

# Township of Manalapan

## Department of Planning & Zoning

120 Route 522 & Taylors Mills Road

Manalapan, NJ 07726

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## Planning Board Minutes

### April 25, 2019

The meeting was called to order with the reading of the Open Public Meetings Act by Chairwoman Kathryn Kwaak at 7:33 p.m. followed by the salute to the flag.

**Roll Call:** Secretary, Daria D'Agostino

In attendance at the meeting: Todd Brown, David Kane, Daria D'Agostino, Kathryn Kwaak, Jack McNaboe, Barry Jacobson, Richard Hogan, Barry Fisher, Steven Kastell

Absent from the meeting: John Castronovo, Alan Ginsberg

Also present: Ronald Cucchiaro, Planning Board Attorney  
Brian Boccanfuso, Planning Board Engineer  
Jennifer Beahm, Planning Board Planner  
Lisa Nosseir, Recording Secretary

Mr. Cucchiaro swore in Jennifer Beahm, Professional Planner and Brian Boccanfuso, Professional Engineer.

### **Minutes:**

A Motion was made by Mr. Fisher, Seconded by Mr. Brown to approve the Minutes of February 28, 2019 as written.

Yes: Brown, Kane, D'Agostino, Kwaak, McNaboe, Jacobson, Fisher, Kastell  
No: None  
Absent: Castronovo, Ginsberg  
Abstain: None  
Not Eligible: Hogan

A Motion was made by Ms. D'Agostino, Seconded by Mr. Fisher to approve the Minutes of April 11, 2019 as written.

Yes: Brown, Kane, D'Agostino, Kwaak, McNaboe, Jacobson, Hogan, Fisher, Kastell  
No: None  
Absent: Castronovo, Ginsberg  
Abstain: None  
Not Eligible: None

**Resolutions:**            **PAS1902 ~ Eames Gilmore, Target Corporation**  
   **55 HWY 9 ~ Block 22 / Lot 14.04**  
   **Amended Final Site Plan**

A Motion was made by Mr. Brown, Seconded by Ms. D'Agostino to approve the Resolution for PAS1902 as written.

Yes: Brown, Kane, D'Agostino, Kwaak, McNaboe, Jacobson, Hogan,  
No: None  
Absent: Castronovo, Ginsberg  
Abstain: None  
Not Eligible: Fisher, Kastell

**PPM1837 ~ Stavola Asphalt Company**  
**Woodward Road and Route 33**  
**Block 7232 / Lots 1.02 1.03 2.04 and 3**  
**Preliminary Major Subdivision**  
**Preliminary Major Site Plan**

Mr. Cucchiaro stated that he has had several conversations with the applicants attorney, Luke Pontier of Day Pitney regarding this resolution. He had initially provided a draft of the resolution and he received their comments. Mr. Cucchiaro made several changes to it. The comments can be broken into three categories. The first has to do with the discussion concerning the cross easement. It is Mr. Cucchiaro's interpretation of what went on during the hearing was that the applicant was not proposing a cross easement, one was not required as a result of the approval, but that the ultimate issue as to whether there would be a cross access easement amongst the lots, was going to be deferred to such time as the other lots were being developed.

Mr. Cucchiaro said the applicant has asked for some modifications to explicitly state that there are no cross access easements being proposed and that it evident in the resolution. Mr. Cucchiaro asked Mr. Pontier if this is an accurate description? Mr. Pontier said yes that is accurate. He stated that the applicant is willing to live with everything that was discussed today with the exception of the language regarding the sewer being in flux. Mr. Cucchiaro asked is that the only issue you want to discuss? Mr. Pontier said we are fine with all the other changes. Mr. Cucchiaro said he reviewed it and he put in the stormwater management, so it needs to be changed to more specifically reference the sewer being in flux. What Mr. Cucchiaro believed the purpose of him using the word flux was, was that when the rezoning happened, and when this process began, there was an expectation on everyone's part, the applicant and the Board, that there was going to be a different sewer access plan. That ran into trouble because there are some Green Acres issues and other issues that are being worked out. The applicant stated as much, or confirmed as much, during the hearing process and there was a discussion that the plan that they proposed still worked and required a pump station, but could change in the future if the DEP issues associated with the current sewer situation were to change. He viewed that as not a situation that was necessarily set in stone, and not one that we had anticipated or wanted, and one that was subject to change in the future. He believed that to be consistent with the word flux.

