

TOWN OF MOUNT PLEASANT

MINUTES OF THE MEETING OF THE PLANNING BOARD TOWN OF MOUNT PLEASANT WESTCHESTER COUNTY, N.Y. HELD NOVEMBER 18, 2024

BUSINESS ITEMS

Acceptance of minutes drafted from the 11-7-2024 Planning Board meeting

Motion was made by John Piazza to adopt the minutes, seconded by Jane Abbate, Walter Hickey abstained, all remaining members present voted in favor

Request to amend resolution of approval for Site Plan# SP 23-07 for the development of vacant parcels located at Bradhurst Avenue and Brighton Avenue in Hawthorne for the construction of an approximate 3,000 Sq.Ft. business office with storage barn. Additional improvements include driveway, parking area, storm water mitigation facilities, landscaping and screened areas. Applications include Subdivision # SD 23-04, Site Plan# SP 23-07, Steep Slopes # SS 23-13. SBL 112.9-1-2&3, owner is Brighton Ave. Properties, LLC

The Board asked the property owner to add further explanation, Vincent de Pascual and Mark DiFabio commented that this new language is basically stating the same thing as the original resolution however more specifically in anticipation of avoiding future calls and complaints from any neighbors. Chairman Collins read the languages: the approved condition for number 13 was “dump trucks used as part of the business operation and that utilize a hydraulic lift to raise and lower the dump bed are prohibited at this site. Dump trucks that have a haul bed of under 2 cubic yards that do not have a hydraulic lift shall be permitted.” This prohibition applies to operation, parking storage versus what's the requested condition, which is “dump trucks used as part of the business operation that utilize hydraulic lift to raise and lower the dump bed and have an open bed capacity of more than 2 cubic yards are prohibited.” This prohibition applies to operation in parking storage. Okay. So that's the language request modification.

John Piazza commented, I don't see an issue with it, but I could see why he wants to change the language because I'm sure they're going to be watching every move they make. But just to be clear to the applicant's point, something like a tow truck arriving is not part of the regular business operation, that would obviously be exempt from any limitation

Chairman Collins commented there was a lot of public interest in this application so to change it now without the public here seems disingenuous, Joan Lederman replied this is how all amendments to resolutions are completed. This language is basically the same, but more specific, it really does not change the application and there is no change to the site plan it's just this one condition.

Motion was made by John Piazza to accept the proposed amendment to the resolution, seconded by Eileen McClain, James Collins voted Nay, all remaining members voted Aye.

CONTINUING PUBLIC HEARINGS

- 1. Proposed: 1 Point Place, construct a series of MESA retaining walls, thereby creating a usable rear yard configuration, including a pool.**

Application: Steep Slopes # SS 24-05

Location: 1 Point Place, Chappaqua

Section/Block/Lot: 99.10-2-3.42

Zone: R-40

Owner &

Applicant: DoshiJay & Supriya - 50%

Doshi Vinay & Vasanti - 50%

Engineer: A.E. Professional Engineers, P.C.

Peter White of A.E. Professional Engineers appeared on behalf of the property owner to present the modifications to the landscaping. At the last meeting we were asked to determine the best variety of arborvitae for the steps between the retaining walls, come up with a plan for maintenance of these areas between the retaining walls and then put it all on the plan page. For the ground cover space between the walls we are planting pachychandra for ease of maintenance. We took the Chairman's advise at the last meeting and have picked a variety of Arborviate that will only grow to 7ft wide and 20 ft tall which the garden center verified as deer resistant. All these items have been represented on the revised plans resubmitted, Patrick Cleary confirmed.

Board Member Comments:

Eileen McClain

- These arborvitae are going on Grade? Peter White replied they are going at the bottom of the last wall on the left side
- So one of the things that I'm concerned about is should those be eaten can there be an ongoing obligation on the part of the property owner to replace any dead or dying or eaten trees? Patrick Cleary responded, Yes, that's a statement we include in resolutions.

No Comments from the Public

Chairman Collins commented that there were no written in comments from neighbors or joint property owners on this application, we did receive one letter from the HOA saying that they were not opposed to the walls, the structure, and the whole project, all notice

requirements have been met and the Town Engineer has completed his review, his comments have all been addressed.

Motion was made by Joan Lederman to close the Public Hearing, seconded by Jane Abbate, all board members present voted in favor.

