

WASHINGTON TOWNSHIP LAND USE BOARD

PUBLIC MEETING MINUTES

April 8, 2009, 7:30 p.m.

CALL TO ORDER and PUBLIC NOTICE

Chairman Leonard Artigliere called the meeting to order at 7:45 p.m. Mr. Artigliere said this is a regular meeting of the Land Use Board of the Township of Washington.

Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act in that a Notice was published in *The Star Gazette* and *Express Times*.

Notice was posted on the municipal bulletin board in the Township Administration Building in Washington Township, New Jersey, and notice was filed with the Township Clerk.

ROLL CALL

Present: Leonard Artigliere, Samir Elbassiouny, Barry Mueller, Evan Howell, Mark Rossi, James Vergos, Robert Christine, Gordon Wallace

Absent: Erich Sodtalbers, Efrem Zaret, Robert Klingel

Professionals: Donald Scholl, Esq.; William Gleba, P.E.; Scarlett Doyle, P.P.

APPROVAL OF MINUTES

The minutes of the meeting of March 11, 2009, were approved as corrected on motion of Mark Rossi, seconded by James Vergos.

Members in favor: Mark Rossi, James Vergos, Robert Christine, Evan Howell, Gordon Wallace

Members abstaining: Barry Mueller, Len Artigliere, Samir Elbassiouny

ANNOUNCEMENT

Grodkiewicz, Jeffrey, Application #2008-09
Block 64, Lot 8

Mr. Scholl confirmed applicant had provided proper proof of service and publication for this matter.

Alan Lowcher, Esq., introduced himself on behalf of the applicant and requested that the matter be carried to May 13, 2009.

Motion to carry the matter to May 13 was made by James Vergos and seconded by

Gordon Wallace

Members in favor: Mark Rossi, James Vergos, Gordon Wallace, Robert Christine

No additional notice is required.

COMPLETENESS:

Mikell, Application #2009-1
Block 45, Lot 14, McCullough Road and Rosebury Road

Minor subdivision creating 2 new lots.

Motion to deem this application incomplete was made by Mark Rossi and seconded by Jim Vergos.

Members in favor: Leonard Artigliere, Samir Elbassiouny, Barry Mueller, Evan Howell, Mark Rossi, James Vergos, Robert Christine, Gordon Wallace

Suplee, Mildred, Application #2009-2
Block 81, Lot 8.04

Mrs. Suplee introduced herself and confirmed no waivers are requested.

Motion to deem this application complete was made by Samir Elbaissouny and seconded by Mark Rossi

Members in favor: Leonard Artigliere, Samir Elbassiouny, Barry Mueller, Evan Howell, Mark Rossi, James Vergos, Gordon Wallace

Members abstaining: Robert Christine

Public hearing was scheduled for 5/13

PUBLIC HEARING

Opdyke, Floyd, Application #2008-19
Block 67, Lot 58, 59, 60

Minor subdivision/lot line adjustment with variance relief.

This application was deemed complete on March 11, 2009.

Having paid the requisite application fees and jurisdiction having been established, Alan Lowcher, Esq., introduced himself

Kurt Hoffman, P.E., and Tom Burrell, Realtor, were called and sworn.
Mr. Hoffman's credentials were accepted by the Board.

Mr. Lowcher offered an overview of the application. He said Mr. Opdyke has owned the lots nearly 50 years, having acquired the property via 3 deeds. The lots have been kept in Farmland Assessment. The lots are located on the east side of Mill Pond Road and are primarily wooded. The property slopes gently (8% -- 15%) toward Mill Pond Road. There are constraints on the property, including 2 tributaries to Shabbecong and Pohatcong, Category 1 streams. Therefore, there is a 300' buffer requirement.

Mr. Lowcher said the proposed lots meet bulk requirements for the MR zone except for requirements of Section #123-29 as to slopes.

Mr. Opdyke had employed an environmental consultant, and LOI was submitted to NJDEP. Mr. Lowcher said Mr. Shriver prepared a subdivision map delineating the area of wetlands. Kurt Hoffman, P.E. prepared soil logs, driveway and slope analysis.

Deeds confirm that Mr. Opdyke has owned the property prior to the current zoning.

Kurt Hoffman was called. Mr. Hoffman said he has been to the site in question. He indicated he had prepared a report dated 2009. Mr. Lowcher asked Mr. Hoffman to focus on slope analysis. Mr. Hoffman explained that both lots are under the 5 acres required by ordinance. He contended that disturbance and impervious coverage was kept to a minimum. For the purpose of the analysis Mr. Hoffman assumed an 1800 sq. ft. footprint house with 2 stories and attached garage.

