

October 16, 2007

The regular meeting of the Andover Township Land Use Board was called to order at 7:35 p.m. on Tuesday, October 16, 2007 by the Chairman Stan Christodlous.

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| Present: Members | Gerald Huelbig, Class II Gail Phoebus, Class III Stan Christodlous Michael Crane Lois deVries Suzanne Howell Michael Lensak |
| Attorney | Thomas J. Germinario, Esq. |
| Engineer | Joseph Golden, P.E. |
| Planner | Russell Stern, P.P. |
| Secretary | Mary Spector |
| Absent: | Thomas Walsh, Ron Raffino, Alt. 1 |
| Late Arrivals: | Diana Boyce (7:40 p.m.) |

FLAG SALUTE - RULES - OPEN PUBLIC MEETINGS ACT

OPEN TO PUBLIC – Dan Freed announced the public hearing on the open space plan and recreation at the Open Space Committee’s meeting next week. He referred people to the open space survey form on the Township website.

BLACKBURN/ROBERTS – Bl. 38, Lot 5.03, R-0.5 zone, Hemlock Ave.; “c” variance for steep slopes. The Chairman asked for consideration of completeness of the application. Golden stated he recommends that the application be found complete. DeVries commented that she could not find flags on the site and that the area where the septic field is placed had not been trimmed. She noted she could not do an adequate site review. Megan Ward, Esq., attorney for the applicant, stated they will address those matters. A motion was made by Phoebus, seconded by Howell, to find the application complete as submitted. In favor: Crane, Howell, Huelbig, Phoebus, Lensak, Christodlous. Opposed: deVries. Abstained: Boyce. Motion carried.

Ward described the proposed application. She stated it is an existing lot, under one acre in size. A variance for the site was approved in 2002. She noted this applicant is here to request a variance for steep slopes. There are no other variances required. Germinario noted the variances approved in the prior have expired. The applicant’s engineer, John Miller of Suburban Consulting, Mt. Arlington, NJ was sworn in. He gave his credentials to testify as an expert witness noting he has been licensed as a professional engineer since 1979 and has testified before many local boards. The Board accepted his qualifications to testify. Miller stated he had received the Board Engineer’s report. He stated the property is adjacent to Lake Lenape, not far from Old Creamery Rd. The prior owner had done limited site clearing, installed the septic and the driveway access. Miller stated most of the site is steeply sloped, in fact it is a rock outcropping. Miller referred to the steep slope ordinance citing the purpose as described there in.

He stated that the design factors in the current project were undertaken with a consideration to minimize the impact on the topography. He pointed out the driveway has good sight distance with 500 ft. in one direction and 250 ft. in the other. He stated the existing septic is on the lawn area. It has the approval of the Sussex County Health Dept. Miller noted the steep slopes are bare rock without soil and trees. He further stated there will be very little siltation. He stated the drainage from the site is identical pre and post development.

Discussion followed concerning the percentages of disturbance as calculated according to the steep slopes ordinance. Ward agreed they would go through the professionals' reports point by point as requested by the Chairman. She stated they do agree with the table presented in Golden's report concerning percentages of disturbance. The slope analysis plan dated 10/16/07 was marked as Exhibit A-1. Miller confirmed it includes a cross section as requested by the Board Engineer. He enumerated the elevation levels and noted the lower level of the house has two bedrooms. He stated the house will protrude 30 ft. over the ledge. Miller described how they determined the building height. He stated they are not seeking variances on the height. They will provide the figures. Germinario referred back to item #3 in Golden's report about moving the house back from the lake's edge. Miller stated moving the house back would not reduce the total disturbance of the site. He noted they may need to rotate the house several feet to comply with DEP regulations regarding a 50 ft. separation from the water's edge. He pointed out that putting the garage underground would require that more rock be removed. Ward noted the architect has a series of photos they will distribute for viewing.

Golden presented Board exhibits of photos he had of the site. Exhibit B-1 is an aerial view of the site taken from the State I-Map system. Exhibit B-2 was taken from across the lake; B-3 and B-4 show side views of the slope. There was discussion concerning the stakes on the site. DeVries stated she only found one stake. Miller noted the site was staked awhile ago. The Sussex County septic permit for the site was marked Exhibit A-2; it is for four bedrooms. Miller stated they had to redesign the tank and pump. The septic field is in place. The system was reapproved January 23, 2007. Ward stated they would correct the notes on the plans..

