

**TOWNSHIP OF OCEAN
Zoning Board of Adjustment
Regular Meeting
January 17, 2008**

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 | Nick Bonamassa | Stanley Bystrek | Edward Covitz |
| | Anthony Mercuro | John Petrosilli | Dennis Tredy |
| | Joe Lachawiec | Antonio DeAlmeida | |

Members Absent: Ron Bruno

Pledge of Allegiance

Administrative

John Petrosilli made a motion to approve the August 16, meeting minutes seconded by Tony Mercuro. Roll Call (Ayes) Petrosilli, Mercuro, Bonamassa, Bystrek, Covitz, , Lachawiec, Tredy

Joseph Lachawiec made a motion to approve the October 18, meeting minutes seconded by John Petrosilli. Roll Call (Ayes) Lachawiec, Petrosilli, Bonamassa, Bystrek, Covitz, Tredy

Edward Covitz made a motion to approve the December 19, meeting minutes seconded by Joe Lachawiec. Roll Call (Ayes) Covitz, Lachawiec, Bonamassa, Bystrek, Mercuro, Petrosilli, Tredy

John Petrosilli made a motion to pay the bills, seconded by Joe Lachawiec. Roll Call (Ayes) Petrosilli, Lachawiec, Bonamassa, Bystrek, Covitz, Mercuro, Tredy

Chairman Tredy stated if there was anything in correspondence that you want to see go to the office.

Joe Lachawiec asked if the Convery correspondence was in reference to the boat business on Route 9. Chairman Tredy said yes it was

Tony Mercurio brought up that they said that our ordinance was vague and very old and it probably is it probably is what got us where we are. So there is another one that we should address. Remember we are redeveloping all of C-1.

Chairman Tredy said that at the last meeting there was some question brought up about the auto mall and if the same condition that took place with Convery if that could take place with the auto mall. I indicated that I would get the resolution and would have it available for you to read. I think that you have it. It came late because we don't have to take any action on it, you can take it home with you and read it. It does indicate that they did come in for something, so if there are any changes they would have to come back. It does indicate that it is a used car dealership. It doesn't indicate how many cars they can have. Right now they are full so they will not get anymore on the lot then you see now. It does indicate that is used cars so there apparently if they wanted to sell anything else they would have to come before the Board.

Tony Mercurio stated that he doesn't think we are protected from them selling any thing else. Because of what just happened with Convery, the judge said selling boats is selling boats.

Attorney Rumpf stated that he would be cautiously optimistic that our case would be somewhat better based on the language in the resolution that it is a used car lot. However, he does agree with Mr. Mercurio that were they to put new cars in there they might challenge our ability to have them come back to the Board.

Tony said we are not against new or used cars what we want is to make people comply to how we want to beautify the area.

Chairman Tredy asked Attorney Rumpf if there was anything he wanted to bring to the Board.

Attorney Rumpf in the last couple of years you asked me to prepare a brief summation as to what our role is a Board of Adjustment.

1. Annual report and identify those areas that need to be strengthened or clarified based upon our history and having applications before the board to report back to the governing body.
2. Jurisdiction of the board is stemmed from one of three matters.
 - a. Appeal of the zoning decision
 - b. Original jurisdiction to hear some cases
 - c. To hear site plan reviews when we are dealing with a use or D variance
3. We deal primarily with the C variances or bulk variances
 - a. C-1 variance is a lot more difficult to obtain and it is based upon the features of the property in question. It could be exceptional narrowness of the property or the shape of the property. The physical features which uniquely affected a particular property or any other extraordinary situation that uniquely affects a property.
 - b. C-2 variances also have to pertain to a specific piece of property. The board is permitted to grant relief where the municipal land use law is somehow advanced by the deviation that is being asked for (a 5 foot setback rather than a 10 foot setback) the variance may only be granted if it does not cause

substantial detriment to the public good. The benefits of the deviation must outweigh any detriment that is imposed. The variance should not at any point substitute to the intents of the governing body in drafting the zoning ordinance to begin with. A C-2 variance must do more than advance the purposes of the owner it must in some manner affect that piece of property to benefit. The reason that is important is many times we have applicants come before the board that may have heart wrenching stories, we need to look beyond a particular applicant and consider how a grant of relief for that variance will have an affect on that piece of property not only for the applicant but for the person that moves into that home twenty years down the road.

