

TOWNSHIP OF DENVILLE  
PLANNING BOARD  
MINUTES

**February 25, 2009**

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, February 25, 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, Mayor Hussa, Chr. Marilyn Kuntz  
**Professionals present** – Edward J. Buzak, Esq., Nicholas Rosania, PE, P.P., William Denzler, P.P.

**MINUTES**

**December 10, 2008**

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

**February 11, 2009 - Closed**

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.

**February 11, 2009 - Open**

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

**PURCHASING**

Motion to pay vouchers submitted by The Buzak Law Group, (dated February 5, 2009) subject to the availability of funds, was made by Mbr. Buie and seconded by Mbr. Shaw and unanimously approved by all Members present.

Motion to pay vouchers submitted by William Denzler and Associates, (dated February 9, 2009) subject to the availability of funds, was made by Mbr. Buie and seconded by Mbr. Maffei and unanimously approved by all Members present.

**CORRESPONDENCE**

Chr. Kuntz referenced recent correspondence that included a letter dated January 20, 2009 from Ferraro Engineering, Inc. regarding an application to the DEP by Denville Hyundai. Pamphlets from the Morris County Economic Development Corporation and New Jersey Environmental Commissions regarding offered programs.

**PROFESSIONAL COMMENTS**

Mayor Hussa inquired about a Right of Way (ROW) requiring an acceptance from a township. Ed Buzak, Esq. indicated that a ROW does not need to be accepted in order to be a ROW. It can remain dedicated but unaccepted. He clarified that the Township's acceptance of a ROW does not have an affect on the property owners who benefit from the ROW. Nicholas Rosania, Township Engineer and William Denzler, Township Planner indicated that they had no professional comments.

**PUBLIC HEARINGS**

**MS/SS 05-17                      Briar Rose Group, Inc.                      (Carried from January 14, 2009)**  
**97 Highland Trail**  
**Block 40815, Lot 1700.01**

The last public hearing on this application was December 10, 2008 and was carried to the January 14, 2009 reorganization meeting for scheduling purposes only.

Allen Hantman, Esq. provided a recap of the application and indicated the amended plan includes a redesign of the proposed house and addresses drainage improvements as per MCSCD comments. Referenced letter dated February 25, 2009 from the MCSCD indicating compliance of Soil Erosion and Sediment Control Plan being ready for certification, by the District Board of Supervisors. Mr. Hantman testified that they only recently received the fire department's comments. As a result of their meeting with the fire department, the plan will be revised to address their concerns.

Alfred A. Stewart, Jr. of Stewart Surveying & Engineering, LLC (25 Pine Street, Suites 3 & 4, Rockaway) was present and remained under oath. Mr. Stewart testified that the plans were revised to include two modified septic tanks to be located to the rear of the home based upon MCSCD comments. Amended Drainage Plan marked as Exhibit A-21. Tanks on Lot 1700.01 to be located directly behind the dwelling and will collect run-off from the roof meters. Volume will be equal to the drywells previously engineered for the site equating to double the storage required. Drainage from driveway and roof run-off will be directed to the septic tanks. Due to possible soil clogs, the MCSCD does not accept infiltration from dry wells as storage and storage must be within the tanks. The state does accept dry wells. The storage is for a 100 year storm event. Emergency overflow to two rip rap areas and then surface run-off. This system reduces the amount of flow off site 1700.01, 26% for 2 year, 27% for 10 year and 28% for 100 year storm events. Flow reduction on Lot 1700.02 is 25% for 2 year, 25% for 10 year and 26% for 100 year storm events.

Mr. Stewart testified that a meeting with fire department took place today and as a result a sidewalk or steps are to be included. Three sections of steps approximately 4 to 5 steps each were proposed and is expected to address the fire department's concerns.

Testimony continued in response to the Township Engineer's report of February 24. Soil movement was discussed using (Exhibit-22) Slopes and Soil Erosion Sediment Control Plan. The total disturbed area proposed for Lot 1700.01 is 20,238 sq. ft. where 9,694 sq. ft. is required and for Lot 1700.02 16,023 sq. ft. disturbed area proposed where 8,877 sq. ft. is required. Mr. Stewart testified that no ordinance exists limiting the amount of disturbance of a lot and that this plan (less than 50%) has the least amount of slopes disturbance. Further, that slopes disturbance is unavoidable to access Highland Trail. Although they do not believe additional pits are necessary the applicant agrees to provide them if required by the board. Mr. Stewart stated that a "construction/development plan" has never been requested or provided in the past. Testimony continued with discussion of soil movement, sight distance and road width. The total amount of fill for Lot 1700.01 is 258 c. y. totaling approximately 20 truck loads over a six month period. Lot 1700.02 is 453 c. y. of fill totaling approximately 30 truck loads. Plan includes a widening of Highland Trail to 24' across the front of property. Applicant agrees to use link block for the retaining walls and a note will be added to use mixed seed with crown vetch for reseeding of the slope.

