



BOROUGH OF EAST RUTHERFORD PLANNING BOARD MEETING MINUTES MAY 30, 2017

A special meeting of the East Rutherford Planning Board was held on **May 30, 2017** at 7:00pm at the Borough Hall, located at 1 Everett Place, East Rutherford. The purpose of this meeting was to continue a site plan application by 10 Morton, LLC for the property located at 10 Morton Street.

ROLL CALL

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| <input checked="" type="checkbox"/> Carmen Polifronio, Chairman | <input checked="" type="checkbox"/> John Giancaspro, Secretary |
| <input checked="" type="checkbox"/> Kaz Dabek, Vice-Chairman | <input checked="" type="checkbox"/> James Novello, Attorney |
| <input type="checkbox"/> Mayor James L. Cassella | <input checked="" type="checkbox"/> Mark Everett, Planner |
| <input type="checkbox"/> Councilman Saverio Stallone | <input checked="" type="checkbox"/> Glenn Beckmeyer, Engineer |
| <input type="checkbox"/> Robert Roth | |
| <input checked="" type="checkbox"/> Joseph Morris | |
| <input checked="" type="checkbox"/> John Fusco | |
| <input checked="" type="checkbox"/> Michael Homaychak, Mayor's Alternate | |

Denotes in Attendance

The meeting was called to order by Chairman Carmen Polifronio, followed by the Pledge of Allegiance.

APPROVAL OF MEETING MINUTES

APPROVAL OF MINUTES OF MAY 8, 2017						
MEMBER	MOVED BY	SECOND	AYE	NO	ABSTAIN	NOT PRESENT
Polifronio			X			
Dabek		X	X			
Cassella						X
Stallone						X
Roth						X
Morris			X			
Fusco			X			
Homaychak	X		X			

APPLICATIONS

Mr. Brian Chewcaskie, Attorney for the Applicant came forward to reintroduce the application to the Board and noted that following the last meeting, the Applicant had received a letter dated May 24, 2017 from the Board's Engineer Glenn Beckmeyer, and provided a response to that letter on May 26, 2017. He explained that there were differences of opinions between the Applicant's engineer, the Objector's engineer, and the Board engineer and that the Applicant had no further testimony to give and stood by its May 26th response. He asked that the Applicant's response be marked as Exhibit A-10.

Chairman Polifronio asked Mr. Beckmeyer to come forward and provide testimony to the Board regarding the engineering of the site.

Mr. Beckmeyer gave a detailed explanation of his opinion of the site's engineering, specific to storm water management and the site's existing conditions, proposed conditions, and flood hazard area.

Mr. Beckmeyer explained that the Applicant could not definitively identify the type of soil on the site, due to restrictions to perform soil borings. Mr. Beckmeyer noted that he had asked for documentation related to that restriction, but had not received it. He went on to explain that the classification of the site as primarily gravel appeared to be inaccurate based on his site inspection. He noted that the Applicant's identification of the surface as primarily gravel was inaccurate, but the Objector's analysis also appeared to overstate the amount of vegetation present. He felt that additional work could be performed in surveying the property and finding a more precise calculation of the surface.

Mr. Beckmeyer continued by addressing the Time of Concentration calculations provided by the Applicant and the Objector, and again noted that both parties appeared to be incorrect and the true calculation could be provided by additional study, including soil testing, would likely result in a calculation somewhere between the Applicant's and Objector's. He placed emphasis on the need to accurately identify the type of surface (gravel vs. vegetation) as it influences the time of concentration calculation.

Mr. Beckmeyer referred to his report and a picture he had taken showing evidence of ponding on the site. He explained that while the amount shown in the picture is unknown, it should be determined and included in the Applicant's calculations.

Mr. Beckmeyer further testified regarding the proposed conditions for the site. He explained that a Type D is acceptable because it maximizes detention on the site, but felt that the use of the 12 inch clay pipe that has been subject of discussion throughout the application is inadequate and lacked capacity, which would result in overflow on the property.

Mr. Beckmeyer also expressed his concern over the design of three catch basins connecting to a 24-inch pipe and then to a chamber. He explained that he felt the Applicant had not accurately calculated the amount of flow that would be captured in by the catch basins, and would create overflow.

Mr. Beckmeyer noted that it was difficult to determine water quality based on the outstanding issue related to the impervious coverage type, which influences water quality.

Mr. Beckmeyer continued by discussing the floodplain elevation and explained the floodplain can be calculated through six different methods, but noted that if the stream has been delineated, that should be utilized to determine floodplain elevation. He explained that in this case the Passaic River has been delineated and should be used, where the Applicant is utilizing FEMA maps. He explained he had also contacted the NJDEP for guidance, who advised Mr. Beckmeyer that the worst case scenario should be utilizing.

