

Present: Peterson, Betesh, Canonico (8:45), Stambaugh, Waterbury, Fisher, Clark
Forrester (Attorney)
Absent: Walsh, Garley

Chairman, Ms. Peterson, called the meeting to order at, 7:30 p.m.
All saluted the flag, and the presiding officer's statement was read.

Minutes:

A motion was made by, Ms. Clark, seconded by Ms. Waterbury, to adopt the minutes of the August 5 2009 meeting as submitted. All approved.

Planning Board Representative:

Ms. Waterbury reported that the K Hovnanian application started at the Planning Board, carried to the 9/16/09 Planning Board meeting.

Correspondence:

Letter received from Mr. Edward McKenna, Esq. requested that the **Paul David Partywares** application be carried to the **10/7/09** without further notice. Board discussion and it was decided that the application will be carried without further notice 1 more time, if the applicant does not appear in October new notice would have to be sent out.

Unfinished Business:

Farrell Property Management:

Bl: 29, Lot: 9

Adoption of Resolution

Use variance

A motion was made by Ms. Waterbury, seconded by Mr. Betesh to adopt & memorialize the resolution of approval for a use variance to Farrell Property Management as submitted.

Roll Call:

Affirmative: Betesh, Waterbury, Fisher, Clark

Negative: None

New Business:

Ms. Clark stepped down, lives within 200'

Mrs. Peterson disclosed that her husband sold Mr. Conway his home.

Mr. & Mrs. Lawrence Conway:
191 Beechwood Dr
Bl: 52, Lot: 7

Bulk variance (impervious)
(driveway expansion)

Mr. Forrester announced that he reviewed service and finds it to be adequate and the board has jurisdiction to hear the application.

Mr. Lawrence Conway, 191 Beechwood Dr was sworn.

Mr. Conway testified that he is seeking permission to expand his driveway by 10' which is resulting in an impervious variance, where 20% is allowed and he is proposing 22.2%, and he is in receipt of the letter prepared by the Borough Engineer dated 8/31/09.

Mr. Conway explained that he currently has a single driveway and the expansion will allow him to park 2 cars side by side during the winter months. He is proposing asphalt surface with Belgium pavers to the apron of the driveway.

Mr. Forrester marked the following:

A-1: Survey with proposed driveway expansion

A-2: 2 photos of existing conditions

Mr. Conway explained that he does meet the side yard set backs for the expansion, and he will not exceed the 5' set back that is required, the only variance he is seeking is an impervious coverage.

Mr. Conway testified that he is seeking permission for what is going on in the neighborhood with the expansions. He will be moving the moving the driveway to the left to avoid a large tree on his property.

Mr. Conway explained that he did receive an impervious coverage variance when he built his home but was not required to do any mitigation on his property for his .2 overage. He has since planted many trees, shrubs and grass on his property to help with the storm water. Mr. Conway stated that he will work with the engineer for his mitigation on his driveway expansion. Mr. Conway did consider using pavers but it is not conducive to children playing in the driveway.

Mrs. Peterson asked if the porous black top that the Grove West used could be considered. Mr. Conway said that he would investigate the option if the board wants and he will check with board engineer. Ms. Waterbury advised that the porous pavement has to be maintained properly since it does clog and the oils still wash off the same as asphalt, the maintenance factor is associated with the porous pavement.

Mr. Conway explained that his walkway was narrowed approximately half of what was put in by the builder about 2 months ago since it was too big, and the patio has been moved to the side of the house and it is now pavers.

Mr. Conway agrees that he will work with the engineer with respect to the impervious coverage issue.

All board members agreed that the proposed expansion would not be detrimental to the neighborhood and gives additional area for walking. It is minimal and with proper water management the project is approvable, conditioned upon the board engineer's approval of water mitigation.

A motion was made by Ms. Waterbury, seconded by Mr. Betesh to open the meeting to the public for questions or comments on the application of Mr. & Mrs. Conway. All approved.

There were no comments/questions.

A motion was made by Mr. Betesh, seconded by Ms. Waterbury to close the meeting to the public. All approved.

