

**WARREN TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**REGULAR MEETING SEPTEMBER 16, 2013**

The regular meeting of the Board of Adjustment was called to order at 7:05 p.m. by Chairman Cooper in the Municipal Court, 44 Mountain Blvd., Warren.

**THOSE PRESENT AT ROLL CALL:** John Villani, George Dealaman, Brian Di Nardo, Fernando Castanheira, Foster Cooper and Clerio Martins, Alt. #2  
Also present was Steven Warner, Attorney for the Board.

**THOSE ABSENT:** Vincent Oliva, Richard Hewson and Scott Bowen, Alt. #1

**THOSE TARDY:** None

**ANNOUNCEMENT:**

Adequate notice of this meeting has been provided by posting Public Notice on the Municipal Bulletin Board on the main floor of the Municipal Building, and sending a copy to the Courier News and Echoes Sentinel, and filing a copy with the Municipal Clerk, all on January 8, 2013. We plan to adjourn by 10:00 p.m.

**FLAG SALUTE:**

**MINUTES:** The minutes of the 8/5/13 meeting had been forwarded to members for review.

Mr. Dealaman made a motion to approve, seconded by Mr. Villani.  
All were in favor, so moved.

**COMMUNICATIONS:**

Township of Warren ORDINANCE NO. 13-18 which recognizes and protects pre-existing non-conforming development in the R-65 and CR-130 zone districts

Memo dated 9/13/13 prepared by John T. Chadwick IV, P.P. concerning CASE NO. BA13-10 SETHI, which will be continued this evening

**PRIVILEGE OF THE FLOOR PORTION OF THE MEETING**

Mr. Cooper asked if any member of the public wished to make a statement, which is unrelated to tonight's agenda.

There was none.

He closed that portion of the meeting.

**AGENDA:**

CASE NO. BA13-01A      CMG CHELSEA, LLC  
                                    BLOCK 82, LOTS 8 & 9  
                                    274 KING GEORGE ROAD  
                                    256 MOUNTAIN AVE

Application for amended final site plan approval for a modification of a Resolution, with reference to Condition #2 - pertaining to the COAH housing units, which the applicant seeks to transfer to another facility at 130 Mount Bethel Road, Warren.

Mr. Villani noted that the file is in order.

Mr. Di Nardo, who was served notice, recused himself and left the dais.

Mr. Richard Sasso, an Attorney, represented the applicant. He noted that there are only five Board members present. He suggested that he put the case before the Board tonight and delay the vote until the next regular meeting. He said that this Board is very familiar with the application and applicant. He believed that the issue involved in their appearance tonight should have been addressed earlier. He had made an assumption, which is not the case here. This is not an afterthought by Herb Heflich about switching the units. To the contrary, he wanted this from the beginning. He had spoken to Mr. Chadwick, who had no objection to the moving of the COAH units. During the hearing, there was no discussion about the units. There was always going to be seven of them. Aside from ordering the units in the Resolution, the entire COAH scenario is handled by the Township Attorney, the Town Council and the Planner. When he went to do the compliance package, Mr. Chadwick didn't remember if he had that conversation. This is understandable, considering all the conversations he has.

Mr. Cooper said the Board knows how this case got here. It is now Mr. Sasso's responsibility to justify to the Board what he wants to do.

Mr. Sasso said that the issue of COAH is the number of units. The State of New Jersey wants to force the Township to have the low income units, and it doesn't matter where they are located - be it at the Chelsea site or down the street at Mount Bethel. It is true that Mr. Heflick will make more money having the units at Mt. Bethel rather than at Chelsea. However, Mr. Heflich will testify that the numbers don't work, if you take seven out of the number of units he is building and make them COAH. He is not going to build the building. There's not going to be a ratable. This site is already approved for an office building. This is not a threat but a fact. The numbers have to work, and the numbers don't work with the seven units at Chelsea.

Mr. Herb Heflich John Chadwick and Christian Kastrud were sworn in.

Exhibit A-1 was marked into evidence. It is a letter dated 5/24/13 from Thomas F. Collins, Jr., Esq. & P.P., the applicant's COAH expert. He confirms that the transference of the seven units from Chelsea to the Mount Bethel autism building is COAH qualified. The building comports with the COAH regulations.

Exhibit A-2 was marked into evidence. It is a copy of a prior deed restriction approved by the Township Attorney.

Mr. Sasso mentioned a document, which indicates that Chelsea will compensate Mt. Bethel Village with a sum of \$300,000 dollars for making the seven units now income restricted. There would now be 18 units available to persons with fewer assets. The transfer of units must remain within the Township. The transfer makes sense.

Another document is an operating agreement showing that Mr. Heflich is a managing member in the Mount Bethel Village Co.  
Discussion followed.

Mr. Heflich said that, when they first came up with this project, they met with officials of the Town. He discussed it with Mr. Chadwick at the early stages. It was probably his own fault that he did not take care of the COAH issue at the time. He said that, with 31 units, they would have to raise the fees an additional \$631 to \$700 per month (if they had to give up the seven units). It would not be economical.

