

WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
Regular Meeting
March 23, 2010

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:30 PM by Chairman Cronce.

The following statement of compliance with the Open Public Meetings Law as listed on the meeting agenda was summarized by Chairman Cronce: This meeting is called pursuant to the provisions of the Open Public meetings Law. This meeting was included in a list of meetings transmitted to the Hunterdon County Democrat and Trenton Times on January 28, 2010. Notice has been posted accordingly and a copy of this notice is available to the public and is on file in the Zoning Board of Adjustment Office.

The meeting was recorded via digital recording system and copy of CD is on file in the Zoning Board of Adjustment Office.

Chairman Cronce led the Pledge of Allegiance to the American Flag.

ATTENDANCE/ROLL CALL:

Roll call on attendance: Joseph Romano-present, Robert Fulper-present, John Dale-present, John Ashton (Alt. #1)-present, John Hoff (Alt. #2)-present, John Cronce-present.

Absent: Ruth Hall, Brian Fitting, David Sanzalone

Professionals Present: Stewart Palilonis, Board Attorney; Tom Decker, Engineer on behalf of Van Cleef Engineering

PRESENTATION OF MINUTES:

Regular Meeting Minutes – February 23, 2010 – Motion was made by Fulper with a second by Romano for approval of the minutes contingent upon minor typographical errors; “Public Hearing – Brown” – addition of language “Attorney Palilonis oversaw the presentation of the application” and reference to “no electric” to be deleted. Motion carried on roll call vote – all ayes.

RESOLUTION(S) OF APPROVAL:

Resolution 2010-09 - Brown, Mark – Block 19 Lot 26 – Variance Request – Pole Barn Garage – Rock Road West - Resolution as prepared by Attorney Palilonis was distributed. Mr. Brown was present and was in agreement with the

resolution as presented. Motion was made by Dale with a second by Ashton for approval of the

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resolution. Roll call: Romano-aye, Dale-aye, Ashton (Alt. #1)-aye, John Hoff (Alt. #2)-aye. Motion carried.

APPLICATION(S):

Continued Public Hearing: Mostofizadeh – Block 21 Lot 12 – Use/Bulk Variance and Minor Subdivision Application – Request to carry hearing to 4/27/10 - Request was received from Mr. Mostofizadeh to carry the hearing to the 4/27/10 meeting of the Board. Additional communications was received from applicant's engineer, Heritage Consulting Engineers, advising that the applicant will be requesting a zone line interpretation and minor subdivision approval at the April meeting of the Board based on the opinion rendered by the Board's planner on the zone line boundary. Due to the fact that the time for decision on the original application would expire prior to the 4/27/10 meeting of the Board and the applicant did not formally request an extension of the application on file, Attorney Palilonis recommended that the application currently before the Board be denied without prejudice. Applicant will be directed to file an amended application for the zone line interpretation. Attorney Palilonis will confer with the Planning Board attorney as to whether the application for minor subdivision will need to

be filed with that Board. He further related that the applicant will not need to notice for the amended application request due to the nature of the requests. Motion was made by Romano with a second by Fulper to deny the application without prejudice. Roll call: Romano-aye, Fulper-aye, Dale-aye, Ashton (Alt. #1)-aye, Hoff (Alt. #2)-aye, Cronic-aye. Motion carried.

Public Hearing: Kilmer – Block 8 Lots 13, 14, 15 and 53 – Route 179 – Lot Consolidations/Use/Bulk Variances – Completeness Determination/Public Hearing
(7:50PM)

Neal Solomon, Esq., appeared before the Board representing the applicants: Kyle Kilmer, Joyce Kilmer, Kim Kilmer, and Karen Kilmer. Application, checklist, and plan titled Boundary Line Adjustment for The Kilmer Property prepared by Bohren and Bohren dated December 2009 l/r/d 2/23/10 (plan marked as Exhibit K-1) were distributed.

