

MINUTES OF THE SADDLE RIVER ZONING BOARD OF ADJUSTMENT
HELD: WEDNESDAY NOVEMBER 17, 2010 at 7:30P.M., MUNICIPAL BUILDING

PRESENT: Chairman Petrocine, Vice Chairman Montana, Board Members Cohen, Dowden, Kakaty, Raia, Gatto, Alt. #1 Nazzaro. Alt. #2, Attorney David Rutherford

ABSENT: Board Member Perrin

SUNSHINE LAW: Chairman Petrocine stated: "I have been informed by the Clerk that adequate notice has been provided by mailing a notice to The Ridgewood News and The Record on December 26, 2009 and posting a notice in the Office of the Borough Clerk."

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

A motion was made to approve the minutes of the Regular Meeting of the Zoning Board of Adjustment of October 20, 2010 by Board Member Montana. Second by Board Member Nazzaro. Roll Call Vote: AYES: Unanimous

At this time, Chairman Petrocine stated that he was going to change the order of the agenda for this meeting.

PUBLIC HEARING TO CONSIDER

TERMS OF SETTLEMENT:

ZBA-18-10

**Blk. 1301 Lot 11
65 Stony Ridge Road
Peter & Susan Barbieri
APPROVED**

Attorney Bruce Whitaker represented the applicant and explained what has transpired with this application to date. This is not a variance application but a settlement agreement. He explained this in detail to the Board.

Attorney Rutherford stated that the zoning code was amended after the original application was denied and the reasons for that denial were negated as there is now compliance.

At this time, Attorney Whitaker asked Douglas Doolittle, McNally Engineer to explain a site plan that was prepared on July 13, 2010 and revised on September 21, 2010. He explained this in detail, outlining the setbacks. The building coverage will be 6.97% with the removal of the overhangs on the structure.

Borough Engineer Spence and Borough Landscape Architect Levy both concurred that all other matters with this application were in order.

A motion to **approve** the Barbieri application and adopt the resolution was offered by Board Member Gatto. Seconded by Board Member Cohen. Roll Call Vote: AYES, Unanimous

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At this time Board Chairman Petrocine stated that the Memorializing Resolutions would be done after all applications were heard.

APPLICATIONS:

**Blk 1201 Lot 26
Nicholas Botta
28 Warewoods Road
Constructed driveway
encroaches into the 25' non disturbance
zone seeking variance to allow
DENIED**

Attorney Bruce Whitaker, Whitaker McDonnell, LLC represented the applicant and gave an overview of the application to the Board. He stated that the property is challenging, with a 30 foot differential between the elevation on the front and the rear.

The driveway has already been constructed and encroaches into the 25 foot non-disturbance zone. He further stated that this C-1 variance is being sought due to the extreme topographic conditions that exist on the property. He further stated that there is a safety aspect to the driveway's location as well.

At this time, a Planning Board resolution memorialized on July 14, 2008 granting the applicant permission to relocate soil was marked Exhibit A-1. An enlarged version of the plan was marked Exhibit A-2.

At this time, John Bezuyen, Professional Land Surveyor, Brooker Engineering, Mahwah, NJ and Bradley Neumann, landscape architect were sworn in and qualified as an expert witnesses.

At this time, Martin Spence, Borough Engineer and Scott Levy, Borough Landscape Architect were sworn in and were qualified as expert witnesses.

Attorney Whitaker asked Mr. Bezuyen to refer to Exhibit A-2 and explain the location of the driveway and outline the encroachment, comparing it to the prior structure on the property. Mr. Bezuyen gave an overview of this in detail to the Board. He referred to another drawing which was enlarged version of the driveway with an automobile superimposed on it. It was marked Exhibit A-3. He used this plan to help illustrate the safety concerns which facilitate the need for the proposed driveway location. He further stated that the drainage will meet all Borough standards.

At this time, Attorney Whitaker asked Mr. Neumann to discuss the two plans he designed, one dated June 20, 2008. This plan was marked Exhibit A-4. Mr. Neumann explained the plan in detail to the Board. Additionally, he discussed photographs taken with the original driveway as well as the current conditions on the property. The first photo, which was taken showing the previous driveway, was marked Exhibit A-5 and explained in detail. The following two photographs were marked Exhibit A-6 and Exhibit A-7 respectively, and indicated the difference between the original conditions

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and what is currently on the property.

At this time, Borough Engineer Spence, stated that he prepared a report regarding this application dated November 15, 2010. He explained the report in detail to the Board. He reiterated that the proposed driveway encroaches into the required setback and applicant's contractor has been aware of this for some time. All of the additional construction and landscaping is completed.

Borough Landscape Architect Scott Levy asked about the timing of some of the landscape installation, specifically a wall on the plan. This was explained by Mr. Neumann and he stated that there were no footings required for the wall and it was moved slightly, having no impact on the location of the driveway. He further stated that the curbing was one of the final items to be installed. In addition, the landscaping on the property was discussed, stating that most of it is stabilized at this point.

Borough Engineer Spence further explained the wall location in conjunction with the driveway, outlining the radius on the property.

Chairman Petrocine asked Attorney Whitaker why the Board was not notified when the driveway was installed in the non-disturb zone. Attorney Whitaker stated that the landscaper did not get the appropriate information, the as-built was missing and the curbing was installed in an incorrect location.

