

**TOWNSHIP OF OCEAN
Zoning Board of Adjustment
Regular Meeting
December 18, 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-Beach, the Asbury Park Press and the Atlantic City Press. Notice was posted on the bulleting 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	Ron Bruno	Stanley Bystrek	Edward Covitz
	Tony Mercurio	Joe Lachaweic	Antonio DeAlmeida
	Dennis Tredy		

Members Absent: Nick Bonamassa, John Petrosilli

Chairman Tredy announced that John Petrosilli was recovering from eye surgery

Pledge of Allegiance

Chairman Tredy thanked everyone and commended them for their work during the course of the year.

Chairman asked if anyone had any comments that they would like to make.

The board members thanked him for his leadership.

Chairman Tredy stated that the minutes were in the packets from the November meeting and asked for a motion to approve the minutes.

Tony Mercurio noted that the minutes just abruptly ended they didn't say adjourned or anything and he wanted to make sure we weren't missing anything.

Laurie said no they were complete.

Edward Covitz made a motion to approve the minutes, seconded by Anthony Mercurio. Roll Call (Ayes) Covitz, Mercurio, Bruno, Bystrek, Lachawiec, DeAlmeida, Tredy

Chairman said we also have the bills that we need to approve for payment.

Joseph Lachawiec made a motion to approve the bills, seconded by Ron Bruno. Roll Call (Ayes) Lachawiec, Bruno, Bystrek, Covitz, Mercurio, DeAlmeida, Tredy.

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Chairman Tredy stated that there was a short correspondence list and if you wish to review them they are in the office.

Chairman Tredy said that in the packet there was an accounting of the Zoning Board of Adjustment Annual Report. This is what will be submitted to the Township Committee and this is just for your information. Mr. Tredy asked Laurie if she had anything to add to this and she said no but there might be more to discuss in January.

OLD BUSINESS:

Resolution No. 27.08.BA
Docket # 03.07.BA
James & Ruby McGeoch
31 Dock Avenue
Block 84, Lot 12.02

Attorney Rumpf stated that we had spent some time discussing the McGeoch litigation, where it stood and what opportunities presented itself in a conference before Judge Grasso to potentially resolve the matter. When we were before Judge Grasso Mr. McGeoch's counsel Tom Butz essentially agreed with all of the conditions that he agreed to at the original hearing. The issue that essentially caused the denial involved the three sheds that are located on the property in addition to the large structure that all of the conditions were imposed upon. He spent some time going over the potential resolution with Mr. Butz and he in turn spent time with his client discussing that resolution. I have prepared for the board and I apologize that the board does not have the resolution in front of them with all of the corrections on it. Most of the corrections are grammatical or what have you, the only changes from our discussion from last months meeting are Mr. McGeoch's wishes to remove two out of three sheds leaving one shed and that being the one closest to the house. However as the board might recall it was my position before Judge Grasso that Mr. McGeoch bring that shed into conformity. The sticking point now is that he wishes to leave that shed as he reconstructed it. As the board may recall that shed was testified to as being one that was previously on the property prior to Mr. McGeoch's purchase of the property. He testified that it was in ill repair and he rebuilt it however he rebuilt it with a roof height which exceeds the ordinance criteria so essentially what he is requesting is an addition to the variance relief for the large structure, additional variance relief to permit one shed in its present condition which is the newest shed and he will tear the other two down. He is also requesting based upon the time of the year that we are in, I wanted to put a date on everything so that we could follow thru on enforcement and he is requesting 120 days from the adoption of the resolution to complete the task of tearing the other sheds down and moving the debris.

Tony Mercurio asked what his reason for that request was.

Attorney Rumpf said that was because it is winter time.

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Chairman Tredy asked how long he has to comply with removing boats etc. that he is still working on. How long before the code enforcement officer can perform an inspection and have the authority to do something.

Attorney Rumpf said immediately but he would suggest that you wait until you get the dismissal with prejudice from the court. In speaking with Attorney Butz if the board does adopt this resolution Mr. Butz would prepare an order of dismissal with prejudice with the resolution attached for the court's file that we are actually granting him variances. As you might recall my concern is that I prefer to see this be the situation where we are granting him a variance and he is not simply being given permission to let that structure remain by virtue of the original permit issued. If the structure is there because the granting of a variance he is unable to add to it or come back to gain additional relief. So I thought it was important to resolve that issue plus specifically granting him the appropriate relief rather than have it be assumed that he is entitled to it.

Laurie asked what it means for the construction department because he finished the building without any inspections.

Tony Mercurio stated that it is still open and there are no enclosures. He didn't feel that there will be a lot of issues there.

Attorney Rumpf proceeded to read the conditions to the board that are in the resolution.

The applicant agrees to all of the representations that he made when he was before the board. As well as with those requirements that were sent forth from Wayne's letter dated July 19, 2008. He shall install collar ties at 6' 9" on the second level of the accessory structure. The second level of the accessory structure shall not be used as habitable space and there shall be no kitchen facilities on the second level. However as defined by the BOCA/National Building Code no portion of the accessory building shall be utilized as habitable space as defined by BOCA. No portion of the accessory building shall be used for any commercial or business purposes regardless of inclement weather. The said accessory structure shall only be used by the applicant for his own personal use and enjoyment, which shall not include any use associated with the applicant's commercial business enterprise. The applicant further agrees and acknowledges and permits random inspections by appropriate officials from the Township of Ocean to insure that no commercial activity is taking place within the structure. Applicant further agrees to waive any notices that which would otherwise precede violations or complaints issued in connection with any commercial use and such notice requirements are specifically waved by the client based upon acknowledgement on the record that such activity did occur within the structure on several occasions in violation of the applicable ordinances. The approvals granted are specifically conditioned upon the complete removal and demolition by the applicant of all but one existing tool and utility shed within 120 days from the adoption of this resolution. There shall be no home occupation use of the accessory structure unless application is made and approved by the board. And no person employed by the applicant shall be permitted to engage in any commercial or

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business endeavor within the accessory structure. The applicant shall submit to all necessary inspections to obtain a certificate of occupancy on the structure. So we are tying him in pretty tight. My concern is that if Mr. McGeoch prevails his argument of estoppels, which really does not have anything to do with the actions of this board but it has to do with the history of Mr. McGeoch over the last four years in coming in and getting permits to construct that building and what happened during the course of those events.

