

Present: Peterson, Betesh, Canonico (8:15), Walsh, Garley
Forrester (Attorney)
Absent: Stambaugh, Waterbury, Fisher, Clark

Mr. Forrester called the meeting to order @ 7:30 pm in accordance with the open public meetings act, the 24 hour notice was posted, published and he is satisfied that the requirements have been complied with.

All saluted the flag, and the presiding officer's statement was read.

Minutes:

A motion was made by, Mr. Betesh, seconded by Ms. Peterson, to adopt the minutes of the September 2, 2009 meeting as submitted. All approved.

Planning Board Representative: none

Correspondence:

Mr. Forrester announced that the Paul David Partywares has requested to carry their application to the November 4, 2009 new notices will be served.

NWDG, Inc: Collex Collison

Mr. Philip San Filippo, Esq represents: **NWDG, Inc.,** d/b/a **Collex Collision Experts** requested to be carried to the November 4, 2009 due to the lack of membership on the board tonight.

Mr. Forrester advised that he has reviewed the service and finds it to be adequate and the board has jurisdiction and recommends that the service be carried.

New Business:

Mr. & Mr. Chris Nelson:

165 Park Ave
Bl: 57, Lot: 1

side yard set back

Mr. Forrester reviewed service and found it to be adequate the board has jurisdiction

Mr. Chris Nelson, & Mrs. Amy Nelson, were both sworn.

Mrs. Peterson reviewed the variance for a 5' x 5' side yard deck/steps, minimum set back of 15' required and 12'.02 proposed

Ms. Canonico arrived @ 7:48 pm

Mr. Forrester marked the following into evidence:

A-1: Survey prepared by Seneca Survey Co, dated 1/29/09 with the Zoning Officers note

Mr. Forrester advised that the improvements that were submitted to Mr. Donlon were approved all but the side yard deck. Ms. Nelson said that is correct.

A-2: Sketch of proposed deck in side yard

A-3: photo of side yard area

Mr. Nelson explained that they need the side yard deck because currently they have to exit the front of the house to go into the back yard, and they currently have 3 children and it makes it difficult. They do not have any access to the back yard at all and this would make it easier to access the children when they are outside.

Mr. Betesh asked how close is the southern neighbor to the property line? Mr. Nelson said approximately 25', and it would be a sun porch on the first floor and bedrooms on the 2nd floor. There are also a row of evergreen bushes along the property line which will stay.

Mr. Nelson explained that due to the swing of the door the 5' deck is the smallest they can build. This is not for entertaining it is for access in and out of the house only.

A motion was made by Mr. Walsh, seconded by Mr. Betesh to open the meeting to the public. All approved.

There were no comments/questions.

A motion was made by Mr. Betesh, seconded by Mr. Walsh to close the meeting to the public. All approved.

All members agreed that due to the evergreens that will remain and the deck will only be used for access for the back yard.

Approval:

A motion was made by Mr. Betesh, seconded by Mr. Walsh to approve the application for a side yard variance for 12' where 15' is required M/M C Nelson as submitted.

Roll Call:

Affirmative: Peterson, Betesh, Ms. Canonico, Walsh, Garley

Negative: None

Resolution:

A motion was made by Mr. Betesh, seconded by Mr. Walsh to adopt & memorialize the resolution of approval for M/M C Nelson as submitted.

Roll Call:

Affirmative: Peterson, Betesh, Ms. Canonico, Walsh, Garley

Negative: None

Unfinished Business:

Mt. Builders:

Continuation of Hearing

Bl: 22 Bl: 3

Mr. Forrester reminded the board that this application has been carried from the September 2, 2009 meeting, and there are 5 qualified members to hear this application.

Mr. Paul Zager, Esq. represented the applicant.

Mr. Messer, Esq. who represents Mr. Zweben owner of Maple Road was present and Mr. Zager advised that they have an agreement with Mr. Zweben to improve the road, and he feels that the conditions which were agreed upon should be included in the resolution. Mr. Messer agreed. At this time Mr. Zager apologized for any statements that he made at last months meeting with regard to Mr. Zweben.