Motion was made by Joan Lederman to have the consultant draft a resolution of approval, seconded by John Piazza, all board members present voted in favor

2. Proposed: 420 Nannyhagen Road - Proposed one lot into two lot subdivision for the purpose of developing a new single-family dwelling.

Application: Subdivision # PSD 24-1

Location: 420 Nannyhagen Road, Thornwood

Section/Block/Lot: 107.17-2-16

Zone: R-40

Owner& Applicant: Nannyhagen 420; LLC

Architect: Spearman Architectural Design, PC

Attorney: Philip Grimaldi

Jane Abbate recused herself due to a professional conflict.

Attorney Phil Grimaldi and one of the Home Owner partner Robert Buffamonte appeared to represent the application to the board. Phil Grimaldi offered these comments:

- The controversy about this application is the fact that we're using Davidson Drive as our access
- Counsel for the neighbor submitted a letter, I submitted my response this afternoon.
- At the last public hearing date the Board requested a legal opinion from the town attorney as to whether we could use Davidson Drive and whether that was sufficient and for frontage to satisfy the frontage requirements of the code, he reviewed everything and said that that he agreed with us, that we could use Davidson and that we had the sufficient frontage. We need 50 feet and we have more than that, those are legal issues that have been resolved by the zoning board of appeals and are not within the scope of this board to determine.
- We were before the ZBA on two occasions, the neighbors had ample opportunity to object to appeal the determination, they did not do so. Chairman Collins asked Mr. Grimaldi to detail that process, when was the application heard by the ZBA? Phil replied about six months ago, there were signs at the site and notices mailed out and it was listed in the local newspaper in accordance to the Town Code requirements.
- It's our position and it's the Town's position that Davidson Drive is a street, we have a right to use it for public access not only because it's a street, but also because we have an easement that was created 55 years ago, that's already been determined.
- The neighbors already said that they don't care if we build another house, but what they do care about is they don't want us using Davidson Drive.
- Robert Buffamante is one of the principals of the owners and he could address the

more planning related issues that that this board generally, considers rather than the legal issues.

Chairman Collins commented we are not a judicial board, to your point, we cannot make determination of law, we can only make a determination based on the law that is provided to us. This board made the decision to get feedback from the town attorney and from a legal perspective there was not a concern from him on this application.

John Piazza commented so the ZBA, town attorney, everybody doesn't have an issue with it. The gentleman was here once or twice already regarding the runoff, and we went through all the site plan items, so what are they here for? Patrick Cleary replied you're at the point where you're considering, subdivision approval of the 2-lot minor subdivision. There were considerable technical comments with respect to this, including a number of comments from Town Engineer Dave Smith's office regarding easement locations, storm water management plans, and so forth. Virtually, all of those technical site planning issues relating to the viability of the subdivision have been addressed

Comments from the Public: (4)

1 - Michael Sheridan. Attorney with Snyder and Snyder, LLP, for the Neighbors – I agree that this board is not here to make legal decisions, however, you are here to make a decision based on the application, and the application is for a subdivision on an easement right of way, and there are requirements that are necessary to have that, be, in accordance with not only town law, but your code. It is not the town attorney that interprets your code, It is the building inspector. The Town Attorney's short reply only states the Building Inspector said that there's frontage, it does not address the concerns that we've raised with the 280A issue. In fact, in your town code and

in the town law, there are requirements for 280A compliance, and those requirements, have not been met by the applicant. The applicant has made statements that are incorrect and mischaracterizations. One of the things is that the applicant, in front of the ZBA, did not mention the fact that it was on an easement right of way. They consistently said to the ZBA that it was on a street or a road, it is not. It should have been raised by the applicant, it should have been raised by the building inspector and it was not, the ZBA did not make a decision on this. You received something brief from the town attorney because all it says was "has frontage", does that mean it has the width of frontage? What the building inspector looked at? You need to get something from the building inspector that says I reviewed this, and you also need to get something from the building inspector saying, this is how I interpret it based on our code and to give you the reasoning behind it. Not a very broad, very vague statement that does not give this board enough information to make the decision to go ahead with the subdivision

John Piazza commented to Phil Grimaldi, your letter states both Joe Breganti and Sal Pennelli's interpretation was the same as Pat Cleary's, was that given to this gentlemen? Phil, do we have something from the Building Inspectors stating their definition? Pat, do you know more about that? Pat Cleary replied I do not think the Inspectors gave you their determination. Phil Grimaldi stated the Inspector is the one

who came up with this, he sat in two or three meetings before the Zoning Board, nothing was hidden from them and they knew exactly what the application was, that it wasn't a road, it was an easement from 1969, the public came out and spoke as well.

