

**Planning Board Meeting  
Borough of Watchung  
November 28th, 2006  
Special Meeting  
Minutes**

Chairman Speeney called the meeting to order at 7:04 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, and Spratford. Mayor Ellis arrived at 7:16. Also present was Mr. Robert Rusignola, Planning Board Attorney, and Mr. Mark Healy, Borough Planner.

Chairman Speeney indicated that there was a quorum to conduct business. He asked for a motion to waive the reading and to approve the minutes of the Meeting of October 17<sup>th</sup>, 2006. Mr. Havas made that motion, seconded by Mr. Haveson, and approved on voice vote.

**K & R Valley, LLC**

Havas Called:

PB06-05 K & R Valley, LLC  
113 Valley Drive Block 65.02 Lot 14  
Preliminary Major Subdivision & Variance(s)

Joseph Murray was present, representing the Applicant. Murray said that he wanted to recall Mr. Kevin Page for a few questions. Chairman Speeney asked that they take the Planners testimony first. Mr. Murray agreed. Mr. Rich Traynor, Attorney for the neighbor who opposed the application, Jeff Tobey, asked Mr. Peter G. Steck, Mr. Tobey's Planner, of Maplewood, New Jersey to come to the microphone. Mr. Rusignola swore in Mr. Steck, and recommended him as an expert in the field of Planning. Mr. Traynor asked Mr. Steck if he is familiar with and has reviewed and visited the application site. Mr. Steck answered yes, and had also reviewed the Ordinance and the Master Plan and the Re-examination Report. Mr. Steck gave an overview of the property. He said that the lot is a little over 3 acres in size. It has a frontage of approximately 160 feet according to the tax maps. It has a somewhat irregular shape. It is longer in general than it is wide. Wooded with varied topography, and sections with steeper slopes (over 15%). The property is currently vacant, although it used to have a one family home. He said that the Applicant is proposing a major subdivision involving the creation of a new lot and a cul de sac. Mr. Steck said that the proposal creates two corner lots. Lot 14.01 has a one-foot control strip that separates the proposed cul de sac from the abutting lot, Lot 13. That can be viewed as making this lot a corner lot.

Proposed Lot 14.02 is a more classic corner lot. The proposed lot line to divide these lots has a sharp bend in it. It starts out being radial to the cul de sac, and after about 50 feet bends sharply to accommodate the minimum amount of lot area. The two proposed lots are not generous in lot area, but just above the minimum lot size. Mr. Steck used Google.earth and the tax maps of the subject area. In driving up Valley Drive, it is a circuitous path. It does not have curbs or sidewalks, and has some relatively narrow widths. In some places, there are trees growing right up to the pavement, in the public right-of-way. Valley Drive is very rural in nature. The public impression at this time of year is to get to see the character of the houses, the setbacks, and the pattern of those houses, which are generally widely setback from one another. Mr. Steck said that he looked at the 1994 Master Plan, which recommended a RR residential designation for this area. No change was recommended in the 2003 re-examination report. It did raise issues about steep topography. Minimum lot width in this zone is 150 feet. Significant in this application, Mr. Steck said, is lot width, which is 150 feet. The definition in the ordinance for lot width was cited, as well as the definition of front yard. Mr. Steck said that there is no specific definition in the Ordinance for a corner lot. Mr. Steck said that common sense says that you measure it along the two frontages. He said that the whole purpose of the minimum lot width is that in the place you would expect a dwelling, to have enough width to accommodate a house, and at least minimum required side yards setbacks. Mr. Steck referred to exhibit AA-1, sheet 2 of 6. In Mr. Steck's opinion, this lot is a substandard lot by 10 feet on frontage. In fact, Mr. Steck said, for most of the length of the lot, even where the house is depicted graphically, there is insufficient width according to the ordinance (not 150 feet). If you measure the width along the longer frontage, it doesn't accomplish the purpose that the ordinance was written for, Mr. Steck said. Mr. Steck said that the lot shape is contorted, to eek out the minimum amount of square footage. He said that there are other items of relief, such as the fact that the Ordinance prohibits control strips. Mr. Steck said that there is an issue of steep slopes that are not permitted, as well as an RSIS item of relief, which is for pavement width. Mr. Steck said that he did not believe that a C1 variance could be granted. Mr. Steck said that in reference to Mr. Zimmerman saying that there was a C2 benefit that substantially outweighed the detriment, no proof has been submitted. Mr. Steck said that Mr. Zimmerman talked about more housing being in character with the area. Mr. Steck said that in his opinion, this development would do just the opposite. He said that if this is developed, you're going to have a suburban street, which is going to give access to just one more lot. Impervious coverage is not counted in the lots, because the street is to be proposed to be public property, but indeed that has the same impact in terms of removing trees and producing storm water runoff as pavement that would be on the lot. As you drive down the street, Mr. Steck said, you will see this clearance with a large paved area. You will see clearance for a detention basin, so basically an open area in front, and then you will see two houses that are relatively close to one another, which is not the pattern of houses that have existed in this area which is already predominately developed. While riding down the street and see something completely out of character with what has been in the area. He said that in listening to the testimony, he did not hear any rationale or hardship or practical difficulties regarding the disturbance of steep slopes. Mr. Steck said if you put one house on the lot, using the current gravel driveway, it will have very little disturbance on the land. He said if both proposed houses are built, there will be a huge

