

JANUARY 20, 2009 MINUTES
OAKLAND BOARD OF ADJUSTMENT
OAKLAND COUNCIL CHAMBERS – 7:45 P.M.
PUBLIC MEETING

Pursuant to Chapter 231, Public Law 1975 (Open Public Meetings Act) adequate notice of this meeting has been provided by:

- Adoption of an annual schedule of meetings
- Posting a copy of same at Borough Hall
- Forwarding a copy of same to the Record
- Mailing a copy to any person requesting same

FLAG SALUTE, MEETING OPENED AT 7:45 P.M.

ROLL CALL: Present: Messrs. Chadwick, Johnson, Haas, Smid, Schneeweiss,
Jensen and Chairman Lepre
Absent: Mr. Wegman

Also in attendance, Mr. Matthew Cavaliere, Esq., (Board Attorney) Mr. Kevin Tichacek (Board Engineer) and Steve Lydon (Board Planner)

REORGANIZATION OF THE BOARD:

BOARD CHAIRMAN

Chairman Lepre entertained a motion to appoint Chairman of the Board.

Motioned by Mr. Jensen and seconded by Mr. Chadwick, to appoint Mr. Richard Lepre as Board Chairman for 2009.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid, Schneeweiss and
Jensen.
Nays: None
Abstain: None
Absent: Mr. Wegman

BOARD VICE-CHAIRMAN

Chairman Lepre entertained a motion to appoint Vice-Chairman of the Board for 2009.

Motioned by Mr. Smid and seconded by Mr. Johnson, to appoint Mr. Timothy Jensen as Board Vice-Chairman for 2009.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid, Schneeweiss and
Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Wegman

BOARD SECRETARY

Chairman Lepre entertained a motion to appoint Secretary to the Board for 2009.

Motioned by Mr. Johnson and seconded by Mr. Schneeweiss, to appoint Mr. Howard Wegman as Secretary to the Board for 2009.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid, Schneeweiss and Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Wegman

ADMINISTRATIVE ASSISTANT TO THE BOARD

Chairman Lepre entertained a motion to appoint Board Administrative Assistant for 2009.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to appoint Ms. Kathlyn Gurney as Board Administrative Assistant for 2009.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid, Schneeweiss and Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Wegman

OFFICIAL NEWSPAPER

Chairman Lepre entertained a motion to appoint the official Newspaper for the Board for 2009.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to select The Record as the official newspaper to be used for the Board for 2009.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid, Schneeweiss and Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Wegman

2009 PUBLIC HEARING SCHEDULE

Chairman Lepre entertained a motion to adopt the 2009 Public Hearing Schedule.

Motioned by Mr. Smid and seconded by Mr. Schneeweiss, to adopt the 2009 Public Hearing Schedule was voted unanimously by the Board.

Chairman Lepre announced that the Board just received the RFQ packets from candidates seeking professional appointments to the Board. Therefore, appointments of the professionals would need to be tabled until the February 10, 2009 meeting.

Chairman Lepre nominated committees to review the candidates for Board Engineer, Planner and Attorney. He entertained a motion to table the appointment of Board professionals to the February 10, 2009 public hearing.

Motioned by Mr. Smid and seconded by Mr. Schneeweiss, to table appointments of Board Engineer, Planner and Attorney to the February 10, 2009 public hearing was voted unanimously by the Board.

PAYMENT OF BILLS:

Motioned by Mr. Schneeweiss and seconded by Mr. Jensen, to pay bills subject to the availability of funds, was voted unanimously by the Board.

APPROVAL OF MINUTES:

Motioned by Mr. Jensen and seconded by Mr. Smid to approve the December 9, 2008 Minutes, was voted unanimously by the Board.

PUBLIC MEETING BEGINS:

Mr. Chadwick sitting in for Mr. Wegman.

