

MINUTES

DECEMBER 9, 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:

J. Alan Pfeil, Chairman
Suzanne Dapkins, Vice-Chairwoman
Brendan Rae (7:34 p.m.)
Ashish Moholkar, Member
Timothy Wallisch, Member
David Hands, 1st Alternate

Excused:

Guy Piserchia, Mayor
Gregory Aroneo
Guy Roshto, Member

Kevin O'Brien, Board Planner
Thomas Lemanowicz, Board Engineer
Daniel Bernstein, Board Attorney
Cynthia Kiefer, Board Secretary

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

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

Chairman Pfeil asked if there were any questions or comments from the public on items not listed on the agenda. Hearing none, he closed the meeting to the public.

Chairman Pfeil noted that this was the last meeting of the year. He requested that a Nominating Committee of two (2) volunteers be formed for the purposes of nominating the board leadership positions for the year 2015. Mr. Hands and Mrs. Dapkins volunteered.

Ms. Kiefer noted for the record that Dr. Rae had arrived at 7:34 p.m.

PUBLIC HEARING

BRIGID ANNIS
532 Meyersville Road
Block 14701, Lot 25

#13-14P
Minor Site Plan, Dev.
Permit Waiver, Bulk Vars.

PROOF OF NOTICE SUBMITTED.

Present:

Brigid Annis, Applicant
Michael Bonner, esq., Attorney for the Applicant
Christian M. Kastrud, P.E., Engineer for the Applicant

Michael Bonner, attorney with **Frieri & Conroy**, Cranford, New Jersey said that this was the culmination of approximately 12 to 13 years of applications and rezoning requests. He pointed out to the board members that in reaching their decision they could rely on the record that had been established over the years and effectively take judicial notice. They could rely on their own information along with the reports of Mr. O'Brien and Mr. Lemanowicz. He reminded them of that since the applicant did not have a planner present, he applicant would rely on the Board Planner's report to the Board outlining what was necessary to be proven. The applicant's testimony would show that the benefits of granting the diminimus variance would far outweigh any detriment.

Mr. Bernstein swore in Brigid Annis, along with Mr. O'Brien and Mr. Lemanowicz. He then swore in Christian M. Kastrud, P.E. with **Kastrud Engineering**, Bound Brook, New Jersey and noted that he had testified before this Board over a number of hearings as a P.E.

Mr. Bonner asked Mrs. Annis to give the board members a brief description of what she did at Willow Pond Farm.

Mrs. Annis said that at Willow Pond Farm they gave horseback riding lessons. They were conducted mostly in the afternoons, Mondays through Fridays, and Saturday mornings from 9:00 a.m. to 4:00 p.m. There were approximately 35 students. Approximately 28 of those students were therapeutic riding students. Those students were children with Down's Syndrome, Autism, ADD/ADHD, and developmental learning delays. There were three (3) instructors. Two (2) of them were certified EGALA (Equine Assisted Growth and Learning Association) and PATH (Professional Association of Therapeutic Horsemanship International) which worked with the learning disabled and autistic children. EGALA instructors worked with psychologists on site which was done on Mondays (Equine Assisted Psychotherapy) for children and adults who had a range of issues. Willow Pond Farm was one of the few barns in the state which did a combination of the two (2) programs.

Mr. Bonner asked if she received any of her referrals from Long Hill Township.

Mrs. Annis said that she had residents from the township and that she also worked with some staff from the township.

Mr. Bonner said that this was clearly a local benefit.

Mr. Bonner addressed Mr. Lemanowicz's concerns over parking. He asked what the parking requirements were on an average day.

Mrs. Annis said that on an average day it would be possibly four (4) cars. If they were completely full with three (3) instructors working, there would be six (6) cars total if the lessons were drop-offs, which they usually were. She added that they also worked with three (3) schools in the area which dealt with mentally and emotionally handicapped children and on the days that the schools brought their students, it would be in a small bus. They could only handle eight (8) students at a time. The bus would drop them off and then it would leave.

Mr. Bonner clarified that it would be a mini bus or a van.

Mrs. Annis answered that that was correct.

Mr. Bonner asked if Mrs. Annis expected any expansion in student level or staff that would increase parking needs.

Mrs. Annis answered no. There was limited space and she expressed concern about the horses. She said that they would only take on 11 horse and with those 11 horses they could only give a certain number of lessons. There were only three (3) riding rinks which limited lessons to three (3) at a time. She added that the lessons were individual.

Mr. Bonner asked, if the variance was not approved and she had to take down the riding rink, would she have to cease riding lessons in the winter effectively ceasing operations.

Mrs. Annis said that it would not be just in the winter. She noted that, for example, with all the rain they had had that week, there would be no lessons going on at all.

Mr. Bonner asked if an important service would be unavailable if the variance was not granted.

Mrs. Annis answered, "Yes."

Mr. Bonner asked, from Mr. Lemanowicz's technical comments, if there were sanitary facilities available to her staff.

Mrs. Annis answered that those facilities were available not only to her staff but to the students as well. They were located right in the barn.

Mr. Bonner said that he had no further questions.

Chairman Pfeil referred to Mr. Lemanowicz's letter of November 19, 2014 along with his letter of March 12, 2012 to the Board of Adjustment. He also noted the comments from Mr. O'Brien and asked what the Board was being asked to approve. In Mr. Lemanowicz's letter to the Board of Adjustment, there were a number of additions or modifications made to the property without seeking variances and without seeking permits.

Mr. Bonner said that they predated the zoning and most, if not all of the pre-existing non-conformities were eliminated by the new bulk standards of the new zoning. Mr. Lemanowicz's March 12, 2012 letter addressed an application which was withdrawn because of that very reason. There was no reason to continue because all of that relief was no longer necessary after the rezoning took place. The applicant was currently asking to establish a new baseline for this property going forward. If the current variance was approved, the property would be in compliance with the new zoning ordinance and they would have a new baseline. Any future applications would refer back to this one. Mr. Bonner said that they would introduce a new survey that would form the basis of this application. He asked Mrs. Annis to verify that no material changes had been made to the property as she had confirmed to Mr. Lemanowicz upon his inspection.

