

BOROUGH OF FAR HILLS
Planning Board Regular Meeting
MINUTES
August 1, 2022
VIA REMOTE MEETING ACCESS ONLY

CALL TO ORDER

Chairman Rochat called the virtual meeting to order at 7:03 p.m. and read the Open Public Meetings statement in accordance with the law. Those present stood for the pledge of allegiance.

ROLL CALL:

Present: Chairman Tom Rochat, Vice Chairman Richard Rinzler, Mayor David Karner, Councilwoman Sheila Tweedie, Robert Lewis, John Lawlor, Marilyn Layton, Jack Koury and Suzanne Humbert, Alt. #1

Also Present: Frank Linnus, Board Attorney, Paul Ferriero, Borough Engineer, David Banisch, Planner and Shana L. Goodchild, Secretary

Absent: John Lawlor

There were approximately ten (10) audience members present.

OATH OF OFFICE

Board Attorney Frank Linnus administered the Oath of Office for the following appointed Board member:

- David Karner (Class I) (Mayor) filling an unexpired term expiring 12/31/22

Chairman Rochat announced that he would like to resume in-person meetings beginning with the September 6, 2022 Planning Board meeting. Mayor Karner announced that the Borough Council will resume in-person meetings beginning in September.

BILL LIST

- August 1, 2022

Vice Chairman Rinzler made a motion to approve the Bill List. Mayor Karner seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote

Those in Favor: Councilwoman Sheila Tweedie, Vice Chairman Rinzler, Mayor David Karner, Robert Lewis, Marilyn Layton, Jack Koury, Suzanne Humbert, Alt. #1 and Chairman Tom Rochat

Those Opposed: None

MINUTES

- July 5, 2022 Regular Meeting

Vice Chairman Rinzler made a motion to approve the minutes of the July 5, 2022 Regular Meeting for content and release. Marilyn Layton seconded the motion. All were in favor.

PUBLIC COMMENT

There being no public comment, Mayor Karner made a motion to close public comment. Mr. Koury seconded the motion. All were in favor.

RESOLUTIONS

- **Resolution No. 2022-23** – John Thomas, Block 15, Lot 1.01
Those eligible: Vice Chairman Rinzler, Councilwoman Tweedie, Mr. Lawlor, Mr. Lewis, Mr. Koury and Chairman Rochat

Councilwoman Tweedie made a motion to approve the resolution as written. Vice Chairman Rinzler seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Vice Chairman Rinzler, Councilwoman Tweedie, Mr. Lewis, Mr. Koury and Chairman Rochat

Those Opposed: None

- **Resolution No. 2022-24** – Cilento 30 Peapack, LLC, Block 9, Lot 2
Those eligible: Vice Chairman Rinzler, Councilwoman Tweedie, Mr. Lawlor, Mr. Lewis, Mr. Koury, Ms. Layton, Ms. Humbert and Chairman Rochat

Mr. Koury made a motion to approve the resolution as written. Ms. Layton seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Vice Chairman Rinzler, Councilwoman Tweedie, Mr. Lewis, Mr. Koury, Ms. Layton, Ms. Humbert and Chairman Rochat

Those Opposed: None

APPLICATION/PUBLIC HEARING TO BE CARRIED

- Appl. No. PB2021-20
Chateau De Fleur, LLC
Block 4, Lot 7
66 Lake Road
Use/Height and Bulk Variance
Action Deadline – 10/4/22

Ms. Goodchild announced that the applicant requested that the matter be carried without a date certain with new notice to be provided when a hearing date is scheduled; an extension for the Board to take action was extended to the available hearing date.

APPLICATIONS/COMPLETNESS DETERMINATION ONLY

- Appl. No. PB2022-08
Gulbrandsen
Block 6, Lot 6 & 7
117 & 139 Sunnybranch Road
Lot Line Adjustment/Use Variance

Ms. Goodchild noted for the record that Councilwoman Tweedie and Mayor Karner were recused from the application as it involves a Use Variance.

