

CAUCUS SESSION: 7:15 P.M. Municipal Building First Floor Conference Room
Deal and Monmouth Roads
Oakhurst

DISCUSSION: Planning Administrator Marianne Wilensky informed the Board Members that the **Synagogue of Oakhurst Community Center** has filed a suit against the Board of Adjustment regarding the Board rescinding their approval.

DISCUSSION: Board Attorney Mark Steinberg informed the Board Members that Mr. Schibell has filed a suit against the Board of Adjustment for the denial of a certification of a pre-existing, non conforming use, for **Roosevelt Avenue Properties**.

REGULAR MEETING: 7:35 P.M. Public Meeting Room
Deal and Monmouth Roads
Oakhurst

MEMBERS Tracey Berkowitz, Alt. I
PRESENT: Jane Grabelle
Warren Goode, Chair
Brian Lefferson, Alt. IV
Russell Malta
David Messer
Leon Pflaster, Alt. II
Henry Schepiga, Vice Chair

MEMBERS Jennifer Lombardi
ABSENT: Mario Delano, Alt. III
Richard Van Wagner

OTHERS PRESENT: Mark A. Steinberg, Zoning Board Attorney
Marianne Wilensky, Planning Administrator
James Higgins, Board Planner
Margo Simpson, Board Secretary
Recording Secretary

OTHERS ABSENT: William Fitzgerald, Board Engineer

Chairman Warren Goode announced that the notice requirements for the Open Public Meetings Act have been satisfied, a copy of the notice was sent to the Asbury Park Press, the Coaster, and the Atlanticville, posted in the Township Hall, and filed in the Office of the Township Clerk on July 11, 2008.

MINUTES FOR APPROVAL A motion was made by Warren Goode and seconded by Jane Grabelle to approve the **minutes from the meeting of December 11, 2008**.

In Favor: Berkowitz, Grabelle, Lefferson, Messer, Goode
Opposed: None
Ineligible: Malta, Pflaster, Schepiga
Absent: Delano, Lombardi, Van Wagner

RESOLUTION: appointing Mark A Steinberg to represent the Board of Adjustment in the litigation of the **Synagogue of Oakhurst Community Center, Inc. v. Zoning Board of Adjustment of the Township of Ocean**.

In Favor: Berkowitz, Grabelle, Malta, Messer, Pflaster, Schepiga Goode
Opposed: None
Ineligible: Lefferson
Absent: Delano, Lombardi, Van Wagner

RESOLUTION: appointing Mark A Steinberg to represent the Board of Adjustment in the litigation of **Roosevelt Avenue Properties, LLC. v. Zoning Board of Adjustment of the Township of Ocean**.

In Favor: Berkowitz, Grabelle, Malta, Messer, Pflaster, Schepiga Goode
Opposed: None
Ineligible: Lefferson
Absent: Delano, Lombardi, Van Wagner

RESOLUTION MEMORIALIZATIONS

Robert Taylor

Block 140, Lot 58
1201 Turner Avenue
Wanamassa

Dismissal without prejudice

MOVED: Goode SECOND: Grabelle
FAVOR: Berkowitz, Grabelle, Goode, Lefferson,
Messer
OPPOSED: None
INELIGIBLE: Malta, Pflaster, Schepiga
ABSENT: Delano, Lombardi, Van Wagner

Hillel School of the Shore Area

Block 34.03, Lots 2, 2.01
1025 Deal Road
Wayside

Dismissal without prejudice

MOVED: Goode SECOND: Grabelle
FAVOR: Berkowitz, Grabelle, Goode, Lefferson,
Messer
OPPOSED: None
INELIGIBLE: Malta, Pflaster, Schepiga
ABSENT: Delano, Lombardi, Van Wagner

Albert and Judith Sutton

Block 40, Lot 143
1 Dwight Drive
West Deal

Bulk Variance Approval

MOVED: Goode SECOND: Grabelle
FAVOR: Berkowitz, Grabelle, Goode, Lefferson,
Messer
OPPOSED: None
INELIGIBLE: Malta, Pflaster, Schepiga
ABSENT: Delano, Lombardi, Van Wagner

Hank Kliem

Block 25, Lot 126
232 Highwood Road
Oakhurst

Bulk Variance Approval

MOVED: Goode SECOND: Grabelle
FAVOR: Berkowitz, Grabelle, Goode, Lefferson,
Messer
OPPOSED: None
INELIGIBLE: Malta, Pflaster, Schepiga
ABSENT: Delano, Lombardi, Van Wagner

Albert and Sally Mosseri

Block 43, Lot 7
444 Golf Road
Deal Park

Bulk Variance Approval

MOVED: Goode SECOND: Grabelle
FAVOR: Berkowitz, Grabelle, Goode, Lefferson,
Messer
OPPOSED: None
INELIGIBLE: Malta, Pflaster, Schepiga
ABSENT: Delano, Lombardi, Van Wagner

APPLICATIONS WITHDRAWN

Madeline Sally Hennessey

Block 38, Lot 91
2513 Asbury Avenue
Wayside

APPLICATIONS CARRIED to February 12, 2009

K & D Associates, L.P.

