

**BLAIRSTOWN TOWNSHIP
ZONING BOARD OF ADJUSTMENT
May 11, 2010**

MINUTES

The Blairstown Township Board of Adjustment met in regular session on Tuesday, May 11, 2010 at 7:30 pm at the Blairstown Municipal Building, 106 Route 94, Blairstown, New Jersey. The following Board members were present: Barbara Green, Mark Ohannesian, Andrew Straut, Andrew Smith, Debra Waldron, Philip Rivera, Mike Repasky and John Sartori. Charles Anderson was absent. Also present were: Board Attorney, Roger Thomas, Engineer, Ted Rodman, and Board Secretary, Marion Spriggs.

SALUTE TO THE FLAG: was recited.

ROLL CALL: was taken.

THE SUNSHINE STATEMENT: was read aloud.

MINUTES: (As distributed prior to the meeting date).

Minutes of April 13, 2010 Regular Meeting

Action: A motion was duly made by Mr. Rivera, seconded by Mr. Straut, and unanimously carried, without abstentions, to approve the minutes of April 13, 2010, as written.

RESOLUTIONS:

ZB#01-10 Dominic Zukoski, Block 902, Lot 12, 4 Cobblewood Rd. – Bulk Var. & Interpretation (Amended)

Roger Thomas pointed out that the Zukoski matter was already approved. There have been some suggested modifications which he has already incorporated into the revised resolution provided to the Board members for this meeting. He will incorporate another correction pointed out by a Board member this evening. He stated these changes are minor and it is not necessary for the Board to take any action.

ZB#03-10 Montage Enterprises, Block 702, Lot 18.01 – 140 Rt. 94 – Major Prel. & Final Site Plan, Bulk and Use Variances

Action: A motion was duly made by Mr. Rivera, seconded by Mr. Straut, to approve **ZB#03-10 Montage Enterprises**, Block 702, Lot 18.01 – 140 Rt. 94 – Major Prel. & Final Site Plan, Bulk and Use Variances. Roll call vote: Green, Ohannesian, Straut, Smith, Waldron, and Rivera – yes.

COMPLETENESS:

None

PUBLIC HEARING:

ZB#04-10 Carl & Della Darst, Block 2003, Lots 28,29,29.01,31.01-Hope Rd. – Amended Prel. & Fin. Site Plan

Barbara Green stepped down for this application.

Andrew Smith stepped down for this application and left the meeting.

Roger Thomas described the amended application for the benefit of the Board members who were not on the BOA at the time of the original application. He mentioned that the Board approved the minor subdivision and preliminary and major site plan for the lots.

He revealed there were 22 conditions approved by the Board. The Miller buildings were to be located in front of the lot. The Board rejected substitution of the Sealand containers for the Miller buildings. No hazardous materials can be stored in the buildings. Certain types of vehicles were going to be stored on the site, thus paving was required. He stated that there also was a requirement for paving in and around the Miller buildings. He revealed that became an issue.

Roger Thomas indicated the approved landscaping plan authorized the applicant to install a single row Norway spruce, 6 to 8 ft. in height. A 6 ft. stockade fence would be required, if the owners of adjacent lot 27 did not install their planned, stockade fence.

He stated the storage would all be located on one lot. The operation of that business could continue to be done from the residence on Lot 29. If the storage business was sold, an office would have to be located on Lot 28.

Roger Thomas explained the Superior Court litigation. He reiterated that the Superior Court modified the resolution in part but upheld the Board in terms of its action. The decision then went to the Appellate Division which concurred with the trial court. The trial court had found that the condition regarding the extraction of soil samples was already preempted by another state act and the condition, relating to certain grading requirements, would be invalid. It did go on to find that the period of time of implementation would commence at the end of the litigation.

He said that the applicants are seeking to amend the approval for the Preliminary and Final Site Plan with certain modifications.

Richard Clark, Esq., Laddey, Clark & Ryan, of Sparta, NJ. was sworn in.

Richard Clark divulged that between counsels, they have agreed the Board members who were not on the Board at the time of the original application, do not have to read transcripts, or listen to tapes of the meetings in the past. He stated they do have an approved plan, and after the courts have reviewed the conditions, the applicant knows what the parameters of the approved plan are.

He revealed they are here tonight to say they cannot realistically build that plan as approved, and are seeking amendments. They desire to change the location of the Sealand containers.