1. **Captive Fasteners, Inc.** – 19 Thornton Road, Block 3301, Lot 4 (f.k.a. Block 3207, Lot 1.01). Continued public hearing for a use variance.

Chairman Lepre announced that Captive Fasteners, Inc. application has been carried to the February 10, 2009 public hearing.

2. Quiles – 69 Manito Avenue, Block 5401, Lot 42. Public hearing for an amendment to prior approval.

The Board members conducted a site inspection. Chairman Lepre reported the neighborhood, in a RA-3 Residential zone, to be light in traffic. Chairman Lepre reviewed the reports from the various departments.

Mr. Quiles was sworn in and testified that he received prior approval for a front porch but altered the plans to extend the porch the full length of the home. When he brought his plans to the Building Department to receive his final inspections, the Zoning Officer informed him that the porch shown on the plans did not match the approvals and to cease any further construction. The Zoning Officer explained that by extending the porch the full length of the house, another variance has been triggered and an appearance before the Board for approval of the changes would be required.

Mr. Quiles explained that he was unaware that by extending the front porch, it would create another variance.

The Board expressed their disapproval that the applicant extended the porch on his own without guidance or approval. The prior approval was for a 9' X 5' porch and the applicant extended the porch to 33' 2" X 5'.

The Board expressed that by extending the porch the length of the house, it dramatically changed the design and the impact on the neighborhood. Mr. Quiles responded that he takes responsibility for the misunderstanding.

A discussion ensued between the Board and Mr. Cavaliere whether the Applicant would require another front yard setback as well as sufficient noticing. Mr. Cavaliere responded that the notice is general enough to explain the reason for the variance.

The Board informed Mr. Quiles that his Builder should have been aware that no changes are to be made after Board approval.

A discussion ensued concerning the size of the soffits on the porch and whether the steps off the porch encroach further into the front yard setback. It was determined that the soffits and the steps for the porch meet the Borough's zoning requirements.

Mr. Dominick Miller, 637 Wyckoff Avenue, Wyckoff, New Jersey with Millenium Homes was sworn in and testified that he is the builder renovating the Quiles home and stated that this was clearly a misunderstanding by the homeowner.

Motioned by Mr. Smid and seconded by Mr. Johnson, to open the meeting to the public regarding matters concerning the Quiles application was voted unanimously by the Board.

No comments.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to close the meeting to the public regarding matters concerning the Quiles application was voted unanimously by the Board.

The Board expressed that if the current application was proposed, the Board probably would have been approved. In the event the Board does not approve this amendment to the application, the Applicant would be required to remove the entire porch.

Chairman Lepre entertained a motion.

Motioned by Mr. Haas and seconded by Mr. Johnson, to approve the Quiles application.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas and Chairman Lepre.
 Nays: Messrs. Smid, Schneeweiss and Jensen.
 Abstain: None
 Absent: Mr. Wegman

3. Kerin – 11 Cedar Street, Block 4504, Lot 45 (f.k.a. 2402/4) Public hearing for a side yard setback.

The Board members conducted a site inspection. Chairman Lepre reported the neighborhood, in a RA-3 Residential zone, to be light in traffic. Chairman Lepre reviewed the reports from the various departments.

Mrs. Kathleen and Mr. John Kerin were sworn in and testified that they are proposing an addition of an 11' X 15' office to the rear of their home with a rear deck running the entire length of house.

Mr. Kerin explained that he submitted a floor plan to the Health Department showing that the office would not be used as a bedroom. Chairman Lepre questioned whether Mr. Kerin would stipulate to the home remaining three-bedrooms in the resolution. Mr. Kerin responded he would agree to the stipulation unless he decides to enlarge the field of their current septic system.

Motioned by Mr. Johnson and seconded by Mr. Smid, to open the meeting to the public regarding matters concerning the Kerin application was voted unanimously by the Board.

No comments.

Motioned by Mr. Schneeweiss and seconded by Mr. Jensen, to close the meeting to the public regarding matters concerning the Kerin application was voted unanimously by the Board.

