Chairman Nargiso brought the regular meeting of the Butler Planning Board for September 18, 2014 to order followed by a Pledge to the Flag. Chairman Nargiso stated that this meeting is being held in conformance with the Sunshine Law Requirements having been duly advertised and posted at Borough Hall.

**ROLL CALL:**

Present: Donnelly, Roche, Drexler, Hauck, Alviene, Brown, Grygus, Finelli, Calvi, Fox, Nargiso

Absent: None

**CASES TO BE HEARD:**

**SP14-48** Perry Construction

1 Sanders Place

Block 78 Lot 4

Board Member – Chris Finelli has stepped down from this application

Robert Massesa, Esq. representing the applicant

Oath Given –

William Perry

Mark Palus – Professional Engineer/Planner

Mr. Palus accepted as an expert witness by motion

Mr. Massesa stated the applicant is before the board for a minor subdivision with variance.

Mr. Palus testified to the following:

* Plans dated May 20, 2014
* Located in the R2 Zone
* Description of property currently
* 24,502 square feet
* Single family house will be removed
* New Lot line
* Lot 4 – Corner of Struble Avenue Lot 5 will only have frontage on Sanders Place
* 2 Separate lots
* Description of surrounding neighborhood
* Positive and negative criteria

Zoning Table:

Required Existing Lot 4 Prop Lot 4 Prop Lot 5

Lot Ares 12,500 sf 24,502 sf 12,505 sf 11,997 sf

Lot Frontage 75’ 151.0’ 75.11’ 75.91’

Lot Depth 125’ 131.6’ 133.1’ 131.6

Lot Width 75’ 165.6’ 89.7’ 75.9

Front Yard 40’ 29.7’ 41.7’ 40.8’

Side Yard Each 15’ 47.6’ 15.4’ 15.7’

Rear Yard 40’ 76.9’ 72.2’ 63.6

Building Height 35’ 19.8’ 35’ 35’

Building Coverage 20% 4.33% <20% <20%

Exhibits A1 200 Foot description of neighborhood

A2 Photograph – existing conditions

A3 Letter from Robert Massesa to Brian Appel

A4 Photo of similar home to be built

A5 photo of similar home to be build

Board questioned the witness on various aspects of his testimony

Public portion opened by motion for questions

Karen Smith – 14 Morse Avenue – questions regarding drainage

Brian Appel – 3 Sanders Place –

* Proposed new construction
* questions regarding lot sizes and the removal of trees
* retaining wall

Public portion closed by motion

Bill Perry testified to the following:

* Principal in Perry Construction
* Description of proposed dwelling – two colonial type homes
* Description of proposed work
* Removal of trees

Board questioned the witness on various aspects of his testimony

Public portion opened by motion for questions

Brian Appel – 3 Sanders Place – questions regarding

* Sizes of the houses and overall height

Public portion opened for comments

Karen Smith 14 Morse Avenue –

* stated that she is in favor of the application
* the current house is an eyesore and dangerous

Brian Appel – 3 Sanders

* concerned with increase of traffic
* impact on the entire neighborhood
* Substandard lot
* Reduce property values
* Conforming lot be adjacent to the adjoining property
* Non-conforming lot be on the street
* Additional plantings

Dan Champange - 6 Sanders Place

* Approval of this application will change the dynamics of the street and the neighborhood
* Increase of parked cars and traffic
* Increase of taxes

Janet O’Toole – 4 Morse Avenue

* Two homes on that lot is too congested
* Increase in taxes and traffic
* Would prefer a one family home as opposed to two single family homes

Public portion for comments closed by motion

* The requirements of the Mr. Darmofalski letter has to be complied with
* The minimum square footage for the houses must be in compliance with the municipal ordinance
* Plots plans have to be developed for each of the lots as indicated and testified to by the engineer/planner
* All Morris County approvals must be obtained especially soil conservation
* Tree removal plan submitted to the board engineer with an eye towards keeping any trees that are not within the building area or necessary areas for utilities or driveways
* Must comply with the borough engineer with connecting utilities especially should be noted as part of the resolution that the destruction of Struble Avenue as it has recently been paved should be avoided at all costs.
* The applicant has stated and agreed that the lots will have all of the dead falls and damaged trees pruned or removed and the board engineer should review that plan as well

