

**MINUTES OF THE PARSIPPANY – TROY HILLS
PLANNING BOARD –MEETING
MONDAY JUNE 14, 2010**

Chairman Parikh called the Planning Board Meeting of Monday, to order at 7:05 PM.

Members Present: Ms. Bronfman, Councilman dePierro, Mr. Dinsmore, Mr. Ferrara, Mr. Keller, Mr. Mele, Mr. Purzycki, Chairman Parikh

Also Present: Anne Marie Rizzuto, Planning Board Attorney
Malvika Apte, Burgis Associates
Gordon Meth, The RBA Group

Absent: Mayor Barberio, Mr. Burns, Mr. Corcoran

Announcement is made that adequate notice of this meeting has been given, that it is being conducted in accordance with N. J. S. A. 10:4-6 et seq. of the New Jersey “Open Public Meetings Act”.

The meeting was opened to the public on anything not on the agenda. There was no one in the public wishing to speak.

Mr. Keller made a motion to approve the minutes of the regular meeting of April 26, 2010. The motion was seconded by Ms. Bronfman. Ayes: Ms. Bronfman, Mr. Dinsmore, Mr. Ferrara, Mr. Keller, Mr. Mele, Chairman Parikh.

The first item on the agenda is **63 NBR LLC**, Block: 601 Lot: 11, 63 North Beverwyck Road, Minor Site Plan / “C” Variance, Application #10:502/10:1. This is a continued hearing from April 26, 2010. Robert Garofalo represented the applicant.

New reports for the record;

Burgis Associates dated June 10, 2010

The RBA Group dated June 9, 2010

Health Department dated June 7, 2010

It was noted for the record that Councilman dePierro and Mr. Purzycki listened to the recording of the previous hearing. Mr. Purzycki disclosed that he has a mutual friend with the applicant. Mr. Garofalo said he has no problem and it was noted that he has no financial interest in the project so there is no conflict. Councilman dePierro said in listening to the recording he had some questions so he asked for a short review.

Mr. Garofalo recalled Mohamed Seyam the applicant who is still under oath. Mr. Seyam reviewed existing conditions and his plans. Currently there is a 30 x 25 ft

building accessed by five or six stairs. The usable retail space is just over 300 sq. ft. so it is very difficult to rent. He proposes a small restaurant in a two story building that he will manage himself.

There were issues from the first hearing. Regarding occupancy Mr. Seyam said the first floor will be kitchen, rest room and storage. There will be tables in front for dining for 26 people and five seats at a bar area. The second floor has additional seating for 24 at tables, 10 people at a lounge area and 6 at a bar area. The total is 71 on both floors.

The lighting on the exterior will be on front with flood lighting towards the signage. The entire building will be stucco. As to parking Mr. Seyam did an analysis. He is a former Parsippany Police Officer who spent time in the traffic division. He did an analysis he did that is a 14 day parking study which was marked as **Exhibit A-2**. His testimony is as a lay person but with experience and based on his observations.

Mr. Seyam did a study from May 12 to May 25 of the lot on North Beverwyck and Minnehaha which is closest to the site. He counted the number of cars parked each time he visited and took photos. There are 34 spaces in the lot. The conclusion is that the average number of spaces open was 22. He did not count street parking but he said there was always available parking on North Beverwyck Road and there are also spaces on Minnehaha. There is another municipal lot further down North Beverwyck Road that he did not study.

There had been questions about garbage at the last meeting. A structure for the garbage in the buffer would require another variance. Mr. Seyam said they will put the garbage in sealed containers in the buffer area. They are leaving the question up to the board about how to handle the garbage. On the plans is a fenced in area in the buffer area. The applicant would still have to bring the garbage out to the front for pick-up. Mr. Purzycki asked about a compactor. Mr. Seyam said it would still have to be stored and brought out front. Mr. Dinsmore noted that there is an odor ordinance so the garbage will have to be properly stored. Councilman dePierro said he would rather grant a variance for a fence to protect the garbage from animals.

Ms. Apte had some questions. She said the plans do show a fenced in area for the garbage and she asked what the height would be. Mr. Garofalo said they will comply with the code on height. She said the occupancy shows 71 seats and what is that based on. Mr. Garofalo said it was based on the layout. Parking is based on the number of seats or square footage. Mr. Seyam said if they calculated based on seats they got 23.6 spaces which was larger than the number required if you calculated on square footage. The dining area is 1418 sq. ft. with 588 sq. ft. on the first floor and 830 on the second floor.

