

**MOORESTOWN TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MARCH 16, 2010**

**MEMBERS PRESENT:**

William Banks  
Veronica Hughes  
John Logue  
Jeffrey Tait  
Donna Weinstein  
Tim Conrey  
Steve Solomon

**STAFF PRESENT:**

Peter D. Clifford, Board Secretary  
Peter Thorndike, Board Attorney  
Nancy Jamanow, Board Engineer  
Barbara Fegley, Board Planner  
Amy Cieslewicz, Landscape Architect  
Sharon Leinheiser, Recording Secretary

Absent: George Williams, Jeffrey Banasz, Philip Lezenby

Mr. Tait called the meeting to order at 7:30 PM in the William Allen Middle School Auditorium by reading the Open Public Meetings Act statement. The Pledge of Allegiance followed a moment of silence. Roll Call is as listed above.

RESOLUTIONS:

- Mr. Banks made a motion, seconded by Mrs. Weinstein, to approve **Resolution ZBA#2009-29, Clearwire US, LLC**, as written. The roll call vote of eligible Board members was unanimous in favor.
- Mrs. Hughes made a motion, seconded by Mr. Logue, to approve **Resolution ZBA#2009-30, William Brady**, as written. The roll call vote of eligible Board members was unanimous in favor.
- Mr. Banks made a motion, seconded by Mrs. Weinstein, to approve **Resolution ZBA#2010-04, Appointment of Zoning Board Engineer/Planner**, as written. The roll call vote of eligible Board members was unanimous in favor.
- Mrs. Weinstein made a motion, seconded by Mrs. Hughes, to approve **Resolution ZBA#2010-05, Appointment of Zoning Board Landscape Architect**, as written. The roll call vote of eligible Board members was unanimous in favor.

MINUTES:

- Mr. Logue made a motion, seconded by Mrs. Weinstein, to approve the **Minutes of January 19, 2010, both Regular & Closed Sessions**, as written. The voice vote of the Board was unanimous in favor.
- Mr. Logue made a motion, seconded by Mrs. Weinstein, to approve the **Minutes of December 16, 2008 Regular Session**, as written. The voice vote of the Board was unanimous in favor.
- Mr. Banks made a motion, seconded by Mrs. Weinstein, to approve the **Minutes of September 16, 2008 Regular Session**, as written. The voice vote of the Board was unanimous in favor.

PUBLIC HEARING:

**Docket ZBA#2010-09, Robert McCandless, Block 4101, Lot 29, Zone R-3, 543 Bethel Avenue** is an application for Bulk variance to permit the construction of a single family dwelling with a lot width of 57 feet where 75 feet is required.

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Mrs. Weinstein recused herself due to possible professional conflict.

Mr. Tumaidn is the attorney for the applicant. Robert McCandless was sworn in and stated that he is considering purchasing this property.

Mr. Thorndike advised that there may be two variances rather than one and detailed his thinking by reading from the Code. Mr. McCandless stated that the building envelope frontage is 57 feet. Mr. Tumaidn provided Exhibits A-1 through A-5. Mr. McCandless described the photos taken this date: #1 shows the two adjacent properties to the left; #2 shows the existing right side of the property facing from the street; #3 shows down the street; #4 shows the actual lot; #5 shows the street from the other direction. The Board discussed the proposed location of the house, the building envelope, and the setback with Mr. McCandless.

Mr. Logue requested a Condition to allow emergency vehicle access. Mr. McCandless agreed to that as long as there is enough room. Mr. Logue questioned the presence of wetlands. Mr. McCandless stated that the property is not in a flood zone. Mr. Logue reported that the Township land adjacent to this property has wetlands on it. Mr. Clifford advised that the two Township lots are Green Acres space maintained by STEM and will be Green Acres into perpetuity. Mr. McCandless stated that this lot is larger than some in the area but, although the house has not yet been designed, it will be similar in size to the others.

Mr. Thorndike questioned the applicant regarding the application, the property and the surrounding area. Mr. McCandless responded to his questions in detail. Mr. Thorndike also verified the variances being sought.

**BOARD QUESTIONS:**

Mr. Banks asked how far from the street line they intend to put the structure. Mr. McCandless responded as close to the street as possible without another variance being needed. He discussed this with Mr. Banks.

Mr. Logue questioned what would happen if the NJDEP delineation finds wetlands and the house has to be moved. Mr. McCandless was not sure but still felt that there are no wetlands on the property. His surveyor was asked to identify wetlands and found none.

**PUBLIC QUESTIONS:**

Dan Craft, 539 Bethel Avenue, questioned when the building plan would be available for review. Mr. McCandless stated he felt there was no reason to put money into an architect if he might not receive approval. Mr. Craft felt it was difficult to make comments without knowing the building elevations and style.

