

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – September 9, 2013

1-2013-09-09

Board Chairman John Gangemi called the regular meeting of the Mine Hill Township Planning Board to order at 7:30 pm and led those present in the Pledge of Allegiance.

OPEN PUBLIC MEETINGS NOTICE

Mr. Gangemi announced that adequate notice for this meeting had been given as required by law.

ROLL CALL: Members Present – Mr. Alpaugh; Mr. Frank; Mr. Gallarano; Mr. Gangemi; Mr. Gorman; Mr. Sauchelli
Members Absent – Mr. Heredia; Mr. Morris; Mr. Willis
Alternates Present – Ms. DelRio; Ms. Goldstein
Also Present – Mr. Haggerty, Board Attorney; Mr. Sterbenz, Engineer; Ms. Macchia, Municipal Clerk/Planning Board Administrative Clerk
Public Present – Approximately 7

CORRESPONDENCE

Mr. Sterbenz discussed his correspondence with Mr. Benkendorf regarding completion of his subdivision. It was noted that, following discussion, a number of outstanding conditions still exist. He is working with them to bring this to conclusion.

CONSIDERATION AND APPROVAL OF VOUCHERS

A motion was made by Mr. Alpaugh and seconded by Mr. Sauchelli to approve the vouchers as presented contingent upon sufficient funds available in escrow. Seeing no further discussion, the roll was called and the vouchers were approved by the following vote:

Ayes: Mr. Alpaugh; Mr. Gallarano; Mr. Gorman; Mr. Sauchelli; Mr. Gangemi
Nays: none
Absent: Mr. Heredia; Mr. Morris; Mr. Willis
Abstentions: Mr. Frank

RESOLUTIONS & MOTIONS

Resolution 012-13 Application 003-12 Salvatore Milelli – Approval of Variance

It is noted that Mr. Heredia is absent and Mr. Frank recused himself from this matter. Ms. Del Rio will be voting in place of Mr. Heredia, and Ms. Goldstein will be voting in place of Mr. Frank.

A motion was made by Mr. Alpaugh and seconded by Ms. Del Rio to approve of the resolution as presented. The roll was called, and the resolution was approved by the following vote:

Ayes: Mr. Alpaugh; Ms. Goldstein; Mr. Gallarano; Mr. Gorman; Ms. Del Rio; Mr. Sauchelli; Mr. Gangemi
Nays: none
Abstentions: none

WHEREAS, Salvatore Milelli, (hereinafter known as the "Applicant") is the owner of a parcel improved with a mixed use building, consisting of commercial and residential space located at 173 Route 46 in the C (Commercial) District and has made application to the Planning Board of the Township of Mine Hill, (hereinafter known as the "Planning Board") for use variance approval to permit installation of three additional residential units in the building in place of commercial rental space, and;

WHEREAS, the Township of Mine Hill having enacted an ordinance pursuant to N.J.S.A. 40:55D-25, authorizing its Planning Board to exercise all of the powers of the Board of Adjustment, and;

WHEREAS, the application was deemed complete at the regular meeting of the former Zoning Board on December 18, 2012, and;

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WHEREAS, proper notice of the hearing of the application, having been provided by the Applicant, in accordance with the requirements of the Municipal Land-Use Law and the requirements of the ordinances of the Township of Mine Hill, and;

WHEREAS, the Planning Board, having considered the testimony of the Applicant, and having reviewed the documentary evidence submitted by the Applicant and its consultants, and the Planning Board staff;

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the Township of Mine Hill does hereby makes the following findings of fact and conclusions of law:

The Applicant is the owner of a parcel improved with a mixed-use building located at 173 Route 46 in the C (Commercial) District. The Applicant has made a bifurcated application for use-variance approval to permit conversion of commercial rental space into residential apartments. The Applicant proposes to make application for site-plan approval if the Planning Board grants use-variance approval.

