

**TOWNSHIP OF WEST MILFORD  
PLANNING BOARD**

**MINUTES**

**April 4, 2019**

**Regular Meeting**

Chairman Christopher Garcia opened the April 4, 2019 regular meeting of the West Milford Planning Board at 7:02 p.m. with a reading of the Legal Notice followed by the Pledge of Allegiance.

**ROLL CALL**

**Present:** Steven Castronova, Linda Connolly, Ada Erik (7:06), Warren Gross, Scott Leonescu, Geoffrey Syme, Chairman Christopher Garcia, Board Attorney Thomas Germinario, Board Engineer Paul Ferriero, Board Planner Jessica Caldwell.

**Absent:** Matthew Conlon, Douglas Ott, Glenn Wenzel, Councilman Luciano Signorino.

Chairman Christopher Garcia requested Scott Leonescu to sit on the Board for Douglas Ott and advised that a quorum was present to hold this regular meeting.

**PUBLIC PORTION**

The public portion was opened by Chairman Christopher Garcia. With no one present wishing to address the Board, the public portion was **closed** on a **motion** by Ada Erik with a **second** by Warren Gross.

**APPLICATIONS**

**NEW APPLICATIONS**

**LAZARA FERNANDEZ – EMILIO HERNANDEZ**

**Major Soil Permit PB-10-18-05**

Block 5006; Lot 3

117 Rockburn Pass; R-4 Zone

**Seeking:** Major Soil Fill Permit and such other variance relief as the Board deems necessary, so as to permit importing 1,350 cubic yards of soil for the purpose of landscaping improvements to the rear yard.

David Newkirk, P.E., engineer for the applicant, Lazara Fernandez-Emilio Hernandez, was sworn in by Thomas Germinario, Planning Board Attorney, and was accepted by the Board after providing his qualifications as an expert witness. Mr. Newkirk referred to the plans that had been submitted in consideration of this Major Soil Movement Permit application, including A-1, a colored rendering of sheet 2 of the submitted plans, and A-2, an aerial photograph of the subject site in its pre-construction condition. Mr. Newkirk testified that the soil moving project began as a landscaping project to improve the rear of the applicant's property, and this included planting and movement of rocks to create tiered rock walls. He noted that prior to the soil movement activity, the area

around the pond basin could fill to as much as 5 feet during rain events and from drainage from a neighboring lot, rendering the property to be under water a significant part of the time. Mr. Newkirk stated that the property was not in the wetlands and it is not an environmentally sensitive area. A wall was constructed at the edge of the water both as an aesthetic remedy and to contain any water from spilling over to the surrounding areas. He testified that the project began in the Spring 2016, and the owners were not aware that they required permits for the soil movement activity. Mr. Newkirk did not inspect the property prior to the landscaping project, but he was able to review files from when the house was constructed. He maintained that although it may not be 100% accurate, it was a good estimation of the soil that was imported to the site. Approximately 1358 c.y. of soil was brought to the site, with 1000 used in one area, and 358 c.y. used around the pond area. Mr. Newkirk noted that an additional 50 c.y. of top soil will be needed at the site to complete the landscaping, but from a construction standpoint, the project was basically completed. Board Member Ada Erik inquired about the depth of the pond, and Mr. Newkirk provided an explanation on the drainage of water into the pond, noting the current stone wall that supports the rear yard had originally been a stoned slope. Board Member Scott Leonescu commented that, based on prior photos of the site, it appears that the pond has been expanded, and he inquired if the adjacent property owner will be affected by water spilling over from the applicant's site. Mr. Newkirk testified that water will drain out from the other side and emphasized that the wetlands expert, Wander Ecological Associates, determined that the pond existed prior to the construction of the dwelling and was not designed as a detention basin. The outlet for the water to drain was located to the north on the neighboring property. Board Engineer Paul Ferriero reviewed the water depth, dimensions of the pond and the rate that it will travel to the outlet. Mr. Newkirk noted that he did not go to the neighboring property to determine the rate of the water flow and they did not do a detailed hydrologic study of the pond, so it was possible that the water, in a very severe event, could flow over the top. Mr. Germinario noted that without knowing the characteristics of the outlet, it could not be determined if an issue can occur during a 100, 50 or 20 year storm.