Mr. Sheridan continued, the most recent email says Joe Breganti as building inspector has determined there is proper frontage and it was submitted to this board, so maybe it's not a letter from him, but it identifies him and that it's proper frontage. Again does it mean just that it has the width, or does it mean that it has the width on a road that is compliant with the 280A issue. I don't see how this road is compliant, it's very clear in 280A that it has to be a road on a plat that's filed with the county. The plat that's filed that they keep referring to does not say road, does not say street, it says easement right of way so it is not compliant with 280A. I would like to see the building inspector's interpretation and be able to discuss that.

- Another issue is that we said that the easement has been abandoned. We provided you with information showing it's been abandoned in several ways, one of which was that plat that showed that the lots that are now 420 Nanny Hagen Road have access directly to Nanny Hagen, with an easement they're saying that that's the way that the access should be obtained for that property, so there's really only one property owner that uses the other easement, now you're going to go four on this easement right of way, that's not spreading the burden out between the two easements. You have the ability to do that, and, it would be appreciated from the neighbors if you could spread out the burden, instead of 4 to 1, 3 to 2.

- One of this board's requirements is to have a new survey, a new survey was not supplied, it is dated January 23, 2006, almost 20 years ago.

- The proof of the required distribution, which mister Grimaldi did on Friday goes to all those agencies, including the fire department, the water, sewer. etc, We need to know that these agencies have reviewed this application, have reviewed what's going to be done on this property to see if they have any interest or concerns, and they should be able to provide those concerns to this board

- They're creating a third lot, which is not compliant with any of the applicable requirements for a lot in this, zone. I'm not understanding how they're trying to create this third lot, who's going to be the owner of the lot? What is the purpose of this lot? It seems to be only carving out the easement right of way area, but it's not carving it out in it's entirety which can make it very confusing for those who are entitled to utilize the easement right of way area like the neighbors.

- They've had 3 different plans, 3 different numbers for the entirety of the property, it's unclear to me, One lot is a 40,001 Sq Ft the applicant stated it can shift based upon surveys, so if the surveys are off by a foot or so will that show as a noncompliant lot later?

2&3 – Carmine Yannikino and sister Lisa Delmont, 412 Nannyhagen - Our father's

house 412 Nannyhagen was the house that started all these lots. Everyone is using these terms of streets, roads, whatever you may want to call it, it's a driveway maybe 15 ft wide and we own 2/3rds of the length of it. Every car that drives on this has to first pass our house. Mr. Davidson had accessed his house (420) from Nannyhagen so there are only two lots behind us. To add another home is just going to add more traffic, factor in the delivery trucks for Amazon, Fed Express and more and I really believe it's going to decrease the value of our property.

- This type of heavy traffic will also cause the pipe underneath the road to get some serious damage. It's not so much from cars, but it would be with construction vehicles, with tractors, trailers and construction bulldozers, things like that. So there's going to be some considerable damage to it and to the property itself.
- The builder is going to fix up and sell that house. They're going to potentially develop this other lot and then they're gone. They have no other connection to this property other than it was a transaction to them. It's still emotional for us because it's our home, it's our neighborhood.

4 – Ellie Calabro, 5 Davidson Drive - We have to have access to Davidson Road, when they were refurbishing their property they parked all over Davidson Drive with no regard to all of us. They made messes, parking on the grass and when it rained it was muddy mess, they dug up part of the blacktop and they didn't fix it. We all work together as a team to maintain the road, cut trees etc. I can see what a mess it's going to be with the construction of a home and all that comes with it.

