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Richard S. Schkolnick
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E-mail: rschkolnick@bmk-law.com

August 4, 2015

Via Hand Delivery and Email (adele@twp.maplewood.nj.us)

Chairman Thomas Carlson
Planning Board
Township of Maplewood
574 Valley Road
Maplewood, New Jersey 07040

**Re: Post Office Redevelopment Plan
Block 13.09, Lots 180, 181 and 185**

Dear Chairman Carlson:

This firm represents Village Keepers, Inc. ("Village Keepers") in the above matter. We understand that the "Post Office" matter has been placed on the Planning Board's August 11 agenda.

For the reasons that follow, if the "hardship" issues referenced in Township Ordinance Section 237-9.1, et seq. are to be addressed at all prior to site plan review (which we think is the proper sequence as explained below), we request that the August 11 date be used for scheduling purposes only.

First, the nature of the issues to be decided makes a pre-meeting exchange of expert reports on the "hardship issue" absolutely imperative, as Village Keepers intends to prepare and submit such a report. We believe fairness and due process concerns require that a reasonable "briefing schedule" be established for the parties to prepare and exchange such reports well in advance of any scheduled substantive hearing. We do not believe that it would be reasonably possible to effectively cross examine witnesses on the highly complex issue of financial feasibility without advance consideration of the financial and other information to be presented. Moreover, without advance submittal of written expert reports, we fear that the proceedings will be overly lengthy and unwieldy. In our judgment, a short delay in scheduling the "financial hardship" hearing will make the Planning Board proceedings more fair, more orderly, and less time consuming overall.

Chairman Thomas Carlson
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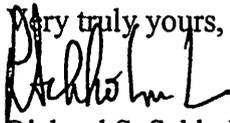
Second, we believe that a schedule should be established to permit sufficient time to provide written submissions concerning possible conflicts of interest that may require recusal of the governing body members of the Planning Board from consideration of this application. There is a complex body of law involved in the recusal issue, including but not limited to the Local Government Ethics Law.

In this regard, we note that Ordinance Section 237-9.1(B)(6) refers in part to an owner's responsibility of "demonstrating significant financial hardship." In this case, the Township of Maplewood is the present property owner. At the hearing before the Maplewood Village Alliance, the Township and the Developer apparently did not take a position as to who is the proper "owner" for purposes of the Ordinance. However, in our judgment, it is virtually self-evident that a sitting mayor and township committeeman --- those who actually make policy on behalf of the property owner --- cannot simultaneously serve as members of the local review board charged with deciding the merits of an application that requires a showing by that very same entity. The Township of Maplewood (as an entity) has a very clear stake in the outcome of this matter, and its own policy-makers cannot reasonably be permitted to adjudicate this application. In short, there are material conflict of interest considerations that demand serious consideration. A reasonable period of time must be allocated to make written submissions on this issue.

A third matter to be discussed is the "timing" of the site plan hearing in relation to the "financial hardship" review. We believe that efficiency dictates that the "financial hardship" matter be handled initially, with the site plan review handled after that "financial hardship" matter is decided. The proofs and legal standards are obviously different, and "mixing" the two, in our view, would cause delay and confusion for both the public and perhaps members of the Planning Board. In addition, if the applicant is not successful in establishing "financial hardship," the matter may never proceed to the site plan phase (which is likely to be lengthy by itself).

For these reasons, we respectfully request that August 11 be used for determining the proper sequence of the "hardship" hearing and the site plan review. If time permits, it should also be used for purposes of scheduling pre-"hardship" hearing events, and to establish procedures for the hearing on this unique matter, and that counsel for all parties and the Planning Board confer to establish reasonable time frames for consideration of these important issues.

Thank you for consideration.

