

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

August 13, 2008

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, August 13, 2008. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Chairperson Kuntz presided.

Secretary Probasco read Notice of Public Meeting.

Roll Call: **Present** – Mayor P. Ted Hussa, Glenn Buie, Sue Filauro, Howard Shaw, Peter Nienstadt, Jim Schoner, Marilyn Kuntz, Lou Maffei
 Absent – Geoff Millington

Professionals present – Edward J. Buzak, Esq, Tiena Cofoni, Esq., Nicholas Rosania, PE, P.P., William Denzler, PP

MINUTES –

May 28, 2008

Motion to adopt the minutes as submitted was made by Mbr. Buie, seconded by Mbr. Shaw and unanimously approved by all Members present and able to vote.

June 25, 2008

Motion to adopt the minutes as submitted was made by Mbr. Buie, seconded by Mbr. Schoner and unanimously approved by all Members present and able to vote.

PURCHASING

Motion to pay vouchers submitted by Township of Denville (dated June 25, 2008) subject to the availability of funds, was made by Mbr. Nienstadt and seconded by Mbr. Shaw and unanimously approved by all Members present.

Motion to pay vouchers submitted by Laddey, Clark & Ryan (dated July 1, 2008) subject to the availability of funds, was made by Mbr. Schoner and seconded by Mbr. Shaw and unanimously approved by all Members present.

Motion to pay vouchers submitted by Edward Buzak, Esq. (dated June 20, 2008 and August 6, 2008) subject to the availability of funds, was made by Mbr. Shaw and seconded by Mbr. Nienstadt and unanimously approved by all Members present.

Motion to pay vouchers submitted by William Denzler and Associates (dated July 1, 2008) subject to the availability of funds, was made by Mbr. Buie and seconded by Mbr. Nienstadt and unanimously approved by all Members present.

CORRESPONDENCE

PROFESSIONAL COMMENTS

RESOLUTIONS

#MS/SS 05-17 Briar Rose Group, Inc.

Resolution authorizing Escrow Account reimbursement in connection with the development application #MS/SS 05-17 of Briar Rose Group, Inc.

Motion to adopt the resolution was made by Mayor Hussa, seconded by Mbr. Shaw, and unanimously approved by all members present and able to vote.

Roll Call: Ayes – Hussa, Shaw, Schoner, Filauro, Buie, Nienstadt, Maffei, Kuntz

**SPV 07-17 Housing Authority of the County of Morris
 Block 21301, Lot 7
 Peer Place**

Motion to adopt the resolution granting minor subdivision and preliminary and final site plan approval with associated variances and a waiver in connection with this application was made

by Mbr. Buie, seconded by Mbr. Maffei and unanimously approved by all members present and able to vote.

Roll Call: Ayes – Buie, Maffei, Schoner, Nienstadt, Hussa, Kuntz

MPSV/SM 07-12 Tri-M Enterprises
Block 20401, Lots 3 & 11
Smith Road

Mr. Buzak reviewed the resolution and highlighted changes on the black lined version.

Motion to adopt the memorializing resolution granting preliminary major subdivision approval in connection with this application was made by Mbr. Buie, seconded by Mbr. Nienstadt and unanimously approved by all members present and able to vote.

Roll Call: Ayes – Buie, Nienstadt, Schoner, Maffei, Hussa, Kuntz

PUBLIC HEARINGS

SP/FSP 08-02 Lerner Enterprises
89 Route 46 East
Block 41208, Lot 1

Mbr. Glenn Buie recused himself of this application.

Applicant is requesting Preliminary and Final Site Plan approval for a change of use from a retail establishment to a child-care center. Site improvements require "C" variance relief for off-street parking.

Mr. Hantman, Esq. explained that there would be no changes to the existing building. There would only be a removal of ten parking spaces for the addition of a playground enclosure. A grading plan (page 3, Exhibit A-1) was entered and reviewed.

Ms. Harriott Lerner (41 McKenzie Lane) was present and sworn in as a professional witness. As the owner of Little Learner Academy, Ms. Lerner testified that there are two other facilities located at Green Pond Road in Rockaway and Old Budd Lake Road in Mt. Olive. Ms. Lerner explained that this facility would be operated in the same manner as the other facilities. Ms. Lerner testified to the practices of the center and further described that the majority of the children are driven to school by their parents and escorted into the building by an adult. Children that arrive by bus are met at the door by the staff. In closing, the applicant requested the board's approval to meet the state's requirement of an outdoor play area at the center.

