

**MINUTES OF REORGANIZATION/REGULAR MEETING OF THE
JACKSON TOWNSHIP BOARD OF ADJUSTMENT FEBRUARY 19, 2020**

The February 19, 2020 Jackson Township Board of Adjustment Meeting was called to order at 7:02 p.m. with a salute to the flag by all present. Attorney Sean Gertner read the Open Public Meetings Act Statement and announced that adequate notice has been provided for this meeting.

ROLL CALL:

Peter Maher	Kathryn McIlhinney, Board Secretary
Garry Miller	Stephen Costanzo, Board Vice Chairman
Jeanine Fritch - Alt #1	Carl Book, Board Chairman
Nino Borrelli – Alt #2	

Absent: *Scott Najarian, James Hurley*

Also Present: Sean Gertner, Board Attorney, Evan Hill, Board Engineer, Ernie Peters, Board Planner, Frank Miskovich, Traffic Engineer, Jeffrey Purpuro, Zoning Officer, Torro Representative, Court Reporter and Danielle Sinowitz, Zoning Board Recording Secretary.

APPROVAL OF MINUTES: **Approval of February 5, 2020 Meeting Minutes by COSTANZO/ Miller** Yes: Maher, Miller, Fritch, Borrelli, Costanzo, Book

APPROVAL OF VOUCHERS: **Motion to approve a voucher for Torro Reporting, LLC in the amount of \$250.00 for February 19, 2020 & a voucher for Danielle Sinowitz in the amount of \$150.00 for the meeting of February 19, 2020 by MCILHINNEY/ Costanzo.** Yes: Maher, McIlhinney, Miller, Fritch, Borrelli, Costanzo, Book

Ms. DeBella swore in the Board's Professionals, who identified themselves and their positions with the Township.

MATTERS FOR DISCUSSION: ADMINISTRATIVE APPROVAL: 8 Denmark Lane, Block 13601, Lot 23. Mr. Hill stated as the Board may recall the application by Barry Zolty for a single family dwelling, and as part of the approval and package, the applicant purposed to vacate a drainage easement that was not located correctly, and create a new drainage easement, and the applicant has been working through resolution compliance and was then asked to review a deed more recently, in which the easements were vacated and created in 1980, which was done exactly as asked, and the Board asked for architectural, and it was decided it would be best to formally act to remove that requirement as it was already done in 1980. Mr. Book asked if this has been memorialized, because then there will no sense in asking the applicant to complete something that was already done. Mr. Gertner asked Mr. Pfeffer if there was anything additional add, and asked Mr. Hill if he was satisfied with the 1980 easement. Mr. Hill said yes, and stated there is an easement completed in 1980. **Adam Pfeffer- attorney for the applicant-** stated this was before the Board for the original application, and the title work and survey work took all the work and placed it in one spot and after research the piping was in the wrong place, and there were going to be some changes, and all of the paperwork has been completed, and atritcheuals have been completed, and the square footage changed however there are no new variances. Mr. Pfeffer stated there is an 115SF difference, and the architectures will have to be reviewed by the building department, however the applicant wanted to come before the Board to get that taken care of. Mr. Maher asked if the house will be a single family house only. Mr. Pfeffer stated that was correct, and noted the applicant has been on the site for 12 years and has outgrown the house. Mr. Gertner mentioned there was one condition which was that a Certificate of Occupancy cannot be obtained without the current residence being removed. Mr. Book asked for a motion to remove the easement relocation, and in addition to architectural plan.

Motion to approve by MCILHINNEY/ Maher. Yes: Maher, McIlhinney, Miller, Fritch, Borrelli, Costanzo, Book.

Mr. Book announced that there are two members that are not here this evening however there are two alternates that will be participating and actively voting on tonight's agenda.

ANNOUNCEMENTS: Mr. Gertner addressed application **4. White Oak Center LLC, Block 11501, Lot 7.02, 130 Pushkin Road- Peter Van Dyke- attorney for the applicant.** Mr. Gertner stated that Mr. Van Dyke represents the White Oak application which is a remand, and as part of the remand the Board has to be educated and review and read the transcripts, and there are members who have not had the opportunity to read the transcript, and there are only 4 members eligible to vote and this application needs at least 5. Mr. Van Dyke mentioned that dates were provided when the application could come back, and although this is disappointing, there are only 4 members eligible. Mr. Gertner stated the Board did not want to put this out for applicant or the residents in attendance and there is March 4, 2020, or April 1, 2020 available. Mr. Van Dyke stated April 1st would be best. Mr. Gertner announced for members of the public item **4. White Oak Center LLC, Block 11501, Lot 7.02, 130 Pushkin Road** on this agenda has been carried to the April 1, 2020 meeting, there will be no further notice required, and that matter will be heard April 1, 2020. Mr. Gertner also asked that the Board members please read the transcripts provided.

