

Minutes of the Re-Organization Meeting of the Morris Plains Board of Adjustment held on January 27, 2014 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mr. Michael Bozza, Chairman
Mrs. Rosemary Lopez
Mr. David Schulz, Vice Chairman
Mr. Robert Webster
Mr. Mark Karr
Mr. Roy Stewart

Mr. William Denzler, Borough Planner
Mr. Leon Hall, Borough Engineer
Mr. Michael Sullivan, Board Attorney

Absent: Mrs. Ruth Mills
Ms. Joan Scaccia

PLEDGE OF ALLEGIANCE TO THE FLAG

The meeting was called to order by Mr. Stewart. Mr. Stewart made the statement that adequate notice of this meeting has been published and posted in accordance with Chapter 231 of the Public Law of 1975, "Open Public Meetings Act."

NOMINATIONS OF OFFICERS

Mr. Stewart turned the meeting over to the Board Secretary for nominations.

NOMINATIONS FOR CHAIRMAN

Mr. Stewart nominated Mr. Michael Bozza for the position of Chairman, seconded by Mr. Schulz.

The Board Secretary asked if there were any additional nominations for this position. Hearing none, she requested a roll call.

Roll Call

Yeas: Mrs. Lopez, Mr. Schulz, Mr. Webster, Mr. Karr, Mr. Stewart.

Nays: None

Absent: Mrs. Mills, Ms. Scaccia

Abstain: Mr. Bozza

Motion carried.

Mr. Bozza thanked the Board for his election as the Chairman.

NOMINATIONS FOR VICE CHAIRMAN

Mr. Stewart nominated Mr. David Schulz for the position of Vice Chairman, seconded by Mrs. Lopez.

The Board Secretary asked if there were any additional nominations for this position. Hearing none, she requested a roll call.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Webster, Mr. Karr, Mr. Schulz, Mr. Stewart

Nays: None

Absent: Mrs. Mills, Ms. Scaccia

Motion carried.

The Board Secretary turned the meeting back over to the Chairman.

The Board congratulated Messrs. Bozza and Schulz on their elections as Chairman and Vice Chairman.

APPROVAL OF THE BOARD'S LEGAL REPRESENTATION

Mr. Bozza commented that the Board must approve legal representation for the calendar year 2014. It was recommended that Michael Sullivan, Esq. continue in his role as the Board's legal representative.

Mrs. Lopez moved that Michael Sullivan, Esq. be approved as the Board's 2014 legal representative, seconded by Mr. Stewart.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Schulz, Mr. Webster, Mr. Karr,
Mr. Stewart

Nays: None

Absent: Mrs. Mills, Ms. Scaccia

Motion carried.

APPROVAL OF BOARD SECRETARY

Mr. Bozza stated the next item of business was the approval of the Board Secretary, Karen Coffey, for the calendar year 2014.

Mr. Schulz moved to that Karen Coffey be approved as Board Secretary for 2014, seconded by Mr. Stewart.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Schulz, Mr. Webster, Mr. Karr,
Mr. Stewart.

Nays: None

Absent: Mrs. Mills, Ms. Scaccia

Motion carried.

Mr. Bozza thanked Mrs. Coffey and she thanked the Board.

APPROVAL OF 2014 MEETING DATES

Mr. Bozza stated the next order of business is to adopt the Resolution to approve meeting dates for 2014, Board of Adjustment Resolution **#14-01 - "Notice of Meeting Dates"**. Mr. Stewart asked that the Board review the following Resolution:

**BOARD OF ADJUSTMENT - RESOLUTION 14-01
NOTICE OF MEETINGS**

NOTICE OF MEETINGS

BE IT RESOLVED by the Board of Adjustment of the Borough of Morris Plains, County of Morris and State of New Jersey, this 27th day of January, 2014 as follows:

