



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

REGULAR MEETING MINUTES
November 9, 2017

The Regular Meeting of the Planning Board was called to order by Chairman Gatto on Thursday, November 9, 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: “In accordance with the Open Public Meetings Law, (c.231.P.L. 1975), this meeting was announced by posting the notice on the bulletin board reserved for that purpose; by mailing such notice on July 24, 2017 to the official newspapers of the Township and by filing such notice with the Township Clerk.”

Present: Mayor Preston, Mr. Ammiano (late), Mr. Bazzurro, Mr. Gatto, Mr. Kash, Mr. Shortmeyer, Mr. Bruno, Ms. Jahn (late), Mr. Asadi and Mr. Levy.

Absent: Mr. Coburn and Ms. Kurtz.

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

There was the Pledge of Allegiance.

MINUTES:

The minutes for November 3, 2016 were carried to the December 7, 2017 meeting.

RESOLUTIONS:

**DENIAL - Preliminary & Final Major Site Plan # 859-14 (Phase II)
Conditional Use “D” and Bulk Variance Application # 029-16
Cracker Barrel Old Country Store, Inc.
Block 70, Lot 20.07 – 288-308 West Main Street (Freehold Marketplace)**

**DENIAL - Preliminary and Final Major Site Plan # 859-14 (Phase I)
JDN Real Estate – Freehold, LP
Block 70, Lot 20.07 – 288-308 West Main Street (Freehold Marketplace)**

**DENIAL - Soil Removal Application # SR-08-16
JDN Real Estate – Freehold, LP
Block 70, Lot 20.07 – 288-308 West Main Street (Freehold Marketplace)**

Mr. Shortmeyer made a motion, seconded by Mr. Kash to approve the resolution of denial. The motion passed with the following roll call vote: Mr. Gatto, Mr. Kash, Mr. Shortmeyer, Mr. Asadi and Mr. Levy. Mr. Bazzurro and Mr. Bruno voted against the resolution of denial.

Mr. Gatto disqualified himself from the following resolutions for DCH. Mr. Kash called the resolutions for vote. Ms. Jahn arrived to the dais.



**Preliminary and Final Major Site Plan # 771-1-16 and Var. # 024-16
DCH Investments, Inc. - Nissan/Volkswagen
Block 65.01, Lot 15 – 4039 and 4041 Route 9 North**

Mayor Preston made a motion, seconded by Mr. Shortmeyer to approve the resolution. The motion passed with the following roll call vote: Mayor Preston, Mr. Kash, Mr. Shortmeyer, Mr. Bruno, and Ms. Jahn.

**Soil Removal/Fill Permit Application # SR-01-17
DCH Investments, Inc. - Nissan/Volkswagen
Block 65.01, Lot 15 – 4039 and 4041 Route 9**

Mayor Preston made a motion, seconded by Mr. Shortmeyer to approve the resolution. The motion passed with the following roll call vote: Mayor Preston, Mr. Kash, Mr. Shortmeyer, Mr. Bruno, and Ms. Jahn.

**Corrective Resolution for Preliminary and Final Major Site Plan # 300-1-16 and
“D” Use Variance Application # 019-16
Lester Glen Chevy
AGK Chevy, LLC c/o Lester Glenn Auto Group (Owner/Applicant)
Block 70.05, Lot 14 – 3712 Route 9**

The corrective resolution was carried due to lack of quorum.

NEW APPLICATIONS:

**Preliminary and Final Major Site Plan # 525-2-17 and Variance #017-17
Bank of America – Kiosk ATM
Block 85.11, Lot 17 – 510 West Main Street**

Proposal to upgrade the drive-thru ATM at the existing bank to a Kiosk ATM.

Diane Hickey, Esq. entered her appearance on behalf of the applicant. Mr. Accisano said 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 has jurisdiction to conduct a public hearing. Ms. Hickey had no objection to the exhibits that were marked and Mr. Gatto read the review letters into record. The following witnesses were sworn: James Kinosian, PE, Stonefield Engineering and Design; Paul Phillips, Phillips Preiss and Grygiel, Township Planning Consultant; and Timothy P. White, Township Engineer.

Mr. James Kinosian gave his credentials and was accepted by the Board as a professional licensed engineer. An additional exhibit was marked. He described the proposed replacement ATM machine. The current ATM will be replaced with a new version. The result will be a reduction of number of signs, from what was approved by the Planning Board in 2013. The signs face internally to the site so that requires a variance for not facing a roadway and the rear sign will be greater than the permitted size. These are directional signs and will promote general welfare, as they function as directional signs. The proposed sign on the front of the ATM will now conform to the size requirements. The intention of the signs is for internal circulation and to direct the patrons to the ATM. There are three variances being sought for the proposed remodeled ATM; them being location (not facing a roadway), sign area and color. The red, white and blue colors are the same colors that exist on the current ATM, although



not included in the Township's color palette. There is no change proposed on any signage other than that for the proposed remodeled ATM. There will not be any light spillage from the signage. The proposed ATM is not visible from Redwood Lane or Rt. 537.