Mr. Pontier stated that our understanding is that the sewer pump station that was proposed was approved by the Board. Our concern is with the inclusion of in flux. A third party may not understand that the sewer system as shown on the plans was in fact approved by the Board. He shares in the frustration with the sewer process that has played out, but as proposed the sewer system works and was approved and we would just like to correct the resolution to accurately reflect what is proposed and approved by the Board. The language that we suggested is objective and states what happens and it does include that the applicant will tie into a gravity system when it is constructed. The words in flux to us is of concern.

Mr. McNaboe said your intention is still to tie that building into the gravity, which will have to come by, whether it is under the lot next door, and the reason for that is, from the beginning, we kept saying we are talking about one 66 acre parcel. Although you are subdividing it, that is on you. We did the zoning and the overlay on this 66 acre lot.

Mr. Cucchiaro stated if you remember during the hearing, they were using the word temporary. We actually, as a Board, brought them to the conclusion that it could be permanent, but their own use of the word temporary would seem to suggest a situation that was less than solid. He does not disagree with Mr. Pontier, the Board approved this stormwater management plan, he thinks that is evident in the resolution because it says we approved the plan. He leaves it to the Board, but he believes there was significant discussion about it, there was use of the word temporary, there was discussion about what would happen if it changed, there was expression on everyone's behalf that there was a frustration with the process that everyone believed was going to work differently. He believes it is something that can be revisited at Final.

Ms. D'Agostino asked Mr. Pontier what his definition of in flux means? Mr. Pontier interprets in flux to be unsure, or not fully decided and subject to change. He agrees that the applicant did use the word temporary throughout the hearing, even though it could be a permanent solution if it needed to be. He sees in flux different from temporary.

Chairwoman Kwaak asked Mr. Pontier if he reviewed the video of the hearing? Mr. Pontier confirmed that he viewed the video and has read the transcript. Chairwoman Kwaak said if you recall, the applicant left the courtroom for a private conversation and came back and said that they would address whatever needed to be done. She does not see a problem with the words in flux since it is a Preliminary, and you are coming back for Final.

Mr. McNaboe said in the interest of center ground here, if we used a word like taking in flux out and putting temporary in, does that still meet what we were trying to achieve as a Board? Mr. Cucchiaro said he thinks it meets what you are trying to achieve, he thinks it is a worse word for the applicant. Mr. Cucchiaro asked Mr. Pontier are you asking for the word temporary? Because that is not what you suggested in the change. Mr. Pontier asked has the Board seen the suggested language that we offered? The Board said no. Mr. Pontier said our language would read, 'the application includes a pump sewer system to service the project in the event that a gravity sewer system is installed in connection with development on Lot 1. The applicant indicated that it will tie into the gravity system'. He believes that this accurately reflects the testimony that was provided and the wishes of everyone involved.