Louis Barbieri, P.P. (123 East Main Street, Suite 29) was present, previously qualified, remained under oath and provided a review of the revised building plans reflecting Lot 1700.01 (Exhibit A-24) and Lot 1700.02 (Exhibit A-25). Mr. Barbieri summarized that the dwelling on Lot 1700.01 was an upside down house that would appear as a one story ranch from Highland Trail. There would be a 400 sq. ft. garage, rear decks and a living area of 2,510 sq. ft., 1,285 on the upper floor and 1,242 sq. ft. on the lower. Average height of the home is 27'5". A summary of Lot 1700.02 reflected a slightly different ranch style home with an average height of 26'1". Total living areas of 2,680 sq. ft., upper level 1,362 sq. ft., lower level 1,316 sq. ft. with an unfinished basement and a 680 sq. ft. garage and rear deck.

Mr. Barbieri stated that the proposed dwellings would be consistent with the newer homes and overall character of the neighborhood. It was difficult to determine if the homes had basements as the assessment was performed by driving around the neighborhood. A survey of the neighborhood within 600 linear ft. of the property showed that based upon approximate living area; there are six homes larger than the applicant's on smaller lots. For the record, Mr. Barbieri stated the addresses, blocks and lots of the 600 ft. survey; 102 Highland, Block 40812, Lot 547 estimated living area with garage of 3,900 sq. ft.; 28 Chestnut Hill Drive East, Block 40815, Lot 1750, living area and garage estimated at 4,800 sq. ft.; 88 Highland Trail Block 40804, Lot 629 estimated house with garage at 3,300 sq. ft.; 86 Highland Trail Block 40804, Lot 628 estimated with living area and garage at 4,300 sq. ft.; 4 Hilltop Trail Block 40804, Lot 625 estimated house with garage at 3,700 sq. ft.; 4 Long View Trail, Block 40810, Lot 486 estimated living area with garage at 4,200 sq. ft.

Using Exhibit A-26, Mr. Barbieri provided an overview of the variance for lot depth and indicated that Lot 1700.01 was triple the minimum required lot size and that Lot 1700.02 was double. Lot 1700.01 has a proposed side yard of 20.7". Based upon the average depth of combined side yards, if 10' was given to the neighbor, the side yard would comply with the requirement. Applicant indicates that the variance is de minimis in nature.

Chr. Kuntz opened the hearing to the professionals.

Nick Rosania, Township Engineer questioned the quantity of homes that differed in size from the proposed dwelling. Mr. Barbieri indicated that approximately 12 were the same size or larger than the proposed and approximately 40 homes were smaller than the proposed. He further testified that half the homes in the neighborhood were on steep slopes lots and 3 were large homes on steep slopes lots.

Bill Denzler, Township Planner made some inquiries on the architectural plans, requested a definition of livable area and questioned the difference on square footage between the upper and lower floors and the discrepancy of square footage between the upper and lower floors. Inquiries included why the tax maps weren't used instead of estimated calculations. Mr. Barbieri responded that the difference is due to the block of the lower level of the plans due to the retaining wall and explained that the basement was not included in the living area calculation. Mr. Barbieri indicated that it was easier to use the outside dimension for comparisons. The calculations to determine the average size of the homes was also discussed. In closing, Mr. Denzler requested the calculations be provided. For the record, Mr. Denzler indicated that COAH fees would exist. Hantman agreed that the applicant would be obligated by the COAH guidelines.

Nick Rosania, P.E. followed-up on the useable living space behind the home and noted the rear slope of approximately 15% that would match the 15% steep slopes driveway maximum. Mr. Rosania went on to discuss the height measurement by ordinance being skewed due to the effective height of the home being exaggerated due to the slope. Making the height of the home excessive to the neighbor. Mr. Barbieri argued the height acceptance by ordinance being relative.

Mr. Denzler sought clarification of homes being built where none should be, and having a three story façade in an area where no slope existed. He questioned the amount of disturbance. Barbieri stated that by reducing the floors and over square footage by 600 sq. ft. it would only decrease the disturbance by 1.5% and went on to discuss that all the lots could be developed safely. Soil movement and length of time for construction were also discussed.

