

WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
July 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, Brian Fitting-present, Joe Romano-present, Ruth Hall-present, John Ashton-present, Rob Borden-present, Robert Fulper-present

Absent: Koveloski (Alt. #1), Frank Sabatino (ALT. #2)

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

Also present: Chris Rose, Zoning Official

PRESENTATION OF MINUTES:

Regular Meeting Minutes – June 24, 2014 – Motion was made by Fitting with a second by Borden to accept the minutes as presented. Roll call: Cronce-aye, Fitting-aye, Romano-abstain, Hall-aye, Ashton-aye, Borden-aye, Fulper-aye

RESOLUTION(S) OF APPROVAL: None

APPLICATION(S):

Completeness/Public Hearing: BDNJ Limited – LLC / (Creekside Preserve) Block 5 Lots 15.02-15.15 a/k/a Holcombe Grove Road – front yard setback/side yard setback variance request(s). (7:37pm)

Application, checklist, Overall Rendering comprised of one sheet prepared by Bohler Engineering, Inc dated 12/28/2010, 12 sheets titled “Unit Exhibit” prepared by Bohler Engineering, Inc dated 5/7/2014, were received and distributed.

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

Gary Forshner, attorney for the applicant, appeared on behalf of the applicant, BDNJ Limited, LLC / (Creekside Preserve). Mr. Forshner stated he will provide a history of this project adding that this project is severely constrained and will go through lot by lot to show why the variance’s requested are necessary to make this project viable.

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Stating that the original property was 213 acres, reduced to 68 acres as part of the development application in 2001. Originally approved by the Planning Board for 19 lots, conforming to ordinance requirements, and for various reasons reduced to 14 lots. Stating the biggest single reason being, on the edge of the property is a tributary to the C1 waters, requiring a 300ft buffer and therefore taking 68 acres of largely developable land with a modest amount of wetlands on it, and reducing it considerably. After ending up in litigation with the DEP and lengthy history with the DEP the current 14 lots is what was approved.

Mr. Forshner added that this entire project missed the market, the settlement with the DEP and approval with the Planning Board came in 2006, 2006 is when it started getting difficult to sell lots. Two lots have been built and sold to third parties, all of the infrastructures have been put in, and the rest fell apart and missed the market. The developer went back to the Planning Board on a number of occasions and requested extensions under the MLUL, those extensions have expired as of July 15, 2014.

Application was previously made to the Planning Board for blanket variances, adding that zoning for this property changed in the interim. Stating that there is a grandfathering ordinance that says the lots are grandfathered, the lots have been perfected and can't be touched. However it did impose additional bulk requirements that didn't exist before. Side yard setbacks, front yard setbacks were imposed upon it, minimum buildable area were imposed upon it depending upon the interpretation of the ordinance. Given the already severe constraints on the project, it has had a significant impact on what can be developed on the property. Some of these lots could not be built if the ordinance is imposed. Septic systems were challenging to get approvals on due to the constraints imposed. All systems are mounded systems, requiring additional setbacks.

Because of different constraints, in many cases, theoretically a house could be built on the lot that meets most if not all of the ordinance requirements, what will be lost is the entire use of any rear yard. Adding that this is a gorgeous piece of property with nice houses, typically most will want a pool, a deck in the back yard, anyone will want a useable back yard. Stating, in looking at all of the different constraints that exist on these lots, by applying the front yard setbacks, the ability to have a useable rear yard will be lost, on many of the lots.

Board member Fitting requested an overview of the implication of the grandfather clause. Attorney Forshner related that a number of the bulk requirements changed, stating the ordinance provides grandfathering provisions for lots under 2 acres; applicant has none, lots between 2-4 acres, lots over 4 acres. Stating the applicant has lots between 2-4 acres, some that are just over 2 acres, and some lots that are as large as 16 acres. Adding, the lots that are over 4 acres are grandfathered, but it doesn't provide an adjustment for the bulk requirements. Therefore everything under the new RR4 ordinance applies.

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

William Rearden, P.E.- Engineer – Bohler Engineering, Chalfont, PA

Carlos Rodrigues – Planner - Princeton, NJ

David DeLuca – Partner BDNJ- Yardley, PA

Witness #1 - William Rearden P.E. - Mr. Rearden offered his credentials and testimony experience and was accepted as an expert witness. Mr. Rearden provided a history of the original approval, stating it was zoned R2, minimum lot size was two acres, minimum lot frontage was 200ft., minimum buildable area was one acre, front yard setback was 75ft., side yard setback was 35 ft., rear yard setback was 50ft., building height was 2 ½ stories or 35ft., and lot coverage was 20%. Once shifting to the RR4 requirements the lot area increased from two to four acres, lot width remained the same at 200ft.,

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buildable area increased to two acres, front yard setback increased to 100ft., side yard setback increased to 50ft., rear yard setback increased to 100ft., maximum building height remained the same, and lot coverage decreased to 15%.

