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Chairman Schwemmer called the regular Meeting of the Board of Adjustment of February 7, 2007 to order at 7:05 p.m.

MEMBERS PRESENT: Elliott Averett, Morris Bauer, Felix Graziano, Craig Schwemmer, Anthony Spina, John Turick
Alternate Members: Dorothy Walter, Frank Baguiao
Members Absent: Ort
Others Present: Clerk Kesper, Attorney Fraser, Planner Banisch, Engineer Hall

STATEMENT OF COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT - Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 17, 2006 and posted on the Bulletin Board on the same date.

Pledge of Allegiance

MINUTES

1. December 6, 2006 Regular Meeting

Mr. Bauer made a motion to approve the minutes, seconded by Mr. Spina. Minor changes were made a voice vote was taken; all were in favor and the motion carried.

2. January 3, 2007 Reorganization Meeting, Regular Meeting and Executive Session

Mr. Spina made a motion to approve the minutes, seconded by Mr. Bauer. Minor corrections were made. A voice vote was taken; Mr. Averett abstained, all others were in favor and the motion carried.

RESOLUTIONS

07-07 O'Hara – Block 33, Lot 75 – 358 West Mill Road – R-5 .25 acre – Approval of Request for front, side and rear setback variances, impervious coverage, insufficient lot size, expansion of non-conforming structure and setbacks from stream corridor

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Mr. Turick made a motion to approve resolution 07-06, seconded by Mrs. Walter. A roll call vote was taken:

Ayes: Bauer, Schwemmer, Turick, Walter

Nays: None

Abstentions: None

Absent: Ort

The meeting was opened to the public for items not on the agenda. There were no comments from the public and the meeting was closed to the public for items not on the agenda.

APPLICATIONS

1. Stanzone – Block 12, Lot 30.14 – 19 Arrowhead Drive – R-1 Zone -.80 acres – Request for Side Yard Setback Variance and expansion of non-conforming structure

Douglas Stanzone, Applicant

Ms. Fraser swore in Douglas Stanzone.

Mr. Stanzone stated that he wants to put an addition on where the deck is currently located. The addition will not be any closer to the sideline than the house is now, possibly a foot closer at the rear of the addition. The house was built in 1966 when the setbacks were 15'.

The meeting was opened to the public for questions and comments on this application. There were no questions or comments and the meeting was closed to the public for this application.

Mr. Bauer made a motion to approve the variance as discussed to follow the sideline of the current house and to be no less than 15' from the side line. Seconded by Mr. Graziano. A roll call vote was taken:

Ayes: Averett, Bauer, Graziano, Spina, Schwemmer, Turick, Baguiao

Nays: None

Abstentions: None

Absent: Ort

2. Primax – Advanced Auto Parts – Block 2 Lots 9 & 10 – Route 46 – C-1 Zone – Request for Preliminary and Final Site Plan with Variances – Deemed Complete December 6, 2006 –Previously Heard December 6,

2006 and January 3, 2007 - Public Hearing Continued – Expires – April 5, 2007

Michael Lavery – Applicant’s Attorney
James R. Houston, Jr, Applicant’s Engineer
Raymond DiPasquale, Applicant’s Traffic Engineer
John Hansen, Applicant’s Planner
Derrick Jordan, Applicant’s Engineer

Mr. Lavery briefly reviewed the previous hearing and outstanding issues.

Mr. Lavery presented a letter from the Union Cemetery Board which stated that the applicant was denied an easement requested by the Board. The letter was marked A-1.

Mr. Houston stated that the State DOT denied them access to the drainage in Route 46 because of recent paving in the area.

Mr. Lavery stated that they have addressed the fire departments concerns.

Ms. Kesper read an e-mail that stated that Schooley’s Mountain Fire Department does not have any further concerns.

Mr. Houston will provide the Knox box as requested by the fire department.

Mr. Houston addressed Mr. Oweis’ letter of February 1, 2007, which approved the applicant’s plan.

Mr. Houston addressed Mr. Hall’s February 2, 2007 letter.

Mr. Hall stated that he wanted a letter from the Fire Department regarding the fire hydrants

Derrick Jordan was sworn in by Attorney Fraser.

Mr. Jordan stated that he had a conversation with Robert Carey who stated the Fire Department accepted the current hydrant locations.

Mr. Houston stated that if the Fire Department requires a hydrant closer or in a different location they would comply.

