

**TOWNSHIP OF OCEAN
Zoning Board of Adjustment
Regular Meeting
July 16, 2009**

7:30 P.M.

STATEMENT: Pursuant to the provisions of the New Jersey, Open Public Meetings Act, sending copies of the notice of meeting properly provided adequate notice of the meeting to the Times-Beacon, the Asbury Park Press and the Atlantic City Press. Notice was posted on the bulletin board in the Administration Building.

The regular meeting of the Zoning Board of Adjustment was held on the above date and time; Chairman Dennis Tredy presided and called the meeting to order.

ROLL CALL

Members Present	Ronald Bruno	Stanley Bystrek	Edward Covitz
	John Petrosilli	Antonio DeAlmeida	Dennis Tredy

Absent: Nick Bonamassa, Anthony Mercurio

Pledge of Allegiance

Chairman Tredy asked for a motion to approve the minutes of June 18, 2009. Antonio DeAlmeida made a motion to approve and it was seconded by Edward Covitz, Roll Call (Ayes) DeAlmeida, Covitz, Bystrek, Tredy.

Chairman Tredy asked for a motion to approve the vouchers for payment. John Petrosilli made a motion to approve and it was seconded by Antonio DeAlmeida, Roll Call (Ayes) Petrosilli, DeAlmeida, Bruno, Bystrek, Covitz, Tredy.

BOARD COMMENTS

OLD BUSINESS

Resolution # 12.09.BA
Docket No. 07.09.BA
Metro PCS NY
12 Route 532
Block 39, Lot 9
“C” Variance

Chairman Tredy asked for a motion to approve the resolution. Edward Covitz made a motion to approve the resolution. The motion was seconded by Antonio DeAlmeida. Roll Call: (Ayes) Covitz, DeAlmeida, Bystrek, Tredy.

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Docket No. 09.09.BA
Joseph Chiusolo
114 Harborage Place
Block 272 Lot 469
“C” Variance

Mr. Chiusolo was sworn in. Chairman Tredy asked Mr. Chiusolo to explain what it is that he wants to do.

Mr. Chiusolo thanked everyone for the opportunity to come before the board. He stated that he is seeking a variance to install a ground level Jacuzzi at the rear of his home. In 1998 the board had granted a variance from 25 % to 30% lot coverage for the previous owner. Tonight he is seeking an increase in lot coverage from 30% to approximately 31 and ½ %. The ground level Jacuzzi would be installed on a ground level concrete slab which would have no effect on any of the neighboring properties.

Mr. Chiusolo presented the pictures that were requested by the engineer. Attorney Rumpf stated that he was marking the pictures as A-1 to A-5.

Wayne McVicar, Board Engineer asked Mr. Chiusolo to turn to page two of his letter and asked him to address the comments stated in letter. Mr. Chiusolo stated that he did not have the letter that Mr. McVicar was speaking about but did have a letter dated earlier and it had comments in it to which Mr. Chiusolo was prepared to speak to. Mr. McVicar stated that the comments were similar to the most recent letter. Mr. McVicar asked him to explain each picture. Attorney Rumpf asked Mr. Chiusolo if he took the pictures himself to which he answered yes he did. Attorney Rumpf asked him approximately when the pictures were taken to which Mr. Chiusolo stated within the last 30 to 35 days. Attorney Rumpf asked if they reflect the conditions that exist today. Mr. Chiusolo stated that yes they did with the exception of one picture. The picture marked as A-2 is a little different today because the deck has been removed and a concrete slab is in its place. Mr. Chiusolo went on to explain about the other pictures in detail.

Mr. Chiusolo went on to address the questions from the engineer. He gave satisfactory testimony and explanations to each of the questions. He stated that the view of his neighbors to look up and down the lagoon will not be impeded in anyway.

Chairman Tredy asked if there are any homes in the neighborhood that have hot tubs. Mr. Chiusolo stated that yes there are hot tubs, pools etc. Mr. Mc Vicar asked if he was aware if those people having hot tubs in the area are over in lot coverage. Mr. Chiusolo does not know.

