

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of October 1, 2008 to order at 7:00 p.m.

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

*Arrived late

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 18, 2008 and posted on the Bulletin Board on the same date. Two notices were mailed as there were two requests

Pledge of Allegiance

MINUTES

1. September 3, 2008 Regular Meeting

Mr. Spina made a motion to approve the minutes, seconded by Mrs. Walter. A voice vote was taken; Mr. Baguiao abstained; all others were in favor and the motion carried.

RESOLUTIONS

08-18 Galloway – Block 34.01, Lot 3.02 – 148 Beacon Hill Road – R-5
Zone 2.77 Acres – Approval of Request for amendment to
Resolution 06-30 – Condition 2 to allow for running water and
toilet fixtures to be installed in

The resolution was reviewed.

Mr. Graziano made a motion to adopt resolution 08-18 as written.
Seconded by Mr. Spina. A roll call vote was taken:

A roll call vote was taken:

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

OCTOBER 1, 2008

Ineligible: Baguiao, 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. Collins – Block 59, Lot 39 – 397 Fairmount Road – R-5 Zone 3.8 Acres – Request for front yard variance for replacement of existing shed

George Collins, Applicant

George Collins was sworn in by Attorney Fraser.

Mr. Collins stated that the shed exists but is in disrepair he would like to take it down and replace it, exactly the same except the door will be moved from the side to the center. He stated that the construction will be in the same style as the house, which is from 1790's. The shed is old also and the foundation is a non-mortar rubble foundation and needs to be replaced.

Mr. Bauer arrived and joined the meeting.

The board reviewed the application.

Mr. Banisch reviewed the application and referred to the MLUL which provided the board with the ability to approve the requested variance.

Mr. Collins stated he met with the Washington Township and Tewksbury Township Historic Preservation Commissions and that he was told that they do not have any jurisdiction over the application as it is not on an historic register or zone.

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

Mr. Spina made a motion to approve the application as submitted and presented, seconded by Mr. Graziano. A roll call vote was taken:

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

Nays: None Abstentions: None Absent: Bauer, Ort

Ineligible: None

2. Kadosh (Neighbor House) – Block 34, Lot 47 – R-5 zone 3.607 Acres – Request for Preliminary and Final Site Plan with Variances for expansion granted with Use Variance 08-13– Decision on Completeness and Public Hearing

Rafi Kadosh, Applicant

David Fantina, Applicant's Engineer

The application was reviewed for completeness.

Mr. Hall stated that his only open issue were easements that were not shown on the site plan, however the deeds have been submitted and he recommended that the application be deemed complete.

Mr. Bauer made a motion to deem the application complete, seconded by Mr. Spina. A voice vote was taken; all were in favor and the motion carried.

David Fantina and Rafi Kadosh were sworn in by Attorney Fraser.

Mr. Hall reviewed his letter of September 26, 2008.

Mr. Fantina reviewed the five variances required for this application as outlined in Mr. Banisch's memo of August 6, 2008.

Mr. Fantina explained that the need for more than one principal structure on the property granted by Use Variance earlier this year by the board is due to the DEP Highlands approval which limited the impervious coverage on the site and the Historic Preservation Approval who did not want to see the buildings connected.

Mr. Fantina stated that the area of the Historic Inn is 5,712 s. f., not including the basement. The applicant would like to use the basement for recreation for the guests. The full basement is 1,797, but not all of it

would be heated, useable space as there is a furnace and storage area. He noted that there will be a separate residence for Mr. Kadosh family.

Mr. Kadosh stated that there is 1,300 s. f. in the current building and 1,700 in the addition that would be for guest amenities.

Mr. Fantina stated that the applicant's property is 3.6 acres which does not meet the current requirements of 5 acres. He noted that when this ordinance was written and adopted it was before the area was changed to five acre zoning and the requirement was for three acres.

Mr. Fantina stated that they cannot meet the rear yard requirements as the building exists and Historic Preservation wanted the addition behind and not along side the historic building. He stated that the neighbor to the rear is a preserved farm. The nearest residence to the rear is thousands of feet back.

Mr. Fantina stated that the applicant was proposing ten parking spaces and the ordinance requires 12 parking spaces.

Mr. Kadosh stated that based on his experience guests arrive in one car per room reservation and that for 8 bedrooms they need one parking space per bedroom and two spaces for his family. He stated that he does not have any employees.

Mr. Banisch read the ordinances for bed and breakfast and historic inn.

