

Frenchtown Planning Board
Regular Meeting
June 26, 2019
7:30 P.M.

Chairman Randi Eckel 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:
Cooke	DenBleyker
Dougherty	Sullivan
Dragt	
Eckel	
Herb	
Musolino	
Myhre	
Reino	
Tyksinski	

APPROVAL OF MINUTES

Regular Meeting – May 22, 2019

Jeanne Herb moved to accept the minutes of the May 22, 2019 Regular meeting. Mike Tyksinski seconded the motion. The minutes of the Regular meeting of May 22, 2019 were approved by favorable roll call vote with Rocco Musolino and Brad Myhre abstaining.

PUBLIC COMMENTS

Chairman Randi Eckel announced that before we start the public comment section, comments are welcomed on matters not listed on the agenda. Comments related to agenda items should be held until that specific item comes up on the agenda. Chairman Eckel opened the public comment session. Having no comments, Chairman Eckel closed the public comment session.

MEMORIALIZING RESOLUTION #2019-13 - SUBDIVISION/VARIANCE

APPLICATION – BLOCK 34 LOT 1, BLOCK 35 LOT 1, BLOCK 36 LOT 1, BLOCK 38 LOT 2 AND BLOCK 52 LOT 14 – RIVER MILLS AT FRENCHTOWN (JERSEY BUILDING GROUP) –

Jeanne Herb and Mayor Myhre stepped down on the resolution. Chairman Eckel noted that condition 7 on page 5 added a letter of credit requirement. On motion by Mike Reino, seconded by Mike Tyksinski, and carried by unanimous favorable roll call vote, the Planning Board approved the Memorializing Resolution #2019-13 for the subdivision/variance application for Block 34 Lot 1, Block 35 Lot 1, Block 36 Lot 1, Block 38 Lot 2 and Block 52 Lot 14 for River Mills at Frenchtown as follows:

FRENCHTOWN BOROUGH PLANNING BOARD RESOLUTION NO. 2019- 13
RIVER MILLS AT FRENCHTOWN
LOT 1, BLOCK 34, LOT 1, BLOCK 35, LOT 1, BLOCK 36, LOT 2, BLOCK 38 AND
LOT 52, BLOCK 14
MINOR SUBDIVISION APPROVAL FOR PROPERTY
IN FRENCHTOWN VILLAGE CENTER

WHEREAS, River Mills at Frenchtown, LLC (the “Applicant”) made Application for Minor Subdivision Approval for property with previous approvals under the name of River Mills at Frenchtown, and consisting of the following property shown on the Frenchtown Borough Tax Maps: Block 34, Lot 1, Block 35, Lot 1, Block 36, Lot 1 and Block 38, Lot 2 (the “Subject Property”); and

WHEREAS, the Applicant is the owner of the subject property; and

WHEREAS, the Subject Property previously received various Approvals from the Frenchtown Borough Planning Board, including Preliminary Site Plan Approval, memorialized by Resolution No. 2006-29, Amended Preliminary Site Plan Approval, memorialized by Resolution No. 2008-15, Final Site Plan Approval, memorialized by Resolution No. 2011-15, Relief from Conditions of Final Site Plan Approval, memorialized by Resolution No. 2012-14, and Amended Preliminary and Final Site Plan Approval, memorialized by Resolution No. 2019-10; and

WHEREAS, development of the Subject Property is governed by a Redeveloper’s Agreement (“RA”) dated August 1, 2011, with the First Amendment to the RA dated July 25, 2012, the Second Amendment to the RA dated May 23, 2016, the Third Amendment to the RA dated April 5, 2017 and a future amendment to the RA as required by this approval, (the “Redeveloper’s Agreement”);

WHEREAS, the Applicant submitted an Application for Minor Subdivision Approval with Variances (the “Application”) on April 3, 2019; and

WHEREAS, the submitted Application was determined to be complete with waivers as identified by the Planning Board at the Board’s May 22, 2019 special meeting, and after determining that notice had been provided by the Applicant’s attorney pursuant to law, the public hearing was commenced and completed at the May 22, 2019 meeting; and