Mr. Beckmeyer stated that he was unsure if the proposed development could be built based on the information provided by the Applicant because the elevation does not appear to be calculated correctly. He noted that the issue would be addressed by the NJDEP's approval process, but felt that the municipality has the right to provide a review, but could not do so until the elevation was properly verified.

Mr. Beckmeyer explained that he had also reviewed and researched the extent and condition of the easement noted in the application. He noted the dimensions of the easement and stated that the Applicant appears to have a right to use up to the end of the proposed western driveway. He raised concerns that based on the easement's dimensions, an area of the site utilized by the site may remain unimproved.

Chairman Polifronio asked Mr. Beckmeyer if he felt the issues raised in previous meetings and correspondence related to drainage had been resolved. Mr. Beckmeyer stated he did not feel the issues had been resolved. He explained that he had briefly reviewed the Applicant's response dated May 26th and it appeared that the Applicant had left a number of items unaddressed.

Following Mr. Beckmeyer's testimony, Mr. Chewcaskie again stated that the Applicant had provided its response to Mr. Beckmeyer's concerns and stood by that report. He noted he would address concerns in his final summation.

Mr. Adam Faiella, Attorney for the Objector, came forward to ask Mr. Keller to testify to previously submitted traffic study data. Mr. Chewcaskie stated that he would stipulate to the submittal of the traffic study data, without the need for Mr. Keller to testify. The Board agreed.

Mr. Fusco moved to open the meeting to the Public. Mr. Homyachak seconded the motion and all were in favor.

Mr. Charles Flenner, President of the East Rutherford Fire Department came forward to provide comments from the Fire Department. Mr. Flenner commended the Applicant and its professionals for maintaining a dialogue with the Fire Department and working to support its concerns and recommendations. Mr. Flenner continued that the Fire Department could not support the application as it was an egregious use and located a multi-family development within a site that significantly depends on ingress and egress through a private easement. Mr. Flenner further testified that he believed that the site provided minimum circulation for fire apparatus and was located in an area of the Borough with historic water supply issues. He noted the closest reliable fire hydrant is located on Morton Street and presents a challenge to the Fire Department in establishing a reliable water supply in the event of a fire at the site. Mr. Flenner also explained the need to determine whether a fire pump would be needed was still outstanding.

Mr. Flenner concluded his testimony by stating that the Fire Department did not support the application, but provided the following recommendations in the event the Board chose to grant approval. The recommendations were as follows:

1. The Applicant construct the building with a NFPA 13 type sprinkler system
2. Fire lanes be maintained by the Applicant
3. An ordinance be established providing the East Rutherford Police Department the authority to enforce parking restrictions on the site
4. Change the name of the street where they property will be located, to avoid confusion with existing residential addresses on the adjacent Morton Street.

Mr. Adam Faiella, Attorney for the Objector, came forward and stated his client's objection to the application as proposed. He explained that the Applicant had not provided an adequate stormwater management plan and redesign may be required following a review by the NJDEP. He felt that the Applicant had not appropriately addressed the issues previously raised. He also noted that there were traffic issues related to the width of the driveway that were not resolved. He urged the Board to deny the Applicant's request and not approve with any conditions.

Mr. Fusco moved to close the meeting to the Public. Mr. Homyachak seconded the motion. All were in favor.

Mr. Chewcaskie provided closing remarks to the Board and highlighted that the application's use conformed with zoning regulations previously established by the Borough's governing body. He explained that the issues related to such things as access and utilities are considered at the time the governing body establishes zoning requirements.

Mr. Chewcaskie explained that the site conforms to all bulk variances. He emphasized that while he did not feel it was necessary, a variance may be required because the site does not front on to a public street. He felt that the governing body should have considered this issue at the time of zoning. He further noted that the site fronted on to a public street, via an easement.

Mr. Chewcaskie summarized that the application had four hearings and documents were submitted that included a project impact assessment, a traffic study, historical and cultural analysis, planning / zoning report, fiscal impact analysis, and environmental study. He also noted that site plans and stormwater management reports were submitted and revised based on the hearings.

Mr. Chewcaskie further explained that the Applicant's professionals had provided their testimony and much time was spent discussing the access driveway and easement. He noted that the Objector had provided a traffic study that the Applicant did not feel was accurate. He also expressed his opinion that RSIS standards applied to the site because it was residential and the Applicant was not responsible for improvements outside the RSIS because the site was adjacent to a light industrial use. He noted that the Applicant would make improvements within the easement the Applicant was permitted use to.

