

TOWNSHIP OF WEST MILFORD

PLANNING BOARD

Minutes

February 23, 2006

REGULAR MEETING

Chairman, Michael Tfank, called the meeting to order at 7:31 p.m. with the reading of the legal notice.

ROLL CALL

Present: James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Philip Weisbecker. Alternates: Steven Castronova, Thomas Harraka. 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.

Chairman appointed Mr. Castronova to sit for absent member.

PUBLIC PORTION

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

APPLICATIONS

**TCR NJ/PA LAND ACQUISITION L.P.
(VALLEY RIDGE)**

COMPLETE: 12-11-05

DEADLINE: 03-25-06

FINAL SITE PLAN #0220-0041B

Block 8002; Lot 4

Union Valley Road; R-1/PN Zone

Final site plan approval for the construction of 100 townhouses

The Applicant was represented by Christopher DeGrezia, Esq., Drinker Biddle & Reath LLP, Suite 300, 105 College Road East, Princeton, New Jersey 08542-0627.

Chairman, Michael Tfank, expressed concerns as to whether the Planning Board should continue with the hearing of this application given the jurisdictional issues raised by Skylands Clean at the last hearing; and,

Mr. DeGrezia reiterated arguments that the applicant's preliminary site plan approval was still valid because it had not expired due to the fact that the zoning on the subject property had not been changed since the time of the preliminary approval in 1997. He further remarked that a preliminary site plan approval expired if either a zone change had occurred after the period of expiration or an Ordinance had been adopted by the Township providing for expiration of a preliminary site plan approval after the period of expiration. Mr. DeGrezia further remarked that since there had been neither a zone change nor adoption of an Ordinance providing for the expiration of the preliminary site plan approval, his client's preliminary site plan approval was still valid as a matter of law. In support of this proposition Mr. DeGrezia cited D.L. Real Estate Holdings v. Planning Board, 176 NJ 126 (2003).

The Board Attorney noted that this particular case dealt with the Court affirming a municipal ordinance that provided for the expiration of preliminary site plan approval once the period of protection pursuant to Municipal Land Use Law had expired. The Board Attorney remarked that the D.L. Real Estate Holdings case did not appear to be clearly determinative and resolve the issues before the Board relative to the validity of the applicant's approvals.

Mr. DeGrezia then responded that the Township's Ordinance did not provide for expiration of preliminary site plan approval and referred the Board to Section 17-5.1 of the Zoning Code of the Township of West Milford.

The Board Attorney noted that Section 17-5.1 required the filing of a final site plan prior to the expiration of preliminary approval. Whereas, Mr. DeGrezia remarked that the application had been filed on April 1, 2002, which was prior to the expiration of preliminary site plan approval on April 23, 2002.

Mr. DeGrezia then noted that a letter prepared by William H. Drew, P.P., Planning Director, dated September 9, 2004 and addressed to Peter Black, P.E. indicated the zoning had not changed on the subject property since the preliminary site plan approval had been granted to the applicant. Said letter was marked into evidence as Exhibit A-5.

Mr. DeGrezia then asked that Resolution No. 2000-12 granting an extension of site plan approval as well as Resolution No. 2001-16 memorialized on January 23, 2002 be marked as Exhibit A-6. Mr. DeGrezia also asked that correspondence dated April 1, 2002 prepared by William E. Beardslee, P.E., P.L.S., P.P. to the West Milford Planning Board be marked into evidence as Exhibit A-7. He indicated that Exhibit A-7 was a cover letter from Beardslee to the Planning Board filing the final site plan application with the Board. Mr. DeGrezia further asked that the final site plan application form filed with the Board stamped received on April 3, 2002 be marked as Exhibit A-8. Mr. DeGrezia remarked that Exhibits A-5 through A-8 showed that the preliminary site plan approval was valid and the final site plan approval had been filed within the time periods provided by Municipal Land Use Law and the Township Ordinance.

The Board Attorney remarked that the application that was submitted on April 1, 2002 was incomplete for almost four (4) years and as such it was not clear whether the applicant's submission had in fact comported with the requirements of the Township Ordinance.

Mr. DeGrezia remarked that there was no express language of expiration in the Ordinance with regard to the expiration of the preliminary site plan approval.

The Board Attorney remarked that the Ordinance itself required the filing of a final site plan prior to the expiration of the preliminary approval and if a complete application had not been filed it might appear by the terms of the Ordinance that the preliminary approval had expired. He further remarked that the Planning Board could apply its Ordinances, but it was not vested with jurisdiction under the Municipal Land Use Law to render binding interpretations of these Ordinances.