Chairwoman Kwaak said she was going to defer to the professionals on this matter. Mr. Cucchiaro said he wouldn't use the word 'indicated'. Indicate is a

suggestion, not an explicit statement. Chairwoman Kwaak said this is not Lot 1 we are discussing, we are discussing Lot 3 which is the assisted living piece. Mr. Cucchiaro asked Mr. Pontier to read it aloud one more time, which he did. 'The application includes a pump sewer system to service the project in the event that a gravity sewer system is installed in connection with development on Lot 1. The applicant *agreed* that it will tie into the gravity system'. Mr. Cucchiaro asked is that really tied to the development of Lot 1? Suppose that Lot 1 is never developed? Is there never going to be a tie into gravity sewer? He doesn't think that was what was discussed. Mr. Pontier said we can change it to in connection with development on the other Lots that are part of the larger parcel. Ms. Beahm said how about in the event that gravity sewer becomes available, or the ability to tie into a gravity sewer, because what happens if Lot 1 never gets developed, or anything else never gets developed? Mr. Cucchiaro said if we are going to take the word flux out, there needs to be some discussion as to how we got to this vs what everyone thought was going to happen and then secondarily, that if gravity sewer does become available, notwithstanding development or lack thereof on any other lot, there is going to be a tie in. We can take flux out, but there needs to be some discussion of why it is that you are even using the word temporary.

Mr. Pontier said he believes the applicant would be fine with that and we would want to see what that language is. That is what we want - we just wanted to reflect the record. Mr. Cucchiaro said he would like to go back also to the transcript and use precise words that were stated and quote them right out of the transcript so that we can capture all that. He would like to give it the revised resolution to Mr. Pontier before we resolve the matter. He could get the revisions to Mr. Pontier next week and we could place it on the agenda for the May 9, 2019 meeting. Mr. Pontier said he is ok with that.

Mr. McNaboe said when we did that, as Ms. Beahm said, that is part of our affordable housing plan, so when somebody said that it could be two years before you do the residential development, it was strongly said that this was not acceptable. We are also relying on that sewer, whether it is done by you, or by other developers, to come down that highway for other lots that we have tied in as well. These are dominos that have been set, we need everyone to do their bit of the work. Mr. Pontier said he understood.

Chairwoman Kwaak said that Resolution PPM1832 - Stavola Asphalt Company will be carried to the May 9, 2019 Planning Board meeting. Mr. Pontier thanked the Board for their time and he looked forward to reviewing the revised resolution with the applicant.

A Motion was made for Proposed Ordinance 2019-06 by Ms. D'Agostino, Seconded by Mr. Fisher to approve the Resolution as written.

Yes: Brown, Kane, D'Agostino, Kwaak, McNaboe, Jacobson, Hogan, Fisher  
No: None  
Absent: Castronovo, Ginsberg  
Abstain: None  
Not Eligible: Kastell

A Motion was made for Proposed Ordinance 2019-08 by Mr. Brown, Seconded by Ms. D'Agostino to approve the Resolution as written.

Yes: Brown, Kane, D'Agostino, Kwaak, McNaboe, Jacobson, Hogan, Fisher  
No: None  
Absent: Castronovo, Ginsberg  
Abstain: None  
Not Eligible: Kastell

**Applications:**        **PPS1903 ~ Samson Annamdevula**  
                                 **22 Crystal Court ~ Block 8422 / Lot 25**  
                                 **Minor Site Plan ~ Vacation of Cemetery Easement**  
                                 ***Carried from March 28, 2019***

Mr. Cucchiaro stated that the applicant was arranging for some more testing on site. This matter will be carried to the May 9, 2019 Planning Board. There will be no further noticing to property owners.

**PMS1913 ~ Ori Birnhack**  
**16 Pension Hill Road ~ Block 14.05 / Lot 71**  
**Minor Subdivision**

Kenneth Pape, Esq. of Heilbrunn, Pape represented the applicant this evening. They are asking for a minor subdivision with certain bulk variance relief to construct a duplex at 16 Pension Hill Road. Mr. Cucchiaro stated he reviewed the notices and they appear to be in order and the Board has jurisdiction.

