

**ZONING BOARD OF ADJUSTMENT
MINUTES**

SEPTEMBER 14, 2009

Meeting was called to order at 7:15 P.M.

Meeting properly advertised according to the New Jersey State Sunshine Law.

Roll call: Attending: Mr. Gelley, Mr. Gonzalez, Mr. Lazzaro, Mr. Naftali, Mr. Zaks,
Mr. Lankry, Ms. Goralski, Mr. Halberstam

Also present: Attorney – Russ Cherkos
John Ernst, Engineer/Planner
Jackie Wahler, Court Stenographer
Fran Siegel, Secretary

Salute to the flag.

Motion to approve minutes of July 27, 2009 with a waiver to read – Mr. Gonzalez

Second – Mr. Gelley

Roll call vote: Mr. Gelley, Mr. Gonzalez, Mr. Lazzaro, Mr. Zaks, Ms. Goralski,
Mr. Halberstam

Chairman announced that **Appeal # 3713, Mark Friedman**, did not notice properly and they will not be heard tonight.

Appeal # 3665 – Omnipoint

Mr. Naftali and Mr. Halberstam stepped down since they were not at the original hearing for Omnipoint.

Warren Stilwell represented Omnipoint. Notice was given for this remand hearing.

Mr. Cherkos - have reviewed the notice and have found it satisfactory. The Board denied the application for the use and site plan to construct an antenna at the MUA water tower. The applicant took an appeal to that decision. There was a remand that says that there shall be no new testimony and no new evidence. Mr. Kron testified that it was better to locate the antennas on an existing structure than to construct a new structure in the M-1 zone where it would have to be excess of 90 feet. Mr. Seud testimony was whether or not it would be possible to locate a tower in the M-1 zone. The board requested additional information to locate the facility in the M-1 zone and he only looked at a tower at 90 feet which would not satisfy the coverage needed and therefore would require a use variance also. The Board determined that there was not sufficient information that a tower at 140 feet in the M-1 zone would not satisfy the need and so denied the application. The Board concluded that the applicant failed to demonstrate sufficient reasons to justify the granting of a special use variance to permit installation of telecommunication antennas in a zone restricted against such use. The Court reversed the board saying that there is insufficient information in the resolution to support the denial of the variance. The matter has been remanded to the board to make more specific findings of fact which will more fully explain to the judge why we denied this application. This is remanded for adequate fact findings. The Board found that they could have achieved the same coverage by placing the antennas in the M-1 zone and not in a residential neighborhood.

Mr. Cherkos – each Board member has to place on the record more specific findings of fact.

Mr. Stilwell - The court said say that the matter was reversed and that the matter was remanded for reconsideration for its denial resolution. Were these board members come to the same conclusion the matter will still be reversed because the judge did not find that the logical reasoning for the denial was adequate. The testimony that was heard by the experts was that there was a gap in the service in the area. They proposed using an existing structure when there is the opportunity. The M-1 zone at 90 feet did not work and even with a taller tower would create redundancy in coverage. The water tank was a

better alternative from a radio frequency point. The Board should have concentrated on the visual impact and could have imposed conditions like camouflaging.

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Mr. Zaks – An Industrial zone would be a better place for a tower. They did not demonstrate any study to a 140 foot tower in the M-1 zone and that is why we denied the application. A residential zone is clearly not a permitted use. The negative impact of a tower in a residential zone is substantial.

Mr. Gonzalez- based his decision on the Municipal Land Use Law 40:55b2k. They did not prove that 140 foot tower in the M-1 zone could work.

Ms. Goralski – the M-1 zone was not explored enough to prove that it was not a suitable site.

Mr. Gelley – no attempts have been made for a 140 foot tower in the M-1 zone. Would like to stick to his original decision of denial.

Mr. Lazzaro – The applicant did not prove that the M-1 zone was unsuitable.

Mr. Lankry – did not give adequate testimony and did not make an attempt on any other area.

