

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of June 2, 2010 to order at 7:05 p.m.

**MEMBERS PRESENT:** Morris Bauer, Elliott Averett, Felix Graziano\*, Harvey Ort, Craig Schwemmer, Anthony Spina, John Turick

**Alternate Members:** Frank Baguiao, Dorothy Walter

**Members Absent:**

**Others Present:** Attorney Fraser, Clerk Kesper, 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 12, 2010 and posted on the Bulletin Board on the same date. Notices were mailed as there were requests.

Pledge of Allegiance

***MINUTES***

1. April 7, 2010 Regular Meeting

Tabled to next meeting

2. May 5, 2010 Regular Meeting

Tabled to next meeting

***RESOLUTIONS***

10-11 Schalkoff – Block 15, Lot 32 -6 Lower Sunset – R-5 Zone – 2.2 Acres – Approval of Request for front yard setback and non-conforming structure variances

The resolution was reviewed.

Mr. Bauer made a motion to approve the resolution as written, seconded by Mr. Averett.

A roll call vote was taken:

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

JUNE 2, 2010

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

10-12 Wehrenberg – Block 50.03 , Lot 6 -11 Gentry Drive – R-5 Zone –  
3.5 Acres – Approval of Request for flag lot setback variance for  
porch and gazebo

The resolution was reviewed.

Mr. Averett made a motion to approve the resolution as written, seconded  
by Mr. Bauer.

A roll call vote was taken:

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

10-13 Verizon Wireless – Block 28, Lot 14 – Bartley Road – R-5 Zone – 10  
acres - Approval of Request for Use Variance for 95’ Wireless  
Communications Silo

Ms. Fraser reviewed the change to condition which clarified the need for  
a soil disturbance permit.

Mrs. Walter made a motion to approve the resolution as amended  
tonight, seconded by Mr. Baguiao.

A roll call vote was taken:

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

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. Liebenzell - Block 30, Lot 34.02 – Pleasant Grove Road – R-5 Zone  
– 15.696 Acres – Request for relief from prior conditions of approval regarding limitations on use  
Michael Selvaggi, Applicant’s Attorney  
David Zimmerman, Applicant’s Planner  
Friedrich Knapp, Applicant

Mr. Selvaggi explained that the property that is the subject of this application is the property along Pleasant Grove Road. He addressed Mr. Banisch’s report regarding whether this application is a use variance or site plan amendment.

Ms. Fraser stated that she has reviewed Mr. Banisch’s letter and agrees that a use variance is required for weekday use of two of the buildings and the change to the condition of one more weekend use is an amendment to the previous use

Ms. Fraser reviewed the notice of the hearing and stated that it was adequate for the change in application from an amendment to a previous resolution to a D variance.

Friedrich Knapp was sworn in by Attorney Fraser.

Mr. Knapp stated that he is the business administrator for Liebenzell Mission and that he has been employed by Liebenzell Mission since 1980 and was familiar with the operation of the camp since that time.

Mr. Knapp explained that Liebenzell is a religious non profit organization and the property is used by church groups to hold retreats and they have their own programs, primarily on weekends. He stated that during the summer there are youth camps. He stated that he is familiar with the current regulations of the Liebenzell camp and the current request for changes.

Mr. Knapp stated that the resolution does not allow outside groups to use the facility during the week from September (after labor day) to May 15 and requires that one weekend a month the facility not be used.

Mr. Selvaggi stated that this restriction was put in place in 1985 (resolution 85-20).

Mr. Knapp stated that he was familiar with the hearings and resulting restrictions and present at most the hearings and prepared materials presented at the hearings. He stated that the core reason for the weekend limitation was to give the neighbors one weekend a month

reprieve.