Exhibit A-1, the previously-approved, Preliminary and Final Site Plan, revised 3/11/10, was marked.

Ted Rodman pointed out that the original site plan illustrated a paved parking pad for vehicle storage, which is not designated on this exhibit. Roger Thomas indicated there were a number of revisions to certain sheets. The Resolution calls for "C". It will be a map dated 5/9/05. Ted Rodman stated that the Resolution called for some changes, and "D" and "E" were the result of the changes. Richard Clark revealed they are seeking to change some of that anyway.

Richard Clark stated the major element they are seeking is not to pave the area surrounding the Miller Buildings. He claims that in order to build what was approved; they would have to put a lot of other structures on site or on adjacent properties. He commented that it is within the power of this Board to grant waivers.

He revealed the deed has not been filed yet.

John Miller, PPE of Suburban Consulting Engineers, Inc., of Mt. Arlington, NJ, was sworn in. The person who handled this application, is no longer with the firm, thus the project was delegated to him. As a result, he stated that he found it very confusing as to where the application stood. Ted Rodman interjected there was another engineering firm and attorney previously.

Exhibit A-2, the existing-conditions plan of Preliminary and Final Site Plan, dated 5/11/10, was marked.

Exhibit A-3, photo of 8' x 40' Sealand container, dated 3/11/10, was marked. They are proposing 25 of these.

Exhibit A-4, the proposed-plan of Preliminary and Final Site Plan, dated 3/11/10, was marked.

Storm water management was discussed. John Miller revealed the focus is to provide a solution to avoid having the Darsts impacted by the new rules regarding drainage imposed by the DEP, after the start of their application. He explained they wish to greatly reduce the area exposed, by proposing gravel. They have provided drainage computations to Ted Rodman. John Miller stated with the new proposal, there will not be an increase in runoff. He reviewed that in the past, the Board wanted paving in the entrance, the aprons around the buildings, and a paved strip--to the left of the Miller buildings. He said that they now propose no paving around the

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buildings, and having a paved area in the front by the County road. He reiterated the key is for the Board to approve no paving.

Mr. Miller stated two – 100', and one -150' Miller buildings are proposed.

Boats and 5th wheel trailers will be stored but no motorized vehicles with fluids. Ted Rodman remarked when he saw the site plan, only boats were to be stored. This needs to be clarified.

Roger Thomas declared that the boats are there as a result of a discussion that the Board had in 2004 or 2005 to allow the Darsts 1 year to store the boats from the NY Yacht Club. They have been there ever since. He said there needs to be a very specific indication and testimony to clarify the issue of fluids, specifically what will have fluids and what will not. If there are going to be fluids, a discussion is necessary regarding pads. Ted Rodman commented that they must be more specific as to what will be parked there.

Roger Thomas pointed out that the setback behind Lot 27 has been modified. The applicant is saying there is a difference between front yard and side yard, and they are deciding to change it on that basis. Mr. Miller stated that helps to reduce all the impervious area. They are trying to make this a greener area, by planting grass.

Roger Thomas stated that Exhibit A-4 shows a 25' setback. Exhibit A-1 shows 60'.

Ted Rodman was sworn in.

He reviewed his report of May 7, 2010.

Roger Thomas wants on the record, Ted Rodman's opinion regarding bituminous concrete vs. gravel, as related in Items #1 & #2. Ted Rodman responded the Best Manager Practices and TR 55 are the accepted federal government standards for drainage calculations, which indicate gravel is a pervious surface. These must be used.

Regarding Item 3, Ted Rodman stated that Blairstown's Ordinance states if there are increased impervious surfaces over a ¼ acre; they must comply with certain requirements. Ted Rodman stated the applicant is claiming the existing gravel is acting as an impervious surface which is the same as bituminous concrete. In Ted Rodman's opinion, it actually is pervious. That is why Ted wants additional calculations.

Regarding Item 6, for the record, Ted Rodman, pointed out the Letter of Interpretation from the DEP, is the standard record to determine where the wetlands are.

Regarding Item 7, for the record, on Preliminary & Final Site Plan, Approved vs. Proposed Site Improvements, dated 4/21/10, illustrates existing boxes to be relocated as noted. They are in the westerly corner of Lot 28. Ted Rodman indicated there could be some noted on Lot 31.01 as indicated. John Miller agreed that anything located on Lot 31.01 and Lot 29 must be cleaned up. This is a requirement of the original approval. John Miller responded that nothing regarding this is being changed from the original plan.

