

~~IN THE MATTER OF~~  
APPLICATION NO. PB-719  
OF AMBOY ROAD ASSOCIATES, LLC  
BLOCK 39, LOT 11.01

~~RESOLUTION GRANTING~~  
DEVIATION FROM CONDITIONS  
OF FINAL MAJOR SUBDIVISION  
APPROVAL

WHEREAS, AMBOY ROAD ASSOCIATES, LLC, hereinafter the "Applicant", has proposed the development of property located at Monmouth County Route 537 and Lakeside Avenue in the Township of Colts Neck, County of Monmouth, and State of New Jersey, which property is further known and designated as Block 39, Lot 11.01 on the Tax Map of the Township of Colts Neck; and

WHEREAS, the Applicant previously applied for and received from the Planning Board of the Township of Colts Neck Preliminary and Final Major Subdivision Approval with Variances to subdivide an existing 17.57 acre parcel into seven (7) new lots with one (1) off-site affordable unit, following the Growth Share Provisions of the A-1 Zone, with variances for failure to provide a 150 foot scenic corridor easement along Lakeside Avenue (Lots 1 and 2), contrary to Chapter 102, Article VII, Section 102-70.1.B., and for failure to provide an open space dedication along Lakeside Avenue 75 feet in depth (Lots 1 and 2), contrary to Chapter 102, Article VII, Section 102-77.C.1. of the Colts Neck Township Development Regulations Ordinance; and

WHEREAS, the aforesaid Preliminary Major and Final Major Subdivision Approvals with Variances were granted by Resolutions of the Colts Neck Township Planning Board adopted February 9, 2016 and June 14, 2016, respectively; and

~~WHEREAS, Special Condition 3 of the Resolution dated June~~  
14, 2016 granting Final Major Subdivision Approval required that the Applicant secure final approval from the New Jersey

~~Department of Environmental Protection for an Unrestricted Use~~  
Remedial Action Order (RAO) prior to the signing of Final Major  
Subdivision Plat for filing and perfection of the subdivision;  
and

**WHEREAS**, the New Jersey Department of Environmental  
Protection has three (3) years from the filing of an RAO to  
decide whether to audit the file which would result in  
substantial delay in the Applicant perfecting the subdivision  
approval and the Applicant having requested permission to  
deviate from that condition of approval; and

**WHEREAS**, the subject property is located in the A-1 Zone  
District and single family residential homes with associated  
accessory structures are a permitted use in the Zone; and

**WHEREAS**, the Applicant appeared before the Planning Board  
of the Township of Colts Neck on August 9, 2016, due notice of  
said meeting having been given in accordance with New Jersey  
Statutes, the Open Public Meetings Act and the Municipal Land  
Use Law and a quorum of the Planning Board being present, the  
application was heard; and

**WHEREAS**, the Applicant's witnesses were sworn and the  
Planning Board having heard the testimony of the Applicant's  
witnesses and having examined the exhibits presented by the  
Applicant, and having considered all of the evidence presented  
in favor of or in opposition to the application, the Planning  
Board has made the following findings of fact:

1) ~~The Planning Board has received and reviewed the following documents, exhibits and reports:~~

1.1 Resolution granting Final Major Subdivision Approval with Variances, adopted June 14, 2016, marked as Exhibit A-1 in evidence.

1.2 Correspondence from Attorney Salvatore Alfieri, dated July 14, 2016 requesting a deviation from conditions of approval, marked as Exhibit A-2 in evidence.

1.3 Letter from Brinkerhoff Environmental Services, Inc. dated June 21, 2016, marked as Exhibit A-3 in evidence.

1.4 Report of Township Planner Tim Anfuso, dated August 5, 2016, marked as Exhibit A-4 in evidence.

1.5 Report of Colts Neck Fire Prevention Bureau, dated July 15, 2016, marked as Exhibit A-5 in evidence.

1.6 Report of Architectural Review Committee dated July 26, 2016, marked as Exhibit A-6 in evidence.

1.7 Email report of LSRP Supervising Scientist Rohan Tadas, dated August 3, 2016, marked as Exhibit A-7 in evidence.

2) The premises in question are located at the intersection of Monmouth County Route 537 and Lakeside Avenue in ~~the Township of Colts Neck, County of Monmouth and State of New~~

~~Jersey which property is further known and designated as Block 39, Lot 11.01 on the Tax Map of the Township of Colts Neck.~~

3) The subject property is located in the A-1 Agricultural Residential Zone District and the proposed use of the property for single family residential homes with associated accessory structures is a permitted use in the zone.

4) The Applicant was previously granted Preliminary and Final Major Subdivision Approval with Variances by Resolutions adopted February 9, 2016 and June 14, 2016, respectively, the contents of which are incorporated herein by reference.

5) The Resolution of June 14, 2016 contained Special Conditions including Special Condition Number 3 which provides "The Applicant shall secure final approval from the New Jersey Department of Environmental Protection for an Unrestricted Use Remedial Action Order (RAO) prior to the signing of the Final Major Subdivision Plat for filing and perfection of the subdivision."