Mr. Pape stated the lot is 20,000 sq ft and the zone requirement is 10,000 sq ft. There is a request for a 1,000 sq ft road dedication, so the lot will be reduced to 19,000 sq ft., which will therefore trigger the first variance. They are also requesting variance relief that is associated with a lot line going down the middle of the property. The zone on Pension Hill Road expressly permits duplex

residences and there are currently five duplex residences on five separate structures, for a total of ten units on the roadway, with one immediately adjacent to this one, and two across. A duplex can be constructed on a 10,000 sq ft lot. They are asking for two 9,500 sq ft lots with the lot line going down through the middle of the structure, essentially creating a zero lot line structure. The reasoning behind it, is that they are looking to create fee simple ownership, and not rental ownership or condo ownership, which would be other choices if the fee simply was not created. The presentation this evening will be made by William Scott, a professional engineer who designed the plans. Allison Coffin will address the planning testimony.

Mr. Cucchiaro swore in William Scott, Professional Engineer in the State of New Jersey since 2004. Mr. Scott prepared Exhibit A-1, an aerial photograph highlighting the property as it currently exists. Mr. Scott pointed out where the proposed dwelling would be located in connection with the existing duplexes in the surrounding area. The key map incorrectly states a 50' radius, it should read 500'. Exhibit A-2 is an aerial photograph and the yellow square represents the property itself and within that square is the outline of the duplex itself along with the two driveways proposed.

Mr. Scott described Exhibit A-3, which is part of the packet that was previously submitted. They are proposing a ROW dedication of 10' width along the entire frontage of Pension Hill Road which deducts 1,000 sq ft from the property. Each lot would be 9,500 sq ft each. The lot line will run through the common wall with a zero setback at that point. Mr. Pape stated it is his understanding that the property slopes from the road to the rear of the lot, with the rear of the lot being lower. It would be necessary to create a form of stabilization and erosion control. Mr. Scott explained that during construction, they are proposing soil erosion control to ensure that there is no erosion during construction. We intend to flatten the slopes on either side yard by introducing low retaining walls, 24" - 30" and we've created a flagstone pathway set into the side of the hill which steps are at 8" increments down from the side yard in the front to the rear yard in the back. We are proposing to the north of the rear of the structure a 4' high retaining wall and this is done to create a level recreation area which the residents could use. Topping that wall, we are proposing a decorative black aluminum outer coated fence.

Mr. Scott continued and said the choice of the dwelling style itself works with the slope. We have a walk-out basement exposed to the rear which fits the dwelling into the slope. We have a higher than normal basement which allows the building to sit more into the slope naturally. We are proposing turf and in the steepest areas, plantings of junipers to stabilize the slopes. The steepest slope we are proposing is 3:1, the bulk of the slope is 4:1 or flatter. As the retaining

wall crosses the line in the back of the house, it actually goes into the side yard setback. The stormwater management consists of two drywells for roof run-off. Each of the residences have a two car garage, as well as two car driveway for a total of four parking spaces.

Mr. Pape asked Mr. Scott if he has made himself familiar with the technical requirements as pointed out in Mr. Boccanfuso's report. He is comfortable saying he can meet all the requests contained within. Mr. Pape asked Mr. Scott to go over the three technical design waivers. Mr. Scott stated that zone one has 10% - 14.99% and is 42% disturbed. Slopes on two, 15% - 19.99% is 98% disturbed and slopes on three, 20% or greater is 94% disturbed. Mr. Pape said there is no impervious coverage variance, no FAR variances, in fact we are below the intensity of development that the ordinance allows.

Mr. Boccanfuso asked about the variance that appeared to be required for retaining walls in excess of 3' within setback areas. Mr. Boccanfuso doesn't have any issue with that variance, in fact it provides a benefit in the form of providing more useable yard area and stabilizing the rear yard. He also notes that the original plans submitted with the application depicted retaining walls in excess of 3' within the outside side yards. The revised plan eliminates that relief, so basically the retaining walls in those side yards now will comply with the ordinance. Mr. Boccanfuso said the architectural plans submitted did not have any information regarding the basement. We do not know the sq ft, the layout, etc. If the basement, or the lowest floor, meets the Township definition of a basement, which is more than half of its cubic volume is above the average level of the adjacent finish grade, then it is considered a story, which would create a three story structure, requiring additional variance relief and it would also be considered in the FAR calculations. A FAR variance is under the jurisdiction of the Zoning Board.

