

**EAST AMWELL
ZONING BOARD OF ADJUSTMENT - MINUTES
Municipal Building – 7:30 PM
Reorganization Meeting - January 12, 2016**

Call to order and compliance with the Open Public Meetings Act

The reorganization meeting of the Board of Adjustment was called to order at 7:30 PM on January 12, 2016 in the Main Meeting Room of the Municipal Building, 1070 Route 202/31, Ringoes, NJ by Administrative Officer Andrews.

In compliance with the Open Public Meetings Act, the Administrative Officer announced this was a reorganization meeting as published in the December 17, 2015 issue of the Hunterdon County Democrat, filed in the Township Clerk’s Office, and posted on the Bulletin Board on January 6, 2016.

Roll Call and Agenda Review

Present: Sherrie Binder
Nancy Cunningham
Gael Gardner
Diana Garrett
Paul Gavzy
Kendra Schroeder
Anne Williams – *Chair*
Jamie Atkeson – *Alt. #1*
Michele Doherty – *Alt. #2*

Absent: No one

Election of Officers

Attorney Cecil asked for nominations for the Board’s Chair. A nomination by Sherrie Binder, seconded by Nancy Cunningham to appoint Anne Williams as the Board’s Chair was made. Hearing no other nominations, the motion to nominate Anne Williams as the Board’s Chair was unanimously approved by voice vote.

The Board congratulated Chair Williams and she took over the meeting.

Chair Williams asked for nominations for the Board’s Vice Chair. A nomination by Nancy Cunningham, seconded by Kendra Schroeder to nominate Gael Gardner as the Board’s Vice Chair was made. Hearing no other nominations, the motion to nominate Gael Gardner as the Board’s Vice Chair was unanimously approved by voice vote.

The following Sub-committees were formed:

On-site inspection – Sherrie Binder, Nancy Cunningham and Michele Doherty with Diana Garrett as the alternate.

Policy Committee – Paul Gavzy, Kendra Schroeder and Jamie Atkeson with Anne Williams as the alternate.

Application Review Committee – Sherrie Binder, Kendra Schroeder, Michele Doherty and Maria Andrews.

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A motion by Gael Gardner, seconded by Kendra Schroeder to appoint Maria Andrews as the Board's Administrative Officer was unanimously approved by voice vote.

A motion by Kendra Schroeder, seconded by Sherrie Binder to appoint Trishka Cecil as the Board's Attorney and approve her contract for 2016 was unanimously approved.

A motion by Nancy Cunningham, seconded by Paul Gavzy to appoint Dennis O'Neal as the Board's Engineer at the same rate as 2015 and approve his contract for 2016 was unanimously approved by voice vote.

A motion by Paul Gavzy, seconded by Sherrie Binder to appoint Frank Banisch as the Board's Planner and approve his contract for 2016 was unanimously approved by voice vote.

Adoption of Policies and Procedures

A motion by Sherrie Binder, seconded by Paul Gavzy to adopt the policies of the Board of Adjustment as adopted on 1/8/02 and last revised 1/28/14, Robert's Rules of Order and the public hearing procedures pamphlet was unanimously approved by voice vote.

Several board members expressed an interest in Attorney Cecil's annual tutorial training session. She indicated she would be happy to provide one and will work with Ms. Andrews to coordinate a date.

Confirmation of 2016 Meeting Schedule

A motion by Paul Gavzy, seconded by Sherrie Binder to approve the Board's 2016 meeting schedule was unanimously approved by voice vote.

Presentation of Minutes

A motion by Nancy Cunningham, seconded by Paul Gavzy to approve the Board's minutes from 12/8/15 with no revisions noted was approved by voice vote with Ms. Gardner abstaining.

Correspondence

Ms. Schroeder suggested Attorney Cecil include information regarding the laws governing social media when she provides her tutorial.

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

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

Old Business

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

New Business

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

Presentation of Bills for Payment

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

Attorney Comments

Attorney Cecil thanked the Board for her 2016 reappointment.

Open to the Public

A motion by Gael Gardner, seconded by Nancy Cunningham to open to the public was unanimously approved.

Andrea Bonette of 17 Ridge Road came forward and stated she has concerns that go back to the 1980's when her husband served on the Board. She commented that she heard stories back then regarding statements made by applicants. Ms. Bonette remarked that she has researched the recent Peacock property application and while she stated she didn't want to cast "dispersion" on any applicants she said, "There is a plethora of contradictory information related to the Peacock store... basically I'm just wondering what is your policy about doing research when people come in and present information under oath... is there somebody that researches any of this stuff to see if it's really in the files?"

