

SUSSEX COUNTY PLANNING BOARD

MINUTES

MARCH 5, 2012

The meeting was called to order by Chairwoman Phoebus at 4:00 p.m. The meeting is held in compliance with the Open Public Meetings Act, NJSA 10:4-2 of 1975, as amended. Present were:

MEMBERS PRESENT:

Gail Phoebus, Chairwoman
Andy Borisuk, Vice Chairman
Michael Cecchini
Dr. John Ford
Michael Francis
Kirk Perry
Walter Cramp, County Engineer
Rich Vohden, Freeholder Member
Joseph Maikisch, 1st Alternate
Daniel Conkling, 2nd Alternate

MEMBERS EXCUSED:

None

STAFF PRESENT:

Dennis McConnell, Esq., County Counsel
Eric Snyder, Planning Director
Alice Brees, Principal Planner
Neal Leitner, Senior Planner
Antoinette Wasiewicz, Recording Secretary

ALSO PRESENT:

John Risko, Assistant County Engineer
Bill Koppenaar, Chief Engineer
Peter Klouser, Esq.
George Gloede, Jr., P.E., P.P.
Robert Wesp, PLS
Anwar Qarmout

MINUTES

A motion was made by Michael Francis to approve the Minutes of January 9, 2012 as presented. The motion was seconded by Joseph Maikisch. All were in favor, with abstentions from Gail Phoebus, Kirk Perry, Walter Cramp, Joseph Maikisch and Daniel Conkling. Motion carried.

A motion was made by John Ford to approve the Minutes of February 6, 2012 as presented. The motion was seconded by Joseph Maikisch. All were in favor, with abstentions from Michael Cecchini, Michael Francis, Kirk Perry, Walter Cramp and Daniel Conkling. Motion carried.

SITE PLAN/SUBDIVISION REVIEW COMMITTEE REPORTS

A motion was made by Michael Francis to approve the Development Review Committee Minutes for February 6, 2012 and February 21, 2012 as presented. The motion was seconded by Gail Phoebus. All were in favor with an abstention from Kirk Perry. Motion carried.

APPEALS AND WAIVER REQUESTS

- A. 13 NEWTON, LLC, SITE PLAN FILE 14E(PSP)08/11, ROUTE 519, BRANCHVILLE BOROUGH AND FRANKFORD TOWNSHIP:

Peter Klouser, Attorney for 13 Newton, LLC said the original driveway was farther to the north and closer to Route 206. It was determined that there was not adequate distance from Route 206. The applicant was asked to obtain a sight triangle easement from the neighbor in Lot 1. They were able to purchase the lot and subsequently revised the site plan to move the driveway further away from Route 206. The sight triangle easement would be on their property and across adjacent Lot 4.

Mr. Klouser does not believe Lot 4 has the same type of topographical issues, it is a gentler slope. They are requesting a waiver from the portion of sight triangle easement on Lot 4. As documented, the owners are not interested in selling it. Mr. Klouser said Neal Leitner visited the property with their Engineer today.

A member asked staff for the status of the Site Plan application. Eric Snyder said the revised plans received conditional approval from the Development Review Committee on January 9.

Andy Borisuk asked how much of a waiver is being requested. Alice Brees said there is 1,600 sq. ft. of the sight triangle easement that is being requested. Mr. Klouser said they need some truck turning analysis and they must include a 'no truck left turn' sign.

No other questions were raised. The meeting was opened to the public. No questions were raised. The meeting was closed to the public.

A motion was made by Andy Borisuk to grant the waiver request from 13 Newton, LLC. The motion was seconded by Michael Francis. A roll-call vote was taken, results were as follows: Gail Phoebus-Yes; Andy Borisuk-Yes; Michael Cecchini-Yes; John Ford-Yes; Michael Francis-Yes; Kirk Perry-Yes; Walter Cramp-Yes and Freeholder Rich Vohden-Yes. Motion carried.

