

**Unified Planning/Zoning Board of Adjustments Meeting
July 7, 2010**

A regular meeting of the Unified Planning/Zoning Board of Adjustments of the Borough of Matawan, New Jersey, was held at the Matawan Municipal Community Center, 201 Broad Street, Matawan, New Jersey on July 7, 2010. The meeting was called to order at 7:30 PM by Chairman, Ken Cassidy, presiding. Mr. Cassidy called the meeting to order, pursuant to Section 5 of the Open Public Meetings Act that adequate notice of this meeting has been provided in the notice which was published in the Asbury Park Press on January 9, 2010, by sending notice to the Courier and the Independent, and by posting.

Mr. Cassidy asked everyone to join in to the Salute to the Flag.

Mr. Cassidy requested a roll call.

On roll call the following members responded present:

Yes: James E. Shea
Kevin Dolan
Ken Cassidy
Robert Montfort
Angelo, Gallego, Jr.
John McKenna
Rochelle Malanga

Absent: Paul Buccellato
Kevin Mendes
Joseph Saporito

Also, present were Michael A. Irene, Jr., Esq., PZ Attorney, and Jacqueline Flor, PE for Philip Haderer, PE, CME, PZ Engineer. Mr. Irene swore in Ms. Flor.

Approval of Minutes

None.

Applicants

Joseph & Jacqueline Julian, 8 Edgemere Drive – Block 47, Lot 19.01

Denial of Zoning Application: Ordinance Section 34-35c. The applicant proposes to construct a new two car garage 65' from the bank of Lake Lefferts. A distance of 100' is required unless the Borough engineer certifies and indicates a lesser requirement is permissible based upon hydraulic and topographic considerations.

Mr. Irene addressed the group asking if anyone had any issues with the notice material. No comments. Mr. Irene swore in Joseph Julian of 8 Edgemere Drive, Matawan. Mr. Irene entered Exhibit A-1 survey and Exhibit A-2 architectural plans into the record. Mr. Julian explained he was replacing an existing shed with a two car garage and a portico. The Board reviewed the plans with Mr. Julian.

Mr. Cassidy opened the floor to the public. No comments. Mr. Cassidy closed the floor to the public.

Mr. Cassidy requested a motion to approve the Application with the condition it is verified by the Borough Engineer or Construction Department that conditions are as reflected in the plans that it is all level and the top of the slope is approximately 40' from the corner of the garage, ie, it is not in any slope area. Mr. McKenna made the motion, seconded by Mr. Dolan. Mr. Cassidy requested a roll call. A roll call vote was taken.

Yes: James E. Shea
Kevin Dolan

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Ken Cassidy
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Motion passed.

Mr. Irene informed Mr. Julian the resolution will be prepared and submitted to the Board for its review at the time of its next meeting, if acceptable, the Board will adopt it, and you may call to the Borough Hall the next morning for a copy. You can submit for your building permits, but I assume, they won't issue the permit until the condition is satisfied, namely, that the Borough Engineer performs a site inspection.

James & Susan Murphy, 13 Lakeside Drive – Block 115, Lot 30

Denial of Zoning Application: Ordinance Sections 304-35c, 304-42b, 304-50. The applicant proposes to rebuild retaining walls and decks in his rear yard. Both of these do not maintain the 100' setback from the lake. Both are assumed to being rebuilt on a slope greater than 15%, as no information was supplied. Part of the retaining walls exceed the 48" maximum height. Both the proposed walls and decks are non-conforming, where the replacements are required to be conforming.

Mr. Schwartz, Esq. and Mr. William D. Peck, PE were present with the Applicant – James & Susan Murphy. Mr. Gasorowski, Esq. was present with the Objector – Linda Giering.

Mr. Irene informed this matter is carried from an earlier meeting of the Board, and brought the group up to speed procedurally. On April 5, 2010 there was a prior vote taken with regard to the deck passing in favor of 3 to 2. The resolution was not adopted as Mr. McKenna had missed one of the meetings where this Applicant had been heard. He stated based on the Schmidt Houseler opinion recently heard in the Appellate Division and also based on the fact that if Mr. McKenna's vote was stricken we would be left with a vote of 2 to 2. As this was less than a quorum - with the vote not being counted at all - technically it was inaction. Therefore, the vote was a nullity, and with the Board taking the position with the vote not counting puts everything back in the mix as though there were no vote. All parties agreed to Mr. Irene's summation. Mr. Cassidy ascertained the eligibility of Board members able to vote: Messrs. Montfort, Dolan, Cassidy, McKenna and Shea who have listened to the tapes and signed a certification, and Mr. Gallego – six voting members.

Mr. Schwartz referred to his client's previous submission of March 25, 2010 revised grading plan prepared by William D. Peck, PE, of Charles Widdis & Co., Inc. entered tonight as Exhibit A-8. Mr. Peck reviewed the conditions requiring variance relief as well as the revisions to the grading plan, materials to be used in construction, retaining walls and fence height.

