

Borough of West Paterson

Planning Board



Passaic County, NJ

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PLANNING BOARD MINUTES April 12, 2010

Meeting called to order at 7:40 P.M. by Chairman Webb.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY PUBLIC MEETING LAW, AND AS STATED IN NOTICES OF THE TIME, PLACE AND DATE PUBLICIZED IN ACCORDANCE WITH THE STATUTE. IT WAS INCLUDED IN A LIST OF MEETINGS FORWARDED TO THE HERALD NEWS AND THE RECORD AS REQUIRED NOTICES. IN ADDITION, THIS LIST HAS BEEN POSTED IN A PUBLIC PLACE BY THE BOROUGH CLERK, AND A COPY OF THIS HAS BEEN FILED IN HIS OFFICE FOR PUBLIC INSPECTION. PROPER NOTICE HAVING BEEN GIVEN, THIS MEETING IS CALLED TO ORDER AND THE CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THE MEETING.

MEMBERS PRESENT: TOM WEBB, COUNCILMAN DIDOMENICO,
DORA DAVENPORT, RICHARD BERNSTEIN, CARLO RENNE, KEITH TANSKI,
J. ROBERT KASSAI, BILL KARP AND TONY RANDAZZO

ALSO PRESENT – JOSEPH WENZEL, BOARD ATTORNEY

FLAG SALUTE

A motion to approve the minutes of the March 8, 2010 meeting was made by Mr. Renne, second by Mr. Kassai and approved.

RESOLUTIONS

DOCKET # 09-06 – K. HOVNANIAN AT GREAT NOTCH, LLC – BLOCK 113 LOTS 4.02 & 12.01 – PRELIMINARY & FINAL AMENDED SITE PLAN – MAJOR PRELIMINARY AND FINAL AMENDED SUBDIVISION – BULK VARIANCES – A typo in the resolution was corrected. Application is hereby approved with conditions by a vote of 9 – 0.

DOCKET # 08-04 – O. KAPLINSKY & S. FILIPCZUK – 51 RYLE PARK AVE. – BLOCK 102 LOTS 31 & 32 – MINOR SUBDIVISION/BULK VARIANCES – Mr. Wenzel explained that this matter predates his appointment as the Board Attorney and the matter is being handled by Casey Cordes of Welhinghorst & Fronzuto. There was an order in the Board's packet from Judge Graziano. The Judge ordered the matter be remanded back to the Board to make findings of facts and conclusions of law. It then sets forth that this should be concluded by the May meeting and the court is retaining jurisdiction

for further consideration at the end of May and lastly it also indicates that the court is inclined to find for the plaintiff on the issue of merger. As the Board has been ordered to do this he discussed it with Ms. Cordes and he was concerned about the time limit. After conversations with the Judge's law clerk and Ms Cordes it appeared that the Judge was asking the Board to revise its resolution which denied the application. The Judge apparently felt there was not enough of an explanation included in the resolution so he wanted it amended to show a more accurate reflection of the Board's position on the application. Since he was not involved in this original application they felt Ms Cordes should handle this matter for distribution. He did review it and thought it was in the correct format and met the needs to clarify it to the judge. The only members who can vote on this resolution are members who voted on the original application. It is not a new resolution it is really a resolution that is amending the prior resolution and reflects what the sentiment of the Board was at the time the prior resolution was passed. Chairman Webb said it appeared to be the same conclusion and the same issues were addressed but just reinforced and rewritten. Mr. Wenzel said he has reviewed all the minutes for at least 2 hearing dates and the original resolution. In his opinion he believes that this reflects the minutes of the prior decision and reflects the prior sentiment. It is up to the Board now to decide if it is accurate.

