

**Frenchtown Planning/Zoning Board
Special Meeting
July 11, 2012**

Chairman Eckel called the Special Meeting to Order at 6:00 P.M. and stated that all the requirements of the “Open Public Meeting Law” have been met. The meeting has been advertised, the Agenda has been posted in the Borough Hall and copies distributed to the designated newspapers.

ROLL CALL

Present:	Absent: DenBleyker
Arent	Hoffman
Case	
Cooper	
Eckel	
Hanley (arrived at 6:04 pm)	
Myhre	
Musolino (arrived at 6:03 pm)	
Suttle	
Wright	

Attorney Lloyd Tubman was also present.

Amendment Request for the River Mills at Frenchtown Amended Final Site Plan approval – Block 34 Lot 1, Block 35 Lot 1, Block 36 Lot 1, Block 38 Lot 2 and Block 14 Lot 52

Bruce Myhre stepped down on this application due to proximity. George Michael thanked the Board for scheduling a special meeting to accommodate the situation.

Thomas Smith, Attorney for the applicant, noted that George Michael, the managing member of Frenchtown Bridge Street LLC, Paul Johnson, construction superintendant for this project and Ed Macalister, the contractor who is performing the site work that will be described this evening. will all be witnesses this evening. Board Attorney Lloyd Tubman swore in the witnesses.

Attorney Thomas Smith noted that he submitted a letter dated 6/28/12 outlining the relief we are requesting. We are requesting a modification of the condition to this Board’s resolution of final site plan approval which would require the posting of a performance guarantee prior to any construction activity on the site including clearing, grading, installation of soil erosion and sediment control measures. Those things will be described this evening. As a corollary to the requested modification, we are willing to agree to a performance guaranteed in an amount satisfactory to the Planning Board Engineer that it is sufficient to cover the cost of the work we are proposing prior to the commencement of these construction activities as well as the funds to cover the cost of the inspections of that work by the Planning Board engineer. We do not have a formal estimate of that proposal to submit this evening and we request that that be a condition of any approval you may give us.

Attorney Smith also noted that the Stream Encroachment permit for this site is set to expire on September 28, 2012 as he mentioned at the last informal meeting. Mr. Michael, through his other Counsel, Neil Yoskin, Environmental Attorney, has met with the NJDEP on a number of occasions and the DEP has orally assured Mr. Michael and his other Counsel that if the work we

are describing this evening is completed prior to the expiration of the stream encroachment permit, that upon application for a hardship exception the DEP would agree that the hardship exception criteria is met and that the remaining work authorized under that permit could be completed even though the permit has expired.

Attorney Thomas Smith called George Michael to describe the construction activities that will be performed. George Michael stated that it is critical to get the permit to protect what they want to do. He has been assured by Rick Reilly at the NJDEP, that they would grant me a hardship if we have all the site work, dirt work done and they want to make sure that the dirt is in and that the flood plan dirt issues are not longer an issue. They will start, hopefully tomorrow because he can not lose any more time, to do some tree clearing and soil erosion and sediment control measures which are tree clearing, demolition, stone tracking pads and then immediately after that move into the dirt transfer, grading, stock pile top soil, bring in the dirt, compact it, and get it back to where it is usable. We will have engineering monitoring of the compaction of the site so it is completely stabilized and then put the top soil back on it and seed it. That will be the completion that the NJDEP is looking for to grant me the hardship. He will also have to install an out pole line, a storm water line to the river.

Attorney Smith submitted as Exhibit A-1, a quote from the site engineer, Mr. Macalister. Mr. Macalister explained what the quote is and what he will be doing. Mr. Macalister stated that the first thing that has to be done is additional clearing that has to be completed so we can put in erosion control devices. Then, we excavate the soft areas where the foundations are now and remove that and stock pile it on site, recycling the material and mix it with bar fill from a quarry and re-compact it and bring everything up to the new proposed elevations and then put the storm water runs in and the basin. Then we will re-top soil and seed and bring everything back to stabilization. Responding to Attorney Smith, Mr. Macalister stated that we will put in the retaining walls where the basin is up to the grade where the pads will be ready for construction. After reading the final grade contours, they will stabilize the site at that point by spreading top soil, seedings and mulching. If we have to mat, we will put matting down to assure that the grass will come up. Mr. Macalister relied upon the final site plan approved by the planning board. The plans are prepared by Hatch Mott Macdonald dated 8/12/11 with the last revision date of 12/22/11.

