Esq.

**NOW THEREFORE**, the Palmyra Borough Land Use Board makes the following Findings of Fact and Conclusions with respect to the Application:

1. The Application requires two variances from Section 1006 Subsection C.6, to permit the replacement of two signs in the same location as currently exist, where the Land Development Ordinance requires such signs to be setback a minimum of 15 feet from property lines, and the proposed location is zero feet for the sign along Route 73 and less than 15 feet for the sign along W. Broad Street; and

2. During the Application, testimony was offered on behalf of the Applicant by the owner, Joseph Arking.

3. Mr. Arking testified about the general improvements that have been made to the subject property, and the proposed replacement of the signs in the same location to improve the appearance of the subject property.

4. Mr. Arking testified that the signs will be replaced on the existing poles which already have utilities installed. The square footage of the signs will not increase, nor will the overall height of the signs.

5. Mr. Arking testified that it would be a financial hardship to move the signs from their current location because of the existing poles and utilities. There have not been any complaints about the location of the current signs.

6. During the hearing the Applicant consented to a condition revise the site plan to depict the distance of the signs from the property lines.

7. The testimony and exhibits offered by the Applicant establish that allowing the signs to be replaced in their existing location will advance the purposes of the Municipal Land Use Law by allowing the reuse of existing structures on the subject property.

8. The testimony and exhibits offered by the Applicant establish that the variances will not have a substantial impact on the surrounding area and that it will not substantially harm the intent of the zoning ordinance.

22. The testimony offered by the Applicant supports the finding and determination that the proposed variances and waivers are compatible with the adjoining and existing uses, would not impair the intent and purpose of the zone plan or Master Plan and the benefit of approving the variances substantially outweigh any detriments.

### RESOLUTION

**NOW, THEREFORE, BE IT RESOLVED**, by the Land Use Board of the Borough of Palmyra that the Findings of Fact and Conclusions are hereby adopted as though they were set forth herein at length and made a part of this Resolution; and

**BE IT FURTHER RESOLVED**, that the relief requested by the Applicant for approval to replace two free standing signs and two bulk variances as set forth above herein as the Application, be and hereby are **GRANTED**, subject to the following Conditions.

1. The Applicant shall amend its plans to depict the distance of each sign from the nearest property line.
2. The approvals contained in this Resolution are conditioned upon the Applicant receiving and complying with any and all other municipal, county, state and federal approvals required and shall comply with all other municipal, county, state and federal rules and regulations; and

**BE IT FURTHER RESOLVED**, that the relief requested by the Applicant is subject to all conditions placed on the record during the hearing held on August 18, 2021; and

**BE IT FURTHER RESOLVED**, that the relief requested by the Applicant is subject to the conditions set forth in the review letter of James Winckowski, P.E.

**BE IT FURTHER RESOLVED**, that the Applicant shall pay all outstanding professional fees and bills in connection with this Application within thirty (30) days after receipt of billing. Should the Applicant fail to pay such professional fees and bills within thirty (30) days, then the Applicant's approval hereinbefore set forth shall be deemed null and void and said approvals shall be deemed withdrawn with no further force and effect; and

**BE IT FURTHER RESOLVED**, that a certified copy of this Resolution of Memorialization and Findings of Fact and Conclusions to which it is attached be sent to the Applicant within ten (10) days from the date of adoption, the Borough Clerk, the Borough Construction Official and any other person who may request a copy of the decision; and the Applicant shall publish a brief notice of this in the official newspaper of the Borough of Palmyra.

Chairman Yetter asked for a motion to approve Resolution 2021-16 Memorialization in the Matter of Wilco Properties, LLC – 5 St & Rt. 73 N, Blk 71 Lot 16 -Application 2021-LUB05

Mr. Gural made a motion to approve Resolution 2021-16 Memorialization in the Matter of Wilco Properties, LLC – 5 St & Rt. 73 N, Blk 71 Lot 16 -Application 2021-LUB05. Councilwoman Cloud second the motion.

