

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of May 2, 2007 to order at 7:10 p.m.

- MEMBERS PRESENT:** Elliott Averett, Morris Bauer, Felix Graziano, Harvey Ort, Craig Schwemmer, Anthony Spina, John Turick
- Alternate Members:** Frank Baguiao
- Members Absent:** Walter
- Others Present:** Clerk Kesper, Attorney Fraser, Planner Banisch, Environmental Consultant Keller

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 12, 2007 and posted on the Bulletin Board on the same date.

Pledge of Allegiance

**MINUTES**

1. April 4, 2007 Regular Meeting

Mr. Ort made a motion to approve the minutes, seconded by Mr. Averett. A voice vote was taken; all were in favor and the motion carried.

**RESOLUTIONS**

07-14 O'Hara – Block 45, Lot 16 – 132 Old Turnpike Road – R-5 Zone – 2.755 Acres – Request for front yard setback variance and expansion of residential non-conforming structure

The resolution was reviewed.

Mr. Ort made a motion to approve resolution 07-14. Seconded by Mr. Turick.

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

Mr. Bauer arrived and joined the meeting.

07-15 Dragunas – Block 47, Lot 25 – 50 North Mt. Lebanon Road – R-5 Zone – 7.58 Acres – Request for front yard setback variance and expansion of residential non-conforming structure

The resolution was reviewed.

Mr. Averett made a motion to approve resolution 07-15. Seconded by Mr. Ort.

Ayes: Averett, Bauer, Ort, Schwemmer, Turick, Baguiao

Nays: None Abstentions: None Absent: Walter

Ineligible: Spina, Graziano

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. Rosado – Block 43, Lot 62.01 – Stephensburg Road – R-5 Zone – 3.21 Acres – Request for Steep Slope Variance - Deemed Complete January 3, 2007 – Previously Heard January 3, 2007 - Public Hearing Continued – Expires May 3, 2007

Mr. Schwemmer announced that the application had been adjourned at the Applicant's request to June 6, 2007

2. Ackerman – Block 30, Lot 22.02 – Schooley's Mountain Road - R-5 Zone – 5.52 Acres – Request for Steep Slope, Ridgeline and stream corridor variances

Mr. Schwemmer announced that the application had been adjourned at the Applicant's request to June 6, 2007

3. Lindert – Block 13.10, Lot 16 – 240 Naughtright Road -R1/R2 Zone – 1 Acre – Request for front yard setback, and expansion of non-conforming structure variances

Christopher Lindert  
Colleen Lindert

Christopher Lindert and Colleen Lindert were sworn in by Attorney Fraser,

Mr. Lindert explained the current location of the house and that it is approximately 100 years old. He stated that 75% of the house is in the front and/or side yard setback. They would like to put an addition on the side of the home.

Ms. Lindert stated that the addition would not be closer to the front yard than the current house. She stated that the well is behind the house. The lines of the addition will be in line with the current house.

Mr. Lindert stated that the existing garage on the site would be removed if this application were approved as a new two car garage is part of the proposed addition. The length of the driveway will be decreased.

Ms. Lindert confirmed the setbacks as shown on the plan. He stated that his property extends to the center of the road. The existing house is 36' from the end of the house and 30' from the end of the porch to the edge of pavement. The addition will align with the front porch. She pointed out the well location under the deck, which would prevent the house addition from being pushed back further. They will reside the entire house when the addition is completed. The addition is 36' wide by 21' deep.

The meeting was opened to the public on the testimony heard this evening. The meeting was closed to the public on this application as there were no questions or comments.

Mr. Spina made a motion to approve the application as presented, with the addition being no closer than 29' and that it must stay in line with the front porch and a condition that the existing barn/garage be demolished prior to the issuance of a Certificate of Occupancy. Seconded by Mr. Graziano.

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

4. 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, 2007 and February 7, 2007 -Public Hearing Continued – Expires – May 2, 2007

Karen Ermel, Applicant's Attorney

Carlton Frost, Applicant's Engineer  
George Piccola, Applicant

Mr. Banisch arrived and joined the meeting.