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Roger Thomas stated in Lot 29 on sheet 1 of 1, in the bottom southwest corner, it indicates the storage box is "to be relocated on Lot 31.01". John Miller agreed this is incorrect and should read, "be relocated onto Lot 28". Mr. Miller indicated it will be modified. Roger Thomas stated clearly, Lot 29 was authorized for resident use only. Unless it can be established that the trailer indicated is for some kind of residential use, it will have to be removed under the present conditions. John Miller interjected that the trailer may be a travel trailer. He will report back to the Board.

Regarding Item 8, John Miller noted that they will show where the steps are on the boxes, to adjust to the grade.

Roger Thomas wants a clear definition of what is to be stored. The Board needs to know specifically what types of boats. Are there motors and motor homes?

Regarding Item 11, Ted Rodman does not want the trailers to be moved once they are located. Chairwoman Waldron wants to know the age of the units.

Regarding Item 16, the landscaping, Chairwoman Waldron stated spruce trees would not be destroyed in winter season. John Miller has no problem with type of trees. He is unsure of the numbers. Ted Rodman will check this.

Regarding Item 18, a sign must be shielded, so it does not shine underneath.

Regarding Item 19, Roger Thomas confirmed that John Miller's testimony is that there is a fence, which may be miss-located by owner of Lot 27. Mr. Miller indicated the proposed plan reveals the proposed fence at 6' high, and the details of the chain link fence are indicated. This is for security when the business is shut down for the night. Mr. Miller stated they do not have a design waiver in mind.

Regarding Item 21, Richard Clark drafted a Joint Maintenance Agreement but waited to see if the Board wanted any change.

Regarding Item 22, Roger Thomas reminded the Board there was reference to the variance resolution of a maximum of 15' for outdoor storage, which includes the boats.

Regarding Item 23, Richard Clark revealed that relocation the "trailers that are in the woods" needs to be done.

Regarding Item 26, Ted Rodman has prepared a review status of the 22 conditions memorialized on 3/14/2006, indicating which ones are being modified by this application. Richard Clark interjected that most of them have been discussed this evening. Ted Rodman responded, by this submission, his point is, some of the conditions are changing from the previous application. Richard Clark agreed.

Ted Rodman indicated that there should be an impervious platform for vehicles with fluids. For the record, the fluids need to be collected; he said if the fluids are not collected, they will get into the water table. He knows there is shale in the area which would allow the oil to seep through.

Ted Rodman stated in lieu of the storm water regulations, if the applicant can show there will be no adverse affect on any of the adjoining property owners, regarding runoff, he would have no problem if the Board did not require those areas to be paved, except the areas that will store vehicles. He said he is referring to the aprons around the buildings and so forth.

Chairwoman Waldron asked to discuss the possibility of having someone inspect the property for the purpose of ground water to determine whether there is an aquifer. She spoke with Blairstown's Environmental Chair, who directed her to the Blairstownwp.org website. The Depth to Ground PDF refers specifically to Lot 31.01, in the eastern corner of that property, as having ground water measure 0 to 1 ½ feet. Ted Rodman admitted there are wetlands in that area and he asked for an LOI. Roger Thomas responded the Board has to make a decision whether to hire a professional to ascertain this.

Roger Thomas said there has to be a Board discussion regarding a buffer in the area behind Lot 27. He pointed out it is obviously different. He stated the Board may entertain a modification if they find the configuration of the proposal better, with less disturbance, than what had been previously approved and is currently required for the lot. Once the Board gets all the information, he declared this issue needs to be resolved.

Chairwoman Waldron stated she drives past the site frequently; there is a trailer w/cab, and drivable motor homes on that property. She asked Richard Clark if the applicant will get rid of all of that. He responded that if they can break now, they will review all the issues discussed this evening.

There was no further testimony at this time.

At 9:18 pm Chairwoman Waldron declared a break in the meeting.

Richard Clark thanked the Board for granting an opportunity to talk with the Darsts during the break. He explained they wish to look at some options. They need to consider how to deal with the vehicles, and how they are defined.

