

**MONTGOMERY TOWNSHIP ZONING BOARD  
MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY  
REGULAR MEETING  
JULY 16, 2019**

**MINUTES**

Chairman DeRochi called the meeting to order at 7:33 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. Voitach; Mr. Wu; Mr. Lopez-Lopez, Alternate #1; Mr. Patel, Alternate #3; Mr. Sudol, Alternate #4

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

**I. SALUTE TO THE FLAG**

**II. APPLICATION**

**Case BA-05-19            Applicant: Alexander & Natasha Wolfson Trustees**  
Block 31003 Lot 22 – 71 Colfax 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. Richard Schatzman, Esquire, represented the applicant. Mr. Schatzman noted a recent Supreme Court decision that says if a Board member is a patient of a doctor there may be a conflict of interest. Each of the Board members confirmed that they are not a patient nor do they contemplate being a patient of Dr. Wolfson.

Mr. Schatzman said the application is for various variances from Section 16-4.2d of the Ordinance. The existing condition variances include lot area of 1.150 acres where 5 acres is required, lot frontage of 136.55 feet where 300 feet is required, lot depth of 283.42 feet where 500 feet is required and lot width of 150 feet where 300 feet is required. The new variances are the side yard setback of 36.2 feet and 45.7 feet where 75 feet is required, for building coverage of 9.19% where 8% is permitted and for lot coverage of 20.81% where the maximum permitted is 19% (with a pool). A technical variance or waiver is needed for the 205 foot diameter circle requirement. A submission waiver is needed since the information within 200 feet of the subject property has not been provided.

Mr. Cline and Ms. Goldman recommended the submission waiver be granted.

A roll call vote on the approval of the submission waiver was taken:  
Ayes: DeRochi, Fedun, Voitach, Wu, Lopez-Lopez, Patel and Sudol  
Nays: None

Robert Gazzale, PE, Joshua Manes, AIA, and Dr. Alexander Wolfson were sworn in.

Mr. Gazzale gave the Board his qualifications and was accepted as an expert witness. Mr. Gazzale referenced Sheet 1 of 3 dated February 11, 2019 that was submitted as part of the application. The plan shows both the existing conditions and the proposed design. The lot is located on the southerly side of Colfax Road. The property is 1.15 acres or 50,138 square feet. The lot is deficient in lot area, lot frontage, lot width and lot depth. The lot is currently improved with a two story dwelling, asphalt driveway, an in-ground pool and a patio. The lot is served by public water and sewer. The current drainage on the property is generally from the rear to the front although portions of the rear of the lot shed towards the adjoining property owners. The applicant proposes to remove all the improvements on the lot except a portion of the driveway and construct a new home and in-ground pool and realign the driveway. The lot will be regraded and a drainage swale installed along the easterly side of the lot to collect the runoff from the rear and direct it towards the front of the property. All the roof leaders would be picked up and connected to a proposed drywell. The drywell is proposed to overflow to the front lawn. The subject lot is located at the high point of Colfax Road so the municipal storm sewer is approximately 130 feet away. It is possible they will have the water directed to the municipal storm drain with a pipe within the Township right-of-way. The drywell is oversized to mitigate the increased impervious coverage. Seven trees will be removed as part of the project and the applicant is proposing to install a total of 30 new trees. Of the 30, 7 will be deciduous in-kind type replacement and 13 will be evergreen. The applicant proposes a comprehensive landscape plan and agrees to comply with Mr. Bartolone's review memo including additional landscaping to screen the pool. The colored rendering of the landscape plan (Sheet 3 of 3) was marked as Exhibit A-1. The detail for the fencing around the pool, including the gate, will be provided. A waiver for the number of trees to be planted may not be required if the additional landscaping around the pool is included in the calculation. The pool occupies about 4% of the rear yard area.

Ms. Goldman testified that the ordinance says no more than 50% of the entire lot should be cleared of trees and in any case a maximum of 40,000 square feet is permitted to be cleared. In this instance no more than 25,000 square feet of the lot can be cleared of trees. Mr. Gazzale testified there may have been approximately 35,000 square feet of the lot that was cleared when the development was originally approved. Ms. Goldman recommended the Board grant the variance to be on the safe side.