Mr. Houston stated that the applicant would obtain Board of Health approval and stated that they will meet all the requirements in Mr. Hall’s letter under his site plan comments.

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Mr. Houston answered the board that 90% of the site currently drains from this site to the cemetery property.

Mr. Lavery answered Mr. Hall that the Union Cemetery would not write a letter on this issue either.

Mr. Houston answered Mr. Hall that he did not know if he could run the storm pipe behind the curb. He stated that there would be only a small amount of additional off site drainage, approximately 20%.

Mr. Hall answered Mr. Schwemmer that dry wells cannot be used because of the limestone and Dr. Oweis' requirements.

Mr. Houston answered the board that he would seek the approval of Dr. Oweis to put in a dry well to handle the 20% additional run off on site to eliminate the need for an easement.

Mr. Houston stated that they would comply with Dr. Keller's letter of February 1, 2007 letter regarding the landscape plantings.

Mr. Bauer stated that he has driven past the Washington Advanced Auto Parts store and that it has a trailer parked in its lot and he wanted to make sure that the resolution makes it clear that this is not allowed.

The meeting was opened to the public for questions and comments on this application. There were no questions or comments and the meeting was closed to the public for questions and comments on this application.

Mr. Spina made a motion to approve the Floor Area Ratio variance. Seconded by Mr. Bauer. A roll call vote was taken:

Ayes: Bauer, Spina, Schwemmer, Turick, Baguiao, Walter
Nays: None Abstentions: None Absent: Ort
Ineligible: Averett, Graziano

Mr. Spina, made a motion to authorize the Board attorney to draw up a resolution of approval approving the Floor Area Ratio variance, preliminary and final site plan based on the discussions during the public hearings including payment in lieu of construction of affordable housing, compliance with Mr. Hall's letter of February 2nd, Fire Department approval, Dr. Oweis approval, compliance with Dr. Keller letter, Board of Health Approval, inspection fee deposit, soil erosion sediment control and shade tree easements. Seconded by Mr. Baguiao. A roll call vote was taken:

Ayes: Bauer, Spina, Schwemmer, Turick, Baguiao, Walter
Nays: None Abstentions: None Absent: Ort

Ineligible: Averett, Graziano

3. Colonial Investment – Block 56 Lots 10 & 11 – West Valley Brook Road – R-5 Zone – 4.259 Acres – Request for Steep Slope Variance, Ridgeline Variance – Deemed Complete December 6, 2006 – Previously Heard December 6, 2006 - Public Hearing Continued – Expires – April 5, 2007

Karen Ermel, Applicant's Attorney
George Piccola, Applicant
Carlton Frost, Engineer

Carlton Frost was sworn in by Attorney Fraser.

Mr. Piccola referred to a photograph board that was marked A-1. The photos were placed on the plan and the photograph locations were marked on the plan. He explained the photographs and their locations.

Mr. Frost addressed Mr. Hall's February 2nd letter. He stated that the ridge is across the street from this property. He described the site and the mature woodlands. He stated that the applicant has received a Highlands exemption and the request for an extension on the previous Letter Of Interpretation is at the DEP today.

Mr. Frost stated that on this four acre property they will be disturbing less than an acre. He stated that in his opinion there is not a need for or an area for a restoration plan. He has shown the stream corridor buffer on the plans. He did not show conservation markers on the plan as this is not an easement, but if the Board required them he would put the conservation markers on the plan.

Mr. Frost address the runoff from the property and that there is a substantial ditch that would carry a tremendous amount of water, more than this site could generate, therefore it was his opinion that calculations for a floodplain were not warranted.

Mr. Frost addressed section III of Mr. Hall's letter.

Item A, he objected to this and stated that they are exempt from the highlands legislation and stormwater regulations. It was his opinion that drywells for the driveway are not appropriate. All roof drainage will go into a drywell.

Item B - The grading plan escrow had been paid.

Item C. - The applicant will comply.

Item D. - The applicant will comply.

Item E. - They have not done the requested calculations and it was his opinion that it was required by ordinance.

Item F. - The applicant will comply and the LOI is at the DEP.

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Item G. - The applicant will put the entire lot, outside the limits of disturbance, in a conservation easement.

Mr. Hall asked that the conservation marker easements not be waived at the beginning of the easement at the back of the home. He would like to see four markers one in each of the extreme corners of the property and the one opposite the area marked on the plan as driveway station 125 and one on the road right of way. He requested that they be installed in accordance with the ordinance.

Mr. Piccola stated he would comply with this and item H, the right of open discharge.

