

**TOWNSHIP OF LOPATCONG
PLANNING BOARD MEETING**

7:00 pm

April 27, 2022

Chairman VanVliet called the Planning Board Meeting to order.

A Prayer was offered followed by the Oath of Allegiance

Chairman VanVliet stated “Adequate notice of this meeting has been provided indicating the time and place of the meeting in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star Ledger and The Express-Times and by posting a copy on the bulletin board in the Municipal Building.”

Present: Members Coyle, DiLeo, Palitto, Mayor Mengucci, Vice-Chairman Samson, Chairman VanVliet. Also present was Attorney Bryce, Planner Ritter, Engineer Wisniewski and Conflict Engineer Andrew Holt.

Old Business:

Minutes - Chairman VanVliet asked for a motion to approve Meeting Minutes of March 23, 2022. Motion by Mayor Mengucci, seconded by Member Palitto. All in favor, no opposed and no abstentions.

Jessamine Minor Subdivision – Block 65, Lot 5.01 – Completeness hearing.

Attorney Dornish – I don’t see Mr. Jessamine. I’m Ryan Dornish on behalf of him. So, as to Lot 5, I did amend the initial application as per Mr. Ritter and Mr. Wisniewski’s instructions and hopefully, everything is complete and satisfactory to approve everything for Lot 5 and then, I also did get a letter just the other day for Lot 3 with some things that have to be revised and hopefully, will be put on for next meeting and make those corrections and be set for the next meeting on that.

Engineer Wisniewski – So, to speak to the application for Lot 5, Mr. Jessamine submitted an amended application to improve the proposed development of the lot that was going to be created as part of the application and so, I completed a kind of second completeness review on the amended application and all of the waivers and/or not applicable to the applications are the same as previously reviewed by the Board at their December meeting so, I guess, the first step here would be to deem this amended application complete and I believe that unless the Board members have any questions specific to any of the items, I believe that could be done as well so that the application can be considered for a hearing with the variances that are being requested.

Chairman VanVliet – George, any comment on it?

Planner Ritter – On completeness, no.

Chairman VanVliet – Does the Board have any questions on this? In that case, I'll entertain a motion to deem the application complete. Do I hear a motion?

Mayor Mengucci- I'll make that motion.

Chairman VanVliet – Do I hear a second?

Member Coyle – I'll second it.

Chairman VanVliet – Beth, may I have a roll call?

AYES: Members Coyle, DiLeo, Palitto, Mayor Mengucci, Vice-Chairman Samson, Chairman VanVliet.

NAYS: None

Chairman VanVliet – Okay. Now, the hearing on Lot 5.

Attorney Dornish – So, Mr. Jessamine intends to subdivide the lot and then he intends to have erected a residential structure. I believe that you have the plans from both VanCleaf and the surveyor which has everything that he intends to do on that and any questions.

Attorney Bryce – You have testimony? The person who put together the subdivision as to the variances.

Attorney Dornish – I do not and Mr. Jessamine doesn't seem to be here. As far as the variances are concerned, I know that no streams or wetlands through the area so that should be not applicable and it is a relatively flat lot and beyond that, I don't have anybody else here to provide any testimony. Mr. Jessamine is here.

Mr. Jessamine arrived and sat down to the table.

Attorney Dornish – Mr. Jessamine they're going to swear you in and ask you some questions.

Attorney Bryce – Are you calling the witness counsel?

Attorney Dornish – Yes, the applicant.

Attorney Bryce – Mr. Jessamine could you please raise your right hand? Do you swear and affirm that the testimony you are about to give this Board, is the truth, the whole truth and

nothing but the truth? Okay, the record will reflect that the witness said yes and nodded his head.

Attorney Dornish – So Annual, we’re talking about Lot 5.

Mr. Jessamine – Five is the one that (inaudible) correct? That’s the corner lot property. That’s all ready. All I had was a line adjustment and then we have a lot. This is Lot 5. The second thing should be approved. That was done, I got the footings done on the other lot, you know.

Attorney Dornish – All right so, Annual for Lot 5 what do you intend to do on Lot 5?

Mr. Jessamine – Three houses the same (inaudible).

Attorney Dornish – And, Annual, you are a licensed contractor in New Jersey, right?

Mr. Jessamine – I am a licensed contractor.

Attorney Dornish – How many years of experience?

Mr. Jessamine – I started in 1946 and built Huffchild’s house. Dan Huff, we built his house. I built about 300 houses. I built at least 100 houses in Lopatcong.

Attorney Dornish – Does the Board have questions for Mr. Jessamine?

Chairman VanVliet – Appears he is creating an undersized lot on one of these. Why are we doing that?

Attorney Dornish – Okay, so, Leonard why are you creating one buildable lot and one undersized lot? What’s the reason for that?

Mr. Jessamine – I made one 85-feet and one 90-feet. The corner I made 90-foot and one I made 85. It was 70-foot. I was going to give the property to my grandson but he doesn’t want it.

