

MINUTES

PRESENT: J. Burke
 R. Dodds
 D. Haywood
 J. Mathieu
 S. McNicol
 E. Niemann
 J. Strasser
 M. Synchron, Alt #1
 D. Posey, Alt #2
 A. Clerico, Planner (7:30 PM – 10:29 PM)
 T. Decker, Engineer (7:30 PM – 10:08 PM)
 D. Pierce, Attorney (7:30 PM to 10:29 PM)

ABSENT: T. Kratzer
 L. Senus

CALL TO ORDER

The meeting was called to order at 7:31 PM by R. Dodds.

NOTIFICATION

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over-talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

Notification of the time, date and place of this meeting has been published in the Hunterdon County Democrat and Courier News, and has been posted in the Kingwood Township Municipal Building at least 48 hours prior to this meeting and has been filed with the Municipal Clerk.

NEW AND PENDING MATTERS

BDAC – Block 23, Lot 17.02 – Barbertown Point Breeze Road – Amendment of Prior Approval

G. Dilts, attorney, and A. Belle, applicant, were present for the matter this evening.

D. Pierce has reviewed the notices and determined they were adequate. He indicated to the Board it may open the hearing.

G. Dilts stated, last month the applicant appeared before the Board with a two lot minor subdivision with remaining lands. After discussions, the application was amended to a one lot subdivision with remaining lands.

Lot 17.05 was severely restricted by the buffer and conservation easements on the Lockatong Creek. The proposal this evening was to remove the restricted areas on that lot.

D. Pierce swore in A. Belle.

A. Belle testified he was familiar with all the plans. He testified, last month, he agreed to make a 1 lot subdivision. Lot 17.05 resulted in a lot size of 2.798 acres. On last month’s plan, the wetlands buffer and stream corridor encumber the lot by almost 50%. The D&R Canal Commission had some concerns regarding the lot remaining in agricultural use. How can a guarantee be given if the lot is sold that the agricultural use will continue? The current proposed plan will eliminate the need for an agricultural easement. There will be less confusion for the homeowner. The lot line is parallel with the driveway and the rear line will remain as previously approved, with the variance. The original lot was 2.798 acres and the new lot is 2.061 acres. There is no altering of the buildable area. It is a better way of handling the easement by not having the large expansive easement attached to the proposed lot.

T. Decker stated the buildable area has not changed and the variance granted for that area has not changed in configuration.

Banisch and Associates provided the following memorandum. A. Clerico reviewed.

We have reviewed revised plans for the above-referenced application, dated 4/21/08, last revised 9/30/09 and offer the following comments to supplement our last review of June 5, 2008:

1. The applicant’s May 22, 2008 plan indicated three (3) proposed lots to be subdivided:
 - Proposed Lot 17.02 (17.276 ac)
 - Proposed Lot 17.04 (3.612 ac)
 - Proposed Lot 17.05 (2.798 ac)

2. Two (2) lots are proposed: Proposed Lot 17.02 (21.626 ac), a flag lot with access to Barbertown-Point Breeze Road, and Proposed Lot 17.04 (2.061 ac) which is to be located on Barbertown-Point Breeze Road.

3. Applicant’s revised plan indicates that two variances on Proposed Lot 17.04 are required:
 - Variance for Total Building Envelope: .858-ac (37,390 sq. ft.); and
 - Variance for Buildable Area: .687-ac (29,933 sq. ft.)

4. A zoning schedule should be provided, which identifies and compare the minimum bulk standards for the zone to each lot proposed.

5. The applicant should also revise the plan to identify the ordinance citation the “Total Building Envelope” variance that is indicated on the plan.

6. Section 132-30.F(6) requires a minimum buildable area of one acre in all Class I and II subdivisions, as follows:

<u>Ordinance:</u>	<u>Required</u>	<u>Proposed</u>
§132-30.F.(6) Min. Buildable Area	1-acre (43,560 sq. ft.)	.687-ac. (29,933 sq. ft.)

7. The variance for the minimum buildable area for proposed Lot 17.04 appears to be the result of the applicant’s responsiveness to our prior comments on the previous subdivision proposal to align the rear lot line with the existing hedgerow.

