

THE VILLAGE OF PAWLING PLANNING BOARD MINUTES

Date:	September 12, 2007
Present:	Michael Grogan, Chairman Taren Tanner, Member Michael Cerny, Member Stan Mersand, Member
Also Present:	Gene Richards, Stantec Engineer for Planning Bd. Michael Hayes, Village Attorney Larry Tomasso, Building Inspector Theresa Ryan, Engineer for the Applicants Mr. Boyle & Mr. Major, Applicants John Kalin, Engineer for Mizzentop Mr. & Mrs. Duffy, Neighbors Chris Fisher, Attorney for Mr. Morgan Mr. Morgan, Neighbor to Allison Close Estates Wendy MacKensie, Administrator for Mizzentop

APPROVED BY

VILLAGE OF PAWLING
PLANNING BOARD

10/10/07

On Wednesday, September 12, 2007 at 7:00 PM, the Planning Board met in the Village Hall at 9 Memorial Avenue. The meeting was called to order by Mary Heubel and began with the roll call as above indicated and conducted by the Planning Board Secretary, Mary Heubel. Dr. Coulter was absent.

PUBLIC HEARING

Pawling Commons Site Plan

Before the Public Hearing got underway, Mr. Hayes excused himself from giving any legal advice. Mr. Morini is a client of Daniels & Porco and therefore, Mr. Hayes thought it best not to create a conflict by offering advice to the Planning Board concerning any project of Mr. Morini. Mr. Hayes said he would give the Board a list of attorneys they could choose from. Both Mr. Cerny and Mr. Mersand agreed that the Board would need counsel for a project of the size of Pawling Commons.

Ms. Ryan reviewed the project. There are two buildings on the site and the applicant wishes to erect a third office building on the southeast corner of the property. The architect's drawings were not available for the Board's review at this Meeting. Mr. Duffy, neighbor, asked when the blasting and construction would begin. The Duffys go to Florida in the winter months but they want to be here for the beginning or blasting phase of the project. They had damage to their home when there was blasting on the site a number of years ago. Ms. Ryan said the blasting company will do surveys of all the adjacent properties before, during and after the blasting is complete. Ms. Duffy asked if there would be a basement. Ms. Ryan said there would not be a basement because of the rock ledge. Ms. Duffy, then, asked about the trees on the south side. Ms. Ryan said most

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of the trees on the property would come down. They would not touch the trees on the Duffy property.

There was a great deal of noise during this part of the Public Hearing due to the repairing of the voting machine.

Ms. Ryan told the Duffys they would be notified of all construction as it proceeds. Mr. Grogan suggested the survey of the Duffy property be done before they go to Florida. Mr. Tomasso stated that if there is damage, the Duffys have a 4 to 6 week window of opportunity to file an insurance claim. Ms. Duffy said they don't want to leave while the blasting is going on.

Mr. Cerny made a Motion to leave the Public Hearing open until the next Planning Board Meeting when the Board will be able to review the architect's drawings of the building. Mr. Mersand seconded the Motion and all Members were in Favor.

CONCEPT DISCUSSION

Mizzentop Amended Site Plan

Mr. Kalin, Board member of the Mizzentop Day School, reviewed the project. The Site Plan for the soccer fields was approved by the Planning Board in 2004. The plan called for a 4' high wood fence along a portion of the retaining wall. The school's insurance company recommended changing this fence to a 6' high vinyl-coated chain link fence. Therefore, the school administration wishes to amend the Site Plan by changing the type and height of the fence. Mr. Cerny asked if the fence was visible from the street. Mr. Kalin said it was only visible from the parking lot. Mr. Hayes asked if it was visible from any neighbor. Mr. Kalin said the fence will only back on one neighbor and he was amenable to the change. Mr. Richards asked if the vinyl privacy slats would be on the entire western side. Ms. MacKensie said it would but only about 25% back on the neighbor's property. The rest of the fence will back against a wooded area. Mr. Grogan asked Ms. MacKensie to obtain a letter from the neighbor stating their acceptance of the chain link fence in place of the wood fence. Ms. MacKensie said that would not be a problem. Mr. Richards asked if any color had been selected for the slats. Ms. Mackensie said no color was selected and the neighbor would have input in the selection process.

