

**TOWNSHIP OF RIVER VALE
PLANNING BOARD
September 15, 2008
REGULAR MEETING
MINUTES**

ADEQUATE NOTICE STATEMENT:

A Regular Meeting of the River Vale Planning Board was called to order at 8:00 p.m. The following statement was read: "This is a Regular Meeting of the Planning Board of the Township of River Vale. I am informed by the Clerk that adequate public notice has been provided by mailing notice to the Pascack Valley News/Post Review and The Record, by posting notice on the bulletin board in the Municipal Building, and by filing a copy of the notice to all persons who requested the same and prepaid the cost fixed by the Board".

The Planning Board saluted the flag.

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ROLL CALL:

Members Present:

Kenneth H. Koons	Chairman
Robert Menville for	Mayor Blundo - Class I
Peter Wayne	Class II
Dwight de Stefan	Class III (Councilman)
Mark Ericksen	
George Shalhoub	
Ron Tucci	
Chris Wahmann	Secretary
Jim Tolomeo	Alt. #1
Scott Lippert	Alt. #2

Also Present:

Dennis Deutsch, Esq., Board Attorney
Christopher Statile, PE Board Engineer
Carol Reiter, Professional Planner

Absent: Bruce Carillo Vice-Chairman

MINUTES: August 18, 2008 - The Minutes of August 18, 2008 were approved on motion of Chairman Koons, seconded by Mr. Wayne and carried.

RESOLUTIONS:

1. Jewish Home Assisted Living Facility, 685 Westwood Avenue - Withdrawn from consideration

PUBLIC HEARINGS:

1. Blue Hill Estates, 719 & 707A Orangeburgh Road, Block 202.01, Lots 9, 15.01, 16.05 - Preliminary Major Subdivision & Final Subdivision - Chairman Koons and Chris Wahmann recused themselves and stepped down from the dais. James Jaworski, Esq. represented the applicant, Blue Hill Estates. Ira Wiener, Esq. represented the objectors, Mr. and Mrs. Koons. They were discussing they suspended their applications pending discussions with the neighbor. They are here to say they are not disappearing, they are still alive and still communicating on a semi-daily basis and hope to come back with something that makes sense in an application, and they wanted to appear rather than send a letter. The applicant is asking for an adjournment with no objection and any time considerations would be extended.

A motion to grant the adjournment was made by Mr. Tucci, second by Mr. de Stefan. Mr. Lippert asked Mr. Deutsch how long they could keep it open for. Mr. Deutsch said it could be kept open for a reasonable period of time, and it is the Board's discretion when it becomes unreasonable. The first hearing was in February. It is probably reaching that point. Mr. Lippert would like to see counsel resolve it. Mr. Shalhoub said the plan was dated October, 2007. Mr. de Stefan did agree with the statements that time is running out. Mr. Shalhoub acted as Chairman. There was a question from the public. Matt Higgins asked how long this has been going on. How many times has the proceedings been canceled. Mr. Deutsch answered the Board could ask counsel to comply by a certain date. Mr. Jaworski asked for a two-month adjournment. Mr. Deutsch suggested he send a letter to the residents advising them. Mr. Shalhoub said they should definitely be ready in two months. Mr. Menville made an amended motion, seconded by Mr. de Stefan. He will send a copy of the notice to the residents to Mr. Deutsch. The motion carried unanimously. The matter was carried to 11/17/08 to move forward or vote.

Mr. Koons and Mr. Wahmann returned to the dais.

2. Rockland Built Homes, 722 Westwood Avenue, Block 1801.01, Lot 30 - Major Subdivision - Robert J. Mancinelli, Esq. represented the applicant. He reviewed that the Board ruled to have its Planner testify. He reserved his right to cross-examine. Mr. Deutsch received a letter from the Police Dept. dated 9/5/08.