The proposed retaining walls were reconfigured on the east side of the property to be angled toward the front line for 2/3 of its length, and changed from a single wall to a two tiered wall with a proposed planting bed between the two walls. The height of the individual walls has been limited to approximately 4-1/2 feet. On the west side of the property a two tiered wall was substituted for a single wall covering 2/3 the length of the wall to the roadside of the proposed stairs. The wood deck and existing concrete area will be removed. The concrete area will be replaced with pavers to match the pool deck. The proposed fence to extend the pillar fence by another section has been removed from the plan. The pillar fence will remain as is and will use railings similar to what is on the existing deck to be extended from the existing railing on the deck around the top of the upper wall tied directly into that pillar wall. On the other side that same type of railing will be extended to the stairs, and then around the stairs, planting bed, around the proposed shed area and back into the house. All the proposed railings will match those on the existing deck and lot features. Mr. Murphy joined Mr. Peck stating it was the intent to bring the pavers to the fence making it

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higher than it is now in order to keep the ground in his yard level. The fence, under the advice of the building official, was kept a foot off the property line in order to maintain a natural grade. Mr. Peck said in order to accommodate the change in grade the proposed retaining wall will tie directly into the last pillar, and the grade on the patio side is 48-8 and the grade on the other side is 46-5 with a little more than a 2 foot drop from the patio down to grade at that point. That wall will taper down to the corner to about a 4 to 4-1/2 foot height.

Mr. Cassidy opened the floor to the public.

Rob Gasorowski, Esq., referring to Exhibit A-8, questioned Mr. Peck at some length pertaining to grading prior to construction to date, the materials and height being used in the grading/construction, line of sight from various directions as well as a timeline of permits being applied for and obtained. Mr. Gasorowski asked Mr. Peck to draw the wall as will be seen from his client's direction. After completing the drawing it was given to the Board and entered as Exhibit A-9. Mr. Gasorowski stated it is his understanding the Resolution states the Applicant was to come back and demonstrate exactly what they were going to build on this property reflecting how the wall will be constructed and what it would look like and, Mr. Peck, you did not do that. Mr. Irene said it was his recollection they were talking about exploring tiering the wall. The Board will review and decide if they want something else or not, and we go from there.

Mr. Cassidy asked the Board for comment. Messrs. McKenna and Gasorowski went back and forth over the wall height and it was decided to save Mr. Gasorowski's comments for summation.

Mr. Irene asked Mr. Schwartz if he had any other witnesses. Mr. Schwartz had none. Mr. Irene declared the Applicant's case closed.

Mr. Irene asked Mr. Gasorowski to present any witnesses.

Linda Giering, 15 Lakeside Drive, Matawan. Mr. Gasorowski established Ms. Giering's residency, and reviewed and submitted additional photographs illustrating various current views from her home, entered as Exhibits OLG-2, 3 and 4. Ms. Giering testified she feels the Applicant's construction is an intrusion on her view, the value of her property, it does not conform with the surrounding properties, does not see the need for such construction or the damage to the slope, and feels the Borough's ordinances should protect her. Mr. Schwartz questioned Ms. Giering as to her view prior to the Applicant's construction, if she reviewed the Borough's ordinances or spoke to a realtor prior to the purchase of her home.

Mr. Cassidy opened the floor to the Board and the public. No comments. Mr. Cassidy closed the floor to the Board and public.

Mr. Gasorowski introduced his second witness, Mr. Gordon Gemma, 68 Seneca Place, Oceanport, New Jersey. Mr. Gemma was sworn in and provided his credentials as a licensed professional planner. Mr. Gemma reviewed the requested variances, and the Applicant's and objector's arguments and evidence vs. the Borough's ordinances.

The Board took a 5 minute recess at 9:20 PM. Ms. Malanga left the meeting. The Board returned at 9:25 PM.

Mr. Schwartz questioned Mr. Gemma if he physically visited the site. Mr. Gemma responded, yes. Mr. Schwartz verified with Mr. Gemma if anyone wished to build in the area that they would need a variance. Mr. Gemma responded, yes.

Mr. Cassidy opened the floor to the Board. Mr. Montfort asked if there was a legal basis to guarantee a view. Mr. Gemma quoted Ordinance Section 304.35C & D – Retention of Natural Features as that guarantee. Mr. McKenna challenged natural features and view. Mr. Gemma stated the Borough's Ordinances define the character of a community and the Borough's desire to preserve it. The Applicant, not the Objector, has to meet the burden of proof. Mr. Shea asked

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about the removal of trees with the remaining stumps pictured in the Exhibits which Mr. Cassidy stated will be directed to Mr. Murphy. Messrs. Montfort and Gemma argued the wording in Ordinance Section 304.56, 304.30 & 304.30C pertaining to the definition of non-conforming use. Mr. Irene clarified the definitions saying the Ordinance is telling everyone that you cannot expand a non-conforming use without getting relief from the Board. The application is a conforming use in terms of a single family residence but we have non-conforming structures and proposed non-conforming structures which require relief.

Mr. Cassidy opened the floor to the public. No comments. Mr. Cassidy closed the floor to the public.

