

ROBBINSVILLE TOWNSHIP ZONING BOARD OF ADJUSTMENT MEETING
ROBBINSVILLE TOWNSHIP, MERCER COUNTY, NJ
TUESDAY, JUNE 21, 2016 7:30 P.M. – SENIOR CENTER
MINUTES

Present: Vice-Chairman Daniel, Mr. Caputo, Mr. Bharatiya, Mr. Gibeault, Mr. Jackson,
Dr. Smolarz

Absent: Chairman Mercantini, Mr. Haney, Mr. Lewen

Also Present: Mr. Herbert, Esq., Board Attorney; Ms. Post, Board Secretary

ROLL CALL

The meeting was called to order by Vice Chairman Daniel. Roll call for the above Board members was called.

STATEMENT

Vice Chairman Daniel read the following sunshine statement: “Adequate notice of this meeting has been provided as required under Chapter 231 P.L. 1975 specifying the time and place with such notice being sent to the *Times of Trenton* and *Trentonian* and posted on the Municipal Building Public Notice Meeting Bulletin Board”.

FLAG SALUTE

The Board members present led the public in the salute to the flag.

CORRESPONDENCE

Vice Chairman Daniel asked Ms. Post if there was any additional correspondence. Ms. Post responded that she gave a copy of the NJPO newsletter to the Board members.

PUBLIC COMMENT

Vice Chairman Daniel opened the meeting to public comment for items not related to the Board’s business this evening.

Joanne Pannone, 215 Meadowbrook Road, stated that the Edinburg Village subdivision was approved by the Planning Board a few weeks ago. It is located on Block 9, Lots 1, 25.01 and 55 on Robbinsville Edinburg Road. The property comes over from Robbinsville-Edinburg Road all the way down to Meadowbrook Road. Meadowbrook Road is a watershed. There is a stream that comes through. When the applicant did his presentation for the Planning Board, he talked about constructing 51 houses and having open space. Ms. Pannone asked the applicant to confirm that it was going to remain open space and the gentleman speaking confirmed yes. That gentleman turned to the owner to smile and wink. She came to this Board to ask if they can do some kind of conservation easement.

Mr. Herbert apologized to Ms. Pannone for cutting her off and stated that the Zoning Board has no jurisdiction to do that. He informed her to go before the Planning Board at their next meeting in July or the Council meeting to speak on that issue. This Board has limited jurisdiction.

Ms. Post told Ms. Pannone that the Council meets on the second and fourth Thursday of the month.

Since no one else from the public came forward to address the Board, Vice Chairman Daniel closed the public comment portion of the meeting.

BOARD COMMENTS

Mr. Gibeault welcomed new Zoning Board members, Daniel Jackson and Dr. Gabriel Smolarz. The rest of the Board also welcomed the new members.

MINUTES

December 15, 2015 – Eligible to vote are Vice Chairman Daniel, Mr. Caputo, Mr. Gibeault, Mr. Lewen (absent) and Chairman Mercantini (absent). Vice Chairman Daniel asked for comments on the minutes. Since there were no comments, a motion was made by Mr. Gibeault and seconded by Caputo to adopt the minutes as circulated.

ROLL CALL:

AYES: Caputo, Gibeault, Daniel

NAYS: None

ABSTAINS: None

There being three (3) aye votes and no nay or abstain votes, the minutes were approved as submitted.

January 12, 2016 – Eligible to vote are Mr. Caputo, Mr. Haney (absent), Mr. Bharatiya and Chairman Mercantini (absent). Vice Chairman Daniel asked for comments on the minutes. Since there were no comments, a motion was made by Mr. Bharatiya and seconded by Mr. Caputo to adopt the minutes as written.

ROLL CALL:

AYES: Caputo, Bharatiya

NAYS: None

ABSTAINS: None

There being two (2) aye votes and no nay or abstain votes, the minutes were approved as submitted.

BUSINESS TO DISCUSS

1. Annual Report of Zoning Variance Requests for 2015 – Review

Mr. Herbert stated that Ms. Post prepared the report, which will be given to Council for review after the report is approved and adopted. He explained that if the Zoning Board is very active, then as a Zoning Board you would request Council to rezone some parts of the town. The Board is aware that they have not been active at all. The report list the applications that occurred. There is no request for a change in zoning at this point. A roll call vote is needed unless someone wants to discuss this further. There was no further discussion.

