

MINUTES
PLANNING BOARD
BOROUGH OF NEW PROVIDENCE
TUESDAY, DECEMBER 13, 2011

A. CALL TO ORDER 8:01 p.m.

B. PUBLIC NOTICE: This is a Public Meeting of the Planning Board of the Borough of New Providence, County of Union, State of New Jersey. Adequate notice of this meeting has been given in accordance with Public Law 1975, Chapter 231, in that an Annual Notice or Revision was made in conformance with Section 13 of the Act.

C. ROLL CALL: Present: Chairman Lesnewich, Nadine Geoffroy, Dan Henn, Mayor Hern, Gary Kapner, John Keane, Robert Sartorius and Philip Treventi. Absent: Vince Vyzas. Also present: Andy Hipolit, Borough Engineer, Keith Lynch, Director Planning & Development; Ronald Reinertsen, Birdsall Services Group, substitute planner; William Robertson, Planning Board Attorney; and, Margaret Koontz, Secretary.

D. PLEDGE OF ALLEGIANCE

E. PUBLIC HEARINGS

Vijaya Venkatesh, Block 283, Lot 11, R-1 Zone, 25 Oakwood Drive – minor subdivision approval – raze existing single family house and subdivide lot into three separate single family parcels.

Glenn Pantel of Drinker Biddle & Reath, attorney for the applicant, introduced the application. The applicant proposes to subdivide the lot into three properties each of which requires a variance for minimum lot width at setback. The applicant stated that each lot conforms to the minimum lot size for the zone and that the lot widths are similar to lot widths in the area many of which are actually smaller. The applicant is seeking variances for steep slope disturbance limitations and also a variance for minimum lot width at right-of-way. The subdivision will have a shared driveway which is proposed at 18 feet whereas 16 feet is permitted so a variance is required. Mr. Pantel added that the property was not acquired with the intention to subdivide.

Mr. Robertson clarified the jurisdiction of the Board to hear the application. The Board received a letter from the attorney representing the adjoining properties regarding a private deed restriction on the property stating that the Board should not hear the application without

a response from the applicant. Mr. Pantel responded to the letter stating that restrictive covenants do not deprive the Board from granting approvals. Mr. Robertson has reviewed both letters and concurs with Mr. Pantel that the private deed restriction falls to the Superior Court to decide and not the Board; therefore, the private deed restriction does not keep the Planning Board from hearing the application. Mr. Pantel added that the private deed restriction expired in 1945.

Dr. Raj Venkatesh, a representative of the owner, was sworn in. Dr. Venkatesh testified that he and his family members purchased the property in 2007 for purposes to accommodate the elderly members of the family. Over the next few years, a series of events occurred and Dr. Venkatesh no longer had the need for the house and did not maintain the house and it fell into disrepair.

The Board questioned Dr. Venkatesh. Mayor Hern asked why the applicant didn't renovate the house and sell it or raze it and rebuild to sell. The engineer will address these questions.

The Board had no further questions of the witness. The meeting was opened to the public to question the witness.

Adam Olszowy, 26 Walnut Street, asked what the economic benefit of the subdivision is to the community and why the applicant doesn't just sell the property. The engineer will testify to these questions.

Jinping Shi, 37 Oakwood Drive, asked if the applicant ever intended to live in the house and if the purpose now is to make a profit on the property. Dr. Venkatesh never intended to live in the house because he and his wife live only a couple of blocks away. He is not sure if he will make a profit. He may lose money.

Christa Miller, 11 Oakwood Drive, asked if Dr. Venkatesh if he is the owner of the property. Dr. Venkatesh's wife owns the property. The property was not purchased as an investment with an intention to make a profit.

Mike Verbaro, 44 Walnut Street, asked how long the applicant has owned the home, why he hasn't done anything to maintain the property and why the neighbors should help the applicant out now. Mr. Pantel responded that Dr. Venkatesh's testimony was to put the application in context and that the applicant is not looking for help. He asked the public to be open-minded about the application.

