

Lackland v. Piscataway

1996

Complaint Reorganative Unit.

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CLERK  
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ATTORNEYS FOR Plaintiff

|                            |   |                                 |
|----------------------------|---|---------------------------------|
| LACKLAND BROTHERS, INC.,   | : | SUPERIOR COURT OF NEW JERSEY    |
| a New Jersey corporation,  | : | LAW DIVISION - MIDDLESEX COUNTY |
|                            | : | DOCKET NO.                      |
| Plaintiff,                 | : |                                 |
|                            | : |                                 |
| vs.                        | : | Civil Action                    |
|                            | : |                                 |
| BOARD OF ADJUSTMENT OF THE | : | COMPLAINT                       |
| TOWNSHIP OF PISCATAWAY,    | : | PREROGATIVE WRIT                |
|                            | : |                                 |
| Defendant.                 | : |                                 |

Plaintiff, Lackland Brothers, Inc., with offices at 400 North Avenue, Dunellen, NJ 08812, by way of complaint against the defendant, says:

FIRST COUNT

1. Plaintiff is the owner of premises known as Lot 1, Block 371, as shown on the Tax Map of Piscataway Township. In September 1985, plaintiff did make application to the Board of Adjustment of Piscataway Township for a use (D) variance to permit the construction of 80 condominium units on said premises.

2. The application made no provision for and did not include any low or moderate (Mt. Laurel) units.

3. In early 1985, applicant on this same 10.9 acre site had applied to construct 110 condominium units of which 22 would be "Mt. Laurel" units. After several public hearings and revisions to the plans, the Board of Adjustment voted seven to zero to deny the application. This vote on March 27, 1985, was memorialized by the Board of Adjustment on April 24, 1985. (Exhibit A)

4. The instant application for 80 units without Mt. Laurel units was the subject of public hearings on November 19, 1985, December 10, 1985 and January 21, 1986. At the last meeting the Board voted to approve plaintiff's request for a use variance to construct the condominium units subject to site plan approval and other conditions.

5. Thereafter, the Board failed to memorialize the vote and instead advised plaintiff that it was re-opening the matter upon discovery that the parcel was on a secondary inventory or list of lots which were subject to certain restraints imposed by Judge Serpentelli in the Piscataway-Mt. Laurel litigation (Urban League of Greater New Brunswick, et als. v. Carteret, et als., Docket No. C-4122-73) dated December 11, 1984.

6. At the re-opened meeting March 18, 1986, counsel for plaintiff contended that the New Jersey Supreme Court in "Mt. Laurel III" had dissolved all such restraints subject to further action of the Urban League. This was the same position taken and publicly enunciated by the attorney for Piscataway Township.

7. Defendant, Board of Adjustment, was also made aware that in the past when acting on applications which specifically included lands subject to Judge Serpentelli's order and restraints, it had acted and approved the application, subject to said conditions and restraints as contained in Judge Serpentelli's order. In short, approving same but leaving the applicant with the burden of either waiting for the restraints to be lifted or by moving before Judge Serpentelli with an appropriate application. (Exhibit B)

8. The Planning Board of the same municipality viewed the problem in the same fashion. It has acted favorably on applications for land which were in the Mt. Laurel inventory with a condition and notice to applicant that such action in no way altered the Mt. Laurel restraints. (Exhibit C) At the present time the Planning Board is conducting hearings in a matter which is clearly subject to said order of December 11, 1984. (Exhibit D)

9. Despite its own past practice, the announcement of the Township Attorney and with knowledge of the Planning Board's actions and practice, the Board of Adjustment on March 18, 1986, voted four to three to rescind the approval previously given to the plaintiff. Said vote was memorialized by resolution of the Board by a four to three vote on April 22, 1986.

10. The action of the Board of Adjustment in rescinding the prior approval was arbitrary, capricious and unreasonable.

SECOND COUNT

1. The plaintiff repeats each and every allegation contained in the First Count as if specifically set forth herein.
2. The vote rescinding the previous approval was a nullity since it was a bare majority and not the same plurality as required to pass or approve a use variance.

THIRD COUNT

1. The plaintiff repeats each and every allegation of the First and Second Counts as if specifically set forth herein.
2. Plaintiff's application was considered complete by the Administrative Officer by letter dated October 3, 1985.
3. The Board of Adjustment has failed to render a decision within a 120 day period and the applicant has not consented to any extension of time.
4. Such failure of the Board of Adjustment to affirm or deny plaintiff's application in accordance with N.J.S.A. 40:55D-73 constitutes a decision favorable to the plaintiff-applicant.