8. We recommend that the Board require the preservation of the hedgerow collinear with the proposed rear lot line of proposed Lot 17.04, by placing the hedgerow in a conservation easement.
9. In accordance with N.J.S.A. 40:55D-70.c., the applicant must (1) demonstrate that there is an extraordinary or exceptional situation relating to a specific piece of property which, if the zoning regulations were strictly applied, would result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the applicant; or, the applicant must (2) demonstrate that *the purposes of the Municipal Land Use Law would be advanced by a deviation from the ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.*

In addition, the applicant must demonstrate that the negative criteria are satisfied, which state that no variance can be granted unless the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

10. The Board should discuss whether the benefit to be gained by aligning the rear lot line of proposed Lot 17.04 with the existing hedgerow is a 'benefit' that would substantially outweigh any detriment to the public good, zoning ordinance and zone plan.
11. The Board should condition approval upon approval by any other agency with jurisdiction.

G. Dilts stated if you compare the original approved total buildable area, 29,922 sq ft, the same is provided with the new configuration.

D. Pierce did not have any comments on the application.

It was moved by J. Mathieu, seconded by S. McNicol and carried to approve the above application with the following conditions:

All members present voted **AYE** on **ROLL CALL VOTE**.

R. Dodds announced the following is a continuation of a public hearing started in May of 2009.

Perrotti – Block 23, Lot 11 & 11.01 – Route 519 – Major Subdivision – Continuation of Public Hearing

P. Henry, attorney and C. Stires, engineer, were present for the hearing this evening.

P. Henry stated the application was present for a hearing before the board in May of 2009. There have been some revisions to the plan which are responsive to the planner's and engineer's comments. It has taken some time to complete the well testing. The testing went extremely well. It has come to his attention that this is the first major subdivision who has gone through the well testing process. The testing is rigorous. One of the proposed lots is slightly under the buildable area and one lot is shy 6/10's of the buildable area.

C. Stires had been sworn in previously.

C. Stires testified the application, visually, has not changed much since the original hearing. The application contains twelve market rate lots and the remaining farm lot would be the back lot. There is an inclusionary COAH lot, which is the first lot on the right hand side coming into the site. They have received approval from

the DEP and the flood hazard area determination has been done. There is a small patch of wetlands at the entrance and will require a general permit to cross. The variance for the two undersized lots, in buildable area, is because the applicant would like to keep the frontage area of the farm lot as open as possible. If the Board was not in favor of keeping the farm lot open, the lots could be shifted down and the variance eliminated. Lot 11.13's buildable area is .98 acres, 200ths of an acre shy and Lot 11.12 is 6/10ths of an acre under. The Lots provide sufficient area for the development of the lot. The setback is consistent with the rest of the development. The original plan showed thirteen lots and the current drawing fourteen. The 14th lot will have a 50' flag stem off the proposed road with a wetlands crossing and riparian buffer. The lot will require permitting from the DEP.

T. Decker stated the flag lot is in conformance to the zoning. The wetlands crossing can be permitted by the DEP. It is an awkward lot but fits the 200' diameter circle in the building envelope and excludes the environmentally sensitive areas.

C. Stires stated he has reservations in utilizing the 50' for ROW of the cul-de-sac for access to the property but it does meet the requirements of zoning and a buildable lot.

P. Henry stated the configuration meets the criteria of the qualifying plan but the applicant is proposing to a cluster form of configuration. In regard to the placement of easements and conservation markers, the applicant is proposing the installation at the time of final approval and building permits.

T. Decker stated the issue was raised so the Board can make a recommendation. The conservation easement does not take into consideration farmed areas. He believes on actively farmed parcels, the markers are pushed to the tree line so that they do not affect the farming activity. He stated it does not matter if they are placed now or at final subdivision.

C. Stires testified the County does not review septic suitability for Kingwood.

T. Decker stated he had spoken with R. Vaccarella of the Hunterdon County Health Department and Kingwood Township is the one of two municipalities which does not ask the Health Department to review septic testing information as part of a subdivision application.

C. Stires testified in regard to the underdrains, on page six of the plan set, the proposed road drains from the left to the right and hits a low point. The inlets will be placed on the high side of the driveways. Installing 12" swales create a safety hazard. He would proposed 6" grass swales. The grass swales will facilitate the drainage to the driveways where they don't have inlets. It is shown as a stone swale in the area just above the proposed driveway. It will contain an 8" or 10" underdrain that will drain back to the catch basin and into the pipe system and then into the retention basin.

T. Decker stated the question is some of the underdrains are pitched to the opposite of the road swale. The road swale is pitched in one direction with the inlet on the higher side. The underdrains pitches back towards the pipe. It is an unusual design.

C. Stires stated the stone will be placed to the bottom of the swale. In response to a comment by a Board member about it becoming overgrown, C. Stires the design provides for a full depth trench of stone containing 1'-2' of stone. The stone will be 1^{3/4}" and will not erode. If the Board is adverse to the stone trench, additional inlets can be installed.

