

**August 5, 2014
Regular Meeting – 7PM**

The Manasquan Planning held a Regular meeting at 7PM on Tuesday, August 5, 2014 in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, New Jersey.

Everyone present stood and saluted the Flag.

ROLL CALL:

Board Members Present:

Mayor Dempsey, Neil Hamilton, John Muly, Paul Rabenda, Councilman McCarthy, John Burke, Greg Love, Leonard Sullivan, Peter Ragan, Mark Apostolou, Kevin Thompson

Board Members Absent:

Joan Harriman, Robert Young (Mayor's Alternate)

Professionals Present:

Geoffrey S. Cramer – Planning Board Attorney

Thomas Neff – T & M Engineer

Geoff Cramer read the rules of the meeting.

APPLICATION #24-2014 – Warjanka, Steven and Dara – 217, 221 Third Avenue – Block: 176 – Lot: 17.01, 74.07 – Zone: R-3 – The attorney representing the applicant's is Michael Holzapfel. Geoff Cramer swore in the applicant's Steve Warjanka and his wife Dara Warjanka, owner/applicant. Mr. Holzapfel had a power-point prepared but was unable to get it to work but he had printed out paper copies which he passed out to the Board, this was marked as Exhibit A-1. It is Mr. Holzapfel's statement is that the Town has already approved this subdivision. He said it was done administratively. He then addressed the TRC report. He argued that the building permits that were taken out on the property were based on the fact that the subdivision was already approved and you cannot un-ring that bell. He stated it looks like they are creating non-conforming lots, but that's not what they are doing, we have always had a 4000-square foot lot and a 2700-square foot lot. What was there a year ago is still going to be there tomorrow, it's just going to be inverted North and South. The same configuration lots that existed prior are going to exist going forward. He understands that there may be some residents here that may testify in opposition to the application, but he wants to note this is not what's going to be built in the future has nothing to do with this application. We are not here to build a structure on a 2700-square foot lot; we are simply here to talk about the moving of the lot line. If in fact what will be built on the structure needs relief then the purchasers of that lot would have to come to the Board. That is another application for another day. Chairman Hamilton asked Mr. Cramer to respond to Mr. Holzapfel's opening remarks where he appears or relates to this Board that there is an administrative approval. Mr. Cramer stated he knows of no

administrative approval of subdivisions, except through the application made to this Board. Review and action by this Board. Mr. Holzapfel is referring to some discussions he has had with the Tax Collector's office perhaps or other employees of the Town, but what we have before you here is a subdivision. Mr. Holzapfel respectfully disagreed, he has a CD of a voice mail from the Zoning Officer, saying "good news, it's been done administratively, all you need to do is take the smaller lot out of the individuals Company's name, put it in the individuals name, prepare Deeds which my Client's did from my office, new property ID's were assigned, my Client's then applied for permits to improve their own property, with the structure presently on it for a driveway and a back patio. Permits were issued on that. I understand Mr. Cramer's position but we are here now and we are seeking the approval. It goes to the issue of hardship under C-1.3 where you need an extraordinary circumstance that uniquely impacts a piece of property. Board member Apostolou asked the Board attorney if this issue should go to the Chancery Judge we don't have that power. Mr. Cramer said he has already exchanged correspondence with Mr. Holzapfel on that point and took that very position. Mark Apostolou said then are we not in jeopardy of inappropriately hearing this if there is pending litigation or proposed litigation on this issue that we would be perhaps trying to pre-judge something that is either before equity or the presiding judge. Geoff Cramer said there is no current action that has been instituted by the applicant with respect to taking either the Planning Board or the Town to Court. Again, there is only one body in this Town that has the authority to grant subdivisions and that is the Planning Board. Mr. Holzapfel said we are now here and he would wager having clerked for Judge Lawson, that if a litigation rendered in Freehold before His Honor, he would say go to the Planning Board for subdivision approval go back and see what they would say, you haven't exhausted. Mark Apostolou said that's why I am asking you this. Next, Mr. Holzapfel had Mrs. Warjanka give her testimony regarding the application. Mrs. Warjanka testified there were no Deed Restrictions or covenants. The present prior to the application and the answer was yes. Mr. Holzapfel went over the Exhibit A-1 with the Board and Mrs. Warjanka, explaining each page and what is depicted there. Tom Neff of T & M Associates asked if there was off-street parking before because it looked like there was a curb cut and apron. Mr. Holzapfel said yes there was a curb cut and an apron if you refer to the front page.

