

**DELANCO TOWNSHIP
JOINT LAND USE BOARD
REGULAR MEETING
MARCH 2, 2010**

Ms. vanGenderen called the meeting to order and led the flag salute.

Sunshine Statement

Adequate notice of this meeting has been provided in the following manner: written notice has been given to the Burlington County Times and Courier-Post newspapers and posted on the official bulletin board of the Township of Delanco at least 48 hours prior to the meeting. Written notice was also filed in the office of the Township Clerk and mailed to those persons who have requested copies and who have paid the required fee. The Secretary is directed to include this statement in the minutes of this meeting.

Present: Mr. Lord, Ms. Lohr, Ms. Mader, Mr. Martin, Mr. Matulewicz, Mr. Taraschi, Ms. vanGenderen, Mr. Schmitt, Mr. Anastasi

Absent: Ms. Jass, Ms. Moore

Board Professionals: Denis Germano, Esq.; Hugh Dougherty, Engineer; Scott Taylor, Planner

Resolutions

Resolution 2010-07

Approving Zurbrugg Partnership Phasing Plan

There was discussion about whether or not all twenty-five senior apartments were affordable. Mr. Germano will verify this with the applicant and if they are all affordable that information will be added to item 5 of the resolution.

Motion by Mr. Matulewicz, seconded by Mr. Lord to adopt and memorialize Resolution 2010-07.

Those voting in favor: Mr. Lord, Ms. Lohr, Mr. Martin, Mr. Matulewicz, Mr. Taraschi, Mr. Schmitt, Mr. Anastasi

Those voting against: none

Those recusing/abstaining: none

Approval of Minutes

Approval of February 2, 2010 regular meeting minutes

The February 2, 2010 regular meeting minutes were approved by those Board members eligible to approve them. The meeting minutes were corrected in the following areas: in section B. under Resolutions, Mr. Martin stated that he had recused himself from voting for an Engineer; in the 3rd paragraph of page 4, Randy Cherkas was identified as being a part owner of Zurbrugg Partnership not Grapevine Development; in the 4th paragraph of page 4, the last sentence was corrected to read "The bollards could then be reused for the next phase" instead of "would then be reused".

Historic Preservation Advisory Board Liaison

Ms. Jass was appointed by the Board at its January 5 reorganization meeting to be the Historic Preservation Advisory Board (HPAB) liaison. Ms. Jass is already on the HPAB as the Township Committee's liaison. Peter Fritz, HPAB Chairperson, asked that the Joint Land Use Board appoint

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another member so they could have a full Board. Ms. vanGenderen asked for a volunteer to act as liaison for the remainder of 2010. Mr. Anastasi volunteered.

Motion by Ms. Mader, seconded by Mr. Matulewicz to appoint Mr. Anastasi as the liaison to the Historic Preservation Advisory Board. The voice vote by the Board was unanimous in favor.

Continued Applications

Thomas & Tammy McFadden
Block 1400, Lot 1
401 Rancocas Avenue
R-6 Zone
Use Variance

Mr. Lord, Class I Board member, stepped down from the dais. Ms. Jass, Class III Board member, was absent.

Mr. William Ziegler, Esq. appeared on behalf of the applicants. Mr. Ziegler summarized that the McFaddens had submitted a revised plan approximately two weeks after their December 1, 2009 hearing. The COAH apartment unit above the ice cream parlor has been eliminated from their plan. The second floor of 401 Rancocas Avenue would now be used for storage which eliminated the need for the garage. Both the deck and the gazebo have also been eliminated from the plan. Picnic tables will be used for seating instead. Mr. Ziegler stated that, under the conditional use ordinance, all variances had been eliminated with the exception of the lot depth. The lot cannot be made any deeper because of the Rancocas Creek.

Since the December 1, 2009 hearing, the Governing Body has adopted an ordinance (Ordinance 2010-1) which eliminates the conditional use aspect for this property. Mr. Ziegler referenced text in the Master Plan on page 24 of the Land Use Plan Element which identifies his clients' property by lot and block and says it should be zoned C-2. Mr. Ziegler discussed parking requirements and said that eight parking spots would be required for the ice cream parlor and the applicants are proposing nine spots. The applicants have also agreed to put in a sidewalk from the corner to the front of the property. Mr. Ziegler stated that his clients had relied upon the Master Plan's recommendation that their property be zoned C-2 and upon the existing zoning when they brought their application. He then referenced page 11 of the Historic Preservation Element of the Master Plan and discussed the history of an ice cream shop that had been directly across the street from the McFadden's property. Mr. Ziegler briefly discussed the new ordinance.

Mr. James Blasberg, Architect, was sworn in as a witness. Mr. Blasberg reviewed the changes he had made to the plans after the December 1, 2009 hearing. The revised plans are dated 12/17/09. Mr. Blasberg discussed the changes that Mr. Ziegler had previously noted as well as changes to the landscaping and the parking spaces.

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Mr. Thomas McFadden, applicant, was sworn in as a witness. Mr. McFadden resides at 409 Rancocas Avenue which is next door to 401 Rancocas Avenue. Mr. McFadden reviewed the history of the zoning of 401 Rancocas Avenue, who would work at the ice cream parlor, hours and seasons of operation, lighting, plan revisions, similar businesses in the area, indoor and outdoor seating, and landscaping.