WHEREAS, Board Member Jeanne Herb was recused due to proximity; and

WHEREAS, the plans and documents submitted by the Applicant in support of this Application are on file with the Board and are part of the record in this matter; and

WHEREAS, the Planning Board received and reviewed the following reports from its professional consultants, all of which are part of the record in this matter and are attached hereto as exhibits:

- A. April 22, 2019 planning report from Darlene A. Green, P.P., AICP (Exhibit “A”); and
- B. April 20, 2019 review letter from Robert J. Clerico, P.E. (Exhibit “B”).

WHEREAS, the Applicant was represented during the public hearings by David M. Shafkowitz, Esq. and the following individuals testified during the hearing for the Applicant, which testimony is part of the record in this matter:

Michael Galante, professional engineer; and

Joseph Gardner, member of River Mills at Frenchtown, LLC.

WHEREAS, the Board's consultants, including Robert J. Clerico, P.E. and Darlene A. Green, P.P., testified under oath during the hearings, and such testimony is considered part of the record in this matter; and

WHEREAS, the Exhibits received into evidence by the Board during the hearing, which are part of the record in this matter, include:

A-1 Minor Subdivision Plan dated 2/4/19, revised to 5/10/19, prepared by JTS Engineers and Land Surveyors

A-2 Schedule showing Floor Area Ratio / Tract Area Calculations

WHEREAS, no members of the public asked questions of witnesses and/or testified on this Application.

WHEREAS, the Board after considering the Application, documents, testimony and exhibits referenced above and giving appropriate weight to each, makes the following factual findings:

1. **FACTUAL FINDINGS AND CONCLUSIONS**

a. **The Property and Zoning.** The net tract area of the property which is the subject of this Subdivision Application is approximately 95,668 square feet in size and consists of four separate and adjacent tax lots located north of Bridge Street, south of Third Street and between the Delaware River and Harrison Street in the R4-A zoning district and within the Frenchtown Village Center Plan overlay area. The Board Planner and Board Attorney determined that since no new construction or uses are proposed by the subdivision, that the R-4A zoning applies rather than the Frenchtown Village Center overlay zoning.

b. **Previously Approved Development.** The approved Amended Final Site Plan shows a total of 30 dwelling units and 4,395 square feet of commercial space in a total of seven (7) buildings as shown on the Amended Final Site Plan approved per Resolution No. 2019-10.

c. **Proposed Minor Subdivision.**

(1) **Purpose of the Proposed Subdivision.** The Application proposes the consolidation of the existing four (4) lots and the subdivision into two lots: lot #1, 12,615 net square feet, to contain future multi-use building A with related parking; and lot #2, 82,922 net square feet, to contain the remainder of the development, including buildings B through G. The Applicant explained that the primary purpose of the proposed subdivision was to separate future mixed-use Building A, which includes commercial uses on the first floor and apartments on the floors above, from the townhouse buildings approved for the remainder of the Subject Property. This will allow the creation of a separate homeowners association for each of the two projects

and allow the two projects to be separately marketed. According to the Applicant's representations, after subdivision, the project would be more economically feasible, which is an important public purpose of Frenchtown Borough, in order to assure that the affordable housing to be produced on the site will be economically feasible and also that critical development within the Frenchtown Village Center is feasible.