Mrs. Annis said that that was correct.

Chairman Pfeil asked, with respect to the construction that occurred without permits, if they were still open issues. He understood that the zoning changes allowed the equestrian use but did that change in the zone grandfather all the additions that were done without the benefit of permits or other variances not associated with the use.

Chairman Pfeil asked if the applicant would still have issues with the construction department whether the Board approved it or not.

Mr. O'Brien answered that the Board was completely separate from the construction department. He added that the Board was being asked to grant minor site plan approval which would legalize from a planning perspective where everything was on the property and the uses on the property in addition to the one variance for the setback for the riding rink that was new. There were pre-existing non-conformities concerning the house and the garage but they were like that since long before.

Mr. Lemanowicz said the only issue the Board would have would be the additional roof area. It would be the additional impervious which would relate to the drainage designs. The applicant was proposing a drywell to compensate for the impervious cover of the new rink.

Mr. Bonner said that the drywell was Mr. Lemanowicz's original recommendation. He referred to his letter which addressed Mr. Lemanowicz's comments and noted that the impervious coverage was 1.89% of the lot's 17.4 acres. The lot would have to be reduced to just over two (2) acres before impervious coverage would become an issue under the township's ordinance.

Mr. Lemanowicz said that it was not an impervious coverage variance. It was impervious area with respect to stormwater. There was a 400 square foot trigger—anything over 400 square feet required stormwater management. He did not try to measure all the new roofs here but he was sure it was over 400 square feet.

Mr. Bonner said that the applicant's engineer would address that.

Mr. Hands asked if there were any plans for future development.

Mrs. Annis said that this was it for at least the near future.

Mr. Bonner said that with the change in zoning, minor changes on the property would be the subject of building permits unless it rose to a level that would bring it before the Board.

Mr. Hands asked if this would square everything away so that anything in the future would go through the proper channels.

Chairman Pfeil asked if there were any members of the public who had questions for the witness.

Debra Schmitt, 486 Meyersville Road, stated that she was a neighbor and she had reviewed the paperwork. She said that she had seen notes about various additions to the barns and to the home (a deck). She said that there was a request for all of that to be provided to the Board as far as permits and she wondered if all of that had been submitted.

Chairman Pfeil said that she had missed the discussion on that.

Mr. Lemanowicz said that in essence he was asking if there were any and apparently there were not. This Board did not deal with enforcing. That was the Construction Official's purview. After this process was done, the intent was to go and get the rest of those permits taken care of.

Ms. Schmitt asked if this was before the Planning Board because it required variances.

Mr. Lemanowicz answered that that was correct.

Ms. Schmitt asked if there was a history of what happened in cases like this when people sought forgiveness instead of permission.

Mr. O'Brien said that she had missed Mr. Bonner's opening remarks about this. He summarized by saying that this issue had been before both boards for a dozen years in different ways which culminated in the Planning Board recommending and the Township Committee approving an ordinance which allowed the equine related farms to be an allowed use in the township. This made what Mrs. Annis did an allowed use. The applicant was before the Planning Board to get site plan approval based on that new ordinance.

Ms. Schmitt said that she understood that the use was allowed but she thought that this particular building was violating the setbacks.

Chairman Pfeil said that it did need variance approval by the Board.

Mr. O'Brien said that there was one variance for a side yard setback.

Ms. Schmitt said that there was evidence of fill in order to construct this.

Mr. Lemanowicz said that the Department of Environmental Protection (D.E.P.) visited the site and they were okay with what was done. He added that Mr. Bonner had that letter and it was also in the application file.

Ms. Schmitt said that her concern was that this didn't happen again in the future. She was distressed to discover that there were so many changes made to the property with no permission.

Chairman Pfeil said that he wasn't sure her comments were appropriate at this time. This was the time to address questions to the applicant.

Ms. Schmitt asked how long the structure had been there.

Mr. Bonner answered that it had been built in 2011 or 2012.

Ms. Schmitt said that the zoning had been changed to allow only this use in addition. She noted that this was a conservation zone and now the township was allowing horse farms in the conservation. She wanted to know if that was a general rule for all the conservation zones in the township.

Mr. O'Brien said that that was correct.

Ms. Schmitt asked if everybody was okay with that.

Mr. O'Brien said that it was approved by the Township Committee with conditions that were applied to equine uses. Only those who meet those conditions were allowed to have this use.

Ms. Schmitt asked if this lot was still separate from the lot that the applicant's house was on.

Mrs. Annis said that they were still two (2) separate lots.

Mr. Bernstein asked if the applicant would comply other than the variance she was seeking tonight with the horse farm ordinance that had been adopted by the Township Committee. He wanted to know if this facility would be in compliance other than the minor variance being sought that evening.

Mr. Bonner said that the applicant had input into the drafting of the ordinance so that her facility met the requirements.

Mr. Bernstein asked Mrs. Annis if it was her testimony that she would be complying with the ordinance.

Mrs. Annis answered, "Yes."

Mr. Bernstein asked what the maximum hours of operation would be on Monday through Friday.

Mrs. Annis answered that the earliest she would start would be 9:00 a.m. on Thursdays only. On the other days, she started at 3:30 p.m. Monday through Friday, the lessons would be finished by 5:30 p.m.

Mr. Bernstein asked what the names of the three (3) schools were that sent students to her facility.

Mrs. Annis answered, "Montgomery Academy, Shepard School and ECLC in Chatham." She added that these schools all catered to handicapped children.

Mr. O'Brien asked if these schools were certified by the New Jersey State Department of Education. He asked if they received public funds.

Mrs. Annis answered, "Yes."

Mr. Bernstein asked Mrs. Annis to list the buildings that she didn't get approvals for so that they could be included in the minor site plan approval. He reminded her that the Construction Office might also have questions for her.

Mr. Bonner said that all the structures on the property were on the plans that the applicant submitted.

