

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

July 24, 2014

Chair Jim Bailey read the Open Public Meeting Advertisement Notice adopted at the annual meeting on January 30, 2014: Adequate notice of this meeting was given to the Citizen and the Daily Record, filed with the Borough Clerk, posted on the Bulletin Board in the Borough Hall on February 03, 2014 and made available to all those requesting individual notice and paying the required fee.

Meeting start: 7:32 PM

ROLL CALL:

Members Present: Bailey, Kane, Tovo, Dagger, Lester, DeVenezia, Nachshen, Horan, Happer and DuTertre

Absent: Russo

Also Present: Attorney Peter Henry, Engineer Bill Ryden

REVIEW OF MINUTES: John Lester made a motion to adopt the minutes of the June 26th meeting. Martin Kane provided the second; the minutes were approved by voice vote of all eligible voters.

RESOLUTIONS: none

PUBLIC HEARING:

Carried from June 26, 2014:

Jeffery and Lynne Ansell	260 Boulevard
Blk: 100, Lot: 23	App. #14-256
Minor Subdivision	R-A Zone
2 Side Setbacks, 2 Height, 2 Building Envelope, Steep Slopes, 2 lot Width, 2 pervious Buffer	

Using Exhibit A-12, the site plan, Jason Rittie, Attorney for the Ansell's, relisted all the variances needed. On remaining lot 23 the applicant needed the following variances, a side yard setback for the existing house, a side setback for arbor and height for the front and rear of the house. They also needed variances for the required building envelope on both lots, steep slopes in the building envelope for the new lot and the new property line was not 90 % of the total frontage all the way down to the lake for both lots. If the guest house was to remain until the transfer of ownership or a building permit was issued they would need additional variances; one for side setback for the garage and another for the 2 ½ ft buffer requirement for the existing driveway on both lots. Mr. Rittie continued he would do his summation after the opposition finished their presentation. John Lester asked the applicant if they had a Certificate of Occupancy for the garage. Jason Rittie said they could not find one but would have to get one once they add the stove to the garage/guest cottage.

Mr. Bailey asked if anyone from the public wished to ask any questions of the applicant. Francesco DeGrossi, of 255 Boulevard, said his kids were grown but planned to stay in the community because they love the historical aspect of the town. The lakes are important to the Borough and adding a new home was not needed.

John Veteri, the Attorney representing the Verzalenos, made the oppositions presentation. The Verzaleno family moved to Mountain Lakes two years ago. They selected this property on the lake because they liked the public beach and the large property next door as their neighbors. The applicant feels the property should not be subdivided because it needs way too many variances. John Veteri introduced Nick Agnoli, a licensed Planner and Engineer in NJ, he would be reviewing the engineering on the project. Using Exhibit A-12 he pointed out the lot width variance requested. In the subdivision presented the new lot becomes 25.1 ft wide at the lake. He looked at 25 other lots around the lake and found them all to be rectangular in nature and none become the odd shape proposed. Mr. Veteri asked him what would happen if you drew the property line down to the lake. Mr. Agnoli said it would trigger many other variances. The way it's currently designed the owner of the new lot would not be able to look out his window and see his property but rather his neighbors. Mr. Veteri asked about the building box being less than 50' x 85'. Nick Agnoli said the building box was smaller due to the lake front exception line. Using exhibit A-14, an aerial view of the property, he pointed out all of the houses along the street are off set to the left of the property creating a pattern. Using exhibit A-13, the lot layout exhibit, he pointed out the street slopes was not technically unsurmountable but just another difficulty to overcome. The way the new lot is laid out you could not build any outdoor space along the lake and the owner would have very little lake access compared to the rest of the lots. Mr. Veteri asked Mr. Agnoli to look at exhibit A-1, the current site plan, and address the present access to the property. Mr. Agnoli said there was a lot of area for parking and emergency vehicles but the access would be greatly reduced if the property was subdivided.

Mr. Bailey asked if the Board or applicant had any questions for Mr. Agnoli. Jason Rittie asked was there a requirement to have rectangular lots in Mountain Lakes; no there was not. He continued have you reviewed the original building development plans for the community and that the property was originally 4 lots; yes he had. Did you verify the calculations on the plans submitted; yes he did.

Jessica Caldwell, a licensed Planner in the state of NJ, was the opposition's next presenter. John Veteri asked her what she felt were the deficiency of the application. Ms. Caldwell said the applicant needed numerous variances which would ultimately create a substandard lot. Land use regulations are meant to control the development of any lot. The plan presented is not consistent with Mountain Lakes as a planned community. There are two historic structures on the lot and felt there was some detriment to the public good to remove a historic structure. In her opinion if the applicant was not subdividing the property they would not be interested in removing the guest house.

John Veteri asked her to explain the variances from a planning perspective. The side yard setback on remainder lot 23 was a C-1 variance due to the hardship created by a preexisting condition but you do not create a need for the variance until you strike the line. Maintaining the community character is very important to the town and is stated as such in your Master Plan. The height variance is a pre-existing non-conforming situation but again you would not need this variance unless you were subdividing the property. You are creating an irregular subdivision that is not like anything else on the lake. I think the irregular property line is done to avoid having to get a D variance at the Board of Adjustment. The subdivision is only benefiting the owner not the community. She cited Kaufmann vs the Planning Board of Warren Township where no C-2 variance should be granted where only the benefit of the owner is advanced.

