

TOWNSHIP OF DENVILLE  
PLANNING BOARD  
MINUTES

**November 9, 2011**

The Planning Board of the Township of Denville held its regular meeting on Wednesday, November 9, 2011. 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** – Chr. Sue Filauro, Vice Chr. Lou Maffei, Mayor Ted Husa, Peter Nienstadt, Marilyn Kuntz, Gene Fitzpatrick, Glenn Buie, Mark London  
                  **Absent** – Kurt Schmitt  
                  **Professionals present** – Edward J. Buzak, Esq., William Denzler, PP  
  John Ruschke, PE

**MINUTES**

**August 10, 2011**

Motion to adopt the minutes as amended was made by Mbr. Nienstadt, seconded by Mbr. Mayor Husa and unanimously approved by all members able to vote.

**CORRESPONDENCE**

Chr. Filauro referenced communications from The Buzak Law Group. Including the Open Public Meetings Act, Briar Rose Litigation Update, Woodmont Properties Litigation Update and the NJ Planner. Stating the litigation updates will be discussed after the Public Hearings under Old Business.

**PROFESSIONAL COMMENTS**

Bill Denzler, Township Planner stated he had nothing specific for this evening.

John Ruschke, Township Engineer had none at this time.

Mayor Husa spoke to working with the Township Engineer to identify and implement any flooding solutions possible. Stating that some possibilities may assist with flooding up to a 50 year flood. After that it will be a regional approach and will require working with Assemblymen and Mayors and Engineers from other towns. This will be the focus in the coming months.

Chr. Filauro commented on the unbelievable time everyone has been through with the recent flooding and power outages resulting from the recent storms. Inquired if the board members have any questions to the professionals. There were none. Chr. Filauro asked for professional observations and inquired about homes condemned in town. John Ruschke responded that a great deal of information was being collected in order to properly document the flood. Inquiries and outcries from residents regarding FEMA buyouts, ways to protect their homes and general questions. Stating that the Township of Denville has an extensive flood hazard area ordinance and there are many homes with a substantial amount of damage. Chr. Filauro spoke to the devastation being heartbreaking and asked if there is anything that the board can do in the land use element of the master plan to act on. John Ruschke responded that there wasn't anything at this time but that the Township is looking into that, studies are being performed and recommendations will be made if possible to mitigate the impact. Bill Denzler responded that flooding issues can be discussed within the master plan and coordinated with the Mayor's and

Engineer's offices. Stating that tonight's application is an example of what can be done to address flooding issues downtown. Mbr. Buie inquired about the height benchmark used in town. John Ruschke responded that at this point in time the information is documented during field surveys on the structures. The information can be tied in with GPS where monuments do not exist. For economics purposes, elevations have not yet been performed. The 100 year flood is well documented. Mbr. Fitzpatrick inquired about necessary changes, elevating certain homes and what can be done proactively at this time. Bill Denzler responded that there is an ordinance in effect and in addition to documentation being required, when rebuilding the first floor is required to be one foot above the flood hazard level. In addition, the township has a zero net fill standard, basement flow through standards and the boards and engineer must look at all these things. Mbr. Fitzpatrick commented that it seems that if a home is rebuilt that it would have to be rebuilt above this level. Bill stated that hundreds of permits have been issued, some for substantial repairs and others were basic repairs. Mbr. London commented that the Morris County Planning has a brand new set of aerial photographs and the County GIS system was working on a new set of floodplain maps that would overlay the photography.

## **PUBLIC HEARINGS**

**PSP/FSP 11-04: Figatner Family Ltd. Partnership  
Block 50202, Lot 4  
111 Bloomfield Avenue**

Jason Rittie, Esq. of Einhorn, Harris, Ascher, Barbarito & Frost (165 East Main Street) represented the applicant, Figatner Family Ltd. Partnership. Applicant is requesting a waiver of preliminary and final site plan approval to elevate existing dentist office building six additional feet. Applicant will be requesting a refund of fees from the governing body. Applicant proposes to elevate the existing one story building to prevent damage due to severe flooding. Mr. Rittie stated that the application was submitted as preliminary and final site plan but that the applicant is actually seeking a waiver of submitting a new site plan by proceeding using the existing 1998 site plan with new architectural drawings. Further stating that the application would be consistent with NJDEP regulations and qualifies for Permit By Rule.

Square footage of the premises of 81,457 and no change in the footprint of the building, only change is the approximate 6' building height increase. The lowest habitable floor is not less than one foot above the NJDEP adopted Flood Hazard Area Design Elevation.

The Board Attorney clarified to the board that the applicant was not seeking a waiver of site plan approval and only sought waiver of new site plan submission. Requesting the professionals to comment. The Township Planner commented that the application was to raise the existing building 6.3' and other than a footprint change by elevating the building there were no site plan changes such as parking or circulation. Stating that there were no concerns with granting such waiver, based upon the limited develop ability of what was proposed. The Township Engineer concurred with the Township Planner and stated that the key documentation for this application is the architectural aspect. Stating that they would be ensuring that the correct elevation is used, that the flood vents are adequately sized and what changes are being done in the provided architectural.

