

**BOROUGH OF HIGHLANDS
PLANNING BOARD
REGULAR MEETING
SEPTEMBER 13, 2007**

Mr. Stockton called the meeting to order at 7:37 P.M.

Mr. Stockton asked all to stand for the Pledge of Allegiance.

Mr. Stockton made the following statement: As per requirement of P.L. 1975, Chapter 231, notice is hereby given that this is a Regular Meeting of the Borough of Highlands Planning Board and all requirements have been met. Notice has been posted on the public bulletin board and transmitted to the Courier, The Asbury Park Press and The Two River Times.

ROLL CALL:

Present: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. Bahrs, Mr. Schoellner,
Mr. Nolan, Mr. Harrison, Mr. Cefalo, Mr. Stockton

Absent: Mayor O'Neil

Also Present: Carolyn Cummins, Board Secretary
Jack Serpico, Esq., Board Attorney
Catherine Britell, P.E., Acting Board Engineer

**PB#2007-4 Knox 400, LLC – Request for Postponement to October 11, 2007 Meeting
Without the Need for Further Public Notice
Block 108 Lot 2.01 – 460 Hwy 36**

Mr. Stockton stated that the Board received a letter from the applicants Attorney requesting that this public hearing be postponed without any further public notice.

Mr. Manrodt offered a motion to carry the Knox 400 Public Hearing to the October 13, 2007 Meeting without the need for further public notice, seconded by Mr. Mullen and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mr. Mullen, Mr. Schoellner, Mr. Nolan, Mr.
Harrison, Mr. Cefalo

NAYES: None

ABSTAIN: None

Mr. Stockton announced to the public that the Knox 400, LLC application will not be heard this evening and that it was carried to the October 11th meeting without the need for further public notice.

Amendment to the Master Plan Stormwater Element Resolution

Mr. Stockton read the title of the following Resolution for approval:

Mr. Manrodt offered a motion to move on the adoption of the following Resolution:

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**A RESOLUTION OF THE BOROUGH OF HIGHLANDS PLANNING BOARD
MEMORIALIZING ADOPTION OF AN AMENDMENT TO THE BOROUGH MASTER
PLAN MUNICIPAL STORM WATER MANAGEMENT PLAN ELEMENT**

WHEREAS, the Planning Board of the Borough of Highlands has been advised that it is necessary to adopt an amendment to the Borough Master Plan, Municipal Stormwater Management Plan Element pursuant to applicable law; and

WHEREAS, the Board and Borough authorized T & M Associates to prepare an amendment to the Master Plan Municipal Stormwater Management Plan Element which amended Plan is annexed hereto and made a part hereof. Said amended Plan was formally presented to the Board and the public at a public session of the Board on August 9, 2007; and

WHEREAS, the Board voted unanimously in favor of the adoption of the annexed amended Plan at the August 9, 2007 meeting; and

WHEREAS, the Board Secretary is hereby directed upon the adoption of this Resolution to transmit a copy hereof to the Clerks of all adjoining Municipalities by certified mail and, to forward an additional copy of this Resolution via certified mail to the Monmouth County Planning Board along with a copy of the annexed amended Plan pursuant to the requirements of the applicable statutes.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Highlands that it hereby adopts the annexed amended Municipal Stormwater Management Plan Master Plan Element and does further recommend to the Mayor and Council of the Borough that it adopt the appropriate ordinances and regulations in order to implement the various programs and policies identified within said document if required by law.

Seconded by Mr. Mullen and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Manrodt, Mr. Kovic, Mullen, Mr. Harrison, Mr. Cefalo,
Mr. Stockton

NAYES: None

ABSTAIN: None

**PB#2006-1 Fleming, Daniel
Block 26 Lot 12 – 127 Highland Avenue
Unfinished Hearing**

Present: Henry Wolffe, Esq.
Daniel Fleming
Robert Simpson, P.E.
Victor Furmanex, P.P.

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Conflict of Interest: Mr. Kovic, Mr. Bahrs, Mr. Harrison all stepped down.

The following documents were marked into evidence:

- A-6: Simpson Report dated July 25, 2007
- A-7: Aerial Photo on board

Mr. Stockton stated that the most current plans for this application are dated 12/14/05 consisting of 3 sheets revised through 4/1/07 and one sheet revised through 4/30/07.

Mr. Wolffe stated that he is working with the plans marked as Exhibits A-5 and AA-3

Mr. Wolffe stated he believes that where we finished up last time was there was concern that we lacked a Geo Technical Report and Mr. Maloney testified as to the site plan. He has Robert Simpson here tonight to provide testimony regarding the slope.

Mr. Serpico swears in Robert Simpson, P.E.