Board members making comments or statements were Mayor George Dempsey who addressed a parking ticket that was issued for a car parked in front of the ingress/egress in front of the house, and Paul Rabenda, who addressed the fence that was installed that has caused a Hardship for the neighbor as their electric meter was blocked and that created a life-safety hazard. And, still to this day the fence blocks two egress windows to their bedrooms on the lower floor, which are used by rescue personal in the event of a fire are blocked by the fence. He asked what the motivation was for putting the fence there. Ms. Warjanka said before Hurricane Sandy hit there was a fence there, there has been a fence there the entire time since he purchased the house. That house is on her property. Paul said it has been there since 1926. Mrs. Warjanka said regardless of that it's a hardship for me that I own a piece of property, I'm not getting paid to rent the property out and that fence was already there. The Chairman next went to the Engineer then back to the Board members and then Mr. Henderson who asked for the right to cross. Tom Neff of T & M said a few times you have referenced the Tax Assessors letter how she assigned the lot numbers. Just so you know, I can't speak for her but that is done anytime a subdivision is

coming in front of the Board. We require the Tax Assessor to assign lot numbers before any subdivision. Mr. Holzaphael said he understands and he would now play for the Board an audio file of Mr. Furey's voice mail which was not audible to the Board or able to be picked up on the tape. Chairman Hamilton said the main point is whatever has been told by the Tax Assessor or the Zoning Officer, the bottom line is you need to come to this Planning Board for approval. So, if there was a misunderstanding, errors in interpretation by Borough employees or yourself or your Council, that's going to be a separate issue that you are going to have to address with the Borough and the employees and the staff. As we stand tonight the application is for us to consider a re-subdivision or moving of lot lines between the two lots. What you are trying to do and the Board may have reservation in doing this is we in good faith subdivided and were pleased to get that at the Keil subdivision, three lots that were totally conforming. In the Resolution and we have done this numerous times in subdivisions, we stipulated that when an applicant comes back they would be required to build everything in conformity. We anticipate we would not give Variances. They are entitled to but it would be very difficult. What this Board is wrestling with right now is you've got a piece of property that has a Variance for a side setback to the South, you are coming to this Board tonight asking for an additional Variance to put on a front porch. You have a Variance for a parking stall, only one, and that house when it was built although it was corrected exceeded the height Variance even though it was corrected, that's why you have the flat roof up there. The dilemma this Board has is why we need to entertain the fact that there is a fully conforming lot which if made into a non-conforming lot the purchaser of that lot would have to come to this Board for Variances. Mr. Holzaphael had a transcription of Dick Furey's voice mail which he asked to be entered as an Exhibit, Mark Apostolou asked who transcribed it and the answer was Mr. Warjanka. Next, John Muly gave the report from the Technical Review Committee. Mr. Muly said this has been pretty much addressed. He said the Board has approved the Keil Subdivision into three (3) conforming lots and the Committee asks why we should create another non-conforming lot when we already have three (3) conforming lots. Regardless of what's there, anywhere in Town if we have a chance to get a lot to be conforming that's what we do. That's what we had and now you want to create another non-conforming lot. He was answered by Mrs. Warjanka's argument that if she puts her house up for sale, it would always exist. Even if she built a house on the 40 X 100 the existing house on the 27 X 100 foot lot would still exist. Mr. Holzaphael said we are just simply inverting north and south. Mr. Holzaphael said he knows Mr. Henderson needs appropriate time to get his questions in. Board members with comments were, Leonard Sullivan, Owen McCarthy, George Dempsey, and Engineer Tom Neff who feels the deck should be shown on the plans. Neil said we need to get through the subdivision first, if the subdivision is not granted then we need to go back to these other issues, either remove them or they are going to have to come back anyway and ask for additional Variances for the issues that are there. Keith Henderson came to the microphone next, he said Mrs. Warjanka testified that all of the improvements were put on the property before you received anything from Dick Furey, is that correct? He asked the date that the fence was installed. She didn't recall. He asked the date the air conditioning units were installed, she said they had permits. He suggested to the Board that's because they had one big lot. You have a 67-foot lot, that was proper to issue those permits, what is not proper is for Mrs. Warjanka to say she relied upon Dick Furey's comments when she already had installed the air conditioning units. He then

