

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

June 23, 2010

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, June 23, 2010. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Chairperson Filauro presided.

Secretary Probasco read Notice of Public Meeting.

Roll Call: **Present** – Mayor Hussa, Chr. Filauro, Vice Chr. Lou Maffei, Glenn Buie, Marilyn Kuntz, Don Kuser, Pete Nienstadt, Kurt Schmitt
 Absent – Jim Schoner
 Professionals present – Tiena Cofoni, Esq., Nicholas Rosania, PE, William Denzler, PP

MINUTES

May 26, 2010

Motion to adopt the minutes as amended 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 June 2, 2010) 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 May 28, 2010) subject to the availability of funds, was made by Mbr. Buie, seconded by Mbr. Kuser and unanimously approved by all Members present and able to vote.

CORRESPONDENCE

Chr. Filauro referenced all correspondence received from First Energy regarding encroachments and asked the Engineer to comment. An article on Developers converting Age Restricted Housing was also referenced and would be discussed under New Business.

PROFESSIONAL COMMENTS

Nicholas Rosania, Township Engineer stated that First Energy may have trouble somewhere with wires and that we will continue to watch it in our area. There was a similar issue on Rosewood with shade trees that were cut down. Referenced his monthly report and otherwise stated there was nothing unusual to report. Chr. Filauro inquired about tree cutting near the high tension wires. Nick responded that they are within their rights if they remain within their easement area.

William Denzler, Township Planner mentioned that in regard to Affordable Housing, the S1 was passed in the beginning of June by the State Senate. It was tabled by the State Assembly for revisions and will not be adopted until later in the summer.

Mayor Hussa had no comments.

PUBLIC HEARINGS

**PSP/FSPV/SM/TR 10-01: Ciottariello Group Holdings
 Block 40102, Lots 5
 301 Palmer Road**

Tiena Cofoni, Board Attorney confirmed to Chr. Filauro that proper legal notice had been provided for this application.

Ted Einhorn, Esq. of Einhorn & Harris (165 East Main Street) represented the applicant. Applicant is requesting Preliminary/Final Site Plan approval to for a permitted use of a landscape business to construct a garage with storage yard requiring relief for bulk variances, soil movement, tree removal and parking. The total property of 3.1 acres will have 1.1 acres of useable land after all the environmental constraints.

The applicant, Giuseppe Ciottariello (140 Mountain drive, Randolph) was present and sworn in. Mr. Ciottariello is co-owner with spouse of a landscaping business. The business is primarily residential with approximately 10% commercial (Westinghouse). Most of the equipment that would be stored on the premises would be backhoes, front loaders and mini excavators. No fueling or repairs will be done onsite. Material storage would consist of gravel, quarry process, stone dust, mulch and top soil. Hours of

operation vary from 7 a.m. to 8 p.m., Monday through Saturday. No hours of operation on Sunday. No chipping or grinding on site. No customers on the site. Currently three employee's onsite. When business was good there were approximately 14 employees.

Chr. Filauro asked the board members for questions.

Mbr. Kuser inquired about warming up of equipment onsite during snow plowing. Giuseppe replied 'no' and that Westinghouse would be used. No business, Nothing there.

Tiena Cofoni, Esq. clarified and Mr. Ciottariello confirmed that there would be no equipment in winter but in the spring there would be.

Mbr. Buie interjected about onsite fueling. The applicant testified that the cost for fuel is the cheaper at the gas station and often will drive the backhoe to the station. When fueling onsite it will be from a tank on the truck.

Mbr. Nienstadt inquired about the truck is owned by the applicant. Mr. Ciottariello indicated that he did own it and would be stored onsite.

Mayor Husa inquired about equipment repairs onsite. Applicant stated that minor repairs would take place in the garage such as welding.

Tiena Cofoni, Esq. clarified about the fueling and the onsite repairs. The applicant indicated that the fueling on the site is from a fuel tank on the Mack truck and repairs could take place in the garage.

Mbr. Buie inquired about prior violation and if the fine has been paid. Mr. Denzler responded that the matter is in municipal court and the fine is subject to the outcome of this hearing. The applicant had been issued a summons and the violation was appealed. The Board of Adjustment determined that the applicant should apply to the Planning Board to make the site in conformance.

Chr. Filauro opened the hearing to the professionals.

Bill Denzler, Township Planner inquired about other landscape equipment being stored on the site. Mr. Ciottariello confirmed that his son and daughter may also store equipment on site. The number of pieces will vary. The children's equipment would be on the site at the same times and seasons as the applicant's. The applicant confirmed that the hours of operation, only minor equipment repairs and no fueling on the property could be conditions of approval.

