

**BOROUGH OF PALMYRA  
LAND USE BOARD  
DECEMBER 18, 2019  
MINUTES-7PM**

**CALL TO ORDER.** The Land Use Board meeting of the Borough of Palmyra is hereby called to order at 7:05 p.m.

**PLEDGE OF ALLEGIANCE.**

**OPEN PUBLIC MEETINGS ACT.**

Public Notice of this meeting pursuant to the Open Public Meetings Act, has been given by the Board Secretary in the following matter:

- A. Posting written notice on the Official Bulletin Board at the Palmyra Borough Hall on January 23, 2019.
- B. Mailing written notice to the Burlington County Times and Courier Post on January 23, 2019.
- C. Notice to all Board members.

**ROLL CALL:** Chairwoman Locke asks for a roll call.

PRESENT: Mr. Gural, Mr. O’Kane, Councilwoman Weiner, Chairwoman Locke, Ms. O’Connor, Mr. Yetter

ABSENT: Mr. Norcross, Vice Chairman Beck

**APPROVAL OF THE MINUTES.** Chairwoman Locke asks if there are any comments or changes on the November 20, 2019 minutes. Mayor Arnold states there is one correction to the first page in the Borough Update paragraph. It should read Route 73 instead of Route 72. Chairwoman Locke requests that be corrected. There being no other corrections Chairwoman Locke requests a motion to accept the minutes as corrected. Mr. Yetter makes the motion and second by Mr. O’Kane. At the call of the Roll:

AYES: Councilwoman Weiner, Chairwoman Locke, Mr. Yetter, Ms. O’Connor

NAYS: None

ABSTAIN: Mr. Gural, Mr. O’Kane, Mayor Arnold

**SWEARING IN:** Chairwoman Locke requests that Mr. Brewer swear in members. He swears in Kenneth Keisler – CLASS IV (Term expires 12/31/2020), Lewis Yetter -CLASS IV (Term expires 12/31/2019) and David Confer- ALTERNATE #1 (Term expires 12/31/19). Chairwoman Locke explains the process for hearing an application.

**BOROUGH COUNCIL UPDATES.** Chairwoman Locke asks Mayor Arnold for the Borough Council updates. Mayor Arnold states that Borough Council is winding down for the year. There are new members to the Land Use Board and thanks them for serving. There was a walk-through of the Fillet property. Additional drums were found that were deposited with material leaking into the soil. It has been

noted and reported to the State as it is additional contribution to the contamination of that area. The Council did an extension to the redevelopment agreement with the redeveloper in order to allow them the opportunity to conduct their investigations. Mayor Arnold advises that reorganization of the Borough Council is scheduled for Saturday, January 4, 2020 at 11:00 a.m. in the Court Room. She hopes the Mayor and Council will consider appointing Roberts Locke to the Land Use Board. Chairwoman Locke thanks her for her support.

**OLD BUSINESS:** Chairwoman Locke asks that Mr. Brewer provide information and explain what steps need to be taken regarding the Knights of Columbus building. Mr. Brewer states that in the middle of September the Mayor and governing body passed a Resolution directing the Board to conduct a study regarding the Knights of Columbus building, known as Block 80, Lot 6. The redevelopment law has a process whereby if a governing body wishes to consider whether a property should be declared in need of redevelopment or blighted it sends it to the Planning Board to conduct a hearing to make a recommendation to the governing body. It is typically done by having a planner in this field undertake looking at the records, looking at the property and preparing a report that is available to the public 10 days prior to a meeting that a special notice goes out. The planner will give the Board testimony and give their opinions and findings. At the conclusion of the testimony and hearing the public if they wish to speak, the planning board makes a recommendation to the governing body. The Borough planner, Mr. Gerkins is more than qualified and Mr. Brewer recommends that the Board make a motion to authorize Mr. Gerkins to prepare the report. Chairwoman Locke asks if there are any questions. Ms. Weiner asks for clarification regarding the sale of the property, how it affects redevelopment and the benefit of hiring a planner for the study. Mr. Brewer explains that in this instance the statutory framework says the Governing Body directs the Planning Board to conduct that study and have a hearing on it then the Board can make a recommendation. If it is recommended that it be an area that is in need of redevelopment and the Governing Body agrees then there has to be a redevelopment plan. A redevelopment plan is essentially the zoning that would apply to it. This is the first step in the process of possibly several steps to get this property moving. Discussion ensues. Chairwoman Locke request a motion to have Mr. Gerkins prepare the report as directed by Borough Council. Mayor Arnold makes the motion and second by Mr. O’Kane. At the call of the Roll:

