

Call to Order:

The regular meeting of the Monroe Township Planning Board was called to order at 7:10 p.m. by Chairman Schwaiger. The Board saluted the flag. This meeting is a joint meeting between the Planning Board and Zoning Board of Adjustment for the purpose of discussing several ordinance changes. Roll call was as follows:

Present – Mr. Crane, Mayor DiLucia, Mr. J. Garbowski, Mr. R. Garbowski, Mr. Kozak, Mr. Masterson, Mr. O’Brien, Mr. Schwaiger, Ms. Fox, Mr. Fritz, Mr. Mercado, Mr. McLaughlin, Mr. Salvadori, Mr. Sebastian, Mr. Rybicki. Absent – Mr. Cotton, (excused), Mr. Hesel, (excused), Mr. Scardino, (excused), Mr. Cossaboon, (excused), Mr. Sander, (excused), Mr. DeFrank, (excused). Also present – Mr. Boraske, Solicitor, Mr. Coe, Solicitor, Ms. Pellegrini, Planner, Mr. O’Reilly, Council Liaison, Ms. Falcone, Council, Mrs. Farrell, Secretary, Mrs. Orbaczewski, Clerk Transcriber.

Proper notice of this meeting was given as required by the Open Public Meetings Act in the Annual Notice of Meetings. In addition, separate notice for this evening’s joint meeting was sent in writing on April 8, 2019 in accordance with the Open Public Meetings Act.

Chairman Schwaiger read the following statement: “Be advise, no new item of business will be started after 10:30 p.m. and the meeting shall terminate no later than 11:00 p.m.”

Memorialization of Resolutions:

1. PB-16-19 – App. #WSP-03-19 – Battle of the Axes NJ, LLC – Site Plan Waiver Approved

Motion by Mr. Masterson, seconded by Mr. Crane to adopt resolution PB-16-19. Roll call vote: Ayes – Mr. Crane, Mr. R. Garbowski, Mr. Kozak, Mr. Masterson, Mr. Schwaiger. Nays – Zero. Abstentions – Zero.

2. PB-17-19 – App. #WSP-04-19 – Shawn P. Applewhite – Site Plan Waiver Denied

Motion by Mr. Crane, seconded by Mr. Masterson to adopt resolution PB-17-19. Roll call vote: Ayes – Mr. Crane, Mr. R. Garbowski, Mr. Kozak, Mr. Masterson. Nays – Zero. Abstentions – Zero.

Approval of Minutes:

1. 4/11/19 regular meeting.

Motion by Mr. R. Garbowski, seconded by Mr. Masterson to approved the minutes from the April 11, 2019 regular meeting. Voice vote; all ayes, motion passed.

Joint Meeting Discussion – Chapter 175 Ordinances:

Mr. Schwaiger stated he would turn the discussion of the proposed ordinance changes over to Mrs. Farrell.

1. 175-48 – Land Development Fees

Mrs. Farrell commented that the fees were reduced back in 2016. These fees include applications fees and escrow fees. The reduced escrow fees are not covering the cost of the professional's reviews and our office is having to request additional money from the applicants. Mrs. Orbaczewski has been spending a lot of time trying to get in touch with applicants from last year to pay the additional escrow money owed to the professionals. The Board's professionals have not been paid for quite some time on many of these previous applications. Our office is requesting that the fee schedule be changed back to what they were just prior to the change in 2016. Mrs. Farrell explained that when the fee ordinance changed back in 2009 and for the Zoning Board again in 2012, there was research done by the office as to what was being charged for each different application by the professionals and how much the escrow fees should be raised to cover the costs and not have to keep asking applicant's for additional money. In many cases the applicants would get unused escrow money returned to them. Right now every applicant that comes to our office has to be advised that the escrow fee is the amount stated in the application but it will not cover the costs and more money will be requested, just so they know up front that we will be asking for additional money.