**At the call of the roll the vote was as follows:**

AYES: Chairman Yetter, Vice-Chairman Beck, Mayor Tait, Councilwoman Cloud, Mr. Gural, Ms. Belton, Ms. O'Connor, Mr. Rossignol

NAY: None

Chairman Yetter introduced the following resolution for approval:

**Resolution 2021-17** Memorialization in the Matter of James Moffett, Jr., 202 Cinnaminson Avenue, Blk 98 Lots 11, 12.02- Application 2021-LUB02

**BOROUGH OF PALMYRA  
LAND USE BOARD  
RESOLUTION 2021-17  
RESOLUTION OF MEMORIALIZATION  
IN THE MATTER OF 202 CINNAMINSON AVENUE  
APPLICATION NO. 2021-LUB-02**

**WHEREAS**, James Moffett, Jr. (“Applicant”) is the owner of property located at 202 Cinnaminson Avenue, Palmyra, New Jersey, more particularly described as Block 98 Lots 11 & 12.01 on the Tax Map of the Borough of Palmyra, (“subject property”); and

**WHEREAS**, the subject property is located in the R-1 (Residential) Zone; and

**WHEREAS**, Applicant filed an application for a use “d” variance to allow the Applicant to use a commercial shipping container as a third accessory structure on the subject property (“Application”); and

**WHEREAS**, the Application as submitted also requires relief from the following sections of the Palmyra Land Use Code

Section 158-15(F)(1) – The shipping container is less than ten (10) feet from the rearmost portion of the principal structure, whereas a minimum of ten (10) feet is required.

Section 158-15(F)(2)(h) – the exterior of the accessory structure (shipping container) shall match the color and materials of the principal structure to which it is accessory.

Section 158-15(F)2(h) the subject property already has two (2) accessory structures. The storage container is a third. No more than two (2) accessory structures are permitted on a lot.

Section 158-16(D)(3)(b) – Accessory structure must be set back at least three (3) feet from the side yard property line, whereas shipping container is located 1.7 feet from the side yard line.

**WHEREAS**, the subject property is owned by the Applicant; and

**WHEREAS**, there is currently a two-story residence, detached garage, wood shed and shipping container on the subject property, and the purpose of the Application is to allow for the continued presence of the shipping container on the subject property; and

**WHEREAS**, the R-1 Zone does not permit commercial storage as a principal or accessory use, so that commercial storage on the subject property would require a variance pursuant to N.J.S.A.40:55D-70(d)(1); and

**WHEREAS**, the proposed use and bulk variances above constitutes the “Application”; and

**WHEREAS**, during the hearing held on August, 2021, the Applicant amended the Application by stating that would relocate the shipping container such that no setback variances would be required; and

**WHEREAS**, the Board considered the following documents submitted by the Applicant:

5. Land Use Board Application Form with attachments;
6. Survey of the subject property prepared by William Robins, L.S., of Robins Associates, dated 12/02/2020 depicting the location of the residence, garage, shed and shipping container.

**WHEREAS**, James Winckowski, P.E. the engineer for the Land Use Board provided a review letter of the Application dated May 10, 2021 (“CME Letter”) which was provided to the Applicant; and

**WHEREAS**, the CME Letter set forth the four bulk variances required as part of the Application as initially presented; and

**WHEREAS**, the CME Letter set forth the proofs necessary for the grant of a variance; and

**WHEREAS**, the Land Use Board held a public hearing on August 18, 2021; and

**WHEREAS**, the Application was presented by the Applicant without counsel; and

**NOW THEREFORE**, the Palmyra Borough Land Use Board makes the following Findings of Fact and Conclusions with respect to the Application:

1. During the Application, testimony was offered on behalf of the Applicant by Mr. Moffett, Jr.

2. Mr. Moffett testified that the commercial shipping container was not utilized for commercial purposes, but rather to store personal items owned by he and/or his father.

3. Based upon the testimony by Mr. Moffett that the shipping container was only utilized for storage of personal items owned by the Applicant and/or his father, Mr. Winckowski stated that a use, or “d” variance would not be required, but the bulk variances would still be required.

