

**MINUTES**

**JUNE 24, 2014**

**PLANNING BOARD**

**LONG HILL TOWNSHIP**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

Chairman Pfeil called the meeting to order at 7:30 P.M. He then read the following statement: Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2014.

**MEETING CUT-OFF**

Chairman Pfeil read the following statement: Announcement is made that as a matter of procedure, it is the intention of the Planning Board not to continue any matter past 10:30 P.M. at any Regular or Special Meeting of the Board unless a motion is passed by the members present to extend the meeting to a later specified cut-off time.

**CELL PHONES AND PAGERS**

Chairman Pfeil read the following statement: All in attendance are requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

On a call of the roll, the following were present:

Excused:

J. Alan Pfeil, Chairman  
Suzanne Dapkins, Vice-Chairman  
Ashish Moholkar, Member  
Guy Roshto, Member  
Gregory Aroneo, Member  
Timothy Wallisch, Member  
David Hands, 1<sup>st</sup> Alternate

Guy Piserchia, Mayor  
Brendan Rae, Mayor’s Designee

Kevin O’Brien, Bd. Planner  
Thomas Lemanowicz, Bd. Engineer  
Dan Bernstein, Bd. Attorney  
Cynthia Kiefer, Bd. Secretary

Ms Kiefer advised Chairman Pfeil that he had a quorum and could proceed.

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**EXECUTIVE SESSION** - It was determined that there was no need to hold an executive session.

**APPROVAL OF MINUTES**

Mrs. Dapkins moved approval of the minutes of May 13, 2014 as presented. Mr. Wallisch seconded the motion. A Roll Call Vote was taken. Those in Favor: Mr. Aroneo, Mrs. Dapkins, Mr. Moholkar, Committeeman Roshto, Mr. Wallisch, Mr. Hands, and Chairman Pfeil. Those Opposed: None. Motion for approval passed unanimously.

**PUBLIC QUESTION OR COMMENT PERIOD**

Chairman Pfeil opened the meeting to the public for questions or comments on those items *not* on this evening’s agenda. Hearing none, he closed the meeting.

**RESOLUTION OF MEMORIALIZATION**

**MICHAEL GURVAL**  
91 Central Avenue  
Block 13103, Lot 6

**#14-05P**  
Minor Site Plan Review  
Bulk Variance

Chairman Pfeil asked for any comments or corrections from the board members or consultants.

Mrs. Dapkins noted on page 2 that “Township Planner” should read “Planning Board Planner” and “Zoning Board Engineer” should read “Planning Board Engineer”.

Mrs. Dapkins motioned approval of the resolution as amended and Mr. Wallisch seconded. A Roll Call Vote was taken. Those in Favor: Mr. Aroneo, Mrs. Dapkins, Committeeman Roshto, Mr. Wallisch, Mr. Hands, and Chairman Pfeil. Those Opposed: None. Motion passed unanimously. Mr. Moholkar was not eligible to vote since he had not voted on the application.

**RESOLUTION OF MEMORIALIZATION****RESTORE MEYERSVILLE LLC**

596 Meyersville Road  
Block 14701, Lot 27

**#13-07P**

Prelim/Final Major Site Plan  
Variances

Chairman Pfeil asked Mr. Bernstein to explain the procedure when an applicant has questions concerning a resolution.

Mr. Bernstein said that this case was particularly complex. He noted that Mr. Kaufman and Mr. Delaney were helpful in clarifying some issues in the resolution. His objective in creating this resolution was to craft a document with maximum sustainability in court. After two (2) meetings with Mr. Kaufman and Mr. Delaney, only five (5) areas of disagreement remained. The first four (4) had to do with verbiage. He had sent out copies of the draft resolution to the board members with his comments in bold and Mr. Delaney's comments underlined in findings 42, 43, 51, 59 and Conclusion "E". He suggested that he and Mr. Delaney review their comments briefly with the Board and those members that voted nay to the application would decide what to do.

Chairman Pfeil said that in Mr. Bernstein's memo to the board members, he suggested that the board members who voted against the application discuss and vote one-by-one on each point. He asked if the other board members had the right to give input although they would not be able to vote on it.

Mr. Bernstein said it would be wrong to say that a board member could not speak. He advised them to keep in mind that the goal was to strengthen the resolution so that in the unlikely event that it went to court, it would be sustained.

Chairman Pfeil asked the board members if there were any questions on the resolution itself.

Mr. Wallisch referred to Finding #27, "Activities at the site would not be limited to volleyball. There may also be yoga and pilates." He asked when that was discussed.

Mr. Bernstein referred Mr. Wallisch to the minutes of October 8, 2013, page 5. "Ms. Mottern stated that a health club would not be her intended use. It would be recreation and training. Volleyball would be the primary, if not the only focus. She would not rule out such things as yoga and pilates so long as they didn't interfere with the volleyball portion."

Mr. Wallisch noted that Ms. Mottern had also mentioned open courts on Friday nights which was Finding #28.

Mr. Bernstein referred again to the minutes of October 8, 2013, page 4. "Ms. Mottern was asked about problems that have confronted her leadership team. She stated that on two occasions she had had to ban high school boys from attending adult open court night on Friday nights."

Mr. Hands asked if that was in reference to the Flemington facility.

Mr. Bernstein affirmed that it was.

Mr. Hands asked if that inferred that there would be Friday night---

Mr. Bernstein further described the boys' activities at the Friday night session.

Chairman Pfeil noted that both of those were at the Flemington facility.