Mr. Simpson stated the following during his testimony and response to questions from the board:

1. He described his Professional qualifications and background to the board and the board accepted his qualifications.
2. He stated that the project site is a through lot from Highland Avenue to Bay Street. There is an existing house to be moved towards Highland and construct a new house towards Bay Street.
3. His area of study was to look at the new house, the slopes there are 38%.
4. They did a boring study which consisted of test borings by his subcontractor. They also used several other borings performed by others. They put a Geologist Engineer on site to log and inspect the borings. The borings are to determine the nature and characteristics of the soil and also to determine the strength of the soil.
5. The borings were used to develop a profile and evaluated the stability of the slope at 1.5.
6. A safety factor is a measure of the forces causing a slope to move which he further explained.
7. He explained how the proposed structure will serve as a big retaining wall to retain a large portion of the earth towards Bay Street and described the back side of AA-1.
8. The safety factor is 1.5 and it's his opinion that it's safe. He stated that industry practice is to design slopes with a safety factor between 1.3 and 1.5 and he explained that the reason that there is a range is because it depends on the severity of the construction. 1.5 would be for houses in situations where you really do not want a failure and 1.3 would be more of a highway slope where you don't really have houses.
9. The property is not located in the slump block area.
10. The new structure has a basement with three stories on it.
11. He explained that the type of stability that he looked at is the failure below the building.
12. His analysis was based on four levels which includes the basement.

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13. It's going to be a substantial wall and be anchored but it has not been designed yet.
14. With the foundation the slope can get cut 1 ½ to 1.
15. He is not sure where the tie backs would be located.

Ms. Britell stated that T & M Associates does not have a Geotechnical Engineer but that she did review the Simpson Report and found no objection and stated that this is doable but difficult.

Mr. Simpson continued his testimony as follows:

16. If the height of the building changes it would not change the slope stability but if the basement floor were eliminated he would have to do an analysis which he further explained.
17. The applicant must consider sheeting and shoring to build this and he would suggest arboring them.
18. He did not look into how the existing house would be moved.

Mr. Stockton asked if there were any questions from the public for Mr. Simpson but there were none.

Mr. Mullen could we approve the application subsequent to the review of the analysis that hasn't been made with regard to the retaining wall? He then wanted to know who would review the retaining wall.

Mr. Serpico – I would make it a strong condition of approval and T & M would follow through with resolution compliance.

Ms. Britell – at this point with what's been presented they would have to stick with the report but at this point since they are not going for the full house we would not have details for the wall. I think that when they came back to get approval for the house then you would normally would require them to submit their signed and sealed plan calculations for the retaining wall which would be reviewed by us at that time but that would be part of the Resolution.

Mr. Serpico stated that it would have to be part of the Resolution.

The board continued to discuss the requirement of review of the wall as a condition of approval.

Mr. Serpico stated that he would have this as a condition imposed in the deeds as well as in the Resolution. The deed restriction and resolution will say that they can't obtain building permits until they provide the appropriate documentation for the retaining walls.

Mr. Wolffe agreed to the deed restrictions.

Mr. Serpico stated that he will make sure that the appropriate conditions will be put in the Resolution and the Deeds.

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Mr. Serpico swears in Victor Furmanec, P.P.

Mr. Furmanec stated the following during his testimony and response to questions from the board:

1. He gave his professional background to the board and the board accepted it.
2. The subject property is a through lot fronting on Highland Avenue and backing up to Bay Street. It has an area of 11,407 square feet. There is a single family residence that is located approximately midway of the property and by moving the existing structure it eliminates its existing side yard violation.
3. He stated that he reviewed the surrounding development and described the surrounding properties by using Exhibit A-7 which is an aerial photograph on a board. He described the development on Highland Avenue of single-family homes on sloping lots. He also described the lot sizes of the surrounding properties.
4. The proposed lots are conforming in size and setbacks. Variances are needed for lot depth of 93.4 feet and 91.55 feet where 100 feet is required which are not out of character with the neighborhood.
5. He reviewed the Borough of Highlands Master Plan and stated that the Master Plan does not seek to develop steep slopes in areas that are underdeveloped and it's of his opinion that this area is developed. He does not believe that the development of this property would be a detriment to surrounding properties.
6. With regard to the front yard setback of the upper lot he stated that the average front yard setback on Bay Street is 17 ½ feet which is what they are proposing.
7. The Engineer has designed angled parking without extending onto the borough roadway. There will be three parking spaces
8. With regard to the "c" variances they can be granted due to the C-1 hardship because of the existing configuration of this lot, it's a through lot and it's shallow in depth which he further explained.
9. By moving the existing dwelling it will now conform to the setbacks. The new structure will also meet the setbacks.
10. He believes that the new structure will conform to the height ordinance. **The applicant has not requested a variance for the height and a height variance is not part of this application.**
11. The bulk variances are associated with lot depth of property and the board is concerned with development safety. The Geotechnical Engineer has stated that the house can be built safely.
12. He believes that the application is consistent with the Master Plan and is in keeping with the surrounding area.
13. He described surrounding lots using Exhibit AA-3.
14. He stated that the proposed development should be permitted because it would not impact the Master Plan and stated that there is sufficient grounds and hardship.
15. He spoke about how the ordinance prohibits development on 35% slopes but it allows it on lower slopes and doesn't really specify what practices are going to be utilized to protect that development but in this case the small deviation from that