The following witnesses present on behalf of the applicant were sworn in by Attorney Palilonis:

Kyle Kilmer, Property Owner - 1484 Route 179, West Amwell Township;

Ryan Warford, P.E., Bohren and Bohren Associates, Flemington NJ;
Frank Banisch, P.P., Banisch and Associates, Flemington, NJ.

Engineer Tom Decker of Van Cleef Engineering was present on behalf of the Board.

Review letter dated 3/18/10 from Engineer Clerico was received and distributed.

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Attorney Solomon agreed to proceed with the hearing and request for use variance relief in light of the fact that there were only six voting members present. Attorney Palilonis reviewed the proofs of notice and service and found same to be in order.

Attorney Solomon referred to the plan (Exhibit K-1) and provided a summary of the application as follows: applicants seek lot consolidations (considered as a minor subdivision), a use variance, and bulk variances for front and side yard setback and frontage for the existing house and kennel.

Mr. Kilmer resides on Route 179 and operates a kennel business which has been in existence for over 60 years. Purpose of application is to move lot line to create an area in the back on lot 14 consisting of approximately 60 acres *on which a conservation easement will be sold to West Amwell Township*. A four acre exception area is included within the conservation easement on lot 14 for the possibility of the construction of a dwelling in the future; there are no plans for development at this time. Mr. Solomon offered that issues concerning the development of the property in relation to meeting stream corridor ordinance requirements for the crossing of the stream and woodlands ordinance criteria will be addressed at such time as the property is developed.

The existing lot 53 and the flag stem portion of lot 14 will be merged into lot 13 (existing house and kennel); existing lot 15 is proposed to be merged with lot 14 with existing lot 15 becoming the new flag stem for lot 14. Lots 15 and 53 will no longer exist individually; property remaining will consist of lots 13 and 14. The proposed lot line adjustments will increase the square footage of lot 14 but will not increase the intensity of the use since it is being sold for farmland preservation. Attorney Solomon offered that the lot line adjustments do not increase the intensity of use of either lot. The original kennel was a pre-existing, non-conforming use and a use variance for a kennel expansion was granted by the Zoning Board of Adjustment in 2000. The front yard and side yard setback are both preexisting and remaining the same. The road frontage which is also preexisting is being increased from 109 ft. to 204.83 ft.

The following waivers are being requested: providing a referenced USC and GS benchmark; general waiver from the Woodland Protection and Stream Corridor Protection ordinances, and waiver for obtaining reserve septic testing and location of existing wells.

Witness #1 - Ryan Warford, P.E. - Engineer Warford referred to Exhibit K-1 and a proposal of the exception area and public access areas on the lot 14 property (Exhibit K-2). Mr. Warford advised that this is a preliminary plan and the access area may change. There is a current public access easement on lot 20 that connects through to Rocktown-Lambertville Rd. In response to questioning from Chairman Crouce, he advised that nothing will be built outside of the exception area. The public access area as proposed is placed there so to avoid proximity to the existing kennels. The applicant has not obtained

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NJDOT approval for the proposed access. Question was raised as to the affect on the proposal if NJDOT requests the access way be moved. Engineer Decker offered that it is not probable that DOT would deny the access area proposed. In regard to the waivers needed pertaining to the stream corridor and woodlands ordinances, Engineer Decker advised that the applicant could present a proposal at this time for the development of the exception area, or the owner of the exception area would need to address the applicable Board at the time of the development.

Engineer Warford testified that lots 13, 53, and the flag stem are all located in the HC Zone which has a two acre zoning requirement with 250 ft. of road frontage. The combined 2.72 acres from lot 53, 2.073 acres from the flag portion, and existing 1.985 acres from lot 13 will result in a total of 6.760 acres which is larger than required in this zone. The road frontage requirement of 250 ft. will not be met whereas 250 ft. is required and 204 ft. is proposed. It was noted that the road frontage existing on lot 13 is 109 ft. so the frontage has been increased although it still does not meet standard. Lots 14 and 15 combined will consist of 61.83 acres and the flag portion of proposed lot 14 is in the HC zone with remaining lands in the RR-5 zone (5 acres required). There will be 61.832 acres at the merger. There will be no front, side, or rear setback violations.

