

**MINUTES OF THE TOWNSHIP OF MENDHAM PLANNING BOARD  
REGULAR MEETING HELD February 19, 2020**

Chairman Giordano called the meeting to order at 7:30 p.m. and asked for roll call. Upon roll call:

**ROLL CALL**

**PRESENT:** Mr. Baio, Mr. Monaghan, Ms. DeMeo, Mr. Johnson, Mr. Maglione,  
Chairman Giordano  
**ABSENT:** Mr. D'Emidio, Mr. Perri, Mr. Mayer,  
**Others present:** Mr. Dennis Keenan, Mr. Edward Buzak

**SALUTE THE FLAG**

**ADEQUATE NOTICE** of this meeting of the Mendham Township Planning Board was given as follows: Notice was sent to the Daily Record and the Observer Tribune on January 10, 2019 and Notice was filed with the Township Clerk on January 10, 2019

This meeting is a quasi-judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the Board may legally consider in reaching a decision and decorum and civility appropriate to a quasi-judicial hearing will be maintained at all time.

**MINUTES**

A motion was made to approve the December 18, 2019 and January 15, 2020 minutes, and it was seconded. All agreed.

**RESOLUTION – PB 20-3**

Pitney Farm Development, LLC  
Ballantine Road  
Block 131.01, Lots 1.02 & 1.03  
Major Preliminary and Final Subdivision

Mr. Buzak stated that this is a resolution memorializing the granting of Preliminary and Final Subdivision approval with variances and exceptions for the Pitney Farm subdivision and that it incorporates all of the conditions that were described at the previous meetings. It has been reviewed by all of the professionals, and their comments have been incorporated into the resolution. Mr. Buzak went on to say that he received a copy of an email from Ms. Foley that Mr. Maglione had sent to the Board members regarding two suggestions related to two of the conditions that are in the resolution.

Mr. Buzak began to address Mr. Maglione's second suggestion, which is identified under Condition K (Page 13) in the resolution. A variance was granted for excluding the floor area of garages in the floor area calculation, and this condition provides a prohibition on converting any of this space to livable space. Mr. Maglione suggested that the maximum allowable building area agreed to during the proceedings and the language which defines what constitutes this area should be recorded into the individual deeds for the lots so that each individual homeowner is made aware of the fact that this condition exists. Mr. Buzak opined that this is a good idea and that this was done in a prior resolution of another application that came before the Board with a

similar provision. Based upon Mr. Maglione's comments, Mr. Buzak read the language that he suggests be added to Condition K and asked that the Board consider amending the resolution before them to include this language.

Mr. Buzak then addressed Mr. Maglione's first suggestion, which is identified under Item J in the resolution. Item J relates to the condition that the applicant provide to the satisfaction of the Board attorney and engineer proof that the applicant can, in fact, discharge stormwater into the detention basin owned and operated by the Pitney Farm Estates Homeowner's Association. He went on to say that the applicant's position was that the proposed property would be draining into an existing Township-owned pipe and where this eventually drains into is not the applicant's concern. In light of the questions raised as to whether the right exists to drain eventually into the Pitney Farms Estate HOA detention basin, Mr. Maglione suggested that a condition be added whereby the applicant is required to provide proof that he can do this. Mr. Buzak continued to read Mr. Maglione's request in his email regarding Item J, and he stated that drainage is a critical factor in any subdivision application; however, he opined that the Board should not become involved in any negotiations that are occurring between private parties with regards to formulas and limitations. The detention basin is not a public detention basin but a private detention basin. Had it been a public detention basin it would not be in the resolution as a condition at all. Mr. Buzak continued to opine that it is not in the Board's jurisdiction to begin creating parameters for negotiations between private parties.

Mr. Maglione referred to his email with his suggestion regarding Condition K. He stated that the maximum allowable building area agreed to during the proceeding and the language which defines what constitutes this area should be recorded into the individual deeds for the lots in order to eliminate any future uncertainty. He opined that this is an easy way to track the restriction of each house on each individual lot. It will also ensure that future zoning officers will have this information.

Mr. Maglione then referred to his first suggestion in his email, which refers to Condition J, which would define the formula that establishes the cost with the HOA for accepting this discharge, if in fact the applicant does have the ability to discharge into the Pitney detention basin. He went on to say that perhaps this is something that can be included in the Developer's Agreement since it has been through his own experience that there can be potential unnecessary conflict regarding fees between the HOA and the developer. This would be more of a protection for the applicant than for the municipality since the municipality has no jurisdiction. Mr. Maglione went on to say that with this application there seems to be some disconnect between some of Mountainview residents and the applicant's views regarding this matter.