amount of disturbance on this lot by virtue of the cul de sac, and the detention basin and two houses. Mr. Steck said that in his judgment, this is a self-created hardship. Mr. Steck that it is the burden of the Applicant to demonstrate either a C1 or a C2 for the variance. Mr. Steck said that if the Applicant abandons the one-foot strip, in effect, the owner of Lot 13 would have a driveway that is close to this new street, and an area where he or she is prohibited in building. Mr. Traynor thanked Mr. Steck for his testimony. Mr. Murray came up for redirect. He discussed lot minimum width in the bulk requirements schedule. An asterisk (\*) follows the lot width on the chart. He had Mr. Steck read the note by the asterisk that stated that “minimum lot width shall be measured at the front yard building setback line.” A lengthy discussion ensued about how to measure lot width, and where the front of the house is, and where the front yard is. Many definitions from both the Borough ordinance as well as planning books were read. They discussed at length where the front of the L-shaped home is on the proposed plan. They discussed minimum lot width, and where it was measured. Mr. Steck explained that he determines the front yard of a house based on the orientation of the lot to the street, not to the shape of the house. They discussed how the reserve strip controls access to or limits the neighbor of Lot 13 to the new cul de sac. Mr. Steck said that lots that are one foot wide, in his opinion represent bad planning. Mr. Murray cited section 119-22 of the Ordinance subsection B about side lot lines being at right angles to straight streets and radial to curved streets. There was an discussion regarding prohibitions of reserve strips vs. angle of side lot lines. A lengthy discussion ensued about the lot lines dividing the two proposed lots, and the shape of those lines. Mr. Steck said that the irregular shape of the proposed lots is created by virtue of the Applicant trying to subdivide the lot. Mr. Steck was of the opinion that this lot is appropriate for one house, not two, because even though it conformed to the square footage, it did not conform to lot width, side yards, and density. He believed that the Applicant is creating his own hardship. The Applicant agrees that one lot is substandard for lot width.

Kevin Page came to the microphone and said based on the Applicant’s interpretation of the Ordinance, the lot frontage standards are met. He said that Lot 14.02 is short on minimum lot width by 10 feet, with a lot width of 140 feet.

Mr. Steck said that both lots require variances for lot width. Mr. Murray asked Mr. Steck if there are any other variances needed in accordance with the zoning table presented by the Applicant. Mr. Steck said that as presented on the plan, none were shown. He said as far as steep slopes the Applicant amended part of the plan by inserting selected areas of the lot that were apparently re-graded. He said he wasn’t sure if that was a fair way to do it. He said if the Applicant wants to amend it, it ought to be done on the same consistency on the same data plane in which case there might be a further violation of the lot by the steep slope provisions. Mr. Steck said that the steep slope ordinance is not part of the site plan or the zoning ordinance, so he isn’t sure what would be the nature of relief. Mr. Murray said that the difference between 1.6 and 2.0 is diminimus and that there was a reasonable basis to seek a waiver. Mr. Steck said he couldn’t answer that in the abstract, because he did not believe it was diminimus. He said he did not know, since that Ordinance is silent on relief. Mr. Rusignola asked Mr. Steck if he had an opinion as to whether the standard is greater or lesser than the burden of proof in the granting of a variance. Mr. Steck said that it would seem to him that if there was relief possible, it would be logical to say it is less of a burden than a variance. Mr. Murray asked Mr.

