Borough of West Paterson

Planning Board

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PLANNING BOARD MINUTES
February 8, 2010

Meeting called to order at 7:30 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 DI DOMENICO, DORA DAVENPORT, RICHARD BERNSTEIN, CARLO RENNE, KEITH TANSKI, GARY HOLLOWAY, SHERRY VAN DYK, BILL KARP AND TONY RANDAZZO

ALSO PRESENT – JOSEPH WENZEL, BOARD ATTORNEY

FLAG SALUTE

A motion to approve the minutes of the January 11, 2010 meeting was made by Mr. Bernstein, second by Mr. Karp and approved.

RESOLUTIONS

DOCKET # 10-01 – GARRET POINTE ASSOC. – WEASELDRIFT RD. – BLOCK 85 LOT 14 – REQUEST FOR EXTENSION OF TIME ON PRELIMINARY SITE PLAN APPROVAL – Application is hereby approved by a vote of 9 – 0.

ORDER OF BUSINESS

Chairman Webb announced that Docket 09-06 - K. Hovnanian at Great Notch, LLC has not noticed for the February meeting. They will notice for the next meeting if they have all the paperwork in place.

REQUEST TO EXTEND TIME FOR APPROVAL OF MINOR SUBDIVISION PURSUANT TO PERMIT EXTENSION ACT 2008 – V. & J. COLOMBO – 55 MERELINE AVE. – BLOCK 108 LOT 21-25

David Amadio, attorney for applicant, stated he was here to request an extension of a resolution that was previously granted. He was not the attorney for the applicant at the time of the subdivision but he wrote a letter that the Board has received explaining that in 2005 his clients bought a property in West Paterson that is kind of an odd property because on it there is what should be a vacant lot and a ranch house but sitting on the dividing line of the two properties is a small cottage which had been rented. They bought the property with the intention of subdividing it. They were going to build a two family and they applied for that and the subdivision. They were granted the subdivision in 2005. They have two closings coming up one for the ranch home and were going to demolish the cottage and sell the vacant lot. As it turns out the minor subdivision was not perfected. He is not a land use attorney but based on his review of the law they had 190 days to perfect the minor subdivision and the prior attorney did not file the deed title. The applicant became aware of it and he came back before the Board and was granted an extension of time in 2008. The deed was prepared and signed off but not perfected again and the prior attorney's response to him was he thought the Planning Board was going to file it. As everyone knows Planning Board's do not file deeds. The applicant's are in desperate need to sell the property. They own a pizza parlor in Lincoln Park and are hard working. They have approval from a Lincoln Park bank and if this property is not sold they are risking losing the approval and everything they have worked for their entire lives. It is a horrible situation for the applicant and he is very nervous about receiving approval tonight. He asked the Planning Board to grant the extension pursuant to the Governor's extension act. The only deed that is in recordable form is in the possession of the Planning Board office which he could probably record with the resolution if it is granted tonight. They are looking to get an extension, sufficient time to file the minor subdivision deed and perfect the deed so they can sell the two properties and bail the applicants out of a terrible financial situation. The town will have properties that will generate tax revenue greater than there is now.

Chairman Webb asked Mr. Wenzel to advise the Board where they are from their prospective. There is an original copy of the deed that is retained in the Board file.

Mr. Wenzel said he knows it is a tough spot for the attorney to be in but as everyone knows a deed has to be filed within 190 days of approval. It is his understanding that the deed was signed both times by the Board Secretary and the Chairman and provided to the attorney. The deed that was provided with the letter was the copy of the deed provided to him by the Board Secretary. Mr. Wenzel said he would have to look at the deed and they may be able to use it but he does not want to provide the deed to the county and have it rejected. The permit extension act provides that development application approvals be extended. It is within the Planning Board's sole prevue to decide if an extension should be granted. It is in his estimation that this type of application would fall under the permit extension act. He knows the applicant has a concern to get it done and the Board has a concern that no more extensions are asked for.

Mr. Wenzel asked where they were in terms of selling the properties. Mr. Amadio said they have two buyers. They are under contract for the ranch house and the sale of the property hinges on what happens tonight. The attorney for the builder is Mr. Corrado whose daughter is the County Clerk. Mr. Wenzel said he wants to make sure that the clerk's office does not reject the deed. Mr. Amadio said he talked to Mr. Corrado about it and they felt they could start with the deed in the Board's possession. Mr. Wenzel agreed that would be the fastest way. Mr. Amadio said you probably could not record a deed that is old and would probably need some sort of resolution to go along with it. Mr. Wenzel said that would be his thought process also. He said this is truly a hardship application and the statute does provide for the extension.

Chairman Webb felt this is something the Board has dealt with in the past and they have approved it. He felt they are faced with the technicality of extending the approval.

Councilman DiDomenico agreed that in one aspect it is a technicality and is sensitive to the financial situation that was described. He is a little concerned because when they originally approved the application it was a single lot owned by a single owner that was going to be subdivided and the owner would retain both lots, develop one and then sell it off. Part of that was the demolition of the structure on the property line. He was concerned about the town getting into some type of litigation because the dwelling straddles the line. Mr. Amadio said there is an explicit condition of both contracts of sale that the rear cottage is being demolished because the property cannot be subdivided until it is. Councilman DiDomenico said it looks like two different parties are buying the two different lots. He is sensitive to the applicant's predicament but feels an obligation to protect the Borough. Mr. Amadio said the resolution specifically provides for the subdivision not to occur unless the cottage is demolished. It is an explicit condition in the resolution. Mr. Colombo will have the building demolished because he cannot sell the property unless it is done.