Applicant Emilio Hernandez was sworn in by Mr. Germinario and provided comments regarding the height of the wall and the increased depth of the water. Mr. Germinario noted that where the water flows over the wall is determined by the contours of the wall, not the topography of the land. Mr. Newkirk accepted that flooding was a possibility. Mr. Hernandez testified that his property was lower than his neighbor's property, and Mr. Germinario noted that the water would be level and would not follow the contours of the land. Mr. Ferriero weighed in on the matter, but stated that without information on the adjoining property, it would be difficult to determine. Applicant Lazara Fernandez was sworn in by Mr. Germinario and testified that she had resided at 117 Rockburn for 14 years and had witnessed many storms. When the outlet was closed up on the neighboring property, her yard was flooded, but after contacting the Township, the issue was addressed and they have had no water issues since that time. Mr. Newkirk conceded that the storage volume has been reduced with the configuration of the walls, but noted that significant flooding would have to occur on the applicant's property before it would affect the adjoining property. Mr. Hernandez stated that the water always accumulates on his property. Board Member Warren Gross commented that he had visited the site of the subject application and there was some evidence of silting or run off in one area, and noted that it would have to be an unusual event for water to go over the wall and flood the property.

Mr. Germinario inquired about the inconsistency between the amount of imported fill that the applicant stated in their application, and Mr. Newkirk referred to the first sheet of the plans which stated that 50 c.y. of fill remained to be imported. Board Member Steven Castronova inquired about the height restriction on a wall, and Ms. Erik commented that it was 4 ft. Mr. Leonescu observed that a wall over 4 feet would require an engineering design. Mr. Newkirk stated that he had submitted an engineer's certification of the wall, and noted that landscaping was located at the top. Mr. Leonescu inquired about the location of the seepage pits and Ms. Fernandez indicated on the plan where the approximate locations were. Mr. Ferriero noted that they should be included on the plans or on an As-Built, and Mr. Newkirk noted that they will add them to the site plan. Mr. Germinario inquired about the source of the soil that was imported to the site, and Mr. Newkirk stated that it came from B & B Landscaping. Mr. Ferriero noted that the soil did not originate from the B & B Landscaping site but was trucked to his business and then to the applicant's site. Mr. Germinario further inquired about the source of the top soil and the route that the trucks would take to the applicant's property. Mr. Newkirk testified that the top soil will come from B& B Landscaping and they will provide receipts to confirm that the soil is originating from their facility in town. He further testified that there would be about 4 or 5 trucks transporting the top soil and they would travel Marshall Hill Road to Morsetown Road to Rockburn Pass. With regard to the stone, Mr. Newkirk advised that the stone would be distributed and if additional stone is required it would be purchased from the quarry in Riverdale.

Mr. Ferriero reviewed the comments in his engineering report, dated April 2, 2019, and noted that the wall height may need a variance, documentation was to be provided to verify that the soil is clean fill, proper measures should be taken so that the septic tanks and field are not compromised by the soil movement activities, and the well location needs to be included on the plan. A bond is required by ordinance, but the amount of fill left will determine the amount of the bond, and the buffer to adjoining properties must be maintained. Mr. Newkirk stated that there would be no disturbance to the septic tanks or the field and noted the location on the site plan. With respect to the height of the stone walls, which varies in height to a maximum of 6 feet, testimony was provided by Mr. Newkirk for the variance criteria. He noted that given the topography, the total relief sought would be approximately 11 feet for the two walls which are 5 and 6 feet. He stated that if they created 3 or 4 walls to decrease the height of each wall, it would take up the majority of the yard area and cause more disturbance at the site. He further testified that all of the areas around, above and below are landscaped to mitigate the effect of the wall height. Mr. Hernandez stated that they did not originally plan to install the rock walls but the view from the neighboring property was not aesthetically pleasing, so they invested in having the walls constructed. Mr. Newkirk testified that the overall improvement to the aesthetic view of the property is a benefit to the community and is consistent with the character of the neighborhood. Chairman Garcia suggested that another wall could be installed, but Mr. Newkirk noted that a 10 foot separation would be required and would affect the structural integrity of the lower wall, adding that if he designed this originally, he would have designed it differently. With regard to the 100 foot buffer requirement, Mr. Newkirk advised that there is a row of evergreens along the perimeter of the property and the applicant can add more plantings, but they are trying to maintain a natural buffer and would hope that additional trees would not be required for more of a buffer. Mr. Newkirk stated that the applicant has maintained the buffer within the intent of the ordinance, noting that the

neighbor has cleared trees and shrubs very close to the property line. Mr. Ferriero remarked that it was up to the Township Engineer to make this determination and he, as Township Engineer, is satisfied with the explanation provided in the testimony.