- c. We also on many occasions consider what we call D variances or use variances. We have those with the cell phone towers for instance. They ordinarily require a D variance because they exceed the height limitation by more than 10 %. A use variance requires five affirmative votes from the board as opposed to a majority members present for a bulk variance. A D variance essentially allows the use not otherwise permitted in the zone or it may allow for the expansion of a nonconforming use. If you have a commercial use in a residential area and you are looking to add on to that commercial use they need a D variance to expand. The deviation from the standard must pertain to one of the conditional uses that are outlined in the ordinance such as an increase in floor area, increase in density or an increase in height beyond 10 % as with the cell phone towers. You want to hear the special reasons before granting that variance you would want to hear planning testimony most often in terms as to how the purposes of zoning will be advanced should you grant that D variance. There is where you are getting into the public health, safety and welfare, air, light, open space. There are certain exceptions that make it a little bit easier to grant a D variance and those are beneficial uses, such as a school, hospital, etc. They also have to show undue hardship if the D variance is not granted. The board is quazi-judicial in nature as such we are acting as judges when we are ruling on applications our job is to construe the meaning of the zoning ordinances that the town has adopted. As well as the maps that the town has adopted for the zoning plan. We also are obligated to determine questions of law when they might arise and we also have the ability to and obligations to exercise judicial discretion in cases. You are empowered to deviate where you believe it is appropriate with regards to the standards set forth in the ordinance as long as the applicant does satisfy those conditions that I just went over. If we are appealed, standard of review for any court is whether or not the actions of the board are arbitrary, capricious or unreasonable. What we need to do as a board particularly with any application where there may be mixed feelings on the board or within the community you must be very careful to set forth what our reasoning is. This board does that very well after an applicant is finished with his or her presentation. The board is usually caucuses and discusses the applications amongst the board members and the Chairman and Vice Chairman always invite comment prior to the vote. That comment is probably the most critical item that any reviewing judge will look at to determine

whether or not our action was arbitrary, capricious, or unreasonable. If we have a reasonable explanation for the reason why we decided to vote a particular way it would be much more likely that it would be upheld in court. If there are any specific provisions within our local zoning ordinance we have to take a look at those specific provision and they take precedence over the more general provisions within the ordinances. Zoning ordinances are always construed in favor of the township and we should keep that in mind if there is a question as to whether or not it is meant to benefit someone seeking relief as to opposed to the township itself we have be in favor of the township.

You always hear about the negative criteria when counsel and they come before the board. We will always be discussing whether the positive outweighs the negative. The positive will be the positive impact on that particular property, the negative we have to consider is the departure from our ordinance standards. We balance that departure against the benefits. Is there a substantial detriment to the public good, that means what is the affect on the surrounding properties if we grant the relief?

Chair asked the to welcome Tony DeAlmeida

NEW BUSINESS

Docket No, 13.07.BA
Christopher Resko
18 Mizzen Way
Block 119 Lot 4.02
Bulk Variance

Chairman asked if there was anyone here for this case to please step forward.

Chairman Tredy stated that there may have been a problem with the notification. ,

Mr. Resko said that a few of the signatures that he got when he hand delivered some of the notices, some of the names were not the actual names on the tax list. They were the adults in the house and he actually went back to the two properties and I got them to sign that they had received the attached letter in the amount of time.

Attorney Rumpf looked over the paperwork that Mr. Resko had. Mr. Rumpf said he had spoke to the board secretary and he became aware of this a couple of days ago. It seems that Mr. Resko trying to be efficient and a good neighbor and went around and hand delivered for some of the notices required within the 200' list. When our board office went through the proofs submitted by Mr. Resko it was discovered that some of the names in which people had signed that they received the notice did not match the names on the 200' list. That happened in several cases which is three definite and two possible areas of confusion. I explained to our board office regrettably I know the board does not want to see Mr. Resko inconvenienced but notice as you know is jurisdictional. Without notice being proper and without us being able to ascertain without a doubt that the notice was in fact proper based on statues. We don't have the ability to proceed to hear the applicant. It is his opinion to the board's office that in fact the notice would

have to be considered deficient. What he sees as to Mr. Resko's attempt to correct that notice is admirable and I think he has done everything that he believes to be right but in order to protect our jurisdiction he is going to have renotify everybody on the list at least 10 days in advance of our next meeting. The substitutions that he has made over the last couple of days is not sufficient to secure that jurisdictional question. Regretably he is advising the board that you do not have jurisdiction to hear the case. Attorney Rumpf stated that it was for the boards protection and for Mr. Resko's benefit as well to start from scratch for this. Mr. Resko stated that when some of them were sent in the mail the return receipt was not signed by the person on the list they were signed by an adult taking responsibility for giving them the information. Attorney Rumpf said that is the rule of certified mail that it might be signed by anyone.