The amount of soil to be imported or exported will not exceed 1,000 cubic yards and will be subject to the review and approval of the Township Engineering Department.

Mr. Schatzman and Mr. Gazzale discussed Mr. Cline's memo dated June 14, 2019. The house foundation and framing will occur first with the pool construction at a later date. The driveway will be used for the pool construction access. The HVAC equipment and a generator are proposed on the east side of the property and will be screened if required by Mr. Bartolone. The equipment will be setback a minimum of 30 feet from the property line and will comply with the State statute regarding noise. The proposed swale will be revised and will possibly have a lawn drain installed to intercept the water and direct it to the front and eventually in the municipal storm sewer. The proposed pool does not backwash. Soil testing was performed in three locations on the property. Inspection and maintenance ports or manholes will be provided for the drywell. The existing steep slopes in the front of the dwelling that are to be removed are the grading conditions associated with the current dwelling. To protect the nesting place of the Northern myotis bat, a deed restricted conservation area will be granted. There are no wetlands, buffers, streams or stream corridors on the lot.

Mr. Schatzman and Mr. Gazzale discussed Ms. Wasilauski's memo dated June 11, 2019. The plans will be revised to provide a two year guarantee on the landscaping. The applicant will work with Mr. Bartolone regarding the tree species. Monuments will be installed to demarcate the deed restriction conservation area. The applicant will install a bat house.

Mr. Schatzman discussed the Health Department memo, the Shade Tree Committee memo, the Public Safety memo and the Environmental Commission memo. The applicant will work with Mr. Bartolone regarding the tree species. Additional landscaping will be done in consultation with Mr. Bartolone. Exterior lighting will be focused downward.

Mr. Manes gave the Board his qualifications and was accepted as an expert witness. Mr. Manes testified that the house will be built with prefab construction. The house will be constructed with modern materials that are energy efficient. The roof is slate tile with a photovoltaic array integrated into the slate looking tiles. The base of the house will be manufactured masonry stone and they will use Hardie Plank siding. The house is 5,500 square feet. The masonry stone will be tan/brown and the Hardie Plank siding is a medium grey color. The elevation, with colored pictures of the building materials, was marked as Exhibit A-2. The height of the house is approximately 32 feet and complies with the ordinance.

Dr. Wolfson testified that everything except the foundation of the old house will be re-used, recycled and resold. It is anticipated that there will be one light inside the pool. The lighting on the back of the house is shielded downward. Dr. Wolfson referenced an excel sheet he prepared regarding lot and house sizes in the neighborhood based on information from the Tax Assessor and a drone which was marked as Exhibit A-3. The front yard setback for the neighborhood averages 88 feet and the proposal is for 109 feet. The side yard setback averages 36 feet and 40 feet and the proposal is for 36 feet and 46 feet.

Mr. Schatzman said the development was approved under the R-2 cluster. When the zoning changed to R-5 the lots were not grandfathered. The applicant is requesting C1 variances since the situation cannot be made better since both sides of the lot are already fully developed.

Mr. Lopez-Lopez asked what the difference in footprint and in the width between the old house and the new house is. It was testified that the footprint was being increased about 600 square feet and is about 14 feet wider.

Chairman DeRochi opened the meeting to the public.

Daly Enstrom, 67 Colfax Road, was sworn in. Mrs. Enstrom said Lot 22 is the highest point on Colfax Road. Since it was one of the first lots built she does not know whether it is fill or the natural drainage. She is not opposing the construction of the house but is concerned with the serious water issue from water draining off Lot 22. She showed 3 photographs, marked as Exhibit O-1, showing water runoff. She hopes the professionals will collaborate on a way to ameliorate the situation.

Chairman DeRochi asked Mr. Cline if the proposed swale will alleviate the problem. Mr. Cline testified that if the swale is done properly it can address the issue. The applicant's engineer has represented that he is going to be able to intercept the water, get it in a swale, run it down towards the front of the property and get it into piping that will get it out to the street.