Mr. Bernstein said that in everything that had been stated, this facility was depicted as a mirror image of Flemington. He did not see anywhere that Ms. Mottern said anything indicating that Long Hill would be different than Flemington. He referred to the October 8, 2013 minutes, pages 2, 3, and 4 where she mentioned Flemington as if it was Long Hill. Karl Pehnke, the traffic engineer, discussed Flemington in relation to what would happen in Long Hill.

Committeeman Roshto referred to Finding # 37.

Mr. Bernstein said the best discussion on that point was with Mr. Legato at the last hearing when he discussed what the parking requirements were. Mr. Bernstein and Chairman Pfeil had a colloquy where Mr. Legato said it was a retail use and Mr. Bernstein said that the ordinance stated that for open space and recreation, parking would be determined by the Board.

Committeeman Roshto noted that that was in the second application and asked Mr. Bernstein if he was inserting testimony from the second application into the first application.

Mr. Bernstein answered no. He said the question was about the quantum of parking required for both the first and second application. The reason he referred to the second was that it might be fresher in the board members' minds. The ordinance was the same. If one assumed that this was a permitted use, he felt that it came within the parking requirement of "to be set by the Board". Mr. Bernstein offered to get the ordinance citation if the Board requested it. He said that parking was a consideration in the application. They had heard testimony on it but it was for this Board to decide the appropriate number.

Committeeman Roshto said his issue with Finding #37 was that, from the testimony and debate amongst the board members, he did not feel they ever had a clear decision on whether this was a service use or considered open space and recreation. That determination would drive the parking. By putting that in the resolution, he felt that they were making a determination that it was open space and recreation.

Mr. Bernstein said that if one believed that it was a personal service, then it would be 5 per 1000. He said that the finding could be changed if the four (4) members felt that it was a personal service.

Chairman Pfeil said that if Finding #37 was never discussed in the first application, it should not be in the resolution. There was nothing to support it.

Mr. Bernstein said that the Board had to make a conclusion based on the testimony. He found, in looking through it, that there was no discussion about "is it a permitted use". Members of the audience brought it up but he and the board members did not have a colloquy about the amount of parking. There was almost no discussion on the ascetic controls in the ordinance. He cited William Cox (New Jersey Zoning and Land Use Administration) and said that this Board did not have to deliberate or discuss it, it was the resolution that constituted the decision of the Board.

Chairman Pfeil said that the Board had to be comfortable with the resolution.

Mr. Bernstein agreed, however he noted that he did not see deliberations on whether this was a permitted use, yes or no, the amount of parking, yes or no. The Master Plan was discussed but the zoning ordinance must be complied with, not the Master Plan. He felt both the proponents and the opponents did not necessarily make findings. They discussed the three (3) mini-variances which he felt were not the main focus of the case.

Mr. Bernstein asked Committeeman Roshto if he wanted Finding #37 changed to say if it was considered to be personal service, it would be 5 per 1000 or would he want it to say that the Board found it was a personal service. He invited Committeeman Roshto to give him the wording.

Committeeman Roshto said that he did not think the Board ever made that determination. He felt that it either had to say both since it was a debate or discuss it now and make a determination or strike the entire finding.

Mr. Bernstein said that if Committeeman Roshto believed that the application should be denied, a basis for that denial would be that there were only 26 parking spaces. He felt that that was one of the grounds because if there were a maximum of 24 cars when Karl Pehnke studied the Flemington facility, there would be no room for growth.

Committeeman Roshto clarified that there were 60-something parking spaces. The additional parking was for overflow. That was a discussion and a debate so to imply one or the other would make it--

Mr. Bernstein interjected that one was paved parking which the ordinance called for and the other was parking on grass. He remarked that he would hate to see what would happen in the winter. He advised the Board that he had given his rationale for Finding #37 but he would follow the Board's wishes.

Committeeman Roshto asked whether the Board wanted to debate it or strike it.

Mr. Bernstein said if Finding #37 was struck, the Board might be giving up the argument that the application was denied for inadequate parking which he felt was the second strongest argument.

Mr. Aroneo felt that if something was inserted that was not debated or a conclusion that there was inadequate parking—

Committeeman Roshto interjected that this was a statement of fact. He did not have a problem with it being in the resolution since it was what the ordinance stated. He had a problem with the implication that the Board debated it and that the Board was stating that.

Mr. Bernstein said those four (4) members who voted against the application must determine whether it was a personal service requiring 5 to 1000 or open space and recreation which would be "to be determined". He felt that they should state one or the other because parking, in his opinion, was an issue in the denial.

Committeeman Roshto reiterated that it should say one or the other, but not both.

Mr. Bernstein clarified that it could say both.

Mr. Moholkar said that he preferred "both". He felt that the first one was strong but the second one which was discussed at the last meeting was the stronger.

Mr. Hands asked what "both" meant.

Mr. Bernstein explained that there were two (2) ways of interpreting the amount of parking. If it was a personal service use, it would be 5 per 1000. If it was considered open space and recreation, it would be determined by the Board. Later on, he had put in the conclusion that it was an inadequate amount of parking which he felt was a strong argument for denial.

Mr. Hands said the application was not for open space and recreation.

Mr. Bernstein said that he could put in alternative ways of analyzing it.

Mr. Hands said he did not mind that it was not discussed by the Board since it came under the zoning officer. It was talked about in a preamble to the Board discussions. He noted that they did get into the 1 per 200 later on in the resolution which was discussed and he was fine with that also. If the resolution talked about open space and recreation, it was not under the application. Whatever was under the application, that parking piece may be relevant here. He would go with both.