1. The Morris Daily Record and the Morris News Bee (or, as an alternate to the Morris News Bee, the Star Ledger), are hereby designated as the two newspapers to receive notice of meetings as required by any and all sections of the Open Public Meetings Act, it appearing that said newspapers are most likely to inform the local public of such meetings.
2. The location for posting of notice of meetings shall be the bulletin board in the Borough Hall, 531 Speedwell Avenue, Morris Plains, New Jersey where notices of this kind are normally posted.
3. The schedule attached hereto and made a part hereof entitled "Notice of Scheduled Meetings for the remainder of the year 2014" is hereby adopted and the Secretary of this Board is authorized and directed within seven (7) days of this scheduled meeting to: (a) post said meeting schedule and maintain the same posted throughout the year on the bulletin board in the Borough Hall, 531 Speedwell Avenue, Morris Plains, New Jersey; (b) mail a copy of the same to the Morris County Daily Record and the Morris News Bee; (c) mail a copy of the same to those persons who may request such mailing provided they comply with the regulations providing for the mailing of such notices; (d) the sum of \$5.00 per notice is hereby fixed as the amount to be paid by any persons requesting individual notice of meetings as provided in Section 14 of the Open Public Meetings Act; and file a copy of said schedule with the Clerk of the Borough of Morris Plains. The Morris Plains Board of Adjustment has their meeting date on the fourth Monday of every month except for May and December when the meeting is scheduled for the third Monday.

**NOTICE OF SCHEDULED MEETINGS FOR REMAINDER OF THE YEAR
2014**

Please take notice that the Board of Adjustment of the Borough of Morris Plains will meet to discuss or act upon public business at 7:30 P.M. prevailing time on each of the dates set forth below in the Council Chambers at 531 Speedwell Avenue, Morris Plains, New Jersey: February 24th, March 24th, April 28th, May 19th, June 23rd, July 28th, August 25th, September 22nd, October 27th, November 24th, December 15th and January 26th, 2015.

* * * * *

Mrs. Lopez moved that Board of Adjustment Resolution 14-01 be approved, seconded by Mr. Stewart.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Schulz, Mr. Webster, Mr. Karr,
Mr. Stewart

Nays: None

Absent: Mrs. Mills, Ms. Scaccia

Motion carried.

APPROVAL OF MINUTES

Mr. Bozza stated the next matter for action at this meeting is the approval of the Board minutes for the December 16, 2013 meeting.

Mr. Schulz moved to approve the minutes of the December 16, 2013 Regular Meeting, seconded by Mr. Stewart.

Roll Call

Yeas: Mr. Bozza, Mr. Schulz, Mr. Karr, Mr. Stewart

Nays: None

Abstain: Mrs. Lopez, Mr. Webster

Absent: Mrs. Mills, Ms. Scaccia

Motion carried

COMMENTS FROM THE PUBLIC

Mr. Bozza opened the meeting to the public to speak on matters other than those on the agenda. Seeing no one, he closed the public portion of the meeting.

BA-6-11 Denise Yuliano – Public Hearing – 49 Dogwood Road Block: 72 Lot: 12 (rear)

Mr. Sullivan swore in Mr .Leon Hall and Mr. William Denzler, the Borough Professionals.

Louis P. Rago, Esq., attorney for the Applicant, introduced himself to the Board. He congratulated the Chairman and Vice Chairman on their election to their positions for 2014. He provided a summary of this matter which he described as an application involving what is and has been a residential building lot at 49 Dogwood Road. The Yuliano family has owned this lot for approximately 35 years. The property does not front on an improved street. The Applicant must show that the site can be accessed by emergency vehicles. He referred to January 20, 2014 comments received from Mike Geary from the Fire Department that make specific recommendations as to the emergency vehicle access issues. Both the Applicant and her witness agree to be bound by the conditions set out by Mr. Geary.

Continuing, Mr. Rago advised the Applicant is seeking relief relating to the steep slope variance. The lot has been offered for sale at fair market value to both neighbors, but there has been no interest. The lot is buildable, but it needs relief to be useable. Taxes

have been paid for many years on this property. This is the nature of this application. He advised that tonight's witness is Stephen Ira Smith.

Mr. Sullivan swore in Mr. Smith who provided a business address of 320 Route 10 West, Randolph, New Jersey. He is a licensed professional planner, licensed in the State of New Jersey since 1985. He is also a licensed professional land surveyor licensed in the State of New Jersey since 1984. He supplied information about his work situation and experience.

The Board accepted Mr. Smith as the expert he testified to being.

