

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, Craig Schwemmer, Anthony Spina,
Alternate Members: Frank Baguiao, Dorothy Walter
Members Absent: Turick, Ort
Others Present: Clerk Kesper, Attorney Fraser, Planner Banisch, Environmental Consultant Keller

Arrived Late: Graziano

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. May 2, 2007 Regular Meeting

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

RESOLUTIONS

07-17 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

The Resolution was reviewed.

Mr. Bauer made a motion to approve resolution 07-17, seconded by Mr. Spina.

A roll call vote was taken:

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

Ineligible: Walter

07-18 Lindert – Block 13.10, Lot 16 – 240 Naughright Road -R1/R2 Zone
– 1 Acre – Request for Request for front yard setback, and
expansion of non-conforming structure variances

The Resolution was reviewed.

Mr. Spina made a motion to approve resolution 07-18, seconded by Mr. Bauer.

Ayes: Averett, Bauer, Schwemmer, Spina, Baguiao

Nays: None Abstentions: None Absent: Turick

Ineligible: 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. Harrington – Block 20.10, Lot 42.06 - 6 Catherine Court – R-1 Zone - .92 Acres – Request for side yard setback variance

John Harrington, Applicant
Jo Anne Harrington, Applicant
Cindy Bonner, Applicant 's Architect

John Harrington, Jo Anne Harrington and Cindy Bonner were sworn in by Attorney Fraser.

Mr. Harrington explained that they were before the board for a side yard variance for a garage. The current garage would become a family room. The current garage is small for pick up trucks and SUV's. They would need a 12' 2" variance.

Ms. Bonner explained that the garage does not fit the applicant's equipment. The new garage would be 23' deep with higher garage doors and loft space that would allow the applicant to remove the shed from the property. The applicant would require a 12.2' side yard variance. She referred to a color site plan, which was marked A-1. A photograph board and side elevation was marked A-2.

Ms. Bonner explained that if the house were built in the middle of the property they would not require a variance. There is currently 136' between this house and the adjoining neighbors' and after addition it would be 104'. She pointed out the vegetative buffer between the two properties. The photographs showed that you could not see the neighbor's home and that the wall of the home facing the Harrington's has no windows or doors. She stated that the addition is in line with the houses in the neighborhood. It will continue to be a two door garage. A portion of the paved driveway will be removed and replaced with pavers set in sand to keep the lot coverage down to less than 15% lot coverage.

The board reviewed the application.

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. Bauer made a motion to approve the application as presented, seconded by Mr. Averett. A roll call vote was taken:

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

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

Ineligible:

2. 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 August 1, 2007

John Hansen, Applicant's Engineer

Anthony Sposaro, Applicant's Attorney

Mr. Sposaro stated that based on the last hearings the plans have been revised to improve the drainage on Stephensburg Road and to keep all additional stormwater runoff created by this single family home lot development on site.

Mr. Hansen stated that after the last meeting the plans have been revised to hold all additional stormwater flow from the property on the property. The applicant will comply with the Township request for additional and updated and improved drainage in Stephensburg Road. The additional drainage work agreed to will require the applicant to obtain a Stream Encroachment Permit, which the applicant has agreed to obtain.

He referred to Mr. Hall's letter, which recommended approval if the applicant complied with the items in his letter which the applicant has agreed to.

Mr. Banisch referred to his memo of June 1, 2007. He requested landscaping, but stated that could be addressed at the time of a lot grading plan.

Mr. Hansen stated that the applicant would re-establish a hedgerow with 6 deciduous trees and lower growing shrubs as a landscape buffer.

Dr. Keller stated that he would work with the applicant to use plants for erosion control on the steeper areas.

Mr. Hansen referred to the existing driveway uphill from the applicant's property and stated that the new inlet they are providing will help improve the current situation by taking some of the water that is now coming off the driveway and crossing Stephensburg Road.

Mr. Hansen answered Mr. Banisch that the house is located in the proposed location because of the steeper grades behind the house. He explained that to put it back further would require a much more extensive driveway and tree removal.

Mr. Banisch accepted Mr. Hansen's' explanation for the variance of setting the house closer to the road.

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

Bruce and Allison Creilen – 129 Stephensburg – asked for information on the new inlet and if there were any provisions for stopping the silt from the up hill neighbors' driveway going into the road and inlet. They asked if this applicant's driveway would be paved.

Mr. Hansen referred to the map and pointed out the inlet and new stormwater system as it related to the Creilen's lot. He stated that the inlets would have to be cleaned and maintained by the Township under the new state stormwater regulations. He stated that the Rosado driveway would be paved.

Leslie Brooks – 135 Stephensburg Road asked how far the house will be from her property.

Mr. Hansen stated that the dwelling would be 320' Ms. Brooks home (from structure to structure).

Mr. Graziano arrived and joined the meeting.

