

**MINUTES OF THE REGULAR MEETING
OF THE TOWNSHIP OF JACKSON
ZONING BOARD OF ADJUSTMENT
SEPTEMBER 1, 2004**

The September 1, 2004 Jackson Township Board of Adjustment meeting was called to order at 7:46 p.m. with a salute to the flag by all present. Attorney Robert Rothstein read the Open Public Meetings Act Statement.

ROLL CALL: Adam Ziobro, V. C. Peter Clute
Robert Paneque, Sec'y Larry Hartman
Scott Weinstein Peter Maher, Alt. #1
Michael Kelly, Chair

ABSENT: Meredith Acacia
Donna Hopkins, Alt. #2

ALSO PRESENT: Richard Megill, Director of Planning and Zoning
Robert Rothstein, Board Attorney
Evan Hill, Board Engineer
Richard Ragan, Township Planner
Leah Furey, The Ragan Design Group
Steve McCrystal, McCrystal Reporting

MEMORIALIZATION OF RESOLUTIONS:

2004-77 – Douglas & Madonna Ziegler- Block 40 Lot 41.16- Motion to approve by Weinstein/Hartman. YES: Clute, Hartman, Weinstein, Maher and Kelly. **VARIANCE GRANTED**

2004-78 – Kenneth Wickham, Jr. – Block 38, Lot 18 – Motion to approve by Weinstein/Hartman. YES: Clute, Hartman, Weinstein, Maher and Kelly. **VARIANCE GRANTED**

2004-79 – Jeffrey Jerman – Block 155 Lot 27 – Motion to approve by Clute/Kelly. YES: Clute, Kelly. **VARIANCE GRANTED**

2004-80 – Nathan, Jeffrey and Michael Grosshandler – Block 83, Lot 42 – Motion to approve by Clute/Hartman. YES: Clute, Hartman, Weinstein, Maher and Kelly. **VARIANCE GRANTED**

2004-81 – Darryl Walling – Block 40, Lots 103, 110.01 and 111 – Motion to approve six month time extension for previously granted minor subdivision approval by Hartman/Weinstein. YES: Clute, Hartman, Weinstein, Maher and Kelly. **TIME EXTENSION GRANTED.**

2004-82 – Pinebelt CB – Block 111, Lot 34 – Motion to approve a third, one year time extension of its previously granted site plan approval by Weinstein/Hartman. YES: Clute, Hartman, Weinstein, Maher and Kelly. **TIME EXTENSION GRANTED.**

ANNOUNCEMENTS:

Mr. Rothstein announced that application 8, Sign-A-Rama, was withdrawn without prejudice, and items 9 through 11 were to be carried to the October 6, 2004 Zoning Board agenda.

Mr. Megill welcomed Janice Kisty as the new Board of Adjustment Recording Secretary. He also announced a meeting at the Ocean County Engineer's office regarding Jackson Commons on Friday, September 24, 2004. Mr. Kelly indicated he would attend that meeting. Mr. Megill also addressed the Board members regarding the New Jersey State League of Municipalities Convention in November, and said whomever wants to attend should let him know by the end of this meeting.

APPLICATIONS:

2. APPLICANT: JOHN & KIM GASKILL (VARIANCE #2368)
BLOCK: 119.01 LOT: 16 ZONE: R-9
LOCATION: 25 NORTH LAKESIDE DRIVE

Mr. Rothstein indicated the applicant did not publish a public notice for this application in August and was carried to this September meeting; however, the applicant wishes to come back with a new application. Mr. Rothstein recommending denying this current application without prejudice. Motion to **DENY WITHOUT PREJUDICE** Ziobro/Clute. Clute, Hartman, Weinstein, Maher and Kelly.

Mr. Ragan, Mr. Hill, Mr. Megill, and Ms. Furey were sworn in by Steven McCrystal.

