

**TOWNSHIP OF WEST MILFORD
PLANNING BOARD**

**Minutes
July 23, 2003
Regular Meeting**

Chairman, Michael Tfank, called the meeting to order at 7:48 p.m. with the reading of the legal notice.

ROLL CALL

Present: Paul Donoghue, Ada Erik, Edward Orthouse, Kurt Wagner, Philip Weisbecker.
Alternates: Leslie Tallaksen. Chairman: Michael Tfank. Special Attorney: Stephen B. Glatt, Esq. Planning Director: William Drew, P.P. Consulting Engineer: Robert Kirkpatrick, P.E.

Absent: James O'Bryant, Robert Szuszkowski, Andrew Tynan. Alternate: Kathleen Caren

Chairman appointed Leslie Tallaksen to sit for absent member.

PUBLIC PORTION

Richard Randazzo commented on the effect of development on the environment and suggested that developers be charged a fee for carrying meetings and that the rule that all materials be submitted ten days prior to a meeting be enforced.

Barry DiGiacinto addressed the Board regarding the findings of the Smart Growth Committee and submitted copies of the Committee meeting minutes, a copy of the draft NY-vvNJ Highlands Regional Study dated March 2002, excerpt from Vernon Township Land Development Code, the Township Ground Water Study performed in 1987, several court cases from various municipalities and a copy of the study on ground water availability dated March 01 for Hopewell Township. He advised that videos of the committee meetings were not available at this time. The questionnaires requested by the Board were being copied by the Smart Growth Committee and would be made available to the Board at a later date.

Richard Nobis inquired about the procedures for addressing questions concerning a particular application.

SITE PLAN WAIVER APPLICATIONS

THEODORE TSIMPEDES

Site Plan Waiver #0320-0143W

Block 14104; Lot 1
2038 Rte 23, HC Zone

Application carried at the request of the applicant.

JACK JAUST

Site Plan Waiver #0320-0144W

Block 16005; Lot 12
96 Oak Ridge Road; CC Zone

The owner of the property in question, Jack Jaust, and his prospective tenants, Josephine Langieri and Maria Parlavecchio, testified that they proposed to open a take-out gourmet food and catering facility. Mr. Jaust indicated that he planned to put an addition on the building within a year at which time the parking lot would be paved and a full site plan submitted for the Board's consideration. He further stated that the take-out facility would require no changes to the interior of the building, that the parking was sufficient and that no dining would take place on site. William Drew suggested that a six-month temporary Certificate of Occupancy be granted to assure that the paving would be completed.

MOTION made by Paul Donoghue to approve the Site Plan Waiver with the stipulation that a six-month temporary Certificate of Occupancy be issued pending the submission of a site plan, which would include the necessary paving and drainage. If the work were not

completed within six months the applicant would have to request an extension of the Certificate of Occupancy. Seconded by Ada Erik.

On roll call vote: Yes – Paul Donoghue, Ada Erik, Edward Orthouse, Kurt Wagner, Philip Weisbecker, Leslie Tallaksen, Michael Tfank.
No - None

MICHAEL & LEONARD SPITZER
Site Plan Waiver #0320-0145W
Block 6803; Lot 1
81 Warwick Turnpike; CC Zone

Michael Spitzer testified that he proposed to construct a garage on a foundation that was installed at the time a house was built on the subject property. There had been an existing garage, which he wished to move to the foundation. Mr. Drew reported that the property is located in a Community Commercial Zone, which would require site plan approval. However, because it is the applicant's residence and no business takes place on the property the applicant requested that a waiver be granted.

MOTION made by Paul Donoghue, seconded by Ada Erik, to approve the Site Plan Waiver.

On roll call vote: Yes – Paul Donoghue, Ada Erik, Edward Orthouse, Kurt Wagner, Philip Weisbecker, Leslie Tallaksen, Michael Tfank.
No - None

APPLICATIONS

JULIUS CARPIGNANO
Minor Subdivision #0110-1942
Block 5301; Lots 42.02 and 45
Morsetown Road; R-3 Zone
Request to subdivide existing lot to create two new residential building lots.