Chairman Lepre expressed that the lot is extremely small and the addition is well planned. He entertained a motion.

Motioned by Mr. Jensen and seconded by Mr. Smid, to approve the Kerin application with the stipulation that the home remains two bedroom with the current septic system.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid, Schneeweiss, Jensen,
 and Chairman Lepre.

Mr. Jerry Vogel, Esq. with Jeffer, Hopkinson & Vogel located in Hawthorne, New Jersey explained that his client was requested to submit a site line rendering to show the residents on Oak Street what the structure would look like from their homes. In addition, a traffic study was conducted and submitted to the Board.

Mr. Vogel introduced Mr. William Brown from Brown Architects located in Wyckoff, New Jersey who was previously sworn in. Mr. Vogel entered an exhibit into evidence.

Exhibit A-1, Site-line schematic of building from Oak Street residents view dated January 20, 2009.

Mr. Brown explained that they have raised the grade around the building and added a three-foot wall with landscaping. In addition, they have lowered the building and parking area 1-½ feet into the ground.

Motioned by Mr. Jensen and seconded by Mr. Smid, to open the meeting to the public regarding matters concerning the testimony of Mr. William Brown was unanimously voted by the Board.

Mr. Jeffery Petroski, 34 Oak Street, questioned Mr. Brown what the height of the berm used to buffer the property would be. Mr. Brown responded that the berm would be approximately 6-feet high.

Mr. Richard Hughes, 32 Oak Street, question Mr. Brown the length of the berm. Mr. Brown responded that the berm would run along the property line approximately 90-feet with staggering plantings.

Both Mr. Petroski and Mr. Hughes questioned the plan to handle the runoff and could the wells and septic systems be affected. Mr. Brown responded that all issues concerning runoff have to be handled within Stormwater Management regulations mandated by the state.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to close the meeting to the public regarding matters concerning the testimony of Mr. William Brown was unanimously voted by the Board.

Mr. Daniel Disarario a Traffic Operations Engineer with Langen Engineering located in Trenton, New Jersey had been sworn in. Mr. Disarray reviewed his credentials and the Board accepted his qualifications.

Mr. Disarario explained that the study was conducted on December 8, 2008. The focus of the study was to find out the impact of 84 apartment units on traffic and the emergency access through Elm Street.

He explained that 84 units would not generate much of a change to the intersection at Terhune Drive and Ramapo Valley Road nor at the two traffic lights. The study determined that 36 vehicles would exit during the peak hours and would have to rely on a courtesy gap when making left hand turn Terhune Drive.

Chairman Lepre asked for Mr. Disarario to define rating "level F" for the left hand turn out of Terhune. Mr. Disarario responded that "level F" is defined as any delay of movement more than 50 seconds. Chairman Lepre questioned if this rating would be the worst-case scenario and Mr. Disarray responded yes.

Chairman Lepre informed Mr. Disarario that making a left hand turn or moving straight across Ramapo Valley Road from Terhune Drive is presently dangerous. Mr. Tichacek added that if the application were to be approved, it is predicted that 25 percent of vehicles exiting Terhune Drive

would head across Ramapo Valley Road to the Copper Tree Mall and the 75 percent of vehicles would be heading left out of Terhune Drive to Route 287.

Mr. Vogel explained that Terhune Drive is the only logical access to the vacant property which is zoned RA-MD and the real issue is whether the property becomes developed according to the Borough's Master Plan. Mr. Vogel expressed that Mr. Disarario testified that there would be little adverse affect on the egress and ingress of Terhune Drive.

The Board questioned how Mr. Disarario determined the number of vehicles exiting Terhune Drive during the peak hours. Mr. Disarario responded that they use a formula which includes the number of vehicles that can be parked on site.

