

Frenchtown Planning Board  
Special Meeting  
February 17, 2016  
7:30 P.M.

Vice-Chairman John DenBleyker called the Regular Meeting to Order at 7:30 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:
Case	Dougherty
Dragt	Eckel
Musolino	Weeks
Myhre	
Scott	
Sullivan	
Suttle	

Vice-Chairman John DenBleyker requested to move Item 5 up on the agenda. Planning Board consented.

**NEW BUSINESS:**

**Redevelopment concept for Ceramics Plant property**

William Sullivan and Rocco Musolino stepped down on this agenda item due to proximity.

Vice-Chairman DenBleyker turned the meeting over to Board Attorney Hirsch as he stepped down on this agenda item due to proximity.

Attorney Hirsch noted that this item will not be discussed tonight and will not be on the February 24, 2016 agenda. The earliest would be March 9<sup>th</sup>. Attorney Hirsch noted that the Applicant’s escrow account is deficient. This is a policy question and the Board should adopt a policy in reference to escrow deficiencies. Once an applicant’s escrow account has run into the red and we have given them notice, if the applicant is on the verge of another meeting, how much in advance do we want to have the escrow replenished. Attorney Hirsch noted that Chairman Eckel suggested 10 days prior to a meeting. That is the bare minimum. Subsequent to a brief discussion, Mayor Myhre recommended 15 calendar days. Given the magnitude of this project, given the level of interest and given all the factors involved, the Board should give itself time to do its due diligence and he is concerned that the Board professionals should be given adequate time to review the documents and provide reports to the Board. He is concerned that 10 days would be problematic. If the applicant is serious, they will make sure the escrow is paid. The Board agreed with the 15 days prior to a meeting that an escrow be replenished. Attorney Hirsch noted that until further notice, 15 days will be the policy. Secretary Shepherd can notify the applicant that escrow accounts shall be replenished at least 15 days prior to a scheduled Board meeting on the application. This time frame was deemed necessary to assure that Board professionals have sufficient time to complete reports and provide them to the Board by the Friday before the Wednesday meeting.

William Sullivan, Rocco Musolino and John DenBleyker returned to the meeting.

**Extension Request on the Preliminary Site Plan approval – Block 52 Lot 9, Oasis Realty, LLC**

Attorney Mark Peck of the law firm of Florio, Perrucci, Steinhardt & Fader representing Jonathon Perlstein of Oasis Realty LLC noted that they were before the Board back in 2009 wherein Oasis Realty got Preliminary Site Plan approval to construct a mixed use project on Kingwood Avenue. It is Block 52 Lot 9. It is a 4 acre tract and the approval was to construct 10 residential units with a small retail portion. He distributed renderings this evening. It will be spectacular project. The preliminary approval was granted in 2009 and because of the economic conditions, the real estate market and the difficulty in getting construction financing, he has not been able to proceed. The protections provided in the preliminary site plan approval have lapsed and we are here to request an extension of that approval or some other guidance on how to proceed because the intent is to go ahead with the project once the economic conditions are right to go ahead with it. Jonathon Perlstein is here this evening to answer any questions. Attorney Hirsch noted that she has spoken with Mr. Peck and they both agree on what the law is. As a result of a series of cases, preliminary approval is good for 3 years and then the applicant has the right to ask for two one year extensions for a full 5 years. At the end of the five years, the approval does not expire. It is still in place. The only thing that stops is the protection that the applicant has from zoning changes that effects this project. They get an assurance that they can build under the zoning approval at that time. At this time, we know that zoning has not changed. This is one of the town's affordable housing sites and it is in the town's best interest that this approval continues to be valid. The applicant has the right to come in at any time to request final site plan approval provided there is not any zoning change. She does not know the status of other governmental approvals. Oasis Realty has a valid forcible approval. She noted from her experience with developers that when you go for construction financing, the bank wants to see a Planning Board resolution of approval. She asked Mr. Perlstein how much risk is tolerable to you at this point? Jonathon Perlstein noted that a great deal of money has been invested into this project from acquisition of the property, Planning Board approvals and DEP applications. Attorney Hirsch noted that from a developer's perspective, you could sit on this until you feel the market has turned and you are ready to come for final approval or you could resubmit the whole application and get a new preliminary approval and that would start a new 3 year run. Responding to Jonathon Perlstein as to the additional costs of application fees, escrows and professional fees for review, Attorney Hirsch noted that professional fees should not be extensive but you would have to hold a public hearing and notice the public hearing. She added that you still have a valid preliminary approval. If you look at the paper work that the Borough has filed with Judge Miller in the Declaratory Judgment Action, you will see that this site is mentioned here and the Mt. Laurel units to come from this site. Those are things that should give you assurance. Attorney Peck asked if there is any foreseeable change in zoning for this site. Attorney Hirsch responded that there is none that she is aware of although you would have to see a change in the Master Plan to justify that change if that would occur and that change would start with this Board. Jonathon Perlstein thanked the Board.

