

**EAST AMWELL
ZONING BOARD OF ADJUSTMENT - MINUTES
Municipal Building – 7:30 PM
August 12, 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 August 12, 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 August 4, 2014.

Roll Call and Agenda Review

Present: Sherrie Binder
Nancy Cunningham
Gloria Frederick
Gael Gardner
Kendra Schroeder
Anne Williams
Diana Garrett – Alt. #1
Attorney Victoria Britton – *(Covering for regular Board Attorney Cecil)*
Engineer Dennis O'Neal
Planner Joanna Slagle

Absent: Paul Gavzy
James Atkeson – Alt. #2

Presentation of Minutes

A motion by Nancy Cunningham, seconded by Anne Williams to approve the Board's 6/10/14 minutes as revised was approved with Ms. Frederick and Ms. Gardner abstaining.

A motion by Kendra Schroeder, seconded by Anne Williams to approve the Board's 7/8/14 minutes with no revisions noted was approved with Ms. Binder, Ms. Gardner and Ms. Frederick abstaining.

Presentation of Bills for Payment

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

Chair Binder re-ordered the agenda to address memorialization of Resolution AJ-14-02: Frank DiGioia – Approval of Side Yard Setback Variance – Block 25 Lot 7.19 in order to accommodate the property owner and Counsel for a neighboring property owner who were both present at the meeting.

New Business

Memorialization of Resolution AJ-14-02: Frank DiGioia – Approval of Side Yard Setback Variance – Block 25 Lot 7.19

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

Attorney Victoria Britton of Mason Griffin & Peirson introduced herself to the Board. She explained that there is a neighboring objector, Mr. Richardson, who's Attorney sent in a letter this afternoon objecting to condition 12 (a) in the resolution: "The applicant shall be required to retain the existing rows of spruces on the northern and western property lines and shall plant additional trees on the western property line as needed to fill any gaps in the existing tree line." Attorney Britton remarked that this condition accurately reflects what the Board imposed but noted Mr. Richardson's Attorney is requesting that a deed restriction be imposed to ensure that the trees are not cut down. Attorney Britton stated that she believes the request goes beyond the scope of what the Board decided at the June meeting but indicated she will defer to the Board on the matter. She suggested that the Board may wish to include additional language at the end of condition 12 (a) stating, "subject to post installation inspection by the Board Planner and Board Engineer."

Planner Slagle commented that the Board has done this in the past where either she or Engineer O'Neal conduct a quick landscape inspection and issue a memo of compliance acknowledging that the condition in the resolution has been met. It was the consensus of the Board to add this additional language.

After Attorney Britton noted a few other minor grammatical corrections, a motion was made by Kendra Schroeder, seconded by Nancy Cunningham to approve Resolution AJ-14-02 as revised, by roll call vote. **Roll Call Vote:** Kendra Schroeder: Yes, Nancy Cunningham: Yes, Anne Williams: Yes, Diana Garrett: Yes.

It was noted for the record that Chair Binder returned to the dais.

Applications to be Deemed Complete or Incomplete

Eric Associates, Inc./Jeff Robertson (Peacock's) – AJ-14-03 – Block 34 Lot 37 – Amwell Valley Agricultural District – 2 Lindbergh Road: Preliminary & Final Major Site Plan Approval with Variances

Present for the application was Attorney Eric Goldberg, Engineer Eric Rupnarain, Planner James Miller, Architect Chris Pickell and property owner Jeff Robertson.

Engineer O'Neal referred to his completeness review memo and noted there were several requested submission waivers for both the Preliminary Major Site Plan approval and the Final Major Site Plan approval. He noted the following two requests as items the applicant may be required to supply once testimony is provided during the public hearing: (1) Location of existing natural features and (2) Wetlands delineation. Engineer O'Neal commented that all of the other requested waivers are reasonable and indicated the application could be deemed complete.

Ms. Cunningham commented that she has concerns with the requested waiver from obtaining an Environmental Impact Statement (EIS) considering the extensive reconstruction that is being proposed on the site. Planner Slagle commented that the Board would just be granting a submission waiver for the purposes of deeming the application complete. She noted that if through the course of testimony, the applicant doesn't address the Board's concerns, then an EIS can be requested.

Ms. Cunningham asked if the taxes are current. Administrative Officer Andrews confirmed that the taxes were current. Ms. Cunningham also asked if the Owner's Affidavit has been signed noting the copy provided in the packets was not notarized.

