

**MINUTES OF A REGULAR MEETING
ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MOUNTAIN
LAKES
February 24, 2016**

Chair Chris Richter called the meeting to order and announced: Adequate notice of this meeting has been provided in accordance with the Open Public Meetings Act by adoption of the annual notice on January 7, 2016. Said resolution was mailed to The Citizen and The Morris County Daily Record and by filing the same with the Borough Clerk on January 11, 2016 and was made available to all those requesting individual notice and paying the required fee.

Start: 7:35PM

ROLL CALL:

Present: Max, Richter, Bolo (7:37PM), Tolud, Sheikh, Murphy and Vecchione

Absent: McConnell

Also Present: Attorney Michael Sullivan

REVIEW OF MINUTES: John Tolud made a motion to approve the minutes from the February 4, 2016 meeting. Arthur Max provided the second; the minutes were approved by voice vote by all members.

RESOLUTION:

Vicki Maniatis

Appl. #16-656

John Tolud made motion to adopt the resolution of approval; Arthur Max seconded the motion. The resolution was passed by a vote of 4 to 0 with members Max, Richter, Tolud, Sheikh voting to approve.

Leanne Cronin and Marc Meyer

Appl. #16-654

Arthur Max made motion to adopt the resolution of approval; Chris Richter seconded the motion. The resolution was passed by a vote of 5 to 0 with members Max, Richter, Bolo, Tolud, Sheikh voting to approve.

PUBLIC HEARINGS:

Carried Application:

Jesse and Fredrika McDonald

Appl. #15-653

Blk. 92, Lot 16.02

165 Morris Ave

Modify a condition of the Resolution

R-A zone

The applicant requested their application be carried to the April 7th meeting with no further notice in the paper but individual notice of those listed on the 200 ft. list needs to be done by the applicant. Peter Bolo made a motion to carry the application without paper notice and a second was provided by John Tolud. The motion was approved by a voice vote of all members present.

Jeffery and Lynne Ansell
Blk. 100, Lot 23
Subdivision, Use, Side setback
FAR, ILC, Building Envelope

Appl. #15-648
260 Boulevard
R-A zone

Doug Henshaw, the Attorney for Mr. and Mrs. Ansell, reminded the Board they were last here on the 12th of November. As per discussions that evening they made changes requested by the Board to the plans. Marc Walker, the applicant's Engineer, went through the change he made. Exhibit A-8 was the highlighted revised site plans dated 12/18/15. He pointed out they also added those items suggested by Bill Ryden in his letter dated January 6, 2016 and removed the phasing of the project. They reduced the coverage to 25% by removing the 2 parking spaces in the driveway and created a lane for passing. This change eliminated the need for an ILC variance. They also removed the request to keep the converted 2 car garage until the lots were ready to build. Now the garage would have to be removed in order to subdivide and perfect the lots. They originally proposed an easement to access the island but by the end of the last meeting they were proposing the footbridge be physically moved and the easement removed. In doing the revised site plan they realized if they maintained the 25 ft. setback as required the bridge would have to be 58 ft. long. They would like to go back to having an easement and plan to plant evergreens near the property line for screening.

Chris Richter asked Mr. Walker to explain the floating dock issues. Mr. Walker said the applicant would have to go to the Borough Manager for approval of the new dock if it were moved. Michael Sullivan confirmed the Zoning Board did not have jurisdiction and this decision would be up to the Manager. Arthur Max asked what the criteria for the bridge was. It was to keep the bridge off the property line as much as they could and to keep it as short as possible.

Peter Bolo asked the applicant to repeat the variances still needed. Mr. Walker said on lot 23 they needed a side setback of 11 ft. for the wood arbor and the building box was not the required 85' x 50' ft. for either lot. The building box needs to contain 4250 sq. ft. We only have 3668 sq. ft. for lot 23 and the new lot will only have 3808 sq. ft. Peter Bolo asked the dimensions of each box. They are 50' x 75' for lot 23.01 and 50' x 72' for lot 23. The smaller box size is created by an average front setback greater than 40 ft. and the lake front exception line. They also need a FAR variance on remainder lot 23. The FAR is 18.1% where it's required to be 17%. While the home a contributing structure, according to the Zoning Officer, we can't use the Historic Preservation Ordinance since we are not altering the house. Stephen Vecchione asked about the prior soil moving permit. Mr. Walker explained the applicant had previously applied for a minor permit to eliminate an old cellar access. They moved the soil and resurveyed the grades. The basement is not considered a story above grade. Mr. Vecchione confirmed the basement was unfinished except for a wine cellar.

John Dusinberre, a licensed Attorney in the state of NJ, represented Mr. Verzaleno of 270 Boulevard. He presented exhibit O - 1 a copy of the property deed and referenced the legal description of the peninsula. On the tax map the property is not shown as having a separate island but rather a peninsula. The applicant is proposing the remaining lot maintains the island. A discussion ensued concerning the proposed footbridge. The bridge would have to be off the property line 25 ft. and not exceed the allowable 6 ft. in

length. Right now they have placed it 3 ft. off the property line and it is about 10 ft. long. If you place it 25 ft. off the line it becomes a bridge 58 ft. long.