Jessica Caldwell, Board Planner, reviewed the comments made in her report, dated March 5, 2019, and the testimony that was on record at this hearing. The applicant was requested to comply with the hours and days permitted for the remaining soil movement activities. Mr. Ferriero stated that no bond would be necessary since the road was in good condition and the majority of the soil movement activity had been completed. Chairman Garcia inquired whether there were any issues with the retaining walls and stormwater run-off following the significant rainfall that the Township received during the past year, and the applicant advised that they had no issues.

Following receipt of testimony for the application, and with no comments from the public, a **motion** was made by Ada Erik, with a **second** by Steve Castronova to **close** the public portion of this hearing. Mr. Leonescu inquired whether Highland's approval was required for this project, and Mr. Ferriero responded that none was needed for an improvement to an existing single family dwelling. Mr. Newkirk stated that there would not be much more disturbance at the site, and the remainder would be the completion of the landscaping. Chairman Garcia commented that he and Board Member Linda Connolly conducted a site visit and noted that the work that was completed was an improvement to the neighborhood. He did comment that the silt fence was not installed properly, and the applicant confirmed that it would be re-installed correctly. Mr. Ferreiro reminded the applicant that they must supply certification of the soil. Mr. Germinario advised the Board that a C-1 Variance for the wall height was justified based on the hardship of the exceptional topographical conditions that existed on the property.

Subsequent to a review of the conditions of approval, a **motion** was made by Steven Castronova with a **second** by Scott Leonescu to **approve** the Major Soil Fill Permit with Bulk Variance.

### **Roll Call**

**Yes:** Steven Castronova, Linda Connolly, Ada Erik, Warren Gross, Scott Leonescu, Chairman Christopher Garcia.

**No:** Geoffrey Syme.

**Motion approved.**

**PENDING APPLICATIONS** – None.

**MEMORIALIZATIONS** – None.

**ORDINANCES FOR INTRODUCTION** – None.

**ORDINANCES REFERRED FROM COUNCIL** – None.

**BOARD PLANNER'S REPORT** – None.

**BOARD ATTORNEY'S REPORT** – None.

**BOARD ENGINEER'S REPORT** – None.

**NEW OR ONGOING BUSINESS**

## **Revised Draft Short Term Rental Ordinance**

Board Planner Jessica Caldwell reviewed for the Board the most recent version of the revised Draft Short Term Rental Ordinance beginning with an assessment of the comments from the February 7, 2019 Planning Board meeting. Referring to the off-street parking matter, Ms. Caldwell included a statement in the ordinance to the effect that prevailing parking regulations should apply unless no off-street parking is available. The Township was included as the additionally insured and Mr. Germinario advised that it was a benefit for the Township to be included in the event of litigation from damage to a property that Township has issued a license for. With regard to frequency of rentals, he advised that a reasonable basis would be needed in order to limit frequency of the rentals since it would not be functional if the number of rental periods are too limited. With regard to the zoning ordinance and classifications, Ms. Caldwell advised that in her opinion, the zoning would not change since the STRP would still be a single family dwelling and the STRP designation would not change a use into non-residential or commercial property. Mr. Germinario noted that in some states a STRP can be reclassified as a hotel type use but he has not seen this so far in New Jersey decisions. He added that it is not a far-fetched assumption that with the character of the use and compatibility to the surrounding neighborhoods, there can be a distinction made based on the fact that a use is effectively more of a hotel than a single family residence. Ms. Caldwell observed that even if a STRP is in a commercial zone, no new use will result. With regard to the owner or responsible party issues, she felt that anyone on the permit can be fined if there is a violation of the ordinance. She included in the draft ordinance a requirement for posting a copy of the survey or tax map so that renters are aware of the property's physical boundaries. As to the various lake associations regulations, those matters should be handled between the private associations and the property owners. With respect to the septic use or overuse due to the number of occupants in the dwelling, Ms. Caldwell remarked that the fire code would determine the total occupancy for a residence and this would have to be posted. As to the issue of fees, she suggested that this matter can be determined by the Board or the Governing Body, and it would encompass the cost to the municipality to process the licenses, conduct the inspections, and address any complaints. Mr. Leonescu commented that Fire and Health Depts. have their own fees and inspections which are paid separately. Ms. Caldwell stated that the new revised draft ordinance contained all the suggestions that were presented at the February Planning Board meeting.