Mr. Cherkos – will have a resolution for you to review and make any changes.

Appeal # 3653A – 910 East County Line Road, Block 208 Lots 2.01 & 2.02. Amended site and elevation plan.

Mr. Penzer represented applicant.

Mr. Penzer – The original elevations was a stucco finish and thought that it would look nicer in brick. He did not realize how expensive the brick was so he only did the front in brick and the rest he was going to do in vinyl siding. The Board requested notice and he did notice. There were no neighbors present.

Mr. Halberstam – this is a semi finished building which has vinyl siding in the back and the front will be finished in brick. The right side when done will be full brick

Yehuda Unger, affirmed. The brick on the right side is about 1/3 up, the front is about 1/2 way up. The back is fully done, the bottom 4 feet is brick and the siding is all the way up. The siding is finished in the rear and the left side.

Mr. Zaks – the issue is that the building that was shown to us was stucco. When the permits were filed it clearly says that the entire building would be brick. If they followed the plans than it should all be brick.

Mr. Halberstam - They filed the plans for fully brick, they ran out of money and now they are asking for siding.

Open to the Public. Closed to Public.

Ms. Goralski – why is the building not stucco? This building is not very attractive.

Mr. Zaks – the only issue is that a permit was issued for all brick. They should have to do whatever the permit says.

Mr. Penzer – they cannot afford to do the brick.

Mr. Ernst suggested that they should have an architect review.

Mr. Gonzalez – there is no rendering and there are going to be changes. Wants to see something.

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Mr. Halberstam – there is some sort of rendering.

Mr. Lazzaro – would like to table and applicant go to an architect and get the details straightened out to correct the mistake.

Mr. Gonzalez- even the rendering is wrong.

Mr. Halberstam – this building has been standing for three months and they have to move on it.

Mr. Lazzaro – the details should be handled by a competent architect and the applicant.

Mr. Halberstam – maybe John Ernst can look it over.

Mr. Penzer – will lighten up the effect of the windows. They will consult with the architect.

Motion to come back with architectural on October 19th – Mr. Lazzaro

Second – Mr. Gonzalez

Roll call vote: affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Lazzaro, Mr. Naftali,
Mr. Zaks, Ms. Goralski, Mr. Halberstam

No further notice.

Appeal # 3715 – Samuel Preschel, 119 Leonard Street, Block 227 Lot 7, R10 zone. To construct an addition with deck. Variances requested for lot coverage and side yard setbacks.

Secretary read reports.

From: John Ernst, Engineer/Planner - August 31, 2009

1.The property is located on the north side of Leonard Street, 200 ft. west of East End Avenue. It lies within the R-10 (Single Family Residential) Zone and comprises an area 7,500 s.f. The lot is occupied by a two-story residential dwelling with an attached deck and driveway from Leonard Street. Sanitary sewer and potable water services are provided by existing facilities within Leonard Street.

2.The applicant proposes to remove the existing deck and construct a single-story addition for additional bedrooms with an attached rear yard deck. The dwelling will have nine bedrooms upon completion of the addition.

3.The following Variances are required for this application:

- a. A Variance for Side Yard Setback: The proposed addition will have a side yard setback of 7.5 ft. and the ramp will have a 2.5 ft.

setback along adjacent Lot 8; whereas a setback of 10 ft. is required. The existing dwelling is setback 7.5 ft.

- b. A Variance for Combined Side Yard Setback: The proposed addition will have a combined side yard setback of 15 ft.; whereas a combined side yard setback of 25 ft. is required. The existing dwelling has a combined setback of 15 ft.
- c. A Variance for Lot Coverage: A lot coverage of 39.9% (dwelling, deck & ramp) is proposed; whereas a lot coverage of 25% is permitted. The existing lot coverage is 27.4% (dwelling & deck).

4. The applicant should provide testimony to the Board on the following issues:

- a. Testimony should be given in support of the required Variances.

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- b. Testimony should be provided to identify the number of off street parking spaces to be provided.

