

**BOROUGH OF NORTHVALE
COMBINED PLANNING BOARD/BOARD OF ADJUSTMENT
APRIL 15, 2015**

MINUTES

CALL THE MEETING TO ORDER –

Chairman Peter Perretti calls the meeting to order.

STATEMENT –

This is a Regularly Scheduled Formal Meeting of the Planning Board/Board of Adjustment of the Borough of Northvale. The date, time and location of this meeting has been advertised in the official newspaper of the Borough, filed with the Borough Clerk and posted on the bulletin board in the Municipal Building. All notice requirements of the Open Public Meetings Act for this meeting have been fulfilled. Please note the fire exits as required by law at public meetings.

ATTENDANCE –

PRESENT: MR. PERRETTI, MR. AMOROSSO, MAYOR PIEHLER, MR. DELAURA,
MR. DEVLIN, MR. TREBINO, MR. VOLLMER, MR. SILLERY (ALTERNATE #2),
MR. MORAN (ALTERNATE #4)

ALSO PRESENT: BOARD ATTORNEY, GREGG PASTER & BOARD ENGINEER, PAUL NIEHOFF

ABSENT: MR. GIANNOTTI, COUNCILMAN SOKOLOSKI, MRS. WALKER
(ALTERNATE #1), MR. BARGNA (ALTERNATE #3)

REGULARLY SCHEDULED FORMAL MEETING

**APPLICATION OF NER FAMILY ASSOCIATES, LLC, 406 HOLLY PLACE
AND 401 ARGENTI PLACE, BLOCK 112, LOTS 3, 4, 5 AND 7 –
SITE SUBDIVISION**

Mr. Perretti mentioned that Lots 3, 4 and 5 have been combined on the tax map; although that would not matter if this application were to be approved because there would be new lot lines and new block numbers.

At this time, Atty. Andy Del Vecchio came forward who is a member of the law firm of Beattie Padovano, LLC and is here tonight on behalf of the applicant, NER Family Associates LLC. In March, several concept plans were submitted to the Board to see what would be the best to effectuate access to the proposed subdivided lots. As a result of the polling of the Board at the

last meeting, it appeared that the majority of the Board was in favor of a private driveway solution to the property. He uses the word "private" in the context of private versus municipally maintained. It is intended to be privately maintained by the applicant and its successor owners who may reside at the proposed subdivided lots in the future.

The plans have been updated and marked as **Exhibit A-7**, updated drawings prepared by RL Engineering, Inc. dated March 31, 2015 consisting of seven (7) sheets. The survey was also produced attached to Mr. Eichenlaub's drawings which is essentially Sheet 8, but marked as Sheet 1 of the set of plans prepared by Schwanewede/Halls Engineering and is dated June, 3, 2014 with a last revision date of July 31, 2014.

Mr. Perretti noted that Mr. Sillery, Mr. DeLaura and himself had listened to the meetings that they were absent for and did certify that they did, in fact, listen to the CD hearings. Councilman Sokoloski also listened to the meeting that he was absent for even though he could not attend tonight's meeting.

Mr. Eichenlaub, engineer representing the applicant, came forward. The subdivision remains the same, three lots have been created that is Lot 3, 4 and 7, where existing lot 5 is being added to lot 7, the back portion existing runs the full depth of the parcel in question. Lot 5 is added to Lot 7, the back portion of 7 is added to 3 and 4. These three lots remain the same. The change is as follows: instead of having the full width roadway across the front of Lots 3 and 4, they refer to a private drive. This means is that the owners of Lots 3 and 4 would be required to maintain the property for snow removal, etc. (the 160 feet of paved driveway). In order to get this in and provide for a 22 foot paved area width, they provided for cross Lots 3 and 4, a 10 foot driveway easement, which allows access between Lot 3 and 4 and the pavement extends onto that easement by approximately seven (7) feet. The northerly curb line is offset from the center line of the roadway 2 ½ feet.

With regard to backing out of the driveway on Lot 4, the engineer provided for an 18 foot back out area. They have provided for drainage and to pick up the run off. The applicant does not have to remove the telephone pole. Holly Place does end in a dead end and they are extending the pavement 15 feet.

