

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of August 5, 2009 to order at 7:00 p.m.

MEMBERS PRESENT: Elliott Averett, Morris Bauer, Craig Schwemmer, John Turick

Alternate Members: Frank Baguiao, Dorothy Walter

Members Absent: Anthony Spina, Felix Graziano Harvey Ort,

Others Present: Attorney Fraser, Engineer Hall, Planner Banisch

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 14, 2009 and posted on the Bulletin Board on the same date. Notices were mailed as there were requests.

Pledge of Allegiance

MINUTES

- 1. May 6, 2009 Regular Meeting

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

RESOLUTIONS

09-11 Ort – Block 8, Lot 6 – 51 Drakestown Road – O/R Zone – 28.6 Acres – Approval of Request for Use Variance to permit single-family residential dwellings in the Office Research Zone

The resolution was reviewed. Mr. Averett made seconded by Mr. Turick A roll call vote was taken:

A roll call vote was taken:

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

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. Millers Green, LLC – Block 35, Lot 18 – 11 East Mill Road – C-1 District – Request for rear yard setback variance for garage and expansion of non-conforming structure

Elaine Harris, Applicant's Attorney and Applicant
Michael Davis, Applicant

Mr. Bauer arrived and joined the meeting.

Elaine Harris was sworn in by Attorney Fraser.

Ms. Harris stated that the June 29, 2009 memo of the Historic Preservation Commission and COA of May 6, 2009 were submitted with the application. She distributed to the board a collection of artist renderings, a copy of a previous submission to the Planning Board, photographs of the site and a property survey, tax map and aerial photograph which were marked A-1.

Ms. Harris gave a history of the project with the Historic Preservation Commission and Planning Board and that the project always consisted of the three structures on the property, the garage, the subject of this application, the house and barn. She noted that it was always their intention, as indicated by the artist rendering to increase the height of the garage. She stated that they had the approvals from HPC for the project as well as the Planning Board. She stated that they had always intended to come before the Zoning Board for permission to expand the non-conforming structure, but they were now also before the board for permission to rebuild the garage in the current non-conforming location. She stated that the application was approved by the Planning Board.

Ms. Harris answered Ms. Fraser that they received site plan approval from the planning board for commercial use of the house and barn subject to MCPB approval.

Mr. Hall stated that there was no approval by the Planning Board as it was the application was a concept plan only.

Ms. Harris stated she stood corrected. She explained the MCPB process and that the project was stopped because of the ultimate determination that they did not have ingress from Fairmount Road. She stated that they had MCPB. She stated that they now resolved the ingress problem from Fairmount Road and now have an easement to use Fairmount Road. She explained the process they went through to obtain the easement and that it took two years to resolve. During the two years they decided to renovate as a single family home and went back to the HPC for approval, which they have.

Michael Davis arrived and joined the meeting and was sworn in by Attorney Fraser.

Ms. Harris read from the COA that found it was appropriate for a second floor on the garage. She reviewed the repairs to the foundation of the house, which involved removing and replacing and cementing the existing stones in the foundation. This work was done by accomplished masons. After that work was done they stared on the garage, which was to also have a stucco exterior. What happened is that during the reinforcement of the walls of the garage it was found that the cinder blocks were found to be deteriorated to a point where they all had to be replaced which is what happened on Memorial Day weekend.

The board reviewed the testimony regarding the Planning Board approvals and determined that there had been no Washington Township or Morris County Planning Board approvals.

Ms. Fraser reviewed for the Board that the issue before the board tonight is that a non-conforming building was taken down and now the applicant wants approval to rebuild and expand the building,

Mr. Davis confirmed they did not have approvals and Ms. Harris' testimony regarding the access delays and the change from commercial development to residential restoration. He answered Mr. Hall that they did not have a building permit for the garage as they were not planning on taking it down and rebuilding it, they took out the materials stored in it, took off the roof and stabilize the walls.

Mr. Schwemmer questioned why the applicant did not get a permit to take the roof off. He also stated that the other buildings on the site are not part of this application, just the garage.

Ms. Harris stated that the applicant was before the board for the setback variance as part of the preservation of an historic site.

Ms. Fraser answered Mr. Bauer that if the building hadn't been taken down the application would be for an expansion of a non-conforming use. But since it came down the building lost its pre-existing non-conforming status and the board is looking at a new building with setback issues.

Ms. Harris stated that although the garage is on its own lot, the tax assessor has informed her that should they receive approval the lots should be merged into one.

Mr. Banisch's report of July 1, 2009 was addressed.

Mr. Davis referred to display boards of photographs of the site as it is currently, which were marked A-2 through A-5. He explained each of the photographs. He stated that the size of the new building is exactly as it was before it was taken down. The foundation was dug out and a new foundation poured before the walls went back up. He answered Mr. Hall that the construction official did not issue a stop work order and stated that he did not have a problem with what the applicant was doing but that the applicant should see the Zoning Officer.

Mr. Davis stated that the proposed use is as a garage on the ground level and the upper would be used for storage and an antique wood shop. No residential above and the shop will only be for the new owner of the property. He answered Mr. Banisch that the property has been used for years but the previous use was residential and the garage is accessory residential use. This will be supporting structure to the three bedroom house. There is no place in the home for storage or workshop. There will be no plumbing, but electrical.