Ms. Apte said the plans show a seating plan for the second floor and she asked if the second floor could be used for parties. Mr. Seyam said the total occupancy of

the second floor is 49 and they will use it for dining, not for parties. The 49 number is the maximum, they anticipate an actual number of 40 occupants. Mr. Keller asked about the balcony. Mr. Seyam said that would be for smoking, not for seating.

Ms. Apte asked about the buffer in back. They did provide some landscaping but they propose a fence. The neighbor has a six foot stockade fence and the area is heavily wooded with a three foot retaining wall as shown in photo 14 on exhibit A-1.

Ms. Apte asked about signage. Mr. Garofalo said they will conform with the sign ordinance. She asked about ADA parking. There is no ADA access for the second floor. The use on the second floor is the same as the first so there is no requirement for handicap access. The lot on North Beverwyck Road and Minnehaha has a handicap space.

Mr. Meth agrees with Mr. Seyam's observations on parking and said his own observations back it up. The lot Mr. Seyam studied is within 100 feet and 300 feet is what is acceptable in NJ for walking distance. Mr. Meth said there is no information about Stormwater run-off and flow from the back. There are no grades on the plans. Mr. Garofalo said those plans can be a subject to condition to an approval.

Ms. Rizzuto verified the count of people for occupancy. There will also be 4 to 6 employees. For the variance there are 24 parking spaces required and zero on the site.

Mr. Keller asked about the stairway. The utility storage room appears to have a doorway opening on to that stairway. If the utility room includes the furnace and there is a fire how do people on the second floor get out? Mr. Seyam said that stairway goes down to the new proposed cellar, under the stairway that goes to the second floor. The furnace may be in the cellar, they have not determined it. The building will have sprinklers. That will be subject to the Fire Code Official in his review.

There were no further questions from the Board and none from the public.

Mr. Garofalo called Ronald Reinertsen who was sworn in and qualified as Planner. Mr. Reinertsen works with Pennoni and he did the planning analysis.

Mr. Reinertsen said the variances requested are for parking, coverage, and the buffer are C-1 variances caused by the uniqueness of the lot. **Exhibit A-3** is an aerial photo from 2007 GIS Database dated 6-14-10. This photo shows the hardship created by the size of the lot. It also shows that none of the other businesses in the area have on-site parking. The municipal lot has sufficient space even at peak usage. He said the negative criteria is minimal.

Me. Mele asked if the rear door would be lit at night in case of an emergency. Mr. Seyam said it is not to be used as a regular exit, only emergencies. He said he will place a motion detector light above the rear door.

Chairman Parikh referred to the parking in the municipal lot. He said it looks like when the restaurant is successful the patrons will fill the lot. He asked where the employees will park. Mr. Seyam said there are several streets with parking including some of the side streets. He thinks that with four to six employees there will be plenty of parking.

Mr. Dinsmore asked if this was the way to start a vibrant walking downtown? HE said for future planning this could be a consideration. Mr. Reinertsen agreed that this type of small, not chain, restaurants are part of what make that type of downtown area.

Councilman dePierro noted that there is a Merchants Association in Lake Hiawatha and perhaps they could suggest that employees park ion the lots and leave the street parking for customers. There is two hour parking on North Beverwyck which should help that situation.

There were no questions from the public. Mr. Purzycki asked about a variance for a fence in the rear buffer for the garbage area. Councilman dePierro said several members of the board had suggested the additional variance and Mr. Reinertsen agreed from a planning aspect.

Ms. Apte asked about the occupancy on the second floor. She asked if the second floor was rented out for parties what impact that might have on parking. Mr. Reinertsen said the occupancy is the same if it is a party or open dining.

Ms. Rizzuto said the applicant gave lay testimony regarding the ADA requirements for the second floor. Mr. Reinertsen said if you are offering equal service to the public on the first floor it is not necessary for the second floor to be ADA accessible. Regarding the location of fencing and the garbage area in the buffer she noted they will provide detail on the fence. There will be sealed garbage cans, not a dumpster.

There was a waiver requested regarding details on adjacent buildings. Ms. Apte said they have provided sufficient testimony on that issue. There is no formal lighting plan it can be submitted and approved in the building permit process. The plans now show demolition of the existing building and construction with a new one including a basement. Mr. Meth asked how you build up to the property line. Mr. Garofalo said that is a building issue, not a planning board issue.

There were no further questions. Mr. Garofalo summed up and requested an approval.

