

**MINUTES OF A REGULAR MEETING
ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MOUNTAIN
LAKES
April 7, 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 07, 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: 7:30 PM

ROLL CALL:

Present: Max, Richter, Bolo, Sheikh, Murphy, McConnell, Vecchione and DeNooyer

Absent: Tolud

Also Present: Attorney Michael Sullivan

REVIEW OF MINUTES: James Murphy made a motion to approve the minutes from the February 24, 2016 meeting. Arthur Max provided the second; the minutes were approved by voice vote by all members.

RESOLUTION: none

PUBLIC HEARINGS:

Carried Applications:

Jesse and Fredrika McDonald	Appl. #15-653
Blk. 92, Lot 16.02	165 Morris Ave
Modify a condition of the Resolution	R-A zone

Jesse and Fredrika McDonald presented their own application. They were before the Board on December 4, 2014 and requested an ILC variance to replace their deck with a patio and fireplace. The Board approved the application and placed a condition in the resolution limiting the height of fireplace to 8 ft. since the fireplace had not been designed. When the fireplace was built it wound up being 11.5 ft. tall to the top of the cap but without the cap it was 9.3 ft. tall. Since the fireplace and patio were built on the ground they now go down three steps to get to the patio. The cap was added to make sure the smoke did not wind up in the house or fill the sitting area. The applicant requested the resolution be amended to remove the condition placing a height limitation on the fireplace.

Peter Bolo said he didn't understand how they got to 11.5 ft. tall. Did the contractor know about the height limitation? Yes, Mr. McDonald had given a copy of the resolution to the contractor. Chris Richter questioned the logic being presented, if the patio was built up 3 steps the fireplace would be 18" taller. Michael Sullivan clarified the fireplace was to be 8ft. measured from the patio elevation. Jim Murphy confirmed with Jesse McDonald the extra height was to clear the windows and the door thereby keeping the smoke out of the

house. Chris Richter remembered during the application process the Board had a lot of discussion about the height of the fireplace. Stephen Vecchione added this is an accessory structure which can be up to 20 ft. tall.

Jesse McDonald presented Exhibit A-1 a photo of old deck that has been removed and Exhibit A-2 a photo of the old fireplace that had been removed. He said originally the patio was to be built 18" higher than it was. Arthur Max asked why the applicant didn't stop the construction when the fireplace and cap were more than two feet over the allowed height.

Mr. Richter asked if anyone from the public wished to comment on the application and no one did. Jim Murphy made a motion to allow the fireplace height to be 11.3 ft. and Stephen Vecchione provided the second. The Board voted 7 to 0 to modify the condition with members Max, Richter, Bolo, Sheikh, Murphy, McConnell and Vecchione voting in favor.

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 said the Ansell's were here for the continuation of their application. At the end of the last meeting we were discussing the proposed altering of the lot line to allow for access of the island from remainder lot 23. Dykstra Walker has prepared plans based on those discussions. The site plan was resubmitted and reviewed by the Borough Engineer, Mr. Ryden.

Michael Tobia, the applicant's Planner, referenced sheet 1 of 4 of the new site plans dated March 11, 2016. He reminded the Board this was a minor subdivision creating two lots and pointed out the almost straight subdivision lot line which created the access to the island. It was determined it would be better not to have an easement but rather have a straight line for 250 ft. with the last 10 ft. jogging south and east for a total of 31 ft. to create the access to the island. This change increases the lot area of the remaining lot 266 sq. ft. They no longer need a new bridge or DEP approval and everything else on the application stays the same. Doing this reduces the FAR and ILC but now requires a variance for lot width. The jog creates a side line width of 80 ft. for the last 10 ft. where 90 ft. is required. Mr. Tobia felt this additional variance was both a C1 and C2 variance. The C1 hardship was because this parcel has an unusual shape at the shore line. The C2 benefits are they save a safe working footbridge and there is no environmental disturbance. This plan eliminates the easement for access. The required width of 90 ft. is designed to make sure you can have a house on a lot and honor the side yard setbacks. This lot has the 100 ft. width maintained through the building envelope and the 80 ft. lot width will never be part of the building area. Mr. Tobia felt this was a minor variance and was not an impairment to the zone plan.

