

MINUTES

The February 25, 2008 meeting of the Planning Board of the Township of Chatham was called to order at approximately 7:30 p.m. by Chairperson Joel Jacobson. The Open Public Meetings Act Statement was read into the record. The agenda for the meeting included the Majmudar Application.

Roll Call

Board members present included Mr. Jacobson, Mr. Brower, Mr. Caprioglio, Mrs. Chambers, Mr. Ciccarone, Mr. Cohn and Ms. Hagner. Board professionals present included attorney Bill Robertson, planner Frank Banisch and engineer John Ruschke.

COAH

Mr. Jacobson asked Mr. Banisch to prepare a draft comment letter on the new COAH regulations. Mr. Banisch will circulate the draft before the March 3, 2008 meeting.

Mr. Jacobson asked if the build out analysis could be presented at the March 3, 2008 meeting. In Mr. Browne's absence, Mrs. Chambers will work with Mr. Banisch on the build out analysis presentation.

Applications

72 Southern Boulevard Estates

Attorney Barry Osmun stated that the approval required the subdivision deed be recorded as required by statute within 190 days of the date of approval. Mr. Osmun stated that the engineers

(Murphy & Hollows) had some work to do on the plans so he did not get the descriptions of the lots until the day after the 190 days. Mr. Osmun requested an extension and asked to write a letter to the Board for it to be voted on.

Majmudar

Attorney Barry Osmun, attorney for the Applicant, was present on behalf of the Applicant Kaushal Majmudar, regarding the property located at 55 Mountain Avenue.

Mr. Osmun presented planner Michael Tobia, who was sworn in and qualified. Mr. Tobia stated that Mr. Majmudar had retained Mr. Tobia to do a planning and zoning analysis of the case and review the history as it pertained to relief from the 1, 500' building footprint condition.

Mr. Tobia testified that Mr. Majmudar proposed to build a house that is a modification of a 2004 approval. Mr. Tobia testified that the current proposal seeks a larger footprint (2,700' sq. ft.) than in 2004. Mr. Tobia says the proposal did some good things compared with the 2004 plan: the driveway was shortened by approximately 40', the garage was angled with a front-entry door, public sewer was installed, ejector pumps to Mountain Avenue were eliminated. Mr. Tobia continued that minor encroachments to steep slopes are still proposed. Mr. Tobia testified that the Applicant proposes a 4,162' sq. ft. house with a 524' attached garage. According to Mr. Tobia, the coverage on the lot has increased to 5,940' sq. ft. from 5,295' sq. ft. Regarding neighborhood impact, Mr. Tobia pointed out the side yard setbacks have increased to 25'. Mr. Tobia called attention to the architectural plans that were included in the Applicant's submission.

Mr. Tobia continued that the property was located in an R-3 zone and the Applicant does meet many of the R-3 zoning requirements including lot area, lot width, lot frontage, side yard, combined side yard, rear yard and building height. Impervious coverage calculations performed by the architect indicate the Applicant falls below permitted coverage levels in this zone. Proposed coverage is

approximately 5,900' sq. ft., roughly 66% of what is permitted and the Applicant's proposal of 2659' sq. ft. is also below what is permitted. Mr. Tobia said there was a variance granted in 2004 for length of driveway; this was modified by reducing the amount of excess coverage.

According to Mr. Tobia, there is one new variance -- a front yard setback variance. Mr. Tobia stated 50' ft. is required. Mr. Tobia said on the site plan there is a setback proposed from the tip of the angled garage to the property line of 28.4' ft. from technically the front property line.

Regarding slope disturbance, Mr. Tobia stated the proposed plan was more or less identical to what was approved in 2004. Mr. Tobia stated there was less disturbance of the severe slopes (over 25%) and more disturbance of the moderate slopes (15-25%).

Mr. Tobia stated that this is a neighborhood of single family dwellings and characterized it as a "neighborhood in transition". Mr. Tobia distributed a document which was marked Exhibit A6, (dated 2/25/08) and entitled, *Analysis of Recently Approved Home Sites for New Construction in Immediate Area*. Mr. Tobia cited 15 new homes located on Mountain Avenue, River Road, Candace Lane, Sycamore Drive and Meyersville Road located in the R-3 zone with slopes and a calculated average size of 5,637' sq. ft. The average lot size is 1 acre which he cited as direct comparables to the subject property.