Chairman Webb asked what happens if the property is subdivided with the building still there. Mr. Amadio said it can't happen. The bank is holding off a foreclosure depending on what happens tonight. He said it is A, B, C – A, they get the approval tonight, B; they write a check to the demolition company and C, they record the deed. They will sell the property and have two buyers there.

Mr. Wenzel said the resolution 05-06 indicates in several areas the dwelling will be demolished, the one-family will remain and a new home will be built and that is exactly what they are still proposing and are only asking for an extension of that approval with all the same conditions.

Mr. Bernstein asked why the dwelling was not demolished in 2005. Mr. Amadio said his clients are terrible landlords. They had tenants in there who were not paying. They paid top dollar for the property and then the value of it plummeted so they did not have the money to do the improvements. Mr. Wenzel asked if the reason for not demolishing the home was an economic choice based on other things needing to be done. Mr. Amadio said the tenants did not pay so they could not fund everything they needed to do. They are not the type of people who just evict tenants. Mr. Bernstein felt the dwelling should be demolished before

they perfect the deed. Councilman DiDomenico agreed. Chairman Webb asked if the demolition could be done before filing the deed. Mr. Amadio felt they could file first. Councilman DiDomenico felt there was a catch 22 because the demolition was a condition of approval so there is no subdivision until the building is demolished. He thought at the time the Board felt the building had to go.

Mr. Wenzel said he was not here when the resolution was passed but what he is hearing is that this building sits astride the two lots and asked if that was correct. Mr. Amadio said yes. Mr. Wenzel said the question is whether or not they need to do the demolition in order to file the deed. He did not necessarily believe that to be true but practically the problem here is that they are back here again on this issue and the concern is that the demolition will not occur. He does understand the applicant's intention but they should understand the Board's concerns. While technically they could file the deed in essence the demolition must occur within a very rapid time frame because you would have a structure that would sit across two lots and that must be rectified.

Chairman Webb asked from a practical point if they would be able to sell these lots with the dwelling there. He asked if any bank would give them a mortgage. Mr. Wenzel felt a bank would be concerned if a structure sits across two lots like this does. He suggested if the Board was inclined to grant the extension they place a condition on it that the demolition would take place in a certain time. Councilman DiDomenico agreed in order to protect the Borough. Mr. Wenzel reminded them that in order to have a valid resolution and thereby valid deed there is a procedure which means there has to be a resolution prepared and the resolution has to be approved at the next meeting. He said there is a 30 day window where there would be a procedural process so the building could come down within that window.

Mr. Amadio said he spoke to his client and there is a tenant in the dwelling but she does have a place to go. Mr. Wenzel said that puts some concern in his mind and advised the Board that if the tenant does not wish to go it could be very time consuming.

Chairman Webb asked what would happen next month if something was not done. Mr. Wenzel said you don't approve the resolution. Mr. Karp asked how long a resolution could be held up. Mr. Wenzel said approving a resolution is not a quasi-judicial act but is just a formality but technically if there is no resolution there is no deed.. Mr. Amadio said they can't do anything without that deed. Mr. Wenzel said the applicants need the deed and they do not have it and that is where the Board's power comes from. There is every incentive for the applicant to do what the Board has asked to be done.

Mr. Karp asked if they could assure the Board that the tenant would be out and a demolition company hired to take down the dwelling.

Vincent Colombo, applicant, was sworn in. He stated that he spoke to the tenant and she pays month to month. She has told him she does have a place to go but he also has vacant spaces for her to move to. He felt he could have the dwelling demolished in 30 days. He has spoken to demolition crews already but he must get the proper permits. Mr. Wenzel asked if the tenants know the situation. Mr. Colombo said yes. The front house is empty.

Mr. Wenzel said under the law he has to assist them by moving them into other available places he owns and Mr. Colombo has already indicated he would do that with his tenant. Mr. Wenzel said he heard what the Board would like to see done and suggested that if there is an approval he gets to the Code Enforcement this week. The Board Secretary indicated he would have to have the utilities turned off and bait the house prior to demolition.

A motion to approve the extension with the condition that the cottage be demolished before the final deeds are issued was made by Mr. Bernstein, second by Councilman DiDomenico and approved by a vote of 9 – 0.

Chairman Webb stated the Report of Approvals & Denials for 2009 from the zoning board has been included in the packet. He asked Mr. Holloway, Chairman of the Board of Adjustment, to comment on the report.

Mr. Holloway said the Board of Adjustment has sent the yearly recommendations to the Planning Board and the governing body. He stated the Board is concerned with the zoning ordinance including the zoning of McBride Ave. and the size of parking spaces being changed. He knows the Master Plan committee will be meeting with Ms. Gregory and suggested that a Board of Adjustment member be included in that meeting in order to voice the Board's concerns. Chairman Webb said it is a public meeting and any one who is not a member of the Planning Board may attend. The meeting is scheduled for February 16th at 6:30 p.m. in the municipal building.

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