Mr. Schwartz called Mr. Murphy asking him to state the reasons for the project. Mr. Murphy said the entire project began over concerns for his family's safety as the original deck required regular maintenance, and there were decaying wooden retaining walls and fences. The deck is the same width and grew maybe two or three feet due to the new material. Referring to Exhibit OLG-2, the design of the skirting around the deck was done for aesthetics believing the surrounding properties would rather see it than timbers. If this remains an objection, I have no problem with removing the siding around the deck. The retaining walls and fences were to be made of stone. If this is objectionable the wood retaining wall on the Objector's side can remain. If the vinyl siding surrounding the deck is objectionable, it will be removed. Whatever the Board decides is fair I am agreeable to. This is a stressful and financial burden, and wish to get my life back.

Mr. Cassidy opened the floor to the Board.

Mr. McKenna asked Mr. Murphy if he set out to purposefully to change the view from what it was. Mr. Murphy said, no. There was already a substantial wooden deck with PVC railing there previously. Money was spent on this project to make it pleasing to the eye, solid and maintenance free. I believe their view to the lake has not substantially changed. Mr. Montfort asked if you remove the wall and was standing on the Objector's property what would I see other than the slope, some columns holding up the deck and through columns and other trees would I probably see something? Mr. Murphy replied, you would probably see some of the lake. But like I said if objectionable I will remove the siding around the deck and it will probably give them a better view. Mr. Murphy replied to Mr. Shea's earlier question about the trees and stumps stating they were removed with a permit in anticipation of building a retaining wall. This actually opened up the view more. Mr. Dolan commented Mr. Murphy is trying very hard to make everything conform and keep them happy but my only problem I have with this if you just would have kept the deck the same size as it was on the existing deck that was there and left the supports the way they were I don't believe you would be running into any of these problems. Mr. Murphy agreed saying if he had a glimpse into what this grew into he would never had done the project. It never entered into his mind. Mr. Gallego clarified with Mr. Murphy of a tree being removed and improving the view.

Mr. Cassidy asked if there were further questions by the Board.

Mr. Cassidy asked Mr. Gasorowski if he would like to cross.

Due to the late hour, the Board asked Mr. Gasorowski if he had any further witnesses. As he did not, Mr. Irene stated Mr. Gasorowski has no further witnesses after Mr. Murphy's cross but Mr. Lane has not had an opportunity to give direct tonight, and then to have time for summation from the Council. Mr. Cassidy said though the Board usually will go to 10 PM but if things can be wrapped up relatively quickly they will continue. The Board elected to break after Mr. Gasorowski's cross of Mr. Murphy, we'll come back to hear Mr. Lane's testimony, and any cross of Mr. Lane, finishing with the Board's summation.

Mr. Gasorowski thanked Mr. Murphy for some of the changes he is making voluntarily moving on to question him about the project's inception, timeline of plans and permits, current status, and relationship between himself and Objector.

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Mr. Cassidy stated Murphy will be continued to have the remaining witness, Mr. Lane, testify followed by the Board's summation. Mr. Schwartz has stipulated an extension of time which the Board has granted. The August 2, 2010 meeting is full and he may not attend as well. All parties agreed to hold a special meeting on Monday, July 19, 2010 at 7:00 PM without the necessity of renote. Mr. Montfort made the motion, seconded by Mr. Shea. Mr. Cassidy requested a roll call vote. A roll call vote was taken.

Yes: James E. Shea
Kevin Dolan
Ken Cassidy
Robert Montfort
Angelo, Gallego, Jr.
John McKenna

Other Business

The Council of the Borough of Matawan provided copies of Ordinance 10-14, which includes the Planning/Zoning Board's and the Construction Department's recommendations, for the Board's information. The public hearing will be held on 7:00 PM August 4, 2010.

Mr. Irene reported Fred Kalma, Daniel Herseg's attorney, sent a letter requesting an extension of the relief for 181 Washington Avenue which falls within the allowable time in the permit extension act. The Board agreed not to act. Mr. Montfort made the motion, seconded by Mr. McKenna. Board agreed. Motion passed.

Mr. Irene informed the Board the minutes of May 3, 2010, previously approved, must be revised to correctly reflect Mr. Montfort's motion to carry the application to the July 7 meeting *without* renote. Also the sentence above that must be revised to correctly state "Mr. Irene said someone should get a list of all the meetings so that it could be determined who was eligible to vote." Mr. Irene related his discussion with the Borough Clerk confirming a quorum to vote on the Murphy application. The Board thanked the Clerk and her office. Mr. Irene requested copy of the revised minutes be presented for adoption at the next regularly scheduled meeting of the Board. Mr. Montfort made the motion to accept the changes to the May 3, 2010 minutes, seconded by Mr. McKenna. Mr. Cassidy requested a roll call vote. A roll call vote was taken.

Yes: James E. Shea
Kevin Dolan
Ken Cassidy
Robert Montfort
Angelo, Gallego, Jr.
John McKenna

Adjournment

Mr. Cassidy suggested the Board adjourn for the night. Board agreed. Motion passed.

Meeting adjourned at 10:30 PM.

Karen Wynne
Acting Recording Secretary