

The October 19, 2009 meeting of the Planning Board of the Township of Chatham was called to order by Chairperson Joel Jacobson at approximately 7:30 p.m. The Open Public Meetings Act Statement was read into the record. The agenda for the meeting included Shunpike Recreation Field, Valle Estates and Majmudar.

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Roll Call

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

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Minutes

Following discussion, minor changes were made to the minutes from the September 21, 2009 minutes. Mr. Hurring moved to approve the amended minutes and Ms. Hagner seconded, with all in favor.

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Announcements

Mr. Jacobson noted that the Township Committee approved a Resolution authorizing the Planning Board to make an investigation and public hearings to determine whether or not the Rolling Knolls landfill is an area in need of redevelopment. Mr. Jacobson stated that Mr. Robertson would outline the process and describe how to stage in the different elements. Background materials will be provided for Board members.

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Memorialization

Shunpike Recreation Field Capital Improvement Review

Mr. Jacobson stated Mr. Robertson circulated the Resolution which calls for the authorization of a letter to be issued to the Township Committee containing recommendations and observations that were made at the last meeting.

After discussion, it was agreed that a statement would be added to the letter, *“The Environmental Commission gave an updated summary of the research it presented to the Township Committee in December, 2008 on the potential health and safety risks of the crumb rubber infill and the newer alternative infills that have become available since the installation of the crumb infill artificial turf at Lum Avenue Field.”* Several Board members expressed concern that this is not an area for the Planning Board’s consideration.

Mr. Caprioglio made a motion to approve the Resolution directing that a letter be sent with the changes articulated by Mr. Robertson and was seconded by Mrs. Chambers. All members voted in favor, except for Mr. Ciccarone, who abstained.

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Applications/Discussion

Rose Pond, LLC/Valle Estates

Attorney Joseph Vena was present on behalf of the Applicant to request amended preliminary and final site plan for the deletion of a pond liner. This would remove a condition of site plan approval.

Mr. Brower asked about the role of the NJ DEP in this hearing. Mr. Ruschke stated that the Applicant would present testimony that the NJ DEP is not opposed to the removal of

the liner. Mr. Ruschke stated the liner was proposed to maintain the water level in the pond, which was planned to have a fountain and be an aesthetic feature.

Mr. Vena presented engineer Rocco Palmieri, of CMX (formerly Schoor DePalma) who was sworn in and accepted as an engineering expert.

Mr. Palmieri stated the Applicant was seeking approval on field conditions observed over the years and some of these field conditions from the geological survey done in 2000 indicated that the soil conditions could be such that they would serve by themselves as an impermeable layer to retain water for the pond.

Mr. Palmieri testified that when the project was being considered prior to construction, one of the requirements that had to be met was the Township's storm water management ordinance which required infiltration of surface water and storm water into the ground. Mr. Palmieri testified that extensive geological study was done and only three areas were found where surface water could be infiltrated. The report issued by the engineering firm indicated that while a polyethylene liner was recommended as a safeguard for retaining water, the recommendation was that the construction of the pond itself and the installation of soil materials should be done and the area should be reevaluated to determine if the liner was required.

The original pond was dredged about 5-6 years ago to de-silt the pond. Mr. Palmieri testified that it has been at its current elevation for that period of time and that over the years, the water level has not subsided to any appreciable level below its natural pond surface.

In addition, Mr. Palmieri testified, over the past two years, it has been observed that there is a constant ground water flow into the pond. Also, according to Mr. Palmieri, the

2000 report recommended that the soils excavated from the dredging be re-established as the surface for the bottoms and sides of the pond and this has been done. Mr. Palmieri stated that from April until July, field measurements showed the water level has not gone below the lowest pipe outlet. Mr. Brower questioned if there was a well on the site and what was the capacity; the Applicant's response was that he was not aware of the depth or the yield. The pump was not installed at that time. Lastly, a well was dug onsite to serve as a fail safe in the event of a drought condition lowered the pond surface.

