

**PLANNING BOARD
BOROUGH OF DEMAREST**

MINUTES

REGULAR MEETING

March 22, 2023, 7:30 PM

Chairwoman Hayden opened the meeting at 7:30 pm with the following announcement:

Public Announcement of Meeting: The notice requirements of the Open Public Meetings Act of the State of New Jersey have been satisfied by the inclusion of the date, time, and place of this public hearing meeting in the annual schedule and notice of regular meetings of this Board. Such annual schedule and notice of regular meetings are posted at the Borough Hall, was mailed to The Newark Star-Ledger and The Record and was filed with the Borough Clerk of Demarest on December 23, 2022.

Roll Call

Mr. Alevrontas-Present
Mayor Bernstein-Present
Ms. Brenner-Present
Ms. Fox-Present
Ms. Hayden-Present
Mr. Keane-Present
Mr. Parlamis-Absent

Mr. Rifkind-Present
Mayor Schooler-Present
Mr. Tabacchi-Present
Mr. Verp-Absent

**Board's Professional Staff Present:
Present:**

Mr. Douglas Bern, Board attorney

**Applicant's Professional Staff
Present:**

Mr. Antimo A. Del Vecchio, attorney
Mr. Mike Hubschman, Engineer

Pledge of Allegiance

PUBLIC HEARING:

**95 County Road, Demarest LLC
Block 145, Lot 5**

Ms. Hayden announced that this is not a hearing, it is a meeting to finalize conditions that were authorized to be drawn up for approval if the Board votes to approve the 95 County Road, Demarest LLC, application this evening. Questions and statements from the public will be allowed after the Board votes.

Mr. Bern, Board attorney: stated that the hearing and all testimony was concluded at the last meeting, as were public questions. The record is closed regarding the application for 95 County Road. This meeting is to review the Conditions of Approval. Copies of these conditions were emailed to all Board members to preview and to the applicant's attorney.

The Board Members then asked questions referencing the Resolution and Conditions of Approval:

A question was asked as to who the particular entity is, that will perform the monitoring of the basins and infiltration systems; particularly annual maintenance and scheduled repairs. It was concluded that the entity is the Home Owners Association; this is stated in the Resolution.

A discussion ensued regarding snow removal being taken off the premises and not being stock

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piled at the end of the road. If stockpiles become overburdened the stockpiles would then be removed off site to provide for safety and vehicular movement.

It was clarified that the affordable units have a shared two car garage and that the trash bins are required to be kept in the garage. Wording referencing the two affordable units would be amended.

It was confirmed that other 'Conditions' to be amended were #'s 10, 18 and 24.

Mr. Bern stated:

This is a variance free application that conforms to the ordinance in terms of bulk requirements, density, height, landscaping, and lighting. MLUL requires that the Board shall approve a project if it is conforming. This applicant has come forward with a conforming plan; it is the purpose of the Planning Board to scrutinize the project for compliance in all matters. There are 53 'Conditions Specific to the Application' & 5 'General Conditions'; many are unprecedented in this municipality.

The Board members are sensitive to the environmental constraints of this property, such as the flooding of the Cresskill brook.

The Homeowners Association will be accountable to the Borough for perpetual enforcement of the set conditions.

It was discussed how an appeal would be handled if the application was denied and the applicant chose to appeal the decision. **Mr. Bern** stated that the case would go to the State Superior Court. The applicant could claim the Settlement Agreement has been breached by the Demarest Borough Planning Board.

A discussion ensued regarding losing immunity, the possibility of losing control over the development of this property and losing the ability of imposing all the 'Conditions' mentioned above.

Mayor Bernstein asked whether the applicants would be entitled to legal fees if they were successful in their appeal. It was stated that the Settlement Agreement does not address the topic of legal fees. **Mr. Bern** stated most parties apply for legal fees, however, they are not always granted.

A discussion ensued comparing the Affordable housing project at 127 Hardenburgh Road and the project at 95 County Road.

Ms. Hayden directed the discussion toward the responsibilities of the Homeowners Association. It was stated that after 50% of the project is completed, the Homeowners Association would hire a firm to monitor the Storm water Management system.

Landscaping must be replaced perpetually if plantings or trees die due to snow piling.

There is a restriction that exteriors cannot be changed, unless there is an application to the Planning Board.

There is a restriction that the garages cannot be used as sleeping quarters.

The developer must supply a manual for the maintenance of the premises. A handbook will be provided for managing filters and other infrastructure the Association manages.