(2) **No Changes to Layout or Uses.** The proposed subdivision involves no changes to the approved site improvements, the layout of buildings, the design or approved uses and the development of new lot #1 containing Building A will be consistent with the size and intensity of nearby developed lots.

d. **Variations Requested and Findings of Fact and Conclusions Thereon.**

(1) **Minimum Lot Size Variance.** A bulk variance was required from the Frenchtown Village Center Plan to allow Lot # 1 to be 12,615 net square feet, where a minimum lot size of 15,000 square feet is required by the R4-A zoning. The Board noted that the lot is actually 14,168 square feet in area if the right-of-way is included. The Board finds that the purposes of the subdivision as stated hereinabove constitute an extraordinary and exceptional situation uniquely affecting the Subject Property and the structures lawfully existing thereon, and justify the grant of the minimum lot size variance. The Board also finds that the requested variance would be a *de minimis* deviation from the R4-A zoning requirements and that the variance may be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

(2) **Minimum Lot Depth Variance.** A bulk variance is required to permit the minimum lot depth of Lot #1 to be 139.65 feet deep, where the R4-A zoning requires a minimum lot depth of 150 feet. The Board notes that the total lot depth, if the Bridge Street right-of-way is included, is 165.93 feet, thus meeting the R4-A zone requirements. The Board finds that the requested variance is a *de minimis* one, and as a result of the reasons for the subdivision stated hereinabove, constitutes an extraordinary and exceptional situation uniquely affecting the Subject Property and the structures lawfully existing thereon, and that the variance may be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

(3) **Minimum Rear Yard Setback Variance.** A variance is required from the R4-A zoning requirements to permit a 4.07 foot rear yard setback on Lot #1, where a 20 foot rear yard setback is required for principal buildings. Although this is not a *de minimis* deviation from the zoning requirement, the need for the variance is directly related to the subdivision to create a separate lot for Building A, and does not change the building separations approved on the Amended Site Plan, thus has no impact on the approved layout of the development. For the reasons stated hereinabove, the purposes of the subdivision create an extraordinary and exception situation uniquely affecting this property and the structures lawfully existing thereon, and the variance may be granted without a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

(4) **Floor Area Ratio Variance.** A "d.4". variance from the maximum floor area ratio permitted under the R4-A zoning was also requested. As calculated in the Board Planner's April 22, 2019 Review Letter, attached hereto as Exhibit A, proposed Lot #1 is permitted to have a total of 11,705 square feet of building area, which total permitted building area would increase to 16,410 if the dedicated Lenape Park lot is proportionately allocated

between Lots #1 and #2. The Applicant is proposing to have 16,510 square feet of building area on Lot #1. In reviewing the variance, this Board notes that pursuant to Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994), the Applicant must demonstrate that the site will accommodate the problems associated with a larger floor area than the floor area permitted by ordinance. The type of problems which usually result from exceeding floor area ratio involve the relationship of the property to neighboring properties, including intrusions into side yards or visual incompatibility with existing and surrounding buildings. The Board finds, based on the testimony of the Applicant's Engineer/Planner and the Board's Planner, that under the special circumstances of this Application, the requested floor area ratio variance will not result in more intensive development, since the Amended Site Plan is not being changed and the approved site improvements and building layout is not being changed by the proposed subdivision.

(5) **Parking Variances Not Required.** After reviewing the Board Planner review letter attached hereto as Exhibit A and the prior approval Resolutions for the Subject Property, and considering the advice of the Board Attorney, the Board finds that due to prior changes in the number of dwellings and previously approved parking cross easements, no parking variances are required for the proposed minor subdivision.

e. **Conclusions.** Based upon the testimony and documents in the record, the Board hereby finds that the Application will the requested minor subdivision may be granted, along with the requested variances from R-4A zoning requirements identified above, provided that there is strict conformance with all conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE Frenchtown Borough Planning Board, by motion duly made and seconded on May 22, 2019, that the Application for Minor Subdivision with Variances, with the revisions as agreed to during the hearings and as required by this Resolution is hereby approved.