Very truly yours,

Richard S. Schkolnick

cc: Andy Norin, Esq. (via email only)
Roger Desiderio, Esq. (via email only)
Jonathan Drill, Esq. (via email only)
Michael Edelson, Esq. (via email only)

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August 7, 2015

Via Hand Delivery and Email (adele@twp.maplewood.nj.us)

Chairman Thomas Carlson
Planning Board
Township of Maplewood
574 Valley Road
Maplewood, New Jersey 07040

**Re: Post Office Redevelopment Plan
Block 13.09, Lots 180, 181 and 185**

Dear Chairman Carlson:

Pursuant to Township Ordinance Section 237-9.2(D), Village Keepers, Inc. ("Village Keepers") hereby appeals to the Township of Maplewood Planning Board the decisions of the Maplewood Village Special Improvement District, Inc. (the "Alliance") taken at its meeting that commenced on July 22, 2015 and concluded on July 23, 2015, as set forth in a letter dated July 27, 2015 from John James, the Alliance's President. We cannot discern from the statements in the July 27 letter whether the letter itself, or the subsequent resolution referred to in that letter, is intended to serve as the Alliance's final decision in this matter.

Kindly advise me of the procedure for this appeal, paperwork or applications that must be filed to perfect an appeal pursuant to Ordinance Section 237-9.2(D), notice requirements (if any), and the date of a hearing at the Planning Board.

This appeal is made without prejudice to any and all rights, including but not limited to Village Keeper's right to assert, pursuant to Ordinance Section 237-9.1(B)(6), that:

...no building within the district shall be demolished without its owner demonstrating significant financial hardship and without having a proposed alternative for new construction (i.e., schematic

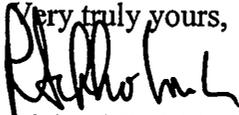
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plans drawn by a licensed architect or engineer) approved by the MVA Design Review Committee and Village Alliance Board and the Planning Board with proof of project financing, i.e., lease agreements, loan agreements, mortgage commitments, etc., except in instances where the Uniform Construction Code requires the demolition of a fire-damaged building...

and that the Planning Board's review obligation pursuant to Section 237-9.1(B)(6) be conducted *de novo*.

Thank you for your attention to this matter.

Very truly yours,



Richard S. Schkolnick

RSS/rmh

cc: Andy Norin, Esq. (via email only)
Roger Desiderio, Esq. (via email only)
Jonathan Drill, Esq. (via email only)
Maplewood Village Alliance (via Township Clerk)
Michael Edelson, Esq. (via email only)

August 10, 2015

Via Facsimile (973-762-2894) and Email (adele@twp.maplewood.nj.us):

Chairman Thomas Carlson
Maplewood Planning Board
Maplewood Township Hall
574 Valley Street
Maplewood, New Jersey 07040

Re: Block 13.09, Lots 180, 181 and 185
Commonly known as the Post Office Site
Pending Site Plan and Subdivision Application by Maplewood Redevelopers, L.L.C.

Dear Chairman Carlson,

This firm represents the Township of Maplewood (the "Township") as special redevelopment counsel, including with respect to the above-referenced property. The Township has provided us with a copy of correspondence to the Planning Board from Richard S. Schkolnick, Esq. dated August 4, 2015 on behalf of Village Keepers, Inc. (the "Objectors") with respect to the above-referenced matter.

Please be advised that the Township disputes the characterizations of facts and law set forth in Mr. Schkolnick's correspondence. To the contrary, the Township is of the opinion that:

- 1) The Planning Board is not required to make a determination of financial hardship.**

As the Planning Board is aware, the site is the subject of a redevelopment plan duly adopted by the Township on July 16, 2013 (the "Redevelopment Plan") pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law"). Page 37 of the Redevelopment Plan enumerates the duties of the Planning Board with respect to the site:

"Prior to commencement of construction, site plans for the construction and/or rehabilitation of improvements within the rehabilitation area, prepared in accordance with the requirements of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), shall be submitted by the applicants for review and approval by the Maplewood Planning Board.