Block 140, Lot 109
735 Highway 35
Wanamassa

Yogesh Lahoti

Block 37.10, Lot 1
30 Oxford Drive
Wayside

Abe and Victoria Anteby

Block 25.10, Lot 6
519 Elizabeth Street
Oakhurst

Stephen DeLuca

Block 22, Lot 57
244 Roosevelt Avenue
Oakhurst

Bruce Horn

Block 211, Lot 2
1901 Logan Road
Wanamassa

CONTINUED CASE

Joseph Vassallo

Block 10, Lot 2.01
104 Norwood Avenue
Elberon Park
Zone R-1

This is an application for an appeal of the Zoning
Officer's decision.

Attorney for the applicant: Jeffrey D. Ullman, Esquire

Board Attorney Mark Steinberg, Esquire, explained to the Board that it is the applicant's contention that the decision that the Zoning Officer made concerning two issues is in error and he is asking the Board to review it and if they find an error, to reverse it and if no error is found, to confirm it. They are not asking for a variance at this time.

Mr. Steinberg read a memorandum he wrote to the Board, marked as **evidence B-2**, dated January 8, 2009.

Jeffrey Ullman, Esquire, representing the applicant, explained that it is his contention that denying the building permit was incorrect under the law. As to the self-created non-conformity, it is a correct characterization of what occurred in the undisputed history, but it was not created by Mr. Vassallo. It was created by the prior owner who indicated to the Board that she would remove the barn, but did not. The Planning Board, on its part, did not require her to do that as a condition of granting approval. If you look at the conditions and look at the approval, there are many conditions imposed, but no condition that says she is supposed to take down the barn. This is an issue that both the applicant and the Board did not carry forward.

Mr. Vassallo purchased the property from the foreclosing bank with the barn present and has no reason to believe that he is under any obligation with respect to it. He has lovingly and painstakingly restored the property to the glory of its golden age.

As to the barn itself, both by a matter of the State law and under the local ordinance, the owner has a right to restore a non-conforming structure to its existing non-conformity, but cannot expand it or enlarge it. It does not require the Board's permission to do that. Mr. Ullman felt that the owner is entitled to a building permit to rebuild the building as to what it looked like previously. This is a matter of what Mr. Vassallo has a right to do. With respect to the argument that back of the building, which is a stem of an inverted 'T', is not a separate structure; it is part of the entire building that was partially destroyed and the owner seeks to rebuild.

With respect to the shed, Mr. Ullman disagreed with the interpretation of the ordinance. The ordinance provides that the owner may have more than one accessory structure and that one such structure may be permitted: 'for which the side and rear setbacks requirements will be no less than five feet provided that it does not exceed ten feet in height or 150 square feet in area.' He felt that this should be for small utility structures like doll houses or tool sheds. This is a relatively small building that will be used to enclose pumping equipment for the 'gray water' on the premises. This is consistent with the ordinance and the applicant should be allowed to do it.

Zoning Officer Jerome Donlon noted that in respect to the 150 square foot shed, his interpretation of the ordinance is that you can have more than one accessory structure on a lot. However, only one accessory structure is permitted outside the building envelope with a minimum setback of five-feet from side and rear property lines provided that it does not exceed ten-feet in height or 150 square feet in area and is not attached to nor within ten-feet of the house. The ordinance states that all others must meet the same setbacks of the principle building.

Mr. Donlon explained that if there is one accessory structure already on the premises, then any additional accessory structure will have to meet the setbacks of the principle building. Since there is one accessory structure on this property, then this proposed shed is an additional accessory structure and must meet the setbacks of the principle building.

Chairman Warren Goode noted that the Board Planner's report quotes from the Board Planner's report where he states that in the approving resolution, fact 3 states: "The two-story barn located in the southwesterly portion of the proposed lot 2.01 and the one-story frame accessory building located in the northwesterly portion of proposed lot 3.01 are to be removed obviating any need for setback variances as set forth in the original application."