Kevin G. Page, Page Engineering Consultants, P.C., a licensed engineer and planner was sworn in and accepted as an expert in engineering. Mr. Page reviewed the subdivision plans (6 sheets) dated February 8, 2011, and revised on July 20, 2011. Mr. Page oriented the Board to the location of the property, existing house and driveway, surrounding properties and their lot widths and topography and described the requirements for properties in the R-1 zone. A

color drawing of the neighborhood was marked as Exhibit A-1: Orange represents lots with less than the lot area of 18,000 square feet and cross-hatching identifies lots with lot width setbacks less than 120 feet. He stated that many of the lots have less than the minimum required for lot area and lot width setback. Less than 10% of the properties meet the current ordinance requirements for the R-1 zone as they were built prior to the Zoning laws. The proposed lots meet the requirements for the R-1 zone.

Mr. Page reviewed Sheet No. 2 of the subdivision plan showing the proposed subdivision and surrounding properties. The applicant proposes to subdivide the lot into three lots (11.01, 11.02 and 11.03) each having the minimum lot area of 18,000 square feet. All three lots require a variance for minimum lot width at setback and lot 11.02 requires a variance for minimum lot width at right of way. The proposed lots meet the requirements for minimum front yard*, rear yard and side yard and for maximum principal structure coverage of 25% and improved lot coverage of 40%. There are no accessory structures. On the sheet were included structure outlines for houses. The FAR calculations for the lots are less than the maximum allowed. The size of the proposed houses is in keeping with the surrounding houses. The lot is 1.3 acres (57,655 square feet) and would permit a 12,972 square foot home which is much larger than the existing homes in the area and not in character with the neighborhood. The three houses would share a common driveway that would be part of lot 11.02.

Sheet No. 3 provides a steep slope summary by lot. The existing home sits in the middle of the site and is surrounded by a series of stone retaining walls that create terraces. Mr. Page stated that the steeper slopes on the perimeter of the property are manmade*, and he does not classify the site as a steep-slope property where the slopes are so significant that a disturbance would impact the site. The rocky terrain is common to the Watchung Mountain area. Mr. Page reviewed the steep slope disturbances for each lot as listed on Sheet No. 3. The steep slope disturbance as a percentage of lots 11.01, 11.02 and 11.03 are 1.4%, 6.4% and 3.9%, respectively. Mr. Page stated that these are minor grading variations. No soil erosion or sediment control measures would be required because of the disturbances. There would be no residual adverse effects after grading. Normal precautions would be taken during construction such as tree protection.

Mr. Page reviewed the conceptual lot development plan (Sheet No. 4)*. The conceptual houses are 3,400 square feet excluding the garages and are similar to those in the surrounding area. The common driveway is 18 feet wide. The subdivision could have three driveways but the common driveway represents the least disturbance. All the utilities would be under the driveway. Each house has its own driveway apron.

The lots are 18,000 square feet and meet the minimum required setbacks especially neighbor to neighbor. The proposed lot widths of lots 11.01 and 11.03 are consistent with lots 10 and 12, respectively. Mr. Page stated that there are other ways to subdivide the property such as three 80-foot lots or constructing a half cul-de-sac or knuckle. The cul-de-sac, however, is a

public improvement and requires public maintenance. The proposed common driveway would be private and the homeowners would be required to maintain the driveway. Mr. Page wanted to avoid floor area ratio (FAR)* and lot width variances which is why he is proposing the subdivision with the common driveway. Mr. Page reviewed the lot width for lot 11.02. While it is 30 feet across at the staff, the lot is 234 feet across including the house which is 65 feet across. Lot 11.02 from lot-line to lot-line through the center of the house is 150 feet which is more than the required 120 feet.

The Soil Conservation & Sediment Control Plan, Sheet 5, was submitted to the Somerset Union Soil Conservation District which had comments. Mr. Page will make changes to address those comments and resubmit the plan.

Sheet 6 shows the sightline and driveway profiles as requested by the Borough engineer. There is more than adequate sightline looking right and left from the driveway. There is safe ingress and egress from the property. There is also a safe internal circulation pattern.

All the roof leaders from the homes will go into dry wells. The driveway will be intercepted by a driveway trench drain that connects to the existing catch basin. The applicant will submit a separate storm water report that verifies that there is no increase in runoff from the property after development for 2-year to 100-year storms. There is no adverse run-off created by the development. The dry well and trench drain should mitigate icing. All of the homes are within 400 feet from a fire hydrant.

