

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

RESOLUTION GRANTING
PRELIMINARY MAJOR
SUBDIVISION APPROVAL
WITH VARIANCES

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, Lots 11.01 on the Tax Map of the Township of Colts Neck; and

WHEREAS, the Applicant has applied to the Planning Board of the Township of Colts Neck for Preliminary Major Subdivision Approval with Variances to subdivide an existing 17.57 acre parcel into seven (7) new lots with one 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 a 50 foot dedication along Lakeside Avenue where 75 feet are required (Lots 1 and 2), contrary to Chapter 102, Article VII, Section 102-77.C.1. of the Colts Neck Township Development Regulations; 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 July 14, 2015, September 8, 2015, November 10, 2015 and January 12, 2016 respectively, due notice of said meetings 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 Development Application of Amboy Road Associates, LLC, dated May 27, 2015, marked as Exhibit A-1 in evidence.

1.2 Aerial Photograph of subject property, marked as Exhibit A-2 in evidence.

1.3 Preliminary Major Subdivision Plans for Block 39, Lot 11.01, prepared by Two River Engineering, dated April 10, 2015, revised May 29, 2015, consisting of 11 sheets marked as Exhibit A-3 in evidence.

1.4 Concept Plan #1 for Lucas Major Subdivision for Block 39, Lot 11.01, prepared by Two River Engineering, dated June 2, 2015, revised June 4, 2015, consisting of 1 sheet marked as Exhibit A-4 in evidence.

1.5 Shade Tree Commission Report, dated June 4, 2015,
marked as Exhibit A-5 in evidence.

1.6 Architectural Review Committee Report, dated April 28,
2015, marked as Exhibit A-6 in evidence.

1.7 Report of Township Health Officer, dated April 15,
2015, marked as Exhibit A-7 in evidence.

1.8 Report of Colts Neck Fire Prevention Bureau, dated
April 17, 2015, marked as Exhibit A-8 in evidence.

1.9 Report of Planning Board Engineer Gerken, dated June
5, 2015, marked as Exhibit A-9 in evidence.

1.10 Report of Township Planner Tim Anfuso, dated June 4,
2015, marked as Exhibit A-10 in evidence.

1.11 Boundary & Topographic Survey, prepared by Morgan
Engineering & Surveying, dated March 12, 2015, marked as
Exhibit A-11 in evidence.

1.12 Stormwater Management Report, prepared by Two River
Engineering, dated March 3, 2015, marked as Exhibit A-12 in
evidence.

1.13 Packet of various deeds of easement and agreements
filed with the Monmouth County Clerk, marked as Exhibit A-
13 in evidence.

1.14 Supplemental Report of Township Planner Tim Anfuso, dated July 9, 2015, marked as Exhibit A-14 in evidence.

1.15 Concurring e-mail of Engineer Gerken, dated July 9, 2015, marked as Exhibit A-15 in evidence.

1.16 Report of Health Officer Frank, dated June 8, 2015, marked as Exhibit A-16 in evidence.

1.17 Environmental Commission Report, dated June 5, 2015, marked as Exhibit A-17 in evidence.

1.18 Mounted Tax Map, prepared by Two River Engineering, showing subject property and surrounding properties, marked as Exhibit A-18 in evidence.

1.19 Existing Conditions Exhibit, dated April 10, 2015, revised May 9, 2015, of Plan Sheet #2, prepared by Two River Engineering, marked as Exhibit A-19 in evidence.

1.20 Photo Board with twelve 8.5" x 11" photographs (six on each side) marked as Exhibit A-20 in evidence.

1.21 Conforming Concept Plan with six lots, revised July 5, 2015, marked as Exhibit A-21 in evidence.

1.22 Color rendered Sheet #4 of 11, prepared by Two River Engineering, dated April 10, 2015, revised May 29, 2015, marked as Exhibit A-22 in evidence.

1.23 Preliminary Major Subdivision Plan, prepared by Two River Engineering, dated April 10, 2015, revised August 20, 2015, marked as Exhibit A-23 in evidence.

1.24 Historic Pesticides Analysis Report, prepared by Two River Engineering, dated August 6, 2015, marked as Exhibit A-24 in evidence.

1.25 Report of T&M Associates, dated September 1, 2015, marked as Exhibit A-25 in evidence.

1.26 Report of Township Planner Tim Anfuso, dated September 3, 2015, marked as Exhibit A-26 in evidence.

1.27 Report of Township Health Officer Frank, dated August 28, 2015, marked as Exhibit A-27 in evidence.

1.28 Report of Environmental Commission, dated August 31, 2015, marked as Exhibit A-28 in evidence.

1.29 Report of Colts Neck Fire Prevention Bureau, dated September 4, 2015, marked as Exhibit A-29 in evidence.

1.30 Color Rendered Revised Landscape Plan, prepared by Two River Engineering; marked as Exhibit A-30 in evidence.

1.31 Site Plan with Boring Sample Locations, prepared by Two River Engineering, revised November 10, 2015, with handwritten revisions of LSRP Zingis, marked as Exhibit A-31 in evidence.

