

# TOWNSHIP OF WEST MILFORD

## PLANNING BOARD

### Minutes

February 23, 2005

REGULAR MEETING

Chairman, Michael Tfank, called the meeting to order at 7:36 p.m. with the reading of the legal notice.

### ROLL CALL

Present: Joseph Elcavage, James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Kurt Wagner. Alternate: Steven Castronova. Chairman: Michael Tfank. Board Attorney: Glenn Kienz, Esq. was represented by Bryant Gonzalez, Esq. Planning Director: William Drew, P.P. Consulting Engineer: Robert Kirkpatrick, P.E.

Absent: Edward Orthouse, Leslie Tallaksen. Alternate: Matthew DeFede.

Oath of office administered to Mr. Castronova.

Chairman appointed Mr. Castronova to sit for absent member.

### PUBLIC PORTION

Elaine Duffy, Warwick Turnpike, addressed the Board regarding the status of the Tichenor House.

### SITE PLAN WAIVER APPLICATIONS SITE PLAN WAIVER APPLICATIONS

#### KELLY MITCHELL

#### Site Plan Waiver #0520-0202W

Block 6401; Lot 1

1590 Union Valley Road, CC Zone

Mr. Castronova recused himself from hearing this application.

Ms. Mitchell was present and explained that she proposed to conduct physic readings. She noted that she would be the only employee and that parking would not be a problem, as only one client would be served at a time.

Planning Director, William Drew, indicated that this was a permitted use and that the Zoning Officer had reviewed the application. He advised that a site inspection was conducted with regard to the site plan waiver. He noted that at that time it was discovered that the rear parking area that was previously approved for gravel parking needed additional gravel and grading.

**Motion** made by Joseph Elcavage, seconded by Michael Siesta, to approve the site plan waiver for the reoccupancy of the commercial store at the above referenced site with the condition that the property owner install additional gravel and grading to the parking area in the spring when weather permits so as to be in compliance with the original Planning Board approval.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Kurt Wagner, Michael Tfank.

No - None.

#### DIANA LYNN & GEORGE BESPALCO

#### Site Plan Waiver #0520-0203W

Block 5701; Lot 6

20 Marshall Hill Road, CC Zone

George Bepalko, the owner of Blockbuster, appeared and explained he wished to move his business to the property in question. He explained that most of his business is at night or on weekends, when the other tenants are closed, and that, therefore, the existing parking is adequate. In response to questions from the Board, Mr. Bepalko advised that there would be a drop off box located at the front of the building.

William Drew, Planning Director, advised that this was a permitted use in the zone. During a site inspection it was noted that the painting of the ingress and egress signs on the driveway had worn off and it was not clear to vehicles entering the property. The original site plan approval called for a one-way traffic circulation pattern. He recommended that these markings be reestablished to clearly delineate the driveway ingress and egress. In addition, the Board Engineer advised that there should be a "Do Not Enter" sign at the northerly exit driveway.

During discussion the Board suggested that the drop off area be properly posted so that patrons do not park in the fire zone.

**Motion** made by Joseph Elcavage, seconded by Kurt Wagner, to approve this application subject to the following conditions: That the Fire Marshal review the proposed location of the drop off box for the Blockbuster store and approve same; that the parking lot have the traffic direction arrows painted on the pavement repainted to indicate the one-way traffic pattern as approved in the original site plan; and, that a "Do Not Enter" sign be installed at the northerly exit driveway.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Kurt Wagner, Steven Castronova, Michael Tfrank.  
No - None.

## APPLICATIONS

**GEORGE IV AND DIANA CLUFF**  
**Minor Subdivision #0410-1969**  
**Bulk Variance #0430-0685**

COMPLETE: 12-20-04  
DEADLINE: 04-19-05

Block 7212; Lot 4  
7207 19

1665 Union Valley Road & 44 Shadowy Lane; R-2 and LR Zones

Subdivide to create a separate lot for an existing dwelling on Lot 4 and the annexation of a portion of Lot 4 to the adjoining property owner.

James O'Bryant recused himself.

The applicants were represented by A. William Sala, Esq.