2. Resolutions

ZB2016-07 – Adoption of Annual Report of Zoning Variance Requests for 2015

All of the present Board members were eligible to vote. Vice Chairman Daniel asked for a motion to adopt the report. A motion was made by Mr. Gibeault and seconded by Mr. Caputo to adopt the referenced resolution.

ROLL CALL:

AYES: Caputo, Bharatiya, Jackson, Gibeault, Smolarz, Daniel

NAYS: None

ABSTAINS: None

There being six (6) aye votes and no nay or abstain votes, the resolution was adopted.

**ZB2016-05 – In Recognition and Appreciation of Service of Kristin Appelget
and**

ZB2016-06 – In Recognition and Appreciation of Service of Niel Siekerka

Mr. Herbert stated that the two above resolutions can be voted upon at the same time. Vice Chairman Daniel agreed. Mr. Herbert noted that these were two members of our Board, especially Mr. Siekerka, who served for a long time. Both members gave a lot of knowledgeable solid thought to applications. Mrs. Appelget was one of the most well-informed and the most stickler on applications. They will both be missed. Mr. Gibeault concurred with Mr. Herbert. He stated that he and Mr. Siekerka joined the Board in 2005. He was sad to see him step off the Board. Obviously, Ms. Appelget was moving out of the town.

All of the present Board members were eligible to vote. A motion was made by Mr. Caputo and seconded by Dr. Smolarz to adopt both of the above referenced resolutions.

ROLL CALL:

AYES: Caputo, Bharatiya, Jackson, Gibeault, Smolarz, Daniel

NAYS: None

ABSTAINS: None

There being six (6) aye votes and no nay or abstain votes, both of the resolutions were adopted.

3. **RZB16-04-01 – Noelle & Paul Limburg
Block 10, Lot 12; 306 Meadowbrook Road
Zoning: RR**

Request for Bulk Variance/Design Waiver Relief – Public Hearing

The applicants are seeking approval of a bulk variance/design waiver to exceed the maximum floor area and maximum length for an accessory structure for the proposed construction of a 672 square foot detached garage on a 1.21acre property.

Mr. Herbert stated that the applicants have complied with all the notification requirements so the Board can take jurisdiction on this application.

The applicants Noelle and Paul Limburg as well as their witnesses James and Margaret Marshall of 308 Meadowbrook Road and Mike Spatola of 304 Meadowbrook were sworn in as witnesses by Mr. Herbert.

Mr. Herbert asked the applicants if they have had a chance to review the May 9, 2016 letter from Mr. McGough. The applicants confirmed that they did review the letter. Mr. Herbert asked the applicants if they had an issue with anything in the letter. The applicants responded no. Mr. Herbert asked if they had any issue with the comments from the Affordable Housing Liaison, Environmental Commission, Construction Official, Police and Fire Departments. The applicants replied no.

Mr. Herbert stated that the applicants have a survey that was submitted as part of the application that he would mark as Exhibit A-1. The survey shows the house on Meadowbrook Road and where the applicants want to construct a structure along the in-ground pool. The applicants confirmed that was a correct statement.

Mrs. Limburg testified that they want to demolish the existing pool house shed and build a garage structure. Their home currently doesn't have a garage. It did at one point, but the previous owners

remodeled it and converted it to a living room. At this point in time, they don't have a place to put their riding lawn mower and other equipment.

Mr. Herbert asked if it is a garage structure, why isn't there a driveway leading to it. Mr. Limburg responded that for the most part it is not going to be used as storage for their vehicles. It will be used for lawnmowers, pool supplies, etc. Mrs. Limburg said that they could drive their cars to it if there was a need.

