

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of December 2, 2009 to order at 7:07 p.m.

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

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. October 7, 2009 Regular Meeting

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

2. November 4, 2009 Regular Meeting

Tabled to the January 6, 2010 meeting.

**RESOLUTIONS**

09-20 Toll Brothers – Block 18, Lot 10.01 – 224 Coleman Road – R-5  
 Zone – Denial of Request for Use Variance to construct a  
 directional real estate sign for the Estates at Long Valley

The resolution was reviewed.

Ms. Fraser reviewed changes made after discussion with the staff and attorney for the applicant.

Mrs. Walter made a motion to approve resolution 09-20, seconded by Mrs. Walter. A voice vote was taken:

Ayes: Walter,

Nays: Abstentions: Absent:

Ineligible: Bauer, Turick, Ort, Graziano Averett, Schwemmer, Spina,  
Baguiao

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. Belluscio- Block 39, Lots 4, 5, 12 – 237 Fairmount Road – R-5 Zone  
– 9.311 Acres – Request for front yard setback variance

John DeMasi, Attorney for the Applicant  
Vincent Belluscio, Applicant

Mr. Belluscio stated that the property is owned by him, his wife and daughter. He explained that there is a home, cottage and barn on the property. He explained that the property is a triangular shape between Fairmount and Fox Hill Roads. He purchased the property in 2001 and a concrete and blue stone patio was behind the house. He stated that he has put a gazebo on the patio and subsequently found that it did not meet zoning requirements as the zoning office stated that the property is considered a corner lot with two front yards.

Mr. Belluscio stated that the gazebo is below the level of the other buildings. He described the screening from Fairmount Road and that it cannot be seen and from Fox Hill Road the gazebo can barely be seen. He stated that the gazebo is 40' from Fairmount and 43' Fox Hill where 100' is required for a front yard setback. His daughter and son in law live in the home full time and he and his wife on weekends.

Mr. Belluscio stated that it was his opinion that the gazebo in the current location would not impact the surrounding properties and also that there is no property to purchase to change the setback. He stated he previously had a steel gazebo on the patio which collapsed due to the weather. He stated that the patio was put in at least 12 or 13 years ago.

Mr. Hall was sworn in by Attorney Fraser.

Mr. Hall stated that this property (three lots) has been merged by law and is shown as one lot under lot 5 on the tax map.

Mr. Belluscio answered Mr. Hall that the gazebo is fastened to the patio. He answered Mr. Hall that sliding the gazebo north 100' is not possible as it was purchased to be put on the patio which is behind the house and that setting back as suggested would bring it back near or into the paddocks. He answered the board that the house is set closer to the road than the gazebo.

The meeting was opened to the public for questions or comments of Mr. Belluscio. There were none and the meeting was closed to the public.

Mr. Spina made a motion to grant the variance as presented, seconded by Mrs. Walter. A roll call vote was taken:

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

Nays: Abstentions: Absent: Graziano

Ineligible:

2. Procaccini – Block 11.01 – 19 Kim Lane – r-1 Zone - .93 Acres – Request for side yard setback variance

Frank Procaccini, Applicant  
Candice Procaccini, Applicant  
Daniel Fiedler, Applicant's  
Craig Rochelle, Applicant's Contractor

Frank Procaccini, Candice Procaccini, Daniel Fiedler and Craig Rochelle were sworn in.

Mr. Procaccini stated that the application was to replace a 40 year old green house with a four season room. He would like to make room in the home for his parents to live with them. He stated that the green house is now non-functioning.

Mr. Procaccini presented ten photographs which were marked A-1. The existing greenhouse is 10' x 14' which he would like to replace with 12' x 22' room. He referred to the photographs which showed the existing and an area marked out showing the size of the proposed addition. He noted that at the closest point the addition would be 13' from the property line which adjoins the side of the house of the neighbor which has no

windows. He stated that there is a vegetative buffer between the homes. He stated that this addition would be an improvement to the neighborhood. He explained that before he started the process of planning the addition he spoke to all his neighbors who said they did not object. He stated that after he applied Mr. Fitzpatrick, the closest neighbor, stated he objected because he felt it would bring down the value of his home and, therefore, he has brought an appraiser to testify on this issue.