Mr. Sala indicated that the Cluff family purchased the strip of land adjoining Shadowy Lane from the Township sometime in the late 1980s since the Township never established a road in this area. By purchasing this strip of land, the Cluff family was able to establish electric service as well as access to its existing greenhouse on the subject property. He indicated that the Cluffs were willing to give up the strip of land adjoining Shadowy Lane in front of the Sheridan property since this would not compromise its farm operations being conducted on Block 7212, Lot 4. With respect to the one-story dwelling on proposed Block 7212, Lot 4.01, Mr. Sala indicated that this was a former barn building that had been converted in 1962 to a one-story frame dwelling for rental purposes. With respect to access from proposed Lots 4.01 and 4.02 onto Union Valley Road, the Cluffs were proposing a common access easement be provided in order to allow access to and from the residential dwelling on proposed Lot 4.02 and the residential and commercial facilities on proposed Lot 4.01.

Mr. Sala indicated that the property was owned outright by the Cluff family and that it had been purchased from the Township of West Milford sometime in the late 1980s. In this regard, Sala indicated that no public rights existed in the driveway.

Mr. Sala noted that this matter was carried from the January 26<sup>th</sup> meeting so that the applicants could provide revised plans showing the location of the septic fields on the proposed lots as well as providing a copy of the Deed from the Township to the Cluff family with respect to the purchase of the strip of land adjoining Shadowy Lane. Mr. Sala produced a Deed dated December 18, 1989 as between the Township of West Milford, as the Grantor, to George A. Cluff, Jr. and Kathleen E. Cluff, as the Grantees, with respect to Block 7207, Lot 20 as shown on the Tax Map of the Township of West Milford. The Deed he indicated was executed by the then Mayor, James A. Robinson, and witnessed by Kevin J. Byrnes, Township Clerk on December 18, 1989.

It was noted for the record that the land described within the Deed was pursuant to a Resolution entitled "Resolution Authorizing the Sale of Certain Properties Owned by the Township of West Milford, Passaic County, New Jersey, and not Required for Public Purposes, pursuant to N.J.S.A. 40A:12-13, et seq." adopted by the Township Council on February 1, 1989. Mr. Sala noted that the conveyance and sale was approved by the Township Council pursuant to a Resolution entitled "Resolution Confirming Sale of Township Property Public Auction" adopted by the Township Council on March 15, 1989. The Deed for Block 7207, Lot 20 indicated that it was made subject to the parcel becoming a part and parcel of the contiguous property owned by George A. Cluff, Jr. and Kathleen E. Cluff known as Lot 4 in Block 7212 as shown on the Tax Map of the Township of West Milford.

Mr. Sala further indicated that the applicants would be providing revised plans to show the location of the septic fields and all other revisions as indicated at the January 26, 2005 hearing as a condition of approval. He also indicated that the applicants agreed to comply with all terms and conditions of the Board Engineer and Board Planner's reports.

The Board then opened the meeting to the public for comment on the application. With no members of the public coming forward to present comment on this application, the Board promptly closed the public comment portion of the meeting to the public.

**MOTION** made by Joseph Elcavage, seconded by Michael Siesta, to approve the application subject to the conditions outlined in the Planning Director's report.

On roll call vote:    Yes -   Joseph Elcavage, Douglas Ott, Michael Siesta, Clinton Smith, Kurt Wagner, Steven Castronova, Michael Tfrank.  
                          No -   None.

**CELLULAR TELEPHONE COMPANY**  
**d/b/a AT&T WIRELESS (OAK RIDGE)**  
**Preliminary & Final Site Plan #0420-0190AB**

COMPLETE: 01-24-05  
DEADLINE: 03-10-05

Block 16307; Lot 21  
394 Oak Ridge Road; CC Zone  
Construct a wireless telecommunications monopole and equipment cabinets.

The applicant was represented by Anikumar R. Avutu, Esq. of Pitney Hardin LLP. He explained that this was an application for preliminary and final site plan approval for a property located on the westerly side of Oak Ridge Road, in a CC Community Commercial district. He noted the proposal was for the installation of a 60-foot-high monopole and its associated equipment on a piece of property that is developed with Eastern Propane's Maintenance Building.