Mr. Knapp explained that the prohibition against midweek use from September to April was because Liebenzell was using it as a summer camp. He answered Mr. Hall that Liebenzell purchased the camp property from the Assembly of God. He stated that The Assembly of God had used the property as a year round camp from 1965 until it was sold to Liebenzell in 1981. He answered Mr. Bauer that a neighbor, Mr. DeFao, was very upset with the use of the property by Liebenzell and filed complaints to shut Liebenzell down and that brought Liebenzell before the board.

Mr. Selvaggi stated that the history is set forth in resolution 85-18 in pages two through 5 stating that in 1965 The Assembly of God used the property as a summer camp for their members which grew to being opened year round for outside groups as well as the church. He confirmed that Liebenzell purchased the property in 1981.

Ms. Fraser read the finding of facts from resolution 85-18 (a request for an interpretation. She stated that the board concluded that the request for an interpretation to be used as a summer camp and year round retreat center was denied. The board found that the permitted use was the state licensed summer camp and/or family camp between June 21 and labor day operated by a charitable organization and it enumerated a number of non permitted uses. She stated that the subsequent to resolution 85-18 Liebenzell applied for a variance which resulted in Resolution 85-20, which granted a limited year round religiously oriented retreat or camping center use. This resolution had a number of conditions associated with it. She further explained that in 1994 there was another resolution that was appealed to the Superior Court which resulted in an amended resolution on April 5, 1995 and the conclusion that the applicant had not met the burden of proof to extend the use of the premises throughout the year and eliminating conditions. The board noted at that time that the applicant was an inherently beneficial use but had not met the burden of proof to eliminate the negative criteria. The board determined that operating the camp from May 15 to Labor Day as well as various dates outlined in the other resolutions and concluded that the rest of the conditions in 85-20 were appropriate and that an inherently beneficial use was allowed without detriment to the zone plan or local neighborhood. They specifically found that allowing year round use would be a detriment to the neighborhood. She read the conditions that they found could be removed.

Mr. Selvaggi stated that the 1985 resolution the summer camp use was restricted to June 21 to Labor Day and in 1987 it was changed to May 15 to Labor Day. He stated that the condition that Liebenzell is looking to

have change is the condition that restricted the use to religious organization and that they would not like to be able to allow non-religious groups Monday thru Thursday from September thru May 15 for the hours of 8 a.m. to 10 p.m. with no overnight stay.

Ms. Fraser stated that this, religious only groups to include non-religious groups, is the change that requires a use variance.

Mr. Selvaggi stated that the second change Liebenzell is seeking is the use of the camp only three of every four weekends September to May 15. they would like to use the camp every weekend. The summer the camp was allowed to run continuously and would remain unchanged.

Mr. Knapp answered Mr. Schwemmer that groups such as the Junior Women's Club, boy scouts, after school care groups have asked to use the camp buildings.

Mr. Knapp stated that there are a number of buildings on the property and those that he would make available would be the large building (two story brick building which has two meeting rooms) on Pleasant Grove Road and the dinning room that is adjacent to it. He stated that there is a large parking lot but did not have the number of cars that it could hold. He stated that the facility accommodate up to 300 people. Most of the church groups come by carpool, vans and buses. He stated that Liebenzell is not looking to have garage sales at the site. He would lease to groups for bible study, garden club meetings, boy scout meeting. He did not envision the groups in the middle of the week to be 300 people. The traffic lanes are two way off of Pleasant Grove Road. The meeting rooms hold 40 and 25 people each and this is the main building they would be renting. The goal is not to raise money but to accommodate other groups in the Township. He stated that Liebenzell does not necessarily need the extra time for there own activities.

Mr. Selvaggi stated that it was his opinion that Liebenzell would not be restricted for using that facility for Liebenzell personnel.

Mr. Knapp stated that the staff uses the buildings now.