**Variance and Site Plan Application – Block 59 lot 4, ArtYard, Inc., 62A Trenton Avenue (Completion Review)**

Sarah Scott is stepping down on this application due to proximity.

Vice Chairman DenBleyker noted that this is a completion review for the variance and site plan application filed for Block 59 Lot 4.

Attorney Rich Mongelli noted that he is the Attorney for ArtYard and Michael Burns is the Architect and Planner who is also present this evening. Vice-Chairman DenBleyker noted that Engineer Clerico will go through the details of his letter dated February 13 for the completion review and the follow up email memo provided for clarification as per Attorney Hirsch's recommendation.

Engineer Clerico noted that in the February 13<sup>th</sup> letter, he notes all the documentation that was filed. On the second page of the letter is the checklist requirements. He will start with that review.

As to Item A, these are administrative items which he usually defers to Brenda Shepherd on and as far as he knows these items are complete.

As to Item B, Checklist Items B-3/D-3, zoning denial letter has not been provided although they have submitted a zoning permit application. Attorney Hirsch noted that the Board could waive this item. It is an archaic requirement when they know a use variance is required. You have competent professionals to guide you on what the variances are.

Engineer Clerico noted that he has categorized the items and noted that there are a number of missing items. The Board could make it a condition of an action taken. Some of these the Board could grant as a temporary waiver and some may be required as part of the site plan.

As to Item C, Checklist Items B-17/D-15, Approval Signature Lines must appear on the site plan. The Board could grant a temporary waiver with the condition that it be provided prior to an action.

As to Item D, Checklist Item B-23, existing natural features within 200 feet of the site was not provided. The applicant requested a waiver. Engineer Clerico recommended that a waiver be granted.

As to Item E, Checklist Items B-24, B-40 and D-21, location of individual trees over 8 inches in diameter and the required site screening & buffering. The applicant requested a waiver because the applicant is not proposing any site plan improvements with the exception of constructing a sidewalk extension on their property and the neighbor's property. Engineer Clerico noted that since the prior site plan depicted existing and proposed additional landscaping and buffering, it would be appropriate for this plan to depict that. He recommended that a temporary waiver be granted and that additional documentation be provided prior to any action on the site plan. Responding to Attorney Hirsch, Attorney Mongelli noted that they are applying for a preliminary site plan approval and will come back with a final site plan. Engineer Clerico commented that they have applied for a minor site plan but in a minor site plan, you cannot have off site improvements. They are extending a sidewalk 50 feet on the neighbor's property. Michael Burns noted that they show the sidewalk extension but there is a note on the plans that said it is at the discretion of the Board. Engineer Clerico noted that he reviewed it as a preliminary site plan application as it was submitted. Attorney Hirsch noted that the significance of it being a minor site plan, that is the only approval required unless a change is required by DEP, etc. There is no preliminary or final approval. Attorney Mongelli noted that the intention is that aesthetic changes will follow. We are still the contract purchaser and will not close unless we have the use variance and site plan approvals. So, we set it up as a preliminary site plan application only. After the closing we will come back to the Board with the external aesthetic changes to the property. We can address the other points at the final site plan approval. Michael Burns added

that when the building gets modified in the interior for the new use, there would be new exterior modifications such as windows, overhead garage doors, etc. Attorney Mongelli noted that in that context, we would address the landscaping and lighting. Engineer Clerico noted that the Board needs to know that before they vote on any site plan. Attorney Hirsch stated that the applicant wants to leave it as a preliminary site plan. Engineer Clerico recommended that the architect update the site plan to include the existing lighting and landscape plan.

As to Item F, Checklist Items B-25 & D-24, existing wetland and transitions areas, the applicant did not document any wetlands or transition areas because they are saying it is not applicable. Engineer Clerico noted that the Board could grant a waiver. They are not proposing to do anything on the site except for the sidewalk along the street.