The Board informed Mr. Disarario that during the public hearings for Ramapo River Reserve, there was testimony that the traffic generated from this development would have little impact on Ramapo Valley Road which is not the case. Mr. Disarario responded that 36 vehicles exiting in addition to the amount of vehicles traveling on Ramapo Valley Road would not significantly increase.

The Board questioned how would they calculate the number of vehicles during the peak hours from 2008 versus during the peak ours of 2010 when the building may get started. Mr. Disarario responded that the New Jersey Department of Traffic (NJDOT) set forth a background traffic study done by growth increments.

Motioned by Mr. Schneeweiss and seconded by Mr. Johnson, to open the meeting to the public regarding matters concerning the testimony of Mr. Daniel Disarario was voted unanimously by the Board.

Mr. Jeffery Petroski, 34 Oak Street, questioned the number of vehicles to turn right off of Terhune Drive and make a right hand turn onto Oak Street. Mr. Disarray responded that the worst case would be 36 vehicles.

Mr. Richard Hughes, 32 Oak Street, informed Mr. Disarray that during the peak hours, children would be crossing the intersection at Oak Street and Ramapo Valley Road if a the traffic study includes pedestrians, because at that peak traffic time children would be crossing at that intersection to go to school.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to close the meeting to the public regarding matters concerning the testimony of Mr. Daniel Disarario was voted unanimously by the Board.

Mr. Vogel informed the Board that this concludes the testimony from the Applicant's professionals. Chairman Lepre entertained a motion to open the meeting to the public for final comments or opinions of the proposed application.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to open the meeting to the public regarding matters concerning comments or opinions following the conclusion of testimony for the proposed application.

Mr. Jeff Petroski, 34 Oak Street, commented that the project would be a big undertaking for that portion of town. He adds, that the impact on traffic, to the schools, emergency services and residents on Oak Street as well as the town itself would be significant.

Richard Hughes, 32 Oak Street, commented that his concerns include density of the project, traffic and impact on the schools. He has a concern with having a rental building a block from his home. Mr. Hughes expressed that there are many issues that have not yet been resolved.

Christopher Stellenwerf, 38 Oak Street, commented that he had concerns with the traffic, water runoff and children walking to school as well as the impact on Oak Street.

Motioned by Mr. Jensen and seconded by Mr. Schneeweiss, to close the meeting to the public regarding matters concerning comments or opinions following the conclusion of testimony for the proposed application.

Mr. Vogel concluded with his closing comments concerning the application. He expressed that he offered testimony from the owner of the property, the engineer, the architect and the traffic expert.

He expressed that the owner of the property should have the ability to build what is designed according to the Borough's zoning ordinance.

Mr. Vogel explained that this application is proposing to offer sewer service to this portion of town and possibly the downtown area with Municipal Utilities Authority (MUA) approval. In order to run the sewers and connect to Pompton Lakes, it would require the project to increase the units to incur the expense.

The project would not have an impact on the Borough of Oakland. However, the residents on Oak Street have a difference of opinion.

Mr. Vogel expressed that they have, at the Board's request, created a berm with dense buffering and lowered the building to lessen the impact on the adjacent neighbors.

There has been discussion that Mayor and Council are currently reviewing this zone and possibly amending the requirements for this zone. If Mayor and Council adopt the zone amendment, the applicant would not require a use variance and could proceed with site plan application before the Planning Board.

Chairman Lepre informed audience that the new Master Plan Re-examination was adopted in 2008 which included a demand to rezone this property. The draft ordinance reflects the changes that would entitle the applicant to go straight to the Planning Board with a site plan application bypassing this Board for a use variance. However, it is the obligation of this Board to honor the existing ordinance supported by the Master Plan.

If the application were to be approved, it would be stipulated in the resolution that the applicant would be required to come back before the Board of Adjustment with their site plan application.

The traffic and ingress and egress involving Terhune Drive and Ramapo Valley Road are complex. However, the Board is required to follow the Master Plan's vision which also considers public schools and stormwater management.

