

**EAST AMWELL
ZONING BOARD OF ADJUSTMENT - MINUTES
Municipal Building – 7:30 PM
June 10, 2014**

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 June 10, 2014 in the Main Meeting Room of the Municipal Building, 1070 Route 202/31, Ringoes, NJ by Chair Binder.

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 23, 2014 issue of the Hunterdon County Democrat, filed in the Township Clerk's Office, and posted on the Bulletin Board on June 4, 2014.

Roll Call and Agenda Review

Present: Sherrie Binder
Nancy Cunningham
Paul Gavzy
Kendra Schroeder
Anne Williams
Diana Garrett – Alt. #1
James Atkeson – Alt. #2
Attorney Cecil
Planner Slagle
Engineer O'Neal

Absent: Gloria Frederick
Gael Gardner

Presentation of Minutes

A motion by Paul Gavzy, seconded by Nancy Cunningham to approve the Board's 5/22/14 meeting minutes as revised was approved with Ms. Schroeder and Mr. Atkeson abstaining.

Presentation of Bills for Payment

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

Applications to be Deemed Complete or Incomplete

It was noted for the record that there were no applications listed on the agenda for completeness.

Applications for Public Hearing

Frank Di Gioia – AJ-14-02 – Block 25 Lot 7.19 – Amwell Valley: Back Brook Road – Side Yard Setback Variance

It was noted for the record that Chair Binder recused herself from this application and stepped away from the dais. Vice Chair Williams took over the meeting.

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Present for the application was property owner Frank Di Gioia, his Surveyor Pat Fatton and his Engineer Robert Lorentz.

Attorney Cecil swore in all parties including the Board's professionals. Mr. Di Gioia explained that he bought the Lot in 1981 and installed the driveway, the well and the septic in 1994 when the zoning allowed for a 30' side yard setback. Subsequently the zoning changed and now requires a 50' side yard setback. Mr. Di Gioia explained that he is seeking a variance to deviate from the required 50' so he can build a home on the site 30' from the property line.

Surveyor Fatton came forward and presented the following exhibits:

Exhibit A-1: Sheet 2 of the site plans submitted with the original application

Exhibit A-2: Three 8" x 11" color photos depicting the subject property

Surveyor Fatton explained that the intent of the ordinance is met because the house will be approximately 100' away from the neighboring homes. He noted that no trees will be cleared and clarified that there are mature tree rows that will offer a substantial buffer and privacy to the neighbors.

It was noted that the proposed dwelling will be 1232 sq. ft with a 625 sq. ft. garage for a total of 1857 sq. ft. Surveyor Fatton remarked that the Lot is constrained by the location of the existing well and septic, and because of the wooded areas and buffer associated with the portion of the Back Brook which runs along the south-central section of the property.

Ms. Cunningham referred to page 1 of the site plans and asked if the applicant had considered moving the proposed dwelling to the east and keeping the septic system in front of the home. Page 1 of the site plans submitted with the original application was marked as **Exhibit A-3**. Surveyor Fatton explained that moving the home to the east is not an option because there are 3 septic trenches in this area with approximately 5' to 10' between each lateral.

Mr. Gavzy asked if Mr. Di Gioia had built the home when the Lot was subdivided would there have been any issues. Mr. Di Gioia said no because there would have been enough room to build a home. Mr. Atkeson asked if there was any consideration given to seeking a different setback variance. Surveyor Fatton remarked that they did consider deviating from the front yard setback requirements but Mr. Di Gioia was reluctant to seek that variance because he thought the proposed home would be too close to the road.

Planner Slagle stated that the Lot was part of a major subdivision in the early 80's prior to the new AVAD zoning and explained that it is considered a grandfathered Lot. Engineer O'Neal asked what the size of a conforming home would be. Surveyor Fatton indicated that to meet all of the zoning requirements he estimates a conforming home would be about half the size they are proposing. Engineer O'Neal clarified that a 2 story home would only be about 1200 sq. ft.

Engineer Lorentz commented the setback variance they are seeking meets the hardship criteria because the Lot has been partially developed with the 30' setback provisions and commented that the requested relief allows the home to be built away from what are considered the sensitive environmental areas of the property. He remarked that granting the variance will not be substantially detrimental to the zone plan.