Roger Thomas suggested discussing the issue of the buffer. He understands the legal reason it has been changed. The question however, he indicated, is from the planning viewpoint. He commented the Sealand buildings were always somewhat problematic, now they are a lot closer. Confirmation of what is on Lot 26 needs to be defined.

Roger Thomas pointed out that the real issue is paving. In question is the paving around the Miller buildings.

Chairwoman Waldron, (who was on the BOA when the initial application was entertained), commented as follows:

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She stated the original reason the paving was suggested, is because there is no control of renters bringing storage. There is no control over the trucks, or the carriers that might be used in order to store items. She said if gravel is used, there can be leaching through the gravel into the ground. The concern is that leakage would not be visible through the gravel.

Also, she is concerned about the area where the boats are stored. She questioned if there are chemicals i.e. gasoline, oil, etc., in the boats, which could leak directly beneath them. She added, storage of recreational vehicles, also presents a concern.

She remarked that the Sealand buildings were never favored by the Board. In the last resolution, the Board stated they should be located in the rear, so there was no visual impact. The present concern is there will be a visual impact from Rt. 521.

She questioned if the buildings will be on a permanent foundation. Richard Clark responded they can be moved. Roger Thomas stated the Board needs confirmation that they will not be moved.

Ted Rodman revealed that the Sealand containers must comply with the building code regarding what they will be seated on. Without proper foundation, Debra Waldron pointed out they will sink.

She asked if the boat masts are removable. That needs clarification, and will be discussed at the next meeting.

This portion of the Hearing was opened to the public.

Rosalie Murray, Blairstown resident and Planning Board member, was sworn in. She commented that she is finding it difficult to believe that this application is being entertained by the Board. She stated that there have been a number of changes to this application, suggesting it appears not to be amended, but rather a new application. She questioned if the applicant has made any effort to meet any of the conditions imposed in 2006.

Since 2006, Roger Thomas pointed out there has been litigation which has gone on until recently. A decision has been made by the Appellate Division which “stays” the requirements of the actions of the Board.

Rosalie Murray indicated she is looking for some sign of faith on the part of the applicant, and commented that the Board has been in court for a long while, at great expense. She questioned if all fees and escrow are up to date. Roger Thomas confirmed that they are.

Finally, she remarked that the (Sealand) trailers are ugly and were sold because they are no longer road or sea worthy. If they must be used for storage, she suggests they be hidden. She commented that they are located on a main road to town and create an eyesore to anyone entering Blairstown. She pointed out, this also affects the neighbors. Her recommendation to the Board is to emphasize that buffers are needed. She insists the “place must look attractive”.

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Richard Clark, attorney for the applicant, revealed that the applicant was trying to line up all the units on 1 lot in accordance with the Plan but approximately 3 months ago, was cited by the Construction Department for various reasons. The applicant then decided not to do anything until returning to the Board to see what conditions actually have to be addressed.

Edgar Wright, 45 Hope Rd., was sworn in. He commented he was heartened to hear that the Board remembered the Sealand containers were an adjunct to the original application for the storage buildings. Now they seem to be a main feature, spreading across the front of the property, in addition to where the proposed storage buildings are going to be. He pointed out that the lie of the ground there rises away from the road. He feels it will be very difficult for a second row of Sealand containers to be hidden from view.

Chairwoman Waldron asked for confirmation of the height of the containers. Richard Clark responded, 9 or 10 feet. Since the fence is 8 feet, she questioned if the Sealand containers would be seen.

Mary Flynn, 8 Conrad Ct., was sworn in. She commented that it took a great number of years, for this variance approval, site plan, and for the conditions to be finalized. She stated it also took the efforts and perseverance of a great number of dedicated people, mostly volunteers. She sees no reason to entertain the “mockery” of modifications when the application was studied so hard, for so long and the conditions were reached, for good reasons. In her opinion there is no reason to use anymore taxpayer money to do anything more than this. She feels it should end tonight. She declared the Board, and its professionals, developed the best plan possible, compromised, and thought of every condition they could. In her opinion, there is no reason to change any of that.

This portion of the Hearing was closed to the public.

Roger Thomas announced that this matter will be carried until July 13, 2010.

CORRESPONDENCE:

NJ Planner Mar/Apr

OTHER BUSINESS:

Annual Report

Action: A motion was duly made by Mr. Rivera, seconded by Mr. Ohannesian, and unanimously carried, to approve the 2009 Annual Report, as corrected.

