

MONTGOMERY TOWNSHIP ZONING BOARD
MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY
REGULAR MEETING
JUNE 20, 2017

MINUTES

Chairman DeRochi called the meeting to order at 7:32 p.m. and read the opening statement which affirmed that adequate notice of the meeting had been posted and sent to the officially designated newspapers.

BOARD MEMBERS PRESENT: Chairman DeRochi; Vice Chairman Fedun; Mr. Kristjanson; Mr. Campeas, Alternate #1; Mr. Wu, Alternate #3; Mr. Lopez-Lopez, Alternate #4

ALSO PRESENT: Mr. Drollas, Board Attorney; Ms. Goldman, Board Planner; Mr. Cline, Board Engineer; Mr. Palmer, Zoning Officer; Mr. Conforti, Township Committee Liaison

I. SALUTE TO THE FLAG

II. APPLICATION

Case BA-01-17 **Applicant: Sean Napolitano**
Block 27001 Lot 2
Submission Waiver and Bulk Variance
Expiration Date – 120 Days from Submission Waiver
Affidavit of Notification and Publication Required

Notice was found to be in order. Richard Schatzman, Esquire represented the applicant. The applicant is requesting a submission waiver from providing information within two hundred feet (200') of the subject property. The Board professionals recommended the waiver. The application is to remove an existing house that is located within the flood hazard area and construct a new house within the flood fringe area. The existing conditions plans shows the steep slopes, the flood fringe, the flood hazard area, Rock Brook, wetlands and associated buffers, etc.

A motion to approve the submission waiver was made by Vice Chairman Fedun and seconded by Mr. Campeas. The motion carried unanimously.

Mr. James Madsen, P.E. and Mr. Sean Napolitano were sworn in.

Mr. Napolitano does substantial work for the property owner in Rhode Island and is advising the owner with this property. There is an existing house on lot that is filled with mold that will be removed and a new updated house will be constructed. By trade Mr. Napolitano is a developer/builder. He has visited the property and has drawn and designed the plans for the proposed house.

Mr. Madsen is a professional engineer employed by Apgar Associates. Mr. Madsen gave the Board his qualifications and was accepted as an expert engineering witness.

Mr. Napolitano gave an overview of the site. The existing house is a single story contemporary home that has a courtyard/swimming pool in the middle. The home is in an irreparable state and is filled with black mold. Anything associated with the building is not salvageable. The existing home will be torn down and a new modern house will be constructed out of the flood hazard area. There will be less impervious coverage and less FAR. The house will fit in with the neighborhood.

Mr. Schatzman discussed the Remington Vernick and Vena memo dated May 10, 2017. The applicant will comply with all the comments in the memo. Mr. Napolitano testified they will build a two story box colonial house. Mr. Madsen testified they have obtained a flood hazard area permit that would allow the construction of the home within the flood fringe area and further away from the stream. Septic design approval has been granted by the Board of Health for a mounded system. There is a wetland on the easterly side and a modified transition area associated with the wetland. A permit from the State has been obtained to reduce and expand the transition area in certain areas. A Letter of Interpretation has been issued. The existing coverage is a little over 7,100 square feet and the proposal is for a little over 6,000 square feet. The driveway will be slightly modified to allow a turnaround. The DEP requires that new construction have a first floor level living space at least one foot above the flood level. The proposal is to have the first floor one and a half feet above the flood elevation. There is also a crawl space underneath the first floor. The crawl space is designed with flood vents to allow water to flow without any impact on the first floor. In order to comply with the Township requirement that the lowest floor be a one foot above flood level they would have to fill in the portion below the first floor. If they

were to do that the NJDEP would require them to excavate somewhere else on the property to compensate for the fill that would be occupying the flood hazard area.

