

# TOWNSHIP OF WEST MILFORD

## PLANNING BOARD

### Minutes

November 9, 2005

REGULAR MEETING

Chairman, Michael Tfank, called the meeting to order at 7:34 p.m. with the reading of the legal notice.

### ROLL CALL

Present: Joseph Elcavage, James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen. Alternates: Steven Castronova, Richard Altieri. 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, Kurt Wagner.

Chairman appointed Messrs. Castronova and Altieri to sit for absent member.

### PUBLIC PORTION

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

### APPLICATIONS

#### MARY BARRETT

**Minor Subdivision #0510-1974**

**Variance #0530-0711**

Block 807; Lots 1 and 4

2001 Clinton Road; LR Zone

Request to permit the subdivision of lot 4 into 2 lots

COMPLETE: 09-27-05

DEADLINE: 01-25-06

The applicant, Mary Barrett, 2001 Clinton Road, Hewitt, NJ, appeared without professionals. She advised that her engineer was not available to attend the meeting. Ms. Barrett submitted a letter dated October 25, 2005 from her engineer, M. J. Berry Associates, addressing the issues raised at the work meeting. Letter marked as Exhibit A2. The Board Attorney advised that it was necessary to have the engineer present to testify as to how the applicant would comply with the Residential Site Improvement Standards (RSIS). Mr. Gonzalez recommended the matter be carried.

**MOTION** made by James O'Bryant, seconded by Leslie Tallaksen, to carry the application to the December 14, 2005 meeting with no further notice required.

On roll call vote: Yes – Joseph Elcavage, James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Steven Castronova, Richard Altieri, Michael Tfank

No - None

#### JACK LEVKOVITZ (VILLAGE ON RIDGE)

**Amended Final Subdivision #0510-1744C**

**Section II**

Block 5201; Lots 16, 19, 20

5303 1

Ridge Road; R-3 Zone

COMPLETE: 10-18-05

DEADLINE: 12-02-05

The application before the Board is a request for amended final major subdivision approval for Section II of the development on the subject property.

The applicant, Jack Levkovitz, 99 Conklingtown Road, Wanaque, NJ was sworn in by the Board Attorney and then testified that he was seeking amended final major subdivision

approval in order to complete Section II of the development on the subject property. The applicant indicated that Final Subdivision Section II of the development originally consisted of 57 lots, three (3) of which would be utility lots for Municipal Utilities Authority pump stations and tanks. The other 54 lots he indicated were to be used primarily for residential development.

Mr. Levkovitz indicated that after having received the amended final subdivision approval earlier in the year he did not file the subdivision map but rather pursued a Highlands Water Protection and Planning Act approval from the DEP. As a result of this process, he was advised by the DEP that the former owner of the property had only applied for a permit for 60 lots and as such in order for the applicant to qualify for an exemption under the Highlands Act the number of lots needed to be reduced. In this regard he noted that his proposal was to reduce the number of residential lots from 54 to 50 so that he could obtain a Highland exemption. As such he indicated that the purpose of his application was to remove four (4) lots from the equation and relocate certain lot lines so that there would be 50 lots instead of the 54 originally approved by the Board.

The Board Planner noted that the applicant received final approval for the entire tract consisting of 64 residential lots and three (3) utility lots (to be dedicated to the MUA) in June 2003, which action was memorialized on July 23, 2003. The applicant he noted then chose to file the final plat by Section, and reapply for final approval for Section I containing ten (10) lots. He further noted that the amended Section I final subdivision approval was granted for ten (10) residential lots in September 2003 which action was memorialized in October 2003. The applicant had since filed the final plat for Section I with Passaic County. The applicant then, he noted, applied for and received from the Planning Board amended final subdivision of Section II for the remainder of the tract, which action was memorialized on February 23, 2005 by the Planning Board. That particular approval created 57 lots in Section II, 54 of which were building lots, three (3) of which were MUA lots. The Board Planner noted that the final plat for Section II had not been filed with the County.

Mr. Drew noted that the applicant was requesting a second amended approval and that this proposal was for a reduction in the number of lots from 54 residential building lots to 50 residential building lots along with maintaining the three (3) MUA lots. He noted that the amended final subdivision request for Section II was reflective of the request by the NJDEP Watershed Management Office for conformity with the T.W.A. Permit issued for 60 houses for both Sections I and II and the scope of the project qualifying for exemption from the Highlands Water Protection and Planning Act.

