

MINUTES OF THE MINE HILL PLANNING BOARD
REGULAR MEETING – May 5, 2014

1-2014-05-05

Board Chairman Gary Frank 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. Frank announced that adequate notice for this meeting had been given as required by law.

ROLL CALL: Members Present – Mr. Frank; Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Morris;
Mr. Sauchelli; Mr. Willis (arrived late)
Members Absent – Mr. Alpaugh; Mr. Galarano
Alternates Present – none
Also Present – Mr. Wiener, Board Attorney; Mr. Sterbenz, Engineer; Ms. Macchia,
Municipal Clerk/Planning Board Administrator; Ms. Istvan, Deputy
Clerk
Public Present – 3

APPROVAL OF MINUTES

None

CORRESPONDENCE

None

CONSIDERATION AND APPROVAL OF VOUCHERS

A motion was made by Mr. Heredia 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: Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Morris; Mr. Sauchelli
Nays: none
Absent: Mr. Alpaugh; Mr. Gallarano; Mr. Willis
Abstentions: Mr. Frank

- a. Milelli Escrow 711286
 - i. \$125.00 to Mr. Wiener (4/16 Invoice)
 - ii. \$1,156.25 to Mr. Sterbenz (233475)
- b. John Curry Escrow 711288
 - i. \$250.00 to Mr. Wiener (4/16 Invoice)
 - ii. \$250.00 to Mr. Sterbenz (233476)
- c. Steve Rose Escrow 711289
 - i. \$125.00 to Mr. Wiener (4/16 Invoice)
 - ii. \$93.75 to Mr. Sterbenz (233477)
- d. Planning Board Budget
 - i. \$62.50 to Mr. Sterbenz (233491)

RESOLUTIONS & MOTIONS

Resolution to Memorialize Denial of Application 002-13 John Curry – Application Denied 04/07/2014

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It was noted that Mr. Frank recuses himself from this matter for reasons of proximity of the subject property to his business. Mr. Sauchelli is acting as chairman.

A motion was made by Mr. Gorman and seconded by Mr. Morris to approve of the resolution of denial as presented. The roll was called, and the resolution was approved by the following vote:

Ayes: Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Morris; Mr. Sauchelli

Nays: none

Absent: Mr. Alpaugh; Mr. Galarano; Mr. Willis

Abstentions:

WHEREAS, John Curry has have applied to the Planning Board, Township of Mine Hill for permission to obtain a dimensional variance so as to permit the *ex post facto* approval of an accessory structure constructed in the rear yard of premises located at 9 Pine Street and known as Block 802, Lot 4 on the Tax Map of the Township of Mine Hill which premises are in a “SF” Zone;

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and having conducted a public hearing has made the following factual findings:

1. The applicant is the owner and occupant of the single-family home located on-site.
2. Sometime in the early summer of 2013, the applicant constructed the structure that is the subject of the instant matter. The applicant was issued citations by the Zoning Officer and the Construction Official. The zoning violation notice was issued July 11, 2013 and the construction notice was issued July 25, 2013.
3. The applicant testified at the public hearing. The applicant did not dispute the fact that the structure was built without permits. The applicant stated the structure replaced two storage sheds that were destroyed by a storm in 2012. The applicant stated that he assumed, since there was no foundation, the structure would not require any permits.
4. The applicant submitted a location survey dated December 2, 2013. The survey depicted a structure that the surveyor referred to as a steel garage in the northeasterly corner of the applicant’s property. The structure was located 8’ from the adjoining property line to the north and 16.4’ to the adjoining property line to the south. The setback to the rear line was 10’ and the overall size of the structure, itself, was just over 626 square feet. As constructed, the applicant needs relief from several provisions from Section 25-10.4 of the zoning ordinance. Based on the testimony of the applicant, as to the present use of the structure, it has an overhead door and has been utilized to store the applicant’s motor vehicles. The Board deemed the structure a garage. In addition, noting that any accessory building shall not exceed a total of 625 square feet floor area, the applicant’s structure is just over 626 square feet and an additional variance was requested.
5. The applicant stated he had constructed the subject structure to provide an adequate area to maintain his collection of special automobiles. The structure would also provide a replacement storage area for the two prior accessory buildings. During his testimony, the applicant stated access to the subject structure was along the northerly side of the property. The applicant noted that the property to his immediate rear was what the applicant described as a junk yard for cars and, while both the adjoining properties were residential, the property to the south on Route 46 was a tavern.
6. The two adjoining property owners both testified at the public hearing. Nelson Morales, the owner of the adjoining property to the south (7 Pine Street) disputed the testimony of the applicant. Mr. Morales presented exhibits consisting of photographs which were marked OA through G. Mr. Morales stated that the applicant was actually gaining entry into the rear from a disputed driveway located along their common boundary line and would have to encroach on the applicant’s property in order to continue to access the structure. He stated the existing structure and its use were an intrusion on his reasonable enjoyment of his property.
7. Nora Mille, the owner of the adjoining property to the north (11 Pine Street), testified that she really had no issues with the applicant’s structure. She stated it simply did not bother her and was adequately screened by a fence between her property and the applicant’s property.

