

**MONTGOMERY TOWNSHIP PLANNING BOARD
MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY
REGULAR MEETING
MAY 6, 2013**

Chairman Some called the meeting to order at 7:30 p.m. and read the opening statement that adequate notice of the meeting had been posted and sent to the officially designated newspapers.

BOARD MEMBERS PRESENT: Chairman Some; Vice Chairman Matthews; Mr. Conforti; Ms. Davis; Ms. Dyer; Mr. Sarle; Mr. Smith; Mayor Trzaska; Mr. Glockler, Alternate #1; Mr. DeRochi, Alternate #2

ALSO PRESENT: Francis P. Linnus, Esq., Board Attorney; Jason Cline, Board Engineer; Cindy Coppola, Board Planner; Richard Bartolone, Township Landscape Architect; John Rea, Township Traffic Engineer; Ms. Savron, Secretary

I. SALUTE TO THE FLAG

II. PUBLIC COMMENT

There was no public comment.

III. RESOLUTIONS

Case PB-08-12 **Applicant: Richard and Nancy Grosso, Jr.**
Block 1001 Lot 35.01
Amendment to Resolution

A motion to memorialize the resolution was made by Ms. Davis, which was seconded by Mr. Conforti. This was carried on the following roll call vote:

Ayes: Conforti, Davis, Dyer, Matthews and Some

Nays: None

Case PB-09-12 **Applicant: JER/Herring Orchard, LLC**
Block 28001 Lot 5.01
Preliminary and Final Major Subdivision and Site Plan

Mr. Schatzman, Esquire represented the applicant. Changes to the resolution were made.

A motion to memorialize the resolution with the changes was made by Mayor Trzaska, which was seconded by Mr. Conforti. This was carried on the following roll call vote:

Ayes: Conforti, Davis, DeRochi, Dyer, Matthews, Trzaska and Some

Nays: None

Case PB-05-13 **Applicant: Carrier Clinic**
Block 2001 Lot 2
Submission Waivers Associated with a Preliminary and Final Major Site Plan Application

A motion to memorialize the resolution was made by Mr. Smith, which was seconded by Ms. Dyer. This was carried on the following roll call vote:

Ayes: Conforti, DeRochi, Dyer, Glockler, Matthews, Smith, Trzaska and Some

Nays: None

III. APPLICATIONS

Case PB-03-13 **Applicant: Montgomery Five, LLC**
Block 34001 Lot 60, 61 & 62
Preliminary and Final Major Site Plan
Expiration Date - 6/30/13
Affidavit of Notification and Publication Required

Notice was found to be in order. Richard Schatzman, Esquire, Robert Heibell, Van Cleef Engineering, John Leonardis, Project Expediter and Clyde Jorgenson, the applicant's architect represented the applicant.

Mr. Schatzman explained that the application is for a retail and residential building. The first floor retail space will be 12,772 square feet and the second floor will be 6 COAH units comprising 4,966 square feet. A temporary variance is being requested for 71 spaces where 75 are required.

Robert Heibell, Van Cleef Engineering Associates, was sworn in and accepted as an expert witness. Mr. Heibell referenced a composite exhibit dated April 30, 2013 which was marked as Exhibit A-1. The property is 1.62 acres. A dedication of 16.5' along Route 206 will be made to NJDOT which will bring the net acreage down to 1.45 acres. The COAH units are all one bedroom. Three units are moderate income, two units are low income and one unit is very low income. There are 71 parking spaces proposed in the front of the property. On the northern end of the property there is an access drive which is right turn or left turn in. There is a proposed access on the southern portion of the property which would be left and right turn out. On the south end of the property, about 82' from the subject property is a proposed Master Plan Road from Route 206 to Cherry Valley Road. The construction of the Master Plan Road is phased and PSE & G will be submitting an application to NJDOT in the latter part of this year. The alignment of the roadway on Exhibit A-1 is consistent with the current plans by PSE & G. The applicant has agreed to take out their proposed exit driveway onto Route 206 and connect to the Master Plan Road when the road is constructed to a point to where the connection would be. The applicant's driveway currently has a NJDOT access permit which allows rights and lefts out. When the exit driveway is eliminated the applicant will construct 4 additional parking spaces in that location and the variance for parking will be eliminated. The site will be serviced by public water and sewer. There is a May 11, 2012 NJDOT Access Permit for the exit and entrance driveways and to connect the underground stormwater detention facility to a pipe in Route 206. The Somerset Union Soil Conservation District has issued an approval dated April 24, 2013. The Somerset County Planning Board has issued an approval dated February 23, 2013. The Delaware and Raritan Canal Commission (DRCC) has issued a Staff Report which approves the application subject to Montgomery Planning Board approval. Some of the stormwater has been modified in consultation with Board Engineer Cline which will require further review from the DRCC.

