

**TOWNSHIP OF DENNIS
ZONING BOARD OF ADJUSTMENT
571 Petersburg Road
Dennisville, NJ 08214
(609) 861-9705**

JANUARY 26, 2011

MINUTES

This meeting was published in accordance with the "Open Public Meetings Act". Notice of this meeting was published in an annual meeting notice in the Cape May County Herald and posted in Township Hall.

The meeting was called to order by Chairman Sorenson. The following members were present: Mr. Sorenson; Ms. Mascia; Mr. Penrose; Mr. Jones; Mr. Robertson and Mr. Haig. Also present were Tony Harvatt, Board Solicitor and Vincent Orlando, Board Engineer.

Mr. Sorenson advised that Mr. Robertson and Mr. Penrose will be voting this evening.

METROPCS PENNSYLVANIA, LLC - Block 253.03, Lot 46.01:

Located on Route 9 in Ocean View in a Moderate Density Residential (R-3) Zone. Applicant is seeking minor site plan approval, as well as use and height variances to extend the height of an existing tower to 130 feet and to place antennas on the tower and to place equipment cabinets on a steel platform within the existing compound.

Due to the weather, the applicant requested that this matter be continued to the February, 2011 meeting of the Board.

WALTERS, WILLIAM - Block 235, Lot 5.04:

Located on Baywood Drive in Ocean View in a Moderate Density Residential (R-3) Zone. Applicant is seeking to construct a single family dwelling on a 1.5 acre lot. Variances for the amount of upland required, side yard setback, building height and wall height are requested.

James Pickering, Esquire appeared on behalf of the applicant. The applicant is asking for

several variances to build a new single family residence. It is a non-conforming lot, and they will need a variance for side yard setback and possibly several other variances.

Matthew Ecker, P.E., William Walters, Carol Tutelian and Vince Orlando, P.E. were all sworn in by Mr. Harvatt.

Mr. Pickering questioned Mr. Walters.

Mr. Walters testified that he was the owner of the property; that he owns the adjacent 2 acres where he currently resides off of Old Goshen Road. He wants to build a single family home for himself and wants to give his current home to his children.; they would share a back yard; and he would be able to do some of the work himself due to his background in construction.

Mr. Sorenson asked for questions for Mr. Walters.

Mr. Pickering then asked questions of Carol Tutelian.

Carol Tutelian testified that a subdivision was approved in 1987; there was a restriction on the back of the lot for an area of 100 feet that could not be developed; she has researched the property and cannot find any rationale for this restriction. She advised that several permits have been obtained; the applicant has a Letter of Interpretation (LOI); it was approved before the Fresh Water Wetlands Act was enacted; and since buffer was created prior to that time, there is no buffer requirement and the applicant has a letter to that effect. She also testified that the applicant has a letter saying that a single family dwelling is permitted on property. She indicated that the lot is about one and a half acres, but is in a 3 acre zone; and that the lot is grandfathered by Township Ordinance if certain conditions are met, which conditions are met.

Mr. Pickering read directly from the applicable Township Ordinance regarding the issuance of a building permit under conditions as outlined for this application. He reviewed the conditions outlined in the Ordinance and how they relate to this application. He indicated that if the 3 acre requirements are halved, then this property meets most of the requirements. He also indicated that variances may be needed for height, wetlands/uplands.

Ms. Tutelian testified that the lot is consistent with others in the neighborhood; and meets the negative criteria.

Mr. Pickering reviewed other possible variances that may be required. He indicated that the local Ordinance requires a transition area from wetlands, but that requirement is illegal due to Statute and he then cited case law and Statute. He indicated that the applicant is forced to ask for that variance because it is in the local Ordinance, but even if it was legal, the variance can be granted.

Ms. Tutelian explained why the requested variance can be granted.

Mr. Pickering discussed the issue of building height, and that under the grandfather

provisions it permits 15 feet; but the applicant is requesting 30 feet which is standard for a 2 story home and which fits in with the neighborhood; and there would be no impairment to the Zone Plan or Zoning Ordinance. He further indicated that this lot is a little larger than most of the other lots in the area.

Mr. Pickering the directed questions to Matthew Ecker, P.E.

Mr. Ecker testified that he was asked to design the septic system; he described the problems he encountered with the design and limited area. He advised that he had to integrate elevations (septic with design of house). He also advised that the applicant is asking for variance for a retaining wall that exceeds 3 feet. He advised that the requested wall is partially functional and partially design (erosion control and access) and will connect aesthetically with the home; and there will be no detriment to the neighborhood; and no impairment to the Zone Plan or Zoning Ordinance. He also discussed grading and how it will function and work.

Mr. Sorenson asked for the Engineer's report.

Mr. Orlando reviewed the Engineer's report.

Mr. Pickering addressed the Engineer's comments.

Mr. Harvatt discussed certain aspects of Engineer's report.

Mr. Pickering advised that he believes that if the lot meets the size of 100 X 125 feet, then the lot is grandfathered and he indicated that he has received variances in the past that if that requirement is met, then all variances are determined from the grandfather provisions and set backs are reduced on a proportional basis. He further indicated that to get a variance from the original number does not make sense; and that if the 100 X 125 feet requirements are not met, then you have to get variances from square one.

Mr. Orlando indicated that the language in the Ordinance is not clear.

Mr. Pickering continued with his analysis of the Ordinance and the grandfather provision.