B. QARMOUT AMENDED SUBDIVISION, FILE 39/11, ROUTE 641, VERNON TOWNSHIP:

Anwar Qarmout was sworn by Mr. Snyder. He said he resides at 45 Woodside Avenue in Newton. Mr. Qarmout said he purchased the property (Lot 6 in Block 132.01) on Route 641 in Vernon Township about a year ago. There is a house on the property which has been unfinished for 18 years. He provided photos of the house which was marked as Exhibit A-1 and dated with today's date. The photos were passed around to the Board members. Mr. Qarmout said this property has a driveway easement on the rear section which goes through two lots with accesses to Settlers Road, even though there is 170 feet of road frontage on the County road. This property went through multiple ownerships before he purchased it for \$25,000. The house was constructed facing the County Road but without access to it. He said the existing driveway makes the house not suitable for living and that is why no one wanted to live there.

Mr. Qarmout is requesting a waiver for access to Route 641 (Drew Mountain Road.) He said there is 170' of frontage and that he has complied with requirements. He added that according to the Vernon Fire Official, the driveway does not meet the 9-1-1 Emergency Code. Mr. Qarmout's address is 18 Drew Mountain Road but you have to go to Settlers Road to access the house.

Walter Cramp questioned the location of the septic system and the well. Mr. Qarmout pointed them out on a map.

George Gloede offered nine additional photographs which were marked as Exhibit A-3. He was also sworn by Eric Snyder. Mr. Gloede said he is a Licensed Professional Engineer and Planner in the State of New Jersey. He said he is the President of G. Gloede and Associates for the last 15 years and he has testified before this Board and many other Planning Boards, Zoning Board and County Boards throughout the State. Mr. Gloede said he took seven of the photographs around September 2011 and two were taken last week. He described the photographs which showed the sight distance in both directions on the County Road from the driveway. He described the driveway access to Settlers Road, which was approved in 1988, as 300 feet long and going through two properties. The first phase of the subdivision was for a couple of lots, and Phase 2 included the lot in question.

When asked who was responsible for the 300' driveway, Mr. Gloede said all three lot owners have to have an agreement regarding maintenance. He said it is a maintenance nightmare and that is another reason why they want a waiver for reverse frontage. He said the driveway has a 15% grade.

Mr. Qarmout was asked if he planned to abandon the easements on the other two lots if the waiver is granted and he said, "Yes." He added this would improve the other owner's property values.

Mr. Gloede was asked if he knew the sight distance off of Settlers Road. Mr. Gloede said the Surveyor was present. Robert Wesp measured the sight distance and included that information in a letter. Alice Brees said the Board members received a copy of the letter in the mailing. Andy Borisuk asked if the other two lots were still being serviced by the existing driveway. Mr. Gloede said, "Yes." A member asked if there was anything in the historical approval as to why the driveway was approved under those conditions. Eric Snyder said that question should be directed to Walter Cramp, County Engineer. He also asked if at that time, Drew Mountain Road was a County Road. Alice Brees had copies of the Filed Map for Phase 2, subdivision plan from 1988 for distribution to the Board. A member said there must be a Resolution that gives the conditions that would list the reasons why access was not provided from the County Road.

Walter Cramp said it is very specific on the Filed Map, with a note requiring the driveway access for Lots 5 and 6 to come through an easement onto Settlers Road. He explained that if every single lot came out onto the County roadway, it would create numerous traffic safety hazards. They use the reverse frontage standard to avoid having all these driveways onto the County road. Mr. Gloede said he agrees with him but he feels three lots on one driveway is excessive. Mr. Cramp said as a former engineer for Calaphon, he has seen multiple residences off of single driveways, it is not uncommon. Mr. Gloede said this lot should never have been created. Mr. Cramp said the lot was created and the access is through Settlers Road as originally approved back in 1988. Subsequent deeds and a site plan to improve the property with the house on it, shows the driveway coming in the rear of the lot. The driveway is there now, this property already has a serviceable driveway coming into it. If the reverse frontage waiver were granted, they would be introducing a driveway with substandard sight distance onto Drew Mountain Road---making a bad condition even worse.

Mr. Qarmout brought up the fact that three Vernon Township officials had difficulty finding his house. Michael Cecchini said he has been a fireman for 31 years and that a fire truck would never come down the driveway anyway. He said the house is 89' off of the main road. The fire truck would hold up traffic and would fight the fire from the County road. He said an ambulance would need to get right to the house. Mr. Qarmout asked how could an ambulance get out of the driveway. Mr. Cecchini said if a car can get in and out of the driveway, an ambulance can get in and out. An ambulance is only slightly bigger than a pick-up truck.

