

**MANALAPAN ZONING BOARD OF ADJUSTMENT
MINUTES OF THE REGULAR MEETING
Thursday, February 7, 2019
TOWNSHIP OF MANALAPAN – Courtroom
Manalapan, NJ 07726**

The meeting was called to order with the reading of the Open Public Meetings by Chairman Stephen Leviton at 7:30 PM followed by the salute to the flag.

Roll Call: Janice Moench

In attendance at the meeting: Mollie Kamen, Terry Rosenthal, Larry Cooper, Eric Nelson, Adam Weiss, Eliot Lilien, Mary Anne Byan, David Schertz, Robert Gregowicz, Stephen Leviton

Absent from the meeting: Nancy DeFalco, Zoning Board Officer

Also present: John Miller, Esq., Zoning Board Attorney
Janice Moench, Recording Secretary
Jennifer Beahm, Township Planner
Jim Winckowski, Township Engineer

MINUTES:

A Motion was made by Mr. Weiss, Seconded by Mr. Rosenthal to approve the Minutes of **January 17, 2019** as written.

Yes: Kamen, Rosenthal, Nelson, Weiss, Schertz, Gregowicz, Leviton
No: None
Abstain: None
Absent: None
Not Eligible: Cooper, Lilien, Byan

RESOLUTIONS:

A Motion was made by Mr. Cooper, Seconded by Mr. Schertz to approve the Resolution of memorialization for Application **ZBE1829 ~The Battleground Country Club**

Yes: Cooper, Nelson, Weiss, Schertz, Leviton
No: None
Abstain: None
Absent: None
Not Eligible: Kamen, Rosenthal, Lilien, Byan, Gregowicz

A Motion was made by Mr. Weiss, Seconded by Mr. Schertz to approve the Resolution of memorialization for Application **ZBE1844 ~ Harvey Diamond**

Yes: Kamen, Rosenthal, Nelson, Weiss, Schertz, Gregowicz, Leviton
No: None
Abstain: None
Absent: None
Not Eligible: Cooper, Lilien, Byan,

PUBLIC HEARINGS:

Application No. ZBE1735

Applicant: Katherine C. Smith & Katherine K. Smith
Co-Trustees of the Katherine C. Smith Revocable Trust Agreement
Proposal: Single family residential home
Request: Bulk variance
Location: 7 Mill Road
Block/Lot: 82/4
Zone: RAG 4

This application was before the Board on February 1, 2018. All professionals representing the applicant were sworn in at that time. On Mr. Miller's instruction the professionals were sworn in again for this meeting. John J. Ploskonka, Professional Engineer was sworn in. Mr. Steib was present on behalf of the applicant. Mr. Steib explained it had been months since the application was last heard and advised Mr. Ploskonka to review the application again so the Board had a clear picture of what is being proposed.

Mr. Ploskonka explained the application is to build a single family home on a lot located on Mill Road in the Southern portion of Manalapan. The lot is a vacant wooded parcel just west of Orchard Mill Road. The lot is triangular in shape and undersized by 23,000 square feet. The surrounding homes are primarily on 80,000 square foot lots. There is a corridor along the brook and the subject lot is located in that corridor in a 4 Acre zone.

Mr. Steib and Mr. Ploskonka provided a package of exhibits to the Board members as well as the Board secretary. The exhibit package was pre-marked beginning at A-11.

Mr. Ploskonka began with Exhibit A-11 a tax map showing the subject property. The subject property is lot 4 located in the RAG 4 zone which is a 4-acre zone. Mr. Ploskonka then referenced lots immediately surrounding the subject property to be located in the RR-Zone which is an 80,000 square foot zone. Mr. Ploskonka explained the only thing that would be permitted to be built on the triangular shaped property according to the ordinances of Manalapan Township would be a Teepee or a house at 50 square feet.

Mr. Ploskonka then reviewed Exhibit A-12 which is an aerial view of the property and surrounding areas. The homes surrounding the subject property on the aerial view are labeled 1, 2, 3 and 4.

Exhibit A-13 showed the Zoning map and the 80,000 square foot lots surrounding the subject property to be colored and the lighter area as the RAG4 zone, the subject property.

Mr. Ploskonka referred to Exhibits A-14, A-15, A-16 and A-17, pictures of homes in the immediate area. These lots were marked as 1, 2, 3, and 4 on Exhibit A-12. The Exhibits A-14 through A-17 showed the structure of the homes.

Mr. Ploskonka referred to Exhibit A-18, a picture of Manalapan Brook. Exhibit A-19 showed the map of the stream corridor and dedicated conservation easement that was applied to the subdivision to the immediate left. All of the exhibits Mr. Ploskonka presented allowed the Board to get a sense of the surrounding area.

