

**WALL TOWNSHIP PLANNING BOARD
MINUTES - REGULAR MEETING
MUNICIPAL MEETING ROOM
APRIL 6, 2009**

Chairman Aromando called to order the regular meeting of the Wall Township Planning Board at 7:40 P.M. Members present were Ralph Addonizio, Laurie Aromando, second alternate George Bednarski, Michael Clayton, Timothy Clayton, first alternate Kristin Coman, Timothy Farrell, Mary Hearn, Todd Luttmann, George Newberry, Attorney Hirsch, Engineer Dahms, Planner Bergailo, Planning Board Secretary Lang, Planning Board Recording Secretary Schinestuhl and Court Reporter Arnone. Mr. DiRocco was not present.

Chairwoman Aromando announced the meeting was being held in accordance with the "Sunshine Law" and a resolution adopted on January 12, 2009.

SALUTE TO THE FLAG

CARRIED APPLICATION

WILLIAM SCHARFENBERG – PB#9-2007 – 1617 Twin Lakes Drive, Block 876, Lot 18, R-20 zone. Application complete: May 31, 2007. Carried from July 9, 2007, October 1, 2007, December 3, 2007, February 5, 2008, May 5, 2008, June 16, 2008, July 21, 2008, October 6, 2008, December 1, 2008 and January 26, 2009. Applicant proposes to subdivide property. Minor with variances.

Jurisdiction was previously accepted.

Chairwoman Aromando said we will finish up testimony and then open it up to the public.

Steven Pepe, Esq. appeared for the applicant.

Attorney Pepe said at the last meeting you had questions on three items. We will provide testimony on them. Regarding the guardrail T & M in their letter marked PB-9 under Miscellaneous #3.1 they state "The applicant addressed that issue by proposing guide rail extending across the west half of River Road and onto the subject property along the proposed driveway. The applicant is also proposing advance warning signs all in accordance with the MUTCD." Attorney Pepe said we offered extensive testimony on this issue. We believe this to be a safe plan. The traffic engineer stated this was safe. He said the public can find the discussion regarding the guide rail in the minutes and in the report.

Attorney Pepe said another issue was irregular lot lines. He said the Board requested additional information. The lines have not moved since the original plan. They are the same as the initial application. The property would be better separated if split in the middle. The lake provides a natural divide.

Chairwoman Aromando said the lot lines have not been changed. Attorney Pepe said correct.

Ms. Bergailo said a couple hearings into the application there was a different plan submitted but they reverted back to the original plan. Attorney Pepe said that is correct.

Attorney Pepe said the last issue was the flag lot. We received a new review letter regarding the flag lot issue. Lot 18.02 is not a flag lot. It does not have a staff. Thirteen months after this application had been submitted this is the first time the issue of a flag lot is being addressed. We intend to address this also.

Attorney Pepe said Mr. Gerken's review letter of June 12, 2007 stated what variances were needed. It does not say anything about a flat log. Item PB-3 still does not indicate anything regarding a flag lot. February 11, 2008 Mr. Rooney says he agrees with Mr. Gerken's review letter and has not mentioned a flag lot. PB-9 still did not indicate that this was a flag lot.

Attorney Pepe said he would like Mr. Thompson to testify. He is here this evening.

Entered into evidence:

PB-12 Planning review prepared by Cheryl Bergailo dated April 1, 2009

A-37 NJDEP LOI plan dated March 26, 2009

Chairwoman Aromando said do we have a new plan. Attorney Pepe said yes the only change in this plan is the cul de sac which was requested by the Fire Marshall.

Attorney Hirsch said the problem is the letter from NJDEP states based on a plan last revised January 26, 2009. We don't have that plan. Attorney Pepe said that is the plan that is up on the board. The only change is the cul de sac.

Mr. Farrell said he disagrees with Attorney Pepe regarding the flag lot. He said the Board started discussing that on February 26, 2008. This was discussed in study session. Attorney Pepe said study sessions are not part of the record. Chairwoman Aromando said we started discussing it back in February 2008. There was a lot of discussion. Attorney Hirsch said there has never been any final resolution.

Entered into evidence:

A-32 Revised plan dated January 26, 2009

Joseph Thompson, Jr. was previously sworn.

Attorney Pepe asked Mr. Thompson if he had an opportunity to review the driveway plan. Mr. Thompson said yes.

Attorney Pepe asked him to describe the changes. Mr. Thompson said we added a cul de sac that the Fire Marshall requested.