Mr. Qarmout was asked by Kirk Perry, if when he purchased the property, was he aware of the conditions? Mr. Qarmout said he was and it is his theory that they were able to get the driveway approved in the back knowing that it would come before this Board for road access later. It was again suggested to look at the original Resolution.

Gail Phoebus asked what is the sight distance for access from the County Road. Mr. Gloede said based on 85 percentile speed, they were required to have 550' from the

proposed driveway. He said if you take 3.5' (eye height) measuring 5' back from the white line and shoot in both directions, they have 550' using 3.5' (object height). The problem that came up is that there is a dip in the road. As a car is coming up the County road, for a period of about two seconds, all you can see is the roof of the car. You don't see the 3.5'. He said because traffic is coming up a steeper grade, the cars are going slower anyway. He said there is plenty of time for stopping sight distance for someone coming up the hill and also visually for someone coming out of the property. He said the code does not say it has to maintain 3.5' through the entire 550', it says you have to see it when you start and at the end.

Mr. Cramp said from a traffic safety point of view, you want to see everything continuously out to 550', not just out at 350'. Everything in between is coming at you, so you have to see the entire range of 550'. If there is a dip, you can't see. You may look out briefly and think it's clear but there may be a vehicle close in which is going to hit you even sooner. Sight distance has to be continuous. A dip is not acceptable in a sight distance. He added that when they design roadways, they look at a sag curve because at night headlights get lost in dips. Dips in the road impair sight distance, particularly at night. He said Mr. Gloede's interpretation is not correct. Mr. Gloede disagreed.

Mr. Qarmout said if you walk in the dark in your bedroom and hit things a few times, you realize where the furniture is. The people who will live in the house will realize what they have to do to safely exit their driveway. Mr. Cecchini said the owners will realize the limited sight distance but the houseguests will not. Another member said it's not just the people coming out of the driveway, it is also the people driving up the County road.

Walter Cramp said the County has to design things from a public safety point of view to meet current standards. Nothing is perfectly safe but they do need to make it as safe as they can by following the existing standards. If they don't follow the existing standards, it creates an unsafe situation for the public. A member clarified that the speed limit was 35 MPH. Mr. Cramp said the road is posted at 35 MPH but the design speed used is the 85th percentile speed. John Risko said the 85th percentile on Route 641 is 45 MPH in both directions. Mr. Qarmout said it is almost impossible to drive up that hill at 45 MPH.

A member asked if the proposed driveway meets driveway standards as far as pitch and slope and if there were any drainage issues. Mr. Gloede said they would adjust the grades and provide drainage at the low point. They propose dry wells at the end of the driveway. When asked about the slope, Mr. Gloede said it is a 15% grade and that they were at 2% grade at the bottom near the County road. Mr. Cramp said there was an issue mentioned about the driveway radius at the top with a fire truck. He said there are ways to traverse slopes by softening grade by going across them. There was a comment about the fire truck radius for the existing driveway. He said the turning radius for a fire truck is softer at the top than they are for proposed driveway --down at the bottom is far worse than anything on top. Mr. Cecchini said the fire truck would park on the County road anyway.

Mr. Cramp said there has been an assertion that the Settlers Road intersection on the County road is substandard. Introducing this proposed driveway creates a second unsafe condition---a condition that does not meet Federal and State safety standards. That's the primary concern for Engineering. Gail Phoebus asked if they approved this proposed driveway, would it create an unsafe condition? Mr. Cramp said it would create an unsafe condition because it does not meet current Federal and State AASHTO safety standards for sight distance. With the dip in the road you cannot see someone coming at you, day or night. That's problematic. There is a specific easement recorded in the deed that restricts the access to this property to the 20' -wide driveway easement across Lots 4 and 5. There is a reason for that. While some may want every single property to access the County roadway, these roadways tend to be for higher speeds. In the absence of proper sight distance, this could create a real safety problem. Mr. Cramp added that the County gets litigated for a number of things. If the County creates an unsafe condition for a driveway, this is headed in the wrong direction. Ms. Phoebus asked if the County's feeling is that if this waiver is granted it would create an unsafe condition and therefore if something happened there, the County could potentially be open for a lawsuit. Mr. Cramp said he would defer to Counsel on that, but that would be his take.