Mr. Keller made a motion to approve the Minor Site Plan and "C" Variance for 63 NBR, LLC, application # 10:502 subject to the Burgis Associates report of June 10, 2010, The RBS report of June 9 and the Health Department report of June 7. In addition the additional variance for a fence in the rear buffer to enclose the garbage area, and subject to compliance with Stormwater management. Motion seconded by Mr. Dinsmore. Ayes: Ms. Bronfman, Councilman dePierro, Mr. Dinsmore, Mr. Ferrara, Mr. Keller, Mr. Mele, Mr. Purzycki, Chairman Parikh.

The next case is **Sunnyside Builders, LLC**, Block: 475 Lots: 2, Knoll Road, Preliminary Major Subdivision / "C" Variance, Application # 09:004 / 09"7. Robert Garofalo represented the applicant. This is a continued hearing from April 26, 2010.

New reports for the record;
Burgis Associates dated June 14, 2010

For the record, Councilman dePierro and Mr. Purzycki certified that they listened to a recording of the previous hearing.

Mr. Garofalo reviewed the previous hearing. He called Peter Korzen who is still under oath. He explained that the application is for a three lot subdivision with two of the three conforming. The third lot is non-conforming in lot width of 53.26 where 100 feet is required.

Exhibit A-1 is an alternate plan of three lots dated 4-17-10. It shows a 3 lot subdivision with a cul-de-sac. The cul-de-sac provides access to the front of lots 2.01 and 2.03. The dwellings are shown of about the same size as the previous plan. There is an easement on lot 2.03 for a detention basin. There is no change to lot 2.01. Lot 2.02 has the home rotated 90degrees so the side faces lot 2.01. Lot 2.03 faces the cul-de-sac but pushed back with a smaller home closer to the neighboring properties. The increase in impervious coverage with the new road is 11,127 sq. ft for a total of 20,958 sq. ft. The original proposal had coverage of 12,809 sq. ft. The area of disturbance is 76,769 sq. ft. vs. 60,090 sq. ft. on the original plan.

Exhibit A-2 is alternate plan #2, 4 lots dated 4/27/10. The lots also conform, 4 lots with a cul-de-sac. It still has the detention basin. The impact on impervious coverage is increased by 9,614 sq. ft. for the roadway, for a total of 22,843 sq. ft. The limit of disturbance is the same as the alternate 3 lot plan. These plans need no variances.

There were no questions from the Board. Chairman Parikh opened the floor to the public. Patricia O'Flaherty, 169 Knoll Road asked about the basin for storm water management. There is one on the alternate plans. On the original plans there were dry wells as shown on sheet 4 of 5. She asked if the dry wells still exist with the alternatives. Mr. Korzen said that remains to be seen, but with a new road the volume of run-off would be greater and require the basin. It would be 3 to 4 feet deep and be fenced. She did not understand what would happen to the

rear houses. Mr. Korzen said lot 2.01 would still have the dry-wall and lots 2.02 and 2.03 would drain to the basin.

Mr. Meth commented that these plans have different criteria and would require the basin since they are disturbing more than one quarter acre.

There were no further questions.

Mr. Garofalo called Michael Tobia who was sworn in and qualified as a planner. HE said the original proposal had 2 conforming lots and lot 3 is oversize with an unusual shape. It is 46,396 sq. ft. where 15,000 is the required in the zone. This lot meets all set-backs but has only 53 feet width at the minimum front lot set-back. The width at the home is over 150 sq. ft. There is a dedication of part of lot 2.01 to the neighboring lot for the driveway set-back which currently encroaches. The easement will also be done so an existing garage that encroaches may remain as long as the building exists.

Exhibit A-3 is a photo of the existing conditions dated 4/21/10. **Exhibit A-4** is a photo of a house on 10 Foote Lane built by the applicant which is similar to the home proposed for lot 2.03 also dated 4/21/10.

Mr. Tobia discussed the proofs required for the variance. A C-1 variance is based on hardship which is present due to the shape of the lot. A C-2 variance requires the benefits to outweigh the detriments. They are going for both types of proof.

The alternates create more coverage in the road than the coverage in all three homes including driveways combined. It would also create another road for the Township to maintain.

Councilman dePierro asked what is there to prevent the future owner for lot 2.03 from coming back for a future subdivision. Mr. Tobia said he does not see a way for such a subdivision to be designed. There is no way to stop someone but such a subdivision would still need approval from the board. Councilman dePierro asked if there could be a deed restriction and you could not but the board could require the resolution be filed so a title search would see the board's opinion.

