

**BOROUGH OF FAR HILLS**  
Planning Board Regular Meeting  
**MINUTES**  
October 2, 2023

**CALL TO ORDER**

Chairman Rochat called the meeting to order at 7:07 p.m. at the Far Hills Municipal Building 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 Robert Lewis, Mayor Kevin Welsh, Councilwoman Mary Chimenti, Marilyn Layton, Jack Koury, Suzanne Humbert, Andrea Harvey, Alt. #1 and Thomas Swon, Alt. #2

Also Present: Frank Linnus, Board Attorney; David Banisch, Planner; Steve Bolio, Borough Engineer; and Shana L. Goodchild, Planning Board Secretary

Absent: John Lawlor

There were approximately eight (8) audience members present.

**APPOINTMENT/OATH OF OFFICE**

Chairman Rochat acknowledged and thanked Sheila Tweedie for all of the years she served on the Planning Board and all of the insight she provided.

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

- Mary Chimenti (Class III) (Council Member) unexpired term expiring 12/31/23

**BILL LIST**

- October 2, 2023

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

**Roll Call Vote**

Those in Favor: Vice Chairman Lewis, Councilwoman Chimenti, Ms. Layton, Mr. Koury, Ms. Humbert, Ms. Harvey, Mr. Swon and Chairman Rochat

Those Opposed: None

Abstentions: Mayor Welsh

**MINUTES**

- September 5, 2023, Regular Meeting

Mayor Welsh made a motion to approve the minutes of the September 5, 2023 Regular meeting for content and release. Mr. Koury seconded the motion. All were in favor.

- September 5, 2023, Executive Session (for content only)

Ms. Layton made a motion to approve the minutes of the September 5, 2023 Executive Session meeting for content only. Mayor Welsh seconded the motion. All were in favor.

## **PUBLIC COMMENT**

Peter Welsh thanked the Board for the recent approval and requested permission to work on landscaping before the winter weather. Chairman Rochat noted that the project would be discussed later in the meeting.

There being no additional comments, Chairman Rochat closed the public comment period.

## **RESOLUTIONS**

Mayor Welsh recused himself from the meeting at this time.

- **Resolution No. 2023-25** – Welsh’s Motor Sales, Inc. Block 13, Lot 12  
*Those eligible: Mr. Lawlor, Mr. Koury, Ms. Layton, Mr. Swon and Chairman Rochat*

Mr. Banisch addressed the prior comments from Peter Welsh during Public Comment and asked the Board if there was any objection to the installation of landscaping; normally no construction activity commences until resolution compliance is achieved. He went on to note that the Board professionals have received transmittal letters from Mr. Welsh’s engineer describing the revised plans but the full package of plans had not yet arrived. Mr. Welsh confirmed that he was asking for permission to proceed with landscaping improvements ahead of the winter weather. Chairman Rochat reminded the Board that some removal of asphalt would be included. Mr. Banisch and Mr. Bolio had no objection and the consensus of the Board was to allow the applicant to install the landscaping improvements under the supervision of Mr. Banisch and Mr. Bolio.

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: Mr. Koury, Ms Layton, Mr. Swon and Chairman Rochat

Those Opposed: None

- **Resolution No. 2023-26** – Glo Esthetics, LLC Block 14, Lot 3  
*Those eligible: Mr. Lawlor, Ms. Layton, Mr. Koury, 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: Ms. Layton, Mr. Koury, Ms. Humbert and Chairman Rochat

Those Opposed: None

### CHANGE OF USE/OCCUPANCY/SITE PLAN WAIVER APPLICATIONS

- Appl. No. PB2023-12  
Circular Management Group, LLC  
Block 15, Lot 1.01  
49 Route 202, Suite 13A (Office #10)  
Change of Use/Occupancy/Site Plan Waiver  
*\*Carried from the September 5, 2023 Planning Board Meeting*

Mayor Welsh remained recused and Ms. Layton and Ms. Humbert also recused themselves.