Mr. Page responded to questions from the Board. The proposed lots meet the zoning requirements for the zone. The Board pointed out that while the lots meet the zoning requirements, the lots are smaller than others in the area and two of the proposed houses will be closer to the road than others in the neighborhood. Mr. Page stated that he tried to make the proposed lots consistent with the lot area and width where possible and that the lot widths are consistent with the neighbors on either side. The Board also stated that the houses are conceptual and the developer could come in after the subdivision and ask for variances for the houses; although indications are fine, it is misleading to include these house structures as that is not part of this application. Mr. Pantel responded that this application is stipulating that FAR is conforming, and if approved, the FAR would conform as indicated on the plans. The applicant is not requesting FAR increase. The Chair stated that they cannot be suggesting FAR conformance when it is not part of the application. Mr. Lynch stated also that Mr. Page's statement of the allowed size for a single house on the entire site is incorrect as the Ordinance has a reduction fraction as lot size increases. Mr. Pantel said that he would come back to this point later.

The Board asked why the property wasn't subdivided into two lots rather than three to eliminate variances. Mr. Page responded that at least one or more variances would still be required. The planner will address this.

The Board asked questions about the steep slope disturbances. Mr. Page responded that this is a previously disturbed property and it doesn't present an adverse impact if disturbed. The slopes on the property mimic where the retaining walls are. The Board questioned as to his interpretation of retaining walls as they seem to be just aesthetic walls of the period. Mr. Hipolit stated that the lot does have steep slopes. Mr. Page agreed but doesn't think the topography is significantly different from the topography of neighboring lots and is similar to lots 17, 18 and parts of 12. Mr. Hipolit believes the topography is good for one house because of the plateau but not for three lots that are not conforming. The difference between the highest and lowest points from the center of the lot to the southeast corner of the lot is 15 feet. The existing house is on a plateau and the land slopes down on all sides. For lot 11.02, the applicant is proposing a disturbance of 6.4%, but because the amount of the slope is so small, the applicant is disturbing 86.2% of that slope category. In Mr. Page's opinion, the amount of true disturbance is small compared to the size of the lot. Mr. Pantel reviewed the variances being requested by lot. For lot 11.01, the applicant proposes to disturb 0.5% of the total lot area or an area of 8 feet by 8 feet. For lot 11.02, the additional disturbance is 850 square feet exclusively in the access driveway that is totally stabilized with no environmental impact. For lot 11.03, the additional disturbance is 100 square feet or 10 feet by 10 feet on the right side of the property. For the whole lot, the disturbance is 1,000 square feet above what is permitted on a lot of over 57,000 square feet. Mr. Page does not have the total area of disturbance but can calculate this. The disturbances are on the edges of the proposed home.

The Board asked about the safety of the driveway with the slope disturbances. The difference from the highest to lowest points on the driveway is 18 feet. The sight distance profile shows the existing and proposed grades and while Sheet 5 shows the sightline from 10 feet, Mr. Page is confident that there would be no problem with the sightline from 15 feet. The Board asked what the impact of slope disturbance would be if the homes wanted to add a patio or gazebo and if a variance would be required. Mr. Page identified where a patio or deck could be added to each lot. This brought up a discussion of rear yard privacy in relation to the back lot's front view.

The proposed lot lines are parallel to the existing site lines to create a regular building box within the lot rather than being askew. Mr. Reinertsen stated that with two lots, the applicant wouldn't have to work with different angles and figure out what is the front lot. Mr. Robertson asked where the front yard is for lot 11.02 and whether it is the driveway. Mr. Page responded that the front yard is the area between the front of the house and Oakwood Drive which is 106 feet. The Board asked where the front door of lot 11.02 is and if the driveway is the front yard. Mr. Page stated there is an area in front of the house besides the driveway. The Board discussed the front yard setback and believes that the southwestern corner is technically the front yard and it is only 12 feet which would require a variance. Mr. Page's interpretation of the ordinance is that the front yard is 40 feet back from the front street line and the proposed house meets this requirement. Mr. Pantel said that the owner of lot 11.02 owns the pole of the flag lot (Sheet 2) out to Oakwood, and that there would be an easement (indicated by a dashed line on Sheet 2) between the owners of 11.01, 11.02 and

