

March 3, 2009

The regular meeting of the Andover Township Land Use Board was called to order at 7:30 p.m. on Tuesday, March 3, 2009 by the Chairman, Stan Christodlous.

Present: Members CeCe Pattison
 Suzanne Howell
 Michael Lensak
 Gail Phoebus, Class III
 Bob Smith, Class I
 Lois deVries, Class II
 Gerald Huelbig
 Diana Boyce
 Stan Christodlous

Secretary: T. Linda Paolucci

: Attorney Thomas J. Germinario, Esq.
 Engineer Joseph Golden, P.E.
 Planner Russell Stern, P.P.

Absent: Ellsworth Bensley, Alternate

Early Departure: CeCe Pattison

FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT

OPEN TO THE PUBLIC – The Chairman opened the meeting to the public and read the rules of the act.

Diane Gillespie of Andover Mohawk Road came forward from the public to remind everyone that the Township Committee has resurrected the Constraints Ordinance and wants to commend the Board in their review the ordinance for its consistency with the Master Plan.

NEWTON COUNTRY CLUB – Block 111, Lot 6, Site Plan Waiver. Christodlous recused himself and Lensak, Vice Chairman took over and ran this portion of the meeting. Jack Minton, President of the Newton Country Club and Les Carpenter, golf course superintendant, were sworn in. Carpenter explained that the applicant is looking for a site plan waiver in order to install an additional equipment storage building on the existing golf course property in their storage facility area. Carpenter stated that the storage is for equipment only, no electric, heat or plumbing will be in the storage building. Lensak asked if there would be any storage of fuel, and the applicant answered “No”.

Golden, P.E. added that he visited the site, the wetlands are more than 150’ away and it meets all of the requirements of a site plan waiver.

Motion was made to waive the requirement of a site plan application by Pattison, second by Phoebus.

In favor: Pattison, Howell, Huelbig, Lensak, Phoebus, Smith, DeVries, Boyce. Opposed: None. Motion carried.

ROBERT SMITH – Block 118, Lots 4 and 31, Minor Subdivision/Lot Line Adjustment
Bob Smith recused himself from this portion of the meeting. Golden, P.E. gave the Board an overview of the application. Golden stated that the applicant is applying for a lot line adjustment to change the configuration of the overall land configuration between adjoining lots. He continued that the lot line adjustment does not make either lot more or less developable, this is really a change of what he considers to be excess land over and above of what the zoning requirements require. Golden stated that he make a recommendation that this be deemed complete subject to waivers as detailed in his report of February 16, 2009.

Christodlous stated to the Board that this application will be voted on by taking two separate votes, as this is a simple project, the first vote will be on completion and the second will be for the application itself.

Christodlous asked for a motion to deem the application complete with the waivers requested. Phoebus made a motion to deem the application complete with the waivers, second by Howell. In favor: Pattison, Howell, Lensak, Phoebus, DeVries, Huelbig, Boyce, Christodlous. Opposed: None. Motion carried.

Christodlous continued the hearing for the application itself. Golden stated that this is a conforming project in the R-2 Zone prior to the lot line adjustment and is a conforming project post lot line adjustment and there is no proposed construction.

Applicant Robert Smith, 109 Lake Iliff Road was sworn in as was Paul Linn of 109 Lake Iliff Road. Linn was asked by the Board attorney to explain his relationship to the property and Linn stated that he is a co-owner of the property. Germinario asked Smith to explain what the reason is for the application. Smith stated that the reason is to create a greater buffer area between his property and the neighboring property. The way it is situated currently is his driveway is directly next door to what could potentially be a driveway if the neighbors chose to subdivide their property. He continued that in the future this could be done and possibly create a flag lot". He stated that again, by this application he is creating a greater buffer which still leaves the neighboring property with a conforming lot of two acres and he is picking up the excess of the acreage and expanding the size of his lot.