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John Chiusolo was sworn in to address the issue of the concrete slab. He explained that the slab's perimeter is one foot thick with the footing and 8 inch slab poured in the middle with reinforced rods and wire mesh. When they tore out the deck there were pilings under it so the slab is sitting on the piling also.

Attorney Rumpf asked if Mr. Chiusolo would consider what he is proposing to do would increase the value of his home and would better the neighborhood. Mr. Chiusolo said yes.

Mr. Petrosilli asked if there could be a deed restriction for the future.

Mr. Chiusolo stated that he didn't plan on any additional improvements but if he were to do so he would come back before the board with no problem

Mr. DeAlmeida asked if he was aware that the previous owner was over on lot coverage. Mr. Chiusolo said that he was not.

Chairman Tredy explained that what the board has done in the past is have a covenant in the deed stating that the property is over in lot coverage.

Mr. Chiusolo said that he would agree to a deed covenant.

OPEN TO THE PUBLIC

Seeing none

PUBLIC SESSION CLOSED

Chairman Tredy asked if there was a motion? Edward Covitz made a motion to approve (Attorney Rumpf asked if that was with the Deed covenant) Mr. Covitz said yes, and it was seconded by Ron Bruno. Roll Call (Ayes) Covitz, Bruno, Bystrek, Petrosilli, DeAlmeida, Tredy.

Attorney Rumpf stated that the board may recall that there was a concern with respect to the notice. The applicant was here at the prior meeting and the board was unable to hear the applicant at that time. With consultation with the Chairman and Laurie he took the liberty to prepare a Resolution to reflect the board's finding this evening which would enable the applicant to proceed without having to wait the additional 30 days. If the board is so inclined I will read the Resolution into the record and you can vote on it.

Attorney Rumpf proceeded to read the Resolution 13-09-BA to the board.

Chairman Tredy asked if there was a motion to accept the Resolution.

Edward Covitz made a motion to accept and John Petrosilli seconded it. Roll Call (Ayes) Covitz, Petrosilli, Bruno, Bystrek, DeAlmeida, Tredy.

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NEW BUSINESS

Docket No. 16.08.BA
Gregory Wagner/Charles Reilly
Morey Place Road
Block 56 Lot 5.05
“C” Variance

Res Judicata decision

Should the application be heard? Is it significantly different from which was previously denied?

Attorney Dina Vicari introduced herself as representing Mr. Wagner and she stated that she had with her Mr. Charles Rush the engineer for the applicant.

Attorney Rumpf swore Mr. Rush and Mr. Wagner in.

Mr. Rush gave his professional experience and the board accepted his credentials as an expert witness.

Attorney Rumpf stated that he knew the board and chair may have some questions as to the nature of this application. I believe the board heard a Wagner application before and the issue arose do we hear the same application twice. I believe the applicant thru counsel wishes to put testimony on the record that this is not the same application which would result in the doctrine of Res Judicata not applying. The board may recall that at one of our workshops we spoke briefly about Res Judicata, what it means and what it means for the board to whether or not you can hear an application for one piece of property on more than one occasion. At that time I shared with the board similar case law in particular as to what is regarded as an opinion that speaks fairly well to the issue of Res Judicata. I think counsel would agree that Res Judicata would not bar a new application if in fact there is a significant change in the application in itself that is being presented to the board. So I believe what counsel is prepared to do is to offer through argument through testimony of Mr. Rush primarily why there has been a substantial change which should result in this board hearing the entire application.

Attorney Vicari stated that she has also done research and has a quick rundown of a comparison between the two applications as well as Mr. Rush’s testimony because he was the engineer on the previous application as well.

Ms. Vicari stated several cases where Res Judicata does not apply.