Attorney Smith stated that there is no other testimony from the witnesses and asked if there are any questions from the Board. Engineer Clerico asked as part of the estimate that they are building the walls for the entire detention basin structure? George Michael responded in the affirmative. Engineer Clerico asked if in the areas of Building F & G where you are grading, you had a raised garage with a ten foot drop, are you building those back walls of those building? Mr. Macalister stated that they may have to build that. Engineer Clerico noted as a word of caution that the retaining walls because of their size is subject to a building permit. Elements of Buildings F & G, where you have fill covered by your permit, will you be building those back walls. George Michael stated that Ed Macalister did not feel we have a problem with that without building the walls. Chairman Eckel suggested that the bonding that you are seeking to request this evening might extend as far as doing that work so that if it turns out you indicate you have to do that work, you do not have to come back to the Board. That would be an unnecessary delay. What the board approves is limited to what is going to be covered. Attorney Smith stated that this solution makes sense. Engineer Clerico stated that the original approval had those estimates and the provisions for all the foundations as you were initially told by NJDEP had to be in the ground. Your current approval allowed for that and had a provision of a 5 year window and if you did not go forward there was a restoration bond in the redeveloper's

agreement. Engineer Clerico stated that you will need some sort of plan and somehow highlight or depict the extent of the work such as this is the 300 feet of pipe, headwall, limits of the basin walls, etc. so if he does an estimate, he is referring to a plan on record. He added that what the Board is hearing tonight is a descriptive analysis of the work to be done. Some of the work is structural and you have to build some structures. Attorney Smith stated that we can prepare that plan and submit the quantities and the engineer's estimate for your review and approval of the performance guarantee. Engineer Clerico stated that there is another provision in the approval that said you could not start any site work until you had all the utility agreements and the utilities worked out. He assumes you are asking for a modification of that condition as well. Attorney Smith replied in the affirmative and noted that we do not have the utility approvals yet. They are in the works. George Michael stated that they have a water proposal. They have not gotten anything back from JCP&L. They had two meetings with JCP&L but do not have a proposal. Responding to Engineer Clerico, Mr. Michael added that he was told by Neil Yoskin that the out pole pipe will be part of this work. Engineer Clerico noted that there are 2 out pole pipes and asked which one he is referring to. Mr. Michael stated that he will have to ask Mr. Yoskin. Engineer Clerico stated that the plan will reflect the out pole pipe and as part of the previous approvals, utilities will have to be reflected.

Responding to Doug Wright as to the extent of the clearing, George Michael stated that there will be clearing along the canal, etc. exactly as shown on the approved plan. Responding to Cathy Suttle as to the demolition of the asphalt, Attorney Smith noted that it is near the rear of the site behind the Frenchtown Inn. George Michael noted that the black top in the middle and stone wall along the alley will be part of the demolition. Mayor Cooper noted that in number 3, it stated that prior to commencing activities described in item 1 you will post performance guarantee sufficient to guarantee the installation of the approved soil erosion and sediment control required for such activities. In item 3, the work sounds more extensive than written in number 1. Attorney Smith stated that item 3 was based on his notes based on the conversations from the last planning board hearing and was the limit that Attorney Hirsch recommended and that we agreed to. In subsequent emails with Engineer Clerico and the agreement with the applicant, we will post a performance of all the work being proposed in addition soil erosion and sediment control work. The language in number three is much more limited than what is being discussed this evening. We will be posting inspection fees based upon the performance bond and the plans being submitted to Engineer Clerico subject to approval of the amounts by Engineer Clerico. Engineer Clerico stated that the original plan and any interim work you do is covered by the County Soil Conservation District Certification so that agency will be involved in inspections. Basically, you are doing grading, stabilization of your building foundations, and mixing soil. That is not normally done under site improvements. This will fall under the building construction code. Engineer Clerico advised George Michael to be careful who you are asking approvals from so that you do not get out there and do something that you do not have a permit for. Make sure the property entities are aware for example the building construction department, the Soil conservation District, etc. George Michael noted that they have been notified. Everything is being worked out. Engineer Clerico stated that because you are building retaining walls you will need building permits because the walls are considered structures. We will look to see that they are in the right location, the design standards are what are on the approved plan and what is on the plan is what will be built. The detention basin walls will have fencing and the detention basin had some type of under drain system. Make sure your plan is clear on what you are doing.