Allison Creilen, stated that the storms have gotten worse and worse. During the latest storm in April of 2007 her sump pumps failed and they had 7" of water in their basement. The water was not from the stream, but from the runoff from the street and other properties. It was her opinion that this new

home will cause more runoff. It was her opinion that it was too steep to build on and also required too many variances. This is not a place for a home and that it will decrease the value of her home.

Bruce Creilen presented photographs of Ms. Brooks property taken during the run off from snow between January and March.

Ms. Brooks was sworn in by Attorney Fraser and stated that she took the photos herself between January and March of this year with snow runoff during a rain storm and also during normal conditions. The photographs were marked O-1.

The applicant and the Board reviewed the photographs.

Ms. Brooks stated that the photos showed the stream that flows alongside her deck and the flooding on her property and she was concerned that the new home will cause flooding of her home.

Mr. Hansen answered Mr. Averett and pointed out the storm drains and catch basin that are upstream from Ms. Brooks property. He stated that there will be no increase in the flow going into the stream then currently is flowing and it would not acerbate the flood elevation of Stephensburg Road. The stormwater pipes will be able to handle the additional flow.

Ms. Creilen presented photographs of the problem driveway up hill of the applicant's property and ice forming in front of other driveways. She stated that she took the photographs in January and February of this year, taken from her property. The photographs were marked O-2 –

Mr. Hansen stated that the development of this site with the stormwater measures proposed, in his opinion, are the most expensive and extensive system he has designed for a single lot and there will be no impact to the neighbor with the flooded basement and no impact on Ms. Brook's property downstream. He answered Mr. Schwemmer that there will be a notable improvement for the neighbors across the street, but not the elevation of the flooding of Stephensburg Brook.

Mr. Hall was sworn in by Attorney Fraser and stated that in January he heard the flooding concerns and the plans as they were previously presented were not sufficient. He requested that all stormwater runoff for the 100 year storm be maintained on site – in excess of 2500 gallons and the applicant has complied. He agreed that this is the most comprehensive stormwater management plan that he has required.

Mr. Schwemmer stated that based on the Board's consultants it was his concurrence that this application will improve current conditions and not make

the current situation worse. He stated that based on the objectors' comments and photographs the board reacted and the applicant has produced a plan that will be an improvement to the area.

Ms. Crelen referred to the traffic on the road and was concerned that this driveway has adequate site distance.

Ms. Brooks was concerned that the water that is being piped off the road is going to go into the brook and increase the level of water coming behind her home.

Mr. Hansen stated that that is not the case as the water is now going into the stream before Ms. Brooks' property and that would not be changed.

Mr. Hall stated at the time the applicant applies to the DEP for a stream encroachment permit Ms. Brooks would have the opportunity to provide written comments to the DEP. He did not have the expertise to agree or disagree with Ms. Brooks on where the water was now crossing.

Denis Austin – 125 Stephensburg Road stated that there are restrictions on the applicant's property that were not previously approved. He was concerned with the 8 variances and waivers to be granted to build on the property. He stated there is a mine on the applicant's property.

Ms. Fraser there is 5 variances and two waivers connected with the application.

Mr. Hansen stated that he was unaware of a mine in the area.

Mr. Austin and Mr. Crelen pointed out the area of the mine that was referred to.

Mr. Hansen stated that the area pointed out is outside the area of disturbance. They have done six or seven test holes on the property and they did not uncover any mines or tunnels.

Mr. Sposaro stated that there are substantial conservation easements that would cover this area.

The meeting was closed to the public for questions or comments.

The board deliberated on the application.

Mr. Hall stated that since the applicant has been made aware of a possible mine they might want to call the NJ Mine Safety Bureau.

Mrs. Walter Made a motion to approve the application as presented and discussed this evening subject to compliance A-Q of Mr. Hall's letter and landscaping plan approved by Dr. Keller. Seconded by Mr. Bauer. A roll call vote was taken:

Ayes: Bauer, Schwemmer, Spina, Baguiao, Walter

Nays: None Abstentions: None Absent: Ort, Turick

Ineligible: Graziano, Averett (absent 1-3-07)

3. 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 – Expires September 28, 2007

Erika Ackerman, Applicant

Jeffrey Ackerman, Applicant

Nichols Wunner, Applicant's Engineer

Erika Ackerman, Jeffrey Ackerman and Nichols Wunner were sworn in by Attorney Fraser.

Mr. Wunner presented his qualifications to the board. He answered Ms. Fraser that he did not prepare the plans, but would be able to present the plans and answer questions.

Mr. Schwemmer accepted Mr. Wunner as a professional engineer.

Mr. Wunner reviewed the location of the property. He stated that the two lots that are part of the application create a 5 acre conforming lot. The property is located in the ridgeline and steep slope area of the Township, and the reason for the Ackerman's appearance for variance approval. There is sufficient room on the lot for the construction of the home, driveway and retaining walls. The house site proposed is located in the flattest area of the property, but there was no way to build a driveway that did not cross 20% slopes. The house and all of the disturbance is on lot 22.