Councilman DiDomenico asked if he thought the judge would see it the Board's way if they provide enough information or would he go the other way no matter what. Mr. Wenzel said this is somewhat unusual because usually when a case is remanded they hear the application again. This is a four part order, one being remanded back to the Board, two issuing more complete or further specification of findings of fact and legal determinations, the court is going to continue hearing the matter sometime in May and lastly the court is inclined to find for the plaintiff on the issue of merger. He is not entirely sure that this will or will not change the judge's position but he does know the Board is being ordered to do this which is the main reason they are doing it. In his opinion, anytime you are providing the court with clarification and further specification of what the decision process was could not possibly hurt. The court could have a clear understanding of the decision rather than deciding that on their own. Councilman DiDomenico said there is no reference that a previous application on the same property was denied for the same reasons. He did not know if that is something permissible or you just weigh this case on its own merit. The other concern is the judge is saying he is inclined to find for the plaintiff on the issue of merger. He felt the Board should be clear on what the issue of merger was. As he remembers the applicant's attorney was talking about frontage on two streets and therefore they were allowed to do this. He wondered if this is what the judge is hanging his hat on and not realizing just how small these properties are. Mr. Wenzel said as to the first part of dealing with the prior application which was two years prior to this application, every application must stand on its own so in terms of the resolution it is appropriate to address what was presented at that time and as part of that application. He does not want to say whether or not Ms. Cordes has brought it up and she would be the more appropriate person to ask that to. In answer to the second question and issue of merger he is not familiar with this particular application. The doctrine of merger is a legal concept whereby two lots that are undersized can be merged with the master lot but there are several facts in making that determination. He does not know if the facts presented lead one to the conclusion that the doctrine of merger does apply in this case or something against it. The point being for the purposes of the resolution

tonight the Board should focus on what the court has asked them to focus on which are the findings of fact and conclusion of law.

Mr. Karp asked if the resolution goes back to the judge or is it the attorney's prerogative to give more information. Mr. Wenzel said it is his understanding that once the Board passes this resolution it is presented to the court as the Board's action for the court to take this resolution and any other papers submitted and make a decision. This is going right over to the court for them to review and make a determination if it is sufficient. Mr. Karp said the resolution is giving a little more information but felt the judge was predisposed in his decision. Mr. Wenzel said he is not handling it and does not know if the judge is predisposed in his decision. In his experience it is relatively unusual for a court to telegraph where they are going to go in an order unless it is for a particular reason. He doesn't know what is in the judge's mind. Once the court receives the resolution it could very well be a game changer but he does not know if it would be or not. He is hoping this resolution will clarify things for the court. The issue of merger is a legal question and he is sure the court has the transcript, resolution and minutes. He said it was hard to say what the court would do.

Mr. Kassai asked about the judge's statement and if the statement was prejudicial. He asked if it would be advantageous for the Board to appeal if he finds for the applicant. Mr. Wenzel said going to the first issue he does not want to suggest that the judge is prejudicial but he is clearly leaning one way. He thought the Board would have to discuss an appeal in close session if it came to that. The Board can discuss the order in public session but to the issue of what the next steps are would be in closed session. It is not an issue at this time. Mr. Karp asked if it is unusual for a judge to telegraph where he is leaning. Mr. Wenzel said he did not know why the judge put the words in there but maybe he put them in so the Board would be as clear as possible as to its reasons for the denial or whether it was meant as a sign to the plaintiff to perhaps craft a settlement of the issue. He would classify it as unusual but the judge has not rendered a final decision and the Board should look at the revised resolution as something to inform him and perhaps change his mind.

Councilman DiDomenico said he is inclined to go with the revised resolution and itemizes 9 elements in item # 3 alone. He asked how the concept of merger would help the applicant and what she is trying to accomplish. Mr. Wenzel said he is not entirely familiar with this situation and did not want to give them a false opinion. The resolution does reflect issues in regard to the size of the lots. Under conclusions of law it says the lots have merged and it talks about entitlement of subdivision. He has discussed it with Ms. Cordes and it does go to the Board's position in terms of denying the application. He felt the judge will see how the Board reached its conclusion with the new resolution.