Attorney Pepe asked if there were any changes to the driveway. Mr. Thompson said it is the same.

Attorney Pepe asked if the guide rail was safe. Mr. Thompson said yes.

Attorney Pepe said the signage meets the safety requirements. Mr. Thompson said yes.

Chairwoman Aromando said did you say you were putting in advance warning signs. Attorney Pepe said yes.

Mr. Thompson said there will be a large diamond shaped sign at the end of the roadway. It will be 18" X 18". In addition we are providing a sign that states dead end. You may want no outlet but it should be dead end. You can put in more than that but it is the only one necessary.

Mayor Clayton said the new driveway what is the width. Mr. Thompson said 15' at the entrance and it widens to 18' and then a 35' turn around.

Mayor Clayton said the December 1, 2008 letter from Fire Prevention where they are addressing the issue it states "A review of the plan shows that the applicant has complied with the previous review letters from this Bureau with respect to the 25' wide access driveway; therefore, the plan is approved as submitted." Do you have a follow-up letter regarding this change? Attorney Pepe said the only change made was the cul de sac. We have submitted no other letter. No plan has ever been submitted with a 25' wide driveway. Attorney Hirsch said ask Fire Prevention where the 25' came from. Attorney Pepe said we never had 25'. Chairwoman Aromando said The Fire Marshall's letter of May 5, 2008 states "Further review of the plan notes that the roadway could be reduced to 18' in width if the applicant provides a turnaround that would accommodate an adequate turning radius for a ladder truck." If it is 15' it does not meet the 18'. Attorney Pepe said we did make a change to 18'.

The application was open to the public.

Margaret O'Hare, 1606 Frazee Drive. Ms. O'Hare said this would be right in her backyard. If the Fire Department requires 18' then does that meet an additional variance to allow 5' on each side to the adjoining properties? Chairwoman Aromando said we have to get back to the Fire Department. Attorney Hirsch said the applicant said it does open up to 18' now.

Ms. O'Hare said she is talking about the entrance. It is 15' now. If this has to be 18' then does that mean another variance? Attorney Hirsch said it might. The 18' that is not a variance. If they are required by the Fire Department for safety reasons and the Board agrees then we would have to measure the setbacks.

Attorney Pepe said Mr. Gerken's review stated that he wanted the driveway to start at 15' and go to 18'. We did what he requested.

Mayor Clayton said against lot 14 there may be 5' and there might not be 5'. Attorney Pepe said we have testimony stating there is 5'.

Chairwoman Aromando said your plan has a 15' entrance and 18' driveway. Attorney Pepe said that was at the request of Mr. Gerken.

Attorney Liston asked if there is enough room to provide an 18' opening. Attorney Pepe said he thinks there is. Attorney Hirsch said we have a few conflicting items. It is not clear. Attorney Pepe said the plan you see up was the plan that was approved by Fire Prevention.

Beverly Ginglen, 2518 River Road, said the original driveway was 18' the present is 15'. She said her question is safety. She said she sees cars drive down all the time. If someone went down the driveway how far would they have to go to make a turn? Is it safe to have that opening and then 20' to the ravine? Mr. Thompson said this is one of the reasons that it was changed from 18' to 15'. They want people to see that it is not a connection of River Road. The wider you make it the more they would think it is a road. If they go up that driveway 25 MPH it would not be a problem.

Chairwoman Aromando asked how far the guide rail goes. Mr. Thompson said it would extend over 20' down that driveway.

Chairwoman Aromando said you are questioning the ravine? Ms. Ginglen said she doesn't think it being narrow would make it any better. They don't pay attention to the signs. She said she is just commenting on the safety.

Randy Mitch, 1607 Twin Lakes Drive, said he has a question regarding the guide rail. How is it going to be held in place? It is a very deep ravine. If someone hits it it would give way. What is supporting it? How deep in the ground would it be? Mr. Thompson said it will have deep components. He said he hasn't considered it. Mr. Mitch said no one has considered it. Mr. Thompson said he has not considered it. Mayor Clayton said it appears to be about a 17' drop. It should be re-enforced in some manner. Mr. Dahms suggested longer posts and to anchor it. Mayor Clayton asked if it is something the Board should require. Mr. Dahms said sure you can say make sure it is safe. Attorney Pepe said River Road is a Township road whatever way the Township wants it we would do it that way. Attorney Hirsch said if approved there will be a list of conditions one may be to provide something that would be approved by the Engineer. Attorney Pepe agreed.