The Applicant was represented at the hearing by John M. Sydlar, Esq. Testimony was presented by the Applicant, Salvatore Milelli, and the Applicant's planner, Jason Dunn. The Applicant submitted a plan consisting of two sheets labeled S-1 and A-2, dated November 26, 2012, prepared by Joseph A. Gates of Architectural Design, Inc., in support of the application. Sheet S-1 provides a radius map, zoning analysis, list of owners within 200 feet, and minor site plan. Sheet A-1 provides elevations and floor plans.

Applicant's attorney granted an extension of the hearing date, and the hearing commenced on June 19, 2013.

Applicant provided testimony that the commercial building historically has had a mixed use with residential use being situated on the first, second and third floors of the easterly portion of the building. It is the Applicant's contention that the mixed-use is a pre-existing, nonconforming use and that conversion of a portion of the commercial space to residential apartment use would constitute an expansion of the pre-existing nonconforming use requiring a variance pursuant to N.J.S.A. 40:55D-70D (2). The Planning Board determined that a variance pursuant to N.J.S.A. 40:55D-70 (D) (1) variance would be required. Although the building is improved with residential units, the Applicant proposes to create entirely new non-conforming apartments. *Saadala vs. E. Brunswick Zoning Board*, 412 N. J. Super. (App. Div.) 541. See also *New Jersey Zoning & Land-Use Administration* by William M. Cox, § 11-6.1 "Similarly, the addition of an entirely new non-permitted accessory or additional primary use should require a D (1) variance" p. 315. The Planning Board, however, is cognizant that addition of a residential-use would essentially constitute expansion of that non-conforming residential use rather than the creation of an independent new use, different in nature or character from the residential apartment use, and therefore the analysis undertaken takes that circumstance into consideration.

There are currently three residential apartments in the easterly portion of the building and three new apartments are proposed. There are three commercial units occupying the first floor of the building.

Applicant converted the second floor of building to three new apartment units without proper permits and seeks approval for those apartments after the fact.

In support of the Applicant's position that there is a pre-existing non-conforming residential -use of the building, the Applicant offered the following exhibits:

1. Exhibit A-1, an application dated November 7, 1949 for an addition of a bedroom to an existing apartment.
2. Exhibit A-2, a Board of Health application, dated September 15, 1976, referencing three commercial stores and three residential apartments.

3. Exhibit A-3, a Certificate of Habitability issued in 2003 referencing three residential apartments and five offices.

The Planning Board determined that the Applicant has provided proof in accordance within N.J.S.A 40:55D-68 to establish a pre-existing non-conforming residential use of a commercial building with said non-conforming use consisting of three residential apartments in the easterly portion of the building.

In support of the variance application the Applicant offered site improvements both functional and aesthetic and the dedication of one or two of the proposed new apartments as COAH units.

To establish entitlement to a use variance an Applicant may demonstrate that the purposes of the Municipal Land-Use Law would be advanced or promoted through the proposed development. The case of South Burlington County NAACP vs. Township of Mount Laurel, 67 N.J. 151 (1975) determined that the provision of affordable housing promotes general welfare according to all land-use regulations. Aesthetic improvements proposed by the Applicant would constitute a special reason to justify the granting of a use variance, *Burbridge vs. Mine Hill Township* 117 N.J. 376 (1990). Testimony was presented that the parking area for the building is in a state of disrepair and there is a disorganized traffic circulation pattern. The Applicant proposed to repave and stripe the parking area and to install landscaping, making the site more aesthetically pleasing and safer to use.

The building is served by public water and has a septic system. The Applicant provided a report as Exhibit A-4 stating that conversion to residential use of a portion of the building would reduce the septic demand. The Planning Board noted that the proposed use must receive NJDEP approval.