Mr. Bernstein reiterated his request.

There was discussion between the applicant and her attorney.

Mrs. Annis said that these were buildings that were constructed years ago by her husband. She didn't know what all of that was and she didn't know everything that he did on the property. She said that he was no longer involved with Willow Pond Farm and whatever was left over that needed to be dealt with in terms of compliance—

Mr. Bernstein said that this was a public hearing and from his perspective, it would be nice if he could list everything and advise the Construction Official to review that list rather than have him try to find out for himself.

Mrs. Annis said that she would be more than happy to review the items that needed to be done with Tom Delia the Zoning Official.

Mr. Bernstein said that if her testimony was that she did not know what was done, he would not interrogate her further.

Mr. O'Brien said that they should start with the riding rink because this was one of the reasons they were here.

Mr. Bonner said that under the new ordinance, it conformed except for the fact that it was mistakenly placed 48.2 feet from the property line instead of 50 feet.

Mr. O'Brien said it would have still required construction approvals.

Mr. Lemanowicz said that there was a partial list in his letter of March 12, 2012. There were photographs that Mr. Bernstein could review and figure out what was done.

Chairman Pfeil asked, in light of the fact that a significant amount of work was done without the benefit of permits and the applicant now needed a variance to allow the rink to stay, if the applicant had approached her neighbor to ask if she could purchase three (3) feet of his property. He asked if she could document that.

Mrs. Annis answered that her husband had corresponded with that neighbor. She said she did not believe there was ever any response.

Chairman Pfeil asked her how recent that was.

Mrs. Annis answered that it was not within the last two (2) years.

Chairman Pfeil asked why the rink was not placed where it should have been.

Mr. O'Brien said that the ordinance was not in place at that time and the side yard setback was not as large. If it was treated as an accessory use it would have a different setback. The equine related ordinance specifically brought all the equine related buildings quite a distance further from the line.

Mr. Bonner said that under the original application, it was looked at as an accessory structure and the setback was 25 feet at the time.

Mr. Hands asked about the actual rink. He asked how permanent a structure it was.

Mrs. Annis said that it had footings but it could be dismantled if necessary. The riding surface was a mixture of sand and a little bit of chewed up rubber like what was used in children's playgrounds.

Chairman Pfeil said that there were no further questions for the applicant.

A site plan that was colored was marked as **Exhibit A-1**. It was noted that the board members each had a black and white copy of that site plan which was submitted with the application.

Mr. Kastrud said that the site was a multi-use property with riding rinks, horse stables, a residence and other paddocks. The darker green areas on **Exhibit A-1** were fenced off areas for the horses. In the easterly portion, approximately half way back on the plan view was the yellow circle which represented the riding rink. It was located 47.8 feet from the easterly property line and was the subject of this hearing. The property was approximately 17.4 acres. A complete survey was not done as the northerly half of the property entered into the Great Swamp. That was totally restricted from any development because of its environmentally critical area. The survey was stopped at the northerly terminus of the fenced in paddock area. Since the impervious area was less than 2%, he did not feel the 17.4 acre figure was important. He proposed to collect roof runoff from the masonry stable which was located just to the southwest of the riding rink and direct that northerly into a drywell with an overflow which would flow northerly towards the Great Swamp.

Mr. Bonner said that the dome diverted the water and the drywell would collect it.

Mr. Kastrud said that that was correct however it was a little more in depth than that. Changing the characteristics of the land from grass and trees to anything impervious would definitely increase the runoff.

Mr. Bonner said that it would not increase the amount of water that fell in that area.

Mr. Kastrud said that that was correct. It would increase the runoff.

Mr. Bonner said that the drywell would account for that runoff.

Mr. Kastrud said that that was correct. He had discussed with Mr. Lemanowicz the idea of creating a trench around the rink instead of a drywell. There were no gutters on the rink and by creating a stone trench around the outside, it would be a drywell that would then just overflow down towards the Great Swamp in a northeasterly direction. After reviewing the plans and the actual footings that were associated with the rink, they did not want to jeopardize the stability of the riding rink itself by introducing the trench.

Mr. Kastrud said that the drywell as now designed was sufficient to capture the runoff for the riding rink. He had heard questions as to whether it was sufficient to capture runoff from any other additions that had been added to the property. He was not aware of where those additions were or which ones they were or when they were added or at what point they were required to have runoff mitigation so he was not prepared to testify to that.

Mr. Bonner asked if Mr. Kastrud could identify the structures that were on the plan.

Mr. Kastrud said that the largest structure in the middle of the property was a masonry stable. There was a garage immediately to the west of that, close to the property line between 532 and 542, both owned by the applicant. Due south of that was a two-and-one-half story frame dwelling and a masonry stable located just to the south of it. There were fences and paddocks shown in the darker green.

Mr. Wallisch asked how the runoff from the tent would get to the drywell.

Mr. Kastrud said that it didn't. He took an equivalent area, the masonry stable.

Chairman Pfeil asked if Mr. Kastrud knew whether that masonry stable would require its own stormwater mitigation. He asked if it was built with a permit.

Mr. Bonner said that his recollection was that the major barn was on the property when the applicant bought it over 20 years ago.

Mr. Kastrud said that he thought that small additions were made to each of the structures, not necessarily a whole structure.

Chairman Pfeil said Mr. Kastrud would take some runoff from the property and contain it but not from the structure that required the variance.

Mr. Hands asked if it was 100% or higher.

Mr. Kastrud said that his recollection was that it was higher than the riding rink.

Mr. Lemanowicz said that Mr. Kastrud was proposing 1,012 cubic feet and he was required to have 928.

Mr. Hands said that according to the pictures submitted, between 2002 and 2010, there was a decent sized addition to that stable.

Mr. Lemanowicz said that picture #4 in his March 12th letter showed that the original barn was a rectangle. The appendages were additions. Also the garage had been enlarged.

Mr. Hands asked if stormwater mitigation proposed would be sufficient for those additions along with the riding rink.