Mr. Forshner stated, without the environmental constraints, theoretically, all of the bulk requirements could be satisfied. The reason the bulk requirements are not being satisfied is because of the environmental constraints, Mr. Rearden agreed.

Mr. Forshner questioned what was the primary setback requirement for the 2-4 acre requirement, Mr. Rearden stated 2-4 acres, front yard is 100ft., side yard is 50ft., rear is 100ft., building height is 2 ½ stories, and lot coverage is 15%.

In response to Board member questions regarding the grandfather RR2 requirements, Mr. Forshner responded with clarification, stating the old RR2 zone was a minimum of 2 acres, with a list of bulk requirements that applied to the entire project.

The current ordinance places the project in the RR4 zone, with a minimum of 4 acres, also subjecting the project to additional bulk requirements. The grandfathering ordinance states the lots can remain, they are being grandfathered, not to be revisited, generally speaking. Exceptions are made as to what will be revisited. Those items not grandfathered are, for lots under 2 acres and does not apply to this project, front yard setback was 75ft., side yard setback was 35 ft., rear yard setback was 50ft., building height was 2 ½ stories or 35ft, and lot coverage is 15%. Mr. Forshner stated that is what it would be for 2 acre lots if they had any before us, adding they do not. Offering his interruption of the ordinance, stating, everything about the lot is grandfathered, and everything about the approval is grandfathered, with the exception of these five items as called out separately.

Mr. Forshner added, they were grandfathered from all of the requirements as long as the approval was still good, but the approval was expiring, they made application initially to the Planning Board. Requesting blanket variances to build the project as it was originally approved, the Planning Board sent the applicant to the Zoning Board to be heard on a lot to lot basis.

The original application required 48 variances, initially applying for 22, now removing a couple of side yard requests. Reiterating the ordinance doesn't apply to anything under 2 acres or anything under 4 acres. The 2-4 acres has requirements of satisfying front yard setback of 100ft., requesting relief to 75ft., side yard setback to 50ft., asking relief to as little as 35ft. in some cases, some cases no relief is required. Rear yard setback of 100ft. is in compliance because of the environmental constraint, building height at 2 ½ stories or 35ft, no relief is requested, and lot coverage at 15% requires no relief. Mr. Forshner stated the most coverage on any of the lots is 11%, well under the ordinance requirements. Mr. Forshner clarified that he is citing from the grandfather provision in ordinance 109-65.

Mr. Forshner referenced the minimum buildable area, stating they submitted for an interpretation for the ruling. The lots are grandfathered, cannot change the minimum buildable area, the minimum buildable area on these lots are just above one acre and just under two acres. Under the current ordinance, the requirement is a two acre minimum buildable area. Adding that the property is constrained, the infrastructure is already in, opining it is hard to imagine any impact to the public good or the zone plan. In addition to the interpretation request, application for variance relief has been submitted if not deemed to be grandfathered.

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Board member Fitting questioned the number of 2-4 acre lots requiring relief, Mr. Forshner responded six lots with at least one variance and possible a minimum of two on every lot if the minimum buildable area is defined to be something requiring relief, and some lots would require a third, being side yard setback. A total of 14 lots, with 12 remaining to be built.

Attorney Palilonis read the *Grandfather Provision* in ordinance 109-65, stating Mr. Forshner's position on the grandfather clause is, the only things that change are the five requirements. For further clarification Mr. Palilonis read the *buildable area* from definitions. Accepting representation from Mr. Forshner that none of the factors called out in the *Critical Environmental Areas* definition apply to the buildable areas, Mr. Rearden confirmed in the affirmative.

For clarification, Chairman Fulper stated, the question is what's grandfathered and what is not under the grandfathering ordinance, they have identified five criteria, and one of those criteria does not list as being grandfathered.

