

TOWN OF PLATTEKILL
PLANNING BOARD
P.O. BOX 45
MODENA, N.Y. 12548

April 22, 2014

THE MEETING OPENED WITH A SALUTE TO THE FLAG BY CHAIRPERSON CINDY HILBERT AT 7:30 P.M.

ROLL CALL: Chairperson Cindy Hilbert, Thomas Wilkin, Nathaniel Baum, Darryl Matthews, Judith Mayle, Richard Gorres (arrived at 7:40 p.m.)

Absent: Kathie Beinkafner
Planning Board Engineer: David Clouser

MINUTES

April 8, 2014

MOTION: Mr. Wilkin made a motion to accept the minutes with the correction on page 6 Change \$111.00 to \$111,000.00. Mr. Matthews seconded the motion. Mr. Gorres was not present to vote. All others present voted aye.

PUBLIC HEARING continuation

MML Homes-Proposed 27 Lot Subdivision (Crescent Ave.)SBL#95.1-3-8.1

Mr. Ryan McGuire was present to represent the applicant, along with Mr. Michael Moriello, Attorney, for the applicant. Planning Board Engineering comments from David Clouser dated April 2, 2014 were passed out to the Planning Board members. Mr. Moriello stated he spoke to Dave Barton, the Town of Lloyd Building Inspector and Mr. Barton made it clear to him that he wants to make sure that they have an understanding of how the road is going to be completed and whether or not a Letter of Credit is going to be used, and what is the security for that completion. Ms. Hilbert asked if anyone in the audience had any questions or comments on this application. There were no comments.

MOTION: Mr. Wilkin made a motion to close the public hearing.

On discussion: Mr. Wilkin indicated the 62 day timeframe would start. Mr. McGuire stated that he was prepared to waive the 62 day timeframe. Mr. Gorres seconded the motion. All ayes on the vote.

Mr. Moriello stated they have the Inter-municipal Agreement drafted and he thinks everyone is in agreement with what it says with respect to the shared roadway responsibility. Mr. Moriello added that Mr. Murphy felt strongly that he didn't want to see just a bond. Mr. Moriello stated his client wanted to talk to Shawn Murphy and Paul Keller, along with both boards about doing work to a point, and having inspections on a regular basis, and then putting up a Letter of Credit or some other sufficient security to finish the road, because to put a Letter of Credit for all of the road would be a big number. Ms. Hilbert asked Mr. Moriello if the agreement would lay out

whose responsibility it would be to do the inspections? Mr. Moriello stated the Town of Plattekill would do all their portion of the roadway and the Town of Lloyd would do theirs. Mr. McGuire stated the Inter-municipal Agreement is also contingent on their phasing plan, which they have to forward to Mr. Clouser. Mr. McGuire added that they would incorporate that into the subdivision plan set. Planning Board Engineering comments from David Clouser dated April 2, 2014 were passed out to the Planning Board members Mr. McGuire stated he had no questions on the stormwater. Mr. McGuire added that they are willing to put in the “stop” bar on Crescent Avenue, prior to the issuance of the first building permit, if that is o.k, with Mr. Clouser. Mr. Clouser stated if it is not built, then it has to be bonded. Mr. McGuire asked the Planning Board if they would be adopting or waiving any of the Ulster County Planning Board comments. Ms. Hilbert went over the Ulster County Planning Board comments. Mr. McGuire stated if there was a comment about putting in a bus shelter, he would recommend against it, just because it is ultimately going to fall into disrepair and then who is going to repair it. Ms. Hilbert stated that the Ulster County Planning Board comments are all items that the applicant has to complete.

