

TOWNSHIP OF OCEAN
PLANNING BOARD
REGULAR MEETING
October 7, 2010

Meeting began at 7:30 PM

The meeting of the Township of Ocean's Planning Board was held on the above date and time. The meeting was called to order.

Pledge of Allegiance

STATEMENT: Pursuant to the provisions of the New Jersey Open Public Meetings Act, sending copies of the notice of the meeting properly provided adequate notice of the meeting to the Press of Atlantic City and the Asbury Park Press. Notice was posted on the bulletin board in the Administration Building.

Chairman Anepete made a statement to the public that a local paper had printed that there was a Township Committee being held tonight and that was an error on the papers part. This meeting is for the Planning Board.

ROLL CALL

Members Present: Anepete, Avellino, Knowles, Lachawiec, Sneddon, Tredy, Bynoe, James

Members Absent: Eckert, Sweeney, VonSchmidt

Professionals Present: Steve Yost, Attorney, Wayne McVicar, Engineer

Chairman Anepete asked for a motion to take action on the minutes of the Regular Meeting of September 2, 2010. Mr. Avellino made the motion to approve the minutes. Mr. Bynoe seconded the motion. Roll Call: (aye) Avellino, Bynoe, Sneddon, Tredy, Anepete.

Chairman Anepete asked for a motion to take action on the voucher list. Mr. Avellino made the motion to approve the vouchers. Mr. Sneddon seconded the motion. Roll Call: (aye) Avellino, Sneddon, Knowles, Lachawiec, Tredy, Bynoe, James, Anepete.

Correspondence is available in the board office for anyone wishing to view.

BOARD COMMENTS

Topics from the Professionals. Mr. McVicar spoke this evening on Community Impact Statements. Mr. McVicar touched on what should be included in a report and what the board should be reviewing when applications that include Community Impact Statements come before the board.

Mr. Yost discussed the case of "Friends of Peapack-Gladstone vs. Borough of Peapack-Gladstone Land Use Board. The case discusses another case. The case involves and Mr. Yost spoke on the procedure if there is a litigation settlement on a matter that is before the Planning Board.

OLD BUSINESS

Green Minor Subdivision, Block 186, Lot 5, 85 Illinois Avenue, Docket No. 05-10-PB, CARRIED from September 2, 2010 meeting. Mr. Bennardo approached and spoke. Mr. Bennardo called Mr. Jason Marciano, Project Engineer, who had been previously sworn in. Mr. Yost reminded Mr. Marciano that he remains under oath. Mr. Marciano presented A-6 into evidence titled Lot Sizes in 200 ft. This document is a modified document of what was presented the first time the applicant appeared in August. Mr. Marciano explained in detail A-6 and stated that conforming lots are rare in the area. The original neighborhood was subdivided in 1921. A-7 was admitted into evidence which was titled Previous Subdivisions – 7 pages of examples of previous subdivisions printed from the internet by Mr. Marciano. Mr. Marciano reviewed A-7. Mr. McVicar pointed out the most recent subdivision in this evidence has a recorded date of 1999. Mr. Marciano printed and admitted A-8 into evidence – Zoning Map of Township. Mr. Marciano could not determine why the 12,500 SF zoning changed had occurred. 12,500 SF lots are hard to find. The smaller lots are the common element of the R1-A Zone. A-9 – Drainage Map was admitted into evidence. This is a scaled down subdivision map showing elevations and storm drains. The grade of the property line in question is 4.22. There is crown to the road. Mr. McVicar asked about the existing storm drain on Illinois Ave. Mr. Marciano answered that he looked at it and it seemed rather full. Mr. McVicar stated that drainage is an issue with this lot and it would be convenient if we could pipe into the current drain on Illinois and pick up the drainage of the newly created lot. It would then not hit the neighboring properties and going to an existing drainage system. Mr. McVicar added that the drain may need some work but it is there. Mr. Bennardo questioned who would be responsible for maintaining the grate from debris. Mr. Bennardo said that would be something they would be happy to work with if it was a condition set by the board.

Mr. Bennardo stated that it is not typical to merge back to back lots. Mr. Marciano agreed. Mr. Bennardo cited the Chirichello vs. ZBA Monmouth Beach, 1979 case which states no merger of lots that are back to back. Mr. Bennardo explained further if both lots were owned independently they would not be merged for planning purposes. Mr. Bennardo feels this lot line disappeared somewhere.