MATTERS FOR DISCUSSION:

APPLICANT: JAMES WALL (VARIANCE #2068)
BLOCK: 40.68 LOT: 51.02 ZONE: RD
LOCATION: EAST VETERANS HIGHWAY

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James Wall sworn in with William Stevens, P.E., P.P. of Property Development Services. Mr. Stevens' credentials were accepted. Mr. Stevens stated this matter concerned a single family dwelling to be built on 9.9 acres of land. He said a variance application was heard and granted. The applicant received the necessary Pinelands and septic approvals. The applicant was given the necessary zoning permit signed by Mr. Megill, and proceeded to clear the property for construction. He stopped construction for two years, went back for a new zoning permit and was denied.

Mr. Megill stated the original map showed the dwelling on 12.6 acres, which was approved by the Pinelands and Zoning Board. When the applicant resubmitted the application, the map was different.

Mr. Stevens said lots 53.06 and 53.05 were owned by James and Jill Wall, while lot 51.02 is owned solely by James Wall. They divorced, and Jill Wall received lot 53.06 in the divorce settlement. The Pinelands letter of approval shows 9 acres.

Mr. Megill said he had a letter dated April 19, 2004 from the Pinelands referencing a 12.6 acre lot. Mr. Stevens said there was a letter of resolution compliance from Maser Consulting dated 6-14-02, and a letter of no further review from the Pinelands dated 2-21-03 referencing a 9.88 acre parcel.

Mr. Wall indicated he wants to build one home on one lot. While he and his former wife had rights to two lots, Mrs. Wall gave him a right of way for access to his lot [from East Veterans Highway].

Mr. Rothstein said Mr. Wall owns lot 51.02, and lots 53.05 and 53.06 had common ownership. Citing case law from the 1960s, he feels these two lots are merged by 'operation of law.' Mr. Stevens said the applicant is willing to speak with Jill Wall about consolidation. Mr. Rothstein said the deeds were not recorded, and Mr. Wall nodded 'yes'. Mr. Rothstein said it would be a good idea to consolidate the lots.

Mr. Maher said this looks like another subdivision. Mr. Rothstein said there are 3 separate lots, with 2 lots in common ownership which are considered already merged.

Mr. Hill said the resolution states lot 51.02 is 9 acres, but the map showed 12 acres. Mr. Rothstein said the resolution only calls for 51.02 and does not mention the other lots. Mr. Ragan said the Maser Consulting letter (previous zoning board engineers) refers to the other lots, causing some confusion. He said the lot area for lot 51.02 is conforming, but would need a bulk variance for narrowness of the lot.

Mr. Kelly asked if there were any questions.

PUBLIC SESSION OPENED

No one came forward

PUBLIC SESSION CLOSED

Mr. Rothstein said he would prepare a resolution to approve the previously granted variance for lot 51.02 of 9.2 acres. The zoning board made a determination that lots 53.06 and 53.05 have been combined by operation of law due to common ownership. He asked if Mr. Megill agreed. Mr. Megill said yes. Mr. Rothstein asked if a lot number should be assigned, and Mr. Megill said he would handle that with the Tax Assessor. Mr. Rothstein asked Mr. Stevens if it was difficult to get a revised letter from the Pinelands. Mr. Stevens said they will send a copy of the resolution to the Pinelands; that any applicant must do that. Mr. Rothstein said the resolution would be conditioned on receiving a revised Pinelands letter.

Mr. Maher asked Mr. Stevens how much uplands there are on lot 53.05. Mr. Stevens said with a 300' buffer, only ¼ acre is useable; in his opinion, this would not be a buildable lot.

MOTION TO APPROVE by Ziobro/Clute. YES: Ziobro, Paneque, Weinstein, Clute, Hartman, Maher and Kelly.

Mr. Rothstein indicated to Mr. Wall to get the deed recorded, and Mr. Wall agreed.