Mr. Frank Matarazzo, Matarazzo Engineering, LLC (575 Route 46 West, Fairfield, NJ 07004) was present and sworn in as a professional witness. The site location (page 1, Exhibit A-3) was used by Mr. Matarazzo's testimony. The pre-existing condition map (page 2 is A-2) was also reviewed. Reflecting site as it currently exists, the property, the building, rear parking, retention basin and common driveway shared with Wendy's on the easterly side of property. The proposed play area of 6,900 sq. ft. would have a fence enclosure and sidewalk to the front of the building. The plan shows 73 of the required 84 parking spaces, leaving a variance for the remaining 11 spaces. Mr. Matarazzo testified that removing 7 parking spaces would be the best zoning alternative.

Mr. Michael Spagnolo, M.J.S. Architects (77 Union Street, Dover, NJ 07801) was present, sworn in and accepted as a professional witness. Mr. Spagnolo described the interior of the facility (Exhibit A-4) and reviewed the proposed plan. The existing building entrance will remain. The front of building faces Rt. 46 with parking in rear and a walk along sidewalk. Exit doors will be added for emergency exits, as well as a couple of windows along the front. An additional sidewalk will be added in the front to accommodate the exit doors along Rt. 46. The proposed signs are basically the existing signs changed out for the new tenant.

Mr. Rosania reviewed his report of August 11, 2008 regarding parking, circulation and memos from fire and health. Replacement of lost trees and fence repairs was also referenced.

Mr. Denzler reviewed his report of June 17, 2008 regarding circulation, peak hours of operation, number of occupants, timing of class sessions, special events, buses and landscaping.

Ms. Lerner responded that the centers' hours of operation are 7:00 a.m. to 6:30 p.m. The number of full time staff will be staggered, with an anticipated maximum of 25 by 9 a.m. The number of students is anticipated at 205. Special events such as open houses are performed at two different times to decrease the number of attendees. There are three buses anticipated,

three times daily but will ultimately be determined by the quantity of school age children enrolled.

Mr. Denzler inquired about the number of simultaneous vehicles for pick-ups and drop-offs, to establish a turnover rate for parking. Ms. Lerner explained that vehicles will vary due to different work schedules and would not expect more than 15 vehicles at any one time.

Mr. Denzler inquired about the front sidewalk. Mr. Matarazzo confirmed that the 4' wide front sidewalk is ADA compliant. Mr. Denzler discussed the additional landscaping referenced in his report. Ms. Lerner voiced concern about not having trees for children to hide behind. She indicated that if required, trees would be added. However, due to visibility concerns she does not believe it's the safest option.

Chr. Kuntz opened the hearing to the public.

Glenn Buie (15 Fraser Road, Lot 9) was present and sworn in. Mr. Buie indicated that he was concerned about the shared driveway with Wendy's, the possibility of buses stacking, and special events, such as car shows. Mr. Buie also inquired about the meaning of cross-easement parking. Mr. Buie suggested a low fence to prevent someone from falling into the detention basin.

Ms. Lerner indicated that the buses are anticipated from the public schools around 3:30, which is not Wendy's busiest time. Mr. Hantman explained that the cross-easement parking gives both owner's the right to overlap parking. Having the children's safety in mind, the applicant was open to the possibility of adding a fence.

Mr. Buie indicated that the parking lot is currently underutilized and inquired about additional lighting. Ms. Lerner indicated that the state would mandate the necessary lighting required and that they would do the right thing.

Mr. Buie expressed concern for no parking along the curbing and believes it could be a serious problem. He recommended signage indicating no drop off's along the curbing. Ms. Lerner indicated that everything would be done to keep parking to the parking lot instead of along the curb.

Chr. Kuntz thanked the public. The public portion of the hearing was closed and was opened to board for comments.

Mbr. Schoner was concerned about traffic pulling in and would like to see it addressed.

Mbr. Filauro inquired about the circulation entering and exiting the center and inquired if a one-way sign could be added.

Mr. Matarazzo confirmed (Exhibit A-1) that the entrance is a one-way and the exit is a one-way through Wendy's. Currently a do not enter sign exists. Ms. Lerner indicated that only two buses would be parked at one time. Mr. Matarazzo indicated that approximately 5 cars would fit behind the bus before they would be reach Rt. 46.

Mbr. Filauro indicated that a designated area for buses would alleviate her concerns for the morning buses.

Mr. Hantman responded that the applicant does not believe this is necessary. If it is determined that this is a problem, the applicant would move the buses further down. Ms. Lerner agreed that the buses could park in the rear parking lot if necessary but would like to avoid having the children walk from the rear parking lot to the front entrance if possible.

