

**June 19, 2013
LAND USE BOARD
BOROUGH OF PALMYRA
MINUTES**

CALL TO ORDER. Chairwoman Locke called the meeting to order at 7pm

OPEN PUBLIC MEETINGS STATEMENT

Public Notice of this meeting pursuant to the Open Public Meetings Act has been given in the following manner:

- A. Posting written notice on the official bulletin board at the Palmyra Borough Hall on February 27, 2013.
- B. Mailing written notice to the Burlington County Times, and the Courier Post Newspaper on February 27, 2013.
- C. Notice to All Board Members.

PLEDGE OF ALLEGIANCE.

ROLL CALL.

PRESENT: Chairperson Locke, Mr. Gural, Mr. O’Kane, Mrs. Byrem, Mr. Dreby, Mrs. Myers
ABSENT: Mayor Scheffler, Mrs. Riener, Vice-Chairman Beck, Mr. Stokes.

SWEARING IN OF NEW MEMBERS. Joan Byrem was sworn in as a Class IV member and Nancy Myers was sworn in as Alternate #1 member by Andrew Brewer, Esquire.

APPROVAL OF MINUTES Mr. Dreby made a motion to approve the minutes from March 20, 2013, Mr. Gural second the motion. All members present voted in favor of the motion.

BOROUGH COUNCIL UPDATE. Mr. Gural reported that the borough council adopted an ordinance on Monday night to require the registration of rental units and also that the new trash carts have been delivered to the majority of the borough. Anyone not receiving a new trash cart should have one delivered by the end of the week.

NEW BUSINESS.

A. **Application 2013-1-Hanna M. Lapteff/Adam T. Veitenheimer-Tattoo Parlor/Art Gallery-3 East Broad Street.** Peter Thorndike, attorney for the applicants explained that he had previously represented the applicant in their original application to open a tattoo parlor/Art Gallery in May of 2011. At the time of approval there were several conditions placed on the approval: the word tattoo was not to be included on any of the signage or advertising, body piercing

was not permitted, hours would be limited to Monday-Saturday 11am-10pm. Mr. Thorndike explained that there have been no incidents of record at the business since its opening and that they are requesting that the condition of not using the word tattoo be reversed as well as allowing for body piercing and Sunday hours. Ms. Lapteff-3 East Broad Street was sworn in. Ms. Lapteff testified that the art gallery has been doing a great service to the community with displaying artist work from around the state for free and that it gives the general public an opportunity to view the art work. Mrs. Lapteff stated that the business has not had an incident since opening and that they are breaking even, which is one reason for the request of Sunday hours. Mrs. Lapteff explained that the military personnel requesting tattoos are only available on Sundays and that they have been referring them to other locations. There are currently three employees at the store. Mrs. Lapteff discussed that surrounding businesses are open on Sunday, including the pharmacy, bar, Wawa and also the store that was next door before they went out of business. There is a great demand for body piercing when obtaining tattoos as well. Mrs. Lapteff explained that the body piercing as well as the tattoos are inspected and governed by state rules and regulations. They have inspections completed by the County Board of Health also. Mr. Thorndike presented the NJ State Sanitary Code Chapter VIII as exhibit A-1, the new hire checklist for body piercing practitioner as A-2 and the Burlington County Health Department Sanitary Inspection Report For Body Art Establishments as exhibit A-3. Mrs. Lapteff testified that the body piercing would take place in the same location in the store as the tattooing and that they would not need additional spacing. Mr. Thorndike requested that Mrs. Lapteff inform the board as the reason for the new signage to include the word tattoo. Mrs. Lapteff explained that the word tattoo allows people walking by and also on the Riverline train to identify the store. Many times clients call and cannot locate the store. Mrs. Lapteff would also like to have a banner made for the front of the store as well. The tattoo sign would be illuminated and pressed up against the window. Mr. Thorndike presented a picture of the sign as exhibit A-4. Mrs. Lapteff testified that they are also opening an additional store in Haddon Township with tattoo and body piercing. Mr. Thorndike discussed that the applicant had appeared in front of the board before and was granted approval to open the store with certain conditions and now that time has passed and there have been no incidents since opening. Mr. Thorndike requested that the board approve the application for using the word tattoo in advertising and signage, allow Sunday hours and allow body piercing to take place at the location. Chairwoman Locke inquired if Mr. Brewer, Esquire had any comments at this time. Mr. Brewer had no questions at this time. Chairwoman Locke inquired if Mr. Hirsch of Environmental Resolutions had any comments on the application. Mr. Hirsch stated that he will hold his questions till later in the applicants.