Steck about standards for seeking C2 relief. They discussed the benefits outweighing the detriments. Mr. Steck said the more natural topography that is disturbed on the lot; there is more of a chance for flooding, runoff or erosion. They discussed open air, light and space, and Mr. Steck said that it is in conflict with the established pattern of the neighborhood. Mr. Steck said that the typical house in the neighborhood has a much greater side yard than what is shown on the Applicant's plans. Mr. Murray and Mr. Steck went into a lengthy discussion of how to determine where side and rear yards are. At this point, Mr. Rusignola stopped the testimony to say that the questions that Mr. Murray was posing, were according to the Applicant's interpretation, and the answers that Mr. Steck was giving, was according to his own interpretation, and to please give answers that respond to the question, and then if Mr. Steck wants to clarify, that would be better. Mr. Murray read section 138-3, the definition of a side yard. Assuming the house on lot 14.02 has a front yard facing the cul de sac. Given that, Mr. Murray said, where is the side yard? Mr. Steck answered that the Applicant shows the side yard to be 15 feet deep running from a point 50 feet from the cul de sac down the proposed common lot line to a point about 35 feet from the southerly lot line. Mr. Murray asked what the lot line was called in the Applicant's interpretation of the distance between the northerly side of that structure to Valley Drive. Mr. Steck said that the Applicant shows a 50-foot setback, which is the required front setback. Mr. Steck said that the Applicant shows space between the required 50 setback and the position of the house, but the Applicant doesn't say what that is. Mr. Steck said that in his judgment, that is the front yard. Chairman Speeney said that Mr. Murray is asking Mr. Steck to read the Applicant's presentation, and verbalize what the Applicant wants. Mr. Murray went on to the purposes of zoning, and if the density requirements were met. Mr. Steck said that for square footage, the density requirements were met. Mr. Murray asked Mr. Steck if he agrees with the fact that for the C2 variance, the purposes of zoning were promoted. Mr. Steck said no. Mr. Murray asked why Mr. Steck did not agree. Mr. Steck said that just because you don't violate a provision, it does not automatically mean that you promote this purpose. In theory you could pave this whole lot over and have deep detention basins and do it in a proper Engineering fashion, but in Mr. Steck's opinion, that would not promote the purposes of zoning. Mr. Murray asked Mr. Steck what he considered a detriment under the C2 standard. Mr. Steck said if someone is proposing a contorted lot shape that has portions of the lot that were unusable, that would be a detriment. Mr. Steck said that the one-foot strip is a detriment. Mr. Murray asked if the distance between the two houses and if they meet the required open space distances under the zoning code. Mr. Steck answered yes. Mr. Murray asked Mr. Steck if he takes the position that a corner lot will be created if that cul de sac roadway abutted the easterly line. Mr. Steck said the easterly lot would no longer be a corner lot but the westerly lot would remain as a corner lot. Mr. Murray asked Mr. Steck if it was his position that as a result of the creation of that lot and it's formation as a corner lot would the Applicant be required to obtain variance relief with respect to that adjacent lot. Mr. Steck said that he didn't testify to that on direct, and that he did not think there was established case law on it. Mr. Steck said there is an opinion by William Cox, but that he didn't think there was actual case law established. Mr. Murray asked Mr. Steck whether those detriments that Mr. Steck described substantially outweighed by the benefits. Mr. Steck said that was correct. They went over the negative criteria that Mr. Steck had mentioned again. (Irregular lot shape,