Nick Rosania, Township Engineer had none at this time.

Steven Ira Smith, Professional Planner of Jaman Engineering (320 Route 10 West, Randolph) was present, sworn in and accepted as an expert witness. Mr. Smith provided an overview of the site and its constraints.

Exhibit A-1 Site Plan, Key Sheet (Sheet 1) The property consists of 3.1 acres.

Exhibit A-2, Existing Conditions Plan (Sheet 2) Wetland location shown in blue. Buffer shown in orange. With a 150 ft. buffer between blue and orange. With a 50 ft. buffer on the northerly part of the site. 300 ft. buffer for the riparian barrier shown in green. Flood plain is not colorized. 135,851 sq. ft. approximately 3.1 acres, of which only 1.1 acres remains unaffected by the wetland buffers or riparian zone.

Exhibit A-3 (Sheet 3) Grading, Utility and Traffic Plan. Existing paved area and entrance off of Palmer Road to remain (shown in orange). The existing access to the site is also the proposed access to the site. Gravel driveway and gravel parking area to include proposed bins (shown in yellow). Twelve storage bins constructed of concrete block to contain the materials located to the right of the building. Swales to force the runoff to the bio detention basins (shown in green). Water from bio-retention basin will seep into the ground as well as reducing the run-off. Dry wells are hooked up to the roof drains to accommodate the state recharge, handling the water quality for the state standards. Proposed building (shown in blue) with two garage entrances on the west, only one on the east. There will be circulation around the building. Mr. Smith reviewed the relief being sought. Flood hazard permits will be required. Relief from the 300' Riparian zone. Reduction of wetlands buffers from 50' to 25'. Proposed lighting of 175 watt metal halide lights mounted at a height of 12'. The lights have shoebox design with shielding and no exposed light source. The elevation of the road is higher than the site. With the lights being mounted at 12', the lights will be at the height of the road. Three parallel parking spaces on the side of the building for passenger vehicles or small trucks. These designated parking spaces will not be for parking the large equipment. Mr. Smith testified that the proposed would be in compliance with MCSCD soil erosion plan and will require MCSCD approval. Proposed to include soil sediment filter fence will be installed on the lower side of the property, crushed stone blanket to keep soil out of the road as well as, soil stock piles.

Exhibit A-3 (Sheet 6) Landscape Plan has a typo. To the left of Palmer Road, reads 20 PA and should read 20 PS.

Exhibit A-4 (Sheet 7) Tree Location & Removal Plan. Reviewed the vegetation and landscaping plans. 17 Norway spruce proposed to be planted 10' on center at a height of 6'. In between Palmer Road and the gravel area are deciduous trees. No additional clearing on the northerly side which abuts the railroad. The westerly side is a wooded area that will not be disturbed. Tree Removal Permit to remove 36 trees 4" or larger in this area. Removal of the dead or diseased trees will allow the remaining trees to become healthier. Existing evergreens of approximately 125' will remain. Additional Norway Spruce will be used as infill and then becoming at the NJDEP's preference, Eastern White Pine.

Steve Smith referred to Bill Denzler's report dated June 18, 2010 and the variances sought by the applicant. **Front Yard Setback** variance for 63' where 75' is required. In order to provide adequate circulation around the building, the 15' driveway around the building will require pushing the building

forward on the site. An underground detention basin is not possible based upon the elevation of the selected location. The proposed 60' long building will consist of 4,800 sq. ft. Both the building and parking area sit considerably lower than the road. **Tree Removal** of 35 trees. **Soil Movement** will consist of 1,100 cubic yards of soil with an unknown destination. Location to be submitted to the Township Engineer, if required by the board. **Fencing & Special Plantings/Landscaping** proposed to the easterly and southerly sides of the property. The westerly side has Mill Brook and the northerly has the railroad. Steve Smith stated that a fence is not necessary for this type of use based upon the location and difference in elevation. There are condos across the street. **Gravel versus Asphalt** is proposed as a better use for heavy equipment in and out of the storage yard unlike asphalt for a residential area. Only pavement at the entrance is proposed. NJDEP doesn't consider gravel more impervious. More impervious coverage will assist with the drainage and recharge. No curbing or pavement. Maintain the integrity of the pavement. Dust control measures will be in place during construction.

In the professional opinion of the applicant's planner, the variances can be granted without substantial detriment to the public good and they will not substantially impair the intent and purpose of the zoning ordinance.

