

West Windsor Township Zoning Board of Adjustment

Minutes – Regular Meeting

May 3, 2018

The regular meeting of the Zoning Board of Adjustment was called to order at 7:00 p.m. on Thursday, May 3, 2018 by Chair Abbey in Meeting Room A of the Municipal Building.

STATEMENT OF ADEQUATE NOTICE

Pursuant to the Sunshine Law, a notice of this meeting's date, time, location and agenda was mailed to the news media, posted on the Township bulletin board and filed with the Municipal Clerk as required by law.

ROLL CALL AND DECLARATION OF QUORUM

Present: Susan Abbey
John Church
Michael Garzio
Curtis Hoberman
Henry Jacobsohn
Daniel Marks
John Roeder

MINUTES

- a) November 2, 2017 - Motion was made by C. Hoberman and J Church seconded the motion to approve the minutes of November 2, 2017. The vote was 6-0 in favor of those eligible to vote. Motion carried.
- b) December 7, 2017 - Motion was made by C. Hoberman and J Church seconded the motion to approve the minutes of December 7, 2017. The vote was 5-0 in favor of those eligible to vote. Motion carried.
- c) February 1, 2018 - Motion was made by S. Abbey and J. Roeder seconded the motion to approve the minutes of February 1, 2018 as amended. The vote was 7-0 in favor of those eligible to vote. Motion carried.

PROFESSIONAL APPOINTMENT:

Turek Counseling, LLC
Fred Turek, PE (Conflict Engineer)

E. Schmierer, Esq., advised that the Board's engineering consultants (Van Cleef Engineering) has a conflict for a pending application (PSE&G) and a conflict engineer is needed to cover the review. Chair Abbey asked if the hourly rate is the same as Van Cleef Engineering. Mr. Surtees stated that it is less per hour.

Motion was made by J. Roeder and J Church seconded the motion to approve the appointment of Fred Turek as the 2018 Conflict Engineer. The vote was 7-0 in favor. Motion carried.

FOR: Abbey, Church, Garzio, Hoberman, Jacobsohn, Marks, Roeder
AGAINST: None
ABSTAIN: None

RESOLUTION:

- a) **ZB18-02**
Ammre & Jehan Mohamed
"c" Bulk Variance
Block 12.09, Lot 23
373 Clarksville Road
Property Zoned: R-20B District

Motion was made by D. Marks and H. Jacobsohn seconded the motion to approve the resolution for ZB18-02. The vote was 2-0 in favor. Motion carried.

For: Jacobsohn, Marks
Against: None
Abstain: None

CHAIR'S COMMENTS & CORRESPONDENCE

Chair Abbey noted that Member Roeder handed her an article about another town in New Jersey that wrote an ordinance regarding chickens. The governing body in Woodbury, NJ found chickens to be permissible in that town and she asked the status for West Windsor. Mr. Surtees stated that an ordinance had been written and soon will be introduced before Council.

APPLICATION

- a) **ZB18-01**
SYED REALTY LLC
D-3 Use Variance; C Bulk Variance
Preliminary/Final Major Subdivision
59 Cranbury Road; Block 5, Lot 77
Property Zoned: R-1/C District
MLUL: 6/29/18

Ed Schmierer, Esq., legal counsel for the board, stated that proof of notice is in order and the Board has jurisdiction.

Peter Flannery, Esq., legal counsel for the applicant, stated that the proposal is for a two lot

subdivision. The larger of the two lots will be occupied by the Montessori daycare school, this use is existing and will continue to operate. The smaller lot will be occupied by a new single-family detached home, the existing structure will be demolished.

Ted Pivovarnick, engineer for the applicant, was sworn in and presented a color rendering of the subdivision plan (Exhibit A-1) and the traffic circulation plan (Exhibit A-2). He stated that the lot depth is slightly under 700 feet, there are three buildings on the property. A one-story school building is on the front lot, a two-story masonry school building is in the center and a residence is in the rear. There are four sheds on the property, three in the rear and one is in the front of the site, that shed will be relocated to the rear of the site. The current access drive is a two-way drive for 100 feet into the site and then it becomes a one-way loop with a bypass road. A gravel drive is used to access the existing residence in the rear.

