

**TOWNSHIP OF RIVER VALE
PLANNING BOARD
February 11, 2009
REGULAR MEETING
MINUTES**

ADEQUATE NOTICE STATEMENT:

A Regular Meeting of the River Vale Planning Board was called to order at 8:00 p.m. The following statement was read: "This is a Regular Meeting of the Planning Board of the Township of River Vale. I am informed by the Clerk that adequate public notice has been provided by mailing notice to the Pascack Valley News/Post Review and The Record, by posting notice on the bulletin board in the Municipal Building, and by filing a copy of the notice to all persons who requested the same and prepaid the cost fixed by the Board".

The Planning Board saluted the flag.

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ROLL CALL:

Members Present:

Kenneth H. Koons	Chairman
George Shalhoub	Vice-Chairman
Joseph Blundo	Mayor (9:00 pm)
Peter Wayne	Class II
Mark Ericksen	Secretary
Ron Tucci	
Scott Lippert	Alt. #2

Also Present:

Dennis Deutsch, Esq.	Board Attorney
Christopher Statile, PE	Board Engineer
Lauren Roehrer	Land Use Administrator

Absent: Dwight de Stefan Class III (Councilman)
Bruce Carillo
Chris Wahmann
Jim Tolomeo Alt. #1

MINUTES:

The Minutes of **January 20, 2009** were approved upon motion of Chairman Koons, with second by Mr. Ericksen and carried.

RESOLUTION:

1. Chopra, 209 Rivervale Road, Block 1719, Lot 5.01 Amended & Final Site Plan Approval; Chairman Koons explained the Board voted to allow a TCO (Temporary Certificate of Occupancy), and to that end, deferred to Mr. Deutsch, who advised the Resolution is only a memorialization of what the Board approved. If it is not adopted within 45 days, the applicant can make a motion to compel the Board to adopt it. He understands the concern, but his advice is to vote on the Resolution. If there is non-compliance with the Resolution, there is recourse. This is to protect the Board from a potential law suit. Chairman Koons suggested the Board act on Mr. Deutsch's recommendation and moved to approve the Resolution, with second by Mr. Shalhoub. On discussion, Mr. Tucci commented he was concerned about the issuance of a TCO, and Mr. Statile said he would work it out with the Construction Code Official. There were no further questions, comments or discussions. On roll call vote, all members voted yes. Mayor Blundo abstained.

2. Pascack Hills Properties, Rivervale Road/Colonial Road & Winding Way, Block 502, Lot 1 and Block 502, Lot 12-Major Subdivision - (Mr. Lippert recused) William Bailey, Esq. of the offices of Russell R. Huntington, Esq. represented the applicant. Chairman Koons moved for approval of the Resolution, deemed as read, with second by Mr. Wayne. There were no further questions, comments or discussions. On roll call vote, Mr. Ericksen, Mr. Wayne and Mr. Koons voted yes. The remaining members were not eligible to vote.

PUBLIC HEARINGS:

1. Rockland Built Homes, 722Westwood Avenue, Block 1801.01, Lot 30 - Major Subdivision - Robert J. Mancinelli represented the applicant and stated he believed he was present just for summation. The Board Planner was also present. Chairman Koons asked for a review of what transpired at the December meeting. Mr. Mancinelli advised in December there was an escrow deficiency, but his client was out of the Country. In January there was a previous vacation commitment. It was his understanding they were just here for summation at this meeting. He did not bring his planner. The Minutes of 11/12/08 were reviewed. Mr. Mancinelli agreed to carry as long as he did not have to bring witnesses. They finished with the police officer and he was told the Fire Chief was not going to testify. Mr.

Deutsch read from the Minutes. The Board agreed and concluded that the hearing was closed. They would not be hearing from the Planner.

Mr. Mancinelli proceeded to present a closing statement. He reviewed from the prior hearings. They had to refile in March 2008 and had 40 public hearings, presented three witnesses, Steve Lydon, Planner, Richard Eichenlaub RL Engineering, and David Galesi. At the Board's request they had the Planner Caroline Reiter and Chris Bulger from the Police Dept. to testify. They have an oversized lot that has two, non-conforming features and as a result, four variances are being sought for non conforming minimum lot width and depth and a fifth for disturbance of soil. There were DEP issues back in 2007 before the application was filed. There is a variance from steep slopes, four waivers from design standards and a boundary line variance. Their planner testified as to the rear lot line, which is not the situational, and to the extent that it is determined a variance, they amended their notice to include any and all variances that come up during the application, so that would be covered.

