

**EAST AMWELL
ZONING BOARD OF ADJUSTMENT - MINUTES
Municipal Building – 7:30 PM
February 14, 2012**

Call to order and compliance with the Open Public Meetings Act

The regular meeting of the Board of Adjustment was called to order at 7:30 PM on February 14, 2012 in the Main Meeting Room of the Municipal Building, 1070 Route 202/31, Ringoes, NJ by Chair Schroeder.

In compliance with the Open Public Meetings Act, the Administrative Officer announced this was a regularly scheduled meeting pursuant to the Annual Meeting Notice as published in the January 19, 2012 issue of the Hunterdon County Democrat, filed in the Township Clerk's Office, and posted on the Bulletin Board on February 7, 2012.

Roll Call and Agenda Review

Present: Sherrie Binder
Nancy Cunningham
Paul Gavzy
Sue Posselt
Kendra Schroeder
Diana Garrett – Alt. #1
Anne Williams – Alt. #2
Attorney Waterbury
Attorney Drill (*Special Conflict Counsel*)
Planner Slagle

Absent: Gloria Frederick
Gael Gardner

Presentation of Minutes

A motion by Paul Gavzy, seconded by Sherrie Binder to approve the Board's minutes from 1/10/12 as revised was unanimously approved.

Presentation of Bills for Payment

A motion by Nancy Cunningham, seconded by Paul Gavzy to approve the vouchers for payment as listed on the agenda was unanimously approved.

Correspondence

Chair Schroeder noted the correspondence will be dealt with as it comes up over the course of the meeting.

Applications to be Deemed Complete or Incomplete

Edward & Linda Feinberg – AJ-12-06: Block 41 Lot 40.06 – Sourland Mountain/Appeal of Activity on Neighboring Lot 40.05

It was noted for the record that Attorney Waterbury recused herself from this application and stepped down from the dais. Conflict Counsel, Attorney Jonathan Drill stepped up to the dais. He explained that there is no question that the application is complete but expressed that based on the volume of information supplied if the Board agrees, he will contact the applicant's attorney to request he limit the documentation to just the essentials needed to make a determination on the matter being appealed.

Ms. Cunningham asked for clarification if the matter being appealed is Zoning Officer McManus's approval allowing the del Campo's to construct a greenhouse and to convert a portion of their existing barn to a farm stand. Attorney Drill said yes.

Mr. Feinberg asked from the audience for clarification on whether or not he should have received notification of this approval since he is an adjoining property owner. Attorney Drill stated, "I spoke with Mr. Feinberg's attorney earlier today and unless someone raises any time limitation there is no need to address the noticing issue."

The Board was in agreement with Attorney Drill's suggestion on requesting the application materials be limited to the essentials.

A motion by Paul Gavzy, seconded by Sherrie Binder to deem the application complete was unanimously approved by roll call vote.

Roll Call Vote: Paul Gavzy: Yes, Sherrie Binder: Yes, Nancy Cunningham: Yes, Sue Posselt: Yes, Kendra Schroeder: Yes, Diana Garrett: Yes, Anne Williams: Yes

Attorney Drill stepped down from the dais and Attorney Waterbury returned to the dais.

Applications for Public Hearing

Margaret Bajzath – AJ-12-05: Block 32 Lot 4.03 – Sourland Mountain/Lot Area Variance to Deem the Lot Buildable

Present for the public hearing was Attorney George Dilts, property owner Margaret Bajzath and her Grandson Glenn Palaschak. Attorney Waterbury swore everyone in including Board Planner Slagle.

It was noted that the public noticing was done in accordance with the MLUL requirements and Attorney Waterbury indicated the Board had jurisdiction to proceed with the public hearing.

Attorney Dilts explained the subject site is a 2 acre parcel in the Sourland Mountain District which is now considered a non-conforming lot. He noted the provisions of the Ordinance (92-89:k) permit the construction of a single family home on smaller lots but the (k) provision states, "...any lot less than 15 acres in size may have a construction permit issued in accordance with the chart of bulk standards below without an appeal to the Zoning Board of Adjustment for residential uses detailed in section k(1) and k(2) below provided that the requirements in the following tables are met..."

Attorney Dilts referred to k(2) noting, "...new construction of a single family detached dwelling for which a variance has been approved..." He explained that in this case, the applicant is coming to the Board prior to conducting any perc tests, logs or designing a septic system. He also noted that no hydrogeologic testing has been performed yet either but agreed to meeting all of the criteria in the Ordinance as conditions of approval in the Resolution noting that his client does not have the financial means to do all of this testing now.