AYE: Mr. Confer, Mr. Gural, Mr. Keisler, Mr. O’Kane, Mr. Yetter, Councilwoman Weiner, Mayor Arnold, Chairwoman Locke, Ms. O’Connor.

NAY: None

Motion passed.

**NEW BUSINESS:**

Application 2019-LUB03, 319 Leconey Avenue, Block 94, Lot 10, Bulk Variance Application. Mr. Kyle Eingorn of the firm of Dembo, Brown & Burns introduces himself as the attorney for the applicant, Judith Ruscitti. He states the application was submitted on September 20, 2019 and deemed complete on November 13, 2019. Written notice was sent on November 14, 2019 and published in the Burlington County Times on November 19 and affidavit of Service was provided on November 27. The applicant comes before the Board seeking a bulk variance approval for a previously constructed chain link fence

with vinyl slats at the property of 319 Leconey Avenue. The applicant did obtain a permit to construct a fence however, pursuant to Municipal Ordinance and the permit, the fence was only permitted to be constructed to the end of the foundation line. However, the fence was constructed past that point to meet the end of the applicant's porch. It is about the distance of seven feet. The applicant submits that this promotes a more desirable visual impact. The distance, when it was at the foundation line, didn't look correct due to the extension of the porch. Therefore a snap decision was made, due to the pouring of a concrete driveway simultaneously, to extend the fence. There wasn't much time to make an application in the interim. In addition, the additional fencing will support the safety of the applicant's house. There has been a few issues of vandalism and trespass. As it relates to the sight lines and the sight triangles there is a large distance between the end of the fence and the end of the driveway. The end of the fence is set back almost thirty feet from the road so there is no visual deterrent from driving down the road or backing out of the driveway. The applicant has not received any complaints from any of the neighbors. In fact, he personally received a call from Mr. Brown, who lives across the street, stating he liked the fence and had no objection to it. Mr. Eingorn concludes. Mr. Brewer swears in Ms. Judith Ruscitti to give testimony. Mr. Eingorn confirms with Ms. Ruscitti that everything he said to the Board was true and accurate and would she adopt that as her statement. She replies yes. Mr. Eingorn asks if the Board or professionals have any questions. Chairwoman Locke calls on Mr. Winckowski. Mr. Winckowski asks if there is any intent to bring the fence across the driveway to put in a gate. Ms. Ruscitti advises that there is already a gate toward the back of the house. Originally she was going to put a gate by the porch but she changed her mind. Mr. Winckowski comments that in the photographs he notes a post near the porch. Ms. Ruscitti comments that originally she was going to put a gate but is now thinking of making the post a solar light. Mr. Winckowski comments that the front porch was enclosed but has since been removed. Ms. Ruscitti says that the porch was falling apart and the sides were sinking. Her original plan was to build it again with an enclosure but she has changed her mind and is now just going to have a porch. Mr. Winckowski asks where the fence ends on the other side of the property line. He is advised that she brought it down to match the front of the porch. The fence on the driveway side offers protection for her car. She states it was a snap decision to extend the fencing because she felt it would look horrible stopping it at the foundation line and it would be more aesthetically pleasing to have the extra seven feet. Mr. Winckowski comments to the Board that the front setback requirement for the zone is thirty feet. The front of the house is basically thirty feet but front porch is part of the principal structure whether it is enclosed or not with the overhang. That is in line with generally the rest of the homes in the block. The front of the porch is the front setback that he would find is permitted in the zone as it is consistent with the rest of the properties but the ordinance is clear that the fencing cannot go beyond the main foundation wall. Mr. Winckowski asks the applicant if she is looking to put fencing on both sides. She responds that if it is approved on the left she would like to leave it on the right. Mr. Winckowski asks if she is asking for both sides to be extended to the front and she says yes. She said she would but if she cannot have both side she would like to keep the one on the left. Chairwoman Locke asks Tracy Kilmer if she has any questions. Mrs. Kilmer states she gave everyone a synopsis of her dealings with Mrs. Ruscitti. She states that on June 12, 2018 she had approved the application for a fence. On March 27, 2018 she issued a violation regarding the fencing. She received a complaint from the neighbor to the left of the property, the driveway side. However, it is the applicant's property and she tried to explain that to the complainant. With the fence coming down past where it is allowed became even more of a concern to the complainant. Due to this, she issued the Notice of Violation. On the original survey that was presented with the application it indicated that the fence would stop at the foundation. Mr. Gural asks Mrs. Kilmer