Chairwoman Aromando asked if they should continue the guide rail. Mr. Dahms said maybe another 10' – 15'. That would be an additional safety factor.

Attorney Liston gave way to his client Mr. Harms. Mr. Harms asked about the guide rail and it's safety.

Attorney Hirsch said he does not want to get into construction details.

Attorney Pepe said this is a sub-division application. We would do that for the engineer.

Mr. Harms said as long as that is all addressed he is okay with it.

William Stevens was previously sworn.

Attorney Pepe said the Board has questions regarding the LOI from the DEP. Mr. Stevens said we prepared the plan and we followed through with DEP. On March 26, 2009 it was received.

Attorney Pepe asked did you review the plan. Mr. Stevens said yes.

Attorney Pepe asked was there anything on this plan, any amendments on this plan other than the cul de sac? Mr. Stevens said the important part is that they classified it as "State Open Waters" and there are no buffers required. That is consistent with the testimony he gave.

Attorney Pepe asked if he had the opportunity to review the letter from Cheryl Bergailo dated April 1, 2009. Mr. Stevens said yes.

Attorney Pepe said you had previously testified regarding flag lots. Mr. Stevens said yes.

Attorney Pepe said is this a flag lot. Mr. Stevens said he doesn't believe it is. They are landlocked parcels. It needs to have a staff or stem to be a flag lot. They do not exist on the subject property. We gave this testimony.

Attorney Pepe said the vacation of the road by the Township that is why it is landlocked. Mr. Stevens said correct.

Attorney Pepe said did you prepare the lot 14 sub-division plan. Mr. Stevens said yes and it was submitted into evidence to this Board on September 18, 2007.

Mr. Stevens explained both lots are landlocked. 14.02 is part of the subdivision created along the Manasquan River. Lot 14.02 was not considered to be a flag lot by the Planning Board.

Attorney Pepe asked what that lot is. Mr. Stevens said it is adjacent to our property. Attorney Pepe said they did not ask for a variance for a flag lot. Mr. Stevens said correct.

Mr. Stevens explained lot 18 is shown in the eastern portion of the map. The lot 14.02 is located to the west of the subject property. It shares the same characteristics. The only access is to Twin Lakes Drive. There is no frontage on a road. This is the same as 18.01. This was deemed not to be a flag lot.

Entered into evidence:

A-39 Map and zoning permit for lot 18.02

Attorney Hirsch said the lot as it exists today you are indicating that it does not meet the flag lot ordinance. The ordinance says it must have access to a public road by a relatively narrow easement or driveway.

Mr. Stevens said Twin Lakes Drive is a private roadway. The flag lot ordinance is clear regarding what a flag lot is. When we talk about flag lots it has a staff or stem. This lot just lacks lot frontage.

Attorney Hirsch said the ordinance says that the lot will generally be in the shape of an "L" or "T".

Mr. Stevens said when talking about flag lots that is what we are talking about. It has to have a staff or stem. This property has neither of them.

Ms. Hearn said if we see this as a land locked parcel for building a home doesn't the same apply.

Mr. Steven said it is his testimony that this is not a flag lot. This property has almost four times the area required.

Ms. Hearn said when we know it is a flag lot we are looking for bigger setbacks. This is landlocked but behind other dwellings.

Beverly Gingen said how many acres is lot 14.01. Mr. Stevens said they were not discussing that lot. He said it is 3.7 acres, lot 14.02 is 1.85 acres.

Randy Mitch said he has a question regarding NJDEP. He said in September 2007 it was determined that there were fresh water wetlands and this is good for five years. Mr. Stevens said that LOI was for your property not ours. Mr. Mitch said this is filed for this property, however, the LOI from the DEP states there is wetlands. Mr. Stevens said that is for your lot.

Mr. Mitch asked when was the flag lot ordinance enacted? If it was done before then isn't this the ordinance you go under. Mr. Stevens said yes. Mr. Mitch said it is possible they did not have the flag lot ordinance for lot 14.02. Attorney Pepe said August 8, 2001 was the last amendment to the flag lot ordinance. It precedes. Approval was in 2001. Ms. Bergailo said it was June 2001.

Attorney Pepe said the flag lot ordinance was never amended. It just states what zones they can be in. The definition remains the same.