Attorney Dilts explained his client attempted to sell the lot to adjoining property owners with no success. He then provided a brief history of the property. **Exhibits A-1 thru A-12** were provided:

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- Exhibit A-1: Property deed. Ms. Bajzath explained she and her husband bought the property known as Block 32 Lot 4.03 in 1977 for \$17,900.
- Exhibit A-2: Letter dated 5/12/77 from seller Gordon Smith indicating the subject site had soil log and perc tests done indicating it met the standards of East Amwell Township's Board of Health.
- Exhibit A-3: Survey of the property showing the lot is 2.003 acres and is on the corner of Orchard Road and Runyon Mill Road.
- Exhibit A-4: Copy of a property tax bill for the subject site.
- Exhibit A-5: Soil logs performed in 1987 for the consideration of building a home on the site at that time.
- Exhibit A-6: Letter dated 3/3/05 from Certified Valuations indicating the parcel was revalued at \$168,000.
- Exhibit A-7: Sales contract for the parcel dated 5/6/10 between Ms. Bajzath and Tim Turlip. It was noted that Ms. Bajzath's husband passed away in 2009 and she attempted to sell the property for \$150,000 in 2010.
- Exhibit A-8: Letter dated 5/24/11 from Mr. Turlip's Attorney indicating that Township Zoning Officer McManus claims the Bajzath lot is not considered a viable building lot and that any prior zoning permit approval issued in the past can no longer be relied upon. Subsequently, the contract to purchase the property was terminated by Mr. Turlip.
- Exhibit A-9: Letter dated 12/10/10 from Zoning Officer McManus indicating the zoning permit approval issued to Mr. Turlip on 6/5/10 for the subject site was conceptual in nature and noted the property will require variance approval in order to build a single family home per the Township Ordinance.
- Exhibit A-10: Letters to adjoining property owners, East Amwell Township and Green Acres offering the property for sale. (*The letters were marked a-d*). Attorney Dilts noted that his office received a phone call from adjoining property owner Ken Dombrowski indicating he and other neighbors were going to object to any development application and he would wait and see before making an offer.
- Exhibit A-11: An email dated 2/3/12 from neighbor Peter Harnett offering to purchase the Bajzath parcel for \$14,000. Attorney Dilts remarked that the offer is unacceptable.
- Exhibit A-12: A copy of a portion of the tax map showing Ms. Bajzath's lot numbered 4.03.

Attorney Dilts stated that they believe they should be entitled to the requested variance subject to the ordinance requirements as conditions of approval in the Resolution. He noted there is no detriment to the public good because the approval would be subject to the objective criteria of adequate water, proper septic and the required bulk standards. He also indicated there is no impairment to the zone plan or ordinance because single family dwellings are permitted.

Planner Slagle commented on her review memo noting that as Attorney Dilts outlined the relief they are seeking is a variance to the specific section 92(k) of the grandfathered provisions which requires the applicant to obtain a variance for the undersized lot. She said it is important to note that if the Board approves the variance, any potential development will still need to meet the ordinance requirements or the property owner would need to seek additional variance approvals.

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Attorney Waterbury clarified that the scope of the relief being sought this evening is simply to say that a residence may be built on this lot provided all outside agency approvals are obtained.

Ms. Cunningham asked for clarification that Ms. Bajzath's intent is to sell the parcel and not build on it. Ms. Bajzath said yes.

A motion by Sherrie Binder, seconded by Paul Gavzy to open to the public was unanimously approved.

Peter Harnett of 8 Orchard Road came forward and was sworn in. He noted that he believes his offer to buy the lot for \$14,000 is reasonable and commented on the current zoning requirements of 15 acres as well as the septic field requirements.

Ken Dombrowski of 38 Runyon Mill Road came forward and was sworn in. He expressed concern over potential wetlands on the subject lot as well as possible drainage issues that may result on his property if the site is developed. Mr. Dombrowski also expressed concern over the lack of water in the Sourland Mountain area and what may happen to the existing wells in the area. He added that he had some interest in purchasing the property as a wood lot and suggested perhaps he and Mr. Harnett could make an offer together.

Attorney Dilts clarified that Mr. Dombrowski is the property owner of Lot 4.04. Mr. Dombrowski said yes.

Rich Spiegel of 1 Mountain Road came forward and refused to be sworn in stating that under NJ Law only those people providing testimony are required to be sworn in and he only wanted to ask a question of one of the Board Members. Attorney Waterbury explained that there is numerous case law supporting that anyone commenting at a public meeting is required to be sworn in. Mr. Spiegel continued to argue his point. Attorney Waterbury directed Mr. Spiegel to ask his question and emphasized that he cannot make any statements or comments regarding the application without being sworn in.

Mr. Spiegel asked Ms. Cunningham what the reason for her question was to Ms. Bajzath regarding her intention to sell the property or build on it. Attorney Waterbury noted that Ms. Cunningham can answer the question if she liked but clarified that it is not appropriate for Mr. Spiegel to be questioning Board Members. Attorney Waterbury explained that the Land Use law is very clear and informed Mr. Spiegel that he is only allowed to make statements and comments on the application and that he may ask questions of any witness who has testified this evening.

Mr. Spiegel expressed his annoyance and sat down.

Peter Harnett of 8 Orchard Road came forward again and expressed support for Mr. Dombrowski's comments regarding the water issues. He also commented that the subject lot was sold once before as a building lot under what he indicated to be "false premises." Attorney Dilts objected stating the contract and conditions of the sale of the property were entered into the record along with the letter terminating the sale and he remarked there were no false pretenses whatsoever. Attorney Waterbury commented that the Board has the documentation on this matter and will know how to evaluate Mr. Harnett's statements.