Mr. Taraschi asked about the surface area that would be under the picnic tables and the location of the tables, the lighting in the parking area, the temporary car port currently on the property, and painting crosswalks. Mr. McFadden and Mr. Ziegler provided information on those subjects. Mr. Anastasi and Mr. Martin asked questions about the crosswalks. Mr. Ziegler provided further information about the crosswalks and went on to say that the ice cream parlor is a use that is intended to thrive off of the park. That is why this property is a prime location for this type of amenity for the town. Mr. Taraschi asked how difficult it would be to turn the property back into either a residential use or some other use if the business didn't succeed. Mr. Ziegler responded any other use would require a trip back to the Board based on the current zoning. He noted that home occupations are still permitted so someone could buy it and have an office on the first floor or the property could be converted back to a single family home.

Mr. Martin and Mr. Taraschi asked questions about a car leaving the end parking stall because there is no room for a K turn and about protection to prevent a car from backing into the creek. Mr. Blasberg and Mr. Dougherty provided information and there was discussion regarding the location of the parking lot, the use of concrete bumpers and the fence that had been eliminated. Mr. Taylor suggested a bollard be used. Mr. Dougherty discussed some issues with the site plan that would need to be addressed if the use variance is approved. Mr. Ziegler stated that if the Board wanted to consider just the use variance request, the applicants would be happy to come back with a perfected site plan. He also said that the applicants had not gone to any outside agencies for approval because they were waiting for a decision by the Board. There was further discussion regarding the site plan.

Mr. Taylor referred to page 2 of his February 24, 2010 Third Planning Review letter and discussed Ordinance 2010-1 and the changes to the zoning. He also referred to the Master Plan Review on page 4 of the letter which details errors in the Master Plan and suggested additional testimony be given. In response Mr. Ziegler read the second paragraph on page 24 of the Land Use Plan Element of the Master Plan and pointed out that Block 1400, Lot 1 was specifically identified in the section which recommends a zoning change from C-1 to C-2. He discussed other areas of the Master Plan including the Burlington Avenue Corridor section beginning on page 21, the map on page 23, and recommendations for the commercial core beginning on page 24. Mr. Ziegler stated that this application accomplishes some of the Master Plan goals including access to the Creek, places to sit, sidewalks and crosswalks. Mr. Ziegler summarized that for all of these reasons—the property was zoned C-1 in the past, it was recommended to be zoned C-2 by the Master Plan, it is immediately adjacent to a historic ice cream shop in downtown Delanco based upon the Historic Preservation Plan Element of the Master Plan, and its proximity to the park—demonstrate that this site is well suited to this very limited small-scale family business use.

Mr. Taraschi stated that at the December 1, 2009 hearing he was a Class I appointee to the Board, and he sat out in the audience and spoke favorably to what he felt was a non-intense commercial use that opened up a view to the Creek by having a deck, etc. He went on to comment that the Master Plan is merely a

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recommendation, it has not been adopted by Town Council in over a year, and Town Council controls the zoning. The park is included in the C-2 zone on the map and it clearly would not be reused or recycled as a commercial use. Mr. Taraschi asked that given the fact that the Township has just last night said that this is no longer an appropriate area for this type of use, how is it then that the Board can override that? Mr. Ziegler responded that the Joint Land Use Board is an independent autonomous body with quasi judicial powers. It is the Board's right to deal with this specific piece of property and to grant variances. He went on to discuss the Board's jurisdiction and details about the application.

Mr. Taylor again referred to the Master Plan Review section on page 4 of his February 24, 2010 letter. He discussed Mr. Ziegler's reference to page 24 of the Land Use Plan Element of the Master Plan. It was noted last month during the ordinance consistency review that there was an error on the map on page 23. Mr. Taylor read from the Master Plan Review section of his letter and discussed the zoning of Block 1400, Lot 1 and the recommendations in the Master Plan. In Mr. Taylor's opinion Ordinance 2010-1 follows the recommendations in the Master Plan. The Board is now looking at a d(1) variance and they need to determine whether or not the applicants' testimony this evening has satisfactorily addressed the positive criteria as well as the negative criteria. He summarized how the ordinance got to where it is, acknowledging that there was an inconsistency in the mapping but that the text clearly presents that only those existing commercial properties that are zoned C-1 are recommended for zoning to C-2 and the McFadden property should never have been included.

Mr. Germano reiterated that the Master Plan clearly said eliminate the C-1 uses as conditional uses in the R-6 zone, and at all times relevant to these proceedings the McFadden's property has always been in the R-6 zone. The ordinance that was adopted last night follows through on that recommendation. Mr. Germano reviewed the Board's responsibility with respect to use variances. The Board's purpose is to fix situations where the use of property is too constrained by a zoning ordinance. The Board cannot substitute its judgment for that of the Governing Body.

