

**WEST AMWELL TOWNSHIP
PLANNING BOARD MEETING
October 15, 2013**

The West Amwell Township Planning Board meeting was called to order at 7:30 PM by Chairman Tomenchok followed by the salute to the flag.

The following statement of compliance with the Open Public Meetings Act as listed on the meeting agenda was read into the record by Chairman Tomenchok: This meeting was called pursuant to the provisions of the Open Public Meetings Act. This meeting was included in a list of meetings transmitted to the Hunterdon County Democrat and Trenton Times on January 24, 2013. Notice has been posted on the bulletin board at Town Hall on October 10, 2013 and has remained continuously posted as to required notices under the Statute. A copy of this notice is available to the public and is on file in the Office of the Planning Board and Township Clerk.

The following general policy statement of the Board was read into the record by Chairman Tomenchok: The Board's general policy is to end the presentation of testimony on applications by 10:30 PM and to conclude all Board business by 11:00 PM. When necessary, the Chair may permit a reasonable extension of those time limits.

The meeting was recorded via digital recording system and a copy of the CD is on file in the Office of the Planning Board.

Attendance – Roll Call

Present: Stephen Bergenfeld
John Haug
Art Neufeld
Zach Rich
Hal Shute
Rob Tomenchok
Chester Urbanski
Nella Hamtil – Alt. #1
Ted Hills – Alt. #2
Attorney William Shurts
Engineer William Burr
Planner Beth McManus

Excused: No one

Chairman Tomenchok noted for the record that Mr. Molnar has resigned from the Township Committee and the Planning Board due to his recent retirement. Several members expressed their gratitude for all of Mr. Molnar's service to West Amwell Township.

Chairman Tomenchok also noted for the record that this is Mr. Hills last meeting due to his recent job transfer to North Carolina. Several board members thanked him for his service and wished him well.

Approval of Bill List

A motion by Urbanski, seconded by Bergenfeld to approve the vouchers for payment as listed on the 10/15/13 bill list was unanimously approved by roll call vote.

Resolutions of Approval

Resolution PB#2013-12: Spectra Energy (Texas Eastern) – Block 5 Lot 6 – 20 Queens Road: Preliminary and Final Site Plan Approval

Attorney Shurts commented that Attorney Landis had suggested a minor language revision. Mr. Urbanski also suggested a few minor revisions. A motion by Haug, seconded by Urbanski to approve Resolution PB#2013-12 as revised was approved by roll call vote with Mr. Bergenfeld abstaining.

It was noted that the applicant should not submit the “As-Built” plans for this site until Engineer Burr conducts his final inspection.

Amended Resolution PB#2013-11: Ryan & Robin Kerr: Block 23 Lot 5 – 394 Route 31 North – Approval of Preliminary & Final Major Site Plan with Variance(s)

It was noted for the record that Attorney Shurts recused himself from this matter and stepped away from the dais.

The applicant’s engineer Eric Rupnarain came forward and explained that they wanted to simply change the language in the approved resolution to reflect “clubhouse/restaurant” rather than “clubhouse/banquet facility” when referring to the primary building on the site. Also, he requested that the reference to the New Jersey Department of Environmental Protection (NJDEP) be deleted since this agency does not have jurisdiction over this particular application.

Engineer Rupnarain commented that his client was running out of time to get moving on the construction and asked that the Board notify the Township Construction Department that they need to start the site work. He indicated they have already received approvals from the County Planning Board, Soil Conservation and the New Jersey Department of Transportation (NJDOT) but are still waiting for some other outside agencies to provide input. Engineer Burr noted that typically all conditions of the resolution must be met which includes all outside agency approvals, prior to the start of any construction. Chairman Tomenchok remarked that it isn’t within the Board’s purview to tell the applicant to start construction. He suggested the applicant speak to the Construction Department, the Board’s professionals and the Township Committee with the understanding that if they begin construction they are proceeding at their own risk.