There are 38 units at Mount Bethel Village with 11 COAH approved. Adding 7 will benefit the parents of autistic children. At present, the State is in transition as to how to provide funds for the residents. It is allowing them to move to different locations. They would fill that need.

A resident is on Medicaid, which makes him COAH qualified. At present, there are 6 or 7 residents in COAH units today. There are 14 or 15 residents in the other units. They have been open for about eight months.

As a managing member, Mr. Heflich was able to enter into the agreement about the COAH transfer. Chelsea owns the property. They manage Mount Bethel Village.

Mr. Castanheira noted that there is competition coming into Town. Why are they not competitive?

Mr. Heflich said that their original project was for about 150 units. They have scaled it down. Because they have multiple levels, anyone who is looking for any kind of senior living will come to them. They will continue to be a good neighbor in a good part of Town.

Mr. Cooper reminded Mr. Heflich that the Board does not make a decision based on an economic conditions. He asked Mr. Chadwick, where does this become a benefit to the Town.

Mr. Chadwick referred to earlier comments. He will not get involved with, "He said, he said". The Township will face a Mount Laurel obligation. Otherwise we will be back in Court. The Legislature never acts. One way or another, it will push forward. The Senior Housing component has always been restricted under COAH rules. We exceed the components substantially, because of the Promenade. The 42 units will go against some future round. There is no chance of getting bonus credits, because of those units. CMG Chelsea units are age restricted. Sometime in the future, we would be able to get credit. If they are transferred to the Mount Bethel facility, they are in the realm - effectively family units. There is no age restriction. We have no very low income units in Town. All of the units at Mount Bethel will qualify as very low units. All of the occupants are Medicaid eligible. The 11 will qualify.

The advantage to the Town is that you go from senior units, that may or may not aid in your obligation, to units that will automatically be part of it The other advantage is that you may get bonus credits.

Discussion followed.

Mr. Sasso asked Mr. Heflich about generator or emergency power. He was told that they have an interconnect similar to Mount Bethel Village. They also own a 350 kilowatt generator, that is on a trailer.

Mr. Warner was told that there is a signed agreement to transfer the Chelsea units to Mount Bethel. Also, property owners within 200 feet of each property was noticed.

Mr. Cooper asked if there were any questions from the public.

There was none.

He asked for statements from the public

There was none. He closed the public portion.

.Mr. Cooper said that this case will be carried to the next regular meeting to be held on 10/7/13 in this room at 7:00 p.m. without additional notice. We hope that we will have an appropriate number of Board members to vote. Absent members will be sent transcripts.

Mr. Cooper called for a recess at 7:35 p.m.

He recalled the meeting to order at 7:40 p.m.

Continuation of the application of:

CASE NO. BA13-10      ATUL & SEEMA SETHI  
   BLOCK 60.01, LOT 9  
   2 MIDVALE DRIVE

Application to construct an addition to a single family dwelling...front yard setback required 75 ft, while 32 ft. is provided

Erwin Schnitzer, an Attorney, represented the applicants. He reminded the Board that, at the 8/5/13 meeting, the Board made suggestions to change the plans, which had been submitted. This was done. He asked Mr. Hernandez, their Architect, to explain the changes. Also, there is a memo dated 9/13/13 from Mr. Chadwick concerning the changes.

Board members have copies of the revised plan Exhibit A-3 - submitted more than 10 days ago.

Mr. Hernandez mentioned the three car attached garage, which was placed on the Busy Bee side (right side). Because it was located too close to the property line, they changed it (as suggested) to the left side of the house -where they have an existing driveway.

He moved the proposed mud room from the left side to the right side of the house. He dropped a little square footage. He went from 6,100 sq. ft. to 5,938 sq. ft. He will use pavers for the driveway. He dropped the building height. He will keep the basement height as it is. It is now a renovation. He will keep as much of the perimeter walls as possible.

Mr. Chadwick noted that this plan gets rid of the conflict between cars and Busy Bee Lane. The whole building is moved over.

Mr. Hernandez told Mr. Warner that the package and memo he submitted on 8/28/13 is accurate and truthful.

Mr. Cooper asked for questions from the public.

There was none.

He asked for statements from the public.

There was none. He closed the public portion.

Mr. Chadwick noted that there is a little shed in the back. When granting the front yard setback for the house, the Board should legitimize the shed, which is pre-existing.

#### **DELIBERATIONS:**

Mr. Villani said that the changes make it a much better application. He has no problem with it.

Mr. Dealaman and Mr. Martins had no problem with it.

Mr. Di Nardo said they met our requests. He is satisfied.

Mr. Castanheira said that this is not a big request. The neighborhood is changing.

Mr. Cooper said he is fine with it. They listened to the Board. It is better for the applicants and the Town.

Mr. Warner read a Draft Motion.

Mr. Villani made a motion to approve, seconded by Mr. Castanheira.