As to Item G, Checklist Items B-28, B-29 & B-31, stream cross sections and drainage basin calculations, the applicant is saying that it is not applicable. Engineer Clerico noted that these provisions in the checklist are archaic and he recommended that the Board consider these items not applicable.

As to Item H, Checklist Item B-36, historic features within 200 feet, the applicant is requesting a waiver. Engineer Clerico deferred this to the Board. They are not proposing to do anything on the site at this point.

As to Item I, Checklist Item B-39, lighting, Engineer Clerico noted that they are installing street lights along Trenton Avenue in conjunction with the sidewalk. Lighting was included in the prior plan. The plan should reflect what is there and if they are proposing changes, those changes should be reflected. He recommended a temporary waiver with the condition that it be provided prior to an action on the site plan.

As to Item J, Checklist Item B-43, stormwater calculations, the applicant is requesting a waiver. Engineer Clerico recommended that the waiver be granted. They are below the threshold for requiring stormwater management.

As to Item K, Checklist Item B-44 & B-45, existing sewer and water services lines, the applicant did not depict those lines on the plan. Engineer Clerico recommended that a temporary waiver be granted and that the documentation be provided as a condition of any action taken by the Board.

As to Item L, Checklist Item B-46, street cross sections and profiles, the applicant is requesting a waiver. Engineer Clerico noted that some of that information will be needed to establish a profile for the sidewalk along Trenton Avenue. A temporary waiver could be granted and the documentation be provided as a condition of any action the Board may take.

As to Item M, Checklist Items B-47, B-48/D-30 & D-31, copy of the title search documents, the applicant has not provided the title search document as referenced in note #3 of the submitted site survey. Engineer Clerico noted that the prior site plan documented that a sight easement was to be established on either side of the driveway but it is not reflected on the plan. In addition, a public sidewalk easement and dedication would be required since the right of way is narrower and the sidewalk would be outside that and an easement from the neighbor would be required. He recommended a temporary waiver and additional documentation be provided prior to any action taken by the Board on the site plan.

As to Item N, Checklist Items B-52/D-33, Environmental Impact Statement, the applicant has requested a waiver. Engineer Clerico noted that he has no object but will defer it to the Board.

As to Item O, Checklist Item D-32, water and sewer capacity, the applicant has not provided any documentation as to the changes in water and sewer use and discharges resulting from the proposed change in use. Engineer Clerico noted that this is not required for the Use Variance. A temporary waiver could be granted but additional documentation must be provided prior to the Board taking any action on the site plan.

In conclusion, Engineer Clerico stated that the Board could deem the applications complete tonight granting waivers for Checklist Items B-3, B-23, 25, 26, 43 & 52 and Items D-3, 23 & 44, deeming Checklist Items B-28, 29 & 31 not applicable, granting temporary waivers for Checklist Items B-17, 44, 45 & 46 and Items D-15 with the information to be provided as a condition of any action taken by the Board and granting temporary waivers for Checklist Items B-24, 39, 40, 47 & 48 and Items D-21, 30, 31 & 32 with the condition that the information be provided prior to the Board voting on the site plan aspect of the application. If the Board deems the application complete tonight, the applicant could proceed with the hearing next week if they properly noticed to the extent that they provide additional documentation to our professionals for review.

Vice-Chairman John DenBleyker asked if the applicant was coming to do the public hearing on both the variance and site plan? Attorney Mongelli stated that they are hopeful that they can get the entire application for variance and preliminary site plan done in 90 minutes. Vice-Chairman DenBleyker expressed concern that the applicant must get this documentation to the Board professionals and the Board for review prior to the public hearing. Attorney Mongelli stated that with respect to paragraph E, trees and prior landscaping, some of the landscaping that was approved as part of the prior landscaping was done up through the Lovin' Oven and then it stopped. There was no other landscaping done. We believe that we will give the Board two bites at this. We are coming back for further approvals and it will give the Board a chance to address it at the final site plan approval. The Board could require this type of lighting, etc. When we do come back with the modification to the building, a landscaping plan would be in conjunction with the outside improvements. Architect Burns noted that they did verify based on the previous approvals that the landscape was either installed or not. Outside of the Lovin' Oven area, the only landscaping that was part of the previous approval was shrubs around the perimeter of the parking area. The remaining part of the previous landscape approval was existing. We have that documentation that we can provide. We suggest that when we come back for the final site plan with modifications to the building, that a landscaping plan would be submitted in conjunction with the outside improvements. Engineer Clerico noted that there was existing fencing and it is not reflected on the survey. He added that a preliminary site plan approval is voted on with conditions and when you come back with a final site plan, all the conditions are addressed. Nothing is overly onerous on the applicant to provide the information that the Board will need such as what landscaping and lighting is there and what is proposed. Lighting may become an issue for the new use. The new uses would probably include additional lighting. Architect Burns noted that there are fixtures on the building that are so old that it would be impossible to do photometrics. Attorney Hirsch stated that if the applicant is planning on coming back to the Board for a final site plan approval and they are not ready to present a lighting or landscaping plan, the Board could update the preliminary site plan application with exhibits at the hearing to show what was previously approved and what is there. Then, we will have an idea of what is missing and when they come in for final site plan approval, they can provide the additional information that were conditions of the preliminary site plan approval.