COMPLETE: 07-02-03
DEADLINE: 08-16-03

John Barbarula, Esq. representing the applicant questioned the position of the Board regarding persons from the public taping the Board meetings. It was determined that there were no rules regarding the matter. Douglas McKittrick, PE, was sworn in and his credentials accepted. He testified that the applicant proposed to create two building lots consisting of approximately 11.22 acres in size. The remainder of the lot would be annexed to lot 42.02, which contains the applicant's residence. The application also includes the removal of lot lines that are contiguous to lot 45 and lot 42.02, which includes part of a right-of-way known as Raymond Boulevard. Three wetland crossings are proposed, which have been delineated and permits have been obtained from the DEP. All of the bulk requirements have been met or exceeded. The proposed lots greatly exceed the size of the surrounding lots. Under current zoning six or seven lots could be created.

The Board questioned when the wetland crossing was installed and if it preceded the issuance of the permit. The Board Engineer, Robert Kirkpatrick, noted that a licensed surveyor, who was not present, signed the plan. He indicated he had questions regarding Raymond Boulevard, which only a surveyor could answer and he felt it was important to have him testify. Mr. Barbarula advised that if necessary he would have the surveyor appear at a later date. Mr. McKittrick testified that there are slopes of 35% on the site, which are not identified on the plan. It was his contention that the proposed development would not disturb any 35% slopes.

Julius Carpignano testified that he has lived on the property for over 50 years and submitted a deed dated September 5, 1936, which indicated that the parties of both sides of the road would maintain it. There is no reference to the public. The purpose of annexing lot 45 to lot 42.02 was to prevent the piece from being landlocked. Mr. Barbarula noted that if the right-of-way can be extinguished and adjoined then the lot would not be landlocked and future development would be possible. Exhibit A1 – the original survey from Campbell and Rude was introduced.

Paul Donoghue noted that during a site inspection conducted by the Board proposed Lot 45.02 showed considerable fill in building a roadway in advance of approval of a plan. Questions were raised regarding the quality of the fill, which consisted of car parts, asphalt and various debris; the driveway width and its proximity to wetlands; the amount of tree clearing and if a permit was obtained; the dumping of stumps and debris at the rear of the proposed building envelope; and what was the traveled way. Mr. Tfrank noted that a major soil fill had occurred without the required permits and voiced strong objection to the applicant performing work prior to receiving Board approval.

Mr. Barbarula stated that the violations referred to are for an enforcement board, not for the purposes of subdivision, and that the Planning Board is not an enforcement agency. The applicant is aware of the problems, which were done not by the applicant, but by a future purchaser. He agreed that the violations would be addressed and corrected by the proper entities. In response, Mr. Tfrank stated that it was imperative to put this information on the record so that a well-rounded picture of the circumstances surrounding this application was available for the future. Mr. Barbarula indicated that the violations are not of a sufficiency to prevent a conforming subdivision.

Mr. Drew advised that he had accompanied the members on the site inspection and observed the amount of work done prior to any Planning Board approval. This particular case would require a Major Soil Fill Permit, including the submission of plans and a public hearing. Whereas, this Minor Subdivision does not require a public hearing. In addition, the rectangular area of proposed lot 45.02 had been entirely cleared and a swatch cut through the property to provide a driveway. Tree clearing independent of an approved subdivision plan would require a permit from the Township Forester. The applicant indicated he had a tree-cutting permit. Mr. Drew noted that this permit referred to his Forestry Management Plan, which recommended that no cutting or clearing of any trees should take place in the area that was disturbed. He also noted that there was clearing of what appeared to be steep slopes and the stumps of the removed trees dumped over those slopes, which is a violation of the Township Zoning Ordinance. There had been significant work performed on the site prior to Board approval. The purpose of a plan is to discuss the proposed development and possibly improve a plan and reduce site disturbance and other adverse impacts to the property in question. In this instance the board had been denied that opportunity.

Recess

Mr. Barbarula testified that the wetlands permit was submitted in the year 2000 and approved February 4, 2002 and that the driveway was placed prior to the permit being approved.