8. The Board received a memorandum from Paul Sterbenz, the Board's Planning Engineer, dated 1/21/14.

WHEREAS, the Board has determined that the relief requested by the applicant **cannot** be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Planning Board of the Township of Mine Hill for the following reasons:

1. The Board notes the applicant is seeking *ex post facto* approval of what the Board has determined to be an accessory garage. The Board further notes there might be a conflict in the ordinance concerning whether or not the applicant would require a further variance inasmuch as there already is a garage integrated into the existing home and thus, the instant structure would become a second garage.
2. The Board, in its consideration, makes no determination as to the issue of whether or not this constitutes a second garage. The Board did not get to that question in determining the outcome of the instant case.
3. As noted, the applicant is seeking approval for something that already exists. The Board draws no inferences from the fact that the applicant violated both the zoning regulations and construction code. Those issues are for a different forum. The Board's determination, in this matter, is to view the proposal as if it had not been built and make a determination as to whether or not the Board would have granted approval or denial. The bottom line is that no inferences were drawn by the fact that the building was already constructed, violated the Township ordinance, and/or that there would be some costs to the applicant where he compelled to remove the structure. Thus, the Board's analysis and its findings view this application as if nothing had been constructed and the applicant was presently proposing the same 626 square foot structure in the location depicted on the survey presented by the applicant.
4. The variances being requested are "C" variances. The thrust of the applicant's testimony was that the shape of the lot (narrow) makes it impractical to construct any meaningful accessory structure without need for a variance. A garage (and the Board finds this structure is clearly a garage) could not be located in the applicant's rear yard without a variance.
5. The applicant did not advance any proofs or suggestions that the instant application should be considered as a "C2" or "flexible C" variance. Those variances fit only a limited number of circumstances and clearly no proofs were offered to suggest that this application might fall within the parameters of a "C2" variance. In the instant case, it was the applicant who chose to construct a 626 square foot structure. The structure was just over 30'x20' and clearly, the size was a discretionary choice by the applicant. While the applicant demonstrated a potential hardship, due to the zoning regulations, and a shed or a modest garage might be a normal amenity in this residential zone – the applicant could not address the negative impact associated with the construction of the subject structure. The Board finds the testimony of the applicant to be, at times, disingenuous. The applicant did not testify as to the utilization of the southern (disputed) driveway access to the rear of the property. This structure already has demonstrated that it has a negative impact on the adjoining neighbor to the south. It is promoting the utilization of motor vehicles within an existing side yard in an area that is really not wide enough to accommodate motor vehicles.
6. The size of the structure is incompatible with this neighborhood. It is massive and has a footprint that mimics and comes close to the size of single family homes in the Township. The applicant could not articulate any cogent reasons for the need of such a massive structure. It is the size of the structure that results in the significant violations of the setback requirements of the ordinance. While at 626 square feet, the structure is only minimally over the permitted size – it, nevertheless, results in a total disregard for the required dimensional setbacks for the side and rear yards. While the present neighbor, to the north, may not object to the structure, maintaining such a structure 8' from the common boundary line flies in the face of the zoning ordinance and the purposes of the Master Plan and the Municipal Land Use Law in providing adequate open space.
7. The structure, itself, is somewhat of a hybrid type building. In some senses, it is not permanent and is obviously pre-manufactured. The structure is not really compatible with the existing structures in the neighborhood and does not necessarily have a residential feel. While it is not an eyesore, it is also not a particularly aesthetic structure in a residential neighborhood. In viewing this, as if it had not been

built, one of the significant concerns of the Board would have been the aesthetic impact of such a structure and how to soften its affect on the surround properties.