A procedural motion to approve waving the requirement of a submission of a new site plan was made by Mbr. Buie, seconded by Mbr. Fitzpatrick and unanimously approved by all members eligible to vote.

Roll Call: Ayes – Buie, Fitzpatrick, Kuntz, Nienstadt, Maffei, Hussa, Filairo

Mbr. Kuntz commented on having used the professional services of the applicant's architect. Mbr. Buzak provided that unless Mbr. Kuntz feels she is unable to view the application objectively, there is no conflict for her to continue to participate in the application. Nor did the applicant object to proceeding with Mbr. Kuntz's involvement in the application.

Thomas F. Graham, PE of Dykstra Walker Design Group (21 Bowling Green Parkway, Lake Hopatcong) was present, sworn under oath and accepted as a professional witness. Mr. Graham spoke to tying in to the benchmark that the State uses, the 1929 NJGD. Monument with known elevation exists. Use field survey to transfer the elevations onto the site. Property is at 505.2 elevation. The property is in the wedge created by Route 46 and Bloomfield Avenue. Bloomfield Avenue to the North. Rockaway River directly across the street. Route 46 is behind the property and the Den Brook is located just to the South. Testified using the current NJDEP Flood Hazard Area Map (Exhibit A-1). *State of NJ Dept. of Environmental Protection, Division of Water Resources, Delineation of Floodway and Flood Hazard Area, Rockaway River, Station A3000-89000 Den Brook, Denville Township, Morris County, NJ dated February 1986.* The Den Brook and Rockaway River are shown in Blue. The Flood Hazard Area outlined in Red and the Floodways (Rockaway and Den Brook) are outlined in Green.

Reference the Section 19-5.724h which provides, notwithstanding any other provisions of this subsection no development shall take place and no structure shall hereafter by Hazard Area unless and until a site plan shall have been submitted to the planning board for review and approval in accordance with Article 4 of this Chapter.

Flood Hazard Area and outside of the associated floodways of both the Rockaway River and Den Brook and activity falls within the jurisdiction of the NJDEP. Spoke to the special class, NJDEP – one of eight classes of Permit By Rule, meet the criteria. (1) inside the flood hazard area but outside the floodway. Stating that this project sits between the Rockaway River floodway and the Den Brook floodway. (2) raise elevation at least one foot above the hazard elevation, (3) raise above the foundation, (4) only disturbance within 20' of building – provided only subject to the activities and must be restored afterwards. Another requirement is that the crawl space must remain open for flood waters until they recede. Fully permitted as far as the state is concerned.

Current elevation is 508.7. Builder was instructed that the structure must be raised to at least 509.7, resulting in a 4.5' elevation change. The applicant is exceeding this and raising the building 6.3' to allow the plumbing and wires to be raised further for a total of 511.5.

Onsite existing parking spaces of 16 is less than required by ordinance. Six employees, 8 patients. The existing parking has satisfied the business for twenty years and with no expansion of the building, parking to remain the same.

Steve Bias, AIA (344 Route 46, Denville) was present, sworn in and accepted as a professional witness. Mr. Bias using the October 19, 2011 floor plan (Exhibit A-2), showed the proposed architectural plans for the applicant. Three doors to the building, main entrance, rear exit from mechanical room and side kitchenette door. Proposed vestibule to contain a new staircase and a handicapped lift to satisfy egress requirements. Existing door in kitchenette area on the west side of the building would be abandoned. The structure would be elevated by hydraulic jacks. The red line denotes the building roof line. (Exhibit A-3 - Sheet A2 Elevations).

Plans can be noted to reflect additional 14" on the stair rise to accommodate the difference. The architectural drawing will need to be changed and submitted prior to permits being issued. All mechanicals will remain on the main floor and only the conduit will be below the structure in the crawl space. The basement will remain empty. Building utilities are on the outside of the building. All HVAC will be located on the interior of the building. Ed Buzak inquired about the condenser location. Steve Bias stated that it exists at grade level now and will remain so. Air handling unit will be at the 511 elevation. Field storage oil tanks will remain outside at the lower elevation and anchored to the existing slab. Ed Buzak inquired about this being done a different way and relocated. Steve Bias indicated that it could be investigated. Mr. Rittie added that the client is already investigating elevating the tanks. John Ruschke spoke to some more practical suggestions regarding the buoyancy and possible condition regarding the tanks. Stating that elevating the tanks would be ideal. Mr. Rittie stated that the client would be open to working with the professionals regarding the oil tanks as a condition of approval. Mbr. Buie commented on possible conversion to gas from oil. Mr. Rittie responded that applicant is not prepared to make that decision on the fly and would defer to working with the professionals on a solution.

