

**MINUTES OF THE
MENDHAM BOROUGH PLANNING BOARD
June 10, 2013
Garabrant Center, 4 Wilson Street, Mendham, NJ**

CALL TO ORDER

The regular meeting of the Mendham Borough Planning Board was called to order by Chair Kraft at 8:00 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

CHAIR'S OPENING STATEMENT

Notice of this meeting was published in the Observer Tribune and the Daily Record on January 17, 2013 and was posted on the bulletin board in the Phoenix House in accordance with the Open Public Meetings Act, and furnished to all those who have requested individual notice and have paid the required fee.

ATTENDANCE:

Mayor Henry – Present
Mr. Bradley – Present (8:05 p.m.)
Mr. Cascais - Absent
Mr. Gertler – Absent

Mr. Kraft - Present
Mrs. Kopcsik – Present
Mrs. Lichtenberger - Present
Ms. Sandman – Present
Councilman Sharkey - Present

Alternates:

Mr. Cavanaugh, Alternate I – Absent
Ms. Isaccson, Alternate II – Present (8:05 p.m)

Also Present:

Mr. Henry, Attorney
Mr. Ferriero, Engineer
Mr. McGroarty, Planner
Ms. Callahan, Secretary

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MINUTES

On motion made by Mayor Henry, seconded by Mrs. Lichtenberger and carried, the minutes of the regular meeting of May 13, 2013 were approved with one correction clarifying language in the TRC documentation discussion.

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PUBLIC COMMENT

Chair opened the meeting to questions and comments on items not included in the agenda. There being none, the public comment session was closed.

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HEARING

#941 – Mt. Hermon Hills Company, LLC – Minor Subdivision
Block 1801, Lots 35 & 36.03, Hilltop & Thomas Road

Present: Thomas Malman, Esq. – Attorney for the Applicant
Craig Villa – Engineer for the Applicant
John DeNeufville, Applicant

Exhibits: A-1: Modified Subdivision Plan prepared by Yannaccone, Villa & Aldrich, LLC
6/10/13

Mr. Malman, Esq. introduced the application stating that Mt. Hermon Hills is Mr. John DeNeufville's company. The properties for the minor subdivision are located at Block 1801 and include Lots 35, owned by Mr. Spada, and Lot 36.03, owned by Mr. DeNeufville. The lots are 5.4 and 10.4 acres respectively. For the subdivision, it is proposed that Mr. DeNeufville will move a

half acre to Mr. Spada, and the remaining DeNeufville property will be divided into two. It will result in three lots, 2 conforming at 5 acres and the third, the Spada lot, somewhat larger. Given the application review comments of the Board's Engineer and Planner, they have developed a new drawing for the subdivision that removes some of the irregular shape and softens the lot line.

Mr. Villa was introduced as a licensed professional engineer. The Board had heard the qualifications of Mr. Villa at previous hearings, and accepted him as an expert witness.

Mr. Villa first testified on the plans that had been filed with the Board. The proposed subdivision fully conforms to the ordinance requirements. There is a proposed lot line adjustment between two neighbors on Thomas Road and a creation of a new lot. The property is located in the 5 acre zone and no variances are required. Lot 36.03, 10.6 acres, is owned by Mr. DeNeufville. The Spada property is located to the right on Hilltop and Thomas Road. Mr. Spada is proposing to acquire .4 acres for future lot improvements on the western portion of the lot. His current lot is 5.6 acres, but a half acre along Hilltop & Thomas will be dedicated some to the County and some to the town.

In terms of the environmental constraints on the Spada property, Mr. Villa stated that there are some environmental constraints in front of the property. The Category 1 stream that feeds Cromwell Lake to the south results in a 150ft. buffer associated with a riparian zone. There are also significant steep slopes in the rear resulting in little room behind the house to do improvements.

Mr. DeNeufville's property, Lot 36.03, is affected by a 300 ft. buffer associated with Cromwell Lake that comes across the front of his property. They plan on using the existing gravel drive that is currently a farm road. The property slopes up from Thomas Road. The existing home is to the west of the lot. There is an approved lot development plan. They have a variance from the Board of Adjustment to keep the driveway along the property line.

Lot 36.04 will become a building lot. Nothing will be built now, but they have shown that a typical home is capable of being built. They did soil testing to show that they can have a septic. The existing plan for the Spada property, Lot 35, shows an odd shape, but it would provide more area to the west, and it avoids the need for a rear yard setback variance for the existing home. Mr. Spada is proposing to add .49 acres, but about the same amount needs to be dedicated to the County.

Mr. Villa concluded that based on the existing plans submitted to the Board, Lot 36.04, the new building lot with the hour glass shape would be 5.03 acres, the existing lot 36.03 with the DeNeufville home would be 5.08 acres, and Mr. Spada's lot with the additional .49 acres would be 5.5 acres. All lots would conform to the bulk requirements. The existing drive would be used for the existing two homes. The existing tree farm drive would be used for the new house in the future.

