

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

July 8, 2009

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, July 8, 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, Vice Chr. Filauro, Glenn Buie, Howard Shaw, Peter Nienstadt, Lou Maffei, Jim Schoner, Kurt Schmitt
Absent: Chr. Kuntz
Professionals present – Edward J. Buzak, Esq., Nicholas Rosania, PE, P.P., William Denzler, P.P.

MINUTES

June 24, 2009

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

PURCHASING

Motion to pay vouchers submitted by Denzler & Associates, (dated June 24, 2009) subject to the availability of funds, was made by Mbr. Buie, seconded by Mbr. Maffei and unanimously approved by all Members present and able to vote.

CORRESPONDENCE

Vice Chr. Filauro referenced the NJ Planner publication along with a letter addressed to Mayor Hussa regarding the Briar Rose application. Mbr. Filauro indicated that the Briar Rose correspondence would be discussed under Old Business.

PROFESSIONAL COMMENTS

Mayor Hussa stated he had no comments at this time but did have a question regarding the Scarce Resource Order. Bill Denzler clarified that the Mayor was referencing the TD/Commerce Bank motion of waiver for COAH and indicated that it was due to the date that their building permit was submitted. Mr. Denzler confirmed that it was for informational purposes only and required no action on the town's part. William Denzler, Township Planner indicated that he had no professional comments.

RESOLUTIONS

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

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

Roll Call: Ayes – Shaw, Schoner, Filauro, Hussa

PUBLIC HEARINGS

**MSV 09-05: Katherine Hall
Block 10901, Lot 15.01
Tulip Lane**

Applicant is requesting minor subdivision approval to create two lots requiring variance relief for minimum lot depth. Vice Chr. Filauro announced that the applicant had requested an adjournment and the application would be carried to September 9, 2009 without further notice.

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

This application was carried from the June 24, 2009. For the record, Mbr. Shaw recused himself on this application as being a long time friend and neighbor of the applicant. Raymond Greene was present and

sworn under oath. Mr. Green testified that he is purchasing the property from Helen Vieten with the intent to subdivide. The first proposed lot would be a fully conforming at 80'x150' and the other lot with an existing dwelling would be 70'x150'. The applicant stated that he and his wife would like to build a ranch to relocate from their raised ranch for their mature years.

Bill Denzler, Township Planner provided a summary of the property dimensions, setbacks and corresponding request for variance relief. Mr. Denzler indicated that the existing lot is 22,500 sq. ft. in the R-3 zone requiring a minimum lot size of 7,500 sq. ft. Two lots are proposed, one at 10,500 sq. ft. and the other at 12,000 sq. ft. The variance involved with the application involves an existing non-conforming side yard setback. The existing adjustable side yard setback of 4.9' will be maintained where 9.3' is required for the subdivision. The 4.4' variance is an existing non-conformity and is not being exacerbated by the subdivision proposed. The subdivision itself is conforming to the ordinance meeting lot width, lot area and lot depth and requires no variances for the subdivision itself. New lots are subject to the COAH Scarce Resource and permits cannot be issued unless the applicant obtains a waiver from COAH.

Vice Chr. Filauro requested comments from the board.

Mbr. Buie inquired about future plans. Mr. Greene responded that he and his wife planned to update the house with a new bath and kitchen. Edward Buzak, Esq. testified that the request being made is for a prior non-conforming condition that it is not being exacerbated by the proposed subdivision. Mr. Buzak indicated that if the property were to change owners, the variance would run with the land. Mbr. Buie suggested approval of the subdivision with denial of the variance.

Vice Chr. Filauro opened to the public for comments.

Dolores R. Westling (5 Mendes Street) was present. Living directly across from the proposed property, Ms. Westling inquired about blasting concerns. Mr. Denzler replied that blasting was not anticipated.

Seeing no other members of public, Vice Chr. Filauro closed the public portion of the meeting.

Ed Buzak, Esq. provided a summary of the subdivision, both lots would be fully conforming, one lot would not have the variance, preventing new home to replace the existing home with non-conforming side yard setback. All other laws will apply, including a waiver of COAH scarce resource to obtain a building permit.

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

ROLL CALL: Ayes – Buie, Maffei, Niendstadt, Schoner Filauro, Husa

OLD BUSINESS

Vice Chr. Filauro referenced the amendment to reconsider the Downtown Overlay District along with the outline that Bill Denzler, Township Planner had provided at the June 24, 2009 meeting. Vice Chr. Filauro asked the board's opinion and comments.

Mbr. Buie asked how effective the change in zoning would be if the applicant were to obtain an appeal in court and inquired about the practicality of making a decision only to have a court reverse the order. Mr. Denzler, PP responded that during the time of a potential court process, it would potentially prevent similar applications from adjacent property owners.

William Denzler, Township Planner provided a summary of his Land Use Plan Amendment dated June 24, 2009 document and explained that if there are no comments, the document will be sent to the council for public hearing. If it is approved, the pilot of the downtown overlay zone will be repealed by ordinance.

Mayor Husa inquired about the impact of the Planning Board's credibility. Ed Buzak, Esq. responded that the board's original decision had been made with trepidation. The development of the broad Master Plan is done on a macro basis and each individual property is not evaluated. Based upon this being the first application during the pilot plan, seeing how it was applied, that it is not inappropriate that it doesn't work. It's a justifiable determination and if the council agrees, it will be repealed. Time of decision rule states that the ordinance that is in effect at the time the case is ruled governs the courts review of the application. If the governing body determines that an ordinance should be changed or something should be eliminated, the court is obligated to take into account the fact that the zoning is no longer a permissible use in the zone. Mr. Buzak further stated that the prior concept is not black and white.

It was the consensus of the board members on the reconsideration of the downtown overlay zone to proceed with forwarding the amendment to the council. The Town Planner will work with the Board Secretary on the next steps that will include a notice to the county. Mr. Denzler indicated that the amendment would be on the next agenda for the August planning board meeting.

NEW BUSINESS

Mayor Husa referenced the letter from Rich Tkach of the Briar Rose Group, Inc. dated June 30, 2009. The Mayor questioned the applicant's contention of a Morris County approval and that he may be referring to the approval of MCSCD for soil movement. Mbr. Buie stated that it wasn't germane and that should it be appealed it would be the decided in court by a judge. Mayor Husa referenced the content of the letter and being justly compensated for deprivation of use of the property. Mbr. Schoner stated that

there were no guarantees or warranties made by the seller at the time the property was purchased as to the use. The Board Attorney stated the property was not determined to be un-buildable and that the board only denied the subdivision. That the individual has the right to build two conforming homes on the properties. The section of the MLUL that is referenced in Mr. Tkach's letter has no relevance to open space or being unbuildable.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date adopted