Dennis McConnell, County Counsel said, "What you have here is an application that went before the Township of Vernon in 1988 -- at that point in time, they had this reverse frontage. That same application would have had to come before the County Planning Board as well and get its approval. So what you're being asked for now is to circumvent that approval, both the County and the Township and say, 'No, we disagree with you, we're now going to allow this to happen.'" "If you want to reverse that condition, you have County standards: *'Reverse access for major subdivisions with frontage on a County road, the following is required: The access shall utilize an internal street or alley, thereby having no direct access on the County road.'*" "So both the Vernon Township Planning Board and the County Planning Board were aware of its standards and they approved it in this fashion."

Dennis McConnell explained that the owner at the time accepted that condition and realized what he had to be faced with. When the plans were approved, there were engineers and surveyors involved back in 1988 on both Municipal and County levels. If at that point in time the applicant wanted to have a waiver, he would have had to meet the criteria in the County standards: *'The subdivision involves lands with frontage on the County road which due to its size, slope or particular or unusual circumstances make the provision of a marginal road or reverse side impractical or unnecessary'*. Or there are environmental constraints such as slopes. It appears there are slopes from either driveway access. That's the criteria to utilize when making your decision: whether it is or is not impractical or unnecessary. Then that's if all the sight distance is met. That would be the second waiver, for sight distance. So those are the two criteria that you have to use based on historical evidence that's been put before you.

Dennis McConnell said that there may be an issue with the adjoining neighbor. The owner of Lot 5 would have the same right to come in and ask for the same thing, to relocate the driveway onto the County road. And then you could be destroying the

entire plan that was approved in 1988. And you have to use the same criteria for reverse frontage on all applications. You can't change the County standards unless you want to go back and change the rules. Those are the rules of the game that we have to play with because that was enacted. We didn't enact them, but they're there. And those are the standards you have to utilize in making the decision whether or not to grant a waiver."

Walter Cramp said if you grant an access here with substandard sight distance, you're creating an issue, an exposure for the County. He asked Mr. McConnell if that would be a fair statement. Mr. McConnell said, "Yes."

Gail Phoebus asked if the Board did grant this for Lot 6, what happens to Lot 5? What if they wanted to access the County road also? Mr. Qarmout said they can't for several reasons. One reason is their septic is in the front yard, and the house is already lived in. He said he hasn't had that luxury.

A member asked what was the slope on the proposed driveway. Mr. Gloede said it starts off at 2% and rises to 15%. For the existing driveway, Mr. Gloede said it was between 15-16%. The member said if the back driveway is the same slope, once it is paved there would be no issue in getting in and out of it. He added that he does not believe that is the only reason that house has not been occupied.

Mr. Cecchini asked Mr. Qarmout if the waiver is not granted will he walk away from the house? Mr. Qarmout said he will not. Mr. Cecchini said that Mr. Qarmout claims the house has not been sold for many years because of the driveway access and yet he bought it and if the waiver isn't granted he will use the existing driveway. Mr. Qarmout said he will not use the driveway, he will exhaust his remedies. Gail Phoebus said this Board was designed to approve access to County roads and stormwater issues. They are not here to determine why this house hasn't sold. The Board's concern is to determine whether granting this waiver makes the County liable if somebody had an accident at the site. She added that she understands that reverse frontage is not attractive, and added that she has the same situation.

Walter Cramp said there are standards and there is relief in certain cases to waive those standards where it's prudent. When professionals get called in front of a judge, the question is, 'Did the applicant follow the existing standards; or were there reasonable efforts to comply with the standards?' It is true, anyone can sue anybody; but the County has to defend that based on complying with existing standards. If the County creates a sub-standard condition, that's where the exposure begins.

Mr. Francis said every waiver they grant technically creates a sub-standard situation. Mr. Cramp said it is true, the Board is here to grant waivers. This property was developed in 1988 predicated on the safe development of the property, which respects the reverse frontage through an access from the rear of the property. The property was developed that way, it was purchased that way, it's been passed along through the deeds that way. It is one thing to grant a waiver, but it's another thing to reverse what's been in effect since 1988 and creating a new condition which is adverse to public safety. He feels this is problematic.