Private sanitation services will be provided. All maintenance expenses will be divided amongst the 8 units. If the property is not kept up, the town can do the needed maintenance, and impose a lien for the costs.

At some point the Homeowners Association will take control of managing all required conditions. **Ms. Hayden** asked if the conditions can be renegotiated in the future.

Mr. Bern stated that according to the Municipal Land Use Law, the applicants can come before the Planning Board if they want to seek reconsideration. **Mayor Schooler** asked if this

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application will need approval by the Bergen County Planning Board, since they are on a county road. **Mr. Bern** stated yes, and that there are also DEP requirements. He stated that the project conforms to the RSIS standards. **Mr. Hubschman** stated that he received verbal approval from the County.

The Chairwoman requested a Motion to approve the Application.

Ms. Fox made the motion to approve the application stating:

I do not like this development. But the consequences of not approving a variance for a fully conforming application that was part of a court litigation settlement does not bode well for the Borough. We risk losing control of the conditions we wish to impose, or even worse, losing immunity from lawsuits that will allow development like this anywhere in town on any lot. Our Professionals have testified that everything is in accordance to regulations, and have advised us that this is a must approve and not a may approve. I object to that and I resent it.

Before casting his vote, **Mayor Bernstein** stated he shared Ms. Fox's concerns, and was concerned about the future effect on residents in the surrounding homes.

A Motion was made to Approve the Application:

Motion: Ms. Fox

Seconded by: Mr. Alevrontas

Ms. Fox -Yes

Mr. Keane-No

Mr. Tabacchi-Yes

Mr. Alevrontas-Yes

Mayor Bernstein-Yes

Mr. Rifkind-Yes

Mayor Schooler-No

Ms. Hayden-Yes

Yes 6

No 2

The Application was approved:

Meeting Opened to the Public for General Comments:

Motion: Mayor Bernstein

Seconded by Ms. Fox

Laura Santos – 9 Carlotta Way – Daughter of resident Laura Santos

Asked if something can be done to restore the Cresskill Brook's banks, and if the Brook could be dredged. **Mayor Bernstein** stated he would discuss this with the County as well as the surrounding municipalities to dredge the Brook in unison.

Jean Nonemacher: 49 Meadow Street

Asked what town residents can do to monitor the construction of this development; whose responsibility it is within the town to oversee the stages of these types of projects? It was stated it is the responsibility of the Building Department; but sometimes the best feedback and observations come from resident's observations.

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Gene Amsel: Central Avenue Asked about the posting of Minutes from prior meetings. It was stated that there are several Minutes that will be approved at the April 11th meeting. The full documents of the Resolutions and Attachments are 75 pages and will be available at the Borough Hall and on the Borough website.

Eileen Lewis: 32 Brook Way

Asked what recourse the residents have once this development has been completed if the neighborhood residents experience more flooding. She stated her property experiences severe flooding; and that the flooding has become increasingly worse. **Mr. Bern** stated that the Planning Board’s engineers reviewed this drainage system and that it is not supposed to cause additional flooding issues

Noel Pugh: 64 Prospect Street:

Mr. Pugh thanked the Planning Board for scrutinizing this project and for the enormous amount of time it took to evaluate this development. Mr. Pugh questioned various aspects of the development, including the percentage of wetlands, the buffer zone, the total foot print, and the total number of guest parking spaces.

David McLain – 9 Isabella Way:

Mr. McLain discussed the number of bedrooms agreed to, and questioned overnight parking on immediately adjacent streets. He stated the current ordinance is vague. He asked about Isabella Way, Brook Way and Carlotta Way and asked for clarification on overnight parking on these streets. It was stated that the ordinance allows parking adjacent to your own street. **Ms. Hayden** stated that perhaps this can be clarified. **Mr. McLain** asked if the ordinance could be redone. **Ms. Fox** stated that this is possible. It was stated the only parking spaces available to the townhouse residents are their individual parking spaces and driveways, and that this development will be marked – “No Parking – Fire Zone”.

Mayor Bernstein stated the ordinance will be reconsidered to either undo or amend, in order to address this issue. **Mr. McLain** thanked the Board members for all the time they put into this application.

At this time there were no further comments from the public.

Motion to Close the Meeting to the Public:

Motion: Mr. Tabacchi

Seconded by: Mr. Alevrontas

Motion to Adjourn the Meeting:

Motion: Mr. Keane

Second: Mr. Alevrontas

Respectively submitted,
Teresa Ferrentino
Planning Board Secretary