Paul Ferriero, Board Engineer noted that the application was for a lot line adjustment between two (2) properties. A completeness and review letter dated June 22, 2022 outlined a number of items for which waivers were requested and recommended. Based on the items listed in that letter and the documentation provided, Mr. Ferriero recommended the Board grant the waivers and the application be deemed complete. Vice Chairman Rinzler made a motion to grant the requested waivers and deem the application complete. Ms. Layton seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Vice Chairman Rinzler, Mr. Lewis, Mr. Koury, Ms. Layton, Ms. Humbert and Chairman Rochat

Those Opposed: None

- Appl. No. PB2022-09
Perry
Block 7, Lot 3
132 Peapack Road
Front and Side Yard Setback Variances

Paul Ferriero, Board Engineer noted that the application was for bulk variances for the construction of porch over an existing stone patio and a second-floor addition. A completeness and review letter dated June 23, 2022 outlined a number of items for which waivers were requested and recommended. Based on the items listed in that letter and the documentation provided, Mr. Ferriero recommended the Board grant the waivers and the application be deemed complete. Mr. Lewis made a motion to grant the requested waivers and deem the application complete. Mr. Koury seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Vice Chairman Rinzler, Mayor Karner, Councilwoman Tweedie, Mr. Lewis, Mr. Koury, Ms. Layton, Ms. Humbert and Chairman Rochat

Those Opposed: None

APPLICATION/PUBLIC HEARINGS

- Appl. No. PB2021-18

Mahoney
Block 5, Lot 6.03
5 Fox Hunt Court
Use Variance/Cert. of Pre-existing Non-conforming Use
Action Deadline – 8/31/22

Mayor Karner and Councilwoman Tweedie were recused from the public hearing as the application involves a Use variance.

By way of background, Mr. Linnus noted that the application was for a Use variance with the first public hearing held in August. He noted that it became clear that there were some legal issues related to potential conditions of approval if the Board chose to approve the application. He explained that the applicant's attorney sent he and Ms. Goodchild some suggested conditions should the Board approve the application. Mr. Linnus informed the Board that they should judge the application on the merits of a Use variance which would require all the necessary proofs.

Mr. Banisch reminded the Board that even though the parcel adjoins the townhouse/inclusionary multi-family zone it is situated in the R-6 Zone which is a single-family zoning district and second dwelling units are not permitted. He pointed out that the original subdivision was created through lot size averaging which resulted in some lots being smaller and some larger; the subject lot happens to be one (1) of the larger lots however those that reside in the development have a reasonable expectation that the neighborhood will remain as a single-family residential district. Mr. Banisch went on to explain that some of the negative criteria offered by the applicant was that the existing apartment was of no negative consequence to the neighborhood. However, both the 1995 Preliminary and Final subdivision approval required the removal of the cottage so that there was no second dwelling unit on any of the lots created.

Mr. Linnus asked Mr. O'Neill to provide testimony as to the 1995/1996 resolutions and the status of the apartment.

Joseph O'Neill, Attorney for the applicant explained that the cottage, for whatever reason, remained in existence and remained in use by the prior owners. He agreed with the characterization of Mr. Banisch that the subject lot and zone should be maintained as a single-family use which is why the applicant proposed some conditions that include limiting the use of the property to the family as it exists in order to allow the parents to age in place; the building would be an accessory to the main residence and not a second primary use. Mr. O'Neill noted that he and Mr. Linnus spoke earlier in the day and they both agree that the enforceability of conditions is an important issue. He went on to note that the case cited in the Cox book needs to be bolstered by a Finding of Fact by the Board that it would be appropriate to allow this family to continue to use the complex of the two (2) structures for the single-family unit.

Mr. Linnus confirmed the conversation with Mr. O'Neill and he outlined the following comments with respect to the application: 1) in order for the Board to approve the Use variance it has to approve it based on the testimony and the record, 2) if the variance is granted the applicant will be spending significant funds to construct a second principal dwelling, and 3) a future owner may challenge the condition limiting the use to the current applicant (variances run with the land and not the applicant).

Mr. O'Neill noted that Mr. Garofalo, in his letter, talked about limiting it to those 55 and older or have the variance sunset after the applicant's parents pass or move out.