Mr. Cecchini said that Mr. Qarmout would have to improve the proposed driveway and the existing driveway has to be improved. All things being equal with improvements, what more risk would his family be in by using the existing driveway rather than the proposed one. Mr. Qarmout said it is a safety issue with fire trucks and ambulances. Mr. Cecchini again stated a fire truck would never come in off the top, they would service it from the road.

Mr. Gloede said while looking at the sight distance, he did not lose a single vehicle in that dip on the County road. He did not see the entire vehicle or the headlights, but he saw the roof. Mr. Cramp said the sight distance is the secondary issue. The primary issue is reverse frontage. It is a known safety fact, and it's why every single property does not come out to a County road. Putting aside the issue of the sub-standard sight distance, if they grant this waiver, all properties now have established a precedence. Mr. Francis disagreed and said that every application stands on its own merits. A member said you can go back to the argument on 13 Newton LLC where the Board just granted a waiver for only 250' sight distance. Mr. Cramp said that there was no deed establishing an easement in a safe manner years ago.

A member asked what is the sight distance on a sight triangle easement. The question was deferred to Bill Koppenaar, Chief Engineer. Mr. Koppenaar said they are talking about two different things -- sight triangle easements and sight distances. Sight triangle easements are established through the Land Development Standards and measured at the centerline of the roads at an intersection. It is a set distance, either 60' or 90' on the approach road and 300' on the County road. It is intended to provide a clear visibility area for approaching vehicles. As a car is coming down the County road, they have a clear view if a vehicle on the side street is approaching them and whether it appears that they are going to stop. Sight distance is when a vehicle is actually stopped at the intersection where you would look right and left. You're looking for a sufficient sight distance before pulling out into traffic, which is generally much farther than what you would have for a sight triangle, to identify any vehicles that are coming at you. The waiver criteria for stopping sight distance is so that if the vehicle approaching gives that vehicle sufficient opportunity to stop if the vehicle that's waiting to exit the driveway or the street should fail to see them and pull out in front of them.

Mr. Koppenaar was asked what the sight distance is on that sight triangle. Mr. Koppenaar said it is based on the design speed, using 85th percentile speed to establish the sight distances. Sight triangle easements are a fixed unit. A member clarified that a safety issue isn't just for the individual that is stopped at the intersection that will be pulling out, but also for the traveling car to give enough distance to stop when needed. Mr. Koppenaar said that is correct. He added that the shortest possible distance you would ever want to approve in a waiver would be the AASHTO stopping sight distance for the vehicle on the through street. If the vehicle on the side street exited in front of them or did not see them, such as being in a dip or some other reason, then the vehicle on the through street has sufficient time to perceive that the vehicle is exiting in front of them, react to it and then the actual braking distance of the vehicle.

Gail Phoebus asked Mr. Koppenaal if he felt that this application does or not meet this criteria. Mr. Koppenaal said he would be very hesitant to grant a waiver in this particular case. He said his professional opinion on this, from being in the transportation engineering field, this has everything in place already to provide for an alternate access to this particular lot. A member asked, at 370' at 45 mph, which is 10 miles over the speed limit, going uphill Alice Brees said the available sight distance is not 370'. Mr. Koppenaal said there are specific formulas. The member said Mr. Wesp's report says there is 370' of sight distance to the dip. Alice Brees said at the field meeting they measured 336'. Mr. Koppenaal said when determining actual stopping sight distance, AASHTO has a manual that they use where you enter in specific values based on the gradient of the road, the travel speed of the vehicles, deceleration rates and perception reaction times that will tell you definitively whether the 336' provides the stopping sight distance. He said he is not prepared to do that calculation in his head.

George Gloede said he did the calculation at a 35 mph speed limit. The grade coming up that hill is 13%. Going through the calculation in the manual which is the stopping distance, comes out to 85.5'. Bill Koppenaal said that is one part of the equation. He said stopping sight distance in AASHTO is comprised of two different elements. The physical distance that it takes a vehicle to stop is 85'. He said he checked the calculations before he came down for this meeting. The other component is the reaction time, which is the time that it takes the person in that vehicle to see the car and decide to stop, put their foot on the brake, press the brake and then begin to stop the vehicle. Andy Borisuk asked if that would be a lot shorter distance coming up a steep grade. Mr. Koppenaal said the 85' takes the gradient into account. The formula already adjusted for the fact that the vehicle is traveling in an uphill direction. For 45 MPH he said he does not have that information with him.

