

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

April 22, 2009

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, April 22, 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** – Mayor Hussa, Chr. Marilyn Kuntz, Sue Filauro, Glenn Buie, Howard Shaw, Peter Nienstadt, Lou Maffei, Jim Schoner, Kurt Schmitt,
Professionals present – Edward J. Buzak, Esq., Tiena Cofoni, Esq., Nicholas Rosania, PE, P.P., William Denzler, P.P.

MINUTES

February 25, 2009

March 11, 2009

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

March 25, 2009

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

PURCHASING

Motion to pay vouchers submitted by Denzler & Associates (dated April 2, 2009) subject to the availability of funds, was made by Mbr. Shaw, seconded by Mbr. Filauro and unanimously approved by all Members present.

Motion to pay vouchers submitted by Township of Denville (dated March 14, 2009 and March 26, 2009) subject to the availability of funds, was made by Mbr. Shaw, seconded by Mbr. Maffei and unanimously approved by all Members present.

Motion to pay vouchers submitted by The Buzak Law Group (dated April 4, 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 a letter from Bernard P. Bacchetta, Esq. regarding withdrawal of application MS 08-06 Henning-Carlyon; March 17, 2009 letter from The Buzak Law Group regarding a unique conflict of interest and a memo dated April 16, 2009 from Town Clerk requesting completion of annual Ethics Disclosure Forms. Correspondence regarding Age restricted housing and the League of Municipalities Convention will be discussed under old and new business topics.

PROFESSIONAL COMMENTS

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

RESOLUTIONS

**SP/FSPV 07-02: 415 Franklin Avenue, LLC
Block 40101, Lot 3
415 Franklin Avenue**

A motion to **adopt** the memorializing resolution for the above property was made by Mbr. Shaw, Seconded by Mbr. Maffei and unanimously agreed upon by all members present and eligible to vote.

Roll Call Ayes: Shaw, Maffei, Filauro, Schoner, Schmitt, Hussa

**MFS 08-07: Estate of Robert Cuneo, Sr.
Block 20901, Lot 7
320 Palmer Road**

A motion to **adopt** the memorializing resolution for the above property was made by Mbr. Schoner, seconded by Mbr. Shaw and unanimously agreed upon by all members present and eligible to vote.

Roll Call: Ayes - Schoner, Shaw, Filauro, Maffei, Schmitt, Hussa

PUBLIC HEARINGS**SPV 07-17: Morris County Housing Authority
Block 21301, Lot 7
Peer Place**

Josh M. Mann, Esq. of Porzio, Bromberg & Newman P.C. (100 Southgate Parkway, Morristown, NJ) represented the applicant, Morris County Housing Corporation, an affiliate of Morris County Housing Authority. Applicant is requesting an extension of the major site plan, bulk variances and minor subdivision approval granted on June 25, 2008 and the memorialized resolution of August 13, 2008 under N.J.S.A. 40:55D-47(d, f & g).

Mr. Mann testified that they are awaiting approval from the NJDEP for a transitionary waiver along with a Declaration of Trust from HUD. The applicant has been trying to get a portion of the Declaration of Trust removed and await confirmation. These are the two outside government approvals that the applicant is waiting for. Mr. Mann is requesting retroactive approval dating back to February 19, 2009 with a one year extension to February 19, 2010.

Chr. Kuntz opened the application for questions.

Mbr. Filauro inquired if the December 10, 2008 letter was the first correspondence to HUD. Roberta Straiter, Executive Director of Morris County Housing Authority was present and remained under oath. Ms. Straiter responded that it was not the first communication and that they had tried to contact them earlier.

Ed Buzak, Esq. provided a recap and made the recommendation to approve the one year extension for the filing and perfection of the minor subdivision based upon the incurred delays and ongoing continuation.

Motion to grant a one year extension for of the August 12, 2008 approval to February 19, 2010 was made by Mbr. Buie, seconded by Mbr. Nienstadt and unanimously agreed to by all members present and eligible to vote.

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

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

Applicant is requesting Minor Subdivision approval with "C" variance relief to subdivide one lot into two lots. Variances are being requested for steep slopes, retaining wall height, and lot depth. Soil movement and tree removal permits are also being requested. The last public hearing on this application was February 25, 2009.

Chr. Kuntz announced that after a recap from the applicant's attorney, the public hearing would begin with the public portion, where the last hearing left off.

Allen Hantman, Esq. of Morris and Hantman provided a recap of the application and indicated that the amended plan includes a redesign of the proposed house as well as addressing drainage improvements based upon MCSCD comments. Mr. Hantman also stated the official approval from MCSCD had been received and that the applicant would like to address sight distance issues raised at the last meeting prior to opening to the public.