The Board proceeded with a discussion on the latest revised ordinance and Mr. Germinario commented about Board Member Glenn Wenzel's email concerns about the ordinance and his opinion that a STRP should be owner occupied. Mr. Germinario advised that NJ case law has been very clear on this and a municipality cannot require a property to be owner occupied.

The meeting was opened for public comment by Chairman Garcia and the following members of the public addressed the Board:

Ron Sherry, 31 Forest Lake Drive, inquired about the length of time that a property could be rented based on the new draft ordinance and whether an owner has to be present. He recounted some of the incidents that have occurred with the neighboring property's transient renters. Mr. Germinario remarked that that with every case that has gone to court, the owner is not required to reside in the house if it is a rental. He noted, however that there is a distinction between long term rentals and renting to someone different every night, which is where the hotel use can be implied. With

Airbnb's, Mr. Germinario stated that weekend rentals are usually their lifeblood, so it would not be fair to restrict rentals on the weekend. Mr. Sherry stated that there were two or three rentals a week at his neighbor's property, and Mr. Germinario suggested that rentals be limited to 3 rentals per week in the ordinance, but not more restrictive than that. Ms. Caldwell responded that the ordinance limits the rentals to not more than 6 months a year or not to exceed 180 days in a calendar year, but not specified as consecutive or collective. Ada Erik commented that if the STRP ordinance is adopted, the neighboring property owner will have to pay an annual fee and comply with the regulations. Scott Leonescu inquired of Mr. Sherry whether there was anything in the ordinance that could be changed that would address some of his issues, and Mr. Sherry noted that the Board has reviewed the matter and revised the ordinance several times in an effort to address some of the issues, and he acknowledged that it was not an easy task to fulfill.

Nathaniel Larrea, 49 Somerville Road, provided comments to the Board, noting that he has been an Airbnb host for many years, and he treats his guests like a hotel would, but he does not rent out his property more than two times per month. He commented that he rents throughout the year and does not want to be limited to 6 months a year. He advised the Board that he moved to West Milford a year ago and has rehabilitated several properties, some to be used for rentals. He felt that the fees charged in the licensing of the STRP will keep the rentals more professional. Ada Erik commented that the fees will have to cover the cost of the licensing procedures and inspections. Mr. Larrea noted that he uses his main residence for the Airbnb business and manages properties for a neighbor. When they have short term renters in his home, he stays with neighbors or relatives.

Jasmine Miravittles, 134 Wesley Drive, addressed the Board and advised that 4 bedrooms in her home are rented out through Airbnb. She inquired about the proposed fees for the Airbnb license and what they would cover. Chairman Garcia responded that they will be used for processing the licenses, administrative fees, certain inspections, and police response to complaints. Ms. Miravittles opined that Airbnbs were a benefit to the Township and stated that West Milford received the state mandated 5% occupancy tax from the Airbnb company in 2018 for rentals in the Township. Board Member Geoffrey Syme commented that an occupancy tax sounds like it is a commercial venture and hotel. Ms. Miravittles remarked that her family owns and rents out bedrooms year round, both short term and long term and does not want to be limited to a 30 day maximum under this proposed ordinance. She maintained that she would lose \$30,000. a year in income if they were restricted to 30 rental days or one renter at a time. Ms. Caldwell commented that the subject ordinance applied to short term rentals and did not limit rentals to 30 days. Board Member Warren Gross suggested that the ordinance should specify the companies that collect the tax in the ordinance. Mr. Germinario inquired if Ms. Miravittles has her rental rooms separated or divided from the homeowners, and she replied that renters are permitted to use all areas of her home. Mr. Germinario commented that this may constitute a multi-family use, adding that there has been a lot of litigation in New Jersey as to what constitutes multi-family use. With regard to insurance coverage requirements, Ms. Miravittles noted that Airbnb has host insurance to cover up to 1,000,000., but Mr. Germinario advised that this was host insurance, not property insurance. Ms. Miravittles was also concerned about the age restriction and stated that her family often rents to students. Ada Erik commented that the Planning Board was tasked with completing the leg work on a land development or

