

MATAWAN UNIFIED PLANNING/ZONING BOARD MEETING MINUTES

DATE: OCTOBER 1, 2001

TIME STARTED: 7:30 P.M.

TIME ENDED: 9:38 P.M.

IN ATTENDANCE: Councilman P. Buccellato
Mr. R. Strang
Mr. R. Montfort
Mr. J. Duffy
Mr. K. Groody
Mr. J. Roselli
Mrs. Nicora
Mr. Jack Shepard
Mrs. E. Rinear

ALSO IN ATTENDANCE: Mr. Keith Smith, Engineer
Mr. John Stockel, Attorney
Mr. L. Nebenzahl

This meeting was called to order by Mr. Strang pursuant to Section 5 of the Open Public Meeting Act, and stated notice having been posted in the Asbury Park Press and on the bulletin board in Borough Hall.

ROLL CALL: Nine members present.

PLEDGE OF ALLEGIANCE:

MEETING CALLED TO ORDER: This meeting was called to order by Mr. Strang.

APPROVAL OF MINUTES: Meeting minutes of October 9, 2001 were approved by Mr. Duffy and seconded by Mrs. Nicora. All members voted in favor.

APPROVAL OF VOUCHERS: None

CORRESPONDENCE: None

OLD BUSINESS:

NEW BUSINESS:

1. Variance Application - Greg Nazarian - 260 Matawan Avenue - Variance Application

to shift the location of house.

Mr. Nazarian was sworn in by Mr. Stockel and testified that he is the owner of the property. All notifications and publications were verified by Mr. Stockel.

Mr. Nazarian presented the board with a new survey and explained that he is requesting to shift the location so as to be able to have suitable side yard.

Mr. Groody asked why he wants to move it? Mr. Nazarian stated that the property has three front yards. The 32' side yard will meet the criteria if shift is approved.

Open To Public: None

Open To Board: None

Motion to approve this application was made by Mrs. Rinear, seconded by Mr. Duffy. All members present voted in favor.

1. JV Homebuilders - 213 Main St. / Broad St. - Subdivision for four houses.

Mr. Montfort and Mr. Strang stepped down from board as a voting member due to conflict of interest with the application.

Mr. Stockel verified all notifications and publications for this application were in order.

Mr. Peiper represented the applicant. Mr. Peiper stated that they are proposing to create four building lots. The property fronts on Main and Broad Streets. Presently there is a structure used as doctors office. The unit with the medical offices will not be touched and there will be a buffered strip of landscaping. The rear portion which will be subdivided is undeveloped.

Mr. Peiper stated that this area will be enhancing the existing master plan and the zoning ordinance.

Mr. Shepherd asked about the parking?

Mr. Kee applicant engineer was sworn in and stated that 73 spaces are required and the total being used presently is 40.

Mr. Shepherd asked 40 are now in use? Mr. Kee stated yes that was correct.

Mr. Kee further stated that he has been on the site many times at different times of the day and the lot was never entirely full at any one time. The operation that presently exists

meets the needs for parking.

Mr. Groody asked if there will be enough for 37 parking spaces even after the four new residences?

Mr. Kee stated that yes there were more than enough property left to accommodate.

Mr. Peiper asked Mr. Kee if it were required could the lot be redesigned to use required number of spaces?

Mr. Kee stated yes by realigning, restriping and paving.

Mr. Roselli asked if the buffer be put in rear?

Mr. Kee stated that the foliage in rear that is presently there will remain and they will add in more, no foliage will need to be removed.

Mr. Montfort asked wouldn't the neighborhood be improved with two residences, why four?

Mr. Nebenzahl stated that if two were built they would be larger and more expensive homes. Two larger would not be more beneficial than four lesser value homes in the neighborhood.

Mr. Freeman applicant's realtor stated that houses he compared to are in the area of Broad and Church Streets.

Mr. Shepherd stated that he thinks the idea of people having to back out their vehicles onto Broad Street is detrimental to the safety of the area.

Mr. Nebenzahl stated one of the conditions of the applicant could be that they must have turn around driveways. He also asked Mr. Kee if they would consider less than four homes on this property?

Mr. Kee stated that in terms to entrances of property they had no present proposals for k turn or turn around style driveways.

Mr. Nebenzahl suggested to the board that this could be a condition of approval for turn around driveways. He asked Mr. Kee if turn around driveways could be provided on each lot?

Mr. Kee stated that they could be designed.

