

TOWNSHIP OF DENVILLE  
PLANNING BOARD  
MINUTES

**February 11, 2009**

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, February 11, 2009. 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** – Sue Filauro, Glenn Buie, Howard Shaw, Peter Nienstadt, Lou Maffei, Jim Schoner, Kurt Schmitt, Chr. Marilyn Kuntz  
**Absent:** Mayor Ted Husa  
**Professionals present** – Edward J. Buzak, Esq., Tiena Cofoni, Esq., Nicholas Rosania, PE, P.P., William Denzler, P.P.

**MINUTES**

**November 12, 2008**

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

**January 14, 2009**

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

**PURCHASING**

Motion to pay vouchers submitted by The Buzak Law Group (dated January 7, 2009) subject to the availability of funds, was made by Mbr. Buie and seconded by Mbr. Shaw and unanimously approved by all Members present.

**CORRESPONDENCE**

Chr. Kuntz referenced recent correspondence that included the Planning Board Roster, Monthly Status Report of applications and a memo dated January 15, 2009 from the township engineer regarding combined board issues. Also referenced was January 21, 2009 memo from the board attorney regarding the records retention schedule and a January 22, 2009 memo from the board attorney to Mayor Husa with feedback on the possible creation of a land use board.

**PROFESSIONAL COMMENTS**

Nicholas Rosania, Township Engineer and William Denzler, Township Planner indicated that there were no professional comments.

**RESOLUTIONS**

**PSP/FSPV 08-05     Heritage Community Bank**  
Block 31210, Lot 1  
NJ Route 53 and Dickerson Road

A motion to adopt the amended resolution was made by Mbr. Buie, seconded by Mbr. Shaw and unanimously agreed upon by all members present and able to vote.

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

Chr. Kuntz announced that the board would be entering into a closed session and requested all non-board members temporarily vacate the council chambers. After approximately forty minutes the public was asked to re-enter the council chambers and the public session resumed.

**PUBLIC HEARINGS**

**MSV/SM 08-01:     Eunice Shatz                             (Carried from 01/14/09)**  
**Block 10901, Lot 17**  
**4 Tulip Lane**

Previous hearings on this application were held on May 28, 2008, September 10, 2008 and November 12, 2008. The applicant's attorney Mr. Remo A. Caputo, Esq. (One Broadway, Suite 201, Denville) was present. Mr. Caputo provided a brief recap of the application. Exhibit A-1 was entered to delineate the easement location. This was provided in response to the request of the board at the last meeting. A Denville Tax Map (Exhibit A-5) was also provided. Marc Walker, (21 Bowling Green Parkway, Lake Hopatcong) was previously sworn in and remained under oath. Mr. Walker indicated that the blue line indicates the sale of the property from

Marvin Dickerson to William Vanderhoff in 1926. The subdivision of the five lots is indicated in red, which at that time was Hanover Twp, now Denville and Parsippany Townships. The 40' ROW indicated in yellow exists on three lots (Lots 14, 15 and 16). The ROW is limited and does not continue to Casterline Road.

Chr. Kuntz opened the application to the professionals.

Nick Rosania, Township Engineer discussed the appearance of a flag lot and stated an ordinance exists preventing the creation of a landlocked parcel. In his professional opinion, since there are other options to develop the property, Mr. Rosania stated there was no hardship.

Mr. Caputo indicated that the lot does not abut a public street, there is no harm and there is emergency vehicle access. Using a Fire Truck Exhibit (A-6), Mr. Walker demonstrated that a 35' fire truck could turn on the property.

Remo Caputo, Esq. provided a closing summary touching on the under-utilization of property being a hardship and argued that the benefit of permitting the subdivision outweighed the detriment. He stated that a property in Denville being accessed through Parsippany is poor planning. Approval would reduce the impervious coverage of the road by having one home with an existing ROW and the applicant's willingness to provide restrictions.

Nick Rosania indicated that the applicant did not agree to the restriction on Lot 2. Mr. Caputo responded that although restriction on Lot 2 was not agreed upon that the applicant would agree to the restrictions set forth in Mr. Peter Agnello's presentation (Exhibit PA-10) of November 12, 2008. Mr. Rosania agreed that although there may be some restrictive benefits that Mr. Caputo indicates, that since the further development of Lot 2 in Parsippany was not restricted that a future road and cul-de-sac is likely. In the township engineer's opinion, there was no great difference between a roadway or cul-de-sac created for three lots versus four.

Marc Walker testified that Parsippany ordinance would allow for a private easement that would provide access through a driveway and eliminate the need for a large road or cul-de-sac and would decrease impervious coverage created by a public ROW. Mr. Walker indicated that one lot would have a driveway off Tulip; another off of Beverly Street and a third driveway would be accessed through an easement.

Bill Denzler, Township Planner cited MLUL 19-4.15(M) 3, Sections 35 and 36 and referenced COAH regulations scare resource order. Mr. Caputo stated that the applicant would comply with any necessary COAH obligations.

Chr. Kuntz reopened to the public portion for comments on the new exhibit.

William Pasiiecznik (49 Long Ridge Road) who was present and remained under oath, inquired why the unaccepted dedication should be changed now.

Mario Milelli (2 Tulip Lane) was present and remained under oath. Mr. Milelli inquired why the request would need be satisfied.

Remo responded that the applicant has a right to use the ROW and that they are asking the board for the right to use it for purposes of this lot to enter this property with sufficient access for emergency vehicles without abutting a public street. Mr. Buzak explained to the public that the applicant is requesting a deviation from a requirement of the statute and Denville ordinances of having a lot abutting a public street. Mr. Buzak further clarified that a right of way for the use of the public is different than a public right of way in that the public can traverse it versus the government has accepted it.

Mike Belen (4 Manchester Drive) was present and remained under oath. Mr. Belen commented on the board validates that the vehicles can turn around and that he's pleased to see the applicant has given their word on no further development.

Chr. Kuntz closed the public portion of the meeting.

After a short break, Chr. Kuntz opened the application to the board for questions.

Mbr. Buie inquired about there being no cross easements to neighboring property owners, ROW improvements would be agreed upon by Township Engineer, Lot 2 remainder lot stipulation to subdivision in the future from Parsippany side and restrict them from accessing this one.

Mbr. Filauro inquired about the intention of building three lots versus two and if an additional fire hydrant would be required and expressed concern for creating a possible negative situation between the neighbors when an access easement is granted over an existing lot.

Mbr. Schoner inquired about impervious coverage and environmental concerns to mitigate road run-off.

Mbr. Maffei inquired about the letter requesting access to the ROW for a fee of \$25K and wanted to confirm that it isn't necessary.

Mbr. Nienstadt indicated that all his questions had been answered and had none further.

Mbr. Shaw voiced his preference for a cul-de-sac prior to the ROW and his concern for the neighboring properties. Other properties reside in Denville that are serviced successfully from Parsippany.

Mbr. Kuntz inquired about a letter of approval for access to Parsippany and confirmed that regardless of what plan is used the proposed home on Lot 17.01 can access the ROW.

Motion to **approve** the subdivision with conditions was made by Mbr. Buie and seconded by Mbr. Nienstadt. The four to three votes constituted a denial of the resolution. Remo Caputo, Esq. requested the motion be reconsidered by the board with a condition of restriction of subdivision of the Parsippany property. The board discussed whether to agree to reconsider and chose not to amend the motion. This was based upon the inability to impose a condition of further subdivision of the property in Parsippany and whether such a condition would be sustainable.

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

**ADJOURNMENT**

Motion to adjourn.

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Denean Probasco, Board Secretary

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Date adopted