**PUBLIC COMMENT:**

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Ruth Berk, 551 Holmes Terrace, was sworn in and identified her lot. She feels that the wetlands need to be clarified through NJDEP. Her property floods and she believes there are wetlands there. She is in opposition to the application. She expressed concerns for safety, access and the wetlands. Even though her main contention is wetlands, she feels that children's proximity to the construction is also a concern. She agreed that whoever constructed her house probably made a mistake because her lot is smaller in square footage than the applicant's and she has a pond in her backyard from all the recent rain. She felt that the Township should not make the same mistake over and over again. If it were possible, she would create a conservation area there to accommodate the existing wildlife. She felt that the Township would have to investigate that; there might be grants that would help accomplish that goal.

Guy Campbell, 540 Bethel Avenue, was sworn in and stated that his house is directly across from the property in question. He expressed concern for the safety of the small children in the area, congestion on the street, and the wetlands. When they built the house on 539, they had to bring in lots of fill dirt to offset the water. Car access is difficult because the roadway is so narrow. He feels this is not a buildable lot and constructing a house here would put a hardship on the neighboring properties.

Dan Craft was sworn in and submitted the current plot plan for Lot 30 which is adjacent to the property. His house has a six foot setback to the property line. He feels that is too close to the building envelope that the applicant wants to build. Mr. Craft stated that his basement is wet and he is aware that most in the area are wet. With the recent weather, his sump pump runs constantly. The rain water on the adjacent properties run onto the lot in question and water collects there. He is concerned about drainage. Mr. Clifford explained that the Township Engineer must review the drainage plans and approve them so that there is no run off from his property. If there is run-off, the homeowner would be responsible to remedy that. Mr. Craft stated that there is no plan showing the extent of impervious surfaces. He is concerned how the lot is going to be raised and how it will affect drainage on his property. Mr. Thorndike felt that the Board Engineer would take their concerns into consideration in their Conditions of Approval. Mr. Craft stated that privacy is another issue. If he had the money, he would buy it so no one could do this. He believes that an LOI is absolutely necessary. Mr. Thorndike agreed to add that requirement as a Condition. Mr. Craft felt that the best use of this lot is to incorporate it into the Green Acres and put it to the community's good use.

Mr. Campbell stated that he had tried to purchase that lot so they would not be encroached upon. Unfortunately, the owner died before the transaction was completed and the heirs are not willing to work with him. If Mr. McCandless contacted an engineer, he would find that this lot is not buildable. He would like to see the owners sell to the Township as part of green acres. He asked the Board to consider the conditions on the street, the safety of children and the smallness of the lots and deny the application.

With no further public comments forthcoming, the public portion was closed.

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Mr. Conrey felt that the issue of the wetlands falls under developers' risk. Mr. McCandless stated that he used to work for Toll Brothers and has constructed approximately two hundred homes. This is to be his own home, not developed and sold. He has sold his current home and will be moving in upon completion of the house, if he buys the lot.

Mr. Tumaidn summarized the application. Mr. Thorndike stated that the current tax lien will be satisfied before construction and that would be a Condition of Approval. The applicant is willing to pay outstanding taxes and be part of the tax base.

Dan Craft felt that this house will probably not cover the expenses of services so this will not be a net gain but green acres would be an asset.

Miss Craft expressed concern about the building on this lot. Construction requires a lot of equipment that would kill trees, risk the other homes, and kill the wetlands.

Ms. Berk stated that most streets can accommodate more than one car on it but this street cannot handle more than one at a time. If a car is parked there, you are stuck. She felt that the construction equipment would impact the neighborhood severely and would pose a big problem.

**BOARD DELIBERATIONS:**

Mr. Thorndike advised that a "C" variance requires a majority vote. He detailed the relief the applicant is requesting. The applicant has to prove to the Board that this property creates a hardship. The Board has to be satisfied that the relief can be granted without imposing on the public good. Conditions have been added requiring an LOI and the applicant must comply with whatever drainage the Board Engineer requires and the outstanding taxes on the property have to be paid before any permits are issued.

Mrs. Hughes stated that she had a problem turning around when checking out this property so there is concern about traffic in the area.

Mr. Logue stated that Mr. Campbell had told the Board that he built on two lots to have room enough for his house. He also felt it made for a very difficult decision to approve when one does not know where the house will be located and what it will look like.

Mr. Banks stated that they are here because there are some lots in the Township that just do not meet the requirements.

Mr. Solomon made a motion, seconded by Mr. Banks, to approve this application with Conditions as amended at this hearing. The roll call vote of the Board was as follows: AYES: Mr. Conrey, Mr. Banks, Mr. Tait, Mr. Solomon. Nays: Mrs. Hughes, Mr. Logue. Absent: George Williams, Jeffrey Banasz, Philip Lezenby. The motion carried 4-2. Mr. Thorndike advised the applicant of the procedure following this approval.

