

WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
September 23, 2014

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:37PM 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, Kevin Koveloski (ALT. #1)-present, Frank Sabatino (ALT. #2)-present, Robert Fulper-present

Absent:

Professionals Present: Stewart Palilonis, Board Attorney;
Elizabeth McManus, acting Board Planner Clark Caton Hintz

PRESENTATION OF MINUTES:

Regular Meeting Minutes – July 22, 2014 – Motion was made by Romano with a second by Ashton to accept the minutes with minor correction. Roll call: Cronce-aye, Fitting-aye, Romano-abstain, Hall-aye, Ashton-aye, Borden-aye, Koveloski (ALT. #1)-abstain, 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 previously distributed.

Gary Forshner, attorney for the applicant, appeared on behalf of the applicant, BDNJ Limited, LLC / (Creekside Preserve). Mr. Forshner stated the project is being presented on a lot by lot basis, this is a partially built out project with a long and tortured history, adding the project has already failed not once but twice. The original builder took it through the approval process, and DEP, eventually giving up

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the project and selling to the applicant. The developer constructed two houses and the project has sat for a number of years without progress, in part because of the market and in part because of the ordinance changes. Stating the applicant is hoping to move forward with the project as originally planned.

Entered as **Exhibit C-4, Overall Rendering (100') Creekside Preserve, dated 12/28/10, prepared by Bohler Engineering**, Mr. Forshner referred to exhibit C-4, stating the darker green area is environmentally constrained, out of 60+ acres it's a relatively small piece that's developable. Stating, those 60+ acres are developable because of litigation with DEP. The DEP delineated a plan that constrained exactly where everything can go. The projects infrastructure is in, driveway aprons are in, roads are in, and two houses are in; the applicant is looking to build out the project.

Mr. Forshner continued by stating the project is not only constrained by the DEP, but each lot has additional constraints in terms of what is buildable. The septic fields were very difficult to obtain, some are located in the front yard.

Referring to exhibit C-4, stating the septic fields are shown with grading necessary, in some cases doubling and tripling the areas that cannot be disturbed. The rain gardens, required by the DEP and determined by the county, are shown with no flexibility. Also added to the plan is additional grading with regard to the rain gardens. Dry wells are also shown on the plan.

Mr. Forshner stated, looking at the model home and honoring the 100ft setback, allows one to see the footprint in the building envelope, showing the footprint needing to be shrunk to fit within the building envelope. The homes will need to be shrunk to something that was never intended for this project. This was a custom home project, with homes similar to those that are already built on two lots. Adding that the current ordinance requires a two acre minimum buildable area, stating none of these lots can accommodate that due to environmental constraints.

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.

Mr. Forshner stated to build out the project the way it was started they need flexibility. It's clear whether a "c(1)" hardship, or a "c(2)" advances a better planning objective variance is being talked about. Mr. Forshner stated the application is not typical and requires flexibility, these are not cookie cutter homes, adding that the Planning Board when they approved it, did not envision it that way. Stating, given the flexibility, it will be a very attractive development, and will have no significant detriment to the public good.

Stating the project fits under both the "c(1)" and the "c(2)", there is clearly a hardship. Adding, the relief that should be granted would be comparable to what the ordinance envisions can be built out. Stating the application is asking for less than the ordinance would allow, but for all of those environmental constraints with regard to the project. Opining, the approval can be granted without any substantial detriment to the public good. Adding, the front yard setback will not be noticeable, there is also additional right of way that takes up about half of that distance. The cart way is not as wide as the right of way, along it is another 10'-12' of right of way adjacent to the paved way. That will provide additional aesthetics, to the extent that a front yard setback is about aesthetics, giving back almost half of that distance back by virtue of having some additional right of way.

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Mr. Rearden clarified the right of way distance at 13' on either side. Adding that the right of way is 50' in width, the cart way was built at a low impact standard of 24' in width, providing an additional 26'; 13' on either side.

In response to Mr. Forshner, Mr. Rearden identified exhibit C-4 as an overall rendering (100') prepared by Bohler Engineering and agreeing that it contained the additional information as discussed by Mr. Forshner.

Planner Elizabeth McManus of Clarke Caton Hintz was present on behalf of the Board. Memorandum dated August 18, 2014, was previously received and distributed.

Planner McManus stated, during a meeting with Mr. Palilonis and the applicants attorney, what became more clear are the environmental constraints and lack of flexibility the applicant has to move some of the homes.

Ms. McManus provided a recap of the application, stating the applicant is requesting two types of variances; front yard variances for all twelve of the lots and side yard variances for eleven of the lots. All of the variances are "c" variances; "c (1)" or "c(2)" variances. Adding that the MLUL states that the applicant satisfy the burden of proof for each variance and for each variance on each lot, opining that it wouldn't be necessary to go through all twenty some odd ones of them in intricate detail, stating these have a lot of shared characteristics that can be discussed and applied to each lot.