6) The Applicant presented the testimony of Laura Brinkerhoff, an environmental scientist with thirty years of experience who has been a licensed site remediation professional (LSRP) since 2009 when the New Jersey Department of Environmental Protection (NJDEP) instituted that program. Ms. Brinkerhoff testified that she has submitted to NJDEP a request for audit and approval of an unrestricted use response action outcome (RAO) for the subject property approving her determination that ~~the elevated arsenic levels located on the subject property are~~

~~naturally occurring and do not require any remediation.~~ She testified that this request was made in March of 2016 and that NJDEP has a period of three years within which to decide whether to review and audit the report. She further advised that NJDEP has no required time frame within which to perform the audit except that if there is no audit performed within three years the RAO becomes final.

7) Ms. Brinkerhoff further testified that she has prepared one-hundred sixteen RAOs since the inception of the program. Of those one-hundred sixteen RAOs, only eight were audited by NJDEP and none of them have been invalidated. She further testified that since the inception of the program over eight thousand RAOs have been submitted to NJDEP and only nine of those have been overturned. She testified that she followed the NJDEP protocol strictly and conservatively and that there is little or no likelihood that it will be audited or that it will be overturned. She characterized the issues relating to the subject property as being extremely minor environmental issues.

8) The Board discussed its concern regarding persons who will purchase lots in this subdivision for their homes and that they would not have knowledge of the elevated arsenic levels in the soil. In response the Applicant offered to place within all of its Contracts a disclosure notice required to be initialed by any potential Buyer so that they will be aware, prior to entering into a contract for purchase, of the conditions of the property and that the RAO is subject to NJDEP review until March of 2019. The Planning Board further notes that pursuant to its ~~prior Resolutions the Applicant is required to record the RAO~~

~~with the Monmouth County Clerk to provide further notice of this issue.~~

9) As a result of the foregoing, the Planning Board finds that it is appropriate to permit the Applicant to deviate from Special Condition Number 3 of the June 14, 2016 Resolution and to permit the subdivision to be signed and filed with the County Clerk to perfect the subdivision. Consequently Special Condition Number 3 of the June 14, 2016 Resolution is hereby deleted subject to the conditions of this Resolution.

10) The Planning Board further finds that proper notice of the hearing of this application was provided in accordance with the requirements of New Jersey Statutes and the Municipal Land Use Law.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Colts Neck on this 13th day of September, 2016 that the application of **AMBOY ROAD ASSOCIATES, LLC** for deviation from Special Condition Number 3 of the Planning Board Resolution adopted June 14, 2016 be and is hereby approved, which approval shall be and is hereby expressly conditioned upon compliance with the following terms and conditions:

1. Except as modified herein, all conditions of all prior Resolutions in connection with this application shall be continuing conditions of this approval.

~~2. Special Condition Number 3 of the resolution of the~~  
Planning Board of the Township of Colts Neck adopted June 14,  
2016 is hereby deleted.

3. The Applicant shall place in all sale Contracts for  
Lots in the subdivision a disclosure notice to be initialed by  
the Contract purchaser as follows:

"DISCLOSURE: THE SOIL WITHIN THE SUBDIVISION IN WHICH THE  
SUBJECT PROPERTY IS LOCATED HAS ELEVATED CONCENTRATIONS OF  
NATURALLY-OCCURRING ARSENIC WHEN COMPARED WITH THE NJDEP  
RESIDENTIAL DIRECT CONTACT STANDARDS. AN UNRESTRICTED  
REMEDIAL ACTION OUTCOME (RAO) WAS ISSUED BY BRINKERHOFF  
ENVIRONMENTAL SERVICES, INC. DATED March 16, 2016 (SEE COPY  
OF RAO ATTACHED). THE NJDEP HAS UNTIL March 19, 2019 IN  
WHICH TO AUDIT THE RAO. THE NJDEP AUDIT MAY RESULT IN THE  
MODIFICATION OR REJECTION OF THE RAO.

INITIAL \_\_\_\_\_, Buyer

INITIAL \_\_\_\_\_, Buyer "

BE IT FURTHER RESOLVED that nothing herein shall excuse  
compliance by the Applicant with any and all other requirements  
of this Municipality or any other governmental entity.

BE IT FURTHER RESOLVED that a written copy of this  
Resolution certified by the Secretary of the Planning Board to  
~~be a true copy be forwarded to the Applicant, to the~~

Construction Code Official of the Township of Colts Neck and to the Code Enforcement Official of the Township of Colts Neck. A written copy of the certified Resolution shall also be filed in the office of the Administrative Officer of the municipality, which copy shall be made available to any interested party and available for public inspection during normal business hours.

BE IT FURTHER RESOLVED that a proper notice of this decision be published once in the official newspaper of the municipality or in a newspaper in general circulation within the Township.

OFFERED BY: Crossan

SECONDED BY: Corsi

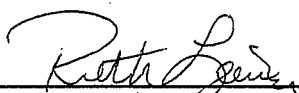
ROLL CALL:

YES: Robinson, Corsi, Crossan, Leccese,  
Lutkewitte, Powell and D'Eletto


NO: None

ABSTAIN: None

ABSENT: Kostka, Orgo, Fitzgerald and  
Singer-Fitzpatrick

  
\_\_\_\_\_  
Secretary, Planning Board  
Township of Colts Neck

I certify that the above is a true and exact copy of the Resolution adopted by the Planning Board of the Township of Colts Neck at its meeting held on September 13, 2016.

  
\_\_\_\_\_  
Secretary, Planning Board  
Township of Colts Neck