Should the application be approved the existing dry well system should be modified to address the increase in lot coverage and relocation as a result of the proposed deck and addition.

I would reserve the right to present additional comments pending the testimony of the applicant before the Board.

Abraham Penzer, represented applicant.

Mr. Penzer – Dr. Preschel’s parents and an in-law are extremely sick. They need constant care and don’t want to put them in a nursing home. The addition with variances are necessary will give them the quality of life. They need handicap ramps and handicap bathrooms and access and therefore the addition cannot be smaller. There will be an addition, deck and ramp.

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Mr. Ernst – dry well system needs to be replaced.

Mr. Penzer – agreed.

Motion to approve – Mr. Zaks

Second – Mr. Lazzaro

Roll call vote: affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Lazzaro, Mr. Naftali,
Mr. Zaks, Ms. Goralski, Mr. Halberstam

Appeal # 3716, Locust Acquisitions, Locust & Vermont, Block 1081 Lots 10.01 – 10.14, R20/12 Cluster zone. To construct townhomes and a community building. Preliminary and final major subdivision approval is sought, and front and side setback variances are required.

Secretary read reports.

From: John Ernst, Engineer/Planner - September 1, 2009

1. The property is located on the southwest corner of Locust Street and Vermont Avenue. It lies within the R-20/12 Cluster Zone and comprises an area of 7.45 acres. The front portion of the site (corner of Locust Street and Vermont Avenue approximately 1.6 acres)

has been cleared of woods and is occupied by a two-story residential dwelling and a driveway from Locust Street. The rear portion of the site is wooded and is occupied by a 1½ story residential dwelling and a shed. Fencing has also been constructed throughout the site. This site is a previously approved 14 lot subdivision that has not yet been developed.

2. The Board should be aware of the following:
 - a. The applicant was previously before the Board and was granted a Use Variance for the construction of an undetermined number of townhouse units on the subject property. The Use Variance approval was granted by Resolution #3690.
 - b. At the Board hearing of July 27, 2009 the applicant presented for approval a 54 unit townhouse development with a community center building and “tot lot”. During the hearing a motion to approve the development with 50 townhouse units failed
3. The applicant is again before the Board seeking Preliminary/Final Major Subdivision approval for a 50 unit townhouse development with a community center building and “tot lot” area. The applicant has relocated the community center building and “tot lot” area to

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2.

3.the southwest corner of the property, relocated townhouse buildings, and eliminated/enlarged parking areas. Initially the Board should determine if the new application is substantially different from the previous proposed townhouse development and the Doctrine of Res Judicata does not apply. The proposed construction will occur in the following manner:

- a. Eight separate buildings are to contain the 50 townhouse units. Seven buildings will contain six units and one building will contain eight units. The proposed density is 6.71 townhouse units per acre. In review of the Architectural and Development Plans each building will be two stories in height, have a raised rear yard deck and an exterior entrance to a basement.
- b. Each townhouse unit will be on a “fee simple” lot.
- c. A one-story community center building is proposed. The building will also have a basement.
- d. A “tot lot” area is proposed in the southwest corner of the site.
- e. Ingress/egress to the development is proposed from Locust Street. The interior 44 ft. right-of-ways will provide for 32 ft. wide paved roads and sidewalks on both sides of the streets. Residential parking is provided by individual lot driveways as well as parking areas that will be owned and maintained by a Homeowner’s Association.
- f. Underground stormwater collection systems that direct stormwater to two underground recharge systems and one above ground infiltration basin is proposed. A Homeowners Association is to be established for ownership and maintenance of the two underground recharge systems and the above ground infiltration basin.
- g. Street trees, street lights and landscaped areas are proposed.
- h. Potable water and sanitary sewer mains are proposed to be extended from existing facilities within Locust Street.
- i. All existing improvements on the site will be removed.