Ms. McManus stated the developer is seeking to build custom homes; not a cookie cutter development. Which is why we're not seeing individual footprints, but instead, building envelopes. With this comes larger footprints to promote flexibility and marketability. Adding that the Board needs to find that this warrants flexibility. The flexibility means that we don't have the specific locations of each lot, but instead approving an alternative development type. With that comes the larger homes and additional flexibility. In addition, the applicant is pushing and concerned about having usable yard space, opining that it is a legitimate concern for the Board members to consider, as West Amwell residents one of the benefits is the open space afforded through larger lot zoning. Opining it is legitimate to consider not just the ability to place the home on the lot, but also the ability to create some usable yard space so that the home is marketable, is enjoyable, and can be used similar to other homes, not only in this zone district but in the township as a whole.

Additionally, this shouldn't be considered in the context that the developer needs to make money on these lots, this is about having a community benefit; the benefit is about having quality of life in West Amwell, provides quality home sites, and provides adequate open space within the community.

The applicant is proposing all "c" variances, some of them meet "c (1)" criteria; which is a hardship criteria, some others meet "c(2)" variance criteria; this is flexible "c" or improved design variance.

Ms. McManus provided variance detail on individual lots as follows:

lot 15.02 requires a 75' front yard and 38.6' side yard variance, suggesting that the variances meet "c(2)" variance criteria for front and side yard setbacks because of the resource conservation area as well as the septic system location. By granting the variance you will be advancing purposes of the MLUL by creating an improved site design. Additionally, for the front yard variance, this lot meets the "c (1)" variance criteria because the permitted buildable area between the township setback line and the special environmental conditions setback is only 25', stating that is not adequate space to construct a home; 25' is too narrow. Recommending that the lot meets the "c (1)" and the "c (2)" variance criteria.

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Mr. Forshner requested “belts and suspenders” for minimum buildable area, asking for relief to be incorporated. Ms. McManus addressed the minimum buildable area on all lots, stating all lot lines are set, suggesting that for lots where minimum buildable area is not required, it would be a hardship because there is nothing that can be done to add additional land to these properties, Mr. Forshner agreed.

Ms. McManus suggested the lot frontage be addressed at once for all lots, stating there is an existing plat and lot; the subdivision was already perfected, creating a hardship for the applicant, not able to take additional land to accommodate a larger lot frontage.

Mr. Forshner suggested they meet frontage, Ms. McManus stated a variance is required for lots 15.06, 15.08, and 15.09. Ms. McManus clarified with Mr. Forshner that it is his testimony that they meet the townships definition that it be measured at the front yard setback and they do meet the standard, Mr. Forshner stated yes.

Attorney Palilonis stated relief is granted for what is requested; giving what is needed to the extent that is deemed appropriate, asking if that is understood, Mr. Forshner acknowledged yes.

Chairman Fulper clarified that the applicant is asking for the Board to address, side yard setback, front yard setback, and buildable area, Mr. Forshner agreed.

Mr. Forshner stated for “belts and suspenders”, they would not object to including lot frontage, if there are no objections.

Board member Romano stated that at last month’s meeting it was stated, there is a proposed range of building envelopes between 4200 and 8100, adding that the definition of buildable area at lot 15.02 is big enough to accommodate a luxury type house, or whatever type standard they are looking for, Stating that if that was the minimum standard, applying that, most of the variances would not be required. Agreeing that some of the variance are warranted.

Mr. Forshner responded, stating that the type of houses desired could not be put on lot 15.02; 15.02 is so constrained that they will have to do something different and special on it, stating, that lot is the most challenged and not the standard they are going by. Looking at exhibit C-4, providing a footprint of the model, and in each case it is outside of the building envelope; based on the 75’ setback and side yard setback. Stating they are looking for as much relief as possible for lot 15.02 because it will be out of character with the rest of the neighborhood and the objective is to have it keeping in character with the rest of the neighborhood as possible.

Discussion continued regarding building envelopes. Mr. Forshner stated they were asking for flexibility, not all of the houses would be the same, nor would you want all the houses to be the same. Some will be smaller, not everyone wants a house that is comparable to the model; some will want a smaller house for whatever reason. But on the other lots where they can physically accommodate the model, they would like the ability to do so.

Referring to the Memorandum prepared by Planner McManus, dated August 18, 2014, page 5 & 6, Mr. Forshner provided variance request updates per lot for side yard setback (*see charts on next page*), all front yard setbacks are being permitted.

