

Borough of West Paterson

Board of Adjustment



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WOODLAND PARK
BOARD OF ADJUSTMENT MINUTES
November 26, 2012

MEETING CALLED TO ORDER AT 7:32 P.M. by Chairwoman Kallert.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY OPEN 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 IN ATTENDANCE: TRACY KALLERT, RUTH PATTERSON, PHILIP DICRISTINA, JIM IANNIELLO, JOE PASCHELL, GIANNI INTILI AND TONY ORLANDO

ALSO PRESENT – JOHN FIORELLO, BOARD ATTORNEY
BOB PERRY – BOARD PLANNER

FLAG SALUTE

A motion of approve the minutes of October 22, 2012 was made by Ms. Patterson, second by Mr. Ianniello and approved.

RESOLUTION

DOCKET # 12-03 – M. ROGEL – 452 MT. PLEASANT AVE. – BLOCK 129.01 – LOT 3 – BULK VARIANCE – Resolution is hereby memorialized

DOCKET # 12-06 – R. IGNE – 345 RIFLE CAMP RD. – BLOCK 85 LOT 9.04 – BULK VARIANCE – Resolution is hereby memorialized

ORDER OF BUSINESS

DOCKET # 12-07 – MT. PLEASANT ESTATES, LLC – MT. PLEASANT AVE. – BLOCK 54.01 LOT 15 – USE VARIANCE

Mr. Joseph Petriello, attorney for applicant, stated he has the principal member of the LLC, Mr. John Evans and his son Matt Evans who is an architect and planner who will be a witness with him tonight. Mr. Fiorello said this is a bifurcated application and they will not

be asking for site plan approval tonight, if the use variance is granted they will come back for site plan. Mr. Petriello said that was correct.

Mr. Petriello said this is an application for a use variance for property that is approximately 2.81 acres and is situated in a Residential B zone that permits single family homes on 100 X 100 lots. They are seeking a variance to construct 8 townhomes on the site. The property conforms to all of the requirements except for the use for townhomes and there is height variance requested also.

Matthew Evans, architect and planner, was sworn in. Mr. Intili said that Mr. Evans has previously been qualified by the Board and was accepted as an expert. Mr. Evans is related to John Evans the principal member of the LLC and John Evans owns 100 % of it.

Mr. Evans described the drawing that represents the property that is the subject of the application. The drawings are a two sheet submission of Sheet S-1 and A-1 dated 5/10/12. S-1 shows the proposed site plan and A-1 shows building elevations and proposed floor plans. The sheets were marked A-1 a & b. A colored rendering of the plan was marked A-2.

Mr. Evans stated the property is 2.81 acres and described the area. The site has an existing stream which is Pearl Brook that runs under Mt. Pleasant Ave. to the southern end of the property and under Route 80. The rest of the property has some environmental concerns as far as the stream, wetlands and terrain issues. They have a big outcropping near Route 80 and the property drops down due to the stream. They have situated the development perpendicular to Mt. Pleasant Ave. and created a driveway with a cul-de-sac in the rear with the units next to each other. The area they are developing is basically high ground and the most developable land because of the stream and buffer issues they need to contend with. There are existing dwellings on Woodrow Ave. and Route 80 in the rear. The property is across the street from a park on Mt. Pleasant Ave. Mr. Evans agreed that there are certain topographical issues and certain environmental constraints on the property that would create an undue hardship for them to develop the property according to the existing zoning. He said there was an application approved a few decades ago which had a cul de sac and 9 single family houses on the whole property and it was found it was not feasible and could not get approved by the DEP. This is the closest they can get to developing according to the zoning. They have taken the units and clustered them into single family town homes and left the other area vacant. He feels this is good planning as far as leaving more green area and nature intact and would not be any denser than the previous application would be. The previous approval allowed for the construction of 9 single family homes but never got through DEP due to wetland issues. They felt they got as close as they can to the Master Plan with this proposal. They had an environmental consultant come out and flag the property for wetlands and they would address the engineering during site plan. They have taken into consideration the buffer area and have allowed themselves adequate space to develop. They have not received the actual delineation from the DEP but they have flagged it and are in the process of having it mapped. They come out and look at the wetlands and vegetation and flag the areas they consider sensitive and after they are flagged a surveyor comes in and shoots all the grades and delineations and they are mapped and put on an

engineer's site plan. Once that is done they need to be 50 feet from the flags. He pointed the areas out on the drawing. There is a lot of rock on the property and the rear drops off so where they are developing they are using the more level area of the property.