Mr. Frost stated that he has submitted drainage calculations as requested by Mr. Frost. The first analysis was at the edge of the property taking into account all of the water coming in at that point which is 88 cubic feet per second. After the house it would be 88.3 cubic feet per second. He explained that this increase would be de minimus and not cause an impact on the residents down stream. He explained that he did another analysis at the request of Mr. Hall that included an additional dry well and that analysis also showed a de minimus increase. He stated that he did not agree to put in a rain garden in the front yard as requested by Dr. Keller as it was his opinion that it was not necessary. He has shown conservation easements on the plan as requested by the Board and Mr. Hall. The applicant was not planning on rip rapping the smaller stream. He stated that the stream does not run all the time and it is discharge from the Township street.

Ms. Ermel stated that the applicant does not intend to apply for a transition averaging plan with the state. They would put a conservation easement over the back yard.

A discussion was held on the drainage ditch that was requested to be stabilized.

Mr. Frost stated that this ditch was created by the Township, who is now asking for a right of open discharge from the applicant.

Dr. Keller arrived and joined the meeting.

Dr. Keller reviewed his letter of February 20, which was in response to a request of the board regarding the stream. He responded to Ms. Ermel's letter of April 1, 2007. It was his opinion that stabilizing the streambed would not be at odds with the conservation easement, who should do the stabilization was up to the board. Regarding item two, the hydrology of the channel, which is at the upper end of the property, the seep was probably seasonal and in summer the seep probably would not be seen. He explained the solution, a step pool, as outlined in his letter. He explained what a rain garden is and that he suggested it to mitigate the discharge downstream. Regarding item 3, this was in reference to the Township's stream corridor buffer ordinance.

Ms. Fraser explained that the variances referenced by Dr. Keller are actually design waivers, not variances.

Mr. Hall explained the stream corridor ordinance of the township and that this is not the stormwater management rules. The applicant is asking for a waiver from 300' to 25'

Mr. Hall read from the minutes of February 7, 2007 regarding a transition area waiver plan.

Mr. Hall offered that Dr. Keller, Mr. Banisch and himself to go over options.

Mr. Piccola explained that he wanted to clean up the stream but was told not to. He stated that the township did not have the right to discharge on his property and he has a title search that shows no easement for the discharge.

Ms. Fraser stated that the best way to handle this is to supply the title report to her and that the applicant should meet with the board professionals.

A meeting was set for Tuesday morning with the board professionals and the applicant.

Ms. Ermel granted the board an extension of time on this application.

The application was adjourned to June 6, 2007.

Eligible: Averett, Bauer, Graziano, Schwemmer, Spina, Turick, Baguiao  
Absent February 7: Ort  
May 2: Walter

5. Davis – Block 51, Lot 34 – 235 Pleasant Grove Road – R-5 Zone, 3.11 acres – Request for front yard setback, insufficient lot size and expansion of non-conforming structure variances

Daniel Davis, Applicant

Daniel Davis was sworn in by Attorney Fraser.

The application was reviewed.

Mr. Davis stated that the addition will be incorporated into the existing dwelling. Two walls of the existing home will remain. The existing structure is 29' x 40'. He will have two bedrooms after the remodeling, the same as exists. The new porch will extend three feet further into the front yard than the current porch. Mr. Davis explained the interior changes.

Mr. Davis answered Mr. Hall that under construction codes this project is considered an addition. All accessory structures will remain on the site. He stated that he has put in a new well and pointed out its location. The septic is

off the back deck. The well and septic were only 25' apart and that is why he has put in a new well. He referred to the plans and stated that the rear yard deck shown on the plans is existing. He explained that the house is approximately 60 years old. He is not doing anything with the garage. The porch will not interfere with the garage, which is approximately 15' away.

Mr. Davis answered Ms. Fraser that the garage shed and trailer shown on the survey would remain.

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

Mr. Averett made a motion to approve the application as submitted, seconded by Mr. Bauer, a 69' setback (3' from the existing home).

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

6.     Montgomery – Block 54, Lot 21 – 400 West Mill Road – R-5 Zone –2.538 Acres – Request for Interpretation or in lieu interpretation a Use Variance for mixed use of residential and agricultural nursery

Mr. Bauer stepped down due to a conflict of interest and left the meeting.

Mr. Mielich stated that this is a different interpretation request then the previous application as the applicant has moved his landscaping business off site with an 80% reduction in employees and a 60% reduction in trucks and a substantial increase in nursery stock.

Ms. Fraser instructed the board on “res judicata” and the previous application and denial resolution of the Board.

Glen Montgomery was sworn in by Attorney Fraser.

Mr. Montgomery stated that he and his brother are residents of Long Valley and they volunteer in the Township, including donating seedlings for Arbor Day.