Approval:

A motion was made by Mr. Fisher, seconded by Ms. Stambaugh to approve the application of Mr. & Mrs. Conway for a 2.2% impervious variance conditioned upon approval of the board engineer.

Roll Call:

Affirmative: Peterson, Betesh, Stambaugh, Waterbury, Fisher

Negative: None

Resolution:

A motion was made by Mr. Betesh, seconded by Mr. Fisher to adopt & memorialize the resolution of approval for Mr. & Mrs. Conway as submitted.

Roll Call:

Affirmative: Peterson, Betesh, Stambaugh, Waterbury, Fisher

Negative: None

Mrs. Clark returned.

Ms. Canonico arrived @ 8:03 pm

Mt. Builders, LLC:

25 Maple Rd

Bl: 33, Lot: 3

Construction of new single family
with variances

Mr. Paul Zager, Esq. represented the applicant.

Mr. Zager explained that they were before the board on 7/01/09 was carried to the 9/2/09 meeting without further notice due to scheduling issues at the 7/1/09 meeting.

Mr. Zager stated that he knows that there is an objector here tonight.

Mr. Forrester stated that Mr. Messer represents Mr. Zweben who is an objector with the service and that the revised plans were not on file 10 days prior to the meeting. Mr. Forrester requested copies of the resolution which were granted sub division approvals with dealt with the properties in this area, which is located on the Shadowbrook Road properties, Meadow Drive & Maple Rd. Mr. Forrester explained the “private road issue” which was a result in the “Fahnstock Estate” and the creation of roads which are not accepted as public streets, but they do appear on the Tax Map but are not public streets.

Mr. Forrester stated that it was determined that the board did have jurisdiction and the notice was adequate, but there was a deficiency of surrounding property owners because Maple Road & Meadow Dr is a convoluted shaped piece of property owned by Mr. Zweben and is contiguous to what is known as the Shadowbrook Restaurant, and was not on the list of property owners supplied by the Tax Assessor to Mr. Zager. Mr. Zweben did send a letter objecting to the application not being properly noticed, but the applicant is entitled to rely on the Assessor’s list, and if it is wrong it is not the applicant’s fault.

Mr. Forrester said that the board could determine that the board has jurisdiction, but it is a factual issue if there is Litigation the Court will determine whether or not there was jurisdiction or not. He feels as the law as it exists now and the fact that Mr. Zweben was not noticed as part of the application; doesn’t mean that under the M.L.U.L. the board doesn’t have the ability to hear the application.

Mr. Forrester explained that the other aspect of the notice from Mr. Messer’s letter was that the notice that was sent to all property owners did not identify a variance requirement for the lot not fronting a public street, which is an Ordinance requirement.

Mr. Zager stated that when he found out before the 7/2/09 meeting who the owner of the road was he did call Mr. Zweben, and brought over a copy of the application.

A-1: copy of letter, dated 6/29/09 to Mr. Zweben, marked into evidence.

A-2: copy of letter from Mr. Zweben to board dated 6/3/09

O-1: copy of letter from Mr. Messer to Board members dated 8/26/09

After an extensive discussion of the board, it was determined that the board is in agreement that contents of the notice were adequate for the relief that the applicant was seeking, and that the public hearing could proceed.

***A motion was made by Ms. Canonico, seconded by Ms. Peterson to break at 9:35 pm
All approved, all were present at roll call at 9:45 pm.***

Mr. Paul Zager, Esq. represented the applicant.

Mr. John J Petillo, managing partners & owner of 25 Maple Rd was sworn. He has been the owner of the property since 2005 and at that time was advised by his attorney that the

home was not on a public street and he was protected with an easement which was recorded with the County Clerk in 1944, marked as A-3 into evidence. The access gives Mr. Petillo out to Shadowbrook Road and permission to improve the property and runs with the land.

Mr. Petillo testified that he purchased the property in order to build a new single family home, which he done all over the County including the development behind The Grove.