Anthony Melillo was present and sworn in by Mr. Linnus. Mr. Melillo explained that the services by the tenant include environmental consulting that provides sustainable and environmental practices for landowners. Hours of operation will be from 6 a.m. to 6 p.m., Monday through Saturday. No site modifications are proposed, and the existing signage will be re-decaled in the foyer and by the door.

There being no additional questions from the Board or professionals, Mr. Koury made a motion to approve the application. The motion was seconded by Vice Chairman Lewis. The motion carried by the following roll call vote:

#### Roll Call Vote:

Those in Favor: Vice Chairman Lewis, Councilwoman Chimenti, Mr. Koury, Ms. Harvey, Mr. Swon and Chairman Rochat

Those Opposed: None

Mayor Welsh, Ms. Layton and Ms. Humbert returned to the meeting at this time.

### EXTENSION REQUEST

- Appl. No. PB2022-05  
Cilento 30 Peapack, LLC  
Block 9, Lot 2  
30 Peapack Road  
Use/Bulk Variances, Minor Subdivision and Prel./Final Major Site Plan

Benjamin Wine, Attorney on behalf of the applicant was present and provided a brief background of the application for minor subdivision and variance relief. He explained that the requirement for a minor subdivision is that the deeds or plat be submitted for recording within 190 days of the date of the adoption of the resolution. Over the course of the months between February and today the applicant was working with the Board professionals in order to achieve resolution compliance; the application involved unique issues with multiple easements that necessitated additional back and forth. Ultimately, resolution compliance was achieved at the end of July however the 190 days expired on August 15, 2023 and the signed deeds were not available for recording. In conclusion, the applicant requested an extension of time to file the deeds. Mr. Bolio confirmed that the applicant complied

with all conditions of the approval and he reminded the applicant that an electronic copy of the subdivision plan is required after the deeds are filed.

There being no additional questions from the Board or professionals, Vice Chairman Lewis made a motion to approve the extension and adopt the following resolution. The motion was seconded by Mayor Welsh. The motion carried by the following roll call vote:

#### **RESOLUTION**

- **Resolution No. 2023-27** – Cilento 30 Peapack, LLC Block 9, Lot 2 Extension of Time

#### Roll Call Vote:

Those in Favor: Vice Chairman Lewis, Mayor Welsh, Councilwoman Chimenti, Ms. Layton, Mr. Koury, Ms. Humbert, Ms. Harvey, Mr. Swon and Chairman Rochat

Those Opposed: None

#### **EXTENSION REQUEST**

- Appl. No. PB2022-14  
11 De Mun, LLC  
Block 13, Lot 5  
11 De Mun  
Minor Subdivision w/Variance

Frederick Zelle, Attorney on behalf of the applicant was present. Mr. Zelle explained that the applicant's resolution was approved on March 6, 2023 and the 190 days expired on September 12, 2023 therefore the applicant was seeking an extension of approval in order to achieve resolution compliance. The pending items include soil conservation district approval, utility will serve letters and some other issues. He noted that the applicant's team dealt with some personal issues that slowed down the process. Mr. Zelle also discussed the condition of the property and noted that they are working with the neighbor to address those concerns. He noted that the deed and two (2) forms of easements have been submitted for approval. He added that he is working through the sewer connection process and expressed concern that the connection could cost upwards of \$150,000.

Chairman Rochat expressed disappointment about the condition of the property and he reminded Mr. Zelle that the applicant testified during the hearing that it would be a clean project.

Mr. Bolio noted that the September 11, 2023 resolution compliance letter contained some open items, but most are minor; he recommended the Board grant the extension request.

There being no additional questions from the Board or professionals, Vice Chairman Lewis made a motion to approve the extension. The motion was seconded by Ms. Layton. The motion carried by the following roll call vote:

#### Roll Call Vote:

Those in Favor: Vice Chairman Lewis, Mayor Welsh, Councilwoman Chimenti, Ms. Layton, Mr. Koury, Ms. Humbert, Ms. Harvey, Mr. Swon and Chairman Rochat

Those Opposed: None

## BOARD DISCUSSION

- Reexamination of the Master Plan and Development Regulations (N.J.S.A. 40:55D-89)

Mr. Banisch reminded the Board that the re-examination report is a re-examination of the Master Plan and the ordinances. He went on to provide an overview of his October 1, 2023 Memorandum which outlines a few possible ordinance amendments to be included, those amendments include:

1. Solar Use
2. Variance Checklist
3. Accessory Buildings, Structures and Uses
4. Scenic Corridors
5. Stream Corridors
6. Natural Resource Constraints Ordinance

Item No. 2 - Mr. Banisch noted that the Variance Checklist is something that repeatedly raises confusion for the applicants and the engineer since the Borough does not have a checklist. The need for this checklist should be put in the re-examination report so that the Borough can take the appropriate action.

