

The regular meeting of June 23, 2004 of the Washington Township Planning Board was called to order by Chairman Jones at 7:36 p.m.

MEMBERS PRESENT

CLASS IV: R. Gregory Jones, Kathleen McGroarty, Geoffrey Price, Kevin Walsh
 ALTERNATES: Mark Bauerlein, William Leavens
 CLASS I: Eric Trevena
 CLASS II: Walter Cullen
 CLASS III: Kim Ball Kaiser
 OTHERS ABSENT: Popper, DiSalvo
 OTHERS PRESENT: Engineer Hall, Clerk Kesper, Planner Banisch, Attorney Buzak, Attorney Cofoni, Environmental Consultant Keller

Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 16, 2004 and posted on the Bulletin Board on the same date. Five notices were mailed, as there were five requests.

****NO NEW CASES OR WITNESSES SHALL BE HEARD SUBSEQUENT TO 10:30 PM****

Pledge of Allegiance

MINUTES

1. Minutes from the June 14, 2004 Regular Meeting

Mr. Trevena made a motion to approve the minutes, seconded by Mr. Price. Minor changes were made. A voice vote was taken; Ms. Kaiser, Mr. Walsh and Mr. Jones abstained; all others were in favor and the motion carried.

RESOLUTIONS

04-21 Cianfracca – Block 47 Lot 11 - Pleasant Grove and Stephensburg Roads – Approval of three Lot minor subdivision

James Laughlin, Applicant's Engineer
 Jeffrey Cianfracca – Applicant

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Mr. Laughlin stated that he found the resolution acceptable. He stated that he wanted to have the subdivision deeds signed as soon as possible, prior to the perfection of the resolution and offered a deed of merger in escrow to merge the new lots if all conditions were not met.

Ms. Cofoni reviewed the changes to the resolution that the board had before them, including the applicant's name, the size of the lots and reference that the DIS had been submitted by the previous Bedrock application, not this applicant. She explained that the stream encroachment permit is one of the items that have not been obtained that typically would have to be obtained for perfection of the subdivision.

Mr. Buzak referred to the previously approved Lance application where the board allowed a similar condition as Mr. Laughlin has asked for on this application. He reviewed the uniqueness of the Lance application and that it was the board's decision to grant the applicants' request.

Mr. Laughlin explained that if he is not able to record the deed, everything that the Board, County Agriculture Board and the applicant have been working on for more than a year would not happen. He explained if that happened then the applicant could reapply for a subdivision after the highlands legislation.

The Board discussed Mr. Laughlin's request and the fact that this property will be going into farmland preservation.

Mr. Walsh pointed out that the applicant has complied with the stormwater management regulations and agreed to allow remediation of a drainage problem onto another township property.

Mr. Buzak reminded the applicant that there are still a number of conditions that have to be met immediately to have the deeds and easements reviewed prior to July 1, 2004.

Mr. Laughlin stated that the deeds are ready to go and will be faxed to the boards' professionals tomorrow.

The meeting was opened to the public for questions and comments. There were no questions or comments and the meeting was closed to the public on this application

Mr. Cullen made a motion to approve the application with the amendments discussed regarding the provision to allow the applicant to file deeds prior to receiving some of the requisite approvals. Seconded by Mr. Trevena. A roll call vote was taken

Ayes: Walsh, Bauerlein, Leavens, Trevena, Cullen, Jones

Nays: None Abstentions: None Absent: Popper

Ineligible: Price, McGroarty, DiSalvo, Kaiser

04-22 Hoppe - Block 51, Lot 6.09 – High Meadow Lane – R-5 Zone – 12.239 Acres –
Memorialized Approval of for two lot minor subdivision

Mr. Mielich stated that he has no objections to the resolution and asked for adoption of the resolution. He stated that his deeds have been approved and they are ready to have them signed as soon as possible.

The meeting was opened to the public for questions or statements on this application. There were no questions or comments and the meeting was closed to the public for this application.

Mr. Price made a motion to approve resolution 04-22, seconded by Ms. Kaiser. A roll call vote was taken:

Ayes: Bauerlein, Trevena, Leavens, Price, Cullen, Kaiser, Jones, Walsh

Nays: None Abstentions: None Absent: Popper
Ineligible: McGroarty,

04-23 Mascharka - Block 42, Lots 13 & 14 – Hacklebarney Road – R-5 Zone – 16.90
Acres – Approval of three lot minor subdivision with variances

Lloyd Tubman, Applicant's Attorney

Ms. Tubman stated that this applicant also faces the highlands deadline. She noted that the one of the lot lines fall through the existing home. She stated that the sight triangle easement has been recorded. She stated that she has deeds ready to be submitted for review by the boards' staff. She referred to the previous discussions on stormwater and that the applicant has now started to do the calculations for stormwater and asked that the board act this evening on this resolution.