The subdivision of lots and parcels of land within the rehabilitation area shall be permitted in accordance with the requirements of this Redevelopment Plan and the subdivision requirements of the Zoning and Development Regulations of the Township of Maplewood, except that where this redevelopment plan contains

provisions that differ from those in the subdivision ordinance, this plan shall prevail.”

The Redevelopment Plan also provides that, with respect to design review by the Maplewood Village Special Improvement District, Inc., “the redeveloper may appeal any decisions of the Maplewood Village Special Improvement District, Inc., to the Maplewood Planning Board.” The Redevelopment Plan does not require the Planning Board to evaluate financial hardship with respect to the site, which evaluation would be a function beyond its considerable expertise and statutory purview.

Nor does the Redevelopment Plan require the Village Alliance to evaluate financial hardship. While the Redevelopment Plan describes a process for Village Alliance review of the design of the project, it does not provide for the Maplewood Village Special Improvement district design standards to override the Redevelopment Plan. For example, while page 37 of the Redevelopment Plan provides in relevant part:

“Any site plan for development in the rehabilitation area shall comply with all signage and design review requirements of the Maplewood Village Special Improvement District design standards as set forth in Section 237-9.1 of the Code of the Township of Maplewood. Prior to the development of a site plan, the redeveloper shall meet informally with representatives of the Township and the Maplewood Village Special Improvement District, Inc. to discuss the design of the building(s) and site.

Any site plan shall be provided to the Maplewood Village Special Improvement District, Inc., for its review and approval prior to submission to the Maplewood Planning Board.”,

this language cannot be read in a vacuum. The Redevelopment Plan also provides at page 14:

“However, the regulations of this Redevelopment Plan are consistent with the Maplewood Village Special Improvement District design standards as set forth in Section 237-9.1 of the Code of the Township of Maplewood. Building and site design elements **not explicitly regulated by this Redevelopment Plan** shall comply with the relevant portions of the Maplewood Village Special Improvement District design standards.” (Emphasis added.)

The demolition of the site is explicitly regulated by the Redevelopment Plan. For example, see page 35, in a paragraph entitled “Demolition”: “It is proposed that the site be completely cleared of existing buildings, parking lots and other improvements, as well as existing trees and other plantings. The Plan proposes a significant change in use over the current conditions, and there is no reason to retain any of the existing structures or vegetation.”

Here, the Township has exercised its planning powers, in accordance with the Redevelopment Law, to establish a Redevelopment Plan for the area. The specifics of that Redevelopment Plan must take precedence over the general provisions of the Maplewood Village Special Improvement District ordinance.

At its July 22nd meeting, the Village Alliance itself found that it was not required to make a determination of financial hardship in this instance. Nonetheless, in evaluating the testimony put before it, together with the participation of the public, at a meeting that lasted until well after midnight, it concluded that such financial hardship existed. To the extent that the Planning Board wishes to take any action with respect to financial hardship (though it is not required to do so), it may elect to rely on the findings and determinations made by the Village Alliance at that time.

2) To the extent that the Planning Board has an obligation under Section 237-9.1.B(6) of the Township's special improvement district ordinance ("Section 237"), that obligation is to evaluate and approve a proposed replacement structure, not to determine financial hardship in connection with a proposed demolition.

Section 237 provides:

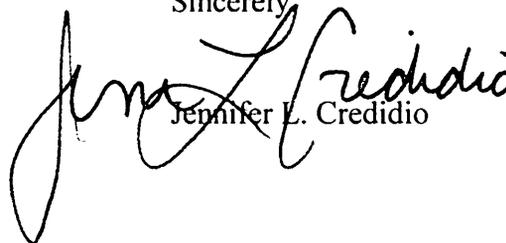
"Demolition. In keeping with the preservation element of the Township of Maplewood's Master Plan, which recognizes the need to preserve structures of historical significance, no building within the district shall be demolished without its owner demonstrating significant financial hardship and **without having a proposed alternative for new construction (i.e., schematic plans drawn by a licensed architect or engineer) approved by the MVA Design Review Committee and Village Alliance Board and the Planning Board** with proof of project financing, i.e., lease agreements, loan agreements, mortgage commitments, etc., except in instances where the Uniform Construction Code requires the demolition of a fire-damaged building." (Emphasis added.)