Pesticides-Mr. McGuire stated that the Pesticide Mitigation Plan would be incorporated into the subdivision plans. Stormwater District Plan & Report-Mr. McGuire stated he has a draft that he would give to Mr. Clouser for his review. Mr. Clouser added that he would need a construction cost estimate. Mr. Moriello stated the wording on the shared services agreement has been agreed to by Paul Kellar and Shawn Murphy, but they do have to address Mr. Clouser’s concerns. Mr. Moriello stated another question that Mr. Clouser had asked was with respect to the roadway waiver, which has not changed, the negative declaration finds no significant impact with it, but they still have to formalize it. Mr. Moriello added that they all have to be in agreement with the wording on the offer of dedication and the roadway agreement before final approval. Mr. Clouser stated that they have to talk about the project phasing. Mr. McGuire stated they have a phasing plan and wanted to incorporate them into their next set of plans, and they will submit those plans with a response to all of Mr. Clouser’s comments. Mr. Wilkin asked Mr. McGuire how many phases he would be proposing. Mr. McGuire stated two phases. Mr. Clouser asked Mr. McGuire if the phasing would be on either side of Crescent Avenue? Mr. McGuire stated yes. Ms. Mayle asked where the pesticide material was going to be stored on lot #4. Mr. McGuire showed Ms. Mayle on the plan, and indicated there would be a restriction easement put in place. Mr. Moriello added that the plan has to be approved by the Ulster County Health Department. Ms. Mayle asked how they would set that up so that someone is maintaining that, and it is not compromised. Mr. Wilkin asked Mr. McGuire is some sort of fiber would go on top of the remediated soil. Mr. McGuire stated they would cap it with a fabric, with twelve inches of clean soil on top of it, with grass and natural vegetation. Ms. Mayle asked Mr. McGuire if they would be getting updated maps. Mr. McGuire stated absolutely. Mr. McGuire added that he would be responding to Mr. Clouser’s comments as soon as possible. There was discussion regarding providing a letter to waive the 62 day timeframe upon the close of the public hearing. Mr. Moriello stated they waived it in the record this evening.

The applicant will supply the board with updated revised plans.

OLD BUSINESS

Orchard Heights-Proposed 8 Lot Subdivision (Palazzo Lane) SBL#95.1-7-29.314

Mr. William James was present to represent the applicant, along with Attorney, Kenneth Stenger. Ms. Hilbert stated that Planning Board Attorney Jason Shaw had drafted a Driveway Improvement Agreement which was presented to the Town Board at their April 16th. meeting. Ms. Hilbert stated that the Supervisor and Town Board were going to send it to the Town Attorney, Paul Kellar, for his review. Mr. Croce, Supervisor, was present in the audience, and indicated that they did have Mr. Kellar review the document and there is little enthusiasm for the Town to enter into that agreement, and it is the feeling of the Town Board that they do not want to be responsible for building driveways on private property. Ms. Hilbert asked the Planning Board members if they had a chance to review the driveway agreement. Ms. Mayle asked if there was any point to discuss the agreement if the Town Board doesn't want to do it. Mr. Stenger stated they did meet with all the interested parties, it was very clear that the meeting with the Town Board was just for informational purposes, because it was short notice. Mr. Stenger stated they would be willing to post an escrow to pay for David Clouser (as Town Engineer) as the inspector for the Town, and the Town Board can put a condition that, in this subdivision no one will get a certification of occupancy without Mr. Clouser certifying the driveway is constructed in accordance with the specifications. Mr. Stenger added, with that model, you take the Town Board out of the potential road building business and you still protect the goal, which is, how are you assured this driveway that you approved is built in accordance with your specifications. Mr. Stenger added that was the only idea he had, other than that, they should have a vote without any conditions. Mr. Stenger stated that they would put together the money that Mr. Clouser thinks he would need to do his job. Mr. Matthews asked if the project gets approved without a driveway agreement and something happens, does the Town have any liability? Mr. Stenger stated he is sure that the Town Attorney, Paul Kellar, would advise the Town with respect to potential liability for this Town. Mr. Stenger added once the Planning Board approves the specifications, the enforcement of your conditions becomes the Town Boards prerogative. Mr. Matthew stated that the issue of liability may be a question for Planning Board Attorney Jason Shaw to review. Ms. Mayle stated she is concerned about the enforcement aspect of it, because she doesn't know if the Building Inspector has the authority to deny the C.O. just because the driveway isn't constructed. Ms. Mayle stated they would have to check with the Town to see if they have that enforcement mechanism in place. Mr. Wilkin stated in the past, the driveway has always been no man's land, and if they do decide to go with this scenario, the Town Board and the Planning Board have to know who is going to be overseeing this. Mr. Wilkin added that the Town Engineer should be answerable to someone in the Town that is overseeing this. Mr. Stenger stated it is up to the Town Board to say that they would entertain them funding the inspections. Mr. Stenger stated that they could put a note on the map that says, "*here is the specifications on lot #3, #4 and #5, no C.O. shall be issued but for the certification of the completion of the driveway built in accordance with the specifications of this approval.*" Mr. Stenger added that the Building Inspector is the Zoning Administrator, he is the first line in enforcement of what the Planning Board approves.