Caroline Reiter, NJ Licensed Professional Planner, Oakland, NJ, employed by Statile Associates for ten years, was sworn in, qualified and accepted. Mr. Mancinelli had no questions of her credentials. Ms. Reiter's understanding was there was a minor subdivision with variances. The applicant provided testimony by Steve Lydon of Burgis Associates, and the Board wanted to retain its own Planner to review the matter and testify. She reviewed the Master Plan, Zoning Ordinances, report of and listened to the tape of the last meeting. Mr. Lydon also provided her with copies of two photo exhibits he presented that evening. She is also familiar with the review letter of Statile Associates I en and did visit the site and the area. Mr. Deutsch advised Ms. Reiter should advise the Board as to her report.

Ms. Reiter described the property, which contains 96,000 sq. ft. The drawing shows it was previously improved with a two-story and one-story dwelling. The rear of the lot backs up to the Hackensack River, C1 waters, with a 300' buffer, and wetlands with a transition area for that. The applicant proposes to subdivide the property into Lots 30 and 30.01, in essence, creating a flag lot development. The transition area will be located on Lot 30.01. Both lots are deficient in lot width and frontage. The parent lot is also non-conforming. The Master Plan contains a land use plan. Lot 30 has two distinct land use classifications, low/medium density, corresponding to the A one district. The back half, the buffer area is in the watershed/land use classification. Also, the Master Plan Parks and Open Space Plan shows a trail going through the back of that property. Her understanding of the audio was that Steve Lydon provided testimony for a C1 variance. It is her opinion that the property does not meet the statutory criteria for C1. The applicant must show undue hardship due to conditions or structures existing on the lot. The parent lot does not meet lot frontage and width, and the applicant is looking to exacerbate the situation, taking one non-conforming lot and making two non-conforming lots. There are environmental constraints as well.

Ms. Reiter continued. The property could be developed with one single family home without the creation of a non-conforming lot and flag lot. A letter was received from the Fire Department dated 9/15/08. Mr. Mancinelli advised he would object to her reading the letter and relying on it for a conclusion based on the fact that the person authoring the letter is not present, and it is here say. Mr. Mancinelli objected to the paraphrasing and would bring his engineer back next month. Mr. Deutsch said she could refer to it, and asked if it would reflect on her conclusions. The Fire Chief could be brought in next month for cross-examination. Ms. Reiter said her letter was dated 9/11/08 and the Fire Chief's letter was dated 9/15/08. Mr. Mancinelli said he would object. Mr. de Stefan commented the right of cross-examination is paramount, and clearly the Fire Chief has to come in. Mr. Deutsch advised if there is any objection to it being considered here say, then the Board should bring in the Town employee for cross-examination. You cannot accept the letter as evidence of the truth of the matter set forth in the letter without the right of cross examination.

Mr. Koons commented the Board's engineer made the same comments, and if Ms. Reiter is in support of it, it is not different from Mr. Statile's report with respect to the driveway, width of driveway, etc. Therefore, the Board could be directed to ignore the letter. Mr. Mancinelli commented they were getting outside this witness's expertise. She is not qualified to testify as to safety. Mr. Deutsch asked Ms. Reiter if she came to any conclusions about public safety. She said she had concerns that she needed to be addressed. Mr. Deutsch asked if planners ever get into fire safety. Her response was certain elements do come up. Mr. Deutsch said the Board can bring in its department heads or ignore the letter. In any event, Ms. Reiter cannot refer to it unless the Board is going to bring in the expert. Or she can testify on her own conclusions and not the opinions of others. Mr. de Stefan commented he would still like to hear from the Fire Chief. She is qualified to talk to the negative criteria and safety issues to the degree it fits into that based on her own conclusions. Mr. Tucci asked if she had enough information to draw a conclusion.

Mr. de Stefan said they should bifurcate. Mr. Deutsch said the objection to the Fire Chief's report is sustained, and Ms. Reiter should rely on her own conclusions.