It is the Applicant's contention that there would be less traffic flow with residential use as compared with commercial use. 51 parking spaces are required for the current use and there are 24 available spaces. The proposed use would require 32 parking spaces, and the Applicant proposes to maintain 24 parking spaces. A traffic study dated June 28, 2013 was prepared on behalf of the Applicant by Elizabeth Dolan, P.E., the owner of a firm specializing in traffic impact analysis, among other areas. Her report, Exhibit A-9, sets forth a calculation of trip generation estimates for the existing and proposed uses, based upon the "Trip Generation Manual" by the Institute of Transportation Engineers. The report notes that that the Applicant would eliminate office space and add three residential apartments. It is her conclusion that the result would be two fewer trips during morning-peak hours, one less trip during the evening peak hour, and one more trip during Saturday peak hour. Her conclusion is that such a change in driveway use is negligible. The Applicant presented testimony that there are three existing two-bedroom apartments, a fourth apartment is to be eliminated, and the proposed three new apartments would each have one bedroom which would reduce parking demand and reduce the amount of solid waste generated at the facility. Applicant submitted as Exhibit A-5 a proposed parking lot layout which, if implemented, would improve traffic flow.

A report dated March 28, 2013 prepared by Paul M. Sterbenz, the Planning Board Engineer, was reviewed with the Planning Board members and the Applicant. Mr. Sterbenz's report notes that the Applicant must provide testimony to establish special reasons pursuant to N.J.S.A. 4:55B-70D (1) to establish entitlement for the variances. The Applicant must also demonstrate that the variance may be granted without substantial detriment to the public good and without substantially impairing the intent of his own plan and zoning ordinance. Mr. Sterbenz's report confirms that COAH Housing is deemed to be an inherently beneficial use and, therefore, the COAH (units) to be created would satisfy the positive criteria of the required proofs, that is a demonstration of special reasons for granting the variance.

Access to the site is problematic due to the size of the site and the location of a wall along the frontage of the property, limiting sight distance for egress. The parking stalls are currently awkwardly configured, and safety in regard to access to the site and movements within the site may be enhanced through requirements which would be imposed as part of the site plan review process. Site plan review would enable the Board to request appropriate landscaping, striping, and lighting.

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Apartments in the building now consist of 2 two-bedrooms, 1 one-bedroom apartment and 1 studio apartment which is not in use. The studio apartment would be removed and the space reallocated to another apartment or to common space.

Uses surrounding the site were reviewed by the Applicant's Planner. A copy of the Planner's Report was offered as Exhibit A-6. There is a commercial use directly across the street. It is the opinion of the Applicant's Planner that the proposed use would have no significant effect on the surrounding uses.

The zoning official for Mine Hill stated that the parcel is used for commercial retail use and that any residential use should be deemed abandoned and parcel should be deemed commercial in accordance with the master plan. There are concerns relate to an increase in traffic and sight issues for vehicles exiting the parking area.

The Board determined that the Applicant had established the right to a use variance to permit the creation of three apartments. The Board determined that the provision of COAH Housing units would constitute inherently beneficial use and satisfy the positive criteria of the statute. The Board determined that there are currently three apartments in the building, 2 two-bedroom and 1 one -bedroom. The Applicant would construct three new residential apartments and eliminate the studio apartment so that there would be a total of six apartments. The Board accepts the testimony of the traffic report furnished by the Applicant's traffic expert that there would be no adverse impact in traffic caused by the creation of three new 1-bedroom residential apartments.

Site improvements would be required pursuant to site plan review including landscaping, improvements to the parking area and surfacing the parking area, striping the parking area, sidewalk and lighting. The restaurant use would be abandoned which would reduce traffic movements at the site. There is a mixture of commercial and residential uses in the area. The Planning Board does therefore find that the Applicant has established that the variance may be granted without substantial detriment to the public good without substantially impairing the intent and purpose of the zone plan.