Mrs. Farrell stated it's not in good practice and is very time consuming to have to keep on asking applicants for money as well as it not being fair to them to not know up front what real costs are going to be. Mrs. Farrell also commented that the application fees were also lowered and the Board should decide if they want to keep the application fees the same or go back to what they were in 2009. Mr. McLaughlin asked if the fees are changed back to what they were before will it solve the problem. Mrs. Farrell replied that it will hopefully solve the problem. Mr. Coe commented that it also becomes a problem when you have applicant's that do get approved because once they are denied there isn't any incentive to pay the what they owe to the Township. Mrs. Farrell went over some of the fee changes for different application types and indicated the Board members could see the changes between the two ordinances provided in the packets. She stated that she would like the changes to be discussed by the next meeting and the recommendation to be forwarded to the Ordinance Committee for their June meeting. Ms. Pellegrini asked if the Board would like her to put a chart together so they can compare between the fees from the old and new. Mr. Kozak stated that he didn't feel a chart was needed since Mrs. Farrell and Mrs. Orbaczewski know the fees were and what they are now. Mr. Schwaiger stated that the costs should be looked at since the last time the old fees were used was in 2015. He wanted to insure the fees are increased sufficiently to cover today's costs so the issue will not have to be addressed again. Ms. Pellegrini replied that in most cases the old fees are sufficient but a few of them might have to be adjusted.

Joint Meeting Discussion: (continued)

1. 175-48 - Land Development Fees (continued)

Mrs. Farrell asked the Board members to please look over fee ordinances provided to them and if they have any questions or concerns to please bring them to the next meeting. Mr. Kozak commented that he is comfortable raising the fees to where they used to be and he is confident that Mrs. Farrell and Mrs. Orbaczewski can make the decision on how much the fees for the different applications should be raised. Mayor DiLucia also commented that he thought Mrs. Farrell and Mrs. Orbaczewski have a feel for what the appropriate fees should be and if one or two have to be adjusted at a later time then it can be done but he would be in support of the recommendation for an ordinance change. Ms. Pellegrini commented that she has worked for the town for a long time and the old fees were appropriate and the office did not have to ask people for more money. The new fee schedule has put everyone in a bad situation. Mr. Coe suggested a disclaimer that states the fees are only an estimate which should also be put on the website. Mrs. Orbaczewski stated that the disclaimer can be added to the applications as well. Mrs. Farrell commented that the reason given for lowering the fees was because it would bring the town more business; however, she felt that was being deceptive to an applicant. Right now when someone picks up an application they are told the fees will probably not be enough. Mr. Schwaiger stated in summary the current fee schedule is not working and that the revisions to the fee schedule will be made by Mrs. Farrell and Mrs. Orbaczewski and brought to the Board for recommendation to the Ordinance Committee.

2. 175-54 – Subdivisions, Site Plans, and Conditional Use Approval

Mrs. Farrell commented that this one should be addressed specifically for the site plan waiver applications. She stated there have been quite a few complaints from businesses who have been subject to applying for a site plan waiver in order to open a new business in an existing building. More specifically a new owner of an existing business where the business is not changing just the ownership of that business. This costs the business owner a fee of \$600.00 plus the costs of obtaining a CO. The site plan waiver process has been around for a number of years and has changed. The intent of the site plan waiver is for a business to occupy an existing building where the use is permitted or a variance has been granted for the use. There were a list of exemptions and the Zoning Officer would determine if the applicant met those exemptions then a zoning permit was issued. The prior Zoning Officer had a form that a new business owner would fill out with regard to their name and number of employees, etc. If it was the same business or same type of business that was permitted, he would issue the zoning permit without the business owner having to come in for a site plan waiver. Mr. Kozak commented that Mr. Weikel would make a site visit and look at the parking, the signage, the existing landscaping and then if there were any repairs or any issues on the site, he would recommend to the applicant or the property owner that they should be addressed; however he would not hold up the business and would issue the zoning permit for the business.

