

**EAST AMWELL
ZONING BOARD OF ADJUSTMENT - MINUTES
Municipal Building – 7:30 PM
July 14, 2009**

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 July 14, 2009 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, Ms. Andrews announced this was a regularly scheduled meeting pursuant to the Annual Meeting Notice as published in the January 29, 2009 issue of the Hunterdon County Democrat, filed in the Township Clerk's Office, and posted on the Bulletin Board on July 7, 2009.

Chair Cunningham welcomed Diana Garrett to the Board of Adjustment.

Roll Call and Agenda Review

Present: Sherrie Binder
Nancy Cunningham – Chair
Gloria Frederick
Gael Gardner
Paul Gavzy
Sue Posselt
Kendra Schroeder
Diana Garrett – Alt. #1
Anne Williams – Alt. #2
Attorney Waterbury

Absent: No one

Presentation of Minutes

A motion by Kendra Schroeder, seconded by Paul Gavzy to approve the minutes from 6/9/09 was approved with Sherrie Binder, Gloria Frederick and Sue Posselt abstaining.

Presentation of Bills for Payment

A motion by Paul Gavzy, seconded by Kendra Schroeder to pay the vouchers as listed on the agenda was unanimously approved.

Correspondence

Chair Cunningham noted that the Board is doing very well with their 2009 budget. It was also noted that all other correspondence will be dealt with as it comes up over the course of the meeting.

There were no applications listed on the agenda for completeness.

Chair Cunningham commented that while the Board was waiting for the applicant to arrive at the meeting, the Board would continue discussing the agenda items.

New Business

Approval of Scibilia Extension Resolution – (Related to Resolution AJ-07-04)

A motion by Paul Gavzy, seconded by Gael Gardner to approve the Resolution was approved by roll call vote.

Roll Call Vote: Paul Gavzy: Yes, Gael Gardner: Yes, Nancy Cunningham: Yes, Kendra Schroeder: Yes, Anne Williams: Yes.

Discussion: Board Member Discussion on Applications

Chair Cunningham commented that during the public hearing for an application before the Board a few months ago, some Board members expressed a desire to have the applicant go back and rework his plan and then return to the Board with a new plan based on the suggestions made at meeting. The majority of the Board, however, wished to proceed with the application and render a decision. Chair Cunningham stated she should have perhaps been more sensitive to the Board Member’s concerns and will be in the future. She stressed that if anyone on the Board ever feels that they can’t make a decision on an application and would like additional information or documentation on something they should speak up and clearly express their concerns.

Ms. Frederick explained that her concern is that the Board sometimes, in a sense, is rewriting applications and approving them without seeing the actual suggested revisions. She reminded the Board that the variances they approve run with the land, not the applicant. Ms. Frederick clarified that she completely understood the suggestions made by the Board but was concerned that the Board rewrote the application.

Ms. Gardner commented that the Board suggested changes that lessened the impact to the property and eliminated the need for one of the variances, all of which the applicant was amenable to.

Ms. Posselt commented that she does not believe it is the Board of Adjustment’s job to restructure or rewrite an application, but rather to make suggestions and allow the applicant to go back and make any changes and then come back to the Board.

Attorney Waterbury stated, “The only comment I want to make is that you are under strict statutory deadlines. By-in-large you are nowhere near the deadline by which you have to make a decision so you do have the luxury to say ‘we’d like you to go back and rework this and re-present it to us.’ Bear in mind that at the end of the day it is the applicant’s choice... there is a fine line...between making suggestions and indicating things that might help to make an application better or to...mitigate the negative impacts vs. completely rewriting and restructuring an application...you want to be careful about the latter, but in being careful about the latter, I would hate to see you completely shy away from the former...which...is part of your role...to the extent that you as Board Members are aware of things that...may eliminate a variance, may help to mitigate negative impacts, I see no harm in putting them forward. The applicant doesn’t have to say yes.”

Ms. Frederick commented that she would have preferred if the Board had requested a new plan showing exactly what changes were made prior to a decision being made.

Applications for Public Hearing

Jacqueline Asplundh – 121 Linvale Road – B:41 L:18 – Bulk Variance: Fencing

Attorney Waterbury noted for the record that all of the noticing had been done in accordance with the MLUL requirements and the Board could take jurisdiction on the matter.