Jason Rittie made two requests. The first request was for the governing body to refund the application fee, if board is in favor could be a recommendation to the council. Second request, for immediate processing versus another thirty days. Ed Buzak stated that a memorialized resolution can be prepared and approval would be effective as of today's date but the appeal period would be only after the resolution is adopted and published notice of decision.

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

Chr. Filauro opened to the professionals and there were no further comments.

Chr. Filauro opened to the board.

Mbr. Buie inquired about the 1' above the flood hazard, (theoretical) and Mr. Graham responded. Mbr. Buie inquired about the back stairs egress and the roof overhang being sufficient as a covered canopy. Mr. Denzler responded yes, sufficient. Mbr. Buie inquired about seal tight and Mr. Bias responded to the track and motor (28 Bloomfield Avenue has one). Mbr. Buie spoke to the elevation of the 14" additional, 20" run for the stairs inquired. Mr. Bias responded that this remains to be determined. Mbr. Buie inquired about the fuel tanks. Lou

Figatner, (111 Bloomfield Avenue) responded to the last storm and that the 2/330 gallon side by side fuel tanks were not penetrated. The proposed would involve brackets to the four corners of the concrete pad, similar to a boat dock and would rise with the water 3-4' with a guide rail. Mbr. Buie had no further questions.

Mbr. Fitzpatrick commented on the NDEP and planner and engineer's approval. Hope to move it along and would like to see the applicant back in business as soon as possible.

Mbr. Maffei inquired about abandoning the stairwell by the kitchen area, Steve Bias thought a variance would be required for a SYS. Bill Denzler thought that there was sufficient room and only a canopy would be required. Would be a condition of approval if the applicant wanted to proceed in that direction.

Mbr. Kuntz had no further questions and commented that it would be good to have the applicant's business remain in Denville.

Mbr. Nienstadt inquired about the level of the water. Steve Bias responded that the water was above 3'6" foundation and to the bottom of the windows. All cabinetry had to be replaced on the interior of the building and the sheetrock was removed and replaced. Mbr. Nienstadt recommended the return of the fees.

Mbr. London thanked the applicant for coming before the board with a great project. And inquired about the flood levels and length of time to raise the building. Mr. Bias commented on the pedestrian friendly vestibule and precautions being taken. Stated the time was unknown, that trenches needed to be dug, holes in the sides of the building needed to be made. Several days just to set the steel before it gets jacked up.

Chr. Filauro inquired about adequate screening should something end up on the roof. Commenting on the ambitious project and the desire to see the applicant back in business as soon as possible.

Mayor Husa had no questions and thanked the applicant for their patience. Spoke to the allowance of a change in the elevation if required. Jason Rittie agreed and responded that the ability would remain. Mr. Graham added that if a level was included as a condition in the resolution that it be 1' above the hazard elevation being sufficient.

Ed Buzak spoke to waiver to the submission of the site plan plat, plans to reflect the elevation 511.5' or 1' above the flood hazard elevation whichever is greater, inclusive of the steps, outside door and vestibule, height of the oil tanks and condenser. To work with professionals to satisfy. Maintaining of the door of the westerly side will be a consideration of the applicant. Recommendation of the board to the council for a full or partial refund of fees. Recommendation of the board to proceed with the construction work prior to the memorialized resolution, provided that these conditions and other items such as the elevation, air conditioner and oil tanks are resolved.

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

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

## **NEW BUSINESS**

Chr. Filauro referenced correspondence received.

- Open Public Meetings Act (OPMA) Ed Buzak spoke to (OPMA) and the dialogue issue of whether a meeting occurs by board members through the use of technology. Emails to all board members was a dialogue considered as a meeting taking place. Utilization of private emails violates the OPMA. Whether it's personal or business email.
- Briar Rose Oral Argument – Ed Buzak did not want to expand beyond what was in the letter. However, the judge on the panel was previously a law division judge from Bergen County who had previous land use experience before being elevated to the Appellate Division.
- Woodmont Properties – Ed Buzak spoke to the unique application where an adjacent landlocked property tried to hone in the application as a condition of approval. The decision from Appellate Division upheld the decision of Judge Bozenelis.

## **OLD BUSINESS**

Chr. Filauro referenced the Master Plan Land Use subcommittee meetings and stated that discussions were successful and thanked the board members for their efforts. Bill Denzler confirmed that they went through various issues and came up with ordinance recommendations and would continue with the process as funds become available. Agreed that it worked out well.

Mbr. Kuntz referenced the township email addresses. OPMA dialogue emails exists regardless of personal or business email addresses. OPRA information request can expose all personal or

business related information in addition to township information. Board Secretary to revisit with administration.

**ADJOURNMENT**

Motion to adjourn.

Denean Probasco, Board Secretary

Date Approved: December 14, 2011