

MINUTES
Andover Township Land Use Board

May 20, 2008

The regular meeting of the Andover Township Land Use Board was called to order at 7:30 p.m. on Tuesday, May 20, 2008 by the Chairman Stan Christodlous.

Present: Members Gail Phoebus, Class I
Bob Smith, Class III
Lois deVries, Class II
Stan Christodlous
Suzanne Howell
Michael Lensak
CeCe Pattison
Secretary T. Linda Paolucci
Professionals: Thomas Germinario, Esq.
Joseph Golden, P.E.
Russell Stern, P.P.

Absent: Gerald Huelbig
Diana Boyce
Ron Raffino, Alt.

FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT

OPEN TO THE PUBLIC – The Chairman opened the meeting to the public.

From the public Vic Capo of 23 Victoria Pines made comments regarding the Driveway Ordinance and stated that within the definition section of *Article I- §1-1 - Definitions – Usage* the driveway is currently contained in the definition of “street” and he has concerns that all of the language in the ordinance for “driveway” could be correlated to that definition in which “driveway” is part of “street” and applies to streets, roads, etc. Capo continued that it might make sense to have a separate definition for “driveway” and would propose that it be taken out of the definition of “street”. Germinario and Golden commented and stated that they would look into the context of the existing definitions.

Capo continued that he had a proposed definition of “driveway” to be “as a private road giving access from a public way to grounds abutting the public way and terminating at a building or parking area within such grounds”. He said that the reason for his speaking about “definition” is to discuss the second item which was his concern about converting a driveway to a road and previous discussion before the Board regarding protections that are in place for this. There was further discussion regarding this matter. Capo stated that the third item of concern was with regard to Belgian block on an existing driveway and suggests that this might become a nuisance to the Board and that maybe there should be an allowance for driveway edging that does not

require a variance against the ordinance. Christodlous spoke to Germinario and Golden and requested that they look into the matter for further consideration.

DUNKIN DONUTS – Block 124, Lot 24.02 – Application for Use Variance.

Completeness review. Bernd E. Hefe, Esq., 21 Bowling Green Pkwy, Lake Hopatcong, NJ stated that this meeting for the application is to be heard on “completeness”. He continued that the location of the property is at the intersection of the Sparta-Newton Road and Yates. This application was filed for a “Use Variance” only at this time and was set up as a bifurcated application to get relief from this Board with regard to the Dunkin Donuts use only and would be back in front of the Board on a complete site plan application should the Board grant the initial use variance. Hefe continued that he came before the Board in October and the Board requested additional information in order to be heard. He stated that the applicant submitted additional information, however, in accordance with the township engineer’s review letter, some additional items are still required. Hefe stated that all of the additional items that are required in the engineer’s report to be put on the plans can be submitted within a week and that the remainder of the items be addressed at the next hearing. Hefe requested that “completeness” and “public hearing” for this application be scheduled for the next meeting. Christodlous went over the policy of the Board and the fact that there are outstanding documents that the Board had been waiting on that was not received. Hefe answered that there is a timing problem with regard to this property as to the contract purchase which is the reason why he is requesting that both be heard at the next meeting.

Christodlous asked for comments from the Board professionals. Golden stated that, without going through the whole list, some of the information that is not shown on the documents provided with the application is necessary in order to determine whether or not the use is suitable for this particular location. Bob Tessier of Dykstra Engineering, 11 Lawrence Road, Newton, NJ stated that at the last meeting before the Board some things were listed without the benefit of Golden’s report, however, he does not feel that the items in the report are insurmountable to do and can be added to the plans. He stated that the only question is the soil logs for the septic system and to obtain a Department of Environmental Protection permit, these are the only two items that will need to be as a “subject to” condition as they will not be able to obtain them in the two week time period. The other items, he continued, are simple surveying and drafting items. Golden commented that relative to the septic system the concern is whether or not the soils are suitable for the system, however, he can accept a general report on the soils themselves as a condition for approval. He stated that there may be environmental concerns and is not sure whether or not there is an issue of a “Category 1 Stream” attached to the property. Hefe stated that they are prepared to address all of these issues and that any approval will be subject to an outside agency anyway. Tessier stated that he looked at the stream category and can provide information, but it is really a question of whether or not DEP is requesting a 50 ft. buffer or a 150 ft. buffer and if the applicant gets 150 ft. buffer they will not proceed with the site plan. DeVries asked Tessier if he was aware that the DEP just upgraded on the landscape project this week and if you go on the map for that lot you can now click on the wetlands which he had designated the 50 ft. buffer for and you can see the count of different species there, which also shows that the wetlands goes completely around the few houses that are existing there.