Mrs. Kilmer-Zoning Official discussed that banners are not permitted in the downtown area and inquired as to what type of signage the applicant is requesting. Mr. Thorndike replied that his clients understand that they would have to apply for a sign permit for additional signs or appear in front of the board. Mr. Thorndike explained that at this time they are only requesting that the word tattoo be allowed on the signage and advertising.

Chairwoman Locke inquired if board members had any comments or questions.

Mrs. Byrem inquired about the age requirements for the body piercing. Mrs. Lapteff replied that it is the same as obtaining tattoo-18 years of age or 16 years of age with parental consent and the parent must be present during the procedure.

Mr. O'Kane explained that he is concerned with the word tattoo in the signs and that the applicant on their first appearance with the board testified that they were not pushing to have the word tattoo included on their signs and agreed to the board's conditions.

Mr. Gural discussed that a few years ago the applicants appeared in front of the board with a great presentation for their shop and at that time the wording and sign issued was addressed. The applicant agreed to the board's decisions and recommendations and now they are requesting additional changes to the approvals. Mrs. Lapteff replied that the banner would be professional and hung between the first and second floor so that it was visible further away. Mr. Thorndike

discussed that the applicants agreed to the conditions of their first application so that they could get started in business and now two years later they are established and looking to amend their application.

Mrs. Myers discussed that there are many upscale tattoo parlors, but that she is not sure of including the word tattoo on the front sign. Mrs. Lapteff replied that there has been no incident and that many of their clients are fireman and police officers.

Mr. Dreby inquired about placing the word tattoo under their current signage in the store front instead of a flashing sign. Mrs. Lapteff explained that because of the angle of the building it is hard to see the signs in the front windows. Mr. Dreby inquired as to why the word tattoo was not approved with the original application. Chairwomen Locke explained that the application was for an art gallery and that the tattoo portion was a subdivision of the art gallery. Mr. Dreby discussed the request of adding the body piercing. Mrs. Lapteff explained that the word tattoo is needed for advertising and that the body piercing and tattoo shop are actually supporting the art gallery.

Chairwomen Locke commented that she had some of the same concerns as Mr. Gural and Mr. O'Kane. The original application was approved and now the applicants are returning for the second time for amendments.

Mr. Brewer informed council that the no adverse effect on neighboring businesses is an opinion of Mr. Thorndike and that there is no testimony from the businesses.

Mr. Thorndike discussed that the Wawa is opened on Sunday as well as several other businesses. Mr. Brewer explained he disagrees that the board denying the use of the word tattoo in the signage or advertising is unconstitutional and that it was part of the original approval. Mr. Brewer explained that the applicants had 45 days to appeal the board decisions and they did not take any action. The board had a concern with the original applications and the applicants agreed with the all of the boards' conditions on the approval.

Mr. Hirsch-ERI discussed that the signage is required to be the same throughout the site, whether façade or window signs. The sign ordinance requires that the same type of sign and wording be used throughout. Also a banner or faced sign cannot be located on a roof or above a window, so the applicants would have to return to the board for additional signage. Mrs. Lapteff explained that there is rigging left from a previous sign and that they would like to use that. Mr. Hirsch explained that banners signs are strictly prohibited.