Chairman Tredy said he thinks the key they have to be notified 10 days prior. We need a complete new notification, you can't pick and choose who got it and who didn't because we are going to be dealing with different dates.

Mr. Resko said that they all received the same letter

Chairman Tredy said it is the decision of our Attorney therefore the decision of this board that we cannot hear your application tonight.

Docket No. 18.07.BA
Richard Roytos/Theresa Gallagher
28 Capstan Road
Bulk Variance

Chairman Tredy said that before we start with this case our Attorney has an issue to address us with.

Attorney Rumpf addressed Antonio DeAlmeida and stated that when we hear an application there often times arise an issue when one of the members consider themselves to have some degree of conflict whether that conflict be actual, direct or indirect or even imagined. The reason he suggest that to him is attorney Rumpf remembered that he appeared as a witness on some of the applications involving this section of town. Mr. DeAlmeida asked if that was a conflict that he lived in that section of town? Attorney Rumpf stated he didn't know if he was within the 200' or not. Mr. DeAlmeida said he was not. Attorney Rumpf said that with regards to him living in that particular neighborhood do you feel that you could proceed as a board member in an unbiased fashion. Mr. DeAlmeida said yes. Attorney Rumpf asked if he had a friendship with the applicants before the board tonight? Mr. DeAlmeida said he has a friendship with everyone in Sands Point. He also stated that he knows everyone there. He doesn't have a business dealing with him and we are not family but yes I know him. Chairman Tredy said he himself had stepped down many times. He said that you had appeared before the board as representing Sands Point, you made those statements to the board so it may not be a conflict but it could be considered an appearance of in appropriatey if you are listening to an application, had you not been on the board you might possibly been sitting out there in favor or against because you had indicated that you represented that area of town.

Mr. DeAlmedia said he wants to see an improvement in Sands Point that is why he is here.

Mr. Mercurio stated that when you sit on the board you are representing the whole town.

Mr. DeAlmedia said he understood that but he lives in Sands Point and he wants to see it improved. That is one of his positions.

Attorney Rumpf said that issue alone would not but if you have a particular conception as to how you believe things should be done in Sands Point could potentially be a disservice to the applicant were anybody to challenge the finding of the board could be a problem.

Let the record show that Mr. DeAlmeida stepped down.

Chairman Tredy asked Richard Roytos and Theresa Gallagher to come forward to be sworn in.

Chairman Tredy asked if there was anyone else with them who would be testifying. Rob Harrington stepped forward and was sworn in.

Mr. Wayne McVicar the engineer for the board was also sworn in at this time.

Mr. Roytos said that for two years they have searched how they could enlarge the present house or replace. They have tried to find a house that would fit on this lot with a minimum amount of difficulty. They chose a modular home and felt that it would be the best replacement for the existing structure. The drawing that he submitted is the one that they selected to meet their needs and will be their permanent residence. He said that he spoke to his neighbors and showed them the drawings and they stated that they did not have any objection. All of his neighbors in the surrounding area are supportive of this. Mr. Roytos said that he did have a petition with their signatures stating they were in support of this.

Chairman Tredy asked if anyone was here tonight that signed the petition.

Mr. Roytos stated that yes there were in the audience.

Mr. Roytos stated that was all of his presentation as to why and what he is planning. The drawings and plot plan you have already and I would like to submit pictures of the area.

Attorney Rumpf said that they would be marked as Exhibit A-1. Mr. Roytos explained what the pictures were.

Chairman Tredy asked for a show of hands if there was anyone in the audience for this application.

Mr. Roytos spoke to the letter from Wayne McVicar. The new house improves the setbacks and that was one of the changes they made. They no longer need a variance for the front yard setback because of the revisions they made. He went on to explain all of the reasons for the variances that they were asking for, changes that they made.

Wayne McVicar stated that the applicant would not be here before the board if these changes that he mentioned in his letter had not been made.

Mr. Roytos continued to go over the items in Mr. McVicar's letter, and he answered questions from board members. Such as could he have gotten a different size house so that it would comply better. He stated that the company could not change the dimensions because it would effect the engineering and structure of the modular.

Mr. Harrington spoke in reference to run off, as to quantity and effecting neighbors. There was discussion as to roof run off and grading towards rear towards bulkhead.