Ms. Mayle stated the Planning Board would be approving a project that says the Code Enforcement Officer can put a stop work order on a project because a driveway has not been constructed properly, and it doesn't appear under the Building Code Enforcement that the building permit, as well as the C.O. covers the construction of a driveway, it is only limited to the building and the structure itself. Ms. Mayle stated she does not want to put the Town in a situation to say "let them figure it out." Mr. Stenger stated he would be happy to put money in escrow to fund the inspection of the driveways, and that would require Town Board approval to do that. Mr. Stenger added that all parties have to be comfortable that the Building Inspector has the jurisdiction to enforce that condition, and if that is it, let's pass this resolution and make the condition that the Town Board sign off on it. Mr. Stenger asked Supervisor Croce if he would be willing to take the Town Board the conditions that he is suggesting, and see what they have to say. Mr. Croce stated the first step would be to talk to their legal counsel. Mr. Croce added that it seems they are unsure as to what authority the Building Inspector has or would have, presenting this scenario as it is being presented this evening. Mr. Croce stated if someone wanted to put that request in concise form, he can't speak for the entire Town Board, but he would think that they would want some advise from Paul Kellar as to whether or not the Building Inspector has the authority to enforce this regulation that this driveway has to be built to Mr. Clouser's specifications. Mr. Stenger stated that he would like to get a resolution of final approval tonight, subject to the Town adopting a resolution subject to putting a note on the map that the applicant agrees to the condition that no C.O. would be issued for the three lots except upon this condition; which is the Town Engineer certifying the driveways are constructed per the specifications. Mr. Stenger added that the Town has to agree that they will enforce that condition through the Building Inspector's office and accept and administer \$7,500.00 from the applicant to defray the cost of inspection. Mr. Stenger stated he thought it gave everyone a narrowly defined target for the Town Board to look at. Mr. Stenger added if they don't do it this way, he doesn't have any other ideas. Ms. Mayle stated if Mr. Stenger gets an affirmative response from the Town Board, what is the issue about coming back to the Planning Board and finalizing everything. Mr. Stenger stated he would like to go to his client and say to them, but for this one identified issue, they are done. Mr. Clouser stated just by New York State Town Law the Building Inspector can't issue a C.O. if he believes there is not safe access, but that is an interpretation by the Building Inspector on what is safe. Mr. Clouser added that there needed to be some way to tie in the design of those driveways. Mr. Wilkin stated that he would also include in the details that it would be up to the Building Inspector, if it is going to be the Building Inspector, to oversee the Town Engineer and to call the Town Engineer at the initial stage. Ms. Mayle stated she wanted to make sure that the language that would be put on the map would be appropriate to this particular situation and it gives the Building Inspector not only the authority but he is acknowledging that these driveways have to be constructed in this manner, and she does not know what that would look like in terms of language. Mr. Stenger stated the first thing is they can't speak for the Building Inspector, but they can say, as applicant and Planning Board together that after working on this project for the last eight months, they all share the opinion that the only means of safe ingress and egress from the nearest public road to the house on these three lots, is a driveway constructed in accordance with these specifications. Mr. Stenger stated they can make that a binding affect.

Mr. Stenger added, as a consequence of that finding of fact, they now will impose a condition that says:

- No certificate of occupancy will be issued to the affected lots except upon certification by the Town Engineer that this driveway has been built in accordance with the specifications that they have approved.

Mr. Stenger stated there would have to be a resolution from the Town Board that says the following;

- “The Town is willing to enforce that condition and accept and administer an escrow fund in the amount of \$7,500.00 and that they will administer that fund for the purposes of defraying the cost of Mr. Clouser’s inspection.