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**Docket ZBA #2009-15, David Cho, Block 7400, Lot 2.17, Zone R-1, 404 Salem Crossing Road**, is an application for Bulk variance to permit the expansion of a nonconforming dwelling with a front yard setback of 84.3' where 150' is required 2009-15

Mr. Penberthy is the attorney for the applicant. Anthony Hibbeln, engineer and Dr. David Cho were both sworn in. Mr. Hibbeln gave his qualifications and was accepted as an expert witness. He detailed the variances requested and the proposed setbacks of the additions. Mr. Penberthy advised that there had been a problem when the building was originally constructed; there was no variance request at that time. Mr. Thorndike responded that approval of this application would legitimize the entire site. Mr. Hibbeln described the site as 1.5-acres on the corner of Borton Landing and Salem Crossing Roads. He detailed the proposed addition, pool and pool area. He advised that there is a small amount of wetlands on the property. There will be easements for drainage. There is a problem with the swale that the homeowner is willing to correct. Mr. Hibbeln detailed the issues with the swale and correction thereof. He stated that the impervious coverage is 5.3% over the allowable. They are looking to use porous paver blocks. He discussed this with the Board. Mr. Banks requested a Condition that all paving used be pervious concrete. The applicant is not ready to concede to that regarding the patio without seeing what it would look like but agrees to the remainder. The macadam has been changed to pervious pavers. Mr. Hibbeln referred to the front yard setback. The buffer currently exists and they will keep that. The farm behind this property drains into the swale. The porch in the rear of the house will be enclosed with glass windows to become a conservatory and an office will be on the opposite side of the house with a family room between.

Mr. Penberthy stated that they are amending the application to request matching the neighbor's fence at six feet. Mr. Thorndike stated that front yard fence regulations are different. Mr. Penberthy clarified that the amendment is for a six foot fence in the rear where a berm will be. Dr. Cho described the location of the berm.

PUBLIC QUESTIONS/COMMENTS: None.

**BOARD DELIBERATIONS:**

Mr. Thorndike advised what action the Board needs to take and clarified what the applicant is asking for.

Mrs. Weinstein supports the application. She feels this is the correct action to take. Her only concern had been the pervious coverage but the applicant has agreed to a Condition to address that. Mr. Banks agreed that they are attempting to limit the impervious. Mrs. Hughes and Mr. Tait also support the application.

Mr. Logue supports application because the applicant wants to improve drainage in his area. Mr. Logue made a motion, seconded by Mr. Banks, to approve this application with Conditions as amended. The roll call vote of the Board was as follows: AYES: Mr. Conrey, Mr. Banks, Mr. Tait, Mr. Solomon, Mrs. Hughes, Mr. Logue. NAYES: None. Absent:

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George Williams, Jeffrey Banasz, Philip Lezenby. The motion carried 6-0. Mr. Thorndike advised the applicant of the procedure following this approval.

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At 9:40 PM the Board took a short recess.

Mr. Tait called the meeting back to order at 9:50 PM.

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**Docket ZBA#2010-07, William & Susan Saldutti, Block 5703, Lot 10, Zone R-2, 4 Tyndale Court** is an application for Bulk variance to construct an in-ground pool with an 18.73 foot rear yard setback where 25 feet is required.

James Burns is the attorney for the applicant. He explained the application and the reason for variances. Witnesses sworn in included William Saldutti, Kerry Mentzer, and Susan Saldutti.

Mr. Saldutti described the in-ground pool. He provided Exhibits A-1 and A-2, photos showing the rear screening and location of the proposed pool. They chose the pool location because they have a handicap son and need to see him when he is in the pool. This is beneficial to his Autism and Downs Syndrome. Mr. Saldutti described Exhibit A-3 as a Google map showing other pools in the area. They need to have fencing around the pool to prevent their son from going in the pool at inappropriate times. This project is being done primarily for their son's comfort and happiness. He truly loves to swim.

Mr. Thorndike questioned Mr. Saldutti regarding the application, the property and the surrounding area. Mr. Saldutti advised that they are actually taking out the patio.

**BOARD QUESTIONS:**

Mr. Logue questioned the filtering system. Mr. Saldutti stated that this will be a salt water pool with a heat pump to maintain the pool at an even temperature. It is very quiet. The salt purifies the pool.

Mrs. Hughes questioned drainage on neighboring lots. Mr. Saldutti will be installing a dry well to prevent water going on neighboring property.

Mr. Banks suggested the installation of an alarm system. Mr. Saldutti stated that it is their intention to do so. Mr. Banks discussed the use of pervious concrete with Mr. Saldutti, who stated that his only concern is the cost.

Mr. Tait requested a Condition requiring review of the drainage review by the Board Engineer. Mr. Saldutti welcomed a drainage review by the Board Engineer.

Mr. Burns summarized their case and proof of hardship.

**BOARD DELIBERATIONS:**

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Mr. Logue supports the application and made a motion to approve this application with Conditions, as amended. Mr. Solomon seconded. The roll call vote of the Board was as follows: AYES: Mr. Conrey, Mr. Banks, Mr. Tait, Mr. Solomon, Mrs. Hughes, Mr. Logue. NAYES: None. Absent: George Williams, Jeffrey Banasz, Philip Lezenby. Motion carried 6-0. Mr. Thorndike advised the applicant of the procedure following this approval.

Mrs. Weinstein made a motion, seconded by Mrs. Hughes, to adjourn the meeting. The voice vote of the Board was unanimous in favor. The meeting was adjourned at 10:18 PM.

Approved: April 20, 2010