Item No. 6 – Mr. Banisch noted that the Borough has quite a bit of environmentally constrained land which would benefit from adopting a natural resource constraint ordinance. He outlined his memo which included the following:

*This type of ordinance can be useful in ensuring that environmentally sensitive areas and other areas restricted that are inappropriate for development are not counted toward subdivision potential and lot yield at the time of subdivision. This type of ordinance is designed to calibrate the amount of “good” land to the number of residential dwelling units that a given site may yield under a subdivision scenario.*

*a. A natural resource constraints ordinance requires a calculation of the subdivision potential for a given tract of land by subtracting out the amount of land classified as constrained, such as a wetlands, wetlands transition areas, streams, stream corridors, steep slopes, existing easements, etc. and calculating the amount of remaining “good” unconstrained land before dividing the resulting acreage by the minimum lot size requirement for the zoning district in which a given tract of lands is located.*

*b. For example, if a farm in the R-10 District is 100 acres, and 20 acres of that land is environmentally constrained, a natural resource constraints ordinance could require the prospective developer to divide the remaining 80-acres of good land by the minimum lot size to yield a subdivision of eight (8) lots vs. the ten (10) lots that would otherwise be permitted.*

*c. This type of ordinance can be paired with other subdivision requirements, such as lot size averaging or mandatory open lands requirements. For example, an open lands ordinance standard that requires at least 50% of the tract to remain open and restricted against development would help the Borough ensure that significant open areas remain as a by-product of subdivision of the larger remaining tracts of land.*

Mr. Banisch requested that the Board members give serious consideration to putting in place some mechanisms that are defensible under the law; ordinances that will best maintain the character of the

community going forward. When asked by Vice Chairman Lewis what parcels are impacted, Mr. Banisch recommended not analyzing individual lots but suggested that the Borough start with the policy orientation; should natural resources be protected on its merits. He reminded the Board that the Master Plan contemplates natural resource protection for large lot zoning in the R-3, R-6 and R-10 zoning districts. Mr. Banisch explained that the Borough discussed the issue approximately ten (10) years ago and he felt that it was important and appropriate to discuss again.

When asked by Mr. Banisch how the Board would like to move forward, Mayor Welsh opined that the Board should include it as a recommendation; the pressure for development is immense and anything that can be done to slow development should be considered. Councilwoman Chimenti agreed and opined that other design controls should be considered.

Item No. 1 – Mr. Banisch explained that every solar application is treated as a use variance, however he suggested the Board consider that solar is becoming a common form of accessory use to residential use. The Board can continue to treat it as a use variance or as a conditional use as outlined in his memo:

*A conditionally permitted use is one which is permitted by ordinance, but only under certain conditions. With the growing use of solar to supplement the electricity requirements of a home, it may be appropriate to consider recommending an ordinance amendment in the Reexamination Report to address solar as a conditional use with appropriate visual compatibility standards, such as:*

- a. Ground-mounted installations shall not be visible from adjoining property or public rights-of-way, shall only be permitted in the rear yard, shall meet all principal building setbacks, shall be appropriately screened from view by existing or supplemental vegetation to provide a year-round screen that completely obscures the view of the installation from off site.*
- b. Roof mounted solar shall conform in color and design with the existing roof color, roof pitch and roof shape, shall not exceed 6" above the height of the existing roof plane upon which solar panels are installed, including all solar panels, racking or support structures or equipment, and shall be installed below at least 12" below the existing height of the roof peak upon which the solar panels are installed.*

*A permitted conditional use requires review and approval by the Planning Board, even for one-and two-family dwellings. The primary difference between a prohibited use requiring use variance approval and a conditional use requiring a conditional use permit/ approval is that for a conditional use, if all of the conditions of a conditional use are met by the applicant, the use must be approved. If one or more of the conditions of the conditional use are NOT met by the applicant, the Board then engages in considering possible conditions to be imposed to address the nonconformity.*

He noted that roof mounted solar gets a little ‘sticky’ because roof mounted panels are attached to a principal structure so it must meet all of the required setbacks; standards should be set as described above.