Attorney Dornish – I think you’re talking about the other lot now. I think you’re talking about Lot 3. That’s the one you were giving to your nephew. We’re talking about the other lot.

Mr. Jessamine – Line adjustment and putting a house on that corner property. That’s 90-foot.

Chairman VanVliet – But you’re creating another lot that’s undersized?

Mr. Jessamine – Yeah, yeah, there’s two lots there. It’s 190-feet.

Attorney Dornish – So, they want to know why you’re creating one smaller than the other.

Mr. Jessamine – I thinking one's 85 (inaudible) 70- feet. Why, you want me to split it? You know, I don't want to split it.

Chairman VanVliet – I'd like to have some testimony of why you

Mr. Jessamine – Corner lot, you need 25-foot setback; do you know what I mean all the way around so that's why I made is another five feet. You know what I'm saying.

Attorney Bryce- Counsel, do you have anybody that's going to be testifying as to the actual lot status. One could be set forth on the plat and actually provide testimony towards the variances.

Attorney Dornish – I do not.

Attorney Bryce – It may be beneficial before the Board renders any type of opinion as to this to consider

Attorney Dornish – Okay, I didn't know they were necessary.

Attorney Bryce – Well, there is variance relief that's being sought here and on this particular application, with the variances being sought, you have to establish either a hardship or that the variance is going to promote the purposes of the Municipal Land Use Law and any detriments associated with same are not going to outweigh those benefits and its undersize lot creation, so it's a difficult case. I certainly don't want to overstep my bounds but it may be beneficial for your client to bring in an expert opinion that the Board can rely on or utilize to evaluate whether a variance can be legitimately granted.

Attorney Dornish – Okay.

Mr. Jessamine – I have a question. A buildable lot, that's all you need.

Engineer Wisniewski – You need 9,000 square feet.

Mr. Jessamine – What?

Chairman VanVliet – You need 9,000 square feet. That's the minimum for a lot in this zone.

Mr. Jessamine – Yeah because I, on Second Street, I took another (inaudible) 190-feet there on that house and made that house 70-foot; it's only like 65-feet.

Chairman VanVliet – You're talking frontages now or?

Mr. Jessamine – Yeah, frontage. The one on Second Street we getting approval for.

Chairman VanVliet – We really don't like to be creating undersized lots around and someone wants to come utilize that lot sometime, I think we're going to need some testimony from the either surveyor or engineer.

Attorney Bryce – Yeah, I hate, you know the survey just, the minor subdivision can be accomplished either through deeds or a plat signed by a licensed surveyor. As to the competency of the testimony, you're going to have an engineer that's going to have to probably have to testify as to why that lot is going to be able to accommodate the undersized nature and might even need a planner to talk about why that is actually going justify a hearing (inaudible) because certainly and I don't want to speak for the Board but it's difficult to see the hardship.

Attorney Dornish – I'll have them both here next meeting. All right, so the application is deemed complete and we need to have another hearing.

Mr. Jessamine – It's not right the lot, 90-foot?

Chairman VanVliet – As long as you have the required amount of square footage on the lot, it fits into the zoning but

Mr. Jessamine – That's a big lot. That corner lot's a big lot.

Engineer Wisniewski – We're not talking about the corner lot. We're talking about Lot 5.

Mr. Jessamine - (Inaudible)

Attorney Dornish – The other one. Not the one you were going to Brandon; the other one.

Mr. Jessamine – The other one (inaudible).

Attorney Dornish – They want to know when you subdivide it, one is going to be smaller, one is going to be bigger

Mr. Jessamine – 80-feet.

Attorney Dornish – Yeah, and the Board is concerned with that so what they want is for us to bring the guy from VanCleaf and the, your surveyor.

Mr. Jessamine – (Inaudible). It was 70-feet. I made it about another 10-feet. (Inaudible). You want me to (inaudible).

Chairman VanVliet – I'm not telling you what you have to do but what we would like to see is the justification for creating an undersized lot.

Mr. Jessamine – I don't see a problem.

Attorney Dornish – Let me ask the Board a question, if in fact we revised it so that both lots were the same size, then would I still need expert, I mean I would have to amend the application?

Chairman VanVliet – You wouldn't need a variance for an undersized lot.

Attorney Dornish – Okay, so then we're going to need to bring the experts.

Engineer Wisniewski – They don't have to be the same size, the lot that has a home on it, can't be under 9,000 square feet because then you might sell that property and then anything wants to do on that property would require a variance. You're creating issues for a future owner by doing

Attorney Dornish – Okay. All right, so then as far as, Lot 5 is concerned we deemed it complete but we can't finalize the application tonight without expert testimony.

Mr. Jessamine – We've been trying to get this in since Christmas.

Attorney Dornish – We'll have to reschedule Lot 5 and onto Lot 3. Is that able to be deemed complete?