Mr. Cerny asked the applicant to submit to the Board an amended site plan showing where the fence would be, a letter from the neighbor accepting the change and the color selected. The Board would, then, be able to vote on the site plan and Mr. Grogan can sign the plan. Mr. Tanner expressed the desire to view the original site plan as he was not on the Board when it was first presented.

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Mr. Grogan polled the Board and all Members were in favor of not scheduling a public hearing. Mr. Hayes reminded Mr. Kalin that a site plan application including filing fees must be also submitted.

OTHER BUSINESS

Minutes of 8/8/07 Meeting

Mr. Tanner made a Motion to accept the Minutes of 8/8/07. Mr. Cerny seconded the Motion and all Members were in favor.

CONCEPT DISCUSSION

Allison Close Estates Subdivision

Mr. Hayes stated he had a number of conversations with Ms. Ryan and Mr. Fisher. In the preliminary site plan, which was approved by the Board, the easement was shown as a hard line marking a strip of land 50' wide rather than a dash line which would be an easement over Lot 2. The Plan showed a separate lot or a paper street to be known as a Village street to be kept in private ownership until such time as it became necessary to open it up to obtain access to the neighbor's property.

In Mr. Fisher's letter of 12/6/06, Mr. Fisher stated that in the event the Village does not want to accept the extension parcel as part of the applicant's dedication, an agreement would need to be reached in the form of an easement to be recorded as it relates to the parcel. Mr. Fisher has advised the Applicant that Mr. Morgan would accept a deed to that parcel in lieu of rerecording the easement as part of the required easement relocation process.

Mr. Hayes explained to the Board that is dealing with two issues: a) If the Final Plat as submitted conforms to the preliminary plat that was approved, the Planning Board cannot change it. It must be approved. b) The Planning Board cannot be subject to estoppels, an error and the error is recognized and the Board wishes to correct it. When a municipal agency makes a mistake, the public cannot be subject to the mistake. The error must be corrected. Did the Planning Board intend to approve that strip of land as a separate strip of land on the approved preliminary plat? If not, the Board can take the opportunity to correct the mistake.

The Board could grant a waiver to include the strip of land as a paper street, or correct the mistake. If the strip of land is a private lot, then, Lot 2 does not conform to the Code for the correct frontage. An area variance would need to be sought from the ZBA. If the

mistake is corrected and the strip becomes an easement, then, Lot 2 conforms to the Code. Mr. Mersand asked Mr. Hayes if the owner of Lot 2 could use the rest of the curve on the cul-de-sac to give him the required 150' frontage needed to conform to the Code. Mr. Hayes said allowing the owner of Lot 2 to use the 50' of the paper street as part of the frontage would be a decision for the Board to make. If the Building Inspector decided the paper street was the side yard, then, it would not be included as frontage. Mr. Tomasso said he would deem it side yard. Mr. Hayes asked if it would be possible to turn the house so it would face the paper street. Ms. Ryan said it could be done. Mr. Cerny said that this is not what the Board intended. The Board never intended to create a separate lot or paper street. Mr. Cerny would not be inclined to grant a waiver. He went on to say if the Board approves this plat, it would be approving a plat that does not conform to the Zoning Code. Mr. Grogan agreed. None of the Board Members were aware of the change on the plat. They thought everything was taken care of and all the Members were shocked at the fact everyone was back discussing right-of-way issues.