There are many trees on site along with many environmental concerns including wetlands, the 100 year flood line, D&RCC buffer line and the greenbelt runs through this property. He advised that as a condition of approval, they agree that approval from the D&RCC and the NJDEP must be obtained. The proposal draws a line between the school use and the residential use with a reconfiguration of the driveway for better access to the rear of the site. A 3.8% FAR is proposed, all structures are staying as is except for one shed which will be removed and put outside of the setback area so all sheds will be in the rear. The access drive for the home will be reconfigured and he referenced Exhibit A-2.

C. Hoberman asked if the two-way drive impedes more than what currently exists. Mr. Pivovarnick stated that it does not, the drive is being aligned to provide a 24 foot width in one section in order to provide two-way vehicular traffic flow, the residential drive will be separate from the school traffic. The parking area for the school will be relocated closer to the school building.

J. Church stated that the fence appears to be in the area of the driveway. James Kochenour, traffic consultant for the Board, was sworn in stated that the post and the fence looks like it encroaches in to the residential drive and this may impact the operation of the driveway. Mr. Pivovarnick stated that the fence will be moved. He also stated that the proposal includes an 18 foot wide utility easement area and this can also be shifted. Regarding parking, one space is required for every 300 square feet, the daycare facility is 2400 sf in size therefore eight parking spaces are required. The school has nine parking spaces on site, seven in front of the one-story masonry building and two to the north and west of the two-story building. He advised that eight parking spaces will be provided with the new site configuration. Handicapped (van accessible) parking is not indicated on the plan and this should be provided.

Mr. Pivovarnick described all of the variances associated with this proposal. An MIC variance is required for proposed lot 77.01 in addition to variances for lot width and lot area. Lot frontage, lot area and side yard setback variances are needed on Lot 77.02. A utility easement will be provided for lot 77.02 that is 18 feet wide. The existing house will be razed and a 3000 sf two-story home constructed with a maximum height of 35 feet. An asphalt drive is proposed for the driveway to the house.

J. Church asked if fire truck access is adequate. Mr. Pivovarnick stated that wide body trucks will not be able to access the site but a pumper truck should be able to. J. Church asked if the code requires the road to be designed so a wide body can access the property to fight a fire.

Mr. Pivovarnick stated the thick grove of trees in the center of the site helped determine the location of the proposed lot line. The sewer connection for all three buildings may pose some problems because one of the lines is beneath the location of the proposed single-family dwelling. They are staying away from the environmental constraint area and approval from the NJDEP is required because the development impacts the sewer line. The NJDEP LOI verification is also pending.

Ian Hill, Engineering consultant for the board, was sworn in and stated that the wetland line location opens the entire rear lot into the transition area and he recommends they get approval from the NJDEP before construction takes place. Regarding Item 1.03 of the report from Van Cleef Engineering dated 4/25/18, Mr. Hill stated the plan was unclear as to what was being removed. Mr. Pivovarnick stated that existing and proposed conditions will be provided on two separate sheets. Pertaining to item 1.04, the plot plan must be supplied.

Pertaining to item 1.05, the applicant must show the proposed lines for the sanitary sewer easement unless the Township Engineer approves an alternate sanitary sewer connection. The applicant must provide the following as per the requirements of the Title Recordation Act. a) all watercourses; b) the deed book and page reference for the plan bearing base and North Arrow reference; c) coordinate values for a minimum of three (3) corners distributed around the tract; d) provide two certificates on map; e) if monuments will be set at a later date, provide Certification on map and provide bond; f) provide certification that the map complies with "map filing law"; and, g) County Route Number for Cranbury Road.