Mr. Ullman explained that there are 'findings of fact' are facts. This states nothing more than Mrs. Bailey's statement as to what her contention was. The

'conditions' are what the approval is subject to and are stated farther back in the resolution. They do not include this condition. Removing the building is not mentioned. It was just an assumption that the building would be removed.

Mr. Steinberg referred to a copy of the approving resolution for the subdivision for Violetta Bailey, dated 25 November 1991. It was marked as **evidence B-3 01-08-09**. Mr. Steinberg noted that a 'finding of fact' is something to be taken into consideration when reading a resolution in its entirety. However, Mr. Vassalo would not have known about this because it was not picked up as a deed restriction.

Mr. Ullman noted that on the subdivision plat there is a note from the Planner that if you jog the subdivision line out by a couple of feet then you will be compliant to the side yard. Apparently, rather than re-drawing the line, the applicant said she would take the building down.

A portion of the subdivision plat, two pieces, with a notation stating that the barn will be removed, was marked as **evidence B-4 01-08-09**.

Chairman Goode noted that in reading the resolution, part of the introductory states: 'Whereas after carefully considering the evidence presented ... in conjunction with the findings of fact ...'. He felt that, as a layman, that seems like the evidence and the intention and is clear. The Board seemed to feel that at that time the barn would be removed.

Mr. Ullman felt that the Board was also concerned with impervious lot coverage because the deed to the neighboring property has a deed restriction on impervious coverage.

Chairman Goode felt that it should not be negated because it is a finding of fact rather than a condition.

Mr. Ullman said that the only issue before the Board is an appeal of the Zoning Officer to not issue permits for a request to rebuild a structure to an existing non-conformity. It would be rebuilding a part of the building that is to the rear. There is nothing that changes the side yard distance. The issue of whether the building should have been taken down by Mrs. Bailey is in the past.

Mr. Steinberg pointed out that there was prior litigation regarding this property. Mr. Ullman explained that Mr. Donlon did cite Mr. Vassallo in 2002, arguing that he failed to remove the barn in violation of the Planning Board approval. Those summons went to Municipal Court. It was dismissed on the grounds that, as a matter of law the matter could not be resolved against Mr. Vassallo. It was beyond the scope of what the court was permitted to do and the court dismissed the complaints.

Mr. Donlon said that it was his understanding that one of the issues that came to light was that Mr. Vassallo did not have a Certificate of Occupancy. An application was made, but it was never issued. Because of that situation, the matter was looked into and the barn situation was looked into with the intent that the barn should be removed.

Mr. Donlon felt that a 'finding of fact' indicates exactly what it states and does not need to be reiterated in a condition. It means that it is going to take place and not necessary to be addressed as a condition.

Mr. Donlon said that as far as he understood it, what happened at the municipal court level was that the ordinance section that was cited was actually a section that applied to the Township Engineer making sure that all conditions of a resolution are met before a Certificate of Occupancy is issued.

Mr. Ullman read from the ordinance Section 21-62.2.a. of the Municipal Land Development Ordinance: "No building or dwelling shall be deemed habitable, nor shall a Certificate of Occupancy for any lot within an approved site plan, subdivision, or single lot residential construction be issued until the Township Engineer certifies that the following improvements are installed as shown on the approved site plan, final

plat, or final plot plan and accompanying supplemental documentation and specifications ...". Number 8 read: 'All conditions of any approving resolutions must be complied with.'

Mr. Donlon's theory at the time was that Mr. Vassallo had violated the conditions because he had not complied to the condition of removing the barn. The evidence showed in that case that Mr. Vassallo paid his money and filed the application for the Certificate of Occupancy at the time he acquired the property. The Township had no record as to what it had done with that application. It could not prove one way or the other whether a Certificate of Occupancy had been issued or not.

Director of Community Development Marianne Wilensky explained that the issuance of Certificate of Occupancies is within her Department. The seller, not the purchaser, is responsible for the Certificate of Occupancy, which is done prior to the closing. Ms. Wilensky said that they would have had to call for an inspection with both the Township and the Fire District. There is no record of that.

Mr. Ullman said that it is unclear what happened after it was applied for and paid for. There has been nothing found in the department files to indicate that it was or was not issued.

Mr. Ullman noted that Judge Kreizman dismissed the case and ended it. The Township never pursued any further issue about the barn.

Mr. Steinberg pointed out that there was no permit issued to demolish the portion of the barn that was removed. The Zoning Officer is not considering it to be a pre-existing, non-conforming use or legal structure prior to the governing ordinance because it did not become non-conforming until the subdivision line was drawn. That was well after the ordinance was issued. Once they drew the line, they had a non-conforming structure; they did not get a variance to keep it and the applicant failed to destroy it. He is considering that it is not a legal structure and it cannot be restored.