Attorney Cecil commented that if an applicant is under oath they are telling the truth or else they would be committing perjury. She explained that generally speaking board members should not be doing their own research because their decision should be based on the record and the testimony provided. She indicated board members can certainly question anything they hear and if something doesn't sound credible they can ask the professionals to look into the details.

Ms. Bonette stated she spent several hours going through the files and discovered that the number of bedrooms on the Peacock property prior to the fire is all over the map. She noted this point since part of the testimony was that the septic would be treated as "existing" because the same number of bedrooms was being proposed. Attorney Cecil explained that if an applicant is making that type of representation, the Board has the right to ask its professional's to confirm that is actually the case. However, she noted that the Board has no jurisdiction over matters such as water and septic and said those regulations would require Board of Health approval. She remarked that all the Board of Adjustment can do is condition their approval on all other required outside agency approvals, which they did.

Ms. Bonette asked if the board members are allowed to go back and look through the township files. Attorney Cecil commented the best practice is for board members to ask the board secretary to gather the file and confirm the details or they can ask the professionals to confirm the issues. Attorney Cecil stated what you don't want to happen is to turn board members into witnesses. She further explained the professionals have to take an oath before they provide any kind of factual testimony on the record and you don't want board members doing research because then they must be sworn in and they become a witness. She stated board members can't be witnesses and also be deciding applications. Attorney Cecil noted limited exceptions such as the site review committee providing reports on properties that are the subject of an application before the Board.

It was noted for the record that Mr. Gavzy left the meeting at this time, 7:52 PM.

Ms. Bonette commented that in this case no one asked the board secretary or the professionals to review the number of bedrooms. Attorney Cecil noted she wasn't here for the application and admitted there was confusion over the number of previously existing bedrooms but explained at the end of the day the Board cannot say whether or not a septic system is appropriately sized because that is the purview of a different agency.

Ms. Binder commented that the Board based their decision on the plans that were presented at the time the application was made which had nothing to do with the amount of bedrooms that existed in the past. She further clarified that the approval was conditioned upon Board of Health approval.

Ms. Bonette continued with other issues including the site triangle on the property. She commented that she had spent an hour with Engineer O'Neal who drew her sketches of the site triangle. Ms. Bonette said Engineer O'Neal was very nice but questioned whether or not he was using the correct numbers. She remarked the County requires a 30' x 100' site triangle on Wertsville Road and Township Ordinance 92-71 requires a minimum site triangle on all township roads of 30' x 100'. Ms. Bonette stated there was a reference on the plan that the site triangle on Lindbergh Road was only 20' x 100'.

Ms. Bonette referenced page 10 of the resolution of approval and read, "...applicant's proposal cannot comply with minimum site distance because motor vehicles will be located within the site triangle." Ms. Bonette asked if anyone remembers what that means. It was noted that no board members responded. *As a point of clarification for the minutes that statement was only a portion of what is actually a design waiver in the resolution and when provided in its entirety, can be better understood. It states, "92-71 requires all intersections to be designed in profile and grade so as to provide at least the minimum sight distance for a given design speed as per the requirements of the Land Development Standards of Hunterdon County and the American Association of State Highway and Transportation Officials. Here, the applicant's proposal cannot comply as a result of the layout of the parking lot because motor vehicles will be located within the site triangle."*

Ms. Bonette then referred to a 12/9/83 letter from then Township Attorney Dilts which recognized 4 residential units and 1 commercial unit in the Peacock building. The letter notes that Attorney Dilts believed various apartments had been created without permits or variances and he recommended the Board of Health review of the adequacy of the septic system. Ms. Bonette then referred to Board of Adjustment Resolution AJ-84-03 and said it grants approval for 8 apartments. She goes on to note that Resolution AJ-86-01 grants a mix of residential and commercial uses, Resolution AJ-86-08 grants convenience/grocery store use and states the existing structure consists of 9 apartments and first floor commercial space, Resolution AJ-87-03 grants approval to enclose an outside storage area and recognized 9 apartments and 2 commercial units in existence, Resolution AJ-88-05 approves the sale of video tapes and recognizes that the septic tank is under the gravel parking lot. Ms. Bonette remarked that there are discrepancies throughout the files over the location of the septic tank(s) and how many actually exist on the site.

