

**MINUTES OF THE REGULAR MEETING  
OF THE TOWNSHIP OF JACKSON  
ZONING BOARD OF ADJUSTMENT  
SEPTEMBER 5, 2007**

The September 5, 2007 Jackson Township Board of Adjustment meeting was called to order at 7:03 p.m. with a salute to the flag by all present. Board Attorney Sean Gertner read the Open Public Meetings Act Statement.

**ROLL CALL:** Jeffrey Bowen *arrived 9:05 p.m.* Peter Maher, Secretary  
Stephen Costanzo Diana LaBianca, Vice Chairwoman  
Joy Ann Harmer Vincent Sgro, Chairman  
William Santos, Alt. #1  
Glen Bouthillette, Alt. #2 *arrived 7:09 p.m.*

**ABSENT:** Barry Calogero

**ALSO PRESENT:** Lee Ann Hoffmann, Board Engineer, Donna Miller, Board Planner, Richard Megill, Zoning Officer, and Steven McCrystal, McCrystal Reporting

**APPROVAL OF RESOLUTIONS**

Recording Secretary Janice Kisty announced the following resolutions and those eligible to vote:

**2007-59 – Locklear - Block 6017, Lot 5 – Variance approval for a patio enclosure**  
**2007-60– Graham– Block 9704, Lot 1 – Variance approval for a 5’ open fence in the front yard**  
**2007-61 – Flores – Block 1701, Lot 1 – Variance approval for a 6’ solid fence in the front yard**

**Motion to approve the foregoing by COSTANZO/LaBianca.** YES: Costanzo, Maher, LaBianca, Sgro.

**APPROVAL OF MINUTES**

**Motion to approve the minutes of August 1, 2007 by MAHER/Costanzo.** YES: Costanzo, Maher, LaBianca, Sgro.

**APPROVAL OF VOUCHERS**

**Motion to approve the voucher in the amount of \$120.00 for the Recording Secretary for tonight’s meeting by MAHER/LaBianca.** YES: Costanzo, Santos, Maher, LaBianca, Sgro.

**Motion to approve a voucher for McCrystal Reporting for \$423.50 for the Jackson Commons transcript for Mr. Russo’s review prior to the meeting on affordable housing, by SANTOS/Costanzo.** YES: Costanzo, Santos, Maher, LaBianca, Sgro. **Motion to approve a voucher for McCrystal Reporting for \$121.00 for the Keisha Johnson transcript requested by Mr. Megill’s office for the interpretation matter on this agenda, by MAHER/LaBianca.** YES: Costanzo, Santos, Maher, LaBianca, Sgro.

**ANNOUNCEMENTS**

Mr. Gertner stated an Executive Session, if deemed necessary, will be held at the end of this meeting. He said Mr. Megill forwarded an annual report to him of what has occurred before the board, and they discussed it in a meeting. Mr. Gertner took the report a step further to make recommendations and drafted wish list of possible ordinance changes, and asked any board members to forward any comments to him, which will be forwarded to the Planning Board and Town Council for possible action.

Mr. Megill stated Items 7 & 8, Jordan and Bartley, will be carried to October 3, 2007 without further notice.

Mr. Gertner stated he has a conflict with the first use variance application, Number 6, and Russ Cherkos of Dasti, Murphy, McGuckin, Cherkos & Connor will represent the Board for that item.

The Professionals were sworn by Steve McCrystal and their affiliations were stated for the record.

