

Township of Manalapan

Department of Planning & Zoning

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Planning Board Minutes

May 9, 2019

The meeting was called to order with the reading of the Open Public Meetings Act by Chairwoman Kathryn Kwaak at 7:30 p.m. followed by the salute to the flag.

Roll Call: Secretary, Daria D'Agostino

In attendance at the meeting: John Castronovo, Alan Ginsberg, Daria D'Agostino, Kathryn Kwaak, Jack McNaboe, Barry Jacobson, Richard Hogan, Barry Fisher

Absent from the meeting: Todd Brown, David Kane, Steve Kastell

Also present: John Miller, Planning Board Attorney
Brian Boccanfuso, Planning Board Engineer
Lisa Nosseir, Recording Secretary

Mr. Miller swore in Brian Boccanfuso, Professional Engineer.

Minutes:

A Motion was made by Ms. D'Agostino, Seconded by Mr. Fisher to approve the Minutes of February 28, 2019 as written.

Yes: D'Agostino, Kwaak, McNaboe, Jacobson, Hogan, Fisher

No: None

Absent: Brown, Kane, Kastell

Abstain: None

Not Eligible: Castronovo, Ginsberg

Resolution: **PPM1837 ~ Stavola Asphalt Company**
Woodward Road and Route 33
Block 7232 / Lots 1.02 1.03 2.04 and 3
Preliminary Major Subdivision
Preliminary Major Site Plan

A Motion was made by Mr. Castronovo, Seconded by Mr. Fisher to approve the Resolution for PPM1837 as written.

Yes: Castronovo, Ginsberg, D'Agostino, Kwaak, McNaboe, Jacobson, Fisher
No: None
Absent: Brown, Kane
Abstain: None
Not Eligible: Hogan, Kastell

Applications: **PPS1903 ~ Samson Annamdevula**
22 Crystal Court ~ Block 8422 / Lot 25
Minor Site Plan ~ Vacation of Cemetery Easement

Todd Cohen, Esq. represented the applicant, Samson Annamdevula this evening. Mr. Cohen gave the Board a brief history of the easement. His client resides on a lot at the end of a cul-de-sac in a subdivision known as Waterford Estates which is off of Route 537 and Thompson Grove Road. They are seeking the removal of a condition of approval which required the cemetery easement on that lot from a subdivision approval that was granted by the Planning Board in 2002. Waterford Estates was created in February 2003 by filed map, a copy of which was submitted with the application. On that filed map, the cemetery easement runs directly across the middle of the back of his client's lot, it is the only lot in the subdivision effected by that easement. The easement measures 21,780 sq ft, which is about a ½ acre.

Mr. Cohen continued and said on May 8, 1969, the property was transferred by deed from Reuben and Mamie Dorrer to their two children, R. George Dorrer and his sister, Grace Witson. In that deed, it transferred 27.78 acres and reserved out of that, and he quotes, "about ½ acre used as a burial ground with the privilege of entrance thereto". It doesn't specify a location for that particular ½ acre or identify anyone that is buried there. In 1999, the property was sold to Finland Associates and in that deed they did mention the reservation of the cemetery easement. In 2002 the land was sold to Waterford Estates, LLC who obtained the subdivision approval and filed the map in 2003 creating the subdivision. Basically, they put the easement on one lot in the subdivision.

Mr. Cohen explained that Mr. Annamdevula previously approached the Township back in 2016 requesting the removal of the easement. There was correspondence

back and forth with Mr. McLaughlin who advised Mr. Annamdevula that he needed to go back to the Planning Board first, since the conservation easement was a condition of a subdivision approval. Mr. Laughlin sought the opinion of Coastal Title Company regarding the easement. Coastal Title Company stated that Manalapan Township can vacate the conservation easement and any rights of the public to the easement, but it cannot vacate any private rights. To address the private rights situation, his client retained Coastal Title to research the estate of R. George Dorrer and Grace Witson, who were the grantees of the 1969 deed. George Dorrer passed awhile ago and his only heir was his sister, Grace Witson. Her only heirs are two sons who reside in Florida. Mr. Cohen personally spoke to both of them by phone. In August 2018, Mr. Cohen sent all of the proofs to the heirs in Florida and asked them if they would be willing to sign off on the deed. They reviewed all the materials and agreed to sign off, and to the best of their knowledge, there was no family buried there at all.