Mr. Fantina addressed the variance for separation of principal structures, which would require 80' where 11' is proposed.

Mr. Banisch explained that the definition was for modern, larger commercial development.

Mr. Fantina referred to the variance for three parking spaces closer to the street than the Bed and Breakfast, therefore in the front yard. He stated that this was due to the geometry of the existing driveway and the DEP Highlands approval.

Mr. Banisch recommended some landscaping to soften the appearance of the cars.

Mr. Fantina reviewed the design waivers as outlined in Mr. Hall's letter of September 26. He stated that they are widening the entrance of the driveway but would like to keep the existing driveway as it is. He stated that they are within 29' of the total impervious coverage allowed under

the Highlands approval and he asked that they not be required to widen the driveway.

Mr. Hall referred to the fire department approval and they did not bring up any access issues, therefore, he did not object to the waiver because of that and the existing Highlands approval.

Mr. Fantina stated that the sign will be relocated because the driveway has to be widened but they would not like to have it as far back as 20'.

Mr. Hall did not object to the sign be relocating as long as there is safe sight distance, and the sign is at least 10' back from the right of way.

Mr. Fantina stated that they do not want to provide the shade easement because the front already has trees.

Mr. Hall referred to the plans and pointed out the mature trees. He stated that there is a gap of 50' – 60' west of the driveway without trees. He did not object to the granting of this waiver.

Mr. Banisch suggested a condition that the tree line be maintained over time and should the trees die they be replaced with new trees, although not at the size they are now.

Mr. Hall noted that some of the trees will have to have branches cut up to provide proper sight distance.

Mr. Fantina referred to the plan to address the area of fill needed in the stream corridor and open water buffer.

Mr. Hall stated that this is a minor intrusion caused by improvements required by the County and he did not object to the waiver. He stated that all areas disturbed must be restored.

Mr. Fantina addressed the site plan comments in Mr. Hall's letter of September 26, 2008.

Ms. Fraser stated that it was her opinion that the board cannot waive ADA requirements. The applicant needs to provide documentation as to why they do not have to provide ADA spaces based on the legislation.

Mr. Kadosh stated that he would provide valet parking for guests when needed.

The board discussed the issue and concluded that they would allow whatever met the ADA requirements.

Ms. Fraser read a suggested condition that the applicant comply with the ADA either for self or valet parking or proof that compliance is not required.

Mr. Fantina stated that the new bed and breakfast is 3300 s.f. (two floors and basement) the new structure is 3,120 sf (two floors and basement) for a total of 6,420 s.f. for the bed and breakfast.

Mr. Hall stated a site plan design waiver for a hydrant or tank would be required under 159-46.

Mr. Kadash stated that the river is within 1000 s. f. of the buildings.

Mr. Banisch read section 159-46 of the ordinance.

The board deferred to the fire department on this issue and requested that an approval of this waiver by the fire department be a condition of approval.

Mr. Fantina stated that they will comply with Dr. Oweis' letter and they will do the required tests when Dr. Oweis is available. He has submitted revised plans to the Morris County Planning board but has not received approval.

Mr. Kadosh stated that they have received revised approval from the Historic Preservation approval.

Mr. Fantina stated that he would submit a copy of the DEP letter on stream encroachment to Mr. Hall.

Mr. Fantina state he would comply with the stormwater management requirements as outlined in Mr. Hall's letter.

Mr. Hall stated regarding a soil disturbance permit that based on the grading plan and the applicant's testimony the applicant would qualify for an exemption because they are not bringing in or removing more than 100 s.f. of soil.

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

Mr. Averett made a motion to authorize the drafting a resolution of approval for the historic inn based on the testimony presented and the

conditions discussed this evening. Seconded by Mr. Bauer. A voice vote was taken; all were in favor and the motion carried.

Eligible: Averett, Bauer, Graziano, Spina, Schwemmer, Turick, Baguiao, Walter

Nays: None Abstentions: None Absent: Ort

Ineligible:

3. Deats – Block 36, Lot 53 – 195 East Mill Road - R/5 Zone – 3.4 Acres – Request to continue to use an apartment in a single family home under the Fair Housing Act - Reasonable Accommodation

Leah Deats, Applicant

Lawrence Fox, Applicant's Attorney

Mr. Fox stated that this is a request to allow Ms. Deats to continue to live in an apartment in a home she owns as a disabled person. She lives in the apartment and rents the remainder of the home. No changes to the structure are proposed.