Item No. 3 – Mr. Banisch noted that the ordinance is silent regarding the setbacks for the requirements for structures constructed at grade (i.e., patios, sidewalks, walkways, driveways, walls, motor courts, septic systems, wells) and he outlined the information from his memo:

*For the large-lot zoning districts, all accessory structures are required to conform to the principal building setbacks.*

- a. *Should there be exceptions for certain at-grade improvements?*
  - i. *It makes sense that there should be certain exceptions for certain at-grade structures such as walkways, driveways, and wells.*
  - ii. *Exceptions for other structures such as a patio, a motor court, and a raised bed septic system may not be appropriate for exceptions within required setbacks.*

The question remains, should there be some exceptions carved out for the usual and customary 'structures' – driveway, walkways, wells, etc. Those items that have caused an issue are septic systems, particularly mounded systems. He noted that separate standards could be set for mounded systems within scenic corridors, etc.

Item No. 4 – Mr. Banisch noted that the Borough's scenic corridors include Route 202, County Route 512 (Liberty Corner Road, Peapack Road), and local roads including Sunnybranch, Lake, Spring Hollow, and Pennbrook.

- a. *A 200' Scenic Corridor setback and easement is required by ordinance. The easement prohibits development and limits disturbance within the 200' setback area except where environmental and physical limitations exist.*
- b. *Removal of vegetation is prohibited within the 200' Scenic setback, which include the removal of invasive, exotic plant and tree species and replanting the corridor with desirable native vegetation.*
- c. *The idea of an exception or modification to the vegetation disturbance and planting requirements has been suggested to allow a property owner to better manage the appearance and scenic attributes of the Scenic Corridors as pertains to the vegetation occupying the Scenic setback.*
  - i. *The ordinance could be amended to permit certain activities within the Scenic Corridor setback, which may include allowing removal of undesirable vegetation and replanting the corridor with desirable native plant and tree species under certain conditions.*
  - ii. *The ordinance could be amended to require a Scenic Corridor management plan, which could be subject to review by the Planning Board. Activities permitted within the corridor, subject to review and approval by the Board, may include:*
    - 1. *Removal of invasive, exotic plant and tree species.*
    - 2. *Planting native vegetation to reestablish forests, fields and enhancement of other scenic attributes of the Scenic Corridor such as existing stone walls, or new walls and hedgerows.*
    - 3. *Other exceptions that the Board may identify as appropriate to the Scenic Corridor.*

Vice Chairman Lewis opined that the approach is over restrictive/heavy handed, and residents are doing what they need to do within the corridor. Chairman Rochat stated that the Borough does not want to see a 'golf course' along the scenic corridors. Mayor Welsh opined that the Borough should be careful about unintended consequences, but the issue has been raised many times regarding trees that have fallen that can't be cleared and invasive species that can't be removed; the issue is allowing maintenance of the lot while maintaining an attractive screened corridor. Vice Chairman Lewis suggested a permit process for cutting of trees or removal of invasives, etc. Mr. Bolio proposed setting reasonable perimeters – limit of disturbance, limit the number of trees to be removed, etc. Councilwoman Chimenti questioned how the tree ordinance interfaces with the scenic corridor to which Mr. Banisch agreed to review and report back. She also noted that the Board may want to consider putting guidelines in place to require the corridor to look more uniform to avoid a grouping of trees creating a 'forest' versus 'open space'. Mr. Banisch was unsure of the objective but noted that when you drive the scenic corridors you encounter a mix of short views and long views and the

