

**MINUTES OF A REGULAR MEETING OF THE PLANNING BOARD  
OF THE BOROUGH OF MOUNTAIN LAKES**

January 26, 2017

Chair Martin Kane read the Open Public Meeting Advertisement Notice adopted at the annual meeting on January 12, 2017: Adequate notice of this meeting was given to the Citizen and the Daily Record, posted with the Borough Clerk and on the Bulletin Board and made available to all those requesting individual notice and paying the required fee.

Start: 7:35PM

**ROLL CALL:**

Members Present: Kane, DuTertre, Dagger, Nachshen, Sheola, Shepherd, DeVenezia, and Horan

Absent: Holmberg, Russo and Mirsky

Also Present: Attorney, Peter Henry, Engineer, Bill Ryden,  
Environmental Engineer, Stephen Souza

**PUBLIC COMMENT:**

Marine Vyff, of 10 Vale Drive, confirmed she could not speak about the Kings application during the public comment time.

**REVIEW OF MINUTES:** none

**RESOLUTIONS:** none

**PUBLIC HEARING:**

Kings, Mountain Lakes, LLC  
145 Route 46  
Major Subdivision, Major Site Plan  
Sign Variance

App. #16-261  
Blk: 116, Lot: 3.01  
Zones OL-2 & R-AH2

Before the public hearing on the Kings, Mountain Lakes, LLC application could begin the Board needed to determine jurisdiction. Peter Henry said the issue before them was if this Board was the right Board to hear the application or if it should be the Board of Adjustment as suggested by Rob Simon, the Attorney for the Mountain Lakes Concerned Citizen, Inc.

Peter Wolfson, the Attorney for Kings, Mountain Lakes, LLC, cited the highlights of his December 5, 2016 letter where he explained the zoning history of the property and the case law to support his argument the Planning Board should hear the application. He pointed out the property has been split zoned over many years. The proposed subdivision line was the exact line that was already established by the Borough. What they plan to do with their site was in strict conformance with the R-AH2 zone. The subdivision furthers the Borough's zoning plan and the church use was compatible with the new zone. The church was built when the entire parcel was in a residential zone. The Borough created the split zone. Once subdivided the church would remain on a lot that was larger than any other church in the Borough. The subdivision is the question not the granting of a use variance for the church.

George Crimmins, standing in for Rob Simon the Attorney for the opposition, presented a second letter from Mr. Simon dated January 26, 2017. Mr. Crimmins stated regardless of how the property has been treated in the past the state statute says the Board of Adjustment has jurisdiction. The subdivision would intensify the non-conforming use and requires a use variance.

Martin Kane asked the Board if they had any comments. Personally his main consideration was the 1987 variance, would it have been granted if the property was 5 acres rather than 12 acres. He thought the *Razberry's Inc. v. Kingwood Township* case applied. John Horan shared his concerns. Mr. Horan read all the cases and struggled with the issue of jurisdiction. He thought the *Razpberry* case black and white. He then read the *Nuckel v. Borough of Little Ferry Planning Bd.* case. He understood this argument. He then asked Mr. Wolfson for further clarification. Peter Wolfson thought this was not the same case as *Razpberry* since the Borough rezoned the back part of the lot and the church use was not intensified. For these reasons it would make the case not applicable. Mr. Horan commented the *Nuckel* case involved a driveway and not a subdivision. Mr. Wolfson thought the proposition in the *Nuckel* case the same.

Tom Dagger asked Mr. Cummins, the January 26, 2017 letter stated the jurisdiction was with the Zoning Board and could only be determined by the Zoning Board. Where was that concept based, was it statutory? Mr. Dagger thought either body could decide. He continued, the property was already split zoned. If the property, owned by the church, was developed by the church would the D variance still be needed? Mr. Cummins thought you would not be reducing the size of the property so it wouldn't apply. Martin Kane said the original use variance was for 12 acres. Is the variance still valid now that you are reducing the church property to 5 acres? Does the use variance still apply? He continued, the town has viewed the property as having separate uses and it was further rezoned for affordable housing.