Mr. Herbert labeled a picture of the proposed structure as Exhibit A-2. The garage door is for a lawn tractor or ATV. The property is in excess of an acre with a pond, some wetland type features, and a creek running along the side of the property. The applicants have agreed to demolish the masonry shed. The proposed structure is 35 feet off the left sideline and 82 feet off the right. Mr. McGough's review letter indicates that the structure is a permitted use in the RR Zone, but the applicants are requesting relief for maximum floor area. Per Ordinance 142-33B.1, no accessory building shall have a floor or ground area in excess of 576 square feet nor shall any dimension be longer than 24 feet. The proposed structure is 672 square feet with a length of 42 feet. It is somewhat larger than the allowed floor area and substantially longer than what is allowed in that zone. When the town created this RR Zone ordinance, they thought an accessory structure should be a certain size. This structure exceeds that size. In order to gain relief, the applicants will have to provide testimony as to the hardship or necessity for a larger structure. There is no issue with it being close to the border property line or close to the front. It looks like it is in a spot where it will not have much of an impact to the neighbors and they need the larger structure for specific hardship reasons. It is his understanding from the applicants' testimony that they need to have a lawn tractor for this property due to the large size of the property plus the various features on the property like the pond and the creek. Because they need a larger vehicle like this, then that would be your hardship. He asked if any of the items they are putting in the structure are for a business. Mrs. Limburg answered no.

Mr. Herbert asked about the color of the shed. Mr. Limburg replied that it would be the same color as the house. Mr. Herbert said the shed would fit in with the layout of the property. Mrs. Limburg had a picture of the proposed structure, which was marked as Exhibit A-3. Mr. Limburg stated that their property is long, which is why they wanted the long 42 foot structure. If they wanted an even longer structure, it would impede the beautiful view. This structure would accentuate the property. Mrs. Limburg said that they started doing some landscaping around where the building will be. They have added mulch and will also add small evergreen shrubs and rosebushes.

Mr. Herbert read from the review letter where it says the structure overlaps a portion of the existing pool shed, which the applicants have stated will be demolished. The plan shows three existing accessory buildings assuming that one will be demolished with the construction of the proposed accessory building. A variance will be required for the number of accessory buildings on the site. Mr. Limburg replied that they will be demolishing two sheds. One close to the house will be gone as well as the pool house shed. They will be keeping the metal shed in the rear of the property.

Vice Chairman Daniel asked if the sheds that they are demolishing are in use now. Mr. Limburg said yes. Those sheds offer a better shelter than being out in the rain, but they are not in good shape.

Mr. Herbert said that they will still have more than one accessory structure on the property. He asked about the purpose of the metal shed in the back of the property. Mr. Limburg replied that he would like to fix it up eventually to make it look nicer. It is located in the woods. His neighbors like that shed. Mr. Herbert asked the size of that shed. Mr. Limburg said it is roughly 10 feet by 10 feet or 12 feet by 12 feet.

Mr. Herbert informed the applicants that they will also be applying for a variance for the extra accessory structure unless they want to demolish the rusty back shed. Mr. Limburg answered that he preferred to keep the shed. He asked if keeping the back shed will affect their approval for the new structure. Mr. Herbert said their application is for a larger structure than is allowed. The applicants are removing two of the smaller sheds on the property. They have a separate application for a variance for the extra shed in the back of the property so they need to present some testimony as to what kind of hardship there is for that back shed. Mr. Herbert is hearing that the back shed is a pre-existing non-conforming structure that has been on their property long before the applicants purchased the property and that the applicants intend to fix it up. Mr. Limburg confirmed that is correct. He added that they would like to plant a garden eventually and those garden tools would be kept in the back shed. The new structure would be built further up from where they want to put their garden, which would be near the metal shed. Mr. Herbert said so their hardship is that in order to keep the tools near the garden, you need to keep the shed. Mr. Limburg said correct.

Mr. Herbert told Vice Chairman Daniel that he does not see anything else in the memos.

Mr. Herbert asked the witnesses if they were in agreement with keeping this back shed. Mr. and Mrs. Marshall said yes. Mr. Herbert asked if they were in agreement with keeping the back shed for the character of the area. Mr. and Mrs. Marshall said yes. Mr. Herbert asked if they believed the new shed would fit in with the character. Mr. and Mrs. Marshall said yes. Mr. Marshall stated that Mr. Limburg's description as to what the metal shed will be used for is accurate because the garden will be planted in the back of the property.

Vice Chairman Daniel asked the Board members if they had any questions.

Mr. Gibeault asked if the fence around the pool would be adjusted and repaired to connect to the new structure. Mr. Limburg said yes. They are removing the existing fence that comes up to the existing structure and replacing it.

Mr. Caputo asked if there is a door from the new structure to the pool area. Mr. Limburg said no.

A Board member asked if the picture depicts the way the structure will appear on their property. Mr. Limburg said yes. There is a door on the overhang side and there is a garage door in the front and back of the building. There is no door on the poolside whatsoever. Mrs. Limburg showed an actual picture of the new shed. Mr. Limburg said that you will have to open the gate to enter the pool area.