In additional testimony responding to the Planner's report, Mr. Smith stated that the lights will be shielded. Additional landscape screening could be provided if the fence is not required by the board. Applicant could meet with Bill Denzler to address. Trees will be planted 10' on center. Township Planner's report suggested landscaping on both sides of the driveway entrance to prevent parking at the entrance of the site. Applicant will do something to prevent this but ultimately under NJDEP jurisdiction.

Chr. Filauro opened the hearing to the professionals.

Bill Denzler, Township Planner inquired about fluid drips from the equipment and impact on the detention basin along with site pollution. Steve Smith responded that maintained equipment is not an issue. Periodic inspections of the onsite gravel can be performed to determine if any leaks exist. If no fence is required by the board, then more evergreen landscaping should be added along the front, as deciduous trees will not prevent adequate screening. Evergreens to be added along Palmer Road and eastern side. Improvements for primary structure to get going as soon as possible, as storage will continue to exist. Time lag to be addressed by approval of NJDEP. Building permit application to be made no later than 30 days after receiving NJDEP approvals. Building construction shall be commenced within 90 days of building permit. All of the aforementioned is "weather permitting".

Nick Rosania, P.E. inquired about the finishes on the building. Applicant indicated that it would be a steel building with trim but color not selected yet. Lighting will not be on all night long and there will only be one light in the rear of the building. Township Engineer stated that the alley around the building to be maintained (as a condition) for emergency access and not used as storage. Typical conditions will apply to soil movement and a bond will be required beforehand.

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

Chr. Filauro opened the hearing to the board.

Mbr. Buie inquired about the preservation of the swales in gravel with heavy equipment going in and out. Steve Smith responded that approval by the board would lock the applicant into maintaining the conditions of approval. Applicant would maintain or regrade, if and as required. Southeast corner to include additional landscaping to provide screening when driving by. Discussed the proposed sewage, injector pump and backflows. Nick Rosania, P.E. added that check valves in the equipment are part of the plumbing permits. Mbr. Buie voiced concern regarding aprons on the driveway and being maintained after construction. Area of outside storage and delineation of the equipment storage and location as accepted. Bill Denzler, P.P. responded that **general conditions as it relates to the landscaping business and remains functional** could be added and addressed as required. Landscaping to start beforehand.

Mbr. Kuntz inquired about possible soil contamination and spoke to concerns for quantity of equipment. Steve Smith added that of the 30 pieces, 10 were roll-off's, leaving 20 pieces of large equipment. Mr. Denzler indicated that it's been over 30 years in its current use and should not present a problem. Mr. Rosania added that any soil contamination would be addressed at the time of soil movement.

Mbr. Schmidt inquired about the building, removal of the existing accessory structure, bins and delineation of the line being maintained to avoid equipment creep. Noting that steel beams and telephone pole were present during site visit. **Construction debris to be removed.** Inquired about hydraulic lifts.

Mbr. Maffei inquired about the maintenance of the storm water maintenance program. The applicant has an obligation to maintain. Suggested providing a Knox box for fire department. Agreed with additional landscaping and no fence. Mr. Ciottariello replied that he had no intention of selling bulk material and there would be no storage of fuel and tanks.

Mbr. Nienstadt inquired if relocating the driveway was a consideration to avoid the transition area. The applicant's planner responded that this was considered but not a viable option.

Mbr. Kuser inquired about the building height and if it would be heated. Mr. Smith testified that the building height would be approximately 30' with 18' above the road, but the lights would be at 12'. The applicant indicated that there would be heat. Mr. Smith indicated that electric, telephone and gas are not reflected on the plans. The foundation would be constructed of interlocking concrete blocks.

The board attorney requested clarification regarding the landscaping to be performed. The applicant agreed that landscaping outside of the environmentally sensitive area, along the Palmer Road frontage and easterly property, would be complete within 30 days of the resolution of approval.

Mayor Husa inquired about the dust control methods and stated dislike for the whole aspect of the gravel. The applicant testimony argued that asphalt would not be practical or hold up under the 25 ton equipment traveling across it. State standards of compliance and stated that dust control methods would only be performed during the construction period. Mayor Husa inquired if retail was permissible and Bill Denzler replied that it was not. The applicant indicated that the building would be used for lawn mowers, tools and required landscaping items along with a small office.

Mbr. Buie inquired about ADA compliance being a requirement for visitor parking. Mr. Denzler indicated that it is not a public building.