**APPLICATIONS**

**1. Steven Berg - Block 5818, Lot 1 – 17 Lawrence Street – R-15 Zone**

Steven Berg was sworn. He wishes to construct an in-ground pool and 6 foot fence on his corner lot. Mr. Megill said a few violations exist on the property. A previous variance granted allowing a 10’ x 10’ shed two feet from the property line was constructed with no zoning or building permits as a 10’ x 16’ shed in a different location than was approved. Mr. Gertner asked if his public notice for the pool and fence included this shed and Mr. Megill said no, the notice does not say ‘for any and all other variances’. Mr. Gertner explained to the applicant that the public notice did not set forth the requirement for another variance. The Zoning office discovered the violation, and could issue a summons. Mr. Berg said the shed was added onto last year. Mr. Gertner said notice is paramount to the Board. Before the board goes further, Mr. Gertner wanted to clarify if the notice does not address the need of a variance for another item, the applicant could proceed only on the pool and fence, but he must know he is in violation. He had the choice of applying for all items at once, or proceeding only with the pool and fence. Public notice will be required either way. Mr. Berg wanted to proceed with the current application and stated he will take care of the other issue. Mr. Santos asked what the required setbacks are for the pool and Mr. Sgro asked what he is here for tonight. Mr. Megill said only a 4’ open fence is allowed in a front yard and the applicant is asking for a 6’ solid fence and in-ground pool in the front yard. He needs variances for both. The setback for the pool is required to be 10’ and he is proposing 5’.

**Public session opened; no one came forward; public session closed.**

Mr. Santos said he visited the site and complimented the applicant on its nice appearance. He asked for clarification on the location of the fence. A picket fence is currently located next to the sidewalk. Ms. Hoffmann said the open picket fence will be removed and the 6’ fence placed 10’ back. Mr. Gertner said the concrete apron for the pool is located next to the property line and he asked Mr. Megill if a variance is required for that; Mr. Megill replied no.

**Motion to approve by COSTANZO/Harmer.** YES: Harmer, Costanzo, Santos, Bouthillette, Maher, LaBianca, Sgro. Mr. Santos said the vote includes authorization for the attorney to prepare the resolution.

**2. Dennis & Susan Federico - Block 4703, Lot 58 – 86 Cromwell Lane – PRC Zone**

Dennis and Susan Federico were sworn. Mr. Federico would like to construct a 12' x 17' deck with screened enclosure with a roof and glass knee wall. It is called a three-season room but it is more of a summer room. The property is located in a planned retirement community. Ms. Hoffmann said for future reference, drainage in these communities is integral and any applicant proposing these types of additions should be made aware that any potential drainage issues that could be created are the responsibility of the homeowner. Mr. Federico said that he is not changing the pitch. Ms. Hoffmann wanted to point that out for the future. Mr. Costanzo asked if there is a conservation easement, and Mr. Federico said there is a basin, beyond is woods, and he is not interfering with another's property.

**Public Session opened and closed; no one came forward.**

**Motion to approve by SANTOS/LaBianca, with authorization to prepare the approving resolution.** Mr. Santos asked if the homeowner's association approved this and Mr. Federico said yes. YES: Harmer, Costanzo, Santos, Bouthillette, Maher, LaBianca, Sgro.

**3. Ralph & Kim Mazzoni – Block 5812, Lot 79 – 14 Red Cedar Run – R-15 Zone**

Ralph Mazzoni was sworn. He needs variances for the 4' and 6' wooden fence on his property. Mr. Santos said the fence is up and he is seeking variance for it; the 4' high fence faces Red Cedar Run, and the 6' high fence is elsewhere. Ms. Hoffmann said the fence is already constructed. The property is on a cul de sac where there is limited traffic and no traffic issues.

**Public Session opened and closed; no one came forward.**

**Motion to approve by HARMER/Santos. Mr. Santos advised Mr. Mazzoni to seek approvals in the future before doing work.** YES: Harmer, Costanzo, Santos, Bouthillette, Maher, LaBianca, Sgro.

**4. Patrick McBride – Block 2101, Lot 10 – 562 Challenger Way – R-3 zone**

Patrick McBride was sworn. He constructed pillars in front his of house, ranging in height from 5' down to 4'. Mr. Sgro asked what the violation was, and Mr. McBride said he did not get a permit. Mr. Megill said solid wing walls in front yard over 30" high require a variance. Mr. Santos asked if they are outside the township easement and was told yes. Ms. Hoffmann said the walls are constructed behind a telephone pole. His neighbor has similar wing walls, but this is in a better location. The street is not paved, and his situation does not appear to encroach on any sight triangle.

**Public Session opened and closed; no one came forward.**

**Motion to approve by SANTOS/Costanzo, with the attorney authorized to prepare the approving resolution.** YES: Harmer, Costanzo, Santos, Bouthillette, Maher, LaBianca, Sgro.