Mr. Gural informed the board that there was an incident at the shop with signs being moved around from store to store. Mrs. Kilmer had to chase the signs down and issue violations. Mrs. Lapteff explained that they were crossing advertising with the bike shop and was not aware that they could not include the word tattoo on a sign that was not displayed at their location. They had placed a sign for the bike shop in their window as well. Mr. Gural discussed that it is a great shop and some of that is credited to the board for making all of the conditions of the approval. Mrs. Lapteff explained it will still be mainly an art establishment with the body piercing added and that tattoo is a form of art.

Chairwoman Locke discussed the wording body ink was approved with the last request and that Mrs. Kilmer as well as the board needs to know the location of the proposed signs before approval. Mr. Thorndike explained that they were given a ticket by the zoning officer for signs and that is one reason they are back in front of the board. Mrs. Lapteff explained that if the word tattoo is approved she will present all signs to Mrs. Kilmer first.

Mr. Gural made a motion to open the application for public comment, Mr. Dreby second the motion. All members present voted in favor of the motion.

Mr. Campbell-7-9 East Broad Street discussed that when he first heard that it was going to be a tattoo parlor he was not in favor of it and was not sure that it would fit in. Now that it has opened things have been fine and it is a welcome addition to the borough. The word tattoo and body piercing is offensive to him and he doesn't understand the need for people to do the body piercing. Mr. Campbell explained that he does not think the body piercing or the word tattoo is good for the general public. There are small children and families that walk by the store and should not have to

be exposed to that. Mr. Campbell also discussed the Sunday hours and that he is not in favor of them, something's should not be opened on a Sunday. The art gallery is a beautiful store and he is glad that they are doing well.

Mr. Fratto-17 East Broad Street discussed that he owns his building and that the Muse Art Gallery has been a good neighbor and that he sees no problem with the people coming to the store. Mr. Fratto explained that his mother lives above his store and has no problem with the store. Mr. Fratto explained that when a business is starting out they have to have a business plan and it has to be able to change with the growth of the business. The board should not lock a business into their original application and should allow them to change or amend it.

No one else from the public wishing to be heard on the application, Mr. Dreby made a motion to close the public portion, Mr. O'Kane second the motion. All members present voted in favor of the motion

Mr. Thorndike gave summary of the application. There are three points that he would like to summarize. The word tattoo and the act of tattooing is a legal activity and are regulated by the NJ Administrative Code and also regulate by the Borough of Palmyra. None of the ordinances in the Borough prohibit the word tattoo in any signs or advertising. Mr. Thorndike discussed that he disagrees with Mr. Brewer that it is unconstitutional to ban the word tattoo from the signs; it is a matter of free speech. There are no reasons to single out this business due to the sins of past businesses. Mr. Gural inquired as to what sins or business he was discussing. Mr. Thorndike replied that the board had talked previously in the first application about other tattoo parlors that were located in the borough and caused a lot of problems. Mr. Thorndike explained that there are two businesses near the gallery that are closed and that they run a good business. The business use is consistent with the zone of Town/commercial and that tattoos can be a part of make up as well. Many clients have their make-up permanently tattooed on. They are requesting a complimentary service to the tattoo with body piercing. Mr. Thorndike explained that nothing in the business will change the store lay out will still remain the same. The Sunday hours will allow for military personal and people who are unable to make it during the week.

Chairwoman Locke inquired if the board had any questions on the Sunday hours and what hours they would consider? Chairwoman Locke discussed that she felt that 10pm was too late on a Sunday. Mr. O'Kane discussed that the hours should be shorter. Mr. Dreby discussed that noon to 6pm would be better suited for Sunday hours. Mrs. Lapteff replied that they would agree to the short hours. Chairwoman Locke requested that Mr. Brewer reviewed the motions that are needed. Mr. Brewer explained that there needs to be three motions. One motion would be to approve Sunday hours and the exact time of the hours, second motion would be to amend the prior approval and allow the word tattoo on signs and advertising, the third would be to allow body piercing.

