

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

May 13, 2009

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, May 13, 2009. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Vice Chairperson Filauro presided.

Secretary Probasco read Notice of Public Meeting.

Roll Call: **Present** – Mayor Hussa, Chr. Kuntz, Vice Chr. Filauro, Glenn Buie, Howard Shaw, Peter Nienstadt, Jim Schoner, Kurt Schmitt,

Absent: Lou Maffei

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

PURCHASING

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

CORRESPONDENCE

Chr. Kuntz referenced correspondence received. The first is a letter from Ted Einhorn dated April 30, 2009 regarding WP Hotel Properties as it relates to the request for changing the I2 zoning ordinance. The second was a letter from MCSCD dated April 21, 2009 regarding a violation notice for 3000 Route 10, LLC and a May 6, 2009 letter from Ed Buzak regarding the Conditional VetoS-2577 Age Conversion Bill.

PROFESSIONAL COMMENTS

Nicholas Rosania, Township Engineer and William Denzler, Township Planner both indicated that they had no professional comments. Mayor Hussa stated that Mbr. Jim Schoner has accepted the position of Environmental Liaison. Chr. Kuntz was not objecting but inquired if an alternate member of the board could hold such a position. Ed Buzak, Board Attorney stated that he would investigate.

RESOLUTIONS

**MSV/SM 08-01: Eunice Schatz
 Block 10901, Lot 17.01
 4 Tulip Lane**

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

Roll Call: Ayes - Filauro, Shaw, Schoner,

PUBLIC HEARINGS

**MS 09-01: Raymond Greene
 Block 41302, Lot 20
 8 Mendes Street**

Chr. Kuntz announced to the public that the applicant was unable to notice and the hearing on this application would be rescheduled.

**SP/FSPV 08-04: Orchard Street, LLC
 Block 50410, Lots 11 & 23
 Orchard & Clark Streets**

For the record all board members have been present or have listened to the audio recordings of the meetings for this application. William Denzler, Township Planner recused himself for the record.

Michael J. Rowland provided a recap of the application for Orchard Street, LLC. The applicant is requesting Preliminary/Final Site Plan approval to build a total of 5 residential housing units requiring relief for building length, soil movement, tree removal and a variance relief for off-street parking. Meetings were held on October 22, 2008 and March 11, 2009. As a result of discussions from the March 11, 2009 meeting, the applicant will be presenting a wholly conforming plan and is no longer seeking variance relief for off-street parking. The owners of

the property, Mr. Jack Onorati and Mr. Jack Carfagno were available for questions. Professionals Daniel Clark, Architect of Lawrence Korinda Architects was also present.

Thomas F. Graham, PE of Dykstra Walker Design Group (21 Bowling Green Parkway, Lake Hopatcong) presented testimony to highlight the changes to provide a wholly conforming application for the board's approval. Mr. Rowland deferred to Mr. Rosania's interpretation of the ordinance regarding what is the rear and side yards. Mr. Graham used a colorized rendering of the Preliminary and Final Site Plan (Exhibit A-11). The building configuration has been changed. The original proposed building footprint of 125' x 44', consisted of three two bedroom units and two three bedroom units and four market priced and one affordable housing. Market units to have one car garages with additional parking along Clark Street. The revised proposed building footprint of 125' x 34.75', consists of five two bedroom units with two car garages and four perpendicular parking spaces along Orchard Street. Providing 12 parking spaces where 11.5 parking spaces are required. The reduction in depth is to allow an increase in the rear yard setback. Parking in the ROW has been eliminated as well as variances for building length and rear and side yards. Mr. Graham also testified to a decrease in impervious coverage to 61% from 67.7% where 90% is allowed. The underground storm water management system has also been decreased. Building height is 34.5' where 36' is allowed by ordinance, as well as meeting the zero net fill requirements.

Michael Rowland, Esq. referenced the comments and concerns of the fire and police departments. The applicant has agreed to comply with the fire departments request for a fire hydrant at the intersection of Clark and Orchard Streets. The police department commented on construction vehicles impacting the flow of traffic in the area. Mr. Graham indicated that circulation will not be impacted by this project. Applicant agrees to cooperate with both police and fire departments.

Lawrence Korinda, Architect (550 W. Main Street, Boonton) reviewed the architectural drawings. Mr. Korinda was present and sworn in. The board accepted Mr. Korinda as a professional witness. Mr. Korinda provided an overview of the floor plans and elevations. Using the following Exhibits:

- Exhibit A-12 Garage Level Floor Plan
- Exhibit A-13 First Floor Plan
- Exhibit A-14 Second Floor Plan
- Exhibit A-15 Clark Street Elevation

Mr. Korinda testified to the revised units being compressed in size. The original proposal was for two units with three bedrooms each and three units with two bedrooms each. The revised is for five two bedrooms units. The 2.5 story building meets the zoning criteria. The fake garage door originally proposed for the handicapped unit has been revised to a window. Door is in the recessed area and provides the appearance of one unit as it relates to the affordable housing unit. The side elevations of the building indicated windows have been added. The rear yard has been increased by reducing the depth of the overall building by 9' creating a better outdoor space and buffer to the neighbors.

