

**Planning Board Meeting
Borough of Watchung
November 21st, 2006
Minutes**

Chairman Speeney called the meeting to order at 7:37 p.m. and stated that notice of this meeting had been posted at Borough Hall, filed with the Borough Clerk and given in the way of notice to the Courier News, Echoes Sentinel, the Reporter and Star Ledger in conformance with the N.J.S.A. 10:4-6 et seq.

Present at the call of the roll were: Speeney, Boyd, Havas, Haveson, Addario, Pennett, Spratford, Ellis and Mobus.. Also present were Mark Healy, Borough Planner, Tom Herits-Borough Engineer, and Robert Rusignola-Board Attorney. Schaefer and Page were not present.

Chairman Speeney said that PB02-06 and PB06-10 would be heard first. The Chair said that he would ask for a continuation because of a full calendar at this meeting. Timothy M. Kronk, Planning Consultant for Omnipoint was present, on behalf of the Applicant's Attorney, granted an extension through December. This application was continued until the meeting of December 19th, 2006.

Mr. Rusignola advised the Board that one of the Attorney's for Phyllis Rohling had an emergency in the family, and therefore hadn't turned in the documents for his review, asked to be continued until the December 19th, 2006 meeting. Chairman Speeney continued PB06-R16 this case until the meeting of December 19th.

Townsend/Shobin

Havas called:

PB02-06 Stephen W. Shobin & Aleece Townsend
Block 68.01 Lot 6
Amended Minor Subdivision

Attorney Robert Van Rensselaer, Attorney for the Applicant was present, as well as Kevin Page, Engineer for the Applicant, and Aleece Townsend, and Stephen Shobin. Mr. Van Rensselaer went over the history of the application back to 2002. They have appeared again before the Board to amend condition #7 of the Resolution substituting Sanjay & Anurita Chitale (Lot 14) neighbors for the Salz neighbors(Lot 15) to provide the sanitary sewer easement. Mr. Van Rensselaer presented exhibit A-1, consisting of 3 sheets prepared by Page Engineering dated 10/11/02 with the last revision of 10/31/06 marked Final Subdivision Plan. Mr. Kevin Page was sworn in and was recognized as an expert in his field. Mr. Page summarized the map for the Board. Mr. Page was asked if an easement was provided to the Borough and he said yes. Mr. Rusignola said that this must be perfected within 180 days. Mr. Van Rensselaer read the conditions of the resolution. Mr. Rusignola called property owner Aleece Townsend to the microphone

and asked her if she is current with her taxes, and she said yes. Chairman Speeney asked for a motion to amend Resolution PB03-08 to substitute the Chitales of Lot 14 in place of the neighbors on lot 15 for the sanitary sewer easement. The motion was made by Mr. Mobus, seconded by Mayor Ellis. On a roll call vote, everyone present voted in favor of the amended resolution.

Watchung Rescue Squad

PB06-10 Watchung Rescue Squad
10 Stirling Road
Block 44.01 Lot 4
Minor Site Plan

Bradford Bury, Attorney for the Applicant was present, as well as Donald William Monetti, President of the Watchung Rescue Squad, Inc. The Rescue Squad proposes to build two additions in two phases to their building. The following is Phase I. They want to extend the two existing bays that now house the rigs by 12 feet, keeping the same look to the building that currently exists. When complete, there will still be 8 parking spaces, which Mr. Bury said are the amount determined to be needed. Phase II addition to be done at a later date, was to add additional office space and a training area which comes to a total of 1,405 sq. feet.. Impervious coverage stays the same when a structure is added in place of blacktop. Chairman Speeney asked Borough Engineer Tom Herits about the impervious coverage issues in his letter of review, and Mr. Herits said that it was simply a labeling issue, nothing more. Mr. Boyd said that he assumed that Phase 2 of the project is well into the future, and Mr. Monetti said probably yes. Mr. Mobus said he believes that the sooner that the crash truck is housed securely, the safer it will be for everyone in this day and age of terrorism. The Mayor said that he did not believe that there should be any parking restrictions imposed at the Squad, since in an emergency, those cars need to be able to park very quickly. Mrs Pennett asked where the trucks would be parked during the construction phase. Mr. Monetti said that they did not know the answer to that yet, but that they were in the process of making a decision on that as soon as possible. Mr. Bury discussed the minor site plan maps that consisted of 4 sheets (A-1) dated 05/18/06 prepared by William Scott. There was no further discussion from the public or the Board, and Mr. Mobus made a motion to approve the application for Watchung Rescue Squad, Inc. Mr. Haveson seconded the motion, and during a role call vote, all present voted in favor of the motion.