Engineer Decker stated there are six over 4 acre lots, since they are over 4 acres, they would not fall under an undersized lot provision as included in the grandfather ordinance. Questioning if the lots are eligible for the grandfathering, because the total lot area is over 4 acres. Offering that the bulk standards would still be the same, the 2-4 acres are identical to what is required for any lot under the current ordinance. Noting that the ordinance states for undersized lots, if the lot is at 4 acres, you are in compliance for lot size. Agreeing on lots less than 4 acres, for the buildable area they would be covered. On the lots over 4 acres, they are not covered in the grandfather clause, the buildable area theoretically would not be grandfathered.

Mr. Rearden stated the minimum buildable area for lots over 4 acres are, smallest is unit 1, lot 15.02, 1.64 minimum buildable acres, largest is 15.09, lot area over 16 acres, buildable area 1.857 acres.

Mr. Decker advised the Board members not to get confused between the buildable area which goes to the property line excluding the setbacks, except those that might be required for environmental, and the building envelope which is the unconstrained area in which you can build a structure, the area within the all the setbacks and environmental constraints.

Mr. Forshner, agreeing with Mr. Palilonis and Mr. Decker's interpretation, stated the ordinance does distinguish between the two; anything undersized between 2-4 acres is grandfathered with the exception of these five provisions. Over 4 acres doesn't require grandfathering to the lot, is subject to current standards. Suggesting a fair interpretation is that the minimal buildable area should apply to any lots over 4 acres, requiring relief for those. For lots 2-4 acres will be for protection, however interpretation of the ordinance is those provisions don't apply. Suggesting the Board reach the interpretation that the grandfather provision applies to minimum buildable areas for lots under 4 acres, not grandfathered for lots over 4 acres, as protection grant relief for all the lots in case of disagreement with interpretation.

Motion was made by Ashton with a second by Fitting to deem lots four acres or less under the provisions of 109-65; the grandfather provision, do not require compliance with the minimum buildable area provisions. Roll call: Cronic-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Borden-aye, Fulper-aye. Motion carried. (8:32 PM)

Chairman Fulper requested the applicant present information for one or two lots that are representative of the relief being requested.

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Mr. Rearden started by presenting information for lot 15.02, stating the lot is the most constrained of all the lots, it has a lot area of almost 4.5 acres, the buildable area is the smallest at 1.16 acres. The reason for this is a Category One (C1) stream buffer.

*Entered as **Exhibit C-1**, Overall Rendering Creekside Preserve, dated 12/28/10, prepared by Bohler Engineering.*

Mr. Rearden provided an overview and history of the development, stating the development consists of one road, Holcombe Grove Rd. running through the middle portion of the property with 14 lots situated around the cul-de-sac and road.

The property has significant environmental constraints associated with it, including the tributaries to the Alexauken Creek, which during the approval process achieved a C1 classification, requiring those tributaries to have a 300ft. buffer. This lot previously had farming activities and disturbance within the inner 150ft. of that buffer. Because of this previous disturbance, that allowed for maintaining disturbance in the outer 150ft. of the buffer. Stating that some of the lots will show the 300ft. line, like 15.09 – 15.11, with houses located in the outer portion, because the existing buffer was disturbed, it is allowed to be maintained. In areas of no disturbance, like lots 15.02, where it was primarily wooded and not farmed, the 300ft. buffer had to be maintained.

The development originally was a 19 lot development, the Holcombe Grove road went across into the back portion of the property with 5 additional lots. As part of the submission to the DEP, there was a request for a hardship waiver for crossing a tributary, that request was denied. That denial started the negotiation process with DEP. The plan was reduced to 14 lots while implementing a significant number of other storm water measures to achieve the stringent requirements of the C1 hardship.

The number of lots was further restricted by the availability of septic beds. Septic beds require both separation distance and grading. Septic systems are mounded systems. Lots that require rain gardens were mandated by DEP and located based on drainage. Drywells have specific locations related to the testing done for the specific block.

The following exhibits were marked:

***Exhibit C-2:** Creekside Preserve Unit Exhibit, Bohler Engineering, 05/07/2014*

***Exhibit C-3:** Planning Report Creekside Preserve, BDNJ Limited, LLC, 07/17/2014*

Member Fitting asked if the two lots that are already built would require the same variances that are currently being requested, Mr. Rearden responded that lot 15.15 would not require a front yard setback but would require a side yard setback. Adding that based on the house shown, it could have complied. Lot 15.12 based on the way it's located, it would not require a front or side yard setback. Primarily because of the location of the septic systems on both lots being more towards the front, which pushed the structure toward the back.

