

WARREN TOWNSHIP ZONING BOARD OF ADJUSTMENT

REGULAR MEETING MINUTES April 3, 2017

MEETING CALLED TO ORDER: 7 p.m.

ROLL CALL:

Mr. John Villani (excused)
Mr. George Dealaman (excused)
Mr. Richard Hewson
Mr. Fernando Castanheira (excused)
Mr. Frank Rica
Mr. Donald Huber
Mr. Foster Cooper
Mr. Scott Bowen, Alt. #1 (excused)
Mr. Clerio Martins, Alt. #2
Steve Warner, Esq.

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 19, 2017. We plan to adjourn by 10:00 p.m.

FLAG SALUTE:

MINUTES:

The minutes of the 3/6/17 meeting were forwarded to members for review. Mr. Warner noted a couple of corrections and a motion to approve was made by Mr. Hewson, seconded by Mr. Rica: All in favor.

COMMUNICATIONS: New Jersey Planner, January/February 2017 Vol. 78, No. 1

PRIVILEGE OF THE FLOOR PORTION OF THE MEETING

Does any member of the public wish to make a statement, which is unrelated to tonight's agenda?

CLOSE THE PRIVILEGE OF THE FLOOR PORTION OF THE MEETING

Seeing no one the portion of the meeting was closed.

AGENDA Case Applications:

CASE NO. BA16-11SKYLINE RIDGE LP
BLOCK 76.01, LOT 8
Old Dutch/Winding Ridge Way

Application for a single family home with no road frontage. The plan shows a 50 foot wide access easement.

Mr. Richard Sasso, Counselor at Law, came forward for the applicant. Mr. Sasso explained the houses surrounding the lot are all smaller than the lot before them. The lot is 3 acres while the surrounding lots are closer to 1.5 acres. The lot is not the creation of a flag lot. This is an existing lot and it has an easement out to the roadway, 50 feet wide. Mr. Warner swore in the witnesses, --Mr. Dave Stires, Professional Engineer, Bridgewater, New Jersey and Mr. John Madden, Professional Planner, Union, New Jersey. They were accepted by the Board of Adjustment.

Mr. Madden described the property as Block 76.01 lot 8, an isolated parcel that is accessed to Old Dutch Road by a 50ft wide access easement. It is three acres and 137,000 SF, and it appears to be part of a parent property of Green Brook and that was cut off by the Warren Township/Green Brook border. It is entirely wooded and does slope and it is on the gentle side of the first Watchung Ridge, a property in keeping with properties in the area to use the slope creatively.

Mr. Sasso brought in the First American Title search as exhibit A-1, dated August 25, 2016. The lot was created by court order on a foreclosure in 1901. Mr. Madden described the lots surrounding that are in the acre and half zone, ranging from 1.5 to almost 2 acres. Mr. Madden thought two lots would need a variance.

Mr. Madden described ingress and egress off of Old Dutch Road with a 50 foot wide easement and that it allows for conformance for what the Fire Marshall has asked for (at least 18 foot in width and 16 foot wide surface). The easement goes over the neighbor's property, block 76.01 lot 7. Mr. Sasso had the deed/easement and offered it as Exhibit A-2, dated November 11, 1996 from Vantage at Morning Glory, Inc. to Joseph A. Percario and Elizabeth M. Percario.

Mr. Madden stated it is an R-65 zone that is a fully developed area and this is a remaining parcel and the lot is double the size of the minimum lot area. The variances are for lot width, lot frontage, and a planning variance for not abutting a street, which is solved by the 50 foot easement.

It is a legal lot, the easement has to be valid and it is recorded. It has approval from the emergency management (Fire Marshall) requirement. The lot width will only be 50 feet where the access meets the lot and the frontage is the same. It is a C1 variance situation. There is no other way to resolve this.

Mr. Sasso asked if the application is not granted by the board, can the property be used for anything? Mr. Madden thought without access it cannot be used for anything residential.

Mr. Sasso asked about Warren Township and the taxation of the lot. Mr. Sasso offered Exhibit A-3, the print out of the tax payments that was obtained from the tax collector's office, dated January 26, 2017. Mr. Sasso asked Mr. Madden to review what is required if a lot does not abut a city street. Mr. Madden said after it is established that it is a legal lot then the question is can they provide proof to this board that it can be safely accessed by emergency services. The access easement meets the requirements.

Mr. Madden went over the C1 variance relief as it is a pre-existing lot created without frontage and it is also a C2 variance relief. It is a pre-existing lot, not a lot to subdivide. It would promote purposes of the municipal land use law. It promotes sufficient light and air; it is a larger lot than others, no encroachment on the neighbors, and it is entirely wooded. It will promote appropriate population density. Minimum disturbance will occur. Mr. Madden proposes it can be approved without substantial detriment to the public good, and the size of the structure will be appropriate to the site. The quality of the home will be comparable to the houses in the area. The placement of the house is twice the distance from normal setbacks in the R-65 zone. Mr. Madden further discussed the zoning plan, and the lot meeting all bulk area and zone requirements except for lot width and lot frontage.

