

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

December 9, 2009

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, December 9, 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, Peter Nienstadt, Lou Maffei, Jim Schoner, Kurt Schmitt
Professionals present – Ed Buzak, Esq., Tiena Cofoni, Esq., Nicholas Rosania, PE, William Denzler, PP

MINUTES

October 28, 2009

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

PURCHASING

Motion to pay vouchers submitted by Denzler & Associates, (dated November 2, 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.

Motion to pay vouchers submitted by The Buzak Law Group, (dated November 4, 2009 and December 3, 2009) subject to the availability of funds, was made by Mbr. Buie seconded by Mbr. Shaw and unanimously approved by all Members present and able to vote.

CORRESPONDENCE

Chr. Kuntz referenced various correspondence received including a November 4, 2009 letter from The Buzak Law Group regarding Governor Corzine recently adopting A-2784 and that Edward Buzak, Esq. would discuss after public hearings. Other general correspondence included Land Use Ordinance Book update, NJ Planner newsletter and paperwork relating to the public hearings.

PROFESSIONAL COMMENTS

Mayor Husa stated that William Denzler, Township Planner would discuss the Highlands under new business at the end of the meeting.

Nicholas Rosania, Township Engineer had no comments.

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

RESOLUTIONS

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

A motion to adopt the memorializing resolution of **approval** as amended 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, Nienstadt, Maffei, Schmitt, Husa

**MPS 08-03: Glenmont Commons Developers, LLC
Block 10003, Lot 3
Casterline Road**

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

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

**PSP/FSPV 09-06 MetroPCS New York, LLC
Block 31406, Lot 1
276 State Highway 53**

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

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

PUBLIC HEARINGS

Chr. Kuntz announced that the applicant's attorney's had agreed to reversing the sequence of public hearings for tonight.

**AFSPV 09-08 Pierson Industries, Inc.
Block 40302, Lot 6
9 Astro Place**

Douglas Henshaw, Esq. of Porzio, Bromberg & Newman P.C. (100 Southgate Parkway, Morristown) represented the applicant. Applicant requested amended final site plan approval to permit "land-banking" of a portion of the required off-street parking.

Kenneth D. Dykstra, PE, PP PLS, Principal of Dykstra Walker (21 Bowling Green Parkway, Suite 204, Lake Hopatcong) was present, sworn in and accepted as an expert witness. Mr. Dykstra provided an overview of the colorized site plan (Exhibit A-1) of the property with frontage on Astro Place in the I2 zone.

The ordinance provides there be 1 parking space for every 300 sq. ft. equating to 199 spaces. For the 26,000 sq. ft. warehouse only one space is required for and used by a single employee. Applicant plans to build 61 spaces and 120 land bank spaces (highlighted in green). A 16 car parking lot is also proposed to be land banked. Mr. Dykstra stressed that land banking has a positive impact being environmentally green. Everything will be adequately lit with proposed lighting on the building and some pole fixtures. Pedestrian circulation by a sidewalk around the exterior of the building. Everything from original approval will remain the same and there will be no additional signage.

Chr. Kuntz opened to the professionals for comments.

Nick Rosania, PE, Township Engineer referenced discussions with the design engineer on various issues. Mr. Rosania questioned the sequence of building the remaining stalls. Ken Dykstra indicated that it would be determined by the tenancy but anticipated that the northeasterly section would be last if required as it was most undesirable. Nick Rosania, P.E. inquired about unconcealed lighting on the site. Ken Dykstra agreed that the lights would either be shielded or replaced with new fixtures. Mr. Rosania referenced circulation and inquired about the fire department's concern to access around the building. Applicant agreed to address emergency circulation as quickly as possible. Spoke to the positive of having more pervious coverage.