character of the neighborhood, lot line, reserve strip). Mr. Murray said he had no further questions at this time. Mr. Traynor asked Mr. Steck with respect to the steep slope ordinance what type of or even if relief would be entitled under that section. Mr. Traynor said that he understood that Mr. Steck said that it was most likely that it does not require variance relief. Mr. Steck said that was correct, but that it would probably require something less than variance relief for example similar to getting a waiver or an exception. Mr. Steck said that he thought that was a reasonable presumption. Mr. Traynor read from 40:55D 51 from the MLUL subsection A with regards to the standards for granting relief for either a waiver or an exception. He asked Mr. Steck if there were any peculiar conditions pertaining to this land in question as opposed to other property in this area. Mr. Steck said no, that this lot has the same topographical characteristics of most of the lots in the area. Mr. Traynor asked if because the lot area perspective exceeds the minimum lot size, does that entitle them to subdivide it into two separate lots? Mr. Steck said it does not, because there are many other standards other than just for footage. Mr. Traynor had no more questions. Chairman Speeney excused Mr. Steck. Chairman Speeney called Mark Healy from Heyer and Gruel who is the Board Planner to the microphone. Mr. Rusignola swore Mr. Healy in, and recommended him as a expert in his field. Mr. Healy did a report on this case back in April of 2006. He said he had a few points of clarification and there were a few points in his report that he did not think that the Applicant has addressed yet. Mr. Healy said he had a slightly different view of the lot line issue. He read the definition again, and said that lot width is measured along a line. He said that throughout the Applicant's testimony, they have pointed to the definition of front yard. Mr. Healy said that front yard is an area, not a line. Chairman Speeney asked Mr. Healy to go to the exhibit AA-1 and graphically show the Board his interpretation. Mr. Healy said in lot 14.01 it is obvious where the front of the house is proposed to be extending to the cul de sac, but the front for 14.02; the Applicant has referred to this definition as the building façade area. Mr. Healy said that he thinks that is misleading. He said that the words building façade is always referring to signage, or sign ordinances. Mr. Healy said that Mr. Murray kept referring to the definitions of what was the front yard setback, and not the front yard. Mr. Healy said that you measure the lot width along a line that is equal to the required front yard setback line, which in this zone is 50 feet parallel to the front line. Mr. Healy said that he is making a little bit of an interpretation because the lot width definition doesn't say that you need to measure it along both lot lines. Mr. Healy said that he agrees with Mr. Steck's interpretation that the ordinance is unclear and if an interpretation must be made, it makes sense that you'd need to measure it along both frontages. Otherwise, you could conceivably have a lot that meets along one dimension, and it's essentially a one-dimensional requirement. Mr. Healy said that lots are two-dimensional features.

Mr. Healy said that the second issue was in regards to lot configuration comment in his memo section 119-22B stating that side lot lines need to be perpendicular or radial from the front lot line. It states that side lot lines shall be at right angles in so far as it is practical. Mr. Healy stated that he has not heard the Applicant state what the practical problem is in this case. Another issue in Mr. Healy's initial review, which he found still unclear in the revised plans, is how much of the site is going to be disturbed along the west and front of the site. The last thing that Mr. Healy said he wished to offer to the Board is if it is determined that a variance is required for lot width; he reviewed the C1

and C2 criteria. C1 must demonstrate that there is a hardship. C2 must demonstrate that they advance the purpose of zoning, and also in doing so they must demonstrate that it is a better alternative than the existing condition, or a subdivision that would be in compliance. In finding the negative criteria, they must hit the two prongs which are they must demonstrate granting of the variance would not be a substantial detriment to the public good, (here, being impact to the surrounding neighborhood), and also that it would not be a substantial detriment to the Master Plan. Chairman Speeney said that both Mr. Healy and Mr. Murray have alluded to the RML bulk standards in the ordinance. They don't apply to the RR zone. Mr. Healy said that it was the similarity in measuring lot width that he was referring to. Chairman Speeney said that because something is included or deleted in one set of standards, doesn't make another set of standards deficient because they don't agree. Mr. Rusignola agreed. Mr. Murray asked for a 5-minute break, and Chairman Speeney agreed.

After the break, at the call of the roll, present were:

Present at the call of the roll were: Speeney, Boyd, Havas, Haveson, Addario, Spratford, and Ellis. Also present was Mr. Robert Rusignola, Planning Board Attorney, and Mr. Mark Healy, Borough Planner, and Mr. Tom Herits arrived shortly before the end of the meeting. Chairman Speeney indicated that there was still a quorum to conduct business. Mr. Murray said to Mr. Healy that he appeared to have taken the position that the definition of front yard is not really relevant to the understanding that we are talking about lot lines. Mr. Healy said yes. Mr. Murray then asked what the function of the definition of a front yard is. Mr. Healy said it is not uncommon to have two different definitions such as this. One reason is that it is common to have certain zoning standards that refer to the front yard. They discussed the term building façade once again. More definitions were read and discussed. Mr. Murray asked Mr. Healy if there was a difference between the words front yard building setback line, in article 5, vs. the definition of front yard in the Ordinance. Mr. Healy said again that yes, front yard is an area, and front yard setback line is a line.

