

WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
April 22, 2014

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:31PM by Chairman Fulper.

The following statement of compliance with the Open Public Meetings Law as listed on the meeting agenda was summarized by Chairman Fulper: 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 February 6, 2014. 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 a copy of the CD is on file in the Zoning Board of Adjustment Office.

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

ATTENDANCE/ROLL CALL:

Roll call on attendance: John Cronce-present, Ruth Hall-present, John Ashton-present, Kevin Koveloski (ALT. #1)-present, Robert Fulper-present.

Absent: Brian Fitting, Joe Romano, Rob Borden, Frank Sabatino (ALT. #2)

Professionals Present: Stewart Palilonis, Board Attorney; Tom Decker, Board Engineer; David Maski, Board Planner

Also present: Chris Rose, Zoning Official

PRESENTATION OF MINUTES:

Chairman Fulper noted that the agenda reflects that Borden and Koveloski (alt. #) should abstain when voting on the March 25, 2014 minutes, this is incorrect, both members were present in March and eligible to vote.

Regular Meeting Minutes – March 25, 2014 – Motion was made by Cronce with a second by Ashton to accept the minutes. Roll call: Cronce-aye, Hall-aye, Ashton-aye, Koveloski (ALT. #1)-aye, Fulper-aye.

RESOLUTION(S) OF APPROVAL: none

APPLICATION(S):

Completeness/Public Hearing: James and Jean Vernor – Block 23 Lot 1 – 16 Mill Rd.

Bulk variances request for pergola, pool pump house, bridge, porch. (7:48 PM)

Henry Chou, attorney for the applicant, appeared on behalf of the applicant, James and Jean Vernor of West Amwell. Application, checklist, and plan titled "*Variance & Plot Plan, Brookmill Farm*" comprised of one sheet and prepared by Hopewell Valley Engineering, PC dated February 10, 2014, "*Topographic Survey, Brookmill Farm*" comprised of one sheet and prepared by Hopewell Valley Engineering, PC dated February 10, 2014, were received and distributed. Additionally submitted and distributed material included: "*Property Survey*", autocad file of Templin Engineering Associates, dated January 21, 2003, unsigned "*Field*" drawings prepared by Templin Engineering Associates, dated in or about January 2003 "*Additions to Property*", comprised of 8 sheets and prepared by Alfred R. Trevino Architect, dated March 10, 2014.

James and Jean Vernor – Block 23 Lot 1 – 16 Mill Rd cont'

Notices of service and publication were reviewed by Attorney Palilonis and found to be in order.

Attorney Chou provided a history to help determine the type of relief necessary, stating that a few years ago Hurricane Irene substantially damaged the applicant's property; washing away the bridge over a stream that bisects the property, as well as the pool pump house and substantially damaged the property in general. Stating that after the damage, the homeowner unwittingly rebuilt the bridge, albeit not the same that was there before. He rebuilt the pool pump house, also not the same as was there before and also did some home additions/renovations; replacing the porch and installing the pergola. Mr. Vernor was cited by Mr. Rose, Zoning Officer, based on two ordinance provisions; 1) 75' stream corridor buffer on either side of the waterway, 2) plot plan showing all stream segments within 150' be submitted.

Mr. Chou stated they came before the Board in February, which was aborted because they didn't have elevations and plans, carrying the meeting to March to bring aboard an architect to prepare plans for the pool pump house and the bridge as well as a structural engineer to prepare plans for the bridge.

Mr. Chou added that upon receiving VanCleeves review letter, days before the March meeting, indicating that "d" use variances were needed for the work done within the stream buffer; which was determined to be 300' based on the C1 classification of those streams. Stating that they disagreed with the determination that use variances were needed but did not have a professional planner to testify.

Mr. Chou stated that he and Attorney Palilonis did brief the issue with Mr. Palilonis issuing an opinion letter recommending that "c" variances rather than "d" variances should apply, understanding that the Board needs to discuss and vote on it.

Mr. Chou added that he and the planner came across another ordinance provision that might render a part of the variance issue mute. Referring to section 109-150.1A. *For Category One stream corridors, requests for exemptions must be authorized by the state Department of Environmental Protection.* Sub section B says, *for all other stream corridors, applicable variances may be granted by the Board of Adjustment or Planning Board, whoever has jurisdiction.*

Attorney Palilonis stated the C1 stream ordinance is adopted pursuant to DEP rules which encourages, but doesn't mandate municipalities to fill in the gaps for the standards that apply to streams that are not C1. Adding that the DEP has jurisdiction over C1 streams, the stream corridor for a C1 stream is 300' from the top of the bank. Adding that the purpose of the West Amwell stream corridor is to fill in the blanks for the non C1 streams. Stating that 109-1501B supports that, adding the real purpose of the ordinance is to deal with everything else. Referring to the case of *Turner* that deals with floodplains, stating the logic of applying *Turner* to this case is that DEP has jurisdiction over floodplains, and will grant hardship relief to applicants. Stating that since this is a C1 it will be subject to DEP review and approval.