Mr. Bonner said that the drywell was designed for the structure as it was.

Mr. Hands asked if more could be done if the cubic footage was not sufficient to cover the alterations that were done over all those years.

Dr. Rae said that they would have to go back and review the regulations in those days.

Mr. Lemanowicz said that there was no calculation as far as the impervious area that was created without coming to the Board. He said based on the drywell size, there was a credit of 260 square feet of impervious. It could handle 260 square feet more of impervious than was existing. He then asked what the surface was on the outdoor riding rinks.

Mrs. Annis answered that the surfaces throughout the riding rinks were uniform because it was best for the horses' hooves and the riders if they fell.

Mr. Lemanowicz asked if it was kept in a "fluffed" condition.

Mrs. Annis said it was kept in a loose condition. If it were packed down it would defeat the purpose of being spongy for the horses and the riders. It was consistently raked with a york rake, at least once a week especially after a rain or snow.

Mr. Lemanowicz asked Mr. Kastrud to comment as to the permeability of that type material versus a lawn.

Mr. Kastrud said that the material kept in a fluffed state would have a higher degree of porosity or perviousness than one would see in a lawn. He felt it was at least the same if not better.

Mrs. Dapkins asked if Mr. Kastrud was familiar with the Environmental Commission's letter of November 26, 2014 where a rain garden was suggested in addition to the drywell.

Mr. Kastrud said that that was another option. He was looking to keep whatever was being used for detention out of sight.

Mrs. Dapkins asked if the applicant would be amenable to that.

Mr. Kastrud said that he did not know if it could be done or what it would look like so he was reluctant to ask the applicant.

Mr. Lemanowicz said that outlet protection on the drywell overflow would be necessary. He asked why not make that a scour hole and call it a rain garden. He explained that a scour hole was a treatment to slow water down as it came out of a pipe before it spilled on the ground. It was a depression filled with stone. He was asking if it could be modified with plantings.

Mr. Kastrud said that that was an acceptable solution.

Mr. Lemanowicz said that he might wind up piping enough gutters and downspouts to that drywell to make sure to use all of its capacity. The rain garden/scour hole could be tucked out of the way. The storage in the rain garden would boost--

Mr. Kastrud said that he felt that was achievable.

Mr. Hands said he would like that since it would help compensate for those structures that had been built throughout the years.

Mr. Moholkar asked if the water drained straight down the sides of the rink, would it create a depression on the side or would it just flow off.

Mr. Kastrud said that it probably would run off to the northeast.

Mr. Hands asked how many footings there were.

Mr. Kastrud said that he briefly reviewed those plans and it appeared that there were 12 to 16 footings. He was unsure exactly how it was constructed but the shop drawings showed 12.

Mr. Bernstein asked if Mr. Kastrud had studied the 2005 resolution that was done on this site. It referred to some plans. He asked if one could review the present site plan and the prior site plan and determine what was done without permits. He felt that if someone wanted items legitimized, that person would list them for the Board.

Mr. O'Brien said that that was Certificate of Non-Conformity.

Mr. Bonner said that what occurred at that time and the granting of the Certificate of Non-Conformity essentially said that everything that was in existence at that time was a pre-existing nonconforming use and therefore left in place. He was not sure what Mr. Bernstein was asking.

Mr. Bernstein said that usually there was a plan that went with it which would show what was done. Then the two (2) site plans could be compared.

Mr. Bonner said that he was still unsure as to where Mr. Bernstein was going with this.

Mr. Bernstein said that in 2005 the resolution legitimized what was on the site at that time. If one were to look at that plan to see what was there in 2005 and then review the current site plan, the engineers could calculate what was done subsequent to 2005. He wanted to see what the Board was approving.

Mr. Bonner said that it was his understanding that there had been no additions to the buildings since the Certificate of Nonconforming Use was granted. He wanted to establish that as the baseline. He did not believe there was any alteration to the buildings.

Mr. Bernstein asked if Mr. Bonner was saying that there was no site plan done. He wanted to know if there was any site work done. The applicant wanted approval for things that were done without permit. In 2005 approval was obtained and that was presumably the base. He wanted to know if Mr. Bonner was saying that nothing had been done since 2005 except for this one rink.

Mr. Bonner said that to his knowledge there had been no addition to the buildings. He had represented the applicant in 2005 for the Certificate of Non-Conformity. It was his belief that the smaller buildings on the site were from the 2002 photo. The next set of photos in 2006 showed that the barn and garage were larger. He knew that the barn was that shape the first time he saw it.

Mr. Lemanowicz said that he was not present in 2005. He noted that the 2006 picture was the worst one as far as clarity. There was another plan by **Harbor Consultants** but he did not recall the date of that plan. It was provided with the 2004-2005 application.

Mr. O'Brien said that the testimony so far had been that there had been no change with the exception of the riding rink.

Chairman Pfeil said that in Mr. Lemanowicz's letter of 2012, point (h) stated that in 2007 there was a photograph showing a new deck and a second floor dormer.

Mr. Lemanowicz said that that was from **Harbor Consultants'** plan of February of 2005 which showed the enlarged barn.

Mr. Bonner said that his recollection of the plan in 2005 in terms of structures only matched (inaudible).

Mr. Hands said, given that information, the benchmark was 2005.

Chairman Pfeil observed that there was a lot of incomplete information about what was there in 2005 when this was granted. It seemed to him that he didn't know how much stormwater runoff the applicant needed approval for. He felt that this was not ready to be voted on. There were too many questions that required answers from the professionals. What was there? What had been added? Where was the drainage going? He was not comfortable with it.

Mr. Kastrud said that the applicant was before the Board for a variance for the riding rink setback. The riding rink was placed based on a calculation for an accessory structure. The other issues being discussed related more to what Mr. O'Brien alluded to earlier which was building compliance and zoning compliance. In terms of the zoning issues, he felt that the board members had the information to make a determination on whether to grant site plan approval and the variance. The plans that were used in 2005 were essentially used by the applicant throughout. They were passed on to the next generation of engineers that worked on the property so although **Harbor**

Consultants' name was on that, they formed the basis of these plans. The buildings from 2005 to today were consistent. He put on the record that those structures had not changed and they were only before the Board for that simple variance. He asked that the board members discuss this application rather than the building compliance issues that were being discussed. He then stated that he had nothing further unless the Board wanted additional clarification as to the runoff.