Chr. Kuntz opened the application to the professionals.

Nick Rosania, Township Engineer commented that the applicant has accommodated all the requests of the board including eliminating parking in the ROW, increase of the backyard, providing additional lighting and landscaping, additional windows, and has even added fire hydrant. Mr. Rosania indicated that this is a variance free project and will comply with fire and police departments. Mr. Rosania inquired about handicapped access and Mr. Graham responded that it's a private residence without a handicap requirement. If it is determined to be required by the building department, applicant agrees to comply. Mr. Rosania inquired about the minimum requirement of square footage for affordable housing. Mr. Graham was not sure of the exact square footage of living area required but testified that the affordable unit was 1,400 sq. ft. and the market price units were 1,700 sq. ft. The difference being the absence of a garage. Mr. Rosania had no further questions.

Chr. Kuntz opened the application to the public and seeing no one, closed the public portion.

Chr. Kuntz opened the application to the board for questions.

Mbr. Schoner inquired of Tom Graham that the parking and building elevations as it relates to the flood zone. Mr. Graham responded that the curb elevation was 509.5 and the pavement elevation was 509 leaving approximately one half foot and towards Orchard the curb is 509 with the pavement at 508.6" leaving approximately one foot. The building would be approximately 3' above the flood hazard elevation.

Mbr. Filauro inquired about the location of utilities for the affordable housing unit and if there was a parking issue with the ROW. Mr. Korinda responded that modest mechanical systems would be located in a small closet or under the stairs. Ed Buzak, Esq. responded that with the two car garages and parking on private property this is no longer a concern. Mr. Graham confirmed that the parking meets the ordinance requirements.

Mbr. Buie inquired of Rosania regarding the flood zone. Mr. Rosania responded to the topography of a knoll that is present. Mbr. Buie indicated that he's in favor of high density downtown for the convenience of walking and commended the applicant for proposing a variance free application.

Mayor Husa commented on the repositioning of the utility pole and then voiced concern about landscaping in the ROW and the loss of six public parking spaces referencing an area 10'1" from the front of the building. Mr. Buzak indicated that the bulk requirements are measured from the edge of the ROW and not from the edge of the paved way. Mr. Buzak spoke to the applicant having eliminated the use of the public ROW for private use being no different than single homes with driveways or sidewalks going over an unimproved ROW. Buzak indicated that the plan doesn't violate any legality that it would prevent the developer from pursuing development. Mayor Husa indicated that his only concern was the perception of the use of the ROW. The board attorney confirmed that it was only a perception and not a legality or reality.

There was much discussion about Mayor Husa's hypothetical suggestion of creating angled parking and possible relocation of the sidewalk to the lot line. It would create the inability for a property owner to access their driveways. The appropriation of the public right of way for private purposes was eliminated and the end result would not accomplish the objective. There would be 15' of grass from the sidewalk giving a public sidewalk the appearance of being private up against the building. Relocating the sidewalk would also be inconsistent with the other sidewalks. Clark Street is unusual in that the roadway is not centered in the ROW.

Chr. Kuntz inquired about the NJDEP's approval. Mr. Graham testified that NJDEP permits would be a condition of approval and that the plans will be consistent with and have been designed to meet the NJDEP requirements. Chr. Kuntz commented that the affordable housing unit should have a garage especially since the unit will be handicap accessible. Mr. Rowland confirmed that the applicant has agreed to landscape buffering in addition to the fence that exists. Chr. Kuntz indicated that plans were requested that do not use the ROW. Mr. Graham responded that the plan does not use the ROW and that a perpendicular crossing from the ROW is necessary for a homeowner to access their property. Chr. Kuntz commented on the 9,775 sq. ft. Ed Buzak, Esq. indicated that the 9,775 sq. ft. does not include the ROW. Chr. Kuntz discussed the overlay zone and the hypothetical of developing the property exiting on Orchard Street. Mr. Korinda indicated that only a two family home would be feasible in that scenario.

Mayor Husa's final comments were that he likes the COAH unit but had a problem with 20' in the ROW and would not support the application unless changed. Chr. Kuntz added that the density of the building on that lot was too great. Mr. Rowland indicated that the proposed could be greater by ordinance. Mr. Graham confirmed that the proposed 22.3 dwelling units per acre was less than the allowed 23 dwelling units per acre.