Mr. Dusinger asked Mr. Walker about the height calculation. He suggested the height calculations should be done continuously, every 6 ft., around the structure. Unless the perimeter is exactly divisible by 6 you would have some spaces more or less than 6 ft. and depending on where you start you can affect the average. If you start at a different point you could have to count the basement in the FAR. Marc Walker explained each side has a new starting point and its own calculation. The Borough has two different height calculations, the front at 35 ft. and the three sides at 38 ft. Mr. Dusinger asked where it says in the Ordinance you don't measure the height in the one continuous measurement. Mr. Walker said the Ordinance does specify how to do the measurement for each side plus they have never had their calculations questioned by the Borough Engineer. When the Ordinance was put in place there were lots of questions regarding how to do the calculations. It has evolved to mean the measurement starts over in the corner of each side resulting in four measurements. Mr. Walker added Mr. Verzaleno's home was measured the same way for his application. Mr. Dusinger stated if the basement story was above grade and it counted the FAR would increase. Chris Richter asked if the Board was comfortable with the method of height and FAR calculation. Stephen Vecchione said he would like to see the FAR calculation with the basement included.

Khizar Sheikh asked, are we questioning if the island was going with lot 23 or 23.01? Jim Murphy said the tax map shows the peninsula as connected. Mr. Walker was unsure where the land mass connection actual was. He referenced exhibit A-9 a survey of the property, dated 9/7/2007, prepared by Korzen Engineering. He used it to determine the monument location of Parcel A and B but the deed description is very old and does not match the actual survey done in 2007. Arthur Max stated the applicant could assign the island to whatever lot he want.

John Dusinger call Peter Steck, a licensed Planner in the state of NJ, to speak about exhibit O -2 consisting of 3 pages. Page one consisted of the 1924 zoning map, the Belhall lot plan from March 1924 and an aerial photo from Morris County Planning Division. On all three maps the lot was depicted in red. Page 2 had 3 photos of dwelling taken January 7, 2016 and page 3 was 2 aerial photos from Bing maps. He testified there was one tax map lot today which at one point was known as Parcel A consisting of lot 23 & 24 and Parcel B consisting of lot 25 and 26. It shows the appendage as a peninsula. Mr. Steck continued this application was before the Planning Board and denied and is now before the Zoning Board due to the FAR and height of the existing house. The area is fully developed with single family dwellings. He looked at Master Plan's Historic Preservation Element and the introduction of FAR to control the size of the homes. The 2013 Master Plan is concerned with the open space around the houses. The home has a lot of existing conditions but the existing large lot compensates for the size of the building. The height is over the maximum allowed and again the large lot compensates. He pointed out the need for building box and side setback variances. Mr. Steck said the applicant made 2000 sq. ft. of the building disappears by applying for a soil moving permit and building a retaining wall. But anyone looking at the back of the house will still see the basement. In his opinion the subdivision creates at third lot (lot X the island) that is 4000 sq. ft. which is undersized and not buildable. The applicant is trying to attach the island by an artificial means which will need to be approved by the Borough and

DEP. If you include the basement and remove lot X from remainder lot 23 the FAR is 26.29%. The subdivision creates a new lot, Lot X, which is not part of the property, doesn't have street frontage and the applicant can't use it in his lot area calculation. Khizar Sheikh asked if the island was connected and had wetlands on it would it still be included in the lot area calculation; yes it would because our Ordinances do not address wetlands.

Peter Steck presented his conclusions. There are a lot of variances to this subdivision application and a lot of gerrymandering including making the basement disappear. There are existing conditions that are currently tolerable due to the large open space of the lot. There are themes in the 2013 Master Plan such as recognizing the home is historic and buildings should be proportional to the land area (FAR) that need to be recognized. Peter Steck said the property should not be subdivided and stay as one lot. He responded to the purposes of the MLUL cited last month by Mr. Tobia. He said it was not a sufficient use of land, did not preserve the environment and it already provides for residential use. In conclusion he felt the applicant had not met the burden of proof and was forcing variances on remainder lot 23 to create lot 23.01. This would be detrimental to the public good, the zone plan and the Borough Zoning Ordinance.

Chris Richter asked if Board members had any questions. Peter Bolo asked Mr. Steck to further explain the idea that lot X does not front on a street. Mr. Steck answered your Zoning Ordinances do not recognize a lot without street frontage and you can only get to the lot if the lake is frozen. Arthur Max asked Mr. Steck if there was any case law to support his argument; he did not have any. Chris Richter asked if the applicant did an easement as originally proposed would Mr. Steck's argument change. He felt giving someone pedestrian use over someone else's property would not create a D variance. Mr. Steck said you usually give an easement to get to public property. Chris Richter and Michael Sullivan disagree with Mr. Steck.