Tony Mercurio brought up the fact that in the future new owners would probably want to put a shed on the property and we are taking away their right because of what we are approving tonight.

Chairman Tredy said that we should have it written into the deed so that anyone who buys in the future, will know before hand.

Attorney Rumpf suggested that a covenant could be recorded within the deed indicating that variance approval was obtained in calendar year 2008 which resulted in a lot coverage which exceeds the maximum permitted. Mr. Roytos stated that he was in agreement with that.

OPEN TO THE PUBLIC

Leo Tierney, 7 Sands Point Road and part owner of 30 Sands Point Road, was sworn in and stated that the consensus of the neighborhood is that this would be an asset to the neighborhood.

Michelle and Frank Himmellrich, 26 Capstan Road, was sworn in and stated that they have no problem with what they want to do.

Cindy Olsen, 24 Capstan Road, was sworn in and stated that she lives one house away from them and they also built a modular and she said that it is very hard to find a house to fit on the lots that are odd shaped and pie shaped. We are very happy with our house and we would like to see them build theirs also.

Chairman Tredy asked if there was anyone else who wanted to come up. He asked if there were any objectors. Seeing none

CLOSED TO THE PUBLIC

Chairman Tredy said he would accept a motion to approve with that approval would contain all of the statements that were represented both by the applicant and his engineer to include the item of disclosure on the deed, run off issues, lot coverage etc. which will be presented to you in the resolution that you will have to abide by.

Attorney Rumpf asked for clarification consensus of the applicant and the desire of the board for the roof run off, both front and rear to the rear bulkhead. Clarify that the concrete patio and existing shed shall be removed. He will specify in the resolution that there is no roof over the front landing.

Anthony Mercurio made a motion to approve, seconded by Joe Lachawiec. Roll Call (Ayes) Mercurio, Lachawiec, Bonamassa, Bystrek, Covitz, Petrosilli, Tredy.

Mr. Roytos asked if he could say something. Chairman Tredy said yes. Mr. Roytos said he would like to say that the secretary, Laurie Clune has been so helpful and he wanted to thank her.

Chairman Tredy stated that you were presented a resolution tonight when you came in on Daniel LoBue. This should have been done under old business but we are going to approve it now.

Resolution 01.08.BA
Daniel LoBue
Docket No. 16-07-BA
Block 274.01 Lot 7
110 Paterson Road

John Petrosilli made a motion to accept the resolution, seconded by Tony Mercurio. Roll Call (Ayes) Petrosilli, Mercurio, Bonamassa, Bystrek, Covitz, Tredy.

Attorney Rumpf said he wanted to indicate to the board without discussing the matter in any detail he wanted to alert them to the fact that Convery Investments will be returning to our February meeting to respond to the remaining matters per Judge Grasso. Our inquiry of the applicant is going to be somewhat limited. I apologize to the board in the event if that presents some frustration but he wanted to remind the board this matter is still within the courts and we want to be careful not to exceed the bounds of what we have been directed to do. Which is to ascertain essentially what existed on that property with previous buyer and therefore establish what can exist today. He had previously submitted to the zoning office and it was fairly recent so he didn't know if the board has it yet, a letter from the applicant's attorney proposing certain restrictions. What he would like to do with the board's permission is to simply write a letter enclosing Mr. Pabst letter that pertains to the applicant and further repeating what Judge Grasso instructions were for the board so that we are cognizant as to what we need to do come February. This matter has already been in litigation and we want to be careful not to exceed the scope of our authority.

Attorney Rumpf stated they are returning before the board for you to determine how many boats may be on the property at any one time with what limitations to parking should be, limitations on signage, and also so that the board can generally reference precisely what they feel the preexisting uses on that property generated by way of items on the property.

Chairman Tredy asked if we could ask Mr. McVicar to go on a site visit to the property. Because they are going to be on the agenda, I am sure that he has the right to make a site visit, and in the site visit perhaps he can try to determine what would the safety factors would be, the necessity for parking and whatever you think would be helpful from an engineers standpoint.

Attorney Rumpf stated that the applicants attorney stated that he is proposing to limit the number of boats on the property at any one time to forty (40), to limit the parking to a maximum of twenty (20) cars on the property at any one time and he is requesting that he is place one (1) free standing sign on the property as located in the picture of prior owner which would not exceed 6' x 8'. The temporary banners were a concern and he said he would advise his client as to what the rules are.

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Seeing none

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Meeting adjourned

*Respectfully Submitted by
Laurie F. Clure*