A Board member indicated that counsel for Skylands Clean had not been present at the prior hearing on this application and requested that he appear to clarify some of the objections presented by his client.

Michael Kates, Esq. appeared before the Board and indicated that it was his client's position that the preliminary site plan approval issued to the applicant in 1997 had expired pursuant to the terms of Municipal Land Use Law, Case Law and the Township Ordinance. Mr. Kates remarked that the applicant had appeared before the Board requesting certain waivers in relation to the completeness of its final site plan application and the Board had expressly rejected the applicant's request for waivers at a hearing on September 25, 2002, which was memorialized in a Resolution of the West Milford Planning Board dated October 23, 2002 and known as Resolution 2002-34. Mr. Kates further remarked that, based on this denial as well as the imposition of the Highlands Act and other development regulations imposed by the State, there was in essence a new zoning for the subject property that had occurred since the expiration of the applicant's approval in April of 2002.

Mr. Kates remarked that given the change in State law and State regulations and the extent of the changes to the plans required of the applicant by the NJDEP, it was appropriate for the Planning Board to deem the preliminary site plan approval to have expired and require the applicant to file a new preliminary site plan application for the development of the property.

The Board Attorney remarked that the D.L. Real Estate Holdings v. Planning Board case was not clear on the question as to whether the term "expiration date" in N.J.S.A. 40:55D-49(b) was meant by the Legislature to impose a specific time period that "expired" upon conclusion of the three (3) years and any further extensions of preliminary approval (See D.L. Real Estate Holdings v. Planning Board, 176 NJ at 133).

Mr. DeGrazia remarked that NJDEP had provided the applicant with a Highlands Exemption through correspondence dated December 29, 2004.

The Board Attorney remarked that at Condition No. 3 of the December 29, 2004 correspondence from the NJDEP it was clear that the NJDEP was limiting its exemption determination upon the applicant having provided accurate information for its consideration. The Board Attorney noted that if in fact the applicant's preliminary site plan approval had expired, then the NJDEP would have proceeded upon information that was inaccurate in granting its exemption determination and the December 29, 2004 determination would be considered by NJDEP to be null and void by its own terms.

Mr. DeGrazia remarked that it was not fair for the Planning Board to question the exemption determination issued by NJDEP.

The Board Attorney noted that the Board was not challenging the NJDEP's determination, but rather pointing out the limitations of that exemption determination, which conditioned the exemption determination upon the information provided to it by the applicant as being accurate. The Board Attorney further remarked that the County Planning Board had also withheld its approval of the application pending its having received verification of the validity of the December 29, 2004 exemption determination from NJDEP as well as the Planning Board's having provided proof of the extensions previously granted to the applicant. He then remarked that the Planning Board had every interest in determining whether the preliminary site plan approval had in fact expired or not prior to proceeding with the remainder of the testimony to be provided on the application.

The Board's Planner, William H. Drew, remarked that from a planning perspective this property was very important to the Township in that it assisted the Township in complying with its Second Round COAH obligations to provide affordable housing. The Board Planner further remarked that, given the restrictions on development imposed by the Highlands Act and the eventual Regional Master Plan to be adopted by the Highlands Council, if the preliminary site plan approval had expired, the development of the property would be severely restricted by the Highlands Act as well as other State regulation such that the Board had a duty in terms of its obligations to plan for the Township to determine whether the approval granted to the applicant in 1997 was still valid.

The Board Chair then inquired whether a legal determination could be rendered by the Courts to assist the Board in determining whether it had jurisdiction to hear the final site plan application.

The Board Attorney remarked that if authorized by the Board, he would prepare a Complaint seeking Declaratory Relief from the Law Division of the Superior Court to determine two (2) issues which were: (1) whether the preliminary site plan approval granted to the applicant had expired pursuant to the terms of Municipal Land Use Law at N.J.S.A. 40:55D-49(b); and (2) whether the preliminary site plan approval granted to the applicant in 1997 had expired after the period of extensions pursuant to the terms of the West Milford Ordinance, particularly Section 17-5.1.

The Board Attorney explained that if the preliminary site plan approval had not expired, then the applicant was properly before this Board on a final site plan application pursuant to N.J.S.A. 40:55D-50. The Board Attorney further remarked that if the preliminary site plan approval was declared to have expired either pursuant to Municipal Land Use Law or the Township Ordinance, then the applicant would be required to file a new application for preliminary site plan approval in order to develop the subject property. The Board Attorney further remarked that the application would be considered stayed by the Planning Board pending the determination of the Courts.