Mr. Eichenlaub stated that they pushed the houses back 10 feet. Instead of being off of the front property line of 30 feet, they are off of the easement line at 30 feet. They would still have that 30 foot front yard.

Mr. Perretti asked if the houses could be pushed back the 20 or so feet. Mr. Eichenlaub answered that if they were to do that the northerly curb line would align with the southerly curb line of Holly Place. You would come up the end of Holly Place and would have to make a 90 degree turn. Mr. Perretti asked if it could be a 45 degree turn at the end of Holly Place. Mr. Eichenlaub said the transition would be in the neighborhood of 50 feet. Mr. Perretti asked if the applicant would entertain this as an idea.

Atty. Del Vecchio answered that this is something that is within the realm of possibility; although it is not an acceptable engineering design solution. It deprives the applicant to use that 16 ½ feet for access to the applicant's property. He further stated that if he thought this would buy peace and no litigation, it is something that he would entertain seriously; however, he suspects it may be entertained and they still buy the litigation and has given up more than he has for no good reason and have also created a bad engineering solution.

Atty. Del Vecchio commented that he has done the best that he can do in designing this application. He is confident that the applicant has the right to do what he is doing here. Regardless of what legal challenge may or may not come - keeping it on the 16 ½ foot portion of the right-of-way is the appropriate solution.

Atty. Del Vecchio stated that the access provided on the plans submitted provides access for emergency vehicles whether it is a fire truck or ambulance, etc. Regarding the fire hydrant, Mr. Eichenlaub stated that it is placed at the start of the south side drive property.

Grading and drainage was discussed. The outside line of the proposed driveway is to be curbing. Any water flowing in the northwesterly direction is intercepted by the curb and will be contained in the new drainage system proposed on the property. Mr. Niehoff concurred with Mr. Eichenlaub.

The meeting was **opened to the public** for any questions to the engineer.

Mr. Barry Hirschberg came forward. He resides at 403 ½ Argenti Place in Northvale. Mr. Hirschberg questions the survey and the deed. He asks for the applicant's engineer to compare the survey of what he has and what the surveyor for the applicant came up with. Atty. Del Vecchio stated that Mr. Eichenlaub is not a surveyor and did not qualify him as a surveyor.

Mr. Hirschberg stated that the applicant should present an expert to explain the right of way.

Atty. Paster noted that the ownership of the right-of-way is immaterial. Regardless of who owns it, nobody can block access to adjoining properties. Mr. Hirschberg commented that the applicant's plat is incorrect.

(There was a lengthy discussion by Mr. Hirschberg, Atty. Paster and Board Members.)

The meeting was **closed to the public**.

Atty. Del Vecchio stated that he has concluded his presentation and his case at this time.

The meeting was **opened to the public** for questions and comments on any subject.

Mr. Gerald Smothergill of 409 Holly Place came forward. Mr. Smothergill gave his opinion on the survey and deed. He feels that he will have a water problem with this application.

Mrs. Lynn Smothergill of 409 Holly Place came forward. She is concerned of the water flow to her property. She does not agree to have property chopped with a curb to appease the Hirschberg's to illegally encroach upon it.

Mr. Barry Hirschberg came forward once again. He feels that the Notice was incorrectly published in the Record newspaper by the applicant's attorney and that this notice was delinquent. He questioned the property owner's list. He feels that this is incorrect also. Mr. Hirschberg stated that the notice did not inform the public that the subdivision being sought would be conditional.

Atty. Del Vecchio commented that his client has the right, under Judge Contillo's decision, at a bare minimum, to utilize the full 33 foot right-of-way for access to and from Holly Place and Argenti Place. The applicant does own Lots 3, 4 and 5.

Mr. Hirschberg commented that the developers have not produced a single document that shows that they have ownership or rights to anything outside the meets and bounds that they are claiming right now.

The ownership of the property is seriously in question, stated Mr. Hirschberg. Atty. Paster stated that it is a private right of way. However; the Court said is that any property bordering the right-of-way has the right to use it for access and cannot deny any other member of the public access to the right-of-way to get from Argenti Place to Holly Place and back. Mr. Hirschberg commented that he doesn't see how the Board can approve this application if they cannot prove that they own the property. If there is case law on this matter, Mr. Hirschberg said that he would love to see it.