Mbr. Shaw voiced his largest concern was the parking and lack of garage for the affordable housing unit. Mr. Rowland indicated that there are four dedicated parking spaces along Orchard Street. Mbr. Shaw wanted confirmation that the sidewalks were handicap accessible and firewalls separate the units to the roof. Mr. Graham confirmed the sidewalks would be ADA compliant. Mr. Korinda confirmed that he would work with the fire marshal to ensure the firewalls are in place.

Mbr. Nienstadt commented on garages becoming storage due to lack of basements and inquired if the storage area would be a finished room and possible restrictions on its use. Mr. Korinda responded that he didn't believe it was intended to be completed. Mr. Rowland indicated that it is intended as storage space but that even if studded he didn't believe restrictions could be made on its use. Mbr. Nienstadt inquired about maintenance of grounds by the association. Mr. Rowland indicated that there would be three lighting fixtures separately metered and some common area that would be handled by the association. Mbr. Nienstadt inquired about the fees as it relates to the affordable housing unit. Mr. Rowland responded that it would be a proportionate amount of the association fees.

Mbr. Schmitt commented that the handicapped parking would be addressed during construction but sought clarification on the COAH unit, bedrooms and subsequent parking requirements. Mr.

Korinda confirmed that the potential of three bedrooms exists. Mr. Rowland added that the number of bedrooms had decreased and that the parking is adequate. Mbr. Schmitt commented in a positive manner as to the reduction of building size, aesthetic appearance and elimination of the variances. Mbr. Schmitt agreed that some landscaping would be good and disagreed that a sidewalk near the building would be used or have a good appearance.

Chr. Kuntz added that the affordable housing unit failed to have a rear exit to the backyard. Mr. Korinda indicated that it would be added if required. Chr. Kuntz stated that regardless of the requirement, a rear exit and a place to sit would be nice.

Ed Buzak, Esq. spoke to the distance from the affordable housing unit to their designated parking spaces and if there was something preventing from shifting the unit closer to the parking. Mr. Korinda responded that this may be possible. Mr. Buzak suggested that the applicant provide rear access from the unit with a walkway to the parking and suggested to the board that this be a condition of approval. Mr. Rowland indicated that this presents an economic consideration making a corner unit affordable housing. Mr. Graham confirmed that a walkway with a shorter distance to parking would be a good idea. Mr. Korinda indicated the materials would be stone on the lower level and shingles on the upper level.

Mbr. Filauro inquired how the determination was made as to the depth of property as it relates to the ROW. Mr. Graham indicated that the front, rear and side yard setbacks determine the building envelope and everything else is to get from the base of the building to the road. Mr. Buzak indicated that Exhibit A-1 reflects the existing curb line was used. Mayor Husa stated that if the applicant would move the sidewalk to the lot line they would have his vote. Mbr. Filauro commented on the road being a cut-through being dangerous and not wanting to see a parking space in front of the affordable unit.

Mbr. Schoner inquired about twelve parking spaces and where people would park. Mr. Rowland indicated that parking could be in the garage, the driveway or in the road. Mr. Rowland added that the town could require that the wide road be widened further and decreases the grass area in front of the building.

The board attorney inquired about handicapped parking and Mr. Graham confirmed that the 36' parking area would become 43' wide and would not create an impervious coverage issue. Mr. Buzak indicated that no parking requirements on one side of the street might be an option.

Chr. Kuntz referenced an article regarding land owners having fewer rights in a public ROW and requiring a town's permission to build even if you own land in the ROW. For the record, Mr. Rowland asked where this information was derived. Chr. Kuntz stated the article was "The Public Right of Way and You" from an Introduction to the Vermont Highway Law.

The board attorney assured the board that legally there is nothing amiss with this application.

Motion to **deny** the final subdivision with conditions was made by Mayor Husa, seconded by Vice Chair Filauro and three other members eligible to vote.

Roll Call: Ayes – Mayor Husa, Filauro, Shaw, Schoner, Kuntz
Nays - Buie

OLD BUSINESS

Mr. Buzak referenced the age restricted conversion bill. Stating that on May 5th, the mayor approved a conditional veto that sets forth the problems and amends the bill to satisfy his concerns for revote. If approved by legislature it will be automatically approved. Three changes were recommended. The one most important is that there is a larger standard for reasonableness for a board to deny an application.

NEW BUSINESS

Chr. Kuntz referenced The League of Municipalities. It was discussed and the four members interested in attending were Jim Schoner, Glenn Buie, Sue Filauro and Chr. Kuntz.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date adopted