Attorney Bryce – I assume you want to ask the Board for an adjournment of Lot 5?

Attorney Dornish – Yes.

Attorney Bryce – Then it will be up to the Board to make a motion to allow to adjourn the Jessamine Minor Subdivision Block 65, Lot 5 minor subdivision with variances to the May meeting without further Notice; May 25th.

Chairman VanVliet – Okay, on Attorney Bryce's explanation, we'll have a continuance on this application to adjourn it tonight, continue it to the May 25th meeting and at that time you'll have the testimony or you'll be moving the lot line over to create two

Attorney Dornish – I'll discuss everything with the two experts probably tomorrow and figure out

Chairman VanVliet – And you will not have to continue, you won't have to Notice. Do I hear a motion on that?

Member Coyle – I'll make a motion.

Chairman VanVliet – Do I hear a second?

Member Palitto – I'll second it.

AYES: Members Coyle, DiLeo, Palitto, Mayor Mengucci, Vice-Chairman Samson, Chairman VanVliet.

NAYS: None

Attorney Bryce – For anyone in the public that's here tonight on Block 65, Lot 5 Jessamine Minor Subdivision with variances, that matter is going to now be carried to May 25th in this room, 7:00 pm no further notice is going to be required.

Chairman VanVliet – Okay, now we need a motion for Lot 3. All right on the matter of completeness on Lot 3, may I have a motion to approve the completeness?

Mayor Mengucci – All make that motion.

Chairman VanVliet – Is there a second?

Member Coyle – I'll second it.

Mr. Jessamine – My question is, is hard to get people, excavators to come in and to dig the lot. I wanted to put the footings in. I need to put the footings in if that's okay with you guys.

Chairman VanVliet – We don't grant that permission. We would normally say that, you know, you can't start construction until you have an approved lot.

Mr. Jessamine – Yeah, but I mean

Chairman VanVliet – You're taking the chance on not getting the approval on this at which time you will be required to take out whatever you did.

Mr. Jessamine – What about Second Street? (Inaudible) What did you do last month?

Chairman VanVliet – We didn't approve anything.

Mr. Jessamine – Well, I thought the house on Second Street, we could go ahead and do that. What do we need on Second Street?

Attorney Dornish – You're subdividing both. You're subdividing.

Mr. Jessamine - (Inaudible).

Attorney Dornish – You got to put together one big lot, the one you were going to give Brandon so he could put a house on it. If you just want to leave it that way, you could build on it, yeah, because it's already done but now you (inaudible).

Mr. Jessamine – (Inaudible).

Chairman VanVliet – On the original lot.

Mr. Jessamine – On the original lot.

Chairman VanVliet – Yes, and now you're breaking that lot up.

Mr. Jessamine – I had the okay.

Attorney Dornish – Yeah, but now you're dividing that lot, so now you don't have approval.

Mr. Jessamine- The other one.

Attorney Dornish – No, but you're splitting this one apart too.

Mr. Jessamine – Well, this one here had a house on it. That's the one that went for two months now. What's going on with that? (Inaudible).

Attorney Dornish – Because you're trying to divide these lots.

Mr. Jessamine – They're two separate lots.

Attorney Dornish – I know that.

Mr. Jessamine – You have Second Street and you have Third Street.

Attorney Dornish – Right, Lot 3 and Lot 5. You're subdividing both of them. You put applications in to the Board to subdivide them. So, until the Board finally approves everything that the subdivisions done, you can't build anything.

Mr. Jessamine – (Inaudible).

Chairman VanVliet – When you get through this Board.

Attorney Dornish – Hopefully on May 25th.

Mr. Jessamine – That's next month.

Chairman VanVliet – Yes.

Mr. Jessamine – I can't do nothing?

Chairman VanVliet – Basically, yes. I understand that scheduling is a problem but

Mr. Jessamine – (Inaudible).

Chairman VanVliet – Well, I think we've been more than cooperative with your attorney in order to do this and

Mr. Jessamine – We don't want to be here every month. It will be summertime; it will be wintertime (inaudible) I got to get it done.

Chairman VanVliet – You understand that continuing to build on that lot, on a subdivided lot, you are in danger of this Board turning you down for that and you will be responsible for taking everything out that your built.

Mr. Jessamine – I'm saying we have approval for one lot. That's where we're at.

Chairman VanVliet – Yes, but you're telling us that you want to divide that lot.

Mr. Jessamine – Yeah, well sure.

Engineer Wisniewski – To build a second house. That's the application

Mr. Jessamine – For building a second house.

Attorney Dornish – Right now, you've got one big lot.

Mr. Jessamine – (Inaudible)

Attorney Dornish – Yes and they have it.

Mr. Jessamine – All I do is pay, pay, pay. You know if, I must of paid \$50,000 over there for permits and you know and in P'burg, here, there, there. I don't mind paying it. I want to get this thing done. You got to help me out. You got to give a little bit. You know, what I'm saying.