Mr. Chewcaskie stated that there were extensive design and calculations were provided and permits would be approved by the NJDEP. He noted that the Applicant was reducing run-off and during the NJDEP review process, if there were necessary design changes, the Applicant may have to return to the Board.

Mr. Chewcaskie stipulated that the Applicant would provide for all the recommendations stated by the East Rutherford Fire Department, and would consider all other reasonable conditions stipulated by the Board.

Mr. Robert Regan, Special Monitor for the Court, summarized the application and interest of the Court regarding it. He explained that the application would provide 76 affordable housing units on a site that was approved for such use under Zoning Ordinance 389-54, adopted in 2006. He emphasized that the approval of the application would assist in the Borough's obligation to provide affordable housing.

Mr. Regan stated that the implementation of affordable housing obligations has been a disaster within the State and the Borough's exact obligation has not yet been determined and currently ranged between 300 and 1,000 units. He continued that he believed that approval of this application would be a positive step an provide an inherently beneficial use.

Mr. Regan explained that the outstanding site plan issues could be addressed in the future and conditions of approval. He noted that some items may be of a shared responsibility between the Borough and the Applicant. He concluded by stating that he strongly urged the Board to approve the application.

Mr. Morris moved to deny the application, noting that he felt there were outstanding engineering issues, the Fire Department's concerns, and the project not fronting on a public street.

Mr. Dabek seconded the motion and added that the site lacked sidewalks and provided a dangerous situation with area truck traffic.

Mr. Homaychak voted in favor of denying the application and expressed his opinion that the Mayor and Council was likely not aware of the lack of street frontage when it created the zoning. He further expressed concerns over emergency vehicle access, dangerous conditions for pedestrians, lack of sidewalks and crosswalks, and the outstanding items related to groundwater and floodplain elevation.

Mr. Fusco voted in favor of denying the application, citing the outstanding engineering concerns related to stormwater and the runoff impact to the adjacent property. Additionally, he noted that the lack of sidewalks presented an unsafe condition and would be exacerbated by snow conditions in the winter.

Chairman Polifronio voted in favor of rejecting the application, with the following comments:

He stated that the COAH legislation is a morally appropriate concept as it allows individuals to reside in a community of their choosing without the burden of selecting a financially inappropriate dwelling.

He continued by stated that accordingly, the property is zoned for housing and all the bulk requirements have been addressed. He noted the application stands before the Board due to the requirement that the property must be fronted on a street of which it is not, and, therefore a variance is needed. **He expressed his opinion that** in and of itself the variance is a minor item, but its approval leads to the granting of the application of which he has some concerns regarding the negative impact to the community and therefore would vote for rejection of the application.

Chairman Polifronio also stated that construction of 76 COAH units would negatively impact the community in the following ways:

1. Its nature and size could burden the resources of the police department.
2. There are safety concerns regarding fire department access and ability to control a fire.
3. Public safety is compromised in generally due to the lack of public road access and the possible infrastructure irregularities caused by Right of Way Easements that are not firm and likely overburdened.
4. Although zoned by ordinance it is amid an established industrial area potentially leading to safety and health hazards.
5. 76 COAH units in one building are likely unmanageable and a financial burden leading to conditions that are a menace to public safety, public health, and the welfare of the public good in general.

He noted that placement of 76 COAH Units into a neighborhood community not familiar with such a project is not inherently beneficial to the community.

Chairman Polifronio concluded his statement by expressing his view that the community is better served by gradual and systematic compliance with the COAH Legislation by adding a percentage COAH units to the more typical residential applications as they arise. By proceeding in this

manner, the community is not burdened by a large cohort of COAH units, and potential tenants become members of a more common residential setting. He reaffirmed his **vote to** reject the application, without any malice, prejudice, or disrespect of the applicant, potential tenants, and COAH officials.

MOTION TO DENY THE APPLICATION OF 10 MORTON ST, LLC						
MEMBER	MOVED BY	SECOND	AYE	NO	ABSTAIN	NOT PRESENT
Polifronio			X			
Dabek		X	X			
Cassella						X
Stallone						X
Roth						X
Morris	X		X			
Fusco			X			
Homaychak			X			

Mr. Chewcaskie thanked the Board for its time.

Mr. Novello noted to the Board that Mr. Fusco had previously reviewed the transcript of the previous meeting he had missed and would provide signed certification. Mr. Chewcaskie acknowledged Mr. Fusco had reviewed the transcript.

With no further business before the Board, a motion was made by Mr. Morris, seconded by Mr. Dabek to adjourn the meeting. All were in favor.

Minutes By:
 John Giancaspro
 Board Secretary