OPEN TO PUBLIC: Mr. Jerry Hourihan, 239 Jackson St. Mr. Hourihan stated that he is concerned with the safety of backing out on Broad Street during heavy traffic hours. Also if there are extra cars are they going to park on Broad Street? With the changes going on at the Municipal Building there is no telling what could happen in the future.

Mr. Montfort stated that the zoning should take into account safety. Two homes which would look gorgeous and that four homes would not fit into the neighborhood.

Mr. James Ferrano - 169 Broad St. - stated that he backs out on street daily and he feels that this is the best thing that could be done with this property. He stated that at this time the property is overgrown.

Mr. Cherry, 1 Franklin St., asked if the homes be configured differently?

Mr. Kee stated no not at this time.

OPEN TO BOARD: Mr. Groody stated that by using k turn driveways would the difference of having a front yard of concrete verses a front yard of grass make a difference in the value of the homes?

Mr. Peiper stated that even though there was not a full board for vote his client still wants to proceed with the voting at tonight's meeting.

Motion was made by Mrs. Nicora to approve the application with the following conditions; subject to site plan approval, four lots with k-turn driveways, lighting and parking to be addressed on remaining lot and that they be in compliance with board engineer's report.

Motion was seconded by Mr. Rinear. Roll call was taken and applicant was denied approval.

3. James and Elizabeth Shea - 5 Franklin St. - Variance - Block 29, Lot 47 & 53.

Mr. Robert F. Munoz attorney representing Mr. and Mrs. Shea was sworn in and testified that proofs of service were submitted to the board and Mr. Stockel verified all were in order.

Mr. Munoz stated that they were requesting relief from a condition from a prior approval from Resolution 99-14.

Mr. Stockel asked if there was any litigation pending this application in the Superior Court in Monmouth County?

Mr. Munoz stated that there was not any more.

Mr. Stockel asked if that was totally resolved?

Mr. Munoz stated yes that as far as he knows it is resolved and the file is closed.

Mr. Stockel stated if it is still pending that the board would not have any jurisdiction over This particular matter until it is resolved.

Mr. Munoz stated that he has that with him and will distribute such.

Mr. Munoz asked if the board members had copies of Resolution 99-14 ? Mr. Stockel stated that they did not so Mr. Munoz distributed extra copies he had.

Mr. Munoz stated that the Resolution 99-14 is a mystery to him as it indicates that it was adopted on the 20th day of June 1999 yet the minutes for the board for that evening indicate that the application was carried to the July hearing. The applicant was here alone without council so he doesn't know what happened with that but he is taking the Resolution on it's face value. The Resolution was supplied to his client with a cover letter from the Zoning Official when certain aspects came up.

Mr. Stockel stated that in all probability the decision was granted on a certain date and then memorialized at next meeting.

Mr. Munoz also had a copy for the board of the final judgement by consent in the action regarding the easement and also the amended judgement which actually came into being after the application was granted.

Mr. Nebenzahl asked Mr. Stockel to explain what a judgment by consent actually means.

Mr. Stockel stated that everybody agrees to what is in the judgment.

Mr. Nebenzahl asked if then that the neighbors particularly the Cherrys had part in the consent?

Mr. Stockel stated that no testimony was taken by the court. Consent was given either through them signing off or through their attorney.

Mr. Munoz stated that the original judgment which was prepared is actually the second part of the document which he gave the board was from June 29, 1998, the amended judgment was October 20, 1999 after the Resolution was adopted by the board.

Mr. Munoz also filed with the application copies of the map, what they propose in terms of the relief of the condition. During several months of hearings during 1999, Mr. and

Mrs. Shea were here and made testimony and made an application for the house they have on Franklin Street. The board granted the Resolution that is there and there was some question about the access easement. Of course the ordinance requires that all new structures have a garage and the application as interpreted by the Zoning Officer as adopted 99-14 requires a driveway to the left of the subject house. He stated that he guesses that it was the intent of the Resolution according to the interpretation that they received that the driveway go through along the side of the house to the rear of the property and a garage be constructed.

Mr. Munoz stated it is their position that in light of the fact that the Shea's have perfected the easement in light of the Consent Order that they were entitled to have relief from that provision. They have provided a driveway that goes up to a portion of the house which will in fact accommodate three cars. Requirement for off street parking for residential is two but they also propose to provide a garage at the rear of the property as shown on the plan and then they would provide a stairway out from the house for the L and Lot 47 appears on the map.