Attorney Bryce – All right, Counsel I think

Attorney Dornish – Lenny, we've got to move on to the next part.

Attorney Bryce – You're good to go.

Attorney Dornish – You have to do anything with the Lot 3?

Attorney Bryce – Yes, you were deemed complete counsel.

Attorney Dornish – Okay, thank you. I didn't hear that.

Mr. Jessamine – All right, thank you guys very much. Appreciate whatever you can do.

Chairman VanVliet – We'll try and get it through as fast as we can. I understand. All right, next order of business if NFI Real Estate, LLC Preliminary and Major Site Plan application with Bulk Variances relief at 188 Strykers Road, Block 99, Lot 3.01 and No. 6 this is a continuation of the hearing. Mr. Peck.

Attorney Peck – Thank you Mr. Chairman, members of the Board. For the record, my name is Mark Peck. I'm an attorney with the Florio, Perrucci Law Firm here on behalf of the applicant NFI Real Estate, LLC. As the Chairman indicated, we're here to continue our hearing which began May 26 and continued on September 22nd of last year. Due to various developments thereafter, it's been delayed until tonight. We have amended our application. We're now, importantly, we're now only seeking preliminary major site plan approval. We are not seeking final approval at this time and again, we're seeking bulk variance relief. A couple less variances than before. The Board did raise some site questions at our earlier two hearings; primarily related to sewer and to buffers and some other things and some of which are related to the pending Bridge Development next door which has since been approved. To address these Board and public questions and concerns and also offer the best possible plan, NFI has purchased the Berry Plastics site, Lot 2 and incorporated this into the site plan and because of the time that's lapsed since we were last together, just to refresh the Board, we are seeking to construct a 592,800 square foot warehouse which would include 17,500 square feet of office space with associated improvements. The warehouse itself will be situated on Lot 3.01 access would be via Lot 2. Lot 6 which was originally the proposed access by way of a 50-foot easement to Strykers Road, that's no longer part of the plan. It is in the ROM Zone District where it is a permitted use. Lot 3.01 itself, is a landlocked 46.75-acre parcel and largely as a consequence of that land-locked status, we do require a few C2, C1 variances, I'm sorry for hardship. The first is from Section 243-63.B which requires lot frontage on a public street. We have a land-locked parcel that lacks that and also from Section 243-75E where we had at least 300-feet of street frontage which are required again this land-locked parcel has no frontage. Mr. Ritter's also raised a variance from Section 243-75B-2 which has to do with the 25-foot landscape buffer that our engineer will discuss that. There is also some design waivers that we're seeking from Section 243-46 C1B that has to do with the width of the driveway apron; Township Ordinance limits that to 40 feet; we're seeking 143.7 feet from Section 243-48B5 which is the sidewalk requirement; internal sidewalks. Section 243-48B6 A&B which has to do with the requirement that the 30-foot minimum fire aisles; our (inaudible) proposing 24-feet. There is also employee parking proposed adjacent to the front and the side of the building and finally from Section 243-48B 7A which has to do with the maximum grade of the driveway, our driveway apron in the vicinity of Strykers, the driveway there, slightly exceeds that slope. So anyway, at the earlier hearings, we had our site engineer, Kyle McKenna, our traffic engineer John Witchner and our planner Andrew Janu testified (inaudible) with us tonight as is Mr. Janu's colleague Barbara Ailin. The

plan tonight is that Mr. McKenna will testify, he'll give, again because of the time that's left, just a very brief overview of his prior testimony with regard to Lot 3.01 but to really focus on Lot 2; it's a newly acquired lot. It's existing proposed conditions and it will also go and testify as to the current state of the buffering proposal, lighting, stormwater management and sewers and Mr. Witchner will offer updated testimony based on the addition of Lot 2 to the plan and Ms. Ailin will again, review the proofs to the variances. Mr. Janu already testified about the variances. They haven't changed; we've lost a few but she'll just again go over positive and negative criteria and of course our professionals will be available to answer any questions. So, without any further ado, I'd like to call my first witness who has been previously sworn and accepted as an expert. Yes, sir.

Engineer Wisniewski – Mr. Peck, sorry to interrupt again but I'm going to recuse myself.

Mr. Chairman – Yes.

Engineer Wisniewski – All right, good night, everyone.

Attorney Bryce – Mr. Peck, before you call your first witness, there is that issue that you and I did discuss earlier; you will provide and certify to the owners by the Township's Tax Assessor that list certainly you relied on in good faith. It's notable that that list is kind of obviously deficient.

Attorney Peck – Yes, well that's what I've been advised.

Attorney Bryce – So, I do realize and I recognize and I think that the Board recognizes that there is a statute; I think it's 40:55D 12 subsection C. It does indicate that, you know let me take a look at, verbatim

Attorney Peck – I can, it says "in pertinent part, the applicant shall be entitled to rely upon the information contained in such list and failure to give notice to any owner, to any public utility, etc., etc., not on the list, shall not invalidate the any hearing or proceeding.