Chris Richter asked why the lot width wouldn't be considered a preexisting nonconforming condition. Mr. Tobia said this is an existing condition. Every lot on the lake has an irregular rear lot line due to water movement changing the shoreline. In fact this jog could have been considered a rear lot line rather than a side lot line. We were conservative and requested the variance for lot width. Mr. Richter agreed a lot width variance was needed. Arthur Max said at its narrowest point it looked like the access to

the island was only five ft. wide and could the applicant testify that was true. He wanted to make sure the width was safe. Mr. Tobia confirmed in some areas the width was 10 ft. and in others it went down to 7 to 8 ft. wide. There was a planting bed along the shore line that made the access very stable. Peter Bolo asked the applicant repeat the requested variances. Mr. Tobia said they was a side yard setback variance of 16.9 ft. on the north side of the remaining lot that has been there since 1913. The arbor along subdivision line is 11 ft. away and requires a side setback variance. The existing home requires a variance for height in front, building stories on the non-street side of the house and height on the lake side; all are preexisting conditions. A variance for the building envelope is required on both lots and lot width is needed on the newly created lot.

Chris Richter opened the hearing to the public for the questioning of Mr. Tobia. John Dusinberre, the Attorney for the Verzaleno family living at 270 Boulevard, said the existing house was 4,475 sq. ft. and the permitted FAR in the zone was 17%. They are requesting a FAR of 17.9% because the lot is 1288 sq. ft. short. He suggested if you move the jog in the line up 41 ft. you could get to the needed lot area and loose the FAR variance. Michael Tobia said the options are numerous but when we left the Planning Board they asked the subdivision line be made straighter creating the need for a FAR variance. Mr. Dusinberre presented exhibit O-3 a copy of the site plan from Dykstra Walker dated June 12, 2014 that was submitted during their Planning Board application. He confirmed the Planning Board thought the lot line was gerrymandered.

John Dusinberre asked their Planner, Peter Steck, his thoughts and conclusions on the new lot line. He said the applicant followed the lot line to the island but they gave no meets and bounds. He said there was no survey of this area so the Board doesn't know the land area they are dealing with. The Planning Board took offence to a subdivision line that wiggled. The original property owner used all the lot area to build the house, garage and additions. He pointed out the applicant changed the property with a soil moving permit and thereby changed the height and stories of the house. This is a self-inflicted hardship. In summary he felt the Board did not have enough information to make a decision thereby putting all the FAR and ILC calculations in question. He read section 35-1.2 of the 2016 NJ Zoning and Land Use Administration book, an FAR variance is "a greater threat to the zoning plan than any other dimensional variance."

Jake DeNooyer asked why he was questioning the lot area now when it was on the plans all along. Mr. Steck said he had looked at this more closely and found the applicant was shaving the calculations much too close to the allowable parameters. Chris Richter added all lots on the lake do not have a meets and bounds for the edge of the lake. He asked since the building of the home in 1913 were there an additions to the house. Seth Leeb, the applicants Architect, said he worked on property for the previous owner who did the actual renovations. He said the addition on the side closest to the subdivision line was done on top of the existing terrace. Jake DeNooyer asked is this not a contributing structure? Chris Richter said yes but they are not using the Historic Preservation Ordinance because the Zoning Officer said it was not allowed. Peter Bolo reiterated the soil moving permit had permitted the regrading of the property to reduce the height and stories of the dwelling. Arthur Max said everything they did was not illegal. He suggested requiring a new survey as a condition of the resolution. Khizar Sheikh said the minimum lot width required is 90 ft. with 100 ft. of frontage. What if you made the line shifted so

the frontage of the new lot was 95ft. wide wouldn't you lose the variance? Chris Richter said you would then create a need for a lot frontage variance.

Chris Richter asked if the court remanded this application to the Zoning Board. Mr. Henshaw said no they did not. Stephen Vecchione asked if the soil had not been moved and the basement counted in the FAR what would it be. The house would be 5968 sq. ft. with a FAR of 24.26%. Chris Richter said the Board cannot suggest the subdivision line be moved because the application would go back to the Planning Board. This Board needs to rule on the application. James Murphy made a motion to recess for a few minutes and Stephen Vecchione provided the second.

When the Board returned Doug Henshaw asked Mr. Tobia about the survey. Mr. Tobia said there was a survey done of the property in 2007. The island size does vary due to the movement of the water. The lots are oversized and they could remove 228 sq. ft. from the house to eliminate the FAR variance from existing lot. Mr. Steck said we need to do a suitability test for a FAR variance however we do not because that only applies to a d-1 variance for use. The house has existed since 1913 and we are not expanding. The minor soil permit was legal.