**5. Robert & Stephanie Stark – Block 1102, Lot 40 – 329 Sapphire Drive – R-3 Zone**

Robert Stark was sworn. He wishes to construct an attached garage, 14' x 22'. His lot is 100 feet wide, one side has 13', the other has 27'. He needs a 20' setback and is providing 13 ½ feet. Mr. Santos noted his neighbor attached a similar garage, and Mr. Stark agreed. Mr. Costanzo asked for clarification on the requested setback, and Mr. Megill said 13 ½'.

**Public Session opened and closed; no one came forward.**

**Motion to approve by HARMER/Maher.** YES: Harmer, Costanzo, Santos, Bouthillette, Maher, LaBianca, Sgro.

Mr. Gertner stepped down. Russell Cherkos, Esq., represented the Zoning Board as conflict attorney. Mr. Santos asked if number 7 & 8 will provide no further notice. Mr. Sgro said that would be addressed when Mr. Gertner returned to the dais.

**Recess at 7:37 p.m.; reconvened at 7:43 p.m.**

**6. Ralph Laks – Block 1001, Lot 62 – 730 Farmingdale Road – R-5 Zone**

Mr. Bernard Weinstein Esq. represented this applicant. He said he had a number of exhibits and professionals to testify for this application. The first exhibit was a colored rendering of the site. They are asking for a use variance and bulk variances will be needed. The application is unusual because two lots are involved. The two lots are numbers 62 & 63 and a third lot, not part of the application but has impact, is Lot 64 which is surrounded by lot 63. Lot 62 is triangular, in the residential district, the lot 63 is in the Neighborhood Commercial zone. The square footage of the retail building exceeds 20,000 square feet, making it a shopping center by the ordinance definition. He stated this was a conclusion drawn by Board Planner, Donna Miller. A shopping center is not permitted in the NC zone. Other exhibits include pictures of other shopping centers, and the planner has some exhibits to offer. One of the variance relates to height, which exceeds the maximum permitted, but is for decorative purposes, not for retail purposes or professional offices. Mr. Cherkos was concerned that Mr. Weinstein said the professionals requested a use variance for a shopping enter, and asked if he takes issue with that. Mr. Weinstein agreed he is asking for a use variance, but disagreed with the definition. He is not asking for an interpretation, and will ask for the use variance. Ms. Miller said she did not have any information on a height variance request. She did not receive architectural as they are not required for the use variance. Mr. Cherkos said the original application spoke of parking; they will need other bulk variances. He only sees use variances. Mr. Weinstein said Mr. Laks will withdraw that request now and those other issues could be taken up at site plan review. Mr. Ralph Laks, 83 Greenwood Drive, Freehold, NJ, was sworn. He is the applicant and contract purchaser of the lots. The application, if a use variance is granted, is for a commercial and retail complex. He submitted for the board's review pictures of shopping centers similar in design to what they propose. Mr. Cherkos asked if the variance map dated 5/21/07 is part of the package marked A-1. A topographic survey dated 4/5/07 was marked A-2, a survey dated 12/26/06 was marked A-3, the prior colored rendering was marked A-4 and a booklet of six photographs was marked A-5. The colored rendering dated 8/23/07 was different from Exhibit A-1. Reduced size copies of A-4 were distributed to the Board members.