WHEREFORE, plaintiff requests judgment nullifying the action of the Board of Adjustment rescinding its prior approval, reinstating the use variance approval of March 21, 1986, and directing the defendant Board to memorialize said approval or in the alternative granting plaintiff's application for a use variance in accordance with N.J.S.A. 40:55D-73.

ABRAMS, BLATZ, DALTO, GRAN,  
HENDRICKS & REINA  
Attorneys for Plaintiff

By   
HOWARD GRAN

DATED: May 19, 1986

RESOLUTION OF FINDINGS AND CONCLUSIONS

WHEREAS, Lackland Brothers, Inc. has applied to the Zoning Board of Adjustment of Piscataway Township for permission to construct eleven townhouse buildings consisting of 110 units together with open space, tennis court and 223 parking spaces in violation of Article 21, Section 21-501 of the Piscataway Township Ordinance. The property is known as Lot 1 in Block 371 on the Tax Map of Piscataway township and is located in a R-10 Zone: and

WHEREAS, hearings were held before the Board ending on March 27, '85 at which hearing evidence was presented on behalf of the applicant as well as from other interested parties; and

Whereas, the Board after carefully considering the evidence presented at the above mentioned hearing, has made the following factual findings:

1. Applicant has submitted a proposal to construct 110 Townhouse Units on a 10.9 acre site. The site is triangular in shape and has one means of access from Baldwin Street, which is to be extended into the site. The site is bounded on one side by an active railroad, the Port Reading. Another side of the site is bounded by the Rehoboth Brook.
2. Applicant proposes to construct 6 buildings of a type A design containing 10 units each. Four buildings with 10 units each of a type B design will be constructed except that the building containing the model unit will have only 9 units. A third building type will consist of 10 units and is referred to as a building type C.
3. Applicant proposes to develop the project and to set aside 20% of the units for lower income housing as defined by State Court decisions.
4. Approximately 5.3 acres of the site would be designated as open space which constitutes approximately 4.5% of the site.
5. Throughout the course of the hearings in this matter, at least four sets of revisions to the plan were submitted. These revisions were the result of significant problems encountered in the site design. Concerns for on street parking, fire fighting access, access to the site through the adjoining road system, proximity of buildings to the railroad and to the brook, and the failure to incorporate the Master Plan provisions for circulation were only some of the problems encountered in the review of the project.
6. The Planning Board reported to the Zoning Board that the proposal failed to comply with several features of the Planned Community Development Ordinance which applicant attempted to incorporate on this site. The density exceeds the maximum permitted of 109, only one means of access is provided, sufficient

open space is not provided and a buffer between adjacent residential development was not considered to be adequate.

7. The site in question was the subject of an approved preliminary subdivision in 1981 permitting the construction of 28 single family dwellings.
8. Applicant reduced the number of dwelling units to 109, of which 22 would be dedicated to low and moderate income residence.
9. All of the lower income units would be contained in one building in the farthest corner of the site and would be within 50 feet of the right of way of the railroad.
10. One means of access to the site would be provided through Mountain Avenue. Several neighboring property owners along Mountain Avenue in the neighborhood of this proposal commented upon the narrow width of Mountain Avenue and the ability of that road to service the project adequately.
11. The site in question was not initially listed as a suitable site for Mount Laurel housing by Carla Lerman, the Court appointed master. As a result of the request of the applicant, the Master did indicate that the site could be potentially suitable for Mount Laurel housing, as set forth in her letter dated January 18, 1985. This opinion by Ms. Lerman is merely a recommendation to be made to the Court in connection with the Mount Laurel litigation presently pending against the Township.
12. The Master Plan shows a major roadway, known as Baldwin Avenue, extending through this site. If applicant were to reserve the right of way for that road, there would be significant impact upon the density calculations. Therefore numerous discussions with the Township Engineering staff resulted in the applicants recommendation that the road be shown as a private road until the Municipality requests the dedication and at that time the road be provided as an easement. If the road were to be dedicated, as is the proper course, the density calculations would be adversely affected.
13. Applicant proposed to construct an 8 foot wide road as a bike path and emergency fire access. Several questions arose as to the ability of fire trucks to use this facility and of the right of the applicant to extend the road into lands owned by the Township.
14. Firefighting access to the buildings is also a serious concern since front yard parking is provided, thereby blocking access to the fire trucks.
15. The predominant nature of the area surrounding this site is rural in nature and consists of single family homes. The road widths are narrow without curbs or sidewalks.
16. There are numerous other sites within the Township which have been designated for development for Mount Laurel housing. In addition, the entire question remains unresolved at this time and is before the Court for resolution. The traffic commission reported that another entrance and exit to the site is essential

for safe operation. The buffering proposed between the site and the railroad is inadequate.

