

MONTGOMERY TOWNSHIP ZONING BOARD
MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY
REGULAR MEETING
DECEMBER 18, 2018

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; Mr. Fedun; Mr. Kristjanson (left at 9:00 p.m.); Mr. Wu; Mr. Sudol, Alternate #2; Mr. Patel, Alternate #3

ALSO PRESENT: Mark R. Peck, Esquire; Emily Goldman, Board Planner; Jason Cline, Board Engineer; Joseph Palmer, Zoning Officer

I. SALUTE TO THE FLAG

II. APPLICATION CONTINUATION

Case BA-02-18 **Applicant: Montgomery Township Fire Company No. 1**
Block 6001 Lots 1.01 & 2 – 35 Belle Mead-Griggstown Road
Submission Waivers and Preliminary and Final Major Site Plan with Use and Bulk Variances
Expiration Date – 120 Days from Submission Waiver Approval
Affidavit of Notification and Publication Required

The above application has been continued to the January 15, 2019 Zoning Board meeting. No further notice is required.

III. APPLICATION

Case BA-05-18 **Applicant: Paul Fernandes**
Block 8001 Lot 6 – 644 River Road
Submission Waivers and Bulk Variances
Expiration Date – 120 Days from Submission Waiver Approval
Affidavit of Notification and Publication Required

Notice was in order. Kenneth Pape, Esquire represented the applicant. The application is for bulk variance relief to construct a single family residence on property that currently has a residence that is in poor repair.

Michael Ford, Van Cleef Engineering, also represented the applicant as both an engineer and a planner. Mr. Ford was sworn in. Mr. Ford marked three exhibits; an overall vicinity map was marked as Exhibit A-1, a colored rendering of the Existing Condition map was marked as Exhibit A-2 and a colored rendering of the variance plan was marked as Exhibit A-3. The property is within the R-2 district. Mr. Ford referenced Exhibit A-2 and described the existing conditions on the property. All the existing structures will be removed. Mr. Ford referenced Exhibit A-3. The existing driveway will be maintained. The driveway will be widened and regraded to provide less of a slope and will provide access to the side entry drive of the new dwelling. Applications have been sent to the Somerset County Planning Board, Somerset Union Soil Conservation District, Delaware and Raritan Canal Commission and NJDEP for a Wetland Letter of Interpretation Absence/Presence. A new septic design for both the primary and reserve septic has been reviewed and approved by the Health Department on September 12, 2018. The new septic will replace the existing cesspool. The lot is slightly over an acre but with the right-of-way dedication to the County the property will become slightly under an acre (0.954). The lot is subject to the enhanced zoning standards along a scenic collector road. The variances that are a result of an existing condition include lot size, lot width, lot frontage, lot depth and the requirement for the 205 foot diameter circle. The plans show the driveway, septic system, pool, well and dwelling fit on the lot. A variance is required for the disturbance of the steep slopes along the existing driveway. The disturbance of those slopes will provide better and safer access to the property. The existing grade at River Road is at elevation 84 and the house is at about 99 or 100. If the enhanced front yard setback and rear yard setbacks were applied to this lot there would be no building envelope left. The setback variances being requested are absolutely necessary in order to build any type of dwelling on the lot. The proposal is to place the new house 76 feet from River Road to try to provide a better buffer between the house and road. Mr. Ford referenced Exhibit A-1. The proposed setback is comparable to the setback of neighboring lot. The application complies with the lot coverage requirement. The house is in very poor shape and is beyond repair. The existing well will be decommissioned in accordance with the Health Department standards. The slope along the driveway that is to be disturbed is a man-made critical area that was created as part of cutting the driveway in. Landscaping has not been shown on the initial application. The ordinance requires 14 shade trees

per gross acre. The Township Landscape Architect has suggested the applicant provide 14 shade trees per acre of disturbance and the applicant agrees to install 9 trees. A landscape plan will be provided to the satisfaction of the Township Landscape Architect. There is approximately a half acre of existing wooded areas on the site and the applicant is proposing to disturb about .2 acres or 8,000 square feet of the woods. A variance is required for the 10 foot rear yard setback to the concrete patio that surrounds the pool. The applicant will use some of the required tree plantings to provide a buffer between the pool and rear yard property line. The house is proposed to be deeper and arrow to minimize whatever view there could be from River Road.

