

JUNE 9, 2009 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 8:02 P.M.

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

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

MEMORIALIZATIONS:

1. **Rinaldi** - 41 Mohawk Avenue, Block 2413, Lot 19. Approval for a front and side yard setback.

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

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

2. **Kennelly** – 11 Cherokee Trail, Block 5303, Lot 28. Approval for a front and rear yard setback.

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

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

3. **Fiore** – 11 Yale Way, Block 4910, Lot 16. Approval for a side yard setback.

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

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

PAYMENT OF BILLS:

Motioned by Mr. Jensen and seconded by Mr. Smid, 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 May 12, 2009 Minutes, was voted unanimously by the Board.

PUBLIC MEETING BEGINS:

1. **Lovell** – 13 Ryerson Avenue, Block 3806, Lot 20. Public hearing for a rear yard setback.

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

Mr. Steven Lovell, homeowner and Mr. Michael Kuybida, architect, located at 10 Squirrelwood Road, West Paterson, New Jersey were sworn in. Mr. Kuybida reviewed all setback issues with the Board.

He explained that Mr. Lovell would like to add a family room, enlarge the kitchen and add a partial second floor for a master bedroom.

Chairman Lepre questioned if the home would exceed four bedrooms and would the porch remain open. Mr. Lovell responded that it would not exceed four bedrooms and the porch would remain open.

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

No comments.

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

A discussion ensued concerning the Applicant's stormwater management plan due to the steep incline in their rear yard. The Board had concerns that the increase of impervious coverage could cause stormwater runoff to direct itself onto the neighboring property. Mr. Kuybida responded that there is a 25-foot drainage easement existing in the rear yard and does not believe that there would be any problems with runoff. Mr. Lovell added to prevent water issues when the septic system was installed, a swale was added at bottom of the property and the neighbor installed french drains.

Motioned by Mr. Chadwick and seconded by Mr. Wegman, to approve the Lovell application contingent to the home remaining four bedroom and the porch to remain open.

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

2. **Reed Academy** – 25 Potash Drive, Block 3601, Lot 29. Public hearing for a Modification of Conditions of the Resolution.

Mr. Jerome Vogel, Esq. with Jeffer, Hopkinson and Vogel located in Hawthorne, New Jersey was before the Board to represent the Applicant.

Mr. Vogel explained that the Applicant, Reed Academy, appeared before the Board in 2006 and received use variance and site plan approval to build a school for autistic children. However, the school is a non-profit institution that needed to raise the money to build the school.

He explained that all the funds have been raised to build the school and in the process of getting building permits, there was an oversight in the adopted resolution concerning a performance bond. Mr. Vogel read the paragraph of the resolution that stated that a performance bond in the full amount of the construction project be posted.

The construction costs for the project is estimated at \$5,000,000.00 to \$6,000,000.00 and in these hard economic times it would be extremely difficult, especially for a non-profit organization, to be granted a loan for this amount.

Mr. Vogel requested that the performance bond for the estimated cost of construction as well as the maintenance bond of \$100,000.00 be waived by the Board to accelerate the process to get the school built for the children.

He gave a brief reminder that the Reed Academy application for this property came after a controversial application, Automann. Mr. Vogel expressed that he believes that the neighboring properties were in favor of the Reed Academy project. Therefore, to waive the bond amount would not have an affect on the neighbors.

Mr. Tichacek expressed that he has been working with the Applicant's engineer and attorney and concurred on estimated amounts for the performance bond and maintenance bond for the Building Department. These bonds are allowed under the Municipal Land Use Law to ensure protection for the Borough. Mr. Vogel expressed that in this economy it would be difficult for non-profit organization to obtain any bond of that magnitude.

A discussion ensued concerning the reason construction sites are required to post performance and maintenance bonds. These bonds protect the Borough so that they can complete a project in the event that a project is left incomplete. Chairman Lepre expressed that although the Reed Academy application was not seriously contentious with the neighbors, there were concerns with the possibility of an uncompleted project affecting runoff from the property.

Mr. Vogel explained that if the project were left incomplete, the Borough would be able to put a lien on the value of the property. He suggested to the Board that they put a lien on the title of the land until the project is completed in lieu of a bond.

Mr. Vogel assured the Board that drainage would not be a problem for the neighboring homes because the runoff would not go in the direction of the neighboring properties.

Mr. Tichacek expressed to Mr. Vogel that if the Board agrees to officially putting a lien on the land, he would not object to the Applicant keeping a continuous flow of escrow that could be replenished as requested.

Mr. Cavaliere and Mr. Vogel discussed an appropriate procedure for the requested waiver and lien on the land. Mr. Cavaliere suggested that this offer be part of the Developers Agreement.