Mr. Evans said he purchased a copy of the Master Plan and reviewed it. He said the units per acre would be consistent with the Residential B zoning. The site is centrally located and close to amenities. The application complies with certain goals & objectives of the Master Plan. Mr. Evans read the goals & objectives he felt they complied with. He stated they are single family townhomes and there will be no shared internal common areas. They will be owner occupied and be ground to sky one family dwellings. They are proposing green type of residential units that are low intensity carbon neutral and will basically be efficient housing. It is his opinion that the variance is granted would be consistent with the intent and purposes of the Master Plan.

Mr. Evans said the proposed development would comply with the minimum lot area requirement of the existing zone but it is clustered so it is a little bit different. It also complies with the existing lot width, depth and frontage, side and rear yard requirements. They comply with the off street parking requirements. They have a two car garage and spaces for two cars in front of the garages. The building height maximum is 35' and they are proposed 35'. The maximum is 2 ½ stories and they are proposing 3 stories so they have requested a variance. The proposed development does not substantially impair the intent and purposes of the zoning plan and ordinance and can be granted without substantial detriment to the public good. The proposal will aesthetically improve the property with new townhouse type residential single family homes. The applicant will required a D1 variance for the interpretation of the non-conforming use. They will have undue hardship if compelled to use the property for the permitted use because of the topography and wetlands and site configuration. The special reasons are satisfied by showing it promotes the general welfare and is consistent with the Master Plan. They have shown the 2.81 acres can accommodate the development. He felt it was an appropriate use and is consistent with the neighborhood. The benefit of developing the property is it would be brought up to conformity with the zoning ordinance to the best it could due to the conditions of the site.

Mr. Evans referred to a document marked Exhibit B wetlands from their consultant and said it was a sketch that shows the general location of where they expect the wetlands to be on the property. The document was marked A-3. The sketch was included in the Board's packet. Mr. Petriello marked his copy and submitted it to the Board. The sketch is preliminary based on the consultant's flagging of wetlands. The consultant is Amy Green Environmental.

Mr. Intili asked if this was a bifurcated application and if so why were they discussing the wetlands. Mr. Petriello said sometimes in a bifurcated application you can't completely divorce the site plan elements from the variance element. He felt they had to discuss some of the issues that create the hardship and would expand on those issues during site plan. He felt the Board needed to know where the wetlands area are because it was important to the use variance request.

Mr. Dicristina asked to clarify that they are saying they received an approval from the Board for single family homes in the 1980's but because of the wetland situation they could not do that so they now have a new idea to develop the land that is not in the wetlands. He asked if the hardship is if the land is not buildable in the normal circumstances and that is why they are proposing townhouses instead of single family homes. He asked if that was correct. Mr. Petriello said as Mr. Evan's stated he is correct it is the wetland issue but also the topographical problems such as the rock outcropping and severe slope of the property. Mr. Fiorello asked if it was just the hardship or is it special reasons also. Mr. Petriello said yes they are saying it is particularly suited for the proposed use given the topographical features and environmental constraints.

Mr. Intili asked about Exhibit B wetlands and if at this point they really knew what kind of results they would get from the DEP. They have not made the application to the DEP yet. He felt they may have to figure out a different configuration for the units if the DEP does not agree with the consultant's sketch. He felt it was a big issue because they are dealing with a bifurcated application. He felt something had to be clarified as far as the development is concerned. Chairwoman Kallert said that any approval would be conditioned on the DEP approval. Mr. Fiorello agreed and if they do not get approval from the DEP the variance would fail. Mr. Intili asked if Mr. Evans researched the zoning regulations for townhouses. Mr. Evans said he did and believed he conforms with the townhouse regulations as well. Mr. Intili said they have vinyl siding on the plan and questioned if it was a green material. Mr. Evans said they are looking into different types of insulation and high efficiency heating and cooling units. Mr. Evans said recycled materials are environmentally friendly and they would look for recycled vinyl siding. If the wetlands delineations change the application it would only restrict them more than what they have now.

