

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

June 24, 2009

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, June 24, 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 Husa, Chr. Kuntz, Vice Chr. Filauro, Glenn Buie, Howard Shaw, Lou Maffei, Jim Schoner, Kurt Schmitt
Absent: Peter Nienstadt
Professionals present –Tiena Cofoni, Esq., Nicholas Rosania, PE, P.P., William Denzler, P.P.

MINUTES

May 13, 2009

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

May 27, 2009

Motion to adopt the minutes as submitted 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 Township of Denville, (dated May 13, 2009) subject to the availability of funds, was made by Mbr. Buie and seconded by Mbr. Shaw and unanimously approved by all Members present and able to vote.

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

RESOLUTIONS

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

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

Roll Call: Ayes - Filauro, Buie, Shaw, Maffei, Husa, Kuntz

**MS/09-04: William & Catherine Jensen
361 Diamond Spring Road
Block 60505, Lot 3 & 4**

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

Roll Call: Ayes - Buie, Filauro, Shaw, Maffei, Husa, Kuntz

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

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

Roll Call: Ayes - Buie, Filauro, Shaw, Maffei, Schoner, Husa, Kuntz

PROFESSIONAL COMMENTS

Mayor Husa stated he had no comments at this time.

Nicholas Rosania, Township Engineer indicated that he had no professional comments.

William Denzler, Township Planner indicated that he had no professional comments.

PUBLIC HEARINGS

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

For the record, Mbr. Shaw recused himself on this application as being a long time friend of the applicant.

John Holinko was present and spoke on behalf of Helen Vieten who was also present. Mr. Holinko stated that his sister had given Raymond Greene permission to file the application. Helen Vieten stated that she was the owner of the property. The applicant, Raymond Greene was not present. Tiena Cofoni, Board Attorney indicated that the applicant would need to be present. Mr. Holinko contacted Mr. Greene and Mr. Greene indicated he was unable to get to the hearing in time. Tiena Cofoni, Esq. informed the applicant that the applicant, Ray Greene would need to be present. The meeting for this application was carried to July 8, 2009 without further notice.

MSV 07-10: Joseph D'Egidio (Carried from May 27, 2009)
Block 61901, Lot 3
59 Kitchell Road

Mbrs. Schoner and Shaw were notified property owners and recused themselves for this application.

Michael D'Agostino, Esq. (702 Prospect Avenue, West Orange) represented the applicant. Mr. D'Agostino provided summarized the open items; driveway profile, soil movement, drainage, possible shifting of the dwelling as well as, a revised steep slopes diagram with reversed shading.

Mr. Fred A. Stewart, Jr. (25 Pine Street, Rockaway), Stewart Engineering was present, remained under oath and provided an overview of the changes since the last hearing on May 27, 2009. Exhibit A-5 – Minor Subdivision and Grading Plan for both lots. Testified to relocating the dwelling allowing for a larger gap between the home and the wall and reducing the retaining walls by one from two. Variance for the safety barrier of 3' on top of the 5' retaining wall for a total of 8' in height. A proposed chain-link fence safety barrier has replaced the aluminum fence for better strength. Runoff will be collected in a 4" PVC pipe through the wall and directed to the wetlands transition area. A stone filled trench off the driveway has been added to the southerly portion of the driveway exiting in the turnaround into the wetlands transition area. A driveway profile reflects grading has been reduced by increasing the slope of the driveway from 14% to 14.4%. The footprint of the home has been reduced from 3,400 to 3,200 sq. ft. Exhibit A-6 - Slopes Exhibit reflects reversed dark to light shading. The proposed disturbance in the 30% or greater area is 9.7% was 20.1%, 25-30% slopes area is also reduced from 24.2% to 20.2%, 20-25% area has reduced from 40.9% to 36.3% and in the 15-20% area reduction from 22.4% to 22.1%. Overall reduction of the slopes as requested by the board. Soil movement calculations for proposed lot at approximately 1,200 cubic yards equating to approximately 85 truck loads of soil. Timber guide rail along westerly edge and a portion of the southerly edge to protect vehicles from the slope on the rear yard also has been added.

Chr. Kuntz opened to the professionals for comment.

Nick Rosania, Township Engineer indicated that the applicant had addressed and significantly improved at least thirteen different items requested at the last hearing. Mr. Rosania stated that the driveway profile was now in acceptable limits, the soil movement has been addressed and can be handled by typical conditions. The grading has significantly eliminated retaining walls. The proposed dwelling has been shifting to decrease the amount of disturbance in the steep slopes area. The square footage of the building has been reduced. Guide rail has been provided. The slopes map has been revised as requested by the board and the dwelling has been set in the range least affected by steep slopes. The retaining wall safety fence has been revised. MCSCD approval is still pending. The drainage is acceptable to address the driveway runoff. Trees to be removed have been included on the plans. The first home will be on a slightly oversized lot and the second home will be on a tremendously oversized lot. In the Township Engineer's opinion the project is reasonable and recommended approval to the board members.