Christodlous stated that there are two issues tonight, does the Board wish to deem this application complete subject to some conditions and, secondly, does the Board wish to have a public hearing in two weeks. Hefele requested that the Board not deem the application complete tonight subject to conditions, but to leave the completeness for next month. Hefele requested that the application be heard at the next public meeting for both completeness and a public hearing. Christodlous reiterated that the question before the Board members is whether they would be willing to have the application heard for completeness and to advertise for a public hearing for the next month's Land Use Board meeting. Stern commented that he agrees with Golden that the information needs to be provided in advance of the meeting so that he and Golden can provide reports to the Board in time before the hearing. Hefele understood and told the Board that he has the information that needs to be provided and will put it on the plans as requested.

DeVries had questions about the buffer wetlands and whether or not information regarding the Environmental Impact Statement needed to be provided at the time of the application for the use variance. Germinario answered that the EIS can be waived for "completeness" purposes only and the use variance can be granted subject to the DEP approving a 50 ft. buffer. Hefele answered that the applicant does not have the answer to the DEP question, and that the applicant always proceeds at his peril as he gets the answer to the use variance first by the Board and then proceeds with the application in trying to satisfy the conditions of the site plan.

Christodlous polled the Board members as to whether or not the application should be heard tonight for "completeness only" or to come back next month for completeness and a public hearing, if found complete. Lensak stated that the Board should have a traffic expert do a study on their behalf in order to be able to look over a written traffic study report by the applicant's expert for comparisons. Hefele answered that he has an expert that will be testifying at the next meeting. Lensak stated that just testimony will not be acceptable and a written report is necessary. Hefele answered that if the issue is to have the applicant's report put into a written report it can be done, as all the work is completed. Lensak stated that the applicant needs to get the written report to the Board's expert in order to have it reviewed before the next meeting.

A motion was made for the Board to set up a date for completion and a public hearing of the application at the next regularly scheduled meeting. There was discussion whether or not the Board would require an independent traffic study. Germinario commented that a decision could be made at the June 17th meeting after hearing the applicant's expert's testimony whether or not the Board felt that an independent traffic study would be necessary. He stated that the hearing would then have to be carried to allow time for that expert to be appointed and to review testimony and report. Golden stated that after he receives the applicant's traffic study report, his office will do a report and an additional report may not be necessary as long as the initial report submitted by the applicant is complete. Stern and Golden stated that the additional information would need to be submitted for their review by May 30th 2008, such as the renditions of the site and an understanding of the functionality of the site which would require floor plans and elevations to show how the building will look and to get an understanding of the traffic. Christodlous stated that if the information is not submitted for review by May 30th, 2008 then a meeting to hear this application will not be held.

A motion was made to find the application incomplete for this evening by Howell. Seconded by Pattison. Approved: Pattison, Howell, Lensak, DeVries, Christodlous. Opposed: None. Motion carried.

A second motion was made to allow the application to be heard for completeness at the June 17, 2008 meeting and, if found complete, to also hear merits of the application at the same meeting. Seconded by Pattison. Approved: Pattison, Howell, Lensak Opposed: DeVries, Christodlous. Motion carried.