The Planning Board finds that the Applicant is entitled to a use variance to permit the creation of three new residential apartments. This approval is subject to the following terms and conditions:

1. Payment of all current fees taxes, fees and escrows;
2. Approval of any other governmental entity having jurisdiction in this matter including but not limited to compliance with all New Jersey Department of Transportation requirements for property adjoining State Highways;
3. The studio apartment is to be eliminated. Residential use of the building is to be limited to the current 2 two-bedroom apartments and 1 one-bedroom apartment and 3 new one-bedroom apartments.
4. Two of the three new apartments shall be COAH restricted with one of the apartments restricted to moderate-income use and the other apartment restricted to low-income use. The restriction shall be through a 30-year deed restriction in compliance with COAH regulations, said deed being subject to the approval of the Attorney for the Planning Board, the Municipal Attorney, and the Board Engineer. COAH units are to have the same amenities and improvements as the approved market unit. The deed is to be recorded by the Applicant and proof of recording furnished to the Board secretary prior to any occupancy of any new residential apartment.
5. The studio apartment is to be eliminated and the plans modified to show where that space will be dedicated.
6. There is to be no occupancy of the apartments until the amended site plan site has been reviewed and approved and the COAH units have been established through deed recording.

7. The COAH units are to be occupied first. Commercial space shall be occupied only by permitted uses in the zoning district.
8. The site plan that shall be submitted to the Board as a condition of their approval shall depict the access easement on adjacent Lots 7 and 8, and the easement on adjacent Lot 5 and is to provide topography.
9. The Applicant is to reconcile the Applicant's traffic report and site plan as to the number of square feet for business use of the facility.
10. There is to be no restaurant use of the building.
11. Applicant's approval is subject to the depiction provided by the Applicant on the plans dated November 26, 2012 prepared by Joseph A. Gates, Architect, consisting of Sheet S-1 labeled "Minor Site Plan" and Sheet A-1 labeled "Preliminary Plans," and as said plans are to be amended in accordance herewith.
12. Applicant must comply with all New Jersey Department of Transportation requirements for property adjoining State Highways.
13. The Applicant shall file an application for site plan approval within 60 days of the memorialization of this resolution by the Planning Board.

COMPLETENESS REVIEWS

Application 002-13 John Curry

Mr. Sterbenz reported that he reviewed the application and found much of it to be incomplete. He explained that a homeowner built a shed without permits and outside of the setback lines. Discussion followed regarding the setback requirements as well as the appropriateness of this applicant being in front of the Board.

It was concluded that, as the Notice of Violation indicates that the applicant did not apply for a permit, there is no matter available for appeal to the Planning Board. Mr. Haggerty will follow up with a memo to the Zoning Officer to discuss the violation. The applicant will likely be instructed to apply for a permit, and, if that permit application is denied, that denial can be appealed to this Board.

The application will be deemed incomplete pending follow up with the Zoning Officer. A motion to do so was made by Mr. Alpaugh and seconded by Mr. Sauchelli. The roll was called, and the motion was carried by the following vote:

Ayes: Mr. Alpaugh; Mr. Frank; Mr. Gallarano; Mr. Gorman; Ms. Del Rio; Mr. Sauchelli; Mr. Gangemi

Nays: none

Abstentions: none

PUBLIC HEARING ON APPLICATIONS PREVIOUSLY DEEMED COMPLETE

Application 001-13 Robin Engle (Variance Approved 8/5/13 – Time Expires 12/3/13)

Ms. Engle was sworn in by Mr. Haggerty.

Ms. Engle explained that she has filed this variance application to be allowed to keep her pet chickens. She received a notice of violation after a neighbor complained about the noise made by the rooster. The rooster has since been rehomed. She described the living accommodations where the chickens are contained. It is noted that she has not had any additional complaints since rehoming the rooster. The eggs produced by the chickens, and the vegetables that are fertilized by the chickens, are donated to a local food pantry.

The application proposes to limit the number of chickens now and in the future to 8.

It is noted that this application is made under the old ordinance as it was submitted before adoption of the new ordinance requiring a minimum of 2 acres to have farm animals and/or fowl.

A brief recess was taken to look up the old ordinance.

Upon return to session, it is noted that farm animals are not discussed in the old ordinance and that any activity not listed as a permitted use is prohibited; the result is that this is a D (use) variance application.

Additional discussion of the property, the surrounding properties, and the accommodations occurred. It is noted that the neighborhood is on township water and that the chickens' area is located over the septic field as approved by the septic installer.