zoning ordinance, but the Township Council will make the ultimate decision on the ordinance. She noted that the Board has compiled ordinances from other areas and revised them to fit this Township. With regard to the 5% occupancy tax, she was not aware that the Township received anything, but will look into this. The Board discussed the process for complaints that are lodged against the STRP owner, and Linda Connolly commented that some people may be hesitant to complain if there are infractions against the ordinance regulations.

With no further comments, the public portion was **closed** on a **motion** by Ada Erik with a **second** by Steven Castronova. The Board continued to discuss the ordinance and Linda Connolly commented that there were other issues that must be considered including quality of life, sewer and water concerns, and more people in town using the services, adding that the ordinance must be fair to everyone in the community. She noted that Airbnb may be here to stay, but everyone's needs must be considered. She suggested that Airbnb's be encouraged to be located in the Town Center where shops are concentrated, and the rentals should have a 7 day requirement to limit the transient population. After consideration, she felt that the rental units should be owner occupied and there should be minimum age restrictions on the rentals. Chairman Garcia responded that, based on the attorney's comments, requiring a unit to be owner occupied was not an option. Scott Leonescu commented that the Council will have their own ideas and will make changes, but the Planner and the Board have drafted a good ordinance for consideration. He felt that the Airbnb rentals help to increase tax ratables with the housing renovations, reduces the number of children attending local schools, the renters shop locally, and the 6 month total limitation on the rentals will limit the adverse effects on water and septic systems. He remarked that the Board can continue to review this ordinance every month and make additional changes or they can send it to the Council and let them decide what they want to do with the document. Chairman Garcia commented that more people using local businesses will help the local economy, but it was evident from the comments received that there are different types of renters and rental properties. There was a consensus of the Board, with the exception of Linda Connolly, to refer the latest revised draft short term rental ordinance to the Governing Body for review. The Board requested that the Secretary include a memo with the following comments expressed at this meeting for the Governing Body to consider in their assessment of the ordinance:

- Limit rentals to one renter per residence
- Research taxes paid by renters to Airbnb (5% occupancy fee) - Ordinance should establish the procedures for collecting state mandated occupancy tax from short term rental companies
- If the owner is permitted to rent for 6 months out of the year, the ordinance should clarify if it is consecutive or cumulative
- Fees for initial and annual registrations should cover costs of staff to process and regulate
- Inspection fees – separate collection to be done by Depts. or included in registration fees?
- Septic issues if occupancy is exceeded – maximum occupancy to be determined by Fire and Health and posted at the site

## **MISCELLANEOUS**

### **Invoices**

The invoices for the Planning Board professionals for February and March 2019 were **unanimously approved** by the Board members who were present at the meetings on a **motion** by Steven Castronova with a **second** by Warren Gross.

## **MINUTES**

The Minutes from the March 7, 2019 Regular meeting were **unanimously approved** by the Board members who were present at that meeting, on a **motion** by Ada Erik and a **second** by Steven Castronova.

## **CORRESPONDENCE RECEIVED:**

*The following correspondence items were reviewed and filed:*

### **Highlands Water Protection and Planning Act Correspondence**

1. Highlands Exemption #9, Water Quality Management Plan–Not Addressed – correspondence received from the NJDEP, dated March 1, 2019, regarding the Proposed Bridge Replacement & Roadway Improvement for the NJDOT – “Route 23 Over Pequannock River, Paterson Hamburg Turnpike and NYS&W Railway Bridge Replacement and Roadway Improvements, November 2018.”
2. Notification dated March 19, 2019, received from Dykstra Walker Design Group, regarding an application being submitted to the NJDEP for a Highlands Applicability Determination with respect to property located at Oak Ridge Road, Block 15903; Lot 1 for Robert Hamilton. Applicant requests a determination for the existing use of storage of commercial vehicles and whether or not it constitutes a major Highlands development and whether the Highlands Water Protection and Planning Act rules apply.