Mr. Hoffman also investigated the extent of additional acreage, which would need to be acquired to make the lots conforming. Applicant would have had to acquire an additional 3.5 acres to comply with the ordinance.

Mr. Hoffman provided his findings to Mr. Shriver, surveyor, which information was included on the survey presented to the Board.

Mr. Hoffman explained that the ordinance was adopted to limit construction in a steep slope area. The total unconstrained area for both lots is 8.29 acres, with one lot being 4.892 acres and the other 3.399 acres. Proposed disturbance and impervious area have been limited to 1.25 acres. Wetland buffers have been respected.

The area proposed for development has very limited slopes according to Mr. Hoffman.

Mr. Hoffman referenced photos: A1 – existing entrance from Mill Pond Road; A2 – 50' into the field from the same location; A3 – 100' into the field from the same location; A4 – from easterly point in the field facing Mill Pond Road; A5 – from the opposite side of Mill Pond looking along the frontage of the subject property; A6 – from a point looking from the northwesterly boundary; A7 – from northwest along Mill Pond, looking southeasterly. This photo depicts the area of the slopes and the area to be developed. A-8 from northwest along Mill Pond, looking southeast; A-9 standing in the driveway across from Mill Pond at the proposed driveway location; A-10 same vantage as A-9 showing where the driveway would come in.

Applicant is proposing 2 lots where there were 3. Disturbance and drainage are proposed to be limited. Mr. Hoffman testified there are single family residences typically located on 2-3 acre lots. Proposed development would be of the same type as before.

Asked about the septic systems, Mr. Hoffman explained Lot 58 would require a pump system.

Referencing the slope ordinance, the Board sought clarification as to the unconstrained area. Mr. Hoffman testified that the Washington Township ordinance is not as clear as it might be since it does not describe a contiguous area. Asked why the Board should permit development, Mr. Hoffman said a single family dwelling typically does not utilize 5 acres of unconstrained land.

Lot 58 is comprised of 4.892 acres with approximately 50% of unconstrained area appropriate for building.

Ms. Doyle asked about the pump septic system. Ms. Doyle requested assurance that the septic be located in the area, which is proposed. Mr. Hoffman expressed confidence in the site.

Ms. Doyle asked about the terms of maintenance for the shared driveway. Mr. Lowcher confirmed there would be a maintenance agreement.

Ms. Doyle requested that the LOI submission be provided to the Board office.

The shared driveway has been created to minimize disturbance according to Mr. Hoffman.

Mr. Lowcher contended that with a written maintenance agreement there tends not to be problems with the common driveway access.

There were no questions from the public.

As to Mr. Opdyke's attempts to purchase additional land, Mr. Lowcher marked letters A-11 and A-12. The letters were addressed to neighbor Schilling, dated December 2008 and then again March 6, 2009. No responses were received from Mr. Schilling.

Tom Burrell was called. Mr. Burrell said he is a licensed realtor with Weichert, Clinton. Mr. Burrell confirmed there was a contract, marked A-13, for the purchase of the property (3 lots) from the Opdykes. Mr. Burrell confirmed that the Cardamones are still interested in purchasing the property, subdivided at Mr. Opdyke's expense.

No questions were raised.

Mr. Lowcher summarized, noting this variance could be construed as C-1 or C-2. If a C-1, he noted exceptional topographical features affect the property creating a hardship. If C-2, the purposes of MLUL would be advanced. Applicant proposes merging 3 lots to create 2. Hardship has been demonstrated. It has been impossible to come to terms with neighbor Schilling.

As to positive criteria, Mr. Lowcher observed that failure to grant would be a hardship with the landowner being deprived of the value of his property.

There was discussion as to whether the offer to purchase was a fair amount. Mr. Hoffman confirmed the property to be acquired from Mr. Schilling was severely constrained and not of value as a stand-alone parcel.

As to negative criteria, Mr. Lowcher confirmed that there would be no substantial detriment to the public good. The lot area is the only non-conformity. Mr. Lowcher explained approximately 12 acres would be retained as open space.

Mr. Artigliere asked counsel to discuss the applicant's attempt to purchase additional property. Mr. Scholl explained case law to the Board. He referenced State Supreme Court opinion Gogan vs. Berber (1968). An offer to purchase should represent the fair market value. It is common for applicant to offer to purchase additional property or sell his property. The offer must be in writing sent certified mail. Willingness to sell or buy is the standard. In an instance where a neighboring property is very large as it is in this case, it is construed as an undue burden for applicant to purchase the entire tract.