A motion by Urbanski, seconded by Hills to approve amended Resolution PB#2013-11 as noted was approved by roll call vote with Ms. Hamtil abstaining.

It was noted for the record that Attorney Shurts returned to the dais at this time.

Applications

Public Hearing: BDNJ Limited, LLC – Major Subdivision with Variances – Block 5 Lot 15.01 – Holcombe Grove Road

Present for the application was Attorney Eric Goldberg on behalf of the applicant BDNJ Limited, LLC and their Planner Carlos Rodrigues.

Attorney Shurts noted for the record that the public notice was provided in accordance with the Municipal Land Use Law (MLUL) requirements and indicated the Planning Board had jurisdiction to hear the application. Mr. Urbanski asked for clarification on the Board’s jurisdiction. He commented that he read through Planner McManus and Engineer Burr’s review memos as well as the MLUL and wasn’t sure why the Planning Board had jurisdiction and not the Board of Adjustment. He remarked that the Planning

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Board has very specific powers under the MLUL and stated that he wasn't comfortable with the idea of granting blanket variances based on hypothetical development.

Mr. Rich asked what the alternative is. Mr. Urbanski commented that the developer or property owner could go to the Board of Adjustment for variance approval on each lot at the time of development. Mr. Shute remarked that he believed the discussion was out of order. Chairman Tomenchok agreed and suggested the Board hear the applicant's testimony.

Attorney Shurts explained that the history of the application is unique. He stated that the applicant is seeking continued viability of the subdivision that was approved years ago and he believes that the Planning Board has jurisdiction to hear the application. Attorney Shurts marked the application as **Exhibit A-1** and the public notice as **Exhibit A-2**.

Attorney Goldberg came forward and explained the history of the application. He noted that the subdivision was approved in 2008 and stated that his client is simply seeking to keep that approval intact. He clarified that in 2004 the Planning Board approved a 19 lot subdivision that the NJDEP subsequently denied because of environmental constraints. Attorney Goldberg stated that the denial resulted in litigation between the NJDEP and the property owner which was settled in 2007. He remarked that the 2008 approval of the 14 lot subdivision is based on the settlement agreement with NJDEP.

Attorney Goldberg further clarified that they have received all of the allowed extensions under the MLUL and in July of 2014 their last extension lapses. He expressed the following reasons for the Board to grant the requested relief:

1. The NJDEP is the backbone of this subdivision and has essentially determined where development on each lot can take place because of the environmental constraints.
2. Variances are needed to build "estate" style homes which will keep the continuity of the subdivision. If the variances are not granted Attorney Goldberg believes the development will be "scatter shot" due to varying house sizes and setbacks.
3. This approval is not protected by the Permit Extension Act.

Planner McManus asked if the applicant was seeking individual variances for each lot or a blanket variance. Attorney Goldberg indicated they were seeking a blanket variance to keep the 2008 subdivision approval intact. Planner McManus expressed that she had concerns with the Board granting a blanket variance and asked to hear additional testimony.

Planner Rodrigues came forward and was sworn in. He noted his credentials and experience and the Board accepted him as an expert to provide testimony on this application.

Planner Rodrigues referred to the chart submitted with the application materials which outlined all of the requested variances for each of the lots in the subdivision. He noted that currently only lots 15.11 and 15.14 have been sold. As for the other lots in the subdivision, Planner Rodrigues indicated they are seeking variances for relief from the front and side yard setback requirements as well as for the allowable lot coverage. It was noted that the approved subdivision allowed for 20% lot coverage and the zoning change now allows for only 15%. Planner Rodrigues stated they wish to keep the 20% allowed coverage.

Exhibit A-4 was presented. It is a map depicting the consequences of the NJDEP settlement which reflects that the potential development within the subdivision is dictated primarily by the NJDEP and not by the Township zoning due to the environmental constraints.