Mr. Forshner added that 15.12 has an ample building envelope without impacting on the rear yard, whereas 15.15 rear yard would be constrained by the 100ft. setback as well as the existing woodlands and resource conservation easement. To potentially construct a pool in the rear yard, relief from the current ordinance would be necessary. Adding that the tip of the house in the rear is almost directly up against the rear yard setback.

Member Romano asked if lot 15.15 weren't built would the plans show the same 8100sf block on that property, as shown on all other lots.

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In response, Attorney Forshner asked Mr. Rearden if a box were drawn around the house on 15.15, what the approx. dimensions would be, Mr. Rearden replied that yes a variance would be required and it would be approx. an 80x80 box.

Member Romano questioned the square footage of the homes on lots 15.15 and 15.12, Mr. Rearden responded approx. 5000sf. Mr. Forshner stated that these homes are all to be custom homes. Member Romano stated that conceivably, if some of the larger boxes are 8100sf and they build a 5000sf home, they could be built within the setbacks as established today. Mr. Forshner agreed that in some cases yes, and some no.

Engineer Decker requested clarification on the color coding, referring to Exhibit C-1, for environmental constraints, Mr. Rearden stated, using lot 15.03 for example and showing a darker green and a lighter green within the building envelope. The lighter green area is to define the building envelope which is different than the buildable area. The lighter green is the area that would be maintained as the lawn that's outside the building envelope. All of this makes up the buildable area, while defining what is in the building envelope vs. what's outside but still within the lot.

Engineer Decker offered that on the environmentally constrained areas, they have to be left untouched. Mr. Rearden confirmed, adding that there is specific resource conservation easements associated with every lot, which goes around the perimeter of the entire property that further restricts even beyond some of the buffers.

Member Romano questioned the proposed size of the building footprint, Mr. Forshner stated, they recognize the building envelope sounds big, but they looked at what they had and what the footprint would be. Referring to the lot already built, and although the house there is smaller than the footprint, drawing a rectangular box around that would give us approx. an 80x80. Showing a box at 90x90 allows for some flexibility. Mr. Forshner stated that a few of the side yard setbacks were eliminated by reducing to the 80x80. With the front yard, if made smaller, pushing the rear yard back, giving up what is already almost non-existent. Trying to slide the house forward a few feet to gain useable rear yard. Stating that most of the homes will never be able to have patios, pools because of the lack of use-ability.

Discussion continued regarding variance relief approval on specific lots vs. blanket variance relief approvals on the project. Applicant is seeking blanket variance relief approvals on the project citing marketability due to limited backyards/side yards due to hardships from existing environmental constraints on the property.

Mr. Rearden provided an overview of lot 15.02, stating it has a significant environmental constraint associated with the full extent of the C1 buffer, going to the front third of the property. In addition to that buffer, there is the Resource Conservation Easement. During the approval process with NJDEP, they imposed an additional setback; the building envelope cannot go back any closer than 35ft. To abide by the setbacks leaves a building envelope of 20ft. in depth, which is not practical on a lot this size nor within a development of this character.

With the requested relief, the building box is a 50ft. depth and 85ft in width, behind the building envelope is 35ft. of useable backyard. Perhaps enough for a deck, small, if any useable back yard.

Board member Ashton questioned why the building envelope is positioned to the west, in response Mr. Rearden stated the Resource Conservation Easement starts to drift toward the front of the property and it starts to skinny up the setbacks, essentially you would be taking the building depth from 50ft. down to something less than that. Additionally, in the front, the septic location; the mound and grading dictates

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where the driveway can access. The driveway access point is fixed to avoid the septic bed, dictating where the house is located.

Mr. Forshner stated that this is a lot over 4 acres, requiring three variances; front, side and minimum buildable area variances.

*Chairman Fulper opened the floor to the public for questions of the applicant's professionals:
Hearing no questions, the floor was closed for questions (9:20 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 (9:20 PM).*

Motion was made by Ashton with a second by Hall to grant 75ft. front yard setback, 36.8ft. side yard setback, 1.164 acres minimal building area.

Chairman Fulper asked for discussion on motion: Fitting stated he would make the same motion but without the side yard relief, Romano stated he would second it. Fitting stated without granting the side yard it would be a 50x70 as opposed to 50x85. Ashton stated the type of neighborhood is relatively large homes, even if constrained down to the size that fit easier in the box, this would be a stand out.

Ashton amended the motion with a second by Hall to grant 1.164 acres minimal building area and front yard setback.