APPLICATIONS:

- 1. APPLICANT: DONALD & DEBORAH SURCHINSKI (VARIANCE #2376)**
BLOCK 82.01 LOT 38.28 ZONE: R-5
LOCATION: 1 SWALLOW TAIL COURT

Donald Surchinski sworn. He stated he wants to install an inground pool, shed and four foot fence in his back yard, which happens to be his front yard since 3 sides of his property front on streets. Mr. Kelly noted the fence would be for safety, and asked the board members if they had any questions. Evan Hill, Zoning Board engineer, stated the improvements are out of the sight triangle.

PUBLIC SESSION OPENED

No one came forward.

PUBLIC SESSION CLOSED

Motion to approve: Weinstein/Hartman. YES: Ziobro, Paneque, Weinstein, Clute, Hartman, Maher and Kelly.

- 3. APPLICANT: THOMAS GRAY (VARIANCE #2378)**
BLOCK: 9.03 LOT 48 ZONE: PV
LOCATION: 67 PARK AVENUE

Thomas Gray sworn. He stated he wished to construct an additon to his existing detached garage, which is a non-conforming structure due to its location to the property line. Mr. Kelly asked if the board had any questions, and asked Mr. Gray what he would be storing in the garage. Mr. Gray stated he would be storing his collectible vehicles there. Mr. Kelly asked if there would be electricity in the garage and Mr. Gray said yes. Mr. Kelly asked for the garage setbacks, and Mr. Gray answered the garage is 1'9" to the property line, but 70 feet from his neighbor. He gave a sketch to Mr. Kelly, which was then shown to Mr. Megill and Mr. Hill. Mr. Kelly noted the house next door is a good distance from the proposed garage. Mr. Clute asked if the fence was Mr. Gray's or the neighbor's, and Mr. Gray answered the fence is probably on the neighbor's property. Mr. Kelly asked how long Mr. Gray lived there, and he said 8 years. Mr. Hartman asked how old the existing garage is and Mr. Gray said it was there since 1950.

PUBLIC SESSION OPENED

No one came forward

PUBLIC SESSION CLOSED

Motion to approve: Clute/Ziobro. YES: Ziobro, Paneque, Weinstein, Clute, Hartman, Maher and Kelly.

4. **APPLICANT: MICHAELA PAVELKOVA (VARIANCE #2380)**
BLOCK: 154.14 LOT: 1 ZONE: R-3
LOCATION: 80 RICHTER ROAD

Michaela Pavelkova sworn. She stated she wishes to construct a 6' solid fence in her backyard. Her property fronts on two streets. She needs the fence because she owns a large dog. Evan Hill stated the fence is out of the sight triangle and asked how far off the property line the fence would be. The applicant said she didn't know, but she would be placing 2 sections off the house, so Mr. Hill calculated the distance would be about 40' from the street. Mr. Rothstein asked how far off Berwyn [Street] and Mr. Hill recommended 30' from the rear (Berwyn) and 40' off Broderick. Mr. Kelly indicated to Ms. Pavelkova the recommendations were being made for those distances due to people turning the corner and being able to see from their vehicles.

PUBLIC SESSION OPENED

No one came forward.

PUBLIC SESSION CLOSED

Motion to approve by Hartman/Weinstein. YES: Ziobro, Paneque, Weinstein, Clute, Hartman, Maher and Kelly.

Mr. Kelly told the applicant to check with Mr. Megill regarding the fence setback distances.

5. **APPLICANT: RICHARD & SHENG NAN LUTZ (VARIANCE #2382)**
BLOCK: 128.01 LOT: 10.01 ZONE: PV
LOCATION: 1 ARBORETUM DRIVE

Richard Lutz sworn. He stated he wants to construct a 6' vinyl privacy fence on the left hand side of his property, which is on the corner of Arboretum Drive and Bennetts Mills Road. He showed pictures to Mr. Kelly. He wants the fence for privacy, security and to keep out debris from Bennetts Mills Road. There is a conservation easement across the rear of his property. He is also proposing a 10' x 16' shed to be placed in the conservation easement. Evan Hill stated the fencing was not in the sight triangle. Mr. Kelly asked about allowing the fence in the conservation easement. Mr. Hill stated it was the Board's position not to grant variances for fences in the conservation easement. Mr. Lutz said all his neighbors have fences in their easements; he is the last one. Mr. Megill asked the board to consider there is nothing to conserve – the conservation easements are strictly grass lots here. The application should be heard on its own merits. A conservation easement is only addressed in the code under definitions, which states you cannot develop or construct in a conservation easement. Mr. Weinstein said he has a friend that lives in that development, and he has a fence and it looks nice.