DeVries questioned Golden on the meaning of "traveled way" which is depicted on the survey. Golden answered that the piece of property that he observed which is in the back of the property and goes up into the first intersection is a trail in which you could drive a jeep or quad and is just a dirt stone path. DeVries asked Smith what the present use of the traveled way is. Smith answered is that it is used now for the neighbors to have access to the back portion of the lot that he is acquiring and they do have shed back in that area and it is the most convenient way for them to get to the shed. DeVries asked what purpose would this area serve the applicant when they acquire it. Smith answered that it probably would allow additional parking area if they so chose or for the same reason, to have access to the back of the property for whatever reason they chose. Germinario asked if the owner of Lot 4 needed to relocate the shed and Smith answered "no" the shed is on the neighbors property which shed conforms to the new set backs. Stern asked about the septic, field, and well on the neighbor's property and Smith answered that none of these are close to the newly formed property line.

Christodlous asked for a motion to approve the minor subdivision/lot line application. Motion made by Lensak, second by Gail. In favor: Pattison, Howell, Lensak, Phoebus, DeVries, Huelbig, Boyce, Christodlous. Opposed: None. Motion carried.

280 MEDICAL ASSOCIATES – Block 103, Lot 4.04, Site Plan Waiver.

James Dwyer, the applicant and a partner of 280 Medical Associates, 280 Newton Sparta Road, was sworn in. Dwyer stated that he is appearing before the Board for a site plan waiver in order to erect a vestibule at the exterior of the building, which is adjacent to his office.

Germinario stated that he understands that the plan will have to be adjusted in order to avoid having the vestibule encroach on the sidewalk. Golden stated that this is correct and the plan has been revised and submitted to himself and to the James Cutler, Andover's Construction Official. Germinario asked for the date of revised plans and Golden stated they were revised on 2/18/09. Germinario asked Golden if he has reviewed the revised plans and Golden answered "yes". Germinario asked if Golden had a chance to review the revised plans and he commented that he had and it meets the requested changes, such as eliminating the encroachment on the sidewalk.

Christodlous asked for a motion to waive the requirement of a site plan application. Motion was made by Boyce, second by Phoebus. In favor: Pattison, Howell, Lensak, Phoebus, Smith, DeVries, Huelbig, Boyce, Christodlous. Opposition: None. Motion carried.

GREGORY FISCHER, Block 59, Lot 3.03, Steep Slopes Variance.

William Haggerty, Esq. of Dolan and Dolan, Spring Street, Newton, NJ stated that he is here to represent the applicant, Gregory Fisher. Haggerty introduced Howard Bach, the engineer on the project. Haggerty stated that he previously presented this application to the Board for consideration and following discussion with the Board changes were made to the plans and documentation was provided to the Board's professionals to try and address some of the concerns. One of the primary concerns he stated was the proximity of the property to Lake Lenape and reminds the Board that Howard Bach is still under oath and would like to address the Board regarding some of those concerns.

Bach stated that there were some concerns about the riparian buffer and whether or not the applicant would need to obtain a flood hazard area permit. Bach made reference to a survey prepared by Robert Poole dated August 18, 2007, revised February 17, 2009, Lake Lenape Shore, marked at "Exhibit A-3" pointing out the areas of the riparian buffer. Bach explained that the red line on the map refers to the 300 ft. riparian buffer, which basically goes right through the center of the construction site. He stated that the proposed disturbance is right through the 300 ft. riparian buffer and the applicant will have to address the NJDEP with a flood hazard area permit. Germinario stated that if this application were approved this would be a condition of approval. DeVries asked Golden a question regarding the stormwater on the site. Golden answered that the applicant's stormwater plan has no net run-off from the site.

Haggerty asked Bach to explain the changes made to the plans. Bach referred to *Sheet 4* of the revised plans, which was an additional sheet that has been added since the last submittal. Bach stated that the changes to the plans, which is a colored version of *Sheet 4* of the revised plan, dated February 6, 2009, marked as "Exhibit A-4", shows storm drainage drywells configuration and actual flow of the water across the property. Bach stated that a fourth drywell was added, also a swale was created that comes across the property to address concerns about water getting from the front to the drywells, leader pipes, rip-rap trench and other items to address any stormwater situations.