4. Mr. Moffett further testified that he wanted to have a third accessory structure because the garage and shed currently on the subject property are full and not able to store additional items which are in the shipping container.

5. Mr. Moffett testified that the subject property is comprised of two tax lots and is wider than average lots in the area.

6. In response to Mr. Moffett's testimony about two lots, Mr. Winckowski testified that because the two lots were adjacent, undersized lot, they were actually deemed to be merged and were to be considered one single lot.

7. Mr. Moffett testified that he wanted the shipping container to remain on his property permanently, and he proposed to put decorative wood around it.

8. During the hearing, in response to questions about the location of the shipping container, Mr. Moffett stated that he would be willing to relocate the shipping container to obviate the need for variances from side yard and the setback from the rearmost portion of the principal structure.

9. Chairman Yetter stated that he was familiar with the subject property and that the shipping container can be seen from the street and that it looks like a shipping container.

10. At the conclusion of the Applicant's presentation, John Friedrich was sworn.

11. Mr. Friedrich owns property adjacent to the subject property with his family and disabled son.

12. Mr. Friedrich testified that he felt that the presence of the shipping container reduced the value of his property.

13. Mr. Friedrich testified that the shipping container is located alongside his home and due to its lack of roof or gutters, there is significant pooling of water when it rains.

14. Mr. Friedrich presented Exhibits O-1, O-2, O-3 and O-4, photographs of the shipping container on the subject property, and a shipping container damaged in an explosion.

15. Mr. Friedrich presented Exhibit O-5, a brief video of the Applicant's shipping container during a rain event.

16. Mr. Friedrich called Stephen Hawk, P.P. to testify. Mr. Hawk was sworn and qualified as an expert in Planning.

17. Mr. Hawk testified that he reviewed the Application, the neighborhood in which the subject property is located and read the land use ordinance and Master Plan.

18. Mr. Hawk testified that in his opinion, the only alleged or potentially applicable basis for the requested variance for a third accessory structure would be a c (2) variance, where the benefits must outweigh the detriment.

19. Mr. Hawk testified that the Application does not meet the requirements for a c (2) variance because the only benefit is to the Applicant, and there is clear detriment to the public good.

20. Mr. Hawk testified that of the 190 properties in the area of the subject property, only 4 properties had 2 accessory structures, and no properties had more than 2 accessory structures.

21. Michael Cloud, who lives within 200 feet of the subject property testified. Mr. Cloud stated he is opposed to the Application because of aesthetics, it is an "eyesore" and it is visible from the street.

22. Mr. Cloud testified that the industrial shipping container detracts from the residential character of the neighborhood.

23. The Application was initially scheduled for the Board's meeting in June 2021, but, two weeks before the scheduled date the Applicant asked to delay the meeting a month because he had another event planned.

24. The matter was scheduled to be heard by the Board in July 2021, but the Applicant failed to provide sufficient notice and the meeting was then moved to the Board's August meeting.

25. At the conclusion of the Applicant's presentation on August 18, 2021, and after comments and testimony from the public, the Applicant requested to continue the hearing to the next meeting date of the Board.

26. Based upon the fact that the Applicant had placed the shipping container on the subject property without obtaining approval; had twice previously requested that the hearing date be delayed; had notice from the CME Letter about the required proofs to obtain a variance; and having been offered more time at the August 18, 2021 meeting to present his case, the request for a continuance of the hearing was denied.

27. The Applicant did not specify which provision of N.J.S.A. 40:55D-70(c) justified the request for the variance for a third accessory structure.

28. A variance pursuant to N.J.S.A. 40:55D-70(c) can be granted under subsection (1) relating to the size, shape or topographic condition of a specific piece of property, however the Applicant did not present any such testimony.

29. The Board finds that there was no evidence submitted that would require the grant of the variances pursuant to N.J.S.A. 40:55D-70(c)(1).

30. A variance pursuant to N.J.S.A. 40:55D-70(c) can be granted under subsection (2) if a purpose of the Municipal Land Use Law would be advanced by the variance and the benefits of the deviation substantially outweigh any detriment.