Mayor Husa inquired about the need for a waiver. Bill Denzler replied that it is not a typical parking lot and will not have aisles.

Chr. Filauro commented that an equipment list should be provided. The Board Attorney stated that it would be helpful to the board but would not be limited to the equipment on the list. Chr. Filauro pointed out that there was no dumpster on the plan. The planner confirmed that a dumpster currently exists and would be added to the plan. Only dying or diseased trees to be removed. Any additional screening from the entrance to the east would be appreciated while traveling east on Palmer Road.

Chr. Filauro requested a recap of the conditions discussed. Tiena Cofoni, Esq. stated that the conditions would include; days and hours of operation, only minor repairs will be conducted inside the garage, no fueling of vehicles, NJDEP approvals, soil erosion and sediment control, permits for tree removal and soil movement, soil location to be provided before soil removal along with other soil related conditions, storm water maintenance manual will be expanded regarding periodic inspections of gravel parking lot for spills and maintenance of the swales. Applicant will work with board planner to enhance the landscaping buffer along the southeast boundary and areas where possible. Applicant will apply for building permit within 30 days of receipt of NJDEP approvals and building construction shall commence within 90 days of building permit, weather permitting. Lights will be off after business hours with the exception of one security light. Emergency access around the building will be maintained. Equipment storage will be limited to the landscaping business. Landscaping outside of the environmentally sensitive areas (specifically Palmer Road frontage and eastern boundary) shall be finished within 30 days of the adoption of the resolution to screen the existing outside storage. No construction debris will be stored on the site. Entrance gate will be locked after hours and the applicant will add a Knox Box for emergency access. Visitor parking signs shall be posted by the three parallel parking spaces along side of the building. Plans shall be revised to show the dumpster location. The applicant shall submit an equipment list to the board professionals to provide an idea of the type of equipment that will be stored on the property. Barrier along the driveway area. Removal of onsite box container.

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

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

Chr. Filauro announced that the board would take a brief break. After ten minutes, the meeting resumed and Chr. Filauro announced that the next applicant would have thirty minutes for their public hearing.

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

Mbr. Buie recused himself for the record. Michael Rowland, Esq. announced that a court stenographer had been retained and was present to document the public hearing. Mr. Rowland also indicated that the professionals had been previously sworn before this board.

Michael C. Rowland, Esq. (4 Second Avenue, Suite 202) represented the applicant. Applicant is requesting Preliminary/Final Site Plan approval to build a total of 5 residential housing units requiring soil movement and tree removal.

Marc Walker, P.E. of Dykstra Walker (21 Bowling Green Parkway, Lake Hopatcong) was present and accepted as a professional witness. Previously sworn, Mr. Walker remained under oath. Marc Walker provided engineering testimony using a colorized Site Layout Plan (Exhibit A-16) dated June 23, 2010.

Mr. Walker referred to the Township Engineer's report dated June 21, 2010. Mr. Walker testified that all issues have been previously addressed with the exception of the lighting. Light fixtures that are in question, private not public light fixtures. There is a small association that would be responsible. The lights would be located between units one and two, three and four and one down by the common parking area by Orchard Street.

Marc Walker referred to Township Planner's report dated June 21, 2010. Stating that the impervious coverage is to remain the same. Three light pole fixtures to serve as exterior lighting for the garages. Light fixtures to be standard residential. Deferred Item #5 architectural comments to be addressed by Mr. Korinda.

Chr. Filauro opened the hearing to the professionals for comments.

Nick Rosania, P.E. had none.

Bill Denzler, P.P. had none.

Tiena Cofoni, Esq. inquired about the comprehensive drainage report and calculations shown on the plan. Mr. Walker explained that the zero % net fill requirement for stream encroachment is also a requirement of NJDEP approval now. NJDEP used to have a 20% net fill requirement but it is now the same as Denville.

Lawrence Korinda, Architect (550 West Main Street) was present, sworn in and accepted as an expert witness. Mr. Korinda used Exhibits to address items in Bill Denzler's Planning Report dated June 21, 2010. **Exhibit A-17** Garage Level Plan to show that the primary change is that the access to handicapped parking is shortened. Clarified room uses in the affordable housing unit. Opposite stairs is kitchen; straight ahead in the back is the 10'4" x 10' sitting area with the 10' x 10' bedroom to the left. Decks or patios in the recessed areas are provided and do not protrude further than the rear line of the building. **Exhibit A-18** Second Floor Plan shows a rear bonus room of 11'4" x 14' and a front bedroom of 11'4" x 11'. All the living needs of the affordable unit are met by a handicapped individual with the second floor being used by a care giver. A handicapped bathroom is located in the corner on the first floor.