Joint Meeting Discussion: (continued)

2. 175-54- Subdivision, Site Plans, and Conditional Use (continued)

Mrs. Farrell stated that the site plan waiver process is in place for businesses that want to use an existing building; for example a single family home in a commercial zone and someone wants to buy it and use it for an office. They are not making any changes to the building, there is only two or three employees so no additional parking is required, there are no other changes on the outside of the property. This is the instance where a site plan waiver is warranted. Not for an existing business who is just changing ownership but the business is remaining the same or is similar in nature. Mrs. Farrell stated that the Board should not be asking about lighting, parking lot striping, landscaping and all those issues because then it becomes a site plan, not a site plan waiver. Mrs. Orbaczewski commented that the reason they changed the site plan waiver ordinance was to supposedly get properties cleaned up. But cleaning up the property is enforcement which is the responsibility of the Zoning Officer and the Construction Official not the Planning Board through a site plan waiver especially since the applicant, who is in most cases, not the property owner, and is not responsible for cleaning up any issues on the property. Ms. Pellegrini concurred that when the Board starts questioning the lighting or the landscaping it is then leaving it to enforcement so it really should be a minor site plan at that point.

Mr. Crane asked what it costs a new business owner to come before the Board when there isn't any change in the business just ownership. Mrs. Farrell replied it costs them \$700.00; \$100.00 in application fees and \$500.00 in escrow fees, plus \$100.00 to obtain a new CO. Mr. Schwaiger commented that the real detriment to the Township is when the applicant comes before the Board and they're not the owner, but they have paid the \$600 and then the Board interrogates them and tries to force them to make repairs on property they don't own. He stated he doesn't think a site plan waiver should be an opportunity to do any kind of code enforcement at the Planning Board level. Mr. Crane agreed and stated that someone purchasing a business, especially for the first time, money is tight for them and didn't think they should be burdened with this type of fee just to be the new owner of the same business.

Mrs. Farrell asked if Mr. Schwartz would say a few words regarding this matter since he has represented some of the business owners that had to go through this process. Mr. Schwartz introduced himself to the Board. He stated that what he is going to say to the Board will take money from his business, but he does not believe a business owner should have to come before the Board for a site plan waiver to have a business in an existing building, especially a strip store center, where the business is permitted and the type of business will not adversely impact the parking or anything like that. He has represented many applicants before the Board for a site plan waiver, which again is good for his business, but not good for the business owner who had to spend the \$600.00 here and then more money for him to represent them. He stated he represented a business that came before the Board for a site plan waiver and the Zoning Officer was going to condition his approval on the removal of another businesses sign in the strip center.

Joint Meeting Discussion: (continued)

2. 175-54 – Subdivision, Site Plan, and Conditional Use (continued)

That issue was an issue of enforcement with the property owner; not the tenant who wanted to open his business. He also mentioned his having to come before the Board for a site plan waiver for the Dollar Tree who was just changing their sign from Family Dollar to Dollar Tree although nothing else was changing. He noted several other site plan waiver applications that he has been through before the Board and stated that in some cases the prospective business owner does not have the money to pay an attorney and to pay the town the required fees. He also noted that the town does not benefit from the fees because the bulk of the fee is an escrow fee that is paid to the Solicitor. He agreed that the Zoning Officer should be looking at the site and making the determination of whether or not the property owner has to correct or repair some things on the site but it certainly should not be the tenant's or the Board's problem it's an enforcement issue. If everything checks out then the prospective business owner has only paid \$75.00 for a zoning permit as opposed to \$600.00 or more.

Mr. Kozak stated that when the ordinance changes it will be the discretion of the Zoning Officer to determine whether to issue the zoning permit or send them for a site plan waiver. Mrs. Farrell replied that the ordinance does need to be tweaked for the language. Change of occupancy should be eliminated from the requirement for a site plan waiver. If the use is changing then the Zoning Officer should determine if the change is substantial enough to warrant a site plan waiver or minor site plan. Katherine Falcone commented that most of the businesses in the town are smaller businesses that are renting and she has received phone calls from prospective businesses that they cannot afford the fees. She is in support of the proposed change to the ordinance so that the businesses will come here instead of other towns. She stated that everyone who is coming to the town now is finding the people very welcoming especially going through the Economic Development office first which is making the process easier for prospective businesses. Mr. Fritz asked how the Township's fees are compared to other towns. Mrs. Farrell replied that she and Mrs. Orbaczewski looked at the fees from other towns and even with using the old fee schedule, we are lower than most towns. She stated that by changing this ordinance for the site plan waivers we will be eliminating the fees altogether for most small businesses that are renting in an existing building. Mrs. Farrell stated that we do have to be mindful of the changes that are made to the ordinance so that there isn't any gray area and it is easy to determine what type of application, if any, is needed. Mr. Sebastian commented on the confusion by people on the definition of a use.

