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Mayor

CONSTRUCTION DEPARTMENT

FRANK DIROMA
Supervisor of Code Enforcement

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BOROUGH OF MANASQUAN
COUNTY OF MONMOUTH
NEW JERSEY 08736

ALBERT "SANDY" RATZ
Construction Official

The Manasquan Planning Board held a Special Meeting on May 16, 2017 at 7PM in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, New Jersey. Neil explained our special meetings are generally at 4PM but because of the sensitivity of this application the Board voted to hold this meeting at 7PM for the convenience of property owners within 200-feet to be present should they so choose. He said this will be meeting #8; we have carried for almost two years. There have been meetings, continuances but we are just plugging along here and I'm sure there will be additional. He then asked everyone present to please stand and salute the flag.

ROLL CALL:

Board Members Present:

John Muly, Robert Young, Mark Apostolou, Leonard Sullivan, Kevin Thompson,
Neil Hamilton, John Burke – Greg Love arrived at 7:22PM

Board Members Absent:

Mayor Edward Donovan, Councilman James Walsh, Peter Ragan, Mark Larkin, and
Barbara Ilaria (Mayor's Alternate)

Professionals Present:

Geoffrey S. Cramer – Planning Board Attorney
Albert D. Yodakis – Engineer/Planner – BORO Engineering

Geoff Cramer read the Open Public Meetings Statement.

Neil said there are some issues that need to be addressed tonight. Geoff Cramer swore Lenny Sullivan in, giving him his Oath of Office as he was away for the winter.

Neil said there has been a re-notice, Wall Township has been included in the notice, this is a Use Variance, that's why you see the Mayor and Councilman are not present this evening. He said he wants to do this in three phases Mr. Starkey. The audience yelled they couldn't hear. Neil said the first phase he would like them to update since it's been awhile since we last met, we may have people from Wall Township who were not present at other meetings. If you just give an over view of the project and stay on point with that. The second phase is we have two letters, one from the objector Mr. Middleton in reference to whether or not we can proceed with the hearing and then also a response letter from you debating Mr. Middleton's letter. We will have a decision made by Mr. Cramer. The third issue was we anticipated and it's on record, that I made a condition supported by this Board that all parties would hopefully meet and Mr. Middleton would have been a part of that with his professionals so the drainage issue would be resolved, and Mr. Yodakis the Planning Board Engineer would have put his stamp of approval on that, and we could move forward with the rest of the application, the subdivision and any other issues that may arise to get this project moving forward. That did not occur. If you just give an overview to the public, then Mr. Cramer will deal with the two letters submitted by both of you and we will see where we go from there. Mark Apostolou said in reviewing Mr. Cramer's letter he sees a