K & R Valley

Havas called:
PBO6-05 K & R Valley, LLC.
113 Valley Drive, Block 65.02 Lot 4
Preliminary Major Subdivision & Variance

Joseph Murray, Attorney for the Applicant was present, as well as David Zimmerman, Planner and Kevin Page, Engineer both for the Applicant. Mr. Murray submitted a letter summarizing changes submitted since last months meeting. Mr. Rich Traynor, Attorney representing Jeff Tobey, a neighbor on Valley Drive was present. Mr. Traynor asked the

Board to address and settle the interpretation issues first. Mr. Rusignola and Chairman Speeney explained that there had to be a foundation made by Mr. Murray, and that he would present his case first. Mr. Murray said that the amended plans showed a one-foot strip in width along the easterly side of the cul de sac, which separates the adjoining lot 13 from the subject property and no longer places lot 13 in the position of being a "corner lot." Mr. Murray said that the question of corner lot came up at the end of the last meeting. He said that in correspondence to Mr. Rusignola, he responded to the issue of the Chair as to whether the proposed cul de sac in it's original layout created a corner lot for setback restrictions as indicated by the Zoning Code. He said that it created a corner lot, but it didn't create a non-conforming use by way of the driveway setback or any other feature, which the MLUL requires that non-conformity to be established by Zoning Ordinance or an amendment to the Zoning Ordinance consistent with Cox. Chairman Speeney said that he would not have expected that result from Cox. Mr. Murray stated that the Applicant does not have the responsibility of providing any variance relief unless variance relief relates to our site and variance relief relates to the creation of a non-conforming use.

Mr. Murray called Mr. Kevin Page, of Page Engineering who was still under oath to the microphone. Mr. Page reviewed the revised plans with a revision date of 11/10/06. They were prepared by Page Engineering. Mr. Page said that they shifted the proposed road one foot to the west. That one foot reserve strip, will belong to Lot 14.01. Mr. Page said that they reviewed the memo of Mark Healy of October 16th, 2006 regarding slopes. Mr. Page said that some of the info that Mark Healy used to prepare his memo was from assumption. Mr. Page said that they redid the topographical study in the field, after discovering that the original study was in error. After redoing the topography, and applying the slope factors, they found that they are entitled to 1.96 lots under the provision of the Ordinance. He said it was listed under the design standards. Lot 14.02 is 60,667 square feet, and Lot 14.01 is 60,282 square feet. Mr. Murray asked Mr. Page if he had reviewed the Ordinance with the purpose of determining where the front yard is. Mr. Page said that the front yard is where the front of the house is. Both homes would face the cul de sac. Lot 14.01 now would have a lot width of 292 feet. Lot 14.02 would have a lot width of 237 feet. Frontage on Valley drive would be one foot on Lot 14.01 and 140 feet wide on Lot 14.02.

Mr. Page talked about corner lots in this municipality that do not meet standards for lot width and frontage on both streets, citing Burnheade. He brought plans that showed these lots. It was submitted as Exhibit AA-1 . A discussion ensued about Burnheade subdivision lots. They showed a number of lots that have been divided in this municipality, that do not have the 150 foot lot width on both frontages. A discussion ensued about Burnheade subdivision lots.

Mr. Murray asked if the creation of this lot would affect negatively the welfare, health, and public safety of the community. Mr. Page said no. Mr. Murray asked if the creation of these lots and their drainage stays within the standards of the RSIS requirements. Mr. Page said yes. Mr. Page said that on this property, impervious coverage remains within the Borough requirements. They discussed the purpose of the steep slope revisions that have been submitted by the Healy memo.