APPLICATIONS: 1. Gary & Doreen Dulowski, Block 7302, Lot 4, 8 Bryant Drive- Mr. Book stated this application is before the Board where a variance is being sought for a rear deck at less than 35' to the rear property line. Mr. Dulowski said the deck has been there for 20 years, and when he went to sell the house and obtain a CO, he was made aware of the Township ordinance, at the time the deck was built he was out of the country, and assumed everything was okay. Mr. Book mentioned there was a survey provided to Gary and Doreen Dulowski, and there is a drawing of the deck that was drawn on the survey, however there are no dimensions, and asked what the dimensions are. Mr. Dulowski said the deck is 24.9'x12'. Mr. Book asked if the deck is 12' out from the back, and 24.9' across. Mr. Dulowski said that is correct, and said when the deck was built the contractor said there was a permit, and then when the property was going to be sold, he was made aware that there was no permit obtained. Mr. Book asked when the time came to obtain a certificate of occupancy, it could not be obtained because of the deck, and the buyer wasn't willing to take the home with the deck, and if there is no variance will that break the deal. Mr. Dulowski said that is correct. Mr. Costanzo asked if the deck is the only concern, there is no AC condenser. Mr. Dulowski said there has been a permit obtained for that. Mr. Costanzo asked what the elevation of the deck was. Mr. Dulowski said 3'. Mr. Book asked once there is a variance, the applicant will still need building permits. Mr. Purpuro stated that is correct. Mr. Gertner noted that it appears based on the location of the house and the drawing of the deck, it appears that the largest deck the applicant could have would be only plus or minus 5', and the hardship is that deck would only be able to go out 5', and this is the only useful design, and the fact that the deck would not be useable, a variance would need to be sought, and since it's been there for 25 years the applicant is asking the Board to look past the

Size of the deck that was built, and has been there for a long time. Mr. Dulowski mentioned that there is no one behind his house, and the neighbors use the deck for parties. Mr. Hill asked if there was a shed on the property. Mr. Dulowski said no.

Opened public comment; seeing no one come forward, public comment is closed

Mr. Maher made a motion to approve based on the hardship.

Motion to approve by MAHER/ McIlhinney. Yes: Maher, McIlhinney, Miller, Fritch, Borrelli, Costanzo, Book.

2. Renee Bogart/ Glenn Knowles, Block 18502, Lot 55, 485 Toms River Road- Mr. Gertner stated this Board has a tradition of for warning applicants seeking D or use variances without a professional to assist them, that there should be at least a planner to explain the planning aspect, and if there is a money issue there should at least be a planner to address planning issues, and because this is an individual and not an LLC there is a right to proceed without professional representation. **Renee Bogart- property owner- sworn, Glenn Knowles- partner- sworn-** Mr. Knowles mentioned upon getting the information to apply, there was advice provided regarding that subject, and there was encouragement or suggestions provided on that topic. Ms. Bogart asked if there is difficulty, can this be re-applied for. Mr. Gertner mentioned that this matter could be carried. Ms. Bogart asked if this could be carried for a month. Mr. Gertner announced regarding matter **2. Renee Bogart/ Glenn Knowles, Block 18502, Lot 55, 485 Toms River Road-** on the agenda, the applicants are asking this be carried to the April 1, 2020 meeting without further notice and are waiving time, and ask that should professionals be hired at least a planner, that the zoning office be advised at least 2 weeks prior whether someone will be here or not. Mr. Hill asked if the applicants are the individuals. Ms. Bogart said she is the home owner, and Mr. Knowles is a partner who lives with her. Mr. Hill noted as individuals, there is no requirement to have legal representation.

3. Royal Grove Realty LLC, Block 16005, Lot 36, Knight Drive- Michael Castore- attorney for the applicant- Michael Castore- attorney for the applicant- stated the applicant is seeking an interpretation on chapter 244-175-C relating to yard areas, and this interpretation is not for any property in particular, and the application was made however there was no notice as it is not required. Mr. Ian Borden is present. Mr. Castore stated there are three Exhibits for this evening, **Exhibit A-1** which is the provision itself to Chapter 244-10-175, and **Exhibit A-2** the definition of chapter 244-2-6 and this is being specifically moved for the lack of definition for a terrace or deck. Mr. Gertner asked if the Board professionals can consent to the statement that there is no definition for a terrace or deck. Mr. Purpuro stated there is no definition. Mr. Castore stated the final Exhibit is **Exhibit A-3** definitions from Merriam Webster for the word terrace and deck.