Bulk Compliance for Lots 4 Acres or Greater in Size (RR-4 District §109 Attachment 1)											
Variance Update	Lot	Lot Size (acres)		Lot Frontage		Front Setback		Side Setback		Lot Coverage	
		Required	Proposed	Required	Proposed	Required	Proposed	Required	Proposed	Required	Proposed
Request	15.02	4.00	4.54	200'	411.3	100'	75'	50'	36.8'	15%	2.9%
Request	15.07	4.00	4.99	200'	220.5	100'	75'	50'	45.0'	15%	3.1%
Request	15.08	4.00	7.55	200'	91.6	100'	75'	50'	35.0'	15%	2.1 %
Request	15.09	4.00	16.73	200'	146.8	100'	75'	50'	35.0'	15%	1.2%
Withdraw	15.10	4.00	5.41	200'	314.8	100'	75'	50'	89.3'	15%	2.5%
Request	15.11	4.00	4.47	200'	195.3	100'	75'	50'	42.0	15%	4.6%

Bulk Compliance for Lots 2 - 4 Acres in Size (Grandfather Provision §109-65)											
Variance Update	Lot	Lot Size (acres)		Lot Frontage		Front Setback		Side Setback		Lot Coverage	
		Required	Proposed	Required	Proposed	Required	Proposed	Required	Proposed	Required	Proposed
Withdraw	15.03	4.00	3.67	200'	301.8	100'	75'	50'	81.2'	15%	5.9%
Withdraw	15.04	4.00	3.21	200'	218.0	100'	75'	50'	37.1	15%	7.1%
Request	15.05	4.00	2.35	200'	222.1	100'	75'	50'	42.1'	15%	8.7%
Withdraw	15.06	4.00	2.94	200'	179.9	100'	75'	50'	42.0'	15%	7.3%
Request	15.13	4.00	2.47	200'	229.2	100'	75'	50'	40.1'	15%	9.2%
Request	15.14	4.00	2.01	200'	234.4	100'	75'	50'	41.0'	15%	11.2%

Ms. McManus stated that we have gone through all of the positive criteria, in terms of the constraints, both with infrastructure and environmental. Addressing the negative criteria, the situation is a very isolated cul-de-sac from not only the rest of the township but the rest of the zone district, so it really doesn't bare any direct relationship to any other neighborhood simply by its isolation. Opining there is no substantial detriment to the public good, nor is there any substantial detriment to the zone plan in virtue of the history of the sites approvals and because of the consistency with other developments within the township that were built with these zoning regulations, or similar.

Mr. Forshner stated that if the Board is comfortable with what is being proposed, they would ask that a motion be made as to each lot.

Chairman Fulper stated that we are looking for a motion for each lot, stating the relief granted for each lot.

Motion was made by Ashton with a second by Hall on **lot 15.02** for 75' front yard setback, 37' side yard setback, and minimum buildable area. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:01 PM)

Motion was made by Koveloski with a second by Ashton on **lot 15.07** for 75' front yard setback, 45' side yard setback, and minimum buildable area. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:03 PM)

Motion was made by Hall with a second by Ashton on **lot 15.08** for 75' front yard setback, 35' side yard setback, and minimum buildable area. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:04 PM)

Motion was made by Hall with a second by Koveloski on **lot 15.09** for 75' front yard setback, 35' side yard setback, and minimum buildable area. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:06 PM)

Motion was made by Hall with a second by Ashton on **lot 15.10** for 75' front yard setback, and minimum buildable area. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:07 PM)

Motion was made by Hall with a second by Koveloski on **lot 15.11** for 75' front yard setback, 42' side yard setback, and minimum buildable area. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:08 PM)

Motion was made by Hall with a second by Ashton on **lot 15.03** for 75' front yard setback. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:09 PM)

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Motion was made by Hall with a second by Ashton on **lot 15.04** for 75' front yard setback. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:10 PM)

Motion was made by Fitting with a second by Ashton on **lot 15.05** for 75' front yard setback, Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-nay, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:12 PM)

Mr. Forshner stated that they are still looking for a motion on lot 15.05 for side yard setback, stating that the issue is the building envelope, it is right up against the rain garden.

Planner McManus stated that the buildable area on lot 15.05 is triangular in shape, going toward the rear of the site, getting a narrower building. Part of that will be offset by the granting of the front yard setback, but none the less, as the property moves toward the rear the buildable area becomes much narrower, the applicant wants to maintain as much useable back yard space as possible. Also, noting there is a 24.5' required setback to the rain garden.

Member discussion continued pertaining to location and amount of side yard relief required. Member Fitting stated, on the building envelope drawing; request is shown as a triangle, if approved, relief will be granted all along the property line.

Mr. Rearden stated that by building a house, placing the front here (referring to exhibit C-4), that doesn't mean the back can extend over to this side (referring to exhibit C-4), still having to maintain offset for garage and driveway, stating that they are no closer to the property line in the front than they are in the back, the setback is still parallel. Stating that they are asking for 42', if granted will be the same in the front and back.