Mr. Legato asked permission to comment and Mr. Bernstein said that the resolution was not open to public comment or discussion.

Chairman Pfeil agreed saying that this was between the board members who voted to deny the application with the understanding that the other board members could voice their opinions.

Mr. Wallisch said that parking was never discussed in detail whether it was personal service or open space and recreation. Given the intended use, he did not have any specific issues with the amount of parking that was there.

Mr. Bernstein said that if a majority of the naysayers felt that way, he should delete the parking references.

Committeeman Roshto said he concurred with Mr. Moholkar and Mr. Hands and felt that both should be represented in the resolution.

Mr. Wallisch said that he was ok with having both in the resolution.

Mr. Bernstein said it would be reworded later in the evening.

Chairman Pfeil asked if there were any other questions or comments from the Board.

Committeeman Roshto said there was a typo in Finding #62, page 12, 3<sup>rd</sup> row. "The testimony disclosed that there will adult volleyball." The word "be" should be inserted between "will" and "adult".

Mr. Wallisch referred to Finding #45 and the phrase "morphing of uses". He felt that that was the responsibility of the zoning officer to enforce a specific complaint.

Mr. Bernstein said that that was theoretically correct however, in his experience, conditions are forgotten and things do morph. The reality of the situation was that enforcement was the weak link in zoning.

Committeeman Roshto said that he underscored that. It was what helped him make a determination since he believed that eventually the use would morph and the Board had to be concerned about that. There was testimony stating that any use changes would have to be approved by the Board but he felt that it was a very valid point and concern.

Mr. Bernstein said that he could put in the resolution that there would be no adult volleyball or yoga or Pilates however, enforcement would be almost impossible. The zoning officer could not just barge in. In fact, the owner could tell the zoning officer to get permission from the municipal court to come in.

Mr. Bernstein said that if a neighbor was really irritated and contacted the zoning officer enough times, the conditions would be enforced.

Mr. O'Brien referred to William Cox, page 690 of the 2014 edition of New Jersey Zoning and Land Use Administration, Section 28-4.8(a) titled, "Enforcement". He read, "Even though variances are often made subject to conditions, it must be realized that the enforcement of these conditions is not the function of the municipal agency. It lies elsewhere."

Chairman Pfeil said that enforcement is presumed when the Board writes a condition into the resolution.

Mr. O'Brien said that in his opinion, the Board should not debate this at length since the township has municipal employees to do this.

Committeeman Roshto clarified that he was not debating enforcement. He was debating the statement of the morphing of uses which were, to him, very different things. Copper Springs was a prime example of a location where the use over a period of time morphed into things that were way beyond what originally was planned for. He said that was something that the boards had some jurisdiction over.

Mr. Bernstein said there was nothing to reference other than he had asked Mr. Kaufman about other uses at one of the other meetings. This would be a "special use" type of facility and by nature, a low generator because it would be drop off and pick up. If volleyball went by the wayside, theoretically it would be enforced.

Mr. Wallisch commented on Conclusion F, "The applicant has not planned for an increase in the number of children in the program. If there is any, then the parking would be inadequate." Since there were only three (3) volleyball courts, there were only so many children that could be on there at any one time.

Mr. Bernstein asked if there were six (6) players on each side. Mr. O'Brien said that the testimony was ten (10) per court. Mr. Bernstein said given that, there would be 30 children plus some parents and coaches.

Mr. Wallisch said as far as planned increase, Mr. Kaufman could only get so many people on there at any one time.

Mr. Bernstein said there could be bigger teams of ten (10) to twelve (12) with "benchwarmers".

Chairman Pfeil moved on to the sections in dispute and started with Finding #42.

Mr. Delaney said that it should read, "The Board finds that the 26 paved parking stalls *is* adequate..." as opposed to Mr. Bernstein's "*may be* adequate." He felt that there was testimony from their expert and that the Board had made a finding that the 26 stalls were adequate. Further on, he felt it should say, "...but finds that the parking would be *inadequate for some other uses* and that additional parking *might* be required." Mr. Bernstein would replace "inadequate for some other uses" with "*inadequate for practically every other conceivable use*" and "...additional paved parking *would* be required." He felt that the Board had made a finding that the parking would be inadequate for *some* uses otherwise it would be speculative. He said his language was more affirmative and reflected what took place at the hearing as opposed to Mr. Bernstein's being rather speculative.

Mr. Bernstein asked the board members to respond either way.

Committeeman Roshto asked Mr. Delaney what he was referencing in testimony to support his words.

Mr. Delaney said that the applicant had had a witness discuss the adequacy of parking and he heard some of the other board members say that they did not have a problem with parking so implicit in that was a finding that the 26 paved parking stalls were adequate.

Mr. Moholkar suggested adding "from the testimony provided".

Mr. Delaney noted that Mr. Bernstein was attempting to protect the Board however the resolution should accurately reflect what happened. The applicant lost the case and Mr. Delaney did not like a lot of things in the resolution but Mr. Bernstein's language was not consistent with what the Board discussed and found.

Mr. Bernstein said there was minimal discussion on all of the aspects and as Cox said, the Board did not have to discuss it. The resolution embodied the findings.

Committeeman Roshto said that discussion was based around the 26 paved spaces however there were 38 other spaces that were on grass for overflow which were only mentioned in passing later on. When he listened to the testimony, he was considering that. He would never have felt that 26 would be adequate but he could say that 26 plus 38 for overflow would be adequate. He wasn't convinced from the testimony that 26 paved parking spaces were adequate.

