

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

**Minutes
December 10, 2003
Regular Meeting**

Chairman, Michael Tfank, called the meeting to order at 7:38 p.m. with the reading of the legal notice.

ROLL CALL

Present: Paul Donoghue, Ada Erik, Andrew Gargano, James O'Bryant, Edward Orthouse, Kurt Wagner, Philip Weisbecker. Alternate: Kathleen Caren. Chairman: Michael Tfank. Board Attorney: Bryant Gonzalez, Esq. Planning Director: William Drew, P.P. Consulting Engineer: Robert Kirkpatrick, P.E.

Absent: Andrew Tynan. Alternate: Leslie Tallaksen

Chairman appointed Kathleen Caren to sit for absent member.

PUBLIC PORTION

Doris Aaronson suggested that a maintenance and liability clause be included in the proposed telecommunications ordinance. She also requested the Board approve the down zoning of property along Union Valley Road.

Louis D'Arminio, Esq., attorney for Castle Rock LLC., re Ordinance 2003-48. The Board Attorney advised that the Board would not comment as the matter is in litigation. Mr. D'Arminio proceeded to explain his client's position regarding the proposed down zoning of its property and requested that the Board maintain the current zoning.

Derek Fredericks, Esq. representing WMUV Associates also addressed the Board regarding Ordinance 2003-48. Mr. Gonzalez again cautioned the Board not to comment due to pending litigation.

James Gorab, Doris Aaronson, Dennis Espinosa, and Scott Murphy expressed concern regarding the development of the Apple Acres property and other properties in the area of Crescent Park and the effect of said development on the aquifer, the sewer system and the environment.

Al Zepponi, Engineer for the Castle Rock property, explained that there would be no runoff from the site and that the proposed development would employ individual septic systems.

As no one else wished to speak a **MOTION** was made by James O'Bryant, seconded by Paul Donoghue, to close the public portion. On voice vote all were in favor.

SITE PLAN WAIVER APPLICATIONS – None requested.

APPLICATIONS

ROCKBURN NORTH

THOMAS L. SCALA, JR.

Amended Preliminary Subdivision #0310-1749A

Phase I

Block 206; Lot 9

Hansen Lane; R-1 Zone

Request to amend a previously approved preliminary subdivision known as Clinton Woods, which consisted of 29 lots, to create 11 lots.

COMPLETE: 11-03-03

DEADLINE: 02-06-04

Thomas Scala, the applicant, presented Jeffrey A. Scala, PE and Alfred A. Stewart, PE and LS to testify regarding the application. Mr. Scala advised that he had read the Planning Board Engineer's report. Mr. Kirkpatrick explained the status of the stormwater regulations proposed by the State and the possible impact on this development. Mr. Scala noted that this

is a request to amend a previously approved development for 29 lots known as Clinton Woods. The current plan proposes 10 building lots, which will average approximately 2 acres. All improvements including drainage, utilities and curbing have been installed. The road, which has been reduced to 24 feet, would not impact the adjacent property, which has an alternate access. The applicant has applied to the DEP for a Letter of Interpretation, a Special Activity Transition Area Waiver for Redevelopment, a Special Activity Waiver for Stormwater Management, a General Permit 10A and Transition Area Averaging. The proposal has been designed for maximum buffers of 150 feet. There will be no disturbance to slopes in excess of 35%. Restrictions regarding the clearing of trees will be incorporated into the deeds for all lots. The Board discussed the mechanisms, such as bonding, that could be employed to ensure that the deed restrictions are adhered to. The Board Attorney suggested that, should the application be approved, a copy of the resolution of approval be attached to the deed of each lot.

Mr. Scala testified that existing trails to Wawayanda State Park would be kept opened by means of a deed of easement. The applicant requested a waiver from the shade tree ordinance. He opined that there are enough shade trees along the roads to suffice. He intended to keep the area as natural as possible and would cut as few trees as necessary. He proposed to sell Lot 18 to the adjacent property owner. A sale of real estate contract between the applicant and the property owners was placed into evidence. The Board requested and the applicant agreed that if proposed lot 18 is annexed to the adjoining lot that no further subdivision of that lot would be permitted. The applicant indicated that with the exception of lot 10, a deed restriction would state that there could be no further subdivision of any of the lots. Due to the fact that the limits of disturbance may change, the applicant requested that the required staking plan be submitted at the time building permits are applied for. The owners of proposed lots along the pond will receive cross easements for the use of it. Property owners not located on the pond will not have access to said pond. The owner of lot 6 will have responsibility for the dam. Mr. Scala submitted a letter from Albert Gloor regarding the status of this dam. Regarding the dam, it was decided to defer to the DEP for a determination of the status of the facility. The strip of land to the north of Hansen Lane will be given to the Township to create a larger right-of-way. The proposed sign will be eliminated.