Khizar Sheikh asked if the minor soil moving permit was obtained in advance with knowledge of this application. Michael Tobia said there were two permits, one was for some grading to remove a small hump of steep slopes that was done in preparation for this application and the other was to repair some walls and the entrance to the basement. He was not sure if that was done for this application.

The Chair opened the hearing to the public and no one wished to comment. He then asked for the summation from the Attorneys. John Dusinberre said the applicant owned the house since 2009 and has wanted to cash out since 2012. In 2012 they made an application to Zoning Board and withdrew it. In 2014 they went to the Planning Board with a crazy lot line to maximize the remainder lot. In 2015 they submitted an application to the Zoning Board after applying for a Minor Soil Moving Permit to make the application as good as it could be. He suggested the Board deny the application because the variances are self-created. You should not approve the variances just because these are large lots. There are other ways to subdivide this so you eliminate the FAR variance. If both lots were empty and someone came before you to build a house with a 17.9% FAR you wouldn't grant it. You should send this application back to the Planning Board. Doug Henshaw disagreed with what had been said by the opposition. FAR variances are not unusual in this town. The opposition's home was taller than this one. These things are preexisting conditions. He resented the implication that his client has done something wrong. Last month Mr. Dusinburee suggested this lot line would be acceptable and so did the Board. So the applicant made those changes to the site plan. There were no problems with the application or the description of property when it was reviewed by the Borough Engineer. The lots are oversized. We reviewed the suggestion that the island became its own lot when the property was subdivided. Based on the MLUL and the town Ordinances there is no way the island is a separate building lot. We think this application deserves the consideration and approval.

The Chair opened the hearing to the deliberation of the Board. Jake DeNooyer said he was the alternate and did not get to vote. He did live across the lake from the applicant and does not like the idea of seeing a new home on the lot. He lives on a .42 acre lot and has a hard time saying you can't put a new home on a .76 acre lot. He could see both

sides of the argument. Arthur Max thought it odd the objector was never called on to testify. He felt the applicant had made his case for the variances. The Board has granted variances for larger FAR percentages.

Peter Bolo felt the applicant had taken a convoluted course because there is not adequate property. He felt the applicant had not met the negative criteria and the development does pose a detriment to the public good and the zone plan. He was concerned about the view corridor from the Boulevard. He read the following passages from the Master Plan, Element XI, *Summary of Major Findings and Recommendations*, page 2, Land Use and Development Policies, Preserving the Borough Character, “One of the fundamental themes of this plan is the importance of preserving the established character of existing residential neighborhoods.” Element III, *Land Use*, page 4, Neighborhood Characteristics, “The single family neighborhoods in Mountain Lakes traditionally have certain land use characteristics in common which should be protected and perpetuated. Lot size is of course an important characteristic... Another important characteristic is a sense of spaciousness and openness in most single family neighborhoods. ... This results from the fact that the scale of homes in relation to land area has traditionally been modest.” Element 10, *Historic Preservation Plan*, page 4, Mountain Lakes Residential Park – A Planned Community, “Mountain Lakes was envisioned by Herbert Hapgood as a residential park community in a sylvan setting... The roads and residential lots were laid out in a manner that focused the overall design on the manmade lakes that were built as part of the development, as well as conforming to the general contours of the land. This resulted in a curvilinear design that grew out of the characteristics and constraints of the land. This is in marked contrast to most residential planning practices of the time (and indeed today) which was based primarily upon a grid pattern.”

Chris Richter said our town permits 100 ft. wide lots and if you have a 200 ft. lot you can subdivide. The Council said if you are a contributing structure we can allow a 21% FAR so the FAR does not bother him. The subdivision line in his opinion was where it should be allowing access to the island and maintaining the lot width as much as possible. The FAR was a direct result of putting the subdivision line where it belongs. This is a lakefront lot and someday someone will knock the house down and make two lots. The result of allowing the subdivision is the preservation of the house. The FAR and the rest of the variances are deminimis. It is not perfect but it is the best plan and proper planning. Jim McConnell felt Dr. Bolo’s points were well taken but if you should subdivide he felt the line was in the right place. The FAR is a small variance and in the course of any other application would be insignificant. It does not bother him the grading was done. Khizar Sheikh said he had to vote based on the proofs presented. He is not an expert in subdivisions or where the subdivision line should be. He is troubled by the FAR because the applicant has not made its case as to where the line should be. They have not met their burden and their proofs do not support the subdivision presented. Jim Murphy said he thought the development plan for two lots with two houses worked. He agreed with the Chair, it is a question of when this will eventually be subdivided. Stephen Vecchione said he felt the subdivision line was where it should be. But by doing so you are creating two lots that are not variance free. He did not think dividing this lot would save the house. The community wants the open airy feeling and he did not think the land should be subdivided unless it could be done without variances. Chris Richter made a motion to approve the application as presented subject to Mr. Ryden’s letter dated September 16,

