

RESOLUTION OF DISMISSAL WITHOUT PREJUDICE
PLANNING BOARD OF THE TOWNSHIP OF WEST ORANGE

Decided: October 3, 2018
Memorialized: March 6, 2019

Belvedere Homes at West Orange, LLC
Minor Subdivision
1 Kunz Way
Block 170.03, Lot 1.09
PB-18-08

WHEREAS Belvedere Homes at West Orange, NJ. (the “Applicant”) having an address at 500 State Road, Princeton, NJ having made application for Minor Site Plan Approval for premises at 1 Kunz Way, West Orange, NJ 07052 and known as Block 170.03, Lot 1.09 on the tax map of the Township of West Orange (the “Premises”); and

WHEREAS the Board having conducted a public hearing on this application on October 3, 2018; and

WHEREAS the Applicant having appeared by Richard Schatzman, Esq., and by witness Cyril Kucera, PE and the Board having received review letters from Township Planner Paul Grygiel, AICP, dated August 10, 2018 and a review letter from Board Consulting Engineer Bowman dated September 28, 2018, and having granted an opportunity for public comment; and having deliberated on the merits of the application;

IT IS HEREBY RESOLVED:

EVIDENCE SUBMITTED

In summary, the following evidence was received and/or introduced in connection with this application:

1. A West Orange Planning Board application, and the following:
 - i. Letter of paid sewer charges dated July 17, 2018 issued by the Tax Collector of West Orange;
 - ii. Site Plan/Subdivision Checklist (6 pages);
 - iii. Sustainability Checklist (1 page);
 - iv. Prior Resolution of the Planning Board for application No. PB-05-59 granting preliminary and final major site plan approval for 9 lots as Lot 1, Block 170.03, Zone R-2 dated 11/2/06 consisting of 6 pages;
 - v. Copy of recorded Drainage Easement from Belvedere Homes at West Orange,

- LLC to the County of Essex recorded on 5/9/2018 as Instrument No. 2018040611 as a Deed consisting of 17 pages for property located at Lot 1.09, Block 170.03 and Lot 1.09;
- vi. Minor Subdivision plans prepared by Cyril Kucera, PE and Michael T. Armstrong, PLS for property located at Block 1.09, Block 170.03 (1 Kunz Way) dated July 18 consisting of 1 sheet.

2. The following Exhibits were admitted into evidence:

Ex. A-1 Letter to Board dated 10/3/18 from Richard Schatzman, Esq. of Schatzman Baker, attorney for Applicant Belvedere Homes at West Orange, LLC

Ex. A-2 Three (3) sheets: (1) Enlarged overall site map of Bel Air, unsigned, undated; (2) Final Map "Bel Air Estates" Lot 1 – Block 170.03 prepared by C.E.C. Civil Engineering Corporation, signed by Michael T. Armstrong, P.L.S., dated 12/10/2007; and (3) Minor Subdivision signed by Michael T. Armstrong, P.L.S., and Cyril Kucera, P.E., 7/25/2018.

Ex. O-1 Letter to Board dated 10/2/18 from John J. Lamb, Esq., Beatie Padovano LLC, attorney for Bel Air at West Orange Condominium Association, Inc. (Objector)

3. Robert Schatzman, Esq. introduced the application on behalf of the Applicant stating that it was for a subdivision of an existing residential lot.
4. John Lamb, Esq. an attorney for the continuous property owner Bel Air at West Orange Condominium Association, Inc. ("Bel Air") also appeared.
5. Mr. Lamb (Ex. O-1) and Mr. Schatzman (Ex. A-1) had sent letters to the Board about the application.
6. Responding to questions from the Board Mr. Schatzman admitted that Block 6.01, over which the Applicant proposed to access the subject lot, was owned by Bel Air and that he had not included Block 6.01 in his notice or application, nor had he sent notice to all of the owners of the condominiums.
7. Mr. Lamb claimed that notice was deficient and that an easement was needed over Bel Air's property to access the subject lot.
8. Cyril Kocera, PE, a principal of the Applicant who had also been the engineer for the original subdivision which was approved November 2, 2006 was sworn and addressed the Board and gave a history of the prior approval.
9. Mr. Grygiel stated he had prepared a memorandum dated August 10, 2018, which did reference a minor subdivision based on the information submitted; however, the review memo raised a number of issues and requested additional information. He stated that Applicant did not submit the additional materials.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. The Premises are located in the R-2 zone where single-family homes are permitted.
11. The Board finds that there is a threshold issue regarding notice. Lot 6.01 should have been included in the application and in the notice since it must be crossed over in order to access the subject lot.
12. Since notice is jurisdictional, the Board lacks jurisdiction to hear the application.
13. Applicant did not file proof of re-noticing.
14. Subsequently by letter dated October 9, 2018 and phone call of like date Applicant requested that the application be carried to April, 2019 because Mr. Kucera, the principal of the Applicant, would be out of town.
15. On November 7, 2018 the Board denied the request for an extended adjournment and dismissed the application without notice.

THE DECISION

WHEREAS, the Board, having reviewed the application for Minor Site Plan and variances, and having considered the impact of the proposed application on the Township's Master Plan, zoning ordinance and the surrounding property owners, and having considered whether the proposal complies with and furthers the goals of the land use and zoning ordinances of the Township of West Orange and the Municipal Land Use Law; and having deemed notice insufficient, and the Applicant having failed to re-notice, and the Board having received a request to carry the application for an extended period of time, hereby concludes that good cause has been shown to dismiss the application without prejudice.

BE IT HEREBY NOTED that Applicant failed to maintain an adequate escrow balance with the Township which caused the application to be administratively incomplete and delayed the memorialization of this Resolution.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of West Orange that the application is hereby dismissed without prejudice.

Certified to be a true copy of a Resolution adopted by the West Orange Planning Board on March 6, 2019.



Robin Miller, Secretary

Vote on the Action Taken by the Board

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Bagoff	*		*			
Cardoza (Vice Chair)			*			
Keigher			*			
Klein						*
McCartney			*			
Trenk		*	*			
Wegner			*			
Wilkes			*			
Williams (Alt #1)						
Johnson (Alt #2)						
Weston (Chairman)						*

Vote on the Memorializing Resolution

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Bagoff	*		*			
Cardoza (Vice Chair)						*
Keigher			*			
Klein						
McCartney		*	*			
Trenk			*			
Wegner			*			
Wilkes			*			
Williams (Alt #1)						
Johnson (Alt #2)						
Weston (Chairman)						