Mr. Ploskonka explained the applicant filed an application with the Department of Environmental Protection ("DEP") for approvals. These approvals are pending subject to the Zoning Board action. The applicant gained approval for the septic system from the Manalapan Township Board of Health in April 2018. Mr.

Ploskonka explained the traffic engineer provided a letter to the Board regarding the driveway location. The driveway is deemed to be located in a safe location. This was an issue brought up by the Chairman at the last meeting.

Mr. Weiss asked for clarification on Exhibit A-18. Mr. Ploskonka explained he took the picture parked on the bridge looking to the south.

Mr. Ploskonka testified that the applicant, Mr. Chaviano has lived in town over 20 years. The applicant currently resides in town at 7 Normandy Court. The home is 8,000 Square Feet with a 4-car garage and 7 bedrooms. The kids are grown and the applicant would like to downsize and remain in Manalapan. The applicant would like his new home to be 4,000 square feet with a basement and a single story above the basement. Mr. Ploskonka explained the applicant choose this lot because he felt the home would fit well. Mr. Ploskonka further testified the proposed home would fit into the character of the neighborhood based on the homes in the area. The applicant obtained an appraisal of the property and approached the neighbors to ask if they would be interested in purchasing the subject property. The applicant also asked the neighbors if they would be willing to sell a portion of their property in order to make the subject property more conforming. There were no responses from the neighbors.

Mr. Steib confirmed if the zoning regulations were applied to the lot there would be a 50 square foot area to lawfully, without variances, place a home. This is not a large enough area to construct a home. Mr. Steib confirmed all of Mr. Ploskonka's testimony and summarized same. Both Mr. Steib and Mr. Ploskonka reference ("The Dallmeyer Case") Dallmeyer V. Lacie Township Board of Adjustment 1987.

Ms. Beahm asked Mr. Steib if there was any indication of Floor Area Requirements in The Dallmeyer Case. Mr. Steib testified the comments in The Dallmeyer Case did not deal with Floor Area Ratio. Ms. Beahm confirmed with Mr. Steib that his applicant is before the Board for a Floor Area variance.

Mr. Ploskonka mentioned if the neighbor to the left sold the applicant the stream corridor, the applicant would then have an 80,000 square foot.

Mr. Steib asked Mr. Ploskonka to identify what is necessary for variance relief. Mr. Ploskonka explained a number of the variances requested are existing conditions meaning they are not created by the applicant. Mr. Ploskonka lists the lot area, width, depth along with improvable area and improvable diameter all are existing conditions.

In light of a Board member having to step out of the meeting, the Board took a short recess at 7:58 PM resumed at 8:03 PM.

Mr. Ploskonka continued with his testimony. There are five existing variances due to the size of the lot. The front, side and rear setbacks along with building coverage and Floor Area Ratio ("FAR") are created in order to build a home on the lot.

Mr. Miller asked for clarification on the existing conditions that Mr. Ploskonka testified to. Mr. Steib explained the existing conditions are non-conformities with the lot. Being the neighbors were not willing to sell the applicant any property the applicant is unable to reduce the variances. Mr. Steib further states, in order for the variances to be lessened the applicant would have to acquire more property.

Mr. Weiss suggested the applicant could reduce the size of the home in order to reduce the variances.

Mr. Beahm suggested that Mr. Steib slowly and clearly explain the existing conditions and what variance relief is requested as a result of the proposed home.

Mr. Ploskonka reviewed his testimony and specified the lot width required is 200 Ft and the applicant has 82 Ft. The lot depth require is 250 Ft, the applicant has 80 Ft.

Ms. Kamen asked what the average square footage was of the homes on the street. Mr. Ploskonka replied the homes are approximately 3,000- 5,000 square feet. Ms. Kamen asked why the home wouldn't be reduced in size when the applicant's lot is 1/8 of the size of the lots in the area. Mr. Ploskonka replied a 1200 square foot home wouldn't fit into the neighborhood. Ms. Beahm explained the homes in the area shown on the exhibits are 5,000 square feet on 1.5 acres.

Mr. Ploskonka continued with his testimony on the minimum improvable area and diameter. He further testified the applicant is asking for variance approval of the front setback, side yard setback, rear yard setback, building coverage and the FAR.

Mr. Cooper asked for the current front and side yard setback. Mr. Ploskonka explained the front setback is approximately 26 feet from the right of way ("ROW"). The side yard setback is at 25 feet. The rear yard setback is at 32 feet.

The Board and Mr. Ploskonka discuss the setbacks. Mr. Winckowski explained the building envelope is not shown on the plot plans however, the setback of the proposed building is shown.