Mr. Kelly asked about the shed. Mr. Lutz said he wants it 5' off the side property line. Mr. Kelly said 5' from the property line would be ok but not in the conservation easement. Evan Hill said that would be 40' off the rear property line, and the fence was not in the sight triangle.

Mr. Hill suggested the fence along Bennetts Mills Road be placed 12' off the property line, to which Mr. Lutz agreed. Mr. Kelly gave the pictures for exhibit purposes to Mr. Megill.

PUBLIC SESSION OPENED

No one came forward

PUBLIC SESSION CLOSED

Motion to approve by Weinstein/Hartman. YES: Ziobro, Paneque, Weinstein, Clute, Hartman, Maher and Kelly.

6. **APPLICANT: JOHN CROGNALE (VARIANCE #2384)**
BLOCK: 10 LOT: 44:03 ZONE: PV
LOCATION: TOMS RIVER ROAD

Mr. Crognale sworn. He wishes to construct a 6' solid fence in his front yard for safety reasons. Mr. Kelly asked how far off the street the fence would be. Mr. Crognale said it would vary from 35' to 50' from Toms River Road. Mr. Kelly asked if there were any questions from the board or the professionals.

PUBLIC SESSION OPENED

No one came forward

PUBLIC SESSION CLOSED

Motion to approve by Ziobro/Weinstein. YES: Ziobro, Paneque, Weinstein, Clute, Hartman, Maher and Kelly.

**7. APPLICANT: KIM MC KINNEY (VARIANCE #2372)
BLOCK: 141 LOT: 11 ZONE: R-3
LOCATION: 795 HARMONY ROAD**

Kim McKinney & Tony Mascaro sworn. Mr. Mascaro wishes to construct an aluminum radio tower on a 7.36 acre property on Harmony Road. Mr. Hill said Mr. Mascaro responded to his August 27, 2004 report immediately. In his report, Mr. Hill refers to the location of the tower. If the applicant changes the location to 26' from the property line, that would eliminate one variance. A variance is required for the 90' antenna on a 135' pole. Mr. Hill requested an engineer foundation design due to the light weight of the pole.

Mr. Mascaro said he had letters from neighbors who are impacted by this request. Mr. Rothstein said letters cannot be accepted in lieu of testimony from those people. Mr. Mascaro responded he thought the letters were acceptable. Mr. Rothstein said you can't cross examine a letter.

Mr. Mascaro selected an alloy tower due to its bending capabilities. A steel tower needs more concrete than an alloy tower for setting it. He feels he selected a better tower. Mr. Kelly asked why the antenna must be so high. Mr. Mascaro responded there are two antennas. If the first antenna is set at 70', the second would be at 55', and the trees would interfere with reception. He wants to enjoy his hobby and is asking for the greater height.

Mr. Ragan referred to his August 24, 2004 report with regard to the fall zone. He noted the wind regulations have been upgraded to 110 mph as a result of changes to the building code. He also recommends no phone companies be allowed to attach antennas to this pole. Mr. Ragan also cited a case in North Hanover where buzzards nest in the tower and cause a hazard. They solved the problem by getting falcons to chase away the buzzards. He mentioned this as a potential issue with the tower here. Mr. Mascaro stated the distance from the tower to the utility lines is 142', out of the fall zone. The one neighbor affected does not object to this tower. Mr. Kelly said he had a problem with the location. Mr. Hill restated he wants a foundation detail signed by a licensed engineer, he wants the fall zone to be addressed, and asked "What if the neighbor [who doesn't object] moves?"