Attorney Bryce – So, I think that that is some fairly clear authority but my concern though is that there is somewhat of a known defect at this point in time that is not your creation, that is the creation of the Township through the incomplete list and I just don't know if you're inclined to proceed with that at this point in time given that there maybe a challenge to the notice dispute what that particular statute says by virtue of the fact that now we know that complete notice was incomplete and while it says that and only, only in this regard it says that the hearing or proceeding will not be invalidated which kind of implies that it may be a discovery after the fact and I'm not sure if, I have not found any case law that addresses this frankly about when a defect is actually discovered before the fact.

Attorney Peck – Perhaps were searching for problems then that don't exist. I have two responses to that and as to why I don't think this is an issue at all and I understand it's your job to look for any possible land mine to protect the interest of the Board but in addition to our statutory reliance, there's sort of equitable argument that the residents are well aware of this. I didn't see the room clear out after that last application concluded and if the Chairman would ask for a show of hands as to how many people in the audience reside at Overlook, I suspect there'd be quite a few numbers of hands up but I also would guarantee, since I've been at the meetings too, every meeting I've been to that's addressed this Council or Planning Board, there have been people, you know, residents from Overlook at those meetings. Further, I would draw Mr. Bryce's attention to the case "Ponder and Watershed vs. Hamilton Township Zoning Board of Adjustment" that's at 397 NJ Super 335 a 2008 Appellate Division Case that reaffirmed that new notices are not required to advise in an application that's been adjourned or will be carried over to another meeting. The statute requires initial notice only and the court there had held it; no new notice is required if the Board announces on the record the adjournment to a future date certain noting that "members of the public have an obligation to attend the first meeting or otherwise stay abreast of the status of the application" and that also cites with approval "Kramer vs. Board of Adjustment of Seagirt" which is a well-known Supreme Court case from 1965. So again, we provided notice back for the initial May 2021 hearing. We provided notice for this just really as a courtesy as a you know belt and suspenders type thing just because so much time had elapsed but the record is clear that the Chairman has carried the hearing, you know, to date, every month because I've been here every month and we've gone through this exercise, so, with all that said, we're very comfortable proceeding. If somebody wishes to spend their time and their money challenging this point, you know, I'm always looking for things to do so.

Chairman VanVliet – I have one question.

Attorney Peck – Yes, sir.

Chairman VanVliet – Under original notice,

Attorney Peck – Yes, sir.

Chairman VanVliet – Did that include the Overlook Development?

Attorney Peck – It did not include Lot 2.

Chairman VanVliet – Lot 2 is the Berry Plastic.

Attorney Peck – That is the Berry Plastics.

Chairman VanVliet – But I mean the original application, the notice was, okay?

Attorney Peck – Correct. Again, we’re very, you know, we’re very comfortable. We don’t think this is an issue at all. You know, Mr. Bryce raised a question, you know, he was obligated to and I can appreciate that. I’ve served in his capacity in other municipalities so I get that but again, we’re comfortable, the law is on our side.

Chairman VanVliet – Okay. I would incline to move forth

Attorney Bryce – It is the Board’s decision as to whether or not it assumes jurisdiction is (inaudible).

Chairman VanVliet – Well, I’ll leave it to the Board. Do we have any questions or?

Attorney Bryce – I dare say this which is a matter of fairness. It’s kind of like a sub hearing, open it up to the public to hear what the public has to say about the (inaudible).

Attorney Peck – I don’t think it is a matter of public debate. I think it is a question about law.

Attorney Bryce – The Board, I think, the Board I think has an obligation not just to the applicant, also to the public what can be heard.

Attorney Peck – It’s the Board’s prerogative to (inaudible) it see fit.

Attorney Bryce – At the end of that, make a determination as to the jurisdictional issue.

Chairman VanVliet -Is there a spokesperson for the Overlook community?

Attorney Bryce – Or anybody in the public.

Jim Belske – Deerhaven Terrace, Overlook. – I just want to go back to a comment Mr. Peck made. You made mention that the public was well aware of this application. How? How was the public made aware?

Attorney Peck – May I?

Attorney Bryce – Yeah, you are allowed to respond; you don’t have to.

Attorney Peck – I would just suggest that the Overlook Association’s was left off the last notice which we weren’t obligated to give. The Overlook Association was noticed for the initial May hearing. There have been residents from Overlook here. It’s certainly been an active subject on social media and in the town. There’s plenty of people who I recognize who have been here all the same meetings that I’ve been at so I feel comfortable and I’m very comfortable that the minutes and records will reviewed will show that people from Overlook have been present at these meetings so from that, I make the conclusion (inaudible).