A discussion ensued concerning the Applicant running out of money halfway through the construction of the project. Mr. Vogel responded that they have all the money in place to construct the building. However, he believes if the project was not complete, this particular building could be used in the same capacity by another outfit. He reminded the Board that Reed Academy already has an existing facility.

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

No comments.

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

Chairman Lepre entertained a motion, to be included in the Developers Agreement, to subordinate through the value of Reed Academy's land, the site completion bond and to subordinate through the value of Reed Academy's land, the maintenance bond for two years after completion.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to be included in the Developers Agreement, to subordinate through the value of Reed Academy's land, the site completion bond and to subordinate through the value of Reed Academy's land, the maintenance bond for two years after completion.

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

3. **Fanale** - 127A & 127B McCoy Road, Block 4202, Lot 1, 2 & 3 (f.k.a. 3416/1.02, 1 & 1.01). Continued public hearing for a preliminary and final major subdivision and use variance.

Chairman Lepre reminded the Board that at last month's meeting they ended with the question of jurisdiction over the Fanale application. The Board heard testimony regarding jurisdiction by Mr. Price, Applicant's Planner, Mr. Lydon, Board Planner, Mr. Meese and Mr. Cavaliere.

Chairman Lepre informed the Applicant at last month's meeting that the Board would take a month to consider the testimony of all professionals. The Board would then make a decision as to whether this application should be heard as a use variance or whether this application belongs before Mayor and Council as a request for a zone change. He explained that he would allow the Board members to give their opinion.

Mr. Meese expressed that he believes this application deals with the overlapping of jurisdiction and the Board of Adjustment has the jurisdiction.

Mr. Johnson thanked Mr. Meese and his professionals for presenting their case before the Board. He expressed that the Board does not have the authority or jurisdiction of rezoning the property and thinks this would be better suited before Mayor and Council.

Mr. Smid disagreed with Mr. Johnson and stated that the application should stay before the Board of Adjustment.

Mr. Jensen expressed that the Board of Adjustment is capable of hearing this application. He does not believe that this Board is taking on a zone change or that this project would harm the town in any way. Mr. Jensen expressed that he is basing his decision on what he believes is the best use for the property.

Mr. Schneeweiss expressed that he agrees that this application contains a lot of gray area but does not feel that this would be a zone change. He expressed his confidants that the Board could hear this application and does not need to go to Mayor and Council for a zone change.

Mr. Chadwick expressed that he personally believes that this a good use for the property. However, he explained that he knows a resident who lives up the street whose home lies within the corporate office zone. The resident looking for advice, asked Mr. Chadwick what his options were. Mr. Chadwick suggested that the resident go before Mayor and Council for a zone change of the property. He said he could not vote differently for this application and believes this application should go before Mayor and Council for a zone change.

Mr. Wegman expressed that there were several items discussed including the court documents that did not help with guidance in this application. His decision was based upon the percentages, discussed by both Planners, of the total corporate office property in the Borough. Mr. Wegman expressed that he does not know where Mayor and Council stand on the future of this property and believes that this would impair the zoning according to the current zoning in place for this property. He stated that this application should go before Mayor and Council for a zone change of the property. If in the future that Mayor and Council decide to rezone the property, he believes that the testimony and evidence presented to this Board should be considered.

Chairman Lepre commented that Mr. Meese presented a compelling case requesting a use variance for the proposed property, which he believes is a good use. However his opinion, in a land use standpoint, would be that this Board would be creating a 40 acre residential neighborhood. Approval of this use would likely result in the property remaining a residential area indefinitely and never go back to corporate office status. Therefore, Chairman Lepre expressed that he believes that this would be in fact changing the zone and the Board of Adjustment is not empowered to make that decision. He suggested that Mr. Meese present the same case that he presented to this Board and he himself would support the change of zone to residential before Mayor and Council.

Mr. Meese expressed that he was disappointed with the Board's decision but did understand. He indicated that he would appreciate any support from the Board when they present this application to Mayor and Council.

Mr. Cavaliere suggested that the Board formalize the rejection of this application by a motion.

A discussion ensued between Mr. Cavaliere and Mr. Meese concerning the appropriate language to be used in the motion. Mr. Cavaliere and Mr. Meese discussed their differences between the Board's jurisdiction and not meeting the negative criteria of the use.

Motioned by Mr. Wegman and seconded by Mr. Johnson, to reject the Fanale application based upon the Board of Adjustment's lack of jurisdiction..

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Wegman and Chairman Lepre.