Mr. Buzak went on to say that he did send the resolution to the applicant's attorney, Mr. Cerminaro, who called him and expressed his concerns about this very provision related to the Pitney Farm detention basin. He stated that Mr. Cerminaro was of the position that there should be no condition with regards to this in the resolution. His position from the outset was that this development is connecting to a public drainage line and where this ultimately leads is not the applicant's concern and should not be addressed at all. Mr. Buzak told Mr. Cerminaro that it was his understanding that this was a concern of the Board and that this type of condition would be put in the resolution. He stated that he told Mr. Cerminaro that he would be welcome to attend the meeting and raise this issue before the Board. Mr. Buzak stated that it should be part of the record that he does not advocate this either way but that the issue was raised before the Board at this meeting. Mr. Monaghan opined that he is an advocate for this condition and that the Board should not become involved with how the HOA and developer would come to an agreement with regards to discharging drainage into the detention basin but that an agreement should be reached between the two entities.

Mr. Monaghan raised the issue of Condition K in the resolution with regards to the maximum allowable building area. Mr. Buzak stated that the ordinance requires that the garage space be included in the calculation to determine the square footage. The applicant had a coverage issue and wished that the garages not be included so that they can meet the coverage requirements because if the garages were included, the coverage would be exceeded and would require a variance. To avoid this, the applicant wished to exclude the garages from the calculation. Mr. Keenan stated that he was in favor of individual deeds for each house and lot in order to track this restriction and that the garage is not included in the calculation. Mr. Buzak went on to say that if the garage square footage is not included in the calculation then the house can be a certain amount of square feet. If the homeowner wishes to reach the maximum allowable number of square feet for their house, the homeowner would have to add onto the house. The garage cannot be used as an expansion for livable space. Mr. Keenan stated that the applicant only stated the allowable maximum size of the living area of the house, which does not include the garage, and there was some further discussion regarding the use of the garage as livable space. Mr. Buzak continued to say that if the applicant had to include the square footage of the garage in the calculation per the ordinance, then the actual house would be smaller than the houses in the area (since they were built before the ordinance or perhaps obtained variances etc.). As a result, the applicant had two choices. He could obtain a variance to exceed the allowable square footage; however, because of the fact that the houses were not designed yet, the applicant was unable to do this. The other choice was to exclude the garages from the calculation, which would allow the houses to be the approximate same size of the houses in the area since the garages were excluded. Since this was the path the applicant chose, then the garage, which is now excluded, cannot be turned into more livable space. The consequence of the decision to do this is that the homeowner would need to obtain relief through a variance to use the garage as livable space. Mr. Buzak also clarified that the applicant's attorney had no concerns regarding the exclusion of the garages from the calculation and any future requirements should a future homeowner wish to expand the garage into livable space

Mr. Buzak stated that there are four members present who can vote on the resolution.

Chairman Giordano entertained a motion to approve, as amended, Resolution PB-20-03 memorializing the granting of both Preliminary and Final Major Subdivision approval with certain variances and exceptions in connection with Block 131.01, Lots 1.02 and 1.03 otherwise known as Pitney Farm Development, LLC. Mr. Monaghan made a motion, and Mr. Johnson seconded the motion. Upon roll call:

AYES: Mr. Monaghan, Ms. DeMeo, Mr. Johnson, Mr. Maglione,

Chairman Giordano entertained a motion to open the meeting to the public. A motion was made, and it was seconded. All agreed.

Mr. Peter Dumovic of 12 Shelton Road approached the microphone. He read his comments dated February 19, 2020 to the Board, and his comments were submitted as part of the record.

Mr. Monaghan referred to Mr. Dumovic's third comment regarding access to the site. He stated that Cold Hill Road access runs over open space property so this cannot be used to access the private property that the developer owns. It is his understanding that the developer would need to access the property via Ballantine Road.

Mr. Johnson stated that as Chief he reached out to the developer to ensure that he is informed of the Township's noise ordinances as well as making sure that he is aware of the fact that his only

access is through Ballantine Road and not via Cold Hill Road. He will continue to monitor this and will meet with the developer again at some point in the future when the project commences.

Chairman Giordano pointed out that the Planning Board has no jurisdiction over the architectural design of the homes.

Chairman Giordano entertained a motion to close the meeting to the public. A motion was made, and it was seconded. All agreed.

Chairman Giordano entertained a motion to adjourn the meeting at 7:58 pm. A motion was made, and it was seconded. All agreed.

Respectively Submitted,

Beth Foley  
Planning Board Secretary