Mr. Mobus left the meeting at this point.

Mr. Page said that he received a report from the Borough Engineer. Mr. Page said that they are asking for a diminimus exception on the width of the cartway. The cul de sac itself would meet the standards for a cul de sac on any road but RSIS looks for a 20 foot wide curbed cartway, and the plans are now showing 18 foot width. Mr. Page said that they would be willing to go 20 feet if the Board would like, but that this is really nothing more than a glorified driveway serving only two houses. It meets the standards for emergency vehicles and has an 80-foot diameter at the bulb of the cul de sac. It will be curbed on both sides, and paved. They are planning to plant street trees by the one-foot strip, since there is a total of 12 feet constituting 11 feet of Municipal right of way, and the one-foot strip. In that right of way, underground utilities would be buried underground, and a water line under the cartway. Mr. Murray asked if the relocation of the road from the north to south cul de sac area have any impact on the surface water runoff and the drainage engineering techniques as existed on the prior plan. Mr. Page said yes it does, and that is why they are creating the detention water basin to intercept that runoff. Mr. Page said that the Storm water management plan is the same as in the prior plan. Mr. Murray had no further questions for Mr. Page.

Questions were opened to the Board. Mr. Alan Haveson asked Mr. Page who maintains that 1-foot strip of land. Mr. Page said the homeowner maintains the one strip, as well as the 11-foot right of way.

Chairman Speeney opened up questions to Mr. Traynor. Mr. Traynor asked if Lot 14.01 would be a corner lot. Mr. Page said yes, it probably is due to frontage on two streets. Mr. Traynor asked if the one-foot strip is known as a spite strip and also as a reserve strip. Mr. Page said that he has heard it referred to as both. Mr. Traynor asked Mr. Page to read section 119-20 (subsection E) which stated, "in no subdivision shall reserve strips controlling access to streets shall be approved." Mr. Traynor asked if this requires a design waiver. Mr. Page said it might. Mr. Traynor asked when the ground topo was taken. Mr. Page said that they did it after the last Planning Board meeting. Mr. Traynor questioned Mr. Murray, asking him if he was aware that the Zoning Officer had determined that a variance was needed for this application, and Mr. Page said that he disagrees with the Zoning officer. They talked about site line, and front yard setback being 50 feet on both streets. Mr. Murray read the definition of a front yard from the Land Use Book citing section 138-3 of the Watchung Ordinance. He talked about a difference between the front of the house, and the front yard. Mr. Murray asked again about lot width requirements, and the fact that no variance for lot width is required. Any house that is constructed on these properties must face the cul de sac. There were no more questions from Mr. Murray or the Board or the Public. There was some discussion about the Burnheade lots that were subdivided in 1989 and Mr. Page's knowledge of them.

David Zimmerman Planning Consultant for the Applicant was called by Mr. Murray, and was sworn in and recognized as an expert in his field by Mr. Rusignola. Mr. Zimmerman said that he became involved last summer and that he had visited the site on a number of occasions. He has reviewed the application, the Zoning Ordinance, and the Master Plan. He also said that he reviewed the corner lot issues. Mr. Zimmerman consulted with some planning and zoning books including The Latest Illustrated Book of Development Definitions by Harvey Moscovitz and Carl Linbloom. Mr. Murray asked Mr. Zimmerman if he thought that the Borough of Watchung provided a definition of what a