Mr. Montgomery testified to the differences in this application from the previous application. The current use is three trucks, all other vehicles are in another location in Flanders, of the 17 employees only six remain on site. All lawn mower equipment and trailers related to the lawn mowing business have been removed. Every snowplow has been moved off site. The nursery stock has been increased. He stated that for the past five or six years they have

brought stock onto site, repotted and planted them on site. Of the six employees, two are on site continuously as care takers for the nursery stock. The other four employees they take material from the location and go off site to install and maintain the plants they install. They no longer have mulch deliveries. The only mulch is for use on site with the nursery stocks. They reduced the deliveries of stock by having the materials not being grown on site being delivered directly to the customer. Only 30% of the materials will now be trucked in.

Mr. Montgomery stated that the shortest period of rotation of the nursery stock would be a week. Right now he has in the ground 50 ornamental grasses, ten Japanese Maples, 30 8' Colorado Blue Spruces, 100 Colorado seedlings and another 900 going in over the next weeks. He also has approximately 60 boxwoods, grasses and perennials on site. He stated that they have expanded their horticultural areas. He explained the need for supplemental stock so they have a variety of species and sizes. He explained to the board that this is a 28 to 32 week operation and they would not be operating from this location in the winter. He read letters from the New Jersey Agricultural Association at Rutgers – Marked Exhibit A-1 and New Jersey Nursery and Landscape Association – Marked Exhibit A-2. He answered the board that the Colorado Blue Spruce seedlings will be in the ground approximately 6 years before they are moved off site.

Mr. Montgomery further explained that when he first moved to this location he was welcomed into the neighborhood, as he was cleaning up the old junkyard. He stated that his neighbor stated that at that time the adjoining property owner had told him he was looking into putting his property into farmland preservation. He noted that this property is surrounded by businesses and nurseries. When he first started at this site there were more trucks and noise then there is now. He stated that finding another location has been very difficult.

David Banisch was sworn in by Attorney Fraser.

Mr. Banisch referred to the previous application and resolution and stated that the testimony heard from the applicant this evening seems to indicate that there is still landscaping services operating from the property by the four employees that go off site.

Mr. Montgomery answered Mr. Banisch that the four employees just pick up and deliver materials during the day, they do not work at the West Mill Road site. All maintenance of vehicles and equipment has been moved off site.

The board deliberated on whether this interpretation request is different from the former interpretation.

Mr. Montgomery withdrew his application for an interpretation and elected to proceed with a use variance.

Ms. Fraser stated that the board should see more than a survey with the use variance request, that a site plan should be submitted showing all of the activities as well so that the board can determine if the use would be a substantial detriment to the neighbor and zone plan. This would be very difficult without a site plan.

The board concurred with Ms. Fraser.

Mr. Montgomery stated that they have had stock growing on the land for the last five years.

Mr. Montgomery asked for an adjournment to submit the plan requested by the board.

The meeting was opened to the public for questions on the testimony heard this evening.

Attorney Hall stated that he had a procedural issue. He objected to the adjournment to August 1, 2007.

Laura Knipmeyer – 422 West Mill Road stated that she is a resident for 21 years who worked on getting Middle Valley the national historic district recognition and past member of environmental commission. She stated that she was concerned with how the large building got on the property and wetlands in the area. She explained that the existing businesses in the area preceded the historic district designation, this business does not. She noted that this property abuts the Columbia trail. She was concerned about degradation of the area.

There were no further questions and the meeting was closed to the public on this evening's testimony.

Ms. Fraser asked that the applicant re-notice the application because of the site plan review.

The application was adjourned to June 6, 2007. If there is not time on the agenda the board would try to schedule a second meeting in June.

Eligible: Averett, Graziano, Ort, Schwemmer, Spina, Turick, Baguiao  
None Absent: Walter  
Ineligible: Bauer

***DISCUSSION - CORRESPONDENCE***

## 1. Vouchers

The vouchers were reviewed. Mr. Ort made a motion to approve the vouchers reviewed by the Chairman and found in order and send same on for payment. Seconded by Mr. Averett. A voice vote was taken; all were in favor and the motion carried.

Mr. Bauer made a motion to adjourn, seconded by Mr. Baguiao. A voice vote was taken; all were in favor and the meeting was adjourned at 9:37 p.m.

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**Virginia R. Kesper, Clerk**