There was discussion about drainage from the site. Exhibit A-3 was marked. It shows drainage areas. The pre-condition drainage was outlined with a heavy black line and post-condition was shown with a thin dotted line. Miller stated they come out to the same numbers. He stated there would be no increase in drainage to Hemlock Rd. Golden disagreed because he stated the concentration of runoff will be more intense. He noted it would help with the calculations if the contour lines on the plans were clearer. Miller stated they have not provided calculations supporting the proposed swale design. He agreed they will provide a guiderail along the driveway as recommended in Golden's report. DeVries asked about the removal of soil from the site and noted a tree inventory would be required if rock and soil is to be removed. Germinario pointed out a soil removal permit is required for a single family house if over 50 cu. yds. are being removed.

The applicant's architect, Jeff Flannigan, was sworn in. He stated he graduated from Cooper Union in 1992 with a degree in architecture and has been licensed since 1995. His qualifications were accepted by the Board. Flannigan submitted photos he had taken that were marked Exhibits A-4 through A-10. He stated A-4 was taken in the spring of '06, looking up the

driveway. He further described the exhibits: A-5 shows the flat part of the property; A-6 depicts the septic field area; A-7 shows a rock outcropping and A-8 is another view of the driveway; A-9 shows the rock outcropping closer to Hemlock Rd.; and A-10 gives a view of the lake. The architect's plans consisting of 8 sheets was marked Exhibit A-11. Christodlous asked about the location of the house. Flannigan pointed to the proposed site on the plans. There was further discussion about the location of the house. A photo marked Exhibit A-12 shows stakes marking the front line of the house.

Flannigan stated a large rock outcropping hampers the moving of the driveway location. Golden stated he did not agree and he stated how it could be moved. Flannigan described the house design. He pointed to Sheet A-2 of Exhibit A-11. He showed the main bedroom is on the first floor. The first floor is at elevation 514 in the flat area. The basement level is over the ridge so as not to have to remove too much rock. The basement comprises the back half of the house. It consists of two bedrooms and a bath. Flannigan stated moving the house back would require more blasting. Three more exhibits were presented of computer renderings. Exhibit A-13 shows the right side of the house with a staircase to the lower level. A-14 shows the front of the house and garage and driveway area. A-15 shows the rear of the house facing the lake. Flannigan stated there is 2,800 sq. ft. of habitable space, 550 sq. ft. of basement and 210 sq. ft. utility room. He explained the house design for the prior applicant was for four bedrooms. Stern asked about the half circle shown on the renderings. Flannigan stated this is a terrace off of the first floor.

The Board Planner's report was reviewed. Ward stated she thought the lots 5.03 and 5.05 had been merged. She confirmed the utilities will be underground. They do concur with the slope ordinance shown in Stern's report and will revise the plan accordingly. Flannigan agreed with the report that the site is limited because of the steep slopes. They want to work with the existing rock outcropping. There was discussion about possible conservation easements. Stern noted logical areas would be between the house and the lake and between the septic field and the road. He suggested if the application is carried they should submit plans showing proposed easement areas. There was further discussion about moving the house back on the site. Flannigan stated the further back it is located, the higher it will be on the site. Lensak noted if the house can be moved on the site, the applicant does not have a hardship. He questioned whether the proposed location is the only one that will work. He thought the house could be put on the site without invading the slope. Flannigan referred to Exhibit A-1 and stated that wherever the house is sited there will be a slope issue. He did not see how to build a house of this size without impacting slopes. Lensak suggested the house be moved to the flatter area and pivoted off the slope. He noted the house could be redesigned to fit with less disturbance.

RECESS – The Chairman called a recess from 9:30 p.m. to 9:40 p.m.

Golden stated there are multiple options for placing the house on this site. He noted to move the house back and put the garage underneath would look odd from Hemlock Rd. He stated they can move the right corner back 6 ft. and move the other corner 3 ft. back. The house would follow contours and would be kept below the tree lines so as not to stick up so high. This adjustment would minimize the lakeside effect. He noted the architect has done well to fit the house into the landscape. DeVries pointed out this solution is primarily addressing the aesthetic considerations. Golden stated with this location the house becomes part of the rock rather than

intruding above the ridge line. He noted the slope disturbance would be similar in either case and this way there is less blasting required.