Mr. Drew further noted that the revised final plat for Section II reduced lots in proposed Block 5203 along the north side of Eagles Nest Terrace between the end of the cul-de-sac and proposed Lot 26 in Block 5203. The Board Planner noted that the six (6) lots that were originally proposed were now reduced to two (2) by virtue of the elimination of lot lines. The result of this proposal was two (2) oversized lots of about 1.6 and 1.4 acres. The proposed lot numbers, he noted, had been changed accordingly so that the proposed lot numbers in the block would run consecutively from 1 to 34. No other changes were proposed on the plans, he noted. The Board Planner noted that the utility lots to be dedicated to the MUA were acceptable as proposed. He further noted that the Tax Collector had reported that taxes were paid to date.

He further recommended that the previous conditions imposed by the Board when Section II final subdivision approval was granted pursuant to Resolution 2005-9 be made conditions of this amended Section II final subdivision. The only change needed in this regard was to reflect the expiration date, new lot total and Township Attorney's recommendations as included in his report.

Mr. Levkovitz then reviewed the terms and recommendations of the Board Planner's report and indicated that he would comply with all terms and conditions. He further indicated that he would be willing to work with the Township to assist it in complying with its Third Round Affordable Housing obligations if necessary by either including an inclusionary component or making a fee contribution to the Township of West Milford. He noted that he understood this was voluntary and that this was acceptable as a condition to any approval issued by the Board.

The Board then opened the meeting to the public for comment on the application. With no members of the public present expressing an interest in this application, a Motion was made by James O'Bryant, seconded by Michael Siesta, to close the public comment portion of the hearing. On voice vote all were in favor.

**MOTION** made by James O'Bryant, seconded by Leslie Tallaksen, to approve the application subject to the conditions discussed.

On roll call vote:    Yes – Joseph Elcavage, James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Steven Castronova, Richard Altieri, Michael Tfrank  
                              No -   None

**VICTOR MARCHIAFAVA**  
**Minor Subdivision #0510-1972**  
**Variance #0530-0713**

COMPLETE: 10-19-05  
DEADLINE: 02-16-06

Block 13602; Lot 7  
1894 Route 23 North; LMI Zone  
Request to subdivide Lot 7 to create two lots.

The application before the Board is a request for minor subdivision approval with bulk variance relief for the subject property. The applicant, Victor Marchiafava, 49 Timber Lane, Newfoundland, NJ, appeared on his own behalf and indicated that the purpose of the application was to subdivide the subject property so that the existing auto body shop could be separated off and utilized by his nephew to continue his auto body shop business. In this regard, the applicant indicated that his nephew operated an auto body shop on the subject property and that in order to assist his nephew to stay close to his customer base, the applicant was looking to subdivide the subject property.

Mr. Marchiafava noted that his intent was to eventually sell the other lot to a future purchaser and that the proposed subdivision was the only way that the lot could be subdivided such that it could be useful to a subsequent owner. In this regard, he noted that there were steep slopes scattered throughout the subject property and that the proposed subdivision carved out the usable spaces said property. He noted that the subject property was severely limited by its topography and that no additional property was available to be obtained to make the proposed lots more conforming to the Ordinance. In this regard, he noted that the adjacent properties were smaller in size and one particular adjacent parcel was owned by the City of Newark, which was not willing to sell any land to the applicant.

Mr. Marchiafava indicated that variance relief could be granted for lot area, lot frontage, lot width, lot depth, side yard setback and rear yard setback for both proposed lots in view of the environmental constraints on the subject property.

The Board Planner, William Drew, noted that the applicant had submitted an application for minor subdivision approval and bulk variance relief for the subject property, which was located in the LMI Zone. The application, he noted, was for the subdivision of existing Block 13602, Lot 7 to create two (2) lots. The existing lot, known as Concours Motors, is improved with various buildings and uses including a wireless telecommunications facility. The Board Planner further noted that he had reviewed plans prepared by Albert Gloor, Jr., P.E., L.S. with a last revision date of September 26, 2005 with respect to this application. The Board Planner then noted that the existing lot of record was approximately 5.45 acres in size and the applicant was proposing to create two (2) lots, one being 1.2 acres in size and the other being 4.22 acres in size on which the existing improvements were located. The Board Planner noted that the submitted plan for this application indicated that for the smaller proposed lot the existing building was to be demolished and a new same-sized building would be constructed, but in a different location on the new lot. In this regard, he noted that the applicant had filed a separate site plan application with the Board for the review of that proposal; however, the site plan application was still in the stage of completeness review and was not part of this application for minor subdivision approval with variance relief.

Due to the level of detail on the plans and the confusion that might be caused by the level of detail, the Board Attorney requested that the applicant submit a revised set of plans in the event the Board granted approval to show the minor subdivision without the site plan details.