Mr. Weinstein said A-4 was a revised map, and Mr. Laks explained the restaurant was changed to bank office, lowering the intensity of use there, they removed the septic area because they intend to use sewer for commercial purposes only, and other bulk requirements would be added. Mr. Weinstein said the site would be served by public sewer, which would be extended to the area instead of individual septic. Ms. Hoffmann asked Mr. Cherkos about exhibit A-4, stating the square footage of the building was different from what was submitted, and she wanted to bring that to the Board's attention. The original plan had septic, and now sewer, and she just wanted to point out the different uses and also asked if their public notice referenced a use variance on the residential use on the property. Mr. Cherkos said these changes must be submitted at least 10 days prior to the public hearing, due to public notice requirements. If there is a substantial change, it can be considered a new application. Anyone from public has not seen these documents, originally a restaurant, now a bank office; he is not concerned with other changes to the plan, but he is concerned with those changes of use. In Mr. Cherkos' opinion, based on the changes, new notices should be sent. The current notice did not say anything about a shopping center, it does mention commercial facilities, but a shopping center was not mentioned in the legal notice. His experience in Lacey included a deficiency of notice where the notice failed to specify the nature of the use, and it was deemed deficient. The applicant is seeking a shopping center and the notice does not use that wording. He could let that slide, but he feels there has been a substantial change in the plans. Mr. Santos agreed with the attorney comments, stating it is unfair to the professionals to catch up with presentation and offer concerns to the neighbors and the board members. Mr. Santos visited the site, and seeing something different now negates his research and he now may have different questions. He asked if the application should be new. Mr. Cherkos said the board could carry it with the applicant providing the uses at least 10 days in advance of the meeting, and should provide a new notice to property owners. Mr. Weinstein asked for a five minute recess.

**Recess at 8:05 p.m.; Reconvened at 8:13 p.m.**

Mr. Weinstein would like to withdraw the exhibits and rely on the original variance plan that was submitted to the Board. Mr. Cherkos said this is the first time he is representing this Board, he is familiar with the letters, but the lack of the word 'shopping center' in the notice and the fact that there are objectors, he does not feel the notice is sufficient and wanted to protect the Board. A new notice is required, to advise a shopping center is proposed partially on a commercial lot. He asked if the professionals would like to see anything. Ms. Hoffmann said if they go forward with the original submission, that is ok, but if they proceed with Exhibit A-4, they would like complete submission package, the surrounding uses are residential, and a traffic study would be required. Mr. Weinstein asked if it would be needed for the site plan, and Ms. Miller thought it would be relevant to the use. A shopping center is a different use intensity and would show one way of the other. Mr. Cherkos said if they choose to come back without a traffic expert they would be taking a risk; the professionals would ask for that again and advise the Board of same. It could be a burden of proof. He cannot force them, but it is the recommendation of the professionals. Ms. Miller said one other thing important at the use level, if they decide to use sewer vs. septic, the Board should have information to support that. Mr. Weinstein understood Counsel's position regarding notice. He is correct, if they are not satisfied, they should be. Larry Waetzman, Planner for the applicant, was sworn. He respectfully appreciated what was said. He understood, but part of his testimony will show the application is similar in intensity to other shopping centers in the NC zone, and have gone forward without a shopping center variance. The issue of sewer or septic is a site plan issue and can be addressed then.

There was a call for a motion to carry the application with re-notice for a shopping center as determined by the professionals. Mr. Weinstein asked also for interpretation of whether this is a shopping center. Mr. Cherkos said the Zoning Board has jurisdiction, they could amend their application by way of a letter, copying the professionals so they know what they are seeking, and in addition to the notice, Mr. Megill will need additional application forms and fees. Mr. Weinstein asked if there are fees if they are not asking for an interpretation and was told no, only if they are changing the application. They can carry the application submitted, the applicant will re-notice, if it will be a different application, the applicant will have to notice that as well. The Board cannot demand a traffic study, although they can find after testimony he may need it, but not now as it is not a completeness item on the checklist for a use variance. Mr. Weinstein asked for the date, and was told that depends on what he is applying for. Mr. Sgro said October 3 is the next hearing.

**Motion to carry**, require to re-notice for a shopping center and carried to October 3, but not to exceed 60 days. Mr. Laks said the changes tonight addressed the comments of the planner, COAH requirements, and other schedules addressed concerns of the engineer. He is not here to confuse anyone. Ms. Miller took offense to that. Mr. Cherkos said **the motion has been made. MAHER/Santos**, for no more than 60 days. YES: Harmer, Costanzo, Santos, Bouthillette, Maher, LaBianca, Sgro. The applicant must notice for October for October's meeting, and November if for November's meeting.