2015 and carried forth in his letter dated April 4, 2016. A second was provided by James McConnell. The Board voted 4 to 3 to approve the application presented. Members Max, Richter, Murphy and McConnell voted in favor and Bolo, Sheikh and Vecchione voted against. Since 5 affirmative votes are required for an FAR variance the application was denied.

New Application:

Megan and Stephen Shuhet
Blk. 86.01, Lot 28
FAR

Appl. #16-657
6 Wilcox Drive
R-A zone

Marjorie Roller, a professional Planner and Architect licensed in the state of NJ would be presenting the application along with her clients Megan and Stephen Shuhet. Ms. Roller reminded the Board the homeowners had been before the board 10 years ago for a generous FAR variance to put a family room on their home. Mr. Shuhet said in 2008 he moved his offices back into their home and was now working with international clients. His work is very disruptive to the household. They would like to add an office above their existing family room. Marjorie Roller continued they wanted to find a place for an office within the existing foot print. They could have added space above the family room that was 40% of what was below but that would require a steeper roof. They thought the design presented was in the back of the house and would be more appropriate. They are giving up the cathedral ceiling in the family room to create the office space. They want the area isolated from the rest of the family so they have added a staircase to the side of the current family room. They will be removing the shed and walkway to keep ILC down.

Chris Richter questioned the FAR, it was 22.64% on the previous resolution and now the existing was 24.46%. Ms. Roller answered a shed was added and it should not have been. The applicant will remove it. Khizar Sheikh asked where he took calls now; he takes them upstairs in bedroom #2. Jim Murphy confirmed the staircase was the only access to office from 1st floor. He thought it a large space at almost 22' x 16'. Jake DeNooyer confirmed there was a window in the staircase. Chris Richter asked the Shuhet's if they had considered moving out of the house. Megan Shuhet answered they like neighborhood and closeness to the schools. Mr. Sheikh asked if they considered sound proofing the bedroom. He thought they could make the office smaller. Marjorie Roller said they were trying to keep the design simpler by stacking the room on top of each other thereby making this a minor renovation from a construction stand point. If they built the space over the breakfast area it would be a higher FAR percentage. Ms. Roller said the house was on the lower side of Wilcox. The lots on the other side of the street are just as wide just deeper. This addition will not be seen from the street and the property backs up to Borough land. Mr. Shuhet added the kids are up and down the hall all the time to their bedrooms so upstairs is not an appropriate space for an office. Peter Bolo asked why they didn't consider the basement. Right now that space is a playroom for their kids and it's subterranean.

Chris Richter said this FAR request was not a hardship. To come before the Board and ask for a home office is not something he could support. Mr. Shuhet repeated his working from home was very disruptive to their household. Khizar Sheikh asked why they were

requesting this size room when he is currently occupying a 12' x 12' space. Jim McConnell questioned if there was really no space in the basement. Peter Bolo said variances don't relate to how the family is using the home. Chris Richter added the FAR was just too high. Stephen Vecchione said he understood the need for the office but this was huge. The variance stays with the house and the applicant could move at any time. Marjorie Roller said they could try to go back and repurpose the 176 square feet of cathedral ceiling into an office thus keeping the FAR the same. Mr. Richer suggest they look at the houses in the area and determine the FAR of those homes. It was suggested they look at a smaller office space and submit new drawings. Peter Bolo also thought they should get rid of the external staircase.

Stephen Vecchione made a motion to carry the application to our May 5, 2016 meeting and Jim McConnell provided the second. The Board approved carrying the application to our next meeting by voice vote with all members voting in favor.

Other Matters / Public Comment:

No one from the public was present to speak during the public comment period.

Arthur Max made a motion to adjourn the meeting and James McConnell provided the second. The meeting was adjourned at 10:24PM.

Respectfully submitted,

Cynthia Shaw, Secretary