Mr. Napolitano testified there would be a hatch for access and not a stairwell from the first floor to the crawl space. Mr. Cline recommended as a condition of approval the architectural sketch be revised to show the hatch rather than a full set of stairs. Mr. Madsen said the crawl space floor elevation is at 71 and the first floor is at 74.5. There is no basement in the house. Steps will be shown on the rear of the dwelling in future submittals. All septic abandonments will be in accordance with applicable regulations. A note will be added to the plan that equipment that must enter the steep slopes will minimize movement and will move vertically rather than horizontally. The proposed disposal field is 205' from any well on Lot 51. The applicant agreed a standby generator is appropriate. The existing well has been abandoned. If HVAC equipment is proposed, it shall be indicated on future submittals and will be located above the applicable flood elevation. Electrical service will run underground from the pole along the westerly sideline. If the utility meters are facing Burnt Hill Road they will be shielded. The driveway encroachment onto the neighbor's property will be eliminated. The extent of proposed or previous filling, cutting or regrading of the land is to be addressed. Mr. Madsen testified there is really minor cutting and filling surrounding the proposed foundation. Any disturbance on the property would be restored either by planting of trees or by topsoil and seeding. A reforestation plan has been submitted and approved by the Township Landscape Architect. There is no stormwater management proposed since there is a reduction in overall lot coverage. Everything will be anchored. The applicant will comply with the applicable requirements in LDO Section 16-6.4.d.7.a and c. The application is subject to the review and approval of the Fire Marshal.

Mr. Schatzman discussed the Clarke Caton Hintz memo dated May 11, 2017. The height of the proposed house will be approximately 30'; it will be below the allowable 35'. The property is within the R-5 zone but there is a grandfather clause that allows the lot to be built under the R-1 zone if the lot was subdivided prior to 1974. The Zoning Officer takes the position that the grandfather clause does not apply because the old house is being removed and therefore the R-5 zoning applies. The applicant is unable to obtain additional property to make the lot conforming. The applicant needs variances for lot area, lot frontage, lot width, lot depth and side yard setbacks. Due to the stream corridor, the critical slopes, wetlands and wetland buffers they do not have the required 1-acre of contiguous non-critical area; they only have 9,120 square feet. They also can't meet the 205 foot circle inscription requirement and can only provide 71 feet. A variance is needed for the driveway setback. The stream corridor deviations from the prohibitive uses require a "C" variance. The existing trees have been located and are shown on the reforestation plan. The disturbed area of just over 20,000 square feet was utilized to determine that seven trees are required to be planted but the applicant is proposing to install ten trees. The conservation easement will be amended as suggested by Ms. Wasilauski the Open Space Coordinator. A variance is needed from the requirement that the limit of disturbance be a minimum of twenty feet from the stream corridor. A variance is required for the disturbance to the steep slopes. Seventeen trees will be removed and ten new trees will be planted. A cut and fill has not been completed so any hauling of soil will have to come back to the Board. A waiver is needed since a sidewalk is not being provided. The property is very unique and the proposal is an improvement to the property.

Mr. Madsen testified that during construction silt fence will be installed. By moving the house from the floodway to the flood fringe area will lessen the danger to life and property due to flooding or erosion. The DEP requires notification to any potential homeowner that there is a chance of flooding under certain conditions. There are no practical alternative locations for the house on the lot. The new house location in the flood fringe area is where the flow of water has minimal velocity. There shouldn't be any damage to any municipal facilities during or after flood conditions. The steep slopes are being disturbed for the construction of the mounded disposal system. The disturbance of the steep slopes has been minimized since it is only the southeasterly corner of the disposal bed that is causing the disturbance. The applicant has received approval from the Somerset Union Soil Conservation District for the proposal. All disturbed area will be topsoil, seeded and mulch to allow establishment of lawn area. Any disturbance is temporary and will be stabilized upon completion of the installation of the disposal system.

Mr. Schatzman discussed Mr. Bartolone's memo dated May 12, 2017. Mr. Bartolone recommended a waiver to allow the applicant to only illustrate the trees over 6" in caliper within the proposed area of disturbance. He recommended a waiver to calculate the number of required trees based on area of disturbance. The applicant will work with Mr. Bartolone at the time of building permit to determine the appropriate species and best locations for the required plantings. Due to the rural character of the area and the fact that the applicant's property does not adjoin Burnt Hill Road, the street tree requirement should be waived.