In response to a inquiry from a Board member regarding the drainage of the first lot, P. Henry stated C. Stires had testified at the first hearing that the road and plan will solve some of the drainage at the top of the property.

C. Stires, referring to Sheet 11, testified the way the basin is designed it provides for a 5' safety ledge. The safety ledge is self-explanatory. It is a 5' level grassed area. If someone were to fall in and be pulled out, there is an area that is not sloping for assistance. There is another ledge 2'-3' into the water. The two ledges are important to the wet basin. In his professional opinion putting landscaping on either side defeats the safety ledge's purpose. The BMP states it should be put there but he doesn't feel it is practical. The only additional landscaping will be in the area between the pond, the residential area and between the lots and farm lot. It is 10' wide at its top width. There is 5' of water in the retention basin. It will have an irrigation fountain to prevent algae and be fenced. There is a continuous level of water elevation at 479'. There is an orifice at the surface elevation and will function like most other retention basins. In order for water to remain in the pond, there needs to be a shut-off. To empty the pond, the gate valve will be opened and is the only reason for the sluice grate. The cost to run the pump will be part of the homeowner's association. The berm will be constructed of soil. There are four bays that come down and run into the basin. It will be landscaped as a water quality feature. The plantings would be brush-hogged rather than removed. After they have been cut down to the ground surface and their spacing is evident, it will allow you to rake the sediments and pull them out without disturbing the plantings. The slope of the pipes is very slow and each of the flared ends have rip rap. There are a series of orifices in front of the outlet structures. The first one is 2.5", the next one is a little bigger and there is a grate at the top of the outlet structure. There is an emergency spill way that could handle the overflow if every one of the orifices were blocked. The elevation in the water in the rainy season is 479'. There is one foot of room for the water to come into the basin. As soon as the water gets above, it will spill out. There is approximately three feet of before it will begin to spill out of the basin. The stormwater management is designed to stay within the limits of the berm. There spillway is there in case everything is blocked or more than the 100 year storm. If you go to the colored drawing, you can see the outfall on the first one on the bottom. The outfall will go to the existing channel that comes down through the field and goes into the Locketong. The design is based on a worse-case scenario. The water is coming off faster than it will when the development is completed. It will have established lawns that have better resistance to water than the existing farm field has now. The run off out of the basin is further reduced. In response to a comment from T. Decker regarding the amount of water and required acreage drainage, C. Stires responded the BMP require you have 20 acres for a wet pond and the volume of water needs to be equivocal to the one year storm. The proposed pond has ten times that amount. There is a concern that the areas along the ledge might become muddy areas and become less an aesthetic feature. No one can control the water table. It is a beautifully designed pond. In a drought, there is nothing you can do.

A. Clerico stated she has seen some other detention basins that have two areas of plantings, one for in the basin and one for around the basin, which might be an option.

T. Decker stated the items discussed are the main items. There are additional items under technical that can be resolved. If the applicant is willing to comply with the balance of the letter, they have discussed all the items his review requested.

C. Stires stated he will work with T. Decker on the design and remaining issues. He received the latest letter from the DEP last week.

P. Henry, in regard to the COAH unit, the applicant is proposing some shared living arrangement, perhaps between five and ten. There was a little concern about a unit of ten residents. Five or six bedrooms would still give bonus units for the Township.

A. Clerico stated another option could be a moderate income single family with an accessory unit or designate through a deed restriction dwelling on Lot 11.01 or low income accessory cottage.

P. Henry stated the dwelling owners would become members of the homeowner's association and share the cost of maintaining the improvements, such as the detention pond and drainage swale system. If the access road is utilized as an emergency access, the maintenance would go to the affordable housing unit, Lot 11.01.

In response to a question from a Board member, C. Stires indicated the electric for the fountain will be coming from the existing barn and will either be part of the homeowner's association or billed to them. None of the drainage from the farm will be sent to the detention pond.

P. Henry stated the remaining lands will be deed restricted from further subdivision. In response to a Board member's comment with regard to the close proximity of the COAH unit to another dwelling, P. Henry stated it is not a multi-family but will contain shared bedrooms. It will have the appearance of a single family dwelling. C. Stires responded the shared bedroom dwelling is approximately 500'-600' from the property and there is an existing hedgerow.