Mr. Sasso asked if the benefits outweigh any detriments. Mr. Madden stated it is not a creation of a lot and the applicant has the 50 ft easement which supplies the solution to use the lot. The impact on the neighborhood is minimal and will fit in with the nature of the area.

The access easement has been in place since 1996. Mr. Cooper asked if the board had any questions for the Planner. Mr. Huber asked about the trees and how many would come down. Mr. Madden deferred to Mr. Stires, the applicant's engineer.

Mr. Chadwick asked about the exhibit on the board, which is the engineer's plan, it came in as Exhibit A-4, a colorized plan. Mr. Madden referred to exhibit A-4 in his testimony in terms of where the house was in relationship to the other homes. The plans have setback and FAR and coverage limits—are these being offered as the limits of disturbance or using as examples. Mr. Chadwick suggested getting more defined

setbacks, FAR, etc. because this shows a relatively small area to be regraded but this is not a site plan approval. Mr. Warner, the Board Attorney, asked about buy/sell letters that may be brought in at some time. Mr. Warner asked Mr. Madden about the lot width and lot frontage being undersized. And there would be a requirement to provide to neighboring properties the opportunity to purchase for full value with zoning approval – does that play into Mr. Madden’s analysis on the C1 perspective. Mr. Madden stated yes it would and the property owner has an obligation to offer this property to the adjacent neighbors for purchase. Mr. Warner asked which lots would be offered to buy? Mr. Madden thought it would be the two lots 76.01 lot 7 and lot 9, most if the benefit is for lot 9 with the most value added to their property. They continued discussion on the other lots being offered or not to neighbors. Mr. Sasso entered two letters to 2 and 4 Old Dutch Road as exhibit A-5 and A-6, which are lots 7 and 9. Those were the only buy/sell letters sent.

Mr. Warner asked about the assessment information for the lot and he asked if that affected the variance relief. Mr. Madden said the lot has been established by a court decision to be a legal lot and it has been taxed by the town in recognition that this is a lot with residential value. Mr. Warner asked if Mr. Madden felt the assessed value was equal to a buildable lot as 3 acres in Warren. Mr. Madden did not, but it is a significant value placed on the property.

Mr. Warner asked about the deeds and having any restriction on the size of any structure for this lot. Mr. Sasso stated it did not, but did on the Percario lot (lot 7). Mr. Sasso proposed if the board wanted a minimum of 3800 or 4000SF they would consider that.

Mr. Warner stated the lot appears to be a legally created lot by foreclosure judgement and the ordinance 16-5.34 that prohibits newly created flag lots (this lot is not newly created) does not apply and the easement preceded the ordinance anyway.

Mr. Cooper opened up the meeting for the public for any questions they have for the Planner. There is also an opportunity at the end of the testimony to make comments. Mr. Joseph Percario came forward and asked about the significant value for an investment. His question was how is it a buildable property, and asked if there is any other use for it. Does it have to be built?

Mr. Madden said if the municipality acquired it they could use it for whatever purpose, if the public does not want to acquire it, then under the laws of New Jersey a property can have a zoned use and the potential for building. Mr. Sasso noted that Mr. Percario is who has the 50 ft. wide easement.

The public questioning portion was closed as no one else came forward. Mr. Sasso called David Stires, the applicant's engineer, and he was accepted by the board. Mr. Stires went through the plot plan, a triangular lot, with the 50 foot access easement, about 250 feet in length. A topographic survey was done and a house was laid out with a driveway up the access road, designed at 15 feet wide and is at a 10% slope. The fire marshal required a 16 foot wide driveway and they will make the change, stipulation was noted. The south end of the driveway has a turning movement, it is not final. Will serve letters have been received from New Jersey American Water and the Sewer Authority, there is sewer, water, and gas in the roadway. There is also a storm inlet right at the driveway connection. Mr. Stires understands they will have to comply with Township Engineer stormwater regulations and that can be accommodated on site, and if necessary drain it down with the inlet. The house is depicted as a box of 3000SF. They propose a retaining wall in the rear of the house. Mr. Stires would anticipate that the clearing would be about $\frac{3}{4}$ of an acre clearing. The north side of the property is considered the frontage so the setbacks are accordingly. They could adjust the setbacks accordingly to get farther away from the neighboring properties.