Ms. Schroeder asked if there were any gaps in the tree line. Vice Chair Williams and Engineer Lorentz confirmed that there is a gap in the tree line.

Vice Chair Williams opened the floor to public comment. Frank Richardson came forward and was sworn in. He identified himself as the adjoining property owner of Block 25 Lot 7.20. He stated that he purchased his home in 1998 for the purpose of raising his family with the privacy and safety that this area offers. Mr. Richardson commented that the new zoning regulations were put into effect in 1995 and believes that he is entitled to the safety and security the 50' setback provides. He requested Mr. Di Gioia build further to the east and stated he does not support the application.

Iлона English of 9 Runyon Mill Road came forward and was sworn in. She expressed support for the application and said the Board should not be so rigid. She commented that there are no substantial negative impacts and stated that there are very few grandfathered undersized lots left in the Township and noted that Mr. Di Gioia has invested in a well and septic system and suggested that perhaps maybe additional buffering can be planted to appease the neighbor.

Seeing no other members of the public come forward, a motion by Nancy Cunningham, seconded by Paul Gavzy to close to the public was unanimously approved.

Ms. Cunningham asked if the applicant was agreeable to provide additional screening on the west side of the property. Mr. Di Gioia remarked that he planted sugar maples and spruce trees years ago when he bought the property and stated that you cannot see the neighbor's house because the trees are mature.

Ms. Garrett provided the Site Review Committee's report to the Board. After some discussion Mr. Di Gioia agreed to plant additional spruce trees where ever there is a gap in the tree line.

Mr. Atekeson commented on perhaps honoring the 50' side yard setback and infringing upon the front yard setback. Attorney Cecil explained that in order for the Board to consider that Mr. Di Gioia would have to submit another application requesting a variance to deviate from the front yard setback requirements and re-notice the public hearing because she stated that is not the application that is before the Board this evening.

A motion by Paul Gavzy, seconded by Diana Garrett to approve the application for a side yard setback variance was approved by roll call vote.

Roll Call Vote: Paul Gavzy: Yes, Diana Garrett: Yes, Nancy Cunningham: Yes, Kendra Schroeder: Yes, Anne Williams: Yes, Jamie Atkeson: Yes

New Market Farm, LLC – AJ-14-01 – Block 41 Lot 17.02 – Sourland Mountain: 125 Linvale Road – Preliminary & Final Major Site Plan Approval with Variances

It was noted for the record that Chair Binder returned to the dais for this application. Attorney Cecil noted for the record that both Alternate Members will be eligible to vote on the application because two regular Board Members are absent. She also noted that those who were absent last month have read the transcripts and are eligible to vote on the application.

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Present for the public hearing was property owner Ruth Sigal, her Attorney Gary Forshner, Geologist Richard Jasaitis, Planner Carlos Rodrigues, Engineer Bob Templin and Architect Glen Fries.

Attorney Forshner explained that the public hearing was a continuation of the hearing that began at the Board's May 22, 2014 special meeting. He called Architect Glen Fries forward who was accepted as an expert to provide testimony on this application. Architect Fries presented **Exhibit A-10**: A mounted color photo of the renovated barn. It was noted that the 200 year old barn was weathered and deteriorated and has been restored to maintain its character and use.

Architect Fries explained the other proposed structures for the site. He stated that the main structure is essentially 3 components: The main barn, the 20 stall stable and the indoor riding ring. He stated the indoor ring will be within a 70' x 270' section of the building. It was noted that the back end of this portion of the building will be constructed 5' to 6' into the existing hillside on the property in order to minimize the height of the structure on the surrounding neighbors.

Exhibit A-11 was presented depicting elevations of the proposed building. Architect Fries commented that the barn section will be visible from Linvale Road. He provided additional details of the structure noting the barn will have a stone base with a green aluminum roof and light green hardiplank siding. The windows will have cream color trim. He indicated the indoor ring will have several glass windows to provide natural sunlight and heat.

Ms. Cunningham asked for details on the barn. Architect Fries explained there will be a 12' aisle, 4 grooming stalls, 2 shower stalls, 1 heat lamp stall, a large tack room, a small tack room, a few bathrooms, a feed room, an indoor lounge, hay storage and a 2 bedroom apartment upstairs with an open floor plan to include a kitchen, a living room, a dining room and a bathroom.