Mr. Knapp answered Mr. Averett that when they lease the camp they are given the regulations that they need to abide by. When they arrive Liebenzell staff reviews the regulations, no PA, curfew, etc. As to the neighbors the groups are told to stay on the Liebenzell premises and that at night they must be quite while outside and after certain hours (11:00 pm) they cannot be outside. He referred to the Regulations for Retreats that is given to every group who uses the facility that was submitted to the board. He stated that Liebenzell has a person, Mrs. Boom, who lives

on site and is available 24 hours a day and who greets the groups and reminds them of the rules. During the time groups are on the premises there is also a full time Liebenzell maintenance person and a host on the property as well as part time staff. He stated that if someone needed to reach Liebenzell there is a phone number that they can use to talk to someone. He was not aware of any significant complaints within the last five years. He stated that the regulations are sent with the information on the rental of the property.

Mr. Knapp stated that currently the facility is being used on most of the available weekend and during some months they have more requests than they can accommodate. He stated that being closed one weekend a month is difficult because of the number of requests. He answered the board that Liebenzell's registrar is responsible for making sure that one weekend a month the camp is not used.

Mr. Knapp stated that Liebenzell sent out from his office a letter to the neighbors within 200' and asked them to contact them with their concerns. A letter was received from Mr. & Mrs. O'Connor about their concerns.

Mr. Selvaggi marked A-1 a package including the letter Liebenzell sent and the three replies they received.

Mr. Knapp read the concerns of the O'Connor's. He stated that the concerns stated in this letter, early morning and late evening disturbances, were the first time they heard of the problems. The other comment was regarding the hour of ten p.m. and that it was felt by the resident that 9 p.m. would be preferable and the other comment was that they never had a problem.

Mr. Knapp stated that other churches in the communities have similar uses and offer their facility to community groups.

Mr. Banisch stated that the buildings that Liebenzell has represented that they want to use are the buildings labeled 7 and 8 on lot 42.

Mr. Knapp stated that the 1985 site plan accurately reflects the site as it appears today.

Mr. Selvaggi stated that it based on Mr. Zimmerman, the applicant's planner, has said that plan there are approximately 30 parking spots.

Ms. Fraser reviewed the addendum to the application and the letter Liebenzell sent to the neighbors and noted that in addition to community and civic organizations Liebenzell would like to open to religious groups

as well (bible study) which goes to the intensity of the increased weekly use being requested.

Mr. Knapp stated that Liebenzell's intent was limited use of small non-profit and civic groups but not eliminating religious groups such as bible study.

Mr. Schwemmer suggested that if the board were to entertain this use it be limited to the size of the groups and time of use.

Mr. Knapp answered Ms. Fraser that he was not looking to open this to individuals for private events such as a birthday party. The group would have to have a sponsoring organization.

Mr. Ort stated that a condition could be that the use by community, civic, non-profit, not for profit, charitable organizations.

Mr. Knapp stated that the evening uses are for local communities but on the weekends it would be for groups who are further away and outside the immediate community.

Mr. Knapp answered Mr. Banisch that the weekday use would probably be mostly indoors, in the lodge and dining hall, but if it was outdoor they would be in the area in the back, the field and pool area.

Mr. Knapp stated that Liebenzell has a commercial kitchen that would be available to the groups on request.

The board discussed who the use would be limited to and who would encompass the local community.

Mr. Knapp stated that the community would be Washington Township and surrounding communities. They do not charge a fee, except for clean up and if food is served, they charge for the food.

Mr. Selvaggi stated that the applicant would agree that the weekday use would be limited to the two buildings (lodge and dining hall) and no outdoor activities. It would be open to local communities and non-profit organizations at no charge and limited to a parking demand of 30 cars. He stated that the applicant would also agree that there would be only one group at a time. He stated that fees are not charged except for clean up and food.

Mr. Knapp stated that the maximum occupancy of the two building is 65 people. He stated that Mrs. Boom would be on the premises when these

buildings were in use. He stated that the buildings do not lend themselves to having more than one group at a time.