Mr. Heibell discussed the April 1, 2013 Montgomery Township Volunteer Fire Company No. 2 report. The Fire Company was concerned with the access to the COAH units from the rear. The applicant met with the Fire Company and has addressed all their comments. The March 8, 2013 Shade Tree Committee comments have been addressed in the March 22, 2013 construction plans. Any approval from the Board could include the comments as conditions since the comments have been included in the plan revisions. The March 8, 2013 Environmental Commission comments have been included in the March set of revised plans. The applicant does not agree to have the project certified as a LEED project. A LEED checklist has been prepared which indicates which LEED credits the project complies with. The applicant agrees to provide benches and tables on the site based on the future tenant uses. Solar panels are impractical for this building since there is very limited roof area and because of the orientation of the building.

Mr. Heibell reviewed Mr. Rea's report dated March 7, 2013. The applicant agrees to revise the plans to show the connection to the future loop road and the placement of the 4 parking spaces.

Mr. Heibell reviewed Mr. Cline's April 4, 2013 report. The applicant has agreed to comply with all the comments with one slight exception to be worked out between the applicant and Mr. Cline.

Mr. Heibell reviewed Mr. Bartolone's report. The applicant has agreed to comply with all the comments.

Mr. Heibell reviewed Ms. Coppola's April 1, 2013 report. The applicant has complied with the comments from an engineering standpoint. The comments regarding the lighting will be complied with. Since the applicant only needs a temporary variance for parking, the applicant does not want to restrict the hours of the tenants. If a restaurant use is proposed, at the time of the building permit, the Zoning Officer will determine if the parking is sufficient. If there are not enough parking spaces a variance would be required and the applicant will have to apply to the appropriate Board.

Ms. Coppola noted that there are other items associated with a restaurant that may trigger the application to come back to the Board such as outside compressors, the need for a grease trap that might require minor site plan or amended site plan approval and the adequacy of the dumpster. The applicant agreed.

Vice Chairman Matthews asked how deliveries to the stores will be made, especially the larger retail space. Mr. Heibell said there is a loading area to the right side as you come off of Route 206. Vice Chairman Matthews asked if there was a way the Board could require the deliveries to be made during off hours because they will be crossing traffic to get from the loading space to the front of the store. Some of the Board members felt that would be unreasonable.

Mr. Linnus asked Mr. Schatzman if they will post a performance guarantee to ensure their portion of the Master Plan Road is done. Mr. Schatzman said it would be in the Developers Agreement and the applicant will post a performance guarantee for the link.

Mr. Schatzman said Ms. Coppola's memo had a comment about whether the applicant needed an easement in the rear from PSE & G to construct the building. Mr. Heibell testified they do not need an easement to construct the building but there is an existing stone area that the prior owners of the property had installed that goes over the property line. That stone area will be removed from the PSE & G property which requires an easement.

Mr. Heibell said the applicant agreed to provide a sticker for the residents of the COAH units who will use the 6 spaces that are limited to residential parking after 6:00 p.m. The applicant will grant Title 39. The 5' sidewalk along Route 206 continues to the southerly property line.