Chairwoman Kallert asked how many single family homes they would be able to build to conform to the lot dimensions. Mr. Evans said the problem is the topography and they would only be able to building 2 or 3 homes. Chairwoman Kallert asked if they have done any traffic studies. Mr. Evans said they did not do any formal traffic studies but it is a residential single family type of unit. Chairwoman Kallert said they do provide parking for the residents but what if someone had visitors because the cul de sac looked narrow and there were no visitor lots. Mr. Evans said the road is 30' wide and it is possible for vehicles to park along the road. The road would be about the same width as Mt. Pleasant Ave. They also have 4 spaces per unit which gives them a comfort factor. Chairwoman Kallert asked if they had any information regarding the brook on the property and if any of the development could cause that brook to overflow or create flooding problems. Mr. Evans said that would be something they would address with the state which has very strict requirements. They would have to provide the necessary drainage component to be in conformity. Chairwoman Kallert said they quoted the goals and objectives of the Master Plan # 12 which states introduce very low density single family residential zoning and asked if they consider an 8 unit town home to be low density when it is bordered mostly by one family homes. Mr. Evans said if you look at the houses on Woodrow they are homes on smaller lots of 60 X 100. It is not in the ordinance now but historically homes were built on 60 X 100 lots or smaller which is very high density for the area. If you looked at it as far as units per acre

and the property was able to be fully developed it would support 42 units which is 15 units per acre and they are proposing 8 units. Chairwoman Kallert said it would support that many units if it was in the townhome district. Mr. Evans said the B zone allows 15 units per acre and they are proposing 8 units. Chairwoman Kallert asked if the negative criteria meets #17 to alleviate some of the parking congestion by prohibiting converting single family homes to two family homes which the Master Plan is saying they don't even want to convert one family homes to 2 family homes how would this not negatively impact with putting in 8 homes. Mr. Evans said he interpreted from the zoning ordinance was if he had a single family home in the B zone and other families have 2 family homes in the neighborhood and he wants to make a two family it is being discouraged in the Master Plan. But basically they are starting from scratch on this property and creating a different type of housing unit but they want it to be a single family type of unit so he felt a town house fit in more with the neighborhood. They basically have a single family house from the ground to the sky and a two family has another unit on top. Chairwoman Kallert asked if they are maintaining the 35' height why make it 3 stories and not 2 ½ stories. Mr. Evans said they wanted to provide underground parking in the units. Chairwoman Kallert asked if they would meet the parking requirements without the 3 stories. Mr. Evans said they could meet them but they would have to redesign it into a different type of development. They did a similar duplex on Jackson Ave. that was recently built that was a 3 story with the garage. Mr. Petriello asked how many space they have in total. Mr. Evans said they have 32 now and 1 ½ spaces per unit are required so they meet the parking requirement. Chairwoman Kallert said the garage is required so they would need a variance for the 3 stories in order to meet the requirement. She noted that the requirement for a single family home is 2 spaces. Mr. Evans said yes.

Ms. Patterson asked if they were going to allow parking along Woodrow Ave. and thought it would create a fire issue. Mr. Petriello said the number of parking spaces and guest parking is something that needs to be addressed and fire issues also. He said there would certainly be more information during site plan if they get an approval. Mr. Evans said they are just showing parking on site but it may be feasible to allow more parking on the property.

Mr. Dicristina asked they clarify that it is a roadway and not a driveway. Mr. Evans said it is a roadway. They are also proposing screening along the properties on Woodrow Ave. They could also provide some type of fencing if needed. Mr. Dicristina asked if they are getting a 10' buffer. Mr. Evans said yes.