William Denzler, PP, Township Planner referenced parking and indicated that 189 spaces is now 92 based upon the reduction by the 2004 ordinance. Mr. Denzler spoke to the sequence of adding additional parking spaces. Douglas Henshaw agreed that there would need to be a balance in the additional parking spaces that would be added. Bill Denzler inquired if there were any outstanding requirements of the original approval and Mr. Henshaw indicated that there were none.

Chr. Kuntz opened to the public and seeing none, closed the public portion of the hearing.

Chr. Kuntz opened the hearing to the board members.

Mbr. Schoner stated that there was not one car parked on the westerly side of the building during his site visit at noon. He stressed the importance of triggers and stated he had no concerns with the application. Mr. Buzak inquired if there was any requirement for an application to be made as tenants are added. Mr. Denzler responded yes. Mr. Buzak stated the language should read that the Township has the final decision. Mr. Henshaw agreed. Ed Buzak, Esq. then suggested a requirement in the memorialized resolution that would run with the land and could be picked up with any title search. This would preserve the land and ensure it not being utilized in the future. Suggested a metes and bounds description of the property subject to this restriction this preservation as site plan maps are not filed. Doug Henshaw agreed to working this out and suggested a map be attached to the deed notice. Mr. Rosania indicated that the applicant could meet with Rosania and Denzler to address and approve the parking sequence. The Board Attorney agreed.

Mbr. Filauro inquired about the retaining walls appearing more aesthetic versus functional to support a road way. Mr. Dykstra indicated that the walls were sufficient. Mbr. Filauro also inquired about guard rails along the southern side in case of future build out. Mr. Dykstra indicated that guard rails were included in the original plans for approval when the parking is built. Chr. Kuntz suggested that it could be added as a condition of approval.

Mbr. Buie inquired about the office area ratio compared to the warehouse. Theodore J. Pierson, President of Pierson Industries, inc. (7 Astro Place, Denville) was sworn under oath to address the question. Mr. Pierson responded 10% totaling 6,000 sq. ft. of office space. Spoke to the number of the employees and shifts. First shift has 40, Second shift has 20 and the third shift has 30 employees. Most of employees car pool, two cars for 15 employees. Mbr. Buie voiced concern for timing of the additional parking approvals from the town to accommodate new tenants.

Mayor Hussa sought clarification of the land banked spaces and parking to be built. Dykstra confirmed that the spaces indicated in grey would be built and those in green were proposed to be land banked.

Mayor Husa inquired about parking and garbage pick-up in the early morning hours. Mr. Pierson denied any such claims.

Mbr. Schmitt indicated that his questions had been addressed.

Mbr. Maffei indicated that he was abstaining from commenting and voting on the application due to limited access to the site during his visits.

Mbr. Nienstadt inquired about the ratio for handicapped parking spaces. Mr. Rosania indicated that it would be addressed by construction. Mr. Denzler confirmed that the six parking spaces for handicapped were adequate.

Mbr. Shaw had none and was satisfied.

Chr. Kuntz was also satisfied and had no further questions.

Ed Buzak sought clarification on the total number of spaces. Mr. Dykstra indicated 189 from the original approval, now a requirement of 92 with proposed 61 to be built and 128 to be banked. The aggregate of the number remains unchanged.

Ed Buzak, Board Attorney provided a recap of the conditions of approval to include lighting improvements of shielding existing lighting or installing new lighting, temporary access to rear access of the building for emergency purposes, agreement between property owner and township for triggering details of parking spaces construction sequence, map of spaces consistent with approval of parking spaces to incorporate a process for parking determinations and sequencing consistent with occupancy.

Mbr. Filauro inquired if a restriction existed for hours of operation for trucks as it relates to the residential neighborhood. Mr. Henshaw didn't recall a restriction being in place. Mr. Denzler confirmed that the noise ordinance is in place from 7 a.m. to 10 p.m. that is consistent with the NJDEP guidelines.