There was discussion pertaining to the volume of traffic in the past compared to traffic today. Mr. Matulewicz commented that he felt this use was going to create a real public safety hazard at this specific location. Mr. Ziegler asked if this was a public safety hazard then why is the park there. He summarized why the property is particularly well suited to the proposed use. Mr. Ziegler emphasized that the Board would have to find a substantial detriment to the public good and substantial impairment to the zone plan or zoning ordinance. There was further discussion regarding the applicants' request for a conditional use variance under the previous zoning.

Mr. Anastasi asked about the positive and negative criteria. Mr. Germano responded that if the applicants can prove that the property is peculiarly well suited to the use that they are proposing they have met the positive criteria. Mr. Ziegler further discussed the positive criteria and the standard of proof and went on to discuss the negative criteria. Mr. Taraschi read from the Medici decision and said that the zoning ordinance was passed just last night. Emotionally Mr. Taraschi thinks this application is a wonderful idea. Intellectually when he is told by the Governing Body that they have looked at this and they do not permit this use, and there hasn't been a passage of time, without some compelling reason to show that this piece of property was zoned into disuse, Mr. Taraschi did not see how the Zoning Board can say that there

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is an error on the part of the Town Council which is charged with creating the zoning laws. That is his suggestion to the Board and what is going to govern his decision when the vote is taken.

Mr. Germano asked Mr. Taraschi if he had been present for the entire meeting in December. Mr. Taraschi responded that he was present. Mr. Germano asked him if he had listened to the tape of the meeting. Mr. Taraschi responded that he had not listened to the tape, he had listened to the live testimony. Mr. Germano stated that he believed Mr. Taraschi could vote.

Ms. vanGenderen opened the hearing to the public. All members of the public were sworn in by Mr. Germano before giving testimony.

Barbara McFadden, 634 Adams Street, Riverside NJ—Mrs. McFadden commented that Delanco was a really nice small town and a nice little place to have a small town business.

Thomas Lord, 312 Center Avenue, Delanco NJ—Mr. Ziegler asked Mr. Lord if he was a member of the Governing Body. Mr. Lord answered yes. Mr. Ziegler asked if Delanco had an ordinance that allows for an appeal for the grant of a variance to the Governing Body. Mr. Ziegler went on to say that when a member of the Governing Body testifies during a use variance and it could potentially be appealed to that very Board you then create the problem of whether or not that person needs to recuse.

The Board took a five minutes recess while the Delanco Township ordinances were reviewed.

After returning from recess, Mr. Germano stated that they had attempted during the recess to ascertain what the ordinance says on the subject of appeals. He did not find any provision for appeals to the Governing Body, but Mr. Lord had decided not to testify.

Since there were no further comments Ms. vanGenderen closed the hearing to the public.

Motion by Mr. Taraschi, seconded by Ms. Mader that the application be denied.

Those voting in favor: Ms. Lohr voted yes given the parameters under the Land Use Law and strictly based on what her understanding is of the Land Use Law and the Board's duty under the zoning,

Ms. Mader voted yes because the Township Committee is the boss at this point,

Mr. Martin believed the applicants had met the positive criteria. He just cannot reconcile in his own mind that the Governing Body did not consider this when they passed the ordinance and therefore it did not meet the negative criteria,

Mr. Matulewicz thought the Township Committee was correct in writing the zoning ordinance. He drives past this property every morning all year and he says it is particularly unsuited for this use,

Mr. Taraschi voted yes for the reasons he explained earlier,

Ms. vanGenderen

Those voting against: Mr. Schmitt

Those recusing/abstaining:

Mr. Lord rejoined the Board at the dais.

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Creek Road Realignment Zoning Study

Mr. Lord asked that this discussion be postponed again until there is a decision with respect to COAH. Mr. Taylor explained what was going on with COAH and the decision would impact not only the Rhawn and Pellegrino sites, but Creek Road as well. The Board agreed to defer discussion until the next meeting.

Open Meeting to the Public

Ms. vanGenderen opened the meeting to the public and since there were no public comments the meeting was closed to the public.

Comments from the Board

Mr. Martin reported that the Ordinance Subcommittee had met. There would probably be one more meeting, and they will be asking the Joint Land Use Board professionals for input. They hope to be able to give recommendations to the full Board at the next meeting. Mr. Taylor suggested that the subcommittee review the draft ordinance for the Rhawn and Pellegrino site so if there are any minor changes to it they could be brought to the Governing Body prior to introduction so the consistency review process moves smoothly.

Mr. Taylor commented that he had looked through Chapter 50 which is Land Use Procedures and it does appear to be silent with respect to whom a decision may be appealed when the Board acts as a Zoning Board.

Ms. Lohr asked about the mechanism for making corrections to the Master Plan. People are relying on that document so it should be fixed. Mr. Germano said that making changes would be an amendment to the Master Plan requiring a public hearing and notice. Mr. Taylor said that if anything is modified by COAH the Board will need to revisit numerous sections of the ordinance. Mr. Lord summarized what had been discussed at the previous night's Township Committee meeting.

Adjournment

A motion to adjourn the meeting was made by Mr. Matulewicz and seconded by Mr. Lord. The voice vote by the Board was unanimous in favor.

Katherine Martin
Board Secretary

Approved: May 4, 2010