Mr. Ercolino, architect, remained under oath.

Mr. Zager referred to the latest revision dated 9/16/09 and marked as **A-7** into evidence. Mr. Ercolino has revised the plans as per Mr. Cranmer's review letter dated 9/29/09 and was included in the 9/19/09 plans. Mr. Forrester reviewed the letter for the public.

Mr. Zager questioned Mr. Ercolino with respect to the revised plan dated 9/16/09:

- House has been moved by 8' to meet the 25' set back requirement, on the northern property line with a 17' on the southern side
- Grading plan - the highest grade at the perimeter is at 53.4 allowing a pitch toward the rear and front yards. Finished Floor will be at 55.5 and the garage will be at 53.5. The height in stories will not change.
- Landscaping has been added to the northern property line with 6' white pines
- The existing brick wall, concrete and driveway will be removed, additional grades have been added along the driveway and the apron will be 53 allowing the water to pitch at the existing grade of the street

Mr. Ercolino has revised Mr. Cranmer's letter 9/29/09 and incorporated the changes into the October 7, 2009 except for the existing tree which is to be removed and the Block and lot number, all other concerns were addressed.

Mr. Walsh asked questions with regard to the drainage plan, and the possibility of puddling on the south side of the lot. Mr. Ercolino stated that they will try and make the water come forward. Mr. Walsh suggested adding additional landscaping.

Mr. Forrester reminded the board that Meadow Dr is a private street with borough standards for the drainage, and asked if Maple Rd would require the same requirements, since Maple does not front a public street. Mr. Zager said that he did not know, but there is a small portion of Maple Rd that they have agreed to improved, since the prior developer improved Meadow to the southern corner of his applicant's corner, and they

would improve the remaining Maple Rd to Shadowbrook Road since they are already improved in front of their property. Mr. Forrester asked Mr. Cranmer if the board is inclined to grant this approval with the condition the same as what the Planning Board did, would this be improved to Borough standards, and Mr. Forrester stated that Mr. Cranmer said yes.

Mr. Zager said that they would improve the Maple Rd the same as Meadow Drive, no sewers, no sidewalks, or curbs. Mr. Forrester read into the record with respect to the requirements to the road from the Planning Board resolution of approval. Mr. Zager stated that his client will agree to bring Maple Road into the same compliance as Meadow Drive and would agree to the maintenance bond. As far as agreeing to Title 39 that would be up to Mr. Zweben to agree to, as well as granting an easement for the use of Maple Road.

Mrs. Peterson feels that the existing drainage should be looked at since it's an issue that keeps coming up. Mr. Zager said that it will be connected to Meadow Drive. Title 39 has been addressed within the Planning Board's resolution.

Mr. Forrester asked if the R.S.I.S would apply? Mr. Zager stated that they are not creating a sub division. They are requesting variances from the Municipal Ordinance and not under the M.L.U.L. Mr. Forrester explained that there was not an approval from the Planning Board to build a house on Maple Road. Mr. Walsh feels that the improvements to Maple Road should be explained to this board.

Mrs. Peterson wants to see more information on the existing drainage.

A motion was made by Mr. Betesh, seconded by Ms. Canonico to open the meeting to the public for questions/comments on Mr. Ercolino's testimony. All approved.

Mr. Jim Halpern, 37 Meadow Drive, asked questions with respect to the plans that were submitted tonight and the elevations and grading. He asked if the height has been changed? Mr. Ercolino said no, the height will be 33'.7" from grade and he has not changed the square footage been change, they only moved the house 9' toward the southern property line. A partial shadow study was done; the original design did cast a shadow into Mrs. Jailer's property, but he did not do a study with the new design.

Mr. Halpern asked if there will be a basement? Mr. Ercolino said only if the ground water level will allow it. Mr. Halpern asked in what direction will the water run toward? Mr. Ercolino stated toward the rear and front yard, he stated that the impervious coverage is less than what is allowed by Ordinance on this lot.