Ms. Cofoni explained why she did not agree that this application was exempt from the stormwater regulations, that having a driveway permit does not meet the test for an exemption as a construction permit.

Ms. Tubman stated that the applicant would comply with the stormwater management regulations.

Ms. Cofoni expressed her opinion that this subdivision may not rise to the same level of public benefit that the board concluded the Lance and Cianfracca applications had when the board moved to adopt a resolution without a stormwater management plan, as in the case of the Lance application, and allow the deeds to be signed prior to perfection of the subdivision as in the Lance and Cianfracca applications.

Ms. Tubman reiterated that they would prepare the stormwater report, that this is a conforming subdivision and the applicant has agreed to conditions of the board regarding the environmental portions of the site and restrictions on impervious

coverage. The applicant would agree to a deed of merger as the previous applicants had.

Mr. Hall stated that without seeing any information on stormwater he couldn't say that a plan could or could not meet the requirements. He noted that the Cianfracca application complied with the request to show stormwater management on their plan prior to approval.

Ms. Tubman stated that the applicant would come back to the board to present the stormwater plan as a condition of approval and signing of the deeds. She explained how the highlands act could possibly impact this subdivision.

Mr. Banisch answered Mr. Walsh that regarding a possible highlands hardship exemption, it was his opinion that there was none.

Ms. Tubman stated that they interpreted the ordinance to require that stormwater management rules were not necessary until lot grading plans.

Mr. Hall explained why he wanted the design at the time of subdivision as this was something that the board should review.

Mr. Buzak brought to the boards attention that this applicant had time to develop a stormwater plan.

The board discussed this issue and concluded that they could not approve this application without seeing a stormwater management plan.

Ms. Tubman asked that the board table the resolution if they were not willing to consider the approval without a stormwater.

The resolution was tabled to July 12, 2004.

Ineligible: Absent 5/10 – DiSalvo (Leavens listened to tape 6/23/04)
 Absent 6/14 – Popper, McGroarty (Jones and Walsh listened to tape 6/24/04)
 Absent 6/23 - Popper

Eligible: Bauerlein, Kaiser, Price, Trevena, Cullen, Jones, Leavens, Walsh

The meeting was opened to the public for items not on the agenda. There were no comments from the public and the meeting was closed to the public for items not on the agenda.

DECISIONS ON COMPLETENESS

1. Rosewood Communities – Block 20, Lot 88 – Spring Lane – R-5 Zone – 31.785 Acres – Request for five lot preliminary subdivision

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Robert Mielich – Applicant's Attorney
Carlton Frost – Applicant's Engineer

Mr. Hall reviewed his letter regarding the incomplete items. He did not recommend the waivers. Each of the items were reviewed:

- A. Wetlands and transition areas and ridgelines on-site and within 200 feet per 175-25B. – Mr. Hall stated that this information is readily available and should have been put on the plan.
- B. Lot dimensions for existing tract and proposed lots per 175-25F. Mr. Hall stated that the lot line dimensions on Lots A, B & C are either incomplete or incorrect.
- C. Location of existing water mains, gas mains, power lines, etc. per 175-27F. Mr. Hall stated it was his opinion that this information was available and should be shown.
- D. Profiles of all proposed utilities per 175-27H. Mr. Hall stated it was his opinion that this information was available and should be shown.
- E. Wetlands and transition areas not shown in conservation easements per 175-27V. Mr. Hall stated it was his opinion that this information was available and should be shown.

Mr. Frost stated that the items would be put on revised plans immediately.

Mr. Mielich asked for a completeness determination this evening and stated that the applicant would grant a statutory time extension of time based on the amount of time it takes the applicant to submit the missing information. He explained the importance of completeness review for the applicant because of the pending Highlands legislation.

Mr. Frost addressed the request for a soil disturbance waiver for completeness. He stated that with this application it was his opinion that there may be changes and the soil disturbance permit would be premature.

Mr. Hall did not support the waiver request as there was not significant difference from this application than other subdivisions.

Ms. McGroarty made a motion to deem this application incomplete due to items Mr. Hall's letter, soil disturbance permit and Ms. Kesper's letter. Seconded by Mr. Jones. A voice vote was taken; all were in favor and the motion carried.

Mr. Hall stated that the revised plans must be in at least ten days prior to the next completeness hearing.

The application will be heard again on July 12th for completeness.