Mr. Petillo advised that he did apply for a demolition permit and was denied a permit and he then decided to wait to build the house until the economic times got better. He is now seeking permission to build a new home.

Mr. Zager asked Mr. Petillo if the lot size (length and width) is the same as when he purchased the property? Mr. Petillo said yes, and he has made inquiries to the neighbors if they would be interested in selling any of their properties to him, which would include Mrs. Jailer & Ms. Parks, which were marked as A-4 a,b into the record. Mr. Petillo said that he has not received any response as of this date.

Mr. Fisher asked Mr. Petillo if he was buying the property in order to make the house bigger or to alleviate some of the variances which are being requested? Mr. Petillo said to alleviate some of the variances.

A motion was made by Ms. Canonico, seconded by Mr. Betesh to open the meeting to the public for questions for Mr. Petillo. All approved

Mr. David Messer, Esq., represents Mr. Robert Zweben.

Mr. Messer asked Mr. Petillo questions with reference to the 1944 Easement specifically gave you the right to improve the property? Mr. Petillo said yes. Mr. Messer asked where in the document did it give him the "right" to improve the property. Mr. Betesh said that he doesn't feel that would be relevant and the document would speak for itself. Mr. Messer said that it is his position that the document does not give him that "right".

Mr. Petillo read the document "...it is agreed that so long as the parties of the first part, the grantors shall make alterations, additions to the buildings now located on the above described premises the grantees will submit plans and specifications to the grantor for approval before any additions or alterations are started. The written approval of the grantors must first be obtained for the same". 2nd page "...it is agreed so long as the grantor shall own any part of the whole tract of which the here and above described premises is a part that the grantees shall desire or erect a new building or any part of here and above described premises they will be likewise obtain from the grantors written approval after first presenting the plans and specifications for the directions of said building".

Mr. Messer asked Mr. Petillo if he did seek the approval of Mr. Zweben to erect a new building? Mr. Zager said the answer is no.

Mr. Messer said to his knowledge Shadowbrook Road is a public road. He asked if he knows if in 1944 if Shadowbrook Road was a public or private road? Mr. Petillo said that he did not know.

Mr. Jim Halpern 37 Meadow Drive, asked Mr. Petillo if he looked into the character and scale of the neighborhood is? Mr. Petillo said that he did look at the homes, but there was only a few at the time.

Mrs. Bernice Jailer, 18 Meadow Drive, said that she will hold her question until later.

A motion was made by Ms. Canonico, seconded by Mr. Betesh to close the meeting to the public. All approved.

Mr. Anthony Ercolino, Architect, Ocean Township was sworn and was accepted as an expert witness.

Mr. Ercolino testified that he prepared the original 1 page plan dated 4/1/08, marked as A-5 into evidence and is familiar with the site, and described the site as 8' x 178' with an existing structure on site, with a 38' front yard set back.

Mr. Ercolino described the existing non conformities which exist and what is proposed as shown on the Zoning Chart on the plan.

- Undersized lot: 22,500 sq. ft. required, 14,240 sq. ft. exist
- Width of the lot: 80' where 150' is required
- Existing structure has a 38.2 f/y set back where 50' is required, 50.2 proposed
- Side yard set back - northern property line: 25' required, existing 9', proposed 16'.10 & 25'.2 to southern property line (**2 variances required**)
- Rear yard set back: 50' required, 50.2 exist
- Height: 2 ½ (35') allowed, existing height 1 story, proposing 2 story 33'.7
- Building coverage: 10% allowed (1424 sq. ft), existing 13.8% proposing 15.4% **variance required**
- Impervious coverage: 20% allowed, existing 16.6%, proposing 19.98%
- Garage facing the street - **variance required** (not enough roof for a side loading garage)

Mr. Ercolino described the 1st & 2nd floor which equals 3,647 sq. ft, with a building coverage of 2,194 sq. ft. & a 2 car garage.

Mr. Ercolino explained that they have made some to the north, south and east elevations changes as requested by some of the neighbors, which he has to present to the board tonight, showing those changes dated 4/1/09 revised 9/2/09, marked as A-6 into evidence 2 pages (floor plan & elevations) adding 4 box windows on the south side which are the only changes to the plan.