Mr. Mancinelli continued. Exhibits A1-7 were presented by Mr. Eichenlaub. There were two, pre-existing, non-conforming structures, two families, in violation of the current zoning ordinances and were permitted, but that condition has been eliminated per the zoning analysis by Steve Lydon. The Cox analysis was reviewed and the Land and Kaufman cases were cited. The proposed development is consistent with the surrounding properties and would not be a detriment to the public good or impair the zoning ordinance or zone plan.

There were concerns from the Fire Department, and although not part of this application, and no one came to testify, the applicant nonetheless redesigned the driveway to support the fire apparatus, and the plan was found acceptable.

The issue of a flag lot being poor planning was presented by the Board's Planner. Mr. Mancinelli asked her how many times she testified as to that, and she said never, and he noted one time she represented an application for a flag lot and supported such a development. He did not see any additional reason or analysis to prove that this was poor planning or a poor design. Mr. Lydon testified on

two separate occasions, and it is their position that the variance is driven specifically by the uniqueness of the property and that itself satisfies one of the criteria.

Mr. Mancinelli continued. Here is where the Board can have control over the property, Mr. Mancinelli pointed out. A large, single family lot could house a 22,000 sq. ft. home. The concern was raised about first responder. A second home could be built with an 18' wide driveway with the same concerns. The concern is no different than any other home in the Township and is identical with what they propose here. The likelihood of a developer putting such an oversized home is remote. Another possibility is a mufti-family requesting relief from the Zoning Board, or the Board could look at this application and say there are some concerns, but it is no different than in other parts of town, and the applicant did address the concerns of Fire Department and redesigned the driveway, which and would lead to the development of two, brand new homes of 3,500 & 3,800-39,00 sq. ft, and which would provide ratable and not stress the services of the Township, because the prior use was a two-family, and this would further the goal of the Master Plan by having separate structures on the lot. The applicant did the best it could with having an oversized lot, and the pattern is that the home is consistent with recent development here. It is certainly permitted under the zoning ordinance, and the relief is derivative of the current non-conforming feature. They would still need those two variances if they came in with another application, for lot width and frontage. This is an opportunity not to miss here. Mr. Mancinelli thanked the Board for its time over the past few months and asked the Board to act favorably on the application.

Chairman Koons deferred to Mr. Deutsch. Mr. Deutsch asked Mr. Mancinelli to restate and review the specific variances in detail, which included lot width, depth, frontage, steep slopes, design waivers and the requirement that all lot lines be straight. Mr. Deutsch summarized the variances.

Lot 30

Lot 30.01 *

Min. Lot Width:

97.20' proposed vs. 120 required

112.15' vs. 150'

Frontage:

97.20' proposed vs. 120' required

118.9' vs. 150'

*(Lot 30.01 is in the A1 Zone-different frontage)

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Steep Slope Disturbance greater than 25%
(145 sq. ft. not to be disturbed)

Design waivers: No sidewalks proposed, with a contribution to a sidewalk fund, unless Board wanted them;

Requirement that all lot lines be straight be waived.

Mr. Statile advised the width of the lot is taken at the rear of the front setback line. Mr. Tucci disagreed and stated it was at the building line. We have to be consistent. Mr. Tucci consulted the zoning book. Mr. Statile read from the ordinance and determined it is taken from the rear of the front yard. Mr. Mancinelli asked if they needed to change the zoning specs on the plan if they are viewed to be incorrect. Mr. Deutsch said it is ministerial.

Chairman Koons asked if the Board would have a vote tonight or ask Mr. Mancinelli to carry one month to have a fuller Board, since there were only six members present. Mr. Mancinelli responded yes he consents to extend if the Board needs to. Six is okay; they seem to have all been present from the beginning of the application. A vote would be taken, the Board agreed.