WHEREAS; the Board has concluded based upon facts determined that:

1. The entire question of the Townships obligation to provide housing under the Mount Laurel decision is the subject of litigation pending before the Honorable Eugene D. Serpentelli. No final decision as to the exact number of units which the Township must provide to meet its fair share, the sites which are suitable for building for this fair share and the credits towards which the Township is entitled as a result of the extensive housing for students and other moderate income families within the Township have not yet been resolved. These issues should be resolved in a comprehensive fashion through revisions and amendments to existing development regulations, after a final decision by the Court.
2. Ms. Lerman's report indicating that the site may be considered suitable for Mount Laurel housing has not been adopted by the Court and cannot be relied upon by this Board.
3. Within five hundred feet of this site, applicants 88 acre tract, which is zoned for this use, is available to incorporate Mount Laurel housing.
4. The small size of this property results in a relatively small contribution to the fair share units required.
5. The size and shape of this property, together with the existence of the Brook and the Railroad, prevent the site from being utilized in a manner which will produce safe and decent housing for all of the residents. Usable recreation areas cannot be included and it is apparent after the numerous revisions made to the plan that the site is not amenable to use at this density.
6. The surrounding area is extremely rural in nature. The proposed use is quite urban and dense and will have a negative impact upon the Zone Plan and the public good.
7. The shape of this property and the railroad and brook preclude use of this site for the density proposed. The existence of only one exit also proposes serious health and safety problems. The campus drive proposed is inadequate for fire fighting access.
8. The proposed residents of this development are entitled to decent housing. The potential Mount Laurel occupants of this project would be in a building within 50 feet of the railroad right of way.
9. Insufficient open space has been provided.
10. The buildings have been located directly up against the stream encroachment and the intense nature of those buildings is extremely problematic.



11. A total of 6 buildings are within 100 feet of the railroad right of way.
12. The property in question is capable of being developed with single family homes. This application represents the desire to maximize on the return of the property, without regard to the stability of the site and the compatibility of the site with the neighborhood.
13. No special reasons exist to justify the extensive deviations from the Ordinance which this application proposes.
14. The proposed use cannot be permitted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Zone Plan.

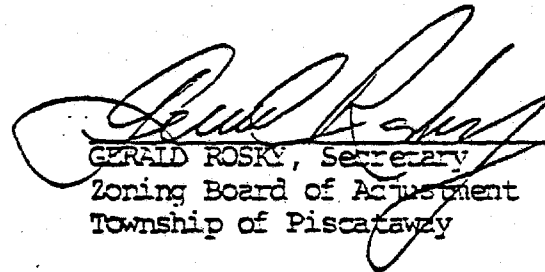
WHEREFORE, the application for Lackland Brothers, Inc. be and is hereby denied.

The above is a memorialization of a motion duly made and seconded on March 27, 1985, on the following vote:

Those in favor: Dubrow, Orbert, Zuber, Rosky, Bukowski, Triano, and Szesko

Opposed                      None

The undersigned, Secretary of Piscataway Township Zoning Board of Adjustment, hereby certifies that the above is a true copy of a Resolution memorialized by said Board on the 24th day of April, 1985.

  
GERALD ROSKY, Secretary  
Zoning Board of Adjustment  
Township of Piscataway

Application Nos. 85-ZB-11;  
85-ZB-12-A; 85-ZB-12-B;  
85-ZB-12-C; 85-ZB-12-D;  
85-ZB-12-E; 85-ZB-12-F;  
85-ZB-12-G; 85-ZB-12-H;  
85-ZB-12-I; 85-ZB-12-J;  
85-ZB-12-K; 85-AB-12-L;  
85-ZB-12-M; 85-ZB-12-N;  
85-ZB-12-O; 85-ZB-12-P;