In this regard, the Board Attorney noted that it was best if the applicant removed all site plan details from the minor subdivision plans so that no mistake would be made with respect to any approval rendered by the Board on this application. Specifically, he noted that the Planning Board was not reviewing the application for site plan approval but rather for subdivision approval and as such for clarity of the record and for any approval to be granted by the Board, the applicant should provide revised plans without any site plan detail. The applicant indicated that he understood the confusion that this might cause and as such agreed to submit revised plans as a condition of any approval which eliminated the site plan details from the minor subdivision map.

The Board Planner noted that there were variances associated with this application. In this regard, he noted that two (2) variances were required for lot area for proposed Lot 7.02 in that the zone required 3 acres whereas the applicant was only providing 1.23 acres. A variance was needed for lot frontage in that the zone required 300 feet whereas proposed Lot 7.01 would be providing 220 feet and proposed Lot 7.02 would be providing 250 feet. Variances were needed for lot width with respect to proposed Lot 7.01 and 7.02 in that the zone required 300 feet and the applicant was providing 226.7 feet and 155 feet respectively. A variance for lot depth was required for proposed Lot 7.02 in that the zone required 300 feet but the applicant was only providing 215 feet. The Board Planner further noted that variances were needed for side yard setback for both lots in that the zone required 75 feet of setback, but the applicant was only providing 60 feet of setback on proposed Lot 7.01 and 16 feet of setback on proposed Lot 7.02. Lastly, a variance was needed with regard to rear yard setback for proposed Lot 7.02 in that the zone required 75 feet of setback, but the applicant was only providing 51 feet.

Mr. Marchiafava then explained how access would be achieved through an easement for proposed Lot 7.02 and directed the Board's attention to the plans submitted.

With respect to environmental considerations, the Board Planner noted that the applicant received a checklist waiver from the requirement to submit an Environmental Impact Statement for this subdivision application. In this regard, the Board Planner noted that in the case of a subdivision request in a nonresidential zone where development proposals were subject to further review by the Planning Board at the time of site plan application it was reasonable to require the environmental analysis to be part of the future site plan review.

The Board Planner noted that the applicant had filed with the Passaic County Planning Board but that the Planning Department had not yet received a copy of the County Planning Board's report. The applicant, he noted, should provide the Board with a copy of any exemption determination made by the County Planning Board.

Mr. Marchiafava then reviewed with the Board the Board Planner's initial recommendations and indicated that he would agree to comply with all initial recommendations as stated therein.

The Board then opened the meeting to the public for comment on the application. With no members of the public present expressing an interest in this application, a **MOTION** was made by James O'Bryant, seconded by Joseph Elcavage, to close the public comment portion of the hearing. On voice vote all were in favor.

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

On roll call vote:    Yes – Joseph Elcavage, James O'Bryant, Douglas Ott, Michael Siesta,  
   Clinton Smith, Leslie Tallaksen, Steven Castronova, Richard  
   Altieri, Michael Tfrank  
   No - None

**BEARFORT SHOPPING VILLAGE (PHASE II)**  
**Formerly Thomas L. Scala (Rockport Shopping Center)**  
**Preliminary Site Plan #89-11A**  
Block 7006, Lot 2  
Union Valley Road; CC Zone  
Request for time extension.



## MEMORIALIZATIONS

### **K. HOVNANIAN AT WEST MILFORD L.L.C. (EAGLE RIDGE AT WEST MILFORD)**

**Resolution No. 2005 - 34**  
See memorialization below.

### **MICHAEL & ROBERT VANDER PLOEG Resolution No. 2005 - 36 Preliminary Site Plan #0220-0042**

Block 16006; Lot 1

16007 4

16008 3

140 Oak Ridge Road; CC/R-4 Zones

**GRANTED:** One-year time extension.

**MOTION** made by James O'Bryant, seconded by Douglas Ott, to memorialize Resolution No. 2005 - 39.

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

### **X-TRA SPACE CENTER**

### **Resolution No. 2005 - 37 Preliminary & Final Site Plan #0220-0127 Bulk Variance #0230-0589**

Block 6902; Lot 17

54 White Road; CC Zone

**GRANTED:** One-year time extension.

**MOTION** made by James O'Bryant, seconded by Leslie Tallaksen, to memorialize Resolution No. 2005 - 37.

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

**ORDINANCES FOR INTRODUCTION** - None.

**ORDINANCES REFERRED FROM COUNCIL** - None.

## PLANNING DIRECTOR'S REPORT

**PLANNING BOARD ATTORNEY'S REPORT** - None. Mr. Gonzalez noted that he was stepping down from the Hovnanian matter and departed the meeting.

## MINUTES

Approval of minutes of the October 26, 2005 regular meeting. Carried to December 14, 2005 meeting.