Mr. Smith stated he was involved with the preparation of both the engineering plans and survey. These are the same plans the Board has. Mr. Griffin and he worked together on the development of these plans. He has been a part of this application process since 2008. He gave information concerning the initial work done in connection with this application. He referred to Sheet 2 – the Existing Condition Plan. He indicated that a portion of the lot is actually in Parsippany and identified as Block 12, Lot 1.01. He provided information as to the precise location of the lot in question. Prior to 2003, the lot had frontage on an unimproved street. He also commented on an existing easement on the municipal utility authority property, directly to the left, when this project first began. Since the existing easement was discovered to not be large enough, they approached the municipal utility authority, and the authority granted a new easement that widened it from the original width of 15' to the new width of 25'. An additional 10' wide easement was granted for construction and slope rights.

Continuing, Mr. Smith provided details about the design phase of the project, including a driveway that would access this property by coming up to the easement that was granted on Lot 11, making a 90 degree bend to the east, paralleling the rear line of Lot 10 and making a turn to the left. The tract is 19,122 SF total where the zone requires a total of 18,000 SF; it is in the R-2 zone. He commented on the matter of setbacks, including that the lot closest to Dogwood Road would be designated the "front yard." The application complies with all of the setback requirements.

Mr. Smith next discussed specific improvements as part of the project: (1) a paved driveway beginning at Dogwood Road; (2) at the intersection where the driveway splits to the house, the driveway will be constructed over to the water tank to benefit the municipal utility authority and give them a paved driveway; and (3) the existing gravel K-turn area (the "notch") for the emergency vehicles will be paved at the request of the Fire Department. He then discussed proposed water and sewer locations. There will be storm water management devices, including a proposal for two drywells that the dwelling will "tie" into. A third drywell will be constructed on the southerly side of the driveway in the southwest corner of the lot under an inlet. An asphalt curb will be installed on the easterly side of the driveway to keep water from flowing onto Lot 10. There will be a storm drain, a trench drain, and a new inlet to be constructed over the existing storm sewer line on Dogwood Road.

Next, Mr. Smith commented on the two variances being sought. The first is because the lot does not have frontage on a public street. Some trees on the property will be re-located. He spoke about the letter received from the Fire Department. There is a 90 degree angle. The turning radiuses have been checked, including the radius for a 40' long fire truck such as Randolph has, and all is satisfactory. He still must check with the Morris Plains Fire Department to be certain they do not have a fire truck longer than 40'. The gravel area (the "notch") will be paved as will the entire driveway. He advised on the requirement that a fire hydrant must be within 400' of the house. The Applicant is agreeable to the installation of a new fire hydrant that will comply with the 400' requirement and will actually be less than 400' from the house. The fire department needs to know that the driveway pavement can support the weight of the fire vehicles. They are proposing 2" of pavement over 4" of quarry process stone. Mr. Hall suggested that perhaps the 2" of pavement should be increased to 3" of pavement. The Applicant is agreeable to this suggestion as well as agreeing to install a very conspicuous house number sign on Dogwood Road due to the location of the house.

Mr. Smith discussed the next variance being sought, the one in connection with steep slopes. He referred the Board to Sheet 5, over to the right, where there is information about steep slope categories. A total of 1,095 SF over 20 percent will need to be disturbed: (1) 766 SF of slopes in the 20-25 percent range; (2) 107 SF that are in the 25-30 percent range; and (3) 222 SF that are in the over 30 percent of slope. The steep slope location does not allow for design around them, and as a result they are seeking a C-1 hardship variance. He commented on the kinds of items municipalities look at in preparing steep slope ordinances. He next referenced Sheet 4 and spoke about issues relating to silt, silt fences, an erosion control plan, proposed construction of a retaining wall (0' in height up to a 4' high wall and then back to 0'), and the installation of a crushed stone blanket. He addressed the matter of runoff from the property, pointing out the usefulness of the asphalt curb that will direct drainage into the storm inlet over the drywell and then into the trench drain system near the road. Referencing Sheet 3, he stated he added several lines to it. This Sheet was marked as Exhibit A-1 and titled "Sheet 3 with a Few New Lines." He provided commentary on the proposed grading, and a waiver they are requesting that will permit re-grading of 1' or more of elevation change within 5' of a property line. A total of 550 cubic yards of cut material will be removed from the site. He stated that if the variances being sought this evening are not granted, this will render the property unbuildable. He again mentioned the soil erosion measures, storm water management techniques, the reduction of direct runoff onto Lot 10, the paved driveway(s), and the paved emergency K-turn area. He believes the proposed design is sound, and that the variances can be granted without substantial detriment to the public good or the neighborhood or substantially impair the intent and purpose of the zoning plan.

