



**Township of Freehold**  
OFFICE OF THE PLANNING BOARD  
One Municipal Plaza, Freehold, NJ 07728

**REGULAR MEETING MINUTES**  
**February 16, 2017**

The Regular Meeting of the Planning Board was called to order by Mr. Gatto on Thursday, February 16, 2017 at 7:00 p.m. at the Freehold Township Municipal Building, One Municipal Plaza, Freehold, New Jersey. Mr. Gatto read the Notice of the Open Public Meetings Law.

**Present:** Mr. Ammiano, Mr. Bazzurro, Mr. Gatto, Mr. Kash, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk, Mr. Coburn and Ms. Kurtz.

**Absent:** Mayor Preston and Mr. Asadi.

**Also Present:** Frank Accisano, Esq.; Paul Phillips, Township Planning Consultant; Timothy P. White, Township Engineer and Danielle B. Sims, Administrative Officer.

Mr. Gatto called the meeting to order. There was the Pledge of Allegiance.

A motion to approve the minutes of the September 1, 2016 meeting was made by Mr. Shortmeyer, seconded by Mr. Kash and passed with the following roll call vote: Aye: Mr. Ammiano, Mr. Bazzurro, Mr. Gatto, Mr. Kash, Mr. Shortmeyer, Mr. Bruno, Mr. Kirk, Mr. Coburn and Ms. Kurtz.

**NEW APPLICATIONS:**

**Interpretation/Appeal of Zoning Officer's Decision # 001-17**  
**Open Minded, LLC – Ruthann Buccheri**  
**Block 44, Lot 3 – 843 Route 33 East**

Appeal the need to file a site plan application and the Zoning Officer's determination of denial (see Zoning Officer's Notice of Zoning Denial dated 12/7/16), at an existing vacant space in a multi-tenant shopping center/strip mall.

Frederick Neiman, Esq. appeared on behalf of the applicant. Mr. Accisano stated he reviewed the proof of notice submitted by the applicant which was correct in form, published and served in a timely fashion so the board had jurisdiction to conduct a public hearing. Mr. Neiman had no objection to the exhibits marked into evidence. Mr. Gatto read the review letters into evidence.

Mr. Gatto addressed the applicant's attorney asking if there will only be retail use or will the applicant allow for smoking and/or hookah lounge. Mr. Neiman confirmed that it is a B-2 retail use, exclusively. He stated that no site changes are proposed. The store's sign will be replaced but will be in conformance with the Township Ordinance. If the sign does not conform, the applicant would be required to come back to the Board.

Mr. Gatto asked if there were any questions from the public. A motion to close the public hearing was made by Mr. Ammiano, seconded by Mr. Kash, all in favor, aye. Mr. Ammiano moved that a positive resolution be prepared, seconded by Mr. Kash, all in favor, aye.



**Site Plan with Waiver of Site Plan Detail # 585-2-16 and “D” Variance #014-16  
Freehold Shopping, LLC**

**Block 50, Lot 25 – 3691 US Highway Route 9**

Proposal to renovate the shopping mall façade and replace the former Freehold Music Center with an Aldi’s Supermarket and future restaurant.

Freehold Shopping, the applicant, has requested that the application will be carried to April 6, 2017, without further notice. The Board has no objection to this request and the matter was carried.

Ms. Kurtz was seated for Mr. Preston.

**Preliminary and Final Major SD # 856-2-16**

**Fitzpatrick, John**

**Block 105, Lot 42 & 43 – Clover Court**

Proposal to subdivide two existing lots into four new lots with two new homes being proposed. One of the lots was subject of a previous subdivision by the same applicant (SD# 856-04 & SD#856-1-06).

Gerald Sonnenblick, Esq. appeared on behalf of the applicant. Mr. Accisano stated he reviewed the proof of notice submitted by the applicant which was correct in form, published and served in a timely fashion so the Board had jurisdiction to conduct a public hearing. Mr. Sonnenblick had no objection with the exhibits that were marked. Mr. Gatto read the review letters into record.

The following witnesses were sworn: John Fitzpatrick, homeowner/applicant; Parker Fitzpatrick, son of applicant; John Ploskonka, Concept Engineering; Allison Coffin, Planner for the applicant; Paul Phillips, Phillips Preiss and Grygiel, Township Planning Consultants; and Timothy P. White, Township Engineer.

Mr. Sonnenblick explained that about nine (9) years ago the applicant received an approval for subdivision under SD# 856-1-04. He said that what they are looking to do now, does not affect the subdivision previously granted. However, he feels the intent doesn’t affect this application since it meets the zoning ordinance, the Master Plan and the purpose of planning, which he stated would be explained by Ms. Coffin. Mr. Sonnenblick reassured the four proposed lots all would be conforming. And they are not looking for relief from the previous resolution.

