

**Borough of Highlands
Planning Board
Regular Meeting
April 8, 2010**

Mr. Mullen called the meeting to order at 7:24 p.m.

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

Mr. Mullen read 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 transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Mullen, Mr. O'Neil, Mr. Parla, Mr. Roberts, Ms. Peterson

Late Arrival: Mayor Little arrived at 7:29 p.m.

Absent: Mr. Schoellner, Mr. Stockton, Ms. Ruby

Also Present: Carolyn Cummins, Board Secretary
Jack Serpico, Esq., Board Attorney
Robert Keady, P.E., Board Engineer

**PB#2009-1 Highlander Dev. Group.
Block 105.107 Lot 1.01
Unfinished Public Hearing**

Present: Paul Drobbin, Esq., Applicants Attorney
Dan Busch, P.E. Applicants Engineer
Armen McOmber, Esq., Objectors Attorney
Paul Phillips, P.P.

Mr. Mullen stated that there would be some testimony this evening with regard to the turning radius for emergency vehicles and also some testimony from the applicants Planner regarding steep slope ordinance.

Mr. Drobbin stated that their engineer will testify tonight about the turning radius and they also have their Planner here to testify as to the site and the variances.

The following documents were marked into evidence:

- B-34: Two River Times Affidavit of Publication
- B-35: Affidavit from Mayor Little RE: Listening to March 11th PB Meeting tape
- A-82: Aerial Truck Access Exhibit last revised 3/15/10.

Mayor Little arrived to the meeting.

Mr. Serpico stated that Janet Peterson, Board Member has disclosed to him that her company that she works for has dealt with Mr. Drobbins law office but she does not see a conflict.

Ms. Peterson explained that her company is defendants in a class action and LeClair Ryan is one of the Attorneys and she interacts through her house Attorney. Her company deals with LeClair Ryan Attorney from the Virginia Office and she feels that this is a coincident and not a conflict.

Mr. McOmber stated that he does not see a conflict with Ms. Peterson.

Mr. Drobbin also does not see a conflict with Ms. Peterson.

Mr. O'Neil left the meeting so the Board stopped the public hearing at 6:32 pm and resumed at 6:34 pm when Mr. O'Neil returned.

Dan Busch, P.E. who was previously sworn in stated the following during his testimony and response to questions from the board:

**Borough of Highlands
Planning Board
Regular Meeting
April 8, 2010**

1. He described Exhibit A-82 which was marked into evidence. He stated that it showed the truck access to building one and building two. He described the maneuvers without having to jump a curb. He stated that he last spoke about mountable curbs and he can add that detail if the board so desires.
2. He feels that all of the curbing should be mountable.
3. There is access hear for club house as well.
4. The template uses a longer truck than what the Borough has and larger than what the Fire Department is looking to purchase.
5. Compromise – make interior mountable and not on the exterior.

Mr. Drobbin stated that we need Fire Marshal input.

Mrs. Cummins stated that she will get a letter from Dave Parker, Fire Marshal.

Mr. Mullen asked if there were any questions from the public for Mr. Busch with regard to his testimony.

Mr. Stober of 1 Scenic Drive asked if the Board reviewed the data that he mailed to the Board.

Mr. Mullen stated that the Board has not seen the documents sent by Mr. Stober. He assumes that if it's going to be a subject of discussion then the Board Members should receive a copy at some point.

Mr. Drobbin – I saw a letter from the Board Engineer in response to that.

Mr. Serpico stated that we can address this issue at the next meeting once our staff reviews it and renders an opinion. He does not want to make a decision until he reviews our Engineers response.

Mr. Drobbin then calls Paul Phillips, P.P. up to testify and requested that he be qualified as an expert Planner, there were no objections. Mr. Drobbin then spoke about the recent zoning ordinance amendment with regard to steep slopes. He then spoke about Exhibit A-80.

Paul Phillips, P.P. was sworn in and stated the following during his testimony and response to questions from the board:

1. He explained that he has reviewed the plans, inspected the premises on two occasions, he met with applicant and other professional, reviewed the Borough's Zoning Ordinance and Master Plan, read through transcripts.
2. He stated that the steep slope provisions were transferred from the design section to a variance, there were no technical changes. Section 21-84b now regulates development within steep slopes.
3. He has been involved with this property since before rezoning.
4. He has reviewed the Master Plan.
5. This application continues to conform with the multi-family development. The relief needed is from the Steep Slope Variance, which he further explained.
6. The ordinance basically from the steep slope section that where slopes exceed 35%, there shall be no disturbance of the steep slope area. We are requesting a variance from that provision. That same section of that ordinance goes on to require that, there shall be no disturbance of the area within 15 feet of the top of slope and no structure located within 25 feet of the top of slope, nor shall there be any disturbance within ten feet of the toe of the slope or any structures located within 15 feet of the toe of the slope. We have been referring to these areas as the no disturbance buffers throughout the hearings. The applicant is requesting a variance from that provision as well.
7. He continues to rely as foundation testimony on the prior testimony of witnesses in this application, most specifically Mr. Busch, Site Engineer and Mr. Serpico, Geotechnical Engineer.
8. His testimony this evening is additive to his December 10th testimony.
9. He discussed the planning proofs for the variances. He stated that since we are now in the zoning section the standard proof for a bulk or a standard "C" variance falls under section 70-c of the Municipal Land Use Statute. The criteria on the positive side is known as a C-1 or C-2

**Borough of Highlands
Planning Board
Regular Meeting
April 8, 2010**

criteria. He then explained that C-1 criteria is essentially due to unique conditions that pertain to a certain piece of property and the strict application of the zoning would result in a hardship. Zoning also provides a C-2 and in those instances the applicant can demonstrate that the benefits from deviating outweigh the negative.