Ms. Goldman testified that the elevations show the house is proposed to be 35.52 feet high when 35 feet is permitted. The applicant will need a variance. Mr. Pape said the elevations will be revised to comply with the ordinance.

Mr. Ford discussed the proofs for the variances. The proposal is to replace an existing house. The lot is surrounded by agricultural uses. The existing well and cesspool are potentially environmentally harmful and the proposed application would upgrade and replace them. The driveway would be improved to provide safer access. The proposed dwelling is approximately 3200 square feet which is comparable to what is in the Township. The applicant is willing to comply with the Landscape Architect's suggestion to mitigate some of the variances requested. The overall project can be granted without any substantial detriment to the zoning or surrounding property.

Mr. Ford testified that the applicant agrees to the comments in the staff reports. A waiver from providing sidewalks and street trees along the frontage of the property is required. There is an existing propane tank that will be removed. The location of the new tank will be shown on the plan as a condition of approval. A standard residential generator is being considered and the possible location will be shown. A detail for the fence to be used around the pool was distributed. Notes will be added to the variance plan to address the construction comments for the contractors. The amount of soil to be exported or imported shall not exceed 300 cubic yards and is subject to the review of the Township Engineering Department. Anything over that amount would require the applicant to go back to the Board. A note will be added to the plan that the pool lighting will be with residential type fixtures and will not cause any glare or adverse impact to the neighbors. An exception is needed for the requirement that a pool be screened from the street with a 25 foot planted buffer. The applicant will work with Mr. Bartolone to try to install additional buffering. The steep slope areas will be seeded and stabilized. A swale has been provided to address the stormwater management requirement for the pool. The applicant will work with the Township Engineering Department at the time of the building permit.

Chairman DeRochi opened the meeting to the public.

Mrs. Pielenski asked about a holding tank for gas that was on the property and wondered if it was removed. Mr. Pape said a Phase I was done and there was no reference to a fuel pump. If there is one it will be removed.

There being no further public comment, a motion to close the public hearing was made by Mr. Kristjanson and seconded by Mr. Fedun. The motion carried unanimously.

Mr. Fedun asked if the minimum driveway width is 12 feet. Mr. Ford testified that it is 12 feet at its narrowest point. The County has suggested it be a little wider especially down by River Road.

Mr. Ford testified no trees will be removed along the lot frontage unless the County requires line of sight improvements.

Chairman DeRochi said he would like to see most of the landscaping used to reinforce the buffering to minimize the view of the proposed structure from the street.

A motion to approve the application subject to the conditions was made by Mr. Wu and seconded by Mr. Sudol. The motion carried on the following roll call vote:

Ayes: DeRochi, Fedun, Kristjanson, Wu, Sudol and Patel

Nays: None

Case BA-07-18 **Applicant: Mountaintop Properties, LLC**
Block 15010 Lot 9 – 149 Kildee Road
Submission Waivers and Bulk Variances
Expiration Date – 120 Days from Submission Waiver Approval
Affidavit of Notification and Publication Required

Notice was in order. Gary Forshner, Esquire represented the applicant. The applicant is requesting a submission waiver from providing architectural plans since the applicant has not determined the exact home to be constructed.

A straw poll was taken for the submission waiver. Chairman DeRochi, Mr. Fedun, Mr. Kristjanson, Mr. Wu, Mr. Sudol and Mr. Patel voted to approve the submission waiver.