MOTION made by Leslie Tallaksen, seconded by Michael Siesta, to stay the application and to authorize the Board Attorney to prepare a Complaint with the Law Division of the Superior Court certifying the two (2) questions presented so that the Planning Board could obtain guidance from the Courts as to whether it had jurisdiction to hear the applicant's final site plan application.

On roll call vote: Yes - James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Philip Weisbecker, Steven Castronova, Michael Tfank
No - None

The motion was approved unanimously and it was further required that the Board Attorney file the Complaint with the Superior Court in an expeditious manner. The Board Attorney remarked that he would attempt to file the Complaint within 30 days.

The application of TCR NJ/PA Land Acquisition, L.P., was stayed until resolution of these matters by the Court.

Board Attorney left due to illness.

SITE PLAN WAIVER APPLICATIONS

KATTNER ENTERPRISES LLC
Site Plan Waiver #0620-0225W
Block 16605; Lot 22
3050 Route 23, HC Zone

Thomas Kattner, owner of Kattner Enterprises LLC, 115 Troy Road, Parsippany, NJ was present.

Planning Director, William Drew, advised that at the previous meeting questions were raised as to drainage on the site and whether improvements were needed to correct it. The applicant had also agreed to submit a landscape plan to increase the buffer along the adjacent property to the east. The applicant submitted the landscape plan and Mr. Drew and the Planning Board Engineer made a site visit to the property. The Board Engineer reported that there is no practical way to capture, collect and redirect the runoff from the property. The landscape plan was also reviewed and Mr. Kattner was advised that some additional plantings would be appropriate. The applicant is agreeable to working with the staff to obtain the desired affect.

Mr. Kattner advised the Board that he was in the process of getting the previous owner to clean up the various pieces of equipment left on the property. He further noted that the landscaping would be completed by June 15th.

MOTION made by James O'Bryant, seconded by Kurt Wagner, to approve the waiver request.

On roll call vote: Yes - James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Philip Weisbecker, Steven Castronova, Michael Tfank
No - None

JOE SAMMAN
Site Plan Waiver #0620-0227W
Block 3603; Lot 7
2019 Greenwood Lake Turnpike, LC Zone

Jason Fobes, son of the applicant, appeared before the Board. He stated that the applicant proposed to open a small electronics store. He stated that no appliances will be sold and that there would be one or two employees.

Mr. Drew explained that the Zoning Officer reported that there were no site related problems affecting this property or the operation of the store.

MOTION made by James O'Bryant, seconded by Kurt Wagner, to approve the waiver request.

On roll call vote: Yes - James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Philip Weisbecker, Steven Castronova, Michael Tfank
No - None

APPLICATIONS CONTINUED

STEVEN & CHRISTINE CASTRONOVA
Minor Subdivision #0510-1973
Bulk Variance #0530-0702

COMPLETE: 10-28-05
DEADLINE: 03-25-06

Block 7213; Lot 1

12 Valley View Lane; R-2 Zone

Minor subdivision to subdivide Lot 1 into two lots to create one new building lot.

This matter was carried to the March 2, 2006 meeting.

JACK JAUST

PRELIMINARY AND FINAL SITE PLAN 0520-0222AB
Bulk Variance 0530-0721

COMPLETE 01-27-06
Deadline: 05-27-06

Block 16005 Lot 12

100 Oak Ridge Road

Preliminary and final site plan requesting approval of a paved parking lot and driveway.

The applicant, John Jaust, Phoenix Marketing, Inc., 100 Oak Ridge Road, Oak Ridge, NJ was represented by Paul M. Califf, Esq., 1167 Route 23 South, Kinnelon, NJ and Mark Palus, PE 170 Kinnelon Road, Kinnelon, NJ.

Mr. Califf explained that the application involved the paving of a parking lot and driveway at the applicant's existing building. At the time the property was purchased by Mr. Jaust in 1994 it was an old dilapidated house. The applicant completely renovated the building, which was used as a home based business. The applicant now proposed to use the building for commercial purposes.

Mr. Palus noted that the work in question had already been completed.

In response to questions from the Board, Mr. Jaust explained that when a home based tenant left in 2003, he tried and was unsuccessful in renting the facility. In an effort to improve the property he paved the parking lot and driveway. He stated that he did not realize a permit was required for this work. Mr. Jaust further testified that he had appeared before the Board in 2003 with a potential commercial tenant. When this venture did not materialize he believed that the site plan application suggested by the Board was no longer necessary. Mr. Jaust stated that when he could not rent the building for a home based business; he paved the parking lot in an effort to make the property more attractive to perspective tenants.