Gail Phoebus asked Dennis McConnell about the Board granting a waiver because this is on the back of the house. Does that set any kind of precedent? Mr. McConnell said, "What you need to do, we've got our County Standards. If you want to grant the waiver, you have to make a finding, and your finding has got to be made that the reverse access is either impractical or unnecessary. And you have to put the reasons why it's impractical or unnecessary. You have to overcome that analysis because it was previously approved in 1988 both by the Vernon Township Municipal Planning Board and the County Planning Board at that time. So they looked at it and you're saying that 'No, a second look at it says notwithstanding those Resolutions of approval, you find it's impractical or unnecessary for certain criteria which you need to put out on the record. That's for the one waiver. The second waiver you have to give because you don't have sight distance. You have to overcome the actions of two Boards back in 1988.'" A member clarified that if they don't approve the first waiver, they don't get to the second one.

Mr. Francis asked why the municipality would be involved in a County road access. Mr. McConnell said, "Because in the prior subdivision plan it went to the Municipality to get approved initially and as part of that approval, you had the access here." Mr. Francis said the County would not make a finding because it didn't come out on the County road. Mr. McConnell said, "But the County has to approve this plan because

it's a major subdivision. This Board approves major subdivisions." Mr. Francis said the County involved with this back driveway would be a moot point. They would just approve the plan that was approved by the town. Mr. McConnell said, "Because it had reverse access on it. We don't know the history, they may have come for all we know to the County Planning Board at that time and asked for a waiver for both Lots 5 and 6. We don't know that because we don't have that file in front of us. They may have asked and been told, 'No'." "We don't know that. It may never have come for a waiver and just provided for reverse access as per our standards and they followed the standards. Because if this is what you're required to do, they looked at it and said, 'We can do that' and they did it. Or they may have asked for a waiver, but unfortunately we don't know that."

Michael Cecchini said the County must have approved Settlers Road access and that might be part of this whole subdivision. A member said he heard Walter Cramp say that we have an existing sub-standard condition and if we granted a driveway waiver then we'd have multiple sub-standard conditions. Walter Cramp said there is an existing non-conforming condition related to traffic safety standards for Settlers Road. So if we allow this driveway, we now have two. A member said it may be imperative that the Board find out what happened at the County Planning Board. If they previously asked for a waiver and were denied, that's a whole different circumstance. Then the appeal should go to the Freeholder Board. Mr. Francis said he would like an analysis on this sight distance of Settlers Road vs. the sight distance on the driveway to see which one is safer. It was suggested that they find the history of this subdivision both on the Municipal level and the County level. Mr. Qarmout felt a decision should be made today. Gail Phoebus said they are dealing with the safety of the residents. She felt the Board should do research so that if they do grant this waiver, the Board can back it up so there would not be an issue.

Mr. Qarmout said he it was the Board's decision whether they want to approve this now or carry it to the next meeting. He asked if there was a previous waiver request and it was denied, that there is a statute of limitations and it would have to come back to the Board again and not go to the Freeholders for an appeal. Dennis McConnell said, "If the applicant at the time asked for a waiver and the waiver was denied, it's denied. You don't get three and four bites at the apple."

A motion was made by Michael Francis to adjourn this until we have an historical record. He also asked for the sight distance analysis on Settlers Road and the proposed driveway on Lot 6. He said that would show diligence on the Board's part. If the Board makes an improvement on a bad situation, it doesn't matter what was done in 1988. The motion was seconded by Michael Cecchini. A roll call vote was taken, all were in favor with an abstention from Rich Vohden.

DIRECTOR'S REPORT

The last of the State Plan Hearings was on March 1. There is now a 30-day comment period. He will put together some comments and submit them.

UNFINISHED BUSINESS

A. DRAFT STATE STRATEGIC PLAN:

Michael Francis suggested that the Board members read the draft State Strategic Plan. He said it is a good plan and is heading in the right direction. It changes all the models that apply to planning.

NEW BUSINESS

None

OPEN TO PUBLIC

None

ADJOURNMENT

All business having been completed, a motion to adjourn the meeting was made by Michael Francis. The motion was seconded by Andy Borisuk and carried unanimously. The meeting adjourned at 5:30 p.m.