Mr. Perry, Board Planner, said he didn't want to talk about the wetlands because it is a site plan issue. He said he is concerned about the sketch being a floating line because he has never seen DEP agree with a consultant. He is more concerned about the testimony that was given on the goals & objectives of the Master Plan and would ask Mr. Evans to clarify a couple things. He said #1 states to encourage development of housing types and provide for housing for various income levels and household needs and asked how they would comply with that. Mr. Evans said he interprets it as a different type of residential unit and it is single family but it is townhouse and has a different type of residential character. He felt this would incorporate different household needs like for people who don't necessarily want their own yard or want to maintain property. Mr. Perry said he understands the household needs but asked how they meet the income level because that is in the Master Plan for a real

reason. Mr. Evans said basically it would effectuate what they are doing as far as green type of houses which would allow people to save consistently once they purchase the house there would be less out of pocket expenses. Mr. Perry referred to #3 which is the development of compatible uses and said the townhouses from a planning standpoint is usually used as a blend to another use. He asked how the compatibility works here and did not feel that this was blending. Mr. Evans said basically there are a couple different aspects of this property and they tried to incorporate a lot of different things. There are the site constraints along with trying to keep single family in the neighborhood and also clustering them together. They have Route 80 to the west of the property, a subdivision to the south, lots to the north and the park across the street. It basically has its own unique character to itself as it is and did not think it would adversely affect the neighborhood as far as the housing type. Mr. Perry said #18 he agrees with Mr. Intili. The Master Plan encourages new construction to go green and asked what they were proposing exactly. Mr. Evans said they would be incorporating a lot of the green building techniques. Mr. Perry said he understands the topography and asked if they would need to fill the site in order to incorporate the road and the houses. Mr. Evans said they have a lot of rock and they could take that and basically balance that fill. He did not believe there would be a lot of fill added to the site. Mr. Perry asked when they were proposing the development previously if there was more fill or less fill. Mr. Evans said there was more fill because it was encompassing the whole property. The previous application was to pipe the brook which would have given the property more usability. In the 80's as the environmental laws changed they restricted the property more and more which changed the whole application. Mr. Perry asked if he could give them one of the purposes of land use zoning that this promotes for the record. Mr. Evans said he mentioned it previously to encourage municipal action to guide appropriate use of development, secure from fire, flood, panic and other natural manmade disasters and supply adequate light, air and open space. Mr. Perry said the Board has to see that he had demonstrated at least one purpose.

Chairwoman Kallert asked what the undue hardship they would suffer if they had to use the land for what is permitted right now. Mr. Evans said you need 100 X 100 for the B zone and if you take 10,000 sq. ft. and you divide that it is basically not going to permit it with all the site constraints. It would not be a usable piece of property when complying with the B zone. The property would be under utilized if they were to conform to the B zone.

PUBLIC – Questions only

Robert Foglia, 9 & 11 Woodrow Ave., asked if the Board saw the property and pointed out a giant mountain in the back. He asked if that is where they would be getting the stone from. He asked if they would be blasting. Mr. Evans said they would not blast it but just chip it away. Mr. Foglia said his sewer lines run right through the property in question. He asked if they would dig the footing into his sewer. Mr. Evans said they are here for a use variance. Mr. Foglia asked how the Board could grant a use variance without talking about his sewer line. Mr. Petriello said it is an issue they would deal with at site plan. Mr. Foglia asked how they would deal with it if they dug and hit his sewer line. Mr. Fiorello said if they built single family homes the sewer line would be there. Chairwoman Kallert said he would have to take the same precautions when building townhomes or single family homes that are