In response to a question about runoff, Mr. Smith stated the runoff directly onto Lot 10 through the Applicant's property is significantly reduced. He referred to Sheet 7 saying that "The three drywells will contain 1,057.9 cubic feet of storage volume which exceeds the required 974.25 cubic feet of storage volume required."

Mr. Hall commented that this is not a major development in terms of RSIS; major development is when there is one acre or more being disturbed and the impervious surface is increased by more than a quarter acre (in excess of 10,000 SF). The Borough has no ordinances for thresholds below these two requirements. But, when steep slopes are involved, control of runoff is critically important particularly during construction. He stated that in talking with the Applicant, he thought it was fair and reasonable to store 3" of runoff off the proposed impervious surfaces. This is what currently has been designed. He cautioned that it is very important that runoff not impact Lot 10 to the south, especially during the construction phase and even more so if a thunderstorm or heavy rain occurs. He advised he had recommended the asphalt curbing along the driveway to direct most of the runoff into the drywells and/or down to the trench drain.

In response to a question about the paving of gravel areas, particularly the emergency vehicle K-turn area and where the plans show an existing gravel driveway. Mr. Smith referred to Sheet 2 where gravel areas are shown. Everything that is shown on Sheet 2 as gravel will be paved.

Mr. Hall asked about the Evergreen trees along the southerly property line – how many trees are there?

Mr. Smith does not know the exact number. He received communication from the Applicant today that no trees would be removed, but rather re-located to other areas on the property.

Mr. Hall stated that there needs to be a note on the plans that "All existing Evergreen trees that currently exist on the lot will be protected during construction and will be re-located to locations to be determined."

Mr. Smith raised the possibility that there may be a very large Evergreen tree that cannot be re-located – what happens then?

Mr. Hall advised that this issue can be left open as a condition, and he will check the site to better observe the precise trees.

Mr. Hall referred back to December 2012 when the Applicant submitted a floor plan. He recommended that the footprint of the building to be constructed be in accordance with the floor plan submitted on December 4, 2012. It can be that size or smaller.

Continuing, Mr. Hall referred to his December 11, 2013 report, stating he will review several comments in that report. Items numbered B5, B6, B7, B8, and B12 are all recommended as conditions of approval; he read these items. B4 has been addressed.

It was indicated that the Applicant was agreeable to these recommendations.

Mr. Hall referred to item B9 – grading plan does not comply with 13-4.14(b) 5.2(l) which addresses change in grade. The contours need to be tweaked or install a short retaining wall. B11 is a revision to the plan relating to the inlet and horizontal slots versus vertical ones. He prefers and recommends the horizontal slots. Mr. Smith agreed to these recommendations.

Mr. Hall discussed the steep slope variance. He again strongly cautioned about the issues relating to the construction phase, particularly if a thunderstorm or heavy rain occurs. All precautions must be ready to be in place if these storms occur to protect Lot 10. Again, he believes there are sufficient measures that will be in place to protect Lot 10. This is not a significant steep slope variance with only 1,095 SF; lots of municipalities exempt 1,000 or 2,000 SF. It is not a large area of slope.

Mr. Denzler stated he reviewed the application from a planning perspective and based on the testimony provided and Mr. Hall's comments, he does not see any problems from his perspective. All Issues have been addressed. He asked if Mr. Smith could provide some general comments on what the proposed structure will look like.

Mr. Rago confirmed that as the plans propose it will be a two-story house and a garage. However, there is some chance that it will actually be smaller than what it is shown, but it will stay within the footprint. He said that a condition could be that it will be a two-story house or less in the event his client wants to build something similar, but smaller.