Bill Denzler, Township Planner had nothing further to add to Nick Rosania's comments other than to note that the revised plans eliminate one variance and reduce the remaining variances. The variance between retaining walls has been eliminated.

Tiena Cofoni, Esq. inquired about comments in the planners report dated March 31, 2009. Bill Denzler clarified that the variance for retaining wall height still exists but the variance for the distance between retaining walls has been eliminated.

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

Chr. Kuntz opened to the board members for questions.

Mbr. Maffei inquired about the wall on the plans and if it allowed for a change in elevation. Mr. Stewart confirmed that it was a small stub wall that allowed a greater backyard for recreation purposes.

Mbr. Schmitt inquired about the pipe and if a rip rap area was required. Mr. Rosania indicated that it was not required and Mr. Stewart responded that the depth of the stone trench would be approximately 1'. Mbr. Schmitt commented that the reduction of the grading and the elimination of one of the retaining walls was favorable and appreciated the reversed shading of the steep slopes map. A future suggestion was for revision clouds. For the record Mbr. Schmitt indicated that he had listened to the audio of the May 27, 2009 public hearing on this application.

Mayor Hussa commented on setting a precedent for steep slopes and concern for disturbance in the 30% or greater area of steep slopes. Mayor Hussa inquired about shifting the dwelling further outside of the steeper sloped portion of the lot, as well as further reduction of the size of the home. Mr. Stewart

indicated that due to the constraints of the wetlands transition area and required access from Kitchell Road that it would be difficult to move the home further to eliminate any disturbance of the 30% slopes.

Michael D'Agostino, Esq. spoke to the disturbance being minimal in nature and keeping a balance between the disturbance and maintaining a rear yard. Mr. D'Agostino didn't believe a precedent would be set based upon the minimal disturbance combined with the size of the lot and wetlands buffer.

Mbr. Buie inquired about sanitary sewer and if crossing the transition area is permitted. Mr. Stewart responded that a sanitary sewer easement exists with existing stubs and crossing should not be a problem. Mr. Rosania agreed that NJDEP would not have a problem with crossing the wetlands area. If not approved, applicant to return before the board for septic location as condition of approval. Applicant intends to connect the existing dwelling to the sewer. Mbr. Buie appreciates that the revisions have been made but would have preferred that the proposed reductions had been part of the original presentation.

Mbr. Filauro inquired if the retaining wall was a consistent height all the way across. Mr. Stewart indicated that it's 5' at the corner and based upon the elevation the wall goes to 5.50' to mimic the grading elevation behind it. Mbr. Filauro was pleased to see the chain link fence and stressed the importance of removing the dwelling from the 30% slopes area for the board.

Mbr. Buie interjected that should the subdivision be approved, that further subdivision be prohibited as a condition of approval.

Mr. D'Agostino, Esq. indicated the applicant offered a condition to convert the property to a conservation area.

Chr. Kuntz inquired about the truckloads of soil required and voiced concern for road damage. Fred Stewart indicated approximately 80 truck loads of fill being brought in. Mr. Rosania indicated that it would be subject to days of operation as well as a soil movement guarantee. Paving will begin at the end of July, and besides clean up it can include damage to the road. Chr. Kuntz requested that soil certification be a condition of approval.

Mbr. Buie stated that architectural detail on the dwelling did not exist and if a limitation of the soil movement could be a condition of approval.

Chr. Kuntz inquired about the size of the river stone. Mr. Stewart responded that the cobblestone is decorative in nature being 3-4' and below is a typical heavier stone. Chr. Kuntz inquired about a drainage issue. Mr. Rosania indicated that should there be an unexpected drainage pattern of a negative nature during the construction a condition of approval is added. The condition would be for the applicant to abide by the recommendations of the Township Engineer to correct the problem. Chr. Kuntz inquired about the stairs to the deck. Fred Stewart indicated that there is only a platform and the deck does not have stairs. The stairs come from the basement floor with no way to get to the deck from the ground. Chr. Kuntz would like to see the home smaller to eliminate the need to encroach on steep slopes perhaps 2,700 sq. ft. and suggested a different architectural style to help reduce the steep slopes disturbance. Mayor Husa concurred and suggested shifting the home back 5'.

Fred Stewart indicated that shifting the home further would eliminate the recreation area behind the home. Joseph D'Egidio, Sr. the owner of the property spoke to the reasons of the home style, footprint and appearance of the home.

Chr. Kuntz inquired about removal of 27 trees, replacement with 14 white oaks and why not a variety of trees. Mr. Stewart indicated that the tree replacement plan came from the NJDEP. Chr. Kuntz inquired about the planting of a variety of trees. Mr. D'Egidio testified that the NJDEP suggested what trees should be planted after reviewing what trees exist in the area.