Mr. Knapp answered Mr. Hall that the improvements made on site were in compliance with the site plan/variances approvals and have included moving the driveway, moving some of the cabins and fields away from neighbors, adding landscape buffers moving the parking area. They have also reduced lighting and redirected it so it does not go off site, enforcing rules, not allowing exterior amplification systems and no alarms for change in events. He stated that these measures were made under the time frames in the previous resolutions (1986). Over the last ten years if people called to lease the property for groups they are given the rules and there is a registrar who processes all requests. Each group must sign off on the rules. This information is gone over again upon arrival.

Mr. Knapp stated that in addition to the resolution requirements, Mrs. Boom has lived on site since 1995 and she assures that there is adherence to the rules. Personnel and job descriptions have changed as well, specifically Mr. Boom's position. These changes make this request different than the request 15 years ago.

Mr. Turick stated that there were many meetings in the 80's and the regulations were put in place because the neighbor documented all uses and problems. He summarized the previous concerns and controls.

Mr. Selvaggi restated that the applicant would limit the hours during the week to 8 a.m. to 9 p.m., limited to building 7 & 8 lodge and dining hall and lodge, limited to one group at a time, limited to inside use, no more than 30 automobiles, groups would be local civic, charitable, not for profit organizations.

Mr. Knapp answered Mr. Averett that the indoor use would not accommodate active groups such as karate, jazzercise, athletics, etc.

Ms. Fraser stated that the rules would have to be revised for the week day use with the appropriate limitations.

Mr. Knapp agreed to revise the regulations.

The meeting was opened to the public for questions on Mr. Knapp's testimony.

Vince Panella – 130 Kings Highway was sworn in by Attorney Fraser and stated that he has lived in Long Valley for 41 years and he had no problems with the Liebenzell Mission asked why did Liebenzell have

problems. He asked if realtors wanted to develop the lands around this property.

Mr. Knapp stated that the problems were because of a neighbor. He did not know of the problems with the development of the land as he did not work at that time.

Mr. Panella stated that he was aware that realtors wanted to develop the property in the 1980's.

Robert O'Connor 5 Glen Ridge Drive was sworn in by Attorney Fraser.

Mr. O'Connor stated that his letter was self explanatory and that property backs up directly to the Liebenzell property and as his letter states the property is not under tight control because he is disturbed early in the morning and late at night. They have heard the hand held bull horns. The times of usages are not acceptable to him. The coming and going into the Liebenzell site is an annoyance to him noise and headlights. He has a completely fenced in yard, but the Liebenzell parking area is above them. He has owned the home for six years and they were aware of the camp when they bought but did not realize how much noise would be generated. When they are inside there are not many problems but when they are outside there are nuisances, especially when people walk up and down the driveway. He answered Mrs. Walter that his wife is home all day.

Mr. Schwemmer noted the driveway along Mr. O'Connor is owned by another resident to the rear. He suggested a stockade fence.

Mr. Knapp agreed to put up a fence to block headlights into the O'Connor property.

Fabian and Karen Barch – 7 Glen Ridge Drive were sworn in by Attorney Fraser.

Mr. Barch stated he agreed with Mr. O'Connor's statements and that there have been noise and bull horn issues as well as car alarms and it is disruptive noise in the back yard. This has been on going since they moved in. They have not complained because it is a religious organization but that does not mean that they would like it enlarged. At least ten times the noise was excessive, he has heard a sermon on bullhorn at 6:00 a.m. and the car alarms are extremely upsetting. He is concerned about property values as well.

Mr. Knapp stated that they are trying to control noise and bullhorns.

Ms. Barch stated that they are willing to continue to tolerate what they have now, but they do not want it increased.

Mr. Knapp stated that if they are notified of a problem they will try to stop it.

Mr. Barch stated that they do not want to be the policemen. He answered Mr. Averett that the sermon was between 6 and 7 a.m. on a Sunday morning.

Mr. Averett was concerned that this was not addressed by the person on site.