Mr. Tobia pointed that this is not a density case. In addition the home would not have any set-back issues where the dwelling would be built. Mr. Keller asked how far the home would be from Knoll Road. Mr. Tobia said the dwelling would be 150 feet but the mail box would be at the street and there would be a clear sight line to the home. Mr. Keller asked if a fire truck could get back there. Mr. Korzen said the drive would be 12 feet wide with a 18 foot clear zone, three feet on each side. There is a hydrant in front of lot 2.02.

Exhibit A-5 is an aerial of the site and the neighboring houses. There is nothing that could stop a new owner from situating the house other than to Knoll Road but it would not make much sense, you would lose a very desirable back yard.

Chairman Parikh asked Ms. Apte about the two alternate concepts. Alternative 1, the 3 lot subdivision creates an irregularly shaped lot, 2.03, and a need for greater impervious coverage for the municipal right of way, and a storm water basin. Alternative , the 4 lot subdivision, created another lot, more impervious coverage and the basin as well as another irregular lot, 2.04.

Mr. Tobia also added that the basins do not count in the coverage calculations, but the area has to be clear-cut so the area of disturbance is greater.

There were no other questions from the Board. From the public Ms. O'Flaherty asked if they had considered two lots. Mr. Tobia said two 38,000 sq. ft. lots would not fit the character of the neighborhood and would probably see huge houses which would also be out of place. She asked about the basin and how it was made. She said there are very large trees along the lot line of 2.03 on her property and what would be the impact on them. Mr. Korzen said the basin would just be a depression with grass that would fill up in the rain and drain. There would be a berm around the basin. He is not sure about the details and any impact on the trees because the plan is only conceptual.

Derek Loux, 222 Lancaster said the lots to there rear are very wet with drainage problems. Mr. Korzen said currently there is no Stormwater management at all. The installation of the dry-wells should help considerably. They are shown on sheet four of five in the submitted plans.

There were no more questions from the public.

Mr. Garofalo summed up and said they feel the original plan is really the best. The applicant has no problems with complying with all of the reports.

Mr. Meth recommended coverage limits be recorded and if the applicant exceeds them they have to come back to the board for Stormwater management planning. They are just at the limit of Stormwater controls. This could be monitored at the building permit time and if they go over the impervious coverage limit they would have to come back to the Board for a new variance. Mr. Garofalo asked how that restriction would affect the owners of the individual lots.

Mr. Meth said what is needed is a trigger for the requirement of Stormwater Management. Mr. Garofalo said there are two levels. The first is the applicant who gets an approval and builds to that plan. Later individual owners may make changes to their own lots when it is no longer part of a larger site. Mr. Meth is concerned that this is a way around our requirements.

Mr. Keller made a motion to approve the Preliminary Major Subdivision application for Sunnyside Builders, LLC, Application # 09:004/09:7 subject to the rerports of Burgis Associates dated March 2, 2010 and June 14, 2010, The RBA Group dated March 8, 2010, the Water Department dated April 22, 2020

and November 20, 2009, Engineering and Environmental dated March 8, 2010 and December 14, 2009, Tax Assessor dated March 1, 2010 and Morris County Planning Board dated March 23, 2010. Also subject to the resolution being recorded with the County Clerk. The motion was seconded by Ms. Bronfman. Ayes: Ms. Bronfman, Councilman dePierro, Mr. Dinsmore, Mr. Ferrara, Mr. Keller, Mr. Mele, Mr. Purzycki, Chairman Parikh.

Chairman Parikh called a five minute recess.

The meeting was reconvened at 9:37pm.

Roll Call: Ms. Bronfman, Councilman dePierro, Mr. Dinsmore, Mr. Ferrara, Mr. Keller, Mr. Mele, Mr. Purzycki, Chairman Parikh.

Also Present; Ms. Apte, Mr. Meth, Ms. Rizzuto.

Chairman Parikh announced that the matter of the Puddingstone Developers Agreement will be postponed to July 12, 2010.

The last case is **Patricia Campbell**, Block: 558 Lot: 17, 47 Lake Shore Drive, Lake Hiawatha, Minor Subdivision / "C" Variance, application # 09:006/09:8. Douglas Kinz represented the applicant.