Mr. Hands said that the overflow was for exceptional situations which occurred three (3) times a year. He was not as concerned about that as a condition because it was there for other purposes.

Committeeman Roshto said his point was that the overflow parking was still available even if other things were happening. If there was no overflow parking, it would have been a totally different situation for him.

Mr. Hands asked if Committeeman Roshto would be more comfortable if the unpaved parking spaces were included.

Committeeman Roshto said that during all the testimony, both the paved and unpaved parking spots were considered together and therefore they could not be separated.

Mr. Hands agreed.

Mr. Bernstein asked if the grass spaces would be adequate for everyday use since he was referring to everyday use when he used the 26 spaces in the resolution. He did not see the unpaved spaces as everyday spaces.

Committeeman Roshto said that the testimony was not convincing enough for him to be comfortable with 26. What convinced him on the parking was that there was available space elsewhere in the overflow area if needed for regular use.

Mr. Wallisch said that as he had mentioned earlier, having gone to the Flemington facility during a shift change, parking was one of his primary concerns. He was ok with the 26 paved but he felt that Committeeman Roshto made a good point in that the other availability for parking should be added.

Mr. Moholkar agreed with Committeeman Roshto on the math. The survey that was done was only done on two days. He felt it should say that the 26 plus the 38 "*should be*" adequate. The survey was not a sample to him. "Is" meant that he was definitely convinced and "should" meant it sounded adequate. He also noted that there was support under the grassy parking area and it was not just a "meadow".

Committeeman Roshto felt that that made sense and the board members concurred.

Mr. Delaney said that he still felt that his language the most reflective of what actually took place.

Mr. Bernstein said that #42 should read, "...however, the Board finds that 26 paved parking stalls and 38 overflow parking stalls should be adequate for a children's volleyball facility with the participants dropped off and picked up..." The board members said that that was correct.

Committeeman Roshto said that on the last part of that section, he agreed with "...inadequate for some other uses..." Discussion among the board members ensued and it was agreed that "...inadequate for *most* other uses..."

Committeeman Roshto next addressed the words "would" and "might" in Finding #42. "...additional paved parking *would/might* be required."

Mr. Wallisch stated that the first part of that sentence implied that if it was inadequate, then additional parking *would* be required. He further explained that if it was a use that had not yet been approved and it required more parking, then it *would* require more parking.

The board members agreed with using the word "*would*".

Mr. Delaney read the last sentence in Finding #43, "A popular yoga and Pilates program with over 25 participants *would/might* also require more than twenty-six (26) parking spaces."

Mr. Aroneo said that they had not deliberated about yoga or Pilates so they had no testimony with respect to how many parking spaces would be required.

The board members agreed with that and subsequently felt the word "*might*" should be used.

Mr. Moholkar suggested that whenever the 26 spaces were mentioned, the additional 38 should also be mentioned.

Mr. Aroneo asked if it was a different use, would there be a possibility when the 38 unpaved spaces could not be used.

Mr. Bernstein said that it would be impossible to enforce. Once the spaces are there, they would be used. He felt that the tenant would want to maximize her profit so why not have yoga?

Mr. O'Brien told Mr. Aroneo that any other use would require a Site Plan Approval or Amendment to the Site Plan or some relief from a regulatory body which might trigger a different amount of parking—Mr. Aroneo interjected the words "paved parking"—which that authority would have to consider.

Mr. Delaney read the third sentence from Finding #51. "The Board therefore finds that the development of the site for future uses other than what was proposed by the applicant *would/might* require additional parking stalls." He felt it should be "might".

Mr. Bernstein felt that the word "would" should continue throughout vis-à-vis parking, however, as the board members pointed out, in one instance "would" was used (Finding #42) and in the other instance "might" was used (Finding #43).

Committeeman Roshto said that in Finding #43, specific programs were listed, yoga and Pilates, and he agreed that "might" made sense in those instances. But in general cases, they were not looking at it from that perspective. The board members had discussed previously that there were very few other uses that this would be compatible with. Using the word "would" reinforced the statement that there were few other uses that this parking could support. He felt that this was a general case, overarching, to support their conclusions.

Mr. Aroneo disagreed saying that they did not know what those uses would be.

Mr. Hands agreed with Committeeman Roshto saying that "might" should be used when it's specific to yoga and Pilates and "would" when it was general.

Mr. Wallisch said the context of the items was different. One said that the parking would be inadequate for practically any other use but it was not an absolute given that it would require additional parking stalls.

Committeeman Roshto asked him if the phrase "substantially similar uses" was added, would the word "would" be appropriate.

Mr. Wallisch said that he would agree that, based on what the other uses would be, it *might* require additional parking.

There was discussion among the board members concerning other phrases such as "practically every other use would" or "probably every other use would". The phrase "*every* other use" was the problem.

Committeeman Roshto suggested the following, "The Board therefore finds that the development of the site for *practically* every other future use other than what was proposed by the applicant would require additional parking stalls." This would indicate that there are uses available that would not require additional parking.

Mr. Wallisch suggested, “The Board therefore finds that the development of the site for future uses other than what was proposed by the applicant would *probably* require additional parking stalls.”

At Mr. Bernstein’s suggestion, the board members agreed on the word “*likely*” rather than “probably”.