Ms. Vacari stated that the case before the board now is that the structure is moved, the size has changed, although there are existing variances which we can never change because of the characteristics of the site and because of the fact that it is on an unimproved road the actual third variance is different in the application than it was in the first. It was a rear setback issue in the first of about 30 feet and in this application the structure has been moved, it still complies with the side setbacks and it has been moved

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to the front so as not to impede on any of the living area or the rear yards of all of the lots on Route 532. That is why we have the front setback, we are closer to the road but we put a bigger buffer between the residents that are in the rear of the house.

Mr. Rush stated that it is a different house, the structure has been moved to the east the larger portion of the allowable building envelope and again in response to concerns from nearby residents we have maximized the setback to the rear and asked for a front setback along the right of way of Morey Place Road.

Chairman Tredy asked the board to make a formal decision as to whether we can go forward with the application. Chair stated that with the testimony that was just presented does indicate that the application is significantly different than the original application in the fact that the variances have changed and the building was moved.

The Chair asked to hear from the members. Mr. Bruno asked how much was the building moved. Mr. Rush said approximately 20 feet.

Ms. Vicari stated that the first application was denied where a rear setback of 47' where 80' is required. This application there is no rear setback variance because there is an additional 5' of rear setback. We are requesting a front set back of 40'

Chair asked if we should hear the application and after hearing from our attorney we need to make a decision if there is a significant difference in the two applications.

Attorney Rumpf reiterated again the reasons to use Res Judicata and the reasons not to.

Attorney Vicari again stated the changes that were made and that the property is a very odd shaped lot.

Chairman Tredy said that he only had one thing to say and that is basically his opinion is this: As a board member after reviewing the packet if you still don't like the application you have an opportunity at the end of the hearing to vote for a denial but he felt that they should hear the application.

Antonio DeAlmeida made a motion to hear the application and it was seconded by Stanley Bystrek. Roll Call (Ayes) DeAlmeida, Bystrek, Bruno, Covitz, Tredy.

(No) John Petrosilli

Ms. Vicari presented Exhibits. Exhibit A-1 is an aerial. Ms Vicari asked Mr. Rush if his office did prepare the exhibit. Mr. Rush stated yes and explained it.

Exhibit A-2 was presented which are photographs of neighboring lots which were taken on June 29th. Mr. Rush gave an explanation of what each picture was.

Mr. Rush gave testimony of the surrounding properties.

Mr. Rush explained the variances requested and to the reasons why.

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Ms. Vicari questioned Mr. Rush in reference to issues addressed in the letter from Mr. McVicar, the board's engineer.

Mr. Rush gave testimony on the moving of the structure on the lot and the setbacks. He felt that granting of the variance would not be a detriment to the neighborhood.

Ms. Vicari asked if Mr. McVicar had received the preliminary architectural plans and asked if they complied with the plot plan.

Mr. McVicar said that they are signed and sealed and they are specific to this particular lot they also match the building as shown on the plot plan.

Mr. Rush addressed the variances requested and the hardships of the property. He stated that their position is to ask for one setback variance and with that make the least amount of impact on anyone. The structure will match in style and scale to the structure immediately to the right.

Mr. Rush stated that in his opinion that a granting of the variance would not change the nature of the surrounding area.

Mr. McVicar said originally there was an easement for the MUA behind this property to put water and sewer to Morey Place Road and since then the State has changed their plan regarding sewer and the town has determined that it is not feasible for them to put water through. So the easement to the rear will serve no purpose.

Chairman Tredy asked that in the clearing around the building is there some way we can limit the clearing and hold the size of the area to be cleared to what is on your survey because people in the area like to keep their privacy.

Ms. Vicari said there is no objection to that.

Chairman Tredy asked Mr. McVicar in reference to fees for maintenance of road. Mr. McVicar said he is not aware of any for that.

Mr. Wagner described the difference between the previous structure and what he would like to build now. Mr. Wagner stated that the depth of the house was reduced by approximately 10 or 12 feet to minimize the variance and that the house went from approximately 3400 feet to somewhere around 2400 feet. The location of the house was moved from the center of the lot to the right side to minimize the variance situation.