8. For the reasons set forth above, the Board finds the applicant did not establish a hardship. The Board further finds that the applicant's structure does, in fact, constitute a significant negative impact due to its location, size, and aesthetics. The Board further finds the applicant's use of this structure and its impact on the adjoining property owner affects that owner in a negative way by reducing light, air, and privacy.
9. The applicant did not propose anything to attenuate the existing structure – no landscaping or buffering was proposed. The applicant could have addressed the issues with the driveway and access along the southerly part of his property – the applicant was not compelled to do so, but the applicant could have and did not.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Mine Hill on the 5th day of May 2014 that for the reasons set forth above, the within application is denied.

COMPLETENESS REVIEWS

None

PUBLIC HEARINGS ON APPLICATIONS PREVIOUSLY DEEMED COMPLETE

Application 002-13 Salvatore Milelli

It was noted that Mr. Frank recuses himself from this matter for reasons of proximity of the subject property to his business, and that Mr. Morris and Mr. Willis cannot hear this matter because it is a D variance. Mr. Sauchelli is acting as chairman.

Mr. Wiener informed the Board that there was an oversight on the part of Mr. Sydlar that the utilities were not properly noticed.

Mr. Sydlar stated that he felt the proper utility notices were made to Verizon, Cablevision, and the Mine Hill Water Department. He added that the Department of Transportation issued a waiver making their notice moot. My Sydlar noted that his client does not consent to the extension of 45 days.

Mr. Sterbenz interjected that this is a major site plan, subject to a 95 day period and deemed complete April 7th, so time runs out July 11th. Mr. Sydlar responded that he does not see how the application is a major site plan and that will be addressed in the future.

Mr. Sydlar then stated that with regard to notice requirements, there are a few positions that are being presented:

1. Because it was a bi-furcated application, the notice for variance satisfies the notice requirement for site plan approval.
2. The list provided by the tax assessor only stated the property owners and the NJDOT, all those parties were properly noticed in Daily Record with the date of May 5th.
3. Notices were sent out as a precautionary measure to Verizon, Cablevision, Mine Hill Water Department, everyone except the DOT. The notice said May 7th instead of May 5th.

Mr. Wiener mentioned that the mistake of date of May 7th makes the notice fatally defective. Notice needs to be perfect.

Mr. Sauchelli explained that since this matter has a 95 day period, the Board is giving Mr. Sydlar the opportunity to come back next month with his professionals, who are not here.

Mr. Willis arrived at this time.

Discussion ensued as to what utilities need to be noticed. My Sydlar mentioned that in the letter of January 30th as to who should be noticed, it only says DOT. My Wiener said it also says in certain cases you have notify all of the utilities and this is one of those cases. Mr. Sydlar said it says if applicable and how is the applicant supposed to know as it is not part of the application process, according to the statute they can rely on the certified list provided by the town official. It was mentioned by Mr. Herrdia that it is the applicant's lawyer's responsibility to know. Mr. Sydlar said he would let Superior Court decide. He said they do not want this to keep dragging on.

Counsel's recommendation is that the most efficient and fair manner to handle this tonight since the notice is insufficient for this evening, and the notice is black and white, would be to make a motion to carry it until June 16, 2014 in order to allow time for the applicant to fix his notice.