permitted. Mr. Foglia said he would not build there. Chairwoman Kallert said he could build where he wants as long as he takes the necessary precautions when he digs. Mr. Fiorello asked if he had an easement across the property. Mr. Foglia said maybe it was done but many years ago which was about 1925. Mr. Fiorello asked if the applicant did a search to see if there were any easements over the property. Mr. Petriello said he has not done a search himself. Mr. Evans said if there is a record of an easement it could be addressed but he did not know of one. Mr. Foglia said he knows the sewer line is there. Mr. Evans said he is not aware of an easement. Mr. Foglia asked what that meant and Mr. Petriello said maybe his sewer line is not supposed to be there. Mr. Foglia said this is the sort of thing the Board should take into consideration. Mr. Petriello said he did not know the answer. Mr. Foglia said both people are dead who agreed to the easement. Mr. Petriello said at this time they don't know where the sewer line is or the exact location of the dwelling units. Mr. Petriello said if there is an easement they will handle it. Mr. Foglia asked how they would find the easement. Mr. Petriello said there should be a record. Mr. Foglia said it was too long ago and did not think the Board could approve this application. Chairwoman Kallert said the Board would definitely look into it and advised Mr. Foglia to seek counsel and look into it. Mr. Foglia said he doesn't have the money to do that. Chairwoman Kallert said they are only here for the use variance at this time. Mr. Foglia felt they were not telling the truth about the issues of the rock and the runoff area. He felt the town passed the original application because they knew the DEP was going to turn them down. Chairwoman Kallert said they are only taking questions right now and the Board will look into the easement and he must do his homework on the easement. Mr. Foglia said there was no easement because they did not have them at the time. Chairwoman Kallert felt they were getting ahead of themselves at this time. She felt at some point in time it would become an issue for the Board but not at this time.

Donna Murray, 19 Vernon Ct., asked since he doesn't live in the area if he took the traffic on Mt. Pleasant Ave. into consideration. Mr. Evans said yes. Ms. Murray asked if he has tried to get out of Brookview Dr. and make a right or a left a 4:00 p.m. Mr. Evans said he has parked in the playground and has been there different times of the day. He said there are speed bumps along Mt. Pleasant Ave. Ms. Murray asked if he knew why the speed bumps were there. He believed they were there for traffic control. Ms. Murray said it was because of the playground across the street. The park and playground has a lot of use during the week and at night for sports games. Mr. Evans said he was aware of that. Ms. Murray said people park up and down Mt. Pleasant and the extra parking he was talking about may not be feasible because there are people parking to watch their children play games. She said the homes are built on rock. She has lived there for 26 years. She asked if the back of the homes would be on the cliff. Mr. Evans said the thing you don't see is that the people on Woodrow have taken 15' to 20' of the property over the years and basically it doesn't look like where the property is. The property is basically to the right toward Woodrow and that is what they are sensitive to. Ms. Murray asked if he was aware the 10' of buffer doesn't really buffer any sound. Living by the highway she has learned all this and was told it takes 300' of trees to buffer sound. She asked if 10' of buffer would really buffer the sound. Mr. Evans said they would try to get the state to provide more sound barriers where it ends by Vernon and Woodrow. He would like to see it connect so there would be a full sound barrier which would alleviate a lot of the noise in that area. Ms. Murray asked if there

would be pretty much a cliff and no backyard there. Mr. Evans said there will be a backyard area but there will be a slope there. Ms. Murray thought it was more than just a slope. She asked if they would have proof they used passive energy materials. Mr. Evans said what he is doing is representing his father as the applicant and he could speak to that. Ms. Murray said that did not answer her question. Mr. Evans said they will far exceed the requirements. Mr. Evans said everything will comply with the energy code.

Barry Quinn, 20 Vernon Ct., stated he would like to see a slope diagram from the house to the brook. Mr. Evans said that would be provided at site plan. The main objective would be state approval. Mr. Quinn asked if they would be below the other houses. Mr. Evans said it goes down. Mr. Quinn asked if they would need a pump to pump the sewer. Mr. Evans said that is one of the reason they are clustering the homes together. Mr. Quinn asked who would maintain that. Mr. Evans said the property owners would maintain it and the town would have nothing to do with it.

PUBLIC CLOSED

BREAK – Call to order 9:08 p.m. – Roll call, all present.