Member Fitting stated, on the building envelop drawing, the applicant is asking for a triangle, if relief is granted on that point they will be gaining all of the building envelope.

Mr. Rearden stated that we are not approving that ultimate shape of it, we would be allowing them to build a structure so that it can be setback no closer than 42' to that side property line. It's not that they are showing a building area of 8000sf and now allowed to build 9000sf because they were given extra area.

Member Fitting states that the buildable area has increased. When asked what the detriment is, member Fitting stated there is no detriment to the increase.

(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed 9:22 PM – 9:28 PM)

Chairman Fulper called for a motion on lot 15.05 on the side yard setback.

Motion was made by Ashton with a second by Koveloski on **lot 15.05** for 42' side yard setback. Roll call: Cronce-aye, Fitting-nay, Romano-nay, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:29 PM)

Motion was made by Hall with a second by Koveloski on **lot 15.06** for 75' front yard setback. Roll call: Cronce-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:30 PM)

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Motion was made by Hall with a second by Ashton on **lot 15.13** for 75' front yard setback, 40' side yard setback. Roll call: Cronic-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:30 PM)

Motion was made by Hall with a second by Romano on **lot 15.14** for 75' front yard setback, 41' side yard setback.

Member Romano stated that in his opinion side yard setback is not required. Planner McManus stated the driveway can't be shifted to the east because of the septic, Mr. Rearden stated a separation needed to be provided between the driveway as well as the septic, and the swale between the septic and the driveway. Stating the side yard setback provides that separation. Adding that it is a similar situation to lot 15.07, while it does conceivably fit, the additional buffer provides a greater flexibility for that grading, otherwise it's a challenge with regard to the grading.

Member Romano stated the grading is going towards the back, it's not going toward the septic.

Mr. Rearden stated the front yard drains toward the house, everything is graded toward the house. If you don't have that buffer area between there, any of that runoff is going to go over the driveway toward the house. If you can provide a separation to create a swale between the driveway and the septic to get it around house where it's not coming toward the house. The additional side yard provides that the driveway would be shifted to the left.

Ms. McManus asked for clarification on the driveway being shifted to the left, stating the curb cuts are in. Mr. Rearden stated the curb cuts are in but once you come past the curb cuts you have the ability to add some variation to the driveway.

Mr. Rearden stated they don't have the flexibility to move the house back, because of the rain garden, only to go right or left.

Motion amended by Hall with a second by Fitting on lot 15.14 for 75' front yard setback. Roll call: Cronic-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:38 PM)

Planner McManus provided comments pertaining to lot 15.14 stating this is a similar situation, the building envelope, the driveway, the improvements shown on the plan can't be shifted east toward the septic system because of the grading. Opining that the building can be literally accommodated within the side yard setback, the issue is that the building will be 25' from the bio swale (rain garden) at the rear of the lot, the useable rear yard will be about 25' in that location, relatively small rear yard. Adding that the question before the Board is whether or this is a useable rear yard space, whether or not this fulfills the MLUL purpose of providing adequate light, air and open space on this particular lot.

Member discussion regarding the need for side yard relief continued, member Ashton stated, it is pretty severely constrained back there and some flexibility to end up with more useable area back there would not be bad, the box that their talking about building in, pushed forward, gives 25' outside of it, providing a little more flexibility to make a better back yard.

Motion was made by Hall with a second by Koveloski on lot 15.14 for 41' side yard setback. Roll call: Cronic-aye, Fitting-nay, Romano-nay, Hall-aye, Ashton-aye, Koveloski-aye, Fulper-aye. Motion carried. Resolution of approval to be prepared for the next meeting. (9:43 PM)

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CORRESPONDENCE:

The following items were distributed as correspondence:

May/June **Planner**

8/27/14 emailed **Resignation** from member **Rob Borden**

Email from Clerk Olsen re: **PennEast Pipeline**

Approval of Bill List 9/23/14:

Motion was made by Romano with a second by Fitting for the approval of the Bill List contingent upon certification of funds. Motion carried on roll call vote – all ayes.

DISCUSSION:

Secretary Hall provided an update on the status of the recording equipment, stating that a technician was out as late as this afternoon to repair the system. Secretary Hall has been in touch with the repair company representative, Jana, and Clerk Olsen, multiple times to ensure the system would be functioning for this meeting. The recording microphones continue to present a problem, but we have been told the system will record the meeting.

OPEN TO PUBLIC:

The floor was opened to the public. Hearing no comments/questions, the floor was closed. (9:50PM)

ADJOURNMENT:

All members voted in favor of adjournment at 9:50 PM

Respectfully submitted,

Ruth J. Hall