Ian Borden- President of Professional Design Services- professional planner, licensed in the State of New Jersey- credentials accepted- sworn- mentioned that this will get right to the heated part of the matter that was questioned but the interpretation is, of course, of the last sentence of part C under 244-175, which is the unroofed entry porches or terraces may extend into setbacks not to exceed 100 SF. Mr. Borden mentioned this is different than the interpretation that was previously submitted, because that was for a specific circumstance of a front step that protruded into the front setback, so the interpretation in that case was a very specific one for front steps and obviously the Board members that were here but not to paraphrase, but the interpretation was denied because simply that there were steps does not appear within the subchapter C, so the application or the interpretation application tonight is for rear decks. Mr. Peters noted that the Board is hearing another application. Mr. Gertner agreed with Mr. Borden's recollection, and noted the resolution is assumed, legitimate, as soon as an applicant is asking for an interpretation of the same provision of the ordinance, it is important to understand the previous interpretation which dealt with the front yard. Mr. Gertner mentioned that the Board does not want to the same case again, and it should be articulated what was proposed to get this here. Mr. Borden stated the interpretation is sought in the circumstance of a rear deck of a home and how it would be required to comply or not with the setback requirements under this provision. When someone looks at this final sentence it talks about an "unroofed entrance, porch or terrace", there is question as to what an entrance porch or terrace, which noted has no definition in the ordinance, or a definition of deck in the ordinance so reference would be made to other published standards which are the **Exhibits A-3, and A-4** which both describe the deck as being synonymous with terrace, so that is the core of the interpretation request that the term "terrace" in the ordinance would apply to a deck, and an unroofed deck which is what this application is speaking about, which do not rise above the height of the floor level, and the "decks" this application references would have an elevation below the floor level. Mr. Book asked regarding the height of the floor level, and of the ground floor, is that to say when someone is walking in at one level and there is option to go downstairs to a level, a lower level and then a level above so someone is actually walking in the steps or walking in from the deck that was mentioned in the backyard, because that's putting it in a foyer level, and there is question whether that would be considered ground level, there just needs to be understanding of what is exactly meant by "floor level of the ground floor." Mr. Borden stated the normal term is "finished floor", and finished floor is the first level, it would be in a normal non split house, and the entry elevation would be as someone walked into the house, and in the case of a split level house, the elevation would be of the lower two levels. Mr. Maher asked if this was talking about an incline. Mr. Borden stated that was correct. Mr. Maher mentioned that would be the first level, however how high off the ground would that be. Mr. Borden mentioned that in all cases found in Jackson, a finished floor which is normally situated about two feet off the ground. Mr. Maher asked if this is with a walkout basement. Mr. Borden stated that's irrelevant to this application, the fact is that the deck would be at the finished floor and would be below the finished floor. Mr. Maher asked if the deck would be on the ground, without elevation. Mr. Borden stated it will be raised a couple of feet if the finished floor in the standard example is two feet above the grade then the deck would be slightly over one-and-a-half feet off the grade. Mr. Maher mentioned that has never been seen before. Ms. Fritch asked if there was any renderings of what this is actually going to look like so Board can have a better understanding of what is being sought. Mr. Borden stated there are no designs, this is to reference the application of a standard deck, with the intention it would be attached standard house design. Mr. Castore stated this application is not associated with a specific property so there's no real product that's coming out of this, there may be one in the future depending upon what the interpretation ends up being but to Mr. Borden's point regardless of the interpretation, this wouldn't comply if the porch or terrace did rise above the height of the finished floor. Mr. Borden indicated that is correct. Mr. Hill stated as of now the understanding is that there is no rear deck, as long as it's not higher than the first floor elevation, it would ever require a variance and it could be built right up to the property line. Mr. Borden mentioned that is incorrect, and if this is continued on with the final portion of the paragraph, that the deck when it is not above the floor level, not above the height of the first floor level, is permitted to encroach into the set back is by no more than 100 SF. Mr. Hill asked if that's the encroachment portion. Mr. Borden mentioned it would be into the setback. Mr. Borden stated the application is simply to comply with the sentence and ask for the interpretation that the terrace wouldn't include an uncovered rear deck. Mr. Book mentioned then the question becomes, what is a terrace. Mr. Castore stated that is correct. Mr. Book asked then what is terrace, and when that is answered, there is another question as to why only Merriam Webster's definition was use, and are there other definitions of "terrace", or is there specific reason only this one definition was chosen. Mr. Borden stated