After a brief delay, it was noted for the record that the applicant and his attorney had Township Clerk Stahl sign and notarize the Owner's Affidavit form so that all submission materials were in order.

A motion by Gloria Frederick, seconded by Kendra Schroeder to deem the application complete was unanimously approved.

Applications for Public Hearing

Eric Associates, Inc./Jeff Robertson (Peacock's) – AJ-14-03 – Block 34 Lot 37 – Amwell Valley Agricultural District – 2 Lindbergh Road: Preliminary & Final Major Site Plan Approval with Variances

Present for the application was Attorney Eric Goldberg, Engineer Eric Rupnarain, Planner James Miller, Architect Chris Pickell and property owner Jeff Robertson.

Attorney Goldberg explained that the building on the subject site burned down in February 2014 and the applicant is requesting to rebuild. He noted that the prior structure contained 10 apartments and the Peacock General Store. Attorney Goldberg indicated that they can legally rebuild what was there before the fire but the owner is now seeking approval to rebuild with 3 additional apartments on site and no general store. He commented that the store is not economically viable and stated that the previous tenant/business owner has no interest in coming back.

Attorney Goldberg remarked that the building will maintain the same historic character with the same number of bedrooms (*19 total*) as previously existed but the breakdown will be six 2-bedroom apartments and seven 1-bedroom apartments. He commented that the proposal will use less water than the prior use, will be less wear and tear on the septic, will have less traffic, will be environmentally friendly and will be rebuilt within a smaller footprint. Attorney Goldberg stated the units will be for "workforce housing" with the rents similar to what the tenants were paying prior to the fire.

It was noted that the applicant took no objection to any of the comments contained in any of the professional's review memos.

Attorney Britton swore in the following 4 witnesses: Planner James Miller, Engineer Eric Rupnarain, property owner Jeff Robertson, and Architect Chris Pickell.

Mr. Robertson came forward and explained that prior to the fire there was an "L" shaped building with a separate carriage house. He stated the main building contained apartments and the general store and was 3 stories, the wing extending toward Wertsville Road had apartments and was 2 stories and the separate carriage house on the left side of the property is 2 stories. The site contains a gravel parking lot and septic system.

It was noted that the property was built in the 1850's and Mr. Robertson intends to salvage the fireplace mantles and banisters. He commented that the old building was a maintenance and energy nightmare and explained there was no insulation in the building at all. Mr. Robertson commented that he plans to make the new structure a totally green building.

The following exhibits were presented:

Exhibit A-1: A rendering of the parking lot

Exhibit A-2: Wertsville Road elevations

Exhibit A-3: Stream side elevations

Mr. Robertson commented that the new structure will not have any porches, but rather balconies for each apartment unit. Other building details included: Hardwood floors, energy efficient appliances, a sprinkler system, 1-hour fire rated walls between every apartment and floor, 9' ceilings, Anderson windows and solid wood cabinetry. It was noted that the 1-bedroom apartments will be on the stream side of the building with the 2-bedroom apartments on the Lindbergh Road side of the building.

There was some discussion on the flat roof. Mr. Robertson explained that the roof design contains 2 drains in the center of the roof which will never freeze because they stay warm. He noted no water will ever drip over the edge of the building either. Ms. Gardner clarified that the drains are not shown on the plans.

Ms. Frederick asked about the emergency exits. Mr. Robertson explained that there is an 8' wide corridor throughout the middle of the building with fire doors and walls that separate the right and left sides of the building. He noted there are 2 stairwells with 2 separate entrances. He said, "Every apartment on the first floor has got an exterior access and anybody on the second floor has the balconies."

The following details were provided for the apartments:

1. The 1-bedroom apartments will be 615 sq. ft. with a 14' x 12' bedroom
2. The 2-bedroom apartments will be 790 sq. ft. with an 11' x 12' bedroom and a 10' x 12' bedroom

Mr. Robertson explained that for the 30 years he has owned the building the apartments have all been affordable for people that live and work in this area. He noted the rents range from \$900 to \$1200 per unit. He indicated that he had spoken with Tax Assessor Marianne Busher and they calculated the market rate to be somewhere around \$1200 for each apartment and the future tax rate would be based on 13 units each at \$1200 monthly rent. Mr. Robertson said that the previous tenants will all have first right of refusal and he commented that he will continue to allow pets in the building as well.