### **NJ Department of Environmental Protection Correspondence**

1. Follow-up Notice of Violation received from the NJDEP, dated February 22, 2019, received for Kirk Dokum, 21 Dockerty Hollow Road, Block 9901; Lot 23.01, advising that the property owner has failed to comply with the requirements set forth in the August 29, 2013 Notice of Violation requiring that certain specific actions comply with the Freshwater Wetlands Act. The required information must be submitted by June 1, 2019 or the owner will be subject to further enforcement action pursuant to the Freshwater Wetlands Act.
2. Correspondence received from D’Amico Engineering, dated February 26, 2019, advising of an application for Freshwater Wetlands Letter of Interpretation & Transition Area Averaging Plan for property on Canistear Road, Block 16901; Lot 4 for George Mesiha, regarding the construction of a single family dwelling with a septic system.
3. NJDEP Suspected Hazardous Discharge Notice, dated March 9, 2019, regarding 416 Morsetown Road, Block 6001; Lot 7, with respect to the relocation of two 275 Gal #2 HO AST resulting in discharge into soil near creek.
4. NJDEP Suspected Hazardous Discharge Notice, dated March 14, 2019, regarding Extreme Snow Pros, 99 Marshall Hill Road, Block 6303; Lot 4, with respect to oil spills on property near freshwater wetlands from maintenance on commercial vehicles.
5. Notification of a GP #24 application being submitted to the NJDEP, dated January 17, 2019, received from Paul Lapatka, LLC regarding 75 Dockerty Hollow Road, Block 8509; Lot 5, for the installation of an ISSDS in a wetlands buffer.

6. Notification of a GP #24 application being submitted to the NJDEP, dated January 17, 2019, received from Paul Lapatka, LLC regarding 71 Dockerty Hollow Road, Block 8509; Lot 6, for the alteration of an ISSDS in a wetlands buffer.
7. NJDEP Suspected Hazardous Discharge Notice, dated March 20, 2019, regarding the area near 46 Marshall Hill Road, Block 5708; Lot 2, advising that PSE&G will be releasing natural gas into the atmosphere while installing a new gas line.
8. Remedial Action Protectiveness/Biennial Certification Form–Groundwater, related to a remedial action permit, dated March 15, 2019, received from Synergy Environmental Inc. regarding Lakeside Amoco, 2 Lakeside Drive, Block 3509; Lot 16, NJDEP PI# 012599.

### **Miscellaneous Correspondence**

1. HEPSCD certification of a soil erosion and sediment control plan, dated February 13, 2019, received for Hernandez-Fernandez Residence, 117 Rockburn Pass, Block 5006; Lot 3 regarding installation of retaining walls, filling and grading of .78 acres of land.
2. HEPSCD certification of a soil erosion and sediment control plan, dated February 28, 2019, received for Cody Marienthal – Virginia Lane Single Family Dwelling, 76 Virginia Lane, Block 10002; Lot 9.
3. HEPSCD certification of a soil erosion and sediment control plan, dated February 27, 2019, received for Stephen Spear, Long Pond Single Family Dwelling Demo and Rebuild, 224 Long Pond road, Block 4003, Lot 3.
4. Community Right To Know Survey Notification received from SUEZ, dated February 27, 2019, regarding the Bald Eagle Commons – Richmond Road Domestic Sewage Treatment Facility, Facility ID 00000043650.
5. New Jersey Planner Publication – January - February 2019 – Vol. 80, No. 1.

### **ADJOURNMENT**

Prior to adjourning, Chairman Christopher Garcia advised that the next regular meetings were scheduled for April 25, 2019 and May 2, 2019. The meeting date will be determined when the resolution for the Fernandez Major Soil Permit is available for memorialization. Mr. Germinario advised that he will have it ready for memorialization at the April 25, 2019 meeting.

With no other matters to be brought before the Planning Board, Chairman Christopher Garcia **adjourned** the regular meeting of April 4, 2019 at 9:45 p.m. on a **motion** made by Steven Castronova with a **second** by Warren Gross.

Approved: April 25, 2019

Respectfully submitted by,

Tonya E. Cubby, Secretary