Mr. Banisch noted that the Fair Housing Act does not preclude occupancy by another family member who is younger than 55 years of age. Mr. O'Neill opined that the Fair Housing Act specifically excludes limitations on family relationships, he cautioned the Board about tying the approval to the Fair Housing Act or the 55 and older designation and suggested that the Board make a specific Finding that the approval be exclusively for the applicant's extended family with a sunset provision that the unit be decommissioned (removal of the oven/stove). Mr. Banisch questioned whether removal of the stove/oven would be a sufficient measure to decommission the dwelling unit from occupancy.

Mr. Lewis opined that there was no demonstration of hardship provided.

Michael Pessolano, Planner for the Applicant, noted that proofs for d-1 Use variances can go in two (2) directions and one (1) of those can be based on hardship however he advanced the Special Reasons test pursuant to the Medici analysis which was presented at the last hearing; the positives of the application outweigh the negatives. If the Board feels that the positives outweigh the negatives then there is a basis for the approval. When asked by Mr. Lewis to present three (3) points for the Board to consider and focus, Mr. Pessolano opined that the location is particularly meaningful, the size and special arrangements on the subject property and lastly that if lot lines were configured differently the subject structure and subject location as a dwelling might have been approved in the 90's. In conclusion, Mr. Passalano opined that the application is a special circumstance, and the site is particularly suitable within those special reasons for the contemplated use.

When asked by Vice Chairman Rinzler if the parents would occupy the structure full time, Mr. Mahoney explained that it would be a partial occupancy until his parents need a full-time residence and full-time care; the request is being made now to get ahead of the need.

Ms. Layton expressed concern with the future use when the Mahoney family no longer needs the space. Mr. O'Neill noted that the applicant has offered, as a condition of approval, to decommission the kitchen or an alternative that pleases the Board. He added that the applicant would agree to a condition that the space would not be rented out as a market rate unit. When asked, Mr. Banisch opined that complete removal of the kitchen should be required. He went on to note that the proposal is by the applicant is a complete demolition and reconstruction which involves a substantial financial investment. A property owner would have reasonable expectation to keep the structure when constructing what essentially is a second dwelling unit. The Board will be faced with arguments at that time such as financial hardship and it may become a continuing problem. Mr. Banisch pointed out that the lot lines and lot yield were approved in the 90's based on the extensive wetlands that exists. Addressing the comment regarding the substantial investment, Mr. O'Neill opined that anyone with the financial means to do so would provide this type of housing for their family. He went on to note that there are State policies to take care of the elderly to allow them to age in place. Mr. Banisch opined that the Board will weigh the testimony provided but there is a question as to why the accommodations cannot be added to the existing single-family dwelling in conformity with zoning; as pointed out by Mr. Pessolano, there is sufficient lot area to make that accommodation.

Mr. Mahoney, Applicant explained that the separate unit would allow his parents to have more independence but still allow them to be close enough for care. Having them in the main dwelling is

not a good option for his family. Mr. Mahoney noted that if he can care for his parents for ten (10) years and the condition is to remove the kitchen at the conclusion, it's not that significant of a loss for he and his family. When asked by Mr. O'Neill if he was aware of the requirement to remove the structure, Mr. Mahoney explained that there was a guest house and shed that were removed, the subject structure was permitted to remain. Mr. Mahoney opined that the subject structure was a legal structure from the 1950's.

Ms. Layton noted that she was in favor of accommodating Mr. Mahoney's family but was unsure what options were available to the Board.

Jonathan Booth, Applicant's Architect, provided a brief recap of his previous testimony and explained that the existing structure is a two (2) story building with a four (4) bay garage on the first floor and an apartment on the second floor, complete with a kitchen and bathroom. The proposal is to create a one (1) story guest cottage in essentially the same location as the existing structure; there will be no garages as part of the proposal. As limited as the sight line is to neighboring properties, the scale of the building will be an improvement. Using the Share Screen function of Zoom, Mr. Booth displayed the architectural drawings comprised of four (4) sheets dated April 23, 2021 (submitted as part of the application). He described each of the four (4) sheets in detail for the benefit of the Board members and public. A brief discussion ensued regarding the roofline and dormered roof to which Mr. Booth explained that the dormer is to extend some of the usable height in the study area. If the dormer is eliminated the space would have a more limited use. Mr. Mahoney also noted that the design makes the proposed structure more congruent with the existing house.