Mayor DiLucia commented that as a Council member he was told that the reason for lowering the fees was to encourage new business; however the person who promoted those changes is the same one who changed the site plan waiver process to make it harder for businesses. He stated that the goal in this town is to encourage businesses, to make sure what is being charged is enough to cover the costs, but the town, by law, cannot be making a profit.

Joint Meeting Discussion: (continued)

2. 175-54 – Subdivision, Site Plan, and Conditional Use (continued)

The goal should be to be as friendly as possible to any prospective business and the issue of cleaning up the property is enforcement and should be enforced prior to any change of occupancy. Mayor DiLucia stated that this is a step in the right direction; if a nail salon is changing owners and is still going to be a nail salon then we should make that process easy. He felt even if there was a business that sold bakery items and soda and someone else wanted to change that business to a hoagie shop, it should not require a site plan waiver. Mr. Schwaiger commented that the Zoning Officer should be able to discern the type of use being proposed and if it will warrant a site plan waiver, a minor site plan, or they can just receive a zoning permit. Ms. Pellegrini commented that the change of use used to read that a change of use resulting in an increase in the minimum number of parking spaces required. There are different use types in the same category of uses but if it's a use type that triggers a higher parking space requirement then that's where the issue comes in. So that language should be in the ordinance so that there's no mistake as to what type of application is required which in most cases with regard to the need for more parking is a minor site plan. The Board was in agreement with the recommended changes and agreed that Mr. Boraske should revise the ordinance based on the discussion and bring it back to the Board for their review.

3. 175-89 – Accessory Buildings

Mrs. Farrell commented that this ordinance has been changed many times through the years. Currently the ordinance reads that two accessory buildings are permitted, one being a shed, not larger than 200 square feet with a maximum height of 15 feet and they are permitted to be five feet from the rear and side property lines. The second accessory building permitted is a garage or pole barn, not larger than 900 square feet with a maximum height of 18 feet to the peak. Mrs. Farrell stated that there was a use variance for a pole barn before the Zoning Board just last week and it was noticed that the setback requirements are not listed in the ordinance. The prior ordinance permitted three accessory buildings. Mrs. Farrell stated that a resident came in last year to construct a pole barn on her property that was larger than the 900 square feet and she needed a use variance. However she has over six acres of property; so it doesn't seem right to make someone get a use variance for a larger accessory building if they have enough property and they meet the other requirement that the pole barn is not larger than the house. Ms. Pellegrini commented that the requirement for the accessory structure to be subordinate to the principle structure is what used to govern the sizes. Mrs. Farrell stated that maybe the Board would like to change the ordinance to include a certain amount of acreage for example if you have one acre or more you wouldn't need a use variance unless the proposed accessory building was larger than the principle structure. Ms. Pellegrini was in agreement saying that the current ordinance discriminates against the lot size and when the ordinance changed it completely left out the setback requirements and they should be put back into the ordinance.

Joint Meeting Discussion: (continued)

3. 175-89 – Accessory Buildings (continued)

Mrs. Farrell stated that it cost that resident approximately \$2000.00 for a use variance to have a pole barn on a six-acre property which isn't fair if someone has the property to accommodate the larger accessory structure they should not have to come for a use variance. The only time they would is if the accessory building is larger than the house which has happened in the past with an older smaller home on a larger piece of property. Mr. O'Reilly commented that he didn't think the acreage should be the only governing aspect in the ordinance because someone could have six acres with only 100 foot of width and he did not want to see an oversized pole barn right on top of the house and right on the property line with the neighbor. He has seen some very large pole barns/garages in developments. Ms. Pellegrini replied that the accessory buildings are not permitted in the front yard and also the setbacks would govern the placement to the side and rear yards.