Lighting was discussed. Architect Fries noted the indoor riding ring will have down shielded lights with 2 outside lights on timers.

Ms. Cunningham asked about landscaping around the detention basin. Architect Fries commented that they intend to plant low shrubbery including butterfly bushes.

Attorney Forshner called Planner Carlos Rodrigues forward who was accepted as an expert to provide testimony on this application. Planner Rodrigues referred to his planning report and commented that the fundamental question regarding this application is whether or not the proposed use on this site is in the wrong location. He stated he believes the proposed application is the proper use and that by approving the project, the Township will be preserving the Sourlands and promoting farming which are both consistent with the Master Plan.

Exhibit A-12 was presented depicting the current East Amwell Township Zoning map and **Exhibit A-13** showing a blown up portion of the zoning map depicting the subject site. Both exhibits were offered to illustrate how the Amwell Valley Agricultural District (AVAD) and the Sourland Mountain District wrap around each other. Planner Rodrigues said that agricultural uses have always been allowed within the Township, but in 1992 agricultural uses became conditional uses in the AVAD (*should actually be "in the Sourland Mountain District"*).

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Planner Rodrigues read a portion of the Township’s Land Use Ordinance explaining it is the section that prefaces the regulations in the Sourland Mountain. He stated, “The natural resources of the Sourland Mountain are of regional and statewide significance with origins of critical features including wetlands, large contiguous forests, limiting geology characterized by low rates of recharge for bedrock aquifers and low yielding wells and critical habitats for threatened and endangered species points to the need for land use regulations that promote sustainability and resource preservation, critical public health and welfare concerns and protecting an adequate water supply and preventing contamination of drinking water by improperly treated subject effluent.” Planner Rodrigues commented that many of these features don’t apply to the subject site. He added that the property is also not included in the “Area 5” section of the State plan. He stated that he believes the proposed application should be approved since it promotes the intent behind the Sourland Mountain zoning by breaking the rules because the proposed project will increase recharge, reduce runoff, improve water quality, promote farmland policies, enhance the surrounding neighborhood, strengthen and diversify the agricultural base and will support local farmers.

Planner Rodrigues noted that any negative impacts typically associated with applications such as traffic, noise, lighting and runoff issues are either non-existent with what is being proposed, or inconsequential.

Attorney Forshner asked about the use of the existing office in the barn. Planner Rodrigues commented that the office is already there and the proposed use of it is very limited. He remarked that he believes the use of the space should be considered an accessory use rather than a second principal use and stated that the office poses no detriments if it’s utilized.

Attorney Forshner asked about the proposed farm labor housing. Planner Rodrigues commented that the apartment will be within the proposed new barn structure so the impact to the property is limited. He noted the importance of having someone on site at all times for the safety of the horses.

Attorney Forshner asked about the 30 acres required for a farm in the Sourland Mountain District. Planner Rodrigues commented that the subject site is 27 acres and can adequately accommodate the proposed structures and use.

Attorney Forshner called Engineer Bob Templin forward to clarify testimony provided at the Board’s 5/22/14 meeting regarding water quality. Engineer Templin explained that the proposed detention basin has been designed with a sand filter at the base of the basin to infiltrate the water into the ground. He noted the filter is 30” in depth where the code requires 18” and he stated their design is higher than the State standards providing for 80% total suspended solid removal. Attorney Forshner asked if clean water is being recharged into the aquifer. Engineer Templin indicated the water will be coming from the runoff on site from the parking areas, the roofs and the lawn and field areas. He expressed that the recharged water will meet state and local ordinance requirements.

Planner Slagle clarified the d(1) use for the office and farm labor. She stated home occupations are clearly defined in the ordinance as being an office used by someone who resides on the property and since Ms. Sigal will not be living there the use of the office does not qualify as a home occupation. Planner Slagle read the definition saying, “A home occupation is an occupation being conducted wholly or in part by the resident permitted as an accessory use in any residential district in conformance with the following requirements...persons engaging in a permitted home occupation shall be limited to the members of the

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household.” Attorney Forshner commented that he respectfully interprets the ordinance differently explaining that it doesn’t have to be a home occupation in order to be accessory. He expressed that accessory is subordinate, incidental and customary and he believes the propose use to be just that. Attorney Forshner stated that he didn’t want the Board to get distracted over technical discussions because he believes the analysis is the same whether the office is there or not. He reiterated that this is an incidental use of an existing office space and agreed to withdraw this component of the application if the office use is a problem but respectfully hoped he didn’t need to.