Present for the application was property owner, Jacqueline Asplundh and contractor Dennis McIlhinney of Pebble Hill Custom Builders. Attorney Waterbury swore them both in. Mr. McIlhinney explained that the application is to remove the existing 6' high fence and replace it with an 8' high fence. The bottom 6' of the new fence will be solid cedar vertical planks with a 2' lattice piece on top. The fence will be installed in the same location as the existing fence.

Ms. Posselt asked if the current fence goes in front of the house. Mr. McIlhinney said neither the existing fence nor the new fence will go in front of the house. He explained that as the fence approaches the house it angles back in toward the corner of the house.

Ms. Posselt asked when the original fence was put up. Ms. Asplundh explained that she has owned the property since 1992 and she believes the fence was put up during the first couple years they lived there.

Mr. Gavzy asked if there is a height limit for fencing. Attorney Waterbury said, "Yes, the section of the ordinance is Section 92-53 and the three pertinent requirements that apply here are that fencing is not allowed within the right-of-way and the ordinance says that there is a presumption that the right-of-way is 25' off of the center line—so it can't be within 25' of the center line. Fences in the front yard are limited to 4' and fences in the side and rear yard are limited to 6'."

Mr. Gavzy asked why the new fence can't remain at 6 feet. Mr. McIlhinney stated that the new fence has a nice look to it and Ms. Asplundh is seeking more privacy. Ms. Asplundh noted her home is right on the road and she would prefer the 8' fence for more privacy. Ms. Gardner commented that Linvale Road is not heavily traveled by pedestrians who are walking or bicycling. She noted she would be more understanding if there was a sidewalk directly in front of the home where people could look over or through the fence. She added that cars driving by can't really even see over a 6' high fence.

Attorney Waterbury asked Ms. Asplundh if she knew what the standard for fencing was at the time the original fence was installed. Ms. Asplundh said she did not know. She stated her ex-husband had taken care of installing the fence. Ms. Gardner commented that she has lived in the Township for 35 years and back then they had to allow 35' from the center line without putting any structures up except for their mailbox.

It was noted that there is no record of any previous variances being granted for this property. Ms. Posselt asked if permits were obtained for the original fence installation. Ms. Asplundh stated that she did not take care of the fence. It was noted that Ms. Asplundh's parents owned the home previously in 1991 and she purchased it from them a few years ago.

Ms. Frederick asked if anything had changed to affect the privacy of the property. Ms. Asplundh indicated the way her property is situated is lower than her neighbors and she explained that anyone standing over on the neighbor's property or on their porch can easily look over into her yard. She stated she has no issues with cars. She also added that the current fence is board-on-board which allows people to see through it at certain angles. The new fence is solid and more private which would make her property more of a refuge. It was noted that Ms. Asplundh's patio and deck (*which is elevated*) are situated on the side of the house and can be seen from certain points along the roadway. Ms. Asplundh also commented that the traffic along Linvale Road has definitely increased over the years.

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Chair Cunningham asked if any shrubs or trees would have to be removed in order to install the new fence. Mr. McIlhinney indicated some shrubs and overgrown vines would have to be removed. She then asked if the fence is directly on the property line. Ms. Asplundh stated the fence is approximately 1.5' – 2' in from the property line.

Attorney Waterbury asked if the adjacent houses are as close to the road as Ms. Asplundh's. She stated that her neighbor on the left is a farm with the dwelling way off of the road and the neighbor to the right is situated almost as close to the road as she is. It was noted that Ms. Asplundh's home is approximately 20 feet off of the roadway.

A motion by Gloria Frederick, seconded by Sue Posselt to open to the public was unanimously approved. Frances Gavigan of 123 Wertsville Road came forward and was sworn in. She stated that she did not oppose the application indicating she has heard at other Board meetings there has been an increase in traffic throughout the Township and commented that what the applicant is asking for is not significantly different from what is already there. She also noted that none of Ms. Asplundh's neighbors were in attendance opposing the fence.

A motion by Sue Posselt, seconded by Gloria Frederick to close to the public was unanimously approved.

Gael Gardner read the site review report for the record, a copy of which is attached.