1.32 Air, Land & Sea Environmental Management Services Inc. Report, dated November 9, 2015, marked as Exhibit A-32 in evidence.

1.33 Brinkerhoff Environmental Assessment, dated December 31, 2015, marked as Exhibit A-33 in evidence.

1.34 Report of Colts Neck Environmental Commission, dated January 6, 2016, marked as Exhibit A-34 in evidence.

1.35 Report of T&M Associates, dated January 7, 2016, marked as Exhibit A-35 in evidence.

1.36 Three Historic Aerial Photographs of subject property, dating to the 1930s, marked as Exhibit A-36 in evidence.

1.37 Enlarged Aerial Photograph showing soil sample locations, marked as Exhibit A-37 in evidence.

1.38 Five mile radius soil survey map for Monmouth County, marked as Exhibit A-38 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 subject property is a 17.57 acre parcel developed with an existing horse farm. The proposed subdivision is an "inclusionary development" pursuant to the Growth Share Provisions of the Ordinance. Thus a 40 percent density increase is permitted with an Affordable Housing set aside at 20 percent. This yields a total of eight (8) lots consisting of seven (7) market rate lots and one (1) Affordable Housing lot which will be provided off-site. The application initially required a significant number of variances. During the course of the application the plans were revised reducing the variances to two. The first variance is for not providing a 150 foot scenic corridor easement along Lakeside Avenue (Lots 1 and 2) as required by Section 102-70.1.B. of the Colts Neck Township Development Regulations Ordinance. The second variance is for providing only a 50 foot dedication along Lakeside Avenue where 75 feet are required (Lots 1 and 2), contrary to the provisions of Section 102-77.C.1. of the Colts Neck Township Development Regulations.

5) The Applicant presented the testimony of A. J. Garito, a Licensed Professional Engineer in the State of New Jersey, and John Zingis, a Licensed Site Remediation Professional, with a Bachelor of Environmental Science Degree, who has worked in the environmental field since 1983, and has been licensed by NJDEP

as an LSRP since 2012. Mr. Garito testified as to the existing conditions of the property. The subject parcel is primarily an open space horse farm area. It is the last developable lot on Lakeside Avenue. He noted that no other properties on Lakeside Avenue have a scenic corridor easement and that to impose the scenic corridor upon the subject property would be inappropriate insofar as the corridor would not connect to a similar corridor on any other properties. Mr. Garito reviewed the reports of the Planning Board's Engineer and Planner and agreed on behalf of the Applicant that all of the technical recommendations set forth in the report of the Planning Board's Engineer would be addressed and complied with. He also agreed to comply with the technical recommendations set forth in the supplemental report of the Planning Board Engineer dated September 1, 2015. He also agreed to comply with the recommendations set forth in the Planning Board's Planner's report of June 4, 2015, including specifically paragraphs 7 through 25, including the location of trees and proposed buildings to improve the aesthetic appearance. He also agreed that the Applicant will comply with the technical recommendations set forth in Mr. Anfuso's report of September 3, 2015.

6) The Planning Board finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested variance relief. The Planning Board notes that, due to the unique location and shape of the property, it is not possible to design a subdivision and maintain the easement as it would prevent Lots 1 and 2 along Lakeside Avenue from having useable rear yard space for accessory structures. The Planning Board finds that the foregoing circumstances create a hardship

upon the Applicant. Moreover, the Planning Board finds that it is a better planning result to have the 50 foot wide dedication to the Township of Colts Neck which prevents new Lots 1 and 2 from becoming corner or through lots and increases the available area for accessory structures. Moreover, the Planning Board notes that a 25 foot landscape easement has been added along the rear of Lots 3 through 7 to compensate for the reduced buffer along Lakeside Avenue. The Planning Board finds that this is a better planning result and the positive criteria have been demonstrated for those variances.

7) The Planning Board further finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief. The Planning Board finds that the 50 foot dedication along Lakeside Avenue will be left to naturally re-vegetate and will provide a pleasing rural, scenic atmosphere along Lakeside Avenue. Thus, there will be no substantial detriment to the public good. Nor will there be any impairment to the Zone Plan or Zoning Ordinance insofar as no other properties along Lakeside Avenue maintain a 150 foot scenic corridor.