Chairman Tredy said that he would like to see if this approved that some plantings be put in the cleared area in the rear of the property.

Mr. McVicar suggested a double staggered row of evergreens between 6' and 8' tall along the back of lot nine and a portion of lot ten.

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Ms. Vicara said there is no objection from her client.

Mr. McVicar stated that a letter should be obtained from the Town's Utility stating that they have no objection to the plantings.

Ms. Vicari stated there is no problem with that and also stated that they would present the planting plan to Mr. McVicar so that it he may review it as well.

Ms. Vicari asked the Chairman in regards to the tree perseveration if we could set a area from the back property line just so it is specific for what we are going to have cleared.

Chairman Tredy asked the engineer what the distance is of the proposed cleared area from the property line.

Mr. McVicar stated it is 35 feet from the rear and 30 feet from the right and varying 35 feet to 45 feet on the westerly side. Mr. McVicar suggested limiting the clearing to the rear, to the north side to 35 feet and the clearing on the east side to 30 feet and leaving the clearing on the westerly side no restriction on that.

Mr. McVicar would like to maintain a buffer area along the frontage of the street so that it would minimize the driveway in. Make the clearing the width of the driveway with 5' on each side which is a maximum of 30'.

Chairman Tredy asked if there were any comments from the Board.

Mr. Covitz brought up the possibility of solar and needing more clearing. Mr. Wagner stated he is not planning on solar. Chairman Tredy said that it was already established that there is a limit on clearing.

Mr. McVicar stated that Laurie just shared the ordinance with him so the easterly side clearing should now be 20' everything else can stay that same as stated.

OPEN TO PUBLIC

Lydia M. Dodd was sworn in and stated her address as 279 Wells Mills Road. Mrs. Dodd asked to see the plan so that she could determine where the planting of new trees was going to be on the rear of the property.

Chairman Tredy asked Mrs. Dodd what her lot number was. Mrs. Dodd stated that it is lot number 8.

Mr. Wagner and Mrs. Dodd looked at the plan together. Mrs. Dodd stated that she and Mr. Wagner discussed extending the tree line that he is going to plant in the rear of his property to include some of the area between her property and his.

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Chairman Tredy asked Mr. Wagner if he was in agreement with that to which he answered yes. He stated that he would plant white pines because they grow quickly and he will stagger them. He stated that he would do whatever is asked.

White pines double staggered row 10 feet apart 6' to 8' tall between a portion of lots 10 all of 9 and a portion of 8.

PUBLIC SESSION CLOSED

Mr. Petrosilli stated that he is still concerned about putting more houses on an unapproved road.

Chairman asked Mr. Wagner if he is aware that it is an unimproved road and the town has no plans of improving it. Mr. Wagner stated that yes he was.

Chairman Tredy asked Attorney Rumpf to read the stipulations that were agreed to for a favorable motion.

The applicant agrees to a double staggered row of white pines to the rear of the property 6' to 8' height with a 10' separation of double staggered rows 10' apart. Along a portion of lot 8, all of lot 9 and a portion of lot 10 to be determined in consultation with the board engineer, pending approval from the utilities department of the Township of Ocean. The applicant does also agree the limit of clearing to the east facing lot 5.03 to 20', northerly to the rear of the property facing lots 8, 9, and 10 to 35' and westerly there are no restrictions. However, the applicant further agrees to a buffer along the frontage of Morey Place road of 20 feet with a driveway opening totally clearing width of no greater than 30'.

Chairman Tredy asked the board for a motion.

Stanley Bystrek made a motion to approve the application and it was seconded by Ron Bruno. Roll Call (Ayes) Bystrek, Bruno, Covitz, Petrosilli, DeAlmedia, Tredy

BOARD COMMENTS

John Petrosilli asked if an applicant has a vacant lot could they please put up a sign of the Block and Lot on their property so that we know what we are looking at.

It was decided that when an applicant comes in for a variance and they have a vacant lot they must identify it by a sign of the Block and Lot number.

Meeting adjourned at 9:50 P.M.