Mr. Villa entered Exhibit A-1, the Modified Subdivision Plan, Sheet 1.01. He also handed out 11" x 17" copies of same to the Board. He testified that they converted the six course sideline down to three courses. They pulled the line back about 15 ft. in some places and simplified the shape of the sidelines. They modified the impervious coverage and footprint tables for consistency and updated the zoning table. It results in conforming lots. Now .47 acres would be transferred instead of .49 acres. This changes the proposed Spada lot to 5.5 acres, and the middle lot, Lot 36.04, becomes 5.05 acres. This does not change the existing DeNeufville lot that is currently under construction. That will stay as 5.08 acres. Lot 36.04 is free of constraints and can support a new home.

Addressing the wetlands, Mr. Villa referenced a previous subdivision to the north of the DeNeufville property that created a cul du sac. On that portion there were no wetlands issues. The wetlands are associated with the stream that feeds Cromwell Lake and cuts across the corner of Mr. Spada's property. There is a 150 ft. wetland buffer on his lot. There is some of the 300 ft. riparian zone on the new lot. There is sufficient room for building on the existing DeNeufville lot and the proposed new lot without constraints.

In terms of the utilities, the water line and drain for the DeNeufville construction will be located on Lot 36.04. They will create an easement for 36.03 and 36.04. The utilities would not be in an area for development for 36.04. Clarifying the wetlands map for Mr. Henry, Esq., Mr. Villa stated that there are wetlands in the northernly portion of lot 36. They do not have an LOI for Lot 35.

In terms of the Board Engineer's report dated June 7, 2013, Mr. Villa stated that they did not have any concerns. The notes can be added to the plans and the plans adjusted with the revisions as requested. They have received feedback from Morris County. They will meet the ordinance and DEP regulations. Addressing Mr. Malman, Esq. on whether they could perfect the subdivision and then receive the LOI, Mr. Ferriero advised the Board that they should have the LOI before the deeds are signed and the subdivision perfected. There should also be indications in the deed as to the restrictions associated with the riparian buffer.

Responding to Mr. Ferriero on whether there are any trees that are 8 inch caliper or greater identified for removal, Mr. Villa stated that there are 2 to 3 ft. pines that might need to be relocated, but he did not see any issue with tree removal. Mr. Malman, Esq. added that there is a tree farm now, but the existing trees are very short. Mr. Villa added that there are some buffer trees along the property line that might need to be relocated. They can add the 8 inch and larger trees to the plan. The trees would be shifted to the new boundary line. Mr. Ferriero stated that a conservation easement would be required around the Spada LOI. Mr. Malman, Esq. responded that they would comply with the ordinance.

In terms of the inadequate site distance of the current driveway identified in Mr. Ferriero's report, Mr. Villa stated that he visited the property and noted that brush needs to be removed. They will document the requirement. He believes there is 250 ft., but the brush is blocking the view. He also was of the opinion that there is primarily brush within 300 ft. of the riparian buffer, and it can be removed. When the driveway is disturbed, they will need to go to the DEP for a permit by rule. Mr. Ferriero stated that it needs to be shown on the plan and addressed as part of the subdivision. They will require a permit from the DEP, or they cannot build on the lot. There should be a condition in the approval. Mr. Henry, Esq. agreed with Mr. Ferriero stating that it needed to be part of the subdivision in order to know if one can build on the lot. The Board should not be creating a building lot, if one cannot build.

Addressing the grading and area of disturbance for Mr. Ferriero, Mr. Villa stated that the disturbance is less than one acre and would be minor development. Mr. Ferriero revisited the need for a grading plan disagreeing with Mr. Villa that the plan shown would work. He noted that all the grading in the rear comes down toward the house, and a patio would be very small. It is more likely there will more grading required, and it would be a major development. With the riparian buffer, a major development would not get a permit. He had a very real concern about what an owner would be able to do given what they would want. Mr. Villa disagreed stating that it would be up to the developer on what they do with the lot. It is doable.

Responding to Chair Kraft on whether the Board should be concerned with that issue at this point, Messrs. Henry, Esq. and Ferriero stated that the limiting language must be included in the resolution and the deed so there is no misunderstanding in the future on what can be done on the lot.

Mr. Ferriero also noted that the plan for the new lot shows the driveway grading for 15%. The only way that can be done is if it is paved and then there are DEP issues. Mr. Villa stated that it is his understanding that if it is already disturbed, one can pave. There is no way of predicting whether it would be major development.

In terms of the existing on-going construction of Mr. DeNeufville's home, Mr. Ferriero stated that the retaining walls are 11 ft. high, and that was not part of the submitted lot development plan. A construction permit is required for walls that high. Mr. Villa responded that his client has been in contact with the Construction Department, and they will only issue a temporary CO until the Construction Official is satisfied with the construction of the walls and safety issues have been resolved.