Mr. Bonner asked if everyone was in agreement that the changes that Mr. Kastrud discussed with Mr. Lemanowicz were an improvement and that they would satisfy Mrs. Dapkins' concerns which represented the Environmental Commission's comments.

Mr. O'Brien said that if it helped clear up the fog between 2005 and now, the Board could have Mr. Lemanowicz and Mr. Kastrud look at the 2005 plans and the current plans to look for any changes that could be seen between the two plans.

Mr. Moholkar asked if the building approvals that were not received in the past were not items for this Board to decide or was the Board looking at the building piece because it affected the stormwater management.

Mr. Lemanowicz explained that the additions would have required site plan approval from a board. Originally, it would have been the Board of Adjustment but when the zoning was changed it would have moved to the Planning Board. That approval was not received. At that point, the Board would have dealt with drainage. The current application was for a riding rink which also required Board approval and drainage. In order to clean up the site as far as site plan approvals—construction permits were separate and not under this Board's jurisdiction—the discussion revolved around how much stormwater mitigation would have been required.

Mr. Moholkar asked if the intent was to make every building at least from a stormwater runoff perspective "legit" as of today. The building zoning would be independent.

Mr. O'Brien said that the site plan was created prior to the Resolution of Approval in 2005. It left the buildings to the construction department. The 2005 plan had nothing else to compare to except the purchase survey which was almost 20 years old.

Mrs. Dapkins noted that on page 6 of the resolution, it stated that, "The Board is not granting to the applicant, or acknowledging any prior grant of, site plan approvals or site plan waivers for any specific buildings or any specific locations on the property; that nothing in the determination of this Board shall exempt or excuse the applicant or its successors in interest from having to comply with applicable or pertinent governmental regulations on matters other than land usage."

Mr. Bonner said that when the riding rink was erected without a permit the only solution that he saw was to create new zoning and new bulk standards and bring the property into compliance as much as possible with all the pre-existing structures being there. They were not "blessed" at the time but they also did not create a problem. There were no enforcement actions at that time on any of the structures so the zoning was changed. Now everything was permitted and, except for the riding rink, the property met the bulk standards.

Mr. Moholkar asked if getting this approved was a prerequisite for something else, from a timeline perspective.

Mr. Bonner said that, originally, the applicant had petitioned the Board to waive the site plan approval which was not granted. This was a retroactive activity to get approval for something that had already been done.

Mr. Moholkar asked if there was an urgency to rush through a 15 minute discussion to do the math.

Mr. Bonner said that there was a self-serving reason. He said that he no longer lived in New Jersey and he had travelled here specifically to get this done.

Mr. Bernstein said that the Board had not required that all corporations be represented by counsel and this was not a complicated matter nor was it that controversial. It was his recommendation to the Board that, with something like this, if Mr. Kastrud and Mrs. Annis were present, that would be sufficient should this require another meeting.

Mr. Bonner said that if all they were discussing was a calculation that only impacted what might or might not be compliance issues should the application be granted, he was inclined to advise that they spend the few minutes it would take to complete those calculations to see if there was an issue or not.

Mr. Bernstein said that the Board would make that decision.

Mr. Moholkar said that the professionals should discuss it and advise whether or not it was a good idea to move forward or not.

Mr. Lemanowicz advised Chairman Pfeil that he would need less than 20 minutes.

Mr. Hands wanted to clarify that based on what was said that evening, the Board was going to say that those buildings were alright.

Mr. Bonner said that the Certificate of Non-Conformity said that the buildings and the pre-existing nonconforming uses existed at that time. Although they may have been in violation, they were nonconforming structures. If no changes were ever made to those buildings, there would be no compliance problems. The only change that was being discussed was the riding rink.

Mr. Hands said that assuming that the professionals did the comparison and there was no difference, it would just be the riding rink. If there was a little bit of difference, what other impact would there be?

Mr. Lemanowicz said that he had read the resolution and he did not believe that the buildings were "blessed". He felt that the use was "blessed". In looking at this and including the discussion on the rain garden/scour hole, it would not surprise him that after some calculations were done, Mr. Kastrud would not have an issue with testifying that they could make it work with the volumes.

Mr. Bernstein asked how the construction official would know what permits were issued. He felt it would be a difficult issue to find out what was "blessed" with permits and what wasn't.

Mr. Lemanowicz stated that the construction official would have to do some research on his own. He noted that his March 12th report would get the official pretty close. The construction official would have to inspect everything to ensure that the buildings were up to code. That was something that the Board would not be involved with.

Mr. Bonner pointed out that all that information and knowledge was in existence and Mr. Delia (Zoning Officer) was a regular participant in the meetings surrounding the Certificate of Non-Conformity. He reiterated that the riding rink was effectively the only change since then and Mr. Delia had brought no compliance—

Mr. Bernstein said that the problem was that there was only one zoning officer and if he looked at every resolution for compliance, there would not be enough hours in the day.

Mr. Bonner held that in most circumstances, he would agree however there had been a lot of notoriety and attention paid to the Willow Pond Farm over the last 12 years. He added that Mr. Delia had visited the property on numerous occasions.

Dr. Rae felt that they were not getting any further along and he was in favor of letting the engineers spend the 20 minutes to move this along, depending on what they came up.

Mr. Hands, Chairman Pfeil, Mr. Wallisch and Mr. Moholkar were in favor of that also.

Mr. O'Brien said that the focus should be to find differences on the property between 2005 and now.

Ms. Schmitt asked if the meeting was to determine exactly what changes had occurred after 2005.

Mr. Lemanowicz said that they were going to try to determine the amount of new roof, impervious cover, that was created and what drainage improvements would have been required at that time had they gotten site plan approval.