John Ploskonka testified as an Engineer only: Additional exhibits were marked. He stated that he has worked with the family since he was hired to prepare the first subdivision in the 1980’s. The site is located off of Jackson Mills Road on Clover Court, near the Ocean County boarder. There was also a subdivision, Winding Woods, that was clustered adjacent to Clover Court, where the Fitzpatrick’s had 500’ of frontage on this road. Mr. Ploskonka described that there was a 9+ acre lot where about 7.3 acres of property in the RE-zone as part of the Fitzpatrick’s lot 43, the remaining portion of the lot was in the R-40 zone (split zone). In 2007, the Planning Board granted approval to subdivide the property to two lots, along the zone line. A small portion of the smaller lot is proposed to be taken to help create the four conforming lots. Mr. Ploskonka agrees with Tim White’s comments in his review letter with the exception of the comment regarding the previous subdivision.

Mr. Gatto confirmed that a portion of the previously approved subdivision (lot 43) was a part of this proposed subdivision and that the resolution stated that there was to be no further subdivision. In the resolution, it was noted that no other property could be acquired to make it conforming. Mr. Ploskonka said it was to his recollection that the comment was relative to the lot with the uplands,



created on Winding Woods in the RE-zone, where they could not acquire additional land to make the 7.3 acre lot conforming.

Mr. Gatto asked what size houses were being proposed. Mr. Ploskonka did not prepare that information but noted that Mr. Fitzpatrick's current house that is on about an acre of land and is about 4,000 s.f. and a 5,000 s.f. could possibly fit without need for any variance relief.

Allison Coffin, PP had previously testified before the Board and was accepted as an expert Planner. She presented an exhibit showing the photos of the houses that exist currently on Clover Court and on Winding Woods Way. After doing a quick calculation, she estimated that a 5,000 s.f. house would fit without a FAR issue, but a house like that would not fit in character with the houses on the street. Ms. Coffin stated that she interviewed the planner that testified for the previous application but they could not recall why the Board imposed the condition that the lots could not be further subdivided. She noted that neither lot could be subdivided to create a conforming lot and therefore would not be able to be further subdivided. Ms. Coffin described the previously approved subdivision and noted the condition restricting further subdivision, however was uncertain to the reason(s) for the condition. However, lot 42 was not part of the previous subdivision and now the conditions have changed. This application would subdivide lots 42 and 43 into 4 new lots in the R-40 zone, for two new single-family homes. All the proposed lots would be fully conforming, with the exception of an existing side yard setback condition with the existing house on lot 42 and would not be impacted by the proposed subdivision application. No new variance relief is being requested. Conditions on an approval could be imposed by a Board as long as they are reasonable and advance the purposes of zoning. This subdivision is in accordance with what the Freehold Township Land Use Ordinance intends in the R-40 zone and is consistent with the Township's Land Use Ordinance and MLUL, provide for an appropriate density and appropriate use of the land. Ms. Coffin stated that these reasons make the previous condition restricting the further subdivision, no longer reasonable, due to the changed circumstances of including lot 42 with the application, where it was previously not part of the application.

Mr. Gatto questioned how the circumstances changed and Ms. Coffin responded, stating that they are now including Lot 42

Mr. Bazzurro inquired about what exists on lot 42 and if only lot 42 was subdivided, how many conforming lots could be created. Ms. Coffin stated two lots. Mr. Bazzurro asked how long has Mr. Fitzpatrick owned lot 42. Mr. Sonnenblick answered he has owned it for at least 30 years. Mr. Bazzurro stated that in fact, Mr. Fitzpatrick did have possession of lot 42 at the time of the previous application. Mr. Bazzurro was on the Board at the last subdivision hearing and the Board had reasons as to why the Board imposed the restrictions as noted in the resolution. He also stated that the resolution says that lot 43 cannot be added upon because they didn't have the ability to obtain additional land. Mr. Sonnenblick said he understood that is what the resolution said, but it was not the case. Mr. Bazzurro stated he would like to hear the recording of the previous hearings to hear what the Board's reasons for the conditions were.

Mr. Gatto asked Mr. John Fitzpatrick if he recalled that there was discussion about a curb cut being left on Clover Court for a future lot. Mr. Fitzpatrick did recall, but not the details. He stated that there are four curb cuts (two additional curb cuts) and this was always the intention. He clarified that his existing house was there at the time of the previous application.

Mr. Gatto gave his recollection regarding the previous application. He said that because there was a curb cut existing on Clover Court, it was always the intention to have another lot. Therefore the Board



granted the relief in giving the new lot (with new access on Winding Woods Way) and put the restriction on Lot 43 from being further subdivided. He also said that two conforming lots could be created from lot 42 (without touching lot 43) and that the applicant is just looking to gain an extra lot-unjust enrichment. He was not sure that the proofs have been made to justify it.

