

REGULAR MEETING

Meeting called to order by Chairman Gilbert Foulon with a salute to the flag at 8:07 P.M.

READING: Open Public Meeting Announcement

This is the Regular Meeting of the Wanaque Planning Board and adequate notice has been given and it has been duly advertised by the placement of a notice in the Suburban Trends and the Herald News on January 26, 2011 and a notice thereof has been posted on the bulletin board in the Municipal Building in the Borough of Wanaque and a copy thereof has been on file with the Borough Clerk.

ROLL CALL: Chairman Gilbert Foulon, Vice Chairman Joseph Graceffo, Mayor Daniel Mahler, Members Kevin Platt, Mark Reuter and Eugene Verba.

PRESENT: Attorney Steven Veltri and Engineer Michael Cristaldi.

ABSENT: Councilman Dominick Cortellessa, Members John Shutte and David Slater.

MINUTES: from the October 20, 2011 Meeting

MOTION TO APPROVE: made by Vice Chairman Graceffo, seconded by Member Reuter. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Members Platt, Reuter and Verba.

COMMUNICATIONS REPORT: A. Michael Rubin, Esq., attorney for M&T Bank, has forwarded a letter to the Board requesting their Application No. PBA2011-06 for Conversion of Development be adjourned to the February 16, 2012 Meeting. Request Granted.

APPLICATION STATUS REPORT (Engineer's Report): No new applications. All current applications are on tonight's Agenda.

APPLICATION #PB2011-08 "Meyer-McCrum-Kennedy", Block 309 Lots 30 & 30.01
Property Address: 3, 4 & 6 Venezia Lane, Haskell
Application For Minor Subdivision **(CD 11/18/2011)**

Don McCrum of 6 Venezia Lane, Haskell, New Jersey, owner of Block 309, Lot 30.01. I am also co-owner of Lot 30 with my two sisters.

We are trying to take a roughly 3700 square foot property, with two existing houses, that were conforming when built, and split it into two lots, and take a piece of that property (Lot 30) and add it on to my property (Lot 30.01), which would go to the front of my property. I am adding the piece to my property to stop someone in the future from putting a garage or shed in front of my living room window.

It looks like we probably need three variances, or some type of relief. When I built my house, it met the requirements for the side yards, but now it doesn't. We are not adding to any of the structures. All the houses are staying the same. All we are trying to do is split it so there is one house on one lot.

Chairman Foulon commented that this makes sense, however there are some legal questions.

Attorney Veltri advised that one of the biggest concerns is access to the lots. We are looking at the survey and it looks like there is a gravel roadway, but there is a note that concerns me about the easements. It says "No distances or width given in deeds." So, we are very concerned that if we subdivide this parcel, that there is legal access and egress from the lots and that it's permanent to each lot.

Mr. McCrum stated that the whole property was all family owned and as they divided the property up amongst my aunts, uncles and my mother, they gave each other easements over the existing properties. I think you are talking about the easement on 906 Ringwood Avenue.

Attorney Veltri is concerned about easements from Ringwood Avenue all the way in, the entire length, because it is unclear from the survey what the easements say and whether they are permanent in nature. The other question is who is maintaining that easement. These are things that, unless they are recorded in Deeds, become problems over time, especially if your family doesn't continue to own all this property.

Mr. McCrum was under the impression that he would have to have new deeds prepared for the two properties to change the lot numbers so we would have to re-write the other deeds to show the easements with the new lots.

Attorney Veltri recommends that counsel be retained, that all easements be put in writing through the aid of a title search, and that they be provided to the Board so we can check to see that there is access, and issues of maintenance in the future are covered. You are before this Board asking for an additional lot to be created and we understand why, but we can't do this piecemeal. It should be all cleared up for the entire parcel now, before the subdivision is granted. This is my opinion because there are a lot of loose ends and I can see a lot of problems if other parties start buying these lots and/or there is a major fight in the family and people don't want to cooperate with each other. We are going to have landlocked homes.

Mr. McCrum stated his is the last house on Venezia Lane number 6. My house was the last house built on the property in the 1960's. We had lawyers then and I had an easement across each of the lots and there were no legal issues at that time. We had title searches done then.

Attorney Veltri stated he doesn't see it. The note on the survey gives me major concerns, "No distances or width given in deeds." This is not appropriate for an easement. It tells you nothing. The other concern I have is, when looking at the survey there is a gravel roadway coming off of Ringwood Avenue and at some point there is a large circle/oval, what is that?

Mr. McCrum said it is an island with trees and grass. The road forks at the island. The driveway comes in front of my house, and then there is another island that just goes into the other property.

Attorney Veltri is very concerned about Mr. McCrum's lot, (proposed 30.01). I want to be sure you always have access to that lot.

