

**A REGULAR MEETING OF THE PLANNING BOARD OF THE TOWNSHIP OF SANDYSTON, COUNTY OF SUSSEX, STATE OF NEW JERSEY WAS HELD ON MONDAY, NOVEMBER 7<sup>th</sup>, 2016 AT THE MUNICIPAL BUILDING BEGINNING AT 7:00 P.M.**

Chairman Utter called the meeting to order. This meeting has been advertised in accordance with the Open Public Meetings Act by advertising notice of the meeting in the N. J. Herald and posting copy of the notice in the Sandyston Township Municipal Building.

**Roll Call:**

Messrs. Harper, Green, Powers, Smith, Pinzone, Cunico, Sinha and Utter  
Absent: MacDonald, Huber, Milligan

**ALSO PRESENT:** Glen Gavan, Board Attorney

**MINUTES:**

**A MOTION** was made by Mr. Cunico, seconded by Mr. Pinzone to approve the minutes of the meeting held on August 1<sup>st</sup>, 2016. Upon roll call the following votes were cast:  
AYES: Green, Powers, Smith, Pinzone, Cunico, Sinha and Utter. NAYS: None.  
ABSTAIN: Harper.

**VOUCHER REPORT:**

**A MOTION** was made by Mr. Cunico, seconded by Mr. Pinzone to approve the November 7<sup>th</sup>, 2016 voucher report. Upon roll call the following votes were cast:  
AYES: Harper, Green, Powers, Smith, Pinzone, Cunico, Sinha and Utter. NAYS: None. ABSTAIN: None.

**CRISCUOLI & GAVAN, LLC**

**General:** None.

**Escrow:** None.

**H.E. PELLOW & ASSOCIATES, INC**

**General:** None.

**Escrow:**

Invoice # 63131 – Petroleum Marketing Group – Concept Review # 02-2016	\$97.50
Invoice # 63130 – YMCA of Newark for Camp Linwood MacDonald - # 03-2016	\$454.00
Invoice # 63433 – Tamara Beckentahl - # 02-2015A	\$260.00

**CORRESPONDENCE:**

Nadine Lyons dated 9/27/16 – request for updated extension of Private Road Variance & “C” Variance #10-2007 – block 503 lot 9 was presented to the Board. It was understood that this is the second request for extension due to illness, the first

A MOTION was made by Mr. Harper, seconded by Mr. Cunico to approve an extension of two years to commence from the date of this meeting. Upon roll call the following votes were cast: AYES: Harper, Pinzone, Cunico, Green, Sinha, Powers, Smith and Utter. NAYS: None. ABSTAIN: None. Motion carried.

Ms. Beckenthal then began to remind the Board of the conditions #6 & #7 of the original resolution. Which reads as follows:

*#6. The applicant will be required to maintain the roadway in front of her home as required by the statute for access of emergency vehicles.*

*#7. The applicant will present a deed for the property she currently owns across from her residence (Block 3003, Lot 1) with an appropriate deed restriction that same cannot be furthered developed or subdivided. Said deed restriction must be acceptable to the Board, Atty. in form and content.*

Mr. Gavan, addressing condition #6, asked if the road was a town road. Ms. Beckenthal stated it was not a town road. Mr. Gavan asserted that the law requires that residents who reside on a private road are required to maintain it by New Jersey Statute.

Mr. Cunico attempted to make clear that the requirement is to make sure the Township does not assume responsibility should emergency response not be able to access a property due to the roadway not being maintained.

Ms. Beckenthal suggested that this situation does not fit under the requirement of the Statute in that in her deed she has a right of way, not a private road. She explained she has found nothing in her research of public records to suggest that she is on a private road. She continued to explain that her right of way extends from a public road to another private road and that the right of way is through the U.S Government property.

Mr. Gavan explained that the approval of the home build was a variance in and of itself in that placing a residence on a non-public road is not permitted so relief is required to do that and the only requirement is that the road be maintained for the access of emergency vehicles.

Ms. Beckenthal explained that her concern was that she didn't want to be responsible for anyone going down that road and getting hurt. She felt that shouldn't be her liability.

There was additional discussion explaining that the concern for her well-being and that of emergency personnel is paramount. That the variance isn't about her improving the road, rather to just to keep it clear and that since the conditions stay with this property the Board has an obligation to think into the future of the ownership.

Faith Zimmerman, of Zimmerman Architects was sworn in and entered into the discussion.

Ms. Beckenthal asked what the process is when a town has historically maintained a private road as she has evidence that road has been maintained by the township as recently as this past year. It was explained that maintenance is a matter for the Sandyston Township Committee.