Mr. Cooper would like to see 75 foot setback on each leg. Mr. Chadwick said that one side abuts open space so the other side abuts existing homes. Mr. Chadwick feels the house should be pushed to the open space/Green Brook side and can get 100 ft along the sides with the homes. Mr. Cooper asked if the applicant would agree to the 100 ft setback from the properties on Winding Ridge. Mr. Sasso agreed to the 75 ft. setback. There was discussion. Mr. Sasso said his clients prefer 75 and the ordinance requires 25 ft.

Mr. Chadwick asked again about the zone schedule on the plan and the FAR of .125 which is allowable. The house could be quite large 16 to 17,000SF. Mr. Chadwick asked if they were willing to limit the size of the house. Mr. Warner reminded the board that it is relevant to the variance relief sought, planning variance, lot width, and lot frontage. There was discussion. Mr. Sasso agreed to 10,000SF or less.

Mr. Cooper also noticed a stone wall that encroaches into the subject property, and on lot 6 there is a fence that encroaches as well as on lot 9 there is a fence encroaching. There was discussion on the encroachments and that a future owner may want removal of the encroachment.

There were no questions from the board. Mr. Kastrud asked about the 100 Ft setbacks, why they can't comply with the 100 ft setback. Mr. Stires said it may require more surface area and the client wants to be flexible in marketing and it will have adequate buffers. Mr. Chadwick suggested that the clearing limits be to 75 ft. Mr. Chadwick asked if the driveway where it connects to Old Dutch could be widened to fit two cars in the driveway. Mr. Stires agreed to that, 18 feet for 250 feet.

Mr. Warner asked about the turning radius being sufficient for Fire equipment. What are the dimensions on A-4, the rendering/colorized version of the site plan, sheet 2, dated May 18, 2016. Mr. Stires suggested to consult with the Fire Marshall when the new plan is completed, and it is subject to approval of Planner and Engineer.

Mr. Warner asked Mr. Stires about the items on the planning and engineering reports. Mr. Sasso said they did not receive reports other than Mr. Chadwick's report.

Mr. Kastrud went over his memo from February 10, 2017. Item 3 concerning the existing path was discussed. Mr. Kastrud brought up the existing encroachment. Mr. Sasso can't speak for the next buyer. Mr. Warner suggested the current owner could provide easements. Mr. Sasso did not feel it was appropriate at the expense of the current owner. Mr. Kastrud discussed trees coming down with the proposed driveway. There are no limits of clearing shown. The engineer did not know the number but they would submit a plot plan and soil movement application. Mr. Chadwick again suggested the 75 ft. clearing limit.

Mr. Kastrud asked where the utilities will come in, under driveway, next to driveway, any additional clearing for utilities. Mr. Stires agreed to keep the utilities as close to the driveway as long as they keep the width required by the Fire Marshall. There also two 20 ft grading easements but the applicant does not intend to use those.

A note shall be added to the plan that the grading on the property shall not cause an increase in storm water runoff to any adjacent property during construction or at completion.

Mr. Kastrud noted that on the plans it shows the disturbance below the threshold of one acre so it is considered in need of minor storm water requirements. If it goes over one acre they agreed to meet the major storm water requirements.

They also agreed to the impervious coverage requirements and if goes over 10,900- it would require major development storm water requirements.

Mr. Chadwick stated that the FAR for 10,000SF house would be on the plan and resolution. There will be some revisions to the plans with the driveway and need to add clearing limits. Mr. Cooper suggested the board was comfortable with the 75 ft. clearing limit. Mr. Chadwick is not concerned with the border to Green Brook. He felt the other sides should be either 100 ft. setback or 75 ft. clearing limit. Mr. Cooper asked Mr. Sasso if they would stipulate to the 75 ft. clearing limit. Mr. Sasso stated his client advised him not to. Mr. Warner reminded the board that the applicant does not have to stipulate to

it as a condition but the board could still impose the condition. The applicant did stipulate to the 75 ft clearing limit.

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Mr. Warner asked about Mr. Chadwick's memo number 5 and 6 with the watercourse. Mr. Stires stated there is a man-made watercourse on the west side of the property and looked like Winding Ridge way developers re-directed some of the water coming down the hill. A wetlands certifier can certify there are no wetlands on the property and it is part of the process for the construction permit.

Mr. Cooper opened up the hearing to questions from the public for the Engineer. Mark Bischi from 21 Winding Ridge came forward and asked about the storm water easement area. Has a study been done? Mr. Kastrud would review a storm water report to manage the storm water that comes off of the property through the soil movement application before construction.

Mr. Bischi asked if this proposed home will cause a detrimental effect to the storm water runoff. Mr. Stires agreed this will not impact the surrounding properties.

This portion of the meeting was closed as no one else came forward.

Mr. Cooper opened up the public comment portion of the meeting.