Mr. Delaney asked for the final language. Mr. Bernstein read it as follows: “The Board therefore finds that the development of the site for practically every other future use other than what was proposed by the application would *likely* require additional parking stalls.” He felt that it was a compromise.

Mr. Bernstein moved to Finding #59. Mr. Delaney felt that it should be struck in its entirety since during testimony there were a lot of positives. The way Finding #59 was crafted, it did not reflect the deliberations.

Mr. Bernstein said that the applicant could have provided parking in the back and reduced the size of the building. He did not want to base the denial on the three (3) mini variances but the applicant did not prove that he had to have that size building with front yard parking. This current application was the “proof of the pudding” where everything would be conforming.

Mr. Delaney agreed with Mr. Bernstein but the sentence in Finding #59 said that the applicant did not prove the positive and he felt that he had done that. He said that everything Mr. Bernstein had just stated was negative.

Mr. Bernstein said that the applicant needed the variances and they were related to the size of the building and to lot coverage. With the second application, the applicant proved that it could be smaller. In the first application, there was no theorem that said the building had to be that size and while the applicant’s planner said that there were a number of other businesses with front yard parking, the applicant was able to reconfigure the plan so that there was no front yard parking. Therefore, Mr. Bernstein said, there was no hardship associated with these variances. He felt that it was a better application today and it added something to the denial.

Mr. Delaney felt that the applicant met the positive criteria. There were some strong compelling arguments that the negative criteria were not met. He felt that that was Mr. Bernstein’s stronger argument.

Chairman Pfeil said that Finding #59 stated that the Board did not agree with the testimony presented by applicant’s planner.

Mr. Bernstein said that was true.

Mr. Delaney disagreed.

Committeeman Roshto asked Mr. O’Brien to read the positive criteria.

Mr. O’Brien said that the positive criteria spoke to the Master Plan and Zoning Ordinance and whether or not an application could be reconciled with those documents. It was up to the Board to decide whether it had been persuaded by arguments that those criteria had been met.

Mr. Bernstein referred to 40:55D-70c which dealt with “C” variances. C-1 stated that the exceptional physical characteristics of the property resulted in an undue hardship. C-2 stated that the benefits of the deviation would substantially outweigh the detriments.

Mr. Hands referred to Conclusion Finding J, “The applicant has failed to prove the positive criteria for the front yard parking, building coverage, and impervious lot coverage.”, and asked if it was more of a conclusion than it was a point.

Mr. Bernstein agreed that Finding #59 and Conclusion Finding J were cumulative and that Finding #59 could be stricken. He also stated that Finding #60 could be stricken since Conclusion Finding K was a restatement of that.

Mr. Moholkar agreed with that. He felt that Mr. Bernstein was saying that there was not enough positive to outweigh the negative. These were conclusions based on the testimony provided.

Chairman Pfeil affirmed that decision of the Board was to strike Finding #59 and Finding #60.

Mr. Delaney referred to Conclusion Finding E which read, “There *is/might be* inadequate parking for the aforementioned other activities.

Mr. Bernstein conceded that “*might be*” would be the appropriate phrase. He indicated that he would make the changes to the resolution during the upcoming recess.

**PUBLIC HEARING (cont’d.)**  
**RESTORE MEYERSVILLE LLC.**  
596 Meyersville Road  
Block 14701, Lot 27

**#14-01P**  
Prelim/Final Site Plan  
Development Permit

Present:

- William Kaufman, Applicant
- John J. Delaney, Esq., Attorney for the Applicant
- Christian M. Kastrud, P.E., Engineer for the Applicant
- Gerald J. Legato, Esq., Attorney for Concerned Citizens of Meyersville

Chairman Pfeil said that during the last meeting, he thought there had been an agreement reached that all the revised engineering plans would be submitted to the Board and its professionals in plenty of time so that the engineering testimony could be heard at this meeting. He wanted to know why that did not happen. The Board had not received the revised engineering plans and there were no reviews by the Board professionals on the engineering plans so no decision could be reached this evening on this application.

Mr. Delaney said that after the last meeting, the applicant, Mr. Kaufman, and his engineer, Christian Kastrud, discussed internally the concerns raised by the Board in terms of the safety of the basin, the steps, the planner’s comments with respect to the fence and gate mechanism, the neighbor’s concern about the potential overflow discharge, and as a result of all that, they felt that there was a better solution available. Mr. Kaufman and Mr. Kastrud reached out to Mr. Lemanowicz and the neighbor’s (Helena Tielmann) engineer to discuss redesigning the detention basin to address all these concerns and possibly create some additional parking. Mr. Kaufman wanted Mr. Kastrud to talk to Mr. Lemanowicz to make sure that Mr. Lemanowicz was comfortable with the concept. Then the plans had to be revised significantly.

Mr. Kaufman said that they had come up with a plan that would eliminate the detention basin and move it underneath the parking area. It would not affect the building design or any of the landscaping. They wanted to take the comments of the Board and see if there was a better engineering solution. As a result, it was placed underneath the parking area. The parking area would have to be constructed of porous pavement which is permitted by ordinance. It would allow the driveway to act as the sieve and filtration. The water would come down into the detention basin which would be located beneath the parking lot and then discharge to the rear. It would mitigate the neighbor’s concerns about overflow discharge going in their direction. It would resolve the issue of having fences, pits, gates, steps, and walls. He said that Mr. Lemanowicz had had only 30 seconds to review the concept and obviously had to have more time for review and comment. The idea would be that Mr. Kastrud would submit a plan to Mr. Lemanowicz within the next two (2) weeks. Mr. Lemanowicz would then have a week or so to get a report back to the Board and to him. Based on that, Mr. Kastrud would revise the plans again to make sure that all engineering issues relating to the detention would be resolved by the next hearing. At that time, Mr. Kastrud would give his testimony on stormwater management. Mr. Lemanowicz’s comments will have already been addressed. It took time to investigate whether or not this would even be a viable solution and Mr. Kaufman apologized however he felt it resulted in a better solution.