8) The Planning Board notes that the Applicant provided a report demonstrating elevated levels of arsenic. Mr. Zingis submitted his report as representative of Air, Land & Sea Environmental Management Services Inc., dated November 9, 2015, and the Applicant subsequently provided additional supplemental information from Brinkerhoff Environmental services and the testimony of its principal, Laura Brinkerhoff, a certified professional Geologist for over 30 years and a licensed LSRP.

The Board's professionals have examined this information and advised that they agree with Mr. Zingis' and Ms. Brinkerhoff's conclusion that the arsenic on the property is naturally occurring rather than created by manmade pesticides. Notwithstanding that the NJDEP does not require a remediation plan for arsenic naturally occurring on site, the Planning Board remains concerned as to the safety of the potential residents of the subdivision.

9) Ms. Brinkerhoff testified that her company is now in the process of securing a Remedial Action Outcome (RAO) which she characterized as the current equivalent of the No Further Action (NFA) letters previously issued by the New Jersey Department of Environmental Protection for remediation of a site. She advised that the Applicant would go through the entire process with NJDEP, initiating an RAO and obtaining an NJDEP audit and approval for an "Unrestricted Use (RAO)". That document will be filed with the Municipality and the Applicant further agreed to record that document in the Monmouth County Clerk's Office with a Developer's Agreement so that any subsequent purchasers of the property would be placed on notice of the arsenic condition, which, pursuant to current NJDEP Regulations, does not require any remediation insofar as the arsenic is naturally occurring in the soils.

TBD

10) The Planning Board finds that the Applicant has submitted a plat and such other information as is reasonably necessary to make an informed decision as to whether the

requirements necessary for preliminary approval have been met.

The Planning Board finds that the grant of preliminary approval for the proposed subdivision is appropriate at this time, subject to the terms and conditions set forth herein.

11) The Planning Board further finds that all property owners within 200 ft. of the premises in question were given proper notice of the hearing of this application and were provided with an opportunity to present testimony in support of or in opposition to the appeal.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Colts Neck on this 9th day of February, 2016 that the application of **AMBOY ROAD ASSOCIATES, LLC** be and is hereby approved, which approval shall be and is hereby expressly conditioned upon compliance with the following terms and conditions:

GENERAL CONDITIONS -

1) This approval is subject to the accuracy and completeness of the submissions, statements, exhibits and other testimony filed with, or offered to, the Board in connection with this application, all of which are incorporated herein by reference and specifically relied upon by the Board in granting this approval. This condition shall be a continuing condition subsequent which shall be deemed satisfied unless and until the Board determines (on Notice to the Applicant) that a breach hereof has occurred.

2) In the event that any documents require execution in connection with the within approval, such documents will not be released until all of the conditions of this approval have been satisfied unless otherwise expressly noted.

3) No taxes or assessments for local improvements shall be due or delinquent on the subject property.

4) The Applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality's professionals for review of the application for development, review and preparation of documents, inspections of improvement and other purposes authorized by the Municipal Land Use Law. The Applicant shall provide such further escrow deposits with the municipality as are necessary to fund anticipated continuing municipal expenses for such professional services, if any, in connection with the Application for Development as may be authorized by the Municipal Land Use Law.

5) The Applicant shall furnish such Performance Guarantees and/or Maintenance Guarantees as may be required pursuant to the Municipal Land Use Law and the Ordinances of this Municipality for the purpose of assuring the installation and maintenance of on-tract/off-tract improvements.

6) ~~No site work shall be commenced or plans signed or released or any work performed with respect to this approval until such time as all conditions of the approval have been satisfied or otherwise waived by the Board.~~

7) Any and all notes, drawings or other information contained on any approved plans shall be conditions of this approval.

8) Nothing herein shall excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental entity. This approval is conditioned upon compliance by the Applicant with all Ordinances and Regulations of this Municipality.

9) In the event any de minimis exception has been granted from the Residential Site Improvement Standards Regulations in connection with this application, a copy of this resolution shall be sent to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Board Street, CN 802, Trenton, New Jersey 08625-0802 within thirty (30) days of the date hereof. Said copy of this resolution shall be clearly marked on its face with the words "SITE IMPROVEMENT EXCEPTIONS".

10) In the event that the Applicant and the approving authority have agreed that exceeding a standard of the Residential Site Improvement Standards is desirable under the specific circumstances of the proposed development, such Agreement to Exceed RSIS Standards shall be placed, in

writing, by the developer and transmitted forthwith to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, CN 802, Trenton, New Jersey 08625-0802.

11) The Applicant shall comply with the contribution requirements of the Municipal Affordable Housing Fund as applicable to this application.