When asked by Chairman Rochat if the driveway is wide enough for two (2) cars, Mr. Booth responded in the positive.

When asked by Mr. Linnus what the structure could be used for if it were decommissioned as a dwelling, Mr. Booth opined that the structure could be a detached recreational use if the kitchen were removed. When asked by Mr. Linnus if the existing house could be expanded to accommodate the aging parents, Mr. Booth noted that he had not studied expanding the residence.

When asked by Vice Chairman Rinzler the distance from the existing residence to the proposed dwelling, Mr. Stires opined 200 feet.

Mr. Lewis opined that the proposed structure would not convert easily to a garage or barn and if the kitchen were removed it would remain a cottage without a kitchen. Mr. O'Neill suggested uses such as a remote office or a game room. Chairman Rochat opined that it would be easily converted into a cottage and puts the burden of enforcement on the Borough.

Chairman Rochat commended the Mahoney's for trying to care for their parents however they bought into a single-family neighborhood. He opined that the same amount of money could be spent to create a mother-daughter type living arrangement as part of the main dwelling. He went on to note that many residents in Far Hills live on large lots and would like to subdivide their lot to accommodate a second home, but the zoning does not permit that type of use.

There being no additional questions from the Board, Chairman Rochat opened the meeting up to the public.

Dr. Mellendick, Lake Road found the application to be a reasonable request and opined that it adds value to the community. He went on to express his concern over the scrutiny of the application by Board members.

There being no additional questions by the public, Chairman Rochat closed the meeting to the public.

In conclusion, Mr. O'Neill noted that the applicant was requesting relief to allow two (2) dwellings on one (1) lot with a condition to limit the use of the cottage to the Mahoney family making it easy to monitor and maintain. The applicant agreed to disable the structure as a residential use by the complete removal of the kitchen and an annual certification of those that reside in the cottage. He concluded by explaining that there is a utility for the building beyond a cottage.

Mr. Banisch reminded the Board that a motion to approve would require at least five (5) affirmative votes.

Mr. Lewis noted that the hearing was continued from July in order for the Board to consider a list of conditions proposed by the applicant's attorney. He went on to note that the Board historically has tried to help residents with their properties, but the Board is also charged with defending the Borough's zoning.

Mr. O'Neill outlined the four (4) conditions in Mr. Garofalo's July 22, 2022 letter noting that he would modify the condition related to an age restriction to a restriction limited specifically to the Mahoney in-laws. He also suggested a condition that would include an annual letter certifying that the in-laws remain in the cottage and when they are no longer residing in the structure a certification that the kitchen has been removed. When asked by Mr. Linnus if he would agree to a deed restriction, Mr. O'Neill responded in the positive.

Mr. Lewis made a motion to deny the application. Vice Chairman Rinzler seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Vice Chairman Rinzler, Mr. Lewis, Ms. Layton, Mr. Koury, Ms. Humber and Chairman Rochat

Those Opposed: None

CORRESPONDENCE

1. A letter dated July 22, 2022 from William Ruggiero re: Mahoney, Block 5, Lot 6.03.
2. A letter dated July 26, 2022 from Robert Garofalo re: Chateau De Fleur, LLC, Block 4, Lot 7.
3. A letter dated July 8, 2022 from County of Somerset Planning Board re: Adoption of the Somerset County Preservation Plan.
4. A Synopsis of Planning Testimony by Michael Pessolano dated July 5, 2022 re: Mahoney, 5 Fox Hunt Court.

ZONING UPDATE

- Zoning memo dated July 26, 2022 – Kimberly Coward

Mr. Banisch noted that he visited the NJDEP website regarding the updated Flood Act Regulations and there are no new updates since last month's report.

ADJOURNMENT

Motion by Vice Chairman Rinzler, seconded by Ms. Layton and unanimously carried to adjourn the meeting at 8:39 p.m.



Shana L. Goodchild, Planning Board Secretary

APPROVED 9/6/22