Attorney Chou agreed with the analysis Mr. Palilonis provided. Stating that a plot plan has been submitted for review, and offering that a pre-application meeting has taken place with DEP, Division of Land Use Regulation. Stating that they were advised to apply for two permits; flood hazard area individual permit and a general permit ten, indicating that those applications will likely be granted as a matter of routine.

Chairman Fulper suggested we should deal with the issue of whether this is a "c" or "d" variance, opening the floor to questions from the Board members. Board member Ashton questioned whether Engineer

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Decker had anything further to add after reading the attorney memos and listening to their analysis. Mr. Decker stated that when he originally reviewed the ordinance, he reviewed as written; it is written with provisions for permitted uses. Stating that buildings and so forth, unless pre-existing aren't permitted uses, adding that as identified it is a non-conforming use. As pointed out by the attorneys, there is case law that overrides as a matter of law, when reviewing as a matter of ordinance it is correct, but as a matter of law it overrides it.

Attorney Palilonis provided a brief overview of what should be focused on. Stating that there were four zoning permit applications denied; the porch, pergola, bridge, and the pump house. Adding that there was a pump building there before that was expanded on, the bridge was replaced and expanded, the pergola is a new structure, and the porch was existing and expanded upon.

Mr. Decker added that the height of the pump house and the bridge need to be addressed, both exceed the maximum allowed.

Motion was made by Cronce with a second by Ashton to classify the application as a "c" variance. Roll call: Cronce-aye, Hall-aye, Ashton-aye, Koveloski (alt#1), Fulper-aye. Motion carried (7:52 PM)

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

James Findley, Engineer – Hopewell Valley Engineering
Alfredo Trevino, Architect – Lawrenceville, NJ
Paul Gleitz, Planner – Lentine & Gleitz
James Vernor, Homeowner – West Amwell, NJ

Witness #1 – James Findley P.E. - Mr. Findley offered his credentials and testimony experience and was accepted as an expert witness.

Offered as Exhibit V-1, *Render Display for Brookmill Farm*, Lot 28, Block 11, dated February 25, 2014, prepared by Hopewell Valley Engineering.

Mr. Findley provided a brief description of the display, stating the property consists of 13.79 acres, detailing the property borders on the display as Mill Rd to the top of the drawing and downstream is Hills of Hunterdon subdivision development. The display shows the water level, in blue, during January and February on the day the topographic survey was performed. Other colors on the display, light green is grass and turf areas, dark green is more heavily vegetative and woodlands areas. The flow of the creek goes from the left in a northwest direction and turns east mid-way through the site bisecting the property in half.

Mr. Findley stated that several structures as shown on exhibit V-1 have existed for many years, the tennis court, the swimming pool, various structures and a barn have been labeled on the display. Mr. Findley stated that the items have been labeled that are the main focus of the hearing, item #1 is the pump house, item #2 is the pergola and the porch area, item #3 is the bridge that was washed out and replaced. The display identifies the existing location of the well and septic system.

Mr. Findley stated this is a C1 stream which has a 300ft. buffer, basically encompassing the entire property. The purpose of the 300ft. buffer is for water quality purposes on important streams in the state. The construction that was done had minimal disturbance to the existing vegetation because it was right around the house, it was in the place of where the existing bridge was, and just a few square footage wider in the pump house area. The effect of losing the buffer on 13.79 acre site is very very minimal.

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In addition, flood maps were looked at; the hundred year flood would occupy about two acres of the property, stating that when looking at about 115sq.ft addition to the pump house it is minimal compared to the size of the flood area on the lot.

Mr. Findley continued, stating the allowed impervious coverage is 6 percent with existing at 10 percent, including the extended sq. footage of the pump house.

Chairman Fulper opened the floor to the public for questions of the applicant's engineer:
Hearing no questions, the floor was closed for questions (8:02 PM).

Chairman Fulper opened the floor to the board/professionals for questions of the applicant's engineer:
Hearing no questions, the floor was closed for questions (8:02 PM).

Witness #2 – Alfredo Trevino RA. - Mr. Trevino offered his credentials and testimony experience and was accepted as an expert witness.

Mr. Trevino stated that his firm surveyed the porch, pergola, pump house, and bridge. Adding that they also inspected photographs from the construction phase; provided by the homeowner, and also surveyed the existing structures. Stating that they decomposed what was there and reorganized it and completed a set of drawings for everything that is on the property. Stating that a couple of items, per the structural engineer, did not meet compliance. The bridge required extra steel to be added to the bottom of the steel frame to be compliant, the porch required railings to be in compliance.