Chairman Fulper opened the Motion for discussion

Witness #2 – Carlos Rodrigues P.P. - Mr. Rodrigues offered his credentials and testimony experience and was accepted as an expert witness.

Mr. Rodrigues stated prior to the changes in the ordinance from the R2 to the RR4, there was a Master Plan amendment that was adopted in 2003 which provides the rationale for, changes. As part of that master plan amendment there were also provisions that recommended creating as a cluster system that would apply to those same zones, all of that was enacted legislatively, the zoning was changed, the cluster provisions were adopted and they apply, not just to the RR4 zones but all of the larger zones.

Adding that as long as you have a parcel of 40 acres, which may or may not be contiguous, you can develop, in this zone, on lots as small as 40,000sq ft and on average as small as 1 ¼ acres. With minimum front yard setbacks of 50ft.and minimum side yard setbacks of 20ft. The concept of clustering is that you are pulling the developed portion of the project together, and setting aside the open space. The open space is deed restricted and undeveloped.

Stating that this project was not developed under the clustering set of standards. Albeit the types of conditions, with the smaller setbacks both in front and to the side, that can be created legally under the clustering provisions and not dissimilar from the types of conditions being requested. Stating that the applicant was forced into a type of layout that looks very similar to what you might have, had the project been developed under the cluster provisions.

Mr. Forshner stated, the ordinance contemplates the type of project being proposed. Adding, when talking about any substantial detriment to the public good or whether its substantial detriment to the master plan, it's hard to imagine that there is, in light of the fact that the ordinance provides for something very similar to what is being proposed.

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Mr. Rodrigues addressed the proofs, the hardship; the peculiar and exceptional practical difficulties. Stating that's one basis for providing the variances. The other basis is when you can show you are actually advancing the purposes of the municipal land use law and the purposes of zoning in ways that you otherwise would not be doing. Opining that this application satisfies both of these criteria.

The property had its own physical features which constrained development in a normal sense, then you have an overlay that results from the settlement agreement. That's what is now being confronted, all of the restrictions that would applied, opining they have a very classic case of hardship.

Mr. Rodrigues opined, this application addresses Purposes A, C, E, J, L, in a general way, and Purpose I and P in a more targeted and specific way. Stating Purpose I, to promote a desirable visual environment through creative development techniques and good civic design and arrangements, Purpose P, which was added last year, to enable municipalities the flexibility to offer alternatives to traditional development through the use of equitable and effective planning tools, including clustering, transferring development rights and lot size averaging.

Mr. Rodrigues opined, the variances can be granted without detriment to the public good or to the integrity of the neighborhood, in fact the character of the neighborhood will depend on the decisions this Board makes, in terms of setbacks. There is no impairment to the intent or purpose of the zone plan.

Mr. Forshner asked that Mr. Rodrigues apply his testimony to lot 15.02, Mr. Rodrigues stated that the back yard is extremely constrained, by increasing the front yard you essentially move the building envelope back, unless the front yard is being used for a functional purpose such as placing the septic. Adding, the left side yard is severely constrained by existing woodland.

Discussion continued regarding amount of relief requested vs. actual amount required per lot. Identifying and proving the hardship for each lot was the main concern for some Board members.

Motion withdrawn by Ashton (10:09 PM)

Applicant and members of the public were advised that the public hearing would be continued to the August 26, 2014 meeting of the Board at 7:30 PM. No additional notice will be made. (10:10 PM)

CORRESPONDENCE:

The following items were distributed as correspondence:

Forwarded email from Clerk Olsen re: **Ordinance 11, 2014**, introduced 6/25/14 adopted 7/23/14
Environmental features

Code Book updates were provided to Attorney Palilonis for the full code, no updates to section 109 of the code.

Approval of Bill List 7/22/14:

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

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DISCUSSION:

Secretary Hall provided an update on the **laptop purchase**, stating that the purchase had been completed. Offering that the cheaper laptop is a consumer grade with a limited warranty and Windows 8 operating system, whereas had they purchased the better laptop it was a business grade with better warranty also supported by JWS and came with Windows 7 Professional operating system, a more user friendly program. JWS was still working out a couple of settings issues on her personal laptop but otherwise the switch was completed.

OPEN TO PUBLIC:

The floor was opened to the public. Hearing no comments/questions, the floor was closed. (10:13PM)

ADJOURNMENT:

A motion by Ashton, seconded by Cronic to adjourn was unanimously approved by voice vote (10:13PM)

Respectfully submitted,

Ruth J. Hall