31. The Applicant did not present any testimony that would establish that any purpose of the Municipal Land Use Law would be advanced by the variance, and the Board finds that no such evidence was presented during the hearing.

32. The Applicant's only testimony about the alleged benefit of granting the variance was that he would personally benefit. The Board finds and concludes that the personal benefit to be realized by the Applicant is insufficient to satisfy this requirement for the grant of a variance.

33. The Applicant did not provide any testimony about comparing the benefit of the variance to the detriment.

34. The Board finds the testimony of Mr. Hawk, P.P. to be credible as to the lack of any benefit to be realized by the grant of the variance.

35. The Board finds the testimony of Mr. Hawk, P.P. to be credible in the substantial detriment that would occur as a result of the grant of the variance in that there were no other properties in the area that had been granted such a variance.

36. The Board finds the testimony of the members of the public to be credible as to the visual detriment that would result from the grant of the variance.

37. The Board finds and determines that the Applicant has not established that any purpose of the Municipal Land Use Law would be advanced by the grant of the requested variance.

38. The Board finds and determines that the Applicant has not established that the grant of the variance would result in a benefit cognizable under the provisions of the Municipal Land Use Law in that the only benefit would be a personal benefit to the Applicant.

39. The Board finds and determines that the visual and aesthetic detriment of the variances would outweigh any benefit.

40. The Board finds and concludes that the requested variance should be denied because the arguments and testimony put forth by the Applicant do not establish that any purpose of the Municipal Land Use Law would be advanced by a grant of the requested variance.

41. The Board finds and concludes that the requested variance should be denied because the arguments and testimony put forth by the Applicant do not establish that any benefit to be derived from the variance will substantially outweigh the detriment.

## RESOLUTION

**NOW, THEREFORE, BE IT RESOLVED**, by the Land Use Board of the Borough of Palmyra on this 15<sup>th</sup> day of September, 2021, the variance relief sought by the Applicant is hereby DENIED and the Application, as amended, is hereby DENIED.

**BE IT FURTHER RESOLVED**, that the Board Secretary shall publish a brief notice of this determination in an official newspaper of the Borough and obtain an Affidavit of Publication by said newspaper, and that this Resolution shall take effect as provided by law.

Chairman Yetter asked for a motion to approve **Resolution 2021-17** Memorialization in the Matter of James Moffett, Jr., 202 Cinnaminson Avenue, Blk 98 Lots 11, 12.02- Application 2021-LUB02

Vice-Chairman Beck made a motion to approve **Resolution 2021-17** Memorialization in the Matter of James Moffett, Jr., 202 Cinnaminson Avenue, Blk 98 Lots 11, 12.02- Application 2021-LUB02. Mayor Tait second the motion.

**At the call of the roll the vote was as follows:**

AYES: Chairman Yetter, Vice-Chairman Beck, Mayor Tait, Mr. Gural, Ms. Belton, Ms. O'Connor, Mr. Rossignol

NAY: None

Abstain: Councilwoman Cloud

### NEW BUSINESS

Land Use Board Training Municipal Joint Insurance Fund with Mr. Andrew Brewer our Land Use Board Attorney will be held after the meeting.

### PUBLIC COMMENT

Chairman Yetter asked anyone wishing to make comments, state their name and address for the record. Chairman Yetter asked for a motion to open to the public for comment.

Mayor Tait made a motion to open the meeting to the public for comment. Councilwoman Cloud second the motion.

All voted in favor of the motion.

No one from the public wishing to make a comment, Chairman Yetter asked for a motion to close the public comment. Vice Chairman Beck made a motion to close the public comment. Councilwoman Cloud second the motion.

All voted in favor of the motion.

Having no further business, Chairman Yetter requested a motion to adjourn the meeting. Mr. Gural made a motion to adjourn the meeting. Vice-Chairman Beck second the motion.

All voted in favor of the motion.

Meeting was adjourned at 7:13 pm

Doretha R. Jackson, RMC

Land Use Board Secretary, Borough of Palmyra

Adopted: October 20<sup>th</sup>, 2021