Mr. Mitch said if the ordinance wasn't enacted before the subdivision was approved then those requirements are good for three years. Mr. Stevens said no because it is a minor subdivision. Mr. Mitch said can you get an extension on that. Mr. Stevens said yes but he is not sure what the MLUL allows. Attorney Hirsch said he will check on it.

Mr. Mitch said the flag lot definitely states the lot will generally but not exclusively be in the shape of an "L" or "T". That means it has to have a staff? It says generally. Mr. Stevens said his interpretation is that it has to have a staff or a stem. Mr. Mitch said where in the definition does it say it has to be part of the property. Mr. Stevens said it would need to be in the shape of a flag.

Attorney Liston said with regard to the subdivision of lots 14.01 and 14.02 was that property part of a larger tract which included lot 18? Mr. Stevens said he doesn't know the answer to that.

Attorney Liston said with regard to the subdivision were there any conditions? Mr. Stevens said yes it is in the resolution adopted for that subdivision.

Attorney Liston asked if it would be possible to move the proposed dwelling. Mr. Stevens said yes. He said one could relocate the house. We could move the house another 10'. Slide it to the north. Attorney Liston said how far could you slide it before you run into problems. Mr. Stevens said about 20'.

Mr. Mitch said you refer to this as a minor subdivision. He said he thought it was a major because it has been subdivided three times. Mr. Stevens said it is really a minor subdivision. We asked for a waiver from major subdivision.

Ms. Bergailo said she reviewed the data and no where in the file did it say that those lots were not flag lots. Mr. Stevens said he would disagree because it was approved. Attorney Hirsch said flag lots may have been permitted by the Board. Attorney Pepe said lot 14.02 would have needed a variance for lot area if considered a flag lot. Attorney Hirsch said the Board this Board has to make a determination on this lot. Mr. Stevens said he believes he would stick to his argument that these are not flag lots.

Deputy Mayor Newberry said you are saying these are not flag lots. Mr. Stevens said yes. Deputy Mayor Newberry went over the definition of a flag lot. Mr. Stevens said he believes that even under your definition of a flag lot it needs to be shaped as a flag and not simply an isolated lot. If you go by that then most lots in Wall will be considered a flag lot.

Attorney Pepe said he thinks he has presented testimony as to why this should be granted. This subdivision will advance the zoning and ordinances of the Township.

Chairwoman Aromando said you believe that the definition states it must be an "L" or a "T". Mr. Stevens said yes.

Chairwoman Aromando said she said she does not believe that a flag lot has to be an "L" or "T".

Mr. Addonizio said how can you say almost any lot in Wall would be considered a flag lot. Mr. Stevens said he overstated his point. Using A-10, which he prepared, he showed lots that have frontage variances. Any one of these lots could be considered a flag lot because it doesn't have the correct frontage.

Mr. Addonizio said lot 18.01 the minimum lot frontage how does that constitute better planning. Mr. Stevens said this application advances the zoning. He said the lot is four times what is required in the zone.

Mr. Addonizio asked if anyone has reviewed the resolution to see if there were any stipulations. Mr. Stevens said yes.

Mr. Addonizio said based on what Chairwoman Aromando read to us regarding flag lots at what point in your planning opinion would someone constitute this a flag lot. The 10' – 15' opening would that change your opinion and make it a flag lot. Mr. Stevens said the size of the entrance would not change his opinion. For it to be a flag lot it would have to have a stem or staff.

Mr. Addonizio said you don't agree with it being in the shape of an "L" or "T". Mr. Stevens said correct. Using A-10 he said they listed about 30 lots that have frontage requirements. Block 837, Lot 14 this lot has a width of 45' it lacks frontage. The same as the applicant's lot. Lot 20 shows a staff or stem that is what a flag lot is. Mr. Stevens said the applicant's property is a piece of property that lacks frontage.

Attorney Hirsch said there are two issues here the existing lot and the one to the left. The new lot with the small frontage we have been all through this. It has access to public road, ROW. Regarding the definition of a flag lot if you look at the last line in the definition "with the larger build able portion of the lot being known as the "flag" and the ROW being known as the "staff". Mr. Stevens said that is not part of this piece of property it is just landlocked.

Attorney Hirsch said it states the ROW may be the staff.

9:00 P.M. the Board recessed.

9:12 P.M. the meeting resumed.

Attorney Pepe said he has completed his testimony.