2. **CONDITIONS**

a. **Compliance with Review Letters and Prior Planning Board Approvals.** The review letters attached as Exhibits to this Resolution are required to be complied with either by plan revision or otherwise. All requirements of the Preliminary and Final Site Plan approvals as set forth in Resolution No. 2006-29, Resolution No. 2008-15, Resolution No. 2011-15, Resolution No. 2012-14 and Resolution No.2019-10 shall continue in full force and effect unless modified by the within approval.

b. **Final Plan Revisions to Produce Record Set of Plans.** The Applicant shall have until no later than 90 days from the adoption of the within Resolution to revise the subdivision plans and documents as required by this Resolution and to obtain the signatures of the Board Officials and Consultants on the Final Plan Set. This revised set of plans shall show all prior plan dates and revisions as well as all current plan revision dates. This approved and signed plan set shall be the record plan set kept on file by the Board Secretary and the Applicant.

c. **Recording of Minor Subdivision Plat.** The Minor Subdivision Plat shall be recorded as required by the Map Filing Law within the time provided in N.J.S.A. 40:55D-47.d., that is, within 190 days from the date of adoption of this resolution (1/2/20), unless this deadline is extended by the Board pursuant to N.J.S.A. 40:55D-47.f. Failure to record by the deadline shall cause the subdivision to expire.

d. **Recording of Amended Site Plan and Minor Subdivision Resolutions.** The Applicant shall record both Amended Final Site Plan Resolution No. 2019-10 and this Resolution within 21 days of adoption of this Resolution of Memorialization.

e. **Cross Access Easements and Existing and/or Proposed Restrictions or Maintenance Obligations.** As described in the Exhibit B Letter Report of the Board Engineer, all required cross access easements created through the division of the subject property along with any other existing and/or proposed restrictions or maintenance obligations must be shown on the Minor Subdivision Plans and Minor Subdivision Plat.

f. **Affordable Housing Obligations.** The affordable housing obligations which apply to the Subject Property pursuant to condition (ii)(e) of Resolution No. 2019-10, shall apply to both lot #1 and #2, since both lot #1 and lot #2 contain market housing units which pursuant to the Frenchtown zoning ordinance, must be phased in with the low and moderate income units required for the entire River Mills development. Thus, the phasing of CO's for low and moderate income units with the CO's for market units shall apply to all dwellings constructed on the entirety of lot #1 and lot #2.

g. **Amended Redeveloper's Agreement and Replacement Letter of Credit.** An Amendment to the Redeveloper's Agreement shall be executed by the Applicant and Borough Council, and the applicant shall post a replacement letter of credit, both actions to be completed within 30 days of adoption of this Resolution, or, this approval shall be deemed null and void.

h. **Compliance with Review Letter of Board Engineer.** All plan details and documents identified in the Board Engineer's memo attached as Exhibit B hereto, which the Board Engineer has identified as necessary prior to the recording of the Minor Subdivision Plat shall be provided on the Plat and in the documents.

i. **Lot Consolidation Deed and Tax Assessor Approval of Lot Numbers.** The Applicant shall file a lot consolidation deed utilizing the new lot numbers as approved by the Tax Assessor. Prior to filing the lot consolidation deed, the deed and associated descriptions shall be approved by the Board Attorney and Board Engineer.

j. **Compliance with Amended Preliminary and Final Site Plan per Resolution No. 2019-10.** The Applicant shall obtain approvals by Board Consultants and the signing of the approved Amended Site Plan pursuant to Resolution No. 2019-10 prior to the recording of the Subdivision Plat. The Minor Subdivision Plan and Plat shall comply with the Amended Preliminary and Final Site Plan, as approved by the Board Consultants pursuant to Resolution No. 2019-10.

k. **Revisions to Master Deed.** The Applicant shall provide the Planning Board Secretary and Board Attorney with copies of all New Jersey Department of Community Affairs review letters and the DCA approval letter for revisions to the Master Deed required by this Minor Subdivision Approval.

l. **Proof of Tax Payments.** The Applicants shall provide proof that all taxes have been paid up to date prior to adoption of this Resolution.

m. **Up-to-Date Escrow Payments.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished within 30 days of the adoption of the within Resolution; within 30 days of any written notice of deficiency as to the escrow accounts; prior to

the signing of the Final Plat; prior to the issuance of any zoning permits; prior to the issuance of any construction permit; and prior to the issuance of any temporary and/or permanent certificate of occupancy. Failure to abide by this condition shall result in all applicable approvals automatically terminating and becoming null and void.

