

**ZONING BOARD OF ADJUSTMENT  
MINUTES**

**OCTOBER 6, 2008**

Meeting was called to order at 7: 40 P.M.

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

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

Arrived Late: Mr. Zaks

Absent: Mr. Naftali, Mr. Lazzaro

Also present: Glenn Harrison, Attorney  
Kathy Elliott, Engineer/Planner  
Ed Mack, Zoning Officer  
Jackie Wahler, Court Stenographer  
Fran Siegel, Secretary

Salute to the flag.

Motion to approve the minutes of September 8<sup>th</sup> with a waiver to read – Mr. Gonzalez  
Second – Ms. Goralski

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

Letter from Adam Pfeffer, attorney for **Appeal # 3680, Ian Goldman**, requesting to carry  
until the next meeting.

Motion to carry until November 3<sup>rd</sup> – Mr. Gelley

Second – Mr. Lankry

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

This is the second request to carry.

No further notice.

Letter from Simon Kettner requesting to carry **Appeal # 3683, Allan Ben-Dayan**, to the  
next meeting.

Motion to carry until November 3<sup>rd</sup> – Mr. Gonzalez

Second – Mr. Gelley

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

This is the second request to carry.

No further notice.

Letter from Mr. Beck, Esq. requesting to carry **Appeal # 3684, Metro PCS New York**.  
No hearing date was requested.

Motion to carry to a future date – Ms. Goralski

Second – Mr. Gelley

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

Re-notice required.

Mr. Zaks arrived at 7:45

**Appeal # 3686 – Paradise Realty** – Block 154 Lot 1, Squankum Road, RM zone.  
Interpretation

Secretary read reports.

**From: Jim Priolo, Engineer/Planner – September 5, 2008**

1. The subject property is located between Monmouth Avenue, Ninth Street, and Squankum Road and is within the R-M (Multi-Family Residential) Zone. The applicant is proposing a building structure that contains 10 dwelling units (8 two-story units with basements and 2 one-story above/below units) with a density of 14 units/acre.

2. In accordance with Section 200 B. of the ordinance, townhouse buildings are defined by the following:
  - a. Townhouse dwellings may not have any other dwellings above or below them within the same building. Townhouse buildings must exclusively consist of units that do not have any other dwellings above or below them within the same building. The proposed building has Units 1.01.06 and 1.01.07 above and below each other.
  - b. Any unit in excess of two units that does not meet the “Townhouse Definition” shall be considered a multi-family dwelling. The proposed building does not meet the “Townhouse Definition” because of Units 1.01.06 and 1.01.07 and therefore shall be considered multi-family.

It is our opinion that that statement “any unit in excess of two units” refers to any building in excess of two units.

3. Based on the definition above, this proposal does not meet the definition of townhouses and conforms more with the multi-family definition.
4. Should the applicant submit an application for a multi-family use at this location, it’s our opinion that they should appear before the Planning Board, as multi-family use is permitted and the density falls within the allowable limits of the R-M Zone as listed in Section 902 H. of the ordinance.

**From: Ed Mack, Zoning Officer**

In answer to the question as to whether the units on the plot plan for block 154 lot 1 are townhouses or multi- family I offer the following:

Units on lots 1.01, 1.02, 1.03, 1.04, 1.05, 1.07, 1.08 and 1.09 all are townhouses under our current ordinance. The units on lot 1.06 however, seem to deviate from the townhouse definition which states “Townhouse dwellings may not have any other dwellings above or below them within the same building. Townhouse buildings must exclusively consist of units that do not have any other dwellings above or below any of the individual units”. The units on lot 1.06 are clearly designed with an upper and lower unit and therefore conflict with the definition of a Townhouse.

The definition however, goes on to say that “Any unit in excess of two units that does not meet the Townhouse definition shall be considered a multi-family dwelling”. Since there are only two dwellings that do not meet the Townhouse definition and no units in excess of two that do not meet the definition that they would also be considered Townhouses as they are part of an obvious townhouse development.

If the applicant is going forward with this application obviously it should be heard by the Zoning Board.

Abraham Penzer, attorney for applicant. Asking for an interpretation of the ordinance.