Mr. Stenger asked if he could read that into the record. Ms. Hilbert asked if anyone else had any comments. Mr. Clouser stated that timing is really important on when the inspection for the driveway starts. Mr. Croce stated that is an important point, and how would they coordinate this with the Building Inspector and Mr. Clouser’s office that this construction project reaches a certain phase, and then Mr. Clouser does his inspection. Mr. Gorres stated that the driveways should be roughed in properly to the specifications, and Mr. Clouser should be able to inspect that, and that should be done before they even build the house. Ms. Mayle asked if they could develop an inspection protocol and schedule as part of the contingent final approval. Mr. Clouser stated he would need to depend on the Building Inspector to some point, to tell him how it is going, and when he would need to be there next. Mr. Stenger stated he read the resolution, and condition #2 is no longer operative, so what he would like to suggest is to make a motion and to say that they would like to modify the existing Resolution of Final Approval by first, putting in a specific finding of fact that the Planning Board has found, that safe egress and ingress for the affected lots #3, #4 and #5 may only be achieved by the construction of the driveways as approved in specification by this Board. Mr. Stenger added, he would like to have that as a statement of fact specifically in the resolution. Mr. Stenger continued, stating, as a consequence of the forgoing, this Planning Board would impose a condition on its approval that will be placed on the map, that says “*On lots #3, #4 and #5, no certificate of occupancy shall be issued except upon receipt of certification of the completeness of a driveway that is built in accordance with the specifications approved by the Planning Board.*” Mr. Stenger stated that would be the note on the map. Mr. Stenger stated that note would also go in the deed, and any contract of sale. Mr. Stenger stated that is how he would modify the resolution, and in place of #2 he would place a condition that says that they need an agreement by the Town Board that;

1. They are willing and able to enforce the Planning Board’s condition
2. That their ability to enforce that condition will include putting into place a protocol to assure efficient coordination between the Town’s Engineer and Building Department and;
3. That the Town Board will accept and administer an escrow in the amount of \$7,500.00 to be applied to defray the cost of the certification by the Town’s Engineer.

Mr. Croce asked if the \$7,500.00 escrow would imply that if the fees are more than \$7,500.00, the escrow account would be replenished. Mr. Stenger responded that the escrow account is not a cap, and it is the intention of this applicant to defray any cost or expense as it is incurred, within reason. Ms. Mayle stated she has no problem with the resolution, but she would like to see it in

final form. Mr. Stenger stated he has no problem with a provisional resolution subject to the final resolution. Mr. Stenger asked when the next meeting was scheduled for the Planning Board. There was discussion that the next scheduled Town Board meeting was May 7th. and the next Planning Board meeting was scheduled for May 13th. Ms. Hilbert stated the Planning Board is comfortable taking a vote on a conceptual resolution of how it is going to be drafted. Ms. Mayle stated it would be subject to any input from the Town Board or the applicant, and then add the maps, mylars, fees. Mr. Wilkin asked if they were doing a resolution or a motion. Mr. Stenger stated that they are doing a motion to ask the Planning Board Attorney to re-draft the resolution of final approval in accordance with the language that he previously suggested.

MOTION: Mr. Wilkin made a motion to include the language suggested by Mr. Stenger as follows: as a note on the map: “*On lots #3, #4 and #5, no certificate of occupancy shall be issued except upon receipt of certification of the completeness of a driveway that is built in accordance with the specifications approved by the Planning Board.*” And; in place of #2 on the resolution;

1. They are willing and able to enforce the Planning Board’s condition
2. That their ability to enforce that condition will include putting into place a protocol to assure efficient coordination between the Town’s Engineer and Building Department and;
3. That the Town Board will accept and administer an escrow in the amount of \$7,500.00 to be applied to defray the cost of the certification by the Town’s Engineer.

Mr. Gorres seconded the motion. All ayes on the vote.

The Planning Board Attorney will be contacted to re-draft the final resolution. The applicant is scheduled for May 13th.

VOUCHERS

Planning Board Attorney, Jason Shaw

Voucher-in the amount of \$1,480.00 to come out of the escrow of Orchard Heights.

MOTION: Mr. Baum made a motion to approve the voucher for payment with Mr. Gorres seconding the motion. All ayes on the vote

ADJOURNMENT

MOTION: Ms. Mayle made a motion to adjourn with Mr. Gorres seconding the motion. All ayes on the vote.

The meeting adjourned at 9:25 p.m.

Respectfully submitted by
Susan Bolde, Planning Board Clerk