Mr. Schatzman discussed the Shade Tree Committee memorandum dated June 16, 2017. They recommended the applicant plant the same number of trees that are being removed. The applicant feels ten trees are adequate but would be open and willing to plant additional if necessary.

The Board discussed the number of trees that should be required and determined ten was satisfactory.

Mr. Schatzman discussed Ms. Wasilauski's memo. It would be impractical to require conservation deed restrictions on all critical areas of the property as the entire property is environmentally encumbered. Instead of placing a deed restricted conservation area on the steep slope area where septic is to be located, Ms. Wasilauski recommended a conservation deed restriction be applied to the fifty foot riparian buffer at the north end of the property. The restriction should not include the area already covered by a channel slope easement. The applicant agreed.

Mr. Schatzman discussed the May 8, 2017 Health Department memorandum. Mr. Madsen had provided testimony on how the crawl space will be configured for the flood waters going in and out.

Mr. Schatzman discussed the Environmental Commission memorandum dated June 14, 2107. The Commission endorsed the reforestation plan and suggested any other proposed landscaping be native species.

Mr. Cline questioned Mr. Napolitano. Mr. Napolitano testified the existing house is not habitable and is not safe for humans. It is not practical to renovate it or bring it back to its previous state. When the original house was constructed it was not subject to the codes that are in place now. The years that it has been abandoned have taken a toll.

Mr. Schatzman will send the deed restriction language required by the DEP to the Township Attorney for review and approval.

Chairman DeRochi asked why the house wasn't pushed further up the hill. It is tailor made for a walkout basement facing the stream. The house is not appropriately designed for the site. Mr. Napolitano said if the house was moved back more trees would have to be removed. Chairman DeRochi said if the house was moved back it would be out of the flood fringe zone.

Chairman DeRochi opened the meeting to the public.

Alan Ramsey, 75 Burnt Hill Road, was sworn in. Mr. Ramsey owns the property that abuts the subject lot. He does not object to the granting of the variances. He has a concern that a portion of the subject property driveway is on his property. The distance between the corner of the property and the guide rail is only about eight feet. He is concerned this might be an issue if he sells his property.

The Board discussed the width of the driveway if the section of the driveway on Mr. Ramsey's lot was removed. The Board was concerned it would not be wide enough for emergency vehicles. Mr. Schatzman said the applicant will have to get an easement from Mr. Ramsey or will have to remove the driveway. The width of the driveway would be subject to the review and approval of the Fire Marshal.

There being no further comments from the public, a motion to close the public hearing was made by Mr. Campeas and seconded by Vice Chairman Fedun. The motion carried unanimously.

Mr. Drollas summarized the conditions of approval would be the comments in the various review letters, approval of the Fire Marshal and the resolution of an easement agreement between the property owners to resolve the encroachment issue.

A motion to approve the variances subject to the conditions was made by Mr. Campeas and seconded by Vice Chairman Fedun. The motion carried on the following roll call vote:

Ayes: Campeas, Fedun, Kristjanson, Lopez-Lopez, Wu and DeRochi

Nays: None

III. MINUTES

May 16, 2017 – Regular Meeting

A motion to approve the minutes was made by Vice Chairman Fedun and seconded by Mr. Wu. The motion carried on the following roll call vote:

Ayes: Fedun, Campeas, Wu and DeRochi

Nays: None

May 23, 2017 – Regular Meeting

A motion to approve the minutes was made by Mr. Campeas and seconded by Vice Chairman Fedun. The motion carried on the following roll call vote:

Ayes: Fedun, Campeas, Lopez-Lopez, Wu and DeRochi

Nays: None

There being no further business to come before the Board, the meeting was adjourned at 8:55 p.m.