Mr. Tredy spoke of the land area in the 200' circle – there are 9 lots that run street to street. Mr. Tredy doesn't think that subdivisions from 30 years ago are relevant today. Mr. Bennardo added that there could have been many homes built with just variances and no subdivisions. Under the Chirichello case there is no merger under Lochner. People were granted variances and allowed to build. Just because it wasn't a subdivision, it doesn't mean that people were not building on 60x80 lots.

Mr. Tredy asked Mr. Bennardo that in testimony it was mentioned that other owners who own street to street lots are using their entire lot with swimming pools or garages. Is there anything that would prevent the present owner from utilizing the entire lot. Mr. Bennardo said the applicants are entitled to use their property absolutely.

The property in and around the neighborhood is in poor shape when it comes to drainage and one problem was a clogged drainage pipe. Mr. Tredy stated that he thinks that any construction in that neighborhood is going to cause a problem for those neighbors surrounding this area. Mr. Marciano stated that we are proposing is adding to the impervious surface on the lot, it will increase run-off. Thus the very important reason to have a detailed grading plan or Mr. McVicar's idea of piping.

Mr. McVicar explained again that it appears the drainage system is on Illinois with a grate directly in front of the property where the applicant's current house exists, that the lot to the rear is higher in

elevation although not that much more. The run-off, the impervious coverage being created by the house, could be piped directly to the inlet that exists on Illinois Avenue. Therefore, it would not impact the neighbors on either side.

Mr. Avellino spoke that going back to the size lots of the area. The lot is undersized and it is not a very prudent thing to do to subdivide it into two undersized lots. That is going against planning. Mr. Bennardo answered that we have tried to show proof that the size of lot is not inconsistent with what is there. Under any scenario are you never going to have 12,500 SF lots there and every property owner is entitled to use his property to the extent that they can. Mr. Bennardo points out that if the middle line where there and we were before a board looking for a variance, no way would a denial ever be sustained.

Mr. Tredy had Mr. Bennardo approach and read part of the minutes from the August meeting. Mr. Bennardo explained that this could be thought of as a C-1 or C-2 variance. C-1 is a hardship. If the lot line were here and we were before a Zoning Board of Adjustment that would be an absolute classic case for a C-1 to be granted. C-2 is if you look at it from a planning perspective, do the benefits outweigh the detriments. I would argue that having a new home there that's modest in size that is fronting on an improved road that meets all the other set-back requirements that gives light, air and open space that does not deprive others of the right to enjoy their property. Those are all the positive reasons why the subdivision and the variance should be granted.

At this time Chairman Anepete recused himself from this application due to personal conflict and left the room. Vice-Chairman Avellino took over chairing the meeting and reiterated that an undersized lot being made into two undersized lots does not make sense.

Mayor Lachawiec asked if the current house were to be knocked down, how big a house could be built on that lot. Mr. Marciano estimated a footprint of 3,000 SF for one large lot. Mr. Bennardo was asked and answered if the applicant would consider that as an option and he replied no. The applicant is proposing a one bedroom with a potential to be a three bedroom. The upstairs square footage is approximately 900 SF per the architecturals. Mr. Marciano said it would be at least 350 SF of full height head room.

Mr. Yost spoke to Mr. Bennardo. Mr. Yost wanted to clarify that he heard an argument that these lots really may not have been legally merged because an exception under the Chirichello case to the Lochner vs. Campoli doctrine where you have lots that merge by operation of law that it doesn't apply to this situation because the lots are back to back. Mr. Yost asked if it were the applicant's position that one of their arguments is that these lots were not merged by operation of law and is in fact two lots. Mr. Bennardo answered no. He is saying that they merged by operation of law only due to the quirk of the lot line having disappeared. If that lot line were there, then there would not be a merger of those two properties. The lots would stand entirely independent and would be the subject of a separate application. Mr. Yost asked how the lot line came into existence. Mr. Bennardo answered he had no idea. The property was that way when the applicant bought the property but they do not know anything beyond that. The Tax Assessor was not able to provide any information.