Alfred A. Stewart, Jr., P.E. of Stewart Surveying & Engineering, LLC (25 Pine Street, Suites 3 & 4, Rockaway) was present and remained under oath. Mr. Stewart reviewed the detail of the Amended Drainage and Grading Plan (Exhibit A-28) that had been modified to protect the 1" orifice from becoming clogged. The proposed infiltration system would have a perforated standpipe (Standpipe detail Exhibit A-27) going through an elbow to a 3" interconnection on the first tank that would be filtered and fall out of the primary tank alleviating sediment from going to the secondary tank. The water from the secondary tank would then be released through the 1" orifice into the seepage tanks below. Mr. Stewart testified to a 350' sight distance based upon his site survey and 400' for Lot 1600.02 being more than double the ASHTO standard which is 25 mph sight distance of 170' for a side road including 20' for slope. There is no ASHTO standard for driveways. Testimony continued to revisions being made to incorporate walkways and steps along for the fire department for access around the structure. These changes were made based upon a meeting with Ed Saniewski.

Nick Rosania, Township Engineer questioned the location of the standpipe not being at 1' orifice where the clog is likely to occur. Mr. Stewart indicated that perforated pipe will filter the run-off in the primary tank and the water going to the secondary tank will be filtered water. The

engineer suggested riser pipes on each 1" outflow. Mr. Rosania inquired about the methods used for determining sight distance. Mr. Stewart indicated that no exhibit was available to demonstrate sight distance and that the method was strictly field observation and use of measuring wheel. Mr. Stewart testified that he went 10' back from travel lane from ROW. Mr. Rosania argued that the method used was inconclusive and thought 20' not 10' from edge of curb and seems questionable. Mr. Stewart indicated that an average grade of 3% was minimal for a driveway.

Bill Denzler, Township Planner inquired about existing vegetation as it relates to sight distance. Mr. Stewart indicated that there is no vegetation in that area. Mr. Denzler also inquired about parking on opposite side of the road. Mr. Stewart testified to the widening of approximately 4' and that sight distance doesn't apply to driveways.

Chr. Kuntz opened to questions and comments from the public from those members of the public who have not already spoken.

Kathleen Ward (7 Chestnut Hill East, Lot 1730) was present and sworn in. Ms. Ward lives on the road below and voiced concern about drainage especially during construction. Ms. Ward wanted to go on record that no drainage problems in her yard have ever existed and remains unconvinced that it will remain that way.

Mary Linda Allaman (15 Chestnut Hill Drive East, Lot 1735) was present and sworn in. Ms. Allaman's property abuts this property. Ms. Allaman read a prepared statement followed by a few questions. Ms. Allaman voiced concerns about the pre, during and post construction, tree removal and soil movement. Ms. Allaman stated that the drainage has not been adequately addressed. Fred Stewart responded run-off being directed to storage and seepage tanks and overall there has been a reduction in run-off from the site. Ms. Allaman inquired about a hypothetical storm and the impact to her property if the barriers did not contain the soil during construction. Mr. Stewart indicated that based upon the site conditions, slope and MCSCD's approval, they have put in place the appropriate measures such as a super silt fence.

Mbr. Filauro clarified regarding the recourse for the citizen. Mr. Hantman explained that pre-construction would be covered by the developer's policy and post-construction would be the homeowner's insurance policy.

James Pryor, Esq. representing Laurie Campbell-Toth (Lot 1733) explained that Ms. Campbell-Toth would be commenting personally. Mr. Pryor sought confirmation of the March 25, 2009 certification letter and if the plan included the standpipe. Mr. Stewart testified that the standpipe was included. There was discussion regarding the fire department's approval of the plans, the meeting with the fire department and dates and details of both. Mr. Stewart was unsure of the exact date of the meeting but believed it was approximately six weeks ago. Mr. Pryor inquired if options were discussed and if approval would need to be contingent upon MCSCD's approval. Mr. Stewart replied yes. Mr. Pryor inquired about the wooden stair varying from the concrete steps with redi-block built into the redi-block wall originally proposed. Mr. Stewart responded that that the concrete was a conceptual plan for discussion only and that the steps are now wood.