INFORMAL DISCUSSION – Constraints Ordinance To Amend Chapter 190, “Zoning”, §190-4 “Definitions” and §190-34 “Tables”; and Chapter 131, “Site Plan Review,” §131-3 “Definitions”, §131-6 “Performance Standards,” §131-8 “Preliminary Approval, Site Plan Details”; and Chapter 131, Article IV “Environmental Impact Statement,” §§131-11, 131-12, 131-13; and Chapter 159, “Subdivision of Land,” §159-6 “Minor Subdivision Plat,” §159-7 “Major Subdivision Plat,” §159-11 “Preliminary Plat,” §159-20 “Lots”; and Chapter 74, “Land Use Procedures,” §74-37 “Complete Applications, Decisions,” Of The Revised Ordinances of the Township of Andover, Regarding Requirements Pertaining to Environmental Impact Statements and Resource Conservation Calculations.

Christodlous stated that there was only one issue that came up at the Township Committee meeting with regard to the proposed Constraints Ordinance and that issue was “should an environmental impact study be required for a minor subdivision”. DeVries wanted to remind the Board that elsewhere in the revisions it states that the Board may “waive” the EIS, therefore, having it for every application is essentially what it already has. DeVries went over some of the details of the works of the Environmental Commission and stated that even if an application did not require an EIS, in applications where there are certain types of impacts, which are enumerated both in the Land Use Law and in our own ordinance, the Environmental Commission could still request that all of the information be supplied, but that the onus of the work would fall on the Environmental Commission and the cost of this work should be that of the applicant and not of the Environmental Commission.

Germinario discussed some of the reasoning behind ordinances that require EIS requirements and said there can be a minor subdivision project that can have more serious environmental impacts than a site plan or a major subdivision, it depends upon the particular property. He continued that one of the reasons why the change is being made in the context of the constraints ordinances is that an applicant is already required to fulfill the requirements of the constraints analysis by having to identify all the wetlands, floodplains, bodies of water, the slope areas, etc. and to identify an unconstrained building envelope. Germinario stated that it is understood that for certain properties an EIS may not be necessary and cause an unreasonable burden to the applicant, and said that this is the reason why the “waiver” is put in place.

Phoebus expressed concern for property owners that would not be able to afford the expense of having to obtain the information necessary for an EIS in order to come before the Board for a minor subdivision. DeVries stated that all the applicant would have to do is ask for a

waiver. Smith commented that at the last township committee meeting he did not believe that the issue of a “waiver” for an EIS statement was discussed enough. There was some further discussion regarding the right to “waive” or the Board allowing for a “limited EIS” instead of the full blown one. Christodlous stated that an applicant can always request a waiver, even if it is not specified in the ordinance.

Christodlous asked for comments from the Board members. Pattison and Howell commented that it should be clear to the applicant that a waiver can be requested. Germinario stated that if the constraints ordinance being discussed remains the way it is written, it will become part of the minor subdivision checklist and it will appear right on the checklist and the applicant can check off that he is requesting a waiver. He continued that the township engineer will consider it when doing his review of the application and if he believes it to be an issue, he will advise and comment to the Board.

Carla Kostelnik of the public, 50 Greendale Road, Andover, made comments with regard to the requirements that are already in place when someone is creating a minor subdivision and the things that still need to occur, such as soil erosion and sediment control, even without being before the Board. Kostelnik suggested that there is another approach to doing this, which is creating a density zone in the Maser Plan based on all the studies that were done. Germinario explained that this is an interim measure until the overall rezoning of the township is completed. Russell commented that this ordinance gives “site specific” data. There was further discussion regarding the requirements as outlined in the ordinance.

Christodlous stated that this ordinance is to go back to the Township Committee with the recommendation that “because of acknowledgment of simplicity of a waiver” the language should remain the way it is. A motion was made by Howell. Seconded by Phoebus. Approved: Pattison, Howell, Phoebus, Smith, DeVries, Lensak, Christodlous. Opposed: None

Phoebus requested that Germinario come to the Township Committee meeting on June 9th, 2008 to assist in the discussion of the constraints ordinance at that meeting. Germinario stated that he was available to attend.