In response to a question from a Board member regarding the farm being part of the homeowner's association, D. Pierce stated it is his impression that each lot in a subdivision benefits from the subdivision. If the farm lot is receiving significant benefits from the subdivision and retaining significant acreage, if the qualifying plan were to be developed, all fourteen lots would be part of the homeowner's association. It is only by virtue of the cluster provision are these lots configured so the farm is not part of the development. He would like to defer judgment on the homeowner's association issue until he has an ability to review the statute and if there is the ability to exempt one lot.

P. Henry stated based on the premise if that lot is not getting what the homeowner's association was created to do that might be a basis it can be exempted. He is not really part of the development but the remainder lot. It is the logical way to go.

D. Pierce responded developments have stormwater easements or emergency easements which would require membership in the homeowner's association.

D. Pierce stated relating to the variances for Lots 11.12 and 11.13 for the buildable area, it is the applicant's rationale of why they would like those variances. The plans can be revised to eliminate those variances. If the Board creates the two lots with variances and the lot owners want to build a deck or sun room, they will have to go to the Board of Adjustment to expand a structure on a non-conforming lot. This is an instance where you can avoid the variance.

P. Henry stated assuming the COAH house wanting to add a pool or deck is highly unlikely since it would not want to expand itself. It is not as if it were a market rate house. The argument in favor of the variance is a farm feature that is being preserved for the people living there and one of the ways to provide visual access to it.

C. Stires stated if you are looking at the plan, shifting it a little might deal with a lot of other things that might be affected, the septic, drainage, etc.

After some discussion, the Board requested the applicant to reconfigure the lot lines on Lot 11.13 to make it a conforming lot and Lot 11.12 remain as non-conforming and requiring a variance. P. Henry stated the non-conformity will be noted in the deed for Lot 11.12.

P. Henry stated there is no technical person present for the well testing. He stated the well testing was done and the Township Consultant wrote a letter dealing with four issues. A response was provided from the person who performed the testing. The tests were satisfactory but had a couple of items that needed work. V. Uhl has not had an opportunity to issue his report. He is requesting it be a condition of approval. The well was a phenomenal producer, recharging within 90 minutes to 90%. The wells were 300'-400' deep, which was deeper than a lot of wells in the Township. The reasons the residents who were contacted but could not participate was due to the fact that their wellhead was submerged. The application is relatively straightforward. It will require one variance for the less than one acre of buildable area on Lot 11.12. They will coordinate with T. Decker and D. Banisch on the outstanding issues. The homeowner's association can be dealt with as a condition of approval. The application is consistent with the requirements of the ordinance. In regard to County approval, the applicant is requesting the Township endorse the emergency access to Route 519 and use of the driveway for the cottage if it is an affordable housing unit. If it is not being used for an affordable housing unit, the existing dwelling will be removed.

R. Dodds called for comments from the public.

L. Schmid inquired if permits are required for new roofs and electrical work inside the house. D. Pierce responded a building permit is required but no variance would be required unless they increased the footprint of the building.

R. Dodds closed the public comment portion of the hearing.

It was moved by J. Burke, seconded by S. McNicol and carried to grant preliminary major subdivision approval with the following conditions:

D. Pierce stated the performance bond would be a condition of final subdivision approval. One of the conditions will be that the applicant provides cost estimates of the off-tract contributions.

P. Henry stated the condition requiring the permits for any wetlands disturbance would be appropriate as a condition of final approval or to be satisfied as a condition of final. Also, the filing of the conservation easement should be a required as part of final approval. D. Pierce stated the conservation easement filing would be required at the time of final approval.

C. Stires stated the conditional approval from the County is that they require an acceleration lane rather than a deceleration lane, a limitation of the height of the growth and triangle site easement. There is currently a site easement to the right but not to the left. The site easement to the County is not practical. It is 30' back from the ROW and 100' long.

E. Niemann recused herself from the following matter.

Resolution No. 2009-21 - Galleria – Block 39, Lot 7 – Tumble Idell Road – Amendment of Subdivision Approval with variances

It was moved by D. Haywood, seconded by J. Strasser and carried to adopt **Resolution No. 2009-21 - Galleria – Block 39, Lot 7 – Tumble Idell Road – Amendment of Subdivision Approval with variances** with the following correction:

Page 5 - #2 – last line – add the word “test”.

All members present voted **AYE** on **ROLL CALL VOTE**, except M. Synchron, who abstained.

E. Niemann resumed her position on the Board.

Resolution No. 2009-22 - Belle – Block 23, Lot 17.02 – Barbertown Point Breeze Road - Amendment of Subdivision Approval with variances

The adoption of the above resolution was postponed until the November 10, 2009 meeting.

