

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

June 13, 2012

The Planning Board of the Township of Denville held its regular meeting on Wednesday, June 13, 2012. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Chairperson Maffei presided.

Secretary Probasco read Notice of Public Meeting.

Roll Call: **Present** – Chr. Louis Maffei, Vice Chr. Glenn Buie, Peter Nienstadt, Marilyn Kuntz, Gene Fitzpatrick, Sue Filauro, Mark London, Kurt Schmitt
 Absent – Mayor Thomas Andes
 Professionals present – Edward Buzak, Esq., William Denzler, PP, John Ruschke, PP

MINUTES

April 11, 2012

Motion to adopt the *open session* meeting minutes as submitted was made by Mbr. Kuntz, seconded by Mbr. Nienstadt and unanimously approved by all members able to vote.

Motion to adopt the *closed session* meeting minutes as submitted was made by Mbr. Kuntz, seconded by Mbr. Nienstadt and unanimously approved by all members able to vote.

PURCHASING

Motion to pay vouchers submitted by The Buzak Law Group (dated May 8, May 16, and June 1, 2012) subject to the availability of funds, was made by Mbr. Filauro, seconded by Mbr. Buie and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by William Denzler and Associates (dated May 4, 2012) subject to the availability of funds, was made by Mbr. Buie, seconded by Mbr. Fitzpatrick and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Hatch Mott MacDonald (dated April 10, April 12, April 27 and May 25, 2012) subject to the availability of funds, was made by Mbr. Nienstadt, seconded by Mbr. Buie and unanimously approved by all Members present and able to vote.

RESOLUTIONS

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

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

Roll Call: Ayes – Nienstadt, Fitzpatrick, London, Maffei
 Nays – Kuntz, Filauro
 Recused - Buie

MS 12-02: **Linda & Walter Dlugolecki**
 28 Freeman Avenue
 Block 30501, Lot 44

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

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

**RMPSV/SM/SS 07-05: Bacala Group, LLC
382 Franklin Road
Block 21101, Lot 5**

A motion to **approve** this resolution of dismissal was made by Mbr. Buie, seconded by Mbr. Kuntz and unanimously approved by all members eligible to vote.

Roll Call: Ayes – Buie, Kuntz, Nienstadt, Fitzpatrick, Filauero, Maffei

PUBLIC HEARINGS

**APSP/FSP 12-03: 29 East Shore Road, LLC
Block 40901, Lot 1692
121 East Shore Road**

For the record, the Board Attorney stated that the legal notice provided by the applicant was sufficient to proceed with the public hearing.

Frederick Roughgarden, Esq. (350 Lafayette Avenue, Hawthorne) represented the applicant, 29 East Shore Road, LLC. Applicant is requesting amendment of the conditions of the minor subdivision approval detailed May 10, 2006 resolution. Mr. Roughgarden testified that the applicant is a contract purchaser of the newly created Lot 1692 and was not affiliated with the original property owner. The home was not built by the developer who originally appeared before the board for the subdivision.

Summarized the original application from the May 10, 2006 Planning Board resolution and the site plan. Original single family home was located on proposed Lot 1693. The dwelling was an older structure that would be kept and divide and create a new Lot 1692. The board understood and approved the two undersized lots that were created. They did not approve the variance for the preexisting dwelling, understanding that it was a preexisting non-conformity and if it was demolished, they would have to return to the board to rebuild. At the time, they did obtain approval to build in a flood zone from the State of New Jersey. Requirements included having no basement, complete flow through for the foundation. Imposed restrictions including the impervious coverage. Stated that the home that is on Lot 1692 is as-built and not the same as what was originally approved by the board. Seeking approval for some deviations between what was approved and what was built.

Frank Mariconda, Owner of Heritage Builders (316 Palmer Road) and a member of 29 East Shore Road, LLC. Mr. Mariconda was present and sworn under oath. With Heritage for seven years. Testified to having been approached by William Murray to purchase the home. Purchased the home, changed the plans with the architect, and submitted the plans to the building department for approval. The high water table makes the 6' deep dry wells impossible with hitting water at 18". Similar to the neighboring properties, the applicant proposed putting splash blocks out to allow for water recharge.

The home was built three months ago. The roof was finished around the time of Hurricane Irene. Testifying that there has been no pooling or run-off from the subject property or neighboring properties. The driveway was one of the last items completed. It was to be a grass paver driveway of cement pavers that allows for grass to grown between. Mr. Mariconda installed a macadam driveway based upon the appearance, price point of the home and neighboring properties. Industrial in nature. Stating that there was a hand written note on the plans and it was an oversight. Testified that in the four months that the driveway has existed there has been no water drainage issues or storm run-off. Stating that there has been no negative impact resulting from the deviations.

John Ruschke, Township Engineer inquired about the front porch. Stating that it needs to be addressed or the applicant will have to reappear before the board. Mr. Mariconda stated that the original 6' x 9' stoop was shown on piers. The applicant's interpretation of piers differs from what was shown. The stoop is floating with a small cement footing. The stoop is on a 12" gravel bed. A home of this price would not look right with a deck as a front porch. Referencing that the plans call for a porch on piles with no foundation under it.