Mr. Forshner said the application is to develop a single family dwelling on an undersized lot. The lot is 1.8365 acres where 2 acres is required. The requested variances are for existing conditions and include lot size, lot circle and the lot does not front on an approved public right-of-way. The lot has access to Kildee Road through a driveway easement on Lot 3.

David Schmidt, DS Engineering, was sworn in. Mr. Schmidt gave the Board his qualifications and was accepted as an expert. Mr. Schmidt referenced the Variance Plan dated October 22, 2018 revised November 17, 2018. The lot is 1.8365 acres and is within the R-2 zone. The lot area requirement is 2 acres. The property has access off of Kildee Road. Lot 3 in Block 15010 has a 20 foot wide easement with a 12 foot gravel driveway. The easement and driveway will cross Lot 10 and go into Lot 9. A 12 foot wide driveway has been acceptable to the Fire Marshal in other applications. The property has 200.34 feet of road frontage along South Street which is an unimproved street (a 33 foot wide paper street) so a lot frontage and lot width variance is not required. The provided lot circle width is 200.34 feet where the requirement is 205 feet. Lot 9 currently has two sheds and paved and gravel areas that will be removed. The application will meet the lot coverage, building coverage, side yard setback, front yard setback and rear yard setback requirements. The lot meets the intent of the lot circle requirement in that there is ample area for a pool, deck, etc. The applicant is seeking relief from NJSA 40:55D-35 to direct issuance of a building permit for a new residence when not related to an improved street. A design waiver is required to calculate the amount of trees to be planted based on area of disturbance rather than area of the lot since the lot is heavily wooded. The applicant is proposing to plant 14 trees for the 1 acre of disturbance. A design waiver is requested for the planting of street trees as none are proposed along South Street. A design waiver is requested for sidewalks along South Street as none are proposed. There is adequate sight distance at the driveway entrance onto Kildee Road. The lots will be serviced by electric and gas, an on-site well, a primary and reserve septic system, cable and phone.

Mr. Schmidt testified the applicant is requesting C1 hardship variances. The lot already exists and they are preexisting conditions. The house itself is fully conforming and complies with all the bulk requirements. The proposal reduces the amount of impervious surface coverage on the property. There is no substantial detriment or impacts to the public good. The positive and negative criteria are met.

Wetlands and wetland buffers are not present. NJDEP Letter of Interpretation Presence/Absence determination was issued December 6, 2018 (marked as Exhibit A-1). The property does not contain 100 year floodplain or a stream as designated by the Montgomery Township Hydrography Map dated May 18, 2001. There are no topographic slopes greater than 15% and no critical soils.

The project does not require stormwater management. There is a decrease in impervious surface coverage of 404 square feet. The threshold for stormwater management is ¼ acre of new impervious surface coverage or if the limit of disturbance is over 1 acre. The property slopes in a northerly direction and slopes no greater than 4%. The existing site is maintained lawn and is very wooded. The existing soils are capable of handling building loads up to 300 psf.

The project is exempt from Delaware and Raritan Canal Commission approval (marked as Exhibit A-3). There is one minor Somerset Union Soil Conservation District comment that has to be addressed (marked as Exhibit A-2). They are awaiting County Planning Board comments but they should be exempt since there are no County impacts.

Ms. Goldman testified there is not a cross easement between Lots 9 and 10 and one should be granted as a condition of approval. The cross easement is subject to the review and approval of the Board Attorney and Board Engineer for access and utilities.

Mr. Cline said as a condition of approval the plans shall be revised to show the location of the utilities and the applicant should obtain written confirmation from the Fire Marshal that the driveway design is acceptable.

Mr. Schmidt agreed with the comments in Mr. Bartolone's memo dated December 13, 2018 and Ms. Carey's memo dated December 12, 2018. The Police Department had no comments.

Mr. Schmidt discussed Ms. Wasilauski's memo dated December 12, 2018. He agreed to all comments except the request to plant additional trees. The lot is heavily wooded.