Mr. Weiss and Mr. Ploskonka discuss the setback lines on the plans.

Ms. Kamen asked Mr. Steib if his client was willing to reduce the home by 1,000 square feet. Mr. Steib explained he has examined that and Mr. Higgins, the Professional Planner will give testimony as to why the home should not be reduced.

Chairman Leviton asked Mr. Ploskonka to elaborate on the FAR. The current plans are asking for .18 % where .06 % is permitted. Last year the application was for .17%. Chairman Leviton asked for the amount the home is reduced by in terms of square footage.

Ms. Beahm explained the home was reduced by 307 square feet in the basement. Mr. Ploskonka explained there is now a crawl space as opposed to a full basement.

Ms. Beahm explained the last time the applicant was before the Board the concern was the FAR variance that was needed. The requirements to demonstrate the statutory proofs are that the site can accommodate the lot. Ms. Beahm explained further she appreciates the testimony given thus far regarding the unusual shape and size of the lot and the inability to purchase and sell property. The testimony was not on point to FAR. Ms. Beahm explained to Mr. Ploskonka, during the professionals meeting she asked for the applicant to present an exhibit of the building envelope. She felt the exhibit would have been beneficial. Ms. Beahm explained, the Board still has concern with the overall size of the home. It was suggested that Mr. Higgins provide his testimony to provide justification to the size of the home, because reducing the home by 307 square feet was not what the Board had in mind.

Mr. Ploskonka explained the property next door has a major flood area and a 60,000 square foot stream corridor. Mr. Steib, Ms. Beahm and Mr. Ploskonka discussed in greater detail how the property next door relates to the application and the FAR. Ms. Beahm explained in further detail that the stream corridor on the lot next to the subject property has no bearing on the size of the proposed home.

Mr. Steib called the applicant, Mr. Orfilio Chaviano to give testimony. Mr. Chaviano was sworn in by Mr. Miller. Mr. Steib asked the applicant to describe his relation to Manalapan Township as a resident and why he is proposing to build this new home. The applicant states he has lived in town over 21 years in a very large home. His children have since moved out of the home and he is trying to downsize. Mr. Chaviano goes on to explain the lot he is proposing to build on is very irregular that and will never meet the FAR. Mr. Chaviano explained the FAR did not exist when this lot was created and in order to become closer to compliance the home would need to be 1,200.00 square feet. Mr. Chaviano explained a bi-level home or ranch style home at 1,200 square feet would not fit into the neighborhood. Mr. Chaviano said his idea was to build a one story home with a minimal impacted view from the road where you see the road from. He further explained that no one will see the proposed home from the rear being it is a sloped lot. The proposed home has a minimal impact on the property with 2,751 feet of livable space on one floor.

Ms. Kamen explained the proposed home is 4,100 square feet. Earlier in the meeting she queried with Mr. Steib to consider reducing the home by 1,000 square feet. That would make the home closer to 3,300 square feet, not a 1,200.00 square foot home.

Chairman Leviton thanked Mr. Chaviano for his testimony and advised Mr. Steib he reserves the right to recall the applicant.

Mr. Steib called Mr. James W. Higgins, Professional Planner for testimony. Mr. Higgins was sworn in by Mr. Miller and the Board accepted his credentials. Mr. Steib asked Mr. Higgins to tell the Board what he did in preparation for the meeting. Mr. Higgins explained he reviewed the application, the zoning ordinance, master plan and testified at the last hearing. Mr. Higgins reviewed the revised plans with Mr. Ploskonka. The application that is currently before the Board is for a residence that has 2,900 square feet on the first floor and 1,172 square feet of unfinished basement area. The home will appear to be one story from Mill Road. Ms. Beahm clarified the square footage Mr. Higgins was speaking of in terms of gross square footage versus net square footage. Mr. Higgins clarified the gross square footage for the basement to be 1,707 and the net square footage is 1,415. The first floor gross calculates to 2,938 square feet and the net is 2,723 square feet. The proposed FAR is .18 percent. This is a permitted use in the zone. Mr. Higgins states he believes the site can accommodate the use. The site can accommodate the septic, well, and drainage. The site is unusual being the site is on the North side of Mill Road. The applicants site and the stream corridor are the only parcels zoned RAG4 others are zoned RR. The parcel is approximately 1/8 the size of a permitted lot. Mr. Higgins described the lots surrounding the subject property and the homes on the lots. If the proposed home were on a conforming four-acre lot in the RAG4 zone, the FAR would be 2.7 percent. Mr. Higgins explained the applicant is taking a parcel that is 1/8 the size of the zone and proposing a home that is consistent with the character of the area.

