

The 40' easement is comprised of a Drainage swale, berm, the proposed driveway, berm and drainage swale. The driveway is 13-14' from the northern side line. Heading to the north to Lot 16.01 there is a proposed 1' berm that would be increased to 2' as requested by the township engineer. Heading from the property line south to Lot 16.01 there is a gravel drainage swale to drain water away from Lot 1, 11502. The driveway and another earthen berm on the south side is another drainage swale to direct drainage towards Tulip Lane. Applicant is not opposed to a moving the driveway 17' from the property line by reducing the improvements from 40' to 30', allowing for 10' nature path.

Nick Rosania, Township Engineer indicated that the property could be approved in Parsippany without variances and that there are other ways to access the property besides Tulip Lane. Mr. Caputo indicated that subdivision approval has been obtained in Parsippany subject to approval in Denville and confirmed that access could be obtained through another town without variances but it would be environmentally unsound to do so. In response to Bill Denzler, Mr. Caputo indicated that he has not received a resolution but has received a letter of approval from the town of Parsippany.

Chr. Kuntz opened the application to the public.

Ms. Antonietta Milelli (2 Tulip Lane) was present and objected to testimony from Ms. Schatz. Ms. Milelli indicated that her home was built in 1988 and in the 11 years of her residency she has never seen the easement used for purposes other than a nature trail and inquired why it would be considered for vacating the right of way. Mr. Walker confirmed that there was no proposal to vacate the right of way. The proposal is to maintain a 10' space for the right of way. The driveway for the Milelli residence is 12' from the edge of the right of way. Moving the proposed driveway would make it 24' from the Milelli driveway.

Mr. Peter Agnello (33 Cambridge Avenue, Denville) was present and sworn in. Mr. Agnello reviewed a handout of the subject property (Exhibit P-1 through P-10) to provide potential scenarios and options. Mr. Agnello voiced concern about the potential that surrounding properties will be further populated, drainage and the owner granting easements to other properties.

Ms. Jennifer Robin Terrill-Grain (12 Puddingstone Road, Morris Plains) was present and sworn under oath. Ms. Terrill-Grain inquired the Parsippany approval and if Parsippany residents were noticed and desire to continue walking her dogs. Mr. Caputo indicated that approval for a subdivision was received from Parsippany and that no notice in Parsippany was required.

Mr. Avi Tilak (22 Rock Ridge Road) was present, sworn in and inquired about building a road to the Parsippany lot. Mr. Buzak indicated that Beverly and Violet roads already exist so no proposal for a road in Parsippany is necessary. Mr. Tilak indicated that Puddingstone existed before Cambridge and that only four wheel vehicle could access over the rocks. Mr. Caputo indicated that there is no legal access from Puddingstone.

Mr. Arnold German (10 Puddingstone Road, Parsippany) was present and sworn in. Mr. German stated that in 1986 the home appears as it does now. He testified that the structure was not a full time residence but was used as a hunting camp and that access was through Casterline and not through Tulip Lane.

Mr. Mike Belen (4 Manchester Drive) was present, sworn in and inquired about expanding the cul-de-sac from North Ridge. Voiced concern about traffic and road congestion and hopes that the board can stop this and future expansion.

Mr. Jim Rodimer (12 Cambridge Avenue) was present and sworn in. Mr. Rodimer inquired if the subject property had ever been offered for sale to the town of Denville. To which, Mr. Caputo replied no. Mr. Rodimer stated that he doesn't have a problem with the road but doesn't see the hardship and doesn't agree with subdividing the property.

Mr. Frank D. Meletto (14 Beaver Brook Drive, Long Valley) was present and remains under oath. As a licensed professional planner, architect and former zoning officer for Clifton he was previously acknowledged as a professional witness. Mr. Meletto cited the case of R.J. Salny Contracting Company vs. Planning Board of Randolph where they found shape of a property to be hardship. Mr. Meletto testified that in the event of a subdivision that underutilization of a piece of a property also constitutes a hardship. Mr. Caputo responded no when Mr. Rodimer inquired if the cited case straddled two separate towns. Mr. Caputo further stated that the applicant is willing to vacate so that there is no access to Parsippany if the home is in Denville.