third or fourth issue, he bounces this off Geoff. Assuming that notice was required of all the Wall Township residents, he is looking at this on the basis of an appeal issue, because he knows that we have interested parties on both sides. His concern is the due process notice that may have in fact been omitted by the fact that we have had eight (8) prior hearings, without the benefit of those members within the prevue of 200-feet in Wall Township that did not have an opportunity to listen to any of the testimony, and he worries that in another year or six months from now what the Superior Court or Appellate division saying to us that we should have allowed those people an opportunity to hear the presentation. So, he is asking do we need to start all over again. He doesn't think it's possible or appropriate under the rules that we require any objector to listen to eight (8) tapes. He thinks the proper procedure as he views it and he defers to our Council. Geoff said he has had this discussion with Mr. Starkey, they both concur that whether he likes it or I like it either way, this matter has to start anew. All the people within 200-feet of the outside perimeter of the cemetery and the cemetery is 20 some odd acres and three fourths of it is in Wall Township, of necessity there are neighbors in both Towns within 200-feet that have to be notified. Without that notification having been given, this time around this Board has no jurisdiction to proceed. Mr. Starkey said he agrees with Judge Apostolou and Geoff Cramer, he said this is actually our third time around, we had he thinks five hearings. He thinks they have streamlined their approach and he was going to address the points you made, he thinks it would be more productive to have Mr. Carpenter sworn in in order to give the testimony. He thinks the Judge is right. Neil said if the people here are happy that they understand what the project is all about, then he thinks Mr. Cramer needs to determine whether or not of the two letters submitted, whether we can even continue on this evening. If not then we will put out our requirements for this drainage issue and we will go home. Geoff needs to say whether the notice was proper and that we can continue on. Mr. Starkey gave a long narrative about why he believes the notice was handled correctly. Mr. Cramer said his problem with the notice is there are two separate notices and the history of this development is that the two applications one for the office building and the other for the splitting out of five lots to houses built on them was consolidated by this Board at a meeting sometime back into a single application. Because his concern was the subdivision, the office building all is occurring on the same property. Cemetery property, its one single property and therefore the applications were consolidated. By having two separate notices with respect to the proceeding tonight it gives rise to some confusion by most people, especially when you have the subdivision taking place on the acreage of the cemetery that is wholly situated within Manasquan. But the law requires notice to be given to every property owner within 200-feet of the outward boundaries of the cemetery. This includes a large number of homes and property owners in Wall Township. Manasquan people are familiar with this, the people in Wall Township, this is the first inkling they have had of this. What they see in the Asbury Park Press is two different notices both saying Borough of Manasquan, no reference at all made to Wall Township. To him that is inhibiting and misleading. He thinks there should be one single notice, spelled out as elaborately or as detailed as you like, but the notice has to be to the Borough of Manasquan and the Township of Wall. Also, Mr. Middleton's argument as with respect to the statement that says fully conforming six lots, which as Mr. Starkey confirms is not really the case. The idea is that there are going to be five (5) residential lots, each of which will conform to the requirements of the R-2 Zone, that's the Zone that's applicable to the

whole cemetery, but the cemetery is a non-conforming Use. You can't even get to the subdivision without the applicant proving his entitlement to a Use Variance. It's a very tightly constructed situation, but we are still talking about a single development application, despite all the things that the cemetery owner and the developer would like to do. It's just imperfect. Mr. Starkey said we have never been told these applications are consolidated, in fact we have separate review letters on the separate applications, we have had to submit separate application fees, we have submitted separate applications. My letters reference two applications. The Board has told us that you want them heard at the same time, which I agree with, but I have to say you are changing the rules while I'm sitting here. This has not been the way this has done, this has been two applications for the past several hearings, we noticed it as two applications after the court hearing, that was accepted, that was agreed was appropriate. For us to go through those hearing and for me now to sit here and you say I am going to change it and say they should be consolidated and notice should be together. To me, honestly, you are changing the rules for us and that's not fair to my clients. Is the notice reasonable to apprise people of what we are doing, whether we have two advertisements in the Asbury Park Press right next to each other or combine them into one, doesn't give people more or less notice than they would get by putting it out twice, it's the same property that's referenced in that, the hearing is the same day. The attorney is the same. Mr. Cramer said I'm not confused, I know if you go back through the Board's minutes you are going to find various portions of those minutes that are related to the fact that this Board consolidated these two applications for purpose of public hearing. The fact that you were charged according to the charging of the Ordinance because the Ordinance has separate fees for different things. Every Bulk Variance has a separate fee attached to it; a Use Variance has a fee attached to it. Tim Middleton came forward to speak regarding noticing issue. He said the notice stated all lots were fully conforming when in fact lot #6 is not. He raised the jurisdictional issue, he doesn't believe they have jurisdiction. Geoff said as far as he is concerned the so called sixth lot is now not only non-conforming it's also a non-conforming use. That's the cemetery use that precipitates out the need for a Use Variance. A Use Variance is quintessential to the grant of any Variance from this Board and a subdivision that you expect to get from this Board. Mr. Starkey responded with his frustration. Neil said Geoff we need your guidance now. Geoff said he feels that the Board has treated these two applications in tandem, every public hearing that has been held by this Board had as its objective the thrashing out of this entitlement to a Use Variance and secondarily the office building which was an accessory type of structure on the cemetery property. As far as he is concerned the subdivision, a Use Variance and an office building were all consolidated. Mr. Starkey objected to Mr. Cramer's position on the matter, he said it's something new. Mark Apostolou said he doesn't quite understand the consolidation issue, he doesn't disagree with Geoff's analysis on the language saying that Wall needs to be included perhaps it's not clear to the members of Wall Township that they have an interest in the property. What he asks is if we abide by your opinion and we take a motion, before we leave here today he would respectfully request that Mr. Cramer, Mr. Starkey, and Mr. Middleton all get together to agree upon language. Mr. Starkey said he would like to put on record because he has had conversations with both gentlemen and he is sitting here tonight and they pull something different. Mark said that's why he is saying the language should be structured and if we put it in a motion to say we agree. Geoff said so what you are saying Judge is the three attorneys participate in the forming of the notice