Mr. Pape said this was brought to our attention in our review of the ordinance during the preparations of the plans. Mr. Pape stated that Mr. Boccanfuso was kind enough to meet with him to go through the report in detail. We understand that it must be 50% or more of the volume of the basement must be subterranean. Mr. Boccanfuso noted in his report that a soil log would be required as a condition of any approval. Mr. Pape said he has no problem with this requirement and asked if it could be done during resolution compliance as a condition. Mr. Boccanfuso had no objection to this.

Mr. McNaboe stated there appears to be a fence to the right hand side of the property. Mr. Pape said that to the rear of the property, it appears to make an easterly turn, and he believes it is a mislocated fence of the neighbor that is on our property. Mr. Pape said we will politely advise the neighbors that their fence



is on our property. Mr. McNaboe asked why isn't this being developed as a single family dwelling? Mr. Pape said this is the duplex zone and this would be the sixth duplex and our proposal fits the surrounding properties. Mr. McNaboe stated that there was a house in the duplex zone that did settle and it was the first time we realized how tough it is to get somebody to fix the home because they are fee simple. One home owner will say they have to fix something, it is effecting my structure, where the home next door doesn't want to get involved. Duplexes rely on a lot of goodwill between neighbors.

Chairwoman Kwaak asked if the front was going to be staggered by the garages, is that for aesthetics? Mr. Scott said yes it was. There is a two foot jog to give the front a little more character in the roof lines. We measured the minimum distance required from the garage that is closest to the street. Mr. Pape said the home has substantial architecture and considerable design elements throughout.

Ms. D'Agostino asked if there is adequate room to put the two cars previously mentioned. Mr. Scott said that from the garage closest to the street, we have 20' to the ROW line.

Mr. Brown asked about the revised site plans submitted for the rear retaining wall. What does that look like now, he hasn't seen the plans. Mr. Pape said a walkway was introduced and a couple of extra walls so that no one wall exceeds the height requirement.

Mr. Fisher stated he considered a turn around driveway, but now doesn't feel like it is necessary.

Mr. Kastell asked about the 1,000 sq ft dedication. The other structures on the street do not come further out, you are giving space that the others haven't given. Mr. Pape said that immediately to the west, there was a subdivision on the property next door and the professionals asked that we dedicate the land. It might not be improved, but it is there in the event that it is ever needed.

Mr. Cucchiaro swore in Allison Coffin, Licensed Professional Planner in the State of New Jersey for 15 years. Ms. Coffin has met with the applicant and has reviewed all the plans and visited the site. Ms. Coffin said the first variance we are looking at is for lot area. We are starting with 20,000 sq ft, subdividing into two lots where 10,000 sq ft are required per lot, but as a result of the roadway widening dedication, we lose 1,000 sq ft. Minimum lot area of 10,000 sq ft in this zone is for a duplex house. We are not proposing two undersized lots with two duplexes, we are proposing one duplex on two undersized lots, which when combined more than provide the required lot area for the zone.

Ms. Coffin continued with the variances for lot frontage and lot width. There is a side yard where we have a zero foot side yard along the shared wall. There is a height variance whereas 35' is required and because of the steep slopes present on the property and where the height is measured from, we need some relief for the overall height of the structure.

Ms. Coffin continued with the variance relief they are requesting. They are bulk, or C variances. There are two tests within the MLUL, the first being the C1 standard, or hardship standard. It is appropriate when the lots unique shape, topographic conditions or pre-existing legal structures create a situation where the strict application of the ordinance creates an undue hardship. The C2 standard is justified when the purposes of the MLUL are being advanced by the variances and benefits that result from those variances substantially outweigh any detriments. The requested variances can be granted under the C2 standard. It promotes the general welfare, it provides adequate light, air and open space. The proposed use is permitted, the intensity of the use is permitted and the majority of the bulk variances are related to the proposed ownership type and it is her opinion that in this situation this doesn't create a substantial detriment to the Master Plan and zoning ordinance.