Roll call vote was taken. "Yes" votes were received from: John Villani, Brian Di Nardo, George Dealaman, Fernando Castanheira, Foster Cooper and Clerio Martins. There were no negative votes. The motion carried.

Mr. Cooper mentioned that the next three cases - from the Promenade are similar in nature and will be heard as a group. He read each case no., name & address as well as block and lot numbers.

Mr. Villani, who had been noticed, recused himself and left the room.

Mr. Dealaman said that the files are in order.

James Clarkin, an Attorney represented the applicants. He said that the three applications are similar in nature. He suggested that the hearings be consolidated. Each property owner will testify. Afterwards, he would like to give the basis for approving the applications. In each case, they are looking for rear yard setbacks. The perimeter setback for this site is 50 ft. They are proposing 44 ft, 45 ft. and 46 ft. Each applicant is requesting a waiver of any site plan.

They are here because, they are unable to use a gas grill at their units. The Fire Official warned each that there must be a separation of 5 ft. between the home and the gas grill. At the time of construction, this was not taken into account. Two patios are at grade level. One would be on an extension of a first floor deck.

Each applicant has received a letter from Mr. Chadwick and Mr. Kastrud. They have received Board of Health approval as well as from the architectural committee of their home owners association.

All of the applicants, as well as Mr. Chadwick & Mr. Kastrud were sworn.

CASENO. BA13-08                      CLIFFORD AND STEPHANIE LURIE  
  BLOCK 72.02, LOT 128  
  52 LARA PLACE

The home was purchased in 2010. The home came with a deck off the rear of the house. They selected a extra feature - a gas line for a grill. They have been unable to hook it up, because they need a five foot separation between it and the unit. As a solution, they are suggesting the construction of a patio.

Pictures of the home were taken a few months ago. They were marked into evidence as Exhibit A-1 & A-2. They show the home and patio area. Exhibit A-3 shows the rear of the home and patio area. The location of the patio was indicated - in the northeast corner. No trees or shrubs will be removed. No paths are involved. The area is level. The new patio will extend 10 ft. The distance from the edge of the patio to the rear property line is 44.47 ft. Fifty feet are required. The homes in the back are about 300 ft. away. There are shrubs, trees and a retaining wall in between.

Mr. Cooper thought the patio is pretty big. He was told that they will have a table and chairs.

Mr. Chadwick mentioned that there are three other units, not part of these applications, that have similar circumstances.

Mr. Cooper thought that we may be setting a precedent.

Mr. Clarkin said that they have approval of the Architectural Committee and the Homeowners Association.

Discussion followed.

The architectural letter of approval was marked into evidence as Exhibit A-4. It was dated 9/12/13 and was addressed to the three applicants.

The Hills (the third applicant) sold their unit to someone else. The new owners are taking over the application.

Exhibit A-5 is a Resolution of approval for the decks to extend into the common area.

Mr. Cooper asked for questions from the public.

There was none.

He asked for statements from the public.

There was none. He closed the public portion.

Mr. Clarkin said that they are asking approval under the hardship clause. This is an exceptional situation. It is no fault of the homeowner. They can't buy any more land. It is nominal relief .



Mr. Warner read a Draft Motion.

Mr. Dealaman made a motion to approve, seconded by Mr. Di Nardo.

Roll call vote was taken. "Yes" votes were received from: Brian Di Nardo, George Dealaman, Fernando Castanheira, Foster Cooper and Clerio Martins. There were no negative votes. The motion carried.

CASE NO. BA13-07RICHARD & LYNN MORAN  
BLOCK 70.02, LOT 131  
22 EMILY TERRACE

Application for a rear yard setback variance to expand a first floor deck to permit the usage of a gas grill according to the fire code regulations

Mr. Moran testified. He is the original owner of the property. He chose the gas grill option, which he cannot hook up. He chose the extension of his deck to solve the problem. He took photos a few months ago. The materials to be used are fire proof. No trees will be removed. The property is slightly sloped. They will not change the grade. The deck will be 12.4 ftx16 ft. out from the house.

**DELIBERATIONS:**

Mr. Warner read a draft Motion.

Mr. Dealaman made a motion to approve, seconded by Mr. Di Nardo.

Roll call vote was taken. "Yes" votes were received from: Brian Di Nardo, George Dealaman, Fernando Castanheira, Foster Cooper and Clerio Martins. There were no negative votes. The motion carried.

Memorialization of Resolution CASE NO. BA13-06 YAHYA SAQER

Mr. Dealaman made a motion to approve, seconded by Mr. Castanheira.

Roll call vote was taken. "Yes" votes were received from: John Villani, Brian Di Nardo, Fernando Cantanheira and Foster Cooper. There were no negative votes. The motion carried.

Mr. Castanheira made a motion to adjourn, seconded by Mr. Dealaman. All were in favor, so moved.

There being no further business, the meeting was adjourned at 8:55 p.m.

Respectfully submitted,

Kathleen M. Lynch