Mr. Accisano clarified that the portion of land proposed to be taken to help create a conforming lot adjacent is solely from lot 43. Mr. Sonnenblick said that this application has nothing to do with Winding Woods Way and this only has to do with Clover Court. Mr. Gatto took exception to that as there was significant testimony regarding the size of the house.

Mr. Ploskonka stated that from an engineering standpoint, there would be no effect on the houses on Winding Woods Way and they are being consistent with the houses on Clover Court. Ms. Coffin stated that from a planning standpoint, there is no effect on the residents on Winding Woods Way.

Mr. Sonnenblick summarized and stated that if there was a land owner looking to subdivide a lot and one of the lots would become a non-conforming lot, the first question the Board would ask is if the applicant attempted to gain property from an adjacent property owner. He said that this is the case here, that there is land on Lot 43 available to make the proposed new lots conforming. The only concern being raised is that there is a condition (from the previous approval) that they cannot further subdivide, and that he is not sure that the condition was proper or even legal.

Mr. Accisano, asked if during the previous hearing were lots 42 and 43 under common ownership. Mr. Sonnenblick confirmed this. Mr. Accisano reiterated that the resolution states that the applicant testified that they were not able to gain additional property, but the adjacent lot was in common ownership. Mr. Sonnenblick responded that this was not an issue as Mr. Fitzpatrick's lot always met the requirements of the R-40 zone and was not sure why this was included in the resolution.

Mr. Phillips noted that the Board put the restriction on both lots (43 and 43.01), not just one. He noted he was not around during the previous application, but wanted to point out that under the RE zone (10 acre minimum) and notwithstanding the split-zoning, the applicant was only entitled to have one lot, which was already non-conforming and the Board granted two lots. He felt that this could be why the Board put the restriction on the lots.

Mr. Gatto asked if there would be a hardship if lot 42 were subdivided into two lots, creating a total of three total lots. Ms. Coffin responded that there would be two conforming lots from lot 42 and there would be no hardship. Ms. Coffin said that aside from the resolution restricting the further subdivision, there wouldn't be any reason that the Board would not be able to grant the requested subdivision. She stated Freehold Township determined that 40,000 s.f. lots are appropriate for this zone.

Mr. Sonnenblick said that Mr. Fitzpatrick purchased 30 acres some years ago. Nine homes would be eligible, approximately 7 acres for the lot on Winding Woods Way and then eight houses on Clover Court on the remaining 23 acres. Mr. Gatto stated that they are really here to get relief from the condition of the previous resolution. Mr. Sonnenblick said that there is no adverse effect of this application.

Ms. Coffin clarified that the previous resolution discussed the size of the house, but Mr. Fitzpatrick's house was already built, in her opinion, the previous resolution was really commenting on the size of the house on Winding Woods Way.

Mr. Sonnenblick stated that there is nothing precluding this subdivision from being approved. There is nothing that is not appropriate, there is no adverse effect and they were not asking for any variance relief. The environmental issues all refer to lot 43.01 and not lot 43.



Mr. Bazzurro agreed that a land owner should be able to do whatever they want to do with their land. He read the minutes and still could not understand the reasons for the restriction. Before he rendered his decision he wanted to hear the recording to listen to the reasons for the restriction. Lot 43 was unusable in the rear (fronting on Winding Woods Way) and the Board allowed the subdivision of lot 43.01. He asked to carry the application to give Board members the opportunity to listen to the recordings.

Mr. Gatto asked if there would be any objection that the Board carry the application to allow the Board to listen to the tape. Mr. Bazzurro made a motion to carry, was seconded by Mr. Ammiano. Mr. Gatto announced that the application will be carried to May 18<sup>th</sup>, 2017 without further notice.

Mr. Accisano confirmed that the application would be carried to May 18<sup>th</sup>, 2017 at 7:00 pm without further notice, and the applicant reserves the right to present additional testimony.

#### DISCUSSION:

Mr. Gatto stated that there was a Monmouth County Stakeholders meeting for the proposed CR 537 Improvements. It was noted that the Rt. 537 Corridor Improvements by the County are fully funded and construction is expected to begin around 2021-2023. Mr. Gatto asked if the Engineering or Planning offices could talk to Daria Jakimowska to see if she can do a presentation of the proposed improvements (about 15 minutes) to go over the plans-not for public questions, only for Board questions. Mr. Gatto would like this presentation before the MACW/Roseland hearing. Mr. Accisano asked if they could get an extension of time for MACW applications.

Ms. Sims reviewed the upcoming agenda for March 2, 2017.

Mr. Gatto asked Mr. Phillips to look at the ground mounted solar array summary he provided while reviewing the upcoming application

#### ADJOURNMENT:

There being no further business, a motion was made to adjourn the meeting and passed unanimously. The meeting concluded at 8:25 p.m.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "R. Shortmeyer".

Robert H. Shortmeyer  
Secretary