Ms. Schmitt asked if that would include things *before* 2005. Were they going with the fact that the *use* was blessed but not the structures?

Mr. Lemanowicz said that it was up for some discussion but his goal was figure what had to be done so that the property was brought into conformance from a stormwater management perspective.

Ms. Schmitt said that she was confused as to whether this would include the additions that were done without permits before 2005 as well as the things that were done since 2005.

Mr. Bernstein asked if they had a base before 2005.

Mr. Lemanowicz said that he had a photograph from 2002.

Ms. Schmitt asked if any rooms were added since 2002, would the run off be considered.

Mr. Lemanowicz answered, "Yes."

Dr. Rae asked if they used the 2002 photo, did they need to take into account the regulations as of that period.

Mr. Lemanowicz answered that the application was before the Board now so the rules that would be applied would be the ones in effect now. It would be as if this was "proposed."

Chairman Pfeil recessed the meeting for ten (10) minutes at 8:47 p.m.

RECESS

Chairman Pfeil recused himself for this portion of the meeting and Mrs. Dapkins reconvened the meeting at 8:58 p.m.

Mrs. Dapkins read #10 from the agenda, "Request for Extension of Time for Restore Meyersville LLC to file a complaint challenging the denial of its first application (#13-07P) to coincide with the timeframe to file a complaint challenging denial of the second application (#14-01P) or June 1, 2015, whichever comes first."

John J. DeLaney introduced himself. He stated that he was with the law firm of **Lindabury, McCormick, Estabrook & Cooper, P.C.** in Summit and Westfield, New Jersey, and present on behalf of the applicant, Restore Meyersville, LLC. He noted that they had his December 2, 2014 letter which had been sent to the Chair. He

explained that he was trying to extend the time for appeal on the first application so that his client could assess his options. Currently, his client was in a position under the agreement that he had to file his appeal by December 31, 2014. He wanted to carry that to be contemporaneous with the second application. First of all there might not be any appeal. He might come in with a different application and much like the last time, he was trying to buy time to avoid filing an appeal. Right now, the applicant would have to file an appeal to protect his rights which would cost both the applicant and the township money.

Mr. Bernstein said that the township position would not be weakened one iota if an extension for filing an appeal on the first Restore Meyersville application was granted. Also, an applicant could require that the Board Attorney prepare a resolution within 45 days and he might want to take more time because this case was controversial and complicated. Mr. DeLaney could file an action if it was not done in 45 days. He felt that it was a courtesy to grant the extension. Mr. DeLaney could file a complaint now and once the second resolution was adopted, file another complaint, and then file a motion to consolidate both cases. This would all be granted. If the extension was granted, they would wait until the resolution was done and if they decided to file a complaint, they would challenge both cases. It made sense and the Board would not be weakening its position. He encouraged the Board to grant the extension so that the applicant could file an appeal beyond the 45 days or the December 31, 2014 date. He noted that the reason that they had that date was because no one thought that Restore II would take so long.

Dr. Rae asked if there would be date certain.

Mr. Bernstein said that the new date would either be June 1, 2015 or 45 days from the date when the memorialization resolutions were approved and published, whichever came first.

Mr. DeLaney stated that Mr. Bernstein could take as much time as necessary to write the resolutions. By giving the June 1, 2015 date, it gave Mr. Bernstein and the Board time to get the resolutions finished.

Mr. O'Brien said that Mr. DeLaney granted the extension.

Ms. Schmitt, asked if there was any risk or downside to this. She wanted to know what would happen if another application for this was submitted.

Mr. Bernstein said that he did not see any downside to this. The alternative would be that the applicant would have to file a lawsuit right away on the first application. He felt that it was a little strengthening because this resolution would go to the Board and its consultants for review to strengthen it as much as possible.

Ms. Schmitt asked if the first resolution had been completed.

Mr. Bernstein answered that the first resolution had been completed. It had not been appealed as of yet.

Mr. DeLaney said the appeal period had been extended once already.

Mr. Bernstein added that the resolution had gone through a lot of revisions before it was approved.

Ms. Schmitt asked if it would run concurrent with Restore II.

Mr. Bernstein answered that that was correct and that the resolutions for Restore II should be ready in January 2015.

Mr. Wallisch motioned that the Board approve the extension for the review period. Mr. Moholkar seconded the motion. A **ROLL CALL VOTE** was taken. Ms. Kiefer asked Mr. Bernstein if there were eligible members and non-eligible members. He felt that everyone could vote and that it was not dependent on their vote on the application.

Mr. DeLaney had no issue with that.

Ms. Kiefer called the roll. Those in Favor: Mr. Moholkar, Dr. Rae, Mr. Wallisch, Mr. Hands, Mrs. Dapkins. Those Opposed: NONE.

Chairman Pfeil returned to the room and asked if the board members were ready to continue the Brigid Annis application.

Mr. Kastrud stated that he and Mr. Lemanowicz had compared the plans to the 2002 aerial photographs and estimated that there was 1,379 square feet of additional roof area that had been constructed since 2002 in addition to the riding rink. In an effort to collect and detain that runoff and going along the guidelines of the Environmental Commission's report, he proposed to enlarge the area downstream of the drywell. It would essentially become a larger rain garden. It would be 15 feet by 20 feet long, 1.5 feet deep and planted with appropriate vegetation. It would be placed to the north of the proposed drywell running towards the swamp.

Mr. Bonner clarified that the drywell would stay as it was proposed. This would be a supplement to it.

Mr. Lemanowicz said that the drywell would have an overflow since it was designed to collect the *difference* in runoff. Normally, there would be a stone bed so that when the pipe discharged, there would be no erosion. In this case, instead of making a small stone bed for a 4" pipe, Mr. Kastrud was suggesting a 15 X 20 rain garden. The pipe would dump into that rain garden which would be stabilized and would hold water. Mr. Kastrud was increasing the amount of water being held for infiltration similar to a drywell.