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Exhibit A-5 was presented. It is an enlarged rendering of lots 15.01, 15.07, 15.08 and 15.09 reflecting the development difficulties presented by the new zoning. It was noted that lot 15.01 is particularly constrained now and only allows for a buildable area of 30' x 140'. Chairman Tomenchok remarked that someone could potentially build a two story 8400 sq. ft. home in that space if they wanted to.

Planner Rodrigues noted that the cluster provision in the Township Code is applicable to this zoning district. He stated it permits this type of subdivision and encourages it. He clarified that this subdivision meets all of the requirements of the cluster provision which means that if a cluster proposal was presented this land would have had substantially more housing units. Planner Rodrigues remarked that he interprets this to mean that the 14 lot subdivision is a desirable outcome for this parcel. Mr. Shute stated that there is a big difference between this subdivision and the cluster provision. He indicated that an open space subdivision is managed "in common" but privately owned and a cluster subdivision allows for open space to be held "in common."

Planner McManus clarified that the cluster provision comment is relevant because the applicant is trying to show that they are seeking approval for setbacks that the Planning Board has already found to be acceptable in this zoning district and that what they are proposing is not inconsistent with the Township's planning.

Attorney Goldberg asked Planner Rodrigues to address the legal standards for granting the variances. Planner Rodrigues referred to the positive and negative criteria outlined in the MLUL. He noted an approval would advance the purposes of the MLUL, create a desirable visual environment, conserve open space and natural resources and he said the subdivision was an efficient use of the land. He added site specific conditions stating that the buildable area qualifies as a unique condition, the benefits to granting the variances outweigh any detriments and he expressed that it would not be desirable to require individual property owners to seek variances in order to develop their lots.

As far as the negative criteria was concerned, Planner Rodrigues stated that he doesn't believe that granting the variances will be detrimental to the public good nor will the variance approval substantially impair the zoning.

Chairman Tomenchok commented that this application seems to be an exercise in process and asked if this was the appropriate venue to issue a blanket variance. Planner McManus clarified that the Board must determine whether or not the requested setbacks are appropriate and if the variances meet the MLUL criteria. She remarked that lot 15.01 appears to clearly require variance approval for development but she didn't believe that was the case for lot 15.03 and she questioned how the Board can justify this proposal as being better than a conforming configuration. Engineer Burr agreed that some lots appear to be buildable without requiring variance. Mr. Hills suggested that variances be asked for on only the lots that actually need them. Mr. Haug expressed support for preserving what has already been approved by the Board. Ms. Hamtil agreed with Mr. Haug's sentiment.

Attorney Goldberg argued that there is an assumption in a subdivision development that your neighbor will build a home similar to everyone else. Mr. Shute remarked that the Township struggled with the re-zoning and commented that this subdivision has been approved since 2008. He expressed the need for everyone to appreciate each other's position.

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Some continued discussion took place regarding concern with granting a blanket variance for all of the lots when variances aren't actually needed to develop each lot. A motion by Urbanski, seconded by Haug to approve the request for a blanket variance was not approved by roll call vote with Mr. Rich and Mr. Hills abstaining.

Unfinished Business

Discussion – South Hunterdon Regional Energy Co-op (SHREC) – Update

Mr. Neufeld commented that the project is moving forward very slowly. He indicated there is nothing to be reviewed yet, but there may be something next month.

Mr. Urbanski commented that there is an excellent article in the NJ Planner on landscape buffers and encouraged everyone to read it.

Open to the Public

Chairman Tomenchok opened the floor to public comment. Seeing no one come forward, a motion by Neufeld, seconded by Urbanski to close the floor to the public was unanimously approved by voice vote.

Approval of Minutes

A motion by Urbanski, seconded by Haug to approve the Board's minutes from 8/20/13 with no revisions noted was unanimously approved by voice vote.

Adjournment

A motion by Haug, seconded by Urbanski to adjourn the meeting was unanimously approved by voice vote.

The meeting adjourned at 9:42 PM.

Maria Andrews, Planning Board Secretary