Chairman Pfeil noted that he was happy to hear that revisions were being made to the detention basin because there were so many concerns about that voiced at the last meeting.

Mr. Moholkar asked if the retention basin was located below the driveway or parking area, would it mean that it would all have to rise because of the historic fill.

Mr. Kaufman said that it came up a little bit but there was still positive pitch from the front of the site to the rear.

Mr. Lemanowicz said that with respect to the revised plan, Mr. Kastrud had contacted him the Tuesday afternoon after the plans were due to inform him that there would be a revised plan. That was the first he had heard from the applicant as to why the plans had not arrived the Friday before, as was originally promised. He had received the plans earlier in the day (06-24-14) and had not a chance to look at them.

Mr. O’Brien said that he too had been waiting for plans or some sort of communication since June 12, 2014. No one had any idea of what would be discussed at this meeting so the Board had not had a chance to prepare. If the plans were going to change, the planning comments could change. Planning testimony could be presented this evening however he deferred that decision to the Chair. The applicant may wish to wait until the revised plans are sent and do it all together.

Mr. Kaufman and Mr. Delaney apologized to the Board for any inconveniences caused by the delay.

Mr. Wallisch suggested that the board members wait to hear the planning testimony until after Mr. O’Brien’s final comments. Mrs. Dapkins agreed.

Chairman Pfeil said that they would wrap up the memorialization and discuss the schedule for the application later in the evening. He asked for a recess so that the attorneys could revise the resolution to reflect the changes agreed upon by the board members. Meeting was adjourned at 9:00 p.m.

**X X X X R E C E S S X X X X**

Chairman Pfeil called the meeting back to order at 9:15 p.m.

Mr. Bernstein referred to page 6, Finding #37, of the Resolution of Memorialization for Application #13-07P, Restore Meyersville LLC, and read the following revised text: “If the proposed use were considered ‘Open Space



*and Recreation*, the amount of parking is: 'As determined by approving authority.' If the proposed use were considered a retail service, then 5 parking spaces per 1,000 or about 71 parking spaces would be required."

Mr. Bernstein noted that, in Finding #42, there was a disagreement. The first sentence of the original draft read as follows: "The ordinance does not provide a parking requirement for a volleyball facility catering to young children." If this is considered a "retail service", the ordinance *does* provide a standard. He did not know what standard the Board would ultimately decide, however, he deleted the sentence because it implied that it was not a retail service.

Mr. Delaney disagreed.

Mr. Bernstein read the remainder of Finding #42 as follows: "However, the Board finds that the 26 paved parking stalls and 38 overflow parking stalls *should be* adequate...but finds that the parking would be inadequate for *most* other uses and that additional paved parking *would be* required."

Mr. Bernstein referred to Finding #43 and read the revised text: "A popular yoga and pilates program with over 25 participants *might* also require..."

On page 10, Finding #51, Mr. Bernstein read the revised text: "...the development of the site for *practically every other* future use...*would* likely require additional *paved* parking stalls."

On page 11, Mr. Bernstein noted that Items #59 and #60 were deleted. In the "old" Finding #62 which was now #60, the word "be" was added to read, "...there will *be* adult..."

On page 12, Conclusion E was changed to read, "There *might be* inadequate parking..."

He concluded the changes that were made to the Resolution of Memorialization.

Mr. Delaney said that in addition to this resolution, there was a pending case. In terms of public policy and judicial economy on both sides, he suggested that both sides enter into a stipulation that the normal 45 day filing period for a challenge to this resolution be carried until 45 days after the next resolution (on the second application). Mr. Delaney noted that both Mr. Bernstein and Mr. Legato were in agreement.

Mr. Bernstein said that there was no reason to embark on litigation unless it was required and there was no reason for the township to spend money on such unless it was required. If the second application is approved, there may not be an appeal from the applicant on the first. The Board would have to agree to this.

Mr. Delaney clarified that he had 45 days from the date of publication of *this* resolution to file an appeal. To avoid unnecessary litigation, he had made the suggestion to enter into a stipulation.

Chairman Pfeil reviewed the Board's meeting schedule. There was one meeting scheduled in July and there were two (2) applications that had to be started therefore, Restore Meyersville LLC would not be heard until the August 12<sup>th</sup> meeting, at the earliest which would be right at 45 days. With engineering, planning, Board questions, public comments, and only one (1) meeting scheduled in August, it was conceivable that this application might not be voted on until September. Based on that schedule, he felt it would make sense to grant the stipulation.

Mr. O'Brien questioned when the 45 days would commence.

Mr. Bernstein answered that it would begin on the date that the resolution was published. It would follow the adoption of the resolution not the vote of the Board.

Mr. Aroneo asked what would happen if the second application was denied.

Mr. Bernstein said that the 45 day appeal period of both applications would coincide. At the time of publication of adoption of the Resolution of Memorialization for Application #14-01P, that 45 day appeal period for both applications would begin. If one became inactive, there would be a time period for action and that would be outlined in the stipulation.

Mr. O'Brien suggested an official withdrawal of the application.