Chairmen Bailey asked if anyone from the Board or the applicant had any questions for

the witness. John Horan asked Ms. Caldwell to clarify how she felt the variances impaired the intent of the zoning ordinances. Jessica Caldwell cited sections of the historic, the community and characteristics and the statements and objectives elements of the Master Plan to answer his question. Nancy DuTertre asked if Ms. Caldwell was suggesting there was a relationship between all the variances requested and the creation of a substandard lot and it was not created by the irregular shape of the property; yes that was correct.

Jason Rittie questioned Ms. Caldwell's statement the lot was substandard when it was an oversized lot. She responded while the newly created lot was over 15,000 sq ft they were setting a precedent by making a lot smaller lot than the average lots on the lake. Peter Henry told the Board they should know they would not be setting precedent by making the decision to approve this application; each application is determined case by case. Mr. Ritte asked her if they maintained the 100 ft width through the building box; yes they did. Was it better to have fee simple ownership than an easement granting access to the lake; single ownership was better. She continued 25 ft does not allow for much access to the lake. Mr. Rittie asked her to look at exhibit A-15, the view from the lake, could she tell the lot line through the vegetation; no she could not.

Michael Tobia, the applicant's Planner, answered Mr. Horan's question, what are the benefits and detriments under the land use law to allow this subdivision. Mr. Tobia referenced exhibit A-12 to explain how the applicant was creating a single family lot that met all the bulk requirements. They were proposing a more efficient use of land, creating a desirable visual environment since the landscape would mostly remain, and they were providing air, light and open space adequately. A C-2 variance requires the benefits outweigh the detriments and he felt they did in this situation.

Francesco DeGrossi, of 255 Boulevard, asked Mr. Tobia what were the benefits for his family and other families in the town. He answered the benefit to the community was the implementation of development intended for the R-A zone. The house would be placed in the grassy area on the lot and all the landscaping would remain.

Tom Dagger asked if there was anything to prevent the future owner from removing any of the landscaping. Mr. Tobia said they couldn't control this but they hoped the future owner would view this as an asset. Martin Kane confirmed Mr. Tobia was saying the building of another house was a benefit to the community. Mr. Tobia said this was only one benefit. Mr. Kane responded, so the hardship is not allowing the subdivision. Mr. Tobia answered we are meeting all the bulk variances the pinch at the bottom of the lot is a hardship. He could draw the line down to the water but it would create other issues.

Peter Henry asked would drawing the line all the way down to the lake change the narrowness of the lot as it is today. Michael Tobia said we can't change the shoreline.

John Lester asked if they could move the building envelope to the left so it matched all the lots on the street. Mr. Tobia said if they shifted the building box to the north they would need a variance on that side. The steep slopes were minimal and the applicant could have applied for a minor soil moving permit to eliminate them. If we did draw the new property line all the way down to the shoreline they would have triggered a D variance. Michael Tobia explained the application to the Board of Adjustment was withdrawn because the FAR and ILC variances would have been more serious than what they were suggesting at the Planning Board. The applicant was willing to use monuments to identify the angles of the new lot line. Nick DeVenezia asked if the new property line was drawn to the lake would they solve the building envelope issue; no it would still exist due to the lake front exception requirement.

Corey Nachshen said we are looking at two things here. If the subdivision goes through does this devalue the Verzaleno property and does the landscape buffer block the view of the house for them? Michael Tobia said, from a planning perspective, he did not think the subdivision devalued the neighbor's property. Mr. Nachshen asked Ms. Caldwell what her client's main opposition to the subdivision was; is it all the variances or he doesn't want a new house next door. Jessica Caldwell said they thought all the variances were important. John Lester said the current owner could remove both structures, build a new one and still be 25 ft from the property line. John Veteri yes he could but the area would have a more intense use when two homes were built.

The Board questioned the recent variances granted for the Verzaleno home. Did they recently receive a 12 ft side line variance? Mr. Verzaleno answered no; they only got a variance for the patio. He continued, his view out of the bedroom would be blocked so he was concerned about the height of the new house. John Veteri asked Mr. Tobia why he said the 90% lot width was where it mattered. Mr. Tobia answered I said that because it is where the building would occur. Why did you not go to the Zoning Board of Adjustment? Mr. Tobia said he was not involved in the time. Mr. Veteri asked about the recent curb cut installed on the property. The curb cut was installed on the new lot because the county just repaved the Boulevard and placed a moratorium on opening the road in anyway.

Mr. Bailey asked if there were any comments from the public; there were none.

Chairmen Bailey opened the Board's discussion on the subdivision. John Lester asked if all the variances should be voted on at once. Peter Henry said the Board should review a few things before they voted. They should discuss the garage options, can it become a principle structure, should it be remove before perfection of the subdivision and would the Board allow it to stay until a building permit is required. He continued should the applicant move the new house to the north and what its potential height could be. The setback for the arbor could be handled alone.