12) In the event that this Application involves a subdivision or site plan, such subdivision or site plan shall expire at the conclusion of the period of protection from zoning changes provided for in N.J.S.A. 40:55D-49 or 40:55D-52.a, as applicable, and in no event shall extend beyond the fifth anniversary of the date of adoption of this resolution.

13) In the event that this approval involves the approval of a subdivision, the Applicant shall provide to the Board Engineer and attorney for review and approval, deeds for each of the lots created and shall file such deeds simultaneously with the recording of any subdivision plat.

14) All special conditions shall be included as notes on the plans.

15) All general and special conditions set forth in this Resolution shall be placed as notes on the approved plans as a Resolution compliance requirement.

16) The Applicant shall comply with the requirements of the Municipal Ordinances with respect to its Affordable Housing obligation by either providing the required affordable housing on-site, providing affordable housing off-site or making a contribution of an Affordable Housing fee pursuant to the applicable Municipal Ordinances. This approval is subject to the Applicant paying all applicable fees, including any fee due and owing to the Municipality's Affordable Housing Trust Fund.

17) This Resolution does not constitute a permit for the construction of the approved improvements. The Applicant shall be responsible for obtaining any and all permits and approvals required prior to the commencement of any development activities including, but not limited to, N.J.D.O.T., N.J.D.E.P., Monmouth County Planning Board, Freehold Soil Conservation District, Regional and/or Municipal Utility Authority approval, in addition to any and all building and construction permits, required by the Municipality. All work performed shall be in accordance with, and shall not deviate from, the approved plans and all applicable Federal, State, County and Local laws, rules and regulations.

18) As an essential and non-severable condition of this approval, the Applicant shall comply with all Mount Laurel obligations and shall comply with the Municipality's approved Housing Element and Fair Share Plan including but not limited to, any associated implementing Ordinances.

SPECIAL CONDITIONS -

1. The following relief is granted as part of this application:

a. Preliminary Major Subdivision Approval pursuant to and consistent with the Subdivision Plan prepared by Two River Engineer, dated April 10, 2015, revised through August 20, 2015.

b. Variance for not providing a 150 foot scenic corridor easement along Lakeside Avenue on Lots 1 and 2 (Section 102.70.1.B.).

c. Variance for providing a 50 foot dedication along Lakeside Avenue where 75 feet are required for Lots 1 and 2 (Section 102-77.C.1.).

2. The following conditions will govern the off-site affordable lot:

a. Since the growth share calculation generates an affordable housing obligation of 1.6 lots, Section 102-46.6.C.4. requires a fractional share contribution of \$91,336.20 ($\$152,227 \times 0.6 = \$91,336.20$). This must be paid prior to the recording of the Final Plat.

b. The affordable unit will have to be delivered prior to the issuance of the fourth new certificate of occupancy (Section 102-46.6.C.8.)

c. The affordable unit will have to comply with all requirements of Section 102-97.1, Lower Income Housing for New Inclusionary Developments, Housing, Affordable in Section 139 of the Colts Neck Township Code, COAH's third round rules at N.J.A.C. 5:97.1. et seq., and the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.

d. The affordable unit must be designated as a low income unit.

e. Deeds describing the terms and conditions of the 30 year affordability controls and a mortgage lien for the affordable unit need to be approved by the Planning Board Attorney, Engineer and Planner.

3. The Applicant shall comply with the technical recommendations set forth in the reports of the Planning Board's Engineer, dated June 5, 2015, and September 1, 2015, marked as Exhibits A-9 and A-25, respectively.

4. The Applicant shall comply with the technical requirements set forth in the reports of the Planning Board's Planner, dated June 4, 2015, July 9, 2015 and September 3, 2015, marked as Exhibits A-10, A-14 and A-26, respectively.

5. The Applicant shall initiate and submit an RAO to NJDEP and obtain NJDEP audit and approval of the RAO. The RAO must be an "Unrestricted Use RAO".

6. The Applicant shall place a notice on the plat with respect to the arsenic levels and the RAO.

7. The Applicant shall file the final "Unrestricted Use RAO" with the Township of Colts Neck.

8. The Applicant shall record the final "Unrestricted Use RAO" in the Monmouth County Clerk's Office.

9. The detention basin shall be encompassed by a drainage easement dedicated to the proposed Homeowners Association and the Township of Colts Neck.

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: Robinson

SECONDED BY: Corsi


ROLL CALL:

YES: Kostka, Robinson, Orgo, Corsi, Crossan and
Leccese

NO: None

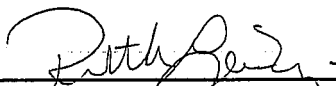
ABSTAIN: None

ABSENT: None



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 February 9, 2016.



Secretary, Planning Board
Township of Colts Neck