Mrs. Myers made a motion to amend the previous application and allow the word tattooing on the signs and advertising, Mr. O'Kane second the motion. At the call of the roll, the vote was:

AYES: Mr. Dreby, Chairwoman Locke.

NAYES: Mr. Gural voted no and explained that a lot of consideration went into the original approvals, Mr. O'Kane, Mrs. Byrem, Mrs. Myers.

Mr. O'Kane made a motion to allow body piercing within the store, Mrs. Myers second the motion. At the call of the roll, the vote was:

AYES: Mr. O'Kane, Mrs. Byrem, Mrs. Myers, Mr. Dreby, Chairwoman Locke.

NAYES: Mr. Gural explained that he does not understand the need for the body piercing.

Mr. Dreby made a motion to allow Sunday hours from noon to 6pm, Mr. Gural second the motion. At the call of the roll, the vote was:

AYES: Mr. Gural, Mr. O'Kane, Mrs. Byrem, Mrs. Myers, Mr. Dreby, Chairwoman Locke.

NAYES: None.

B. Application 2013-2, Route 73 Fuel Stop Inc.-201 Route 73. Mr. David Hodulik attorney

for the applicant explained that they are before the board to request a use or bulk variance for approval for an ice machine and ATM adjacent to the Kiosk structure at the service station on Route 73. The property is owned by Bernice Cipoletti and the applicant has consent from the owner to appear in front of the board. Mr. Brewer swore in Bhagwant Bhatti as the applicant for the application. Mr. Hodulik discussed that the property has been a service station for several years and that under the current zoning ordinances an ice machine and an ATM machine are accessory uses and must appear in front of the board. The ATM is useful to customers who do not wish to pay extra money for gas by using their credit cards and also people shopping at the Flea Market go into the station to get cash for their purchases. Mr. Bhatti explained that he leased the service station in October, 2008 and has a ten year lease. He started the business when gas prices were very high and the customers like paying in cash because it is cheaper. The ice machine is used by customers who are headed to the shore mostly. Mr. Hodulik presented the site plan as exhibit A-1. The site plan shows that the ATM machine will be located outside of the actual office for security reasons and the ice machine is located behind the Kiosk. Mr. Bhatti explained that there was a vending machine that was removed due to vandals. Mr. Bhatti informed the board that he does not want to put the ATM machine inside the building due to security concerns for his employees. The machine is actually located inside a large metal box for security reasons by the company. He makes a little bit of money from the ice machine but it is more of a service to his customers. Mr. Bhatti testified that the ATM and the ice machine will draw more customers to his gas station, because they will not have to make extra trips on their way to the shore or flea market. Mr. Hodulik explained that there are commercial properties in the immediate area and that residential homes would not be affected. Mr. Hirsch-Environmental Resolutions inquired about the hours of the service station and if the ice machine actually made the ice or if it was a freezer. Mr. Bhatti replied that the hours are 6am-10pm and that a company delivers the ice already in bags. Mr. Hirsch discussed that there needs to be a dedicate parking space in front of the ATM machine so that customers are aware that it is there and that people are walking to it. Mr. Hodulik replied that his client will agree to that. Mr. Hirsch explained that the ATM and ice machine require a different pattern of traffic so customers need to know that it is there when leaving the pump area.

Mrs. Kilmer expressed her concern for pedestrian traffic and also for pedestrians entering from the flea market. Mr. Bhatti explained that customers come through the fence from the flea market to use the ATM machine. Mrs. Kilmer discussed that there is no walk way for pedestrians for the ATM and that the fence is broken and torn down and should not be used as cut through. Mr. Bhatti replied that they cut through because they do not want to lose their parking space at the flea market and that he does not have control of the fence. Mrs. Kilmer discussed that when she visited the site there were also a lot of vehicles being parked in the back as well as things that had been dumped there. Mr. Hodulik explained that Mr. Bhatti is a tenant and cannot require the owner of the property to repair the fence and does not have control of the full site, there are other businesses located in the same site. Mr. Kilmer explained that the trash enclosure is also falling down. Mr. Hodulik will have his client contact the owner as soon as possible but he is only leasing the site.