Mr. Andrew White, 30 Meadow Drive, asked why the house is so big and a drainage study should be done since he lives to the west of the new house and the property slopes toward his home. He already has 2 dry wells on his property, and he would like to see drains put in on this property since they already have icing problems in the area.

Mr. Ercolino stated that he will advise his client that an engineer needs to be contacted since they are now looking into the existing drainage on the street.

Mr. Howard Weiner, 33 Meadow Drive, he also would like to see a drainage study since he now has water running onto his property which is diagonally across the street from the proposed new home on Meadow Drive. He feels that currently the current drainage is inadequate.

A motion was made by Mr. Betesh, seconded by Ms. Canonico to close the meeting to the public. All approved

Mr. Betesh asked if the request for additional landscaping will cast additional shadowing on the neighbors property? Mr. Ercolino said yes they will.

Mr. Walsh asked if the owner of the property will be testifying as to why the house has to be so big? Mr. Zager said that he could if the board wants.

Mr. Zager said that they have agreed to move the house 9' in order to eliminate some of the shadowing and to add additional landscaping. Mr. Ercolino agreed that moving the house would eliminate some shadowing.

Mr. Walsh asked how high will the peak of the roof be? Mr. Walsh asked if it will be 35' plus the finished floor? Mr. Ercolino said 31'.7" above the finished floor or to the ridge line; he corrected his statement and said 31'.3", no variance is being requested for height.

Mr. Zager said that he cannot answer any questions with regard to the drainage or the road. They can improve the road because of the agreement with Mr. Zweben but they cannot fix the problems within the entire area. They have done everything that has been requested and he doesn't feel that if there is a problem with the existing drainage it is not his client's problem. All his client wants to do is improve the area and to improve the road. It would be up to the town to approach Mr. Zweben to correct the drainage.

Mr. Forrester explained some of the drainage on Maple/Meadow Drive. Mr. Messer explained that a portion of Maple has already been improved by the previous developer, and the drainage in that area was part of the Planning Board approval. Mr. Zager suggested that curbing could be installed to keep the water off of the resident's property.

A motion was made by Mr. Betesh, seconded by Ms. Canonico to break.
9:14 pm. All approved. All present at roll call vote 9:28 pm.

Mr. Zager stated that his client will work with Mr. Cranmer at the time of building permits and there will not be any increase of water on the proposed project vs. the old drainage. If they have to put the down spouts into dry wells they will do that, in order not to increase the run off.

Mr. Forrester asked Mr. Zager if they are referring to only Maple Road or onto the neighbor's property.

Mr. James Higgins, Planner, was sworn and accepted as an expert in Municipal Planning.

Mr. Higgins testified that he has reviewed the site and all documents. Mr. Higgins gave testimony to the C1 & C2 variances which are being requested. He described the existing site with an 80' front/width on Maple Rd, which is a private road. of 14, 240 sq, ft, with an existing 1 story residence, 7' from the property line, which is out of character with the neighborhood. North, south and west are single family homes, some of which are conforming and some are not. To the east there is an existing professional building, which fronts Rt. 35. this is not in the middle of a pristine residential neighborhood.

Mr. Higgins described the variances being requested:

- Lot width and minimum lot area is nonconforming will not change - pre-existing conditions and will not change
- The lot does not abut a public street, the residence on the lot has been there and functioned for a number of years, and a residence will continue on an improved lot
- Front yard & rear yard set backs are currently non conforming will be significantly improved
f/y 33.2 where 50' is required, 50.2 being proposed
r/y 38.8 where 50' is required, 50.2 being proposed
s/y - north side 25' is required, 25' being proposed
s/y - south side 25' is required, 17' being proposed
- Maximum building coverage: 10% allow, 13.8% exist, 15.4% proposed
- Variance for the garage door fronting a street, due to the width of lot a side or rear entry garage cannot be done

Mr. Higgins stated that the Municipal Land Use Law does not require a private road to abut a public street; it requires the building lot abut a street; the MLUL does not mention Public Street. Read the definitions of street into the record. He feels that the Planning variance is not necessary.