A motion was made by Mr. Betesh, seconded by Ms. Canonico to open the meeting to the public. All approved.

Mr. Jim Halpern, 37 Meadow Drive, asked if the house would have a basement? Mr. Ercolino said yes, if the soil borings show that a basement can be included. Mr. Halpern asked if the house will be built on a berm giving the house an additional 3-4' lift? Mr. Ercolino said that is not his intent. Mr. Halpern asked if they did any testing to see how much of the neighbor's sunlight would be blocked? Mr. Ercolino said no, but he could do the test, he doesn't feel that the neighbor will be impacted since the height of the structure at the closest point to the property line is only 20' high. Mr. Halpern asked if the contractor wanted you to maximize the square footage on this property? Mr. Ercolino said that they did tell him what they wanted and the plan is a result of their instructions. Mr. Halpern asked if he is aware of the square footages of the existing homes on Meadow Drive? Mr. Ercolino said no, but this house would not be any larger than some of the newer homes, and it is certainly smaller than the house to the north

Ms. Waterbury asked Mr. Ercolino if he knows if this house is on a similar lot size than the newer homes? Mr. Ercolino said that he does not know the lot sizes. Ms. Waterbury asked if variances were issued on those homes? Mr. Ercolino said that he doesn't know.

Mrs. Bernice Jailer, Meadow Drive, stated that this lot is 1/2 of minimum required of the zone where 22,500 sq. ft. is required, and the frontage requires 150' and this lot is 80' which is also 1/2 of the requirement. The house will be 17' from her property line, which she feels is too close. Mr. Ercolino stated that the existing house is 9' so they are proposing to move it to 17'.

Ms. Clark stated that the existing house is very small and 1 story and set back. This house will be brought up to the front of the property line with a 2 story home, and very close to the property line which will be over powering. Mr. Ercolino stated that the house could be move over.

Mr. Betesh asked why wasn't the house given a larger set back to the property to the north? Mr. Ercolino said that there is a large tree to the left of the new driveway, and they felt that moving the house toward the other direction could be done.

A motion was made by Ms. Canonico, seconded by Mr. Betesh to close the meeting to the public. All approved.

Ms. Waterbury asked if the shed dormer will be closest to Mrs. Jailer's property? Mr. Ercolino said yes.

Mr. Betesh referred to the side yard set back of 25' required. Mr. Ercolino stated that they can move the house to the middle of the lot, if they move the house an additional 4' the house would be more centered on the lot, and lessen the side yard on the southern property line since it is a rear yard property line and it would be less intrusive to both of the neighbors, especially the northern property owner.

Ms. Waterbury asked if there is a grading plan for the property available for this lot. Mr. Ercolino said no. Mr. Zager asked if the house could be flipped around? Mr. Ercolino said that he would not recommend that, he would recommend that the house be moved closer to the south, maximizing the northern property side yard.

Ms. Clark asked if any landscaping could be added to the property lines for both of the neighbors, given the size of the property? Ms. Waterbury asked if the building coverage variance was necessary? Mr. Ercolino said that it is a result of what his client was looking for, it is not due to an architectural but rather a “need driven”.

Mrs. Peterson asked when they plan to receive the result of the percolation tests? Mr. Ercolino said that he doesn't know. Mr. Zager said that they would be done prior to receiving a building permit, pending any appeals. Mr. Forrester said that they must be done within a certain period of time, as per Ordinance.

Ms. Waterbury asked if there will be a witness to discuss the sizes of the existing home vs. the proposal of this house? Mr. Zager said that Mr. Higgins will answer questions with regard to these questions, and they will be addressed at the time of the review for the revised plans, **11 days prior to the next meeting, along with landscaping & grading plans.**

Mr. Forrester announced that this application will be carried to the **October 7, 2009** without further notice at 7:30 pm., without further notice.

A motion was made by Mr. Betesh, seconded by Ms. Canonico to adjourn the meeting at 10:45 pm. All approved.