- We made the road wider that goes to our house for our use not for trucks and construction vehicles.
- There was a street sign that said Private Road, which is not there anymore, so these construction guys have just been sleeping in their vehicles and hanging out. I called the Highway department to ask them to put the sign back to keep people out, but it hasn't happened yet.
- There is no garbage service on our road so we bring it out to Nanny Hagen Road and place it on someone else's property for pick up. Now it's three homes I'm not sure what four houses would look like. It's not the greatest visibility and with garbage piled up, it may be a problem to see past this pile.
- I feel bad. I wouldn't mind the house. I just don't like the fact that they have to come through Davidson Drive. They should be coming through Nannyhagen Road because it would be less of a burden on us, and it would be like sharing the burden

End of Public Comments

Further Board Member Comments:

Joan Lederman - Why can't the applicant use the Nannyhagen egress for this new lot? Robert Buffamonte replied first and foremost we also own part of Davidson Drive so we feel we have the right to use it because it's better access for us. Secondly after appearing before the Zoning Board of Appeals several times they made up explore other options so as to not be a burden to the neighbors. We went to DEP, who actually owns 80% of that driveway for 420, and DEP said that it changes the purpose of the

easement, and they would have to redo the whole easement. That easement is only for the main house not for a further house, we don't even own the driveway or easement that they're suggesting we use. The more likely scenario is to use what we do own and what we believe we are legally able to use

John Piazza - Is there is any type of an HOA there or anything like that? Robert Buffamonte replied they don't have anything formal, I suggested we split maintenance four ways instead of three and maybe establish an HOA with this application, it became a little contentious.

- Do you have any plan on upgrading that road with these two lots? Robert Buffamonte replied we don't have any plan on upgrading it, we definitely recommend it.

John Piazza continued, maybe it wouldn't have gotten so contentious if you made a little upgrade to it, that might have helped everybody. Robert Buffamonte replied I actually went to the neighbors after the last planning board meeting and I asked what's going on here? Is it about the road, house what is it and he said we just don't want a house here, nothing else will make us happy. John Piazza said that's not what I heard here tonight. Robert Buffamonte replied it goes back and forth, we're open to all this, we'll trim the trees, survey the condition of the road, make improvements after the construction is completed.

- Is there drainage on this road, Patrick Cleary replied there is nothing.

- the main thing for us, this board, is to hear what is the building inspector's interpretation. If he says it's to code then it's to code. Phil Grimaldi commented I would like to address that because I think it's a disingenuous way to get it back before the ZBA. We met with Joe Briganti twice, and he's the one who suggested this. Now it's not the building inspector it's the ZBA who's the ultimate interpreter of the board. Counsel knows that if you ask for an interpretation from the building inspector and he gives it to you, he then has 30 days to appeal that, and we're right back before the ZBA again, we're going to go around in a circle. That's why he's asking you to do that. Now Joe Briganti sat through two ZBA meetings, he sat with us at two separate meetings. He could have said, look this is not a street, you have to come in pursuant to 280A, he never said that. Now you're asking me to go back to him, get an opinion, then counsel is going to appeal it after 30 days, this will never end. We had that determination made. It was made by the ZBA. The ZBA said this is your street, you have to go 85 feet from the center line of that street and that's where your frontage is. You have 72 feet of width. You need 100 feet.

I'm sorry it's so emotional for some people, but we're not putting 14 houses, we're putting 1 additional house here, that's it. For the two people in the back this will virtually have no impact on them because our cars will turn in before them. We have been very transparent, we had we had two meetings with the ZBA, we detailed our position before them. Nobody, not the planner, not the building inspector, nobody said you can't use this road, we sent in all the old deeds, showed the easements, I don't know what more we could have done. If the neighbors didn't agree, they could have filed an article 78 against the ZBA, they did not do so, now Counsel wants a determination and it's not fair to us.

Eileen McClain - Referencing comments made by Mr. Sheridan, there was a submittal

of a map based on a 2006 survey, is that adequate? Patrick Cleary replied we require updated surveys when conditions around the survey change, property boundaries do not change. We require confirmation that the survey that exists is accurate.

- And the other thing that he mentioned was a third lot, it is my understanding it's a two-lot subdivision. Phil Grimaldi replied at the suggestion of the building inspector, he said leave Davidson Drive out of the lot area calculation so you could use it as your frontage. We didn't create a lot because a lot is defined in the code as something that has a building on it or is planning to have a building on it, so it's not a lot. Eileen McClain continued, you will own that and maintain an easement over it for the neighbors to the back? Phil Grimaldi replied, yes, and we can't block it in any way, a small portion of the lot includes Davidson Drive, but we already own it, it's just on lot number two now. Robert Buffamonte pointed out this 4,361 square feet is the proposed right of way area that will be dedicated to the new lot two, it's just not in the lot square footage calculation.