Mr. McCrum stated that when we built the house, at the closing, there were questions and the lawyers went back and forth and there was a permanent easement. I have easements across existing Lot 30, existing Lot 28 and existing Lot 21.

Engineer Cristaldi questioned, where do you think the easement is and how big do you believe the easement is? McCrum said it is the existing driveway easement across that. To the best of my knowledge, there never was a dimension given. He considers the driveway shown on the drawing as his access easement.

Engineer Cristaldi asked Mr. McCrum if he would have a problem if his surveyor delineated that on the map and gave it metes and bounds so that the Board, when they look at it, see the size of the easement and who has rights to it. If you and everyone on the property understand that the easement is the driveway as it is shown on the drawing, would you have a problem putting it on the drawing as the easement?

McCrum answered that he didn't think he would, except that it is just going to take more time, and that is our only concern. All we are asking to do is split an existing piece of property.

Attorney Veltri stated that, if we don't ask for it now, it is never going to get done, until there is a problem.

Mr. McCrum doesn't understand the problem.

Chairman Foulon explained that the potential problem could be that one of the lots gets sold before yours does, and the guy that buys the house says you can't drive across his property, and he can do that unless we have been shown, in writing, where these easements are.

Attorney Veltri asked who owns Lot 21, the one closest to Ringwood Avenue? McCrum said a family member also owns this house. My grandfather owned that house.

Engineer Cristaldi asked about the lot that contains the big garage. McCrum said that was family property, but it is not owned by the family anymore, it is Patriot Landscaping.

Engineer Cristaldi stated that this is a problem because part of your driveway goes through that lot. Mr. McCrum said we have an easement on the owner's deed.

Chairman Foulon questioned, when the lot was sold to Patriot, there was an easement on that Deed? Mr. McCrum said “yes”.

Engineer Cristaldi asked how much of an easement, since the survey states “no width given”. How wide is the easement?

Mr. McCrum’s interpretation has always been that the easement is basically as it is drawn with the road.

Attorney Veltri stated that this is why we are suggesting that your surveyor do a metes and bounds description of the driveway and have all these property owners sign an access easement. That would clear it up. On your survey, you have nothing. There are notes, numbered 1 and 2, concerning access easements. The last sentence in note 1 says “no distances or width given in deed”. That’s a problem. Number 2, which is what Engineer Cristaldi was just pointing out, for Lot 22, says “No width given.” That is a problem because width is the key to you having access to your house. To have an access easement without any distances or widths, to me, doesn’t make any sense. It is almost like not having an easement. I don’t believe this is a major undertaking for a surveyor, who has already plotted the driveway out, to prepare a metes and bounds and a lawyer could draft an access easement that makes sense, attaching the metes and bounds and having all the property owners sign off on it. This is really all you need to do on this issue. To go forward without doing this, I believe is going to create trouble down the line.

Mr. McCrum advised that they tried to purchase that property owned by Patriot by they never responded to any requests. I can put all this new information into our deeds, but I can’t change what is in Patriot’s deed.

Member Platt recommended moving the driveway off of Patriot’s property. If you go a few feet over to the left, and go right around it, you won’t have a problem.

Vice Chairman Graceffo commented that, you are going to have to re-do the deeds to maintain the subdivision, so do it the right way now so down the road when the properties may be sold there will be no issues. No one is going to purchase the property without a delineated access road shown on the map. You should do now what the professionals are recommending, not later.

CHAIRMAN ENTERTAINED A MOTION TO OPEN THE PUBLIC HEARING PORTION OF THIS APPLICATION: made by Vice Chairman Graceffo, seconded by Member Platt. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Members Platt, Reuter and Verba.

No one present to come forward.

CHAIRMAN ENTERTAINED A MOTION TO CLOSE THE PUBLIC HEARING PORTION OF THIS APPLICATION: made by Member Reuter, seconded by Vice Chairman Graceffo. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Members Platt, Reuter and Verba.

Attorney Veltri’s opinion is that this application should not be granted without an access easement with metes and bounds descriptions.

Engineer Cristaldi did note in his report that all three lots do not front on the street and, without any street frontage, all three lots have overlapping easements. The other problem is, without any street frontage, it was hard to determine which way the houses front. I orientated them as though they were on a road and gave them the most favorable positioning in terms of variances and that is how I came up with the three variances. My concern is also the easements, which are mentioned in paragraphs 7 and 11 of my report. I also wasn't sure what type of utility services is on the properties. Do you have one water service that serves all three homes? Mr. McCrum believes that there is one water main that comes and each house is separately metered, but is not sure of the pipe size. Are you hooked up to the sewer? Mr. McCrum stated "no". At the time they were hooking everyone up to sewers, they said our house was too far back off of Ringwood Avenue, they never figured it in for sewer and there is no sewer connection by Venezia Lane. 906 Ringwood Avenue is tied into the sewer, but our house is septic. Engineer Cristaldi stated that, if the septic fails in the future, and they wanted to connect out into the road with an ejector pump, that easement should also not just be for access but also for utilities for the water and sewer.