PUBLIC OPEN – Statements

Donna Murray was sworn in. She stated she and her husband objected to 8 townhomes being built on the property. She is concerned about the negative impact they would have the neighborhood including traffic, the children in the park, parking, wildlife, how the homes would be built on the edge of a cliff and the creek. She is worried the homes would have an impact on the creek and the wetlands. Some of the homes are considered in partial flood zones and asked if that would change and what has never happened might one day happen. She is concerned about erosion and if the building of the homes would affect it. She is also concerned the 8 homes being built would more than likely have children in them and our schools are already overcrowded. One of the big things she is concerned about is many years ago they tried to build on the property but it did not work because of the wetlands. The property for the most part is unusable and now they are trying to make the most money they can so therefore they are building these 8 homes and compacting them into a smaller space whereas only 2 or 3 homes should be built. She felt 8 homes is not the best for them. Sometimes greed is not the best and sometimes we have to count our losses and say it is what it is.

Robert Foglia was sworn in. He said his concern is his property value going down because the wooded area is what give his house character. Since they changed the name to Woodland Park we would be trying to preserve as many wooded areas as we can because there are not many left. He felt the town is getting overdeveloped now. He sees a lot of houses for sale and rent and is concerned after growing up here for 54 years he has never seen this before. He doesn't think this is the right thing to do in such an area to try and squeeze so many houses in. He also thought it was a greed issue and felt you could get 2 one-family homes there. It is up to the Board to decide.

PUBLIC CLOSED

Mr. Intili thought the Board should hear the attorney's summation before they discuss it.

Mr. Petriello stated he believes in terms of satisfying the requirements they have done so. There is no question that this property is severely constrained in terms of environmental and restraints in terms of the topography. He felt they have come here with a concept that is consistent with good planning and the Master Plan. In terms of density they have a site that is almost 3 acres and the B zone would allow 15 units per acre which would be over 40 units and they are proposing 8. He did not feel it would be overdeveloped with 8 units on a 3 acre site. He felt they satisfied the requirements for a use variance in terms of special reasons and undue hardship, negative criteria and the enhanced quality of proof. He felt some of the other issues that were raised really go to the site plan issue even though there is always a mix with a bifurcated application. He felt things like sewer lines, parking issues and traffic issues are for site plan. They want to be good citizens and good neighbors and they will address those issues if they get to site plan. He requested the Board approve the variance they applied for.

Mr. Intili did not think this particular application has met the goals and objectives of the Master Plan. He thought they have serious issues as far as environmental issues. He felt it is difficult to determine the number of housing units that can be put on this site at this point. It is also difficult dealing with a bifurcated application and having no idea what they are dealing with. Unfortunately the site follows the continuation of a ravine that slopes down past Route 80 and there is a stream. It may have to be balanced once the application is made to the DEP and at that point you could determine the proper number of units. He did not think they have met the criteria as far as sustainable materials to be used. He felt they had elevations that did not conform to the particular site because they have no grading and don't know if it will work. There are too many issues that are not available to the Board.

Ms. Patterson agreed with Mr. Intili and felt there were a lot of unknowns. They did talk about a site plan but she did not think the use fits. Chairwoman Kallert felt that is one of the things about a bifurcated application you rely on a site plan but when you come in with things like wetlands and a stream maybe a site plan would give the Board more information. She knows they don't want to provide that until they know whether or not they are going to get the use variance but in a case like this where it is not cut and dry and straight forward more information may be helpful.

Mr. Pascrell agreed with Mr. Intili that there were way too many unknowns. He thought some of the issues need to be answered for the Board to make a decision.

Mr. Orlando said his concern right now is the parking. He went by the site this evening and there were cars parked on both sides which he thought was illegal. He said there were no events going on at the park. He said there was a police car there and he assumed the cars were getting tickets. The cars parked in front of the garage bothered him. Chairwoman Kallert said the parking would have to be addressed at site plan.

Mr. Ianniello felt there was not much to comment on without a site plan. He felt nothing would be done until they get approval from the state regarding the stream. He is not concerned with parking at this time because they don't really know what they can do.

A motion to deny was made by Mr. Intili, second by Ms. Patterson and denied by a vote of 6 -1.

A motion to adjourn was made by Ms. Patterson, second by Mr. Pascrell, all in favor. Meeting adjourned.