

BOARD OF ADJUSTMENT MINUTES

May 30, 2006

A complete record of this special meeting is contained on the audio tape of the meeting which may be listened to at the Bernardsville Municipal Building. Information on how to obtain a transcript may be had by contacting the Administrative Officer of the Zoning Board of Adjustment.

Call to Order

Statement by Presiding Officer: Adequate Notice

Roll Call: Members present were Mr. Berman, Mr. Biba, Ms Buchanan, Mrs.

Dee, Mr. Fell, Mr. Foster, Mr. Greenebaum, Mr. Hagen, Mr. Negri, Mr. Salisbury and Mrs. Shea.

Also present were John T. Lynch, Esq., Board attorney and Robert Brightly, P.E., Ferriero Engineering, Board engineering consultant.

Communications - None

5. Minutes

Mr. Biba moved approval of the corrected draft minutes of April 3, 2006 and Mr. Negri seconded. The minutes were approved by voice vote.

Vouchers - None

7. Resolutions - None

Pending Applications

#05-26 Schlott, 211 Douglass Avenue; Block 28, lot 60, R-1 Zone - subdivision - 3 lots - Carried from April 3, 2006

Vincent T. Bisogno, Esq.

Ronald Kennedy, P.E.

Richard Schlott, owner

Michael Patsalos-Fox, 64 Charles Road, neighbor

Exhibits: A-1 & A-2 - photos of the carriage house; A-3 & A-4 - photos of the cottage; A-5 & A-6 - photos of the root cellar; A-7, A-8 & A-9 - showing trees and Mr. Patsalos-Fox's house from the driveway to the cottage; A-10 - wetlands report by PK Environmental; A-11 - aerial photo of area with some enhancement of structures and driveway - red ink added by Mr. Kennedy at the meeting

Mr. Bisogno reviewed the testimony at the April 3, 2006 meeting. The 29 acres

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are to be subdivided into 3 lots; the largest of 14 acres which the Schlotts will retain. This lot contains two accessory buildings. The other two lots will be sold for development (6 acres on Charles Road and 8 acres on Douglass Avenue).

The variances requested are: 1. the accessory buildings on the 14 acre lot which received a variance in 1999 but as the lot will be smaller there is an intensification of a non-conforming use; 2. a technical variance is needed for the driveway from Charles Road which will be used by the 14 acre lot and the 6 acre lot; and 3. a technical variance because the driveways cross the lot lines. This is a minor

subdivision.

At the previous meeting the Board had asked for information: square footage of the accessory dwellings; possible landscaping to screen lot 59.01's driveway from Charles Road; the root cellar on lot 60; the cistern funding; whether the Duncan resolution referred to the cistern; and how the Board might be assured the accessory dwellings will be maintained.

Mr. Kennedy explained how the floor area was figured for the first meeting. They went back and did a physical inspection and came up with somewhat different numbers. Mr. Kennedy pointed out the location of the two accessory dwellings and the two new lots. Photos were submitted, marked A-1 and A-2 of this date and showed the carriage house which contains an apartment above a two-car garage which totals 1,371 S.F. Photos A-3 and A-4 of the cottage were also submitted. The cottage is 800 S.F., excluding the porch. From the air the cottage looks much larger due to the roof line.

Mr. Kennedy said the root cellar is on new lot 60.04 and photos A-5 and A-6 show that structure which is simply walls without a roof. He described the root cellar as having 2 ft. thick stone walls (one is 7 ft.), 27 ft. x 16 ft., with several openings in the walls. It has not had a roof for some time. There is a concrete path to the structure. The walls are stable - none are falling down. Thus they left it on the plan - a future homeowner will choose what to do with it.

On the question of possible landscaping to screen lot 59.01, Mr. Kennedy explained there is a driveway from Charles Road to the cottage and then on to the main house. At one place the drive is quite close to the property line because when this was part of the Hummel estate, the drive went to the Patsalos-Fox house as well as the cottage. Photos A-7, A-8 and A-9 show the trees in that area and a view to Mr. Patsalos-Fox's house. There are large trees and clumps of trees in the area with limited low vegetation. Thus structures on lot 59.01 can be seen.