Mr. Bharatiya asked what will be stored in the structure. Mr. Limburg answered that they plan to store a huge leaf blower, a snow blower, a large mechanics toolbox and a small motor less boat. The larger shed allows for him to work on his boat and other things. Their entire property is lined with trees.

Mr. Herbert marked the drawing plans of the new structure as Exhibit A-4.

Mr. Limburg said that they plan to start a family so he is thinking long term. He doesn't want his children's bikes and toys all over the property so that is another reason for building this structure.

Mr. Bharatiya said that if he was their neighbor, and there was not all the foliage and trees around the property, he would see that big structure, which would be an issue for him, but that is not the case for these applicants.

Mr. Caputo asked if the pool equipment would be stored in the shed. Mr. Limburg said the filter will be outside of the shed right next to the lean to overhang.

Vice Chairman Daniel asked if the witnesses would like to make statements.

Mr. Herbert asked the witnesses to rise and be sworn.

Mike Spatola stated that what the Limburgs are proposing would be a tremendous improvement to what currently exists. There is a terrible block building there now that you can see through that has been staring them in the face this whole time.

Mr. Marshall agreed with Mr. Spatola’s statement.

Vice Chairman Daniel opened the meeting to public comment. Seeing no one from the public stepping forward, the public comment portion of the meeting was closed.

Mr. Herbert stated that a motion is needed to approve or deny this application. The motion would be to grant a floor area ratio variance for the exceptional size and dimension of the shed as well as to grant a variance for the extra accessory structure, which is the previous non-conforming structure in the back of the property.

A Board member asked to whom the grading plan should be submitted. Mr. Herbert answered that it would be submitted to the Township Engineer and it would be made a condition in the resolution.

A motion was made by Mr. Caputo and seconded by Dr. Smolarz to approve the application as summarized by the Board Attorney.

ROLL CALL:

AYES: Caputo, Bharatiya, Jackson, Gibeault, Smolarz, Daniel

NAYS: None

ABSTAINS: None

There being six (6) aye votes and no nay or abstain votes, the application was approved.

4. **RZB16-05-01 – Chaithanya K. Jalagam
Block 5.06, Lot 1; 1 Blyman Court
Zoning: R1.5**

Request for Bulk Variance Relief – Public Hearing

The applicant is requesting approval of a bulk variance to allow the construction of a 54 inch high fence in the front yard of a .60 acre corner property whereas the ordinance limits the fence height to 36 inches in the front yard of a corner property.

Mr. Herbert stated that he reviewed the proof of service of notice and found it satisfactory so the Board could take jurisdiction on this application.

Chaithanya and Mansi Jalgam were present for this application and were sworn by Mr. Herbert.

Mr. Herbert asked the applicants if they have had an opportunity to review the Township Engineer’s review letter of June 2, 2016 and the comments from the other Township departments. The applicants confirmed yes.

Mr. Herbert stated that the applicants have to show some type of hardship and asked why they needed the higher fence. He understood that this property is a corner lot. Mrs. Jalagam answered that they needed a higher fence for their children's safety. She presented pictures of their house.

Mr. Herbert marked the pictures as Exhibit A-1, which is a side view of the home (living room) showing where the fence would be installed; and Exhibit A-2, which is a picture of the home without the drawn in fence.

Mr. Herbert reviewed the Township Engineer's review letter. This is a single lot and the Jalagams are looking for a bulk variance, which is why they are here tonight. He asked what the fence would look like. Mr. Jalagam replied it is a black aluminum fence with spaces in between.

Mr. Herbert noted that the house is located on the corner of Windward Way and Blyman Court. The fence will be on the front yard of the Windward Way side. The hardship is that this is a corner lot and because they have children they want a higher fence for security and peace of mind. The plan shows the fence along the property line, which has a 10 foot easement. The fence will be outside of the easement.

Mr. Caputo asked if the fence did not encroach into the easement, would it still be a 3 foot requirement.

Mr. Gibeault asked if there is a point where it is far enough away from the corner that it isn't a variance.

Mr. Herbert said that a variance is still needed for the fence height because it is in the front yard. Because it is a corner lot, both sides are considered front yards, which is why a variance is required.