Section 237, as generally applied, clearly seeks that a new structure be proposed and approved prior to the demolition of the prior structure. To the extent that Section 237 applies in this instance, the Planning Board's role in the process is to evaluate site plans in accordance with its statutory purview and expertise.

3) The Objectors' request for recusal of Mayor DeLuca and Committeeman Ryan, statutorily required members of the Planning Board, is without merit.

Thank you for your time and attention to this matter.

Sincerely,



Jennifer L. Credidio

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August 10, 2015

VIA EMAIL (adele@twp.maplewood.nj.us)

Mr. Thomas Carlson
Chairman, Maplewood Township Planning Board
Maplewood Township Municipal Building
574 Valley Street
Maplewood, New Jersey 07040

**Re: PB-15-03
Maplewood Redevelopers, L.L.C.
Application for Preliminary and Final Major Site Plan Approval, and
Minor Subdivision Approval
Maplewood Village Post Office Rehabilitation Area
Block 13.09, Lots 180, 181, 185; Block 13.10, Lot 178, Maplewood, New
Jersey**

Dear Chairman Carlson:

This firm represents Maplewood Redevelopers, L.L.C., in connection with the above referenced application (the "Application"). We received a copy of a letter to you, dated August 4, 2015, from Richard Schkolnick, Esq., on behalf of his client, Village Keepers, Inc., a group objecting to the Application. Mr. Schkolnick's letter implies that the Planning Board is required to make a finding of financial hardship pursuant to Chapter 237 of the Township Code (the "SID Ordinance") prior to allowing the demolition of the Post Office building. It has always been, and it remains, Maplewood Redevelopers' position that a finding of financial hardship is not required in connection with this project.

Section 8 of the Maplewood Village Post Office Redevelopment Plan (the "Redevelopment Plan") provides that:

[a]ny site plan for development in the rehabilitation area shall comply with all signage and design review requirements of the Maplewood Village Special Improvement District design standards as set forth in Section 237-9.1 of the Code of the Township of Maplewood.

Section 237-9.1.B(6) of the SID Ordinance provides that:

[i]n keeping with the preservation element of the Township of Maplewood's Master Plan, which recognizes the need to preserve structures of historical significance, no building within the district shall be

Andrew B. Joseph
Partner responsible for
Florham Park Office

Established 1849

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demolished without its owner demonstrating significant financial hardship and without having a proposed alternative for new construction . . . approved by the MVA Design Review Committee and Village Alliance Board and the Planning Board with proof of project financing. . . .

The Village Keepers believe that, pursuant to these provisions of the Redevelopment Plan and the SID Ordinance, both the Village Alliance and the Planning Board must make independent findings of “significant financial hardship” before approving the design of the project to allow for the demolition of the old Post Office building. The Village Keepers’ position, however, is simply without merit.

First, the Redevelopment Plan explicitly contemplates the demolition of the Post Office Building. Section 7 of the Redevelopment Plan provides that:

“[i]t is proposed that the site be completely cleared of existing buildings, parking lots and other improvements, as well as existing trees and other plantings. The Plan proposes a significant change in use over the current conditions, and there is no reason to retain any of the existing structures or vegetation.”

The Redevelopment Plan was adopted on July 16, 2013, whereas the SID Ordinance requirement that a “significant financial hardship” be found prior to demolition dates back to July 6, 1999. Thus, the Redevelopment Plan supersedes the SID Ordinance requirement regarding demolition. The Township Committee expressly set forth its policy decision in the Redevelopment Plan to have the Post Office building demolished as part of the redevelopment of the subject tract. To require the Township (as owner of the site) to make a finding of financial hardship not only clearly contradicts the Township Committee’s decision to demolish the Post Office building pursuant to the Redevelopment Plan, but could actually lead to the absurd result of the entire Redevelopment Plan being rendered meaningless if there was no significant financial hardship and no way to effectuate the Redevelopment Plan without demolition. That is not a viable way to interpret the SID Ordinance and the Redevelopment Plan together.

