

MONTGOMERY TOWNSHIP PLANNING BOARD
MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY
REGULAR MEETING
MAY 3, 2021

MINUTES

Chairman Campeas called the meeting to order at 7:30 p.m. and read the opening statement - Although this meeting is the regularly scheduled meeting of the Montgomery Township Planning Board, due to the State of Emergency that exists as a result of the COVID-19 Coronavirus crisis, and in accordance with Executive Order No. 104 issued by Governor Murphy on Monday, March 16, 2020 limiting public gatherings, this meeting is being held virtually by webcast, simulcast on Comcast Cable Channel 29, and public participation is enabled by Zoom Webinar.

BOARD MEMBERS PRESENT: Chairman Campeas; Vice Chairman Roberts; Mr. DeRochi; Mayor Keenan; Mr. Mani; Mr. Schuldiner; Mr. Glockler, Alternate #1

ALSO PRESENT: Karen Cayci, Esquire, Board Attorney; Rakesh Darji, Board Engineer; Emily Goldman Board Planner; Lori Savron, Planning Director

I. SALUTE TO THE FLAG

II. SWEARING IN OF PROFESSIONALS AND STAFF

Ms. Cayci swore in Ms. Goldman and Mr. Darji.

III. PUBLIC COMMENT – None

IV. APPLICATION

Case PB-10-20

Applicant: Wayne and Betsy Caivano

Block 12001 Lots 14 and 16 – 257 Hollow Road

Submission Waivers and Minor Subdivision and Bulk Variances for a lot line adjustment

Expiration Date – 120 Days from Submission Waiver Request

Affidavit of Notification and Publication Required

Mr. Glockler noted he is a member of the Montgomery EMS Squad which Mr. Fedun represents. It was determined Mr. Glockler does not have a conflict.

Notice was in order. Michael Fedun, Esquire and Michael Ford, PE, PP represented the applicant.

Mr. Fedun described the application. The subject property is in the R-5 zone. Lot 16 is 3.727 acres and Lot 14 is 0.273 acres. Lot 14 has a single family dwelling. Lot 16 has a sanitary landfill that was put in place by Mrs. Caivano's father-in-law by a mid 1960's agreement with Montgomery Township. The application is to move the lot line between Lots 14 and 16 so there is enough room to install a new septic system on Lot 14. The landfill was sealed off in the 70's by the Township in accordance with what the NJDEP asked at the time. Nothing can happen with Lot 16 without notice to NJDEP including the sale of the lot.

Mr. Ford was sworn in and accepted as an expert engineering and planning witness. The minor subdivision plan submitted as part of the application was displayed. The proposal is to shift the lot line so that Lot 14 becomes about 1 acre in size after the 16.5 foot right of way dedication. The shift in the lot line would accommodate the new septic system on Lot 14 and will eliminate a few of the existing nonconformities including the shed that currently straddles the two lots. Other nonconformities that will be eliminated include the required frontage, building coverage and total impervious coverage. Along the easterly boundary is the Rock Brook which carries with it associated critical areas including the C-1 stream classification. There are no other improvements associated with the application. The proposed lot line follows the maintained lawn area. The more restrictive area along Rock Brook would remain part of Lot 16. The existing driveway and parking area that are now on Lot 16 would become part of Lot 14. A drainage easement to the Township will be granted for the existing drainage pipe that traverses Lot 16. There was a prior right-of-way dedication for Camp Meeting Avenue but not for Hollow Road. The applicant will dedicate the 16.5 foot half width that is shown on the tax map for Hollow Road.

Mr. Ford noted the April 14, 2021 memo from Richard Bartolone indicating he had no issue with the application. He also noted the April 9, 2021 report from the Health Department who had no comment.

The Environmental Commission issued a February 24, 2021 memorandum. They do not recommend the applicant's tree planting waiver request. There are no improvements being proposed. There are limitations on activity on the prior landfill area and there are no good records on the limits of the landfill. There is existing vegetation along Hollow Road and wooded areas along the Rock Brook. The applicant is not proposing a conservation easement on the critical areas and doesn't believe it is prudent for this application.

Mr. Ford discussed the Open Space memorandum dated April 13, 2021. There was a suggestion that the doctrine of merger be considered for these two lots. Mr. Fedun has discussed the issue with Ms. Cayci and it does not apply in this case. The typographical corrections will be made to the plan. Notes 2, 3 and 4 are not applicable and will be removed. A waiver is requested from the sidewalk, street tree and tree planting requirement. This is a rural section of the town. Hollow Road has its unique appearance and does not lend itself well to a regimented structure of street trees or sidewalk. Over half the property has existing vegetation along the frontage except in the area of the intersection which needs cleared sight distance.

Ms. Goldman asked about the recommendation to construct sidewalk along Camp Meeting Avenue. Mr. Ford said there is not an opportunity to put sidewalk immediately adjacent to the Camp Meeting bridge without widening the bridge.