Ms. Barch stated that she was not so concerned about the weekday use of the property by adults but was very concern with children using the facility at that time and evening because of the noise.

Ms. Barch stated that they understand the benefits of Liebenzell and that is why they have not complained. Their concern is increased hours of noise.

Mr. Hall addressed the noise ordinance.

Mr. Turick noted that there are many schools and ball fields in residential zones that are used all the time.

Mr. Barch stated he was most annoyed by the car alarms, which seemed to be set off on a regular basis to indicate a change in activities.

Mr. Knapp stated that they would be willing to put a stockade fence along the parking area and driveway as the evergreens don't grow well with the tall trees in the area.

Emily and Neil Pierson - 47 Glen Ridge Drive were sworn in by Attorney Fraser.

Ms. Pierson stated that she was an original owner and the camp was there with farmland. She was concerned that the camp was there before the homes and they be restricted because homes were built around them. She stated that when they bought their home they did not know that Cobblestone athletic fields were going to be built and they did not have any choice but they have learned to live with it. They have found Liebenzell to be good neighbors and they have attended events there with their church and there children have worked at Liebenzell as well.

David Zimmerman was sworn in by Attorney Fraser and presented his qualifications and was accepted as an expert witness in planning.

Mr. Zimmerman stated that there are two aspects to this application the weekday use and the three times a month use of the facility. The first is a use variance and the other an amendment to a site plan resolution.

Mr. Zimmerman stated that the proposed uses are inherently beneficial for the granting of the use. Regarding the negative impact, it was his opinion that this is such a unique application it would not impair the R-5 zone or zone plan. He stated that the R-5 zone allows house of worship and their accessory uses. It was his opinion what they are asking for his no different then a house of worship. It was his opinion that the negative criteria have been met. It was his opinion that having the facility open Monday through Thursday is not a detriment to the public good.

Mr. Zimmerman presented an aerial photograph which was marked exhibit A-2. He noted that lot 42 is a 15 acre property that is on a road designated as a collector road. He stated that the properties on Glen Ridge Drive are separated from the camp by a driveway that leads back to a residential property. He pointed out the parking lot and stated that it is 400' from the O'Connor property.

Mr. Zimmerman stated that most of the use of the buildings during the week will be during the day and that this does not rise to being a substantial impact on the public good. He answered Ms. Fraser that this was his opinion and he did not have case law to site that the use by civic groups is an inherently beneficial use. He referred to the 2000 Federal Act for religious uses (lupa). He answered Mr. Banisch that it was his opinion that this act covers Liebenzell Mission as it is a religious organization.

Mr. Banisch stated that it was his opinion that if the board denied this request it would not be imposing a substantial burden to this religious organization.

Mr. Zimmerman that this application allows Liebenzell to meet there mission goals and serve the community to a greater extent.

Mr. Zimmerman reviewed his testimony on the inherently beneficial use and negative criteria and that the request does not have a substantial impact on the zone plan and public good.

Mr. Zimmerman addressed the one week a month prohibition and stated that procedures have changed over time and the required modifications

and buffering of the site have been done and the prohibition does not serve any public benefit.

Mr. Bansich referred to Cox and MLUL purpose J, recreation, and that this has not been upheld as inherently beneficial.

Ms. Fraser asked the applicant to address the unique suitability of the site.

Mr. Zimmerman addressed the suitability and stated that there is a unique fit of the uses. The buildings are vacant during the week with parking on site and there is a need that these buildings could be used to fulfill within the community. It is not a request to change a use of a building to something else or to build a new structure. He also reiterated that the property is on a collector road and the buildings to be used are at the front of the property a distance from homes.

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

Ms. Burch stated that she is not opposed to opening up Liebenzell to serving the community but there needs to be consideration to what the neighbors are experiencing. It was her observation that the current operating procedures at Liebenzell is such that it does not monitor the activities of the groups using the facility that the neighbors feel are disruptive. The Liebenzell operating procedures must also protect the neighbors.