Mr. Frost stated the applicant would comply with item I, revision date on plans and item J, the 4' high retaining walls will have a PE certification if it becomes any higher than 4'.

Mr. Frost stated that regarding item K, this site is very tight and the house is shown on grade, which would cause the least amount of disturbance. The area the septic system was required to go and the required location of the driveway dictated the house placement. He stated that when the LOI is received they could try to get DEP to approve a transition averaging plan to give a greater back yard.

Mr. Banisch suggested that the transition area waiver be applied for as a condition of approval.

Ms. Ermel referred to the plans and the area to the side that a homeowner would have to utilize along the side of the property.

Mr. Frost stated that the basement footprint would be made narrower if the second floors could be cantilevered over it. This would give about 4' more to the back yard.

Mr. Piccola stated that he would accept this as a condition of approval as long as it could be accomplished architecturally. He offered that the patio would be put in when the house is built and a deed restriction would be placed that it could not be enlarged.

Mr. Bansich agreed with Mr. Frost regarding the ridgeline and viewshed and the fact that the house would not be seen and therefore there are no substantial issues with regard to the ridgeline.

Mr. Hall read 217-38 A-2 and E-3 regarding his request for drainage improvements.

Mr. Hall stated that based on his field review there is a well established grass area vs. forest floor and this generates less runoff, it is more a meadow than a forest.

The meeting was opened to the public for questions and comments on this evenings testimony.

Mary Jane Allen – Block 56 Lot 11.02 – She stated that runoff has created gullies 5’ deep in Sandt Hill Road. The silt runoff is great now and any development uphill will cause more problems. She stated that the trees are dying uphill and soon the hillside will be bare. She pointed out where the stream runs to and through her property.

Mr. Allen stated that the road has been rebuilt by the township five times in the last several years.

Mr. Piccola stated that he agreed to do the runoff calculations for the area of disturbance of his property and provide drywells that would contain all of the additional runoff.

Mr. Hall told the applicant that he wanted this analysis done at the point where the stream leaves the site.

Steve Pannone – Block 56, Lot 11.01 – Stated that at the December meeting they were told that a development impact study/calculations would be done. He was concerned with development 10’ from the wetland buffer. He stated that there are days when a car cannot get out the driveway on Sandt Hill Road because of the road being washed out.

Mr. Banisch stated that the drywells would collect the additional drainage. He explained that the 150’ transition area is the buffer before the wetlands.

Mr. Frost answered Mr. Hall that they have performed two soil logs where they went down 11.5’ and did not hit water.

Mr. Hall answered Mr. Pannone that they would not be excavating as low as 11.5’ which gives a level of assurance that the basement would not hit groundwater.

Robert Lakey – Block 56, Lot 11.03 - stated that he has streams and ponds on his property that change over the years, one is just outside his driveway. He stated that a state environmental person once stated that he was sitting on an aquifer. He was concern with flooding in his home. He asked about recourse he would have if he experiences more water after this house is constructed.

Mr. Bauer stepped down due to a conflict of interest.

Glenn Montgomery was sworn in by Attorney Fraser.

Mr. Montgomery stated that he is the co-owner with his brother of Garden State Landscaping that operates from 400 West Mill Road. He started operating his landscape business at 400 West Mill Road approximately five years ago.

Mr. Mielich distributed three pages of photographs that were marked exhibit A-1.

Mr. Montgomery stated that he took the photographs about a month ago and described each of the photographs. He referred to the survey submitted with the application. He stated that he has been in business for 22 Years. He employs seventeen people, plus himself and his brother. Twelve of the employees do installation and 5 maintain the installations and one employee is a landscape architect. He maintains and grows the landscaping materials on this property. His hours of operation are from 7:00 am to 7:00 pm. His business operates March to the end of November with the busiest time being the spring, slower in summer and nothing in the winter. He produces over \$2500 per year in income from the agricultural stock. He has 8 vehicles/trucks. Six out of the eight are for agricultural use, the others are for post installation and maintenance work. He has several employees who work on site maintaining the landscape stock. He stated that no customers come to the site. He explained that noise does generate from the site from the personnel and operation of the vehicles. From 7:00 a.m. to 7:20 a.m. it is noisy as his personnel arrive and then it is quite the rest of the day except for occasional deliveries of mulch. Activity begins again in the late day when the employees and trucks return to the site.

Mr. Mielich stated that it is the applicants' position that he is protected by the right to farm ordinance under agricultural uses.