The meeting was opened to the public and Scott DeCesare questioned the notification of the General Permit application to the DEP. He stated that neither he nor a number of other contiguous property owners had been notified. In response Mr. Barbarula stated that if this were the case it was a matter for the DEP. Mr. DeCesare expressed concern regarding the impact of traffic on Raymond Boulevard, runoff and drainage, the effect on the water table and inquired why an Environmental Impact Statement was submitted only on two lots and not the entire property,

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

In summation Mr. Barbarula stated that the Board had a right to consider the situation that arose. However, under the Land Use Law the Planning Board had to apply the aspects of what is appropriate for subdividing this property. It was not his position that the Township did not have the authority to enforce existing laws if someone had done something inappropriate. However, the Board had to make a decision on a proposed subdivision in a three-acre zone in which each proposed lot is almost three times that permitted under the zone. That an opinion could not be rendered as to whether the area of disturbance was beyond the scope of the building envelope. There are no steep slopes and no variances were requested. The question of the right-of-way could be conditioned upon the municipality vacating that portion of the right-of-way, which would allow the attachment of that section to the mother lot of Mr. Carpignano. The fact that a potential purchaser did these things is not a factor for the subdivision. All the standards and requirements of the ordinance have been

met with no variances. He requested the subdivision be granted with the condition of the portion of the right-of-way being vacated.

During discussion the Board expressed concern regarding the extremely grievous violation of the ordinances prior to obtaining proper approvals and how this could be conceived by future applicants. As to the vacation of Raymond Boulevard concern was expressed that the applicant could be creating a hardship. It was suggested that if approval is granted a restriction be put on future subdivision of the property, that all access is through existing property and not through Raymond Boulevard or the newly created lots.

Mr. Glatt explained that the actions of the applicant had put the Board in a precarious position. It is not possible to say if the property remained in its original condition that the Board might have considered other concerns or considerations. The applicant's engineer testified that there are no steep slopes, but had there been steep slopes what effect would that have had on the Board's decision.

MOTION made by Paul Donoghue, seconded by Kurt Wagner, to deny the application.

When casting their votes members expressed anger and frustration at the blatant disregard of the ordinances and the extensive site work that took place prior to the approval of a subdivision, which essentially removed the Board's ability to perform its duties. They indicated that the status of Raymond Boulevard should be resolved prior to any approval being considered. Concern was expressed that a lot could be created without road frontage, thus creating a future hardship.

On roll call vote: Yes – Paul Donoghue, Ada Erik, Edward Orthouse, Kurt Wagner, Philip Weisbecker, Leslie Tallaksen, Michael Tfank.
 No - None

MARK LINDSAY

Preliminary and Final Site Plan #0220-0130

Block 6404; Lot 1.02

Greenwood Lake Turnpike; CC Zone

Construct new office/storage building for plumbing business.

COMPLETE: 07-02-03

DEADLINE: 08-16-03

The applicant and his engineer, Douglas McKittrick, requested that the application be carried give them time to address the Board Engineer's report. Applicant granted a time extension to the end of November. Matter carried to the September meeting with no further notice required at this time.

K. HOVNANIAN AT WEST MILFORD L.L.C.

(EAGLE RIDGE AT WEST MILFORD)

Amended Preliminary Site Plan #0320-0091A

Final Site Plan #0320-0091B

Final Subdivision #0310-1929B

Block 5405; Lot 8

5301 20

Cahill Cross Road; R1/PN Zone

Application for the construction of 280 townhouses.

COMPLETE: 07-08-03

DEADLINE: 10-11-03

Ada Erik recused.

Meryl Gonchar, Esq. representing the applicant advised that the amended preliminary application was submitted in order to eliminate 8 units on the site. This is a result of modifications to detention basins requested by the DEP, which eliminated one detention basin and reduced the size of another. She called John Hunt, P.E.; George J. Costentino, Jr., Landscape Architect; Perry Falone, representative of K. Hovnanian LLC. and Richard Schultz, P.E. of Najarian Associates to testify.

William Drew, Planning Director, explained that the applicant received preliminary approval in 2002. In the process of obtaining permits from the DEP they were required to make modifications to the stormwater management facility, which resulted in the removal of eight units. This amended application reflected the changes requested by the DEP. The applicant is also filing for final site plan approval.

3050 Route 23; HC Zone

APPROVED: Preliminary and final site plan for the construction of 19,833 sq. ft. business/warehouse buildings.

Matter carried to the July 30 meeting.