Mr. Higgins feels that what is being proposed is attractive, fits into the character of the area and is a significant improvement over what currently exists on the site, and the improvements to the street will be a significant improvement. In addition the applicant will agree to limit the amount of drainage from the site to a preexisting condition.

Mr. Higgins pointed out that the height of the house is permitted by Ordinance. The building will not be set back to the 25' required by the Ordinance from the northern property line.

Mr. Higgins does not feel that there are substantial benefits to the granting of the applicant there aren't any negative impacts to the granting of the application.

Mr. Higgins reviewed the resolution of approval to Bl: 21, Lot: 7 and the board did consider lot size and lot frontage for 7.03 only since there are other non conforming lots in the area. Both 7.01 & 7.03 did not have the required lot frontages and lot areas.

Mr. Zager asked Mr. Higgins if he feels that there is precedence for this board to grant their application on size and frontage? Mr. Higgins said that the area is mixed with lot areas and non conforming frontages. There are at least 5-6 lots that are undersized some of them being created from subdivisions.

Mr. Higgins feels that the emergency public access is consistent with what exists in other residential developments, and doesn't see any concerns with emergency access. There is currently an emergency access required by the Planning Board, with Maple Road being a through street to Shadowbrook Road, even with the easements currently in place.

Mr. Forrester asked Mr. Higgins with regard to the other undersized lots and there locations. Mr. Higgins gave the block and lots of those lots. Mr. Higgins does not know how the lots that were not created from the subdivision came to be. He feels that the existing homes run from 7,500 sq. ft (1 ½ stories) down to 1, 787 sq. ft.

Mr. Betesh asked if the applicant could build within all of the set back requirements? Mr. Higgins said that they would still need the lot width and area, but the house would be similar to the house that is currently on the site with a second story. The proposed is more esthetically more pleasing.

Mr. Betesh asked if the building coverage is being increased? Mr. Higgins said yes by 230 sq. ft., but it is already non conforming by being over the 10% allowed.

Mr. Walsh asked where is the height measured from? Mr. Higgins explained, from the average of the finished grade at the 4 corners of the building to the highest point of the roof for a flat roof. For buildings without a flat roof it is measured to the mean height level of the distance measured between the eaves and the ridge for a gable & a hip roof and to the deck line for a mansard roof. Mr. Ercolino said that he measured the height to the mean portion of the roof.

A motion was made by Mr. Betesh, seconded by Mr. Walsh to open the meeting to the public. All approved.

Mr. Andrew White, 30 Meadow Drive asked questions with regards to Mr. Higgins comment on the neighborhood not being a pristine neighborhood. Mr. Higgins meant that this neighborhood abuts Rt. 35 and not in a residential area. This house would be one of the larger homes in the area. Mr. White feels that this house is too big for the area. Mr. White asked if the lot was undersized when he purchased the land? Mr. Higgins said yes, and he is now seeking the variances. Mr. White feels that the proposed house is not in keeping with the characteristics of the neighborhood, and he doesn't feel that the applicant has shown a "hardship" in granting the requested variances. Mr. Higgins stated that removing an eyesore, improving the road and having a designed house are all

substantial benefits that outweigh the minimal detriments of increasing the footprint of the building by 230 sq. ft. Mr. Higgins stated that this applicant is proposing a house which will now be centered on the lot, an attractive house, and will add to the quality of the neighborhood. Mr. White again stated that this house does not fit into the character of the area.

Mr. Howard Weiner, Meadow Drive, said that this neighborhood is unique and the impact from the commercial doesn't impact this neighborhood as it would in other neighborhoods. Mr. Higgins said that he was identifying the commercial area with relative to the residential neighborhood. Mr. Weiner asked if the variances that are being requested are hardship variances? Mr. Forrester explained the differences between the C1 and C2 variances, and addressed Mr. Weiner's concerns.