Voting Record

On May 22, 2019 a motion to grant the Minor Subdivision with variances received the following vote:

Vote:

Those in favor: Eckel, DenBlyeker, Dougherty, Tyksinski, Dragt, Reino, Cooke

Those opposed: None

Recused: Herb

The above memorializing Resolution was adopted on June 26, 2019 by the following Board Members eligible to vote:

MEMBER	YES	NO
Eckel	X	
Dougherty	X	
Tyksinski	X	
Dragt	X	
Cooke	X	
Reino	X	

Attest:

Brenda S. Shephard, Board Secretary

REQUEST FOR EXTENSION TO JUNE 30, 2019 – RIVER MILLS AT FRENCHTOWN, LLC. AMENDED SITE PLAN

Mayor Myhre returned to the meeting. Chairman Eckel reported that plans were submitted to the Board professionals and the municipality. The applicant is requesting an extension to June 30, 3019. On motion by Gordon Dragt, seconded by Mayor Myhre and carried by unanimous

favorable roll call vote, the Planning Board approved the request for extension to June 30, 2019 for River Mills at Frenchtown, LLC. amended site plan.

Jeanne Herb returned to the meeting.

NEW BUSINESS

Review of Ordinance #833 as amended

Chairman Eckel reported that the issue discussed by the Board on page 2 of the Redevelopment Plan under Redevelopment Area, paragraph 2, was amended per the Board's comments. The Borough Attorney Albert Cruz determined that the change was not substantive. On motion by Jeanne Herb, seconded by Gordon Dragt and carried by unanimous favorable roll call vote, the Planning Board determined that the Ordinance is still substantially consistent with the Master Plan.

2018 Annual Planning Board Report

Chairman Eckel noted that she has completed the Annual Report. This report had been previously done by Planner McKenzie. Under relief sought, it specifies the article number, etc. from the Land Use Ordinance. The relief sought and a brief description was put in. It lists the Board members and variances granted. The purpose of the report is to make the Planner, the Mayor and the Attorney aware of any patterns of relief sought before the Board. The Board thanked Chairman Eckel. On motion by Jeanne Herb, seconded by Rocco Musolino and carried by unanimous favorable roll call vote, the Planning Board approved to send the 2018 Annual Planning Board Report to the Borough Council.

APPROVAL OF VOUCHERS

Brenda Shepherd, Board Secretary, presented the following vouchers for approval:

VOUCHER LIST 6/26/19

Archer & Greiner, P.C.	Professional Services for General Representation through 5/21/19	\$620.00
Maser Consulting	Professional Services for General through 6/16/19	\$36.25
Maser Consulting	Professional Services for Zoning Amendments through 6/16/19	\$217.50

ESCROW ACCOUNT – BLOCK 57 Lot 1 and 55 LOT 14 – ArtYard – Attorney Fees

Albert Cruz	Professional Services for Art Yard through 4/30/19	\$ 16.00
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ESCROW ACCOUNT – BLOCK 3 LOT 1 - Country Classics Redevelopment

Albert Cruz	Professional Services for Country Classics through 4/30/19	\$1,872.00
Archer & Greiner, P.C.	Professional Services for County Classics through 5/31/19	\$260.00

ESCROW ACCOUNT – BLOCK 34 LOT 1 – River Mills at Frenchtown – Subdivision Application

Archer & Greiner	Professional Services for River Mills through 5/31/19	\$1,040.00
VanCleaf Engineering	Professional Services for River Mills through 4/30/19	\$1,369.00

On motion by Mayor Myhre, seconded by Mike Tyksinski, and carried by unanimous favorable roll call vote, the Planning Board approved payment of the above bills list.

CORRESPONDENCE, COUNCIL REPRESENTATIVE REPORT AND OTHER RELATED ITEMS

Mayor Myhre reported that he is hopeful that Council will authorize going out to bid on the Harrison Street project by the July or August meeting. The project will include repaving of Harrison Street, fixing the pavers and putting in landings for ADA compliance. The project will go from Second Street to Seventh Street and includes Second Street. We will try to minimize disruption to traffic.