Mr. Gibeault said the setback may go back 50 feet for the front yard, which would put the fence up against the house. That is the way he is reading it. He does not know the exact numbers. Mr. Herbert agreed with Mr. Gibeault.

Mr. Caputo asked if there is a corner line of sight easement for a corner. There is no line of sight for the corner. Mr. Herbert said that he is relying on the Township Engineer's report and it is not an issue for him.

Mr. Caputo commented that it appeared that their neighbor has a similar fence. He asked the applicants if they are connecting up to the neighbor's fence in the rear. Mr. Jalagam confirmed yes that is their property line and the right side also has a fence.

Mr. Jackson asked about the size of the neighbor's fence. Mr. Jalagam replied that it is the same size so it is not an issue – 54 inches high.

Mr. Herbert asked the Board if they had any other questions. There were no other questions.

Mr. Herbert said to the applicants that it is their testimony that they have a hardship because they have a corner lot. They have young children, who climb fences, which is why they are requesting the fence height of 54 inches. Otherwise, they have two front yards with very little area for fence. That is the hardship they are presenting to the Board. The applicants agreed pursuant to the May 25th review letter that they will not be constructing the fence in the easement area so that is not an issue.

A Board member asked the applicants if they are planning any landscaping along the fence area. Mr. Jalagam responded that the landscaping will be within the fenced area.

Vice Chairman Daniel opened the meeting to the public. Since no one came forward from the public, the public comment portion of the meeting was closed.

Mr. Bharatiya commented that he agreed with everyone. He has three daughters who play field hockey, basketball, etc. so he understands the applicants' concern especially with the ball going over the fence. With softball, the ball will probably still go over the fence.

Mr. Caputo said he has a corner lot as well and he wished that he had come to the Zoning Board before he installed his fence in the backyard.

Vice Chairman Daniel asked for a motion. A motion was made by Mr. Gibeault and seconded by Mr. Bharatiya to approve the application. Mr. Herbert said the motion is to approve a bulk variance to install a 54 inch high fence on a corner lot with two front yards as presented and discussed.

ROLL CALL:

AYES: Caputo, Bharatiya, Jackson, Gibeault, Smolarz, Daniel

NAYS: None

ABSTAINS: None

There being six (6) aye votes and no nay or abstain votes, the application was approved.

5. **Other Business**

Mr. Herbert reported on the Affordable Housing litigation. Right now the issue is something called the GAP period. Members of the court have taken over the Affordable Housing process because COAH decided that they were not going to do anything pursuant to the governor not wanting to go through this process so the courts have taken it back over. The courts found that there is a constitutional right to affordable housing in NJ and towns cannot zone affordable housing out of their jurisdiction. The courts are trying to legislate the town's number of affordable housing units that they will have to come up with in the next 10 years. Each county has a judge that is hearing it. In Mercer County, it is Judge Jacobson. She is also following what is going on in Ocean and Monmouth County where he has ongoing cases. The GAP period runs from 1999 to present when COAH didn't do anything, and the lower court has ruled that the town should have to count the number of units that they should have come up with during that period. The towns are arguing that it wasn't the legislation's intent to require a GAP period account. It is only going forward. Judge Trancone in Ocean County said no and that you have to count the GAP period too. For towns like Robbinsville, it is not a big hit, but for a lot of towns it is. It is now before the appellate division so the lower courts have held up everything until the appellate rules on the GAP period, and it can also go to the Supreme Court. Right now they have a trial scheduled before Judge Jacobson as to what each town's numbers will be in September. Mr. Herbert is in settlement negotiations with Fair Share Housing for other towns that he represent to try and get out of the litigation. They are giving them a 30% discount to come up with a number. He believes he will settle Ewing and Hamilton. He believes that Robbinsville is also in negotiation with Fair Share Housing. The reason Robbinsville is able to talk about that is because it has done a fantastic job with affordable housing. He does not think that there will be a large impact from the courts on this town. Then again, everything can change. He will continue to report on it, but not a lot has changed.

ADJOURNMENT

Since there was no other business, a motion was made by Mr. Caputo and seconded by Mr. Gibeault to adjourn the meeting. All in favor. Meeting adjourned at 8:30p.m.

Respectfully submitted,

Elide M. Post

Elide M. Post
Zoning Board Secretary

Transcribed by: Jewel Timberlake-Morgan

ADOPTED AUGUST 16, 2016