that is published. Mr. Starkey objects, he said he would like to have a decision by the Board whether the notice was proper. Neil Hamilton said that's why we hire Mr. Cramer as our guidance. We are not attorneys, we have to rely on the fact that if Geoff says we need to re-notice and continue this hearing, we have got to rely on that, because if all should fail and there is an appeal he is the guy who is going to Freehold and represent this Board. Mr. Cramer said Mr. Chairman I feel that the safest course of action is to frame a single notice directed to Wall Township, Borough of Manasquan spelling out the relief that is being sought here, stop talking about the six legally conforming lots, because that means all sorts of things to all sorts of people and just filling out the balance of relief that is requested. Mr. Starkey disapproved, stating we have five legally conforming lots and we have one lot that conforms in all respects except for the minor issue about frontage. I want to be clear, we are not looking for something here that's unusual, that's obscure, and that remaining lot is a huge lot. It's got one minor issue at most. I want that on the record. Mr. Middleton said his client lives next to that 19-foot frontage that's not a minor infraction, that's a 60% deficiency. Kevin Thompson made a motion to carry this application as Geoff said to get the notice corrected and get back here and get this going, seconded by Mark Apostolou. Geoff said we will set a date and we will not charge for a Special meeting, July 25, 2017 at 7PM.

ROLL CALL – BOARD MEMBERS VOTING YES:

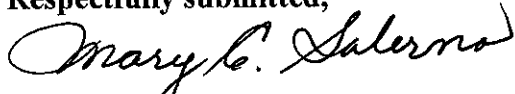
John Muly, Robert Young, Greg Love, Mark Apostolou, Leonard Sullivan, Kevin Thompson, Neil Hamilton and John Burke.

Kevin Starkey said I hear the Board's concerns, I hear your concern about that frontage issue and we will obviously address that. My client's would prefer we don't want to consolidate them. These are going to be two separately owned parcels of land. We also have a Use Variance on one side and we have a fairly straight forward subdivision on the other. Geoff said he thinks Mr. Starkey should generate the notice, if he wants to send a copy to Mr. Middleton, a copy to me I will certainly give him a prompt response. Mr. Middleton promised he would respond within three days. Mr. Starkey said to be clear, there is going to be one notice, it's going to reference two applications, one is for the cemetery one is for the subdivision, they are going to go essentially in one form, one envelope to all these people and one publication in the newspaper that this Board will continue to treat them as separate applications and separate Resolutions. Mr. Cramer said he can't foresee what this board is going to determine with respect to this application. They may grant the whole thing, they may grant part of it and deny the rest of it, he has no idea, but as far as he is concerned certainly the subdivision of those five lots from your client's cemetery is going to require a Use Variance. The proofs have to support that. Mr. Starkey said the subdivision does not require a Use Variance, the Court ruled on this specifically. Mr. Middleton made a judgment because there is a case known as Raspberry and what that case says is when you have a piece of property with a non-conforming use and here that's the cemetery at least in Manasquan, the cemetery use is a non-conforming use and you want to subdivide off a portion of that thereby decreasing the size of the property or at least in theory making that non conformity more intense, so that's why we are here for the cemetery. To make an application for a Use Variance so that the cemetery can sell the property, OCLAR is here with a straight forward subdivision application, the application by OCLAR is proposing five lots with residential uses on them, the residential use is what is approved in Manasquan as a permitted use. That does not require a Use