Ronald Enstrom, 67 Colfax Road, was sworn in. Mr. Enstrom said the high point of Lot 22 is at the mailbox so his lot is getting most of the water from the property. The runoff is causing erosion in his rear yard exposing the roots of the trees and vegetation. A drainage pipe should be installed to intercept the water. Mr. Enstrom objects to the generator location on the side of the house and asked what will ameliorate the noise. He asked if the stairway will be covered and was informed it is below grade so he won't see it. Mr. Enstrom said it is difficult to get the Tesla tile and wondered what roofing material would be used if they can't get the Tesla tile.

Dr. Wolfson testified that Tesla roofs are available in NJ but are extremely overpriced. He is proposing to use the slate model so it will look like a slate roof that the Homeowners Association requires and it will be available in March. He is planning to begin construction in June.

Dr. Wolfson showed a picture of the two houses which was marked as Exhibit A-4. It is impossible to see the neighboring house because of the vegetation along the property line which will be further screened with additional

planting. The proposed air conditioning units are approximately 2 feet by 4 feet. The generator will be exercised at a time that it is not disturbing to the neighbors. The generator exhaust will be aimed toward the back of the property not toward the neighbor.

Mr. Enstrom testified that the Homeowners Association documents outline the permitted roofing materials and he can't tell if the Tesla shingles comply. He does not want to see solar panels installed if the Tesla shingles aren't installed. He is concerned with the noise and dust associated with the construction of the house.

Mr. Gazzale testified the applicant is proposing a swale that would take water from the pool area as well as roof leaders and would carry it around the side of the house. Subsequently they will connect a storm drain to an inlet down the street. Once there is a gravity connection they will be able to extend the pipe onto the property and likely put in a lawn drain in the area they are disturbing to take two thirds of whatever currently goes towards the adjoining property and pipe it down to the municipal storm drain. This would alleviate a significant portion of whatever water has historically run to the adjoining property.

Mr. Fedun asked if they could install a second drain further back to pick up more of the water. Mr. Gazzale said they could but it would require significant regrading and more tree removal. The existing landscaping berm along the property line could be extended back to catch some of the runoff. The applicant will work with Mr. Cline, Mr. Bartolone and Ms. Wasilauski to extend the berm while keeping it out of the proposed deed restricted conservation area.

Mr. Schatzman said Dr. Wolfson has to comply with the Homeowners Association with regard to the roof materials.

Mrs. Engstrom said they appreciate the applicant trying to address handling more of the runoff.

Mr. Schatzman discussed the positive and negative criteria. As far as the existing conditions the applicant can never comply so it is a classic C1 variance. The stormwater management is vastly improved with the proposal which is a benefit that outweighs any detriment. The side yard is approximately the same as all the other lots in the development. Any detriment from the side yard can be ameliorated by additional screening.

Mr. Fedun said he did not have any issue with the variances but it is important to address the water issue.

Mr. Peck said any approval would be subject to the applicant's professionals meeting with the Board's professionals to capture as much of the runoff as is practicable without encroaching on the deed restricted conservation area. The conditions will be as set forth in the review and staff reports as discussed.

A motion to approve the application with the conditions was made by Mr. Fedun which was seconded by Mr. Sudol. The motion carried on the following roll call vote:

Ayes: DeRochi, Fedun, Voitach, Wu, Lopez-Lopez, Patel and Sudol

Nays: None

### **III. DISCUSSION OF REVISIONS TO THE ZONING BOARD RULES AND REGULATIONS**

Mr. Palmer explained that the Board Rules and Regulations permit the applicant one year after approval to get their building permit. Because of conditions that have to be satisfied, outside agency approvals and other things that come up an applicant many times can't submit within the year. Staff is recommending the Rules and Regulations be amended to permit two years from approval to get a building permit. This will help with the timing and expense to the applicant if they have to file for an extension.

Chairman DeRochi said the regulatory environment is getting harder and it is difficult to get everything done within one year.

A motion to amend the Rules and Regulations was made by Mr. Sudol and seconded by Mr. Fedun. The motion carried on the following roll call vote:

Ayes: DeRochi, Fedun, Voitach, Wu, Lopez-Lopez, Patel and Sudol

Nays: None

There being no further business to come before the Board, the meeting was adjourned at 9:25 p.m.