Mr. Trevino stated that the bridge is an 8ft. wide covered foot bridge, designed for pedestrian and small machinery, not designed for a car. The height of the bridge is 15'4" including the cupola.

The pool house is not conditioned space; not meant for living. It has a ceiling fan, operable windows, has stairs to access the second floor and is used for storage of pool furniture. The height is 21'6", requiring a variance from the 15' code. Stating that flood vents are required and need to be added.

Chairman Fulper opened the floor to the board/professionals for questions of the applicant's architect:
Hearing no questions, the floor was closed for questions (8:10 PM).

Chairman Fulper opened the floor to the public for questions of the applicant's architect:
Hearing no questions, the floor was closed for questions (8:10 PM).

Witness #3 – Paul Gleitz P.P. - Mr. Gleitz offered his credentials and testimony experience and was accepted as an expert witness.

Mr. Gleitz provided an overview of the site as being in the RR5 zone, and reviewing the permitted uses stated that the property is a single family home with accessory out buildings and other type of single family recreational amenities. Adding that there is no proposed use change and the surrounding uses are low density residential, forest, and agricultural fields.

Engineer Decker stated that he agreed with Mr. Gleitz regarding the items within the stream corridor, but requested clarification on the other buildings and uses on site.

Mr. Gleitz stated that the pre-existing non-conforming conditions are the side yard setback for the barn, the two story accessory building in the front yard, the gazebo to the side of the rear lot lines, and the barn in terms of the side yard setback under separate section. There are two residential structures; the main dwelling and a guest house, it is not rented.

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Mr. Decker stated there is two guest cottages identified on the plot plan. In response, Mr. Gleitz noted that the one to the north is labeled as guest cottage and the one to the back labeled as a house is an old dog kennel, currently used as a workout gym.

Mr. Decker questioned whether the property is rented out for functions, the homeowner responded that it is.

Board planner David Maski stated, for the record it should be clear what the use is; categorize it as either a permitted use, permitted conditional use, or an existing non-conforming use.

Witness #4 – James Vernor, Homeowner – 16 Mill Road Lambertville, NJ

Mr. Chou questioned whether the property is rented out. Mr. Vernor stated it is their residence, living there for six years. Stating they do rent it out and having it listed on a site called VRBO (Vacation Rentals by Owner), usually renting for 8-12 weekends each summer for family gatherings.

In response to Board member questioning, stating that it is not a bed and breakfast. When the property is rented out they move to their rental property in Pennsylvania. The property rents for small weddings and birthday parties. The homeowner is just making the facility available; no food is provided, all events are organized/catered by the renter. The premises is not inspected by the Board of Health. The homeowner is registered with the state of NJ as a registered business. No special or additional homeowner insurance is required as stated by the homeowner.

Engineer Decker questioned with respect to the septic, whether port a johns are brought in, Mr. Vernor stated that he does not and he does have the septic pumped once a year, which is more than adequate.

In response to Board member questioning, Mr. Vernor stated that he can accommodate seventeen overnight guests, with a maximum of fifty non-overnight guests. Stating that he has never had any complaints from neighbors. Adding that they have accommodated small corporate functions and it works best if the functions are kept to 2-3 days in length rather than a weekly rental.

Witness #3 – Paul Gleitz P.P

Mr. Gleitz offered that it is considered a single family home, still a residential use permitted in the zone which happens to be rented out 10 weekends out of the summer. Stating the variances required as building height for the pool pump house, the bridge height, the accessory building in the front yard, the pool pump house expansion to the foot print, and the three structures in the stream corridor. Adding that measurements from the top of the stream bank are currently 16ft. for the pool pump house, zero on the bridge, the residence is at 68.3ft. for the pergola and 72.3ft. for the nearest corner of the porch

Mr. Gleitz stated that he reviewed the 2012 Master Plan, finding no statement of Goals and Objectives, just a collection of prior elements adopted from 2010-2012, and referring to #7 of the Land Use Element. Stating that the Master Plan does speak to the stream corridor protection ordinances and puts a balance in, protecting ground water recharge, protecting resources while enabling reasonable use. Opining that how the site is being used, is a reasonable use for the size and location of the property.

Mr. Gleitz stated that in terms of the stream corridor, the hardship comes into effect because of the stream corridor that bisects the entire property. The entire site is affected by the buffer, there is no alternative siting for any of the accoutrements. The site is currently developed and has existed in the same state for some time, the original portions of the farm house are from the mid 1800's. A number of the out buildings developed from the turn of the twentieth century through the early 1930's and 40's. Stating that we are dealing with an existing site that has all these existing developments on it and is completely covered by a buffer.