Variance that is a permitted use. What we are dealing with here in concept is the cemetery authorized to subdivide that and sell it to OCLAR, then OCLAR comes in and says I'd like to carve that up into five lots. That part of it is not a use variance. That is one of the reasons why I was trying to maintain this as separate. Mr. Cramer said he understands, your idea is a step transaction, I view it as a unitary transaction. We have sat here for months, the board heard testimony as to why this was being done. Mr. Starkey said what does that mean for me, what do you want me to do because of your conclusion that the OCLAR application requires a use variance; I don't know what you mean by that. Mr. Starkey said he has been here three times on this application, now I have to come a fourth time, notice, notice, notice now notice again and every time I've been told initially by the Board you're good, and then I come to a meeting and I'm told you are not good. I'm still confused and I don't like to be confused what I need to do. I want to come here next time with proper notice, two applications heard together, votes on the two applications and two Resolutions when I walk out the door, win or lose, that's what I want. Neil said let's just deal with Geoff, so it's entirely a Use both the cemetery and the subdivision, correct? Geoff said to get to the subdivision separating out this tract to be divided into five lots that require a Use Variance. Because, you are intensifying the use of the remaining cemetery property by taking away that tract. Mr. Starkey said this is important. Geoff said I agree it is important, now we have a situation that is compounded by two things, one years ago there was a condition in the Resolution that approved the mausoleum addition and it required the removal of the office trailer from the site, that's ten years ago. It was never removed, the applicant was supposed to remove it by coming back with an application to take care of it, it took ten years to get here to do that, that's a problem. Neil said once these gentlemen approve the notice you're good. Mr. Starkey said I'm going to put an application in for OCLAR for subdivision approval with a variance. I just want the Board to know what I'm doing and see if there is anybody up there that objects to me doing that, so I am at least clear. Neil said you satisfy Geoff and Mr. Middleton and we're good, move on. We are coming back on the 25th of July at 7PM. Mark Apostolou seconded that. Mr. Starkey said at the last meeting Mr. Chairman you suggested my clients reach out to the neighbors, they have done that, I have reached out to Mr. Middleton but I'd like to say with the residents here tonight or tomorrow we are available to talk, we have all our documents in, Mark Apostolou said the audience is shaking their heads no. Mr. Starkey said some people may not have been home, his clients spoke to three residents in the neighborhood but he makes the offer that his engineer, his clients and he are here tonight if anyone wants to speak to them. Mr. Middleton knows where to find him. Neil said at the next meeting we are not going to discuss drainage, that's the bottom line. You need Al's points clarified. We are not going to sit around and talk about engineering that we have no idea, I want to know that when we come into that next meeting, Al has reviewed everything and he can put the rubber stamp on this thing, this is the best you are going to get and I think it's good to go. Mr. Middleton doesn't want to participate in that, that's his issue and if he doesn't want to do that he's going to say well I have to get an engineer now and we need to go to another meeting so we can review that, that's going to be the call of the Board and I don't know if in listening to me tonight you need to work with these fellows. Enough already of carrying this application, let's try to work together and get the damn thing done. If it can't be satisfied by drainage, then it can't be satisfied, then we've got problems. The drainage report just came in. Mr. Middleton said for some odd reason Judas Creek which

is on the cemetery property, which is required by your own Ordinance to be shown on the plan, it's not there, it's like Marley's ghost. Mark Apostolou said Mr. Middleton you know how much respect I have for you, perhaps if you could perhaps have your experts meet with the applicant's experts it would certainly be appreciated. Mr. Yodakis said he had a conversation for almost an hour today with Mr. Carpenter going over Al's report, it was very productive. Neil said don't you think Mr. Middleton has to be involved. We are not going to open to the public, they are aware of what's going on. We are trying our best to get a resolution to this issue. Kevin Thompson made a motion to close the meeting, seconded by Mark Apostolou, all in favor none opposed.
Meeting adjourned at 7:56PM.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary C. Salerno".

Mary C. Salerno
Planning Board Secretary