An element in the Master Plan would reinforce that the current Council of Affordable Housing (COAH) obligations of 10 units would be met and if that requirement increases in the time it takes to get site plan approval, the applicant would be responsible to added obligations.

Chairman Lepre reviewed the specifics of the application. The number of floors above grade exceeds the height requirement and number of units per acre exceeds the density requirements. An approval would be contingent upon the number of units and square footage of units not to exceed the proposed. Verification for sharing the easement that runs along the Railroad as well as approval from Pompton Lakes and MUA for arrangements and connection of their sewer system and county approvals.

Mr. Jensen commented that he was not sure that the proposed project would benefit the Borough of Oakland. He explained that he understood the increase of units to differ the cost of the sewers

but had concerns with the impact on traffic. In addition, improvements with the esthetics of the building would be necessary.

Mr. Jensen expressed that he does not want to see transient crime rates increase in town and perhaps a screening process could be applied on possible renters to satisfy the concerns of the residents along Oak Street.

A discussion ensued concerning the COAH obligations for rental units. Mr. Cavaliere responded that it would be hard to count on the Third Round Rules because they may not stand.

Mr. Johnson commented that the question is if the project is a benefit or value. Yes, the area is zoned multi-family but not the number of units. Due to the decline in the economy, it could have an affect with COAH obligations.

He explained that he grew up in apartments and they were loaded with children. Mr. Johnson expressed that the increased density would certainly have an impact on schools, taxes and traffic. In agreement with the other Board members, Mr. Johnson commented that the esthetics would need more work.

Mr. Haas commented that the new ordinance is not in place and the Board's obligation is to follow the requirements of the current zoning for that property. This project would need sewers and there has been no formal approval from the connecting town.

Mr. Schneeweiss expressed that financial hardship is not a reason to grant a variance.

Mr. Vogel responded that the property would remain vacant because you would need sewer connection to develop the property.

Chairman Lepre entertained a motion.

Motioned by Mr. Haas and seconded by Mr. Smid, to deny the Ropper Oakland, LLC application.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas and Smid.
 Nays: Mr. Jensen and Chairman Lepre.
 Abstain: None
 Absent: Mr. Wegman

Chairman Lepre announced that the Board would not have time to hear the Estate of Fanale application and that this matter would be carried to the February 10, 2009 agenda with no further notice.

6. Omnipoint Communications – 250 Skyline Drive, Block 701, Lot 7 (f.k.a. 1603/10)
Public hearing for a preliminary and final site plan, conditional use and setbacks.

The Board members conducted a site inspection. Chairman Lepre reported the neighborhood, in the Conservation zone, to be light in traffic. Chairman Lepre reviewed the reports from the various departments.

Mr. Gregory Meese from Price, Meese, Shulman & D'Arminio located in Woodcliff Lake, New Jersey was before the Board to represent the Applicant.

The applicant is proposing the installation of 9 antennas on the existing monopole, the installation of three cabinets for electrical equipment on an 8' X 10' concrete pad.

A discussion ensued between Mr. Cavaliere and Mr. Meese concerning the type of use variance. Mr. Meese responded that it meets the criteria of a D1 variance. Mr. Cavaliere informed Mr. Meese that the need for a height variance might not be necessary.

Mr. Rocko Palmerie, licensed Engineer, located in Parsippany, New Jersey was sworn in. He reviewed his credentials and the Board accepted Mr. Palmerie's qualification. Mr. Palmerie entered an exhibit.

Exhibit A-1, Colorized version of service to the area dated 1-20-09.

Mr. Palmerie explained that at the southwest portion of the property exists a 112-foot monopole with three sets of antennas installed at 85 feet, 93 feet and 110 feet. Each carrier has installed equipment cabinets enclosed by an 8-foot chain link fence. A structure analysis was conducted in 2008.