Mr. Gleba clarified the unconstrained areas of each lot. He said the 7.9 acres total lot area is correct. Mr. Lowcher noted applicant would comply with the requirements set forth in the letter of Bill Gleba of April 6. Mr. Gleba's letter was marked B-1, and Ms. Doyle's letter was marked B-2.

Mr. Artigliere asked Mr. Gleba about the engineer's contention that the unconstrained land is contiguous, and Mr. Gleba confirmed good design technique has been utilized to locate the houses on the property. Mr. Gleba noted the design on the property would not be a significant drawback to the slope ordinance. Asked whether the constrained areas should be protected, Mr. Gleba explained that drainage and conservation easements should be provided. Additionally, any conditions arising from an LOI should be part of an approval.

Applicant has designed for a limited area of disturbance. That will become a condition of any approval. Mr. Gleba noted that a copy of the plan should be submitted to NJDEP for interpretation. Mr. Lowcher confirmed that applicant would abide by NJDEP conditions. Mr. Gleba observed that this plan is conceptual, and it will be subject to actual soil testing and location of the dwellings.

Mr. Lowcher indicated applicant would comply with the conditions of Ms. Doyle's letter. Mr. Gleba asked about the site distance for the driveway. As to the guide rail along the

road, Mr. Hoffman opined that 40' of guide rail would need to be removed.

Mr. Gleba asked about the status of approvals related to Highlands scarce resource restraint, which is a condition of any approval.

Should the limit of disturbance need to be expanded, Mr. Hoffman noted that storm water management regulations would apply. Mr. Gleba observed that the project would have to come back to the Board for consideration.

Motion to close the public hearing was made by Evan Howell and seconded by Mark Rossi. All members concurred on voice vote.

Mr. Scholl summarized the relief sought.

Bulk variance C-1 and C-2 for lot area. There are two under-sized lots after applying constraints of Section 123-19 of the zoning ordinance. C-2 variance provides no substantial detriment to the zone plan; C-1 hardship variance is operative when there are practical difficulties related to the property with emphasis on topography and constraints. Applicant must demonstrate efforts to acquire additional property.

Conditions:

- Applicant must return if soils testing does not allow development as depicted on the map
- Deed restriction – ½ acre/lot disturbance. Mr. Lowcher confirmed 1 acre total for both lots.
- Common driveway – cross access easements must be provided
- Outside agencies approvals required
- Removal guide rail as required by engineer and DPW
- Removal/waiver of scarce resource restraint by COAH
- Compliance with professionals' review letters

Mr. Artigliere observed with this type of variance, the issue of steep slope looms large. The ordinance limitation is to protect steep slopes. Mr. Artigliere said applicant's engineer offered good arguments as to contiguous land. Design and stringent limitation are self-imposed restrictions. Applicant plans to utilize 15 acres for 2 lots with minimal disturbance. Any negative is minor according to Mr. Artigliere.

Mr. Rossi cites his knowledge of the property and agrees with Mr. Artigliere.

Motion to grant the variances was made by Mark Rossi and seconded by Gordon Wallace.

Mr. Elbaisouny asked about the guide rail jurisdiction. It was confirmed that jurisdiction rests with the Township

Members in favor: Leonard Artigliere, Samir Elbassiouny, Barry Mueller, Evan Howell, Mark Rossi, James Vergos, Robert Christine, Gordon Wallace

Motion to grant the minor subdivision was made by James Vergos and seconded by Barry Mueller.

Members in favor: Leonard Artigliere, Samir Elbassiouny, Barry Mueller, Evan Howell, Mark Rossi, James Vergos, Robert Christine, Gordon Wallace

OLD BUSINESS

COAH charts had been forwarded to Board members. Ms. Doyle offered some explanation. She emphasized computation of credits. Mr. Artigliere clarified inventory + chart. Formation of a subcommittee is appropriate. Mr. Artigliere asked members to consider serving on the subcommittee, and he will make appointments next month.

NEW BUSINESS

Presentation from Highlands Council is proposed for 4/29.

The Mayor asked about the Hodges Melrose application. Board secretary confirmed no new application has been received.

PUBLIC COMMENT

ADJOURNMENT

Motion for adjournment was made and seconded with all members in concurrence. Meeting was adjourned at 10:10 p.m.

These minutes were approved April 29, 2009.

Alice Oldford, Secretary to the Board