Daniel Fiedler presented his qualifications as a real estate appraiser and broker who has offices in Hackettstown, NJ.

Mr. Fiedler stated that upon Mr. Procaccini requests he went out to inspect the house. He testified that he is an appraiser for banks and relocation companies as well as home owners. He presented an aerial photograph that was marked A-2, photographs of the Procaccini property consisting of 4 pages which were marked A-3 a-d. He explained the photographs and stated that it was his opinion that the market would not even distinguish that the proposed addition was three feet closer to the property line than what exists now and that the addition not would have a negative impact on the community.

Mr. Procaccini stated that the addition will tie into the proposed porch and would be an improvement to the home.

Ms. Kesper stated that the applicant would need a variance even if he did not expand because he needed to take down the green house to put up the family room.

Ms. Procaccini answered Mr. Banisch that by putting the room to the rear they would have to remove the deck. Also they would then need to repair the green house. Also the interior setup of the existing house allows the parents to use the current bathroom on the first floor.

Mr. Hall stated that the setback on the plat is a correct dimension from the property line, even though the box representing the addition is not to scale.

The meeting was opened to the public for questions.

Warren Fitzpatrick 23 Kim Lane – stated that he is the adjoining property owner and asked Mr. Fiedler if he was paid. He asked Mr. Fiegler if it was his opinion that the house being closer to his property line would devalue his property.

Mr. Fiedler stated he gets paid for his time not the testimony. He stated that it was his opinion that the proposed Procaccini addition would not have a negative impact on the Fitzpatrick property .

Mr. Fitzpatrick asked Mr. Procaccini about previous statements made to him during their discussions prior to the meeting.

Mr. Procaccini denied making false statements to Mr. Fitzpatrick during their previous discussions.

Joesph Bartnicki - 26 Kim Lane- was sworn in by Attorney Fraser and stated that he is the neighbor across the street and it was his opinion that this improvement will do nothing but improve the neighborhood and remove an eyesore. He stated that he has recently consturcted a large addition to his home.

Warren Fitzpatrick was sworn in by Attorney Fraser and stated that the current setback is 25 and 40 years ago it was 15' and this proposal exceeds that. He does not want a building closer to his home and it was his opinion that this would devalue his property. He stated that it was his opinion that the change in setback was to protect adjoining property owners and his home is the biggest financial investment. He does not see how this addition to the Procaccini home would be an advantage to him but that it would be a liability. He agreed that Mr. Bartnicki has a beautiful home and he did it without violating setbacks. He stated that Mr. Procaccini already has the largest home on Kim Lane. He referred to the setbacks on the other side and front and rear of the Procaccini property. He stated his opinion that the garage could be used for this same purpose. He asked that the board not approve the application. He answered Mr. Bauer that his house is 40' from both side property lines and the shed is 20' from the property line. He answered Mrs. Walter that although there are no windows on this side, there is a driveway and he would see the addition every time he enters his home.

Mr. Banisch was sworn in by Attorney Fraser.

Mr. Banisch stated that the tree line separating the two lots is not continuous and perhaps a condition of approval could include more trees. He stated that a purpose of zoning is to provide adequate air and light and it was his opinion that this addition would not infringe on that as the Fitzpatrick property is to the south and the addition is one story. He referred to the MLUL for granting the requested C variance. He noted that the home was built under different setbacks. He referred to the applicant's testimony that the interior layout of the house makes this addition to the side the most logical.

Mr. Banisch explained that an additional purpose of zoning is to encourage senior citizen housing, and although this is not senior citizen housing development, it is to allow for elderly parents to live with the family. Under the MLUL is is also an esthetic improvement to the property as well. Also as mentioned by the applicant and Mr. Bartnicki, good civic design is furthered.

Mr. Procaccini answered Mr. Schwemmer that fencing or vegetation would be an acceptable condition of approval.

Mr. Turick expressed his concern regarding the size of the addition.

Mr. Procaccini answered Mr. Schwemmer that this would be a sitting room for his parents and answered Mr. Turick that 10' would be small for this type of room.