asked when she put the driveway in do you know the date. So you really don't know if you put these in before or after. She said she knows that everything was in place, contracts were already signed. This is not our home, this is our summer home and she was not present for any of the installation of the fence, the shed, anything but she has contracts all signed in May for the work to be done. Mr. Henderson said so once again you are not in a position to testify, under Oath as to whether those improvements were installed before or after you got Dick Furey's letter telling you that you could not proceed. Mr. Henderson asked the date she received the letter and Mrs. Warjanka said she did not check her mail every day. Mr. Henderson said I'm sure you read the Resolution that there were to be no further relief on that lot whatsoever. Mrs. Warjanka said she did not read any Resolution. Next, he addressed the stakes and Mrs. Warjanka said those stakes were absolutely crooked. There is also a monument on the property. Mr. Henderson asked if she would be willing to submit a set of building plans for the 27-foot lot. Mr. Holzaphael said this is strictly about the lot line. Mr. Henderson said that is not correct. You cannot measure the negative criteria to the neighbor's with this application at the present time, it can't be done. Next, the Chairman told Mr. Holzaphael that he would have five-minutes to sum up and this would be continued. The Chairman said you will have to address Mr. Henderson's concerns, we need the architectural for the deck and then the Board will have an opportunity to speak, then we will go to final summary and where we want to go. He asked the Secretary for a date to be carried to, it was noted it would be carried to Wednesday, September 3, 2014 at 7PM.

APPLICATION CARRIED

The next two cases are Use Variances – Mayor Dempsey and Councilman McCarthy stepped down.

APPLICATION # 25-2014 - Rider, Kevin – 202 E Main Street – Block: 95 – Lot: 7.01 – Zone: B-3 – W. Craig Knaup, P.C. is the attorney representing the applicant. His address is 900 Hadden Avenue, Suite 206 – Collingswood, NJ 08108. Mr. Cramer found the file to be in good order and accepted jurisdiction. Mr. Cramer swore in Kevin Rider, applicant. He stated he used to work for Greenlight Surf Shop which is now located in Manasquan and had appeared before this Board. Chairman Hamilton told Mr. Rider his packet is very complete. He asked Mr. Rider to just give an overview and we will go into the possible noise and odors that will be generated from this facility. Mr. Rider gave an over view of his project, he had given copies of his presentation to be put in the Board members packets. He went through the entire packet explaining how his business would be handled. He is the only employee so parking is not an issue. His hours of operation will be 9 to 5PM; there will not be any retail. His products are sold to surf shops throughout the State by e-mail or telephone. He also has a web site. He has spoken to Chris Barkalow, the Fire Marshall who visited the site and he also spoke to Sandy Ratz, the Construction Official at the Borough of Manasquan who said his system is sufficient. Board members asking questions or making comments were: Paul Rabenda, John Burke, Greg Love, and Mark Apostolou. He exceeds OSHA requirements. The fire suppression unit in the building is so old it is probably not working as he was told by the Fire Marshall. He therefore has to have an extinguisher in each room. He said he wants to be transparent with the Board. He was

asked to obtain a letter from the Fire Marshall stating this. Paul Rabenda will reach out to the Fire Marshall regarding the suppression system.