Mr. Gural discussed that he is concerned about the dangerous conditions for the pedestrians and the safety concerns with the property. The issues need to be corrected.

Mrs. Myers inquired if the fence is on the flea market property or the service station.

Mr. O'Kane inquired as to how the safety issue of the pedestrians could be corrected. Mr. Brewer replied that a good solid fence around the area would help with keeping the people from walking through from the flea market. Mr. O'Kane inquired if the board has the authority to require the applicant fix the fence since he is not the owner of the property. Mr. Brewer replied that the owner sign the consent form for the applicant to appear in front of the board for the property which gives the authority to the applicant. The conditions of the fencing can be part of the conditions of approval. Mr. Hodulik discussed that Mr. Bhatti is willing to put up or repair the fence if the owner agrees.

Mr. Hirsch discussed that there are three conditions with the safety of pedestrians-prohibit pedestrians from entering the property through the flea market, stripe the area in front of the ATM machine, place signs out for caution pedestrian traffic. The signage should be approved by Mrs. Kilmer or him.

Mrs. Myers inquired as to how many people actually come over from the flea market? Mr. Bhatti replied that he does not count them and it depends on the crowd.

Mrs. Byrem explained that she would really need to see the site before determining approval.

Mr. Dreby inquired as to how much space the service station actually has at the site. Mr. Bhatti explained that he has the office and the pumps but is not sure exactly of the dimensions. Mr. Dreby inquired about moving the ATM and ice machine to a better part of the site for safety reasons. Chairwoman Locke discussed that this would impact the other tenants and that the other tenants have no control over the ATM and ice machine. Mrs. Kilmer explained that there is another tenant on the site that does slot machines, a detailing shop and one bay is vacant. Chairwoman Locke discussed that she is concerned about the fencing around the site and that she did drive by the site and that there does not appear to anything offensive. The fencing issue does need to be addressed.

Mr. Hodulik discussed that a certain amount of people use the ATM from the flea market but that it is mostly customers from the service station. The station was closed down for several years before Mr. Bhatti leased the site. There are other sites in the area that are horrible. Mr. Hodulik explained that Mr. Bhatti is a small businessman, but will agree to repair the fencing, paint the striping of the area in front of the ATM machine and use pedestrian signs.

Mr. Brewer explained that the applicant is looking for approval of a variance for the ice machine and the ATM machine. There will two signs for pedestrian safety as well as repair or replacement of the fencing.

Mr. Dreby made a motion to open the application to the public, Mr. O’Kane second the motion. All members present voted in favor of the motion. No one from the public wishing to be heard, Mr. Gural made a motion to close the public portion, Mr. Dreby second the motion. All members present voted in favor of the motion.

Mr. O’Kane made a motion to approve the application with the conditions outline from the engineer, Mr. Hirsch and solicitor, Mr. Brewer. At the call of the roll, the vote was:

AYES: Mr. Gural, Mr. O’Kane, Mrs. Byrem, Mrs. Myers, Mr. Dreby, Chairwoman Locke.

NAYES: None.

MATTERS TO BE PRESENT BY THE PUBLIC. Mr. Dreby made a motion to open the meeting to the public, Mr. Gural second the motion. All members present voted in favor of the motion.

Mr. Irons-Morgan Avenue inquired about the old bank building on the corner and that there was an auction held but they did not let him in. Mrs. Kilmer replied she was aware of the auction, but did not know the outcome. Chairwoman Locke replied that no one has made application to the board to use the property. Mr. Hirsch explained that it is listed as an office/commercial use, but that churches or schools are allowed also.

No one from the public wishing to be heard, Mr. Dreby made a motion to close the public portion, Mr. Gural second the motion. All members present voted in favor of the motion.

ADJOURNMENT. Mr. O’Kane made a motion to adjourn at 8:50pm, Mrs. Myers second the motion. All members present voted in favor of the motion.