Mr. Rosania inquired if other trees of a decorative variety be placed near the roadway. Mr. Stewart responded to the northeast corner of the home accommodating possibly three additional trees. Mr. Rosania suggested additional trees be planted towards the road which is an area typically neglected by homeowners.

Exhibit A-7 – Soil Erosion Sediment Control Plan reflects the area of disturbance with a dashed heavy line across the front of the property and down the side to transition area. The access point of the driveway is the only area of disturbance near the roadway.

Mbr. Filauro inquired if the applicant would consider a smaller dwelling to further reduce the steep slopes disturbance in the 30% area by 5'. Joint discussion ensued as the possibilities of the front porch, size of the home and shifting the home to reduce the disturbance in the 30% area if not eliminate it entirely. The applicant was concerned about the resale value of a 2,500 sq. ft. home. While empathetic, Mbr. Filauro explained that the board's decision cannot be for economic conditions and based upon proper planning. Mr. D'Agostino inquired if the board would prefer the home be shifted back instead of further reduction of the size. Mayor Husa emphasized his desire to follow the ordinance and eliminate disturbance in the 30% area. Mbr. Buie disagreed with the applicant's attorney that the size of the homes appearance from the road would not change and would not have a negative impact on its economic value.

The board proposed eliminating the front jut out and reducing the width and extending the length to make up the difference in square footage. Mr. Stewart explained that even if the home was shifted back that the disturbance from grading in front of the home would be unavoidable. The applicant suggested cantilevering the back of the home as an alternate as well as a reduction of the backyard. Chr. Kuntz suggested that anything to reduce the size of the home and the impact of the 30% steep slopes would be appreciated by the board.

Mr. D'Agostino requested the boards approval that his applicant obtain minor subdivision approval and return with architectural drawings of the home eliminating disturbance in the 30% steep slopes area. The board attorney explained that minor subdivision approval from the Planning Board would require the applicant to go before the board of adjustment. Nick Rosania, Township Engineer suggested approval with the condition that a suitable grading plan eliminating the home from the 30% area subject to Township Engineer's review. Chr. Kuntz polled the board members and the board agreed that they were satisfied with Nick Rosania's suggestion.

Tiena Cofoni, Esq. discussed conditions that would be included but were not limited to; payment of taxes, no further subdivision, soil certification, soil movement permit, drainage problems to be addressed by applicant to Township Engineer's approval, additional decorative trees, conversion of the existing home to sanitary sewer, variances for retaining wall height and steep slopes disturbance, clarification on 30% no disturbance except the driveway and in front of the home even if the footprint is out of the 30% there will be grading.

Chr. Kuntz requested a motion for approval with conditions stated.

A motion to **approve** this application was made by Mbr Schmitt, seconded by Mbr. Maffei and approved by all members eligible to vote.

ROLL CALL: Ayes – Schmitt, Maffei, Filauro, Buie, Husa, Kuntz

NEW BUSINESS

Chr. Kuntz referenced an amendment to reconsider the Downtown Overlay District and asked William Denzler, Township Planner to explain. Bill Denzler, Township Planner explained that should the Planning Board agree, then the item would be before the Council to amend the Master Plan for inclusion of the removal of the downtown residential overlay zone. Mayor Husa inquired if there were any other areas zoned similarly. Mr. Denzler indicated that this was a trial zone and the only one. Mbr. Buie spoke to being a member of the board at the time of approval and voiced preference to maintain the overlay zone and density remain in the area of town where the stores are within walking distance. Chr. Kuntz also spoke to being a member of the board at the time of approval and voiced vehement opposition to this location due to being overcrowded and in a flood zone. Chr. Kuntz was not opposed to high density housing that this location was inappropriate for high density housing.

Nick Rosania, Township Engineer spoke to the decision having been controversial at the time. Another proposition at the time was to allow residences on the 2nd floor businesses. This scenario would increase the density and Mr. Rosania was not in favor of it. Currently retail downstairs and office space upstairs. Spoke to help fill the empty businesses suggested that office space be allowed downstairs without detriment to the town. In this scenario, Mbr. Buie indicated parking would be a concern.

Chr. Kuntz inquired about "staggering" being prevented. Bill Denzler spoke to offsets of buildings being a design to prevent a continuous building face. Mbr. Filauro commented on how interesting it was to see the inconsistency of the application brought forward. Mayor Husa inquired about the acceptance of same. Tiena Cofoni clarified that this would amend the Master Plan but the ordinance would be addressed separately. Mbr. Buie inquired about residential housing and Bill responded that the OB zone currently has an underlying residential component. Members should be provide comments at the July 8th Planning Board meeting for incorporation.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date adopted