there are others. Mr. Book asked if there is a standard definition of a terrace from the point of view of zoning or architectural. Mr. Castore stated in the municipality designs there are definitions on their own and in the absence of definitions the dictionary was chosen, of course there could be supplement or additional definitions provided if the Board so desires. Mr. Borden mentioned that other definitions refer to terraces as being decks as well. Mr. Book asked Mr. Borden to speak to what the definition of a terrace is or at least what the proposed definition is to be for consideration, because with looking at the definition provided it has multiple parts, some of which are highlighted. Mr. Borden stated a terrace can be a land form which is what this application is talking about under the Merriam Webster definition under 1-A, it is a relatively paved or unpaved planted area, and other sections mentioned the porch is collimated, and in this case, section C would be applicable, an open platform. Mr. Book mentioned there was still an issue trying to visualize what the exact look of this structure is, and the interpretation it just a little lost, and with looking at what's been highlighted, unroofed entrance, porches, so that's one, and it says or terraces, so it gives the Board two consents, and there is question whether or not the unroofed terraces or porches, are they the same or are they different. Mr. Borden mentioned they are different, they are similar, but different, a porch is a front yard feature and a terrace is a rear yard feature, that's the interpretation. Mr. Book mentioned if the Board is to forget that one is in the front yard and one is in the rear, do the otherwise look the same. Mr. Borden stated that is correct, they would look the same. Mr. Book asked if one is unroofed, and then the question is with looking at the definition of terraces, its highlighted sections under 1-B in the provided definition, a colluminated porch or promenade, and what's being visualized is Corinthian columns, or some type of a column structure on this unroofed deck, it that was is being talked about. Mr. Borden advised that is incorrect, and the term colluminated is not what is being referenced because colluminated infers that there's a roof, which obviously the term "unroofed" is a critical part of this paragraph. Mr. Peters mentioned the term "porch" keeps getting mentioned, and there's a definition of "porch" in the ordinance, and there should be some testimony heard on the ordinance, there seems to be three phrases being used somewhat interchangeably and while it is appreciated, a cerebral conversation about this, it's still not understood what is being sought, and the purpose of the conversation is unsure, but the word "porch" keeps getting used, and it's not in what the applicant was submitted for. Mr. Book asked for the planner's definition. Mr. Peters stated a porch is a roof and/or enclosed area with a percentage of window area to wall area greater than 50 percent; not heated or air conditioned or designed, constructed, used, or intended to be used year round, and which is attached to or is part of and has direct access to or from a building. Mr. Borden stated that is correct, and that porch would not be permitted within the setback encroachment because it's roofed. Mr. Castore added there's limitations. Mr. Peters stated there is the description of 244:175C that says "unroofed entrance porches", so for a debatable conversation, the definition of porches doesn't say front or back, 244:175 yard areas, Subsection C says "unroofed entrance porches", which again, you can enter from the front or the back. Mr. Borden stated definition of "porch" is part of the issue here because the definition of porch, as Mr. Peters read, is a roofed and/or enclosed area so that is not applicable to the section. Mr. Gertner asked what happened, that determined that an interpretation was need, was something applied for that was denied. Mr. Borden said no. Mr. Castore stated this application is literally trying to figure out what this provision is permitted for, and if a deck is subsumed within those definitions. Mr. Borden stated for years there have been a tremendous number of developments in the R-1 zone, and that's the predominant zone in town which are arced lots and there's simply, no limitations to the setbacks, and a house with a deck and a porch can be built within those setbacks without really any conflicts, however this application, obviously was made under Royal Grove, and Royal Grove as I'm sure the members know development was nearly completed in the Regional Growth Zone of Pinelands, and in the RG-2 zone, it allows smaller lots, so these lots are 12,000 SF, and of the 120 lots in Royal Grove, approximately 80 are now constructed, and the client has mentioned the homes that are on the market are looking for a larger rear deck, and it would help in their sales and marketing if they could provide these larger decks for their customers. Mr. Peters raised concern, because if the Board redefined what's in the code through an interpretation, something should be brought into the zoning officer, let him review, approve, deny, then the applicant can appeal the zoning officer's decision, there is uncertainty if the Board can take Merriam Webster's definition in determining whether something is approvable or not and have