Bach continued that a driveway easement and a conservation easement line were added. There was discussion regarding the retaining wall, amount of foundation versus the first floor elevation, whether or not there will be a basement, site distance, and soil erosion.

Golden stated that there are conditions of approval as stated in his report of February 23, 2009, which are *Items 2, 3, and 15 through 19*.

Stern made comments regarding his report of February 26, 2009 and the items that have been addressed and made a recommendation that the landscaping, using native plants, be left to the client's choosing as long as the foundation is covered.

Haggerty stated that this is a "C-1" type variance case, there are steep slopes on the lot, the lot is more than double the minimum lot area required in the zone and the conservation easement would be more than the minimum lot area. The home has been located to the front of the property to disturb as little of the steep slopes as they can, the house is appropriate for the

area and they have addressed the stormwater issues and they also will obtain the necessary permit from the NJDEP which will be a condition of the Board's approval.

Smith had a question stating that he did make a site visit and had concerns as to the drainage of run off to the west of the property and asked Golden whether or not he feels that this has been addressed. Golden stated that he believes it has been addressed to the extent that the applicant is proposing at this meeting. He stated that the engineer is re-directing some of the water from the rear of the property and to the front of the property to the seepage pits and any water that by-passes that to the west remains, but believes that the applicant has addressed the issues relative to their disturbance.

Christodlous asked for a motion subject to the conditions that will be included in the resolution. Howell made a motion to approve, second by Huelbig. In favor: Pattison, Howell, Phoebus, Huelbig, Lensak, Smith, DeVries, Boyce, Christodlous. Opposed: None. Motion carried.

SUSSEX & WARREN HOLDING CORP. – Block 105, Lots 6.01 & 12.02, Block 105.01, Lot 7, Block 105.02, Lot 12, Block 72.03, Lot 1.02, Block 117, Lot 10.02 – Amended Preliminary & Final Major Subdivision and Use Variance

Germinario, Esq. made a statement at the beginning of the hearing stating that he received a letter from Frank Maglio regarding this application, who indicated that he represents Vienna and Allegra Maglio, beneficiaries of the Estate of Jerry Turco and beneficiaries of trust which own Sussex and Warren Holding Corp. Germinario stated that Maglio refers to a certification that was previously submitted by Kevin Hahn's partner, Mr. Kobert, under cover of his letter dated February 9, 2009 which is a certification of Howard Wachenfeld. The letter generally states that the beneficiaries of the estate have certain differences with Mr. Wachenfeld, it indicates that they don't consent to this application, it indicates that there is on-going litigation regarding Mr. Wachenfeld's performance of his duties as a fiduciary to the beneficiaries and the estate. Germinario commented that he read the letter and also reviewed the certification of Mr. Wachenfeld and it appears that Mr. Wachenfeld does have the authority to act on behalf of the estate and the beneficiaries in this matter. Germinario stated that he understands that the beneficiaries do dispute that and are pursuing litigation to challenge that. Germinario stated that any action of this Board will be premised on the condition that should a court of law subsequently determine that Mr. Wachenfeld exceeded his authority, or acted improperly in any way, any action of this Board will become void as a result of that. Germinario made a few other comments concerning the matter and the meeting continued.

Germinario commented that if any member of the Maglio family that was present at the meeting and had anything that they would like to add to that he would give them the opportunity to do so.

Jeryl Turco Maglio was sworn in and stated that she wanted to point out some of the items in the letter that she wanted to make known. Maglio went over some of the points that were outlined in the letter that Germinario received that she felt were important issues. She also stated that there is litigation for the removal of Mr. Wachenfeld, as well as other fiduciaries that have abused their authority and that the motion is expected to be heard in March and, therefore, because it is expected to be heard in March, she would appreciate if no action is taken on this application at this time. She continued that eleven of the thirteen beneficiaries of the estate support the removal of the trustee and there are a number of very serious issues in the litigation. Maglio pointed out to the Board the family's relationship with the town and stated that she would like to continue to have a good relationship with the town. There was further discussion regarding the protection of the rights of the grandchildren and had requested that the Board take no further action this evening.