John Leonardis, 173 Washington Street, was sworn in. The proposed building mounted signs will be consistent subject to their national franchise logos. If there is some type of marketing that the tenant uses in which their logo is an integral part of, it would be incorporated into the consistency.

Ms. Coppola said the elevations suggest there will be consistency between the color, the font, etc. She asked if there will be consistency or will the tenant be allowed to put up any type of sign.

Mr. Leonardis said there will be consistency subject to any national logo or font. There will be no sign boxes permitted. The signs will be pin letter.

Ms. Coppola asked that Mr. Leonardis' testimony about the signage be added to the elevation. Mr. Heibell said the architectural plans will be revised accordingly.

Robert Jorgenson, 1278 Clyde Road, was sworn in. Mr. Jorgenson gave his qualifications and was accepted as an expert witness.

Ms. Coppola asked if the parapets will completely screen all the roof mounted mechanicals from the front and the two sides. Mr. Jorgenson replied that the top of the parapet walls that surround the perimeter of the building are at least to the elevation or above the top of the roof top equipment. This is the case all around the building.

In response to Mr. Cline, Mr. Schatzman indicated the applicant would come back to the Board if there is a need to import or export soil. The applicant will enter into a Sewer Capacity Agreement. The existing mailboxes on Route 206 have been removed and will be removed from the plan. The mailboxes will be inside the building.

Chairman Some opened the meeting to the public. There being no public comment, the public hearing was unanimously closed.

Mr. Glockler asked about the entrance to the second floor apartments. Mr. Jorgenson explained that the residents park on the south end of the property. There is sidewalk access along the rear of the property to the main entry at the south end of the building. There is a second door off of the stair tower which is an exit only door. Mr. Glockler asked if there would be access for emergency vehicles behind the building. Mr. Jorgenson said there would be no vehicle access. Mr. Glockler was concerned with ambulance access and how it may be difficult to get a resident with a medical emergency to the ambulance.

Mr. Smith commented that LEED certification is voluntary. Private development should not be asked to do LEED certification and the LEED checklist should not be required.

Mr. Linnus explained that the temporary variance would stay with the property until the Master Plan Road is constructed. There is always a possibility that the Master Plan Road may not be constructed. The variance will be granted but will voluntarily be abandoned.

Mr. Heibell gave justification for the granting of the variances.

Mr. Linnus summarized the conditions; when the Master Plan Road is ready for construction the applicant will participate in that construction at which point the applicant will formally abandon the variance. The applicant will comply with all the professional reports except one or two items from the Environmental Commission memo.

A motion to approve the application subject to the conditions was made by Mayor Trzaska, which was seconded by Ms. Davis. This was carried on the following roll call vote:

Ayes: Conforti, Davis, Dyer, Glockler, Matthews, Sarle, Smith, Trzaska, and Some

Nays: None

Case PB-02-13 **Applicant: East Country Development**
Block 16002 Lot 9
Amended Preliminary and Final Major Subdivision with Bulk Variance
Expiration Date - 8/9/13
Affidavit of Notification and Publication Required

Richard Schatzman, Esquire, Patricia Ruskin, PS&S, and Kevin Hayes represented the applicant. Notice was found to be in order. Ms. Ruskin, 67B Mountain Boulevard, and Mr. Hayes, 18 Lorian Place, were sworn in.

Mr. Schatzman said the application is for amended subdivision approval for 9 lots for a height variance. He discussed Ms. Coppola's memo dated April 26, 2013.