Nays: Messrs. Smid, Schneeweiss and Jensen.
Abstain: None
Absent: Mr. Haas

Meeting recessed at 9:21 p.m.
Meeting resumed at 9:27 p.m.

4. Sheji – Roosevelt Boulevard, Block 2418, Lot 11. Continued public hearing for a steep slope, lot area, lot width, front and side yard setback.

Chairman Lepre announced that the Board received revised drawings and received notice from the Health Department indicating that McNally Engineering forwarded revised septic plans to the Health Department that afternoon, leaving insufficient time to review and comment on the revised septic plans.

Mr. Cascio informed the Board that the plans have been submitted addressing all issues of the Board of Health.

A discussion ensued between the Board and Mr. Cascio concerning plans that were previously submitted to the Health Department and not approved. The Board explained to Mr. Cascio that they were lead to believe that those plans last submitted would be approved. The Board expressed that before moving forward, they would feel more comfortable waiting for an approval by the Board of Health of the newly revised septic plans. Mr. Cascio responded that the Board does not need Health Department approval to move forward with the application.

Mr. Cavaliere expressed that the Board would prefer to be reviewing plans where the septic has been approved because things could change with the application possibly causing more variances. However, the applicant has the right to continue with the application but will be held to a contingency of Health Department approval. Mr. Cavaliere explained if the applicant does not receive Health Department approval, then they would have to return to the Board with a new application or modifications of this application.

Mr. Cascio requested that the Board let him finish his presentation and carry the application to the next months meeting or grant a decision contingent upon Health Department approval.

Mr. Doolittle was reminded that he was previously sworn and continued his testimony. He explained that this application is here for zoning approval. He explained that they reviewed the Health Department's last letter and is confident that the septic system plans submitted today will be approved.

Mr. Cavaliere questioned Mr. Doolittle on the possibility that the Health Department could request that the septic system be relocated or increasing the septic field. Mr. Doolittle responded that this would be the only location where the septic system could be placed.

A discussion ensued concerning a shift in location of the septic system on plans submitted to the Health Department. The revised plans submitted to the Board did not reflect any of these changes. Mr. Doolittle responded that there was little time to include the change in location of the septic system because they were busy with the architectural changes.

The Board requested that the Applicant move the home back. Mr. Tichacek informed the Board that if the Applicant could not move the home back due to New Jersey Department of Environmental Protection (NJDEP) requirements restricting a 300-foot distance from a waterway. The Applicant would have no other option but to go to NJDEP for a waiver.

Chairman Lepre questioned Mr. Doolittle if anything else, other than the building footprint, has been changed on the revised drawings. Mr. Doolittle reviewed changes that made the plans and

did not make the plans. He explained that they have reduced three of the bulk variances and eliminated the front yard setback.

Chairman Lepre questioned stairs and a platform on the side that encroaches into the side yard which would continue to require a variance. Mr. Cascio suggested that the door and stairs could be removed.

Mr. Doolittle responded that the retaining walls would remain the same. Chairman Lepre questioned if the Applicant was still in agreement to provide the wall with buffering. Mr. Doolittle responded that he would be planting arborvitaes along the side of the retaining wall.

Mr. Cavaliere requested that Mr. Doolittle review the dimensional changes of the house again on the revised plans. Mr. Doolittle responded that the plans show a two-bedroom dwelling of 1,000 square feet.

Mr. Tichack informed Mr. Doolittle that he sees a total of 7 variances and that transitional grading does not require variances. The Board questioned, by comparing the old and new plans, shading and outlines of steep slopes that did not match on the drawings. Mr. Tichacek responded that he also questioned the difference in the steep slope shading on the revised plan. Mr. Doolittle responded that they did more topography groundwork on the revised plans to make the steep slopes analysis more accurate.

Exhibit A-8, Plot plan dated June 2, 2006, revised May 29, 2009, sheet p.p. 1.

Mr. Tichacek reviewed the disturbances of the steep slope that would require variances. A discussion ensued concerning the C.A.D. (Computer Aided Design) system used to detect the steep slopes and whether the Borough Engineer requires this method. Mr. Tichacek responded that the Borough's ordinance does not require the Applicant to use the C.A.D. method. He informed the Board that they are pretty accurate and he has no problem with this.

Mr. Tichacek suggested that if the Board were to make a decision tonight, he would recommend that the Applicant submit a site plan, prior to drafting the resolution, depicting all the modifications so that this is on file at the Borough.

Chairman Lepre reminded Mr. Doolittle that Mr. Anderson, neighboring property, had concerns with potential runoff onto his property. Mr. Doolittle responded that an inlet could be placed to run along the wall leading into a leach pit. Mr. Doolittle responded that they would put a drain in the front that would run down into a seepage pit.