Mr. Cooper explained to Mr. Higgins the other homes in the neighborhood are two story homes. The applicant is proposing a one story home. If the applicant were to build upwards the physical footprint would be smaller but the home would be larger. Mr. Higgins explained the issue is the FAR and if the applicant were to build another story the FAR would increase.

Ms. Beahm explained to Mr. Higgins she understood the testimony with respect to the uniqueness of the lot and how the lot is zoned differently than those around it on the same side of the street. Ms. Beahm is in agreement that strict compliance with the ordinance would a hardship. However, the building coverage is an issue. The coverage requirement for the zone is 10 percent and this application shows 12 percent. There is nothing that requires the applicant to have a home at the same square footage as the other homes on the street. Ms. Beahm explained if the applicant had compliant building coverage with the

footprint of 2,285 square feet, including the basement, the total square footage would be over 3,000 square feet. This would be consistent, based upon earlier testimony, with other homes in the area.

Mr. Higgins explained generally when dealing with building and lot coverage percentage the percentages increase as the size of the lot gets smaller. Mr. Higgins explained he respectfully disagrees with Ms. Beahm and does not feel it is reasonable to ask the applicant to comply with a 10 percent building coverage.

Ms. Beahm explained the Board has requirements that need to be reconciled. In Summary if 500 square feet of livable space were to be eliminated on the first level of a home, that is over 4,500 square feet on a lot 1/8 the size. This would allow the site to accommodate the use because the coverage would be met. Unfortunately, the FAR will still not be in compliance.

Mr. Steib asked the Board to allow him a few minutes with his client. The Board took a recess at 8:45pm and resumed at 8:50pm.

Mr. Steib explained after discussions with the applicant and professionals they would like to eliminate the request for a building coverage variance and will conform to the 10 percent.

Mr. Winckowski explained the applicant will be making the footprint smaller. By doing this the side setbacks would increase and be more conforming. The applicant will need to revise the plans to advise what variances will be needed. Mr. Winckowski explained the driveway location needs to be discussed as well as a waiver for the stream corridor buffer.

Mr. Ploskonka explained to Mr. Winckowski the applicant would be willing to revise the plans to reflect the approval at the 10 percent building coverage and work out the details with Mr. Winckowski and Ms. Beahm.

It was determined that the applicant would need to revise the plans and advise of the variances requested with the revision.

Mr. Winckowski expressed he has a concern for the driveway location. The driveway is best served on the opposite side of the frontage. This would create some grading and site design issues. Mr. Winckowski explained he would be willing to work with applicant's professionals to meet somewhere in the middle.

Chairman Leviton asked Mr. Winckowski for feedback regarding the report from the applicant's traffic consultant in respect to the driveway location. Mr. Winckowski explained he feels the driveway would be in an improved location if it were to be shifter over.

Mr. Steib explained he would not have any problems with the suggestions set forth by Mr. Winckowski. Mr. Steib asked for a straw poll to get a feel for the Board's position, prior to revising the plans.

Mr. Miller explained he would not recommend the Board taking a straw poll. The Board would be taking a poll on revisions that aren't clear at this time. The applicant has agreed to reduce the building coverage for compliance, however the Board would need to see the revised plans. To be fair to the applicant, any comments made by the Board should be based upon the revised plans the applicant intends to submit to the Board.

Ms. Byan asked if the revised plan will be prepared and reviewed with the Board's professionals prior to the next hearing date. Mr. Ploskonka advised they would submit the revised Plans to Ms. Beahm and Mr. Winckowski or Mr. Boccanfuso prior to the next hearing.

Chair Leviton opened the meeting to the public for comment or questions on the application. Seeing there were none, Chair Leviton closed public

It was determined this application would be carried to the May 2, 2019 hearing date with no further notice to the public. All of the Board members were present for this hearing. There were two Board members, Mr. Cooper and Ms. Byan, that were not present for original hearing date of February 7, 2019. They have agreed to listen to the recording of the hearing in preparation for the May 2, 2019 hearing date. Mr. Steib agreed to waive the time for the Board to act.

Mr. Miller advised on the Board the Boundless Adventures application. The trial court denied the appeal by Boundless Adventures. Boundless Adventures has appealed the decision to the Appellate Division.

Chair Leviton opened the meeting to the public for comment or questions. Seeing there were none, Chair Leviton closed public.

ADJOURNMENT:

A Motion was offered by Mr. Cooper and agreed by all to adjourn the meeting at 9:10 PM

Respectfully Submitted,

Janice Moench
Recording Secretary

RECORDED COMPACT DISCS OF THE ZONING BOARD OF ADJUSTMENT ARE AVAILABLE FOR REVIEW, IN THE PLANNING/ZONING BOARD OFFICE BY APPOINTMENT.