Mr. Kastrud said that, for illustrative purposes, the drywell was just to the west of the riding rink in essentially the middle of the property and the overflow pipe would head northerly towards the wetlands. It would be in this area (he pointed to a spot on **Exhibit A-1**) and indicated that he could not give an exact location at this time.

Mr. Bernstein asked for a list of changes so that they could be included in the resolution.

Mr. Bonner said that he wanted to make it clear that he had been talking about changes from 2005. There were no changes since then. Mr. Lemanowicz and Mr. Kastrud had gone back to 2002. He pointed out that no compliance actions had been brought by Mr. Delia until the riding rink.

Mr. Kastrud said that he had those areas shown on the plan and he asked if it would be acceptable to show them with the exact calculations.

Mr. Bernstein asked that Mr. Kastrud supply that to him when he did the resolution.

Mr. Kastrud said that he could supply an 8-1/2 X 11 exhibit.

Mr. Hands asked Mr. Lemanowicz if he was comfortable that the rain garden and dry well could accommodate the additional impervious coverage.

Mr. Lemanowicz said that the drywell and the rain garden would provide the 4" of volume required by the ordinance. The additional impervious coverage since 2002 was 1379 square feet and the riding rink was an additional 2778 square feet of impervious coverage.

Mr. Bonner stated that his presentation was complete.

Chairman Pfeil asked if the public had any questions for the engineers.

Steven Skrobacz, 446 Meyersville Road, expressed concern over what he termed as the "lackadaisical engineering" being done.

Mr. Bernstein answered that the applicant would have to submit amended plans to meet Mr. Lemanowicz's requirements. Those would be the plans that would be approved. He also indicated that in his experience, this was the normal process.

Mr. Skrobacz asked if the Board was going to approve something that was non-conforming and not permitted by the construction department. He added that the Board was approving a waste water plan for a structure that was not approved. The building department could instruct the applicant to remove it.

Chairman Pfeil said that if the application was denied, that would be a consequence. It might have to be removed or relocated to make it comply. He said that he had similar concerns about whether the Board was guessing about the additional runoff due to the prior unapproved construction. The applicant's proposal to contain the runoff from the rink had been approved by the Board's professionals. The board members voiced their opinions that they were comfortable with the two (2) professionals reviewing the information and generating a number that they were comfortable with. The Board had made a decision; the professionals had come up with a number and he felt that that was reasonable.

Mr. Lemanowicz added that the Planning Board could not overrule the construction official. If the construction official inspected the rink and found that it was constructed poorly, he could mandate that the structure be torn down and rebuilt. This Board was simply deciding from a zoning perspective whether or not it was okay. There would still be construction inspections to ensure compliance. The Board would be approving the location of the building, not the physical construction of the building.

Mr. Skrobacz noted that the rink did not comply with the setback from the sideyard.

Mr. Lemanowicz reiterated that this Board would be dealing with just the setback. It was the construction official who would look at it from a structural standpoint. Even if this Board granted the variance, if the construction official found the construction to be insufficient, he would have the authority to have the structure altered or removed. The Board would simply be approving the site plan.

Mr. Skrobacz felt that that was putting the cart before the horse.

Dr. Rae stated that essentially the Board was following the proper procedures. Each board member had voiced that he was comfortable with the manner in which they were coming to a decision. He reiterated that once the decision was made, the construction official would then weigh in on the construction.

Mr. Wallisch asked Mr. Skrobacz if he had a specific concern.

Mr. Skrobacz was concerned over the number of violations.

Mr. Bernstein said that from a zoning standpoint, other than the riding rink, the property was in conformance with the existing ordinance.

Mr. O'Brien said that the property had been given a Certificate of Non-Conformity meaning that the property was allowed to continue in its existing use. Then the Township Committee changed the ordinance to allow horse farms as a permitted use in the Conservation Zone so this was now an allowed use.

Mr. Skrobacz stated that his issue was with the Construction Department. He reiterated his concern that the Board was in a too much of a rush and he referred to an earlier application during which the Board had required detailed revisions on the stormwater management plans. He wanted the applicant's engineer to prepare a plan with all the calculations before there was a vote.

Chairman Pfeil noted that that would be a condition of approval.

Mr. O'Brien reiterated that the Board would ask for revised plans to be drawn, should the application be approved, that would show everything that had been discussed that evening. The Board would then get another look at the application and there would be another vote on the entire matter. If there was anything wrong with the plans or the proposed resolution, the Board would make the changes it felt were necessary.

Mr. Bonner added that it would be a two (2) step process meaning the approval would not be final until the revised plans Mr. Skrobacz was talking about were completed and agreed upon.

Chairman Pfeil said that the resolution would be reviewed by the Board's professionals before the board members voted on it.

Mr. O'Brien said that the process Mr. Skrobacz was seeing that evening was a more normal one unlike the one Mr. Skrobacz referred to (Restore Meyersville) which was a much larger, more complicated application. As with all applications, this application had started months ago. There had been meetings with the applicants and the professionals along with revised drawings. These drawings were reviewed by the professionals who then wrote numerous reports. This was the culmination of a four (4) to six (6) month process.

Mr. Bernstein said that Mr. Kastrud would prepare an exhibit indicating what was done after 2002 based on his and Mr. Lemanowicz's review which would be included in the resolution. The Board could not direct the Construction Official however he would look at these items that were done since 2002 possibly without permits.

Mr. O'Brien said that part of the process was that the Construction Office must receive a copy of whatever the Board signed off on so they would get a copy of this.

Mr. Bernstein said that it was not this Board's task to enforce the ordinance. The Zoning Officer or any citizen could sign a complaint.

Chairman Pfeil apologized for allowing public comment to be combined with questions of the engineer. He asked if there were any further questions of the engineer.

Ms. Schmitt asked if there were other recommendations in the Environmental Commission's report that had not been discussed.

Mr. Lemanowicz said that the Environmental Commission also commented on the gravel filled stone swale around the perimeter of the tent which was what was discussed earlier. Mr. Lemanowicz had been informed that there had been some discomfort about that being located next to the foundations of the footings for the posts and he agreed that it might jeopardize the stability of the footings and posts.