Chairman Eckel stated that the one concern she has is that we will have an approved performance guarantee in place before any work starts because you are talking about starting

work tomorrow. At this point, the Board Engineer can not come up with a number for a performance guarantee until he has the data. He can not make an estimate when he does not know the extent of the work being done. Nothing can be moved until we have that portion of the performance guarantee. George Michael noted that this started because New Jersey does not require a performance bond to do this type of work. We should have been able to do that. He agreed to the bonding issue but now we are talking time. The State does not require it. You have a right to waive or demand it. Chairman Eckel stated that if the Board would waive it, we would have to have a public hearing because this was agreed to with the community having a public hearing. When we had the meeting two weeks ago we agreed to go with a performance bond just for the portion of work that you are doing so we did not have to have a public hearing so you did not have to notice. At this point, we can not waive something that would be a major change without public input. Two weeks ago, you preferred not to take it back to a public hearing and the Board determined that it would not be a significant change so that a public notice was not required. Attorney Smith stated that the issue of a performance guarantee was part of the final approval. The Board made a determination that a change in the performance guarantee amount for this proposed work was a minor modification so no public notice would be required. Unfortunately, we are not able to provide all the plan details at this time. Mr. Michael did say at the commencement of this hearing that he would like to start clearing trees tomorrow. Perhaps we can request an amendment to my letter that would allow for tree cutting only. Engineer Clerico stated that this would fall under the Soil Conservation District. Cutting of the trees would not necessarily require the installation of soil erosion and sediment control. Removal of stumps is site disturbance and that would trigger the Soil Conservation District. The Board can decide that. Attorney Smith requested a modification to the final site plan resolution that would allow Mr. Michael to do tree clearing prior to posting a performance guarantee and then post a performance guarantee to cover the limited work described in Exhibit A-1 prior to commencing that work with notification to the County Soil Conservation District and whatever conditions and inspections they require, posting of the inspection escrows that are satisfactory to the Board engineer. Engineer Clerico stated that if that is accessible to the Board, the Board action would be to allow him to cut tree but not stumps and no site disturbance until a plan is in place. He will do an estimate for the performance bond along with the inspection escrow fees. Engineer Clerico asked if there were any requirements for Brian Bosenberg in the final approval for tree clearing. Chairman Eckel read the following from the final site plan approval resolution: Prior to the start of construction the Applicant shall field-mark the limits of the work space to determine the limits of tree pruning required by the construction of the project. The limits shall be approved by the Borough Landscape Architect prior to the start of any work. Engineer Clerico suggested that Mr. Michael mark the trees and the limits. Assuming the Board approves the request, he recommended getting the Soil Conservation District and the Board Landscape Architect out to the site. You will want to do a preconstruction meeting anyway. Give him a call about that meeting. If you have to do anything with wall construction, get your architect out there because that could take some time. We can not authorize you to build walls without a building permit because the walls require a building permit.

Responding to Robb Arent as to how long it will take to get them an estimate, Engineer Clerico stated that we have a full estimate of everything. It is a question of figuring out what they will do. He has heard this evening that there will be more activity then what he understood. There will be a clear plan submitted. Once that is submitted, it will take 1 or 2 days to provide an estimate. He needs a clear plan.