James Murphy questioned Mr. Steck, your position is lot X is an island? Mr. Steck said when looking at the bounds of the property today this is one lot that has a bridge to an island and the tax map shows it as a peninsula. If we grant the subdivision a person would have to leave his property, go over public property (the water by bridge), to get to the island which is a new lot. It will no longer be part of this parcel. The subdivision line creates the third lot. Chris Richter said what if the Board proposes the applicant takes the lot line and following the lake edge to encompass the area. If the issue is where the footbridge is and they keep the bridge on the north side of the lot line what would your position be. John Dusenberre said if the applicant took the easement line and the property line was reconfigured to attach the footbridge then you don't create a third lot. Khizar Sheikh said the issue is not the footbridge but if a third lot was created. He asked Mr. Dusenberre from a legal perspective how you support you are creating the 3rd lot. He answered according to the Borough Ordinances lots in Mountain Lakes need to be connected to be part of the same tax parcel. Mr. Richter said this may not be true since there are properties on the lake that have islands as part of their property description. Mr. Dusenberre said this property has a peninsula and it has never been a separate parcel. The only way to get to it after the subdivision is by the bridge. Michael Sullivan asked if the footbridge was not there was the island connected to the property? Peter Steck said yes it is connected even though there is water there all the time; it is similar to a stream on a lot. Michael Sullivan said there is not precedent or case law to support this argument.

Chris Richter questioned the placement of the house on the lot; it appears to have been built on lots 23 and 24. Peter Steck pointed out the garage was on the other side of the lot. Mr. Richter asked if Mr. Steck was familiar with the Historic Preservation Ordinance; the Planner did not review it for this application. Mr. Richter added he could not convince himself to forget the 4000 sq. ft. island; why throw it away.

The Chair opened the meeting to the public and no one else wished to speak.

Doug Henshaw called Seth Leeb, a licensed Architect in the state of NJ, to explain the FAR calculations with the basement included as requested by Stephen Vecchione. Mr. Leeb said the basement was 1521 sq. ft. (500 sq. ft. of garage area excluded), the house with the basement would be 5968 sq. ft. and thus the FAR would be 24.26%. Chris Richter asked if the property had previously been before the Board. Mr. Leeb answered the home had an addition 23 years ago which did not require any variances. Both the 1st floor and 3rd floor were reconfigured and the additions were to the rear of the house. The 16 ft. side line was original. A terrace with a metal canopy was removed and changed to a vestibule. The FAR has not increased since 2007. Stephen Vecchione asked when the garage was converted; about 25 years ago. Chris Richter asked if the current owners did any work to the carriage house; Mr. Leeb don't know. John Dusingberre asked if there was a door out the back of the basement; there is no access out the back.

Mr. Richter asked if the public had any questions of Mr. Leeb, no one did.

Marc Walker said the Board questioned the average grade of 5.99 ft. around the perimeter of the home. The .01 feet represents 2.25 ft. of buffer within the 23 spot grades. Mr. Richter asked how the applicant wanted to proceed. Doug Henshaw suggested the applicant go back to the use of an easement and follow the shoreline to let the foot bridge stay where it was. Michael Sullivan reminded him if they did that they didn't have to go the Manager for the footbridge. Mr. Walker drew a new subdivision line following the easement on exhibit A-2. When he highlighted the access easement 451 sq. ft. was applied to remainder lot 23 and the FAR becomes 17.7%. Doing this creates a need for a lot width variance of 77 ft. where 90 ft. must be maintained. Michael Sullivan asked if the lot line could be irregular. Mr. Walker said yes, exhibit A-10 was an aerial photo of a Morris County tax map superimposed with lots. It showed all the irregular lots on Mountain Lake. Khizar Sheikh asked do the other irregular lots need lot width variances. Arthur Max asked if there were any other adverse impact of changing the lot line on remainder lot 23. The changed lot line could also follow the water line. Chairman Richter asked which way the applicant wanted to go; follow the easement or the shoreline. Khizar Sheikh asked isn't this what the Planning Board objected to. The Planning Board lot line was not straight, it was drawn to avoid the FAR variance.

John Dusingberre asked the applicant be required to submit a new site plan. Michael Sullivan said the current notice should be ok with this change. Chris Richter asked if the Board was comfortable moving forward and having the applicant making lot line changes to the site plans as requested by the Board. Arthur Max asked the applicant to come back with the subdivision plan redone. Doug Henshaw said his client would come back and may even re-notice for the adjusted plans.

James Murphy made a motion to carry the application until April 7th without notice. John Tolud provided the second. The application was carried by voice vote with all eligible members voting in favor.

Other Matters / Public Comment:

No one from the public was present.

Peter Bolo made a motion to adjourn the meeting and Stephen Vecchione provided the second. The meeting was adjourned at 10:28PM.

Respectfully submitted,

Cynthia Shaw, Secretary