

Offered: Mr Vignola
 2nd: Mr Lavan
 Approved 4/4/13
 Date

Minutes of March 7, 2013

The Regular Meeting of the Hazlet Township Planning Board of Adjustment scheduled for March 7, 2013 was called to order at 7:30 PM with a Salute to the Flag followed by a Moment of Silent Prayer and a Reading of the Letter of Compliance.

ROLL CALL:

Present: Mr. Glackin, Mr. Vignola, Mr. DeMatteo, Mr. Mann, Mr. Bace, Mr. Tyler, Deputy Mayor DiNardo, Mayor Belasco, Mr. Lavan, Mr. Solomeno,

Absent: Mr. Pobega

Professionals: Mr. Vella, Esq. in attendance

Professionals Absent: Mr. Kittner, Jr. P.E.

MOTION: To approve the Minutes of the Regular Meeting of February 7, 2013

Offered by: Mr. Lavan

2nd Mr. Tyler

Roll Call:

	Yes	Absent:
Mr. Glackin	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mr. Pobega	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mr. Vignola	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mr. DeMatteo	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mr. Mann (abstain)	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Bace	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chairman Mr. Tyler	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Deputy Mayor DiNardo	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mayor Belasco	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alt #1 Mr. Lavan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alt #2 Mr. Solomeno	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Carry Over Case #12-03P Elegant Properties, LLC, P.O. Box 3031 Sea Bright NJ

Property Location: 780 Poole Avenue Block 66 Lot 1.02

Applicant is requesting Preliminary & Final Site Plan Approval with the bulk variances and design waivers to construct forty-eight (48) stacked multi-family dwelling units.

Offered By: N/A

Seconded By: N/A

Mr. Vella- Mr. Chairman this application was carried with notice reviewed Affidavit of Publication the board has continuing jurisdiction on this matter. Yesterday I received an email from the applicant's attorney asking to be carried to the next meeting which is March 21, 2013 at 7:30 pm in these chambers. The reason for that is that on Monday at 11:00 am as your board is aware there is still pending litigation regarding COAH which the applicant is a party too.

Monday at 11:00 AM there is a meeting between Co-counsel for the Township, Co-counsel for the applicant, the applicant's planning board attorney, the Special Master and I think the Planner for the board as well and I am going to be in attendance also. We are not party to that litigation but it obviously affects this board so I am going to be there. I will tell you on the 21st of March what is going to happen because there might be some discussion about moving the matter to litigation. I will send an email out to the board after the meeting Monday. This application Carry to March 21, 2013 at 7:30 pm in these chambers without Further Notice.

Mr. Solomeno- Is it appropriate to ask a question to Mr. Vella at this point about this application?

Chairman Tyler- You can ask the question and he will tell you if he can answer it.

Mr. Solomeno- I am new here but I have been following this through the years in the papers and different individuals that I have spoken to. Just so I correctly understand what we are facing right now as a result of litigation and a decision by a court appointed special master. They mandated that this applicant is going to build 48 units.

Attorney Vella- The applicant filed a Builders Remedy Lawsuit. Basically that is an allegation that I own a piece of property that this town has not complied with COAH Regulations therefore we want to put affordable housing on this site. We want the Court to order it on our site as part of the lawsuit. Part of that is first the determination when you go to court on that it is really the applicant vs. township. The town defense is (a) I am compliant I do not know what you are talking about or (b) I am not compliant but I am going to be compliant and your property is not part of it or you are part of it and we will go to COAH (c) just never did anything. C is the real result because Judge Lawson ruled the township was not compliant and the town has never been compliant ever. One of the reasons why is there is not a lot of property for this type of use because we are pretty much built out. I think there are some parties over the years that believe that based on all the mobile homes the senior housing that we really did not need to apply. It then gets transferred to the next area which should have been the town needs units the court appoints a special master and the master works with the applicant and the town for a determination of how many units the town owes. That is what the next step is supposed to be. O.K. Town you owe 100 units but how is the town supposed to do 100 units. We can put 8 units on this current property but town where are you putting the other 92 units? The other 92 has to come with a plan to the special master and say I am going to zone this property here special zone that permits 10 units, I am going to zone this area another 15 units. It is whatever to get to a number. What happened in this case was they never did that part they kind of skipped to the third part of how many units can fit on this property. What happened is they kind of jumped the gun and there was a trial an agreement (there are different definitions of what you really want to call what occurred). There was a court order, ordering the town re-zone this property to 48 units. They were required to draft an ordinance and a specific zone. The zone really drafted by the plaintiffs to get those 48 units. That is what the town would have to approve pursuant to court order they did not want to do it but they had to do it pursuant to court order. That is what we are dealing with there is still litigation because during the process and change of administrations the town appealed that decision of 48 units. The Appellate Division I am not even hearing that appeal, you guys did stuff backwards if the town really needs 3 units why are you giving this property eight. They said

they are not handling that they are going to remand it back to court for determination on how many units for the town. That is without litigation. Right now from a planning board perspective I was representing the board after the court order and I got the board dismissed. What the board should really only be concerned about is we have an ordinance and we have a zone and that is what we have to deal with. The COAH litigation that is out there does not directly affect us other than creating ordinance we are dealing with.