Mr. Bernstein added, if it were dormant for a specified period of time. There would be some protection for the Board.

Mr. Hands asked if the dormant phase would begin the next Wednesday (anticipated date of publication of the Resolution of Memorialization of Application #13-07P). Once the Resolution of Memorialization for Application #14-01P was published, the 45 day period for appeal would begin for both.

Mr. Bernstein affirmed that this was the case.

There was further discussion between the board members and attorneys clarifying the terms of the stipulation agreement which would be a separate document from either of the applications or resolutions.

Mr. Delaney asked if the township needed to be a party in this.

Mr. Bernstein answered that it did not because it was the Planning Board that would be sued, not the Township of Long Hill.

Mr. Bernstein addressed the Board and asked for a motion authorizing him to enter into a stipulation extending the time for the filing of a complaint to be co-terminous with the adoption of the resolution and publication of the legal notice for Restore Meyersville LLC Application #14-01P or in the event that that application is not decided by the end of the year, the appeal period will expire.

Committeeman Roshto asked if the board members would have a chance to review the document.

Mr. Bernstein answered probably not unless the Board felt it was significant. He felt it was a simple document extending the time for the applicant to file a complaint.

Mr. Delaney suggested that Mr. Bernstein prepare the document.

Mr. Moholkar motioned to authorize Mr. Bernstein to enter into a stipulation as described earlier. Mr. Wallisch seconded. A Role Call Vote was taken. Those in Favor: Mr. Aroneo, Mrs. Dapkins, Mr. Moholkar, Committeeman Roshto, Mr. Wallisch, Mr. Hands, and Chairman Pfeil. Those Opposed: None. Motion passed unanimously.

Chairman Pfeil asked for a motion to approve the Resolution of Memorialization as amended for Application #13-07P. Mr. Wallisch motioned and Mr. Moholkar seconded. A Role Call Vote was taken. Those in Favor: Mr. Moholkar, Committeeman Roshto, Mr. Wallisch, and Mr. Hands. Mrs. Dapkins was ineligible to vote because she voted in favor of the original application. Chairman Pfeil and Mr. Aroneo were ineligible to vote since they were not present at the meeting when the vote for the original application was taken.

Chairman Pfeil referenced Restore Meyersville LLC Application #14-01P and reiterated that, based on discussions before the recess, they would not proceed with engineering or planning testimony at this meeting.

Chairman Pfeil wanted to develop a timeline for all the elements required to hear this application first on the agenda of August 12, 2014.

Mr. Lemanowicz said that submission for the meeting would have to be on July 29, 2014. If Mr. Kaufman submitted plans on July 11, Mr. Lemanowicz would have two (2) weeks plus to review with at least a couple opportunities for revisions.

Mr. Kastrud wanted to ensure that this would not require multiple submissions of 25 sets.

Mr. Kastrud said that by the 11<sup>th</sup> or 15<sup>th</sup>, he would like to have the hydrologic calculations done and hydrology submitted so that there would be nothing left to chance. If there were comments, they would address each of them. He did not want to submit just a concept. He wanted to submit full engineering plans for Mr. Lemanowicz's review.

Mr. Lemanowicz said that if plans were submitted on the 11<sup>th</sup>, that would give Mr. Kastrud two (2) weeks plus to get plans for the meeting. Mr. Lemanowicz felt it was doable.

Chairman Pfeil asked if the applicant would commit to that timeline.

Mr. Kastrud said that as long as they were not making multiple submissions of 25 sets, communicating by telephone and emails would not be a problem in an effort to iron out any differences. He also agreed to communicate with the engineer retained by Helena Tielmann.

Committeeman Roshto asked if there was an option to not set a date this evening to allow the applicant to review the timeline.

Mr. Kastrud said that they were aware that they had to have 25 sets of final plans to the Board by July 29, 2014 to make the August meeting. His intention was to not have any comments left open for discussion on that night which was why he wanted to work with Mr. Lemanowicz.

Mr. Lemanowicz assured Committeeman Roshto that if he received the submission by the 11<sup>th</sup>, he would have time to review it despite the fact that he had jury duty.

Chairman Pfeil said that there would be final review and agreement between all the engineering parties by July 29, 2014 in order to meet the August 12<sup>th</sup> meeting.

Mr. Lemanowicz said his goal was to have it finalized by the 21<sup>st</sup> which would give Mr. Kastrud four (4) business days to make final changes.

Mr. Kaufman clarified that Mr. Lemanowicz would not make a formal report until the final submission was made on the 29<sup>th</sup>.

Mr. Lemanowicz agreed. There would be written communication on the plans prior to that date but the formal review would be issued after the submission of final plans.

Mr. Kastrud said that Mr. O'Brien would be copied on all correspondence with Mr. Lemanowicz.

Mr. O'Brien said that based on that timeline, the board members could expect to see their copies of the plans along with the professionals' reports one (1) week prior to the hearing. He summarized that the Board staff would receive revised plans from Mr. Kastrud on July 11<sup>th</sup> so that they could work on the engineering comments on the revised plans. By July 21<sup>st</sup>, Mr. Lemanowicz would have his comments completed and forwarded to Mr. Kastrud so that he could file a final revised version to everyone as of the 29<sup>th</sup> of July. On August 5, 2014, the Board would receive the professionals' reports along with the final plans. The public would have two (2) weeks to review the submission to the Board and one (1) week to review the reports.

Mr. Delaney offered to sign the "Consent to Extend Time for Decision" to August 13, 2014.