Curtis Cole of 9 Orchard Road came forward and was sworn in. He commented that he and his wife moved into the Township 11 years ago and they were pleased to see the 15 acre zoning change in the Sourland Mountain. He remarked that the Board of Adjustment should adhere to that zoning requirement.

Judith Glogau of 14 Orchard Road came forward and was sworn in. She expressed concerns with the wetlands on the subject site and also with potential traffic safety since the property is a corner lot.

Seeing no other members of the public come forward, a motion by Sue Posselt, seconded by Sherrie Binder to close to the public was unanimously approved.

Attorney Dilts remarked that he understands the neighbor's concerns with potential wetlands on the subject property and noted that the Township Ordinance permits the construction of homes in this zone and specifically addresses lots under 15 acres so that property owners don't lose their equity.

Ms. Binder asked Ms. Bajzath if there are homes on the lots adjoining her property. Ms. Bajzath said yes and Ms. Binder remarked that she believes all of those surrounding lots are undersized as well.

Attorney Waterbury clarified that the Board is only being asked to grant a lot area variance to deem the property buildable, but the approval is subject to conditions such as wetlands determination from the NJDEP, soil and perc testing and proper well approvals. She also reminded the Board that under Section 92-13(f) of the Ordinance, building permits must be pulled within 1 year unless the applicant requests an extension. She noted the Board can grant 6 month extensions per the applicant's request.

Ms. Cunningham noted that while there was no official site report provided, she had driven by the property and commented that the lot is currently wooded stating she believes that in addition to the other requirements Attorney Waterbury outlined, tree conservation buffering would also be applicable.

Attorney Waterbury reviewed the legal standard for the application explaining it is a lot area variance – a C-1 hardship variance. She noted the applicant is required to prove the positive and negative criteria. Attorney Waterbury stated that with regard to this application, the positive criteria focuses on the ability or inability to make the lot conforming. It was noted that testimony was provided that attempts were made to sell the land to the adjacent property owners without success. She stated the lot had to have been legal at some point and the zoning would have had to have changed to render it non-conforming which is the testimony that was provided. With regard to the negative criteria: The detriment to the public good and any impairment to the zone plan and the zoning ordinance, she noted that as long as the positive criteria is satisfied and based on the proofs, the Board believes the lot area variance can be granted without substantial detriment to the public good, and without substantial detriment to the zone plan and zoning ordinance the variance can be granted subject to all other outside agency approvals.

A motion by Sherrie Binder, seconded by Paul Gavzy to approve the application and deem the lot buildable allowing the property owner 18 months to pull a building permit was unanimously approved by roll call vote.

Roll Call Vote: Sherrie Binder: Yes, Paul Gavzy: Yes, Nancy Cunningham: Yes, Sue Posselt: Yes, Kendra Schroeder: Yes, Diana Garrett: Yes, Anne Williams: Yes

Old Business

Status of Policies of BOA as Adopted 1/8/02 and Revised 2/12/02

Ms. Cunningham provided some revisions to the policies. It was noted that Chair Schroeder will also review the document for any additional revisions. Ms. Andrews will make the changes and provide a clean copy to the Board in their packets for adoption at the Board's March meeting.

New Business

It was noted for the record that there were no new business matters listed on the agenda.

Comments of the Board Members

It was noted for the record that there were no comments made by any of the Board Members.

Attorney Comments

It was noted for the record that Attorney Waterbury had no comments.

Open to the Public

A motion by Paul Gavzy, seconded by Sherrie Binder to open to the public was unanimously approved.

Ann del Campo of 82 Stony Brook Road came forward and indicated she had some procedural questions regarding the appeal made by her neighbor regarding activities taking place on her property. Attorney Waterbury stepped down from the dais and Attorney Drill stepped up. Ms. del Campo asked, “Is it customary for the Board of Adjustment to bring forth any inconsistencies with what may be being presented elsewhere regarding the appeal brought forth by my neighbor?” She specifically referenced the time requirement to file an actual appeal. Attorney Drill noted that since Mr. Feinberg was in the audience, and stated he had no objections, he is able to respond to Ms. del Campo, otherwise he could not. He explained that his legal advice to the Board is that if Ms. del Campo believes that the appeal was not filed in a timely manner, she should participate in the public hearing next month and raise the issue or send written notification of such, prior to the meeting.

Ms. del Campo referred to the jurisdiction of the CADB regarding agricultural issues. Mr. Gavzy expressed that he believed all of Ms. del Campo’s questions should be asked next month during the public hearing. Ms. del Campo remarked that she would save everybody the time this evening and left the meeting.

A motion by Nancy Cunningham, seconded by Paul Gavzy to close to the public was unanimously approved. Attorney Drill stepped down from the dais and Attorney Waterbury stepped up.

Adjournment

A motion by Paul Gavzy, seconded by Nancy Cunningham to adjourn was unanimously approved.

The meeting adjourned at 8:57 PM.

Maria Andrews, Administrative Officer