Mr. Kennedy said there was a discussion about putting plants in. Mr. Schlott said he would like to keep it open. There are nice views as one drives; there are meadows on one side and trees on the other.

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The two accessory buildings have been upgraded by the Schlotts and they are quite attractive now. The cottage is at least 100 years old. They could not be exact but the construction fits that age.

As to the cistern, Mr. Bisogno said the applicants are willing to put in another \$20,000 so a cistern can be built. Mr. Greenebaum said given 4 lots in the earlier subdivision and now two more lots with this subdivision, the cistern should be paid for since the ordinance says 6 lots triggers a cistern. There was some discussion since lot 60.05 will not be covered by the cistern.

Mr. Greenebaum was also concerned about the possibility that by allowing further subdivision there would be slope and wetland problems. Mr. Bisogno said those concerns are valid and the application is not violating any slopes or wetlands. A copy of a January 20, 2006 wetlands report by PK Environmental was submitted and marked Exhibit A-10. The report stated there were no regulated wetlands or State open waters in any area of disturbance. Mr. Bisogno added they had been particularly careful in locating the new driveway so slopes or wetlands would not be disturbed.

Mr. Bisogno noted that the subdivision being proposed meets all of the requirements of the ordinance. The only variance being requested is for the two accessory buildings now being on a smaller lot. The applicants had considered taking them down but Mr. Bisogno said he believes they are part of the

Borough's history and so should remain. Mr. Schlott said when he purchased the original property, they could have followed the zoning and put in 5-acre lots. However, they subdivided into large lots - 6+ acres to 9 acres. This application follows that pattern. He is not a developer and wants to keep the character of the area as much as possible.

Ms Buchanan said the Environmental Commission asked about the effect of adding two more wells to the area. Mr. Kennedy said they have not done a thorough well analysis of the area. He noted the Bernardsville Mountain area is fractured rock which means that new wells can draw water in one place and 100 ft. away there is little water. Also the wells are getting deeper to insure a better flow. What they basically rely on is how the town zones as to lot size and density. The zoning here allows a house and well on five acres.

It was noted that the Duncan resolution did not mention the cistern since its purpose was to purchase land to allow an access to Charles Road. Mr. Kennedy pointed out the location of the cistern easement which was located as the Fire Prevention Bureau had requested.

There was a discussion about the original cistern funding and what it covered. The

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cost of putting in a cistern at this time is between \$35,000 and \$40,000 so additional funds are needed. Mr. Negri said if the Board approves this, a condition should be that the additional funds be given for the cistern so it may be put in. Mr. Schlott said one of the reasons he put in a pool was as a fire protection for his lot. Mr. Lynch said the point of the ordinance is to provide protection for new lots going in and the person creating the lots is responsible. There was a discussion about how much the Borough was also responsible. The MLUL requires the money be returned to the applicant after 10 years if the cistern is not built. After further discussion it was suggested the money be returned to Mr. Schlott and he be required to put in the cistern.

Mr. Patsalos-Fox said he has no objection to the applicants' plan. They moved to this area basically for the space. The earlier subdivision caused them no concern. Their main concern here is whether the new house on proposed lot 60.05 might be moved forward on that lot and away from the knoll which now shields their house.

As a part of their concern about the proposed house on lot 60.05 is that it might "grow" to the maximum size allowed, i.e., 16,000 S.F. rather than the more modest size here proposed. Mr. Patsalos-Fox asked if there is a way to place a size and a placement restriction on any approval. While Mr. Schlott has assured the placement of the house, once he sells the lot, a new owner may decide to place the house elsewhere.

Mr. Kennedy estimated the distance from Mr. Patsalos-Fox's house to the proposed house as 450 ft. He marked the aerial (Exhibit A-11) in red indicating the locations of Mr. Patsalos-Fox's house, the knoll and the proposed home. He referred to site plan Sheet 2 of 2 which shows the slopes on the site. There was a discussion about whether the Board can put a house placement restriction on the site or if members want to do so. As to the driveway to the cottage, Mr. Patsalos-Fox said he would like to see some screening where the driveway nears the property line. He has put up some trees himself to block headlights on the driveway.

