

NOVEMBER 18, 2008 MINUTES
OAKLAND BOARD OF ADJUSTMENT
OAKLAND COUNCIL CHAMBERS – 8:00 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 8:06 P.M.

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

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

PUBLIC MEETING BEGINS:

Mr. Chadwick sitting in for Mr. Schneeweiss.
Mr. Johnson sitting in for Mr. Wagoner.

1. **Donohue** – 39 Wenonah Avenue, Block 5201, Lot 8 (f.k.a. 3524/25)
Public hearing for a side yard setback.

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

Mr. Donohue was sworn in and testified that he is proposing to remove an old deck and replace it with a new “composite” deck.

The Board questioned if the new deck replacing the old deck would be in the same location and no closer to the setback. Mr. Donohue responded that it would be replaced in the same location and no closer to the setback.

The Board questioned the location of the stairs accessing the deck. Mr. Donohue responded that the stairs would be accessed at the rear portion of the deck into the rear yard.

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

No comments.

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

Motioned by Mr. Jensen and seconded by Mr. Johnson, to approve the Donohue application.

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

2. **Santos/Marques** – 22 Chicasaw Drive, Block 5420, Lot 5 (f.k.a. 3610/33).
Public hearing for lot area, lot depth and rear yard setback.

The Board members conducted a site inspection. Mr. Wegman reported the neighborhood, in a RA-2 Residential zone, to be light in traffic. Chairman Lepre reviewed the reports from the various departments.

Mr. Wegman recused himself from this application.

Mr. John Santos was sworn in and testified that he proposes to knock down the existing single family home and build a new two-story, four bedroom home.

The Board recognized that a new septic would be installed and that drainage calculations were submitted. A proposed seepage pit would be adequate to handle runoff from the roof.

Chairman Lepre reviewed the variances requested in the application. He advised that it would be in the Applicant's best interest to increase the capacity of the new septic system being installed to accommodate a five bedroom home in the event that it is decided the media room would become a bedroom.

The Board questioned the size of the proposed attic and whether Mr. Santos would agree to stipulate that it would remain unfinished. Mr. Santos agreed to the Board's request.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to open the meeting to the public regarding matters concerning the Santos/Marques 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 Santos/Marques application, was voted unanimously by the Board.

The Board commented that the design of the new home falls in line with the other homes in the neighborhood.

Motioned by Mr. Haas and seconded by Mr. Jensen, to approve the Santos/Marques application contingent upon the attic to remain unfinished and the septic system be upgraded to service a five-bedroom home.

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

Mr. Wegman returned to his seat on the Board.

3. **Freschi** – 22 Hillside Avenue, Block 1804, Lot 12 (f.k.a. 2313/20). Public hearing for a front and rear yard setback.

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

Mr. Freschi was sworn in and testified that he proposes to add a small addition off the rear portion of his house to extend his dining room as well as a front entry door with a portico roof.

Motioned by Mr. Wegman and seconded by Mr. Chadwick, to open the meeting to the public regarding matters concerning the Freschi application was voted unanimously by the Board.

No comments.

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

The Board agreed the hardship was the extreme narrowness of the property.

Motioned by Mr. Johnson and seconded by Mr. Jensen, to approve the Freschi application.

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

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

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

Mr. Kelleher was sworn in and testified that he is proposing to put a shed in the northeast portion of his property. Because the property is a corner lot there are no accessory structures permitted in the front yard setback.

Chairman Lepre informed Mr. Kelleher that according to the survey, the proposed shed is within the Borough's right-of-way and would not be permitted. He questioned why the shed could not be placed in the most northwest portion of the property that appeared vacant. Mr. Kelleher responded that he would then have to remove trees.

A discussion ensued concerning other alternatives for the shed. Chairman Lepre explained that it is the Board of Adjustment's obligation to recognize the hardship in an application and with the substantial size of the property the Board sees other options for the location of the shed.

Chairman Lepre informed Mr. Kelleher that if he moved the shed the required distance from the property, he would not require a variance.

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

No comments.

Motioned by Mr. Wegman and seconded by Mr. Jensen, to close the meeting to the public regarding matters concerning the Kelleher application, was votes unanimously by the Board.

Mr. Kelleher explained that he thought this would be the best location for the shed because there were no obstacles in that corner of the property.

The Board suggested different options with Mr. Kelleher for the location of the shed.

Chairman Lepre suggested to Mr. Kelleher that this application be carried to the December 9, 2008 meeting and that he revise his plans by moving the shed 10 feet from the front yard setback.

Mr. Cavaliere advised Mr. Kelleher that if there are any trees that would become an issue, to have them marked as well as the revise the plans and submit to the Board no later than 10 days prior to the hearing.

Chairman Lepre announced that the Kelleher application would be carried to the December 9, 2008 public hearing with no further notice.

Meeting recessed at 8:45 p.m.

Meeting resumed at 8:55 p.m.

5. **Ropper Oakland, LLC** – Elm Street and Terhune Drive, Block 1802, Lot 1 (f.k.a. Block 2318, Lot 1). Public hearing for a use and bulk variances.

Mr. Jerome Vogel from Jeffer, Hopkinson & Vogel located in Hawthorne, New Jersey representing the application explained that testimony from Weissman Engineering had concluded at the last hearing. Mr. Michael F. Kauker from Kauker Associates located in Wyckoff, New Jersey would testify as the licensed Planner for this application. Mr. Kauker was sworn in. He reviewed his credentials and the Board accepted his qualifications.

Mr. Kauker testified that he reviewed the site plan, analyzed the requested variances, reviewed the reports from the Board professionals, reviewed the Borough's Master Plan, attended all meetings and listened to all testimony.