Coming back to the issue of condition #6, the private road; Ms. Beckenthal had expressed her concern with liability should someone get hurt. She testified that people drive down that road to seek access to the Delaware River and swing around on her empty lot to turn around.

Mr. Harper expressed concern regarding the removal of condition #6 as it addresses the ability of emergency personnel to access the property and that the necessity of the variance requirement is to protect the Township and those emergency personnel who may be at risk. Ms. Beckenthal acknowledged that concern.

Ms. Beckenthal then mentioned a meeting of the Sandyston Township Committee on March 9<sup>th</sup>, 2010 which she attended and entered into evidence the minutes of the meeting held on 3/9/10 marked as Exhibit A-2. At the time of that meeting Ms. Beckenthal was considering purchasing the property and testified that she was assured that the Township maintains the road. Mr. Harper thought perhaps the Township does do that. Mr. Gavan stated that may not always be the case and it would be still be appropriate to, at a minimum include something in the deed that says it's a non-public road and it may not have to state who maintains it.

Mr. Utter expressed his understanding the applicants desire to keep the property unencumbered and out of the hands of the government. However, testimony provided has revealed the property to be landlocked and from a Planning Board perspective, regardless of conversations with the Township Committee, it doesn't change the absolutes that have to be resolved with the Planning Board. He continued to explain that she is able to renovate the structure as is, but when you take the building down and start of anew, that is what is creating the issues at hand. This issue now becomes, how does the Planning Board allow new construction on a landlocked property?

The Board continued to contemplate the requirement for a private road variance. Mr. Gavan having researched the Statute and read the requirement, "NJSA 40:55D-35 requires that no permit for the erection of any building or structure shall be issued unless the lot abuts a street giving access to such proposed building or structure. The street which the lot must abut must either be a street shown on an official map or an existing street or a street shown on a plat approved by the planning board or a street shown on a plat filed in the office of County recording officer prior to an ordinance requiring approval of plats. Additionally, before any street can be issued the street must be certified to be suitably improved in accordance to the standards and specifications for road improvements approved by the governing body. These standards for road improvements are most often found in the municipal subdivision." "Also, it must be shown that the roads access conforms with the access management code adopted by the commissioner of transportation for State roads, County roads and by the municipality for municipal roads. If the developer proposes to erect a structure that does not comply with the above requirements then the Planning Board must obtain by filing of appeal in accordance with this section. There are two criteria for the approval for planning variances to permit construction on a lot which does not abut a street. The first criteria requires proof either that the enforcement of the requirement of fronting on a street would entail practical difficulty or unnecessary hardship or that the particular case does not require the building or structure to be related to a street. The second criteria for approval for building approval of a lot that does not abut a street is proof that the proposed alternate access will protect any future street layout shown on the official map or on general circulation of plan element of the municipal master plan. The grant of

**OTHER BUSINESS:**

Shi Site Plan - #02-2011 – Expiration of letter of credit: The Board Secretary reported that the letter of credit for the Shi Site Plan # 02-2011 has expired. The Board directed the secretary to send a letter notifying them of that matter.

Short-Term Rental of Residential Property: This matter was opened for discussion. It was asked if it is a permitted use of the single family residential home. After some dialogue to understand the nature of this issue, it was determined that the law is undefined and the use is not changed. Therefore, this is not a matter for the Board and consideration of governance should be forwarded to the Township Committee.

A Memo from the Municipal Clerk was reviewed:

With regard to the draft ordinance #2016-08 entitled "Signs" , the Board reviewed the letter from the Township Attorney which included proposed modifications. After a brief discussion, the Board found the suggestions proposed to be confusing and not an improvement to the draft of changes which was submitted to the Township Committee. They determined that they were satisfied with the draft of changes submitted and would not be recommending the changes proposed by the Township Attorney.

The matter of the Housing Ordinance and the suggestion that the Planning Board conduct a review was discussed. Mr. Powers was prepared to review and make some recommendations for the next meeting. Mr. Utter objected to the Planning Board becoming involved as the Housing Ordinance is not a Zoning issue. Mr. Utter emphasized that this should be a matter for the Township Committee to review, not the Planning Board.

Lastly, the idea of a property maintenance ordinance was proposed. The Board found that this too was not a zoning matter and was under the jurisdiction of the Township Committee.

**AUDIENCE PARTICIPATION:** None.

**A MOTION** was made by Mr. Cunico, seconded by Mr. Pinzone to adjourn the meeting. **AYES:** All in favor. **NAYS:** None. Motion carried.



Beth Brothman  
Board Secretary