Jim Belske – So, I would present to the Board, receiving a legal notice is much different than going to social media or talking about it at the pool. Not receiving legal notice and knowing that the residents did not receive the legal notice is much different than just assuming everybody is aware. It's hard to keep track honestly of all the warehouses right. There's a lot of them coming but we have, Overlook, in particular, two warehouses that are going up; one of them notice was neither received and we're here tonight with a hearing knowing that residents were not legally noticed or informed of this hearing and to dismiss it as, it's on social media

Attorney Peck – Excuse me, but that was not my point. That was one of several points; the main point is that we provided valid notice per the statute and per case law for the first hearing. This supreme court in the State of New Jersey has held once that first notice is given, we're done. We're entitled to rely on the list that we were given and it's the obligation of the public, once that first notice is given, to keep itself informed. That's not for me, that's through the supreme court.

Jim Belske – This is not what we're talking about, we're talking about today, we're talking about this hearing today; about NFI

Chairman VanVliet – We hearing the statute read. If it's an oversight, and it wasn't noticed, it's not a cause for not hearing, having a hearing.

Jim Belske – The Board does have the ability to require that notice.

Chairman VanVliet – That's what I'm basing it on. (Inaudible) that Mr. Peck and the fact that you were noticed on the original application and that inconclusion comes to the point where you were noticed, you've been by your presence here at most of the meetings, all of the meetings that we had anything to discuss, you're here.

Jim Belske – This is me. This is the residents here. The residents that aren't here that could be sitting at home not knowing what's going on and to be honest I'm not aware of the first notice. I have to check it. I personally did not get a first notice of this at all so I'm going to look into that separate.

Chairman VanVliet – (inaudible) look into that separately. I believe the law the indicates that the notice was given to the management office and they are responsible from that point to notify the residents of Overlook.

Jim Belske – I'm referring to the notice for this hearing today. When was the first notice Mr. Peck given?

Attorney Peck – It would have been early May of 2021.

Jim Belske – So, almost a year ago, there was notice and here we are a year later and it's not reasonable to think that a notice should be given to inform the residents that this is ongoing?

Chairman VanVliet – At each, meeting where there was an extension requested, we noted it in, it's in the minutes that we granted the extension for that notice to be continued on through. Doesn't give us a time limit on it.

Jim Belske – So, the Board has the ability to require, at a minimum, notice be given to the residents for this hearing. They, the Board, could require this from the developer.

Chairman VanVliet – And, we required it.

Jim Belske – For this hearing?

Chairman VanVliet – For this hearing.

Jim Belske – The notice we're talking about today. Not the one from a year ago.

Chairman VanVliet – This Board required – talk about the error that occurred

Jim Belske – So, the error is being dismissed. The residents will have to bear the brunt of that. Taking that into account that this is going on over a year. That there's a number of residents that weren't even informed by error of the previous application.

Motion by Member Samson, seconded by Mayor Mengucci to continue the hearing. Roll call vote:

AYES: Members Coyle, DiLeo, Chairman VanVliet

NAYS: Member Palitto, Mayor Mengucci, Vice-Chairman Samson

Attorney Bryce – The motion does not carry. Now what my noting that and noting that I think the Board's concern in all fairness from a jurisdictional issue and recognizing that this is not the applicant's fault by any stretch of the imagination. It may be appropriate to try and do it at a special meeting for the benefit of the applicant and that this Board will undertake to rectify the notice issue so that it's not at the applicant's expense

Chairman VanVliet – No, it was by error of your management company.

Jim Belske – Correct, but the point that I'm making, is that we have residents.

Talking over by public.

Attorney Bryce – Everyone please, we're trying to maintain a record here. I do want to say, this is not about question, please make a statement. This is a preliminary hearing as to a notice issue. Make a statement; it's not a back and forth. At the end of it, the Board is going to make its determination.

Jim Belske – NFI, Overlook, residents have not received a single notice including the first one for this application. We checked into that. I had numerous emails. No notice was delivered to Overlook for NFI in May last year or recently.

John Ketcherson – 38 Jade Lane – I just want to, I'm not from obviously from Overlook, but I would like to point out that the last time the minutes were posted, were October 2021 so, if you're depending on minutes for people to determine whether or not something's been continued or not, that doesn't really work. Now, maybe somebody could drive to the building here and look at them, you know, as part of the records but, you know, typically, we should be looking at them on line and if they're not available, how can you depend on those for to know what is coming up.

Donna Schneider – 26 Meadowview. I'm not from Overlook either but to add on to Mr. Ketcherson's comments, there are no videos up either. So, you can't rely on video and you can't rely on minutes for people that live in Overlook or anywhere else in the Township to find out what's going on in meetings so, thank you.

Judy Liptak – 47 Kyle Drive – I just want to reiterate in fact you have it in the minutes, that I am also not from Overlook and I do attend these meetings. To be lumped in and just assuming that everyone that comes in from Overlook should have been notified is not relevant and about the minutes, I'm going to reiterate that minutes are not posted promptly so we can not be rely on those to give us information and nor or the videos and videos released to the public for information. So, there is a lot of lack of information given.