Borough should attempt to identify a standard versus the character of each property to prevail. Mr. Banisch read into the record Section 802.F. and opined that backing away from protecting the scenic corridors would likely end in a subtractive process. On the other hand, property owners should be given the opportunity to manage their property in an appropriate way using certain design standards; within the forested corridor it's permitting the removal of the invasive exotics and replanting with appropriate indigenous vegetations. When asked by Chairman Rochat how that works with the right to farm act or a woodland management plan, Mr. Banisch noted that the act or a plan supersedes any local regulation with the exception of some enhanced standards. When asked by Mr. Banisch if there is generally some consensus that that it should be addressed in some form of recommendation in the re-examination report, the Board responded positively.

Item No. 5 – Mr. Banisch noted that the Borough created stream corridor standards before the State adopted any standards; in some cases, more restrictive than the NJDEP's Flood Hazard Area Act Riparian Corridor regulations.

- a. The Borough's definition of "Stream Corridor" was developed and adopted before the NJDEP had established the current Flood Hazard Area Act regulatory regime.*
- b. NJDEP's Riparian Corridors are fixed distance buffering from the stream channel.*
- c. The Borough's Stream Corridor requires a 100' buffer around all land on each side of "the stream channel, which is classified as wetlands, is within the 100 year floodplain, or is a sloping area of 12% or greater that is contiguous to the stream channel, wetlands or floodplain, and all of the land within a 100' wide buffer around all stream channels, wetlands, floodplains and contiguous slopes of 12% or greater. floodplains and contiguous slopes of 12% or greater."*
- d. The ordinance requires the Stream Corridor to be protected within a Stream Corridor Easement. In some cases, neighborhoods and developed residential lots throughout the Borough are impacted by this definition and the required easement; however, the ordinance does not distinguish between undisturbed areas within the Stream Corridor and areas that are developed with homes, yards, accessory structures, etc.*
- e. We recommend that the Board consider including a recommendation in the Reexamination Report for an ordinance amendment that carves out exceptions for existing development to avoid including areas such as homes, manicured yards, accessory structures and associated accessory structures that are situated within the Stream Corridor. The ordinance amendment should specifically allow the Planning Board to define the appropriate limits of the Stream Corridor, particularly for residents requiring variance relief for development of a pool or other backyard amenity, home renovations and additions, and substantial reconstruction of a home situated within the Stream Corridor.*

When asked by Vice Chairman Lewis how NJDEP deals with these types of deviations, Mr. Bolio noted that property owners may qualify for a Permit By Rule if they meet certain conditions; if conditions are not met they may trigger an Individual Permit which involves more steps. Mr. Banisch noted that the local ordinance sets a different standard of protection than the State standard.

Mr. Banisch agreed to provide the Board with more information about other controls that could be put in place.



Referring to the Scenic Corridor, Vice Chairman Lewis noted that he's seen some easement language that allowed environmental projects to occur and offered to provide those to Mr. Banisch.

Mr. Bolio offered to work with Mr. Banisch as far as carving out some additional items for accessory uses related to setbacks, for example storm drainage meeting required setbacks is excessive. Chairman Rochat agreed that some items like walkways, walls and basic items become a nuisance for the Board to hear and rule on. Mr. Banisch agreed that the ancillary 'stuff' should not be required to meet setbacks but patios, etc. that may generate noise/lighting should be regulated. Mr. Banisch specifically noted motorcourts along Spring Hollow Road meet the front yard setbacks however the motorcourt at 20 Lake Road required a setback variance and, at the time of the application, a discussion arose regarding a driveway versus a 'motorcourt'.