Mr. Gatto opened the meeting to the public for comments and questions. No one from public came forward. A motion to close the public portion of the hearing was made by Mr. Shortmeyer, was seconded by Mr. Bazurro. All in favor, aye. Mayor Preston made a motion, and was seconded by Mr. Kash to authorize Mr. Accisano to prepare a positive resolution. All in favor, aye.

Appeal of the Zoning Officer's Decision/Variance Application # 030-17

Archway Programs

Block 72.04 Lot 1 – 2 Lutea Terrace

Appeal of the Freehold Township Zoning Officer's decision regarding the need for lot area and lot depth variances, and alternately, for the approval of these bulk variances. Proposal to install ramps and walkways to support a single-family group home use on the property pursuant to NJSA 40:55D-66.1.

Peter Flannery, Esq. entered her appearance on behalf of the applicant. Mr. Accisano said 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 has jurisdiction to conduct a public hearing.

Mr. Gatto announced that there will be a 5 minute break.

Mr. Flannery offered that the applicant would like to bifurcate the application to hear the Appeal of the Zoning Officer's opinion. In his opinion, no new variance relief would be required. He explained that in 1964, there was a plat filed for Juniper Farms Section 3. The lot dimensions are exactly the same as was approved by the Planning Board subdivision and with the filed plat. The zone requirements have changed since the Planning Board approval. Per Township Ordinance §190-235, this is an approved non-conforming lot and in his opinion, would not require new variance relief.

Mr. Accisano stated he had done some research and is in agreement with Mr. Flannery. In Mr. Accisano's opinion he stated that the zoning officer's denial appears to be in error. Variances should not be required in conjunction for what the applicant is proposing. Building permits would be required. Mr. White agreed as long as the applicant would not exacerbate any existing non-conformities.

Mr. Gatto stated he would like to take a straw poll as to if the Board feels that the denial was given in error. The eligible Board took no exception. The matter was opened to the public.

Mr. Sean Brown of 10 Lutea Terrace was sworn in and stated that he was required to go to the Planning Board for a variance for eight (8) inches too close to neighbor. Mr. Brown stated he felt the applicant should also have to go through variance application process. Mr. Brown interpreted that his non-conformity was similar when he wanted to add an addition to the home. Mr. White explained that this has been the practice to deny an applicant if a violation of side yard/rear/front yard creates non-conformity when putting an addition on a home (expansion within a non-conforming lot); it is required that the applicant go before the Board. This is a different type of application than Mr. Brown's. The applicant (Archway) may not require variance relief because there will be no affect to lot size and the proposal does not exacerbate any non-conformity.

Mr. Bazurro explained to Mr. Brown, that because he did not have an attorney and being a lay person he may not have an understanding the legality of municipal land use.



Donald O'Brien of 32 Hibernia Way came forward was sworn in and asked who the people are that purchased the house and why they have not been notified of a group home being put in the neighborhood.

Mr. Accisano explained that there is NJ state law that says that a group home is treated as a single family home. They are not required to give notice of the group home. If issues of variance did not come up, as in this case, only building permits, if required, would be necessary. State law does not require them to give notice, they are treated exactly the same as single family homes. Freehold Township cannot control whether or not a group home can occupy a single family residence. He explained that this is a State Law and the Township must comply.

Mr. Gatto explained that the Board's job is to weigh the facts and to balance the detriments and the benefits, all in accordance with the Municipal Land Use Law.

Mr. Asadi stated that if the applicant was treated differently because they are a group home, they can be found guilty of discrimination.

Mr. White stated that there are other group homes within a one mile radius to this home that were not required to come before Board.

Randolph Caruso of 92 Three Brooks Road was sworn in and asked if the group home pays property taxes. Mr. Gatto explained that that is not a consideration of the Board and is not part of the two legal arguments presented.

Jane O'Brien of 32 Hibernia Way was sworn in and stated she has lived there for 22 years. There are neighborhood by-laws, including that you must have a mailbox on the side of the house. She mentioned that the home has already undergone significant changes. Mr. Gatto explained that this is perhaps an association issue and the Board would not have jurisdiction over an association. Mrs. O'Brien stated there is no Association. Mr. Accisano suggested that perhaps there is a restriction in the title, but not for Board consideration.

There was no one else from the public that came forward. Mr. Ammiano made a motion to close the public portion of the hearing, which was seconded by Mr. Kash. All in favor, Aye. Ms. Jahn made a motion to authorize a resolution affirming the applicant's appeal that the zoning officer made his determination in error, which was seconded by Mayor Preston. All in favor, Aye. There were no motions against.

Mayor Preston made a request for the Engineering office to follow-up with Mr. Brown regarding the variances required for his property.

There was a 5 minute break.

Ms. Jahn left the meeting due to a scheduling conflict. Mayor Preston and Mr. Ammiano left as they are disqualified from the application since it is a "D" variance.

**Zoning Interpretation/Amended Major Subdivision # 869-1-17 and "D" Variance # 016-17
Robert Northfield – d/b/a Burlington Farms
Block 42, Lot 2, 2.01-2.11 Burlington Road**

Interpretation of FAR, and alternately, amended major subdivision and variance relief request for regrading and FAR relief on five (5) of the lots previously subdivided under Subdivision Application # 869-06.