Ms. Posselt commented again that she would like to know if permits were obtained for the original fence. Ms. Binder asked what impact previous permits have on the Board's decision this evening and commented that the new fence will have permits if it's approved. Ms. Frederick commented that they may not have needed a permit 17 years ago. Ms. Garrett also indicated she believed it was important to know whether or not permits were obtained for the original fence.

Ms. Gardner commented that there is a good amount of existing trees and bushes that provide natural screening.

Attorney Waterbury noted the MLUL standards that must be met saying, "...in order for you to grant the relief that's being requested there are two alternate standards that you can proceed under, the common theme between the two is characteristics that are unique to this property: One is the Hardship Standard which means that it would create exceptional practical difficulties or hardships for the applicant if made to comply strictly with the requirements of the ordinance. The other standard that is the more flexible standard which is that there is actually...a benefit—a broader public benefit to be gained by allowing the deviation." Attorney Waterbury advised the Board to use the testimony and explanations they heard this evening and relate the information to the characteristics of the subject property with those of the surrounding properties and determine if there is something that is particular to the applicant's property that is driving the need to grant the deviation.

Ms. Posselt asked if the new fence needed to be 8' all the way around. Ms. Alsplundh indicated she could keep the fence 6' on the side of her property where it adjoins what appears to be an open field but she would like it to be 8' along the roadway.

Ms. Williams commented that she has observed that the Asplundh property appears to be more exposed than other homes in the area.

A motion by Sue Posselt, seconded by Sherrie Binder to approve the application to allow an 8' fence in the front yard and a 6' fence in the side yard and to permit the new fence to be installed in the existing fence location within the 25' right-of-way was approved by roll call vote.

Ms. Gardner commented that she would prefer the fence remain at 6' and indicated she was not in favor of allowing an 8' fence.

Chair Cunningham commented that being the subject property sits so much lower than the neighbor's it speaks to the unique conditions that make it important to have a higher fence which would provide more privacy and in light of the fact that there has already been a 6' fence across the front of the home for a number of years, adding another 2' in a decorative lattice motif is not going to make a dramatic negative impact.

Roll Call Vote: Sue Posselt: Yes, Sherrie Binder: Yes, Gloria Frederick: Yes, Gael Gardner: No, Paul Gavzy: No, Kendra Schroeder: Yes, Nancy Cunningham: Yes.

New Business – Continuation of Board Member Discussion on Applications

Ms. Posselt asked if everyone was happy with where the previous discussion had left off. Ms. Binder commented that she believes the Board acted the same way with tonight's applicant as they did with the applicant a few months ago, noting that the Board asked to change the height of the fence and effectively assisted the applicant. Ms. Williams indicated that perhaps the application a few months ago was more complicated in that the size of the barn was changed and pastures were reconfigured.

Mr. Gavzy asked for follow up information on the Guide to Horse Management pamphlet discussion that took place last month. Ms. Andrews indicated that the consensus of the Planning Board is to keep the pamphlet for informational purposes only.

Open to the Public

A motion by Gloria Frederick, seconded by Kendra Schroeder to open to the public was unanimously approved. Frances Gavigan of 123 Wertsville Road came forward and asked Attorney Waterbury for clarification on the MLUL regarding whether or not anything can be built in easement areas, she specifically noted drainage easements. Attorney Waterbury stated easements have nothing to do with the MLUL. She indicated they are property rights and there is no inherent law on what you may or may not do within an easement. Attorney Waterbury noted that what can be done within an easement area is specific and unique to each easement and reflected in the boundaries established in the language of the easement. Ms. Gavigan asked if there was a difference between Township easements and County or other easements. Attorney Waterbury commented that an easement is a property right belonging to whoever owns it. She further clarified that the owner would also enforce the easement, noting that it is difficult to answer Ms. Gavigan's questions without all of the details because easements are very specific.

Ms. Gavigan also commented that she has noticed an overt display of racism at a particular property within the Township, specifically referencing a confederate flag flying from the roof and a lawn decoration. Attorney Waterbury stated this is a first amendment issue and suggested that Ms. Gavigan speak to the Zoning Officer about her concerns since the Board of Adjustment is not an enforcement authority.

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

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Adjournment

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

The meeting adjourned at 8:53 PM.

Maria Andrews, Administrative Officer