Mr. Ort stated that it was his opinion that unless the addition was somewhere else, whether it was a one foot or four foot variance it would not make a difference.

Mr. Procaccini answered Mr. Schwemmer that the deck is 20' x 48' and that the septic is under the deck toward the south side and that is another reason the addition cannot go out the back.

Mr. Rochelle stated that the survey shows that the addition is flush with the rear of the house, which it will be.

Mrs. Walter agreed with Mr. Schwemmer that a 10' or 12' wide room is probably not adequate for seniors and visually it would not make a difference.

Mr. Fitzpatrick stated that the discussion was on the size of the addition, but did not address the possibility of a room on the front of the house, the rear the garage or going up. He asked the board to not allow the addition to be moved closer to his home.

Mrs. Procaccini stated that her in-laws are 85 and funding the project. They do not have a lot of funds and this is to add on the most space for the least money.

Mr. Banisch stated that the septic to the rear is a seriously limiting factor to going out the back and out front they have the well and a 50' setback.

Mr. Schwemmer stated that in his opinion, an addition to the front would not be esthetically feasible.

Mr. Fitzpatrick answered the board that the leach field does not preclude the addition to the rear and to reduce the Procaccini expense he has a home closer to him. He did not answer the board about the type of buffering he would prefer because he did not want the board to approve this application.

Mrs. Walter explained that the duty of the Board of Adjustment is to hear cases that violate zoning ordinances and allow deviations from the ordinance and that the Board was listening and taking into consideration Mr. Fitzpatrick's concerns.

Mr. Banisch answered Mr. Turick that the principal setback for the addition is now 25' and the greenhouse, because it is attached to the home is considered part of the principal building and that in the past the principal setback was 15'.

Mr. Hall reviewed the interior layout.

Mr. Procaccini stated that the house has half crawl space which is under this part of the house, the other part of the house has a basement which was part of the original construction.

The board discussed screening.

Mr. Hall stated that this property lends itself to a fence because of trying to plant trees under an existing canopy.

Mr. Fitzpatrick stated that he would not like a fence, he did not want the addition approved.

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

Mrs. Walter made a motion to approve the application as presented with a 13'9" setback from the property line, subject to the usual approval conditions and the submission of an as built survey submitted prior to Certificate of Occupancy. The motion was seconded by Mr. Bauer.

Ayes: Bauer, Averett, Schwemmer, Spina, Baguiao, Ort  
Nays: Turick      Abstentions:      Absent: Graziano  
Ineligible:

Ms. Fraser answered Mr. Fitzpatrick about the procedure to appeal the Board's action.

3. Ort – Block 8, Lot 6 – 51 Drakestown Road – O/R Zone – 29.23 acres – Request for three lot minor subdivision – Completeness Hearing and if deemed complete a public hearing

Michael Selvaggi, Applicant's Attorney  
John Hansen, Applicant's Engineer

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

Mr. Selvaggi explained that this application is a follow up and condition of the use variance application approved by the Board previously.

The application was reviewed for completeness.

Mr. Hall recommended completeness.

Mr. Ort 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.

John Hansen was sworn in by Attorney Fraser.

Mr. Hansen reviewed the use variance approval previously granted by the Board and the property. The minor subdivision was designed consistent with the concept plan presented at the time of the use variance. He stated that all bulk variances are consistent with the OR/I zone requirements. He pointed out the environmental constraints, wetlands, streams and that they will be put in a conservation easement. He noted that a stormwater management plan was submitted to Mr. Hall that meets stormwater requirements. He confirmed that the application complies with the net yield under the R-5 conservation zone requirements.

Mr. Hansen referred to sheet three of six and indicated where they have requested an LOI from the state DEP and stated that the map shows the wetlands and expected wetland buffers to be required by the DEP. He stated that the applicant agrees to put in a conservation easement the 150 stream buffer and all wetlands, transition areas and state open areas but asked that the conservation easements allow maintenance of the pond.

Mr. Hansen described the stormwater management plan that was done through a series of bio retention basins. He noted that the project maintains the same drainage pattern as exists now on the property.