Chairman Pfeil asked the Board if there were any questions. Seeing none, he opened the meeting to the public and asked if there were any questions or comments regarding the procedure. He noted that a member of the public corralled him at the break and asked why an email was not sent to the public advising them that the application would not be completed that evening. He apologized since he had no idea that there was an email system to notify the public.

Mr. O'Brien advised the Chair that had the applicant withdrawn or delayed the application or asked for an adjournment, that information would have been on file late last week. It would also be part of the agenda which is placed on the township website and disseminated by email to those who are on the list to receive Planning Board agendas. However, no one was aware of what actions the applicant would be taking this evening.

Mr. O'Brien stated that if the applicant required an extension, his attorney should draft a letter to the Board explaining the circumstances and staff would communicate that to the list of email recipients as well put it in the various notice places such as the bulletin boards and newspapers.

Ms. Kiefer noted that it would be taken off the agenda and the revised agenda would then be posted and emailed to those on the list.

Mr. Bernstein noted that he would advise Mr. Legato who would then advise those he represented.

Chairman Pfeil asked again if there were any comments or questions from the public *not* on the current application since there had been no testimony, but on the process itself.

Debra Schmitt, 486 Meyersville Road, Meyersville, said that there have been a few times now that the applicant had submitted things late, at the last minute, or not at all without notification. She asked if there was some consequence for this repeated behavior.

Mr. Bernstein said that a court would not rule that untimely submission of materials was grounds for dismissal.

Ms. Schmitt asked if there was some way to require the applicant to absorb the expenses that were unnecessarily incurred.

Mr. Bernstein answered that the applicant had absorbed those expenses. The applicant paid the three (3) Board professionals' expenses in addition to his own attorney and engineer for the evening and nothing had been accomplished.

Ms. Schmitt questioned if the taxpayers were paying for the Board professionals.

Chairman Pfeil answered that the applicant pays for the Board professionals and the court reporter. The applicant's delay cost him a lot of money.

Mr. O'Brien reiterated that the consequences were that they were not heard tonight, they did not advance tonight, and they were delayed to a meeting two (2) months from now.

Chairman Pfeil asked if there were any other comments from the public. Hearing none, he closed the meeting.

Chairman Pfeil asked Mr. O'Brien and Committeeman Roshto to update the Board on the Master Plan Subcommittee. He noted that along with Committeeman Roshto, Mr. Hands was a member of that subcommittee and Mr. O'Brien was the advisor.

Mr. O'Brien informed the Board that Master Plan Subcommittee met and all of the members were present. Committeeman Roshto, the Chairman, made several suggestions on how to advance the goals of achieving the rewriting of the Master Plan within a two (2) year period. Committeeman Roshto posed questions concerning the goals of the Master Plan, the vision for the township as a whole, and what was the essence of this community. His first task for the committee was to find a theme for the community that would follow through the various elements and unite not only the elements but the entire community. A schedule of meetings had been published and the creation of a work plan was in progress.

Committeeman Roshto said that the township website had a new page for the Master Plan Committee and it listed the schedule of meetings. The committee recommended that two elements, the Recreation Element and Historic Preservation Element, come to the Planning Board and the Master Plan Committee simultaneously to speed up adoption of these elements. His goal was to complete these two elements by the end of the year.

Committeeman Roshto said that there were links available on the Master Plan Committee website to all of the Master Plan documentation. The various elements that had been done in 2001 and 2007, Stormwater Management Plan, and the 1996 Comprehensive Master Plan had all been consolidated into one place called the 2013 Master Plan and that was the document that the committee was working from. He hoped to develop a 2016 Master Plan outline, a packet for every Planning Board member to review and also for anyone from the public who would like to comment so that as the committee moved through the process, changes and updates would be made right into that 2016 element and that latest information that the committee had would be available.

Committeeman Roshto said that there was a working folder that the committee members and the Planning Board members had access to so that progress could be viewed on a weekly basis. He advised the board members that he would send them instructions on how to access that link.

Committeeman Roshto noted that Dr. Tom Behr and Patrick Jones were elected as spokespeople from the committee to the Planning Board for periodic presentations. A number of people on the committee are experts in certain fields and they would come in periodically to give the board members an update on what they were working on.

Committeeman Roshto added that they would be inviting some experts to come and talk to the committee. The first would be a presentation by the Morris County Planner, Christine Marion, on economic development. There was some discussion as to how multiple members of the Planning Board could attend without violating quorum rules.

Chairman Pfeil said that the Recreation Element had been reviewed by the Planning Board and sent back to the Recreation Committee. Mr. O'Brien advised him that he was meeting with Lisa Scanlon to work on it in July to complete it.

Chairman Pfeil asked Committeeman Roshto about the Historical Preservation Element. Committeeman Roshto said that he would give the Planning Board an update at the at the July meeting.

Mr. O'Brien added that he would submit a report on the Recreation Element at the August meeting.

A discussion about the agenda for future meetings ensued. Morristown Road Rezoning would be heard first on the agenda for the September 9, 2014 meeting. Mrs. Dapkins suggested that the board members visit the properties on Morristown Road and Mr. O'Brien clarified that it encompassed every property from the pump station to the railroad facing Morristown.

Mr. Wallisch motioned to adjourn. Mr. Moholkar seconded. A Voice Vote was taken and the motion passed unanimously. The meeting was adjourned at 10:07 p.m.

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CYNTHIA KIEFER  
Planning and Zoning Secretary

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Date