Peter Henry stated there is nothing that says the Zoning Board is the only one who has the right to determine jurisdiction. The core of the applicant's argument is how the town has treated the property for decades. Mr. Henry said he couldn't point the Board in any particular direction or to a particular case and could argue both positions. There is no clear authority in this situation so this was their decision as a Board.

Nancy DuTertre asked when the dual overlay zone or split zone was established. Peter Wolfson stated the overlay zone (OL-2/RC-1) is mentioned in the 1987 Board of Adjustment resolution. Then the OL-2/RC-1 zone district was created in 1997 with the passing of Ordinance 5-97. Mrs. DuTertre thought the history of the property created a lot of confusion on the zone. She thought since the zoning map was interpreted by the Zoning Board they should hear the application. She asked when the Council rezoned the property for affordable housing what happened to the R-1 zone. Mr. Wolfson said the R-1 zone was not relevant as of 1997. Peter Henry added the rear lot was never R-1, it was the church that was R-1 and rezoned to OL-2. The property has had split zones for years. This property has had two different zones although they have not always been the same. Again Martin Kane stated the acreage was the question. Peter Wolfson said the church would remain on 5.5 acres. Tom Dagger did not think the *Razpberry* case was black and white, he thought there had always been the thought that the back lot would be used for residential housing. In 1987 the Board of Adjustment felt expansion of a non-conforming use would not impact the neighborhood plus there was a subdivision after that. To him

the non-conforming use does not affect the neighborhood in fact the church was not changing. John Horan said in his mind the *Razpberry* case states you have to go to the Zoning Board for a use variance. Once you bring in the other cases things get murky. The *Nuckles* case is not a subdivision and he did not think perfecting a subdivision creating a 5.5 acre lot de minimis.

John Horan made the following motion. The Planning Board did not have jurisdiction to hear the Kings, Mountain Lakes, LLC application; jurisdiction rested with the Zoning Board of Adjustment. David Shepherd provided the second. The Board voted 5 to 3 to deny the motion with DuTertre, Shepherd and Horan voting for and Kane, Dagger, Nachshen, Sheola and DeVenezia voting against.

A second motion was made by Corey Nachshen to accept jurisdiction at the Planning Board and a second provided by Tom Dagger. The Board voted 5 to 3 to approve the motion with DuTertre, Shepherd and Horan voting against and Kane, Dagger, Nachshen, Sheola and DeVenezia voting for.

George Crimmins stated he reserved the right to file an application with the Zoning Board for an interpretation of the Ordinance pertaining to jurisdiction.

John Horan asked to speak before the start of the hearing. In the September 15, 2016 Environmental Commission Report the commission stated the Environmental Impact Statement submitted was not sufficient. As per Ordinance 102 -8; *“The Planning Board shall approve an [EIS] only if it determines that the proposed development has been designed with adequate safeguards as needed to protect the environment”*; therefore the application cannot continue. Board member Corey Nachshen disagreed with that statement. As an Environmental Engineer and former Chair of the Environmental Commission he felt the report sufficient. Peter Henry reminded the Board completeness is only given if all the check list items we ask for have been submitted. An EIS has been asked for, we have received one and that is all that is needed now. The EIS may not be what we want but we can ask for any additional information we feel necessary at any point in the hearing. Therefore the hearing can start.

Peter Wolfson stated the applicant would be subdividing the lot. The church would remain as is and the back lot would be developed to include a 40 unit townhouse development containing 6 affordable housing units. He then reviewed the history of affordable housing in the state of NJ followed by Borough’s affordable housing history. The current Supreme Court decision has put pressure on municipalities to meet their affordable housing obligations. Mountain Lakes will need to provide units for the gap period of 1999 to 2015. The applicant has drafted its development plan to help the Borough meet part of its obligation. The state has said environmental concerns cannot be used as a reason for not providing affordable housing. They also said a town must provide incentives such as higher density to help a developer provide affordable housing. The applicant has received the following NJDEP state permits to do the development. They are a Wetlands letter of Interpretation, Fresh Water Wetlands general permit #11, Flood Hazzard Determination and Flood Hazard Individual Permit. They are only looking for a variance to erect a sign on the property to identify the project.