them come back to us and say well, this was done in the RG-2 zone property so let's do it over there, it's bad enough that this isn't being sought for one lot, but the applicant is asking for it on entire project, which is pretty much built. Mr. Book asked Mr. Gertner if this Board is providing an interpretation of an ordinance section, and is that binding across the board going forward on all applications. Mr. Gertner stated the Board is to interpret the ordinance. Mr. Peters noted this is talking about an entire subdivision in a particular zone, and there are concerns that someone is going to say well we set that standard here, and this is not the place. Mr. Borden stated the applicant would love for the ordinance to give all the direction necessary, but the simple fact is the ordinance doesn't, and if the ordinance didn't have defined terrace or defined deck, then it would be clear, but it doesn't, it simply says that an unroofed terrace is forbidden and it's not a stretch to say that an unroofed deck is analogous to a terrace, and this application is not to draw new boundaries in town, it's a simple interpretation of a single word that doesn't give direction otherwise in the ordinance and the published literature gives us that direction. Mr. Castore mentioned it's also not a fair characterization of this application. Mr. Peters stated under this interpretation, there are concerns because it's in the Pinelands area, and whether or not the Board decides something if Pinelands needs to look at it, all ordinances that are in town that have been adopted Pinelands, have to go to Pinelands so now the Board is going to interpret an ordinance in Pinelands, and the argument would then be does someone pay the fee, or make an application and get a hearing. Mr. Borden agreed that any interpretation, it might be favorable, and would not take effect until an affirmative answer was received from the Pinelands, it may not be necessary, but it can be provided. Mr. Gertner stated that's a reasonable tradition under the circumstances, but for the attorney for Mr. Borden, are there decks being constructed, decks as you defined it, being constructed there now. Mr. Borden said that was correct. Mr. Gertner asked if the client has determined that the market wants larger decks. Mr. Borden stated that is the case for some homes, because in some cases a shape of a limits the size of the deck to less than what might be on adjoining houses. Mr. Gertner asked what the largest deck size is that's been constructed. Mr. Borden advised he was UN sure. Mr. Castore noted that it's not necessarily germane to our general application. Mr. Costanzo mentioned that the planner raised a question, how can someone differentiate between this interpretations, this application is asking the Board to interpret for a general project, approximately 80 homes. Mr. Borden stated this is not specified for anything, there's no block and lot notice, there's no street address notice, and the Knight Drive is simply a typographical error. Mr. Peters stated a block and lot was provided with looking at the application package. Mr. Costanzo asked again if the Board is interpreting a development, or a single lot. Mr. Gertner mentioned it is believed that the application is asking Board to find that for purposes, at least of 244-175(c), a terrace is a deck. Mr. Borden stated that is correct. Mr. Gertner mentioned that at least, even if this applied as to only one lot, that interpretation would apply universally. Mr. Purpuro advised that is correct. Mr. Castore stated this is a quasi-judicial Board, so the determinations of the Board are binding, so it's unknown if the distinction matters as much, and from a legal standpoint that there is no definition of terrace, so in the absence of a definition, someone would look to the dictionary which is what is attempting to do here. Mr. Book asked Mr. Peters if there is a source that would give the Board better definitions or maybe even help understand some of the history that gave rise to this particular section and what may have been intended by terrace, terraces. Mr. Peters mentioned there are several other sources. Mr. Gertner agreed with the attorney for the applicant, that there's a provision to interpret and if language is looked at, for reasons unknown, this wasn't authored by this Board, and unroofed entrance porches or terraces, etc., provided that the total area of all such porches, then they subsume the idea of a terrace as part of a porch, so with that a suggestion is going to be made. Two things: One, obviously the

overriding suggestion is to come back in two weeks, there would be no re-notice necessary, but everyone can do a little work and review the planning sources for the definition, and second perhaps, and illustrative for viewing purposes only. Mr. Borden mentioned that is reasonable. Mr. Castore stated the Applicant consents to carry for two weeks from now, which is to what date. Mr. Purpuro stated that date would be March 4, 2020. Mr. Gertner stated this matter will be carried to the March 4, 2020 meeting without further notice required, and illustrations will be provided showing the differences between the terms discussed for viewing purposes only.

Motion to adjourn at 8:30 p.m. by MCILHINNEY/ Fritch. Yes: Among those present.

Respectfully submitted,

Danielle Sinowitz,
Zoning Board Recording Secretary