

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of November 5, 2008 to order at 7:00 p.m.

MEMBERS PRESENT: Elliott Averett, Morris Bauer, Harvey Ort, Craig Schwemmer, Anthony Spina, John Turick
Alternate Members: Frank Baguiao, Dorothy Walter
Members Absent: Graziano
Others Present: Clerk Kesper, 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 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. October 1, 2008 Regular Meeting

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

RESOLUTIONS

08-19 Collins – Block 59, Lot 39 – 397 Fairmount Road – R-5 Zone 3.8
 Acres – Request for front yard variance for replacement of existing shed

Mr. Bauer made a motion to approve resolution 08-19, seconded by Mrs. Walter. A roll call vote was taken:

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

08-20 Kadosh (Neighbor House) – Block 34, Lot 47 – R-5 zone 3.607
 Acres – Approval of Request for Preliminary and Final Site Plan with Variances for expansion granted with Use Variance 08-13

Ms. Fraser reviewed changes to the resolution requested by Mr. Hall.

Mr. Kadosh stated he was satisfied with the resolution as written.

Mr. Spina made a motion to approve the resolution, seconded by Mr. Baguiao. A roll call vote was taken:

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

Nays: None Abstentions: None Absent: Graziano

Ineligible: 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. Deats – Block 36, Lot 53 – 195 East Mill Road - R/5 Zone – 3.4 Acres – Request for Use Variance to continue use of apartment under the Fair Housing Act - Reasonable Accommodation

Leah Deats, Applicant

Lawrence Fox, Applicant's Attorney

Mr. Fox explained the application and that this is an application for a use variance for an accessory apartment which exists in the home at this time. He explained that Ms. Deats is a disabled individual as defined under the social security rules and the request is supported by the fair housing act under disabled persons. He referred to Mr. Banisch's report and did not have any objections to the report. He stated that Ms. Deats rents the home and lives in the apartment in the downstairs of the home. He stated that the apartment is not apparent from East Mill Road. It was his opinion that the fair housing act is enough to support the request for this apartment. He stated that under the Township ordinances accessory apartments are allowed for COAH units.

Leah Deats was sworn in by Attorney Fraser.

Ms. Deats stated that she has lived at this location since 2002 and the accessory apartment was one of the reasons she and her former husband purchased the home. The apartment was their when the house was purchased and remains the same. She is now the sole owner of the property. She explained that the house is approximately 3200 sf and was built in the 1700's and although it is on East Mill Road, it is in a rural area as she cannot see the homes on either side of her; to the rear there is a new home, but they cannot really see her house because they are set low. She has resided in the apartment for the last year.

Ms. Deats testified that she has been disabled since 1994 for neurological problems and has received social security since 1994. She explained that her disability at times limits her ability to walk up stairs and had an episode just yesterday that required her to call the first aid squad. She also has problems focusing on tasks from time to time. The apartment is 900 sf which is ideal for her because it is also on grade with no stairs. She takes medication regularly, but it is not always effective. She stated that the doctors have told her that it is not likely that she will get well enough to go off of social security.

Ms. Deats answered the board that when they purchased the home the tax records from 1991 indicated the apartment and they mistakenly thought that this made the apartment legal and they did not look into it further.

Eric Witwick was sworn in by Attorney Fraser

Mr. Witwick stated that he is aware of and has been at this property. He stated that when the previous owners put the house up for sale it was indicated that there was a separate apartment. The Tax Department had sent a letter to the previous owner regarding back taxes due on the apartment because they were not previously aware of it.

Ms. Deats stated that the tenants she rents to are made aware that she needs assistance. Her income is from the social security and she gets alimony for a few more years. The house front door is about 30' from East Mill Road. The apartment door is at the rear of the house. She explained that in the past there was a complaint made by the rear neighbor, who she previously dated, about the use of the apartment. She did not object that a condition of approval be that if it was not occupied by a disabled person the use would end. It was her opinion that there would be no negative effect on the community with this apartment as it could not be seen from the street.

Mr. Fox answered the board that they have not been able to document that it was always a two family, except back in the 1800's but it was not something they would be able to approve.

Ms. Deats stated that the address is the same and there are no separate utility meters. There are four floors of living space in the home. The apartment is in the walk out basement (bank home). She explained that each floor is approximately 900 to 1000 sf. Three floors would be rented by one tenant with one kitchen and two baths. The fourth floor (basement) is the apartment. The property is on 3 ¾ acres and there is adequate room for four-to five cars.

Ms. Kesper explained the previous attempt of the applicant to qualify the unit as a COAH accessory apartment and that all steps were taken to qualify, except for the deeds being recorded.

David Banisch and Leon Hall were sworn in by Attorney Fraser.

Mr. Banisch referred to his memo of November 4 and the Federal Fair Housing Act and group homes. He stated that the closest guidance he could find for the board was indicated under item 5 of his memo which is from HUD and related to group housing for the disabled.

The board discussed the application.

Mr. Banisch reviewed the particular suitability with the walk out to the driveway and the applicant's testimony that the continued use of the apartment not a detriment to the community or zone plan.

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

Mr. Averett made a motion to approve the application subject to the conditions discussed and outlined in Mr. Banisch's letter and that it would remain an apartment for disabled persons and that it be decommissioned if it is not offered for rent to a disabled person and the requirement that the resolution be recorded with the County.

Mr. Turick stepped down from the application as he has had rental property in the Township.

Mr. Schwemmer stated that he also owns rental property, but not in this township and did not see that he had a conflict of interest.

The motion seconded by Mrs. Walter .

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

2. 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

Mr. Schwemmer announced that the application was adjourned to
December 3, 2008 at the applicants request

3. Lance – Block 33, Lot 54 – 40 West Mill Road – R-5 Zone – Request for
front yard setback, non-conforming structure, insufficient and non-
conforming lot size variances for replacement and expansion of front
porch.

Barry Lance, Applicant
Roberta Lance, Applicant

Roberta Lance and Barry Lance were sworn in by Attorney Fraser.

Ms. Lance reviewed the application request and stated that the porch
should help abate the water coming in through the window wells in the
front of the house.

Mr. Lance stated that they are going to take the current concrete out and
replace it. The house has been re-roofed and new gutters installed and
this porch addition will be a continuation of trying to remedy the water
problem.

Ms. Lance stated that the 11' shown on the plans is from the porch to
the edge of the blacktop. The new porch will go all the way across the
front of the house and be the same depth as the current, which is six
feet. The porch roof will be a hip roof. The porch floor will be over the
basement windows. The area not covered currently is grass. She
presented a photograph of the home which was marked A-1.

Mr. Hall stated that a variance will also be needed for lot coverage for an
additional 120 sf. Existing is 17.9 and it will be increased to 18%.

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

Mr. Spina made a motion to grant a setback of 9' for a six foot deep porch, grant the 4' side yard setback for the porch and existing house, improved coverage 18%. Seconded by Mr. Bauer.

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

4. Birsner – Block 25, Lot 59 – 138 Mission Road – Request for extension of time on Resolution 07-22 dated September 5, 2007 which permitted a second story addition

The board reviewed the request.

Mr. Bauer made a motion to grant the requested one year extension to obtain a building permit under Resolution 07-22. Seconded by Mr. Spina. A voice vote was taken; all were in favor and the motion carried.

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

2. Site Walk for Sobolewski

A site walk was scheduled for Tuesday the 11th at 8:30 a.m. Mr. Bauer, Mr. Spina and Mr. Schwemmer will attend for the Board. Mr. Turick stated that he had already been to the site.

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 8:30 p.m.

Virginia R. Kesper, Clerk