10. He has reviewed all of the testimony and he feels that there are peculiar conditions on this property and there are benefits for not complying. He explained that this is not a virgin tract of land

11. He then referred to exhibit A-14 and described the finger area on the plan. He explained that the slopes are not part of the natural property. They are most likely from earth movement disturbance, man made. These manmade slopes are not worthy of steep slope ordinance protection, which he further explained.

12. He feels that there are unique conditions specific to this site, these isolated manmade slopes that would if the ordinance were enforced would result in practical difficulty or hardship in whatever development that were proposed. The removal and the leveling will result in the grade will also provide for long term stability of the site which is an incidental benefit.

13. On the disturbance of the 35% area, he thinks that there is a legitimate basis based on the both the C-1 and C-2 criteria. In terms of the Statute both "a" and "g" would be advanced, which he further described.

14. With regard to the negative criteria, this finger area can be regarded accordingly consistent with public health and safety. The applicant has obtained soil erosion sediment approval and he sees no detriment to any of the surrounding properties or the community. Given the unique site conditions, these are not natural slopes, he feels the board is able to grant this variance without compromising the integrity of the zoning.

15. The issue of the no disturbance buffer areas, there will no longer be any structures within the required buffer area, post construction. The existing one half acre of disturbance will be eliminated if this project were approved.

16. Secondly, there is about one and a quarter acres that are still being disturbed within the no disturbance buffer. Of this amount about ½ an acre is associated with the buffers that are contiguous to the 35% finger steep slope area. So clearly there is a benefit of eliminating these areas for purposes of accommodating development that is consistent with the zone. This leaves about ¾ of an acre of the remaining disturbance the bulk of this occurs within areas that have already been disturbed around the parameter of the trailer pad sites and such areas will be regarded once the trailers are removed. There are only two exceptions to that, one is the disturbance associated with the utility connections which are necessary to development of the site. Secondly there is disturbance to a portion of the property that adjoins the north slope creating a drainage swale, which he further explained to be a public health safety. The improvements outweigh any negative impacts.

17. He feels that the board can grant the variances without detriment and they meet the criteria for the C-1 and C-2 requirements.

Mr. McOmber then crossed examined Mr. Phillips.

Mr. Phillips stated the following during his cross examination:

1. He referred to exhibits A-13 and A-14a and showed Mr. McOmber where the finger area is located. The blue is the areas of 35% slope.

2. If building three were eliminated, clearly the variance would be eliminated but whether your build one or two or three buildings on this site, from a planning standpoint he sees no good reasons to retain those slopes.

3. Exhibit A-14a shows the depth of the slope.

4. For the most part dealing with man-made slopes, the bulk of the disturbance relates to man-made slopes. The only virgin slope impacted is a small portion for drain swale which is a benefit.

5. If the project is large or small still need utility connections on man-made slope.

6. He sees no benefit, no measurable way to reduce amount of disturbance.

There were no further questions from Mr. McOmber.

Mr. Mullen asked if there were any questions from the public for Mr. Phillips but there were none.

**Borough of Highlands
Planning Board
Regular Meeting
April 8, 2010**

Mr. Mullen stated that there is still the issue of sewer capacity.

Mr. Drobbin stated that it would be a condition of approval.

Mr. Mullen questioned the status of providing access to the site for Exxon and the property owner stated that they were already there.

Mr. Mullen questioned covenants and easements.

Mr. Drobbin stated that he would check on any.

Mr. Keady stated that the June 5, 2009 engineer letter states that they recommend that the applicant dedicate an easement to Eastpointe Condos.

Mr. Drobbin stated that they can respond to that.

Mr. Mullen stated that at the next meeting deal with stability of slope, possible more testimony from Mr. Busch, then summations and public comments.

Mr. Parla offered a motion to carry this public hearing to the May 13th meeting beginning at 7:00 p.m., seconded by Mr. O'Neil and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Mullen, Mr. O'Neil, Mayor Little, Mr. Parla, Mr. Roberts, Ms. Peterson

NAYES: None

ABSTAIN: None

Mr. Mullen informed the public that this matter has been carried to the May 13th meeting and that there would be no further public notice.

Approval of Minutes:

Mr. Parla offered a motion to approve the March 11, 2010 Planning Board Minutes, seconded by Mr. Roberts and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Mullen, Mr. O'Neil, Mr. Parla, Mr. Roberts, Ms. Peterson

NAYES: None

ABSTAIN: None

Mr. O'Neil offered a motion to adjourn the meeting, seconded by Mr. Parla and all were in favor.

The meeting adjourned at 8:26 p.m.

CAROLYN CUMMINS, BOARD SECRETARY