Per Township ordinance, a 50 ft. flag stem is allowable with approval from the Township. The flag stem width is 120 ft. which consists of 60 ft. of public access and 60 ft. of exception area. Proposed lot 13 requires a setback of 100 ft.; applicant proposing 62.33 ft. which is an existing condition on the house; side setback required 30 ft. - applicant proposing 16.92 ft. which is another existing condition. Mr. Warford offered that the proposal as presented does not increase the non-conformities but rather improves the existing non-conformities with the boundary line adjustments.

Attorney Solomon advised the Board that the contract for the conservation easement and funding is contingent upon approval by the Zoning Board. Attorney Palilonis requested whether the Township representatives negotiating the agreement are aware that waivers are being sought in relation to this

application. Mr. Solomon and Mr. Kilmer could not offer insight into this question, however, they offered that there is no intention to build at this time. Chairman Cronce offered that while he is a member of the Open Space Committee, he has had no involvement with this negotiation. In response to questioning by Board member Romano, applicant is not proposing to remove or move the existing stream crossing. Concern was raised as to the public access means via the stream crossing. It was related that there would only be pedestrian access and the stream would have to be crossed by foot. Question was also raised as to whether access is needed to go across the utility easements via the public access. Engineer Warford indicated that this would be an allowable use.

Engineer Decker offered that the access and exception areas should be shown on the subdivision plan or a copy of the plan depicting these areas should be included in the file

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for reference purposes. Attorney Palilonis offered that since this is a preliminary proposal only at this time, it is not necessary to have the plan put on file.

Witness #2 - Frank Banisch, P.P. - Mr. Banisch offered his credentials and testimony experience and was accepted as an expert witness. Sensitive Area Map as prepared by Banisch Associates dated 3/10 was entered into the record and marked as Exhibit K-3 along with Map of Streams and Wetlands dated 3/10 marked as Exhibit K-4. Mr. Banisch reiterated the relief being sought by the applicant. He offered that this is a long standing use of the property (kennel) in the community. The intent of the zone allows for highway commercial uses and a variety of permitted mixed uses, i.e. residences, offices, veterinary hospital, etc. He stated that the current kennel use is a pre-existing, nonconforming use but is consistent with the uses in this zone. The use approval granted in 2000 by the Zoning Board of Adjustment confirmed the Board's support of the appropriateness of the expansion of this use.

Mr. Banisch advised that the parcel as proposed has a mixture of uses to include: open agricultural uses, wooded areas, and wetlands with associated buffer areas. He offered that the property will provide the opportunity of recreational use to the public whereby they can enjoy the variety of landscape features and habitat opportunities. The sensitive habitat map was referred to identifying land cover and sightings as reported to the National Heritage data base reflecting types of habitat and endangered species present on the property.

Mr. Banisch provided testimony as to how the series of goals contained within the Master Plan of the Township will be directly advanced by the proposal before the Board to include that the combination of the small scale of the existing uses and large scale of the open space will help to maintain the rural agricultural character. He provided testimony that the proposal also advances the purposes of the Master Plan as to providing for light, air, and open space. Mr. Banisch offered that the bulk variance requests being sought reduce the pre-existing, non-conformities even further noting there is no additional expansion of the use at this point. Testimony on the application as it addresses the positive and negative criteria of the municipal land use law was provided. Mr. Banisch attested that no substantial detriment to the public good or impairment to the purposes of the zone plan and zoning ordinance is being made. The existing uses have long existed in the community and will be better accommodated on the larger lots which meet the positive criteria, they are similar to other uses in the zone, and expanding the site of the kennel and preservation of open space for recreational space advances the general welfare of the community. He offered that there is no substantial detriment to the public good and a permanent element of the open space of the character of the community is being afforded. He further related that the use does not create a hazard or affect adjoining properties in a negative manner but rather the nonconformities that are preexisting are being reduced.