A motion was made by Ms. Goldstein and seconded by Mr. Gorman to carry this matter to the next meeting on June 16, 2014. The roll was called and the motion was carried by the following vote:

Ayes: Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Sauchelli
Nays: none
Absent: Mr. Alpaugh; Mr. Galarano
Abstentions:

Application 001-14 Steven Rose

Mr. Wiener swore in Mr. Rose. Mr. Rose verified that he is the applicant and resides at the subject property, 37 Frank Street. Mr. Rose stated that he is representing himself. Mr. Rose stated that he is a do-it-yourself type of person. Currently he has a small wood shop in his basement and a year and a half ago finished up a restoration of a 1967 Mustang which is stored in the only garage on the property. He would like to build some type of additional storage area so that he have his wood shop and equipment to work on restoring his cars in the same location. He went to the Construction Office three years ago and got some of the requirements in regards to distance from property line, how big it could be. He went to the Zoning Office this past January to ask for a variance as he knew he would not be able to work with the 15 foot height requirement as it would not allow him enough room to put in a rotisserie or car lift.

He realized some of the Zoning laws must have changed when he received the letter of denial recently from the Zoning Office. He addressed the requirements he could. He cut down the size of the driveway and cut down the size on the back of the garage. His original proposal, which he feels would be more aesthetically pleasing and fit the architecture of the neighborhood better, would be set back on the property a bit and consist of three garage doors. The new measurements would be 32 feet wide and 26 feet deep. The height from the floor to the peak will be 20 feet. The garage will be placed 15 feet from the southern property line and 100 feet back from the street. An area 32 feet wide by 20 feet deep area in front of the garage will be paved. A 10 foot wide gravel driveway will connect the paved area with the existing driveway. A small sidewalk will be placed on the north side of the building to connect the man door to the paved area. The ground around the garage will be re-graded to ensure water migration away from the structure and then grass will be planted.

He submitted Exhibits A1 and A2, as alternatives. They would be attached to the house and he feels meet the zoning requirements, but look ugly, commercial, and have too many walls. He tried to look into adding to the existing but with the septic in the location it is and the lot-line the way it runs makes it very difficult to add anything there. It was going to be a two car garage that you could squeeze three cars in and have a section for his woodshop.

Mr. Rose also spoke with his neighbors, the Kramers, who are on the same side of the road and immediately to the South. They have no problem with it.

Mr. Sterbenz, mentioned that Mr. Rose's property in its entirety is located within a riparian buffer of the Lamington River. The river is a Category One stream so under the State's Flood Hazard Area Regulations

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there is a 300 foot riparian buffer. The stream is on the adjacent property, but the riparian buffer does not know property boundaries it just goes out 300 feet. It goes through and behind Mr. Rose’s property. Riparian buffers are regulated under the Flood Hazard Area Rules. There are some allowances of the rules to do some construction within the riparian zone, but he has to go to the Department of Environmental Protection and get an individual permit. Mr. Sterbenz asked Mr. Rose if he has gone to the DEP. Mr. Rose did contact them and they gave him a whole list of things he needs to do like site plans and surveys. He did not know about needing the DEP approval until after he had already applied for the variance. He decided to continue with the variance approval first. Vegetation disturbance was questioned and 2,000 square feet is his threshold. He needs DEP approval even if he adds onto the existing house.

The question of whether there was an accessory structure on the property was discussed. There is a shed that is under 100 square feet without permanent footings.

Members of the Board expressed concern with the size and height and suggested he review his plans and scale back somewhat, make modifications to the height and size and come back next month. Mr. Rose and the Board agreed to carry the discussion to next month.

A motion was made by Ms. Goldstein and seconded by Mr. Morris to carry this matter to the next meeting on June 16, 2014 with no further notice. The roll was called and the motion was carried by the following vote:

- Ayes: Ms. Goldstein; Mr. Gorman; Mr. Heredia; Mr. Sauchelli; Mr. Morris; Mr. Willis; Mr. Frank
- Nays: none
- Absent: Mr. Alpaugh; Mr. Galarano
- Abstentions: none

OLD & NEW BUSINESS

The Proposed Sign Ordinance was discussed and amendments were recommended.

OPEN TO THE PUBLIC

None at this time.

ADJOURNMENT

There being no further business, a motion was made by Ms. Goldstein and seconded by Mr. Gorman to adjourn the meeting at 10:00 PM. The motion was approved by a voice vote.

Respectfully Submitted,

Marcia H. Istvan
Mine Hill Deputy Clerk

Approved on this _____ day of _____, 20_____

Planning Board Chairman