

**CITY OF PLEASANTVILLE
PLANNING BOARD
RESOLUTION NO. 499 of 2006**

**RE: Frank Carpino
Property: Northeast Corner of
Delilah Road and Maxwell Lane
Block 193, Lots 1.01 & 1.02**

**Application for Waiver of Site Plan,
Determination of Validity of Prior
Approvals**

**GRANTED:
Hearing Date: October 3, 2006**

This matter having been heard by the Planning Board of the City of Pleasantville on the 3rd day of October, 2006, at the Municipal Building, Pleasantville, New Jersey, and the hearing having been conducted with a quorum present on the application as submitted by the Applicant; and

WHEREAS, the Applicant submitted an Application consisting of: (A) The appropriate Check Lists, (B) Typical floor plan prepared by Harry S Harper, Architect & Planner, (C) Topographic Survey by Stephen C. Martinelli, a professional and surveyor, (D) Existing Conditions/Site Plan Waiver Plan prepared by Steven L. Filippone, P.E. of Engineering Design Associates, P.A., (E) Original site plan for The Orchards, Section IV, submitted to the Planning Board in its meeting of May 2, 1989, and

WHEREAS, the Board received a Memorandum from the Board Planner dated September 18, 2006, her sworn testimony as well as the sworn testimony of the Board Engineer; and

WHEREAS, the Board considered the evidence presented on behalf of the Applicant through the legal argument of Richard M. Milstead, Esquire, of the Gruccio, Pepper, DeSanto & Ruth, P.A. law firm of Vineland, New Jersey; as well as the sworn testimony of Vincent

Orlando, licensed professional engineer, licensed professional planner, certified landscape architect who qualified as an expert and Frank Carpino, the Applicant, as well as from Richard Maxwell and Fernando Rosa, members of the public; and

WHEREAS, the Board made the following findings and conclusions which are reflected in the record.

FACTUAL FINDINGS

(1) The Applicant, Frank Carpino, is proposing to complete the construction of Section Four of the "The Orchards" consisting of five (5) buildings with a total of ninety-six (96) dwelling units at the existing location on the northeast corner of Delilah Road and Maxwell Lane.

(2) The site is referred to as Block 1931, Lots 1.01 and 1.02 as per the Tax Maps of the City Pleasantville. The overall site acreage equals 10.99 acres.

(3) The existing site conditions include the previously constructed Sections One through Three of "The Orchards" multi-family residential complex. The remaining Section four was previously started and abandoned due to prior issues and was never completed. The portions of the buildings that remain include the foundations and sub-surface infrastructure items.

(4) The project is located in the Multi-Family (MF) Residential Zoning District. Under §290-24.A(1), Multi-family residential housing units, consisting of apartments, townhouses, condominiums or public housing, units that are single-unit or multi-unit structures are permitted within the Zoning District.

(5) The City of Pleasantville, Land Development Application Review Committee, reviewed this project at their August 29, 2006 meeting at which time the Application was deemed Complete as a Waiver of Sit Plan, without Variances.

(6) Marked as A-1 in evidence was the Resolution No. (unnumbered) of 1989 of the Pleasantville Planning Board for the hearing date of May 2, 1989 re: The Orchards, Section 4 of Project, Delilah Road, Block 193, Lots 1.01 and 1.02.

(7) On or about October 1, 1985, a previous owner of the property obtained site plan approval for three hundred and fifty-one (351) units of which the subject property was a part. The first three (3) phases of that project were constructed and occupied. By virtue of Exhibit A-1, on May 2, 1989, the previous owner received Final Site Plan Approval for Section 4 of the property which is the subject of the instant Application. Building permits for this project were issued.

(8) Thereafter, substantial physical improvements to the property were made: access drives and parking areas, not paved, with only a gravel base, lighting, streets (with no final coat) and a storm water drainage system was constructed in accordance with plans submitted by Adams Rehmann and Hegan Associates, Inc. The infrastructure remained to this day and is operational, according to the Applicant's testimony.

(9) The Applicant testified that building permits were issued for the property and, in fact, construction was begun, including, but not limited to, the foundations for four (4) buildings as well as the beginning of at least one of the structures.