APPLICATIONS

1. JBK – Block 28, Lots 45 & 47– Christopher Drive –Request for Extension of Time on Resolution 03-19 for recording of subdivision deeds

James Knox, Applicant's Attorney

Mr. Knox reviewed his letter of regarding a need for additional time to file the deeds. The 190 expired March 4, 2004 and asked for an extension to August 15, 2004.

Mr. Knox answered the Board that the township accepted the roadway by ordinance and granted the applicant an easement. The neighbors did not respond to the applicant 's request to share the use of the existing driveway, therefore, they will be using the Township road as a driveway. He did not agree to send an additional letter to the neighbors.

Mr. Hall stated that a second letter was already sent at his request to the neighbors which also was not replied to.

Mr. Buzak referred to the statute for extensions of times to file deeds and it was his opinion that the letter submitted to the board by Mr. Knox met this criteria.

Ms. Kaiser made a motion to grant an extension of time to file the deeds from the date the resolution expired to October 1, 2004. Seconded by Mr. Walsh. A voice vote was taken; all were in favor and the motion carried.

2. Fleming – Block 40, lot 26 – Fairmount Road – R-5 Zone – 13.118 acres – Request for three lot minor subdivision with variances

Robert Mielich, Applicant's Attorney
David Zimmerman, Applicant's Planner
Harry Metzler, Applicant's Surveyor

Mr. Mielich reviewed the application and stated that the variances are for the existing home and for the creation of a three acre lot in a five acre zone.

Harry Metzler was sworn in by Attorney Cofoni.

Mr. Metzler referred the subdivision map, which was marked A-1. He explained that lot B required a lot size variance. The remainder lot requires a variance for lot frontage for the existing home. The new lots will be serviced by public water and private septic systems. Driveway permits have been received. He identified the environmental constraints on the property. He stated that there are some minor steep slopes in the area of the driveway. He pointed out the conservation easements and road frontage dedications. Surface water management will be provided on these lots.

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He stated that if the variance were not granted the applicant would not have to comply with the stormwater management regulations.

P. David Zimmerman was sworn in by Attorney Buzak.

The board accepted Mr. Zimmerman as an expert witness.

Mr. Zimmerman explained the information he reviewed in preparing his testimony on this application. He first testified in support of the pre-existing front yard variance requirement for the existing historic home on the site. He noted that the front yard was being further reduced due to the road dedication.

Mr. Zimmerman stated that the applicant was seeking a C-2 variance for the creation of an undersized lot. He explained the criteria for a C-2 variance. He referred to an enlarged zoning map of the township on which the area in question had been highlighted that was marked A-2. He pointed out the surrounding areas within 2500', which encompassed approximately 450 acres. The areas in yellow were less than the current 200,000 sf lots the white lots were more than 200,000 sf and stated that there were two r-1 zone districts within the area. He also pointed out Township property in the area. He stated that it was his opinion the 3 acre lot is consistent with the surrounding land use.

Mr. Mielich answered the board that the lots to the north were previously property owned by the applicant.

Mr. Zimmerman put an overlay on the zoning map that indicated the wetlands across the street that would limit future development in this area. He explained that there are 6 lots fronting on Fairmont of which 52 are less than 200,000 sf. In the area of Fox Hill Road there are 48 lots of which 46 were less than 200,000 sf. He testified that as 95% of the lots are under the five acre minimum there would not be a detriment to the zone plan.

Mr. Zimmerman referred to the ordinance that changed the zoning and that it was to protect large continuous tracts of farmland and stated that it would not apply to this property. He further referred to the township Master Plan and that this area was not an area that would call for protection. He referred to a WTMUA water service area map which was marked A-3 and noted that this property is going to be served by public water. This area is outside the township greenbelt area and outside the highlands core area. He read from the Township master plan land use and conservation element to support the variance. It was his opinion that there were no negatives to the approval of this variance and that as to the positive this proposed subdivision is a good use of the property.

Mr. Jones disagreed with Mr. Zimmerman regarding the master plan supporting a three acre development. He stated that part of the decrease in farmland and the creation of the surrounding neighborhood was made by this property owner through a series of minor subdivisions.

Mr. Bauerlein stated that he and Mr. Leavens did the site walk on this property and it was his opinion that this was the last lot the preserves the historic viewshed of this area.

Mr. Mielich stated that when these lots were subdivided farmland preservation and cluster ordinances were not around.

Mr. Bauerlein stated that he would like to see this lot go into farmland preservation.