- j. Four “open space” lots are proposed. One lot (containing 0.43 acres) will contain the above ground infiltration basin. The second lot (containing .85 acres) will contain a parking area for 61 vehicles, an underground stormwater recharge system beneath the parking area and a cleared/graded open space area which is traversed by a proposed stormwater conveyance system. The third lot (containing 0.79 acres) will contain the community center building, the “tot lot” area and a 50 ft. wide fenced perimeter buffer. The fourth lot (containing 0.44 acres) will contain a 50 ft. wide partially fenced (30 ft. of property line) perimeter buffer.
 - k. Landscaped buffers are proposed along the south side of the site as well as along portions of the east and west sides of the site. The buffers run along portions of the “open space” lots as well as encroaching into residential lots along the Vermont Avenue frontage of the property.
 - l. Based on our calculations the applicant proposes 5.3% of contiguous land area for “active/passive recreation”. This land area includes the community center building, and the cleared area for the “tot lot” and is in conformance with Section 18-808.A1 of the Ordinance which requires a minimum of 5% of the tract area to be reserved for “active/passive recreation”.
 - m. The applicant has provided a statement that there will be no bedrooms in the attic and/or the basement areas of the townhouse units.
4. The following Variances are required:
- a. Front Yard Setback Variances – Front yard setbacks of 20 ft. on Lots 1 and 25 and 12 ft. on Lots 13 and 14 are proposed; whereas 25 ft. is required (Section 18-900.H6a).

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- b. Side Yard Setback Variances for End Units – Side yard setback of 4 ft. on Lot 10.33 and 6 ft. on Lots 6, 8, 19, and 20, and 7 ft. on Lots 10.16, 10.21 and 10.27 and 10 ft. on Lots 10.35 and 10.36; whereas 12 ft. is required (Section 18-900.H6.a).
- c. Distance Between Buildings Variance – Distance between buildings of 20 ft. on Lots 10.35 and 10.36 and 21.5 ft. on Lots 10.27 and 10.28 and 21.6 ft. on Lots 10.21 and 10.22; whereas 25 ft. is required (Section 18-900.H6a).
- d. A Variance for Not Providing a Useable Rear Yard Depth of 20 ft. –

<u>Lot No.</u>	<u>Proposed Useable Rear Yard Depth</u>
10.18	18.8 ft. measured from building line to proposed 29 ft. wide buffer line and 18.5 ft. measured from building line to proposed 6 ft. high vinyl fence
10.19	18.8 ft. measured from building line to proposed 29 ft. wide buffer line and 18.5 ft. measured from building line to proposed 6 ft. high vinyl fence
10.22	18.7 ft. measured from building line to proposed 29 ft. wide buffer line and 18.5 ft. measured from building line to proposed 6 ft. high vinyl fence
10.23	18.6 ft. measured from building line to proposed 29 ft. wide buffer line and 18.5 ft. measured from building line to proposed 6 ft. high vinyl fence
10.26	18.6 ft. measured from building line to proposed 29 ft. wide buffer line and 18.5 ft. measured from building line to proposed 6 ft. high vinyl fence

- 10.27 18.5 ft. measured from building line to proposed 29 ft. wide buffer line and 18.5 ft. measured from building line to proposed 6 ft. high vinyl fence
- 10.30 18.4 ft. measured from building line to proposed 29 ft. wide buffer line and 18.5 ft. measured from building line to proposed 6 ft. high vinyl fence
- 10.31 18.3 ft. measured from building line to proposed 29 ft. wide buffer line and 18.5 ft. measured from building line to proposed 6 ft. high vinyl fence

Whereas a useable rear yard depth of 20 ft. is required for all lots above.