A motion was made by Mayor Lachawiec, seconded by Mr. Tredy to open the meeting to the public. Mr. Bennardo spoke before a roll call was taken. Mr. Bennardo quoted the Cox Book, Section 16-15.2. Roll call: (ayes) Lachawiec, Tredy, Knowles, Sneddon, Bynoe, James, Avellino.

PUBLIC COMMENT OPEN

Ms. Valerie Provine – 91 Adriatic was sworn in by Mr. Yost. Ms. Provine has a drain in front of her house and spoke that the drains are always full. Photo's marked O-1, O-2, O-3 authenticated by Mr. Yost and Ms. Provine were entered into evidence. Block 185, Lot 10 is Ms. Provine's property.

Mr. Bill Conroy – 94 Adriatic was sworn in by Mr. Yost. Mr. Conroy spoke about the drainage. He is not aware where the storm drains lead. He doesn't think they lead anywhere and he would like to know where they drain.

Mr. Tredy spoke that Mr. Nutt had called him and they spoke in length about the existing drains. The Road Department was sent there to clean a cross-over pipe. That was completed and is being followed up by the Township Engineer. Mr. Tredy asked the Township Engineer to come down and make an assessment of what can be done to alleviate the constant flooding problems.

Ms. Moira Bunn – 91 Illinois Avenue approached and was sworn in by Mr. Yost. Ms. Bunn is a street to street lot. Ms. Bunn had a house built next door to her. The Bunn's have previously regraded their property. When the house next door to them was being built, their yard and drain would fill with this clay. Ms. Bunn feels the drainage is definitely an issue.

Mr. McVicar spoke about the drainage in the area. The grade that is in front of the Bunn's property is the lowest in the area. The water will come out of their drain first.

Mr. Tredy asked Ms. Bunn if she had called the township and she said she had called and the Road Department came out once. This summer they tried to clean the drain themselves. Mr. Tredy stressed that the homeowners must call when there is a problem so that the Road Department can be sent out.

One photo - B-1 was authenticated by Mr. Yost and Ms. Bunn and marked into evidence. Mayor Lachawiec asked Ms. Bunn where her house sits right now and Ms. Bunn answered that it is just past the midline of the property.

Donald Mantuano – 83 Adriatic approached and was sworn in by Mr. Yost. Mr. Mantuano doesn't feel an undersized lot should be made into two undersized lots. He is concerned about the drainage. His yard floods. Photo marked M-1 was set-aside and not authenticated. Photo's M-2, M-3, M-4, M-5, M-6 and M-7 were authenticated by Mr. Mantuano and Mr. Yost and marked into evidence. Mr. Mantuano lives at Block 185, Lot 2.

Mayor Lachawiec asked Mr. Marciano to speak on Mr. Mantuano's lot again. Mr. Marciano reiterated that Mr. Mantuano's lot is the one that is depicted on the map with the cross hatching. This is the only lot in the area with conforming lot area; it has at least 12,500 SF.

Nicla Pistone – 84 Adriatic approached and was sworn in by Mr. Yost. Photo's P-1, P-2 and P-3 were authenticated by Ms. Pistone and Mr. Yost and admitted into evidence. Ms. Pistone described each photo in detail. Ms. Pistone spoke about the light and air and how a house would affect their privacy. Their house is a slab. They have a sump pump, but it does not alleviate the flooding problem. Block 186, Lot 3. Ms. Pistone's lot is next door to the applicant's. The crown of the road is higher than their home.

Donald Mantuano approached again and spoke about the back of his property. There is a drain in the rear of his property which is also underwater all the time.

Robert Kraft, 28 Bay Parkway approached and was sworn in by Mr. Yost. Mr. Kraft inquired about the Chairman's recusal. Mr. Yost explained that the Chairman felt he had a personal conflict with the application. Mr. Yost explained further that the Chairman thinks the applicant may have signed a petition for a position he had been running for and under the circumstances he felt it would be inappropriate for him to continue and take a chance on tainting the application one way or another. Mr. Kraft inquired about the middle line. There was no line when the home was purchased.

A motion was made by Mr. Bynoe to close to the public and seconded by Mr. Sneddon. Roll Call: (aye) Bynoe, Sneddon, Knowles, Lachawiec, Tredy, James, Avellino.