Attorney Goldberg asked if there is a shortage of work force housing in this area. Mr. Robertson commented that there are very few apartments available in this area and encouraged the Board to review the ads in the paper and on Craig's List. He referred to an email he received from previous tenants (Cliff and Heather – last name not provided) requesting that he rebuild. Attorney Goldberg read the last paragraph of the email marked as **Exhibit A-4** saying, "...for the East Amwell Township, I am begging you to give Jeff the right to rebuild our home. It's a historic structure that deserves a second chance. We were considered homeless at the time Peacock's burned down as other tenants were. Please give us and the other people their homes back once again." Mr. Robertson commented that he tried to create a cohesive, family environment where all of the tenants looked out for each other. He stated his vacancy rate was very low because if units became available the tenants would find replacements or had friends who wanted to rent there.

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Attorney Goldberg asked why 13 units are needed. Mr. Robertson explained that he does not have stocks or bonds and chose to make his retirement investment in property. He remarked that the building provided a specific cash flow and when he received the insurance money he has a limited time to rebuild. He noted that he does not have a tenant who wants to come back and run the general store and without the commercial component he requires 13 apartments to replicate the income that was previously generated prior to the fire. Mr. Robertson commented that the insurance payment does not cover the cost of the rebuild and indicated he will have a mortgage again and wants to get the building up and running by December. He stated that he has other options and if the Board denies the application, he will invest in income property he has looked at in either Florida or Arizona.

Attorney Goldberg asked if COAH units were an option. Mr. Robertson commented that he has called COAH 5 times and has not received the same answer twice and cannot get a definitive answer on what the rules are and how the process works. He stated that he cannot commit to something he knows nothing about and expressed that the 30 year deed restriction as well as giving up control over who he can rent to concerns him.

Attorney Goldberg asked if the proposed building will utilize less water and generate less effluent than the previous structure. Mr. Robertson confirmed that it will and clarified that he has received a T1 approval from the State based on the calculations he provided on the new building. He noted that the new structure will save approximately 227,000 gallons of water annually.

Attorney Goldberg referred to Planner Slagle's review memo regarding parking spaces. Mr. Robertson commented that the same number of bedrooms will be replaced but that a different configuration of rental units will be built. Therefore he does not anticipate any additional parking will be needed, especially if the general store is not going to be rebuilt. He confirmed that at night there were only ever 8 – 10 cars in the parking lot and can't explain why suggesting some tenants may not have had vehicles.

With regard to the dumpster on site Mr. Robertson said there has always been a 6 yard dumpster on site and confirmed that it will remain in the same location. He commented that if the Board would like to see an enclosure built around it, he will comply.

With regard to the landscaping, Mr. Robertson noted there is existing landscaping on the site and is only proposing replacing some shrubs along the Lindbergh Road side of the building and confirmed that the existing cedar tree on the Wertsville Road side will remain.

There was some discussion regarding signage. Mr. Robertson indicated there will be no formal signage except for a plaque on the building indicating the structure was originally built in 1851.

Ms. Binder asked how many tenants were living in the building prior to the fire. Mr. Robertson said 12. Ms. Binder commented that if there are 19 bedrooms the Board has to assume that there could be 2 people in each bedroom. It was noted that the State guidelines for septic disposal are based on 350 gallons of water per day, per unit regardless of the number of bedrooms. Engineer O'Neal confirmed these are the State guidelines for what Mr. Robertson's T1 approval was based on.

Mr. Robertson indicated that his construction schedule is based on having the building up and running by this December. He commented that 2 dumpsters are expected to be delivered tomorrow so that they can begin cleaning up the site.

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Mr. Robertson clarified that the only lighting will be down shielded motion activated LED lighting for the sidewalk areas and will comply with the zoning regulations. Engineer O’Neal commented that there is an existing light in the parking lot area. Mr. Robertson clarified that there is a light where the handicapped parking spot will be.

Planner James Miller came forward and provided his credentials to the Board. He was accepted as an expert to provide testimony on this application. Planner Miller noted the following variances are requested:

d(1) – to permit a multi-family dwelling which is not a permitted use in the AVAD
Front yard setback – 150 ft. is required where 0 ft. exists and 1.5 ft. is proposed
Side yard setback – 75 ft. is required where 19.6 ft. exists and 21 ft. is proposed

The following conditions were noted as being pre-existing non-conforming conditions:

Lot area – 10 acres is required where 2.01 exists
Lot width – 400 ft. is required where 109.59 ft. exists
Impervious coverage – 10,000 sq. ft. is allowed where 13,950 sq. ft. exists and 13,208 sq. ft. is proposed

Planner Slagle noted that the grandfather provisions in the AVAD for lots under 10 acres do not apply to this property because the grandfathering provisions are for single family homes so the setback requirements default to the regular standards for the AVAD. Planner Miller commented that the proposed use is otherwise permitted in the district and where this type of use variance is requested with bulk standards attached to the use, the assumption is that if the ordinance didn’t anticipate the use in the district then the Board should apply whatever bulk standards they believe are appropriate for the proposed use.