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Board member Hoff questioned the impact on the contiguous forest lands when the property is developed and the driveway is brought in through the flag stem access to the back area of the property. Mr. Banisch advised that there will be a crossing over the stream that will require DEP approval but the impact on the woodlands and habitat will be minimized.

It was related to the applicant that it is the Board's position that existing nonconforming conditions (bulk variances) do not require the granting of relief by the Board. It was noted that in regard to the use variance being sought, due to the fact that the proposed lot will be made larger by the proposal and the intended use remains the same, there will be less impact on adjacent properties which makes the use less intense.

The waiver requests were reviewed. It was agreed that the requirement to provide the US and GS benchmarks could be waived at this time. This will be complied with at such time as a building permit is sought by the applicant. The applicant is not providing a design of the proposed driveway to the exception area at this time. Engineer Decker offered that the Township driveway regulations be reviewed specifically in relation to the maximum slope requirements before plans are developed for the driveway.

In response to questioning by Attorney Palilonis and based on the waivers requested, Mr. Kilmer agreed on behalf of all of the applicants that the property owner will comply with the woodlands and stream corridor ordinances in effect at such time as the property is developed.

Discussion ensued regarding the waiver request for providing a reserve septic area on proposed lot 13 which has the existing house and kennel. *Septic suitability testing has been done* for the proposed development for the exception area on lot 14. Request has been submitted to the Township Board of Health for waiver of the reserve septic area on lot 13 along with the need to provide locations of wells and septic on adjoining properties. The Zoning Board has no jurisdiction over these requests.

Motion was made by Fulper with a second by Ashton to deem the application complete. Roll call: Romano-aye, Fulper-aye, Dale-aye, Ashton (Alt. #1) - aye, Hoff (Alt. #2) - aye, Cronce-aye. Motion carried.

The floor was opened to the public for comments/questions. Hearing none, the floor was closed.

Motion was made by Fulper with a second by Dale to approve the modification of the use variance previously granted whereas the existing conditions have not been exacerbated and to approve the minor subdivision as proposed with the conditions of deferred compliance of the stream corridor and woodlands ordinances until such time as a building permit or zoning permit are applied for and contingent upon Board of Health approval or

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waiver for proposed lot 13. Roll call: Romano-aye, Fulper-aye, Dale-aye, Ashton (Alt. #1) -aye, Hoff (Alt. #2) - aye, Cronce - aye. Motion carried. Resolution of approval will be prepared for the next meeting of the Board. (9:45 PM)

CORRESPONDENCE:

Notice from the New Jersey Planning Officials, Re: **NJPO Awards**

Memorandum dated 3/17/10 from Township Clerk, Re: **Training Video for Volunteers** – It was agreed to hold group training prior to the April meeting (4/27) at 6:45 PM.

PRESENTATION OF BILLS FOR PAYMENT:

The following bills were received:

VanCleaf Engineering - \$1,050.00 – Kilmer escrow account.

Motion was made by Fulper with a second by Hoff for the approval of the bills contingent upon certification of funds. Motion carried on roll call vote – all ayes.

DISCUSSION:

Possible Amendment of ZBA By-Laws - It was the consensus of the Board that no action be taken on the adoption of the by-laws.

(Attorney Palilonis was excused from the meeting – 9:55 PM)

Professional Services Quotes – Board Engineer – Resolution/Possible Award of Contract – Engineer Tom Decker of VanCleaf Engineering provided the Board with an overview of his experience in both the private and public sectors. Discussion ensued regarding the expectations of the Board relative to the review of applications before the Board. It was the consensus of the Board to retain the engineering services of Tom Decker of Van Cleef Engineering as the Board Engineer through the remainder of the year. Motion was made by Fulper with a second by Romano to approve the appointing resolution. Motion carried on roll call vote – all ayes.

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OPEN TO PUBLIC:

The floor was opened to the public. Hearing no comments/questions, the floor was closed.

ADJOURNMENT:

Motion was made by Fulper with a second by Ashton to adjourn at 10:15 PM. All voted in favor of adjournment.

Respectfully submitted,

Donna M. Griffiths

Secretary