Mbr. Filauro suggested that something be put in place. Mbr. Nienstadt mentioned that something similar existed at the A&P. There was further discussion regarding garbage trucks. Nick Rosania mentioned complaints would be addressed by health. Mr. Henshaw voiced interest in cooperating but concern that a complaint at a neighboring property may cause confusion to result in an incorrect violation. The applicant's attorney deferred to the Board Attorney on this matter. Mbr. Shaw commented that any trucks can cause a problem and that it exists most frequently in the summer when windows are open. Mbr. Shaw further stated that a warning from the police usually put an end to it. Mbr. Henshaw indicated that applicant would work with the board but it was problematic. Mr. Buzak indicated that it would be addressed in the resolution.

A motion to **approve** this application with conditions was made by Mbr. Buie, seconded by Mbr. Shaw and approved by the majority of voting members.

ROLL CALL: Ayes – Buie, Shaw, Filauro, Nienstadt, Schoner, Husa, Kuntz
Abstain - Maffei

**PSP/FSPV 09-07 LLD, LLC
Block 51005 Lot 3
300 Route 46 West, Mosswood Trail, Lakewood Drive**

Ted Einhorn, Esq. of Einhorn & Harris (165 East Main Street) represented the applicant and provided a recap of the prior public hearing that was held on October 28, 2009.

Ordinance requirement for parking has become more restricted allowing 1 space per 65 sq. ft. Mr. Einhorn also referenced Mr. Denzler's report regarding a portion of the building being on Mosswood Trail. Mr. Einhorn stated that a portion of Mosswood Trail had been vacated by the municipality and another portion of Mosswood Trail had been deeded over by Lake Arrowhead to cover this encroachment in 1998.

Luciano D'Amato, principal of LLD, LLC (300 Route 46) was sworn in and testified. Mr. D'Amato testified that only in December has parking been tight. In busy situations, Lake Arrowhead provides parking. Testifying that the busy season is November and December, slowing down again in January. The outdoor deck will be used for the summer months and would have no entertainment. Mr. D'Amato also testified that no complaints regarding noise or smell have been received from the neighbors.

Peter Rand, resident (40 Mosswood Trail) from Lake Arrowhead and member of the Lake Arrowhead Board up until recently was present, and sworn in. Mr. Rand represented that Lake Arrowhead would allow parking as needed provided they were notified in advance. The written agreement would be for two years initially and renewable afterwards. Mr. Rand testified that he did not foresee a problem as this has worked for the past ten years as a verbal agreement. Mr. Rand confirmed that insurance would be required by the restaurant to cover any claims resulting from parking on their property. Not to include any soil or tree removal.

Alfred A. Stewart, Jr. of Stewart Surveying & Engineering (25 Pine Street, Suite 3, Rockaway) was previously sworn and remained under oath. Using Exhibits A-6 Sheet 1 of 4, A-7 Sheet 2 Grading Plan, A-8 Sheet 3, A-9 Sheet 4, Mr. Stewart discussed the revisions beginning with lighting. Two proposed utility pole lights to be shut down would be a set at the main entranceway and a set near the new addition area along Mosswood Trail. The utility pole on the northerly portion of the site near Lakewood Drive is proposed to remain for illumination of the parking area. Additional revisions proposed included directional signs for handicapped parking, relocation of trash enclosure, relocation of curbing to accommodate the existing fence, roof leader system, HVAC condenser near the refuse enclosure, basement has been noted on proposed addition and additional shrubs have been added. Distance to Lake Arrowhead to proposed addition as well as existing building has been noted on the plans. Existing 67' and to proposed addition to the lake is 85'. The proposed deck steps back from the line of the building. No restrictions

with the NJDEP. Two additional parking spaces from Lake Arrowhead and proposed parking area, gravel area. Mr. Stewart testified to no ground water or storm water issues.