Mr. Schlott said he can agree with Mr. Patsalos-Fox's concerns, particularly about the size of the proposed house. He would not like to see a 16,000 S.F. house there himself. As to the proposed

house's location, he believes the area shown is the most logical place to put a house on that lot. Concerning the driveway to the cottage, Mr. Schlott said he does not feel he should be expected to put a wooded area in to handle the

headlights. The Patsalos-Foxs could put trees on their property. He could tear down the cottage which would take away anyone driving to it. He does not want to do that.

Mr. Lynch noted that the ordinance only requires 150 ft. between homes in this zone. The proposal is for more than that. He made a suggestion which might be

satisfactory to both parties. The house would be built at a 100 ft. sideyard and not lower than the 624 ft. elevation. There was a discussion with Mr. Kennedy who was figuring

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how to place a house on the site with those constraints. He said if someone wanted a wide house they would find it difficult to place the house in that location. A 630 ft. elevation was also suggested.

There was a discussion on exactly how the variances requested relate to some of the restrictions being put forth. It was noted that the applicants could have subdivision without variances if they tore down the accessory homes. The point for various Board members was dealing with the neighbor's concern. The Board can change the building envelope with reason.

Mr. Schlott said the proposed house site fits the setbacks. The angle of house as drawn by Mr. Kennedy follows a suggestion by a builder who looked at the lot. The garage would be on the side away from lot 59.01.

As to the two accessory buildings, Mr. Bisogno said the applicants have agreed to maintain them with the understanding they will be used for employees or social guests. The question then was could the Board require no further subdivision. Since this is the 5-acre zone, it might be difficult to make that restriction. Mr. Schlott has no problem with that but a future owner might.

Mr. Lynch reviewed some of the questions and possible conditions the Board had discussed. Mr. Bisogno and Mr. Schlott said there would be a contribution of \$20,000 in addition to the earlier contribution. The 630 ft. elevation is no problem but the 100 ft. building side setback is. There is no problem with the septic system being down the slope.

Mr. Bisogno said the main question is the access for the 14-acre lot because it shares a portion of an existing driveway across new lot 60.04. It is important to preserve the accessory homes, particularly because they are part of the history of the area. There will be a \$20,000 contribution for the cistern and the proposed home on lot 60.05 will be above the 630 ft. elevation.

Board members discussed several items as outlined. The process for installation of the cistern by the Borough was outlined and Board members felt it would be more practical to return the original contribution to Mr. Schlott and have him install the cistern. Mr. Bisogno said they would agree to that.

Mr. Negri moved that all the variances requested be granted subject to any conditions agreed to at the April 3, 2006 meeting and to those agreed to at this meeting. As to the cistern, Mr. Schlott will deposit an additional \$20,000 to the Borough and in the event that the Borough does not actually construct the cistern, all of the moneys will be returned to Mr. Schlott with the requirement that he build the cistern. Conditions were:

no further subdivision of lot 60; that the two accessory buildings will be maintained in their current shape; and the new house on lot 60.05 cannot be lower than the 630 ft. elevation. The applicants agreed to the second condition of the Shade Tree Committee report. Mr. Greenebaum seconded.

Mr. Kennedy said they will be able to comply with the items in the engineering report. The roll call vote was:

Mr. Biba yes Mr. Hagen yes

Ms Buchanan yes Mr. Negri yes

Mr. Foster yes Mr. Salisbury yes

Mr. Greenebaum yes

B. #06-01 Christopher Shaw, 34 Old Fort Road; Block 45, lot 2, R-3 Zone -
addition

This matter was held to July 17, 2006 at the request of the applicant.

Old Business

New Business

11. Comments from Members

Comments from Staff

Adjournment

Mr. Hagen moved the meeting be adjourned at 9:40 p.m. and Mr. Negri seconded.

Respectfully submitted,

Joy W. Vavrek

Administrative Officer

Board of Adjustment

5-30mins.06