RESOLUTION OF FINDINGS AND CONCLUSIONS

WHEREAS, Lackland Brothers, Inc. has applied to the Zoning Board of Adjustment of the Township of Piscataway for permission to construct one family dwellings on seventeen (17) lots, sixteen (16) of which require variances, in violation of Chapter 21, Section 21-501 of the Piscataway Township Zoning Ordinance and further seeking classification and preliminary major subdivision approval pursuant to Township Ordinances. The properties in question are known as Lots 11A, 12A, 13A, 14A, 15A, 19A, 20A, 21A in Block 561 and Lots 30A, 31A, 32A, 33A, 35A, 36A, 37A, and 38A in Block 564, on the Tax Map of Piscataway Township and located on Hillside Avenue in Piscataway Township in Zone R-10; and

WHEREAS, hearings were held before the Board on April 24, 1985, May 21, 1985 and May 29, 1985 at which hearings evidence was presented on behalf of the applicant as well as other interested parties; and

WHEREAS, the Board has after carefully considering the evidence presented at the above mentioned hearing, has made the following factual findings:

1. Applicant is the owner of seventeen (17) lots, sixteen (16) of which require variances. The lots are located on 4 streets and are not contiguous.

2. The applicant proposes to complete all the streets and to install improvements in accordance to Township standards.
3. The property is on the inventory of Mount Laurel housing for the Honorable Eugene D. Serpentelli in connection with the litigation brought by the Urban League against the Township of Piscataway.
4. Applicant proposes to construct a variety of single family homes including Cape Cod homes and Bi-levels, similar to the Birch Run development. Each home will be approximately 12,000 to 14,000 square feet in size.
5. Applicant's planner testified that the configuration of the property results in only 12 lots being subdivided without variances, thereby requiring a density variance under the July 1, 1984 statutory amendments.
6. The neighborhood is compatible with the proposed development of single family detached homes. Numerous lots within the area are non-conforming and vary in frontage from 70 to 85 feet in width. There are also several non-conforming properties on Hillside Avenue.
7. The properties are further burdened by the extensive improvement costs required to construct streets, curbs and sidewalks.
8. If the applicant were to comply with the lot size

requirements, because of the location of the lots, there would be 130 feet frontage, far in excess of the lot size requirements.

9. Applicant attempted to acquire lot 16, adjacent to one of the undersized parcels but without success.
10. The subdivision committee recommended classification as a major subdivision, and recommended a series of changes, which are incorporated within this resolution as conditions. In addition, the variances were recommended for approval, except that a total of sixteen (16) lots was recommended, requiring the merger of lots 19A, 20A and 21A.
11. Applicant agreed to install improvements and a storm water run-off system, if necessary, to eliminate impact, on adjacent properties.

WHEREAS, the Board has concluded based upon facts determined that:

1. The mixture of dwellings and the type of units proposed are in keeping with the general area and will provide for a general upgrading of the neighborhood. The cost of single family homes, particularly the improvement costs, require the variance relief granted.
2. The proposed variances can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan.

3. The property is best suited for single family residential development which is compatible with the surrounding area and will not cause disruption.
4. Preliminary subdivision approval should be granted in that the applicant has complied with, or has agreed to comply with, provisions of the Township subdivision ordinance.
5. The application can be granted only if the applicant obtains the permission of the court to remove the restraints contained in the court order dated December 11, 1984.

WHEREFORE, the application of Lackland Brothers, Inc. for variances, and for preliminary major subdivision approval is granted on the following conditions:

1. That applicant apply to the Superior Court of New Jersey in the Urban League of Greater New Brunswick vs. Piscataway Township litigation to lift the restraints contained in the Court order dated December 11, 1984. Until such time as the Court has entered an order permitting development of the properties in question in accordance with this conditional approval, no further action will be taken by the Zoning Board or Township staff in connection with this application.
2. That applicant pave all streets in accordance with all Township specifications and the approval of the Township Engineer.
3. That applicant install sidewalks and curbs along

Hillside Avenue from Salem Street to Long Street, along Bay Street to Hillside Avenue and along Long Street and Salem Street and Avon Street for one hundred (100) feet.

4. That applicant eliminate the impact of storm water run-off by installing such devices as may be required by the Township Engineer.
5. That applicant install all utilities, including a storm water system and fire hydrants, in accordance with recommendations of the Township Engineer.
6. That applicant preserve as many mature trees as possible.
7. That applicant install shade trees in accordance with the recommendations of the Township Landscape Architect.
8. That applicant obtain a soil erosion and sedimentation control permit.
9. That applicant obtain County site plan approval required.
10. That applicant obtain final subdivision approval.
11. That applicant combine lots 19A, 20A and 21A in Block 561 into 2 lots with 111 foot frontage each.
12. That applicant comply with all other State and/or applicable requirements.

