

**BOROUGH OF MAGNOLIA
PLANNING BOARD MINUTES
DECEMBER 19, 2007**

The meeting was called to order by Chairman Lawrence Barrar at 7:33 PM. The public statement was read by the Chairman, followed by the flag salute.

ROLL CALL - CH-Chairman, VC-Vice Chairman, C-Council, MD-Mayors Designee, A-Alternate

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|-------------------|----|---------|----------------|-----------|---------|
| Lawrence Barrar | CH | Present | Arthur Loder | | Present |
| Joyce Albrecht | | Present | Mary Martz | C | Present |
| Robert Brown | | Present | John Wolf, Jr. | | Present |
| John DiBartolomeo | VC | Present | Joseph Conway | A2 | Present |
| Jim Hannold | | Present | VACANT | A1, A3&A4 | |
| Richard Krause | MD | Present | | | |

ALSO

| | | | | | |
|-------------|-------------|--------|---------------|------------------|---------|
| David Kreck | Engineer | Absent | Michael Ward | Solicitor | Present |
| Chris Mecca | Zoning Off. | Absent | Denise O'Kane | Secretary | Absent |
| | | | John Keenan | Acting Secretary | Present |

APPROVAL OF MINUTES

The November 28, 2007 minutes were tabled until the January meeting. AIF-motion approved.

OLDBUSINESS

Variance

VAR07-2 / Wazir Grewal - 331 N. White Horse Pike

Applicant's attorney was present, as well as the Architect Ron Faul, whose address is 1203 Haddonfield Road, Voorhees, NJ. The Architect was sworn in.

Site plan #S-1, dated August 15, 2004 was presented and marked into evidence as A1 and was prepared by Ron Faul. Mr. Faul explained the property is located at White Horse Pike and Bryant Avenue. There is a Valero Gas Station with a three story building adjacent to the gas station. In the building on the first floor is a mini market and on the upper floors is one apartment. The application is for use of the lower floor under the mini market. Due to the topography the grade at the rear is at ground level and the lower level is planned for an apartment.

Alternate member J. Conway inquired to the location of the 20 parking spaces. Ron Faul pointed out for Mr. Conway the 20 parking spaces. Member J. DiBartolomeo questioned the number of ADA parking stalls. Mr. Faul stated there was one, which the Board Engineer D. Kreck confirmed was adequate.

Another plan detailing the lower level floor plan was presented and marked as A2. Mr. Faul explained the prior concern of the Board regarding safe access from one of the two bedrooms window. There was now a design for a retaining wall to hold back the earth on the one side of the building to allow safe exit from the bedroom window.

Mr. Conway asked if all the parking spaces are still on site as are noted on the plan. The Board Engineer stated he confirmed when he inspected the site that all parking stalls are as on the plan.

There was a question from the Board regarding the use of the apartment by an employee. Board Solicitor M. Ward stated if the applicant agrees to make it a condition of approval, the Board can condition the apartment use only by an employee.

The owner's manager Adnan Khan of 406 East Evesham Avenue, Magnolia was present and sworn in.

Member R. Brown questioned the site becoming an apartment complex. The applicant's attorney stated the site is conducive to this use since it has the large building.

Mr. Kahn stated the upper apartment is for the employees who work at the gas station. At this time there is more than one person in the unit. Mr. Ward stated at the initial application previously when that apartment was granted approval in 2004 it was stated there was one employee to live in the unit. Member J. Wolf had resolution 04-011 and read page 2, paragraph 3 which stated "employees". Mr. Brown stated "employees" could mean one employee over multiple years, equating to "employees". Mr. Faul detailed the topography of the site. The front along White Horse Pike and the gas station side are above the lower level, but the rear is at grade, and the east side is mostly at grade. The Chairman read the code and the definition for a "basement".

Mr. Ward stated the applicant could have a Deed restriction to protect the two apartments as employee occupied. The applicant agreed.

The applicant's attorney confirmed Mr. Kahn has only been the manager for one year and was not present in 2004 for the prior application.

Mr. Kahn stated the hours of operation of the mini market as 6am to 10pm on weekdays, and 7am to 10pm on weekends. He stated also the apartments are there to help keep good employees. He did confirm the owner will agree to the Deed restriction for the units to be employee occupied only.