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Mr. Gleitz opined that the variances from the stream corridor protection could be granted without substantial detriment to the public good, stating the site is predominantly wooded as shown in exhibit V-1, stating there is a lot of tree cover and natural vegetation, the slopes are held together with deciduous and evergreen species and shrubs. The wooded habitat provides protection in the stream corridor, the balance of the site helps with storm water recharge, has natural cover, and prevents erosion; this site does provide all that is looked for in the stream corridor ordinance.

Mr. Gleitz added that here was minimal disturbance of the improvements, most of the improvements were either directly on the original foundations or slightly expanded. The pool pump house was expanded from the existing foundation, the bridge was put in the same location; just widened slightly, the pergola replaced a screened room, and the porch was slightly expanded. Stating that no vegetation was removed for any of the improvements. Adding that the increase was minimal in terms of the expansion of the buildings on a 13+ acre site. The relative impact was small.

Mr. Gleitz stated that in terms of the impact to the intent and purpose of the zone plan and ordinance, this is a good example of maximizing opportunities to protect and enhance prime water recharge while enabling reasonable use of developmental land.

Mr. Gleitz stated that the ordinance was designed to accommodate this particular type of application, adding that there is no other place to put these type of things, the buffer encumbers the entire site, stating there are some variance relief that the board can grant for this type of development. Adding that the stream bisects the entire property, the location of the stream corridor, and the intended buffers shows the hardship, opining that the variances can be granted without harm to the surrounding neighborhood, the zone plan or master plan.

Referring to the accessory building height variances, Mr. Gleitz stated that the hardship arises from the exceptional topographic conditions that affect this specific piece of property. The creek bisects the property which necessitates the bridge crossings; the bridges are required on the site to access the portions of the site and improvements on the other side of the creek. Storage is necessary on site for outdoor furniture, the applicant did lose a lot of equipment and outdoor furniture during the last storm event. Adding that the site is a currently developed site and they are trying to stay within existing footprint to minimize the impact. Mr. Gleitz stated that 13+ acres provides buffers while removing the impacts to the public good.

Engineer Decker stated that the pool house went from an 8'x12' to 14'x15' and two stories, adding that regardless of where it is located, it will be in the stream corridor. Asking if there was an opportunity, within the 100 year floodplain, to move it out of the flood area? Mr. Vernor stated that all of the mechanics/wiring/piping are underground for the pool, making sense to keep it in the same location, near the pool, and increase the size of pool house for storage of pool furniture. The second story is used for storage and the ground floor houses the mechanics for the pool.

Motion was made by Ashton with a second by Koveloski (Alt. #1) to grant variance relief for: 6'6" relief for accessory building height of pool pump house whereas 15' permitted with 21.6ft provided, 6" relief for bridge cupola whereas 15' permitted with 15'6" provided, a pool pump house accessory bldg. in front yard, and exceptions from the Stream Corridor Protection Ordinance for the existing bridge, pump house, pergola, and porch, subject to all other applicable agency approvals, including specifically DEP approval; and installation of flood vents in the pool house. Roll call: Cronce-aye, Hall-aye, Ashton-aye, Koveloski (alt#1), Fulper-aye. Motion carried (9:10 PM)

Cronce stated that the applicant did a good job in presenting their application and he votes aye.

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CORRESPONDENCE:

The following items were distributed as correspondence:

Forwarded email from Clerk Olsen re: **Mandatory Training for Heads of Planning/Zoning Board-Chairman Fulper received a certificate for participating,**

Forwarded email from Clerk Olsen re: **Employee Safety Orientation/Anti Harassment video training** – Secretary Hall received a certificate for the attending video training.

Clerk Olsen requested the **ZB professional’s fee schedule**, Secretary Hall provided same.

Approval of Bill List 4/22/14:

A motion by Cronce, seconded by Ashton to approve the Bill List for payment was unanimously approved by voice vote.

DISCUSSION:

Vice Chairman Cronce inquired about the status of the **laptop for the secretary**. Secretary Hall reported that upon follow up she was told by CFO Carro that the ZB budget was submitted with the additional funds included, however, the budget has not been adopted.

Secretary Hall again related her frustration with the delay in acquiring approval for the laptop and also conveyed obstacles incurred while using her personal laptop for completing zoning board work.

Member Koveloski will plan on attending **board training** the beginning of 2015.

Secretary Hall distributed **“Roles of the Zoning Board of Adjustment & the Zoning Officer”** from an earlier issue of the Planner.

OPEN TO PUBLIC:

The floor was opened to the public. Hearing no comments/questions, the floor was closed. (9:25PM)

ADJOURNMENT:

A motion by Ashton, seconded by Cronce to adjourn was unanimously approved by voice vote (9:25PM)

Respectfully submitted,

Ruth J. Hall