Mr. Fisher explained that his client, Mr. Morgan believes that the easement should be such that when the road is built it could be a Village dedicated road. To achieve this, Mr. Fisher said a fee simple lot or paper street needed to be indicated on the plat. An easement would not be able to be dedicated to the Village. The fee simple lot or paper street would be. The road will probably not be dedicated to the Village until some time in the future. Mr. Fisher stated that Mr. Morgan has every right to say to the Applicant, "When you record the Final Plat and the Notes are completed, the relocation of the easement should be recorded at the same time". This record should also show that at the time the Village takes a dedication, Mr. Morgan's private rights would be extinguished.

Mr. Grogan asked if the Board could go back to what was agreed in December, 2006 which was 4 lots around the cul-de-sac with an easement in the deed of Lot 2 stating a 50' wide private road can be built were indicated on the plat some time in the future. Mr. Hayes said that there could be a map note that a provision be made on Lot 2 showing the easement. As long as it is on the map and the deed to Lot 2, that could be a way to let the approval go forward and be consistent with what the Board intended.

There was much discussion of the above mentioned points. Mr. Cerny asked Mr. Hayes if he believed the frontage for Lot 2 could be the paper street. Then, Mr. Hayes's questioned whether a paper street provides frontage on the map or is it the side yard. Mr. Tomasso indicated on the map the frontage and side yard for Lot 2 as it now stands and the frontage is on the cul-de-sac. Mr. Hayes said a paper street could be privately owned. He, also, said the paper street could not be a reserved strip of land according to the Code.

Ms. Ryan asked Mr. Fisher if the strip could be changed into an easement and would his client be amenable to that. She asked if the deed could be changed or was it set for life. Mr. Hayes said, legally, it could be changed. At this point, Ms. Ryan presented to the

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Board an alternative subdivision plan. She reviewed the new plan with the Board. The new plan has only 3 lots on the Morgan side and the 4th lot remains where it was located on the previous site plan. The original easement from West Main Street would be returned to Mr. Morgan. There was some discussion and clarification of the new plan.

Mr. Hayes said the new proposal displays a lot of awkward angles. He favors the original proposal with the house on Lot 2 facing the paper street. Mr. Hayes said the Planning Board could approve the subdivision with one non-conforming lot provided a variance was approved by the ZBA. Mr. Hayes clarified the options presented to the Board. The Board could do any one of the following:

1. Correct the mistake on the preliminary subdivision plat
2. Turn the house on Lot 2 to face the paper street, thus giving it the required frontage with the side yard facing the cul-de-sac
3. Go to the ZBA, requesting an area variance for Lot 2 with notes on the plat concerning the 50' strip of land. The paper street can be privately owned.

There was a discussion concerning whether it was legal for the Board to create a reserved strip of land in a subdivision. Mr. Hayes said he believed it was legal.

The discussion continued as to what was the best, easiest and least costly way to resolve the issue. Mr. Major asked the Board to write a letter to the ZBA asking for approval of the area variance. Mr. Cerny thought the area variance was the best solution. Mr. Mersand disagreed and suggested the waiver as the way to proceed. Mr. Tanner agreed with Mr. Cerny. Mr. Grogan strongly favored fixing the mistake on the preliminary subdivision plat. Ms. Ryan asked if the applicant could seek to remedy the conflict with the neighbor while coming before the ZBA for a variance. Mr. Hayes and the Board said the applicant certainly could do that.

Mr. Cerny made a Motion that the Planning Board refer this matter to the ZBA for an area variance allowing Lot 2 as currently listed on the preliminary subdivision plat with less frontage than is allowed under our Code and the Board makes a favorable recommendation to the ZBA that while the Board understands this variance is highly unusual and variances are only granted under unusual circumstances, we favorably and strongly recommend in this instance because of the circumstances facing the Developers with the easement and the language of the easement that burdens the property.

Mr. Tanner seconded the Motion and every Member was in favor of the Motion.

ADJOURNMENT

Mr. Grogan made a Motion to adjourn the Meeting. Mr. Cerny seconded the Motion and all Members were in favor.

Submitted by

Mary Heubel
Planning Board Secretary