Ed Buzak, Esq. questioned Mr. Barbieri seeking quantities of the surveyed homes. Mr. Barbieri testified that 6 of the homes were larger than the proposed home and 3 of the 6 were on steeply sloped lots. Mr. Barbieri was uncertain of how many of the homes were built prior to the ordinance, indicating possibly half or how many sought variances he indicated that the survey performed was only for square footage.

Fred Stewart took the stand and addressed Nick Rosania's inquiry about the version and revision of drawings that MCSCD approved, as well as a list of what was requested and subsequent responses. Mr. Rosania indicated that using septic tanks as detention tanks was a better plan but was concerned how the over flow of a 1" orifice to a 3" delivery pipe would remain unclogged with all the runoff. Using Exhibit A-21, Mr. Stewart testified that the first of two storage tanks would be used for the runoff. Two 3" inter-connections (one at bottom, one at top) to the secondary tank with 1" orifice with a 3" overflow pipe in case the 1" orifice was to become clogged, to delivery pipe that leads to the dry well system. Mr. Stewart confirmed that the drainage system would need to be maintained by the home owner. Mr. Rosania stated that a maintenance free system would be ideal and identified the 1" orifice being a possible draw back. Mr. Stewart responded that even gutters require some maintenance and indicated that 1" reduction in flow (.3 CFS) was necessary as per specifications of the MCSCD. Mr. Stewart testified that the sequence would be to build the lower area of the lot first prior to the wall, tanks, and foundation, working from rear of the property toward Highland Trail. Mr. Stewart testified that the tanks would be protected to prevent sediment from entering the tanks during construction. NR inquired about additional borings and soil logs to indicate viable pits and tanks. Mr. Stewart referred to Exhibit A-21 only 10' away on Lot 1700.01 to be suitable and on Lot 1700.02 basically the same but would be provided if required. Mr. Rosania made this recommendation to avoid possible relocation due to encountering rock.

Nick Rosania, PE inquired about seepage and preventing a potential blow-out and overall disturbance of the slope. Mr. Stewart responded that the dry wells are located approximately 18" below grade. MCSCD did not believe this location below grade a concern. Mr. Stewart agreed that one home on one oversized lot would minimize the disturbance. Stating that the size of the lot calls for two homes.

The Township Engineer inquired about the origin of the soil and sight distance concerns. Mr. Stewart testified that a sample of certified clean fill would be used and provided to the town before moving onsite. Mr. Stewart responded that this issue was not reviewed but confident the sight distance would be acceptable. The driveway is considered flat at a 5% slope and that

most of the homes on Highland currently back out of their driveways. Mr. Rosania suggested that an exhibit demonstrating the driveway be provided for the board and Mr. Stewart didn't feel it was necessary.

Bill Denzler questioned Mr. Stewart on the number of driveways that back out being 90% and what was considered the neighborhood. Fred Stewart stated the percentage was a broad estimate. An actual survey was not performed. The neighborhood was considered to be Highland, opposite Highland, and the roads north of subject property. The step description given was concrete walks with redi-rock steps incorporated into the redi-rock wall. Mr. Stewart testified that the applicant would conform to code on the height of the stairs and the shade trees. Mr. Denzler questioned the discrepancy in the square footage testified versus the plans. Mr. Stewart confirmed for the lots were 20,238 sq. ft. and 16,023 sq. ft. Discussion continued regarding lot size and developable area.

Chr. Kuntz opened the hearing to the public for comments and questions after a short break.

George Allaman (15 Chestnut Hill Drive East) was present and sworn in. A resident at this address since 1965, Mr. Allaman indicated that he would like to see the steep slopes ordinance is held and that this application be denied. Mr. Allaman spoke to the history of the property and its ownership. The land was sold with the stipulation that it may not be buildable in any way. Mr. Rajani filed a deed in December 1986 for one combined lot that was gifted to the Day School in 1994 in order to join the lake. No new deeds have been filed. George Allaman questioned how the integrity of Highland Trail was to be maintained during construction. Mr. Stewart responded he had no concerns, based upon approximately 40' between the front corner of dwelling and pavement edge of Highland Trail. Derived from; 8' from ROW, 25' required setback, 3' gap between setback and porch and 6' for porch. Mr. Stewart responded that he was not aware of the soil conditions along Highland Trail and would investigate it under the direction of the Township Engineer. Mr. Allaman indicated that for parking along side of Highland Trail it would require being mucked out 6-8'. Nick Rosania interjected that a good point was raised regarding digging into a steep slope and possible issues. Mr. Allaman spoke to removal of 53 trees impacting the integrity of the soil and stated that the applicant's estimate will be closer to 2000 cubic yards of required fill. Ed Buzak, Esq. inquired about George's experience who indicated that he was a construction project director for over 40 years and built his own home on Chestnut Hill Drive. Discussion continued between Mr. Allaman and Mr. Buzak regarding other homes built on steep slopes in the area that have had problems.