Chairman Goode said that in spite of what the resolution says, there is a plot plan that states the barn is to be removed. It is critical to know if the barn is required to be removed. The court never got to the barn issue. He felt that the Board needs to know if the applicant required to remove the barn under the resolution.

Mr. Steinberg explained that the Board was not hearing this application to decide that. The Board's job is to decide whether Mr. Donlon is interpreting the building to be what it should be and if they need a variance now to have the building or to rebuild just that portion.

Chairman Goode felt that if the barn were not there, the shed would be permitted and it is critical to know if the barn should be treated as a lawful structure or not. He felt that in reviewing the resolution, in his opinion, it should be removed.

Mr. Ullman noted that the Town charged the applicant with the wrong ordinance and might have been successful if they provided a different case. Judge Kriezman threw it out before it got to the barn issue.

Mr. Steinberg felt that since Judge Kreizman made no findings of fact, the Board is not bound by the Municipal Court as to a decision concerning whether or not a condition of the resolution has been met. He did not think that the court could make that decision.

Mr. Goode said that he needed a clear answer regarding the legality of the structure because the resolution and the site plan say that the structure is either non-permitted or illegal to be existing there. If that is the case, then the expansion thereof would require a variance. Whatever they choose to do to it would be the expansion of a nonconforming use or a replacement of a non-conforming use because it is not supposed to be there.

Mr. Ullman said that the only non-conformity created by the approval of the subdivision was the side yard; not the rear yard; not the height; not the volume; just

the side yard and that non-conformity is not going to change. The issue is the rear of the structure which would not have any affect on the non-conformity. He felt that Mr. Goode's question is not within the scope of what the Board is dealing with regarding this application.

Mr. Ullman felt that if the Board affirms the denial of the building permit they put Mr. Vassalo in the position of asking for a variance. The practical solution is to return the building to the size that it was and continue the restoration of this property.

Mr. Donlon offered an observation regarding subdivisions on a non-conforming use basis. He felt that if a newly created lot line triggers a variance, it does not matter what part of the building needs the variance. If a variance is needed, it is needed.

Mr. Steinberg explained that the first issue the Board needs to decide is if this is a legal building at all and did it change when the subdivision was granted. The second issue is the shed. The applicant is calling the shed the first accessory structure and the Zoning Officer is calling it a second accessory structure. The second structure must be within the principle building setbacks.

Mr. Ullman felt that there needs to be some practicality to the solution. If the Board says no and sustains Mr. Donlon's determination, then the homeowner can let the situation sit or come back to the Board for a variance. If the Board denies, then the building can just sit as it is and the applicant will not be able to do anything.

Chairman Goode felt that the applicant has the option to tear down the structure. There was an approval and the applicant has stepped in the shoes of his predecessor and should do whatever should have been done before.

Mr. Steinberg explained that the Board has to determine if the subdivision line deemed this structure illegal and if Mr. Donlon's determination is correct.

Chairman Goode carried this application to the meeting of February 12, 2009. Board Members who are not eligible offered to listen to the recording of this meeting to be eligible to vote at the next meeting.

CARRIED CASE

Isaac and Leslie Sultan This is an application to build an addition with a bulk
Block 40, Lot 129 variance for a rear yard setback.
29 Dwight Drive
West Deal
Zone R- 1

The Board's information packet was marked as **evidence B-1**. This packet contained the reports of the Board's professionals and in-house departments, which were read into the record.

Planning Administrator Marianne Wilensky explained that the applicant is seeking to construct a second story addition to the rear of an existing home with an open patio area under the room. She felt that there should be plantings on the side to shield it from the neighbor's view.

Mr. Isaac Sultan said that the addition will match the existing house. The golf course in behind his home and will not be affected.

A motion to close the public hearing was made by Henry Schepiga and seconded by David Messer.

In Favor: Berkowitz, Grabelle, Malta, Messer, Pflaster, Schepiga, Goode
Opposed: None

A motion of approval was made by Henry Schepiga and seconded by Jane Grabelle.

In Favor: Berkowitz, Grabelle, Malta, Messer, Pflaster, Schepiga, Goode
Opposed: None
Ineligible: Lefferson
Absent: Delano, Lombardi, Van Wagner
To be memorialized on February 12, 2009.