Martin Kane was concerned about the hardship of the application I think the hardship was created by the subdivision so it would be self-inflicted. Tom Dagger thought both sides did an excellent job presenting but thought the historic significance of the property was important. He did not like the lot line as drawn and saw it as a planning detriment not a benefit to the community. Dan Happer was concerned about the angled lot line; couldn't the new owner plant large trees along the lot line and obstruct the view of the lake. Could we put a condition in the resolution restricting that type of planting? Nick DeVenezia said he has live here 45 years and the garage was not significate to me. There would be a new family in town which could be a benefit. There was no home being removed and no landscape changing so he would be in favor of the plan. John Lester said an owner should be allowed to do what he wishes with his property. Our current ordinances allow him to take down the garage. All the lots are 100 ft and so is this one but felt the lot line a bit odd. He thought they were here because they didn't want to go to the Zoning Board of Adjustment. Our ordinances do allow for this type of the development. Robert Tovo said he could not see the hardship and was concerned about the avoidance of the D variance. He would like to see a stipulation in the resolution maintaining the landscaping. Nancy DuTertue commented the new property line to the lake was not straight and that bothered her. John Horan was conflicted about supporting the application. He looked at the subdivision line as not sound planning. But thought it was not unreasonable to approve the plan or deny. Jim Bailey said his responsibility was to the town and not to the personalities. He thought the requirements for the town were not being met so he could

not support the application.

Martin Kane made a motion to deny the application and Tom Dagger provided the second. John Lester asked the applicant if they could make some adjustments to the plan and come back. Jason Rittie said the applicant would like to carry application to the next meeting and consider the comments of the Board. John Lester made a motion to table the current motion which was seconded by Dan Happer. The Board voted 5-4 to deny tabling the motion with members Bailey, Kane, Nachshen, Dagger and DuTertre voting no and members Happer, Lester, Tovo and Horan voting yes. A roll call vote was done on the original motion. The Board voted 7 – 2 to deny the application. Members Bailey, Kane, Nachshen, Tovo, Horan, Dagger and DuTertre voted yes and Happer and Lester voted no. The subdivision application was denied.

New Application:

Evergreen Realty Group, LLC	90 Route 46 East
Blk: 4 Lot: 20	App. #14-257
Major Site Plan Review	B Zone
Parking Spaces, Parking Stall Size, Fence in the Front Yard, Side Setback, Front Setback	

The Evergreen Realty Group was here to determine the completeness of their application. Peter Henry asked Bill Ryden if the four (4) deficiencies he found in the application had been satisfied. Mr. Ryden said two (2) requirements have been submitted and two remained. They have submitted the Landscape Plan and a Traffic Report. The location of Sanitary Sewer was not on the site plan and Wetlands LOI (letter of Interpretation) had not been provided.

Joseph Alessi, Attorney for the applicant, added they also needed a waiver for the scale used on their plans. The Borough requires 30 ft to 1” and they would like to use 50 ft to 1”. Bill Ryden said he was fine with their requested change in scale. Mr. Alessi introduced Kevin Robine, a licensed Engineer in state of NJ, to speak about the remaining two check list items. Mr. Robine said they had the approximate location of the Sanitary Sewer and had included it on the recently submitted Landscape Plan. They were willing to add it to any future site plans submitted. He continued they have a qualified wetland delineator on staff who had walked the site and found the property free of wetlands. Joseph Alessi asked him if this was a fully developed site. Mr. Robine answered yes and reminded the Board they did not have to get a LOI the last time they had a new development plan for the property.

Bill Ryden said he would like the wetlands employee to testify to the lack of wetlands at the hearing. The applicant was willing to have their expert appear. Mr. Ryden was satisfied and found check list complete.

Corey Nachshen was fine with a presence absence letter done by the engineering firm; he knew it would take time to get the LOI from the DEP. We do not need to take 5 to 6 months to have them support your conclusion. I would request the report be done before the waiver was granted. Joseph Alessi said the applicant would provide the letter before the next meeting.

Martin Kane made a motion to determine the application complete. Robert Tovo seconded the motion. The determination of completeness was approved by voice vote of all eligible members.

Stephen Shaw, facilitator for Evergreen Realty Group, asked if there was anything else the Board needed to hear the application; there was nothing missing. He asked who

would be doing the traffic report for the Borough? It will be done by Gary Dean from Dolan and Dean Associates.

The Evergreen Realty Group application was carried to the August 28th meeting.

Other Business

Ordinance 08-14

Amending Chapter 40 of the “Revised General Ordinances”
Establishing a procedure for the Issuance of Zoning Permits

Robert Tovo made a motion that the amendment to Chapter 40 was not inconsistent with the Master Plan. A few minor typos would be passed onto Council. Dan Happer provided the second. The lack of inconsistency with the Master Plan was approved by voice vote of all eligible members.

Committee Reports – None

Public Comments – No one was present.

Chairmen Bailey made a motion to adjourn the meeting at 11PM.

Respectfully submitted,

Cynthia Shaw, Secretary