11.03. A condition of approval for the application would be an easement obligating the owners to contribute to the maintenance of the driveway. The Board further discussed how to determine the front yard of lot 11.02. Mr. Pantel cited the definition of a front yard as stated in Ordinance 310-6 and his interpretation of it. The Board and applicant continued to discuss whether the front yard setback is from the street or the property line. Mr. Pantel said the definition of the front property line per the ordinance takes the measurement of the front yard setback to Oakwood Drive. Chairman Lesnewich pointed out the ordinance has restrictions against building behind other properties and that he believes there is a front yard setback variance required to be added to the list for the back lot. Mr. Pantel said this is an issue the applicant and Board can come back to.

Mr. Reinertsen thinks a better plan is to have a dedicated street with front yard setbacks for the lots. Mr. Hipolit believes that the shared driveway is 18 feet wide because 16 feet isn't enough to service the three houses and that the driveway is really a road. Mr. Pantel responded that another option is to have three driveways and stated that the relief requested is for a driveway of 18 not 16 feet and that asking for this variance doesn't make it a road. The Board and applicant again discussed the applicable setback line for lot 11.02 and whether the front lot line should start from the northern end of the easement. Mr. Pantel can't agree because of the language in the ordinance that the front property line should be at the northern end of the easement but stated that it doesn't make a difference because the house is more than 40 feet back from the northern end of the easement. Mr. Reinertsen stated that this is a gray area and cited ordinance 310-6 regarding corner lot lines to indicate the ordinance's intent that the front lot line should be measured from the principal entrance of the house which is only 12 feet for lot 11.02. Mr. Page responded to questions about lots 11.01 and 11.03 stating that the front doors of these houses as shown on the conceptual plan face the street (Oakwood). He tried to focus all of the development in the previously disturbed areas and was 90% successful. Lots 11.01 and 11.03 are pretty far back from Oakwood to keep them on previously disturbed property and also to maintain the perimeter screen of trees. Common drives are not unusual. There are other ways to lay out the lots but if the goal is to preserve perimeter vegetation, this plan attempts to do this. The applicant will make the driveway 16 feet if 18 feet is an issue. The question of guest parking came up. The Board disagreed with the applicant that guests can park on Oakwood drive saying there's no place to park on Oakwood without endangering their cars.

Mr. Hipolit asked if it is good planning for the front of one house to face the back of another. Mr. Page stated that there is no overlap between lots 11.02 and 11.03 and a little overlap between 11.02 and lot 11.03 that is garage to garage and suggested that the homeowners could put a fence or evergreens between the lots to make the yards semi private. The Board responded that fences including landscape fences are not permitted in front yards. Mr. Lynch pointed out that two of the houses are only 60 feet apart which is less than the required 80 feet.

The Board discussed the requirements in ordinance 310-19 regarding building on flag lots.

Mr. Pantel maintained that lots 11.01 and 11.03 abut an approved street (Oakwood) and access is from Oakwood Drive. Mr. Hipolit disagreed stating that access to these lots is through lot 11.02 which goes to Oakwood Drive.

Mr. Lynch expressed concern about the conceptual plan and the impact of changes to the conceptual plan after approval of the subdivision. His concern is that the house on lot 11.01 could be pulled closer to Oakwood where more steep slopes would be disturbed and it would put the house a lot closer to the house to the west.

Mr. Hipolit discussed the previous application for two lots. Mr. Page said the previous application was made by a different owner and proposed saving the existing house which required more variances and represented more disturbances.

Mr. Robertson asked if the applicant has done any soil testing or testing for the dry wells and storm water management system to see if they are possible given the rock underneath. The applicant did not do any soil testing. Testing for dry wells and the storm water management system would be done in the building phase. Mr. Page is comfortable that there is enough soil for development because other properties in the area have been developed but acknowledged that there will be bony material. This would be removed by hammering or ripping and is rarely blasted. Chairman Lesnewich said that surface bedding as wells as appropriate fencing to protect the trees will be required.