Related to re-development, Mr. Banisch provided a brief update on transit and noted that they are not an agency controlled by the BPU; they are under the control of the Governor and the Legislature. Mr. Banisch discussed the issue with Borough Attorney Sordillo and he cited some transit oriented design that was undertaken with redevelopment and his suggestion was put the NJ Transit land into the redevelopment planning process. Mr. Banisch suggested that the Board recommend two (2) Blocks as possible re-development areas and the Borough Council could recommend whether those areas have conditions within them to meet the statutory conditions for designating them a redevelopment area. After the Planning Board has a public hearing, it's up to the Borough Council to decide how much redevelopment to designate. He mentioned the dynamics that might be at play and suggested how to 'slow walk' the process in such a way that it is palatable to everyone. Mr. Banisch explained that the Planning Board is 'functionary' in the process but ultimately, the Borough Council designates redevelopment. Mayor Welsh opined that the point raised by Mr. Banisch is very important for the Borough Council to handle very delicately; find sites that should be repurposed/reused. When asked by Mr. Koury if the meetings should be promoted despite the fact that they are public, Mr. Banisch opined that at this point it may be premature however, the kickoff would be if, and when the Governing Body chooses to take action on the Planning Board's recommendation. Mr. Koury agreed but suggested that when the decision is made the Board should take extra steps to promote the public process.

When asked if there were any comments from the public, Councilman Peter Coccoziello, Lake Road opined that the Planning Board is responsible for planning and for ensuring that the opinion and vision of the public is captured. Mr. Coccoziello suggested that the Board spend time talking about the vision and feel it's trying to create; the discussion tonight was focused on very scientific issues and the public is more concerned about what they see while driving down the road. He suggested that the focus be more aesthetic; the 'visual experience'. The vast majority of lots are in the 10-to-20-acre range so taking 200 feet of 20 acres could potentially be 10% of someone's property; what does the Borough want that area to look like. Mr. Banisch noted that there was a long discussion in the Master Plan 20 years ago about a community survey that was undertaken and the survey produced a lot of 'keep it the same' to maintain the countryside with minimal change. Mr. Coccoziello also encouraged the Board to recommend green infrastructure. Speaking about the Scenic Corridor Easements, Mr. Coccoziello opined that requiring a recorded easement on residential frontage is problematic when it does not allow owners to do anything within that area. He also noted that there is a big difference between an easement and a variance. Mr. Banisch explained that the form of easement flows from the action that the Planning Board takes during a variance application. Mr. Coccoziello asked if the Board wants residents to come to the Board with a landscape plan to improve the front of the

property, inside a scenic corridor. Mr. Banisch opined that the Board discussed those issues and the Board was receptive to the idea of allowing modifications of the quality and character of the forest within the 200 foot scenic corridor easement; the Board was in favor of making recommendations of ordinance amendments. When asked by Mr. Coccoziello about regulating fences within the eased area, Mr. Banisch opined that historically there has been a laidback approach among the citizenry; don't over regulate residents within limits. He opined establishing design standards for the scenic corridors would be a big departure from the historic approach in the Borough. Mr. Linnus agreed that the form of easement has to be part of the new ordinance so that interested parties understand what can be done in the eased area. A discussion ensued regarding amending the ordinance and how it impacts an existing easement that's been in place for years. Mr. Linnus was of the opinion that once the easement is recorded the language stands. Vice Chairman Lewis recommended that a new model easement be considered for the reason that instead of preserving the natural environment it deteriorates because no activity is permitted. In conclusion, Mr. Coccoziello asked the Board to consider what they want the Borough to look like (lighting, sidewalks, landscaping, fencing, colors, etc.). When asked by Mr. Banisch if the Board wanted to look at a series of pictures of the community and talk about the issues raised, Mayor Welsh opined that the Board should be careful because people don't like to be told how they can develop their property. In conclusion, Mr. Banisch offered to meet with Mr. Coccoziello to look at some of the design standards from other towns and return next month with some that may make sense.

#### **CORRESPONDENCE**

1. A letter dated September 18, 2023 from Jason Tuvel, Esq. re: Cilento 30 Peapack, LLC, Block 9, Lot 2.
2. A letter dated October 1, 2023 from Frederick Zelley re: 11 DeMun, LLC, Block 13, Lot 5.

#### **ZONING UPDATE**

- Zoning memo dated September 26, 2023 – Kimberly Coward

#### **ADJOURNMENT**

Motion by Mr. Koury, seconded by Chairman Rochat and unanimously carried to adjourn the meeting at 9:06 p.m. All were in favor.



Shana L. Goodchild, Planning Board Secretary

**APPROVED 11/6/23**