Mark Apostolou made a motion to open the meeting to the public, the motion was seconded by Paul Rabenda, all in favor none opposed.

Audience Members Coming Forward:

Paul Ward – 17 Wyckoff Avenue – his property adjourns the proposed shop. He was not opposed to the application.

Mark Apostolou made a motion to close the public portion of the meeting, seconded by Greg Love, all in favor none opposed.

Mark Apostolou made a motion to approve the application, the motion was seconded by Kevin Thompson.

Board Members Voting Yes:

Neil Hamilton, John Muly, Paul Rabenda, John Burke, Greg Love, Leonard Sullivan, Peter Ragan, Mark Apostolou, Kevin Thompson.

APPLICATION APPROVED

John Burke asked for a 5-minute recess.

Kevin Thompson recused himself from the next application as he owns property within 200-feet of the applicant.

Roll Call following recess – present:

Chairman Hamilton, John Muly, Paul Rabenda, John Burke, Greg Love, Leonard Sullivan, Peter Ragan, and Mark Apostolou.

APPLICATION #22-2014 – Drum, Erna – 29-31 Atlantic Avenue – Block: 37 – Lot: 5.02 – Zone: R-2 – The Chairman said this application is to remove a shed, install a two-car garage, it's a Use Variance. Mr. Cramer swore in Mrs. Erna Drum and her son John Roche who would be speaking on his mother's behalf. Mr. Roche gave a description of what his mother is planning to do at the site. Neil Hamilton asked if the applicant acquired the back section of the property from the Borough and the answer was yes in 1976 as it shows on the Survey that is the old railroad property. The existing structure was built in 1965 and was always a two-family. They plan to build a two-car garage which will meet all setbacks; they will remove the existing shed on the property and also add a small addition. Mrs. Drum wants to mirror the addition that she had put on the other side of the property which she received approval for from the Board. It will be a sun room, laundry services and a shower. The size of the addition is 248-square feet. Tom Neff said its 20-feet, 3-inches X 12-feet, 3-inches. Board members asking questions were: Rabenda, Burke, and Muly. Mr. Hamilton said this is a deminimus application they are just here because they have to deal with the Use Variance, he asked if the Board had any questions. Tom Neff said to make it clear for the Resolution, the letter said the driveway was 27-feet; it appears it's actually 32-feet; again it's pre-existing, non-conforming. John Muly made a motion to open the meeting to the public, motion seconded by John Burke, all in favor none opposed. There was no audience participation. John Muly made a motion to close the public portion, the motion was seconded by John Burke, all in favor none opposed. John Muly made a motion to approve the application, the motion was seconded by John Burke.

Board Members Voting Yes:

John Muly, Paul Rabenda, John Burke, Greg Love, Leonard Sullivan, Peter Ragan, Mark Apostolou and Neil Hamilton.

APPLICATION APPROVED

Leonard Sullivan made a motion to approve payment of the vouchers, motion seconded by John Burke, all in favor none opposed.

VOUCHERS APPROVED FOR PAYMENT

John Burke made a motion to approve the minutes of the Regular meeting of July 15, 2014; the motion was seconded by Mark Apostolou, all in favor none opposed.

MINUTES APPROVED

RESOLUTION #12-2014 – Brock, Matthew – 63 Rogers Avenue – Peter Ragan made a motion to memorialize the Resolution, the motion was seconded by Leonard Sullivan, all in favor none opposed.

RESOLUTION MEMORIALIZED

RESOLUTION #21-2014 – Stryke, Rosemary – 569 Trout Avenue – Leonard Sullivan made a motion to memorialize the Resolution, seconded by Greg Love, all in favor none opposed.

RESOLUTION APPROVED

The Chairman asked if there were any comments by Board members, the answer was no. He told them to save their paperwork from the first application for the next meeting and asked for an adjournment. Leonard Sullivan made a motion to adjourn, seconded by Greg Love, all in favor none opposed.

MEETING ADJOURNED AT 8:45PM

Respectfully Submitted,

**Mary C. Salerno
Planning Board Secretary**