

Minutes of the Regular Meeting of the Morris Plains Board of Adjustment held on July 22, 2013 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mr. Michael Bozza, Vice Chairman
Mrs. Rosemary Lopez
Mrs. Ruth Mills
Ms. Joan Scaccia
Mr. David Schulz
Mr. Robert Webster
Mr. Mark Karr
Mr. Roy Stewart, Chairman

Mr. Leon Hall, Borough Engineer
Mr. Michael Sullivan, Board Attorney

Absent: Mr. Martin Reilly
Mr. William Denzler, Borough Planner

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."

Mr. Stewart sadly stated that Mr. John Scagnelli passed away last night. He mentioned the party given in his honor several months ago at Ms. Scaccia's home. He asked Mrs. Mills to provide details about the arrangements.

Mrs. Mills advised that she is assuming at this point in time that the wake will be held at the Dangler Funeral Home with a viewing on Friday from 2:00 p.m. to 4:00 p.m. and from 7:00 p.m. to 9:00 p.m. The service will be on Saturday, July 27, 2013, at 10:00 a.m. at St. Virgil Church. Internment will be at Gate of Heaven.

Mr. Stewart thanked Mrs. Mills.

APPROVAL OF MINUTES

Ms. Scaccia moved to approve the minutes of the April 22, 2013 Regular Meeting, seconded by Ms. Mills.

Roll Call

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

Nays: None
Abstain: None
Absent: Mr. Reilly

Motion carried

COMMENTS FROM THE PUBLIC

Mr. Stewart opened the meeting to the public to speak on matters other than those on the agenda. Hearing none, he closed this portion of the meeting to the public.

BA-1-12 Rand Homes Corporation, Madison Avenue

Block: 53 Lots: 11,12.01

Mr. Stewart advised this application is on for continuance of the hearing.

Mr. Mark Blount, introduced himself stating he is appearing on behalf of the Applicant.

Mr. Sullivan swore in the witnesses for the Applicant.

Mr. Andrus Aasma, 61 Main Street, Ledgewood, New Jersey, introduced himself to the Board.

Mr. Sullivan also swore in Mr. Leon Hall, Borough Engineer.

Mr. Blount presented a summary of this application. It is an application under the Municipal Land Use Law, Sections 35 and 36, where the Applicant is seeking the direction of the Board for the issuance of a building permit on a lot which is located on an unimproved, municipal right of way. There have been a number of meetings, discussions, and plan revisions. The latest delay results from the submission of the most current plans to the Fire Department for Chief Geary's review and receiving his comments and input in connection with the design of the proposed right of way. He anticipates there will be discussion at this meeting regarding what the law allows as far as what this Board is directed to do as well as discussion of municipal ordinances under Chapter 13. He understands that at a point this matter goes to the Council for discussion of issues relating to costs and possibly other related matters.

Continuing, Mr. Blount, provided commentary in connection with relatively recent communications in this matter, including comments contained in an e-mail dated July 3, 2013 to Mrs. Coffey from Chief Geary referencing Mr. Hall's June 21, 2013 report to the Board of Adjustment. Now that the Chief has reviewed the plan and provided his comments, it is something like "mission accomplished."

Mr. Sullivan referenced a June 20, 2013 report from Mr. Denzler, who is not present at tonight's meeting, and the comments concerning items to be added to the plan contained therein, specifically in Paragraph C.

Mr. Blount stated that 1, 2, 3, and 4 are satisfactory with the Applicant.

Mr. Sullivan next referenced Mr. Hall's June 21, 2013 report that had some comments and Mr. Hall's July 18, 2013 memorandum in connection with soil disturbance and related issues which the Applicant is seeking approval of at this meeting.

Mr. Blount stated this is correct. The Applicant did submit a soil disturbance application with calculations. They did receive Mr. Hall's July 18, 2013 report which specifically addressed soil disturbance. The Applicant does not object to these comments. As to Mr. Hall's June 21, 2013 report, there have been discussions relating to comments contained in this report. There is still some discrepancy between the plans and the comments. He highlighted certain items/comments.

Mr. Sullivan stated that if the Applicant will conform and comply with the recommendations in the Professionals' reports, this can be stated. If issue is to be taken with any of the comments/recommendations, now is the time to raise these points.

Mr. Blount stated the Applicant cannot say that it will comply with everything in all reports; there are items they still contest. He commented on the Applicant's position regarding the top course of pavement saying they agree with 2A with the exception of the top course. The comment is that the Applicant does not agree with the top course of pavement being installed at this time because there will be future build-out other than the Applicant's lot.

Mr. Sullivan asked how many items the Applicant is taking issue with.

Mr. Blount responded there are four items.

Mr. Sullivan asked if the Board wants to hear them all first.

Mr. Stewart replied they should hear them first.

Mr. Blount referred to H and J under Item 2. They do not believe these are items that are appropriate for this application. These items as well as Item No. 4, A and B, on that same page all benefit other properties and are not related to the conditions set forth in Section 36. Other than these matters the Applicant concurs with terms and conditions of Mr. Hall's June 21, 2013 letter and July 18, 2013 correspondence.