Ms. Reiter continued. If one house was built, there would be less coverage. The negative criteria must be satisfied, that the variance can be granted without detriment to the public good and without substantial detriment to the Zoning Code. There were three goals of the Master Plan. When asked if Lot 30.01 would have any effect on the environmental issues, Ms. Reiter, responded from a review of the plans, she did not think the applicant was preparing any type of request or a structure in that area.

Mr. Deutsch questioned Ms. Reiter about flag lots, and she responded they are not good development. There is deficient lot width and lot frontage. Mr. Tucci commented this lot could be developed in the transition area. Mr. Deutsch suggested the Board hold its dialogue. The Planner should be asked questions by the Board. Her opinion is that statutory proofs have not been met. There is a previous non-conforming situation, and a flag lot is not a good planning principal.

Mr. Mancinelli asked how she was contacted to appear that night and did she receive a letter. Ms. Reiter indicated Mr. Statile had told her. Mr. Mancinelli asked if she knew anything or was told anything. Ms. Reiter responded just to prepare a planning analysis; she knows it was a flag lot. Did you ever testify in a two-lot subdivision I flag lot. Flag lots are not always necessary poor planning, Mr. Mancinelli said, but each application should be looked at its own merits. Mr. Mancinelli said if it was a one family, bulk dimensions, would there be any similar means of testimony. Yes she said, with a single family dwelling, inconsistent with the development pattern, he would still need bulk variances. Mr. Mancinelli said it would be a better planning objective to go with a single family home what the applicant is proposing. If applicant was to go with a single family home, wouldn't applicant need to propose two variances. Yes, Ms. Reiter said, but significantly less. Mr. Deutsch inquired if Mr. Mancinelli was asking Ms. Reiter if she could support a hypothetical application Mr. Deutsch asked him to be more specific. She cannot answer that question. She cannot respond to any application that does not exist. Mr. Mancinelli asked if

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she heard it was a two family in the past. Ms. Reiter heard from Mr. Lydon's testimony. Mr. Mancinelli questioned Ms. Reiter at length as to the history of the lot.

The matter was opened to the public, but there were no questions.

Mr. Koons asked Mr. Tucci if he wanted to hear from the Fire Chief. Mr. Tucci said it was important. Mr. Koons asked if it was a motion on his part to request the Fire Chief and Police Chief to be present. Mr. de Stefan agreed there is a potential safety issue, there should be live testimony and the applicant should have the opportunity for cross examination and rebuttal. Mr. Mancinelli objected to the letter from the Fire Dept.

A motion was made for the Fire Chief and Sergeant Ryan from the Police Dept. to testify. Mr. Mancinelli agreed and would bring his planner for rebuttal. Also, he was not planning on bringing an expert to testify as to public safety issues. The motion was seconded by Mr. Wayne and carried.

The matter would be continued on October 20, 2008 with time extension granted.

The Board took a break from 9:20 pm to 9:30 pm.

3. Pascack Hills Properties, Rivervale Rd/Colonial Rd & Winding Way, Block 502, Lot 1 and Block 502, Lot 12 - Major Subdivision - William Bailey with proposed subdivision with no variances, confirmed by Mr. Statile's report as well. He had two witnesses, Dr. Crow, and Robert Costa.

John H. Crow, Ph.D., President, C&H Environmental, Inc., of Hackettstown, NJ, was sworn in. The Subdivision Plan on the easel for Rivervale Road/Colonial Road dated 2/28/07 was marked A1, and A2 was the Subdivision on Winding Way, dated 1/24/08. Dr. Crow was qualified, giving his credentials, education and experience and was accepted as an expert in the field of environmental consulting and wetlands, specifically in ecology and soils. The 200' notice and affidavits were submitted. Dr. Crow testified to A1 first, stating there are no environmental constraints. The State will also do its own review. Mr. Wahmann asked if there were any steep slopes. Dr. Crow

said there was a change in grade, but the home sites are very level. The Winding Way subdivision A2, also has no environmental issues. The subdivisions are next to each other. Mr. Bailey asked who has jurisdiction. Dr. Crow said the DEP. Only the State of NJ has authority. In both cases they filed with the DEP for Letters of Interpretation (LOI). They are very slow, but will get around to them, and he has no doubts they will approve these sites. If you have no wetlands, you get back an LOI stating it is an absence finding. You have to provide them with data, and they have experts. They also go to the site. Dr. Crow submitted letters setting forth the findings.