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standard as well as the enhanced engineering and construction practices which are going to be utilized as well as the fact that the neighborhood is largely on similar slopes and has been developed over the years to accommodate single family homes and that there has not been substantial failures or impacts related to the presence of those homes indicates to him that it would be appropriate to develop this house on this property.

Mr. Stockton asked if there were any questions from the public.

Jim Parla of 16 Portland Road stated that he cannot see the exhibits from where he is sitting so the exhibits were then faced more towards the public.

Maria Grace of 135 Highland Avenue questioned the setbacks and Mr. Furmanec explained them to her.

Mr. Stockton commented on the sewer easement of 10 feet proposed and 20 feet being required and wanted to know if it impacts the setbacks.

Mr. Furmanec stated that in order to comply with widening it to a 20 foot easement they would have to shift the house two feet to a 6-foot setback and the applicants Engineer suggested that it can be carried in a 10 foot easement or 15 foot easement because of the lack of space required which he further explained.

Ms. Britell – 15 foot sewer easement would be acceptable without creating a variance.

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

Daniel Fleming was sworn in and stated the following during his testimony and response to questions from the board:

1. His intent is to build a flat roof house to make roof useful.
2. **If the house has to be two stories they will reduce it to conform to the height ordinance and will skim off the top of the house not the basement if needed.**
3. He can build house on that slope that will be stronger than existing surrounding houses.
4. It is still his intent to build a house to the highest LEAD Standards if it's not going to cost him way more than the conventional construction.
5. The concrete foundation is extremely strong and extremely insulated, termite proof and it's the best way to build homes which he further explained.
6. It is his intent to get this property certified by the Lead Green House Council or as close to being certified as he can.
7. He will be removing trees on the property that are within the footprint and some that are leaning trees and there is a replanting procedure that will be implemented as well.

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Mr. Mullen explained that the real issue is erosion and water runoff and advised the applicant that it's very critical during construction that the applicant consider the amount of disturbance.

Mr. Fleming continued as follows:

8. He is hoping to do a rain water collection system.
9. He is moving the existing house and has received three bids to move the house and they all said that there was no problem with moving it.

Mr. Stockton asked if there were any questions from the public for Mr. Fleming.

Maria Grace of 135 Highland Ave - do you have to move the existing house first in order for you to be granted the variance and permit to build the second house.

Mr. Fleming – I would think that we would have to move the existing house before the building department would issue permits.

Mr. Stockton – the subdivision line that is being created for this project runs right through this house where it exists now. Does it have to be moved in order to perfect the subdivision or to sell the lots.

Mr. Serpico – the house is going to have to be moved. No, it's going to have to be a condition of the subdivision and deed that they have to move the house. He explained that the moving of the house does not have to be done first in order to perfect the subdivision but if it's not moved then his subdivision would not be effective and it would die a natural death.

Mr. Stockton then stated that he is also concerned that if after he moves that first house to the second lot then finds out that it's too expensive to build the structural elements of the second lot and he doesn't pay taxes then it shouldn't have to revert to the town, it should revert to the other lot.

Mr. Fleming stated that he wants to live in the house on the top lot.

Maria Grace wanted a time estimate to complete the project.

Mr. Fleming stated that he does not have a time frame yet.

Mr. Serpico stated that the applicant has 190 days to perfect the subdivision deeds, so that he has six months to do that and it might not be a bad idea to hold off on the recording of the deeds until the applicant works out the details and if need be we can extend the subdivision.

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

Mr. Stockton asked if there were any comments from the public on this matter.

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Steve Striand of 125 Highland Avenue was sworn in and stated that he supports the application.

Richard Morris of 10 Bay Street was sworn in and expressed his objection to the approval of this application because of environmental impact concerns which he further described.

Maria Grace of 135 Highland Avenue was sworn in and gave a lengthy objection to this application. She expressed her concerns with quality of life during construction, the disturbance of the soil safety concerns of building a house on the hill. She also tried to submit her written objection which contained language that had to deal with a personal litigation matter between herself and one of the board members which Mr. Wolffe objected to and Mr. Serpico reviewed the letter and advised her that he could not accept it because of the litigation language contained in the letter.