Ms. Harris addressed item 11 of Mr. Banisch's letter and that it would advance the purposes of the MLUL: A (benefit to the public – up grading of a deteriorating site and using the land efficiently); E; G; J (historic preservation).

Mr. Davis presented a photograph of the site showing the tree that would need to be removed if the garage were to be moved to a conforming location which was marked A-6.

Ms. Harris stated that the applicant does not want to change the location of the garage. She stated that it was her opinion that rebuilding and expanding the garage would not be a detriment to the public good or zoning.

Mr. Davis addressed item 13 of Mr. Banisch's report regarding the garage being moved to a conforming it would affect the streetscape and cause another large tree to come down and compromise the driveway.

Ms. Davis referred to the aerial and pointed out all the buildings on the site and the adjoining lots and stated that it would not improve the view from the neighbors and would actually be crowding the house on the adjoining lot rental home. She stated that the applicant was willing to put in landscaping if they are allowed to rebuild the garage in the pre-existing location. She stated that the rehabilitation and occupancy of the site would be a benefit the adjoining neighbors.

The June 29, 2009 memo from the Historic Preservation Commission was reviewed.

The meeting was opened to the public for questions and comments.

Dale Blum, 23 East Mill Road was sworn in by Attorney Fraser.

Ms. Blum stated she lives on the adjoining lot and submitted a letter and photographs of the site from her home which was marked O-1. She stated after the July 1 meeting was adjourned she spoke with applicant who offered landscaping, but given the proximity to her house there was no room for landscaping. She stated that on Friday of memorial weekend heavy equipment was pushing down the building (she called the police because of the noise) and on that Saturday it was rebuilt. She stated that she does sit on the HPC but stepped down from the application because of her conflict of interest. She noted that the applicant violated Township ordinances by not getting the required permits. She objected to the increased height because it would be in the direct line of site to both her houses and did not see that a resident would need the loft. She would prefer that a new structure be not allowed as well. She disagreed that the garage would be a benefit to the township or historic district. She stated that the photographs depict the view from her property and homes.

There were no further questions or comments and the meeting was closed to the public for questions and comments.

Ms. Harris summarized the application before the board and responded to Ms. Blum's comments and stated that Ms. Blum could have made these comments as an adjacent property owner during the HPC meetings. She stated that a tenant would benefit by having a garage with a loft. She would put up trees or hedges to help with the visual

intrusion. It was her opinion they have been and will continue to be a good neighbor.

Mr. Davis stated that it was his opinion that putting the garage in a conforming location would be a greater impact to the Blum property. He stated that the HPC has supported and endorsed the second story.

Ms. Harris presented her qualifications to the board as an attorney and restorer of historic buildings.

Mr. Averett stated that based upon Ms. Harris' qualifications and experience that he found it difficult to accept that they did not get the required permits for the building. It was his opinion that the applicant had not proved the benefit to approve the rebuilding of the garage in the non-conforming the location.

Ms. Harris stated she was not on site when this happened and reiterated that it was not their intent to take the garage down and that is why they are at the board now. By moving the garage it would destroy the historic character of the property. When the renovations of the three buildings are complete it will be a benefit to the area.

Mr. Schwemmer expressed his concerns that this building came down on a holiday weekend and without permits.

Mr. Davis stated that he was not on the site when the garage came down and was rebuilt and his masonry contractor did it on his own without consultation with him.

Mr. Schwemmer concurred with Mr. Averett that the positive criteria was not met.

Mr. Banisch answered Mr. Bauer that the applicant could put a garage in a conforming structure at the proposed height or size or higher/larger without approval of any agency but the HPC.

Ms. Fraser advised the board on the relief the applicant was asking for and the options of the board for approval or denial and the applicant's right to ask the board to adjourn and not take a vote this evening or to modify the current application to eliminate the expansion (second floor) of the garage.

Mr. Banisch elaborated on the option of allowing the garage being rebuilt as it was with no expansion and addressed the objectors concerns by stating that the Board could find that the detriment was no greater then it has been for the last fifty years.

Mr. Turick expressed his concerns without correct plans and outstanding HPC approval of the proposal before the board. It was his opinion that the applicant had met the positive criteria for the setback variance but not the expansion.

Ms. Fraser read the HPC letter and that they want to revisit the former COA because the building is no longer there.

Ms. Harris stated that they would agree to merging the lots as a condition of approval and that they would willing to accept the replacement of the garage without the expansion, but it is not what they really want to do.

The Board deliberated on the application and reviewed the submitted plans.

Ms. Blum answered the board would not object to the garage being rebuilt as it was before without expansion or change in the height/roof.

Mr. Averett made a motion to deny the application, seconded by Mr. Averett.

Mr. Davis answered Ms. Fraser that they would like the board to vote on the motion and stated that if they board were to deny the expansion but approve the replacement of the existing garage as is they would accept it.