Mr. Mielich stated that Mr. Fleming stated had today's ordinances been in place twenty years ago and farmland preservation been available he would have done so, but they were not and the property was subdivided the way it is now based on the zoning in place 15 – 20 years ago.

Mr. Banisch referred to the MLUL and the review the board would have to make to determine if a variance could be granted.

Mr. Mielich referred to Mr. Metzler's testimony that if both lots were approved the new stormwater regulations would apply and more water would be recharged and less would flow into the wetlands. He answered Mr. Banisch that a letter from natural heritage was not obtained regarding grassland habitat.

Mr. Banisch referred to the zone plan called for in the Master Plan.

Mr. Zimmerman answered Dr. Keller that his opinion that there was no critical habitat was based on his inspection, the farming on the property and the property owner as well as the critical habitat map of the master plan.

Mr. Banisch stated that this property being in the highlands planning area does not mean that the current zoning would not apply.

Ms. Kaiser noted that this area is within planning area 5 of the State Plan.

Mr. Jones answered Mr. Zimmerman there are times when the board would consider undersized lot variances.

Mr. Buzak reviewed for the board the C variance and whether this variance could be viewed as a density variance, which would have to be heard by the Board of Adjustment. He explained that the way our zoning ordinance is worded this would not be a density variance, but it was similar to it.

Mr. Zimmerman quoted from the MLUL regarding zoning neighborhoods and the character of this area and the appropriate use of the land and uniformity of the area. He referred to recent court decisions which it was his opinion, supported this application. He restated his opinion that there were no detriments to the property or

zone plan of the township, that it would not set a precedent or meet the criteria of substantial impact on the area or the zoning.

Dr. Keller stated that there is no qualified testimony that there is not critical habitat on this property.

Mr. Hall stated for the record that the applicant are friends of his in-laws, and he has met the Fleming's, but did not see that there would be a conflict for him on reviewing this property.

Mr. Hall stated that the board does have a history of granting this type of variance, but when there is a public good such as farmland preservation.

Mr. Cullen stated that it was his opinion that the property should continue to be developed under township ordinances, which is now 5 acres.

Ms. Kaiser and Mr. Walsh concurred.

Mr. Price did not want to see undersized lots created.

Ms. McGroarty, Mr. Leavens, Mr. Bauerlein and Mr. Jones concurred with what has already been put on the record.

The meeting was opened to the public for questions and comments.

Michael Allan – 3 Sun Valley Way stated he lives directly behind the farm house. Headlights would be coming into the rear of his home if this application were approved. He did not want to see the board approve additional lots. He was concerned about the tree line on the property between his home and this property. He stated that he wanted to see the applicant held to the new zone ordinance of five acres.

Mr. Jones stated that if the applicant comes back with a revised plan, the headlights and tree issues may be addressed.

Mr. Mielich asked for a continuance of the application.

The meeting was adjourned to August 9, 2004

3. Morton House Farms - Block 60, Lot 15.02, Black River Road, R-5 Zone Acres – 30 Acres -Request for 6 Lot preliminary subdivision – Deemed Complete December 8, 2003 - Previously Heard December 8, 2003 and January 24, 2004 – Public Hearing Continued – Expires July 28, 2004

Adjourned at the applicants' request to July 28, 2004

4. Elegant Homes – Block 42, Lot 11 – Hackelbarney Road - R-5 Zone – 66.8 Acres - Request for 11 Lot Preliminary Subdivision – Deemed Complete

October 22, 2003 – Previously Heard December 16, 2003 - Expires August 31, 2004

Adjourned at the applicant's request to August 9, 2004

DISCUSSION/ CORRESPONDENCE

1. Vouchers

Mr. Price made a motion to approve the vouchers reviewed by the chairman and found in order and send same on for payment, seconded by Ms. Kaiser. A voice vote was taken; all were in favor and the motion carried.

2. RO-16-04 – Musconetcong Age Restricted Housing Overlay Zone

Mr. Banisch stated that this ordinance amends the previous zone in this area, which now requires multifamily housing and greater open space set aside.

Ms. McGroarty made a motion that this ordinance was found not inconsistent with the master plan and recommends that the township committee adopt the proposed ordinance, seconded by Mr. Price. A voice vote was taken; all were in favor and the motion carried.

3. Ridgeline Ordinance

Tabled to the July work session.

4 Summer Calendar

The board discussed the July calendar and decided to cancel the July 28th meeting.

5. Personnel

Tabled to the July work session.

Mr. Bauerlein made a motion to adjourn the meeting, seconded by Mr. Leavens. A voice vote was taken, all were in favor and the meeting was adjourned at 10:25 p.m.

Virginia R. Kesper