Mr. Mullen questioned Ms. Grace about the new house being within the character of the neighborhood.

Maria Grace stated that she does not feel that the proposed new structure will be within the character of the structures in the neighborhood which she further explained.

Connor Jennings of 27 Ralph Street was sworn in and spoke about a recent tree removal protection ordinance that was recently introduced by the Highlands Council.

Mr. Serpico explained that the Ordinance is not law and the application will be decided on law that is current but that any resolution could have a condition that the applicant must comply with current or succeeding tree removal ordinance.

There were no further questions or comment from the public.

Mr. Manrodt offered a motion that the public hearing on Fleming Application be closed, seconded by Mr. Schoellner and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Manrodt, Mr. Mullen, Mr. Schoellner, Mr. Nolan, Mr. Cefalo

NAYES: None

ABSTAIN: None

The board had a discussion about the application.

Mr. Mullen stated that he was quite acceptable about granting relief with regard to the steep slope because he believes that the board has a responsibility to look at the subdivision and the buildability of the lot and after this evenings testimony it gave him some comfort that a building can be put up on the hill based on the study that was made. He believes that the board must

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reserve some sort of review process of the foundation building to make sure that the retaining wall system and the slippage of the building must be reviewed by people who can make

judgments on that. He believes that the variances that they are asking for with regard to the lot depth is de minimis and the area of the lot is in excess of the requirements. The issues that were brought up with regard to trees are an important issue because trees do hold the hill. He feels that we do need to condition our approval that current or future Shade Tree Commission Ordinance be complied with. He feels that the building footprints will be within character of the neighborhood. **The applicant stated that he would comply with the building height ordinance and he feels that there should be a condition that the applicant comply with the height ordinance and that a post framing survey done to show its conformance with the height ordinance.**

Mr. Manrodt stated that he feels that the board should maintain control of this subdivision and control of the building and that the applicant must come back before the board to show their plans and show us what they are going to build and move and the retaining walls.

Mr. Stockton – can we make it a condition of approval to require the applicant to submit plans to the board with their retaining wall design so that we can review to see if it's in still in line with the intent of the subdivision.

Mr. Serpico – yes.

Mr. Mullen – and to degree that we need to obtain expertise to review the calculations. His point is to the structural analysis of the upper building is the real concern.

The board discussed with the applicant a time frame for compliance.

Mr. Serpico asked the applicant if he had an objection to the board granting a conditional approval, and for the applicant to hold off on the subdivision deeds and have the applicant comply with all conditions in a six month period of time and if the applicant has to come back before the board and need an extension to perfect deeds, then the board will grant that. The applicant can get the approval but must first show the board the rest. The applicant agreed to this being a condition along with the other conditions. Mr. Serpico stated that he can draft a resolution which outlines all of these detailed conditions along with a condition that the subdivision deed not be perfected until the design drawings are brought in which the applicant agreed to. He advised the applicant that he may have to come back to the board to explain the details, if not and you give them to the board engineer and she understands them and there are no complexities involved that have to be brought before the board then the applicant will move along.

Mr. Wolffe questioned if a built in time extension for the perfection could be built in.

Mr. Serpico – yes, it could if the board so desires.

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The board also discussed the requirements for the applicant to obtain approvals from the Freehold Soil Conservation, Monmouth County Planning Board and the Atlantic Highlands/Highlands Regional Sewerage Authority.

Mr. Serpico stated that by putting in a condition that the applicant can't perfect deeds until compliance then we may not even need to require deed restrictions which he will determine when preparing resolution

Mr. Manrodt offered a motion to approve the Fleming Application subject to compliance of all conditions of approval as previously discussed, seconded by Mr. Nolan and approved on the following roll call vote:

ROLL CALL:

**AYES: Mr. Manrodt, Mr. Mullen, Mr. Schoellner, Mr. Nolan, Mr. Cefalo,
Mr. Stockton**

NAYES: None

ABSTAIN: None

Mr. Harrison and Mr. Kovic both returned to the meeting table but Mr. Bahrs did not.

Communications

There were no communications that required any board action. The board spoke about the upcoming Monmouth County Planning Board Dinner.

Mr. Stockton advised the board members to please review the Steep Slopes Ordinance information for the next meeting.

Mr. Serpico advised the board that if the Planning Board submits an ordinance amendment that the board engineer prepares rather than an recommendation letter it may be a quicker and smoother process.

Ms. Britell stated that she would need funding approval in order to prepare a draft ordinance and the Board advised her to just review it for now and did not authorize her to draft an ordinance.

Mr. Kovic offered a motion to adjourn the meeting, seconded by Mr. Nolan and all were in favor.

The Meeting adjourned at 10:02 P.M.

CAROLYN CUMMINS, BOARD SECRETARY

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