There were no further questions or comments and the meeting was closed for questions comments of Mr. Zimmerman.

Mr. Graziano asked what is the trade off what does Liebenzell is believe they will gain by getting a greater use? He pointed out the inconsistencies in the application regarding the hours. He wanted to know what Liebenzell's business plan was.

Mr. Selvaggi stated that there are only user fees to cover carrying costs. He stated that there is no difference then how the local churches open up their buildings to community groups.

Mr. Knapp stated that Liebenzell is not a business, their aim is to be more visible to the community and offer their facility to the community and help the community find out about Liebenzell, who they are and what they do. There is no hidden agenda or business plan. The weekend request is to help simplify the scheduling and accommodate additional groups.

Mr. Banisch was sworn in by Attorney Fraser.

Mr. Banisch stated that the opening of the facility to community groups for meeting space during the week is not inherently beneficial but does agree that the property is uniquely suited for the activity requested. He answered Mr. Selvaggi that he did not object to opening the facilities up to the community groups, but does not see the use as an inherently beneficial use. He answered Mr. Ort that the negative criteria can be addressed by adding fencing, limiting hours of operation (8 a.m. to 9:00 p.m. from the original request of 6:00 a.m. to 10:00 p.m.), intensity of use limited to one group at a time.

Mr. Averett suggested a Liebenzell representative, on site director, being with or near/with the group to monitor the behavior.

Mr. Knapp stated that they would address their operation procedures and have someone more involved.

Mr. Zimmerman stated that the Monday-Thursday use would not have any outside use associated with it except people going to or from their cars.

Mr. Knapp stated that Mrs. Boom would be in the building during the weekday uses as part of her normal duties.

The board deliberated on the application.

Ms. Fraser reviewed some of the conditions the board has discussed, should they move to an approval.

Mr. Ort made a motion to approve the requested Monday – Thursday use of buildings 7 and 8 as discussed including on site monitor while in use, no aerobic or athletic events, groups must park in the parking lot identified as lot 10, which holds 30 cars, new stockade fencing, limited to one use (group) at a time and hours of use from 8:00 a.m. to 9:00 p.m., a revised set of rules and regulations to be reviewed and approved by Mr. Banisch, one group per time, fencing and limiting the groups allowed to use the buildings to community, civic or charitable non-profit groups in Washington Township and bordering municipalities and not to individual persons. Seconded by Mr. Spina.

A roll call vote was taken:

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

Nay: Graziano

The motion carried.

The board deliberated on the request to allow retreat operation on all weekends September to May.

Mr. Banisch stated that the applicant has testified to the changes made since 1985 that, in their opinion, changes the conditions that were present in 1985 that resulted in the one week end a month that the property could not be used.

Mr. Turick stated that the one weekend a month was a compromise between the applicant and the public in 1985.

The board discussed Liebenzell keeping a log of complaints and giving the neighbors the on site manager's phone number.

Ms. Kesper stated that residents could also call the Zoning Officer.

Mr. Ort made a motion to rescind the condition of the resolution in 1985 that limited the number of weekends per month to three that the camp may be used September to May subject to the conditions under the Monday - Thursday use enumerated above. Seconded by Mr. Spina.

Ayes: Averett, Ort, Turick, Spina

Nay: Schwemmer, Bauer, Graziano

The motion carried. The resolution was reviewed.

Mr. Bauer made a motion to approve the resolution as written, seconded by Mr. Averett.

The resolution was reviewed.

Mr. Bauer made a motion to approve the resolution as written, seconded by Mr. Averett.

***DISCUSSION - CORRESPONDENCE***

1. Vouchers

The vouchers were reviewed. Mr. Turick 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.

Mr. Averett made a motion to adjourn, seconded by Mr. Graziano. A voice vote was taken; all were in favor and the meeting was adjourned at 11:15 p.m.

---

Virginia R. Kesper, Clerk