Ms. Williams commented that there may be some concern with use of the office space by future property owners. Attorney Forshner suggested that the use can be restricted in the resolution to what has been described. Attorney Cecil agreed that the Board can limit the use and expressed that she believes the testimony demonstrates the use of the existing office as incidental.

Attorney Forshner referred to the Board’s Professional’s reports saying that he believes most of the issues have been addressed through testimony and those that haven’t he indicated they will agree to. He recognized receipt of a review memo from the Environments Commission and he also thanked the Agricultural Advisory Committee for their letter of support.

Chair Binder asked Engineer O’Neal about the recharge calculations provided by the applicant. Engineer O’Neal commented that he asked for the calculations supporting the testimony regarding the 2.2 million gallons of annual recharge to the aquifer and he indicated his firm’s in house geologist has reviewed the numbers and confirmed that the calculations are correct.

Ms. Cunningham asked if any of the fields or pastures will be irrigated. Architect Fries said no.

A motion by Kendra Schroeder, seconded by Anne Williams to open to the public was unanimously approved.

Dante DiPirro of 77 Snydertown Road came forward and stated his property is adjoining Lot 17 to the right of the subject site. He referred to Exhibit A-13 and commented that the proposed barn will be within his view. He expressed concern with potential odors and with the magnitude of the proposed project noting that the ordinance allows barns up to 2000 sq. ft. and said the applicant is proposing a 24,000 sq. ft. structure. He suggested additional buffering be considered and remarked that the impervious coverage could be reduced if the barn was reconfigured. He asked the Board to do whatever they could to ensure the uses on the site don’t expand over time.

Iлона English of 9 Runyon Mill Road came forward and expressed support for the application. She commented that she started the preservation movement within the Township years ago and has been involved with breeding horses for 27 years. She referred to horse farmers as “the last of the Mohicans” and stated they are the industry who will keep agriculture alive. Ms. English noted that horse farmers are the second largest industry in the State of NJ. She commented that they buy local hay creating a “symbiosis” critical to keeping the AVAD and the Sourland Mountain from becoming multi-flora rose with deer eating everything. Ms. English encouraged the Board to support the application and realize that change is happening in agriculture. She also asked that the issue of the home office be revisited saying they are a reality of our society noting how they are used and who functions in them is constantly evolving.

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Attorney Forshner commented that he doesn't believe the home occupation provision in the ordinance provides anything. He stated it says there cannot be any third party use and he remarked that with the way everyone telecommutes today we all can use any portion of our homes as an office without any permission whatsoever. Attorney Forshner said that the irony of the home occupation provision is that he isn't sure it actually gives anyone any further rights than what they already have as a matter of law.

Frances Gavigan of 123 Wertsville Road came forward and expressed support for the application. She noted that she is the Chair of the Agricultural Advisory Committee and presented the following exhibits in an effort to demonstrate that the subject site is more characteristic of the AVAD than the Sourland Mountain:

Exhibit P-1: A blown up portion of the EIS submitted by the applicant depicting the site has prime soils

Exhibit P-2: A blown up portion of a figure from the Farmland Preservation Plan contained in the Township Master Plan depicting that the subject site is surrounded by agricultural properties

Exhibit P-3: A blown up figure from the Township's Master Plan showing locations of prime soil

Exhibit P-4: A blown up figure from the Township's Master Plan showing protected species habitats for the purpose of demonstrating that the subject site provides and supports protected species habitats

Ms. Gavigan commented that East Amwell supports the right to farm and she remarked that she didn't believe there were any compelling reasons to deny the proposed application.

Susan Dunning, Executive Director of Mercer County's Big Brothers Big Sisters organization came forward and read the following letter into the record:

"For the past four years Ruth Sigal has generously volunteered several hours at a time of 'Horse Time,' the chance for a pair consisting of a Little Brother or a Little Sister and their adult mentor to sign up to visit Ruth and her horses. Less than 15 miles from where most of them live, young and old have discovered the beauty of rural farm landscape and the history of horses in our culture. With Ruth's expert guidance, they have gained confidence and joy from their guided interactions with Ruth and her horses. This has been an unforgettable experience for these children as well as for their Big Brothers and Big Sisters who accompany them. I am confident that Ruth's plans embody respect for the community, the land and the rural traditions because that is what Ruth has taught our clients and how she has conducted herself. I hope she will be able to build her permanent home soon so she can continue her good works and so that more of us can continue to learn to appreciate and become the future guardians of our natural world.