Mayor Myhre also reported that the Chief of Police will be retiring in August. We will be advertising for the position.

Mayor Myhre stated that a committee was constituted and will have its first meeting on July 9th at 6:30 pm to discuss the Downtown Improvements for the TAP grant. We are trying to move the project expeditiously.

Mayor Myhre reported that the public hearing on Ordinance #833 was carried to July 10th. The Council will hear additional comments. No re-advertisement was required. The Borough had an updated report from the developer. The LSRP reported that the remediation is going well. A lot of soil was removed close to Old Frenchtown Field. Monitoring wells are showing a reduction in toxin levels. They have put in additional monitoring wells for water quality. The developer has a good working relationship with the NJDEP. They are continuing to remediate and getting ready to move forward once the Council adopts the Redevelopment Plan. The developer has provided 5 presentations and this is the most anyone has ever known about the site. The Borough has been given all the reports and the reports are posted on the website. There are large quantities of spark plugs which are considered a solid. These areas will be capped. The developer will provide the Borough with either an insurance policy, a line of credit or cash deposit to insure long term maintenance of the cap. They will be subject to inspections which the LSRP and VanCleaf will do. They are eager to take down the water tower. Responding to Mike Reino, Mayor Myhre stated that over 20,000 gallons of oil were removed from the buried tanks. Maggie Cooke commented that there was talk about the Borough hiring its own LSRP. Mayor Myhre responded that Council debated it at length and public attendance was dropping when the LSRP provided a public presentation. The Borough considered an independent review of the LSRP work and that review was quoted at \$10,000.00. NJDEP regulates it and the NJDEP

is the final arbitrator. Mayor Myhre added that they did clean up Old Frenchtown Field and there is no longer any contamination there.

Chairman Eckel reported that there was a Technical Review Committee meeting consisting of Rocco Musolino, Mayor Myhre, Michele Liebttag and herself with Jonathon Perlstein. Jonathon Perlstein provided a plan of what he would like to do with the building where Napoli's and Edward Jones is. He will be coming to the Board in a few months. He is considering adding apartments above that location. He does not intend to go forward with Shale Cliff. He is not selling that project but wants to do something different because Shale Cliff was too expensive of a project. The new proposal will require affordable housing which will make up for the unit at Shale Cliff. As part of the Borough's Fair Share Housing Plan, one unit is listed for Shale Cliff. Jonathon Perlstein had preliminary approval for the project on the Kathee's General Store lot. If he does not build the project, we will have a hole in our Affordable Housing Agreement. If he does something across the street, he will have to provide a unit which will make up the lost unit from Shale Cliff. The Borough would have to amend the agreement.

Chairman Eckel noted that she will be reaching out to see who wants to participate on the sign ordinance committee. The zoning officer is approving sign applications and is charged with enforcement of the sign ordinance. There is now a streamlined sign application process. Jeanne Herb asked if the Board ever discussed the concept of standards in the business district for exterior paint colors. Chairman Eckel responded that the subject has come up in informal discussions at least twice but there was not much political will to impose something like that. At least one member did not think the Board should be telling people what colors someone should use. Jeanne Herb asked what that process would be. Chairman Eckel responded that an individual could bring the issue to the Board or the Planning Board could discuss it. One comment that came up was that the business district is struggling and to tell them to paint their buildings a certain color would be a burden although Frenchtown likes aesthetics. If the Board did do something like that, it could not be put in retroactive.

Chairman Eckel reported that the Executive Session for this evening will be tabled to next month. Attorney Hirsch pointed out that it would be more fiscally responsible to do the Executive Session when she has to come to a meeting.

ADJOURNMENT

Jeanne Herb moved adjournment at 8:10 pm and Mayor Myhr seconded. The motion passed on favorable voice vote.

Brenda S. Shepherd
Planning Board Secretary