Mr. Califf noted that it would be better to have a paved parking lot than gravel. The proposal in his opinion was sensible for this property. The buildings existed on the property prior to Mr. Jaust's purchase. The building is currently occupied by a paging and cell phone business.

Mr. Palus testified that there is an existing house and detached garage on the property. Prior to the applicant's paving there was a gravel driveway from the garage to Oak Ridge Road. He outlined the existing pavement and noted that the area infringing on the County right-of-way would be removed. In addition, a portion of the driveway extended over the property to the east. This area has been removed and the driveway is entirely on the applicant's property. This would result in a net increase of impervious coverage of approximately 2,292 square feet. No lighting is proposed. The building contains a 1,000 square feet of office space on the first floor and a two-bedroom apartment on the second floor. Mr. Palus noted that there are 7 spaces on the existing pavement and 2 spaces inside the garage. There are deficiencies in the drive aisle width. Mr. Palus further explained the variances requested.

Board Engineer, Robert Kirkpatrick, questioned the aisle width and suggested that as this is narrow they might add a foot to each parking space to make easier turning in and out. He also questioned the location of a swale on the property and where the drain leads. He indicated that this should be included on the plans. He also suggested that a floor plan of the building should be presented to assess the validity of the site design. A landscaping and sign plan should also be submitted.

PLANNING BOARD ATTORNEY'S REPORT – None.

MINUTES

MOTION made by Michael Siesta, seconded by Steven Castronova, to approve the minutes of the January 26, 2006 regular meeting. On voice vote all eligible members voted in the affirmative.

COMMUNICATIONS

The following communications were received and filed:

Notice dated January 13, 2006 from the League of Municipalities advising that the League is opposed to S-457, Time of Decision Rule, and enclosing a draft resolution opposing this bill for consideration by the governing body.

Notice dated January 13, 2006 advising that Thomas & Terry Dockray are applying for a General Permit for property located at 247 Germantown Road, Block 14112; Lot 4 for the installation of a sub-surface sanitary disposal system.

Letter dated January 17, 2006 from the DEP granting an extension of the application submitted by Shoebox Storage LLC for a Letter of Interpretation for property located on Oak Ridge Road, Block 16006; Lot 1 and Block 16005; Lot 16.

Notice dated February 1, 2006 advising that Marco and Kristen Silvestri are applying for a General Permit for the installation of a sub-surface sanitary disposal system for property located at 68 Charcoal Road, Block 15302; Lot 21.03.

Letter dated January 22, 2006 from Joanne Jordan and Stanley Frey to the Township Administrator regarding the vacating of Parlin Court.

HIGHLANDS WATER PROTECTION AND PLANNING ACT

Notice dated January 27, 2006 advising that Charles Russo is applying for a Highlands Applicability Determination for property located on Layton Road; Block 1903; Lot 11. Noted and filed.

Letter dated January 25, 2006 from the DEP advising that the application submitted by Eugene and Elaine Prais for property located at 114 Dockerty Hollow Road, Block 8401; Lots 22 and 23 did not qualify for an exemption from the Highlands Act. It is consistent with the Water Quality Management Plan.

Mr. Drew noted that this applicant had a minor subdivision before the Board. The applicant does not qualify for an exemption and will have to apply for a full Highlands approval from the DEP.

Letter dated January 18, 2006 advising that New Cingular Wireless has submitted a request for Highlands Protection Area Approval for property located 364 Oak Ridge Road, Block 16307; Lot 21. Noted and filed.

Notice dated February 1, 2006 advising that Vincent Lanza is applying for a Highlands Determination for property located at 1383 Macopin Road, Block 9501; Lot 12.

Mr. Drew noted that this application for the Vreeland Store, which Mr. Lanza is in the process of renovating. The parking lot at the rear of the property exceeds the impervious coverage limits and the applicant is not eligible for an exemption. Due to this the applicant will not be proceeding with a site plan application submitted to the Board.

Notice dated January 18, 2006 advising that Shiloh Bible Camp is applying for a Highlands Exemption for property located at 753 Burnt Meadow Road, Block 6002; Lot 47. Noted and filed.

Notice dated February 1, 2006 advising that John Marcellaro is applying for an Exemption from the Highlands Act for property located on Maple Road, Block 10817; Lots 4, 5, 9. Noted and filed.

ADJOURNMENT

Meeting adjourned by unanimous consent at 10:15 p.m.

Respectfully submitted,

Grace R. Davis
Secretary