Again responding to Chair Kraft on whether it is an issue with the subdivision, Mr. Henry, Esq. stated that it is not in the direct sense, but if in any way it deals with the driveway features, it is. Mr. Ferriero added that the driveway was to be removed in accordance with the lot development plan, and now it is being used. Mr. Villa responded that given the subdivision proposal, it does not make sense to remove it. It is a gravel farm road. Mr. Ferriero continued that the lot development plans needs to be revised for the lots.

Referring back to the discussion of utilities, Mr. Ferriero stated that they should be relocated to the lot currently under development. It is an impediment to development in the future and could cause a problem. Mr. Malman, Esq. stated that there is a lot of expense involved in moving the utilities. There is nothing in the law that requires them to do that. Mr. Villa added that the purchaser of the lot might request it in the future, or the prospective buyer might accept the easement. Mr. Ferriero reiterated his recommendation to move the utilities.

In terms of the planning issues related to the subdivision, Mr. McGroarty stated that the modified plan helps as there are fewer jogs and no variances are required. He did not understand why the plan was providing a supplementary setback in addition to the rear yard setback particularly as the home is already built. Mr. Villa addressed the bulk ordinance dealing with the height of the buildings and the "wedding cake" approach. Mr. Malman, Esq. clarified that when the home was laid out, the ordinance was not an issue and part of the mix. The reason is that Mr. Spada wanted land for improvements in the future.

Mr. McGroarty stated that there are no variances required at this time, but he questioned whether building on the new lot would require obtaining variances. The hourglass shape is constraining the building envelop to the center of the lot. Given the character of the neighborhood, a new owner might want a larger home and might want to move it up the hill. The less incumference there is, the less likely the need for a variance.

Mr. Villa stated that they have shown the primary and secondary setbacks. There is room to build. At the narrowest point there is 150 ft. within the setbacks.

Mr. Henry, Esq. pointed out that Mr. McGroarty also requested plan changes in his report and the changes should be made.

Board discussed the open issue of the utilities and whether or not they would require that they be moved. Mr. Ferriero continued to express his opinion that they should be moved to avoid any type of construction problem in the future, ie. fence post through drain. Even calling markouts might not identify them.

Mr. John DeNeufville was sworn to make comment on the utilities. He testified that his excavator is a perfectionist, and that it would be a major expense to move the utilities. He does not plan on selling the lot as it is for future generations. He agreed that there should be reference in the deed. Moving the utilities is an unreasonable request.

Chair Kraft asked each member of the Board for his/her opinion. They unanimously agreed that the utilities should not be moved and an easement developed. The easement should also be referenced in the deeds. Chair Kraft stated that any approval should also address the LOI needed, and the site distance and the DEP implications. Mr. Henry, Esq. advised that the applicant's engineer has testified that a home can be built, but any limitations should be delineated in the resolution, the deeds and the plans.

After a short discussion, it was agreed that Mr. Henry, Esq., with the involvement of Mr. Ferriero, would draft a resolution of approval clearly articulating the issues in the conditions for the next meeting. At that time the Board would review the resolution, and if in agreement, approve both the application and the resolution.

Mr. Malman, Esq. agreed to an extension of time for the decision until the end of July.

Mayor Henry made a motion to authorize the attorney to prepare a resolution for the July 8, 2013 meeting to include all the discussion items including the easement for the utilities, the LOI and any site distance issues. Councilman Sharkey seconded.

ROLL CALL: The result of the roll call was 8 to 0 as follows:

In Favor: Henry, Bradley, Kopcsik, Lichtenberger, Sandman, Sharkey, Isaccson, Kraft
 Opposed: None
 Abstentions: None

The motion carried. Mr. Henry, Esq. will prepare a resolution for the July 8, 2013 meeting.

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OTHER BUSINESS

TRC Language Change: Mr. Henry, Esq. had prepared the revised documentation as discussed at the June 10 meeting. Members had been provided with copies in their pre-meeting packages.

Mrs. Kopcsik made a motion to approve the new language. Mrs. Lichtenberger seconded.

ROLL CALL: The result of the roll call was 8 to 0 as follows:

In Favor: Henry, Bradley, Kopcsik, Lichtenberger, Sandman, Sharkey, Isaccson, Kraft
 Opposed: None
 Abstentions: None

The motion carried. The new TRC delegation language was approved. Ms. Callahan will keep the new documentation with the policies and procedures.

Master Plan: Mayor Henry questioned when the next Master Plan would need to be developed. Ms. Callahan stated that the Borough currently has a 2006 Master Plan. She confirmed with Mr.

McGroarty that the next plan would be required in 10 years, 2016. We would also need to assure there is money allocated in the budget ahead of that time.

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TRC UPDATES (Information Only)

Mrs. Kopschik reviewed the approved and pending applications with the Board.

ADJOURNMENT

There being no additional business to come before the Board, on motion made, seconded and carried, Chair Kraft adjourned the meeting at 9:10 p.m. The next regularly scheduled meeting of the Planning Board will be held on **Monday, July 8, 2013 at 8:00 p.m.** at the Garabrant Center, 4 Wilson St., Mendham.

Respectfully submitted,

Diana Callahan
Recording Secretary