Mr. Hill stated that the Board Attorney, in a memo to the Board dated March 20, 2018 stated his opinion that formal site plan approval was not necessary. Although site plan review is not required, he provided his comments about the site modifications and layout, as identified in Section 2 of the engineering report dated 4/25/18. He asked if the applicant can pull the driveway away from the property line. Mr. Pivovarnick stated that this can be done but there is an 18 foot access easement and the driveway would be one foot from the line. Mr. Kochenour asked if a 12 foot wide drive connecting to the loop road to the residence can be provided. Mr. Pivovarnick responded that it can be provided. A solid fence is proposed as a buffer separating this property from the neighbor's property.

He advised that a "d" variance had been granted from a conditional use standard for an expansion of the day care center in 1987 which is still in effect. Mr. Flannery stated that the fenced in area which was called a play area was never used as a play area, the applicant wants a larger play area for the children and a striped crosswalk is proposed for the students to access the play area. C. Hoberman stated that it is preferred that the children not cross any traffic.

Mr. Kochenour asked if this is going to be more than a single-family home and recommended a condition of approval that the structure can only be a single-family dwelling. J. Roeder recommended one-way traffic for the driveway which will result in less vehicular conflicts. He then questioned the sewer locations. Mr. Pivovarnick stated that the connection will be in the rear, the three lines will connect into that one line. The main school building could be connected to the street line if a sewer cleanout is permitted by the NJDEP and then the other two buildings would use the rear line.

Hassan Syed, Applicant, was sworn in. He stated that he is the Principal and Operator of the School. The total population of the students will be 150 and 6 to 7 employees will be on site. The ages of the

children are 18 months to 6 years old. The time of operation is 7:30 am to 3:45 pm. He is not aware of any traffic conflicts for the school or the residence. The school has been in operation for twenty (20) years, 35 sf is provided at a minimum per child. Chain link fencing with slats is proposed. He stated the single family home will be for his family. The home that is there is 2000 sf and it will be replaced with a larger home, approximately 3000 sf in size. The proposed driveway design was to separate the uses so there are no vehicular conflicts. Sixty (60%) percent of the students get dropped off in the rear and forty (40%) percent in the front.

Mr. Flannery stated that a reciprocal easement agreement for the two lots would be needed and recorded into the deed.

Chair Abbey asked if there are any requirements for the center that will change due to this subdivision, including the play area. Mr. Syed advised that nothing will change. Mr. Flannery stated that renewal of the daycare license will not be jeopardized if the subdivision is approved. Chair Abbey advised that if a home was not existing on the property then the Zoning Board would not permit a home to be constructed. M. Garzio asked if a 3000 sf home could be constructed without the subdivision. Mr. Schmierer responded that it could be a problem. David Novak, planning consultant for the Board, was sworn in and read Section 200.299 noting that one structure is permitted on each lot in this district. To expand the building would be an expansion to a pre-existing use and would require approval from the Zoning Board.

M. Garzio asked if construction vehicles will conflict with the school schedule when accessing the site. Mr. Flannery responded that the vehicles will not go anywhere near the school.

Mr. Kochenour stated that the separation of traffic for the two uses has taken place successfully for twenty years. He is not convinced that what they are experiencing is necessary for a redesign of the drive. A fire truck entering the site is going to take the path of least resistance and that would be up the left side of the property. He acknowledges that the applicant agreed to widen the drive to 12 feet but the truck would attempt to negotiate the loop at a slower speed and then someone would have to come out and remove the barrier and back the truck into the site to access the house and this is not an efficient operation. He requested additional truck turning templates because he feels there will a significant encroachment into the loop, even for a pumper truck. Some adjustments may be possible if the house is shifted and perhaps the applicant can provide a direct driveway to the house. Mr. Kochenour stated a WB-50 truck must be able to access the site, if a ladder truck needs to back into the site this will be restrictive. He would like a design where the house is shifted and the driveway is moved to the side.