Mr. Banisch addressed the lot merger requirement. The lots in common ownership meet the required zoning.

Mrs. Ackerman stated that they would prefer to have lot 22.02 not combined with lot 22.03. She would like to have lot 22.03 merged with lot 22 as the driveway for lot 22 is on lot 22.03.

Mr. Wunner stated that the applicant would not meet the lot width or lot size requirement but would meet all setback requirements if lot 22.03 were not part of the application.

Ms. Fraser stated that if the applicant wanted to merge the lot with lot 22 it would create a minor subdivision and other variances that the applicant did not notice for.

Mr. Banisch did not recommend the merger of the lot with the larger lot because Township ordinances do not encourage larger lots that could later be subdivided.

A recess was taken to allow the applicant time to discuss their application options.

Ms. Ackerman stated that they have elected to continue with the application as applied for, steep slope and ridgeline variances on the combined lot.

Mr. Hall reviewed his letter of May 21, 2007 and the required variances and waivers as outlined in his letter. He stated that a soil disturbance permit would be required either as part of this application or a separate application. He recommended a manufactured wall be used for the retaining wall. He noted that there is an approved driveway plan that will require further steep slope variances for the sight distance clearing. Revised calculations are required for the drywells and stormwater flow. He stated that his comment 8 regarding roof leader drains and the drywell is significant. Conservation easements are required on the slopes. Retaining walls must be separated by at least 10' or request a variance.

Mr. Wurnner stated that the applicant recognizes they need a soil disturbance permit and will apply later. He agreed to make the changes stated by Mr. Hall and enumerated in his May 21, 2007 letter under IV – Application Comments.

Mr. Wurnner addressed the conservation easements, which the applicant agrees to give the Township, but asked for a change in the location so that it was somewhat beyond the limits of disturbance. He proposed the conservation easement at contour 540 to the property lines on Schooley's Mountain Road, which would give the applicant a little more room and flexibility. More than four acres would still be in a conservation easement that would protect the environmental areas. He pointed out the area for the proposed septic system.

Mr. Banisch stated that the board needed to see slope classifications in the area that they want to leave out of a conservation easement.

Mr. Wurnner stated that the applicant agreed to the landscaping and screening to be approved by Dr. Keller.

Mr. Wurnner referred to the plan and pointed out the areas of steep slope. The majority of the lot has slopes of 20% or greater. The house is in an area of 20%

slope or less. He stated that on the plan everything that is not shaded is slopes of over 20%.

Ms. Ackerman stated that the house location was chosen based on the area that they could get the best driveway sight distance. All of lot 22.03 will be put in a conservation easement.

Mr. Banisch stated that the slope delineation on the plan is not detailed enough to tell if there are other areas on the property that would disturb slopes less than 20%.

Mr. Hall referred to the ordinance which defines steep slopes of 15% or greater and the board can require conservation easements in this area.

Mr. Ackerman stated that to move the house to lot 22.03 would have a greater disturbance as it is steeper and would require more tree clearing.

Mr. Spina stated he wanted a more detailed plan to determine whether the steep slope or stream corridor variance would be greater environmental impact.

Dr. Keller recommended a site walk of the property. Mr. Schwemmer and Mr. Spina will attend for the board if it is scheduled in the evening. An e-mail will be sent when a date is agreed to.

Mr. Banisch reviewed his memo of June 5, 2007.

Mr. Wurnner stated answered Mr. Banisch that the septic system site would not be able to be moved because of the grade. Moving the house closer to the side yard, it was his opinion, was not a good option because if a home were built on the adjoining lot it would probably be where a house would be put and you would be putting houses closer together. He stated that turning the house 90 degrees would cause a lot more slope and tree disturbance.

Ms. Ackerman agreed to submit additional copies of the proposed home elevations.

Mr. Wurnner stated that a site visit would answer a lot more of Mr. Banisch's comments and Dr. Keller's comments.

Dr. Keller reviewed his letter of June 2nd. He commented that in general he is not predisposed to granting waivers or variances from ordinances that the board has passed but that he is sympathetic when an applicants possession of the property pre dates the ordinances, which this application did. This has been a family owned lot for a long time, but development should be done in a way that minimizes the impact now and in the future and the extent of

variances granted are minimized to the greatest extent possible. His major concern is water quality.

The meeting was opened to the public for questions on the testimony heard this evening. There were no public comments and the meeting was closed to the public.

The hearing was adjourned to August 1, 2007 so I site walk could be taken. The applicant was advised that if there is not enough time on the agenda it would be adjourned to September 5, 2007.

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, May 2, 2007 -Public Hearing Continued – Expires – September 5, 2007

Mr. Schwemmer announced that this application had been adjourned at the applicants' request to August 1, 2007.

DISCUSSION - CORRESPONDENCE

1. Vouchers

The vouchers were reviewed. Mr. Averett 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. 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 10:00 p.m.

Virginia R. Kesper, Clerk