Mr. Montgomery stated that although the right to farm act affords him some protections, he proposes to reduce some of the noise by: eliminating the mulch deliveries – which during the course of the season is 15; employee parking limited to four cars; provide a landscape buffer; he would not increase the number of vehicles or employees. He distributed a landscape plan that was marked A-2. He stated that the landscape plan would reduce noise and provide a greater visual buffer through the planting of evergreens and a privacy fence.

Mr. Mielich read the definitions in the township ordinance for nursery and agriculture. He stated that the zone is R-5 but that these uses are permitted in all zones.

Mr. Mielich stated that the applicant is before the board for an interpretation that this is a permitted use of the property.

Mr. Montgomery stated that he took out 30 dumpsters of junk off the property when he purchased it.

Mr. Montgomery answered the board that his business is off site installations. The plants are stored and grown on the property. He answered the board that his company maintains their installations. Their work is both on and off site. He said that in a typical week he employs 12 people to do the nursery work and five men do the post installation work. The nursery work is done both on and off site. He pointed out the area of the property they have nursery stock and pointed out areas that they could expand the nursery area. The expansion would not require additional personnel or vehicles. He answered that no site plan approval was obtained as he thought his use was permitted based on the surrounding uses and the former use.

Mr. Mielich stated that the house is akin to farm manager's house; in this case a nursery manager's house. The house, barn and nursery are one integrated use.

Mr. Banisch stated that the applicant has put on the record uses that conform to agriculture uses such as the sale of product. He noted that the horticulture part is minimal compared to other uses on the site. It was his opinion that the applicant should return to the board for a use variance and site plan review.

Mr. Mielich referred to 217-40 – definition of agriculture, which is independent of any acreage. He read the definition to the board.

Mr. Montgomery explained the nursery stock that they grow on site. He described the businesses in the area of this property as: pool company, three nurseries, electrical company, tree service company, dog kennels.

The meeting was opened to the public for questions and comments on this evening's testimony.

Attorney Hall representing Jeff Winton asked Mr. Montgomery about what prompted this application.

Mr. Montgomery stated that Mr. Jordan, Zoning officer informed him of the letter sent by Mr. Hall. He stated that Mr. Jordan did not tell him that he concurred his use was a zoning violation.

Attorney Hall asked Mr. Montgomery questions on the materials submitted.

Mr. Montgomery stated that he constructed the barn and added it to the survey. He stated that the survey does not show areas of the property that are graded and used for parking. He stated that the evergreens on the property now were brought in as small stock and grown from there. 10% of the material he uses in his business is grown on site. He answered Attorney Hall that he maintains property that he did not do the initial installation – this is about 10% of his business. They also do snow removal for their clients. He has six plows that he puts on his vehicles. They do not start operations until 7:00 a.m. On site there are 4 - 5 trucks. The others are driven to the site and taken home at the end of the evening. He receives approximately two tractor trailers of stock per month. He explained the plantings he did on Mr. Winton's property.

Mr. Montgomery answered the Board that the questions he answered for Attorney Hall were based on his past operation and not what he has proposed to the board.

James Modica was sworn in by Attorney Fraser and stated that he has owned the adjoining property since 1998. He knew that there was an inactive salvage property next to him when he bought the property, but it was quiet as they were no longer operating the business. The owner lost the property and the bank cleaned up the property, then the Harrington Family bought the property and cleaned up more of the property and then Mr. Montgomery bought the property. He stated that Mr. Montgomery rented out the property and ran a landscaping business, which was minimally active. He stated that he has not seen stock and shrubs that would be sold grown on the property as shown on the photographs submitted as exhibit A-1. For the last three years employees arrive on the property between 6:00 - 6:45 am up to seven days a week. Equipment was being operated prior to 7:00 a.m. He had made his concerns known to Mr. Montgomery and then to the township and police department, and then a letter of complaint to the Township Zoning Officer. During summer hours the trucks were returning and working until as late as 9:00 p.m. This last year the truck traffic goes on all day long as well as equipment maintenance. He explained the traffic going on during the recent winter months. He presented photographs that he has taken which were marked 0-1, through 0-5. He described each of the photos showing the various vehicles that enter the property taken from this home and property. The trees planted by Mr. Montgomery were in response to his complaints regarding noise and clearing that Mr. Montgomery did of his property.

Mr. Montgomery stated that Mr. Modica has exaggerated the situation and his payroll records would show that employees do not start before 7:00 am. Also