Ms. Filauro inquired about a potential change of business at Wendy's and what would occur with the parking. Mr. Buzak apologized for not answering Ms. Filauro's question. She also inquired why Corridor 2 could not be used for children to enter the building from buses in the rear parking lot.

Ms. Lerner explained that these doors can only be opened from the inside for safety reasons. If it becomes a problem, she explained that the buses would be parked in the rear.

There was further discussion regarding the total number of 73 useable parking spaces. There are 32 dedicated parking spaces for Lerner's exclusive use. An additional 14 shared spaces

available to Lerner on Wendy's side, an additional 7.5 shared spaces on Lerner side shared by Wendy's and the ability of utilizing another 19.5 on the Wendy's side.

Mayor Hussa inquired about how full the parking lot was anticipated on any given day. He indicated that he wasn't as concerned about the parking, but did feel the potential for stacking was a concern. The question was made whether there was room for vehicles to pass.

Ms Lerner explained that during the year, there are special occasions that would require additional parking of an additional 36 vehicles during morning hours prior to Wendy's opening. She confirmed that there was room for vehicles to pass and assured the board that vehicles would pull as far back as possible in the parking lot to prevent stacking.

Mayor Hussa suggested that the triangular area near the playground could be adjusted for a designated bus area at the end of the driveway. This would increase the number of stacked cars to a total of nine and alleviate any potential of stacking. Mbr. Nienstadt agreed that this should alleviate the stacking potential.

There was further discussion of a designated bus area. The fence would then go on the inside of the sidewalk.

Mbr. Shaw was concerned about the width of drive and the upcoming lane decrease. Mr. Hantman explained that the power to increase the driveway lies with Wendy's and not the applicant.

Mbr. Nienstadt inquired about the school bus sizes. Ms. Lerner explained that there would be one full size school bus and a 25 passenger Class "C" bus.

Mr. Maffei commented on having the lighting looked at and the possibility of signage for potential cars stopping on Rt. 46.

Chr. Kuntz agreed to Mr. Hantman's request for a five minute recess.

Before resuming the meeting, Mr. Buzak explained that there was another scheduled hearing. He inquired how Mr. Hantman, who represents both applicants, would like to proceed. Mr. Hantman agreed to proceed with the first hearing, Lerner Enterprises, with the understanding that an extension of time would be required for Briar Rose Group, Inc.

Chr. Kuntz indicated that most of the questions have been asked. She indicated that based upon the boards comments, the concerns remain regarding stacking, parking, landscaping, fencing the retention basin, traffic flow and buses, parking lot lighting and landscaping. Chr. Kuntz would like to ask the owner if paving could be done and inquired about snow plowing. Ms. Lerner indicated that a company has been hired to remove the snow beginning at 5:30 a.m. and will push it to the back of the property, similar to the other centers.

Mr. Spagnola indicated that the storage of the removed snow could be stacked around the perimeter of the parking lot in an area of over 20'.

Mr. Buzak inquired about the existing cross easements and if there was a potential for modification. Mr. Hantman indicated that this is an agreement that cannot be changed during this tenant's use.

Mr. Spagnola was present and remained under oath. He indicated there they would agree to no parking signs, entrance only signs, 4' fence between basin and building, replacement of missing trees and landscaping, moving the bus drop to the rear of the building. They further agreed to investigate additional lighting, lights out and the possible increase of the foot-candles. Patching holes in the pavement could be subject to approval. The applicant indicated that they cannot accommodate the widening of the driveway. Widening the entrance remains under the Department of Transportation's jurisdiction.

Mr. Buzak provided a recap of the conditions of approval. He indicated that the conditions of approval were to include; on and off street parking variances, no parking signs being placed along driveway, entrance only sign being placed at entrance, 4' fence subject to engineer and planner's approval, subject to replacement of trees in accordance with the engineer's report of August 11th, revised plans to reflect relocation of bus drop off area as demonstrated on the plans as the "triangular area" to the south of the building and adjacent to the proposed playground, additional lighting that shall be approved by the township engineer as to intensity,

shading and shielding, fire lanes being striped where indicated, appropriate facilities review by the health department, repairing existing fence, repairing paved parking and driveway areas.

He indicated that it was more difficult to create a condition for the variance portion of the application. Mr. Buzak referenced Ms. Filauro's question regarding change of use for the existing cross-easements. The parking currently works due to the different hours of operation between the two parties.

Mr. Buzak indicated that the ordinance requires 84 parking spaces, of which the applicant has proposed an aggregate of 73 with 53.5 onsite leaving a variance request for 11 spaces.

Mr. Buzak suggested an expiration of the easement in ten years. Alternately, Mr. Hantman suggested an expiration with the lease agreement.