Planner Miller discussed the positive and negative criteria noting the following:

1. The site is well suited for the proposed use because apartments were already established there, the proposed new structure will be similar in character to the previous building, there will be the same amount of bedrooms as previously existed and the proposed units compliment the overall housing stock in the AVAD by providing an affordable alternative for smaller households. Ms. Cunningham suggested that the proposed use may be better suited in the Village or in the Residential District. Planner Miller disagreed and presented **Exhibit A-5**, two photos depicting what the site currently looks like. He explained that the location is uniquely suited for the proposed use and believes it advances the goals in the Master Plan which provides for good civic design
2. Promotes the health, safety and welfare of the community
3. Provides a desirable visual environment

Planner Miller expressed that this area is basically a hamlet. He commented that the AVAD recognizes that there are small scale concentrated hamlets spotted through the rural landscape of the Township. He noted that in this area there is a church, the subject site which provided apartments along with several houses around the intersection which is a development form recognized by the Master Plan and the ordinance as being viable and part of the overall character of this area.

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Planner Miller indicated he doesn't believe there to be any negative criteria associated with the proposed application. With regard to COAH he commented that the project is not appropriate because there is no equitable reason – no incentive for Mr. Robertson to provide public housing. He said the project is not designed to accommodate COAH housing and there is no support system for COAH units in terms of recreation for the residents or public transportation. Mr. Robertson commented that he cannot consider committing to something for 30 years when the State can't tell him what the rules and regulations will be for 30 *days*. He added the fact that he cannot get the same answer twice is also a problem. Additionally he noted there are a series of regulations and required paperwork that must be kept and stated he stated he has zero input on who would be living there. Chair Binder remarked that there are laws prohibiting property owners from discriminating against who they rent to.

Planner Slagle remarked that there is a COAH waiting list for East Amwell Township and stated that there is no set subsidy for property owners, but the Township can choose to use the COAH Trust Fund to negotiate a subsidy if they wish to. She noted that there is no question the Township has an affordable housing obligation and stated it makes sense to try and utilize existing development.

Ms. Cunningham commented on the importance of the EIS given that there is a stream on the site. Attorney Goldberg indicated that Engineer Eric Rupnarain will address the environmental issues on the property.

Attorney Goldberg called Engineer Rupnarain forward who provided his credentials to the Board and was accepted as an expert to provide testimony on the application.

Engineer Rupnarain noted that he reviewed the Boards professional's memos and commented that there was mention of a sprinkler system or an underground water tank on the site. He stated that Mr. Robertson prefers to install a sprinkler system rather than an underground tank. Engineer O'Neal added that he had spoken to Board of Health Chair Tracy Carluccio who expressed that the Township's Water Quality Management Plan is going to have to be updated and revised by the County. Engineer Rupnarain confirmed that they are in receipt of an updated T1 approval from the State and believes they will be in compliance with the water quality management plan.

With regard to the wetlands, Engineer Rupnarain commented there is a stream on the property which is of environmental significance but stated there are no wetlands on the site. He added that Mr. Robertson is proposing a slight reduction in impervious coverage which will reduce the amount of impact and runoff to the stream. He indicated the lawn area will provide for groundwater recharge. Ms. Gardner remarked that if the soil is compacted there will be limited recharge from the lawn area. Chair Binder asked where the water collected in the roof drains will be discharged. Engineer Rupnarain indicated it will drain into the existing inlets on the public roadway.

Ms. Binder asked about the parking lot and referred to a prior resolution which indicated the area was to be paved and lined. Engineer Rupnarain explained that the parking lot will remain gravel except for the ADA handicapped parking spot. Engineer O'Neal noted that the applicant is proposing 20 parking spots where the ordinance requires 26 and the residential sight improvement standards require 25. He expressed that the applicant will need a design waiver from this criteria. Ms. Gardner noted she has never seen 20 cars parked at the site.