Beverly Myers – I am from Overlook and we did not get a notice from NFI for the warehouses being built. Bridge, I think there was a letter that was sent but the NFI letter was not delivered and it went back to their lawyer's office because it was a registered letter and we checked with the post office and that's what happened. We never got it.

Chairman VanVliet – Any further comments? Seeing none, we'll close the public portion and we'll proceed with the hearing.

Attorney Bryce – Let the Board

Chairman VanVliet – Can I have a motion to continue with the hearing?

Motion by Vice-Chairman Samson, seconded by Mayor Mengucci to continue the hearing.

AYES: Members Coyle, DiLeo, Chairman VanVliet

NAYS: Member Palitto, Mayor Mengucci, Vice-Chairman Samson

Attorney Bryce – The motion does not carry. Now what my noting that and noting that I think that the Board's concern in all fairness for a jurisdictional issue and recognizing that this is not

the appellate fault, the applicant's fault by any stretch of the imagination, it may be appropriate to try and do a special meeting for the benefit of the applicant and that this Board will undertake to rectify the notice issue so that it's not done at the applicant's expense as a matter of fairness. That's kind of where I'm coming from. It's up to the Board. I just, I want to be sure that everything, everybody's rights are preserved in the process

Mayor Mengucci -Fair enough.

Chairman VanVliet – Do I hear a motion to do that?

Mayor Mengucci – I'll make that motion.

Member Palitto – Second.

Chairman VanVliet – Roll call, Beth.

Secretary Dilts - What is the motion for?

Chairman VanVliet – Trying to have a special meeting.

Attorney Bryce – and that this Board will undertake to provide appropriate notice and double check the notice with the tax assessor.

Secretary Dilts – And, is that the entire notice?

Attorney Bryce – I'm going to do the entire notice.

Secretary Dilts -The entire certified list.

Attorney Bryce – Yes.

Secretary Dilts – And, who made the motion?

Chairman VanVliet – Mayor Mengucci made the

Secretary Dilts – Seconded?

Chairman VanVliet – By Jim.

AYES: Members Coyle, DiLeo, Palitto, Mayor Mengucci, Vice-Chairman Samson, Chairman VanVliet.

NAYS: None

Attorney Bryce – And I do want to apologize to the applicant. It's not the applicant's fault.

Attorney Peck - I do, you know I appreciate the Board's concerns and you know, I'm happy to accept the judgment of the Board but I do want to state for the record my disappointment because I do know, not think, I know that the law is on our side. That we could have proceeded tonight and it would have been sustained in a challenge and that looking at the delays that we've been subject to, you know and we filed our amended application in November, you know, and it took, you know, the conflict was discovered and that took, you know, I'm just saying a, I know the Boards been acting, you know, in good faith and has treated, always treated me fairly but, you know, somebody looking from the outside might say, hey this is starting to appear obstructive so, let's just hope we get it right this time and that we can proceed at the next meeting. Hopefully go as long as we have to get a vote so we can conclude this saga.

Attorney Bryce – That's fair. I do want to take somewhat of an exception. The Board certainly is not (inaudible) there's been more than one requests even beforehand for adjournments, especially with access concerns. There was subsequent notice requirement because of a new lot being configured for access so there was subsequent notice required because of what is relied on. So, I understand the decisions been made

Attorney Peck – That was one of many points.

Attorney Bryce – But Mr. Peck, you've been here at this Board every meeting and I don't think that the record should reflect that the fact that this Board is trying to somewhat hand string this application.

Attorney Peck – And, I said that the Board has treated me fair. I said that but again, and as you indicated, I've been here at every meeting and the public could have been here at every meeting when it was carried again and again and again and the supreme court has said it's there obligation so, hopefully, we can agree on a date.

Attorney Bryce – Why don't we talk about it.

Discussion with the Board and applicant took place and a decision to meet May 17th at 7:00 pm was decided.

Attorney Bryce – I guess, we can just adjourn the hearing at this point. We need a motion that we carry further notice, then it will be provided and then I can just make an announcement.

Chairman VanVliet – Is there a motion?

Mayor Mengucci – I'll make that motion.

Member Palitto – I'll second

Chairman VanVliet – Beth, roll call please.

Secretary Dilts – Can I have the words to that motion?

Attorney Bryce – Yeah, the motion is to carry this hearing to May 17th, which is Tuesday at 7:00 pm in this location. Notice will be provided by the Board.

AYES: Members Coyle, DiLeo, Palitto, Mayor Mengucci, Vice-Chairman Samson, Chairman VanVliet.

NAYS: None

Attorney Bryce – All right so for the members of the public, the hearing is not going to be proceeding tonight at this time. Notice is going to be carried to May 17th which is Tuesday at 7:00 pm in this location. Notice will be provided by the Board. Thank you.