Mr. Munoz stated that they are asking for relief of the condition of running the driveway all the way to the rear and connect to the garage and would like to access the proposed garage through the easement which was perfected through the litigation and that is in essence the relief that they are requesting. In the absence of being entitled to use the easement to access the garage, in essence have lost the right to the easement for what it is for. The easement is not for parking vehicles, the easement is only for access the rear of the property.

Mr. Shepherd asked the attorney to show on the maps that were provided where the easement and where the proposed garage was going. He was familiarizing himself where the proposed garage and easement under which was proposal.

Mr. Shepherd asked if the garage was built yet?

Mr. Munoz stated no it is not, it is proposed.

Mr. Shepherd asked if the original house that was built on Lot 47 was built without a garage?

Mr. Munoz answered that was correct and they were on a temporary CO.

Councilman Buccellato stated that the proposed garage part of the original application so it's not a new proposal. There always was a garage proposed as required by ordinance.

Mr. Munoz stated that they are asking the board to relieve the applicant of the condition of having to run the driveway all the way to the rear to the garage and that the driveway

stop at the side of the house where it presently exists and that they construct the garage and utilize the easement.

Mr. Nebenzahl asked if that easement is paved?

Mr. Munoz stated that no it looks like a driveway. The other property accesses it all the way to the back where they see foundation.

OPEN TO BOARD: Mr. Montfort stated that he would like to clarify that they approved this application plus or minus the easement had nothing to do with the conditions of the approval. There was a lot of debate about the easement, the condition was to make sure that the property was whole and when somebody walks away from it the next time it is fully in compliance that is why they ended up moving the house slightly to the right, put the driveway in to get to the back of the house to get to the garage. It had absolutely nothing to do with the easement.

Mr. Munoz stated that they did not say it did but they are asking for relief from that condition.

Mr. Montfort stated that he is just telling him the conditions of the approval of this plan.

Mr. Munoz stated that his clients are in here with counsel and if in the absence of utilizing the easement for access they have spent a lot of time and effort on the easement for nothing and in essence they would have no use for it.

Councilman Buccellato asked Mr. Stockel if this was a relief or an appeal?

Mr. Stockel stated that it is an appeal of the decision of the board that they did back in June based upon the information that was contained and submitted to the board at that time.

Councilman Buccellato stated that it not a relief it's an appeal?

Mr. Munoz stated that there is a case called "Cohen" which when you have a condition of approval you have a right to go back to the board and ask to be relieved of the condition and that is what this application is about.

Mr. Stockel asked that in other words he is in effect saying that Judge Fisher back in October 20, 1999 superceded technically the actions of the board that were taken.

Mr. Munoz answered no that he is not saying that, he is saying that the easement allows access to the rear of the property. The judgment says that they have the right to utilize that easement for access to the rear of the property using vehicles.

Mr. Stockel stated to gain access to the garage, the proposed garage in the back.

Mr. Munoz stated that in the absence of being able to use it to access the proposed garage it has no utility because that is what it was used for years. That easement used to go through to the other properties, it didn't just end there and at some point it was cut off but we perfected our right to utilize the easement and what they are saying is that they want to utilize the easement as part of the development of the property.

Mr. Strang asked if in other words they want to do away with driveway?

Mr. Munoz stated that they will leave the driveway where they have it now, there is a driveway there now.

Mr. Strang stated that when you come in the driveway, approximately 8 1/2 feet, that the next door neighbor on Washington Street side allotted two or three feet so that Mr. & Mrs. Shea could have a normal driveway. Then when the house was built either the Shea's did not know about it, but He was told that the builder would put in a side door because Mr. Shea was going to build steps there. That would have prevented any car, truck, ambulance or anything to go through. The board okayed the original house and There was never a door on the side and again it was okayed when the good neighbor gave them the 2 or 3' he needed to expand the driveway to get through there, this he feels is wrong of them and that they should stand up, shake hands and work things out. In other words if it is 11:30 at night and Mr. Shea has to go to work or go anywhere and he comes out this man's kids toys are in the driveway he has to either knock at the door or sit in the driveway beeping his horn and this man is going to have to come out and move the toys for something that's never been really told to this board if he really owns or disowns this.

Mr. Munoz stated that the judgment says that they own it.

Mr. Strang asked why create this? What is it doing to the poor woman in the middle? Why create this monster? Because two people can't get along? They don't have to talk to each other but at least get along with each other. He further expressed that he feels that this is awful of Mr. Shea to be doing this. He further stated that there is a water main underneath that driveway.