The Environmental Resolutions memo dated April 22, 2021 was discussed. There are 11 existing nonconformities for Lot 14 and 5 for Lot 16. After the lot line adjustment there will be 7 for Lot 14 and 4 for Lot 16. The remaining nonconformities are being reduced to a great extent while providing for an enhanced benefit of a new septic further from the stream. The existing woods at the rear of Lot 14 are being placed on Lot 16 which restricts and eliminates the potential of them being impacted. Proposed Lot 16 is unique in shape but there is not a specific requirement that lots be straight lines. Just to the north there is a similar situation where a portion of Lot 15 is behind Lot 14.01 and Lot 10.11 has slivers of land that are behind Lots 11 and 11.01. The total area of disturbance for the project is less than 2,500 square feet so the application is not subject to Somerset-Union Soil Conservation or Delaware and Raritan Canal Commission review. An applicant was submitted to the Somerset County Planning Board and a letter of approval has been issued. The minor subdivision will be recorded by Deed. No trees will be impacted. Property corner monumentation will be added to the plan. A waiver has been requested to construct the new septic system partially within the Township stream corridor. The septic system impacts to the riparian zone would fall under the NJDEP Permit by Rule.

The request for a deed notice for the landfill was discussed. Mr. Fedun said they can't do anything on Lot 16 without notice to NJDEP. There has been no finding of landfill material on Lot 14 so putting a notice in the Deed would effectively be a taking of the property. The application before the Board is to preserve the property value. There is an obligation to advise a purchaser of any possible off site conditions that could affect the property.

The Clarke Caton Hintz memo dated April 19, 2021 was discussed. The survey will be updated to show the existing conditions. A septic design plan was submitted that was revised March 23, 2020 that shows a rectangularly shaped lot. Subsequently it was revised with the new irregular lot configuration. It makes more sense to have a regularly shaped lot. At the Site Plan/Subdivision Committee meeting it was discussed that the applicant would provide additional information to identify the extent of the landfill along Rock Brook to justify the lot lines as proposed. Without the additional information the Board may wish to consider a more regularly shaped lot or require the Deed notice. There is concern that shifting the lot line may place portions of the landfill on Lot 14.

Mr. Fedun said that the information they have about the landfill indicates it was in the direction of Hollow Road but they don't really know for certain how far it goes. It likely does not go past the pipe. The configuration provides Lot 14 with protection from the environmental constraints.

Mr. Darji said he recommended the Deed notice because no one knows the extent of the landfill. He asked if the applicant is even allowed to subdivide off a portion of the landfill lot without NJDEP notice. The applicant may need confirmation from the Bureau of Solid Waste.

Mr. Fedun said he has been advised that the NJDEP has signed off on the closure of the landfill. He will find out if there is a requirement for NJDEP notice for the subdivision. He would agree to a Deed notice for Lot 16 but not Lot 14.

The Board discussed the shifting of the lot line to make it a regular shaped lot. Unless there is a physical barrier the new owner will treat the area of Lot 16 as their backyard. It is cleaner to have the lot line go from Hollow Road to the brook. The Board is concerned about liability for the Township if the application is approved and it is found the landfill did extend on new Lot 14.

Ms. Cayci discussed the merger theory and referenced the Jock case. Its intent was to prevent a situation where someone tries to sell undersized nonconforming lots that were created long ago. The goal is to try to create conformity with the current existing zoning laws. In this instance, they would not comply even if they were combined. The other issue with this situation is there are two different uses on the lots. An argument can be made that the identity of the lots was separated a long time ago with one used as a landfill and one used a residence. However, this does not eliminate the problem of what protections should be put in place if part of Lot 16 is added to Lot 14.

There was further discussion of the Clarke Caton Hintz memo. Pins/monuments shall be placed at the property corners. A variance for the setback of the current dwelling to the critical areas is required. If the tree planting exception is approved one tree would be required. The applicant should work with Mr. Bartolone with regard to species and location.

The Environmental Commission mentioned fixing the disturbance to the stream corridor area, even if it's on the portion of Lot 16 that is behind Lot 14.

Mr. Darji noted per the Master Plan, the right-of-way dedication along Hollow Road would need to be 25 feet from centerline. The Township Engineer would prefer the full Master Plan right-of-way dedication.

Mr. Ford said the current Township Tax Map shows it at 33 feet total width or 16.5 feet half width which is shown on the plan. The applicant will dedicate so it is recorded at 16.5 feet. It would be a hardship if an additional 10 feet were dedicated since it would bring it into the existing parking area and closer to the house. Mr. Ford did not think it was an issue to dedicate 25 feet along Lot 16.

There was not public comment.

Mr. Glockler asked what the negative consequences are of merging the lots. Mr. Fedun said there would be a residence on a lot that has a landfill and the house would not be able to be sold. Lot 16 has no value even with the subdivision.

The Board unanimously carried the application to the June 7, 2021 Planning Board meeting. No further notice will be served.

V. MINUTES

April 19, 2021 – Regular Meeting

Mr. Schuldiner noted a correction.

A motion to approve the revised minutes was made by Mr. Schuldiner and seconded by Mr. DeRochi.

The motion carried on the following roll call vote:

Ayes: DeRochi, Glockler, Keenan, Mani, Roberts, Schuldiner and Campeas

Nays: None

VI. TENTATIVE MAY 17 AGENDA

Ordinance Recommendation – decks and patios in the PMUD Zone

Ms. Savron explained that the ordinance would provide regulations for decks and/or patios that homeowners may want to install.

There being no further business to come before the Board, the meeting was adjourned at 9:05 p.m.