Member Platt commented that our concern is down the road, about twenty years from now. It will make life easier, especially for your kids, to take care of all this now, not later. It will save a lot of aggravation in the future.

Mr. McCrum stressed again, that if this is not approved, nothing will change. I understand the concern and I hope you believe I will do this in all of the deeds because I would be crazy not to. When I spoke to John Miceli, what he said was that after the Board's approval, he is going to redo the deeds for us.

Chairman Foulon advised that Mr. Miceli cannot redo the deeds because he is not a lawyer. Attorney Veltri advised that the only thing the surveyor can do is a metes and bounds description. You are going to have to retain an attorney to write an access easement and utility easement and all the adjoining property owners need to sign off on that and I would include in there maintenance type of clauses so everyone knows what their responsibilities are. That's the way I believe it should be done. If it is done that way, then everyone will be protected along that access area. If it is not done right, you could have major legal issues in the future and someone could point the finger at this Board for creating an extra lot without covering these issues.

Mr. McCrum could understand all these issues and concerns if you were giving me a separate lot to build a new house on, but what is there, is there. It is not going to change. If I wanted to put an addition on, then I could understand your concern with the water main. Engineer Cristaldi questioned what is to stop the next person who purchases that property from doing that? Mr. McCrum said they would have to come to the Board. Attorney Veltri advised no they wouldn't have to. They could say that since we created the lot in 2011, this is what I am going to do.

Chairman Foulon asked if they wanted to consult an attorney, have the surveyor prepare the metes and bounds descriptions and then come back next month. You would not have to advertise or notify the property owners again.

Mr. McCrum questioned that if he has the surveyor take care of it and a lawyer draw up the deeds, do you want to see the wording for the easement?

Attorney Veltri advised that there are a couple of ways this can be done. You can have all the deeds changed, but this is the long way. The other way is to do an Access & Utility Easement Agreement and all the property owners sign off on that Agreement. This would be recorded and all the Lots and Blocks would be cited in the Agreement so you don't have to change all the deeds, you would have one Agreement with all the adjoining property owners.

Vice Chairman Graceffo commented that there is nothing wrong with the subdivision. It is just the way to maintain what is specified as far as access in and out of those properties. If you are going for a subdivision now, you have to do it right, with the right legal representation; otherwise you are leaving yourself open for many problems down the road.

Attorney Veltri stated that this application will be carried to the January 19th meeting without the need to re-advertise. We are asking that you work on this easement situation. You can report back then and, if you have documentation for us to review, we will do that, and then we can vote on the application. You can have your attorney contact me. If the documents are not ready for January, you can come in and we will give you another extension.

CHAIRMAN ENTERTAINED A MOTION TO CARRY THIS APPLICATION TO THE JANUARY 19, 2012 MEETING WITHOUT ANY NEED TO RE-NOTICE OR RE-ADVERTISE: made by Member Platt, seconded by Vice Chairman Graceffo. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Members Platt, Reuter and Verba.

PUBLIC DISCUSSION: None

RESOLUTION: Application #PB2011-05 Maria Ethel Sieber, 26 Locust Street, (Haskell) Wanaque, NJ, Block 304, Lot 14, requesting approval for a minor subdivision to create two newly configured lots from one existing lot with attendant variances for minimum lot width, accessory building side yard and pre-existing variances for front yard setback, distance of accessory building to main building and street.

MOTION TO APPROVE RESOLUTION: made by Member Platt, seconded by Member Reuter. Voting yes were Chairman Foulon, Vice Chairman Graceffo. Mayor Mahler, Members Platt, Reuter and Verba.

VOUCHERS: submitted by Steven Veltri, Esq. on the Sieber Application for \$450; and submitted by Richard Alaimo Engineering Associates for Attendance at Meetings For The Period Ending 11/23/2011 in the amount of \$380; and for Meyer-McCrum-Kennedy Application in the amount of \$930.

MOTION TO APPROVE VOUCHERS: made by Member Reuter, seconded by Vice Chairman Graceffo. Voting yes were Chairman Foulon, Vice Chairman Graceffo, Mayor Mahler, Members Platt, Reuter and Verba.

MOTION TO ADJOURN AT 8:50 P.M.: made by Member Verba, seconded by Vice Chairman Graceffo. Carried by a voice vote.

Jennifer A. Fiorito
Planning Board Secretary