Mr. Hall commented on 2A of the June 21, 2013 report. He believes the Applicant must build a certain width of the roadway; the width desired is 20'. He realizes that during construction there can be damage to top course pavement. If there is damage, whoever is building a home at the time is required to repair the top course pavement. It is not an unreasonable request. As to comments 2H and 2J, the comments apply to construction issues. All the utilities should be extended out to and beyond the future 28' wide curb line. He offered the roadway of Kosakowski Drive as example of what happens when not allowing for future development. He believes he must be proactive on this issue; he, too, learned a lesson from the Kosakowski Drive matter. Other

comments also relate to this same thinking for future development. The comments are absolutely appropriate.

Mr. Blount spoke about specific information included in Section 36. He said the Applicant is willing to discuss this matter with the Borough Attorney as to the appropriateness of the various recommendations being made by the Borough Professionals to arrive at a mutually beneficial conclusion with the Borough.

Mr. Stewart expressed some uncertainty in connection with having to vote on anything tonight.

Mr. Blount stated that Mr. Sullivan certainly can provide guidance, but he believes it is within the Board's jurisdiction to make a determination if it believes Mr. Hall's four comments/recommendations are required or inappropriate.

Mr. Hall referred to the fact that there will be certain list of conditions if this application is approved. They will need to be complied with.

Mr. Sullivan stated we are going to be taking action as determined to be appropriate. Mr. Blount will still have to make his presentation to the Borough Council. He asked Mr. Blount if there is soil that will be exported off the site. Is the total amount of soil to be exported 328 cubic yards?

Mr. Blount replied it is correct that soil will be exported off the site. The Applicant has agreed to Mr. Hall's recommendation that the soil not remain in Morris Plains. He believes that 328 cubic yards of soil to be exported is the correct estimated total.

Mr. Hall suggested checking the application for the amount of cubic yards of soil to be exported. He checked it and found the 328 cubic yards to be a correct estimate.

Mr. Stewart asked if there was a suitable use for the soil within the Borough, could Mr. Hall approve this after an approval of the application?

Mr. Hall responded no. Once it is approved with the specific condition of it being removed from the Borough, he would not be able to amend the condition. Additionally, if for some reason this volume of soil remained in the Borough, tests would need to be conducted to comply with soil testing standards and would be dependent on what the use would be. He wants it out of the Borough.

After further discussion of this issue, Mr. Stewart agreed it was better to retain the removal of the soil from the Borough as a condition.

Mr. Stewart closed this portion of the meeting of the Board's questioning of the Applicant and opened the meeting to the public for any questions or discussion they may have of the Applicant.

Seeing none, Mr. Stewart closed this portion of the meeting.

Mr. Sullivan stated that when there is a hardship, the Board can direct issuance of a permit to allow the building of a single-family house on a roadway that is not fully improved. The focus of the Board and this hearing has been to ensure there is adequate access for emergency equipment and vehicles. He referred to Section 13-4.15 of the Borough ordinance and the determinations that must be made by the Board. He listed the determinations, specifically in relation to off-track improvements. One of the conditions of approval would be that a revised cost estimate for the partial construction would be submitted and subject to the review and approval of Mr. Hall. If the application is approved, the Board would need to state that it was approving it subject to various conditions, including the cost estimate; compliance with Mr. Denzler's June 20, 2013 additional comments in paragraph C (1-4); recommendations in Mr. Hall's June 21, 2013 and July 18, 2013 memoranda; soil to be moved out of the Borough; and compliance with the Borough's soil disturbance ordinance (Section 19-6, Conduct of Operations, posting of a bond/letter of credit).

Continuing, Mr. Sullivan stated that while the final decision is the Board's, he believes there is a consensus to include all the items in Mr. Hall's June 21, 2013 memorandum. He specifically mentioned items 2A, H, J and 4A and B.

Mr. Sullivan swore in Brian Clark, 10 Madison Avenue, Morris Plains, he asked where power lines/other utilities lines would be located – underground, overhead or some other way. He also asked about lighting.

Mr. Hall stated he is recommending that all utilities including electric be installed underground as required by the Residential Site Improvement Standards (RSIS), a State statute governing residential development.

Mr. Clark, Madison Avenue next asked whether anyone has checked for any endangered species such as hawk nests.

Mr. Hall replied that this has not been done; he does not believe a development impact statement is required for this type of application.

Mr. Stewart asked if anyone has any exception to the conditions Mr. Sullivan enumerated. If so, they should be discussed. If not, the assumption is that an approval will contain all the elements listed by Mr. Sullivan.

Mr. Bozza moved that the application be approved with the conditions as outlined by Mr. Sullivan, seconded by Ms. Scaccia.

Roll Call

Yeas: Mr. Bozza, Mrs. Lopez, Mrs. Mills, Ms. Scaccia, Mr. Schulz,
Mr. Webster, Mr. Stewart

Nays: None
Abstain: Mr. Karr
Absent: Mr. Reilly

Motion carried

Mr. Stewart stated this application has been approved and that the Board will adopt a resolution at next month's Board meeting.

Mr. Blount thanked the Board.

CORRESPONDENCE AND BILLS

Mrs. Mills stated she received no documentation for action; there are no bills.

NEW BUSINESS

None.

OLD BUSINESS

Mr. Hall commented that last week he and Mr. Denzler met with Mr. Eddie Kloss of EJK Realty; it was a pre-application meeting. Mr. Kloss/EJK Realty will be submitting a formal application for the Board's August meeting. It involves the Route 10 property. He has a prospective tenant to occupy the standalone building who wants to be on their own lot which will require a minor subdivision, an amended site plan, and probably an additional parking area(s).

There being no further business, Mr. Schulz 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