Mr. Hansen stated that the applicant has agreed to put in the common driveway as recommended by the Board professionals. He stated that the applicant would draw up a joint driveway easement for the shared driveway. As this subdivision is proposed to be a family homestead the house locations and subdivision design was done based on the family needs and requirements.

Mr. Hansen referred to the rural historic road buffer requirements. He addressed the proposed road improvements suggested by Mr. Hall.

Mr. Selvaggi submitted a package of four photographs taken of Drakestown Road today.

Mr. Hansen stated that the road width requirement is 24' and Drakestown Road is between 23 and 24' which could possibly require a road widening. It was his opinion that road widening is not necessary because of the substantial hedgerow which is saved by the use of the common driveway and this would be a detriment to the buffer and he thought the road was safe as it is now and did not see any benefit to it being widened.

Mr. Hansen stated that except for item six of Mr. Hall's letter he had no objections or comments. Under number 3, they agree to two or three tree replacements. Regarding 6, storm sewer, he stated that between improvements and DEP permits this would be approximately \$40,000.00 and he did not see that it was necessary. He referred to the plans and pointed out the existing roadside berm and that when the road was most recently paved there was a bitumous swale added. He answered Mr. Schwemmer that this subdivision would not impact the current situation.

Mr. Hall asked that the applicant agree to maintain the area of bitumous swale. He answered Mr. Schwemmer that he did not know who put the berm in. He answered Mr. Ort that this development would not significantly increase the current drainage along the road.

Mr. Hansen reviewed Mr. Banisch's report and did not have any concerns with it.

Mr. Banisch referred to his comment 7 regarding the house placement, but based on the comment that the family designed where the homes were placed and this placement is acceptable to them, he did not object to the placement. He also recommended that if allowed by the DEP the conservation easements be modified to allow the continuation of the current agricultural uses.

Mr. Hansen reviewed Dr. Keller's letter of November 25, 2009 and did not have any objections to the comments in the letter.

Mr. Hansen addressed the use variance criteria and stated that the plan as designed does not have any significant negative impact, allows for the continuation of agriculture and continues the residential nature of the area as well.

Mr. Hansen answered Mr. Hall that they will comply with comment 1 of his report, unless the home locations are changed not to meet the threshold to require stormwater management. As to number 2, buffer easement, they will supply a buffer easement and do a one for one tree replacement for whatever is removed.

Mr. Hall stated that the application today does not propose import or export of soil at this time and therefore a soil disturbance permit is not required at this time, but may in the future, if this changes.

Mr. Hall suggested that a shade tree easement waiver is requested and that the buffer easement will cover this area as well.

Mr. Turick was concerned with no road improvements.

Mr. Hall stated that he concurred with Mr. Hansen's testimony that road improvements are not required on this application. He stated that he did meet on the site with the Road Department Superintendent. He explained the driveway requirements of the township that the applicant will have to comply with at the time of construction.

The meeting was opened to the public for questions and comments. There were none and the meeting was closed to the public.

Mr. Averett made a motion to draw up a resolution of approval based on the discussion this evening with no maintenance of the road side berm, subject to compliance with the consultant reports, revised plans, outside agency approvals. The motion was seconded by Mr. Spina.

A voice vote was taken; all were in favor and the motion carried.

Eligible: Ort, Averett, Schwemmer, Spina, Baguiao Walter, Turick

Absent: Graziano

Ineligible: Bauer

**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. The motion was seconded by Mr. Baguiao. A voice vote was taken; all were in favor and the motion carried.

## 2. Annual Report

Ms. Kesper reviewed the draft letter.

The Board concluded that there were no issues that arose this year that should be addressed by ordinance changes.

Ms. Kesper brought up the issue of realtor signs and setbacks for solar panels and outdoor furnaces.

The Board concluded that they did not have an issue with the sign ordinance but adjourned the discussion on possible recommendations for solar panels and outdoor furnaces until the January meeting.

## 3. Personnel

The board reviewed the rates for 2010, had no objections and thanked the consultants for their service and holding of the rates.

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 10:15 p.m.

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Virginia R. Kesper, Clerk