PUBLIC COMMENT CLOSED

Vice-Chairman Avellino made a statement about the water in his rear yard as well. There is no place for the water to go. The water table is high. No one can change that no matter how many drains are put in.

Mr. Yost asked Mr. Bennardo if the applicant wants the opportunity to submit any legal brief with the objectors here and being that it has been a long hearing. Mr. Bennardo didn't feel this was necessary. Mr. Bennardo added that everyone has the right to use their property. One neighbor's reason why he's got problems should not deny another person the legal right to use their property.

Mayor Lachawiec spoke that most of the residents that testified spoke about drainage. Mayor Lachawiec made a motion that the application be carried until the next meeting. The Department of Public Works have been sent to this area to clean out the drains and see if the over the next few rains if it makes a difference. The board could then make a more informed decision.

Mr. Tredy added that he ordered the Township Engineer to go there and make an inspection. Mayor Lachawiec suggested getting the jet vac there also to do a cleaning of the entire area.

Mr. Bennardo spoke that this drainage problem should not impact a person's right to use their property. That is a township problem, not this particularly the applicant's problem and he feels the board needs to look independently at their right to use their property. They will do the best they can with the drainage and possibly do what Mr. McVicar had suggested but he doesn't feel the applicant should be subject to a condition to see what the weather will bring.

Mr. Yost spoke that zoning laws apply here as Mr. Avellino stated however the zoning law also states that the applicant is entitled to variance if they prove the positive and negative criteria. The sense that Mr. Yost gets from the board is obviously there is a drainage problem in the area and the applicant may want to think about if they are asking the board to make a decision when they don't feel they have all the information they need to make that decision. It is the applicant's call. Mr. Tredy added that he feels Mr. Bennardo will get a firm answer by the next meeting. The applicant agreed to waive any time restrictions. Mr. Yost indicated to Mr. Bennardo if he wishes to submit anything to him on Chirichello or the Lochner doctrine, he would appreciate getting that. The last time this application was carried it was at the applicant's request. Everyone is vested in trying to make the right decision.

The motion that was previously made to carry the application made by Mayor Lachawiec was seconded by Mr. Tredy. Roll call: (aye) Lachawiec, Tredy, Knowles, Sneddon, Bynoe, James, Avellino.

NEW BUSINESS

Ordinance of the Township of Ocean 2010-8, County of Ocean, State of NJ establishing regulations regarding the erection and location of small wind and solar energy systems.

Mr. McVicar spoke that on page 5 in paragraph 2 it talks about solar energy systems being considered a structure. It should be clear how the town will treat solar arrays as it relates to lot coverage. The fact that the ordinance states that it is a structure means it would go against lot coverage. The board discussed this in detail and felt any array should go to lot coverage.

Mr. Knowles added that the Environmental Commission had gone over the proposed ordinance and did not have any changes to make. They recommended it back to the Committee for action.

The board spoke further about how the energy is stored and used. This ordinance addresses small solar panels on roofs or in back yards. Mr. McVicar felt 100 kilowatts should also be defined for solar panels. A building permit will be required.

Mr. Sneddon made a motion to approve the ordinance as written. Mr. Knowles seconded the motion. Roll call: (ayes) Sneddon, Knowles, Lachawiec, Tredy, Bynoe, James, Avellino.

Mr. Yost read into the minutes the prepared Resolution recommending proposed 2010-8 back to the Township Committee for action.

Mr. Bynoe made the motion approving the Resolution seconded by Mr. James. Roll call: (aye) Bynoe, James, Knowles, Lachawiec, Sneddon, Tredy, Avellino.

Mr. James left the meeting at 10:12 PM.

Mr. Yost spoke that had previously spoken to Chairman Anepete before he left letting him know that no development has transpired that Mr. Yost has to brief the board on and therefore, it was decided not to retire into Closed Session.

Mr. Avellino asked Mr. Yost about the Redevelopment Entity and the scenario of redevelopers changing. Mr. Yost gave a description on how contracts could work.

A motion to adjourn was made by Mr. Sneddon and seconded by Mr. Bynoe. All in favor: (aye).

Meeting was adjourned at 10:15 PM.

Cordially,

Beth O'Connor
Planning Board Secretary