Bryant Gonzalez, Esq. and Robert Kirkpatrick left the meeting.

## MEMORIALIZATION

### **K. HOVNANIAN AT WEST MILFORD L.L.C. (EAGLE RIDGE AT WEST MILFORD)**

**Resolution No. 2005 - 34  
Final Site Plan #0320-0091B  
Final Subdivision #0310-1929B**

Block 5405; Lot 8

5301 20

Cahill Cross Road; R-1/PN Zone

**DENIED:** Request for extension of vesting period for Final Site Plan and Subdivision approval

**MOTION** made by James O'Bryant, seconded by Joseph Elcavage, to memorialize the resolution.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Douglas Ott, Clinton Smith, Leslie Tallaksen, Michael Tfank  
No - None

## **MISCELLANEOUS**

**Housing Element:** William Drew advised that the Township was required to file for a 3rd round Substantive Certification of the Township affordable housing obligation. He explained that the Township was granted substantive certification October 6, 1999 for its Housing Element and Fair Share Plan. That six-year certification period expired October 6, 2005 and the Municipal Council requested an extension of that protection to December 20, 2005. The COAH rules require the Township to prepare and adopt a Housing Element and Fair Share Plan and file this plan with COAH on or before December 20, 2005. Mr. Drew further explained the Township's obligation and how it proposed to meet those needs. He advised that the Board needed to conduct a public hearing to consider the adoption of an amendment to the Housing Element Fair Share Plan. This hearing was scheduled for the December 8, 2005 meeting in order to meet the deadline set by COAH.

Recess. Mr. Siesta recused himself from the following matter.

## **CLOSED SESSION**

With respect to Maria Winter and Wolfgang Winter, by their Successor-in-Interest, K. Hovnanian at West Milford, LLC v. Township of West Milford and the Township of West Milford Planning Board, Docket No. PAS-L-4018-97. Resolution No. 2005 – 38.

Stephen B. Glatt, Esq., representing the Board in the above matter, read Resolution No. 2005 – 38 into the record.

**MOTION** made by James O'Bryant, seconded by Leslie Tallaksen, to go into closed session.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Steven Castronova, Richard Altieri, Michael Tfank  
No - None

Upon returning from closed session, Mr. Glatt advised that the Board had discussed whether the Board would stay Resolution No. 2005 – 39. That resolution was inadvertently memorialized before Mr. Glatt could advise the Board on matters relating to the stay of the resolution. As a result of discussion during the executive session the Board indicated that a motion would be made to stay the memorialization of Resolution No. 2005 – 34. Mr. Glatt read Resolution No. 2005 – 39 into the record.

**MOTION** made by James O'Bryant, seconded by Joseph Elcavage, to rescind the memorialization of Resolution No. 2005 – 34, which was inadvertently adopted.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Douglas Ott, Clinton Smith, Leslie Tallaksen, Richard Altieri  
No - Michael Tfank

**MOTION** made by James O'Bryant, seconded by Joseph Elcavage, to stay the memorialization of Resolution No. 2005 – 34.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Douglas Ott, Clinton Smith,  
Richard Altieri  
No - Leslie Tallaksen, Michael Tfank

**MOTION** made by James O'Bryant, seconded by Douglas Ott, to memorialize Resolution No. 2005 - 39.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Douglas Ott, Clinton Smith,  
Richard Altieri  
No - Leslie Tallaksen, Michael Tfank

## **COMMUNICATIONS**

The following correspondence was received and filed:

County Planning Board reports to the Planning Board regarding the following applications:

Battinelli Farm and Garden Center, Site Plan, Block 3907; Lots 1.01 and 1.02, 1611 Greenwood Lake Turnpike. Application approved.

Mobil Gas Station, Site Plan, Block 6701; Lot 8, 1910 Union Valley Road. Approval withheld pending receipt of additional information.

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

Notice received October 27, 2005 advising that Ernie & Barbara Suto are applying for a permit to re-align the stream on property located at 24 Dudley Street, Block 11001; Lot 58.

Notice received October 25, 2005 advising that Eugene Prais is applying for a General Permit for property located at 114 Dockerty Hollow Road, Block 8401; Lots 22 and 23.

Notice dated October 24, 2005 advising that Nicholas Sacelaris is applying for a General Permit for the replacement of a subsurface sewage disposal system on property located at 470 Otterhole Road, Block 11302; Lot 10.

## **HIGHLANDS WATER PROTECTION AND PLANNING ACT**

### **ADJOURNMENT**

Meeting adjourned by unanimous consent at 9:25 p.m.

Respectfully submitted,

Grace R. Davis  
Secretary