Cell Tower Ordinance

Roger Thomas stated that an issue raised, is whether one cell tower should be limited to one lot. He suggested that Ordinance 19-601 E(2) be modified to reflect that only 1 tower be authorized
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on a lot. Further, cellular antennas and/or towers, shall be deemed a principal use. If the lot in question has a principal use, a variance shall be required. This means the Township has a priority list of where cell towers should go. Adding an additional tower, would be adding an additional use.

Chairwoman Waldron indicated that both Board of Adjustment and Planning Board members are trying to encourage certain spots. She said Sal Lascari, Deputy Mayor, has said there are 2 companies interested in putting up towers. She stated the Township is trying to help them by directing them to certain areas i.e. Municipal Bldg., and the DPW garage, whereby the Township would benefit from the income. The towers are subject to topography in this area. She stated the objective is planned growth. Vice Chairman, Phil Rivera, commented that Blairstown Township cannot deny but can concentrate or spread out.

Roger Thomas pointed out that different carriers have different requirements dictating where their towers should be located. He stated that this Board took the position they were not happy with 2 flagpole cell towers on one site, i.e. Verizon, "Cellco". He explained that is why he crafted the Ordinance which he stated must go to the Planning Board and Governing Body.

Roger Thomas explained the 2 issues for the Board to decide are:

1. Do they want to have more than 1 tower on one lot.
2. If there is an existing structure, do they want to require a D variance, stating that the antennas on that structure are a separate, independent, principal use.

He said the Board has 3 options tonight:

- Defer until the next meeting.
- Consent to the Ordinance as drafted.
- Consent to the 1st sentence of the Ordinance, as drafted.

Chairwoman Waldron suggested approving the 1st sentence of the draft Ordinance but making it the last one, which means an applicant can build on a tower. Roger Thomas then suggested a modification of the Ordinance making it clear that when an extension is put on an existing structure, a D variance would not be required.

Roger Thomas agreed to modify the draft Ordinance to reflect Chairman Waldron's and his suggestions above. He will present it at the next BOA meeting on June 29, 2010.

Last Frontier – ZB#02-06

Roger Thomas declared that no decision by the Appellate Division has been made at this time.

Verizon/All Walnut Valley – ZB#05-08 aka /"Cellco"

Roger Thomas informed the Board their decision was overturned by Judge Buxbaum in Flemington, who was a former land use attorney. He explained because of a manpower problem, it went to Flemington. This matter should've been in Belvidere Court, the County seat of Warren County. It went from Belvidere to Somerville to Flemington.

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The Judge decided that the aesthetic issues raised by the Board were not valid. He indicated that John Madden's testimony was a "net opinion" which was that an additional pole is ugly. He did not give the Judge's Opinion any valid authority for John Madden's opinion.

Roger Thomas does not see the Governing Body authorizing an appeal at this time, due to the expense and the fact that the only objection is aesthetically. There is no guarantee for success.

Roger Thomas conferred with Judge Buxbaum and the applicant's attorney, Lynn Dunn, today. The Judge's Order reflects the variance denial reversed. The Judge did not approve the site plan, therefore the site plan must return to the BOA. Roger Thomas will talk with Lynn Dunn to clarify what must be added to the site plan, that wasn't already discussed.

EXECUTIVE SESSION:

Action: A motion was duly made by Mr. Rivera, seconded by Mr. Straut, and unanimously carried, to enter in to Executive Session on the basis of litigation, at 10:18 pm.

Action: A motion was duly made by Mr. Rivera, seconded by Mr. Sartori, and unanimously carried, to adjourn Executive Session at 10:30 pm.

NEW BUSINESS:

None

PUBLIC PORTION:

There were no comments from the public, as no members of the public were present, at this time of the meeting.

VOUCHERS:

Action: On a motion duly made by Mr. Ohannesian seconded by Mr. Straut, escrow and general vouchers, as attached to these minutes, were approved. Roll call vote: Green, Ohannesian, Straut, Waldron, Rivera, Repasky and Sartori – yes.

ADJOURNMENT:

The Chairman asked the Board for a motion to adjourn.

Action: On motion duly made by Mr. Rivera seconded by Mr. Straut, and unanimously carried, the meeting was adjourned at 10:32 pm.

Respectfully submitted,
Marion C. Spriggs
Board Secretary
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