Mr. Schmidt discussed the Environmental Commission memo. The limit of disturbance line follows the tree perimeter. If the limit of disturbance line is moved closer to the house and they find during construction they have to move the line, while still complying with the regulations, they would have to come back to the Board. The limit of disturbance line will be staked in the field. The applicant does not want to donate money to the tree bank and does not feel that additional trees should be planted. The applicant does not agree to build a rain garden or vegetated swale. The impervious surface coverage is being reduced. Rain gardens do not work well in Montgomery and they are a maintenance nightmare. The proposal is under the State Regulation for stormwater management. The applicant does not agree to install roof mounted solar panels but the homeowner may in the future. If the driveway is paved pervious pavement will not be used. Pervious pavement is a maintenance issue and there are concerns about the long term load bearing. Any outdoor lighting will be pointed downward.

Mr. Schmidt discussed Mr. Cline's memo dated December 14, 2018. Board of Health approved a 5 bedroom house. The applicant agrees with all comments in the memo.

Mr. Schmidt discussed Ms. Goldman's memo dated December 12, 2018. The applicant agrees with all comments in the memo. A proposed egress ingress and utility easement will be provided to Lot 9 through Lot 10.

Chairman DeRochi opened the meeting to the public.

Rad Parkash, 151 Kildee Road, owns Lot 3 in Block 15010. He purchased the house about a year ago and was aware of the driveway only servicing one lot. He is concerned with the increase of the use of the driveway when two 5 bedroom houses are constructed. He asked if there was any way to access the lots through South Street rather than through the easement. Only one car can use the driveway at a time and if there are two cars one would have to pull off onto his property.

Chairman DeRochi replied that the driveway would have to be able to accommodate 80,000 pound vehicles. The driveway could be widened for two or three pull off areas so that cars can safely pass. The applicant can provide additional buffering for the driveway in the immediate area of Mr. Parkash's house.

Mr. Schmidt said additional evergreen trees would be planted as suggested by Mr. Bartolone.

Mr. Cline asked if the applicant would be willing to provide buffering along the driveway. Mr. Schmidt said Mr. Parkash would have to agree that the plantings would be on his property since it is only a 20 foot wide easement. Mr. Parkash said he would agree. Mr. Cline said it is not likely that access could be from South Street.

Mr. Forshner said the applicant would agree to provide the buffer as long as Mr. Parkash consents to the planting on his property. The trees will be planted at the direction of the Township Landscape Architect. The plantings will be compensatory for the plantings that they asked for the waiver.

Richard Kocinski, 139 Kildee Road, said he is concerned with losing his view so landscaping is imperative. The driveway is not currently built for trucks.

There being no further public comment a motion to close the public hearing was made by Mr. Fedun and seconded by Mr. Sudol. The motion carried unanimously.

Mr. Fedun said his biggest concern is the driveway easement and the maintenance to make sure the driveway can handle a fire truck. Mr. Forshner said the property owners of Lots 9 and 10 will be responsible for the maintenance. Mr. Peck said the access easement and cross easement will have to address the maintenance and inspection issues. The easement will be subject to the review of the Board Attorney and filed with the Somerset County Clerk's office.

Mr. Schmidt agreed to work with Mr. Mondy. He anticipates Mr. Mondy will ask for a turnaround so the fire trucks don't have to back down the driveway.

Mr. Forshner said the waiver from the tree planting based on disturbed area is not necessary since they agreed to plant additional trees along the driveway. It may require a technical waiver since they will be planting offsite.

A motion to approve the application subject to the conditions was made by Mr. Patel and seconded by Mr. Wu. The motion carried on the following roll call vote:

Ayes: DeRochi, Fedun, Wu, Sudol and Patel

Nays: None

Case BA-06-18 **Applicant: Mountaintop Properties, LLC**
Block 15010 Lot 10 – 147 Kildee Road
Submission Waivers and Bulk Variances
Expiration Date – 120 Days from Submission Waiver Approval
Affidavit of Notification and Publication Required

Notice was found to be in order. Mr. Forshner said this application is almost identical to the application for Lot 9. The applicant will rely upon the testimony that was given for Lot 9 and focus on the differences between the two applications.