Mr. Pryor then questioned Louis Barbieri, AIA regarding the home sizes and who determined the size of the homes. Mr. Barbieri replied that it was a combination of applicant, engineer and architect. Mr. Pryor inquired about if a two story home was considered. Mr. Barbieri indicated absolutely not due to the need have storage space and mechanicals. Mr. Barbieri testified that a 2.4% reduction of home size was not significant reduction and that an average 3,000 sq. ft. per floor to reduce to 1500 sq. ft. would be significant. Mr. Barbieri testified that a 15% reduction of the disturbance would result in a tiny home with a minimal impact on the property. Mr. Pryor inquired about comparable homes in the neighborhood. Mr. Barbieri testified that within 230' of this property the visual survey resulted in 41 total lots, 5 existing and larger than proposed. Discussion continued on the home sizes in the neighborhood and the survey performed by Barbieri. Home sizes, slopes and economics were discussed. Mr. Pryor inquired about negative criteria impairing the zoning ordinance and Mr. Barbieri responded no, not in any aspect.

Laurie Campbell-Toth (11 Chestnut Hill Drive East) was present and sworn in. Ms. Campbell provided many exhibits.

Exhibit P-1 depicts photographs of all the homes in the neighborhood within 200 ft. of the proposed property taken by Ms. Toth with a summary of details including the address, lot, block,

square footage and if the home has a garage. This information comes from the NJACTB.org. Ms. Campbell-Toth testified that her findings resulted in a total home size averaging 1,512 sq. ft. Ms. Campbell-Toth countered testimony regarding the arborvitae growth rate and density of the woods.

Exhibit P-2 tax records were entered. Allen Hantman, Esq. objected to Exhibit P-2 as to tax records not being documents of record. Mr. Hantman stated that the accuracy of the records could not be relied upon and that the board cannot take these records into account. Ed Buzak, Board Attorney stated that the board could take the accuracy of these records into account. Based upon Mr. Barbieri's testimony being based upon guesstimates, Mr. Buzak stated that there was adequate leeway for this information to be entered even if not completely accurate. Ms. Campbell-Toth stated this information was obtained from the website after tax records are submitted to Trenton.

Ms. Campbell-Toth spoke to the danger involved, the expected noise to be generated by three homes and the widening of road. Stating that during a chimney fire in January 2008, emergency vehicles had to back up and go around due to legally parked cars blocking the road.

Exhibit P-3 – Easement Request for a 10' wide easement was offered \$10,000.

Exhibit P-4 – Denville's Environmental Comments and Concerns sheet January 6, 2009 distribution date and returned to Zoning February 10, 2009.

Exhibit P-5 – Steep Slopes Document in reverse shading of black on white versus white on black reflecting the impact of steep slopes.

Exhibit P-6 – Steep Slope Model Ordinance recommended by the State of New Jersey's Quality Management Planning rule (N.J.A.C.7:15)

Exhibit P-7 – The Benefits of Open Space document from The Great Swamp Watershed Association

Chr. Kuntz asked if the board had any questions of Ms. Campbell-Toth. There were no questions from the board.

Ms. Campbell-Toth stated that there was no hardship to the applicant as they are not the owner of the property. Mr. Hantman inquired if there needed to be an existing dwelling and to be a property owner to request a variance. Ms. Campbell-Toth responded no to an existing dwelling but yes to being a property owner in order to request a variance to violate the ordinances. Mr. Hantman and Ms. Campbell-Toth argued that the applicant's proposed homes do not fit in the neighborhood based on size. Testimony continued regarding homes in the 200 ft. range and the year built.

Exhibit P-8 - List of properties, acreage and square footage with the year built. Including the year the home is built but not when renovations were performed. This information is provided by the same website of the tax boards.

Allen Hantman, Esq. inquired about Ms. Campbell-Toth's belief that the steep slopes coloring was deceptive. Ms. Toth commented that she felt it was noteworthy and Mr. Pryor, Esq. clarified that the environmental commission's comments stated "it could be judged as being deceptive".

Harold Idec (1 East Long View Trail) was present and inquired if the applicant would be willing to install a 4' chain link fence to maintain the 10' ROW from being taken over by the future homeowner. Mr. Hantman, Esq. stated that the applicant would have no problem marking the corners with a post and rail or a none-obtrusive less expensive demarcation such as rocks.

Mr. Idec further inquired about the back wall drop behind the garages and the precautions to be taken to prevent cars from sliding off driveway or through garage wall. Mr. Stewart stated 14' from garage floor to proposed grade on Lot 1700.01 and 20' difference from garage floor to proposed grade on Lot 1700.02. Mr. Barbieri indicated that the reinforced concrete wall could be raised 3' from the floor of the garage to create a bumper to prevent a car from going through the wall.

George Allaman was present and remained under oath. Mr. Allaman inquired whether the foundations would be poured concrete or reinforced concrete walls. Mr. Barbieri indicated that the foundation had not yet been designed but anticipated to be reinforced poured concrete walls.