NEW CASES

Ramon and Luz Gomez This is an application to erect a second-story addition and a one-story addition with variances for front yard setbacks on both West Park Avenue and Fanwood Street, side yard setback, and lot coverage.
Block 33.12, Lot 18
614 West Park Avenue
Oakhurst
Zone R-4

The Board's information packet was marked as **evidence B-1**. This packet contained the reports of the Board's professionals and in-house departments, which were read into the record.

Cindy Gomez, daughter of the applicant, explained that she will be living in the house and she is asking for approvals to add on to the house because the current layout is not good for her disabled five-year-old who does not walk.

Chairman Warren Goode felt that what the applicant was proposing was not aesthetically appealing and asked if she could look into building farther back on the lot. The current proposal creates problems with the visual affect from West Park Avenue and Fanwood Street. It will be an imposing structure right on the street.

Ms. Gomez said that she has looked at alternatives and they do not fit within the budget. She presented her architect, Donald J. Passman, who explained that the house is an existing one-and-a-half story structure, existing close to West Park Avenue. There is currently a dormer on the front of the house. He had a photograph of the front of the house, taken in the fall of 2008, placed into **evidence A-1**. A plan of the proposed house with elevations, sheets A1 and A2, dated July 16, 2008, was marked as **evidence A-2**.

Mr. Passman explained that the existing house has a living room, bath, kitchen, dining room and entryway. The second floor has two 10' X 10' bedrooms with low ceilings. The house has a 24' X 24' footprint. The stairs are steep and narrow and need to be replaced with better steps that will be moved to the new addition and will lead upstairs and down to the basement. There will be a basement under the new addition. The second story addition will be over the existing house.

The lot coverage will exceed the requirement by 112 square feet, 85 of which are for the covered porch. The lot is long and narrow. Anything that is built on this lot will be non-conforming. The front yard setback on West Park Avenue could be met with a new structure.

Chairman Goode was concerned with the look of the house so close to West Park Avenue. Vice Chairman Henry Schepiga noted that the house to the east of the subject property is set back much farther. Mr. Passman offered to change the roofline to make it more pleasing. He said that the house next door is set back about 40' from West Park Avenue.

Board Member Russell Malta asked why a second story is necessary. Ms. Gomez said that she has a son who will use the second story bedroom. Mr. Schepiga noted that there could be one bedroom upstairs instead of two which would reduce the size of the second story addition.

Chairman Goode felt that there is no outdoor storage and perhaps there should be a Bilco door to the basement for storage. He felt that the size of the structure needs to be reduced and it needs to look better. Mr. Passman said that he will redesign the house to a salt-box shape and add a Bilco door to the basement.

This application was carried to the meeting of February 12, 2009.

Robert and Karen Devlin
Block 197, Lot 3
1309 Franklin Avenue
West Deal
Zone R-4

This is an application to erect a covered front porch with a variance for front yard setback.

The Board's information packet was marked as **evidence B-1**. This packet contained the reports of the Board's professionals and in-house departments, which were read into the record.

Ms. Karen Devlin explained that she would like to have a front porch on her home. She will landscape with Hydrangeas and build a stone walk to the driveway. The roof will match the existing roof of the house and the color of the posts will match the house.

A motion to close the public hearing was made by Henry Schepiga and seconded by Jane Grabelle.

In Favor: Berkowitz, Grabelle, Malta, Messer, Pflaster, Schepiga, Goode
Opposed: None

A motion of approval was made by Jane Grabelle and seconded by Henry Schepiga.

In Favor: Berkowitz, Grabelle, Malta, Messer, Pflaster, Schepiga, Goode
Opposed: None
Ineligible: Lefferson
Absent: Delano, Lombardi, Van Wagner

To be memorialized on February 12, 2009.

Carole Doran
Block 117, Lot 13
1417 Unami Avenue
Wanamassa
Zone R-6

This is an application to replace a driveway with a variance for side yard setback.

The Board's information packet was marked as **evidence B-1**. This packet contained the reports of the Board's professionals and in-house departments, which were read into the record.

Carole Doran explained that the driveway has deteriorated and must be replaced.

A motion to close the public hearing was made by Henry Schepiga and seconded by Jane Grabelle.

In Favor: Berkowitz, Grabelle, Malta, Messer, Pflaster, Schepiga, Goode
Opposed: None

A motion of approval was made by Jane Grabelle and seconded by Henry Schepiga.

In Favor: Berkowitz, Grabelle, Malta, Messer, Pflaster, Schepiga, Goode
Opposed: None
Ineligible: Lefferson
Absent: Delano, Lombardi, Van Wagner

To be memorialized on February 12, 2009.