It is noted that any potential future noise violations would be handled under the Township noise ordinance and that any potential future health violations would be handled under health regulations.

Ninoskika Guglielmone was sworn in by Mr. Haggerty and spoke on behalf of Ms. Engle. She is a recipient of some of the donations that Ms. Engle has made to the food pantry. She spoke about the benefits to her and many other families of having a source of protein and fresh produce on very limited budgets.

Linda Bindhammer was sworn in by Mr. Haggerty and spoke on behalf of Ms. Engle. She is the director of the food pantry that Ms. Engle donates to. She spoke about the benefit of the fresh produce that the pantry is otherwise unable to provide to its recipients.

Phyllis Keown was sworn in by Mr. Haggerty and spoke on behalf of Ms. Engle. She is Ms. Engle's next door neighbor and also receives some of the eggs produced by Ms. Engle's chickens. She has no complaints about the proximity of the chickens.

Agnes Bogen was sworn in by Mr. Haggerty and spoke on behalf of Ms. Engle. She also lives in Ms. Engle's neighborhood and has no complaints about the chickens.

Mr. Sauchelli remarked that this is the type of application that he wishes the Board didn't have to hear. He asked the professionals if there is any clear line where the line can be drawn between pets and agricultural operations. Mr. Haggerty responded that he is not aware of any such distinction, adding that the chickens in the absence of a rooster are probably quieter than the average family dog. Mr. Sauchelli expressed some concern about future owners of the property abusing a variance granted to that property, and about consistency with future applications of this nature. Mr. Alpaugh noted that it has become a very popular notion to raise your own food. Additional discussion of consistency with future applications followed.

Possible conditions were discussed.

A motion was made by Mr. Frank to approve this application with appropriate maintenance conditions and limited to 8 chickens and no roosters. Mr. Gorman seconded the motion. The roll was called, and the application was approved by the following vote:

Ayes: Mr. Alpaugh; Mr. Frank; Mr. Gallarano; Mr. Gorman; Ms. Del Rio; Mr. Sauchelli; Mr. Gangemi

Nays: none

Abstentions: none

SITE PLAN COMPLETENESS REVIEW

Application 002-12 J&E Auto, LLC (Variance approved 6/19/2013)

Sam DeAngelis introduced himself as the attorney for the applicant. A site plan for the property has been submitted, and Mr. Sterbenz response was received earlier today. Mr. Fox, engineer for the applicant, will address each of the concerns expressed in Mr. Sterbenz report.

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Mr. Fox noted that the largest updates to the site plan are related to traffic flow through the site and visibility. It is noted that there is improvement in the buffer between subject property and neighboring properties, and that the need for a new septic installation will be addressed as well.

Mr. Fox referenced Items A through L in Mr. Sterbenz memorandum. Various items were discussed. It was concluded that the submission would be deemed incomplete, that a revised submission would be supplied, and that Mr. Sterbenz would work with the applicant's professionals toward achieving completeness at the next meeting and possibly being able to move directly into public hearing.

A motion was made by Mr. Alpaugh and seconded by Ms. Del Rio to deem the application incomplete at this time. The roll was called and the motion carried by the following vote:

Ayes: Mr. Alpaugh; Mr. Frank; Mr. Gallarano; Mr. Gorman; Ms. Del Rio; Mr. Sauchelli; Mr. Gangemi
Nays: none
Abstentions: none

NEW & OLD BUSINESS

Mr. Alpaugh noted problems with the new Land Use Book. Discussion of the recodification process followed.

OPEN TO THE PUBLIC

None at this time.

ADJOURNMENT

There being no further business, a motion was made by Ms. Del Rio and seconded by Mr. Frank to adjourn the meeting at 8:52 PM. The motion was approved by a voice vote.

Respectfully Submitted,

Amanda G. Macchia, RMC
Mine Hill Municipal Clerk
Board Administrative Clerk

Approved on this _____ day of _____, 20____

Planning Board Chairman