Chr. Kuntz inquired if there were any other members of the public that wished to speak and seeing none, closed the public portion of the meeting.

Chr. Kuntz opened the application to additional comments from the professionals.

Nick Rosania, Township Engineer stated that there were no additional questions.
Bill Denzler, Township Planner had no further questions.

Chr. Kuntz opened to the board for questions after a five minute break.

Mbrs. Schmitt and Maffei had none.

Mbr. Nienstadt inquired about the number of trees to be removed and if the walk out basement leads to a patio. Mr. Stewart yes to the patio and indicated that 28 trees were proposed to be removed from Lot 1700.01 and 35 trees were proposed to be removed from Lot 1700.02. Mbr. Shaw inquired about tree replacement and purpose of road widening. Mr. Stewart indicated that there was no tree replacement due to disturbance and that only shrubs would be added for shielding. Mr. Stewart indicated that the widening to 24' was requested by the township engineer and that 24' was standard. Mbr. Shaw voiced concern about going off the back of the driveway and down the slope.

Mayor Hussa inquired about a modified septic being used for drainage purposes before and voiced concern about the 1" orifice becoming clogged. Mr. Stewart responded that this has been used before and that the result was successful. The Mayor also voiced concern about the site being dangerous and the slope diagram being misleading. Mayor Hussa stated that the steep slopes ordinance was put in place to protect the neighbors, that the driveway was dangerous and that the applicant did not substantiate a hardship.

Mbr. Buie inquired about maintenance, requirements and timeframes. Mr. Stewart indicated that there is no standard maintenance but that annual inspection would be good. Mbr. Buie voiced concerns about Franklin Avenue blow-out and liabilities and suggested that \$1M coverage risk should be increased as a condition of approval. Mr. Buzak commented that it was set forth as a recommendation.

Mbr. Filauro stated that as a liaison to the Environmental Commission she was surprised at the latitude in allowing so many revisions. Mbr. Filauro stated that the coloration depicted could be discerned as misleading at first glance and that this application is the essence of the steep slopes ordinance. Mbr. Filauro voiced concern with the removal of 63 trees on steep slopes having an unknown impact. Mbr. Filauro also commented on hitting rock and the danger along the edge of the driveway requiring guard rails.

Mbr. Schoner commented that the members have already question the septic tanks, maintenance and inaccessibility of the yard. Mbr. Schoner had no further comments other than stating that 8,700 of 8,800 sq. ft. lot on one and 9,000 of 9,600 sq. ft. lot on the other lot are in strict violation of the steep slopes ordinance.

Chr. Kuntz commented on the length of this application and made statements regarding the timeliness of providing information, and ongoing revisions, errors and omissions. Examples included drafting errors on slope tables, calculations on dry wells, architectural submissions lacking due to time constraints, open items and issues. To date, no construction staging and build out plan detail having been provided after repeated requests. Chr. Kuntz voiced concern for not having any comfort or safety level.

Allen Hantman, Esq. provided a clarification on a plan version and MCSCD approval. Mr. Hantman stated that the application before the board has been approved by the MCSCD without qualification. Approval for the modification of the stairs would be resubmitted as a condition. If the board(s) agrees, the standpipe modification would also need to be included in the resubmission.

Mr. Buzak explained that due to the complexity of this application that instead of taking action and then memorializing the resolution as normally done that a non-binding vote and preliminary action be taken to direct the board attorney to draft a resolution that can be added to and then a vote be taken.

Mr. Pryor, Esq. provided a closing statement indicating that a more compelling case could have been provided if homes more in character with the neighborhood and smaller in size and disturbance were proposed stating no hardship exists other than steep slopes.

Mr. Hantman, Esq. stated that the hardship is not the builder's but rather created by the exceptional hardship of the topography of the property. In closing, stated that based upon the nature of the impediments weighed against the ordinances that the applicant's proposal is an asset to the neighborhood and should be approved.

A motion was made to **deny** this application was made by Mbr. Buie, seconded by Mbr Shaw and unanimously agreed upon by all members present and eligible to vote.

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

OLD BUSINESS

Ed Buzak, Esq. referenced the conversion regarding the age restricted housing. The bill is still before the Governor but due to legislature not being in session it has not been signed yet. If the Town Council has not yet sent a letter, now would be the time to do it.

NEW BUSINESS

Mbr. Filauro referenced a current car dealership application before the zoning board and cited the Master Plan prohibiting this along Route 10. Mr. Denzler and Mr. Rosania responded that the application was bifurcated and that a use variance was previously approved.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date adopted