Mr. Harvatt advised the Board that they will need to make a determination as to whether or not this property is grandfathered because everything flows from that decision.

Mr. Pickering indicated that lot size and lot depth would be the only variances needed if not grandfathered, but he believes the lot is grandfathered.

Mr. Sorenson then asked the Board for comments and/or questions regarding this.

Mr. Jones indicated that he would like to have seen an artist sketch as to what the building and property would look like.

Mr. Walters testified that this was originally going to be a wedding present for his daughter; but his wife passed away and it is now going to become his house.

Mr. Pickering indicated that architectural drawings are not required and would cost a great deal.

Mr. Walters testified that the retaining wall will be an E.P. Henry Drystack wall; and that he plans to do a first class job as he plans on living there forever.

Mr. Sorenson asked if there were any further questions/comments.

Ms. Mascia indicated that she believes the lot is not grandfathered, but can deal with the variances and is not opposed to granting variances and wants more explanation on wall.

Mr. Haig asked for further information on the additional set back for wetlands. Mr. Orlando explained that it is the buffer plus the required set back, for example 100 foot wetlands buffer plus 35 foot setback equals 135 foot set back. In this case there is no buffer.

Ms. Mascia wanted to know what is the guarantee that wetlands area will not be disturbed. Mr. Walters indicated that he is willing to mark the area and agrees not to put anything in that area.

Mr. Orlando indicated that if the house is moved back about 12 feet, the applicant can pick up an additional 3 feet. Mr. Pickering discussed this with Mr. Walters. Mr. Walters testified that he knows he can build the house without ever entering wetlands area.

Mr. Harvatt asked if there were any questions about the wall.

Ms. Mascia indicated that she has concerns with the wall; and wanted to know why does it have to be 11 feet. Mr. Ecker explained the reasons for the height of the wall - it need slope to move drainage away from the home and also because of the slope of property. An alternative would be for a mounded septic systems with a basin in middle. He also testified that it would give the landscape aesthetic and permits plantings of trees, etc.

Mr. Orlando discussed the septic bed with Ecker. Mr. Pickering indicated that it was submitted to the County and approved. Mr. Ecker confirmed the County's approval.

Mr. Orlando and Mr. Ecker discussed the wall, landscaping; and grading.

Mr. Penrose indicated that his only concern is the patio in the back and with the ground falling off in the back. Mr. Walters testified that access to the patio will be from the house only, there will be no steps down, and that it will be like a balcony. Mr. Orlando added that the patio will be above ground.

Mr. Sorenson opened the meeting to the public. There being no public comment, the meeting

was closed to the public.

Mr. Harvatt asked Mr. Pickering for any closing statements.

Mr. Pickering closed by saying that he believes this is a grandfathered lot; it was granted by the Planning Board in 1987; has been recorded and is a legitimate lot; meets grandfather lot because it meets 100 X 125 foot size.; and even if not a grandfathered lot, they can request variances.

Mr. Harvatt asked for a formal vote as to whether or not this was a grandfathered lot. He asked for a form of motion to affirm a pre-existing grandfathered lot.

Ms. Mascia asked for clarification of what Harvatt indicated. Mr. Harvatt re-stated what is being asked for. Mr. Harvatt indicated that he just wants to know at this time if the Board believes the lot is a grandfathered lot without considering any other conditions.

A motion to approve was made by Mr. Jones. The motion was not seconded. Mr. Harvatt advised that since there was no second on the motion, the Board considers this to not be a grandfathered lot.

Mr. Harvatt then moved on to the variances - the first being a variance for lot area. A motion to approve was made by Ms. Mascia, seconded by Mr. Jones and carried by all voting members.

Mr. Harvatt then presented a form of motion for a variance for minimum lot area upland. A motion to approve was made by Ms. Mascia, seconded by Mr. Penrose and carried by all voting members.

Mr. Harvatt then presented a form of motion for a variance regarding lot depth. A motion to approve was made by Ms. Mascia, seconded by Mr. Penrose and carried by all voting members.

Mr. Harvatt then presented a form of motion for a variance regarding side yard set backs. A motion to approve was made by Ms. Mascia, seconded by Mr. Jones and carried by all voting members.

Mr. Harvatt then presented a form of motion for a variance regarding wall height. A motion to approve was made by Mr. Jones, seconded by M. Penrose and carried by all voting members.

Mr. Harvatt then reviewed the conditions of approval.

RESOLUTIONS:

BARRY, THOMAS AND SALLY - Block 96, Lot 1:

A motion to approve was made by Ms. Mascia, seconded by Mr. Haig and carried by all voting members.

PHILTRICH, LLC - Block 64, Lot 30:

A motion to approve was made by Mr. Jones, seconded by Mr. Haig and carried by all voting members.

ANNUAL REPORT:

A motion to approve was made by Mr. Jones, seconded by Ms. Mascia and carried by all voting members.

OTHER BUSINESS:

Mr. Sorenson requested a motion to pay the bills. A motion to approve was made by Ms. Mascia, seconded by Mr. Jones and carried by all voting members.

Mr. Orlando asked the Board members if they would like the Engineer's reports e-mailed to them. Board members indicated that they would like this to be done. Board members were asked to supply their e-mail addresses to Mr. Orlando.

There being no further comments or business to discuss, the regular meeting was adjourned at 8:20 p.m..

Carla A. Coffey, Secretary
Dennis Township Zoning Board of Adjustment