Mr. Kelly said he didn't want to take a vote this evening as information is still needed, and the vote may not be favorable at this time. He told the applicant to get the information requested by Evan Hill.

PUBLIC SESSION OPENED

Susan Tandari, 600 Jackson Mills Road, sworn. She stated she has no knowledge concerning radio towers. This antenna is 20' higher than the township allows and she asked why. Her concern is interference with cell phones, baby monitor, and the like. Mr. Mascaro responded there would be no interference with cell phones or baby monitors, and Ms. Tandari's lot is 1000 feet away from the proposed tower. Evan Hill stated the 70' height stems from wireless communication companies and the number is arbitrary. Ms. Tandari said wireless communication use of this tower is a concern of hers, too. Mr. Ragan replied we would not permit the applicant to enter an agreement with a wireless communication company. Mr. Megill stated the ordinance says if there is a complaint [of interference], the township would notify the FCC and the owner would be ordered to cease operation of the tower.

Anne Marie Batiuk, 594 Jackson Mills Road, sworn. She was concerned with interference with planes flying low. She also heard cell tower companies pay tower owners up to \$20,000 to attach antennas to their towers. Her other concern was with letters delivered to people who have moved, and the new neighbors did not receive a letter. Mr. Rothstein answered the applicant relies on the certified list and is only required to send letters to everyone on that list. There are public notices placed in the newspaper besides the certified letters. Ms. Batiuk also stated she was concerned about seeing the tower once the leaves have fallen from the trees. Mr. Mascaro stated when he notified the homeowners using the certified list, he indicated on the envelope "or current homeowner" so the new homeowner could open the letter.

Mr. Weinstein questioned the engineering of the tower. Mr. Hill stated again he wants a foundation design as the tower has a lot of flex and wants to see the relationship to the fall zone. Mr. Mascaro said he is prepared to do so with D. W. Smith [engineers]. He is prepared to work with the neighbors if there is interference. He is aware of the FCC regulations and does not anticipate interference. The FAA regulations do not apply in this case as the tower is not in their jurisdiction.

Mr. Kelly suggested moving the antenna to the back yard closer to the woods. Mr. Mascaro was receptive to that idea; he can move the tower 126' back and he could go further but would have to remove trees. Relocating the tower would clear the houses [should the tower fall].

Mr. Kelly suggested the applicant move the location of the tower and get the information requested by Evan Hill. He questioned the frequency, and Mr. Mascaro said it is the same as UHF, the same as used by the Township police. He said he wanted to be able to keep in touch with Kim [McKinney]. Mr. Kelly told him to come back next month with the information. He asked if the tower could be used with the police department, and Mr. Mascaro said he considered it. Mr. Ragan asked if the applicant should move, that he take down the tower. Mr. Mascaro answered yes. Mr. Kelly reiterated there would be no commercial use, and possible use by the PBA.

MOTION TO CARRY APPLICATION TO OCTOBER 6, 2004 by Ziobro/Hartman. YES: Ziobro, Paneque, Weinstein, Clute, Hartman, Maher and Kelly.

MOTION TO PAY ATTORNEY'S BILLS by Weinstein/Hartman. YES: Unanimous by all present.

MOTION TO APPROVE MINUTES OF AUGUST 4, 2004 by Ziobro/Weinstein. YES: Unanimous by all present.

MOTION TO APPROVE THE VOUCHER FOR THE RECORDING SECRETARY by Ziobro/Paneque. YES: Unanimous by all present.

Mr. Megill announced transcripts are available in our office for the Jackson Commons meetings. Any board member who was absent for any previous Jackson Commons meetings can come into Planning and Zoning to pick up a copy of the required transcript, and after reading it, can be certified to vote on the application.

ADJOURNMENT: Motion to adjourn meeting at 9:20 pm by Ziobro/Paneque. YES by affirmation.

Respectfully submitted,

Janice Kisty
Zoning Board Recording Secretary