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Engineer O’Neal noted the following design waivers requested by the applicant:

1. Curbs
2. Parking stalls
3. Site triangles
4. The number of parking spaces
5. Sealed plans from a certified licensed landscape architect

Ms. Cunningham asked about the septic system on the site. Engineer Rupnarain explained there are 3 fields: (2) in the back portion of the property and (1) beyond those. Ms. Cunningham noted the third field is not shown on the plan. Engineer Rupnarain added that there are 3 tanks located at the edge of the gravel parking area that are each 1000 gallons. He commented the system is 25 – 30 years old and stated it has not been inspected in quite some time. **Exhibit A-6** was marked which is sheet 2 of the plans submitted with the application depicting the septic area.

Chair Binder asked what the exterior of the building will be constructed with. Mr. Robertson explained the material will look like hardiplank siding but is not cement board. He noted it has permanent color built into it and will have a textured cedar look.

A motion by Gael Gardner, seconded by Gloria Frederick to open to the public was unanimously approved.

Dick Ginman of 125 Mountain Road came forward and expressed that he has been involved with the Township for years and served on the first Affordable Housing Committee. He commented that he doesn’t understand why some type of agreement cannot be made regarding the COAH units and encouraged all of the parties involved to try and work something out.

Sharon Davidson came forward and identified herself as a Wertsville Road resident. She expressed support for the application.

Frances Gavigan of 123 Wertsville Road came forward and expressed concern with the septic system and the lack of historic character the proposed new structure will have. She questioned whether or not a precedent will be set if the Board allows an apartment building in the Agricultural District and expressed that she believes more can be done to make the structure resemble the old Peacock building.

Barbara Sageser came forward and identified herself as the Chair of the Historic Committee. She read a review memo into the record, a copy of which is attached.

Stewart Birkenmeier of 308 Wertsville Road came forward and expressed concern with all of the proposed balconies on the new building saying they will potentially impact his privacy on his property. He suggested that perhaps the new structure could be turned 90 degrees in order to mitigate this potential issue.

Lisa Thompson came forward and indicated she lives in Hillsborough and expressed support for the application saying it would be a shame to see a vacant lot there. She encouraged the Board not to lose sight of the essence of what the community needs and commented that the site needs to get cleaned up and the people need to get back into their apartments.

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Stewart Birkenmeier of 308 Wertsville Road came forward again and commented that the drains on the property drain into the stream.

Seeing no other members of the public come forward, a motion by Gloria Frederick, seconded by Gael Gardner to close to the public was unanimously approved.

Ms. Cunningham asked about the construction time frame. Mr. Robertson indicated it is his intention to get the building up and running by this December. He noted that all of the construction materials will be kept within the property lines primarily in the existing parking lot area. Mr. Robertson said there is a pile of stone from the foundation that will be used throughout the landscaping once the building is rebuilt. It was noted that no construction materials will be stored in the right-of-way.

There was some additional discussion on the possibility of COAH units. Planner Slagle noted that the Township was required to have 55 COAH units during the prior round obligation and the new regulations indicate a prospective additional requirement of 29 units. Attorney Britton mentioned that there is also a COAH development fee that could be imposed on Mr. Robertson's development.

Attorney Britton outlined the following conditions the Board may wish to consider:

1. Design waivers for curbing, parking stalls, site triangles, the number of parking spaces and certified plans by a landscape architect
2. Board of Health approval for the septic system
3. Sprinklers
4. A revised Water Quality Management Plan
5. The third septic field must be added to the plans
6. The final plans should be subject to the review of the construction official
7. A night time lighting test should be performed prior to the issuance of a C.O.
8. The location of the trees on the site should be shown on the plans
9. The location of the dumpster enclosure will be shown on the plans
10. There will be no designated parking along Wertsville Road

A motion by Kendra Schroeder, seconded by Gael Gardner to approve the application with the requested variances and design waivers and conditions outlined by Attorney Britton was unanimously approved by roll call vote.

Roll Call Vote: Kendra Schroeder: Yes, Gael Gardner: Yes, Sherrie Binder: Yes, Nancy Cunningham: Yes, Gloria Frederick: Yes, Anne Williams: Yes, Diana Garrett: Yes

Old Business

It was noted that there were no old business matters listed on the agenda.

New Business

Ms. Cunningham asked what the \$472 under miscellaneous in the Board's budget was used for. Administrative Officer Andrews explained that was money used to reimburse an applicant on Orchard Road.

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Open to the Public

A motion by Nancy Cunningham, seconded by Gloria Frederick 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 Sherrie Binder, seconded by Gloria Frederick to adjourn was unanimously approved.

The meeting adjourned at 10:51 PM.

Maria Andrews, Administrative Officer