Vice-Chairman DenBleyker recommended that the Board hear the variance application on February 24<sup>th</sup> and continue the preliminary site plan approval on March 9<sup>th</sup> so that the Board professionals can review and provide a report to the Board so that they can deliberate.

Attorney Mongelli noted that they have the title search with information on the site triangle easements here this evening. Engineer Clerico stated that you have to take action to deem the application complete. The Board could allocate some time to the applicant for next week's meeting. Let them start the public hearing and if they have supplemental information they are bring in to make their case, so if you get through the use variance and they provide enough information for the preliminary site plan approval with conditions. Attorney Hirsch noted that a condition of the preliminary site plan approval could be a full landscaping and lighting plan and you would make that a condition.

Attorney Mongelli noted that they are prepared to present the application next week. It is our intention to come back for a final site plan approval. If the Board wants to make the lighting and landscaping plan as a condition of preliminary site plan approval. If there is adequate time, we will be prepared to present to the Board. Mayor Myhre suggested that the Board allocate an hour to the public hearing. Attorney Mongelli stated that if the Board grants a use variance and gives us preliminary site plan approval with conditions, we would proceed to closing and then come back with a final site plan application.

Engineer Clerico asked if the applicant has an agreement with the neighbor to put a sidewalk there. Architect Burns stated that the only reason they are proposing a sidewalk there is so that the sidewalks runs continuously from the center of town out to the property. We are trying to complete that. It would be ridiculous to put one on our property and not next door. Engineer Clerico stated that the application is proposing off-site parking and the ability to walk to the site. That would support part of your testimony. Architect Burns noted that the sidewalk is shown for two reasons, one to support argument for a parking strategy and secondly, to comply with the revitalization plan for the Borough, to extend that sidewalk, street trees, lighting and landscaping. Engineer Clerico stated that for the Borough to consider that, you will have to show a plan that is within the right of way or some agreement with the property owner. Architect Burns noted that if it is problematic, we do not show it on the plan. Engineer Clerico stated that the Board will only review what is on your plan. It is currently on your plan.

Vice-Chairman DenBleyker asked if the Board had any questions on the waivers or temporary waivers recommended by Engineer Clerico. Having no questions or comments, a motion was made by Brad Myhre and seconded by William Sullivan to deemed the variance and preliminary site plan applications complete granting waivers for Checklist Items B-3, B-23, 25, 26, 43 & 52 and Items D-3, 23 & 44, deeming Checklist Items B-28, 29 & 31 not applicable, granting temporary waivers for Checklist Items B-17, 44, 45 & 46 and Item D-15 with the information to be provided as a condition of any action taken by the Board and granting temporary waivers for Checklist Items B-24, 39, 40, 47 & 48 and Items D-21, 30, 31 & 32 with the condition that the information be provided prior to the Board voting on the site plan aspect of the application. The Planning Board approved the motion by unanimous variable roll call vote.

Architect Burns noted that they have a will serve letter from the Water Company and have been trying to get a will serve letter from the sewer department but it is his understanding that the Sewer Advisory Committee has to be re-established to discuss the issue. Mayor Myhre noted that the plant has capacity and he does not see it as an issue.

Sarah Scott returned to the meeting.

**CORRESPONDENCE, COUNCIL REPRESENTATIVE REPORT AND OTHER RELATED ITEMS**

Mayor Myhre announced that the next Council meeting is March 2<sup>nd</sup>. He encouraged anyone who wants to share their thoughts on the redevelopment to come to Council.

**ADJOURNMENT**

Gerry Case moved adjournment at 8:27 pm, and Brad Myhre seconded. The motion passed on favorable voice vote.

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Brenda S. Shepherd  
Planning Board Secretary