what was the disposition of the violation in this matter. He is advised that there is no disposition yet. He asks if the applicant decided once they received that summons to make this application to the Board. Mrs. Kilmer states yes. Mr. Gural confirms that the case will not be resolved until there is a decision from the Board. Mrs. Kilmer advises that she has dismissed the summons because they came to the Land Use Board. Mr. Eingorn reports that he did e-mail back and forth with Mrs. Kilmer and he understood that she would dismiss the matter at the November hearings. She confirms that it was pending them making application. Councilwoman Weiner asks Mrs. Kilmer about the driveway and the neighbor's complaint. Mrs. Kilmer explains. Mr. Yetter asks if there is anything in the Ordinances covering shared driveways. He is told that it is not shared. Mr. Gural comments that it should be kept in mind that Mrs. Kilmer approved the application originally for the fence only seven feet further back. Up until that point it was perfectly legal whether it impacted the neighbor or not. It is the additional extension that there is a concern. Chairwoman Locke asks Mr. Eingorn if he is aware of any easement agreement for the driveway. He replies that he is not aware of any easement agreement. Chairwoman Locke asks the professionals if there are any further questions and is advised no. Chairwoman Locke begins asking the Board if there are any questions. Mr. Yetter asks if the right side is already completed up to the porch. He is advised the fence is completely in. He confirms that the gate is in the back. Ms. Ruscutti replies yes and states the gate is in the back corner of the house and goes across the driveway. Mr. Yetter comments that he is aware of at least five other fences on the applicant's street that come out to the sidewalk. Ms. O'Connor asks if the neighbor on the left of the driveway, now that the fence is up, can use the driveway. Ms. Ruscutti states that the neighbor can use the driveway. Ms. Ruscutti asks that if the neighbor is renting is he allowed to complain and she is advised yes. She states that, in the front of the property, the fence is at least three inches inside her property line and in the back she believes she is about six inches from the property line. Mr. Gural has no questions. Mayor Arnold asked if the neighbors were advised in any way and did they have an opportunity to weigh in on their opinions on both sides of the property. She is advised that notice was given to residents through the 200 foot list provided by the Assessor. Mr. Eingorn states notice was sent out the day after the application was deemed complete. Mayor Arnold comments on the survey in the packet and asks if Mr. Eingorn has the legal description. She is advised that it was not provided but will provide it if it is a condition of approval. The Mayor states that a legal description may have more information in it than a survey does and if there is any kind of an easement. Chairwoman Locke states that it would also be on a Title Report if the attorney has it. Mr. Eingorn said it was not provided. Mr. Winckowski states that it was not a requirement. Mr. Brewer explains that if, in fact, there was a cross easement for the driveway the neighbor would be a part owner of it and they would have needed consent to put up the fence. If it existed and consent was not approved then any approval of the application would be invalid. There is no representation that there is but that would be the significance if there was some type of easement. Mr. Winckowski states that the survey submitted excludes any identification of an easement and defers that to a title report. Mayor Arnold comments that personally she finds that one of the pictures submitted is significant because not only is the fence impacting the visibility from the applicant's property but also the neighbor's property. Since the fence is in between and there is no room for the other property owner to put a fence because the applicant's is there, it is coming out too far on their property as well. Regarding access to the driveway, it is not a shared driveway but with the fence someone could not pull into the driveway and open their door to get in and out. They would have to go to the back of the driveway or stay in the front area. Mr. Eingorn states that the record does reflect that the fence was built on the applicant's property not on the neighbor's property. The Mayor explains that the fence visually impacts