front yard is. Mr. Zimmerman said that the Ordinance does define front yard, but the front yard is defined as an area located in the front of a building and extending across the lot between the side lot lines through the front back setback line exclusive of open porches, steps, overhanging eaves and cornices. Mr. Murray said to Mr. Zimmerman, “looking at Mr. Page’s application exhibit based upon your reading of the Ordinance, please point out where the front yard is and where the front lot setback line is. Mr. Zimmerman pointed to where he thought the front yards of the two proposed homes would be. He said that both homes would face the “bulb” of the cul de sac. In this definition of corner lot from this book, it says “A lot or parcel of land abutting two or more streets at their intersection or on two parts of the same streets forming an interior angle of less than 135 degrees.” It goes on to comment that the major problem with corner lots is the designation of yards opposite the street frontages. It continues that it is a better approach to permit the Applicant to designate one of the street frontages as the front requiring the house to be built facing the front. Mr. Zimmerman said they are satisfying many of the requirements of corner lots as far as open air, light, safety and adequate sight distance. Mr. Zimmerman said that the house on lot 14.01 is a considerable distance to the abutting residence on lot 13 (easily 300-400 feet). Mr. Rusignola asked Mr. Murray if the two homes would be placed in that exact building envelopes that are shown on the plans. Mr. Murray answered that the goal is to have those houses placed within several feet of where they are, so they can be set back the distances from Valley Drive that are shown on the plans and face the cul de sac. Mr. Rusignola said that what we have is a hypothetical plan, more than actual testimony from Mr. Zimmerman. Mr. Zimmerman said that the front of the house on lot 14.01 will face the cul de sac. He also said that in the plans, the conceptual footprint, is 50 feet back from the cul de sac. It will be at least that far back from the cul de sac. The distance to the adjoining house will not be less than 300 feet. Mr. Zimmerman said that similarly on lot 14.02 there is not much maneuverability either. It must be set back 50 from the cul de sac. There is a retention basin between the house and Valley Drive and the front yard narrows considerably in that area so this house is pretty much set in this location. Lot 14.02’s relationship to Lot 15 is about 300 or 400 feet distance as well. Mr. Murray brought up the issue again about where the front yard is relating to a corner lot. Mr. Zimmerman quoted from a book by Norman Williams on American Land Planning Law. It stated that required front yards are normally much larger than side yards. It said that normally one yard should be designated as the front, and the other as the side. Mr. Zimmerman said that he believes the Watchung Ordinance is consistent with that last sentence. Mr. Zimmerman said it’s common sense that the front yard is defined best as being relative to the front of the house, and the relationship of the front of the house to the street. Mr. Zimmerman said that if the Board doesn’t agree with the Applicant’s interpretation of the Ordinance, then they are looking for variance. Mr. Zimmerman said that the variance that is being requested for Lot 14.02, which is proposed to have a front yard of 140 feet, where 150 feet is required. Mr. Zimmerman said that he feels that is a minor dimensional variation of the strict lot width requirements in the ordinance. He said it does not violate the spirit or intent of requiring lot widths. Mr. Zimmerman said that it creates two homes on their own private drive. He said it is not out of character with the neighborhood, or out of character in the street scape. Mr. Murray said that the front yard is the driving element in

compliance with the ordinance. Mr. Zimmerman said that if the Board was not disposed toward the one-foot solution, then the cul de sac could be moved over to the lot line and that property would not have a lot width variance. It would be entirely conforming. Mr. Murray asked him if that was done, would there be a resulting variance need with respect to owner of lot 13 regarding the driveway located on that lot. Mr. Zimmerman brought up Professor Cox, and the book that he has written which is used by Planning Boards. Non-conformity can only be created by a change in the zoning was what he was referring to here from the Cox book, and Mr. Zimmerman said there has been no change in zoning. The MLUL agrees with this theory. Mr. Murray said that there would be no negative conformity regarding lot 13. Mr. Murray asked Mr. Zimmerman if he had any opinion on the reserve strip. Mr. Zimmerman said that he did not think that the mention of reserve strips not being allowed in the ordinance related to a case like this but rather where a future subdivision may occur.

Mr. Zimmerman addressed the issues of C1 variances saying that this lot has plenty of lot area to create 2 lots. However, because of the shapes of the lots, we do have a lot width variance requests before the Board. He said that in terms of the C2 criteria, Mr. Zimmerman said that he believes the benefits outweigh the detriments. He said the lots are very appropriate size, and will be seen as very desirable and unique to Watchung, being two homes enjoying their own private driveway. They will have a degree of privacy that not many homes in Watchung have. Mr. Zimmerman said that he sees no detriment to the public good or the zone plan. Mr. Murray had no further questions from Mr. Zimmerman.