Peter Licata, Esq., entered appearance on behalf of the applicant. Mr. Licata stated that he is withdrawing the application for an interpretation. Mr. Accisano said 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 has jurisdiction to conduct a public hearing. Mr. Accisano stated that a D(4) variance should be treated similarly to a D(3), with lighter burdens. Mr. Asadi and Mr. Levy were seated for Mayor Preston and Mr. Ammiano. Mr. Licata had no objection to the exhibits that were marked and Mr. Gatto started to read the review letters into record. Due to the removal of the request for an interpretation, Mr. White removed # 3 of his review letter. Mr. Phillips read his review letter into record in order to redact the items relative to the interpretation request, which is now withdrawn. The following witnesses were sworn: Lorali Totten, PE; Allison Coffin, PP; Robert Northfield, owner/applicant; Paul Phillips, PP, Phillips Preiss and Grygiel, Township Planning Consultant; and Timothy P. White, Township Engineer. An additional exhibit was marked.

Lorali Totten, PE, Crest Engineering Associates Inc. She described the site as a farm lot that was previously subdivided into ten lots. With the removal of the request for the interpretation, and should the Board grant the FAR relief, there would be no need to change the grading and could keep the grading that was originally proposed. There is no engineering reason that the proposed homes would cause any detriment. In her opinion, there is more of a technicality due to the definition of a cellar/basement and this proposal would not affect the drainage or the site. There were no questions from the Board.

Ms. Allison Coffin, PP, has previously been accepted as a professional licensed planner, was the planner on the original application ten years earlier and was accepted by the Board. The requested additional relief affects five lots from the previously approved subdivision. FAR is a planning tool used to limit the intensity of a home. The proofs needed are distinct from a "D" variance and would not need the same proof as a D(1) variance. A similar standard is a conditional use, can the site still support the additional FAR. The proposed homes are similar in size and character and are consistent with the homes in the area and on the opposite side of the street. The houses there are approximately 4,000 s.f. Similar homes are proposed on this side of the street, but due to grading differences, they do not comply with the FAR requirement (definition of cellar vs. basement). In her opinion, the properties can support the proposed FAR and intensity. It is consistent with the development pattern and character in the area. It does not result in any detriment in the character of the area or the Master Plan and the Zoning Ordinances. The proposed variances are driven by existing conditions and grading on property.

Mr. Gatto opened the matter to the public.

Amanda Sheer of 104 Bear Oak Road, was sworn in and stated that she questioning the grading vs the public notice. She stated that it appears changes have occurred since receiving the public notice. The letter stated that the lowest level of proposed residents would have a walk out access. If there is a walk out access (walk out basement), her interpretation is that it would be higher than the other houses built on the east side of the street.

Lorali Totten stated that there is no change in the walk outs which have always been proposed. The height and profile of the proposed homes have not changed.

Ms. Sheer asked about the additional FAR, there is a high water table at her home and has a lot of water issues, her and many of her neighbors have needed to install French drains. She is concerned about the grading and drainage. There is also a tree that recently fell from Mr. Northfields property onto her property. Mr. White agreed to inspect ponding as a courtesy. Mr. Licata stated applicant will take care of fallen tree.



Ms. Totten stated that the installation of the road and development it is graded to run-off towards the basin at the end of the road. The homes will have dry wells to collect run-off, and there should be no additional or even less water running off from the old meadow. The grassed areas collect water better than the previous meadow/field. She explained that the proposed homes are not being moved from what was previously proposed.

There was no one else from the public that came forward. Mr. Kash made a motion to close the public portion of the hearing, which was seconded by Mr. Shortmeyer. Mr. Kash made a motion, and was seconded by Mr. Shortmeyer to authorize Mr. Accisano to prepare a positive resolution. All in favor, Aye.

DISCUSSION:

Mr. Gatto reviewed the upcoming agenda for December 7, 2017.

CLOSED SESSION:

Mr. Accisano stated that the Board would need to authorize a resolution to exclude the public from the next portion of the meeting for litigation matters regarding the Fitzpatrick application.

Mr. Shortmeyer made a motion to go into closed session to discuss pending litigation, seconded by Mr. Kash; there was a roll call vote with all in favor. Frank Accisano, Esq. announced that the Planning Board has authorized a resolution allowing the Board to go into closed session, excluding the public from the hearings in order to discuss litigation for the Fitzpatrick subdivision (SD# 856-2-16).

The Board went into **closed session**.

The Board reopened in public session.

Mr. Kash made a motion for a resolution to authorize Mr. Accisano to accept process and otherwise defend the Planning Board regarding litigation with John Fitzpatrick and the motion was seconded by Mr. Bazzurro. There was a roll call vote with all in favor.

ADJOURNMENT:

There being no further business, a motion was made to adjourn the meeting and passed unanimously. The meeting concluded at 8:43 p.m.

Respectfully Submitted,



Robert H. Shortmeyer
Secretary