Brian Flannery, planner, sworn. The building they are proposing is one lot that has 10 units on it, 8 two story units and two are over and under units. Their position is that this project does not meet the definition of a townhouse and you are more than two units than it is multi-family. This project fits into this area. They submitted to the Planning Board as multi-family. Asking for an interpretation if they meet the definition of townhouse.

A plan was shown with 8 townhouse units and 2 up and down units. The Board was asked to interpret if the plan was townhouses or multi- family units.

Being one building and all the units are connected because of the end units does it make all the units multi-family?

Mr. Halberstam – Mr. Priolo is saying that this is multi-family and he is our expert engineer.

Ms. Elliott – if it meets the definition of townhouse than it is. There is an exception to the definition with the unit above and below and then it would be considered a multi-family project.

Mr. Mack disagreed with Mr. Priolo. It is here because the Planning Board sent it here. Multi family gives the right to double the density.

Mr. Halberstam - This is a multi family zone area and they are not going over the density.

Mr. Mack – Multi-family is not spread out over this much space. There are 8 townhouse units attached to 2 multi-family units.

Mr. Flannery – this is much nicer than a 65 foot high building. This is an appropriate use. The zoning board has to interpret the definitions not look at the plan.

Mr. Mack – the corner unit is multi family, the other 8 units are townhouses. Multi family is not contagious it does not spread.

Mr. Halberstam - This is one lot – one tax billed property, not separated by fee simple lots.

Mr. Harrison – there are two opinions.

Mr. Penzer – this is one lot, one tax bill, will be condominiums. This clearly falls into multi-family.

Ms. Goralski - Why did your client choose this particular design?

Mr. Flannery - This is the nicest way to do multi family and this many units. This is nicer than a larger building.

Mr. Penzer - This is an odd shaped piece of property and this is the safest multi family.

Mr. Flannery - This is an RM zone where multi-family is permitted.

Mr. Mack - There are 8 townhouses attached to 2 multi family units. There are 2 very poorly described definitions. What was the intent of the ordinance?

Mr. Flannery – townhouses are permitted in the RM zone at 8 per acre. The property is 31,000 square feet. If you do not meet the definition of townhouses and you have 3 or more units you are multi-family.

Motion to interpret that the plan shown is multi-family and should be heard by the Planning Board – Mr. Zaks

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Zaks, Mr. Halberstam

nays: Mr. Gonzalez, Ms. Goralski

abstained: Mr. Lankry

**Appeal # 3685 - Zeldy Oppen** – Massachusetts Avenue, Block 442 Lot 2, R-20 zone.  
To construct a single family home on an under sized lot. Required  
20,000 square feet – proposed 10,000 square feet.

Secretary read reports.

**From: Jim Priolo, Engineer/Planner - August 8, 2008**

1. The subject property is located on Massachusetts Avenue and is within the R-20 (Single-Family Residential) Zone. The existing site is vacant. The applicant proposes to construct a two-story single-family dwelling. Claremont Street is an unimproved right-of-way.
2. In accordance with Section 902.E of the Ordinance, bulk variances will be required for the construction of the proposed two-story addition as follows:

|                  | <u>Required</u> | <u>Proposed</u> |
|------------------|-----------------|-----------------|
| Minimum Lot Area | 20,000 s.f.     | 10,000 s.f.     |

The applicant must demonstrate to the Board that the requested variances can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and the zoning ordinance.

The applicant should address the Board regarding the visual impact that the dwelling will have on the surrounding properties.

3. Any approval should include a condition that curb and sidewalk shall be constructed as directed by the Township Engineer and Ocean County.
4. The building layout on the plot plan shows the reverse layout shown on the architectural plans provided. This discrepancy should be corrected.
5. Ocean County Planning Board approval should be provided.

**From: Ed Mack, Zoning Officer**

I have no objection to this application

John Doyle represented applicant. This is an undersized lot. The applicant can gain no additional property. Letters were sent to adjoining property owners and there was no interest. This site will have public sewer and public water.