Mr. Jim Halpern, Meadow Drive, asked questions with regard to the existing homes and the volume of the 6 undersized homes that have been identified by Mr. Higgins. Mr. Higgins said that this home does not create a substantial negative impact to the granting of the variances being requested as to what exists on the site. Mr. Halpern stated that he doesn't feel that the proposed home is attractive for the neighborhood with regard to the volume of the house. Mr. Higgins did not agree, the new location of the house giving a larger front yard set back makes this site more in compliance with the zone.

Mr. Zager asked Mr. Halpern if he met with the applicant's architect on 7/14/09 and expressed his concerns about the tree at that time? Mr. Halpern said yes, and then it was determined that since the tree was not healthy and they needed the room for the house he agreed to remove the tree.

Mrs. Peterson stated that the neighbors seem to agree that there should be house, but there concerns are how much of house should be on the street. Mr. Zager said he would like to ask for a straw poll so they can see what direction they should take in regard to the size of the house, the esthetics of house, and location.

A motion was made by Ms. Canonico, seconded by Mr. Walsh to close the meeting to the public. All approved.

Board discussion:

Ms. Canonico complimented the applicant on making improvements to the road which isn't his burden. The placement of a dry well on the property would off set the difference of the impervious coverage, even though they are under the impervious coverage and would not be required to put in the dry well. With regard to the volume and the mass of the building, currently there is a one story building and most likely the new home will be 2 stories and if they could just reduce the mass a small amount it might address some of the concerns that they are hearing. She couldn't vote favorably tonight with the application since there are too many neighbors who feel that the mass should be reduced.

Mr. Walsh agrees with Ms. Canonico's comments. The house would improve the neighbor & property, but if it can be reduced in size to accommodate the neighbors that would be great. He does have concerns with the drainage; he doesn't want to see anything that will contribute to the drainage on Meadow Dr. He feels that a drainage plan should be submitted, with some changes to the elevations around the property by at least 6". He would like to see the roof line lowered which could address the height and shade. He wants to see additional information before he makes his decision.

Mr. Betesh he is balancing the owner's rights to build on the site, with the constraints of the site. The existing structure is close to the northern property line, the new home is a substantial improvement and it is a good improvement with the front yard increase as well. There will not be a negative to the neighbor towards the south since the area is unimproved. He doesn't have any concerns with the +200 sq. ft. of foot print; he feels that the structure is 35% larger than what is permitted by Ordinance when compared to what is on the lot. Considering zoning he doesn't feel that there is a large negative impact, he feels that the zoning falls in favor of the applicant. He would like to see the plan modified to reduce the appearance of the imposing structure, which he feels would be the solution to all of the interests. He cannot make a determination tonight, but he hopes his comments will provide some guidance.

Mr. Garley feels that there are valid on both sides. He likes the improvements on the side and the amendments to the plan from past discussions. He agrees with all of the comments made by other board members and he would also like to see some clarity on the drainage issue. He also doesn't feel that there will be a tremendous or substantial negative impact on the site. He also would like to see a scaled down version on the structure. He could not vote on the application tonight or until he sees the drainage has been addressed or the structure can be reached.

Mrs. Peterson cannot give decision tonight. There will be something built on the property, but the size and magnitude of whatever structure is built will have a bigger impact on what is currently there. The character of the town is bigger and it can be seen all through town. Since the applicant is willing to improve the street is commendable, but it is important to look at the drainage. The proposed dry well/swale to ensure there is no additional storm water to the street is very important. She could not vote on the application tonight until the issues as discussed are addressed.

Mr. Zager asked to have the application carried.

Mr. Forrester announced that the application for Mt. Builder will be carried to the **November 4, 2009 meeting without further notice.**

A motion was made by Mr. Betesh, seconded by Mr. Walsh to adjourn the meeting at 10:47 pm All approved.