Motion to approve application as submitted and testified to

Motion: Brown

Second: Donnelly

Voted Aye: Donnelly, Roche, Hauck, Alviene, Brown, Grygus, Calvi, Fox, Nargiso

Voted Nay: None

**SP10-58A** Johan Kafil

1465 Route 23

Block 54 Lots 1.08,1.09

David Dixon Esq. representing the applicant

Mr. Dixon stated that this application deals with an amendment to the preliminary and final site plan previously approved by this board

John Sullivan, Esq. with the offices of A. Michael Rubin

Mr. Sullivan stated that his appearance has to do with Butler Bowl Inc. There is an application that the board will be considering tonight for the amendments to the original final site plan approval of Johan Kafil that was approved back in November of 2013. Butler Bowl Inc. has instituted an action by way of a third party complaint seeking a judgment to set aside and vacate the approval of the board with regard to that final site plan approval on the basis that Butler Bowl Inc. was not a party to that application, did not consent to the application and the consent to that portion of the conditions contained in that approval which required the closure of the existing driveway access from Route 23 South to its property.

This office wants to put on the record our client’s position and objections to the board proceeding with such application for amendments to that challenged site plan approval until a court has made a determination as to the validity of the underlying approval of this board to that site plan and that is the purpose of the appearance tonight.

Mr. Barbarula stated that he talked with Mr. Rubin, it is the opinion that based upon the fact that this matter has been brought by an order to show cause and also a complaint. At the present time the board does not have any court order that says that their actions were improper or invalid or that the entire approvals of this board were void. Additionally the court could have but they did not restrain the board from further action, they did not do that. So at the present time we have neither an order that says that our prior actions were invalid nor do we have an order that says that we cannot proceed and do our job as required under the Land Use Laws. It is my opinion that absence of those particular orders that the board must hear applications before it. Tonight we have the obligation to go forward because we have no legal restrictions against or orders to prevent us from doing so. That would be my recommendation to the board.

Exhibits associated with this application

A1 – Color Landscape rendering

A2 – Original Site Plan as approved

A3 – Rendering of the building façade

David Beesley – Engineer/Planning – Burton Engineering

Accepted as an expert witness by motion

Mr. Beesley testified to the following:

* Description of the property (color rendering marked as A1)
* Description of prior approval
* Description of variances
* Landscape and planting
* Parking
* Loading area/parking spaces
* Modifications to the plans
* Reasons for modifications
* Description of building/façade

Board questioned the witness on various aspects of his testimony

Public portion opened by motion for questions/comments

Public portion closed by motion

Motion to approve as testified to

Motion: Brown

Second: Hauck

Voted Aye: Donnelly, Roche, Hauck, Alviene, Brown, Finelli, Calvi, Fox, Nargiso

Voted Nay: None

Jesvinber Arjani – Architect

Accepted as an expert witness by motion

Mr. Arjani testified to the following

* Handicapped accessibility is from the rear of the parking lot

Public portion opened for questions of the testimony provided

Public portion closed by motion

Motion to approve with the following modifications of reducing the parking spaces by one and doubling the size of the refuse area on the retail side

Motion: Brown

Second: Hauck

Voted Aye: Donnelly, Roche, Hauck, Alviene, Brown, Finelli, Calvi, Fox, Nargiso

Voted Nay: None

**APPROVAL OF VOUCHERS**

Motion: Brown

Second: Fox

Voted Aye: Donnelly, Roche, Hauck, Alviene, Brown, Finelli, Calvi, Fox, Nargiso

Motion to Adjourn:

Motion: Brown

Second: Fox

All Ayes

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Chairman – Planning Board

ATTEST:

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Secretary – Planning Board

ADOPTED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_