The Chairman opened the meeting to the public for questions. Carla Kostelnik asked about the age of the subdivision. She noted people have been paying taxes on these lots for a long time. She asked about how conservation easements are enforced and whether they affect property values. She stated she has a problem with trying to save the view of people across the lake in a developed area. There were no further comments from the public. Boyce stated she has concerns in that she would like to see testimony from the applicant that is accurate and complete. She asked for written reports to clarify the applicant's position. Lensak asked about the relative importance of the issues raised here: steep slopes, hardship, aesthetics. Stern pointed out this application could be considered a c2 variance for promoting the purposes of the land use law by fitting the house into the topography. They should weigh the benefits v. the detriments. For example it will not penetrate the canopy. They also need to consider the negative impacts. Germinario noted the testimony has been focused on development on the steep slopes. That has not justified the c1 variance but there could be a compelling argument for the c2.

Christodlous asked the Board members for comments. Lensak stated he would like to see a rendering of this house and of a house on top of the ridge so that he could see the difference. DeVries stated she had no comment. Phoebus noted it is a beautiful design and to move the house as Golden described would only make it more beautiful. She emphasized her concern that the drainage off the driveway should not impact the township road. Huelbig stated he also is concerned about washouts on the roads and neighboring properties. He stated this lot, which was created in 1930 according to the deed, would be even more feasible with the modifications as described. Huelbig noted it was not his intention to stop development such as this one with the steep slopes ordinance. Howell stated she would like to see the modifications as proposed by Golden. She agreed it looks more like a c2 variance. Crane agreed that repositioning the house would solve problems. They should work on the potential drainage problems and show the Board where water from the driveway would go. He was against imposing a conservation easement on this lot as he thought the owners should have access to the lake.

Christodlous stated he would be hesitant to vote on this application tonight. He recommended that it be carried to the next meeting. The applicant agreed to carry the hearing to the meeting of November 20, 2007 without further notice.

DRIVEWAY ORDINANCE – Golden advised the Board of the handouts he distributed including a checklist for the proposed driveway ordinance and a sheet of drawings referred to as Figure 1. He noted the Figure 1 drawings illustrate conditions that are described and referred to in the ordinance. Howell questioned the wording in Section 68.1 Purpose and stated it should be rewritten. Lensak asked for clarification about the sight distance. Golden noted it is taken from a point 10 ft. from the edge of the pavement and at the centerline of the driveway. Lensak also pointed out there is no such word as “irregardless.” There was further discussion on suggested changes to the ordinance. Christodlous asked if it applies to major and minor subdivisions. Golden stated the applicants would have to show the location of each driveway on new subdivisions.

DeVries suggested that a tree inventory and tree replacement requirement be added to the ordinance or that there be a referral to the soil erosion/sediment control ordinance that requires this. Golden noted he has heard of an ordinance in Warren County that requires an inventory of trees within the right-of-way. He thinks the Township should do a tree ordinance separate from the driveway ordinance. He noted according to this proposed driveway ordinance no driveway can be installed without a permit even if it does not access a structure. Christodlous asked about a limit on the number of lots with access from a common driveway. Golden noted four lots off a common driveway is a frequently used limit. There was further discussion about a lot limitation for common driveways. Germinario suggested that the limitation not be included at this time. Christodlous asked whether they could specify that the guiderails be wood rather than metal. Golden noted the State has strict regulations on guiderails. He would have to research that question. Germinario recommended that Golden make corrections as suggested tonight and forward the ordinance to the Township Attorney. A motion was made by Lensak, seconded by Crane, to recommend to the Township Committee that the driveway ordinance be adopted as amended tonight. In favor: Crane, Howell, Huelbig, Phoebus, DeVries, Lensak, Boyce, Christodlous. Opposed: None. Motion carried.

MINUTES - September 18, 2007. A motion was made by Howell, seconded by Phoebus, to approve the minutes as distributed. In favor: Crane, Howell, Huelbig, Phoebus, DeVries, Boyce, Christodlous. Opposed: None. Abstained: Lensak. Motion carried.

VOUCHERS - See Schedule A. A motion was made by Phoebus, seconded by Huelbig, to approve the vouchers submitted. All in favor. Motion carried.

OLD BUSINESS – DeVries asked about the Meda litigation settlement. Germinario stated the parties agreed that the resubdivision ordinance would not apply to the Meda application.

MATERIAL RECEIVED, GENERAL INFORMATION - See Schedule A.

RESOLUTIONS – Resolutions adopted during this meeting are made a part of these minutes by referral to the specific file.

ADJOURNMENT - Time 10:45 p.m. A motion was made by Lensak, seconded by Howell, to adjourn. All in favor. Carried unanimously.

Respectfully submitted,

Stan Christodlous, Chairman

Mary Spector, Secretary