(10) Thereafter, a fire destroyed that structure. Certain bonded improvements had been installed. The Applicant testified that the bonds were released. This would need to be verified by the public records.

(11) Since the fire, the property has fallen into disuse, has become extremely unsightly, and the scene of criminal and other negative activities.

(12) Mr. Orlando testified that he had reviewed information and had a survey of the site

done. He further testified that this would be a non-rental age restricted property to those over fifty-five (55) years in age. This would create a positive impact in that there would be less traffic.

(13) Since becoming involved in the site, the Applicant, Frank Carpino, has cleaned it up, made repairs to certain aspects of it, cleaned out the drainage basin and placed continuous fencing around the property.

LAND USE

(14) As was stated above, the project is located in the Multi-Family Residential Zoning District. Under §290-24A(1) multi-family residential housing units are permitted in either single unit or multi-unit structures. Therefore, the property is a conforming use.

(15) Mr. Orlando testified that the bulk requirements for multi-family dwellings that were applied to the property in 1989 were consistent with the bulk requirements existing in the MF Residential Zoning District today.

LEGAL ISSUES

(16) A number of legal issues arose during the hearing as follows.

(17) The first legal issue was whether the previous Final Site Plan Approval granted by the Board on May 2, 1989 was still in effect. The Board determined, after hearing input from the Applicant's attorney, and the Board attorney, that, in fact, the approvals, under the law, were still in force and effect. The Board determined that any zoning change that had been made was more favorable to the project, rendering what was once a non-conforming use a conforming use.

(18) The Board determined that previous owners had, in fact, commenced construction at the property within one year after the determination of the Board of Adjustment in accordance with §290-71 of the granting of the use variance.

(19) The Board also found that any regulations regarding non-conforming buildings in use no longer applied to the property as it was a conforming use.

(20) The Board concluded, based upon N.J.A.C. 5:21-1.10, that the New Jersey Residential Site Improvement Standards and its amendments with regard to drainage did not apply as specifically this regulation exempted any property for which preliminary subdivision or site plan approval had been granted prior to June 3, 1997. In the present matter, Final Site Plan Approval had been granted on May 2, 1989.

(21) The Board concluded that the earlier approvals, therefore, for ninety-six (96) units in five (5) buildings were still valid.

ENGINEERING ISSUES

(22) The sole engineering issue to be determined by the Board was what responsibility the Board Engineer would have over anything constructed by the Applicant. The Board concluded that the Board Engineer was not in any way endorsing any of the previously installed improvements nor signing off on same. The Engineer was not approving in any way or endorsing in any way the previous Adams Rehmann and Heggan plan. The only responsibility of the Board Engineer, therefore, would be for anything additional to the initial site plan which the Applicant was agreeing to install as would be detailed below.

(23) Mr. Orlando testified that with regard to the storm drainage, either a homeowner's association or condominium association would be formed and that part of its responsibility would be to pay for the operation and maintenance of all the facility, storm water, streets, street lighting, etc. He further testified that the storm drainage system as originally designed was sufficient to handle the storm water burden of the proposed project and would be protective of the health, safety and welfare of the residents of this project.

(24) Mr. Orlando further indicated that because the sub-base for the interior roads of this project have been in for a long period of time, same would be inspected and any repairs made in anticipation of final paving.

(25) He also agreed to review the issue with regard to a site triangle on Delilah Road because of the placement of the fencing.

(26) The Board Engineer questioned whether an updated Letter of Interpretation (LOI) would be required from the NJDEP for the wetlands line. Mr. Orlando testified that an updated LOI was not required. The Board did not require the Applicant to obtain an updated LOI.

ADDITIONAL SITE MATTERS AGREED UPON

(27) The Applicant, on the record, indicated that he wished to voluntarily make certain changes to the site, which changes were not considered by the Board as an amendment to the earlier site plan, but as agreed upon improvements. The Board determined that each and every one of the agreed upon items would be a condition of this Resolution, such that the City Engineer would be required to inspect for each and every one for the purpose of making sure that all were installed. They are as follows.