Mr. Flannery – The only variance sought is for minimum lot area, 20,000 is required and 10,000 is proposed. This is an isolated lot. There is no negative criteria. There is no detriment to the zone plan. Agreed to # 3, 4 & 5 from Mr. Priolo's report.

Open to Public. Closed to Public.

Motion to approve – Mr. Gonzalez

Second – Mr. Zaks

Roll call vote: affirmative: Mr. Gellely, Mr. Gonzalez, Mr. Zaks, Mr. Lankry,  
Mr. Halberstam  
nays: Ms. Goralski

Recess.

**Appeal # 3664 – Somerset Development, Somerset Avenue & East County Line Road,  
Block 208.01 Lots 10.01, 10.02 11 & 72**

Secretary read reports.

From: Jim Priolo, Engineer/Planner – September 23, 2008

1. The subject property is located on the southeast corner of East County Line Road and Somerset Avenue and is within the R-12 (Single-Family Residential) Zone. The existing site contains three single-family dwellings and a garage. The Applicant has provided a variance map showing a future subdivision that would subdivide the existing property into eighteen (18) lots and construct seventeen (17) new single-family dwellings and one homeowner's association lot. The existing dwellings will be razed.

The applicant appeared before the Board on May 5, 2008 with a variance plan requesting 24 units. The Board requested the applicant revise the variance plan to reduce the units and reconfigure the layout to include an entrance onto East County Line Road.

2. The Applicant is requesting use variance approval (for density) and dimensional relief for the proposed subdivision as follows:
  - a. The subject property can yield 16 dwelling units (3.6 units/acre) based on R-12 Zone criteria. The Applicant is seeking approval for 17 buildable lots (3.8 units/acre) by requesting dimensional relief for lot area, lot width, front and side setbacks and building coverage. The requested lot areas range from a minimum size of 7,526.02 s.f. to a maximum size of 8,340.72 s.f.
  - b. The following bulk variances for the dimensional relief will be a condition of this approval for the future subdivision as follows:

|                                      | <u>Required</u> | <u>Proposed</u>                     |
|--------------------------------------|-----------------|-------------------------------------|
| Minimum Lot Area                     | 12,000 s.f.     | 7,526 s.f. (min.)                   |
| Minimum Lot Width                    | 90 ft.          | 53.5 ft. (min.)                     |
| Minimum Front Yard Setback           | 30 ft.          | 10 ft.<br>17.5 ft. (E. County Line) |
| Minimum Side Yard Setback (One)      | 10 ft.          | 5 ft.                               |
| Minimum Side Yard Setback (Combined) | 25 ft.          | 15 ft.                              |
| Maximum Building Coverage            | 25%             | 26.75% (max.)                       |

The Applicant must provide testimony to the Board detailing the special reasons which would allow the Board to grant a variance to depart from the zoning regulations to permit an increase in the permitted density and the noted bulk variances for dimensional relief.

The Applicant must demonstrate to the Board that the requested use variance can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and the zoning ordinance.

3. The following comments should be addressed with regards to the architectural plans:
  - a. The Applicant should discuss if basements will be proposed on the new dwellings on Lots 1 and 10.

- b. Plans for the Harvard and Oxford models show separate outside entrances to the basement. The proposed use of the basement should be discussed.
4. If the variances are granted, the Board should defer the approval of site layout to the subdivisions plan review phase of this application. Environmental constraints, buffers, traffic/circulation, drainage, and topography may alter or affect the usability of certain areas and the overall layout of the project.
5. The right-of-way width of East County Line Road should be indicated and the Applicant should show the anticipated right-of-way dedication that will be required by the County during the subdivision phase. The required 30 foot front setback should be maintained along East County Line Road and Somerset Avenue. This may result in the elimination of the two units along East County Line Road.
6. Any approval should be subject to Preliminary and Final Major Subdivision approval.

**From: Ed Mack, Zoning Officer**

Although it appears to be an interesting and attractive design the lack of conformity to this zone is hard to accept.

Moshe Klein, attorney for applicant. Board was concerned with density and they were asked to rework the plans. The plan has been revised.

Norm Reynolds, 948 East County Line Road, sworn. He is the owner of a good portion of the property. His family has lived on the property since 1850. Would like to see this plan approved.