Chairman Koons asked Mr. Statile if he had any questions of the witness with respect to the findings. Mr. Statile would wait until the LOI is received. The Chairman commented so there are no wetlands and no endangered species. Mr. Ericksen expressed concern with steep slopes. Dr. Crow said the DEP does not regulate slopes. There were no further questions.

The matter was opened to the public. Paul Tollin, 588 Rivervale Road, River Vale, NJ, came forward and questioned Dr. Crow if he gets paid for testimony, and how long he has worked with the applicant, and the response was yes, he gets paid for his time, not his testimony. He provides consulting services and has provided these services for the applicant for about 10 years. The next member of the public, Lorraine Tollin, asked how many visits he made to the site. Dr. Crow described his visits at different times. Mr. Shalhoub asked what determines wetlands. Dr. Crow explained basically three things---vegetation soils and hydrology. The key element is if a site is a wetland, the plants will either not grow there or not grow as well. The ones that do grow in wetlands, you will see them grow more plentiful and possibly exclusively. He gave details on soil, vegetation and growth. It is a combination of species that is important in the identification. Another member of the public, Mr. Cone, questioned the witness. Dr. Crow said he uses IMap and gave clarification. Mr. Cone submitted a colored aerial photograph on a small board, which was marked Cone 1. A NJ State website aerial map was also shown by Mr. Cone and discussed. Al Krinity, Dorchester Drive, questioned Dr. Crow if he was aware of the fact that there was a bicycle path adjacent to the property and the Board of Ed. He also asked the size of the property and impact. Mr. Deutsch said the witness is

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offered as an expert in environmental areas, and you can only question him on the environment and ecology. He cannot question Board Members or the Attorneys. The Board said it was also awaiting receipt of the DEP letter. Mr. de Stefan asked Dr. Crow about IMap. Chairman Koons asked if he did borings, and Dr. Crow said yes. Lisa Kalfus, 777 Rolling Hill Drive, questioned Dr. Crow in connection with the water table. Paul Tollin asked if there was a stream 15' down, would a foundation affect it. Dr. Crow responded the concept of an underground seem is inaccurate and explained in detail. They can tell if there are any wetlands, and that is what the DEP regulates. (Mr. Menville departed at 10:35p.m.) There were no further questions from the public.

Robert Menville made a motion to continue this to the next meeting, due to the lateness of the hour.

Mr. Tucci questioned whether the lot on Rivervale Road contains a steep slope. They are subdividing the property, and that lot, even though not being built upon, has steep slopes. Mr. Deutsch would take another look at the application, discuss it with Mr. Statile and give a response.

The Board acknowledged the lateness of the hour and carried the matter to the 10/20/08 meeting. Robert Costa, Engineer would testify then. There would be no further notice.

DEVELOPER'S AGREEMENTS:

1. **Kern, Spring Street & Cedar Lane, Block 1501.02, Lots 32 & 32.01 - major Subdivision** - Chairman Koons made a motion to authorize the Chairman to sign and the Secretary to attest on behalf of the Board the Developers Agreement for the Estate of Edith Kerns. The motion was seconded by Mr. Shalhoub and carried.

DISCUSSIONS: None

OPEN TO PUBLIC - None

PAYMENT OF INVOICES: None

NEXT MEETING: October 20, 2008

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ADJOURNMENT: On motion made, seconded and carried, the meeting was adjourned at approximately 10:45 p.m.

Respectfully submitted,

**Mary R. Verducci, Paralegal
Recording Secretary**