Ramon Zamora, Senior RF Engineer for Bechtel Telecommunications & Industrial, testified as to how the site was chosen and why it was needed. He provided exhibits, which indicated the existing and proposed sites in the area.

The meeting was opened to the public and the following residents spoke: Gary Prince, Tyrrell Rydgren, Michael Bonanno, Michelle Bonanno and Patricia Harrington.

The Board then heard from Marc Stephens, Site Acquisition Specialist for Innovative Engineering, who explained how a site is selected for a telecommunications facility.

The meeting was again opened to the public and Gary Prince and Roy Freitas spoke.

The matter was then carried to the March 23, 2005 meeting.

## **MEMORIALIZATIONS**

### **JACK LEVKOVITZ (VILLAGE ON RIDGE-SECTION II)**

#### **RESOLUTION NO. 2005 - 9**

#### **Amended Final Subdivision #0410-1744C**

Block 5201; Lots 16, 19, 20

5303 1

Ridge Road; R-3 Zone

**MOTION** made by Joseph Elcavage, seconded by Douglas Ott, to memorialize the resolution.

On roll call vote: Yes - Joseph Elcavage, Douglas Ott, Clinton Smith, Michael Tfank.  
No - None.

### **ROBERT SCHMIDT**

#### **Resolution No. 2005 - 10**

#### **Minor Subdivision #0410-1965**

#### **Bulk Variance #0430-0667**

Block 2001; Lot 12

11-13 Paterson Road; LR Zone

Subdivide an existing lot with two houses into two separate lots.

**MOTION** made by Douglas Ott, seconded by Clinton Smith, to memorialize the resolution.

On roll call vote: Yes - Douglas Ott, Clinton Smith, Michael Tfank.  
No - None.

**ORDINANCES FOR INTRODUCTION** – None.

**ORDINANCES REFERRED FROM COUNCIL** – None.

## **MISCELLANEOUS**

**Bald Eagle Manor – Amended Preliminary and Final Site Plan, Resolution 2004 – 27 Condition #(3)A. Highlands Exemption Request** – Applicant present to discuss.

The applicant was represented by John Barbarula, Esq.

The Planning Board made the following findings of fact, based on evidence presented at its public hearing, at which a record was made.

The application before the Board is a request for an amendment to a condition of the preliminary and final site plan (Phase IIIA) approval for the subject property that was issued to the applicant by Resolution of the Board decided on September 22, 2004 and memorialized on October 27, 2004.

Mr. Barbarula indicated that several months prior the Planning Board granted amended preliminary and final site plan approval for the construction of a commercial building within the Bald Eagle Manor complex. As a condition of that approval, the applicant was to obtain a Highlands determination with regard to the status of its amended site plan approval. In addressing that condition of the approval, he noted that the applicant and its professionals were requesting that the Board grant an exemption from the requirement of obtaining a consistency determination from the Department of Environmental Protection pursuant to the Highlands Water Protection and Planning Act ("HWPPA"). Mr. Barbarula noted that a principal of the applicant, Sal Falciglia, was available to comment with respect to any questions the Board had with regard to this request. Mr. Barbarula also indicated that Kenneth Ochab, P.P. would be providing expert planning testimony with regard to the subject

property and especially with respect to the applicant's request for a Highlands exemption determination.

Mr. Ochab indicated that he reviewed all plans prepared and submitted to the Board by the applicant and noted that his testimony was geared towards providing the Board with the basis for granting an exemption pursuant to the HWPPA such that the applicant could continue the construction of its Bald Eagle Commons project.

Mr. Ochab indicated that the development met the definition of a Major Highlands Development as defined in the HWPPA. However, he noted that the development did not require a Highlands Preservation Area approval from DEP in order to proceed because it fell within a category of exemption that allowed the applicant to continue with the project without having to obtain an approval from DEP. In this regard, Mr. Ochab noted that pursuant to Section 30(a)(3)(a)(i) of the HWPPA the project was exempt from DEP approval in that the applicant had obtained a preliminary site plan approval granted by the Planning Board in 1992, which was well before the March 29, 2004 deadline imposed by the HWPPA. As such, this was one basis for the Board finding that the development did not require a Highlands Preservation Area approval in order to proceed.