Ms. Tiena Cofoni, Esq. indicated that the board could grant approval of a variance for 73 parking spaces so in the event this tenant, or a future tenant, eliminate parking spaces, they would need to come before the board for a variance on parking.

Mr. Buzak agreed that this would address the change of use issue but would not address the guarantee of use. In order to ensure that there are 73 spaces would require a private lease agreement.

Mr. Hantman indicated that the applicant would be willing to enter into a stipulation that if their lease agreements ability to maintain this easement changes, that they would come back to the board. Mr. Buzak indicated that this would have to run not only with the lease but also with the approval. He inquired if the owner would be willing to explore the modification of the easement to include a condition that the cross-easement would not be modified without the approval of the board.

Mr. Kamel Yassim, President and owner of Sound City and owner of the property (89 Route 46) was present and sworn in. Mr. Yassim testified that the easement is a private agreement between him and Wendy's in case they become busy. He explained that in eleven years, with the exception of the car show, cars have not used his property. He stated that he can terminate the car show himself at any time. Wendy's does not open until 11 a.m. and there is not a lot of traffic. He stated that snow removal is pushed to wetlands and has never been an issue.

Mr. Buzak summarized that the applicant is seeking a variance for 84 spaces. The applicant can guarantee 32 spaces with the right to use an additional 41 spaces to obtain the 73 parking spaces that they are seeking the variance. The applicant represents that the lease agreement that they have with the owner of the property, guarantees the applicant the ability to utilize the additional 41 spaces.

A possible condition of approval was discussed at length regarding the variance of 11 parking spaces and obligation to notify the board if the parking easement was to change. It was determined that the notification can be provided by either the owner or the applicant, since both parties have signed the applicant.

A condition of approval for a variance of 73 parking spaces would be require notification by the owner or applicant of any change and a requirement that the spaces be maintained during the period that these premises are used for these purposes.

In response to Chr. Kuntz's inquiry, Mr. Buzak indicated that if spaces become obsolete and the tenant still occupies the space the township would have the right to enforce it.

A motion to approve this application with conditions was made by Mbr. Filauro and seconded by Mbr. Shaw and unanimously approved by all members present and able to vote.

Roll Call: Ayes – Filauro, Shaw, Buie, Nienstadt, Maffei, Schoner, Millington, Hussa, Kuntz

MS/SS 05-17**Briar Rose Group, Inc.
97 Highland Trail
Block 40815, Lot 1700.01**

Mr. Allen Hantman, Esq., Morris & Hantman (168 East Main Street) represented the applicant, Briar Rose Group, Inc. Mr. Hantman who remains under oath called Mr. Stewart as his first witness.

Mr. Alfred A. Stewart, Jr., Stewart Surveying and Engineering, Inc. (25 Pine Street, Suites 3 & 4, Rockaway) was present, sworn in and acknowledged as a professional witness. Mr. Stewart provided testimony to address the engineer's report dated August 12, 2008. Requested recommendations from the engineer on fencing for the next meeting. Due to the steep slopes, Mr. Rosania recommended a metal chain link fence. Mr. Stewart to provide some fencing information for the engineer's feedback. The standard minimum radius of 13.8' will be increased on one driveway to 15'. Mr. Stewart explained that all the standards were met, including the 10' driveway width. There was some discussion of the serpentine driveway being difficult to access for vehicles with a larger radius. Mr. Stewart indicated that he would contact the fire department and would investigate the incorporation of a stairway or walkway into the plan. Mr. Stewart addressed the engineer's drainage comments by providing a Type B inlet for Lot 1700.01. Further detail will be provided for the trench grate for Lot 1700.02 that will remain. If possible, driveway width to be increased by 2' for visitor parking. The arborvitae tree height will be increased to 5' in front of the 6' wall. Mr. Stewart provided examples of the Redi-Block wall (Exhibit A-1) with "D" as the stamped belgium block that would be provided. A review of the evergreen tree planting detail (Exhibit A-2) sheet 2 of 6 was reviewed. Wall detail was discussed and a clarification of wall/curb interaction would be provided for the next meeting.

Chr. Kuntz suggested that this application be carried without further notice to September 24, 2008.

OLD BUSINESS

Mr. Buzak indicated that the Council of Affordable Housing denied the League's motion to extend the time in which to file housing elements and fair share plans. The deadline is still December 31, 2008. There are now twenty appeals to the regulations that were adopted on May 6th that will not be heard until late in the fall.

ADJOURNMENT

Mayor Hussa made a motion to adjourn and Mbr. Nienstadt seconded the motion.

Denean Probasco, Board Secretary

Date adopted