Mr. Chairman Koons moved for approval with second by Mr. Shalhoub, subject to the granting of six variances. Mr. Deutsch advised if Board Members are inclined, they should express an opinion on voting. On roll call vote, the vote was as follows:

Mr. Shalhoub - voted yes, although there are a number of variances, it produces ratables, and it is the lesser of two evils;

Mr. Ericksen - voted yes and agreed;

Mr. Wayne - voted no, because of the issue of safety responders, the rear is not a safe environment, and two, non-conforming lots would be created;

Mr. Tucci- voted no- they would be putting two non-conforming lot on the books. Voting for a ratable is not the right thing to do. This type of lot represents bad planning. It takes a lot of variances for this to happen. A 22,000 sq. ft. house is a large ratable. That area has

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huge pieces of properties with lots of houses on them. This type of development has been nightmare for zoning ordinances

Mr. Lippert - voted yes- large lot cases can be tough calls, and this is a tough call. He is voting yes, and he does think it complies with the negative criteria and is consistent with deficiencies in the immediate area, and when you have a such a large lot, he has to think long and hard to give relief to an applicant with a unique lot. You have to analyze it, and he was impressed by the testimony. He had a concern about fire and police safety, but did not hear a lot of testimony against it.

Chairman Koons - voted no - It is not a hardship, indicating there is a substantial degree of non conformity. It is a self-created hardship, contrary to the zone plan, contrary to the straight lot line ordinance they have, which is for the purpose of not creating flag lots without calling them flag lots. They have narrowness, which has been further created by the applicant. There is a safety issue, and for those reasons, he votes no.

The motion failed on a 3-3 vote.

Mayor Blundo arrived at 9:00 pm.

Mr. Lippert commented to Chairman Koons that he proposed the Board approve the matter, and then he voted against it. Chairman Koons responded he did so rather than proposing a negative vote. Mr. Lippert stated he never saw that and is not sure he can do that. Mr. Deutsch said that is a good questions, and he would like to take a recess before he advises. Chairman Koons commend he did not want to set a negative tone. Mr. Deutsch requested a recess to review same at 9:08 pm.

The Board reconvened at 9:13 pm. Mr. Deutsch advised he had not found a definitive response without having access to a law library, but had option for Board. The Board and applicant may, if they wish, agree to have the motion withdrawn, carried to next meeting, at which time any members who have not can listen to the tapes and have a newly offered motion. That's one option, or carrying with Mr. Mancinelli's consent, or, if it is not an exact situation, and it would be his opinion that the Board can if it wishes, declare the motion invalid and make a new

motion. This particular motion and vote thus far can be declared invalid based upon the way it was presented, and simply put in a new motion to approve or deny. He read from the MLUL regarding a motion to deny an application. It was a 3-3 vote, and it failed. The law said here that the Board would have to rephrase the motion and vote. Because of the confusion, he recommends one of the members who intends to continue his motion affirmatively put in a positive motion. It was questioned because a member voted to deny after proposing a motion to grant. The person voting must be consistent with making the motion. We do not have by-laws here. This motion could be rephrased and voted upon this evening. It would still be the option of the Board if Mr. Mancinelli agrees to withdraw and carry the motion.

Mr. Tucci commented we are doing this to not have our motion challenged and to be on the safe side. Someone should make a motion. He asked if they had to make a motion to void out the vote. Mr. Deutsch advised the intent is to get the true wishes of the members. Mr. Lippert suggested withdrawing the vote, then have someone make the motion and a second and vote on it.

Mr. Mancinelli requested to be heard, and if he understands, he is not going to approve it if someone else is going to introduce the motion to approve and result in a same 3-3 vote. He put his objection on the record. Since it is a very unique legal issue, we should take more than five minutes to look at it. Mr. Deutsch advised the Board can certainly put this off and allow an opportunity to research this. If it is put off, another question is could an absent member listen to the record or not---he is not sure what the law is either. The Board has a choice of retracting that vote, introducing it the way he indicated and voting this evening or adjourning with the consent of counsel, but he is not guaranteeing another member could come in. Mr. Mancinelli would do research as well to see if a seventh member could come in and would prevent a tie vote.