Marc Walker, a licensed Engineer in the state of NJ, would be the engineer for the applicant. Mr. Walker started by presenting exhibit A-1, dated January 26, 2017, an aerial

exhibit with the lot identified. The 13.2 acre property is split zoned. The back part of the lot is in the R-AH2 zone and the front of the lot is in the OL-2 zone. Mr. Walker gave an overview of the surrounding development. He presented exhibit A-2, a blown up version of exhibit A-1 also dated January 26, 2017. The front 5.5 acres will house the King of Kings Church. The back 7.7 acres of the lot will be used for the townhouse development. Exhibit A-3 was a still larger version of site plan dated January 26, 2017. The Engineer pointed out the highlighted green spaces, waterways and buildings. There will be 7 buildings for market rate units and 1 building for the affordable housing units. There are a total of 40 units 6 of which are affordable housing.

The internal access consists of two roads. The main entrance will come off of Sherwood Drive. The stem for the access road was put in place when Spruce Edge was developed. No sidewalks are proposed similar to other projects in the Borough. The Residential Site Improvement Standards (RSIS) require sidewalks. The development meets all the other RSIS standards but this one. Concrete and natural stone retaining walls will be built throughout the site. A variance is needed for an entrance sign which is not allowed in a residential zone. The sign area is 32 sq. ft., it will be made of stone and will have up lighting to illuminate it. Sheet 19 of the site plan shows the sign design. A street sign will be placed at the intersection. Mr. Walker continued there will be 149 parking spaces. The parking space requirements will be met by counting the driveways, garage spaces and common parking areas. They are required to provide 99 spaces for the market rate units. They will have 119 garage and driveway spaces plus 17 spaces on street for a total of 136 spaces. They are required to have 12 spaces for the affordable units and they have 13 spaces. There is one handicap space for the affordable units and they meet all the ADA requirements.

There is public water available on the northerly and easterly property line. They will extend the water line and use the public sewer system. There is adequate capacity for water and sewer for the project. The Stormwater Management design has been reviewed by the state and meets the design requirements. There will be three drainage areas. They will pipe the stormwater to the tributary by way of piping to reduce soil erosion. Trash will be placed in a trash enclosure for the affordable housing units. The market rate units will be picked up at the curb. There are 13 light fixtures that are 15 ft. tall and a ½ ft. candle in parking areas. The landscaping will consist of shade trees, evergreens and foundation plantings. A total of 12 trees will be removed from the right of way to connect Sherwood Drive to the new development. All the slopes in the development comply with the Ordinance requirements. There are intermediate wetlands on the property per the DEP Flood hazard verification. They have located the stream and must maintain a riparian buffer of 50ft. around it. The affordable housing units will be constructed when they have completed 50% of the project or 17 market rate units are built. Mr. Walker then listed the NJDEP permits they received.

Before Mr. Walker commented on some of the reports they have received from the various committees Mr. Kane asked if there were any questions from Board members. Nick DeVenezia asked why the affordable units in building 7 was the only multi-family unit and why a 3 bedroom affordable housing unit was 1000 sq. ft. when a market rate unit was 3000 sq. ft. Mr. Wolfson said the Architect would address that in his testimony. Rich Sheola asked where the water was coming from. Marc Walker said it would come from Mountain Lakes.

Martin Kane asked why there were no sidewalks. Mr. Walker said they were required to have them for the affordable housing units. They were not in the other parts of the project because they wanted to be consistent with the rest of the municipality. The proposed road is wide enough for pedestrian walking and this design also reduces the impervious coverage. Tom Dagger asked what the width of Sherwood Drive was; it is 30 ft. wide. Mr. Walker continued the two new streets, Lakeland Court and Albie Drive, are 28 ft. wide but the road connecting Sherwood and Albie Drive was 24 ft. wide. The access road was narrower through the Borough right of way. As a reference Morris Ave is 24 ft. wide and consists of similar and steeper slopes along its distance. Tom Dagger questioned the lack of a cul-de-sac on the multifamily court. Mr. Walker answered since the road was less than 300 ft. long you do not need a cul-de-sac but they did provide a turnaround area to facilitate a K turn. Rich Sheola followed up, didn't they think it would be a good idea to have one for emergency vehicles. Mr. Walker said any emergency vehicle would back out. Rich Sheola thought the entrance to the development should be 2 ft. wider. This would be a choke point since Sherwood Drive was 30 ft. and the road in the right of way was 24 ft.