Attorney Peck – Thank you again.

Chairman VanVliet – Okay, now we'll open it to public comment on any subject you would like to talk about

Judy Liptak – Asked to speak to the agenda item evening though we're not having the hearing.

Attorney Bryce – Ma'am that's not appropriate.

Judy Liptak – Okay, so, then I'm just going to make a statement asking about C Variances.

Secretary Dilts – Your name for the record.

Judy Liptak – Judy Liptak. She talked about the C Variance which deals with hardship and proof and asked the Board to define what a C Variance is.

Attorney Bryce – Noted the Board is not here to educate the public on C Variances.

Judy Liptak – Further noted that warehouses have inundated this whole area. She asked the Board to take into consideration everything that has been heard from the residents over the last months. She read a statement to the public about her concerns of the negative impact the warehouses, trucks, etc., would have on the Township.

Chairman VanVliet – Anyone else?

Jim Belske – Deerhaven Terrace at Overlook – Asked a question – Mr. Peck mentioned that Bridge had received approval for their application. Wanted to confirm that Bridge received preliminary approval and still waiting for sewer capacity issue.

Attorney Bryce – Bridge has received preliminary site plan approval and has not received final site plan approval.

Jim Belske – And, no planned hearing or final approval.

Attorney Bryce – Not at this time, that I'm aware of.

John Ketcherson – Made a statement about the warehouses in Lopatcong. Asked where the relief was for Lopatcong from the mega warehouses, truck stops, truck traffic. He asked about the P'burg Mall and Ordinance 20-12 and the Redevelopment Plan and what can be built there. He talked about the Pohatcong minutes indicating Lopatcong is on board with a warehouse. What can be built on the warehouse property? He asked for an answer.

Chairman VanVliet – Wish I had one for you.

John Ketcherson – You guys, nobody's going to answer?

Attorney Bryce – This is public comment. If the Chairman wants me to answer, I'll answer.

Chairman VanVliet – You're free to do that.

Attorney Bryce – This is not for this Board. There has to be, the only thing that this Board has done, is undertake a study to determine an area to be in need to redevelopment. Anything that has to happen in that redevelopment area, has to be done through a redevelopment plan. That is not part of this Board.

John Ketcherson – Does that not have to follow our ordinances though?

Attorney Bryce – No, it does not.

John Ketcherson – So, the answer is basically is that yes, a warehouse can be built there. Yes, a truck stop can be built there because it can override the existing town ordinances. I appreciate the answers.

Chairman VanVliet – Anyone else?

Barbara Horn – Marlboro Circle – Overlook is very much opposed to the building is not really on point; residents from other areas of the town are too. State the obvious which is the Strykers

Road location has one warehouse built. Now looking at two other applicants. Strykers Road is the wrong place for the location of warehouses.

Patti Lienenbach – Barn Owl Way – Asked if discovery has been done by April and wanted to know if this is on target.

Chairman VanVliet – Which litigation are you talking about?

Patti Lienenbach – NFI.

Attorney Bryce – Special Counsel is handling this.

Chairman VanVliet – NFI does not have an enforcement against us per se, but again the town council. We do have a lawsuit against us by the owner of the property that NFI wants to purchase.

Donna Schneider – 26 Meadowview – Commented that NFI having a landlocked piece of land and needing Barry Plastics to move forward – C-Variance – hardship if self-imposed should not be made available to them. NJDOT truck traffic grant allowing P’burg to send tractor trailers to Rt. 519, South Main and 22 – so on top of what is originally happening here, Phillipsburg will now be shifting all of their stuff this way as well. Noted there is a porta potty in front of Berry Plastics – asked how to get rid of it. Asked if anyone heard from solar.

Robert Bruce – Harwich Road – No notice regarding NFI – registered letter was sent and returned. So, Mr. Peck is hanging his head on what’s legal but it is an ethical obligation he felt. Spoke of the Lehigh Valley Planning Commission acting as an advisor to communities if there was a South Warren Planning Commission they could advise to communities as well.

Chairman VanVliet – Anyone else?

Audra Frank – Bald Eagle Drive – She is across the highway and she lives here but does a lot of stuff in Phillipsburg. She is on the Historic Commission of Phillipsburg. One of the things she is asking is why isn’t there an entertainment center – Easton has been successful. One of the things lacking is a hotel with a conference center.

Chairman VanVliet – Anyone else? Okay, seeing none I’ll close the public comment portion of the meeting and entertain a motion to adjourn.

Member Coyle – I’ll make a motion to adjourn.

Chairman VanVliet – Do I hear a second?

Mayor Mengucci – I’ll second it.

Chairman VanVliet – All those in favor signify by saying yes. All said yes, no nays and no abstentions.

Respectfully submitted,

Margaret B. Dilts
Secretary

Margaret B. Dilts
Land Use Secretary