The property is zoned RA-MD, multifamily use which is permitted. However, the determination made was that the application requires a D5 and D6 variance for density and height with minimal setbacks.

This property has remained vacant due to constraints concerning septic issues and the expense with the installation of sewers. The Applicant proposes to offer the project sewers which would resolve septic issues.

Mr. Kauker explained that the D5 density variance is significant. The maximum number of units permitted would be 8 units per acre, allowing 35 units. The Applicant is proposing double the building mass to absorb the expense of the cost for sewers.

He advised that the proposed density of this site would be consistent with Smart Growth, the Borough's Affordable Housing obligation and the Borough's Master Plan.

Mr. Kauker explained that the property is moderately wooded with mature trees which would mask the view of the building. He informed the Board that no more than 50 feet would be required for buffering the homes on Oak Street but the Applicant is proposing 85 feet of buffering. The design of this project is optimum for keeping the building as far away as possible from the residential homes on Oak Street. Two thirds of the perimeter of this property is facing the commercial properties having no impact.

Mr. Kauker explained that the D6 height variance would raise the building ½ of a story. By raising the first floor one level, it would allow for most of the parking to be located underneath the building leaving three usable stories. He commented that the seven additional feet added to the building height would pose minimal impact to the surrounding area.

He indicated that this is an appropriate location for a multi-family zone which were the earlier visions of the Borough's Master plan.

Mr. Tichacek questioned if the application would require two density variances, for units per acre and for units per building. Mr. Kauker responded that variance is applicable for both.

Mr. Vogel questioned Mr. Kauker on items concerning the multi-family zone and the proposed sewers. Mr. Kauker responded that this would be a unique situation for a vacant piece of property to offer sewers and meet the goals of the Master plan.

Mr. Lydon suggested that a landscape berm with plantings be situated behind the homes on Oak Street to enhance the buffer. Mr. Kauker responded that the Applicant would agree to that when they come back with a site plan application.

Mr. Lydon questioned the number of Affordable Housing units. Mr. Kauker responded that the number would be in accordance to the COAH regulations at that time. Mr. Vogel responded that they are at a disadvantage with making a determination on numbers due to the amendments and extensions of COAH. Mr. Vogel expressed that he could not agree to a number at this time due to other locations in town that may satisfy most of the COAH obligation. He assured the Board that his client would comply with whatever the COAH regulations demand.

Mr. Lydon questioned if the Borough would have an opportunity to tie into the sewer if desired. Mr. Vogel responded yes, but Pompton Lakes Municipalities Utilities Authorities (MUA) may only accept residential homes unless there is a modification to the size of the lines and the pump station.

A discussion ensued concerning the possibility of sub grading the property to lessen the height issue. Mr. Weissman responded that it could be dropped down a couple of feet.

Chairman Lepre questioned if there would be any improvements to the ingress and egress of Terhune Street. Mr. Vogel responded that improvements for the access to Terhune Street could be a condition when the Applicant returns to the Board with a site plan application.

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

Mr. Jeffery Petrofsky, 34 Oak Street, questioned why they are proposing sewers instead of septic systems. Mr. Kauker responded that new regulations set forth by the Department of Environmental Protection (DEP) would not permit a septic system for a project this size.

Mr. Petrofsky questioned how they determine the building height including the underground parking. Mr. Kauker responded that the 42 feet is determined at the average grade.

Mr. Richard Hughes, 32 Oak Street, questioned the size of the berm behind the homes on Oak Street. Mr. Kauker responded that a 6-foot high berm could be situated behind the homes on Oak Street affected by the view.

Mr. Hughes questioned where the drainage ditch for the projects parking area would be located. Mr. Kauker responded that the drainage ditch would be located in the rear near the Railroad.

Mr. Hughes questioned the possibility of over crowding for the school system. Mr. Kauker responded that the number of school age children would be 1 out 10 people for the entire project.

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

Chairman Lepre recommended that a traffic study, height and length of the proposed berm and site line of the project for the residents on Oak Street be submitted 10 days before the December 9, 2008 public hearing. He concluded that this matter would be carried to the December 9, 2008 public hearing with no further notice.

Meeting recessed at 10:25 p.m.

Meeting resumed at 10:30 p.m.

Chairman Lepre announced that due to a lack of time the Captive Fasteners application would be carried to the December 9, 2008 public hearing with no further notice.

MEMORIALIZATIONS:

- 1. Overlock** - 90 Ramapo Valley Road, Block 2601, Lot 4 (f.k.a. 2101.03/1.01). Approval for a sign variance.

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

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

- 2. Titova** – 15 Lakeview Terrace, Block 2513, Lot 5 (f.k.a. 1118/3 & 4). Approval for a side yard setback in a floodway.

Motioned by Mr. Haas and seconded by Mr. Chadwick, to memorialize the above resolution of approval.

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

- 3. O'leary** – 3 Manito Avenue, Block 5202, Lot 40 (f.k.a. 3690/26). Approval for a side yard setback.

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

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

PAYMENT OF BILLS:

Motioned by Mr. Jensen and seconded by Mr. Johnson, 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. Johnson to approve the October 14, 2008 Minutes was voted unanimously by the Board.

OLD BUSINESS:

Mr. Cavaliere informed the Board that the judge has reserved his decision regarding part one of the action for the Bartholome argument. He explained that the Board did not win nor did it lose. Due to questions regarding the zoning application, the judge dismissed the zoning application and directed them to seek a use variance. The farming aspect of the application would have to be made to the Agriculture Board and the recycling aspect would need NJDEP approval. Part two of the action is for seeking damages.

NEW BUSINESS:

None

MEETING ADJOURNED:

Motioned by Mr. Johnson and seconded by Mr. Jensen, to adjourn the public meeting at 10:45 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney/Board Administrative Assistant