If he wins that the town was incorrect in what it did prior to him coming to the board he is going to get an approval not only for that structure but he won't have to do anything with any of the three sheds that exist and additionally we will probably have issues with him in regards to his continued use and there wouldn't be any requirement for him to install collar ties, we wouldn't have him down as to agreeing no habitable space, or commercial business space, he wouldn't be agreeing to inspections. In a way if you if you want the concept of progressive discipline this will be that he is acknowledging here that he did do something wrong and he is agreeing not to do it again.

Tony Mercurio said that he felt that we got a lot and he felt the board should look at that.

Chairman Tredy said that the board was 50 / 50 split originally. Tony Mercurio said he does have issues, he did walk out with a building permit and we have a battle and I am for ending it.

Chairman Tredy asked if any other board members have anything to say.

Attorney Rumpf reminded the board that if you continue to battle this in court you are not only paying him but the Township is also paying their attorney because the township is also being sued.

Mr. Covitz said that it seemed to him that all the board accomplished is stopping him from commercializing. Mr. Mercurio said and we knocked out two sheds.

Chairman Tredy said that we have it on record that Mr. McGeoch by his own admission did use his building for commercial use. So now code enforcement can now stop him if he starts that up again.

Chairman Tredy asked for a motion.

Tony Mercurio made a motion to approve the resolution as the attorney presented it. Ron Bruno seconded the motion. Roll Call (Ayes) Mercurio, Bruno, Covitz, Tredy Chairman Tredy spoke to the board and stated that it was a long and difficult road that they went through. He agreed that that it was difficult but he feels that it was the right decision to make for this particular application and it protects the town and enables the town to enforce commercial use within the building.

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Chairman Tredy said that he wanted to thank Wayne for his fantastic job as an engineer and for Laurie who is a super secretary to the board, and Brian who is fantastic as an attorney. This concludes my 20th year in zoning, planning or land use and every meeting I learn something. He wanted to express thanks from the board and from himself.

Ed Covitz said lets not forget Brian's wife when she filled in for Brian.

Resolution 28-08-BA
Docket # 13.08.BA
Pamela Dauksis
Block 170 Lot 3
14 Vessel Avenue
Bulk Variance

Edward Covitz made a motion to approve the resolution and Joe Lachaweic seconded.
Roll Call (Ayes) Covitz, Lachaweic, Bruno, Bystrek, Mercurio, DeAlmeida, Tredy

NEW BUSINESS

Docket # 14.08.BA
Richard and Loretta Fuentes
118 Whippany Road
Block 272 Lot 318
Bulk Variance

Chairman Tredy stated that Mr. Fuentes was here last month but was not quite prepared and he joins us here tonight to continue.

Richard Fuentes was sworn in. Mr. Fuentes handed pictures to the engineer and Wayne asked him to bring them up to the attorney. Attorney Rumpf explained that he mark the back of the pictures so that when he referred to them everyone would know what he was referring to.

Chairman Tredy stated that Mr. Fuentes indicated that he had applied for two permits (one for a shed and one for a fence) and you received permission to put the fence but you were denied the shed, but you misunderstood and you put the shed up in error. Is that correct? Mr. Fuentes said that the permit did state he could do both. But when he called for inspection then he found out that he was not allowed to put the shed up.

Mr. Fuentes said that the shed does not affect either of his neighbors. Mr. Fuentes stated that picture A2 shows the shed with the fence gate open, A3 shows the fence with the gate closed and you can't even see the shed. A4 looking south on the lagoon and you can see the shed, A5 looking in the same direction and you can see the large tree on his neighbors property. A6 looking down the lagoon on the south side and A7 is looking in the southerly direction.

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Mr. Fuentes said that he moved down here to downsize and also to live on one level. When you go from a two story large house you lose storage space and that is why he needs a shed. He feels it enhances the look of his property, it is not a problem to his neighbors and he basically needs it.

Wayne asked if there are similar properties in the neighborhood. Mr. Fuentes said yes there are. Wayne asked if there were other properties with sheds similar to yours, he said yes.

Tony Mercurio stated that if the board should approve this tonight you do understand that you are maxed out on lot coverage. So we couldn't grant you any other approvals.

Chairman Tredy noted that there is no one in the audience so having stated that he asked to have a motion to accept the application.

Tony Mercurio made a motion to approve the application and it was seconded by Ron Bruno. Roll Call (Ayes) Mercurio, Bruno, Bystrek, Covitz, Lachawiec, DeAlmeida, Tredy.

BOARD COMMENTS:

Chairman Tredy asked Laurie to explain the packets that she is giving out to the board members.

Laurie stated that these are the proposals from the professionals for the positions within the Township for the year 2009. You can look them over and on reorganization night you make your suggestions.

Reorganization night can be on January 15th our regular night.

Wayne said it was a pleasure working with the board and wished everyone a Merry Christmas.

Adjourned