Mr. Joseph Percario came forward from 2 Old Dutch Road and was sworn in by Mr. Warner. Mr. Percario was not in absolute objection of the development although he did prepare a presentation, it was marked in as O-1, it is a copy of a survey with handwritten comments. It is a flag lot. Mr. Percario had a restriction of construction when he built his home. It was required to have a 3-car garage facing left or the right not facing the street. Mr. Percario made application to build a pool. Photos were brought into the case as O-2, a picture of Mr. Percario's home. The front part of the house is on the street level. There is a steep grade on Winding Ridge and on the lot. Mr. Percario stated the Brown family paid over \$55,000 to dynamite, and another neighbor also had to do that about 35 to 40,000 over 16 years ago.

Mr. Percario had testing done because they were considering a pool. They hit bedrock. He is concerned with the disturbance of the property with that size driveway and the easement is all rock all the way up there. He said there are a lot of scrubby trees, not large beautiful trees. Mr. Percario saved as many trees as he could and tried to maintain a wooded appearance. He feels they will have to wipe out the scrubby trees. His main point is it is all rock and will be towering over the neighborhood. He feels it will affect the property values. He brought up that his driveway has been washed out continually and the neighbors have a lot of water that come down the hill. Mr. Percario sent his water with two PVC pipes going into the storm sewer and there is a lot of water. And a new house will bring more water and it will affect everyone. He asked the board to be careful with the conditions if this is approved.

Mr. Warner asked if Mr. Percario took all the photographs and when. He did take all the pictures, one was from the summer in a plane, and the other ones were from the previous week. The pictures were brought in as exhibit O-2. Mr. Percario also said the water goes into the street and ices on the road. There were no questions for Mr. Percario from the board.

Mr. Daniel Allgor from 19 Winding Ridge Way (lot 4) came forward and was sworn in. He bought his house six years ago and didn't realize his stone wall infringed on the lot and would like to get an easement in place.

Mr. Sasso stated that the others encroach on their property and the neighbors may agree at the encroaching property owner's expense to easements.

Mr. Sasso summarized the case. If this is not granted it becomes a useless piece of property and it has been taxed by Warren, not as a 3 acre developable lot but as a lot with value. Mr. Sasso feels they have met the proofs and have agreed to conditions. The water issues will be addressed before construction begins via Township Engineering. They have a 50 ft wide easement and the utilities will fit.

Mr. Warner clarified the stipulation with the easement for encroachments of neighbors. Mr. Sasso suggested that the easements be done by 30 days. Mr. Sasso's feels it should stay out of the resolution. It is filed at the county office.

Mr. Warner went over the variances, The Planning Variance (the lot does not abut a street), and under section 36 of the MLUL the planner addressed the criteria for emergency vehicle access. The lot frontage is a variance, 100 ft required, 0 provided, and the lot width 150 ft required and 0 provided. All are C variance and will need 3 out of the 5 members to vote for it.

Mr. Cooper asked for deliberations. Mr. Rica stated it is a legal lot and they have paid taxes on it. Mr. Warner believes it is a legal lot so there is a right to develop as long as they meet the criteria. The lot predates the ordinance that prohibits flag lots. There was discussion on if not approved it may be forced into inutility.

Mr. Hewson had no problem with it. Mr. Martins feels it is fine with the stipulations. Mr. Huber felt that the lack of frontage was dealt with for the fire marshall's requirements. He felt that the neighbors are willing to work with the applicant, especially with the easement but would like it for all the neighbors. He would like it a condition.

Mr. Cooper felt the applicant has proven out the case and the compromise with the 75 foot setback provides a continuous buffer with the neighbors. There were good comments. He would like a stipulation of a 30 day grant of easements for the neighbors who may have encroached on the property.

Mr. Sasso stated they could notice the neighbors by certified mail and give 30 days from the date of the mailing. It will be at the encroaching property owner's cost. Mr. Sasso agreed to this as a stipulation.

Mr. Cooper asked for a motion.

A motion to grant the application for variance relief, the planning variance relief, the lot frontage, and the lot width deviation subject to all the conditions stipulated on behalf of the applicant. The resolution will be adopted at a later date.

Motion was made by Mr. Huber, and seconded by Mr. Martins to approve the application.

Roll Call

Mr. Hewson, Mr. Rica, Mr. Huber, Mr. Martins, and Mr. Cooper

Against: None.

Memorialization of Resolution CASE BA16-21 MICHAEL VOLPE

Motion was made by Mr. Hewson, seconded by Mr. Rica to adopt the resolution.

Roll Call

For: Mr. Hewson, Mr. Rica, and Mr. Cooper

Motion was made by Mr. Hewson, seconded by Mr. Rica to adjourn. All in favor.

MEETING ADJOURNED: 9 P.M.