Michael Dipple, 12 Engle Street, Englewood, NJ, sworn.

Nicholas Graviano, 4057 Route 9 North, Howell, NJ, sworn.

Ralph Zucker, 52 Cabinfield Circle, Lakewood, affirmed. President of Somerset Development.

Mr. Dipple reviewed Mr. Priolo's review letter. This plan has 17 proposed units on 18 subdivided lot. The 18<sup>th</sup> lot is for stormwater management. They are proposing 17 \_ feet front setback along East County Line Road. The County has to review the plan. They could move the houses back more from County Line Road and eliminate approximately 3 feet from each of the other lots. These lots are all 7,500 square foot lots.

Mr. Graviano – The site 4.4 acres. Could put in 16 12,000 square foot lots without the road. The community requested a through street from Somerset Avenue to East County Line Road which also dictated the size of the lots. They are adequately buffered from any adjacent neighbors. This plan provides 3.8 dwelling units per acre. The proposed use and bulk variances and can be granted without substantial detriment to the public good. The applicant wants to keep the homes as close to the street as possible, they can have a larger backyard.

Mr. Zucker – by pushing the houses back you lose the effect.

Mr. Mack – a nice big backyard is nice.

Mr. Graviano – the front yard is basically useless space. The applicant agrees to have a minimum of 15 feet between dwellings.

Mr. Halberstam – Concerned about a front yard setback of 17 \_ feet on County Line Road.

Mr. Graviano – applicant agreed to a 30 foot setback from County Line Road. They will shift the lots on the east and west side of the development toward the southern portion.

Mr. Zucker – they will be going down 3 – 3/2 feet on each lot to meet the front setback on County Line Road.

Open to Public. Closed to Public.

Motion to approve use variance for density of a maximum of 17 houses plus drainage basin, minimum size of lot will be 7,500 square feet, no two units shall be closer than 15 feet to each other, front yard setback on County Line Road will be 30 feet, keep tree lines on Somerset Avenue and on site – Mr. Zaks

Second – Mr. Gonzalez

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

**Resolutions**

**Appeal # 3641 – Fairmont Investments**, Central Avenue, Block 11 Lots 116.01 & 118.01, R-15 zone. Resolution to approve minor subdivision for 4 single family homes.

Motion to approve – Mr. Gonzalez

Second – Mr. Lankry

Roll call vote: affirmative: Mr. Gonzalez, Mr. Lankry, Mr. Halberstam

**Appeal # 3569AA – SK & B Realty**, Block 174.11 Lot 40.01, 921 East County Line Road. Resolution to approve amended preliminary final site plan, preliminary and final major site plan and subdivision.

Motion to approve – Mr. Lankry

Second – Mr. Gelley

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

**Appeal # 3681 – Alter Rubin**, Block 247 Lots 12-16, 310-330 Dewey Avenue, Resolution to approve use variance for townhouses.

Motion to approve – Ms. Goralski

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Lankry, Ms. Goralski, Mr. Halberstam

**Appeal # 3682 - Robert & Erwin Deutsch**, Block 247 Lots 28.01 & 28.02, Cottage Place. Resolution to approve use variance for a duplex on an undersized lot.

Motion to approve – Mr. Gonzalez

Second – Mr. Gelley

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

**Appeal # 3661A – MTR Ventures**, 350 Cedarbridge Avenue, Block 763 Lots 2 & 17, R-7.5 zone. Resolution to approve site plan.

Motion to approve – Mr. Zaks

Second – Mr. Gonzalez

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

Resolution will be amended to include that the entrance will be to the right of the building and the trash enclosure will be on the right side of the building.

**ZONING BOARD OF ADJUSTMENT  
MINUTES**

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**Appeal # 3675A – Real Acquisition**, Block 1081 Lots 12 & 13, R-20 zone, Locust Street. Resolution to approve site plan.

Motion to approve – Mr. Zaks

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Zaks, Mr. Halberstam

Motion to pay bills.

All in favor.

Motion to adjourn.

All in favor.

Meeting adjourned at 10:15 P.M.

Respectfully submitted,

Fran Siegel, Secretary