Mayor Cooper commented that we have heard that you have a verbal okay from the DEP that what you are proposing to do will satisfy the permit. He asked if there is anyway to know how

soon you will get something in writing from the DEP? George Michael responded that Neil Yoskin is trying to get it in writing. He added that he is looking at the risk factor. He does not see it as a risk factor because we are taking a property that is currently undevelopable out of the flood plain and stabilizing it. You will have a perfectly good site and will not have to have a DEP permit. He has strong faith about the DEP verbal. He was told by Rick Reilly and his people from the DEP and there were a lot of witnesses. Mayor Cooper noted that we recognize the significant risk you are taking without having something in writing from the DEP. Chairman Eckel added that she believe that is what Engineer Clerico was pointing out, the things we do not want you to get tripped up on. George Michael noted that he will check on some things tomorrow but we may not do the retaining walls right now. We just have to make sure everything is stabilized. We are looking at that hard. It was never his intention to do the walls initially. Chairman Eckel commented as part of the relief you are seeking, you should include those retaining walls as part of the performance bond so you do not have to come back to us. Robb Arent asked if we could give George Michael 10 days to do some tree clearing prior to post the performance bond because it seems that everyone is working in good faith. Board Attorney Lloyd Tubman noted that beyond tree cutting prior to posting the performance bond, it would require that the applicant go back to the original approval. The performance bond is to assure the completion of the project. Tree clearing is a pre-condition to starting construction. Chairman Eckel commented that they could start the tree work and then can post the performance bond once they get a plan to Engineer Clerico and he can get them an estimate. We could give them leeway to begin the clearing work but they will still have to comply with everything else in the document. They will still have to have Landscape Architect Brian Bosenburg come out to make sure they are not clearing beyond the area. Before they do any site disturbance beyond tree cutting, we need to have a performance bond. Engineer Clerico already has a checklist and as soon as they submit a plan so that he knows the extent of the work, he can provide an estimate. George Michael noted that he will talk to Peter Turek first thing in the morning and he will tell Peter Turek that we will bond for the walls as well even if we do not do the walls. Attorney Tubman noted that the Board will need a motion to amend the final approval to grant relief from two conditions of the final approval, one of which is to allow tree cutting prior to posting of the performance guarantee and secondly, to allow partial relief of the condition of final approval which is to allow posting of a partial performance guarantee for the work to be delineated on a plan and bonded before site disturbance and posting of inspections fees based on the performance guarantee amount. Attorney Tubman stated that the land use law allows several different methods of insuring performance. There was a request heard this evening that the resolution for preliminary required that you have utility approvals prior to disturbance. That should be waived but only for a period and for this work that is approved. Responding to Attorney Smith, Attorney Tubman stated that you may only cut trees but not stump and only prior to Brian Bosenberg looking at a marked perimeter cutting.

A motion was made by Warren Cooper, seconded by Robb Arent and carried by favorable roll call vote, the Planning Board approved to amend the final approval for River Mills at Frenchtown to grant relief from two conditions of the final approval, one of which is to allow tree cutting prior to posting of the performance guarantee and secondly, to allow partial relief of the condition of final approval which is to allow posting of a partial performance guarantee for the work to be delineated on a plan and bonded before site disturbance and posting of inspections fees based on the performance guarantee amount. And, also to waive the utility approvals requirement prior to disturbance for a period and for this work approved.

George Michael thanked the Board and noted that there will be a ground breaking ceremony on August 1st at 6:00 pm. He will invite the community to come out to talk with him. Robb Arent

asked about a ceremony as well for the piece of property along the river that George Michael is giving to the Borough. George Michael agreed.

ADJOURNMENT

Gerry Case moved adjournment at 6:47 PM, and Doug Wright seconded. The motion passed on favorable voice vote.

Brenda S. Shepherd
Secretary, Planning/Zoning Board