Germinario responded that he did not feel that action would be taken this evening as this is just being opened up and is quite a complex application and anticipates at least two or three hearings on this application. Therefore, no action is expected to be taken tonight and that should afford Maglio the opportunity to pursue her legal remedies. He stated that “we” do not have jurisdiction here to determine whether or not Wachenfeld has or has not acted properly in his capacity as fiduciary but we certainly are desirous of cooperating in order for Maglio to exhaust their legal remedies with regard to those issues.

Christodlous questioned Maglio since this application is four years old, why is it that she waited until tonight to bring up her opposition to the application. Maglio stated that there have been changes in the application and there is property that has been added to the application and she opposes the application at this time.

Germinario requested from Maglio that if there is a determination from the Court that has bearing on Wachenfeld’s continued authority to act on behalf of the estate and the beneficiaries that he would like to be advised.

Lensak asked who is paying for the application and Maglio answered that the estate is paying for the application. Robert Maglio, Esq. came forward and stated that he is the attorney on behalf of Vienna and Allegra Maglio, both his daughters, and also on behalf of Jeryl Turco Maglio. He explained his involvement in the application and the issue of the beneficiaries not having been noticed and not receiving information regarding the changes to the application. Robert Maglio made some other comments referring to attempting to preserve the estate.

Kevin Hahn, Esq. of Courter, Kobert, Hackettstown, NJ who represents the applicant stated that he is here for an Amended Preliminary and Final Subdivision, Site Plan, as well as a Use Variance and COAH Site Plan.

Robert Tessier, of Dykstra Engineering, Andover, New Jersey, is a licensed planner, was sworn and stated that he was the planner and coordinator for this project which was first for Mr. Turco, then for the contract purchaser and now for the estate for Mr. Wachenfeld. Tessier gave an overview of the project stating that this was a subdivision approved in September 26, 2005 and then a resolution was granted approving the subdivision November 1st, 2005 and a Developer’s Agreement was signed with the Town. He stated that preliminary subdivision plans were signed and the resolution was signed and adopted. Tessier pointed to *Exhibit A-1* which was a 2007 aerial photo of the subdivision and the purpose of showing this partially is to show how the amendment came about with the preliminary subdivision. What took place was that when Limecrest Quarry stopped pumping, Howells Pond which was previously dry, filled up with water. When the applicant applied for a stream encroachment permit and a wetlands permit from the State of New Jersey, they required the applicant to move the storm receptor, that was coming out from the road taking care of the storm drainage, up in elevation and they required them to move the road, that was previously approved, up a couple of feet. He continued that they came before the Board and showed those plans to the Board and argued to the Board that there was no necessity to open up the preliminary plan, but was told “no” as it was a significant enough change but just for that limited purpose the applicant would come back to the Board for an amendment to the preliminary plan. In addition, he continued, the applicant is required to produce three COAH units but will actually be developing four COAH units, of which the units will now have to be moved to another location on the plans because of the elevation and, therefore, a separate site plan and use variance is currently being applied for.

He further discussed property which comes down right through the old roadway which links the school to the railroad bed and goes underneath the Newton Sparta Road and that there was a request from the Open Space Committee to dedicate just the right of way, not the wetlands, to open space.

There was discussion regarding the township’s engineer’s report dated January 13, 2009 which reports on the subdivision. Tessier stated that he will make the changes in accordance

with the engineer's report and agreed with all the items in the report up to *Item 25* which will be a condition of approval. There was further discussion regarding the providing all the items on the plans in accordance with Golden's report.

Golden pointed out that on Page 4 of his report, *Item 6* referring to the Stormwater Management Report is asking for the engineer's estimate for the cost to maintain the stormwater facility over a twenty year period and should be included in the Developer's Agreement unless it shall be maintained as part of the Homeowner's Association and this should be clarified.

Tessier addressed the contents of Stern's report with regard to the use variance for the COAH obligation. Tessier stated that this is a single family zone where the COAH units will be developed and this is the reason for the need to apply for a use variance. He stated some of the positive conditions for the placement of the COAH housing, such as a large four acre lot which has along one edge Howells Pond, which provides buffer and open space and the other area is along the railroad right of way. There was further discussion regarding the benefits of providing this type of housing within the community and believes there is no negative impact on the zone plan or the master plan and the positive criteria is satisfied as it is an inherently beneficial use.