A discussion ensued concerning the depth of test pits done and the possibility of an impermeable layer underneath the basement level. Mr. Doolittle responded that they will go deeper but are not required to go deeper than 10 feet for a test hole.

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

Mr. Eric Anderson, 110 Roosevelt Boulevard, questioned if the perk tests guarantee that the front yard can accommodate the septic system. Mr. Doolittle responded that the perk tests were already done and the soil logs came back adequate.

Mr. Anderson expressed that he disputes the amount of runoff the wall area will cause for his property. Mr. Doolittle responded that a 500-gallon seepage pit would be included to prevent runoff.

Mr. Anderson expressed that he would like to see the height of the wall lowered. Mr. Doolittle responded that this would not be possible because of the landfill for the driveway and the septic

system. Lowering the retaining wall and landfill would result in a steeper driveway. Mr. Tichacek also added that the town has a code requirement that driveway grades be no more than 10 percent.

Mr. Anderson questioned the issues from Health Department that prompted a change in the septic system. Mr. Doolittle responded that the issues involved location and size of the leach field. Chairman Lepre questioned Mr. Doolittle if the leach field was moved in ten feet, would it be possible to move the wall in further. Mr. Doolittle responded that he would need to look at this option further. He explained that he might be able to move the wall over five feet which could alleviate the problem of relocating a utility pole.

A discussion ensued concerning the possibility of certain materials used for the wall to improve the protection against drainage. The Board suggested that new plans be submitted to show the improvements that have been discussed.

Mr. Anderson questioned what material would be used to construct the wall. Mr. Doolittle responded that the wall would be concrete. The Board questioned if the wall could tier to lower levels as it goes toward the back yard making it less obtrusive. Mr. Tichacek responded that this would be a much better proposal and solution to the neighbor.

Mr. Anderson requested if the front of the wall could be rounded instead of cornered for esthetic purposes. Mr. Doolittle responded that this would not work but there would be a decorative finish to the wall.

Mr. Anderson questioned the outcome of the application if the Board of Health does not approve the application. Mr. Doolittle responded that if this application were not approved by the Health Department, they would need to go to NJDEP to obtain a Treatment Works permit.

Mr. Anderson questioned if there were any restrictions during construction within a flood plain. He explained that the property floods frequently and what kind of provisions would be made as well as materials used to prevent the runoff onto his property during construction. Mr. Doolittle reviewed his soil erosion control plan. Chairman Lepre assured Mr. Anderson that on the soil erosion plan there are rules that the contractor would have to follow.

Ms. Maria Pallarino, 114 Roosevelt Boulevard, questioned the septic system affects would have on her property neighboring the other side. Mr. Doolittle responded that there would be no construction beyond the Applicant's property line.

Ms. Pallarino questioned if there would be any walls on the side of her property. Mr. Doolittle responded that there would not.

Ms. Palarino questioned the noise. Chairman Lepre responded that there are guidelines for hours of operation.

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

Chairman Lepre announced that it was 10:30 and that no new testimony would be taken. A discussion ensued concerning the dimensions of a platform entrance on the side of the house. Mr. Cascio explained that if the Board does not grant the variance for the platform, the Applicant would remove it.

Mr. Cavaliere suggested that the Applicant's architect give testimony on the specifics of the platform entrance. Mr. Nassir Almkhtar from Heritage Architecture, LLC located in Paramus, New Jersey was reminded that he was previously sworn in.

Mr. Cavaliere questioned the benefit of granting the variance for the platform would be. Mr. Almkhtar responded that it is a safety issue. It is better to have another means of egress from a house.

Mr. Almkhtar reviewed with the Board dimensions of the platform. A discussion ensued concerning the steep slope and the side entrance.

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

Mr. Smid exited the meeting at 10:38 p.m.

Mr. Ralph Pallarino, 114 Roosevelt Boulevard, questioned the open foundation in the rear of the property. His concerns were that wild animals could habitat the open foundation. The Board responded that the Applicant is required by N.J.D.E.P. regulations to keep the foundation open due to flooding.

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

Exhibit A-9, Copy of the Applicant's quarterly tax bill.
Exhibit A-10, Copy of the Applicant's land assessment.

Chairman Lepre announced that the Sheji application would be carried to the July 14, 2009 public hearing with no further notice.

OLD BUSINESS:

None

NEW BUSINESS:

None

MEETING ADJOURNED:

Motioned by Mr. Jensen and seconded by Mr. Johnson, to adjourn the public meeting at 10:50 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney/Board Administrative Assistant