**7. Richard Jordan – Block 804, Lot 24 – Constitution Drive – R-3 Zone**

*previously carried to October 3, 2007*

**8. Kevin & Paula Bartley – Block 1401, Lot 30 – 422 Bartley Road – R-3 Zone**

*previously carried to October 3, 2007*

**MATTERS FOR DISCUSSION - INTERPRETATIONS**

**1. James Fritz/Goddard School – Block 11801, Lot 76.02 – 178 West Veterans Highway – NC Zone**

Mr. Gertner said that Mr. Fritz made an application through his LLC company for a sign variance at the site where he is a tenant. The LLC is a tenant, owned by another LLC, not related to him. The issue is the general rule that LLCs require attorneys to represent them, and this can be looked upon as a jurisdictional issue. If the LLC or corporation comes before the Board without an attorney, they cannot hear the application. This issue is before the Board for an interpretation, based on history, if the corporation members are sole members, as in a husband and wife, as long as the owner of the property is a sole owner, and applicants are the only owners, and they provided proof that the Board has made exceptions to the rules. Mr. Gertner said the rule is understood that an attorney should represent the LLC. When a firm becomes an LLC, it gives up the right to represent itself. A previous Board of Adjustment has allowed the owner to represent himself. This application is limited to a sign variance and is not necessarily the worst thing. Mr. Gertner did not think it proper to recommend the applicant represent himself, so he recommended he come here for an interpretation to make an exception if lawyer must represent him. It could be decided on a case-by-case basis, but he would not recommend it in the case of a use variance. Bulk variances are routinely granted, and if this was a general partnership and not an LLC, there would be no discussion. These issues will occur more often as LLCs are formed more frequently, due to tax interpretation.

James Fritz was sworn. Mr. Fritz said legal issues are confusing and he only wants to replace his sign. Mr. Gertner said the Board needs to hear that to see if they feel this is de minimus. Mr. Megill said this is a basic "c" variance for setback and height. Mr. Sgro said he is just determining if he could represent himself. A precedent was set twice before this Board of Adjustment where applicants who were incorporated were permitted to represent themselves, one of which was a use variance. Mr. Santos asked the applicant why he wanted to represent himself. Mr. Fritz said the cost of the attorney is \$3,000, which he can't afford, and he did not understand why he could not represent himself. Mr. Santos agreed with Mr. Gertner these could be done on a case-by-case basis. Each applicant should determine he if can represent his interest, but he cautioned he will hold him to same standards as anyone else. He can present his case to the Board, but he has reservations for him to represent himself. The questions must be answered sufficiently. Mr. Fritz said he would withdraw the application. Mr. Santos said an LLC is different than a resident. Mr. Sgro thought he could represent himself and thought he is capable. Mr. Fritz would have to decide. Mr. Santos is willing to take comments, but will hold him to the same standards. Mr. Gertner said if it is the Board's inclination, the applicant must supply a certificate of formation of the owner and applicant, and the owner must affirm before the Board that it is a small, closely held corporation. Ms. Miller said other towns have consent of owner forms. They are spouses and will protect their own interests; other small corporations may not be so simple. Mr. Gertner said the question is if this gentleman can proceed and represent his interest of the LLC. Mr. Bouthillette noted he is the tenant and asked how he could make application for the variance. Ms. Miller said the owner could authorize the tenant. Mr. Costanzo said they are talking about a legal aspect, there have been exceptions, the need for an attorney has been recommended, and simple applications can be made larger at times. Mr. Megill said he had a permission letter from the owner of the property and always requires that. Mr. Sgro asked Mr. Megill if this is simple, and was told this is not complicated, but the applicant would proceed at his own risk. Mr. Gertner asked for a motion for only this application. Mr. Costanzo said this is uncharted territory.

Mr. Santos' concern was for the applicant, to ensure proper representation. **Motion to deny the request to represent himself by SANTOS/LaBianca.** YES: Santos, Bouthillette, Maher, LaBianca. NO: Harmer, Costanzo, Sgro. The vote was 4-3, yes to deny. Mr. Gertner said the applicant needs an attorney to represent himself.