Chairman Webb said when this was presented to them he believed it was the applicant's position that if the Board accepted the doctrine of merger then everything flowed from that and they got everything. Looking at the complaint there are two counts, the first being the merger and the second being the variances. It may be the judge is signaling that the merger is just the law and is looking how they went about denying the variances. He felt they certainly have more concise information in the new resolution.

Councilman DiDomenico felt under the heading of finding of facts the numeration of the facts should be clear. He felt the 9 points under item # 3 should be lettered. Under conclusions of laws the numbering should be corrected.

Mr. Tanski felt the judge was telling them that he is going to subdivide the lots if the Board doesn't give him something to hang his hat on. He thought by asking for finding of facts it was what he was looking for in order to make a decision. He read the minutes and did not think some of the proceedings were incorporated in the resolution. Chairman Webb noted that the judge did have the transcripts. Mr. Wenzel said the theory behind a resolution is to synopsize the proceedings of the meeting, remove some ancillary information and synopsize it down to the basics of the decision. Resolutions often have to have a pleasant balance between too much information and too little information. He thought Ms. Cordes should prepare the resolution because she knew the case and would know what was enough information. He thought the issue was that the judge has the minutes of the meeting and the attorneys will bring up all the information that was put before the Board. The court will review the entire transcript.

Councilman DiDomenico suggested the minimum front yard setback of 25' be added to the resolution under Item D. The Board agreed.

A motion to memorialize the resolution with corrections discussed was made by Councilman DiDomenico, second by Ms. Davenport and approved by a vote of 5-0.

Revised resolution for denial of application as per court order is hereby memorialized by a vote of 5 - 0

ORDER OF BUSINESS

DOCKET # 10-02 – L.O.G., LLC – 1130 MCBRIDE AVE. – BLOCK 86 LOT 76 –
PRELIMINARY & FINAL SITE PLAN/BULK VARIANCES

Applicant has requested the application be carried until May 10, 2010 meeting with no further notice and waiving time.

Chairman Webb noted the Board received a letter from T & M Associates regarding 1225 McBride Ave., LLC notifying the Board of incomplete items.

Chairmen Webb asked Mr. Wenzel to discuss the letter he submitted to the Board in their packets. Mr. Wenzel said he attached to his letter a recent unpublished Appellate Division decision with regard to the application of an unrecorded deed restriction that was placed upon an applicant back in 1988. A subsequent purchaser purchased the lot and obviously the applicant then proceeded before the Board and was told he had a Mt. Laurel requirement he had to meet and the applicant asked what they meant. The Board said they have a deed restriction but the problem was that it was never recorded so there was no notice provided to the good faith purchaser of the lot even though a prior owner agreed to those conditions some 20 years ago. The reason he brought it to the Board's attention was that they just had

an application where they had an applicant who had not filed the deed and site plan. Sometimes you get these decision and you wonder what application could this possibly have to do with because the facts are so unusual but it's always the unusual facts that make good or bad law. The caveat to the Board is that they have to insure that the applicants who you place these restrictions on and who receive approvals see that they actually get filed. The question is what can the Board do and unfortunately there is not much they can do in terms of insuring people do it other than to instruct applicant's they have to file and the Board does everything in terms of providing all information needed to get it filed. You can see the havoc a document that goes unfiled can have on a situation which we just saw in prior meetings. It is something he wants all the members to be aware of considering what they just went through with an applicant failing to file a deed and site plan.

Chairman Webb said in condition #9 of T & M Associates letter regarding 1225 McBride Ave. LLC the applicant must file a deed restriction regarding parking. The Board Secretary noted they will have to file a deed on the reverse subdivision that was approved also. Chairman Webb felt they would need to stay on top of this situation.

A motion to adjourn was made by Councilman DiDomenico, second by Mr. Bernstein. All in favor, meeting adjourned.