The above is a memorialization of a motion duly made and seconded on May 29, 1985 on the following vote:

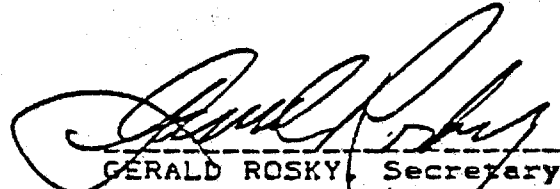
Those in Favor: Dubrow, Zuber, Rosky, Bukowski, Szesko,

Carlton and Cahill

Opposed: None

Applicant must publish a legal notice in the P.D. Review within twenty (20) days from the memorialization of the written resolution. An affidavit of publication is to be submitted to the Board.

The undersigned, Secretary of Piscataway Township Zoning Board of Adjustment, hereby certifies that the above is a true copy of a Resolution memorialized by said Board on the 26th day of June 1985.

  
GERALD ROSKY, Secretary  
Zoning Board of Adjustment  
Township of Piscataway

PISCATAWAY PLANNING BOARD

LACKLAND BROTHERS, INC.  
400 North Avenue  
Dunellen, New Jersey  
08812

APPLICATION NO. 85-PB-113

RESOLUTION  
CLASSIFICATION & MINOR SUBDIVISION APPROVAL

WHEREAS: LACKLAND BROTHERS, INC., 400 North Avenue, Dunellen, New Jersey, 08812 has requested of the Piscataway Township Planning Board Classification and Approval of a Minor Subdivision for Tax Map Block 564 Lot(s) 29 & 30 in an R-10 Zone on Hillside Avenue.

FOR THE PURPOSE OF: Subdividing premises into two lots and to construct two single-family dwellings on Hillside Avenue.

IN ACCORDANCE WITH MAPS PREPARED BY: SEMESTER CONSULTANTS, INC., 113 Lincoln Avenue, Dunellen, New Jersey, 08812, entitled "Proposed Minor Subdivision, Lots 29 & 30 Block 564, Township of Piscataway", dated December 12, 1985 and revised December 26, 1985.

WHEREAS: A Hearing was held before the Planning Board on January 15, 1986 at which time testimony was received; and

WHEREAS: Said Subdivision meets all the requirements for a Minor Subdivision as set forth in the Subdivision Ordinance of the Township of Piscataway or Variances have been granted for any violations thereof.

THEREFORE BE IT RESOLVED: That said Subdivision is hereby classified a MINOR SUBDIVISION; and

BE IT FURTHER RESOLVED THAT: The Applicant is hereby granted approval of a Minor Subdivision subject to the following conditions:

1. Middlesex County Planning Board approval.
2. That the Applicant cooperate with the Board of Fire Commissioners of the District if they have any requirements.
3. That the Applicant understands that by the granting of this subdivision, the Applicant is granted no development rights as to the new Lot 30 in Block 564 as the subject property is subject to the restraining Order of Judge Serpentelli issued December 5, 1984.



4. The Applicant is to post bonds and certified checks in an amount satisfactory to the Township Engineer for all improvements required herein by reason of this approval.

BE IT FURTHER RESOLVED THAT: Copies of this Resolution be forwarded to the Tax Assessor, Township Engineer, Zoning Officer and the Applicant.

The above is a memorialization of a motion which was duly seconded and passed on January 15, 1986 on the following vote:

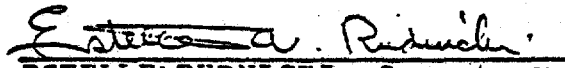
THOSE IN FAVOR: Mr. Dass, Councilman Dunphy, Mr. Greeley, Mrs. Perry-Allen, Mrs. Rudnicki, Mayor Smith, Mr. Southern, Dr. Steckel and Mrs. Merolla.

OPPOSED: None.

The Applicant must publish a legal notice in the P. D. REVIEW or THE HOME NEWS within twenty (20) days from the memorialization of the written Resolution.

The undersigned, Secretary to the Piscataway Township Planning Board, hereby certifies that the above is a true copy of a Resolution memorialized by said Board on the 20th day of February, 1986 on the following vote:

THOSE IN FAVOR: Mr. Dass, Councilman Dunphy, Mr. Greeley, Mrs. Rudnicki, Mr. Southern, Dr. Steckel and Mrs. Merolla.

  
ESTELLE RUDNICKI, Secretary  
PISCATAWAY PLANNING BOARD