Chr. Filauro opened the hearing to the professionals for questions.

Bill Denzler, P.P. inquired about the unit having two kitchens. Larry Korinda responded yes but that one would be removed.

Nick Rosania, P.E. inquired about the aesthetics as per the judge. Larry Korinda responded that continuity is added to the front of the units by having a side entrance to the affordable housing unit.

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

Chr. Filauro inquired about the façade, discussion on the decks with railings (missing on the drawings) instead of the originally intended patios. Single egress and shared entrance space was discussed. There is no rear exit on any of the units. A small 3'x4' area can be used as a balcony area if the board would like. The deck replaced the original patio area due to the flood area and updated drawings will be provided.

Chr. Filauro opened the hearing to the board members.

Mbr. Schmidt had none at this time.

Mbr. Maffei voiced concern regarding having an alternate means of egress in case of emergency. Second concern about the shared common entrance way between the affordable unit and market rate units. Suggested moving the doorway to the front where the window is located. Mr. Korinda explained that doing so would not leave enough room for a wheelchair. The intent was to blending the units versus a visibly noticeable smaller separate unit.

Mbr. Nienstadt had no questions.

Mbr. Kuser inquired about the market rate windows versus the affordable housing unit window. Larry Korinda explained that it's for the bathroom, a smaller window with flower box.

Mbr. Kuntz inquired about parking spaces. Parking with island not in front for the affordable housing similar to the others. Walker indicated that the parking area for the affordable unit would be in the ROW. Rowland spoke to the Judge's order. Just one parking space would violate the front yard setback and ROW issue. Parking was moved to Orchard to alleviate the boards concern regarding parking in the ROW to comply with the zoning ordinance. Mr. Rowland stated that there is an inconsistency between Mr. Korinda's and Mr. Walker's plans and that the applicant has no problem adding a door and a 3'x4' deck to the affordable housing unit. Similar to the market units, there will be no access to the yard.

Mayor Husa requested clarification regarding encroachments of the ROW. Mr. Walker replied using the original testimony and board objections as it relates to the building, parking and setbacks. The Board Attorney provided clarification that the parking is within the garages for the market units and that there is no garage for the affordable unit. Mayor Husa commented that the Judge's decision was a rejection and consistent with the boards decision. Mr. Rowland replied that the Mayor's comment was false, that the Judge had reversed the decision for denying the approval, rejected the reasoning for denying the approval and that only two issues were valid (i.e. parking, and location of affordable unit) and denied Chr. Filauro interjected that we would move on. For the record, Mayor Husa referenced that a title search was performed. Mr. Rowland was not aware of such search. Tiena Cofoni, Esq. explained that the applicant's use of the pavement beyond the property line was out of necessity only. The affordable housing unit is approximately 1,740 sq. ft. and the 1,865 sq. ft. for the market rate units.

Chr. Filauro opened to the professionals and then to the board members for further comments and having none, requested a recap of conditions from the board attorney.

Tiena Cofoni, Esq. provided a recap to include NJDEP Stream Encroachment Permit, MCSCD Approval, a firewall between attic and roof, COAH affordable unit to comply with low income regulations, parking spaces in flood hazard area, landscaping to be reviewed by Township Engineer, homeowner association

documents to be approved by township attorney. Upstairs bedroom unit will be legally abandoned if the lower unit of the affordable housing unit is occupied by a handicapped individual. Affordable unit to have ADA access from the parking area, only one kitchen and a 3' x 4' deck without rear access. Railings to be added to the drawings. Handicapped parking for affordable housing unit will be addressed as dedicated occupant parking to be located between the two spaces for the affordable housing unit but will accommodate handicapped persons.

A motion to **approve** this application was made by Mbr. Nienstadt, seconded by Mbr. Maffei and approved by the majority of voting members.

ROLL CALL: Ayes – Nienstadt, Maffei, Kuser, Filauro
Nays – Kuntz, Husa
Recused - Buie

NEW BUSINESS

Chr. Filauro stated that due to the time constraints, any new business or discussion of distributed correspondence will be deferred to the next board meeting.

Chr. Filauro reminded the board members and professionals that all information should be submitted to the board secretary by the Wednesday prior to the hearing. This is necessary to enable sufficient time for distribution to the applicant, board members and professionals to allow sufficient review time.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date adopted