the neighbor's property not that the fence is on the neighbor's property. The Mayor also comments that there is a proper process to go through when making improvements to our properties. When you get into a project and get approval for something and then you change your mind we do not have the ability to just change our minds and do what we want to do. She continues to say if it requires approvals, if it requires a process then that is what should be done. Ms. Ruscetti comments that she is in total agreement and that she made the decision knowing it didn't match the permit that was approved. She takes full responsibility. Mr. Keisler asks Ms. Ruscetti about the original permit and confirms that the fence was originally going to stop at the foundation of the house and not go past it. She states when she obtained the permit she knew what she was supposed to do. Mr. Keisler asks if it is her intention to gate the driveway. Ms. Ruscetti states that originally she was going to gate it but has changed her mind. There is a post and she doesn't want to remove it so she is thinks it is a perfect spot for a light. Mr. Keisler confirms that the extra footage for the gate was for aesthetics. Ms. Ruscetti confirms that it was primarily for aesthetics and to prevent trespassing. He asks if the neighbor has approached her regarding the fence and he is advised no. Mr. O'Kane confirms that the applicant would like to leave the post and she had intended at one point to put a six foot gate across the driveway. She confirms yes but now intends to leave it to make a light post. Mr. O'Kane asks Mrs. Kilmer if a six foot gate is permissible across the driveway if the fence were back seven feet. Mrs. Kilmer advises that as long as the fence does not go past the foundation it is permissible. Mr. O'Kane states that his concern is that now that the fencing is there that maybe in the future the applicant may decide to put a gate there. He is told by Chairwoman Locke that if the Board approves the Resolution where the applicant testified that she is putting a light and not a gate then she would have to come back to the Land Use Board for the gate. He questions that if the post is left in she may have good intentions of not putting a gate in now but when the application is approved she may just put a gate in next year without asking. Chairwoman Locke states that it can be stipulated. Ms. Ruscetti asks if there was something in the zoning laws where she cannot put a gate in. Mr. Winckowski answers that she would need to file a zoning application which would be denied and then she would have to come before the Land Use Board for relief. Councilwoman Weiner asks when the 200 foot list is sent, are they sent to property owner and residents. Mr. Eingorn advises that the list is provided by the municipality. Mr. Brewer states it is the registered owner of the assessed property. Mr. Confer has no questions. Chairwoman Locke she believes her questions were answered but has a concern with a solar light being placed on the post in that the intensity of it doesn't upset any of the neighbors. Mr. Eingorn asks Ms. Ruscetti to describe the proposed light fixture. She explains it is a solar light and looks like a lantern. It is not a flood light. Mr. Gural asks for clarification regarding the pictures submitted. He comments that on two of the pictures there is a seam in the concrete between the new and the old asphalt of the neighbor's property. He asks if that basically represents the property line. He is told by Ms. Ruscetti no it is actually approximately three inches inside the asphalt. Mr. Gural confirms that there is three inches of the neighbor's asphalt on her property. Ms. Ruscetti replies yes. Mr. Gural refers to another photograph asking for clarification regarding the view. It is confirmed it is the front of the property where the applicant wants to put a light post. Mr. Winckowski and Mr. Gural ask the applicant why there is a long rectangular cut out along the driveway. Ms. Ruscetti explains that she plans to put in plants because she couldn't bring the fence all the way to the sidewalk. The cut out is going to have low plants to help with the separation of the properties. Mayor Arnold has a question regarding the extension of the concrete. On the survey it doesn't show the extension of the concrete and wonders about the surface area and if it is permissible. Mayor Arnold states she sees a downspout that the water has nowhere to go. Ms. Ruscetti explains that the water runs down the driveway. The Mayor explains that it looks

like the concrete didn't extend over to the foundation of the home in the survey but now it does. Ms. Ruscutti explains that there was concrete there and also flower beds. The Mayor confirms that the additional pouring of the concrete has not been inspected. Mrs. Kilmer advises the inspection has not been done for the porch itself. Ms. Ruscutti advises that she does not plan to continue with the porch until the spring. Mrs. Kilmer responds to the Mayor's question regarding coverage stating that she found coverage to be acceptable. Finding no further questions from the Board Chairwoman Locke request a motion to open the meeting to the public regarding this application. Mr. Yetter makes the motion and second by Mayor Arnold. All were in favor.