## **2. Keisha & David Johnson – Block 7109, Lot 6 – 75 Citadel Drive – R-9 Zone**

David Paulus, with Keisha and David Johnson were sworn. Mr. Gertner said this matter is here for an interpretation of an approval granted on March 7, 2007 for reconstruction of a home destroyed by fire with a modular home. There were some affirmations made during the approving testimony that the home would not exceed 2,400 square feet, and that the lot coverage would not be significantly greater. The submitted plans were for a 3,100 square foot home to the board and professionals. A variance was required for lot size, width, depth and frontage, but was not needed for setbacks. The question is whether size restrictions were material since they needed no setback requirements, and the plan was not amended.

Mr. Bowen arrived at 9:05 p.m.

Mr. Gertner briefly recapped for Mr. Bowen's edification. Dave Paulus from Statewide Modular Homes was at the prior meeting, and when he came before the board, he was prepared to speak on the variance issues. He said the transcript either misspoke or was misquoted. The house measures 48' x 27', two story, and a coach's room, like the size of a garage to review training films, which is one story. On the night of the hearing, when he looked at the schedule on the plan, he did the math quickly and said 2,400 square feet and he apologized for misspeaking. The zone for this area is R-9, and this lot is much larger for this area. They cannot buy property from adjoining owners, they used the R-1 standards as advised, and requested variances. He misspoke and meant 3,400, not 2,400 square feet. Ms. LaBianca asked how long he has been in business, and was told 6 years. She asked if this is the first time this happened and was told yes. Mr. Paulus said the house was delivered, set in sections, the roof raised, and now is sided. The issue was raised when the coach's room was framed. The footprint has not changed and is according to the plan as presented to the board when they approved it. Mr. Santos asked the size of the home with the coach's room. Mr. Paulus said it has a 2,096 square foot footprint. Actual square feet, is 3,100. Mr. Megill said the size of the dwelling was represented, not the decks. No setbacks are violated. The two story portion is 2,644 square feet and the rear is 500 square feet, plus or minus, and the house is just shy of 35' high. Mr. Maher said he asked numerous times about the size of the dwelling, and this is a huge mistake. It did say 2,400 square feet in the transcript, and two lines later, when asked if the lot was that big, they said it had a 2,096 square foot footprint. Ms. Miller saw the house, and had no problem with it. She knew the Board had a concern of the size of the house, but the other houses could be added on to make their houses larger. Houses in that development are a range of sizes. Mr. Sgro visited the site and thought it was beautiful and enhances the area. Ms. Miller said the concern is that there was incorrect information about the size of the house, but the transcript is accurate. The neighbors were concerned this would be a McMansion on the block. Mr. Gertner said it was the representation made to grant the variance. The question becomes if it fits in the footprint, there is no jurisdiction to determine the size of houses if they fit to the building envelope, and nothing Zoning could do about it. Ms. Miller said there is a one-story addition on the back of the house; it is a two-story dwelling, and fits into the neighborhood. Mr. Costanzo asked what the issue is. Mr. Maher said the resolution said the house would be 2,100 square feet.

**This was not open to the public as it is an interpretation, per Mr. Gertner.**

Gertner said the motion is whether the information presented is material to the application. Mr. Megill said the application as presented with the transcript, resolution and minutes reflect a certain size home. The permit is issued based on that. The question is, can he continue? The permit was released per the plans submitted.

**Motion to allow the applicant to continue building per HARMER/Bowen.** An objector in the audience became angry. Mr. Maher said this is tough because of what the resolution says. YES: Harmer, Bowen (apologized for his lateness this evening), Costanzo, Sgro. NO: Santos, LaBianca. ABSTAIN: Maher. Motion is 4-2 yes. Mr. Megill commented since the home is built back farther, could the applicant provide buffering, and Mr. Sgro said as in large trees. The Johnsons had no problem with that. Another neighbor said it is regrettable the square footage is so extreme. The footprint is the outline and it was understood the house would be in the same spot.

Mr. Megill said there was another issue, and Mr. Gertner said they could go into executive session. Mr. Sgro said they are meeting in two weeks for an affordable housing presentation and two applications if they are technically complete.

**Motion to adjourn by MAHER/LaBianca at 9:34 p.m.** Yes, by affirmation.

Respectfully submitted,

Janice Kisty  
Zoning Board Recording Secretary