Mrs. Nicora stated that the board gave variance also for them to move the house over, she feels that the can of worms is reopened and she can't understand, she feels that they are getting both ends of the stick here.

Mr. Roselli stated that if they give them relief of the driveway that they ought to pick the house up and move it back where it belongs then.

OPEN TO PUBLIC: Christina Linton, 3 Franklin Street, was sworn in and stated that she would like to start off by saying that she feels that going back several months that the board didn't handle this very well. The board gave someone a CO and allowed them to move into that property when there wasn't a driveway put in and the garage wasn't put in. She stated that she had to wait a month too move into her little house, she couldn't move in until there was a CO and everything was completed and yet the board has allowed a situation like this to take place.

Mr. Nebenzahl stated to Mrs. Linton that the board does not issue the CO, the Zoning Construction Code official does.

She stated surely they shouldn't let someone move into a house until it's complying with regulations and it said that they would have a driveway and a garage. She stated that she doesn't understand that. She stated she is the person who lives in the middle of this argument, Lot 48, and she said it is intolerable living like this, she doesn't want to live like this, she wants two proper driveways either side of my so that people can put their cars and move in and out. What is it going to do to her home if she ever wants to sell it? She has this situation going around her and feels that it is totally unfair and it really needs to be addressed by the board and sorted out tonight one way or the other but to have this continual war going on around her is not how people should have to live. She stated that she is very upset by this and how it has been handled, the whole thing.

Mr. Nebenzahl stated that the board heard her testimony the last time.

Mrs. Linton said that is right and they did nothing.

Mr. Montfort stated that is not true.

Mr. Nebenzahl stated that is why the board required the driveway to do what he did so that there would not be a driveway that he is asking for now.

Mrs. Linton stated that the driveway is not a finished driveway on either side of her house, they are just dirt.

Mr. Montfort stated that the board only approved the plan that required the driveway, the board doesn't actually do the inspections and the installation to see if it is done, that is why they took the action they did was to make sure this property conforms with the driveway and access to the garage.

Mrs. Linton asked who is supposed to address that issue then?

Mr. Montfort replied the building inspector, the Zoning Officer, not this board.

Mrs. Lintin asked doesn't he work for Matawan?

Mr. Montfort answered of course. It's just not this board, they did what they were responsible to do in granting this approval.

Mr. Nebenzahl stated that a temporary CO issued.

Mrs. Lintin stated that that was about a year ago.

Mr. Nebenzahl stated that to clarify the record that basically what this board did was based on Mrs. Lintin's testimony. They were agreeing with her that she should have two driveways on both sides of her lot. Does she object to this application?

Mrs. Linton stated that she does not object to their having driveways now the house is there so what can she do about it the harm is already there. It's not a decision that she can make. She is now asking the board to get the two people to work together and get finished driveways along side of her house, she feels that is pretty simple.

Kathleen and William Cherry, 1 Franklin Street. Mr. Munoz asked Mr. & Mrs. Cherry if they spoke to their attorney prior to saying anything at this meeting? They responded yes. Mr. Stockel swore Mr. & Mrs. Cherry in and they testified that they are adamantly opposed to Mr. & Mrs. Shea wanting relief of the variance that was granted, Resolution 99-14. They had an opportunity to appeal the Resolution within the first 45 days. In applying for their variance they encroached on side yard setbacks that were overlooked to ensure that the access to their garage went through their property. That garage still to date has not been built. As to date there is no new survey which was ordered by the Planning Board in the July 19, 1999 minutes as well as restated in an April 5, 2000 letter that that was needed prior to any permanent occupancy permit. The survey submitted by the Shea's is not a new survey, it's an update of an old survey as well as no as built that insures where the house is where they say it is. Her husband and herself are both floored by the non-compliance. They put up a home themselves and had to comply with everything that the board wanted. They feel that it is long overdue. The date they had marked on their calendar was Feb 9, 2001 which was their six month extension and they feel that it has dragged on too far and long and they should abide by the existing variance.