Chairman Speeney asked Mr. Zimmerman how many homes in the neighborhood are 25-30 feet apart. Mr. Zimmerman said it was not common on Valley Drive. Chairman Speeney also asked Mr. Zimmerman if as a Planner, he often recommends a reserve strip. Mr. Zimmerman said no, that this particular situation is very unique subdivision application. Mr. Murray asked Mr. Zimmerman what the side requirement was. Mr. Zimmerman responded that the requirement for one side yard is 15 feet, and the requirement for both side yards is 50 feet. Mr. Murray asked at the closest distance of the proposed homes to each other, is the distance less than 15 feet to the property division line. Mr. Zimmerman said that they are not less than 15 feet and meet the zoning requirement.

Chairman Speeney opened up questions on redirect to Mr. Traynor. Mr. Traynor said that he thought everything Mr. Zimmerman discussed front yard vs. side yard. There was no mention of lot width or lot depth. Mr. Zimmerman said the reason he quoted the Ordinance, was that indirectly it talks about the requirement that the house face the front of the street, and that defines the front yard of the house. Also, it established some of the criteria for having an appropriate front yard, which applies equally well to an appropriate lot width. Mr. Traynor asked Mr. Zimmerman if indeed there is no minimum lot depth under the Watchung Ordinance. Mr. Zimmerman said that was correct. Much discussion ensued between Mr. Traynor and Mr. Zimmerman about the lot depth, and what is required by Watchung Ordinance. Hypothetical subdivisions were also discussed. Mr. Traynor said that he thought the crux of all of the Applicant's argument was that they do not require a variance is that lot width is measured along the front yard setback, and that the front yard setback is determined by the yard which is in front of the building. Mr. Zimmerman said that it is determined by the front of the building, yes. Mr. Traynor

asked if there is anywhere in the Watchung Ordinance that says that there cannot be two fronts of a building. Mr. Zimmerman said that in his experience, he has never seen a building that has two fronts. Mr. Traynor cited section 138-3 in the definitions of the Watchung Ordinance, which stated that in the case of a corner building that front on more than one street, only one face shall be used to calculate the façade area. Mr. Zimmerman said that that only substantiated his point. Mr. Traynor said that meant the façade area, and not to calculate the width. Mr. Zimmerman said it meant that the front of the building is determinative to calculating the location of where the lot width should be measured.

Mr. Murray, on redirect asked if both of these lots meet the rear yard, front yard, side yard, dimensional standards of the Ordinance. Mr. Zimmerman said yes. He asked if under the Applicant's interpretation of the Ordinance, are both lots fully conforming. Mr. Zimmerman said yes.

Chairman Speeney asked if the reserve strip is not accepted by this Board, and Lot 13 becomes a corner lot, did Mr. Murray not say that no variance would be required by Lot 13. Mr. Murray said that was correct. Chairman Speeney asked if that doesn't though, imposed new setback requirements on Lot 13 even though they do not have to ask for a variance. Mr. Zimmerman said it might. Mr. Murray asked Mr. Zimmerman the question that Chairman Speeney posed, and Mr. Zimmerman said that was an area of law, and not of Planning, and that he would have to defer to the Attorneys.

Chairman Speeney asked for a date at this point for the next meeting and brought up the date of November 28th, 2006. A time of 7:00 p.m. was set for a special meeting of the Planning Board to hear this case.

Chairman Speeney asked for a motion to accept the vouchers. Mr. Addario made the motion, seconded by Mrs. Spratford. A roll call vote was taken, and the motion was unanimously passed. Mr. Havas made a motion to adjourn, seconded by Mr. Addario. The meeting was adjourned at 10:55 until the next meeting of November 28th, 2006 at 7:00p.m.

Respectfully Submitted,

Carolyn Taylor
Planning Board Clerk