James Kyle, planning consultant for the applicant, was sworn in and stated that the variances involve circulation and lot coverage. Landscaping cannot be provided but fencing is proposed to buffer. The circulation changes will not impact the variance requests. He then read the conditional use standards and responded that 100 sf of outdoor play space per child is provided so requirement (a) is satisfied, the outdoor play space shall be fenced so requirement (b) is satisfied and there is no child care within a quarter of a mile of the site therefore item e is satisfied. The only issue is a change to the circulation, the applicant is not increasing the size of the facility or the number of students so there will be no increase in traffic. Landscape screening shall be provided. Mr. Kyle described the student drop off process and advised that there will be no stacking on the road or in the driveway. Chair Abbey asked the applicant to return with a revised circulation plan.

Mr. Kyle identified the purpose of the proposal, there are two separate uses on the property and creating two separate lots and uses removes the pre-existing non-conforming use on the property. Access agreements would be needed in the future when the owner sells the business. This is a unique property, there is not enough frontage to create a flag lot therefore this is their attempt to provide two separate uses. Chair Abbey stated that this is a flag lot where all the development is within the pole. J. Roeder stated that if the subdivision is approved, the child care will be on a substandard sized lot.

Mr. Kyle stated the environmental characteristics of the site are improved by moving the house out of the buffer area, there are more positives than negatives. There will always be interaction between the two uses but there is a different use for each lot. Easements would remain in perpetuity. Chair Abbey stated that approving a subdivision would make the front lot less conforming. Bank restoration is proposed in addition to the relocation of the house so the D&RCC should be accepting of this proposal. A problematic situation is being made much better. The Board can vote on the plan or if desired or the applicant can make changes to the plan and return before the Board.

The applicant requested a five minute recess. The meeting recessed at 9:15 pm and resumed at 9:25 pm. Mr. Flannery stated that the applicant is requesting a continuance. The applicant asked the Town's landscape architect to present his report so they have a full picture of the issues.

Daniel Dobromilsky, landscape architect for the Board, was sworn in and provided his report dated April 25, 2018. Item #2 - pertains to the requirement for a 50' riparian zone buffer from all streams and surface water bodies, restricting construction so these restrictions must be indicated on the plan to make sure there are no issues with having a single-family home on the back lot. Moving the house further away from the school buildings is an improvement but the house will be larger than what exists. Item #3 - there is no room to additional landscaping for separation so a fence is proposed. Item #4 - review of existing trees and proposed clearing to be conducted and all hazardous trees to be removed. Item #5 - landscape transition buffer - this is an existing condition and the code requires a 25 foot landscape buffer transition, but the board is able to reduce this requirement for a fence or they can require an increased buffer for the new home.

Mr. Flannery asked if there is any issue with widening the driveway. Mr. Dobromilsky responded that there is no issue with moving it away from the residence but he cannot determine if the house will have a more intense use or if the situation will be made worse. There are existing fences but the applicant is building a new house closer to the day care and he recommended a landscape buffer as a condition of approval. Mr. Novak stated that a fence cannot be considered as a substitute for a landscape buffer.

Mr. Novak stated that templates are needed for emergency vehicle access and if the subdivision is approved, the lot size is insufficient to provide maneuvering room for parking and unloading/loading of children which does not satisfy the requirement of Item (k).

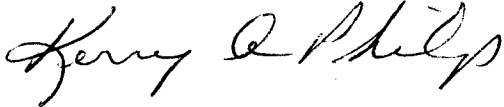
C. Hoberman stated that there are many waivers requested on the checklist and he asked the municipal Planner to respond to the waiver requests and the applicant's planner to testify on the variance requests. The applicant must also present the positive and negative criteria.

The meeting was opened to the public. Being that no one wished to address the Board, the public portion of the meeting was closed. Motion was made by J. Roeder and J. Church seconded the motion

to continue the discussion to July 26th.

Being that there was no other business before the board, the meeting was adjourned at 9:45 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kerry A. Philip".

Kerry A. Philip
Recording Secretary