Mr. Palmieri stated that in April, 2009, conversations began to change the liner plan as part of a field change. In July, 2009, Mr. Ruschke indicated the Application had to come back to the Board for formal approval since it was a condition of approval.

Mr. Palmieri stated they went back to the DEP, and in May, 28, 2009, heard via email that using the data provided, the liner did not need to be installed and the DEP had no objection to the liner being deleted.

Mr. Jacobson asked Mr. Ruschke to explain why the Planning Board required a liner; Mr. Ruschke stated he did not recall. Mr. Ruschke did say that in review of the geotechnical report, he got the impression that the liner being installed was to minimize seepage and to support improvements of the dam.

The meeting was open to the public for comment. Resident Dan Lerhoff of 10 Sterling Drive stated that part of the sales pitch of the property was a pond with a liner and rocks that made a pretty picture. Resident Mr. Benedetto of 12 Sterling Drive stated the water in the pond is full of scum and rampant with mosquitoes. Resident Mark Brissam, 6 Sterling Drive felt the pond was misrepresented and feels it is in the developer's advantage to eliminate the liner. Mr. Seitz of 8 Sterling Drive asked about a drilling machine that

appeared on the site within the past two weeks. Mr. Lipretti of 20 Sterling Drive commented that the developer has not lived up to his side of the deal in terms of the appearance of the pond. Jim Mathews, 43 Sterling Drive, asked about the possibility of a fence being installed on the steep (east) side of the property and resident Charles Amly, 14 Sterling Drive, asked about the financing of the pump - the maintenance costs.

Joseph Forgione, principal owner of Valle Estates, was sworn in to testify. Mr. Forgione addressed the concerns of the residents. Mr. Forgione testified that the liner would not affect the water level of the pond. Mr. Forgione stated the well was always going to be installed and the timing for that is now. Mr. Forgione testified that there is no reason to install the liner. Mr. Forgione said the landscaping cannot be installed until the pond is finished. Mr. Forgione stated the costs of the pump were included in the homeowner's association manual.

Mr. Jacobson asked Mr. Ruschke for the downsides to removing this condition. Mr. Ruschke said he could provide no guarantees to the residents regarding the liner. Mr. Ruschke said that information is being provided in testimony from the Applicant.

Mr. Jacobson asked if there could be a performance guarantee in place if the liner was removed so the residents would not have to foot the bill if something goes wrong. Mr. Ruschke stated the risk is on the Applicant and that additional inspections could be done. Mr. Ruschke said that if the developer feels confident that liner can be removed safely, there can be a bond that would cover the expenses should something go wrong.

Mr. Jacobson asked if benchmarks can be developed to establish if the liner is not working properly; Mr. Ruschke said benchmarks could be developed.

Mrs. Chambers stated she did not feel she had enough information to make a decision and that she would like a third party review of the subject.

Mr. Ruschke stated the issue would be to do some additional monitoring to get an appreciation of how much infiltration is occurring within the pond versus evaporation and then have some quantitative analysis on the infiltration and base some projections on the makeup. Mr. Ruschke stated this was just better documenting.

Mr. Jacobson suggested to Mr. Forgione that he meet with the residents to discuss some of the issues. Mr. Jacobson also asked Mr. Ruschke to determine what data he would need to feel comfortable with removing the liner.

Mr. Ruschke stated an “as-built” plan should be made of the pond with the actual depths.

Mrs. Dot Stillinger of the Chatham Township Environmental Commission asked if erosion from the eastern section was causing some of the silt in the pond; Mr. Palmieri said, “Probably yes”. Mrs. Stillinger noted a memo from the Township forester that indicated the conservation easement along the top of the eastern bank has been violated by erosion and construction and suggested a fence be installed; Mr. Palmieri was not familiar with the forester’s document. Mrs. Stillinger will get a copy to the Applicant.