Mr. Tobia stated there was a requirement for a 50' ft. front yard setback and a 50' ft. rear yard setback. Mr. Tobia pointed out that it had been agreed that the best way to enter the site is off of "upper" Mountain Avenue. The property adjacent to "upper" Mountain Avenue would be designated as the front yard and the functional distance from "upper" Mountain Avenue to the house is approximately 190'.

Mr. Tobia stated he had spoken with the Applicant regarding screening between the subject property, and neighboring Lot 5, and the Applicant is amenable to a tree line along the common property line.

Mr. Tobia then focused on the 1,500' sq. ft. condition and stated that after research, he was unable to determine why the condition was granted and that there was no real connection to driveway length or steep slopes, in his opinion. Mr. Tobia referred to changed circumstances and trends to be considered including that in 2004 there was talk of a public sewer going through the area, it had not gone through; the sewer was constructed in 2006. In 2004, there was speculation that it would go through in the road bed of Mountain Avenue; in the end, easements were secured through the subject property to allow it to go through the body of the property. Mr. Tobia said also the neighborhood is building homes over 5,000 sq. ft. Mr. Tobia stated he would encourage the Board to lock in the submitted architectural plans with the property.

Mr. Tobia reviewed the *Oloski?* decision where it states that in order to evaluate whether a condition is valid or not, five items must be considered:

1. the condition must not offend any provision of the zoning ordinance
2. the condition must not require illegal conduct on the part of the grantee
3. the condition must be in the public interest
4. for the condition to be valid, it must achieve legitimate objective of zoning
5. the condition cannot be burdensome to the Applicant

Mr. Osmum asked Mr. Tobia if there would be any difference in the appearance of the height of the structure from lower Mountain Avenue if the footprint was restricted to 1,500' sq. ft.; Mr. Tobia stated whether it is 1,500' sq. ft. or the 2,600' sq. ft. proposed, the setback will still be 50' from the street and he did not feel it would make much difference. Mr. Osmun asked if the increased storm water management would be benefit the Township; Mr. Tobia stated he would endeavor to have the dry wells placed under the driveway and this would be a better situation than what is out there now. Mr. Tobia

expressed concern that with a 1,500' sq. ft. footprint, the house constructed may end up being a big, square box.

Mr. Brower asked if the architectural plans would be a condition that would run with the property, in the event the Applicant sold the property; Mr. Osmun stated he believed it would. Regarding screening, the Applicant would agree to work with Mr. Banisch to provide appropriate screening in terms of the neighbors. There was a review of the height of the proposed structure.

Mr. Ciccarone referred to the stated goal in the Master Plan of preserving existing neighborhood character. Mr. Ciccarone stated that the condition in question was part of a negotiated settlement of litigation and that Mr. Majmudar knew of this condition at the time of purchase.

Mr. Osmun stated he would like the Board to postpone a vote as he would like to order the transcripts from 2004. Mr. Jacobson referred to a memo dated June 10, 2004 from former Planning Board engineer Marshall Frost suggesting the condition of 1,500' footprint with agreement from the former Applicant's engineer, Ken Newman. Mr. Osmun requested he be allowed to submit a legal brief in the form of a letter to the Board; Mr. Jacobson agreed that that would be helpful. Mr. Robertson added that Judge Stanton did not reverse the Board's denial of the Bernardo application. Mr. Ciccarone suggested the consideration of a house with a footprint in between the permitted 1,500' sq. ft. and the proposed 2,700' sq. ft.; Mr. Tobia said that would be discussed with the Applicant.

After input from the attorneys, it was determined that Mr. Osmun would order the transcripts from the original application and submit a legal brief to the Board. Mr. Robertson would then have an opportunity to respond to the brief. Mr. Osmun will submit information to Mr. Robertson by March 17, 2008 and the meeting will reconvene on April 7, 2008. Mr. Ruschke reviewed a memo from Mr. Frost and indicated that the 1,500' sq. ft. condition may have come from the original subdivision application in 1988.

Mr. Jacobson asked the public for questions of the witness, Mr. Tobia. Members of the public Mr. Kennedy, Mr. Joseph Kelly, Mr. Peyton, Betty Shultz, Mrs. Kennedy, Michael Kelly and Bill Sullivan asked questions relative to the discussion.

Following public questions, Mr. Jacobson closed the hearing and stated the hearing would reconvene on April 7, 2008.

- - -

There being no further business, the February 25, 2008 meeting of the Planning Board of the Township of Chatham was adjourned.

Respectfully submitted,

Katherine T. Hollerith
Recording Secretary