The applicant and his professionals addressed the issues raised in the Board Engineer's report. The responsibility for the removal of an existing curb was discussed. It was determined that the Township would decide whether or not to vacate the piping. J. Scala explained the proposed drainage facilities. The Board Engineer and the applicant's professionals to meet to clarify issues raised concerning drainage. It was noted that the Township Environmental Commission was impressed with the proposed drainage and wished to be kept informed of the progress of this proposal. The Board requested that the applicant address the Township Engineer's concerns as well as the availability of water at a future meeting.

MOTION made by Paul Donoghue to carry the application to the next available meeting to allow the applicant, his professionals and the staff to review the issues raised. Seconded by Ada Erik.

On roll call vote: Yes - Paul Donoghue, Ada Erik, Andrew Gargano, James O'Bryant, Edward Orthouse, Kurt Wagner, Philip Weisbecker, Kathleen Caren, Michael Tfrank
 No - None

MEMORIALIZATIONS

MICHAEL & CHRISTINE VANDER PLOEG

Resolution No. 2003 - 30

Minor Subdivision #0310-1955

Bulk Variance #0330-0628

Block 16006; Lot 1

Grove Street; CC & R-4 Zones

APPROVED: Application for subdivision with variance relief to create 1 residential building lot.

MOTION made by James O'Bryant, seconded by Ada Erik, to memorialize Resolution No. 2003 – 30.

On roll call vote: Yes - Ada Erik, James O'Bryant, Edward Orthouse, Kathleen Caren, Michael Tfank
No - None

DOUGLAS J. McMILLIN (RITA'S ITALIAN ICES)

Resolution No. 2003 - 31

2ND AMENDED Preliminary and Final Site Plan

#0320-0128AB

Bulk Variance #0330-0637

Block 3503; Lot 23

1939 Union Valley Road; CC Zone

APPROVED: Application to erect a free standing sign with a front yard setback variance.

MOTION made by Ada Erik, seconded by Kathleen Caren, to memorialize Resolution No. 2003 – 31.

On roll call vote: Yes - Ada Erik, Edward Orthouse, Kathleen Caren, Michael Tfank
Present - James O'Bryant,
No - None

THOMAS SCALA (LAUREL HOLLOW)

Resolution No. 2003 - 32

Preliminary Subdivision #0010-1925

Block 5001; Lots 19, 20, 21

Block 5006; Lots 10 and 11

Rockburn Pass; R-4 Zone

APPROVED: Request for one-year time extension.

MOTION made by James O'Bryant, seconded by Ada Erik, to memorialize Resolution 2003 – 32.

On roll call vote: Yes - Ada Erik, James O'Bryant, Edward Orthouse, Kathleen Caren, Michael Tfank
No - None

ORDINANCES REFERRED FROM COUNCIL

Ordinance to rezone properties from R-3 residential to R-4 residential – Union Valley Road.

Block 14601; Lots 5 & 6

Block 14602; Lots 1-6

Ordinance to rezone property from R-1 residential to R-4 residential – Union Valley and Stephens Road.

Block 7701; Lots 1-7, 9-11, 18 & part of 19

Block 9801; Lots 1, 2, 4, 28.01, 28.02, 28.03 & 29

Block 9901; Lots 2-7

Ordinance to rezone properties from SHD/R-2, R-1/PN and R-2 residential to R-4 residential – Union Valley, Macopin and Wooley Roads.