Mr. Anthony Moscaritolo (84 Kipling Avenue, Springfield) was present and sworn in. Mr. Moscaritolo purchased Lot 13.01 15 years ago from Howard Clark who purchased it in 1950. Mr. Moscaritolo testified that the property was said to have been accessed from Casterline. He argued that the right of way was created for access to Lots 13 through 17. An eleven page handout was entered (Exhibit P-11) for distribution to the board with letters from May 1971 through January 1993. The last page shows the right of way from Casterline Road found at the library. Mr. Moscaritolo would like to see the town relocate the easement between the two homes.

Mr. Mario Dudzinski (24 Michelle Way, Pine Brook) was present and sworn in. Mr. Dudzinski indicated that he is the co-owner of Lot 13. He inquired what the engineer's findings were on the property and if access through the created cul-de-sac was ever considered. Mr. Caputo indicated that not owning the property, Mr. Barrese was not considered and Mr. Caputo didn't represent Mr. Barrese, now RJR. Ms. Schatz does not own the other lots in questions. Mr. Buzak reminded Mr. Dudzinski that matters concerning other applications were not relevant to the board.

Chr. Kuntz indicated that a break would be taken after the next member of the public speaks.

Mr. William Pasiecznik (49 Long Ridge Road, Parsippany) was present and sworn in. Mr. Pasiecznik inquired if the applicant was present, the applicant's age, whereabouts and original intentions. (Key Map on A-1) Mr. Pasiecznik believes that the original access should remain.

Chr. Kuntz began with the members of the public after a short break.

Mr. Richard Green (12 Puddingstone Road, Morris Plains) was present and sworn in. Mr. Green stated that Mr. Mossberg has created problems for Parsippany. He further stated that despite the different stories and contradictions, that it is short sighted not to address access to all the lots in the master plan. He also indicated that the Verizon cell phone tower is still in use and has been rented by a short wave radio company.

Mr. Mario Milelli (2 Tulip Lane) was present and sworn in. Mr. Milelli discussed the size and proximity of the driveway. Mr. Caputo indicated that the driveway was moved as far as possible based upon the last meeting. Mr. Milelli voiced concern about increased traffic and crime.

Mr. Peter Agostini (28 Cambridge Avenue) was present and sworn in. Mr. Walker confirmed that he testified in Parsippany but that this is not a flag lot. Mr. Agostini inquired if the property could be accessed from Beverly as it exists today. Mr. Walker confirmed that it would be permissible by ordinance for the applicant in Parsippany to construct a ROW/driveway from Beverly through the property that fronts Beverly to the property of the proposed subject property but not without a variance. Mr. Agostini argued that the variances could not be granted without substantial detriment to the public good. He further testified that the proposal impairs the intent of our zoning ordinances and essentially creates a non-conforming flag lot in an area of residential single-family homes.

Chr. Kuntz closed the public portion of the hearing after seeing no further public wishing to speak and opened to the board members for questions.

Mbr. Schoner inquired about the ROW details on Lot 16.01 and the distance to the public ROW. Mr. Walker indicated that the distance was 20'. Mr. Caputo confirmed that the 20' ROW, Tulip Lane extension, was part of the application during the approval for the extension.

Mbr. Filauro asked the board attorney about the contradictory testimony. Ed Buzak, Esq. indicated that there was nothing definitive that would prove how the applicant accessed the property and that it is testimony has been here say. The applicant has provided a deed that references a 40' wide public ROW is definitive. Mr. Buzak indicated that the issue of paving and the unaccepted dedication of the ROW remains open.

Chr. Kuntz indicated that the application would be carried without further notice to the January 14, 2009 reorganization meeting for scheduling. At the applicant's request this application was carried without further notice to December 10, 2008 for rescheduling. No further testimony will be made at the December hearing. An extension of time will be required or a decision will be made.

Mr. Buzak inquired if the perimeter description of the property in the 1926 deed be obtained along with the location of the 40' easement in it's totality of the property.

In closing, Mayor Husa inquired of Mr. Caputo if there is specific similar language in other deed conveyances during this period that this 40' ROW did extend up and down. Mr. Caputo was not certain at this time.

Chr. Kuntz notified the public that there would not be further notice for the December 10, 2008 meeting on this application.

Mr. Buzak stated that the record should reflect that the November 10, 2008 letter from RJR Developers LLC to Mr. Remo Caputo regarding the granting of an easement was marked as Exhibit A-4.

OLD BUSINESS

Mayor Husa referenced the fourth draft of the COAH action plan has been distributed.

NEW BUSINESS

Chr. Kuntz referenced an article from the League of Municipalities magazine. The article states that effective January 2009, permits will be required for clothes bins to protect the interest of generous donors.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date adopted