- 5. The applicant has requested a Waiver from submitting an Environmental Impact Statement as required by Section 18-820 of the Ordinance. Testimony should be provided to substantiate this request.
- 6. The applicant requires a Waiver for not providing a 30 ft. wide buffer along adjacent Lot 12 which is presently occupied by a single family residential dwelling (Section 18-803.E2b of the Ordinance). Within the required buffer area there is a portion of a parking lot (13 parking spaces), a lighting pole, a cleared wooded area, an underground stormwater conveyance system and a portion of an underground stormwater recharge system. We realize that if the adjacent townhouse development is constructed this buffer is not required.
- 7. The applicant requires a Waiver for not providing a 25 ft. wide buffer along Locust Street and along Vermont Avenue which is adjacent to the proposed stormwater infiltration basin (Section 18-803.E2e of the Ordinance). Within the required buffer area is a portion of a parking lot, a portion of an underground stormwater recharge system and a portion of the above ground stormwater

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infiltration basin. The Board should be aware that the applicant is providing landscape screening plants along both roadways.

- 8. The applicant requires a Waiver for the proposed 29 ft. wide buffer along Vermont Avenue as 18 residential lot areas encroach into the buffer area. The Board should be aware that the proposed buffer would require deed restrictions on the 18 residential lots. Additionally the buffer width only need be 25 ft. wide along the roadway.
- 9. The applicant proposes two driveway parking spaces on each townhouse lot (100 spaces) and 101 additional parking spaces within four separate parking areas throughout the site. The total number of parking spaces proposed is 202 which provides for 4 parking spaces per townhouse lot.
- 10. The Board should determine if the number of townhouse units (50 units) is appropriate for this site. The number of townhouse units was not determined during the hearing for the Use Variance (Appeal #3690).
- 11. Since Locust Street and Vermont Avenue are County roads, we will defer to the County Engineer all issues related to traffic, intersection and Locust Street improvements.
- 12. The applicant should petition the Township Committee for the vacation of Geula Court.
- 13. The Development Plans indicate the extension of an existing 8” sanitary sewer within Locust Street will be done “by others”. The applicant should provide testimony to the Board on who will construct the sanitary sewer main within Locust Street.
- 14. The Architectural and Development Plans should be amended to show the locations of the screened trash and recycling containers and also the HVAC equipment.
- 15. The applicant should provide a street name for the project and revise the plans accordingly. The street name must be approved by the Township Committee. Proof of the approval of the street name should be submitted to this office.

16. As per Section 18-805B of the Ordinance the proposed lot numbers should be assigned/ approved by the Township's Tax Assessor. If previously approved please submit to this office a copy of the Tax Assessor's approval letter.
17. The applicant should provide testimony to the Board on the suitability of the number of recreational pieces proposed within the "tot lot" area verses the development of 50 townhouse units. The manufacturer's products catalog indicates the proposed recreational pieces as a whole can facilitate 75 to 85 children ages 2 to 12.
18. We will perform a Technical Engineering Checklist Review of the stormwater management system as well as other issues related to the Development Plans and the Final Plat. The Checklist Review will be sent to the applicant's Engineer with copies to the Board.
19. The following outside agency approvals are required:
 - a. Ocean County Planning Board.
 - b. Ocean County Soil Erosion and Sediment Control.
 - c. NJDEP (for potable water approval).
 - d. NJDEP (for sanitary sewer approval).
 - e. Lakewood Township Municipal Utilities Authority/NJ American Water (for potable and sanitary sewer approval).
 - f. Township Committee approval for the street name.
 - g. The applicant remains responsible to obtain all other Local, State and Federal approvals and permits that may pertain to this project.

I would reserve the right to present additional comments pending the testimony of the applicant before the Board.

Abe Penzer represented applicant.

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Mr. Cherkos – Applicant was before the board on July 27th for 50 townhouse units and was denied. Board has to decide if this application is substantially different. This application is also for 50 units but the use was previously approved. This is for site plan. Mr. Penzer needs to state the differences between this application and the last one that was denied.

Brian Flannery, engineer, planner, sworn.

A-1 new site plan
A-2 denied site plan

Mr. Flannery – the road layout and the units in the middle stayed the same. They moved the development in the southwest corner and shifted everything. They moved all the parking to the front corner. They increased the size of the community building and the tot lot. The density was 7.25 and they are now down to 6.7 with the 50 units and they reduced the parking from 217 to 202. This is a substantially different plan that was presented to the board at the last hearing.