Ms. Ruskin who was accepted as an expert gave an overview of the proposal. She referred to the overall plan Sheet C-2. Based on the elevations and the homes proposed on each of the lots, in order to maintain a more usable rear yard and flatten the grades along the back yard, height variances for 9 lots is being requested. Lots 9.04, 9.05, 9.06 and 9.07 are along Riley Court. Lots 9.05, 9.06 and 9.07 back up to open space. Lot 9.09, 9.10 and 9.11 in Gallway Court also back up to open space. Lots 9.19 and 9.20 back up to existing homes in the adjacent neighborhood and the existing houses look higher than the proposed houses. Ms. Ruskin referenced Sheet C-3 which is a blow up of the lots on Riley Court. A cross section was provided wherever the lots abutted an existing neighborhood. For the pre-existing grades the applicant is using the new aerial topography that was flown in August 2012 and they added 6" since 6" of topsoil was stripped from the site at the time of the aerial photography as well as the 1' that the Township allows to be used in the height calculation. The finished floor elevations on Lots 9.04 and 9.11 were raised slightly to accommodate the seasonal high groundwater. Ms. Ruskin referenced Sheets C-3 and C-4. Based upon the cross sections, Lots 9.04, 9.19 and 9.20 will not have a visual impact to the surrounding properties. The change in the elevation from the finished floor is about 6". The elevation in the rear can be up to 3'.

Ms. Coppola explained that the front of the dwelling and the grading from the street remains the same as previously approved. The grading on the sides and the rear of the lots is changed so that the slope drops away from the front of the house back to the rear of the lot and that exposes basement wall on the sides and the rear. The purpose is to create a softer slope to the rear of the lot and to create a more usable yard but there will not be walkout basements due to the 2% grade that is required to slope away from the dwelling.

Ms. Ruskin referenced the elevations for the Carnation model, Sheet PB-1 which was submitted as part of the application. The plan shows "best case" and "worst case" scenario because the model can fit on multiple lots. The exposure can vary between 2.67' and 4.3' because of the grades on the particular lots. The side elevation differential is 5.4' or 7.97' exposed.

Mayor Trzaska asked if there would be 8' of concrete showing in the back. Ms. Ruskin showed the rear elevation. The differential would be 5.4' of the foundation exposed up to nearly 8' of exposure. The foundation would be made to look like a brick façade.

Mr. Hayes testified that the brick façade on the concrete foundation will be painted the same color as the siding. He showed pictures of the brick façade painted the color of the siding (Exhibit A-1). The rationale for the variances are to give the homeowner a usable rear yard area.

Ms. Coppola asked why there are no windows in the basements. Ms. Ruskin said the architectural plans have been revised to provide windows.

Mr. Schatzman discussed the positive and negative criteria. The positive criteria is to give the prospective homeowners more usable rear yard area. The negative criteria is there is no visual impact. The main detriment would be visual and testimony has been that there is no visual impact to the already developed lots so there is no real substantial detriment. The applicant will work with Mr. Bartolone on the nine lots for the landscaping.

Mr. Linnus read Gail Smith's, Township Engineer, memo dated May 1, 2013 into the record. Chairman Some opened the meeting to the public.

Burt Mandlebaum, 124 York Drive, was sworn in. Mr. Mandlebaum is under contract for one of the subject lots and came in support of the application. The initial grading plan for the lot he is considering has a 4' drop over 40' which is not amenable to a usable space. The revision to 2' over 40' makes it a much more usable rear yard.

Daniel Dunzik, 370 Burnt Hill Road, was sworn in. Mr. Dunzik is a licensed architect and a neighboring property owner. He referenced Exhibit PB-2 and commented that there are 6-7 steps up to the finished floor in the front and between 5' - 8' is exposed in the rear. He asked if it was possible to have 2-3 steps up in the front and expose less in the back. There are a number of architectural things that can be done to keep these houses below the required height such as changing roof elevations and roof angles and lower basement ceiling height. If the variance is granted a bad precedent will be set which will continue throughout the neighborhood. In a wet area it is more appropriate to construct the houses on a slab or crawl space.

Mr. Schatzman responded that in the law each case rests on its own facts and if approved it doesn't necessarily set a precedent. This is what the applicant has to do to keep these models.

Mr. Hayes confirmed that it is important to give the homeowners a dry home. Each house will have a backup generator. All the houses have full basements.