Ms. Beahm stated that she takes no exception to the relief being requested and she agrees that it is simply a factor of the fee simple lots. If this application came in on the 19,000 sq ft lot, the duplex would be permitted and with the exception of the height, which is based upon the slope of the property, all the variances that are being requested would not be required. It is a factor of the lot line that goes down the center of the building, that is what is causing all the variances that are necessary.

Mr. Boccanfuso said he agrees with Ms. Beahm. He asked if the intent to perfect the subdivision if approved would be by deed or by plat? Mr. Pape said it would be by plat, this way appropriate notes will be incorporated into the plat that might not be as apparent if it was done by deed.

Mr. McNaboe asked if the applicant had any objection that there is a stipulation that the garages cannot be converted into living space. Mr. Pape said he did not have a problem with this. Mr. Cucchiaro asked how this was going to be recorded? Mr. Pape said he would take the Resolution of Approval and make it into a declaration and then record it with the County Clerk. Mr. Cucchiaro said that is acceptable.

Chairwoman Kwaak asked Mr. Boccanfuso if the Environmental or Shade Tree Commissions had any comments on this application? Mr. Boccanfuso said Ms. Spero did review the application and her only comment she had was included in

their report. It was that the applicant would be required to obtain tree removal permits prior to any disturbance. Mr. Pape said they did meet with Environmental and they asked for a copy of the Letter of Interpretation. There is a wetland LOI indicating that this property doesn't have any wetlands. They also wanted copies of the soil logs.

Mr. Brown had a question regarding the sq ft of the building. Is there going to be a basement? Mr. Pape said yes and it can be a finished basement. It is not intended to be finished by the developer. It will be a walk-out basement. Mr. Brown said the first floor and second floor total 4,640 sq ft, when on the site plan it says 3,200 +/- . Mr. Pape said each side is approximately 3,000 sq ft. Mr. Brown said on the architectural plans, the bottom left hand corner, is the area calculation for them together? Mr. Pape said that each of the structures has a 1,876 sq ft footprint and that is the controlling element of the structure. Mr. Brown said the areas noted on the second floor plan is for both units as a combined sq ft number.

Chairwoman Kwaak opened the floor to the public for any comments or questions. Seeing none, she closed public.

A Motion was made for Planning Board Application PMS1913 for a Minor Subdivision with ancillary variance relief and design waiver relief and all the stipulations that were made on the record by Mr. Fisher, Seconded by Ms. D'Agostino.

Yes: Brown, Kane, D'Agostino, Kwaak, McNaboe, Jacobson, Hogan, Fisher, Kastell  
No: None  
Absent: Castronovo, Ginsberg  
Abstain: None  
Not Eligible: None

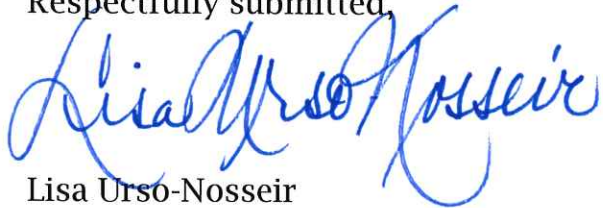
Mr. Pape thanked the Board for their time.

Chairwoman Kwaak opened the floor to any non-agenda items; seeing none, it was closed. She added that the next meeting will be May 9, 2019 and there are a number of pending applications at this time.

**Adjournment**

A Motion to adjourn the meeting was made by Chief Hogan and agreed to by all.

Respectfully submitted,



Lisa Urso-Nosseir  
Recording Secretary

A recorded CD or DVD of the meeting is available for purchase by contacting the Planning Board Office.