INFORMAL DISCUSSION – Re-Examination Report – Area of Newton-Sparta Road. Christodlous stated that the members of the Master Plan Subcommittee are DeVries, Smith, Christodlous, Germinario, Esq., Semrau, Esq., and McGroarty, P.P. He continued that the particular area was discussed in response to some of the residents that came to a Board meeting and requested that the area be re-zoned. Stern commented that after his looking over the Draft Master Plan Reexamination Amendment he thought it would be prudent to put in a minimum parking lot set back from the adjoining property lines, if it is not already in the township codes. Germinario stated that Stern’s suggestion should go in under *Section D – Lot Area and bulk standards* – to add “Item A. – Minimum parking set back property line. Stern suggested to also include *driveways, traffic aisles*.

Christodlous noted that two of the major changes are that *no drive-ins will be allowed except for banks* and there will be *no retail sales allowed in the zone*. He stated that everyone felt that retail sales were not quite keeping in with the nature of the neighborhood. Golden

questioned the minimum lot size and stated that there are eleven lots and the minimum lot area is one acre. He continued that he knows that at least one of the lots is two acres, which means that ten lots encompass eight acres and does not know how many existing lots are therefore substandard. DeVries stated that it was agreed that if the lots had to be converted the applicants would have to buy additional lots and merge them. Stern stated that if the properties were undersize it would be a pre-existing non-conforming condition so it would not stop development on the 30,000 sq. ft. lot. Christodlous commented that the lots would be “grandfathered in” as they currently are, but if the owner wanted to put a bank on the property, for example, and it was less than an acre, the applicant would have to get more land. Stern commented that they could come before the Board for a variance if they did not have enough land. Germinario confirmed this to be true if the applicant could prove that they could not obtain more land, they could request a variance.

Germinario summarized that the permitted uses would be office building, including business professional, medical and administrative, along with the others, home office, childcare, essential services, houses of worship. Financial institutions, such as banks would be allowed, but banks with drive-thru would have to be conditional uses and the condition that is attached to those would be a 50 ft. landscape buffer between any drive-thru lane or ATM lane and the closest residential use or residential zone boundary. He continued that the permitted conditional uses also include expansion of existing single family detached residential dwellings as to allow the existing residences to expand without the necessity of a variance. The changes that Stern mentioned would be added to *Page 2 – Lot area and bulk standards: Add Item 8 – Minimum set back for parking areas, driveways and traffic aisles to property line (20 ft.)*

Germinario stated that in the Re-examination Amendment *Page 2 – B. Permitted accessory uses* – numbering would have to be corrected to *numbers 1 to 5* as number 2 was missing from the numeration.

Smith asked whether or not these changes would affect the applicant that appeared before the Board today and whether or not this would be an issue for them in creating a problem. Germinario stated that he already has alerted the attorney for the applicant of the proposed revision, however, it does not really affect the applicant in a direct sense because it is still a use variance as this is a residential zone and it will remain a residential zone until the actual ordinance itself is changed, not just the Master Plan. However, it will affect the decision on the merits of the use variance as when a use variance is considered one of the things you look at is the Master Plan, especially recent Master Plan amendments under what is called the *Medici criteria*, when there has been a recent Master Plan amendment that doesn't allow the use that is being sought as a part of a use variance, it carries some weight against the application. Stern stated that even if this was not adopted, the applicant would still have to deal with the hurdle even as presented in the 2007 Master Plan Re-examination report where it states that the “c/b district”, still does not allow a drive-thru.

A motion was made to adopt the Re-Examination Amendment dated April 17, 2008 and revised May 16, 2008, with suggested changes discussed this evening, by Michael Lensak. Seconded by Lois DeVries. Approved: Pattison, Howell, Phoebus, Smith, DeVries, Lensak, Christodlous. Opposed: None. Motion carried.

MINUTES – March 18, 2008. A motion was made by Phoebus, seconded by Smith to approve the minutes. All in favor: Aye. Opposed: None. Motion carried.