Mr. Schmidt remains under oath. Mr. Schmidt referenced the Variance Plan dated October 22, 2018 revised November 17, 2018 and testified the lot sizes and dimensions for Lots 9 and 10 are identical. The lot is 1.8365 acres and is in the R-2 zone. There is 200.34 feet of frontage along South Street which is an unimproved street. A variance is requested for lot circle and lot area. The lot area requirement is 2-acres. The lot coverage is 11.72% and the allowed is 15% and the building coverage is 4.6% and the allowed is 10%. The side yard setbacks are 77 and 56.6 feet where 40 feet is required. The front yard setback is 100 feet and the rear yard setback is 235 feet where 75 feet is required. A bulk variance is needed for the lot circle requirement. A variance is needed from NJSA 40:55D-35. A design waiver is needed to allow the number of trees required to be planted to be based on area of disturbance rather than the area of the whole lot. A design waiver is needed for street trees and sidewalk since none are proposed.

Chairman DeRochi asked why the applicant doesn't provide the required landscaping to provide additional buffering of the driveway. Mr. Forshner said they could but it seems a lot to ask because the easement was there before the lot was purchased. The applicant has gone above and beyond to provide additional landscaping to address Mr. Parkash's concern even though he purchased the lot with the easement. Mr. Peck said all the trees may not be needed for the buffer but there could be a cap with the number of trees. The applicant agreed to an "up to" number subject to the Township Landscape Architect.

The justification for granting the variances is the same as the prior application. There are not wetlands on the property and a Letter of Interpretation Presence/Absence letter dated December 6, 2018 has been received. There are no slopes greater than 15% and there are no critical areas.

Mr. Schmidt showed how access to the property will be obtained. A turnaround for fire trucks will probably be required. The increase in impervious surface coverage is 2,724 square feet where the threshold is 10,890 square feet. Stormwater management is not required and what is being proposed is consistent with both State regulations and local requirements.

The project is exempt from the Delaware and Raritan Canal Commission and there were minor comments from the Somerset Soil Conservation District. Copies of the outside agency reports will be submitted as a condition of approval.

Mr. Schmidt discussed the professional's memos. The applicant agrees with all the comments in Richard Bartolone's memo dated December 13, 2018 and in the Health Department memo dated December 12, 2018

Mr. Schmidt discussed Ms. Wasilauski's memo, the Environmental Commission memo and Emily Goldman's memo. The responses are the same as the previous application.

Mr. Schmidt discussed Mr. Cline's memo. The proposed house will be a maximum of 5 bedrooms and has been approved by the Board of Health. Mr. Schmidt provided testimony on the measures to be taken to convert the building footprint to septic.

Chairman DeRochi opened the meeting to the public. There being no public comment, a motion to close the public hearing was made by Mr. Fedun and seconded by Mr. Wu. The motion carried unanimously.

Mr. Cline asked if the applicant had an estimate of the net cut or net fill. Mr. Schmidt said based on the size of the lots he does not think they will need a hauling permit. The Board approved a maximum amount of 100 cubic yards for Lot 9 and for Lot 10.

A motion to approve the application subject to the conditions was made by Mr. Fedun and seconded by Mr. Patel. The motion carried on the following roll call vote:

Ayes: DeRochi, Fedun, Wu, Sudol and Patel

Nays: None

IV. MINUTES

September 25, 2018 – Regular Meeting

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

Ayes: DeRochi, Fedun, Wu, Sudol and Patel

Nays: None

There being no further business to come before the Board, the meeting was adjourned at 9:39 p.m.