Ms. Schmitt said that the drywell was created instead.

Mr. Lemanowicz said that the rain garden was also added. Those were the major suggestions in the Environmental Commission's report and he was satisfied.

Ms. Schmitt said that she had lived at the same address for 30 years and the applicant had lived there almost as long. She said that in all those years, this was the first time she had received a notice in the mail about anything. She had not received anything when the zoning was changed or when other hearings had occurred. She added that Mr. Skrobacz had indicated that he had never gotten a notice either.

Mr. Bonner said that he did not have his file with him however the applicant had complied with the notice provision every time there had been an application before the Board. Rezoning had been done by the Township Committee and those notices were published in the newspaper. He stated anybody living within 200 feet of the property had received notice. There had been no changes to those rules. He noted that he recalled Mr. Skrobacz's name over the past 13 years.

Mrs. Dapkins said the list of property owners came from the tax office.

Mr. Bernstein said that even if that list was wrong, the applicant could rely on the list supplied by the town.

Ms. Schmitt reiterated that she had never received one before. She asked if the resolution could require the applicant to follow up with the Construction Office. She was unclear as to how to ensure that the other things got resolved.

Mr. Bernstein said that he would put in the resolution that the Construction Official would be advised that both engineers looked at the photographs and the current site plan and determined the following work was done post 2002 and would request that he investigate it. The Board could not direct him.

Ms. Schmitt asked for the name of the Construction Official. Ms. Kiefer supplied the information to her. Ms. Schmitt then asked if there was a fine for doing construction without a permit.

Mr. Bernstein said it was up to the Zoning Officer to file a complaint with the Municipal Court. If there was a violation of zoning, a private individual could file a complaint with the Municipal Court or file an action with the Superior Court.

Mr. Bonner said that this application was brought to the Board after the Zoning Officer, Mr. Delia, cited Willow Pond Farm for violation because of the tent. This action was a result of a violation. He added that more often than not, once the violations were cleared up, the penalties "went away".

Ms. Schmitt continued the discussion about all of the things that were done without the benefit of permits. She felt that the entire system was so broken that they could not enforce--

Chairman Pfeil said that it was not appropriate for this Board to decide. He advised her to discuss this with the Township Committee.

Mr. Bernstein said that this township worked much better than other towns that he worked in. For each application, there was a Board Planner and a Board Engineer who scrutinized the applications much more closely. This Board was concerned with what each citizen had to say. This was the way it was supposed to work.

Ms. Schmitt expressed concern about the follow-up afterwards.

Chairman Pfeil advised that her comments should be limited to this particular application.

Ms. Schmitt thanked the engineers for doing the calculations. She felt that the applicant would not be asked to remove the structures so it was important to provide for the runoff there.

Mr. O'Brien said that he could recall only three (3) cases before both boards where applicants came in with a pre-existing structure—one was for a Certificate of Non-Conformity and the other two were because the Zoning Officer caught them.

Mr. Hands said that the number the engineers had come up with—1400—seemed reasonable but he assumed that they would come up with a concrete number.

Mr. O'Brien noted two (2) conditions. The first was to redesign the stormwater runoff to show the new scour hole and a rain garden of a minimum of 15 X 20 X 1.5 feet. The second was to revise the site plan to show changes since 2002 and provide stormwater calculations.

Mr. Bernstein stated that the applicant would have to comply with the existing ordinance. He added that there would be a condition that those changes made since 2002 would be pointed out to the Construction Official.

Mr. O'Brien said that made four (4) conditions.

Mr. Hands asked if there were any concerns in reference to the setback variance requested.

Mrs. Dapkins said that she felt it was diminimus. Dr. Rae agreed.

Mr. Wallisch added that there was nothing but trees on that side.

Mr. Moholkar agreed also. It was small enough in scale and there was a large buffer existing.

Chairman Pfeil expressed concern because there was a history of many things being done without the benefit of permits or approvals. He referred to the incorrect placement of the rink and said that he would have preferred to see a document from a neighbor verifying that the applicant had offered him money for the three (3) feet which would have made the variance unnecessary. It was the principle that concerned him. It troubled him that the applicant had not given the Board a list of ways that she had tried to eliminate the variance.

Mr. O'Brien said that when the rink was built, it did not violate the regulations.

Mr. Bernstein offered the following. "Be it resolved that the application that was submitted be approved subject to the conditions outlined by the professionals and any typical conditions that we have with the memorialization to be adopted incorporating the findings of the Board."

Mrs. Dapkins moved approval and Mr. Wallisch seconded. A **Roll Call Vote** was taken. Those in Favor: Mrs. Dapkins, Mr. Moholkar, Dr. Rae, Mr. Wallisch, Mr. Hands, Chairman Pfeil. Those Opposed: None. The application was approved unanimously.

Chairman Pfeil noted that the final discussion item listed on the agenda was "Portable Signs". It was suggested to him that this was an item that would have a lot of detail to it so it would not be a good idea to start it with only 40 minutes left.

Dr. Rae asked what the purpose of the discussion was.

Chairman Pfeil said the six (6) month period when the signs were allowed had expired. Feedback from the Board and the Chamber of Commerce would be discussed before the Board made its recommendation to the Township Committee. He asked that it put on the agenda for the first meeting in January 2015.

In answer to Mr. O'Brien's question, Ms. Kiefer stated that she had sent out invitations to three (3) churches, the Police Department, both Fire Departments, the Chamber of Commerce, and the Municipal Clerk to distribute to the

Township Committee members. The Chamber of Commerce was the only entity to respond indicating that Dennis Sandow would represent them at the meeting.

Chairman Pfeil asked for a motion to adjourn. Dr. Rae motioned and Mr. Moholkar seconded. A **Voice Vote** was taken and the meeting was adjourned by unanimous vote at 9:50 p.m.

CYNTHIA KIEFER
Planning and Zoning Secretary

Date