Mayor Clayton said at this point there has been a lot of talk regarding flag lots can we hear from our Professionals. Ms. Bergailo said her thoughts are outlined in her sixth planning review. In her fourth planning review the proposed lot containing the existing dwelling as is is a flag lot. It has a narrow easement. The original lot was a flag lot. It is also accessed by an easement to Ramshorn Drive. All three can be considered flag lots.

Attorney Pepe said if he understands her interpretation any land locked parcel constitutes a flag lot. Ms. Bergailo said she is not sure she would have to see each lot.

Attorney Pepe said that is not what a flag lot definition intended to be. Ms. Bergailo said this lot does qualify as a flag lot in her opinion.

Attorney Pepe asked Ms. Bergailo if she prepared a report marked PB-2. Ms. Bergailo said yes.

Attorney Pepe said in that review letter did you ever indicate that this was a flag lot. Ms. Bergailo said she doesn't think that was in her report. She said she discussed frontage variances. She said no she does not think she discussed the flag lot issue.

Attorney Pepe said back in 2007 your report of June 28, 2007, PB-4, did you say in that report this was a flag lot. Ms. Bergailo said she discussed MLUL. Attorney Pepe said you never indicated that this was a flag lot, correct? Ms. Bergailo said yes.

Attorney Liston said he would like to call Mr. Thomas.

Mr. Pepe left the meeting. Mr. Scharfenberg filled in.

Tom Thomas was sworn.

Mr. Thomas gave his credentials which were accepted by the Board.

Attorney Liston said at the request of Mr. Harms have you reviewed this application, visited the site and looked at the backyard. Mr. Thomas said yes and he has attended most of the hearings.

Attorney Liston said based on your work and knowledge of MLUL is this a major or minor subdivision. Mr. Thomas said it is a major. It is a subdivision of a previously approved subdivided property. In addition it requires variances for side yard and front yard.

Attorney Liston said the applicant is asking that it be treated as a major be waived. Has he given enough testimony? Mr. Thomas said he has done just the opposite. It appears to be more of a major subdivision. It was previously subdivided. He said there are a number of issues involved. He said it is his opinion that it should be a major subdivision.

Attorney Liston said regarding the issue of a flag lot. Can you give me your opinion of this application as it stacks up against Wall Township zoning and give the history of this property? Does it constitute a flag lot? Mr. Thomas said the original property was clearly a flag lot. The definition in Wall Township is much broader than that. It does not require an "L" or "T" shape. In order to provide fire access the application has a cul de sac which states this is a flag lot. Lots 14.01 and 14.02 the Board did require that the cul de sac be provided for those two lots. He said he reviewed the resolution and it required an area on that stem be widened for turn off.

Attorney Liston asked if there were any other variances required. Mr. Thomas said yes. He went over the variances.

Attorney Liston said they presented testimony to meet the negative criteria. Mr. Thomas said if the Board says this is a flag lot it would be a negative impact on the zoning ordinance. You are going to have a large house with a driveway which appears to be right on the property line and it will have an impact on the adjacent property. This is a major subdivision and has a negative impact on the neighborhood.

Chairwoman Aromando said the other concern is the size of the driveway. She wants to clarify that with the Fire Official.

Mr. Scharfenberg said originally it was an 18' driveway Mr. Gerken said he would rather it narrower in the beginning and then get wider. Chairwoman Aromando said she remembers that. She just wants that qualified. Mr. Scharfenberg said they would make it 18'.

Chairwoman Aromando said the next open night is June 15, 2009 unless you want to come May 18, 2009 with our Affordable Housing hearing. Mr. Scharfenberg said he prefers May 18, 2009. Chairwoman Aromando asked about May 4, 2009. She said she would rather it be that date. Mr. Scharfenberg agreed. Chairwoman Aromando said this will be carried to May 4, 2009. No further noticing is required. Chairwoman Aromando said the Scharfenberg application will go on first.

Attorney Hirsch said where we are leaving off is at the next meeting the applicant has the opportunity to cross examine Mr. Thomas on his testimony. Once that is done if Attorney Liston has no other witnesses then anyone in the public can present their testimony. When that is done the applicant can respond and when that is done a vote will occur.

Mr. Scharfenberg waived the time limits.

Chairwoman Aromando asked the applicant to supply the map referred to in the DEP letter.

There being no further business to come before the Board, a motion was made, seconded and unanimously approved to adjourn the meeting at 9:35 P.M.

Respectfully submitted,

Betty Schinestuhl
Recording Secretary