Chairwoman Locke invites anyone to make comments. Kim Robinson, 325 Leconey Avenue. She is sworn in by Mr. Brewer. Mrs. Robinson asks for clarification regarding the meeting notice and the extension of the fence. She thought the fence was going to go to the sidewalk. She is happy that it is not. She asks for confirmation that the fence is staying where it currently is and there will be no gate. Ms. Ruscutti confirms that to be true. Jeffrey Scott, 334 Berkley Avenue. He is sworn in by Mr. Brewer. Mr. Scott asks Ms. Ruscutti if she plans to put up a three foot fence in the future. Ms. Ruscutti replies no. He asks the Board if this application was approved would it change the Ordinance regarding fences and is told no. It only applies to the particular property that the application is made. Seeing no one else from the public wishing to speak, Chairwoman Locke requests a motion to close the public portion of the meeting. Mr. O'Kane makes the motion and Mr. Yetter second. All were in favor.

Chairwoman Locke requests Mr. Brewer recite the motion. Mr. Brewer states it would be a motion to approve the application as presented which is to allow the fence to remain in the location as constructed with the condition that there will not be a gate installed at the end of the fence on the driveway side. Mr. Gural proposes an additional condition that the light be attached to the house and not the fence. Mr. Gural is advised that it would not be on the fence but on a post that has already been installed. Chairwoman Locke asks Mrs. Kilmer if there is any in the Ordinances that if a light was installed and it's illumination affects the neighbors, is there any recourse and she is advised yes. Mr. Brewer continues with the motion stating that it is conditioned on the light being reviewed and approved by the construction official or the engineer prior to use. Discussion ensues. Chairwoman Locke request a motion to accept the motion as stated by Mr. Brewer. Mr. Yetter makes the motion to accept and Mr. Keisler second. At the call of the Roll:

AYE: Mr. Confer, Mr. Gural, Mr. Keisler, Mr. O'Kane, Mr. Yetter, Councilwoman Weiner, Chairwoman Locke, Ms. O'Connor

NAY: Mayor Arnold

Motion is approved.

Review of meeting dates for 2020. Chairwoman Locke asks for any comments, questions or concerns regarding the meeting dates. Hearing none, she asks for a motion to accept the meeting dates. Mr. Keisler makes the motion and second by Mr. Yetter. All in favor, none apposed.

JIF Land Use Training by Andrew Brewer, Esquire. Mr. Brewer advises that it will not be done this evening but there is a booklet that must be reviewed and at the next meeting it will be reviewed. This will

provides extra insurance that the JIF provides at no additional cost for Land Use Boards and members that have taken the course.

Chairwoman Locke asks the secretary if there are any pending applications. She is advised that there is one application pending but it has not been deemed complete. Mr. Winckowski advises that the application pending is at 400 Legion will be deemed incomplete for further information. He states that it will not be ready for January.

Chairwoman Locke requests a motion to open the meeting to the public. Mr. Yetter makes the motion and second by Mr. Keisler. All in favor, none apposed.

Seeing no one wishing to speak, Chairwoman Locke requests a motion to close the public portion of the meeting. Mr. O'Kane makes the motion and second by Mr. Yetter. All in favor, none opposed.

Mayor Arnold wishes to make a clarification regarding the previous Land Use Board meeting. Her question is regarding the memorization of the application 2019-LUB02, Mr. De Souza, Block 61, Lot 4 & 4.01 for a bulk variance. Was there a postponement of the memorialization hearing? It was done in a timely fashion? It was done when it was scheduled to be done? She is advised yes. Discussion ensues.

Chairwoman Locke requests a motion to adjourn the meeting. Councilwoman Weiner makes the motion and second by Mr. Yetter. All in favor, none opposed.

Meeting adjourned at 8:18 p.m.

Respectfully submitted,



Marie Nagle  
Secretary, Land Use Board  
Borough of Palmyra