Mr. Rusignola asked Mr. Healy if it was fair to say that the front yard setback line depicts the minimum front yard. Mr. Healy said yes. Mr. Murray asked Mr. Healy if they have properly utilized the definition of front yard building setback line for the purpose of determining the lot width on exhibit AA-1. Starting with 14.01, Mr. Healy shows a lot width of 150 feet. Lot 14.02 shows a lot width of 140 feet, assuming they were both measured correctly. Mr. Healy said that the orientation of the house is completely irrelevant with regard to lot width. Mr. Murray showed Mr. Healy several lots on a map and asked him to review them to see if they were irregularly shaped. From there, they looked at tax maps. Mr. Murray asked Mr. Healy if he thought there was an absence of a standard of relief for the steep slope ordinance. Mr. Healy said that he would have to defer to the Board Attorney to see if the Board has the authority to grant relief. Mr. Healy also said that this is a very unique set of regulations. He said that in his opinion, if relief could be granted, it would be in the way of something like an exception or waiver. Mr. Rusignola said that he thought that the question was; in Mr. Healy's experience in land use, have you seen a situation in land use where the Board was not empowered to grant a deviation from what was in the Ordinance standards. Mr. Healy said he had not seen when something in another Ordinance outside the Land Use Ordinance has been

applied. Mr. Murray asked Mr. Healy if he had an opinion here as to whether the lot line configuration proposed here creates a substantial detriment to the public good. Mr. Healy answered that he thinks there is a detriment. He said he agreed with Mr. Steck's opinion that the change in the character of the neighborhood and the appearance of the area as a very forested rural residential area is accurate and he thinks that this will change it to more of a suburban area and it will involve a substantial amount of tree clearing and will change the look of Valley Drive from a forested curve, to a view of a large cul de sac with a detention basin in a very conspicuous location on the curve of Valley Drive.

Chairman Speeney said that there is the issue of the number of lots that this lot can be divided into. (Density of 1.96 vs.2.0) Chairman Speeney asked Mr. Healy if he agreed with those two numbers. Mr. Healy said he had not had the opportunity to confirm that. He said his initial estimate was 1.85, and it very well could be 1.96, since he did not have some data that has been presented when he did his initial estimate. Chairman Speeney asked Mr. Healy from his experience from reviewing the Master Plan updates of 94, 99, and 05 is there anything consistent in those updates of how this Planning Board and this Borough wants to operate relative to this density issue. Mr. Healy said yes and no. Mr. Healy said that he does not believe that the Applicant has a density problem. They meet the minimum lot area per the zoning ordinance. Mr. Healy said that there is language though, in all the planning documents starting from the 94 Master Plan update through the 2005 Re-examination report that brings up the issue of infill subdivision, making a very strong statement that infill subdivision areas should meet the density and development pattern of the existing neighborhood. Mr. Healy said he thought that would heavily discourage the granting of variances that would allow more zoning lots than the fully zoning compliant lots would. Mr. Murray said that means fully compliant with the Applicant's position. Mr. Healy said yes.

Mr. Herits was asked if he had any testimony. He said that the only testimony that he could give was from an Engineering standpoint. He said his report stands on its own. He said there are some issues that he asked the Applicant to address. Chairman Speeney asked if in Mr. Herits opinion, there were any exceptions that this Board needed to consider. Mr. Herits said not that he remembered. Chairman Speeney asked if Mr. Herits addressed the issue of steep slopes. Mr. Herits said that he believed that they discussed it in both his report and the Planner's report. Mr. Murray talked about sections 5 & 6 regarding required information. Mr. Murray asked Mr. Herits if he received the report from Mr. Page about drainage runoff. Mr. Herits said yes. He asked if the soil conservation requirements were satisfied. Mr. Herits said that he was mostly concerned with soil loss, soil erosion, whether or not the silt fences were in. Mr. Murray had no further questions for Mr. Herits.

Mr. Murray called Kevin Page back to the microphone. Mr. Murray marked an exhibit from Mr. Page as AA-2. AA-2 showed the two proposed homes on the two proposed lots with the driveway flipped, and now showed the houses 65 feet apart. He did this after seeing concern at the last hearing about how close the houses were. He said each depiction showed houses between 4 and 6 thousand square feet. He said that the houses locations complied before, and it complies now, but that they are simply further apart on this depiction. He also drew a pink box on proposed lot 14.02 showing that the house could be rotated to face the cul de sac and still meet all the yard requirements. Mr. Page

said that he believes that you could deny a subdivision if you could not reasonable provide a building box.

Chairman Speeney proposed that the Applicant consider an extension until the meeting of January 16<sup>th</sup>, 2007 at this location. Chairman Speeney asked that Mr. Healy be present for this meeting. The applicant granted an extension through the end of January. Chairman Speeney asked for a motion to adjourn. Mayor Ellis made that motion, seconded by Mr. Havas, and the meeting was adjourned at 9:35 until the next meeting of December 19<sup>th</sup>, 2006

Respectfully Submitted,

Carolyn Taylor  
Planning Board Clerk