Chairman Koons commented if we postpone it, we don't know if a seventh member is allowed to vote. Mr. Tucci commented this is the Board here tonight, and this is just a technicality. We will be complicating it more. Chairman Koons stated we don't know if the motion made was improper. Mr. Tucci asked what the grounds were for voiding out a

motion. Mr. Deutsch consulted the Cox book and advised there is no case on point here. Mr. Mancinelli stated that is correct. He was also looking at the book. He felt the Board would be justified in rephrasing the motion and revoting on it because of the unique character, based on the way the original motion was presented and voted on.

Mr. Ericksen commented he will not change his vote, but he did ask for a one month extension to walk the property. Mr. Mancinelli questioned what the Board would rely on to rescind that vote. Mr. Deutsch did not have an answer to that.

Chairman Koons asked for a motion to rescind the decision. Mr. Tucci said he was in favor of delaying for 30 days. Mr. Mancinelli reiterated his position, but would want a seventh member. He would consent to carrying if a seventh member showed up at the next meeting. But if there is going to be a revote with another person making a motion for approval and there being a denial, he can't agree to have the Board voting and resulting in a tie again. Mr. Tucci said he is only suggesting they wait the 30 days in light of any potential law suit. Mr. Mancinelli asked, and Chairman Koons responded the alternate member can vote if one of the nine regular members is not present. Mr. Deutsch advised if it goes to Court in Hackensack it would come back on a vote methodology and for a revote.

Chairman Koons asked if there was anyone on the Board that would want to reopen it and take another vote. Mr. Koons noted there was no one, and the vote stands.

2. Nicolini, 517 Brook Avenue - Adjourned at request of the applicant;

DISCUSSIONS:

1. Approval of By-Laws - Chairman Koons stated the only issue to Mr. Deutsch is if anyone files plans on a Friday afternoon at 4pm, you lose about five days, and Mr. Statile winds up with four days for review. He was advised by Mr. Deutsch we can only have 10 calendar days. Mr. Deutsch said you cannot supersede that. Mayor Blundo commented the Land Use Administrator can recommend additional time be given for a more thorough review--two weeks would be preferable. A discussion ensued. Mr. Statile commented he has 45 days to deem an application complete. The public must be able to see the plans 10 days

before the hearing. Chairman Koons moved for approved, with second by Mr. Shalhoub, all in favor, none opposed. The motion carried.

2. Informal - Pumpnick's - William Bailey, Esq. of the law offices of Huntington Bailey appeared in an informal setting, with nothing binding, just for discussion. This was the subject of another application. There was an issue of seating with an impact on parking. Mr. Bailey explained they were present because the deli, Ruben's Deli, is in dire financial constraints and will not be there much longer. They are here to see if another application would be considered.

Mayor Blundo commented he sat on the application and the issue was the quantity. Ordinances are there to protect the town. If the applicant can demonstrate they have been running a business there and can demonstrate there is parking and room to accommodate more visitors for a longer period of time than take-out, he would be open to seeing that. He would encourage that in a limited way. He cannot see a 100-seat restaurant, but in a controlled manner, with what they deem parking to be, he would like to see that evidence.

Mr. Shalhoub asked how many people he was talking about. Mr. Bailey said approximately 30-40, but he would have to speak with the client, the engineer and Mr. Huntington. It would have to make the business viable. They are here in spirit and for guidance, not simply to take another bite of the apple. Mr. Ericksen asked if they are going to sell bagels, because he heard they want to put ovens in, but Mr. Bailey did not know.

Mr. Tucci asked how this application differs. Mr. Deutsch advised this is not an application; it is an informal. They have a right to come back with a different scenario. A different parking request would be a different application.

Mayor Blundo commented he would like to see the businesses thrive. Yes it's tough times, but he cannot see the parking having a negative impact on the residents. Mr. Tucci commented he did not want to hear that the Board drove out a business because it did not grant a variance.

Chairman Koons indicated to Mr. Bailey he believed he

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heard that the Board is willing to listen to an application if the parking is not burdensome, and that traffic is not an issue. There were no further comments.

OPEN TO PUBLIC - None

PAYMENT OF INVOICES: A motion for approval to pay invoices was made by Chairman Koons, seconded by Mr. Menville and carried.

NEXT MEETING: March 16, 2009

ADJOURNMENT: On motion made, seconded and carried, the meeting was adjourned at 10:00 p.m.

Respectfully submitted,

**Mary R. Verducci, Paralegal
Recording Secretary**