Chairman Collins

- The stream under the road, I know the town engineer looked at the bridge in the front, not but not by the back one. Patrick Cleary replied yes, he looked at the one in the front, not the one in the back.

- How do we convey to a new homeowner all these types of conditions, the garbage placement and pick up, the maintenance of the road, the snow plowing etc? Phil Grimaldi replied when you do a title search they will see it's a private road, when they ask it's something that we would have to disclose. Chairman Collins continued, with this board we need to be overly and abundantly clear, we're not looking for "I guess" or "maybe" we need to know how to instruct people to the right answers, Pat, what is the best way to navigate through this? Patrick Cleary replied you can establish conditions in the resolution of approval and direct the applicant to put it somewhere in a deed, in a homeowner's association, I don't think you would care what legal device embeds that, but your approval condition mandates that it's private.

Eileen McClain added we can't really compel the existing residents of the neighborhood to form a homeowners association, I don't think we can do that, Patrick Cleary replied, you are correct we cannot do that. Eileen McClain continued, so to Jim's point, how do we memorialize this formally? Phil Grimaldi replied we've said from the start that we're willing to contribute to the cost of maintenance of the roads, snow plowing, etc, There are other private roads in town that all contribute, it's not an insurmountable thing.

Chairman Collins stated, for this application I don't want to have a lingering "I guess, I think we could, or maybe we should", we should be more definite.

Chairman Collins asked for one person from the public to add their comments on this subject, Mr. Gerard Pagello of 6 Davidson Drive came up and made the following comments: we've been there 25 years, we split everything a third, maintenance of the road, trimming of the trees, filling the potholes, snow plowing, etc. We're all people of our word and we've had absolutely no issues or problems in 25 years. I'm unhappy that we have not another potential homeowner that will be involved, but a business that will be involved, these are developers. Chairman Collins asked if one of you sells your

house how do you convey to the new owner their responsibility for contributions? Mr. Pagella responded, in all of our deeds it clearly states that each of these properties is responsible for 1/3 of the upkeep and the maintenance of the right of way. Chairman Collins commented so it is formulatic and immortalized somewhere. Eileen McClain asked if the deeds of the current owners need to be changed from 1/3 to 1/4, or do I move in and say thanks everybody for taking care of my road? Patrick Cleary replied that's a good question, I would want my share to be reduced accordingly based on the new guy, you would assume that it would be normal to change the deeds.

- A distribution went out on Friday to the public services, there's no point in doing that distribution if we don't give them time to respond. In my opinion there has to be some measure of time, a couple weeks, a month, 21 days, but I would think we need to allow them to respond.

- This whole garbage thing does not sit well with me, a new owner buys this house and has to walk down Davidson Drive and dump it somewhere on someone's property. Phil Grimaldi added, on every public street there's a right of way of at least 10 feet, so if we put the garbage there it wouldn't be on anyone's property. Chairman Collins replied if that was my house and someone put their garbage in front of my house I would not be happy, what would be the best way to navigate this? Patrick Cleary replied, typically you make a provision for the joint placement of the trash receptacle in an appropriate location that DPW finds acceptable. Chairman Collins added we would also like to have it documented somewhere on a plan or survey, as well as in the resolution, we are looking to make good neighbors as these houses are going to change hands at some point. Mr. Pagella added that right now they all place their trash at the curb of 400 Nanny Hagen Road.

Chairman Collins commented things we decide here, even when we walk away, should not be lost. They will all be memorialized somewhere. I'm hearing there's deed restrictions that are in place already for the three lots, and now we're looking to add a new mathematical formula to it with a 4th. The garbage immortalization needs to be solved, and I think we need to make sure we give adequate time for the public, utilities or public service to respond to that notice that went out on Friday.

Eileen McClain commented I feel like we've heard everything we need to hear, but we haven't heard everything from the town staff, they may say something that the public might want to respond to and if we close the public hearing, we'll trigger a deadline.

Motion was made by Joan Lederman to continue the Public Hearing, seconded by Eileen McClain, all members present voted in favor

[MIN_SIGNATURES]