Louis Edward Barbieri, AIA, PP (123 East Main Street) was previously sworn in and remained under oath. Mr. Barbieri testified to being the architect for the applicant in 1998. The approved, signed and memorialized site plan dated February 16, 1999 was entered as Exhibit A-10. Top of page showing the revised rear elevation along Mosswood Trail to depict the exhaust fans and ductwork (Exhibit A-11). Bottom of page showing the existing and proposed basement plans along with the parking spaces under the proposed deck with one additional parking space to the side of the deck. Mr. Barbieri testified that if the outdoor dining deck was eliminated parking would be unaffected. This is due to the proposed deck being above grade.

Ervin Melendez, President of Classic Valet Parking (92 North Avenue, Suite 200, New Rochelle, NY) was present and sworn in. Mr. Melendez testified to being employed 11 years of the 12 years of business. With over 500 employees and to having over 150 locations, approximately 15% being restaurants. Other NJ locations are Sparta, Paterson and North Bergen. Mr. Melendez was accepted as expert witness. No drug testing or criminal background checks unless requested and paid for by the client. Limited to DMV checks. Mr. Melendez testified using an onsite site plan (Exhibit A-12) to maximize the lots available parking capacity. Proposed 85-87 parking spaces using piggy back parking with eight self parking spaces. All other parking spaces to be valet parking only with between 2-5 attendants. Emergency vehicles could use by a proposed fire lane.

Chr. Kuntz opened the hearing to the professionals.

Nick Rosania, Township Engineer spoke to the three prior concerns being lighting, parking and outdoor deck. Mr. Rosania stated that they have addressed these concerns by removing the obtrusive lighting, and installing shoebox fixtures, upgrading the parking leaving only a shortage of 4 spaces and adding parking beneath the raised outdoor deck. No additional comments at this time.

Bill Denzler, Township Planner had a few additional questions regarding the parking calculation being wrong and received clarification that there are three parking spaces without valet parking. Mr. Denzler stated that valet parking at SOGO restaurant has been successful and works well and that they also have outdoor dining.

Ted Einhorn, Esq. clarified proposed parking that there would be 62 patron spaces and 8 employee spaces onsite. With an additional four offsite, 2 on the easterly side of Lake Arrowhead and 2 from Lake Arrowhead totaling 74. Mr. Denzler confirmed and referenced the vacated portion of Mosswood that was not reflected on the site plan and would have to be revised. Existing steps are in the ROW without proposed changes. Lake Arrowhead conveyance is for the building and the stairs. Mr. Denzler had no further questions.

Chr. Kuntz opened the public portion of the hearing to the public for comments.

Amy Plyshtin, resident (18 Mosswood Trail) was present, previously sworn and remained under oath. Mrs. Plyshtin testified that all her concerns had been addressed by the applicant regarding the additional two parking spaces. Ms. Plyshtin had no further concerns or objections.

Chr. Kuntz asked for other members of the public and seeing none, closed the public portion of the hearing.

Chr. Kuntz opened the hearing to the board members for comment.

Mbr. Schmitt inquired about the parking under the dining deck and voiced concerns about the noise to patrons from vehicle engines. Applicant confirmed that the spaces under the deck would be for employees only. Mbr. Schmitt commented that the plan was good and had no further questions.

Mbr. Maffei commented on the improvements over the last plan and that the shrubbery is a good idea. Mbr. Maffei suggested investigating a parking arrangement with the billiard place, which is closed during the restaurants busy hour. Due to the narrowness of Mosswood, Mbr. Maffei also suggested no parking signs.

Mbr. Nienstadt had no questions but agreed with Mbr. Maffei that the revisions were a great improvement.

Mbr. Shaw commented on parking on the street. Mr. D'Amato indicated it is not their employees or customers parking on the street. Those parking on the street are from Lake Arrowhead.

Mbr. Schoner spoke to potential perpetual problem on parking. Mr. Melendez spoke to parking overlapping cars beneath the deck to remain stationary. Spoke to the differences in quantities of spaces and what it would be without valet parking. Mr. Barbieri spoke to there being differences in parking requirements from ten years ago. Mbr. Schoner had no further questions.