DONALD E. EHRMANN

Resolution No. 2003 - 17

Minor Subdivision #0210-1945

Block 8101; Lot 25.01, 25.02 and 26

Cahill Cross Road; R-1 Zone

APPROVED: Application to subdivide a lot and annex half to each of two existing lots.

MOTION made by Paul Donoghue, seconded by Kurt Wagner, to memorialize Resolution 2003 - 17.

On roll call vote: Yes – Paul Donoghue, Ada Erik, Edward Orthouse, Kurt Wagner, Michael Tfrank.

No - None

KERRY GREENE

Resolution No. 2003 - 18

Preliminary Subdivision #0110-1910

Bulk Variance # 0130-0501

De Minimis Exception to request reduction of right-of-way width

Block 10001; Lots 14, 19, 20, 23

Wooley Road; R-3 and R-4 Zones

APPROVED: Subdivision with variance relief to subdivide four existing lots to create 17 residential building lots.

At the request of the Board Attorney the matter was carried to the July 30 meeting.

JACK LEVKOVITZ (VILLAGE ON RIDGE)

Resolution No. 2003 - 19

Final Subdivision #0310-1744B

Bulk Variance #0330-0633

Block 5303; Lot 1

5201; 16, 19, 20

Ridge Road; R-3 Zone

APPROVED: Final subdivision with variances.

MOTION made by Paul Donoghue, seconded by Ada Erik, to memorialize Resolution No. 2003 - 19.

On roll call vote: Yes – Paul Donoghue, Ada Erik, Edward Orthouse, Kurt Wagner, Michael Tfrank.

No - None

DOUGLAS J. McMILLIN (Rita's Italian Ices)

Resolution No. 2003 - 20

Amended Preliminary and Final Site Plan #0320-0128AB

Block 3503; Lot 23

1939 Union Valley Road; CC Zone

APPROVED: Amendments to approved site plan.

Due to the fact that the applicant had not completed any of the recommended improvements, the Board carried the matter. It was requested that a letter be sent to the applicant requesting he attend the next meeting and explain why the improvements had not been installed.

ORDINANCES REFERRED FROM COUNCIL – None

PLANNING DIRECTOR'S REPORT – None

PLANNING BOARD ATTORNEY'S REPORT - None

MINUTES

MOTION made by Paul Donoghue, seconded by Kurt Wagner, to approve the minutes of the July 9, 2003 reorganization meeting. On voice vote all eligible members voted yes.

STAFF REPORTS/MEMOS TO TOWNSHIP MANAGER/COUNCIL

COMMUNICATIONS

The following communications were noted and filed:

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

Village on Ridge – Preliminary and Final Subdivision – Block 5201; Lots 16, 19, 20 and Block 5303; Lot 1, Ridge Road. Approval withheld pending receipt of additional information.

Rita's Italian Ice – Site Plan – Block 3503; Lot 23, 1939 Union Valley Road. Plan approved unconditionally.

Shoebox Storage – Minor Subdivision – Block 16006; Lot 1, 140 Oak Ridge Road. Plan approved unconditionally.

Valley Ridge at West Milford – Site Plan – Block 8002; Lot 4, Union Valley Road. Approval withheld pending receipt of additional information.

Notice dated June 30, 2003 advising that Morris County Division of Engineering, DPW is applying for a Minor Stream Encroachment Permit for the replacement of Bridge No. 140 located on the Paterson Hamburg Turnpike over the Pequannock River.

Notice received July 1, 2003 advising that Your Home Team Builders is applying for a Treatment Works Approval for property known as Block 2705; Lot 6, Lakeshore Drive.

Copy of The Highlands Coalition publication *High Ground* for Summer 2003.

Letter dated July 9, 2003 from Susan Bass Levin, Commissioner, Department of Community Affairs, advising that the deadline for the Township petition for center designation has been extended to June 30, 2004.

MISCELLANEOUS

Motion made by Paul Donoghue, seconded by Kurt Wagner, to accept the contract submitted by Robert Kirkpatrick for engineering services.

On roll call vote: Yes – Paul Donoghue, Ada Erik, Edward Orthouse, Kurt Wagner, Philip Weisbecker, Leslie Tallaksen, Michael Tfank.
 No - None

ADJOURNMENT

Meeting adjourned by unanimous consent at 11:25 p.m.

Respectfully submitted,

Grace R. Davis
Secretary