MINUTES – April 17, 2008. A motion was made by DeVries, seconded by Smith to approve the minutes. All in favor: Aye. Abstain: Phoebus. Opposed: None. Motion carried.

MINUTES – May 6, 2008. A motion was made by DeVries, seconded by Smith to approve the minutes. All in favor: Aye. Abstain: Pattison and Phoebus. Opposed: None. Motion carried

VOUCHERS - See Schedule A. Motion was made for approval. A motion was made by Lensak, seconded by Phoebus to approve the vouchers submitted. All in favor: Aye. Opposed: None. Motion carried.

MATERIAL RECEIVED, GENERAL INFORMATION - See Schedule A.

OLD/NEW BUSINESS - Howell mentioned that it should be stated on the agenda that people from the public coming before the Board to make statements should step up and state their names and address to be put under the **OPEN TO PUBLIC** section.

Golden stated that he created a document a while back that is relative to the Procedure and Protocol on how we should proceed and perhaps it should be revisited by the Board. He stated that he recalls that there is a provision in the document that with the Board's approval, if an applicant comes in and is deemed "incomplete" that the Board can, if the agenda allows, grant the applicant the opportunity to be heard for completeness and a public hearing at the same time on a Board vote. He stated that the thought behind this is that a completeness review has already been done and the changes would be of a minor nature and that the professionals will have enough time to review it because the plans have been seen once already. He is not sure how this will work for all the professionals, but it is at the Board's discretion. Christodlous suggested that we discuss this matter at the next meeting.

Phoebus would like the Land Use Board to get to the Township Committee a copy of the draft of the Growth Share Ordinance by Chuck McGroarty, Special Planner for the township. Christodlous stated to put on the agenda for the next meeting.

Golden stated that the Board should review the proposed revised Escrow Fee Ordinance. Christodlous said this should be on next month's agenda. Golden also discussed issues with soil erosion review and problems with drainage. Golden stated that there are new regulations where the engineer has to witness soil logs, seepage pits and various measure that are needed to mitigate this, the escrow fees for soil erosion review that is now in place is inadequate because of this. There was discussion regarding escrow fees needing to be added for well testing also when the ordinance gets approved.

Christodlous requested that Golden state the status of Dina's LLC application. Golden stated that after his many requests to the applicant, he went to the property to witness the soil logs for where the proposed system is to be. Golden stated that everything that the applicant proposed from drainage prospective behind the building is "off the table". Golden said that they met with the County on two or three occasions and what the County is currently doing is supporting a new crossing across the Newton-Sparta Road to get the water off of Eddie's site and across the Newton-Sparta Road. He continued that what was discovered, which might be partially attributable to the rising in the Limecrest Valley, is the old system that Eddie had in place is definitely not working, therefore, the applicant has no correct solution right now for drainage. The applicant proposes to be presenting the Board with a new solution, which is contingent upon getting a discharge permit from the DEP and/or permission to discharge from the DEP, which he is fully expecting to receive because the water will be taken from what is already discharging across the road out of the old system and to be discharged at a new location that has a higher invert that will allow the water to get off the site. Golden explained that this is also being dictated by Andover Transmission who is having significant problems with water coming through his wall and freezing, etc. Therefore, he continued, Dina's LLC is not approved as he is not in conformance to the Resolution as he has done some things different to the site than was actually approved. Christodlous questioned how this matter should be handled. Golden stated that there are some issues there that are beyond the applicant's control, but he still needs to resolve the issues or the permits will be pulled. There was some further discussion regarding the requirements of this application.

Lensak asked that the professionals recommend names of various experts to produce the traffic report for the Dunkin Donuts application, should the attorney require it in the future. Stern recommended John Desch and Harold Maltz and Golden recommended Michael Marise.

ADJOURNMENT - Time 9:48 p.m. A motion was made by Lensak, seconded by Phoebus, to adjourn. All in favor. Opposed: None. Motion carried.

Respectfully submitted,

Stan Christodlous, Chairman

T. Linda Paolucci, Secretary