Mr. Cohen said in September 2018, he sent the Quit Claim Deed package to the heirs in Florida containing the language that was approved by Coastal Title Company to transfer their private interests in the ½ acre to Mr. Annamdevula.

The application was then submitted to the Planning Board, figuring they had enough information to make their request. Mr. Cohen did receive CME's review letter which suggested the possibility that he go one step further and Mr. Annamdevula retained GPR One Call, which is an underground location expert. They conducted a ground penetrating radar survey of the easement area on April 25, 2019, specifically looking for anomalies that are indicative of potential burial plots. Mr. Cohen said that are happy to report that none were found. The survey was witnessed by Jan Zackary of the Historical Commission as well himself and his client. The report was submitted to the Planning Board on April 29, 2019.

Mr. Cohen said that based on the evidence presented, we would request that the Planning Board remove the cemetery easement as a condition of the original approval which will then allow his client to go to the Township Committee and request that they vacate the easement altogether.

Mr. Boccanfuso said Mr. Cohen did an accurate description of the history based upon the items that were submitted. He did review the ground penetrating radar, it was a simple and straight forward report. It did conclude that there was no evidence of a historic burial ground. Mr. Boccanfuso said in addition to the conservation easement in the rear of the property, there is also a 10' wide access easement that appears was dedicated to provide access to the conservation easement. Are you seeking approval from the Board to vacate that as well? Mr. Cohen said yes they are, that was part of the original approval.

Mr. Boccanfuso referred to the April 7, 2016 letter from Coastal Title Agency, the last paragraph it speaks about if the homeowner wants to move those persons, they should contact New Jersey Cemetery Board. Since Mr. Annamdevula has done this additional investigation, and there don't appear to be any persons there, it is your position that the New Jersey Cemetery Board has no jurisdiction over this easement. Mr. Cohen said that even if there were people buried there, the New Jersey Cemetery Board does not have jurisdiction over private cemeteries. Mr. Miller swore in Mr. Annamdevula. He called the New Jersey Cemetery Board about eight to ten months ago. They indicated that they have no jurisdiction of any private cemeteries or religious cemeteries.

Mr. Boccanfuso asked besides the ground penetrating radar, were there any other physical investigation on the property? It does appear from aerial images that there was some disturbance or clearing in the area. Was anything done by your client to try to take a look at what is in within the area in question? Mr. Cohen said he received permission from The Shade Tree Committee to clear behind the easement area. He worked with Shade Tree and Zoning they allowed him to cut down some trees so that some grass could be planted. At that time, Mr. McLaughlin indicated to him that any structure that has to be built has to go through the Planning Board. Mr. Cohen said on May 31, 2016, there was an application for a permit for removal of trees and shrubs submitted. It was approved by the Shade Tree Committee.

Mr. Boccanfuso asked the applicant if he had any idea what improvements he would like to do in the area, should this matter be approved? Mr. Annamdevula said he is interested in proposing an in-ground pool. Based on the drawings of the engineer, part of the pool would be in the easement area. Mr. Cohen said there was a pool grading plan which shows that part of the pool and patio would be in the cemetery easement area as proposed. Mr. Boccanfuso asked if the modification is approved here tonight, will the past presence of the conservation/cemetery easement run with the title of the land? Will the future prospective buyers be aware that there was formally an easement on the property? Mr. Cohen said yes, because a declaration of vacation of easement would be in the Title. Mr. Miller agrees with this process.