Stern made comments as to incorporation design features for the housing units and stated that revisions should be made to the exterior of the house and to the floor plan for a more aesthetic look. Tessier stated that he will provide the Board with a revised architectural plan.

Tessier referred to comments in Stern's report of January 24, 2009 and agreed to make the changes contained within the report. Stern commented that also a narrative should be provided with regard to the changes that need to be made.

Tessier commented that the COAH housing will be rental units, which will provide extra credits to the Township.

Tessier agreed to submit a Phasing Plan with regard to the development of the units and homes.

There was further discussion regarding the hydrology report submitted with the original application of approval which shall be followed with this application.

Stern had questions regarding the Homeowners Association documentation, two 10,000 gallon fire prevention cisterns, proposed landscaping. Tessier agreed to provide information requested as outlined in January 24, 2009 report of Russell Stern.

Donna Del Valle, Executive Director of Start Easy Eagle Development Corp., (SEED Corp.), a non-profit housing development organization, main office in East Orange, NJ, was sworn in. Tessier stated that the applicant's objective is to have a coordinated effort and to get together with the Town, the developer and Del Valle to get the development going as SEED has an opportunity to get some grant money for the affordable housing project. Del Valle gave an overview of the history of and accomplishments of SEED Corp.

Tessier and Del Valle reviewed some of the comments in Stern's report of February 2009 referencing the COAH units with regard to handicap accessibility, size of the units, storage and landscaping. There was further discussion regarding the ownership, operating and maintaining of the units. Discussion was made with regard to off-site improvements, trash enclosure, amount of units (from 4 units to possibly creating 8 units), set backs, lighting, architectural appearance of the building, septic, sprinkler system for the units, wells, etc.

Hahn, Esq. stated that the applicant will be re-submitting before the next hearing revised subdivision plans, the site plans and the architectural for the Board's review in accordance with the comments made this evening.

The Board agreed that they would carry the application on March 17, 2009 for the amended preliminary and final subdivision and use variance with no further notice.

RESOLUTION – ROLLING HILLS CONDO ASSOC., Block 109, Lot 4.01, Mulford Road, Site Plan Waiver . Motion to approve Resolution by Howell, second by Huelbig. In

favor: Howell, Lensak, Phoebus, Smith, DeVries, Huelbig, Boyce, Christodlous. Absent: Pattison. Opposed: None. . Motion carried.

RESOLUTON FOR MASTER PLAN CONSISTENCY – PARKING & LOADING REQUIREMENTS, SECTION 190-57, COMMERCIAL USES, PARAGRAPH A OF THE GENERAL ORDINANCES – Motion to approve by Phoebus, second by Howell. In favor: Howell, Lensak, Phoebus, Smith, DeVries, Huelbig, Boyce, Christodlous. Absent: Pattison. Opposed: None. Motion carried.

MINUTES – January 20, 2009. Motion to approve made by Lensak, second by Howell. All in favor: Aye. Opposed: None. Motion carried.

VOUCHERS - See Schedule A. A motion was made by Phoebus, second by Huelbig to approve the vouchers submitted. All in favor: Aye. Opposed: None. Motion carried.

OLD/NEW BUSINESS –

Phoebus wanted to know the status of WaWa application. Golden and Stern stated that there has been continuing correspondence and documents being exchanged between their offices and believes that the applicant is moving ahead.

DeVries commented that she was misquoted in the newspaper with regard to the water table rising. She stated that the misquote was the water table rising to 130 ft. and what she had said was that the water table rose to 35 ft. and in the quarry pit level rose to a height of 145 ft.

MATERIAL RECEIVED, GENERAL INFORMATION - See Schedule A.

ADJOURNMENT – At 10:37 p.m. motion was made by Lensak, seconded by Howell, to adjourn. All in favor. Carried unanimously.

Respectfully submitted,

Stan Christodlous, Chairman

T. Linda Paolucci, Board Secretary