Cross discussion about what the proposed structure will look like and be.

Mr. Smith is not aware of any need for there to be blasting and a brief cross discussion relating to blasting followed.

Mr. Schulz asked about the steep driveway and the 90 degree turn for an emergency vehicle. Have changes in elevations been looked at from this perspective? He also asked about the retaining wall 1' off the property and whether it will require a construction or maintenance easement.

Mr. Smith responded an analysis was done of this. He referred to the driveway profile appearing on Sheet 6 and discussed what this shows. He provided more detailed information concerning the proposed retaining wall.

Mr. Hall stated he is comfortable with the proposed plan regarding the driveway and the 90 degree turn and he explained why he is comfortable with it.

Cross discussion about retaining wall issues, including comments from Mr. Hall that a retaining wall can be built 1' off the property line, but it takes a certain finesse and knowledge of the contractor, but it can be done. He recommended staking out the property line and installing a construction fence.

Mr. Hall stated that as a condition it should be stated that the retaining wall shall be constructed in its entirety for construction access north of the proposed wall and that the property line of Lot 10 will be staked out with orange construction fencing to prevent encroachment.

Mr. Smith asked if a silt fence is adequate?

Mr. Hall stated no, there must be the orange construction fencing.

Mrs. Lopez asked about the easement granted by the water company. Is this easement now recorded in the County?

Mr. Smith stated that to his knowledge it has been. He believes copies of this easement have been provided to the Borough.

Mr. Hall confirmed that and that it has the Morris County Clerk's stamp on it.

Mr. Smith reported that the easement runs from Dogwood Road through to where Kosakowski Drive is. Part of the easement area is actually in Parsippany. The water company will maintain their portion of the easement once it is constructed.

Cross discussion about issues relating to the easement(s) situation.

Mr. Bozza opened this portion of the meeting to questions from the public of this witness. Hearing none, he closed this portion of the meeting to the public.

Mr. Bozza opened this portion of the meeting to comments from the public about this application. Hearing none, he closed this portion of the meeting to the public.

Mr. Rago stated that 10 years ago when the Borough vacated Kosakowski Drive, it put this property in an awkward spot. It had to seek access from Dogwood Road. Virtually all the testimony indicates that access to this property whether it be drainage or the trees or the curb is going to be beneficial. The only way to make this property useful is to approve a plan such as this one so that a house can be built that meets the setbacks with more than adequate access. He requested that the Board look favorably on this application with the condition discussed.

Mr. Sullivan reviewed the conditions/notes that will be a part of the resolution if it is approved by the Board.

Mr. Hall reminded that the Applicant must still check with the Fire Department to be sure the radius for the fire trucks is adequate – to make sure they do not need more space than the Randolph fire truck.

Mr. Schulz moved to approve this application as submitted, as amended by the Professionals, and to include comments by Mr. Sullivan regarding the relief for the lot

not fronting on a fully-improved street and the variance relating to the steep slopes and the waiver from 13-4.14(b) 5.2(k) in connection with the re-grading of 1' or more from within 5' of the adjoining property, seconded by Mr. Stewart.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mr. Schulz, Mr. Webster, Mr. Karr,
Mr. Stewart
Nays: None
Abstain: None
Absent: Mrs. Mills, Ms. Scaccia

Mr. Bozza reminded of the need for memorialization which will be on the agenda of the Board's meeting on February 24, 2014.

CORRESPONDENCE AND BILLS

There are is correspondence and no bills.

OLD BUSINESS

Mr. Schulz reported that Mr. Reilly will be coming home on February 6, 2014. He has work to do at home.

NEW BUSINESS

Mr. Bozza discussed the Board's annual report that is prepared each year of the previous year's activities for the Borough Council. He has been doing this report for several years and asked for a volunteer to handle the responsibility to prepare this report for the 2013 activities. He has the report template. He requested that the members think about it, and that he would appreciate it if someone would accept this responsibility.

There being no further business, Mr. Stewart moved the meeting be adjourned, seconded by Mrs. Lopez. Voice vote. All in favor. **Motion carried.**

Karen M. Coffey
Commission Secretary

Maureen Sullivan
Recording Secretary