Mr. Munoz stated he had a closing statement. His closing statement was this. If this board denies the access use from the easement, the easement will have been taken from them and they won't have any use for it. They have actually litigated, gone to court. The Cherry's have settled, they saveway settled, they said they are against the easement but when in court before Judge Fisher they said it was okay to use the easement so he would suggest that if the board denies the easement that it will be placed in utility and they will have to seek any relief that they have to do. Putting something in utility is certainly one of

the issues the board will have to determine when determining whether to grant the variance and in this case just determining whether or not relief from the condition is to be granted and he suggests to the board that that's really the issue here. The Shea's have spent a lot of time and effort and own personal money securing the easement when they bought the property and they have the right to utilize it. What this board will do as I think Mr. Stockel stated is that this board will undo what the judge has granted and if they are forced to utilize only that portion of the property not the easement and the easement will have been taken away from them and will have undone what the judge has granted them what is theirs to begin with.

Mr. Nebenzahl asked what the prior condition that the applicant is seeking relief from?

Mr. Munoz stated that he cannot seek relief from this condition because it is very unclear, he is seeking relief from the letter that was interpreted from the Zoning Officer. He said that they had to put a ten foot driveway all the way back to the garage. That is the condition that the applicant is seeking relief from.

Mr. Nebenzahl asked Mr. Munoz asked how could that possibly give his client from use of the easement?

Mr. Munoz stated that they have a right to utilize access to their property the same way that it was utilized by that easement that is by vehicles. The applicant is asking to have that access and utilize that access. If the board denies the access then they will have lost that access.

Mr. Nebenzahl stated that the board cannot deny access. The board put a condition on it and that condition was to let the home be located in a certain location and that a certain portion be paved for a driveway so that vehicles could reach the rear at a certain location on the property. This board has never ruled that the applicant couldn't use the easement if it was theirs. The board has never said that it couldn't be used. What they are asking for is the board do away with the requirement that a certain portion of the lot be paved?

Mr. Munoz stated that is correct. They only want to be paved up there.

Mr. Nebenzahl stated what the board does or does not do away with, it is still not stopping from using their easement.

Mr. Strang asked what are they actually asking relief for?

Mr. Munoz stated they are asking for relief from bringing the driveway all the way to the back of the house and utilizing the easement. They want a relief from the driveway and to use the easement to their property.

OPEN TO BOARD:

Motion was made by Mrs. Nicora to deny the relief request and that the applicant must abide by the application Resolution 99-14 , dated 20 June 1999, motion was seconded by Mr. Roselli. Mr. Roselli stated that when they were talking about the easement it was a landmark piece of property and when it was approved two properties were combined and made it unlandlocked. There was an agreement to move the house to the right side of the lot so that the driveway could be put in to have access to the yard. That was agreed upon and voted on and that is what he feels that they need to stand by. Seven members present voted for the motion, one against the motion. Application asking for relief of condition stated in Resolution 99-14 was denied.

4. Variance application - John Impaglia

Mr. Christopher Handlin attorney representing the applicant John Impaglia was sworn in and stated his client is applying for a Variance Site Plan approval to use his property for commuter parking. Property fronts on Main and Broad streets.

Mr. Stockel verified notifications and publications to residents within 200'.

Mr. Impaglia, 103 Main St., was sworn in and testified that he is partners in property and also owns 65 Main St. 67 Main St. goes all the way through to Broad St. He has owned it for 18 years . He stated that he paved the lot in October 1999 as lot was being used as a dumping ground. He is applying to pave the whole entire lot and used as a controlled parking lot.

OPEN TO BOARD: Mr. Montfort stated that there is no testimony relative to Use Variance for no permitted use for commuter parking. Mr. Smith would like to see grading and handicapped spots. A Design Waiver to include grading, handicapped parking spots, lighting, etc. He further stated that Mr. Impaglia needs to obtain professional engineer to accompany him with plans to review and present the board.

Application will be carried to November 5, 2001 along with the applicant's engineer. Motion to carry this application until meeting of November 5, 2001 was made by Mr. Duffy, seconded by Mrs. Nicora. All members voted in favor.

OPEN TO PUBLIC: Mr. Jerry Hourihan stated that if it is not in compliance and just being brought to the board why is it still in existence? How come it is taking all this time? Shouldn't the area be roped off until approval?

Motion to adjourn this meeting of the Matawan Planning/Zoning Board, October 1, 2001 was made by Mr. Montfort, seconded by Mr. Strang. All in favor.

The next business meeting of the Unified
Planning/Zoning Board held on Monday, November 5, 2001.

PREPARED BY:


Pamela J. Pennipede, Recording Secretary

c: Board Members

Mr. P. Kramer, Fire Official
Mr. K. Smith, Board Engineer
Mr. J. Stockel, Board Attorney
Mr. L. Nebenzahl, Board Planner
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