Chief Hogan asked Mr. Cohen if he had anyone from the ground penetrating radar testing company GPR One Call available tonight for questioning. Mr. Cohen said no he is not present. Chief Hogan asked Mr. Cohen to read #4 from GPR One Call's report regarding limitations. Mr. Cohen read, "limitations encountered during the investigation included the ground dielectric permittivity that limited maximum GPR depths to 8'. Please note that EM measurement and GPR are remote sensing methods and in some instances, due to interference or other geophysical limitations, do not reveal data which may be indicative of subsurface anomalies. The findings of this investigation should only be used as a tool in evaluating the possibility that anomalous subsurface areas or other hazards are or were once

present on the property and should not be considered a guarantee regarding the presence or absence of subsurface objects. The presence of the limiting conditions at the job site makes it possible that undiscovered subsurface objects may exist.”

Chief Hogan stated a member of GPR One Call made a conclusion of ‘clear - no evidence of a prior burial plot exists at this location.’ Chief Hogan said what does that mean to you? Mr. Cohen said he watched the test being performed by an expert in this field and indicated that there were no anomalies present. He watched the expert cover every square inch of the easement area and they were questioning him as he went along. He never once indicated that there was anything that jumped out at him. Mr. Cohen stated that in any expert's report that you would read in pretty much any field, you will find a paragraph in there where they would cover their bases by saying there are possibilities that other matters could interfere or come into play that would change the results.

Chief Hogan said his take on the conclusion is a visual inspection of the site where there were no markers, or any type of stones. Without the expert present, we really don't know that. Mr. Cohen said there are 37/38 pages of the graphs that indicate everywhere he tested the property, there were no anomalies that could indicate a burial ground.

Mr. McNaboe asked when this was originally subdivided, would you venture to say that your lot was probably discounted, or was the value of his lot lower since there was a cemetery easement on it, in comparison to your neighbors? Mr. Annamdevula said he did not believe so. The property was sold for \$979,000 which was comparable to other properties sold in that area. When he purchased the property he was told there was no one buried there. He walked around, but there were dense trees in the area. Personally, he had no issues with the cemetery in his backyard, but the only issue he has is that he cannot build a pool.

Mr. McNaboe said the Dorrer Family transferred this from mother and father to their daughter and son in 1969. How long did the Dorrer Family and their predecessors own the land? Mr. Cohen said the Dorrer's have owned the property since 1927. Mr. McNaboe said if someone was buried there 100 years ago, would GPR pick anything up? Mr. McNaboe asked why he can't put the pool off-center to the left? Mr. Annamdevula said from a grading perspective, all the water would just come down that side and could affect my neighbors. Substantial retaining walls would need to be built and there wouldn't be any sunlight due to the dense trees. Mr. Annamdevula said the right side wouldn't work because there is a well there and it would be visible from the road and again, there are grading issues. Mr. Annamdevula stated he is an engineer and really tried to avoid going through this process by trying other locations for the pool, but there were issues with all angles. Mr. McNaboe asked if he planned to do anything with the back property. Mr.

Annamdevula said there is a severe drop from the easement area to the back third of the property. The water table level is very high there.

Mr. McNaboe said you are not aware how this easement came to be, correct? How do we know it is this specific part of this particular lot? Mr. Cohen said he contacted the developer who received the original approval. They needed to satisfy the condition of that deed, and they decided to put it in a back lot. The engineer who did the project, Mr. Ploskonka, confirmed this for him. Mr. McNaboe stated if they just needed to find a ½ acre of land to satisfy somebody, wouldn't they have just pushed it to the back? Mr. Boccanfuso said he cannot speak to any of that, but what he can offer is that he reviewed the historic aerial images of the property going back to the 1930's. Going back as far as 1931, this area was entirely farmland. There was a section of the property that generally matches up with the cemetery easement that was wooded. If what Mr. Cohen is saying is true, and the people that have told him this correctly represented what happened, perhaps they just looked at that area that was wooded and assumed this would be the cemetery easement.

Mr. McNaboe asked if he was to get the approval tonight, and then we realize we are wrong - you start digging that pool and we turn up something, where are we then? What do we do? Mr. Cohen said we would do that right thing and cease work and get the proper officials involved. Mr. Cohen said he is in complete agreement to have a condition of approval that if something turns up during construction, the job would be stopped, immediately contact the proper officials and do the right thing. This private cemetery is not governed by any State statute.