The Board had no further questions of Mr. Page. The meeting was opened to the public to question the witness.

Christa Miller, 11 Oakwood Drive, stated that there is a severe slope on the property. She has a French drain and sump pumps and still has water on her property. Snow makes a groove in her lawn. Ms. Miller asked if the houses will have basements. Mr. Page answered that the houses will have basements. Ms. Miller said that any construction will affect her property. The ground is solid rock and nothing grows on it. Ms. Miller's house was built in 1956: 25 Oakwood Drive was already there when her house was built.

Jinping Shi, 37 Oakwood Drive, asked if the placement for the existing house was a good location. Mr. Page responded that it was good in terms of drainage, basement footings and view. Mr. Shi asked Mr. Page if he would prefer to live in the existing house with renovations or one of the three proposed houses and stated that he believes the property is being converted to a less desirable property. Mr. Shi asked about the width of the driveway compared to the neighbors. Mr. Page responded that if the plan were changed to make three driveways, each would be 12 feet wide or could be as wide as the permitted 16 feet. Mr. Page said that houses are not always lined up like soldiers and that houses can face corner to corner. Mr. Page responded to Mr. Shi's concern about not building to the conceptual plan: He intends to build as designed.

Kathy Weijer, 34 Walnut Street, commented on the steep slopes. She has to be on the second floor to be level with the applicant's property and she believes this represents a steep slope. She asked Mr. Page how he can be sure the stone walls are man-made. Mr. Page responded that the stones are stacked and aren't scattered.

Bill Weijer, 34 Walnut Street, stated that the owner didn't maintain the property and asked why the applicant is proposing three lots when previous applications for two lots were denied. Mr. Pantel responded that the application can't be compared with previous applications: This is a new application that was reviewed by the professionals and then revised, and the application has a right to be heard. Mr. Weijer asked about traffic, the height of the existing house and how much usable space there will be in the subdivision. Traffic was incorporated in the plan, the house is the highest in the area and the site has enough space to support building three houses and a driveway. Mr. Page designed what he believes fits in the space.

Adam Olszowy, 26 Walnut Street, asked what the economic benefit is of developing the lot versus selling it. Mr. Page responded that the applicant would like to recoup its investment and approached him to develop the property in a way that would allow this. His goal in designing a site is to do so without a lot of variances. He believes the proposed plan is a good way to approach the site but it does require variances. The existing house is not salvageable. Mr. Olszowy asked why lots to the left of the property on the street (shown on Sheet 1) were eliminated. Sheet 1 shows properties within 200 feet and extends to the east and west in a way that Mr. Page believes is reasonable stating that 20 of 29 lots to the west on Oakwood have steeper slopes.

Mr. Verbaro, 44 Walnut Street, asked why the applicant is asking for so many variances. Mr. Page reviewed the lots and the variances being requested. Two lots only require one variance each and the other requires two.

There were no further questions from the public for Mr. Page.

The applicant answered additional questions from the Board about the amount of property being disturbed and other design options for the site. Mr. Page chose this option to stay closer to the center of the property. He could shift things but this would require more variances. The Board asked about bringing soil for fill and removing soil. Mr. Page will overlay the steep slopes on the plan. Lot 11.03 will drop to make a walkout basement. The owner to the east will see the finished basement. No fill will be required for lot 11.01: The plan has been designed to fit the land.

The hearing will be carried to February 7, 2012. No further notice is required or will be given. The applicant consented to the extension of time for the Planning Board to act on the application.

F. OTHER BUSINESS

No other business.

G. MISCELLANEOUS

No miscellaneous business.

H. EXECUTIVE SESSION

No Executive Session.

I. MINUTES

Ms. Geoffroy moved and Mr. Kapner seconded the motion to approve the minutes of November 15, 2011, as submitted. Voting in favor: Ms. Geoffroy, Mr. Henn, Mr. Kapner and Mr. Treventi.

J. ADJOURNMENT

Mayor Hern moved and Ms. Geoffroy seconded the motion to adjourn. The meeting was adjourned at 11.35 p.m.

Respectfully submitted,
Margaret Koontz
Planning Board Secretary