Mrs. Farrell also commented that the Zoning Board Solicitor would usually do a year end report which documents all variances that were before the Zoning Board for that year. He would then point out certain variances that are frequently granted so that the Planning Board may want to look at that particular ordinance and recommend changes to the governing body. There was further discussion on how to change the ordinance with regard to size and not cause the resident who has ample property to have to get a use variance. Mr. O'Reilly stated that there are some very large pole barns in developments. Mrs. Orbaczewski stated that there are some large houses in some developments and if the ordinance was only going on subordinate in size to the house and a house is 3000 square feet then the pole barn could be quite large. This is where acreage would come into play as well as the required setbacks. Ms. Pellegrini stated she didn't think there was maximum size for a pole barn in the old ordinance. There was also comment on the current ordinance which specifically allows one shed and one garage/pole barn and the difference between a shed and a garage. It was determined that the ordinance should just state accessory structure no matter if it's a shed, garage, or pole barn. The other issue that may determine the size of an accessory structure is impervious coverage which isn't usually addressed on the Zoning Officer's paperwork. Mr. Boraske commented that the impervious coverage can be tied into the ordinance as well. He also stated that he has seen other ordinances from other towns that do use ratios and percentages and he can look at something like that if the Board chooses. Mrs. Farrell stated that she will work with Mr. Boraske and Ms. Pellegrini on this ordinance to bring back to the Board. Mr. Schwartz also commented on the issue of lot grading for accessory structures. Mr. Schwaiger commented that lot grading should be considered depending on the size of the structure and the size of the property. Mrs. Farrell stated that she is aware the lot grading started for in-ground pools and that lot grading waivers are used for larger properties so that can be the same for accessory structures and should be part of the revised ordinance.

Joint Meeting Discussion: (continued)

4. 175-151.1 – Wireless Telecommunication Facilities & Deployment

Mrs. Farrell stated that she was contacted by an individual concerning this ordinance. She stated that she was confused when reading the ordinance as she remembered when the ordinance changed and why it changed; however when you read the ordinance it gives the impression that the Director of Community Development/Zoning Officer is the approver. Mr. O'Reilly replied that the solicitor at the time mandated that it be that way but the title of Director of Community Development can be removed and it should just say Zoning Officer. The ordinance sets very specific guidelines as to what is required for just a zoning permit; for example if its an existing tower and they want to co-locate, that is a zoning permit only. Mrs. Farrell also brought up the section that refers to a special permit and anyone that doesn't meet the requirements has to appear before the Zoning Board. She said when she looked for the process of obtaining a special permit it did not include the Zoning Board. It actually can be interpreted that the Zoning Officer will hold the hearing and make all determinations concerning the application. Mr. O'Reilly stated that the language can be tweaked but the timelines are governed by the State. Mrs. Farrell stated that the timelines are fine but the language does have to be cleaned up so that someone reading the ordinance knows the correct process. Mrs. Farrell and Mr. O'Reilly will work on this ordinance and bring it back to the Board.

Public Portion:

Motion passed to open the meeting to the public. There being none, motion passed to close the meeting to the public.

Reports:

1. Mrs. Farrell reminded the Board members that their financial disclosure statement must be filed by April 30th. She also stated that new Board members will be required to take a class on land use and there are refresher courses for members who have been on the Board. She will forward the schedule as soon as she has it.

2. Mr. Schwaiger thanked the Zoning Board members, Mr. Schwartz, Mrs. Farrell, Mrs. Orbaczewski, Mr. Coe, and Ms. Pellegrini for their input and participation concerning the ordinances discussed.

Adjournment:

The meeting was adjourned at 8:45 p.m.

These minutes are an extract from the meeting that was held on the above date and are not a verbatim account or to be construed as an official transcript. Respectfully submitted by: Ninette Orbaczewski, Clerk Transcriber.