Block 9901, Lots 8-13, 14.01, 14.02, 14.03, 15-19; 20, 21, 22;

Block 8509, part of Lot 1; 2-23, 24.01, 24.02, 25-39;

Block 8501, Lots 20-28

Block 8502, Lot 1;

Block 8503, Lot 1;

Block 8504, Lot 1;

Block 8505, Lots 1-18;

Block 8506, Lots 1-12;

Block 8507, Lot 1

Block 8508, Lots 1-3;

Block 8510, Lots 1-9

Block 9901, Lots 23.01, 26, 27

Letter dated December 10, 2004 from Board Attorney regarding ordinances to be reviewed distributed and read by Board members. Mr. Gonzalez explained that the three ordinances referred by the Township Council were the same ordinances introduced at the Council's November meeting. He recommended that the Planning Board send a report to the Council advising that, although the ordinances are consistent with the Master Plan, due to the pending litigation the Board did not recommend adoption at this time. Chairman advised that copies of the letter would be available to the public.

MOTION made by Andrew Gargano, seconded by Kathleen Caren, to move to closed session to discuss pending litigation. Resolution No. 2003 – 33 read into the record.

On roll call vote: Yes - Paul Donoghue, Ada Erik, Andrew Gargano, James O'Bryant, Edward Orthouse, Kurt Wagner, Philip Weisbecker, Kathleen Caren, Michael Tfank
No - None

Upon returning from closed session, Philip Weisbecker made a **MOTION** that the Board move to send to the Council a recommendation to move forward with an ordinance for rezoning properties from R-3 residential to R-4 residential – Union Valley Road; an ordinance to rezone properties from R-1 residential to R-4 residential – Union Valley and Stephens Road; and an ordinance to rezone properties from SHD/R-2, R-1/PN and R-2 residential to R-4 residential – Union Valley, Macopin and Wooley Roads. Seconded by Ada Erik.

On roll call vote: Yes - Ada Erik, Andrew Gargano, Philip Weisbecker, Kathleen Caren
No - Paul Donoghue, James O'Bryant, Edward Orthouse, Kurt Wagner, Michael Tfank

In voting several members noted that although these ordinances have been the subject of litigation they were voting no at the advice of the Board Attorney so as not to demonstrate bad faith or jeopardize the Township's legal position. That while the ordinances are consistent with the Master Plan the matter should be held until the litigation is resolved.

In voting yes members noted that the Board did its homework and the matter was sent back due to procedural problems. The ordinances are consistent with the Master Plan. Mr. Weisbecker read a memo dated October 24, 2003 from the Planning Board Secretary regarding a previous recommendation of the Board and noted that the pending litigation was present at that time, yet the Board made the recommendation to change the zoning.

Wireless Telecommunications Ordinance: Recommendation to Council. During discussion the Planning Director advised that the matter of maintenance could be controlled by a condition in the resolution of approval for individual applications.

MOTION made by Paul Donoghue, seconded by James O'Bryant, to recommend that the Township Council adopt the ordinance as presented.

On roll call vote: Yes - Paul Donoghue, Ada Erik, Andrew Gargano, James O'Bryant, Edward Orthouse, Kurt Wagner, Philip Weisbecker, Kathleen Caren, Michael Tfank
No - None

Spruce Street Right-of-Way Vacation: Recommendation to Council.

MOTION made by James O'Bryant, seconded by Paul Donoghue, to recommend that the Township Council vacate the road as requested.

On roll call vote: Yes - Paul Donoghue, Ada Erik, James O'Bryant, Edward Orthouse, Kurt Wagner, Philip Weisbecker, Kathleen Caren, Michael Tfank
No - None
Abstain – Andrew Gargano

PLANNING DIRECTOR'S REPORT- No report.

PLANNING BOARD ATTORNEY'S REPORT - No report.

STAFF REPORTS/MEMOS TO TOWNSHIP MANAGER/COUNCIL – None.

COMMUNICATIONS

Letters from the Passaic County Planning Board regarding the following applications:

Rita's Italian Ice – Final Site Plan – Block 3503; Lot 23, 1939 Union Valley Road.
Notice that all work has been completed and there is no objection to a permanent Certificate of Occupancy being issued. Received and filed.

Forest Glen – Preliminary Subdivision – Block 9901; Lot 7, 870 Union Valley Road.
Approval withheld pending receipt of additional information. Received and filed.

ADJOURNMENT

Meeting adjourned by unanimous consent at 10:54 p.m.

Respectfully submitted,

Grace R. Davis
Secretary