The Board questioned the result of the analysis because from a distance it appears the monopole is leaning a bit. Mr. Palmerie responded that he would follow up with this matter.

Mr. Leavell with T-Mobile located in Parsippany, New Jersey was sworn in. He reviewed his credentials and the Board accepted his qualifications. He entered exhibits into evidence.

Exhibit A-2, Site location.

Exhibit A-3, Overlay showing coverage.

Exhibit A-4, Proposed existing tower.

The Board questioned the six, eight and ten foot distance of separations between carriers. Mr. Leavell responded that typically the vertical separation between carriers are 10-feet. The Board expressed that during the Omnipoint Communications application the month prior, they were lead to believe that there had to be a 10-foot separation. Mr. Meese responded that a 10-foot separation between carriers would be optimum.

Mr. David Collins with Pinnacle Telecom Group located in Cedar Knolls, New Jersey and licensed with the F.C.C. was sworn in. He reviewed his credentials and the Board accepted his qualifications.

Mr. Collins explained the F.C.C. analysis compliance standards with the Board. This included the calculations for radio frequency levels that he informed are within the standards for human exposure.

Mr. Chistopher Nevill, Planner for the applicant, located in Piscataway, New Jersey was sworn in. He reviewed his credentials and the Board accepted his qualifications.

Mr. Nevill explained that he reviewed Oakland's zoning code and determined that this would be an application for a conditional use variance and a D6 height variance. He expressed that this is a suitable site with no hazards would be involved. Exhibits were entered into evidence.

Exhibit A-6, Uphill view from gravel road dated 1-20-09.

Exhibit A-7, Westerly view from gravel road dated 1-20-09.

Exhibit A-8, Easterly view from gravel road dated 1-20-09.

A discussion ensued whether there would be an impact on the preservation area. Mr. Nevill responded that according to the Highlands, this is a pre-existing site which would be grand-fathered in.

Motioned by Mr. Smid and seconded by Mr. Johnson, to approve the Omnipoint Communications application contingent upon the structural analysis approval by the Board Engineer.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid, Schneeweiss, Jensen and Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Wegman

MEMORIALIZATIONS:

1. **Kelleher** – 13 Bannehr Street, Block 3801, Lot 8 (f.k.a. 2313/20). Approval for a front yard setback.

Motioned by Jensen and seconded by Mr. Smid, to memorialize the above referenced resolution of approval.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid and Jensen.
Nays: None
Abstain: None
Absent: Mr. Wegman

2. **Cooper** – 826 Ramapo Valley Road, Block 5701, Lot 3 (f.k.a. 3702, Lot 1) Approval for a front yard setback.

Motioned by Mr. Jensen and seconded by Mr. Smid, to memorialize the above referenced resolution of approval.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid and Jensen.
Nays: None
Abstain: None
Absent: Mr. Wegman

3. **Omnipoint Communications** – 97 Yawpo Avenue, Block 4101, Lot 1 (f.k.a. 3411/1). Approval for preliminary and final site plan, conditional use and bulk variances.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to memorialize the above referenced resolution of approval.

Roll Call Vote: Ayes: Messrs. Johnson, Haas, Smid and Jensen.
Nays: None
Abstain: None
Absent: Mr. Wegman

OLD BUSINESS:

Mr. Cavaliere informed the Board the outcome of the judgment for the Bartholome complaint. The Judge ruled that a resolution be issued by the Board dismissing the application without prejudice.

Motioned by Mr. Smid and seconded by Mr. Johnson, to dismiss the Bartholome application without prejudice.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Haas, Smid, Schneeweiss, Jensen and Chairman Lepre.
Nays: None
Abstains: None

Absent: Mr. Wegman

NEW BUSINESS:

None

MEETING ADJOURNED:

Motioned by Mr. Johnson and seconded by Mr. Jensen, to adjourn the public meeting at 12:00 a.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney/Board Administrative Assistant