David Shepherd asked Mr. Walker to explain the steep slopes as per the new Ordinance. Mr. Walker answered the slopes that would be disturbed were in the building boxes. They will be obtaining a soil moving permit. The disturbance would be for the foundations of the buildings. Bill Ryden asked for clarification on the DEP permits; were they all issued by the state? The water extension permit and sewer permit have not been given. Bill Ryden clarified the applicant did not need to file a soil moving permit but need to comply with the requirements as part of the application.

Stephen Souza, the Environmental Engineer hired by the Borough for this application, asked Mr. Walker if they had done a mounding analysis on the site. Mr. Walker did discuss doing one with the DEP but the DEP did not think it was necessary since the soils were such a nice quality. Mr. Souza asked when you reviewed the test pits did the applicant find any mottling in the soil. Mr. Walker said there was no mottling or bedrock found. The soil testing was done by Dykstra Walker in September and independently by Lear Group in the wet season. Souza asked if there was any seepage in the test pits. Mr. Walker said there was none.

Mr. Kane asked if there was a special permit needed to let the run off from the development go into the stream. There was a permit needed and it has been granted. Tom Dagger confirmed all the run off was not going into the stream but some of it would be absorbed by the site. Mr. Walker added we are required to absorb 100% of the displaced run off on the site. They were actually exceeding that requirement and absorbing 129%. Stephen Souza asked what the maintenance requirements were for the subsurface infiltration system they had proposed. The proposed system requires quarterly inspections and after 1" of rain. The water quality structures are cleaned out by a vacuum truck. The filters of the structures have to be cleaned once a year and replaced every two to five years. The surface basin also follows a maintenance schedule. Mr. Souza asked who would be doing the inspections and forwarded the results to the Borough. The homeowner's association would do the inspections and report to the DPW so they can maintain the records. Stephen Souza said he understood the applicant had good soils to construct the basins but how will they prevent the compacting of the soils during construction. Mr. Walker said they plan to construct the units with stone bases and a large

surface area. Mr. Souza asked if the applicant would be willing to do perk tests after the installation of the basins; yes they would be. Tom Dagger asked if the equipment used during construction caused the compacting; that was correct. Bill Ryden confirmed the Borough vacuum truck would not be doing the maintenance of the infiltration systems. Mr. Souza stated if the Board required sidewalks or the addition of another cul-de-sac the stormwater calculations would have to be redone. Nick DeVenezia wanted to discuss the k-turn and the crosswalk on Lakeland Court. He felt there was too much going on there. This was a bad design and needs to be redone. Mr. Walker agreed to redesign the area. Mr. DeVenezia suggested putting all the parking on one side of the street. In closing out the testimony for the evening Tom Dagger asked if the applicant had agreed to do a mounding analysis for the Board. Peter Wolfson said he would discuss it with his client and get back to them. Due to the time and other business that needed to be done by the Board Chairman Kane asked the public to hold their questions until next month. The meeting was carried to the Boards next meeting on February 23, 2017 without further notice. The meeting will once again be held in the high school.

### **COMMITTEE REPORTS:**

#### **Other Business**

Sign Ordinance – The committee will be making a presentation to Council in March on the proposed Sign Ordinance changes.

Appointment of the Planner – Tom Dagger made a motion to appoint Paul Phillips of Phillips, Preiss, Grygiel, LLC, the Planning Board Planner and Richard Sheola provided the second. The motion was approved by an 8 to 0 roll call vote.

Historic Preservation Ordinance – Tom Dagger said the Historic Preservation Committee had been working on an amendment to the Ordinance. They now have 4 ½ years of experience with the Ordinance and have received feedback from those who have been using it. Those improvements have been drafted into the Ordinance. The group thinks the preservation effort has been working since there has been only one teardown since its passing.

Martin Kane made a motion to adjourn the meeting at 10:33PM.

Respectfully submitted,

Cynthia Shaw, Secretary