Mr. Smith asked what the basement ceiling height was. Mr. Hayes responded that it is 9'.

Vice Chairman Matthews asked if the 9 houses would comply if the basement height was reduced. Ms. Coppola responded that 7 would.

Mr. Smith agreed with Mr. Dunzik. The applicant should comply with the ordinance. It is extremely easy to change the roof pitch or reduce the ceiling height in the basement.

Mr. Sarle commented that his house had to be modified because of the height ordinance. He agreed with Mr. Smith.

Vice Chairman Matthews thought the applicant should try to comply by reducing the basement height, by changing the roof pitch or both.

Ms. Coppola confirmed that if they modified the house by 1' 7 of the 9 variances would be eliminated. It is possible as they build in the other phases they might find problems with the water table and come back for other variances.

Mr. Hayes stated that no other variances would be needed. The entire project has been tested.

Chairman Some noted that Sharbell received similar variances. This is a problem with regard to the topography. The applicant is only asking for a variance for 9 out of 54 lots.

Mr. Hayes showed the Board a picture of an existing home at Sharbell which was marked as Exhibit A-2. The picture shows the exposed basement.

Mr. Smith said this is not a topographical issue. This is an elevation issue. They need to conform to the ordinance.

Mayor Trzaska asked what lowering the pitch of the roof entails and how much it costs.

Larry Horowitz, 921 Vossler Avenue, was sworn in. Mr. Horowitz is the project manager. Mr. Horowitz said the house is not raised above 35'. More of the rear of the house is being exposed. If the roofline is lowered the look of the house is not as nice. The higher the pitch the more stately the house and the nicer it looks.

Mayor Trzaska asked how the homes would be made compliant if the variance is denied.

Mr. Horowitz said they would go back to the original grading and the yards would be less usable. When asked he acknowledged that the homeowner could be offered the option of an 8' basement height and the more usable rear yard.

Mr. Mandlebaum discussed how the height is measured by ordinance.

Ms. Coppola said the rear of the houses is going to be much higher because the mean of the four corners is used to determine the height. They may be 35' measured from the front two corners but in the rear they may be 40' or 43' and that creates the need for the height variance. Six of the lots back up to wooded open space that will not be developed or they back up to lots within the development. They may be viewed differently than those that back up to the tract boundary. The height ordinance was adopted to address the issue of lots being mounded up and the dwellings being placed on top of the mounds so that new housing didn't tower over other existing developed lots.

Chairman Some asked the applicant if they would be willing to amend the application to request a variance for the six lots that back up to the wooded area or other lots within the development.

Mr. Schatzman said the applicant would consider it but the testimony was that the existing neighboring houses look higher than the proposed houses on Lots 9.19 and 9.20.

The motion would be for variance approval on Lots 9.05, 9.06, 9.07, 9.09, 9.10, 9.11, 9.19 and 9.20. A variance on Lot 9.04 would be denied due to the difference in configuration and relationship to the neighborhood.

The motion was made by Mr. Conforti, which was seconded by Mayor Trzaska. The motion carried on the following roll call vote:

Ayes: Conforti, Davis, Dyer, Matthews, Sarle, Trzaska and Some

Nays: Smith and Glockler

IV. MINUTES

April 1, 2013 – Regular Meeting

A motion to approve the minutes was made by Mr. Conforti, which was seconded by Mayor Trzaska. This was carried on the following roll call vote:

Ayes: Some, Matthews, Conforti, Davis, Dyer, Sarle, Smith, Trzaska and Glockler

Nays: None

April 15, 2013 – Regular Meeting

A motion to approve the minutes was made by Mayor Trzaska, which was seconded by Mr. Conforti. This was carried on the following roll call vote:

Ayes: Some, Matthews, Conforti, Dyer, Sarle, Smith, Trzaska, Glockler and DeRochi

Nays: None

There being no further business to come before the Board, the meeting was adjourned at 9:30 p.m.