Reserve Septic on Plats

The Planning Board requested the Board of Health review requiring reserve septic sites for subdivisions. A letter was sent to the Board for their review.

T. Decker stated the Hunterdon County Health Department encourages the Township to implement due to the number of failures in the Township. Each town has its own guidelines. Alexandria requires it for new lots less than six acres and Delaware requires it for any lot over 10 acres. When his firm does a review of a subdivision application, they indicate it is not an approval of the individual lot septic designs. It is a certification that the soil testing, as conducted, is suitable for a septic design. Septic designs for individual lot applications are made to the County and don't come before the Township unless the design needs relief. His office does the witnessing of the results and the County does a review of the design. Most of the Townships ask the County to review the soil tests to verify the results. If the county finds there is a glitch in the soil testing, the lots exist and the owner will be able to come in for relief because they exist.

D. Pierce stated septic requirements are a purview of the Board of Health. If the Board of Health has not adopted a septic ordinance, the Township Committee can adopt one.

T. Decker stated in his correspondence to the Board of Health recommending the reserve system and supported by the County Health Department, he can include the County's involvement with the review of the soil testing for subdivisions.

Wind Generating Equipment

The subject will be listed on next month's agenda. D. Laudenbach will research and provide examples, if available.

Definition of Habitable Area

A. Clerico stated she has not heard a response from D. Banisch. She will have a response for the Board at the November meeting.

Definition of a cellar/basement

A. Clerico stated she will provide the definition for November's meeting.

Site Plan Checklist

A motion was made by S. McNicol, seconded by J. Mathieu and carried to request the Township Committee amend Chapter 115 and Chapter 132 with the revised checklists. All members present voted **AYE** on **ROLL CALL VOTE**.

PRIVILEGE OF THE FLOOR

A. Belle, Barbertown Point Breeze Road – the ordinance provides for the creation lots in a Class 1 or 2 to be a minimum of 2 acres. Taking into consideration the minimum buildable area of 1 acre, the 2 acre lot cannot meet that requirement. He suggested a requirement of 2.25 acres to accommodate an interior acre.

D. Pierce stated part of the problem is that the table of area requirements only references a minimum buildable area of one acre. The actual definition is in the subdivision ordinance:

Buildable area – A contiguous area of land located within the building envelope of a lot which does not contain any constrained area and which is equal in size to the lesser of ½ of the area of the building area of the building envelope or one acre.

D. Pierce stated if your building envelope is less than one acre, your buildable area is half of that requirement. He further stated, in regard to A. Belle's application, the issue arose on his original subdivision because he had a larger lot. The required buildable area would have been greater. No one looked at that requirement when you reduced the lot.

A. Belle requested the Board to allow the first building permit to be issued on his front lot as they did with the Perrotti subdivision. He was instructed to write a formal letter requesting that relief.

T. Decker left the meeting at 10:08 PM.

Community Visioning Questionnaire

A. Clerico provided a draft of the above to the Board members. The Board had some comments and A. Clerico stated she would provide a new draft for the Board's review.

D. Pierce and A. Clerico left the meeting at 10:29 PM.

Approval of Minutes

It was moved by J. Mathieu, seconded by J. Burke and carried to approve the minutes of September 8, 2009. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by J. Mathieu, seconded by S. McNicol and carried to approve the minutes of September 29, 2009. All members present voted **AYE** on **ROLL CALL VOTE**, except D. Haywood, J. Strasser and M. Surnick.

APPLICATION STATUS

CORRESPONDENCE

Franklin Township – Ordinance 2009-6A;
Franklin Township – Ordinance 2009-6A (Adoption);
Rutgers – Land Use for Municipal Planning Boards and Zoning Boards of Adjustment;
Alexandria Township – Flood Damage Prevention Ordinance;
NJPO – Training Programs;
Code Enforcement Officer – Letter Re: Chris' Citgo - the board discussed the General Code Enforcement Official addressing the property next to Chris' Citgo. There are approximately 8 or 9 vehicles parked in front. It is commercial but it is a residential property. The property was not included in his site plan. It is a clear violation having the tow truck and customer's cars parked in front of the building. E. Niemann stated she is having a meeting with W. Sidote, G. DeSapio and herself. C. Wildgen was invited to attend.

ADJOURNMENT

It was moved by J. Strasser, seconded by S. McNicol and carried to adjourn the meeting at 10:35 PM. All members present voted **AYE**.

Respectfully submitted,



Diane Laudenschach, Secretary