Mr. Solomeno- The ordinance that we are speaking about says "X" number of units.

Attorney Vella- It shall be 48 units, yes.

Mr. Solomeno- There is no way that this project is not going to move forward it is just how are we going to make it the best kind of project for Hazlet.

Attorney Vella- Just like any piece of property something is going to be built there. Shall have 48 units, the applicant does not have to build 48 units they can apply for more than that and the board can grant that. Forty-eight is the number they can apply for but it does not mean it is going to be approved. There are a lot more factors from the planning board perspective. We do not have a court order saying approve this site plan and that is why there are variances and waivers. From the time they file their application we have 90-120 days for us to make a determination.

Mr. Solomeno- What are the likely courses of action if it is not approved by the board if it is denied?

Attorney Vella- The applicant can do one of three things. 1. Do nothing; 2. Do a new application that is more consistent with the ordinance. 3. Sue the board.

Mr. Solomeno- My concern and tell me if it is unfounded would be that we already spent so much money tax dollars on litigation this issue that to deny it and get back involved.

Attorney Vella- The reality is while money is always an issue and the budget is always an issue the board is not supposed to approve or deny an application by the threat of litigation or the cost of litigation. Your job is to determine whether there are variances and design waivers granted and the answer is yes, did they satisfy their burden of proof the positive and negative criteria to justify those variances. If they have done that and you add reasonable conditions they get approved. If they don't satisfy the positive and negative criteria then you deny them. The only people that worry about the money is the Township Committee. We are a quasi-judicial body we are basically judges. Judges never care about money they make decisions left and right. We really can't worry if it is going to cost the town more money if we deny litigation.

Chairman Tyler- What has come out of the past couple of sessions with them is that there are reasonable issues that we identified and they realize it.

Mr. Lavan- From last meeting I think they know that the board will work with them if they work with us. We can make this short and sweet if it is done right.

Chairman Tyler- They realize it perhaps, the ordinance that they designed doesn't work for the plans that they have and there is no way to make it work and now they have to reconsider.

Attorney Vella- Hopefully they come in at some point and say here is your application there are no waivers and no variances, you have to approve us. I will tell the board straight out that you have to approve them. That is the law and you can't vote no. However, what you can do is impose reasonable conditions.

Sharon Keegan-Zoning Officer- If they drop some of the units would they have to go back to the court system to modify the ordinance?

Attorney Vella- No, if they came in today and said you know what I am cutting ten units off and I am doing 20% set aside that is their right. Now how does it affect the town? There are two less COAH Units that they have to put some place else. They may want to go back and change other things and that may be something the special master gets involved in.

ITEMS FOR DISCUSSION:

Township Committee requested that the Planning Board review an amendment to the Development Review Ordinance for Section 181-408.06 Driveways and give their recommendation that this amendment is substantially consistent with the land use element and the housing element of the master plan.

Mr. Tyler- I asked Sharon to prepare a memo, if everyone has it and we are happy to have you here with us. Please explain.

Mrs. Keegan- I am just looking to delete two words out of one section of the ordinance. It is the words access and principal. It is all related to an ongoing litigation case I had before the zoning board. I want the section of the ordinance to be consistent with the definition section of the ordinance. Under the definitions we have driveway, we have no access drive we have no principal driveway, it is strictly driveway.

Mr. Tyler- It does not affect that litigation or is it to avoid this in the future?

Mrs. Keegan- He went to the zoning board and was denied. He did appeal and the court system upheld the appeal and he is actually appealing in the Superior Court System and the Appellate Court now. He came back to the zoning board saying that I erred in my judgment because I denied him again on two applications and the board upheld that to.

Mr. DeMatteo- One question that I had when I read this was that when you put a "U" driveway in you have two openings?

Mrs. Keegan- No that is still one driveway. It all started with an illegal structure that he has and he put an extra driveway in that is not connected to the other driveway. We tried to work with the gentleman and it became a night mare and he did not want to bend and was denied. The ordinance reads a single family house should have one driveway.

Attorney Vella- Based on what Sharon said the planning board's job is to make one of two determinations. 1. Whether the order to revise is substantially consistent with the Master Plan, Zoning Ordinance or not substantially consistent. Based on what Sharon says I think this is more for clarification. The board can make a determination that the proposed ordinance is consistent with the Master Plan. If you said it was inconsistent that is kind of like saying we have a big residential zone and in the middle of it you want to through a commercial zone right in the middle of it and that is not what the Master Plans say and you would say it is inconsistent and that would require four out of five votes from the town. For this I would say the ordinance is consistent with the Master Plan and if the board agrees with that we just need a motion and second.

Offered By: Mr. Vignola

Seconded By: Mr. Bace

Roll Call:

	Yes	Absent:
Mr. Glackin	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mr. Pobega	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mr. Vignola	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Chairman Mr. Tyler	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Deputy Mayor DiNardo (asbtain)	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Belasco	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alt #1 Mr. Lavan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alt #2 Mr. Solomeno	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Citizen Hearing:

No one spoke at hearing.

Motion to Adjourn:

Offered: Mr. Lavan

2nd Mr. Tyler

Voice Vote: Yes

Next Meeting March 21, 2013

Sharon A. Keegan
Administrative Officer

Mary Lynch Transcribed