Ms. Fraser explained to the board that if the motion passes, the application is denied and the structure would have to be taken down or file a law suite; or build meeting the setbacks and HPC and building permits. She explained that if the motion fails the Board can make another motion to approve the application with conditions or approve without the expansion.

Mr. Davis explained the restoration work that they have done on the single family home and the amount of board replacement they have had to do and how he has met all the requirements of the HPC. He apologized for the barn coming down and being rebuilt without the proper approvals.

Ms. Fraser answered Ms. Walter that the motion to deny means that the applicant cannot come back to the board for approval unless the application unless there is a substantial of the application.

A roll call vote was taken:

Ayes: Averett, Baguiao, Turick, Walter

Nays: Bauer, Schwemmer Abstentions: None Absent: Ort,
Graziano, Spina

Ms. Fraser stated that the motion to deny carried and the application was denied.

2. Rizzo – Block 20.08, Lot 28 – 1 Harmony Court - R-1 Zone – .75 acres -Request for side/front yard setback for sun room

Joseph Rizzo, Applicant

Mr. Rizzo was sworn in by Attorney Fraser.

Mr. Rizzo presented photographs which he stated he took of his yard today which were marked A-1 – A-5. He would like to put a sunroom/greenhouse, all grass where the existing deck is but expanded by seven feet which will violate the setback. The area they have chosen is outside the sliding glass doors off the family room which is the only place to put the room. He stated that the lot is .75 acres and the location of the house on the corner lot and the corner lot setbacks cause the need for the variance. He pointed out the trees that block the view from the street and neighbors.

Mr. Banisch reviewed his memo of August 5, 2009.

Mr. Rizzo answered Mr. Banisch that there is currently an evergreen buffer between the proposed addition and the neighboring property. Making the room smaller would make it unusable and unacceptable.

The meeting was opened to the public for questions and comments on this application and the meeting was closed to the public.

Mr. Bauer made a resolution to approve the application as presented. Seconded by Mr. Turick.

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

Nays: Abstentions: None Absent: Ort, Graziano, Spina

3. Wallace/O'Neill – Block 17, Lot 10 – 36 S. Four Bridges Road – R-5 Zone – 5.44 Acres – Request for front yard setback and non-conforming structure variances

John Wallace

Katherine O'Neill

John Wallace and Katherine O'Neill were sworn in by Attorney Fraser.

Mr. Wallace stated that they have an old house up against the road and no matter where they would put the addition it would violate the front yard setback.

Mr. Banisch reviewed his memo of August 5, 2009.

Mr. Wallace concurred with the comments in Mr. Banisch's letter. He stated that they will be moving their driveway for this addition and the accessory garage has already been built with the proper permits and did not require a variance. He pointed out the well and septic on the survey.

The board reviewed the application and noted that the architecture proposed will compliment the existing house.

Mr. Turick noted that the home with the addition would be 4500 sf.

Mr. Wallace stated that the reason for the size is an indoor pool (9' x 15' lap pool which generates a current) for Ms. O'Neill for physical therapy required because of an injury. He answered Mr. Hall that the plans have been reviewed and approved by the Health Department and the house will remain a three bedroom house and the Health Department did not have concerns with the indoor pool. He stated that he already has submitted a driveway permit to reconstruct the driveway.

The meeting was opened to the public for questions and comments on this application and the meeting was closed to the public.

Mr. Averett made a resolution to approve the application as presented. Seconded by Mr. Bauer.

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

Nays: Abstentions: None Absent: Ort, Graziano, Spina

4. Kraft – Block 36, Lot 24.01 – 84 East Valley Brook Road – R-5 Zone – 2.934 Acres – Request for flag lot setback variance

David Kraft, Applicant

David Kraft was sworn in by Attorney Fraser.

Mr. Kraft answered Mr. Schwemmer that the house was being enlarged from 1800 sf and add 2400 sf. They proposed to put a second story on the two car garage and connecting it with the current breezeway. They

are not changing the footprint of the house. The breezeway is a mud room now. The house is a two story cape cod. He is adding two bedrooms and bath and laundry room. The square footage is additional living space. The house was built in 1963 and violated the setback by 2.5'. The area above the breezeway will be the laundry room.

Mr. Banisch reviewed his memo of August 5, 2009.

Mr. Kraft referred to the plans and pointed out the area of the variance. He stated that they have a new septic system for a five bedroom house.

Mr. Kraft answered Mr. Hall that they setback variance was determined by a land surveyor on the survey he received when he purchased the home.

The meeting was opened to the public for questions and comments on this application and the meeting was closed to the public.

Mr. Turick made a resolution to approve the application as presented. Seconded by Bauer.

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

Nays: Abstentions: None Absent: Ort, Graziano, Spina

5. Maroney – Block 35, Lot 3.08 – Request for Extension of time to build under Resolution 2008-14

The board reviewed the extension request.

Mr. Bauer made a motion to grant the requested two year extension. Seconded by Mr. Baguiao

A roll call vote was taken:

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

Nays: Abstentions: None Absent: Ort, Graziano, Spina

DISCUSSION - CORRESPONDENCE

1. Vouchers

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

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

Virginia R. Kesper, Clerk