Mbr. Filauro commented on parking in the ROW and if changes on 47, 46, 45 and 44 would eliminate the parking spaces. Mr. Einhorn confirmed that the state could eliminate parking but that the four spaces would not be a problem and reiterated that the outdoor dining is seasonal. Mbr. Filauro inquired about the frequency of valet parking. Mr. D'Amato indicated that valet parking has not been used. In the past, during the peak parking times, a restaurant employee directs the traffic. Mr. D'Amato indicated that the peak holidays are Valentine's Day, Mother's Day and the week before Christmas. Mbr. Filauro stressed

the concern for noise. Mr. D'Amato responded that there would be no music or party reservations on the deck. Applicant agreed to no parties on the deck as a condition of approval.

Mbr. Buie commented on the improvements to the plans. Mbr. Buie stated that any parking or reservation trouble would resolve itself but voiced more of a concern for the neighbors, foot traffic and location of handicapped signage. Stressed overall the revisions were a big improvement, with the appearance to the neighbors and handicapped access.

Mayor Husa commented on parking concern and sought clarification on number of parking spaces. Mayor Husa stated that Mosswood Trail should be a one way street. Mr. Einhorn responded that the agreement with Lake Arrowhead for four spaces would be for two on their lot and two on their easterly side totaling 75 without outdoor dining and 82 with outdoor dining. Mr. Denzler confirmed. Mr. Einhorn stated the variance is being requested for a maximum shortage of eight spaces. Mayor Husa stated that a shortage of eight parking spaces is substantial.

Chr. Kuntz commented that the applicant did a great job in the revisions and inquired about Mr. Rand's position on the board. Mr. Rand indicated that he's speaking on behalf of the board but is not currently a member of the board but that his wife is. Only one member of a household can be a member of the Lake Arrowhead board. Chr. Kuntz commented that it speaks well of the plans that although notified, the 200 ft. list residents were not present. Mr. Buzak confirmed that the agreement with Lake Arrowhead would only be for a two year period with the ability to renew but without obligation. Chr. Kuntz received confirmation that the large oak tree would not be removed.

Ted Einhorn, Esq. requested the right to keep the 1993 approval that predated the scarce resource ban for purposes of going to COAH and suggested resolution language, as a condition of approval, to nullify the 1993 approval upon applying for building permit.

To include language with an objective standard that triggers that can be included in the resolution.

Ted Einhorn, Esq. provided a summation. There was discussion regarding an objective standard to be used for triggering a number of people that triggers valet parking. Ed Buzak, Esq. provided a recap of the site plan with variances. Summary of the conditions of approval to include valet parking to be provided based upon an objective standard, parking under deck, reservations to be taken for interior tables only, no party reservations or music on outdoor deck, agreement to be provided for four spaces with Lake Arrowhead with ability to renew clause, large oak tree on Lake Arrowhead to remain, use of 1993 approval to remain for COAH with one approval to void the approval of the other not interested.

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

ROLL CALL: Ayes – Buie, Filauro, Nienstadt, Maffei, Schoner, Husa, Kuntz

NEW BUSINESS

Bill Denzler, PP distributed the Highlands Element Draft Master Plan Supplement along with the Highlands Area Land Use Ordinance Supplement for review. Ultimately the Planning Board will be adopting a separate Highlands Element of the Master Plan. The document addresses the various goals and objectives of each of the various highland resources. Recommended that the board hold a separate hearing to obtain public comments. Comments from the public hearing will then be submitted to the council and to determine when the Planning Board will adopt the plan. Until the process changes, we will follow the current process and deadlines. The Housing Plan has a June deadline and is a separate document that will be provided from the Highlands Council. Highlands increases the existing 150' buffer to 300' buffer. Bill Denzler informed the board that the file was available in pdf form if interested.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date adopted