Atty. Del Vecchio stated that the documents provided by Mr. Hirschberg are not certified; they are not complete and are pieces of documents. The Board cannot render a full and complete decision, even if they are admissible. The entirety of the documents was not produced. Many of the documents would constitute here say.

Mr. Hirschberg said that there is nothing in the Master Plan that allows for a flag lot. The proposed lots do not abut a public street. Mr. Amorosso stated that the right-of-way abuts the street and the private drive belongs to the property owners.

Mrs. Elizabeth Hirschberg of 403 ½ Argenti Place came forward. She stated that there are many opinions on this property. There are at least five rights-of-way there. There are three surveys over the years from Atty. Del Vecchio.

Atty. Paster stated that the validity of the subdivision on the application is based on its own merit.

(Inaudible -- everyone talking at one time)

Atty. Paster stated that he will refer to Atty. Del Vecchio. He will have to prove in another venue that they have the right to access the property the way they are requesting in the application. Atty. Paster further noted that the notice is two pages long, 5 paragraphs long and states the date, time and place and the relief that will be sought. The language in the notice is perfectly accurate all property owners' within 200 feet of the property were notified by certified mail. He further noted that every public street is a right of way.

Mr. Niehoff stated that when he gets a survey from a licensed surveyor in the State of New Jersey, he takes it as Gospel, it's the facts.

Mr. & Mrs. Hirschberg both stated that they have the right to question the surveyor.

At this time, Mr. Gerald Smothergill of 409 Holly Place came forward. He said theoretically, no one owns the 400 X 33 feet. It's not private property, it's not anything and he commented that the town should have taken it over in 1976 and created Holly Place with it.

Atty. Del Vecchio stated that as far as the notice is concerned, he has done above and beyond noticing the requirements. The content of the notice was described fully. He said that it is the Court's decision ultimately that is going to bind a Resolution to this property and stated that he thinks Judge Contillo's decision has done that.

Mayor Piehler stated that he feels for the Hirschberg's as noted by Chairman Perretti, but in this situation, Mayor Piehler commented that he along with the Board members relies on the Town's professionals.

Atty. Paster said that the applicant brought to the Board a major subdivision application on proper notice – all of the owners were noticed by certified mail. The applicant submitted its application and the Board has proper jurisdiction to hear the application and there is no use variance being requested. There were seven (7) exhibits that were submitted including the application. In addition to the relief being sought, Atty. Paster indicated that the applicant has agreed to provide the Title 39 enforcement on the private driveway as well as that the driveway maintenance and snow removal and trash removal would be at the head of Holly Place.

Atty. Paster also stated that the developer would agree to pave Holly Place instead of curbing to the Lots 18, 19 line in Block 106 for any potential drainage concerns.

A motion to **approve** the application was made by Mr. Amorosso, seconded by Mr. Vollmer.

Chairman Perretti commented that his vote is governed by Court's decision. He has compassion for the applicant and for the people that live in the neighborhood. Mr. Vollmer also commented that his vote is made by the Court's decision.

ROLL CALL: Mr. Amorosso, Mr. Vollmer, Mr. Perretti, Mayor Piehler, Mr. DeLaura,
Mr. Devlin, Mr. Trebino, Mr. Sillery - YES

Mayor Piehler noted that his vote is also made by the decision of the Court.

APPROVAL OF MINUTES OF MARCH 4, 2015

A motion to **approve** the minutes was made by Mayor Piehler, seconded by Mr. Amorosso.

ROLL CALL: Mayor Piehler, Mr. Amorosso, Mr. Perretti, Mr. Devlin, Mr. Trebino,
Mr. Vollmer - YES

Mr. DeLaura, Mr. Sillery, Mr. Moran - ABSTAINED

Correspondence was discussed.

A motion to **adjourn** the meeting at 10:48 p.m. was made by Mr. Vollmer, seconded by Mr. Amorosso.

All in Favor - "YES".

Meeting Adjourned.

Respectfully submitted,

Laura Benvenuto, Board Secretary