Ms. Dunning concluded by saying that Ms. Sigal has a big heart and going to her farm is one of the children's favorite activities. She expressed that Ruth will make a great neighbor.

Lisa Stockman of 286 Carter Road in Princeton came forward and commented that the Cheret's are internationally known dressage riders and stated that they are remarkable people who will contribute in a distinguished manner to the community.

Mark Marchuk of 129 Linvale Road came forward and expressed that he wholeheartedly endorses the application and remarked that Ruth's project will fuel the economy.

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Seeing no other members of the public come forward, a motion by Kendra Schroeder, seconded by Anne Williams to close to the public was unanimously approved.

Planner Slagle commented that there has been a lot of discussion regarding East Amwell's commitment to agricultural uses and the Township's encouragement of agricultural vitality. She stated that there should be no doubt that East Amwell is a very agricultural minded community. She noted that equally important is the commitment the Township has made to protecting the resources in the Sourland Mountain district and remarked that this property is located in the Sourland Mountain Zone. Planner Slagle stated that the applicant has presented their testimony demonstrating why the required variances should be granted. She commented that she wanted to make it clear that while the Master Plan goals and vision for East Amwell addresses many agricultural objectives, there are also goals and objectives specific to the Sourland Mountain. She remarked that ultimately the Board has to take everything into consideration and make determinations on the relief that is being requested.

Engineer O'Neal mentioned that he did 2 review memos: April 10, 2014 which did not include his stormwater analysis because the applicant had not completed addressing the stormwater requirements and the May 14, 2014 memo which did include his stormwater review. Engineer O'Neal noted that there are still about 30 outstanding items that need to be addressed. He said many are housekeeping issues but several are related to stormwater management, partial redesign of the detention basin and modifications to the stormwater report and calculations. Attorney Forshner commented that any outstanding items can be addressed as conditions of approval. Engineer O'Neal noted that he is uncomfortable with the amount of potential conditions.

Attorney Cecil explained that the applicant is asking for variances as well as for site plan approval. She remarked that she is nervous about site plan issues being listed as conditions of approval and suggested that the applicant consider bifurcating the application and requesting that the Board act only on the variance aspect this evening.

Engineer O'Neal commented that he doesn't believe any of the outstanding issues will affect the variance aspect of the application.

Attorney Cecil summarized the application explaining that the Board must look at the totality of the proposed horse operation on a property that is less than the required 30 acres with increased impervious coverage, occasional office use and farm labor housing. She noted the following potential conditions of approval:

1. No events, clinics, horse shows or festivals
2. Limited use of the existing office
3. All items in the professional's review memos will be addressed
4. The existing well is to be abandoned
5. No trees will be removed on the site
6. Additional screening around the barn will be reviewed by the professionals in an effort to appease the neighbor
7. Subject to site plan approval

A motion by Paul Gavzy, seconded by Kendra Schroeder to approve the requested variances subject to the conditions noted was unanimously approved by roll call vote.

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

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There was some discussion regarding when the revised site plans needed to be submitted because Planner Slagle and Engineer O’Neal will both be on vacation the week of 7/7/14. They each noted they will send a colleague to cover the meeting on 7/8/14 if necessary. It was determined that the submission deadline for the revised site plans will be on or before 6/25/14.

Attorney Forshner clarified that the public hearing for site plan approval will be carried to the Board’s 7/8/14 meeting with no additional public notice required. Attorney Cecil agreed.

Open to the Public

A motion by Kendra Schroeder, seconded by Anne Williams to open to the public was unanimously approved. Seeing no members of the public come forward, a motion by Nancy Cunningham, seconded by Kendra Schroeder to close to the public was unanimously approved.

Adjournment

A motion by Paul Gavzy, seconded by Sherrie Binder to adjourn was unanimously approved.

The meeting adjourned at 11:03 PM.

Maria Andrews, Administrative Officer