Mr. Ochab indicated that the applicant also had received a water allocation permit well before March 29, 2004 from the Department of Environmental Protection and as such the project was exempt pursuant to Section 30(b)(i) of the HWPPA. He further noted that the project was also exempt on the basis of Section 30(c)(i) of the HWPPA in that the applicant had obtained from the DEP a Letter of Interpretation with respect to wetlands on the subject property, a Wetlands Buffer Averaging Plan, a Transition Area Waiver and a Mitigation Plan Approval prior to March 29, 2004 and in furtherance of the Freshwater Wetlands Protection Act.

Mr. Ochab further indicated that the applicant would be willing to amend the plans such that they would show that there would be no change in impervious coverage or disturbance from the prior approval.

Mr. Barbarula indicated that the applicant would ensure that only 19,975 square feet of impervious coverage would result and that this would remain the same from the approval previously granted.

In reviewing this application the Board considered the report of its Board Planner, William H. Drew, dated February 18, 2005, the terms of which are incorporated herein by reference. The Board Planner noted that the Planning Board granted amended preliminary and final site plan approval for the construction of a commercial building within the Bald Eagle Manor complex. The Board Planner noted that the property was located along the southerly side of Cahill Cross Road, opposite its intersection with Ridge Road in the Senior Congregate Care Zone. He noted that a condition of the approval granted to the applicant was that it obtain a Highlands determination with regard to the status of this amended site plan approval. In this regard, the Board Planner indicated that the applicant and its professionals had prepared a response requesting the Township grant an exemption from the requirement to receive a consistency determination from DEP.

The Board Planner noted that it was the applicant's contention that the preliminary site plan approval approved by the Planning Board in 1992 had proposed a commercial building with driveway and parking with a total of 16,830 square feet of impervious coverage. He indicated that the original site plan approval proposed a single-family dwelling with driveway that totaled 3,145 square feet of impervious coverage. The commercial building on the subject property was to be located on Lot 2 and the proposed dwelling on Lot 3. The amended preliminary site plan approval granted by the Board amended the 1992 approved plan to relocate the commercial property to Lot 3 in place of the single-family residence. Access to Lot 3 he noted and the parking configuration was changed from that which was approved in 1992 by the amended site plan submitted and approved by the Board. The Board Planner stated that the Board also granted final site plan approval to the commercial building and parking lot proposed for Lot 3.



Copy of letter dated January 26, 2005 from James Van Hooker, Chairman, Historic Preservation Commission, to Vincent Lanza, owner of the Vreeland Store, requesting support for the designation of the property on the State Historic and National Registers.

Copy of letter dated January 26, 2005 from James Van Hooker, Chairman, Historic Preservation Commission, to Steve Edmond, Passaic County Engineer, requesting support for the designation of the Tichenor House to the State Historic and National Registers.

Notice dated January 27, 2005 from Gerald Gardner Associates Inc. advising that Robert Coyman is applying for a Letter of Interpretation to determine the Presence/Absence of Wetlands for property located on Burrows Road, Block 2018; Lot 7.

Notice dated February 2, 2005 advising that Victor and Blanche Pizzulo are applying for a General Permit for the replacement of an existing failed subsurface sewage disposal system for property located at 88 Otterhole Road; Block 11601; Lot 4.

Copy of letter dated February 3, 2005 from Michael Tfank, Chairman of the Planning Board, to Neil D. Muller, Passaic County Director of Planning, regarding the West Milford Township Draft Passaic County Cross-Acceptance Report.

Copy of memo dated February 11, 2005 from the Planning Board to Richard Kunze, Township Administrator, regarding County's cooperation in maintaining the Tichenor House.

#### **ADJOURNMENT**

Meeting adjourned by unanimous consent at 10:35 p.m.

Respectfully submitted,

Grace R. Davis  
Secretary