Reports for the record;

Burgis Associates dated December 15, 2009

The RBA Group dated December 6, 2009

Water Department dated November 25, 2009

Tax Assessor dated November 24, 2009

Fire District #4 dated December 8, 2009

Councilman dePierro recused himself because his family has been close friends with the applicant.

Mr. Kinz explained that the applicant has owned the lot since 1991 and the lots date back to 1934. The rear portion of the lot fronts on Norman Ave and has a garage structure which is used for storage. He noted that many of the lots facing Norman Ave are 40 feet wide. From what Mr. Kinz found out the two lots were combined in about 1974.

On the west side of Norman Ave. 8 of 16 lots are 40 feet and on the east side 6 of 14 are 40 feet wide. The application requires two variances therefore, for width and area of the lot on Norman Ave. which will be 40 feet wide and 4855 sq. ft. where 60 feet and 6000 sq. ft. are required. They are not seeking a C-1 variance based on hardship because they are creating the hardship. They are seeking a C-2 variance where the benefits outweigh the detriments.

The benefits he cited are that presently it is an irregular lot fronting on two streets which probably should not have been joined anyway. The subdivision will create two "normal" lots per the neighborhood. The garage which is in bad shape will be taken down.

Mr. Kinz called Patricia Campbell, the owner of the property who was sworn in. She has owned the property since 1991. She said the lot is very big to maintain and she does not use the garage. It is just she and her daughter living in the house. She will continue to reside in the house in front and sell the rear lot. There were no questions from the board.

David Hals the engineer was sworn in and qualified. He prepared the plans and described the lot. The front lot is 11,065 sq. ft with 80 feet in width, with a single family dwelling facing Lake Shore Drive. The rear lot is 4855 sq. ft. facing Norman Ave. There is a garage structure on the rear lot. The rear lot has a power line easement across it.

The proposal is to subdivide the two lots. The garage which is non-conforming because of side yard setback will be demolished. The lot facing Norman Ave. will have a building footprint of 27 x 29 feet to meet all of the set-backs and the easement. That is a footprint of 783 sq. ft. and if a home is two stories it will be about 1500 sq. ft. and conform with the homes in the neighborhood. The topography of the lot is flat.

The dwelling on the Lake Shore Drive is non-conforming with a 1.98 foot side setback and there are no plans to change that home in any way. Mr. Hals said the proposed dwelling on the rear lot will be behind the power easement and will visually line up with the other homes on the street.

Exhibit A-1 is a copy of the 1934 map of the properties.

Ms. Rizzuto said the garage would have to be demolished prior to the deeds being signed. She asked for a copy of the recorded easement and Mr. Kinz said he would get that to her. Mr. Purzycki asked Mr. Hals to confirm that a house could be built on the rear lot and Mr. Hals said yes a home definitely could fit on the lot. Mr. Meth said he has no problem with waiving sidewalks since there are none in the neighborhood.

Mr. Keller asked the width of the lots on either side of the proposed lot on Norman Ave. Mr. Hals said to the north the lot is 40 feet wide and to the south it is 60 feet wide.

There were no further questions from the Board or the public.

Mr. Kinz called Frank D. Mileto who was sworn in and qualified as Architect and Planner. Mr. Mileto said the existing lot is very irregular and they propose to subdivide it along the same line as the other lots facing Norman Ave. He said it is the only lot with no dwelling on it. The dwelling to be constructed will conform to those on the neighborhood.

Mr. Mileto said dividing the lots would make the two more consistent and there will not be a rear lot is everyone else's front yard. There are no detriments to the neighboring lots.

On Norman Ave to the east 8 of 16 lots are 40 feet wide and to the west 6 of nine lots are 40 feet wide. **Exhibit A-2** is a copy of the current tax map with the property in question rendered.

Mr. Mileto said that the two neighbors to the sides of the Norman portion of the lot were interested in purchasing the land.

Mr. Mele asked about the neighbors and Mr. Kinz noted that there were no neighbors present with objections.

Mr. Keller made a motion to approve the Minor Subdivision for Patricia Campbell, Application # 09:006/09:8 subject to the reports of Burgis Associates dated December 15m 2009, The RBA Group dated December 6, 2009 except item # 2 regarding sidewalks, the Water Department dated November 25, 2009 and the Tax Assessor dated November 24, 2009. The Motion was seconded by Ms. Bronfman. Ayes: Ms. Bronfman , Mr. Dinsmore, Mr. Ferrara, Mr. Keller, Mr. Mele, Mr. Purzycki, Chairman Parikh.

The meeting was adjourned at 10:20PM.