The hearing was continued to November 16, 2009.

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Majmudar

Barry Osmun was present on behalf of the Applicant. Mr. Osmun stated that the Planning Board denied an Application in May 2008 for modification of the condition imposed

in the 2004 Resolution, which limited the footprint of the dwelling to be constructed to 1,500 square feet. There was also variance relief for steep slopes.

Mr. Osmun filed a complaint in Morris County appealing the Board's denial. Following that, Mr. Osmun and Mr. Robertson discussed the development of a modified plan for the home. Citing case law, Mr. Osmun stated appeals can be settled but the Applicant must appear before the Board and notice must be given to neighbors.

Under the modified plan, the house would have a 2,200' square foot footprint with a basement garage and a reduction in disturbance of steep slopes.

Mr. Osmun requested the Applicant, Kaushal Majmudar, be sworn in. Mr. Osmun asked Mr. Majmudar to outline the changes made to the dwelling under the modified plan. Mr. Majmudar described the house as having a reduced footprint of 2,200 square feet; the dwelling was pushed back on the lot to give an additional 2 feet from the lower portion of Mountain Avenue; walls were jogged to be between 54-58 feet back; the basement elevation was dropped by 1 foot; the garage was placed underneath the house and the length of the house was reduced to 62 feet. The storm water management was updated to the 100-year flood and landscape screening was proposed on shared property lines.

Mr. Majmudar also cited design features that make the house look smaller. Mr. Majmudar presented Exhibit A1, which showed an architectural rendering of a similar style dwelling to what he proposed to build.

Mr. Jacobson asked Mr. Banisch to prepare a memo on the visual issues and what would help the visual impact for the neighbors.

Mr. Majmudar outlined the variance relief under the proposed modified plan. Mr. Majmudar stated three variances were needed and were driven by the basement garage.

The variances included a drop of the driveway an additional 9-10 feet so the slope of the driveway is 15-17 degrees; a retaining wall needed to be added because of the elevation change near the house; and the deck would require a variance for set back. Mr. Ruschke also pointed out that a variance was needed for a front yard setback.

The steep slope variances were reviewed and compared between 2004 and 2009 in square feet.

<u>Slopes</u>	<u>2004</u>	<u>2009</u>
0-14.99	7,122	6,929
15-19.99	6,553	7,034
20-24.99	1,645	1,366
25 - >	487	349

Mr. Osmun argued a C-1 zoning hardship due to the flagstaff lot and said the Application satisfied the C-2 zoning requirements by creating a more desirable appearance.

Mr. Jacobson opened the hearing to the public. Joanne Kennedy of 51 Mountain Avenue expressed concern about the house looming over her home; Mr. Kelly, 55 Mountain Avenue stated the house should conform with the neighborhood and with what the town permits; Bernard Kennedy, 51 Mountain Avenue made comments on the steep slope variances and the need to hold to the rules that are set and was sworn in and testified on the impact on his property; Paul Payton, 67 Candace Lane was sworn in and asked about a three dimensional computer model being made to compare the 1,500 square foot house with the 2,200 square foot house; Chris Kane of 764 River Road expressed concern on storm water run off to his house, which is lower than the proposed house; Donald McNally of 62 Mountain Avenue expressed concern that the Board uphold the ordinances, not advise on design.

Mr. Robertson explained that what is before the Board is an Application in the midst of litigation; there is a case that permits the settlement of cases before Superior Court; the

Applicant is making a proposal to settle or resolve the pending litigation. The proposal that has been made is to reduce the initial request, but more than what was previously permitted. Mr. Robertson stated it makes sense to discuss this in stages.

Mr. Jacobson suggested the discussion be considered in stages and would be continued on November 2, 2009.

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There being no further business, the October 19, 2009 meeting of the Planning Board of the Township of Chatham was adjourned.

Respectfully submitted,

Katherine T. Hollerith
Recording Secretary