Ms. Fraser stated that there may be jurisdiction issues. She reviewed the Zoning Board of Adjustment's jurisdiction. She did not see where this board has jurisdiction to hear the case the applicant proposes. She reviewed the Fair housing Act section 36:10 G2 referred to by Mr. Fox which is something the federal or state agencies would have to grant relief.

Mr. Fox read from a document that referred to the Zoning Board of Adjustment being able to grant the requested relief.

Ms. Fraser stated that variance relief goes with the land, not an individual.

Mr. Banisch read 217-46 - Accessory apartments and COAH.

Ms. Kesper stated that Ms. Deats had completed all of the items under 217-46 except the filing of the restrictive deed.

Mr. Fox stated that this may not be an answer because Ms. Deats may not qualify to live in the apartment.

Ms. Fraser stated that being the case the applicant should file for and request for a use variance.

Mr. Fox stated that his prior reference was from a reported court case - Easter Seals Society vs. North Bergen 798 228 1992 case which included

the Zoning Board of Adjustment. It was his opinion that this is not a variance.

Ms. Fraser stated that she needs to review the case prior to giving an opinion on the Board's jurisdiction and unless the case indicates otherwise, it was her opinion that the relief needed is a use variance for a two family home.

Ms. Deats stated that she has been trying to resolve this issue since 2004.

Mr. Fox agreed and will re-notice for a D-variance, use variance, for multi-family housing.

4. Sobolewski – Block 43, Lots 57, 58, 59, 61 and 62.03 – 80
Stephensburg Road – Request for variance for more than one
principal structure on a lot and steep slope variance

Greg Sobolewski, Applicant
Anthony Sposaro, Applicant's Attorney
Greg Yannacone, Applicant's Engineer

Mr. Sposaro reviewed the application and stated that Mr. Sobolewski owns five lots and bought this property to build a home for his family. He referred to the plans previously submitted to the board and pointed the lots out. He stated that the applicant wanted to build his home on lot 58, which has no frontage, but has a farm road to it. Because of the highlands act, the ridgeline and steep slopes it has been determined that the best way to develop the property for the applicant is to ask for use variance relief for two principal structures on one lot.

Mr. Sposaro asked the board to accept the fact that the applicant will meet the requirements outlined in Mr. Hall's letter of September 26th and review whether the board would consider the granting of the use variance.

Greg Sobolewski and Gregory Yannacone were sworn in by Attorney Fraser.

Mr. Yannacone referred to the plan and pointed out the environmental areas of the property. He explained that the applicant would use the existing driveway, but will bring the driveway into compliance with the Township ordinances. He explained that the property is currently a tree farm and the applicant will be continuing that use. He explained that building on lot 58 would require relief from the ridgeline ordinance.

Mr. Sposaro stated that the applicant does not want to do a lot line adjustment because this would send him to the DEP for a highlands approval.

Mr. Sposaro stated that even with a subdivision the house would be in the same location. The applicant was willing to deed restrict the remainder of the property and lots from future development and appropriate conservation easements. There would be close to 60 acres of land preserved if the board granted the variance for the two structures.

Mr. Banisch stated that he did not object to the two principal structures on one lot if the board came to the conclusion that there was no detriment to the public good.

Mr. Yannaconne stated that the two dwellings will be at least 400' apart.

The meeting was opened to the public for questions on this evenings testimony. There were no questions or comments and the meeting was closed for questions on tonight's testimony.

The board gave their opinion on the proposed use variance. The Board members did not object to having two principal structures on one lot, given the unique characteristics of the land and property being deed restricted, if the applicant can meet the requirements in the letters of Mr. Banisch (September 30, 2008), Dr. Keller (September 9, 2008) and Mr. Hall's (September 26, 2008).

Mr. Yannaconne stated that he will set the house location by this Saturday, October 4 so the Board members could walk the site.

Mr. Sobolewski gave the board permission to walk his property and asked that the members call before they come. 917-386-3029.

Mr. Hall and Mr. Banisch will inform the applicant and the board when they are going to do a site walk.

The meeting was adjourned to November 5, 2008

Eligible: Averett, Bauer, Graziano, Spina, Schwemmer, Turick, Baguiao, Walter

Nays: None Abstentions: None Absent: Ort

Ineligible:

DISCUSSION - CORRESPONDENCE

1. Vouchers

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

Mr. Averett made a motion to adjourn, seconded by Mr. Spina. A voice vote was taken; all were in favor and the meeting was adjourned at 10:00 p.m.

Virginia R. Kesper, Clerk