Any contention that the 2014 amendment to the SID Ordinance (the “2014 SID Amendment”) superseded the Township Committee’s prior decision to not have the Redevelopment Project subject to the “significant financial hardship” requirement, also has no merit. Prior to the 2014 SID Amendment, Section 237-9.1.B(6) provided:

Demolition: Except in instances where the Uniform Construction Code requires the demolition of a fire-damaged building, no building within the District shall be demolished without its owner demonstrating significant

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financial hardship and without having a proposed alternative for new construction (i.e., schematic plans drawn by a licensed architect or engineer) approved by the Design Review Board and the Planning Board with proof of project financing, i.e., lease agreements, loan agreements, mortgage commitments, etc.

Thus, the 2014 SID Amendment did not make any substantive change to Section 237-9.1.B(6). The version of that section that was in place since 1999 contains the same requirement for a finding of significant financial hardship prior to demolition. Furthermore, there is no language in the 2014 SID Amendment that suggests that it was intended to supersede the explicit, specific provision of the Redevelopment Plan that calls for demolition of the Post Office building. It is a well-established canon of statutory interpretation that a specific ordinance provision will trump a general ordinance provision. Thus, if a subsequently adopted general ordinance is intended to invalidate a prior specific ordinance, there would need to be some explicit intent to do so contained in the subsequent ordinance. Here, there is none. Therefore, Section 7 of the Redevelopment Plan which requires demolition must prevail and Section 237-91.B(6) should have no force and effect in connection with the Application.

Furthermore, even if a finding of significant financial hardship were required by the Redevelopment Plan and SID Ordinance, the Redevelopment Plan and SID Ordinance are both clear that compliance with the design requirements of the SID Ordinance are to be determined by the Village Alliance and not the Planning Board. The Planning Board's only role in that determination is to decide any appeal of the Village Alliance's decision filed by the Redeveloper. After the language quoted above requiring compliance with the design requirements of the SID Ordinance, Section 8 of the Redevelopment Plan provides:

Any site plan shall be provided to the Maplewood Village Special Improvement District, Inc. for its review and approval prior to submission to the Maplewood Planning Board. The Developer may appeal any decisions of the Maplewood Village Special Improvement District, Inc., to the Maplewood Planning Board.

It would be redundant and inefficient if both the Village Alliance and the Planning Board were obligated to determine compliance with the design requirements set forth in the SID Ordinance. More importantly, if the Planning Board also had original jurisdiction and an obligation to determine compliance with the SID design standards, then the provision of the Redevelopment Plan granting the Planning Board appellate jurisdiction over any decision of the Village Alliance would be entirely superfluous. Again, as a matter of

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common sense and well established rules of statutory interpretation, ordinances should not be read in a manner that would render provisions superfluous.

The language in Section 237-9.1.B(6) of the SID Ordinance does not contradict this interpretation. Though that section does refer to approval by the Planning Board, that reference applies only to the requirement that there be an approved "proposed alternative for new construction," not that the Planning Board make a determination of financial hardship. This interpretation is consistent with the approval scheme established both by the SID Ordinance and the Redevelopment Plan and a common sense reading of the SID Ordinance together with the Redevelopment Plan in accordance with long held canons of statutory interpretation. Any suggestion to the contrary simply has no basis in the law.

I hope you find this letter helpful, and that we can avoid getting bogged down in spurious procedural issues at the hearing on August 11th. Thank you for your time and attention to this matter.

Very truly yours,

Andy S. Norin

cc: Richard Schkolnick, Esq.
Michael Edelson, Esq.
Roger Desiderio, Esq.
Jonathan Drill, Esq.
William Northgrave, Esq.
Jennifer Credidio, Esq.
Mr. Joseph M. Forgione