The Chairman stated the first order of business would be to consider if the unit is a basement. There were no questions or comments from the Board regarding this issue. The attorney M. Ward asked the Board to take a vote to declare if the lower level meets the definition of a basement. Alternate J. Conway could not vote since there was a full board attendance and Mayor Designee R. Krause, and Councilwoman M. Martz can not vote on this application since it is an application for a use change.

Motion made by J. DiBartolomeo, seconded by R. Brown to confirm the lower level does meet the borough code definition as basement. By roll call vote five (5) members voted yes to confirm the lower level meets the basement definition, with two (2) members voting no. The members voting no were J. Albrecht, and J. Hannold. The motion passed and the lower level met the borough's definition of a basement.

The Board discussed the code does not allow habitation in a basement. A variance would be required to allow an apartment and seeking an apartment in a basement.

The applicant's attorney asked to address the Board since the lower level was defined as a basement. He stated the unit is a usable space with proper access.

Mr. Keenan, acting secretary inquired to Mr. Ward regarding comments made by Mr. DiBartolomeo about taxation of the basement and the impact children could have on the school system. Mr. Ward did confirm the Board can not make a judgment on taxes and children and the hardship children may have on the school system. The Board understood.

Mr. Kreck commented on retaining wall and asked that something be designed to protect anyone from falling into the lower level area created by the retaining wall. He suggested a railing would suffice. The applicant's attorney stated if approved grading plan would be submitted and agreed to a barrier at the top of the retaining wall for safety.

The attorney also agreed that when any tenant changes the borough would be contacted for an inspection to comply with the borough's certificate of occupancy guidelines.

Mr. DiBartolomeo confirmed with Mr. Ward that if the basement was approved the building would be considered a "multiunit dwelling".

Mr. DiBartolomeo pointed out the Borough Code, section 270-15; letter J which states no dwellings in basements.

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Motion made by J. DiBartolomeo, seconded by R. Brown to open the meeting to the public. All members voted aye.

No comments or questions from anyone in the public.

Motion made by J. Hannold, seconded by J. DiBartolomeo to close the public portion, with all members voting aye.

Motion made by J. Hannold to deny application of the apartment in the basement, seconded by R. Brown since the code prohibits such a dwelling. All members voted aye by roll call vote, with J. Albrecht commenting with her vote since the lower level was defined as a basement she was denying the application. The only member to vote against the motion was J. DiBartolomeo. The motion passed denying the application.

RESOLUTION(S)

An amended resolution for Sauro fence application was submitted by M. Ward since the applicant had contacted the office stating the reference to 3 foot high should be 4 foot high. The four members who were present for this application reviewed the correction. J. DiBartolomeo made a motion to accept the amendment, seconded by J. Conway with all four members who were eligible voted aye for the amendment.

NEW BUSINESS

D. Kreck stated and recommended the preliminary subdivision and preliminary site plan are deemed complete for the D'Anastasio Development. D. Kreck stated his review letter will be to the board members at least a week prior to the meeting. Motion made by J. DiBartolomeo, seconded by R. Krause to deem the plans complete. All members voted aye.

D. Kreck stated he received updated plans for SRA Development on Davis Road. D. Kreck inquired if the changes could be handled at the final approval. M. Ward agreed they could be dealt with at the final approval application. D. Kreck did state the changes improve the issues at the site.

OPEN PUBLIC

A motion was made to open the meeting to the public. Being no further discussion, a motion was made to close the meeting to the public.

COMMENTS & DISCUSSION

Chairman stated he received from the NJ Planning Officials organization a notice regarding By-Law Revisions/Amendments. The Chair stated he would be glad to review the correspondence and reply for the Board. Motion made by J. DiBartolomeo, seconded by R. Brown to authorize the Chair to respond to the NJ Planning Officials By-Law Revisions/Amendments with all members voting aye.

Motion made by J. DiBartolomeo to adjourn the meeting, seconded by R. Brown with all members voting aye.

*AIF – All in Favor

Respectfully Submitted by: John D. Keenan, Jr., Acting Planning Board Secretary