Gerald Idec (1 East Long View Trail) was present and voiced concern about parked cars along Highland Trail be continued without blocking the road for emergency vehicles. Mr. Idec would like to see continued parking along the front of these lots and a problem not be created if this parking is eliminated. Believes this will occur due to curbing. Mr. Hantman doesn't believe that there will be a problem created by this proposal that will prohibit or prevent the ability to park along the road. The Township Engineer indicated that new developments include curbing but should still allow ample parking along the side of the 24' road.

Joseph Blauner (21 Chestnut Hill Drive) was present and indicated that his Lot 1737 is located next to the Allaman lot. Mr. Blauner testified to his family's long history in Denville spanning many generations. Mr. Blauner stated that his child was injured from a falling branch and voiced concern that vehicles will end up in his backyard. Indicating that since it's not a Denville resident moving into the home they won't be able to have a relationship with the neighbors. Requested the board not approve this application.

Stephen Toth (11 Chestnut Hill Drive) was present and sworn in. Buzak confirmed that Mr. Toth was not represented by the attorney, James Pryor. Mr. Toth summarized his research indicating that dry wells must have a maintenance plan and that the NJ Administrative Code states a homeowner is not qualified to inspect a dry well. Mr. Stewart replied that the homeowner would be cleaning not inspecting. Mr. Toth quoted the NJ Storm Water Management Best Practices Manual. Mr. Stewart responded that this is not a major development and defined solely by area. Mr. Toth inquired if it wouldn't be prudent to follow these guidelines even if not bound by law and further testified that a privately owned dry well should be protected by easement, deed restriction, or other legal measures to prevent its neglect, alteration or removal. Mr. Stewart indicated that those were requirements for properties larger than one acre. Mr. Toth inquired what occurs if a homeowner neglects to maintain a dry well. Mr. Stewart responded to Mr. Toth that no law existed that obligates a homeowner to maintain a dry well but that the size of the system, that was approved by the MCSCD, is twice the size of Denville's requirement. Discussed continued relating to the retaining walls and runoff. Calculations for a 100 year storm event were not performed. Mr. Toth indicated that his research specifically indicated that Dry wells were not for runoff of driveways.

Mr. Barbieri agreed that landscaping would be good at the rear of the 15' concrete wall after Mr. Toth pointed out there wasn't any. The concrete corrosion rate was discussed and Mr. Barbieri indicated that all foundations below grade would have weatherproofing protection. Mr. Toth quoted property values and open space.

Ed Buzak, Esq. inquired how the modified septic tanks would be covered. Mr. Stewart responded that it would be a riser with manhole cover and inlet and outlet cleanouts on either side of the tank. Mr. Stewart testified that there would be no mosquitoes because it's a closed system and confirmed that there would be 4' of water before there was an overflow.

Nick Rosania, P.E. added that if the system becomes clogged, everything would overflow and bypass the system. If the orifice clogs it overflows to the seepage pit, if the seepage pit clogs it goes out over the ground and no attenuation of the storm. Mr. Stewart doesn't see seepage pits clogging at all, going from the primary and then secondary tanks.

Chr. Kuntz announced that this application would need to be carried without further notice to the April 22, 2009 meeting.

### **OLD BUSINESS**

Chr. Kuntz referenced an article from the League of Municipalities previously distributed to the board regarding clothes bins requiring permits and possible enforcement.

Mbr. Filauro indicated that it would be helpful to have ROW information for future reference. In response to the request, Ed Buzak, Esq. to provide a copy.

Chr. Kuntz stated that Mbr. Filauro previously requested a COAH update. This item will be added at a short meeting.

### **NEW BUSINESS**

Chr. Kuntz inquired about the status of investigation on creating a Land Use Board. Mayor Husa responded that he was satisfied with the board attorney's response and that there would be no further discussion this year. The Mayor indicated that based upon the Highlands and workload this would be monitored and discussed on an annual basis. Chr. Kuntz stated that it would be a travesty by providing too much power to the town and not enough power to the citizens.

### **ADJOURNMENT**

Motion to adjourn.

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Denean Probasco, Board Secretary

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Date adopted