John Ruschke, PE commented on the testimony. Stating that the porch is surrounded by masonry, representing fill in the flood zone. Stating that it is a violation of local ordinance, as well as NJDEP. It would also require NJDEP approval. Using calculations, the applicant will need to demonstrate that there is no net fill. Net fill is approximately 5 cubic yards. Would require a design change. Applicant agreed to compliance with the no net fill to meet the local and state requirements as a condition of approval. Mr. Ruschke referenced the dry wells and stated that test pits should have been performed prior to breaking ground to determine site constraints. Requesting an alternative be proposed, such as shallow piping or a rain garden. The applicant agreed to a rain garden in the corner of the property. The Township Engineer indicated it would also alleviate some of the zero net fill guidelines and went on to discuss the driveway. Referencing that the typical would be 5% and that the existing impervious driveway is at 7%. Stating that the NJDEP Best Management Practices guidelines call for overflow drains for heavier rain. The sandy soil should help in allowing for recharge.

Bill Denzler, PP inquired if all changes will require NJDEP approval, since the driveway and permits were previously approved. Fred Roughgarden, Esq. responded that his interpretation is that NJDEP approved the applicant to construct a single family home and driveway.

Edward Buzak, Esq. stated that the applicant is requesting relief from two provisions and that it is for the board to listen to the testimony of what the applicant presents they want to do. It is not for the board to decide how to solve the issues.

John Giammarino, AIA (Ramsey) was sworn under oath and accepted as an expert witness. Mr. Giammarino is the architect of record for the home constructed on Lot 1692. Stated that the modified site plan to make the home appear similar to the other homes in the neighborhood and more like a home on a lake. The home is 1,856 sq. ft. In his expert opinion with residential experience, Mr Giammarino agreed that a 6' dry well would not work with the high water table. Stating that the driveway is approximately 600 sq. ft. and with grass pavers that are 75% impervious, there is net loss of 150 sq. ft. Stated his opinion that grass pavers are difficult to maintain and do not look good if unmaintained. Based upon his opinion, no other homes in the neighborhood. Mr. Giammarino agreed that the rain garden would be a good solution and that the home has no negative impact to the surrounding area. The Board Attorney received clarification that the impervious area is approximately 450 sq. ft. and that the grass pavers would only gain pervious area of 150 sq. ft. Mr. Giammarino stated that there are no onsite conditions of storm water run-off on this property.

Mbr. Buie was not questioning the architect's qualifications but inquired about the architect providing storm water testimony. Mr. Buzak commented that drainage calculations are typically engineering expertise and not architect expertise. Mr. Giammarino commented that there are calculations on the plans and that the site will not support a 6' dry well. Mr. Ruschke commented that architects can provide limited drainage testimony. Further stating that he disagrees with the testimony, in that this site did have a storm water problem.

John Ruschke, PE stated that the mitigation onsite be to the maximum extent possible. Understanding that there are site limitations.

Bill Denzler, PP had no additional questions and concurred with the Township Engineer. Spoke to stormwater runoff being a great concern for the township.

Chr. Maffei commented on a specific type of grass paving grids that have trays in the ground, lined with gravel and then topped with grass.

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

Chr. Maffei asked for consensus from the board. Stating that the board shouldn't be re-engineering the project and that the applicant has more work. Mr. Buzak provided an overview of the considerations and alternatives of mitigation for the applicant and board to consider. Fred Roughgarden, Esq. stated that his client would like to request their application be carried without further notice.

Chr. Maffei announced to members of the public that this application would be carried without further notice to the August 8, 2012 meeting.

There was a brief discussion regarding the five year stream encroachment permit dated October 10, 2006, whether it had expired, was still in effect as well as the permit conditions. If the applicant is in violation of the conditions of the permit, they will have to be complied with and may require new NJDEP approval. Mbr. Fitzpatrick inquired if the rain garden would be sufficient to satisfy the issues of the porch and driveway. Mr. Ruschke responded that it would be more than what was originally proposed. Stating that similar to a dry well, a rain garden would detain the water and allow it to recharge the ground. The issuing agency monitors compliance of any issued permits. Ultimately, the construction official looks at the approvals. The applicant confirmed that the construction department issued permits on the plans that were submitted to the board.

OLD BUSINESS

Mbr. Maffei requested an update on the Woodmont litigation. Edward Buzak, Esq. provided a brief summary stating that there has been a change in Judge's. There has been a reschedule from May 18, 2012 for motion to dismiss to be heard on June 27, 2012.

There have been no new developments from Casa Bella. The Board Attorney stated that it is not the responsibility of the board to enforce resolution compliance. The information should be passed along to the appropriate official or if necessary to administration. Edward Buzak, Esq. went on to say that the resolutions of approval are supposed to impose conditions to address the myriad of things that come before the board. The resolution is to become the guiding document for everyone else in the municipality that deals with the implementation to govern everything else in the municipality. Chr. Maffei stated that there is no continuity. Boards change, administrations change and continuity is needed.

NEW BUSINESS

Mbr. Filaurio referenced the Master Plan and the need to work on a survey as a first step. Bill Denzler stated that there is nothing currently budgeted and mentioned that things change quickly and the revised version is not due until 2016. Mr. Denzler will work with the Chair and Administration to determine what provisions have been made. Chr. Maffei mentioned some more key issues such as signage or fast food restaurants could be addressed at this time.

Mbr. Buie referenced COAH. Ed Buzak referenced the Supreme Court has not scheduled oral argument in the regulation challenge. They now have denied a stay of the Appellate Division's decision that effectively reinstated COAH to function but there is no quorum of members. There is a staff and legally they exist on paper, but they are not functioning. Development fee forfeiture on July 20, 2012. Still in flux.

Chr. Maffei referenced having had success with a rain garden built on his own property. Commenting that he has had positive results.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date Approved: September 12, 2012