Mr. Penzer – they moved so much around that they needed to sign a new agreement with the neighbors. Read letter from Harrogate, Mr. Bryce, supporting the application. Mr. Rice has also done a new agreement.

Mr. Penzer – tot lot is separately deeded so that it may never be used for anything else. Will also record second deed for the community building. They have made sure that the southwest corner is totally free of anything other than the tot lot.

A-3 - September 14th letter from Mr. O'Malley

A-4 – September 11th letter from Landscaping Architect
A-5 agreement between Kensington Hills Homeowners Group and applicant.

Mr. Penzer- his position is that it is a new application

Mr. Halberstam – looks like a new application.

Mr. Lazzaro - agreed that it appears that all of our objections were addressed.

Mr. Zaks – substantially different.

Mr. Cherkos - This is for site plan and subdivision – use was previously approved.

Motion to determine that this is a substantially different application – Mr. Zaks
Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Lazzaro, Mr. Naftali,
Mr. Zaks, Ms. Goralski, Mr. Halberstam

Mr. Flannery reviewed Mr. Ernst's report. Trying to reduce the impact in the southwest corner. Proposed separate lots for the community building and the tot lot and there will be separate deeds.

Mr. Flannery – there will be public sewer and public water.

Mr. Penzer – they will be providing an engineer for Mr. Rice to look at the drainage.

Mr. Flannery – The benefits outweigh the detriments. Requesting a waiver for environmental on site. Asking for waiver for not providing a waiver along adjacent lot 12 which was approved for townhouses. Asking for a waiver for a buffer along Locust Street, provided landscaping. Requesting for a waiver for a buffer along New Hampshire Avenue. They will be giving 4 parking spaces per unit. The tot lot is over 10,000 square feet.

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A-7 deed restrictions
A-8 deed restrictions for tot lot

Open to Public.

Craig Rice, 13 Salvatore Drive, sworn.

Mr. Flannery - The site plan submitted is the same as the one Mr. Rice has.

Mr. Rice – Asked that the documents submitted would be a condition of approval.

Closed to Public.

Motion to approve subject to handicapped ramp cutouts, resolution containing the two agreements, A-7, A-8 deed restrictions – Mr. Zaks

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Lazzaro, Mr. Naftali,
Mr. Zaks, Ms. Goralski, Mr. Halberstam

Appeal # 3714 tabled until the next meeting of October 19th.

Motion to table carry – Ms. Goralski

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Lazzaro, Mr. Naftali,

Mr. Zaks, Ms. Goralski, Mr. Halberstam

No further notice.

Motion to grant Russ Cherkos permission to represent the Zoning Board for **Appeal #3702, Metro PCS**, 220 E. 4th Street, Block 246 Lot 1 – Mr. Zaks

Second – Mr. Gonzalez

Roll call vote: Mr. Gelley, Mr. Gonzalez, Mr. Lazzaro, Mr. Naftali, Mr. Zaks,
Ms. Goralski, Mr. Halberstam

Resolutions

Appeal # 3690A – Locust Acquisitions, Block 1081 Lots 10.04-10.14, R20/12 cluster zone. Resolution to deny subdivision and site plan.

Motion to approve – Mr. Gonzalez

Second – Ms. Goralski

Roll call vote: affirmative: Mr. Gonzalez, Mr. Lazzaro, Ms. Goralski

Appeal # 3711 – Metro PCS, Block 2 Lot 5.01, OS zone. Resolution to approve a use variance for 6 antennas on an existing monopole at 110 feet.

Motion to approve – Mr. Zaks

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Lazzaro, Mr. Zaks,
Ms. Goralski, Mr. Halberstam

Motion to pay bills.

All in favor.

Motion to adjourn.

All in favor

Meeting adjourned at 11:15 P.M.

Respectfully submitted,

Fran Siegel, Secretary