(28) The Applicant will replace any and all damaged curb and sidewalk abutting the property.

(29) The Applicant will repair any damage to the storm drain found.

(30) The Applicant will install curbing and sidewalk along Delilah Road as necessary.

(31) The Applicant will conform to the landscaping plan contained in the Adams Rehmann Heggan plans.

(32) The Applicant's engineer will provide to the Board Engineer a certification that the storm water system was built in accordance with the plan that had been previously approved.

(33) The property would be an age restricted project for people fifty-five (55) years and over, which would be placed into the governing documents of either the homeowner's association or condominium association formed to manage this property as a private property.

(34) All streets within the property would be private.

(35) Each unit built would contain two bedrooms, no less.

(36) The Applicant agreed to update the zoning chart contained in the documents.

(37) The Applicant would bring in a structural engineer to survey the existing foundations. That would be done in accordance with the input of the City Engineer. Any found to be deficient would be required to be replaced. The Applicant also agreed to video all utility lines, i.e. the storm sewer, sanitary sewer, etc., for the purpose of determining whether any need to be replaced or repaired. This would be done, again, in accordance with the input of the City Engineer.

(38) ~~The Applicant would be required to seek approval from the Pleasantville County Department of Planning and Economic Development.~~

(39) The Applicant's expert testified as to the new place for the trash enclosures and the use of ninety-eight (98) gallon cans which would be required in this project.

(40) The Applicant lastly agreed to contact the Fire Chief of the City of Pleasantville for a determination by the Chief that the roadways were sufficient to handle emergency response vehicles and fire vehicles.

PLANNING ISSUES

(41) The Applicant agreed to amend the plan to provide for handicapped parking spaces as per the requirement of the Planner's Report, subsection (J).

(42) Mr. Orlando testified that the lighting fixtures on the proposed buildings would be

incandescent lighting.

(43) Mr. Orlando testified with regard to signage, that he would provide a signage detail to the Board Planner and, if necessary, come back to the Board for further approvals if same became necessary.

(44) The Applicant agreed to landscape around its trash enclosures which landscaping will have to be submitted to the Board Planner in advance and approved by her.

(45) The Applicant agreed to provide pedestrian access to Delilah Road from the interior of the site.

(46) With regard to architectural elevations, the Applicant agreed, on the record, in accordance with a graphic shown to the Board, that he would vary the color and materials of the exteriors of each building.

PUBLIC INPUT

(47) Mr. Richard Maxwell of 210 W. Delilah Road was sworn in and testified that he lives next store to this project, that the Applicant has substantially cleaned up the property and that he had no problem with the project.

(48) Mr. Fernando Rosa of 1523 S. 9th Street, Philadelphia, PA, was sworn in and testified that he was there for his mother who lives at 904 Florence Avenue. He indicated that he thought this would be a great improvement to the area. He further indicated that there are five (5) houses near the property that do not have water, including his mother's. In response, Mr. Orlando agreed that if in response to a petition to the New Jersey American Water Company it would agree to supply water to these five (5) homes, that the Applicant would agree to provide an easement for the water line across the Applicant's property to New Jersey American Water

Company to facilitate the providing of the water to these properties.

DECISION

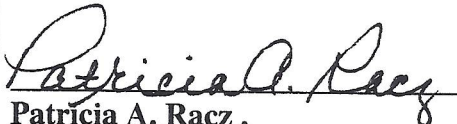
The Board, having considered the legal argument and the sworn testimony detailed above and having made the foregoing findings of fact and legal determinations, voted upon a resolution granting the Applicant's request for Waiver of Site Plan and Determination of Validity of Prior Approvals as set forth above, all in accordance with the determinations made in this Resolution and subject to all terms and conditions contained herein for the property known as Block 1921, Lots 1.01 & 1.02


MOTION BY: Vigue

VOTED TO APPROVE:

SECONDED BY: Harmon

Bell
Christmas
Gooding
Harmon
James
Vigue
Yarbrough
Chairman Bowman


Patricia A. Racz,
Secretary


DAVID C. BOWMAN,
Chairman