Chair Kwaak said when you ran your title search, you only went back to 1969, or further? Mr. Cohen said the deed from 1969 had recitals from 1927, so we went as far back as 1927. Chair Kwaak asked about the access easement to the cemetery, which is on right hand side, by the driveway. She said there is a fence there. Mr. Annamdevula said he went through the proper channels and got a zoning permit for the fence.

Mr. Fisher asked while the excavation is being done, could it be monitored? Mr. Miller said that is likely a code enforcement issue. A code official may be there and perhaps a building official.

Mr. Castronovo said this area is zoned for single family homes. Can the lot size be split into two in the future? Mr. Cohen said no, it would be undersized then. Mr. Miller said it appears from the subdivision map that this would be two, undersized non conforming lots. Mr. Cohen said he's not sure how you could possibly divide the lot. The house is pretty big and it sits right in the middle of the property. The zone requirement is 80,000 sq ft, and Mr. Annamdevula's lot is about 2.3 acres, or 88,000 sq ft. Mr. Castronovo asked since this property has had this easement, has

it been tax free all these years? Mr. Miller said he is not familiar with the tax history for this property. Mr. Cohen said his client pays \$21,000/year in taxes, I don't believe he is getting a break here. Mr. Annamdevula said that his property taxes are pretty high given the fact that the back lot was being factored in as part of his overall assessment of his land. The easement is basically unusable. When the assessment was done, they tried to compensate by increasing the sq ft of his value per sq ft of his home to level things out. There was some amount of discount that went in as part of the assessment because there was an easement in the middle. When Mr. Annamdevula purchased the property, he bought it for \$825,000. Taxes will go up if the easement is lifted and the pool is installed. Mr. Miller reminded the Board that as far as assessment it should not be taken into consideration and it is not within the Board's purview.

Mr. Miller asked Mr. Cohen if the easement area is about ½ acre and could you repeat the sq ft amount? Mr. Cohen said the easement is 21,780 sq ft, just over ½ acre.

Chairwoman Kwaak opened the floor to the public for any comments or questions. Seeing none, she closed public.

A Motion for approval was made for Planning Board Application PPS1903 to vacate the condition of the subdivision approval requiring the cemetery easement and access easement and the condition that in the event any anomalies are discovered during excavation that construction will stop, by Mr. Castronovo, Seconded by Mr. Fisher.

Yes: Castronovo, Ginsberg, D'Agostino, McNaboe, Jacobson, Fisher
No: Kwaak, Hogan*
Absent: Brown, Kane, Kastell
Abstain: None
Not Eligible: None

*Chief Hogan's No vote is based on the fact that he did not receive enough information from the GPR One Call report and would have preferred the expert to be present this evening to answer his questions in person.

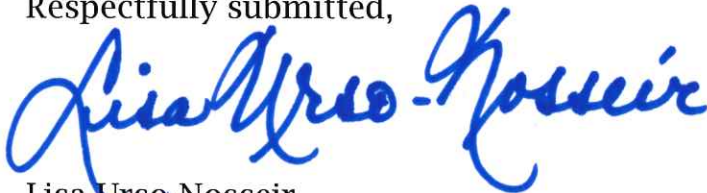
Mr. McNaboe requested Mr. Cohen to please clear up any issues regarding the depth of the GPR as well as the exact location. Mr. Cohen and Mr. Annamdevula agreed.

Chairwoman Kwaak opened the floor to any non-agenda items; seeing none, it was closed. She added that the next meeting will be May 23, 2019 and there are a number of pending applications at this time.

Adjournment

A Motion to adjourn the meeting was made by Chief Hogan and agreed to by all.

Respectfully submitted,



Lisa Urso-Nosseir
Recording Secretary

A recorded CD or DVD of the meeting is available for purchase by contacting the Planning Board Office.