Mr. Neumann stated that the builder did bring it to the Borough's attention and then the only recourse was to apply for a variance. Mr. Spence reiterated that the installation of the curbing and the landscaping was done without any permits or variances.

Attorney Whitaker stated that there clearly was a mistake made but that the issue before the Board is not the issue of the mistake but rather the issue is making the decision that what is there now is a better alternative than what was originally approved.

Chairman Petrocine questioned how the Board could be asked to approve something that the applicant feels is improved when they approved a prior plan and it was acceptable to the Board previously. He asked Attorney Rutherford to give an overview of this at this time.

Attorney Rutherford stated that the Board needs to analyze facts regarding the property and determine if what has been done represents a better zoning alternative. He further stated that the applicant should not be punished for what has already transpired on the property; the focus should strictly be on zoning matters.

OPEN TO THE PUBLIC: No one wished to be heard.

Mr. Spence stated that he feels that while there is a benefit to having less of a slope in the driveway, there is a detriment to having a tighter turning radius, therefore neutralizing both plans.

Board Member Raia stated that he has an issue with changing the plan. Board Member

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Cohen stated that she feels that when a change is made to a plan, the Zoning Board should be notified. Board Member Montana stated that he does not feel this meets the criteria for a C-2 variance and feels that the original plan that was previously approved is sufficient. Board Member Nazzaro stated that she feels the smaller radius could be a detriment but also feels there is no traffic issue and does not feel that the new plan currently seeking approval is necessary.

At this time, Nicholas Botta, home owner, 28 Warewoods Road, Saddle River, NJ was sworn in.

Mr. Botta stated that he was not aware of the curbing installation in the non-disturbance zone until it was already installed. He further stated that the contractor took it upon himself to proceed without his permission and, once he became aware of the situation, work was immediately stopped. He also stated that he does feel there is a safety issue for emergency vehicles and encouraged the Board to ask him questions at this time. He further stated that he has been a good neighbor and asked the Board for their support. In addition, he stated it will be extremely expensive to have to move the driveway.

Chairman Petrocine asked Attorney Rutherford to reiterate the Board's responsibility as it relates to rendering a decision. Attorney Rutherford stated that it is the Board's responsibility to render this decision based solely on a zoning perspective and consider the fact that the driveway already exists as legally irrelevant.

A motion to **deny** the Botta application was offered by Board Member Montana
Seconded by Board Member Kakaty

Roll Call Vote: AYES: Board Members Petrocine, Montana, Kakaty, Cohen, Raia, Gatto
NAYS: Board Member Dowden

MEMORIALIZING RESOLUTION (S):

ZBA 19-10	Blk. 1802 Lot 17.02 29 Lower Cross Rd. Daniel Turano Requesting variance relief for gazebo and ponds constructed without prior approvals or permits APPROVED
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At this time, Attorney Rutherford gave an overview of the resolution.

A motion to adopt the Turano resolution was offered by Board Member Nazzaro
Seconded by Board Member Cohen
Roll Call Vote: AYES, Unanimous

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**Blk 1902 Lot 16
63 Chestnut Ridge Road
Michael Murphy
Construct a rear addition
front porch, in ground pool, patio and wall,
proposed additions to principal structure
would violate the required setbacks.
APPROVED**

Attorney Rutherford stated that the resolution was not ready and would be memorialized at the December 15, 2010 meeting of the Zoning Board of Adjustment.

**ZBA-20-10 Blk. 1303 Lot 56
44 West Wildwood Road
Dr. Kalmon Post
Construct deck additions which would
increase the building coverage, further
exceeding maximum allowable coverage.
APPROVED**

At this time, Attorney Rutherford gave an overview of this resolution.

A motion to adopt the Post resolution was offered by Board Member Montana
Seconded by Board Member Gatto
Roll Call Vote: AYES, Unanimous

**ZBA-21-10 Blk. 2002 Lot 4.02
57 East Saddle River Road
Veronica Porreca
Requesting variance to permit the lot coverage
to remain at 23.52% for improvements
previously installed.
APPROVED**

At this time, Attorney Rutherford gave an overview of this resolution.

A motion to adopt the Porreca resolution was offered by Board Member Nazzaro
Seconded by Board Member Cohen
Roll Call Vote: AYES, Unanimous

WORK SESSION:

NEW BUSINESS: Chairman Petrocine stated that the Mayor and Council are looking at two additional ordinances and asked for feedback from the Board. Corner lots, building heights and generators are all issues that the Board feels needs to be addressed.

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Borough landscape architect Levy asked the Board to consider decreasing the criteria for identifying trees on plans from a diameter of eight inches to six inches as this is more the norm.

Chairman Petrocine asked Attorney Rutherford to prepare an Annual Report and consider including Mr. Levy's request.

In addition, the starting time for the Zoning Board Meetings in 2011 will be 7:00pm. The Board would also like to limit the number of applications heard at a meeting to two. This was discussed and it was decided that rather than limit the number of applications, a better alternative is to not begin hearing any new applications after 9:30pm.

Chairman Petrocine also asked the Board to submit any changes to the By-Laws they would like to see implemented.

ADJOURNMENT:

As there was no further business to discuss, a motion was made to adjourn the Closed Session and return to the regular meeting of the Zoning Board of Adjustment.

As there was no further business to discuss, a motion was made to adjourn and seconded.

Respectfully submitted,

Marie Elena Macari
Borough Clerk

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