Ms. Bonette referred to the Board of Adjustment's August 2014 minutes noting points about the number of apartments prior to the fire, the newly proposed number of "bedrooms" and the state's guidelines for septic disposal. Ms. Gardner noted that the subject property has a main building along with 2 other buildings that contained apartments. Ms. Binder remarked that the prior commercial space is now apartment space and said of course there are more residential units if the commercial component of the building was removed. Ms. Binder asked where Ms. Bonette is going with all of this. Ms. Bonette stated she is curious to know whether or not anybody researches anything.

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Ms. Bonette questioned the size of the building. She referred to a 1975 appraisal done by the Hunt Agency saying the main building is 51' x 41' for a total of 7600 sq. ft. including the 2 floors and the attic. Ms. Binder and Ms. Gardner asked why Ms. Bonette is bringing up details from 40 years ago. Ms. Bonette said, "The building has grown." Ms. Binder commented of course it has, noting it's a new building and stated the old building burned down. Ms. Bonette said the basis of the new approval is based on the size of the old building. Several board members spoke up indicating that statement was not correct. Ms. Binder clarified the approvals were based on the new plans submitted for the new building. Ms. Bonette insisted that there are references throughout the minutes and resolution that the new building's footprint is smaller than the old building. Ms. Binder stated again that the Board acted upon the plans that were presented to them. Ms. Bonette said, "That's my whole point. I think you are not looking at what happened before and you are willing to base what happened before without knowing what really happened before, that's my point."

Ms. Gardner asked how far back Ms. Bonette wanted the Board to look. Ms. Bonette requested that on future applications the Board try to verify what applicants are talking about.

Ms. Bonette's final point was regarding the Tax Assessor's records. She commented that township officials were never allowed in the Peacock building. According to the records she found in the files, the re-evaluation inspectors at the time relied on the maintenance man, who Ms. Bonette said was the friend of the property owner. Ms. Bonette explained that in June of 2012 the ground floor of the subject site consisted of two 1 bedroom apartments, the second floor consisted of two 1 bedroom apartments and two 2 bedroom apartments and the third floor contained one 1 bedroom apartment which is a total of 7 apartments with 9 total bedrooms. Chair Williams noted that is what consisted in the main building along with the commercial space. Ms. Gardner clarified that the commercial space also had an apartment attached to the rear of it with 1 bedroom and a bath.

Ms. Binder expressed that obviously there is a lot of erroneous information that has been put into the files over the past 40 years that hasn't been verified. She commented there were so many different people involved with the files over the years the reliability of some of the information is probably questionable. Ms. Binder explained that being in real estate she knows how easily it is for someone to call a room a "bedroom" but if it doesn't have a closet technically it is not a bedroom.

Frances Gavigan of 123 Wertsville Road came forward and commented on Ms. Bonette's statements. She said, "...only in the context of the application that was reviewed and heard and approved, there were a number of false and/or misleading statements that were made by the applicant. Specifically in the water usage calculations...he spoke about the number of apartments and the number of bedrooms but he was assuming that there would be only 1 person in a 2 bedroom apartment." Ms. Gavigan expressed her belief that "data manipulation" was happening. She explained that the Board of Health did not get involved because the applicant said he was "re-building" after the fire and under the state fire statute he was allowed to rebuild. Ms. Gavigan said the applicant filed a false statement with the State of NJ because what the Board approved was a new building and more apartments and what the applicant told the State was that he was just replacing what was burned down.

Ms. Gavigan expressed that she believes the frustration is that when you come to a meeting and comment or question things, sometimes it appears that those details are not heard much less investigated. She suggested a process be defined within the Application Review Committee for details to be verified.

With regard to the site triangle, she explained that the change and the stipulation of no parking on the road was dictated by the County who had not been part of the discussion, the review, or the analysis. Attorney Cecil commented that is a fairly standard practice noting applicants usually wait to go to the County until they have received their local approvals.

Ms. Gavigan commented she believes there are a number of issues with the Peacock application and believes better attention could have been paid.

David Wang-Iverson of 55 Wagner Road came forward in his capacity as Mayor and thanked the Board Members for all of their service and dedication to the Township. He wished everyone a Happy New Year.

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

Board Member Comments

Ms. Cunningham wished everyone a Happy New Year.

Adjournment

A motion by Sherrie Binder, seconded by Kendra Schroeder to adjourn the meeting was unanimously approved.

The meeting adjourned at 8:12 PM.

Maria Andrews, Administrative Officer